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Chasing Treaty Promises

Guadalupe T. Luna*

In their quest for housing throughout history and still today, Latinas/os continuously witness the disregard of international and domestic law. A survey of the legal methods various municipalities employ in seeking to eliminate Latinas/os from their communities, exemplifies how alleged legal rules advance power relationships in the United States. Whether one chooses to study the current anti-immigrant ordinances confronting Latinas/os across the United States or to go back in history and examine the effects of the United States’ war against the Mexican Republic in 1846, an analysis of the property law jurisprudence from either period will show a series of entangled conflicts of legal doctrines.

Anti-immigrant ordinances, for example, are difficult to reconcile with federal laws that govern both entry and removal from the United States or the innumerable types of immigration statuses available to non-citizens. Additionally, these anti-immigrant ordinances violate state laws that guard against indiscriminate treatment and equally contradict longstanding property rights. In some instances, the ordinances go so far as to conflict with state constitutions that protect all persons within their geographical borders.

Unfortunately, these types of legal inconsistencies and conflicts facing Latinas/os are not new. Following the United States-Mexican War of 1846, the United States made false promises to individuals of Mexican, Spanish, and Native

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* Interim Associate Dean and Professor, Northern Illinois University College of Law. Mil gracias to Professor Mark Rodriguez for his much appreciated invitation to participate in this valuable panel and the editors of the Berkeley La Raza Journal for their contributions. This essay stems from my investigations into the United States’ war against Mexico and its attendant legal consequences. For one recent example, see Guadalupe T. Luna, Legal Realism and the Treaty of Guadalupe Hidalgo: A Fractionalized Legal Template, 2005 Wis. L. Rev. 519 (2005).

1. Within a short period of entry into new communities several municipalities adopt or have pending anti-immigrant ordinances that seek removal of Latinas/os. Whether adopted or pending, the ordinances encompass overly broad and vague landlord tenant provisions, constitutionally vulnerable employer sanctions, or suspect English only restrictions. For examples, see tables listing the ordinances, type, and language at http://www.immigrantsolidarity.org/Documents/Nov06OverviewLocalOrdinances/OverviewRecentLocalImmigrationOrdinancesandResolutions.pdf (last visited Nov. 20, 2008).


3. See, e.g., Lisbeth Haas, War in California: 1846-1848, in CONTESTED EDEN: CALIFORNIA BEFORE THE GOLD RUSH 331 (Ramon A. Gutierrez & Richard J. Orsi eds., 1998). Mexico permitted settlement in its northern territories for a number of reasons, which include taxes and protection against foreign intrusions. For one version of the procedures involved in obtaining property and the conditions required to justify fee simple in the northern regions, see for example Ferris v. Coover, 10 Cal. 589, 594 (1858).


American descent that were embodied in the Treaty of Guadalupe Hidalgo ("Treaty"). In exchange for a negotiated realm of concrete promises, the Treaty not only effectuated the conclusion of war hostilities, but also transferred a vast amount of territory abundant with natural resources to the United States. The Treaty's signatories included covenants for those electing to remain on their property after the war and it granted the Mexican residents living on the newly transferred lands, federal constitutional rights. In making these promises, the United States emphasized that the strength of Anglo-American laws and jurisprudence would protect former Mexican residents' continued enjoyment of property and liberty interests. The United States accordingly underscored the legal parity of those remaining in the annexed territories in the protection of their property and liberty interests.

Within a short period, however, almost all of the property in former Mexican ownership yielded to the public domain, soldiers who fought in the war, and other third parties like squatters. Thereafter, diminished citizenship standing brought forth inter alia segregation, deficiencies in education, poll taxes, and literacy requirements that further disenfranchised native Mexican inhabitants. Essentially, the betrayal of the Treaty's promises inhibited its full incorporation into the nation's political fabric.

While a span of generations separate the Treaty from current anti-immigrant legislation, the focus of both is the same: the removal of foreign-looking or foreign-sounding populations. Both furthermore, illustrate how Latinas/os are forced to

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6. Mexican law legally recognized all population groups within the Republic as citizens of Mexico.
8. See Treaty of Guadalupe Hidalgo, supra note 7, at art. VIII.
11. See, e.g., An Act to Extend Preemption Rights to certain Lands therein mentioned, 32 Cong. Ch. 143, 10 Stat. 244 (1853); An Act to provide for the Survey of the Public Lands in California, the granting of Preemption Rights therein, and for other purposes, 32 Cong. Ch. 145, 10 Stat. 244 (1853); An Act to secure Homestead to actual Settlers on Public Domain "The Homestead Act of 1862," 37 Cong. Ch. 75, 12 Stat. 392 (1862).
15. For one example of how Latinas/os are treated as outsiders, see Family Wins Suit In Wake of Border Altercation, CHICAGO TRIB., Nov. 24, 2006, at C9 (rancher Roger Barnett terrorized U.S. citizens of Mexican descent subsequently lost litigation).
confront disparate and adverse housing circumstances drawing from their race, class, and gender. These circumstances conflict with property’s links with liberty, independence, and the bundle of rights that curtail governmental intrusions. Not unlike the legal breaches that define the Mexican experience with the Treaty, anti-immigrant ordinances ultimately violate international and domestic law. In light of the wide realm of property related hostilities, Latinas/os’ political and social economic standing in rural and urban communities are thereby diminished.

This essay, grounded in the goals of this Conference, focuses on the structural barriers that center on the intersection of property law with the systemic colonization of Latinas/os. To link the present with the past, Part I of this essay returns to the period following the United States’s war against the Mexican Republic. It draws from case law detailing the property interests Mexican owners struggled to defend. Part I further illustrates the extent to which the former Mexican citizens eventually succumbed to the arbitrary and selective enforcement of Anglo-American law. A betrayal of fundamental law and legal precepts thereafter characterize this period.

Part II of this essay addresses current anti-immigrant ordinances that challenge the presence of Mexicans, whether domestic or foreign born, by specifically contemplating the added burdens Latinas/os confront in their quest for housing. Part II also illustrates the hard contours of colonization and attendant marginalization present in the communities where Latinas/os reside.

Finally, this essay, adopting the analysis performed in Parts I and II, which shows the treatment of Latinas/os in the United States in the period following the United States-Mexican War and today, exemplifies how Anglo-American law lapses to the political capriciousness of state officials. Furthermore, the universe of results demonstrates a wide girth of resultant legal injuries for citizen and immigrant Latinas/os.

16. See infra Part II.

17. Property ownership is closely identified with liberty and independence. See H.N. HIRSCH, A THEORY OF LIBERTY: THE CONSTITUTION AND MINORITIES 41 (1992) (“Liberty provided security because it protected property, and property make people independent of government.”). Compare with the anti-immigrant ordinances that directly target tenancies and housing. See, e.g., City of Hazleton, Pa, Illegal Immigration Relief Act Implementation Amendment, Ordinance 2006-40. Since this essay, the Hazleton Ordinance was rejected in Lozano vs. City of Hazleton, 496 F. Supp. 2d 477, 542 (M.D. PA. 2007).


19. See, e.g., U.S. CENSUS BUREAU, HOUSING PATTERNS, RESIDENTIAL SEGREGATION OF HISPANIICS OR LATINOS: 1980 TO 2000, at Ch. 6 (2004), available at http://www.census.gov/hhes/www/housing/resseg/ch6_table.html. Part II nonetheless does not seek expanding the legal debate involving a specific group and alleging a white identity. Nor is it aimed at emphasizing the distinctions between a model minority and non-citizens that promotes fractionalization of the broader Latina/o family.

"The Mexican War was the deadliest war the United States ever fought . . . The number of deaths was staggering: 110 out of every thousand participants died of disease, accident, or wounds."  

This section addresses the first structured relocation of newly incorporated Mexican groups who resided throughout the present American Southwest. Prior to the conquest of Mexican territories, innumerable individuals resided in urban as well as in large and small rural holdings. Following the war between the United States and Mexico, which ended in 1846, those electing to remain on their lands were promised by government officials and through the Treaty that they could continue to use and enjoy their property interests. Yet, within a short period, the majority of property shifted into the hands of third parties, including squatters, attorneys, and the public domain. Collectively the various third parties did not fall under the Treaty’s stated covenants.

The dispossession of Mexican property following the United States-Mexican War has recently received an increased amount of legal scholarly attention. In part, this interest generated from the present litigation defending property use rights and restitution claims for the loss of former Mexican, Spanish, and Native America property interests after the war between the two Republics. A more expansive study of the legal historical antecedents surrounding the war and cases in which the property holders defended their interests nonetheless remain lacking within the jurisprudence of property law. The application of colonial theory to the legal impact of the Treaty also has remained hidden within the formalism of the law. In addition, specificity on the legal justifications of the United States-Mexican War is necessary to understand the conditions in which the United States conquered former Mexican territories.

Although spatial limitations disallow greater specificity as to the cause of the war, there are, however, three dominating theories explaining its cause. First, it is well acknowledged that prior to the war the United States coveted the tremendous topography and natural resources of the Mexican territories presently encompassing the Southwestern United States. Mexico, however, repeatedly rejected offers by the United States to purchase its northernmost territories. Second, the hostile activities of non-Mexican citizens in the Texas region had long generated conflict between Mexico and the United States. Third, mobilizing influence resulted from the threats of foreign

invasion in the Pacific Northwest from Great Britain activities. Ultimately, an international peace agreement embodied in The Treaty of Guadalupe Hidalgo concluded the war with the purchase of former Mexican territories. The Treaty moreover contractually bound the United States to protect the property interests of varied classes of urban and rural populations remaining in the conquered territories.

Apart from the Treaty, the common law of property denotes status in a community and Anglo-American jurisprudence guards against unlawful intrusion. Notwithstanding these legal values as well as constitutional law protections of property ownership, Mexican owners faced a series of legal challenges to their property interests. Although they actively defended their interests, they eventually lost their property to the public domain or to private individuals within a relatively short period. In the process, the loss of their interests led to their disenfranchisement and an accompanying diminished legal status.

This section targets the legal structures that generated the property dispossession of the nation’s newest citizens. It calls attention to the broad realm of Anglo-American federal law that recognizes the supremacy of treaties but which were betrayed in the jurisprudence of land adjudication. It also links states’ legislative activity to eliminate Latinas/os from their rural and urban communities with the legislative activity of the present. Ultimately, this section emphasizes that states lacking jurisdiction to adopt anti-immigration ordinances encroach on federal law.

A. Structuring Dispossession: Treaties and Legal Promises

On the first level, treaties are an interesting species of law deemed of the most sacred character and its supremacy under constitutional law is widely acknowledged. Therefore, the supremacy standing of the Treaty that ended the war established a formal and legally binding relationship between the newly incorporated Mexican residents and the United States. During the Treaty’s ratification, Congress,


25. For an examination of the conditions attached to a land grant, see for example De Haro v. United States, 72 U.S. (5 Wall.) 599, 604 (1866). Property was also exchanged in consideration for governmental duties or for direct purchase.

26. See, e.g., U.S. CONST. amend. X (providing in part: "[N]or shall private property be taken for public use, without just compensation"); U.S. CONST. amend. V, cl 4 (which should have applied in this federal template of the case law that generated dispossession during the historical period and into the present).

27. Legal precedent from case law interpreting earlier land acts should have applied to the California Land Acts. Compare Soulard v. United States, 29 U.S. (4 Pet.) 511 (1830), and United States v. Perchman, 32 U.S. (7 Pet.) (1833) (interpreting the earlier Florida Land Act), with the Act to ascertain and settle the private Land Claims in the State of California [hereinafter referred to as California Land Claims Act], 31 Cong. Ch. 41, 9 Stat. 631 (1851). See also MALCOLM EBRIGHT, LAND GRANTS AND LAWSUITS IN NORTHERN NEW MEXICO (1994) (emphasizing the differences were designed to change the liberal interpretations of earlier legal precedent).

28. See infra Part II discussion on local municipalities attempts to control undocumented entry with its ramifications on citizens of Latina/o descent.


30. See, e.g., Grant v. Jaramillo, 28 P. 508 (1892) (addressing perfect title of property as
nonetheless, unilaterally removed Article X, which would have recognized the property interests of those electing to remain in their homes.\textsuperscript{31} Article X provided:

\begin{quote}
[G]rantees . . . put in possession thereof, who, by reason of the [war and the events leading thereto] may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited in the same . . . .\textsuperscript{32}
\end{quote}

Innumerable Spanish documents were misinterpreted and obligates references to the original language:

\begin{quote}
Todas las concesiones de tierra hechas por el Gobierno mexicano, ó por las autoridades competentes en territorios que pertenecieron antes á México y quedan para lo futuro dentro de los límites de los Estado-Unidos serían respetadas como válidas, con las misma extension con que lo serian si los indicados territorios permanecieran dentro de los límites de México.\textsuperscript{33}
\end{quote}

The covenant effectively disallowed claims of property ownership for failure to complete the land process under Mexican law. The removed article in contrast would have protected property interests that but for the war would have allowed clear title for the holder in interest.\textsuperscript{34} Following the covenant's removal, the United States reacted to Mexico's protests with the Protocol of Querétaro.\textsuperscript{35} The Protocol brought forth stated assurances that the United States intended to preserve the legal value of property interests as held before the war.

Aside from federal officials' assertions to protect property interests, minor changes during the Treaty's ratification process were nonetheless permissible. Yet unilateral substantive changes that frustrate a treaty's signatories' intent and purposes can ignite further hostilities against its signatories.\textsuperscript{36} Therefore, the United States assured Mexico that notwithstanding its unilateral actions, property interests would be protected.\textsuperscript{37}

Aside from the Treaty's sacred standing, the legal formalism from earlier land pact cases in the American Republic, which followed federal constitutional protections should have further buttressed the property claims of Mexican holders in their newly

\textsuperscript{31} Protocol of Querétaro stating: that: “Suppressing the Xth article . . . did not in any way intend to annul the grants of lands . . . . These grants . . . preserve the legal value which they may possess . . . .” Treaty Documents, supra note 9, at 381.

\textsuperscript{32} Id. at 242.

\textsuperscript{33} Id.

\textsuperscript{34} See, e.g., Cessna v. United States, 169 U.S. 165, 186 (1898) (Article X would have allowed further time to fulfill the conditions of a grant of land).

\textsuperscript{35} Treaty Documents, Protocol of Querétaro, supra note 9, at 380.

\textsuperscript{36} Vasquez, supra note 29, at 704-05. The U.S. claimed that removal was necessary to avoid reviving the claims of Mexican ownership that would prove harmful to the foreign nationals claiming the interests. See also Knight v. United States Land Ass'n, 142 U.S. 161 (1891) (applying international law principles as supporting treaty obligations).

\textsuperscript{37} See Treaty Documents, Protocol of Querétaro, supra note 9, at 380.
identified status as citizens of the United States. Citizenship brings innumerable legal, political, and societal benefits including fundamental freedoms and favorable constitutional protections. A wide legal network of civil and criminal laws further strengthen constitutional protections against misdirected intrusions that could alienate a holder’s property interests. Property rights moreover do not dissipate against the backdrop of hostilities that result from a change of sovereigns.

The above confluence of legal norms should in their totality underscore the political and property standing of the property holders residing in the annexed territories. In *Ely’s Administrator v. United States*, for example, the Court reported that “[i]n harmony with the rules of international law, as well as with the terms of the treaties of cession, the change of sovereignty should work no change in respect to rights and titles; that which was good before should be good after . . . .”

The legal framework employed in the Florida region pre-dated the adjudication in the Southwest and should have provided precedential value for the Mexican litigation in the newly acquired territories. The legal antecedents in the 1833 case of *United States v. Percheman* protected the property interests of a former Spanish sergeant in the Florida region. This case is important because it illustrates the misdirection taken against Mexicans following the Treaty.

Although Juan Percheman held confirmed title to his property, the United States government challenged his legal interests. The United States Supreme Court nonetheless rejected Attorney General Taney’s arguments of invalid ownership standing by ruling that, “The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.” This ruling thereby should have governed the subsequent land disputes as well as following the adoption of the Fourteenth Amendment. This course of law as well as authoritative antecedents and rationale, however, curiously disappeared from the Mexican land grant period where thereafter Justice Taney rendered property rulings.

Outside of federal supremacy law, other protections were equally disallowed from the nation’s newest citizens and inhabitants. For example, following California’s statehood, early state law decisions clarified the legal interests at stake. One of these decisions involved a judicial nomination controversy that

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38. In addition to the Treaty, the United States Constitution offers property ownership a realm of protection against intrusions from state based actions. See, e.g., U.S. Const. amend. XIV.

39. See infra Part II.


45. U.S. Const. amend. XIV. The Fourteenth Amendment would have added to the purported realm of legal protections the Treaty promised the Mexican citizens.

46. See, e.g., MALCOLM EBRIGHT, LAND GRANTS AND LAWSUITS IN NORTHERN NEW MEXICO (1994) (asserting during the Treaty’s ratification, removal of Article X reflected congressional intent to evade favorable precedent from the earlier land pact cases in the Florida region).

47. People v. De La Guerra, 40 Cal. 311 (1870).
challenged a former Mexican nominee’s judicial seat. Yet within the study of law and legal historical investigations, a legal amnesia frames the cause and the impact of colonialism on the nature of citizenship and property ownership of former Mexican citizens, their children, and their children’s heirs. This amnesia conceals the legal maneuvering that expedited the specifics of property losses in the conquered territories. In the aggregate, the vast body of land grant jurisprudence and colonial dispossession of property interests remains unchallenged. This status within law thereby obscures the accountability that their heirs and the activists of the present seek.

Contrasting with this legal framework, historians provide additional facts on the property losses of this period. They assert that the alleged substantive differences between the common law of Anglo-American law and the civil law of Mexico caused the property losses. Other historians emphasize an additional theory that charges a realm of procedural differences between the common law and the civil law of Mexico divested property ownership rights. Finally, a last theory highlights the purported cultural differences between the two Republics as the basis of dispossession.

The above theories, as well as others that join property losses to the jurisprudence of land grant law, leaves unchallenged the limitations of legal formalism. As applied in the Mexican land adjudication, legal formalism, as set forth below, did not contemplate the specificity or doctrines required in proving property ownership. At times, courts misapplied the purported legal tests that ranged from federal supremacy to legal antecedents. This absence obligates drawing from archival research, interdisciplinary theories, and from the diaries of those detrimentally impacted to excavate and complete the legal framework of disenfranchisement. In short, the broader based evidence from external sources in which land claimants defended their interests reveals an alternative emphasis that should be accessed by those studying the intersection between colonial theories and corresponding impact on racialized minority groups. This broader based approach with a concrete focus on colonial theory permits an alternative interpretation when the jurisprudence of land adjudication is examined.

48. Id.
52. Compare Report of the U.S. Industrial Commission on Agriculture and Agricultural Labor, H.R. Doc. No. 57-1, at 951-952 (1901) (testimony of A.H. Naftzger, President and General Manager of Southern California Fruit Exchange), with Luco v. United States, 64 U.S. 515, 524 (1859) ("The influx of American settlers had, from the year 1849, given great value to these lands . . . ."). Historical texts prove otherwise as to the industry of Mexican property holders and their land use practices. The deficiency of cultural biases is thus underscored when considered against the backdrop of colonial theory.
53. The recording deeds (espedientes) and other documents that survived the war are scattered throughout the national archives in Washington, D.C. and Maryland but the Bancroft Library also retains innumerable holdings from the Mexican era. See, e.g., ANTONIO MARIA OSIO, THE HISTORY OF ALTA CALIFORNIA: A MEMOIR OF MEXICAN CALIFORNIA (Rose Marie Beebe & Robert M. Senkewicz trans., eds, & anne., 1996).
B. Structuring Legal Hierarchies

After substantively and unilaterally changing the Treaty's intent with the removal of Article X, the United States Congress adopted the California Land Claims Act of 1851 ("CLCA"). The CLCA directly challenged the holders of formerly held Mexican property by requiring proof of clear title of ownership. In addition, other land claim commissions and procedures emerged following the statehood of adjoining territories.54

In general, the CLCA required a Board of Commissioners and courts to consider and apply "the law of nations, the laws, usages and customs of the Government from which the claim is derived, the principles of equity, and (prior) decisions."55 The composition of the Board of Commissioners, however, shifted periodically with concurring changes and additions of new commissioners, which depended on the politics of the time. The broad scope of differing commissioners in charge of clearing title moreover imposed differing evidentiary levels on interest holders. All property holders nonetheless had to demonstrate the validity of their interests through hearings before the commissioners. The process, in bringing forth additional legal hurdles, elevated the distrust of former property holders and yielded the Treaty's legacy to generations of criticism over property dispossession.

Further tainting the requisite fairness and obligations of protecting property interests, as set forth in the Constitution and other federal doctrines included the involvement of numerous United States attorney generals. The attorney generals brought challenges on behalf of a signatory in charge with protecting the property interests of their Mexican holders. One attorney general translated the laws of Mexico as required under the CLCA but omitted the procedural technicalities that would have expedited proof of ownership.56 This omission advanced the dispossession of property holders.

Other legal barriers that fostered the distrust of critics included the fact that title documents were often lost. Mexico employed archives for property holders recording documents but these archives were vulnerable to seizure by United States operatives. This encompassed the circumstances in which United States officials and military officers removed recording documents from the archives following the arrest of individuals in charge of the documents. For example, one decision reports that government officers had accidentally lost the recording deeds that otherwise would have proven the validity of property interests.57 Without deeds or other recorded title documents, property holders eventually yielded their interests to the shifting evidentiary standards that various federal courts required.58 While this was directly related to the high number of attorney generals prosecuting the cases, the instances of

56. MALCOLM EBRIGHT, LAND GRANTS AND LAWSUITS IN NORTHERN NEW MEXICO 19 (1994). Ebright illustrates how the U.S. Supreme Court relied on a mistranslated text that disallowed grantees the legal presumptions recognized under Mexican law. The text conflicted with CLCA provisions that required title determination analysis to follow Mexican law.
57. United States v. Bale, 24 F. Cas. 968 (N.D. Cal. 1855) (No 14,504).
58. Compare the burden of proof required of the plaintiffs in Peralta v. United States, 70 U.S. (3Wall.) 434 (1865) with the plaintiff in Fremont v. United States, 58 U.S. (17 How.) 542, 564-65 (1854).
shifting evidentiary demands also resulted from the inaccurate translation of Mexican land grant laws.\(^5\)

Before their ultimate losses, property holders also had a difficult time proving their property interests because their legal documents were destroyed in natural disasters that occurred immediately before their hearings. The destruction of numerous recording deeds and other documents that would have protected their interests muddled their ownership status and defeated their claims of ownership.\(^6\)

While the aggregate of these legal hurdles negated the Treaty's intent, a further particular legal setting produced even more harm that stemmed from federal courts disregarding title based on the custom and usage of Mexican land ownership. Specifically, the custom and usage of property transactions in Mexican law permitted individuals or communities to reside on a requested tract upon completion of several conditions subsequent, such as building roads and pursuing agricultural enterprises.\(^6\) Mexico permitted this form of acquiring property in proper circumstances when the exact requirements of land acts were difficult to process. This included for example, instances in which recording documents failed to reach the Mexican interior in a timely manner due to the long distances involved.\(^6\) The war, moreover, prevented many property holders from completing the Mexican land grant procedures which would have otherwise satisfied Mexican law. Accordingly, this cluster of ownership interests also yielded to dispossession.

Case law from this period reveals recognition of purported holders of Mexican land notwithstanding the failure to follow the original terms of a grant as required under Mexican law. Purported owners of property claiming ownership ranged from non-Mexicans lacking documents or failing primary evidence of ownership. This involved, for example, not performing all of the conditions attached to the tract as required by Mexican land laws.\(^6\) Further, the CLCA required turning to Mexican law to demonstrate the validity of a title.\(^6\) Yet non-Mexican claimants

\(^5\) The California Land Claims Act provided that "[A] secretary, skilled in the Spanish and English languages, shall be appointed by the said commissioners, whose duty it shall be to act as interpreter." California Land Claims Act, 31 Cong. Ch. 41 § 2, 9 Stat. 631 § 2 (1851). The inaccurate translation of Spanish recording deeds also fostered property losses during the survey phase that the federal law required as a condition in recognizing the validity of a claim. See California Land Claims Act, 31 Cong. Ch. 41 § 13, 9 Stat. 631 § 13 (1851).


\(^6\) Compare Fremont v. United States, 58 U.S. (17 How.) 542, 564-65 (1854) (holding that a condition subsequent prohibiting Alvarado from alienating property to Fremont was not valid as the transaction occurred in California after the conquest and thus was "subject to the authority and dominion of the United States"), with United States v. Ortiz, 176 U.S. 422, 425-26 (1899) (requiring the evidence presented in favor a claim to be "of such persuasiveness and preponderating force"). For an example of Fremont's activities during the Conquest, see Guy J. and Helen S. Giffen, Tracing Fremont's Route with the California Battalion, from San Juan Bautista to Los Angeles November, 1846 to January, 1847, 22 Q. HIST. SOC'Y OF S. CAL. 4 (1940).

\(^6\) See California Land Claims Act, 31 Cong. Ch. 41, § 8, 9 Stat. 631, § 8 (1851) (requiring each and every person claiming lands in California to present documentary and fulfillment of conditions subsequent that would have allowed clear title). Cf. United States v. Cambuston, 25 F. Cas. 266, 267 (D.C. Cal. 1859) (Fremont took possession of archival recording documents "removed several" and thereafter they "were lost in the mountains").
succeeded in obtaining clear title from the United States Supreme Court. The weak claims further established as precedent the standards for subsequent land grant adjudications. As Justice Catron noted in his dissent, the Court was called to yield property of inestimable worth to the claimant, "[the original grantee] never was a colonist... never did a single act under his contract to colonize and... could not have obtained a definite title from... the departmental assembly."

In contrast, where Mexican property holders had followed Mexican colonization law and obtained clear title and where their tracts of property were held in ownership for generations that preceded the war, they nonetheless lost their claims to United States based challenges. Further stringent and vacillating standards of proof of ownership imposed on Mexican holders also influenced dispossession law.

Mexican landowners who had successfully demonstrated a property interest in fee simple status also confronted legal obstructions. For example, the CLCA did not permit res judicata effect. This clause further expedited challenges even years after former property holders' demonstrated proof of their ownership interest. In other instances, until the practice was stopped, a payment of a $1,000 bond permitted anyone to challenge claims under the name of the United States even where the nation lacked a legal interest in the tract. Thus, through the CLCA arbitrary, capricious and ambiguous challenges accelerated forfeitures of property ownership.

Property interests also fell to the misinterpretation of recording documents written in Spanish. In additional instances the United States questioned the legal standing of government officials who had signed the recording documents of the petitioners. Other interests were lost to charges of fraud, land rings, or the actions of attorneys who filed partition actions in payment for defending interests.

Women also experienced difficulties facing the gendered biased common law or capricious charges alleging fraud. In contrast with Anglo-American law, women in former Mexican territories could hold property independent of male relationships, such as Maria Concepción Valencia de Rodriguez, the owner of Rancho San Francisquito established in California in 1839. Although succeeding initially in defending her


66. Not even the privileged class background of some holders protected them from U.S. challenges. See for example, United States v. Peralta, 70 U.S. (3 Wall.) 434 (1865), and compare it with the "reputation" that protected the interest in United States v. Hancock, 30 F. 851, 858 (N.D. Cal. 1887).

67. See generally United States v. De Rodriguez, 25 F. Cas. 821 (N.D. Cal. 1864) (confirmed grant with a confirmed survey nonetheless challenged as to the validity of the holder's interest).

68. Id.


70. California Land Claims Act, 31 Cong. Ch. 41, § 15, 9 Stat. 631, § 15 (providing right of action for third parties). See also United States v. Garcia, 25 F. Cas. 1242, 1243 (D. Cal. 1870) (motion to set aside order confirming grant); United States v. Bernal, 24 F. Cas. 1123, 1129 (N.D. Cal. 1855) (appellant's resistance of the confirmation of the claim as a "supposition involving such a series of impossible or improbable crimes" and affirmed the respondents' claim to the land).

71. The title of records that included the petitions and deeds of property holders were collected into one package and were identified as the expediente or expediente. For case law discussions of expedientes; see for example Romero v. United States, 68 U.S. (1 Wall.) 721 (1865); United States v. Guerrero, 26 F. Cas. 52 (N.D. Cal. 1855) and State v. Balli, 190 S.W.2d 71, 73 (Tex. 1944).

72. During the land claim process attorneys financially benefited whether in the defense of Mexican litigants or in forming land rings that targeted land grant tracts. See, e.g., MALCOM EBRIGHT, TIERRA AMARILLA GRANT, A HISTORY OF CHICANERY (1980).

interests, several years later brought forth additional threats of injury to her property rights.\textsuperscript{74}

Without proof of ownership, law enforcement officials ignored pleas for protection of Mexican held property interests. While property holders challenged the CLCA’s demand for absolute proof of ownership, their states did not protect them from the whims of squatters and other third parties.\textsuperscript{75} For example, Mrs. Dominguez, a woman from a long established California family, grappled with squatters during litigation defending her interest.\textsuperscript{76} Ironically, the squatters themselves pressured legislative bodies to protect their interests resulting in what some scholars call squatter sovereignty.

Whatever the intent of the Treaty, irreconcilable law has emerged regarding its interpretation and its application to the jurisprudence of land adjudication law. The ultimate consequences and legal record show that the promises of the Treaty were held hostage to arbitrary and shifting legal norms that frustrated the nation’s common law system and generated criticism from heirs and others throughout the annexed territories.\textsuperscript{77} Thereafter and long into the present, their descendants continue to confront housing discrimination that thwart and conflict with their property ownership.

Throughout the nation’s early history, land ownership brings with it a level of tremendous standing and privilege as characterized by the bundle of sticks common to ownership. Residing on property in rural and urban areas, the legal parity of the full property rights and interests promised in the Treaty with assertions of protecting the interests of their property disappeared in the land adjudication cases.\textsuperscript{78} The varying legal interpretations that betrayed the legal relationship between the Treaty’s promisors and promisees breached federal and state law and causally produced a broad realm of land losses. The vast realm of litigation further illustrates how the shifting standards of proof required of Mexican holders breached

\textsuperscript{74} Seale, 29 Cal. 104.

\textsuperscript{75} The Supremacy Clause obligated federal courts protecting the full realm of Mexican property interests until clear title was established. Nonetheless claim jumpers would illegally occupy the property of another without regard to the interests of the property holders. For a further example of squatter law, see Donald J. Pisani, Squatter Law in California: 1850-1856, 25 W. Hist. Q. 277, 285 (1994).

\textsuperscript{76} Botiller v. Dominguez, 130 U.S. 238, 238 (1889) (identifying individuals residing on Mrs. Dominguez’s tract). See also United States v. San Jacinto Tin Company, 23 F. 279, 295 (C.C.D. Cal. 1885) (“Those familiar with the notorious public history of land titles in this state need not be told that our people coming from the states east of the Rocky mountains very generally denied the validity of Spanish grants . . . .”).

\textsuperscript{77} See, e.g., Christian G. Fritz, Politics and the Courts: The Struggle Over Land in San Francisco: 1846-1866, 26 Santa Clara L. Rev. 127, 135-37 (1986); Pisani, supra note 75, at 282-85 (discussing how squatters used “time-worn principles [such as popular sovereignty, preemption, and equal access to wealth to justify their actions] and how several state legislatures and politicians promoted squatter interests); San Jacinto Tin Company, 23 F. at 295-96 (“[T]hese reckless charges by disappointed trespassing and opposing claimants, in many instances . . . involved the officers of the government, as well as the claimants under the grant.”).


\textsuperscript{79} The assertions of federal officials during the Treaty’s ratification emphasized that the full realm of American law would protect their interests. See, e.g., Treaty Documents, supra note 9, at 253-57.
the legal formalism that constitutionally protected property rights and thereby rendered this early legal history suspect. In turn, authoritative precedent holding that treaties were to be read in their entirety did not apply to Mexican holders and their interests. These consequences in sum structured Mexican property holders and their heirs as outsiders to the American legal system, diminished their status as citizens, and sacrificed basic principles of law. In exchange, privilege accrued to those displacing former Mexican citizens of their property interests and continues into the present.

To the detriment of former Mexican citizens, the invisibility of federal supremacy re-emerges with additional property and housing challenges confronting the nation’s citizens and immigrants of Mexican descent. In a similar vein, state officials are breaching federal control of immigration control in regulations that seek the removal of Latinas/os from their housing in varied local communities across the nation.

PART II: “NO KNOCK” EVICTIONS AND ANTI-IMMIGRANT ORDINANCES

Across the nation Latinas/os, whether born in the United States or in foreign locales, are transitioning into vastly new and varied communities. In response to their presence in new geographic regions, they witness aggressive outbreaks of anti-immigrant ordinances that threaten the quiet use and enjoyment of their homes. The ordinances purportedly target the undocumented without regard to their immigrant status, ignore the citizenship status of domestic Latinas/os, or otherwise lawful presence of local residents. These “legal” mechanisms employ broad and vague language, which require landlords and other property holders to engage immigration law with demands to verify a prospective tenants’ legal status.

While the anti-immigration ordinances that target Latinas/os vary across the nation, they impact landlord tenant relationships, extend beyond the scope of federal immigration law by further encroaching on employment law, and limit the use of the Spanish language through proposed English-Only provisions. In
innumerable situations even before the adoption of ordinances such as proposed in Carpentersville, Illinois, extensive ill will and animosity against all individuals of Mexican descent is generated. In sum, the ordinances produce an overwhelming surge of anti-Latinas/o sentiment with housing not only difficult to procure but the ordinances fail in their purported efforts to curtail undocumented entry.

To justify the ordinances and without basis in fact, some local officials allege Latinas/os are the cause of escalating crime rates or that they unduly burden hospital facilities in their local communities. Some local officials have resorted to allegations that the housing in which Latinas/os reside violate health and safety codes. Although the empirical data and evidence does not exist to support such assertions, local municipalities continue to generate extensive animosity against Latinas/os whether citizens or immigrants.

For example, in Farmers Branch, Texas an adopted ordinance and its various changes would have required landlords to verify the legal immigration status of potential tenants. To promote the legal viability of the ordinance, the municipality employed the language of the federal Fair Housing Act (“FHA”). The FHA targets discriminatory housing practices, but the Farmers Branch ordinance extended its reach beyond the FHA. The ordinance as amended, which proved overly restrictive, would have also resulted in discrimination against citizens and subsequently was enjoined pending trial on the merits.

The failure of federal officials to promulgate a national immigration framework breaches the supremacy clause and federal preemption law that governs the nation’s immigration laws. In several instances, overly broad ordinances conflict with longstanding federal immigration law which ignores the inherent

87. The proposed ordinance has generated extensive anti-immigrant rhetoric and is pressuring Latinas/os to leave the community. Ray Quintanilla & Carolyn Starks, Suburb’s Hispanics Feeling Unwelcomed After Election, Chi. Trib., Apr. 21, 2007, at C1; Alex Kotlowitz, Our Town, N.Y. Times, Aug. 5, 2007, at sec. 6 col. 0. While the heart of the community’s anxiety is related to congressional failure to enact immigration legislation, this focus disregards the innumerable taxes the immigrant community brings in whether from salary deductions or the purchase of inter alia cigarettes and gasoline. This misdirected hostility also ignores the complex variations in which a person may be holding an immigrant status.


89. See Puerto Rican Legal Defense Fund Press Release, Hazelton Trial Ends and The Mayor’s Message is Blame the Powerless, Mar. 22, 2006 (trial proving how City through misrepresentation sought to eliminate the Latina/o presence).


92. Compare the ordinance adopted by Farmers Branch, Texas with its demand for proof of citizenship. Ordinance Number 2952, An Ordinance Amending Chapter 26, Businesses Art IV Apartment Complex Rental, Mandating A Citizenship Certification Requirement Pursuant to 24 CFR 5 et seq. (2006). In litigation since this essay was initially written, the Mexican American Legal Defense and Educational Fund (MALDEF) successfully obtained the granting of a preliminary injunction against the ordinance. Attorney fees for plaintiffs could potentially cost the city approximately $924,000 in defending the ordinance. Frank Trejo & Stephanie Sandoval, Illegal Immigration: FB to Stop Defending One Rental Ordinance, City to Concentrate on Newer Measure, Challenge of Legal Bills, Dallas Morning News, Sept. 30, 2008, at B1.

93. Authority over the nation’s immigration schemes over naturalization is vested in Congress. See U.S. Const. art I, § 8, cl 4.
complexities that govern the legal status of individuals.\textsuperscript{94} Yet anti-immigrant ordinances are also faulty in that the municipalities and its supporters presume that the undocumented are beyond the reach of civil rights legislation. In their totality, the anti-immigrant ordinances render imperative immediate federal legislation to address the purported issues that instigate the ordinances.\textsuperscript{95}

For example, a federal district court recently verified the extent to which a local anti-immigrant ordinance violated federal preemption laws.\textsuperscript{96} In this instance, the challenged ordinance also demanded that employers collect identification papers.\textsuperscript{97} The purpose of which was to verify proof of "lawful" immigration status and required the papers to be forwarded to a local code enforcement office.\textsuperscript{98} In yet another example of a local ordinance conflicting with existing federal law,\textsuperscript{99} the court held that the ordinance was irreconcilable with federal preemption law.\textsuperscript{100} Still other legal injuries follow from anti-immigrant ordinances that encompass violations of civil rights legislation, which are applicable without regard to citizenship status.

In addition to conflicts with federal law, overly vague ordinances violate state constitutions\textsuperscript{101} and property and landlord tenant acts, such as the Hazelton, Pennsylvania ordinance or the City of Escobedo, California's ordinance.\textsuperscript{102} State landlord tenant acts as well as innumerable state and local municipal human rights acts protect "all persons" without regard to their "immigration status."\textsuperscript{103} The anti-immigrant ordinances thereby over reach the relationship between municipalities and state law mandates.

In yet another state driven example, local officials employed temporary restraining orders ("TROs") that ejected residents in breach of property and landlord tenant laws.\textsuperscript{104} Ejected during the night and other odd hours under the guise of prosecuting local health and safety codes, Latina/o tenants were barred from gathering their possessions and denied the opportunity to locate alternative

\textsuperscript{94} See, e.g., The Immigration Reform Control Act of 1986, 8 U.S.C. § 1324a(e).
\textsuperscript{95} A renewed federal policy is necessary to allow the free flow of individuals from foreign nations for employment purposes in the U.S. In the present, agricultural exemptions permit the entry for seasonal labor in various rural sectors. A similar set of legislation could expedite the exchange of labor on a broader and national level.
\textsuperscript{96} Lozano v. City of Hazelton, 496 F. Supp. 2d 477, 520 (federal Immigration Reform Control Act "expressly preempts the employment provisions of IIRA"). In its analysis the Court addresses the various tiers of federal preemption law including express, implied and field preemption.
\textsuperscript{97} Id. at 526.
\textsuperscript{98} Id.
\textsuperscript{100} The federal preemption of immigration related offenses also encompasses The Immigration Reform Control Act of 1986 authorizing sanctions against employers hiring undocumented workers underscores the preemption of federal and thus emphasize a municipality's lack of jurisdiction over immigration matters. Lozano v. City of Hazelton, 496 F. Supp. 2d 477 at 519. See also Ken Belson & Jill P. Capuzzo, Towns Rethink Laws Against Illegal Immigrants, N.Y. TIMES, Sept. 26, 2007, at A1.
\textsuperscript{101} See, e.g., ILL. CONST. art. 1, § 17, No Discrimination in Employment and in Sale or Rental of Property (2008) (protecting "all persons").
\textsuperscript{102} For an overview of the numerous ordinances both proposed and adopted, see tables supra note 1. To preclude their implementation the ordinances obligate litigation challenges. See, e.g., Garrett v. City of Escondido, 465 F. Supp. 2d 1043 (S.D. Cal. 2006). For a concrete example of federal preemption, see Lozano v. City of Hazelton, 496 F. Supp. 2d 477 (M.D. PA. 2007).
\textsuperscript{103} See, e.g., Illinois Human Rights Act, 775 ILCS § 5/1-102 (2008) (providing inter alia "freedom from unlawful discrimination because of... national origin... ").
\textsuperscript{104} See, e.g., Valdez v. Town of Brookhaven, 2005 U.S. Dist. LEXIS 36713 (E.D.N.Y. 2005).
housing. Without notice to landlords, the TROs and housing searches directly breach the requirements under statutory provisions that require providing notice to property holders. The TROs are further difficult to reconcile with the procedural process employed in health and safety code violations absent emergency situations.

The above ordinances are fundamentally difficult to reconcile moreover with longstanding property and landlord tenant laws that protect a holder’s interest. Requiring landlords to demand and inspect proof of eligibility in the United States is beyond the scope of property law involving tenancies. Latinas/os confrontations with housing raids at obscenely early hours amid accusations of overcrowding violate the privacy interests of tenants and residents and search and seizure law.

In yet other communities such as in Elgin, Illinois, local housing inspection ordinances disproportionately affect Latinas/os compared to non-Latinas/os where the ordinance confronts excessive housing inspections with over-occupancy violations. Until federal officials stopped this form of disparate treatment in Elgin, local Latina/o residents who were both citizens and immigrants confronted no knock inspections that mimicked drug searches. In one instance, upon allegations from housing inspectors that a violation had occurred, the tenants were ejected during the late night hours without reconciling a state’s dispossession law. The inspections are difficult to reconcile with typical rights of property owners and tenants, as evidenced by the widely recognized bundle of sticks characterization accruing landownership.

Further consideration of the rights of residents includes the vast realm of property law and landlord tenant laws that disallow self-help in ejecting tenants. Nonetheless, local officials overreach their authority by employing TRO orders without the due process owed to both tenants and landlords. State law thereby compliments the Fourteenth Amendment template that protects property interest holders against disparate treatment.

In summary, the parallels between the past where federal officials permitted the lapse of constitutional supremacy to lapse to the actions of state actors parallels the present. Presently a failed immigration policy ignores the onslaught of anti-immigrant law, and, thus, is once again allowing federal legal precepts to yield to


108. Fletcher, supra note 107.

109. For a general review of the rights of property holders, see for example HERBERT THORNDIKE TIFFANY, A TREATISE ON THE MODERN LAW OF REAL PROPERTY AND OTHER INTERESTS IN LAND (1903).


state driven actions and in the process violating a broad realm of property interests that divide communities.

CONCLUSION

As in the past when federal officials allowed states to fracture and counter the federal supremacy of the Treaty of Guadalupe Hidalgo and its obligations, federal officials are once again yielding to state driven measures that prove harmful to Latinas/os. Additionally, the past illustrates an instance in time when federal and state laws disenfranchised newly incorporated residents in annexed territories from their property interests.

In sum, the Latinas/os of the present are also negotiating a conflicted legal relationship with federal laws. In witnessing excessive and harm inducing state and local measures, Latinas/os are forced to once again challenge the realm of laws that seek their removal from the United States’ geographical base.112
