Neither sovereignty nor property rights could forestall American geopolitical expansion in the first half of the nineteenth century. The conflicts that resulted from this clash of doctrine with desire are perhaps most evident in the history of the Chicanas/Chicanos of Texas, California, and the Southwest, who sought to maintain their land and property, as guaranteed by the Treaty of Guadalupe Hidalgo, in the aftermath of the U.S.-Mexico War. Integrating an exploration of case law with political and social histories of the period, the Author explores the sociolegal significance of Chicana/Chicano land dispossession; exposes the racial, economic, and political motivations of the legislators, judges, and attorney's involved; and demonstrates the internal incoherence of land grant doctrine. Focusing on the material relationship of the past to the present, the author seeks to establish linkages between the past roles of law and legal structures in dispossessing Chicanas/Chicanos of their land and their present roles in structuring Chicana/Chicano political and economic subordination in the agricultural sector. The author concludes that the study of Mexican land dispossession suggests both the need to expand the traditional approach to teaching property law as well as the importance of deploying the Treaty of Guadalupe Hidalgo and international law in the struggle for racial equity.

INTRODUCTION

I. “THE GREAT AMERICAN LAND BUBBLE”
   A. Property and the Common Law
   B. Historical Framework
      1. Land Grant Procedure
      2. Grantees, Contractual Performance, and Land Use
      3. American Conquest
      4. Treaty of Guadalupe Hidalgo
      5. Senate Amendments and the Undermining of the Treaty Negotiations
   C. Mexican Law and Native Americans
II. THE LAND GRANT EXPERIENCE .............................................................. 78
   A. Land Act Legislation ................................................................. 79
   B. Mexican Grantees in Case Law .............................................. 87
      1. Initial Disputes and Judgments ........................................ 87
         a. Mexican Law and Granting Papers ................................ 88
         b. Challenges to Mexican Authority .................................. 101
         c. Mexican Colonization Law and Conditions Subsequent .... 103
         d. Granting Language and Grant Documents ...................... 110
      2. Collateral Attack ................................................................. 112
         a. Ecosystems and Boundaries ........................................... 113
         b. Supplemental Legislative Actions ................................. 119

III. CONTEMPORARY LAND USE AND CHICANA/CHICANO POVERTY IN THE AGRARIAN DOMAIN .............................................. 133
   A. A Potential Alternative ....................................................... 138

CONCLUSION .......................................................................................... 142

INTRODUCTION

Law is not a water-tight compartment sealed or shut off from contact with the drama of life which unfolds before our eyes. It is in no sense a cloistered realm but a busy state in which events are held up to our vision and touch at our elbows.¹

As early as 1885, the federal courts evinced clear awareness of their dubious record in deciding disputes between Mexican landowners and American settlers in the Southwest. In United States v. San Jacinto Tin Company,² the court poignantly addressed the subject as follows:

Those familiar with the notorious public history of land titles in this state need not be told that our people coming from the states east of the Rocky Mountains very generally denied the validity of Spanish grants... and, determining the rights of the holders for themselves, selected tracts of land wherever it suited their purpose, without regard to the claims and actual occupation of holders under Mexican grants... Many of the older, best-authenticated, and most-desirable grants in the state were thus, more or less, covered by trespassing settlers. When the claims of Mexican grantees came to be presented for confirmation, these settlers aided the United States; the most formidable opposition usually

¹. Wortham v. Walker, 128 S.W.2d 1138, 1150 (Tex. 1939).
². 23 F. 279 (C.C.D. Cal. 1885).
coming from them, first, to the confirmation of the
grants, on every imaginable ground, of which the most
frequent was fraud in some form at some stage of the
proceedings. When confirmed, and the officers of the
government came to the location, the contest became
still more vigorous and acrimonious; the trespassing set-
tliers, or adverse claimants... would seek to move the
location... in opposition to confirmation...

Charges of fraud are easily made, and they were by no means spar-
ingly made by incensed defeated parties, and these
reckless charges by disappointed trespassing and op-
posing claimants, in many instances, as in this case,
involved the officers of the government, as well as the
claimants under the grant.3

This Article investigates the dispossession of Chicanas/
Chicanos4 from their property interests following the war between
the United States and the Republic of Mexico (“U.S.-Mexico War”).

3. 23 F. at 295–96.
4. “Mexican” nationals include citizens of Mexico. The term “Chicanas/
Chicanos” refers to individuals of Mexican descent in the United States after the
Conquest of the former Mexican Territories. The terms are used interchangeably
with emphasis on “self-designations.” See generally GENARO M. PADILLA, MY
HISTORY, NOT YOURS (1993) (describing the importance of allowing people to name
their own identity). For an alternative designation, see ANA CASTILLO, MASSACRE OF
THE DREAMERS 12 (1994), which employs the term “Xicanismo.” Castillo encourages
Xicanistas to “not only reclaim [their] indigenismo but also reinsert the forsaken
feminine into [their] consciousness.” Id. For information concerning the indigenous
heritage of people of Mexican ancestry, see RICHARD GRISWOLD DEL CASTILLO &
ARNOLDO DE LEÓN, NORTH TO AZTLÁN, A HISTORY OF MEXICAN AMERICANS IN THE
UNITED STATES (1996). Griswold del Castillo and De León assert that the indigenous
background of Mexicans derives from “the tribes and groups that populated Amer-
ica before Christopher Columbus’s voyage. Along with most Mexicans, Chicanos are
also Mestizos—a biological as well as cultural mixture of Indian and Spanish with
some traces of African and Asian peoples.” Id. at 7.

The Mexican period is distinguished from the Spanish governance of the
provinces. See generally Ely’s Adm’r v. United States, 171 U.S. 220, 228 (1898) (noting
Mexico’s declaration of independence from Spain on February 24, 1821).

5. The war between the two Republics began on May 13, 1846. Lisbeth Haas
reports that “its immediate causes... stemmed from the United States’ annexation
of Texas.” Lisbeth Haas, War in California, 1846–1848, in CONTESTED EDEN, CALIFORNIA
Imperialism and the doctrine of Manifest Destiny encouraged westward expansion
in the 19th century, see FREDERICK MERK, MANIFEST DESTINY AND MISSION IN
AMERICAN HISTORY (1963), and it is well established that the United States long had
coveted Mexico’s northern provinces. See A. BROOKE CARUSO, THE MEXICAN SPY
COMPANY, UNITED STATES COVERT OPERATIONS IN MEXICO, 1845–1848, at 5 (1991)
(reporting that President Adams “made no less than three [unsuccessful] attempts to
induce Mexico to sell [Texas] to the United States”) After Mexico’s refusals, President
Andrew Jackson attempted to purchase key regions of Mexican territory; he also
became the first American president to direct American continental acquisition
The admission, by at least one federal court, of the widespread abuses that occurred during the nineteenth century suggests that one might reasonably expect to find some mention of them within traditional legal education in the contemporary period. Not only were these actions the type of “abuses” that often attract at least academic discussion, they also constituted the means by which private citizens gained title to vast amounts of rural property. Nevertheless, legal scholarship and classroom discussions are virtually silent on the matter.

This gap in legal history does not result from a lack of present relevance. A fundamental issue in both property and agricultural law involves the reconciliation of conflicts between the ownership rights of fee holders and certain governmental actions. Academic efforts toward the Mexican ports of Monterrey and San Francisco. See id. Because he sought to expand the United States to all Mexican territories, Andrew Jackson, whether in or out of office, proved a continuous threat to Mexico’s security for the next 20 years. See id.

For an account of westward expansion into territory formerly belonging to Mexican landholders, see generally Southern Pacific Railroad v. Brown, 68 F. 333 (C.C.S.D. Cal. 1895), in which the court discussed land granted by the Mexican government and later awarded by the U.S. government to railroad companies. For another detailed discussion, see generally William H. Goetzmann, When the Eagle Screamed: The Romantic Horizon in American Diplomacy, 1800-1860 (1966).

6. See supra note 2 and accompanying text.

7. For example, property law exposes students to chain of title issues. Broome v. Lantz, 294 P. 709 (Cal. 1930), presents a chain-of-title fact pattern of property once held under Mexican ownership. That case describes Isabel Yorba and her ranch, Guadalasca, dating back to 1836. During her tenure as property owner, Yorba conveyed various parts of the ranch. Whether she conveyed her property under duress is a further point of interest. Finally, the gap in legal history obscures the extent to which property titles throughout the Southwest derive from the land grant periods. As the Supreme Court noted at the time, “[when the sovereignty of Spain was displaced by the revolutionary action of Mexico, the new government established regulations [for granting public lands to individuals]. These two sovereignties are the spring heads of all land titles in California . . . .” United States v. Moreno, 68 U.S. 400, 403 (1863).

8. Agricultural law encompasses the realm of federal and state regulatory structures that expedite food production in the United States and entry into foreign markets. See Keith Meyer et al., Agricultural Law, Cases and Materials (1985).

9. Students of property law conceptualize property rights as a “bundle of sticks.” Board of County Comm’rs v. Conder, 927 P.2d 1339, 1352 (Colo. 1996) (Kourlis, J., dissenting); see also Joseph Singer, Property Law, Rules, Policies and Practices 3 (1994) (“Property rights concern relations among people regarding control of valued resources.”). Anglo-American jurisprudence has a longstanding tradition, expressed in Constitutional and legislative provisions as well as court rulings, of protecting these bundles of sticks from overly intrusive governmental actions. For example, the Fifth Amendment to the U.S. Constitution provides in part: “Nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V., cl. 4. The Federal Takings Clause applies not only to the federal government but also to state governments by incorporation through the Due Process
inquiry also examines how those conflicts impact the country's natural resources. Notwithstanding the breadth of these fields of study, the literature generally excludes reference to Chicana/Chicano land dispossession. This Article seeks to provide a partial remedy for that exclusion.

Prior to the U.S.-Mexico War, the Mexican government awarded and recognized private and communally held grants of

Clause of the Fourteenth Amendment. See, e.g., Chicago, Burlington & Quincy R.R. v. City of Chicago, 166 U.S. 226, 236 (1897).

10. See, e.g., JESSE DUKEMINIER & JAMES KRIER, PROPERTY (3d ed. 1993) (extensively discussing property acquisition by discovery, capture, creation, find, adverse possession, and gift, but omitting the enormous history of property ownership and governmental actions as they affected Chicana/Chicano land disposition). Land use texts also fail to examine the historical underpinnings of land distribution law, which arose from land grant adjudication law. See, e.g., CHARLES M. HAAR & MICHAEL ALLAN WOLF, LAND-USE PLANNING, A CASEBOOK ON THE USE, MISUSE AND RE-USE OF URBAN LAND (4th ed. 1989). These omissions result in an imprecise legal history and deprive students of the opportunity to address complex analytic exercises that stem from the difficult task of reconciling land grant adjudication with prior American legal principles.


11. Although Chicana/Chicano dispossession touches on numerous compelling issues that require further scholarly investigations, space constraints permit the enumeration of only a few. For example, the jurisprudence from the annexation period encompasses federalism considerations. See, e.g., United States v. Martinez, 184 U.S. 441, 444 (1902) (questioning whether, after the private land claims court confirms a land grant, a court can without explanation "entertain a supplemental petition for the value of certain parcels disposed of and patented by the United States to third parties before the filing of the original petition"); Gunn v. Bates, 6 Cal. 263, 266 (1855) ("California is an independent sovereignty, and the Federal Courts have no right or power to interfere with the decisions of this Court.").

This review also omits discussion of water rights litigation. However, information on that litigation as it involved the former Mexican territories can generally be found in Gutierrez v. Albuquerque Land & Irrigation Co., 188 U.S. 545 (1903); Mann v. Tacoma Land Co., 153 U.S. 273 (1894); Miller v. Letzerich, 49 S.W.2d 404 (Tex. 1932). These conflicts extend into the present. See Richard D. Garcia & Todd Howland, Determining the Legitimacy of Spanish Land Grants in Colorado: Conflicting Values, Legal Pluralism, and Demystification of the Sangre de Cristo/Rael Case, 16 CHICANO–LATINO L. REV. 39 (1995).

12. Empresario grants entitled groups to live on large tracts of land. See Vernon B. Hill, Spanish and Mexican Land Grants Between the Nueces and Rio Grande, 5 S. TEX. L. REV. 47, 47 (1960). Communal living was valued because it permitted people living on semi-arid tracts to access scarce water resources. American courts, however, disallowed communal rights. See, e.g., United States v. Sandoval, 167 U.S. 278, 298 (1897). In rejecting these rights, United States courts failed to consider colonial American laws that permitted colonists to hold communal property. For a discussion
property throughout its territories. After the Conquest, the United States annexed the former Mexican territories through the Treaty of Guadalupe Hidalgo ("Treaty"). In establishing new national geographic borders, the Treaty also obligated the United States to provide grantees in the annexed areas citizenship status and to protect their fee interests. Notwithstanding the promises contained in the Treaty, grantees of Mexican descent and their successors in title experienced the loss of the very property interests the Treaty pledged to protect.


13. Rural Mexican estates of varying sizes included, for example, Rancho San Antonio, Canon de San Diego, and Rancho San Francisquito. See, e.g., Chaves v. United States, 168 U.S. 177 (1897) (San Antonio and San Diego); United States v. Rodriguez, 25 F. Cas. 821 (D.C.N.D. Cal. 1864) (No. 14,950) (San Francisquito).


18. For example, by the 1920s, the majority of grantees and their heirs in Texas had long ago been dispossessed of their property holdings. See Rodolfo O. de la Garza & Karl Schmitt, Texas Land Grants & Chicano-Mexican Relations: A Case Study, 21 Latin Am. Res. Rev. 123, 125 (1986). Grantees of Spanish descent also lost their property following the Conquest by the United States, but this Article focuses on governance of the Southwest in the Mexican period. Specifically, the Treaty of Guadalupe Hidalgo identifies those remaining after the Conquest as Mexicans. Treaty of Guadalupe Hidalgo, art. VIII, supra note 15, at 929 ("Mexicans are now established in territories previously belonging to Mexico . . . ").
Scholars outside of legal academia have long investigated the issue of Chicana/Chicano property dispossession. Three theories regarding the origins of Chicana/Chicano alienation from their property interests emerge from these scholars’ work. Two of these theories attribute alienation to differences between Anglo-American and Mexican property law, while the third relies on cultural differences.

The first theory places responsibility for property dispossession on the substantive differences between United States common law and Mexican civil law. Adherents of this theory contend “[n]ot so much that Americans ran roughshod over the legal rights of Mexican landowners [but rather] that different traditions of property rights came into conflict.” Such an argument is difficult to reconcile with the Treaty, international law, constitutional provisions, and subsequent congressional legislation obligating the United States to protect the property rights of those remaining in the annexed territories. Thus, by relying on conflict between the different property traditions, the first theory does not completely explain Chicana/Chicano land alienation.


20. “Civil law uses law codes as the main source of its rules, while Anglo-American common law … looks primarily to the decisions of judges for precedents to govern its jurisprudence.” EBRIGHT, LAND GRANTS, supra note 19, at 69. Contrary to the English common law origins of U.S. law, Mexican law originated from the civil law of Spain. See Manry v. Robison, 56 S.W.2d 438, 442 (Tex. 1932) (contrasting American common law riparian rights with Roman civil law governing Spain and Mexico); Miller v. Letzerich, 49 S.W.2d 404, 407 (Tex. 1932) (“After the revolution by which Mexico gained her independence, the Spanish civil law prevailed in connection with the decrees and statutes of the supreme government of Mexico.”).


22. See discussion infra Part II. For a discussion of the role of a former sovereign’s law in proving validity of a grant and American courts’ disregard of testimony regarding official jurisdiction as a source of construction of that law by the antecedent government despite the lack of a practically available alternative, see Hans W. Baade, The Historical Background of Texas Water Law, A Tribute to Jack Pope, 18 ST. MARY’S L.J. 1, 21-23 (1986).

23. Indeed, in the southwestern United States, several Mexican and Spanish legal principles extend to the present. For example, the law of community property
A second theory argues that the procedural differences between
the systems led to the loss of property. Characterizing Anglo-Saxon
law approvingly as "exact, clear, and precise," while criticizing
Mexican legal institutions as employing "loose and careless meth-
ods," proponents of this theory assert that "the defects in the
Spanish and Mexican records and titles," rather than the unfair
treatment of Mexican grantees, resulted in alienation. American
courts, however, did not always share this view. In Davis v. California
Powder Works, for example, the court declared that "[t]he Mexicans
of the Spanish race, like their progenitors, were a formal people, and
their officials were usually formal and careful in the administration
of their public affairs." Thus, the second theory does not adequately
link Chicana/Chicano land dispossession to differences in proce-
dural administration of the laws.

The last theory asserts that the cultural differences between the
United States and Mexico produced dispossession of Mexican grant-
ees' property interests. This theory posits that "the original holders
being Mexicans were improvident and really squandered [their
land] for riotous living." As one author has noted, while early
remains in use. See SINGER, supra note 9, at 1078. For an account of the Spanish influ-
ence on Texan marital property law, see generally Hans W. Baade, The Form of

24. Gates, The California Land Act of 1851, supra note 19, at 405 (1971); see Paul
Gates, Pre-Henry George Land Warfare in California, in LAND AND LAW IN CALIFORNIA:
ESESSARS ON LAND POLICY 186 (Richard S. Kirkendall ed., 1991) (discussing the
"rigidity" of Anglo-Saxon law).

25. Morrow, supra note 19, at 15; see also Sena v. United States, 189 U.S. 233, 239
(1903) (favoring the U.S. government's interpretation of property boundaries due to
the "loose manner" in which Spanish land grants were made).

109 (1948) (discussing the typical lawyer's attitude that "condemnation of the whole
procedure comes only from those not familiar with the situation").

Other scholars, providing only limited references to legal causes, assert that
Mexican lands were lost because they were the spoils of war. See Harold Weiss, The
These discussions, however, fail to consider the extent to which the United States
breached its contractual and fiduciary-like obligations to grantees of Mexican de-
cent.

27. 24 P. 387, 388 (Cal. 1890).

28. Id. (internal quotation marks omitted) (quoting White v. United States, 68
U.S. 660, 680-81 (1863)).

29. See DOUGLAS MONROY, THROWN AMONG STRANGERS: THE MAKING OF A
MEXICAN CULTURE IN FRONTIER CALIFORNIA 199 (1990) (discussing the "conflict of
legal cultures").

30. U.S. INDUST. COMM'N, REPORT ON AGRICULTURE AND AGRICULTURAL LABOR,
H.R. Doc. No. 57-1, at 952 (1901) (testimony of A.H. Naftzger, President and General
Manager of Southern California Fruit Exchange). Those who adhered to this theory
essentially viewed the land as wasted until American settlers arrived. Cf., e.g., Luco
v. United States, 64 U.S. 515, 524 (1859) ("The influx of American settlers had, from
the year 1849, given great value to these lands . . . ").
Anglo-Americans pejoratively characterized the Mexican population as "indolent, ignorant, and backward. Americans of the late nineteenth century re-imagined the Californios as unhurried [and] untroubled." This theory is grounded in part on the same demeaning ethnic stereotypes that shaped court decisions in the nineteenth and early twentieth centuries. Moreover, evidence from historical texts demonstrates the industry of Mexican grantees' land use practices. Cultural biases alone cannot justify any theory. The lack of evidentiary support further demonstrates that this theory fails as a sufficient explanation for Chicana/Chicano alienation.

Proponents of the above theories apparently ignore compelling legal evidence demonstrating that, in dealing with Mexican grantees' land, the United States failed to honor the Treaty of Guadalupe Hidalgo and violated American constitutional norms protecting against governmental intrusions on private property rights. By subjecting them to shifting legal norms, American courts subordinated Mexican grantees and their heirs as outsiders to the American legal system, thereby diminishing their status as citizens.
sacrificing basic principles of law, and ultimately privileging the dominant population.\textsuperscript{35}

A principal goal of this Article is to provide a counterhegemonic story to the exclusion of the history of the post-U.S.-Mexican War period from legal analysis and education. This omission facilitates a legal culture that subordinates Chicana/Chicano communities through restrictive laws.\textsuperscript{36} Its exclusion also denies a more sophisticated understanding of race.\textsuperscript{37} Not unlike the work of LatCrit theorists, this Article elaborates several linkages among our history, our communities, and legal norms, long denied by mainstream legal culture and scholarship.\textsuperscript{38} By providing a counter-story, this Article presents an opportunity to examine the continuing subordination of Chicana/Chicano communities and its harmful effects, both of which derive from the period of land grant adjudication.

This Article also aims to introduce the case law of Chicana/Chicano land dispossession into legal education. Chicanas/Chicanos' status as outsiders and the extent of their land alienation encompass a wide range of issues, including ejectment, trespass law, adverse possession, quieting of title, and the takings doctrine.\textsuperscript{39} Consideration

\textsuperscript{35} The terms "dominant population," "Euro-American," and "European-American" refer to individuals of European descent. For a discussion of the legal identification of the dominant population, see In re Camille, 6 F. 256, 257 (C.C.D. Or. 1880), which defined the dominant population as "Europeans or white race."


\textsuperscript{38} Environmental racism in contemporary communities of color constitutes an example of these denied linkages. See Gerald Torres, Race, Class, Environmental Regulation, Introduction: Understanding Environmental Racism, 63 U. COLO. L. REV. 839, 841 (1992).

\textsuperscript{39} In addition, other authors specifically describe the use of violence in removing Chicanas/Chicanos from their land and property. See, e.g., RODOLFO ACUÑA, OCCUPIED AMERICA: A HISTORY OF CHICANOS 115 (3d ed. 1988) (arguing that through "nonfeasance law officers condoned the legal and physical abuse" of Mexican grantees and noting that grantees were killed after they acquired title to their property) (citing LEONARD PITT, THE DECLINE OF THE CALIFORNOS: A SOCIAL HISTORY OF THE SPANISH-SPEAKING CALIFORNIANS, 1846–1890 119 (1971)); see also ALFREDO MIRANDÉ,
of the diverse legal methods that expedited dispossession provides an invaluable opportunity for analytical study of the tension between private ownership rights and governmental actions.

As a means of establishing the legal framework necessary to develop a more precise understanding of the events of land dispossession, Part I provides a discussion of the historical procedures Mexico used to regulate land grants throughout its provinces. Part II analyzes case law to examine whether the United States met its obligations under the Treaty, which terminated the U.S.-Mexico War. This examination demonstrates that legal and governmental actors extended favorable legal "interpretations" to the dominant population, denied analogous interpretations to Mexican fee holders, and ultimately that favoritism expedited dispossession.

Finally, Part III joins the past with the present and examines the link between lack of land tenure and poverty in the contemporary period. It demonstrates that rural Chicanas/Chicanos cannot acquire land and that without property, they are unable to access the

GRINGO JUSTICE 3 (1987) (enumerating examples of violence against Mexicans after the Conquest).


41. Further evidence of the treatment of Chicana/Chicano property interests can be found by examining land grant and deed records, census and church records, deposition papers, Board of Land Commissioners hearings, and federal legislation promulgated during the period. In addition, voluminous examples of these documents, legal briefs, motions, court opinions, surveys, and maps of land formerly held by grantees of Mexican descent are located in the Bancroft Library at the University of California at Berkeley.

42. The application of vague standards by American courts ultimately accomplished what political forces could not—an expedited dispossession of land from Chicanas/Chicanos. See George A. Martinez, Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980, 27 U.C. DAVIS L. REV. 555, 566-68 (1994) (referring to Mexican land grants); cf. H.L.A. HART, THE CONCEPT OF LAW 132 (1961) ("[I]n every legal system a large and important field is left open for the exercise of discretion by courts and other officials in rendering initially vague standards determinate, in resolving the uncertainties of statutes, or in developing and qualifying rules only broadly communicated by authoritative precedents.").

privileges extended to property owners through government programs. Thus, they are guaranteed impoverished conditions. To counter their marginalized existence, Part III suggests opening the public domain for distribution to Chicanas/Chicanos. Rather than calling for the wholesale distribution of the country's natural resources, Part III indicates that land transfers should be conditioned on sustainable, alternative forms of land use and agriculture. In addition to righting prior wrongs, this proposal therefore also provides a means of ameliorating the current ad hoc spoliation of the public domain.

III. CONTEMPORARY LAND USE AND CHICANA/CHICANO POVERTY IN THE AGRARIAN DOMAIN

Justice Holmes once declared: "This abstraction called the law ... is a magic mirror [wherein] we see reflected, not only our own

---

473. Id. at 511-12 ("[T]he relations of the inhabitants of Louisiana to their government is not changed. The new government takes the place of that which has passed away.")
474. See id. at 86.
475. See Miller, supra note 16, at 241 ("For Article 9, the Senate amendment was a new text, adapted from Article 3 of the Treaty for the Cession of Louisiana ... which, indeed, was the basis of the first paragraph of the article as originally written ... ").
Section 13 of the California Land Act reads as follows:

[S]aid surveyor-general shall have the same power and authority as are conferred on the register of the land office and receiver of the public moneys of Louisiana, by the sixth section of the act "to create the office of surveyor of the public lands for the State of Louisiana approved third March, one thousand eight hundred and thirty-one."

476. United States v. McLaughlin, 127 U.S. 428, 454 (1888) (holding that, where a float had been granted, the United States could dispose of any specific tracts within the exterior limits of the grant, leaving a sufficient quantity to satisfy the float).
lives, but the lives of all men that have been!" Holmes believed that this 'magic mirror' offered historians an opportunity to explore the social choices and moral imperatives of previous generations. While this Article argues that including Chicanas'/Chicanos' rural experience in legal education enriches our understanding of property law, this legal experience also provides a basis for understanding their current economic standing in the rural and agricultural sector. The magic mirror now shows both that their dispossession was improper and that agricultural law is replicating the historical alienation of Chicanas/Chicanos from rural land and policies.

Insofar as legal practices and land use policies privileged the dominant population, the mirror shows that they also discriminatorily determined the distribution of power and benefits. Not long ago, Reis Tijerina and the Alianza in New Mexico revived the land grant issue and exposed the consequences resulting from land grant dispossession. Currently, discriminatory distribution of agricultural resources excludes Chicanas/Chicanos and invokes Reis Tijerina's claims for a return of long lost land grants.

Under the federal regulatory framework, farmers in their regions vote on the determination of subsidy awards for their given

478. Id.
479. In rural areas Chicanas/Chicanos remain primarily as laborers without land tenure. See generally HISPANIC POPULATION OF U.S. SOUTHWEST, supra note 43. See generally id. Population figures, however, remain inexact because of the mobility of agricultural workers during census surveys. See Leslie A. Whitener, A Statistical Portrait of Hired Farmworkers, 2 MONTHLY LAB. REV. 49 (1994) (explaining that the nature of seasonal work ensures undercounting of field workers when workers are not employed on farms during the census-taking period).
480. See supra notes 217-99 for a discussion of this misappropriation.
482. See generally HISPANIC POPULATION OF U.S. SOUTHWEST, supra note 43, (enumerating Chicana/Chicano population in the Southwest); DEVELOPMENT PROFILE OF RURAL AREAS, supra note 43 (analyzing impoverished rural areas). Chicanas/Chicanos have long struggled to be heard in various areas. See ROOTS AND RESISTANCE: THE EMERGENT WRITINGS OF TWENTY YEARS OF CHICANA FEMINIST STRUGGLE, HANDBOOK OF HISPANIC CULTURES IN THE UNITED STATES: SOCIOLOGY 175 (Nicolas Kanellos & Claudio Esteva-Fabregat eds., 1994). This required further litigation to ensure access to public accommodation, see Terrell Wells Swimming Pool v. Rodriguez, 182 S.W.2d 824 (Tex. Civ. App. 1944), and the franchise through elimination of poll taxes and literacy tests, see White v. Regester, 412 U.S. 755 (1983); GOMEZ-QUÍNONES, supra note 84; JOHN STAPLES SHOCKLEY, CHICANO REVOLT IN A TEXAS TOWN (1974). Other cases discuss Chicana/Chicano rights to education. See Westminster Sch. Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).
areas. At present, Chicanas/Chicanos comprise only 1.7% of rural landholders and those without land can neither participate nor vote on agricultural committees. Land alienation impoverished them, requiring transformation from land owners to field workers. Their labor as fieldworkers consequently renders them ineligible to participate in the distribution of the federal benefits that accrue to the agricultural sector. Long trajectories deriving from the inability to own land diminish their political standing and perpetuate discrimination in the administration of farm programs and agricultural policy. Without capital or land Chicana/Chicano farmers cannot improve their circumstances in a sector where they are largely relegated to subservience for established landowners' personal gain, and where they do not even benefit from the protections required in other industries.

484. Because the Census identifies rural landowners as Latinas/Latinos, it is difficult to discern the exact number of Chicana/Chicano landowners holding land. See generally U.S. BUREAU OF THE CENSUS, 1992 CENSUS OF AGRICULTURE, U.S. DATA CHARACTERISTICS OF OPERATOR AND TYPE OPERATED BY BLACK AND OTHER RACES, 1992, 1987, AND 1982 (1995). The national total of 12.4 million rural landowners is dominated by majority-status individuals. Id. During the 1982-87 period, the number of new farm entrantsthose who began operations on their current farm within a given year of the studied period—averaged about 25,000 fewer people on an annual basis. See id. at 2-3. Note, however, that these estimates remain imprecise because of limitations in census data, which do not account for farmers entering and exiting between the census periods. See sources cited supra note 479. Recently, government officials have responded to the complaints of those long excluded from accessing public agricultural programs. See U.S. GEN. ACCOUNTING OFFICE, GAO/RCED-97-41, FARM PROGRAMS: EFFORTS TO ACHIEVE EQUITABLE TREATMENT OF MINORITY FARMERS (1997) (focusing on minority farmers and reviewing the Farm Service Agency’s efforts to conduct farm programs in an equitable manner).
487. From early in the formation of the United States, the legal rights of fee holders have permitted access to a wide array of governmental benefits. In the contemporary period, for example, special tax valuations are available to holders of rural enterprises. See, e.g., Williamson v. Commissioner, 974 F.2d 1525 (9th Cir. 1992) (holding that special use valuation protects agricultural enterprises and therefore permits the abeyance of estate taxes). The basis for the special use exemption is to keep land within the family claiming the exemption. See id. at 1527 (referring to the legislative history of legislation as promulgated “in the hope of protecting the family farm”). An ancient property doctrine recognizes these rights as a form of wealth. See SINGER, supra note 9, at 5 (“Property rights are the legal form of wealth.”).
488. See U.S. GEN. ACCT. OFF., GAO/RCED-97-41, FARM PROGRAMS: EFFORTS TO ACHIEVE EQUITABLE TREATMENT OF MINORITY FARMERS 3-6 (1997) (describing the FHA’s failure to promote farm programs in an equitable manner and noting the special treatment that non-minority farmers receive).
489. The plight of agricultural workers and their working conditions is beyond the scope of this Article. For a well-documented discussion, see DENNIS NODIN
The historical link between land and power is no secret. Paul Taylor writes that "[a] land policy means social control over one of the greatest instruments of production." Agriculture "occupies nearly two-thirds of the private land in the United States, 878 million acres." Yet, since the country's earliest periods, property has remained "concentrated in very few hands." Examinations of the sector by Taylor and others demonstrate that public laws, including homestead laws, grazing rights legislation, and a vast array of labor legislation, have long promoted access to the public domain and provided protection for private economic gain. These and simi-
lar policies ensure the growth of large-scale rural enterprises, which threaten smaller owner-operators. The growth of production contracts and large-scale enterprises are vertically integrating agricultural enterprises while imposing costs to the diversity of the rural sector. Within the agricultural industry, historical and present structural conditions result from the cultural biases of those responsible for determining property rights and agricultural policy, and preclude Chicanas/Chicanos from farm ownership.


498. Keith Haroldson explains contract farming:

Under the traditional livestock production process, the livestock owner fed and cared for the livestock throughout the growing period. Contract feeding arrangements split this process. Under contract feeding, a livestock owner enters into a care and feeding agreement with a production facility or feedlot owner. Typically, the feedlot owner will furnish facilities and labor in exchange for payment by the livestock owner for the livestock's care and feeding. Such payment is usually made after care and feeding is rendered. The parties often include specific terms indemnifying who will bear production costs such as feed, medication, and utilities.


499. Vertical integration occurs "[w]hen a company involved in one phase of a business absorbs or joins a company involved in another phase in order to guarantee a supplier or a customer." Haroldson, supra note 498, at 410 (citing DAVID J. RACHMAN & MICHAEL H. Mescon, BUSINESS TODAY 37 (2d ed. 1979)). Professor Fred Morrison's description of vertical integration is one "in which individual farms would disappear or become mere operating units of large, integrated agribusinesses, which owned the means of production and controlled agriculture from the planting of the seed to the marketing of the processed product." Fred L. Morrison, State Corporate Farm Legislation, 7 U. Tol. L. Rev. 961, 992-97 (1976).

500. Every five years, since the New Deal, Congress promulgates a new farm bill that defines the agricultural agenda for the next five-year period. See infra note 523.