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Surviving the Transition: Women's Property Rights and Inheritance in New Mexico,  
1848-1912

by

Carol Archer

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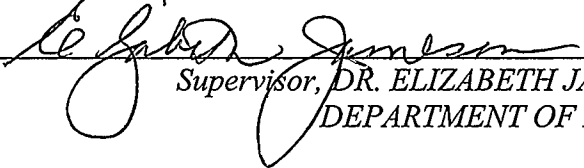
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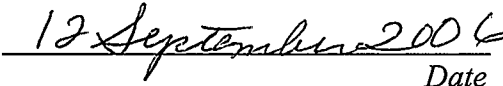
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## ABSTRACT

Following the conclusion of the Mexican-American War of 1846-1848, the United States claimed nearly one-half of Mexican territory and instituted judicial procedures based on the English common law. New Mexico Territory had been claimed by Spanish colonial settlers beginning in 1598, and had operated under Spanish law from 1598-1821, and Mexican law from 1821-1848. Women experienced new legal traditions, institutions, and practices but they also adopted strategies of survival that allowed them to resist the complete destruction of the social and legal rights they had historically enjoyed under a Spanish Mexican civil code of law. New Mexico retained Hispanic law, marital customs, and concepts of property longer than other U.S. territories. In addition the uneven establishment of U.S. law meant that Hispanas continued to maintain a legal profile long after conquest. However, changes in land title and taxation procedures, increased numbers of European Americans, and differing social attitudes affected the status of New Mexico women. The transition from Mexican province to U.S. state meant disempowerment and massive property loss.

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## Introduction

During a trip to Spain in the summer of 2005, I took the opportunity to stroll along the *malecón* or waterfront, a path that included the *Ruta de las Villas* or Route of the Villas at Benicassim on the *Costa Azahar*, the Orange Blossom Coast of Spain. As I read the informational plaques in front of each historic villa, I was struck by the fact that several were the property of Spanish women, and I noted in particular the Villa Pilar. Construction of the Northern Railway in Valencia in the late-eighteenth century prompted the Spaniard responsible for the survey work, Don Joaquín Coloma Grau, to build a residence for his wife, Doña Pilar Forts Mas, to occupy during the building of the railway. It was paid for with the 15.000 pesetas that Doña Pilar brought to their marriage. With the construction of two additional villas, the three properties eventually formed the inheritance of the two daughters and one son of the marriage. Such brief information on one small plaque reflected the ancient civil code upon which Spanish matrimonial law was based. Women possessed their own property, in many cases inherited from parents and grandparents, and sons and daughters shared in a system of partible or equal inheritance.<sup>1</sup>

On the other hand, in the United States in the mid-nineteenth century, women like Jane Grey Swisshelm, an early newspaper owner who published her own paper, the *Saturday Visiter* [sic], suffered bitterly under the restrictions of the English common law. Married into a family that actively worked against her, Jane Swisshelm endured a tormented relationship with James Swisshelm. He resented the time his wife spent nursing her own sick mother, and threatened to bill his mother-in-law's estate for his wife's nursing services, as was his legal right. In 1857, the two separated, and Jane

Swisshelm subsequently went to court to secure her personal property. In 1861, James Swisshelm divorced his wife on grounds of desertion. The next year Jane Swisshelm pressed for a law permitting married women to hold property in their own names.

Articulating the concerns of many women, she wrote: “If I do not mistake, there are more systems of oppression than southern slaves which are growing shaky; and I expect to see the day when all that a married woman acquires by her labor or services will belong to herself-when wives as well as slaves will own their own bodies and souls just like white folks.”<sup>2</sup> The notion of marriage as slavery and servitude formed a common thread throughout much of the feminist analysis of women, marriage, and property in the Anglo-American world. In 1979 Nancy Cott wrote: “In the strictly economic aspect the traditional marriage contract resembled an indenture between master and servant. Both parties had rights and obligations. The wife (much like the servant) deserved provision and owed service and obedience.”<sup>3</sup> Men also served their wives but in a “superordinate” role.

This study examines how Hispanas in New Mexico responded to a new legal tradition in the Territorial period following the American conquest in 1848 up to 1912 when New Mexico achieved statehood. The thesis also examines how Hispanas adapted when the international border moved but they did not. The issue of class is addressed as well as the increased presence of European American women in the courts and what that meant for Hispanas. The topic stemmed from a reading course on the U.S.-Mexico borderlands in which I became aware of the extensive legal and property rights that Hispanas had historically enjoyed. My research examines the changes over time in how women in New Mexico used the courts and for what purposes. The thesis tests



assumptions that system change is clear-cut and examines the actual practices of New Mexico women during the judicial transition from the Spanish civil code to an Anglo-American law tradition. As Mary Lyndon noted: "Law does not exist in isolation. It is an expression of public policy, and it embodies, if not a majority view, at least the political and juridical consensus about matters of public policy."<sup>4</sup> It is also important to note that men made the laws. How policies are enacted in judicial practice is also less clear. How exactly did conquest affect the lives of Hispanas? How did they participate and interrelate in a changing society? Did they still imagine themselves as active agents in their world? Were there continuities as well as changes and were there some changes for the better as well as losses?

Documents concerning property and inheritance as it affected Hispanas formed the greater part of my archival research. Unfortunately some of the records are incomplete. For example the deed indexes from 1880 to 1887 for Doña Ana County are missing from the record. However, the material gathered for the study provided a starting point towards forming an interpretation of women's rights during the Territorial period in New Mexico. I also included other types of litigation such as cases of debt and assault to corroborate the continued presence of Hispanas in the courts during the period under study and to add to our understanding of life in mid-nineteenth century New Mexico.

The format is not a linear chronology, as the chapters address the new circumstances and issues that affected women, particularly Hispanas (Spanish-heritage women), in nineteenth-century New Mexico, as well as the persistence of legal tradition. Chapter One looks at the historical differences between the Spanish civil code and the English common law, and the state of the law in the mid-nineteenth century. Chapter

Two discusses some of the legal changes and also the continuities that affected Hispanas throughout the Territorial period. Chapter Three examines how New Mexico women used the courts for help with inter-personal issues such as divorce, assault, insults to honour, and debts, and Chapter Four looks at property rights, inheritance, and guardianship. Chapters Three and Four inevitably overlap in some instances because suits for divorce and litigation over debts frequently included property. However, Chapter Four is intended to illustrate the strength of the concepts of property rights, inheritance, and guardianship through the inclusion of a number of actual cases.

In 1852, after the 1848 American takeover of New Mexico, General Stephen Kearney created nine counties including Rio Arriba and Doña Ana. I used these two counties in order to ascertain how women employed the courts in New Mexico and to look at the changes and continuities in that practice over time. Drawing geographic parameters, and limiting the analysis of court use to two New Mexico counties from 1848-1912, allowed me to focus upon two different regions that served as markers for what was occurring in the larger picture in nineteenth-century New Mexico.

The Spanish conquest and subsequent settlement of New Mexico lasted from 1598 until 1821 when Mexico gained her independence from Spain. Mexican sovereignty continued from 1821 until the U.S. conquest in 1848 when Mexico lost nearly one half of her national territory. Isolation and distance from the metropolis over the centuries meant that New Mexico changed slowly and retained Spanish customs and practices. The women of Rio Arriba and Doña Ana Counties represented two populations that experienced slightly different conquests because of the differences in wealth, demographics, and jurisdiction. Rio Arriba County, situated in northern New Mexico,

had been settled by the early Spaniards on land granted by the Spanish crown and had a relatively homogeneous population. Doña Ana County, located in the southern part of New Mexico Territory and closer to the U.S. border with Mexico, had a large immigrant population with the greatest number moving from Mexico, and to a lesser extent, from U.S. states and territories. The legal records of the two counties reflected these differences.

However, although the court and probate records, wills, inventories, and deeds of New Mexico did not reflect New Mexico women equally, neither class nor the lack of education dictated their appearance in the courts. Many illiterate female litigants signed the legal instruments with an "X" in place of a signature. Wealthy women, with greater resources at their disposal, were more likely to initiate lawsuits, execute deeds, write detailed wills, and to have their estates inventoried. Because of the demographic differences and the availability of documentation, a precise comparison of the two counties was not possible. The records, while suggestive, are not statistically conclusive, so the data in the thesis is the best that can be done at the present. Nevertheless the evidence serves to advance our knowledge of the role the law played in the lives of New Mexico women in two regions of New Mexico during the Territorial period.

My data retrieval method extracted only the litigation initiated by women and those cases that involved females as principal actors. For example, records of property sales invariably included the names of both husband and wife or wife and husband, for the male name was not always listed first. Occasionally a record referred to a woman by name, followed by the words "and husband." District court records; civil and criminal court dockets; property deed records; territorial petitions; and sworn statements and

complaints illustrated not only the types of cases brought before the courts, they also indicated the change in the nature of the cases over time. As well, the records illuminated the lives of women in nineteenth-century New Mexico who were often illiterate. As Silvia Arrom noted about Mexico City, court records, censuses, and notarial records are not too biased, as they were not meant to “regulate, entertain, or instruct” although she maintained that it was difficult to ascertain exactly how many women were actually omitted from the records.<sup>5</sup>

I separated the data by county, organized it chronologically, and noted the details of each case. In addition, I classified the numerous property deed records for Doña Ana and Rio Arriba Counties into four categories that indicated transactions between Hispanics and European Americans; between European Americans and Hispanics (not always the same thing especially in land conveyances); those between Hispanics only; and lastly litigation or transactions between European Americans. This categorization allowed me to see the increased judicial presence of European Americans, their links with Hispanics, and the shaping of a new society. Finally, in each of these four categories I grouped proceedings by gender and ethnicity: male to female or female to male, husband to wife or wife to husband, and female to female. It was not always possible to determine the actual marital status of the women and men named in the documents as some Hispanas kept their birth names at marriage. By organizing this information I established who interacted with whom, and, more importantly, why they did so.

Identifying persons or groups can be problematic, especially when administrations, nationalities, and populations changed.<sup>6</sup> For example, in eighteenth-century New Mexico, racial and ethnic categories were more numerous and more subtle

than in the nineteenth-century U.S. For this study I referred to the female subjects as Hispanas, a somewhat monolithic term because a typical Hispana did not exist. The majority were *mestizas*, of mixed Spanish and native ancestry. Historically, despite racial categories that assigned status according to racial ancestry, people who adopted a Spanish lifestyle achieved *Hispanidad*. Thus a woman named María in a will or deed record might be a *peninsular* (a person born in Spain); a *criollo* (someone born in Mexico but of Spanish blood); a *mestiza* (of mixed blood); or an indigenous female who lived in one of the Pueblos. Sometimes, but not always, ethnicity could be determined by a place name in the document. The term "Hispanic" refers to people of Spanish ancestry. It connotes a link as well to the Spanish culture that played a remarkably important role in New Mexican society, especially on the northern frontier and not incidentally in the legal system of the province. The early U.S. censuses classified people of Hispanic background as white, and it was not until the 1930 census that categories for seven population groups appeared including a separate non-white category for Mexicans.<sup>7</sup> Direct comparability between censuses was not always possible since the classifications regarding the birthplaces of parents changed. I used European American rather than Anglo American to refer to persons of European origin other than Spanish because migrants to New Mexico came from many ethnic groups.

I italicized all Spanish language words and retained diacritical marks for given names. I also employed the term "legal tradition" rather than "legal system" for as legal scholars have argued, an enormous diversity existed among civil and common-law systems.<sup>8</sup>

New Mexican territorial documents referred to both "dollars" and "pesos."

Frequently cases recorded in Spanish that dealt with Hispanic litigants used the term "pesos." <sup>9</sup>

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## Endnotes

<sup>1</sup> The text read: "La Ruta de las Villas. Todo empezó en 1887 cuando el responsable de las obras del trazado del Ferrocarril del Norte, Don Joaquín Coloma Grau, decidió construir una vivienda en la que su esposa, Pilar Forts Mas, pudiera descansar mientras durarán las obras. Se llamó Villa Pilar y fue pagada con las 15.000 pesetas que Doña Pilar aportó al matrimonio." (The Route of the Villas. All began in 1887 when Don Joaquín Coloma Grau, responsible for the survey work of the Northern Railway, decided to build a house in which his wife, Pilar Forts Mas, could rest while the work lasted. It was called the Villa Pilar, paid for with the 15.000 pesetas that Doña Pilar brought to the marriage.)

<sup>2</sup> Arthur J. Larsen, ed., *Crusader and Feminist: Letters of Jane Grey Swisshelm 1858-1865* (St. Paul: The Minnesota Historical Society Press, 1934), 132. James Swisshelm also tried to swindle his wife out of her title to some land mortgaged to her in return for money she loaned to her brother-in-law, William Swisshelm. The case of *Swisshelm vs. Swisshelm* in 1858 gained notoriety at the time as it exposed the pitiful state of married women's property rights in the nineteenth century. See also, Peter F. Walker, *Moral Choices: Memory, Desire, and Imagination in Nineteenth-Century American Abolition* (Baton Rouge: Louisiana State University Press, 1978).

<sup>3</sup> Nancy F. Cott and Elizabeth H. Pleck, eds., *A Heritage of Her Own: Toward a New Social History of American Women* (New York: Simon and Schuster, 1979), 22.

<sup>4</sup> Mary Lyndon Shanley, "Suffrage, Protective Labor Legislation, and Married Women's Property Laws in England," *Signs: Journal of Women in Culture and Society* 12:11 (Autumn 1986), 62.

<sup>5</sup> Silvia Marina Arrom, *The Women of Mexico City, 1790-1857*, (Stanford, CA: Stanford University Press, 1985), 11.

<sup>6</sup> The use of appropriate terminology is complex due to historical changes in New Mexico and the historical construction of identities. For example Spanish-Mexican refers to persons of Spanish heritage who lived under the Mexican flag from 1821. Mexican refers to persons of Spanish ancestry or indigenous persons living south of the Mexico-U.S. border. A resident refers to Spanish-Mexicans living in New Mexico before and after the American takeover. See Deena González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999), xix-xx.

<sup>7</sup> Earlier censuses classified those persons of Mexican birth or ancestry not obviously belonging to an Indian or other non-white group as white. The seven groups in the 1930 census were: Native White, native parentage; Native White, foreign or mixed parentage; Foreign-born white; Negro; Mexican; Indian; Japanese, Chinese, Filipino, etc. This was an extremely contentious issue in New Mexico, so much so that census takers eventually left the space blank and filled it in later according to their own judgment. Thus it became

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difficult to determine the numbers of Hispanics in New Mexico in the total population. For further discussion of this issue, see Suzanne Forrest, *The Preservation of the Village: New Mexico's Hispanics and the New Deal* (Albuquerque: University of New Mexico Press, 1989). See also Martha Oehmke Loustanaunau, "Hispanic Widows and Their Support Systems in the Mesilla Valley of Southern New Mexico, 1910-1940," in Arlene Scadron, ed., *Widows and Widowhood in the American Southwest 1848-1939* (Urbana: University of Illinois Press, 1988), 94. Loustanaunau asserted: "Before 1970 the census did not distinguish Hispanic from Anglo-populations and simply counted them as 'white' or 'non-Indian.'"

<sup>8</sup> "A legal system . . . is an operating set of legal institutions, procedures, and rules. A legal tradition . . . is a set of deeply, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way the law is or should be made, applied, studied, perfected, and taught. The legal tradition relates the legal system to the culture of which it is a partial expression." John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford: Stanford University Press, 1985), 1-2.

<sup>9</sup> The Spanish dollar or peso and its subdivisions remained as legal tender until 1857. See A. Barton Hepburn, *A History of Currency in the United States* (New York: Augustus M. Kelley Publishers, 1967), 46. Also see Neil Carothers, *Fractional Money: A History of the Small Coins and Fractional Paper Currency in the United States* (New York: Augustus M. Kelley Publishers, 1967) for a discussion of the ambiguous nature of currency use in the Southwest.



## Chapter 1

### Civil Code vs. Common Law

To keep a firm eye on the tension between the power of the dominant on the one hand and the agency of the oppressed on the other we must choose sites in which multiple cultures are present and we must focus on the problem of recovering the perspective of the powerless as well as of the powerful.<sup>1</sup>

Peggy Pascoe

In 1598, Juan de Oñate established the settlement of San Juan close to the junction of the Rio Grande and the Rio Chama, in the northern frontier province of Nuevo México. He brought with him not only Spanish culture, but also an ancient civil code of law quite unlike the legal tradition based on English common law that much later European American colonists would bring to their newly conquered home. The Spaniards were less interested in building a new society than in transferring an old one under the strict guidelines of the royal government. The civil code of law served the people of New Mexico from 1598 through the changes wrought by the Wars for Independence (1810-1821) and up until the 1848 U.S. conquest. Admittedly legal changes occurred during the centuries that preceded this study, but essentially the Hispanic women of New Mexico enjoyed broad legal rights, an independent profile in the courts, and a sense of entitlement to seek redress before the law.

Heirs to the Spanish legal tradition, women in colonial Mexico could buy, sell, rent, administer, inherit, and bequeath property. Although wives and daughters required

the consent of a husband or father, they entered into business partnerships, and widows and women of independent means managed their own affairs. Women frequently retained their family names after marriage.<sup>2</sup> In the mid-nineteenth century a U.S. woman who married became a *feme covert* or under the “cover” and protection of her husband, thus relinquishing most of her property and subsuming her legal identity into that of her spouse.<sup>3</sup> Hispanic wives, on the other hand, maintained the legal ownership of any inheritance, dowry, or *arras* (a sum equal to 10 percent of the groom's assets given by him upon marriage), as well as a one-half share in any property acquired during the marriage.

In New Mexico under Spanish and Mexican rule, the *ganancial*, or community property system, regarded husbands and wives as distinct persons capable of holding separate estates. Although a husband might have control of the property, he could not sell it without the express consent of his wife. Women held sole control over their *bienes parafernales*: clothes, jewelry, or property received during marriage either through inheritance or as gifts. Spanish law also ensured that the wife could not divest herself of her property through inordinate affection for her spouse. Donations made between husbands and wives were not valid as inter-spousal gifts could dilute the estate for any putative heirs.<sup>4</sup> A wife might choose to place separate property under the administration of her husband, but he administered it at his own risk, implicitly pledging his own property as security.<sup>5</sup> Rather than controlling community property, husbands managed it as an administrative duty only. Conversely, in English common law property rights were concentrated in the hands of the husband who legally possessed his wife's property for his own use and enjoyment.<sup>6</sup> Community property could be sold without the wife's

consent only if said sale did not injure her interest. However, Hispanic wives forfeited their property rights completely if they committed adultery.<sup>7</sup>

The hierarchical structure of Hispanic society appeared to place women in a subordinate position to men, but frontier conditions in New Mexico challenged this notion. Low population numbers blurred the division of labor between men and women so that women exhibited independent behavior and engaged in tasks usually handled elsewhere by men. New Mexico women also acted independently within a legal framework. They owned, inherited, lent, and sold property, executed estates, sued and were sued, and served as witnesses. New Mexico women had their rights upheld in *alcalde* or local courts.<sup>8</sup> They appeared in court in person, sometimes accompanied by a male relative but not always. Hispanas engaged in the tradition of petition and answer in which arguments were presented and judgments given. The Spanish civil law gave a wife the right to proceed against her husband without his permission for either a civil or a criminal act.<sup>9</sup> In Mexico, the legal codes of 1870 and 1884 recognized women as the legal heads of households, granted widows *patria potestad* (the powers inherent in legal guardianship), and freedom from parental control at the age of twenty-one.<sup>10</sup> Just as importantly, the community property system that gave married women some protection in the event of the deaths of their husbands remained basically unchanged.<sup>11</sup>

Few women, particularly "women of colour", appeared at the center of early narratives of the American Southwest.<sup>12</sup> Hispanas, if present at all, showed up on the margins of history, characterized as living in patriarchal families where they wielded little real power. Modern scholarship has altered this view, enlarging our understanding of the lives of New Mexico women.<sup>13</sup> Historian Silvia Arrom, focusing upon the women

of colonial Mexico, affirmed that historically practice did not always follow prescription, for new attitudes and behaviours frequently prefigured laws and legislation.<sup>14</sup> Janet Lecompte determined that the *alcalde* (or mayor) upheld Spanish and Mexican women's traditional legal rights in local courts under the centuries-old Spanish civil code. After conquest these rights diminished with the reorganization of the court system. Lecompte described New Mexico as distinct from other Mexican frontier communities: "In costume, language, religion, government, and legal rights of women, the people of New Mexico kept strong ties to sixteenth-century Spain."<sup>15</sup> Yolanda Leyva's work on Hispana widows cautioned against a simplistic interpretation of women's rights pre-1848. She defined the women as "protected protectors" who acted within prescribed societal expectations of what constituted "good women." Although the rights of Hispanas decreased under a new legal tradition, neither had New Mexico women been entirely independent within a civil code.<sup>16</sup> Sarah Deutsch's work on the cultural and economic strategies of Hispanics as they struggled to survive in a wage economy after 1880 highlighted women's isolation in new workplaces far removed from their villages and traditional spheres of power.<sup>17</sup> Lisbeth Haas pointed out that the women of California exhibited a sense of entitlement to property guaranteed to them under Spanish and Mexican law. Many owned property outright, including at least sixty-six women who received grants of ranchos after 1821 following Mexico's independence from Spain. However, territorial conquest, European American perceptions of social roles, and U.S. law gradually eroded that sense of entitlement. In what she described as a "gendered politics of conquest," Haas suggested that Californianas became vulnerable to the prejudices and mores of U.S. society where women lacked equal status in either law or

custom.<sup>18</sup> Deena González studied the Spanish-Mexican women of Santa Fe from 1820 up until 1880. She concluded that they became increasingly impoverished under the new regime. González asserted that the dramatic increase in the writing of wills after 1877 allowed Hispanas to exercise some measure of control over their lives. However, although we know that the English common law supplanted the Spanish civil code after U.S. conquest, more work remains to be done on the practice of the law as it affected Hispanas during the Territorial period and on the persistence of old customs and practices. What exactly did 1848 mean for New Mexico women?

Early European American historical accounts did not appreciate the complex legal customs that guided the lives of the new U.S. citizens in New Mexico. Racial attitudes and a legal tradition based on English common law ignored the subtle power structures embedded in the civil law. Howard Lamar observed that the word "frontier" could be used in a different sense in the Southwest United States than in the Turnerian definition of a dividing line between savagery and civilization for "another civilized, if colonial, culture already existed there."<sup>19</sup> The absence of a jury system, the common law, lawyers, and a strong legislature, all echoed the "medieval" origin of the former Spanish territory. But Spanish law proved to be flexible in adapting to the needs of frontier society. It respected "local particularism" and relied on local usage and time-honoured practice. For example, under Spanish law, the authorities could confine a woman accused of adultery by her husband, or a woman seeking a divorce, in a *depósito*, an "honorable house," in which a wife could obtain shelter and protection.<sup>20</sup> But in small New Mexico villages, populated by extended kinship units, such a house would have been difficult to locate.<sup>21</sup> Consequently *alcaldes* frequently recommended reconciliation for troubled relationships,

or temporary banishment for serious misbehaviour in order to maintain community harmony.<sup>22</sup> *Arbitrio judicial*, or judicial will, became the essential element of the law's flexibility, allowing it to fit the particular needs of a region. In his study of northern New Spain, Charles Cutter noted that local modification of Hispanic law, *derecho vulgar*, became an important component of self-government. Litigants entered the court expecting to find justice or "derecho."<sup>23</sup>

This "civilized " culture also possessed an ancient, codified legal tradition based upon Spanish law that stretched back almost a thousand years to the Reconquista which began in 711 and ended in Spain in 1492, and even before, to the *Fuero Juzgo*, an institution that blended Gothic and Roman codes to form the basis of Spanish jurisprudence.<sup>24</sup> During the eight-century period in which Spanish Christians fought to reclaim their territory from the Moorish conquerors, women gained powerful legal rights. Maintaining the boundaries in newly reclaimed territory meant the establishment of towns and villages that required a stable population and the presence of Spanish women. The authorities promoted marriage in resettled towns and Castilian municipal law gave urban women the right to acquire and to inherit property. By the thirteenth century, the northern half of the Iberian Peninsula had been re-conquered. During the reign of King Alfonso X, El Sabio (The Wise) of Castile, Castilian laws were compiled into a document known as *Las Siete Partidas* that drew from Roman, Visigothic, and canon law as well as customary law.

*Las Siete Partidas*, restated under Philip II in 1567 as the *Nueva Recopilación de Castilla* (New Compilation of Castile), continues to be the basis of Spanish marriage law today.<sup>25</sup> Women in particular benefited from these powerful legal codes. The basic

principle of Spanish community property law dated back to 1255. Marital rights in property had been acknowledged even earlier and recognized in written form in 693 A.D. as the Visigothic Code or *Fuero Juzgo*.<sup>26</sup> This Code formed the foundation of Spanish law, retained precedence over the *Siete Partidas*, and became the recognized authority for the *Novísima Recopilación de las Leyes de España* (Revised Code of Laws of Spain) in 1805. However, the *Siete Partidas* and the *Leyes de Toro* (laws promulgated in the town of Toro in 1505) basically defined the status of women. The *Leyes*, the basic family law codified in the early sixteenth century, guided partible inheritance (in which all heirs shared equally), property transfer, and guardianship in New Spain during the colonial era and into the early independence period.<sup>27</sup>

One of the main themes of this study concerns women's marital and property rights derived from the old codes. The *Siete Partidas* permitted a wife to retain ownership of property not included in her *dos*, or dowry, as well as her paraphernalia or personal property. Her husband managed the dowry but could be taken to court if he wasted his wife's property, for if a marriage dissolved, the dowry had to be returned to those entitled to it, namely the wife's family. When a husband administered both his assets and those of his wife he could neither alienate nor squander them.<sup>28</sup> Single and married women shared an almost equal status with men under the *Siete Partidas* although "natural weaknesses" allowed a married woman to revoke contracts deemed to be against her best interests unless she had previously renounced laws that favoured women.<sup>29</sup>

Legal historian William De Funiak believed that the historical framework of the Spanish system of community property law bore closer scrutiny: "But since the community system in effect in our American states is that which was developed in Spain,

the way in which it was viewed there is entitled to great weight.”<sup>30</sup> The dominating principles in Spanish law emphasized the protection of property and ownership as well as matrilineal rights. English common law, on the other hand, accorded primacy to the person whose name appeared on the land title.<sup>31</sup> However one exception did exist in the English common law. If a husband died and no children survived the marriage, lands could revert to the wife’s family, one of the few cases in which the wife's family became significant under the common law.<sup>32</sup> The Spanish civil code preserved family lineage, and when a woman died her estate passed to the heirs in her family line. At one time, land granted to colonists in New Spain could not be sold but remained as a perpetual inheritance. Partible inheritance in which daughters inherited property equally with their brothers under the Spanish judicial system lent great importance to the correct decision in a marriage partner. Property might change ownership but it was expected to remain in the family. Of course, the choice of marriage partners on the northern frontier of New Spain would have been limited.

Whereas English common law relied upon precedent or *stare decisis* (decided cases), the governing principles of Spanish legal codes, and the commentaries of juriconsults, legal experts, whose opinions had the force of law if they were unanimous, guided the civil law.<sup>33</sup> These treatises, translated into English and published in London in 1825, provided the basis for much of the jurisprudence in the mid-nineteenth century in New Mexico, Texas, and California, where the courts frequently cited them.<sup>34</sup> Admittedly, law books on the frontier were not plentiful, and *alcaldes* generally handed down decisions based on common sense and local custom.<sup>35</sup> Such uncereemonious behavior shocked Americans moving into New Mexico Territory who were familiar with



an adversarial legal tradition marked by trial by jury, witnesses, and civil, criminal, and chancery courts in which the law could be applied.

Silvia Arrom summed up the contrast between the rights enjoyed by Spanish and Mexican women, and the lack of property rights experienced by women under the English common law:

Mexican women enjoyed the legal rights conferred by tradition and law, such as community property (a legally protected interest in property owned jointly). Women also had the right to independently own and, if they desired, manage their own property. Interestingly, contemporary Anglo-American women, viewed as legal minors, lacked these rights and were considered economic wards of their husbands, fathers, or court-appointed guardians.<sup>36</sup>

The conquest of New Mexico by the U.S. through the imposition of new political, economic, and social institutions, and an unfamiliar legal tradition threatened to diminish the rights that women in the Spanish-speaking world had enjoyed for centuries. To comprehend the threat it is necessary to know something about the system into which Hispanas moved after U.S. domination, a framework against which their experience might be measured. This knowledge also affords some insight into the legal tradition with which many immigrants from U.S. states to New Mexico after 1848 would have been familiar. Research into the nature of the legal position of Mexican American women in the nineteenth century provided an amusing irony. When American women met at the first U.S. Women's Rights Convention in Seneca Falls, New York, in 1848, Mexican American women in the northern territory of New Mexico faced the real possibility of the erosion of their traditional legal rights following the U.S. victory over Mexico in the same year. Norma Basch insisted: "We cannot understand in full historical context the impulse, resistance [sic], and conflict that accompanied the passage of the married

women's property acts unless we first understand the legal status of married women in the Anglo-American legal tradition."<sup>37</sup>

There are misconceptions about both legal traditions. Whereas Hispanic women enjoyed property rights withheld from Anglo-American women, in fact the latter did hold rights depending upon regional variations.<sup>38</sup> However, in many respects English common law treated women much less equitably than Spanish civil law. As already noted, when a single female married, she became a *feme covert*, a women covered by the shelter and protection of her husband. Marriage automatically annulled a will that a single woman might have drawn up. However, under common law, a woman could keep the fee of her real estate, that is, an inheritance in land that was absolute and without any limitation as to a particular class of heirs. This implied that she had the right to sell it and provided an exception to the truism that a wife had no legal existence during marriage.<sup>39</sup> In fact Elizabeth Warbasse identified three exceptions to the fiction of unity between husband and wife that included: the wife's ability to retain and convey away the fee of her real estate, to have *feme sole* powers when apart from her husband, and, in certain cases, to pursue a separate trade.<sup>40</sup> Of course, such rights varied from state to state, as did the administration of the law. For example, the supreme judicial courts ruled over property affairs in New England, common law tribunals served in Pennsylvania, and by the beginning of the nineteenth century, the chancery courts in New York and New Jersey oversaw property cases.<sup>41</sup>

Equity in married women's property rights varied greatly within regions and between states as evidenced in an informative passage by Eleanor Flexner:

In Louisiana the discriminatory provisions of the “Code Napoléon” inherited from the days of French dominion were still in full force: a married woman did not even have legal title to the clothes she wore. In Georgia a woman’s earnings still belonged to her husband. Yet next door, in Mississippi, she was fairly well safe-guarded as to property rights, while in Florida she could control her own earnings.<sup>42</sup>

This thesis is not intended to provide an exhaustive study of the differences in married women’s property rights among the states but it is instructive to examine the diversity in legislation that existed in the U.S. in the nineteenth century including some of the states and territories from which people migrated to settle in New Mexico. New Mexico Territory experienced rapid population growth in the latter half of the nineteenth century. From 1870-1890 the population increased 74.5 percent and from 1890-1910 it more than doubled.<sup>43</sup> Native-born immigrants (those born in the U.S.) came to Rio Arriba and Doña Ana Counties largely from California, Texas, Missouri, Ohio, Pennsylvania, New York, Illinois, Indiana and Colorado. In 1880, for example, 232 people from Colorado moved to Rio Arriba County and 435 Texans immigrated to Doña Ana County.<sup>44</sup>

Under the English common law, American women suffered severely restricted property rights. Legal wards of the state or of the nearest male relative, women could lose custody of their children in marital dissolution even if the husband were at fault.<sup>45</sup> Chancery trusts, in which married women could hold property through a third party, had existed since the end of the sixteenth century in England, representing something of a revolution in married women’s property control.<sup>46</sup> Thus equity jurisprudence permitted married women to protect their wealth. Such trusts undermined the idea of the unity of husband and wife, but only a wealthy few could actually afford the legal costs of setting

up a trust. Designed to offset harsh common law restrictions on women's property ownership, some historians viewed the trust concept as the institution of the wife's separate equitable estate.<sup>47</sup> A married woman could hold an equitable separate estate as a *feme sole* in either real or personal property or both, and such property could be disposed of by will, gift, transfer or conveyance. However, Basch noted that the basic inequities of common law did not change for equity was the exception and not the rule.<sup>48</sup> The small estate that Jane Swisshelm inherited from her mother came as a trust, a legal device designed to allow a woman to hold property.<sup>49</sup> The states of New York and South Carolina led in the development of chancery law.<sup>50</sup> However, not everyone understood chancery procedure nor did the majority use marriage settlements that kept property out of a husband's reach and, more importantly, out of the reach of his creditors, and freed him from providing a dowry and trust protection for daughters.<sup>51</sup> It is important to note that in the United States the lack of equitable protection and the small number of trusts and marriage settlements gave rise to increased statutory legislation.<sup>52</sup> One can speculate that because a woman could create a separate estate and convey it to a trustee before marriage, enter into pre-and post-nuptial agreements, and establish sole ownership to a gift or legacy that legislatures had no alternative other than to pass new statutes to keep up with current practices.<sup>53</sup>

Between 1839 and 1850, most U.S. states legislated property rights for married women, although the emphasis might have been less on the property rights of women and more on their inheritances from large property owners.<sup>54</sup> In fact the early women's rights movement in the United States focused on the control of property and earnings, guardianship and divorce, educational opportunities, change in legal status so that a

woman might sue or bear witness, and the whole concept of female inferiority perpetuated by established religion.<sup>55</sup> Thomas Herttell, a sixty-five-year-old Democratic assemblyman from New York City complained bitterly about unfair marriage laws. He demanded that a committee be formed to report on the property rights of married women in the state of New York. In 1837 he denounced marriage laws that gave the husband:

so much, and such uncontrolled, indefinite, irresponsible and arbitrary power over [the wife's] person, and subject [ed] her to such an abject state of surveillance to the will, commands, caprices, ill humours, angry passions, and mercenary, avaricious and selfish disposition, conduct and views of her husband, that marriage for women approximated slavery for blacks.<sup>56</sup>

As an advocate of codification, a Francophile, and an admirer of European community-property systems, Herttell pointed to the stability of marriage in France where the law, he asserted, recognized the wife's separate financial interests.<sup>57</sup> The point is that generalizations about women's legal status ignored the diversity of their legal situation in the nineteenth-century United States where lobbying for legal change had begun just as New Mexico became a territory. Thus, New Mexico women who experienced a legal change after 1848 made the transition to a system that was itself in flux.

It is worth noting certain of the changes in various states, because some of the laws are referred to later in New Mexican legal documents, because they defined some of the losses for the women who had lived under a civil code, and because they revealed the continuing influence of Spanish law in some regions. Notably, the South took the lead in legislating married women's property rights. Husbands did not want to lose control of property to their creditors so that new legislation was less about married women's property rights and more about the protection of male property.<sup>58</sup> This became especially important during the financial panic of 1837, since women's property could not be held

liable for a husband's debts. Mississippi passed its first Married Women's Property Act in 1839, granting married women the right to contract, to sue and be sued, to manage and control property brought into marriage, to work without the husband's permission, and the right to keep their own earnings. However, legal scholar Leo Kanowitz viewed these gains as limited by judges who had been reared in the tradition of natural male dominance and confined by the rule of strict construction of statutes in derogation of the common law.<sup>59</sup> Again, such legislation provided a shield for slave owners. The law regarded slaves as real property rather than chattels, thus ensuring that husbands would always have the necessary labor supply.<sup>60</sup>

Married women enjoyed varied prerogatives in the northeastern United States especially in New England, which enforced rights under English common law.<sup>61</sup> Rhode Island (1844), Connecticut and Massachusetts (1845), Vermont (1867), and Maine (1848), all enacted versions of Married Women's Property Acts. New York revised the property laws twice, once in 1848 and again in 1860. In 1848, Mary Upton Ferrin, of Salem, Massachusetts, learned to her shock and dismay that under Massachusetts law her husband could own all of her real estate and any improvements on it as well as her personal effects, unless she hid them or proved they had been loaned to her.<sup>62</sup> Ferrin campaigned vigorously for legislative reform and in 1854 the state passed a Married Women's Property Bill.

Florida provided a good example of the difficulty involved in integrating two quite different legal traditions, particularly in the area of married women's property rights, after the state adopted the common law and repudiated the Spanish colonial civil law. The state passed clarifying laws in the 1820s that defined the rights of husband and

wife, as they had existed under Spanish law. These included an 1824 Act giving spouses permission to sell, succeed to, dispose of, and convey by sale or will, their goods. Additionally an Act in 1828 allowed married women to bequeath their separate property.<sup>63</sup>

Although Warbasse described Florida as an isolated example, New Mexico, too, operated under overlapping legal systems for years after the conquest. The New Mexico legislature did not adopt the common law as the rule of practice and decision until 1876.<sup>64</sup> A Mexican territory from 1824 to 1837, and a Mexican department headed by a governor after 1837, in 1846 New Mexico fell to General Stephen W. Kearny who issued the Kearny Code in September of the same year. Under this Code, existing laws that did not conflict with the Constitution and law of the United States continued to be in force. The New Mexico Organic Act of 1850 did not import the body of the English common law when it established common law procedures. However the common law became mandatory for criminal law cases. Provisions for the civil law remained in New Mexico until after the adoption of the common law. Helen Carter noted that in 1864 New Mexico adopted English common law court rules of practice and decision that were consistent with regional laws then in effect. Enactments adopting the common law for use in the courts did not abolish the civil legal system then in use in Arizona and New Mexico."<sup>65</sup>

Law played an increasingly important role in the post-conquest U.S. West, manifested through increased participation in legal procedure, changes in suffrage, and access to institutional power. The judicial system recognized the singular nature of the West in the enactment of swift legal changes.<sup>66</sup> Territorial legislatures and courts played a key role in modifying the common law to adapt to local conditions. Concerned with

expanding married women's rights, legislators worked to strengthen the law of *feme sole* (the right of married women to transact business independently of their husbands).

Economic and social change, and the reduced importance of real property, led to the expansion of the concept of *feme sole*, a notion lacking under the English common law and limited in the eastern United States.<sup>67</sup> The right to contract, essential in a marketplace society, had to include women.<sup>68</sup> As a result, common law restrictions eased in the late 1840s. For example, in 1861 women gained property conveyance and inheritance rights in Colorado's first territorial legislature although conveyance of real property remained limited. In 1874 the law expanded to include *feme sole* without restriction. Utah and New Mexico moved slowly toward enacting statutes affecting married women's rights. New Mexico did not change its civil law until 1884 and Utah not until 1896.<sup>69</sup>

The influence of Spanish law manifested itself in many ways. For example, Missouri Territory basically exercised English common law but cases could arise that had to be judged in the light of Spanish law.<sup>70</sup> In the absence of any other type of government, California used the laws of Mexico. In 1849 Military Governor Bennet Riley adopted the Mexican legal tradition to support his civil authority, adapting it to the then current conditions of California.<sup>71</sup> The ultimate purpose of course would be the blending of the two legal systems. All laws in force at the time of the adoption of the new constitution, and not inconsistent with it, would continue until the legislature either altered or repealed them. Mexican law would be subsumed into the new American system.<sup>72</sup>

Texas adopted the English common law in 1840, but retained the Spanish community property system, as did California, New Mexico, Arizona, and Nevada, all of



which had been part of northern New Spain. American women, too, made use of Mexican law before Texas became a republic in 1836. When Lydia Ann McHenry moved to Texas in 1833 with her sister and brother-in-law, Maria and John W. Kenney, debt threatened the family. In an 1835 letter to her brother, McHenry referred to an attempted collection of the debt and wrote: "I learned enough of the Laws of Mexico to know that property descended from the wife's father could not be taken for the husband's debts."<sup>73</sup> A wife had no contractual powers until a 1911 statute removed the "disabilities of coverture" permitting her to be come a *feme sole* for "mercantile trading purposes."<sup>74</sup>

With the adoption of the Howell Code on January 1, 1865, Arizona Territory repealed the laws of Mexico, Spain, and the Territory of New Mexico. Flexible in nature, the Code attempted to accommodate legal traditions with the English common law. In 1865, Governor John N. Goodwin realized the importance of Arizona's strong Spanish cultural heritage and took the step of appointing local officials personally. Because they dealt with numerous Spanish-speakers, Goodwin and successive governors had either to learn Spanish or to hire interpreters.<sup>75</sup> The Territory took the common law, established dower and *curtesy*, the life tenure a husband was entitled to in his deceased wife's land inheritance provided they had children able to inherit, and ensured that all property acquired by a married woman, by grant or in any other way, would be her separate estate. By December 30, 1865, the last provisions had been repealed and a community property statute adopted.<sup>76</sup> An act in 1871 established the law of *feme sole*. Arizona's Supreme Court mandated that the Spanish law "so far as it is consistent with the laws and customs of the state may be applied to its interpretation."<sup>77</sup> And Arizona, in particular, followed the Spanish law in that the "fruits and profits" of separate spousal property became part

of the community property of the marriage, unlike other community property states in which the fruits and profits of separate estates remained separate. Such concepts proved to be anathema to the common law-trained judges of the Territorial court who could not reconcile the two ideas that women could hold separate property whereas its fruits became common.<sup>78</sup>

The transition from the Spanish legal tradition to that of the United States evolved gradually. Men and women had moved into New Mexico for centuries but the nineteenth century brought a new populace. Following Mexico's independence from Spain in 1821 and the opening of trade with the U.S. from 1821-1848, fur traders and merchants traveled the Santa Fe Trail from Missouri to Taos and Santa Fe in northern Mexico, lured by the promise of the profits to be made in an untapped market.<sup>79</sup> Besides their involvement in business, men like Kit Carson, Charles Beaubien, Ceran St. Vrain, and Charles Bent also married Hispanas, Native American women, or engaged in long-term relationships with them.<sup>80</sup> Some of these men would become representatives of the new legal tradition imposed upon New Mexico after the U.S. takeover. For example, in 1850 Charles Beaubien appeared as the Circuit Judge in Rio Arriba County in a document that recorded the transfer of Julián Lucero's house, land, and trees to his daughter, María Martha Clark, and her husband, Elias T. Clark. Interestingly the instrument, written in English in 1850 but recorded in 1852, referred to Beaubien's position in Spanish as the *Juez del Circuito* (Circuit Judge).<sup>81</sup> A different sort of newcomer arrived during the U.S. Civil War when soldiers from the volunteer California Column marched into New Mexico to expel the Confederates in 1862. The first significant group of European American arrivals since the Mexican-American War, these men would play an important

part in New Mexico history, especially in Doña Ana County, where their names appeared on many legal documents that concerned the Hispanas with whom they intermarried.<sup>82</sup>

European American economic control of New Mexico took longer than in either California or Texas. California had 13,000 Mexicans in a population of 115,000 people in 1849, and Texas had become predominantly European American by independence in 1836. In contrast, in 1850 in New Mexico Territory, of a population of approximately 54,000 inhabitants, 47,000 or 86 percent were Hispanic, 6400 or 12 percent Indian, and 1000-1500 or 2 percent European American, most of whom had come in the 1840s.<sup>83</sup> In 1880, 10,000 European Americans lived amongst a Hispanic population eight times greater in the Territory of New Mexico. The completion of the railroad accelerated European American settlement after 1880. By 1900 the ratio stood at three Hispanics to every European American; ten years later the American-born white population had increased from 167,000 to 282,000 people, 41 percent of whom came from outside New Mexico.<sup>84</sup>

The demographics of Rio Arriba County, situated in the Rio Arriba or upper Rio Grande region of northern New Mexico, and Doña Ana County at the southern portion of the Rio Grande in the Rio Abajo or lower river region, differed considerably, providing a basis for the comparison of court appearance by Hispanas and later European American women. United States census figures from 1850-1920 recorded changes in the demographic makeup of Rio Arriba and Doña Ana Counties. It is important to note that the governing authorities repartitioned the two counties several times, either reducing their territory to form new counties or to acquire additional land. For example, in 1863 Arizona Territory was carved out of Doña Ana County. However these changes did not

obscure the differences between the two counties over time. Rio Arriba consistently contained a larger concentration of population who had settled on the original Spanish and Mexican land grants. The tightly knit, interdependent, communal villages of the northern region, populated by Hispanos of colonial Spanish ancestry, would become the “Old Spain” of cultural myth and colonial imagery. This mythical idea was reborn in the first decades of the twentieth century when the idea of “español” or “Spanishness” began to popularize the concept of an old Southwest.<sup>85</sup> The percentage of newcomers in Rio Arriba County was less than in Doña Ana, where the statistics illustrated a completely different picture. Blessed with a warmer climate and richer agricultural land, Doña Ana was also less densely settled as the early Spaniards had followed the valley of the Rio Grande as it wound northward, building small settlements with irrigated fields. The southern desert areas of New Mexico became more widely populated from 1821 to 1846 as European Americans developed large farming and ranching enterprises. The diverse population included immigrants from the eastern U.S. and Texas, and a large number of Mexicans who labored in agriculture. Texans came into the Mesilla Valley right after 1846, where Hispanic colonization had commenced only in 1843 after Mexico granted allotments to its citizens along the river. Census numbers showed a greater number of foreign-born females in Doña Ana County than in Rio Arriba County. (See Table 1).

The population figures for the two counties differed considerably as did the ratio of foreigners. Proportionally more foreigners, or non-Hispanics, lived in Doña Ana County than in her northern neighbor. By 1910 Doña Ana County had the highest percentage of native whites with foreign or mixed parentage for all twenty-six counties at 27.5 percent.<sup>86</sup> However, unless one looked at the statistical breakdown by either state or

country of origin, the inclusion of immigrant Mexicans as "foreigners" after 1848 distorted the picture. The thirteenth census of 1910 showed that of the 2,863 "foreign-born" residents in Doña Ana County, 2,634 originated in Mexico. Only eight people of Mexican origin (meaning those people who came from Mexico after U.S. conquest) lived in the county of Rio Arriba in 1910. One must be careful not to assume that the term "foreigners" referred only to Europeans for it also included those people who continued to cross the border, a boundary that many may not have consciously acknowledged. When the number of Mexicans is extracted from the total population, Doña Ana County still had more resident foreigners than Rio Arriba, 229 versus 110.<sup>87</sup>

The number of Mexican immigrants declined between 1880 and 1890 and increased from 1900 to 1910 as people fled the political and economic chaos of the Mexican Revolution. In the Southwest, many counties were more than one-half Mexican in origin, including Imperial County, California; Santa Cruz County, Arizona; and Doña Ana County, New Mexico.<sup>88</sup> Proximity to the border reinforced Hispanic culture, a significant point because Mexican women shared the same legal tradition as Hispanas in New Mexico and presumably would have pursued some of the same strategies in dealing with the law. Rio Arriba continued to be home to very few Mexican immigrants, whom the local Hispanic population regarded with hostility and suspicion.<sup>89</sup>

However, the more important census figures may be those that distinguished between native whites (U.S. born), born and resident in New Mexico, compared to native whites born outside of the territory but resident in the Territory. These figures reflected the arrival of newcomers who subsequently appeared in court as well as those who

acquired Hispanic land. For example, the native white population born outside of New Mexico numbered 19.0 percent in 1890, 22.0 percent in 1900, and 41.7 percent in 1910.<sup>90</sup>

A different set of numbers from the 1860 Census recording the wealth of each county presented another aspect of the differences between the two areas. Although Doña Ana County had a smaller population than Rio Arriba County, immigrants to the area formed a larger proportion of the population who brought capital and investment to the region resulting in greater wealth for the county. The number of Mexicans who moved across the border to Doña Ana County also helped to provide cheap labour. Real property or real estate was similar for both counties but there was a dramatic difference in the size of personal estates.<sup>91</sup> These numbers reflected a more vigorous economy based on agriculture and large-scale ranching in Doña Ana County. (See Table 2).<sup>92</sup>

How did Hispanas who had lived under a civil code fit into the disparate, regional mix of statutes and laws that existed in the mid-nineteenth U.S.? Did they change their litigious behavior? How did the women of New Mexico survive the transition? Charts, tables, and statistics can only create a framework upon which to create a picture of the past. When the veil of numbers is pulled aside, names revealed, and litigation examined, it is possible to catch a glimpse of the strong-willed, independent-minded Hispanas who strove to maintain their legal profile in the midst of sudden and dramatic legal change. In the following chapters, we shall meet some of these women.

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### Endnotes

<sup>1</sup> Peggy Pascoe, "Race, Gender and Intercultural Relations: The Case of Interracial Marriage," in *Writing the Range: Race, Class, and Culture in the Women's West*, eds. Elizabeth Jameson and Susan Armitage (Norman: University of Oklahoma Press, 1997), 77.

<sup>2</sup> Janet Lecompte, "The Independent Women of Hispanic New Mexico 1821-1846," *New Mexico Historical Review* 12:1 (January 1981), 19.

<sup>3</sup> Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982), 16. *Feme Covert* is also spelled as *femme covert*. I use the first spelling because it is the most commonly used in current publications on women and the law. The same principle is applied to the term *feme sole* or *femme sole*.

<sup>4</sup> William Quimby De Funiak, *Principles of Community Property* (Tucson: University of Arizona Press, 1971), 391.

<sup>5</sup> *Ibid.*, 351.

<sup>6</sup> *Ibid.*, 259.

<sup>7</sup> In 1919, the Supreme Court of New Mexico struck down this law so that a wife did not lose one-half of her community property due to her adultery. See Harriet Daggett, *Comparative Studies in Community Property Law* (Baton Rouge: Louisiana State University Press, 1955), 191.

<sup>8</sup> Lecompte, "Independent Women," 17.

<sup>9</sup> De Funiak, *Principles of Community Property*, 369.

<sup>10</sup> Heather Fowler-Salamini, and Mary Kay Vaughan, eds., *Women of the Mexican Countryside, 1850-1990* (Tucson: University of Arizona Press, 1994), 29.

<sup>11</sup> Silvia Marina Arrom, *The Women of Mexico City, 1790-1857* (Stanford: Stanford University Press, 1985), 267.

<sup>12</sup> See for example Howard Lamar, *The Far Southwest 1846-191: A Territorial History* (New Haven: Yale University Press, 1966).

<sup>13</sup> See for example Deena González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999). See also Lisbeth Haas, *Conquests and Historical Identities in California: 1769-1936* (Berkeley: University of California Press, 1995).

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<sup>14</sup> Arrom, *Women of Mexico City*, 315.

<sup>15</sup> Lecompte, "Independent Women", 17.

<sup>16</sup> Yolanda Leyva, "A Poor Widow Burdened with Children": Widows and Land in Colonial New Mexico," in *Writing the Range: Race, Class, and Culture in the Women's West*, Elizabeth Jameson and Susan Armitage, eds., (Norman: University of Oklahoma Press, 1997), 93.

<sup>17</sup> Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987).

<sup>18</sup> Haas, *Conquest and Historical Identities*, 85.

<sup>19</sup> Lamar, *The Far Southwest*, 7.

<sup>20</sup> See Arrom, *The Women of Mexico City*, 212, and Asunción Lavrin, ed. *Latin American Women: Historical Perspectives* (Westport: Greenwood Press, 1978), 34.

<sup>21</sup> For the use of *depósitos* in New Mexico, see Lecompte "Independent Women," 85.

<sup>22</sup> Rosalind Z. Rock, "'Pido y Suplico': Women and the Law in Spanish New Mexico, 1697-1763," *New Mexico Historical Review* 65:2 (April 1990), 156. However, this practice often meant that women were forced to remain in abusive relationships.

<sup>23</sup> Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995), 34.

<sup>24</sup> Frank Wilson Blackmar, *Spanish Institutions of the Southwest* (Baltimore: John Hopkins University Press, 1891), 26.

<sup>25</sup> Woodrow Borah and Sherburne F. Cook, "Marriage and Legitimacy in Mexican Culture: Mexico and California," *California Law Review* 54:2 (May 1966), 949.

<sup>26</sup> De Funiak, *Principles of Community Property Law*, 8.

<sup>27</sup> Arrom, 55.

<sup>28</sup> E.N. Van Kleffens, *Hispanic Law Until the End of the Middle Ages* (Edinburgh: Edinburgh University Press, 1968), 199.

<sup>29</sup> Jean Stuntz, "Spanish Laws for Texas Women: The Development of Marital Property Law to 1850," *Southwestern Historical Quarterly* 104:4 (April 2001), 545.

<sup>30</sup> De Funiak, *Principles of Community Property*, 8.



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<sup>31</sup> Ibid., 2.

<sup>32</sup> Basch, *In the Eyes of the Law*, 53.

<sup>33</sup> Ibid., 235.

<sup>34</sup> Joseph W. McKnight, "Law Books on the Hispanic Frontier," *Journal of the West* 27:3 (July 1988), 80.

<sup>35</sup> Marc Simmons, *New Mexico: A Bicentennial History* (New York: W.W. Norton and Company, 1977), 104.

<sup>36</sup> Arrom, *Women of Mexico City*, 267.

<sup>37</sup> Basch, *In the Eyes of the Law*, 16.

<sup>38</sup> I used Anglo American rather than European American in this instance as a historical reference to those women who lived under English common law. Many European countries maintained a continental or civil code.

<sup>39</sup> Elizabeth Bowles Warbasse, *The Changing Legal Rights of Married Women: 1800-1861* (New York: Garland Publishing, 1987), 17.

<sup>40</sup> Ibid., 29.

<sup>41</sup> Ibid., 25.

<sup>42</sup> Eleanor Flexner, *Century of Struggle: The Woman's Rights Movement in the United States* (Cambridge: The Belknap Press of Harvard University Press, 1975), 236.

<sup>43</sup> United States Bureau of the Census, *Thirteenth Census of the United States with Supplement for New Mexico* (Washington, D.C.: Government Printing Office, 1913), 568.

<sup>44</sup> The two counties had different immigrant populations. For example, in 1880 the greatest number of immigrants to Rio Arriba County came from Colorado (235) or 2 percent of the population, followed by Missouri (50), and California (46). In Doña Ana County the greatest number by far came from Texas (435) or 9 percent of the population, followed by Pennsylvania (20) and New York (20). United States Bureau of the Census: *Statistics of the Population of the United States at the Tenth Census* (Washington, D.C.: Government Printing Office, 1883), 521.

<sup>45</sup> Nancy F. Cott and Elizabeth H. Pleck, eds., *A Heritage of Her Own: Toward a New Social History of American Women* (New York: Simon and Schuster, 1979), 198.

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<sup>46</sup> The English Chancery (or Equity) Court dates back to the fourteenth century when the English Chancellor answered petitions for justice in the event that petitioners found themselves to be without remedy under the common law. See Warbasse, *Changing Legal Rights*, 29.

<sup>47</sup> Leo Kanowitz, *Women and the Law: The Unfinished Revolution* (Albuquerque: University of New Mexico Press, 1969), 38.

<sup>48</sup> Basch, 230.

<sup>49</sup> Flexner, *Century of Struggle*, 62.

<sup>50</sup> Warbasse, *Changing Legal Rights*, 47.

<sup>51</sup> *Ibid.*, 289. The issue of trusts underscores the changing historiography on women's rights. Flexner noted in a footnote in *Century of Struggle* that Mary Beard believed that such devices as trusts, and other redress through equity court proceedings, largely nullified these forms of legal discrimination. (Mary Ritter Beard, *Women as a Force in History*, New York: Persea Books, 1946). But while some women were able to secure redress through equity, the procedure was too cumbersome and expensive to help them all, or those who often needed assistance most, as working women did. 346, footnote 2.

<sup>52</sup> Warbasse, *Changing Legal Rights*, 298.

<sup>53</sup> Paula Petrik, "If She Be Content: The Development of Montana Divorce Law, 1865-1907," *Western Historical Quarterly* 18:3 (July 1987), 261. Petrik contended that courts responded to new social and economic conditions affecting women and that their complaints evolved into public policy.

<sup>54</sup> *Ibid.*, 64.

<sup>55</sup> Flexner, *Century of Struggle*, 83.

<sup>56</sup> Remarks Comprising in Substance Judge Hertell's Argument in the House of Assembly of the State of New York in the Sessions of 1837, in support of the bill to restore to married woman "The Right of Property." (New York, 1839), 41-43; as quoted in Cott and Pleck, *A Heritage of Her Own*, 77, footnote 24.

<sup>57</sup> Basch, 116.

<sup>58</sup> *Ibid.*, n.p.

<sup>59</sup> Kanowitz, *Women and the Law*, 40.

<sup>60</sup> *Ibid.*, 143.

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<sup>61</sup> Warbasse, *Changing Legal Rights*, 191.

<sup>62</sup> Flexner, *Century of Struggle*, 93.

<sup>63</sup> Warbasse, *Changing Legal Rights*, 77.

<sup>64</sup> James M. Murphy, *The Spanish Legal Heritage in Arizona* (Tucson: Arizona Pioneer Historical Society Press, 1966), 34.

<sup>65</sup> Helen Carter, "Legal Aspects of Widowhood and Aging," in Arlene Scadron ed., *On Their Own: Widows and Widowhood in the American Southwest 1848-1939* (Urbana: University of Illinois Press, 1988), 273-274.

<sup>66</sup> Gordon Morris Bakken, *Practicing Law in Frontier California* (Lincoln: University of Nebraska Press, 1991), 30.

<sup>67</sup> *Ibid.*, xvii.

<sup>68</sup> *Ibid.*, 30.

<sup>69</sup> *Ibid.*, 31.

<sup>70</sup> Van Kleffens, *Hispanic Law*, 269.

<sup>71</sup> Neal Harlow, *California Conquered: War and Peace on the Pacific, 1846-1850* (Berkeley: University of California Press, 1982), 333. Eventually California adopted the common law but retained the community property system derived from civil law. In 1872, David Dudley Field began codifying California law.

<sup>72</sup> *Ibid.*, 334.

<sup>73</sup> George R. Nielsen, "Lydia Ann McHenry and Revolutionary Texas" *Southwestern Historical Quarterly* 74:3 (January 1971), 393.

<sup>74</sup> William O. Huie, "Some Principles of Texas Community Property Law-Basic Spanish Principles," in Jan P. Charmatz and Harriet S. Daggett, eds., *Comparative Studies in Community Property Law* (Baton Rouge: Louisiana State University Press, 1955), 140.

<sup>75</sup> Lamar, *The Far Southwest*, 441.

<sup>76</sup> John S. Lyons, "Development of Community Property Law in Arizona," *Comparative Studies in Community Property Law*, 3.

<sup>77</sup> *Ibid.*, 4.

<sup>78</sup> *Ibid.*, 5.

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<sup>79</sup> I used the term "foreigners" to describe European American newcomers to New Mexico Territory. The U. S. censuses from 1850-1910 variously classified the population into native-born, foreign-born, native white with native parents, and native white with mixed or foreign parents. Not all of the categories appeared in all of the censuses. Hispanics counted as white.

<sup>80</sup> Kit Carson married Josepha Jaramillo, his third wife, in 1843, Charles Beaubien married María Paula Lobato, and Charles Bent married María Ignacia Jaramillo, sister of Josepha Jaramillo. Ceran St. Vrain married Luisa Branch in addition to other "marriages."

<sup>81</sup> Julián Lucero to María Martha Clark and Elias T. Clark, 19 November 1850, Rio Arriba County, New Mexico State Record Center and Archives, Deed Record Book 1852-1884, Box 1, Folder 1, unnumbered.

<sup>82</sup> See Darlis A. Miller, *The California Column in New Mexico* (Albuquerque: University of Albuquerque Press, 1982). Miller estimated that of the 2350 California volunteers, almost 2000 were mustered out in New Mexico rather than at their place of enrollment due to numerous requests from the volunteers themselves. The 1870 U.S. Census showed that over half of the 196 veterans listed lived in the four southern counties of Grant (44); Lincoln (23); Doña Ana (23); and Socorro (17). Rio Arriba listed 3. By 1885 many had died or left the territory. United States Bureau of the Census, *Statistics of the Population of the United States at the Ninth Census* (Washington, D.C.: Government Printing Office, 1872).

<sup>83</sup> Suzanne Forrest, *The Preservation of the Village: New Mexico's Hispanics and the New Deal* (Albuquerque: University of New Mexico Press, 1989), 3. However, David Lavender made the point that Mexicans, as distinct from California's original inhabitants that numbered 8000 in 1900, comprised more than 360,000 people in the late 1920s. See David Lavender, *California: A Bicentennial History* (New York: W.W. Norton and Company, 1976), 65.

<sup>84</sup> Charles Montgomery, *The Spanish Redemption: Heritage, Power, and Loss on New Mexico's Upper Rio Grande* (Berkeley: University of California Press, 2002), 7. I used Montgomery's statistical analysis here. U.S. Department of Commerce, Bureau of the Census, *Thirteenth Census of the United States* (Washington, D.C.: Government Printing Office, 1913).

<sup>85</sup> *Ibid.*, 21.

<sup>86</sup> United States Bureau of the Census, *Summary Statistics Thirteenth Census* (Washington, D.C.: Government Printing Office, 1913), 579.

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<sup>87</sup> United States Bureau of the Census, *Thirteenth Census of the United States with Supplement for New Mexico* (Washington, D.C: Government Printing Office, 1913), 586-587.

<sup>88</sup> Arreola, Daniel D., "La Tierra Tejana," in Richard L. Nostrand and Lawrence E. Estaville, *Homelands: a Geography of Culture and Place Across America* (Baltimore: The Johns Hopkins University Press, 2001), 103-104.

<sup>90</sup> United States Bureau of the Census, *Thirteenth Census of the United States with Supplement for New Mexico* (Washington, D.C.: Government Printing Office, 1913), 581.

<sup>91</sup> United States Bureau of the Census, *Summary Statistics Eighth Census* (Washington, D.C.: Government Printing Office, 1866), 318.

<sup>92</sup> Ibid.

## Chapter Two

### Change and Continuity

The advent of a common law legal tradition did not entirely alter the judicial lives of New Mexico women in the Territorial period. Although the structure and the language of the courts changed, Hispanas continued to seek justice, whether that meant appearing before the local *alcalde* or employing European American lawyers. Class and wealth determined how individuals approached the law but in general New Mexico women exhibited a sense of entitlement to see justice done.

The culture of New Mexico differed from that of central Mexico, not least in the development of judicial process as the people of New Mexico, isolated both by geography and by Spanish government policy that forbade foreign commerce, developed their own traditions. In Mexico women made regular appearances in court both in the colonial period and after independence. In addition to the civil courts, Mexicans traditionally took advantage of ecclesiastical courts, church courts that dealt with a myriad of problems, especially interpersonal concerns. In New Mexico, *alcaldes*, at once mayor and *juez*, or judge, dispensed swift justice, guided by common sense and community sensibilities. If conciliation, the preferred solution, could not be reached, each side appointed an arbitrator, or *hombre bueno*, literally a "good man." The *alcalde* considered the opinion of these individuals before issuing his judgment and if agreement could not be reached, the case was dropped. However, proceedings became more serious if a plaintiff laid a formal charge, for witnesses then had to testify and the suit must be sent to the governor for a verdict.<sup>1</sup> In New Mexico, men and women sometimes went to the *cura*, the parish priest first, and then to the *alcalde* with the same problem.<sup>2</sup> The

intrusion of a legal tradition with its new procedures inevitably brought numerous changes. Many European Americans, schooled in the common law, viewed Mexican laws and courts as arbitrary and dictatorial. They had little conception of the social and legal rights that Hispanas had enjoyed before conquest. European Americans wanted predictable, transparent law based on individual rights, not a legal tradition based on flexibility and conciliation that had evolved over the centuries on the northern frontier of New Spain.<sup>3</sup>

Moreover, the persistence of Hispanic law meant that significant legal changes took years to implement. The Kearny Code, promulgated on September 22, 1846, by Colonel Stephen W. Kearny as an interim plan for military rule, proved to be limited when resolving conflicts between civil and military authorities. Colonel Alexander Doniphan and Private Willard P. Hall drew upon diverse sources to design a code of law that included the Mexican body of laws together with those of Texas and Missouri.<sup>4</sup> However it was not until July 12, 1851, that the legislature of the newly organized territory of New Mexico established the preeminence of the common law in criminal cases. California had already adopted the provision so that New Mexico became the last jurisdiction at that point to follow suit.

Nevertheless, the Kearny Code retained those Spanish and Mexican laws not incompatible with Anglo-American law.<sup>5</sup> Of particular note, the Code addressed the business of wills and testaments, a proviso that spoke to a significant element in the lives of the Hispanas of New Mexico. Laws concerned with "descents, distributions, wills, and testaments" remained in force so long as they conformed to the U.S. constitution and state laws for the time being.<sup>6</sup> In fact, President Zachary Taylor declared in an address to

the House of Representatives on January 21, 1850: " the people of this territory still enjoy the benefit and protection of their municipal laws, originally derived from Mexico."<sup>7</sup> That Spanish civil law continued to influence legal practice well into the twentieth century was evidenced in a 1934 estate case in which the New Mexico Supreme Court declared:

New Mexico was not an uninhabited territory or one occupied by English speaking people, bringing their common law with them. The Americans invaded a foreign territory and conquered a civilized people. The American military commander, proclaiming a code of law for the conquered territory and people, long before the peace, did not establish the common law.<sup>8</sup>

Accustomed to taking advantage of their legal system and settling their grievances in local courts, New Mexicans relied upon Spanish traditions and values rather than on formal legal precepts.<sup>9</sup> However, it would be incorrect to assume that a legal vacuum had existed for centuries in pre-conquest New Mexico with justice meted out solely at the whim of the *alcalde*. Despite American criticism of the courts in their newly acquired territory, local courts followed some semblance of due procedure according to Spanish law. One has only to examine the archival records of lengthy, detailed court cases with their formal wording to appreciate the serious concern for the law exhibited by the plaintiffs whether the suit involved a small debt or a large property transfer. Although not entirely free from bias, the courts incorporated local customs and attempted to provide some form of justice. People had access to the law, and officials, overburdened by multiple duties, issued swift decisions. Moreover women who at first petitioned the *alcalde* in his legal capacity knew that the litigation could move to a higher authority. Some cases went directly to the governor at Santa Fe although a judicial decision at this level entailed considerable investment in time and money.<sup>10</sup> It is noteworthy that it was only in New Mexico that the provincial government and not the crown appointed the



*alcaldes mayores*.<sup>11</sup> After the conquest, the Hispanic population preferred the flexible, community-controlled courts of the Justice of the Peace to the Anglo-controlled district courts with their unfamiliar judicial system.<sup>12</sup>

Many examples of pre-conquest court cases in which women acted as the litigants offered clear evidence of their public presence, reference to traditional legal rights, and a foretaste of what nineteenth-century New Mexico women were to lose under the common law. For instance, in 1697 in Santa Fe, María de Castro petitioned the *alcalde ordinario* to assign power of attorney to her husband, Jacinto Sánchez. Now that she had married, María, the legitimate heir of Miguel Rodarte and Juana Guerrero, claimed her inheritance, consisting of a bar of silver and eleven hundred pesos, which had been in the safekeeping of others. The *alcalde* granted her petition.<sup>13</sup> The document revealed that María de Castro came from a well-to-do family; that under Spanish law, as a female, she could inherit property in her own right; and that by assigning power of attorney to her husband, she sought to pass administration of her wealth to her husband. One hundred years later in 1800, in the Puesto de Nuestra Señora de la Salidad del Rio Arriba, Captain of the Militia and *alcalde mayor* Don Manuel García de la Mora, lamented the lack of a public or a royal scribe when he documented the transfer of one hundred varas of land and one-half of a house from Juana Padia to her niece Monica. The document reflected the legitimate transfer of property between two women who did not suffer "disabilities due to their sex."<sup>14</sup>

But how exactly did Hispanas make use the territorial courts? From 1848-1912, women in both Rio Arriba and Doña Ana Counties continued to be represented in district, probate, and local courts. New Mexico women availed themselves of courts to dispute

wills, settle small claims, and they acted as administrators, executors, and witnesses. In addition women turned to the courts to resolve marriage problems or to seek separation. They appeared as plaintiffs, defendants, or witnesses in cases of murder, petty theft, and grave insults to their honour and reputation. Indeed Hispanas had engaged in these legal activities in colonial Mexico for centuries prior to the Mexican-American War of 1846-1848 and they continued to do so in new and varied ways long after the conquest.

Their numerical advantage allowed New Mexico women to resist assimilation, to withstand total integration, and to maintain their ties with a civil legal tradition.<sup>15</sup> However, the use of the courts varied by ethnicity and county. For example, during the Territorial period Hispanas in both Rio Arriba and Doña Ana Counties continued to appear before justices of the peace more than they did in district courts, but only 13 to 14 percent of cases involving Hispanas appeared in district court compared to some 60 percent for European American women. The residents of Rio Arriba County regularly used the probate courts to settle estates and to transfer land between themselves, transactions that reflected their closely-knit communities and kinship networks. The consistent appearance of Hispanas in the justice of the peace courts in the southern county is perhaps not so surprising when we remember that many of the so-called "foreigners" came from the northern regions of Mexico that shared a similar legal tradition. New Mexico women made increasing applications to the chancery courts or courts of equity when they judged their briefs to be without remedy under the common law. In contrast to the use of courts by Hispanas, European American females invariably appeared before the district courts. (See Table 3). Although this suggested an ethnic or cultural divide, the types of litigation engaged in as well as legislative changes also

influenced court use. The legality of divorce under American administration meant that Hispanas appeared in district courts where divorce cases were heard in greater numbers. That they went to court over small debts and property disputes reflected the place of Hispanas in the new economy, the scarcity of goods, and the continuation of historical litigious behavior. European American women, on the other hand, contested business conflicts as well as divorce suits in district courts.

With the institution of English common law procedures and processes, if not the actual body of the common law in New Mexico Territory, Hispanas in particular did not so much avail themselves of the local and probate courts less as they changed to add the district court to their repertoire of legal strategies. While the restructuring of the legal system and new juridical processes under the American administration restricted women's choices in how and where they pursued legal recourse, Hispanas did not withdraw from a practice that they had long considered their right. Despite the fact that males recorded their cases within the formal legal language of the court, the judicial documents revealed the legal concerns of nineteenth-century Hispanas. Class, wealth, and family support dictated whether or not a woman could afford to hire lawyers and pursue litigation, possibly over a number of years. The Territorial district courts judged cases of divorce, separation of bed and board, guardianship, and the partition of wealth or estates. They also dealt with more serious crimes such as murder, aggravated assault, and major property damage or debt. Litigants frequently pleaded their cases in courts of chancery or equity if they could not find any remedy under the common law. Justices of the peace concerned themselves with small debt claims and minor property disputes, petty crime, insults to honor, and some marital disputes.

Analysis of the rich archival documentation revealed the complexity of the lives of Hispanas in the Territorial period and allowed for a more complete and accurate picture than might be obtained from the accounts of European Americans. Overlapping legal systems created parallel worlds in which Hispanas maintained their litigious behavior and a juridical presence despite the incursion of European American cultural and social institutions. Both Hispanic men and women resisted the intrusion of American institutions by covertly or overtly ignoring new laws.<sup>16</sup> When Lecompte described pre-conquest relations between New Mexicans and European Americans she declared: "If New Mexican law was disregarded in New Mexico courts, the common law of the United States was entirely ignored."<sup>17</sup> As James Murphy noted: "New Mexico, as the local point of the Southwest where common law and civil law swirled together suddenly and abruptly, faced great difficulties thereby, and its courts moved cautiously and deliberately in cases involving Spanish influence within the American possession--and with good result."<sup>18</sup> Justice remained local with *alcaldes* serving as mayors, justices of the peace, and probate judges.<sup>19</sup>

European American middle-class immigrants experienced a new language and unfamiliar institutions in New Mexico. Creighton M. Foraker, United States Marshal in New Mexico from 1897-1912, discovered that, in order to carry out their duties, deputies had to learn to speak Spanish.<sup>20</sup> The ambiguous nature of the law throughout this period of New Mexico history, a lack of new legislation, and the continuing influence of Hispanic law became evident time and again throughout the historical record. Judge Kirby Benedict, who arrived in New Mexico in 1853, discovered that few laws had been enacted to allow for proper court procedure, leaving him no alternative but to depend

upon old laws and customs. Thirteen years later it seemed that little had changed. In 1866, in a case in chancery in Santa Fe, Benedict complained:

The court cannot fail to regret that during the fifteen years of territorial legislation, the Assembly of New Mexico has omitted to pass acts fully defining and establishing liens upon property, upon renditions of judgments and the manner of distributing among creditors the assets of insolvent estates of deceased persons . . . In the absence of such legislation, the courts are often troubled . . . in the search to find rule or law among the civil laws of Spain and Mexico to aid or guide them in their decisions.<sup>21</sup>

Although the women in Rio Arriba and Doña Ana Counties continued to use the courts to seek justice and to address grievances, they faced difficult challenges in the new legal tradition. The records revealed not only the presence of women in the legal system but also the changes in the institution of the law in mid-nineteenth-century New Mexico. Whereas Spanish-Mexican law operated in a unitary system of civil courts, English common law functioned with two sets of courts: courts of law, and courts of equity. More significantly for women (in terms of time, cost, and flexibility), under Mexican law cases had been tried in the most convenient place for the defendant. The common law judged cases in the locale in which the dispute took place.<sup>22</sup> This change in location must have had a significant impact on whether or not a woman decided to pursue her complaint. The petitions, affidavits, depositions, injunctions, requests, bills, and pleas reviewed revealed some fundamental changes stemming from the U.S. conquest. Although the majority of the evidence continued to be recorded in Spanish, the courts documented increasing numbers of cases in English or in both languages. Soon after the Mexican-American War the courts attempted to adopt common law terms, procedures, and concepts but the majority of Hispanas sought justice in the justice of the peace courts created under the laws of New Mexico Territory. The flexible nature of these courts allowed for the

application of customary procedures within the guidelines of the law.<sup>23</sup> As already noted the body of the common law came later in 1876 but at this date the jury system and American legal procedures had still not been fully implemented in Territorial courts.<sup>24</sup> The probate judges and justices of the peace or *jueces de paz* assumed the powers of the old *alcalde* courts under American administration especially at the county level, trying criminal cases that should have been heard in Territorial courts.<sup>25</sup>

Some use of juries did occur early in the new administration in New Mexico Territory. In the northern villages, the Penitentes, a powerful religious lay brotherhood, controlled the local administration of justice, and any case involving a jury invariably included a member of the society. Although some defendants may have escaped judgment in the "foreign" courts through the reluctance of a sheriff or local judge to pursue a case against a fellow Penitente, they faced community ostracism and expulsion from the brotherhood.<sup>26</sup>

In 1855, in the District Court of Rio Arriba County, a Hispanic jury found in favor of María Benigna Salazar in a plea of ejectment from a lot and a house to which she claimed she had the rights. María Benigna Salazar stated that Antonio María Vigil had withheld her possession of said property and that she wished to claim rents and damages.<sup>27</sup> Local courts also made use of juries. In 1865 María Meregilda Abeyta went to court to obtain payment of twenty-one pesos for wheat owed her by Reducindo Torres.<sup>28</sup> A jury ordered payment of the debt by the defendant. But this action did not just indicate the presence of a jury, it also illustrated the continuity of old customs. The president of the jury addressed Judge Pedro Salazar García as *Señor Alcalde* and the judge himself signed the document as *Juez de Paz Alcalde*. It is also significant that the clerk's name,

M.M. Gwynne, illustrated the increasingly bicultural nature of the courts and the intrusion of European Americans into the judicial process.<sup>29</sup> When plaintiff María Melquiades Tomé wanted Faustino Olguin to return her goats to her, the *juez de paz*, Marcelino Gallegos, and a jury, ruled that she should get them as well as costs.<sup>30</sup> Nonetheless, it must be remembered that prejudice and the language barrier generally prevented Hispanics from serving on juries at the district court level.<sup>31</sup> Women of course faced the additional barrier of gender as well as ethnicity.

New legal terminology quickly appeared in the court record in Spanish documents as well as in suits written in English. In 1858 Agustín Lucero and his wife, María Guadalupe Trujillo, sold a house and some land to Jesusita Trujillo, the wife of Diego Archuleta, for 910 pesos in fee simple. In another nod to the common law, Señora María Guadalupe Trujillo, in a separate interview, swore that her husband had not unduly influenced her, and that she was selling the property voluntarily.<sup>32</sup> It is intriguing that Hispanas continued their drive for justice in the face of new procedures, legal concepts and philosophies, and terms. They had no control over how their suits would be presented or the terms in which they would be couched, but these women understood their own cases and must have grasped at least some of the legal terminology. María Duran's petition for a writ of habeas corpus in 1869 concerning her claim that she had been wrongly imprisoned, directly related to her disagreement with the court's decision to incarcerate her. Although María Duran vowed that imprisonment would be preferable to continued cruelty from her husband, for whom she had more fear and horror than affection, in fact habeas corpus would provide defense against illegal imprisonment.<sup>33</sup> Hispanas acted as plaintiffs in cases of attachment (the seizure of property or person by

legal authority), of *assumpsit* (legal action for a breach of contract), and of *replevin* (action for the recovery of goods or chattels wrongfully taken or detained). The point is that New Mexico women continued to exhibit their sense of entitlement to seek justice in the courts regardless of the changes in procedure. Whether or not they always found that justice is another matter.

Eighty-four cases tabulated from 1840-1910 for Rio Arriba County suggested a more stable society than that of Doña Ana County. The designation *Juez de Paz, Alcalde* or "Justice of the Peace, Mayor" appeared frequently, the last instance in 1904, harking back to a pre-conquest era when the *alcalde* or mayor of a village presided over local disputes. The probate court adjudicated twenty-nine cases, the majority of them wills, in addition to eighteen at the district level where a European American probate clerk recorded them. Three cases went to chancery court. Twenty-two cases went to the district court under the arbitration of a European American judge and two cases went to jury. The plaintiffs in four of the cases employed the use of a "next friend" or "un amigo." (Next friend referred to one who acted for a person suffering from some disability. The term is explained in more detail later in the text.) Five court actions made use of European American attorneys; in one of these cases a Hispana wife and Hispano husband each used a non-Hispanic attorney. Not surprisingly a European American filled the district court judgeship but in the majority of cases a Hispanic served as clerk. Women made their mark on ten of the documents. European American women appeared in only four (five per cent) of the cases.<sup>34</sup>

From 1850-1912 in Doña Ana County, European American women appeared in forty of the 137 legal records or 29 per cent of the cases, suggesting a substantial judicial



profile. Research into the original manuscript census schedules would provide a finer demographic breakdown of the numbers of European American women in Doña Ana County.<sup>35</sup> From 1860-1890 European American women figured almost exclusively in the district court, but by 1880 they began to appear in the Justice of the Peace courts and the numbers increased over the next two decades. Their greater presence reflected the increased in-migration of European Americans with the advent of the railroad and the subsequent development of New Mexico Territory. In the same period Hispanas made use of the justice of the peace courts in greater numbers and appeared less frequently in chancery courts. Their appearance in district courts fluctuated, never rising above 13 or 14 per cent.

A survey of legal statistics allows us to see the framework of the legal system after 1848, the overlapping elements in the judiciary, and the changes as well as some of the continuities for women as they adapted to their new circumstances. Though it was not possible to establish with complete certainty the social status of a woman from the documentary evidence, often one could glean some indication of her position from the details of the case. If a woman could afford to use lawyers it generally meant that she had some financial means at her disposal. Similarly, if she signed her name rather than making her mark, it may be assumed that she had some education or at the very least that she was literate, and was therefore not desperately poor. A woman's economic status could also be inferred from the amount of property inventoried in a last will and testament. Deena González warned about making conclusive statements concerning a woman's class based on property, without the use of corroborative material from additional sources. She cited the example of one woman who went to court over the loss

of one burro. The woman might have owned only one burro or many but one could not determine class origins from only one court appearance.<sup>36</sup>

By 1855, New Mexico women engaged European American attorneys and had their cases judged by juries. They had little choice, for not only did a number of European American lawyers flood into the territory after the conquest but also there were few Hispanic lawyers available. Whereas previously the *alcalde* courts basically represented the justice system, now the legal process became increasingly professional and structured. When the aforementioned María Benigna Salazar entered a plea of ejectment against Antonio María Vigil, the law firm of Watts and Wheaton acted on behalf of the plaintiff and a jury of “twelve good and lawful men” all of them *Hispanos*, heard the case. The jury argued in favor of María Benigna Salazar and ordered Antonio María Vigil to restore her property and to pay court costs. Officials escorted him to the common jail for safekeeping until his discharge in due course.<sup>37</sup>

In 1865 Maria Lucia Quintana employed attorney C.P. Clever in her plea of ejectment case against Merced Sánchez, who employed the firm of Ashurst and Elkins. Quintana complained that Merced Sánchez illegally possessed a house and property that rightfully belonged to her and she asked for the return of her property and 500 dollars in damages. The court ordered Merced Sánchez to produce two documents that indicated the land in question had been sold to María Lucia Quintana's father, Juan Quintana. This case had an intriguing footnote, for the defendant, Merced Sánchez, argued that Don Manuel Trujillo, one of Juan Quintana's relatives, and Don Diego Archuleta, “. . . a person of great influence in the County of Rio Arriba” influenced the minds of the petit (petty) jurors against him.<sup>38</sup>

In 1869, in a court of chancery, Attorney John Watts acted for plaintiff Alvina Sánchez in a lengthy and complex suit against her husband, Antonio Rodríguez, and co-defendants, James West and Perfecto Armijo. Alvina Sánchez sought a divorce from her husband on the grounds of his insanity. Apparently he dressed up in women's clothes and paraded through the town insulting people and also assaulting them. She feared for her life and the lives of their two children and sought protection under the law. But Alvina Sánchez had other problems. She accused justice of the peace James West, and Perfecto Armijo, to whom her husband owed a debt, of taking advantage of her situation, selling her livestock below its true value and buying the animals for themselves. She singled out James West as particularly culpable, alleging that he sold off her property under the guise of recovering court costs. Alvina Sánchez's petition noted that "the Justice of the Peace was prohibited by the 52 [sic] section of the act relating to Justices of the Peace found on Page 150 of the Compiled Laws from purchasing and selling said cows and steers and especially so for a sum not equal to one fourth of their actual value."<sup>39</sup> She asked that the court take "equitable jurisdiction of her case as she is without remedy by the common law." Alvina Sánchez asked permission to sue in her own name without the joinder (the acceptance of the suit) of her husband; in addition she sought custody of her two children. James West and Perfecto Armijo asked the court to dismiss the petition as it was for a divorce, not in any manner connected to them, and they were not required to answer to threats. It is not known whether or not Alvina Sánchez received her divorce but it is noteworthy that she entered her plea in a court of chancery, used an attorney, and sued in her own name. The case illustrated some of the challenges that Hispanas faced after conquest. Although Alvina Sánchez may have had easier access to divorce, it must be

noted divorce was not easy anywhere in 1869. She also faced exploitation as a woman forced to act on her own owing to the incapacitation of her husband. Additionally she had to deal with an unfamiliar court system.

It is fascinating to trace the blending of the two legal systems as well as the persistence of Mexican law, especially as they impacted upon the lives of women in New Mexico. Understandably changes in the institution and application of the law took time. Hence legal instruments occasionally cited Mexican law. In November of 1850, Julián Lucero gave the house in which he lived to his daughter, María Martha Clark, and her husband, Elias T. Clark, with the proviso that they relinquish their rights to his other houses. The document was written in English, one of the witnesses, Theodore D. Wheaton, was an American, and the circuit judge, Charles Beaubien, another non-Hispanic albeit from a well established New Mexico family. However, the judge described himself as a *Juez del Circuito*, and, more importantly, the description of the house was in Spanish with all of its *choreras, entradas, and salidas* "as defined by the Mexican law."<sup>40</sup> Though New Mexico did not adopt the body of the common law until 1870, the processes and the terminology of a new system became apparent immediately after American conquest, although not as quickly as some would have wished. For example, when plaintiff William Black met defendant José María Chavez in the district court in Doña Ana in 1856, it was under the private seal of the clerk, Vincent St. Verain, "no seal being yet provided by the law."<sup>41</sup>

The civil code concept of marital community property continued to be important in New Mexico. The territory functioned solely under Spain's community property laws until 1901 when more inclusive statutes were enacted. The will of Josefa García de

Rascon, composed in 1859, illustrated this very clearly. When she married Don Francisco Rascon, Josefa García de Rascon brought a piece of tillable land to the marriage that her husband subsequently sold. He then returned it where "a house now stands that was constructed with the labor of both consorts." Señora Josefa García de Rascon acknowledged how her husband tried to advance the marriage community: "I do declare that allowing that my referred husband for the convenience and benefit of our social matrimony decided to enter upon agricultural pursuits but owing to depression of business and circumstances has not advanced but merely in preserving [sic] the existence of one *terreno* (plot) that before did not produce anything, which remains in favor of my mentioned husband."<sup>42</sup> When Sisto Chávez's wife, María Manuela Gallegos, died intestate in 1870, Sisto Chávez appeared before *Juez de Paz*, Juan García, to state that after deducting the goods that belonged to his wife, and the communal debts from the marriage, he had the right to partition the remaining wealth.<sup>43</sup> According to the archival evidence, Hispanic couples maintained the community property tradition after conquest. Formal recognition of a practice common throughout the Territorial period finally occurred in 1907. The *New Mexico Probate Manual*, published in 1961, defined community property as the "Spanish ganancial system of holding property during marriage as adopted in New Mexico by 1907 statute and as since modified by law."<sup>44</sup> . Nineteenth-century records revealed the uneven, overlapping, and opaque nature of the law.

The case of Francisca Trujillo illustrated the increasingly common blend of both civil and common law in the nineteenth century. When she married Blas Trujillo in Rio Arriba County in 1863, Francisca Trujillo brought nothing to the marriage except for her

wearing apparel. In 1865, she appeared before Judge Kirby Benedict in a court of chancery claiming to have received as a marriage gift or donation from her husband the undivided half of a piece of land at Los Ranchos de San Juan. Unfortunately her husband failed to execute a title deed. She also claimed to have received clothing and other articles as her “separate and exclusive property,” items that were in his possession. Francisca Trujillo referred to gains accrued by their “joint labor and industry” consisting of agricultural provisions, stock increases, and “gains of a traffic with the Indians.” These gains rightly belonged to the marriage community. Furthermore Francisca Trujillo alleged that she had been subjected to systematic abuse at the hands of her husband who eventually cast her out of their house. In such seemingly desperate straits Francisca Trujillo declared herself to be “without adequate relief at the common law and prayed for justice in the Court of Chancery” where matters of this nature are properly cognizable.”<sup>45</sup>

In order to escape such a miserable marriage, Francisca Trujillo requested a decree of separation “*a mensa et thoro*” (or from bed and board) and that she be restored “to all the rights, privileges and immunities of a *femme sole*.” This statement epitomized the blending of two legal systems, for the Catholic Church permitted married couples to live apart in separate establishments whereas an unmarried woman, under English common law, enjoyed rights and privileges as a *feme sole*, a single woman.

Not to be deterred, Francisca Trujillo made additional requests. She demanded alimony, also a new term in New Mexico, although perhaps not a new concept since women often petitioned for “maintenance” under a civil code. She asked for one-half of the marriage or communal property, standard under civil law; a title of deed to her marital donative property; a restraint against the selling of the property; and division of the said

property under the direction of the court after proper conveyance. Francisca Trujillo's case exemplified the continuities and complexities of a different judicial order. Blas Trujillo denied all charges, swore that Francisca Trujillo had abandoned him, and refuted the claim that he would not allow her to return to their home or to his "bed and board." He actively solicited her return, desired that she return and perform her duties to him as a wife should, and claimed to have returned his wife's property to her. He also asserted that some of the communal gains had accrued from the efforts of his three children by his former wife, Jesús, Refugia, and Basilio, all of whom had rights to the property. The outcome of this case is unknown.

In 1871, Marcelino Gallegos and Guillermina Sledd, supported by her next friend, Thomas B. Catron, brought a bill against Guillermina Sledd's husband, Joshua Sledd that related to a deed of trust Joshua Sledd had created to ensure Guillermina Sledd's future maintenance and well being. The use of the legal term "next friend" revealed the new language of the law. Defined as one who acted without formal appointment for the benefit of an infant, a person of unsound mind not judicially declared incompetent, or someone under some disability, the appearance of a next friend in this case intimated that Guillermina Sledd suffered a disability due to her sex or language. The deed permitted Guillermina Sledd to convey the couple's extensive property holdings to such persons as she desired provided that she did so in her last will and testament "or by an instrument in the nature of a last will and testament subscribed by her in the presence of two creditable witnesses- notwithstanding her coverture-[as she] may direct and appoint . . ."<sup>46</sup> The deed named Marcelino Gallegos as trustee. Upon Guillermina Sledd's death the property passed to her son or, if he died before the age of twenty-one, it reverted back to her

husband, Joshua Sledd. The three defendants objected to the fact that Guillermina Sledd was not absolutely free to dispose of the property as she wished. Of course, this lengthy document failed to disclose precisely why Marcelino Gallegos and Thomas Catron were so anxious that Guillermina Sledd be free to sell her property. Thomas Catron was at the center of the infamous Santa Fe Ring, a group of men who took advantage of land title disputes to acquire vast property holdings.<sup>47</sup> The continued use of the common law term *coverture* in 1871 is interesting particularly as it referred to a Hispana who would neither have been under *coverture* in a civil system nor suffered from the "disability" of her sex.

The documents cited the *Recopilación de leyes de los reynos de las Indias* (the compilation or summary of the laws of the kingdoms of the Indies) several times. The *Recopilación* comprised more than 400,000 royal orders codified into 6400 laws in nine volumes. These references served as reminders of the continuities of the Spanish legal code that endured well into the nineteenth century. In 1863 when Doña Ana County *juez de paz* Anastacio Sisneros embargoed the goods of María Rosa Salcedo and threatened her with jail if she did not pay Seferino Bienes the money that she owed to him, he made reference to section 66 page 153 "de la Recopilación de leyes de este Territorio."<sup>48</sup> Three years later Loreto Muñoz complained of abandonment by his wife, Concepción Martínez, accusing her of being a disorderly person according to section 2a, page 285, "de la Recopilación de leyes de este Territorio." He asked that she be ordered before the court to respond to his accusation and to either be punished or set free.<sup>49</sup> As noted earlier Alvina Sánchez, too, cited the Compiled Laws of New Mexico in the process of filing for a divorce against her deranged husband, Antonio Rodríguez. In addition, she asked the district court to render judgment on this act, once more referring to the Compiled Laws,



pages 520-534. It was not evident whether or not Alvina Sánchez knew the law or acted under the direction of legal counsel.<sup>50</sup> Finally, in 1891, in Rio Arriba County, the sister and brother-in-law of María R. García, who died intestate, petitioned probate judge, Don Francisco Serna, asserting that they should be entitled to part of the inheritance and requesting that they be named administrators in conformity with the *Leyes Compiladas*.<sup>51</sup> But plaintiffs in smaller suits also referred to the laws of the Territory as Francito Sepúlveda did in her 1889 complaint against her husband, Aniceto Elias. She charged him with beating her and abandoning her and their four children, the youngest a nursing baby, and asserted that these actions were "against the statutes of New Mexico."<sup>52</sup>

To be sure, without extensive letters, memoirs, or diaries, it is difficult to ascertain just how Hispanas of the Territorial period in New Mexico truly reconciled themselves to the new legal processes. The documentary evidence demonstrated their continued presence in the legal record albeit in reduced circumstances, especially in the disposal and loss of property. But how, for example, can one determine the feelings of a Hispana when presented with a summons? By 1856, eight years after the Treaty of Guadalupe Hidalgo, printed summonses in English were already in use under the private seal of the clerk as no seal had yet been provided by law. The names of Francisca Chávez, Josefa Velázquez, and Ana María Chavez, appeared in one of these forms on June 10, 1856. They had been summoned before the Doña Ana County District Court in the case of William Black versus José María Chávez.<sup>53</sup> Judging by the surnames, some of the women were obviously family members. The illiteracy in English of Hispanas of the period would have prevented them from reading the summons so perhaps the person delivering it read it, assuming either that he could speak some Spanish or someone in the

household could read English, if they could read at all. How would women have reacted when such an event occurred? Did they ignore the summons? The evidence showed that occasionally witnesses, defendants, and plaintiffs did not show up in court. Were they so familiar with litigation in the Spanish legal tradition that this would have seemed nothing out of the ordinary or did this type of process seem alien to them? Did new legal processes affect women of different classes in different ways?

In Territorial New Mexico Hispanas litigated over property affairs; unhappy marriages; disputes over debts, violence and assault; and notably, insults to honor and reputation. The drama of these events, large and small, played out in an arena at once familiar through legal attitude and propensity but made strange by unfamiliar trappings. How did the women of New Mexico navigate the reconstructed labyrinth that the law had become? The next chapter looks at the interpersonal issues that brought Hispanas to the courts, some of the challenges they met, and their resistance to acceptance of U.S. law.

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### Endnotes

<sup>1</sup> Janet Lecompte, "The Independent Women of Hispanic New Mexico: 1821-1846," *Western Historical Quarterly* 12:1 (January 1981), 24.

<sup>2</sup> Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999), 26. In 1834 the federal government secularized all missions, expelled Spanish-born regular clergy, for example Franciscan friars, and replaced them with parish priests.

<sup>3</sup> Doyce B. Nurris, "Alta California's Trojan Horse: Foreign Immigration," in Ramón A. Gutiérrez and Richard J. Orsi, eds., *Contested Eden: California Before the Gold Rush* (Berkeley: University of California Press, 1998), 321.

<sup>4</sup> Jack K. Bauer, *The Mexican War: 1846-1848*. (New York: Macmillan, 1974), 135.

<sup>5</sup> Milo Kearney, *Medieval Culture and the Mexican American Borderlands* (College Station: Texas A & M University Press, 2001), 68.

<sup>6</sup> Hans W. Baade, "Marriage Contracts in French and Spanish Louisiana: A Study in 'Notarial' Jurisprudence," *Tulane Law Review* 53:1 (December 1979), 48

<sup>7</sup> Quoted in William Quimby DeFuniak, *Principles of Community Property* (Tucson: University of Arizona Press, 1971), 78.

<sup>8</sup> Robert Emmet Clark, "Matrimonial Property Law in New Mexico and the Western United States," in Wolfgang Friedmann, ed., *Matrimonial Property Law* (London: Stevens & Sons Limited, 1955), 91. Clark cites the case of *In Re Gabaldon's Estate*, 38 N.M. 392, 34 P. 2d 672, 94 A.L.R. 980 (1934).

<sup>9</sup> Jill Mocho, *Murder and Justice in Frontier New Mexico: 1821-1846* (Albuquerque: University of New Mexico Press, 1997), 179.

<sup>10</sup> Rosalind Z. Rock, "Pido y Suplico: Women and the Law in Spanish Mexico, 1697-1763," *New Mexico Historical Review* 65:2 (April, 1990), 156.

<sup>11</sup> Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995), 82

<sup>12</sup> Frances Leon Swadesh, *Los Primeros Pobladores: Hispanic Americans of the Ute Frontier* (Notre Dame: University of Notre Dame Press, 1974), 117.

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<sup>13</sup> Petition of María de Castro, July 17 1697, Spanish Archives of New Mexico 1621-1821, New Mexico State Records Center and Archives (hereafter referred to as NMSRC), Roll 3, Frame 109.

<sup>14</sup> Juana Padia to Monica Pacheco, Rio Arriba County, 18 April 1800, NMSRC, Deed Record Book 1852-1884, Box 1, Folder 1, Number 173. This box contained many deeds, some dated earlier than indicated on the box. A *vara* was a variable unit of length measuring about 2.8 feet.

<sup>15</sup> Roxanne Dunbar Ortiz, *Roots of Resistance: Land Tenure in New Mexico, 1680-1980* (Los Angeles: Chicano Studies Research Center Publications and the American Indian Center, 1980), 18.

<sup>16</sup> Suzanne Forrest, *The Preservation of the Village: New Mexico's Hispanics and the New Deal* (Albuquerque: University of New Mexico Press, 1989), 24.

<sup>17</sup> Lecompte, "Independent Women of Hispanic New Mexico," 27.

<sup>18</sup> James M. Murphy, *The Spanish Legal Heritage in Arizona* (Tucson: Arizona Pioneer Historical Society, 1966), 36.

<sup>19</sup> Kathleen P. Chamberlain, "Billy the Kid, Susan McSween, Thomas Catron, and the Modernization of New Mexico, 1865-1912," in Richard W. Etulain, ed., *New Mexican Lives: Profiles and Historical Stories* (Albuquerque: University of New Mexico Press, 2002), 195.

<sup>20</sup> As quoted in Larry D. Ball, *The United States Marshals of New Mexico and Arizona Territories: 1846-1912* (Albuquerque: University of New Mexico Press), 191.

<sup>21</sup> Aurora Hunt, Kirby Benedict, *Frontier Federal Judge: An Account of Legal and Judicial Development in the South West, 1853-1874* (Glendale: A.H. Clark, 1961), 240.

<sup>22</sup> Donald Chipman, *Spanish Texas: 1519-1821* (Austin: University of Texas Press, 1992), 251.

<sup>23</sup> Swadesh, *Los Primeros Pobladores*, 137.

<sup>24</sup> Howard Lamar, *The Far Southwest 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), 137.

<sup>25</sup> *Ibid.*, 85.

<sup>26</sup> Forrest, *Preservation of the Village*, 28.

<sup>27</sup> María Benigna Salazar vs. Antonio María Vigil, September 1855, Rio Arriba County, NMSRC, District Court Civil Cases 1849-1889, Number 5.

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<sup>28</sup> A number of documents referred to "pesos" well after 1848.

<sup>29</sup> María Meregilda Abeyta vs. Reducindo Torres, September 1865, Rio Arriba County, NMSRC, Rio Arriba County Records 1847-1957, Box 1 Number 11.

<sup>30</sup> María Melquiades Tomé vs. Faustino Olguín, June 1885, Doña Ana County, NMSRC, District Court Civil Cases 1851-1901, Box 30 Mixed Numbers.

<sup>31</sup> From the 1880's to the 1930's it was customary to exclude Hispanic jurists from district court juries in northern New Mexico if a Hispano was to be tried on criminal charges. Hispano jury members as well as the Hispano accused would have been suspected of being members of the lay brotherhood known as the Penitentes. See Swadesh, *Los Primeros Pobladores*, 91. Some Hispanics did serve as jurors in district courts. In 1915 it became a newsworthy event when the first jury trial without an interpreter was held at the district court in Socorro. See Nancie L. González, *The Spanish Americans of New Mexico* (Albuquerque: University of New Mexico Press, 1967), 18.

<sup>32</sup> Agustín Lucero and María Guadalupe Trujillo to Jesusita Trujillo, December 1858, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Number 266.

<sup>33</sup> Petition: María F. Duran, March 1869, Doña Ana County, NMSRC, Probate Court, Box 6 Folder 218.

<sup>34</sup> Data aggregated from Rio Arriba County, NMSRC, Probate Court Records 1870-1912, District Court Civil Cases 1849-1880 and 1877-1881, District Court Criminal and Civil Docket 1860-1875, and District Court Judgment Docket 1891-1905.

<sup>35</sup> For example the censuses variously broke down the population by native-born, foreign born, and native-born but from out of state categories. Unfortunately the latter category was broken down by state not sex.

<sup>36</sup> González, *Refusing the Favor*, 33.

<sup>37</sup> Petition of María Benigna Salazar against Antonio María Vigil, September 1855, Rio Arriba County, NMSRC, District Court Civil Cases 1849-1889, Box 7, Number 5.

<sup>38</sup> María Lucia Quintana vs. Merced Sánchez, 21 September 1865, Rio Arriba County, NMSRC, District Court Civil Cases 1849-1889, Box 7, Number 64a.

<sup>39</sup> Petition for divorce, Alvina Sánchez vs. Antonio Rodríguez, 14 June 1869, Doña Ana County, NMSRC, Civil Case Files, 1851-1909, Box 30, Mixed Numbers.

<sup>40</sup> Julián Lucero to María Martha Clark and Elias T. Clark, 19 November 1850, Rio Arriba County, NMSRC, Deed Record Book 1852-1884.

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- <sup>41</sup> William Black vs. José María Chávez, June 1856, Doña Ana County, NMSRC, Civil Case Files 1851-1901, Box 30, Mixed Numbers
- <sup>42</sup> Will of Josefa García de Rascon, February 1859, Doña Ana County, NMSRC, Probate Court, Box 6 File 214.
- <sup>43</sup> Estate of María Manuela Gallegos, September 1870, Rio Arriba County, NMSRC, Probate Court Records, Box 3 Number 212.
- <sup>44</sup> Arie Poldervaart, *New Mexico Probate Manual* (Albuquerque: University of New Mexico Press), 178.
- <sup>45</sup> Francisca Trujillo vs. Blas Trujillo, Bill of Complaint, April 1865, Rio Arriba County, NMSRC, County Records 1847-1957, Box 1 Number 58a.
- <sup>46</sup> Marcelino Gallegos and Guillermina Sledd, Bill to Change a Deed of Trust Made by Joshua Sledd, November 1871, Doña Ana County, NMSRC, Civil Case Files 1851-1909 and 1886-1909, Box 30 Mixed Numbers.
- <sup>47</sup> Thomas Catron and the Santa Fe Ring are discussed in greater detail in Chapter 4.
- <sup>48</sup> María Rosa Salcedo and Seferino Bienes, 22 November 1863, Doña Ana County, NMSRC, Sworn Statements and Complaints 1863-1865, File 115.
- <sup>49</sup> Loreto Muñoz and Concepción Martínez, 1866, Doña Ana County, NMSRC, Sworn Statements and Complaints 1866-1878, File 116.
- <sup>50</sup> Alvina Sánchez vs. Antonio Rodríguez, June 1869, Doña Ana County, NMSRC, Civil Case Files 1851-1909, Box 30 Mixed Numbers.
- <sup>51</sup> Estate of María R. García, 1891, Rio Arriba County, NMSRC, Probate Court Records, Box 4 Number 309.
- <sup>52</sup> Francito Sepúlveda complaint against Aniceto Elias, December 1889, Doña Ana County, NMSRC, Sworn Statements and Complaints 1883-1889, File 117.
- <sup>53</sup> Summons for Francisca Chávez, Josefa Velázquez, and Ana María Chávez, 10 June 1856, Doña Ana County, NMSRC, Civil Case Files 1851-1901, Box 3 Mixed Numbers.

## **Chapter Three**

### **Divorce and Debt**

The law illuminates the culture and values of a society as well as the divide between prescription and practice. In this way, the legal record reflected the history of nineteenth-century New Mexico during a period of enormous social, political, economic, and legal change.<sup>1</sup> The cultural mores, values, and attitudes of two distinct societies met within the context of the U.S. Southwest borderlands. European American ideals of modest womanhood differed sharply from the Hispanic concept of honour based upon one's reputation and standing in the community. Hispanas, who felt entitled to justice, did not suffer verbal insults against their honour and delicacy lightly and frequently swore out official complaints against those who insulted them. New Mexico women also pursued debtors, brought charges against abusive partners, and contested wills.

Legatees of a culture that transcribed political, economic, and legal affairs in meticulous detail, numerous documents indicated that the majority of Hispanas had access to some sort of law, however local it might be. Even the illiterate left records through wills and testaments, executed in the presence of witnesses and set down by official scribes. Legal documents could be limited in that they did not always indicate if women were not appearing in court alone or with others, nor did they consistently provide the judgments handed down by officials. It was difficult to ascertain whether or not defendants invariably obeyed court orders although the evidence indicated that some people reappeared in court on the same charges in addition to new allegations. However, in the small New Mexico villages, the failure to comply with orders could mean ostracism and slander since the residents quickly learned about any suits brought before

the *alcalde*. Clerks carefully noted and recorded cases of adultery, assault, trespass, debt, and threats. New Mexico women did not easily cede their traditional legal practices in the transition from Mexican province to U.S. territory.

It is in the area of interpersonal as well as intercultural relationships that differences in the definition of marriage, changes in the law, and the increased presence of European American women and men became evident in New Mexico in the latter part of the nineteenth century. Intercultural unions differed in the U.S. Southwest according to specific historic and economic circumstances. For example, Dysart's study revealed that in San Antonio, Texas, intercultural marriages provided European American men with links to powerful Hispanic landed families while benefiting wealthy Tejano families who wished to maintain their political and economic position. However, increased Anglo power led to the assimilation of Tejana spouses. Miller looked at the intermarriage of California Column veterans, most of whom were working-class men, with Hispanas in New Mexico. These men moved into a predominantly Hispanic society and married the local women; a number of the couples lived in Doña Ana County. González wrote that for the women of Santa Fe, New Mexico, intercultural unions, forged in an environment of conquest and strife, only led to bitter disagreements and conflicted relationships.<sup>2</sup> The legal record for Doña Ana and Rio Arriba Counties reflected intercultural unions both formal and informal. European American men and Hispanas turned to the courts to resolve personal relationships, contest the guardianship of children, and to deal with financial affairs such as maintenance, support, and inheritances.

The majority of European American immigrants to the Southwest in the Territorial period were male so that marriage and informal sexual unions existed almost



solely with Hispanas. The two groups met, lived together, sometimes married, and raised children. Ramón Gutiérrez stated that ninety foreigners became Catholics in New Mexico between 1821 and 1846 so that they could marry New Mexican women.<sup>3</sup> However, informal unions or *barrangía*, originally an old institution in Hispanic society in which higher status Europeans took Indian or mestiza women as sexual partners, was more common, especially in military outposts. A formal religious ceremony entailed fees that most poor Hispanics could not afford so men and women continued to live together in an unmarried state.<sup>4</sup> Unfortunately not all of the intercultural unions succeeded and mixed pairs, as well as European American and Hispanic couples, found it necessary to resort to the courts in order to resolve their personal problems. Differing cultural constructs of intimacy meant that informal unions between European American males and Hispanas were often marked by stress and discord.

The Territorial period brought more than just political and economic change to New Mexico. Immigrants conveyed new concepts of marriage and of appropriate feminine behavior. However, while the Victorian prescriptive ideal of companionate marriage predicated on the existence of a partnership in which the husband provided for the family while the wife maintained a peaceful, harmonious home, nurtured the children, and offered her spouse a haven from a cold, industrialized world had little basis in the reality of life in the Territorial period in New Mexico, nevertheless, Victorian sentiments permeated the language of New Mexico divorce petitions in the Territorial period because such cases went to the U.S.-controlled district courts. Arrom noted that a few Victorian notions regarding women surfaced in Mexico in the 1840s and 1850s, most notably those that exalted motherhood.<sup>5</sup> However it is not clear to what extent

companionate ideas of marriage influenced the Hispanic communities in the small isolated villages of northern New Mexico where women had historically played a vital role in a subsistence economy.<sup>6</sup> Such ideals were directed at the urban middle and upper classes as most nineteenth-century Americans lived and worked in rural areas. The language of earlier cases relating to troubled relationships reflected the harsh realities of frontier life. Women were more concerned with the maintenance and support of their families than with a companionate marriage.<sup>7</sup>

There is evidence of the Victorian language of ideal marriage in some of the separation and divorce petitions by both Hispana and European American women in the latter half of the nineteenth century. When Francisca Trujillo requested separation from Blas Trujillo in 1863, she claimed that she had at all times conducted herself as a chaste, virtuous, industrious, and obedient wife, always performed her obligations towards him, and in every respect complied with and conformed to the duties incumbent upon her by virtue of her said marriage contract. The wording of Francisca Trujillo's statement reflected both Victorian concepts of marriage as well as the obedience and subordination inherent in the traditional wedding vows of a New Mexico Catholic woman. The sentiments of chastity, virtue, industry, and obedience, did not extend to Blas Trujillo however, who had apparently only been unmindful of the considerations due to the female sex. Similar societal expectations would not have been so different from Hispanic notions of marriage, although perhaps they would have been less expressly stated.<sup>8</sup> The legal record also reflected class and wealth. The property that Francisca Trujillo referred to in her petition, as well as her request for alimony and her use of a lawyer, indicated that she lived in relatively comfortable circumstances.

Historically, Hispanas sought redress before the law for wrongs committed against them no less so in personal relationships than in the matters of property and inheritance that will be addressed in Chapter Four. *Alcalde* courts usually recommended conciliation between contentious couples in an attempt to find equitable solutions, to maintain community harmony, and to uphold social conventions.<sup>9</sup> This policy continued long after conquest. In 1883, the court in Doña Ana County proposed the act of reconciliation between Santiago García and his wife, Antonia Madrid. They agreed to the judgment but under stringent terms. Santiago García had to buy a lot, to build a house, and to give Antonia Madrid power of attorney. In addition she would live with her parents until these conditions had been met.<sup>10</sup> Men also complained of mistreatment. In 1885, Cornelio López took his wife, Telefora F. de López, to court, complaining that she had rejected him, and he demanded to know why. Again the court recommended reconciliation while it conducted an inquiry into the difficulties of the couple.<sup>11</sup> When John Green mistreated Rafaela B. Green, his wife, in 1895, the record showed that the court advised conciliation, which the couple discussed and eventually accepted.<sup>12</sup>

Under Mexican law, if reconciliation failed, New Mexico women could obtain separation from their spouses *a mensa et thoro*, or from bed and board, for reasons of adultery and cruelty. The 1870 Civil Code expanded the grounds to include separation by mutual consent. Divorce in the ecclesiastical sense meant legal separation ending cohabitation but not the dissolution of the marriage itself.<sup>13</sup> The very existence of the marriage bond created the partnership with respect to community property.<sup>14</sup> The tradition of separation from bed and board continued well after conquest. In Doña Ana County, Guadalupe Valencin received a decree of divorce of bed and board from

Gerónimo Lujan in November 1853, five years after the end of the Mexican-American War, as well as real and personal property set aside for her use and benefit.<sup>15</sup> And the next year in Socorro County, complainant Bárbara Elis asked for a divorce of bed and board from Benigno Cardinal. She also requested that she be fully restored to all the rights that may have existed before said marriage.<sup>16</sup>

Divorce was rare in New Mexico in the nineteenth century but women and the courts elsewhere worked to widen the grounds for divorce and the number of divorces increased dramatically. In California and Montana, expanded notions of cruelty that justified divorce included grounds of mental cruelty.<sup>17</sup> Hispanas sought divorces in the Territorial period but the records contained more petitions for divorce by European American women. I separated the cases for this chapter into three categories: those cases featuring only European American women, those in which Hispanas interacted with a European American male or female, and those dealing only with Hispanas. From 1864 to 1907, twenty-four cases involving European American women in Doña Ana County as principals revealed that divorce figured in the greatest number of briefs. Breaking down the numbers pre-and post-1880 in the sample for this study reflected the increase in the number of out-of-state native-born as well as foreigners and indicated that divorce was on the rise, especially in the European American population although the numbers were still relatively small given the overall increase in the population. From 1853 to 1879 Doña Ana County recorded three divorce suits, two for Hispanic couples, and one involving a Hispana and a European American male. However from 1880-1912, six European American couples sued for divorce as well as one mixed couple consisting of a Hispana wife and her European American husband. Another couple reconciled during this period.

Between 1845 and 1879 in Rio Arriba County, three Hispanic marriages and one European American union dissolved whereas none were recorded from 1880 to 1912 in the available documents. Doña Ana County, with a smaller population but proportionally more European American residents, had the greater number of divorces, especially in the European American group.<sup>18</sup>

In 1880, Amelia Sohns' petition for separation emphasized the overlapping nature of the law in the last half of the nineteenth century. Trapped in an abusive marriage in which her husband, Adam Sohns, beat her, causing permanent loss of hearing, and in which he spent all of the couple's earnings from the operation of a boarding house, Amelia Sohns testified that she could no longer safely remain in the relationship. She appeared in court accompanied by her next friend, Henry Arnold, and requested "a separation of bed and board forever" in addition to the custody of their baby daughter, Ida. Notably women still carried the disability of their sex since Amelia Sohns appeared in court with a next friend. It was puzzling that she asked for the customary separation rather than for an absolute divorce. Perhaps religion might have played a part in her choice.<sup>19</sup>

Divorce, although not unknown in the Spanish-speaking world, had historically been extremely difficult to obtain due to religious sanctions against it. Separation became the preferred method of accommodating married couples that could no longer live together. An early example of a divorce case appeared in Fray Angelico Chávez's *The Archives of the Archdiocese of Santa Fe: 1678-1900*, in which he listed an item that referred to "A divorce case remitted to the Governor, Santa Fe, January 29 1818."<sup>20</sup> Although not expressly stated, one can assume that this would have been an ecclesiastical

separation of bed and board rather than the complete dissolution of a marriage. Although divorce continued to be rare in nineteenth-century New Mexico, Hispanas did occasionally take advantage of its availability.

The suit of María Gertrudes McBride against her American husband, Charles McBride, whom she married in 1854, began the same year and incorporated several elements of the common law. In a deed dated July 1854, Charles McBride sold a two-room house and a lot to his wife. In law, and in equity, he would retain possession and use of said property but in the event that any creditors pursued him, she would take immediate possession. This stipulation would remain in effect as long as the couple was married, with the agreement becoming null and void if they separated, and if María Gertrudes McBride had been deemed responsible for the separation. Four months later, in November 1854, María Gertrudes McBride initiated a petition against her husband in district court before Judge Kirby Benedict. She charged that Charles McBride had mistreated her in the summer of 1854 whereupon she fled to her father's house. In order to be forgiven, Charles McBride deeded land and goods to his wife. Apparently reconciled, Charles McBride subsequently wanted to sell the property, and beat María Gertrudes McBride again until she consented under duress. Adding that her husband had been adulterous throughout the marriage, María Gertrudes McBride asked the court to take chancery jurisdiction as she was without remedy at law. She petitioned for a divorce and a decree for the property as well as alimony and maintenance. By then Charles McBride had fled to El Paso, Texas.<sup>21</sup> The case raised the question as to whether María Gertrudes McBride would have had remedy under the civil code in her desire for divorce and alimony. Her right to property and maintenance would most likely have been granted

in a local court and perhaps separation from bed and board, but divorce remained extremely rare in pre-1846 New Mexico.

Well past the mid-nineteenth century, European American women and Hispanas sought justice in the U.S. courts of chancery or equity that they could not easily obtain under the common law. The refrain "I am without remedy under the common law" appeared repeatedly throughout the documentation of the period. In 1876, a European American woman appeared in the Court of Chancery in Rio Arriba County pleading that she was "without remedy by the strict rules of the common law." The victim of a truly tragic marriage, Ellen Meyer had married Frithjof Meyer in the belief that he was an engineer. To her dismay, not only was Frithjof Meyer not an engineer, he was a gambler who sold the goods she brought to the marriage, eventually gambling all of the money away. In her written statement, Ellen Meyer alleged that her husband had been adulterous during their marriage and infected her with a disease of which she did not know the name but which she later discovered to be gonorrhea. Frithjof Meyer ultimately abandoned his wife. In October of 1876, Ellen Meyer requested an absolute divorce and "the resumption of her maiden name together with all the rights and privileges which pertain to unmarried women." Chief Justice L. Bradford Prince granted the divorce and restored to Ellen Meyer "all the rights, privileges, and immunities of free, single, sole and unmarried persons."<sup>22</sup>

Men, too, sought divorce as evidenced in the complaint of Dolores Gallegos against his wife Gregoria Trujillo in the March 1853 term of the district court in Doña Ana County. The divorce suit, framed in the terms of nineteenth-century marital expectations, accused Gregoria Trujillo of adultery with Santiago González. Dolores

Gallegos declared that though he was always a kind, provident, affectionate, and virtuous husband, his wife did not act as a kind, faithful, affectionate, and virtuous wife. The file in this case also contained a letter by Dolores Gallegos to his "Idolatrada Gregorita" (adored Gregorita) that revealed a loving husband. Besides an absolute divorce, the aggrieved spouse petitioned for the guardianship of his daughter, Francisquita, the couple's only child, who lived with her mother and with whom Dolores Gallegos had no contact. He wished to remove her from "vulgar associations" and an "evil, immoral, and indecent" environment. Because this document was written in English and Dolores Gallegos used an American lawyer, the language and concepts that described the marriage ideals appeared to emanate from an American perspective. The outcome of the case is not known.<sup>23</sup>

In 1887, Peter Buhlig too sued for divorce from his Hispanic wife, Alfonsa Buhlig, the mother of his three children. Appearing in chancery court he accused his spouse of adultery with Rosario Paiz. Peter Buhlig professed that he had "always behaved himself as a faithful, chaste, and affectionate husband whereas his wife had "wholly disregarded her marriage vows and duty" and abandoned him. His statement also reflected both the romantic ideals of companionate marriage as well as the more traditional sentiments of obedience and duty.<sup>24</sup>

Hispanics continued to turn to the local courts first for help in solving personal problems. In 1898, José Carrillo made a complaint before justice of the peace M. Valdéz. He wanted to know why his wife, Paz Cortés, had abandoned him and their child. José Carrillo declared that she had no reason or motive to leave and requested a court order requiring her to appear to determine her motives for fleeing.<sup>25</sup>



Although men were generally regarded as the head of the family, many women did not suffer abuse lightly and Hispanas launched complaints against both physical assault and verbal abuse. A standard estate settlement, recorded in 1886, contained two documents that shed quite a different light on the dynamics of one New Mexico marriage. On November 12 of that year, Deluvina Salazar's heirs acknowledged receipt of their inheritances, as did Deluvina Salazar's husband, Juan A. Quintana, who received one-half of her estate according to law, and the guardianship of their three minor children. But two additional bits of evidence appeared amongst the inheritance material. The first, dated September 18, 1882, four years before Deluvina Salazar's death, concerned an order against J.A. Quintana that requested him to respond to a complaint by Deluvina Salazar, his wife. Deluvina Salazar stated that she sought justice and the shelter of the law since she could no longer suffer the cruel treatment of her husband. She also named Francisco Martínez to act as her agent. The second paper, dated the following year, indicated that Deluvina Salazar's brother, Donaciano Salazar, had petitioned the court on his sister's behalf to put her and her family under state guardianship. He asserted that his brother-in-law was in the habit of being drunk and exhibited bad behavior.<sup>26</sup> It appeared that Juan Quintana paid little attention to the first complaint and continued to abuse his wife. Sometimes women who had male relatives to intervene on their behalf fared better than if they had been on their own, but not always. The presence of an agent and an obviously supportive family did not prevent the further abuse of Deluvina Salazar. The evidence did not reveal how or why Deluvina Salazar died.

In a petition to the district court in 1869, María Faya Duran complained that she had been unjustly accused and deprived of her liberty in a case of marital abuse. She

claimed that the court did not have all the evidence and cited the names of four witnesses, including one woman, to speak in her defense. In the custody of a constable, and threatened with prison until the resolution of the case, María Duran stated that she had much more fear and horror than affection for her husband whose cruel treatment broke the eternal obligations that marriage required.<sup>27</sup> The nature of her crime is not revealed nor is the outcome of the case, as the document only contained her appeal.

In July 1895, in Doña Ana County, William W. Rynerson appeared in court accused of assault, blows, and dragging his pregnant Hispanic wife, Alejandrina Rynerson, whom he had married five months earlier. He attempted to use common law process in his defense. William Rynerson pleaded not guilty to the charges, and, desirous of keeping the case out of court, requested a grand jury, for which he would pay \$300 dollars. Grand juries convened to ascertain whether there was sufficient evidence to warrant trial by a petit jury. If William Rynerson had succeeded in his request and the grand jury found insufficient evidence, he might have avoided a public trial. As it was, the court rejected his request, fined him \$300 dollars and costs, and ordered him to keep the peace for six months.<sup>28</sup> Unfortunately the record did not show if William Rynerson kept the peace or if Alejandrina Rynerson kept her baby.

Nicolasa Benavides de Trujillo of Doña Ana County took her husband, Ignacio Trujillo, to court twice in four years complaining of abuse and break and entry. After the assault in 1897, the couple met before their scheduled appearance in court, and after a long discussion Ignacio Trujillo promised to behave and to treat his wife well. However it seemed that the marriage could not be saved. In 1901, Nicolasa Benavides de Trujillo appeared in court once more claiming that her husband had forced his way into her house

when she was not there, where he stole a packet of coffee and the sum of \$2.50 that she had earned.<sup>29</sup> Some Hispanas refused to remain in failed relationships and resorted to legal means in order to leave their abusive partners. Their actions also reflected a cohesive social network based on family and *compadrazgo*, the enduring relationship between a person and his or her godparents. Women could generally seek shelter and support, although extending help to extra family members often meant a severe strain on a family's resources.

Nineteenth-century New Mexico women did not use the courts solely for property jurisprudence or marital problems. Heirs to a cultural legacy in which unfriendly lawsuits or *pleitos* were common, Hispanas continued to press their suits whatever their station in society.<sup>30</sup> During the Territorial period women frequently turned to the courts in order to solve personal issues concerning domestic problems, insults to honor and reputation as well as assault, debt and business related issues. Of course, not all of the cases that came before the court involved land sales and inheritances. Hispanas fought to maintain their homes as the case of María Concepción Mester demonstrated. In 1861, she appeared before Judge E. Perry in the district court of Doña Ana County to complain that Hispanos had destroyed the foundation and walls of her house in Mesilla that was under construction. Moreover, they persisted in hindering the building of the house. She presented a claim for \$2,000 for damages, loss of labour and building materials, and the loss of use, occupation and enjoyment of the house. The district court heard the case due to the size of the claim and the extensive damage to property. Notably the suit reflected swift judicial change for it occurred just thirteen years after U.S. occupation. A decade and a half earlier, this type of case would likely have been heard before an *alcalde* court

and settled at the local level. But María Concepción Mester had no choice. Perhaps she received greater satisfaction in the outcome of the case, perhaps not.<sup>31</sup>

Many suits resulted from conflict over other types of property such as livestock and goods as well as debts owed on property. The case of a borrowed iron underscored more than just recompense for damaged goods. In 1881 Felicita Baray lent an iron to the wife of Gorgonio Díaz. As it was returned damaged, she took him to court, and he was ordered to either pay Felicita Baray her 200 pesos or to give her an iron that was to her satisfaction. Astonishingly the documentation for this litigation included the sworn testimony of the three participants and covered almost three pages, which suggested that the item meant a great deal to the owner. Similarly, when Mrs. R.K. Beer charged Manuela G. de Beltran with the theft of a petticoat from her room, she registered the complaint in court. Litigation over a small item of clothing seemed trivial but such a garment may have represented the lack of goods for some women. The affidavit, written in Spanish, reflected in a microcosmic way the society of the time. A European American woman owned the petticoat but the suspected thief was a Hispana. The suit referred to the complainant as "Mrs." whereas the defendant had no Señora or Señorita before her name. Furthermore, Mrs. Beer signed her own name thus signifying her literacy although that might have meant only a year or two of primary school.<sup>32</sup>

In addition to their presence in the divorce courts European American women appeared in cases of debt, violating the Sunday law, and theft. Several cases in this period illustrated the presence of European American women in business, for the files referred to females in suits concerning non-payment for a mill, not possessing a license to run a dram shop, and breach of contract.

It is in the legal action involving Hispanics only that the greatest divergence in the litigation of the two counties emerged. The eighty files examined for Doña Ana County revealed some dramatic differences in contrast to Rio Arriba County. Again the number of cases was larger than those for the northern county but even accounting for the numerical discrepancy some patterns appeared. Instances of debt, physical assault, and besmirched honor or assault with words, topped the list followed by property disputes and complaints. Of fifty-one records from Rio Arriba, fifteen concerned land sales or sales of other property such as fruit trees. Women acted as the vendors in all except two instances. Thirteen made reference to inheritances where women either inherited from parents or bequeathed their own property, and five dealt with matters of marriage such as conciliation or estate inventory. Divorce or separation, and debt figured in three cases each and the rest dealt with matters pertaining to damages, ejectment, trespass, power of attorney, and breach of contract. (See Tables 4 and 5).

The attitude of some European American men toward Hispanas became evident in a lengthy treatise that came before the district court in 1855. Written in English, it related the complaint brought by Refugio Saenz against one Philetus M. Thompson in Doña Ana County. Refugio Saenz alleged that she had joined in a business with Philetus Thompson, providing capital of \$600, servants, and her labor. The business prospered for five years when apparently without any cause, Philetus Thompson ejected Refugio Saenz from both the business and the home they shared. Moreover he failed to return not only the capital she had invested but also her share of the gains in the amount of \$5000. In the affidavit, Refugio Saenz declared that she was "remediless in the premises at common

law" and so sought equity from Judge Kirby Benedict through her attorney W. Claude Jones.<sup>33</sup>

However the astonishing testimony of several witnesses recorded in a second suit, illustrated just how some European American males viewed Hispanas. Refugio Saenz claimed that Philetus Thompson had promised to marry her. They lived together for a number of years and Refugio Saenz produced two children, but Philetus Thompson eventually abandoned the family and married another woman. When questioned, some of the witnesses noted that Philetus Thompson affirmed that he would marry Refugio Saenz when "he could get an American minister to perform the ceremony" while others said that they had never heard him make such a promise. Witnesses included both European American and Hispanic males. Three of the Hispanos testified that they had never heard Philetus Thompson mention anything about marriage, and one of the Hispanos volunteered that he knew that Refugio Saenz was Philetus Thompson's "kept mistress." In the most telling account, one Bannon [sic] reasoned: "Know that is the custom of all bachelors in the county to keep casaras [sic]. Saw nothing peculiar in the little endearments between Thompson and Refugio more than I have practiced or hear about with other gentlemen and their kept women." Another said that he had never seen the two eat together for "it is not the custom for ladies to eat with the gentlemen." And finally Charles Hopper swore that he knew the couple to be living together in the same house: "They were living together as men ordinarily live with their casaras [sic]."<sup>34</sup> Others noted that Refugio Saenz had bestowed her favors on some of Philetus Thompson's fellow soldiers and bore a child by one of them. The couple eventually compromised and

Philetus Thompson agreed to pay Refugio Saenz \$100 a month to the sum of \$1000 on the promise that she would not re-launch the suits.

The litigious nature of New Mexican society is well documented in the archival evidence. The statistics for debt and assault provided some knowledge of the lives of Hispanas in nineteenth-century Doña Ana County. However, one cannot assume that the evidence showed women only as victims although the numbers confirmed that women were more likely to be the plaintiffs in cases of assault. The fact that they sued over debts ranging from the non-payment of rent to the recovery of a bushel of corn or half a fanega of wheat (slightly more than one and a half bushels) illustrated the determination of women to redress wrongs in a legal fashion. But women were by no means blameless and frequently appeared as defendants in debt and damage suits. In 1856, Fabian Gómez brought a complaint against María Teresa Gómez although the document does not make clear the relationship between the two. He had loaned her an ox and she refused to return it but tried to replace it with a sick ox. Fabian Gómez refused it and demanded 25 pesos instead.<sup>35</sup> And Carmen Alarcon de Aguirre had to appear in court in 1869 for damages in the amount of 99 pesos that she owed Christian Duper.<sup>36</sup>

Although community harmony may have been the ideal, men and women regularly appeared in court to dispute small debts, damaged property claims, and trespass. Women who had long signed their own contracts and who were responsible for their own debts turned up in the judicial record as frequently as men, both as plaintiffs and as defendants. In 1863 María Rosa Zalzidu [sic] risked having her goods embargoed concerning a sum of money she owed to Seferino Biances. If she could not raise sufficient funds to cover the debt in thirty days, she would go to jail.<sup>37</sup> The document did not

indicate the marital status of María Rosa Zalaidu but under the Spanish civil code women could incur their own debts. Hispanas also took each other to court. In 1882 the court ordered Petronila Olivas to pay Manuela Corten 46 pesos for her personal work plus court costs.<sup>38</sup>

One class of legal complaint distinguished Hispanas from their European American counterparts throughout the territorial period. Complaints concerning a woman's "honour and *delicadeza*" or delicacy and refinement appeared frequently in the documentation. Verbal assault provoked almost as much concern as physical abuse and the women of New Mexico took it seriously. Time and again women spoke of being assaulted with obscene words against their honour and reputation. Admittedly some of the complaints appeared to be class-based. Many of the verbal assaults occurred in the street or at dances, and the women used extremely coarse language. However the written complaints reflected traditional Spanish notions of honor and reputation. Ramón Gutiérrez defined honour as a quality that had to be acknowledged by others, a concept especially important to Spanish New Mexicans from the seventeenth-to the early-nineteenth centuries.<sup>39</sup> Under Spanish rule in Mexico *calidad* referred to one's social status based on race, religion, ethnicity, legitimacy, occupation, and land ownership. The newly independent Mexican government abolished such social distinctions in 1821, and by 1846, *calidad* referred to one's civic status as a *vecino* (landowner), *residente* (resident), or *natural* (native) for the majority of individuals.<sup>40</sup>

In 1904, Vivian Herrera accused Fresques de Provencio of assaulting her with obscene words against her honour and reputation. In 1908 Evangelista M. de Montez complained that José Valencia and his wife, Josefa de Valencia, had accused her of being



haughty and maligned her mother.<sup>41</sup> A year later, Magdalena E. de Maldonado swore a complaint against her husband, Gregorio Maldonado. She accused him of illegally assaulting her with obscene words and running her out of the house, all of which was against her honour and delicacy.<sup>42</sup> Finally, in 1911, Catalina McGran accused one Ana B. Madrid of calling her a harlot and other obscenities against her honour, reputation, and delicacy at a dance they had both attended.<sup>43</sup> All of these complaints, recorded in Spanish before a Hispanic justice of the peace, reflected the continued bicultural nature of the judicial system well into the early twentieth century.

In addition to their judicial affairs, New Mexico women engaged in business ventures and signed contracts long before the American takeover. A record from 1837 indicated that María Candelaria Valdéz and Antonio María Trujillo took part in a *partido* or sheep contract wherein they pledged a house and some land as security for 974 sheep. The document represented the fulfillment of the contract in which the flock would be returned to its rightful owner, Juan Esteban Pino, minus any increase that accrued to the contractors. Francisco Sandoval signed for his mother as María Candelaria Valdéz admitted in the document that she did not know how to sign her name.<sup>44</sup> Women also continued to engage in business ventures both informally and formally after conquest. In 1875 in Doña Ana County, María Jesús Melendres took Modesto Aguirre to court over his non-fulfillment of a contract to deliver the rim of a carriage wheel she had purchased. Initially she demanded that he pay 30 pesos but eventually she settled for a fertile cow and court costs. Although an action for debt, the case demonstrated that María Jesús Melendres contracted with the freighter, possessed the resources to not only buy a wheel rim but to pay for its delivery, and appeared in court in person.<sup>45</sup> Two years later on

August 1877, Señorita María Juana Ramírez and Jesús María Gómez de Armijo appeared before Juez de Paz, Panfilo Gonzáles, to establish a company agreement. Although neither the type of business is not known nor the relationship between the two people involved, the contract, written in Spanish, contained the stipulation that each had the right to sell his or her interest and that the company would pay the cost of separation. In the event of disagreements, the company could be dissolved without time limits. It is significant that Señorita María Juana Ramírez, a single woman, acted as a *feme sole* in an otherwise standard contract.<sup>46</sup>

Furthermore Hispanas continued to appear in public roles of a different sort. In 1883, the community voted for Isabel Apodaca as one of three mayordomos or stewards of the water commission, an important institution that regulated irrigation in an arid region. In the late 1880s the names of several women appeared on a register of landowners in the community of San Luis del Chamberino in Doña Ana County. The list outlined the number of days of irrigation to which each landowner was entitled as well as the dimensions of each individual's property. Josefa Guiles, Delfina Apodaca, Josefa Ortega, Vicenta Maldonado, and Juana Duran all owned properties that fell in the middle range of property size.<sup>47</sup>

Throughout the Territorial period, Hispanas in Rio Arriba and Doña Ana Counties faced old problems as well as changes and challenges. Instances of unhappy marriages, adulterous affairs, assault, debt, and insults to honour existed as they always had, but the process of resolving these issues changed, as did the arena in which the action took place. However, the most serious threat to Hispanic society would prove to be the insatiable land hunger of the new arrivals to New Mexico

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### Endnotes

<sup>1</sup> Deena J. González, "Juanotilla of Cochiti, *Vecina* and *Coyota*" in Richard W. Etulain, ed., *New Mexican Lives: Profiles and Historical Stories* (Albuquerque: University of New Mexico Press, 2002), 88.

<sup>2</sup> On assimilation, see Jane Dysart, "Mexican Women in San Antonio, 1830-1860: The Assimilation Process," *Western Historical Quarterly* 7:4 (October 1976), 356-375. For the Hispanicization of European American men and the conflicted relationships between them and Hispanas, see Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999), 72. For economic advancement, see Darlis A. Miller, "Cross-Cultural Marriages in the Southwest: The New Mexico Experience, 1846-1900," *New Mexico Historical Review* 57:4 (October 1982), 335-359. For discussion on informal unions, see Dysart, "Mexican Women in San Antonio," and Susan Johnson, *Roaring Camp: The Social World of the California Gold Rush* (New York: W.W. Norton and Company, 2000). 166, 282, 293.

<sup>3</sup> Ramón A. Gutiérrez, *When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846* (Stanford: Stanford University Press, 1991), 246.

<sup>4</sup> Susan Johnson, "Sharing Bed and Board: Cohabitation and Cultural Difference in Central Arizona Mining Towns, 1863-1873," in Susan Armitage and Elizabeth Jameson, eds., *The Women's West* (Norman: University of Oklahoma Press, 1987), 81..

<sup>5</sup> Silvia Marina Arrom, *The Women of Mexico City: 1790-1857* (Stanford, CA: Stanford University Press, 1985), 261.

<sup>6</sup> Robert L. Griswold, *Family and Divorce in California, 1850-1890: Victorian Illusions and Everyday Realities* (Albany, NY: State University of New York, 1981), 5. Griswold asserted that the record showed people of all social classes in California believed in these ideals. However marriages and divorces between Hispanics are virtually non-existent in his account. See also Paula Petrik, "If She Be Content: the Development of Montana Divorce Law, 1865-1907," *Western Historical Quarterly* 18:3 (July 1987), 261-291.

<sup>7</sup>For earlier cases see Rosalind Z. Rock, "Pido y Suplico: Women and the Law in Spanish New Mexico, 1697-1763," *New Mexico Historical Review* 65:2 (April 1990).

<sup>8</sup> Francisca Trujillo vs. Blas Trujillo, Bill of Complaint, April 1865, Rio Arriba County, New Mexico State Records Center and Archives (hereafter referred to as NMSRC), County Records 1847-1957, Box 1 Number 58a.

<sup>9</sup>Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995), 10.

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<sup>10</sup> Santiago García vs. Antonia Madrid, 22 January 1883, Doña Ana County, NMSRC, J.P. Civil Record Book 1879-1901, File 97.

<sup>11</sup> Cornelio López vs. Telefora F. de López, 2 December 1885, Doña Ana County, NMSRC, J.P. Civil and Criminal Record Book 1898-1919, File 99. This case was included in the file although it is dated seven years earlier.

<sup>12</sup> Territory vs. John Green, 21 August 1895, Doña Ana County, NMSRC, J.P. Civil Docket Book 1894-1898, File Numbers 92 and 17.

<sup>13</sup> Silvia Marina Arrom, "'Changes in Mexican Family Law in the Nineteenth Century: The Civil Codes of 1870 and 1884,'" *Journal of Family History* 10:3 (Fall 1985), 311.

<sup>14</sup> William Quimby DeFuniak, *Principles of Community Property* (Tucson: University of Arizona Press), 512.

<sup>15</sup> Guadalupe Valencin vs. Gerónimo Lujan, November 1853, U.S. District Court, 3<sup>rd</sup> Judicial District, Bernalillo, Socorro, Valencia, Doña Ana, NMSRC, Docket Book, 1851-1855, Box 6.

<sup>16</sup> Benigno Cardinal vs. Bárbara Elis, May 1854, Socorro County, NMSRC, U.S. District Court 3<sup>rd</sup> Judicial District Bernalillo, Socorro, Valencia, Doña Ana Docket Book 1851-1855, Box 5, page 159.

<sup>17</sup> See Griswold, *Family and Divorce in California*, 182. Griswold cited U.S. Census figures that showed from 1867 to 1929 the U.S. population rose 300 percent, the number of marriages 400 percent, and the divorce rate 2000 percent. See also Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991). Riley asserted that the divorce rate was higher in the West than in the North and South. The rate was high in both urban and rural areas. The desertion rate exceeded the national average from 1887-1906. The number of divorces increased faster than the number of marriages.

<sup>18</sup> Data for Doña Ana County aggregated from NMSRC, Civil Dockets 1894-1898, Civil Record Book Precinct 2 1875-1887, Civil Record Book 1879-1901, Civil Record Book Precinct 2 1885-1905, Civil and Criminal Record Book Precinct 2 1898-1919, Civil Record Book Precinct 3 1894-1898 and District Court Civil and Criminal Docket "a" 1869-1886. Data for Rio Arriba County aggregated from NMSRC, District Court Civil Cases 1849-1880, District Court Civil Cases 1877-1881, District Court Criminal and Civil Docet 1860-1875 and District Court Judgment Docket 1891-1905.

<sup>19</sup> Amelia Sohns vs. Adam Sohns, 12 August 1880, Doña Ana County, NMSRC, District Court Civil Cases 1851-1901, Box 30 Mixed Numbers.

<sup>20</sup> Fray Angelico Chávez, *Archives of the Archdiocese of Santa Fe: 1678-1900* (Washington, D.C.: Academy of American Franciscan History, 1957), 150.

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<sup>21</sup> Petition of María Gertrudes McBride against Charles McBride, November 1854, Doña Ana County, NMSRC, District Court Civil Cases 1851-1901, Box 30 Mixed Numbers.

<sup>22</sup> Petition of Ellen Meyer vs. Frithjof Meyer, October 1876, Rio Arriba County, NMSRC, District Court Records, Civil Cases 1877-1881, unnumbered.

<sup>23</sup> Petition of Dolores Gallegos against Gregoria Trujillo, 22 March 1855, Doña Ana County, NMSRC, U.S. District Court Docket Book 1851-1855.

<sup>24</sup> Peter Buhlig vs. Alfonsa Buhlig, 9 March 1887, Doña Ana County, NMSRC, Civil Case Files 1851-1910, Box 30.

<sup>25</sup> José Carrillo vs. Paz Cortés, 10 June 1889, Doña Ana County, NMSRC, Sworn Statements and Complaints 1891-1899, unnumbered, File 118.

<sup>26</sup> Estate of Rufina L. de Salazar, 4 February 1896, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 4 Number 355.

<sup>27</sup> Petition of María F. Duran, 16, March 1869, Doña Ana County, NMSRC, Probate Court Records, Box 6 Number 218.

<sup>28</sup> Alejandrina Rynerson vs. William W. Rynerson, 10 July 1895, Doña Ana County, NMSRC, JP Civil Docket 1894-1898, File 92, Number 72.

<sup>29</sup> Nicolasa Benavides de Trujillo vs. Ignacio Trujillo, 24 June 1897, Doña Ana County, NMSRC, JP Civil Docket 1894-1898, Number 92, and 29 January 1901, Sworn Statements and Complaints 1900-1914, File 119.

<sup>30</sup> Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas: 1734-1900*. (Albuquerque: University of New Mexico Press, 1998), 48.

<sup>31</sup> María Concepción Mester vs. Nepo Archeta [sic] and Cristoval Ascarate, 1861, Doña Ana County, NMSRC, Civil Case Files 1851-1910, Box 30.

<sup>32</sup> R.K. Beer vs. Manuela G. de Beltran, 2 December 1889, Doña Ana County, NMSRC, Sworn Statements and Complaints 1891-1899 File 118.

<sup>33</sup> Refugio Saenz vs. Philetus M. Thompson, 21 May 1855, Doña Ana County, NMSRC, Civil Case Files 1851-1909, Box 30. *Casara* can be loosely translated as ones partner as the Spanish verb *casar* means to partner as well as to marry, although it may well have connotations of a housemate linked to *casa* or house. The word did not appear as a noun in the historical dictionaries or dictionaries of slang consulted and may have been incorrectly transcribed or used by the soldiers in a very familiar manner.

<sup>34</sup> Ibid.

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<sup>35</sup> Fabian Gómez vs. María Teresa Gómez, Response to a complaint, 17 November 1856, Doña Ana County, NMSRC, Civil Case Files 1851-1909, Box 30.

<sup>36</sup> Christian Duper vs. Carmen Alarcon de Aguirre, Complaint for damages, 24 December 1869, Doña Ana County, NMSRC, Civil Case Files 1851-1909, Box 30.

<sup>37</sup> Seferino Bienes vs. María Rosa Zalaidu, 22 October 1863, Doña Ana County, NMSRC, JP Sworn Statements and Complaints 1863-1865, Number 115.

<sup>38</sup> Petronila Olivas vs. Manuela Corten, 5 August 1882, Doña Ana County, NMSRC, JP Civil Record Book 1875-1887, File 96.

<sup>39</sup> Ramón A. Gutiérrez, *When Jesus Came*, 177.

<sup>40</sup> Ibid.

<sup>41</sup> Vivian Herrera vs. Fresques de Provencio, 2 December 1904, and Evangelista M. de Montes vs. José Valencia and Josefa de Valencia, 3 October 1908, Doña Ana County, NMSRC, Sworn Statements and Complaints 1900-1914, File 119.

<sup>42</sup> Magdalena E. de Maldonado vs Gregorio Maldonado, 29 July 1909, Doña Ana County, NMSRC, Sworn Statements and Complaints 1900-1914, File 119.

<sup>43</sup> Catalina McGran vs. Ana B. de Madrid, 15 July 1911, Doña Ana County, NMSRC, Sworn Statements and Complaints 1900-1914, File 119.

<sup>44</sup> María Candelaria Valdéz to Juan Esteban Pino, 14 December 1837, Rio Arriba County, NMSRC, County Records 1847-1857, Box 1. Earlier documents frequently appeared in files that had later dates.

<sup>45</sup> María Jesus Melendres vs. Modesto Aguirre, 28 December 1875, Doña Ana County, NMSRC, JP Civil Record Book, File 96.

<sup>46</sup> Contract between Jesus María Gómez de Armijo and María Juana Ramírez, 7 August 1877, Doña Ana County, NMSRC, JP Civil Record Book, File 96.

<sup>47</sup> List of landowners for irrigation rights, Doña Ana County, NMSRC, JP Civil Record Book 1879-1901.

## **Chapter Four**

### **Property**

On December 15, 1878, in the village of Santa Cruz de la Cañada, Rio Arriba County, Jesús M. Roybal returned to his wife, María Petra Advíncula Aragón, "with all his will," 200 pesos' worth of land, livestock, and goods in payment for his use of part of the 400 pesos' worth of livestock and household effects that his spouse had brought to the marriage. Under Hispanic law as practiced in colonial New Spain and in Mexico, such a debt repayment would not have been unusual. What was curious was the fact that it took place in 1878, thirty years after the conclusion of the Mexican-American War of 1846-1848. Why was the restoration of property brought into the marriage still occurring in 1878 in a U.S. Territory? This puzzling practice is related to the uneven changes in law and legal practices following U.S. occupation in 1846. Although U.S. common law procedures, derived from the British tradition, had been established in 1850, the New Mexico territorial legislature did not adopt the body of the common law until 1876. As noted in Chapter One, provisions for the civil law remained in New Mexico until well after the adoption of the common law. The territory adopted those English common law court rules and procedures consistent with regional laws. The legal record suggested that in the transition from Mexican province to U.S. state, nineteenth-century New Mexico retained its cultural and legal traditions long after other territories had adopted the common law.

The greater number of cases and deeds concerned with property provides a clearer picture of marriage in nineteenth-century New Mexico than separation and divorce suits. The records also revealed something of the role gender played in the disposition of

property. Hispanas appeared to enjoy considerable power and authority within their families, in spite of the changing circumstances in which they lived during the Territorial period. Hispanic married couples commonly sold real estate jointly to both Hispanics and European Americans. Under community property law, a husband could not dispose of property without the wife's agreement. Hispanas engaged in property transactions with both Hispanic and European American men and women, and women exchanged property between themselves. However a closer look at the numbers showed that over the decades increasingly Hispanas sold their lands to European Americans. In some cases Hispanas who had married European American men acquired deeds from other Hispanics and then deeded the property to their husbands.<sup>1</sup> (See Table 6)

The appearance of Francisco Saavedra and María Ignacia Quintana before the *alcalde* in April 1848, concerning the re-writing of a marriage document so as to include the actual *donación* or gift that the groom intended to give to the bride, was not so surprising as the common law would not yet have taken effect.<sup>2</sup> But when María Tomasa Romero sold a piece of land to Nicolasa Baca thirty years later in 1878, in what appeared to be a standard bill of sale in Spanish describing the land with all of its rights, privileges, and rents, it also included information about the rights of dowry, written in by hand. Although the sale took place in Santa Fe and not in either Rio Arriba or Doña Ana Counties, it added to the evidence that Hispanic customs continued well into the latter half of the nineteenth century.<sup>3</sup> But as is often the case in research, the files that accompanied the bill of sale revealed the larger picture of what was occurring in New Mexico. Nicolasa Baca sold the property to one Samuel B. Axtell in 1887, seven years after the arrival of the railroad, thus presaging a massive loss of property by the Hispanic



population. Samuel B. Axtell had been a prominent figure in New Mexican politics. A judge and governor, he became embroiled in both the Colfax County War (1875-1878), and the Lincoln County War (1878-1881). Corruption, violence, and bloodshed marked the conflicts that eventually drew national attention. The Colfax County War occurred when claimants to the two-million-acre Maxwell Land Grant faced squatters who had settled on what they believed to be public land. Cattlemen and merchants feuded in the Lincoln County War in southern New Mexico and eventually political pressure after the Lincoln County War forced Samuel Axtell to resign as governor.<sup>4</sup>

The acquisition of land essentially underscored the transfer to U.S. sovereignty of former Mexican territory. Whereas Hispanas continued to use the courts concerning property as they had done previously under Mexican rule, others also learned to use the courts to their own advantage. In the context of the transitional power struggles in New Mexico, some European Americans used both the legal system and intermarriage with Hispana property-holders to acquire real estate. Thus the legal record illuminated emerging power and property transfers, and not just the continuity of women's status in the courts. Eventually the traditional patterns of land conveyance and property inheritance between the Hispanic residents of New Mexico became subsumed into the greater transference of land into the possession of European Americans. The evidence suggested that Hispanic culture endured the transition, but at great cost.

Although the process of land claims and disputes in nineteenth-century New Mexico is beyond the scope of this thesis, the fact remained that massive property losses lurked in the background in spite of the continued transfer of property between Hispanic men and women. The problem of determining land titles, based on Spanish and Mexican

land grants, proved to be extremely complicated due to the number and variety of types of grants, since communal and individual grants existed in addition to those made to the Pueblos. Grants variously awarded by the King of Spain, by the Republic of Mexico after 1821, and by the provincial governors further complicated matters.<sup>5</sup> As well as the loss of private holdings, families also lost communal grazing and water rights on land that the United States deemed to be part of the public domain. It has been estimated that ten years after the Treaty of Guadalupe Hidalgo ended the Mexican-American war in 1848, 90 per cent of cash-poor New Mexicans had lost their land due in part to tax bills, lawyers' fees, and blatant manipulation.<sup>6</sup> Mexican land grants were to have been protected by Article X under the Treaty of Guadalupe Hidalgo but the U.S. Senate struck out the article on the grounds that it "would revive old land grants" especially those made by the Texas government after the 1836 declaration of Texas independence.<sup>7</sup>

The names of men involved in the acquisition of real estate appeared in many of the documents for this study. Samuel B. Axtell, John S. Watts, Theodore Wheaton, Thomas Catron, Merrill Ashurst, and Stephen B. Elkins all acted as judges, lawyers, advisors, clerks, deputies, and "next friends" for both Hispanas and European American women.<sup>8</sup> These men used the existing legal customs as well as new legislation to increase their land holdings and power. Thomas Catron and Stephen B. Elkins, two well-known figures in nineteenth-century New Mexico, reigned at the center of the infamous Santa Fe Ring, a non-partisan group of judges, lawyers, politicians, and businessmen that controlled territorial affairs from the late 1860s to the mid-1880s. The group also received the political support of the powerful Hispanic elite in exchange for the promotion of the elite's land claims. Members of the Santa Fe Ring supported political

candidates who could best advance their interests in exploiting the potential of New Mexico Territory.<sup>9</sup> Not surprisingly the Ring was heavily involved in both the Colfax County and the Lincoln County Wars.

The U.S. Congress established the Office of Surveyor General in 1854 to sort out disputed land claims but the Civil War intervened before the work could be completed. Speculators and homesteaders alike arrived after 1866, including lawyers like Thomas Catron, who took land in payment, sometimes as much as one-third, from cash-poor *vecinos* who could not otherwise afford the legal costs of ascertaining title to their land. Congress established the Court of Private Land Claims in 1891 to settle land grant titles but large landowners and lawyers still managed to acquire vast amounts of property. For example Thomas Catron had an interest in at least thirty-four grants and by 1895 controlled 240,000 acres of land.<sup>10</sup>

The description of María Manuela Trujillo's possessions in her 1874 will and inventory presaged in some part what was about to happen in her world. She left some farmland consisting of fifty *varas* along the river's edge and nine *varas* towards the hills, a small piece of land, typical of so many smallholdings, in which everyone in a community shared access to water as well as to farmland.<sup>11</sup> But the old method of determining boundaries by *metes and bounds* or identification by natural objects on unsurveyed land, proved to be incompatible with the American scheme of plats, or the grid system of measuring land. Combined with the lack of formal documentation of land ownership by Hispanic men and women, it was not long before masters of the new system swallowed up many such holdings.

Conflicts inevitably arose as land-hungry newcomers attempted to acquire property, cases went to court, and the original settlers, both men and women, endeavored to defend their interests. For instance, in 1869, Guadalupe Reyna and his wife, Rosa Reyna, engaged in a suit against John R. Johnson entailing land that John Johnson occupied, land that the complainants maintained belonged in "El Terreno del Pueblo" the public domain.<sup>12</sup> Twenty years later the same issue concerning public and private property arose once more. Willis J. McGinnis testified that Nicolas Armijo, Sostena Smith, María A. de Smith, Catarina Smith de Gallegos, and Elena Smith did "unlawfully, willfully, and maliciously throw down a fence placed for the purpose of fencing" that had been built on his land. The family, with John Ryan and Tiburcio Silva acting as their securities [sic], requested an appeal to the district court. Who actually cut the fence is not stated; the important point is that the document named the females as well as the sole male charged with the crime.<sup>13</sup> The case echoed the activities of the *Gorras Blancas* (White Caps), a secret group of Hispanics that cut fences, slashed livestock, and burned barns in San Miguel County in the 1870s and 1880s in order to protect communal lands from the intrusion of European American ranchers. The *Manos Negras* (Black Hands) carried on the same actions in Rio Arriba County from the 1890s well into the 1920s.<sup>14</sup>

Of course not all property disagreements occurred between Hispanics and European Americans. The original Hispanic landowners continued to dispute land grievances amongst themselves albeit in a different legal framework but it was not unusual to discover a non-Hispanic name involved in cases of land dispute ostensibly between Hispanics. An early Territorial case highlighted both the changes in the language and procedure of the law, and the presence of a European American. In 1853, María

Martha Clark and her husband filed a complaint against Salvador García for deeds to some land that they had purchased. Legal proceedings took place in a court of chancery (court of equity), a legal institution important in the common law and historically significant for Anglo women in the pursuit of property rights. The Clarks requested not only the deeds but also the profits derived from both the use of the land and the increase in the value of the land itself. In addition, Salvador García had to pay the court costs. As he neither delivered the deeds nor had the wherewithal to pay the Clarks, they applied to the court: "By this breach of trust as aforesaid and for these reasons your petitioners are wholly without relief at law and their only remedy is in your honor's court of chancery where this matter is alone cognizable."<sup>15</sup> The charge of being without remedy under the common law echoed again and again in the courts of this period.

Interestingly, the disagreement between the Clarks and Salvador García began in 1848 before María Martha Lucero's marriage to Elias T. Clark. Salvador García, María Martha Lucero's brother-in-law, had been living with her family when she claimed to have given him some money in order to purchase a tract of land for her. Salvador García did so but put the deeds in his name. In court, a series of witnesses, in another nod to the influence of the common law, swore that María Martha Lucero was telling the truth, as they had been in her presence both when she gave him the money, and when Salvador García declared that indeed the land belonged to her. In this case several elements underscored the nature of New Mexico society at the time: the intermarriage of Hispanas and European American men, land acquisition by a European American, an Hispana who engaged in the purchase of land (although we do not know with whose funds or at whose bequest), and the introduction of common law processes with the use of a court of equity,

witnesses, and a document recorded or at least translated into English. Elias T. Clark's name appeared in many cases concerning real estate and he acquired property in diverse ways. For example, Julián Lucero sold a tract of land with a water grist-mill upon it to Theodore D. Wheaton in 1850 with the understanding that he and his daughter, María Martha Lucero, be granted the right to grind their wheat at the mill for the rest of their natural lives. However, shortly afterwards, Wheaton sold the said property back to María Martha Lucero who had by then become Mrs. Clark.<sup>16</sup>

Despite the violence and conflict, Hispanics continued to act under their own legal traditions and customs in property matters. In the cases examined, Hispanas throughout the new Territory were aware of their rights, exhibiting a sense of entitlement in asserting their use of the legal system. It has been suggested that frontier conditions, a relatively small population in New Mexico, and the contributions of women to the family unit led to less division of labor between men and women. Hispanas, with a vested interest in the success and prosperity of the community, historical property rights, and a tradition of appearing in court, proved to be less subordinate to, and less dependent upon, the men in their lives.<sup>17</sup> They demonstrated a presence in their world that is perhaps not fully appreciated historically until one examines the court dockets and deed record books. Spanish laws concerning women's property and inheritance rights were respected in practice as evidenced in much of the litigation and documentation.

The Spanish legal tradition also included provisions designed to protect women from coercion into selling their land against their wishes. In 1858, María Guadalupe Trujillo and her husband, Agustín Lucero, sold a piece of property with a house and corrals on it, to Jesusita Trujillo. In the document recording the sale, María Guadalupe

Trujillo stated in a separate examination that she had executed the deed voluntarily, without compulsion or the illicit influence of her husband.<sup>18</sup> Under Spanish law, both husband and wife enjoyed the testamentary disposition of their respective properties as well as their share of the community property. New Mexico women continued to possess land in their own names, to will property and inherit it, and to hold mortgages and loans.

The majority of the documents for the Territorial period revealed that litigating women appeared before the court in person. In the cases researched for this study not one woman stated that she was present with the permission of her husband. Men, however, still assumed a more active role when required. This seemed to have been a change from earlier in the century when fathers, husbands, and brothers often acted as agents for the women in their families. When Juana Padia gifted a house and land to her niece, Monica, in a previously cited case, it went through the agency of her niece's husband, Juan Pacheco. In fact the document is headed, "Juana Padia a Monica, Esposa de Juan Pacheco," (Juana Padia to Monica, wife of Juan Pacheco). In 1850, María Guadalupe Pacheco sold land that she inherited from her mother, María Bárbara Salvadra, to her brother Fancisco Pacheco, and Manuel Salvador Lucero acted as her agent at her request.<sup>19</sup> Similarly when María Rosalia García died much later in 1891, her brother-in-law, Gregorio Casados, acted as the administrator of her will. He affirmed that he and his wife, Andreiyita García de Herrera, María Rosalia García's sister, were entitled to a portion of the inheritance according to the Compiled Laws.<sup>20</sup> In both Rio Arriba and Doña Ana Counties, women appeared frequently before the courts to sell land, to administer wills (as well as to dispute them), and to engage in business. Historically,

although property may have changed ownership, essentially it remained in the family and this tradition continued in territorial New Mexico.

The documentation concerning land conveyances contained numerous references to property inherited from deceased parents and grandparents, evidence of a long tradition of inherited property. Fray Angelico Chávez referred to an early instance of female property ownership: "Likewise, the first landowner named Fernández was a Spaniard who had come to the valley around 1744, where his wife owned considerable ancestral property."<sup>21</sup> In 1803 María Manuela Martín and her husband, Cristóbal Mantolla [sic], residing in the County of Rio Arriba, sold Julián Lucero a piece of land that María Manuela Martín had inherited from her deceased parents.<sup>22</sup> Julián Lucero acquired more property in 1857, when Pablo Lucero, on behalf of his siblings and with the consent of his parents, sold the land they had inherited from their *abuelita* (little grandmother).<sup>23</sup> Julián Lucero subsequently willed two pieces of property and several fruit trees to his daughter María Margarita Lucero in 1833, in consideration of her care and attention both before and after her marriage.<sup>24</sup>

Physical property descriptions aided in the determination of extensive property ownership by Hispanas. Many early documents described land boundaries in reference to the property of others. The records named the owners, many of whom turned out to be female. In 1785, Valentín Martín, acting in the name of his deceased mother, sold a piece of land to Francisco Isidro Gallegos, land that had been purchased previously from Rosa Martín. The evidence suggested that the Hispanas of Rio Arriba County possessed real estate in their own names. Land owned by Manuela Ballegos bordered the north side of the property, and property owned by the aforementioned Rosa Martín, bordered the south



side.<sup>25</sup> When María Ortega sold some land to Hilario García in 1821, it came from her own *rancho*, bordered by additional property she already owned.<sup>26</sup> María Rufina Salazar, with the knowledge and consent of her three children, two daughters and a son, sold three parcels of land to María Concepción Lucero in 1837, land that had been inherited from her grandparents. Again the land she sold bordered real estate already owned by the purchaser, María Concepción Lucero.<sup>27</sup> In 1845 Jesús María Sánchez sold a piece of land to María Lugarda Muñoz, bordered on the south by the lands of Señora María Encarnación Romero. Both vendor and buyer appeared before the *alcalde* in person.<sup>28</sup> This type of document revealed the illiteracy of many of the women since they signed the agreements with an "X".

It was not always easy to ascertain the primary actors in some of the cases. Hispanas brought their own suits before the courts as well as filing joint grievances with men. In other instances they acted with the support of family members or through an agent. In 1855 in Doña Ana County, the residuary legatee of Don Manuel Armijo, Ramona Armijo sued Antonio Constante for the sum of \$2,412.75 that he owed and had not repaid Don Manuel Armijo. However the suit existed in the names of Ramona Armijo *and* her husband, Luis Baca. The document stated that, as the money had not been repaid to Don Manuel Armijo, the obligation passed to Ramona Armijo. As she had "intermarried" with Luis Baca, Antonio Constante now owed the money to two plaintiffs, wife and husband.<sup>29</sup>

Women also inherited, or bought and sold, other types of property besides land. In Rio Arriba Juana Gallegos sold a mill to José Manuel Salazar in 1830, apparently hers to sell, but before she did so, she obtained the consent of her daughter as she had promised

to do "according to custom and law."<sup>30</sup> It was not unusual for parents to inform their sons and daughters of a property sale and to obtain their permission for such. Hispanics tended to maintain the Spanish legal tradition of keeping property in the family. Also in Rio Arriba, in 1852, Juan de la Cruz Borrego sold six fruit trees to Elias T. Clark as well as a further half tree that his wife María Josefa Lucero had inherited from her mother, María Bárbara Sisneros. Elias T. Clark paid for the trees with land previously purchased from the daughters of Diego Jaramillo. The transactions required a two-page document signed by no fewer than eight people, including María Josefa Lucero and Jacinta Lucero, who both made their marks, and Manuel Jaramillo, who signed for his father and sisters. In 1854 María Margarita Lucero sold the same Elias T. Clark two apple trees that she had inherited from Don Juan Lucero, her father.<sup>31</sup> In a poor territory, fruit trees were precious assets in a subsistence economy.

However, while Mexican American women may have had rights not enjoyed by their European American neighbors, they also assumed other responsibilities. Spanish law stipulated that women were liable for debts or obligations arising from their own property, but conjugal property was also liable for debt. For example, when María Rosalia Trujillo of Rio Arriba sold some land and trees to Juan de la Cruz Borrego in 1854, it was not for her own profit but to pay a debt incurred by her husband, José Ramón Martín, who had left the Territory for California four years before. He had inherited the property from his deceased mother but it had to be sold for unpaid debts.<sup>32</sup>

Varying circumstances could lead to the transfer of property to women in New Mexico. The replacement or return of dotal property occurred well into the nineteenth century and provided one of the most striking examples of the persistence of Hispanic

tradition. Two cases from Rio Arriba County, seventeen years apart illustrated enduring custom. In 1857, Benito A. Larragoite restored property to his wife, Feliciana Valdéz “in consideration of the natural love and affection” that he bore his wife and more pragmatically, in consideration of the \$3,000 dollars worth of property she had brought to the marriage, and which he had used. In addition he promised to defend his spouse and her heirs to the land title.<sup>33</sup> When Donaciano Martín took to his sickbed in 1874, he specified that a certain amount of land be paid to his wife, María Ginia Archuleta in return for some of her land that he had previously sold. He instructed his godfather that his estate should go to the maintenance of his wife and two daughters but in the case of María Ginia Archuleta’s remarriage, it would pass to the children. If she did not remarry the estate remained in her hands without impediment from anyone. In other words, she would have total control.<sup>34</sup>

As noted earlier, in 1878 Jesús M. Roybal returned some dotal property to his wife, María Petra Advíncula Aragón, which she had originally received from her parents. Jesús Roybal stated that he had made use of the animals and wished to return the value of her *dote* to María Petra Advíncula Aragón and to repay with all his will the debt he owed.<sup>35</sup> This occurred thirty years after American occupation and influence, and illustrated the continuity that existed during the territorial period. Three cases recorded in 1857, 1874, and 1878 did not necessarily indicate a trend or pattern although they did suggest the strength of the Spanish legal tradition. The possibility existed that these men represented a generation still influenced by a previous code. They may have only been fulfilling earlier contracts and agreements. However, in 1911, Albino Martínez petitioned to become the administrator of his deceased second wife's estate. In the document he

referred to some property that Carmelita Sisneros Martínez brought to the marriage that he had in his power "as was natural." Albino Martínez's statement reflected two time-honored elements of the civil code: his wife brought her own property to the marriage (whether inherited or not is not clear), and he administered such property, as was his legal right. He wished to make an inventory since she had died intestate and he had four children to consider.<sup>36</sup> The language used in this petition from Rio Arriba, as well as in that of Benedito Torres, who, in the same year, requested the administration of his wife, María Antonia Archuleta de Torres' estate, was extremely formal. The petitions used eighteenth-century forms of address that reflected the persistence of Spanish culture in the northern county.<sup>37</sup>

The writing of last wills and testaments assumed great importance in the lives of Hispanas since women could make their private wishes known in what often served as a public instrument. Inheritances preserved property within the family and maintained economic status. *Testamentos* revealed the property that a woman had owned, inherited, or acquired during her lifetime; illustrated the continued practice of maternal inheritance; and demonstrated the desire of women to leave their affairs in good order. Wills listed the order in which debts were to be paid, determined heirs and the goods assigned to them, and frequently attached inventories of property. As well, wills showed the love and affection that women had for their children, both their own and those belonging to their extended families. Finally, many women began their wills with expressions of devotion to the Catholic Church and requests for prayers to be said in their names. Hispanas often bequeathed religious articles to special friends and relatives.<sup>38</sup>

Legal requirements, the use of legal language, and the number of witnesses, all attested to the serious nature of the writing of wills in Hispanic New Mexico. All of the prospective heirs had to declare that they were in agreement with the will and happy with their bequest, thus signifying that they would not contest it. Equally important, a will could not be closed until each requirement had been met.<sup>39</sup> These directives continued to be honored in the late-nineteenth century. The 1896 will of Rufina L. de Salazar contained statements made by each of her heirs, sons, daughters, and granddaughter, in which they stated "Yo quedo conforme and satisfecho" (I remain in agreement and satisfied) with the inheritance each received from their mother and grandmother.<sup>40</sup>

More than fifty years after American administration began, María Lorenza Clara Romero's will, written in 1900, provided evidence of the continued strength of Hispanic society in Rio Arriba County. Each of her heirs agreed to, and acknowledged receipt of, their bequests from the administrators of the estate. María Lorenza Clara Romero's sons, daughters and grandchildren variously inherited parts of houses, outbuildings, and narrow strips of land that bordered on the *Acequia Madre*, the main irrigation ditch of the village of Truchas.<sup>41</sup>

For the most part husbands left their property to their wives to be divided among themselves and any surviving children since the Spanish Cortes or parliament had abolished mayorazgo or primogeniture in 1820. Mexico adopted similar legislation very shortly thereafter. The legal record suggested that partible inheritance, under which sons and daughters inherited equally, continued to be the rule in New Mexico. Nancie González stated that remote villages developed "autonomous" systems of preserving law and order.<sup>42</sup> While in some villages a daughter might be given land as a dowry to be

managed by her husband, in other villages a daughter might only receive furniture, household goods, and some livestock. A daughter might also inherit an entire estate. When the last Mexican governor of New Mexico, José Manuel Armijo, died on December 9, 1853, his will named his daughter, Ramona Armijo as his universal heir. She therefore inherited all of his property and effects.<sup>43</sup> The majority of estates in the sample indicated that parents treated their heirs equally.

Wills and testaments also illustrated the conflicts that existed in families by detailing the exclusion of certain family members. In 1855 in Rio Arriba, Pedro Antonio Martínez left everything to his wife, Ana María Alibas, in his last will and testament; upon her death the inheritance was to be divided amongst the five surviving children unless Ana María Alibas had specified otherwise in her own will. However, Pedro Antonio Martínez named his brother José Manuel Martínez as his administrator in order to avoid arguments among the children and their mother.<sup>44</sup> Similarly it appeared that Francisco Saavedra, whom we previously encountered in 1848 when he rewrote his marriage document, married a woman with children of her own. He must have been somewhat older than his wife, for in 1851, three years after the *donación*, Saavedra left his estate to María Ignacia Quintana and her children as apparently they regarded him as their father. Curiously, the document had been drawn up so that neither Francisco Saavedra's brother nor his nephew received anything.<sup>45</sup>

In general, extremely detailed directions stipulated exactly how much each child would receive. In 1879, María Ruperta Manzanares, who had inherited several pieces of real estate from her mother in Rio Arriba County, left each of her seven children *solares* or lots upon which to construct houses.<sup>46</sup> Rufina L. de Salazar left each of her six sons

and one daughter precisely nineteen *varas* of land, forty-nine adult sheep, and fifteen small ones. However, Rufina Salazar's granddaughter, Delfina Martínez, received the same inheritance as well as the gift of a house and its furnishings, a lot, a pair of horses, and forty rams.<sup>47</sup> It is interesting that part of Delfina Martínez' property was acknowledged as part *donación* or gift and part inheritance. Further research might reveal if the *donación* was intended to be a dowry from a grandmother who had lived in the era when dowries were common (as the inheritance occurred in 1894) or if Delfina Martínez had helped Rufina Salazar in some way. It may have been that Delfina Martínez was a *soltera*, a spinster, and a concerned grandmother intended to ensure the maintenance of a granddaughter. Yolanda Leyva maintained that in the colonial period in Mexico, daughters and granddaughters had frequently inherited land and material goods in return for their care and support of mothers and grandmothers. Some wills expressed the sense of reciprocity in explicit terms while it may have been implicit in other testaments.<sup>48</sup>

Administrators took the inheritance of children very seriously. Juan Antonio Vigil, executor of María Eulogia Martínez's estate in Rio Arriba County, assigned the bequeathed property to an underage daughter and son. He acknowledged that it would be kept under guardianship until María Josefa Vigil and José Esquipula Vigil should be legally capable of receiving it. They received identical bequests, as did an older brother.<sup>49</sup>

In addition to leaving property directly to their children, Hispanas typically had more say in the appointment of guardians for their offspring than did European American women, and they continued to exercise that influence after 1848. Fathers did not automatically assume guardianship of their children. In numerous cases husbands had to petition the courts in order to be assigned as guardians of their children. One will in

particular stood out for the care and attention a woman took in the preservation of her estate and in the bequests left to her large family. Upon the death of his wife, María Juana de los Dolores Valerio, in Rio Arriba in 1874, Manuel Valdéz requested that the court name him guardian of his five minor daughters, María Manuela, María Amada, María Juana Anastacia, María Aniceta, and María Rafaela. They were to inherit various goods and property from their mother who split her finances down to the last centavo. The two sons and one daughter who had attained their majority, and the five minor girls, all received exactly twenty-three pesos and nineteen centavos; the four centavos remaining could not be divided according to the mother's accounting. The small debts that María Juana de los Dolores Valerio owed were to be paid out of the revenue of agricultural products so as to protect the wealth of the estate.<sup>50</sup>

However, in the 1891 testament of Cornelia Herrera de Jaramillo who lived in the same county, there is no mention of a husband in a lengthy and detailed will, although her name itself indicated her probable marital status. Although a number of Hispanas did not live in households headed by males during this period, it seemed unusual that the name of a spouse did not appear in the will of a woman with substantial property to bequeath. It may be that Cornelia Herrera de Jaramillo's husband had predeceased her. In this instance it would be necessary to check further records. Cornelia Herrera de Jaramillo also followed tradition when she named her own family members as guardians. Her brother, Delfido de Herrera, became the guardian of her three sons, and her parents, José Vicente de Herrera, and María Rufina Abeitia, the guardians of her daughter.<sup>51</sup>

The will of María Pabla Valdéz de Casados of Rio Arriba County incorporated several of the legal rights that women in New Mexico enjoyed under the Mexican civil



code. She named her husband, Gregorio Casados, as the absolute guardian of María Gertrudes Casados, their nineteen-month-old daughter. She conferred all of her personal property, goods and real estate upon her baby daughter for her own use and benefit. She named her husband as the administrator of her estate. The instrument listed the property María Pabla Valdéz de Casados brought to the marriage as well as the gifts received from Gregorio Casados on the occasion of their wedding. It included a list of the ganancial or community property of the couple as well as the debts to be paid from her estate. What was not usual about this will is the fact that María Pabla Valdéz de Casados stated that she could not sign it in her own hand due to a pistol wound in her right shoulder. Don José Salazar signed for her, the same "as if she had signed herself." We do not learn how María Pabla Valdéz de Casados received her injury, but she did mention that it had made her ill, apparently so seriously that she wrote a will when still in her childbearing years as evidenced by the age of her daughter.<sup>52</sup>

Occasionally sons and daughters renounced their inheritance in favor of a parent. Upon receipt of their inheritance from their deceased father, Pedro Francisco García, in 1885, five of the six heirs renounced their property in favor of their mother, Guadalupe Martínez, "as it suited her better."<sup>53</sup> Of the three sons and three daughters, only María Rita García did not renounce her inheritance; she only acknowledged its receipt. As it was considerably less than her brothers and sisters had received, perhaps she felt no obligation to give any of it to her mother. Pedro Francisco García divided his estate almost evenly amongst his sons and daughters except, apparently, for María Rita García, and only one son received slightly more than the others.

In an 1899 document, José Eufemio Archuleta, José Florencio Archuleta, and Juan de la Cruz Archuleta, all renounced their inheritances in favor of their mother, María Teresa Romero de Archuleta. Still not all renunciations went quite so smoothly. Matters became complicated in another case where two daughters, María del Refugio Córdoba de Santiago, and María Andrea Córdoba, renounced the estate of their mother, María Petrana Espinoza, in favor of their father, Antonio Enríquez Córdoba, until his death. When their father died in 1887, the two women petitioned to have the maternal estate included in the paternal will so that their share of the entire estate could be restored to them.<sup>54</sup>

Hispanas continued to act as executors and administrators of wills as they had done under Spanish rule until 1821, during Mexican administration up until 1848 and, subsequently, throughout the Territorial period. In an 1860 case, Rufina Chávez challenged the estate of Toribio Martínez for the sum of thirty dollars. Evangelisto Chávez, justice of the peace, found in her favour. However the document was a petition to the Sheriff of Doña Ana County for a *writ of certiorari*, a request that the case be moved to a superior court, in this case the District Court. María Sandoval, administratrix of the estate, filed sufficient bond and the case was transmitted to the higher court.<sup>55</sup> It may be wondered how Rufina Chávez felt about this, for traditionally vecinas preferred matters to be settled locally. José Ignacio Archuleta, who died on March 9, 1874, named his wife, María Guadalupe Sánchez, as one of three executors in his will. She also inherited one half of his estate with the other half going to the eight surviving children of thirteen born to the couple.<sup>56</sup> The next year María Soledad Martín, executor of Nicolás Martín's estate, requested the court to transfer power of attorney to her father, Juan

Martín, as she was ill.<sup>57</sup> Both Margarita Sánchez de Jaquez and Juan A. Jaquez were named administrators of the estate of Ricardo Jaquez in 1887. They formally declared in an official legal instrument that they had distributed the estate according to the wishes of the deceased and now requested discharge of any financial responsibility. The document did not state the relationship of the administrators to Ricardo Jaquez.<sup>58</sup> In Doña Ana County on October 27, 1893 the court summoned Rafaela G. de Barela, executrix of Mariano Barela's estate, to answer the suit of B.P. Michaelson for the sum of \$53.03, plus interest and the costs of the suit. Romulo Martínez also had to appear so apparently the two men served as co-administrators.<sup>59</sup> Not surprisingly, in contrast to Rio Arriba County, more non-Hispanic names were recorded in the judicial record in Doña Ana County.

On September 7, 1896, María Josefa Medina, a resident of Rio Arriba County, respectfully presented herself before the court to ask that she be named as an administrator of the estate of María Guadalupe Baca, as one of the administrators named in the will was not in the county. Apparently affairs moved quickly because in a document dated September 11, 1896 María Josefa Medina had been named as principal, “*administradora*” and “*ejecutora*” and reported that she had fulfilled her mandate.<sup>60</sup> Still, a year later José Ignacio Medina, María Guadalupe Baca’s husband, complained that some of the real estate his wife had left in her will was actually his. It is not clear whether or not this was his private property or part of their conjugal holdings.<sup>61</sup>

Women also performed as co-administrators as was the case of María Ramona Vigil who acted with Jesus M. Roybal in settling the estate of her mother-in-law, María Relles Fernández. She received the maternal inheritance of her husband, José Demetrio

Roybal, consisting of some land, household goods, and trees and grapevines, on his behalf at the death of his mother.<sup>62</sup> It is evident that women not only challenged estates, they frequently acted as administrators and executors.

In naming their estate administrators, Hispanic women sometimes acted independently and did not always appoint their husbands to the position. J. Concepción García launched a petition to become the executor in the estate of his deceased wife, María Emilia Suaso de García, who had named others to be executors of her will. Her husband complained that he had been injured in the process and disentitled as María Emilia Suaso de García's legal husband, as he considered himself entitled by law to be her executor. It is not clear why she chose others to administer her will.<sup>63</sup> On the other hand, the court did appoint Antonio José Jacquez, the husband of Paulita Chávez de Jacquez, as administrator of her estate in 1891, guardian of their four children, and caretaker of the children's estate. In 1897 he wrote a follow-up report to the probate court judge acknowledging that his wards were fine, as was their estate, except for some sheep that had sickened and died. It is not known whether the court requested the report or if it emanated from personal choice.<sup>64</sup> Upon the death of María Candelaria Jaramillo in 1874, her husband, Francisco Gallegos, petitioned to be the administrator of his wife's estate in order to make an inventory of the goods, furniture, and bills belonging to "our estate" and to make the necessary deductions. As there had been no children in the marriage, he claimed to be the rightful heir.<sup>65</sup> Ten years later, similar statements continued to appear in wills and testaments. Both Pablo Sánchez and his wife, María Pabla Martínez of Rio Arriba, named each other as their heirs and executors as both of their children had died. Each declared what he or she brought to the marriage; in this case the husband provided a

mare and the wife, a horse. The will clearly specified the right of the couple to be completely free in the disposal of their property without the interference of the court although either partner could authorize others to execute the will if necessary for its fulfillment. The couple composed the will in April 1884 and María Pabla Martínez died in October of the same year.<sup>66</sup>

These examples give us a general overview of judicial activity regarding the type of property transfer in which women engaged during the nineteenth century in Rio Arriba and Doña Ana Counties. However, when comparing the data for both counties, another picture emerged, for as the nineteenth century progressed, it became obvious that Hispanas were not alone in the courts. As noted earlier, census returns indicated that more foreigners or non-Hispanics lived in Doña Ana County than in Rio Arriba County.

Indeed a virtual transformation of the real estate market occurred as property moved into the hands of European Americans. The property deed records for Doña Ana County in particular underscored the dramatic growth of the European American population in the last two decades of the nineteenth century.<sup>67</sup> It is clear that the number of European American women alone who acquired real estate increased substantially. (See Table 6). The statistics suggest that although the ratio of European American women to Hispanas remained fairly constant, they acquired more property in the decades from 1880 to 1910. González asserted that: "Most white women moving into the southwestern United States after the war participated in the systematic effort to control or acquire property and settle in former Mexican territory."<sup>68</sup> My figures confirm her assertion.

A number of the European American women were involved in more than one transaction, but I counted each name only once. I noted any deeds that contained the

names of non-Hispanic females. Those with a Hispanic first name and a European American surname were classified in the European American category. It was probable that these women were either the wives or the daughters of European Americans.

Numerous examples of mixed names appeared in the record such as Lucita Hunt, who received a mortgage from Donato Alderete, Mariacita Dailey, who obtained a deed from Manuel Nevares, or Rosa G. de Campbell who transferred land to Francisco Carboniere.<sup>69</sup> They may have been daughters receiving property from their fathers, acquiring land at the behest of European American husbands, or conveying property to family members. For example, one wonders why Simona Haring, the Hispanic wife of Henry C. Haring, California Column veteran and one-time sheriff of Doña Ana County received a deed from María Rita Herrera? Was there a family relationship? Who wanted the land? Why did María Rita give up the property? The evidence produced more questions than answers and further research is needed in order to clarify the data.

The persistence of New Mexican inheritance patterns and property conveyance could not disguise the fact that the majority of Hispanics lost most of their land holdings in the nineteenth century. Property deed indexes provided the basic facts of real estate disposal but questions remained. What did it really mean when María Candida Cabrera had the word "Pre-emption" recorded beside her name? Who was doing the pre-empting? Again the evidence suggested that both Hispanics and European Americans engaged in the pre-emption of property. Speculation, fraud, confusing laws, illiteracy, and new taxation procedures all conspired against the *vecinos* and *vecinas* of Rio Arriba and Doña Ana Counties throughout the last half of the nineteenth century. So, while Hispanas

maintained their presence in the courts, they lost a greater battle as the European Americans seized their land.

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### Endnotes

<sup>1</sup> The greater part of the documentation on women and property for Rio Arriba County derived from fifty-eight wills and estate settlements. Rio Arriba County, NMSRC, Probate Court Records 1870-1912.

<sup>2</sup> Francisco Saavedra and María Ignacia Quintana, April 1848, Rio Arriba County, New Mexico State Records Center and Archives (hereafter referred to as NMSRC), Deed Record Book 1852-1884, Box 1, Folder 1, Number 86.

<sup>3</sup> María Tomasa Romero to Nicolasa Baca, May 9 1878, Santa Fe, NMSRC, Avery Papers, File #19.

<sup>4</sup> Marc Simmons, *New Mexico: A Bicentennial History* (New York: W.W. Norton, 1977), 161.

<sup>5</sup> Howard Roberts Lamar, *The Far Southwest 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), 139.

<sup>6</sup> Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe: 1820-1880* (New York: Oxford University Press, 1999), 61.

<sup>7</sup> Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman: University of Oklahoma Press, 1990), 44. The original language of Article IX stipulated that Mexicans who wished to become U.S. citizens would be "protected in the enjoyment of their liberty, their property, and the civil rights invested in them according to the Mexican laws." This article changed to the general statement that Mexicans "shall be maintained and protected in the free enjoyment of their liberty and property."

<sup>8</sup> Judge John S. Watts was handling forty-three land title cases in the 1850s. See Lamar, *The Far Southwest*, 140.

<sup>9</sup> Lamar, *The Far Southwest*, 150.

<sup>10</sup> Kathleen P. Chamberlain, "Billy the Kid, Susan McSween, Thomas Catron, and the Modernization of New Mexico, 1865-1912" in Richard W. Etulain, ed., *New Mexico Lives: Profiles and Historical Stories* (Albuquerque: University of New Mexico Press, 2002), 199. Mexico's Colonization Law of 1824 had limited the size of individual grants to about 97,000 acres, a guideline used by the U.S. Congress. However lawyers managed to stretch the limits.

<sup>11</sup> Estate of María Manuela Trujillo, 6 July 1874, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 2 Number 222.



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- <sup>12</sup> Guadalupe and Rosa Reyna, Complaint against John R. Johnson, 1869, Doña Ana County, NMSRC, District Court, Civil Cases 1851-1901, Box 30 Mixed Numbers,
- <sup>13</sup> Willis J. McGinnis vs. Nicolas Armijo, Sostena Smith et al, 25 March 1889, Doña Ana County, NMSRC, District Civil and Criminal Cases 1871-1889, Box 7 Files 78-162.
- <sup>14</sup> Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987), 26.
- <sup>15</sup> Elias T. Clark and María Martha Clark vs. Salvador García, 31 May 1853, Rio Arriba County, NMSRC, District Court, Civil Cases 1849-1880, Box 7, Numbers 5-208.
- <sup>16</sup> Julián Lucero to Theodore D. Wheaton, 23 October 1850, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1, Folder 1, Number 3.
- <sup>17</sup> Swadesh, *Los Primeros Pobladores*, 178.
- <sup>18</sup> Augustín Lucero and María Guadalupe Trujillo to Jesusita Trujillo, Rio Arriba County 10 January 1858, NMSRC, Deed Record Book, 1852-1884, Box 1, Folder 1, Number 267.
- <sup>19</sup> María Guadalupe Pacheco to Francisco Pacheco, 1850, Rio Arriba County, NMSRC, Deed Record Book 1847-1857, Box 1 Number 264.
- <sup>20</sup> Estate of María Rosalia García, 6 March 1891, Santa Fe, NMSRC, Probate Court Records 1847-1957, Box 4 Number 315.
- <sup>21</sup> Fray Angelico Chávez, *Archives of the Archdiocese of Santa Fe: 1678-1900* (Washington, D.C.: Academy of American Franciscan History, 1957), 26.
- <sup>22</sup> Cristóbal Montolla to Julián Lucero, 15 August 1803, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1, Folder 1, Number 327,
- <sup>23</sup> Pablo Lucero to Julián Lucero, 4 October 1857, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1 Folder 1, Number 326.
- <sup>24</sup> Julian Lucero to María Margarita Lucero, 1<sup>st</sup> November 1833, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1 Folder 1, Number 62. This is an earlier document included in the file.
- <sup>25</sup> Valentín Martin to Francisco Isidro Gallegos, April 25 1785, Rio Arriba County, NMSRC, Deed Record Book, 1847-1857, Box 1. Earlier deeds are included in the Deed Record Book.

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<sup>26</sup> María Ortega to Hilario García, 5 May 1821, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1, Folder 1, Number 268.

<sup>27</sup> María Rufina Salazar to María Concepción Lucero, 25 March 1837, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1 Folder 1, Number illegible.

<sup>28</sup> Jesus María Sánchez to María Lugarda Muñoz, 2 April 1845, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1 Folder 1, Number 76.

<sup>29</sup> Ramona Armijo and Luis Baca vs. Antonio Constante, n.d. November 1855, Doña Ana County, NMSRC, District Court, Civil Cases, 1851-1901, Mixed Numbers Box 30.

<sup>30</sup> Juana Gallegos to José Manuel Salazar, 11 February 1830, Rio Arriba County, NMSRC, Deed Record Book 1847-1857 Box 1. Earlier deeds are included in the Deed Record Book.

<sup>31</sup> Juan de la Cruz Borego to Elias T. Clark, 19 September 1852 and María Margarita Lucero to Elias T. Clark, 11 October 1854, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1 Folder 1, Numbers 93 and 109.

<sup>32</sup> María Rosalia Trujillo to Juan de la Cruz Borrego, 25 October 1854, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1, Folder 1, Number 215

<sup>33</sup> Benito A. Larragoite to Feliciano Valdéz, 21 August 1857, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1 Folder 1, Number 242.

<sup>34</sup> Estate of Donaciano Martín, 23 April 1874, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3. This will was filed with that of María Manuela Trujillo (number 222) so was obviously misfiled.

<sup>35</sup> Jesus M. Roybal to María Petra Advíncula Aragón, 15 December 1878, Rio Arriba County, NMSRC, Deed Record Book 1852-1884, Box 1 Folder 1, Number 426.

<sup>36</sup> Estate of Carmelita Cisneros de Martínez, 29 May 1911, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 4 Number 383.

<sup>37</sup> Estate of María Archuleta de Torres, 16 July 1911, *Ibid.*, Number 390.

<sup>38</sup> González, *Refusing the Favor*, 101

<sup>39</sup> *Ibid.*

<sup>40</sup> Estate of Rufina L. de Salazar, 4 February 1896, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 4 Number 355.

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- <sup>41</sup> Estate of María Lorenza Clara Romero, 5 March 1900, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 374.
- <sup>42</sup> Nancie L. González, *The Spanish-Americans of New Mexico* (Albuquerque: University of New Mexico Press, 1969), 40.
- <sup>43</sup> William A. Keleher, *Turmoil in New Mexico* (Albuquerque, University of New Mexico Press, 1952), 115.
- <sup>44</sup> Estate of Pedro Antonio Martínez, 25 July 1855, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 150.
- <sup>45</sup> Francisco Saavedra to María Ignacia Quintana, 21 November 1851, Ibid.
- <sup>46</sup> Estate of María Ruperta Manzanares, 7 September 1874, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 218.
- <sup>47</sup> Estate of Rufina L. de Salazar, 4 February 1896, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 4 Number 355.
- <sup>48</sup> Yolanda Chávez Leyva, "A Poor Widow Burdened with Children: Widows and Land in Colonial New Mexico," in Elizabeth Jameson and Susan Armitage, eds. *Writing the Range: Race, Class, and Culture in the Women's West* (Norman: University of Oklahoma Press, 1997), 91.
- <sup>49</sup> Estate of María Eulogia Martínez, 19 August 1885, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 259.
- <sup>50</sup> Estate of María Juana de los Dolores Valerio, 6 July 1874, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 220.
- <sup>51</sup> Estate of Cornelia Herrera de Jaramillo, 1 October 1891, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 4 Number 314.
- <sup>52</sup> Estate of María Pabla Valdéz de Casados, 18 August, 1893, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 4 Number 340.
- <sup>53</sup> Estate of José Francisco García, 1 October 1885, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 209. This document was misfiled in the Estate of María Jesús Córdoba.
- <sup>54</sup> Protest re the will of Antonio Enríquez Córdoba, 4 June 1887, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 278.
- <sup>55</sup> Rufina Chávez vs. the estate of Toribio Martínez, Petition for a writ of certiorari, n.d., Dona Ana County, NMSRC, Civil Case Files 1851-1909 and 1886-1909, Box 30 mixed

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numbers. The finding aid for this box of documents was numbered incorrectly at NMSRC.

<sup>56</sup> Will of José Ignacio Archuleta 2 March 1874, Rio Arriba County, NMSRC, District Court Civil Cases 1849-1880, Box 7 Number 5-208.

<sup>57</sup> Petition of María Soledad Martin, 30 March 1875, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 209. This document was misfiled with the Estate of María Jesús Córdoba, 1870, NMSRC.

<sup>58</sup> Estate of Ricardo Jaquez, 4 June 1887, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3 Number 278.

<sup>59</sup> Summons for Rafaela de Barela, 27 October 1893, Doña Ana County, NMSRC, U.S. District Court 3<sup>rd</sup> Judicial District, Bernalillo, Socorro, Valencia, Doña Ana Docket Book 1851-1855, Box 5 Number 178.

<sup>60</sup> Petition of María Josefa Medina, 11 September 1896, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 4 Number 358.

<sup>61</sup> Complaint of José Ignacio Medina, 7 September 1897, Ibid.

<sup>62</sup> Estate of María Relles Fernández, 19 May 1879, Rio Arriba County, NMSRC, Probate Court Record 1847-1957, Box 3 Number 235,

<sup>63</sup> Petition of J. Concepción García, 19 August 1894, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 4 Number 337.

<sup>64</sup> Estate of Paulita Chávez de Jacquez, 16 December 1891, Rio Arriba, NMSRC, Probate Court Record 1847-1957, Box 4 Number 315.

<sup>65</sup> Estate of María Candelaria Jaramillo, 6 March 1874, Rio Arriba County, NMSRC, Probate Court Records 1849-1880, Civil Cases 35-298, unnumbered.

<sup>66</sup> Estate of María Pabla Martínez, 23 April 1884, Rio Arriba County, NMSRC, Probate Court Records 1847-1957, Box 3, Number 250.

<sup>67</sup> Some of the years in the deed books overlap but the names listed are different. I also accounted for the duplication of some of the names.

<sup>68</sup> González, *Refusing the Favor*, 66.

<sup>69</sup> Index to Book "1" and Book "C": Property Transactions. 1861-1871. Doña Ana County, NMSRC, 1852-1946

## Conclusion

I find that the Mexicans are constantly studying us, which is more than we do in regard to them. They look upon us as something immensely powerful, that is able, and perhaps, if displeased, willing, to crush them. They are infinitely more subtle than we, and their efforts tend more to keeping out of our clutches than to imitating us. Our institutions, all our ways of procedure, are endlessly wearisome to them, and correspond to nothing they consider profitable and agreeable.

Edith O'Shaughnessy<sup>1</sup>

Unfortunately few of her contemporaries shared the sensitive perceptions of Edith O'Shaughnessy, the wife of American diplomat, Nelson O'Shaughnessy, who lived in Mexico from October 1913 until the end of April 1914. Although she based her knowledge of Mexicans on the cosmopolitan circles in which she moved as a diplomat's wife, and not on Mexico's former frontier province of New Mexico, nevertheless O'Shaughnessy's discerning comments could be applied to the behaviour of Hispanas in nineteenth-century New Mexico who did not imitate the Americans except when it was advantageous to do so. They adapted to a change in legal institutions but retained customary legal practices as much as possible. When two litigious cultures came into contact in New Mexico as a result of conquest, the legal system of the dominant power did not immediately prevail nor did the legal tradition of the conquered disappear. The persistence of Hispanic legal culture meant that American judges and courts struggled for years to implement new policies and procedures, to separate the powers of different

levels of courts, and to incorporate such customary practices as were compatible with the common law.

The continued appearance of Hispanas in a restructured court system during the Territorial period, their adaptation to new legal procedures, and their persistence in asserting their rights, be they personal or property-related, underscored the resilience of these women in employing new survival strategies even when their status was under attack. It is impossible to know from the evidence whether or not Hispanas made conscious choices in selective acculturation, or to ascribe any motives to their behavior as they negotiated unfamiliar legal procedures. While they conformed to the new institutions imposed upon them when necessary, the legal record indicated that New Mexico women succeeded in maintaining their sense of entitlement to juridical solutions to their problems, and in so doing preserved an important element of their culture.

The legal record showed that after the U.S. conquest the Hispanas of Rio Arriba and Doña Ana Counties bequeathed property, sold land, exercised guardianship of minors, held power of attorney, sought divorces, administered estates, and executed wills. They engaged in legal proceedings as they had done for centuries but in different forums. Nonetheless, we must not allow the continued presence of Hispanas in the legal system to obscure the fact that an enormous economic and social transformation threatened to engulf them and to reshape every aspect of their lives. Hispanas experienced new litigation processes, an individualistic view of the law, and eventually, decreased informal settlements in local courts. A marketplace society required a transparent legal system to ensure the security of property and ready capital, the former an unfamiliar

institution to be negotiated in New Mexico, and the latter difficult to obtain in what was basically a subsistence economy.

In spite of property loss, societal attitudes toward women, and economic dislocation, the women of New Mexico did not disappear from the legal record. In both Rio Arriba and Doña Ana Counties, Hispanas continued to buy, sell, and inherit property, to write wills and engage in partible inheritance, and to engage in business. The greater number of foreigners in Doña Ana County and their interaction with New Mexico women involved Hispanas in domestic suits. Cases of assault increased significantly in Doña Ana County in the last quarter of the nineteenth century. In Rio Arriba County, Hispanas concerned themselves with property transfer as well as the orderly disposition of their land and goods. The women of Doña Ana County appeared more frequently in the U.S.-controlled district court in cases of divorce and property disputes whereas Hispanas in Rio Arriba County appeared in local courts to settle small debts and to probate wills. The most dramatic change occurred in Doña Ana County after 1880 with the increased number of property transactions that included the names of European Americans.

Only a small number of European American women used the courts in New Mexico and the evidence shows that although both Hispanas and European American women experienced a legal system in transition, the same laws that meant expanded opportunities for the latter became increasingly constrictive for Hispanas. The increasing presence of European American women in the judicial system and the types of cases in which they were involved indicated their growing power. Admittedly formal divorce became more easily obtainable under U.S. administration, but fewer Hispanas availed themselves of the opportunity to permanently dissolve unhappy marriages than did

European American women who, while smaller in number, appeared more frequently in cases of divorce at the district court level. European American women figured disproportionately in the transference of property after 1880 as they engaged in the land-grab from the Hispanic population. Disputes that had been settled in a local, familiar setting moved to the district court where American officials presided

Questions remain as to the exact nature of the legal changes experienced by New Mexico women in the last half of the nineteenth century. Further examination of changes in the Mexican civil code and research based on the statutes and legislation of New Mexico will help to clarify the precise structure of two different legal traditions as they affected Hispanas in nineteenth-century New Mexico Territory. Correlating the legislative changes with the traditional legal rights of Hispanas and then revisiting their appearances in court would provide more detail and nuance on the legal experience of New Mexico women during the transition from Mexican province to U.S. Territory. A comparative study based on court use between resident New Mexico females and more recently arrived Mexican women would provide some meaningful data. Research into marriage records would also help to clarify marital relationships and to refine the data.

The power shift that began with U.S. conquest led to political, economic, legal, and ethnic transitions. The preservation of some semblance of customary rights in such a major power shift was no small achievement. It may be as important that Hispanas had a legal tradition, and expected to use the courts, as that the judicial system changed. Because they were accustomed to acting in legal arenas, they did not passively submit to legal changes. That New Mexico women maintained a legal profile is a tribute to their tenacity, and to their determination to "survive the transition."



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### Endnotes

<sup>1</sup> Edith O' Shaughnessy, *A Diplomat's Wife in Mexico: Letters from the American Embassy at Mexico City, Covering the Dramatic Period Between October 8<sup>th</sup>, 1913, and the Breaking Off of Diplomatic Relations on April 23<sup>rd</sup>, 1914, Together with an Account of the Occupation of Vera Cruz* (New York: Harper & Brothers Publishers, 1916), 113.

## TABLES

**Table 1. Native Born Females and Foreign Born Females 1890-1910**

(Native Born refers to persons born in the U. S. and Foreign Born refers to those persons born outside of the U.S.)

		Native Born		Foreign Born		Total	
		N	%	N	%	N	%
1890	Dofia Ana	3343	77	994	23	4337	100 %
	Rio Arriba	5401	99.5	31	.005	5432	100 %
1900	Dofia Ana	3657	77	1112	23	4769	100 %
	Rio Arriba	6713	99.6	26	.004	6739	100 %
1910	Dofia Ana	3055	49.6	3063	50.4	6118	100 %
	Rio Arriba	7341	90.0	825	10.0	8166	100 %

Source: United Bureau of the Census, *Report on the Population of the United States at the Eleventh Census* (Washington, D.C.: Government Printing Office, 1901), 513 and United Bureau of the Census, *Thirteenth Census of the United States with Supplement for New Mexico* (Washington, D.C.: Government Printing Office, 1913), 587, 589.

**Table 2. Assets of Dofia Ana and Rio Arriba Counties in 1860**

	Real	Personal	Aggregate
Dofia Ana	\$487,778	\$1,003,970	\$1,491,748
Rio Arriba	\$432,489	\$313,615	\$746,104

Source: United States Bureau of the Census, *Summary Statistics, Eighth Census* (Washington, D.C.: Government Printing Office, 1866), 318.

**Table 3. Court Use by Hispanas and European American Women in Rio Arriba and Doña Ana Counties 1840-1912**

	Hispanas				European American Women			
	Rio Arriba		Doña Ana		Rio Arriba		Doña Ana	
	N	%	N	%	N	%	N	%
Alcalde/JP	31	37	54	74	2	25	16	40
District Court	11	13	10	14	5	62	23	58
Chancery Court	5	6	8	11			1	2
Probate Court	37	44	1	1	1	13		
Totals	84	100 %	73	100 %	8	100 %	40	100 %

Source: Data for Rio Arriba County aggregated from Probate Court Records , 1870-1912, District Court Civil Cases 1849-1880 and 1877-1881, District Court Criminal and Civil Docket 1860-1875, and District Court Judgment Docket 1891-1905. Data for Doña Ana County aggregated from Civil Docket 1894-1898, Civil and Criminal Records 1875-1898, and Sworn Statements and Complaints Records from 1865-1914. New Mexico State Records Center and Archives, Santa Fe, New Mexico.

**Table 4. Categories of Cases Involving Hispanas 1840-1910**

	Rio Arriba		Doña Ana	
	N	%	N	%
Marital Relations	15	20	25	18
Marital Property/ Inheritance/Guardianship	35	47	26	19
Debt/Breach of Contract	10	13	32	23
Other Property	10	13	13	9
Assault	5	6	41	30
Other	1	1	1	1
Total	76	100 %	138	100 %

Source: Data for Rio Arriba County aggregated from Probate Court Records, 1870-1912, District Court Civil Cases 1849-1880 and 1877-1881, District Court Criminal and Civil Docket, 1860-1875, and District Court Judgment Docket 1891-1905. Data for Doña Ana County aggregated from Civil Docket 1894-1898, Civil and Criminal Records 1875-1898, and Sworn Statements and Complaints Records from 1865-1914. New Mexico State Records Center and Archives, Santa Fe, New Mexico.

**Table 5. Categories of Cases Involving European American Women 1840-1912**

\* These numbers contain the names of five women who had Hispanic first names but European-American surnames.

	Rio Arriba		Doña Ana	
	N	%	N	%
Marital Relations	2	20	9	22
Marital Property/ Inheritance/Guardianship	4	40	6	15
Debt/Breach of Contract	2	20	5	12
Other Property	2	20	3	7
Assault	0	0	9	22
Other (Theft and Murder)	0	0	9	22
Total	10	100 %	41	100 %

Source: Data for Rio Arriba County aggregated from Probate Court Records, 1870-1912, District Court Civil Cases 1849-1880 and 1877-1881, District Court Criminal and Civil Docket, 1860-1875, and District Court Judgment Docket 1891-1905. Data for Doña Ana County aggregated from Civil Docket 1894-1898, Civil and Criminal Records 1875-1898, and Sworn Statements and Complaints Records from 1865-1914. New Mexico State Records Center and Archives, Santa Fe, New Mexico.

**Table 6. Property Transfers in Doña Ana County that Included Women 1853-1910**

Years	H to H		H to E		E to H		E to E		Total Deeds	
	N	%	N	%	N	%	N	%	N	%
1854-1861	39	63	10	16	6	10	7	11	62	100 %
1863-1871	41	40	33	33	4	4	23	23	101	100 %
1855-1867	26	51	7	13	5	10	13	25	51	100 %
1869-1871	12	50	4	17	3	13	5	20	24	100 %
1870-1879	26	36	25	34	5	7	17	23	73	100 %
1888-1890	35	35.5	23	23	3	3	38	38.5	99	100 %
1889-1891	26	28	9	10	5	5	53	57	93	100 %
1899-1901 ( to 1909)	26	28	11	12	4	4	53	56	94	100 %
1854-1861	39	17.5	10	8	6	17	7	3.5		
1863-1871	41	18.5	33	27	4	11.5	23	11		
1855-1867	26	11	7	6	5	14	13	6		
1869-1871	12	5	4	3	3	9	5	2.5		
1870-1879	26	11	25	21	5	14	17	8		
1888-1890	35	15	23	19	3	9	38	18		
1889-1891	26	11	9	7	5	14	53	25		
1899-1901 (to 1909)	26	11	11	9	4	11.5	53	25		
Total	231	100 %	122	100%	35	100 %	209	100%		

H=Hispana      E=European American

Part One of the table classifies property transactions by time period according to the available indexes. Part Two illustrates the changes over time from 1854 to 1909.

Source: These numbers have been aggregated from the following indexes: Doña Ana County Records-Property Transfer Record 1; Index to Book B-Records of Doña Ana From and To-1853-1861; Index to Deed Record 3-Doña Ana County From May to May-1866-1867; Index to Record Book of Deeds Nos.13 and 14 Vol. 11-1888-1890 and 1889-1891; Book # 1 From July 1863-1866 and Book C Oct. to Mar. 1861-1871. Unfortunately the index for the crucial years of 1880-1887 was missing. Several of the indexes overlap time periods. Not all transfers listed had a date indicated so that separating the data by decade was not possible. Women acted either alone or jointly with their husbands in all of the above property conveyances. The numbers and percentages have been added both horizontally and vertically to illustrate property exchanges over smaller time periods as well as cumulatively.

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Index to Deed Record "3". 1866-1869

Index to Deed Record "4". 1869-1871

Index to Deed Record "13". 1888-1890

Index to Deed Record "14". 1889-1901

Property Transfer: Record 1. 1899-1901

Justice of the Peace

Docket: Civil. 1894-1898

Record Book: Civil, Precinct 2, 1875-1887

Record Book: Civil, 1879-1901

Record Book: Civil, Precinct 2. 1885-1905

Record Book: Civil and Criminal, Precinct 2. 1898-1919

Record Book: Civil, Precinct 3. 1894-1898

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1866-1878

1883-1889

1891-1899

1900-1914

Rio Arriba County-Record

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