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THE FORGING OF CASTILIAN LAW: LAND DISPUTES BEFORE THE ROYAL AUDIENCIA AND THE TRANSMISSION OF A LEGAL TRADITION

JAMES E. DORY-GARDUÑO

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James E. Dory-Garduño

Candidate

History

Department

This dissertation is approved, and it is acceptable in quality and form for publication:

Approved by the Dissertation Committee:

Timothy C. Graham, Chairperson

Michael A. Ryan

Durwood L. Ball

Anthony J. Cárdenas-Rotunno

Charles R. Cutter

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JAMES E. DORY-GARDUÑO

B.A., History with English Minor, University of New Mexico, 2000
M.A., History, Saint Louis University, 2002
Juris Doctor, University of New Mexico, 2009

DISSERTATION

Submitted in Partial Fulfillment of the
Requirements for the Degree of

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May, 2013

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DEDICATION

To Marcella for patience and support

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*Rio Rancho, New Mexico
Spring, 2013*

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ABSTRACT

The study of legal history has attracted scholars who have surveyed legal writings and their development over time as a body of literature. Others have taken this further by analyzing how the principles contained in these legal writings have been applied, by attempting to analyze cases with similar issues, usually in regards to a specific region or jurisdiction. This study combines both approaches by analyzing how Castilian law formed in the eleventh, twelfth, and thirteenth centuries and was applied first through the royal court and then through the *Audiencia Real Castellana* (high tribunal). While there have been studies that analyze Castilian institutions, such as the *curia regis* (royal assembly), the *cortes*, and the *Audiencia*, these focus primarily on the development of the respective institutions with the analysis of legal elements where they contribute to the institution's history. Royal concessions, legislation, and cases have also been studied, but primarily to support the

analysis of the reign of a particular monarch or the history of a specific region or kingdom. This study analyzes how the Castilian royal court and *Audiencia Real Castellana* applied law primarily in deciding land disputes. It draws mainly from unpublished documents in the Archivo de la Real Audiencia y Chancillería in Valladolid, Spain. Other archival sources published and unpublished and secondary sources are analyzed as well. This research also incorporates formal legal analysis of royal concessions, lawsuits, and legislation, and it considers the impact of this legal tradition on the overseas possessions of the Castilian Crown, particularly in New Spain and New Mexico. The investigation focuses on land law, as land tenure on a practical level allowed the sovereigns of Castile to establish jurisdiction in other matters. It also held a central place in a royal policy that enabled the incorporation of enormous amounts of land in the Iberian Peninsula and the Americas by giving generous land grants to subjects of the crown. Territorial jurisdiction had to be established before a criminal case could be heard.

Fernando III, Alfonso X, and Alfonso XI played significant roles in the formation of Castilian law and its dissemination in Castilian Spanish. Alfonso XI's ordering of Castilian law through legislation promulgated at the *cortes* of Alcalá de Henares in 1348 enabled Enrique II to formally establish the Royal *Audiencia* in the *cortes* of Toro of 1371. Land disputes represented a significant number of cases that the court decided. They were critical to the crown's claims of jurisdiction, upon which all other types of cases would then rely. Cases involving title, possession of land, usage rights, frequently adjudicated by the royal court, were now routinely adjudicated by the *Audiencia*. Title to communal lands, such as *ejidos*, *pastos*, and *montes*, were also disputed by villages, towns, and cities. The *Audiencia* consistently applied principles found in *fueros* (charters enumerating specific rights), royal

concessions, and bodies of law such as the *Fuero Juzgo*, *Espéculo de las Leyes*, and the *Siete Partidas*. These principles were transmitted to the New World in concessions and written law through the authority of the Crown of Castile, which, through the Treaty of Tordesillas, claimed exclusive jurisdiction in the lands it claimed in the Americas. The crown established *audiencias* throughout the Americas. Viceroy and governors executed royal concessions to Natives and European settlers in what today is Latin America and also numerous states in the southwestern region of the United States.

The final section of this study examines the province of New Mexico after the Pueblo Revolt of 1680. As all of the records from the Spanish Archives prior to the revolt have been lost or destroyed, an analysis of the documents in the archive after this event will show what legal system, particularly concerning land, Spaniards established. After analysis of documents from the Spanish Archives of New Mexico, Archivo General de la Nación of México, I make comparisons to Castilian land law prior to 1492. These comparisons show similarities in the royal concessions, accompanying documents, adjudications, and terminology that indicate that officials and inhabitants—Native, European, Mixed-Race (*castas*)—followed to a large degree legal precepts established in the thirteenth, fourteenth, and fifteenth centuries. They reflect one legal tradition that followed long established royal policy, one that spans conventional historical periodizations. To understand the controversial adjudications by the United States of Spanish land grants, one must take into account the legal tradition and royal policies of the Crown of Castile before as well as after 1492. This also allows us to better understand the rich history of this lengthy era.

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Chapter One

Introduction

Historiography

By the end of the fifteenth century, the Crown of Castile claimed jurisdiction over an extensive amount of Iberian soil. It accomplished this through the political and geographical expansion known as the *Reconquista*, which culminated with the conquest of Granada in 1492.¹ In the Iberian Peninsula, title to land acquired by conquest or based on other claims of sovereignty vested in the monarch, and it was at the monarch's discretion to bestow it upon whomever he or she wanted.² These claims were broad and had also extended to land claimed by the monarch, but whose possession was not yet obtained. In 1088, for example, Alfonso VI executed a grant in which the grantee, a Castilian knight, would have absolute title to any lands or castles he might conquer from Muslim-held lands in Andalucía.³

¹ On the *Reconquista*, see Joseph F. O'Callaghan, *Reconquest and Crusade in Medieval Spain* (Philadelphia: University of Pennsylvania Press, 2003); Derek W. Lomax, *The Reconquest of Spain* (London: Longman, 1978). On the conquest of Granada, see Jocelyn N. Hillgarth, *The Spanish Kingdoms, 1250-1516*, 2 vols. (Oxford: Oxford University Press, 1978), 2:367-93.

² In 653/4 King Reccesuinth established this plainly in the *Lex Visigothorum (Liber Iudiciorum)* book II, title 1, law v. See *Lex Visigothorum (Liber Iudiciorum)*, ed. Karolus Zeumer, Monumenta Germaniae Historica, Leges Nationvm Germanicarvm, vol. I: *Leges Visigothorum* (Hannover and Leipzig: Hahn, 1902), 33-486 (hereafter *Lex Visigothorum (Liber Iudiciorum)*); for an English translation, though dated, see *The Visigothic Code (Forum Judicum)*, trans. and ed. by S. P. Scott (Boston: Boston Book Company, 1910), who translated the version of the *Lex Visigothorum* known as the *Forum Judicum*; when discussing Zeumer's edition, I will place the number of the law from the *Forum Judicum*, if different, in parenthesis. The *Forum Judicum* was later translated into Castilian and known as the *Fuero Juzgo*, which I discuss below. See also Roger Collins, *Visigothic Spain*, 409-711 (Malden, MA: Blackwell, 2004), 90, who notes that Reccesuinth identified two types of royal property: property belonging to the king for his administration and royal property belonging to individuals within the royal family. He suggests that King Reccesuinth as a matter of policy restrained himself from granting land from the former to the royal family without the consent of his court. Later Christian kings—in addition to recognizing the continued authority of the *Leges Visigothorum*—reinforced this through their actions and through written law found in later legal writings such as the *Siete Partidas*. See below.

³ See the *Historia Roderici* in *Historia Latina de Rodrigo Díaz de Vivar: edición facsimile del manuscrito 9/4922 (olim A-189)*, ed. Gonzalo Martínez Díez, José Manuel Ruiz Asencio, and Irene Ruiz Albi (Burgos: Amabar, 1999), 64 (chapter 26); also see f. 79v: “Insuper autem talem dedit absolutionem et concessionem in suo regno sigillo scriptam et confirmatam, quod omnem terram uel castella, que ipsemet posset acquirere a sarracenis in terra sarracenorum iure hereditario prorsus essent sua, non solum sua uerum etiam filiorum suorum et filiarum suarum et tocuis sue generationis” (Moreover, he gave such an acquittal and such a concession in his kingdom written and confirmed with his seal, that all land or castles, which he might be able

Whatever land that this knight captured and held would pass to his heirs and to their heirs.⁴

Six years later, this knight, Rodrigo Díaz de Vivar *El Cid Campeador*, captured the city of

Valencia and several other villages, which his wife Jimena inherited at his death in 1099.⁵

By the mid-thirteenth century, numerous grants of land had been made in the kingdom of

Castile not only to Christians, but as one scholar has noted, to Muslim and Jewish subjects of

the Castilian monarchs as well.⁶ In addition to individuals receiving land, settlements

spontaneously emerged and municipalities were established along the shifting frontiers that

separated Christian and Muslim Spain.⁷ These entities religious and secular received royal

grants and charters known as *fueros*, which in various degrees listed their rights, boundaries

to acquire from the Saracens in the land of the Saracens, should be his absolutely by right of inheritance, and indeed not only his but also his sons' and his daughters' and all of his heirs' [unless otherwise noted, all translations have been done by the author]).

⁴ Ibid. Richard Fletcher, while accepting that this description reflected a legitimate grant, suggests this is an example of *presura*. The doctrine of *presura*, however, allowed one to claim title by taking land from an enemy or by occupying land whose ownership was uncertain for a certain period of time. It was not an action taken after receiving a royal concession, but one before having official sanction. As discussed below, this is a straightforward grant from sovereign to subject. For Fletcher's analysis of Alfonso's grant to *El Cid*, see Simon Barton and Richard Fletcher, trans., *The World of the Cid: Chronicles of the Spanish Reconquest* (Manchester: Manchester University Press, 2000), 113, n. 50.

⁵ Jimena held Valencia until 1102, but abandoned it when Alfonso VI determined it was no longer feasible to defend. Altogether, this episode shows how broadly Alfonso VI made claims to jurisdiction, asserted rights to grant conquered land, and claimed sovereignty over those lands. For the 1102 abandonment of Valencia, see *Historia Roderici* in *Historia Latina de Rodrigo Díaz de Vivar*, ch. 76.

⁶ See generally Jonathan Ray, *The Sephardic Frontier: The Reconquista and the Jewish Community in Medieval Iberia* (Ithaca: Cornell University Press, 2006).

⁷ See Peter Sahlins, *The Making of France and Spain in the Pyrenees* (Berkeley: University of California Press, 1989), 6, who provides a useful definition of frontier in the eleventh through thirteenth century, stating it was a defensive zone between two enemies—a contested militarized zone, sometimes depopulated, as opposed to boundaries separating two jurisdictions or kingdoms. León established the county of Castile as a march or defensive zone against Islam. Until the conquest of Granada, and even though Nasrid Granada was a vassal to the sovereign of Castile, Castile always had a frontier—albeit shifting—with Islam in which raiding and counter-raiding took place. See the introduction in James F. Powers, trans., *The Code of Cuenca: Municipal Law on the Twelfth-Century Castilian Frontier* (Philadelphia: The University of Pennsylvania Press, 2000), 1-23; José Enrique López de Coca Castañer, "Institutions on the Castilian-Granada Frontier, 1369-1482," in *Medieval Frontier Societies*, ed. Robert Bartlett and Angus MacKay (Oxford: Clarendon Press, 1989), 127-31.

to their settlements, and any other conditions the crown thought relevant to record in writing.⁸

During the eleventh through fifteenth centuries, Castilian monarchs, who conceded land at their discretion, also had the responsibility of adjudicating the ensuing disputes concerning ownership, boundaries, and other questions involving land tenure. They did so through the *curia regis* (the royal assembly) and then through a specialized judiciary that evolved out of the royal court.⁹ This judiciary eventually had at its top an *Audiencia*—an institution that developed out of the *audiencias públicas* that Castilian monarchs periodically held.¹⁰ By the end of the fourteenth century, the *Audiencia* functioned as a court of appeals as well as a court of first instance in certain matters such as the adjudication of royal concessions. As an appeals court, based at the physical site of the *Chancillería*, the *Audiencia* issued written decisions in the form of *sentencias* (judgments) and *cartas ejecutorias*. The *carta ejecutoria*, literally an enforceable charter as it guaranteed the rights of the litigants, contains the *sentencia definitiva*, and as such it represented the final judgement in a case.¹¹ This absolved or condemned the defendant in a suit. The *carta*

⁸ E.g., for a royal concession to a religious order, see the Capilla Fortress Grant (Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars), Toledo, 9 September 1236, in Julio González, *Reinado y diplomas de Fernando III*, 3 vols. (Córdoba: Monte de Piedad y Caja de Ahorros, 1986), 3:93-95; for a *fuero* confirmed to a municipality on the Christian-Muslim frontier, see James F. Powers' introduction in *The Code of Cuenca*, 1-23.

The *villa* of Valladolid (*ciudad* after 1596) provides a good example of a settlement whose origins relied on spontaneous settlement rather than any royal conveyance.

⁹ See Joseph F. O'Callaghan, *The Cortes of Castile-León, 1188-1350* (Philadelphia: University of Pennsylvania Press, 1989), 12-13. For an example of royal officials acting as judges, see Confirmation of Sentence, Fernando III, Burgos, 11 June 1220 in Evelyn Proctor, *Curia and Cortes in León and Castile, 1072-1295* (Cambridge: Cambridge University Press, 1980), 268-9.

¹⁰ On the *curia regis*, see Proctor, *Curia and Cortes*; on the *audiencias públicas*, see Carlos Garriga, *La Audiencia y las Chancillerías Castellanas, 1371-1525*, Historia Política, Régimen Jurídico y Práctica Institucional (Madrid: Centro de Estudios Constitucionales, 1994), 48.

¹¹ For an overview of the diplomatic components of the *carta ejecutoria*, see María Antonia Varona García, "Cartas ejecutorias. Aportación a la Diplomática judicial," *Estudis Castellonencs* 6 (1994-95): 1445-53; for the origins of the *carta ejecutoria*, see Elisa Ruiz García, "La Carta Ejecutoria de Hidalguía," *En la España medieval*, No. Extra 1 (2006): 251-276, in particular 258-9.

ejecutoria also summarizes the procedural posture of the case, the main arguments that the litigants sought to prove, and whether it was decided on appeal.¹² Decisions in civil suits, including those made earlier by the *curia regis*, contain the legal principles that the Castilian judiciary applied to decide conflicts concerning how individuals, villages, towns, and cities held title to land.

Until now, scholars have largely written institutional studies on the Castilian *curia regis* and *Audiencia*. These have focused on the origins and function of the *curia regis* and its successor the *cortes* (legislative assemblies). This royal assembly has attracted the attention of scholars attempting to identify the roots of western European legislative assemblies. The assemblies of Castile-León have been the subject of several histories as Iberian assemblies have an early date for the attendance of nobility, clergy, and representatives from towns.¹³ Vladimir Piskorski's *Las Cortes de Castilla en el período de tránsito de la edad media a la moderna 1188-1520*; Evelyn Proctor's *Curia and Cortes in León and Castile, 1072-1295*; and Joseph O'Callaghan's *The Cortes of Castile-León, 1188-1350* all investigate the early parliaments of León and Castile.¹⁴ They discuss the *cortes'* role in raising revenue, influencing royal administration, and creating legislation. They also emphasize the uniqueness of these assemblies. The royal assembly's function in adjudicating disputes is only touched upon sparingly or where it was a matter before the royal court.

¹² Varona García, "Cartas ejecutorias. Aportación a la Diplomática judicial," 1450-51.

¹³ O'Callaghan, *The Cortes of Castile-León*, 1-11.

¹⁴ Vladimir Piskorski, *Las Cortes de Castilla en el período de tránsito de la edad media a la moderna 1188-1520*, trans. Claudio Sánchez-Albornoz (1930; repr., Barcelona: El Albir, 1977), 187; Proctor, *Curia and Cortes*; O'Callaghan, *The Cortes of Castile-León*. O'Callaghan emphasizes that what contributed to the necessity of the *cortes* were the matters of defense against the Muslim kingdoms of Spain. The king naturally had to work with the three estates to secure not only his own position, but the security of his kingdom as well. Townsmen, because of this situation, were given generous concessions, since they represented the militias of resettled towns and provinces. Grievances between townsmen and king were also settled in the *cortes*.

Their analysis of the individual meetings of the *curia regis*, however, provides evidence of the reforming efforts that contributed to the establishment of a professional judiciary.

Evelyn Proctor's *Curia and Cortes in León and Castile* includes analysis of the judicial role of the *curia regis*, which eventually evolved into the *Audiencia*. Proctor traces the origins of a Leonese-Castilian judiciary to the eleventh and twelfth centuries, when the *curia* served as a court of first instance and appellate court.¹⁵ It heard appeals concerning various disputes from lower decisions issued from *alcaldes* serving municipalities or seigniorial jurisdictions throughout the realm; claimants involved in land disputes presented their initial petitions before the royal court.¹⁶ During this time, the number of officials with training in the law increased within the *curia*, which is indicated by the presence of permanent judges, assessors, and legal advisors. Drawing from eleventh- through thirteenth-century charters, Proctor discusses these suits, incorporating into her analysis an elaboration on various forms of common lands—*ejidos* (multipurpose commons), *dehesas* (enclosed commons), *pastos* (common grazing lands), and *montes* (mountainous land containing common woodlands). These were all essential to the economic viability of villages, towns, and cities as well as individuals, military orders, and the church.¹⁷ Some of these lands may have been claimed by villages or municipalities over time under various theories of ownership, such as possession since time immemorial; in other instances, the crown or a lord may have granted them to a corporate entity, religious or secular.¹⁸ Thus, the disputes could be not only contentious, but also complex due to various claims to ownership.

¹⁵ Proctor, *Curia and Cortes*, 67.

¹⁶ *Ibid.*, 62-69.

¹⁷ *Ibid.*, 91.

¹⁸ For an example of a case with a time immemorial claim, see *Compana de Albalá v. Villa de Almaraz*, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1, rollo 2, fol. 107r; for a grant from the sovereign to a religious order, see the Capilla Fortress Grant

In discussing these disputes, Proctor provides preliminary detail to demonstrate the types of cases that the royal court adjudicated. For example, she discusses who the claimants were on each side and identifies the suit as one involving land. How specific legal rules were applied or how various legal principles were understood was beyond the scope of her investigations. Similarly, in her *The Judicial Use of 'Pesquisa' (Inquisition) in Leon and Castile, 1157-1369*, she studied cases primarily to identify when a *pesquisa* (inquest or inquisition) was used to settle a case or a dispute.¹⁹ Though she does not provide a comprehensive analysis that evaluates the claims of the parties, issues, and evidence employed in each case, Proctor identifies the form of inquiry that characterized the trial. Her analysis of the development of the judicial aspect of the royal court is also helpful in tracing how the royal judiciary became an independent institution on its own, ultimately in the form of the *Audiencia*.

The offices of the royal ministers who served the Castilian Crown that Proctor touches on have also been the subject of institutional histories. Luis Vicente Díaz Martín in *Los oficiales de Pedro I de Castilla* provides an evaluation of these positions.²⁰ He roots his investigations in the reign of Alfonso XI (1312-50), which chronologically continues one reign from where Proctor concludes her research in *Curia and Cortes in León and Castile*. Díaz Martín dates the existence of an informal *audiencia* within Alfonso XI's reign.²¹ By the time that Pedro I succeeded Alfonso XI, several judicial officers had defined roles. The *oidores* were royal councilors as well as judges and served in the *Audiencia*; the *alcaldes*

(Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95.

¹⁹ Evelyn S. Proctor, *The Judicial Use of 'Pesquisa' (Inquisition) in Leon and Castile, 1157-1369* (London: Longmans, 1966).

²⁰ Luis Vicente Díaz Martín, *Los oficiales de Pedro I de Castilla* (Valladolid: Universidad de Valladolid, 1975).

²¹ *Ibid.*, 92.

were judges with a narrower judicial role in the royal administration. In general, they heard criminal cases. While Díaz Martín examines numerous royal officials, he provides mostly descriptive information on the functions of specific ministers based on cartulary references. Still, this sketch shows that numerous officials served the Crown of Castile, including various judges with specialized training and specialized duties. The offices that many of these ministers worked in eventually became the component parts of the *Audiencia*, which Enrique II (r. 1367, 1369-79) formally established in 1371. This dissertation, through the analysis of cases heard before the royal court, will build on the works of Proctor and Díaz in tracing the evolution of the Castilian judiciary.

The *Audiencia Real Castellana* of Enrique II has also been the subject of institutional studies among which several works stand out. María Antonia Varona García's *La Chancillería de Valladolid en el reinado de los Reyes Católicos* investigates the administrative changes that occurred under Fernando of Aragon (r. 1479-1516) and Isabel I of Castile (r. 1474-1504), *Los Reyes Católicos*.²² Varona García argues that the *Audiencia* was not a function or extension of royal will, but functioned as an independent institution.²³ Originally, it included a *president*, who served as the executive over seven *oidores* (a number that *Los Reyes Católicos* eventually increased to eight).²⁴ Three of these were prelates and four were laymen. The *presidente* was usually a bishop or archbishop. On the *competencia* or subject matter jurisdiction of the *Audiencia*, Varona García qualifies the notion that the

²² María Antonia Varona García, *La Chancillería de Valladolid en el reinado de los Reyes Católicos* (Valladolid: Universidad de Valladolid, 1981).

²³ Varona García, *La Chancillería de Valladolid*, 13.

²⁴ *Ibid.*, 112.

Audiencia was designed to hear only civil cases; instead, she argues that it was originally commissioned to hear all the cases that would have come before the king at the royal court.²⁵

Incidentally, these were mainly civil cases, but they may have included violence, such as the suit between Doña Catalina Ruiz who sued the Ulloa family for dispossessing her of the village of Herreros.²⁶ In 1485, the Ulloas physically threw Doña Catalina and her son beyond the gates of the village. That on its own would have resulted in the case being heard by the *alcaldes del crimen*, but since title to the village was at issue it came before the *Audiencia*, which decided the case in 1486.²⁷ Originally the *Audiencia* had broad territorial jurisdiction. Prior to the establishment of an additional *Audiencia* at Ciudad Real in 1494, the jurisdiction of the *Audiencia* at Valladolid was the entire kingdom of Castile.²⁸ By then, this included León, united with Castile in 1230, and the other kingdoms appended to the Crown of Castile.²⁹

Carlos Garriga's *La Audiencia y las Chancillerías Castellanas, 1371-1525* provides a broader chronological approach to the institution with analysis before and after the reign of Fernando and Isabel.³⁰ Though Garriga's study overlaps Varona García's investigations, he emphasizes the constitutional position of the *Audiencia* within the royal administration. More so than Varona García, he analyzes the legal aspects of the institution, discussing particularly the role of the *Audiencia* in contrast to the *cortes* and the Council of Castile. Garriga explains that the *Audiencia* developed out of the *audiencias públicas* that monarchs

²⁵ Ibid., 117.

²⁶ Ruiz de Las Puertas v. Ulloa, *Carta de Ejecutoria*, Valladolid, 1 January 1486, ARCV, Registro de Ejecutorias, Caja 1, 11.

²⁷ Ibid.

²⁸ Varona García, *La Chancillería de Valladolid*, 120.

²⁹ See Joseph O'Callaghan, *A History of Medieval Spain* (Ithaca: Cornell University Press, 1975), 340; Gonzalo Martínez Díez, *Fernando III, 1217-1252* (Palencia: Editorial La Olmeda, 2003), 110-13.

³⁰ Garriga, *La Audiencia y las Chancillerías Castellanas*.

traditionally utilized to hear complaints from their subjects.³¹ The *Audiencia* originally was not established as a supreme court charged with applying the latest legal rules, but as a tribunal that in place of the king—the supreme judge of the realm—heard grievances and served as a court of last resort. Only after Enrique II formally established the court in 1371, he argues, did it develop into something of an independent court. This echoes Varona García’s assertions in viewing the institution from the reign of the *Reyes Católicos*.³²

Garriga then discusses the introduction of the Council of Castile by Juan I (r. 1379-90) in 1380. He contrasts this with the establishment of the *Audiencia*. While the *Audiencia* reflected an increase in royal authority, the Council of Castile indicated a decrease, since it allowed members of the nobility, clergy, and representatives of towns to participate in shaping royal policy.³³ This placed the council between the king and *Audiencia*. Garriga also discusses the actions of *Los Reyes Católicos*, who sought the “reformation and restoration” of the *Audiencia* and *Chancillería*.³⁴ This included confirmation of the laws that their predecessors had confirmed to the *Chancillería*. They also sought to expedite lawsuits through these reforms.³⁵ *Los Reyes Católicos* clarified the distinction between the Council of Castile and the *Audiencia* as well. In short, while they both had the same jurisdiction, the Council heard cases that were exceptional in some way.³⁶

Still broader in chronological terms is María de la Soterraña Martín Postigo’s *Historia del Archivo de la Real Chancillería de Valladolid*.³⁷ As indicated in her title, Martín Postigo’s primary concern is the development of the physical archive at the *Chancillería* in

³¹ Ibid., 48.

³² Ibid., 57-8.

³³ Ibid., 94.

³⁴ Ibid., 134.

³⁵ Ibid.

³⁶ Ibid.

³⁷ María de la Soterraña Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid* (Valladolid: Librería Clares, 1979).

Valladolid, Spain. Though an archive existed at the *Chancillería*, it was not formally instituted until the seventeenth century. In addition to an outline of the institution's history, Martín Postigo surveys its archival contents and provides transcriptions of relevant documents concerning its founding. While this covers its extensive holdings, Martín Postigo distinguishes the civil and criminal holdings. The *pleitos civiles* (civil suits) collection has thousands of documents from the late fifteenth century; the *pergaminos* (parchment) section has thousands from the eleventh to the sixteenth century. This study draws from the analysis of some of these unpublished documents from the *Audiencia's* archive. In 1494, the Castilian Crown established an additional *Audiencia* at Ciudad Real, which the crown transferred to a second *Chancillería* based in Granada in 1505.³⁸ After 1492, the Crown of Castile then established nine *Audiencias* in the Americas by the end of the 1500s.³⁹ Although circumstances dictated whether the new *Audiencia* would be based at a *Chancillería*, the original *Audiencia* at Valladolid represented the model on which the later *Audiencias*—all established after 1492—were based.

These institutional studies of the *Audiencia* constitute valuable sources for the institution's history, but they are not legal histories that analyze specific cases. In utilizing these investigations, this dissertation places the analysis of the legal reasoning of those who litigated before the *Audiencia* and the analysis of the logic embedded in the decisions of the

³⁸ Santos Manuel Coronas González, "La Audiencia y Chancillería de Ciudad Real (1494-1505)," *Cuadernos de estudios manchegos* 11 (1981): 47-139; J. H. Elliott, *Imperial Spain, 1469-1716* (New York: St. Martin's Press, 1963; repr., London: Penguin, 1990), 97. Fernando el Católico founded an *Audiencia* at Santo Domingo (*Hispaniola*) in 1511 and Carlos I (r. 1516-56) established the first mainland *Audiencia* at Mexico City in 1527. See Henry Kamen, *Empire: How Spain became a World Power, 1492-1763* (New York: Harper Collins, 2003), 142.

³⁹ Rosine Letinier, "Origen y evolución de las audiencias en la Corona de Castilla," *Revista Jurídica de Castilla y León* 12 (2007): 237; see also Mark A. Burkholder and D. S. Chandler, *From Impotence to Authority: The Spanish Crown and the American Audiencia, 1667-1808* (Columbia: University of Missouri Press, 1977). Burkholder and Chandler trace the evolution of this system. They argue that from 1750-1808 the *audiencias* essentially allowed for the implementation of royal authority, whereas prior to this, the system ineffectually administered justice. While Burkholder and Chandler focus on the end of the seventeenth century and the eighteenth century, they provide a bare sketch of the early system that began at Santo Domingo in 1511.

oidores more precisely within its historical context. This analysis then compares and contrasts that reasoning to that used to settle land disputes in the New World, particularly in litigation involving land in New Spain and New Mexico. In spanning the medieval-modern periodization and the Old World-New World divide, this study follows other legal histories.

In *Law and Revolution: The Formation of the Western Legal Tradition*, for example, Harold J. Berman argues that the origins of modern Western law were established during the Papal Revolution in which the papacy rose to the heights of its political power in the eleventh, twelfth, and thirteenth centuries.⁴⁰ The development of canon law in this period represented the first modern legal system.⁴¹ Berman's analysis crosses what historians have conventionally divided into ancient, medieval, and modern time periods.⁴² Rather than adhere to these constructs, he emphasizes commonalities in legal tradition over several centuries. Manlio Bellomo in *The Common Legal Past of Europe, 1000-1800* similarly crosses the conventional periodization paradigm.⁴³ He acknowledges that the various jurisdictions of Europe had their own local law in this period. He argues, however, that the *ius commune* (Roman and canon law) through its "usable concepts, principles, rules, and technical terminology" represented a unifying source of law to Europeans despite local traditions.⁴⁴ He places this commonality within the eleventh and nineteenth centuries. In the *Making of the Civil Law*, Alan Watson also discusses the lasting influence of Roman law in

⁴⁰ Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983).

In a discussion of some 657 pages, he allocates only a handful of pages to the contributions of the kingdoms of the Iberian Peninsula. A renewed appreciation of the *Siete Partidas*, in particular, is indicated in Robert I. Burns' edition of the *Siete Partidas*, which is discussed below and in Chapter Three of this study. See Robert I. Burns, S.J., ed., *Las Siete Partidas*, 5 vols. (Philadelphia: University of Pennsylvania Press, 2001).

⁴¹ Berman, *Law and Revolution*, 520-1.

⁴² See *ibid.*, 42-3, 538-9 for Berman's criticisms of conventional periodizations; for another critique of the problems of periodization, see Howard Kaminsky, "From Lateness to Waning to Crisis: The Burden of the Late Middle Ages," *Journal of Early Modern History* 4 (2000): 85-125.

⁴³ Manlio Bellomo, *The Common Legal Past of Europe: 1000-1800*, Studies in Medieval and Early-Modern Canon Law 4 (Washington, D.C.: Catholic University of America Press, 1995).

⁴⁴ *Ibid.*, xxxiii.

Western Europe and Latin America.⁴⁵ In his collection of essays, he utilizes a broad chronological and geographical scope in his investigations. He also draws from the analysis of cases and legislation that he deems illustrative. This dissertation follows a similar conceptual model by focusing on the legal history of Castile from county to kingdom and from Europe to the Americas; it also draws from legislation, royal concessions, *fueros*, and cases, with a particular focus on the legal reasoning of litigants, their representatives, and the officials who decided the cases.

Understanding the legal reasoning found in the decisions of the royal court and *Audiencia Real Castellana*, nonetheless, requires an analysis of the substantial body of law that Castilians produced prior to 1492. The historiography of this corpus has often been treated in broad surveys of law produced in the various jurisdictions of the Iberian Peninsula. Two monographs that broadly sketch this history are Marie R. Madden's *Political Theory and Law in Medieval Spain* and E. N. Van Kleffens' *Hispanic Law until the End of the Middle Ages*.⁴⁶ In *Political Theory and Law*, Madden discusses the development of the *Lex Visigothorum (Liber Iudiciorum)*, the *Siete Partidas*, the theory of kingship, the *cortes* (legislative assemblies), and the legal standing of municipalities. Van Kleffens also traces the formation of Iberian law, beginning in antiquity and progressing toward a general evaluation of the influence that Hispanic law has had throughout the world. While these studies are broad in scope, detailed issues, such as the development of a specialized judiciary and the study of cases, receive less attention in favor of breadth of coverage. Numerous Spanish legal historians, such as Alfonso García-Gallo and Eduardo de Hinojosa, have produced an

⁴⁵ Alan Watson, *The Making of the Civil Law* (Cambridge, MA: Harvard University Press, 1981).

⁴⁶ Marie R. Madden, *Political Theory and Law in Medieval Spain* (New York: Fordham University Press, 1930; repr., Clark, NJ: Lawbook Exchange Ltd., 2005); E. N. Van Kleffens, *Hispanic Law until the End of the Middle Ages, with a Note on the Continued Validity after the Fifteenth Century of Medieval Hispanic Legislation in Spain, the Americas, Asia, and Africa* (Edinburgh: Edinburgh University Press, 1968).

enormous number of scholarly works.⁴⁷ García-Gallo has also written on topics specific to the peninsula, but also on the law intended for application in the Americas, which is known as *Derecho Indiano*. This dissertation will draw from these sources, but focus more sharply on land tenure and the Crown of Castile.

The thirteenth-century legal writings of Alfonso X have also attracted the attention of numerous scholars, who have provided detailed analysis of the king and his work.⁴⁸ Joseph F. O’Callaghan’s *The Learned King: The Reign of Alfonso X of Castile* discusses the influential reign of Alfonso X, known as the Learned, with discussions of the *Fuero Real*, *Espéculo de las leyes*, and the *Siete Partidas*.⁴⁹ Alfonso X designed these laws to facilitate the organization of the newly reconquered lands of Andalucía and to bring uniformity to the administration of justice in Castile-León. The *Fuero Real*, promulgated in 1254, was a model municipal law code given to specific cities that owed allegiance directly to the king.⁵⁰ It provided royal law that would be common to towns and cities. The *Espéculo de las leyes*, the reflection of the laws, systematized the laws of the royal court and the realm in general. It

⁴⁷ E.g., Alfonso García-Gallo, *Estudios de Historia del Derecho Indiano* (Madrid: Instituto Nacional de Estudios Jurídicos, 1972); Alfonso García-Gallo, *Manual de Historia del Derecho Español*, 2 vols. (Madrid: Instituto Nacional de Estudios Jurídicos, 1964). Eduardo de Hinojosa, *Historia general del Derecho Español*, 2 vols., 2nd ed., (Madrid: Antonio Marzo, 1924).

⁴⁸ E.g., Joseph F. O’Callaghan, *The Learned King: The Reign of Alfonso X of Castile* (Philadelphia: University of Pennsylvania Press, 1993). O’Callaghan, *The Cortes of Castile-León*; Burns, *Las Siete Partidas*; Robert I. Burns, S.J., ed. *Emperor of Culture: Alfonso the Learned of Castile and His Thirteenth-Century Renaissance* (Philadelphia: University of Pennsylvania Press, 1990); and Robert I. Burns, S.J., ed., *The Worlds of Alfonso the Learned and James the Conqueror: Intellect and Force in the Middle Ages* (Princeton: Princeton University Press, 1985).

⁴⁹ O’Callaghan, *The Learned King*. For the *Fuero Real*, see Alfonso X el Sabio, *Fuero Real*, ed. Azucna Palacios Alcaine (Barcelona: Promociones y Publicaciones Universitarias, 1991); *Fuero Real in Leyes de Alfonso X*, vol. 2, ed. Gonzalo Martínez Díez, José Manuel Ruiz Asencio and César Hernández Alonso (Ávila: Catedrático de Historia del Derecho, 1988); on the *Espéculo*, see *Espéculo de las leyes*, in *Los Códigos Españoles: Concordados y Anotados*, 12 vols. (Madrid: Imprenta de la Publicidad, 1847-51): 6:7-209; for the *Siete Partidas*, see *Las siete partidas del muy noble rey Don Alonso el Sabio, por el licenciado Gregorio López de Tovar*, 4 vols. (Madrid, Compañía General de Impresores y Libreros del Reino, 1844). Samuel Parsons Scott’s English translation of 1931 of the *Siete Partidas* is found in Burns, *Las Siete Partidas*. While the recent introductory material is useful, this translation is now dated.

⁵⁰ See Jerry R. Craddock, “The Legislative Works of Alfonso *el Sabio*,” in Burns, *Emperor of Culture*, 182-97, 184.

was also produced in 1254. The *Siete Partidas* or seven divisions of law amplified the *Espéculo*. The *Partidas* have been simplistically described as a restatement of Romanized law, yet their contents also reveal distinctly Castilian influences and influences from the *Lex Visigothorum*. They were of general application, forming a foundation below *fueros* and royal law; Alfonso XI (1312-50) decreed this with the *Ordenamiento de Alcalá de Henares* in 1348 at the *cortes*.⁵¹ Of all of the thirteenth-century legal writings, the *Siete Partidas* have been the most influential in practice in Castile, but also in the Spanish New World possessions.⁵² One historian noted that “of the four principal fields cultivated by Alfonso *el Sabio*—poetry, history, astronomy, and law—it is fair to say that only his contributions to law possess any everyday practical significance outside university departments and other intellectual milieus.”⁵³

Robert I. Burns’ introductions to the *Siete Partidas*—short essays in themselves—provide a much needed analysis of the contents of the *Partidas*. In these introductions, which precede Samuel Parsons Scott’s 1931 translation of the entire *Partidas*, he discusses constitutional authority, jurisprudence, and the application of law while introducing each *Partida*.⁵⁴ His analysis shows how reading this compilation provides valuable insight into thirteenth-century Castile and the worldviews of those who aided Alfonso X in compiling it. He explains that Roman law experienced a renaissance in thirteenth-century Europe and elaborates on the conventional notion that the *Partidas* are an expression of Roman law.⁵⁵

The introductions provide some examples of how the *Partidas* were applied or used as a

⁵¹ O’Callaghan, *The Cortes of Castile-León*, 117.

⁵² Burns, *Las Siete Partidas*, 1:i-xii. The *Recopilación, Libro II, título i, leyes i-ii* state that the laws of Castile should apply where the *Recopilación* is silent. See *Recopilación de Leyes de los Reynos de las Indias*, 4 vols., ed. Juan Manzano Manzano (Madrid: Julián de Paredes, 1681, facsimile reprint, Madrid: Ediciones Cultura Hispánica, 1973) (hereafter *Recopilación (Indias)*).

⁵³ Craddock, “The Legislative Works of Alfonso *el Sabio*,” 182.

⁵⁴ Burns, *Las Siete Partidas*, 1:xii.

⁵⁵ *Ibid.*

body of legal principles, but these are few rather than many. This dissertation therefore approaches the *Siete Partidas* and other legal writings to evaluate how they were applied and how people used the reasoning embedded in them to settle disputes.

The analysis of litigation involving similar issues has allowed for the identification of a consistency in judicial decisions that helps to explain patterns in behavior. In particular, historians focusing on the Crown of Aragon have incorporated into their work the analysis of criminal and civil cases; these studies, however, are not strictly legal histories in that their primary purpose is not to identify rules and principles that form a legal tradition. Yet, in performing their analysis they give an indication of the value of analyzing similar cases to identify these very things. David Nirenberg, in *Communities of Violence: Persecution of Minorities in the Middle Ages*, evaluates how accusations of miscegenation by Christians were used to persecute Muslims and Jews in Christian Aragon.⁵⁶ He argues that they were an effective way to inflict various degrees of harm on the accused. Though he is not interested in summarizing legal rules *per se*, he nonetheless suggests a degree of consistency in the legal process. Brian Catlos' *The Victors and the Vanquished: Christians and Muslims of Catalonia and Aragon, 1050-1300* similarly focuses on acts of violence.⁵⁷ Like Nirenberg, he also analyzes cases involving accusations of miscegenation by Christians, Muslims, and Jews. Catlos has even attempted to look for patterns in the rulings concerning claims of miscegenation, some of which differ from Nirenberg's assumptions.⁵⁸ In his analysis the varying circumstances in each case affected the eventual outcome. This represents something similar to researching how law was applied to unique sets of facts case by case. In

⁵⁶ David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton: Princeton University Press, 1996).

⁵⁷ Brian Catlos, *The Victors and the Vanquished: Christians and Muslims of Catalonia and Aragon, 1050-1300* (Cambridge: Cambridge University Press, 2004).

⁵⁸ See *ibid.*, 309-10, in particular table 2.

focusing on land disputes, this dissertation will more formally analyze cases—i.e., what was the central issue, what did each side argue, and what rules were applied—to discern a consistent body of legal principles, identifying *lex scripta* where it is cited, referenced, followed, or paraphrased.

Similar studies that touch on legal issues exist for medieval and early modern Castile. In *The Sephardic Frontier: The Reconquista and the Jewish Community in Medieval Iberia*, Jonathan Ray examines early Jewish settlements on the frontier following the thirteenth-century conquests of al-Andalus by the Christian kingdoms of Iberia.⁵⁹ Drawing from Castilian and Aragonese archives, he analyses the status of Jews, communal organization, communal tensions, and maintenance of social boundaries. As land became available in the thirteenth century, Jews took advantage of new opportunities. Ray stresses that Jews viewed these new opportunities in a manner similar to Christians, as the chaos of resettlement did not necessarily invoke religious differences.⁶⁰ He presents a more complex and fluid frontier rather than one driven by religious conflict.⁶¹ In *Crisis and Continuity: Land and Town in Late Medieval Castile*, Teófilo F. Ruiz focuses on peasant holdings, movement, land transactions, and economic issues.⁶² While some peasants owed allegiance to lords through the *behetría* system, in which they selected the lord to whom they would become a vassal, many peasants owned land outright and swore allegiance directly to the crown. Following the Christian *reconquista* of large parts of Andalucía from 1212 to 1256, numerous tracts of arable land became available. This attracted a multitude of peasants and non-noble knights who migrated south. Ruiz also provides a case study on village life in Aguilar de Campóo,

⁵⁹ Ray, *The Sephardic Frontier*.

⁶⁰ *Ibid.*, 7.

⁶¹ *Ibid.*, 7, 27-45.

⁶² Teófilo F. Ruiz, *Crisis and Continuity: Land and Town in Late Medieval Castile* (Philadelphia: University of Pennsylvania Press, 1994).

which demonstrates the complexity of land tenure in Castile.⁶³ Ruiz explains the importance of the *fuero*, which was a list of privileges or a charter of laws provided to municipalities.⁶⁴ The generous terms that many *fueros* contained, promoted the settlement and incorporation of land with the jurisdiction of the crown.

Municipal government also added to the complex nature of land holding in Castile-León, as villages, towns, and cities held various types of communal land. In *Del concejo medieval castellano-leonés*, María del Carmen Carlé traces the development of the governing council found in villages, towns, and cities through the eleventh and fourteenth centuries.⁶⁵ She discusses how smaller settlements emerged with a few families near a town, fortress, or a spring in contrast to the larger cities that had already been established or previously existed. Other villages, towns, or cities had an initial royal concession from the sovereign establishing their settlement.⁶⁶ She distinguishes Castilian-Leonese towns from Roman towns by attributing the emergence of the council as needed to protect its economic endeavors, often related to communal lands.⁶⁷ The council represented the leadership and governing body of small settlements, villages, towns and cities. It sought to protect its *términos* (boundaries) and communal spaces—*montes* (woodlands), *prados* (meadows), and *dehesas* (enclosed grazing land). Drawing from *fueros*, Carlé also provides analysis of the *vecino* (citizen) in contrast to the *marador* (inhabitant) and attempts to trace the legal status and origins of the *buenos hombres* (good men) who appear in *fueros* and law suits. While Ray and Ruiz focus mainly on the individual, Carlé provides a comprehensive study of the Castilian-Leonese council and

⁶³ Ibid.,101-39.

⁶⁴ Ibid.,184.

⁶⁵ María del Carmen Carlé, *Del concejo medieval castellano-leonés* (Buenos Aires: Universidad de Buenos Aires, 1968).

⁶⁶ Ibid., 164.

⁶⁷ Ibid., 11-14.

its function. She also poses questions over title and ownership of communal spaces, some of which will be taken up in Chapter Four of this dissertation. She, as have others, speculates that the crown always retained an interest in the commons, but I will argue that the evidence mostly supports the opposite conclusion.⁶⁸ Likewise, in addition to analyzing disputes between individuals of various economic and religious backgrounds, this dissertation also analyzes suits involving villages, towns, and cities in which the councils were parties to the disputes.

For sixteenth-century Castile, several works provide a historiographical foundation chronologically situated where this study will turn to the investigation of the Spanish possessions in Nueva España and Nuevo México. Richard L. Kagan's *Lawsuits and Litigants in Castile, 1500-1700*, for example, examines the litigious nature of Castilian society, but he states that his study is not a legal history *per se*.⁶⁹ Instead, *Lawsuits and Litigants* is a social and political study of Castilians as an overly litigious group. Nonetheless, Kagan's study examines civil and criminal law, providing a glimpse of the workings of the judiciary in Castile. David E. Vassberg's *Land and Society in Golden Age Castile* focuses on various forms of land tenure in the sixteenth century with an emphasis on communal lands.⁷⁰ He describes how villages and municipalities held commons such as *ejidos*, *dehesas*, *montes*, and *pastos*.⁷¹ He argues that in sixteenth-century Castile these types of commons could be

⁶⁸ Ibid., 200-01; see also Richard E. Greenleaf, "Land and Water in Mexico and New Mexico, 1700-1821," *New Mexico Historical Review* 47 (1972): 85, who describes royal concessions as grants of usufruct. Though he goes on to discuss them in terms of ownership, this usage confuses the issue, which I more fully address below; Spaniards also could be confused or attempt to create confusion over this issue. See James E. Dory-Garduño "The Adjudication of the Ojo del Espíritu Santo Grant of 1766 and the *Recopilación*," *New Mexico Historical Review* 87 (2012): 167-208.

⁶⁹ Richard L. Kagan, *Lawsuits and Litigants in Castile, 1500-1700* (Chapel Hill: University of North Carolina Press, 1981); for the admission, see p. xxiii.

⁷⁰ David E. Vassberg, *Land and Society in Golden Age Castile* (New York: Cambridge University Press, 1984).

⁷¹ Ibid., 19-33.

owned by municipalities through royal grants, through claims by the municipalities themselves, or the land could remain in the royal domain.⁷²

In “*By My Absolute Royal Authority*”: *Justice and the Castilian Commonwealth at the Beginning of the First Global Age*, J. B. Owens assesses sixteenth-century Castilian notions of absolute authority through the examination of a single lengthy dispute.⁷³ This case was the high-profile Belalcázar lawsuit involving the city of Toledo and the House of Béjar. The dispute originated in the reign of John II (r. 1406-54) and ended in that of Philip II (r. 1556-98). Rather than providing an examination of the legal merits of each litigant, Owens analyzes the exercise of “absolute royal authority” in what he calls a “microhistory” centered on the suit.⁷⁴ Juan II had granted Puebla de Alcocer, known as Belalcázar, to Gutierre de Sotomayor as a reward for military support and as punishment against Toledo for its role in an insurrection.⁷⁵ Alcocer was allegedly part of Toledo’s *montes*.⁷⁶ A trial ensued between Toledo and the House of Béjar. In 1536, the *Audiencia* of Granada ruled in favor of Toledo, but there was an appeal that focused on the monarch’s authority to make such a grant.⁷⁷ According to Owens, Philip II and the influence of the House of Béjar persuaded the Council of Castile to overrule the *Audiencia*. While some jurists noted that this conflicted with legal principles that stated that the crown should not place its personal interests above those of the commonwealth, others thought Toledo forfeited its rights through the insurrection.⁷⁸ For Owens, this case was indicative of a shift in the understanding of the monarch’s authority in

⁷² Ibid., 19.

⁷³ J. B. Owens, “*By My Absolute Royal Authority*”: *Justice and the Castilian Commonwealth at the Beginning of the First Global Age* (Rochester, NY: University of Rochester Press, 2005).

⁷⁴ Ibid., 2.

⁷⁵ Ibid., 20.

⁷⁶ Ibid., 21.

⁷⁷ Ibid., 143.

⁷⁸ Ibid., 171-3.

Castile, but he otherwise describes a judicial system working with the same understandings of legal principles as in the previous century.

Kagan, Vassberg, and Owens provide ample evidence that the legal tradition concerning land that developed in Castile before 1500 continued into the sixteenth century and later in the Iberian Peninsula. This investigation does not set out to directly challenge or confirm this. However, to what degree this tradition—one with distinct roots prior to 1500 or even 1492—was transmitted to the New World is a question that has not been fully answered. This investigation seeks to answer this question by focusing on land tenure, which provided a fundamental basis for claims to jurisdiction by the Crown of Castile for centuries. Any clarification on the legal principles governing Castilian land law would be highly relevant in places such as New Mexico, where the adjudication of land grants from the Spanish period by the United States remains controversial. Thus, this research will primarily focus on Castilian land disputes and principles to the reign of Isabel I and then consider the transmission of that law to the New World, particularly New Spain.

Methodology and Theory

The preceding historiographical investigation has attempted to articulate the limitations of institutional studies and studies that incorporate a substantial legal discussion, but are not legal histories *per se* yet provide value in other ways. This investigation therefore builds on these studies by incorporating a formal analysis of disputes that also considers what principles were applied in them and from what body of law they came. Formal legal analysis includes a systematic analysis of related cases, their specific issues, the arguments and claims that the advocates put forward, and discerning wherever possible the legal reasoning and

rules that the judges employed in deciding cases. This also incorporates a paleographic and diplomatic analysis of unpublished archival sources.⁷⁹

This investigation draws from research into disputes that centered on the communal ownership of *ejidos*, *dehesas*, *pastos*, and *montes* that the *curia regis*, *cortes*, and *Audiencia* decided in eleventh- through fifteenth-century Castile as well as cases involving individuals. Other questions of ownership are investigated, but the study proposes to primarily analyze how contentious boundary disputes and claims of ownership were decided. While earlier conflicts from the eleventh through thirteenth century will be considered, unpublished cases adjudicated by the *Audiencia* at Valladolid in the fourteenth and fifteenth centuries will receive more attention, as these cases provide lengthier discussions of the disputed issues.⁸⁰ These suits provide the best opportunity to show how the *Audiencia* defined title in binding decisions. A comparison of these cases to adjudications in the New World will be made. Cases from northern New Spain, where frontier conditions existed throughout the Spanish period, are analyzed, drawing from published sources and archival sources in the Archivo General de la Nación (Mexico) and the Spanish Archives of New Mexico (USA).

This investigation also evaluates how Castilian land law and royal policy facilitated the incorporation of vast geographical spaces in the peninsula and later the Americas. This law and policy explains why a civil-law tradition, as opposed to a common-law tradition, took root in Castile in the eleventh through fifteenth centuries and also in its possessions in

⁷⁹ On paleography and diplomatics, see James M. Powell, ed., *Medieval Studies: An Introduction*, 2nd ed. (Syracuse, NY: Syracuse University Press, 1992), 1–113.

⁸⁰ The Archive of the *Real Chancillería* of Valladolid houses records of civil and criminal lawsuits, as well as maps, musical notations, and other fragments from the medieval and early-modern periods. For a survey of medieval Valladolid, see Miguel Ángel Martín Montes, et al., *Una Historia de Valladolid* (Valladolid: Ayuntamiento de Valladolid, 2005), 22-193; Adeline Rucquoi, *Valladolid en la Edad Media: la villa del Esgueva* (Valladolid: Ayuntamiento de Valladolid, 1983); Adeline Rucquoi, *Valladolid en la Edad Media: Genesis de un poder*, 2 vols. (Valladolid: Junta de Castilla y León, Consejería de Educación y Cultura, 1987).

the New World. This analysis will draw from the above research, but also on secondary sources plentiful for Castile proper and New Spain. As there have been few studies that focus specifically on land disputes adjudicated by the *Audiencia Real Castellana*, the research that follows represents an original investigation. The analysis of these sources will provide a better understanding of how Castilian law functioned in practice, and through comparison, to what degree it was transmitted to the New World.

Chapter Descriptions

Following this Introduction, Chapter Two will include the historical background and early history of the judicial function of the *curia regis*. Leonese and Castilian monarchs early on assigned the adjudication of civil disputes to ecclesiastics, nobles from the monarch's inner circle (*comitatus*), or learned men.⁸¹ These assignments were fluid. Alfonso VI's naming of the Castilian, Rodrigo Díaz (*El Cid*), to adjudicate an Asturian dispute in which laws from the *Leges Visigothorum* were applied to determine the sentence provides an excellent example.⁸² The crown's need to effectively adjudicate land disputes led to the establishment of a specialized judiciary and then a formal *Audiencia*. Eleventh- and twelfth-century documents overwhelmingly show that the king took an active role in the adjudication of disputes. He may have ordered a *pesquisa* and may have delegated *omes bonos* or "good men" to conduct the inquest and hear the dispute. They would have travelled to the locale and attempted to determine and discover as much relevant evidence to the case that they could find. These men ideally would have been known for their honesty and knowledge of

⁸¹ Proctor, *Curia and Cortes*, 34-5.

⁸² See Ramón Menéndez Pidal, *La España del Cid*, 2 vols. (Madrid: Espasa-Calpe, 1969), 1:218; Richard Fletcher, *The Quest for El Cid* (Oxford: Oxford University Press, 1989), 120; Gonzalo Martínez Díez, *El Cid Histórico* (Barcelona: Planeta, 1999), 90-92; and Proctor, *Curia and Cortes*, 35.

the law, whether custom or *lex scripta*. This represented an early example of how the *curia regis* served as a royal tribunal. It also provides evidence of the *competencia* or subject matter jurisdiction that passed from the crown to the *Audiencia Real*.

In the reign of Alfonso X, a professional judiciary was established and given guidance through the Ordinances of Zamora in 1274.⁸³ The ordinances defined the territorial jurisdiction of the judges, but also elaborated on their *competencia*. This determined which judges had jurisdiction over certain types of cases. Some cases reached the royal court on appeal, while others were heard there first, i.e., in the first instance. Alfonso X also drafted the *Espéculo de las Leyes*, the *Fuero Real* and *Siete Partidas*, providing a substantial body of written law.⁸⁴ These legal writings elaborated on judicial offices. They were also intended to provide uniformity to the multi-jurisdictional realms appended to the Crown of Castile, which had rapidly and dramatically increased under the leadership of Fernando III (r.1217-52).⁸⁵ Alfonso's successors attempted to keep the judiciary, which worked out of the *Chancillería*, effective in carrying out its duties through reforms and through confirmation of Alfonso X's reforms.

Chapter Two will also examine Alfonso XI's promulgation of the *Ordenamiento de Alcalá de Henares* in 1348, which proved a second important element in the forming of the *Audiencia*.⁸⁶ The legislation provided clarification on how the various strains of Castilian law would relate to one another in terms of authority.⁸⁷ The legislation established a legal hierarchy in which the *Siete Partidas* were formally promulgated throughout the kingdom of

⁸³ O'Callaghan, *The Cortes of Castile-León*, 120.

⁸⁴ *Ibid.*, 22.

⁸⁵ For the reign of Fernando III, see Martínez Díez, *Fernando III*; Francisco Ansón, *Fernando III: Rey de Castilla y León* (Madrid: Palabra, 1998).

⁸⁶ *Cortes de los antiguos reinos de León y de Castilla*, ed. Manuel Colmeiro (Madrid: Real academia de la historia, 1861-1903) (hereafter *CLC*), 1:544, Cortes de Alcalá de Henares of 1348, capítulo 64.

⁸⁷ O'Callaghan, *The Cortes of Castile-León*, 117.

Castile. Above the *Siete Partidas* were *fueros* and privileges, with royal law taking precedence over both. Alfonso XI's death from the plague in 1350 while he was laying siege to Gibraltar and the Castilian civil war put off a full reordering of the judicial function of the court, though many of the offices and terminology associated with the court were in place by 1350.⁸⁸

In 1371, Enrique II, the ultimate victor of the Castilian civil war, established the *Audiencia* as a formal institution with jurisdiction throughout the kingdom of Castile-León.⁸⁹ He set the number of judges at seven and assigned a president to act as the head of the body.⁹⁰ The *Audiencia* decided disputes and the *Chancillería* sealed and issued the charters that contained those decisions. From 1371, the *Chancillería* moved throughout the kingdom, but in 1442 it was fixed at Valladolid along with the *Audiencia*. This chapter will also evaluate the significance of the authority given the *Audiencia* along with the establishment of a hierarchy of law at Alcalá de Henares. This helped define the jurisdictional authority derived from the Crown of Castile and imposed over the inherited kingdoms listed in the monarch of Castile's style of title. The *Audiencia* received this very jurisdictional authority along with the types of cases, or subject matter jurisdiction, that the royal court previously had. This entrusting of royal authority to the institution of the *Audiencia* meant that learned men would apply royal law and that this law had to be discernible. That law will be discussed in Chapter Three. Finally, Chapter Two will briefly analyze Valladolid's significance as the *de facto* capital of Castile in the fourteenth and fifteenth centuries. Valladolid, along with having a university, was an important locale for the holding of the

⁸⁸ O'Callaghan, *A History of Medieval Spain*, 419-27.

⁸⁹ This included the kingdom of León and the other kingdoms now united to the Castilian Crown. See the intitution in the transcription in Appendix B of Villa of Galisteo v. Arias Barahona, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3.

⁹⁰ Varona García, *La Chancillería de Valladolid*, 112.

cortes, which between 1250 and 1350 were held there more than in any other town in Castile. Until the capital was transferred to Madrid in the sixteenth century, Valladolid was the most important town in Castile in terms of royal administration. The later *audiencias* were largely based on that of Valladolid.

Chapter Three examines the types of law that the *Audiencia* could apply, which by the end of the fifteenth century jurists were glossing in Latin. Compilations of law such as the *Leges Visigothorum*, *Fuero Real*, the *Siete Partidas*, and *fueros* issued to municipalities will receive considerable attention. Rather than constructing a broad survey along the lines of Madden and Van Kleffens, this investigation will highlight the principles that the examined sources of law contain, specifically those that pertain to royal authority, jurisdiction, and land tenure. Customary law, judicial discretion, and other elements that contributed to the deciding of a dispute are addressed as well. This analysis highlights how this body of law was applied to places, villages, towns, and cities falling within the jurisdiction of the kingdom of Castile. For example, I discuss the provisions in the *Leges Visigothorum* and *Siete Partidas* that address how ownership is established. The doctrines of prescription and possession as found in these sources and how they relate to other doctrines also receive attention. Laws from the *Siete Partidas*, such as law ix, title xxviii, division III, which stipulated that various commons could be established in places, towns, cities, or castles are analyzed.⁹¹

Finally, Chapter Three examines how the Castilian legal tradition described early in the chapter facilitated or thwarted the expansion into and incorporation of vast amounts of land. This discussion explains the various types of land tenure found in medieval Castile and

⁹¹ *Las siete partidas del muy noble rey Don Alonso el Sabio, por el licenciado Gregorio López de Tovar*, 4 vols. (Madrid: Compañía General de Impresores y Libreros del Reino, 1844); when referring to the *Siete Partidas*, I will be citing this edition unless a different version is otherwise indicated.

how they created problems in settling disputes. It will also introduce the reader to strains of law that suggest principles in establishing settlements that have deep roots in tenth- and eleventh-century Castile. These stretch into the sixteenth, seventeenth, and eighteenth centuries and can be found in adjudications and royal concessions in the eighteenth-century kingdom of New Mexico. The connections between these royal concessions, the *Siete Partidas*, and the *Recopilación de Leyes de los Reynos de las Indias*, which the Castilian Crown published in 1681 for the New World, is also mentioned.

Chapters Four and Five—the heart of this study—examine the cases that the *Audiencia* decided. Chapter Four, after discussing the movement and settlement of people from Old Castile to the south, analyzes cases where two or more municipalities litigated over communal land or boundaries. These cases provide evidence as to how the *Audiencia* decided cases and how litigants understood their rights under the law. Formal legal analysis will be applied to the *Audiencia*'s decision in deciding the disputes. Cases such as *Concejo de Olmos et al. v. Concejo de Atapuerca et al.*, where eleven villages sought to establish their rights over their sources for firewood in the mountains near the city of Burgos, provide an example of cases with multiple parties and complex issues.⁹² It also represents an example of a suit that ended in a settlement in which the *Audiencia* facilitated a compromise.

In a 1393 charter, the *Audiencia* issued a *sentencia* that declared the commons near the village of Galisteo to be *baldios*.⁹³ That is, they were commons that were part of the royal domain. The villagers of Galisteo complained that a knight named Barahona had settled on these lands, claiming that they were his *ejidos* or multi-purpose commons. In the end, the

⁹² *Concejo de Olmos et al., v. Concejo de Atapuerca et al., Sentencia Arbitraria*, Burgos, 17 November 1488, ARCV, Pergaminos, Caja 2, 1.

⁹³ *Villa of Galisteo v. Arias Barahona, Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3.

Audiencia ruled that the land in question had been *baldios* and that it belonged to the *infantes* of Castile.⁹⁴ He ordered anyone who claimed any of the land to show title or seek permission to use it. Cases such as this address several concepts of how land might be held. *Baldios*, as used here and as defined in later disputes, were crown lands distinct from *ejidos*, which a village or an individual (as head of a settlement) could own. *Baldios* also signified land that had not been granted but could be granted or used with permission.⁹⁵

In a 1464 case the *Audiencia* decided, the *lugar* of Algodre sued the *lugar* of Coreses over the boundaries or *términos* between the villages, which they both used as commons.⁹⁶ In proceedings preserved on twenty leaves of parchment, the *Audiencia* issued a *carta ejecutoria* (enforceable charter), which describes the procedure, evidence presented, and arguments used in the case. In it, the attorney for Coreses made the distinction between usage rights and ownership of communal land. This case and others also show how the *Audiencia* evaluated the arguments of the litigants and brought the case to a conclusion on which it based its decision (*sentencia*). The possession of land and how that factored into the *Audiencia*'s decision is another element that frequently appears in cases such as this.

Chapter Four will also consider abandoned suits filed in the *Audiencia*'s *sección de pleitos olvidados*. Though a *sentencia* or *executoria* was never issued in these disputes, they still retain value in demonstrating how villages, towns, and cities understood their rights to ownership of land. In *Concejo de Lantadilla v. Concejo de Itero de la Vega*, the villages argued over commons known as La Falda, which Lantadilla lost through arbitration.⁹⁷

⁹⁴ Ibid.

⁹⁵ Royal grants made to villages were common. E.g., Sancho IV to the Villa de Lerma, Toledo, 6 December 1289, ARCV, Pergaminos, Carpeta 7, 2.

⁹⁶ Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2. Algodre is located near Zamora.

⁹⁷ *Concejo de Lantadilla v. Itero de la Vega*, Valladolid, 1481, ARCV, Pleitos Civiles, Escribanía Moreno, Olvidados, Caja 549, 6.

Lantadilla sued to reverse this decision based on claims that it had an older title and that the arbitration lacked equity.⁹⁸ Nonetheless, the arguments in this dispute show that once land designated as *ejidos*, *dehesas*, *pastos*, or *montes* had been deemed part of a village, town, or city, it was treated as an integral part of that locale. These cases reflect legal principles found in the *Siete Partidas* and the *Lex Visigothorum* concerning communal land, title, possession and the distinction between servitudes and usufructs, evidence, and the investigation of disputes. An analysis of these concepts follows that of the cases.

Chapter Five provides a contrast with Chapter Four by focusing on the individual's claim to land. Royal concessions, beginning in the eleventh century, were increasingly given to individuals, nobles and peasants, and consist of the cartulary records of numerous sovereigns. They demonstrate that monarchs used the royal concession as an effective tool to reorganize space through the issuance of *mercedes reales*. With the conquests of most of Andalucía in the thirteenth century, *libros de repartimientos* were compiled to record the numerous concessions given to individuals following the taking of Córdoba, Jaén, Lorca, Sevilla and other places.⁹⁹ While these provide information on those who received the grants, the types of grants that were given, and information concerning Islamic land use, the *repartimientos* do not tell us how competing claims to the same property or tract of land were

⁹⁸ Ibid.

⁹⁹ For the reign of Fernando III, see Julio González, *Reinado y diplomas de Fernando III*, 3 vols. (Córdoba: Monte de Piedad y Caja de Ahorros, 1980-86), particularly volume I; Martínez Díez, *Fernando III; for the reconquista of Andalucía*, see Julio González, *Las Conquistas de Fernando III en Andalucía* (1946; reprint: Valladolid, Editorial Maxtor, 2006).

For the *repartimientos*, see Julio González, *Repartimiento de Sevilla*, 2 vols. (Madrid: Consejo Superior de Investigaciones Científicas, 1951); Juan Torres Fontes, ed., *Repartimiento de Murcia* (Madrid: Consejo Superior de Investigaciones Científicas, 1960); Joaquín Vallvé Bermejo, ed., *Repartimiento de Comares, 1487-1496*, trans. Francisco Bejarano-Robles (Barcelona: Universidad de Barcelona, 1974). Juan Torres Fontes, ed., *Repartimiento de Lorca* (Murcia: Ayuntamiento de Lorca y La Academia Alfonso X El Sabio de Murcia, 1977); Juan Torres Fontes, ed., *Repartimiento de Orihuela* (Murcia: Ayuntamiento de Lorca y La Academia Alfonso X El Sabio de Murcia, 1988); Miguel Ángel Ladero Quesada, ed., *La incorporación de Granada a la corona de Castilla* (Granada: Diputación Provincial, 1993); Francisco Oriol Catena, *La Repoblación del Reino de Granada después de la Expulsión de los Moriscos*, ed. Manuel Barrios Aguilera (Facsimile. Granada: Universidad de Granada, 1987).

settled.¹⁰⁰ Land also changed hands through *cartas de ventas*, judicial decrees, and inheritance. Disputes arising from these transactions also had to be adjudicated at the local and appellate level.

Chapter Five therefore considers how the *Audiencia* and the Council of Castile decided cases involving individuals, concerning title, possession, and usage rights. It provides an analysis of how these decisions reflected principles found in the *Siete Partidas* and the *Lex Visigothorum* as well. It explains how individuals perceived the law and how the law affected the way they pursued their claims. *Molina v. Vera*, a case appealed from the *Audiencia* to the Council of Castile, turns on the very issue of title and possession.¹⁰¹ Both litigants argued that they were entitled to ownership of an estate called La Verguilla, which was located near the city of Soria. In reading the suit, the importance tied to the concept of possession becomes apparent and explains why the *Audiencia*'s archive houses numerous Acts of Possession. Title, in the form of an authentic *carta de venta* (bill, letter of sale), also plays a role in this case. An analysis of these types of documents will provide insights into how property was understood and how it was transferred.

Chapter Five will also examine other grants and land disputes in which remedies were sought to restore property as seen in *Catalina Ruiz de Las Puertas v. the Ulloas*.¹⁰² It will consider royal concessions and their importance to royal policy in the administration of land. Provisions in the will of Isabel I reflect this. Title and possession—one of the themes of this chapter—also plays a role in the concessions that Fernando and Isabel I received from Pope

¹⁰⁰ Thomas F. Glick, *From Muslim Fortress to Christian Castle: Social and Cultural Change in Medieval Spain* (New York: Saint Martin's Press, 1995), 127-67.

¹⁰¹ *Molina v. Vera, Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25.

¹⁰² *Ruiz de Las Puertas v. Ulloa, Carta de Ejecutoria*, Valladolid, 1 January 1486, ARCV, *Registro de Ejecutorias*, Caja 1, 11.

Alexander VI, concerning the voyages of Columbus.¹⁰³ An analysis of these concessions with an eye for those concepts will reveal something of the legal tradition of Castile relating to title. Isabel I's will also tells us how she understood those concessions and indicates how she perceived the realms she referred to as the *Corona Real de Castilla*.¹⁰⁴ The significance of how Castile received title and the right to possess discovered lands is significant, as the closing of Chapter Five means turning to the issue of how and in what way Spaniards transmitted Castilian law to the Americas.

Chapter Six initially focuses on the founding of the *Audiencias* in the Americas, particularly Nueva España. It then proceeds to evaluate cases and royal concessions decided in the viceroyalty established in Nueva España. It also includes an examination of the legal instruments found in works, such as Josué Mario Villavicencio Rojas' *Mercedes Reales y Posesiones, Cacicazgo de Tecomaxtlahuaca, 1598-1748*.¹⁰⁵ A textual analysis of these documents is compared to that of scholars who also examined records from the Archivo General de la Nación. An evaluation of legal writings follows this discussion. The organization of the *Recopilación de las leyes destos Reynos* is considered in comparison to other bodies of law discussed later in the chapter.¹⁰⁶ The analysis of the *Ordenanzas de sobre descubrimiento, nueva población y pacificación de las Indias* issued in July 1573 provides

¹⁰³ *Inter Caetera II*, Pope Alexander VI to Fernando and Isabel (Sovereigns of Castile), Rome, May 4 1493, in *The Book of Privileges issued to Christopher Columbus by King Fernando and Isabel, 1492-1502*, Repertorium Columbianum, vol. II, ed. Helen Nader and Luciano Formiso (Eugene, OR: Wipf and Stock, 1996), 348-52, document XXXVI.ii.I.I; an English translation is in Geoffrey Symcox and Blair Sullivan, *Christopher Columbus and the Enterprise of the Indies: A Brief History with Documents*, The Bedford Series in History and Culture (Boston: Bedford/St. Martin's Press, 2005), 140-4; *Dudum Siquidem*, Pope Alexander VI to Fernando and Isabel (Sovereigns of Castile), Rome, 25 September 1493, in Symcox and Sullivan, *Christopher Columbus and the Enterprise of the Indies*, 148-9.

¹⁰⁴ Isabel la Católica, *Testamento and Codicilo*, in *Testamentaria de Isabel la Católica*, ed. Antonio de la Torre y del Cerro (Barcelona: Vda. F. Rodríguez Ferrán, 1974), 61-101, particularly 80.

¹⁰⁵ Josué Mario Villavicencio Rojas, *Mercedes Reales y Posesiones, Cacicazgo de Tecomaxtlahuaca, 1598-1748* (Puebla, México: Benemérita Universidad Autónoma de Puebla, 2000).

¹⁰⁶ *Recopilación de las leyes destos Reynos, hecha por mandado dela Magestad Catholica del Rey don Philippe Segundo nuestro Senor*, 2 vols. (Alcalá de Henares: Juan Iñíguez de Liquerica, 1581) (hereafter *Recopilación (Castilla)*).

textual evidence of similarities and differences between law found in previous chapters and those promulgated specifically for the New World.¹⁰⁷ This chapter also analyzes Juan de Solórzano Pereira's *Política Indiana*, particularly *libro I* and *libro vi, capítulo xii* to evaluate the sources of law he drew from in writing his text, but also to compare how he conceived the role and place of the Crown of Castile with prior considerations of the sovereign found in the *Fuero Juzgo*.¹⁰⁸ A discussion of the concept of *Derecho Indiano* and the *Recopilación de leyes de los reinos de las Indias* concludes this first part of Chapter Six.

The second part of Chapter Six examines royal concessions and land disputes in Nuevo México following the Pueblo Revolt of 1680. Spanish land grants in New Mexico remain relevant to many *Nuevomexicanos* due to their controversial adjudications under the federal courts of the United States. The province of Nuevo México also provides a good case study to evaluate to what degree Castilian law as described in Chapters Three, Four, and Five had any lingering influence in the late colonial era in the province. What makes this so is that all of the records in the Spanish archive in Santa Fe during the Pueblo Revolt were destroyed, lost, or removed. Upon the return of the Spaniards, a different legal tradition could have developed, as officials were not bound by legal instruments issued before the uprising. As such, this investigation will look at laws applied after the Pueblo Revolt concerning land tenure and evaluate their character and to what degree they reflect the legal tradition discussed in the previous chapters. The *Recopilación (Indias)* contained royal laws based on decrees, provisions, and ordinances from the sixteenth and seventeenth centuries and was published at the time that New Mexico had been essentially lost by the Spaniards to the

¹⁰⁷ *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in *Teoría y leyes de la conquista*, ed. Francisco Morales Padrón (Madrid: Ediciones Cultura Hispánica del Centro Iberoamericano de Cooperación, 1979), 489-518.

¹⁰⁸ Juan de Solórzano Pereira, *Política Indiana*, 2 vols. (Madrid: Matheo Sacristán and Gabriel Ramírez, 1736-39).

revolting Pueblo Indians.¹⁰⁹ However, upon the successful recovery of the province by the Spaniards under Governor Diego de Vargas, the *Recopilación* had been published.¹¹⁰ It represented a body of law available to officials working in the province.

The governors of New Mexico issued numerous land grants to individuals and communities of Native, European, and mixed-descent.¹¹¹ This chapter includes a discussion of royal concessions and disputes adjudicated within the province by its *alcaldes* and governors. This includes a textual analysis of concessions that established the settlement of Belén, the Pueblo of Sandía, and Santo Tomás de Abiquiú. Issues related to the grants that formed the Nueva Villa of Santa Cruz de la Cañada, San Miguel del Vado and numerous others will be included along with the analysis of archival documents found in the New Mexico State Records Center and Archives. These concessions and adjudications show that principles several centuries old were applied in New Mexico. This chapter also draws from the works of legal historians such as Malcolm Ebright, G. Emlen Hall, and Charles R. Cutter, as well as historians such as John Kessell and Rick Hendricks.¹¹²

¹⁰⁹ For the uprising, see John L. Kessell, *Pueblos, Spaniards, and the Kingdom of New Mexico* (Norman: University of Oklahoma Press, 2008), 119–75.

¹¹⁰ See John L. Kessell, Rick Hendricks, and Meredith Dodge, eds., *Blood on the Boulders: The Journals of Don Diego de Vargas, New Mexico, 1694–97*, 2 vols. (Albuquerque: University of New Mexico Press, 1998), 1:87, 2:710, 2:912, 2:919, 2:926–27, 2:940, 2:943, 2:1125; John L. Kessell et al., eds., *That Disturbances Cease: The Journals of Don Diego de Vargas, New Mexico, 1697–1700* (Albuquerque: University of New Mexico Press, 2000), 335; and John L. Kessell, Rick Hendricks, and Meredith Dodge, eds., *A Settling of Accounts: The Journals of Don Diego de Vargas, New Mexico, 1700–1704* (Albuquerque: University of New Mexico Press, 2002), 78, 97–99.

¹¹¹ For a concise discussion of the historiography of land grants, including those issued to indigenous settlements, see Iris Wilson Engstrand, “Land Grant Problems in the Southwest: The Spanish and Mexican Heritage,” *New Mexico Historical Review* 53 (1978): 317–36; for a more extensive treatment, see Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* (Albuquerque: University of New Mexico Press, 1994).

¹¹² E.g., Ebright, *Land Grants and Lawsuits in Northern New Mexico*; G. Emlen Hall, *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800–1933* (Albuquerque: University of New Mexico Press, 1984); Kessell et al., *Blood on the Boulders*.

In the Conclusion (Chapter Seven), I discuss how cases decided by the *Audiencia* show how concepts of land tenure involving common land were understood. As these legal precepts formed a legal tradition before the European discovery of the New World, they were transmitted as needed to the Americas as a body of law. Land disputes are particularly important because of Castile's unique history in expanding from the north-central part of the Iberian Peninsula into the south over several centuries. Before any other law could be applied, geographical territory had to be retained and royal authority imposed. Only after this, could the crown establish jurisdiction in other fields of law and claim appellate jurisdiction over cases decided in lower courts. Suits between villages, towns, and cities, royal lands, ecclesiastical lands, and those held by military orders had to come before the crown, as these entities often contested each other's jurisdiction, boundaries, and claims to land. Individual landholding also played an important part in this tradition, in which the examination of cases involving individuals adds to our knowledge of Castilian land law. It also provides further examples of flexibility, which enabled the crown to implement a policy to incorporate large quantities of land to the crown. After the conquest of the kingdom of Granada in 1492 and the European discovery of the Americas, the Crown of Castile, based on grants given by Pope Alexander VI, began claiming jurisdiction over lands in the New World, the Caribbean first and then the *terra firma* of the Americas.

Ultimately, the conclusions drawn from this investigation argue that the law developed primarily in the thirteenth and fourteenth centuries and the decisions of the *Audiencia real castellana* formed a legal tradition that was transmitted to the New World. Fundamental to this legal tradition was land law that enabled territorial expansion through a policy of generous land distributions carried out over centuries; the jurisdiction based on this

expansion made it possible to establish a civil law system well suited for adjudicating land disputes. The formal legal analysis of the reasoning employed in the litigation before the *Audiencia*, royal concessions, *fueros*, and other law will distinguish this dissertation from all of the works cited herein.

Finally, the reader will find below a glossary, appendices that feature transcriptions and translations of key documents and law, and a bibliography.

Chapter Two

The Castilian Judiciary and the Founding of the *Audiencia Real Castellana*: The Extension of Royal Authority

Prior to the establishment of a formal judiciary under Alfonso X (r. 1252-84), the king and his court (*curia regis*) exclusively settled disputes that fell within the crown's jurisdiction.¹¹³ Land disputes in particular came under the direct authority of the crown. Castilian sovereigns claimed the right to redistribute conquered land and issued grants that severed land from the royal domain, bestowing it upon their subjects.¹¹⁴ Hence, they had the responsibility of adjudicating disputes that resulted from these conveyances, but also those that concerned questions involving rights to commons or lands whose ownership was not entirely clear.¹¹⁵ The royal court heard these cases in the first instance. In the tenth through thirteenth centuries (and probably earlier), rulers in Castile and León selected judges from the *curia regis* or the sovereign's *comitatus* (inner circle of trusted nobles) to hear cases; cartulary evidence shows that monarchs frequently confirmed cases decided by these judges.¹¹⁶

Between 1274 and 1371, Castilian kings attempted to reform the judicial functions of the *curia regis* by formalizing the jurisdiction of judicial officials that decided various cases. They accomplished this mainly through legislation promulgated at the assemblies known as *cortes*, in which clergy, nobles, and representatives of towns participated. In 1274 at the

¹¹³ On the reign of Alfonso X, see Joseph F. O'Callaghan, *Alfonso X, the Cortes, and Government in Medieval Spain* (Brookfield, VT: Ashgate, 1998); O'Callaghan, *The Learned King*; Burns, *Emperor of Culture*; Antonio Ballesteros Beretta, *Alfonso X el Sabio* (Barcelona: El-Albir, 1984).

¹¹⁴ O'Callaghan, *Cortes of Castile-León*, 10. The monarch also issued new royal concessions (land grants) while holding court. See Proctor, *Curia and Cortes*, 24.

¹¹⁵ Proctor, *Curia and Cortes*, 35-8, 87-91.

¹¹⁶ See *ibid.*, 38.

town of Zamora, Alfonso X issued ordinances that shaped the role of regional and appellate judges; these laws addressed the territorial jurisdiction and *competencia* of the judges.¹¹⁷ *Competencia* referred to the types of cases they could decide once they had established that the case was within their territorial jurisdiction. Alfonso X limited the territorial jurisdiction of the *alcaldes del corte* to the regions they were assigned within Castile and its subordinate kingdoms.¹¹⁸ He also created a panel of three justices to hear appeals from these judges. He decreed that these men should be learned in the *fueros* (charters that enumerated privileges and rights), and that they would have territorial jurisdiction covering all of Castile-León.¹¹⁹ Fernando IV (r. 1295-1312) attempted to make this arrangement permanent, but calls for further reform persisted and seigniorial lords resisted the idea of acknowledging the superiority of royal law.¹²⁰

In 1348 at the *cortes* held at Alcalá de Henares, Alfonso XI (r. 1312-50) promulgated laws known as the *Ordenamiento de Alcalá de Henares*.¹²¹ The one hundred and thirty-one *capítulos* of legislation dealt with various issues of substantive law, procedure, and the ordering of legal authority within the realms of Castile. In short, *capítulo* sixty-four stated that though the *fueros* and customs of the realms would be reaffirmed, royal decisions and the royal laws of the *Ordenamiento* had superior authority.¹²² In addition, *Las Siete Partidas*, commissioned by Alfonso X, would hold force where the *fueros* or laws of the

¹¹⁷ *CLC*, 1:87-94, Cortes de Zamora de 1274, articles 1-48.

¹¹⁸ For Alfonso X, the kingdoms listed after Castile were “Toledo, León, Galicia, Sevilla, Córdoba, Murcia, Jaén.” See the intitution in Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Eduardo de Hinojosa, ed., *Documentos para la historia de las instituciones de León y Castilla* (Madrid: Est. tip. de Fortanet, 1919), 166-67, no. CII.

¹¹⁹ *CLC*, 1:90, Cortes de Zamora de 1274, article 19.

¹²⁰ On Fernando IV, see César González Mínguez, *Fernando IV de Castilla (1295-1312): La guerra civil y el predominio de la nobleza* (Valladolid: Universidad de Valladolid, 1976).

¹²¹ *CLC*, 2:492-592, Cortes de Alcalá de Henares de 1348, capítulos 1-131.

¹²² *Ibid.*, 2:544, Cortes de Alcalá de Henares de 1348, capítulo 64.

Ordenamiento did not apply.¹²³ This made explicit an established hierarchy of law that judicial officials charged with enforcing the law could refer to when deciding cases.

After the Castilian civil war (1366-69), Enrique II (r. 1367, 1369-79) substantially reorganized the royal judiciary through the formal establishment of the *Audiencia* in 1371 at the *cortes* of Toro.¹²⁴ At the same time, he provided ordinances that regulated the quotidian work of the *Chancillería*, which, by the middle of the thirteenth century, had been reorganized under the authority of the sovereign of Castile.¹²⁵ It eventually operated side by side with Enrique II's *Audiencia*. Though substantially reformed by *Los Reyes Católicos*, Fernando (r.1479-1516, Aragon) and Isabel (r. 1474-1504, Castile), Enrique II's *Audiencia* became the basis for future *audiencias* in the Iberian Peninsula and the New World.¹²⁶ The *cortes* at Alcalá and Toro provided two key elements in administering justice within the kingdom of Castile: Alcalá established the hierarchy of law and Toro charged the *Audiencia*—an institution staffed with professional, educated men—with applying that law. Both occurrences contributed significantly to the forming of a legal tradition prior to the era of European expansion into the Americas. However, before turning to the activities of Enrique's *Audiencia*, an investigation of the history of how royal officials adjudicated disputes prior to 1371 will provide an understanding of the administration of royal justice.

¹²³ Ibid.

¹²⁴ *CLC*, 1:188-202, Cortes de Toro de 1371, articles 1-32. On Enrique II, see Julio Valdeón Baroque, *Enrique II de Castilla: La guerra civil y la consolidación del régimen, 1366-1371* (Valladolid: Universidad de Valladolid, 1966).

¹²⁵ *CLC*, 1:217-240, Cortes de Toro de 1371.

¹²⁶ Elliott, *Imperial Spain*, 97; on Fernando and Isabel, there exists an enormous amount of literature; a few notable works in English are Peggy K. Liss, *Isabel the Queen: Life and Times* (Oxford: Oxford University Press, 1992); John Edwards, *The Spain of the Catholic Monarchs* (Oxford: Blackwell Publishers, 2000); in Spanish, see Tarsicio de Azcona (O.F.M.), *Isabel la Católica: Estudio crítico de su vida y su reinado*, 3rd edition (Madrid: Biblioteca de Autores Cristianos, 1993). Isabel, while emphasizing the oneness in her actions with Fernando, was by law the sole sovereign in Castile. Likewise, in Aragon, she was the queen consort.

The work performed in this period also established the subject matter jurisdiction and legal tradition that the *Audiencia* inherited.

In March 1075, Alfonso VI (1072-1109) and his court adjudicated two disputes in the Asturias in northern Spain.¹²⁷ These provide useful insights into the royal court's function as a judicial venue in the eleventh century. The suit that the court adjudicated on 26 March 1075 is preserved in a lengthy decision, with references to supporting documentation that still survives.¹²⁸ It provides an excellent example of an adjudication of land, the logic and reasoning of the judges involved, and the law that the judges consulted and applied. It also provides an example of the royal court hearing cases as it moved throughout the realms. This resembled what would later be termed as *audiencias públicas*, which were predecessors to the institution of the *Audiencia*.

The dispute of 26 March concerned the ownership of the monastery of San Salvador de Tol, its villages, and some settlements near Oviedo. Alfonso VI appointed four men to hear the dispute as judges. He named Bishop Bernard of Palencia, Lord Sisnando Davídez of Coimbra, a learned man named Tuxmarus, and Rodrigo Díaz de Vivar, later known as *El Cid Campeador*.¹²⁹ Here, however, he is described as “the Castilian.”¹³⁰ They heard and decided the dispute in the presence of the king and his court. The appointing of these men as judges

¹²⁷ On Alfonso VI, see Bernard F. Reilly, *The Kingdom of León-Castilla under King Alfonso VI: 1065-1109* (Princeton: Princeton University Press, 1988).

¹²⁸ Bishop Arias of Oviedo v. Count Vela Ovéquiz and Vermudo Ovéquiz, Oviedo, 26 March 1075, in Ramón Menéndez Pidal, *La España del Cid*, 2 vols. (Madrid: Espasa-Calpe, S. A., 1969), 2:849-853. For a synopsis of the case, see Menéndez Pidal, *La España del Cid*, 1:218; Richard Fletcher, *The Quest for El Cid* (Oxford: Oxford University Press, 1989), 120; Gonzalo Martínez Díez, *El Cid Histórico* (Barcelona: Planeta, 1999), 90-92; and Proctor, *Curia and Cortes*, 35.

¹²⁹ Bishop Arias of Oviedo v. Count Vela Ovéquiz and Vermudo Ovéquiz, Oviedo, 26 March 1075, in Menéndez Pidal, *La España del Cid*, 2:849-53. For Bishop Bernard of Palencia, see Reilly, *The Kingdom of León-Castilla under King Alfonso VI*, 140-42.

¹³⁰ *Ibid.*, 140.

followed precepts in the *Lex Visigothorum (Liber Iudiciorum)*, which gave the king the authority to appoint and invest judges to hear a specific case.¹³¹

The suit resulted from Bishop Arias of Oviedo's taking possession of the monastery of San Salvador in 1075. Count Gondemar Piniólez and his wife Mumadona had founded the monastery at the beginning of the eleventh century. After the count died, Mumadona gave it to his daughter from a previous marriage, Gontroda. Gontroda was to have possession of the monastery for as long as she lived and lived there as a nun. Upon her death, however, Mumadona's donation specified that the monastery was to then be given to the See of Oviedo.¹³² Before Gontroda died, she also confirmed in her testament the donation along with another monastery to Oviedo.¹³³ When she passed away, Bishop Arias claimed ownership of the monastery in accordance with the conveyances executed by Mumadona and Gontroda.

The great-nephews of the count, Count Vela Ovéquiz and his brother Vermudo also claimed ownership of the monastery. They would have to prove that they had a stronger claim to title than Bishop Arias. Under the *Lex Visigothorum*, which reflected the Germanic custom of dispersing one's property to multiple heirs rather than a single heir, they had at least two possible theories of ownership.¹³⁴ They could base a claim on documentation, such as a charter, which purportedly would name them as heirs; or they could have claimed that, as relatives of the count and countess, they should receive the monastery through the *Lex Visigothorum's* intestate laws. The two theories, however, would not have been of equal

¹³¹ *Lex Visigothorum*, book II, title i, law xiii. Law xxv of the same book and title also provides that anyone properly invested as a judge should bear the title of judge. Law xxix of the same book and title also stipulates that judges could be called upon to give the reasons for their decisions.

¹³² See Bishop Arias of Oviedo v. Count Vela Ovéquiz and Vermudo Ovéquiz, Oviedo, 26 March 1075, in Menéndez Pidal, *La España del Cid*, 2:850.

¹³³ *Ibid.*, 2:850, n. 1.

¹³⁴ Burns, *Las Siete Partidas*, 5:ix.

strength. The *Lex Visigothorum* gives precedent to written instruments (*scripturae*). In book II, title i, law xxi, it states that “the true investigation of justice requires that documentation should take precedence . . .”¹³⁵ The counts apparently understood the value of documentation and claimed they had charters proving title. Otherwise, if they relied on the intestate provisions of the *Lex Visigothorum*, rules only used if no valid will or other conveyance existed, they would have risked losing the claim if Bishop Arias’ charters proved authentic.

Bishop Arias responded on multiple fronts. In addition to claiming title based on the surviving conveyances, he noted that Gontroda had possession of the monastery for over thirty years. This allowed him to argue that the counts’ claim should be barred under Book X, title ii, law ii of the *Lex Visigothorum*. This law, a statute of limitation, disallowed suits after thirty years had elapsed from when the original cause of action could have been initiated. The date of the original conveyance from Mumadona to Gontroda was 1037.¹³⁶

Despite the positioning of the claimants, the judges made the handling of the dispute appear easy. They heard statements from the representatives of each party. Then they examined the charters the count and his brother produced, which they declared “not to be authentic.”¹³⁷ They then examined the charter of donation from Mumadona to Gontroda and the testament by which Gontroda gave the monastery to the See of Oviedo. The judges

¹³⁵ *Lex Visigothorum (Liber Iudiciorum)*, book II, title I, law xxi: “. . . enim iustitiae potius indagatio vera comendat ut scriptura ex omnibus intercurrent . . .”; for comparison the *Fuero Juzgo*, libro II, título I, law xxi translates this as follows: “ca esto semeia mayor derecho, que el escripto venga primeramente por saber la verdat, e despues venga el iuramiento si fuere menester.” “Because it resembles greater right, that the letter comes first to know the truth, and after that oath if it be necessary.” See the *Fuero Juzgo* in *Fuero juzgo en latin y castellano*, ed. Real Academia Española (Madrid: Copigraf, 1971), 1- 204, after the *Forum Judicum*.

¹³⁶ See Bishop Arias of Oviedo v. Count Vela Ovéquiz and Vermudo Ovéquiz, Oviedo, 26 March 1075 in Menéndez Pidal, *La España del Cid*, 2:850; see note 2, where Menéndez Pidal provides a summary of the conveyance of 1037.

¹³⁷ *Ibid.*, 2:851, “non esse autenticas.”

deemed these authentic.¹³⁸ They then confirmed that the conveyances that the bishop possessed were consistent with the *Lex Visigothorum*, referencing law iii, title iii, Book IV and law iii, title ii, Book X. The judges concluded that the conveyances were lawful and that the charters were authentic. Thus, the See of Oviedo should have the monastery, villages, and settlements. The royal court and both parties then confirmed the decision.

This adjudication shows that the king selected judges based on the authority given to him under the *Lex Visigothorum*.¹³⁹ They came from diverse backgrounds and diverse regions of the kingdom of León-Castile, but they understood how to proceed in such a dispute and had sufficient knowledge to access and cite the *Lex Visigothorum*. Rodrigo Díaz, a Castilian, and Bishop Bernard, a bishop of a Castilian town, appeared to have served the king well. Historians have attributed to the county and later kingdom of Castile a legal tradition marked by custom, rather than one based on the *Lex Visigothorum*, but this has been questioned recently.¹⁴⁰ Roger Collins has shown that a dispute adjudicated in 944 by Count Assur Fernández of Castile, also involving inauthentic charters, arrived at the same outcome as the Bishop Arias case.¹⁴¹ If Castile also applied principles found in the *Lex Visigothorum*, rather than only principles from its own exclusive legal custom, this would explain why two Castilians were invested as judges in the Bishop Arias case. The explicit citation of Visigothic law suggests that these laws were acknowledged as authoritative by Castilians as well as other Iberians.

¹³⁸ Ibid. The *Lex Visigothorum*, book II, title v, laws i and viii (ix) provide provisions for a valid document and require that a valid conveyance not be made fraudulently or under duress.

¹³⁹ See Bishop Arias of Oviedo v. Count Vela Ovéquiz and Vermudo Ovéquiz, Oviedo, 26 March 1075 in Menéndez Pidal, *La España del Cid*, 2:850-1.

¹⁴⁰ See generally, Roger Collins, “‘*Sicut lex Gothorum continet*’: Law and Charters in Ninth- and Tenth-Century León and Catalonia,” *The English Historical Review* 100 (1985): 489-512; “Visigothic Law and Regional Custom in Disputes in Early Medieval Spain,” in Roger Collins, *Law, Culture and Regionalism in Early Medieval Spain* (Brookfield, VT: Ashgate, 1992): 85-104.

¹⁴¹ Collins, “‘*Sicut lex Gothorum continet*’”, 508.

Substantively, the Bishop Arias case shows that title depended on whether a particular form of ownership was valid and whether there was sufficient evidence of title, with written evidence at least being considered before other forms of evidence, such as sworn oaths. In this case, Bishop Arias had the actual conveyances that ultimately donated the Monastery of Tol to his See. This last conveyance came into effect with Gontroda's death. This donation had been given in accordance with the *Lex Visigothorum*, but also represents a sophisticated conveyance equivalent to a modern life estate. At the start of the trial, Alfonso VI designated the *Lex Visigothorum* as the controlling legal authority. The counts possibly hoped that the four-judge tribunal would find the conveyance unlawful and that their documentation might not need to be scrutinized, since they were the relatives of the count and could possibly inherit under the intestate laws of the *Lex Visigothorum*.

On the following day, the court decided a second case, which involved the king as a party.¹⁴² At issue, was whether the valley of Langreo was *realengo* (royal domain) or owned by a group of nobles known as the *infanzones del valle de Langreo*.¹⁴³ The king had granted the valley to the church of Oviedo, but the *infanzones*, claiming ownership, objected to the conveyance and petitioned the king for a hearing. Alfonso VI answered. In his response, he offered to settle the dispute through trial by combat, a trial *per Librum Iudicum* (*Lex Visigothorum*), or to adjudicate the matter through an inquest (*pesquisa*), which also followed principles in the *Lex Visigothorum*.¹⁴⁴ The *infanzones* opted for an inquest, in which judges were delegated to take testimony and gather witnesses to testify under oath concerning the

¹⁴² See *Infanzones de valle de Langreo v. Alfonso VI, Oviedo, 27 March 1075* in *Documentos para la historia de las instituciones de León y Castilla* (hereafter *DHILC*), coleccionads por Eduardo de Hinojosa (Madrid: Fortanet, 1919), no. xix; *España Sagrada*, ed. Enrique Flórez et al., 51 vols. (Madrid: Antonio Marín, 1747-1879) (hereafter *ES*), xxxviii, appendix xii.

¹⁴³ *Ibid.*; see also Proctor, *Curia and Cortes*, 34-5, 39.

¹⁴⁴ On the use of *pesquisa*, see Proctor, *The Judicial Use of 'Pesquisa'*.

nature and title of the land in question. The king had argued that the valley had been royal domain under Alfonso V; the evidence acquired during the inquest appears to have supported his claim.¹⁴⁵ While the details of the investigation are not clear, the case shows that procedure followed a petition and answer format and that title would be determined according to the weight of the evidence.

Although this case did not feature the citation of any written law, it was consistent with them and demonstrates how the judges conducted the inquest into title. After the investigation, the court ruled in favor of Alfonso VI. On the whole, these cases demonstrate how the king used the *curia regis* to settle disputes concerning land. He appointed judges as needed and they conducted trials or investigations depending on the petitions and evidence of the litigants. The value placed on documentation and evidence obtained through oaths and investigation remained a significant feature in later disputes.

In the twelfth century, the *curia regis* in Castile applied customary law and principles from the *Lex Visigothorum*, but also relied on decisions, called *fazañas*, which consisted of previously known precedent.¹⁴⁶ In the twelfth century, León and Castile were temporarily separated when Alfonso VII (r. 1126-57) gave Castile and Toledo to his son Sancho III (r. 1157-58) and León to his son Fernando II (r. 1157-88).¹⁴⁷ In 1085, Alfonso VI had extended the *Lex Visigothorum* to Toledo, when he captured the city.¹⁴⁸ When Alfonso VII gave Toledo to Sancho III, the *Lex Visigothorum* was reintroduced into a jurisdiction that became a permanent part of Castile. Eventually, Fernando III (r.1217-52) would extend the *Lex*

¹⁴⁵ See Infanzones valle de Langreo v. Alfonso VI in DHILC, no. xix; *ES*, xxxviii, appendix xii; see also, Proctor, *Curia and Cortes*, 34-5, 39.

¹⁴⁶ Proctor, *Curia and Cortes*, 30. In Chapter Three, I will further discuss the significance of the *Lex Visigothorum* and other bodies of law concerning land.

¹⁴⁷ On Alfonso VII, see Bernard F. Reilly, *The Kingdom of León-Castilla under King Alfonso VII: 1126-1157* (Philadelphia: University of Pennsylvania Press, 1998).

¹⁴⁸ Reilly, *The Kingdom of León-Castilla under King Alfonso VI*, 140-42.

Visigothorum—in the form of a Castilian language translation of the text, the *Fuero Juzgo*—to the regions of Andalucía that he conquered.¹⁴⁹

The system of assigning judges to hear disputes continued in León and Castile concurrently with the development of a chancellery, the institution with which the crown would eventually establish the *Audiencia* to operate alongside. For administrative purposes, the chancellery was charged with producing the documentation that recorded the decisions of the royal court and authenticated them by various means.¹⁵⁰ Eventually, it provided this same function for the *Audiencia*. Evidence of the office of chancellor appears with frequency in early twelfth-century charters. Evelyn Proctor notes that as early as 1112, a chancellor had confirmed a charter for Queen Urraca of León-Castile.¹⁵¹ Within a few decades, further documentation shows that the kings of León and Castile intended to further institutionalize the office. Alfonso VII of León-Castile had conceded the office of chancellor to the archbishop of Santiago de Compostela in perpetuity on 6 June 1140.¹⁵² However, when he partitioned his kingdom among his sons, Sancho and Fernando, separate chancelleries developed. In Compostela on 30 September 1158, Fernando II of León confirmed that in León the archbishop of Santiago would continue to hold this privilege.¹⁵³ His brother, Sancho III, who inherited Castile and Toledo, lived to rule only one year. On 1 July 1201 in Frías, his son Alfonso VIII of Castile (r. 1158-1214) confirmed that the archbishop of Toledo

¹⁴⁹ See *Fuero juzgo en latín y castellano*.

¹⁵⁰ See Richard Fletcher, “Diplomatic and the Cid Revisited: The Seals and Mandates of Alfonso VII,” *Journal of Medieval History* 2 (1976): 305-37, for the development of the seal as a means of authenticating royal documentation; for the Castilian Chancellery at Valladolid, see María de la Soterraña Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid* (Valladolid: Librería Clares, 1979).

¹⁵¹ See Proctor, *Curia and Cortes*, 12-13; on the reign of Queen Urraca, see Bernard F. Reilly, *The Kingdom of León-Castilla under Queen Urraca: 1109-1126* (Princeton: Princeton University Press, 1982).

¹⁵² Alfonso VII to the Archbishop of Santiago, Compostela, 6 June 1140, in Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid*, 363-4.

¹⁵³ Fernando II to Archbishop Martín of Santiago, Compostela, 30 September 1158, in Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid*, 365-6.

would hold the office of chancellor in perpetuity in Castile.¹⁵⁴ Fernando III confirmed this when he recorded that he placed Archbishop Rodrigo of Toledo in possession of the office of chancellor.¹⁵⁵

Table 1. Rulers of Castile, 1035-1504

Monarchs of Castile	Years of Reign	
Fernando I	1035-65	and León
Sancho II	1065-72	and León in 1072
Alfonso VI	1072-1109	and León
Urraca	1109-26	and León
Alfonso VII	1126-57	and León
Sancho III	1157-58	
Alfonso VIII	1158-1214	
Enrique I	1214-17	
Berengaria	1217	
Fernando III*	1217-52	*Permanently unifies Castile and León in 1230
Alfonso X	1252-84	
Sancho IV	1284-95	
Fernando IV	1295-1312	
Alfonso XI	1312-50	
Pedro I	1350-66, 1367-69	
Enrique II	1366, 1369-79	
Juan I	1379-90	
Enrique III	1390-1406	
Juan II	1406-54	
Enrique IV	1454-74	
Isabel I	1474-1504	

¹⁵⁴ Alfonso VIII to Archbishop Martín of Toledo, Frías, 1 July 1201, in Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid*, 367-8; on the reign of Alfonso VIII, see Gonzalo Martínez Díez, *Alfonso VIII: Rey de Castilla y Toledo (1158-1214)*, 2 ed. (Gijón: Ediciones Trea, 2007).

¹⁵⁵ Fernando III to Archbishop of Toledo Rodrigo, Guadalfairam, 12 April 1230, in Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid*, 368-9. He did the same for the archbishops of Santiago in León the following year; Alfonso XI confirmed this privilege as well, see Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid*, 369-71.

In the early thirteenth century, as the office of chancellor developed, the monarchs of Castile continued to assign officials from their inner circle to hear suits. On 11 June 1220, Fernando III confirmed a *sententia definitiva* (final judgment) concerning a dispute between the Monastery of Santa María de La Vid and its villages against claims made by Lord Lope Díaz.¹⁵⁶ The two judges, Gonzalvo Rodríguez and García Fernández, were the *mayordomos* of the king and the king's mother respectively. They ruled against Lope Díaz, who had apparently attempted to take possession of villages under the monastery's control; the king confirmed the decision before the bishops and leading magnates of Castile.¹⁵⁷ This case shows that the system of assigning judges to hear cases from the monarch's inner circle was still prevalent. The king may have also personally brokered a settlement between the orders of the Templars and Alcántara, who were contesting each other's rights to lands near Almorchón. He brought them together before the court to confirm the settlement in writing.¹⁵⁸

Fernando III also confirmed *pesquisas* that were conducted to determine the ownership and use of commons, such as *pastos*. In a dispute that the town of Sigüenza initiated against Atienza and Medina, a three judge panel determined that Sigüenza did not have exclusive use of its *términos* for grazing its livestock, but had always allowed Atienza and Medina to graze livestock there.¹⁵⁹ Since the time of Alfonso VIII, Atienza and Medina had also helped defend Sigüenza's *términos*. These cases show that under Fernando III, the sovereign continued to delegate judges to hear specific cases or conduct *pesquisas* as needed.

¹⁵⁶ Monastery of Santa Maria de La Vid v. Lope Díaz, *Sententia Definitiva*, Burgos, 11 June 1220 in Proctor, *Curia and Cortes*, 268-69 (appendix 1).

¹⁵⁷ Fernando III to the Orders of the Templars and Alcántara, Burgos, 16 December 1236, in González, *Reinado y diplomas de Fernando III*, 3:100-01.

¹⁵⁸ Ibid.

¹⁵⁹ Sigüenza v. Atienza and Medina, Zamora, 24 April 1234, in González, *Reinado y diplomas de Fernando III*, 3:29-31.

Fernando III's reign represents a critical juncture in the history of Castile and León, as he successfully conquered Andalucía and made the Nasrid kingdom of Granada his tributary. In 1230, he inherited the kingdom of León and united it with Castile, which he had ruled since 1217. Where under Alfonso VI, Queen Urraca, and Alfonso VII, Castile was considered part of the Leonese empire, after Fernando III claimed León as his inheritance, it became one of the appended kingdoms fused to the Crown of Castile.¹⁶⁰ Local jurisdictions retained their *fueros* and customs, but they came under the ultimate authority of a single sovereign. Though Fernando III sometimes referred to these kingdoms as "*ispania*" or the kingdom of Spain in passages within his charters, he signs these same charters simply as "*rex Castellae*" (king of Castile) even after 1230.¹⁶¹ When he issued royal concessions, Fernando III expressly stated that they were to hold force in the kingdom of Castile as well as León.¹⁶² He and his successors also utilized the *rodado* the kings of León had used to seal their charters.¹⁶³ The kings of Castile-León, first used a cross, then eventually placed in the center of the seal the castle for Castile and the lion for León quartered (see fig. 2.1).

¹⁶⁰ E.g., see the intitution in the Capilla Fortress Grant (Fernando III to Stephen of Bellomonte and the Militia of the Order of the Templars), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, no. 575, 3:93-95.

¹⁶¹ E.g., Fernando III to the Orders of the Templars and Alcántara, Burgos, 16 December 1236, in González, *Reinado y diplomas de Fernando III*, 3:100-01; also, see 3:13, 14.

¹⁶² See the Capilla Fortress Grant (Fernando III to Stephen of Bellomonte and the Militia of the Order of the Templars), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95.

¹⁶³ On the Castilian *rodado*, see also Anthony J. Cárdenas, "Alfonso's Scriptorium and Chancery: Role of the Prologue in Bonding the *Translatio Studii* to the *Translatio Potestatis*," in Burns, *Emperor of Culture*, 90-108, at 97-99.



Figure 2.1. Rodado Seal from Alfonso XI, Charter of Confirmation of Donations of Alfonso VII (8 March 1145), Burgos, 22 December 1338, ARCV, Pergaminos, Carpeta 70, 6.

Fernando III translated the *Lex Visigothorum* into Castilian and confirmed it to the cities and towns he conquered in Andalucía, such as Córdoba, Sevilla, and Jerez de la Frontera.¹⁶⁴ He sought to establish a more effective, more unified body of law by which his realms could be ruled. His reign added a considerable amount of geographic space through inheritance (León) and through the *reconquista*. These were kingdoms listed along with Castile in the intitulation (style of title) of his charters, but jurisdictions that would eventually all come under the authority of the *Audiencia*. From the time of Fernando III into the modern era, Castile was listed first in the intitulations of the monarchs that ruled the multiple jurisdictions appended to its crown.

¹⁶⁴ See González, *Reinado y diplomas de Fernando III*, 1:280-394.

Alfonso X, Fernando III's successor, developed the royal judiciary into an institution in which judicial officers had distinct professional roles. He gave the judiciary guidance through the *Siete Partidas* and the Ordinances of Zamora in 1274.¹⁶⁵ *Partida* III, title iv, laws i-xxxv contain precepts governing judges and the judiciary. Law i defined the various judges. There were *jueces* (judges) of the court of the king, with authority over all of the realms. There were also *sobrejueces* (superior judges) who heard appeals. Law i also explained that *adelantados* could serve as judges and that judges could appoint worthy men to serve as judges in particular cases. Echoing the *Lex Visigothorum*, law i also stated that the parties in a dispute could consent to a judge who would hear their case.¹⁶⁶

The Ordinances of Zamora promulgated in 1274 reiterate the ordering of the judiciary laid out in the *Siete Partidas*, but they provide more detail concerning territorial jurisdiction and the *competencia* of the judges. The ordinances were issued in response to the resistance by the municipalities, nobles, and prelates at the *cortes* of Burgos in 1272 to the promulgation of the *Siete Partidas* over the *fueros* that the municipalities had received.¹⁶⁷ The forty-eight articles of the ordinances address legal representation, the judiciary, *escribanos*, and cases in which the king's royal court retained jurisdiction.¹⁶⁸ In these, Alfonso X reconfirmed the applicability of the *fueros* throughout his realms and required that attorneys and legal representatives act in conformity with them.¹⁶⁹

¹⁶⁵ On the *ordenanzas de Zamora de 1274*, see *CLC*, 1:87-99; O'Callaghan, *The Cortes of Castile-León*, 120. On the *Siete Partidas*, see *Las siete partidas del muy noble rey Don Alonso el Sabio, por el licenciado Gregorio López de Tovar*, 4 vols., (Madrid: Compañía General de Impresores y Libreros del Reino, 1844).

¹⁶⁶ See the *Lex Visigothorum*, book II, title i, law xiii.

¹⁶⁷ O'Callaghan, *Cortes of Castile-León*, 198-99.

¹⁶⁸ The term *escribano* does not translate exactly into English. An *escribano* was a scribe who also had legal training or legal knowledge gained through experience that he applied to his work in drafting documents.

¹⁶⁹ See *CLC*, 1:87-89, *ordenanzas de Zamora de 1274*, articles 1-16.

In articles 17-35, Alfonso X set the *alcaldes* assigned to hear disputes for the royal court in Castile at nine, eight for León, and six for Estremadura.¹⁷⁰ He then specified that some of these *alcaldes* would remain in the *casa del rey*, all of whom would be laymen.¹⁷¹ Three from Castile and four from León are always to be in the *casa del king*. For León one *alcalde* had to be a knight who knew the *fuero del libro* (*Lex Visigothorum*) and ancient custom.¹⁷² In reconfirming the *fueros*, custom, and the *Fuero Juzgo* to specific jurisdictions, Alfonso X ensured that these *alcaldes* would continue to administer justice according to the laws of the specific locales. Their *competencia* would be based on the *fueros* or customs of their jurisdictions. However, he also established a panel of judges to hear the appeals from these judges. He mandated in article 19 that three nobles learned in the *fueros*, supported by *escribanos*, should hear appeals from “all of the land.”¹⁷³ Thus, they had territorial jurisdiction over his entire realms. There were no distinctions made for specific jurisdictions concerning local law. He also gave this tribunal broad discretion to settle cases as they saw best. Where they could not arrive at an easy decision, they were to consult with the other *alcaldes* and determine the best solution.¹⁷⁴ However, he also provided that if no decision could be reached the case should be presented to the king.¹⁷⁵ Here again, territorial jurisdiction spanned throughout all of the king’s realms.

¹⁷⁰ Ibid., 1:89-90, *ordenanzas de Zamora de 1274*, article 17.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid., 1:90, *ordenanzas de Zamora de 1274*, article 19, “... *toda la tierra*.”

¹⁷⁴ Ibid.

¹⁷⁵ Ibid., 1:90, *ordenanzas de Zamora de 1274*, article 20. A more elaborate process is stated for Castile, whereas appeals in all of the other jurisdictions that were using the *Lex Visigothorum* or the Castilian version, the *Fuero juzgo*, would reach the king more directly.

Alfonso X also reasserted that certain criminal cases, such as treason, murder, duels, and the forced abductions of women fell under the direct jurisdiction of the king.¹⁷⁶ Here, the king was clarifying that while most criminal offenses were adjudicated locally and on appeal by the *alcaldes del corte* assigned to specific jurisdictions, the offenses listed in article xxxvii were always under the jurisdiction of the king and the royal court.¹⁷⁷ Like major land disputes, they were heard by the royal court at the first instance rather than by appeal. Altogether, these ordinances established a system in which the *alcaldes del corte*, applying *fueros* and other laws, heard cases according to their assigned jurisdiction. This provided a process in which the litigants could conduct their appeal according to the laws of their specific jurisdictions. Then there was a tribunal to hear appeals, with a territorial jurisdiction covering all of the realms under the Crown of Castile.

Finally, the king reasserted jurisdiction over certain types of cases, which he had traditionally claimed. This *competencia* included land disputes, other civil disputes, and the criminal cases that Alfonso X listed in article xxxvii from the Ordinances of Zamora of 1274. The *Audiencia's* subject matter jurisdiction would include this as well; it derived its jurisdiction from the sovereign's jurisdiction as supreme judge rather than from the tribunal of judges who heard appeals from the *alcaldes del corte*. Ultimately, the sovereign had full territorial jurisdiction and jurisdiction over all cases when the lower adjudications had not resulted in a decision or were appealed; the crown had original jurisdiction (*primera instancia*) over certain types of case, such as land disputes. The distinction here is that, in general, criminal cases were decided in their local jurisdiction or through the *alcaldes del corte* on appeal. Only when this process was exhausted did the case reach the king. Alfonso

¹⁷⁶ For a discussion of these cases, see Aquilino Iglesia Ferreirós, "Las cortes de Zamora de 1274 y los casos de corte," *Anuario de historia del derecho español* 41 (1971):845-72.

¹⁷⁷ *CLC*, 1:94, *Ordenanzas de Zamora de 1274*, article 46.

X's successors attempted to keep this system intact. Sancho IV and Fernando IV attempted to implement his reforms while others developed their own reforms.¹⁷⁸

In 1348, Alfonso XI issued the *Ordenamiento de Alcalá de Henares* at the meeting of the *cortes* in the same town. This legislation proved fundamental in establishing how the various strains of law under the Crown of Castile would relate to each other in terms of authority.¹⁷⁹ Chapter sixty-four of the legislation established a legal hierarchy in which the existing *fueros* would continue to be observed, but royal law and royal decisions would take precedent where applicable.¹⁸⁰ The *Siete Partidas* were also formally promulgated throughout Alfonso XI's realms and were to be used where the *fueros* lacked a sufficient remedy. Their laws could be supplemental or speak directly to an issue. The *Siete Partidas* were not simply a Romanized code nor an essay or restatement of Roman law, but a body of legal principles and custom derived from numerous Spanish sources as well as the Roman civil and ecclesiastical legal traditions. In this sense, the *Siete Partidas* replaced the *ius commune* (European common law), which had formed from the legal reasoning found in the *Corpus Iuris Civilis* and ecclesiastical canon law.¹⁸¹ (In the following chapter, the *Siete Partidas* will be more fully analyzed within the context of the Castilian legal tradition.)

The offices of the royal ministers who served the Castilian Crown and *Chancillería* continued to develop as well. Luis Vicente Díaz Martín provides a sketch of numerous ministers in his *Los oficiales de Pedro I de Castilla*.¹⁸² In the documentation accumulated under Alfonso XI and Pedro I (r. 1350-66, 1367-69), the term *audiencia* appears more

¹⁷⁸ O'Callaghan, *The Cortes of Castile-León*, 156.

¹⁷⁹ *Ibid.*, 117.

¹⁸⁰ *CLC*, 2:544, Cortes de Alcalá de Henares de 1348, capítulo 64.

¹⁸¹ Bellomo, *The Common Legal Past of Europe*, 101.

¹⁸² Luis Vicente Díaz Martín, *Los oficiales de Pedro I de Castilla* (Valladolid: Universidad de Valladolid, 1975). On the reign of Pedro I, see Clara Estow, *Pedro the Cruel of Castile, 1350-1369, The Medieval Mediterranean: Peoples, Economies and Cultures, 400-1453*, 6 (Leiden: Brill, 1995).

frequently.¹⁸³ These references, and those found in the journals of the *cortes*, refer to the *audiencias públicas* that Castilian kings held once or twice a week while travelling throughout their realms.¹⁸⁴ Not unlike the cases from 1075 heard by Alfonso VI, residents of the places where the sovereign temporarily resided, submitted petitions and complaints, which the monarch, learned men, and *asesores* (councilors) heard and quickly decided. They then issued a *carta de ejecutoria*, containing their decision. As historian Carlos Garriga notes, the term *audiencia* as well as the basis for the institution developed partially out of these *audiencias públicas*.¹⁸⁵ The *asesores* eventually became known as *oidores* and the *audiencias públicas* took on a role distinct from the *alcaldes del corte*.¹⁸⁶

Still, overlap existed concerning the duties of judicial officers and other court officials, indicating that an institutionalized *audiencia*—independent from the person of the monarch—had not been established.¹⁸⁷ The *oidores* were royal councilors as well as judges. Originally, they had been royal counselors as seen in the reign of Fernando III, but by the time that Enrique II formed the *Audiencia*, the *oidor* had more fully taken up judicial duties. This dual function has been cited as raising issues of conflicts of interests.¹⁸⁸ Díaz Martín notes, for example, that Doctor Pero Yáñez had been the Chancellor of Castile, *oidor de la audiencia* and an *alcalde del Rey*.¹⁸⁹ He argues that the *oidores* were *alcaldes del rey*, but were considered a more elite class of *alcaldes* linked with the *Chancillería*.¹⁹⁰

¹⁸³ Díaz Martín, *Los oficiales de Pedro I de Castilla*, 92.

¹⁸⁴ Garriga, *La Audiencia y las Chancillerías Castellanas*, 48.

¹⁸⁵ *Ibid.*, 48; Garriga traces the term *audiencia* to the *Audiencia del Papa*. See *ibid.*, n. 46.

¹⁸⁶ *Ibid.*, 49.

¹⁸⁷ *Ibid.*, 54.

¹⁸⁸ Varona García, *La Chancillería de Valladolid*, 116.

¹⁸⁹ *Ibid.*, 41, 92. By the fourteenth century, there were two chancellors: the *chancellor mayor* and the *chancellor del sello de la poridad*.

¹⁹⁰ *Ibid.*

The development of the Castilian judiciary remained in this state during the civil war between Pedro I and the supporters of Enrique of Trastámara, Pedro's illegitimate half-brother (later Enrique II).¹⁹¹ The civil war, fought between 1360 and 1369, involved the French and English entering the struggle on opposing sides. The English, led by Edward, Prince of Wales, known as the Black Prince, sided with Pedro I of Castile, but left him before the final decisive battle.¹⁹² The French with financial support from the papacy and Aragon sided with Enrique of Trastámara. The kingdom of Aragon, which Castile had invaded with varying success in 1357, naturally supported Enrique, who was in exile there. The civil war featured numerous executions and brutalities, which, for his part, earned Pedro I the moniker of "the Cruel."¹⁹³ After Pedro defeated Enrique on 13 April 1367, it appeared that he would ultimately prevail.¹⁹⁴ Enrique, however, escaped and after gaining reinforcements, returned to Castile in the early part of 1369. Pedro, against the advice of the Black Prince, sought to execute the Castilian rebels. The Black Prince left Castile for Bordeaux, seeing that Pedro could not cover any of his debts to him.¹⁹⁵ Enrique and Bertrand du Guesclin defeated Pedro at Montiel on 14 March 1369.¹⁹⁶ Pedro, however, escaped to Montiel's fortress and began to offer Guesclin bribes to change sides. Guesclin informed Enrique of the offers. Pedro was invited to Guesclin's tent on the pretext of arranging a bribe. After Pedro arrived, Enrique slew him. Geoffrey Chaucer memorialized Pedro's fall from fortune's wheel in his *Monk's*

¹⁹¹ For a concise overview of the struggle between Pedro I and Enrique II, see O'Callaghan, *A History of Medieval Spain*, 419-27.

¹⁹² Ibid., 426.

¹⁹³ Ibid., 422.

¹⁹⁴ Ibid., 425.

¹⁹⁵ Ibid., 426.

¹⁹⁶ Ibid.

Tale: “And after, at a seege, by subtiltee,/ thou were bitraysed, and lad unto his tente,/ where as he with his owene hand slow thee,/ succedyng in thy regne and in thy rente!”¹⁹⁷

The civil war ended as such.

During the conflict, however, there had been calls for judicial reform. In 1367, prior to the end of the fighting, representatives at the *cortes* held at Burgos, called for the establishment of a judicial court.¹⁹⁸ Enrique II (r. 1367, 1369-79), having declared himself king, confirmed the laws given by Alfonso XI at Alcalá de Henares, specifically naming the *Siete Partidas*.¹⁹⁹ He also reaffirmed all previous law given by his predecessors.²⁰⁰

In 1371 at Toro, Enrique II further advanced his reforms. In an attempt to make substantial changes to the Castilian judiciary, he established the *Audiencia*, charging it with administering justice and having jurisdiction throughout the kingdom of Castile.²⁰¹ The *Audiencia* was to consist of seven *oidores* that were not to be *alcaldes ordinarios*.²⁰² No longer could a single official hold the office of *oidor* and *alcalde*. Enrique II named the first seven judges: the bishops of Palencia, Salamanca, and Orense; Sancho Sánchez of Burgos; Diego de Corral de Valladolid; Dr. Juan Alfonso; and Velasco Pérez de Olmedo.²⁰³ He ordered that the *Audiencia* should hear cases in the royal palace or in the office of the *Chancillería*.²⁰⁴ The *Audiencia* was to hear petitions and complaints on Mondays,

¹⁹⁷ Larry D. Benson, ed. *The Riverside Chaucer*, 3rd ed. (New York: Houghton Mifflin Co., 1986), “The Monk’s Tale,” p. 246, lines 2379-82.

¹⁹⁸ Varona García, *La Chancillería de Valladolid en el reinado de los Reyes Católicos* (Valladolid: Universidad de Valladolid, 1981), 38-9; Garriga, *La Audiencia y las Chancillerías Castellanas*, 61-3.

¹⁹⁹ *CLC*, 2:177-188, Cortes de Burgos de 1367, articles 14, 20.

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*, 2:188-256; Varona García, *La Chancillería de Valladolid*, 38-9. This included the kingdom of León and the other kingdoms now appended to the Castilian Crown. See the protocol in the transcription in Appendix B of Villa of Galisteo v. Arias Barahona, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3.

²⁰² *CLC*, 2:189-90, Cortes de Toro de 1371, articles 1 and 2.

²⁰³ *Ibid.*, 2:189, Cortes de Toro de 1371, article 1.

²⁰⁴ *Ibid.*

Wednesdays, and Fridays.²⁰⁵ It was to decide them summarily. It gave the decision and the *Chancillería* sealed and issued the *sentencias* that contained them. Six *escribanos* were assigned to assist the *oidores*. To curb corruption, the *oidores* and *alcaldes* were prohibited from serving as attorneys in any of the cases before the *corte*.²⁰⁶ A *presidente* served as the executive over the *oidores*.²⁰⁷ He was usually a bishop or archbishop. He presided over the *Audiencia* once a week and took the oaths of all the officials involved with the process.²⁰⁸

On the jurisdiction of the *Audiencia*, historian María Antonia Varona García argues that the *Audiencia* was designed to hear all the cases that would have come before the king, not just civil cases as some have argued.²⁰⁹ The *Audiencia* did not end the role of the *alcaldes de crimen*.²¹⁰ These judges, also known as *alcaldes del corte*, continued to hear criminal cases based on the law of the jurisdictions from where the disputes arose. The *alcaldes de las alzadas* heard appeals from these specific decisions.²¹¹ After its formal establishment, Garriga asserts that the *Audiencia* began to extend its jurisdiction over cases where parties claimed that the king had jurisdiction either expressly or implicitly due to the nature of the claims.²¹² This was based on the doctrine of *provocatio ad causam*, sometimes translated as an extrajudicial appeal. However, it appears to resemble a summons to show cause in which evidence otherwise would be lost. In this scenario, the *Audiencia* would accept one party's petition and order the other to preserve or provide certain evidence.

²⁰⁵ Ibid., 2:190, Cortes de Toro de 1371, article 2.

²⁰⁶ Ibid., 2:192, Cortes de Toro de 1371, article 3.

²⁰⁷ Varona García, *La Chancillería de Valladolid*, 112. The *Reyes Católicos* eventually increased the number of *oidores* to eight.

²⁰⁸ Ibid.

²⁰⁹ Ibid., 117. Here, she revises Piskorski, *Las Cortes de Castilla en el período de tránsito de la edad media a la moderna 1188-1520*, 187.

²¹⁰ Ibid.

²¹¹ Carlos Garriga, *La Audiencia y las Chancillerías Castellanas*, 65-66. A *juez mayor de Vizcaya* heard complaints from Vizcaya and decided them based on the privileges and *fueros* of the region. An *alcalde de hijosdalgo* adjudicated cases concerning the privileges of the *hidalguía* (nobility).

²¹² Ibid., 83.

The territorial jurisdiction of the court was the entire kingdom of Castile (and all of the realms held by the monarch of Castile.) This meant that theoretically the entire population fell under its jurisdiction. Prior to 1492, Jewish judges heard cases involving Jews in their respective *aljamas*. Claimants could appeal these decisions to the Jewish *juez mayor*. Decisions by this judge could then be appealed to the *Audiencia*.²¹³

Based on late fifteenth-century civil cases, the quotidian function of the *Audiencia* at Valladolid generally proceeded along these lines. An interested party, through a *procurador* (legal representative), arranged for a hearing to present his or her petition.²¹⁴ This was done before an *escribano*, who then scheduled a hearing before the *presidente* and *oidores* of the *Audiencia*. If the case was an appeal, the party filing the suit would petition the *Audiencia* to issue a summons termed a *real provisión de emplazamiento* to the opposing party.²¹⁵ That party had thirty to forty days to respond, depending on where the opposing party lived. In the next hearing, the parties presented their cases. The *escribano* arranged the documents of the dispute and left it before the members of the *Audiencia*. Cases worth more than 5,000 *maravedís* were written down in the *relación*. In those worth less, the *relación* was given orally. Both parties were to sign the *relación*. If one party refused, the *relación* was written “*en rebeldía de las partes*.” Then the *oidores* in the *Audiencia* heard the *relación*, examined the suit, and voted on a decision in which a simple majority determined the outcome.²¹⁶

The introduction of the Council of Castile by Juan I (r. 1379-90) in 1380 further shaped the role of the *Audiencia*. While the *Audiencia* reflected a strengthening of royal authority, the Council of Castile represented a weakness, since it allowed members of the

²¹³ Varona García, *La Chancillería de Valladolid*, 120.

²¹⁴ *Ibid.*, 231.

²¹⁵ E.g., Alfonso Díaz y Alfonso del Castillo v. Juan de Alcázar, *Real provisión de emplazamiento*, Valladolid, 3 September 1483, ARCV, Registro de Ejecutoria, Caja 1, 18.

²¹⁶ Varona García, *La Chancillería de Valladolid*, 231.

nobility, clergy, and representatives of towns to participate in shaping royal policy.²¹⁷ It was also positioned between the king and *Audiencia*. The *Audiencia* originally was not established as a supreme court, but as a tribunal that in place of the king—the supreme judge of the realm—heard grievances and served as a court of last resort. In this sense, the *Audiencia* was the king’s alter ego. With the establishment of the Council of Castile, however, an additional court was placed between the *Audiencia* and the physical person of the monarch.

Los Reyes Católicos sought the “reformation and restoration” of the *Audiencia* to reorganize it into a more effective judicial institution and define its role in contrast to the Council of Castile.²¹⁸ This included confirmation of the laws that their predecessors had confirmed to the *Chancillería*.²¹⁹ They also sought to expedite lawsuits.²²⁰ *Los Reyes Católicos* clarified the distinction between the Council of Castile and the *Audiencia* as well. In short, while they both had the same jurisdiction, the Council heard cases that were exceptional in some way.²²¹ From 1371 forward, the *Audiencia* had moved throughout the kingdom with the royal court, but in 1442 it was fixed at Valladolid. In 1489, *Los Reyes Católicos*, in the *Ordenanzas de la Chancillería de Valladolid*, confirmed that the *Audiencia* and *Chancillería* would remain in Valladolid.²²² The archives of the *Chancillería* exist there today next to the Palacio de los Viveros, where *Los Reyes Católicos* were married in 1469.²²³

²¹⁷ Ibid., 94.

²¹⁸ Ibid., 134.

²¹⁹ Fernando and Isabel I, *Ordenanzas de la Chancillería de Valladolid*, Medina del Campo, 29 March 1489, in Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid*, 472-93.

²²⁰ Varona García, *La Chancillería de Valladolid*, 134.

²²¹ Ibid.

²²² Fernando and Isabel I, *Ordenanzas de la Chancillería de Valladolid*, Medina del Campo, 29 March 1489, in Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid*, 472-43, particularly item 1, p. 472. Enrique IV also declared (confirmed) that it would be based in Valladolid in 1472.

²²³ See Martín Postigo, *Historia del Archivo de la Real Chancillería de Valladolid*.

The *villa* of Valladolid proved an excellent location for the *Chancillería* and *Audiencia*, as it had a university, good water supplies, and was well situated for communications with other towns.²²⁴ Until Felipe II transferred the capital from Valladolid to Madrid in the sixteenth century, Valladolid was the most important town in Castile in terms of royal administration.²²⁵ Between 1250 and 1350, Valladolid held the *cortes* more than any other town in Castile, including Burgos.²²⁶ In 1325, Alfonso XI donated numerous villages to the *villa*, greatly extending the jurisdiction of the town's council.²²⁷ This shows that a measurable shift, in terms of royal administration, from Burgos south toward the center of Castile had occurred.

Valladolid's own history distinguished it from Burgos, hitherto the principal city of Castile and of the county of Castile.²²⁸ Valladolid had spontaneously emerged along the Pisuera and Esgueva rivers on a previous ancient settlement in the eleventh century, but came to play a prominent role in fifteenth-century Castile. Alfonso VI apparently placed the settlement under Pedro Ansúrez's lordship in 1072.²²⁹ Ansúrez established a collegiate church, Santa María la Mayor, in 1095, where the sixteenth-century cathedral now stands

²²⁴ Elena Sánchez Movellán, "La Época medieval," in *Historia de la Universidad de Valladolid*, 2 vols., ed. Luis Antonio Ribot García (Valladolid: Universidad de Valladolid, 1989), 1:22.

²²⁵ For a survey on medieval Valladolid, see Miguel Ángel Martín Montes, et al., *Una Historia de Valladolid* (Valladolid: Ayuntamiento de Valladolid, 2005), 22-193; Adeline Rucquoi, *Valladolid en la Edad Media: la villa del Esgueva* (Valladolid: Ayuntamiento de Valladolid, 1983); Adeline Rucquoi, *Valladolid en la Edad Media: Génesis de un poder*, 2 vols. (Valladolid: Junta de Castilla y León, Consejería de Educación y Cultura, 1987); for the university, see Luis Antonio Ribot García, ed., *Historia de la Universidad de Valladolid*, 2 vols. (Valladolid: Universidad de Valladolid, 1989).

²²⁶ It held the *cortes* at least sixteen times following the dates given in O'Callaghan, *The Cortes of Castile-León*, 38, 72-4.

²²⁷ See Martín Montes et al., *Una Historia de Valladolid*, 129.

²²⁸ For Burgos, see Teofilo F. Ruiz, *The City and the Realm: Burgos and Castile, 1080-1492* (Brookfield, Vt: Variorum, 1992); for the County of Castile, see Gonzalo Martínez Díez, *El Condado de Castilla (711-1038): La Historia Frente a La Leyenda*, 2 vols. (Valladolid: Marcial Pons, Ediciones de Historia, S.A., 2005).

²²⁹ See Martín Montes et al., *Una Historia de Valladolid*, 78-85.

(see figures 2.2 and 2.3).²³⁰ In the 1240s, or possibly earlier, the University of Palencia may have been transferred to Valladolid for economic reasons. However, there are numerous theories on the very beginnings of the Universidad de Valladolid.²³¹ One theory suggests that the university grew out of the school established at the church of Santa María la Mayor.²³² This would explain the close proximity of the university and the church, which today are separated by a plaza. Another theory with documentary support attributes the founding of the university to the municipal council with support of the crown in the thirteenth century, possibly under Alfonso X.²³³ The Universidad de Valladolid, nonetheless, expanded from its obscure origins to include a law school. By 1400, Valladolid had six *cátedras*, four of which were dedicated to law. As many as eighty *escribanos* worked in the *villa* at the end of the fourteenth century.²³⁴ The frequent holding of the *cortes*, the vibrant legal community, university, and growing economic prosperity contributed to Valladolid's importance in the royal machinery of Castile.²³⁵ The *Audiencia*'s establishment at the physical location of the *Chancillería* next to the Palacio de los Viveros, where it still stands, proved a good selection (see figures 2.4 and 2.5).

²³⁰ Bernard F. Reilly, "The Rediscovery of Count Pedro Ansúrez," in *Cross, Crescent, and Conversion: Studies on Medieval Spain and Christendom in Memory of Richard Fletcher*, edited by Simon Barton and Peter Linehan, The Medieval Mediterranean: Peoples, Economies and Cultures, 400-1500 (Leiden: Brill, 2008), 116, 120; Sánchez Movellán, "La Época medieval," in *Historia de la Universidad de Valladolid*, 1:27. The Crown of Castile later took Valladolid under its *señorío* (lordship). See Martín Montes et al., *Una Historia de Valladolid*, 78-85.

²³¹ Sánchez Movellán, "La Época medieval," in *Historia de la Universidad de Valladolid*, 1:22-8.

²³² *Ibid.*, 27-8.

²³³ *Ibid.*, 28-9. Sánchez Movellán favors this interpretation.

²³⁴ Martín Montes et al., *Una Historia de Valladolid*, 153.

²³⁵ See *ibid.*, 151.



Figure 2.2. Remains of the Colegiata de Santa María la Mayor, Valladolid. Photo by James E. Dory-Garduño, © 2011-13.



Figure 2.3. Thirteenth-century exterior walls of Santa María la Mayor, Valladolid. Photo by James E. Dory-Garduño, © 2011-13.



Figures 2.4. (top) and **2.5** (bottom). Interior courtyard of the Palacio de los Viveros, Valladolid, where the *Audiencia* decided cases in the late-fifteenth century. Photo by James E. Dory-Garduno, © 2011-13.

In establishing a professional judiciary, the monarchs of Castile combined the traditional use of appointing judges to handle specific disputes with a multi-level judicial system developed by Alfonso X. Certain types of cases were heard by the *alcaldes del corte* and an additional tribunal heard these appeals. If there was still need for a further decision, the king heard the case. In addition to these cases, the royal court established a long tradition of settling land disputes involving royal concessions, communities, and various types of commons. These suits represented the types of cases that came directly before the royal court and within the sovereign's direct authority as the supreme judge of his or her realms. This became the *Audiencia's competencia*, and, in this sense, the institution, as it acted independently, enhanced the administration of royal justice, utilizing existing law and a discernible legal tradition. The *Ordenamiento de Alcalá de Henares* was the second critical development as it expressly stated the structure of this tradition. In that legislation, Alfonso XI laid out clearly the hierarchy of Castilian law, which later monarchs—Enrique II and *Los Reyes Católicos*—confirmed. The *Audiencia*—along with its territorial and subject matter jurisdiction—inherited this legal tradition as the monarch's alter ego in the administration of justice.

The *Audiencia* and *Chancillería* at Valladolid became the model for the future *audiencias* that the Crown of Castile established in the Iberian Peninsula and the Americas. The *Audiencia* established at Ciudad Real, later moved to Granada, was based entirely on that of Valladolid.²³⁶ With this new *Audiencia*, the territorial jurisdiction for the *Audiencia* at Valladolid became all of the lands north of the Tajo River, with the *Audiencia* at Ciudad Real

²³⁶ Rosine Letinier, "Origen y evolución de las audiencias en la Corona de Castilla," *Revista Jurídica de Castilla y León* 12 (2007): 237; Santos Manuel Coronas González, "La Audiencia y Chancillería de Ciudad Real (1494-1505)," *Cuadernos de estudios manchegos* 11 (1981): 47-139.

having territorial jurisdiction over all the lands south of it.²³⁷ In 1511, Fernando of Aragon, governor and administrator of Castile, founded an *Audiencia* at Santo Domingo (Hispaniola) and Carlos I (r. 1516-56) established the first mainland *Audiencia* in the New World at Mexico City in 1527.²³⁸ He also established an *Audiencia* in Nueva Galicia at Compostela in 1548, which was transferred to Guadalajara in 1560.²³⁹ By the early 1600s, eleven *audiencias* had been established, which resembled the Castilian *audiencias*.²⁴⁰ The *audiencias* at Santo Domingo, Mexico City and Compostela (Guadalajara, Nueva Galicia) will be discussed further in Chapter Six.

In the following chapter, the body of law that the *Audiencia* applied and that later *oidores* glossed in Latin, will be evaluated in detail.

²³⁷ Ibid., 234; Elliott, *Imperial Spain*, 97.

²³⁸ Kamen, *Empire: How Spain Became a World Power*, 142.

²³⁹ J. H. Parry, *The Audiencia of New Galicia in the Sixteenth Century: A Study of Spanish Colonial Government* (Cambridge: Cambridge University Press, 1948).

²⁴⁰ Burkholder and Chandler, *From Impotence to Authority*, 2.

Chapter Three

The Castilian Legal Tradition to the End of the Reign of Isabel I

In the past century, the study of medieval Spanish law has shifted from surveys that cover the enormous amount of legal writings produced in the peninsula to studies that focus on specific texts such as the *Lex Visigothorum* or the *Siete Partidas*.²⁴¹ This more focused research has provided a better understanding of the evolution of that law and the various jurisdictions in which specific bodies of law held force: the Iberian Peninsula for most of the Middle Ages comprised numerous principalities and jurisdictions, not one. The identification of the law that the sovereigns of Castile deemed authoritative therefore must be determined before evaluating the principles that the Castilian *Audiencia* could apply in specific decisions. At the same time, such a determination will allow the possibility of identifying instances in which the *Audiencia* relied on *lex non scripta* (unwritten law) in the form of use and custom rather than written law. The *Audiencia's competencia* or the subject matter that it had jurisdiction over covered mainly civil suits, among which land disputes were frequent. Its adjudication of these cases required an understanding of the royal authority underlying the distribution of land and the laws that pertained to land tenure.

The *Lex Visigothorum* (*Fuero Juzgo*), the *Siete Partidas*, and *Fuero Real*, promulgated by the monarchs of Castile-León, contain numerous laws that speak to these

²⁴¹ For surveys, see Madden, *Political Theory and Law in Medieval Spain*; Van Kleffens, *Hispanic Law until the End of the Middle Ages*. For an analysis of the *Lex Visigothorum*, see P. D. King, *Law and Society in the Visigothic Kingdom* (Cambridge: Cambridge University Press, 1972); for the *Siete Partidas*, see the introductions, introductory essays, and accompanying bibliographies in each volume of Burns, *Las Siete Partidas*; for citations to individual laws of the *Siete Partidas*, see *Las siete partidas del muy noble rey Don Alonso el Sabio, por el licenciado Gregorio López de Tovar*, 4 vols. (Madrid: Compañía General de Impresores y Libreros del Reino, 1844); for the law of the Visigoths, see Zeumer's edition of the *Lex Visigothorum* (*Liber Iudiciorum*).

issues.²⁴² For example, provisions in the *Lex Visigothorum* and *Siete Partidas* address ownership and how it might be proved, with an emphasis on written documentation and physical possession.²⁴³ The *Lex Visigothorum* in numerous laws emphasizes the value of *scripturas* (written documents) for the purpose of determining ownership and the validity of wills.²⁴⁴ It remained influential after the Arab-Berber conquests of 711-18.²⁴⁵ By the time that Alfonso X (r. 1252-84) completed the *Siete Partidas*, proceedings associated with juridical acts were recorded on parchment or paper.²⁴⁶ Royal concessions, given to individuals and settlements, and *fueros*, could also establish title. *Fueros* represented important written sources, which recorded rights, privileges, and the territorial boundaries of the settlements of the grantees who received them. They also indicated that private property and communal property were important to settlements, towns, and cities. Laws from the *Siete Partidas* reflected this. Law ix, title xxviii, division III stipulated that various commons could be established in and owned by places, towns, cities, or castles.²⁴⁷ Towns and cities additionally could own land that the municipality as a corporate entity leased or rented to pay the salaries of town officials and maintain infrastructure. Royal concessions from earlier periods contain these principles as well, representing early examples from which these unique features of Castilian law developed.

²⁴² Palacios Alcaine, *Fuero Real; Fuero Real in Leyes de Alfonso X*, 2 vols., ed. Gonzalo Martínez Díez, José Manuel Ruiz Asencio, and César Hernández Alonso (Ávila: Catedrático de Historia del Derecho, 1988).

²⁴³ See the *Lex Visigothorum*, Book II, title i, laws xxi, xxix; on possession, see *Siete Partidas*, Div. III, title xxx, laws i-xviii.

²⁴⁴ *Lex Visigothorum*, Book II, title i, law xxi; Book III, title i, law ix (x) (dowries); Book III, title vi, law ii (marital issues); Book V, title v, law x (legal instruments in general).

²⁴⁵ On the Arab-Berber conquest, see Roger Collins, *The Arab Conquest of Spain: 710-797* (Oxford: Blackwell Publishers, 1989); Hugh Kennedy, *Muslim Spain and Portugal: A Political History of Al-Andalus* (New York: Longman, 1996).

²⁴⁶ *Siete Partidas*, Div. III, *título xviii, leyes i-cxxi*.

²⁴⁷ *Ibid.*, Div. III, *título xxviii, ley ix*.

In the thirteenth century, Fernando III (r. 1217-30) initiated the process of converting the official language of Castile from Latin to Castilian Spanish through charters and the translation of the *Lex Visigothorum* into the vernacular.²⁴⁸ Alfonso X drafted his entire body of legal writings in Castilian. Though he was unable to promulgate the *Siete Partidas* and fully complete the legal reformation of Castilian society that he and Fernando III initiated, Alfonso XI (r. 1312-50) largely accomplished this. In declaring the authority of royal ordinances, *fueros*, and the *Siete Partidas* at the courts of Alcalá de Henares in 1348, Alfonso XI made it possible for the *Audiencia* of Enrique II (r. 1366-7, 1369-79) to apply a rich body of legal writings to various disputes. *Oidores* of the *Audiencia*, such as Vicente Arias de Balboa and Alonso Díaz de Montalvo, crafted commentaries and added glosses to the *Ordenamiento de Alcalá*, the *Fuero Real*, and the *Siete Partidas*.²⁴⁹ Commissioned by Fernando (r. 1479-1516, Aragon) and Isabel I (r. 1474-1504, Castile), Díaz de Montalvo published a compilation of royal legislation known as the *Ordenanzas Reales de Castilla* in 1484.²⁵⁰ He organized it similarly to the *Fuero Real* and *Siete Partidas* with books, titles, and individual laws, which facilitated later efforts by the Crown of Castile in compiling its legal writings.²⁵¹ This body of law, given force through the courts at Alcalá de Henares in 1348, represented a legal tradition that the *Audiencia* applied in the increasing number of cases it heard in the fourteenth and fifteenth centuries.

²⁴⁸ *Fuero juzgo en latín y castellano*.

²⁴⁹ Alfonso X, *Las Siete Partidas*, 2 vols., ed. Alonso Díaz de Montalvo with a new intro. by Gonzalo Martínez Díez (Sevilla, 1491; facsimile, Madrid: Lex Nova, 1989); for Arias de Balboa, see below.

²⁵⁰ *Ordenanzas Reales de Castilla*, in *Los Códigos Españoles: Concordados y Anotados*, 12 vols. (Madrid: Imprenta de la Publicidad, 1847-51), 6:247-548.

²⁵¹ E.g., *Recopilación (Indias)*.

The most influential body of law in the peninsula before the thirteenth century was the *Lex Visigothorum (Liber Iudiciorum)*.²⁵² Compiled in the seventh century, under the Visigothic kings Chindasuinth (r. 642-53) and Reccesuinth (r. 649-72), the *Lex Visigothorum* drew from earlier Visigothic legal writings, custom, Roman law, and Christian teachings.²⁵³ Some have described it as a mixing of Roman principles and Germanic custom, with a Christian tone.²⁵⁴ Others have suggested a more sophisticated achievement, calling it an organic fusion of Roman and Germanic law.²⁵⁵ While earlier Visigothic law applied to Goths and Romans separately, the *Lex Visigothorum* issued by King Reccesuinth in 654 applied to the entire population of Hispania under Visigothic control.²⁵⁶

The kingdom of the Asturias (ca. 718-924) and its successor, the kingdom of León (924-1230), applied the law of the Visigoths to settle disputes, acknowledging it as a law of general application.²⁵⁷ Roger Collins argues that in the ninth and tenth centuries, the *Lex Visigothorum* influenced legal proceedings, especially those concerning land, not only in

²⁵² For a discussion on the editions of various Visigothic law, see Floyd Seaward Lear, "The Public Law of the Visigothic Code," *Speculum* 26 (1951): 13, "Appendix A"; for an English translation, though dated, see *The Visigothic Code: (Forum Judicum)*, trans. and ed. by S. P. Scott (Boston: Boston Book Company, 1910).

²⁵³ See Roger Collins, *Visigothic Spain, 409-711* (Malden, MA: Blackwell, 2004), 223-39.

²⁵⁴ Aloysius K. Ziegler, *Church and State in Visigothic Spain* (Washington, D.C.: The Catholic University of America, 1930), 23, 204-05.

²⁵⁵ Lear, "The Public Law of the Visigothic Code," 1. It has also been praised as the "most remarkable monument of legislation" promulgated by "semi-barbarian people," that, according to one scholar, "incomparably surpassed in excellence the codifications of other barbarian peoples." Scott, *The Visigothic Code: (Forum judicum)*, xxiv; Ziegler, *Church and State in Visigothic Spain*, 88. Older historiography criticized the seventh-century Latin as overly rhetorical and "void of sense." See Ziegler, *Church and State*, 83, quoting Montesquieu. Most historians have been appreciative. Recently, the *Lex Visigothorum*, with its concern for justice and written evidence, has led one scholar to ponder whether any better body of law existed in the early medieval era. Roger Collins, "Sicut lex Gothorum continet", 512.

²⁵⁶ See Collins, *Visigothic Spain*, 226. It was revised in 681 and 692, see *ibid.*, 236; for an argument that Reccesuinth's father Chindasuinth promulgated an earlier territorial body of law, see P. D. King, "King Chindasuinth and the First Territorial Law-code of the Visigothic Kingdom," in *Visigothic Spain: New Approaches*, ed. Edward James (Oxford: Clarendon Press, 1980), 157. King notes that at least twelve Visigoth kings published legal writings of which the *Lex Visigothorum* represented the most substantial effort.

²⁵⁷ On the emergence of the Christian kingdoms after 711, see Roger Collins, *Early Medieval Spain: Unity in Diversity, 400-1000* (New York: St. Martin's Press, 1983), 222-50; Roger Collins, "Visigothic Law and Regional Custom in Disputes in Early Medieval Spain," in Collins, *Law, Culture and Regionalism in Early Medieval Spain*, 92-94.

León, but throughout the peninsula.²⁵⁸ Scholars have traditionally thought that custom eclipsed Visigothic law in the county of Castile.²⁵⁹ However, adjudications of disputes concerning ownership of land bear a resemblance to those in León and Catalonia, where the law of the Visigoths was expressly cited.²⁶⁰ A case adjudicated by Count Assur Fernández of Castile in 944 concerning the control of the monastery of San Salvador follows a similar procedure and outcome as that seen in the Bishop Arias of Oviedo v. Count Vela Ovéquez case.²⁶¹ The conflict erupted when monks from the monastery of San Salvador were ousted by claimants bearing charters allegedly proving their right to title. To settle the dispute, Count Fernández ordered an inquest and named judges to hear the case. The delegated judges deemed the charters false and the monks were restored to their monastery. The judges had examined the *scripturas* and took sworn testimony as in cases outside of Castile that cite and follow the procedure of the *Lex Visigothorum*.²⁶² While this may be a single case, it provides some evidence that the counts of Castile, and the judges they delegated to hear cases, also applied principles found in the *Lex Visigothorum*.²⁶³ It explains, moreover, why the judges from Castile assigned to the Bishop Arias of Oviedo case seemed to have effortlessly adjudicated that dispute according to principles found in the *Lex Visigothorum*.

Alfonso VI of León-Castile (r. 1065-1109) confirmed the *Lex Visigothorum* to the kingdom of Toledo in 1085, but the inhabitants within the city—Muslims, Jews, Mozarabs,

²⁵⁸ Collins, “*Sicut lex Gothorum continet*,” 489-512.

²⁵⁹ For this interpretation, see Palacios Alcaine, *Fuero Real*, ii.

²⁶⁰ Collins, “Visigothic Law and Regional Custom,” 92-94.

²⁶¹ Collins, “*Sicut lex Gothorum continet*,” 508; Bishop Arias of Oviedo v. Count Vela Ovéquez and Vermudo Ovéquez, Oviedo, 26 March 1075, in Ramón Menéndez Pidal, *La España del Cid*, 2 vols. (Madrid: Espasa-Calpe, 1969), 2:849-53.

²⁶² Collins, “*Sicut lex Gothorum continet*,” 508.

²⁶³ See also *ibid.*, 511; Collins, “Visigothic Law,” 85-104; and Roger Collins, *Caliphs and Kings: Spain 796-1031* (Malden, MA: Wiley-Blackwell, 2012), 238-56, in which Collins argues against the notion that the county of Castile had developed a unique legal tradition in which custom took the place of the laws of the Visigoths. While this question deserves more attention in the study of the county of Castile, Fernando III’s rendering of the *Lex Visigothorum* into the Castilian language shows that, in the end, Visigothic law formed part of the Castilian legal tradition. See below.

Castilians, and Franks—apparently had their own *fueros* respecting their religions and customs.²⁶⁴ Nonetheless, the law of general application in the province (kingdom) was the *Lex Visigothorum*, and Alfonso VII issued it in Toledo proper.²⁶⁵ The Christians, known as Mozarabs, were probably following Visigothic law or a degenerate form of it.²⁶⁶ Some textual evidence supports this.²⁶⁷ In the eleventh century, the use of the charter or royal concession increased as a means to grant privileges to monasteries and other settlements. Some of these concessions known as *fueros*, which listed privileges and rights, became important sources of written law applicable at a local level. However, these were applicable to the local village, town, or city that received them or to the individual grantee. As such, the *Lex Visigothorum* remained relevant as a body of written law useful for its general applicability. In the thirteenth century, Fernando III had it translated into Castilian and confirmed it as the *Fuero Juzgo* to various towns in Andalucía, such as Córdoba, Cartagena, Sevilla, Carmona, and Alicante.²⁶⁸ As such, its laws continued to shape Christian society in the kingdom of Castile, a process that facilitated the translation of the laws into the vernacular. An examination of the laws that speak to the administration of justice, title, procedure, and the value of written evidence will assist in discerning how the law of the Visigoths influenced later Castilian law.

The *Lex Visigothorum* is organized into twelve books, with subtitles that contain individual laws.²⁶⁹ Its laws cover legal theory, procedure, marriage, inheritance, contracts,

²⁶⁴ See King, “King Chindasvind,” 131; Reilly, *The Kingdom of León-Castilla under Queen Urraca*, 317-19; Reilly, *The Kingdom of León-Castilla under King Alfonso VII: 1126-1157*, 279-282 for governance of the city of Toledo.

²⁶⁵ Carlé, *Del concejo medieval castellano-leónes*, 23.

²⁶⁶ Collins, “Visigothic Law and Regional Custom,” 96; Palacios Alcaine, *Fuero Real*, ii.

²⁶⁷ Collins, “Visigothic Law and Regional Custom,” 96.

²⁶⁸ Palacios Alcaine, *Fuero Real*, ix.

²⁶⁹ Later legal writings—the *Siete Partidas* and the *Recopilación de leyes de los reynos de las Indias* of 1681—would follow this organization, albeit with a different overall number of books.

and rules for foreign merchants. It also has titles that cover criminal acts, violence, fraud, and laws against heresy and Judaism. The *Lex Visigothorum*'s stated purpose is to protect the innocent, by deterring people from committing wicked acts by providing severe penalties for violations.²⁷⁰ It aims to bring stability and justice by doing so.²⁷¹ Several laws warn judges to avoid improper conduct, indicating an attempt to curb corruption and ensure basic procedural rules. Others describe how judges are appointed, how they should render their decisions, and order them to explain their reasoning upon request.²⁷² Law xxi, title i, book II describes the procedural steps a judge should take in adjudicating a case and what he should do if no written evidence is available.²⁷³ Several other laws warn judges about coercing parties into unjust settlements, deciding cases out of fear of the sovereign, and misappropriating property.²⁷⁴

The *Lex Visigothorum* also provides laws particularly relevant to land tenure. It states how land could be granted, the value of written evidence, and warns against the production of fraudulent documents. Law v, title i, book II distinguishes between property held by the royal family and that acquired or held by the sovereign as head of state.²⁷⁵ Property that the sovereign held or obtained through his familial ties, rather than through his office as monarch, would pass to his heirs. Land acquired while holding the office of king belonged to the royal domain, of which the king could dispose at his discretion.²⁷⁶ Otherwise, it would

²⁷⁰ *Lex Visigothorum*, Book I, title ii, law v.

²⁷¹ *Ibid.*, Book I, title ii, law vi.

²⁷² *Ibid.*, Book II, title i, laws xvi, xxiii.

²⁷³ *Ibid.*, Book II, title i, laws xxi, xxix.

²⁷⁴ *Ibid.*, Book II, title i, laws xxvi, xxvii, and xxx. In law vi, title i, book VI, the king reserved the right to hear appeals and to exercise mercy.

²⁷⁵ *Ibid.*, Book II, title i, law v.

²⁷⁶ *Ibid.*, Book II, title i, law v, “. . . Similis quoque ordo de terris, vineis adque familiis observetur, si sine scripture textum tantummodo coram testibus quelibet facta fuerit definitio. De rebus autem omnibus a tempore Svintilani regis hucusque a principibus adquisitis aut deinceps, si provenerit, acquirendis quecumque forsitan princeps inordinata sive reliquid seu reliquerit, quoniam pro regni apice probantur adquisita fuisse, ad

pass to the sovereign who succeeded him (or her in the post-Visigothic monarchies of León and Castile).²⁷⁷ While this law provides a textual basis for the conveyance of land from the sovereign to his subject without restriction, law ii, title ii, book V explains that such a conveyance did give the grantee absolute title.²⁷⁸ This created a tradition in which *mercedes reales* (royal concessions) could be generously granted and the grantee could hold his property securely and pass it on to his heirs.²⁷⁹ The *Lex Visigothorum* also states that written evidence, such as a charter, should take precedence over oral testimony.²⁸⁰ Throughout the twelve books, written evidence is identified as preferable to other types, such as testimony sworn under oath.²⁸¹

Still, numerous laws reflect a concern for conveyances involving force, duress, and fraud. Law i, title ii, book V declares that donations “extorted by force and fear” have no validity.²⁸² Book VII, title v has nine laws that prohibit the tampering with documents in any way. It provides penalties for those who bring fraudulent claims before the king or forge his orders or mandates.²⁸³ Law ii, title v provides substantial penalties for the forging, attempted forging, or altering of any document.²⁸⁴ Others extend similar penalties and prohibitions specifically to testaments.²⁸⁵ Several laws also protect property owners from forceful

successorem tantundem regni decernimus pertinere; ita habita potestate, ut quidquid ex his helegerit facere, liberum habeat velle.” See also King, *Law and Society in the Visigothic Kingdom*, 63.

²⁷⁷ Queens Urraca, Berengaria, and Isabel I all ruled Castile.

²⁷⁸ *Lex Visigothorum*, Book V, title ii, law ii; see also King, *Law and Society in the Visigothic Kingdom*, 60.

²⁷⁹ The description of the 1088 conveyance from Alfonso VI to Rodrigo Díaz de Vivar in the *Historia Roderici* illustrates this concept. See the *Historia Roderici*, in Martínez Díez, et al., *Historia Latina de Rodrigo Díaz de Vivar*, 64 (chapter 26); also see f. 79v. These ideas will be discussed in detail below along with other examples.

²⁸⁰ *Lex Visigothorum*, Book II, title i, law xxi.

²⁸¹ On the importance attached to documentation, see *ibid.*, Book III, title i, law x (dowries); Book III, title vi, law ii (marital issues); Book V, title v, law x (legal instruments in general).

²⁸² *Ibid.*, Book V, title ii, law i.

²⁸³ *Ibid.*, Book VII, title v, law i.

²⁸⁴ *Ibid.*, Book VII, title v, law ii.

²⁸⁵ *Ibid.*, Book VII, title v, laws iv, v, and vi.

dispossession, fraudulent conveyances, or conveyances of property whose ownership is under dispute.²⁸⁶ Anyone who expelled an inhabitant by force was to lose his case.²⁸⁷ Property could not be seized without a judicial decree.²⁸⁸

The *Lex Visigothorum* also contains laws concerning the partition of property, leases, and the marking and preservation of boundaries.²⁸⁹ Laws iii, iv, and v, title iii, book X provide the procedures designed to settle boundary disputes. Law iv states that where land falls within the boundaries of another's land, title to the land must be determined, even if one party has possession for over fifty years.²⁹⁰ If it cannot be determined, the party that has possession of the land in dispute is to be deemed the owner. In cases where no title existed or could not be established, law v, title iii, book X provides that an inquest must be conducted. The required procedure calls for the examination of the land by persons selected as judges to whom both parties consented. The judge was to take sworn oaths from the elders of the area as to the boundaries of the land in dispute. With all persons present, the elders were to mark the boundaries. Through the actions of Fernando III, the laws of the Visigoths continued to remain relevant in the thirteenth through fifteenth centuries. They also influenced the *Siete Partidas*—the most renowned body of law in the history of Castile.

The *Siete Partidas* or *Seven Divisions* of law, more systematically and comprehensively than the *Lex Visigothorum*, covered numerous facets of life.²⁹¹ Alfonso X the Learned, in addition to the *Fuero Real* and *Espéculo de las Leyes*, drafted the *Siete Partidas* in his court in the 1250s and 1260s. The *Partidas* drew from scripture, and from

²⁸⁶ Ibid., Book V, title iv, laws viii, ix, xix, and xx.

²⁸⁷ Ibid., Book VIII, title i, law ii.

²⁸⁸ Ibid., Book VIII, title i, law v.

²⁸⁹ On partitions and leases, see *ibid.*, Book X, title i; for the preservation of boundaries, see Book X, title iii, laws i and ii.

²⁹⁰ Ibid., Book X, title iii, law iv. However, if the rightful owner does not attempt to contest another's possession of his land, he could lose title.

²⁹¹ Burns, *Las Siete Partidas*, 1:xxxv.

canon, Roman, Visigothic, and Castilian law—*fueros*, as well as custom.²⁹² Alfonso X and his team of scholars also incorporated ideas from philosophers such as Aristotle, Seneca, Cicero, Boethius, and Arabic sources.²⁹³ They were also influenced by biblical scripture and the church fathers, particularly Isidore of Seville.²⁹⁴ According to the *Crónica del rey don Alfonso décimo*, Fernando III began drafting the *Partidas* and Alfonso X completed them.²⁹⁵ Despite this reference, scholars believe that Alfonso X directed the project from start to finish, with the earliest surviving manuscripts having been dated to the fourteenth century.²⁹⁶ Jerry Craddock dates the completion of the *Partidas* to 1265, when they replaced Alfonso X's *Espéculo de las Leyes* out of which they probably evolved.²⁹⁷

The *First Partida* contains numerous titles dedicated to theology, the clergy, and canon law, but it also contains titles that explain general concepts of law and types of law. Title i contains several laws that resemble those of the *Lex Visigothorum* concerning the

²⁹² Ibid., 1:xxxviii.

²⁹³ Ibid., 1:xxxix-lx.

²⁹⁴ Ibid.

²⁹⁵ *Crónica del rey don Alfonso décimo*, in *Biblioteca de Autores Españoles desde la formación de lenguaje hasta nuestras días, Crónicas de los Reyes de Castilla*, ed. Cayetano Rosell (Madrid: M. Rivadeneira, 1876), vol. 1, capítulo ix.

²⁹⁶ Burns, *Las Siete Partidas*, 1:xxxiv. As will be discussed below, Alonso Díaz de Montalvo published the first complete printed edition in Sevilla in 1491, adding glosses in Latin. See Alfonso X, *Las Siete Partidas*, 2 vols., ed. Alonso Díaz de Montalvo with a new intro. by Gonzalo Martínez Díez (Sevilla, 1491; facsimile repr., Madrid: Lex Nova, 1989). The attorney and future member of the Council of the Indies, Gregorio López, published an edition in 1555 with Latin glosses at Salamanca. See *Las Siete Partidas del muy noble rey Don Alfonso el Sabio*, 4 vols., ed. Gregorio López (Salamanca, 1555; reprint, Madrid: Compañía General de Impresores y Libreros del Reino, 1843-44). In 1807, the Real Academia de la Historia published an edition in Madrid. See *Las Siete Partidas del noble rey Don Alfonso el Sabio*, 3 vols., ed. Real Academia de la Historia, (Madrid: Imprenta Real, 1807; reprint Madrid: Atlas, 1972). Judges, jurists, and scholars have considered López's edition the best. Burns, *Las Siete Partidas*, 1:xxxiv.

²⁹⁷ Jerry Craddock, *The Legislative Works of Alfonso X el Sabio: A Critical Bibliography* (Wolfboro, NH: Grant and Cutler, 1986), 7; Burns, *Las Siete Partidas*, 1:xxxiv. O'Callaghan suggests that the Alfonso X revised the *Espéculo* after he was elected Holy Roman Emperor (but not fully recognized) in 1257. Ibid. In *ibid.*, 1:xxx, O'Callaghan argues that the *Partidas* are a code in the modern sense: they are "comprehensive and systematic, organized in books, titles, and laws." He also describes the *Lex Visigothorum* as a true code as well. Ibid., 1:xxxi. Of the two, the *Partidas* resembles a code for the reasons O'Callaghan gives more than the *Lex Visigothorum*, which is more like a compilation.

writing of legislation, amending law, repealing law, and the interpretation of law.²⁹⁸ Title ii contains nine laws explaining usage, custom, and *fueros*.²⁹⁹ All three were important to the evolution of Castilian law. Title ii explains the relationship between usage, custom, and *fueros*. Custom comes from continued usage and *fueros* essentially record custom, converting them from flimsy principles to *lex scripta*. Law iv defines custom as *lex non scripta* or privilege. Law vi states that custom has the force of law, when no written law exists. This includes situations where no royal concession had been given.

When towns disputed the right of other towns to use their grazing lands (*pastos*), for example, they relied on custom in claiming those towns over time had been excluded from accessing their fields.³⁰⁰ In 1234, the town of Sigüenza attempted to prohibit the towns of Atienza and Medina (Medinaceli) from entering its *términos*, which Atienza and Medina claimed all three towns used as *pastos*.³⁰¹ Fernando III delegated judges to conduct a *pesquisa* (investigation). The judges verified that based on established custom, Atienza and Medina historically had grazing rights although no written document proved this. In setting the conditions of the investigation, Fernando III had required the judges to verify the use of the fields at issue as far back as the reign of Alfonso VIII (r. 1158-1214).³⁰² This indicates that two decades of accepted use by all of the parties would suffice to prove that custom and therefore rights to access the *pastos* had been established. It also shows that discretion played a role in the outcome of the dispute. In setting the standards of the inquest, Fernando

²⁹⁸ E.g., *Siete Partidas*, Div. I, *título i*, *leyes xi-xxi*.

²⁹⁹ *Ibid.*, Div. I, *título ii*, *leyes i-ix*.

³⁰⁰ After the promulgation of the *Siete Partidas*, they had the right to exclude non-inhabitants from using their common land. See the *Siete Partidas*, Div. III, *título xxviii*, *ley ix*.

³⁰¹ *Villa of Sigüenza v. Atienza and Medina*, Zamora, 24 April 1234, in González, *Reinado y diplomas de Fernando III*, 3:29-31. These towns are located northeast of Madrid.

³⁰² This was approximately twenty years. Incidentally, law xviii, tit. xxix, *partida III* allows one to gain ownership of immovable property in ten or twenty years depending on circumstances. If an owner were present, it was ten years; if the owner was absent it was twenty years. Fernando III apparently exercised his discretion in setting it at approximately twenty years, which if proven essentially covered both time periods.

III set conditions that would lead to an outcome that would satisfy both parties. Discretion (here, used to establish procedure and length of time to measure usage) and custom were two separate elements, both unwritten, but both having legal force. They provided flexibility when *lex scripta* did not provide suitable procedures and remedies. The *Siete Partidas* also indicates that custom could be used to interpret law, but that it also could be replaced by new custom, legislation, or a *fuero*.³⁰³

Law vii, title ii, of *Partida* I defines the *fuero* as written law, which may have preserved use and custom in writing, but it had broader application and was publicly given to its recipients for the furtherance of peace and justice.³⁰⁴ The word *fuero*, from the Latin *forum*, emphasizes the public utility and purpose of the law. Azucena Palacios Alcaine states that *fuero* early on meant *derecho*, and that a *fuero* was a manifestation of customary rights enumerated in a charter.³⁰⁵ The term begins to appear with frequency in eleventh- and twelfth-century charters.³⁰⁶ In studying the document production of the “chancellery” of Alfonso VI (r. 1065-1109), really *escribanos* at this time, Bernard Reilly observed that *fueros* developed from charters through which the crown “surrendered a royal right or prerogative” to a particular grantee.³⁰⁷ This might have involved a tax, toll, or the right to establish a settlement.³⁰⁸ They were flexible instruments. In Castile, *fazañas*, decisions recorded from

³⁰³ *Siete Partidas*, Div. I, título ii, ley vi.

³⁰⁴ *Ibid.*, Div. I, título ii, ley vii.

³⁰⁵ Palacios Alcaine, *Fuero Real*, i-iii.

³⁰⁶ E.g., Fernando I to Palencia and Bishop Bernardo, 19 April 1042, in Pilar Blanco Lozano, *Colección Diplomática de Fernando I, 1037-1065* (León: Centro de Estudios e Investigación San Isidoro, Archivo Histórico Diocesano, 1987), 73-74 (no. 16); the original is Archivo de la Catedral de Palencia, arm. III, leg. 1, núm. 255.

³⁰⁷ See Bernard F. Reilly, “The Chancery of Alfonso VI of León-Castile (1065-1109),” in *Santiago, Saint-Denis, and Saint Peter: The Reception of the Roman Liturgy in León-Castile in 1080* (New York: Fordham University Press, 1985), 10.

³⁰⁸ *Ibid.*

disputes, were also incorporated into *fueros* along with custom.³⁰⁹ *Fueros breves* appear as early as the ninth century and were used until the twelfth century when *fueros extensos*, much lengthier as indicated by their names, appear. For example, the *Fuero de Cuenca* confirmed sometime between 1177 and 1191 had forty-three *capítulos*, each subdivided by numerous laws.³¹⁰ The *Fuero de Madrid* (1202) had over a hundred laws and the *Fuero de Teruel* (1177) from the Crown of Aragon had several hundred.³¹¹

The definition of *fuero* in the *Partidas* is deliberately general, but it emphasizes with clarity that *fueros* had the full force of law, and that as *lex scripta* they had greater authority than usage and custom. Rulers frequently copied provisions in earlier *fueros* and applied them in newer *fueros*, much as they employed formulaic clauses in the protocols, intitulations, and eschatocols of charters.³¹² By the twelfth century, *fueros* with extensive laws could be confirmed to settlements and towns, some engaged in raiding and counter-raiding with the Islamic forces of al-Andalus.³¹³ *Fueros* applied not only to the towns that they were confirmed to, but also to the surrounding *alfoz* (dependent villages). In larger towns, the surrounding districts may have included numerous villages of various sizes.³¹⁴ Law viii, title ii of *Partida* I explains that for a *fuero* to be confirmed as law, in addition to promoting peace and justice, it must have the assent of the lord of the jurisdiction and the consent of those whom it should govern. Law ix explains that a *fuero*, when it no longer serves its purpose, should be amended or abolished.

³⁰⁹ Palacios Alcaine, *Fuero Real*, ii.

³¹⁰ *El Fuero de Cuenca*, 2nd ed., ed. Alfredo Valmaña Vicente. (Cuenca: Editorial Tormo, 1978).

³¹¹ *El Fuero de Madrid*, ed. Agustín Millares Carlo (Madrid: Raycar, 1963); *El Fuero Latino de Teruel*, ed. Jaime Caruana Gómez de Barreda (Teruel: Instituto de Estudios Turolenses, 1974).

³¹² For a discussion of the elements of a charter, see Leonard E. Boyle, "Diplomatics," in *Medieval Studies: An Introduction*, ed. James M. Powell, 2nd ed. (Syracuse, NY: Syracuse University Press, 1992), 82–113.

³¹³ See James F. Powers, trans., *The Code of Cuenca: Municipal Law on the Twelfth-Century Castilian Frontier* (Philadelphia: The University of Pennsylvania Press, 2000), 3-23.

³¹⁴ Proctor, *Curia and Cortes*, 30.

The Learned King and his team of jurists, Jacobo de las Leyes *inter alios*, put numerous laws concerning property and procedure in the *Third Partida*.³¹⁵ Although scholars often describe the *Partidas* as Romanized law, and although they did reflect the influence of the *ius commune* (European common law), they also had several key differences in their conception and organization.³¹⁶ The most prominent is that the *Partidas* were written in Castilian, not Latin. As the systematic study of Roman and canon law (*ius commune*) rose to a crescendo just before the drafting of the *Partidas*, this is a significant difference—a bold statement, but one that was made initially in the reign of Fernando III.³¹⁷ The *Partidas* were also organized into seven books, not sixteen or twelve like the codices of the emperors Theodosius and Justinian.³¹⁸ Moreover, unlike the *Corpus Iuris Civilis*, property law appears early in the *Partidas*.³¹⁹ Castilians valued property, as indicated by the bequests in their wills.³²⁰ They also understood the importance of establishing dominion in the settlement and reorganization of reconquered land. Title—a concern even before the successes of the *Reconquista* in the eleventh, twelfth, and thirteenth centuries—became even more important as the resettlement of conquered land was essential to holding that terrain. Individuals increasingly took measures to protect their property, but villages, towns, and cities did too.

³¹⁵ On Jacobo de las Leyes, see Antonio Pérez Martín, “La obra jurídica de Jacobo de las Leyes: las Flores del Derecho,” *Cahiers de linguistique hispanique médiévale* 22 (1998): 247-70; see Cárdenas, “Alfonso’s Scriptorium and Chancery,” 90-99, for a discussion of the evidence of Alfonso X’s participation in the drafting of documents.

The *Second Partida* contains laws concerning the role of the king, the art of war, and higher education. A majority of the titles are devoted to kingship and the monarch’s relation with his subjects. *Partidas IV* and *V* address marriage and commerce respectively. These three divisions will only be referenced when individual laws relate to the substance of the discussion.

³¹⁶ On the *ius commune*, see Bellomo, *The Common Legal Past of Europe*.

³¹⁷ Palacios Alcaine, *Fuero Real*, ix-xi.

³¹⁸ For the *Codex Theodosianus*, see *The Theodosian Code and Novels and the Sirmondian Constitutions*, trans. and ed. Clyde Pharr (Princeton: Princeton University Press, 1952); for the *Codex Justiniani*, see *Corpus iuris civilis*, 3 vols., ed. Theodorus Mommsen, Paulus Kreuger, and Rudolph Schoell (Zurich: Weidmann, 1872-1968).

³¹⁹ See generally the *Third Partida*.

³²⁰ Teófilo F. Ruiz, *From Heaven to Earth: The Reordering of Castilian Society, 1150-1350* (Princeton: Princeton University Press, 2004).

Accordingly, property law in terms of topics follows the church (*Partida I*) and the authority of the king (*Partida II*).

The two most important elements in establishing ownership were title and possession. Law xxvii, title ii, *Partida III* states that *propriedad* (ownership) and *posesión* (possession) mean two different things, but that since possession is easier to prove procedurally, it should be claimed first.³²¹ If plaintiffs fail to prove it, they could still attempt to prove ownership. Law xxvii notes, however, that if one party has positive proof of ownership, such as written title, the party demanding possession has no standing. Law xxviii states that possession gives a party the advantage of holding property whether they can prove title or not. While this law is nestled within the title concerning plaintiffs, *Partida III*, title xxviii, comprising fifty laws, focuses solely on various types of ownership. Law i defines three types of ownership, one that the king or emperor has, one that an individual has over his movable or immovable property, and one that an individual has over properties that are rented or leased. Judicial decisions could remove or bestow title as well.³²² Law ii continues and introduces the things held in common by those who reside in cities, towns, castles, or other places where men may own things exclusively, but that some things are held in common. Laws iii and vi explain that air, rain water, the sea, its shores, rivers, harbors, and highways are common to all.

³²¹ *Siete Partidas*, Div. III, *título ii*, *ley i* uses *propriedad* and *señorío* in referring to ownership.

³²² *Ibid.*, Div. III, *título xxviii*, prologue.

Laws ix and x stipulate what cities, towns, places, and castles could hold as commons for their residents.³²³ Law ix, title xxviii, *partida* III states:

Apartadamente son del comun de cada vna Cibdad, o Villa, las Fuentes, e las plaças o fazen las ferias e los mercados, e los lugares o se ayuntan a concejo, los arenales que son en las riberas de los rios, e los otros exidos, e las carreras o corren los cauallos, e los montes, e las dehesas, e todos los otros lugares semejantes destos, que son establecidos, e otorgados para pro comunal de cada Cibdad, o Villa, o Castillo, o otro lugar. Ca todo ome que fuere y morador, puede vsar de todas estas cosas sobredichas: e son comunales a todos, tambien a los pobres como a los ricos. Mas los que fuessen moradores en otro lugar, non pueden vsar dellas contra voluntad, o defendimiento de los que morassen y.

These are separately of the commons of each individual city or villa: springs, plazas, places where they hold fairs and markets, places where they hold council, sands that are on the banks of the rivers, the other *ejidos*, the tracks where horses run, the *montes*, the *dehesas*, and all the other similar places as these. And these are established and granted for the advantage of all men of each city, villa, castle, or other place. Because every man who is a resident therein can make use of all of these aforementioned things: and they are communal to all, for the poor as well as the rich. Moreover, those who might be residents elsewhere cannot make use of them against the will or prohibition of those that live therein.³²⁴

Elements of this law come from the Roman legal tradition, where ports, rivers, the banks of rivers, race tracks, and the forums were considered public spaces.³²⁵ However, this law also includes other communal spaces—*ejidos*, *montes*, and *dehesas*—that are not found in the works of the *Corpus Iuris Civilis*.³²⁶ Neither are they found in the *Lex Visigothorum* stated

³²³ For translations of *leyes* ix and x, *título* xxviii, Div. III of the *Siete Partidas*, see Appendix A, items V and VI.

³²⁴ *Siete Partidas*, Div. III, *título* xxviii, ley ix.

³²⁵ See *Institutes of Justinian with notes*, ed. Thomas Cooper (New York: John S. Voorhies, 1852), Book ii, title i, laws ii and iv (rivers, ports banks of rivers); Book iii, title xix, law ii; Book III, title xxiii, law v (forum).

³²⁶ The *Corpus iuris civilis* included the *Institutes*, *Codex*, *Digest*, and *Novellae*. *Corpus iuris civilis*, 3 vols., ed. Theodor Mommsen, Paulus Krueger, and Rudolph Schoell (Zurich: Weidmann, 1872-1968).

like this. These types of land tenure appear, however, in charters issued by the monarchs of León and Castile.³²⁷

In 1236, Fernando III executed a charter in which he established a settlement.³²⁸ In one of a series of grants to the Knights Templar, he granted them a fortress known as Capilla and its surrounding *termini* or districts.³²⁹ The Templars had served Fernando III's grandfather, Alfonso VIII, at the battle of Las Navas de Tolosa and had been campaigning in Andalucía since then.³³⁰ As a reward for their service, which certainly included support in the capture of Córdoba in June 1236, Fernando III made the grant "perpetual and irrevocably valid."³³¹ He stipulated the boundaries of the settlement in relation to nearby towns and settlements with more detail than usually found in such conveyances before and after his reign. The king stated that he "granted and conceded to the said fortress of Capilla with their springs (*fontibus*), mountainous woodlands (*montibus*), pasture-lands (*pascuis*), ingresses and egresses (*ingressibus et egressibus*)" and all rights to lands within its boundaries.³³² The *montes* and pasturelands reflect the terms that eventually appeared in law ix, title xxviii, division III of the *Siete Partidas*. These were not the typical communal spaces of a Roman

³²⁷ E.g., Fernando II to Guillermo de Castro (San Cristóbal Grant), León, 16 May 1164, Archivo Histórico Nacional, Carpeta 900, 11, where Fernando II of León, in making the grant, uses the phrase "*ab integro iure hereditario cu(m) pactis, pascuis, montib(us), fontib(us) et cu(m) omnib(us) directuris ad ipsa(m) hereditate(m) pertinentib(us)*." "By full hereditary right with the agreed upon pasture-lands, woodlands (mountainous lands), springs, and with all rights pertaining to the same inheritance"; also see, Queen Urraca to Santa María de León and Bishop Diego (Villa of San Martín Grant), n. l., 14 July 1116, in Cristina Monterde Albiac, ed., *Diplomatario de la Reina Urraca de Castilla y León, 1109-1126* (Zaragoza: Librería General, 1996), 154-56 (no. 98). As discussed below, Fernando III's conveyance to the Templars is more detailed and explicit in what he grants.

³²⁸ Fernando III to Stephen of Bellomonte and the Militia of the Order of the Templars (Capilla Fortress Grant), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95.

³²⁹ Ibid.

³³⁰ On the battle of Las Navas de Tolosa and the Templars, see Francisco García Fitz, *Las Navas de Tolosa* (Barcelona: Editorial Ariel, 2005), 186-201; Gonzalo Martínez Díez, *Fernando III, 1217-1252* (Palencia: Editorial La Olmeda, S.L., 2003), 258-61.

³³¹ Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars (Capilla Fortress Grant), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95. On the capture of Córdoba, see Martínez Díez, *Fernando III*, 145-55.

³³² Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars (Capilla Fortress Grant), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95.

town, such as fountains and forums, but important resources needed in a society with a pastoral economy that depended on grazing and watering holes for its livestock. The *montes*, “mountains” (but in this context, woodlands), would have provided the timber for structures, corrals, firewood, and weapons. Though a pastoral society, it was also one militarized to defend against raiding and that needed the ability to launch offensives when the right opportunities arose.³³³ The terms of Fernando III’s conveyance demonstrate that settlements for their successful survival were to have basic communal features, *montes*, pastureland, water, ingresses and egresses. He also stated that these rights were law in Castile as well as León.³³⁴

In 1257, Alfonso X issued a royal concession (*carta de población*) to resettle the town of Requena, which also names woodlands, springs, pastureland and other natural resources.³³⁵ Militia from Cuenca, Moya, and Alarcón captured the town for Fernando III in 1238.³³⁶ The grantees, listed as knights and foot soldiers (*peones*), were given the concession to hold the town, with its fortress. The knights, noble and non-noble, and the foot soldiers were to gain title to land and houses that they acquired after a period of ten years. This, as indicated in the terms, was to keep them from immediately turning and selling the land or transferring title. The grant was otherwise given “free and clear” to the settlers and to “their children and their grandchildren, and those that might come that they hold it as theirs by

³³³ See James F. Powers, *A Society Organized for War: The Iberian Municipal Militias in the Central Middle Ages, 1000-1284* (Berkeley: University of California Press, 1988), who explores this phenomenon in focusing on municipalities.

³³⁴ Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars (Capilla Fortress Grant), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95.

³³⁵ Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII. For a translation of this grant, see Appendix A, item III.

³³⁶ Martínez Díez, *Fernando III*, 160.

inheritance.”³³⁷ Alfonso X then added that the conveyance of land included the “*montes con fuentes con rios con pastos con entradas et con salidas et con todos sus terminos et con todas sus pertenencias*” (*montes*, springs, rivers, pasturelands, ingresses and egresses and with all its districts and all its possessions).³³⁸ Alfonso X’s language specified all of the natural resources that were known as assets to the *villa* and that were integral to its boundaries. In this sense, he was following a centuries-old European tradition, but in Castile the formula had its own unique form: it usually included in the following terms, *montes*, waters or springs, pasturelands, ingresses and egresses with other resources added where they existed. These phrases were expressed in Latin, and then in the thirteenth century, during the end of the reign of Fernando III and in the reign of Alfonso X, in Castilian. They not only appear in royal concessions from the eleventh through thirteenth centuries, but in *mercedes reales* issued in the Americas as late as the eighteenth century, as will be more fully discussed below.

The mention of rivers raises the question of what limits there would be to the *villa*’s control over river water, which otherwise would be common to all residents of the realm. Similarly, the ownership and use of water by the Villa of Requena was bounded by the principle that that use must not harm a third party. Law iii, title viii, *Partida III*, in the context of judicial decisions awarding the possession of land, notes that a separate party would have grounds to sue someone placed in possession of land in which he or she had a better claim to title. This principle would have protected, or at least provided a cause of

³³⁷ Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII.

³³⁸ *Ibid.* This language appears in charters that confirmed earlier donations as well. See Alfonso X to the Monastery of Santo Domingo de Silos and Abbot John, Burgos, 18 February 1255, Archivo Histórico Nacional, Clero SR, carpeta 375, doc. 13, in which Alfonso X confirmed a grant that his great-grandfather Alfonso VIII of Castile executed in 1189. In this grant, the monastery of Santo Domingo was given with the surrounding *montes* and *fontes*. See also Alfonso XI, Charter of Confirmation of Donations of Alfonso VII (8 March 1145), Burgos, 22 December 1338, ARCV, Pergaminos, Carpeta 70, 6.

action for settlers downstream who had used the water prior to the grant issued by Alfonso X. *Ríos* here may also mean bodies of water—springs, streams, ponds, or lakes—completely within the boundaries of the town, and not necessarily rivers. Due to the strategic importance of the town and the generosity of the other provisions, Alfonso X may have intended to emphasize that the town would have full control of its resources.

The generous terms of this concession suggest Alfonso X sought to attract as many settlers as he could, offering tracks of land (*caballerías* and *peonías*).³³⁹ *Caballerías* (approximately 95.5 to 105 acres) and *peonías* (about 1 acre) appear in later *repartimientos* of land, but also in grants issued later in the Americas. He also confirmed the *Fuero de Cuenca* to the settlers—a *fuero* with munificent privileges. Requena is situated just west of Valencia, where the borders between the kingdom of Aragon and the kingdom of Castile frequently shifted.³⁴⁰ Though several treaties sought to delineate Castilian and Aragonese zones of expansion, both kingdoms spilled over into the other's designated region on occasion, undermining the ordered expansion that the treaties sought to ensure.³⁴¹ Sometimes one kingdom ventured into the other's zone to assist the other militarily; at other times, Castile and Aragon sought to take advantage of conditions that allowed one of them to capture vulnerable villages, towns, and cities. Requena was also near the recently reconquered region of Murcia, some of which included land still heavily populated with Muslim farmers, who revolted in 1252 and 1254. Requena therefore had value for its fortress

³³⁹ Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII.

³⁴⁰ See Amparo Bejarano Rubio, "La frontera del reino de Murcia en la política Castellano-Aragonesa del siglo xiii," in *Alfonso X El sabio, Vida, Obra y Época*, ed. Juan Carlos Miguel Rodríguez, et al. (Madrid: Sociedad Española de Estudios Medievales, 1989), 199-212. Spain incorporated Requena into the province of Valencia in 1833. Martínez Díez, *Fernando III*, 160.

³⁴¹ The Treaty of Almirza (1244) superseded those of Tudilén (1151) and Cazorla (1179). See Bejarano Rubio, "La frontera del reino de Murcia," 200; O'Callaghan, *A History of Medieval Spain*, 348.

and other resources; Alfonso X no doubt sought to strengthen his position and ability to hold the land through the grant.³⁴²

In addition to appearing in royal concessions and the *Siete Partidas*, clauses specifying woodlands, pastures, and *ejidos* also appeared in *fueros*, particularly those of Cuenca, Sepúlveda, Madrid, and Teruel in Aragon. The Castilian language version of the *Fuero de Cuenca* states that Alfonso VIII had granted and conceded to all of the town's inhabitants the “*montes, fuentes, pastos, rios, salinas y minas de plata, hierro o de qualquier otro metal.*” Here, the metals and salt mines were included with the other essential resources. Other towns received other resources in addition to the woodlands and springs. The origins of the most common terms *montes, pastos*, and *ejidos*, however, predate the *fueros*, in which textual examples are found in earlier concessions. Some of these date to concessions made in the tenth century though the documents that contain them are copies from a later date. By the eleventh century, they appear with frequency.

Fernando I, the first king of Castile, used these clauses, as did his immediate successor kings and queens.³⁴³ For example, in a royal concession given to García Iñiguez, Fernando I granted the Castle Biérboles with the named “[*h*]eredites, et terminus et montes et fontes et pratis et exitus et regrescitus” (cultivable lands, districts, woodlands, springs, meadows, and egresses and regresses).³⁴⁴ In other grants he included similar phrases,

³⁴² In 1281, Sancho of Castile (later, Sancho IV) promised to deliver the Castle and Villa of Requena to Pedro III of Aragón as part of a settlement known as the Treaty of Campillo (1281), which was intended to end the ensuing border questions in the Valle de Ayora. See Sancho of Castile (Sancho IV) to Pedro III of Aragón, Campillo, 27 March, in Bejarano Rubio, “La frontera del reino de Murcia,” *Apéndice Documental*, 211.

³⁴³ E.g., Fernando II to Guillermo de Castro (San Cristóbal Grant), León, 16 May 1164, *Archivo Histórico Nacional*, Carpeta 900, 11; Queen Urraca to Santa María de León and Bishop Diego (Villa of San Martín Grant), n. l., 14 July 1116, in Monterde Albiac, *Diplomatario de la Reina Urraca de Castilla y Leon*, 154-56, no. 98.

³⁴⁴ Fernando I to García Iñiguez (Biérboles Castle Grant), n. l., 21 June 1038, in Pilar Blanco Lozano, *Colección Diplomática de Fernando I, 1037-1065* (León: Centro de Estudios e Investigación San Isidoro, Archivo Histórico Diocesano, 1987), 59-60 (no. 8); the original is AHN, clero, carpeta 697, no 16.

sometimes with pastures and other resources, while, at other times, he more carefully named the location of a spring or woodland.³⁴⁵ In others still, Fernando I specifically gave tangible gifts, lands, and the license to use certain resources, such as pastures.³⁴⁶

In Fernando I's grant to García Iñiguez, moreover, we have an early textual reference to an *exitus*, the Latin word from which the Castilian term *ejido* derives.³⁴⁷ Here, Fernando I used it to describe an egress or *salida* (exit), but it came to mean something more, as seen in law ix, title xxviii, *Partida* III. In discussing all of the things that are owned communally by a village, town, or city, law ix includes the phrase “*e los otros exidos.*”³⁴⁸ The absence of any mention of an egress suggests that the term *ejido* had become something more than just part of a guaranteed right to exit or to access to granted land. Evidence shows that between the grants of Fernando I and the drafting of the *Siete Partidas*, the term *ejido* had taken on a more nuanced meaning. For example, the *Fuero de Madrid*, dated to 1202, although it could be earlier, refers to the “. . . *exidos ubi ganato illorum intrent et bibant aquam . . .*” (the *ejidos* where their livestock enter and drink water).³⁴⁹ Then it describes the locations of *entradas*, suggesting a distinction between the ingresses/egresses and the *ejidos*. The royal concessions that mention *ejidos*, and also egresses in the same phrase, confirm that they had become something different and that they belonged to the village, town, or city. As for

³⁴⁵ See Fernando I to Abbot Gómez de Cardaña, 17 February 1039, in Blanco Lozano, *Colección Diplomática de Fernando I*, 60-62, no. 9.

³⁴⁶ See Fernando I to Abbot Auriolo of San Pedro de Arlanza, 29 December 1041, in Blanco Lozano, *Colección Diplomática de Fernando I*, 68-70, no. 13.

³⁴⁷ Fernando I to García Iñiguez (Biérboles Castle Grant), 21 June 1038, in Blanco Lozano, *Colección Diplomática de Fernando I, 1037-1065*, 59-60, no. 8.

³⁴⁸ *Siete Partidas*, Div. III, título xxviii, ley ix.

³⁴⁹ *El Fuero de Madrid*, ed. Agustín Millares Carlo (Madrid: Raycar, 1963), título 40; see the introduction, 20-21, for dates of the *fuero*. As Alfonso VIII (r. 1158-1214) confirmed the *fuero* it predates the *Siete Partidas*.

ownership of the *ejido*, a law from the *Espéculo* states that the people of a village or town owned their *ejidos* along with the *montes* and *términos*.³⁵⁰

Charters from elsewhere in Western Europe, some very early, also make similar references concerning resources and rights granted to settlers.³⁵¹ When it came to creating rights, the discretion exercised by grantors may have simply come from the ancient precept: “let the terms of the conveyance create the right.”³⁵² For our purposes, these types of grants and *fueros* show that a tradition that predates the *Siete Partidas* included these natural resources and that law ix reflects and expands on these principles. Later municipal ordinances also define the meaning of some of these terms. In the *Ordenanzas de Baeza*, the *dehesa* was to be “guarded and closed for the pasture of the live stock of the butchers.”³⁵³ The *dehesa* was an enclosed grazing area set aside for a specific use. The *Ordenanzas* also describe their *términos* and *montes* as belonging to Baeza, which it protected for the

³⁵⁰ *Espéculo*, Libro V, título viii, ley ii, in *Los Códigos Españoles: Concordados y Anotados* (Madrid: Imprenta de la Publicidad, 1849), 6:158.

³⁵¹ An early Anglo-Saxon land grant specified “fields, feedings, and meadows” in the terms of the conveyance. See F. M. Stenton, *The Latin Charters of the Anglo-Saxon Period* (Oxford: Clarendon Press, 1955), 38; others mention pastures and meadows as well. E.g., John Earle, *A Hand-Book to the Land-Charters, and other Saxon Documents* (Oxford: Clarendon Press, 1888), 29, 415. Grants of small plots issued to individuals tend to have very specific descriptions in the Peninsula as well. In Robert I. Burns, S.J., *Society and Documentation in Crusader Valencia*, 4 vols. (Princeton: Princeton University Press, 1985), however, numerous conveyances incorporate the same or nearly the same clause, concerning ingresses and egresses. This differs from those issued by Fernando III and Alfonso X and their predecessors, which usually include *montes*, springs, and *pastos* in addition to ingresses and egresses. For examples of those issued by Jaume I of Aragon, see *ibid.*, 3:30-31, 65, 72-73, 78-79. The *Fuero de Teruel*, law iii contains a detailed description of the resources that were granted to the Teruel settlement, which resembles its Castilian counterparts. See Gómez de Barreda, *El Fuero Latino de Teruel*, 77-8. The *Repartimientos* of Castile that transferred land to individuals have more specific descriptions of the resources tied to the land in some cases. E.g., Francisco Bejarano-Robles, *Repartimiento de Comares, 1487-1496* (Barcelona: Departamento de Árabe, 1974), 60-1. Based on the above wide-ranging samples, albeit a small amount, the variations suggest that different chancelleries as well as individuals employed their own clauses and adjusted them according to their needs. The sovereigns of Castile employed a clause, with some variation, that they used from the kingdom’s infancy well into the modern era, as will be discussed below.

³⁵² See *Leges XII tabularum*, Table VI, law i, in *Institutiones*, Imperatoris Justiniani Institutionum libri IV, ed. J. Crispini and J. Pacii. (Amsterdam: Joannes Blaeu, 1659).

³⁵³ *Ordenanzas de Baeza*, Título V, capítulo i, in José Rodríguez Molina, *El reino de Jaén en la baja edad media: aspectos demográficos y económicos* (Granada: Universidad de Granada, 1978), 297.

enjoyment of all its citizens to pasture, access water, and to cut timber and firewood.³⁵⁴ This reflects the principles of law ix, title xxviii, Division III of the *Partidas*. These same principles and terms later appear in the *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias* of 1573 and the *Recopilación de leyes de los reynos de las Indias* published in 1681 of which more will be said later.³⁵⁵ For now it is clear that this tradition is rooted in the conveyances given to settlers, villages, towns, and cities and that later *lex scripta* reinforced it. Some of these settlements were on the border with Christian kingdoms, sometimes friendly, sometimes not; others were on the frontier with Muslim-held lands in which raiding and counter-raiding persisted until the war with Granada (1481-92). The generous provisions included in these concessions, in terms of specifying that specific natural resources were included with the conveyance and integral to the locale, were designated to increase the chances of a settlement's survival. In the Americas, they served the same purpose.

Title xxviii also provides similar principles regarding what a municipality might own for support of the public functions it needed to provide for its residents. Whereas law ix, title xxviii referred to the rights of individuals to use communal space, law x, title xxviii, *Partida* III, states that towns and cities could own “fields, vineyards, orchards, olive groves, other lands, livestock, and servants.” Individual citizens did not have rights to these lands. These were owned by the municipality, that is, a *villa* or *ciudad*, for the purpose of making profits by renting them to pay for infrastructure, walls, fortifications, or the salaries of officials. This reflected Roman law. While towns could rent or profit from their own fields, orchards, and

³⁵⁴ *Ibid.*, 300, *Título X, capítulo i*.

³⁵⁵ Felipe II, *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in *Teoría y leyes de la conquista*, ed. Francisco Morales Padrón (Madrid: Ediciones Cultura Hispánica del Centro Iberoamericano de Cooperación, 1979), 489-518; *Recopilación (Indias)*.

other assets, the *Partidas* also provide elaborate laws for servitudes, which further indicates the sophistication and comprehensive nature of their contents. Title xxxi, dealing with servitudes, also includes several laws on *usufructo*, which the *Partidas* define as the use of one's house or estate and lands but does not include ownership.³⁵⁶ A second form may be the use of just the house, but not the land. A third type is the use of orchards or vineyards, but not the house or estate. In all of the examples the beneficiary must use the property in good faith and provide surety against damage to the property. Though often confused with rights derived from use and custom, this was a distinct legal concept requiring contractual language to set the terms of an agreement.

Settlements, towns, and cities had private property and communal property that its residents owned, individually or corporately.³⁵⁷ While communal lands were important for the survival of newly established settlements, individual private property was also important. *Partida III*'s numerous titles and laws on ownership and possession demonstrate this. A separate title contains laws on how a person gains ownership through taking possession of movable or immovable goods for a period of time. The theory behind this doctrine, known as prescription, dates back to the *Twelve Tables* of Roman law and resembles adverse possession from the Anglo-American common law system.³⁵⁸ It encouraged owners not to neglect their property, since someone could take possession of it and eventually claim title

³⁵⁶ The term usufruct has been used by some historians to describe the *mercedes reales* (royal concessions) issued by the Crown of Castile to inhabitants in the Americas. See Greenleaf, "Land and Water in Mexico and New Mexico," 85. The legal meaning of the term usufruct is quite different than how Greenleaf used the term; it refers to a form of servitude, not a general class of conveyances or land grants. See again Dory-Garduño, "The Adjudication of the Ojo del Espíritu Santo Grant of 1766," 167-208, for a discussion involving a claim by one Spaniard that all grazing grants were nothing more than grants of usufruct—a claim in which the Spanish governor and *auditor de guerra* refused and rejected.

³⁵⁷ As indicated in *ley x, título xxviii, Partida III*, towns and cities also had municipally owned property.

³⁵⁸ On adverse possession, see Edward E. Chase, *Property Law: Cases, Materials, and Questions* (Cincinnati, OH: Anderson Publishing, 2002), 59–111; on prescription, see the *Leges XII tabularum, lex iv (iii), tabula vi*, in *Institutiones, Imperatoris Justiniani Institutionum libri IV*, ed. J. Crispini and J. Pacii, (Amsterdam: Joannes Blaeu, 1659).

when a specified period of time elapsed. In disputes heard before the *Audiencia* concerning common lands, attorneys argued that the villages they represented had possession for certain periods of time, implying that they should be given ownership based on the doctrine of prescription.³⁵⁹

Partida III, title xxx contains eighteen laws on the critical doctrine of possession, a concept underlying most of the above-mentioned theories of ownership. Possession coupled with some form of written evidence of title usually constituted the strongest demonstration of ownership, what the sources call *posesión titulado*.³⁶⁰ Yet possession on its own could mean the difference between maintaining or losing ownership. Title xxx, law i explains that possession consists of the physical act of occupying the property.³⁶¹ Should one abandon his property, he could lose whatever rights he had to the land.³⁶² Physical possession also gave one an advantage in any litigation and could be coupled with various forms of documentation to prove title. A royal concession, judicial decree, or some other written instrument given in good faith or believed to have been given in good faith could, along with physical possession, establish ownership.³⁶³

Fueros also demonstrated the importance of ownership and provided clarity in describing what that meant to individuals. Where much of the discussion so far has been on communal land, individuals also bought and sold land and had strong notions of ownership.

³⁵⁹ E.g., *Campana de Albalá v. Villa de Almaraz*, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1.

³⁶⁰ *Ibid.*

³⁶¹ *Siete Partidas*, Div. III, *título xxx, ley i*.

³⁶² *Ibid.*, Div. III, *título xxx, ley xii*.

³⁶³ In *Campana de Albalá v. Villa de Almaraz*, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, Antonio Perlines argued that an earlier *sentencia* from the *Audiencia* provided “color of title” for the town of Almaraz, which also physically possessed the fields whose ownership had caused a long-running dispute.

The *Fuero de Cuenca*, capítulo II, law 1, for example, records the following grant from

Alfonso VIII:

Os concedo también que posea un bien raíz, téngalo firme y estable y sea suyo para siempre, de modo que puede hacer de él y en él lo que la plazca; por consiguiente, pueda darlo, venderlo, cambiarlo, prestarlo, empeñarlo, dejarlo en testamento, ya se encuentre sano, ya enfermo, ya quiera residir en Cuenca, ya irse a otro sitio.³⁶⁴

I [Alfonso VIII] also grant that whoever possesses real estate holds it fixed and sound, and it will always be his to do with as he pleases. Consequently, he can give, sell, change, lend, or pledge it, or leave it in his will, whether he be healthy or sick, regardless of residing in Cuenca or elsewhere.³⁶⁵

While villages, towns, and cities could gain land through concessions, individuals also had strong rights in terms of owning property. Castilians, from peasants to nobles, Christians and non-Christians, could and did sell, rent, lease, and bequeath property.³⁶⁶ If the *fueros* and the *Partidas* reflected nuances based in custom, then this tradition of ownership had deep roots in addition to the *lex scripta* expressed in the *Leges Visigothorum* and Roman law.

The *Partidas* also expanded the procedure and laws concerning the investigation known as the *pesquisa*, which was used to settle property disputes where the litigants lacked the documentation to prove title.³⁶⁷ The Castilian *pesquisa*, sometimes translated as inquisition, was a formal investigation into a specific matter, prior to submitting complaints. This distinguishes it from the formal trial as seen in the thirteenth century and later ecclesiastical inquisitions.³⁶⁸ Jurors were used in inquests to give oaths on certain facts.

³⁶⁴ *El Fuero de Cuenca*, ed. Alfredo Valmaña Vicente, 2nd ed. (Cuenca: Editorial Tormo, 1978), capítulo ii, título I, p. 47. If capítulo I, law 10 from the *fuero* grants citizenship in Cuenca to Christians, Muslims, and Jews, and there are other laws in the *fuero*, dealing with commerce and other matters of civil law, which generally treated Jews, Christians, and Muslims as equals, then this law read broadly included Jews and Muslims.

³⁶⁵ This translation is from Powers, *The Code of Cuenca*, Chapter II, title i.

³⁶⁶ Ruiz, *Crisis and Continuity*; Ray, *The Sephardic Frontier*.

³⁶⁷ Proctor, *The Judicial Use of 'Pesquisa'*.

³⁶⁸ For the ecclesiastical inquisition, see generally Edward Peters, *Inquisition* (Berkeley: University of California Press, 1989); for a substantial example of a trial, see Daniel Hobbins, *The Trial of Joan of Arc* (Cambridge, MA: Harvard University Press, 2005); for the distinction between the Castilian *pesquisa* and the

Procedure followed the *Lex Visigothorum* in eleventh-century cases, but also custom in the petition and answer format that litigants followed.³⁶⁹ *Partida* III, title xvii includes twelve laws elaborating on how and why a *pesquisa* may be ordered by the king or another authorized official. Law i states that a king could order a *pesquisa* after receiving a complaint or for purposes of gaining information about a certain region with or without receiving a complaint. He could also order a *pesquisa* to determine the perpetrator of a crime, and he could order one where two parties petition the king or another judge and, echoing the *Lex Visigothorum*, would consent to the commissioned judges to handle their dispute. Other laws set the number of judges at a minimum of two and explain procedures of gathering witnesses and conducting the investigation.³⁷⁰

Partida VI discusses wills, codicils, testators, heirs, wards, guardians, and executors.³⁷¹ Burns argues that the “modern will, as explicated by Alfonso, is a medieval artifact.”³⁷² He states that in this period the Roman testament became a will—a religious act, a religious instrument.³⁷³ Some medieval Castilian wills still followed the Visigothic model that sought to diffuse property, whereas the Roman model favored a single heir. The proliferation of wills reflected the growing notarial culture in the thirteenth century, whereby archives in Spain are rich with wills from this period.³⁷⁴ *Partida* VI has numerous laws that govern the role of individuals involved in typical wills, such as heirs and executors, and

ecclesiastical inquisition, see Henry Ansgar Kelly, *Canon Law and the Archpriest of Hita* (Binghamton, NY: Medieval and Renaissance Texts and Studies, 1984), 173, n. 4; Burns, *Las Siete Partidas*, 3:xix.

³⁶⁹ Proctor, *Curia and Cortes*, 37.

³⁷⁰ *Partida* III, *título xvii leyes v and ix*.

³⁷¹ *Partida* VII deals with crime, minorities, and punishment.

³⁷² Burns, *Las Siete Partidas*, 1:ix.

³⁷³ *Ibid.*, 1:ix.

³⁷⁴ On Castilian wills, agains see generally Ruiz, *From Heaven to Earth*.

briefly touches on intestate situations. This adds to the notion that documentation was more important than ever.³⁷⁵

The *Fuero Real* was another important piece of legislation that Alfonso X crafted, and one that scholars agree he promulgated during his reign.³⁷⁶ Completed in 1256, it represented an effort to establish a model *fuero* for individual municipalities.³⁷⁷ As such, it was a component of Alfonso X's plan to reorganize his realms with local law, the *Fuero Real*, and territorial law, the *Siete Partidas* of general applicability.³⁷⁸ As local law, the *Fuero Real*, in four books, covered the church, the king's authority, local judicial officials, procedure, evidence, appeals, marriage, debts, and fines. For example, Book IV, title vi, law i authorizes fines for blocking roads or wrongly entering a town's *ejido*.³⁷⁹ The distinction between a road and an *ejido* provides a further example that the term *ejido* had developed a broader meaning than the term *exitus*. Beginning in 1256, Alfonso X confirmed the *Fuero Real* to numerous towns, including Burgos (1256), Madrid (1262), and Valladolid (1265).³⁸⁰ This naturally provoked a hostile reaction from the nobility. It impacted the power of the nobility by regulating their relationship with the sovereign and allowed royal judges to interfere in the administration of justice in seigniorial estates.³⁸¹ In this sense, Alfonso X intended it to work with existing *fueros*, but also with the *Siete Partidas*. While some scholars have emphasized that the *Siete Partidas* may have been designed for use as an

³⁷⁵ Burns, *Las Siete Partidas*, 1:xx.

³⁷⁶ Palacios Alcaine, *Fuero Real*, xv; Martínez Díez, *Fuero Real*.

³⁷⁷ Palacios Alcaine, *Fuero Real*, xiii.

³⁷⁸ On local and territorial law, see Palacios Alcaine, *Fuero Real*, vi.

³⁷⁹ Fines for blocking highways were paid to the king; fines for unlawfully entering an *ejido* were paid to the *Merino* (royal administrator).

³⁸⁰ Palacios Alcaine, *Fuero Real*, xxiii. It was also confirmed at least to these municipalities as well: Soria, Alarcón, Peñafiel, Atienza, Buitrago, Cuellar, Talavera in 1256; Escalona and Béjar in 1262; Guadalajara in 1262; Niebla in 1263; Campo-Mayor in 1269; Briviesca in 1313; Villareal de Álava in 1333; Alegría and Elburgo in 1337; Monreal de Zuya in 1338; and Belmonte de Alarcón in 1367.

³⁸¹ Palacios Alcaine, *Fuero Real*, xxiii.

imperial body of law, in the Peninsula, Alfonso X intended it, and its predecessor the *Espéculo*, to reassert his authority over the nobility and all of the realms within the Crown of Castile.³⁸² As such, the *Siete Partidas* complemented the *Fuero Real* by providing general law to be applied, where local law, i.e., the *Fuero Real*, older *fueros*, ordinances, and custom, did not provide a remedy. When Alfonso XI promulgated the *Ordenamiento de Alcalá* at the *cortes* in 1348, he provided a discernible ordering of Castilian law along these very lines.³⁸³

Since the end of the reign of Fernando III, legal writings of all kinds were written in Castilian Spanish; the Castilian and Leonese chancelleries, moreover, were combined after 1230.³⁸⁴ During the first year of his reign, Alfonso X declared Castilian the official language of his realms.³⁸⁵ Pleadings, responses, decisions, summonses, warrants, testaments, and other documents were written in Castilian. Though a single language had been established for the administration of the realms and much legislation had been compiled in that language, the full force of the laws that Alfonso X had amassed—particularly the *Siete Partidas*—still had not been definitively promulgated until the fourteenth century.³⁸⁶ Alfonso XI took that next critical step. In *capítulo* lxiv of the legislation of Alcalá de Henares, he first declared that the crown's responsibility and will was to establish peace and justice in his realms.³⁸⁷ To do so, the monarch needed to provide laws so that disputes and lawsuits could be effectively decided. In the royal courts, he states the "*Fuero de las leyes*" (*Fuero Real*) was used and

³⁸² Burns, *Las Siete Partidas*, 1:xiii

³⁸³ *CLC*, 2:492-592, *Cortes de Alcalá de Henares de 1348*.

³⁸⁴ Palacios Alcaine, *Fuero Real*, ix-xi.

³⁸⁵ *Ibid.*, *Fuero Real*, xi.

³⁸⁶ While the *Fuero Real* had been promulgated, and it is not quite clear how the *Espéculo* was applied in the thirteenth century, the *Siete Partidas* represented a body of law designed for general application, which until its promulgation meant that existing *fueros* or the *ius commune* had to fill that void.

³⁸⁷ *CLC*, 2:492-592, *Cortes de Alcalá de Henares de 1348, capítulo* lxiv. Pedro I (r. 1350-69) reorganized the *Ordenamiento de Alcalá*. See *El Ordenamiento de Leyes, que D. Alfonso XI hizo en las cortes de Alcalá de Henares el año de mil trescientos y cuarenta y ocho (Ordenamiento de Alcalá)*, in *Los Códigos Españoles: Concordados y Anotados* (Madrid: Imprenta de la Publicidad, 1847), 1:427-483. For a translation of *capítulo* lxiv, see Appendix A, item VII.

would continue to be used, but that the existing *fueros* confirmed to *villas* and cities would continue to be observed.³⁸⁸ These *fueros* provided law that could settle and decide some disputes, but not all of them. In the suits, where the *Fuero Real* and the local *fueros* did not provide the proper remedy, the *Siete Partidas* should be used:

Et los pleitos e contiendas que se non podieren librar por las leyes deste libro e por los dichos fueros, mandamos que se libren por las leyes contenidas en los libros delas siete Partidas que el Rey don Alfonso nuestro visauuelo mandó ordenar . . .

And the suits and disputes that cannot be decided by the laws of this book and by the said *fueros*, we command that they should be decided by the laws contained in the books of the *Siete Partidas* that the King don Alfonso our great-grandfather ordered to be arranged . . .³⁸⁹

Alfonso XI added that the power of making *fueros* and laws, as well as interpreting, amending, and declaring them, belonged to the king.³⁹⁰ This single *capítulo* stated the authority of the king in administration of justice in forceful language.

In another important *capítulo* (xviii), Alfonso XI ordered that disputes concerning the *términos*, pasturelands, and other rights related to communal land be adjudicated through *pesquisas* (investigations).³⁹¹ This and other laws drew from older custom incorporated from the *Fuero Viejo de Castilla*.³⁹² The *Fuero Viejo* is a compilation of older Castilian *fueros* now lost, which may date to the reign of Alfonso VII (r. 1126-57) or earlier, but whose oldest manuscript dates to the fourteenth century. While *capítulo* xviii does not specify the procedure involved in the *pesquisa*, evidence shows that the investigation followed procedure similar to that found in the *Lex Visigothorum*, which the *Siete Partidas* expand upon.³⁹³

³⁸⁸ *CLC*, 2:492-592, Cortes de Alcalá de Henares de 1348, *capítulo* lxiv.

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*, *capítulo* xviii.

³⁹² See *El Fuero Viejo de Castiella*, in *Los Códigos Españoles: Concordados y Anotados* (Madrid: Imprenta de la Publicidad, 1847), 1:219-80.

³⁹³ E.g., *Villa of Galisteo v. Arias Barahona*, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3.

Alfonso XI repelled the last major invasion of Spain from North Africa in 1340 at the battle of the Río Salado; he succumbed to the bubonic plague while besieging Gibraltar in 1350.³⁹⁴ These events, in addition to his devotion to his mistress Eleanor de Guzmán, have tended to overshadow his efforts in solidifying royal authority. By promulgating the *Siete Partidas*, the *Fuero Real*, and the authority of royal ordinances, however, Alfonso XI delivered an efficacious blow in the ordering of Castilian law—law that Alfonso X and others had written and restated in Castilian Spanish. Alfonso XI authoritatively expressed how these laws functioned in relation to each other. This process, propelled by the efforts of Fernando III and Alfonso X, forged Castilian law out of various legal influences—the *Fuero Juzgo*, the *Siete Partidas*, royal concessions, custom, the *Ius Commune*, and others—that came together in preceding centuries. The principles found in these bodies of law were the law and legal tradition that the *Audiencia* inherited. Within a generation of Alfonso XI's death, the *Audiencia* had been formally established and charged with administering justice in accordance with this tradition.³⁹⁵

Before examining in detail the cases that the *Audiencia* decided, however, it may be enlightening to evaluate the degree to which legal professionals understood Castilian law in the late-fourteenth and fifteenth centuries. The jurist Alonso Díaz de Montalvo published several juridical works in the second half of the fifteenth century, some of which drew upon the work of the *oidor* and bishop Vicente Arias de Balboa. His work indicates that justices in fact worked with and studied this law. Fortunately, we have some knowledge of the details

³⁹⁴ For the Río Salado, see Derek W. Lomax, *The Reconquest of Spain* (London: Longman, 1978), 166-67; Ambrosio Huici Miranda, *Las grandes batallas de la Reconquista durante las invasiones africanas* (Madrid, 1956; facsimile repr., Granada: Universidad de Granada, 2000), 346-79. On the death of Alfonso XI, see Joseph F. O'Callaghan, *The Gibraltar Crusade: Castile and the Battle for the Strait* (Philadelphia: University of Pennsylvania Press, 2011), 216-17.

³⁹⁵ *CLC*, 1:188-202, Cortes de Toro de 1371, articles 1-32.

of Díaz de Montalvo's impressive legal career.³⁹⁶ He attended the universities of Lérida and Salamanca, where he studied the *Ius Commune* and eventually attained the degree of doctor.³⁹⁷ He served as the *procurador* of the town of Huete in 1438.³⁹⁸ Juan II (r. 1406-54) appointed him the *corregidor* of Murcia and Baeza, and in Madrid he received several commissions as a *juez pesquisidor*.³⁹⁹ In the years 1460-64, he served as an *oidor* of the *Audiencia*.⁴⁰⁰ And Enrique IV (r. 1454-74) appointed him to the Royal Council of Castile.⁴⁰¹

During his illustrious career he published several works, which demonstrate the legal writings he thought were most significant. Among these, he made known the commentaries on the *Ordenamiento de Alcalá de Henares* by Vicente Arias de Balboa. He published a version of the *Fuero Real* with Latin glosses and a collection of legal terms, known as the *Repertorio de derecho*.⁴⁰² In the final years of his life, he completed the first printed edition of the *Siete Partidas*, which also included his glosses in Latin. It was published in Sevilla in 1491.⁴⁰³ The *Fuero Real* and the *Siete Partidas* went through multiple editions. Díaz de Montalvo's edition of the *Siete Partidas*, though criticized, was considered authoritative until

³⁹⁶ On the career of Díaz de Montalvo, see María José María e Izquierdo, *Las Fuentes del Ordenamiento de Montalvo*, 2 vols. (Madrid: Dykinson, 2004), 1:ciii-cvi; *Text and Concordance of the Ordenanzas Reales*, I-1338, Biblioteca Nacional, Madrid, ed. Ivy Corfís, Introduction by Carlos Petit (Madison: Hispanic Seminar of Medieval Studies, Ltd., 1990), 1-3; Fermín Caballero, *Noticias de la vida, cargos, y escritos del Doctor Alonso Díaz de Montalvo* (Madrid: Colegio Nacional Del Sordo-Mudos y de Ciegos, 1873). He was born in Arévalo near Ávila in 1405. María e Izquierdo, *Las Fuentes del Ordenamiento*, 1:ciii; Petit, *Text and Concordance of the Ordenanzas Reales*, 1-2.

³⁹⁷ Caballero, *Noticias de la vida*, 96; Petit, *Text and Concordance of the Ordenanzas Reales*, 1-2.

³⁹⁸ María e Izquierdo, *Las Fuentes del Ordenamiento*, 1:civ.

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² María e Izquierdo, *Las Fuentes del Ordenamiento*, 1:civ-vi; it is not clear when and in what way Díaz de Montalvo added to commentaries. Ibid. See also Caballero, *Noticias de la vida*, 90-2, who notes that Arias de Balboa also produced a glossed version of the *Fuero Real* in the early 1400s.

⁴⁰³ Alfonso X, *Las Siete Partidas*, ed. Alonso Díaz de Montalvo with a new intro. by Gonzalo Martínez Díez, 2 vols. (Sevilla, 1491; facsimile reprint, Madrid: Lex Nova, 1989).

Gregorio López published his version in 1555.⁴⁰⁴ In 1480, the *Reyes Católicos* commissioned Díaz de Montalvo to make a compilation of royal ordinances.⁴⁰⁵ In compiling his *Ordenanzas Reales de Castilla*, he focused on royal ordinances from 1347 up to 1480.⁴⁰⁶ His *Ordenanzas* included eight books, divided by one hundred and fifteen titles, and divided again by 1063 individual laws. He reorganized the content into groups that comprised ecclesiastical, political, procedural, civil, administrative, and penal law from the times of Alfonso X, including laws from the *Fuero Real*.⁴⁰⁷ He also included recent ordinances from the courts of Toledo in 1480. While some have drawn comparisons to the *ius commune*, Díaz de Montalvo's *Ordenanzas* contained laws exclusively issued by the Crown of Castile.⁴⁰⁸ His compilation of law, published in 1484, is considered the first of the Castilian *recopilaciones*.⁴⁰⁹ His *Ordenanzas* also received a fair share of criticism. Jurists identified repeated laws, redactions, and other changes to the original texts, which in their opinions, constituted corruption. They also questioned whether the *Ordenanzas* received official sanction once completed.⁴¹⁰ Nonetheless, several editions were made, and as María e Izquierdo notes, the *Ordenanzas* were accepted as authoritative regardless of whether they were officially sanctioned or not.⁴¹¹

⁴⁰⁴ María e Izquierdo, *Las Fuentes del Ordenamiento*, 1:cvi; for Gregorio López's edition, see *Las Siete Partidas del muy noble rey Don Alfonso el Sabio*, ed. Gregorio López, 4 vols. (Salamanca, 1555; reprint, Madrid: Compañía General de Impresores y Libreros del Reino, 1843-44).

⁴⁰⁵ Petit, *Text and Concordance of the Ordenanzas Reales*, 1-2.

⁴⁰⁶ For the *Ordenanzas Reales de Castilla*, see *Los Códigos Españoles: Concordados y Anotados* (Madrid: Imprenta de la Publicidad, 1849), 6:247-548; for an analysis of the laws he included and omitted, see María e Izquierdo, *Las Fuentes del Ordenamiento*, 1:cvii-2:587.

⁴⁰⁷ María e Izquierdo, *Las Fuentes del Ordenamiento*, 1:cvii-2:587.

⁴⁰⁸ See Petit, *Text and Concordance of the Ordenanzas Reales*, 4, who notes organizational similarities to *Libro de los decretales* and the codices of Theodosius and Justinian.

⁴⁰⁹ The *Lex Visigothorum* with its collection of ancient law and laws from various kings is also a compilation.

⁴¹⁰ María e Izquierdo, *Las Fuentes del Ordenamiento*, cii.

⁴¹¹ *Ibid.*

For our purposes, his efforts demonstrated what an *oidor*, who served on the *Audiencia* as well as several other important posts, thought were key bodies of law. His work focused on the *Ordenanzas de Alcalá*, the *Fuero Real*, and the *Siete Partidas*. He deemed the *Fuero Real* and *Siete Partidas* so authoritative that he glossed their laws in Latin. (In the seventeenth century his *Ordenanzas* were glossed in Latin even after the *Nueva Recopilación* (Castilla) of 1567 had officially replaced them.) Díaz de Montalvo's activities also demonstrate that the justices charged with applying Castilian law studied, glossed, and commented on it. María e Izquierdo notes that Díaz de Montalvo's publications spread among the justices, who benefitted from them in deciding cases.⁴¹² Modern scholars have tended to appreciate the career of Díaz de Montalvo more than his contemporaries—one recognizing the prestige of his offices as compared to other contemporary jurists.⁴¹³

With this discussion in mind, an examination of the cases that the *Audiencia* adjudicated will shed more light on how justices applied the law in the fourteenth and fifteenth centuries. A study of the pleadings and other collateral documentation will also show how litigants understood that same law in regard to land tenure. Let us now turn to the adjudication of these disputes and the work of the Castilian *Audiencia*.

⁴¹² Ibid., xciii-cii.

⁴¹³ Antonio Pérez Martín, "Glosas medievales a textos jurídicos hispánicos. Inventario y tipos," *Cahiers de linguistique hispanique médiévale* 14 (1989): 29.

Chapter Four

Land disputes before the *Audiencia Real Castellana* involving Villages, Towns, and Cities

Scholars have noted that the Christian *Reconquista* of the Iberian Peninsula in many ways was a movement of settlement and repopulation, particularly in Castile.⁴¹⁴ The river valleys of the Duero, Tagus, Guadiana, and Guadalquivir were repopulated from north to south in succession from the ninth through thirteenth centuries.⁴¹⁵ The political function of these settlements was to hold conquered land through defensive and offensive military action.⁴¹⁶ In the late fifteenth century, the Nasrid kingdom of Granada was incorporated into the Crown of Castile after an eleven-year war and the process of resettlement resumed there as well.⁴¹⁷ Unsettled land, as it came under the authority of the Castilian crown, converted to

⁴¹⁴ Claudio Sánchez-Albornoz, *España, un enigma histórico*, 2 vols. (Buenos Aires: Editorial Sudamérica, 1956), 2:9-55; Julio González, *Repartimiento de Sevilla*, 2 vols. (Madrid: Concejo Superior de Investigaciones Científicas, 1951), 1:5-20; María del Carmen Carlé, *Del concejo medieval castellano-leonés* (Buenos Aires: Universidad de Buenos Aires, 1968), 23; Angus MacKay, *Spain in the Middle Ages: From Frontier to Empire, 1000-1500* (London: Macmillan, 1977), 36-7, 66-7; Charles Julian Bishko, "The Castilian as Plainsman: The Medieval Ranching Frontier in La Mancha and Extremadura," in *Studies in Medieval Spanish Frontier History* (London: Variorum Reprints, 1980), 47-69. (This list could be extended; other works are cited below.) The arguments I propose in this chapter address how concepts of communal land tenure were understood by those living within the jurisdiction of the Crown of Castile; in the next chapter, I examine individuals and land tenure. Rather than addressing the broader theoretical concept of *Reconquista* and alternative frontier approaches to understanding the process by which the Peninsula came under Christian control, these arguments focus on the very real concerns Castilians had over control of their land—ownership, possession, and use—in the eleventh through fifteenth centuries.

⁴¹⁵ On the repopulation of the Duero Valley, see Claudio Sánchez-Albornoz, *Despoblación y repoblación del valle Duero* (Buenos Aires: Instituto de Historia de España, 1966); on the repopulation of territory south of the Tagus, see Julio González, *La Repoblación de Castilla la Nueva*, 2 vols. (Madrid: Universidad Complutense, 1975-76); for the land south of the Guadalquivir, see José Enrique López de Coca Castañer, "Institutions on the Castilian-Granada Frontier, 1369-1482," in *Medieval Frontier Societies*, ed. Robert Bartlett and Angus MacKay (Oxford: Clarendon Press, 1989), 127-50.

⁴¹⁶ See Manuel González Jiménez, "Frontier and Settlement in the Kingdom of Castile (1085-1350)," in Bartlett and MacKay, *Medieval Frontier Societies*, 54.

⁴¹⁷ On the Nasrid kingdom, see L. P. Harvey, *Islamic Spain, 1250-1500* (Chicago: University of Chicago Press, 1990); Miguel Ladero Quesada, *Granada, historia de un país islámico, 1232-1571* (Madrid: Editorial Gredos, 1969); Miguel Ladero Quesada, *Castilla y la conquista del reino del Granada* (Valladolid: Editorial Sever-Cuesta, 1967); on the conquest of Granada, see Jocelyn N. Hillgarth, *The Spanish Kingdoms, 1250-1516* (Oxford: Oxford University Press, 1978), 2:367-393; MacKay, *Spain in the Middle Ages*, 197-205.

the royal domain (*realengo*).⁴¹⁸ Existing towns also came under the jurisdiction of the crown rather than lay or ecclesiastical lordship (*señoríos*). As seen in royal concessions given to nobles, military orders, soldiers, and common settlers, Castilian sovereigns generously distributed available land in the conquered territory to promote its settlement.⁴¹⁹ As indicated in the *Fuero de Sepúlveda*, the crown even pardoned criminals who participated in that settlement.⁴²⁰ Towns that were repopulated were also given substantial tax exemptions and other incentives to foster growth and settlement.⁴²¹ Knights, noble and non-noble, as well as foot soldiers settled these lands, creating communities that utilized the terrain to create strongholds in the new settlements.⁴²²

Settlers also spontaneously formed communities that came under the jurisdiction of the crown and that of larger municipalities, namely *villas* (towns) and *ciudades* (cities), or they became municipalities themselves.⁴²³ González Jiménez calls the settlers who participated in establishing these settlements “warrior-shepherds,” which provides us with a reference to the pastoral basis of their economies. Stock-raising or ranching—suited to controlling vast amounts of land—enabled the organization of terrain where arable land and water supplies were scarce; it fostered mobility and the investment in livestock, which was

⁴¹⁸ See the *Lex Visigothorum*, Book II, title ii, law v. See also P. D. King, *Law and Society in the Visigothic Kingdom* (Cambridge: Cambridge University Press, 1972), 63.

⁴¹⁹ E.g., Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars (Capilla Fortress Grant), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95, no. 575; Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII.

⁴²⁰ González Jiménez, “Frontier and Settlement in the Kingdom of Castile,” 54.

⁴²¹ *Ibid.*, 61.

⁴²² For a list of knights and foot soldiers, see Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII; see also González Jiménez, “Frontier and Settlement in the Kingdom of Castile,” 54-6, for the settlement of defensible terrain and its significance.

⁴²³ E.g., Valladolid. See Martín Montes et al., *Una Historia de Valladolid*, 78-85. The 238 villages surrounding Soria (southeast of Burgos) in the thirteenth century provide an example of how many villages might exist around a larger settlement. See González Jiménez, “Frontier and Settlement in the Kingdom of Castile,” 59.

not easily destroyed as were crops.⁴²⁴ Communal spaces developed out of these conditions. Often small-ranchers herded their livestock together for defensive purposes and to take advantage of communal grazing lands (*pastos*), springs (*aguas* or *ojos*), woodlands (*montes*), and multi-purpose commons (*ejidos*).⁴²⁵

The initial difficulty in holding the land recovered by Castilian sovereigns explains the emergence of numerous military orders in the twelfth century and their prominence as recipients of royal concessions.⁴²⁶ As seen in the twelfth- and thirteenth-century campaigns of Alfonso VIII (r. 1158-1214) and Fernando III (r. 1217-52), military orders—indigenous to the Peninsula and beyond—played an important role in wresting Andalusia from Muslim control. They received generous grants and the control of pastoral lands in which they collected grazing fees.⁴²⁷ Land was also granted to lords, lay and ecclesiastical, and individuals of various statuses, about which more will be said in the next chapter. Towns and cities also emerged from spontaneous settlements, received land through royal concessions, or acquired land on their own. This resulted in a reorganization of geographic space within the lands of the Crown of Castile that spanned centuries. Disputes that arose from the questions of ownership, usage rights, or the need to define the boundaries of these lands were originally adjudicated by the royal court, as seen in the previous two chapters. With the establishment of the *Audiencia* in 1371, suits concerning land were heard there, sometimes

⁴²⁴ González Jiménez, “Frontier and Settlement in the Kingdom of Castile,” 60; Bishko, “The Castilian as Plainsman,” 54, 56.

⁴²⁵ *Siete Partidas*, Div. III, *titulo xxviii, ley ix*, for the communal nature of these types of land and water; for *montes*, see Carlé, *Del concejo medieval castellano-leonés*, 23.

⁴²⁶ González Jiménez, “Frontier and Settlement in the Kingdom of Castile,” 61.

⁴²⁷ Fernando III to Stephen of Bellomonte and the Militia of the Order of the Templars (Capilla Castle Grant), Toledo, 9 September 1236, in Julio González, *Reinado y diplomas de Fernando III*, no. 575, 3:93-95; Bishko, “The Castilian as Plainsman,” 54.

on appeal from a *corregidor* or as a result of the handling of the case at the municipal level, as will be seen in *Algodre v. Coreses* discussed below.⁴²⁸

Corregidores were appointed by the crown as early as the fourteenth century to enforce royal law in the cities of the realms of Castile.⁴²⁹ In places where they had jurisdiction, they heard land disputes or delegated the suit to a commissioned judge or investigator and the *Audiencia* heard the appeal.⁴³⁰ Litigants were often the municipal councils of *villas* or cities acting as corporate entities, who sued other locales over land rights; *procuradores* (legal representatives) presented their cases in the *Audiencia*. In the villages, *villas*, and cities, *caballeros* initially gained control of the councils and fought to protect their locale's lands and communal spaces.⁴³¹ Some *fueros* provided for *peones* (foot soldiers) to rise to the rank of *caballero*.⁴³² Within the *caballero* ranks, there were noble knights and non-noble knights (*caballeros villanos*). Other citizens, known as good men (“*hombres buenos*”), held positions as merchants, judges, legal representatives, and other positions of skill. They were often named in disputes, simply as “the good men” along with the council of the locale that they came from.⁴³³ Often *vecinos*, who were more than just residents or inhabitants (*moradores*), testified on the use, possession, and actual boundaries of land; *vecino* status depended on the owning of property, paying of taxes, and residency in

⁴²⁸ *Algodre v. Coreses*, *Carta de Ejecutoria*, Valladolid, 8 August 1464, Archivo de la Real Chancillería de Valladolid (hereafter ARCV), Pergaminos, Caja 5, 2; also, see *Compana de Albalá v. Villa de Almaraz*, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1.

⁴²⁹ Agustín Bermúdez Aznar, *El Corregidor en Castilla durante la Baja Edad Media (1348-1474)* (Murcia: Universidad de Murcia, 1974); Marvin Lunenfeld, *Keepers of the City: The Corregidores of Isabella I of Castile (1474-1504)* (Cambridge: Cambridge University Press, 1987); Hillgarth, *The Spanish Kingdoms*, 2:195, 307, 509.

⁴³⁰ E.g., *Algodre v. Coreses*, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2.

⁴³¹ Carlé, *Del concejo medieval castellano-leonés*, 12-13.

⁴³² González Jiménez, “Frontier and Settlement in the Kingdom of Castile,” 64.

⁴³³ See Carlé, *Del concejo medieval castellano-leonés*, 71-5, who notes that *vecinos* were distinguished from *moradores* in certain *fueros* and describes how one might obtain the status of *vecino*.

the *villa* or *ciudad* or some combination of these things.⁴³⁴ *Villas* and *ciudades* regularly had villages (*aldeas*) within their jurisdictional boundaries. The lands and water sources within these bounds were described loosely as *términos*, a term which could also specifically refer to the *pastos*, *montes*, or *ejidos* or a combination of these spaces.⁴³⁵ These villages, often referred to a *lugar* (place or site), could also file suit over land, as seen in *Algodre v. Coreses*.⁴³⁶ In this dispute, both villages had councils and *hombres buenos*, who through their *procurador*, pursued the lawsuit. At first the case was heard in Zamora as a criminal complaint. Algodre ultimately appealed the decision of the commissioned judge and the case was heard before the Royal *Audiencia* in Valladolid in 1457, where the issue of the ownership of the commons between the two villages arose.⁴³⁷

By 1442 the *Audiencia* was situated at the site of the *Chancillería* at Valladolid, a few blocks west of the Universidad de Valladolid, founded almost two centuries earlier. Prior to this the *Audiencia* had moved, as did the *corte* (royal assembly). The *Chancillería* accumulated an archive of cases heard before the *Audiencia*, but also had charters that settled land disputes prior to the formal establishment of the *Audiencia* in 1371.⁴³⁸ These, along with the cases that the *Audiencia* heard after 1371, in which its territorial jurisdiction included all of Castile, form a considerable body of medieval archival sources pertaining to land disputes. As a court of appeal, the *Audiencia* more fully delineated what the law was; litigants, arguing to reverse or affirm the lower decision, argued more precisely to prove that they held the correct interpretation of the law. After deciding the case, the *Audiencia* issued through the

⁴³⁴ See *ibid.*, 81-5, where Carlé states that *vecinos* were distinguished from *moradores* in certain *fueros* and describes the process of obtaining that status.

⁴³⁵ *Algodre v. Coreses, Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2.

⁴³⁶ *Ibid.*, discussed below.

⁴³⁷ *Ibid.*

⁴³⁸ E.g., Alfonso XI, Charter of Confirmation of Donations of Alfonso VII (8 March 1145), Burgos, 22 December 1338, ARCV, Pergaminos, Carpeta 70, 6; Alfonso XI, Sentencia (*Castrojeriz v. Vallunquera*), Burgos, 30 September 1315, ARCV, Carpeta 17, 4.

Chancillería sentencias definitivas (definitive sentences or final judgments) and *cartas de ejecutorias* (enforceable charters); the latter were usually issued upon the request of the prevailing party and included in some cases the legal reasoning behind the decision.⁴³⁹ The *Chancillería* issued the document, on parchment or on paper, in the name of the reigning king or queen; they read as if the sovereign is speaking. Near the end of the fourteenth century, a registry was established that recorded the *cartas de ejecutorias*.⁴⁴⁰

This evidence, then, provides the best insight into how medieval Castilians understood ownership of communal land, such as *ejidos*, *pastos*, and *montes*, but also concepts of possession and title relevant to communal and individual land tenure. *Ejidos*, *pastos*, and *montes* appear in Castilian *fueros*, royal concessions, and legislation throughout the medieval period and also the early modern or colonial era. This chapter will analyze suits between villages, *villas*, and cities to see how the *Audiencia* decided these cases and how litigants argued them. It will present the argument that medieval Castilians well understood concepts of title and usage rights concerning communal lands. Support for this argument will be drawn from formal legal analysis applied to the *Audiencia*'s decisions in deciding the disputes. This not only considers who the litigants were and what specific issues the suit addressed, but it also examines how the litigants argued their positions, the unique characteristics of the case, and what legal principles or rules were used in resolving the case.

Often cases included disputes that were not matters of title at first glance, but through the proceedings and resolution of the case, they decided that issue. In a 1393 case, the *Audiencia* issued a *sentencia* that decided the ownership of commons near the *villa* of

⁴³⁹ E.g., *Algodre v. Coreses, Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, discussed below.

⁴⁴⁰ See María Antonia Varona García, *Cartas Ejecutorias del Archivo de la Real Chancillería de Valladolid (1395-1490)* (Valladolid: Universidad de Valladolid, 2001).

Galisteo.⁴⁴¹ According to the surviving charter, Martín Fernández, representing the *villa* of Galisteo, its leaders, *caballeros*, and nobility, presented a petition before the *Audiencia* in the *villa* of Medina del Campo on 3 July 1393.⁴⁴² He complained that the *villa* had lost its lord and that powerful *caballeros* had settled in the lands near Galisteo, seizing heritable land and lands that had already been tilled. These *caballeros* also treated the residents of Galisteo as though they were citizens of the nearby town of Coria, the city of Plasencia, and other places. This could have had the effect of undermining the citizens' claims or standing in the matter and would have provided grounds to contest their right to use the land. Fernández also stated that a *caballero* named Arias Barahona had settled on lands in a place called Río del Lobo, a village whose territory Galisteo had used as its agricultural fields. Barahona apparently bought some houses in the area from a man named Diego Sánchez. According to Fernández, Barahona then claimed that he owned the *ejido* radiating out from the houses, which encompassed some of the already occupied land in dispute.⁴⁴³ Fernández stated that Galisteo needed the crown to rule against Barahona and the other *caballeros* to deny their claims and eject them from the land.

After hearing Fernández, the *Audiencia* commissioned Iñigo López to conduct a *pesquisa* (investigation) to resolve the matter. The investigation followed principles found in the *Lex Visigothorum*, the *Siete Partidas*, and the *Ordenamiento de Alcalá de Henares*. For López, this involved taking testimony in the presence of an *escribano* (a scribe with formal legal training). In this case it was Pablo Fernández.⁴⁴⁴ After travelling to the city of

⁴⁴¹ See *Villa of Galisteo v. Arias Barahona*, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3. The Chancillería drafted decisions by the *Audiencia*—*sentencias* and *ejecutorias*—as if written by the king, emphasizing that the court's opinion was also that of the reigning monarch. For a transcription of this charter, see Appendix B, item I.

⁴⁴² *Ibid.*

⁴⁴³ *Ibid.*

⁴⁴⁴ *Ibid.*

Plasencia, about thirteen kilometers east of Galisteo, López swore in several men from the region and proceeded to take their testimony. All testified that they knew Galisteo and considered the surrounding lands as *baldíos*. *Baldíos* were commons or vacant lands that were part of the royal domain—in this case part of the *infantazgo*, which was owned by the princesses of Castile.⁴⁴⁵ Lope Rodríguez el Viejo, whose statements are included in the *sentencia*, provided details of the land in question. In general, he described it as dense and mountainous.⁴⁴⁶ He and some others cleared portions of the land and had used it during the planting season, but left it as a cleared meadow afterwards. His activities, and the fact that he did not claim to be a citizen of Galisteo, but was from Plasencia, indicates that he had an interest in the right to use the land in question as long as it was deemed *baldíos* (vacant land). He also described pieces of land owned, leased, and rented by Juan Floriano, but again swore the rest was *baldíos*.⁴⁴⁷

Rodríguez el Viejo also provided a description of the *ejido* Barahona claimed as his own.⁴⁴⁸ As we saw in the *Fuero de Madrid*, the *ejido* had developed into something more than just an egress exiting out of a village, town, or city.⁴⁴⁹ In Madrid, residents entered the *ejidos* to water their livestock, indicating a communal space of utilitarian value. Law ix, title xxviii, division III of the *Partidas* uses *ejido* in the plural, indicating that locales could have

⁴⁴⁵ See *Latin Chronicle of the Kings of Castile*, ed. and trans. Joseph F. O’Callaghan (Tempe, AZ: Arizona Center for Medieval and Renaissance Studies, 2002), 19, n. 6, where O’Callaghan states that Fernando I established the *infantazgo* for his daughters Urraca and Elvira, funded by revenues from Leonese monasteries; as Alfonso VIII was still attempting to gain control of these assets in the 1170s-1180s, they possibly came under the control of Castile during the reign of Fernando III, who permanently unified León and Castile.

⁴⁴⁶ Villa of Galisteo v. Arias Barahona, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

⁴⁴⁹ *El Fuero de Madrid*, ed. Agustín Millares Carlo (Madrid: Raycar, 1963), título 40.

multiple *ejidos*.⁴⁵⁰ Rodríguez el Viejo stated that Barahona's alleged *ejido* extended from a group of houses. Then it proceeded over a red hill and then dropped into a winding arroyo. From there, it followed the arroyo and returned to the road. In giving this description, El Viejo did not clarify whether the *ejido* belonged to the *villa* of Galisteo or to a village within its *términos*, presumably Río de Lobo, or if it simply represented part of what Barahona seized. He added, however, that it constituted a great amount of land.⁴⁵¹ His description adds further evidence that an *ejido* by the fourteenth century had taken the form of a section of land that had to be described by metes and bounds. It was not a mere road.

Based on the testimony given—and Barahona's position can only be deduced indirectly as he is not attributed any direct testimony—Barahona claimed ownership of the *ejido* as an extension of the estates he had purchased. El Viejo's testimony and Martín Fernández's statements also indicate that Barahona and the other lords denied that the lands they claimed were *baldíos*. Presumably, under color of title, resting on the purchase of the houses, they were making claims to an extensive amount of land.⁴⁵² However, to make good on such a claim, Barahona would have had to have proved possession of the *ejidos* as he may have only obtained title to the houses but not any additional lands. The *Audiencia* addressed this briefly. It stated that Barahona's actions should not be considered to constitute possession. Had the *caballeros* been in possession of their land, a doctrine whose

⁴⁵⁰ *Siete Partidas*, Div. III, *título xxviii, ley ix*; see also the *Espéculo*, Book V, title viii, law iia, in *Los Códigos Españoles: Concordados y Anotados* (Madrid: Imprenta de la Publicidad, 1849), 4:158.

⁴⁵¹ Villa of Galisteo v. Arias Barahona, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3.

⁴⁵² Color of title meant that a claimant to a particular piece of land had a conveyance or judicial decision that provided some evidence of title, even if it was ultimately proved invalid, to base his or her claim upon. In a case spanning two centuries, attorney Antonio Perlines argued that the Villa of Almaraz had established title to *dehesas* via prescription as it proved possession under "color of title" for forty years. Here, he used an earlier *sentencia* in favor of Almaraz concerning the same land as "color of title." See Compañía de Albalá v. Villa de Almaraz, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1, rollo (bundle) 2, f. 107r.

significance is stated in law i, title ii, division III of the *Partidas*, they would have had a much stronger case.⁴⁵³ The issue as such does not play a prominent role in the case, but indicates the weaknesses that Barahona and the other *caballeros* had in their claim. Possession would have at least given them a claim to the land in which various arguments, such as color of title based on the purchase of the houses, might have given them a decision. This decision could have later been used as a form of title.⁴⁵⁴ By stating that Barahona had not established possession, the court eliminated this possibility and narrowed down the dispute to a matter of producing evidence of title. In the final steps of his investigation, and much in line with the principles found in the *Lex Visigothorum*, Iñigo López physically inspected the land at issue. He found that other evidence supported, or at least did not undermine, the notion that the lands in question were *baldíos*.⁴⁵⁵

The *Audiencia* consequently ruled that some of the land at issue had been *baldíos* and that it belonged to the *infantas* of Castile.⁴⁵⁶ It declared that the other properties, which Barahona had seized, should be returned to the residents of Galisteo or the previous owners. To prevent further disputes, it ordered anyone who claimed any of the land at issue to show title or consider it lost. It also ruled that the residents of Galisteo could continue to use the *baldíos* with no one having more right than any other to use it.⁴⁵⁷

In addition to providing an example of the significance of title in the first few decades of the *Audiencia*'s existence, the charter of 1393 also provides indications of how *baldíos*, *ejidos*, and usage rights were understood. Where possession had not been claimed or

⁴⁵³ On claiming possession procedurally ahead of attempting to establish title, see the *Siete Partidas*, Div. III, *título* ii, *ley* i; on the doctrine of possession, see the *Siete Partidas*, Div. III, *título* xxx, *leyes* i-xviii.

⁴⁵⁴ *Compana de Albalá v. Villa de Almaraz*, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1, rollo (bundle) 2, f. 107r.

⁴⁵⁵ *Villa of Galisteo v. Arias Barahona*, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*

established, title became critical in determining the right to own or use land. Without either, the *caballeros* lost the land. *Baldíos*, as used here and as defined in later disputes, were crown lands distinct from *ejidos*. *Baldíos* also signified land that had not been granted, but could be granted or used with permission.⁴⁵⁸ They were commons, available for use, but in which title remained in the hands of the *infantes* or in other cases the crown itself.

While the *villa* of Galisteo referenced that it had received lands through a grant, for the purpose of ejecting Barahona, it argued that he had settled on *baldíos*. This no doubt invoked a reaction by the *Audiencia* to answer an issue involving the crown's interest. This certainly was a strategic calculation by the men of Galisteo. If they had argued that he was on their *ejido*, the case might have turned on who could establish better title or rights to use. This would have invited a compromise. To say that the land was *baldíos*, the burden of proving ownership fell on Barahona and the other *caballeros* who had claims to lands in the area. As *baldíos*, Galisteo could then still claim usage rights. A passage in the *sentencia*, nonetheless, indicates that the *Audiencia* may have recognized the *ejido* that Barahona allegedly claimed as that of Galisteo, as it said that those lands were to be enjoyed by the citizens of Galisteo and no others.⁴⁵⁹ This echoes law ix, title xxviii, division III of the *Partidas* and the *Espéculo*, both of which provided that a *villa* or *ciudad* could own

⁴⁵⁸ Royal concessions made to villages were common, but the type of land and the types of resources—water, pastures, and woodlands—varied; e.g., Sancho IV al Villa de Lerma, Toledo, 6 December 1289, ARCV, Pergaminos, Carpeta 7, 2.

⁴⁵⁹ A cautionary note should be added to this charter. The document in the archive is a copy and has an anachronism that indicates the earliest date of its drafting was after Enrique III's death in 1406. It refers to Enrique III's brother, Fernando de Antequera, as king of Aragon, which indicates that the copy must have been made after Fernando's election to the Aragonese throne in 1412. The moniker "Antequera" comes from Fernando's conquest of the town of the same name in 1410 while serving as regent of Castile after Enrique III's death. See Jocelyn N. Hillgarth, *The Spanish Kingdoms, 1250-1516* (Oxford: Oxford University Press, 1978), 2:229-38.

communal land; the *Partidas* add that *villas* and *ciudades* could prevent non-citizens from using that land.⁴⁶⁰

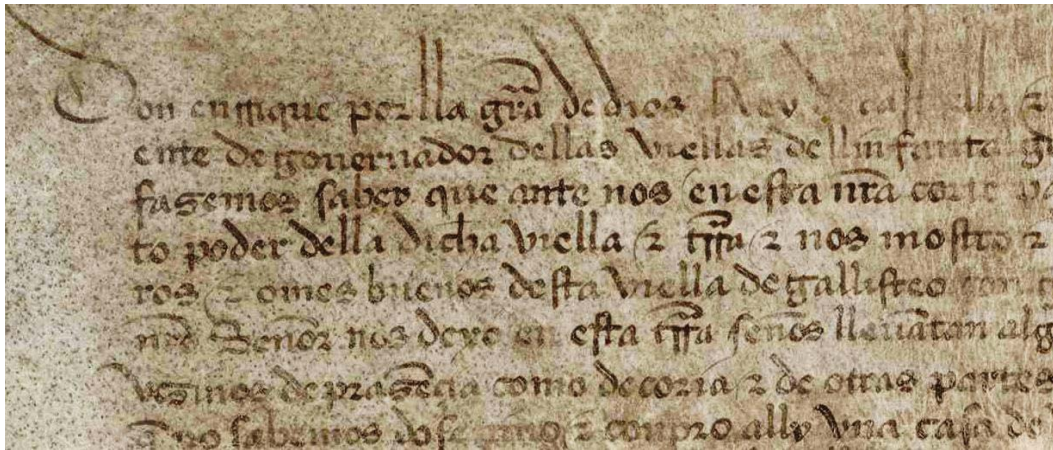


Figure 4.1. Villa of Galisteo v. Arias Barahona, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3. (Upper left area of document.)



Figure 4.2. Algodre v. Coreses, *Carta Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, fol. 1v. (Upper left area of document.)

⁴⁶⁰ *Siete Partidas*, Div. III, título xxviii, ley ix; see also the *Espéculo*, Libro V, título viii, ley ii, in *Los Códigos Españoles: Concordados y Anotados* (Madrid: Imprenta de la Publicidad, 1849), 4:158.

A Castilian *villa* ranked above a *lugar* (place or site), but below a *ciudad* (city) in terms of municipal rights, prestige, and size. Like a *ciudad*, it could have numerous *aldeas* (villages) within its *términos*. As a *villa*, it was entitled to be represented as a corporate entity as was a *ciudad* or a *lugar* with a *consejo* (council).⁴⁶¹ In the *Algodre v. Coreses* dispute, two *lugares* with councils became embroiled over the status of the *términos* surrounding their villages. Disputes such as this provide further insights into how litigants, *corregidores*, and justices of the *Audiencia* understood ownership of certain types of communal land: *ejidos*, *pastos*, and *montes*.⁴⁶² In 1457 the *lugar* of Algodre sued the *lugar* of Coreses over an incident that occurred within the boundaries or *términos* between the two villages, which they both used as commons.⁴⁶³ In proceedings preserved on twenty leaves of parchment (forty pages *verso* and *recto*) the *Audiencia* issued a *sentencia definitiva* and recorded it in a *carta de ejecutoria*.⁴⁶⁴ In contrast to the *sentencia* of 1393 involving the *villa* of Galisteo, the *carta de ejecutoria* in the *Algodre v. Coreses* suit presented the procedural background of the case, the disputed issues, and an elaboration of how the *Audiencia* reached its decision. This warrants an extended discussion of the case.

By the fifteenth century the two villages had come under the jurisdiction of the city of Zamora, where a *corregidor* also had jurisdiction as a representative of the Crown of Castile. The *lugares* were situated within Zamora's extended jurisdictional boundaries. Coreses lies about thirteen kilometers northeast of Zamora and about six kilometers north of the Duero

⁴⁶¹ See Carlé, *Del concejo medieval castellano-leonés*.

⁴⁶² The *Audiencia* decided several cases with similar issues, such as *Algodre v. Coreses* in the fifteenth century, but the *carta ejecutoria* issued in this case provides excellent insights and might be what jurists call a "leading case."

⁴⁶³ *Algodre v. Coreses, Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2.

⁴⁶⁴ *Ibid.*

River. Algodre is less than three kilometers north to northeast of Coreses. Today, the Autovía del Duero runs between the two villages. Both are situated within the old kingdom of León, which Fernando III incorporated into the Crown of Castile in 1230.⁴⁶⁵ Algodre had been one of the villages that Queen Urraca of León-Castilla named and granted to the Order of the Cistercians in 1116.⁴⁶⁶ By the mid-1400s, however, it belonged to the jurisdiction of Zamora. The inhabitants of Coreses and Algodre were both using the land surrounding their villages for various purposes. Both villages would refer to portions of these *términos*, i.e., the surrounding land between the villages, as “*prados et pastos et montes et exidos*” (meadows, pastures, woodlands, and multipurpose commons).⁴⁶⁷ As previously noted, these terms had technical meanings; they designated communal lands in which certain rights or ownership were attached.⁴⁶⁸ Villages, towns, and cities valued these rights and often pursued litigation to defend them.

The *fueros* of Zamora and the pertinent royal concessions in this area, however, lacked explicit references to any communal lands. In contrast, *fueros* and concessions given in Old Castile had included such references more frequently dating to the time it had been a county.⁴⁶⁹ Algodre *v.* Coreses therefore provides a good example of a suit concerning communal lands where no underlying *fuero* or initial concession explicitly granted the communal spaces to the villages. In addition, the case allows us to see how the *Audiencia* adjudicated a boundary dispute between villages located within the *términos* of a *ciudad*. For

⁴⁶⁵ As such, both fell under the jurisdiction of the *Audiencia*—an issue not disputed in the case.

⁴⁶⁶ Queen Urraca to the Order of the Hospitallers of St. John (Rio Guareña Grant), 3 June 1116, in Cristina Monterde Albiac, ed., *Diplomario de la Reina Urraca de Castilla y León, 1109-1126* (Zaragoza: Librería General, 1996), 152-53, no. 95.

⁴⁶⁷ See Algodre *v.* Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, f. 16r.

⁴⁶⁸ *Siete Partidas*, Div. III, *título xxviii, ley ix*, states that these lands could belong to a *lugar*, villa, or *ciudad*.

⁴⁶⁹ Carlé, *Del concejo medieval castellano-leonés*, 27-30.

example, did Algodre and Coreses theoretically or by law have rights and access to the communal lands of Zamora? Or did each village have its own distinct *montes*, *ejidos*, and *pastos*? Or did Algodre and Coreses share these communal spaces? An analysis of these issues, the circumstances surrounding the dispute, and the *Audiencia*'s decision will provide answers to these questions.

The conflict between the two villages erupted on a February day in 1457, when Martín Rodríguez, Marina Alfonso, and Marina Matheos, villagers from Algodre, were grazing their sheep in the *términos* between the two villages.⁴⁷⁰ They claimed that several men from Coreses fell upon them with the intent to injure and rob them.⁴⁷¹ The men from Coreses proceeded to take eleven rams estimated to be worth eighty *maravedís*, which they allegedly sold, and they injured or lost as many as five hundred sheep when they scattered the herd.⁴⁷² As had been common with villages, such as Algodre, residents often herded their livestock together.⁴⁷³ The sheep that were lost probably hurt more people financially than just the three villagers named in the suit. The village of Algodre, through its *procurador* and on behalf of Rodríguez, Alfonso, and Matheos, filed a complaint in the city of Zamora against the village of Coreses and the men involved in the seizure of the livestock: Benito de Cubillos, Alfonso Cadenado, Juan Carretero, Antón Martín, Juan de la Plaza, Nicolás Risa, Pedro Garzón, and Juan Sanchino. Algodre requested that the *corregidor* and other judicial officials in Zamora proceed against the men of Coreses and impose the highest penalties allowed under the law.⁴⁷⁴ At this point Algodre's complaint focused on the assault and

⁴⁷⁰ Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, f. 1v.

⁴⁷¹ Ibid. They claimed these boundaries were not marked and never had been marked.

⁴⁷² Ibid.

⁴⁷³ Carlé, *Del concejo medieval castellano-leonés*, 24, 29-30.

⁴⁷⁴ Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, f. 1v.

seizure of animals, not the boundaries between the two villages. The remedy they sought was compensation and the punishment of the assailants. *Corregidor* Diego de Heredia commissioned Fernando Núñez to conduct a *pesquisa*. As a *corregidor*, Heredia, representing the crown, could hear, decide, or delegate cases.⁴⁷⁵ He also presided over the town council. He along with the *regidores* of the town council of Zamora selected the *regidor* Fernando Núñez to investigate.⁴⁷⁶ Núñez eventually marked off the boundaries between the two villages, dividing the communal spaces, in an attempt to settle the dispute. Algodre objected to this and appealed to the *Audiencia*.

Pedro López de Nájera represented Algodre as its *procurador* (legal representative).⁴⁷⁷ Drawing from pleadings he brought to the court, he argued that the *Audiencia* should declare void the boundary indicators and monuments (official markers) set by Fernando Núñez along with the decision he issued.⁴⁷⁸ López de Nájera then complained that the suit had not originally been a boundary dispute and that Fernando Núñez exceeded the scope of his commission by dividing the communal lands.⁴⁷⁹ He added that the original filing was a criminal complaint against certain individuals from Coreses and that Algodre and its citizens involved in the incident sought damages for the stolen rams and lost sheep:

⁴⁷⁵ The Trastámara monarchs of Castile (Enrique II and his successors) appointed *corregidores* (“corrector” judges) in the fourteenth century to curb local abuses in royal towns. Alfonso XI and Pedro I also used them. See Bermúdez Aznar, *El Corregidor en Castilla durante la Baja Edad Media*; Hillgarth, *The Spanish Kingdoms*, 2:195, 307, 509. Their decisions and those by the judges they delegated to hear cases could be appealed to the *Audiencia* as discussed below. See also Compañía de Albalá v. Villa de Almaraz, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1, where Almaraz successfully appealed the decision of the *corregidor* of Plasencia.

⁴⁷⁶ Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, f. 1v.

⁴⁷⁷ *Ibid.*, f. 2r.

⁴⁷⁸ *Ibid.* Monuments were the fixed legal markers referenced in the description of the land and set by the proper authority.

⁴⁷⁹ *Ibid.*, f. 2v.

Algodre did not ask to have the *términos* partitioned as these were communal to both villages.⁴⁸⁰

López de Nájera then turned to the evidence produced, claiming that there were witnesses that Núñez never swore in, deposed, or presented to the representatives of Algodre. Consequently, their testimony was not published.⁴⁸¹ Yet the location of Núñez’s boundary indicators and markers were based on their testimony. He also stated that other witnesses contradicted those that supported Coreses; they stated that the “*dichos termjnos et prados et montes et exidos de los dichos lugares algodre et coreses fueran et eran comunes*” (the said boundaries, meadows, woodlands, and *ejidos* of the said places of Algodre and Coreses were and are being used as commons).⁴⁸² These witnesses also said that residents of Algodre and Coreses had used these commons to herd, stubble-graze, and cut timber in the *términos* of both places longer than anyone could remember. López stated that this had been so since time immemorial.⁴⁸³ Under this claim, an argument for ownership could be made based on how long the lands had been used—fifty years according to the *Lex Visigothorum*, or forty years under the *Siete Partidas*, depending on the circumstances.⁴⁸⁴ While law vii, title xxix,

⁴⁸⁰ Ibid.

⁴⁸¹ Ibid., ff. 2v-3r.

⁴⁸² Ibid., f. 3r.

⁴⁸³ Ibid.

⁴⁸⁴ For the *Lex Visigothorum*, see Book X, title iii, law iv, which states that more than fifty years (*amplius quam L annos*) would not count toward proving title if the land in question fell completely within the bounds of someone’s property. The implication is that if the land is not fully within someone else’s property, fifty years would count toward proving title. In this same law, title by this means, or prescription, could be claimed after a long period of time. Book X, title ii, law i, suggests a long period of time is fifty years: if title was to be gained through prescription, an adverse party would have to contest title within fifty years. Book X, title ii, laws iii-v, set the limitations for bringing a suit at thirty years. Law v states, however, that between twenty-five and thirty years a claimant can file suit; for the *Siete Partidas*, see ley xviii, título xxix, Div. III, which states that a claim to ownership could be made to immovable property after ten, twenty, and thirty years depending on circumstances. This law also provides grounds for claims based on “color of title.” Ley xix, título xxix, Div. III, provides the same increments of time in which, depending on circumstances, a claim to ownership could be made; Fernando III used twenty years in *Villa of Sigüenza v. Atienza and Medina, Zamora*, 24 April 1234, in González, *Reinado y diplomas de Fernando III*, 3:29-31, to establish usage rights. These numerous possibilities, all depending on circumstantial variations, explain why López de Nájera enumerated so

division III of the *Siete Partidas* states that commons could not be acquired by an individual through prescription, attorneys argued before the *Audiencia* that a locale could claim ownership of commons based on possession over extended periods of time.⁴⁸⁵ López, to cover all plausible time periods found in the *Lex Visigothorum* and the *Siete Partidas*, said that Algodre had been in possession of the land for more than “ten, twenty, thirty, forty, fifty, and sixty years.”⁴⁸⁶ He added that there were more witnesses to this view than those who said the lands at issue had been divided.⁴⁸⁷ López continued that the *Audiencia* should order the residents from Coreses to refrain from disturbing, disrupting, or bothering anyone using the “*pastos, montes and exidos*” to pasture, stubble-graze, or water their livestock, or to cut wood.⁴⁸⁸ He also requested that the *Audiencia* issue an injunction that would order the officials in Zamora not to take any further action until the court viewed the entire appeal.⁴⁸⁹

Martín Alfonso de Bolaño then appeared before the *oidores* of the *Audiencia* representing the “council and good men” of Coreses.⁴⁹⁰ He argued firstly that Algodre had consented to the commission of Fernando Núñez.⁴⁹¹ This argument had a basis in the *Lex Visigothorum* in which judges could be delegated or consented to by the parties.⁴⁹² Here, Alfonso emphasized that this occurred with no objection from Algodre at the time, so they should not be allowed to bring it up again. He continued, arguing that Algodre had accepted Núñez’s sentence and that the issues being appealed were *res adjudicata*, i.e., they had been

many increments of time: he had to make his point and protect his clients from various potential counter-arguments by covering all possibilities.

⁴⁸⁵ E.g., *Compana de Albalá v. Villa de Almaraz*, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1, bundle 2, f. 107r.

⁴⁸⁶ *Algodre v. Coreses, Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, f. 3r.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ *Ibid.*, f. 3v.

⁴⁸⁹ *Ibid.*

⁴⁹⁰ *Ibid.*

⁴⁹¹ *Ibid.*

⁴⁹² See the *Lex Visigothorum*, book II, title i, law xi (xiii).

decided and therefore should not be adjudicated again.⁴⁹³ Alfonso then urged the *Audiencia* to confirm the lower decision and order Algodre to pay the costs of the new proceedings.⁴⁹⁴

Moving from arguments based on procedure, he then presented arguments based on the merits of the case. He stated that Algodre had not been in continuous possession of the lands in question, but that Coreses had had possession of them, which they held separately from Algodre.⁴⁹⁵ The lands in question were indeed communal, but they belonged to Coreses: they were Coreses' exclusive commons. Alfonso continued that Coreses would rightly seize anyone lacking permission or license who attempted to use its *términos*. The right of one place to defend its commons and deny non-citizens access to them is provided for in law ix, title xxviii, division III of the *Siete Partidas*. In making this assertion, Alfonso also provided a definition for *términos*. In the context of boundaries surrounding a locale, *términos* meant *pastos*, *prados*, *montes*, *aguas*, and *ejidos* collectively: these were all forms of commons that individuals from a village, *villa*, or *ciudad* could exclusively use, but were owned by the locale. Alfonso then stated that commissioned investigator Fernando Núñez properly marked the boundaries.⁴⁹⁶ He also urged the *Audiencia* to defend and protect Coreses in their possession of their *términos* and order all others to refrain from entering them.⁴⁹⁷ He reiterated that the residents of Algodre or any others should be warned against disrupting or disturbing the inhabitants of Coreses and that Algodre should be condemned and ordered to pay the costs of the proceedings.⁴⁹⁸

⁴⁹³ Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, f. 4r.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid., f. 4rv.

⁴⁹⁶ Ibid. This shows that villages within the *términos* of a villa or city could claim ownership to its own *pastos*, *prados*, *montes*, *aguas*, and *ejidos*.

⁴⁹⁷ Ibid.

⁴⁹⁸ Ibid., f. 4v.

Pedro López de Nájera, representing Algodre, responded by stating that the *Audiencia* should have jurisdiction and should decide the case as an appeal.⁴⁹⁹ He argued that the Council of Coreses never held the *términos*—*prados*, *montes*, and *pastos*—in question separately from Algodre nor prevented its inhabitants from entering them.⁵⁰⁰ He also stated that this included the land marked by Fernando Núñez and that Algodre had peacefully possessed that land since time immemorial. He admitted that though some of this land may have belonged to Coreses, Algodre through uncontested use should at the least have a servitude (*servidumbre*) to those portions.⁵⁰¹ He also added that Algodre had usage rights to *cotos* (fenced reserves) under the conditions of use and custom in other places, some as far away as “three shots of a crossbow” as opposed to the close proximity of Coreses.⁵⁰² He then requested the *Audiencia* to decide the case in Algodre’s favor and condemn Coreses for taking common land from it and award Algodre all the remedies the law afforded.⁵⁰³ This included compensation of lost livestock and the return of the goods that Coreses still had.

After hearing these pleadings, the *Audiencia* ordered that Fernando Núñez’s sentence be vacated and revoked.⁵⁰⁴ It ordered the parties to file new petitions and to present witnesses and evidence to support their case.⁵⁰⁵ It also enjoined the officials—*corregidor*, *alcaldes*, *regidores* and any other ministers—in Zamora against taking any further action against Algodre.⁵⁰⁶ It additionally ordered that all matters concerning the case should be suspended

⁴⁹⁹ Ibid., f. 5r.

⁵⁰⁰ Ibid., f. 5v.

⁵⁰¹ Ibid., f. 6r. Here, a servitude would mean the right to use the *términos*, which could exist indefinitely.

⁵⁰² Ibid.

⁵⁰³ Ibid., f. 6rv.

⁵⁰⁴ Ibid., f. 6v.

⁵⁰⁵ Ibid., ff. 6v-7r.

⁵⁰⁶ Ibid., f. 7r.

or set as they were before the filing of the suit.⁵⁰⁷ Pedro López de Nájera, continuing in his representation of Algodre, was given sixty days to present his witnesses and evidence beginning on 13 December 1457. Coreses would have the same amount of time. The *Audiencia* ordered the parties to use its reception halls for the new proceedings.⁵⁰⁸ The little village of Algodre certainly celebrated upon hearing this decision, but the case was far from over.

López's next filings included his arguments on what would now be the central issue in the case. Were the *términos* between Algodre and Coreses communal lands for both villages jointly or did Coreses have exclusive rights to its own separate communal lands? López again averred that the lands in question were commons and that Algodre had peaceably held them in possession since time immemorial.⁵⁰⁹ Algodre and Coreses had used these lands for herding, grazing, cutting wood, and watering livestock.⁵¹⁰ López argued that the only divided lands were some *cotos* (reserves).⁵¹¹ He then provided a definition of what *coto* meant in the context of communal land. In prior disputes it had a flexible meaning and could be a hunting preserve or some other commons fenced off similar to a *dehesa*. Derived from the Latin term *cautus* for "cautious," it took on the connotation of meaning "to secure/guard." López stated that it was a reserve for grazing and keeping oxen, which each council had rights to for specific periods of time through custom and use without charging

⁵⁰⁷ Ibid., f. 7r.

⁵⁰⁸ Operating at the physical locale of the Chancillería, between the Plaza Santa María and the University of Valladolid along Calle San Martín, this site is where the Palacio de Viveros stands today.

⁵⁰⁹ Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, f. 7v.

⁵¹⁰ Ibid.

⁵¹¹ Ibid., f. 8r.

fees, seizing, or hindering each other's use.⁵¹² He added that Algodre used these lands and until this incident occurred, Coreses did not oppose its use.⁵¹³

He continued that Coreses had not proved its case, and then proceeded to impeach its witnesses on grounds that they contradicted themselves and lacked credibility. One, he argued, had never set foot in either Algodre or Coreses or any other place within the region, but was a night traveler and a drunk.⁵¹⁴ López dismissed several others as drunks and thieves, and stated that some had been corrupted with bribes.⁵¹⁵ Some, he claimed, were crazy and lacked capacity—stating that one senseless man was infamous for walking, acting, and dressing publicly as a woman.⁵¹⁶ Some witnesses were excommunicates, whom López denounced for an array of reasons.⁵¹⁷ Other witnesses, he claimed, had interests, such as property they received from the Council of Coreses, or land that would benefit from a decision in favor of Coreses.⁵¹⁸ He then listed several men and women from Coreses and questioned their credibility, since they had provided money for the suit and stood to lose a great deal financially if Coreses lost. For López, all of these witnesses lacked credibility.

Martín Alfonso de Bolaño submitted a response in the name of Coreses in which he claimed his party had proved its propositions and thus established its case.⁵¹⁹ He advised the *Audiencia* that Coreses held the *términos* in question separately from Algodre and that they were delineated, marked, and monuments had been placed.⁵²⁰ He added that Coreses held

⁵¹² Ibid.

⁵¹³ Ibid.

⁵¹⁴ Ibid., f. 8v.

⁵¹⁵ Ibid., f. 9r.

⁵¹⁶ Ibid.

⁵¹⁷ Ibid., ff. 9rv.

⁵¹⁸ Ibid.

⁵¹⁹ Ibid., ff. 9v-10r.

⁵²⁰ Ibid.

them as such since time immemorial.⁵²¹ He also explained that Coreses had rightly seized any livestock that had entered within its marked boundaries. He urged the *Audiencia* to forbid Algodre from entering Coreses' *términos* or pay rent for using them. Alfonso then questioned the credibility of the witnesses who testified for Algodre. He claimed that all of them were within the third and fourth familial degree of citizens of Algodre and some owned property in Algodre.⁵²² He then accused several of them for being renegades against God, drunks, and recipients of bribes.⁵²³ Consequently, it was the witnesses for Algodre, he argued, that should not be believed.

Pedro López de Nájera replied that his witnesses had given testimony in good faith, were credible, and had good reputations.⁵²⁴ He also denied that they were related in the manner that Coreses had claimed or had interests in the outcome of the suit.⁵²⁵ Furthermore, he argued, Algodre had also provided more witnesses. He said that the impeachments by Coreses were not proper and that Coreses' new requests for damages were malicious, since they prolonged the suit and lacked any evidentiary support.⁵²⁶ The *Audiencia* issued an order that allowed further testimony and evidence to be presented.⁵²⁷ Coreses, should it not prove its propositions before the court, would be subject to a penalty of 3000 *maravedís*.⁵²⁸ López requested that the *Audiencia* name a *receptor*, which it did in the name of the *escribano*,

⁵²¹ Ibid.

⁵²² Ibid., f. 10r.

⁵²³ Ibid.

⁵²⁴ Ibid., f. 11v.

⁵²⁵ Ibid.

⁵²⁶ Ibid.

⁵²⁷ Ibid., f. 12r.

⁵²⁸ Ibid.

Sánchez de Matabuena.⁵²⁹ It then increased the time permitted to provide evidence to fifty days—after which that evidence would be published.⁵³⁰

Martín Alfonso, representing Coreses, then presented a document in which he argued that Coreses had established its proofs and the *Audiencia* had viewed the documents.⁵³¹ He also stated that Coreses had established its propositions, but Algodre had not and had not submitted its evidence on time.⁵³² These witnesses also presented contrary testimony, were interested parties, and testified in bad faith.⁵³³ In contrast, Coreses presented more credible witnesses, who testified that monuments marked and divided the *términos* between each locale.⁵³⁴ These witnesses saw the monuments with their own eyes. Alfonso also suggested that the *Audiencia* should send someone to verify that the old monuments were in place separating the villages.⁵³⁵ He added that these old monuments had been recognized in the earlier proceedings.⁵³⁶

Pedro López de Nájera responded to this latest evidence by pointing out the defects in the testimony of the witnesses presented by Coreses, citing contradictions and statements given in bad faith.⁵³⁷ In contrast, his witnesses exceeded those of Coreses in number and were more trustworthy.⁵³⁸ He reiterated Algodre's claims to damages in respect to the lost sheep and the seized livestock.⁵³⁹ The case, nonetheless, still turned on whether there was sufficient evidence to prove that the *términos* between the two villages had been divided.

⁵²⁹ Ibid., f. 12v.

⁵³⁰ Ibid.

⁵³¹ Ibid., f. 13r.

⁵³² Ibid.

⁵³³ Ibid., f. 13rv.

⁵³⁴ Ibid.

⁵³⁵ Ibid., f. 13v.

⁵³⁶ Ibid.

⁵³⁷ Ibid., f. 14r.

⁵³⁸ Ibid., f. 14v.

⁵³⁹ Ibid., f. 14r.

He presented documents in which he argued that the witnesses who went to inspect the monuments that marked the divisions between Algodre and Coreses agreed that the monuments were new and not old boundary markers.⁵⁴⁰

After reading the propositions and evidence presented, the *Audiencia* found that Algodre had proved its case.⁵⁴¹ In doing so, López had established that the “*términos, prados, pastos, montes, and ejidos*” between Algodre and Coreses were commons used by both places.⁵⁴² The *Audiencia* also accepted that the communal lands had been used as such since “time immemorial.” In its decision, the *Audiencia* declared that the “*términos, prados, pastos, montes, and ejidos*” were owned jointly by Algodre and Coreses.⁵⁴³ The inhabitants of each place were entitled to pasture, stubble-graze, and cut wood freely and without penalty in the *términos*. The *Audiencia* also admonished each village not to seize or attempt to seize any of the inhabitants from the other village. It also ordered Coreses to restore all of the livestock that it had taken from the men and women of Algodre and that they would have to pay restitution for any other damages. Coreses was also ordered to pay the penalty of 3,000 *maravedís* for the additional proceedings in which it attempted to prove that the *términos* between the two villages had been divided.⁵⁴⁴

Martín Alfonso of Bolaño appealed the decision.⁵⁴⁵ He stated that the sentence should be declared void and that it was an injustice.⁵⁴⁶ He argued that the evidence in favor of the *términos* having been divided was greater than that which Algodre presented.⁵⁴⁷ He also claimed that an ancient land grant had been made to Coreses and that the monuments

⁵⁴⁰ Ibid., f. 16r.

⁵⁴¹ Ibid.

⁵⁴² Ibid.

⁵⁴³ Ibid., f. 16v.

⁵⁴⁴ Ibid., f. 17r.

⁵⁴⁵ Ibid.

⁵⁴⁶ Ibid.

⁵⁴⁷ Ibid.

in question reflected those ancient boundaries.⁵⁴⁸ He argued that the *Audiencia* should visually inspect the monuments.⁵⁴⁹ He also challenged the *Audiencia*'s decision, which in addition to stating that Algodre had proved its propositions, stated Coreses had not.⁵⁵⁰ He added that the *Audiencia* believed Algodre's witnesses, but it could have just as easily believed Coreses', including a document that claimed that the *términos* had been divided.⁵⁵¹ He also stated that Algodre at most proved that it used the *términos* and this established at best a usage right to the commons; the *Audiencia* exceeded its scope in declaring that Coreses and Algodre owned the *términos* jointly.⁵⁵² Here, Martín Alfonso distinguished between establishing a right to use based on use and custom and outright ownership, which the *Audiencia* established for both villages by declaration.⁵⁵³ Had the *Audiencia* been determining usage rights, sometimes confused as usufruct (which had a different technical meaning under the *Siete Partidas*), there would have been no need for Martín Alfonso to make this distinction in the appeal.⁵⁵⁴

The *Audiencia* took Alfonso's appeal on behalf of Coreses under consideration. After deliberating in Valladolid on 8 August 1464, it issued a definitive sentence in the degree of a "revista" affirming its decision in favor of Algodre.⁵⁵⁵ It stated that that decision was "good, just, and lawfully given."⁵⁵⁶ It ordered Coreses to pay restitution for

⁵⁴⁸ Ibid.

⁵⁴⁹ Ibid., f. 17rv.

⁵⁵⁰ Ibid., f. 17v.

⁵⁵¹ Ibid., f. 18r.

⁵⁵² Ibid.

⁵⁵³ See *Compana de Albalá v. Villa de Almaraz*, Valladolid, 1491-1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1, rollo (bundle) 2, f. 107r, where the same type of judicial decree later provided evidence of title.

⁵⁵⁴ For *usufructo* under Castilian law, see the *Siete Partidas*, Div. III, *título xxxi, leyes xx-xxvii*.

⁵⁵⁵ *Algodre v. Coreses, Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, ff. 19v-20r.

⁵⁵⁶ Ibid., f. 19v.

the livestock seized and costs in the suit in the amount of 12,500 *maravedís*.⁵⁵⁷ It also ordered a *carta ejecutoria* to be issued to Algodre as requested, so that all would know the definitive sentence. The *Audiencia* added that the citizens and inhabitants currently living there and their offspring shall have the “*prados, pastos, montes, and ejidos* of the said places freely and without penalty.”⁵⁵⁸ It ordered Coreses not to seize nor consent to seize the citizens and inhabitants of Algodre nor their livestock nor any of their belongings.⁵⁵⁹ Algodre likewise was not to do the same to Coreses or its citizens and inhabitants. Both villages were ordered to respect the wheat fields, vineyards, fenced *prados*, and *cotos* owned by the respective councils.⁵⁶⁰

Algodre v. Coreses provides further evidence that litigants recognized the principles contained in laws ix and x, title xxviii, Division III of the *Siete Partidas*. Had Coreses persuaded the *Audiencia* that the *términos* between the two towns had been divided and marked with monuments or that *Corregidor* Fernando Núñez had properly divided them, it would have been able to prevent Algodre from using those separated lands. In discussing communal land belonging to a village, town, or city, law ix states that “those who might be residents elsewhere cannot make use of them against the will or prohibition of those that live therein.”⁵⁶¹ Since Coreses could not prove that the communal land belonged only to it, law ix worked to guarantee the rights of the citizens and inhabitants of Algodre. “And these are established and granted for the advantage of all men of each city, villa, castle, or other place. Because every man who is a resident therein can make use of all of these

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid.

⁵⁵⁹ Ibid.

⁵⁶⁰ Ibid., f. 20r.

⁵⁶¹ “Mas los que fuessen moradores en otro lugar, non pueden vsar dellas contra voluntad, o defendimiento de los que morassen y.” *Siete Partidas*, Div. III, *título* xxviii, *ley* ix.

aforementioned things: and they are communal to all, for the poor as well as the rich.”⁵⁶²

The *Audiencia* also made sure to state that municipally owned lands, such as vineyards and wheat fields, referred to in law x, title xxviii, division III of the *Partidas*, were not communal for individual use, but belonged to the municipalities to provide income for their upkeep.⁵⁶³ Both villages were ordered to respect these lands as well as the fenced *cotos* and other places specifically owned by the municipality of Coreses.

Algodre v. Coreses also demonstrates that villages owned the *prados*, *pastos*, *montes*, and *ejidos*. Martín Alfonso, in representing Coreses, made this clear when he complained that the *Audiencia* declared the *prados*, *pastos*, *montes*, and *ejidos* to belong to both villages. He would have preferred a declaration from the court stating that *Algodre* simply had a right to continue to use the *términos* based on custom and usage. This would have been established under a form of prescription and would have amounted to no more than a *servidumbre*—a usage right in the form of a servitude. In the fifteenth century, when the jurist Gregorio López glossed the *Siete Partidas* in Latin, he stated in his commentary to law ix, title xxviii, division III that “it seems to be proved” (by the provisions of the law) that the *termini* (*montes*, *pastos*, and *ejidos*) belonged to the cities or villages.⁵⁶⁴ *Algodre v. Coreses* proves that they did. The central issue that the *Audiencia* decided was whether they belonged only to Coreses or to both villages jointly. That Fernando Núñez had actually marked boundaries in the early proceedings indicates that Coreses had persuaded the officials in Zamora that the two villages had distinct boundaries

⁵⁶² “. . . que son establecidos, e otorgados para pro comunal de cada Cibdad, o Villa, o Castillo, o otro lugar. Ca todo ome que fuere y morador, puede vsar de todas estas cosas sobredichas: e son comunales a todos, tambien a los pobres como a los ricos.” *Siete Partidas*, Div. III, *título xxviii*, *ley ix*.

⁵⁶³ *Siete Partidas*, Div. III, *título xxviii*, *ley x*.

⁵⁶⁴ *Ibid.*, Div. III, *título xxviii*, *ley ix*, n. 6. “Videtur hic probari, quòd montes, & termini sunt communes civitatis, vel villae, in cujus territorio sunt, & quòd in his habeat fundatam suam intentionem.”

within the greater *términos* of the city of Zamora. This indicates that even small villages, such as Algodre, had potential claims to communal land in addition to individually owned property. For Coreses, Martín Alfonso suggested there was an ancient grant that purportedly proved his case, but he could not produce any convincing evidence.⁵⁶⁵ As such, *Algodre v. Coreses* provides an example of a dispute in which no underlying *fuero* or royal concession provides a textual reference to communal lands, yet ownership was ultimately established.⁵⁶⁶ In the end, the *Audiencia* declared both villages owners—a declaration that could later serve as title.⁵⁶⁷

To further evaluate the work of the *Audiencia* in disputes concerning communal land, a suit with an underlying royal concession giving communal land to a village, town, or city will tell us something more about the Castilian legal tradition. *Concejo de Olmos et al. v. Concejo de Atapuerca et al.* is such a dispute. In this conflict, the ownership and use of the *montes* east of Burgos in Old Castile was at issue. The suit originally involved eleven villages that sought to establish their rights over their sources for firewood and timber in the *montes de Burgos*.⁵⁶⁸ Along with Olmos were the villages of Quintanapalla and Fresno de Rodilla on one side of the dispute. The villages joining Atapuerca in defending the suit were Agés, Santovenia de Oca, Villamorico, Barrios de Colina, Hiniesta, Villaescusa, and Quintanilla. The Villa of Atapuerca was at the center of the case. Atapuerca, situated about twenty kilometers east of Burgos, allied with six villages in its vicinity, some located along the Camino de Santiago, which passes through Burgos.

⁵⁶⁵ *Algodre v. Coreses, Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, f. 19v.

⁵⁶⁶ See Carlé, *Del concejo medieval castellano-leonés*, 164-73.

⁵⁶⁷ E.g., *Compana de Albalá v. Villa de Almaraz*, Valladolid, 1491-1622, ARCHV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1, rollo (bundle) 2, f. 107r.

⁵⁶⁸ *Concejo de Olmos et al., v. Concejo de Atapuerca et al., Carta de Sentencia de la Audiencia*, Burgos, 17 November 1488, ARCV, Pergaminos, Caja 2, 1, ff. 1r-2v.

Olmos, Quintanapalla, and Fresno lie to the northwest and north of Atapuerca. The woodlands between Atapuerca and Burgos, the Sierra de Atapuerca, had considerable value; nearby villages gathered and sold the firewood in addition to using it for heating fuel, construction, and other timber products. In 1138, Alfonso VII (r. 1126-57) included Atapuerca in a charter, or *fuero breve*, which he issued to the Order of the Hospitallers of St. John of Jerusalem.⁵⁶⁹ He gave Atapuerca to the order, and the *villa* was to have perpetual hereditary rights to the “montibus et fontibus, cum rivis et pascuis ...” (woodlands and springs, with streams, and pastures . . .).⁵⁷⁰ Four centuries later, the woodlands given to Atapuerca retained their significance as valuable resources to the eleven locales involved in Concejo de Olmos et al. v. Concejo de Atapuerca et al.

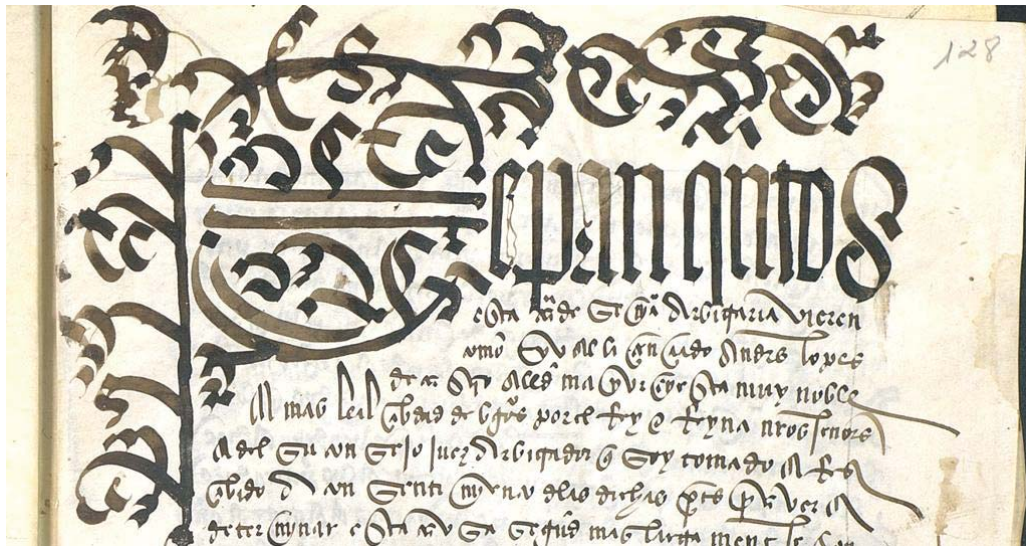


Figure 4.3. Concejo de Olmos et al. v. Concejo de Atapuerca et al., *Sentencia Arbitraria*, Burgos, 17 November 1488, ARCV, Pergaminos, Caja 2, 1, f. 128r.

⁵⁶⁹ *Fuero de Atapuerca*, in *Fueros locales in el territorio de la provincia de Burgos*, ed. Gonzalo Martínez Díez (Burgos: Caja de Ahorros, Municipal de Burgos, 1982), 147-49.

⁵⁷⁰ *Ibid.*

The *Audiencia* issued a *sentencia arbitraria* in facilitating a compromise in Concejo de Olmos et al. v. Concejo de Atapuerca et al (fig. 4.3).⁵⁷¹ Through this sentence, the *Audiencia* stipulated the terms by which each party could access the *montes de Burgos*. Olmos, Quintanapalla, and Fresno were given rights to cut wood in the *montes*. The settlement, however, limited the amount of wood they could cut and they were prohibited from selling wood in Burgos.⁵⁷² The compromise also stipulated fees and penalties for various violations of the agreement.⁵⁷³ The ownership of the *montes*, in accordance with the *fuero* of 1138, was attributed to the *villa* of Atapuerca.⁵⁷⁴ However, the *sentencia arbitraria* also stated that the *montes* in question were part of the *términos* of the villages defending the suit with Atapuerca.⁵⁷⁵ While the focus of the case was on the equitable rights of the villages involved in acquiring wood and timber, it also shows that ownership of communal land could be based on title in the form of an initial concession when one existed. The *Audiencia* recorded the settlement on 142 leaves of parchment (283 pages); the parties executed it before the *escribano* of Burgos, García Ferranz de Buezo, on 17 November 1488.⁵⁷⁶

⁵⁷¹ Concejo de Olmos et al., v. Concejo de Atapuerca et al., Carta de Sentencia de la Audiencia, Burgos, 17 November 1488, ARCV, Pergaminos, Caja 2, 1.

⁵⁷² Ibid., f. 129v.

⁵⁷³ Ibid., ff. 128r-129v.

⁵⁷⁴ Ibid., ff. 128r, 130r.

⁵⁷⁵ Ibid., ff. 128r-129v.

⁵⁷⁶ Ibid.

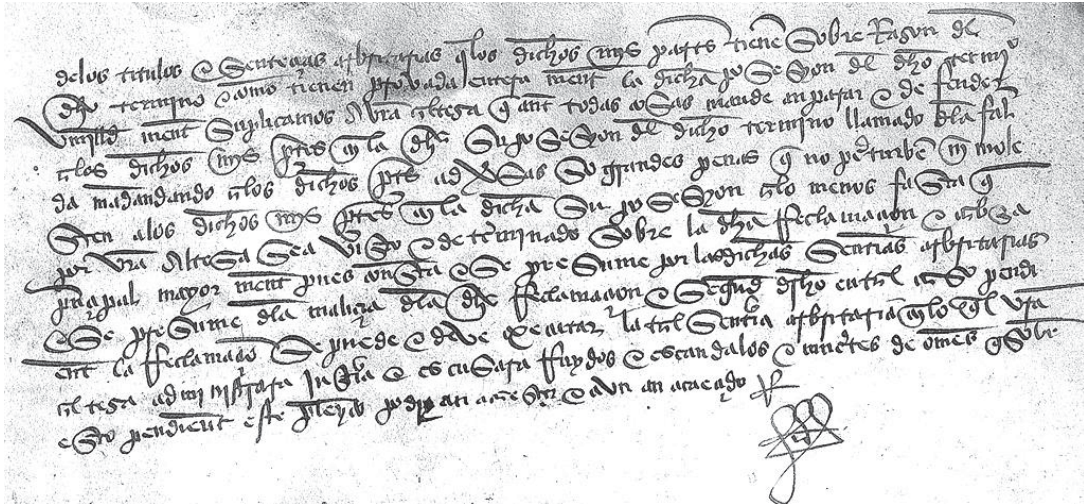


Figure 4.4. Concejo de Lantadilla v. Concejo de Itero de la Vega, Valladolid, 1481, ARCV, Pleitos Civiles, Escribanía Moreno, Olvidados, Caja 549, 6, f. 17r.

The archive of the *Chancillería* also contains suits that were dropped by the plaintiff for various reasons. The documents filed before the abandonment of the suit were stored in the *Audiencia*'s *sección de pleitos olvidados* (section of abandoned suits). Though a *sentencia definitiva* was never issued in these disputes, they still retain value in demonstrating how villages, towns, and cities understood ownership of land. Some contain the initial filings of an appeal of a lower decision or a *sentencia arbitraria*. In *Concejo de Lantadilla v. Concejo de Itero de la Vega*, the two locales argued over control of *pastos* known as La Falda.⁵⁷⁷ In a *sentencia arbitraria* from 1480, Itero de la Vega was deemed the

⁵⁷⁷ *Concejo de Lantadilla v. Itero de la Vega*, Valladolid, 1481, ARCV, Pleitos Civiles, Escribanía Moreno, Olvidados, Caja 549, 6. In addition to conflicts between villages and towns over various forms of commons, the sheep-raising guild known as the Mesta also contested ownership of commons and the seizing of its livestock by villages. The Mesta had gained concessions from the Castilian crown that spurred the growth of the sheep-raising industry. These included rights-of-way in which the Mesta's transhumant sheep could graze throughout the kingdom of Castile. This, however, led to conflict with towns and villages over the use of commons, particularly those used as *pastos*. In 1489, the *Concejo de la Mesta* initiated a suit against the village of Villacastín over the use of its *pastos*. In multiple suits that followed the 1489 filing, the Council of the Mesta continued to dispute Villacastín's control of its commons and the claims and counterclaims of the seizing of livestock. Eventually, the *Audiencia* issued two *cartas ejecutorias* ordering restitution for some of the seizures involved in the case. In the end, both sides had recognized Villacastín's ownership of its commons, but argued

owner of La Falda. Lantadilla sued to reverse the settlement, claiming that it had an older title and that the arbitration lacked equity.⁵⁷⁸ The appeal by Lantadilla was ultimately abandoned, but the pleadings provide further details as to how *pastos*, in particular, were understood by the justices of the *Audiencia* and the litigants arguing before the tribunal.

After the *villa* of Lantadilla filed its appeal of the *sentencia arbitraria* in the *Audiencia*, Juan Pérez, representing the Council of Itero de la Vega, filed a response in which he addressed the central issues of the case (fig. 4.4).⁵⁷⁹ His filing explains the dispute and the strengths of each side’s arguments. Itero de la Vega, he argued, had held La Falda since time immemorial and still had possession.⁵⁸⁰ It had established ownership based on use and custom in prior proceedings through the presentation of superior evidence. Pérez added that the *Audiencia* would find that Itero de la Vega proved this “*muy completamente*.”⁵⁸¹ The *villa* of Lantadilla, he asserted, failed to make its appeal within the required time period and in the proper form. For these reasons, Pérez requested the crown to defend the village’s title, the previous *sentencia arbitraria* affirming ownership, and its possession of La Falda.⁵⁸² Juan Pérez also called for punitive damages against Lantadilla and for a *sentencia definitiva* ordering Lantadilla to refrain from bringing suit in the future over the same issue.⁵⁸³ He added that if Lantadilla wanted to access Itero de la Vega’s lands, it should pay for using them.

over how and whether they could be used by both parties. See *Concejo de la Mesta v. Villacastín*, Valladolid 1489-1525, ARCV, Pleitos Civiles, Escribanía de Alonso Rodríguez, Fenecidos, Caja 714, 1.

⁵⁷⁸ *Concejo de Lantadilla v. Itero de la Vega*, Valladolid, 1481, ARCV, Pleitos Civiles, Escribanía Moreno, Olvidados, Caja 549, 6. Both villages lie on the eastern bank of the Río Pisuega about fifty kilometers west of Burgos.

⁵⁷⁹ *Concejo de Lantadilla v. Concejo de Itero de la Vega*, Valladolid, 1481, ARCV, Pleitos Civiles, Escribanía Moreno, Olvidados, Caja 549, 6, f. 17r.

⁵⁸⁰ *Ibid.*

⁵⁸¹ *Ibid.*

⁵⁸² *Ibid.*, ff.17v-18r.

⁵⁸³ *Ibid.*

Perhaps fearing that the *Audiencia* might be persuaded by Pérez's response or lacking the resources to continue, Lantadilla dropped the case. The filings were eventually placed in the *sección de pleitos olvidados*, where thousands of other abandoned civil cases rest today. The arguments in these pleadings, however, are consistent with those found in other cases.⁵⁸⁴ The *Audiencia's* *sentencia arbitraria* served to affirm title for *términos* used as *pastos*. This allowed Juan Pérez to argue that Itero de la Vega had title. It also had possession of the *términos*. These elements together amounted to a strong argument for ownership—one which withstood arbitration and an attempted appeal. It was also consistent with numerous principles within the *Siete Partidas*.

In other disputes, the *Audiencia* and the Council of Castile established that litigants had usage rights to grazing lands and water. These were rights established by use and custom as seen in the case that Fernando III adjudicated in 1234 between Sigüenza and Atienza and Medina.⁵⁸⁵ In a 1453 case from the *Audiencia's* archive, Concejo de San Martín de los Herreros v. Concejo de Ventanilla, Fernando de Velasco, the delegated judge, specified when each village could use grazing lands near their villages.⁵⁸⁶ He also addressed the repair of a dam. After taking sworn testimony from witnesses, Velasco allotted damages to the village of San Martín for the repair of the dam that Ventanilla had

⁵⁸⁴ E.g., Concejo de Olmos et al. v. Concejo de Atapuerca et al., Carta de Sentencia de la Audiencia, Burgos, 17 November 1488, ARCV, Pergaminos, Caja 2, 1; Compañía de Albalá v. Villa de Almaraz, Valladolid, 1491-1622, ARCHV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1; Caja 1564, 1.

⁵⁸⁵ Villa of Sigüenza v. Atienza and Medina, Zamora, 24 April 1234, in González, *Reinado y diplomas de Fernando III*, 3:29-31.

⁵⁸⁶ Concejo de San Martín de los Herreros v. Concejo de Ventanilla, *Sentencia Definitiva*, Palencia, 18 August 1453, ARCV, Pergaminos, Carpeta 33, 6. For a transcription of this case, see Appendix B, item II.

been ordered to, but had not repaired.⁵⁸⁷ The dam fed water to irrigation ditches tied to a public river near an arroyo known as Valde Cadera—water that both villages used.⁵⁸⁸

Next, Velasco settled the issue of the use of pasture lands. He ordered that on the day of Santiago (25 July), Ventanilla was to use the meadows of the Paradeja, while San Martín was to use the Valde los Orrios.⁵⁸⁹ He added that should San Martín be in the meadows when Ventanilla arrives, it should use the Valde los Orrios. Neither village could deny the other access to the grazing lands. In cases such as this, title did not arise because the dispute centered on litigants claiming usage rights to certain lands whose usage they denied to each other. Also, Fernando de Velasco was not establishing a usufruct for one party or the other; this would have required a pact brokered by the parties or some other legal instrument and a claim of ownership of one of the lands by one party. Rather, he was setting parameters to keep the villages from fighting each other over the use of the two common grazing spaces. In his *sentencia definitiva*, Velasco also provides amounts for restitution for damages bases on use and custom that might be caused by one village to the other.⁵⁹⁰ By specifying the usage rights that each village had to the lands in question, he affirmed a *servidumbre* that each one had to the grazing lands and also public water.

The laws of the *Siete Partidas* provide insights into this. Law v, title xxxi, Division III, for example, notes that the right to use water from a spring was a servitude (*servidumbre*), not a usufruct *per se*.⁵⁹¹ Law vi, title xxxi, Division III explains that wells

⁵⁸⁷ Ibid. He ordered Ventanilla to pay him several hundred *maravedis* in fines.

⁵⁸⁸ Ibid.

⁵⁸⁹ Ibid.

⁵⁹⁰ Ibid.

⁵⁹¹ The provisions on usufructs in the *Siete Partidas*, though more comprehensive, reflect some of the basic principles in the *Institutes* of Justinian, which also stipulate that a usufruct is created through a testament or contract, both of which would require some sort of written instrument. *Justinian's Institutes*, trans. and introduction by Peter Birks and Grant McLeod with the Latin Text of Paul Krueger (Ithaca, NY: Cornell University Press, 1987), Book II, titles III-V.

and pastures operate in the same way. Should the owner, moreover, who grants another party the right to use the well, spring, meadow, or pasture, sell the property, the new owner must honor the right of use in the form of a servitude.⁵⁹² Usufructs, in contrast, require some form of contractual agreement or will and in some cases security as discussed above in Chapter Three. The usufruct also is usually given for a period of time, whereas servitudes, such as the use of water or pastures, may run indefinitely even after the property changes hands.⁵⁹³ As seen in the cases where a usage right has been declared, the right was gained by prescription through evidence of use of the land in question over an extended period of time or because the lands in question were commons in the royal domain. According to the *Siete Partidas*, in these circumstances, a servitude is established, not a usufruct.⁵⁹⁴ *Concejo de San Martín de los Herreros v. Concejo de Ventanilla* is typical of cases that were settled by royal officials through the enumeration of the rights of each party.

The cases heard before the *Audiencia* and royal court show that communal lands—*ejidos*, *pastos*, and *montes*—belonged to the villages, *villas*, and cities apart from the royal domain or any other lordship in accordance with law ix, title xxviii, division III of the *Partidas*. Ownership in itself, or the right of use to lands owned by another locale, were proven or established through judicial decisions, *fueros*, royal concessions, and custom and use. In the 1393 *sentencia*, issued to settle the question of ownership of the land surrounding the Villa of Galisteo, all parties claiming lands in the area were to present title or forfeit the lands. The lands wrongfully taken were returned to their owners. However, the right to use,

⁵⁹² *Siete Partidas*, Div. III, *título xxxi*, *ley vi*.

⁵⁹³ Compare *ley vi*, *título xxxi*, Div. III with *leyes xx* and *xxxvi* of the same title.

⁵⁹⁴ *Siete Partidas*, Div. III, *título xxxi*, *leyes xiv* and *xv*.

but not ownership of the *baldíos*, was given to the inhabitants of Galisteo, whose leaders did not claim title to it at any point in the proceedings.

In *Algodre v. Coreses*, the villages did dispute title to the *prados, montes, pastos*, and *ejidos*, which existed between the villages. Coreses' initial claims and success in pressing those claims shows not only that a town or city could own communal lands, but also that a village existing within the jurisdictional boundaries of a city could own *términos*. The commissioned judge Fernando Núñez set monuments marking these *términos*, which would have given Coreses exclusive ownership of the *prados, montes, pastos*, and *ejidos*. The *Audiencia* reversed this act, however, and Coreses and Algodre were declared joint owners. Had Coreses provided more persuasive evidence, or proof that the monuments marking the boundaries predated the suit, it would have been declared the sole owner of the lands in question. Martín Alfonso, representing Coreses, complained that the *Audiencia* should have gone no further than declaring that Algodre had usage rights to the *términos* between the villages. His arguments show that ownership rights were at stake, not permission, license, or other rights.

Cases such as *Lantadilla v. Itero de la Vega* show that a sentence issued by the *Audiencia* could stand for title where no initial concession or underlying grant existed. This along with possession of the land at issue proved formidable against counterclaims of ownership. The *Audiencia* also determined title based on royal concessions, as seen in *Olmos et al. v. Atapuerca et al.* though, in doing so, it could still broker a settlement giving adverse parties usage rights. Rights such as these were a form of servitude, not usufructs. The above decisions were consistent with principles in the *Lex Visigothorum (Fuero Juzgo)*, the *Siete Partidas, fueros*, royal concessions, and cases adjudicated by the royal courts before

and after the establishment of the *Audiencia*. In cases such as *Algodre v. Coreses*, the lengthy *cartas de ejecutorias* and *sentencias* issued by the *Audiencia* provide valuable insights into how litigants and justices understood Castilian law. They also demonstrate how they made distinctions between usage rights and ownership, and the importance they attributed to possession. Based on these cases, these understandings were stable and clear.

Chapter Five

Land Tenure and the Individual to the End of the Reign of Isabel I

While the preceding chapter focused on how villages, towns, and cities established ownership, title, possession, and usage rights concerning communal land, this chapter will evaluate how individuals understood the same concepts. As noted in cases analyzed in the previous chapters, numerous disputes survive that involved individuals and how they asserted their rights to title, possession, and usage rights in land. Some of these disputes involved land that Christians had controlled for centuries while others involved territory that had rapidly come under the control of the sovereigns of Castile during the reign of Fernando III (r. 1217-52).⁵⁹⁵ Andalusian towns—Jaén, Córdoba, and Sevilla—and their surroundings were captured by Fernando III and Alfonso X (r. 1252-84), bringing most of Andalucía under Christian control and further extending the jurisdiction of Castile.⁵⁹⁶ Sovereigns redistributed conquered land to nobles, ecclesiastics, religious orders, soldiers, and other settlers both Christian and non-Christian.⁵⁹⁷ Some of these grants were recorded in *libros de repartimientos*, which, through their lists of concessions, provide further insights into resettlement of conquered land.⁵⁹⁸ In the case of Córdoba, which Fernando III reconquered

⁵⁹⁵ For the reign of Fernando III, see Julio González, *Reinado y diplomas de Fernando III*, 3 vols. (Córdoba: Monte de Piedad y Caja de Ahorros, 1980-86), particularly volume 1; Gonzalo Martínez Díez, *Fernando III, 1217-1252* (Palencia: Editorial La Olmeda, 2003).

⁵⁹⁶ Julio González, *Las Conquistas de Fernando III en Andalucía* (1946; reprint, Valladolid, Editorial Maxtor, 2006); Martínez Díez, *Fernando III*.

⁵⁹⁷ E.g., Ray, *The Sephardic Frontier*, 2-7.

⁵⁹⁸ See Thomas F. Glick, *From Muslim Fortress to Christian Castle: Social and Cultural Change in Medieval Spain* (New York: Saint Martin's Press, 1995), 127-67, particularly 130, who finds the *repartimientos* of land useful in gleaning Islamic land tenure and use prior to its transfer to Christian authority and also in illustrating the social structure of the Christian grantees—peasants as well as nobles—through the types of donations they received. His map on p. x is also useful.

in 1236, the *repartimiento* no longer exists;⁵⁹⁹ those for Sevilla, Jaén, Lorca, Comares, Orihuela and others survive.⁶⁰⁰ In some cases, Fernando III and Alfonso X partitioned land through the *repartimientos* shortly after territory was taken, while in others, such as Lorca, several *repartimientos* were made over multiple decades.⁶⁰¹

Fernando III's *repartimientos* in Ubeda and Sevilla provide a sufficient contrast to the corresponding discussion in Chapter Four of land settled by communities. In 1233, Fernando III captured the city of Ubeda, which had been heavily refortified since the battle of Las Navas de Tolosa.⁶⁰² Following the surrender of the city, the *repartimiento* was conducted. Fernando III's *escribano* recorded the grants in a document now in Ubeda's archive described as the *repartimiento de Santa María del Alcázar de Ubeda*.⁶⁰³ Fernando III distributed land to individuals—nobles, militia officers, soldiers—and also to congregations of friars. The donations consisted of small parcels of land, houses, vineyards, mills, and estates. There are thirty-four entries with various transactions included in some entries and a

⁵⁹⁹ For the capture of Córdoba, see Martínez Díez, *Fernando III*, 145-60; González, *Las Conquistas de Fernando III en Andalucía*, 73-81; for the absence of the *repartimiento*, see John Edwards, *Christian Córdoba: The City and its Region in the late Middle Ages* (Cambridge: Cambridge University Press, 1982), 7.

⁶⁰⁰ E.g., Julio González, *Repartimiento de Sevilla*, 2 vols. (Madrid: Consejo Superior de Investigaciones Científicas, 1951); Juan Torres Fontes, ed., *Repartimiento de Murcia* (Madrid: Consejo Superior de Investigaciones Científicas, 1960); Joaquín Vallvé Bermejo, ed., *Repartimiento de Comares, 1487-1496*, trans. Francisco Bejarano-Robles (Barcelona: Universidad de Barcelona, 1974); Juan Torres Fontes, ed., *Repartimiento de Lorca* (Murcia: Ayuntamiento de Lorca y La Academia Alfonso X El Sabio de Murcia, 1977); Juan Torres Fontes, ed., *Repartimiento de Orihuela* (Murcia: Ayuntamiento de Lorca y La Academia Alfonso X El Sabio de Murcia, 1988); Miguel Ángel Ladero Quesada, ed., *La incorporación de Granada a la corona de Castilla* (Granada: Diputación Provincial, 1993); Francisco Oriol Catena, *La Repoblación del Reino de Granada después de la Expulsión de los Moriscos*, ed. Manuel Barrios Aguilera (facsimile; Granada: Universidad de Granada, 1987).

⁶⁰¹ *Repartimiento de Santa María del Alcázar Ubeda* in José Rodríguez Molina, *El reino de Jaén en la baja edad media, aspectos demográficos y económicos* (Granada: Universidad de Granada, 1978), 283-5; Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII; Torres Fontes, *Repartimiento de Lorca*, 1-51.

⁶⁰² Martínez Díez, *Fernando III*, 130-1; González, *Las Conquistas de Fernando III en Andalucía*, 66-8; Rodríguez Molina, *El reino de Jaén en la baja edad media*, 1-15. Fernando III originally laid siege to the city with Castilian troops and Leonese militia from Ledesma, Toro, Salamanca, and Zamora, but after the Leonese troops had completed their terms of service, he maintained the siege with mainly Castilian soldiers and some Leonese nobles. Martínez Díez, *Fernando III*, 131.

⁶⁰³ *Repartimiento de Santa María del Alcázar Ubeda*, in Rodríguez Molina, *El reino de Jaén en la baja edad media*, 283-5.

final entry that describes the places that Fernando III kept for himself.⁶⁰⁴ Some concessions imply military service, which underlines the importance of the *repartimientos* and resettlement in general in retaining conquered land for the crown.⁶⁰⁵ In contrast to the *repartimiento de Ubeda*, Julio González's study on the *repartimiento de Sevilla* comprises two volumes, one on the *repartimiento* and one containing a comprehensive analysis of the content of the document and the history of the region.⁶⁰⁶

The *Libro de repartimiento* records the distributions of lands in Sevilla and its surroundings, following Fernando III's *reconquista* of the city in 1248. There, a *junta de partidores* (committee of partitioners) distributed property within the city and the surrounding villages.⁶⁰⁷ The process followed a Castilian-Leonese tradition dating at least to the 1100s.⁶⁰⁸ As in the *repartimiento de Ubeda*, the king gave title to individuals to various types of land, but the process was considerably more extensive than in the case of Ubeda. The *repartimientos* reflect the shifts in land tenure as Christians came to control the former Islamic towns, villages, and lands of Andalucía. They also show that the crown exercised broad discretion in granting various types of estates: houses, groups of houses, vineyards, orchards, defensive towers, or lands of various sizes and intended uses.⁶⁰⁹ Some conditions were placed on the grants, such as restricting the alienation of the property or setting time requirements to settle the land.⁶¹⁰ Other grants included the obligation of providing military

⁶⁰⁴ Fernando III, *Repartimiento de Ubeda*, in Rodríguez Molina, *El reino de Jaén en la baja edad media*, 285.

⁶⁰⁵ Ruiz, *Crises and Continuity*, 298.

⁶⁰⁶ Julio González, *Repartimiento de Sevilla*.

⁶⁰⁷ González, *Repartimiento de Sevilla*, 1:239-40. Also, see the map between pages 386 and 387.

⁶⁰⁸ Ibid.

⁶⁰⁹ While these are found in various *repartimientos*, the *repartimiento de Sevilla* provides the most comprehensive example. See González, *Repartimiento de Sevilla*.

⁶¹⁰ González, *Repartimiento de Sevilla*, 1:327.

service.⁶¹¹ The grantees varied as well. They included lords, military orders, noble and non-noble knights, militia, foot soldiers, and peasants.

The reorganization of land also occurred outside the *repartimientos* and scholars have also studied specific groups based on ethnicity or class. Jews participated in the resettlement of land that came under the control of Castile.⁶¹² As land became available, Jews participated in the new opportunities that followed from its availability much as Christians did. They could receive land, hold it, or sell it. They were granted mills, oil presses, and other monopolies for the production of comestibles, such as bread. One scholar notes that they viewed these new opportunities in a manner similar to Christians; resettlement offered opportunities to all subjects of the crown.⁶¹³ As the greater part of Andalucía was reconquered from 1212 to 1256, arable land became increasingly available, attracting peasants and non-noble knights as well.⁶¹⁴ Peasants and non-noble knights received, bought, and sold land. All of this movement contributed to the complexity of land tenure in Castile, though some unable to prosper in the lands opened up through the thirteenth-century *Reconquista* returned to northern Castile.⁶¹⁵

While these studies provide valuable analysis of the socioeconomic and agricultural history in the twelfth through fifteenth centuries, they do not tell us how title, possession, and usage rights were determined. They do not demonstrate how two individuals claiming ownership, or even more contentious, claiming possession of the same land, estate, or village

⁶¹¹ *Repartimiento de Santa María del Alcázar Ubeda*, in Rodríguez Molina, *El reino de Jaén en la baja edad media*, 283-5. González, *Repartimiento de Sevilla*, 1:237-39.

⁶¹² See Ray, *The Sephardic Frontier*, 2-3, who focuses on the settling of the frontier by Jews. Ray argues that his focus on how Jewish settlements interacted with the crown, municipalities, and other communities has been lacking in previous studies of the *reconquista*. His analysis on landholding offers a perspective on the Sephardic experience in Iberia different from the one that focuses strictly on ideology.

⁶¹³ *Ibid.*, 7.

⁶¹⁴ Ruiz, *Crisis and Continuity*, 101-39.

⁶¹⁵ *Ibid.*, 296.

settled their conflict through the legal process. As seen in the *Siete Partidas*, title and possession together formed ownership, but how did litigants establish this? Prior to the *Audiencia*'s establishment, the royal court had jurisdiction in deciding these disputes and the *Audiencia Real Castellana* inherited this jurisdiction. The establishment of the office of *corregidor* and the Council of Castile provided additional venues, in which the *Audiencia* served as an appellate court to the former and a venue whose decisions could be appealed to the Royal Council. Fernando and Isabel I (r. 1474-1504) reformed these venues and the *Audiencia* came to handle a heavy case load in the 1480s.⁶¹⁶ Among these were numerous cases that dealt with title, possession, and usage rights. In *Molina v. Vera*, a case that was originally heard in the *Audiencia* and then appealed to the Council of Castile, the litigants both argued that they had title and possession of an estate know as La Verguilla (see fig. 5.1).⁶¹⁷ The arguments that each side presented, in an effort to prove title and possession, provide insights into how these concepts were understood and what type of evidence proved persuasive.

⁶¹⁶ E.g., in 1486, it decided over two hundred cases.

⁶¹⁷ *Molina v. Vera*, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25. Discussed below.

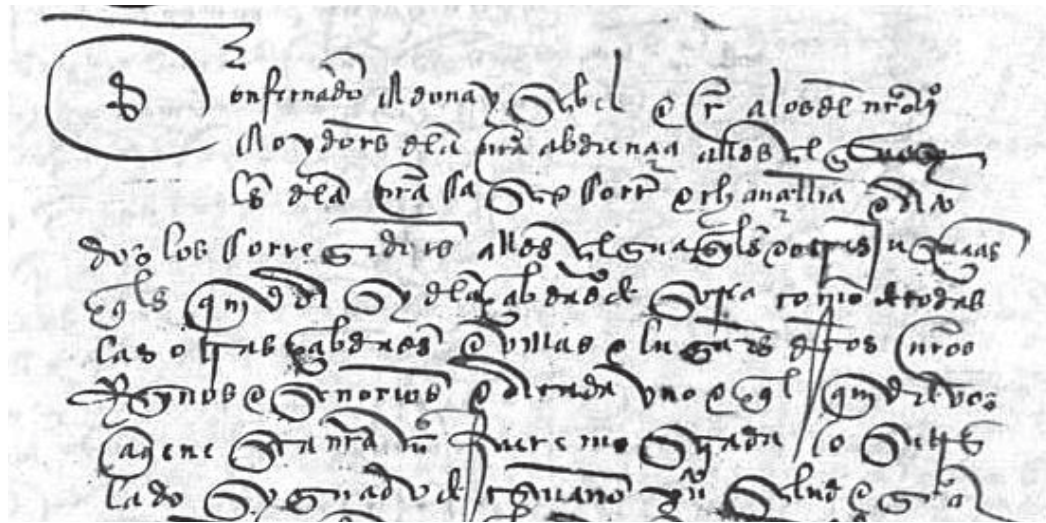


Figure 5.1. Molina v. Vera, Valladolid, *Carta de Ejecutoria*, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25, f. 1r. The intitulation/protocol reads as follows:

Don fern(n)do et don(n)a ysabel et c(ete)r(a) a los d(e)l n(uestro) c(oncej)o
 et oydor(es) d(e)la n(uest)ra abdiencia al(ca)ld(e)s alguasy(-)
 l(e)s d(e)la n(uest)ra casa et cort(e) et chançell(er)ia et A to(-)
 dos los corregidor(e)s al(ca)ld(e)s alguasyles et otras justiçias
 q(ua)l(e)s qui(er) Asy d(e)la çibdad d(e) soria com(m)o de todas
 las otras çibdad(e)s et villas et lugar(e)s destos n(uest)ros
 Reynos et Sen(n)orios et A cada Vno et qual quier de vos
 aq(ui)en esta n(uest)ra c(ar)ta fuere mostrada o su tras(-)
 lado sygnado de escriuano pu(bli)co salud et gr(aci)a.

In this and other cases, the issue of possession arises as a formal procedure, in which the archive of the *Audiencia* and *Chancillería* in Valladolid kept notarized accounts of Acts of Possession.⁶¹⁸ These are also consistent with the laws of the *Siete Partidas* and provide examples as to how Castilians performed the act. Dispossessions likewise appear in cases decided by the *Audiencia*. In Ruiz de Las Puertas v. Ulloa, the Ulloas dispossessed Doña Catalina Ruiz de las Puertas from the village of Herreros, over which she claimed lordship.⁶¹⁹ In other cases, the *Audiencia* decided issues related to ownership, but did not address issue of

⁶¹⁸ E.g., Pero López de Calatayud and Leonor de San Juan, Power of Attorney and Act of Possession, Tordesillas, 4-5 September 1468, ARCV, Pergaminos, Caja 22, 3. Also discussed below.

⁶¹⁹ Ruiz de Las Puertas v. Ulloa, *Carta de Ejecutoria*, Valladolid, 1 January 1486, ARCV, Registro de Ejecutorias, Caja 1, 11.

title directly.⁶²⁰ Altogether, these cases show that the *Audiencia* and the Council of Castile acted in accordance with law found in the *Fuero Juzgo*, *Siete Partidas*, Royal Ordinances, and municipal *fueros* in regards to ownership of land.⁶²¹ The litigants based their claims, similarly, on law (as opposed to custom) as did the litigants in *Algodre v. Coreses* and other suits.⁶²² Finally, this chapter will evaluate the concession the kingdom of Castile received from Pope Alexander VI concerning the lands encountered by Columbus and how Isabel I—the legal sovereign of Castile—understood that concession.⁶²³

Documentation produced as a result of Columbus' first voyage indicates that her understanding fell within the constructs of the legal traditions of Castile concerning title and possession. On the whole, these cases show that ownership, title, and possession were well established prior to the expeditions of Columbus and Castilian expansion into the Americas. By the end of the eleventh century, disputes over land use and title appear with frequency.⁶²⁴ In the twelfth and thirteenth centuries, they continued to be adjudicated through the commission of judges at the royal court. By the end of the fourteenth century, the *Audiencia* was charged with this function and by the late fifteenth century, it adjudicated numerous cases and archived the decisions in the *Chancillería*. In one case, *Molina v. Vera*, Gonzalo de Molina sued María de Vera over title to an estate called La Verguilla. The *Audiencia* had

⁶²⁰ E.g., Gómez de Alcalá v. Francisco y Pedro Pamo, *Carta de Ejecutoria*, Valladolid, June 1477, ARCV, Registro de Ejecutorias, Caja 1, 2.

⁶²¹ See Chapter Three above, where these bodies of law and legal principles are discussed in detail.

⁶²² *Molina v. Vera*, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, Registro de Ejecutorias, Caja 3, 25, ff. 1v, 2r, 3r, 4r, 5r, 6r, 7v, 8rv, 9v, 10r; *Algodre v. Coreses*, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, ff. 1v, 2rv, 3v, 4v, 6rv, 7r, 8v, 9r, 17r, 18v.

⁶²³ *Inter Caetera* II, Pope Alexander VI to Fernando and Isabel (Sovereigns of Castile-León), Rome, 4 May 1493 (issued in June), in Geoffrey Symcox and Blair Sullivan, *Christopher Columbus and the Enterprise of the Indies: A Brief History with Documents*, The Bedford Series in History and Culture (Boston: Bedford/St. Martin's Press, 2005), 140-4. Discussed below.

⁶²⁴ E.g., Abbot of Cardeña v. Infanzones of Valle de Orbaneja, 17 April 1073, in *Fuentes para la historia de Castilla*, ed. L. Serrano (Valladolid: Santo Domingo de Silos, 1910): 3:19, no. 14; Bishop Arias of Oviedo v. Count Vela Ovéquiz and Vermudo Ovéquiz, Oviedo, 26 March 1075, in Ramón Menéndez Pidal, *La España del Cid*, 2 vols. (Madrid: Espasa-Calpe, 1969): 2:849-53; see also Evelyn Proctor, *Curia and Cortes in León and Castile, 1072-1295* (Cambridge: Cambridge University Press, 1980), 37.

ruled in favor of Gonzalo de Molina, but María de Vera sought to reverse that decision by appealing to the Council of Castile in 1486, which also included members of the *Audiencia*.⁶²⁵ On 16 June 1486, the Council of Castile issued its decision in the degree of second review.⁶²⁶ The chancellery's *carta de ejecutoria* (see fig. 5.1) traces the procedural history of the case and how the Council came to its decision.

Molina v. Vera squarely addresses the issue of evidence of title and evidence of lawful possession, exemplifying how justices serving in the *Audiencia* and on the Council of Castile adjudicated such disputes. According to the *carta* drafted by the chancellery, the estate known as La Verguilla was situated within the district of the city of Soria, of which María de Vera and Gonzalo de Molina were both citizens.⁶²⁷ It had houses, agricultural lands, a *monte* and *términos*.⁶²⁸ In her pleadings, María de Vera, through her *procurador* (attorney), argued that the estate belonged to her by right and by law.⁶²⁹ She also stated that she had lawful title and that she stood in peaceful possession (*posesión pacífica*) of the property.⁶³⁰ Vera added that the *Audiencia* had found for the “unjust possessor” Gonzalo de Molina.⁶³¹ She petitioned the Council to issue a sentence ordering Molina to return and restore the estate to her, with all its rented lands, *términos*, and *monte*.⁶³² She also requested compensation from the rents and agricultural production that she would have benefitted from.

⁶²⁵ In 1486, Archbishop Alfonso de Fonseca was the president of the Council of Castile and the *Audiencia*.

⁶²⁶ Molina v. Vera, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25.

⁶²⁷ Ibid., f. 1rv.

⁶²⁸ Ibid., f. 1r. Here, the connotation of the word *términos* in connection with the estate and within the *sentencia* refers generally to boundaries. The issue of what the *términos* consisted of does not arise in the case.

⁶²⁹ Ibid., f. 1rv.

⁶³⁰ Ibid., f. 1v.

⁶³¹ Ibid. “Ynjusto poseedor.”

⁶³² Ibid., f. 1v.

Gonzalo de Molina's *procurador* responded through a petition in which he argued against María de Vera's claim based on procedure and substantive issues. First, he stated that she lacked the right (juridical standing) to pursue the lawsuit or to receive her stated remedy. He added that her petition was improper in form and in timeliness.⁶³³ He then challenged her claim on substantive grounds, arguing that she never took possession of the estate, which had belonged to her uncle Rodrigo de Vera. Molina stated that Rodrigo de Vera had sold or conveyed his interest in the property to the Adelantado de Galicia, Hernando de Pareja and his wife doña Elvira, who took title.⁶³⁴ He also argued that because of this, even if María de Vera had taken possession it would have been "forceful, violent, and uncertain."⁶³⁵ He added that if she had not rightfully taken possession, she could not have been dispossessed. He added that if she ever had possession or title, she would have lost it when her properties were confiscated in prior litigation during the reign of Enrique IV (r. 1454-74).⁶³⁶ Molina then asserted that he had title held in good faith and was in true possession of the estate.⁶³⁷ As such, he was not obligated to return the estate nor share any of the rents or produce it generated. Finally, he requested that the Council order Vera to pay the costs of the new proceedings.⁶³⁸

After considering these petitions, the Council ordered both parties to submit evidence and witnesses, whose statements and depositions would be recorded, copied, and published in accordance with the law.⁶³⁹ María de Vera submitted a new petition, in which she claimed that Fernando Álvarez de Fuente, her father-in-law, and Lope Álvarez, her husband, had

⁶³³ Ibid.

⁶³⁴ Ibid., f. 2r.

⁶³⁵ Ibid. "forcosa et viole(n)ta et percario."

⁶³⁶ Ibid.

⁶³⁷ Ibid.

⁶³⁸ Ibid.

⁶³⁹ Ibid., ff. 3r, 4r.

taken possession of La Verguilla in her name.⁶⁴⁰ Gonzalo de Molina had unjustly taken it and was benefitting from its rents. He should be condemned, she argued, to restore it to her and compensate her for the damages she suffered.⁶⁴¹ She also stated that Molina claimed his documentary evidence showed that Rodrigo de Vera had sold the estate, but she argued that these documents were neither properly executed nor represented a conveyance in ownership (*señorío*).⁶⁴² She requested that the Council reverse the lower decision and order Molina to return the property and pay damages.⁶⁴³

In Molina's answer, he argued that the *Audiencia's* sentence was just and rightly given and that the Council should confirm it.⁶⁴⁴ He argued that Vera had not proved her case, reiterating that the estate had been previously sold and that Vera had not shown any evidence of possession or proof of any Act of Possession.⁶⁴⁵ He then produced a *carta de venta* (bill of sale) that showed that the estate had been sold to Fernando Álvarez de Fuente.⁶⁴⁶ The documents had been properly executed, signed by an *escribano publico*, and were deemed authentic.⁶⁴⁷ Witnesses then testified that Ruy Sánchez had taken possession of the estate for Álvarez, but had seized the property from which Álvarez apparently never ejected him. Either way, Molina argued, María de Vera never had title in her name, nor did she produce any evidence of an Act of Possession.⁶⁴⁸ This underlined Molina's claim that she lacked juridical standing to pursue the case.

⁶⁴⁰ Ibid., ff. 3v, 5r.

⁶⁴¹ Ibid.

⁶⁴² Ibid., f. 5rv.

⁶⁴³ Ibid., f. 5v.

⁶⁴⁴ Ibid.

⁶⁴⁵ Ibid., f. 6v.

⁶⁴⁶ Ibid.

⁶⁴⁷ Molina v. Vera, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25, f. 6v.

⁶⁴⁸ Ibid., f. 6v.

After conducting the proceedings, the Council confirmed the definitive sentence of the *Audiencia*, affirming Molina’s title and possession of La Verguilla (see fig. 5.2).⁶⁴⁹ The Council’s sentence in the degree of review states that Molina requested the *carta de ejecutoria*. In it, the Council ordered its decision to be complied with, observed, and executed.⁶⁵⁰

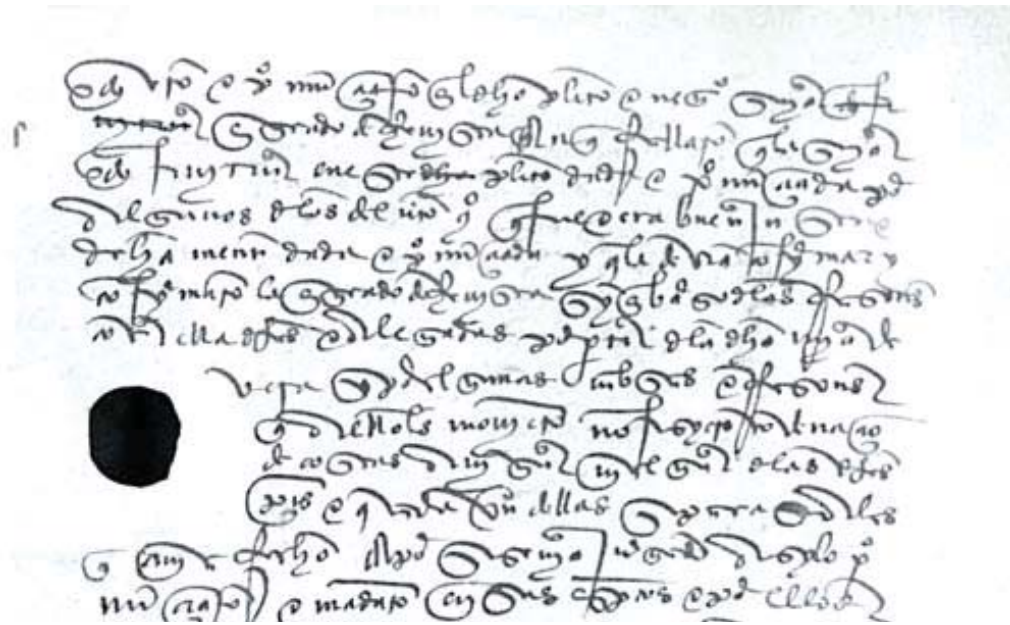


Figure 5.2. Molina v. Vera, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25, f. 10r. Upper Top Left Area.

Molina v. Vera demonstrates how litigants attempted to establish the two elements needed to prove ownership—title and possession. The case also shows how much weight was placed on the issue of possession: title alone left uncertainties, since abandoned

⁶⁴⁹ Ibid., f. 10r.

⁶⁵⁰ Ibid., f. 10rv. The *Audiencia*’s *escribano* Francisco de Marisol executed the copies on 16 June 1486, which required ten leaves of paper.

properties could be taken and claimed by someone else under Castilian law.⁶⁵¹ Moreover, María de Vera argued possession while claiming that the title documents were defective. Authentic title and possession proved ownership, but both parties, following the Learned King's recommendation in law i, title ii, Division III of the *Siete Partidas*, emphasized possession.⁶⁵² Molina, who had undisputed possession throughout the case, focused on possession and that Vera never established it or even offered evidence of an Act of Possession. He also produced evidence in the form of witnesses who testified against Vera's claims that her husband and father-in-law took possession in her name. Molina also showed that properly executed and filed title documents supported his case and that he had witnesses who supported the authenticity of those documents. Their proper execution before witnesses and a notary, moreover, proved persuasive, showing that the value that the *Lex Visigothorum* and *Siete Partidas* placed on documentation had not diminished. It tipped the case toward Molina, enabling him to establish ownership.

Possession nonetheless factored in as a critical element of ownership or claiming other rights to land. Castilians took this seriously and documented the Act of Possession when acquiring property. A few examples of how the Act was carried out and the importance attributed to it are worth examining. The archive of the *Audiencia* contains several notarized Acts of Possession, some contained in *cartas de ventas* and some in royal concessions.⁶⁵³ In 1419, Diego Rodríguez de Carvajal, a *vecino* of the *villa* of Galisteo, bought land known as

⁶⁵¹ *Siete Partidas*, Div. III, *título* xxviii, *ley* i; physical possession after the instrument conveying the property had been delivered from the previous owner to the new owner was not technically necessary, but the absence of proof of it opened the door to numerous claims of ownership. See *ibid.*, Div. III, *título* xxx, *ley* vii.

⁶⁵² *Ibid.*, Div. III, *título* ii, *ley* i.

⁶⁵³ Alfonso VIII, Confirmation of Possession given to the Hospital of Saint John of Jerusalem, Torozos, 8 June 1190, ARCV, Pergaminos, Carpeta 107, 10.

El Ochavo from Fernando González of the Ciudad de Placencia.⁶⁵⁴ The land was located outside of the *ejido* of the *lugar* of Argamasa between Galisteo and Riobos, in the area discussed in the 1393 suit concerning Galisteo.⁶⁵⁵ On 29 December 1419, Rodríguez took possession of the land, which the *escribano* Pablo González notarized at the physical site.⁶⁵⁶ Rodríguez passed through the land, taking royal and physical possession, pulling up shrubs, and declaring that he bought the land from Fernando González. The *escribano* noted the act and recorded it on the same piece of parchment that the parties used to record the sale.

In documentation from 1468, Leonor de San Juan bought three water mills with five dams, houses, and some adjoining land known as La Moraleja.⁶⁵⁷ The mills, dams, and buildings were situated on the Duero River in the Villa of Tordesillas. She purchased them from Beatrice Manrique of Burgos, the wife of the *Mariscal* Sancho de la Fuente.⁶⁵⁸ They executed a *carta de venta* before the *escribano* of the City of Burgos, Pedro Gonzáles.⁶⁵⁹ On 4 September 1468 in Valladolid, Leonor de San Juan executed a *carta de poder* (power of attorney) in favor of her husband Pedro López de Calatayud, a citizen of Valladolid.⁶⁶⁰ In it, she gave him “license and authority” to take actual, corporal, and *real* possession of the mills, structures, and lands in the *término* of Tordesillas according to the precepts of the law.⁶⁶¹

⁶⁵⁴ Fernando González de Villanueva to Diego Rodríguez de Carvajal, *Carta de Venta*, Galisteo, 7 December 1419, ARCV, Carpeta 40, 7.

⁶⁵⁵ Argamasa has a hermitage known as Nuestra Señora de la Argamasa.

⁶⁵⁶ Diego Rodríguez de Carvajal, Act of Possession, Galisteo, 29 December 1419, ARCV, Carpeta 40, 7. Rodríguez two years earlier, similarly, took possession of a mill near Galisteo. See Diego Rodríguez de Carvajal, Act of Possession, Río Jerte, Aldehuela, 6 August 1417, ARCV, Carpeta 40, 6.

⁶⁵⁷ Pero López de Calatayud and Leonor de San Juan, Power of Attorney and Act of Possession, Valladolid and Tordesillas, 4-5 September 1468, ARCV, Pergaminos, Caja 22, 3. While these documents do not include the *carta de venta*, they refer to it several times, providing some detail of its content.

⁶⁵⁸ *Ibid.*, f. 1v.

⁶⁵⁹ *Ibid.*

⁶⁶⁰ *Ibid.*, ff. 1v-2r. “. . . moradero vecino dela noble villa de vall(adol)id.”

⁶⁶¹ *Ibid.*, f. 1v.

The following day before several witnesses—the mill workers, renters, and the notary—López entered the properties.⁶⁶² The notary states that López took the mill workers and renters by the hands, and walking throughout the premises, “stated that he was taking and took possession.”⁶⁶³ The *escribano* and notary, Francisco Sánchez, recorded that no one objected to López’s actions. He then placed the documents recording the Power of Attorney and Act of Possession in the archive of the *Audiencia* in Valladolid (see fig. 5.3). The formal procedures of the Act are also consistent with provisions of the *Siete Partidas*. They demonstrate several clear elements of the Act: one, the owner or legal representative physically entered the premises as required by the *Siete Partidas*; two, those who also had a lesser claim to possess the property, a renter or lessee, also were present; three, the owner or legal representative made a formal declaration indicating that he or she was taking possession of the property; and four, those who might have an adverse claim were given an opportunity to dispute or contest the formal possession of the property. Though the second element may not always be relevant, the other three were crucial. When Molina contested Vera’s claim to taking possession of La Verguilla, he was relying on a lack of witnesses that could possibly testify that Vera’s Act of Possession ever took place. The Act of Possession served the purpose of providing an open and notorious claim to ownership, which a notary could document and place in an archive as the *escribano* and notary Francisco Sánchez did.

⁶⁶² Ibid., f. 2r.

⁶⁶³ Ibid., f. 3r. “. . . dixo q(ue) tomava et tuvo la posesion.”

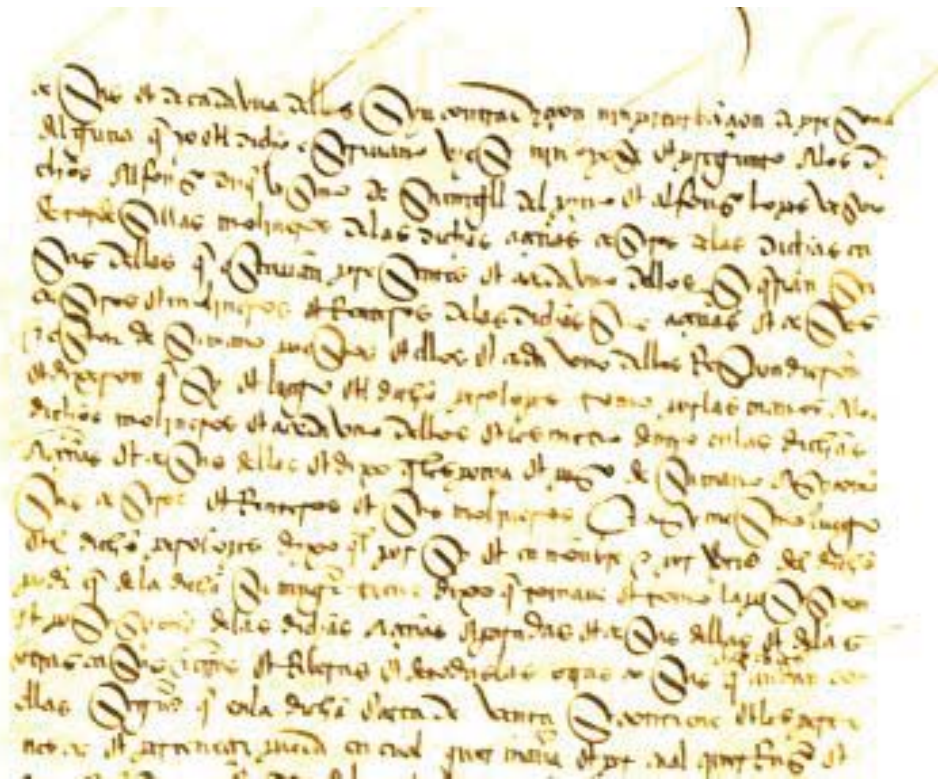


Figure 5.3. Pero López de Calatayud and Leonor de San Juan, Power of Attorney and Act of Possession, Valladolid and Tordesillas, 4-5 September 1468, ARCV, Pergaminos, Caja 22, 3, f. 3r. Upper Area.

The *Audiencia* also adjudicated cases that centered on the dispossession of property.⁶⁶⁴ In *Ruiz de Las Puertas v. the Ulloa*, two women litigated over the control of the village of Herreros.⁶⁶⁵ The dispute began when the Ulloa family raided the village with fifteen armed men bearing muskets and crossbows. They seized the *domina* there, Doña Catalina Ruiz de las Puertas, along with her son, and threw them beyond the gates of the village, physically dispossessing them of Herreros. Doña Ruiz subsequently filed suit.⁶⁶⁶ The

⁶⁶⁴ The *Lex Visigothorum* prohibited any claims to title of property in which the owner was forcibly dispossessed. See Book V, title iv, law viii; the *Siete Partidas*, Div. III, *título xxx*, *ley xvii*, allows for the recovery of property taken by force as well.

⁶⁶⁵ *Ruiz de Las Puertas v. Ulloa*, *Carta de Ejecutoria*, Valladolid, 1 January 1486, ARCV, Registro de Ejecutorias, Caja 1, 11.

⁶⁶⁶ *Ibid.*

Audiencia, after considering the case, restored the village to Doña Ruiz, finding that she was the rightful owner.

Ownership over other types of land in disputes that the *Audiencia* decided also turned on title and possession; some also included claims of wrongful occupation and trespass. In 1486, the *villa* of Moguer, situated near Heulva about 80 kilometers west of Sevilla, sued Diego Oyón over the ownership of a *dehesa*.⁶⁶⁷ They also attempted to recover profits and any rents that Oyón had received through his alleged wrongful occupation. The *Audiencia* issued a *sentencia* in favor of the council of Moguer ordering Oyón to restore the *dehesa* to the *villa* and to pay damages. It declared that he had not proved his case in establishing ownership of the *dehesa*.⁶⁶⁸ Oyón appealed to the Council of Castile; his arguments in the appeal clarify the central issues of the case.

Oyón (through his *procurador*) argued that he had ancient possession of the *dehesa*, which converted to just title.⁶⁶⁹ He added that the Concejo de Moguer never established when it took possession of the *dehesa*. Oyón continued that he had uninterrupted possession for “ten, twenty, forty, and fifty years” (see fig. 5.4).⁶⁷⁰ As the litigants did in *Algodre v. Coreses*, he covered various lapses of time found in the *Fuero Juzgo* and the *Siete Partidas* that could, under the right conditions, establish or deny title through prescription. Oyón also argued that he had livestock in the *dehesa* and defended it against the council of Moguer. He requested that the Council reverse the *sentencia* given by the *Audiencia*.⁶⁷¹ All of this, however, as seen in previous cases, depended on the testimony of his witnesses to support his

⁶⁶⁷ Concejo de Moguer v. Diego Oyón, *Carta de Ejecutoria*, Valladolid, October 1486, ARCV, Registro de Ejecutorias, Caja 5, 34.

⁶⁶⁸ *Ibid.*, f. 1r.

⁶⁶⁹ *Ibid.*, f. 2r.

⁶⁷⁰ *Ibid.*

⁶⁷¹ *Ibid.*

claims. The Council considering the case on appeal noted that both sides had witnesses that testified on their behalf.⁶⁷² The *villa* of Moguer, however, had demonstrated that it had defended the *dehesa* from the *villa* of Niebla, where Oyón was a citizen. It particularly prevented it from establishing usage rights among other claims to title. Accordingly, the Council confirmed the *sentencia* of the *Audiencia* and ordered Oyón to pay costs.⁶⁷³

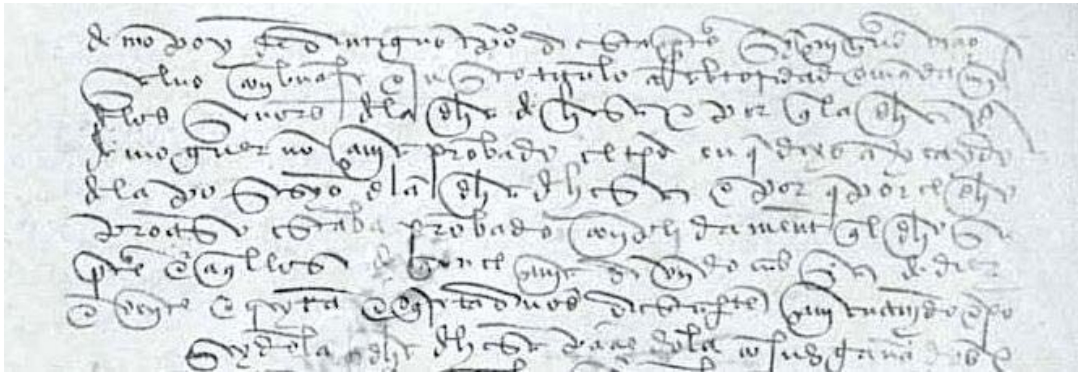


Figure 5.4. Concejo de Moguer v. Diego Oyón, Valladolid, October 1486, ARCV, Registro de Ejecutorias, Caja 5, 34.

The *cartas de ventas*, mentioned in the above cases, shed light on how land was held through the documenting of the transfer of property from one party to another. As seen in the *repartimientos* and suits heard before royal courts and the *Audiencia*, individuals bought, sold, willed, and were granted various types of property: orchards, vineyards, estates that include several types of land, mills, and houses. In *Algodre v. Coreses*, the lands at issue were the ownership of commons in the form of “*pastos et montes et exidos*.”⁶⁷⁴ In the fourteenth-century dispute concerning the *villa* of Galisteo, the *caballero* Arias Barahona

⁶⁷² Ibid.

⁶⁷³ Ibid.

⁶⁷⁴ *Algodre v. Coreses, Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2.

claimed certain lands as the *ejidos* of several houses that he had bought.⁶⁷⁵ María de Vera included a *monte* in the description of lands that made up the estate of La Verguilla.⁶⁷⁶ While this could have meant the generic form of mountain, in the context of a land description it probably meant woodlands where timber resources would contribute to the productivity of the estate.

A *carta de venta* executed on 24 May 1386 provides additional evidence in understanding how *montes*, *pastos*, and *ejidos* were understood in conveyances involving individuals. In it, Nuño Fernández Cabeza de Vaca sold the village of Tábara to Juana de Cifuentes for 50,000 *maravedís*.⁶⁷⁷ Fernández sold the ownership of the village with its surrounding lands that the notary described as “*montes et fontes et pastos et exidos et divisos*.”⁶⁷⁸ These belonged to the place of Tábara, described as “El logar de ualde tauara,” which Juana de Cifuentes would hold in lordship as Catalina Ruiz de las Puertas did with Herreros.⁶⁷⁹ The terminology used in the *carta* indicates that *señoríos*, rather than meaning plain ownership, gave Cifuentes seigneurial jurisdiction in civil and criminal matters. It also shows that the communal lands formed part of the land of the village. They were an integral part of the land and were conveyed along with it neither as separate items nor as lands that never left the royal domain. This document, indicating a seigneurial jurisdiction, represents a contrast to the villages, towns, and cities, which, under the direct jurisdiction of the crown, defended their *términos* through their councils as seen in *Algodre v. Coreses*. In the New

⁶⁷⁵ *Villa of Galisteo v. Arias Barahona, Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3.

⁶⁷⁶ Molina v. Vera, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25, f. 1r.

⁶⁷⁷ Nuño Fernández Cabeza de Vaca to Juana de Cifuentes (Place of Tábara Sale), *Carta de Venta*, Valladolid, 24 May 1386, ARCV, Pergaminos, Carpeta 32, 2, f. 1v.

⁶⁷⁸ *Ibid.*, f. 1v.

⁶⁷⁹ *Ibid.*, f. 1v. “Senorio mero misto imp(er)io co(n) alta et inxa jurisdicion . . .” (Lordship with civil and criminal authority with high and instant jurisdiction.) This phrase distinguishes *señorío* meaning lordship from *señorio* meaning plain ownership. Without these terms, no juridical powers are granted.

World, the sovereigns of Castile prohibited this form of lordship, as is discussed below in Chapter Six.

As seen in the *repartimientos*, royal concessions, and other conveyances, property and land of all types was transferred among the inhabitants of Castile-León. The royal concession, however, remained one of the most prominent means of transferring and granting land to either an individual or a corporate entity. In a charter that Fernando and Isabel I executed and also archived in the *Real Audiencia* and *Chancillería*, they confirmed royal concessions from predecessors as far back as Alfonso XI (r. 1312-50). The recipients included individuals and municipalities.⁶⁸⁰

In her will, Isabel I, after stating her final wishes concerning her burial and religious intentions, declared that her debts be paid and alms given to various recipients.⁶⁸¹ Before addressing the issue of succession, she revoked and confirmed numerous royal concessions also to individuals and corporate entities. She also added that those who had taken land or rents through custom, use, or prescription must return those lands to the authority of the crown.⁶⁸² She stated that they had taken advantage of the crown, which only tolerated their actions due to other business, but that they had no rights in what they held.⁶⁸³ That Isabel I placed these concerns in such a place shows the significance of the use of royal concessions in asserting the crown's authority. It also shows the interconnection of land tenure, jurisdiction, and royal authority. The concessions and negotiations related to the expeditions of Columbus bear this out.

⁶⁸⁰ Fernando and Isabel I to Gonzalo Álvarez et al., *Carta de privilegio*, Burgos, 19 June 1497, ARCV, Pergaminos, Caja 57, 2.

⁶⁸¹ Isabel la Católica, *Testamento and Codicilo*, in *Testamentaria de Isabel la Católica*, ed. Antonio de la Torre y del Cerro (Barcelona: Vda. F. Rodríguez Ferrán, 1974), 61-66; protocol to item 8.

⁶⁸² *Ibid.*, 66-71; item 10.

⁶⁸³ *Ibid.*

Before Fernando and Isabel I established the second *Audiencia* in 1495, originally at Ciudad Real and later moved to Granada, the first voyage of Christopher Columbus raised the question of who had authority and title to the lands he encountered.⁶⁸⁴ The crowns of Portugal and Castile had an interest in the lands that explorers sailing under their banners had encountered.⁶⁸⁵ Fernando and Isabel I turned to the papacy, as Portugal had earlier, for guidance in settling this dispute shortly after Columbus returned from his first voyage.⁶⁸⁶ This resulted in several documents issued by Pope Alexander VI. The documents that he executed are fairly well known, especially the papal bull (charter) known as *Inter Caetera* II, which established a line of demarcation originally 100 leagues west of the Azores and Cape Verde Islands.⁶⁸⁷ Lands west of this line would fall within the exploratory sphere of Castile and lands east of the line would belong to Portugal. The Treaty of Tordesillas moved this line west 270 leagues.⁶⁸⁸ For our purposes, these documents indicate how that authority was defined and granted to the Crown of Castile. These, along with provisions from the will of Isabel I, the legal sovereign of Castile, show how she understood the pope's concession.⁶⁸⁹ This will allow us to establish a firmer understanding of who had legal jurisdiction over the possessions of what is commonly called the "Spanish" empire. The question is how did

⁶⁸⁴ Santos Manuel Coronas González, "La Audiencia y Chancillería de Ciudad Real (1494-1505)," *Cuadernos de estudios manchegos* 11 (1981): 47-139; Rosine Letinier, "Origen y evolución de las audiencias en la Corona de Castilla," *Revista Jurídica de Castilla y León* 12 (2007): 223-43.

⁶⁸⁵ See William D. Phillips, Jr., and Carla Rahn Phillips, *The Worlds of Christopher Columbus* (Cambridge: Cambridge University Press, 1992), 187-88.

⁶⁸⁶ Ibid. See also Tarsicio de Azcona, *Isabel la Católica: Estudio crítico de su vida y su reinado* (Madrid: Biblioteca de Autores Cristianos, 1964), 654-99.

⁶⁸⁷ *Inter Caetera* II, Pope Alexander VI to Fernando and Isabel (Sovereigns of Castile), Rome, 4 May 1493, in *The Book of Privileges issued to Christopher Columbus by King Fernando and Isabel, 1492-1502*, Repertorium Columbianum, vol. II, eds. Helen Nader and Luciano Formiso (Eugene, OR: Wipf and Stock, 1996), 348-52, document XXXVI.ii.I.I; an English translation is in Symcox and Sullivan, *Christopher Columbus and the Enterprise of the Indies*, 140-4. The bull is dated 4 May 1493, but Symcox and Sullivan, as have others, note that it was actually issued in June, 1493. Ibid., 140.

⁶⁸⁸ Treaty of Tordesillas, 7 June 1494, in Symcox and Sullivan, *Christopher Columbus and the Enterprise of the Indies*, 150-2. Discussed below.

⁶⁸⁹ See also José Luis Abellán, "Isabel and the Idea of America," in David A Boruchoff, *Isabel la Católica: Critical Essays*, The New Middle Ages (New York: Palgrave, 2003), 79-89.

Isabel I, her successors, and her subjects interpret these concessions, not whether Alexander VI had the right to make the concession.

In Pope Alexander VI's charter, known as *Inter Caetera* II, he states: "we give, grant, and assign to you and your heirs and successors as kings of Castile and León, in perpetuity, all islands and mainland found or yet to be found, discovered and yet to be discovered."⁶⁹⁰

Though Alexander VI addresses Fernando and Isabel I as sovereigns over the multitude of kingdoms that they held, he makes the concession exclusively to the kingdom of Castile-León.⁶⁹¹ He goes on to add that he grants "all the lordships, cities, castles, places, and towns, rights and jurisdictions and all things pertaining thereto, by tenor of the present letters."⁶⁹²

He then states that a line of demarcation will be drawn from the North Pole to the South Pole 100 leagues west of the Azores and Cape Verde Islands. Finally, he states that Castile-León will have "complete power, authority, and jurisdiction" over these lands.⁶⁹³ This final statement made it clear that the sovereign of Castile would have exclusive power to and jurisdiction in these lands, as opposed to lords and other nobles who held *señoríos* with juridical power in Castile proper. In these new possessions, there would be no *señoríos* to compete with the crown.

Certainly, Fernando and Isabel I—*Los Reyes Católicos*, a title Alexander VI bestowed on them—received a concession of their liking.⁶⁹⁴ The language in the granting clause, though not unique, resembles the language used in the *Capitulaciones of Santa Fe* of 1492, making Columbus viceroy and governor general of the land that he should discover.⁶⁹⁵

⁶⁹⁰ *Inter Caetera* II, Pope Alexander VI to Fernando and Isabel (Sovereigns of Castile), Rome, 4 May 1493, in Symcox and Sullivan, *Christopher Columbus and the Enterprise of the Indies*, 142.

⁶⁹¹ *Ibid.*

⁶⁹² *Ibid.*

⁶⁹³ *Ibid.*, 143.

⁶⁹⁴ Abellán, "Isabel and the Idea of America," 80-81.

⁶⁹⁵ *Ibid.*

Inter Caetera II left little doubt that the pope was conferring title on the sovereign of Castile, one it could hold up against its rival, Portugal. Even if Fernando and Isabel I had doubted its validity, they would have known that at the very least the document gave Castile “color of title” to the lands that Columbus encountered and that any other explorers under their banner should discover.

In the legal tradition of Castile, title was one of the two elements that established ownership. Possession, as demonstrated above, was the critical second element—one often pressed with fervor by litigants. Fernando and Isabel I undoubtedly had this in mind when they secured an additional papal bull as Columbus left for his second voyage. In *Dudum Siquidem*, Alexander VI confirmed his concessions to the kingdom of Castile in *Inter Caetera* II, extending its designated sphere of influence.⁶⁹⁶ He then added that the sovereigns of Castile had the right to take possession of any islands or mainland that they should encounter in person or through their representatives in perpetuity.⁶⁹⁷ This provided the second element in establishing ownership. King João of Portugal protested the extension of Castile’s sphere of exploration and the Treaty of Tordesillas had to be crafted to settle the conflict. However, in the treaty, he and the *Reyes Católicos*, though moving the line of demarcation 270 leagues to the west, otherwise confirmed Alexander VI’s concessions including the provisions concerning title and possession.⁶⁹⁸ This demonstrates that these kings believed the grants to be valid and they acted on them accordingly.⁶⁹⁹

⁶⁹⁶ *Dudum Siquidem*, Pope Alexander VI to Fernando and Isabel (Sovereigns of Castile), Rome, 25 September 1493, in Symcox and Sullivan, *Christopher Columbus and the Enterprise of the Indies*, 148-9.

⁶⁹⁷ *Ibid.*, 149.

⁶⁹⁸ Treaty of Tordesillas, 7 June 1494, in Symcox and Sullivan, *Christopher Columbus and the Enterprise of the Indies*, 150-2.

⁶⁹⁹ *Ibid.*

Additional evidence sheds light on how Isabel interpreted the concessions and how she understood the constitutional composition of the realms that she ruled. In the *testamento* that she executed on 12 October 1504 and the codicil that she added on 23 November, she addresses her succession and concern for the administration of the Castilian possessions in the New World.⁷⁰⁰ Throughout the will she makes reference to the “*corona real de los dichos mis reynos.*”⁷⁰¹ She defines “*mis reynos*” as Castile and León, and also refers to her realms as the *Corona Real de Castilla*.⁷⁰² This included, in addition to the other realms within her style of title, the Canaries and the *islas y tierra firme del mar océano*.⁷⁰³ The latter terms were those that had been used in the pope’s concession of 1493. In the codicil that she added to her will (and that carried the same force as her will), she urged her heirs to comply with the mission of evangelizing and protecting the Natives of the *islas y tierra firme* of the ocean sea.⁷⁰⁴ She reiterates that that mission derived from the pope’s concession of 1493.⁷⁰⁵

Given that title within the Castilian legal tradition often rested on a documentation—a royal concession, charter of settlement, *carta de venta*, or a judicial decision—Isabel I had no reason to doubt that those lands and those to be discovered belonged to Castile by way of the pope’s charter.⁷⁰⁶ While scholars and others, then and now, questioned and question the right of the pope to make such a concession, this evidence demonstrates that Isabel I recognized that right. Castilian expansion would continue within the constructs of Isabel’s interpretation.

⁷⁰⁰ Isabel la Católica, *Testamento and Codicilo*, in de la Torre y del Cerro, *Testamentaria de Isabel la Católica*, 61-101.

⁷⁰¹ Ibid.

⁷⁰² Ibid., 80; item 13.

⁷⁰³ Ibid., 76, 80; item 13. The intitulation at the beginning of her will lists all of the kingdoms appended to Castile as well as those belonging to Fernando, such as Aragon and Sicily. Ibid., 61.

⁷⁰⁴ Isabel la Católica, *Codicilo*, in de la Torre y del Cerro, *Testamentaria de Isabel la Católica*, 97 (item XI).

⁷⁰⁵ Ibid.

⁷⁰⁶ Phillips and Phillips, *The Worlds of Christopher Columbus*, 188; Peggy K. Liss, *Isabel the Queen: Life and Times* (Oxford: Oxford University Press, 1992), 347.

The *Requerimiento* of 1513, textually based on the pope's concession of 1493 and which Spaniards were ordered to read before taking possession of any lands, allowed them to acquire that land in the name of Castile-León.⁷⁰⁷ In the *cortes* of Valladolid in 1518, where Carlos I was sworn in as king of Castile, the *cortes* settled definitively that the *ultramar* Spanish possessions were fully incorporated into the Crown of Castile.⁷⁰⁸ In Book Two of the *Recopilación de leyes de los reynos de las Indias* of 1681, the crown reiterated and reaffirmed this understanding.⁷⁰⁹

In her will, Isabel I also specifies how the kingdoms that she ruled would be inherited. She states that her oldest child Juana would inherit her kingdoms, lordships, and properties, and that her grandson Carlos would inherit them after her.⁷¹⁰ King Fernando, due to Juana's mental condition, should assist in governing. Isabel goes through pains to implore Juana and her husband Philip of Burgundy to respect, obey, and follow the counsel of Fernando.⁷¹¹ Though Fernando had no legal claim to rule as king of Castile after Isabel died, he immediately wrote to the President and *oidores* of the *Audiencia* in Valladolid. He informed them that he would administer and govern Castile-León for Juana according to the provisions of Isabel's will.⁷¹² Following the regency of Fernando, Cardinal Francisco Jiménez de Cisneros governed Castile until he died shortly before the arrival of Carlos I.

⁷⁰⁷ Juan López de Palacios Rubios of the Council of Castile drafted the *Requerimiento* of 1513. "De parte del rey, don Fernando, y de su hija, doña Juana, reina de Castilla y León ..."

⁷⁰⁸ Azcona, *Isabel la católica*, 693.

⁷⁰⁹ *Recopilación (Indias), Libro II, título i, leyes i-ii.*

⁷¹⁰ Isabel la Católica, *Testamento*, in de la Torre y del Cerro, *Testamentaria de Isabel la Católica*, 73; item 14.

⁷¹¹ *Ibid.* See also Liss, *Isabel the Queen*, 343-51.

⁷¹² Letter quoted in Ernest Belenguer, *Fernando el católico: un monarca decisivo en las encrucijadas de su época* (Barcelona: Ediciones Península, 1999), 293; see also Fernando V, *Real Cédula*, Burgos, 5 October 1511, in *Collección de documentos inéditos para la historia de España*, 113 vols., ed. Martín Fernández

While this discussion may seem tedious, it is important to underline that as Spaniards added to the realms of the kingdom of Castile, there was no constitutional change that severed the legal tradition that developed in Castile before and after 1492. Even though the kingdom of Castile experienced a crisis of monarchy following the death of Isabel I, the arrangement originally worked out by Fernando and Isabel I, John II of Portugal, and Pope Alexander VI remained essentially in place as confirmed by Carlos I at the *cortes* of Valladolid in 1518. In Castile proper, scholars have noted the legal continuity from the medieval era into the early modern, but, in evaluating the Castilian legal influence in the New World, there has been less clarity, especially in North America. Despite the historical periodization established by scholars since the Renaissance, no legal transformation took place in 1492 or 1500—the years commonly used to divide medieval and early modern Iberian history. On the contrary, Isabel I, by preserving Castile’s exclusive claims to the lands encountered by Columbus and his successors, was able to establish the crown’s sole jurisdiction over those lands. She rooted this claim on a concession that gave Castile title and the right to take possession of the lands its explorers encountered west of the line of demarcation. This allowed Castilian law to be established in a single jurisdiction, where the settlement and holding of vast amounts of geographical space would confront the crown.

The legal principles associated with Castilian land tenure—developed throughout the eleventh through fifteenth centuries—would prove useful for addressing this challenge. Still, educators and scholars for various reasons have preferred using the terms “Spain” or “Spanish” where “Castile” or “Castilian” would be less ambiguous, especially when tracing the historical jurisprudence of Castile and its influence in its *ultramar* possessions in the

Navarrette et al. (Madrid: Imprenta de la viuda de Calero, 1842-95), 2:285-93, for the style of title he used when acting on behalf of Castile.

fifteenth through eighteenth centuries. No nation of Spain or a Spain with a unitary legal tradition existed at that time and it would be anachronistic to insist that one did, especially in matters of law: The Iberian kingdoms guarded their individual legal traditions and masking them with unspecific terms clouds our understanding of each unique tradition.

Much of this ambiguity results from periodization, which divides the medieval world from the modern in the fifteenth century, commonly at 1500 or 1492 or earlier. We must be steadfast in realizing that historical periodizations are artificial, academic constructs that cannot create any formal legal transformations in themselves.⁷¹³ They may allow more focused studies of specific time periods and foster narrow specializations, but they cannot change how concepts of justice, expressed in law intended to be stable and indefinite, were understood. We must detect any changes in legal tradition where they occur rather than because a certain time period has been imposed, arbitrarily distinguishing one era from another. Furthermore, since the legal history of Castile is the very focus of this study, we will properly use the terms Castile and Castilian when referring to law and legal matters rooted in its legal tradition, promulgated and applied under the authority of the Crown of Castile. Other terms, such as those referring to one's identity, will be utilized to describe people and their culture.

With this in mind, in the final chapters we will focus on the Americas to evaluate in what degree Castilian law was transmitted to Nueva España and the kingdom of Nuevo México. We will maintain a steady focus on the legal principles concerning land tenure, since

⁷¹³ In addition to concerns over ambiguity and anachronism, see Berman, *Law and Revolution*, 42-3, 538-9 for other problems of conventional periodizations.

they form the fundamental elements of law in the discussion of the claiming of jurisdiction and application of authority that follows.

Chapter Six

Castilian Law and the Adjudication of Land Disputes in Nueva España and Nuevo México

I

While Fernando and Isabel I (r. 1474-1504) had been negotiating the Treaty of Tordesillas, they also implemented plans for a second *audiencia* in the Peninsula. They established it at Ciudad Real in 1494 (about 185 km south of Madrid), and then in 1505, it was transferred to Granada.⁷¹⁴ By now Bartolomé Colón, Columbus' brother whom he appointed *adelantado*, had founded Santo Domingo on the southeastern shores of the island of Española.⁷¹⁵ After repeated complaints against the two Colón brothers and the need for *pesquisas* into mismanagement of the colony, the crown increasingly took control of the island's administration.⁷¹⁶ In 1511, Fernando, as governor of Castile, established an *Audiencia* at Santo Domingo, Española.⁷¹⁷ He gave the tribunal jurisdiction to hear appeals and charged it with providing consultation to the governor on matters of administration.⁷¹⁸ Though the documentation is not entirely clear, it was suppressed due to the objections of Diego Colón and his understanding of his authority as admiral-vice-roy-governor. He

⁷¹⁴ Santos Manuel Coronas González, "La Audiencia y Chancillería de Ciudad Real (1494-1505)," *Cuadernos de estudios manchegos* 11 (1981): 47-139; Rosine Letinier, "Origen y evolución de las audiencias en la Corona de Castilla," *Revista Jurídica de Castilla y León* 12 (2007): 223-43; Elliott, *Imperial Spain*, 97.

⁷¹⁵ Phillips and Phillips, *The Worlds of Christopher Columbus*, 214-15.

⁷¹⁶ *Ibid.*, 170-240.

⁷¹⁷ Fernando V, *Real Cédula*, Burgos, 5 October 1511, in *Colección de documentos inéditos para la historia de España*, 113 vols., ed. Martín Fernández Navarrete et al. (Madrid: Imprenta de la viuda de Calero, 1842-95), 2:285-93; see also see Mario Góngora, *El Estado en el Derecho Indiano* (Santiago de Chile: Universidad de Chile, 1951), 56-62, for an overview of the establishment of the *audiencias* in the Americas.

⁷¹⁸ Góngora, *El Estado en el Derecho Indiano*, 53.

particularly opposed the ability of the *Audiencia* to hear appeals of his decisions.⁷¹⁹ Carlos I (r. 1516-56) reformed this *Audiencia* in 1526, and in the following year, he established the first mainland *Audiencia* at the Ciudad de México (formerly the Aztec capital of Tenochtitlán).⁷²⁰ The *presidente* of the first *Audiencia* also had the authority of a governor.⁷²¹ Due to the officials of the first *Audiencia* failing to follow their instructions, however, a second *Audiencia* replaced the first.⁷²² In order to further establish royal authority, the crown also established the viceroyalty of Nueva España in 1528; Antonio de Mendoza, the first viceroy, arrived in 1535.⁷²³

The viceroyalty first included the *villa* of Vera Cruz and the Ciudad de México; it eventually included several provinces to the north and south. As Spanish settlements spread

⁷¹⁹ Charles Henry Cunningham, *The Audiencia in the Spanish Colonies as Illustrated by the Audiencia of Manilla (1583-1800)* (Berkeley: University of California Press, 1919), 19, n. 27. Discussed below.

⁷²⁰ Mark A. Burkholder and Suzanne Hiles, "An Empire Beyond Compare," in *The Oxford History of Mexico*, ed. Michael C. Meyer and William H. Beezley (Oxford: Oxford University Press, 2000), 115; see also Henry Kamen, *Empire: How Spain Became a World Power, 1492-1763* (New York: Harper Collins, 2003), 142, who also includes a useful set of maps of the Americas, Asia, and Europe relevant to this study on xi-xix. There are numerous accounts of Fernando Cortés and his Native allies' capture of Tenochtitlán—a controversial subject beyond the scope of this dissertation. For a narrative account, useful for its source criticism, however, see Hugh Thomas, *Conquest: Montezuma, Cortés, and the Fall of Old Mexico* (New York: Touchstone, Simon and Schuster, 1993).

Carlos I inherited Castile and Aragon as the grandson of Isabel I of Castile and Fernando II of Aragon. Though he inherited the crowns of Castile and Aragon, the two kingdoms did not share the same *cortes*, nor did they share the same legal system. Carlos I had to travel to each kingdom to legislate laws and to petition each kingdom's *cortes* for funds. As all of his Habsburg successors were to do, he ruled Castile and Aragon as two separate kingdoms. He was unanimously elected Holy Roman Emperor Charles V in 1519, giving him at least nominal authority in Germany. Historians have generally referred to him as Charles V or Carlos *Quinto*, though in Spain he has been known as Carlos I, which I will follow in this study. For his career as emperor, see Manuel Fernández Álvarez, *Charles V: Elected Emperor and Hereditary Ruler*, trans. J. A. Laluguna (London: Thames and Hudson, 1975); Karl Brandt, *The Emperor Charles V: The Growth and Destiny of a Man and of a World-Empire*, trans. C. V. Wedgwood (London: Fletcher and Son, 1939; repr. London: Jonathan Cape, 1970); and for an analysis of his actions during the religious crisis of the sixteenth century, see Stephen A. Fischer-Galati, *Ottoman Imperialism and German Protestantism, 1521-1555* (Cambridge, MA: Harvard University Press, 1959).

⁷²¹ Góngora, *El Estado en el Derecho Indiano*, 53.

⁷²² Ethelia Ruiz Medrano, *Gobierno y sociedad en Nueva España: Segunda audiencia y Antonio Mendoza* (Zamora, Mexico: Colegio de Michoacán, 1991), 31-4; Peggy K. Liss, *Mexico under Spain, 1521-1556: Society and the Origins of Nationality* (Chicago: University of Chicago Press, 1975), 52; for the career of Nuño de Guzmán, the president of the first *audiencia*, see Donald E. Chipman, *Nuño de Guzmán and Pánuco in New Spain 1518-1533* (Glendale, CA: The Arthur H. Clark Co., 1967); Góngora, *El Estado en el Derecho Indiano*, 61-2.

⁷²³ For the appointment of Mendoza, see Burkholder and Hiles, "An Empire Beyond Compare," 117; see also Góngora, *El Estado en el Derecho Indiano*, 62-7, for the office of the viceroy.

north in the 1500s, Carlos I established another *Audiencia* in Nueva Galicia in 1548.⁷²⁴ A governor headed the administration there as one did in Pánuco, Nueva Vizcaya, Nuevo León, and eventually in Nuevo México after its formal settlement in 1598.⁷²⁵ Within the next several decades, the crown established *audiencias* in what is today Central and South America, and one in Manila in the Philippines.⁷²⁶ In the seventeenth and eighteenth centuries, several more were established; the *ultramar* tribunals resembled the Castilian *audiencias*, though, due to local conditions, some had expanded authority and variations in the number of officials whose offices were based on those of the Peninsula.⁷²⁷ Ordinances issued in 1528 and 1568, as well as the New Laws of 1542, defined the functions of the early *audiencias*.⁷²⁸ In 1570, Felipe II (r. 1556-98) ordered all *audiencias* to follow the order and methods of those at Valladolid and Granada.⁷²⁹ Along with the *audiencias*, governors, bishops, and other clergy, numerous other officials—*corregidores*, *regidores*, *alcaldes*, and *aguaciles*—whose offices originated in the Peninsula in the thirteenth, fourteenth, and fifteenth centuries served in the Americas.⁷³⁰ Scholars consider royal authority to have been established during Felipe II's reign; by the 1790s, Nueva España was the core of the empire, and by the time of independence, the wealthiest viceroyalty.⁷³¹

⁷²⁴ J. H. Parry, *The Audiencia of New Galicia in the Sixteenth Century: A Study of Spanish Colonial Government* (Cambridge: Cambridge University Press, 1948).

⁷²⁵ Chipman, *Nuño de Guzmán*, 85; Burkholder and Hiles, "An Empire Beyond Compare," 117. These provinces were subdivided into *alcaldías mayores*, with *cabeceras* and *sujetas* as main and dependent villages. The governorships of New Vizcaya and New León were founded in 1562 and 1580.

⁷²⁶ For an institutional study of those in the Americas, see Mark A. Burkholder and D. S. Chandler, *From Impotence to Authority: The Spanish Crown and the American Audiencia, 1667-1808* (Columbia: University of Missouri Press, 1977); for Manila, see Cunningham, *The Audiencia in the Spanish Colonies as Illustrated by the Audiencia of Manila*.

⁷²⁷ Burkholder and Chandler, *From Impotence to Authority*, 2. The *audiencias* provided a check on the executive power of the region, whether a viceroy or governor.

⁷²⁸ Góngora, *El Estado en el Derecho Indiano*, 53.

⁷²⁹ Incorporated into the *Recopilación (Indias)*, *Libro II, título xv, ley xvii*.

⁷³⁰ Góngora, *El Estado en el Derecho Indiano*, 53.

⁷³¹ Burkholder and Hiles, "An Empire Beyond Compare," 117, 140, 148; for the establishment of royal administration in the years 1492-1570, see generally, Góngora, *El Estado en el Derecho Indiano*.

After his appointment as viceroy in 1535, Antonio de Mendoza began to make grants of *encomiendas*, *estancias* (ranches), *caballerías* (farmland), *solares* (small plots), and other lands and water to individuals, Native villages, other locales, and religious congregations. The *Audiencia* of Mexico City also began adjudicating cases resulting from these conveyances, whether disputes between two individuals or boundary disputes between locales, Native villages, or some other combination of litigants and issues. The grants and disputes over land generated by Mendoza and his successors and the *Audiencia* created an enormous amount of documentation. The Archivo General de la Nación de México (AGN) contains these records in hundreds of containers in the sub-collections *mercedes* and *tierras* of the *Real Audiencia*. William Taylor attempted to analyze these collections and draw some general conclusions regarding the provisions of the grants, particularly those that contain issues of land and water.⁷³² He found that formulaic phrases and certain principles, such as the significance of possession in proving title, appeared frequently within the documentation he examined. Other studies, drawing from the *testimonios* (attested copies) of conveyances and adjudications by and before the viceroy and *Audiencia*, also show how elements of title and possession were essential in establishing ownership to land and the right to water. This chapter will present analysis of some of these documents, their provisions, and how the *Audiencia* and other *alcaldes* adjudicated disputes arising from them. It will also identify examples of legal principles and the application of law whose origins are rooted in the previous centuries.

This chapter will also look at the legal writings issued and published in the sixteenth and seventeenth centuries. By the end of the sixteenth century, the crown of Castile had

⁷³² William B. Taylor, "Land and Water Rights in the Viceroyalty of New Spain," *New Mexico Historical Review* 3 (1975): 189-212.

issued numerous laws to address complaints from clergy, concerns for enforcing royal authority, and the general need for order in the New World. In 1512-13, Fernando el Católico issued the *Leyes de Burgos*, which sought to protect the Natives of Española, who worked on *encomiendas*, and ensure they were evangelized in accordance with the Alexandrine concessions of 1493.⁷³³ The Dominicans, whose complaints these laws were supposed to address, sustained their calls for the abolition of *encomiendas* for several decades, which placed the issue of the treatment of the Natives within the crown's legislative concerns.⁷³⁴ Numerous scholarly works have been published, focusing on the career of Bartolomé de las Casas, who defended the plight of the Natives of the New World more vehemently than others. The lingering influence of Las Casas and others helped influence the crown to implement legal presumptions in favor of its Native subjects in its legislation, particularly in the *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias* and the *Recopilación de leyes de los reynos de las Indias*.⁷³⁵

After the crown established the Council of the Indies in 1524, laws came through this body in the name of the sovereign.⁷³⁶ This council, like the Council of Castile from which it was derived, heard appeals that came from the *Audiencias*. The crown issued the *New Laws of the Indies* aimed at addressing the abuses associated with the *encomienda* system, in which Native labor, but not their land, was allotted to Spaniards (and some Natives) in exchange for

⁷³³ *Las ordenanzas para el tratamiento de los indios (Leyes de Burgos)*, Burgos, 27 December 1512, in *Teoría y leyes de la conquista*, ed. Francisco Morales Padrón (Madrid: Ediciones Cultura Hispánica del Centro Iberoamericano de Cooperación, 1979), 311-26; see *ibid.*, 327, for a list of other editions of the laws.

⁷³⁴ Most of this attention has centered on the career of the former *encomendero* turned Dominican, Bartolomé de las Casas, who participated in a famous *disputación* in 1550 with Juan Ginés de Sepúlveda in Valladolid, Spain over the rights of the Amerindians. For an overview of this dispute, though somewhat dated, but indicative of how Las Casas has been viewed historically, see Lewis Hanke, *All Mankind Is One* (DeKalb, IL: Northern Illinois University Press, 1974).

⁷³⁵ Both of these sources are discussed below. A legal presumption in this context means that where a decision is to be made in which non-Natives and Natives are involved, there should be a presumption to decide the issue in favor of the Natives should the rights of both parties be about equal.

⁷³⁶ Góngora, *El Estado en el Derecho Indiano*, 67-8.

protection and Christian instruction.⁷³⁷ The New Laws sought to phase out *encomiendas*, but met with resistance in Nueva España and Peru and the main force of the laws was postponed.⁷³⁸ Still, the issue of the treatment of the Natives of the New World remained a part of the crown's policy and laws, many of which eventually formed Book Six of the *Recopilación de leyes de los reynos de las Indias*, of which more will be said below.

In the last half of the sixteenth century, three important bodies of law were published in Castile, including one that exclusively addressed the crown's *ultramar* possessions. In 1555, Gregorio López's edition of the *Siete Partidas* in four volumes with Latin glosses, organized in the *libro-título-ley* format in roman numerals, was published at Salamanca.⁷³⁹ A *recopilación* of Castilian law, *Recopilación de las leyes destos Reynos*, was published in 1567; scholars have also referred to this as the *Nueva Recopilación*, since it updated Montalvo's *Ordenanzas reales de Castilla*.⁷⁴⁰ While numerous ordinances and decrees had been issued prior to the reign of Felipe II concerning land in the Americas, he promulgated the *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias* in 1573 to further regulate settlement and the accompanying evangelization.⁷⁴¹

These bodies of law had great influence. The *Recopilación (Castilla)* and the *Siete Partidas* were cited by officials such as Juan de Solórzano Pereira, and the *Ordenanzas* of

⁷³⁷ For the New Laws, see Carlos I, Real Provisión, Barcelona, 20 November 1542, in Morales Padrón, *Teoría y leyes de la conquista*, 428-46.

On the *encomienda*, see Silvio Zavala, *La Encomienda Indiana*, 2nd ed. (Mexico City: Editorial Porrúa, 1973); Robert Himmerich y Valencia, *The Encomenderos of New Spain, 1521-1555* (Austin: University of Texas Press, 1991); for a discussion of the Old World origins of the *encomienda*, see Lesley Byrd Simpson, *The Encomienda in New Spain: The Beginning of Spanish Mexico* (Berkeley: University of California Press, 1950), vii-ix.

⁷³⁸ Carlos I, *Real Provisión*, Barcelona, 20 November 1542, in Morales Padrón, *Teoría y leyes de la conquista*, 428-46.

⁷³⁹ *Las Siete Partidas del muy noble rey Don Alonso el Sabio*, 4 vols., ed. Gregorio López (Salamanca, 1555; reprint, Madrid: Compañía General de Impresores y Libreros del Reino, 1843-44).

⁷⁴⁰ *Recopilación de las leyes destos Reynos, hecha por mandado dela Magestad Cathólica del Rey don Philippe Segundo nuestro Señor*, 2 vols. (Alcalá de Henares: Juan Iñiguez de Liquerica, 1581).

⁷⁴¹ *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518.

1573 were incorporated into Book Four of the *Recopilación (Indias)*. Solórzano Pereira also wrote three works related to the crown's title and administration of the New World. In sequence, he published *Disputatio de Indiarum iure sive de iusta Indiarum occidentalium inquisitione, acquisitione et retentione, tribus libris comprehensa* in 1629 and *Tomus alter de Indiarum iure sive de iusta Indiarum occidentalium gubernatione, quinque libris comprehensus* in 1639.⁷⁴² He then published in Castilian *Política Indiana* in 1647—an adaptation of the previous works.⁷⁴³ A former *oidor* of the *Audiencia* of Lima, and member of the Councils of Castile and Indies, he presented a defense of the Crown of Castile's title to its possessions in the New World.⁷⁴⁴ Also included are discussions on the *encomienda*, the Patronato Real, the crown's secular authority, and the royal treasury. His understanding of the crown's title to land and the responsibilities pertaining to it indicates a tradition steeped in European history. His analysis also indicates what he considered authoritative out of all of the various authorities he cited.

Solórzano also had a hand in the formation of the *Recopilación de leyes de los reynos de las Indias*, eventually published in 1681.⁷⁴⁵ It represented a compilation of laws, provisions, instructions and royal dispatches issued up until its final form in nine books, 218 titles, and 6,385 laws. Altogether, these precepts—Castilian legal writings and law issued by the crown for the Americas—formed part of the core of two elements of what historians call *Derecho Indiano*. This was law applicable in the New World Spanish possessions. A third

⁷⁴² *Disputatio de Indiarum iure sive de iusta Indiarum occidentalium inquisitione, acquisitione et retentione, tribus libris comprehensa* (Madrid: Francisco Martínez, 1629); *Tomus alter de Indiarum iure sive de iusta Indiarum occidentalium gubernatione, quinque libris comprehensus* (Madrid: Francisco Martínez, 1629).

⁷⁴³ Juan de Solórzano Pereira, *Política Indiana*, 2 vols. (Madrid: Matheo Sacristán and Gabriel Ramírez, 1736-39); Juan Solórzano Pereyra, *Política Indiana*, 3 vols. (Madrid: Biblioteca Castro, 1996), 1:xxv.

⁷⁴⁴ See Francisco Tomás y Valiente's introduction in *Política Indiana*, 3 vols. (Madrid: Biblioteca Castro, 1996), 1:xxiii-xxvi; see also James Muldoon, *The Americas in the Spanish World Order: The Justification for Conquest in the Seventeenth Century* (Philadelphia: The University of Pennsylvania Press, 1994).

⁷⁴⁵ *Recopilación (Indias)*.

element was the law that indigenous communities developed to govern themselves that did not conflict with Christian doctrine or royal law. In addition to the documents that the viceroy and *audiencias* produced, this chapter analyzes these legal writings, which together form the main elements of the *Derecho Indiano*. It also identifies the sources and tradition they came from.

Finally, this chapter will consider the kingdom of Nuevo México, following the insurrection carried out by the Pueblo Indians in 1680. This revolt drove the Spanish settlers first to Isleta Pueblo then to El Paso del Norte, the southernmost town of the province.⁷⁴⁶ In 1693 Governor Diego de Vargas led an expedition that, after a siege of the *villa* of Santa Fe, reestablished royal authority in the kingdom.⁷⁴⁷ From the final years of the seventeenth century to the first two decades of the nineteenth, lands were distributed to European settlers and Natives.⁷⁴⁸ These concessions, boundary disputes, and other instances of land tenure will be analyzed in light of the preceding chapters. These conveyances remain controversial as some of the titles to the grants were denied by the federal courts of the United States when it took the territory of New Mexico from Mexico in 1848. This second section of Chapter Six evaluates how Spanish governors issued conveyances and how adjudications were carried out. It then compares that process with concessions and adjudications from Castile prior to

⁷⁴⁶ For the uprising, see John L. Kessell, *Pueblos, Spaniards, and the Kingdom of New Mexico* (Norman: University of Oklahoma Press, 2008), 119–75; David Roberts, *The Pueblo Revolt: The Secret Rebellion That Drove the Spaniards out of the Southwest* (New York : Simon & Schuster, 2004); Andrew L. Knaut, *The Pueblo Revolt of 1680: Conquest and Resistance in Seventeenth-Century New Mexico* (Norman: University of Oklahoma Press, 1995).

⁷⁴⁷ See John L. Kessell, Rick Hendricks, and Meredith Dodge, eds., *Blood on the Boulders: The Journals of Don Diego de Vargas, New Mexico, 1694–97* (Albuquerque: University of New Mexico Press, 1998); John L. Kessell et al., eds., *That Disturbances Cease: The Journals of Don Diego de Vargas, New Mexico, 1697–1700* (Albuquerque: University of New Mexico Press, 2000); and John L. Kessell, Rick Hendricks, and Meredith Dodge, eds., *A Settling of Accounts: The Journals of Don Diego de Vargas, New Mexico, 1700–1704* (Albuquerque: University of New Mexico Press, 2002).

⁷⁴⁸ See Ebright, *Land Grants and Lawsuits in Northern New Mexico*; Engstrand, “Land Grant Problems in the Southwest,” 317–36. For a comprehensive list of land grants issued by Spain and Mexico, again see Bowden, “Private Land Claims in the Southwest,” 1:356–85.

1492. This, along with Part One, will show that a distinct legal tradition fundamental in extending the crown's jurisdiction in Nueva España and Nuevo México had similarities and common roots with that of the eleventh through fifteenth century found in the kingdom of Castile.

The *Real Cédula* that Fernando *el Católico* issued in 1511, establishing an *audiencia* at Santo Domingo, Española shows that he had envisioned something along the lines of those at Valladolid and Granada, but less ambitious.⁷⁴⁹ He cites the reasons for establishing the *audiencia* as the expense of appeals, as well as the time spent in litigation. The tribunal would have three justices who would hear cases every day except *fiestas* and issue *cartas de ejecutorias* in civil and criminal matters.⁷⁵⁰ The *oidores* were also given discretion in deciding cases of little value that they should settle summarily. Civil cases would be appealed to the Council of Castile. Decisions of the Admiral-governor, Diego Colón, could also be appealed; Colón immediately objected to what he perceived as an infringement on his authority.⁷⁵¹ In what form this *Audiencia* took shape in Española is not entirely clear, but the concept had been implemented as an extension of royal authority, along the lines of the peninsular *audiencias*.⁷⁵² In a *Real Cédula* dated 14 September 1526, Carlos I reformed the *Audiencia*, providing that it should have a president, four *oidores* who would decide civil and criminal cases, a *fiscal* (royal prosecutor/treasurer), *alguacil* (bailiff), and a lieutenant chancellor.⁷⁵³ The president was also named governor and captain-general and took on

⁷⁴⁹ Fernando V, *Real Cédula*, Burgos, 5 October 1511, in Fernández Navarrete, *Colección de documentos inéditos para la historia de España*, 2:285-93.

⁷⁵⁰ *Ibid.*, 287.

⁷⁵¹ C. H. Haring, *The Spanish Empire in America* (New York: Harcourt, 1947; reprint, New York: Harbinger Books, 1963), 16.

⁷⁵² See *ibid.* In the language of the *cédula*, Carlos I refers to Santo Domingo “as is established”; see also Cunningham, *The Audiencia in the Spanish Colonies*, 19, n. 27, who suggests that the tribunal that Fernando had established was reformed rather than reestablished.

⁷⁵³ Later incorporated into the *Recopilación (Indias)*, Libro II, *título xv, ley ii*.

administrative duties.⁷⁵⁴ This *Audiencia* borrowed elements, albeit in a truncated form, from the *audiencias* at Valladolid and Granada.

In 1527 Carlos I established an *Audiencia* at the Ciudad de México.⁷⁵⁵ He named Nuño de Guzmán the first president, but after he and the *oidores* named with him engaged in the self-serving abuses they were supposed to curb, a second *Audiencia* was established.⁷⁵⁶ Bishop Sebastián Ramírez de Fuenleal headed the second *Audiencia*, which largely carried out the directives of the crown.⁷⁵⁷ In 1548, another *Audiencia* was established in Nueva Galicia.⁷⁵⁸ In addition to the *Audiencia* and *Chancillería* at the Ciudad de México, Antonio de Mendoza was named the first viceroy. While some scholars have emphasized that the viceroy and the *Audiencia* provided checks on each other's authority, they also worked together particularly in the administration of land and the adjudication of land disputes.⁷⁵⁹ Eventually, Philip III decreed that when the office of the viceroy was vacant, the *Audiencia* should serve in the executive capacity. While this differs to some degree from the organization of the *audiencias* and chancelleries in Castile, it resembles the arrangement where officials served on the *audiencias*, but also on the Council of Castile, and therefore participated in judicial and administrative matters.⁷⁶⁰ It also resembles the original notion of

⁷⁵⁴ Ibid.

⁷⁵⁵ Ibid., *Libro II, título xv, ley iii*; it had a president, eight *oidores*, four *alcaldes de crimen*, two *fiscals*, one for civil matters and the other for criminal.

⁷⁵⁶ Góngora, *El Estado en el Derecho Indiano*, 61-2.

⁷⁵⁷ Liss, *Mexico under Spain, 1521-1556*, 52; for the career of Nuño de Guzmán, the president of the first *audiencia*, see Chipman, *Nuño de Guzmán*.

⁷⁵⁸ Parry, *The Audiencia of New Galicia in the Sixteenth Century*.

⁷⁵⁹ Burkholder and Chandler, *From Impotence to Authority*, 2.

⁷⁶⁰ Luis Vicente Díaz Martín, *Los oficiales de Pedro I de Castilla* (Valladolid: Universidad de Valladolid, 1975), 41; see also Molina v. Vera, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, Registro de Ejecutorias, Caja 3, 25, f. 1r, where Archbishop Alfonso de Fonseca is named as President of the *Audiencia* and of the Council of Castile.

the *Audiencia* in terms of the administration of justice, as representative body of the sovereign, which royal officials in the Americas were.⁷⁶¹

After Antonio de Mendoza took office, he initiated a stream of conveyances to various types of grantees that his successors and governors in other provinces would continue into the nineteenth century. Many of the earliest grants consisted of various forms of land: *sitios de estancias*, *caballerías*, and *solares*.⁷⁶² Viceroy also granted mills, houses, and *ejidos*.⁷⁶³ There were also *encomiendas* and grants for other forms of land and water. *Sitios de estancias* were ranches given for the raising of *ganados mayor* (horse and cattle) or *ganados menor* (goats and sheep).⁷⁶⁴ The viceroy granted *caballerías* to grantees requesting tracts of farmland. On 25 and 26 March 1550, Mendoza conveyed several *caballerías* to Antonio de la Cadena and members of his family.⁷⁶⁵ The individual grants were for land in the mountains near Xalatlaco, about 50 kilometers southwest of the Ciudad de México. In the first two grants, he stipulated that he would make them without prejudice to the king's right, those of a third party, or those of the Indians. Also the grantees would hold the land with just and lawful title.⁷⁶⁶ In the grant to Melchior de Sotomayor, Cadena's son, he stated that he ordered Corregidor Juan de Jaso of Xochimilco to make a *relación* of the lands,

⁷⁶¹ Varona García, *La Chancillería de Valladolid*, 57-8.

⁷⁶² E.g., Viceroy Antonio de Mendoza to Francisco Mendoza, Three *Sitios de Estancias*, Mexico City, 29 April 1550, Archivo General de la Nación, Instituciones Coloniales, Real Audiencia, Mercedes (hereafter AGN, Mercedes), Contenedor 2, Volumen 3, f. 50v. (See Figure 6.1.)

⁷⁶³ Viceroy Martín Enríquez Almanza to the *Villa* of Zalaya, Grant of an *ejido*, Mexico City, 11 December 1573, AGN, Mercedes, Contenedor 6, Volumen 3, f. 3r.

⁷⁶⁴ E.g., *Testimonio* of the Pueblo of Tecomaxtlahuaca *Sitio de Estancia* Grant, Mexico City, 9 July 1612, in Josué Mario Villavicencio Rojas, *Mercedes Reales y Posesiones, Cacicazgo de Tecomaxtlahuaca, 1598-1748* (Puebla, Mexico: Benemérita Universidad Autónoma de Puebla, 2000), 86-95.

⁷⁶⁵ Viceroy Antonio de Mendoza to Antonio de la Cadena, Mexico City, 25 March 1550, AGN, Mercedes, Contenedor 2, Volumen 3, f. 24r; Viceroy Antonio de Mendoza to Melchior de Sotomayor, Mexico City, 26 March 1550, AGN, Mercedes, Contenedor 2, Volumen 3, ff. 24v-25r; Viceroy Antonio de Mendoza to Gaspar de la Cadena, Mexico City, 26 March 1550, AGN, Mercedes, Contenedor 2, Volumen 3, f. 25r.

⁷⁶⁶ Viceroy Antonio de Mendoza to Antonio de la Cadena, Mexico City, 25 March 1550, AGN, Mercedes, Contenedor 2, Volumen 3, f. 24r; Viceroy Antonio de Mendoza to Melchior de Sotomayor, Mexico City, 26 March 1550, AGN, Mercedes, Contenedor 2, Volumen 3, ff. 24v-25r.

which adjoined each other (see fig. 6.2).⁷⁶⁷ He also ordered him to obtain a declaration from the Natives that the grants would not prejudice them nor do them harm. Mendoza then granted the land and ordered the grantees to take possession.⁷⁶⁸ The stipulations that Mendoza included in the grants, that they not harm a third party, as noted in Chapter Three, had roots in Castilian law going back three hundred years.⁷⁶⁹ In theory, the monarch could not give away what he no longer owned unless for cause or by previous condition, nor would the monarch want to create grounds for future suits by giving title to land already held by others.⁷⁷⁰ In these conveyances, Mendoza followed a centuries-old policy and legal tradition. The inclusion of provisions concerning the king's rights and those of the Natives expands on this same principle. Mendoza also emphasized just and lawful title as well as possession—two important elements of ownership—within the Castilian legal tradition, as seen in the preceding chapters.

⁷⁶⁷ Viceroy Antonio de Mendoza to Melchior de Sotomayor, Mexico City, 26 March 1550, AGN, Mercedes, Contenedor 2, Volumen 3, f. 24v.

⁷⁶⁸ Viceroy Antonio de Mendoza to Antonio de la Cadena, Mexico City, 25 March 1550, AGN, Mercedes, Contenedor 2, Volumen 3, f. 24r; Viceroy Antonio de Mendoza to Melchior de Sotomayor, Mexico City, 26 March 1550, AGN, Mercedes, Contenedor 2, Volumen 3, ff. 24v-25r.

⁷⁶⁹ See *Siete Partidas*, Div. III, *título* viii, *ley* iii, where a third party had grounds to sue someone placed in possession by a judge, no less, of land to which he or she had a better claim to title.

⁷⁷⁰ See Helen Nader, *Liberty in Absolutist Spain: The Habsburg Sale of Towns, 1516-1710* (Baltimore: Johns Hopkins University Press, 1990), for the process of several villages from lordships and the grounds by which the crown justified it; see also J. B. Owens, “*By My Absolute Royal Authority*”: *Justice and the Castilian Commonwealth at the Beginning of the First Global Age* (New York: University of Rochester Press, 2005). Discussed in Chapter One.

subo qd nro. v. a. l. m. e. c. o. n. s. t. p. r. e. s. e. n. t. e. d. e. m. e. n. d. o. z.
s. i. n. t. e. s. a. g. o. n. i. d. a. e. s. e. n. f. r. a. n. c. i. s. c. o. m. e. n. d. o. z. a. c. e. w. a. s. a.
t. i. e. s. i. t. o. s. s. o. l. i. d. a. s. p. r. o. p. r. i. e. t. a. s. m. a. y. o. r. e. s. d. e. p. r. e. s.
e. n. g. a. n. s. u. o. s. p. m. v. e. s. p. r. i. o. s. e. s. p. r. a. u. d. e. e. r. z. i. v. i. b. r. e. s.
y. p. a. l. g. u. e. d. e. t. a. r. u. b. a. l. a. s. d. e. p. r. i. o. c. a. t. u. n. d. i. a. y. t. e. r. a. s. d. e. c. e. d. e.
f. r. a. n. c. i. s. c. o. m. e. n. d. o. z. c. o. n. t. a. n. d. o. e. l. r. e. g. i. s. t. r. o. e. s. t. a. n. g. u. e. n. o. s. o. m.
e. n. p. e. r. i. p. t. o. a. c. o. n. t. i. n. e. m. o. s. e. y. n. i. v. o. m. y. d. e. q. u. e. t. i. e. n. d. o. t. e. n. e. m. o.
y. e. s. t. e. p. r. i. o. r. t. e. n. e. m. o. s. e. n. c. a. m. e. n. d. o. z. y. g. u. i. e. c. e. r. e. s. e. s. e.
n. a. n. i. c. a. s. e. s. t. a. n. g. u. e. s. e. s. t. a. n. g. u. e. s. d. e. c. e. w. a. s. a. m. e. n. d. o. z. y. u. n. d. e.
p. o. r. t. e. e. s. t. e. p. r. o. p. r. i. e. t. a. s. d. e. c. e. w. a. s. a. m. e. n. d. o. z. y. e. s. t. e. p. r. i. o. r.
e. l. b. i. e. r. e. y. t. i. e. n. o. l. a. c. a. u. s. a. y. c. o. m. o. e. s. t. a. n. g. u. e. s. e. s. t. a. n. g. u. e. s. e. s. t. a.
p. e. n. e. d. i. o. s. d. e. l. a. c. a. d. e. n. a. d. e. l. a. c. a. d. e. n. a. d. e. l. a. c. a. d. e. n. a. d. e. l. a. c. a. d. e. n. a.
y. e. s. t. e. p. r. o. p. r. i. e. t. a. s. d. e. c. e. w. a. s. a. m. e. n. d. o. z. y. e. s. t. e. p. r. i. o. r.

Figure 6.1. Viceroy Antonio de Mendoza to Francisco Mendoza, 29 April 1550, Mexico City, Archivo General de la Nación, Instituciones Coloniales, Real Audiencia, Mercedes, Contenedor 2, Volumen 3, f. 50v.

Y odoñ Antonio de Mendoza, e. s. p. r. a. q. u. a. n. t. o. p. o. r. e. l. c. o. n. t. a. d. o. z. a. n. t. o. n. i. o. d. e. l. a. c. a. d. e. n. a.
d. e. l. a. c. i. u. d. a. d. d. e. m. e. x. i. c. o. m. e. s. u. p. e. r. i. o. r. e. p. o. r. e. l. n. o. m. b. r. e. d. e. s. u. m. a. g. l. a. b. i. z. i. e. d. e.
m. e. d. i. d. e. d. e. d. e. s. c. a. l. l. e. r. i. a. s. d. e. t. i. r. a. s. e. n. l. o. s. m. o. n. t. e. s. d. e. x. a. l. a. t. a. c. o. p. a. r. a. l. a. b. i. a. r.
l. a. s. y. a. n. b. i. a. r. l. a. s. y. t. e. n. e. r. e. s. e. n. e. l. l. a. s. e. l. l. a. s. e. n. t. o. s. g. r. a. n. g. e. r. i. a. s. p. o. r. q. u. e. v. i. d. i. a. d. i. s.
p. o. s. i. c. i. o. n. y. m. u. c. h. a. s. t. i. r. a. s. a. l. m. a. s. y. p. o. r. q. u. e. n. o. p. o. d. i. a. s. e. l. e. p. o. d. i. a. h. a. z. e. r. l. a.
d. i. c. h. a. m. e. n. d. o. z. s. i. n. p. e. r. i. p. t. o. m. i. n. g. u. n. o. y. p. a. r. a. s. e. r. i. n. f. o. r. m. a. d. o. y. s. a. b. e. r. l. o. s. u. s. o.
d. i. c. h. o. m. a. n. d. e. y. j. o. a. n. d. e. j. a. s. o. c. o. r. r. e. g. i. d. o. z. d. e. s. u. c. h. i. m. i. l. l. a. q. u. e. l. l. a. m. a. d. o. e. s. t.
e. n. c. o. m. e. n. d. a. d. o. y. p. r. e. s. e. n. t. e. s. l. o. s. y. n. d. i. o. s. e. n. c. u. y. o. s. t. e. r. m. i. n. o. s. c. a. y. o. s. e. n.
l. a. s. d. i. c. h. a. s. t. i. r. a. s. l. a. s. f. u. e. r. e. n. a. b. e. r. y. b. i. e. r. e. n. y. d. i. e. s. e. n. a. e. n. t. e. n. d. e. r. a. l. o. s. d. i. c. h. o. s.
y. n. d. i. o. s. c. o. m. o. p. e. d. i. a. l. a. d. i. c. h. a. m. e. n. d. o. z. q. u. e. d. e. c. l. a. r. a. s. e. n. e. s. i. d. e. l. l. o. l. o. s. v. i. a. p. o.
s. u. i. z. i. o. o. d. o. ñ. o. a. l. g. u. n. o. y. d. e. l. l. o. m. e. h. i. e. r. i. e. s. e. R. e. l. a. c. i. o. n. c. o. n. s. u. p. a. r. e. e. z. e. n.
d. i. c. h. o. s. u. r. a. d. o. e. n. f. o. r. m. a. y. p. a. r. a. e. r. e. y. e. n. c. a. m. p. l. i. m. d. e. l. o. s. u. s. o. d. i. c. h. o.
e. l. d. i. c. h. o. j. u. a. n. d. e. j. a. s. o. f. u. e. r. e. d. e. l. a. s. d. i. c. h. a. s. t. i. r. a. s. e. h. i. z. o. l. a. s. d. i. c. h. a. s. d. i. l. i. g. e. n.
c. i. a. s. y. d. e. c. l. a. r. o. s. e. r. e. r. i. t. a. m. i. n. o. s. d. e. l. d. i. c. h. o. p. u. e. l. l. o. d. e. x. a. l. a. t. a. c. o. y. q. u. e.
p. r. e. s. e. n. t. e. s. l. o. s. d. i. c. h. o. s. y. n. d. i. o. s. l. a. s. a. d. i. a. b. i. s. t. o. y. q. u. e. a. b. i. a. n. d. i. o. y. d. e. c. l. a. r. a. d. o.
q. u. e. d. e. s. c. h. e. r. e. l. a. d. i. c. h. a. m. e. n. d. o. z. d. e. l. a. c. a. d. e. n. a. d. e. l. a. c. a. d. e. n. a. d. e. l. a. c. a. d. e. n. a.

me. d. i. d. e. d. e. d. e. s. c. a. l. l. e. r. i. a.
d. e. f. u. e. r. o. m. a. y. o. z.
h. i. s. t. o. r. i. a. d. e. a. n. t. o. n. i. o.
d. e. l. a. c. a. d. e. n. a. d. e.
u. n. a. c. a. u. a. l. l. e. r. i. a.
d. e. t. i. r. a. s. e. n. t. e. r.
m. i. n. o. s. d. e. x. a.
l. a. t. a. c. o. s. i. n. p. e. r.
i. u. i. z. i. o.

Figure 6.2. Viceroy Antonio de Mendoza to Melchior de Sotomayor, 26 March 1550, Mexico City, Archivo General de la Nación, Instituciones Coloniales, Real Audiencia, Mercedes, Contenedor 2, Volumen 3, f. 24v.

Other documents executed in the Viceroyalty of Nueva España, but not in the Archivo General de la Nación, also shed light on this tradition. The *testimonio* (attested copy) of a 1612 *sito de estancia* grant given to the Pueblo of San Sebastián Tecomaxtlahuaca provides further evidence of how grants were textually formulated to Natives as well as Europeans.⁷⁷¹ The Viceroy and *Audiencia* of the Ciudad de México made the grant in the name of the king, also without prejudice to his rights or those of a third party. The granting clause reads as follows: We make a grant to the Governor, Alcaldes, and Natives of the Pueblo of Tecomaxtlahuaca of a ranch for small livestock for ownership by the community.⁷⁷² It then goes on to describe the location of the *sitio* by metes and bounds and in relation to another ranch. Then the document describes several conditions: the *pueblo* must populate the ranch with two thousand heads of small livestock; must not sell, barter, or alienate the land to anyone; and if they should, the grant could be revoked.⁷⁷³ It also informs the grantees that should the king or the viceroy decide to establish a Spanish town or settlement, the *pueblo* would have to give back the land in exchange for compensation.⁷⁷⁴ This is based on the notion of *praeminens*—the overarching authority that the crown had over its entire territory in the peninsula and the Americas for doing justice and punishing malefactors.⁷⁷⁵ Gregorio López, in glossing the term “ownership,” laid this out in the *Siete Partidas*; for twenty-first-century North Americans, though expressed differently, this is the

⁷⁷¹ Testimonio of the Pueblo of Tecomaxtlahuaca *Sitio de Estancia* Grant, Mexico City, 9 July 1612, in Villavicencio Rojas, *Mercedes Reales y Posesiones*, 86-95; facsimile on 86, 88, 90, 92, 94. San Sebastián Tecomaxtlahuaca lies about 160 kilometers northwest of Oaxaca, Mexico.

⁷⁷² *Ibid.*, 87. “Hacemos merced al Governador, Alcaldes, y Naturales del Pueblo de Tecomastlahuaca de un Sitio de Estancia para Ganado menor para propios de comunidad.”

⁷⁷³ *Ibid.*, 89.

⁷⁷⁴ *Ibid.*

⁷⁷⁵ See Solórzano Pereira, *Política Indiana, Libro VI, capítulo xii*, 1-2; *Recopilación (Castilla), Libro I, título vi, ley xiv; libro I, título vi, ley iii*. See below.

doctrine of eminent domain.⁷⁷⁶ Neither this nor the other conditions of the grant convert it into anything less than a grant of title to ownership. This is made clear in the phrases that the grant should belong to the community now and forever.⁷⁷⁷

This *merced* also includes several provisions referencing written law, though there are no explicit citations of law. First it tells the pueblo to take possession of the land; then it assures them that they will not be disposed without a hearing to defend their rights under the law.⁷⁷⁸ These provisions follow the precepts of the *Siete Partidas* on the doctrine of possession, the laws that emphasize its importance, how it should be argued, and also the right to regain title if one should be wrongfully dispossessed.⁷⁷⁹ As we have seen in the cases above, councils of villages and towns as well as individuals made arguments based on these.⁷⁸⁰ This document also quotes a specific law. It cites an ordinance referring to the minimum distances between *estancias*, with different distances for those intended for large cattle and those intended for small cattle.⁷⁸¹ Legal instruments often include references to principles found in *lex scripta* or quotations of a specific law, but the officials who drafted them did not formally cite them, nor were they required to so.

⁷⁷⁶ See *Siete Partidas*, Div. III, *título xxviii*, *ley I*, gloss. “Dominium est potestas faciendi, quod quis vult de suis rebus, ut jus permittit. Et est triplex dominium: unum praeminens, quod Princeps habet in coercendis malefactoribus, et in reditione justitiae cuilibet. Secundum, quod quilibet homo habet in re sua. Tertium, quod habet in fructibus, et reditionibus alicuius rei ad vitam, vel ad tempus certum, vel in castro, aut feudali terra. Hoc dicit.”

⁷⁷⁷ Testimonio of the Pueblo of Tecomaxtlahuaca *Sitio de Estancia* Grant, Mexico City, 9 July 1612, in Villavicencio Rojas, *Mercedes Reales y Posesiones*, 91.

⁷⁷⁸ *Ibid.*, 93.

⁷⁷⁹ On possession, see *Siete Partidas*, Div. III, *título ii*, *leyes xxvii-xxix*; *título xxx*, *leyes i-xviii*; on dispossession see, *título ii*, *ley xxx*.

⁷⁸⁰ E.g., *Algodre v. Coreses*, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2; *Molina v. Vera*, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, Registro de Ejecutorias, Caja 3, 25.

⁷⁸¹ *Recopilación sumaria de todos los autos acordados de la real audiencia y sala del crimen de esta Nueva España y providencias de superior gobierno*, ed. Eusebio Bentura Beleña (Mexico: Don Felipe de Zúñiga y Ontiveros, 1787), 69.

Another document related to the same *pueblo* contains an Act of Possession, which is useful in comparison with those from the fourteenth and fifteenth centuries as well as those from later centuries.⁷⁸² In 1710 in the *puesto* (site) of Nuyoo, subject to the *pueblo* of Tecomaxtlahuaca, *Alcalde mayor* Plácido de Porras placed Governor and *Alcalde* of the Pueblo, Nicolás de los Ángeles, in possession of the land. The act, which included witnesses and others from the *pueblo*, included Porras taking the governor and his *alcaldes* by the hand when they then entered the site.⁷⁸³ They passed through the tract, tearing up grass, making “many signs of possession without any contradiction.”⁷⁸⁴ On the same day, the same *alcaldes* and officials from Tecomaxtlahuaca took possession of another piece of land within the *términos* of the *pueblo* in the same manner.⁷⁸⁵ In the Act of Possession for the mills and lands near Tordesillas in 1468 discussed in Chapter Five, we saw the same procedure with witnesses.⁷⁸⁶ Pedro López passed through the lands and buildings, making an open act of possession in which those who might contest it had the opportunity to do so.⁷⁸⁷ There, an *escribano* and notary documented the proceedings, but in Nueva España *Alcalde mayor* Porras noted that, lacking an *escribano* in his jurisdiction, he took assistant witnesses to attest to the act.⁷⁸⁸

For the *pueblo* of Tecomaxtlahuaca, these were not just ceremonies, but they proved valuable when the neighboring *pueblo* dispossessed the village of some of its lands. In the

⁷⁸² *Testimonio*, Act of Possession given to Governor Nicolás de los Ángeles, *Sitio de Nuyoo*, Pueblo de Tecomaxtlahuaca, 7 October 1710, in Villavicencio Rojas, *Mercedes Reales y Posesiones*, 120-23.

⁷⁸³ *Ibid.*, 121.

⁷⁸⁴ *Ibid.*, 122-3: “se pasaron a Rancaron yervas a hizieron muchas señales de Poesession sin contradiccion ninguna.”

⁷⁸⁵ *Testimonio* of an Act of Possession by Governor Nicolás de los Ángeles, *Sitio en Términos*, Pueblo de Tecomaxtlahuaca, 7 October 1710, in Villavicencio Rojas, *Mercedes Reales y Posesiones*, 124-25.

⁷⁸⁶ Pero López de Calatayud and Leonor de San Juan, Act of Possession, Tordesillas, 5 September 1468, ARCV, Pergaminos, Caja 22, 3, f. 2r.

⁷⁸⁷ *Ibid.*, f. 3r.

⁷⁸⁸ *Testimonio* of an Act of Possession by Governor Nicolás de los Ángeles, *Sitio en Términos*, Pueblo de Tecomaxtlahuaca, 7 October 1710, in Villavicencio Rojas, *Mercedes Reales y Posesiones*, 124-25.

1740s, the *Audiencia* of Mexico City heard and decided the case in favor of Tecomaxtlahuaca, which based its claims on title and possession.⁷⁸⁹ These included the documents mentioned above, but also other grants dating from 1598 and documentation produced through *composición*, a process the crown established to settle title to lands that individuals or villages and towns possessed but for which they lacked proof of title.⁷⁹⁰ In the 1780s, the *Audiencia* confirmed this by decree, citing the earlier decision.⁷⁹¹ In that decision, the document that the chancellery produced, in describing what had been lost, mentioned lands, waters, and structures.⁷⁹²

While the provision that required officials to call forward those who might contest the taking possession of land may seem like a mere formality, the failure to do so could create grounds for a suit. In a case the *Audiencia* of Mexico City adjudicated, this issue proved determinative in a dispute over the ownership of two *caballerías* and an *estancia* near the city of Valladolid (Morelia) in the province of Michoacán.⁷⁹³ Nicolás Carrillo Altamirano filed a complaint that his lands that he rented to María de la Cruz were given to the Pueblo of Santiago el Chico. He filed a petition before the *Audiencia*, claiming that the *alcalde mayor* of Pasquaro placed the *pueblo*'s leaders in possession of the land, but that he did not allow Carrillo to contest the Act of Possession. Carrillo's attorney protested the Act in the petition and submitted four groups of documentation, including conveyances from the sixteenth and

⁷⁸⁹ *Testimonio of Auto de Acordado*, Tecomaxtlahuaca v. Tlaxiaquillo, Mexico City, 6 January 1744, in Villavicencio Rojas, *Mercedes Reales y Posesiones*, 134-45.

⁷⁹⁰ The documents mentioned here are only part of the centuries-long struggle over land on the part of Tecomaxtlahuaca; see Villavicencio Rojas, *Mercedes Reales y Posesiones*, 19-75.

⁷⁹¹ *Testimonio of the Auto de Acordado*, Petition and Decree, Tecomaxtlahuaca v. Tlaxiaquillo, Mexico City, 6 January 1744 to 13 October 1780, in Villavicencio Rojas, *Mercedes Reales y Posesiones*, 132-63.

⁷⁹² *Testimonio of Auto de Acordado*, Tecomaxtlahuaca v. Tlaxiaquillo, Mexico City, 6 January 1744, in Villavicencio Rojas, *Mercedes Reales y Posesiones*, 135.

⁷⁹³ Carrillo Altamirano v. Pueblo of Santiago el Chico, Mexico City, AGN, *tierras, legajo* 189, *expediente* 17; transcription in the Center for Southwest Research, Albuquerque, New Mexico, Mss 867, box 12, folder 23, p. 2.

seventeenth centuries, which established that Carrillo had title to the land.⁷⁹⁴ The *pueblo* did not contest the petition and the *Audiencia* ordered the property to be restored to Carrillo and that he be placed in possession of the land.⁷⁹⁵ This case shows that procedures several centuries old were not formalities, but measures that protected the legal rights of land owners against wrongful dispossession—rights that the *Siete Partidas* and other cases describe.

Rights to water, while not always mentioned in royal concessions, certainly could create grounds for a dispute. In “Land and Water Rights in the Viceroyalty of New Spain,” William Taylor attempted to evaluate the enormous holdings of Mexico’s Archivo General de la Nación (AGN) concerning grants of land and water to indigenous settlements.⁷⁹⁶ Drawing from the archive’s body of *Real Audiencia* holdings, Taylor focused on the *mercedes* and *tierras* sections of the archive to identify principles of land and water rights.⁷⁹⁷ The *tierras* section contains suits over land and water involving all types of litigants. The *mercedes* section of the AGN contains grants for farm and ranching land, but also for mills, salt, lime deposits, and streams. Taylor found that most of the grants were issued between 1542 and 1620, while those from 1644-1796 contained mostly the documentation of boundaries, water, and land allocations.⁷⁹⁸ He estimated that the first thirty-three volumes contain “four thousand grants of farmland and ranching land.”⁷⁹⁹ Taylor suggests that though the *mercedes* that imply the use of irrigation water did not frequently mention that water

⁷⁹⁴ See Carrillo Altamirano v. Pueblo of Santiago el Chico, Mexico City, AGN, *tierras*, *legajo* 189, *expediente* 17; transcription in the Center for Southwest Research, Albuquerque, New Mexico, Mss 867, box 12, folder 23, p. 11, where a concise abstract of Carrillo Altamirano’s title documents is provided.

⁷⁹⁵ Carrillo Altamirano v. Pueblo of Santiago el Chico, Mexico City, AGN, *tierras*, *legajo* 189, *expediente* 17; transcription in the Center for Southwest Research, Albuquerque, New Mexico, Mss 867, box 12, folder 23, pp. 8-9.

⁷⁹⁶ Taylor, “Land and Water Rights in the Viceroyalty of New Spain,” 189.

⁷⁹⁷ *Ibid.*

⁷⁹⁸ *Ibid.*, 194.

⁷⁹⁹ *Ibid.*, 194-95.

itself was granted, some explicitly state the rights by land owners and indigenous settlements drawing from the same sources.⁸⁰⁰

In the cases Taylor examined involving disputes over water, he found that from 1710 to 1810 officials, and he bases this on a 1768 directive from the *Audiencia* to an inspector, were to determine if any grants had existed and, if not, if any distributions had been recorded.⁸⁰¹ If no documentation existed, the *Audiencia* directed the inspector to take the testimony of witnesses and conduct inquiries to see who had used the water and for what amount of time.⁸⁰² Then an agreement factoring in “prior use, need, availability of water, and protection of Indian communities” should be made.⁸⁰³ This is essentially a *pesquisa* to determine title or usage rights in the form described in the *Lex Visigothorum* (*Fuero Juzgo*), the *Siete Partidas*, and numerous land disputes.⁸⁰⁴ Taylor also found that in other cases after the *pesquisa* had been conducted, a *repartimiento de aguas* was made based on principles of equitable distribution.⁸⁰⁵ In the determination of prior use, he found that parties staked their claims on concepts of possession and use since time immemorial or variants such as *uso antiguo*.⁸⁰⁶ As seen in the preceding discussions, including claims that combined land and water, these concepts had been used successfully by litigants well before 1492 and they continued to be used in Nueva España.⁸⁰⁷

Need formed the second important element and shows that prior use was just one factor. When sufficient amounts of water existed, prior use could not exclude others from

⁸⁰⁰ Ibid., 200.

⁸⁰¹ Ibid., 201, see especially n. 34.

⁸⁰² Ibid.

⁸⁰³ Ibid., 201.

⁸⁰⁴ *Siete Partidas*, Div. III, *título xvii, leyes i-xii; Fuero Juzgo (Lex Visigothorum), Libro X, título iii, ley v; CLC, 2:492-592, Cortes de Alcalá de Henares de 1348, capítulo xviii; see also Proctor, The Judicial Use of ‘Pesquisa’ (Inquisition).*

⁸⁰⁵ Taylor, “Land and Water Rights in the Viceroyalty of New Spain,” 201.

⁸⁰⁶ Ibid., 202.

⁸⁰⁷ Ibid.

obtaining water. As seen in other suits, the adjudications were made case by case. In one, the *Audiencia* of Mexico City issued a *sentencia definitiva* stipulating that after careful consideration, the claimants, Hernán Pérez and his descendants, would be allotted irrigation water for only the land they currently held and not that which they might obtain. The rest of the water should be returned to the mainstream for potential use by the Natives of Apaseo.⁸⁰⁸ In the concessions and cases from Nueva España discussed above, the main elements of land tenure and water use and the resolution of disputes concerning them—emphasis on title, possession, the *pesquisa*—all have precedent prior to 1492.

Taylor also describes laws that addressed the crown’s Native subjects, some indicating that there was a presumption in favor of the Natives concerning land disputes and others from the *Recopilación (Indias)* concerning taxation and tribute. He adds that these have two fundamental concerns: a paternalist apprehension to protect the Natives and an “economic motive inherent in colonial rule.”⁸⁰⁹ He adds that “the special position of Indians based on paternalism and economic colonialism carried over into Indian property rights included in the excerpted laws of the *Recopilación [Indias]*.”⁸¹⁰ While the crown had concerns over protecting the Natives and also had economic interests, the claim of economic colonialism cannot be fully supported with the cases that Taylor presents. Their legal principles concerning the establishment of title, possession, and prior use predated any knowledge by the crown of the peoples of the Americas. Rather, these show that the crown borrowed from the past in providing land law for its subjects in the New World, suitable for protecting the Natives and promoting their ability to subsist: these principles and their

⁸⁰⁸ Ibid., 205.

⁸⁰⁹ Ibid., 191.

⁸¹⁰ Ibid., 193.

application follow a tradition that was several centuries old in some cases and not part of a new colonial theory of law.

A case involving owners of small plots (*solares*) shows that these principles were applied even in relatively small disputes.⁸¹¹ This dispute arose in the Villa of Santiago de Querétaro, which lies about 220 kilometers north of Mexico City along the *camino real*. In the *barrio* of the Espíritu Santo, two couples owned adjoining plots with houses. José Mendoza and his wife Bárbara de los Reyes had an aqueduct by which they conducted water to their house. However, it passed through the property of the adjoining house, owned by Francisco de Olivares and his wife María Ruano. They allegedly blocked Mendoza's use of the water because he had dammed his *acequias* (irrigation ditches) in a manner that caused the water to flood their property. Mendoza then petitioned the *alcalde ordinario* to issue a decree to stop Olivares from impeding the water. Mendoza, who is described as a *Natural* or *Indio* in the proceedings, produced documentation showing that his wife had bought the property from Ysabel de Alvarado and that it came with water rights. These rights were based on a *repartimiento de aguas* that the *Audiencia* had previously made, but he also argued that he established rights through custom and use.⁸¹² In response to Mendoza's claim, Olivares claimed that Mendoza had modified his aqueduct and *acequia* and that the overflowing water inundated his house. When he tried to talk to Mendoza about the problem, he alleged that Mendoza attempted to verbally provoke him. Based on Mendoza's documentation, the *alcalde ordinario* ordered Olivares not to impede the water.⁸¹³ Olivares contested the decree and full proceedings into the matter were conducted.

⁸¹¹ Olivares v. Mendoza, Querétaro, 1718-1722, AGN, *tierras, legajo 400, expediente 9*; transcription in the Center for Southwest Research, Albuquerque, New Mexico, Mss 867, box 12, folder 34.

⁸¹² *Ibid.*, p. 5.

⁸¹³ *Ibid.*, p. 21.

Mendoza reiterated that he had title to his land that specified that he had water rights in conformity to the *Audiencia's repartimiento*. He also emphasized that the documentation stated that he had a *servidumbre* (servitude) to conduct the water across Olivares' land. He added that he had used the water since time immemorial and had established *uso antiguo*.⁸¹⁴ In sum, he argued that he had title, possession, and had established this according to law. Additionally, he had ancient possession that his neighbors did not contest.⁸¹⁵ Olivares replied that though Mendoza had water rights, they were neither for the modifications that Mendoza made nor for a *servidumbre* running through his property.⁸¹⁶ He added that just because Mendoza claimed that he had used the water since time immemorial, that did not mean he actually did.⁸¹⁷ *Alcalde ordinario* Alejandro Escorza y Escalante, after examining the documentation that Mendoza presented and after physically examining the two lots, issued a *sentencia* in favor of Mendoza, but included in his decision that Mendoza would be liable for any damage the water did to Olivares' house.⁸¹⁸ His decision closely conforms to the principles in law iv, title xxxi, Division III of the *Partidas*, which allows a *servidumbre* through another's property to conduct water, but also stipulates that the *acequias*, ditches, or water must not harm the property burdened with the servitude.⁸¹⁹

The decision also shows that the fundamental elements of title and possession proved determinative. Olivares had no answer to Mendoza's claims other than request for relief or an injunction to stop Mendoza from flooding his property, which the *Partidas* also allowed. Mendoza layered his arguments, as we have seen lawyers do in previous cases, claiming

⁸¹⁴ *Ibid.*, p. 21.

⁸¹⁵ *Ibid.*, p. 34.

⁸¹⁶ *Ibid.*, p. 32.

⁸¹⁷ *Ibid.*

⁸¹⁸ *Alcalde Ordinario Alejandro Escorza y Escalante, Decree in Favor of José Mendoza, Querétaro, 14 August 1722, AGN, tierras, legajo 400, expediente 9; transcription in the Center for Southwest Research, Albuquerque, New Mexico, Mss 867, box 12, folder 34, p. 37.*

⁸¹⁹ *Siete Partidas, Div. III, título xxxi, leyes i, iv.*

multiple theories of title to preserve his right to the water and the servitude. Most of these propositions centered on possession in some form, again reflecting the principles of the *Partidas*.⁸²⁰ This dispute also shows that a *servidumbre* was a usage right, but not necessarily in the form of a usufruct. Here the *servidumbre* meant that Olivares' house was burdened by Mendoza's right to draw water and that this right was indefinite. The right came with ownership to Mendoza's property and the burden of the servitude was attached to Olivares' property; it was not contractually made with Olivares or anyone else as would be needed with a usufruct.

By the end of the sixteenth century, Castilian jurists had published several important bodies of law. Gregorio López's edition of the *Siete Partidas* was published in Salamanca in 1555; it remains the standard version of the text for many scholars and replaced Alonso Díaz de Montalvo's 1491 edition.⁸²¹ Jurists in the peninsula and the Americas cited it.⁸²² In 1567 Felipe II sanctioned the *Recopilación de las leyes destos Reynos*, which reorganized and updated Díaz de Montalvo's *Ordenanzas Reales de Castilla*.⁸²³ The *Recopilación de las leyes destos Reynos (Recopilación Castilla)* has nine books, subdivided by titles and then individual laws. The first four books include laws on (1) the Church; (2) royal authority, the *Audiencias* of Valladolid and Granada; (3) the *Audiencias* of Galicia, Sevilla, and the Canaries; and (4) jurisdiction and procedure. Books five through nine focus on (5) marriage, inheritance, and contracts; (6) *caballeros*, nobles, and other persons; (7) councils and land; (8) investigators, judges, and *pesquisas*; and (9) treasury. New laws issued by the crown

⁸²⁰ Ibid., Div. III, título ii, leyes xxvii-xxix; título xxx, leyes i-xviii.

⁸²¹ *Las siete partidas del muy noble rey Don Alonso el Sabio, por el licenciado Gregorio López de Tovar*, 4 vols. (Madrid: Compañía General de Impresores y Libreros del Reino, 1844). See Chapter Three for a discussion of the contents of the *Partidas*.

⁸²² E.g., Solórzano Pereira, *Política Indiana, Libro VI, capítulo xii*, 1-2.

⁸²³ *Recopilación (Castilla); Ordenanzas Reales de Castilla*, ed. Alfonso Díaz de Montalvo, in *Los Códigos Españoles: Concordados y Anotados*, 12 vols. (Madrid: Imprenta de la Publicidad, 1847-51): 6:247-548.

were added to the *Recopilación (Castilla)*, with a final version published in 1775; in 1805 the *Novísima recopilación de leyes de España* in twelve books reformed and updated the *Recopilación (Castilla)*. Book VII, title vii of the *Recopilación (Castilla)* printed in 1581 contains several laws concerning communal lands; about half of these are from the fourteenth and fifteenth centuries, including law i from 1329 affirming that *ejidos*, *montes*, and *dehesas* belonged to the *lugares*, *villas*, and *ciudades* of the realms.⁸²⁴ All but one of these precepts date from the reign of Carlos I or earlier.

Legal historians have referred to these and other sources of law that held force in the New World as *Derecho Indiano*. While some historians have cited two main bodies of precepts, others have acknowledged three.⁸²⁵ Castilian law formed one of the three main elements and indigenous law formed a second. This second element includes customs and laws that indigenous communities had established for their own governance or to regulate their economic activity.⁸²⁶ Carlos I acknowledged the validity of these customs in a decree issued in 1555 with the conditions that they not conflict with royal law or Christian doctrine.⁸²⁷ There are also incidents of the suppression of Native custom.⁸²⁸ The recognition of custom and law existing within the jurisdiction of the crown, however, also had precedent in the Iberian Peninsula prior to 1492. As seen in Chapter Two, Jews had jurisdiction over

⁸²⁴ *Recopilación (Castilla)*, Libro VII, título vii, ley I; also see Libro VI, título vii for laws acknowledging the rights of *caciques* and *cacicazgos*.

⁸²⁵ See Antonio Dognac Rodríguez, *Manual de historia del Derecho Indiano* (Mexico: Universidad Nacional Autónoma de México, 1994), 11-17.

⁸²⁶ Miguel Ángel González de San Segundo, *Un Mestizaje Jurídico: El Derecho Indiano de los Indígenas* (Madrid: Gráficas Arias Montano, 1995), 40-2 for several examples of the crown confirming Native custom.

⁸²⁷ Incorporated into the *Recopilación (Indias)*, Libro II, título i, ley iv.

⁸²⁸ González de San Segundo, *Un Mestizaje Jurídico*, 42-46.

their own communities in cases that did not involve Christians.⁸²⁹ They had their own judges, whose decisions could ultimately be appealed to the *Audiencia*. In the New World, though the substance of the laws and governing custom differed, this followed a tradition that existed in the Peninsula prior to the expulsions of 1492. In the Americas, Native *pueblos* had a range of officials: *caciques*, governors, lieutenant governors, *alcaldes*, and *fiscals*.⁸³⁰ These varied from community to community. In 1620, the governors of the *pueblos* of New Mexico were given *varas de justicia*, known as “canes of authority,” to symbolize their right to govern their respective *repúblicas* (communities).⁸³¹ Appeals from Native judges went to the viceroy or governor of the province and then to the *Audiencia*.⁸³² As such, though they had local autonomy, that power existed within the larger sphere of the sovereignty of the monarch of Castile.

The crown also issued precepts specifically for the New World; these represent part of the third body of law that along with Castilian and indigenous law formed the three main components of *Derecho Indiano*. Much of this was influenced by Castilian law by design. This is particularly apparent in the *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias* of 1573, the majority of which dealt with settlement and land

⁸²⁹ Varona García, *La Chancillería de Valladolid*, 121; María Antonia Varona García, “Pleitos de judíos en la Real Chancillería de Valladolid. Regesta de sus cartas ejecutorias (1486-1495),” *Sefarad*, 54:1 (1994): 155-93.

⁸³⁰ Joe S. Sando, *Pueblo Nations: Eight Centuries of Pueblo Indian History* (Santa Fe, NM: Clear Light, 1992), 55.

⁸³¹ *Ibid.*, 79.

⁸³² *Recopilación (Indias)*, Libro III, título iii, ley lxiii.

tenure.⁸³³ Felipe II promulgated the *ordenanzas* on 13 July 1573 in Segovia.⁸³⁴ They applied to all future endeavors related to exploration, settlement, and pacification of Native people.⁸³⁵

Evangelization, as stated in ordinance 36, was the principal purpose for the new discoveries and settlements.⁸³⁶ Of the one hundred and forty-nine laws, thirty-one address expeditions of discovery by sea or land.⁸³⁷ Firstly, they prohibit any new expeditions without license from the crown on pain of death.⁸³⁸ Possession, that concept relevant to land of all sizes and to people of all stature, was to be taken in the name of the king.⁸³⁹ Other ordinances ordered Spaniards to take care not to harm indigenous settlements or any of the Natives.⁸⁴⁰ On pain of death they were forbidden to enslave them.⁸⁴¹ The last eleven ordinances address pacification of the Natives, focusing on bringing them under the authority of the crown. This should only be done, according to ordinance 138, after the settlement of Spaniards had been established. Another law gives officials the discretion to not exact tribute from the Natives and one asserts that tribute shall be in a moderate quantity.⁸⁴²

Felipe II dedicated one hundred and seven ordinances to settlements. According to one scholar, these reflect Old World concepts of ordered, urban planning mixed with

⁸³³ *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518. These are transcriptions of the documents in the Archivo General de Indias, *legajo 427, libro XXIX*, ff. 63-93.

⁸³⁴ *Ibid.*

⁸³⁵ *Ibid.* See also José Miguel Morales Folguera, *La construcción de la Utopía: El Proyecto de Felipe II (1556-1598) para Hispanoamérica* (Madrid: Editorial Biblioteca Nueva, 2001), for further examples of the *ordenanzas* drawing from the ancient past.

⁸³⁶ *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 497, *ordenanza 36*: “. . . que sean pobladas de indios y naturales a quien se pueda predicar el evangelio pues este es el principal fin para que mandamos hazer los nuevos descubrimientos y poblaciones.”

⁸³⁷ *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518.

⁸³⁸ *Ibid.*, *ordenanza 1*.

⁸³⁹ *Ibid.*, *ordenanza 13*.

⁸⁴⁰ E.g., *ibid.*, *ordenanzas 3, 5, 24, 29, 30, 42, 137*.

⁸⁴¹ *Ibid.*, *ordenanza 24*.

⁸⁴² *Ibid.*, *ordenanzas 146, 145*.

conditions of the New World to create a utopian society.⁸⁴³ The purpose of the ordinances was to establish separate communities of Spaniards and Natives in which the former lived in cities and the latter in villages, bound together as a greater community of Christians.⁸⁴⁴ The law the crown drew from—in this interpretation—was that which had developed since the early 1500s.⁸⁴⁵ While the ordinances reflect a concern with the proper ordering of cities, *villas*, and *lugares*, they also emphasize settlement as a means to organize spaces incorporated into the crown of Castile. This aspect of the laws draws from much older legal principles.⁸⁴⁶ The laws mention *ciudad* or *ciudades* in reference to the desired establishment of cities several times, but they use *población* (settlement), *poblar* (to settle), *poblado* (settled), *pobladores* (settlers) with much greater frequency.⁸⁴⁷ The governor of the district determined whether the settlement should be a *ciudad*, *villa*, or *lugar*; it was not always certain what form the settlements would take.⁸⁴⁸ The ordinances also emphasize that the settlements should be defensible.⁸⁴⁹ Officials are charged with making *repartimientos de tierras* of *solares* in accordance with a family's or individual's resources.⁸⁵⁰

Within this general concept, the ordinances also refer to several elements of Castilian settlements—*ejidos*, *pastos*, *dehesas*, *montes*—as seen in previous chapters.⁸⁵¹ The ordinances not only use these terms, but use them as they were used in the thirteenth through

⁸⁴³ Morales Folguera, *La construcción de la utopía*, 17.

⁸⁴⁴ *Ibid.*

⁸⁴⁵ *Ibid.*

⁸⁴⁶ These terms are always stated in the hierarchical sequences seen in the *Partidas* and other Castilian laws. See *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518, *ordenanzas* 34, 44, and 89.

⁸⁴⁷ *Población* alone occurs over seventy times while *ciudad* in reference to a new city, is mentioned about 15 times.

⁸⁴⁸ *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518, *ordenanza* 43.

⁸⁴⁹ *Ibid.*, *ordenanzas* 41, 133.

⁸⁵⁰ *Ibid.*, *ordenanzas* 47, 128.

⁸⁵¹ See Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2; *Siete Partidas*, Div. III, *título* xxviii, *ley* ix; *Recopilación (Castilla)*, libro VII, *título* vii, *ley* i.

fifteenth centuries. Ordinance 71 provides that *ejidos*, watering holes, roads, and pathways should be given to the settlements and their councils.⁸⁵² Here we see the same distinction between regular roads and an *ejido* as in the examples from cases and *fueros* from the thirteenth, fourteenth, and fifteenth centuries. Ordinance 90 adds that the *ejido* and *dehesas* should be established right after the *solares* are distributed. Felipe II admonished the settlers in ordinance 129 to ensure that the *ejido* be a sufficient size because even though the settlement might grow, the people always needed a place to go for recreation and to take their animals. He was not creating a new concept in organizing space: Places in the New World—Santiago del Cercado (Lima), Tlaxcala, Quito—had already established *ejidos*.⁸⁵³

Ordinance 130 explains the purpose of the *dehesa*: it should be next to the *ejido* where the settlement should keep draft animals, horses, and animals to be slaughtered.⁸⁵⁴ This last use is exactly how the *dehesa*, as seen in the ordinances of Baeza, was used.⁸⁵⁵ *Ordenanza* 95 states that the *dehesa boyal* and the *dehesa conçeijil* are separate from the common pastures in the *términos* of the settlement.⁸⁵⁶ Other ordinances mention the need for *montes* for grazing *ganados menor* and obtaining firewood and timber.⁸⁵⁷ Numerous ordinances refer to *pastos* in the same usage and context, as seen in the previous chapters.⁸⁵⁸ As seen in law ix, title xxviii, Division III of the *Partidas*, which itself drew from earlier

⁸⁵² *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518, *ordenanza* 71.

⁸⁵³ Morales Folguera, *La construcción de la utopía*, 104, 194, 227; see also Viceroy Martín Enríquez Almanza to the Villa of Zalaya, Grant of an *ejido*, Mexico City, 11 December 1573, AGN, Mercedes, Contenedor 6, Volumen 3, f. 3r; see also Luis Wistano Orozco, *Los Ejidos de los Pueblos* (Mexico City: Ediciones “El Caballito,” 1975).

⁸⁵⁴ *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518, *ordenanza* 129.

⁸⁵⁵ *Ibid.*, *ordenanza* 130; *Ordenanzas de Baeza, Título V, capítulo i*, in José Rodríguez Molina, *El reino de Jaén en la baja edad media: aspectos demográficos y económicos* (Granada: Universidad de Granada, 1978), 297.

⁸⁵⁶ Also, see *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518, *ordenanza* 131.

⁸⁵⁷ *Ibid.*, *ordenanza* 35.

⁸⁵⁸ See *ibid.*, *ordenanzas* 35, 47, 85, 95, 104, 107, 108, 111.

sources, these concepts were part of the Castilian tradition for centuries before Felipe II drew upon them.⁸⁵⁹ They were not concepts of law transferred laterally from Castile in the sixteenth century, but elements whose roots dated back several hundred years. In the seventeenth century, the crown incorporated the *Ordenanzas* of 1573 into Book IV of the *Recopilación (Indias)*, of which more will be said below.

Juan de Solórzano Pereira's writings on royal law and policy also indicate that the crown's use of authority was rooted in the distant past.⁸⁶⁰ Solórzano received his doctorate in law from the University of Salamanca in 1608.⁸⁶¹ The following year he began serving as an *oidor* (justice) in the *Audiencia* of Lima, a post he held until 1626.⁸⁶² After returning to the Peninsula, he served on the Councils of Castile and Indies.⁸⁶³ In two works written in Latin, he addresses the acquisition and administration of the Spanish possessions in the New World. In *Política Indiana*, written in Castilian and published in 1648, he expanded on his earlier Latin works. Throughout the six books he draws on numerous authorities including ancient writers, scripture, royal provisions, the *Partidas*, and the *Recopilación (Castilla)*.

In *Libro I*, he discusses the justification of the claims to title that the crown had to its New World possessions. Solórzano gives numerous theories. One was to bring the Catholic Faith to the Natives of the Americas. Another emphasizes that “*castellanos* . . . founded, occupied and conquered lands in the New World” and that they took possession in the name of the king.⁸⁶⁴ He proceeds to the Alexandrine concessions and includes the text of *Inter*

⁸⁵⁹ *Siete Partidas*, Div. III, título xxviii, ley ix.

⁸⁶⁰ See Tomás y Valiente, *Política Indiana*, 1:xxxiii, who notes that Solórzano's theoretical knowledge and thought were rooted in the jurisprudence of previous centuries.

⁸⁶¹ Tomás y Valiente's introduction in *Política Indiana*, 1:xxv; see also Muldoon, *The Americas in the Spanish World Order*.

⁸⁶² Tomás y Valiente, *Política Indiana*, 1:xxvi.

⁸⁶³ *Ibid.*

⁸⁶⁴ Solórzano Pereira, *Política Indiana*, *Libro I*, capítulo ix, 15.

Caetera in the final two sections of *Libro I, capítulo 10*.⁸⁶⁵ In the following two chapters, he analyzes and defends the concession, giving numerous reasons, but returning to the importance and duty of preaching the Gospel in the New World. He also draws from numerous historical examples of papal concessions, such as that on which Henry II of England based his claims to Ireland.⁸⁶⁶ While Solórzano presents a comprehensive defense of the crown's title, the two strongest legal claims are those that rely on title and possession, in which the Alexandrine concessions affirmed a process already under way, but gave formal title to the crown.

In Books Two through Four, he addressed efforts in protecting the Natives, the *encomienda*, the Patronato Real, and the crown's secular authority. In the sixth and last book, Solórzano discusses the royal treasury. He asserts the crown's interest in the "lands, fields, *montes*, *pastos*, rivers, and public waters" of the New World.⁸⁶⁷ He writes that all of these were incorporated into the *Real Corona* and that this is called *realengo* (royal domain).⁸⁶⁸ They could be used as commons without having been granted, but he also states that the crown had the authority to distribute those lands, citing several laws from the *Partidas* and the *Recopilación (Castilla)*.⁸⁶⁹ The laws of the *Partidas* from divisions I and II state that the king should give land to his subjects, so that they can improve it and benefit from it, and that charters of privilege should contain these concessions.⁸⁷⁰ The laws from the *Recopilación (Castilla)* emphasize the crown's *praeminens* authority over land in various circumstances, and that the crown having acquired this land through conquest, should be able

⁸⁶⁵ Ibid., *libro I, capítulo x*, 23-4.

⁸⁶⁶ Ibid.

⁸⁶⁷ Ibid., *libro VI, capítulo xii*, 1.

⁸⁶⁸ Ibid., *libro VI, capítulo xii*, 1.

⁸⁶⁹ Ibid., *libro VI, capítulo xii*, 2.

⁸⁷⁰ Solórzano cites Div. II, *título xi, ley I*; Div. III, *título xx, ley vii*.

to distribute it and administer it.⁸⁷¹ The laws of the *Recopilación (Castilla)* that Solórzano cites, containing principles from decrees of various monarchs, all date from the fourteenth and fifteenth centuries. He frequently reaches into the distant past to explain royal policy in the Americas not laterally to any contemporary thought.

Solórzano asserts that the traditional Castilian understanding of the crown's authority applies to the Americas, and that although the crown held title to the "lands, fields, *montes*, *pastos*, rivers, and public waters," concessions were made to cities, towns, places, communities, and individuals. Solórzano, with the royal treasury in mind, emphasizes the crown's interest in these lands and defends its actions in selling, auctioning, and confirming title through arbitrary settlements (*composición*). His understanding of the crown's authority, however, reflects a concept several centuries old. The idea that the monarch had control of the royal domain (separate from his personal property), and that that control passed to each succeeding sovereign, dates to the laws of the Visigoths. The *Fuero Juzgo*, the thirteenth-century Castilian version of the *Lex Visigothorum*, reads as follows:

. . . E de todas las cosas que ganaron los principes en el regno desdel tiempo que regnó el rey Don Sintisiand fasta en esaquí, ó que ganaren los principes daqui adelante quantas cosas fincaron por ordenar, porque las ganaron en el regno, deben pertenecer al regno. Asi quel principe que viniere en el regno faga dellas lo que quisiere.⁸⁷²

. . . And of all the things that the princes in the kingdom acquired since the time of the reign of King Suinthila until now, or that the princes should acquire from here forward, however many things they should undertake to arrange, because they conquer them for the kingdom, they must belong to the kingdom. Thus the prince that shall succeed in the kingdom should do with them as he desires.

⁸⁷¹ He cites the *Recopilación (Castilla)*, libro I, título iii, ley xiv; libro I, título vi, ley iii.

⁸⁷² *Fuero Juzgo*, Libro II, título i, ley v, in *Fuero juzgo en latin y castellano*, ed. Real Academia Española, 1815 (facsimile reprint, Madrid: Ibarra, 1971). Compare with the original Latin in *Lex Visigothorum*, Book II, title i, law v. ". . . De rebus autem omnibus a tempore Svintilani regis hucusque a principibus acquisitis aut deinceps, si provenerit, adquirendis quecumque forsitan princeps inordinata sive reliquid seu reliquerit, quoniam pro regni apice probantur acquisita fuisse, ad successorem tantundem regni decernimus pertinere; ita habita potestate ut quidquid ex his helegerit facere, liberum habeat velle."

The section of law iii, title vi, *libro* I, of the *Recopilación (Castilla)* that Solórzano quotes in *Política Indiana*, reiterates that the crown has the right to administer the lands, i.e., the Americas.⁸⁷³ It derived this right through the Alexandrine concessions and other theories of title that Solórzano discusses in *Libro I*.

The ability to grant land and adjudicate those grants was well established by the eleventh century, as seen in the previous chapters. This tradition coalesced further in the twelfth through fifteenth centuries. The fundamental principles enabled the crown to extend its jurisdiction; they had a foundational purpose, since criminal law and other fields of law could not be applied until territorial jurisdiction had been established. Solórzano's concept of royal authority rests within this centuries-old understanding, which he himself elaborates by citing and quoting from thirteenth-, fourteenth-, and fifteenth-century precepts. He adds to this with examples drawn from Roman history, and Scripture, and provides several anecdotes, but all this comes after the exposition of Castilian law. In emphasizing the crown's interest in a book focused on the royal treasury, however, he does not argue that lands in the Americas should not have been conceded, but that some concessions did not follow *Reales Cédulas* that attempted to regulate them. *Composición*, the process of establishing title to land in which one had possession, but not lawful title, allowed for people to also officially clear any adverse claims to their lands (quiet title).⁸⁷⁴ According to Solórzano, the monies associated with these liberal proceedings still cost the honest settler less than the purchase price of the land.

⁸⁷³ *Recopilación (Castilla)*, *libro* I, *título* vi, *ley* iii, quoting a phrase from the latter: “que este es Ganado por los reyes por respeto de la conquista, que hicieron de la tierra” (This is acquired by the kings by way of conquest that they do of the land [as they wish]).

⁸⁷⁴ Solórzano Pereira, *Política Indiana*, *libro* VI, *capítulo* xii, 8-12.

By the time that Solórzano had published *Política Indiana*, the need to compile all of the laws and provisions issued by the crown for officials in the New World had manifested itself. The process began in the sixteenth century under Felipe II and took over a century to complete.⁸⁷⁵ By 1636, Antonio Rodríguez de León Pinelo, drawing from decrees chronologically listed in the registers of the Council of the Indies, had completed an early version of a *Recopilación* for the West Indies.⁸⁷⁶ Juan de Solórzano Pereira made additions and revised the organization of the collection. Further additions were made prior to publication.⁸⁷⁷ In 1681, the work was published as the *Recopilación de leyes de los reynos de las Indias*. It had nine books and was organized along the familiar *libro-título-ley* format. Book One, like the *Partidas* and the *Recopilación (Castilla)*, emphasized the importance of the Catholic Faith. Through the *Patronato Real*, the crown, among other things, received the authority from the papacy to name bishops and other ecclesiastical officials. The first ten laws of Book One mirror the organization of the *Recopilación (Castilla)*. Books Two and Three contain laws that express the authority of royal law, jurisdiction, the *audiencias* and their ministers. Book Four deals with settlements and includes the *Ordenanzas* of 1573 and several important laws based on royal dispatches and provisions. Book Five addresses the administration of local government and Book Six deals exclusively with the Natives. It includes provisions from the codicil of the will of Isabel I and reiterates the mission of protecting and evangelizing the Native populations. Book Seven covers investigators,

⁸⁷⁵ See Juan Manzano Manzano, *Historia de las Recopilaciones de las Indias*, 2 vols. (Madrid: Ediciones Cultura Hispánica, 1950), 1:1-117 who traces the reforming efforts of Spanish jurists to compile a collection of laws for use in the New World.

⁸⁷⁶ See Manzano Manzano, *estudio preliminar* in *Recopilación de Leyes de los Reynos de las Indias*, 1:32-34.

⁸⁷⁷ *Ibid.*, 1:35-67.

pesquisas, and commissioned judges; Book Eight addresses royal accounts; and Book Nine treats the *Audiencia* and *Casa de Contratación* in Sevilla.

The crown decreed the authority of the *Recopilación (Indias)* in the preface to Book Two. Carlos II (1665-1700), borrowing a phrase that was commonly used in *cartas ejecutorias* issued by the *Audiencia*, declared that the laws of the *Recopilación (Indias)* “shall be observed, fulfilled, and executed.”⁸⁷⁸ He continued by stating that the *Recopilación (Indias)* superseded all previous law that conflicted with it and that the laws of Castile shall be observed where the *Recopilación (Indias)* did not directly speak on the issue.⁸⁷⁹ Altogether, the *Recopilación (Indias)* was conceived of along the lines of the *Partidas* and *Recopilación (Castilla)*, with the importance of the Church and royal authority expressed in Books One and Two. Rather than a new tradition of law, it represented the transmission in many ways of the old, with understandings of the crown’s mission couched in theoretical concepts of authority several centuries old and developed within the larger context of the Natural Law.⁸⁸⁰ The transmission of this tradition, as seen in this chapter, had been occurring since the final years of the fifteenth century. One author writing as late as 1787 stated that law issued in the New World was Castilian law adapted to local conditions.⁸⁸¹ Due to distance and other factors, officials in the Americas also exercised discretion in ways that

⁸⁷⁸ *Recopilación (Indias)*, Libro II, título i, ley i, “HAVIENDO considerado quanto importa, que las leyes dadas para el buen gobierno de nuestras Indias, Islas y Tierra firme de el Mar Océano, Norte y Sur, que en diferentes Cédulas, Provisiones, Instrucciones y Cartas se han despachado, se juntassen y reduxessen á este cuerpo y forma de derecho, y que sean guardadas, cumplidas y executadas.” See Molina v. Vera, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25, f. 10v, for an example of this last phrase appearing in chancellery documents from the fifteenth century.

⁸⁷⁹ *Recopilación (Indias)*, Libro II, título i, leyes i-ii state that the laws of Castile should apply where the *Recopilación* is silent on a particular issue.

⁸⁸⁰ See Anthony Pagden, “The Search for Order: The ‘School of Salamanca’ and the *ius naturae*,” in Anthony Pagden, *The Uncertainties of Empire: Essays in Iberian and Ibero-American Intellectual History* (Brookfield, Vt: Variorum, Ashgate Publishing Company, 1994), 155-66, for a concise discussion of intellectual thought in Spanish universities in the sixteenth and seventeenth centuries.

⁸⁸¹ Bentura Beleña, *Recopilación sumaria de todos los autos acordados*, xi.

their counterparts in the Peninsula could not. Use and custom, defined in the *Siete Partidas*, also played a role in creating different experiences for people living in the New World.⁸⁸²

These legal writings found in the *Recopilación (Indias)* and other sources represent an enormous amount of *lex scripta*. The application of this law is another question entirely that must be addressed to determine how inhabitants and officials of the Americas understood them. They must also be understood within the larger context of the juridical actions taken by officials, such as the issuance of a conveyance, a decision, or application of custom, all of which involved discretion and the consideration of facts pertinent to individual cases. To evaluate these factors and how and in what way laws from the *Recopilación (Indias)* were applied after its publication, a study of concessions and adjudications will be necessary. Yet due to the enormous amount of documentation, a full analysis of all of the Spanish possessions in the Americas will not be possible. However, as officials were preparing the *Recopilación (Indias)* in 1680 in Madrid, the Pueblo Indians of the kingdom of Nuevo México rose up and drove the Spanish settlers and their allies from Santa Fe to Isleta Pueblo.⁸⁸³ From there, Governor Antonio de Otermín made the decision to retreat to El Paso del Norte, which would become the most southern *villa* of the province. Despite attempts to return to regain the greater part of New Mexico in the 1680s, the province was not retaken until Governor Diego de Vargas led the resettlement in 1692-93.⁸⁸⁴ As the entire archive of Spanish documents from Santa Fe prior to 1680 has been lost, the resettlement beginning in 1693 allows for an examination of the province in which any legal tradition could have been imposed, including one wholly distinct from the Castilian past. The following section of this

⁸⁸² *Siete Partidas*, Div. I, título ii, leyes i-ix.

⁸⁸³ Kessell, *Spain in the Southwest*, 121-23.

⁸⁸⁴ *Ibid.*, 160-72.

study will examine what laws were applied in the province during that resettlement and what legal tradition they reflect.

II

The insurrection of 1680 by the Pueblo Indians, which drove the Spaniards to El Paso for over a decade, provided a distinct break in the history of the province. The loss of the provincial archive and documents related to land tenure due to the revolt, allows an opportunity to evaluate the legal tradition imposed after the resettlement that began in 1693.⁸⁸⁵ This tradition relied on the imposition of royal authority at a very rudimentary level. The only substantial Spanish settlement north of El Paso del Norte was the *Villa* of Santa Fe, which Governor Diego de Vargas (1691-97, 1703-04) had to besiege in the bitter winter of 1693.⁸⁸⁶ Though he had received acts of obedience from various Pueblo Indian villages and had even taken possession of Santa Fe the previous year, he returned with his troops to El Paso in December.⁸⁸⁷ The following year, he led the settlers, who had massed at El Paso, north toward Santa Fe, which had now been occupied by unfriendly Pueblos and their

⁸⁸⁵ For the revolt, see John L. Kessell, *Pueblos, Spaniards, and the Kingdom of New Mexico* (Norman: University of Oklahoma Press, 2008), 119–75; David Roberts, *The Pueblo Revolt: The Secret Rebellion that Drove the Spaniards out of the Southwest* (New York : Simon & Schuster, 2004); Andrew L. Knaut, *The Pueblo Revolt of 1680: Conquest and Resistance in Seventeenth-Century New Mexico* (Norman: University of Oklahoma Press, 1995).

⁸⁸⁶ Kessell, *Spain in the Southwest*, 161-3; for the Reconquest of New Mexico, see also Kessell, Hendricks, and Dodge, *To The Royal Crown Restored*, 3–21; for the career of Diego de Vargas, see John L. Kessell and Rick Hendricks, eds., *By Force of Arms: The Journals of don Diego de Vargas, New Mexico, 1691-1693* (Albuquerque: University of New Mexico Press, 1992); John L. Kessell, Rick Hendricks, and Meredith Dodge, eds., *Blood on the Boulders: The Journals of don Diego de Vargas, New Mexico, 1694-1697* (Albuquerque: University of New Mexico Press, 1998); John L. Kessell, Rick Hendricks, Meredith Dodge, and Larry D. Miller, eds., *A Settling of Accounts: The Journals of don Diego de Vargas, New Mexico, 1700-1704* (Albuquerque: University of New Mexico Press, 2002); John L. Kessell, Rick Hendricks, Meredith Dodge, and Larry D. Miller, eds., *That Disturbances Cease: The Journals of don Diego de Vargas, New Mexico, 1697-1700* (Albuquerque, University of New Mexico Press, 2000).

⁸⁸⁷ Kessell, *Spain in the Southwest*, 161-3.

allies.⁸⁸⁸ After recapturing the *villa*, Governor Vargas initiated the process of resettlement of the province.⁸⁸⁹

In the following twelve decades until the province fell under the authority of the Republic of México, Vargas and his successors distributed land to Spaniards, Natives, and those of mixed heritage (*castas*). In each of these decades, governors of the kingdom of Nuevo México issued numerous royal concessions to settlers. These included grants to individuals, groups of settlers, and Indigenous settlements.⁸⁹⁰ Governors made concessions to form settlements for defensive purposes, while inhabitants petitioned for arable land, grazing land, *ejidos*, mines, or lands for multiple purposes.⁸⁹¹ Governors Gaspar Domingo

⁸⁸⁸ For the founding of Santa Fe, see James Ivey, “The Viceroy’s Order Founding the Villa de Santa Fe in the Seventeenth Century, 1608-1610,” in *All Trails Lead to Santa Fe: An Anthology Commemorating the 400th Anniversary of the Founding of Santa Fe New Mexico in 1610* (Santa Fe: Sunstone Press, 2010), 97-108; José Antonio Esquibel, “Thirty-Eight Adobe Houses, the Villa de Santa Fe in the Seventeenth Century, 1608-1610,” *ibid.*, 109-28; Gilbert R. Cruz, *Let There Be Towns: Spanish Municipal Origins in the American Southwest, 1610-1810* (College Station, TX: Texas A&M University Press, 1988), 24-5.

⁸⁸⁹ For a survey of Spanish settlements in New Mexico, see Oakah L. Jones, Jr., *Los Paisanos: Spanish Settlers on the Northern Frontier of New Spain* (Norman: University of Oklahoma Press, 1979), 109-35; see generally Cruz, *Let There Be Towns*, for municipalities established in the provinces of northern New Spain that were incorporated into the southwest of the United States.

⁸⁹⁰ E.g., Governor Gaspar Domingo de Mendoza to Salvador González (Cañada de Ancha Grant), Santa Fe, 26 August 1742, Report 82, Surveyor General of the United States (hereafter SG), Series I, Spanish Archives of New Mexico, New Mexico State Records Center and Archives, Santa Fe, New Mexico; for a conveyance to a single grantee, see Governor Gaspar Domingo de Mendoza to Diego Torres et al. (Nuestra Señora de Belén Grant), Santa Fe, 15 November 1740, Report 13, SG, Series I, Spanish Archives of New Mexico, New Mexico State Records Center and Archives, Santa Fe, New Mexico (hereafter Ser. I, SANM, NMSRCA), for a concession to a group of settlers; see Governor Joaquín Codallos y Rabal, Acts Reestablishing Sandía Pueblo (Sandía Pueblo Grant), Santa Fe, 5 April 1748, no. 848, Ser. I, SANM, NMSRCA for a grant establishing an Indian Village.

⁸⁹¹ E.g., see Governor Tomás Vélez Cachupín to Miguel and Santiago Montoya (Bosque Grande Grant), Santa Fe, 23 October 1767, Report 100, SG, Ser. I, SANM, NMSRCA for a *sitio de ganado* (grazing site for raising stock); for a petition in which the lack of *ejidos* and the benefits of communal space are specifically mentioned, see Antonio de Armenta et al., Petition to Governor Juan Bautista de Anza, in *Testimonio* of the San Isidro de los Dolores Grant, Santa Fe, 4 May 1786, Report 24, SG, Ser. I, SANM, NMSRCA; for a boundary dispute, see Governor Tomás Vélez Cachupín to Santa Clara Pueblo (Cañada de Santa Clara Grant), Santa Fe, 19 July 1763, Report 138, SG, Ser. I, SANM, NMSRCA (discussed below). Numerous studies now exist for individual concessions as well as those for specific regions of New Mexico. Due to the complex history of specific grants and the controversial adjudication of many of these conveyances in the federal courts of the United States following the Mexico-United States War, 1846-1848, these studies tend to span lengthy periods of time under multiple sovereigns. For influential approaches to these cases, see Ebright, *Land Grants and Lawsuits in Northern New Mexico*; G. Emlen Hall, *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800-1933* (Albuquerque: University of New Mexico Press, 1984); Malcolm Ebright, ed., *Spanish and Mexican Land Grants and the Law* (Manhattan, KS: Sunflower University Press,

de Mendoza (1739-43) and Tomás Vélez Cachupín (1749-54, 1762-67) were involved with well over a dozen grants each.⁸⁹² Most governors were active in issuing conveyances as well as adjudicating them. All of the *mercedes reales* issued by Governor Vargas and his successors were made after the publication of the *Recopilación (Indias)*.⁸⁹³ This case study will evaluate the land tenure imposed after the insurrection of 1680 and to what degree it followed royal law. While scholars have recognized influences of Castilian law in Nuevo México's legal history, this chapter identifies substantial examples, particularly in the distribution and adjudication of land.⁸⁹⁴

This second part of Chapter Six will also examine the strategic placement of the concessions and whether they were consistent with the stated policy of the crown. Scholars have noted that Vélez Cachupín made concessions based on strategic concerns, as the province defended itself against the lightning attacks of nomadic raiders.⁸⁹⁵ At various times, Apache, Ute, and Comanche raiders threatened the security of the kingdom, leaving it in an

1989); Engstrand, "Land Grant Problems in the Southwest," 317-36. Though the analysis of individual concessions has been revised or needs revision, Bowden, "Private Land Claims in the Southwest," 1:356-85, provides a comprehensive list of land grants issued by Spain and Mexico. I squarely address the rejection of the Ojo del Espíritu Santo Grant of 1766 by the Court of Private Land Claims of the United States and the United States Supreme Court in Dory-Garduño, "The Adjudication of the Ojo del Espíritu Santo Grant of 1766 and the *Recopilación*," 167-208.

⁸⁹² Governor Vélez Cachupín served from 1749 to 1754 and 1762 to 1767. For a discussion of his career, see Malcolm Ebright, Teresa Escudero, and Rick Hendricks, "Tomás Vélez Cachupín's Last Will and Testament, His Career in New Mexico, and His Sword with a Golden Hilt," *New Mexico Historical Review* 78 (2003): 285-321.

⁸⁹³ For the Reconquest of New Mexico, see Kessell et al., *To The Royal Crown Restored*, 3-21; *Recopilación (Indias)*.

⁸⁹⁴ José Ramón Remacha, "Traces of the Spanish Legal System in New Mexico," *New Mexico Historical Review* 69 (1994): 281-94; Charles R. Cutter, *The "Protector de Indios" in Colonial New Mexico, 1659-1821* (Albuquerque: University of New Mexico Press, 1986); Malcolm Ebright, "The San Joaquín Grant: Who Owned the Common Lands? A Historical Puzzle," *New Mexico Historical Review* 57 (1982): 5-25, particularly 5; for connections to Castilian law in criminal and civil cases concerning women, see Rosalind Z. Rock, "'Pido y Suplico': Women and the Law in Spanish New Mexico," *New Mexico Historical Review* 65 (1990): 145-59, who frequently cites volumes III-VI, *Las Siete Partidas*, from *Los Códigos Españoles: Concordados y Anotados* (Madrid: Antonio de San Martín, 1872).

For a more general overview of the legal history of the northern provinces of Nueva España, see Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995); Ebright, *Land Grants and Lawsuits in Northern New Mexico*, 11-21.

⁸⁹⁵ Malcolm Ebright, "Breaking New Ground: A Reappraisal of Governors Vélez Cachupín and Mendinueta and Their Land Grant Policies," *Colonial Latin American Historical Review* 5 (1996): 195-233.

embattled state.⁸⁹⁶ In the 1750s-1770s, Governors Vélez Cachupín and Juan Bautista de Anza (1778-89) were able to keep the province from succumbing to disaster.⁸⁹⁷ The peace treaty Governor Anza established between the Spanish and Comanche in 1786 has been credited for the economic resurgence of Nuevo México in the last decades of the Spanish period.⁸⁹⁸ These concerns along with those for the encroachment of other European principalities emphasized the importance of territorial security needed to assert royal authority.⁸⁹⁹

Within the province, governors adjudicated numerous land disputes. These ranged from boundary disputes to questions of title to water usage. All three of these types of issues factored into a dispute that Governor Vélez Cachupín settled by conveying additional land to the Pueblo of Santa Clara for protective reasons in 1763.⁹⁰⁰ In support of his decision, he cited the *Recopilación (Indias)*.⁹⁰¹ Governors Anza and Fernando de la Concha (1789-94) confirmed his decision. In a boundary dispute involving the Pueblo of San Ildefonso, Governor Anza, similarly, settled the case based on provisions of the *Recopilación (Indias)*.⁹⁰² Cases such as these, as well as the various conveyances issued by governors of

⁸⁹⁶ For a survey of the widespread problem of nomadic raiders across New Spain's northern frontier in the eighteenth century, see David J. Weber, *The Spanish Frontier in North America* (New Haven: Yale University Press, 1992), 204-35; Elizabeth A. H. John, *Storms Brewed in Other Men's Worlds: The Confrontation of Indians, Spanish, and French in the Southwest, 1540-1795*, 2nd edition (Norman: University of Oklahoma Press, 1996), 226-57, 304-35, 465-86.

⁸⁹⁷ For Governor Anza, see Kessell, *Spain in the Southwest*, 293-95; Alfred Barnaby Thomas, *Forgotten Frontiers: A Study of the Spanish Indian Policy of Don Juan Bautista de Anza, Governor of New Mexico, 1777-1787* (Norman: University of Oklahoma Press, 1932; Second Printing, 1969); for Governor Vélez Cachupín, see Ebright, "Breaking New Ground," 195-205.

⁸⁹⁸ For the treaty, see Kessell, *Spain in the Southwest*, 301-05; for the economy in the last decades of the eighteenth century, see generally Ross Frank, *From Settler to Citizen: New Mexican Economic Development and the Creation of the Vecino Society, 1750-1820* (Berkeley: University of California Press, 2000).

⁸⁹⁹ Kessell, *Spain in the Southwest*, 293-305.

⁹⁰⁰ Governor Tomás Vélez Cachupín to Santa Clara Pueblo (Cañada de Santa Clara Grant), Santa Fe, 19 July 1763, Report 138, SG, Ser. I, SANM, NMSRCA.

⁹⁰¹ *Ibid.*

⁹⁰² See Governor Juan Bautista de Anza, *Sentencia*, Santa Fe, 10 June 1786, no. 1354, Ser. I, SANM, NMSRCA, also noting that he had a copy of the *Recopilación (Indias)* before him.

Nuevo México, show that the *Recopilación (Indias)* was the authority that governors relied on, as the crown intended. Still, other considerations—custom, discretion, numerous instructions, and important decrees, such as that from 1754—also affected land tenure.⁹⁰³ While the Spaniards could have imposed a distinct legal tradition from that which they had established prior to the insurrection of 1680, they established one within the lengthy legal tradition of Castile: in regards to land, this emphasized principles of title and possession, the protection of third parties that could be affected by grants, and the generous distribution of land from the royal domain. This contributed to the ability of inhabitants to ultimately secure the province, which allowed the enforcement of other parts of the law reliant on territorial jurisdiction.

Governor Vargas issued several conveyances to resettle the province in the 1690s; the process continued throughout the eighteenth and early nineteenth centuries. As such, the Spanish archives contain an enormous amount of documentation concerning *mercedes reales*, conveyances of land, boundary disputes, and estate matters. Most legal transactions, proceedings, or disputes in the Spanish period relate to land in some way. Two *villas*, towns that ranked above places (*lugares*), but below *ciudades*, were established within the first two decades of the resettlement. In 1695, Governor Vargas established the Villa Nueva de Santa Cruz de la Cañada north of Santa Fe, placing recently arrived settlers from central Mexico north of Santa Fe and south of San Juan (Ohkay Owingeh) Pueblo.⁹⁰⁴ Governor Francisco Cuervo y Valdés (1705-07 *ad interim*) established the *villa* of Albuquerque in 1706 in an

⁹⁰³ Fernando VI, *Real Cédula*, San Lorenzo El Real, 15 October 1754, AGN, *Reales cédulas originales*, vol. 74, expediente 80.

⁹⁰⁴ Governor Diego de Vargas Zapata Luján Ponce de León to Joseph Mascarenas et al. (Villa Nueva de Santa Cruz de la Cañada Grant), Santa Fe, 1 July 1695, Case 194, Court of the Private Land Claims of the United States (hereafter PLC), Ser. I, SANM, NMSRCA.

area that already had Spanish and Indigenous settlements to its north and south.⁹⁰⁵ The site of Atrisco, on the western side of the Río del Norte (Río Grande), had families who traced the origins of their settlement to 1692.⁹⁰⁶ Governor Cuervo y Valdés stated that he established the *villa* of Albuquerque in accordance with Book IV, title vii of the *Recopilación*.⁹⁰⁷ This was done without approval from the viceroy, which he belatedly obtained, but the *villa*, like the settlements surrounding it, grew from modest origins.⁹⁰⁸

Governors also issued concessions to groups of settlers as well as to individuals in response to various requests. In November 1740, Captain Diego Torres and Antonio de Salazar petitioned Governor Gaspar Domingo de Mendoza for lands from the *realengo* (royal domain) in a place they referred to as the “Puesto del Río Abajo.”⁹⁰⁹ Captain Torres represented several families of settlers, who claimed that their families were growing and lacked sufficient land. They wanted a *merced real*, so that they could settle, farm, and provide *pastos* for their small and large livestock on the identified vacant lands.⁹¹⁰ They intended to make the settlement “according to the royal ordinances.”⁹¹¹ Along with the

⁹⁰⁵ Richard E. Greenleaf, “The Founding of Albuquerque, 1706: An Historical Legal Problem,” *New Mexico Historical Review* 39 (1964): 1-15, particularly 9 and 12 for references to title and possession; L. B. Bloom, “Albuquerque and Galisteo, 1706,” *New Mexico Historical Review* 10 (1935): 48-50; for criticism of the compliance of the founding with the *Recopilación (Indias)*, see Marc Simmons, “Governor Cuervo and the Beginnings of Albuquerque: Another Look,” *New Mexico Historical Review* 55 (1980): 188-207.

⁹⁰⁶ Joseph P. Sánchez, *The Atrisco Land Grant in Albuquerque History, 1692-1968* (Norman: University of Oklahoma Press, 2008), 11-23.

⁹⁰⁷ See Simmons, “Governor Cuervo and the Beginnings of Albuquerque: Another Look,” 201-03, for evidence that Governor Cuervo y Valdez exaggerated the number of settlers who participated in the founding.

⁹⁰⁸ Ibid. See also Brian Luna Lucero, “Old Towns Challenged by the Boom Town: The Villages of the Middle Rio Grande Valley and the Albuquerque Tricentennial,” *New Mexico Historical Review* 82 (2007): 37-69, particularly 37-46.

⁹⁰⁹ Captain Diego de Torres et al., Petition to Governor Gaspar Domingo de Mendoza in *Testimonio* of the Nuestra Señora de Belén Grant, Santa Fe, 15 November 1740, Report 13, SG, Ser. I, SANM, NMSRCA. For a transcription of this grant, see Appendix C, item III.

⁹¹⁰ Ibid.

⁹¹¹ Ibid.

boundary descriptions of the identified lands, Captain Torres listed the thirty-five women and men who would establish the settlement.⁹¹²

On 15 November 1740, Governor Gaspar Domingo de Mendoza executed the grant; he ordered the *alcalde mayor* of Albuquerque, Captain Nicolás Durán y Chávez, to place the settlers in possession with care not to harm any third party with a better right.⁹¹³ He also ordered that nearby settlers should come forward with their documents (*instrumentos y papeles*), so that the *repartimiento* could more accurately be made and future law suits avoided. Here, Governor Domingo de Mendoza presented the rationale behind the ancient principle frequently stated in conveyances that the *merced* not harm a third party. A grant to lands already rightfully possessed would do damage and force that third party to file suit. This would be an injustice to that person. It could also nullify a concession. When Governor Diego de Vargas made a visitation to the Nueva Villa de Santa Cruz in 1704 in his second term, he cited this principle in declaring void a grant that Governor Pedro Rodríguez Cubero (1697-1703) had made for lands Vargas originally granted in 1695.⁹¹⁴

On 9 December 1740, *Alcalde mayor* Durán y Cháves, at the site which he referred to as Nuestra Señora de Belén, put Captain Torres in royal possession of the land, as

⁹¹² Ibid.

⁹¹³ Governor Gaspar Domingo de Mendoza to Diego de Torres et al., in *Testimonio* of the Nuestra Señora de Belén Grant, Santa Fe, 15 November 1740, Report 13, SG, Ser. I, SANM, NMSRCA.

⁹¹⁴ Governor Diego de Vargas Zapata Luján Ponce de León to Joseph Mascarenas et al. (Villa Nueva de Santa Cruz de la Cañada Grant), Santa Fe, 1 July 1695, Case 194, PLC, Ser. I, SANM, NMSRCA. The grant mentioned here had been given to María de Barusa, who petitioned Vargas to confirm her grant, as she was now a widow and her husband Joseph de Xaramillo had been wounded in the reconquest. The governor declared the grant void because it had been given in prejudice to a third party. María de Barusa was later included in the reorganized settlement of Nueva Villa de Santa Cruz; for Barusa's petition, see María de Barusa, Petition to Governor Diego de Vargas for Confirmation of a *Merced*, Villa Nueva de Santa Cruz, 13 February 1704, in Villa Nueva de Santa Cruz de la Cañada Grant, Santa Fe, 1 July 1695, Case 194, PLC, Ser. I, SANM, NMSRCA; for Vargas' reply, see Governor Diego de Vargas Zapata Luján Ponce de León, Decree, Villa Nueva de Santa Cruz, 13 February 1704, in Villa Nueva de Santa Cruz de la Cañada Grant, Santa Fe, 1 July 1695, Case 194, PLC, Ser. I, SANM, NMSRCA; for Vargas' rivalry with Governor Rodríguez Cubero, see Rick Hendricks, "Pedro Rodríguez Cubero: New Mexico's Reluctant Governor, 1697-1703," *New Mexico Historical Review* 68 (1993): 13-39.

representative of the named individuals in the petition.⁹¹⁵ Durán y Chávez noted that he called forth anyone who might object to the grant, and his assisting witnesses affirmed that there were no objections. He then led Captain Torres across the land in the now familiar Act of Possession: they pulled up grass, threw rocks, and made declarations that they had received possession. Durán y Chávez recorded that the boundaries were marked and that the settlers, along with the land received, should have “*pastos, aguas, abrevaderos, [y] montes*” (see fig. 6.3).⁹¹⁶ He added that the grant was given for the settlers, their heirs, children, and successors, and that this with royal possession would be sufficient title.⁹¹⁷

nombre de su Mag.^a quita y pacificam.^{te} con los mismos lindos
 q.^e expresa su peti.^o; en los cuales mandó se pudiesen por pe-
 tuas mchonerar, dándosele su^a tasa libre y generalm.^{te} con
 pasto, agua, abrevadero, monte, uson y costumbres p.^a la gose
 p.^a si, sus hijos, herederos y sucesores sin perjuicio ninguno.
 Esta Real posesion, le sea de bastante título, y p.^a ella gose
 gose como shá. es; y p.^a p.^a conde lo puse p.^a dilig.^a siendo testigo
 instrumental, Bernabe Baza y Baltasar Baza. u. l.

Figure 6.3. Alcalde mayor Nicolás Durán y Chávez, Act of Possession given to Diego de Torres, Puesto de Nuestra Señora de Belén, 9 December 1740, in *Testimonio* of the Nuestra Señora de Belén Grant, Report 13, SG, Ser. I, SANM, NMSRCA.

⁹¹⁵ Alcalde mayor Nicolás Durán y Chávez, Act of Possession given to Diego de Torres, Puesto de Nuestra Señora de Belén, 9 December 1740, in *Testimonio* of the Nuestra Señora de Belén Grant, Report 13, SG, Ser. I, SANM, NMSRCA.

⁹¹⁶ Ibid. Alcalde mayor Juan González Bas, Act of Possession given to Juan Barela et al., Poblazón de Nuestra Señora de Concepción de Tomé Domínguez, 13 July 1739, Report 2, SG, Ser. I, SANM, NMSRCA, for similar usage of these phrases.

⁹¹⁷ Alcalde mayor Nicolás Durán y Chávez, Act of Possession given to Diego de Torres, Puesto de Nuestra Señora de Belén, 9 December 1740, in *Testimonio* of the Nuestra Señora de Belén Grant, Report 13, SG, Ser. I, SANM, NMSRCA.

This document, while recounting the founding of Belén, New Mexico, shows that the officials and the grantees were familiar with royal law and sought to proceed in accordance with it. It also explains that principles of not harming a third party dating back centuries were still understood and even articulated in the process.⁹¹⁸ *Pastos, aguas, abrevaderos*, and *montes* are mentioned in the *merced*. In addition to appearing in concessions and laws from the thirteenth century and earlier, these elements appear in law i, title v, Book IV of the *Recopilación (Indias)*.⁹¹⁹ This law combines several ordinances from the *Ordenanzas de descubrimientos* of 1573, which draw from principles established in the thirteenth, fourteenth, and fifteenth centuries.⁹²⁰ The *Recopilación (Indias)* calls for the consideration of whether a potential site has these resources, among other things, and also orders that officials follow the other laws in Book IV. Law ii, title v, Book IV commands that settlements have ingresses and egresses, another example of elements found in royal concessions going back at least to the eleventh century.⁹²¹ However, in those concessions the elements of laws i and ii are included together, usually in the same phrase; other laws from the *Recopilación (Indias)* also provide these elements in an integral way, which will be discussed shortly.

⁹¹⁸ See *Siete Partidas*, Div. III, *título viii, ley iii*, where a third party had grounds to sue someone placed in possession by a judge, no less, of land for which he or she had a better claim to title.

⁹¹⁹ *Alcalde mayor* Nicolás Durán y Cháves, Act of Possession given to Diego de Torres, Puesto de Nuestra Señora de Belén, 9 December 1740, in *Testimonio* of the Nuestra Señora de Belén Grant, Report 13, SG, Ser. I, SANM, NMSRCA.

⁹²⁰ *Siete Partidas*, Div. III, *título xxviii, ley ix; Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518, *ordenanzas* 71, 90 and also 35, 47, 85, 95, 104, 107, and 108.

⁹²¹ E.g., Fernando I to Abbot Gómez de Cardeña, 17 February 1039, in Pilar Blanco Lozano, *Colección Diplomática de Fernando I, 1037-1065* (León: Centro de Estudios e Investigación San Isidoro, Archivo Histórico Diocesano, 1987), 60-62, no. 9; Fernando I to García Iñiguez (Biérboles Castle Grant), 21 June 1038, in *ibid.*, 59-60, no. 8; Alfonso VII to Bishop Juan de Segovia and the Church of Santa María (Cervera Castle Grant), Segovia, 13 December 1150, in Luis-Miguel Villar García, *Documentación medieval de la catedral de Segovia (1115-1300)* (Salamanca: Gráficas Cervantes, 1990), 96, no. 46; Fernando III to Stephen of Bellomonte and the Militia of the Order of the Templars (Capilla Castle Grant), Toledo, 9 September 1236, in Julio González, *Reinado y diplomas de Fernando III* (Córdoba: Monte de Piedad y Caja de Ahorros, 1980-86), 3:93-95, no. 575; Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII.

While officials exercised broad discretion in their conveyances, grants such as the one to Captain Diego de Torres followed precepts that were common features in settlements with multiple grantees.

In a *sitio de ganado* grant, Governor Tomás Vélez Cachupín honored a commitment made to the grandfather of Miguel and Santiago Montoya, who had lost his land in the former settlement of Santa Rosa de Abiquiú.⁹²² The Montoyas petitioned for a *sitio de ganado* based on the unfulfilled promise to their deceased grandfather, Captain Antonio Montoya, and his sons, their fathers. Miguel and Santiago Montoya explained to Vélez Cachupín that they had growing families, widowed mothers, and small and large livestock. They stated that they lacked sufficient grazing space where they lived in Atrisco. *Alcalde mayor* Bartolomé Fernández, commissioned to inspect the lands, rejected the first site that the Montoyas selected after examining the titles to nearby lands owned by Salvador Jaramillo and Captain Antonio Baca.

On 23 October 1767 Felipe Tafoya, a self-styled *procurador*, filed another petition on behalf of the Montoyas for lands from the royal domain (*realengo*) that were unoccupied. Vélez Cachupín honored the promise he had made to the fathers and grandfather of the Montoyas and issued the grant in accordance with “sovereign royal law.”⁹²³ He then commissioned Fernández to place them in possession of the land and to give them *testimonios* (attested copies) of the proceedings, which would serve as proper title for

⁹²² Governor Tomás Vélez Cachupín to Miguel and Santiago Montoya (Bosque Grande Grant), Santa Fe, 23 October 1767, Report 100, SG, Ser. I, SANM, NMSRCA; Governor Vélez Cachupín resettled Santa Rosa de Abiquiú in 1754, renaming it Santo Tomás de Abiquiú. See *Testimonio* of the Santo Tomás de Abiquiú Grant (Governor Tomás Vélez Cachupín to the Congregation of Genízaro Indians), Santa Fe, 5 May 1754, Report 140, SG, Ser. I, SANM, NMSRCA (discussed below).

⁹²³ Governor Tomás Vélez Cachupín to Miguel and Santiago Montoya (Bosque Grande Grant), Santa Fe, 23 October 1767, Report 100, SG, Ser. I, SANM, NMSRCA.

them.⁹²⁴ Fernández then conducted the Act of Possession, in which nearby settlers were given the opportunity to object. War Captain Tomás from the Pueblo of Zía attended, as Zía's lands were on the eastern side of the grant.⁹²⁵ Throughout the process, title in the form of documentation was enough to protect earlier land grants from becoming the proverbial third party harmed by the conveyance where possession was not an issue. Title and possession, much as they did for centuries in Castile, formed ownership in eighteenth-century Nuevo México.

These proceedings reveal something more. Vélez Cachupín's mention of sovereign royal law brings to mind the *Recopilación (Indias)*, which included general provisions for distributing land from the royal domain. In some conveyances, he specifically cited the *Recopilación (Indias)* in the instrument and referred to its laws in others.⁹²⁶ Royal law, however, also included the elements of title and possession, not elaborated in detail in the *Recopilación (Indias)*, but in the *Siete Partidas*. In other conveyances, Vélez Cachupín and others referred to "his majesty's ordinances" or "royal laws."⁹²⁷ In these, governors probably had in mind not just the *Recopilación (Indias)*, but also the *Partidas*, and royal *cédulas*, and other sources of authority from the Castilian legal tradition. Elements of this tradition appear

⁹²⁴ Ibid.

⁹²⁵ *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zia, Jémez, and Santa Ana), Santa Fe, 6 August 1766, Report TT, SG, Ser. I, SANM, NMSRCA; Transcription of the Cochití Pueblo Grant (Governor Tomás Vélez Cachupín to the Pueblo of Cochití), Santa Fe, 17 August 1766, Case 172, PLC, NMSRCA; see also Dory-Garduño, "The Adjudication of the Ojo del Espíritu Santo Grant of 1766," 167-208. For a transcription of the *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant, see Appendix C, item IV.

⁹²⁶ *Testimonio* of the Santo Tomás de Abiquí Grant (Governor Tomás Vélez Cachupín to the Congregation of Genízaro Indians), Santa Fe, 5 May 1754, Report 140, SG, Ser. I, SANM, NMSRCA; Governor Tomás Vélez Cachupín to Santa Clara Pueblo (Cañada de Santa Clara Grant), Santa Fe, 19 July 1763, Report 138, SG, Ser. I, SANM, NMSRCA; SANM I: 1350.

⁹²⁷ Governor Tomás Vélez Cachupín to Pedro Martín Serrano (Piedra Lumbre Grant), Santa Fe, 12 February 1766, Report 73, SG, Ser. I, SANM, NMSRCA; Governor Juan Bautista de Anza to Antonio de Armenta et al., *Auto de Merced*, Santa Fe, 4 May 1786, in *Testimonio* of the San Isidro Grant, Santa Fe, 4 May 1786, Report 24, Ser. I, SANM, NMSRCA.

in the granting clauses used by several governors from the eighteenth century. The granting clause was the phrase that conveyed the land from the sovereign or his agent to the grantee.

Clauses used in the eighteenth century bear a marked resemblance to those from the thirteenth century, as seen in conveyances of Fernando III. In one he recorded:

. . . Hos prenomatos terminos dono et concedo iam dicto castro Capelle cum suis fontibus, montibus et pascuis, ingressibus et egressibus et cum omnibus directuris ad eosdem terminos pertinentibus . . .⁹²⁸

. . . These aforesaid *términos* I grant and concede to the aforesaid fortress of Capilla with their springs, woodlands, and pastures, and with ingresses and egresses and with all rights pertaining to the same *términos* . . .

Here, he uses a double affirmation in the granting clause, “*dono*” and “*concedo*.”⁹²⁹ In the San Ysidro Grant, Governor Anza similarly wrote that he “*concedia y concedi en nombre de S. M. que Dios guarde . . . la merced de tierras . . .*”⁹³⁰ In a grant to Joaquín Mestas, Governor Pedro Fermín de Mendinueta (1767-78) wrote that he “*concedia y concedo*” the *merced*.⁹³¹ While in some instances the double affirmation was not used or a form of *hacer* was used, governors frequently used *conceder* in the imperfect and preterite. The use of two forms of a single verb or two verbs closely related connects these textual similarities on another level. Other decrees, laws, and orders—instruments of a juridical nature—use language in this way, something the monarchs of Castile adapted from the laws of the Visigoths, in which verbs are similarly used.

Governors issued conveyances in the name of the king, a practice that follows an overall structure that had been well established by the thirteenth century, against what some

⁹²⁸ Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars, (Capilla Fortress Grant), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95.

⁹²⁹ Ibid.

⁹³⁰ Governor Juan Bautista de Anza to Antonio de Armenta et al., *Auto de Merced*, Santa Fe, 4 May 1786, in *Testimonio* of the San Ysidro Grant, Santa Fe, 4 May 1786, Report 24, Ser. I, SANM, NMSRCA.

⁹³¹ Governor Pedro Fermín de Mendinueta to Joaquín Mestas, Santa Fe, 20 January 1768, Case 23, PLC, Ser. I, SANM, NMSRCA.

historians have thought.⁹³² In grants of land, governors named the boundaries of the lands and any conditions or terms that the grantee must fulfill. In addition to appearing in concessions from the thirteenth century and earlier, these elements follow the procedures in issuing a conveyance laid out plainly in law ii, title xviii, Division III of the *Siete Partidas*. However, this law notes that these procedures already had been well established. When Governors Vargas, Domingo de Mendoza, Vélez Cachupín, Anza, and Fermín de Mendinueta issued royal concessions in conformity to this tradition, they were not acting in a legal tradition distinct from that prior to 1492: they were perpetuating one already in existence. They acted in the name of the monarch of Castile in severing land from the royal domain and bestowing it upon the named grantees in the legal instruments they created. While conditions and experiences may have differed for people in the Americas compared to those in the Peninsula, land was distributed within the same legal tradition.

The grants in the kingdom of Nuevo México, furthermore, contain natural resources given with settlements and described as they are in royal concessions from the thirteenth century and earlier and also found in the *Recopilación (Indias)*. These elements—*pastos*, *ejidos*, *dehesas*—also appear in the *Ordenanzas de descubrimiento* of 1573.⁹³³ In 1766, Vélez Cachupín issued the Ojo del Espíritu Santo Grant to the Pueblos of Zía, Jémez, and

⁹³² See Woodrow Borah, “Spanish Law in Mexico,” in *Iberian Colonies, New World Societies: Essays in Memory of Charles Gibson*, ed. Richard L. Garner and William B. Taylor (privately printed, 1985), 63-70, at 66-7, who wrote in regards to royal concessions issued in the Americas that “a formal system of grants by crown agents arose, in theory at least, with careful inspection and verification and a chance for injured parties to protest.” As compared to the proper form of a land grant described in the *Siete Partidas*, Div. III, título xviii, ley ii and the numerous examples of concessions from the eleventh, twelfth, and thirteenth centuries cited in this study, *mercedes reales* in the New World were actually less formal textually for various reasons; they shared the procedural element that called for third parties to have the right to protest the taking of possession of land, but this already existed in pre-1492 Castilian Acts of Possession; their overall structures show they are from the same legal tradition as well. The principles underlying the protection of a third party come from the *Partidas* and were not born in the Americas. See below.

⁹³³ E.g., *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias (1573)*, in Morales Padrón, *Teoría y leyes de la conquista*, 489-518, *ordenanzas* 47, 71, 90, 129, and 130.

Santa Ana, and a grant to the Pueblo of Cochití.⁹³⁴ The two petitions in the respective grants, both skillfully drafted by Felipe Tafoya, state precisely that the Pueblos needed *ejidos* that they planned to use for grazing their large and small livestock.⁹³⁵ Law xxii, title i, Book VI of the *Recopilación (Indias)* states that crown officials shall allow the Indians to raise all types of cattle, and that those officers should give them whatever support is needed.⁹³⁶ The pueblos wanted land granted to them which they could use as their own commons or an extension of their existing communal land, and in which they could exclude others from usage as permitted by law ix, title xxviii, Division III of the *Siete Partidas*.

The Pueblos' petition makes more sense when considering the difference between using the royal domain as communal land and having land severed from the royal domain for their exclusive use. In the previous year, Vélez Cachupín had mentioned, in a dispute over an area known as El Capulín near Cochití Pueblo, that the royal domain was available as common pastures for all residents.⁹³⁷ There, anyone could use the land for grazing animals and accessing water and wood without the right to exclude others from using it. If the Pueblos sought this type of use, they would not have needed to petition to use them, but could have—like other inhabitants—used them without having any ownership rights. In contrast, the Pueblos sought land that they could designate as *ejidos*, which the governor would sever from the royal domain and confirm to their respective pueblos for their use as

⁹³⁴ *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zia, Jémez, and Santa Ana), Santa Fe, 6 August 1766, Report TT, SG, Ser. I, SANM, NMSRCA; Transcription of the Cochití Pueblo Grant (Governor Tomás Vélez Cachupín to the Pueblo of Cochití), Santa Fe, 17 August 1766, Case 172, PLC, NMSRCA; Dory-Garduño, “The Adjudication of the Ojo del Espíritu Santo Grant,” 167-208.

⁹³⁵ Zia, Jémez, and Santa Ana Pueblos' Petition to Governor Tomás Vélez Cachupín, in *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zia, Jémez, and Santa Ana), Santa Fe, 6 August 1766, Report TT, SG, Ser. I, SANM, NMSRCA; Cochití Pueblo Petition to Governor Tomás Vélez Cachupín, in Transcription of the Cochití Pueblo Grant (Governor Tomás Vélez Cachupín to the Pueblo of Cochití), Santa Fe, 17 August 1766, Case 172, PLC, NMSRCA.

⁹³⁶ *Recopilación (Indias)*, Libro VI, título i, ley xxii.

⁹³⁷ The use and attempted settlement of these commons must have had some influence on Cochití Pueblo's decision to petition Governor Vélez Cachupín and his decision to make the *merced*.

permanent commons.⁹³⁸ This follows Castilian law presented in the *Siete Partidas*, where two types of commons existed: 1) royal domains and 2) commons belonging to a specific community that could exclude from usage of the commons others not from their village, town, or city.⁹³⁹ The pueblos had petitioned for the latter. Other inhabitants of Nueva España and Nuevo México successfully petitioned for land in a similar manner.⁹⁴⁰

The petitions that the Pueblos of Zía, Jémez, Santa Ana, and Cochití submitted also included a relatively unique claim.⁹⁴¹ Both petitions include the assertion that the Pueblos were requesting land that they considered theirs “from their founding.”⁹⁴² This claim invoked the laws that commanded that indigenous settlements have the necessary lands for their successful survival, as well as those that they held prior to the arrival of the Spanish.⁹⁴³ For example, law xxiii, title i, Book VI commands viceroys and governors to ensure that the

⁹³⁸ Governor Tomás Vélez Cachupín, *Sentencia*, Santa Fe, 18 April 1765, no. 1352, Ser. I, SANM, NMSRCA. Here, the governor ordered *alcalde mayor* Bartolomé Fernández to eject the settlers, who had attempted to occupy crown lands that had been used as common pastures by all residents.

⁹³⁹ *Siete Partidas*, Div. III, *título xxviii, leyes ix and x*; see also Daniel Tyler, “Ejido Lands in New Mexico,” in *Spanish and Mexican Land Grants and the Law*, ed. Malcolm Ebright (Manhattan, KS: Sunflower University Press, 1989), 24–35, at 29, who states in regards to the *ejido*:

Its real meaning, according to the laws of Spain and Mexico, as well as to the customary and accepted practices of New Mexico prior to United States occupation, was that a special portion of land was removed from the public domain, attached to a community which had legal title to and control of an area into which new settlers were expected to expand and in which they, too, had common use rights.

⁹⁴⁰ See Antonio Armenta et al., Petition to Governor Juan Bautista de Anza, in *Testimonio* of the San Ysidro Grant, Santa Fe, 4 May 1786, Report 24, Ser. I, SANM, NMSRCA, “*egidos*”; Viceroy Martín Enríquez Almanza to the Villa of Zalaya, Grant of an *ejido*, Mexico City, 11 December 1573, AGN, Mercedes, Contenedor 6, Volumen 3, f. 3r; Governor Pedro Fermín de Mendinueta to Joaquín Mestas, Santa Fe, 20 January 1768, Case 23, PLC, Ser. I, SANM, NMSRCA, “*pastos*”; see also Tyler, “Ejido Lands in New Mexico,” 24–35, for a discussion of the *ejido* in New Mexico.

⁹⁴¹ *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zía, Jémez, and Santa Ana), Santa Fe, 6 August 1766, Report TT, SG, Ser. I, SANM, NMSRCA; Transcription of the Cochití Pueblo Grant (Governor Tomás Vélez Cachupín to the Pueblo of Cochití), Santa Fe, 17 August 1766, Case 172, PLC, NMSRCA.

⁹⁴² Petition, in *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zía, Jémez, and Santa Ana), Santa Fe, 6 August 1766, Report TT, SG, Ser. I, SANM, NMSRCA; Petition, in Transcription of the Cochití Pueblo Grant (Governor Tomás Vélez Cachupín to the Pueblo of Cochití), Santa Fe, 17 August 1766, Case 172, PLC, NMSRCA.

⁹⁴³ *Recopilación (Indias)*, Libro VI, *título iii, leyes viii and ix; título i, ley xxiii*.

Indians retain their properties (lands, not just personal possessions).⁹⁴⁴ As law ix, title iii, Book VI states, this included lands that the settled Natives had held before the Spanish arrived.⁹⁴⁵ Law v, title xii, book IV similarly states that the viceroys and governors “shall leave the lands, cultivated properties, and pastures of the Indians for the Indians in such a way that they may not lack what they need.”⁹⁴⁶ Similarly, law xiv, title xii, Book IV requires the apportionment or granting of land that the Indians may “properly need for cultivating, planting, and the raising of livestock.”⁹⁴⁷ These laws did not simply assign lands for use by the Indians by permit or temporary use of the royal domain: they required the granting of land if needed. In the granting decree of the 1766 Espiritu Santo Grant, Vélez Cachupín did just this. He stated that he granted *the lands* to the Pueblos and that they had legitimate title under the *merced real*.⁹⁴⁸ Additionally, no Spaniards were to prejudice the Pueblos, presuming the lands to be commons (i.e., still part of the royal domain).⁹⁴⁹ Thus, Vélez Cachupín severed these lands from the royal domain and confirmed them to the Pueblos.⁹⁵⁰

⁹⁴⁴ *Recopilación (Indias), Libro VI, título i, ley xxiii*: “Que à los Indios se señale tiempo para sus heredades, y grangerias, y se procure, que las tengan.”

⁹⁴⁵ *Ibid., Libro VI, título iii, ley ix*: “Que à los Indios reducidos no se quiten las tierras, que antes huvieren tenido.”

⁹⁴⁶ *Ibid., Libro VI, título xii, ley v*: “...Y à los Indios se les dexen sus tierras, heredades, y pastos, de forma, que no les falte lo necessario, y tengan todo el alivio y descanso possible para el sustento de sus casas y familias.”

⁹⁴⁷ *Ibid., Libro IV, título xii, ley xiv*: “. . . Y repartiendo à los Indios lo que buenamente huvieren menester para labrar, y hazer sus sementeras, crianças, confirmandoles en lo que aora tienen, y dandoles de nuevo lo necesario, toda la demás tierra, quede y esté libre y desembaraçada para hazer merced, y disponer de ella à nuestra voluntad.”

⁹⁴⁸ Governor Tomás Vélez Cachupín, *Auto de Merced*, Santa Fe, 6 August 1766, in *Testimonio* (copy, n.d.) of the Ojo del Espiritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zía, Jémez, and Santa Ana), Report TT, SG, Ser. I, SANM, NMSRCA. “Dije que les considia y concedi en nombre de (S.M.Q.D.G.) los referidos terrenos . . . ,” “I stated that I conceded and did grant in the name of His Majesty May God Save Him the referred lands”

⁹⁴⁹ *Ibid.*

⁹⁵⁰ *Ibid.*

Governor Pedro Fermín de Mendinueta issued a grant for grazing lands to the Santo Domingo and San Felipe Pueblos in 1770. See Governor Pedro Fermín de Mendinueta to the Pueblos of Santo Domingo and San Felipe, Santa Fe, 10 September 1770, Report 142, Ser. I, SANM, NMSRCA, in which he required that the Pueblos not sell the tract to any ecclesiastical institution, referring to *ley x, título xii, Libro IV* of the *Recopilación (Indias)*.

Other concessions given to indigenous communities included citations and references to royal law from Book Six of the *Recopilación (Indias)*.⁹⁵¹ In 1748 Governor Joaquín Codallos y Rabal resettled Sandía Pueblo along with the construction of a mission in accordance with a plan approved by the Viceroy Juan Francisco de Güemes y Horcasitas and Friar Juan Miguel Menchero.⁹⁵² The plan also emphasized the strategic position of the settlement in providing defensive capabilities against nomadic raiding.⁹⁵³ On April 5, 1748, Governor Codallos y Rabal instructed Lieutenant Governor Bernardo Antonio de Bustamante y Tagle to inspect the site and make the “*repartimiento de tierras, Aguas, pastos, y abrebaderos que corresponden a Pueblo formal de Indios segun preescriben las Reales dispocisiones*” (“... allotment of the lands, waters, *pastos*, and watering holes that correspond to a formal Indian Pueblo according to prescribed royal precepts.”)⁹⁵⁴

Governor Codallos y Rabal’s language references the text of law viii, title iii, Book VI of the *Recopilación (Indias)*. In the proceedings cited here and in other documents referring to Sandía, he uses the term *reducción*, referring to the proposed resettlement of Natives who had resided in various villages throughout the province.⁹⁵⁵ In addition to the above citation, he mentions that the site must have ingresses and egresses along with grazing

⁹⁵¹ Governor Joaquín Codallos y Rabal, Acts Reestablishing Sandía Pueblo (Sandía Pueblo Grant), Santa Fe, 5 April 1748, no. 848, Ser. I, SANM, NMSRCA; *Testimonio* of the Santo Tomás de Abiquiú Grant (Governor Tomás Vélez Cachupín to the Congregation of Genízaro Indians), Santa Fe, 5 May 1754, Report 140, SG, Ser. 1, SANM, NMSRCA.

⁹⁵² Governor Joaquín Codallos y Rabal, Acts Reestablishing Sandía Pueblo (Sandía Pueblo Grant), Santa Fe, 5 April 1748, no. 848, Ser. I, SANM, NMSRCA.

⁹⁵³ *Ibid.*

⁹⁵⁴ Governor Joaquín Codallos y Rabal, Act Reestablishing Sandía Pueblo (Sandía Pueblo Grant), Santa Fe, 5 April 1748, no. 848, Ser. I, SANM, NMSRCA.

⁹⁵⁵ Governor Joaquín Codallos y Rabal, Proceedings Concerning the Moqui (Sandía) Settlement, no. 1347, Ser. I, SANM, NMSRCA.

lands and water as stipulated in law viii.⁹⁵⁶ Altogether, he touches on all of the important elements of this law.

In the 1754 conveyance to Genízaro Indians reestablishing a settlement at Abiquiú, Governor Vélez Cachupín specifically cited law viii, title iii, Book VI of the *Recopilación (Indias)* (see fig. 6.4).⁹⁵⁷ He made this grant in accordance with a plan approved by Viceroy Juan Francisco de Güemes y Horcasitas and the settlement also provided defensive capabilities. This law, which other scholars have identified as significant for its provisions relating to Native settlements, includes geographical elements used in Castilian royal concessions dating to at least the eleventh century.⁹⁵⁸ It reads:

Que las Reducciones se hagan con las calidades desta ley. Los sitios en que se han de formar pueblos, y Reducciones, tengan comodidad de aguas, tierras y montes, entradas, y salidas, y labranças, y vn exido de vna legua de largo, donde los Indios puedan tener sus ganados, sin que se rebuelvan con otros de Españoles.⁹⁵⁹

They shall make settlements with the conditions of this law. The sites in which villages or settlements are to be formed shall have the conveniences of waters, lands and woods, ingresses and egresses, and farm lands, and an *ejido* one league long, where the Indians can have their livestock, without mixing with those of the Spanish.

As seen in previous chapters, waters, lands, and *montes* were frequently phrased together in royal concessions for settlements; they were integral and assets of the land. Fernando III's

⁹⁵⁶ Ibid.

⁹⁵⁷ *Testimonio* of the Santo Tomás de Abiquiú Grant (Governor Tomás Vélez Cachupín to the Congregation of Genízaro Indians), Santa Fe, 5 May 1754, Report 140, SG, Ser. 1, SANM, NMSRCA; see also Malcolm Ebright and Rick Hendricks, *Witches of Abiquiú: The Governor, the Priest, the Genízaro Indians, and the Devil* (Albuquerque: University of New Mexico Press, 2006), 269-72, for a transcription and translation of the grant.

⁹⁵⁸ See Hall, *Four Leagues of Pecos*, 13; for eleventh-, twelfth-, and thirteenth-century grants, see Fernando I to García Iñiguez (Biérboles Castle Grant), 21 June 1038, in Blanco Lozano, *Colección Diplomática de Fernando I, 1037-1065*, 59-60, no. 8; Alfonso VII to Bishop Juan de Segovia and the Church of Santa María (Cervera Castle Grant), Segovia, 13 December 1150, in Villar García, *Documentación medieval de la catedral de Segovia (1115-1300)*, 96, no. 46; Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII.

⁹⁵⁹ *Recopilación (Indias)*, Libro VI, título iii, ley viii.

grant of 1236, cited above, calls for springs, *pastos*, woodlands, *ingresses* and *egresses*.⁹⁶⁰ Numerous others from the eleventh through fifteenth centuries do so as well. By the thirteenth century *egresses* were distinct from the *ejido*, which came from the word *exitus* as noted in Chapter Three.⁹⁶¹ If there is one notable variation from Fernando III's land grant of 1236, the specified length of the *ejido* in the *Recopilación (Indias)* is it. Felipe II first established this principle in 1573 over concern for Native livestock.⁹⁶² The protective element is rooted in Castilian law that prescribed that *ejidos* belonged to specific communities who could exclude those not from their community from using them.⁹⁶³ All of the geographical terms used in law viii, title iii, Book VI of the *Recopilación (Indias)* and the context of settlement in which the crown and its representatives used them have precedent in concessions made prior to 1492—most of them appearing in eleventh-, twelfth-, and thirteenth-century concessions, as noted above. The crown also expressed these elements in the context of settlement in laws from the *Partidas* and laws from the fourteenth century that appear in the *Recopilación (Castilla)*.⁹⁶⁴ Altogether, law viii, title iii, Book VI demonstrates that settlements, even those established for Natives of various heritages in the eighteenth century, followed a tradition of land tenure developed in Castile centuries earlier.

⁹⁶⁰ Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars (Capilla Fortress Grant), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95.

⁹⁶¹ See Alfonso VII to Bishop Juan de Segovia and the Church of Santa María (Cervera Castle Grant), Segovia, 13 December 1150, in Villar García, *Documentación medieval de la catedral de Segovia*, 96, no. 46, where *ingressus* and *egressus* are given with an *exitus* of the mountains.

⁹⁶² *Recopilación (Indias)*, Libro VI, título iii, ley viii.

⁹⁶³ *Recopilación (Castilla)*, Libro VII, título vii, ley i; *Siete Partidas*, Div. III, título xxviii, ley ix.

⁹⁶⁴ *Siete Partidas*, Div. III, título xxviii, ley ix.

y sobre que se les diese a usar...
 en los de gran utilidad, como pide el Sr. fiscal acordado al dicho
 octava, título tres, libro sexto de la recopilación de estos reynos
 de las Indias en que manda S. M. que en los litigios en que se
 hagan de formar pueblos y reducciones tengan consideración de aguas

Figure 6.4. Governor Tomás Vélez Cachupín citing the *Recopilación*, Book VI, title iii, law viii in establishing the Santo Tomás de Abiquiú settlement. Testimonio of the Santo Tomás de Abiquiú Grant (Governor Tomás Vélez Cachupín to the Congregation of Genízaro Indians), Santa Fe, 5 May 1754, Report 140, SG, Ser. I, SANM, NMSRCA. From the top right area: “. . . a la ley octava título tres libro sexto de la recopilacion de estos reynos de las Yndias en que manda Su Magestad” (“. . . the eighth law, title three, sixth book of the *Recopilación* of these kingdoms of the Indies in which His Majesty orders . . .”). (This image and caption first appeared in James E. Dory-Garduño, “The Adjudication of the Ojo del Espíritu Santo Grant of 1766 and the *Recopilación*,” *New Mexico Historical Review* 87 (2012): 167-208.)

Along with the petition and the report on the requested lands, concessions in New Mexico also included Acts of Possession that followed the Castilian tradition from earlier centuries. In the Sandía Pueblo Grant, Governor Joaquín Codallos y Rabal commissioned Lieutenant Governor Bernardo Antonio de Bustamante y Tagle to place the Natives that were to settle the pueblo in royal possession of the land.⁹⁶⁵ On 14 May 1748, Bustamante first announced his commission to the nearby settlers on the western bank of the Río del Norte (Río Grande). He informed them that he would not make the one league of the *ejido* in the western direction which would have crossed the river, but that he wanted their consent for permission for the Natives to use the grazing lands on the western side of the river for the purposes of protection.⁹⁶⁶ He then sought to hear any objections to the settlement.

⁹⁶⁵ Governor Joaquín Codallos y Rabal, Acts Reestablishing Sandía Pueblo (Sandía Pueblo Grant), Santa Fe, 5 April 1748, no. 848, Ser. I, SANM, NMSRCA.

⁹⁶⁶ Lieutenant Governor Bernardo Antonio de Bustamante y Tagle, Report, Nuestra Señora de los Dolores y San Antonio de Sandía, 14 May 1748, in Acts Reestablishing Sandía Pueblo (Sandía Pueblo Grant), Santa Fe, no. 848, Ser. I, SANM, NMSRCA.

Four days later, Bustamante recorded the Act of Possession.⁹⁶⁷ In the procedure, he declared the name of the mission to be “Nuestra Señora de los Dolores y San Antonio de Sandía.”⁹⁶⁸ He then gathered the Native settlers along with the Friar Juan Joseph Hernández, whom Bustamante led by the hand, and they proceeded across the land, throwing stones, pulling weeds, and shouting several times, “Long Live the King, Our Lord!”⁹⁶⁹ In so doing, Bustamante stated that the Natives had received “royal possession.”⁹⁷⁰ He also wrote that he measured the one league that a “regular pueblo” would receive in each direction—another reference to the *ejido* one league in length stipulated in law viii, title iii, Book VI of the *Recopilación (Indias)*. Bustamante reiterated that the land was granted to the Natives, their children, heirs, and successors.⁹⁷¹

The Act of Possession performed in the Ojo del Espíritu Santo Grant of 1766 paralleled that in the Sandía Pueblo Grant.⁹⁷² On 6 August 1766, Governor Tomás Vélez Cachupín ordered *Alcalde mayor* Bartolomé Fernández to place the Pueblos of Zía, Jémez and Santa Ana in “royal possession” of the Valley of the Ojo del Espíritu Santo.⁹⁷³ Officials on hand from the pueblos included governors, *caciques*, and several war captains. As seen in the Act of Possession reestablishing the Sandía Pueblo, the grantees—leaders from the three

⁹⁶⁷ Lieutenant Governor Bernardo Antonio de Bustamante y Tagle, Act of Possession given to the Moqui Nation (Sandías), Nuestra Señora de los Dolores y San Antonio de Sandía, 18 May 1748, in Acts Reestablishing Sandía Pueblo (Sandía Pueblo Grant), Santa Fe, no. 848, Ser. I, SANM, NMSRCA.

⁹⁶⁸ Ibid.

⁹⁶⁹ Ibid.

⁹⁷⁰ Ibid.

⁹⁷¹ Ibid.

⁹⁷² Compare *Alcalde mayor* Bartolomé Fernández, Act of Possession given to the Pueblos of Zía, Jémez, and Santa Ana, Place of the Ojo del Espíritu Santo, 28 September 1766, in *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zía, Jémez, and Santa Ana), Report TT, SG, Ser. I, SANM, NMSRCA with Lieutenant Governor Bernardo Antonio de Bustamante y Tagle, Act of Possession given to the Moqui Nation (Sandías), Nuestra Señora de los Dolores y San Antonio de Sandía, 18 May 1748, in Acts Reestablishing Sandía Pueblo (Sandía Pueblo Grant), no. 848, Ser. I, SANM, NMSRCA.

⁹⁷³ Governor Tomás Vélez Cachupín, *Auto de Merced*, in *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zía, Jémez, and Santa Ana), Santa Fe, 6 August 1766, Report TT, SG, Ser. I, SANM, NMSRCA.

Pueblos—were escorted across the land, threw stones, pulled up grass or weeds, and shouted “long live the King, our sovereign!”⁹⁷⁴ The procedure served to confirm that possession had been conferred along with title in the form of *testimonios* without objection.⁹⁷⁵

Royal concessions to individuals also followed these procedures. In a *merced* made to Salvador González in 1742, Governor Gaspar Domingo de Mendoza commissioned *alcalde mayor* Antonio de Ulibarrí to place González in royal possession of the grant.⁹⁷⁶ Ulibarrí recorded the Act of Possession, noting it was carried out in the customary fashion, “plucking grass, casting stones, and shouting, saying long live the king of Spain.”⁹⁷⁷ The Spanish Archives of New Mexico have numerous examples of concessions such as this.

In the San Miguel del Vado Grant of 1794, Governor Fernando Chacón commissioned *alcalde mayor* Antonio José Ortiz to place fifty-two settlers led by Lorenzo Marquez in possession of land south of the Pueblo of Pecos along the Pecos River.⁹⁷⁸ On 26 November 1794, Alcalde Ortiz conducted the Act of Possession, which closely resembled

⁹⁷⁴ *Alcalde mayor* Bartolomé Fernández, Act of Possession given to the Pueblos of Zía, Jémez, and Santa Ana, Place of the Ojo del Espíritu Santo, 28 September 1766, in *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zía, Jémez, and Santa Ana), Report TT, SG, Ser. I, SANM, NMSRCA. As noted in the *Siete Partidas*, if one has possession of property whose ownership is in dispute, the burden of proving title shifts to his or her adversary. See Div. III, *título xxx, ley xii*; Castilian law borrowed this from Roman law, see *The Digest of Justinian*, ed. Theodor Mommsen and Paul Krueger, English trans., Alan Watson (Philadelphia: University of Pennsylvania Press, 1985), book 43, title 17, l.3.

⁹⁷⁵ For questions of authenticity concerning this particular *testimonio*, see Dory-Garduño, “The 1766 Ojo del Espíritu Santo Grant,” 157-96.

⁹⁷⁶ Governor Gaspar Domingo de Mendoza to Salvador González (Cañada de Ancha Grant), Santa Fe, 26 August 1742, Report 82, SG, Ser. 1, SANM, NMSRCA.

⁹⁷⁷ *Alcalde mayor* Antonio de Ulibarrí, Act of Possession given to Salvador González, Santa Fe, 26 August 1742, Report 82, SG, Ser. 1, SANM, NMSRCA.

⁹⁷⁸ Governor Fernando Chacón to Lorenzo Marquez et al. (San Miguel del Bado Grant), Santa Fe, 26 November 1794, Report 119, SG, Ser. I, SANM, NMSRCA; see also Malcolm Ebright, “The Villanueva State Park History of Title and History of the San Miguel del Bado Land Grant,” March 3, 2009, Report to the Commission for Public Records, http://www.newmexicohistory.org/featured_projects/Legislative%20Reports/documents/Villanueva.pdf (last accessed 15 February 2013).

those described in this study.⁹⁷⁹ The land included *pastos y abrevaderos*, but also enumerated several conditions. It stipulated that the main body of land was common to the settlement and to those that should join it in the future.⁹⁸⁰ Due to the dangers of the location of the settlement, the settlers were also ordered to arm themselves and that within two years, those weapons must be firearms. The settlers were also required to construct a plaza with defensive features and all of the improvements were to be done by and for the community.⁹⁸¹

Altogether, these Acts of Possession follow those that have been analyzed from Nueva España and fifteenth-century Castile.⁹⁸² They also reflect the importance attached to possession and title as seen in the numerous laws of the *Siete Partidas* concerning both elements. Numerous cases from the fourteenth and fifteenth centuries also stress the importance of possession, which like the natural resources—*tierras, montes, aguas*, and *ejidos*—listed in law viii, title iii, Book VI of the *Recopilación* are rooted in a tradition several centuries old, one that was maintained even after the Pueblo rising of 1680.

The emphasis on the defensive nature of these settlements also resembles those of the twelfth through fifteenth centuries in the Iberian Peninsula, where the location of settlements in Castile has been shown to take into account their strategic value.⁹⁸³ The Pueblo of Sandía, Santo Tomás de Abiquiú, and Belén settlements, among numerous others, were placed with consideration to their defensive capabilities. In his article “Breaking New Ground: A Reappraisal of Governors Vélez Cachupín and Mendinueta and Their Land Grant Policies,”

⁹⁷⁹ *Alcalde mayor* Antonio José Ortiz, Act of Possession given to Lorenzo Marquez et al., San Miguel del Bado, 26 November 1794, Report 119, SG, Ser. I, SANM, NMSRCA.

⁹⁸⁰ *Ibid.*

⁹⁸¹ *Ibid.* The settlers took actual possession of their individual lots in 1803.

⁹⁸² E.g., Pero López de Calatayud and Leonor de San Juan, Act of Possession, Tordesillas, 5 September 1468, ARCV, Pergaminos, Caja 22, 3.

⁹⁸³ See Manuel González Jiménez, “Frontier and Settlement in the Kingdom of Castile (1085-1350),” in *Medieval Frontier Societies*, ed. Robert Bartlett and Angus MacKay (Oxford: Clarendon Press, 1989), 49-74, in particular 56.

Malcolm Ebright argues that Governor Vélez Cachupín issued grants for settlements to enhance the defensive capabilities of the province against nomadic raiding.⁹⁸⁴ Though not always successful, he and Governor Pedro Fermín de Mendinueta (1767-78) attempted to settle strategic sites, such as the Río del Norte south of Belén and the pass between the Sandía and Manzano mountains.⁹⁸⁵ They also made several concessions near the Río Puerco west and northwest of Albuquerque, including the Nuestra Señora de la Luz, San Fernando, y San Blas Grant of 1753 and the Ojo del Espíritu Santo Grant of 1766.⁹⁸⁶ Governor Vélez Cachupín may have seen the Ojo del Espíritu Santo Grant as a means to better secure the region by formally placing it in the hands of the Zía, Jémez, and Santa Ana Pueblos. The grant encompassed land through which the Río Puerco runs, entering the valley through a narrow pass. By sealing off this pass, or at least keeping it monitored, the Pueblos could better guard the trail leading to their villages along the Jémez River as well as the settlements along the Río de Norte.⁹⁸⁷ Many of these settlements, some secured after multiple attempts, remain in existence.

Due to the active reorganization of land in the eighteenth century, inhabitants of the kingdom of Nuevo México turned to their *alcaldes* and governors for relief in various

⁹⁸⁴ Ebright, "Breaking New Ground," 195-233, in particular 201; see also Dory-Garduño, "The 1766 Ojo del Espíritu Santo Grant," 183-85. For an overview of the widespread problem of nomadic raiders across New Spain's northern frontier in the eighteenth century, see Weber, *The Spanish Frontier in North America*, 204-35.

⁹⁸⁵ For the San Gabriel de las Nutrias settlement, south of Belén, see Ebright, "Breaking New Ground," 203-10; for the first attempt at settling the pass between the Sandías and Manzanos, see *ibid.*, 210-12; Governor Tomás Vélez Cachupín to Manuel Armijo et al. (San Miguel de Laredo Grant de Carnuel), Santa Fe, 12 February 1762, Report 150, SG, Ser. I, SANM, NMSRCA; Robert Archibald, "Cañón de Carnué: Settlement of a Grant," *New Mexico Historical Review* 51 (1976): 313-27.

⁹⁸⁶ See Governor Tomás Vélez Cachupín to Bernabé Manuel Montañón et al. (Nuestra Señora de la Luz, San Fernando, y San Blas Grant), Santa Fe, 25 November 1752, Report 49, SG, Ser. I, SANM, NMSRCA; *Testimonio* (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zía, Jémez, and Santa Ana), Santa Fe, 6 August 1766, Report TT, SG, Ser. I, SANM, NMSRCA.

⁹⁸⁷ Dory-Garduño, "The 1766 Ojo del Espíritu Santo Grant," 183-85.

disputes.⁹⁸⁸ In 1744, Bernabé Baca filed a complaint alleging that Nicolás Durán y Cháves had encroached upon his land. Both had come from families that had received land grants in the area surrounding Albuquerque; Durán y Cháves later placed the Belén settlers in possession of their grant.⁹⁸⁹ On 1 June 1739, Governor Domingo de Mendoza issued a grant to Durán y Cháves, who had petitioned for land for which he had possessed, but had not yet received title.⁹⁹⁰ The concession placed his property to the south of Bernabé Baca's land. During the Act of Possession conducted by *alcalde mayor* Juan González Bas, Baca and Durán y Cháves disagreed on the southern boundary of Baca's property.⁹⁹¹ While both parties agreed the boundary line was at the ruins of Tomé Dominguez's house, they disagreed as to which ruins of the two that existed constituted the house. They settled on the boundary line between the two ruins and *alcalde mayor* González Bas placed Durán y Cháves in possession of the land.⁹⁹²

Within a few years, Baca and Durán y Cháves again disputed the boundary. Baca's complaint reached Governor Domingo de Mendoza in 1742, who declared that the boundaries of the 1739 conveyance should be followed.⁹⁹³ He added in a note to the *expediente* of the grant that though Durán y Cháves owned his land, the crossings (ingresses

⁹⁸⁸ See Marc Simmons, *Spanish Government in New Mexico* (Albuquerque: University of New Mexico Press, 1968), for an overview of the governmental structure of the province in the eighteenth century.

⁹⁸⁹ For the Durán y Cháveses and Bacas in the Albuquerque and Atrisco area, see Sánchez, *Between Two Rivers*, 34, 50, 52-9, 63-9, 89.

⁹⁹⁰ Governor Gaspar Domingo de Mendoza to Nicolás Durán y Cháves, Santa Fe, 1 June 1739, Report 155, SG, Ser. I, SANM, NMSRCA.

⁹⁹¹ *Alcalde mayor* Juan González Bas, Act of Possession given to Nicolás Durán y Cháves, Puesto de los Esteros de San Pablo, 26 August 1739, Report 155, SG, Ser. I, SANM, NMSRCA.

⁹⁹² *Ibid.*

⁹⁹³ Governor Gaspar Domingo de Mendoza, Decree, Santa Fe, 6 October 1743, Report 155, SG, Ser. I, SANM, NMSRCA.

and egresses), water holes, and *pastos* were commons unless their usage by others caused him damage.⁹⁹⁴

In 1744, after Governor Joaquín Codallos y Rabal had taken office, Baca filed a new complaint, alleging that Durán y Cháves had encroached on his land and that he was using his watering holes and pastures.⁹⁹⁵ After examining the petition and documents of both parties, Governor Joaquín Codallos y Rabal ruled that Durán y Cháves had encroached on Baca's land.⁹⁹⁶ He then declared null that part of his grant. He also quoted from Governor Domingo de Mendoza's *merced*, citing the provision that he issued the grant under condition that the property descriptions were accurate and not to the prejudice of a third party. He added that Domingo de Mendoza could not have intended to affirm Durán y Cháves' interpretation of the boundaries. He ordered the *alcalde mayor* of Albuquerque, Baltazar Abeyta, to place Baca in possession of the disputed land. He also ordered Durán y Cháves not to trespass on Baca's land. On 9 March 1744, *Alcalde mayor* Abeyta placed Baca in possession of the disputed land along with its "*pastos, aguas, montes y abrevaderos*" (pastures, waters, woodlands, and watering holes) that the governor stated belonged to the land.⁹⁹⁷

In 1746 Baca and Durán y Cháves reached an accord and executed a stipulated agreement before Governor Joaquín Codallos y Rabal, in which Durán y Cháves would receive possession of the disputed land along with its "*pastos, aguas, abrevaderos, entradas*

⁹⁹⁴ Ibid.

⁹⁹⁵ Bernabé Baca v. Nicolás Durán y Cháves, Santa Fe, 3 March 1744, No. 92, Ser. I, SANM, NMSRCA.

⁹⁹⁶ Governor Joaquín Codallos y Rabal, *Sentencia*, in Bernabé Baca v. Nicolás Durán y Cháves, Santa Fe, 3 March 1744, No. 92, Ser. I, SANM, NMSRCA.

⁹⁹⁷ *Alcalde mayor* Baltazar Abeyta, Act of Possession given to Bernabé Baca, Puesto de Nuestra Señora de Guadalupe, 9 March 1744, no. 92, Ser. I, SANM, NMSRCA.

y salidas.⁹⁹⁸ While this agreement ended the dispute, Codallos y Rabal in clarifying that the *pastos* and watering holes were part of the land, allowed for an eventual compromise. This corrected Governor Domingo de Mendoza's vague notations in the *expediente* that the *pastos*, crossings, and watering holes were commons. He may have meant them to be commons for Baca and Durán y Cháves. Either way Baca argued that the Durán y Cháves grant injured him, since it caused him to lose the watering holes and pasture lands. The principle not to prejudice a third party came into play as seen in the case Governor Vargas addressed. Here, Codallos y Rabal also declared null the conveyance of the disputed land. This tract included the "*pastos, aguas, y abrevaderos*," indicating again that these geographical resources were integral to the land, and that without specifying ownership, they created disputes.⁹⁹⁹ Governor Codallos y Rabal's statement in his *sentencia* that these belonged to Baca ended the ambiguity. This is further clarified in his order that Durán y Cháves not trespass on Baca's land as the watering holes and pasture were not commons. *Pasos, entradas y salidas* (ingresses and egresses) were also important features to land tenure, but they always had to serve their purpose, guaranteeing access to geographical space.

As discussed above, the rights to *entradas* and *salidas* had a tradition several centuries old in royal concessions, but also featured in several laws of the *Partidas*.¹⁰⁰⁰ In 1753, Juan José Pacheco filed a petition, alleging that he could not access his land in the

⁹⁹⁸ Bernabé Baca and Nicolás Durán y Cháves, *Carta de compromiso* (Letter of Compromise), El Paso del Norte, 8 October 1746, no. 184, Ser. I, SANM, NMSRCA.

⁹⁹⁹ *Alcalde mayor* Baltazar Abeyta, Act of Possession given to Bernabé Baca, Puesto de Nuestro Señora de Guadalupe, 9 March 1744, No. 92, Ser. I, SANM, NMSRCA.

¹⁰⁰⁰ E.g., Alfonso X, *Carta de Población*, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Hinojosa, *Documentos para la historia de las instituciones de León y Castilla*, 166-67, no. CII; the principle of a right to an ingress and egress is found in the *Siete Partidas*, Div. III, *título xviii, leyes lvi* and *lxviii*, which describe how to draft a *carta de venta* (bill of sale) and how to grant land *en feudo* (*en fief*); the latter would also include ". . . *con todos sus terminos, con montes, e con fuentes, con rios, con pastos . . .*"; it is distinguishable from other grants in that the land has to be explicitly given *en feudo* for a feudal relationship to be formed.

place known as Nuestra Señora de Soledad del Río Abajo near the Nueva Villa de Santa Cruz.¹⁰⁰¹ He specifically asserted that he lacked sufficient “*entradas y salidas*” to arable land, owned by him and his wife Inéz Martín, which through various circumstances, had been hemmed in by his neighbors.¹⁰⁰² He also requested that an honest citizen who could read and write view the case. He explained that the *alcalde mayor* in the Villa of Santa Cruz was closely related to Sebastián Martín, the individual he alleged to have impeded access to his property.¹⁰⁰³

After viewing the petition, Governor Vélez Cachupín commissioned Captain Juan Esteban García de Noriega to investigate the property.¹⁰⁰⁴ This granted Pacheco’s request for the appointment of a disinterested judge; this case had issues that suggest other tensions associated with the division of land between extended families. The next day García de Noriega viewed the site. He ordered Pacheco to build his house on the *solar* that he had to which he had access. He then urged Pacheco’s neighbors to compromise with him by accepting his offer to exchange a strip of land to allow access to his arable land. García de Noriega, while promoting the compromise already on the table, affirmed Pacheco’s right to an ingress and egress to land.¹⁰⁰⁵ This provides another example in which the law, as stated in the *Siete Partidas*, at the very least, provided grounds for a cause of action. Pacheco presented his petition so that the issue centered on his right to enter and leave his land. Vélez Cachupín responded to the petition, emphasizing this issue, when commissioning García de Noriega to make an investigation.

¹⁰⁰¹ Juan José Pacheco, Petition to Governor Tomás Vélez Cachupín, Santa Fe, 18 June 1753, no. 687, Ser. I, SANM, NMSRCA. For a transcription of these proceedings, see Appendix C, item V.

¹⁰⁰² Ibid.

¹⁰⁰³ Ibid.

¹⁰⁰⁴ Governor Tomás Vélez Cachupín, Decree, Santa Fe, 18 June 1753, No. 687, Ser. I, SANM, NMSRCA.

¹⁰⁰⁵ Capitán Juan Esteban García de Noriega, *Sentencia*, Santa Fe, 19 June 1753, No. 687, Ser. I, SANM, NMSRCA.

In other disputes, governors explicitly cited royal law in adjudicating boundary disputes involving the Native pueblos. These disputes could also result in the nullification of a grant. In 1763, Governor Vélez Cachupín revoked such a grant, which Governor Juan Domingo de Bustamante (1722-31) originally issued to Cristóbal Tafoya in 1724.¹⁰⁰⁶ The provisions of the grant had restricted land use to grazing and prohibited the use of the water from the Santa Clara creek. On 1 July 1763, Governor Vélez Cachupín asked Santa Clara Pueblo to state its case in its dispute with Spanish settlers over the use of the *cañada* (ravine) of Santa Clara.¹⁰⁰⁷ In response, Fray Mariano Rodríguez de la Torre, representing Santa Clara, stated that the Pueblo lacked sufficient arable land due to insufficient water.¹⁰⁰⁸ He then related that the adjacent Spanish ranch had been irrigating its fields, despite the fact that the deed restricted the land to grazing. Despite the intervention of several governors over several decades, the settlers were still irrigating the land with water reserved for the Pueblo. Rodríguez de la Torre ultimately requested that the *cañada* be given solely for the use of Santa Clara Pueblo as a means to permanently resolve the ongoing dispute.¹⁰⁰⁹

Vélez Cachupín responded to the request on 19 July 1763. After considering the accounts of several witnesses, he stated that the Pueblo of Santa Clara consistently had opposed the adjacent ranch. In addition, he found that the damages claimed by the Pueblo had resulted from the settlers' use of the water from the creek for cultivation, despite the

¹⁰⁰⁶ These provisions are described in the proceedings of this dispute, which spanned several decades; see Governor Tomás Vélez Cachupín to the Pueblo of Santa Clara (Cañada de Santa Clara Grant), Santa Fe, 19 July 1763, Report 138, SG, Ser. I, SANM, NMSRCA.

¹⁰⁰⁷ Ibid.

¹⁰⁰⁸ He also stated that he would act as the "Protector de Indios," in Governor Tomás Vélez Cachupín to the Pueblo of Santa Clara (Cañada de Santa Clara Grant), Santa Fe, 19 July 1763, Report 138, SG, Ser. I, SANM, NMSRCA; for the office of the *protector de Indios*, see Cutter, The "*Protector de Indios*"; Malcolm Ebright, "Advocates for the Oppressed: Indians, Genízaros and their Spanish Advocates in New Mexico, 1700-1786," *New Mexico Historical Review* 71 (1996): 305-39.

¹⁰⁰⁹ Governor Tomás Vélez Cachupín to the Pueblo of Santa Clara (Cañada de Santa Clara Grant), Santa Fe, 19 July 1763, Report 138, SG, Ser. I, SANM, NMSRCA.

restrictions on the grant.¹⁰¹⁰ Also, the land granted was contrary to law xx, title iii, Book VI of the *Recopilación (Indias)*.¹⁰¹¹ This law ordered that all cattle should be kept one league and a half from Indian settlements.¹⁰¹² Vélez Cachupín's *sentencia* revoked the 1724 grant and conveyed the entire Cañada of Santa Clara to the pueblo, "because of damage and prejudice to the Indians."¹⁰¹³

The governor used the violation of law xx as the basis for revoking the grant, but his reasoning relied on the principle that no conveyance should prejudice a third party. Law xx expressly extends this to Native settlements threatened by ranching. Vélez Cachupín applied the same rule that we have seen in other cases. The grant was revoked and then the disputed land was conveyed to the third party, here, for purposes of protection. In doing so, he also acted consistently with law xiii, title xxxi, Book II, which called for judicial proceedings to settle such a dispute, including removing a Spanish ranch.¹⁰¹⁴ When boundary disputes arose in the same area, two other governors affirmed Vélez Cachupín's *sentencia*. In 1780, Governor Juan Bautista de Anza, in affirming Vélez Cachupín, wrote that he acted "in accordance with justice and the royal laws of the Indies."¹⁰¹⁵ He also reaffirmed the application of law xx to the conflict, with an explicit citation: "They shall be treated with the

¹⁰¹⁰ Ibid.

¹⁰¹¹ Ibid.

¹⁰¹² *Recopilación (Indias)*, Libro VI, título iii, ley xx. "Que cerca de las reducciones no haya estancias de ganados."

¹⁰¹³ Governor Tomás Vélez Cachupín to the Pueblo of Santa Clara (Cañada de Santa Clara Grant), Santa Fe, 19 July 1763, Report 138, SG, Ser. I, SANM, NMSRCA.

¹⁰¹⁴ *Recopilación (Indias)*, Libro II, título xxxi, ley xiii: "Que los Visitadores vean si las estancias situadas están en perjuizio de los Indios y hagan justicias. Algunas estancias, que los Españoles tienen para sus ganados, se les han dado en perjuizio de los Indios, por estar en sus tierras, ó muy cerca de sus labranças y haciendas, y á esta causa los ganados les comen y destruyen los frutos, y les hazen otros daños. Mandamos, que los Oidores, que salieren á la visita de la tierra, lleven á su cargo visitar las estancias sin ser requeridos, y ver si están en perjuizio de los Indios, ó en sus tierras, y siendo assi, llamadas y oidas las partes á quien tocara, breve y sumariamente, ó de oficio, como mejor les pareciere, las haga quitar luego, y passar á otra parte, todo sin daño y perjuizio de tercero."

¹⁰¹⁵ Governor Juan Bautista de Anza, *Sentencia*, Santa Fe, 19 April 1780, Report 138, SG, Ser. I, SANM, NMSRCA.

rigor that the cited law xx, Book VI, title iii of the *Recopilación of the Indies* imposes” (see fig. 6.5).¹⁰¹⁶ He then confirmed Vélez Cachupín’s decision and the Pueblo of Santa Clara’s title to the land. When settlers later disputed the boundaries of the ravine, Governor Fernando de la Concha (1789-94) confirmed them, citing Vélez Cachupín’s decision.¹⁰¹⁷ In the end, three governors—spanning twenty-five years—concurred on the application of law xx, title iii, Book VI of the *Recopilación (Indias)* to the Cañada de Santa Clara boundary dispute.¹⁰¹⁸

In another dispute, concerning the boundaries of the Pueblo of San Ildefonso, Governor Anza also ultimately relied on royal law in unequivocal terms to end the dispute.¹⁰¹⁹ In 1763, the Pueblo of San Ildefonso argued that several Spanish settlers, who claimed to have received grants, were within the bounds of the pueblo. Both sides based their arguments on precepts from the *Recopilación (Indias)*, but a compromise was reached.¹⁰²⁰ The pueblo renewed its complaint in 1786.¹⁰²¹ Its complaint questioned the position of Marcos Lucero’s ranch. Governor Anza ordered the boundaries measured and measured again due to objections concerning the proper cordel (rope) to be used for the job. Governor Anza then accepted the second of the two measurements, which showed a space of 236 Castilian *varas* between the Pueblos of San Ildefonso and Santa Clara. He issued a *sentencia* that limited the boundaries of the ranch of Marcos Lucero to this space between the

¹⁰¹⁶ Ibid.

¹⁰¹⁷ Governor Fernando de la Concha, *Sentencia*, Santa Fe, 7 August 1788, Report 138, SG, Ser. I, SANM, NMSRCA. On 15 August 1788, Governor Concha drafted an addendum that clarifies the boundaries by referring to Governor Vélez Cachupín’s *sentencia*, declaring that the slopes of the mountains belong to the Pueblo.

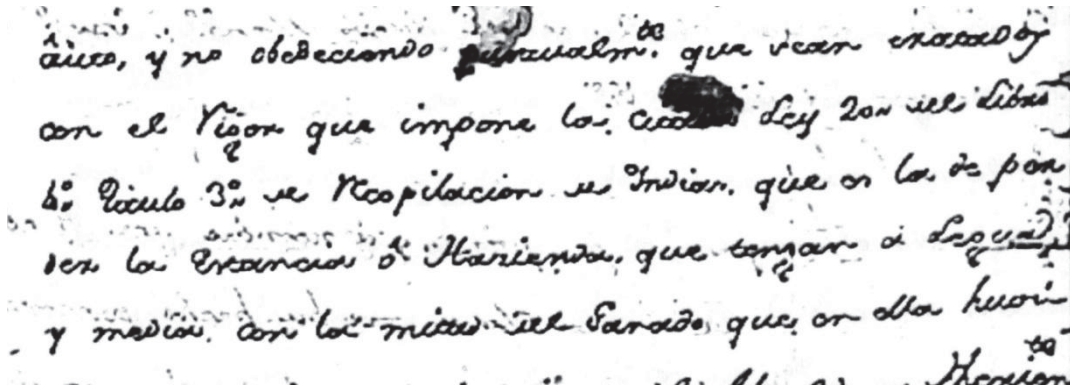
¹⁰¹⁸ Ibid.

¹⁰¹⁹ Proceedings Concerning the Boundaries of the Pueblos of San Ildefonso and Santa Clara, 10 June 1786, Santa Fe, no. 1354, Ser. I, SANM, NMSRCA; see Ebright, “Advocates for the Oppressed,” 320-31, for an analysis of these proceedings.

¹⁰²⁰ Ebright, “Advocates for the Oppressed,” 320-31.

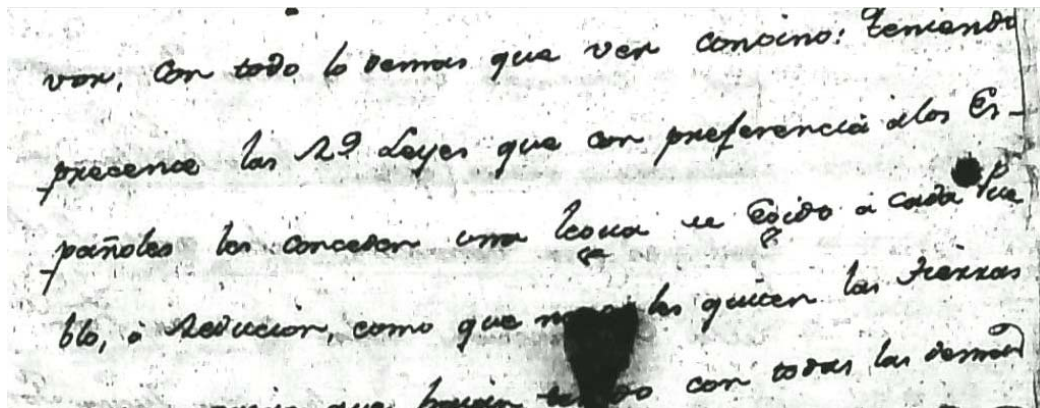
¹⁰²¹ Ibid., 325.

two pueblos; he added that if he sold his land, the Pueblo of San Ildefonso should have the right of first refusal.¹⁰²²



... y no obedeciendo ~~gubernamental~~ que sean ~~inadecuados~~
con el rigor que impone la Ley con el libro
de Título 3^o de Recopilación de Indias, que es la de por
ser la Encomienda de Mariandú, que tengan a la ~~segunda~~
y media, con los límites del Estado que en ella ~~hayan~~

Figure 6.5. Governor Juan Bautista de Anza, *Sentencia*, Santa Fe, 19 April 1780, Report 138, SG, Ser. I, SANM, NMSRCA. (This image and caption first appeared in James E. Dory-Garduño, “The Adjudication of the Ojo del Espíritu Santo Grant of 1766 and the *Recopilación*,” *New Mexico Historical Review* 87 (2012): 167-208.)



... con todo lo demás que ver conviene: Teniendo
presente las R^{as} Leyes que con preferencia a los Es-
pañoles les conceder una leona se ~~esido~~ a cada Pue-
blo, o Reducción, como que ~~no~~ ~~se~~ ~~quieren~~ las ~~tierras~~
... ~~hayan~~ ~~en~~ ~~so~~ con todas las demás

Figure 6.6. Governor Juan Bautista de Anza, *Sentencia*, Santa Fe, 10 June 1786, no. 1354, Ser. I, SANM, NMSRCA. (This image and caption first appeared in James E. Dory-Garduño, “The Adjudication of the Ojo del Espíritu Santo Grant of 1766 and the *Recopilación*,” *New Mexico Historical Review* 87 (2012): 167-208.)

¹⁰²² Governor Juan Bautista de Anza, *Sentencia*, 10 June 1786, Santa Fe, no. 1354, Ser. I, SANM, NMSRCA.

In deciding the case, Governor Anza noted in his *sentencia* that he had the *Recopilación (Indias)* before him: “. . . teniendo presente las re(ale)s leyes . . .” (“having in front of me the royal laws . . .”) and referenced two laws from it to support his decision (see fig. 6.6).¹⁰²³ He clearly references the right to an *ejido* of one league in length in law viii, title iii, Book VI, which states, “tengan comodidad de aguas, tierras y montes, entradas, y salidas, y labranças, y vn exido de vna legua de largo . . .” (“they shall have the commodity of waters, lands, woodlands, ingresses, egresses, and farmlands, and an *ejido* one league long . . .”).¹⁰²⁴ Here is another example in which the *ejido* mentioned in this law is the “Pueblo League.” More importantly, as noted above, this law, which settled the dispute, reflects principles of Castilian law and is formulated in a similar manner to those dating to at least the eleventh century.¹⁰²⁵

Following the Pueblo Revolt of 1680, inhabitants of New Mexico actively participated in the reorganization of the province through utilized royal concessions of land. Governors, as agents for the crown, issued numerous grants to individuals and communities of indigenous people and Spanish settlers. These included concessions for land by which they created settlements, ranches, or in the case of Sandía and Abiquiú, Native settlements. Governors formulated their concessions along the lines of the procedure laid out in the *Siete Partidas*, but surely known through practice and observing others, such as their superiors as they advanced through the ranks, draft the instruments. Nonetheless, these had basic

¹⁰²³ Governor Juan Bautista de Anza, *Sentencia*, 10 June 1786, Santa Fe, no. 1354, Ser. I, SANM, NMSRCA.

¹⁰²⁴ *Recopilación (Indias)*, Libro VI, título iii, ley viii; he also references *Recopilación (Indias)*, libro II, título xxxi, ley xiii.

¹⁰²⁵ Again, see Fernando I to García Iñíguez (Biérboles Castle Grant), 21 June 1038, in Blanco Lozano, *Colección Diplomática de Fernando I, 1037-1065*, 59-60, no. 8; Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars (Capilla Castle Grant), Toledo, 9 September 1236, in González, *Reinado y diplomas de Fernando III*, 3:93-95, no. 575.

provisions that resembled those several centuries old in form and in substance. Those that governors issued to settlements—European, Native, or mixed heritage—enumerated natural resources as monarchs of Castile had done at least as far back as the eleventh century.

Inhabitants petitioned for land, and upon receipt of a *merced*, commissioned judges, usually *alcaldes mayores*, placed them in possession, following procedures rooted in Castilian law originating prior to 1492. Many petitions requested land in the form of pasture land or *ejidos*, as communal land owned by villages, towns, or cities had long been a tradition in Castile and the Americas. Royal concessions, *fueros*, and legal writings such as the *Espéculo* and *Siete Partidas*, and numerous adjudications demonstrate this. When the San Miguel del Vado Grant of 1794, the Ojo del Espíritu Santo Grant of 1766, and Cochití Grant of 1766 were adjudicated in the federal courts of the United States in the nineteenth and twentieth centuries, the communal land was stripped from the village of San Miguel and placed in the federal domain.¹⁰²⁶ The Ojo del Espíritu Santo and Cochití Grants were rejected altogether, deemed grants of permissive use or licenses, since the stated purpose in their petitions was to use the land as grazing land.¹⁰²⁷ The decisions from these three examples were completely inconsistent with the legal tradition described in this study. On a practical level, this study provides further evidence to redress these errors.

The underlying law of the Crown of Castile's policy to generously concede land in the eighteenth century as it did in the eleventh through fifteenth centuries outlines the contours of a single legal tradition. The adjudications of land also demonstrate this. These adjudications also followed principles found in the *Siete Partidas*, royal concessions, and

¹⁰²⁶ See *United States v. Sandoval et al.*, 167 U.S. 278 (1897); see Mark Schiller, "The San Miguel del Vado Adjudication: A Template for Injustice," *Jicarilla News* 11 (2006), viii, for a synopsis of the problems of the decision.

¹⁰²⁷ *Pueblo of Zia et al. v. United States et al.*, 168 U.S. 198 (1897).

legal writings formulated before 1492. Where governors applied law from the *Recopilación (Indias)*, that law had deep roots in the eleventh through fifteenth centuries. The expression and description of land in these laws included the enumeration of the basic resources that settlements should be entitled to have. On a lesser level, the emphasis on possession and written evidence recurs in most disputes, also reflecting the Castilian legal tradition prior to 1492. Concessions that prejudiced nearby landholders or Native settlements were frequently declared null and the disputed land sometimes granted or restored to the offended party. This also occurred in incidents involving Native settlements.

Although the law was not always enforced by officials and procedure and rules not always followed, many governors did act in accordance with written law and the unambiguous policy of that law. The principles that enabled this did not rely on who the grantees or offended parties were, though the laws designed to protect Natives were more explicit and strident. Rather, they were rooted in concepts of justice expressed most fully in the Learned King's *Partidas*. For governors, such as Anza, Vélez Cachupín, and Concha, the *Recopilación (Indias)* and the principles of Castilian law that it contained were the controlling authority when they issued and adjudicated royal concessions. The ability of governors, such as these, to maintain authority in the province and carry out the defensive policies of the crown, allowed for the possibilities of economic growth in the latter decades of the Spanish era and a modicum of stability required to adjudicate other legal matters.

CONCLUSION

Castilian Law: From County to Kingdom to Royal Crown

In eleventh-century Castile-León, the administration of justice flowed through the king's court. A petition and answer format initiated suits in which a variety of types of law could be applied. Monarchs delegated disputes to judges who decided cases based on laws from the *Lex Visigothorum*, the veracity of documentation, testimony given under sworn oath, combat, or some combination of all of these. Disputes show that not only did judges act in accordance with provisions of the *Lex Visigothorum*, they cited specific laws in the proceedings. These suits could also include sophisticated testamentary evidence and other forms of title. Documentation could prove decisive and, if authentic, was always a vital piece of evidence as provisions of the *Lex Visigothorum* explain. Still, even as late as the last quarter of the eleventh century, a noble such as Rodrigo Díaz de Vivar, who served as a delegated judge and applied the *Lex Visigothorum*, could also offer to vindicate himself through trial by combat among other legal theories by which he could be exonerated.¹⁰²⁸

At the same time, however, Alfonso VI began issuing *fueros* that contained enumerated rights and privileges to individuals and settlements. Some of these privileges were based on custom that his subjects desired to retain in the form of written law; they might also include incentives to settle a locale in which warfare with Muslim al-Andalus or a hostile Christian kingdom was a real possibility. Even in the last decades of the fifteenth century, raiding occurred between Castile and Granada. The Christian kingdoms of the Peninsula also frequently fought over boundaries or to support rival claimants in dynastic

¹⁰²⁸ *Historia Roderici*, in Martínez Díez et al., *Historia Latina de Rodrigo Díaz de Vivar*, 69; chapter 35 (also f. 83r).

disputes. The Crown of Castile's policy to generously promote settlement served a basic need to secure the kingdom's territorial jurisdiction and retain support from its subjects.

After the capture of Toledo, Christians, Muslims, and Jews received their own *fueros*. These developed from the royal charters that monarchs of Castile-León drafted to meet the most pressing needs of their subjects. While the earliest *fueros* were short, "*fueros breves*," *fueros extensos* contained numerous provisions—some containing several hundred articles. Even before the capture of Toledo in 1085 and the battle of Las Navas de Tolosa in 1212, villages, towns, and cities received *fueros*. By 1202, as seen in the *fueros* of Madrid and Cuenca, they were issued in various lengths and diverse provisions. By the beginning of the thirteenth century, the expansion of the Christian north and the continued incorporation of settlements, towns, and cities meant that the administration of justice could pose substantial problems for monarchs charged with providing peace and justice. This required a discernible body of law, a delineated territorial jurisdiction, and educated, professional judges to apply this law.

Fernando III, king first of Castile and then also of León after 1230, initiated changes that would transform the administration of justice in his realms. Though he still adjudicated cases through the appointment of royal officials as judges, he combined the chancelleries of Castile and León and began to issue royal concessions and charters in Castilian. He stipulated that these held force in Castile and León, merging the two kingdoms as well as the others listed in his style of title. He also commissioned the translation of the *Lex Visigothorum* into Castilian and gave it to various towns that he captured in Andalucía. *Fueros* also were given in Castilian. By the end of Fernando III's reign, Castilian had replaced Latin as the legal language of his realms. Latin, however, remained an intellectual

language, which jurists used to gloss Castilian law. This acknowledged that Castilian law had replaced the *ius commune* as a general source of legal principles.

Alfonso X took the next steps in reorganizing and consolidating the administration of justice in Castile-León. He commissioned the *Fuero Real*, which he conceded to numerous towns under the direct jurisdiction of the crown. It standardized some basic elements of the administration of justice, where the *Fuero Juzgo* may have been lacking. He then commissioned the *Espéculo de las Leyes*, which formed the foundation of what would later be known as the *Siete Partidas*. That this body of law was originally referred to as the “Mirror of the Laws” indicates that it was meant to explain existing law and custom. The legal writings that Alfonso X commissioned did not invent completely new concepts in law; rather they systematized, reformed, consolidated, and elaborated on an existing legal tradition.

Royal law from the reign of the Learned King forward appeared in Castilian. Still, the *Partidas* drew from the *Lex Visigothorum*, which had procedures for the *pesquisa*, a Germanic-influenced testamentary law that complemented the Roman tradition. The scholars working under Alfonso X’s direction borrowed—as great law-givers always have—from ancient sources, but they also incorporated principles that had come from the tradition of granting privileges through royal concessions, *fueros*, and concepts of land and communal land distinct from earlier legal traditions. The Castilians were borrowers as were the Romans and the Visigoths. Evidence also had a stratified value. Written evidence had greater weight than testimony if proved authentic. The *Partidas* emphasize evidence as well.

The *Partidas* also drew from the *ius commune*, and in areas such as servitudes and possession, systematized law in a manner that justifies the historian of Castile Joseph F.

O’Callaghan’s observation that it reads like a modern code. Elaborations found in the *Partidas*, such as how to argue a case with certain pieces of evidence, reflects the notion that the *Corpus iuris civilis* had value as a body of legal writings in which its principles and logic provided legal instruction. The *Siete Partidas* edifies in a similar way, but reflects concepts of communal land, which distinguishes the Castilian world from the Roman. The *Partidas* were systematic in discussing topics such as duels, evidence, appeals, judicial conduct, wills, universities, and numerous other topics. While it reflects Roman-influenced law in some places, it also restates uniquely Castilian law and custom.

The importance of religion and scripture is indicated by their being positioned first in the *Partidas*, a place the Catholic faith, as a subject, never relinquished in the *recopilaciones*. The *Partidas* also defined law itself within the context of the Castilian tradition. Usage could establish custom over time. Custom itself could become part of a *fuero*. It had more authority than usage; as a written law, it had a higher authority. In this way, the *Partidas* tell how usage and custom evolved into *lex scripta*. This system—generated by royal charters and practice—had already existed when the Learned King drafted the *Siete Partidas*: this body of law reflected the substantive jurisprudence of an already existing legal tradition that rapidly formed during the reigns of Fernando III and his son, Alfonso X.

Alfonso X also addressed the need for reform and more thoroughly organized the judiciary. He appointed judges to hear appeals from regions throughout his realms and reserved for himself cases in which the crown had original jurisdiction (*primera instancia*). Three judges were designated to hear appeals from the entire realm, setting in place a hierarchy in which the monarch of Castile, through this judiciary, had the final say in matters of justice. Alfonso X naturally experienced resistance from lords who had criminal and civil

jurisdiction in their domains, but the systematic approach to providing appellate venues proved significant. It required learned men to apply and practice a known law, which by the end of the thirteenth century existed in the kingdom of Castile in substantial quantities. The *cortes* of Castile-León also provided a means to add to this law through the answering of petitions from towns, nobles, and ecclesiastics.

Alfonso XI brought the reforms of Fernando III and Alfonso X to fruition by officially setting the hierarchy of law in place through the *cortes* held at Alcalá de Henares in 1348. By placing royal law and decrees above royally confirmed *fueros*, he insured that edicts, provisions, and decisions issued by the crown would have a juridical supremacy over other elements of the law. This provided an ordering by which the crown could institutionalize a high tribunal in the form of an *audiencia*; the law that it would be entrusted to apply would have been officially promulgated. When Enrique II established the *Audiencia*, it had these advantages to build on. It also had a corps of royal ministers who served the court to draw from, and it could make use of an already consolidated chancellery. By 1442, it was fixed at the physical location of the *Chancillería* in Valladolid, where documents generated from disputes and other legal instruments were archived.

The justices who would constitute the *Audiencia* were university-educated men who served as *alcaldes del corte* or *asesores*, the latter of which became the *oidores* of the *Audiencia*. *Oidores*—the elite justices—heard civil matters while the *alcaldes* of the *Audiencia* heard criminal matters. The essential organization of the *Audiencia real castellana* became the model by which later *audiencias* were formed in the peninsula, the Americas, and the Philippines. The royal council established in 1380 also shaped the

hierarchy of royal administration, which would also be replicated through that of the Indies in the sixteenth century.

The royal charter proved an inveterate tool for shaping law and policy. It provided a means to enumerate privileges, rights, and laws to govern settlements; it also was the means by which the crown conveyed land from the royal domain. As the *fueros* given to settlements increased in length, they elaborated on privileges, rights, and how land was conceived. Though a grant of land might enumerate the resources that were integral to that land—*montes, fontes, aguas, ingressus* and *egressus*—these all appeared in the *fueros* given to towns. As a form of communally owned land, they fit within a complex, though understandable, system of land tenure that included individually held land in addition to communal land. Individual rights to property meant indefinite ownership and rights to sell, give, rent, lease, or bequeath that property to an heir. Chapter I, law 1 from the *fuero de Cuenca* states these rights with such clarity and assurance that even the most strident of twenty-first-century private property advocates might find its provisions comforting. This complemented land tenure that featured commons in the form of the royal domain and commons owned by locales. The municipal councils could own land (*propios*) to support their functions as well. The laws governing the commons bestowed upon villages, towns, and cities the right, as with private property, to exclude outsiders from their *ejidos, pastos*, and *dehesas*.

The policy behind Castilian land tenure was to extend Christian civilization, through incorporation, but also defense. As Fernando III's successors reorganized the lands that he and his predecessor won for the Crown of Castile, they redistributed land with these legal understandings. The *libros de repartimientos* show how transformative this process was. The

royal concession as a flexible tool to distribute land, create *fueros*, and provide privileges and judicial sentences, explains why Castile developed a civil-law tradition rather than a common-law system in the manner of the kingdom of England. The Royal concession proved so useful that the description of a proper charter in law ii, title xviii, Division III of the *Partidas* reflects the basic document that the rulers of León and Castile had been issuing for centuries. It very closely resembles those of Fernando III, which Alfonso X witnessed firsthand and probably used as model documents.

Alfonso XI set the hierarchy of Castilian law and reaffirmed royal authority at Alcalá de Henares; Enrique II established the *Audiencia*. These acts delivered further blows that put final shape to an already established legal system. They added the order and structure—crucial elements in themselves—to the substantive law, which had developed in the eleventh, twelfth, and thirteenth centuries. Altogether, this gave the Castilian legal tradition the basic shape it retained for centuries.

If the *cortes* of Alcalá de Henares reaffirmed the substantive law of Castile in the form of a systematized body of legal writings, the *Audiencia* reinforced this. It did so as a formalized institution entrusted with administering justice and the law confirmed by Alfonso XI and his successors. Even the *Reyes Católicos* confirmed the substantive law promulgated by previous rulers. They added much in administrative reforms that were later incorporated into the *Ordenanzas Reales de Castilla* and the *Recopilación (Castilla)*. They also reformed the *Audiencia*, which functioned at a high level in the last few decades of the fifteenth century, handling numerous cases, some sophisticated interlocutory appeals.¹⁰²⁹

¹⁰²⁹ See Pineda v. Uceda, Valladolid, 10 January 1492, *Carta de Ejecutoria*, ARCV, Registro de Ejecutorias, Caja 43, 6.

Suits in the archive of the Real Audiencia y *Chancillería*, as well as the ancillary documentation deposited there, demonstrate that a legal tradition had been established.

Land disputes turned on whether any of the parties had title if possession was not an issue. In cases where possession might prove determinative, villages, such as Algodre, as did individuals in other cases, argued that possession proved or disproved certain rights.¹⁰³⁰ That both *procuradores* in that case argued that their side at least had usage rights, or that the other side should be limited to only usage rights to the commons that they were fighting for, demonstrates that they knew how to frame their cases within the concepts of laws from the *Siete Partidas* and other written law. They argued actual possession, possession since time immemorial, possession for various enumerated periods of time. All of these would at the least preserve usage rights, but they argued for more. The Council of Coreses could have justified their seizure of the villagers and their livestock for entering their *términos* if they could have persuaded the court that the boundary markers at issue had been placed prior to the dispute. These arguments also show that the provisions of the *Siete Partidas* concerning possession extended to villages, towns, and cities; it was the principle of taking and holding land that these provisions emphasized, not the very narrow understanding that possession was only applicable in private law. Possession showed intent to exercise ownership and power over land or other things. If communal lands never left the royal domain, where commons could also be found, it would make no sense to argue possession of them. Therefore, when litigants placed arguments of possession as their strongest claim to ownership, they were following the advice of the *Partidas* and the provisions of law that allowed places, towns, and cities to own commons. The right to exclude was an element

¹⁰³⁰ See Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, discussed above on pages 112-28.

derived from ownership, which law ix, title xxviii, Div. III granted and that litigants such as Coreses sought to affirm.

Litigants also distinguished between usage rights or *servidumbres* and ownership—other concepts found in the *Siete Partidas*, which *procuradores* used effectively to make their arguments. Procedural issues and jurisdiction also factored in. These were all elements of law, of which the *oidores*, as seen in the example of Alonso Díaz de Montalvo, were well aware.¹⁰³¹ Díaz de Montalvo published editions of the *Siete Partidas* and the *Ordenanzas Reales de Castilla*. Jurists in the sixteenth, seventeenth, and eighteenth centuries followed this tradition.

The *sentencias* issued by the *Audiencia* demonstrate that concepts of title, possession, and evidence were consistent with law found in previous decisions by the royal court, royal concessions, *fueros*, the *Lex Visigothorum*, and the *Siete Partidas*. The *sentencia definitiva* issued in the Algodre case affirms that villages, even those within the jurisdiction of a *ciudad*, owned their own commons and could exclude others from them.¹⁰³² It also shows that they could jointly own communal land in the form of *montes*, *pastos*, *prados*, and *ejidos*. No lengthy treatise on the law or common-law opinion is needed to reach this understanding. The decision illustrates the plain meaning of law ix, title xxviii, division III of the *Partidas* as well. The *Audiencia* also issued *sentencias arbitrarias*, in which ownership to communal land could be asserted or rights to communal land could be established. In some cases, decisions such as these could be used as a form of title in later disputes. In those, litigants argued they had “titled possession.”

¹⁰³¹ See Chapter Three, 96-99.

¹⁰³² See again Algodre v. Coreses, *Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, discussed above on pages 112-128.

Other decisions affirmed that the *oidores* thought that authentic documents proved title and that possession could also prove ownership even where there was no original grant. In cases such as *Molina v. Vera*, the lack of possession or questions concerning whether an Act of Possession had taken place with the proper persons could defeat a claim as well.¹⁰³³ In some cases litigants could argue various theories of possession, but could not provide the witness testimony to prevail in the suit. Altogether, these cases consistently follow principles found in royal charters, *fueros*, and other written law. The significance of title and possession was well understood by litigants, *procuradores*, and the *oidores* of the *Audiencia*.

The Act of Possession as seen in several cases from the fifteenth century and earlier shows that the procedure had several standard elements based on principles found in the *Partidas*. The recipient who took possession of the land physically entered it led by an official or some other interested persons. This constituted *corporal* and *real* possession of a tract of land, estate, or mill. That person then pulled up turf or threw rocks and announced that he had taken possession; then those who might object or contest the new owner's right had a chance to do so before officials or *escribanos* and other witnesses. This ceremony had the purpose of making the transfer of ownership open and notorious, providing an opportunity for someone potentially prejudiced by the transfer to protest and take the appropriate action to have it nullified. As such, Castilians notarized Acts of Possession, deposited them in archives, and referred to them in litigation. *Cartas de venta* found in the *Audiencia's* archive also included Acts of Possession. The process of obtaining land through a *merced real* differed slightly. It meant the submission of a petition, the receipt of a *merced*, but then also an Act of Possession. The latter—title and possession—established ownership

¹⁰³³ See *Molina v. Vera*, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, *Registro de Ejecutorias*, Caja 3, 25, discussed above on pages 141-49.

(*propiedad* or *dominion*) over land. Although the *Partidas* also allow “constructive possession” through the delivery of a title document, the practice of recording an Act of Possession better protected a party.

The application of these laws in courts such as the *Audiencia* shows, particularly when focusing on land tenure, that a legal tradition had taken shape in the thirteenth and fourteenth centuries. Its core elements included a substantial amount of *lex scripta* with a defined hierarchy, delineated territorial jurisdiction, assigned subject-matter jurisdiction, and a professional judiciary charged with applying that constitutionally promulgated law. Litigants, some with few means, based on the surviving documents, understood this system and successfully defended or established their rights. Though the process could be lengthy, expensive, and undoubtedly bitter to those who had to resort to it, the *Audiencias* decided a substantial amount of cases in the late-fifteenth century.

Some of these litigants came from villages, whose founding resembled that of other villages that spontaneously emerged along the river valleys of the Duero or Tagus or Guadalquivir. Some could trace their origins to a royal concession that revealed a concept of land that enumerated its resources and features—*montes*, *pastos*, *ejidos*, *entradas*, and *salidas*—which settlements would need to sustain themselves. They suited a pastoral and ranching economy. These terms meant something slightly different than their Latin heritage suggests. *Montes* were woodlands where firewood and timber could be found, but also where materials for weapons and fortifications could be had. *Pastos* were pastures. Villagers, townspeople, and city dwellers often joined and assembled their herds together for economic and defensive purposes. When the villagers from the small village of Algodre were

attacked, they were doing just this.¹⁰³⁴ These communal lands allowed settlements, which initially a few families established, to grow into larger villages. *Ejidors* and *dehesas* also took on a distinct meaning in the eleventh through thirteenth century. While their Latin origins give an idea what they came to mean, the *ejido* became something separate from the *exitus* that simply meant a path out; it came to mean a larger extension of space from the center of the village, town, or city. By the time that Alfonso X commissioned the *Siete Partidas*, an *ejido* meant a multipurpose commons, which could serve as *pastos* or some other communal space.

The concept of the community sustaining itself through the use of the resources found within its bounds followed the theory that the monarch's duty was to provide the opportunity for his or her subjects to prosper in peace and justice. The precepts assigning this right and duty are found in the *Lex Visigothorum*, but are more clearly elaborated in the *Siete Partidas*, Div. II, *título xi, ley i*. The monarch should distribute lands to his or her subjects, so that they may produce what they need and make use of the fruits of the land. This reflected a longstanding policy. Land should be generously distributed with flexible and liberal concepts of ownership, such as property an individual could own, communal lands owned by communities, and communal land owned by the councils of towns and cities. In addition to this, subjects could make use of the royal domain. Royal concessions, *cartas de ventas*, judicial decisions, *fueros*, and bodies of written law supported this concept. The issuance of a *fuego* to a settlement on the edge of Christian civilization incrementally extended the territory of Castile-León over centuries, but also perpetuated its juridical tradition at the same time.

¹⁰³⁴ See again *Algodre v. Coreses, Carta de Ejecutoria*, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2, discussed above on pages 112-128.

This legal tradition thrived within the crown's policy—one dating to when Castile was the *Condado de Castilla*. The leaders of Castile placed land law at the heart of a policy that promoted the distribution of land, from the period of the semi-autonomous counts to the last land grants given in the name of the sovereign of Castile in the New World. It was flexible and suited to the territorial expansion that characterized the shifting frontiers of Castile and León—a characteristic that required law that could be issued in circumstances where stability and static borders, needed for a common law tradition, did not exist. The civil law of Castile allowed the enumeration of rights and privileges, designed to attract settlers, and which could be promulgated as conditions demanded. The crown similarly formulated royal provisions and legislation in response to petitions presented at the roaming *cortes*.

This legal tradition carried over into the action the crown took to administer the Canary Islands and eventually the Americas. Isabel I received title to the lands that Columbus had encountered in much the same way her subjects had received title for land from Castilian monarchs for centuries. She petitioned the pope, whose authority in spiritual and temporal matters she acknowledged. He issued a concession granting to Castile-León the lands that the crown might discover west of a line of demarcation, and in an additional grant, the Crown of Castile received the right of its representatives to take possession of these lands. At the very least and in the legal context of Castile, the crown had color of title in good faith based on Isabel I's belief that she, as sovereign of Castile-León, had received a legitimate conveyance. From 1492 until the wars of independence, there was no change in sovereignty over the lands that fell within the scope of the grants that Isabel I received.

While numerous scholars have studied various events such as the conquest of Mexico or Peru or the administration that the crown established in the New World, the examination of the basic elements of land tenure shows that the legal tradition of the eleventh through fifteenth centuries was extended to the Americas. Viceroy Mendoza and his successors issued land in the name of the monarch of Castile-León and although that monarch ruled other domains, the authority conferred on the ministers in the Americas came through that of the sovereign of Castile. While the numerous ministers—viceroys, *oidores*, *corregidores*, *alcaldes*, and so on made administrative rules and regulations, land was held and conferred according to the tradition established in the eleventh through fifteenth centuries. This laid the foundation for the application of the other fields of law.

Mendoza and his successors issued *mercedes reales* for *encomiendas*, *estancias*, *solares*, water, and other forms of land that had precedent in the Peninsula. The varied distribution of land resembles that found in the *libros de repartimientos*. The royal concessions issued in Nueva España, although truncated, contained the basic elements established in the Peninsula. By diplomatic standards they had less of the textual formalities found in thirteenth-century charters, but the concessions contained the essential rudiments described in law ii, title xviii, Division III of the *Siete Partidas*: The lawful representative of the crown issued the grant in the name of the monarch to a specific grantee; the boundaries are described by physical features; and any conditions that govern the conveyance are stipulated in the document.

Recipients of grants, and indigenous settlements whose land was confirmed to them, took possession of the land in accordance with the traditional Act of Possession. This component closely followed that of the Peninsula, though the background and heritage of the

recipients varied throughout the Americas. Still, the Act of Possession served the same purpose. One litigant, as seen in the Michoacán case, demonstrated that others had been placed in possession of his land without giving him a chance to protest the act.¹⁰³⁵ The *Audiencia* heard his case and declared the grant null. Circumstances were indeed different in the Americas as were the experiences, but the ways in which land was held or adjudicated did not create a distinct and new legal tradition.

In *Olivares v. Mendoza*, where two neighbors owned adjacent *solares* in Querétaro, Mendoza preserved his right to a servitude for irrigation ditches that burdened Olivares' lot.¹⁰³⁶ He based his successful argument in principles found in the Learned King's law; his adversary based his arguments on principles in the *Partidas* as well. In cases such as these, the ancient *pesquisa* conducted by the proper officials provided the facts that helped determine the case. In these examples, to understand how litigants used royal law, one must not only read individual cases, but also read and reread the law. Litigants and royal officials infrequently used an explicit citation to a law, but they recurrently applied legal principles found in numerous bodies of written law as seen in numerous cases and conveyances.

Laws that the crown issued early on in the sixteenth century dealt with the crisis concerning the just treatment of the Natives and the granting of *encomiendas*. It also promulgated several important works by the end of that century. In 1567, Felipe II approved the *Recopilación (Castilla)*, which had force—as did the *Partidas*—in the New World, though qualified in the seventeenth century. He also promulgated the *Ordenanzas de*

¹⁰³⁵ See Carrillo Altamirano v. Pueblo of Santiago el Chico, Mexico City, AGN, *tierras*, legajo 189, expediente 17; transcription in the Center for Southwest Research, Albuquerque, New Mexico, Mss 867, box 12, folder 23, discussed above on pages 181-82.

¹⁰³⁶ See *Olivares v. Mendoza*, Queretaro, 1718-1722, AGN, *Tierras*, legajo 400, expediente 9; transcription in the Center for Southwest Research, Albuquerque, New Mexico, Mss 867, box 12, folder 34, discussed above on pages 185-87.

descubrimientos, nueva población y pacificación de las Indias of 1573. While the ultimate object of these reforms was to better evangelize the Natives in the Americas, Felipe II uses the same terminology for types of land, with connotations that reflected those of the thirteenth, fourteenth, and fifteenth centuries. Villages, towns, and cities were to have *ejidos*, *pastos*, *dehesas*, *montes*, and *prados* as did their predecessors from prior centuries. Many towns already had established these forms of communal land. Felipe II's ordinances fostered the extension of a tradition that had already been in place. He did not invent a new system of land tenure.

While these laws, which historians have called *Derecho Indiano*, were directed to address conditions in the Americas, they closely reflected principles of the Castilian legal tradition. When the former *oidor* Juan de Solórzano Pereira presented his explanation for the crown's management of the royal domain, he cited two Castilian laws: one from the thirteenth century, the other from the fourteenth.¹⁰³⁷ He cites various ancient sources for persuasive effect, but his citations of law frequently refer to Castilian royal law. His overarching conception of royal authority in regards to the royal domain is couched in the crown's longstanding policy expressed in the *Fuero Juzgo* and *Siete Partidas*. The *Recopilación de leyes de los reynos de las Indias* affirmed this as well. The monarchs of Castile never voluntarily relinquished the sovereignty that Isabel I asserted over the lands granted by the pope. The *Recopilación (Indias)* also contains numerous provisions that reflected the Castilian legal tradition and was closely organized along the lines of the *Recopilación (Castilla)*.

In Nuevo México, the heart of the province which lay some 2,300 kilometers from the Ciudad de México, officials began reestablishing royal authority in 1693 following the

¹⁰³⁷ See above, pages 193-97.

Pueblo Revolt. The resettlement of the province required the imposition of authority over the Native pueblos, but also defending it from nomadic raiders. Governors issued *mercedes reales* that severed land from the royal domain largely along the Río del Norte (Río Grande) and other waterways. As the viceroys of Nueva España did, they followed a centuries-old procedure of responding to petitions for land, issuing concessions in the name of the king, and placing the grantees in possession of their land. When grantees—European and Native—took possession of their land, they entered that land, tore up turf, threw stones, declared that they took possession of the land, and often shouted “Long Live the King our Lord!”¹⁰³⁸ They also offered third parties the opportunity to contest the grant. This was a centuries-old tradition.

The study of the resettlement of Nuevo México, particularly the royal charter that officials executed, reveals even more. The royal concession, the instrument used to shape land law, *fueros*, and other written law, so many centuries prior, also shaped the settlement of the province of Nuevo México. It allowed the establishment of settlements, Native pueblos, individual ranches, grazing lands, mines, and individual homesteads. The components of the royal concession also followed the basic elements of those from several centuries earlier. Officials placed them in possession, observing procedures established in Castile that were then followed in Nueva España and other places in the Americas. Grantees also petitioned for land to be used as *ejidos*, *pastos*, and other forms rooted in land law several centuries old. Governors, such as Tomás Vélez Cachupín and Joaquín Codallos y Rabal, also issued royal concessions based on law viii, title iii, Book VI of the *Recopilación (Indias)*, which stipulated that the settlements would receive waters, lands, woodlands, arable lands,

¹⁰³⁸ See above, pages 220-23.

ingresses, egresses, and an *ejido* one league long.¹⁰³⁹ All of these elements are found in concessions from the eleventh, twelfth, and thirteenth centuries. Altogether, the resettlement of Nuevo México represents a further example of the crown's policy to generously concede land, which, along with defensive measures, including the strategic placement of settlements, assisted in securing territorial jurisdiction.

Adjudications of land-related disputes demonstrate that the principles of title and possession remained constant. Grants that threatened the ownership of nearby landholders or native settlers were frequently declared null, particularly those that infringed on the bounds of a prior grant. In Nueva España and Nuevo México, the rule was nullification, and depending on the circumstances, that land could be granted to the party that the later conveyance prejudiced. As seen in cases involving Native settlements, governors such as Vélez Cachupín and Anza explicitly cited the *Recopilación (Indias)*.¹⁰⁴⁰ Despite the innumerable variables that officials encountered in the Americas, principles developed centuries earlier could still be applied with effect. That even as late as 1786 Juan Bautista de Anza, a native-born American (*criollo*), could decide a dispute with royal law, in which *Nuevomexicanos* fired legal volleys rooted in the *Recopilación (Indias)* at each other, says something about the importance of those precepts.¹⁰⁴¹ The law that Anza ultimately applied in that case reflected concepts of land and legal authority from the thirteenth century, which speaks to the enduring relevance of Castilian law.

In sum, two main conclusions can be drawn from this study. On an academic level, by removing the artificial barrier of periodization that severs the worlds before and after 1492 from each other, we can learn much more about the legal tradition that spanned from the

¹⁰³⁹ See above, pages 217-20.

¹⁰⁴⁰ See above, pages 229-235.

¹⁰⁴¹ Ibid.

eleventh through the eighteenth centuries. The similarities, parallels, and analogies have much to tell us about the principles pondered in the minds of men and women throughout this period. Artificial constructs cannot change the fact that these inveterate principles exist in the historical record. That the petition, granting clause, and Act of Possession found in the file of a land grant given in eighteenth-century Nuevo México are rooted in a tradition from the eleventh through fifteenth centuries underlines the value of studying this period. The royal concession, issued from the same sovereign office, shaped law throughout this period. It drove the formation of royal law at a time when the ultimate victory of the Christian kingdoms of Hispania was not certain. It similarly drove the resettlement of the province and kingdom of Nuevo México, when that province also faced an uncertain future. The *Audiencia real castellana* applied the law that had been formed in the thirteenth and fourteenth centuries in adjudications it performed in the twelve decades preceding the expeditions of Columbus and others. This demonstrates that a discernible Castilian legal tradition existed prior to 1492. Under the same sovereign authority, it was transmitted to the New World, not just laterally, but through the recourse to various bodies of *lex scripta* and knowledge of the past. While there is much work to do in the study of this era, the focus on the similarities, rather than the differences, in the legal tradition of Castile and the Americas before and after 1492 has much to offer in understanding the origins and development of law.

On a practical level, studying this period as one tradition allows the introduction of evidence concerning communal lands that is still relevant in parts of the southwestern region of the United States, where the sting of the nineteenth- and twentieth-century land grant adjudications is still felt. In cases where communal lands of the very type so clearly owned by villages, towns, and cities were stripped from the heirs of the original grantees, the study

of this period allows the possibility of articulating more clearly, and with much more certainty, why those cases were wrongly decided.

Based on the evidence presented in this study, the Crown of Castile implemented a policy in which the extension of its authority relied on the successful settlement of the lands it claimed. From the settlement of the depopulated zones north of the Río Duero to the Río del Norte of the province of Nuevo México, this policy depended on concepts of land tenure that promoted settlement and provided those settlements with the natural resources to sustain themselves. At the same time, before other aspects of law could be enforced, territorial jurisdiction had to be established. The settlement of land and implementation of stable land law had to come first. Men and women carried this tradition in their minds and in books that they took to the Americas. The crown and its subjects drew from these sources time and time again. At the heart of this law was a tradition that Castile established in the thirteenth and fourteenth centuries, practiced in the *Audiencia* in the fourteenth and fifteenth centuries, and applied in Nueva España and Nuevo México in the sixteenth through eighteenth centuries. This tradition's adaptability and utility, with multiple conceptions of land use and ownership, made it useful in the Peninsula in the changing landscapes of the eleventh through fifteenth centuries and also those of the Americas in the sixteenth through eighteenth centuries.

Glossary

Act of Possession: a ceremonial procedure in which one takes physical possession of a piece of land by walking across it, declaring that he is taking possession, and usually tearing up turf or casting rocks before a delegated judicial official or an *escribano* (scribe with legal training) who notarizes the act.

Alcalde mayor: chief judge in an *alcaldía* (administrative unit).

Alcalde ordinario: judge or magistrate with general jurisdiction in a town or city.

Audiencia: high tribunal or appeals court permanently established in 1371, eventually seated at Valladolid. A second *audiencia* was founded in 1494 at Ciudad Real (later moved to Granada in 1505). After its establishment in 1380, cases could be appealed to the Council of Castile. Later, *audiencias* were established throughout Spain and the New World.

Audiencias Públicas: public hearings in which the royal court heard complaints and decided disputes.

Auto de Merced: the granting decree in a royal concession.

Baldíos: vacant lands that by default were part of the royal domain; royal commons.

Carta de Venta: charter of a land sale, some of which include a notarized act of possession; bill of sale.

Carta Ejecutoria: enforceable charter; final judgment, decision, intended to be unappealable.

Caballería: the amount of land granted to a knight; unit of measurement of approximately 105 acres or amount capable of producing 65 *fanegas* (1 *fanega*= 1.5-2.5 bushels).

Ciudad: a city with judicial privileges that ranks above a *villa* (town) and *lugar* (village) or *pueblo*.

Coto: an area of common land designated as a reserve or enclosed grazing space; fee or fine.

Concejo: the assembly of rural or urban communities, which brought suit on behalf of its village, town, or city.

Corregidor: a royal official at the head of a municipality with judicial, administrative, and economic responsibilities.

Cuaderno: documents bound together by thread to form a booklet or journal.

Dehesa: an area of enclosed common plot used for grazing.

Dehesa Boyal: an area of enclosed common land used for grazing draft animals.

Ejido: multipurpose common lands owned by a community, village, town, or city, derived from the Latin *exitus*.

Escribano: a scribe with legal knowledge or training who drafted legal instruments and who could also notarize those documents.

Expediente: a legal file that includes documents of a proceeding or conveyance of land such as the petition, granting decree, and act of possession.

Fuero: a municipal charter of varying length granted by the crown to a municipality; charter of privileges, rights.

Infantazgo: lands that were part of the inheritance of the *infantas* (princesses of Castile) or high nobility from which they derived income.

Legajo: bundle of papers, file, or dossier.

Legua (League): a unit of land measurement equal to 5,000 Castilian *varas* (2.597 miles).

Lex scripta: written law; *fueros*, provisions in royal concessions and decrees: e.g., the *Corpus iuris civilis*, *Siete Partidas*, *recopilaciones*.

Lugar: as a legal term, *lugar* refers to a place that ranks below a *ciudad* or *villa*; as a general term, place.

Maravedí: a Castilian coin minted in silver and gold as early as the thirteenth century, but mainly used as fictitious coin for counting.

Mesta: stock-raising guild that had extensive rights to graze transhumant sheep.

Montes: common woodlands or forests designated as a source of firewood or other needed resources for a particular settlement, usually listed in a series with other natural resources or features in a royal concession or conveyance; also mountains.

Pastos: commons used for grazing, usually listed in a series with other natural resources or features in a royal concession or conveyance.

Peonia: amount of land given to a foot soldier, in some places, 50 feet by 100, which could produce .65 *fanegas*.

Pie: a Castilian measurement of one foot (10.969 inches).

Prado: vega or meadow; irrigated pasture land.

Presura: custom and right described in *fueros* by which settlers could claim unused land.

Procurador: in documents filed with the *Audiencia*, *procurador* usually means attorney or advocate, but it could mean legal representative or refer to a non-attorney in provinces such as Nuevo México; *procuradores* also represented towns and cities in the *cortes*.

Pleito: lawsuit.

Pleitos Olvidados: forgotten lawsuits, suits withdrawn by the litigants.

Realengo: royal domain; land under the crown's direct lordship.

Señoríos: seigniorial estates, some with criminal and civil jurisdiction; also a generic term for ownership.

Sentencia: A judicial sentence, decision, or decree issued in a particular dispute; derived from the Latin *sententia*; eventually given as a *sentencia definitiva* (see below).

Sentencia arbitraria: a formal sentence based on a compromise or arbitrary proceedings; could be appealed.

Sentencia definitiva: final sentence (judgment) in which the judicial official brought the process to a conclusion, condemning or absolving the defendant.

Servidumbre: a right that burdens another's property by allowing passage across land, irrigation ditches across one's land, or some other burden; a usufruct, which grants the right to take the fruits of the land or permits the use of a structure for a certain period of time through a contractual agreement, is a form of servitude.

Solar: a plot designated for habitation; an agricultural unit.

Términos: boundaries or lands of a place, village, town, or city; land under a town's or city's jurisdiction.

Testimonio: an attested copy of proceedings or royal concessions, given to the grantees.

Tierras realengas: crown lands, royal domain; could be used as commons, particularly in the New World.

Usufruct: a form of servitude that, through contractual agreement, grants the right to obtain the profits, fruits, and/or produce of land and/or use of a structure or house for a certain period of time.

Vara: a Castilian linear measurement of 32.909 inches; it slightly differs in some locales; a rod or three *pies*.

Vecino: an inhabitant of a *lugar*, *villa*, or *ciudad*, who established *vecino* status by owning property, paying taxes, or establishing residency in a *lugar*, *villa*, or *ciudad*; status sometimes could be established with a combination of these things.

Villa: as a legal term, *villa* refers to a town that has judicial privileges indicating it ranks below a *ciudad* and above a *lugar*.

Viceroy: in the Americas, a representative of the monarch of Castile (with the highest rank); also the captain general of the viceroyalty.

Appendices

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Appendix A: Transcriptions and Translations of Royal Concessions, Individual Laws, and Excerpts of Laws

I

Reference to a royal concession from the *Historia Roderici*, chapter 26 (f. 79v): “Description of a sealed charter from Alfonso VI to Rodrigo Díaz de Vivar.” In *Historia Latina de Rodrigo Díaz de Vivar: edición facsímile del manuscrito 9/4922 (olim A-189)*, ed. Gonzalo Martínez Díez, José Manuel Ruiz Asencio, and Irene Ruiz Albi. Burgos: Amabar, 1999.

Insuper autem talem dedit absolutionem et concessionem in suo regno sigillo scriptam et confirmatam, quod omnem terram uel castella, que ipsemet posset acquirere a sarracenis in terra sarracenorum iure hereditario prorsus essent sua, non solum sua uerum etiam filiorum suorum et filiarum suarum et tocius sue generationis.

Moreover, he gave such an acquittal and such a concession in his kingdom written and confirmed with his seal, that all lands or castles, which he might be able to acquire for himself from the Saracens in the land of the Saracens, should be his absolutely by right of inheritance, and indeed not only his but also his sons’ and his daughters’ and all of his heirs’.

II

Excerpt from the Capilla Fortress Grant (Fernando III to Stephen of Bellomonte and the Militia of the Order of the Templars), Toledo, 9 September 1236. In Julio González, *Reinado y diplomas de Fernando III*. 3 Vols. Córdoba: Monte de Piedad y Caja de Ahorros, 1986: 3:93-95.

. . . Hos prenominatos terminos dono et concedo iam dicto castro Capelle cum suis fontibus, montibus et pascuis, ingressibus et egressibus et cum omnibus directuris ad eosdem terminos pertinentibus, hoc excepto quod hereditates et loca que ad colendum apta et utilia uidebuntur excolantur, cetere uero hereditates seruentur inculte ad ganatorum pascua et estremos . . .

. . . These aforesaid *términos* I grant and concede to the aforesaid fortress of Capilla with their springs, woodlands, and pastures, and with ingresses and egresses and with all rights pertaining to the same *términos*, excepting that any possessions and places that appear fit and useful for cultivation are to be cultivated, but the other possessions are to be kept uncultivated for the pasture of livestock and outer areas . . .

III

Translation of Alfonso X, Carta de Población, (Resettlement of the Villa of Requena), Atienza, 4 August 1257. Original in *Documentos para la historia de las instituciones de León y Castilla*. Edited by Eduardo de Hinojosa. Madrid: Est. tip. de Fortanet, 1919: 166-67, no. CII.

Let it be known to all the men that might see this charter, how we don Alfonso, by the grace of God, king of Castile, Toledo, León, Galicia, Sevilla, Córdoba, Murcia, and Jaén, together with queen Violanta my wife and with our son the *infante* don Fernando, understanding that it is in the service of God and for us to keep our land, that we settle with Christians our fortress that is in the *villa* of Requena.

And furthermore, we grant to them that they settle our estates of the *villa* in that our arsenal, and the heritable lands that belong to us; for this same reason as well, that which we now have there, that we will speak of from here forward, which should be divided among them by *caballerías* and *peonias*.

And concerning all of this, we grant to them that they may buy arable lands from the Moors who wish to sell them without force and without coercion, the knights of noble lineage up to one hundred and fifty *maravedis Alfonsis*, and the citizen knight one hundred *maravedis*, and the foot-soldier up to fifty.

And we hold and command that for the good of all they settle there thirty knights of noble lineage and another thirty knights and thirty citizen knights, and as many foot soldiers as there are available, in the fortress as in the estates, and in the estates of our arsenal, as in the villages of Requena, and in the lands that belong to us for what manner whatsoever it is to be.

And all this we grant to these aforementioned settlers and to those that are to be inhabitants there from here forward that they have for their law the *fuero* of Cuenca. And all of these aforementioned settlements, that we grant them, and those that we might give from here forward, or which they should be able to have rightly in the *villa* of Requena, we grant that they have them free and clear, they and their children and their grandchildren, and those that might come that they hold it as theirs by inheritance, with *montes*, springs, rivers, *pastos*, ingresses and egresses and with all the *términos* and all its possessions, just as the *villa* of Requena has and ought to have; but in such a manner, that they not have the power to sell, nor pledge it for debt, nor transfer ownership of it from the day that this our privilege was made until ten years; and from ten years forward, they can do what they might want with all of it the same as one's own.

And in all this that we give them, by making this more from the good and from grace, we excuse them of all tribute and required military service or *fonsadera* (tribute for war) and of all work levies and of all requests.

Therefore anyone who should go against this will have our wrath and owe us tribute in the amount of one thousand *moravedises*. And because this privilege is to be firm and stable, we order it sealed with our lead seal.

This charter was made in Atienza, by order of the king, four days into the month of August in one thousand two hundred ninety and five years of the Spanish era [i.e., 1257 A.D.].

And we the aforesaid king D. Alfonso, reigning together with Queen Lady Violanta my wife, and with our son the infant D. Fernando in Castile, Toledo, [León], Galicia, Sevilla, Murcia, Jaén, Baeza, Badajoz, and in the Algarve, do execute this privilege and confirm it.

IV

Espéculo de las leyes, Libro V, título viii, ley ii. In *Los Códigos Españoles: Concordados y Anotados*. 12 vols. Madrid: Imprenta de la Publicidad, 1847-51: 6:158.

... Las otras cosas comunales de cada cibdat, o de cada villa, son asi como el lugar ô fazen el conceio, por que se ayuntan y los omes para tomar sus conseios e aver sus pleitos, e las plazas, e los exidos, e los montes, e los términos. Ca estas son cosas en que a todo el pueblo señorío, e de que pueden todos usar, segunt aquella postura que pusieren, non seyendo a daño del rey o de su tierra. Otras cosas y a que son comunales otrosi del pueblo quanto al señorío. Mas que cada uno non puede usar dellas sinon comunalmiente, asi como heredades, mesones o siervos, o otras cosas que son de comun de que an rentas. E por eso son dichas comunales por que non puede ninguno dezir apartadamente, que son suyas mas que dotro.

... The other communal places of each city or of each *villa*, as well as the locale where they create a council, because men come together to take council and have suits, are the plazas, *ejidos*, *montes*, and the *términos*. Because these are things which all of the people own, and they can all use them, according to the condition that they are not causing damage to the king or his land. They are communal to the people as much as to the jurisdiction. Yet each one is to use them communally unlike heritable estates, inns, or servants, or other common things by which councils have income. And because of this, they are said to be communal because no one can say they are his separately more so than any other person.

V

Siete Partidas, Div. III, título xxviii, ley ix. *Las siete partidas del muy noble rey Don Alonso el Sabio*, por el licenciado Gregorio López de Tovar, 4 vols. Madrid: Compañía General de Impresores y Libreros del Reino, 1844.

Apartadamente son del comun de cada vna Cibdad, o Villa, las Fuentes, e las plaças o fazen las ferias e los mercados, e los lugares o se ayuntan a concejo, los arenales que son en las riberas de los rios, e los otros exidos, e las carreras o corren los cauallos, e los montes, e las dehesas, e todos los otros lugares semejantes destos, que son establecidos, e otorgados para pro communal de cada Cibdad, o Villa, o Castillo, o otro lugar. Ca todo ome que fuere y morador, puede vsar de todas estas cosas sobredichas: e son comunales a todos, tambien a los pobres como a los ricos. Mas los que fuessen moradores en otro lugar, non pueden vsar dellas contra voluntad, o defendimiento de los que morassen y.

These are separately of the commons of each individual city or villa: springs, plazas, places where they hold fairs and markets, places where they hold council, sands that are on the banks of the rivers, the other *ejidos*, the tracks where horses run, the *montes*, the *dehesas*, and all the other similar places as these. And these are established and granted for the advantage of all men of each city, villa, castle, or other place. Because every man who is a resident therein can make use of all of these aforementioned things: and they are communal to all, for the poor as well as the rich. But those who might be residents elsewhere cannot make use of them against the will or prohibition of those that live therein.

VI

Siete Partidas, Div. III, título xxviii, ley x.

Campos, e viñas, e huertas, e oliuares, e otras heredades, e ganados, e sieruos, e otras cosas semejantes que dan frutos de si, o renta, pueden auer las Cibdades, o las Villas: e como quier que sean comunalmente de todos los moradores de la Cibdad, o de la Villa cuyos fueren, con todo esso non puede cada vno por si apartadamente vsar de tales cosas como estas; mas los frutos, e las rentas que salieren de ellas, deuen ser medidas en pro communal de toda la Cibdad, o Villa, cuyas fueren las cosas onde salen; assi como en lauor de los muros, e de las puentes, o de las fortalezas, o en tenencia de los Castillos, o en pagar los aportellados, o en las otras cosas semejantes destas, que perteneciessen al pro communal de toda la Cibdad, o Villa.

Cities and *villas* can own fields, vineyards, orchards, olive groves, other estates, livestock, servants, and other similar things that produce profits, or rent. And as they are to be communal to all the inhabitants of the city or *villa* to whom they belong, with all this each one cannot separately use such things as these; but the profits and the rents that will come from them ought to be measured out for the community of the whole city or *villa*, whose things shall be from which they come; such as in maintaining the walls, bridges, fortresses, or possession of the Castles, or in paying the officials, or in other similar things as these, which should belong to the community of the whole city or *villa*.

VII

Ordenamiento de Alcalá de Henares de 1348, Capítulo lxxiv, “How the *fueros* ought to be observed.” In *Cortes de los antiguos reinos de León y de Castilla*. 7 vols. Edited by Manuel Colmeiro. Madrid: Real Academia de la Historia, 1861-1903: 2:541-43.

Nuestra entencion e nuestra voluntad es quelos nuestros naturales e moradores delos nuestros rregnos sean mantenidos en paz e en justia: et commo para esto sea mester de dar leyes çiertas por do se libren las contiendas e los pleitos que acaesçieren entre ellos, et maguer que enla nuestra corte vsan del Fuero delas leyes e algunas villas del nuestro sennorio lo an por fuero e otras çipdades e uillas ayan otros fueros departidos por los quales se pueden librar algunos pleitos; pero por que muchas mas son las contiendas e los pleitos que entre los omes acaesçen e se mueuen de cada dia que se non pueden librar por los fueros; por ende queriendo poner rremedio conuenible aesto, estableçemos e mandamos quelos dichos fueros sean guardados en aquellas cosas que se vsaron, saluo en aquello que nos fallaremos que se deue meiorar e emendar e enlo que son contra Dios e contra rrazon ocontra las leyes que en este nuestro libro se contienen.

Et los pleitos e contiendas que se non podieren librar por las leyes deste libro e por los dichos fueros, mandamos que se libren por las leyes contenidas enlos libros delas siete Partidas que el Rey don Alfonso nuestro visauuelo mandó ordenar, commo quier que fasta aqui non se fabla que fuesen publicadas por mandado del Rey nin fueron auidas nin rreçibidas por leyes; pero nos mandamos las rrequerir e conçertar e emendar en algunas cosas que cunplia.

Our intention and will is that the natives and inhabitants of our kingdoms be maintained in peace and justice: and for this it is necessary to give certain laws by which they shall decide the disputes and lawsuits that will take place among them, although in our court they use the *fuero de las leyes* [*Fuero Real*] and some *villas* of our *señorio* have it by *fuero* and other cities and *villas* may have other separate *fueros* by which they are able to decide some suits; however, there are many more disputes and lawsuits that happen between men and take place each day that they are not able to decide by the *fueros*; therefore, desiring to give a suitable remedy to this, we establish and order that the said *fueros* are to be observed in those matters wherein they are used, except in that which we pass judgment that it should be improved and corrected and in those which are against God and against reason or against the laws that in this our book are contained.

And the suits and disputes that cannot be decided by the laws of this book and by the said *fueros*, we command that they should be decided by the laws contained in the books of the *Siete Partidas* that the King don Alfonso our great-grandfather ordered to be arranged, since until now it has not been said that they should be published by command of the king, nor were they held as laws; but we command to summon, arrange, and correct them, in some things to be carried out.

Et asy conçertadas e emendadas, por que fueron sacadas e tomadas delos dichos delos sanctos Padres e delos derechos e dichos de muchos sabios antiguos e de fueros e de costunbres antiguos de Espanna, damos las por nuestras leyes.

Et por que sean çiertas e non aya rrazon de tirar e emendar e mudar en ellas cada vno lo que quisiere, mandamos fazer dellas dos libros, vno seellado con nuestro seello de oro, et otro seellado con nuestro seello de plomo para tener en la nuestra camara, por que enlo que dubda ouiere, quelas conçierten con ellas.

Et tenemos por bien que sean guardadas e valederas de aqui adelante enlos pleitos e enlos juizios e en todas las otras cosas que se enellas contienen, en aquello que non fueren contrarias alas leyes deste nuestro libro e alas fueros sobredichos.

Et por quelos hijos dalgo de nuestros rregnos an en algunas comarcas fuero de aluedrio, et otros an otros fueros porque se julgan ellos e sus uasallos, tenemos por bien queles sean guardados sus fueros aellos e a sus vasallos segunt quello an de fuero e les fueron guardados fasta aqui.

E otrosy en fecho de los rrieptos, que sea guardado aquel vso e aquella costunbre que fue vsada e guardada en tienpo de los otros rreyes e enel nuestro.

Otrosy tenemos por bien que sea guardado el ordenamiento que nos agora fezimos en estas cortes para los hijos dalgo, el qual mandamos poner en fin deste nuestro libro.

And thus arranged and corrected, because they were drawn and taken from the sayings of the holy fathers and of the laws and sayings of many ancient wise men and from *fueros* and from ancient customs of Spain, we give them for our laws.

And so that they may be certain, and no one may have reason to extract, amend, or change in them what he might wish, we command two books of them to be made, one sealed with our golden seal and another sealed with our lead seal to be kept in our chamber, because where there might be doubt, let there be certainty with them.

And we hold it for the benefit of all that they are to be observed and to be valid from here forward in the suits and judgments and in all the other things that are contained in them provided that they are not contrary to the laws of this our book and to the above mentioned *fueros*.

And for the *hidalgos* of our realms who have in some regions the *fueros de aluedrio*, and others have other *fueros* because they and their vassals are judged by them, we hold for the benefit of all that their *fueros* are to be observed by them and by their vassals according to that which they have from *fuero* and those that were observed until now.

And furthermore in the event of conflicts, use and custom should be observed, which was used and observed in the time of the other kings and in ours.

Furthermore, we hold for the benefit of all that the legislation that we now make should be observed in these courts for the *hidalgos*, which we command to be placed in the end of this our book.

Et por que al Rey pertenesçe e á poder de fazer fueros e leyes e delas entrepetar e declarar e emendar do viere que cunple, tenemos por bien que sy en los dichos fueros e en los libros delas Partidas sobredichas oen este nuestro libro oen alguna o algunas leyes delas que en ellas se contiene fuere mester interpretacion odeclaracion, oemendar o ennader o tirar o mudar, que nos que lo fagamos.

Et sy alguna contrariedad paresçiere en las leyes sobredichas entresy mismas oen los fueros oen qual quier dellos, o alguna dubda fuere fallada en ellos, o algun fecho que por ellas non se pueda librar, que nos que seamos rrequerido sobrello por que fagamos interpretacion odeclaracion o emienda do entendieremos que cunple, et fagamos ley nueva la que vieremos que cunple sobrello por quela justiçia e el derecho sea guardado. Enpero bien queremos e sofrimos que los libros delos derechos que los sabios antigos fezieron, que se lean en los estudios generales de nuestro sennorio, por que á en ellos mucha sabidoria e queremos dar logar que los nuestros naturales sean sabidores e sean por ende mas onrrados.

And because the power of making *fueros* and laws and interpreting, declaring, and amending them belongs to the king where he might see fit, we hold for the benefit of all that if in the said *fueros* and in the books of the aforesaid *Partidas* or any law or laws contained therein there should be need of interpretation or clarification or any emendation or nullification or striking or changing, we are to do it.

And if any contradiction should appear in the aforesaid laws among the same or in the *fueros* or in any of them, or any doubt be found in them, or some incident that through them cannot to be decided, we should be required concerning it because we must make an interpretation or declaration or an emending where our understanding fits, and we should make a new law that we will see fit concerning justice and the right to be observed. Yet for the benefit of all, we want and permit that the books of the laws that the ancients made, may be read in the universities of our lordship, for in them is much knowledge and we want to encourage that our natives be educated and be therefore more honored.

Appendix B: Transcriptions of Suits

N. b.: () indicate the expanded letters of an abbreviation; [] indicate a missing word or letter due to damage, faded ink, lost ink, or some other factor making the word in the document illegible; [. . .] indicate multiple missing words

I

Villa of Galisteo v. Arias Barahona, *Sentencia*, Medina del Campo, 5 July 1393, ARCV, Pergaminos, Carpeta 40, 3. *Note: There is faded ink throughout the document.*

Don enrique por lla gr(aci)a de dios Rey de castiella et lleon et de tolledo et de Sevilla de gallizia de cordoua et Jaen Sennor de uiscaya et mollina a uos el gouernador o teni(-) ente de gouernador dellas viellas dell infantalgo que son dell rey nuestro hermano don ferna(n)do rey de arago(n) ynfante en castiella conllo infanta don(n)a leonor n(uest)ra hermana os
fasemos saber que ante nos en esta n(uest)ra corte parecio vn ome que por su no(n)bre se dixo martin ferna(n)des vesino della viella de gallisteo que es del dicho infantalgo et nos pres(-)
to poder della dicha viella et t(ie)rra et nos mostro et dio vna carta q(ue) desia ansi muy alto Sen(n)or el conçejo et onbres buenos della viella de gallisteo ansy cavalleros como escude(-)
ros et omes buenos desta viella de gallisteo con gr(aci)a reuere(n)çia lle besamos manos y nos encom(e)n damos alla v(uest)ra mercede y lle fasemos saber que despues q(ue)ll infante
n(uest)ro sen(n)or nos dexo en esta t(ie)rra sen(n)ore)s lleva(n)tan algunos et disen q(ue)lla t(ie)rra es suya et com(m)o esta t(ie)rra et villa esta muy desjnbrada et nos veen sin Sen(n)or cada vno nos lla toma ansy
vesinos de prase(n)çia como de coria et de otras partes en espeçial agora q(ue) en vn llogar que es so campan(n)a desta viella que llama(n) ryodellobo vn cavallero que ha no(n)bre Barahona
que no sabemos dose uino et conpro ally vna casa de vno que llamauan diego sanches et vnas terresuelias que alli toma con vna cortes depuestos se dicho barahona es onbre poderoso et agora dize que es todo ell exido suyo et toma amuchos sus heredami(ent)os dellos por fuerça et dellos por grado et allos quelos toma de grado a aquellos no son su(-)yos que ally no ay heredam(ien)to mas de quatra antigua mete fa fecha merçede a esta viella et tierra dellos sen(n)ores della aquellos que desmo(n)tasen lla tierra parra menses quella gozase et que uenses q(ui)tados pastos en [. . .] aun Sen(n)or es mas []dello que enllas [. . .] les queda es com(m)o []llo queiebran et nos en cor non heredades alli via merçede rogamos nos ell infante n(uestr)o sen(n)or []esta enlla t(ie)rra [] por otra parte y adios hara

seruicio y aesta villa y tierra o (tie)rra y mercede et []. Et luego mando el Sen(n)or [. . .] yn(n)ego lopes que fue se [. . .]escribano aq(ue)lla t(ie)rra et tomase certinidad do dellos

vesinos della t(ie)rra ni viella son de otros et gello traxese por quel queria ser cierto y este paso enlla viella de medina del canpo a tres dias del mes de jullo de myll et tresintos y noventa y tres annos. Despues desto dose dias delines ya dicho del dicho an(n)o enlla ciudad de prasencia al dicho yn(n)ego lopes ell adellante de diego rrodrigues

alcalde enlla dicha çiuçade et por ante pabros ferna(n)des escribano del rey como jura enforma de llope rrodriguez viejo et de su hijo diego rrodriguez vezinos della dicha çiuçade

et de marty(n) allonso vezino dell alberq(ui)lla et de paschual sanchez vezino de rreytortillo darriba sobre lla caus et en(ll)a gellos et dixo cada vno juro et antel et luego lles pregu(n)to si sabi(-)

an agalliste et rrespondiero(n) quesi muy bien et lles pregunto que q(ue) heredamientos avia en aq(ue)lla t(ie)rra et dixon que no sabia(n) ni(n)gunos que todo hera t(ie)rra baldia son tenian en aq(ue)lla t(ie)rra uso q(ue)

por quella t(ie)rra hera mo(n)tosa y espesa quel quella allinpiaua lla gozaua q(uan)do lla senbraua de menses et despues todo hera com(m)o son si auia algu(n) prado de guadan(n)a que guarda(n)

et lluego lles pregu(n)to que como arias barahona se llamaua apose de vnas caserias que llamarian rey dellobos dixo entonçe llope rrodriguez el viejo dixo mira Sen(n)or esta es lla uer(-)

dade como lla t(ie)rra es mostrença y baldia y esta sin Sen(n)or cada qual se toma llo que q(ui)ere que juro vos Sen(n)or que ha çinquenta an(n)os que conosco aquel asiento que nu(n)ca vi nj oy desa

mas heredades o viese sine siete pedaços de t(ie)rra de Juan froriano que aq(ue)llos daua el allabrar a q(ui)en quer(i)a quiera(n) de gran ti(en)po et luego sallia del exido dellas casares y va por cima

del cerro bermejo et daua enel regato tramojoso et boluia hasta la calçada este hera vna gran parte y andesta lla tomado barahona y otros dos alcamino della prata hazia dollamia(n) lla torre de ouigo y otros dos asa ellogar dellargmosa y tres llongueras hazia el ronpedero nueuo y otros por lla lladera esta hera buena y quiere(n) que para dezir lla verda muy poco tiene el alli que todo es baldio y esta es verdate. Estonces dixo marti(n) allonso vezino dell alba ally y vos llope rrodrigues que ha sus en torre de vigo y el come(n)dador enel mo(n)te

del rincon rrespondio hago como veo hazer pues inello consiente(n) que todo es mostrenco mas [] Sen(n)or no tenemos [] q(ue) no temos syne lla fuerça q(ue) hasemos aquella vie(-)

lla y su t(ie)rra y como ellos son pocos nose [. . .] que nos ayudamos et todos dixon que aquella hera lla uerdade e que saban que avn salian mas que algunos des que non llos consentia(n) far ruyndad en algunas t(ie)rras que dezia quera(n) suyas y nollo hera les vendian a otros onbres ricos et monesterios y ygrejas y se que dauan con ellas por non ver quien llo procurase y esto hera lla uerdade y llo que sabian. E lluego el dicho yn(n)ego lopes ma(n)do al dicho escribano que ansy y no llo dezia(n) et acraraua(n) llo lleuasen de(-)

Il ante del rey con esta carta de su mercede sello ma(n)daua et el dicho escriuano dixo quelle
 rogaua quelle espirase aquel dia quel gella daria synado et quello lleuase quelle
 no q(u)isiese far y [] dixo quelle prazia testigos martin martines sesmaro et jua(n)
 sanchez escriuano et diego detreje algu(n)as della dicha çuidade. E en despues desto
 p(r)imero dia del mes de jullo del dicho anno antel rrey nuestro Sennor paresçio ynnego
 llopes et llemostro esto que auian dicho llos testigos et desde que el rrey llo vido dixo como
 ansy
 se toma lla t(ie)rra Escreui diego dias que yo ma(n)do por mi Sente(n)çia que ora y de aqui
 adellante ni(n)guno sea osado de tomar heredami(ent)o ni heredade en gallisteo ni en su
 t(ie)rra syn licencia del infante o de su gobernador o n(uest)ro y las que agora tiene(n) llas
 amuestre(n) por que titullo las tiene(n) et llos quellas no(n) mostrare(n) las pierdan et los
 conçeijos llas tome(n) et sean baldias y entiendase quellos quellos ande mostrar q(ue) es
 q(ue) muestre(n) como allinpraro(n) aquella tierra o el quella vendio lla llinpio et si esto
 no
 mostrare nolle ualga et en q(ua)nto allo quedize(n) que barahona sellama apose de aquella
 sientto de roy dellobos que nose llame alla tal poseson que sy algo co(n)pro queda
 q(ue)llo
 goze como vesinos et no demas et por que parece que llope rrodriques semete et ha metido
 adodize torre de vigo et parece que es baldios que dello n(on)llo pueda gosar mas
 de como gosa vn vezino della viella et t(ie)rra et no mas et enlo otro que habra que el
 come(n)dador de santiuan(n)es semete auiar o defiende adodize(n) el rrincon que pu(e)s
 es bal(-)
 dio que nollo haga ello dexten sopena de muerte al quello contrallo far querra son que cada
 vno gose como vezino et no mas dell eredamj(ent)o que mostrare con bue(n)
 titullo et sy otras p(er)sonas ansy de ygreja o monasterio o p(er)sona poderosa alguna tierra
 o tierras o heredami(ento) ha conprado et no mostrare bue(n) titullo del quell vendio
 q(ue-)
 llo pudo vender quello pierda et torne al baldio et por esta n(uest)ra sente(n)çia ansy llo
 ma(n)damos et ma(n)damos que nadie vaya contra ella sopena della n(uest)ra merçede et
 de perder et
 llos bienes et que ni otra por ello alquella quebrare et por essolle ma(n)damos dar esta
 n(uest)ra carta de sentencia sellada con n(uest)ro sello et synada del n(uest)ro escriuano
 del n(uest)ro secreto
 que su dada enesta viella de medina del campo a cinco dias del mes de jullo an(n)o de
 nasami(ent)o de n(uest)ro Sen(n)or Ih(es)u Cristo de myll y tresie(n)tos et nove(n)ta y
 tres an(n)os dello qual
 juron testigos q(ue)lla viero(n) dar et ma(n)dar sellar et synar antono delluna gonçalo
 Sanchez et ell rruy []della casa del rrey. E yo diego dias q(ue) por
 ma(n)dado del rrey lla escrevi en esta foja de piel et lla sella con este sello que della en
 colgado en estas çintas regias [] a por mayor firmesa lla sine con este mi
 syno en testimonio verdadero.

II

Concejo de San Martín de los Herreros v. Concejo de Ventanilla, *Sentencia Definitiva*, Palencia, 18 August 1453, ARCV, Pergaminos, Carpeta 33, 6. *Note: There is damage to the document in several places, which I have indicated by brackets.*

Sepan q(ua)ntos esta sentençia vieren com(m)o yo ferrna(n)do de Velasco camarero de n(uest)ro sen(n)or el rey et del su conssejo. Visto un pleyto q(ue) pende ante mi entre partes co(n)uiene saber de la vna el conçejo et hombres buenos de sant m(art)in et d(ie)go dias ferrero pero carvonal procu(-) radores del dicho conçejo de sant m(art)in et en su no(m)bre assi com(m)o actores et dema(n)dantes. Et dela otra parte el conçejo et hombres bue(-) nos de ventanilla et jua(n) de la calle et pero puente vesinos del dicho conçejo de ventanilla com(m)o sus procuradores et en su no(m)bre reos et defendie(n)tes estando la mayor p(ar)te de los vesinos de amos los dichos conçejos en el prado dela paredeja et en los correcales vista la contienda que [] los dichos conçejos tema(n) sobre la represa q(ue) los de ventanilla fisieron en el rio q(ue) viene de sant m(art)in en su termino junta con el arroyo de val(-) de cadero et sobre el [. . . prado] dela paradeja et los correcales q(ue) es de sant m(art)in et de los prados de valde los orrios q(ue) son de venta(-) nilla. Visto en com(m)o para [. . .] Amas las p(ar)tes presentacion çiertos testigos et juraron et todo lo q(ue) amas las p(ar)tes quisier[an] deste et Ra(-) sonar fasta q(ue) concluye [] se me pidieron sen(ten)çja et yo o(i)re el pleyto por concluso Avida sobre todo mj deliberaçion [] adios ante mjs ojos. Fallo q(ue) [] al prim(er)o [] dela presa q(ue) los de ventanilla sacaron del rio publico cerca del aroyo de valde cadera [] [. . .] q(ue) deuo mandar et mando q(ue) este en aq(ue)l mesmo lugar donde agora es sin embargo de [. . .] agora del rio faze represa mando q(ue) los vesinos del Conçejo de ventanilla reparen la fue(n)te dela di(-) [] en tal man(er)a q(ue) los moços et hombres o mugeres de sant m(art)jn q(ue) fueron aguardar los ganados en aq(ue)l termjno puedan passar sin peligro por la dicha presa del vn cabo al otro et esto fagan de aq(ui) al dia de sant mjguel de setiembre p(roxi)mo q(ue) viene sopena de seysçie(n)tos m(ar)avedis p(ar)a mj et sopena de dozie(n)tos m(ar)avedis para el Conçejo et hombres buenos de Sant m(art)jn por toda vez q(ue) no(n) tuujeren reparada la dicha presa com(m)o yo mando. Q(ua)nto al segundo articulo del paçer delos ganados en el prado dela paredeja et los correcales/ mando q(ue) los ganados del conçejo de sant mart(jn) et ventanilla entren apaçer en el dicho prado el dia de s(an)tiago del mes de jullio en cada an(n)o et si antes entraven los ganados sant m(art)jn antes entre los de ventanilla apaçer en el dicho prado. Et si el dia de s(an)tiago no(n) quisieren los de sant m(art)jn

paçer en el dicho prado co(n) sus ganados. mando q(ue) los ganados de ventanjlla entre(n) apaçer en(e)l dicho prado dela paredeja et los correguales sin coto et sin pena alguna. Et esso mesmo mando q(ue)los de sant m(art)jn entren apaçer con sus ganados en valde los orrios el dicho dia de s(an)tiago del mes de jullio en cada vn an(n)o et el dia q(ue) ellos entraren q(ue)los vesinos de sant m(art)jn entren co(n) sus ganados apaçer enel dicho valdelos orrios et si amas e(n)trare(n) los ganados de ventanilla en(e)l dicho valde los orrios Antes entre(n) los ganados de Sant M(art)jn sin coto et sin pena alguna. Et si por aventura antes deste t(iem)po des q(ue) es vsó et costumbre de se guardar los dichos prados la vez toda del ganado del ganado de ventanilla de vacas o bueyes o ouejas et cabras o puercos entraren enlos dichos prados dela paredeja los correguales apaçer mando q(ue) pague de coto cada vez del gan(a)do suso dicho dos cantaras de vjno cada vegada q(ue)los ende tomare(n) los vezinos de Sant M(art)jn o sus cotaneros. Et otro ta(n)to coto ljeue(n) los de ventanjlla alos de sant m(art)jn cada ves q(ue)les tomare(n) sus ganados paciendo enlos prados de valde los orrios q(ua)ndo se han de guardar. Et si por aventura no(n) entra(-) re ende toda la ves mando q(ue) cada buey o vaca q(ue) ende fuere tomado pague de dia vn açu(m)bre de vjno de coto et dos açu(m)bres de noche. Et del ga(-) nado menor diez cabeças pague(n) vna cantara de vjno et toda la vez dos ca(n)taras com(m)o ariba se faze mençio(n). Et Por mj sentençia difinitiuua jugando lo pronunçio et mando todo asi enestos sc(ri)ptos et por ellos dada et pronu(n)çiada fue esta sentençia por el dicho sen(n)or ferrna(n)do de velasco Enel dicho prado dela paredeja et los correguales en presençia de Amas las partes A diez y ocho dias del mes de Agosto An(n)o del Nasçimje(n)to del n(uest)ro saluador jhesu (crist)o de mjll et q(ua)troçientos et cinc(ue)nta et tres an(n)os. Testigos q(ue) esteua(n) p(re)sentes [] de corruido vezino de la villa de Carrion et pero g(arce)s de q(ui)ntana alcayde de la casa de vallijera et per alfon(so) de santivan(n)es cura del dicho lugar [] s(cri)pto sobre raydo ado dize vezinos no(n)le Enpesta et en otro lugar ado dize rpiada de madera nonle enpesta q(ue)lo mando asi fazer el dicho sen(n)or despues q(ue) signada la sentençia no(n)le enpesta.

[bottom right on the other side of the notarial rubric]

E Yo El Bachiller m(art)jn Rodrigues de vall(adol)id de la dioc(es)is de palen(çia) puso por la attoridad applica(ble) Notario q(ue) A todo lo sobre dicho fuy p(re)se(n)te en vno co(n)los dichos testigos q(ua)ndo el dicho mj sen(n)or f(e)rrna(n)do de velasco dio et pronunçio esta sen(tenç)ja en presençia de Amas las partes. Et por Ende fise aq(ui) mj signo solito et acostu(m)brado Rogado et req(ue)rido.

[Notary seal]

Fernando de Velasco [signature]

III

Algodre v. Coreses, Ejecutoria, Valladolid, 8 August 1464, ARCV, Pergaminos, Caja 5, 2.
(Excerpt.)

[f. 1r Cover]

[f. 1v]

Don enriq(ue) por la gr(aci)a de dios Rey de castilla de leo(n) de to(-)
ledo de gallisia de seuilla de cordoua de murçia de jahe(n)
del algarbe de algesira et de gibraltar et sen(n)or de vis(-)
caya et de molina a los al(ca)l(de)s alguasil(e)s de la mi casa et
corte et chançilleria et al corregidor et jueses et al(ca)ld(e)s et
min(istr)os et alguasiles et otras justiçias et oficiales q(ua)l(e)s
quier de la çibdat de çamora q(ue) agora so(n) o sera(n) de aqui
adelant(e) et aqual quier o aq(ua)les quier de uos a quje(n)
esta mj carta fuere mostrada o el traslado d(e)lla signa(-)
do de escriuano publico saccado co(n) auctoritat de
jues o de al(ca)ld(e) salud et gr(a)cia sepades q(ue) pl(e)ito paso en la mj cort(e) ante los
mjs oydor(e)s
de la mj audie(n)çia el q(ua)l vjno ant(e)llos por via de ap(e)llaçion et se començo et trabto
primera mente en(e)sa dicha çibdat ante diego de eredia mj maestre sala et mj ju(-)
es et corregidor enesa dicha çibdat el q(ua)l dicho pl(e)ito era entre el co(n)cejo et om(ne)s
bu(-)
enos de algodre et su procurador en su nonbre dela vna parte et el co(n)cejo et om(ne)s
buenos de coreses et su procurador en su nonbre dela otra el q(ua)l era sobr(e) rason
de vna demanda q(ue) ante el dicho diego de eredia mj juez et corregidor enesa
dicha çibdat pussiero(n) et demandaro(n) m(art)jn rodrigu(e)s et m(ar)jna alfo(n)so
mug(e)r que
fue de benito ferrandes et marina matheos mug(e)r q(ue) fue de jua(n) bravo
vesi(-)
nos del dicho lugar de algodre contra benito de cubillos et alfo(n)so cadenato et
ioha(n) carretero et anto(n) m(art)jn et ioha(n) dela plaça et njcolas risa et p(er)o garçon et
jua(n)
sanchino vesinos del dicho lugar coreses por la q(ua)l recontaro(n) et quexaro(n) q(ue) en
vn dia d(e)l mes de febrero del an(n)o presente del sen(n)or de mjll et q(ua)troçie(n)tos et
çinq(uen)ta
et siete an(n)os reyn(n)a(n)te yo en castilla et leon et seye(n)do obispo de çamora do(n)
juan
de mella et andandolos reban(n)os de ganado ovejuno d(e)los dichos m(art)jn rodrigu(e)s .
..

[f. 20v]

...

no(n) por q(ua)l quier o q(ua)les quier de uos las dichas justiçias por quie(n) fi(n)care d(e)lo
a(-)
si fazer et co(n)plir ma(n)do al om(n)e q(ue) uos esta mi c(art)a mostrare o el dicho su tras(-)
lado signado com(m)o dicho es q(ue) uos enplaze q(ue) parescades ant(e) mj en la mj
corte d(e)l dia q(ue) vos enplazare fasta quinze dias p(roxi)mus seguiet(e)s sola d(ic)ha
pena a cada vno deuos adizir por q(ua)l razo(n) no(n) co(n)plides mj ma(n)dado. Et de
com(m)o esta mi c(art)a uos fuere mostrado o el dicho su traslado signado com(m)o
dicho es et la co(n)pliedes ma(n)do sola dicha pena a q(ua)l q(u)ier escriuano publico q(ue)
p(ar)a
esto fuere llamado q(ue) de ende al q(ue) uos la mostrare tes [. . .] signado
co(n) su signo por q(ue) yo sepa en com(m)o cunplides mj ma(n)dado Dada en la noble
villa de Vall(adol)id a ochos dias del mes de agosto an(n)o del nascimiento del
n(uest)ro saluador i(es)u cris(t)o de mill et q(ua)troçientos et sesenta et q(ua)tro an(n)os...

IV

Molina v. Vera, *Carta de Ejecutoria*, Valladolid, 16 June 1486, ARCV, Registro de Ejecutorias, Caja 3, 25. (Excerpt.)

[f. 1r]

Don ferna(n)do et don(n)a ysabel et c(ete)r(a) a los d(e)l n(uest)ro c(once)jo
et oydor(e)s d(e)la n(uest)ra abdiencia al(ca)ld(e)s alguasy(-)
l(e)s d(e)la n(uest)ra casa et cort(e) et chançell(er)ia et A to(-)
dos los corregidor(e)s al(ca)ld(e)s alguasyles et otras justiçias
q(ua)l(e)s qui(er) Asy d(e)la çibdad d(e) Soria com(m)o de todas
las otras çibda(d)es et villas et lugar(e)s destes n(uest)ros
Reynos et sen(n)orios et A cada Vno et qual quier de vos
aq(ui)en esta n(uest)ra carta fuere mostrada (o su tr(a)s(-)
lado sygnado de escriuano pu(blico) Salud et gr(aci)a
Sepades q(ue) ple(yt)o sc(rip)to Antel muy r(everen)do y
e(xcelentisim)o padr(e) do(n) alfonso de fonseca arcob(is)po de
s(an)t(i)ago p(re)syd(e)nt(e) en la n(uest)ra abdiencia (et) de
n(uest)ro c(o)ns(e)jo et ant(e)los oydor(e)s della
q(ua)l primera ment(e) se e(scri)pto ant(e)los d(e)l n(uest)ro co(n)sejo
et vjno ant(e)los d(ich)os n(uest)ro p(re)sydent(e) et oydor(e)s por
Revysyo(n) q(ue) nos ma(n)damos faser d(e)l d(ic)ho negocio
et de todos los otros negocios q(ue) estaua(n) pendient(e)s
ant(e)los de n(uest)ro co(n)sejo q(ue) s(eno)ra m(ar)ja de vera vesyna
d(e)la d(ic)ha çibdad de Soria et su p(rocurador) en su no(n)bre
d(e)la un p(ar)te et gonçalo de Molina vesyno asy
m(i)smo d(e)la d(ic)ha çibdad et su par(te) en su no(n)bre
d(e)la otr(a) sobre razon qual p(ro)curador dela d(ic)ha m(ari)a
de vera pareçio Ant(e)los del n(uest)ro consejo et
revisio(n) dixo q(ue) tenye(n)do por se(-)

ye(n)do la d(ic)ha maria de vera su p(ar)te un heredad
q(ue) es en t(ie)rra et termj(n)o et juridiçio(n) d(e)la d(ic)ha çibdad
de soria q(ue)se llama la v(er)gila con sus casas
e t(ie)rras et heredad(e)s et mo(n)te et termj(n)o redondo
et q(ue) Asy tenye(n)dola dicha heredad con todo lo . . .

Appendix C: Transcriptions from Royal Concessions and Laws in New Spain and New Mexico

I

Excerpt of *Fuero Juzgo, Libro II, título i, ley v*. In *Fuero juzgo en latín y castellano*, ed. Real Academia Española. 1815. Facsimile reprint, Madrid: Ibarra, 1971.

... E de todas las cosas que ganaron los principes en el regno desdel tiempo que regnó el rey Don Sintisiand fasta en esaqui, ó que ganaren los principes daqui adelante quantas cosas fincaron por ordenar, porque las ganaron en el regno, deben pertenecer al regno. Asi quel principe que viniere en el regno faga dellas lo que quisiere.

... And of all the things that the princes in the kingdom acquired since the time of the reign of King Suinthila until now, or that the princes should acquire from here forward, however many things they should undertake to arrange, because they conquer them for the kingdom, they must belong to the kingdom. Thus the prince that shall succeed in the kingdom should do with them as he desires.

II

Libro VI, título III, ley viii. Recopilación de leyes de los reynos de las Indias. 4 vols. Estudio preliminar by Juan Manzano Manzano. Madrid: Julián de Paredes, 1681; facsimile reprint, Madrid: Ediciones Cultura Hispánica, 1973.

Que las Reducciones se hagan con las calidades desta ley.

Los Sitios en que se han de formar Pueblos, y Reducciones, tengan comodidad de aguas, tierras y montes, entradas y salidas, y labranças, y un exido de vna legua de largo, donde los Indios puedan tener sus ganados, sin que serebuelvan con otros de Españoles.

[Indian] Settlements shall be made with the conditions of this law.

The sites in which villages or settlements are to be formed shall have the conveniences of waters, lands and woods, ingresses and egresses, and farm lands, and an *ejido* one league long, where the Indians can have their livestock, without mixing with those of the Spanish.

III

Testimonio of the Nuestra Señora de Belén Grant (Governor Gaspar Domingo de Mendoza to Diego de Torres et al.), Santa Fe, 15 November 1742, Report 13, SG, Ser. I, SANM, NMSRCA.

[f. 1r]

S(en)or Gov(ernad)or y Cap(ita)n Gen(era)l = El Capitan Diego de Torres y Ant(oni)o de Salasar, y los demas q(ue) abajo firmamos, ante la grandeza de V. S. con el mayor rendim(ien)to debido decimos que por q(uan)to nos hallamos con cresidas familias y no(n) tenemos tierras comodas p(ar)a podernos mante(-)ner, y tener visto un sitio yermo despoblado, y como tal realen(-)go en el puesto del Rio Abajo; le registramos y pedimos de merced en el Real nombre de S. M. (Q. D. G.) p(ar)a poblarnos en el, habrien(-)do t(ie)rras de lavores las q(ue) fueren comodas p(ara) ello, y en las q(ue) nos po(-)der tener en que pastar n(uest)ros ganados mayores y menores; el q(ue) ofre(-)cemos mantener y poblar, seg(u)n reales ordenansas previenen: cuyos linderos son p(o)r la p(ar)te del oriente, la Sierra de Sandía, y p(o)r el Poniente el Rio puerco: Por el Norte, de una y otra banda del Rio, son lind(er)os las t(ie)rras de Nicolas de Chaves, y las de los vecinos po(-)bladores de N. S. de la concepc(io)n sitio de Tome; y p(o)r el Sur, el Para(-)ge que llaman de Ph(eli)pe Romero, linea recta h(as)ta tropesar con los lind(er)os q(u)e dejo espresados de oriente a poniente. Lo que sien(-)do V. S. servido de hacernos la merced q(u)e pedimos, sin perjui(-)cio de tercero q(u)e pueda tener mejor der(ech)o poblaremos como d(ic)ho es; pues p(ar)a todo lo cual a V. S. pedimos y suplicamos rendidam(en)te sea muy servido de provener y mandar como lle(-)vamos pedido, que en ello recibiremos merced y buena obra. Y juramos en devida forma q(u)e este n(uest)ro escrito no es de mali(-)cia alguna sino p(o)r socorrer n(uest)ras bejasiones. = Diego de Torres = Ant(oni)o de Salasar = Pedro Vijil = Mig(ue)l Salasar = Juana Tere(-)sa Romero = Luganda Romero = Juan Ant(oni)o Salasar = Mig(ue)l Sa(-)lasar = Pablo Salasar = Nicolas Salasar = Man(ue)l Ant(oni)o Trujillo = M(ari)a Torres = Salvador Torres = Jose Ant(oni)o Torres = Tadeo Torres = Ca(-)yetano = Christoval Torres = Diego Torres = Barb(ar)a Romero = = Gabriel Romero = M(ari)a Vijil = Jose Trujillo = Fran(cis)co Mar(-)tin = Nicolas Martiniano = Ygn(aci)o Barrera = Juan Domingo Torres = Jose Romero = Jose Tenorio = Juan Jose de Sandoval = Fran(cis)co

[F. 1v]

Trujillo = Fran(cis)co Xiron = Christoval Naranjo = Jose Ant(oni)o Naran(-)jo = B(artolo)me Torres = Pedro Romero = Merced Real

En la villa de S(an)ta Feé a los quince dias del mes de N(oviem)bre de mil setec(ien)tos cuarenta, Yo el Th(enient)e Coron(e)l Gov(ernado)r y Cap(ita)n G(ene)ral de este Reyno de la Nueva Mejico D(o)n Gaspar Domingo de Mendoza, visto

el presente escrito p(o)r los mencionados en el, devia mandar y mandé se les diese la merced del sitio q(u)e piden en nombre del Rey N. S. (Q. D. G.) p(ar)a q(u)e lo Pueblen, cultiven y beneficien p(ar)a si, sus hijos, he(-)rederos, subseores en q(ue)n mas d(e)r(ech)o tengan sin perjuicio de terceros como lo prometen en su mismo escrito; p(o)r lo q(u)e ordeno y man(-)do al Alc(ald)e mayor de la Villa de Alburq(uerqu)e D(on) Nicolas de Chaves les de la posecion mencionada con las circunstancias y calidades q(u)e en tales casos se requieren; con apersivimi(en)to q(u)e como no puede dejar de haver en aquellas imediaciones otras mercedes reales en que es neces(ari)o q(u)e a la data y señalami(en)to de esta nueva merced se lleven los instrum(en)tos y papeles de los q(u)e pudiesen alindar con esta; p(ar)a q(u)e con mayor claridad se pueda hacer el reparto de ello y divisiones, a fin de q(u)e en lo presente ni en lo futuro se formen pleitos in discordias: p(o)r lo q(u)e me parece muy conveniente se observe la forma que se previene. Asi lo provei, mandé y firme con los testigos de mi asist(enci)a actuando p(o)r recept(or) a falta de es(-)crivano Re(a)l q(u)e no lo hay, y en papel comun por no correr otro en este Reyno = D. Gaspar Domingo de Mendoza = Ant(oni)o de Herrero = = Jose Ferrus = Queda anotada en mi libro de gov(ier)no que para en el archivo de esta capital a foxas 68 vta. = S(an)ta Feé, y En(er)o 29, de 1742. Mendoza =

En este puesto de

N. S. de Belen, jurisdic(io)n de la villa de Alburq(uerqu)e en dies y nueve dias del mes de Dis(iembr)e del año de mil setec(ien)tos cuarenta, Yo el Cap(ita)n D(o)n Nicolas Duran y Chaves, Alc(ald)e mayor y cap(ita)n a guerra de d(ic)ha villa y Jurisdic(io)n en virtud del auto del S(en)or Th(enient)e Coronel D(o)n Gaspar Domingo de Mendosa, Gov(ernado)r y Cap(ita)n G(ene)ral de este Reyno pronuncia(-)

do el quince del p(roximo) p(asa)do de Nob(iemb)re del mismo año en q(u)e me manda

[f. 2r]

pase y de Re(a)l posesion al cap(ita)n Diego de Torres, en cavesa de todos los mencionados y firmados en el escrito q(u)e antecede, p(o)r el tenor de su pedimi(en)to se les concede en nombre de su, Mag(esta)d cuyo auto fue intimado p(o)r mi or(de)n a los vecinos y circunvecinos de d(ic)has t(ie)rras en las q(u)e no hallando ning(un)a contradici(o)n sobre lo q(u)e pide, pasé a dar la posesión, lindando d(ic)has t(ie)rras p(o)r la p(ar)te del Norte con las del Cap(ita)n D(o)n Nicolas Duran y Chaves, por la del Sur, afrontado a las ruinas de la casa de Felipe Romero: Por el Poniente el Rio Puerco Por lo q(u)e mira a la otra banda del Rio del Norte, con el lind(er)o de los Pobladores de la Pura y limpia Concepci(o)n y p(o)r el oriente con la Sierra de Sandía, y p(o)r el Sur con paderes y ruinas de d(ic)ha casa del espresado Felipe Romero. Y habiendo reconocido d(ic)hos lin(-)deros con tres testigos de asist(enci)a e instrumentales seg(u)n der(ech)o tomé de la mano al referido Torres, lo pasie p(o)r sus t(ie)rras y dio voces

arrancó sacate, tiró piedras é hizo otras demostraciones que en semejantes casos se requieren, persiviendo esta posesion en nombre de su Mag(esta)d quieta y pasificam(en)te con los mismos lind(ero)s q(u)e espresa su petic(io)n; en los cuales mande se pusiesen perpe(-)tuas mohoneras, dandosele d(ic)has t(ie)rras libres y generalm(en)te con pastos, aguas, abrevaderos, montes, usos y costumbres p(ar)a q(u)e las gose p(o)r si, sus hijos, herederos y subsesores sin perjuicio ninguno: Y esta Real posesion, le sea de bastante titulo, y p(o)r ella las goze como d(ic)ho es; pues p(ar)a q(u)e conste lo puse p(o)r dilig(enci)a siendo testigos instrumentales Bernabe Baca y Baltasar Baca, y los de mi assist(enci)a q(u)e lo firmaron con migo actuando como Jues receptor en el presente papel comun p(o)r no correr en estas partes el sel(-)lado, Ante mi, y como Jues Receptor, Nicolas de Chaves =De asis(tenci)a = J(ua)n Mig(ue)l Albares del Castillo = De asis(tenci)a = Guillermo Sabedra = En la villa de S(an)ta Feé, capital de este Reyno de N. Mejico, a los veinte dias del mes de Julio de mil setec(ien)tos cuarenta y dos, Yo el Th(enient)e Coronel D. Gaspar Domingo de Mendoza, Gov(ernado)r y Cap(ita)n Gen(era)l de este dicho Rey(-)

[f. 2v]

no p(o)r su Mag(esta)d (Q. D. G.). Digo que hallandome informado q(u)e diferentes vecinos que se incluyen en la presente Merced que se les hizo p(o)r mi d(ic)ho Th(enient)e coron(e)l en nombre del Rey N. S. y p(o)r cavesa de ella el Cap(ita)n Diego Torres devia mandar y mande que todas las personas que no han ocupado d(ic)ha merced y puesto, ni fuesen a ocuparla en el termino de treinta dias q(u)e deveran contarse desde el dia de la f(ec)ha se les da p(o)r escluidos a la merced y tierras q(u)e pudieran tener der(ech)o a ellas si las huviesen havitado: y que los pertenecientes de t(ie)rras a estos q(u)e se escluyan si no cumplen con lo ordenado se daran p(o)r realengo o se repartiran en las personas q(u)e las havitan deviendo cumplir con lo que citan las leyes reales sobre poblar y cultivar las t(ie)rras: y asi lo provei, mande y firmé con los de mi assist(enci)a en la forma acostumbrada, y en el presente papel p(o)r no haver otro de q(u)e doy fe. D(on) Gaspar Domingo de Mendoza. Testigos, Salvador Martinez y Ant(oni)o . . .

IV

Testimonio (copy, n.d.) of the Ojo del Espíritu Santo Grant (Governor Tomás Vélez Cachupín to the Pueblos of Zia, Jémez, and Santa Ana), Santa Fe, 6 August 1766, Report TT, Ser. I, SANM, NMSRCA.

[f. 1r]

Testim(oni)o [*in left margin*]

Correg(i)do [*in right top margin*]

Señor Governador y Cap(ita)n G(ene)ral Ph(elip)e Tafoya procurador de esta Villa de Santa fee paresco ante Us(ted) en toda forma de Der(ech)o por y en nombre de Cristobal Yndio Gou(ernad)or del Pueblo de Zia y de tomas Capitan Mayor de la g(ue)rra de d(ic)ho Pueblo q(u)e esto bienen con comicion de su Casique y de los de mas de su republica y digo Señor en Nombre de los d(ic)hos y de los del Co(-)mun de los Pueblos de Santa Ana y del de los Xemes que estos desde su funda(-)cion han reconocido por sus hejidos en las ynmediaciones de d(ic)hos sus Pueblos un Valle que comunm(en)te llaman el ojo del Espiritu Santo i que es(-)te en algunos casos urjentes sirve para ejidos de la Cavallada de este real Presidio como es constante. y sabedores los d(ic)hos q(u)e d(ic)ho Valle a tenido algunos pretendientes Vecinos para adquirirlo de Merced lo que sera para los d(ic)hos de grandisimo daño pues seallan con cresidos Ganados Mayores y Menores y Cavalladas para el real servicio y no tener otro paraje en donde poderlo haser ynparticular los del Pueblo de Zia pues estos todos los mas de sus Labores son te(m)porales y parte de ellas en las Cañadas de d(ic)ho Valle ynmediatas a d(ic)ho su Pueblo. Por todo lo qual a Us(ted) pido y sup(li)co en nombre de (S. M. Q. D. G.) sea mui servido de declarar por sus le(-)xitimos hejidos y pastos consejibles d(ic)ho Valle Mandando se las seña(-)len sus Linderos que es por oriente a todos d(ic)hos Pueblos y por el Poniente la Ceja del Rio puerco y por el Norte un paraje q(u)e llaman la Bentana q(u)e es donde viven unos Apaches Navajores i por el Sur con las tierras de los Vecinos Pobladores de d(ic)ho Rio puerco que en mandar haser Us(ted) como llebo pedido reciuiran los d(ic)hos mis partes Merced con Justicia querido y juro en Nombre de los d(ic)hos no ser de malicia este sera. Phelipe tafoya.

decreto [*in left margin*]

Villa de S(an)ta fee dies y seis de Junio de mil setecientos sesenta y seis. uisto lo pedido por las republicas de los tres Pueblos de Zia Santa Anna y Xemes de la nacion queres contiguos unos y otros a la riuera del Rio de Santa Anna i para determinar segun Justicia doi Comicion a el Alc(ald)e Mayor de d(ic)hos Pueblos don Bartolome Fernandez Para q(u)e reconociendo los Linderos q(u)e expresan del ojo del espiritu s(an)to en donde refieren man(-)tener sus Ganados y Cavalladas me informe las Leguas q(u)e contendran de Norte a Sur y de Oriente a Poniente y si los d(ic)hos tres pueblos tendran ganados Mayores y Menores y cavalladas que Equibalgan a los Linderos que piden para su pastos como hasi mismo si es o no perjudicado algun Vecino o vecinos con d(ic)hos Linderos por antesedente Merced y posesion Lexitima q(u)e

tengan lo que executara d(ic)ho Alc(ald)e maior con la berdad posible y por este asi

[f. 1v]

lo probei mande y firme yo don Thomas Velez Cachupin Gou(ernad)or General de este Reyno con dos testigos de mi as(istenci)a falta escribanos que no los hai en esta gouernacion. Velez Cachupin = testigos Carlos Fernandez = tes(-) tigo Joseph Maldonado =

Ynforme [*in left margin*]

en cumplim(ien)to de lo mandado por el señor d(o)n Tho(-) mas Velez Cachupin gou(ernad)or y Cap(ita)n g(ene)ral de este reino por su decreto de diez y seis del corriente Junio que antesede, yo d(o)n Bartolome fernandez Alc(ald)e Mayor y Cap(ita)n ag(ue)rra de los Pueblos de Nacion Queres pase a reconocer las tierras pedidas por los tres Pueblos de Xemes Zia y S(an)ta Anna y los Linderos que en su pedim(en)to expresan y hallo que com(-) prenden de Norte a Sur esto es de bado de Piedra que es el Lindero de los Vecinos del Rio puerco hasta la Bentana como ocho Leguas poco mas o menos y de oriente a Poniente esto es desde el Pueblo de Zia que es el mas ynmediato a las tierras pedidas hasta el Rio Puerco Como Seis Leguas poco mas o menos en cuia distancia no se que entren tie(-) rras utiles para sembrar por ser los aquajes cortos y pocos y solo son utiles para pastar ganados Mayores y menores de los que a(-) bundan d(ic)hos Pueblos sin que tengan las d(ic)has tres republicas otras tie(-) rras en que poder mantener sus ganados y siendo sierto como lo es que con ninguno de los sitados Linderos perjudican a Vecino alguno a(-) posecionado ni por a posecionar en tierras comprehendidas en ellos lo que hasente por diligencia que firme con dos testigos de asis(tenci)a a falta de es(-) cribanos que no los hai en este reyno de ninguna clase Villa de Santa fee y Junio de mil setesientos sesenta y seis = Bartolome fernandez = T(estig)o Juan Maria Antonio Riuera = Testigo Pedro Padilla =

Auto de Merced [*in left Margin*]

En la Villa de Santa Fee

en seis dias del mes de Ag(os)to de mil setecientos sesenta y seis. Yo d(o)n Thomas Velez Cachupin Gou(ernad)or g(ene)ral de este reyno del Nuevo Mex(i)co en aten(-) cion a lo pedido por los tres pueblos de S(an)ta Anna Zia y Xemes de la Na(-) cion Queres ya el informe que hace su Alc(ald)e Mayor d(o)n Bartolome fer(-) nandez como de ser terrenos que con sus Ganados Mayores y Menores y Cavalladas han poseido y en lo autual abundan sin tener otros para(-) jes adonde pastiar lo que los contenidos en su peticion con los cortos aquajes que se refieren en d(ic)ho informe dije que les concedia y conce(-) di en Nombre de (S. M. Q. D. G.) los referidos terrenos para el pasto de los ganados y Cavalladas de los d(ic)hos tres Pueblos Santa Anna Zia y

Xemes con los Linderos de Norte a Sur desde el paraje de la Bentana hasta el bado de Piedra del Rio Puerco Lindero asi mismo de los Vecinos del lugar de S(a)n Fern(an)do y N(uest)ra S(eñor)a de la Luz y de oriente a poniente

[f. 2r]

desde el Pueblo de Zia hasta el mismo Rio de puerco orilla de la parte del oriente que dando todo el Valle del Ojo del Espiritu Santo comprehendido en el sentro y Linderos de este Merced con la calidad y Condicion de que en este d(ic)ho Valle se pueda y deba poner en caso necesario la Cavallada del Real Precidio de Santa fee por ser paraje en que a solido pastearse de modo que por los mencionados tres Pueblos ni se ha de poner embaraso ni rreclamar agrabio y para q(u)e conciderandose en lo subsesibo los supra d(ic)hos Linderos por de los tres Pueblos lo posean con Der(ech)o lexitimo mediante esta real Merced sin que por ningun Vecino o Vecinos españoles les sean perjudicados yntrudusindo sus Ganados suponiendo ser comunes los pastos y mando a el Alc(ald)e Mayor d(o)n Bartolome fernandez pase y de Posecion real a d(ic)hos tres Pueblos de esta Merced y Linderos con(-) tenidos llebando con sigo a las Justicias y Mayores de cada uno de ellos a siendo constar y la dilijencia a Continuacion de este mi auto de Merced q(u)e mi de bolvera para dar a cada Pueblo el testimonio co(-) rrespondiente de todo y poner el original en el Archibo de este Go(-) bierno adonde debe Constar y hasi lo probei concedi mande y fir(-) me autuando con dos testigos asis(tenci)a falta de escribanos que de ninguna clase los hai en este Gouvernacion thomas Velez Cachupin testigo = Carlos Fernandez = Testigo Domingo Labadia =

Posesion [*in left Margin*]

En cumplim(ien)to de lo mandado por el S(eñor) d(o)n thomas Velez Cachupin Gou(ernad)or y Cap(ita)n g(ene)ral de este Reyno del Nuevo Mexico yo don Bartholome Fernandez Alc(ald)e Mayor y Cap(ita)n ag(ue)rria de los Pueblos de la Nacion Queres pase a d(ic)hos Pueblos y en Compania de los Go(-) uernadoresillos Casiques y de mas Justicias de los Pueblos de S(an)ta Anna Zia y Xe(-) mes pase a las tierras pedidas por los naturales de d(ic)has tres republicas y men(-) sionados por d(ic)ho Señor Gou(ernad)or en nombre de S(u) M(ajestad) como consta por la anteceden(-) te Merced y sitando a los con lindantes q(u)e son los vecinos del puesto de S(a)n Fernando del Rio puerco y presentes el then(ien)te Juan Bap(tis)ta Montañó Agustin Gallego y to(-) mas Gurule les tome de lo mano a d(ic)hos Gouvernadorcillos que lo son Cristobal Naspona y Cristobal Chiguigui Pedro chite Casique Sebastian Lazaro Juan Antonio Ca(-) pitanes de la guerra Augustin Thomas Juan Domingo y de mas Justicias y los pasie por d(ic)has Tierras dieron Vozes viva (el Rey N(uest)ro Señor Q(ue) D(ios) G(uarde)) tira(-) ron Piedras ya rancaron sacate en señal de posesion la que les di y aprendie(-)

ron quieta y pasificamente sin contradiccion alguna bajo las condiciones expresadas en la referida Merced y de los Linderos en ella señalados que son de norte a sur de la Bentana el Bado de Piedra y de Oriente a Poniente

[f. 2v]

desde el Pueblo de Zia a orillas del Rio Puerco a la parte del oriente y pa(-) ra q(u)e asi con este lo firme yo d(ic)ho Alc(al)de Mayor con dos testigos de as(istenci)a autuando como Jues receptor a falta de escribano que no los hai en esta Gouernacion en este paraje del Ojo del Espiritu Santo en beinte y ocho de Septiembre de mil setecientos sesenta y seis años doi fee = Bartholome ferman(-) dez = testigo Mig(ue)l tenorio de Alba = testigo Pedro Garcia =

Concuenda con su original que quede en el Archivo de este Gou(ier)no donde Yo d(o)n Thomas Velez Cachupin Gov(ernad)or General de este reyno del Nuevo Mexico lo man(-) de sacar va fielmente y corregido y fueron presentes los de mi asistencia quienes actuo a falta de escribano que no los ay en este Gouernacion = En testimonio de verdad = Thomas Velez Cachupin = testigo Carlos fernandez t(estig)o Dom(ing)o Labadia

V

Juan José Pacheco, Petition to Governor Tomás Vélez Cachupín, Santa Fe, 18 June 1753 (*and subsequent filings*), no. 687, Ser. I, SANM, NMSRCA.

[f. 1r]

No. 417 S. Governador y Capitan General

Ano de 1753

Petiz(io)n de Ju(a)n J(ose)ph

Pacheco sobre

quesele ymposi(-)

bilita por Sebas(-)

tian Martin la

fabrica de vna

casa en propias

tierras con dili(-)

gencias a su con(-)

tinuacion

Juan Joseph Pacheco Vesino deel Puesto de N. S. de la Soledad en la Jurisdision dela Villa de Santa Cruz dela Cañada como meror aga lugar en derecho y protestando á salvo los que me sean, competentes paresco ante V.S. (excelenci)a y digo que

estando en quieta y pasifica posesion de unas tierras que por derecho hereditario tocan y pertenesen á Ynes Martin mi lexi(-) tima Muger é hija lexitima de Antonio Martin difunto y tambien poseo un pedazo de tierra de Zembradera que co(-) pre a Phelipe Garduño vesino desta villa y porque no ten(-) go Cassa enque vivir con me cresida familia me determin(-) no á la biarla en el dicho sitio que asi tengo conprado por ser la parte que me es de mayor conmodidad y respecto de que se me inpede dicha fabrica por Sebastian Martin pa su poner que no tengas entradas y salidas labrando en dicho si no la Cassa y porque si las tengo por tierras meas para el Rio y prouirare no dar perjuicio a ningun Circun Vesino Ó sino que me buelvan un pedazo de tierra que permuto

[f. 1v]

el dicho Sebastian Martin por otro con Antonio Mar(-) tin mi suegro difunto que estoi Mano aholverde la de dicha por muta en cuió Caso no queda ya in conuiente ninguno, y labraze la Casa en dicha tierra dela permuta con que de ha honraran le escriptulos: por lo qual venade vez vir V.S. (excelenci)a, de mandar se notifique dicho Sebastian Martin no me estorve dicha fabrica = y respeto á que D(o)n Juan Joseph lovato Alcalde Mayor de aquel partido es circum Vesino y tiene Relacion de parentesco de afinidad con el dicho Sebastian Martin lo Recuso para que no haga sobre este particular ningunas diligencias las que suplico al V.S. (excelenci)a, se sirva de cometer a un Vesino honrrado que sepa leer, y escrevir y de cuenta de su execusion dentro de un breve término en cuiá átension y haviendo por expreso el mas formal pedimento que Nesesario sea

A V.S. (excelenci)a pido y suplico se sirva de mandar hazer y determinar como yevo pedido que es de justicia y juro a Dios N.S. y ala Santa Cruz no ser de malisia y en lo Nesesario es

Juan Joseph Pacheco

Santa Feé 18 de Junio de 1753

Dasse comision al Capitan d(o)n Juan esteban Garcia de Noriega Vecino dela Villa de la Cañada, para que siendo cierto loque esta

[f. 2r]

parte represento notifique á Sebastian Martin Vecino dela Soledad, no la impida la fabrica De su cassa, en el dominio De su solar que de derecho puede, comprometiendose el referido Sebastian

Martin en la permuta que esta parte pro(-)
pone, para evadir unos y otros los perjuicio
y discordias que puedan originarse: Y el
Alcalde mayor del Partido, no entienda
esta causa; y el Comesario, proce(-)
dera en Justicia y en las demas diligen(-)
cias que resultaren: Asi lo decreto
mande y firme. Yo d(o)n Thomas Velez
Cachupin Gov(ernad)or deste reyno =
Velez Cachupin [signed]

En este p(ues)to de Nuestra Senora dela Soledad del Rio Arib[a], en di(-)
es y Nuebe dias del Mes de Junio de mil setesientos sinq(uen)ta y tres
yo, D(o)n Ju(a)n Esteban Garsia de noriega delegado del S(eno)r D(o)n
Thomas Velez Cachupin, Gobernador y cap(ita)n Gen(era)l deste Rey(-)
no A contiusion del decreto descriuia, vine a d(ic)ho p(ues)to y ent(-)
trado dela le presentacion de Ju(a)n Jos(e)ph Pacheco, pase a sus ti(-)
erras y las de conosi Ser todos de laVor sin poder tener
Lugar solariego, sin grave perjuisio de todos vesinos des(-)
te d(ic)ho p(ues)to: y reconociendo que tiene el d(ic)ho Pacheco Zolar
de caza con entradas y salidas y un pedazo la por
de quenta debia mandar, y mande a d(ic)ho Juan Joseph pa(-)

[f. 2v]

acheco fabrique casa de bibiendo en d(ic)ho su solar, Respecto a
que vna bezino ynmediasa que los Riziana de abila con tal
de que aya conbenio para la ynportante por y tranquilidad
destos vesinos se conpromiso con dicho Pacheco a ferionle
Vn pedaso de tierras competente para que dicho pacheco
entre y salga a sus labores sin perjuisio de ninguno de sus be(-)
zinos y mando por la avtoridad que me es conferida
Se selebre ynstrumento juridico para que entodo tiempo
coste: y respecto de no tener lugar la permuto que pedia
el dicho pacheco por estar las tierras ya en quarto poseedor
mando a d(ic)ho pacheco para ótra ócasion no pida semejante
cosas en que no ha lugar y por todo lo dicho le mando así mismo
no fabrique casa jacal, ni torion, en donde tenia comenzado
So pena de beynte y sinco pesos, aplicados a la real camara
asi lo decreto, mande, y firme yo dicho juez delegado con los tes(-)
tigos de mi asistencia a falto de escrivanos publico, y []
que no los ai eneste Reyno y es fecho ..., supro, de que doi fee
Juan esteban Garsia de Noriega
Jues comisario
T(estig)os de Asistencia
Fran(cis)co Valdes y Bustos
Fran(cis)co sanches

En dicho dia mes y ano y se commission al S(eno)r D(o)n Tomas Velez Cachupin
Gobernador y Cap(ita)n General para que su vista determine su señorio lo que
fuese ser bido y para que Costelo firme en dicho dia mes y año de que de todo
doi fee,
Juan esteban Garsia de Noriega
Francisco Valdes y Bustamante
Francisco sanches

Santa Fee 23 de Junio 1753

[These two lines appear in the left margin.]

[]obar de la

[]en(ten)cia

Apruebanse estas diligencias, las que co(n)seruasion por usas y otras
Partes, precisa y puntualmente: Y asi lo decreto mande y firme Yo d(o)n Tho(-)
mas Velez Cachupin Gov(ernador) de este Reyno
Velez Cachupin [Signed]

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