Returning the Commons: Resource Access and Environmental Governance in San Luis, Colorado

Keith Lindner

Syracuse University
Abstract

In *Lobato v. Taylor* (2002) the Colorado Supreme Court awarded Hispano heirs to the 1843 Mexican-era Sangre de Cristo Land Grant returned access to formerly communal land known as *La Sierra*, the Taylor Ranch, or today Cielo Vista Ranch. The 77,000 acre parcel of mountainous land remains privately owned, yet through *Lobato* over 4,000 individuals have been awarded legal rights to access the land for the “reasonable use” of pastures and forests for grazing, firewood, and timber. Based on roughly 15 months of ethnographic research in collaboration with the Land Rights Council and based in San Luis, CO, this dissertation examines struggles to access, use, and govern the commons from the 1860s to 2011. Part I of the dissertation traces the iterative reproduction of property and sovereign authority through struggles over resource access and use on the Sangre de Cristo Land Grant. I show how *Lobato v. Taylor* has contributed to the reproduction of U.S. sovereign authority and private property even as it awarded access rights to the commons. Part II examines struggles to govern the commons after 2002, illustrating how configurations of sovereignty, property, law, identity, and nature have shaped resource access and use. I find that private property and legal individualism are central to contemporary resource access and use in ways that have hindered effective procedures for environmental governance, monitoring, and enforcement. Throughout the study, I advance an analysis of the ways in which socio-spatial formations are iteratively reproduced and challenged in contingent and contested ways through the governance of the commons.
RETURNING THE COMMONS

Resource Access and Environmental Governance in San Luis, Colorado

By

Keith W. Lindner
B.A. Allegheny College, 2004
M.A. Colorado State University, 2007

DISSERTATION

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Geography in the Graduate School of Syracuse University

December 2012
Acknowledgments

As Ann Laura Stoler has recently suggested, the term “acknowledgment” connotes an obligatory recognition of debt that does not adequately capture the deep gratitude and appreciation one feels at the end of an undertaking such as this. I will never be able to fully repay the debts that have made these pages possible: the care, friendship, engagement, support, relief, and generosity of others that have, necessarily, been deeply intertwined with the writing of this dissertation since well before its beginnings. If there are strengths in this work, I owe them to the following individuals and organizations, though I am sure I have missed many. All shortcomings, errors, and omissions are my own responsibility.

Above all, I thank the Land Rights Council and its tireless Board of Directors for making my work possible and tolerating my presence, and absence, throughout this project. Norman and Julie Maestas, Shirley Romero, Arnold Valdez, and Junita and Jose Martinez deserve special mention for supporting me in innumerable ways both large and small. Countless people in southern Colorado and northern New Mexico shared their time, thoughts, memories, and not a small number of home cooked meals with me, for which I am truly grateful. I also thank Maria Mondragon-Valdez and Devon Peña for providing indispensable signposts, particularly during the early stages of fieldwork. Chris, Leland, Angelo, and Maggie helped me survive my first months in hostile Anglo territory before I found a home in safer and more comfortable environs further south.

At Syracuse, I have been lucky to have an outstanding doctoral committee, and each member has significantly shaped this project: Matt Huber, Eric Ishiwata, Alison Mountz, Tom Perreault, and Jamie Winders. My largest debts are to my advisor Tom Perreault, who has provided steadfast encouragement, challenge, patience, support of all kinds, and more
pints at our unofficial office, Alto Cinco, than I can count. Thank you, Tom, for being both a terrific advisor and a friend. Jamie Winders has been nearly a co-advisor, and certainly my toughest editor, providing invaluable advice and critique at every step. Eric Ishiwata has worked closely with me the longest, first serving on my M.A. committee at Colorado State, and has deeply shaped the ethical and political commitments I strive to meet in my work.

I have also been lucky to share time and space with an extraordinary and dynamic group of faculty and graduate students at Syracuse and Colorado State. To say my ideas have emerged in dialogue with Declan Cullen is an understatement; he has also become a close friend. John Hultgren has not only been a lasting intellectual influence, but I cannot begin to count the number of hours spent on John's couch (what I will do on return trips to Colorado now that he has moved away I do not know), nor the number of hours we have discussed ideas over IPAs. George Stetson provided me a model for what engaged and ethical scholarship should look like and even let me try it out with him, though I have never lived up to George’s example. For variously providing friendship, critique, support, and much more I also wish to thank Kafui Attoh, Mitul Baruah, Michele Betsill, Lisa Bhungalia, Emily Billo, Beatriz Bustos, Alejandro Camargo Alvarado, Bill Chaloupka, Kate Coddington, Elvin Delgado, Nikki Detraz and Doug Reynolds, Jose Manuel Gonzales, Barbara Green, Nancy Hiemstra, Matt Himley, Kathy Hochstetler, Kristy Hollinger, Jennifer Hyndman, Mike Kantor, Brad MacDonald, Don Mitchell, Chandra Mohanty, Mary Naylor, Riley Neugebauer, Brent Olsen, Jackie Orr, Caroline Packenham and Ben Colton, Tod Rutherford, Effie Scott and Zach Seward, Joaquin Villanueva (a true unsung hero), He Wang, Katie Wells, Evan Weissman, and Bob Wilson. For helping me navigate countless institutional and bureaucratic obstacles I thank, above all, Chris Chapman, as well as Jake Bendix, Janet Bricaddy, Margie Johnson, Susan Millar, and Jackie Wells. For cartographic
assistance I thank Joe Stoll. My new institutional home at Vassar College has been equal parts welcoming and stimulating as I wind down one chapter and begin a new one; in particular I thank Joe Nevins, Lois Horst, and the geography faculty for easing my transition.

For generous financial support, I thank Community Forestry and Environmental Research Partnerships at the University of California at Berkeley, which also provided a supportive intellectual environment within which to think carefully and critically about research design and methodology, as well as the National Science Foundation (Award No. 0926964), and the Department of Geography and Maxwell School at Syracuse University.

Finally, I thank my family and friends outside of academia, particularly my mother and father, Jan Lindner and Bill Lindner, who each in their own way have always supported and challenged me with unending love. Thank you also to the extended Lindner, Neuhaus, Eberwine, and Staub families. It is to Lindsey that I dedicate this work, with love.
# Table of Contents

<table>
<thead>
<tr>
<th>Acknowledgments</th>
<th>iv</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of Figures</td>
<td>vii</td>
</tr>
<tr>
<td>List of Acronyms</td>
<td>ix</td>
</tr>
</tbody>
</table>

## Introduction

Iterative Geographies 1

Part I: Sovereignty 40

### Chapter 1

Sovereignty, Property, Rights 41

### Chapter 2

Rethinking *Lobato v. Taylor* 79

Part II: Governance 117

### Chapter 3

Governing the Returned Commons 118

### Chapter 4

Identifications: Law, Property, and the Subject of Rights 142

### Chapter 5

“¡Ya Basta!”: Passions and Frustrations in the Collective Governance of Individual Subjects 170

### Chapter 6

“The Land is the Bottom Line”: Authority and Articulation in the Performative Governance of the Commons 200

### Chapter 7

Good Stewards and Uncertain Subjects 250

## Conclusion 297

## Bibliography 314

## Vita 341
## List of Figures

<table>
<thead>
<tr>
<th>Figure</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Figure 1</td>
<td>Cielo Vista Ranch (La Sierra) and areas of historic Hispano settlement, Costilla County, CO (map by author)</td>
<td>39</td>
</tr>
<tr>
<td>Figure 2</td>
<td>Patches at the Jaroso Meadow. Photo by author, 2011</td>
<td>141</td>
</tr>
<tr>
<td>Figure 3</td>
<td>Impassable bridge on Cielo Vista Ranch. Photo by author, September 2010</td>
<td>199</td>
</tr>
<tr>
<td>Figure 4</td>
<td>Cielo Vista Ranch north headquarters. Photo by author, July 2010</td>
<td>247</td>
</tr>
<tr>
<td>Figure 5</td>
<td>Cattle grazing on Salazar Meadow, Cielo Vista Ranch. Photo by author, July 2010</td>
<td>248</td>
</tr>
<tr>
<td>Figure 6</td>
<td>Demonstrating overgrazing on Cielo Vista Ranch. Photo by author, July 2010</td>
<td>249</td>
</tr>
<tr>
<td>Figure 7</td>
<td>Land Rights Council community meeting. Photo by author, June 2011</td>
<td>294</td>
</tr>
<tr>
<td>Figure 8</td>
<td>Remains of an old grazing corral on La Sierra. Photo by author, 2010</td>
<td>295</td>
</tr>
<tr>
<td>Figure 9</td>
<td>An acequia farmer irrigates in San Francisco, CO. Photo by author, 2010</td>
<td>296</td>
</tr>
</tbody>
</table>
# List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CVR</td>
<td>Cielo Vista Ranch</td>
</tr>
<tr>
<td>FSA</td>
<td>Farm Service Agency (United States Department of Agriculture)</td>
</tr>
<tr>
<td>HLGA</td>
<td>Herederos Livestock Grazing Association</td>
</tr>
<tr>
<td>LRC</td>
<td>Land Rights Council</td>
</tr>
<tr>
<td>NRCS</td>
<td>Natural Resources Conservation Service</td>
</tr>
<tr>
<td>SCAA</td>
<td>Sangre de Cristo Acequia Association</td>
</tr>
<tr>
<td>SLVTC</td>
<td>San Luis Valley Title Company</td>
</tr>
<tr>
<td>USGS</td>
<td>United States Geological Survey</td>
</tr>
</tbody>
</table>
Introduction: Iterative Geographies

Introduction: work

My first home cooked meal in San Luis was a burrito smothered in red chile. I know this, because I have pretty descriptive notes about it in my field journal. A few years later, while writing this dissertation, I often wished my firsthand accounts of other experiences in my fieldwork, some more relevant to my research – the meetings of local organizations, trips to the mountains, interactions and chance encounters with farmers and ranch hands and real estate tycoons and hermits and Buddhists and lawyers and dogs and cows I can’t get out of my yard and various other assorted characters (and species) – had been as detailed as my account of that burrito. It was her husband Norman’s “famous” red chile, Julie Maestas told me. In time Norman’s green chile became my real favorite, but if my notes are any indication, the red left a pretty good first impression.

It was late September 2009. I had arrived in San Luis a day or two before to begin my long-term fieldwork on struggles over resource access and use on the mountainous land known as La Sierra, a part of the former communal land of the Mexican-era Sangre de Cristo land grant that sits within the Sangre de Cristo range of the Rocky Mountains. Heirs of the original mid-19th century settlers of the grant had battled a North Carolina lumberman named Jack Taylor for nearly 40 years after Taylor bought the land in 1960 and forcibly closed it to local use (Taylor’s family sold the property in 1998 though struggles over the land continue today). Residents of the region had used the land communally and had depended upon it for survival from the very first days of Hispano settlement on the land
grant. 1 Taylor, however, enclosed the land and did so with now-notorious violence and racism, in the process decimating the local economy and the livelihoods of its farmers and sheep herders who had come to depend upon access to the land. As I describe in-depth throughout this dissertation, Taylor won a court victory in 1967 that gave him control over the land, but in 1981 the Land Rights Council (LRC), a small local organization of heirs to the Sangre de Cristo land grant, filed a lawsuit to reclaim access rights. Remarkably, the LRC won that case in 2002 when in Lobato v. Taylor the Colorado Supreme Court awarded a group of Hispano heirs limited rights to graze, gather firewood, and cut timber on the 77,000 acre property (Golten 2005; Gonzales 2007; Mondragon-Valdez 2006). Seven years later, I arrived in town to figure out what all those years of hard work and struggle and the resulting return of access to communal land meant for residents of the area today.

Norman and Julie had me over for dinner at their house in Chama, a few miles east of San Luis, as soon as they could after I arrived. 2 As President of the LRC, the organization facilitating my work, Norman always made sure to take good care of me, and Julie did too. So did a lot of the people involved with the LRC, in fact, which was a good thing. Day to day life in San Luis often presented challenges for which I was ill-equipped to handle, like living without running water for about two months (as it turned out, at times when I needed water the Land Rights Council office was just as indispensable to me as the organization’s members) or figuring out how the heck I was going to get my car out of the 6-foot snow drift I had just buried it in not only at 11,000 feet with no cell phone reception but also precariously close to the edge of a rather sharp drop-off (I eventually made it out, and

---

1 “Hispano” is a regional term for descendants of Mexican citizens in what is now the U.S. southwest, most of whom settled on one of the many Spanish and Mexican land grants across New Mexico and southern Colorado.
2 I use the term “San Luís” to describe all of the small villages that constitute the main area of Hispano settlement in Costilla County (see Figure 1). I refer to specific village names or qualify my usage of San Luis to refer to the town itself when necessary.
thankfully I only had to call Norman once for help in getting those stray cows out of my yard before I learned to keep the gates closed).

While Norman, Julie, and I enjoyed the burrito with red chile we talked about a lot of things as they got me oriented for life in San Luis: the first words in my field journal reference the rhythms of the seasons and the work of preparing for winter. “Time is marked not by hour and day but, instead, by seasonal change[s] … [that] radically reconfigure the landscape,” Laura Ogden (2011: 32) writes about a wholly different setting, “and in so doing they reorganize the alliances and practices of people, animals, and plant life.” Her words map the entanglements of people and things in San Luis equally well. The region’s long and harsh winters are crucial to human life in the mountainous valley, because it is through those cold, dark months that the mountains capture and store just enough of the environment’s most basic, but often most scarce, necessity: water. The snowpack that accumulates at high elevations (the valley’s highest peaks tower over 14,000 feet above sea level) steadily melts as spring turns to summer, releasing the flow of water that brings life to the valley floor, which itself sits on average over 7,500 feet.

We spoke of the changing work that such shifting relationships required. In fact, work of all kinds dominated our discussions that night: the hard and uncertain work of farming and ranching in an arid environment; the migrant farm worker who didn’t know when he would vacate the apartment I was hoping to rent; the never-ending but imperative work of creating community and maintaining a unique cultural way of life; the really never-ending but imperative work of keeping all this dust out of the kitchen when the wind blows so hard all the time; and of course the challenging and sometimes insurmountable or inescapable or exhilarating or discouraging or passion-filled work that I focus on throughout
this dissertation of fighting for rights to livelihood, land, and natural resources in a region that has long been home to processes and projects of enclosure and dispossession.

I grew to know Norman and Julie well over the course of my fieldwork. Like many who came of age during Jack Taylor’s tenure over La Sierra, Norman had left San Luis for the military as well as education and stable employment – the latter all but foreclosed by Taylor’s enclosure of the commons for more than one generation of San Luis residents. But like many of those forced to leave, Norman never thought of his home as anywhere but San Luis: “I remember that saying from the 1970s, ‘If you don’t like it here, go back home!’” he once told me and a few other LRC board members. “It was usually directed at blacks, but sometimes people would say it to us. Well, one day I sat down and thought about it, and I wondered, where would I go?” He started to laugh. “I can’t go to Spain, I can’t go to Mexico. San Luis is my home! This is my nation, my community. I love this place.” After a career as an accountant in Denver, Norman was now retired and back in San Luis full time. He had long been a plaintiff in the *Lobato v. Taylor* legal case and was among the first group of heirs to receive returned access rights to La Sierra after the Colorado Supreme Court’s ruling. More recently he had taken over as Land Rights Council President shortly before I began working closely with the organization. Julie, by contrast, had grown up in Texas and had a career and family of her own before meeting Norman. Her relationship with the region was more complex: while she loved living in Chama, there were times when her status as a non-San Luis native – in a region where so many residents trace their ancestry to the land’s first Hispano settlers – ambivalently marked her as something of a “local” and something of an “outsider.” Yet, layered in deep histories of migration, Julie followed a long line of new arrivals who have continually become part of land grant life in San Luis (Gonzales 2007). By the time I arrived in 2009, Norman and Julie were several years into the laborious and
difficult process of re-establishing a small farming and ranching operation on the land long-owned by Norman’s family.

“Farming is hard work,” Julie told me, “we don’t do much now, but Norman is determined to do it.” She paused. “Well, we don’t want to be real farmers, you know. But it’s nice to have a little bit, to have some animals, maybe a few horses, cattle, chickens to have some eggs, with a garden or greenhouse maybe.” Because of their relative economic security Norman and Julie may have a different relationship to the land than others who depend upon it for livelihood – that Costilla County is the poorest in Colorado is a common refrain in the area – however they see themselves as part of the same cultural and political projects implicating all heirs to the Sangre de Cristo land grant, some of which I discuss in these pages.

“It’s not really for profit,” Norman told me about his farming. “We need to survive, but it’s really more about community, happiness, a way of life.” Norman was growing alfalfa on two small fields nearby, which he sold since he didn’t yet have any cattle of his own to feed it to. By the time my dissertation fieldwork was over, though, he had started re-building his father’s old corral. Similarly, Julie talked about starting a little general store in the run-down building adjacent to their home that had formerly housed a liquor store. “A store would bring in money, sure,” she said. “But that’s not why we want to do it.” A store would be more about building community, she said, and self-reliance: it would provide a meeting place and the basic things people need like milk, bread, water, tools. It would create community. “We can create something right here in Chama,” Julie told me, “we don’t have to be dependent on anyone else. We can be self-sufficient right here – it just takes some work.”
The stove kept the kitchen warm long after dinner. When the sun sets, it tends to get very cold. At such a high elevation San Luis is technically located within an alpine desert, and the daily temperature swings can be intense. Though we sat in the kitchen until about 9:30 that night, the diesel heater sitting adjacent to the old stove never kicked on inside as the temperatures dropped outside. The stove continued to give off heat and kept us plenty warm as our discussion turned to events earlier that day. I had accompanied Norman and Julie to visit two friends, Frank and Liza Padilla, to pick up some extra lumber. The visit was my first of many glimpses of the “mutual aid and cooperation” (Gallegos 1998: 237) constitutive of livelihood provisioning and use of natural resources in San Luis (cf. Hicks and Peña 2003; Peña 1998a, 2003, 2005). But the stove keeping us warm, as Norman and Julie spoke of Frank’s courage and positivity in battling cancer and about how nice it was of he and Liza to let them have all that lumber, was burning firewood chopped from La Sierra thanks to the Lobato decision that gave Norman and many others returned rights to the commons.

Throughout our meal and night of conversation, Norman and Julie were doing the work of preparing me for my months in San Luis, guiding me towards a different way of thinking about the work of the every day. There are different types of ties to place here, they told me, a way of living with its own values and histories that are unique. Roots are important here, living off the land, respecting and reinvigorating the ways our ancestors lived. Surviving here is hard work, they said – but why would you want to do something different? Norman and Julie, like many others I would meet in the coming months and years,

---

3 The San Luis Valley receives “huge doses of sunshine year round, but can be one of the coldest spots in the nation” (Huber and Larkin 1996: 9). Huber and Larkin (1996: 1) write, “The constant contradiction and contrast of the physical and human geography of the Valley make the San Luis Valley of Colorado a land of notable geographic irony. The Valley is Colorado’s only true desert, yet sits atop billions of acre-feet of ground water. The Valley lies between two mountain systems, yet itself rises almost 8,000 feet above sea level. The Valley’s economy depends, in great part, on farming while the average annual precipitation rate is only about eight inches. For thousands of years the area served semi-nomadic Native Americans, yet holds the oldest continuously inhabited town in Colorado. And here what can only be described as a boom and bust economics threaten farming practices that date back to Spanish land use codes which settlers originally brought from New Mexico.”
had so much respect for how their ancestors lived and wanted to keep some of those ways alive – but they also recognized that task as very hard work. Everything, even the littlest of tasks, takes a lot more work out here, they said. The work of social and cultural reproduction, of creating community, of teaching the youth, of fixing up this house for winter, of survival, of fighting the politicians and protecting our scarce water, of staying healthy.

“Nothing comes easy out here,” Norman said. “In a way, it’s kind of like a pioneer culture.” His and Julie’s words did a certain kind of work as well, of delineating what it did and did not mean to live and work in the seven Hispano villages clustered in the southeast corner of Costilla County (Figure 1). Their words delineated a culture and way of life rooted in place “in which, over generations, the local culture accumulates a vast reservoir of knowledge dealing with the ecological limits in a specific locale … a ‘co-evolution’ of culture and environment in which local communities become part of … diverse cultural and ecological landscapes” (Peña 1998b: 11). Norman and Julie were reciting and reiterating a rural way of life that was as defined by its ties to place, mutualism, and cultural-ecological knowledge as by its antitheses: the trappings of mainstream American culture and economy, symbolized by the urban, the technological, the individual and competitive, the modern. The work of drawing such distinctions has long been central to the work of organizing and struggles over resources among Hispanos in San Luis (Gonzales 2007) and, as I discuss throughout this dissertation, remains so today (see, in particular, Chapter 7).

Yet just as these distinctions between urban/rural, traditional/modern, individual/cooperative are drawn, they are also sites of ambivalence and often undermined: by the flows of resources and migrant laborers long connecting and constituting rural and urban spaces; the old wood burning stove sitting adjacent to the new diesel heater; Julie’s laments that San Luis was becoming “too modern” at the same time many locals expressed
pride in the new Dollar General opening on Main St. just a short walk from Colorado's oldest store; the enclosure of an ancestral land grant commons and resulting industrial logging operations even as countless San Luis residents have derived livelihoods and incomes from all sorts of industrial operations throughout the southwest, from mines to farms and everything in between. To put this point another way, drawing distinctions and materializing the categories they mobilize takes a lot of work too, and that work is not always successful in the face of forces that cut in other directions.

Throughout this dissertation, I also draw attention to the work of “global” or “national” processes sometimes said to produce or dominate “local” places like San Luis: the work of sovereign power, privatization, and property. Yet I also show how such abstractions – along with others like “nature,” “Hispano” and “Anglo,” “San Luis” – are themselves the iterative results of the various kinds of work being done in and through such supposedly local places like San Luis. I explore the ontological, epistemological, ethical, and political stakes of such a position below.

Legal scholar Ryan Golten (2005: 458-9) has called the Lobato ruling “astounding,” “a new approach to interpreting centuries-old land … claims,” and “a model for recognizing some of the oldest and most important property rights in the American Southwest.” In many ways my research in San Luis has been an effort to ethnographically assess these claims, though my conclusions are somewhat less sanguine than Golten’s – or at least messier. I often focus on the mundane alongside the astounding, on historical continuities as well as ruptures, and on what this apparent recognition of property rights has not only made possible, but what it has foreclosed. Above all, I hope to provide an account of the many kinds of work implicated not only in the Lobato decision, but in the over century and a half long history of struggles surrounding La Sierra more broadly: the work of activists,
organizing, resource use, lawyers, judges, texts, discourses, maps, landscapes, forms of property, sovereignties, meetings, enclosures – even meals of burritos with red chile.

Below, this introduction first provides a brief historical overview. Here I offer a simplified narrative history of events relating to the Sangre de Cristo land grant from the grant’s origins in mid-19th century Mexico to the Lobato decision in 2002, many parts of which I revisit in more depth throughout the dissertation. Then, I turn to the central theoretical, ethical, and political orientations of the dissertation through discussions of three clusters of theoretical and methodological literatures: what I call iterative geographies, political ecology, and postcolonial geography. My discussion of postcolonial geographies frames considerations about fieldwork and methodology which I revisit in more depth in the dissertation’s conclusion. Finally, the introduction concludes with an overview of the structure and chapters of the dissertation.

**Context(s): The Sangre de Cristo Land Grant**

Land granting was a Spanish and Mexican practice where top officials awarded large tracts of land to individuals and communities who would settle the land. Over 300 grants in present-day New Mexico and Colorado extended the boundaries of New Spain and Mexico, settled remote frontiers, and provided compensation to loyal and influential persons. Land grants contained a commons area, where all settlers could graze, hunt, cut wood, fish, and recreate. In contrast to private property systems, land grants were intended to foster communal or corporate organization, where families could access all natural resources needed for survival (Brayer 1949-14-5; Stoller 1980: 25; Westphall 1983: 35). After the U.S. took over control of the area in 1848 and began adjudicating land claims, however, patterns of land ownership and resource access radically changed. Despite promises in the Treaty of
Guadalupe Hidalgo that property of former Mexican citizens would be “inviolably respected,” Hispanics lost land in many ways. Scholars have argued that U.S. law has been unable to adequately recognize or accommodate the complex property system of land grants (Ebright 1987, 1994; Montoya 2000, 2002; Stoller 1980), and patterns of land ownership and use based on private property increasingly, though incompletely, began to replace communal land grants (Hicks 2006). Loss of grant land spawned an often-violent movement for land rights, and struggles over land and resources continue today (Acuña 1988; Correia 2008; Gonzales 2000; Peña 1998d, 2005; Rosenbaum 1981).

The Sangre de Cristo Grant was made in 1843 to Taos merchant Carlos Beaubien, who was forced to sell the grant in 1863 because of pending taxes under the U.S. governing regime. Beaubien remains a central figure in contemporary politics of nature in San Luis. His inscription of Hispano rights to the commons in what has become known as the Beaubien Document was highly significant to the Colorado Supreme Court’s ruling in *Lobato* in 2002, and through his efforts language protecting “the claims of the local people” appeared in every deed to La Sierra, regardless of ownership, until Jack Taylor managed to get it removed in federal court in 1967 (Golten 2005). Despite legal protection for communal use until that time, however, access to La Sierra has been subject to complex and changing conditions ranging from nearly open access to complete enclosure. Owners continually sought to remove local settlers from the grant in order to facilitate intensive natural resource development, but usufructuary rights and communal traditions have persisted, at times

---

4 Reasons for Hispano land loss include delays and inconsistencies in the systems set up by the U.S. Congress to adjudicate land claims; decisions by U.S. courts that consistently favored private property over communally held land; the fact that many if not most Hispanics did not understand U.S. property law or trust U.S. officials; incompatibilities and inconsistencies between the American and Spanish/Mexican systems of law; corruption and dishonesty among officials, lawyers, and judges; and enterprising Anglo-Americans who acquired land titles legally and illegally, sometimes facilitated by well-positioned Hispanics, including through such means as fraud and manipulation of land laws (Briggs and Van Ness 1987; Eastman 1991; Ebright 1987, 1994; Gonzales 2003; Montoya 2002; Stoller 1980; Westphall 1983).
through evasion, trespassing, and vandalism. For many years, two distinct traditions of property ownership and land use coexisted on the grant, often contentiously (Hicks 2006).

In 1960 this uneasy coexistence ended when wealthy North Carolina lumberman Jack Taylor bought La Sierra and closed it to local use. Taylor fenced the land, barricaded roads, and used force and the threat of force to keep locals off what he believed to be his private property (Mondragon-Valdez 2006). Taylor’s actions accelerated and intensified trends that had begun before his arrival, including an influx of Anglo-Americans to this once primarily Hispano region, and the subsequent loss of a land base among Hispanics. A rising number of Hispanics migrated permanently or seasonally in search of labor, often working for the very industries that were displacing them (Deutsch 1987; Nostrand 1992; Smith 1999). Costilla County, which crosses the Southwestern part of the Valley where many Hispanics live, remains among the poorest counties in Colorado, a situation undoubtedly attributable to the loss of land. Taylor’s actions took a considerable toll on Hispanics: Hicks and Peña (2003) estimate, for example, that before 1960 about 600-700 families practiced acequia agriculture, a local farming method based on stream-fed ditch irrigation, but after Taylor’s enclosure that number had fallen to roughly 270 families by 2003. Nevertheless, Hispano cultural traditions and land grant practices have persisted and even flourished in and around San Luis (Smith 1999), and Lobato offers a new opportunity to strengthen these traditions.

Taylor managed to close La Sierra to local use by legally clearing the title to his land in 1967. Grant heirs in San Luis formed the Land Rights Council and filed suit against Taylor in 1981 to regain legal rights to the commons. After a long and contentious legal process, the Colorado Supreme Court finally ruled in favor of Hispanics in Lobato (Frazier 2004b; Golten 2005; Lobato 2004; Ortiz 2005). Over 4,000 individuals have so far been awarded
“reasonable” access to graze, gather firewood, and cut timber on La Sierra. Since Lobato, contested processes of legal implementation and environmental governance have occurred in and around San Luis, as the Land Rights Council, local landowners, the new owners of La Sierra and many others attempt to solidify new institutions and norms of resource access and use (Frazier 2003). Multiple interests and goals are at stake, including sustainability, resource extraction for La Sierra’s owners, and subsistence and maintenance of cultural practices among Hispanos. Complicating the situation, not all Hispano grant heirs have been awarded access to La Sierra, while some non-grant heirs – mostly absentee Anglo-American landowners – have received access because they own property within historic grant boundaries. The return of access rights to La Sierra, therefore, is an environmental struggle in which issues of livelihood, justice, and changing traditions are at stake.

Iterative geographies: Genealogical investigations

The basic ontological and theoretical perspective underlying this dissertation is a notion of iterative geographies: that, in short, diverse social and spatial formations must be continually enacted. In Gregson and Rose’s (2000: 434) words, such a perspective implies that spaces and identities are “constructed in and through social action, rather than existing anterior to social processes.” Critical human geographers have long argued that identities, spaces, and natures are constructed through iterative practices (e.g. Braun 2000; 2002b; 2009; Braun and Castree 1998; Gregory 1994; Massey 1994; 2005; Smith 1984; 1996); more recently they have recognized how transnational processes such as development and globalization are constructed iteratively (e.g. Clark et al. 2009; Li 2007; Sawyer 2004; Tsing 2005); and finally, capitalism and economic processes – the last hold outs of essentialism within critical geography – are also beginning to be theorized as constructed and contingent.
Thus I begin from the perspective that identities, categories, and processes like sovereignty, capitalism, Hispano, nature, space, and more must be continually iterated – produced, reproduced, and struggled over through contested sets of social and spatial relations as they cohere in concrete and contingent assemblages and entanglements of bodies and things. I mobilize this broad perspective throughout the dissertation through more specific theoretical debates: on sovereignty and property (Part I); performativity, environmental governance, and nature (Part II); and the politics and ethics of ethnographic fieldwork (Conclusion).

The iterative practices that produce, reproduce, and contest social and spatial forms, however, occur within contexts of power, and in turn help to reproduce those power relations and regulatory norms. As Marston et al. (2005: 424) note, individuals are embedded “within a milieus of force relations unfolding within the context of orders that constrict and practices that normativize.” “To work at all,” following Ryan (1982: 30), an iterative practice “must be acknowledged as citing a previously established code, convention, or repeatable model, and it must be repeatable from the outset in other places, other contexts.” I engage such power relations in different ways. Part I foregrounds what I call the “sovereign stories of U.S. colonial power” to signal the racial grammars and spatial relations bound up in the iterative production of U.S. sovereignty and private property. Part II continues the interrogation of sovereign stories, but from the perspective of the formation of subjects. I mobilize the notion of regulatory norms or normative ideals to interrogate how power relations and citationary structures surrounding property, law, and nature compel particular practices of identification and productions of space.

Social and spatial formations, then, are effects that produce effects (Nealon 1998). I follow Marston et al.’s (2005) “flat ontology,” “an ontology composed of complex, emergent
spatial relations” (422). Such a perspective “focuses on both material composition and
decomposition … both systematic orderings and open, creative events” (424) so that “here,
at an ontological level, … ‘being’ exists as an interplay of forces” (Gidwani 2008a: xiv).

Holding in tension both the “extensive repetitiousness of the world and its intensive
capacities for change and newness[,] … both [the] repetitions of similar orders and practices
and … the emergence of new, creative relations or singularities” (Marston et al. 2005: 425),
my strategy is to focus on the iterative production of hegemonic relations of power as well as
the concrete ways in which such iterations fail to materialize, take place with a difference, or
open new possibilities.

In emphasizing the “repetitive redoings of modernity” (Scott 2010: 2), then, I also
highlight how such repetitions repeat with a difference.5 I conceptualize the production of
social and spatial formations specifically as iterative because iteration “contains the double
meaning of repetition and alteration or difference” (Ryan 1982: 30). Precisely because socio-
spatial formations must be continually reproduced, there is potential for “slippage” (Butler
1999) or “becoming other” (Deleuze and Guattari 1987). As Michael Ryan (1982: 30) points
out, “Repetition makes identical, but it also alters or makes different.”

Every “thing,” then, is a multiplicity that “includes focuses of unification, centres of
totalization, points of subjectivation” (Deleuze and Parnet 2002: vii-viii) as well as
movements of deterritorialization and lines of flight: “a multiplicity … constantly inhabits
each thing” (Deleuze and Parnet 2002: 57). Socio-spatial formations are “always already
interrupted by an irreducible, prefatory différence which disperses the original” (Doel 1992:
172). From within the continual movement of differentiation, various processes, projects,
and forces – some human, some nonhuman, most complex entanglements of both (Latour

5 I consider the primacy of differentiation as an active process over difference as a categorical foundation so that the
movement of differentiation is constitutive of the solidity of difference (Deleuze 1994; Glissant 1997; Williams 2000).
1993; Mitchell 2002) – attempt to materialize particular formations over others. Careful attention to the specificities and particular configurations of such iterative practices and their effects of repetition and difference can provide possibilities for political openings (Pratt 2007), especially to the extent that any materialization will necessarily be haunted by that which it has foreclosed, hidden, repressed, or excluded (Braun and Wainwright 2001; Derrida 1994; Gordon 2008). However, a deterritorialization or movement of differentiation cannot automatically be assumed to be normatively desirable or progressive; as Deleuze and Guattari (1987: 500) write, “never believe that a smooth space will suffice to save us.”

In part my aim is genealogical: to “record the singularity of events outside of any monotonous finality” while “reject[ing] the metahistorical deployment of ideal significations and indefinite teleologies” (Foucault 1984: 76, 77). Rather than explain the play of historical events through recourse to a transcendental causality I seek to produce an account “without constants” (Foucault 1984: 87), “where analysis proceeds not from the certitudes of given categories but instead takes as its philosophical task to ask how those categories acquired their givenness and with what consequences” (Gidwani 2008a: xvii). An overarching argument of this dissertation is that social and spatial formations are contingent and relational achievements, the uncertain effects of the work of assemblage, iteration, and repetition with a difference. A central objective of the chapters that follow is to ethnographically trace that always uncertain work, of how particular assemblages and entanglements are achieved and contested as they attempt to stabilize social relations, bodies, discourses, and things into molar forms (Deleuze and Parnet 2002). In turn, these effects can produce their own effects. For example, Part I traces the iterative and contested

---

6 At times, my narrative unavoidably and strategically holds certain identities or formations constant in order to open up or interrogate others. Which sets of power relations or categories to “open up” and which to hold constant is an ethical, epistemological, and political question that occurs in the context of particular histories and power relations. I discuss my ethical, political and strategic commitments below.
production of sovereignty, a complex assemblage of material and discursive practices that itself produces concrete effects in specific contexts, such as the erasure of colonial histories and marginalization of land grant rights that I discuss in Chapter 2.

I orient my genealogical investigations epistemologically in two ways: within the critical analytical and methodological traditions of the interdisciplinary approach to nature-society relations known as political ecology; and within the ethical, political, and strategic projects of postcolonial theory and postcolonial geography. I discuss each in turn, before concluding with an overview of the dissertation.

Political ecology

Political ecology examines the “complex relations between Nature and Society through analysis of social forms of access and control over resources” (Watts and Peet 2004: 4). The interdisciplinary field has documented and interrogated the ways in which dynamics of power along axes of class, race, and gender shape access to and control over resources in the U.S. and globally (McCarthy 2002; Peet et al. 2011; Robbins 2004). In the U.S. Southwest, political ecological work in southern Colorado and northern New Mexico has examined cultural politics and the contested articulations of nature and identity/difference in conflicts over land and resources (Kosek 2006; Pulido 1998; Wilmsen 2007); the epistemological dualisms separating people from nature in ways that reflect and perpetuate colonial assumptions and practices (Wilson 1999); and capitalist, racial, gender, and sexual domination alongside articulations of alternative visions grounded in place-based, bioregional perspectives on human-environment relations (Peña 1998a, c; 2005).

This dissertation is located within and helps extend three intellectual movements within political ecology research over the past several decades: from structure to practice,
identity to difference, and margin to center. The field first emerged in the context of detailed empirical studies of marginalized actors in rural third world contexts (Bryant and Bailey 1997) in response to the fundamentally apolitical explanations of environmental degradation found in human-environment research (e.g. cultural ecology, human ecology, and natural hazards research) as well as broader societal practices, policies, and discourses of population, environment, and development (e.g. Malthusian notions of population growth and environmental limits) (Robbins 2004). Blaikie and Brookfield’s (1987: 17) foundational definition of political ecology as “combin[ing] the concerns of ecology and a broadly defined political economy” was operationalized by placing a “land manager” within a broader context of “conjunctural factors” (4) and core-periphery relations (17-8). Typically, politicizing nature-society research meant placing individual resource users – such as peasant farmers or herders – within a broader structural context of economic forces, political economic marginalization, and exploitation. In his seminal work on peasant production, environmental degradation, and famine in northern Nigeria, Michael Watts (1983a: 235) took hazards and cultural ecology research to task for “lacking … the highly complex social production of material life.” Instead, Watts (1983b: xxii) sought to ensure his work was “grounded in the unfolding of capitalism in Nigeria, … the jagged temporal rhythms and breaks and the uneven spatial distributions and displacements of capital accumulation.” More broadly, Paul Robbins (2004: 5) sees “the difference between a political and an apolitical ecology” as, in part, “the difference between identifying broader systems [of power] rather than blaming proximate and local forces” for environmental degradation or conflict.7

7 The other two dimensions that set political ecology apart from apolitical ecology, for Robbins (2004: 5), are “viewing ecological systems as power laden rather than politically inert” and “taking an explicitly normative approach rather than one which claims the objectivity of disinterest.”
Through this political economic and structural approach, political ecology highlighted “Questions about the social relations of production and about access and control over resources – the basic toolkit of political economy” – that established the field as “analytical, normative, and applied … [with] concerns for marginal social groups and issues of social justice” (Paulson et al. 2003: 206). Over time, however, political ecology has increasingly moved from structure to practice:

Political ecology in its first generation and the cultural ecology that preceded it tended to think in terms of structures, systems, and interlocking variables and had little to say about actors and their agency. Today’s political ecology inevitably engages to some degree with ‘practice theory’… that attends to the constraints of structure but also to the indeterminacies of agency and events (Biersack 2006: 5).

This shift from structure to practice and the genealogies of political ecology more generally are bound up in the trajectory of social theory within human geography, with the engagement of Marxist ideas in the 1970s and 1980s followed by a broadened understanding of what counts as “political” via engagements with poststructural, but also feminist and postcolonial, theoretical approaches (Gregory 1994).

Marxism was unquestionably the central theoretical driver in the formation of political ecology, as studies of peasant integration into market relations – and the radical dislocations for such communities that followed – overturned taken-for-granted understandings of homeostasis, equilibrium, hazards and cultural practices in human-environment research (notably cultural and human ecology, ecological anthropology, and natural hazards research; political ecology also explicitly targeted neo-Malthusian ideas about population and environmental limits; Watts 1983a, b; Blaikie and Brookfield 1987; Hecht and Cockburn 1989). The increasing influence of poststructural ideas in political ecology
(and human geography generally) led more and more studies to turn away from a strict focus on political economy, rendering identities, cultural practices, and “regional discursive formations” (Peet and Watts 1996) central to the field – as well as a host of social differentiations besides class, including ethnicity, race, and gender (see Biersack 2006; Moore 1996; Paulson et al. 2003; Peet and Watts 1996; 2004; Peet et al. 2011; Robbins 2004; Rocheleau et al. 1996). For many in the field, Blaikie and Brookfield’s “land manager” began to look somewhat apolitical and limiting as an explanatory tool: these actors were “overwhelmingly male, rural, third world subjects” and there was little consideration of “peasant resistance or of gender and household dynamics” (Paulson et al. 2003: 208).

In response, the field opened up the question of what counts as political, turning increasingly to questions of discourse, identity, and nature by “giving greater salience to the ethnic identities, gender roles and relations, institutions, governance apparatuses, political involvements, and other social factors that condition the knowledge, decisions, and actions of diverse land managers” (Paulson et al. 2003: 208). If political ecology places nature-society relations in contexts of power, struggle, and contested social relations, the early structural and systemic political economic approaches have increasingly become more focused on the iterative “set[s] of relational practices operating on multiple material and discursive levels that order space,” nature, and identities in specific ways (Bobrow-Strain 2007: 7).

A second movement in the field has been from identity to difference, or more specifically from what Braun (2002b: 3) calls “identity thinking” to a relational ontology that tracks the production of difference. The latter perspective, paralleling my discussion of iterative geographies above, sees the “things” of nature-society relations – “such as the body, sexuality, government – as effects of shifting configurations of discourse and practice, rather than innate properties found in the world” (Braun 2002b: 3). In practice, this shift has meant
a move from examining how race, class, gender, and other differences act as variables influencing nature-society relations, towards analyses of how such identifications are emergent within environmental struggles. The field remains divided over this theoretical move, with some scholars (usually rooted in Marxist theoretical traditions) continuing to interrogate how pre-constituted groups (designated by race, ethnicity, gender, region, or some other identification) engage in struggles over access to and control over resources in ways deeply impacted by those lines of differentiation. An increasing number of scholars, however, have begun to ask how such identifications emerge relationally: how the very groups involved in environmental struggles are constituted through the process of environmental conflict itself, rather than asking how pre-existing axes of difference influence outcomes (Bobrow-Strain 2007; Nightingale 2011; Valdivia 2008; Sundberg 2004; 2006). This shift from identity politics to the production of difference is bound up with the growing influence of poststructural approaches discussed above, building on work that examines how particular groups construct distinct identifications (e.g. Bru Brister and Cabo 2004; Li 2000; Moore 1998; 1999; Moore et al. 2003; Perreault 2001; 2003a; Sawyer 2004; Wolford 2004) and understandings of nature (e.g. Braun 2002b; Castree and Braun 2001; Escobar 1999; Goldman 2004; Robertson 2004; Rutherford 2007; Watts 2005).

Finally, political ecology has moved from “margin” to “center” in multiple ways: from a focus on the rural third world to a concern for the first world (e.g. Darling 2005; Emery and Pierce 2005; McCarthy 2002; 2005; Robbins 2002; 2006; 2007; Robbins and Luginbuhl 2005; Schroeder 2005; Schroeder et al. 2006; St. Martin 2006; Wainwright 2005; Walker 2003) and urban political ecologies (e.g. Gandy 2003; Heynen et al. 2006; Kaika 2005; 2007; Nicklow 2011; Trouwborst 2010; Wainwright 2005).
Swyngedouw 2004; 2006; Swyngedouw and Heynen 2003); as well as from a focus on peasant societies and marginalized actors to the powerful, including socially situated individuals and groups (Bobrow-Strain 2007; Sundberg 2007), the state (Robbins 2000; 2003; 2008; Robertson 2007; Wainwright and Robertson 2003), and international financial institutions (Goldman 2004; 2005; Peet 2003); as well as powerful institutions and governance processes more generally, such as those bound up in neoliberal ideologies and policies (Bakker 2004; 2005; 2010; Bridge and Jonas 2002; Castree 2008a, b; Heynen et al. 2007; Heynen and Robbins 2005; Himley 2008; Mansfield 2008b; McCarthy and Prudham 2004; Perreault 2005; 2006; Wolford 2007). This dissertation can be seen to join this intellectual shift: I examine the iterative production of hegemonic relations of power through spaces of difference and contestation within the supposed apex of capitalist democracy, what Schroeder et al. (2006) call “the third world within.” Yet while the San Luis Valley might be seen as a margin within the center, I reiterate Wainwright’s (2005) call to interrogate the production of “first” and “third” world spaces rather than taking them as unproblematic containers or spatial locations.9 Throughout the dissertation, I mobilize the perspectives of political ecology in ways that draw from and extend these three intellectual movements. I engage with more focused political ecological debates on enclosure, property, and privatization in Part I; and environmental governance, subject formation, nature, and social movements in Part II.

I also situate this dissertation within political ecology as a methodological approach: the field has long privileged detailed empirical accounts that are often ethnographic and normative (Robbins 2004: 11-2). As McCarthy points out, political ecology has understood

---

9 Many in political ecology, including myself, would reject the structuralist and hierarchical language that divides the world into “margins” and “centers,” however I retain that language here because it has framed recent calls to shift the focus of political ecology even as these calls undermine such strict divisions.
itself as providing “better” descriptions than other approaches to nature-society relations through its privileged methodological (often ethnographic and historical) and theoretical approaches: “by asking more and better questions, and gathering more and different data, we move towards a fuller, better understanding of particular cases, one that more closely approximates reality” (McCarthy 2005: 954). In some sense, I perpetuate this claim to the superiority of political ecological productions of knowledge: in framing this introduction (and Chapter 2) with Golten’s enthusiastic praise of the Lobato v. Taylor decision, I argue that a more careful ethnographic and normative accounting of the ways in which the decision has entangled geographies of sovereignty, property, and difference suggest very different conclusions than those reached by Golten.

I also seek to work against this methodological claim, however, and do so through engagement with postcolonial theory and postcolonial geography. Scholars of colonialism have long critiqued the effects of power embedded in ethnographic productions of knowledge and the role of ethnography in reproducing hegemonic power relations (e.g. Brosius 1999; Katz 1996; Sparke 1996; Stacey 1996; Tuhiwai Smith 2012). The very production of knowledge about an “other” by ethnographic as well as historical and textual means has been critiqued and problematized by postcolonial theory (following Said 1978; cf. Glissant 1997; Vizenor 1999), as has the “global claim” of complete and universal knowledge as a Euro-centric imposition (Noxolo et al. 2008; cf. Mignolo 2000). As a political ecologist engaging heavily with postcolonial theory, Joel Wainwright (2008) concludes that he must both abandon ethnography and redefine the entire project of political ecology itself, to understand the field “not as a research framework but as an antidisciplinary project… [that] call[s] into question the constitution of the world as such – its spacing – in ways that allow us to think radically about the politics of nature” (Wainwright 2005: 1041). For Wainwright, the
complicity of ethnography and geography with the colonial project are too damning to continue either in any way that does not radically call into question the fundamental assumptions and practices of academic work. Speaking to political ecologists, he argues that “our project is not ethnographic,” because “work under that sign, surely one of the signature colonial disciplines, will only introduce more confusion and epistemic violence” (Wainwright 2008: 9). Wainwright’s argument is an important one for political ecology, particularly the ways in which he foregrounds colonial power; however, as I explore below, my approach does not abandon ethnography but seeks to foster a critical relationship to ethnographic practice through the ethical, political, and strategic commitments of postcolonial theory and geography.

**Postcolonial Theory and the U.S. Southwest**

In her historical account of domination and resistance on the Sangre de Cristo land grant, San Luis scholar Maria Mondragon-Valdez (2006: 3) argues that

The history of the Sangre de Cristo Land Grant has all the trappings of colonialism: disenfranchisement of land and resources, generations of dominance stemming from racial prejudice, and socioeconomic subordination by an elite group of non-residents in partnership with local collaborators.

Similarly, in her study of the Maxwell land grant in southeastern Colorado, Maria Montoya (2002: 8) notes that the U.S. West and Southwest “[reflect] the broader trends of nineteenth-century imperial and colonial endeavors throughout the rest of the world” and should be

---

10 Wainwright does not set out to study “the Maya” in his examination of capitalism and development in Belize, insisting that “the Maya” are “one of the most studied ethnos in the world” (2008: 4) in ways that have most often been harmful to actual Mayan individuals and groups. Rather, he seeks to call into question the very terms through which the world, its peoples, and its geographies have been understood. For Wainwright, even notions such as the existence of a location called “Belize” belie a colonial history that conceals relations of power/knowledge and inequality.
placed in comparative perspective “within the context of a larger world history and other
nineteenth-century case studies of land loss in places such as Hawai‘i, Russia, Africa, and
Latin America.”

Yet, neither scholar fully harnesses the insights of postcolonial perspectives.
Mondragon-Valdez explicitly shies away from the label “postcolonial theory” and hesitates
to employ the insights of the field, arguing that “Despite strong parallels to colonialism,
there were two obstacles to using postcolonial theory in this study. First, the custom of land
granting was itself a colonial apparatus. Second, segments of the Sangre de Cristo Land
Grant were the hunting grounds of Taos Pueblo and Utes” (Mondragon-Valdez 2006: 2).
While postcolonial theory can be useful because Anglos colonized Hispanics and Native
Americans, Mondragon-Valdez turns away from its insights because ultimately Hispanics also
colonized indigenous nations. Similarly, as I argue in Chapter 2, Montoya examines the
dispossessions that resulted when relations among people and land transitioned from one
system of property regimes (Hispano/Mexican) to another (Anglo-American) but does so in
ways that hide part of the workings of colonial power even as her aim is to render such
power relations transparent.

Both accounts remain rooted in the “three peoples” thesis through which the U.S.
southwest is seen as a meeting ground of Anglo-Americans, Hispanics, and Native
Americans (Meinig 1971). This understanding has given rise to constructs such as the
“Hispano Homeland” said to constitute the U.S. southwest (Nostrand 1992). I argue,
however, that postcolonial perspectives fundamentally undermine such easy
characterizations of identity (and their isomorphism with particular spaces) by instead
emphasizing the constitutive violence of colonialism (Blackhawk 2006). From the
perspective of postcolonial theory, the notion of three peoples in the U.S. Southwest is a
myth. Instead, the field offers tools to help unpack how colonialism’s constitutive forms—its assemblages of knowledges and practices such as specific racial grammars—shape the present, including the formation of the identities of Anglo, Hispano, and Native. While Mondragon-Valdez misses the ways in which these separate identities are themselves emergent and uncertain effects of colonial encounter as well as the productive tensions that arise from attention to such “in between” identifications, Montoya too easily conjures separate “systems” of property relations that exist in isolation from one another—rather than, as postcolonial theory would suggest, interrogating how these “systems” emerged relationally through colonial encounters.

Following the arguments of postcolonial geography, I instead attempt to trace the ways in which distinct identities and spaces are iteratively produced and stabilized as such through colonial practices (Wainwright 2005; Winders 2005). Here, the identifications and practices of both the “center” and “periphery,” “metropole” and “colony,” “colonizer” and “colonized” emerge relationally (Braun 2002a; McClintock 1995; McEwan and Blunt 2002; Nash 1999; 2002; Noxolo et al. 2008; Stoler 1995; 2008). Following Juanita Sundberg (2006: 241, quoting Joseph 1998: 16), in highlighting colonial encounters I seek to work against “the illusion that the social groups brought together are ‘pristine, autonomous cultures moving directly into contact, like billiard balls striking each other on a felt-covered table’—and therefore easily identifiable as ‘internal’ or ‘external.’” Instead, “overlapping histories of Spanish colonialism, internal colonialism, and U.S. imperialism make such dichotomous framings impossible. Rather, subjectivities, social and environmental formations and institutions are best seen as already transcultured constructs” (ibid.). The categories through

---

11 I have in mind here Bhabha’s (1994) work on mimicry (also see below) as well as work interrogating how white women living in settler colony contexts are simultaneously colonizer and colonized (e.g. McClintock 1995; Stoler 1995). Postcolonial theory has been particularly adept at highlighting the ambivalence, boundary crossings, and categories-in-flux that emerge in such contexts.
which the U.S. Southwest is conventionally understood, then, are not stable, but are brought into being and enacted in time and place through relations of power that reflect long histories of colonialism (Sundberg 2004: 44).

I situate the historical and contemporary events, identities, and spaces discussed in this dissertation as fundamentally shaped by colonial encounters: the “unique process of ‘double colonization,’ first by the Spanish and later by the Americans” (Gómez 2007: 10). As Gómez shows, the American colonization of New Mexico was fundamentally shaped by the Spanish colonialism that preceded it: both “were grounded in racism, though their precise ideologies of white supremacy differed” (Gómez 2007: 10).12 Largely, Hispanos living and working on the Sangre de Cristo grant after 1848 found themselves within a biopolitical context fundamentally shaped by the racial grammars of whiteness as they emerged through ideologies of Manifest Destiny. Efforts to make sense of Mexican Americans racially produced fraught encounters: “The central paradox was the legal construction of Mexicans as racially ‘white’ alongside the social construction of Mexicans as non-white and as racially inferior” (Gómez 2007: 4).13

Postcolonial theorists have long sought to interrogate such ambivalent and in-between iterations, such as Homi Bhabha’s (1994: 123) insights into the anxieties and uncertainties generated by colonial desires for and disavowals of certain colonial subjects who came to be “almost the same, but not quite.” The “postcolonial” has been understood in

---

12 Gómez reworks the dominant conceptualizations of racial imaginaries in the United States as centered on a black-white binary: such a binary “has obscured the ways in which Latin American-style race relations have existed historically in the United States and continue to exert a powerful legacy” (Gómez 2007: 10).

13 Gómez (2007: 5) interrogates “the twentieth-century racial hierarchy that placed African Americans at the bottom with Mexican Americans above them … [as] a wedge racial group between whites and blacks. While Mexican Americans were relegated to second-class citizenship in virtually all areas, they had access to legal whiteness under a kind of reverse one-drop rule: one drop of Spanish blood allowed them to claim whiteness under certain circumstances. The separate racial ideologies that developed with respect to Mexican Americans and African Americans highlight the complexity and contradictions within white supremacy. Whereas the racial ideology that we most commonly associate with this period of American history resulted in the hardening of categories that governed African Americans (under the one-drop rule), with respect to Mexican Americans a racial ideology emerged that depended on those boundaries being flexible and inclusive. Both ideologies reproduced the racial subordination of blacks and Mexicans, but they did so in very different ways.”
diverse ways, including as a place that has gone through colonization but is now temporally after, or “post,” the colonial; and a condition of people(s) and places that can be somewhat generic and ageographical (the postcolonial condition, or simply “colonial discourse”). I understand the term, however, to signal a set of theoretical, epistemological, ethical, and political commitments, practices, and perspectives: the “aesthetic, political and theoretical perspectives … committed to critique” colonial legacies in the present (Sidaway 2002). Here, the “awkwardness of the ‘post’ in post-colonialism” (Nash 2002) can become a persistent reminder of the necessity of engaging with those colonial processes and legacies that a more temporal or static ontological definition posits as unchanging, undifferentiated, or located in the past.

At its best, postcolonial theory is a set of critical theoretical, epistemological, and political perspectives that call attention to the operation of power and difference in social and spatial formations. Work probing the postcolonial as a condition (including Bhabha 1994; Fanon 2004; Glissant 1989, 1997; Minh-ha 1994; Vizenor 1999) can provide powerful conceptual tools for exploring postcoloniality in concrete temporal and spatial contexts; many geographers have stressed the importance of spatial and temporal specificity (e.g. Blunt and McEwan 2002; Braun 2002a; Nash 1999; Winders 2005; cf. the postcolonial feminism of Lewis and Mills 2003; McClintock 1995; Mohanty 1991). Three themes common to postcolonial work within geography are the persistence of colonial relations in the present (Braun 2002a; McEwan 2003), particularly through the centrality of imaginative geographies in conjuring identities (Gregory 1994; McEwan and Blunt 2002; Morin 2002; Said 1978; Winders 2005); the relational constitution of those identities and of colonizer and colonized (Bhabha 1994; Blunt and McEwan 2002; Lester 2002; McClintock 1995; Minh-ha 1994; Nash 2002; Stoler 1995); and the difficulties of forging political projects that begin from
relational engagements with and across difference(s) (Braun 2002a; Nash 1999; Noxolo et al. 2008; Spivak 1988).

This dissertation draws from postcolonial perspectives to center the ways in which colonial practices are constitutive of present day environmental struggles. Traces of colonialism – what Braun (2002a) calls “colonialism’s afterlife” – often manifest themselves in the categories through which contemporary environmental conflicts are articulated. For those political ecologists taking up postcolonial theory, a major contribution has been to show the ways in which “nature” is deeply bound up with colonial practices: specific ways of seeing, scientific practices, and racial grammars (e.g. Braun 2000; 2002a; Braun and Wainwright 2001; Gregory 2001; Kosek 2006; Wainwright 2005; 2008; Wainwright and Robertson 2003). In southern Colorado, the category of “Hispano” (and its others, “Anglo” and “Native American”) has been sedimented through multiple colonial encounters, themselves constituted through racial grammars common to colonial formations across the globe (Gómez 2007; cf. Stoler 1995). The historical production of these categories (and others, including “nature,” and some more specific to the region like “acequia agriculture” and “La Sierra”) through colonial relations continue to shape the present in profound ways, as contemporary court decisions, for example, hinge upon particular understandings of groups of people and their relation to land and property (see especially Chapter 2). At a broad level, postcolonial theory makes race central to environmental conflicts (e.g. Wainwright 2008), but in ways that highlight how race itself was formed, through articulations with colonial invasion and settlement, legal mechanisms, dispossession, and other categories-in-formation that include gender, sexuality, and class.

In addition to categories and imaginative geographies, traces of colonialism also show up here through specific material practices of exclusion. Such practices include the
languages and materialities of private property (Chapter 1), themselves fashioned through contingent processes of struggle. Postcolonial perspectives open up categories like “property” to inquire into the wider network of interrelations, stemming from colonial processes, which constitute such seeming presences – I gloss some of these colonial formations as the “sovereign stories of U.S. colonial power” in Chapter 1. Historically, as I explore, “private property” has been used as a tactic of dispossession by white corporations and settlers in the San Luis Valley, couched in the abstract languages of law and universal rights.

**Postcolonial methodologies: For opacity**

Another way postcolonial theory has fundamentally shaped this dissertation is through my approach to fieldwork and data. I carried out roughly fifteen months of field research in San Luis, beginning with two preliminary trips in the summer of 2008, followed by long-term fieldwork from September 2009 to October 2010, and a follow up trip in summer 2011. During this time I engaged in extensive participant observation in governance-related meetings, court hearings, community events, and daily life in San Luis; conducted roughly 45 semi-structured, in-depth interviews with individuals involved in governance and the legal process, and had many more informal conversations with individuals and groups; and analyzed archival documents in several archival sites, including the New Mexico State Archives in Santa Fe, New Mexico; and in Colorado, the Colorado and Coleville Rooms at the Adams State College Library in Alamosa, the Colorado Collection at the Tutt Library of Colorado College in Colorado Springs, and the offices of the Land Rights Council, Costilla County Planning and Zoning Office, and District Courthouse in San Luis.
Two primary research questions guided my fieldwork. First, what institutions and norms are being constructed to govern resource access, and what factors are shaping their emergence? Second, what significance does newly expanded resource access have for livelihoods, economic and cultural practices, and sovereignty? These questions were designed to document and critically assess the new form of resource access emerging in the San Luis Valley, including its historical context and the emerging effects of returned access to the commons. More specifically, I sought information on the rules, norms and ideas that govern resource access and use, and how these have changed over time; the multi-scalar processes, competing interests, power relations, and conflicts that shape and are shaped by environmental governance; changing livelihoods, economic practices, discursive forms, and identities; and changing patterns of authority and control over land and resources.

All ethnographic research is fraught with dilemmas of power, positionality, representation, and responsibility that can be negotiated but never fully resolved (Cahill et al. 2007; Hodgson 1999; Katz 1996; Pratt 2000; Sparke 1996; Stacey 1996; Sultana 2007). Guided by postcolonial theory, which foregrounds questions of representation, speaking for others, and ethical relations with difference (e.g. Glissant 1997; Noxolo et al. 2008; Spivak 1988), I did not travel to southern Colorado to “uncover” marginalized voices or discover the “truths” about a particular ethnic or racial group; rather, I sought to investigate historically how particular categorizations, social relations, and spaces were invoked, produced, and contested by diverse and shifting constellations of actors.

The work of Édouard Glissant (1989; 1997) in particular has been formative for the analyses developed here. Glissant suggests that the projects of social science should not necessarily be focused on understanding or generating Truths about certain peoples and places – as Glissant (1997) phrases it, “getting to the bottom of natures.” Instead, I mobilize
Glissant to think about alliances and engagement in political projects. For example, concrete
court struggles of land rights in southern Colorado often depend on the category of
“Hispano” and even an essentialized notion of connections between Hispano bodies and
land. To the extent that I mobilize such a category, I may be reinforcing colonial
categorizations that produced Hispano bodies as racially inferior and, among other things,
closer to nature (Gómez 2007). Yet a postcolonial perspective calls attention to both the
ways in which such a subject position has been historically produced, with what effects
(often done in poststructural theory), as well as how such a subject position has or can
produce effects of its own (Nealon 1998) – including the ways in which such categorizations
may be strategically occupied, mobilized, and deployed for progressive (if imperfect) ends
(Braun 2002a; Nash 1999).

Finally, postcolonial theory adds an ethical dimension to my work. In calling for a
“right to opacity” for colonized populations, Glissant (1997) pushes me to think about the
ways in which my academic representations may render particular identities transparent once
again under the gaze of the (colonial) observer (I explore these questions further in the
Conclusion). There are no easy answers to any of these questions, and postcolonial theory
helps to foreground the particular, the concrete, the imperfect, and the complex, to work
through difficult interrelations in ways that perhaps may be more socially and
environmentally just. Postcolonial theory typically complicates rather than simplifies;
foregrounding these tensions rather than sublimating them is a constant challenge that I
strive to meet in these pages.

I approached these issues through a participatory research strategy and by adopting a
particular relationship to “fieldwork.” First, I sought to design my research in partnership
with the Land Rights Council (Greenwood et al. 1993; Pain 2004). Despite the dilemmas inherent in ethnographic fieldwork, researchers can still engage with communities ethically and politically, strive to achieve inclusive and democratic outcomes, and orient the questions and results of their work towards community-driven aims (Brosius 1999; Hondagneu-Sotelo 1993; Manzo and Brightbill 2007; Nagar 2003; Routledge 2002; Routledge and Simons 1995; Tuhiwai Smith 2012). One way to shift research in ethical and participatory directions is to move away from doing studies on or about particular groups, towards studying with and for these communities (Dove 1999; Sundberg 2007).

Second, I take seriously Wainwright’s (2005: 1034) insistence that “doing political ecology in postcolonial spaces carries the responsibility of engaging with colonialism, because we cannot understand these spaces outside of, prior to, or apart from the fact of colonial experience.” Therefore, being “in the field” often meant being attentive to traces of colonialism, the ways in which colonial knowledges and material practices remain present, or the ghostly presences of erasure and exclusion that haunt the taken-for-granted (Gordon 2008: 8). Such attentiveness also means centering the ways in which colonial practices have helped to define “the field” and the objects within it in particular ways (e.g. Katz 1996). In attending to colonial practices and their traces in the present, I took seriously “a way of performing fieldwork to unlearn, to learn to read anew, to learn apart from knowledge production in the mode of empirical data collection and transcoding” (Wainwright 2008: 202). In this “field,” following Avery Gordon (2008: 44), “the ‘real story’ is always a

14 As a long-standing, local group, the Land Rights Council has wide legitimacy and knowledge of resource use and legal issues; and is actively involved in efforts to manage resource access and use on La Sierra. Its Board of Directors and other members helped to formulate my research questions and design. The LRC sought evaluation of ongoing efforts to sustainably and effectively manage resource use on La Sierra with the belief that a critical assessment of emerging institutions (Question 1) and their effects (Question 2) would contribute to more successful management strategies. The LRC Board also asked me to interview members of the community to document and preserve cultural knowledge and experiences.

15 Spivak calls this orientation a process of “fieldwork without transcoding” (Sharpe and Spivak 2002: 619) or of “surreptitious unlearning” (Spivak 1993; see Wainwright 2008: 202). Avery Gordon captures something similar in thinking
negotiated interruption of that seemingly two-party system of analyst and analysand.” To negotiate my complicity in colonial practices and histories, therefore, this dissertation attempts to disrupt received narratives about environmental conflict through attention to colonial traces in the present; but also recognizes the limitations of the productions of academic truth (see the dissertation’s Conclusion). As Mountz (2007: 47) underscores, fieldwork is performative: the accounts given in this dissertation are always, necessarily, accounts of “me and.” The presence and questions of the researcher invite performative reiterations that simultaneously constitute the researcher and the objects and subjects of research; and the performativity of knowledge production extends to the writing process, as I construct contingent and partial accounts of my performative research encounters (cf. Pratt 2000; Sundberg 2006; 2007).

Postcolonial geographies are perhaps most productive when critically interrogating the specificities of colonial relations, remaining attentive to the partialities, exclusions, and multiple becomings that both constitute and are covered over by geographic productions of knowledge. But above all, postcolonial theory within geography must remain unsettling. If “the postcolonial” becomes another area or domain to be mastered by an expert geographic knowledge (Gregory 1994), its critical thrust will have largely been lost. By foregrounding ambivalence, complexity, contingency, uncertainty, and struggle, I hope to retain this unsettling force; put another way, continually asking unanswerable questions can foster sustained critical questioning and constant re-evaluation (Bondi 2002). In the dual focus of challenging hegemonic power relations and building more just futures, postcolonial perspectives highlight specificity and, in the process, dwell on rather than push away

---

beyond “the field” as a bounded, well-defined area of knowledge production or area to which one goes: “the fields that are bound up with and overdetermine any analytic encounter are not just other academic fields, or the sociohistorical in the abstract, but the field of transformation that draws us in and sometimes away” (Gordon 2008: 44).
complexities.

Notes on naming

Due to the ongoing legal conflict in *Lobato v. Taylor* and struggles over governance and use of La Sierra more broadly, on many occasions in this dissertation I have used pseudonyms or general descriptions (e.g. “a Hispano resource user”) to protect the identities of individuals involved in my research. However, because of the highly public nature of the conflict over La Sierra, many participants in the struggle have already been named, quoted, and profiled in countless news stories, magazine articles, books, and academic works over the past several decades. I have used real names for many individuals, either because they have given me explicit permission to do so; they are highly public figures and, during my research, acted in that capacity (as president of the LRC, for example); or in many cases, both. Also, following Merry (2000: xiii), I italicize certain words such as La Sierra or acequia the first time they appear in text, but not thereafter, because I recognize these as local words, not those of a foreign language or country.

Overview of chapters and arguments

Drawing from theoretical perspectives that highlight the contingent and iterative work of power relations, this dissertation explores struggles over the commons in southern Colorado from the 1860s to 2011. Part I examines the contested ways in which sovereign authority has been iteratively produced through struggles to enclose land and natural resources via private property (Chapter 1) and the work of the law in the *Lobato v. Taylor* chain of cases and its predecessors (Chapter 2). Rather than abstract universals or ahistorical principles, I argue that property and sovereignty emerge through historical and material
practices that iterate specific types of boundaries and distinctions. Chapter 1 traces how the sovereignty of the U.S. nation-state has emerged in the San Luis Valley as an effect of struggles over resources, highlighting concrete ways in which this process has been unfinished and incomplete. Yet, the sovereign stories of U.S. colonial power – inextricably bound up in racialized notions of property, nature, and political qualification – have continued to produce effects in the present.

Chapter 2 takes up these themes by examining the iterative entanglements of property, law, and sovereign power produced by *Lobato v. Taylor*. The 2002 decision by the Colorado Supreme Court returning partial access rights to the commons, I argue, repeats the sovereign boundary drawing traced in Chapter 1 most notably through its circumscription of the Treaty of Guadalupe Hidalgo and related sources of sovereign authority, as well as its extensions and reiterations of private property as the mechanism linking subjects of the law to rights to the commons. In the process, I explore how the *Lobato* decision conceals colonial histories through the production of difference, rendering Hispanos as Other and apart from the workings of U.S. colonial power yet, ambivalently, fully within the territorialized spaces of the U.S. nation-state. Following insights of postcolonial geography, I engage debates on the adjudication of land grant rights in the U.S. legal system to explore how notions of “Anglo” and “Hispano” emerge relationally.

Part II of the dissertation examines struggles over environmental governance in the aftermath of *Lobato*. Chapter 3 connects theoretical work on performativity and the subject with geographic work on environmental governance and governmentality. I provide an extended ethnographic vignette followed by a theoretical overview of the ways in which the environmental governance of the commons is implicated in uncertain and contested processes and projects of subject formation. In Chapter 4 I turn to questions of
identification, tracing how *Lobato v. Taylor* initiates a process of suture that attempts to fix
subjects to private property as part of the adjudication of use rights to the commons.
Subjects have been formed through the law, I argue, in ways that render resource users
private landowning individuals and erase historical, cultural, and other differences between
and among resource users. For many resource users, this constitution of subjects marks an
injustice, and I explore some implications that this effective commodification of access
rights to La Sierra has had in San Luis. Cielo Vista Ranch, by contrast, has been constituted
as a “burdened property” in relation to the ideal of private property as “fee simple absolute,”
in effect invited by the court to attempt to restore its burdened property rights through
surveillance. Further, the court has rendered questions of enforcement on the commons as
questions of individual legal disputes between private property owners. Both resource users
and Cielo Vista Ranch, however, have only been formed as subjects by the court partially
and ambivalently: while Hispanos have re-asserted the historical and cultural differences of
land grant heirs, CVR has seemingly embraced its powers of surveillance far more than those
of dispute resolution.

Chapter 5 offers an ethnographic exploration of the ways that subjects, and the
terrain within which they interact, have been constituted by the court. I examine the deep
confusions, conflicts, passions, and frustrations that permeate and help to constitute
governance of the commons, revisiting questions of the uncertain formation of subjects.
Questions, uncertainties, and disagreements over responsibility for things like road
maintenance, enforcement and rules, and what constitutes sustainability (and who can define
it) have all shaped environmental governance in far-reaching ways. Frustration, anger,
despair, and fear have all arisen among certain subjects who have both decried and
participated in their positioning in relation to property and the law. In the chapter’s
conclusion, I raise the question of the tragedy of the commons, arguing that the social relations and subject formations emerging from the legal process in fact create the conditions through which such a tragedy can occur.

The next two chapters examine the efforts of Cielo Vista Ranch (Chapter 6) and the Land Rights Council (Chapter 7) to govern the commons in such a power-laden, contested, and contingent context by creating new kinds of environmental subjects and defining what the “reasonable use” of La Sierra entails. Both have worked with and against the court’s processes of subject formation, and have mobilized La Sierra as a particular kind of environmental and social object. Chapter 6 centers on Cielo Vista’s efforts at articulation: to articulate diverse subjects, objects, and knowledges in a common project of good stewardship. CVR has carried out this project through spatial strategies that rely on the authority of arguments about nature, in the process attempting to depoliticize its political project to restore full private property rights. Yet, in part because of the uncertain effects arising from the repetition of what I call the regulatory norm of nature, CVR’s efforts have not been fully successful.

Chapter 7 explores the efforts of the Land Rights Council to create particular kinds of environmental – and cultural – subjects, rooted in a historical context of struggle linked to a broader project of maintaining and strengthening a cultural way of life against the incursions of resource enclosure and dispossession. Conceptualizing the Land Rights Council as a social movement organization, this chapter traces the cultural politics and struggle over material conditions through which the LRC has attempted to shape socio-natural assemblages that themselves constitute particular kinds of land grant subjects. I examine the scalar strategies and highly politicized concepts through which the LRC has attempted to demonstrate its ecological legitimacy and tie nature to culture as it intervenes in
environmental governance processes. Like the projects of Cielo Vista Ranch, however, I explore how the efforts of the LRC have also been only partially successful.

Finally, building on the discussion here, in the Conclusion I explore questions of the politics of ethnographic knowledge production, linking academic practices to broader struggles and uncertainties surrounding control and authority in struggles over La Sierra. I conclude by exploring how the struggle over La Sierra continues in the present, suggesting ways in which struggles over the commons may become implicated in processes of conservation, climate change, and changing economic formations in the San Luis Valley.
Figure 1. Cielo Vista Ranch (La Sierra) and areas of historic Hispano settlement, Costilla County, CO (map by author).
Part I: Sovereignty
Chapter 1: Sovereignty, Property, Rights

Introduction: “we are particularly vigilant upon the doings of that company”

In December of 1871, the Rocky Mountain News ran an unlikely article. The piece was not written by a regular columnist or reporter, but by a merchant far away from the paper’s home in Denver. That merchant, Ferdinand Meyer, lived and worked on the Sangre de Cristo land grant and took it as his duty to inform the paper’s readership of the situation there. Meyer, a German immigrant, came to be something of an intermediary between the land companies operating on the grant and the Latinos who had settled it. William Gilpin, the first governor of territorial Colorado, acquired large portions of the grant from Carlos Beaubien in 1864 and, through the formation of a series of land companies, attempted to profit from intensive exploitation of the grant’s natural resources. Meyer, who ran large flocks of sheep in addition to his activities as a moneylender and merchant, initially acted as representative and defender of Latino land and resource rights against the land company. He came to act as one of five “commissioners” (the other four were Latinos) who would collectively make decisions for the Latino population, and his ability to speak both Spanish and English meant he was often the main negotiator with company representatives.

Eventually, Meyer would become complicit in Latino land loss and cooperated with the land companies (Mondragon-Valdez 2006: 126) – but in 1871, he stood firmly on the side of the Latino people.

---

16 Upon acquiring the grant, Gilpin split it into two halves, the northern Trinchera Estate and southern Costilla Estate, to better market it to potential Anglo-American and European investors and settlers. Latino settlements were concentrated in the southern Costilla, with the northern Trinchera largely composed of communal lands that were used less frequently by Latinos. Multiple land companies were formed to develop and sell grant lands, both by Gilpin and his successors. Gilpin formed the Colorado Freehold Land Association, Ltd to oversee the Trinchera Estate, alongside U.S. Freehold Land and Emigration Co. (USFLEC) on the Costilla. The Costilla Land and Investment Company and Costilla Estates Development Company were successors to USFLEC on the Costilla. I refer to these companies as simply “the company” or “the companies” to avoid confusion.
“(V)ery few of your readers and a still more limited number of the eastern people are acquainted with the true state of affairs in regard to ... the Sangre de Christo [sic] grant,” Meyer wrote in his Rocky Mountain News piece (Meyer 1871), but because of “misrepresentation on the part of those, who to-day claim to hold the controlling interest in the said grant,” Meyer felt himself “called upon to make public through your valuable paper the following statement.” Beginning with Carlos Beaubien, Meyer traced patterns of land ownership on the grant, noting the deeds for “about one hundred and forty” tracts, with “(a) great number of people [who] had settled besides, without having obtained from Beaubien more than a verbal promise that their rights and possessions would be recognized.” Altogether, Meyer estimated, the individuals who had settled on the grant numbered “about three thousand souls.”

Just these figures alone would have been enough to cause a serious problem for Gilpin’s company and its investors, as he had been working to conceal the presence of Hispanics on the grant in order to facilitate eastern and European investment and settlement (Mondragon-Valdez 2006: 118). But Meyer went on to reveal broken promises, deceit, and duplicity on the grant; and the extension of “false statements and misrepresentations” off of it. Gilpin’s company, Meyer alleged, was attempting to exercise control over the grant and its Hispanic occupants while simultaneously marketing and selling its land and resources to outsiders. Gilpin, who had agreed to honor Beaubien’s promises of settler rights as a condition of his purchase of the land, was instead “deed[ing] away, at various times, the most, if not the whole, of the Costilla estate.” Meyer’s account was no less than scandalous for Gilpin and his economic pursuits: “where are [Gilpin’s] promises,” Meyer asked, “if they ever amounted to anything?” He continued:
At two different times Governor Gilpin, pretending to act on the part of some company, has promised to meet the people for settlement of the pending questions; meanwhile good care being taken that such meetings took place during my absence. The people finally suspected the game, and told Governor Gilpin that they would have nothing to do with him unless I was present and approved of any transaction he might propose to make. ... Governor Gilpin was duly notified of our appointment and requested to designate time and place of meeting but a week elapsed before he could find time enough to let us know that he had no time. About six weeks after this occurrence I had to leave home on a trip of three weeks duration, and upon my return I learned that Governor Gilpin, Messrs. William Blackmore and Newell V. [Squarey], claiming to represent the company, found time to invite my Mexican colleagues to what they called a preliminary meeting, to settle the pending land question. The four commissioners refused, saying that nothing could be done without the five being present but they were finally coaxed to sign their names to something written, which they were made to believe to be to their interests, but which, when I appeared upon the scene, turned out to be ruinous to them. These papers are taken to New York and England, purporting to be, to one not posted, a satisfactory adjustment between the company and the settlers.

So as not to create the wrong impression, Meyer assured his readers that he was no enemy of progress: he, too, “would like to see this country settled.” His hope, instead, was to avoid “witness[ing] the disappointment of those, who, upon false statements and misrepresentations, might be induced to come out here.” Meyer therefore ended with an ominous warning to potential investors in or settlers on the grant: “I caution everybody not to go into the trap, and would express for myself and those interested with me, that we are particularly vigilant upon the doings of that company.”

This chapter examines the contested history of the Sangre de Cristo grant from the time of Gilpin beginning in 1864 through Jack Taylor’s arrival and tenure stretching from 1960 through the late 1990s. As Meyer’s *Rocky Mountain News* expose suggests, from the first days of Anglo arrival on the grant, contestation and conflict over land and resource rights was the norm rather than the exception. However, rather than attempt to recount this story in full, as
other scholars have done quite thoroughly (e.g. Brayer 1949; Gonzales 2007; Hicks 2006; Mondragon-Valdez 2006), I set a more focused task for this chapter. With an eye towards the historical legacies that shape the Sangre de Cristo grant in the present in ways I explore in the chapters that follow, here I examine the contingent and conflictual emergence of private property and sovereign authority over bodies, resources, and land in the San Luis Valley.

By tracing the contested emergence of new social relations and their sovereign effects, I make three theoretical arguments in this chapter. First, property and sovereignty are not abstract, universal principles, but are instead historical and material practices that structure social relations and come to stabilize contested and diverse sets of boundaries. Second, I argue that the sovereignty of the U.S. nation-state – as a contested project rather than already-existing thing – has emerged historically through the iteration of private property. Finally, and more broadly, I argue that struggles over resources – the bread and butter of political ecology – can come to produce political geographic, and in particular, sovereign effects. Below, I first survey relevant theoretical work on sovereignty and property. These theoretical perspectives guide the analysis of both this chapter and the next, and set the stage for Part II. I then turn to the struggles over resource access and use on the grant, with attention to their imbrications with private property and sovereign effects. Together, the chapters in Part I trace the iterative production of sovereignty and property on the Sangre de Cristo grant from roughly 1864 to 2003: this chapter does so by examining struggles over natural resources from the arrival of Gilpin to the departure of Taylor in the late 1990s; Chapter Two does so through a close reading of the antecedents and legal history of the *Lobato v. Taylor* cases from 1981 to 2003.
Sovereign stories

Sovereignty is conventionally understood as the power of a state exercised over a coherent national territory: “The Treaty of Westphalia (1648),” writes Flint (2009), “codified modern politics as a system of states: states have sovereignty over the land and people in their territories. The term implies that no external political entity has the authority to enact laws or exercise authority within a sovereign territory.” In such an understanding, sovereignty comprises “a fixed territorial entity” enclosing a coherent national culture and formed through “[t]he merging of the state with a clearly bounded territory” (Agnew 1994: 54, 56). Through this isomorphism of state-nation-territory, a “single unproblematic actor: the sovereign state” (Biersteker and Weber 1996: 5) comes to form “the basic, uncontested and natural unit of political space” (McConnel 2009: 1907).

Instead, I emphasize the material and semiological production of state sovereignty.17 As Emel et al. (2011: 72) note, “(s)overeignty is often imagined in normative-legalistic terms without considering the actual material practices of sovereignty that become territorialized in specific geographies.” I attempt to contribute to such a perspective by historicizing the contested emergence of sovereignty in the San Luis Valley as a colonial project (Mongia 2007) rather than assuming its a priori coherence or existence. I define sovereignty in terms of what Kareena Shaw (2008: 1) calls “the problem of the political”: “the conditions under which and the practices through which authority is constituted and legitimated, and what these constitutions and legitimations enable and disable.” In this view, the specific

---

17 Following Radhika Mongia (2007), sovereignty is typically understood as a unitary and coherent “principle,” first formulated as a secure and comprehensive doctrine in Europe before its subsequent extension across the globe through various state-making and colonial projects. Attention to the practices that produce and reproduce sovereign power, particularly the constitutive effects of colonialism and violence in the emergence of such a “principle,” however, challenge the view that sovereignty was “an insulated European invention” (Mongia, 2007: 393). For Mongia (2007: 396-7), sovereignty was in part constituted by colonial encounter, borne out of historical necessities and contingencies in the processes of encounter and conquest rather than emerging in any “systematic or cohesive way.” The so-called “principle” of sovereignty, when treated as a unitary, pre-formed universal, hides the histories of colonialism and violence that are central to its contingent and conflictual emergence.
materializations of sovereignty, sovereign power, and the sovereign itself are not automatically synonymous with any principle, ensemble, or territory; but rather are empirical questions for investigation in terms of how these formations come to be defined, enacted, challenged and re-asserted in specific empirical contexts.\textsuperscript{18}

In examining how sovereignty is actualized, geographers and others have emphasized the production of distinctions and political categories as well as the ways in which sovereign power enacts particular spatialities. Sovereignty is constituted by the continual separation of Self and Other, inside and outside, legal and illegal, even human and nonhuman (Agamben 1998; Braun 2004; Ishiwata 2004; Kauanui 2002; Shapiro 2004; Tully 1995). Geographers and others have also emphasized the spatial dimensions of sovereignty, in that state power often works to inscribe particular territorialities or to produce particular kinds of space (Agnew 1999; 2003; Gibson 1999; Mountz 2010; 2011; Olund 2002; Ong 2006; Vandergeest and Peluso 1995; Wainwright and Robertson 2003). The formation of national identities, forms of political authority, and different types of sovereign spaces can be seen in diverse ranges of practices, including quotidian, embodied practices far from the centers of state power and calculation (Hyndman 2004; Macklin 2004; Mayer 2004; Smith 2001). The categories and spatialities of sovereign power, in this view, are iteratively constituted in particular contexts: continually produced and reproduced in and through the most mundane to the most powerful actions and locations, from households to bureaucracies, forests to corporate boardrooms.

\textsuperscript{18} A growing literature of feminist and political geographic work examines the diverse sets of practices that give rise to a coherent entity called “the state,” recognizing that such practices are not necessarily located exclusively within the institutional structures typically recognized as the state (e.g. Painter 2006; Desbiens et al. 2004; Hansen and Stepputat 2001, 2005; Mitchell 2006; Mountz 2007). This work opens avenues for exploring the very constitution of stateness and other categories of the political (nation, territory, space) through myriad and wide-ranging empirical sites, and demonstrates the ways in which “states are not unitary subjects” but “rather infinite sets of relationships, agendas, identities, desires, and fears performed by a multitude of people” (Mountz n.d.).
I locate the sovereign production of distinctions and spatialities in the San Luis Valley in terms of what I refer to as the sovereign stories of U.S. colonial power. These dominant spatial stories (Shapiro 1997) or geographical imaginaries (Gregory 1994) are predicated on the processes through which hegemonic or dominant “collectivities try to achieve, stabilize, and reproduce their unity and coherence” (Shapiro 1997: ix). Sovereign stories, as Michael Shapiro (1997: 173-4) points out, “reaffirm who [individuals] are, where they are, and how it is that they have become part of an assemblage or a ‘people’ in a collective sense. … [T]o belong to a ‘people’ … one must claim location in a particular genealogical and spatial story.” Yet, as Shapiro (1997: 174) underscores, “To the extent that they are part of the reigning structure of intelligibility, [sovereign] stories tend to escape contentiousness within ongoing political and ethical discourse.” However, sovereign stories are predicated on the exclusion of certain narratives – and bodies, spatial practices, forms of identity, etc. – and indeed come to actively marginalize other modes of political qualification: “the dominance of a spatial story,” writes Shapiro (1997: 175), “inhibits the recognition of alternatives.” As particular collectivities inscribe their spatial stories onto maps and landscapes – sometimes violently, sometimes through cultural production, sometimes through the quotidian practices of the everyday – they efface other stories, “amount[ing] to a non-recognition of older, often violently displaced practices of identity and space” (Shapiro 1997: 176).

In the founding narration of the American sovereign story, the nation’s western territory “consisted of unsettled land devoid of property systems” (Montoya 2002: 6), an empty wilderness and desolate wasteland to be tamed, conquered, and civilized: “American westward migration moved into an area devoid of civilization, an empty natural space that shaped the migrants but no one else” (Montoya 2002: 6). This myth of the empty frontier –
what William Cronon (1996: 13) calls “so crucial in the making of the nation … the nation’s most sacred myth” – informed the practices and ideologies of Manifest Destiny. Similarly, Laura Gómez (2007: 3) writes,

Many Americans view the concept of Manifest Destiny positively, as a shorthand reference to a period in history (the 1840s) during which Americans’ unbounded hunger for national growth was satiated by the acquisition of the Oregon Territory, Texas, and the Mexican Cession, including California as its jewel. For many, Manifest Destiny conjures a moment of national triumph before the dark of conflict over slavery that culminated in the Civil War.

Following Gómez (2007: 4), I characterize Manifest Destiny, and the sovereign stories of U.S. colonial power more broadly, “as inexorably entwined with race and racism” in their justification of the colonial occupation and settlement of the U.S. Southwest. As Gómez shows, the constitutive violence of colonialism (Blackhawk 2006) in the U.S. Southwest helped to constitute racially coherent identities – Anglo/white, Mexican, Indian – that were accorded varying degrees of political qualification and arrayed around a normative ideal of whiteness. These sovereign stories are also bound up with spatialized relations of property, as I explore below.

Such sovereign stories continue to animate the present (Shapiro 1997), by way of “the fantasy that the modern state contains a unitary and coherent national culture … forged by a single system of meaning” (Shapiro 2004: 31). As I explore in this chapter and throughout the dissertation, colonial sovereign stories were and are narrated, enacted, and challenged by a host of actors in the San Luis Valley, from the earliest days of the United States to the present. Yet, these stories do not exhaust the forms of identity, spatial practices, and notions of authority that are constitutive of this space. While the United States is “often portrayed as the gold standard of sovereign state capacity” (McCarthy 2002: 1287), sovereign
power and its narrative and material enactments do not automatically exist as coextensive with social and territorial space. Rather, I argue that sovereign spaces are transversal (Glissant 1987; Soguk and Whitehall 1999), shot through with competing and multiple sovereign stories, spatial practices and histories.

I draw from Édouard Glissant in thinking about sovereignty as transversal. For Glissant, transversality is about the convergence of multiple histories. On his native Caribbean, Glissant (1989: 66) writes,

> [O]ur diverse histories in the Caribbean have produced today another revelation: that of their subterranean convergence. … The implosion of Caribbean history (of the converging histories of our peoples) relieves us of the linear, hierarchical vision of a single History that would run its unique course. It is not this History that has roared around the edge of the Caribbean, but actually a question of the subterranean convergence of our histories … [and] multiple converging paths.

Thinking about sovereign spaces in the U.S. southwest as transversal draws attention to the ways in which a coherent U.S. sovereignty – a capital-H History of/for the U.S. nation-state – must be continually reiterated to overcode (Shapiro 2004: 40) the multiple histories and sovereign stories that animate the region. A conceptualization of sovereignty as transversal makes visible the multiple histories and entangled presents that are too often covered over by abstract universals like property or sovereignty: as Glissant (1989: 66) puts it, “converging histories … [relieve] us of the linear, hierarchical vision of a single History that would run its unique course.”

Transversality calls into question the coherence of power, pointing to the ways in which sovereignty and its spatial practices are incomplete and unfinished projects that must continually work to produce a singular History out of the entanglement of multiple histories. In the San Luis Valley, transversality helps to make visible how colonial histories of
dispossession – in the form of resource enclosure, dispossession of Hispanos, and production of private property relations – have been covered over by the History of a coherent U.S. sovereign power that exists as coextensive with social and territorial space. Transversality makes visible the always unfinished projects to produce a capital-H History, continually undermined by the ontological transversality of multiple histories that converge in the present.

The coherence and extent of sovereignty across space, then, cannot be taken as an a priori achievement, but rather the iterative production of particular sovereign stories must be a question for empirical investigation. Thinking of sovereignty as transversal draws attention to the multiple, contested histories through which sovereign authority is produced. Formal juridical sovereignty for the American nation-state over the lands and peoples of what is now the Southwest derived from the conquest of the Mexican-American War (1846-8) and the Treaty of Guadalupe Hidalgo (1848) that followed. Sovereign authority, however, did not simply exist; rather, I suggest, it had to be continually (re)iterated, particularly because of the demographic, ethnic, and political economic conditions of early territorial New Mexico and Colorado. Former Mexican citizens along with Pueblo Indians remained a numerical majority; and significant cultural, political, legal, and economic institutions stemming from Mexican rule and the land grant system remained deeply entrenched (Gómez 2007).

Sovereign stories both spring from and enable the exclusions of certain geographically- and socially-situated bodies (Pratt 2005) while simultaneously authorizing some spatial practices and not others (Olund 2002; Wainwright & Robertson 2003). Sovereign stories are diverse and not necessarily coherent: they construct and authorize authority in juridical-legal, socio-political, and moral forms; mobilize diverse spatial practices
and assemblages; and are not tied to a state apparatus but are narrated, enacted, challenged, reworked, and reproduced by individuals, collectives, and institutions.

In this chapter, I take up these themes largely in terms of the ways in which particular sovereign stories and the forms of authority they narrate, assert, and legitimize work to shape how individuals and collectives, primarily through particular forms of property relations and notions of moral authority, come to define, access, and use natural resources in certain ways and not others. I suggest that one way in which sovereignty has been reiterated is through the extension of private property relations as a tactic to enclose resources; however, such a project is an uncertain one, and must be continually re-asserted. If sovereignty is a circular form of power in that the exercise of sovereign power is meant to ensure the continued exercise of sovereignty (Foucault 1991), in the San Luis Valley private property has been a central element in producing particular forms of sovereign power over others.

Property

In her important collection on privatization, Becky Mansfield (2008a: 1) argues that “property has become the central mode of regulating multiple forms of nature.” For Mansfield and others, “Efforts to create and impose new private property regimes are remaking ecosystems, livelihoods, and identities, creating … a ‘massive transformation of the human-environment relationship’” (Mansfield 2008a: 1, quoting Liverman 2004: 734; cf. McCarthy and Prudham 2004; Heynen et al. 2007). Yet while Mansfield is referring to contemporary trends under neoliberalism, I argue here that property as a form of resource enclosure and exclusion has been central in shaping human-environment relations in the U.S. Southwest for well over a century; in turn, struggles to enclose natural resources have
had the iterative effect of producing the very category of private property and, in so doing, sovereign effects.

I understand property as a social relation that is continually in formation. Like sovereignty, property is a process that fundamentally depends upon the production and contestation of boundaries. In this view, property works as a contested process of assemblage predicated upon “(i)dentifying, negotiating, and stabilizing a diverse array of boundaries” (Blomley 2008: 1825). Rather than an abstract and already-achieved “thing,” property is an ongoing practice that attempts to materialize particular arrangements of people, ideas, things, and territories (Blomley 2008; Brown 2007; Hann 1998; Nadasdy 2002). Property can take many forms, from its ideal privatized form of complete, alienable private ownership as “fee simple absolute” to the complex forms of usufructuary rights that have historically governed use of common lands on Mexican land grants (Montoya 2002). Even private property itself is complex and diverse, creating multiple types of rights, obligations, and interdependencies (Blomley 2004; Mansfield 2008b). Further, private property is fundamentally always already cooperative or collective, in that a claim to property “has to be recognized and acknowledged by others” in ways that create both rights and duties beyond any individual property owner (Mansfield 2008b: 96).

Typically, however, private property is understood only in idealized form as fee simple absolute: a social relation of exclusion or what Mansfield (2008b: 95) calls the “ownership model,” based on “an autonomous, individual owner who has complete control over a discrete object against the incursion of the state and society … [an] idea of ownership as non-interference and individual control.” The power of private property to naturalize particular arrangements and social relations stems precisely from its ability to appear as an

---

19 In Part II, I draw from and build upon this discussion by treating private property as a regulatory norm or normative ideal in the formation of subjects.
uncontested “principle” – the straightforward principle and ideal of fee simple absolute – as a universal that has seemingly arrived from elsewhere or from nowhere (Mitchell 2002).

I argue that private property has been fundamental to the enactment of the sovereign stories of U.S. colonial power. As a social relation of exclusion and enclosure (Mansfield 2008a: 7), private property was central in the dispossession of land and resources from Native and Hispano populations throughout the U.S. West (Blackhawk 2006; Cronon 1991; Kuletz 1998; McCarthy 2001). Yet property can also come to function in ways that work to stabilize socio-political and cultural boundaries, including notions of progress, race and identity, and space. Montoya (2002: 13-4) argues that the racial categories of Anglo and Hispano are relatively recent phenomena that were imposed on the people of [the U.S. Southwest] during the latter part of the nineteenth century. As outsiders moved onto land grants and pushed Native Americans and Mexican Americans aside, Anglos eventually came to equate landlessness with ethnicity, and particularly with being Indian or Mexican. Indeed, it was important to conflate ethnicity with landlessness as Americans fulfilled their Manifest Destiny to occupy, liberalize, and democratize the open spaces of the American West. Americans argued that both Indians and Mexicans “wasted” the land, misusing its resources. They therefore felt justified in advocating dispossession and improvement of both the land and its inhabitants.

Similarly, as Gómez (2007: 97-8) shows, private property has been constitutive of membership in the American nation, in that the extension of citizenship and political qualification has been predicated upon relinquishing communal ownership of property (cf. Olund 2002). Such socio-political and racial boundaries are central to the ways in which forms of property are implicated with sovereign power in the San Luis Valley.

**Sovereign boundaries, sovereign effects**
I suggest, then, that the distinctions and spatialities of sovereign power come to work in part through the inscription of particular modes of property and the boundaries they attempt to materialize. In the San Lais Valley, the processes of arranging people and things through property are inseparable from the production of sovereign effects. As normative ideal and tactic of dispossession and enclosure, private property has been used to eliminate and marginalize communal land grant practices that draw from Mexican law and custom and the Treaty of Guadalupe Hidalgo as sources of sovereign authority, as well as the more quotidian authorities and spatial practices of land grant collectivities. Arrangements and spatialities based on private property work to minimize communal practices, thereby marginalizing land grant traditions and the sovereign stories and multiple histories upon which they rest. Boundaries based on private property, therefore, have been central to ensuring the continued iteration of U.S. sovereignty; but this process remains ongoing and never fully complete.

The boundaries drawn through property and sovereignty can be physical, territorial, social, metaphorical, or cultural, as the process of boundary imposition constitutes an effort to constrain competing sources of authority to secure power. Kevin Bruyneel (2007: xiii) describes sovereignty as a process whereby “spatial boundaries around territory and legal and political institutions,” and “temporal boundaries around … narratives of economic and political development, cultural progress, and modernity,” are continually imposed, invoked, and struggled over. Below, I examine struggles over boundaries that deal with physical and social exclusions, territorial enclosures, separations of modernity and civilization from tradition and backwardness, and the containment of legal traditions and sources of socio-legal authority. Yet, as Bruyneel underscores, boundaries are always contingent and to some
degree disjointed. While sovereign boundary drawing is often repressive and violent, it is never coherent and impermeable: boundaries are sites of conflict.

By tracing the contested processes of boundary drawing that have produced the supposedly abstract universals of property and sovereignty, this chapter demonstrates the continual work necessary for the iterative (re)production of sovereign effects. In a context of transversal histories and spatial practices, the (re)iteration of a new regime of private property was a central mechanism through which the sovereign stories of U.S. colonial power – alongside new forms of control, domination, and authority – were asserted. These contested processes are unfinished, however, evidenced by the continuing persistence of communally-based land grant practices in the U.S. Southwest, other ongoing struggles over land rights in the Southwest (Kosek 2006; Peña 2005), and, indeed, the *Lobato v. Taylor* case itself. A diverse array of sovereign stories continue to be enacted in the San Luis Valley, not all of which are grounded in private property as fee simple absolute and the narratives of U.S. colonial power. Mexican sovereignty and the Treaty of Guadalupe Hidalgo also authorize particular sovereign stories, often alongside more quotidian sources of authority such as the Beaubien document, one’s membership in a community based on status as a land grant heir, or spatial practices rooted in communal access to land and resources. Below, I turn to the collisions and contestations surrounding the transversal sovereign stories of the San Luis Valley as they come together around efforts to access and control the natural resources of the Sangre de Cristo land grant.

**Sovereign effects in the San Luis Valley**

When William Gilpin purchased the majority of the Sangre de Cristo grant from Carlos Beaubien’s heirs for four cents an acre in 1864, he promised to uphold Beaubien’s
commitments to local Hispanics by extending deeds to Hispano settlers and allowing continued use of the upland commons, La Sierra. These Hispanics would time and again reiterate these promises in claiming other sovereign stories and spatial practices based on the authorities of Mexican law and custom, the Treaty of Guadalupe Hidalgo, the Beaubien document and Beaubien’s agreement with Gilpin and, more intimately, by the daily spatial practices of communal resource access on the grant (Gonzales 2007). At first, Gilpin seemed willing to accede to these demands. Soon after arriving in 1864, Gilpin wrote a letter to a Hispano leader promising that he would fulfill his promises and honor Hispano rights, saying:

Dear Sir: You are authorized by me to assure all persons residing in good faith within the limitation of the Sangre de Christo [sic] Grant, who hold their possession from Carlos Beaubien and myself, that they shall receive from me full and just confirmation and possession by deed so soon as the essential surveys to arrange their several boundaries shall be completed (quoted in Mondragon-Valdez 2006: 117-8).

Despite such assurances, Gilpin and his partners immediately took up the task of subdividing the land, exploiting its resources, and selling whatever they could to Anglo-American and European investors, speculators, and settlers. The story of speculation on the grant is most often interpreted as the self-interested pursuit of wealth, resources, and power by a group of Anglo-American capitalists, akin to the notorious Santa Fe land ring (e.g. Brayer, 1949; Hicks, 2006; Mondragon-Valdez, 2006; Stoller, 1980). Consequently, private property is often taken as a given, a pre-existing thing that simply extends its reach alongside the westward migration of Anglo-American settlers. Mondragon-Valdez (2006: 130), for example, describes in great detail the operations “of a fully articulated land ring” which
was ruled by a hierarchical assemblage of merchant/politicians, *ricos*, and land surveyors who cooperated with a succession of land companies to the disadvantage of villagers. … To maintain absolute control, the land ring created an iron-clad oligarchy [that] grew in power by incrementally appropriating deeds and water rights at county tax sales or promoting community debt… [and dominated] community affairs into the 1960s.

Little is said about private property in these accounts, yet the stories they tell of settlement and struggle over land were decisive in its very formation. When property is referenced it is typically recited as settled fact – the land companies were able to appropriate deeds as if the land and resources in question were already bundled up and accepted as privately controlled parcels that could be transferred and sold at will. By contrast, I suggest that the actions of Gilpin, his partners, and the land companies he formed helped to constitute the emergence of private property rights in the San Luis Valley – a process through which “private property” had to be asserted and accepted and new social relations of exclusion materialized. Such projects, however, have never fully succeeded. More than simply the greed-driven machinations of “*rico* accomplices [who] were land-grant robber barons” (Mondragon-Valdez 2006: 134), or the straightforward extension of pre-formed notions of property, Gilpin *et al.* are part of the broader construction of property and sovereign boundaries in the Southwest.

Gilpin and the land companies engaged in multiple forms of boundary drawing. I draw from secondary historical literature, primary historical documents, and legal decisions to examine how private property emerged as an effect of the struggles over resources initiated by land company activities. The variety of tactics used by the companies to displace Hispanics, from legal actions to negotiations to physical violence, constituted successive iterations that produced the effect of private property. I trace how private property emerged in the San Luis Valley as a tactic used by the companies to dispossess and limit the rights of
local Hispanos, and the work that property did vis-à-vis U.S. sovereignty through the marginalization of land grant traditions and the sovereign authority of Mexican law and custom. Two forms of discursive boundaries also had significant effects: through narratives of progress and development the land companies located the racialized bodies of Hispanos in an archaic past; and through narratives of geology and resource abundance the companies helped to produce an empty space of resources amenable to capitalist exploitation.

**The emergence of private property: “The … Company now owns these lands”**

Gilpin and his partners engaged in elaborate schemes to subdivide and sell grant lands and promote intensive development of natural resources. They considered the local Hispano population to be squatters on private land and began working to evict them (Hicks 2006: 304; Stoller 1980: 35). By the time Gilpin took over the grant, all former Sangre de Cristo land was formally owned privately, either by Gilpin associates or Hispano smallholders, though patterns of resource access and use on the ground did not always accord with juridical-legal assertions. Many Hispanos who owned private lands also continued to use the grant’s common land, and many others did not formally own land but continued to occupy it. Gilpin immediately broke his promise to honor local rights by manipulating legal documents pertaining to his agreement with Beaubien that clearly specified who was entitled to settlement rights, thereby beginning the formal consolidation of land titles (Hicks, 2006: 30, fn12; Mondragon-Valdez, 2006: 116). Gilpin and his associates began the dual – and highly contested – task of reducing the number of Hispanos who held formal legal titles to land and reducing the rights of those with and without deeds, including elimination of continued use of the grant’s commons.
Efforts to contain settler rights intensified with the formation of the U.S. Freehold Land and Emigration Company. The company pursued a multi-pronged strategy to consolidate resource control, employing the courts, direct agreements with settlers, incremental acquisition of deeds, and the promotion of debt among settlers. Private property functioned as a tool to sediment relations where Hispanos could only use the small plots of land for which they held formal legal titles, so that they would have to pay for access to resources on the now company-owned La Sierra (Hicks 2006). The land company helped to open up the San Luis Valley to Anglo settlement, which drastically increased after 1870 with the Denver and Rio Grande railroad. Anglos established a gridded pattern of farms larger than the long varas of Hispanos, initiating a different type of spatiality based from the start on commercial production and almost entirely dependent on large-scale irrigation, capital-intensive methods, and cheap migratory wage labor (Carlson 1967: 120-5). With declining access to grazing lands, Hispanos increasingly began to default on loans, beginning a cycle of rising debt and agricultural wage labor (Deutsch 1987; Mondragon-Valdez 2006: 128, 141). With rising debt, the land company and its associates took advantage by gradually acquiring lands at county tax sales (Mondragon-Valdez 2006: 130).

The companies hoped, in the words of one supporter in the early years of U.S. Freehold, that “as soon as the tract is open for settlement, and through proper influences, the Mexicans will be gradually crowded out” (quoted in Mondragon-Valdez 2006: 123). The achievement of privately owned land and resources, however, was never fully certain. Hispanos continued to iterate different notions of property, sovereignty, and resource rights based on the communalism of land grant traditions, refusing to be “crowded out.”

Across many historical documents of the time – promotional pamphlets to attract investors, internal company memos and reports, letters, contracts, legal filings and court
records, and more – one finds a concerted effort to establish the private property rights of the land companies. Considerable care is taken to document the historical and legal events which led to the company acquiring the land in question, often going back to the initial conveyance and confirmation of the grant. Both on paper and on the ground, these documents reveal the great deal of work that was done to ensure that, in the words of one report, “(t)he … Company now owns these lands” (“Properties” 1907: 7).

And yet across these same documents one also finds numerous uncertainties, problems, and difficulties with the actual control of the land and resources in question, suggesting struggle in the exercise of private property rights. One report notes that the company was in a privileged position to return profit on investments because of its sole control of grant lands, reciting notions of fee simple absolute, since investment is “always profitable where land and water are in one hand and can be disposed of by one party, as is the case on the … Grant” (Pels 1895: 9). Yet only two pages before, the report hastily notes that “the matter of water rights in the Colorado portion of the Estate (now pending in the courts) has [not] been fully adjudicated.” Despite such court proceedings, the document leaves little doubt that the Company would soon possess the full legal titles it sought as well as the ability to do with that property what it saw fit. Indeed, one letter between company employees notes that “(t)he whole [irrigation] ditch matter is very complicated,” because many tracts of land are irrigated by more than a single ditch (“Letter” 1907). The letter details a host of problems – some claimants do not always have rights to all the ditches they use, some do not claim the correct ditch, some take too much water – and concludes that a survey is desperately needed to help make sense of the maze of legalities and complications involved. It was not even known at all times which land belonged to the company and which did not. Another internal company letter complains that the People’s Ditch – an irrigation
canal established by Hispano farmers that is the oldest water right in the entire state of Colorado (Gallegos 1998) – had an “excessive” allowance and should be curtailed, and outlines legal strategies for laying claim to the maximum land and water rights possible (“San Luis” 1908).

References to “squatters” pepper documents that span decades, suggesting that the company’s problem of Hispano resource claims was not going away. As U.S. Freehold was first beginning its operations, it had to confront Hispano presence and use of resources on the grant based on sovereign stories grounded in Mexican law and custom, the Treaty of Gaudalupe Hidalgo, the Beaubien document and language in Gilpin’s deed, and collective spatial practices of resource use on the grant. One company functionary, for example, reported that he was “quite disgusted with The Mexicans” after they rejected an early agreement proposed by the company to regulate land and resource use (“Letter” n.d.), while at an investors meeting in 1871, Gilpin himself pledged to take care of the “Mexican claims” that had been plaguing company development plans (“Memoranda” 1871). In 1901, correspondence between two company employees offered a lengthy list of names that needed to be investigated as squatters (“Letter” 1901), and nearly 50 years after Gilpin’s pledge, Hispano claims had still not disappeared: a 1919 letter complains that the “Chama people,” referring to a Hispano village a few miles east of San Luis, were claiming rights on the Cerro irrigation ditch despite their status as “squatters” on company lands (“Letter” 1919). Today, descendents of these same “Chama people” continue to irrigate using the Cerro ditch.

Meanwhile, the company deployed sleek propaganda and fabricated reports to sell the land to potential investors, intentionally hiding the presence of settlers on the grant (Mondragon-Valdez, 2006: 120). Elaborate development plans featured vast agricultural
operations, mining, and future towns fully connected to the rest of the U.S. via promised railroads ("Southern Colorado" n.d.). These reports, often relying on authoritative statements from high-placed American officials and scientists, usually described the abundant natural resources that made grant lands ideal for Anglo settlement. One “Prospectus,” for example, featured noted American geologist Ferdinand Hayden’s estimation “that about one-half of the Estate consists partly of rich bottom lands, and partly of upland terraces, admirably adapted for agricultural purposes, whilst the remaining portion of the Estate consists of well-timbered mountain lands abounding in minerals” (Colorado Freehold n.d.). Reports promised easy access to resources, including timber, water, fertile soil, and, especially, minerals such as gold. The reports mobilized narratives of progress and development and virtually ensured the accumulation of wealth for potential investors and settlers, asserting that “no doubt exists of the immense profitableness [of] this grant” (“The Mineral” 1869).

When Hispanos did enter these texts it was through the iterative citation of established racialized constructions that cast them as backward, lazy, and uncivilized, shoring up Anglo claims to land and resources by implicitly or explicitly arguing that Anglos would make far better use of them. One promotional pamphlet, for instance, argues that “(f)or many years the rude and unskilled labour of the Mexican population has produced liberal quantities of [gold],” and that Anglo mining operations with “proper machinery and experienced miners” would have little trouble profiting (“The Mineral” 1869). Nathaniel Hill, a Brown University chemist hired by Gilpin to assess the mineral potential of the grant in hopes of luring investors, referred to Hispanos in his memoir of the time as “indolent,” “strange and curious,” and “very ignorant” (quoted in Mondragon-Valdez 2006: 119). Gilpin (1981: 13), in a promotional article from 1881, justified dispossession of the “nine millions
of homogenous people” inhabiting the region through an explicit environmental
determinism. For Gilpin (1981: 13), “the Mexican-American race” was not naturally at home
in the environment of the Southwest, but Anglo-American settlers would surely live and
thrive in far greater cultural-environmental harmony.

Texts such as these did the boundary-drawing work of constructing a “San Luis
Park” for outside consumption, rich with exploitable resources and virtually empty of
inhabitants. The tropes of Manifest Destiny clearly came to justify the dispossession of
“static native cultures” by a “dynamic culture of progress” (Gómez 2007: 66), whereby “the
Mexicans” would soon be supplanted by the superior Anglo-American race. In these
documents, the San Luis Valley and its present and future inhabitants were made intelligible
in ways that enabled the extension of private property and American sovereign authority
through boundaries that cleanly separated an advancing civilization from a disappearing,
vestigial past.

Consolidating title, iterating property

In court, the land companies enjoyed success in cases involving land and water
rights. From the beginning, Hispanics asserted communal rights to land and resources via the
authority of the Beaubien Document, arguments that were uniformly rejected by both land
company lawyers and the courts. The company attempted to both evict Hispanics from land
and remove Hispano resource rights such as access to common grazing land. In August
1908, for example, Donaciano Martinez was presented with a “Notice” demanding that he
pay rent for the land he was living on. The company reiterated private property as fee simple
absolute, asserting that “it is the owner in fee simple and landlord” of the land, and “hereby
demands that on or before Saturday the 15th day of August 1908, you pay the sum of Thirty
and 00/100 Dollars [rent] … or in the alternative that you surrender possession” of the land in question. When Martinez failed to pay, the company sued, and in January 1909, the Costilla County Court issued a Writ of Restitution ordering the sheriff to collect the money and remove Martinez from the land within 90 days (Salazar 1909).

Similarly, the land company pursued legal action to remove Hispano sheep from what it considered its private property, as in a 1908 case in which three plaintiffs leasing company land sued Endrique Jacquez to stop him from grazing. In this precedent-setting case, Salazar et al. v Jacquez (1908), Jacquez claimed rights to graze based on the Beaubien Document and his status as “son of one of the original settlers or colonists,” entitling him to “a perpetual right to graze their flocks and herds on the grant.” The company, reciting the history of Beaubien and the grant’s confirmation, argued that the Beaubien Document “is in no sense a deed of conveyance” because “(t)he essential elements of a conveyance are wanting” (Salazar et al. 1908). In effect, they argued, Beaubien had sold the land to people other than the original settlers, effectively erasing any rights Beaubien himself would have allowed – the land is now private property. The judge in the case, Chas. C. Holbrook, agreed with the land company, though for slightly different reasons. In the opinion, Holbrook writes,

(I)f the contention of the defendant [to grazing rights] could be upheld, it is hard to understand how conveyances could be made, or the country settled and improved, or how the purchaser, who came and took deeds from Beaubien and his successors in interest subsequent to the delivery of this paper [the Beaubien Document], could be secure in their titles, or be enabled to maintain houses and enclosures which the descendants of the original settlers or colonists would be bound to respect (Salazar et al. 1908).
Holbrook, drawing a clear boundary between modernity and backwardness, rejects claims based on the Beaubien Document. Such land grant rights would prevent the development and progress of the nation by disrupting private property as fee simple absolute. His words would echo through decision after decision on Hispano claims to La Sierra. The Beaubien Document, Holbrook wrote, “is simply a writing of regulations and was never intended as a conveyance or grant,” and is therefore “adjudged of no force or effect in law or in equity as against plaintiff’s title and not to constitute a cloud or incumberance in any manner whatsoever upon the title of the plaintiffs.” Jacquez was ordered to remove his sheep from the land immediately and to pay legal costs (Salazar et al. 1908). In this way, a continuing series of individual disputes over land and resource rights came to (re)iterate private property and produce sovereign effects through the inscription of multiple boundaries.

Despite its boundary drawing efforts, particularly in consolidating legal control of the grant, the land companies were never fully successful in removing Hispanics or eliminating continued subsistence uses of La Sierra (Golten 2005: 466; Hicks 2006). The company offered compromises to limit opposition to its development plans – for example, offering to recognize limited land and resource rights for settlers – while also engaging in divide-and-conquer strategies by accommodating some settlers but not others. By giving original or older settlers land titles the company hoped to establish a legally rooted community as a barrier against newly arriving settlers, some forced off other neighboring land grants (Hicks 2006: 304-5, 317). All the while, U.S. Freehold refused to recognize historic ownership, use, or any legally enforceable rights other than its own (Hicks 2006: 299-300, 314). The company, however, often acted cautiously when dealing with Hispanics, abandoned active

20 Holbrook himself had personal interests in private property. Before becoming a judge, Holbrook had represented USFLEC as a private attorney “in a series of ejectment suits against grazers between 1871 and 1891” and had also purchased land on the northern Trinchera Estate (Mondragon-Valdez 2006: 135).
pursuit of court cases, and avoided direct tests of Hispano rights in court to preserve the possibility of negotiations on favorable terms. Numerous factors led to company restraint in removing settlers, including the costs and uncertainties of new trials, fears of facing a hostile jury trial, the production of unexpected documentary evidence by Hispanics in court, and the fact that the company was to some degree dependent upon settler cooperation. The company had to avoid active Hispano resistance and the bad press this would bring while attempting to attract often skeptical Eastern and European investors and settlers to the grant; and also hoped Hispanics would be a docile source of inexpensive labor for its planned extractive industries. Walking the tight rope of trying to eliminate local claims while placating Hispanics and ultimately creating a cheap labor force, the company’s hands were tied (Hicks 2006: 315-9).

U.S. Freehold or its successors were never truly successful on the grant. Hispano claims persisted, and Hispanics re-asserted control and use of resources during times when the company was unable to keep them out. For Hicks (2006: 318), “two distinct cultures of property and landscape remained in a state of tension.” The land companies and Hispanic smallholders did coexist uneasily on the grant; yet, their struggles over resource access and use helped to produce the effect of “two distinct cultures of property.” Many Hispanics would come to participate in and benefit from new iterations of private property, yet struggles against the land companies also helped to define Hispano identity and the communalism of the land grant against such iterations – just as Anglos like Gilpin positioned Hispanics as part of an isolated and essentialized Mexican race.21

Similarly, the effect of private property was iteratively produced through struggles to enclose the commons and exclude Hispanics. Consistent success in the courts consolidated

---

21 I more fully develop this argument about the relational emergence of Hispano and Anglo in Chapter 2.
legal titles for the land companies, and by 1940 many Hispanos could show no legal title for lands they claimed to own (Hicks 2006: 317-8). Legal decisions consolidated company control over land and water rights, reduced the size of the commons available for access and use by Hispanos, and left many with rights to use, but not own, large portions of grant land through grazing easements allocated by the company (Mondragon-Valdez 2006: 140). Market-based relations, debt, patronage structures, and class stratification among Hispanos all increased during the tenure of the land companies (Brayer 1949). Until Taylor’s arrival in 1960, the Sangre de Cristo grant was characterized by this uneasy impasse. Private property remained an uncertain achievement, iterated again and again by the actions of courts, company officials, and even Hispanos themselves.

**Sovereign boundaries**

First used as a tool by the land companies to dispossess Hispanos, private property marginalized land grant practices, therefore containing Spanish and Mexican law and custom as sources of authority. In this sense, private property was essential to achieving U.S. sovereignty in the region through the incremental elimination of land grant practices and the alternative sovereign authorities they gained legitimacy from. The fact that such land grant practices never truly disappeared, however, points not only to the transversality of the U.S. Southwest, but to the continued work that must be done to iterate private property and U.S. sovereign authority. Hispanos often ignored or refused to abide by court decisions or company edicts declaring that they could not use La Sierra and continued to use the commons, often out of necessity (Hicks 2006: 310; Mondragon-Valdez 2006: 142). Hispanos also engaged in acts of vandalism and property damage by cutting fences; evading ranch
managers and roadblocks; trespassing to graze, cut wood, hunt, and fish; and destroying signage (Mondragon-Valdez 2006: 143).

The mere presence of a different set of boundary drawing practices and sovereign stories inhibited company plans. The settlement patterns of Hispanos were awkward for U.S. Freehold because of both the length of the vara strips and the ambiguities surrounding communal control of the uplands. These features simply did not fit the boundary drawing practices of the company and the spatialities of private property. Not only did the long, thin vara strips disrupt the imposition of a gridded pattern of property, continued use of common lands flew in the face of notions of property based on exclusive private ownership (Hicks 2006: 302). While subsistence was increasingly limited through fragmentation of the commons (Gonzales 2003: 322), Hispano communal practices persisted and continued to disrupt sovereign boundary drawing and efforts at containment.

The Hispano “squatters” enacted different iterations of property, sovereign stories, and sets of boundaries, by continuing to use La Sierra as a commons whenever it was possible to do so and ordering day-to-day life through cooperative institutions to govern agricultural, grazing, and other subsistence-based practices. These practices drew from and reasserted the spatialities and sovereign authority of the Sangre de Cristo land grant through the Beaubien Document and Treaty of Guadalupe Hidalgo. “Private property,” then, was something that had to be worked at, continually, and the land companies never fully succeeded. When Taylor arrived in 1960 he found an area still governed by heterogeneous iterations of property and sovereignty. In response, Taylor enacted a new series of iterations that attempted to foreclose land grant communalism, shore up private property, and end the uneasy coexistence of multiple iterations of property on the grant once and for all.
Jack Taylor bought La Sierra to log it, and did so on and off for his entire tenure (Carlos Mora 2004a; Frazier 2004c). “I flew over the Rocky Mountains and saw all this timber,” he was quoted as saying in a North Carolina paper, “So I just decided, I bet I can buy some of it cheap. So I went out there and sure enough, I found this tract and bought it” (“Taylor Expresses” 1979). At just under $500,000 for 77,000 acres – or about $6.50 per acre – Taylor found his cheap price thanks to the “cloud” on the title that specified local access rights (“Taylor Deed” 1961; Trillin 1976). Taylor immediately worked to claim exclusive ownership of the land and exclude Hispano claims to access and use, but could not have anticipated the resurgent “land war” that followed, as it was ubiquitously referred to by local papers. Taylor hired armed guards and began barricading roads, fencing land with barbed wire, issuing fines to trespassers (Hispano, Anglo, or otherwise), seizing the property and gathered firewood of those he caught, confiscating cattle, and even shooting horses with riders on top of them (Golten 2005: 466, fn30; Mondragon-Valdez 2006: 155, 171). Treating Hispanics with “blatant racism and frequent violence” and infamously known “for his brutal treatment of those he found on the property” (Frazier 2003), Taylor would mobilize physical boundaries including fences, roadblocks, and violence; natural boundaries through alteration of hydrological patterns; and discursive boundaries that drew from and reinforced racialized tropes.

As with all previous deeds to the land, Taylor’s title included language stipulating that the tract was “subject to the claims of the local people” (“Taylor Deed” 1961), and within months of purchase, Taylor filed a claim in U.S. District Court under the Torrens system to clear his title of all competing claims (Golten 2005: 466). The Torrens system has a colonial history. Begun in Australia in the middle 19th century, the registration method is designed to
clear overlapping claims to titles by settling all adverse claims in a single proceeding and has been used to dispossess original claimants to land in other settler colony contexts, including Hawai‘i, New Zealand, and Canada (Golten 2005: 466, fn31; Montoya 2002: 213). Under Torrens, a landowner could petition the court to have all claims to a particular property erased. The landowner would notify all claimants, and after a hearing the court could dismiss rival claims to register the title as cleared (Montoya 2002: 213). As Montoya (2002: 213) puts it, the procedure “had the effect of rewriting the legal history of a particular parcel of land,” as all potential claimants, “some with complex usufructuary interests in the land, were erased, and the title vested solely in the landowner who petitioned the court.” The Colorado State Legislature enacted the law in 1903 and updated it in 1953 because, Montoya (2002: 213) suggests, it “felt that there was enough threat from unclear land titles as a result of Mexican land grants that” the law was necessary “to help clear those parcels of prior property rights.”

Taylor took full advantage of the law, having previously used the Torrens procedure to clear title to disputed land in North Carolina (Mondragon-Valdez 2006: 157). With his use of the Torrens Title Registration System, private property would again function as a tactic of enclosure and exclusion. Taylor filed his claim in 1960 to materialize La Sierra as his private property, fee simple absolute. The Land Rights Council (LRC) alleged that “out of over 1,000 property owners in the County in 1960 only 103 defendants were named” in the Torrens action, so that “90 percent of the people [were] excluded” (“Land” 1981). Spanish speakers in general were excluded, as Taylor’s team published notices in an English

---

23 I discuss the sovereign effects and legal implications of Taylor’s Torrens action more fully in Chapter 2. I also discuss that action here because of the ways in which the Torrens procedure came to authorize the violent enclosure of resources under the “principle” of private property as fee simple absolute.
24 Altogether, 112 defendants eventually challenged Taylor’s Torrens action, while an additional 369 were named by Taylor but did not respond. Rael v. Taylor 876 P.2d 1210, 1216 (Colo. 1994).
newspaper that was not widely circulated in San Luis, and the case was plagued by procedural and due process issues (Mondragon-Valdez 2006: 157-61). Nevertheless, Taylor was awarded a clear title in 1967 (Montoya 2002: 213).

The Torrens procedure served to simultaneously iterate private property while producing sovereign effects. Numerous documents were rejected in the case because they did not meet the standards of Anglo-American property law, despite the fact that Beaubien and the settlers were acting according to the assumptions of a different legal system. In addition to documents found to be “faulty,” “ambiguous,” “unauthenticated,” or “irrelevant” – even as Taylor’s flawed property abstract that excluded Gilpin’s letter of commitment to Hispanos was deemed admissible (Mondragon-Valdez 2006: 162-4) – the Beaubien Document was rejected as a source of rights because it did not contain the correct language required under U.S. common law (Golten 2005: 468).

By holding documents that had originated under Mexican law and custom to the standards of Anglo property law, the court was circumscribing other sources of authority at the same time it dispossessed Hispano claimants of resource access. The court drew on *Salazar* to reject Mexican land grant law and Spanish and Mexican traditions of communal use, sidestepping both the Beaubien Document that granted settlers rights and the Treaty of Guadalupe Hidalgo (Mondragon-Valdez 2006: 169). Meanwhile, from the bench, Judge Hatfield Chilson echoed his predecessor Chas Holbrook by allegedly claiming “to bring the Mexicans into the 20th century” by finally ending the archaic traditions of communalism in favor of private property (Land Rights Council 1980: 16). Private property here is clearly tied to modernity and progress, while communalism represented the arbitrary and backward. Chilson’s remark is depicted in a 1979 cartoon in *Tierra y Libertad*, a radical newspaper dedicated to land and resource struggles of marginalized communities in San Luis and
elsewhere, in which the scales of justice in U.S. courts are insurmountably tipped against Native and Hispano communities.25

Yet Chilson’s iterations of sovereign power were not sufficient to fully produce private property and sovereign authority, and Taylor, authorized by the principle of private property, continued to work at this task. “There’s absolutely no basis in fact for [Hispano] claims that they have rights to my land – it’s all spelled out in the court ruling,” Taylor said. “In a nutshell, the court said those people never had any claim to my land” (Wilson 1974). Taylor immediately fenced his property and barricaded incoming roads, even claiming a county road as his own (“Taylor Deed” 1961; Wilson 1974). When necessary, Taylor violently policed the boundaries of private property, assuming the role of sovereign himself.

The most notorious enactment of violence occurred on Thanksgiving Day 1961, when two of Taylor’s armed ranch guards found three young Hispano men on his property. Taylor claimed the men had set fire to a bulldozer and logging trailer, while the men said they were simply searching for a lost cow. Neither side disputed what happened next: the men were beaten, tied up, and forced to walk roughly five miles to Taylor, who brutally beat them before cleaning them up and taking them to the county sheriff to demand their arrest. The sheriff, however, arrested Taylor and his men instead, sending the Hispano men to receive emergency medical care and keeping Taylor jailed overnight to prevent his murder by enraged local residents (Holliger 1961; Steiner 1961). Taylor and his guards were eventually

25 This illustration also raises questions of the relationships between Native and Hispano communities: it depicts Crazy Horse welcoming Judge Hatfield Chilson to the twenty-first century, in which Chilson has not successfully broken the links between Hispano and Native communities and between these communities and land. These bonds are represented by Crazy Horse holding a “circle” labeled with the phrase “unity,” with a Hispano and the phrase “tierra y libertad” in the background. Both the Hispano figure and Crazy Horse are connected to the phrase “tierra y libertad” in a way that implies shared speech, while the entire right half of the image is connected in a dotted (not yet actualized) circle that bifurcates the figure labeled “U.S. Courts.” The figure has an open eye within this circle, but a closed eye on Chilson’s side of the image, suggesting a blindness to justice. Chilson sits immediately above a Hispano with head down, huddled next to a cactus (suggesting ties to Mexico) in opposition to the top right where the Hispano has arms outstretched. As I discuss in Chapter 7, the Land Rights Council sought to cultivate alliances with Native and many other groups as part of its organizing strategies beginning in the late 1970s, through analyses of shared experiences of colonization and land dispossession.
found guilty of assault and battery and fined $300 each ("Jack Taylor" 1980), but Taylor defended his actions as sovereign, saying he and his men had no choice but to use violence. In court testimony, Taylor was quoted as saying to his men, “You should have killed them, not brought them back here” ("Jack Taylor" 1980).

The operation of the law was directly linked to race for Taylor, who claimed he was a victim of “reverse discrimination” ("Taylor Asks" 1961) and “a Chicano power movement” ("Taylor Expresses" 1979). Immediately after the Thanksgiving violence, Taylor told a local paper that his life and property were under attack and the law refused to protect him. “Nobody will catch them unless we catch them. They could shoot me tomorrow,” he argued, “and no one would be caught or punished because the law down here wouldn’t try” (Steiner 1961). He later told a North Carolina paper that “(a) jury will convict us [Anglos], on anything, and will not convict the other crowd [Hispanos]. So you have a complete absence, I don’t mean partly, but a complete absence of any court justice” ("Taylor Expresses" 1979).

But Taylor was not simply victim of unfair treatment, he also believed himself to represent a superior race. The imbrications of sovereign power and race were directly visible in Taylor’s actions, as he took it upon himself to violently iterate sovereign authority over property and Hispano bodies, given legitimacy by legal inscriptions of property as well as discourses of racial superiority. Taylor reiterated essentialized notions of race, with a difference. While Gilpin and the land companies had relied on environmentally determinist notions of racial-environmental harmony and the gradual and inevitable, if not peaceful, supplanting of one static, uncivilized culture by another of progress and industrious virtue, Taylor’s racism, by contrast, was deeply entangled with white supremacy and notions of immutable racial conflict.
That’s what the Anti-Anglos thing is, it’s an inferiority complex. They know they’re not equal, mentally or physically, to a white man and that’s why they stick together so. Damn Mexicans, you get in a fight with a Mexican, buddy, and every Mexican [that] comes down that street is going to help him (“Taylor Expresses” 1979).

Taylor’s perceived difficulties can at least partly be attributed to the transversality of the region: most of its inhabitants continued to tell very different sovereign stories, and U.S. sovereign authority and private property rights were uncertain achievements in San Luis. Instead, Taylor appealed to sovereign power outside of San Luis, asking the Governor of Colorado to send troops to protect him (a request that was denied; “Taylor Asks” 1962), requesting a probe into violations of his civil rights by the U.S. Attorney and Justice Department (“Taylor Asks” 1961), successfully moving his Torrens action from San Luis to Denver, and more broadly, winning virtually every case he brought or defended in federal courts (Golten 2005).

But in San Luis, Taylor found an area at least partially governed by other sources of authority, and his iterations of sovereign power were contested by very different practices. Such other sovereign authorities were even iterated from within local state offices. One Costilla County Sheriff in the early 1970s responded to Taylor’s complaints of injustice and reverse discrimination by saying, “I respect the law – I’m in it. But the people deserve to have their rights explained and protected, too.” He continued by invoking alternative sovereign stories in his appeal to justice:

The Treaty of Gaudalupe Hidalgo that ended the Mexican-American War said the U.S. had to protect the rights of the people in the land given up by Mexico. That is also law, but it has never been enforced. … Taylor is a thorn in this community. … The small farmers can’t make it anymore without hunting and fishing and grazing on those lands (Wilson 1974).
The sheriff reiterated the sovereign spaces of the San Luis Valley as transversal, authorizing the spatial and resource use practices of Hispanics through international treaty law – but also through more quotidian authorities grounded in community and livelihood.

The sheriff did not simply invoke other sources of authority, however; he acted on them. In response to barricades erected by Taylor on what was considered a county road, in August 1974 the sheriff led a group of Hispanics in dismantling the barricades. Parts of the county government were also enrolled in this other sovereign story: “The county commissioners learned of the [barricades] and came to me for help in retaking control of the county roads,” explained the sheriff. “So I deputized six to 10 specials and went and tore the barricades down. The commissioners went, too, and so did many citizens of Costilla County” (Wilson 1974). Shortly after, Taylor was shot in the ankle while he slept. True to Taylor’s prediction, no one has ever been charged in the shooting, though some accounts implicate a disgruntled group of Anglo hunters from Wyoming rather than local Hispanics (Mondragon-Valdez 2006: 182-4).

Taylor left San Luis for good after the shooting, but continued to log La Sierra for decades. Logging was a particularly acute threat to Hispano farmers, because of the gravity-fed acequia irrigation system that supports agriculture in the San Luis Valley. La Sierra is the top of the watershed for the Culebra River and its tributaries; these streams provide water feeding the acequias, rendering the commons important in terms of not only access to resources but also the stability of the watershed (Hicks and Peña 2003; Montoya 2000: 122). The acequia system depends upon a slow and steady flow of water from La Sierra, but logging alters the hydrological system and disrupts this flow by reducing watershed capacity to capture and hold water. It also increases soil erosion and sedimentation, which subsequently clogs the acequia channels (Mondragon-Valdez 2006: 188-9). “Every time they
cut a tree, more snow is exposed to the sun,” explained local acequia farmer Joe Gallegos at the height of Taylor’s logging in the mid-1990s. “We know [water] will come down faster. We don’t need a scientist to tell us that” (Brooke 1997).

Taylor’s logging was a threat to acequia agriculture and, therefore, to the survival of the San Luis community itself. Logging constituted a powerful instance of boundary drawing, with the power to erase acequia-based practices of community and livelihood. Communally-oriented practices were again circumscribed by a new type of sovereign boundary drawing: to log La Sierra, Taylor had relied on a legal mechanism with a colonial history to cover his own practices of violence and displacement – the Torrens procedure helped rewrite a complex legal history to produce the universal of private property rights in the San Luis Valley, enabling Taylor to do what he wished with the land regardless of its consequences. The abstract appeared to arrive from elsewhere, covering over its particular origins in seizure and dispossession. Again, however, these boundaries were sites of contestation as Hispano activists formed a surprising coalition with environmental groups to oppose and slow Taylor’s logging (Gonzales 2007; Wilson 1999: 19), contradicting the historically strained relationship between Hispanos and environmentalists (Kosek 2006).

Conclusion

In surveying instances of conflict over the land and resources of the Sangre de Cristo grant from Gilpin to Taylor, this chapter has made three interrelated arguments: first, sovereignty and property are not already-existing “things,” abstract universals or principles that simply extend across an empty landscape, but rather emerge as the effects of iterative and material practices entangled within the competing desires, discourses, and resource use practices of diverse individuals and groups in particular landscapes. I focus on the iterations
of private property on the Sangre de Cristo grant, where Gilpin and his profit-seeking successors — a series of land companies and Jack Taylor — attempted to materialize private property through an array of physical, social, and discursive boundaries in ways that were never entirely successful. Rather, property, as a social relation, remained contested as Hispanics continued to iterate different notions of property, authority, and rights to resources. Second, such iterations of private property were central in the production of U.S. sovereign authority over bodies, land, and resources. Sovereignty is transversal, shot through with multiple histories and competing spatial stories (Glissant 1987; Soguk and Whitehall 1999). In the daily practices of resource use on the Sangre de Cristo grant, Hispanics continued to assert the moral and juridical authority of Mexican law and custom in the form of their communal rights as settlers of and heirs to the Sangre de Cristo Land Grant, guaranteed by the Treaty of Guadalupe Hidalgo, Beaubien Document, or even community rights to livelihood. These diverse sovereign stories collided with private property as a universal principle deployed as a tactic to limit communal access to resources. As the effect of private property as fee simple absolute was iteratively produced the sovereign authority upon which communal resource use rested and reproduced was contained and limited. Third, then, struggles over resources, namely their attempted enclosure via private property, have been central to the production of specific political geographies and sovereign effects.

Yet, these boundary-drawing projects have been unfinished and incomplete, as Hispanics have time and again refused to accede to the demands of private property and U.S. sovereign power. Despite Taylor’s violent enactments, private property as fee simple absolute has not been fully materialized on the Sangre de Cristo grant, nor have the sovereign stories of U.S. colonial power come to fully animate the lives and spatial practices of all of its inhabitants, as I explore in more depth in Part II. Instead, many Hispanics have
continually asserted alternative notions of property and authority grounded in collective rights to the land grant commons, refusing to recognize and accept the enclosure of La Sierra as someone else’s private property. Despite Taylor’s legal victory for private property in 1967 when a federal court awarded him clear title to La Sierra, Hispanos, led by the Land Rights Council, organized and prepared to challenge Taylor’s ownership of the land – and U.S. sovereignty as the sole source of authority over the land and its resources. In 1981, a group of over 100 Hispano plaintiffs and heirs to the Sangre de Cristo Land Grant filed suit against Taylor to reclaim access to the land, claiming rights both as U.S. citizens under American common law and also as land grant heirs guaranteed rights under the sovereignty of Mexico and the Treaty of Guadalupe Hidalgo (Golten 2005). The dual nature and even ambivalence of this claim illustrates the conflicted and partial emergence of sovereign authority: sovereignty over bodies, land, and resources in the San Luis Valley remains transversal. The next chapter analyzes the outcomes and sovereign effects of the LRC’s legal challenge to Taylor and eventual victory in Lobato v. Taylor in 2002, when the Colorado Supreme Court awarded the plaintiffs limited access rights to La Sierra for grazing, firewood, and timber in ways that, as I will illustrate, reiterated U.S. sovereign authority once again.
Chapter 2: Rethinking *Lobato v. Taylor*

It is almost as if, starting from a certain point, every decisive political event were double-sided: the spaces, the liberties, and the rights won by individuals in their conflicts with central powers always simultaneously prepared a tacit but increasing inscription of individuals’ lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves (Agamben 1998: 121).

Introduction: “Taylor must be stopped”

One cold winter day, while combing through the filing cabinets and drawers of archival files at the Land Rights Council office in San Luis, I came across an old newspaper article from 1979. The article was in a yellowing edition of *Tierra y Libertad*, or land and liberty, an old activist newspaper published by the Land Rights Council (LRC) in the early years of their struggle against Jack Taylor to regain access to La Sierra. Inspired by the Civil Rights and Chicano/a movements in the U.S., the paper was a key organizing tool for LRC activists, covering, supporting, and raising local awareness about land struggles not only in southern Colorado and northern New Mexico, but around the world (see Chapter 7). An interview with a small farmer and rancher, Adolpho Lobato, caught my eye. Adolpho, from a few miles up the road in Chama, traces his ancestors to the first settlers on the Sangre de Cristo Grant.

In the article, Adolpho lamented Taylor’s arrival nearly 2 decades before in 1960, and recounted a series of violent actions by Taylor and his staff to forcefully exclude Hispanics from the mountain. “I was just 14-years old when Taylor came to Chama,” Adolpho says in the article. “Up until then, and for as long as I can remember, we went up on the Mountain whenever we needed to, to graze livestock, for hunting and for fishing.” Yet when Taylor came, he “hired gunmen … to forcibly stop people from going on the Mountain. They
would shoot horses out from underneath their riders, and they pistol-whipped Eddie Medina, Lupe Medina, and Tom Rael [on Thanksgiving 1961].” Adolpho described a confrontation that he personally had with Taylor, where Taylor shot at the tires of a truck Adolpho was driving. “We told the sheriff about it,” Adolpho is quoted as saying, “and he said he wouldn’t do anything. We took it to the D.A. in Alamosa, … and he mocked us, and made a joke out of it” (“Taylor Must” 1979). Adolpho, and the article, concluded that “Taylor must be stopped.”

Of course, Taylor eventually was stopped. Adolpho spoke at a time when local Hispano activists were forming the LRC as they prepared to file suit against Taylor to regain access to La Sierra. “We spent that time educating the community about their rights,” co-founder of the LRC Shirley Romero told me, adding that Tierra y Libertad was a key part of that effort. “We had a lot of irons in the fire,” she continued, “we had to re-educate the community, we had to find lawyers… Organizing, raising money, doing research to file the lawsuit. It was a big task.” With a sense of reverence and respect, Shirley spoke of the importance of community elders in the struggle, in particular Apolinar Rael and Juan LaComb, as well as the energy and new perspectives of a younger generation that included herself and her husband, Ray Otero. Ultimately, Shirley said, “We were able to convince over a hundred people to stand in the footsteps of their ancestors who were gone,” and in 1981 the LRC filed suit against Taylor. It would take over twenty years, but at long last Shirley, Adolpho, and many other heirs to the Sangre de Cristo grant saw their struggle and rights to the land vindicated in court.

The Colorado Supreme Court’s 2002 decision in Lobato v. Taylor to return access to La Sierra for grazing, firewood, and timber was seemingly a resounding victory for land grant

heirs in San Luis, reversing iterations of private property, restoring communalism on the
grant, and finally providing some degree of justice for years of forceful exclusion from La
Sierra. Indeed, in the only existing social scientific treatment of the ruling, legal scholar Ryan
Golten (2005: 458-9) calls the decision “astounding,” and “a new approach to interpreting
centuries-old land claims” that provides “a model for recognizing some of the oldest and
most important property rights in the American Southwest.” She continues,

The *Lobato* court’s ability to translate Mexican property interests into the
common law offers hope for heirs of land grantees and settlers with similar
land claims in Colorado and New Mexico, many of whom have lost property
rights during more than a century of land grabs and legal maneuvers (Golten

Yet, now a decade after the ruling, the return of access to communal land has not
been free from struggle and conflict. Over thirty years after the *Tierra y Libertad* article
described above, I first met Adolpho at a Land Rights Council community meeting in June
2011. He was still working to secure his rights, and still encountering problems with the
owners of La Sierra, now two Texas couples who renamed the land Cielo Vista Ranch
(Frazier 2004c). He described to me a recent confrontation with Cielo Vista staff, in which
he claims he was physically assaulted while legally hunting on an adjacent property.
Underscoring the continuities between Taylor’s time and the present with a fiery defiance
and anger, Adolpho told me, “What we were dealing with, with that Jack Taylor… Now it’s
going on the same way.” He continued:

We are still having a hard time with the people they employ up there [as
guards]. They tend to harass us, they tend to beat the hell out of us, pull guns
on us. … They approach us right away, to intimidate us. It’s still going on to
this day. … It keeps going on and on.
I asked Adolpho if he thought the 2002 decision might be changing things for the better. “We’ve gotten somewhere with [the case], and I hope it’s not too late, like they say,” Adolpho said, his voice trailing off. “But for a lot of people, it is too late. My descendants might enjoy something that I never did… But still we go out there, and they still go against the courts, arresting us, and intimidating us, and beating us up. Son of a bitch, we’re tired of that, you know?”

Statements such as these should temper any uncritical celebration of the *Lobato* decision. My intent in this chapter, however, is not to praise or condemn the ruling as hopeful or discouraging, positive or negative. Rather, in this chapter and throughout Part II, I seek to tease out how the ruling has worked to produce effects such as Adolpho’s frustrations through its iterative entanglements of property, law, and sovereign power. In part, I suggest, Adolpho’s experiences stem from the ways in which *Lobato v. Taylor* has worked to reiterate private property and U.S. sovereignty even as access rights to the former land grant commons, La Sierra, were awarded to the plaintiffs. Despite its undoubted significance for the community in San Luis, *Lobato* in part represents a repetition of sovereign boundary drawing most notably in its circumscription of Mexican law and custom, further sedimentation of private property, and concealment of the colonial histories of conflict and dispossession (discussed in the previous chapter) through the production of difference. I develop this argument in the next section in the context of recent debates over the adjudication of land grant rights in U.S. courts before turning more fully to the legal genealogies of *Lobato v. Taylor*.

**Translating land grants and lawsuits**

---

27 Author interview, San Luis, 2011-06-22.
In his widely cited work on the legal histories of land grants in the U.S. Southwest, *Land Grants and Lawsuits in Northern New Mexico*, Malcolm Ebright (1994: 3) writes, “The evidence strongly suggests that U.S. courts and Congress did not fairly meet the obligations assumed by the United States under the Guadalupe Hidalgo treaty.” For Ebright (1994: 3-4), the central reason for such an outcome was that the land grants were established under one legal system and adjudicated by another. The Anglo common law system did not sufficiently take into account important elements of the Hispanic civil law system such as customary law, which drove the legal system in New Mexico when the land grants were made. Hispanic customary law was poorly understood in late nineteenth century New Mexico … [and] [a]s today's lawsuits continue to adjudicate land and water rights often originating in New Mexico’s land grants it is important that New Mexico’s Hispanic legal system be better understood.

For Ebright, the differences between legal systems and the resulting ways in which American courts did not sufficiently understand or take into account Spanish and Mexican law and custom in land grant cases were decisive in large scale land loss among land grant heirs after 1848.

These critiques are extended and sharpened by Maria Montoya (2002) in *Translating Property*, her study of land loss on the Maxwell Land Grant, which straddles the contemporary Colorado-New Mexico border and shares many other similarities with the Sangre de Cristo, its neighbor to the west just over the Sangre de Cristo mountain peaks, including the early involvement of Carlos Beaubien.28 For Montoya (2002: 4), “The failure of the courts over the last century and [a] half to incorporate the grant system into modern American property law suggests that the problem of land grants in the American Southwest

---

28 Montoya (2002: 1-4, 209-16) makes explicit comparisons between the legal situations of the two grants, though at the time of her book’s publication the Colorado Supreme Court had not yet issued its unexpected ruling. See also Montoya (2000).
is largely a problem of translation.” In short, the U.S. legal system, with its focus on private property as fee simple absolute, has been unable to understand or to “translate” the complex, often informal patterns of property and ownership emerging from Spanish and Mexican land grants. Montoya (2002: 4-5) argues that

The Southwest has been, and continues to be, the scene of a collision between land regimes with radically different cultural conceptions of the land’s purpose. The U.S. courts … have wanted property rights to be vested in only one owner and then expressed in clear, specific, and legally complete documents. But the Mexican property system … was rooted in communal, as well as individual, ownership and was often expressed in informal, customary understandings among neighbors and in oral deals between patrons and clients. For the U.S. courts to privilege individual ownership and demand written documents to define such rights was to effectively refuse to enforce Mexican property rights.

This failure of translation, for Montoya, stemmed from the very different conceptions of property within each legal system, but also because American courts lacked the tools to incorporate or recognize claims to property based on the land grant system of tenure – and as American legal instruments began to adjudicate land grant claims after 1848, the results were confusion, one seemingly arbitrary ruling after another, injustice, and vast land loss among Hispanos (Ebright 1987).

Golten, however, asserts that Montoya’s analysis can no longer be considered correct in light of the 2002 Lobato v. Taylor ruling that came down just as Montoya’s book was published. For Golten (2005: 494), at first echoing Montoya’s analysis, while land grant “rights have been routinely denied for over a century because courts have lacked a

29 “[T]he Spanish and Mexican governments did not typically convey title to their subjects in fee simple absolute, conveniently recorded in a warranty deed,” writes Montoya (2002: 173). “Instead, governors granted land with a wide variety of conditions, such as the grantee must perform a variety of services for the crown or republic. … For instance, individual grantees sometimes received their land with the condition that they not sell or mortgage it, a restriction on alienability that, under Anglo-American legal tradition, would be unenforceable.” Montoya argues that these types of complexities and nuances often left American courts paralyzed or unsure of how to adjudicate claims, typically resulting in the denial of any claims that did not easily match the fee simple absolute model.
framework through which to interpret rights grounded in the history, culture, and laws of our antecedent sovereigns,” this analysis no longer holds because Lobato has developed such a framework. “[T]he Lobato decision,” Golten writes (2005: 490), “provides courts with important tools for enforcing land claims with cultural and legal roots in Mexico or Spain.” Largely, these “new tools” allow courts to “[examine] the historical context of land grant claims in cases involving ambiguous historical documents” (Golten 2005: 493), just as Ebright (1994) suggested was necessary. In so doing, “Lobato proved that the common law is flexible enough to recognize these historic claims to crucial resources in the Southwest” (Golten 2005: 493) and “disproves those who argue that U.S. courts are unable to recognize property rights arising under antecedent sovereigns and different systems of law” (Golten 2005: 494).

As alluded to in the opening of this chapter, my analysis shades more towards Montoya than Golten, however I distinguish my argument from both scholars. While Golten fails to adequately consider the implications of the reiteration of U.S. sovereign authority and private property relations through Lobato – iterations that, as I explore below and in Chapter 4, have hidden colonial histories and enabled new types of dislocations and dispossessions via private property – Montoya too easily calls forth a notion of “competing property systems” as somehow already in-tact, coherent, and functioning in isolation. Her analysis remains within the frame set by Ebright (1994: 3), whereby “the land grants were established under one legal system and adjudicated by another.” My analysis instead attempts to track the production of difference: the ways in which the iterative work of the law came to produce notions of individual and collective, private and communal, Anglo and Hispano.30

---

30 As I note in the introduction, Montoya productively breaches the reluctance of scholars of the U.S. West and Southwest to engage postcolonial theory, arguing that these regions “reflected the broader trends of nineteenth-century imperial and colonial endeavors throughout the rest of the world” and should therefore be considered in comparative perspective.
Nevertheless, there is much of value in each analysis. Golten skillfully and carefully traces the precise legal mechanisms through which rights were – and were not – granted to the plaintiffs in *Lobato*, with crucial implications for U.S. sovereignty and the Treaty of Guadalupe Hidalgo, as I explore below. And not only does Montoya presciently recognize the importance of District Court Judge Gaspar Perricone’s decision at trial in 1997 to refuse to consider evidence from land grant law and custom to help interpret a key historic document in the case (Montoya 2002: 3) – a decision that the Colorado Supreme Court overturned, ultimately enabling its ruling in favor of the Hispano plaintiffs by allowing “New Mexico’s Hispanic legal system [to] be better understood” (Ebright 1994: 4) – but more importantly, she articulates the ways in which claims to collective rights to the commons became fundamentally translated into individual rights to private property in a genealogy stretching back to Taylor’s Torrens action in the 1960s (Montoya 2002: 214-6).

Below, I briefly survey two foundational 19th century iterations of U.S. sovereignty vis-à-vis land grants, iterations that have since been repeated in countless land grant cases including *Lobato*. I then turn to close analysis of the *Lobato* chain of cases from its origins in Taylor’s Torrens Action in 1960 through the 1981 lawsuit against Taylor and subsequent decisions, appeals, affirmations, and reversals as *Lobato* worked its way through Colorado courts for over 20 years. Through a detailed analysis of the landmark 2002 decision by the Colorado Supreme Court (*Lobato I*), in which I also reference the clarification and extension of the ruling issued by the same court the following year in 2003 (*Lobato II*), I trace the iterative production of property, sovereignty, and difference through the law.

“within the context of a larger world history and other nineteenth-century case studies of land loss in places such as Hawai‘i, Russia, Africa, and Latin America” (Montoya 2002: 8). Yet, as I argue below, Montoya’s focus on the two competing property systems of America and Mexico fails to harness the theoretical insights of postcolonial work on how metropole and colony, center and periphery, colonizer and colonized emerge relationally (Braun 2002a; McClintock 1995; McEwan and Blunt 2002, Nash 2002).
Central to my analysis is the Colorado Supreme Court’s decision in *Lobato* I to consider historical and contextual evidence to enable it to better understand land grant law and custom – the precise legal strategy called for by Ebright and Montoya and, after *Lobato*, celebrated by Golten. I argue, however, that such an ethnographic turn by the court has not only paved the way for the return of access rights, as Ebright, Montoya, and Golten have all suggested, but it has also hidden colonial histories of dispossession on the Sangre de Cristo grant while enabling the continued iteration of private property and U.S. sovereign authority. Following Édouard Glissant, “to understand” is to grasp that which has been rendered transparent. Yet “the verb to grasp,” Glissant (1997: 191-2) writes, “contains the movement of hands that grab their surroundings and bring them back to themselves. A gesture of enclosure if not appropriation.” Such practices of “understanding,” I argue, are themselves implicated in colonial power. Below, I examine how the enclosures and appropriations of “understanding” can function to enable colonial power, both in terms of the ontological production of difference – the Hispano as *Other* and as *apart* – as well as the continued narration of the same – locating the Other within the sovereign stories of U.S. colonial power.

**Sovereign decisions**

Kevin Bruyneel (2007), in an analysis I draw on here and in Chapter 1, argues that colonial power works in part by containing other sources of authority and locating them in the past. Congress and U.S. courts both systematically circumscribed Mexican law and custom as sources of authority and continued the discursive construction of Hispano bodies and land grant practices as remnants of an archaic past discussed in Chapter 1. This section briefly surveys the legal apparatus set up by Congress to adjudicate land claims in former
Mexican territory and a precedent-setting decision for land grant cases in the 19th century – together, these sovereign decisions have had crucial implications for land grant cases stretching through to the present.

After the Mexican-American War (1846-8), the U.S. government faced the complex and daunting challenge of what to do with the vast land grants in former Mexican territory and the communities living on them. Mexico demanded that the U.S. sign a treaty to protect the rights of Mexican citizens who were set to be incorporated into the U.S. (Valdez and Mondragon-Valdez 1999). However, the final version of what would become known as the Treaty of Guadalupe Hidalgo was imposed by the U.S. rather than negotiated (Ebright 1987: 28). Article 10 of the treaty originally provided explicit protection for land grants, but Congress removed the provision (Ebright 1987: 27; Gonzales 2003: 298). The only language left in the treaty to protect the rights of land grant communities said that “property of every kind now belonging to Mexicans … shall be inviolably respected” (quoted in Ebright 1987: 29). With no clear standard for adjudicating land grants, Congress proceeded in a highly erratic, and often unjust, manner. In all likelihood Congress did not want a clear standard for adjudication, and the U.S. wanted to gain more territory without being limited by Mexican property claims (Ebright 1987: 28; Golten 2005: 459).

Congress set up a confirmation process by creating the office of the Surveyor General of New Mexico to adjudicate titles to land grant land. This process began in 1854 and would continue for a half-century through the work of the Court of Private Land Claims until 1904 (Ebright 1994: 37). Following an earlier process in California where a similar burden of proof was transferred from the government to private individuals, those who lived on or owned land grant lands in Colorado and New Mexico became claimants (instead of property owners) who were required to file and defend a claim for title to the land, instead of
the government needing to invalidate an already presumed land grant before appropriating it into the public domain (Ebright 1994: 34). Such a claims process was expensive, time-consuming, and often misunderstood, mistrusted, or dismissed by Hispanics who feared turning over legal documents to the U.S. government or already felt they were protected by the Treaty of Guadalupe Hidalgo. Corruption, deceit, and speculation by well-connected individuals (many involved with the notorious Santa Fe ring) also contributed greatly to land loss among Hispanics (Ebright 1994: 37-45). The confirmation process initiated an understaffed and underfunded Congressional apparatus with no judicial oversight that moved slowly, applied conflicting and sometimes unjust standards, and created significant uncertainties. Taken as a whole, the system functioned to transfer massive amounts of land from former Mexican citizens to the U.S. government, U.S. corporations, and Anglo-Americans (Ebright 1987, 1994; Gómez 2007: 123; Gonzales 2003).

Many land grants were simply not confirmed: according to Ebright (1994: 37), only 24% of all land claimed (by acreage) was confirmed in New Mexico, with the rest passing into the public domain of the United States. The Sangre de Cristo grant, however, was among the first major Mexican land grants to be successfully confirmed by Congress, in 1860, at which point Carlos Beaubien became sole legal owner of the grant. As he had promised, Beaubien subsequently began to provide written deeds to many Hispano settlers on the grant (Stoller 1980). Yet even when the confirmation process “worked” and claimants ultimately received legal title to grant land, as with the Sangre de Cristo, these lands were still often lost by Hispanics because of the change in property regimes. Through the legal confirmation process, land became an individualized, alienable commodity – the entirety of

31 At around 1 million acres, and considering Beaubien’s involvement in the neighboring 1.7m acre Maxwell grant, the Sangre de Cristo grant would have been illegal under Mexican legal standards that limited how much land a single individual could own. Despite the instructions to the surveyor general to follow those standards, which was never done consistently, the grant (along with the Maxwell) was confirmed. The confirmation, while clearly violating Mexican law, was upheld by the U.S. Supreme Court in the Tameling decision discussed below (Ebright 1994: 39-40; Stoller 1980: 24-5).
the Sangre de Cristo grant was now owned by Beaubien to do with as he pleased (and, as discussed in Chapter 1, Beaubien sold the grant to William Gilpin, initiating the struggles over the grant’s land and resources that continue today). While Beaubien owned the grant under Mexican law, his ownership came with conditions that are alien to the fee simple absolute model, such as the requirement that he settle the land, which in turn required providing access to communal land in perpetuity (Montoya 2002: 175). Even though it was confirmed, then, the Sangre de Cristo was not immune from the broader effects of land loss stemming from the confirmation process because the entire grant, including its common land, legally became private property through the sovereign act of Congress.  

The confirmation process was only the beginning of the loss of land grant land through legal mechanisms. The most important precedent-setting court decision for the Sangre de Cristo and many other land grants came in 1876 with Tameling v. U.S. Freehold & Emigration Co, where the U.S. Supreme Court held that rights to land and resources on the Sangre de Cristo grant were not created before 1848, the year concluding the Mexican-American War, rejecting the position that rights pre-existing U.S. sovereignty could be enforced under the Treaty of Guadalupe Hidalgo. This location of Mexican law and custom in the past has since been repeated time and again, as treaty rights have been “uniformly rejected in land grant cases for over 100 years under Tameling” (Golten 2005:

32 Of course, Beaubien took steps to legally memorialize his commitments to settlers (e.g. the Beaubien Document and his agreement with Gilpin to honor Hispano rights), complicating the absolute nature of fee simple and prompting countless individuals and courts to attempt to produce the land as such, as I describe throughout Part I.

33 It is possible that Tameling and USFLEC colluded to bring the suit in order to help eliminate the Hispano claims that were inhibiting the plans of USFLEC on the Costilla Estate. Golten (2005: 470-1, fn52) describes the details of the case as follows: “In Tameling, the U.S. Freehold Land & Emigration Company, then owners of the southern part of the Sangre de Cristo Grant [the Costilla Estate], had filed an ejectment suit against John Tameling, who had purchased 160 acres allegedly located on the same land. Tameling argued that when it issued the Grant, the Mexican government was limited by the 1824 Mexican Colonization Law to granting each grantee 11 square leagues, and therefore the two grantees could only have owned 22 square leagues, or 96,000 acres, rather than the roughly one million acres shown on the patent. Similarly, he argued that Congress could not legally have confirmed the Grant for more than what was created under Mexican law, which the United States was obligated to recognize under the Treaty of Guadalupe Hidalgo. The Supreme Court disagreed. It held that, even if Congress had confirmed more land than the Sangre de Cristo grantees were allowed to receive under Mexican law, this patent should be construed as a de novo grant issued by the United States and thus inherently valid” (in-text citations of Tameling removed).
The court used novel legal reasoning to argue that the confirmation of land grants by Congress functioned as a grant *de novo*. That is, Congress was not confirming grants made by other sources of sovereign authority, as it thought it had done, but was rather issuing *new* grants. Therefore, no court could look “behind” this sovereign action of Congress to find rights to property (Ebright 1987: 36; Golten 2005: 470-2).

*Tameling* also began the marginalization of land grant custom by U.S. courts: the legal text that became the principal source of information for the U.S. Supreme Court on Spanish and Mexican law ignores laws concerning custom, an oversight which has had the effect of facilitating land loss because so much land grant practice rested on custom rather than formal legalities (Ebright 1987: 45). Under Spanish and Mexican custom, for example, land grant settlers often simply settled on grant land with the expectation that the land would become theirs. Possession, use, and contribution to the communal life of the grant was far more important than any legal document (Ebright 1987: 35; Hicks 2006) – hence the arguments of Ebright and Montoya on the importance of U.S. courts understanding the land grant system.

The *Tameling* decision came despite language in Congress’s 1860 Act confirming the Sangre de Cristo grant holding that the confirmation “shall not affect the adverse rights of any person or persons whosoever.” Yet since *Tameling*, courts in countless cases for many different land grants have consistently held that they are precluded from determining the existence of rights stemming from before congressional confirmation (Golten 2005: 470, fn52), contributing to the land loss of Hispanos and boundary drawing practices of U.S. sovereignty. In effect, *Tameling* has enabled U.S. courts to completely ignore the Treaty of Gaudalupe Hidalgo.
Individual due process From Torrens…

As discussed in the previous chapter, Jack Taylor bought the Mountain Tract in 1960 and a few months later filed to clear his ownership of the property under Colorado’s 1953 Torrens Title Registration Act.34 Invoking diversity jurisdiction because of his status as a resident of North Carolina, Taylor was able to file this state law procedure in federal court in Denver.35 Taylor needed to carry out this quiet title action because the deed to the 77,000 acre Mountain Tract, which along with the adjacent 2,500 acre Salazar Estate that Taylor subsequently purchased would together become known as the Taylor Ranch,36 read as follows:

All of the land hereby conveyed being subject to rights of way of record and all rights of way heretofore located and now maintained and used on, through, over, and across the same; and also subject to claims of the local people by prescription or otherwise to right to pasture, wood, and lumber and so-called settlements [sic] rights in, to and upon said land.37

The case took five years for the District Court to decide. A total of 472 defendants were eventually named in the suit, with all other interested parties being served by publication. Of the named defendants, 369 did not file an answer to Taylor’s interrogatory and were dismissed by default judgment in July 1962. The remaining 112 defendants were largely, if not wholly, organized under the auspices of La Asociación de los Derechos Civicos (The Association for Civic Rights), a grassroots organization originally formed in 1959 by Hispano land grant heirs in San Luis to protest the pending sale of the Mountain Tract to

34 My discussion of Taylor’s Torrens Action here is based on Rael v. Taylor 876 P.2d 1210 (Colo. 1994).
36 In 1973 Taylor had purchased the Salazar Estate, for which “Taylor’s predecessor in title … had also filed a Torrens title action in 1960” to bar rights to the land (Lobato v. Taylor 71 P.3d 938, 944 [Colo. 2002]). Both tracts were at issue in the legal case by the time of the 1997 proceedings in district court discussed below.
Taylor (Gonzales 2007: 80). The heirs argued that they had rights to the land both as land grant heirs under the Treaty of Guadalupe Hidalgo and as U.S. citizens, just as the Land Rights Council would do two decades later.

In 1963 Taylor filed a motion for summary judgment against all of the defendants, arguing that “he is the owner of the fee simple absolute title” of the land.38 Crucially, “The trial court denied [Taylor’s] motion with respect to the claims asserted by the defendants for individual rights by prescription, but granted the motion with respect to the defendants’ claims of common usufructuary rights in the Mountain Tract.”39 In other words, the court rejected claims for collective rights under Mexican law and custom, but proceeded to consider individual claims to Taylor’s property. After a trial the court denied all claims of the defendants and granted Taylor a clear title in fee simple absolute. For the first time in its history, language stipulating the “claims of the local people” was removed from the deed to the Mountain Tract.40

The decision was appealed but upheld by the Tenth Circuit Court of Appeals, which held that, under Tameling, the 1860 Congressional confirmation of Beaubien’s grant eliminated “any conflicting rights prior to the confirmatory Act of 1860 which might have arisen or existed by reason of the original grant from Mexico, considered in light of Mexican law and the Treaty of Guadalupe-Hidalgo.”41 Through the principle of private property as fee simple absolute, the ruling constituted a reiteration of U.S. sovereign authority in its circumscription of Mexican law and custom.

38 Quoted in Rael v. Taylor, 876 P.2d 1210, 1216 (Colo. 1994).
40 The attorney for la Asociación, Elihu Romero, is now widely believed to have been incompetent (Charlie Jaquez, Author Interview, San Luis, 2010-04-12). Gonzales (2007: 85) writes that Romero was “a young, relatively inexperienced, and often tardy attorney … [who] would prove to be an incompetent ally … [H]e bungled the case, and la Asociación fired him.”
41 Sanchez v. Taylor, 377 F.2d 733, 737 (10th Cir. 1967).
...to *Rael v. Taylor*

A new generation of activists in San Luis would take up the struggle against Taylor, organizing and preparing a legal case for years before filing suit in *Rael v. Taylor* in Costilla County District Court on March 2, 1981.\(^{42}\) Indicative of the transversality of sovereign power in the San Luis Valley, this filing locates rights to land within the sovereign authority of, first, Mexico and second, by way of the State of Colorado, the United States. The suit argues that the plaintiffs “were and are heirs or successors in interest of the original settlers of the Sangre de Cristo Grant at or near the towns of San Luis, San Pablo, San Acacio, Chama, San Francisco, and La Valle, territory of New Mexico, Republic of Mexico, now within the County of Costilla, State of Colorado.”\(^{43}\) The suit made three claims: that La Sierra was a “community land grant under the laws of Mexico and Spain, the custom of the people of the area, by grant and dedication express and implied, and as guaranteed to the plaintiffs under the Treaty of Guadalupe Hidalgo in perpetuity”\(^{44}\) or in other words, that rights to the commons were created under Mexican sovereignty and remain valid today; “the 1863 Beaubien Document either memorialized or created rights to collect timber and firewood, graze, hunt, fish, and recreate on *La Sierra*” (Golten 2005: 469) as either expressly granted or implied rights under U.S. property law; and, finally, that Taylor’s Torrens Action was invalid because of due process violations and the failure to provide proper notice to potential claimants to the Mountain Tract.

Only the third claim was addressed by the court, which saw no reason to proceed to the substantive issues of the other two. In 1985 Taylor filed a motion arguing that, among other things, “the petitioners’ claims were barred by the [doctrine] of res judicata,” which

---

\(^{42}\) *Rael* would briefly become *Espinoza v. Taylor* in the District Court proceedings of 1997 before finally becoming *Lobato v. Taylor* on appeal, which the case remains today.

\(^{43}\) Quoted in *Rael v. Taylor*, 876 P.2d 1210, 1217 (Colo. 1994).

\(^{44}\) Quoted in *Rael v. Taylor*, 876 P.2d 1210, 1217 (Colo. 1994).
roughly means that the same case cannot be tried twice. In other words, the federal courts had already dealt with this matter by quieting Taylor's title in the Torrens procedure. The following year, the court agreed, ruling against the plaintiffs and upholding Taylor's Torrens Action. The decision was appealed and upheld by the Colorado Court of Appeals in 1991. Under the direction of The Land Rights Council the plaintiffs again appealed, this time to the Colorado Supreme Court, which in its 1994 decision wrote,

Because it deemed its resolution of the res judicata issue dispositive, the court of appeals did not address any of the other issues raised by the petitioners in their appeal. … We granted petitioners’ application for certiorari on the following two issues: whether adequate notice was provided in the 1960 Torrens action and whether the court of appeals erred by determining the question of res judicata without first addressing the question of adequate notice.

In other words, the lower courts did not address the first two claims of the plaintiffs, and now the Colorado Supreme Court would not do so either. Instead, the court focused solely on the due process issues surrounding Taylor’s Torrens procedure implicated in the third claim, writing, “While the parties … have advanced vigorous arguments respecting the authenticity and scope of the usufructuary rights claimed by the petitioners, those issues are not before us.”

Instead, the issue before the court was whether or not Taylor had satisfied due process in his Torrens Action – or more specifically, whether the lower courts had determined whether or not Taylor had satisfied due process. The Supreme Court ruled

---

48 The court wrote, “the constitutional guarantees of due process of law provide minimum standards for determining whether … publication notice is sufficient to deprive a person of an alleged property right. The initial question posed by the petitioners in this case is whether Taylor satisfied those constitutional standards in the 1960 Torrens action.” Rael v. Taylor, 876 P.2d 1210, 1222 (Colo. 1994).
with a 4-3 majority that the appeals court, just as the trial court had done, did not properly determine whether or not Taylor’s Torrens Action accorded the plaintiffs their constitutional right to due process before ruling that *res judicata* barred their claims, and additional evidence would need to be gathered at trial before a decision could be reached. The Supreme Court reversed and remanded, asking the district court to determine if Taylor exercised “due” or “reasonable diligence” in his effort to precisely identify “all reasonably ascertainable persons who claim interests in the property and are thus entitled to personal service” as opposed to the service by publication that Taylor had carried out.

Even in this decision – the first significant legal victory for the Hispano occupants of the Sangre de Cristo grant in the 134 years since Congressional confirmation of the grant in 1860 – the sovereign stories of U.S. colonial power rang out loud and clear. Not only did the court continue to ignore the Treaty of Gaudalupe Hidalgo as it couched the legal rights at issue as questions of individual due process and private property rights, but the dissenting justices felt compelled to recite the sovereign iterations of their many predecessors who had worked to ensure the progress and development of the nation through private property. In dissent, Justice Vollack (joined by Chief Justice Roviera and Justice Erickson) wrote,

> I believe that the plaintiffs are barred by res judicata from relitigating the issues of the 1960 case. In my opinion, reopening the question of rights in

---

49 In remanding, the court wrote that the lower courts did “not directly address the petitioners’ argument that publication notice was constitutionally inadequate,” and therefore, “disputes of material fact remain for resolution at the trial level before the issue can be resolved.” *Rael v. Taylor*, 876 P.2d 1210, 1219, 1222 (Colo. 1994). More specifically, at issue was a question of the identification of the plaintiffs, a theme I return to in Chapter 4, and whether “their names or the names of the predecessor in interest were or should have been known to Taylor at the time he filed his application.” *Rael v. Taylor*, 876 P.2d 1210, 1222 (Colo. 1994).

50 *Rael v. Taylor*, 876 P.2d 1210, 1223, 1226 (Colo. 1994). The court wrote, “In Torrens Act proceedings, … notice must be reasonably calculated under all relevant circumstances to ensure that interested parties are made aware of the proceedings. In view of the sharp distinction drawn by the Torrens Act with respect to named defendants who must be served personally and unknown persons who may be served by publication, applicants must act with reasonable diligence to ascertain the names of persons who claim an interest in the property subject to the proceedings. The test of reasonable diligence … an objective test: the conduct a reasonably prudent applicant would undertake under all circumstances known or reasonably discoverable by the applicant at the time the application is filed to ensure that interested parties will be identified and served as named defendants.” *Rael v. Taylor*, 876 P.2d 1210, 1226-7 (Colo. 1994).
property determined over thirty years ago is counter to the public policy of this state because it creates uncertainty in the conclusiveness of quiet title decisions and fails to keep title secure and marketable.\footnote{Rael v. Taylor, 876 P.2d 1210, 1230 (Colo. 1994).}

Questioning or complicating notions of fee simple absolute, these justices reasoned, would “put into question the ownership of a considerable portion of the land in Costilla County” which, regardless of the specific case at hand, could only lead to “chaos and uncertainty” in dealings with land grants: “The majority,” these justices concluded, “does violence to this state’s system of securing title and irreparably harms the marketability of land in this state.”\footnote{Rael v. Taylor, 876 P.2d 1210, 1235-6 (Colo. 1994).}

In sum, from the filing of the lawsuit against Taylor to regain access rights to La Sierra in 1981 to the Colorado Supreme Court’s reversal and remand in 1994, the Colorado courts did not move past procedural issues, the third claim of the plaintiffs that Taylor’s Torrens Action violated constitutional due process rights. Their first two claims – that, first, rights to La Sierra were created for heirs to the Sangre de Cristo Land Grant under the sovereignty of Mexican law and custom and were now guaranteed by the Treaty of Gaudalupe Hidalgo, and second, rights were also created for these plaintiffs under U.S. common law by the express or implied grant of Beaubien in his 1863 covenant to settlers and subsequent language in all deeds to the Mountain Tract – were never considered. But what did occur during these thirteen years of litigation over due process was the narrowing of the legal questions at issue, as the courts came to focus on individual claims to due process rather than collective rights to common property. In remanding, the Colorado Supreme Court directed the lower court to determine whether all the relevant individuals had been correctly identified and served by Taylor in 1960, and if not, to determine which individuals still remained eligible to press claims for rights.
As Montoya argues, this narrowing of rights began with Taylor’s Torrens procedure. As opposed to the community rights asserted by the plaintiffs as heirs to the Sangre de Cristo grant, the Torrens Act deals with the adequate notice that must be given to specific individuals when their individual interests or property rights in land are challenged. Montoya (2002: 215) writes,

the Torrens Act claim … hardly seems to explain the real nature of the plaintiffs’ grievance. The plaintiffs were not merely injured by lack of notice. They were injured by the loss of their communal property rights, an interest that the notice requirements of the Torrens Act would be inadequate to vindicate even if such requirements had been honored by Taylor. … The Torrens Act claim simply cannot protect any conception of communal ownership where the vested right in question belongs to a group of persons and where no single individual is institutionally suited to protect the communal interests. Thus, notice to individuals would be insufficient to protect the community interest… The courts, however, have denied the Hispanics the right to act as a class and work together. Rather, they must individually sue Taylor to retain specific rights that had once belonged to the whole community.

She concludes that “the plaintiffs’ claim against the Torrens Act is an inadequate way to recognize Spanish/Mexican communal property rights – a sort of imperfect translation of such communal rights into terms recognized by the Anglo-American system of individual property rights” (Montoya 2002: 216). Strangely, Montoya finds it “ironic” that only a procedural due process claim kept Hispano claims to the commons alive in the Supreme Court’s decision. She writes, “Ironically, the claim that has worked in the Hispanics’ favor has not been the more esoteric and principled arguments about the nature of communal rights under Mexican grant law or how Mexican land rights were incorporated into the U.S. system under the Treaty of Guadalupe Hidalgo. Rather, a purely procedural and legalistic objection has kept their claim alive” (Montoya 2002: 214).
of the land grant system: the courts have “translated” collective rights into individual ones, simultaneously reiterating U.S. sovereignty over bodies, land, and resources while containing other sources of sovereign authority and locating them in the past. When the courts finally did move beyond procedural issues to the substantive claims of rights to La Sierra, as I explore below, these iterations continued.

**Remand and reiterate**

In 1997 the parties to the case found themselves back where they had started in 1981, in district court. But unlike in the early 1980s, this time the trial court ruled on all three of the plaintiffs’ claims. First, and consistent with the boundary drawing practices and sovereign stories under *Tameling*, the court dismissed the plaintiffs’ first claim of rights created and preserved under the sovereign authority of Mexican law and custom and the Treaty of Guadalupe Hidalgo. Second, the court addressed the due process of Taylor’s Torrens procedure based on the standards laid out by the Colorado Supreme Court in *Rael*. In doing so, the court ruled that only ten of the plaintiffs who had not been personally named in the Torrens Action “had an identifiable interest in the property and could reasonably have been identified and served” by Taylor (Golten 2005: 476, n76). With only ten plaintiffs remaining, and without a hearing, the court then denied the plaintiffs’ class certification, further cementing the case as a question of individual rather than collective rights. With the majority of the plaintiffs now dismissed, the case proceeded in San Luis...

---

55 Of these ten plaintiffs, “The court determined that seven … could pursue their claims regarding the mountain tract and that three … could proceed with their claims regarding the Salazar estate.” *Lobato I* at 944.
56 Tellingly, before the remand to trial court, the plaintiffs were referred to by the Colorado Supreme Court in *Rael* as “successors in interest” to the original settlers of the grant. After the trial court proceedings, the plaintiffs became “successors in title” in *Lobato I* as their potential rights came to be understood as the property rights of individual landowners. The Colorado Supreme Court later wrote (*Lobato I* at 1156 fn3, emphasis added), “the petitioners limited their claims [during their appeal to the appeals court in 2000] to landowners in an area they define as the Culebra River Drainage... At trial, the petitioners identified this specific area of land in conjunction with their efforts to certify a class. The
under the direction of Judge Gaspar Perricone with “an eight-day bench trial in which the plaintiffs presented 22 witnesses, including four experts, and the defense presented one witness” (Golten 2005: 476).

As Perricone had already dismissed the first claim of rights under Mexican law and custom and the Treaty of Guadalupe Hidalgo, the issue at trial was now whether rights existed for these ten plaintiffs through U.S. property law. After the trial, the court ruled in favor of Taylor, holding that Beaubien did not expressly grant or imply rights in his covenant with settlers, the 1863 Beaubien Document, because that document “did not identify the parties to the rights or the locations where the rights should be exercised” precisely enough and “Colorado law did not recognize the implied rights the landowners claimed.” In other words, consistent with the arguments of Ebright (1994) and Montoya (2002), the court was unable to “see” or understand the rights of the plaintiffs within documents that had emerged from within and according to a very different legal context. These documents – primarily the Beaubien Document in this case – were found to fall short of the precise standards and language necessary for conveying or implying rights under U.S. property law. The appeals court, which would uphold the District Court’s rulings in 2000, explained that “the document included neither the ‘Christian and surnames’ of the grantees nor an accurate description of the property to be burdened… [and] because the document does not use the

---

57 Lobato I at 944.

58 In addition to the Beaubien Document, Beaubien made an agreement with Gilpin as a condition of Beaubien’s sale of the land, stating that Gilpin would provide deeds for vara strip lands to those Hispanics that had not yet received them, and that the “settlement rights before then conceded … to the residents of the settlements …shall be confirmed by said William Gilpin as made by him” (Quoted in Lobato I at 943).

59 The appeals court upheld all rulings from the district court except its determination of due process issues, which it felt no need to decide since rights to the land had already been denied on substantive grounds. Lobato v. Taylor, 13 P.3d 821 (Colo. App. 2000).
words, ‘and heirs and assigns’ it does not indicate that Beaubien intended any rights to run with the land” beyond the lives of the original settlers.60

Despite these rulings, during the trial the District Court made several important “findings of fact” that would be central in the Colorado Supreme Court’s ruling in Lobato I, which I discuss in depth below. The court found

that the landowners or their predecessors in title had ‘grazed cattle and sheep, harvested timber, gathered firewood, fished, hunted and recreated on the land of the defendant from the 1800s to the date the land was acquired by the defendant, in 1960.’ The trial court further found that the community referred to Taylor Ranch as ‘open range,’ and that prior to 1960, the landowners ‘were never denied access to the land.’ The court also stated that it did ‘not dispute’ that the settlers could not have survived without use of the mountain area of the grant.61

In sum, the Lobato case did not progress past procedural issues, the plaintiffs’ third claim regarding due process issues in Taylor’s Torrens procedure, for 16 years. Then, at trial in 1997, Tameling barred consideration of rights to the commons under Mexican sovereignty and international treaty law, and claims under U.S. law were denied because Beaubien did not grant rights in a way intelligible to the courts. As Ebright (1994) argues, the courts did not, and in fact could not, understand Mexican law and custom: Judge Perricone refused to consider historical and contextual evidence to help clarify the Beaubien Document, just as other U.S. courts had done time and again in denying Hispano claims to land grant land and reiterating U.S. sovereign authority.

**Sovereign rights in Lobato**

---

60 Lobato I at 945.
61 Quoted in Lobato I at 944.
The Colorado Supreme Court ruling in *Lobato* was unique, surprising, and overturned decades of precedent not only in the *Lobato* chain of cases but, as Golten (2005) points out, in countless land grant cases more broadly. Largely, the case’s lasting impact will likely stem from its intervention in ways that Ebright (1994) and others like Montoya (2002) have long suggested were necessary: the court agreed to consider historical and contextual evidence to help it understand the laws and customs of the land grant system so that it could more accurately interpret the Beaubien Document. In so doing, the court determined that Beaubien had *intended* to transfer rights to Hispano settlers and their heirs, yet had done so imperfectly.

But before it could do so, the court had to dispense with Mexican law and custom and the Treaty of Guadalupe Hidalgo as a *source* of rights. It did so quickly and with little comment, continuing the boundary drawing practices of colonial power by containing these alternative sources of authority and explicitly locating them in the past (Bruyneel 2007). The court upheld the decisions of the lower courts on this first claim based on *Tameling* “whatever rights may have existed at the time of the Treaty of Guadalupe Hidalgo,” wrote Chief Justice Mary Mullarkey in her opinion for the court, “were subsequently extinguished by Congress’s 1860 Act of Confirmation.” Mullarkey was just hedging her bets. For her and the majority, no such rights actually did exist in 1848 because rights were created solely within the sovereign space of the United States:

We agree [with the lower courts] that the landowners cannot claim rights under Mexican law. Their predecessors in title did not settle on the Sangre de Cristo grant until after the land was ceded to the United States and thus their rights developed under United States law. … [B]ecause the settlement of the grant occurred after the land was ceded to the United States, we conclude that Mexican law cannot be a source of the landowners’ claims.62

---

62 *Lobato* I at 946.
Here, the simple “fact” that the grant was not settled “until after the land was ceded to the United States” denies the existence of such rights before U.S. sovereignty. Following Wainwright and Robertson (2003: 202), the Lobato decision achieves effects of power in its production of the territoriality of the nation. The ruling narrates the founding of the United States in ways that erase its transversality – sovereign authority was immediately coextensive with territorial space in 1848 – and arrays the rights of Hispanics along this timeline in such a way as to preclude these rights. The court opens its third opinion on the case in Lobato II by saying that the court is “construing some of the oldest property rights in the state,” locating the rights at issue as both property rights and fully within Colorado. Summarizing the conclusions of Lobato I, in Lobato II the court wrote that the present-day rights of the plaintiffs “were all created at the same time” – after the sovereign territoriality of the U.S. was achieved – “and stem from the actions and intentions of Beaubien.”

The question of when and where the first “settlement” occurred on the grant has been subject to scholarly controversy and uncertainty, and several Hispanics insisted to me during my fieldwork that their ancestors had lived on and used the grant’s resources well before the “official” date as established by the colonial record. Yet, the court relies on this record as settled fact, creating the effect that the territoriality of the sovereign U.S. state was fully achieved before Hispano rights existed – no later than 1848. To paraphrase Wainwright and Robertson (2003: 203-4), the text writes the territory of the U.S. against Hispano claims.

---

63 Lobato v. Taylor, 70 P.3d 1152, 1155 (Colo. 2003), hereafter Lobato II.
64 Lobato II at 1158.
65 One interviewee, for instance, told me that “Our ancestors have used that mountain for 200 years at least. They say this area wasn’t settled until it was the U.S. That’s ridiculous. We were here. Those are their histories, not ours” (Author interview, San Luis, 15 October 2009). Contrasting with the court’s assertions, Hicks and Peña (2003) describe the settlement of the acequia communities in and around San Luis as occurring under and according to the legal regimes of Mexico before later being appropriated within the U.S. system through the formation of the Territory of Colorado in 1861. On the settlement history of the grant see Mondragon-Valdez (2006).
because it does “not show the dispossession and exclusion of [Hispanos] in the space of the state.” Lobato calls forth an “objectively … neutral space that already ‘is’” (Wainwright and Robertson 2003: 204), at the same time it locates Mexican sovereignty in the past.

In ruling in favor of Hispano heirs, then, the court found their rights to emanate fully from within U.S. law in the form of an easement, an established part of common law that allows for the use of someone else’s private property for specified purposes.66 To do so, the court drew on Mexican law and custom as a source of contextual information to historically interpret the rights in question (as opposed to an outright source of those rights): while rights do not stem from Mexican sovereignty, “Mexican land use and property law are highly relevant in this case in ascertaining the intentions of the parties involved.”67 The court agreed with the lower courts that the Beaubien Document did not expressly grant rights to the parties, however, when considering evidence on the nature of the settlement system of land grants, the document clearly intended to grant such rights. Here the court invoked the transversality of sovereignty in the U.S. Southwest that it had just denied and appealed to ideals of justice in explaining this part of its decision:

We are attempting to construe a 150 year-old document written in Spanish by a French Canadian who obtained a conditional grant to an enormous land area under Mexican law and perfected it under American law. Beaubien wrote this document when he was near the end of his adventurous life in an apparent attempt to memorialize commitments he had made to induce families to move hundreds of miles to make homes in the wilderness. It would be the height of arrogance and nothing but a legal fiction for us to claim that we can interpret this document without putting it in its historical context.68

---
66 See Golten (2005) for an in-depth discussion of the types of easements and profits at issue, and how the court re-interpreted the treatment of such rights within the history of the Lobato case to enable its ruling.
67 Lobato I at 946.
68 Lobato I at 947.
Interestingly, while gesturing towards the transversality and cross-cultural connections of the region, the court simultaneously conjures the sovereign myth of Manifest Destiny: that the continent was an *empty wilderness* before its settlement by American citizens, “unsettled, unappropriated, unsocialized nature … an area devoid of civilization, an empty natural space” (Montoya 2002: 5-6). But this iteration appears here with a difference: the migrating “families” are not Anglo-Americans moving westward, but instead Hispanos moving northward. Perhaps such a slippage and its double erasure of Native American populations is enabled by or permissible within the court’s timeline that establishes this frontier settlement as one fully locatable within the United States – and hence these Hispano settler families were acting as U.S. citizens. Or perhaps it is bound up in colonial “desire for a reformed, recognizable Other, as a subject of a difference that is almost the same, but not quite” (Bhabha 1997: 153, emphasis removed). Yet this iteration also does the work of producing Hispanos and their “settlement system” as geographically apart, as I explore below.

Once contextual evidence could be considered, the court drew from a number of sources as evidence of Beaubien’s intent in the Beaubien Document, including his agreement with Gilpin and “other documents associated with the grant,” expert testimony presented at the 1997 trial, the nature of the “settlement system under which Beaubien and the settlers were operating,” and the continued and necessary use of the land by Hispano settlers from the first days of settlement.69 The court used this evidence to determine that the Beaubien Document did in fact refer to Taylor’s land, Beaubien had intended these rights to be permanent and not limited to just the initial settlers, and the Hispano settlers had exercised these rights uninterrupted up until Taylor’s enclosure in 1960:70

---

69 *Lobato* I at 946, 948, 950, 953.  
70 *Lobato* I at 948-9.
The evidence in this case overwhelmingly supports the conclusion that the landowners have implied rights in the Taylor Ranch… [because of] traditional settlement practices, repeated references to settlement rights in documents associated with the Sangre de Cristo grant, the hundred year history of the landowners’ use of the Taylor Ranch, and other evidence of necessity, reliance, and intention.\textsuperscript{71}

The consideration of such contextual evidence enabled something of an ethnographic turn by the court: the Lobato opinion cites books on land grants – including Ebright’s (1994) \textit{Land Grants and Lawsuits} – as well as the testimony of land grant experts to produce an ethnographic and historical narrative of the Hispano settlement and use of Sangre de Cristo grant lands. Within this ethnographic account, I argue, lie two foreclosures that are more subtle in their iterative boundary drawing practices than the explicit containment and dismissal of Mexican law and custom and the Treaty of Guadalupe Hidalgo as sources of rights. A narrative of the continued use of La Sierra by local Hispanics plus the discursive construction of a land grant “settlement system” work together in the decision to isolate the historical practices of Hispanics on the grant from colonial contexts (even as these practices are located fully within the sovereign space of the U.S.) and to hide the colonial histories that are constitutive of land loss. As the court came to “understand” Hispanics and their spatial practices, I argue, its ethnographic turn constituted the simultaneous production of the difference of Hispano Others and the sameness of U.S. sovereign stories. While the ethnographic turn of the court holds potential to be a significant legacy of the case in terms of making possible the consideration of a greater understanding of land grant practices, Lobato’s ethnography remains haunted by the sovereign stories of U.S. colonial power.

\textbf{Ethnographic foreclosures I: “for over one hundred years”}

\textsuperscript{71} Lobato I at 950.
The central element of the court’s narrative is an assertion of the continued, uninterrupted use of La Sierra by Hispano grant heirs since the time of settlement. This evidence of use was mobilized to justify multiple types of easements under contemporary U.S. property law. According to the court, these Hispano settlers “grazed cattle and sheep, harvested timber, gathered firewood, fished, hunted and recreated on the land of the defendant [Taylor] from the 1800s to the date that the land was acquired by the defendant, in 1960.” Referencing the trial court’s “findings of fact,” the Lobato decision continues:

the community referred to Taylor Ranch as ‘open range,’ and … prior to 1960, the landowners ‘were never denied access to the land.’ The court also stated that it did ‘not dispute’ that the settlers could not have survived without use of the mountain area of the grant.

The 2003 clarification in Lobato II puts these findings more succinctly: “access rights had been granted to the original settlers in Costilla County and had been utilized for over one hundred years. In 1960, Jack Taylor purchased the Taylor Ranch and forcibly excluded landowners by fencing the land.”

“(F)or over one hundred years,” Hispano settlers used La Sierra without interruption; indeed, they “could not have survived without” doing so. This narrative was important, though not imperative, in the court’s decision to grant an easement. While not necessary for deriving the rights of Hispanics, however, this description does a tremendous

---

72 As matters secondary to the Beaubien Document, questions of use were addressed in the lower courts but found to be insufficiently adverse. Lobato I at 944.
73 Lobato I at 944.
74 Lobato I at 944.
75 Lobato II at 1157.
76 The finding that settlers had continuously used La Sierra was one of multiple reasons that the court gave to justify its ruling in favor of easements, including the interests that would arise in the “settlement system” operating at the time (see below); the language guaranteeing rights in Taylor’s deed to the property; references to settlement rights in various documents, including the Beaubien Document and Gilpin agreement; and the most significant evidence that the resources on La Sierra were necessary for survival and could only be found on that land. For all of these reasons, the court argued that a preponderance of evidence “overwhelmingly supports … implied rights.” Lobato I at 950. In its 2003 ruling, the court maintained that the rights awarded to grant heirs “all … stem from the actions and intentions of Beaubien.” Lobato II at 1158.
amount of work in covering over colonial histories. The simple “finding of fact” that “access
rights … had been utilized for over one hundred years” obfuscates a long history of struggle,
one in which many Hispanics were “denied access” to La Sierra by the land companies,
backed by the courts, that were organized to facilitate the large-scale development of natural
resources and Anglo settlement of Sangre de Cristo grant lands. Sometimes this denial was
temporary, other times permanent. Sometimes denial came through physical enclosure,
sometimes through cycles of restricted access to grazing land that led to rising debt and
increasing migration for wage labor. I first read the words “were never denied access to the
land” with some bewilderment, recalling the histories that show how many Hispanics –
indeed, countless numbers, it is impossible to know the exact number – were “denied
access” in a host of ways: criminalization, dispossession through the courts, theft, enclosure,
speculation, fragmented land, regimes of debt patronage (see Chapter 1). While some
Hispanos have persisted in San Luis, others have long been “denied access” and forced to
leave, as direct and indirect result of the colonial practices of the U.S. conquest of the region.
These practices – and the role of private property in dispossession – are conveniently and
seamlessly foreclosed within the court’s narrative. “(F)or over one hundred years,” contra
the assertions of Lobato, the Sangre de Cristo was a site of intense struggle.

Ethnographic foreclosures II: Systematic settlement

The court’s construction of a land grant “settlement system” or system of
“traditional settlement practices” works in tandem with the narrative of continued use in
Lobato. The court spells out what was done on the grant as follows:

Agriculture and stock raising were the primary means of subsistence for the
settlers on the grants. The settlers supplemented their irrigated plots by use
of commonly accessible community or private grant lands for gather firewood and grazing livestock.  

The opinion also quotes Ira Clark’s *Water in New Mexico* (1987) to support its point that the commons was a necessary incentive for any settler to move to the grant:

> The pattern of land tenure and use was the foundation for these tightly knit communities. Produce from their small irrigated plots supplemented by the use of common lands for gathering firewood and for grazing a few head of livestock furnished the bare necessities for the village families, a lifestyle to which they were accustomed.

The court continues on this theme: “Common areas were not only a typical feature but a necessary incentive for settlement.” Finally, variations of a familiar refrain run throughout: “Expert reports submitted in this case reveal that Beaubien and the original settlers operated under this traditional system.” In the next paragraph we learn that “because the settlers and Beaubien were so familiar with the settlement system, it is highly relevant in ascertaining the parties’ intentions and expectations.”

Ethnographic evidence and descriptions may seem like strange things to find in a court decision. After all, the law is meant to be *abstract* and *universalizing*, distilling complex, messy realities into the necessary principles, rationalities, or truths relevant to a case. The particular case must fit the universality of the law in order for a decision to be reached (Blomley 1994). In his examination of development politics and the Maya in Belize, Joel Wainwright (2008) similarly detects a curious deployment of ethnographic description, this time in an otherwise abstract and technical loan agreement between the Belizean state and an international financial institution. The loan was to fund a development project whose “aim

---

77 *Lobato* I at 949, references removed.
78 Clark 1987: 34, quoted in *Lobato* I at 949.
79 *Lobato* I at 949.
was to reform Maya agricultural practices and accelerate development,” like countless other projects across the globe (ibid.: 69). Wainwright (ibid.: 70) notes how the inclusion of ethnographic description suggests that the project is “grounded in a careful assessment of culture” and may represent “a progressive shift within development thinking” because “local cultural practices will inform the work of this development project.” Likewise, the consideration of ethnographic evidence by the court in *Lobato* suggests that “a careful assessment of culture” has encouragingly informed the decision and, following Ebright (1994: 3), helped the court to better understand “New Mexico’s Hispanic legal system.”

Yet ethnographic accounts produce effects. “We are told that the Maya are very systematic people,” Wainwright (2008: 70) writes. For Wainwright (2008: 88), the discourse on Maya agriculture functions to produce a certain ontological fixity that typifies “the Maya” and “Maya agriculture” in ways that ultimately authorize the continued trusteeship, oversight, and development practices of the colonial state. I suggest that the deployment of ethnographic evidence in *Lobato* has a similar function.

The court’s productions of difference render Beaubien and his Hispano settlers perfectly transparent and graspable by the court, with an ontological fixity that enables them to be viewed in isolation. These actors exist and interact with one another alone in the wilderness, shaped only by the settlement system of an antecedent sovereign and acting according to its dictates. Hispanos are constituted as operating according to a *system*, and this system can be understood according to its own internal logics and rules. It is striking how often – five times in the short passage of text I quoted from above – the court insists that the original Hispano settlers on the grant, along with Beaubien, are products of the “settlement system” that they “operated under.” “Expert reports” in fact “reveal” this to be true. Ethnographies have longed purported to describe culture as a “system” that produces
identifiable cultural patterns, beliefs, interests, actions (Brosius 1999; Katz 1996; Sparke 1996; Stacey 1996; Tuhiwai Smith 2012). The court’s construction of a coherent system – “to which they were accustomed” – works to domesticate the difference of Hispanics and of a different historical moment. As part of an identifiable, understandable, and explainable “system,” the court can easily discern the “intentions and expectations” of Beaubien and the settlers; they were, after all, “so familiar with” this system. Difference here is rendered perfectly transparent and explainable, and the desires, thoughts, and actions of actors in the distant past can be easily discerned.

Like the narrative of continued use, the construction of the settlement system of Hispanics is important to the court’s conclusions, but not essential to it. However, these ethnographic descriptions are critical in producing the effects of colonial power. Ethnographic evidence is deployed by the court to render difference transparent, to domesticate it, make it familiar; but ultimately to make it other. The “settlement system” is different, separate – it is their history, not ours. In short, the deployment of a settlement system erases any histories of connection among Hispanics and Anglos, the land grant “system” and the “system” of private property. When the court does locate this settlement system in terms other than southern Colorado or Costilla County, it does so only in an environmental context, and only in ways that serve to isolate Hispanics as geographically separate and remove the presence of Anglos (or markets, or governments, or any other connections with the American nation-state): first, the settlement system is located in the wilderness; and second, it is located “in an arid climate” that creates “the harsh realities of farmers’ lives in southern Colorado.” The actions of Gilpin, the land companies, and countless U.S. courts,

---

80 Lobato I at 947.
81 Lobato II at 1164.
apparently, created no such “harsh realities” – only the “arid climate” and “wilderness” of the Southwest.

Constructing a “settlement system” and ascribing the behaviors of Hispanos to it “for over one hundred years,” Lobato forecloses the possibility that colonial practices and the pressures, contradictions, dislocations and violence that resulted from them ever mattered for or even existed within the histories of the Sangre de Cristo. Hispanos, like Wainwright’s Maya, seem to be very systematic people. The court sets up the settlers as “different,” operating according to their own “system.” This difference positions Hispanos in relation to the U.S. in deeply ambivalent ways. While the actions and intentions of Beaubien, Hispano settlers, and their successors are temporally located within the space of the U.S. nation-state – the grant was not settled and hence no rights existed prior to the founding of the U.S. across this space in 1848 – they remained spatially outside of or separate from any events, institutions, or power relations occurring within that state. What type of settlement system, I wonder, did Gilpin, his land companies, and their successors operate under, and what intentions and actions did it produce? For how many years did U.S. courts deny the rights of Hispano smallholders in Costilla County and throughout the Southwest?

The ontological difference of Hispanos and their settlement system “as preordained fact” (Chow 2003: 339) ultimately becomes the mechanism for sameness: the sameness of U.S. colonial practices, laws, sovereign stories. The difference of the Other functions by enabling the court to re-enunciate or re-iterate the sameness of the Self, chiefly in its deployment of private ownership of land as the mechanism of rights in Lobato II: “only those present-day landowners … who are successors in title to those persons who settled Costilla County by the time the Beaubien Document was created, can claim rights of access to the Taylor Ranch
for reasonable grazing, firewood, and timber.”82 The court ignores or cannot see the extent to which private property has been constitutive of the U.S. nation-state and was used as a colonial tactic of dispossession on Sangre de Cristo grant lands, and as a result was able to reiterate private property through a decision it claimed was reversing the “grave deprivation of rights” suffered by the plaintiffs through the very social relations enabled by private property.83

The court, however, did pay attention to the cultural contexts within which persons and their interests are constituted in reaching its decision. This ethnographic turn might be seen as “a progressive shift” (Wainwright 2008: 70) in the ways in which U.S. courts deal with land grant cases, enabling greater understanding of the legal systems of antecedent sovereigns (Ebright 1994; Golten 2005). As I suggest above, the turn to ethnography holds the possibility of becoming the most significant legacy of Lobato for other land grant heirs and communities fighting for land across the U.S. Southwest and elsewhere. By historicizing and contextualizing, the court caught glimpses of the “social, economic, political and historical character of settlement rights.”84 In a partially dissenting opinion, one justice hints at what greater consideration of historical context might add to court decisions on land grants: a richer historical narrative, this justice argued, would support additional rights in this case beyond simply access for grazing, timber, and firewood. This dissent suggests that more careful historical and ethnographic attention would lead to an even better understanding of Hispano practices, and would therefore lend support to a position of additional rights.85

I argue, however, that better understanding is unlikely to produce victories for land and resource rights on other land grants. The Sangre de Cristo grant is unique among land grant

82 Lobato II at 1158.
83 Lobato II at 1159 fn7.
84 Lobato I at 962.
85 Lobato I at 957.
cases precisely because of the extraordinary amount of existing legal documentation from
the beginnings of the grant’s history – as even Golten (2005: 470, fn50) recognizes. That
Beaubien acted to write down and record his promises to settlers on a distant frontier in the
1860s, thereby creating language in each successive deed to La Sierra inscribing the rights of
the local people, and that these documents survived in the public record is truly remarkable.
The Colorado Supreme Court in Lobato made it clear that these documents were crucial in its
decision. Thus, finding rights within U.S. property law, and doing so based upon these
peculiarities of the case, forecloses possibilities for other land grant heirs to capitalize on the
Lobato precedent. Lobato not only covers over the history of the marginalization of Mexican
law and custom and the Treaty of Gaudalupe Hidalgo as sources of rights – ultimately, the
sources of rights that other land grants need for the recognition of rights to common
resources – it ensures that these potential sources of law remain irrelevant to the U.S. legal
system. No matter how far the court goes in contextualizing and historicizing the
“settlement system” of Hispanics, such an effort serves to produce the difference and
separateness of Hispanics from U.S. colonial practices. In these ways, Lobato renders U.S.
sovereignty more fully entrenched and holds little possibility that other groups of
dispossessed land grant heirs elsewhere in Colorado and New Mexico will be able to
capitalize on the Lobato ruling.

Conclusion

When Adolpho Lobato pleaded that “Taylor must be stopped” in 1979 (“Taylor Must” 1979), he likely could not have imagined that it would take another 23 years before
access rights to La Sierra would be returned, nor that he would still be in conflict with the
land’s new owners another decade later. Adolpho’s struggles to access and use the commons
before and after the 2002 *Lobato* decision and his frustrations and problems in doing so, I suggest, are deeply bound up with the ways in which sovereignty, property, and difference have become entangled in and through the case. Continuing the analysis of Chapter 1 by tracing the iterative production of U.S. sovereignty and private property through the law, this chapter argues that the Colorado Supreme Court’s attempt to ensure that “New Mexico’s Hispanic legal system [is] better understood” (Ebright 1994: 3) in its *Lobato* decision does just as much, if not more, to recite the sovereign stories of U.S. colonial power and foreclose other sources of sovereign authority on other land grants as it does to overturn injustice on the Sangre de Cristo grant.

From the sovereign decisions of the 19th century confirmation process and *Tameling* to Taylor’s Torrens procedure and the first thirteen years of *Rael*, the iterative work of the law served to reiterate private property relations, narrow Hispano rights to questions of procedural harms, and locate Mexican law and custom and the Treaty of Guadalupe Hidalgo as irrelevant and in the past. As *Rael* moved through the Colorado courts and became *Lobato*, the Hispano plaintiffs finally achieved a historic and precedent-defying victory in 2002. Yet, the iterative work of the law continued to produce effects. The Hispano settlers of the Sangre de Cristo grant are ambivalently constituted as temporally within the sovereign space of the U.S., yet spatially apart from the enactments of U.S. sovereignty and dispossessions of private property. The production of the ontological difference and separateness of Hispanos and their settlement system, alone in the arid wilderness and surviving from the land for over one hundred years before an Anglo arrives to enclose the commons – as *Lobato* I succinctly puts it, “the rights were exercised from the time of settlement until Taylor came on the scene”86 – works to construct the “two distinct property systems” that Ebright, Montoya,

86 *Lobato* I at 956.
and others take as their starting point for analysis. It appears that being a particular kind of Other – almost the same, but not quite (Bhabha 1997) – is the only thing that will grant rights to the land. This production of difference also, however, enabled the court to erase the history of private property and its role in dispossession on the Sangre de Cristo grant and, subsequently, to rule in Lobato II that the ownership of private property would be the mechanism that ties bodies to rights today.

As I explore in Part II and particularly Chapter 4, this new iteration of private property has had far-reaching consequences for the access and use of La Sierra in the present within which Adolpho's frustrations are directly implicated. In Part II, I turn to an examination of the contested and uncertain process of governing the commons after 2003. After a theoretical introduction in Chapter 3, Chapters 4 and 5 ethnographically consider how property and law have shaped subjects and environmental governance on the grant today, while Chapters 6 and 7 address the efforts of Cielo Vista Ranch and the Land Rights Council to work within and against this constitution of subjects in their efforts to govern the commons.
Part II: Governance
Chapter 3: Governing the Returned Commons

I returned to San Luis in June 2011 for my first visit since long-term fieldwork in 2009-2010, quickly finding that the process of governing the returned commons remained highly contentious. Soon after arriving in San Luis, I met Marco Santore, a small farmer and rancher whose family has lived in the area for generations. I met Marco at the house of Norman Maestas, President of the Land Rights Council (LRC), who I had stopped to visit. Having just arrived in town an hour or two earlier, I drove the winding road from San Luis a few miles east to Chama and pulled into Norman's driveway. I found him out back in his garage, with two friends who had just helped put up part of a new corral. The three were trading stories about corrals, sheep, and what not to do while transporting a goat in a vehicle with new leather upholstery (goats will eat anything, I was instructed).

We had barely begun to catch up when Marco came rumbling down the driveway in his beat up pickup truck with his aging dog Patches, worn from his years on the job as Marco’s first ranch hand, happily bouncing around in the back. Marco skirted around my car and pulled up to the open garage door where the four of us stood – he too was looking for Norman. Marco had just been issued a trespassing ticket at the behest of Cielo Vista Ranch (CVR), and needed to know what it meant and what he should do. The trespassing ticket, Marco explained to us, was not for trespassing on Cielo Vista, to which he has legal access rights, but rather for trespassing on a property in a subdivision immediately adjacent to the ranch’s eastern boundary and – unbeknownst to Marco at the time – also owned by Cielo Vista. “I know who gave me the ticket, it was Cielo Vista,” Marco told us. “But I wasn’t even on the ranch, I was just outside of it in that subdivision.” Marco’s cattle, he explained, were grazing on Cielo Vista for the summer, but had wandered off the ranch in search of food.
“We’re in a drought right now,” he turned to tell me, knowing that the other three in the garage already knew how dry a summer it had been. “The pasture is so thin on the ranch, you can’t stop these cows from moving all over looking for enough to eat.”

According to Marco, he was in the process of pushing his herd back onto La Sierra when he was stopped by a guard and questioned. He was issued a ticket several days later, which happened to be the day I arrived in town, and had brought it to Norman to see if he could talk to the LRC lawyers about it. Norman agreed that he would call the lawyers the next day, and hopefully he could find someone to handle Marco’s case pro bono. They also made plans to go up to the mountain so that Marco could show Norman exactly what had happened and where. “You should come to,” Marco said, turning to me. “I can show you where my cows were and where I was when they stopped me.” He gestured his hands towards the mountain, adding, “you can see for yourself the kind of things we have to deal with up there.”

Several days later, I arrived at the LRC office to find Marco and Norman just finishing up a phone conversation with a lawyer in Denver. A few others were in the office as well, and Norman is happy to report that he was able to find a lawyer willing to take on Marco’s case pro bono. Marco explained his situation to the group, not all of whom had heard what happened. “I ran my cows up Jaroso Canyon,” Marco began, motioning towards the mountain with his hands,

but it’s so dry up there that they go all around and even come down. … I was just pushing them back up. I had about 20 cows with me, and I was pushing them up with my 4-wheeler when [CVR ranch manager] Carlos’s son stopped me. I think he works for someone in the subdivision. He said, ‘you know this is private property?’ I said, ‘yeah, I’m just pushing my cows back up, I have rights to.’ I can’t stop my cows from breaking through fences, they’re just looking for food. I can’t control where they go, I can just push them back up.
Shirley Romero, co-founder of the LRC back in the late 1970s, past president, and long at the forefront of the struggle for rights to La Sierra, shook her head. “They’re just throwing their weight around,” she said, referring to Cielo Vista. “This is pure harassment, nothing else.”

“You’re right,” said Marco, adding, “that’s my livelihood. I’ve got my rights, and I’m going to keep doing it.”

Marco, Norman and I make plans to pinpoint the route that Marco’s animals had traveled, and a few days later I meet Norman at the LRC office to head out to see Marco, who was already on the mountain checking on his herd. We climb into Norman’s pickup and set off towards Chama, to stop quickly at his house to grab a chainsaw and axe. “If you’ve got time,” Norman said stepping out of his truck, “I want to go check out a spot or two for firewood while we’re up there, and maybe bring a little back.”

We hadn’t talked about spending extra time on the mountain to cut firewood the day we planned to go see Marco, but I was already prepared with boots, water, and work gloves – after all, I was not a “key holder” with access rights to Cielo Vista Ranch. Legally, I could only enter the Mountain Tract if I was helping someone who was a key holder, as their agent to assist with the exercise of their rights. Knowing I could not simply go on the property under any circumstances, I also knew that Norman would turn our outing into at least a scouting trip, if not a full day’s work of cutting firewood. Not wanting to miss a rare opportunity to go up on the mountain, I came prepared and ready to work.

As it turns out, we didn’t cut much wood that day, though Norman did identify an area to which he planned to return. Instead, we spent most of our time on the mountain searching for Marco. With cell phone reception essentially nonexistent at higher elevations (and often unreliable even in the villages below), we had to rely on Norman’s sense of where
we were likely to find Marco – and the hope that his cattle hadn’t wandered off, luring Marco too far in an unexpected direction. We did find him where Norman expected, just above the Torcido gate at a spot where the Torcido Creek cuts through thick forest as it rushes down towards the villages below, but not the first time we passed through this area. Marco hadn’t yet turned up when we first arrived, and Norman and I spent over an hour looking for him, traversing switchbacks and bumpy dirt roads in his pickup as we crossed from one part of the ranch to another. Our circuitous route around the southern end of the Mountain Tract gave Norman some time to scout locations for firewood; as a resident of Chama, Norman spent most of his time on the ranch in its northern half. Each gate to Cielo Vista is located along its western edge in drainage areas that are most defined by the creeks and rivers that cut through them, creating a series of canyons separated by hills and mountain sides that can be quite easy or quite difficult to traverse, depending on where you are and what the conditions are like. Roads of varying conditions criss-cross the ranch in all directions, some running east and up in elevation, remaining within the same drainage or canyon from the western gate towards the eastern mountain peaks; others run north-south and cross over and through drainages, some at high elevations and some closer to the ranch’s western, lower elevation boundary.

We entered in the southern half of the Mountain Tract through the San Francisco gate, at first keeping to lower elevations as we wound our way up and over into the Torcido drainage just to the south, and then up and over again into the Jaroso drainage even further south, where Marco had first put his herd. At one point Norman made an unexpected turn off of a main road and onto what looked like little more than an overgrown trail, turning to tell me, “not many people think they can use this road because it’s never maintained. It’s kind of like a secret. There’s a lot of good timber this way because no one comes through
here.” Marco’s cows had managed to cross from the Jaroso drainage, where he had initially pushed them up, into the Torcido drainage just to the north, where the animals then wandered down off the Mountain Tract and into the subdivision where Marco was stopped for trespassing.

After we didn’t find Marco in the Jaroso, we began working our way back towards the Torcido, this time at a little higher elevation. Once in the Torcido drainage, Norman began heading west back down the mountain, eventually stopping the pickup on the side of the grassy road so that we could hop out. By then we were within 200 yards of Cielo Vista’s western border, just inside the then-closed Torcido gate. At that time, the “gate” was only a heavy-duty metal wire connecting two poles that would normally support a gate; the barricade, along with the closed road that led up to it, were a central issue in the conflicts over access rights after the 2002 *Lobato v. Taylor* ruling. Sitting just above the village of San Francisco (also called El Rito) and historically used heavily by those who lived or grazed animals towards the south end of the Culebra villages, the gate had never been re-opened after *Lobato*, forcing many of these more southern access holders to travel longer distances to access the ranch via other, more far away gates. Directly outside of Cielo Vista across the closed gate lay the subdivision properties created and sold by Colorado Land & Ranches, Inc. in two adjacent developments called “Sanchez Lakeview Ranches” and “Mountain Lake Ranches.” Together, these developments constituted a cluster of over sixty 35+ acre lots that had gone through a highly contentious county permitting process only a few years prior. Bobby Hill, a co-owner of Cielo Vista, had also purchased several lots inside of Mountain Lake that abutted the Mountain Tract. Hill had re-named his Mountain Lake properties as the Torcido Creek Ranch, and it was there that his guard stopped Marco for trespassing.
As Norman and I walked around, inspecting the barbed-wire fence that separated Cielo Vista from Torcido Creek Ranch, I tried (mostly unsuccessfully as it turned out) to take pictures that conveyed the size of a large trench that lay just behind the barricaded gate, well over six feet deep in spots. The trench was dug by either Taylor or Lou Pai\(^{87}\) to keep vehicles out – no one I asked seemed to recall which, they’ve all been digging trenches up there forever, people tended to say. The road itself seemingly hadn’t been maintained in quite some time, which was why Norman had to stop his truck 200 yards or so short of the gate before we walked the rest of the way. Very quickly, I noticed a light-colored pickup truck parked off in the distance, somewhere in the middle of the Mountain Lake properties. While the truck was visible to us, I could not identify it or make out who was inside, if anyone, nor what they were doing. Was this the over-sized white pickup truck with a black Cielo Vista emblem on the side that was used by CVR staff, the one I myself had ridden in almost exactly a year before when Carlos DeLeon, the head ranch manager, had driven me around the ranch (see Chapter 5)? It was difficult to see with the hot afternoon sun beating down on us and gleaming off of the truck at seemingly every angle. Could CVR be carefully watching and observing Norman and I as we walked around the gate? Was it just someone who owned one of the 35-acre lots in Mountain Lake? Perhaps it was another would-be trespasser, who might or might not escape Marco’s fate? Either way, despite my desire for some photos from the outside of the gate, I made sure not to put a single foot on the other side of the fence; while my presence inside the ranch was justified only by the chainsaw and axe in the back of Norman’s pickup, nothing but the good will of Cielo Vista staff would keep me from a trespassing ticket of my own should they spot me exiting the Mountain Tract and entering Torcido Creek Ranch.

\(^{87}\) Lou Pai, former Enron executive, began purchasing the mountain tract from Taylor in pieces beginning in 1996. He sold the land to Cielo Vista Ranch shortly after the 2002 Lobato ruling (Frazier 2004a).
As I stood safely inside the CVR fence, I began to daydream about how my very own trespassing ticket could form the basis of a great article, recalling the exhilarating and near heroic accounts of other ethnographers running afoul of the law in pursuit of authentic embodied experiences and deep understandings of the exercise of power – but Norman quickly interrupted my romanticized contemplation. “Hey!” he called out from an unknown location. He had disappeared a few minutes before, but now his voice cut through the still mountain air: “Come take a look at this!” From where I stood above the gate I was probably a good forty or fifty feet in elevation above where I estimated Norman’s voice to be coming from, and perhaps fifty or seventy-five yards to the south along the fence line. I scaled down a slight hill, weaving through the sagebrush, and dropped into the trench running parallel to the fence – an easier, straighter path to traverse on foot, and one not visible to the truck off in the distance. I found Norman in the thick of some dense and thorny brush, with one foot on dry land and the other on top of a rock that lay in the middle of Torcido Creek. He was clutching a few branches to keep from falling in. Just a few feet downstream from Norman’s perch, the creek passed under the boundary fence separating these two parcels of property owned by one man.

“Look at this,” Norman said, pointing with his one free hand as I slowly made my way down towards him. “See where the fence is? You can see how it is up higher off the ground where the creek is.” My eyes followed along the path of the water until I spotted the fence that crossed directly above it. At this line, where Cielo Vista became Torcido Creek Ranch, the banks of the creek were highly uneven. To the south, the bank was a good four or five feet higher than on the north, with the creek itself another foot or so below that. The fence angled downward across the creek from south to north, trying to hug the terrain along the ground, but immediately below the higher, southern bank there was a gap several feet tall
as the bottom of the barbed wire fence just hung in the air. Though Cielo Vista had tried to extend the bottom of the fence downward, there was clearly room for cattle to pass underneath it. “That’s it, that’s where Marco’s cows went through,” Norman said. “The cattle can walk right under that, and they do. They would have just found this road up there and followed it all the way down.” He gestured toward the bumpy road we had just traveled along. “Or at some point they found the creek and followed that, looking for something to eat. They can just walk right on out under that fence. One gets through, and pretty soon the rest follow.”

I ask Norman if he saw the pickup truck off in the distance, and if he thought it could be Cielo Vista. “I did see it, but I can’t really tell. Anyway, let’s get out of here.” Norman had found what he was looking for, and we headed back towards his truck. Via the Torcido gate it would take less than ten minutes by truck from where we were standing to get to the village of San Francisco just below and northwest of us. But with the gate closed it would take 30 or 40 minutes to first head up, cross over to the next drainage, and turn out through the northern San Francisco gate instead. We took our time, enjoying the beautiful scenery and cutting a few small logs for the back of the truck. Just before reaching a fork in the road where we could go north to the San Francisco or south to the Jaroso, we rounded a sharp turn and to our collective surprise saw Marco zooming towards us on his four-wheeler. His trusty sidekick Patches was riding along on the back.

“There’s my helper right there,” Marco said after he pulled up, pointing towards Patches sniffing around on the side of the road. “That day I pushed my cows back up he was right there with me too.” Marco’s cows had been on the move again. “You didn’t happen to see any cows when you were down near the gate, did you?” he asked. “I can’t find a couple of them now.” He explained that the lawyer told him to try to stay out of the area around
the Torcido gate, and while his cows were getting used to a new area, he thought some of them might have wandered back towards more familiar environs. Norman told Marco that we hadn’t seen any stray cows, and explained our path first through the San Francisco drainage before crossing over into the Torcido and Jaroso to the south. Marco turned to me: “You saw then, El Rito [San Francisco] is just right there below the Torcido gate.” Norman finished his thought: “I mean, why do we have to go all the way up and around just to get our cows back over here?”

We drove back over to the Jaroso meadow, following along behind Marco and Patches, and stopped at an intersection near the Jaroso Creek and Jaroso Meadow (see Figure 2). “There’s good water here,” said Marco, making his way down towards the stream, taking a drink with his hands and splashing his face with water. Patches agreed, and took a nice long drink from the creek. “This creek carries some nice little Rainbow [Trout]. I used to fish here before, a long time ago, but today our rights don’t include fishing.” He paused before turning and motioning to the southern Jaroso: “My cows go up this canyon or over to the Torcido” to the north. Marco turned in my direction: “There’s about six little meadows up there, and my cows stay up there all summer. But look at it, it’s dry.Normally this meadow, in a good year, it’s so much more beautiful. That’s why those cows go looking for food, you know? And over there in those corners,” he continued, pointing up towards the southern Jaroso, “it’s even prettier. There’s some big meadows over there. But back in Taylor’s time, they took a lot of lumber out of here. There’s a lot of roads, a lot of logging roads. Norman knows. I remember when they were doing all that. But at least now he’s gone, and we got our rights back – at least to get some timber and graze.”

Marco explained to us exactly where he left his cows and where he found them, and Norman pulled out a few maps to show Marco exactly what property he had been stopped
on by triangulating among various roads, waterways, and property boundary lines. Marco was surprised to learn that the subdivision property he was ticketed for trespassing on was owned by Hill as well: “Ohhh,” Marco responded, “I thought it was one of those developers.” I pause to consider how many developers had tried to profit from Sangre de Cristo grant lands over the years and think it’s no wonder that Marco, referring to “one of those developers,” can’t remember them all by name.

“The Torcido Creek Ranch gave you the ticket, right?” said Norman, pointing at a color-coded map of the maze of privately owned properties in the area: “Yep, that’s Bobby Hill.”

“Oh, so he does own it, huh? Right there by the creek,” Marco replied. While he seemed surprised, this new knowledge didn’t change Marco’s assessment of the situation as he studied the map. “I’ve been bringing my cows up here the last two years, to the sierra. I just like the mountains, and I check on them all the time. But they don’t have any posted signs anywhere around here,” he said, referring to the subdivision properties just below the Torcido Gate, “No tienen nada” (“They don’t have anything”). He paused, looking off into the distance. “Yeah, we’re blessed that we can come back here again, that the Supreme Court gave us our rights, huh Norman?”

“Yeah, we are,” replied Norman, tapping his hand on the map of subdivisions he was holding, “but we shouldn’t have to deal with stuff like this.” We thank Marco and turn to head home. “My dog, he’s getting old,” Marco says as Patches struggled to hop up onto the back of the four-wheeler. He laughs: “He’s probably tired already!” As we exit the ranch through the Jaroso gate, I step out of the truck to close and lock the gate, which Marco had left open just ahead of us. I notice a “Private Property” sign across the road from the gate that I hadn’t seen before, and upon closer inspection, it too was put up by Cielo Vista
Ranch. I tell Norman that I’m confused, they own this land outside of the Mountain Tract down here too? “Oh yeah,” he replies, “they are buying up a lot of this land. It’s not Cielo Vista Ranch, but Bobby Hill owns it just the same.”

Part II examines the process of governing the returned commons after the 2002 Colorado Supreme Court Ruling in *Lobato* – a process that, as illustrated by Marco’s story, remains contentious. The confrontation between Marco and Cielo Vista staff and its aftermath encapsulates many dynamics emerging from the struggle to govern the commons in San Luis and explored in the following two chapters – beginning with the ways in which the “commons” is cross-cut with complex social relations, including those deeply shaped by the social, physical, and ecological boundaries that carve up the southwestern landscape into complex forms of property, private and otherwise, while also dividing groups of people and their rights and responsibilities. Such dividing lines are variously asserted and re-asserted, crossed and invoked, decried and re-formulated; and done so by people, animals, flows of water, fences, maps, passions, signs, laws, developers, and court decisions that create new forms of property altogether. At issue in Marco’s story and the broader process of governing the commons are questions of property and rights to natural resources; drought, pasture conditions, and mobile nature; surveillance, enforcement, and harassment; the maintenance of roads and fences; livelihoods and cultural difference; authority and knowledge – of the mountain, of rights, of people and their property; and of private capital and collective organizing.

Marco’s interactions with Cielo Vista Ranch – the people that own and work for it and the physical property itself – also offer a glimpse into the multiple ways in which environmental governance is implicated in projects and processes of subject formation that
unfold in uncertain, conflicted ways. Part II explores these processes and projects as they have unfolded in San Luis, with an eye towards what access and use of the commons means in a region long parceled out into private property. In their initial interaction on Torcido Creek Ranch, as recounted by Marco, the Cielo Vista guard attempted to situate Marco, as a subject, in relation to private property as a social relation of exclusion (Mansfield 2008a: 7): “You know this is private property?” he asks, implying that Marco and his property – the twenty or so cattle he and Patches were directing from atop a four-wheeler – must better respect the lines drawn on the landscape that divide one parcel of private land from another. Following the arguments of Chapters 1 and 2, the citation issued to Marco for trespassing was a citation of private property as a complex material and discursive practice, one that takes shape as a coherent “thing” only through countless such iterations and re-assertions as when the guard stopped Marco. Such reiterations help to produce forms of property and sovereign authority, as explored earlier, at the same time as they give rise to subjects. Akin to the police officer “hailing” a man on the street, who turns and therefore recognizes himself as the one called, becoming interpellated as a subject by the discursive power of the State itself (Althusser 1972), the CVR guard attempts to interpellate Marco as a subject of private property precisely by marking out his violation of its dictates and failure to act according to its norm. But Marco, in turning to the guard and recognizing his interpolation as a subject in relation to property, qualifies himself and resituates his subjection in relation to rights: “I’ve got my rights, and I’m going to keep doing it.” Marco’s response illustrates the ways in which individuals are deeply and ambivalently constituted as subjects, both by themselves and by others, often at the intersection of multiple discourses. As Judith Butler notes (1997), individuals are subjected by and subject to discourse, yet also depend upon their subjection in order to appear as
intelligible subjects with the ability to exercise agency. Marco saw himself as able to legiti-
ately exercise his rights to graze his animals on Cielo Vista, rights that legally stem from his status as a private property owner, as I explain in Chapter 4. Yet, Marco’s formation as a private property owning subject remains ambivalent, repeated with a difference from the CVR guard’s iterations. Marco reaffirms himself as a subject constituted by property and the law, yet with a difference: by way of his own ownership of private property that had been certified by the court, giving him access rights to CVR, Marco could cross these dividing lines on the landscape and could do so legitimately. Property, as a social relation that must be continually enacted through encounters like this one, is an achievement that is by no means certain or necessary. While the CVR guard insisted that Marco had illegitimately crossed a territorial boundary, Marco insisted otherwise. And while Marco acted as an agent by way of the social power given to him by his own ownership of private property, he simultaneously positioned this constellation of power and practice alongside an alternative set of material and discursive practices grounded in his love for the mountain and ancestral rights to livelihood.

Nature, too, intersects with this story in ways that make visible processes of subject formation. It was Marco’s livestock, not Marco himself, that initially crossed the territorial lines of private property drawn across the landscape. Marco’s cows, as he explained, pay little heed to such social relations and instead proceed according to the biophysical imperatives of finding enough to eat and drink within a dry, harsh, mountainous landscape. Further, as Marco notes above, this landscape has in part been constituted by the logging of previous owners, logging that many in San Luis believe has made the mountain watershed less able to hold and capture moisture. Marco, in turn, was enrolled into the project of policing and regulating the social boundaries that his cattle could not see, by moving the cows back to
where they belonged – within the boundaries of Cielo Vista Ranch, but not Torcido Creek Ranch. Here, nature emerges as part of the formation of subjects in its violation of social relations – the power of private property to exclude – that compel Marco to re-place such relations by re-placing his cattle on Cielo Vista Ranch. Marco is simultaneously subject to the demands of private property – he is ticketed for trespassing on private property while returning his cows to the property where they belong – while also empowered as an agent by his formation as a subject in relation to property – as the owner of property certified for access rights, Marco is able to graze his cattle on the property of Cielo Vista Ranch in the first place.

**Subjection**

The following chapters, then, explore environmental governance as a process of subject formation whereby individuals are made, and make themselves, into subjects. Such processes and projects of subjection are uncertain, power-laden and, if successful at all, contingent achievements. Before turning to that analysis, in the remainder of this chapter I connect performative theories of the subject with work on environmental governance by emphasizing the unequal and ongoing iterative production of the social field through governance processes. Such processes lie at the intersection of multiple and at times conflicting regulatory norms, discursive practices, and uncertain subjects that collectively shape and are shaped by the problematizations of government upon which the management of nature and society turn.

In her work on performativity, Butler (1993, 1999) conceptualizes the subject not as an essence or autonomous individual but as an effect of power. Subject formation occurs through the repetitive iteration of regulatory norms or normative discourses that found the
subject as they compel particular practices or performances in contested and uncertain fashion. On one hand, certain historically specific discourses and sets of power relations come to function as regulatory norms at particular junctures. That is, certain discursive formations and subject positions must be (re)cited in order for subjects to achieve the effect of intelligibility. Such norms come to compel particular iterations, often forcefully, by delimiting what is possible, thinkable, say-able, and do-able, so that the “performances [of individuals] are not arbitrarily chosen… [but] are compelled and sanctioned by … compulsory norms” such as those of heteronormativity in Butler’s case (Pratt 2004: 17). On the other, any identity is the contingent achievement of iterative practice, only emerging as the effect of citational practice and repetition. Performativity does not signal singular acts or performances, but rather draws attention to the constant, necessary, and citational iteration and re-iteration of regulatory norms. Such repetition, however, can never be a perfect copy of the norm – rather, all repetition is by definition repetition with a difference, and Butler and others have pointed to this necessary failure of sameness as potentially harboring possibilities for slippage and change (Butler 1993: 2; Gregson and Rose 2000; Nash 2000; Nealon 1998; Secor 2003).

Butler (1997: 1-2) conceptualizes subjection as a paradoxical form of power:

To be dominated by a power external to oneself is a familiar and agonizing form power takes. To find, however, that what ‘one’ is, one’s very formation as a subject, is in some sense dependent upon that power is quite another. We are used to thinking of power as what presses on the subject from the outside, as what subordinates, sets underneath, and relegates to a lower order. But if, following Foucault, we understand power as forming the subject as well, as providing the very conditions of its existence and the trajectory of its desire, then power is not simply what we oppose but also, in a strong sense, what we depend on for our existence and what we harbor and preserve in the beings that we are. The customary model for understanding this process goes as follows: power imposes itself on us, and, weakened by its force, we come to internalize or accept its terms. What such an account fails
to note, however, is that the ‘we’ who accept such terms are fundamentally dependent on those terms for ‘our’ existence.

I foreground this central paradox of subjection – its “fundamental dependency on a discourse we never chose but that, paradoxically, initiates and sustains our agency” (Butler 1997: 2) – to explore the uncertain, contested, and ambivalent ways in which individuals are made and make themselves into subjects.

The subject, as Butler (1997: 10) suggests, is not synonymous with an individual or person, but rather has discursive conditions of existence: “the subject … ought to be designated as a linguistic category, a placeholder, a structure in formation.” For Butler (1997: 10-1), “Individuals come to occupy the site of the subject (the subject simultaneously emerges as a ‘site’), and they enjoy intelligibility only to the extent that they are, as it were, first established in language.” Butler’s unintentional (or at least un-remarked) spatializing of the subject through its “site” of formation is significant, as is her insistence that the subject is always in formation.88 Discourses and the performative iterations that contest and sustain them are fundamentally spatial (Gregson and Rose 2000). “Discourses emerge as situated practices in particular places,” writes Pratt (2004: 20). “(T)hey are inherently geographical” and are circulated and materialized through “socio-spatial circuits” (Pratt 2004: 20, emphasis removed). For Pratt (2004: 22), Butler’s temporal theorization of repetition over time “has the effect of ungrounding processes of subject constitution from the networks of objects and spatial relations … through which power and knowledge work.” Examining Foucault’s work on sexuality, Pratt argues that “Discourses of sexuality involved a literal respatialisation of sexual practices.” She continues:

---

88 Perhaps the most influential feminist theorist within geography has been Butler (1993, 1999). I take Butler’s most important intervention to be the theorization of social formations as performatively reproduced through contingent articulations. Geographers have extended Butler’s theorizations to space, though Butler herself had little to say specifically about space (Gregson and Rose 2000; Mahtani 2004).
(L)egitimate sexuality was consigned to the private parental bedroom and illegitimate sexuality to the asylum and prison, where it could be controlled and contained … When new discourses on children’s sex developed in schools, this discourse was as much written into the bricks and mortar of the schools as spoken through speech (Pratt 2004: 21).

Not only do the practices that constitute subjects deploy particular spatialities, then, but the very materialization of diverse spaces – such as those of the household or the school – are “themselves produced through performances” (Pratt 2004: 24; Gregson and Rose 2000). I examine the ways in which normative discourses are repeated with a difference across and through environmental governance processes, as spaces and subjects come to form together in contested, ambivalent, and uncertain ways.

**Governance, government, and the subject**

Work on environmental governance in geography has followed two central paths, which I denote here as “governance” and “government.” Issues of subjection have appeared largely, though not exclusively, in the latter. Both approaches share a broad concept of governance that problematizes state-centered notions of power, conceives of political authority as multilayered, and illuminates the growing influence of non-traditional actors such as NGOs in governance processes. This understanding raises questions of politics, power, and struggle; participation and authority; and institutional, spatial, and scalar configurations (Bridge and Perreault 2009; Durant et al. 2004).

Within political ecology and elsewhere, work under the banner of environmental governance, as well as critical resource geography, is framed by the shifting relations between capital, state, and civil society. This work draws from institutional political economy and, more specifically, regulationist approaches to move “away from state-centric forms of social
and economic regulation” and interrogate “the networked interaction of various state and nonstate organizations and institutions operating at multiple sites and scales” (Himley 2008: 434-5). Typically in contexts of large-scale primary resource extraction or nature-based commodity production (surrounding, for example, forestry, mining, oil and gas, or water), this work places governance processes in contexts of power and struggle in which historically specific and contingent institutional and spatial configurations come to temporarily stabilize particular crises or contradictions inherent in the process of producing commodities from nature (Bridge and Jonas 2002; Liverman 2004; McCarthy 2005; McCarthy and Prudham 2004; Perreault 2005). Typically, any particular institutional configuration is seen to mediate either social conflicts along axes of race, class, gender, or other differences; or contradictions inherent in capitalist political economy or the commodity production process, such as the destruction of environmental conditions of production (Bakker 2004; Bridge 2000; O’Connor 1996). In the face of such conflicts or contradictions, historically specific social institutions (rules, norms, and routinized social practices) attempt to temporarily stabilize social relations to allow certain outcomes, typically in the form of continued resource extraction and capital accumulation to the benefit of powerful actors. How institutions come to temporarily and contingently stabilize is dependent upon a host of social, economic, and ecological conditions – much recent work, for example, has interrogated resource governance under conditions shaped by neoliberal ideologies and policies (Bakker 2005; Bridge 2004; Castree 2008a, 2008b; Heynen et al. 2007; Himley 2008; McCarthy 2004; McCarthy and Prudham 2004; Perreault 2006, 2008; Prudham 2004, 2005; Robertson 2004, 2007).

This largely political economic literature is complemented by work on government, also described as governmentality, eco-governmentality, or environmentality, which
foregrounds questions of power/knowledge, governmental rationality, discourse, and identity. Much of this work draws from Foucault’s (1991) essay on governmentality exploring the forms of rationality and imbrications of “men and things” [sic] necessary for securing the “conduct of conduct.” This work has examined the normalization of environmental objectives and rationalities with their attendant spatialities, categorizations, and subjectivities (Agrawal 2005; Braun 2000; Bridge and Perreault 2009: 484; Goldman 2004; Yeh 2005). A large body of work examines the ways in which nature itself is brought into being at the intersection of multiple discursive and material practices (Agrawal 2005; Bakker and Bridge 2006; Braun 2000, 2009; Braun and Wainwright 2001; Castree and Braun 1998; Escobar 1996; Robertson 2004; Wainwright and Robertson 2003).

While studies of governance and governmentality share a common project of interrogating processes of rule related to nature and society, they can diverge significantly on theoretical grounds. Often, work on governance conceptualizes power in terms of structures, logics, and contradictions, while work on government views power in more micropolitical terms. At times, these theoretical differences mean that work on governance tends to frame power as a top-down, macro-scale enactment, while work on government examines power as micro-political, working from the bottom-up. Yet this framing masks a cross-cutting divergence in the literature: some studies of governance and government view power as a structural, top-down enactment, while some studies of governance and government view

---

89 For instance, McCarthy and Prudham (2004: 280), working from a governance perspective, argue that “Foucauldian notions of power remain somewhat diffuse for grappling with the class coalitions, interest-based politics, and scale-specific ecological dynamics we see as central to neoliberal … environmental governance.” For these authors, “It is essential … to remain focused on the need to identify specific winners and losers in such reforms” (2004: 280). This characterization of their own understanding of politics and identity and of Foucault’s can be seen in the terms of a distinction within political ecology that I discuss below, between work that begins with coherent identities or groups that then engage in environmental struggles (hence clear winners and losers can be identified) and work that inquires after the very formation of identifications in and through such processes of struggle. In this latter conceptualization, the lines between particular identities, or between things like “state” and “society,” become blurred, fashioned only in relation to one another, and the very emergence of clear categories is itself the operation and effect of power relations (Mitchell 2002). Within political ecology, conceptions of identities as pre-existing or as emergent continues to divide the field on questions of power, politics, and agency—and thus also on questions of governance and government.
power as a more contingent, iterative, and place-based process of struggle.⁹⁰ I draw from studies of governance and government with an ethnographic approach to the contingent and complex micropolitics of power, to underscore the ways in which the social field is iteratively produced.

As Sundberg (2006: 241-2) argues, much work in political ecology and related fields “tend[s] to assign individuals and collectives coherent identities prior to their entry into social and environmental relations. Hence, social groups and their ecological practices come to appear self-evident, with pre-given, timeless characteristics.” Work on governance that is ethnographically attuned to the contingent production of categories rather than assuming their coherence, often examining how social movements contest, accept, and rearticulate governance processes and institutions (Perreault 2005; 2006; 2008; Sawyer 2004), complements the small but growing political ecological literature exploring the highly uneven spread of political rationalities alongside dynamics of subject formation (Agrawal 2005; Asher 2009; Bobrow-Strain 2007; Sundberg 2006; Valdivia 2008). Much work on the government of nature focuses most directly on the ways in which nature(s) and identities are constructed by different groups, without connecting such discursive formations to a broader theorization of subject formation (Escobar 1996, 1999). While I describe different articulations or constructions of nature and identity in the chapters that follow, I also stress the ways in which performative iterations are compelled, as well as the ways in which subjects are formed in unintended, incomplete, and contradictory ways.

⁹⁰ While many studies of governance begin with the a priori categories of “state,” “capital,” and “civil society,” many governmentality studies also deploy a top-down notion of power. In her review of green governmentality, Rutherford (2007) points out that much governmentality literature is overly state-centric, positing the state as the locus of seamless discursive formations or political rationalities that are effortlessly deployed outward – this despite Foucault’s (1991) proclamation that the state itself is less important than scholars typically think it is. Power apparently flows smoothly, from state categorizations to the political field. This tendency perhaps results from a methodological over-reliance on the texts of the powerful, as various political rationalities come to appear as fully formed high above the contingent, contested world of politics and struggle. For examples of work on government that reads the formation of nature and subjectivity off of the discourses of the state and capital, see Goldman (2004) and Yeh (2005).
Studies of government that pay attention to subject formation, for example, avoid views of political rationality that make power seem as if it merely needs to be discursively scripted by powerful institutions before it becomes a reality, eliding the complex arrangements and ongoing work that such rationalities require in order to take hold (Bobrow-Strain 2007; Moore 2005; Sundberg 2004; 2006; Valdivia 2008). Similarly, ethnographic assessments of restructurings of governance institutions can demonstrate the ways in which such outcomes are never easy or secure, but dependent upon complex social demands as well as the articulations of particular cultural and ideological idioms that must be sutured together in hegemonic – and unstable – fashion (Perreault 2005; 2006; 2008). Such ethnographic examinations of the governing of nature show contingency or at least messiness and struggle—projects of rule do not unfold unproblematically, or come down ready-made from on high where they are then simply followed down below. Such projects must be made to work, and often depend upon the very bodies and things they set out to discipline and dispose.

Conclusion

The problem of government, as Foucault understood it, was less a question of how “governors actually governed,” but rather, how “certain things – ‘state and society, sovereign and subjects’ – … become objects of thought that can be interrogated, or reflected upon, as problems” (Cadman 2010: 544-5, quoting Foucault 2007: 3). In other words, inquiries that foreground questions of governmentality cannot begin with “state and society, sovereign and subjects” – as well as space, nature, and territory (Braun 2000) – as fully formed objects and subjects that interact and struggle with one another in a well defined political arena. Rather, “(f)or Foucault, both the definitions and the respective positions of the governors and
governed are not definitive prior to the process of problematisation-governmentalisation” (Cadman 2010: 545). The very formation of state, society, subject, and the field through which they come together are at issue in particular problematizations of governmental rule – or as Agrawal (2005: 98) puts it in relation to environmental governance, “new strategies to govern forests – to allocate, monitor, sanction, enforce, and adjudicate – do not simply constrain the actions of existing sovereign subjects … [but] these strategies and their effects on flows of power shape subjects, their interests, and their agency.”

The mundane materials and practices of environmental governance – legal documents and court hearings, reports, maps, plans, meetings, daily interactions and practices – all constitute sites for the production of power and knowledge, through which subject positions are elaborated, categories are delineated, and spaces are materialized – in ways that simultaneously hide or foreclose others. As Butler (1993: 13) underscores, the performative does the work of positing that which it names, simultaneously eliding the process of its contingent formation. Such encounters and sites come to form subjects as normative discourses are received, reiterated, acted upon, challenged, reshaped, and rearticulated by individuals who, as Gregson and Rose (2000: 447) point out, attempt to control for the uncertain effects of their performative iterations, yet cannot entirely do so.

In the following chapters, I explore the uncertain, contested, uneven, and always provisional ways in which subjects are made and make themselves in and through property and nature, but also courts, law, science, culture, documents, meetings, interactions, resource use practices, and more. In Chapters Four and Five I focus on how subjects are made in relation to property and the law as part of the ongoing legal procedures of *Lobato v. Taylor*.

---
91 But while Agrawal (2005: 98) explores “these strategies as the means through which individuals make themselves into certain kinds of subjects,” my account also foregrounds the ways in which subjects are brought into being through less intentional projects and processes, and through discourses that subjects come to depend upon but did not themselves choose or cannot fully control.
referred to as the identification process, through which the district court in San Luis has sought to identify precisely who has a right to access the commons after *Lobato*. In Chapters Six and Seven I turn to the efforts of the Land Rights Council, Cielo Vista Ranch, and others to govern the commons in the context of highly contested social relations. In the process, I consider questions of cultural difference, sustainability and nature, and the ambivalence of contemporary nature-society relations forged through colonial encounters. Before doing so, however, I turn in the next chapter to questions of identification.
Figure 2. Patches at the Jaroso Meadow. Photo by author, 2011.
Chapter 4: Identifications:

Private Property and the Subject of Rights

On a July morning in 2008, I took a seat on the back bench in the tiny Costilla County courthouse in San Luis, located across a gated courtyard from the entrance to the Land Rights Council and part of the same building. Soon after, the courthouse would have a new, more spacious location down the street, in a brand new building designed and built to replicate the county’s original courthouse. But today, the proceedings in District Case No. 81CV5 – otherwise known as Lobato v. Taylor – continued in the cramped little space nestled between the local bank, offices of the Land Rights Council and La Sierra newspaper upstairs, and the Beaubien community theater on the courtyard’s opposite side.

It was a characteristically sunny day in the San Luis Valley as familiar faces in the case’s long history slowly settled into the courtroom: Bobby Hill and two attorneys for defendant Cielo Vista Ranch; Shirley Romero and a few other representatives of the Land Rights Council; San Luis residents and heirs to the Sangre de Cristo grant with surnames that loom large in community history – Sanchez, Lobato, Medina – who were about to experience what the lawyers called “due process” in their capacity as plaintiffs in the case; and finally Judge Gaspar Perricone, who had been intimately involved with the case for over a decade. It was Perricone’s 1997 denial of Hispano rights that had been overturned by the Colorado Supreme Court in 2002, and his “findings of fact” at trial that enabled the Supreme Court to do so (see Chapter 2). Perricone, though now retired, was again hearing arguments in the case, tasked by the Colorado Supreme Court to oversee what was called the identification or certification process, to determine precisely which landowners would have access to the 77,000 acre Mountain Tract and the adjacent Salazar Estate, a 2,500 acre parcel.
that also formed part of Cielo Vista Ranch. He would oversee the process from its inception in 2004 until his complete retirement in February 2010 when a new judge was assigned to the case.

That day’s hearing did not go well for the string of plaintiffs attempting to gain access to the land. At issue on this day were the cases of individual landowners who had been denied access rights as part of a phase of the identification process based on historical title research conducted by the San Luis Valley Title Company (SLVTC). Perricone had ordered the private title company, at the defendants’ expense (Cielo Vista Ranch and previous owners still implicated in legal costs), to verify the chain of title for every property located on the historic vara strips or identified in what the court determined was the earliest reliable public record, the 1894 Map A, Book E on file in the Costilla County Clerk and Recorder’s office. As specified by the Colorado Supreme Court, access rights to Cielo Vista Ranch were to be granted to “the present-day landowners who are successors to the original settlers of the Beaubien grant who were settled at the time of William Gilpin’s ownership of the former Taylor Ranch [1869], and whose predecessors-in-title were not named or served in the 1960 Torrens Action.”

SLVTC had determined that the six plaintiffs heard that day – whose claims would all be denied – now owned land that in the 1960s was owned by an individual or entity that had been properly served in Taylor’s Torrens action. Because proper service had been carried out for these landowners’ predecessors-in-title, the owners of these properties today could not be awarded access rights under the doctrine of res judicata, which roughly means that the same case cannot be tried twice. In other words, Jack Taylor had successfully

---

92 My account draws from my own observations at the hearing along with the court’s orders pertaining to that day, “Orders From July 22nd and 23rd, 2008 Res Judicata Hearings,” *Lobato v. Taylor* (Colo. District 81CV5) 23 August 2008.

extinguished the access rights of these properties and their current owners when he was granted clear title in 1967. Today, however, the owners of these barred lands were now given the opportunity to present evidence to Judge Perricone that such a determination was inaccurate, thus satisfying due process requirements and, these landowners hoped, solidifying their identifications as legitimate rights holders.

“[I]dentification,” writes Diane Nelson (1999: 5), “is produced through constant repetition in sites of power that themselves are historically overdetermined.” Yet the very “instability of such identifications,” she continues, “incites ambivalence and attempts to ‘fix’ them (in both the sense of to stabilize and to repair)” (Nelson 1999: 6). In a context historically overdetermined by the identification of tradition and ethnic and racial particularities with the communal, supposedly “primordial” qualities seen to inhibit civilization and modernity (Nelson 1999: 2), private property has long been the mechanism through which recalcitrant bodies are redeemed. These dynamics, at play in the broader histories of colonialism and sovereign power in the United States (Gómez 2007; Olund 2002) and the Sangre de Cristo grant (see Part I), were encapsulated by federal judge Hatfield Chilson when he allegedly claimed that his verification of Taylor’s Torrens quiet title action, by at long last dispensing with the communal for the private, would finally “bring the Mexicans into the 20th century” (Land Rights Council 1980).

Of course, Chilson’s repetition of private property, overdetermined by the contested and uncertain meanings of civilization, modernity, and race that I have called the sovereign stories of U.S. colonial power, failed to “fix” – in Nelson’s dual sense of both to stabilize and normatively repair – the recalcitrant Hispano bodies who for the next four decades would work to undo Chilson’s ruling. That work would culminate with the Colorado Supreme Court’s Lobato ruling in 2002 but, as discussed in Chapter 2, that decision again
repeated private property by tying rights to La Sierra to the ownership of particular parcels of property in southern Costilla County.

The ambivalence of these contested iterations was on full display as I sat in the San Luis courtroom in July 2008. The identification process, I argue, is predicated precisely on fixing bodies to private property in Nelson’s dual sense, and is a process of suture that, still today, has been far from complete. Yet while the Colorado Supreme Court had initiated this new process of suture in its *Lobato* ruling, on this July day a series of Hispano plaintiffs were attempting to secure rights to the commons by binding themselves to private property. As Butler (1997) argues about processes of subject formation, individuals come to depend upon particular formations of the subject that are not of their own choosing, yet are necessary for the exercise of agency.

The first landowner to be heard that day was Jerry Sanchez, whose property, Perricone explained based on the SLVTC research in front of him, had been owned by Costilla County at the time of Taylor’s Torrens action. Sanchez’s father, the prior landowner, had failed to pay property taxes and lost the land to the county. The elder Sanchez stayed on the land without legal title and the county made no effort to remove him, and eventually the Sanchez family bought the land back. This situation was a common one, Perricone would explain later in the day, because the county treasurer was lenient with the area’s mostly poor residents and only rarely forced an individual or family off of the land for nonpayment of taxes. Because the county was properly served by Taylor’s attorneys in the Torrens action, despite the fact that Sanchez had not himself been notified, any current owner of the land remains barred from access rights based on *res judicata*.

Sanchez’s defense did not last long. He tried to build a case based on his family’s occupancy of the land, congruent with land grant tradition and custom whereby occupying
and using land as a productive member of the community was paramount to formal legal ownership (Hicks 2006; Hicks and Peña 2003), but also asked the judge for more time to prepare evidence. Perricone, however, informed Sanchez that he had been “given ample time,” and his verdict was immediate: Sanchez did not meet the burden of proof, and his claims were therefore denied.

Several of the other cases replicated the day’s first. Procedural irregularities – precisely the kinds of irregularities the Colorado Supreme Court had referenced in 1994 before remanding the case to Perricone to re-examine Taylor’s Torrens action (see Chapter 2) – seemed to be brushed off easily in this day’s proceedings. Sam and April Medina argued that a Sam E. Medina was served by Taylor in Fort Garland, and another Sam Medina was served in San Pablo, but their predecessor-in-title, also named Sam Medina, had no middle name and lived in San Luis. Another plaintiff argued that only his father was served by Taylor, but not his mother, who was also on the deed, and thus service was incomplete. In both cases Perricone made reference to documents identified in the title company’s research that precluded access rights. Neither plaintiff could produce the required countervailing documentary evidence: both failed to meet the burden of proof, and all claims were denied.

For another plaintiff – the only one that day represented by an attorney – county ownership of the land was again at issue. The short, young, female Hispano lawyer stepped forward and laid out her case quietly and deliberately, carefully explaining that the legal record shows that the County Treasurer was in fact served for the property in question, but was served on a Saturday. Government officials cannot be served in the same way as an individual would be, she continued, and by Colorado law cannot be served on the street but rather must be served in an office. Since county offices were closed on Saturday, she concluded, proper procedure was not followed. One of the Cielo Vista lawyers, white, in his
late 50s or early 60s, physically imposing at well over six feet with broad shoulders, stood once his counterpart across the aisle had finished. Without stepping out from behind his table, he presented his objection in a deep, slow, confident, and thundering voice: the court has already dealt with this matter, and *res judicata* bars such claims. He sat as quickly as he had stood, and Perricone similarly wasted no time: the plaintiffs have not met the burden of proof. All claims are denied.

I was struck by the symbolism embodied in the stature and mannerisms of the two opposing attorneys, and noted so in my fieldnotes: one seemingly all-powerful and in command of the legal apparatus, a white male barely having to utter a few Latin words to win his case; the other an Hispano woman, exasperated and powerless in the face of the cold calculation of the law. “You didn’t give me anything today,” added Perricone from the bench, speaking to the visibly upset female attorney. “You gave me an argument, but you didn’t give me anything. This is a factual determination.”

The observations scribbled in my fieldnotes from that day read:

These plaintiffs seemingly have no idea what they are up against – and usually no legal counsel. They come with stories, histories, ties to the land, injustices; but the judge demands ‘proof.’ The stories themselves are dismissed with no comment by Perricone, who sits stoically and barely looks up as he instructs his audience, ‘The Court finds you have not met the burden of proof.’

As I sat on the back bench I wondered to myself how many times such a scene had repeated itself in cramped courtrooms in out of the way places across the U.S. Southwest: Hispanics unfamiliar with Anglo-American law, perhaps too poor to afford legal representation and nearly always lacking the documentary evidence deemed necessary and proper by the court, coldly and swiftly dispossessed of rights by imposing attorneys and judges seemingly blind or
indifferent to the injustices being done. In one instance that day, while Perricone
formulaically recited the doctrine of res judicata, he paused to re-assure the Hispano plaintiff:
“I don’t expect you to understand that,” but try to do so “as best you can.” These legal
concepts are difficult for “ordinary people” to comprehend, he said, apparently forgetting
that such Latin phrases had been common utterances in San Luis for decades.94 Perricone’s
paternalism conjured the arrogance and racism of previous judges, as Jack Taylor’s actions
nearly fifty years prior continued to reverberate through the San Luis courtroom.

By most accounts, however, Perricone’s direction of the identification process had
been positive for the Land Rights Council and Hispanics seeking rights. After a January 2010
hearing in Denver, Perricone’s last on the case before his full retirement, a supporter of the
plaintiffs, referring to the Colorado Supreme Court’s reversal of Perricone’s prior ruling,
joked that “once the Supreme Court slapped him in the chops, he has been pretty good for
us!” Largely, this perception stems from Perricone’s refusal to approve or even consider
many of the motions filed by Cielo Vista Ranch attempting to restrict, regulate, or even
clarify the rules of resource access and use beyond the standard set by the Supreme Court of
“reasonable use.” Time and again since 2004, Cielo Vista has approached the court asking it
to issue binding regulations or rules for resource access and use among the certified
plaintiffs, some of which I describe in the following chapters. In these instances, however,
the presumption of res judicata has worked the other way: Perricone has insisted that he will
not let Cielo Vista “re-litigate this case” by re-opening matters that have already been
determined by the Colorado Supreme Court (Carlos Mora 2005a); as lead LRC lawyer Jeff

---

94 LRC Board member Charlie Jacques, for instance, told me, “We did file the lawsuit in 1981, and so the people in this
community are used to being interviewed [in legal interrogatories], they’re used to being taped, they’re used to hearing
words that are Latin. Just crazy, crazy stuff, because the litigation has a language all its own.” Author interview, San Pablo,
2010-04-12.
Goldstein put it, “Judge Perricone has made it clearer and clearer that his job is to let more people on to the ranch and not limit their rights” (Frazier 2005b).

Even still, attorneys for the plaintiffs have had to respond to each and every Cielo Vista motion, at considerable time and expense as the identification process has continued year after year. The plaintiffs have argued, and Perricone has agreed, that the Colorado Supreme Court has not tasked this Court with micro-managing the Taylor Ranch, nor with shaping the interaction among the legitimate access owners, so long as the rights of these access owners are safeguarded … [Nor has it] tasked this Court to ‘clarify’ and ‘define’ the scope of access rights … because the scope of those rights has already been defined by the Colorado Supreme Court.95

Rather, Perricone has construed his responsibility narrowly, as simply “the administrative task of identifying the present-day landowners who are successors to the original settlers of the Beaubien grant who were settled at the time of William Gilpin’s ownership of the former Taylor Ranch, and whose predecessors-in-title were not named or served in the 1960 Torrens Action.”96

This seemingly straightforward “administrative task,” however, has been anything but, stretching out over eight years and still ongoing at the time of this writing.97 The process

95 “Plaintiffs Response to Defendant CVR’s Motion For Further Clarification and Definition of Scope of Access Rights,” Lobato v. Taylor (Colo. District 81CV5) 25 March 2005 (emphasis in original).
97 In the first phase of the process, SLVTC researched titles located within historic vara strip boundaries or named in Map A, Book E according to rough geographic clusters: beginning with lands in San Francisco and San Pedro, moving to Chama, San Pablo, San Luis, and outlying areas on the varas. Certification has proceeded according to the periodic title reports of SLVTC, which are examined by the court and the parties before the court issued orders with a list of properties certified for access. No fewer than fourteen access orders were issued between 2004 and 2008. Any landowner denied rights during this phase was given a chance to contest that denial in court — as had happened in the events of July 2008 described above. Once a group of property owners has been certified by the court, they become eligible to receive a key to open the gates of Cielo Vista Ranch at one of the periodic key distribution events in San Luis run by CVR (“Key” 2009). In the second phase, as agreed upon by the parties any landowner with property in the southern half of Costilla County not processed by the title company (i.e. land not located on the varas or named in Map A, Book E) received a notice informing them that they could request a court hearing to present evidence (subject to challenge) that their land meets the test spelled out by the Supreme Court that the land was settled at the time of Gilpin but its owner was not personally served in the
has been plagued by delays, costing the defendants thousands of dollars in payments to the
title company and involving countless hours of legal work for both parties, including intense
legal wrangling over issues ranging from the most critical to the smallest of details through
dozens of motions, responses, and replies filed by the various plaintiffs and defendants. 98 In
August 2009 the defendants estimated that over 4,500 different property owners of over
6,300 properties had been certified for access rights. 99 Many individuals own more than one
certified property—for example, some of the landowners denied by Perricone in July 2008,
discussed above, already had access rights from other properties that they owned.

The identification process has been highly uneven, as some grant heirs were awarded
access rights as early as 2004, while others continue to wait for hearings and still others have
been denied rights. Meanwhile, thousands of non-land grant heirs have been awarded rights
even as some heirs have been denied. One local activist estimates that around 500 local
families who are heirs to the Sangre de Cristo grant have been awarded access rights, while
the remaining thousands of certified properties are owned by non-heirs or private companies
that are predominantly absentee landowners.

Chapters 1 and 2 explored the ways in which private property was implicated in the iterative
production of sovereign power, but private property has also been constitutive of subjects.

---

98 The delays and ballooning costs have largely been attributed to ongoing health issues with a co-owner of SLVTC, on top
of the already difficult and archaic nature of historical title research in a region with a complex and contested history of
overlapping property regimes. As of February 2011, defendants reported that their clients (which include Cielo Vista as well
as previous owners of the land who remain implicated in legal costs) had paid the title company $688,047.76, despite the
Court previously capping the allowable amount at $400,000. “Defendant Jaroso Creek Ranch LLC’s And Defendant
Western Properties Investors LLC’s Motion For Inquiry Into Status of the Completion of Work by San Luis Title
Lobato v. Taylor (Colo. District 81CV5) 28 March 2008. The legal record and my own conversations indicate frustration from
plaintiffs, defendants, and the Court with regard to the title company’s slow and sporadic progress (Carlos Mora 2005b).

This chapter and the next examine the ways subjects have been formed, largely in relation to property, through the law – namely, the district court’s identification process through which the Colorado Supreme Court’s directives in *Lobato* I and II have been implemented. In this chapter, I first examine the uncertain constitution of resource users as private landowning individuals in ways that erase distinctions among resource users while simultaneously commodifying access to the commons. As I explore in this chapter and those that follow, resource users have both participated in and resisted their formation as property owning subjects. I then turn to the ambivalent constitution of Cielo Vista Ranch as a “burdened” subject, one responsible for both surveillance and enforcement in sometimes conflicting and contradictory ways. As I begin to explore here, these formations of subjects and the field within which they interact have had far-reaching implications for the governance of the returned commons. In Chapter 5, I turn more fully to an ethnographic exploration of how these contested subject formations have played out with respect to questions of responsibility, rule(s), surveillance, and enforcement as multiple actors attempt to shape the collective governance of the commons.

**Private property—rights**

As Bill Chaloupka (1996: 372-3) argues, the power of the law works by rendering its subjects visible and identifiable, locating and specifying them within contexts of power and knowledge: “the judicial system now functions by creating a certain kind of individual on which to operate,” he writes, as specific mechanisms of identification “[prepare] institutions and individuals … for and, sometimes, [mark] their entry into a disciplinary grid that promotes some constructions of the self and discourages others.” Individuals come to be known and to know themselves through these disciplinary grids, as they are iterated in and
through sites of power/knowledge. It is not simply that the law or the court, as an external power, imposes itself on or dominates the individual who enters its purview; rather, just as Althusser’s man on the street turns to acknowledge himself as the subject hailed by and interpolated into the power of the State, by stepping into the San Luis courtroom as a potential subject of rights, individuals themselves acknowledge and participate in such disciplinary grids.

I argue that through *Lobato*, the courts have constituted resource users as private landowning individuals in ways that erase additional historical, cultural, racial, or other characteristics of rights holders. With a stroke of the pen – “we conclude that reasonable access rights to the Taylor Ranch are available to Costilla County landowners who are successors in title to the original settlers of Beaubien’s grant” – the Colorado Supreme Court delineated the subject position of the “Costilla County landowner,” constituted as nothing more and nothing less than an individual or entity that owns property in present-day Costilla County.100

While elsewhere in its trilogy of decisions the Colorado Supreme Court made reference to the injustices of the dispossession of Hispano land grant heirs, and it had been aware of the practice in Mexican law and custom whereby access to the commons depended upon being a member of the land grant community, here, when specifying the precise mechanism through which access rights would be granted, the court was silent on questions of identification or the ties that bind one to a community save one crucial quality: now, the court decreed, access to the commons would depend solely upon the ownership of private

---

100 *Lobato v. Taylor* 70 P.3d 1152, 1157 (Colo. 2003). From among this class of subjects, as discussed above, two additional requirements were instituted in order to earn rights: a landowner must be “able to trace the settlement of their property to at least the time of William Gilpin’s ownership of the [grant]” and demonstrate that their predecessor-in-title was not “personally named and served [by Taylor] in the 1960s Torrens action.”
Rights would only be vested in individual subjects according to their relations of property; as the district court succinctly put it: “The Colorado Supreme Court has determined that the access rights run with the land.”

The implications of this constitution of rights-holders as private property owners have been tremendously significant for the ways in which the Lobato decision has been implemented since the Colorado Supreme Court penned those words. As subjects of the court and of rights, access holders are not heirs to the Sangre de Cristo Land Grant, nor are they members of a community. Access to the commons today has nothing to do with whether one needs access to communal resources for survival, as Beaubien had ensured when he first lured poor settlers north into the precarious frontier from Taos. Under the gaze of the law, sorting out who receives rights and who does not has nothing to do with injustices suffered at the hands of Taylor and his men, nothing to do with decades of hardship and struggle, nothing to do with enduring racism in and out of the courts nor the persistence and tenacity of many in the struggle to reclaim lost rights. Rather, a resource user must only possess a single characteristic: he, she, or it must hold the title to what the district court came to call “benefited property” – those parcels of land in the southern half of Costilla County that have been certified by the court for access. To access the commons of the Sangre de Cristo land grant today, one must only be the owner of the right kind of private property.

**Injustices and outsiders**

---

101 Chapter 2 argues that such a decision was enabled by the court’s production of difference in ways that simultaneously located Hispanics within and yet apart from the U.S. nation-state, in the process hiding the colonial histories of dispossession and enclosure on the grant through private property.

To many I spoke with, this feature of the Colorado Supreme Court’s decision – the fixing of rights to private property – was the single most important facet of the entire struggle over the commons: of how it could be used, by who, in what manner and for what purposes. Time and again in interviews and conversations, this constitution of subjects was repeated as an injustice – even as individuals continued to participate in and, indeed, came to depend upon this form of subjection in order to exercise rights. Take the story of Marco that opened the previous chapter: as he, Norman and I stood on a dirt road overlooking the sweeping landscape in which Marco had been issued a trespassing citation a mile or two below us, Marco turned and asked, “the courts gave us our rights, huh Norman?” In this instance, Marco both claimed rights as a collective subject, an heir to the Sangre de Cristo Land Grant who, by definition, had rights to the commons that preexisted any present-day court action – the court gave us our rights – while simultaneously reaffirming and participating in his creation as a subject of rights by that very court – the court gave us our rights. I suggest that the ambivalence manifest within this utterance – did rights already exist or were they created by the court? – has come to characterize the very exercise of rights and processes of environmental governance made possible through Lobato.

“I have mixed feelings,” Norman had said in a Land Rights Council meeting the year before our trip to the mountain to see Marco. “It was supposed to be just the seven [Hispano] villages, and now [rights] are spilling over into the rest of the county. I don’t like that.” The tying of rights to property ownership by the Colorado Supreme Court, like so much else in the case, is ambivalent: it did accord with Mexican law and custom in the sense that rights to the commons have always continued beyond the immediate rights-holders to
include their successors as well (Hicks 2006). That rights run with the land renders the decision significant beyond the immediate plaintiffs in the case, and enables the projects of the Land Rights Council, discussed in Chapter 7, to re-build the cultural and resource use practices of Sangre de Cristo Grant heirs as a long-term and multi-generational project.

Yet, tying rights to property also opens La Sierra to non-heirs, and the Land Rights Council and others have criticized the specific mechanism for linking rights to subjects – the ownership of private property – arguing instead that rights should accord to one’s status as an heir to the land grant. “This land grant needs to be tied to blood. It needs to be based on blood ties,” is how one grant heir and LRC member put it to me, and this is a sentiment I encountered often, repeated almost ritualistically in ways that invoke an authority of heirship that exists prior to and independent from any rights created within U.S. property law by U.S. courts.

Norman elaborated on his thoughts a few days after the 2010 LRC meeting mentioned above: “the Supreme Court decided based on maps, not on history,” he told me, adding:

The people that got rights did not all [initially] settle that mountain, a lot of the people that got the rights did not settle it. They had nothing to do with the struggle, their families were not involved, and I think the [Colorado] Supreme Court should have identified only those people, or those areas, that were involved with the settlement [of the land grant]. … It bothers me that rights go with the land, which kind of throws history out the window. … I got a call two weeks ago, somebody asking me, ‘well, does this land here fall within the access right lands?’ … The last thing we want is to have 30,000 people having access rights to that piece of land. You can’t control that many people – they’re going to damage it way beyond capacity – and that’s where

---

103 As an attorney for the plaintiffs explained to me, there are two kinds of easements in U.S. law, personal and appurtenant. Had the court decided that the easements created by Beaubien were personal or individual, then rights would have been extinguished long ago with the death of each individual rights holder. Appurtenant easements, by contrast, run with the land and can be transferred along with that land.
104 Author interview, San Luis, 2010-09-13.
the Supreme Court erred, in my opinion. They should have looked back to
the history, and not to the maps. The Supreme Court erred, in my opinion. They should have looked back to
the history, and not to the maps.105

In part, the insistence that rights must be tied to one’s status as an heir to the land grant
works to contest the constitution of resource users as ahistorical private property owners
and re-assert the historical and cultural difference of Hispano land grant heirs. “We care
about that mountain, it sustains us,” one Hispano resource user told me. “Our ancestors
always took care of that mountain. But outsiders don’t care about it. They’ll trash it and
there’s nothing we can do.”106 As I discuss more fully in Chapter 7, such statements work
against the court’s processes of subject formation by delineating subject positions that
distinguish local grant heirs who are intimately bound to the mountain, from the typically
white outsiders who lack such cultural and historical connections to the land and will surely
trash it.

So-called “outsiders” figure centrally in the struggle to govern the commons today
simply because so many non-heirs and non-San Luis natives hold legal access rights to the
land. Legal records as of March 2010 show certified property owners with mailing addresses
located throughout the State of Colorado, in addition to every U.S. state excepting North
Dakota (but including Alaska and Hawai‘i), Australia, Canada, the Dutch West Indies,
England, Germany, Guam, Lebanon, Puerto Rico, Spain, and Switzerland.107 Four months
later, that list may have included Nicaragua: in July 2010 Cielo Vista Ranch Manager Carlos
DeLeon told me, “I get phone calls all the time from people asking about their rights and
how to get a key. … In fact, I just got a call from a woman in Nicaragua. She bought
property up on the Mesa [in a subdivision south of San Luis], and she was very excited to get

105 Author interview, San Luis, 2010-04-05.
106 Author interview, San Luis, 2009-10-15.
her key.” Two days prior, Carlos had informed a meeting of grazers in San Luis (described in Chapter 5) that “The majority of keys we have given out are to outsiders.”

This situation has fostered significant tensions along class and racial lines, reflected across my interviews and interactions with Hispanics and non-Hispanics alike, in an area where such tensions have been present from the earliest days on the grant. And like Norman and Carlos, even I was asked by someone how to get their key.108 The question was taken in jest, but underscores the tensions surrounding outsiders and access rights. While I reviewed documents in the Costilla County Planning and Zoning Office one afternoon in 2010, a few people entered the office looking for information that would help them in acequia-related matters. One turned to see me digging through a large box of documents in an adjacent room and asked a staff person, “Who is this guy over here?” I stood and introduced myself, as the Planning staff person added, “He’s been doing some research with the Land Rights Council.”

“Ohhhh, Land Rights Council, huh?” the visitor responded, eyeing me suspiciously, and without hesitation asked in a cold and direct tone, “So, where’s my key?”

“Unfortunately,” I replied, “I can’t help you with that. I wish I could.”

“Man, where’s my key?” he repeated for the rest of the office to hear. “All these outsiders got keys and I’m an heir and I get nothing.” The conversation quickly turned to the area subdivisions, with the visitor underscoring what he saw as the lack of county regulation of uncontrolled development that had led to the proliferation of subdivision properties now owned by outsiders: “the County Commissioners were bought out way back when,” he said as he turned to look me in the eye. “They sold us out, man, for a nickel and a dime. They

108 Others have also fielded such questions, including Matthew Valdez, discussed below. Arnold Valdez, author of the LRC management plan, oversaw the collection of Notice of Intended Use forms in the early years of the process and underscored the uncertainty of the process in 2005: “No one is in charge of the entire process ... I get calls at all hours asking me, 'Am I on the list? Can I go up on La Sierra?' Every day there are unanswered questions” (Carlos Mora 2005c: 2).
sold us out. Now look what we got, I don’t have any rights to that mountain and all these outsiders do.”

Most all of these “outsiders” do not live or own property in one of the villages that historically constituted the main areas of settlement on the Sangre de Cristo grant and remain populated almost exclusively by Hispanos today; rather, they typically own property in one of the many subdivided lots that surround these villages. That Costilla County is one of the most subdivided counties in all of the U.S. is an oft-repeated iteration (Valdez and Mondragon-Valdez 1999); as one board member put it to me after a 2010 Land Rights Council meeting, “We’re already owned. This city, this community is already owned by outside interests. Just look at the tax rolls. So many of them don’t live here and I wonder, who are they?”

For many heirs to the land grant, one of the cruelest ironies emerging from the fixing of rights to private property ownership stems from the lasting legacy of Taylor’s Torrens action in the 1960s and the ways in which it has prevented the certification of some properties for access rights today.¹⁰⁹ In practice, the lasting effects of Taylor’s quiet title action mean that within the seven villages today, a complex patchwork of certified and non-certified properties covers the landscape: while one parcel may be certified in, for example, Chama or San Pablo, the neighboring lots may be denied access if they were owned by an individual who was properly served by Taylor. Meanwhile, however, nearly every parcel that lies at the outer ends or extensiones of the long, thin vara strips has been certified by the court – precisely because no one lived on these lands in the 1960s and so there was no one there for Taylor to serve by name. These extensiones were used for a variety of purposes including grazing, hunting, firewood and timber, recreation, and gathering, but were rarely occupied:

¹⁰⁹ As discussed above, if an individual was properly served by Taylor, the property they owned at that time is not eligible for access rights today under res judicata.
home sites and farm fields on the varas were located close to river bottoms and clustered in the villages. The outlying extensiones are precisely the lands that have been purchased and subdivided by real estate developers.

In March 2008, for example, the court certified access rights for over 130 properties that were owned by a single real estate developer, Melby Ranch Properties, that operates several subdivisions mostly concentrated just south of the town of San Luis with names like “Little Norway” and “Wild Horse Mesa.” Those properties are marketed with narratives (and accompanying images) of pristine natural beauty in ways suggestive of the first land companies operating on the grant. During my entire fieldwork period, for instance, the main page of that developer’s website featured an idyllic image of the Sanchez Reservoir just a few miles south of San Luis – a body of water highly polluted with mercury – framed by the majestic Sangre de Cristo mountains in the background and accompanied by the text, “Wouldn’t it be wonderful, to wake up to this every morning?”

Upon discovering that one company held so many certified properties while I sifted through the hundreds of pages of records in the Lobato v. Taylor file at the San Luis courthouse on a crisp fall day in 2010, I returned to the LRC office that afternoon to find its secretary, Junita Martinez, taking care of some work in advance of the next board meeting. I told her about my findings, and pointed out the complex patchwork of certified and excluded properties in the villages – in contrast to the situation in the subdivisions, where nearly every property met the Colorado Supreme Court’s test simply because no one was living there for Taylor to serve. Most of those lands were just beginning to be subdivided in

111 The high levels of mercury are largely attributed to coal burning power plants in northwest New Mexico (Green 2005).
the 1960s, and most were not yet occupied as subdivision properties.113 “It’s aggravating,” Junita replied, “it really is.” A smile came over her face as she spoke – Junita was often able to keep a sense of humor no matter what circumstance she found herself confronting – and she exclaimed with a laugh: “But the wheels of justice run like that sometimes. They run crooked!”

Similarly, and contributing to the patchwork pattern of certified and denied properties, lands would also be ineligible for rights if they were not settled by the time of Gilpin.114 In one dispute during the certification process, Judge Perricone relied on SLVTC title research to determine that an entire area adjacent to and just south across the Culebra Creek from Chama, known as the Vallejos lands, was deeded by Beaubien, via Gilpin, to investors and not to Hispanic settlers. These parcels, therefore, were not settled early enough because those investors who owned the land did not actually live on them (“Status” 2009).

Norman, who lives in Chama right on the creek, explained his objections to this situation to me one day in late March 2010 as we walked along his property: “We know those lands were settled, because it’s all the same families as the people living across the river here in Chama. Of course they were there at the same time!” We walked down near the creek, ducking into the brush and trees that cover its banks through a well-worn trail across Norman’s land, and he began pointing towards the Vallejos lands that sat just in front of us on the other side of the water: “My aunt lives over there, that house is my cousin. It makes no sense that one side of the creek gets rights and the other doesn’t. We know the land on both sides was settled by the same families and at the same time.” While areas like the

---

113 Author interview with Matthew Valdez, San Luis, 2010-09-17.
114 The outlying areas of the varas were considered “settled” in 1869 even though no one lived on them, because Hispanics were living on the other ends of the long, thin properties, close to river bottoms and the seven villages, but still considered the same parcels as the extensiones. By 1960 when Taylor arrived, these extensiones had become subdivided, most with absentee owners who were not served, and hence these properties have met the certification test of the Colorado Supreme Court.
Vallejos were denied rights, areas like the Mesa south of town, extensively subdivided today yet never historically occupied as part of the extensiones, are fully certified: “[The mesa] had never been settled, so why did they get rights?” Norman asked me a month after our walk along the creek, exasperated. “The presumption that just because you’re on the vara strips gives you that right is not necessarily the right decision in my opinion. We need to go back historically to find out who really is entitled to those rights.”115

The tensions stemming from the commodification of access rights ran deeply among Land Rights Council activists during my fieldwork. Matthew Valdez, who served on the LRC board during my research in addition to his employment as County Planner, said as a few LRC members and I waited for a meeting to begin in September 2010, “I get people coming into the office all the time saying, ‘how can I get a key?’ People call all the time too.”

“It’s disgusting,” board member Charlie Jacquez replied, gesturing towards the mesa, “There are going to be more outside key holders than there are locals. There are a lot of properties up there.” Earlier in the year at a May meeting, the board had learned that the number of notices sent to landowners in the southern half of Costilla County alerting these landowners that they could request a hearing to pursue access rights as part of the second phase of the identification process, was double the 10,000 figure discussed by the group during the previous month. In April, the 10,000 figure had elicited groans and disbelief from around the table; with 20,000 notices actually sent out, discussion quickly turned to how the Land Rights Council – and the mountain – could handle so many outsiders with rights should many of them eventually be certified.

Despite such criticisms, however, resource users must participate in their constitution as private landowning individuals and, indeed, depend upon this identification

115 Author interview, San Luis, 2010-04-05.
to exercise rights. Each year, in fact, the owners of certified property must reaffirm and make visible their identification within the court’s disciplinary grid by completing and returning a “Notice of Intended Use Form.” This form lists all certified properties owned by a rights holder and whether they are entitled to access the Salazar Estate, Mountain Tract, or both. The rights holder must report whether they intend to gather firewood and cut timber and/or graze animals (and to indicate the type and number of animals if so). If an access holder who has failed to make themselves visible as a property owning subject is stopped on Cielo Vista Ranch, CVR personnel must facilitate this identification by providing a Use Form to be filled out on the spot.

**Benefits and burdens: The surveillant subject**

If the court created resource users as nothing other than the owners of benefitted property, a subject position that resource users have come to both participate in and contest, Cielo Vista has been constituted rather differently as a subject of the law. As the owner of so-called “burdened property,” the court explicitly granted Cielo Vista the capacity to attempt to restore its now diminished property rights. While the court declined to restrict, eliminate, or otherwise regulate resource use at this present time, it reserved the right to do so in the future – and it would need help. “If after a period of time,” wrote the court without specifying any precise duration, “the Ranch Owner Defendants reasonably believe that the Plaintiffs are not in compliance with the Supreme Court’s standards [of reasonable use], they may then seek relief.”

subsequently present matters to the Court if they believe that the … Plaintiffs … are abusing
the land or their rights.”

Cielo Vista, in other words, would be able to ask the court to restrict, regulate, or
remove access rights in the future – to “seek relief” – if it could also present evidence that
“the … Plaintiffs … are abusing the land or their rights.” Cielo Vista Ranch emerges here as
an entity that has lost part of its property – now “burdened” according to the ideal of fee
simple absolute – but could at some future point seek the restoration of that property if, and
only if, those other subjects who had gained from Cielo Vista’s loss – those who now own
“benefitted” property – act in unreasonable or abusive ways. And it would be the job of
Cielo Vista Ranch to monitor such conduct. As Nealon (1998: 138) underscores, an
identification founded on loss or the failure of full realization provides the subject occasion
and impetus to attempt to restore that originary plenitude. Certified property owners are tied
to the law by a right, a “benefit”; the ability to exercise such rights simultaneously binds
individuals to the law as subjects. CVR, however, has been constituted by the law through a
founding lack, a loss or “burden”; its ability to ameliorate that lack similarly binds CVR to
the law as a subject. Beyond simply the owner of private property that is variously benefitted
or burdened, then, Cielo Vista Ranch was effectively constituted by the law as an instrument
of surveillance, one that could potentially eliminate some of the claimants now “burdening”
its property.

An additional iteration of private property by the district court, however, has
strengthened the formation of resource users as private landowning subjects alongside the
creation of Cielo Vista as agent of surveillance. Judge Perricone has ruled that questions

of enforcement and dispute resolution on the newly-returned commons would also be tied to a subject’s status as a private landowner. In a 2008 ruling Perricone wrote,

> a party’s use [of Cielo Vista Ranch] may be restricted or limited only by a finding supported by evidence that the use is unreasonable, and such a determination does not fall within the purview of this class action, and instead must be initiated by a specific claim against any individual alleged to have engaged in unreasonable use.¹¹⁸

This iteration has worked to constitute subjects and the field within which they interact, as questions of enforcement have become private legal matters between relevant parties. For example, if a resource user is using their access to Cielo Vista to hunt or fish, or if a resource user is selling firewood instead of using it only for household consumption, these are disputes that must be resolved as conflicts between private landowners – a constitution of subjects that I gloss here as “legal individualism.” In most cases, Cielo Vista Ranch, as the private landowner being harmed by the actions of another private landowner, would need to initiate the appropriate legal action against any party engaged in such “unreasonable” use of the land. Not only has Cielo Vista been constituted as an agent of surveillance, then, it has also become largely responsible for enforcement as the only entity involved in the governance process able to act with legal force in most situations. The Ranch must both document violations of reasonable use – with the hope that such documentation can become a mechanism to restore its full property rights at some future date – and also solve these violations by taking the appropriate action that any landowner must take when harmed.

The district court, therefore, has constituted Cielo Vista Ranch as a burdened property in relation to the normative ideal of private property as a social relation of exclusion: CVR can no longer fully exclude according to fee simple absolute and is therefore

burdened by the rights of others; however it can attempt to achieve the ideal of exclusion through the surveillance of resource users and documentation of unreasonable use. Yet simultaneously, in the broader constitution of the field of resource users as private landowners, Cielo Vista is positioned as the sole agent of enforcement. Cielo Vista, however, has seemingly participated in this subject position only partially: the ranch has embraced its constitution as the owner of burdened property with the ability to eliminate its burden through surveillance, yet has acted far less decisively to resolve disputes. As a split subject, Cielo Vista’s interests in re-asserting its private property rights by excluding the rights of other landowning subjects has outweighed and even undermined its interests in regulating the conduct of resource users.

CVR’s participation in its formation as a subject as the owner of burdened property able to restore its lost rights was revealed in 2009 when Judge Perricone, in advance of his pending retirement in the case in early 2010, directed both the plaintiffs and defendants to prepare their appeals of the identification process in an attempt to achieve some closure before a new judge was assigned to the case.\(^{119}\) Ultimately, both the defendants and plaintiffs would argue (and the court agreed) that since the identification process was not yet complete, it was too early for an appeal to proceed. In the meantime, however, Cielo Vista filed an extensive appeal with the Colorado Court of Appeals that “[raised] 36 points of contention with how Judge Gaspar Perricone has conducted the access proceedings in the lower court” (Hildner 2009b). The appeal lays bare Cielo Vista’s intentions to overcome the lack that founds it as a subject of the law and to reverse that lack via the achievement of private property rights as an ideal of exclusion to the greatest extent that it can.\(^{120}\)

\(^{119}\) CVR’s intent to restore its lost rights specifically through surveillance is discussed below.

\(^{120}\) I discuss Cielo Vista’s attempts to document “[abuse] of the land” on environmental grounds in Chapter 6.
A “Notice of Appeal” filed with the district court in August 2009 (and paralleling the appeal filed with the Court of Appeals) begins with the repetition of private property as line one in its “Advisory List of Issues to Be Raised On Appeal”: the Notice argues that the Court of Appeals must determine “Whether the trial court erred in … [allowing] communal rights … for the public in and to the private property of CVR, as evidenced by the fact that the trial court’s proceedings … have led to over 4,500 people and over 6,300 parcels of property having access to the Ranch.”121 This line performatively recites the subject position of Cielo Vista as a “burdened” property unable to achieve the normative ideal of private property – a burden quickly framed as an imposition on Cielo Vista.122 The appeal can be read as a multi-faceted attempt to render this burden as variously too numerous (the original 170 vara strips in 1863 have now become 6,300 parcels), too extensive (the original 170 rights should be apportioned, or divided, 6,300 ways so that each individual access holder gets only a small numerical fraction of the original right), misplaced in multiple ways (the Mountain Tract was only a small part of the original commons and should not shoulder the entire burden of use rights today; and each individual plaintiff should have to prove the validity of their burden on CVR rather than the title company, at defendants’ expense, determining access to large groups of landowners subject to Cielo Vista’s challenge), not sufficiently defined (the precise scope or extent of access rights and limits to resource use should be defined [and then apportioned] more precisely than “reasonable use”), and as normatively harmful (certain aspects of the district court’s actions constitute “a taking of CVR’s property without due process or payment”).123

Above all, however, the appeal situates the actions of the district court, in allowing resource use to proceed as it has, as violating the regulatory norm of private property as fee simple absolute, because the court refused to recognize “that the use rights … granted to property owners are limited by and do not supersede or preclude the rights of the Ranch owner to use the Ranch and its natural resources.”124 The private property rights of Cielo Vista Ranch as a landowning subject, then, must supersede any other rights – a reiteration of private property invited by the court five years prior when it constituted CVR as a burdened property able to lessen or remove that burden through surveillance.

Cielo Vista also appears to be embracing its constitution as a surveilling subject. Many resource users during my fieldwork told me that they had little doubt Cielo Vista was documenting everything possible to help convince the court to restrict or revoke access rights – from instances of hunting and fishing to left behind trash to use of the ranch by non-access holders. At a July 2010 Land Rights Council meeting (described in Chapter 5), board member Charlie Jacquez addressed the group during a discussion of grazing issues, saying, “I bet those lawyers for Cielo Vista are just rubbing their hands together right now. They are collecting all kinds of information about the problems up there.” He continued a few moments later after the board expressed general agreement, “I know what Cielo Vista is doing. They have all the information: pictures, videos, dates and locations of violations, everything. And they will represent this community – not us, but them. They are documenting everything.”

Documentation was an issue that had been discussed by the LRC before, including a month earlier when Shirley had brought it up, saying “There is no question they are documenting everything. The ranch will bring it all with them to court.” CVR’s

documentation was also a recurring theme in my interviews and conversations with resource users outside of the Land Rights Council Board. Similarly, in 2006, a story appeared in the local newspaper of a disgruntled out-of-state hunter who was unhappy that he had been filmed by Cielo Vista staff when they stopped him for hunting illegally on the ranch (Martinez 2006). Cielo Vista Ranch has also approached the court with specific violations of reasonable use as part of their effort to convince the court to institute rules to restrict and regulate resource use, which I discuss more fully in Chapter 6.125

Conclusion

This chapter has introduced details of the court’s identification process and explored the ways in which subjects have been constituted through the iterative practices of the law. Resource users have been constituted through their relations of property – as the owners of “benefitted” properties – in ways that erase distinctions among resource users, commodify resource access, and open the commons to “outsiders.” Cielo Vista Ranch, by contrast, has been constituted as a “burdened” subject, one able to work towards the exclusion of resource users through surveillance and, contradictorily, also as an agent of enforcement and dispute resolution. In this chapter, I have argued that specific individuals as well as Cielo Vista Ranch have both participated in and worked against these subject formations: while resource users have come to depend upon the ownership of property to exercise rights, and must repeatedly make themselves visible as property owning subjects, many have also decried the effects of this subjection as an injustice. Similarly, CVR has seemingly embraced its subjection as a subject of surveillance able to restore its ability to exclude, yet has acted far less decisively to resolve disputes. In the next chapter I flesh out and extend these

arguments, by arguing that resource users and the field through which they interact have been constituted by the courts in such a way as to elicit widespread confusions, uncertainties, and passions, while simultaneously working against effective collective governance of the commons in ways desired by local organizations of resource users.
Chapter 5: “¡Ya basta!”

Passions and Frustrations in the Collective Governance of Individual Subjects

As a student looking for a workable research project in June 2008, I traveled to San Luis for the first time with a colleague, John Hultgren, to interview Arnold Valdez. Arnie is an heir to the Sangre de Cristo grant and long-time activist with the Land Rights Council (LRC), and is also the author of the resource management plan that forms the central element of the LRC’s efforts to govern the returned commons (discussed in Chapter 7). John and I planned to spend a few weeks that summer in San Luis, visiting archives, conducting interviews, and hopefully generating enough empirical material to publish an article or two. A little side project, we called it.

By a stroke of luck (or more likely Arnie’s helpful foresight in scheduling the interview with us on that day), Arnie alerted John and me that we had arrived just a few hours before a Land Rights Council community meeting with the Santa Fe-based NGO Forest Guild in the nearby Parish Hall. We conducted the interview sitting outside of a café on Main Street in San Luis, and Arnie introduced us to many of the issues central to the governance process and, eventually, Part II of my dissertation: outsiders getting rights, what accessing and using the land sustainably might mean, the role of the courts in the governance process, the management plan and the LRC’s efforts to govern the commons, and more. Soon after, Arnie walked us over to the Parish Hall and we took a seat to wait for things to begin.

The meeting was co-facilitated by Henry Carey and Mike DeBonis of the Forest Guild along with Shirley Romero of the LRC, and centered on strategies for harvesting timber and firewood on Cielo Vista. As I describe in Chapter 7, community events such as
this one formed part of the LRC’s strategy to sustainably govern the commons in a context deeply shaped by private property and legal individualism: in other words, to shape the behavior of resource users towards sustainable resource use practices in absence of any institutional or legal power to compel or sanction such behaviors. Much discussion in the meeting centered on forest health alongside the project of identifying, mapping, and alerting resource users to areas within Cielo Vista Ranch that would be most beneficial for timber and firewood collection for both ecological and community needs. As Henry would explain to me almost two years later, his work with the Land Rights Council was in part about finding common ground between these two things: “From the ecological perspective, doing a lot of [tree] thinning in [certain areas of La Sierra] makes a lot of sense, so we were looking at the notion that the community could be the agents of change … and could contribute to the health of the mountain” by gathering wood from areas that needed to be thinned the most.\footnote{Author interview, Santa Fe, 2010-04-27.}

The discussion in the meeting, however, quickly turned from ecology to access. While we had discussed conflict over the exercise of access rights in our just-concluded interview, Arnie had emphasized cooperation rather than conflict; what came next in the meeting surprised me. One old and weathered-looking Hispano in cowboy hat, dusty jeans, and work boots spoke up from the back of the room in response to a question from Henry about what types of species the community most needed for its firewood – but his concern was not with the relative merits of Aspen or Ponderosa Pine: “What we need are roads. But there ain’t no roads.” He paused and looked around. “There are lots of low altitude areas that have plenty of wood, but we can’t get to them, because the logging damaged a lot of areas and the owners won’t improve or maintain the roads. Some of the roads were
improved by the loggers, sure, but now those are deteriorating. The new owners don’t want anything to do with maintaining them, because they know it will keep us out.”\textsuperscript{127}

“Exactly,” responded Shirley. I could feel our little side project sucking me in as she spoke: “The owners agreed to maintain roads if the community only goes certain places, but the places they have in mind don’t work for people. They want us to clean up the slash piles left behind from the logging, but that wood doesn’t burn well and it’s not what people want. They say one thing and they do another.” She paused. “And it’s always about restricting access.” For Shirley, the maps the group was working on with the Forest Guild were precisely what was necessary to combat Cielo Vista, so that access holders could counter CVR restrictions with evidence and management strategies grounded in both scientific knowledge and the needs of the community.

The side project wasn’t sidelined for much longer. After two weeks in the San Luis Valley with John, I returned on my own several weeks after that, slowly getting acquainted with the issues and actors involved in governing and using the commons. I returned again a little over a year later, this time for long-term fieldwork, and quickly found that roads remained a contentious issue. I had arrived in September 2009, and in the Land Rights Council meeting in early November, roads – and rules – were central to the discussion. LRC president Norman Maestas spoke about both Carlos DeLeon and Bobby Hill trying to make up their own rules – saying you can’t do this, or can’t do that, whatever they could dream up. Another board member spoke up: “They just blocked a county road that they claim is theirs, and now I can’t even get to my own house. They’re blocking out some Forbes people also.” He was referring to the land immediately north of Cielo Vista, which contained numerous

\textsuperscript{127} Similar themes were discussed at a community meeting with the Forest Guild several months earlier. Two local residents were quoted as saying, “Access to roads is hurting us, locals can’t go up there with their trucks,” and “there’s been a promise made if the locals stay away from the Cuates Gate, they [Cielo Vista] would maintain the roads, but have not done so” (Maestas 2008: 1).
housing subdivisions and was for many years owned by the Forbes family before being sold in 2007 (Hooper 2007). “They do things like put in trenches,” he explained. “It’s so easy for them to stop people. We can build a new trail, but why do we have to keep fighting these people? We can’t let them run over us anymore, they’ve been doing it for too long.”

The spirit of defiance in these words encompassed more than just roads, as when a resource user named Esteban Delplain told me soon after about Cielo Vista staff harassing him for eating lunch on the ranch:

I go and get firewood, and when I do, I take my lunch. I sit by the stream and I eat it, and when I’m done, I finish loading up the truck and go home. Don’t you dare tell me I’m having a picnic or that this is recreation when I’m eating my lunch, that I can’t do that. I’m going to go on that mountain and do just what my ancestors did.128

But Esteban had plenty of anger about roads as well – he was central in the conflict over the Torcido road and gate described in Chapter 3. “The U.S. Supreme Court ruled in our favor in 2003,” he told a group of Land Rights Council board members and I a few months later when discussing the Torcido,129 “and here it is in 2010, and they are still closing roads. They just bulldoze these roads and gates right off of the landscape. These people completely erased it from the landscape, but they will never erase it from my mind.”

This chapter picks up where the last left off by ethnographically exploring some of the implications of the ways in which subjects have been formed by the court’s identifications. I argue that on the ground, the constitution of subjects and the field within which they interact through the legal process – resource users as benefitted private landowning

128 Author interview, San Luis, 9 November 2009.
129 Esteban was referring to the U.S. Supreme Court’s denial of certiori for CVR’s appeal of the Lobato rulings by the Colorado Supreme Court.
individuals, Cielo Vista as burdened agent of surveillance and enforcement, and dispute resolution as an individual legal matter between the relevant private parties – has often elicited deep confusions, conflicts, passions, and frustrations. These uncertainties and emotions, I argue, are *productive* of governance processes and the subjects and objects they implicate.

Below, I first continue the discussion of roads initiated above as an entry point into issues of responsibility and rule(s) in the governance process. I then turn to discussions over grazing problems on Cielo Vista across three consecutive days in July 2010: a meeting of the Herederos Livestock Grazing Association (HLGA) on the 27th, a Land Rights Council board meeting on the 28th, and a grazing workshop held on Cielo Vista Ranch on the 29th. These three events, along with an additional discussion revisiting the conflict over the closed Torcido road, illustrate the frustrations, confusions, and uncertainties – as well as the uncertain formation of subjects – constitutive of the governance of the returned commons. I conclude with a discussion of the tragedy of the commons as a way to transition to Chapters 6 and 7, where I explore how those involved in governing the commons have attempted to mobilize both subjects and natures in contested projects to reconcile the conflicted and uncertain formation of subjects described here and in the previous chapter.

**Rule(s) and responsibility**

A sense pervades the governance process that the court’s vague specifications of reasonable use, which I explore in Chapter 6, have opened the door for CVR to unilaterally decide what rules will govern resource access and use. The community was not unfamiliar with the owners of the land appropriating the right to rule, even after the 2002 *Lobato* decision. At that time, the land had been owned by Lou Pai, a former Enron executive who
purchased the land from the Taylor family in several pieces beginning in 1996. In the first years of resource use after *Lobato*, Pai had sought to unilaterally impose severe restrictions on access to and use of the land (Frazier 2004a; “Jaroso” 1998).

Once Bobby Hill and his partners took over, some of these restrictions continued. One 2005 motion brought by the plaintiffs, for example, details the problems that the initial nine certified rights holders experienced in 2004 when Cielo Vista Ranch only opened three of its ten gates for the plaintiffs to access.\(^{130}\) According to the motion, these resource users “had difficulty in obtaining free access to the Ranch … under the physical limitations imposed by the current and former Ranch owners.” The limitations imposed by *former* Ranch owners were not discussed in the motion, but likely include trenches and barricaded gates employed by both Jack Taylor and Lou Pai to restrict entry into the Mountain Tract.

According to the motion, CVR refused in 2004 to provide keys for seven gates; locks for the open gates were changed after keys had been distributed (including when resource users were on the mountain, so that they could not exit from the gate they had entered); and large parts of the ranch, including those closest in proximity to specific resource users and areas traveled and used heavily by Hispanics historically, were simply not accessible from the open gates because of topography and physical obstacles within CVR. “Essentially,” the motion argued, “the plaintiffs are being kept from a large portion of the Ranch because of the refusal by the Ranch owners to provide keys to the remaining gates.”

Several resource users included testimony along with the motion detailing the implications of closed gates for the exercise of their access rights. These included Emilio Lobato, who described needing to hire three to four additional workers to herd his 29 cattle onto Cielo Vista because of the added distance he must travel to reach an open gate, in

addition to the unfamiliarity of the cattle with the long, circuitous route, causing them to turn back and necessitating more labor. Opening all gates, Emilio argued, would enable the use of traditional and more efficient grazing routes. Another affidavit described the difficulties faced by Pete Espinoza in not only dealing with closed gates – “he has to cross over high passes, gulleys, and four difficult canyons just to get to the South Vallejos canyon for firewood, a grueling passage” – but also with CVR attempts to restrict access in the early mornings and late evenings.131 “[I]t is a physical, logical and rational impossibility,” the affidavit argued, “for [Espinoza] to do the work he is entitled to do there based on the 8 a.m. to 5 p.m. ‘bankers’ hours’ access approach that is currently in place.”

Also included was testimony from Norman, who provided details on a bridge over Culebra Creek within Cielo Vista that had fallen into disrepair, effectively blocking access to a large section of the ranch that could only be accessed otherwise through a locked gate. Over five years later, while up on the mountain with Norman to help him cut firewood in September 2010, we found ourselves in front of that same bridge, which was again not passable. As we approached the small bridge, I thought it looked potentially crossable, but perhaps on foot or an ATV rather than in a large pickup truck. Norman turned to me and said, “Emilio, his brother and I fixed up that bridge a while back, but it needs work again, more than we can do right now. The owner won’t maintain it. He says, ‘if you want it, you repair it.’” Expecting us to turn around and head in a different direction, I was surprised when Norman continued driving towards the bridge, only to make a sharp left turn at the last moment, heading down the creek embankment and, very slowly, with quite a few large bumps, crossed directly through the creek and up the bank on the other side. The sloping

131 CVR has tried to restrict access to limited hours during hunting season to prevent conflicts between resource users and hunters on the land. As I discuss in the next chapter, the largest single source of income for CVR stems from its use as a hunting preserve.
and worn terrain on each bank made it clear that Norman was not the first to choose this route through the water instead of over the bridge. I hung out the passenger window and snapped a picture of the bridge next to us as we crossed (see Figure 3), as Norman said “This late in the year, the water level is low enough to drive through.”

I often heard conflicting responses to questions about who is responsible for maintaining roads, as well as accusations that Cielo Vista has used a lack of road maintenance as a spatial strategy to restrict access.132 After circumventing the bridge with Norman, we soon neared Cielo Vista’s north headquarters and came to a location where the condition of the roads was noticeably improved from what we had been driving on. As we passed by the complex of buildings, several pickup trucks were parked nearby – it was bow hunting season and, we surmised, these trucks belonged to a group of hunters. “This road is in much, much better shape than it was a few months ago,” Norman observed. “That’s because it’s hunting season. They only do that for the hunters, not for us.”

**Herederos and the “right to enforce”**

Who is responsible for road maintenance? Questions of responsibility were front and center in late July 2010 and extended beyond simply road conditions. Who is responsible for ensuring sustainability? For halting abuses of the reasonable use standard? How are these things even defined? These questions elicited many different responses during my fieldwork. This section and those that follow consider the frustrations, passions, and uncertainties surrounding collective efforts to govern individual resource users, as well as the uncertain formation of subjects within the legal process. I begin with a meeting of the Herederos Livestock Grazing Association (HLGA) in San Luis.

---

132 I discuss the spatial strategies of Cielo Vista more fully in Chapter 6.
The Herederos is an organization formed after the *Lobato* decision to implement a grazing management plan among heirs who are grazing cattle on the mountain. Yet the organization has so far been frustrated by a lack of enforcement power, which is to say that it has been frustrated by its constitution as a particular type of subject within the legal process. The Land Rights Council has faced a similar situation, as I explore below. The LRC owns property in Chama that has been certified for access rights so that legally, the organization is indistinguishable from any other resource user: nothing more and nothing less than one private landowner among many other private landowners with access rights to Cielo Vista. The Herederos is even less in the eyes of the law: it does not own property, and so legally it has no bearing on the legal process outside of any influence it may happen to exert over the actions of resource users through, say, persuasion or education. Neither of these organizations, despite the desires of many members, can act as an enforcement body with the ability to sanction or direct the behavior of resource users.

Frustrations over rule(s) and responsibility came to a head on the evening of July 27, when CVR ranch manager Carlos DeLeon joined a group of Herederos and I to discuss several problems that had been occurring with grazing on the mountain. Most everyone involved was familiar with the problems, and knew who was doing what – news tended to travel fast in the small community. The main problems discussed that night were the cutting of fences, enabling cattle to wander off of the Mountain Tract and onto the properties of adjacent landowners; herds that were seemingly too large; and individuals who did not have access rights grazing cattle anyway by transferring their cattle to someone who did have rights. There were allegedly three or four people putting cattle on the Mountain Tract under

---

someone else’s name – and that same group was also at issue for having herds that were too large.

Early on, before Carlos had arrived, Esteban challenged the group, telling them he had had enough talk and it was time to act. “If these people don’t have rights, then they shouldn’t be up there,” he began, his voice progressively growing more assertive. “Enough talk. Are we just going to sit here and do nothing? I don’t want to be a part of an organization that does nothing. Let’s tell the sheriff that they can’t be up there, or let’s take care of it ourselves. We have to do something.”

“But whose responsibility is it?” replied another Heredero, or heir, Ricardo Hernandes. “Ours, or Bobby Hill?” The uncertainty over who could and should act in an enforcement capacity, as well as precisely what standards or rules or practices could and should be enforced, was pervasive throughout the conversations occurring over grazing problems throughout that summer. Such a situation, I argue, is in part a product of the court’s constitution of resource users as private landowning individuals who must interact as private parties through proper legal channels. In her work on forest conflicts in Indonesia, Anna Tsing (2005: 41) argues that “confusions between legal and illegal, public and private, disciplined and wild are productive in sponsoring the emergence of men driven to profit, that is, entrepreneurs, as well as the natural objects conjured in their resourceful drives.” Like Tsing, I emphasize the productivities of uncertainty and confusion: what is legal and illegal? What is sustainable and unsustainable? Who can act, and how? While clear answers to these questions have not yet emerged in San Luis, certain “men driven to profit” seemingly have; men (and women) who herd too many cattle on the mountain when they’re not supposed to herd any, who exploit the gaps in governance and the hesitations of others. New objects,
some of them “natural,” have also emerged, hesitantly – including objects that double as objectives, such as forest health or carrying capacity.

Meetings like that of the Herederos in late July also illustrate the difficulties of collective resource governance in the context of legal individualism among resource users who legally relate as nothing more than successive private landowning individuals. Ricardo couched the Herederos’ task in terms of uniting some of these individuals: “We have to protect our rights, but we have to work together to do it. And we can’t be getting people angry either. Bobby Hill wants people to be divided. Divide and conquer.”

The HLGA secretary and Norman, also on the Herederos board, began taking roll and initiating the meeting’s agenda as the conversation continued in fits and starts. After a few administrative tasks the group was back to grazing problems. “How many cattle will your cropland support in the winter,” said Ricardo, “that’s the key question here and that’s what has to be enforced.” The question of sustainability and carrying capacity, discussed more fully in the next chapter, came up repeatedly in discussions of resource use – yet no clear or agreed upon standard or understanding of these issues existed. What Ricardo was referring to by broaching the issue of how many cattle one’s land would support was the Colorado Supreme Court’s stipulation for grazing as “limited to reasonable use of livestock given the size of the vara strips” owned by any particular resource user. For some, this stipulation meant that a resource user could only graze the number of cattle on the mountain that their land could support during the winter months. Then, “sustainability” became a question of simple math: how much cropland do you have on your land, and how many cattle can the hay grown on that land support during the months those cattle are not grazing on La Sierra?

Some, like Ricardo, insisted that the court had ruled on this matter: he said later in the meeting that “It wasn’t the Supreme Court, it was Perricone when the case came back down. He said that the question is, how many cattle can your cropland support in the winter with the feed grown in the summer?” He continued, “The numbers are easy. People report hay to the FSA [Farm Service Agency of the U.S. Department of Agriculture] every year. It’s just a matter of averaging it out – how much does your hay sustain?”

But Norman disagreed, saying that yes, the Supreme Court said sustainability was about how many animals the land could support, but what that meant had not been determined yet: “No one has done a study on sustainability yet, how do we know? There have to be studies done, and our grazing plan has to address this issue.”

Esteban sided with Ricardo: “The lawyers told me 20 cows was a good number for my 18 acres. It is all about how much your cropland can sustain in winter, with your summer feed.”

As far as I was able to determine, and despite any concrete advice that may have been given by certain lawyers, neither the supreme court nor the district court had ruled definitively on what sustainability meant – and this gap was part of the uncertainty among resource users that pervaded efforts at governing the commons.135

“Whose problem is this?” Esteban interjected, “is this our problem or Hill’s problem?”

Jose Martinez, another Heredero, replied, “It’s both of our problems. The court wants us to work together, and like it or not, we have to. We’re stuck together.”

135 I was unable to locate any court order from the district court that ruled on this issue beyond the text quoted above on “reasonable use given the size of the vara strips,” which contained no additional specification. That quotation was in reference to a single line in Lobato I, also without additional clarification: “grazing access is limited to a reasonable number of livestock given the size of the vara strips,” Lobato v. Taylor 71 P.3d 938, 956 (Colo. 2002). In August 2010 I asked a lawyer for the plaintiffs about this issue, to which he replied, “The sustainability issue has not yet been litigated. We don’t know what it means yet. It will probably get worked out in the appeal, but for now, it hasn’t been determined.”
By this time Carlos DeLeon had arrived, and he addressed Esteban’s question by saying, “The problem is, we [CVR] can’t kick people off of the mountain when they have rights. That should be the Grazing Association, and these grazers up there should all be in the association if they’re not. That’s what the management plan is about, making sure they are complying.”

Esteban again became animated, saying “They’re violating what the Supreme Court said, and they’re hurting us. They’re hurting us! If people don’t complain and do something, they’ll take advantage. And they are. Three years this has been going on, and no one has done anything, so they continue to take advantage. It’s the same three people, but no one is doing anything about it!”

“My hands are tied,” responded Carlos. “I can’t kick anybody out if they have rights. People ask me to fix fences to stop other people’s cattle from coming through, but I can’t do that. I can’t fix a fence for your cattle or someone else’s. It’s Colorado law: if you don’t want cattle in your land, you have to fence them out.”

Another Heredero spoke up, Alfred Mondragon, who had refrained from even taking his cattle up to the mountain that summer because the pasture was so thin and dry. “We need legal advice,” he said, “We can do what we think is right, but we might be breaking all kinds of laws. We should send a letter to everyone grazing, not just the violators, so everyone knows: these are the rules, and you need to follow them or else you’ll face legal action.”

Norman interjected:

See, the question is, who has the right to enforce? I think that’s the property owner [Cielo Vista]. People who we know are grazing up there should be members of the Grazing Association, but they’re not. They say they’ll come to the meetings, but they don’t. Of course they don’t, they’re doing
something wrong and they know it. And if they’re not members of our association, well, then we can’t enforce anything on them.

Carlos, however, disagreed:

It’s you, the Grazing Association, that has to do something, that has to talk to people. It’s kind of like children: they don’t listen to the teacher, but they’ll listen to their friends or their parents. That’s kind of what you are, sitting at the head of the table. I can tell them all I want about what they can and can’t do, but they don’t listen to me. But hearing it from someone they know, they’ll realize what they have to do. It’s when they hear it from their own people.

The meeting ended with little resolution. It was unclear as to whether or not a letter would be written, what or who such a letter might address, how the lawyers would become involved, or who could and should take action. My fieldnotes from after the meeting capture my initial reaction to what had occurred and, like the others in the room that night, the uncertainties and questions I had about the process:

There is a lot of ambiguity about who can do what and who has to do what with respect to enforcement. Most of what Carlos said implied that he couldn’t do very much about anything, even though he knows problems are occurring, and the Grazing Association needs to take responsibility to get people in line. He thinks the grazers should be doing something, while the grazers feel helpless and think the property owner has the responsibility and the authority. … There are periodic suggestions that both sides have to work together, but these are complicated by the fact that there is still an ongoing court case. … Ultimately, all of these problems stem from the individual nature of the access rights – who can compel who to do what?

**Passions and frustrations at the LRC: “We did a good thing, but now it is spoiling on us”**

The next night, the Land Rights Council held its monthly board meeting. The agenda was sparse, but Charlie Jacquez (who was not present at the grazer’s meeting the night
before, though other LRC members, including Norman and Jose, had been) added “La Sierra Grazing Issues” to that night’s business. When the meeting reached Charlie’s addition, he explained that he had been getting phone calls from an individual, George Amarillo, who was concerned and upset about CVR fences being cut and the resulting movement of cattle from the Mountain Tract to his adjacent property. “From what I can tell, the situation is getting out of hand,” said Charlie. “George said to me, ‘Is it my job to chase cows out of my place every day?’ Fences are being cut again even if he repairs them. ‘What’s happening here is criminal’ were the words he used.” Charlie, by then retired from a career teaching in San Luis, was a self-described activist for most all of his life, and knew what it meant to deal with conflict. He once told me, “Around this community, I’m considered a big mouth. Some people appreciate it and others don’t, but that’s the price you pay for being an activist.”

Typically calm and collected, Charlie’s passion and frustration came through loud and clear on this night:

We [the LRC] are not an enforcement agency, we really don’t have any authority, we just don’t. But it’s a terrible issue, and it is starting to get out of hand. Someone is going to get shot. People are serious about other people touching their cows or moving them around. Someone is going to get shot. I told George there are no rules. There just aren’t. It’s a free for all up there. At the last meeting, the LRC said that it is CVR’s point to deal with things, but guess what? They’re not going to do that! They’re getting their case together for appeal, because we are doing everything wrong up there: duplicating keys, up there without rights, too many cows, overgrazing. We could be doing something, but there is no patrolling, no circuit riding, no fence repairing – and that should be the grazer’s responsibility.

In the June board meeting the month prior, these same grazing issues were also discussed, but the group had decided that they had no responsibility or enforcement power, and it was the ranch owner’s obligation. “The Land Rights Council is completely out of the

136 Author interview, San Pablo, 12 April 2010.
picture,” is how Shirley had put it then, “We are not a policing or monitoring organization whatsoever, and we couldn’t be even if we wanted to.”

At the time, Charlie had agreed, saying: “We are not a law enforcement agency. Maybe we can help facilitate things and help people cooperate.” Even still, he was hesitant: “I don’t have cattle up there, so to me it’s all theoretical – but what’s going on is hurting that land, and it’s a big deal. I know it is wrong, but there’s nothing really that we can do right now.”

A month later, however, Charlie’s hesitation was gone:

So many people worked so hard, for so long, to get those rights back. But it was a partial victory, and now it’s not going as well as we thought it would. We did a good thing, but now it’s spoiling on us. It’s turning on us. If we lose our rights, people will come complaining to the LRC: ‘we lost our rights because you didn’t do anything.’ And you know? They would be right. We’re not doing anything.

Charlie’s solution was to formulate a plan to take to the court, whereby anyone grazing on the mountain would have to go through the Herederos Grazing Association in order to do so: “you pay a fee, not much but enough to pay for fence repairs, maybe a rider, and you have to work with them to graze.” He continued, “We need some way to get governing powers, and we need this community to talk about what that would mean. All of this, with the rights, it could end. We have maybe two or three years until the appeals are all said and done. It could end. This could end.”

Norman, who was typically in close contact with the lawyers as president of the LRC, said “All the attorneys know there is a problem. They have all heard about it. Last year it started to become an issue, but once winter came it kind of died out. Well, now it’s going
on again and it’s getting worse.” After some discussion about what the lawyers would say about the issue, Norman concluded, “We’re powerless. We really can’t do anything.”

“It’s just a few people, we all know this,” Charlie said. “But they’re not going to listen until you fine them or throw them in jail. And that won’t happen until there are rules and fees. We need to start taking care of that mountain again. Otherwise, we just sit here and watch that mountain get raped again. That’s culpability to me.”

The group decided that Norman would again contact the lawyers about the issue to see what could be done, and the meeting continued in a somber mood. The uncertainty over what could be done sat uneasily with the conviction that something must be done – but what? And by whom? Could the LRC act? Could the Herederos? For those around the table, Cielo Vista certainly could act – but why would they? Like the Herederos the night before, the LRC was struggling with the uncertainty, ambivalence, and difficulty of the collective governance of resource use in a context in which resource users – and the LRC – were constituted as simply private landowning individuals who must interact with one another only in that capacity. For Charlie, Norman, Shirley, and others in these organizations, it was clearly difficult and even painful to be helpless in the face of what they considered wrongdoing.

**The uncertain formation of subjects**

These individuals, I argue, were struggling with their uncertain formation as particular kinds of subjects within the legal process – private landowning individuals who operate within the proper legal channels – a subject position that they both decried and participated in. As I discuss in Chapter 7, the LRC is only the latest community organization dedicated to fighting for rights to La Sierra. Many of its members express deep care for the land and its connections to and importance among grant heirs, at times explicitly situating
their activism and organizing today within the centuries-long history of collective action and organizing on the grant (Gonzales 2007). Yet, their inclinations to take action have in many cases been tempered by their subjection to the law.

LRC and Herederos member Jose Martinez, who often spoke to me proudly about his ancestors’ and his own struggles in fighting for land and water rights – and his and their mistakes, and how to learn from them – struggled with his inability to take action. “It’s frustrating,” he told me. Jose was referring to the closed Torcido gate. “In the past,” he continued, “we would have marched right on up there and bulldozed that gate open. But now, the lawyers tell us to take it easy, you can’t do that, wait for the legal process.” He concluded by reciting his subjection to the law as a subject of rights: “We have something to lose now, so we listen.”

In another conversation with LRC members about the Torcido issue, Shirley had also expressed her frustration with inaction. At the time the LRC lawyers had been working to find pro bono attorneys to address the case but were having difficulty doing so. “The community wants to take action,” Shirley had said, “but we’re told don’t do this, don’t do that. Don’t get me wrong, we need to listen to what the lawyers say” – she paused and looked around the room – “but let’s not forget that they work for us.”

The others around the table seemed just as frustrated as Shirley. “Last year we were all ready to open that gate,” responded one.

Jose chimed in, “¡Ya basta!” (“Enough is enough!”).

“That’s right,” said Shirley, “I know of at least a couple instances where the community was ready to take action but the lawyers called and said not to do it.”

137 Author interview, San Francisco, 2010-02-08.
Junita inserted her characteristic humor, referring to the radicalization of many in the San Luis community during the 60s and 70s: “A bunch of baby boomers from the protest era aren’t afraid to take matters into their own hands!”

“Sometimes you just have to take action,” concluded Shirley, “I am a big believer in that. When the community takes action it puts pressure on people and things get done.”

And yet, the community did not take action on the Torcido gate. Instead, these individuals deferred to the legal team who, eventually, organized plaintiffs, put together a legal case, and ultimately achieved a settlement whereby the road and gate would be re-opened (Hildner 2011). While a positive outcome for the LRC was reached on the Torcido gate, it remains unclear what will result from the grazing problems on the mountain as many continue to struggle with their uncertain formation as particular kinds of subjects. After successive discussions among the LRC board and with the lawyers over grazing issues through the August and September 2010 LRC meetings, the group again deferred, deciding that, first, getting involved could help Cielo Vista either by creating in-fighting among resource users, weakening their united front, or helping CVR’s efforts to document violations of reasonable use that might cause legal problems in the appeal; and second, as Norman put it in September, “the bottom line is we have no enforcement capability – only the ranch owners do.”

Charlie concluded then, “I brought it up [in July] because people are calling me and saying someone’s going to get killed up there. But if the lawyers say we should wait, then we should wait.” Yet he remained, hesitating, an uncertain subject of the law: “But at some point, somebody has to do something.”

Managing land, profits, and “a few rogue grazers”
I had little time to process what had happened at the July 28 LRC meeting, especially coming as it did only 24 hours after the Herederos meeting in which passions, frustrations, and uncertainties had similarly run high. Instead, I got up early the next morning and drove alone to the North Headquarters gate of Cielo Vista Ranch. As I discuss in the next chapter, I had managed – barely – to get invited to a grazing workshop being held that day on the ranch. As I pulled up to the gate, a ranch employee cheerfully made sure my name was on his list of workshop attendees, and directed me and the two or three other vehicles that had pulled up behind me through the gate and towards the headquarters. The workshop, called “How to Effectively Manage Your Land While Maximizing Your Profits,” was put on by the Costilla County Conservation District (a division of the Colorado Department of Agriculture) to demonstrate and discuss effective sustainable grazing practices with Costilla County landowners, and Cielo Vista had agreed to host. Charlie had referenced the workshop the previous night at the LRC meeting, juxtaposing it with the LRC’s inaction: “Even with this workshop,” he said, “it’s all part of a plan. They [CVR] are thinking, ‘Let this community hang itself. Look, we’re giving this grazing workshop, and it’s free! We’re working with a state agency, trying to help make grazing sustainable.’” He exclaimed, exasperated, “They’re even serving breakfast and lunch!”

This would be the day that CVR manager Carlos DeLeon drove me around parts of the ranch in his white pickup truck, as we talked about a host of issues including the grazing issues discussed at the Herederos meeting two nights before. His boss, Bobby Hill, had described his head employee to me as a “local guy” and a “good person.”138 Carlos and his family lived in nearby San Pablo, and because of his land there, he too was a certified property owner: “I’m an individual that has rights,” he told me later that day, “because of the

property that I own in San Pablo. You know, just because I work for the ranch doesn’t mean I don’t care about the way things are going and the way the mountain is treated, as far as trash, and overgrazing, and just the abuse. I don’t like to see the abuse of it, just like everyone else, so I try to educate people as much as I can.” This was Carlos’s 12th year as manager of the ranch. He started under Lou Pai – who, to Carlos, was wrongly criticized by locals: “He was a good boss,” he said. “He did a lot of good things and wanted to take care of the land. He bought out [Taylor’s] logging contract just so the logging would stop, he cleaned out a lot of water ways, he employed a lot of people.” He laughed, “He gets a bad rap, even from people who used to work for him, so I have to stick up for him a little bit. He did a lot of good things up here.”

Our discussion of nearly two hours, spread out in three chunks over the course of the half-day workshop including a long ride around the ranch, covered a lot of ground, from Carlos’s day-to-day work on the job to CVR’s elk hunting business to problems on the ranch. Carlos spoke about many of the issues discussed at the previous two nights’ meetings – people copying keys, trespassing, using rights for other properties: “For example,” he said, “I just had one person call me from Alamosa [a city of around 9,000 people about 40 miles from San Luis], and they own property over here too, with no house on it or anything, it’s just an empty parcel.” I nodded as I pictured one of the many vacant subdivision properties, covered in “nothing but sagebrush and rattlesnakes,” as the locals say, that nevertheless was certified for access despite being unoccupied. “They want to haul firewood all the way from here to way over in Alamosa to use there,” Carlos continued, pointing out that such an act violates the court’s stipulation that firewood and timber must be used on or for the specific property certified for access: “And other people are even farther away.”
We discussed the multiple ways in which widespread uncertainty has shaped resource use and the governance process – that many people don’t know what they have to do, what they can do, or what they should do, from how to properly rotate cattle to where to find good firewood to who is in charge of what. “A lot of people call and ask me,” Carlos said, “‘where’s the best place for me to get firewood?’ or ‘Where can I find aspen?’ or ‘Where can I find pine?’” The main problem for Carlos, he explained, was that “people just don’t know the rules. I have to explain them all the time.” He talked about how many people don’t turn in their annual Notice of Intended Use form because “they just think that since their key opens the gate that’s all there is to it. But they have to file the form every year, not everyone does. We don’t kick people off the ranch anymore, we just make sure they get the form in so that next time their name will be on my list.” Kicking people off the ranch was one of the things the LRC had taken issue with in Cielo Vista’s assertions of its right to impose rules; eventually, through the court, CVR agreed that its employees would carry use forms for resource users to fill out on the spot rather than unilaterally kicking them out. A few minutes later, Carlos said, “A lot of people are upset with how the decision came down, and they get angry with me. I mean… it’s not my doing, you know? It’s just the way the court decided. And a lot of people think, because I’m the one that gives out the keys, people will say, ‘well, do you think you could put my name on the list so that I could get a key?’” He laughs, shaking his head. “It’s like, I… That’s not the way it works! That’s not even close to the way it works.”

Our discussion quickly turned to the grazing problems highlighted the previous two nights and the question of enforcement. Carlos, like most everyone else I talked to, insisted that it was only a small number of people who were doing something that they shouldn’t: “You have a handful of people that aren’t doing what they’re supposed to be doing, and the
majority of them that are,” Carlos said. “It’s hard because there are people that abuse it, and there are so many more than don’t. It’s not like everyone abuses it, there are a lot of people that want to protect their rights.” Often, the phrase I heard around town was that there were “a few bad apples,” or as Junita had put it the evening before, “a few rogue grazers” whose actions were threatening the rights of all resource users. “I try to talk to people all the time,” Carlos continued, “and some people just won’t listen. They tell me they won’t do what I tell them. They just think they have a right, and that’s it, they can do what they want.”

Still working out my thoughts from the nights before, I say, “to me what seems like a big problem is that it is unclear who has authority to do something about the problems. The ranch does in some cases, but which ones? Many people just don’t know who has authority.”

“There are so many open and unanswered questions,” Carlos replied, returning to his main theme from the Herederos meeting: “But like I said at the meeting, I told them that if there’s a group of grazers that are working together, and there are a handful that want to do their own thing, I think they’ll listen better to a group of people that they know, and that they’ve been around all their lives.” He paused as I leaned forward, looking at a few cattle grazing to our left. We were approaching the Salazar Meadow, a heavily grazed – most would say overgrazed – area of Cielo Vista. “When you start involving attorneys…” Carlos continued, “Yeah, I understand that you have to make sure things are done correctly and according to the law, but it gets difficult to deal with, to work things out. I just think they [the grazers doing things wrong] will listen to the Grazing Association more than they would to the property owner telling them this is the way it has to be done. To us, they’re just going to say, ‘we’re going to do it the way we want, we have the right.’”

I agree with Carlos, saying “I think you’re right, in terms of who is more likely to listen to who,” and give him the Herederos side of things: “But the Grazing Association
doesn’t really have any authority, do they? If the court would say that someone has to go through the Association in order to graze it might be different.”

“But right now,” Carlos responded, “there are no identifiable rules.” The desire for rules seemed to be shared by both Cielo Vista and many members of the LRC and Herederos – though precisely what kind of rules remained highly disputed, as I describe in the next chapter. Carlos continued, “In a situation where a judge would say, this is how it has to be done, then in that situation I could see your point as far as the ranch owner being able to do something.” He glanced over at the cattle grazing on the Salazar. “Without any rules, I think it is the grazers themselves who can get people to listen, not us. If the grazing committee wants to work things out in a certain way, I think they are the ones to say, you know, this is the way we’re all doing it, this is the way everyone has to do it to make things work. But in the other case, unless a judge would set those rules…” he trailed off and paused for a moment as we bounced along the narrow road, seemingly gathering his thoughts, and continued:

Only with rules in place would I see the landowner having the authority to make sure those rules are followed. Now, if people come in and do something other than graze, get firewood, or cut timber, then the ranch owner has the authority to stop them, to call law enforcement or prosecute them, just in situations where they’re doing something they’re not supposed to. But beyond that, it just has to come down to the judge … if the judge came down and set rules as far as grazing goes… It’s just like any other rule or law that a person has in life. In order to have a driver’s license you can’t be drinking and driving, or else you lose your privileges. That’s what has to happen here. People have to realize that there need to be rules that are followed, and understand that following those rules is going to be better for them in the long run.

He started to laugh. “I try to educate people all the time, but without rules to enforce, I don’t think a lot of them listen to me.”
Conclusion

In November 2009, I attended a potluck dinner in San Luis. The dinner was organized by the Land Rights Council to honor Jeff Goldstein, the lead lawyer for the plaintiffs since the case began. Remarkably, Jeff had been the head of the LRC’s legal team from the beginning, overseeing the case through each and every loss – and the victories that were much fewer and further between – and had done so pro bono. But he was now stepping down from the case to become a judge in Denver, and the LRC wanted to honor his decades of work and dedication. The night was filled with plenty of good food, stories from Jeff’s nearly three decades on the case, and laughter. It felt as if a major chapter of the struggle was coming to a close, and a new one was just beginning. I spoke with Jeff as the night wound down about what lie ahead. “The question now, really,” he told me, “is whether this community will validate or invalidate the tragedy of the commons.”

A similar event occurred two months later in Denver, when the Colorado Lawyers Committee organized a surprise luncheon to honor Jeff’s work. About 50 or 60 people attended, many of them attorneys. Norman and his wife Julie, Shirley, Jose and Junita, and I had also driven to Denver to attend, and to present a plaque to Jeff on behalf of the LRC. Norman spoke to the group first, introducing his fellow LRC members and me as a student working with the LRC. Norman underscored the LRC board’s wishes to thank not only Jeff, but all the lawyers who had worked on the case over the years, many of whom were in the room. He passed the floor to Shirley, saying the LRC didn’t want “just anyone” to present

139 Goldstein elaborated in the local paper, saying, “The most important asset in Costilla County is its people. It is their traditions and way of life that we have been fighting to protect for so many years. The Mountain Tract and Salazar Estate are at the center of that tradition and way of life. The Land Rights Counsel [sic] has been at the center of this struggle for more than 30 years.…. I have little doubt that [it] will carry on the struggle into the future. The hard part is how to preserve the land for future generations. Those with rights need to cooperate with each other on grazing plans, etc. They need to figure out a way to work with the owners. This case will end, and then it will be up to the people. They need to show by their action that the ‘tragedy of the commons’ is a myth” (quoted in Martinez 2009, italics removed).
this award to Jeff, but someone who had been part of the struggle, like Jeff, since the very beginning.

Shirley spoke the longest, and with the most emotion. Like Norman, she took the opportunity to thank and recognize others besides Jeff, including the other lawyers who had worked on the case, the countless activists and plaintiffs in San Luis who had been part of the struggle, and the many individuals in and out of San Luis who had been central to not only the work of the Land Rights Council but also to Shirley personally, including her mother, her husband and co-founder of the LRC, Ray Otero, and community elders like Apolinar Rael and Juan LaComb. A captivating and dynamic public speaker, Shirley’s words dripped with passion and commitment and at several moments she struggled to remain composed. “We cannot thank you enough,” she told Jeff, “but for us, we cannot walk away from this case, this struggle. This struggle lives within us.”

Shirley also spoke with the most humor. She told stories of the early years when Jeff had first begun working with the LRC and came down from Denver to spend many long weekends doing legal research in San Luis. Jeff had a few difficulties adjusting to “rural living,” as Shirley put it, like one night when he stayed with Shirley and Ray. Shirley awoke in the middle of the night to find Jeff searching the house in the dark, unsuccessfully looking for the thermostat to turn down the heat. Of course, the heater that was keeping Jeff awake that night, like most in San Luis, was wood burning – it had no thermostat, giving the room a good laugh. Once he had the floor, Jeff joked that he remembered a few of those stories a little differently.

Shirley also described one particularly tense moment between the LRC and the legal team: at one point in the mid-1990s Jeff did not think the Lobato case was winnable in court and advised the LRC to pursue other options. Those options, at that time, meant to work
with the State of Colorado in an effort to resolve the dispute over La Sierra through a plan involving the purchase of the Mountain Tract from the Taylor family by the state. Shirley and others in the LRC, however, did not think such a plan was the best course of action (Mondragon-Valdez 2006; Wilson 1999). One day, Shirley and other activists cornered Jeff and a few other lawyers, informing them of how their relationship would continue. I laughed to myself as Shirley spoke, recalling her oft-repeated reminder to the LRC board: the lawyers work for us, not the other way around. “We will exhaust our legal remedies” is the message the LRC activists sent to the legal team that day: “If we lose, we will appeal to the Colorado Supreme Court. Then, we will appeal to the U.S. Supreme Court, then to the Inter-American Court of Human Rights in San Jose, and then to the World Court in Geneva.”

At the conclusion of the luncheon Norman and I chatted with one of the other lawyers who had been involved with the case for decades and recalled that confrontation: “I was only a law clerk at the time,” he said, “wondering what I just walked in to. I thought, ‘Wow. That’s an awfully big job!’ Well, needless to say, I’m glad we won a lot earlier than that!”

“We will exhaust our legal remedies,” Shirley concluded, smiling, “and we’re still going.” She turned to Jeff: “There are no words to express my gratitude. I could not even begin to calculate the hours you have put into this case.”

An attorney at a table adjacent to me leaned over, laughing as he whispered to the lawyer next to him, nodding in my direction (and causing my smile to quickly disappear), “Maybe that could be that guy’s thesis!”

In accepting his award from the LRC, Jeff credited the success of the legal case to two factors: “good lawyering” by countless attorneys through the years, remarkably all pro bono, and “the tenacity of the community.” He continued, “there were some rough spots,
and not everyone always saw eye to eye. We didn’t always advance the legal theories that the LRC wanted us to, because we had to work within U.S. property law. We couldn’t use law relating to indigenous rights or international treaties. We had to work within the U.S. system with the tools available to us.”

Back at the potluck in San Luis two months prior, I had nodded when Jeff told me what was at stake was whether or not the San Luis community would avoid or fulfill a tragedy of the commons. At the time, having just arrived a few weeks earlier, I had not yet come to understand how deeply the governance and use of La Sierra was shaped by the iterations of sovereignty, property, and law discussed in this chapter and those preceding it. It seems that Jeff, despite his intimate familiarity with the ways in which rights to the commons were channeled into questions within U.S. property law, had not fully recognized them either; and the notion of a tragedy of the commons has circulated more extensively through the governance and legal processes, as I discuss in the next chapter, becoming central in the struggles to access, use, and govern La Sierra.

Yet as this and the previous chapter have shown, subjects have been constituted through the legal process in ways that tie questions of both access to the commons and the enforcement and resolution of disputes to the ownership of private property in far-reaching ways. The court’s identifications have worked to fix individual bodies to private property, both stabilizing them as a subject of rights under U.S. sovereignty and rendering them individual subjects of the law who interact as private landowners through the proper legal channels. The resulting commodification of access rights and legal individualism, in turn, have precisely created the conditions under which a so-called tragedy of the commons can occur, as when the LRC board lamented the explosion of potential rights-holders or when passions ran high over who could and should do something to curtail grazing abuses. The
emergent configurations of identification, property, and law in San Luis have been productive. And as Tsing (2005) suggests, so have confusions and uncertainties.

The next two chapters examine the efforts of the Land Rights Council, Cielo Vista Ranch, and others to govern the commons in such a context, both working with and against the court’s formation of subjects, and to do so in particular ways: as a certain kind of environmental object. Carlos’s pleas for the necessity of rules as we rode around the ranch together align with the broader strategies of Cielo Vista, bound up in its contradictory formation as a burdened subject seeking to restore its lost rights through surveillance, agent of enforcement, and also defender of the sustainability of the land and of rights to private property. Meanwhile, the Land Rights Council has struggled in the absence of rules as well, with many members frustrated at the group’s lack of enforcement power to shape the interactions of resource users constituted only as individual private owners of “benefitted” properties, illustrating the difficulties of collective governance in a context of legal individualism. The nature of the land, as the next chapter shows, has been central to the strategies of each.
Figure 3. Impassable bridge on Cielo Vista Ranch. Photo by author, September 2010.
Chapter 6: “The Land is the Bottom Line”:
Authority and Articulation in the Performative Governance of the Commons

In late July 2010 I called the local office of the Costilla County Conservation District to RSVP to a grazing workshop entitled “How to Effectively Manage Your Land While Maximizing Your Profits.” I had read about the workshop in the local paper, and Norman Maestas, Land Rights Council (LRC) president, had also alerted me to it as the LRC had received a formal invitation to the event in the mail. As mentioned in the last chapter, the workshop was being held on Cielo Vista Ranch (CVR), and sought to transmit state-sanctioned knowledge of “best practices” to local ranchers in hopes of strengthening the regional ranching economy in environmentally sustainable ways. In requesting permission from the state to attend, I identified myself as a student doing some research locally. The woman on the other end of the line, Mary, interrupted me: “Oh, ok. Well, really this event is for landowners on how to graze their cattle.”

“Right,” I responded, “but I think it’s pretty important for me to be there.” Before I could elaborate, Mary quickly said “OK” and asked for my name and other contact information. That was easy, I thought.

When she had taken down my information, Mary asked if I needed directions; I said I did not. She paused, perhaps wondering why I would have already known how to get to the North Headquarters of Cielo Vista Ranch (see Figure 4). “Just out of curiosity,” she asked, “what is it that you’re studying?”

“Sure, I’m studying the implementation of the legal case involving Cielo Vista and…”
“Oh, no. I’m sorry, no,” Mary cut me off mid-sentence. “This is not a forum for questions like that. I’m sorry but you cannot attend the workshop.”

Becoming increasingly aggressive and hostile, Mary proceeded to interrupt my every halting chance at explanation or persuasion. Almost shouting at me through the phone, I was unable to address Mary’s concerns or offer an explanation for why it made sense for me to attend, let alone finish a thought. I tried to protest – you don’t even have to feed me, I said, I just want to observe. I don’t want to raise questions, I don’t have a political agenda to pursue here.

It was too late. Mary had made up her mind about who I was and what my motives were, and she had decided that she could not let my presence politicize this otherwise technical and scientific process of knowledge transmission. “This is not a forum,” was her most repeated phrase.

“This is not a space for questions about who should be allowed up there, this is for landowners,” she insisted. “This is not about political questions. This has nothing to do with Cielo Vista. This is about should we move our cattle or not, it is not a forum for discussion or to raise questions.”

I continued to try to protest, but Mary had had enough. Her words became more terse and sharp as she informed me, “we have almost 100 people already, we’re just about full.”

Knowing that the workshop couldn’t have magically filled up from the time she took my name down only a few minutes prior, I sensed that I wouldn’t be making much headway in convincing Mary. In a last ditch attempt, I asked if there was anyone else I could speak to about this just so I could explain why I would like to attend.

“No,” Mary replied. “I’m the district manager. We’re full. I’m sorry, goodbye.”
She hung up. I hadn’t finished a single sentence following “Hi, I’m calling to RSVP for the grazing workshop next week.”

I was shocked at Mary’s reaction. Her near instantaneous shift from taking down my name to nearly screaming at me that her workshop would not tolerate my political questions had caught me completely off guard. I had barely said anything, and suddenly I was being berated. I could hardly think of how to respond – not that Mary would have let me explain myself anyway.

I wondered, did Mary think that I would be a disruption, that I myself would raise unwanted questions during the workshop? Or was she merely afraid that I, as a researcher, would document the “political questions” that already threatened to disrupt the proceedings (both Anglo and Hispano ranchers were invited to, and attended, the event)? Norman suggested the latter, saying, “There are already going to be people there who raise questions.” He named a couple local Hispano ranchers known for their outspokenness and political activism. “There are guys that will be there who are going to speak their mind if they want to,” he said, “they don’t care what kind of forum it is.”

Eventually I learned that Mary was concerned with both. When the grazing workshop had come up at the meeting of the Herederos Livestock Grazing Association (HLGA) several days later (described in the previous chapter), Norman mentioned my thwarted effort to attend and I elaborated on my conversation with Mary. One of the grazers who also worked for a local government office explained that everyone involved with the workshop was very concerned with the event turning into a political forum, and wanted to be clear that it was just a workshop, solely involving the transmission of knowledge from experts to grazers. I had already chalked my experience with Mary up to the vagaries and unexpected setbacks of fieldwork – bound up in the assumed privilege and mobility of the
researcher to observe crashing up against the refusals of those who do not wish to come under the academic gaze (Gidwani 2008a: 235) – but the next day, Norman called and told me that one of the Herederos had talked to CVR ranch manager Carlos Deleon, Carlos had talked to Mary, and Mary decided that I could now attend.

When I arrived at the workshop, Mary instantly recognized who I was as I approached the registration table. “You must be Keith,” she said, again catching me off guard since we had never met or spoken outside of my previous phone call. “Up here,” she explained, “you’re either Hispanic or if you’re Anglo, you have short hair and look like a cowboy.”

“This is my best cowboy outfit,” I responded with a smile, in my boots, jeans, and worn button down work shirt. “But, yeah, I tend to stick out around here.” My hair was getting a little long.

Mary apologized, and explained that two apparent activists who “wanted to blow the place up” in protest had called her just before me, “and then you called, clearly a young Anglo – you just caught me at a bad time.”

I thanked Mary, gathered my workshop materials, and joined a few familiar faces as we waited for the workshop to start. The day’s events proceeded with no hitches and no disruptions. “Political questions” were never raised – this despite a woman from the Colorado Department of Agriculture, to my surprise and bemusement, asking Carlos and a Hispano rancher to “give a little presentation” about the “local history.” While the woman asked both men so that they could present “both sides” of the issue, from Cielo Vista and from the local families, she clearly was not as familiar as Mary with how contentious that “local history” was and, apparently, had no knowledge of the effort to keep “political questions” off of the day’s agenda. In the end, the presentation did not occur – to the relief
of Mary as well as Carlos and the Hispano grazer. Instead, the workshop attendees participated in a series of presentations and Q&A sessions with academic, industry, and state experts focused on technical questions of cattle and pasture management – and I learned some new things about cows, weeds, and Kentucky Bluegrass.

This chapter examines the efforts of Cielo Vista Ranch to attempt to shape the governance of the commons through the contested work of *articulation*: to articulate resource users, CVR, cows and elk, ecosystem characteristics, scientists, hunters, forms of knowledge, law and more into a common project of good stewardship. Through the articulation of common interests and subject positions that bind previously conflicting individuals together as environmental subjects, I argue that the strategies of CVR have worked through nature to secure authority and depoliticize a broader political project to restore CVR’s private property rights – in ways that have so far been unsuccessful.

Just as Mary had attempted to do in refusing to let me attend the grazing workshop, CVR has sought to cleanly separate politics from science and technical expertise in its projects of articulation. And yet, this distinction is not so easily drawn (Mitchell 2002). As LRC board member Charlie Jaquez had alluded to in the Land Rights Council meeting the night before (described in the previous chapter), the workshop was *already* embedded in a deeply politicized context no matter what questions were raised during its sessions. In hosting the event, Cielo Vista was bolstering its ability to appear not only as an environmental subject – graciously helping to disseminate environmentally-sound grazing practices to the broader community – but also as a cooperative subject, working with local grazers, both Hispano and Anglo, in a common project to achieve the best results for
economy and environment. Charlie had contrasted the workshop with the LRC’s apparent lack of action on the grazing problems of that summer.

As it turned out, however, the content of the workshop turned out to be highly political itself. In the day’s main session, participants traveled from CVR headquarters out to the Salazar meadow – the area of Cielo Vista most widely acknowledged as overgrazed during my fieldwork (see Figure 5). In discussing the importance of properly rotating cattle herds, the workshop speaker made use of a three year old enclosure on the pasture: a fence that prevented the entry of cattle, yet allowed elk and deer to pass through and graze within enclosure boundaries. Outside of the enclosure, the speaker pointed out, pasture conditions were poor. By contrast, within the enclosure we collectively discovered a much healthier pasture, with a more diverse mix of plant species and a healthier root system (see Figure 6). Presented as the objective conditions of nature, lost in the presentation was the implication that these ecologies created by the enclosure were a direct result of Cielo Vista’s attempts to demonstrate Hispano overgrazing of its property: elk have not overgrazed within the enclosure, but cattle have overgrazed outside of it. The enclosure was erected precisely as part of a highly politicized process of measuring the conditions of nature and attributing the responsibility for those conditions to specific actors and practices, yet here it was mobilized solely as an instrument of scientific knowledge and technical expertise. Any consideration of the broader power relations and social formations that have fundamentally shaped grazing on the Salazar meadow – such as the contested formation of subjects and relations of legal individualism described in the previous two chapters – disappeared within presentations of objective natural fact that we could all observe directly. The workshop, and Mary herself, were already enrolled within the political projects of Cielo Vista to convince the court that rights to access and use its property should be curtailed – and Mary had done her best to
extend that project by disciplining me as a potential source of “political questions,” and above all insisting on the workshop’s fundamentally apolitical nature.

As I discuss below, Cielo Vista Ranch has attempted to mobilize notions of what it means “to do the right thing for the land” as part of a project of articulation that works to depoliticize conflict over nature, expertise, and authority. I examine the efforts of CVR to mobilize scientific as well as moral concern for nature and good stewardship, in the process attempting to enroll Hispanos and others – like Mary and the presenters in the grazing workshop – as environmental subjects who act in a common project to care for nature. This chapter and the next continue the analysis in Part II of environmental governance as a project constitutive of subjects by examining how Cielo Vista and the Land Rights Council attempt shape subjectivities in ways that work both with and against the formations of subjects produced through property and law. As the previous two chapters argued, subjects have been constituted through the environmental governance process as particular kinds of subjects in ways that, while contested and uncertain, reflect the lasting legacies of the sovereign stories of U.S. colonial power and the dispossessions enacted through private property discussed in Part I.

This chapter and the next argue that in this context of power, both Cielo Vista Ranch and the Land Rights Council have attempted to shape the governance and use of the returned commons by themselves creating specific kinds of subjects – and in particular, environmental subjects. To do so, both groups have necessarily recited what I refer to here as the regulatory norm of nature, yet not always with the desired effects. As I explore below, Cielo Vista has attempted to mobilize the detached authority of science to define the sustainability of the land and the “good stewards” who use it. I highlight CVR’s fundamentally spatial strategies in a project of articulation to enroll resource users in
hegemonic constructions of nature and subjectivity. The Land Rights Council, too, has
drawn from the authority of science, yet in the process has situated scientific discourses
alongside discourses and practices of historical and cultural difference. This chapter
examines some of the responses of Hispano activists to the governance projects of Cielo
Vista; the next turns more directly to the strategies and projects of the Land Rights Council.
This chapter begins an analysis, continued in Chapter 7, of the ways in which LRC activists
re-assert difference and transversal colonial histories while re-politicizing knowledge about,
and use of, nature. First, however, I turn to the regulatory norm of nature before examining
the spatial strategies of Cielo Vista Ranch to produce nature, authority, and subjectivity in
the performative governance of the commons.

The regulatory norm of nature

As Juanita Sundberg (2004) has argued in the context of environmental conflict,
specific sets of power relations shape the identities and practices that are available to
individuals. In San Luis, the practices of Spanish, Mexican, and indigenous resource use
strategies and cultural forms, as well as private property, attempts to enclose and dispossess,
and the sovereign stories of U.S. colonial power have shaped efforts to govern the commons
in the present. In this chapter, I use what I call the regulatory norm of nature as an entry
point into these contested relationships and practices: nature, as both a biophysical set of
objects, relationships and processes as well as the discursive constructs meant to describe
them, has shaped the identities and practices that are available to individuals involved in the
governance of the returned commons in San Luis.

Nature is central in the governance of the commons for at least two reasons, one
particular to the Lobato v. Taylor legal case and one that reaches beyond it. Beyond the case,
discourses of race and nature that circulate in the U.S. Southwest deeply shape notions of what Laura Pulido (1998) calls “ecological legitimacy.” Many environmental struggles have turned on perceptions of how ecologically sound - or unsound - a particular group’s resource use practices are. In northern New Mexico, portrayals of Hispano communities as inherently poor land managers or irresponsible resource users (de Buys 1985), especially when placed adjacent to the ecologically noble practices of native groups, have served to justify curtailment of Hispano allotments to federal grazing or timber permits, and to sediment popular portrayals of ecologically irresponsible Hispanos who have lost touch with the land (Kosek 2006; Pulido 1998).

Such discourses repeat the essentialisms of colonial racial grammars that link spatialized notions of identity to both nature and political qualification, as when nonwhite populations engaging in communal land use practices are rendered not only backward, uncivilized, and disqualified from socio-political rights but also closer to nature (see Chapter 1) and responsible for their own poverty. Similarly, the isomorphisms of race and space found in notions like the “Hispano Homeland” said to encompass parts of Colorado and New Mexico (Nostrand 1992) also reflect such regulatory formations. These formations shape the possible identities and practices of resource-using subjects in the present in complex ways. Not only can arguments based on such cultural essentialisms be redeployed as part of oppositional strategies to help marginalized groups strategically assert control of resources (Pulido 1998: 122-3), but certain global environmental discourses have re-coded

---

140 Following Sundberg (2006: 241-2; see Chapter 3), these perceptions “tend to assign individuals and collectives coherent identities prior to their entry into social and environmental relations. Hence, social groups and their ecological practices come to appear self-evident, with pre-given, timeless characteristics.” To combat this ontological fixing, this chapter and the next track how such practices, subjectivities, and relationships are contingently and conflictually produced in iterative and uncertain fashion.

141 Pulido (1998: 126) surveys how “poverty becomes a consequence of a cultural deficiency” in northern New Mexico when the supposedly ecologically irresponsible practices of Hispanos (e.g. overgrazing) are causally linked to poverty and marginalization.
colonial linkages of race and spatio-environmental practices in sometimes romanticized ways: the perceived communalism and nonmodern nature of certain rural, nonwhite groups can now come to be seen as environmentally friendly rather than destructive.\textsuperscript{142} Reiterating the link in western thought and colonial discourses between ethnic minorities (particularly indigenous people) and nature (e.g. Tully 1995) can have diverse and contradictory effects.\textsuperscript{143} Such iterations can provide ecological legitimacy for marginalized groups and form the basis of territorial claims to land, resource, and socio-political rights (Wainwright and Bryan 2009); yet they can also perpetuate essentialized racial ontologies and disciplinary enactments that “fix” (Nelson 1999: 6) racialized subjects. These subjects can come to be seen as pre-modern in ways that limit acceptable identities and environmental practices, and hence possible livelihood strategies (e.g. Braun 2002b; Conklin and Graham 1995; Rivera 1983) at the same time as they are held responsible for negative environmental outcomes (or their own poverty or marginalization) when they are perceived as not living up to their essentialized construction – when, in Pulido’s (1998: 127) terms, “a general moral shortcoming [is] expressed in the failure to practice an appropriate environmental ethic.” As I address in the conclusion to Chapter 7, these iterations could pose potential problems for Hispano resource users and the Land Rights Council.

Within this broader context of race and nature, the Colorado Supreme Court ruled in \textit{Lobato I} that access to and use of La Sierra “should be limited to reasonable use,”\textsuperscript{144} yet offered little guidance on what constitutes reasonable. The court wrote,

\begin{footnotesize}
\begin{enumerate}
\item This inversion is seen most dramatically in constructions of “ecological Indians,” themselves arising from previous notions of the noble savage (Conklin and Graham 1995).
\item Such contradictions reflect the broader ambivalence of postcolonial political projects (e.g. Braun 2002a; Nash 1999).
\item \textit{Lobato v. Taylor} 71P.3d 938, 956 (Colo. 2002), hereafter \textit{Lobato I}.
\end{enumerate}
\end{footnotesize}
we hold that the landowners have implied rights in Taylor’s land for the access detailed in the Beaubien Document - pasture, firewood, and timber. These easements should be limited to reasonable use - the grazing access is limited to a reasonable number of livestock given the size of the vara strips; the firewood limited to that needed for each residence; and the timber limited to that needed to construct and maintain residence and farm buildings located on the vara strips.\textsuperscript{145}

The district court in San Luis, as part of its overseeing of the identification process, clarified these terms only slightly: “reasonable use” is construed as “for the purpose of survival or for household use,” which “does not include commercial use” and must not be “large scale.”\textsuperscript{146}

While the courts have tied “reasonable use” to the requirements and characteristics of the individual resource user and their land – use must be subsistence oriented and timber can only be cut, for example, for use on the individual property certified for access – in a 2005 motion Cielo Vista Ranch shifted the terrain of reasonable use squarely towards the common land itself.\textsuperscript{147} The “reasonable use” standard, Cielo Vista argued, “is not sufficiently defined, leading to problems of misuse and/or overuse and the resulting lack of stewardship of the land.”\textsuperscript{148} “[T]he land,” here, refers not to the land on the vara strips, but to Cielo Vista Ranch. CVR continued: “there is not only the potential for, but the very real likelihood of continual misuse/overuse (whether intentional or unintentional) on a much larger scale … that will damage the eco-systems of the Ranch to the detriment of all.”\textsuperscript{149}

Since that time, the struggle to define “reasonable use” on ecological grounds – by defining the nature of La Sierra and what sustainability and good stewardship entail in

\textsuperscript{145} \textit{Lobato I} at 956.
\textsuperscript{146} “Order,” \textit{Lobato v. Taylor} (Colo. District 81CV5) 1 July 2004, p.3. As I discuss in Chapter 5, what these stipulations of reasonable use mean in legal terms has not yet been adjudicated, leading to widespread uncertainties and confusions within governance processes. This chapter and the next describe struggles to materialize definitions and practices of “reasonable use” in specific ways.
\textsuperscript{147} As I discuss in Chapter 4, the district court invited this shift when it enlisted CVR as an agent of surveillance that could restore its burdened private property rights by documenting abuse of the land by resource users.
\textsuperscript{149} “Defendant CVR Properties, LTD’s Motion For Further Clarification and Definition of Scope of Access Rights In Light of Recent Circumstances,” \textit{Lobato v. Taylor} (Colo. District 81CV5) 14 March 2005, p.2.
relation to that nature – has become central to the struggle over environmental
governance.\textsuperscript{150} Nature, therefore, has become a regulatory norm that must be cited and re-
cited in order to achieve intelligibility and legitimacy and to exercise agency within the

governance process. As a result of the importance of nature, La Sierra has become the
subject of, and subject to, numerous efforts to map, inventory, define, diagnose, and
articulate its nature(s). More concrete concepts of forest health, carrying capacity, good
stewardship, and the tragedy of the commons work to cite a globally circulating discourse of
nature as a set of ecological interactions separate from and threatened by humans.\textsuperscript{151} The
repetition of such discourses enables particular subjects to appear as environmental subjects,
and therefore as legitimate subjects able to speak for, use, and care for nature. These
iterations, however, are ambivalent and uncertain. Both Cielo Vista and the Land Rights
Council attempt to strategically shape discourses of nature, yet neither can entirely control
the uncertain effects of repetition (cf. Gregson and Rose 2000).

This chapter is framed by Cielo Vista’s efforts to use ecological arguments to shape
governance and subjects by mobilizing the regulatory norm of nature as a mechanism of
restriction, considered alongside the responses of Hispano resource users to these iterations.
Below, I first discuss the efforts of CVR in court to define sustainability and good
stewardship in ways that mobilize nature as a mechanism of restriction, before turning to a
pair of competing ecological reports that attempt to define the nature(s) of La Sierra while
also articulating notions of good stewardship. I then turn to a meeting between Cielo Vista
staff and members of the LRC and HLGA to examine CVR’s efforts to articulate resource

\textsuperscript{150} As I describe in Chapter 4, the district court has so far refused to implement rules or regulations for resource use beyond
the reasonable use standard. This refusal has led CVR to ask for such rules at multiple occasions, some of which I discuss
below.

\textsuperscript{151} On the contested histories of ecological ideas and the ways in which nature has become ontologically separate from
culture or society in environmental discourses, see for example Braun and Castree 1998; Castree 2005; Latour 1993;
users as good stewards. Throughout this chapter and the next, I consider the uncertain projects of creating environmental subjects – and natures and spaces – that have emerged in the struggles to govern the returned commons.

**Nature as mechanism of restriction**

Cielo Vista Ranch has attempted to define “reasonable use” according to the carrying capacity of the land, and in so doing mobilize the authority of scientific discourses of nature to restrict resource access and use. In the process, CVR has sought concrete and enforceable rules and regulations for resource access and use mandated by the district court – for example, to shorten the length of the summer grazing season; restrict all resource access during hunting season; mandate procedures for cattle branding, vaccination, and diet; specify areas of the ranch that can and cannot be grazed or accessed; prohibit sheep grazing; limit use of motorized vehicles; designate areas for firewood collection and mandate procedural paperwork for wood and timber harvesting; and charge resource users monetary costs for maintenance.152

Through a discourse of population pressure, natural limits, and carrying capacity, coupled with repeated requests to the court for specific rules to govern resource access and use, CVR invokes a tragedy of the commons, whereby the unregulated, self-interested actions of individual resource users will inevitably destroy the commons (Hardin 1968). Foregrounding finite and fragile ecological resources, on one hand, and an explosion in the number of resource users and their livestock, on the other, CVR’s iterations mirror Malthusian global environmental narratives. Within this regulatory context, CVR mobilizes notions of carrying capacity, good stewardship, and “doing the right thing for the land” in an

---

attempt to restrict resource access and rights, and also to shape how those rights are
exercised – nature, in the spatial strategies of CVR, emerges here as a mechanism of
restriction. The Land Rights Council, however, has critiqued such a characterization by
pointing to historical and contemporary efforts to collectively manage resources in
sustainable and equitable ways – that is, the sets of informal norms, explicitly codified rules
through collective organizations, and collective cultural practices that serve to effectively
govern the commons (see Ostrom 1990; Peña 1998d) – while also re-politicizing the ability
to speak for, use, and govern nature.

In court, CVR was most direct in articulating its arguments about carrying capacity,
arguing for the necessity of court-imposed rules to curtail resource use practices and thereby
ensure sustainability on the ranch. Beginning in 2005, one year after the first Hispano use of
the ranch authorized by Lobato in the summer of 2004, CVR has argued that use of La Sierra
has been, and will continue to be, unsustainable. At the time, roughly 180 cattle had been
grazed on the ranch by four of the nine plaintiffs who had been awarded access rights.153
CVR’s arguments as they emerge in court filings are comprised of several components,
including spatial restriction, ecological limits, and population pressure on resources. First,
CVR argues that only about one-third of the 77,000 acres comprising the ranch, roughly
28,500 acres, is “suitable for grazing” because of the fragile or inappropriate terrain of the
remaining land. This argument fits the broader spatial strategies of CVR to limit access to
large segments of the ranch – instead of through closed or poorly maintained roads or other
physical barriers, here that strategy is enacted through ecological arguments.

Second, CVR argues that the remaining suitable grazing land has a specific carrying
capacity of “approximately … 60 acres to the animal unit,” so that the carrying capacity of

153 “Defendant CVR Properties, LTD’s Motion For Further Clarification and Definition of Scope of Access Rights In Light
any specific pasture on the ranch can be mathematically calculated by dividing the total number of acres by 60 – a figure quickly translated into “natural limits.” Discussing one popular pasture on the ranch known as the Salazar Estate (where all but 24 of the total 180 cattle were grazed in 2004), CVR writes: “Assuming these natural limits, the 2,500 acres of the Salazar would support 42 animal units (2,500 acres divided by 60).” As of August 2004, however, the ranch found that the grazing pressure on the Salazar pasture “was statistically more than double the carrying capacity of the Ranch.” CVR offered no scientific or other evidence for their 60 acre calculation of carrying capacity beyond the affidavit of a prior ranch manager, and in response to challenges by the plaintiffs, CVR quickly abandoned this or any other numerical figure. However, since that time, CVR has consistently invoked “the natural limits of the Ranch in terms of its grazing and resource capacity,” and these natural limits have become central to discussions of sustainability.

Third, CVR has focused sustained attention on the “sheer number” of resource users, both animal and human. In addition to the “problems of sheer numbers of livestock on limited suitable ground for grazing” in that first grazing season, there was also the issue of a coming population explosion. At the time of CVR’s first motion to restrict resource use on ecological grounds, there had been only nine plaintiffs awarded access rights, but the court was set to begin awarding access to hundreds of individuals (see Chapter 4). On the eve of the court’s first major access order, in which 125 individuals from San Francisco were expected to be granted access, CVR wrote:

if issues [arose] with just 9 having access, certainly the issues and problems will expand and enhance with an additional 125 with access. For example, with respect to grazing, if a mere 20% of the 125 San Francisco landowners choose to graze livestock on the Ranch, … [t]he impact of such numbers on the limited grazing capacity of the Ranch should be obvious. \(^{159}\)

Under this situation, CVR later added, “the depletion of the subject resources of the Ranch (i.e. suitable land for grazing, firewood and timber) to the detriment of all would be a foregone conclusion.” \(^{160}\)

In conjuring visions of a head on collision between exponential population explosion and finite natural resources, Cielo Vista recited notions of carrying capacity and fixed natural limits, longstanding concepts in environmental discourses (e.g. Meadows et al. 1972; Sayre 2008). In the process, the ranch both explicitly articulated and, through its expressions of care and concern for the state of the ecological balance on the ranch, attempted to occupy the subject position of the “good steward of the land.” In turn, across these legal filings CVR sought concrete rules from the court to enforce its definition of good stewardship.

In contesting CVR’s motions, lawyers for the plaintiffs did not contest the regulatory norm of nature. Instead, they too recited this norm, strengthening its force as common sense in the governance process with each successive iteration. These filings similarly attempt to situate Hispanos within the subject position of the “good steward” by locating good stewardship within a history of cooperativism and sustainable resource use among Hispanos from the initial settlement of the grant until Jack Taylor’s arrival in 1960:

\(^{159}\) “Defendant CVR Properties, LTD’s Reply to Plaintiff’s Response To Motion For Further Clarification And Definition Of Scope of Access Rights,” Lobato v. Taylor (Colo. District 81CV5) 4 April 2005, p5.

That there are environmental concerns and limits which the access owners should consider is without question, and the community ... using their own resources and without financial assistance from CVR, have been diligently working to develop a sustainable use plan. This is not because the Supreme Court mandated the development of such a plan. It is because of their desire to be good stewards of the land.\textsuperscript{161}

Ultimately, however, the plaintiffs argued that “[t]he issues of carrying capacity of the Ranch, sustainable use, and similar questions are not part of this present litigation,”\textsuperscript{162} and the court agreed (see Chapter 5).

Despite the court’s rejections of CVR’s pleas to impose rules and regulations on ecological grounds, the ranch continued to return to the issue, particularly with regard to the number of resource users. In 2006, the ranch approached the court again asking for rules, arguing that
to date, nearly 1000 separate properties/property owners have been determined to have access rights to all or a portion of the Ranch. It almost goes without saying that if even a fraction of these properties/property owners were to exercise the rights ... the Ranch would be completely overburdened. In this regard, it cannot be disputed that the Ranch has limited resources, especially in terms of land suitable for grazing.\textsuperscript{163}

The force of the regulatory norm of nature is such that CVR could simply assert the notion of fixed natural limits instead of presenting factual evidence to support this position: such limits simply “cannot be denied,” and “(i)t almost goes without saying” that these limits would be violated. While the plaintiffs undoubtedly will challenge the notion of overburdened

\textsuperscript{161} “Plaintiffs Response to Defendant CVR’s Motion For Further Clarification and Definition of Scope of Access Rights,” Lobato v. Taylor (Colo. District 81CV5) 25 March 2005, p4 fn2.

\textsuperscript{162} “Plaintiffs Response to Defendant CVR’s Motion For Further Clarification and Definition of Scope of Access Rights,” Lobato v. Taylor (Colo. District 81CV5) 25 March 2005, p17.

limits when these issues are litigated on appeal, they have not disputed the notion of limits –
these are, simply, “without question.”

Again in 2007, the ranch complained that the title company had “now identified
nearly 4,000 parcels that encompass the [original Beaubien-era] 170 vara strips,” and
reiterated its request for court-sanctioned rules. With each successive iteration of natural
limits, population explosion, and degraded ecosystems, CVR asked the court for restrictions
on resource use practices both in terms of the number of resource users (human and animal)
and via stipulated rules of use.

An additional feature of CVR’s arguments has been the notion that court-enforced
rules and restrictions on resource use would be “in the best interests of all” while,
conversely, unregulated use and the inevitable environmental degradation that would result
would be “to the detriment of all.” CVR has not only attempted to articulate and occupy the
subject position of “good steward,” it has also attempted to enroll others as good stewards
through the articulation of common interests. The regulatory norm of nature, dictating that
all parties care about the land and strive to be proper environmental subjects, constitutes the
starting point and common ground for such articulatory practices.

Fragile spaces and good stewards

Cielo Vista has also worked to construct a discourse of natural limits outside of
court, drawing from multiple sources of expertise to recite discourses of nature and
sustainability. One source of expertise is outside scientists, and in 2007 CVR commissioned
an ecological study of the ranch by Colorado State University range scientist Roy Roath. I

situate the report as part of the broader effort by Cielo Vista to become environmental
subjects – reciting scientific discourses of nature to demonstrate legitimacy as stewards of
the land – and to use that legitimacy to restrict access rights both spatially and temporally.
The study focuses on the effects of livestock grazing and conditions in areas where grazing
activities are concentrated (Roath 2007). Extending the strategies previously used by CVR in
court, the Roath Report characterizes higher elevation areas as “ecologically fragile,” with
subsequent recommendations that human activities on these parts of the ranch be severely
limited. Lower elevations, by contrast, are seen as potentially untapped and productive,
creating a binary spatiality of high elevation, fragile, and restricted on one hand; and low
elevation, productive, and accessible to use, on the other. Nature again functions as a
mechanism of restriction, where notions of natural limits, fragile ecosystems, and above all
the requirements of good stewardship serve to justify curtailment or restriction of Hispano
resource access and use.

In part, the Roath report achieves its citationality of the regulatory norm of nature
methodologically. Through its experimental basis, grounded in surveying and sampling
techniques, the report presents direct access to nature, interpreted through the scientific
method, as the truth of the landscape and its claim to legitimacy as an accurate
representation of reality. Roath’s concerns lie primarily with grazing, which leads to a focus
on “forage production” and the carrying capacity of different areas of the ranch. The report
surveys eleven different “vegetation communities” within CVR, serially finding overgrazing
and degraded range capacity across many of these ecosystem types.

Unlike CVR’s lawyers, however, Roath does not insist that the entire ranch is
“overburdened” or grazed beyond carrying capacity. Rather, Roath argues that only certain
specific areas are overgrazed, while the entire ranch when considered as a whole was grazed
at less than half of its potential capacity in summer 2007. The report does, however, echo CVR lawyers in arguing that only a small portion of the ranch is suitable for grazing, and in the process articulates a binary spatiality of high and low elevations. The upland, high elevation alpine areas of the ranch are constituted as “fragile” and “sensitive” by the report, and because of the current grazing pressure from both elk and cattle – “the two dominant grazers on the landscape” – these Alpine areas have been overgrazed in certain “concentration areas” (Roath 2007: 10-4). Of these areas, Roath concludes, “(t)his [vegetation] community needs careful monitoring and management since it is a fragile system that does not readily repair itself. … [H]eavy cattle pressure is evident … and must be carefully controlled” (14). Roath’s recommendations directly contrast with the accounts of historic grazing practices among Hispanos and the ways that several grazers (along with CVR ranch manager Carlos DeLeon) told me cattle should be managed today, whereby cattle should be progressively moved first upwards to high elevations as the winter snowpack melts, kept at high elevation for a short duration, and then progressively brought back down to lower elevations as the grazing season continues. Instead, Roath argues that the “very fragile, sensitive” high elevation areas “probably should not have cattle use” at all (3). The solution, for Roath, is to shift cattle away from high elevations and riparian areas and “implement a grazing program in the lower elevations” (3-4).

The sub-text of the report and context within which it intervenes is partly constituted by tensions over the competition for limited grazing land and resources among elk and cattle. While Hispanos now graze cattle on La Sierra, CVR derives significant income from elk hunting on the ranch – according to head ranch manager Carlos DeLeon when I spoke to him in July 2010, bringing in outside hunters for trophy elk hunts is CVR’s “main source of income.” Carlos added, “we have a lot of elk,” and for this reason many Hispano
grazers react strongly to charges that cattle are overgrazing the mountain by pointing out the
fact that elk are responsible for overgrazing as well. My introduction to the Roath Report, in
fact, was a Land Rights Council board member blithely quipping, as he slid the report into
my hands, “we don’t agree with this report, because it completely ignores the impact of elk.
But you should read it anyway.”

In this context, the Roath Report articulates a fundamentally spatial strategy. In
short, because of significant overgrazing across the ranch, cattle should both be restricted
from grazing in high elevation areas and better distributed across low elevation areas and
ecosystem types. Combined with other management tools such as prescribed burning and
thinning of woody species, the spatial redistribution of cattle more widely throughout low
elevation areas would significantly increase grazing capacity.

Roath does not completely ignore the impacts of elk. For example, elk constitute one
of “the two dominant grazers on the landscape” (11); for one of the most heavily grazed
areas of the ranch, Roath concludes that “both species impact this system” (29); and low
ground cover in sub-alpine meadows “is probably, primarily attributable to heavy elk use”
(57). Such impacts, however, are minimized, and elk become a constitutive absence of
Roath’s spatial management strategy. While both cattle and elk are recognized as heavy
grazers, only cattle are seen as responsible for overgrazing and should therefore be restricted.
Roath’s solution is articulated only as a cattle management strategy: “(a)rresting these trends
[of overgrazing and poor forage production] can only be accomplished by changing the
amount of livestock pressure on these areas” (2-3).

Elk cannot be managed spatially in the same way that cattle can. However, elk
seemingly pose no threat as agents of overgrazing, as Roath recommends that conditions
beneficial to high elk populations be increased. In areas dominated by aspen, Roath finds that
grazing pressure from elk has contributed to the reduction of highly palatable species for grazers and the dominance of unpalatable species – the same finding used to justify the restriction of cattle grazing elsewhere on the ranch. Yet in alpine-dominated areas, which constitute a “community important to grazing animals and particularly to elk and deer,” Roath recommends “the maintenance of aspen stands” to ensure continued elk habitat as “a central part of any management plan” (15).

Similarly, the restriction of cattle from high elevation alpine areas despite the finding that “(t)he majority of grazing pressure in this community appears to come from elk during the late spring and summer months,” with “heavy cattle pressure evident in concentration areas” (13), makes sense only in the context of an unspoken desire to maintain high elk populations. This absence drives the Roath Report’s recommendations so that what emerges in its pages is a management strategy through which Hispanics and their cattle should be restricted to the low elevations of the ranch so that elk and their hunters can occupy the higher elevations. To several Hispano resource users I interviewed, the high elk populations on La Sierra stood as a painful irony, where locals, many of whom struggle to put food on the table, cannot hunt on the mountain as part of their access rights, while CVR derives significant income from bringing in non-local hunters for recreational trophy hunts.

Meanwhile, only cattle are blamed for overgrazing, as large elk herds continuously come down from the mountain to damage fences and graze farm fields, eating crops or forage intended for cattle. “He [CVR co-owner Bobby Hill] thinks he owns those elk just because they’re on his property,” one grazer told me in disgust. “He thinks he can do whatever he wants with them, no matter what damage they cause to my fences.”

166 Author interview, 2010-04-09, San Luis.
The Roath report also continues CVR’s legal strategy of enrolling resource users into governance practices by articulating good stewardship as a common interest shared by all. In between the introductory summary of the report’s conclusions and the following fifty-plus pages of technical, scientific language, graphs, and charts that carefully document experimental procedures and illuminate the empirical realities of CVR’s nature, the report announces, in bold, italic, enlarged font centered on the page (Roath 2007: 4):

There is beauty and reverence on the Mountain!

It is a cultural legacy that is desired by all!

There is much to be gained by creating and implementing an effective management plan!
In order to do that, we must work together.

The following page also takes time to interrupt the report’s scientific narrative to implore its readers to work together to engage in proper management, and to note that “(i)t is the owners’ goal to formulate a management plan that can be mutually agreed upon by both landowners and cattle operators/plaintiffs who use the ranch” (Roath 2007: 5).

These pleas, in attempting to enroll diverse subjects into a common project, both depoliticize the practice of speaking for nature and cover over histories of struggle at the same time as they articulate shared identities, practices, and desires. By invoking a cultural legacy that can somehow be claimed and desired equally by all, the Roath report collapses differences both among resource users and between resource users, CVR, and experts such as Roath himself. By finding “beauty and reverence” on the mountain instead of or in addition to labor and local livelihoods, the report displaces and encloses the meanings and
significance of the landscape within contemporary environmentalist discourses that privilege spiritual, scientific, and conservation-oriented connections to nature over relationships grounded in production and use (Cronon 1996). Further, as certain subject positions emerge – most notably those of the good steward and the scientist who defines its practices – others, such as loggers, out of state elk hunters, or acequia farmers, are foreclosed.

Such iterations evacuate La Sierra of its diverse and contested histories, erasing the importance of the mountain in sustaining land grant heirs and their predecessors materially and culturally as well as the role of the land in decades of conflict, struggle, and dispossession. Further, in recommending elements of a grazing plan and noting that such a plan “will require joint efforts of the Ranch and the people who graze livestock,” Roath (2007: 3) instructs would-be collaborators that “(c)ertainly, engineering and technical assistance to do this is available from the local NRCS [Natural Resources Conservation Service] office.” Proper governance of the commons is rendered a technical and scientific problem, not a political one (cf. Ferguson 1990; Li 2007), and – certainly – not one best framed around the historical and cultural practices of Hispanos who had grazed La Sierra for over a century before the enclosure of the commons.

Such statements attempt to do the work of the performative, to bring into being the world that they name while simultaneously covering over their conditions of production (Butler 1993). As the project of managing the grazing resources of the mountain is sublimated into a technical and scientific question, for which objective knowledge is available from detached experts and state extension agents, the practices of resource access and use become depoliticized and ahistorical. The histories of the settlement of the land grant, intimate connections between Hispanos and the mountain that sustained them, countless conflicts and struggles through which such passionate attachments among Hispanos have
been transformed into political activism and organizing to protect the mountain and rights to it, forceful enclosures by Jack Taylor and the land companies that preceded him, an entire generation whose ties to the mountain were severed, and the ecological damage done by Taylor’s logging all dissolve into “beauty and reverence,” “a cultural legacy … desired by all,” and the creation and implementation of “an effective management plan” (Roath 2004: 4).

Such statements also do the work of articulation, as they attempt to enroll diverse subjectivities into the common frame of the good steward, one who self-governs according to the truths of scientific expertise and works cooperatively with others. What Roath (59) calls “proper management” becomes a question of the truth of nature, interpreted by the expert scientist according to the metrics of grazing capacity and forage production. The central articulatory move, however, is the translation by which the interests of nature, operationalized as the interests of grazing populations and their habitats, come to stand in for the interests of all proper environmental subjects.

Divergent repetitions

Yet such normative repetitions are not uncontested, and the LRC offers its own repetitions of nature, with a difference. In contrast to the Roath report’s binary spatiality, the primary scientific report commissioned by the LRC offers a very different conception of ecological space. The LRC report was done by the Colorado Natural Heritage Program (CNHP), which also has affiliations with Colorado State University (Sanderson 2004). The report articulates a very different model of nature and vision of ecological sustainability, based on the centrality of riparian areas. Rather than a definition of sustainability based on range condition, and therefore the populations of particular species that the range can support, this report measures the condition of nature based on concerns of biodiversity.
Further, the report does not shy away from the overgrazing of elk, noting early on that “Elk are currently having a large impact on Aspen forests and willow communities” and suggesting steps “to bring the elk population down to target levels suggested by wildlife agencies” (Sanderson 2004: iii, iv).

The Roath report gains its legitimacy methodologically, through its use of the scientific method, and because of its access to the nature in question through the ability to carry out direct observation on the ranch. The authors of the Heritage Report, by contrast, did not have that same privileged access to the nature of Cielo Vista, and were limited by CVR to several short field visits. Instead, this report must achieve its citationality through the scientific literature, by citing globally circulating discourses of biodiversity and conservation according to the regular CNHP methodology of conservation science.

The Heritage report identifies seven “Potential Conservation Areas” that are seen to be crucial for maintaining particular threatened species and an overall high level of biodiversity. Primarily, these conservation areas are riparian, and are located in diverse ecosystems in a patchwork pattern across the ranch. Rather than the dualistic spatial constructions in the Roath report of high and low elevation areas, one fragile and the other productive, the spatiality of the Heritage report is more heterogeneous, based on conservation “zones” that contain different “elements” of biodiversity across multiple ecologies and elevations. The Heritage report recommends that the key land use consideration is not elevation, but proximity to and relationship with these seven zones.

---

167 My observations and discussions with LRC activists suggest that CVR has come to recognize the importance of controlling direct access to the nature of the ranch for scientific study in ways that shore up the legitimacy of CVR to speak for nature while circumscribing the ability of others to do so. For example, after initially cooperating, CVR denied access to the ranch for the LRC-partner Forest Guild to conduct a GPS-based resource survey of the land with local youths, thereby restricting efforts to scientifically represent the land.

168 See the CNHP website at http://www.cnhp.colostate.edu/about/heritage.asp. The report was guided by concerns of identifying important and threatened biological resources, and balancing resource use considerations against the chances of successful conservation initiatives (Valdez 2005a): “to help prioritize conservation actions by identifying those areas that have the greatest chance of conservation success for the most imperiled elements” (Valdez and Sanderson 2005).
creating land use patterns in a more patchwork pattern that breaks the spatial containment of the Roath report.

Therefore, the land use activities of Hispanics should be based upon considerations of avoiding these largely riparian areas, regardless of elevation. In this scenario, Hispano resource practices would cover a far greater spatial extent than under CVR’s plan, and the presence of cattle overall is less significant to biodiversity as long as livestock are kept away from designated conservation areas. The report further calls for a reduction in elk numbers, citing estimates by state wildlife agencies, and an improvement of road conditions throughout the ranch to stabilize high levels of erosion; improved roads, even if some are closed as the report calls for, would greatly facilitate movement of resource users throughout the ranch.169

Uncertain iterations

It is possible to read these competing scientific reports as simply extensions of the strategic interests of the groups that commissioned them: that is, CVR produces a report that attempts to contain Hispano use of its land to low elevations, close to the Hispano villages and as far away from its big game hunting clients as possible. Meanwhile, the LRC-commissioned report argues in favor of a more spatially complex pattern of land use, replacing the distinction between high and fragile, on one hand, and low and productive on the other, with a spatially complex picture of multiple conservation zones that would enable far greater movement of Hispano resource use practices throughout the ranch. Nature might be interpreted, for example, as an empty signifier (Laclau 1989) that different groups attempt

169 The lead author of the LRC’s management plan (discussed in the next chapter), Arnold Valdez, told me that the conservation vision of the Heritage report would, in practice, be very difficult to implement precisely because of its spatial complexity (Author interview, Santa Fe, 2010-04-26). I discuss the efforts of the LRC to combine scientific expertise with historical and cultural practices in the next chapter.
to fill with definitions and articulations that map onto their own political and economic interests.

However, such an argument overlooks the force of nature as a regulatory norm, which must be cited to achieve intelligibility within environmental governance processes. My argument is not that CVR and the LRC “perform nature differently,” but rather that each is compelled to perform in ways that recite the regulatory norm of nature. Conservation discourses can be appropriated for strategic purposes, as both CVR and the LRC are attempting to do, however dominant discourses can only be manipulated within the bounds of acceptable normative discourse (Gregson and Rose 2000). A subject must remain within the frame of intelligibility structured by the regulatory norm, and therefore any repetition of a discourse within specific projects of articulation may have politically or strategically unwanted or uncertain effects. Because repetitions of the norm are never certain, the necessity to cite an already established realm of meaning – a regulatory norm – can lead to unintended effects in attempts at articulation.

Cielo Vista, for example, is confronted with the effects of elk grazing no matter how much Roath or CVR attempt to downplay such effects, and reciting a discourse of natural limits as CVR has done repeatedly has only served to highlight, rather than obscure, the historically high numbers of elk that currently graze in the Sangre de Cristo mountains. Consequently, these iterations surrounding elk as ecological and economic actors have emerged as key sites of controversy as they elicit passion and anger among Hispano resource users – emotions that in turn work to inhibit cooperative practices between Hispanics and CVR in governing and using the land. As I describe below, CVR’s projects of articulation,

---

170 In part, these high numbers are attributable to the relative absence of predators such as wolves and mountain lions, which also disappear within CVR discourses. Historically such predator species reduced ungulate herds while also ensuring greater movement of herds across space (e.g. Ballard et al. 2001; Beschta and Ripple 2009).
through which nature is positioned as a nodal point that binds diverse subjects and objects, have been troubled by these uncertain effects of repetition.

Similarly, while CVR argued in court in 2004 that the land was already and would continue to be completely overburdened by the exploding population pressure on resources unleashed by the *Lobato* decision, the ranch’s own primary scientific report plainly states that the land as a whole was not overgrazed three years later in 2007 (a time when many more resource users had been awarded access than in 2004), but that in fact the ranch was then being grazed at less than half of its capacity. CVR’s strategy of iterating the regulatory norm of nature through direct scientific access to nature, then, has both enabled and complicated its articulatory strategies of spatial restriction.

The Land Rights Council also finds itself in a tenuous, ambivalent position as it attempts to appear as a representative of environmental subjects. Confronted with closure of roads, restriction of sheep, and general limits to resource use all on environmental grounds, the LRC and individual resource users must strike a careful balance between the need to become environmental subjects, and the desire to avoid strict limits on the use of resources. For example, while the Heritage report recommends improvement of roads to slow erosion, which would benefit resource users by providing easier access to certain areas, it also recommends the closure of several roads, which would render other areas more difficult to access. Further, the Heritage report recommends that sheep not be grazed on the ranch, echoing the concerns of the State of Colorado that grazing sheep would be dangerous for the recently recovered populations of Bighorn sheep whose range includes La Sierra.

These recommendations, among others, have left the LRC in an ambivalent position, forced as they are to cite the regulatory norm of nature in order to appear as proper environmental subjects. “We left that part out of our recommendations to resource users,”
Norman told me about the Heritage Report’s suggestion to disallow sheep, “because we
don’t want to discourage people from using the land.” He continued, “we don’t agree with
that part – our ancestors grazed thousands of sheep up there – but we’re also not going to
tell people how they can or can’t use the mountain, we don’t want to discourage use.” To
my knowledge, no sheep had been grazed on the mountain tract since *Lobato* through my
fieldwork period, yet the LRC sits ambivalently between the imperatives of the regulatory
norm of nature and desires to prevent restrictions on resource access and use.

**Hegemonic articulations**

The performative articulation of the Roath Report – as well as the unintended
consequences that emerge from the uncertain repetition of the regulatory norm of nature –
was on full display in mid-October 2010, when Bobby Hill met with members of the HLGA.
As one of four co-owners of Cielo Vista Ranch (CVR) along with fellow Texans Dottie Hill
and Richard and Kelly Welch (Frazier 2004c), Bobby Hill is the public face of CVR locally
and the most involved in legal and environmental governance processes. It is Hill who
attends the most meetings, gets quoted in the newspapers, and engages most directly with
Hispanos in San Luis. Locally, the name “Hill” is often synonymous with “Cielo Vista
Ranch.”

After the morning *Lobato v. Taylor* district court hearings in July 2008 (described in
Chapter 4), I stood outside the courtroom talking with Bobby Hill as we waited for the
hearings to resume after lunch. My hunch is that our conversation that July day was not
unlike the many others Hill has had with news reporters since he bought La Sierra: the
fieldnotes I scribbled down after our conversation ended and before the afternoon hearings

---

began share many similarities with countless news articles quoting Hill that I would see in the following months and years. One of those similarities was, in Hill’s words, the desire to “do the right thing.” Of he and his wife Dottie, Hill told me that “We’re just ranching people, trying to do the right thing.”

When Hill began personally engaging members of the San Luis community in 2004, he had a similar message: in the lead up to the first meeting between the four CVR co-owners and San Luis residents, when about seventy people gathered to meet the new owners of La Sierra in late August, the Pueblo Chieftain newspaper described Hills’ stated goals as “simply to be good stewards of the land, good neighbors in the community and to enjoy the quiet and peaceful possession of the property” (“A Hopeful Note” 2004). “[T]he law has spoken and we will certainly obey the law,” Hill said at the time, and underscored his hope for a “clean slate and fresh start” in the long-contested relationship between the local community and the owners of La Sierra (Carlos Mora 2004b). “We came to listen, learn and be responsive,” Hill told the meeting in what the Chieftain described as “generally soothing tones” (Carlos Mora 2004c).

In 2004 and again when we spoke in 2008, Hill was clearly trying to signal a rupture between his tenure over the mountain tract and those of his predecessors by stressing neighborliness and doing the right thing. In an obvious break with Jack Taylor’s notorious and blatantly essentialist racism (see Chapter 1), Hill told me that the region’s Hispano residents were “innocent” and “sweet people,” not so different from he and his wife: most locals, he assured me, were “good, responsible people trying to do the right thing.” Yet, Hill’s words also marked out certain continuities with those who came before him. In part, these continuities sprang from Hill’s shifting public discourse beginning in 2005, when the district court began awarding access rights to Cielo Vista to hundreds, and then thousands,
of certified property owners (see Chapter 4). At that time, Hill began to mark Hispanos and other resource users as out of place, publicly lamenting the increasing “burden” on his private property rights.

Standing outside the court room with Bobby Hill in 2008, I was initially startled – though ultimately not surprised – when Hill recommended to me a recent book by former Denver Post journalist and government public relations advisor Dick Johnston and described it as “accurate.” That book, The Taylor Ranch War: Property Rights Die (2006), contains both racialized essentialization and an ideological defense of private property rights. Johnston is clear on who is responsible for the poverty of Costilla County: against the “(c)ritics of Jack Taylor” (15) who suggest that his enclosure of the commons led to economic decline, for Johnston it is the San Luis residents themselves who, in focusing on a lawsuit designed to claim the private property of someone else, failed to pursue “a major overlying need of the community … the need for economic development.” Instead, Johnston alleges, “many residents fought proposals that would cause any change in their lifestyle or environment,”

---

172 At a 2005 access order hearing in court, the local paper described Hill as “visibly overwhelmed by the number of property owners who will be granted access,” and quoted him as saying, “I’ve had better days” (“Most Riteños” 2005). Several months later, Hill told the Denver Post, “Our worst case scenario was 200 people claiming it” (Curtin 2005: 11).

173 Hill was not the first to condemn the persistent claims of Hispanos in San Luis as out of place (see Chapter 1). In another example, a 1997 profile of Zachary Taylor, the son of Jack who took over control of La Sierra after his father died in 1988, summed up Zachary’s views on the locals: “the villagers are content tending their fields of alfalfa, fava beans and chicos,” wrote the article’s author, “when someone is not filling their heads with grander dreams” (Horton 1997: 16). The younger Taylor – named after his ancestor of the same name who happened to be the 12th President of the United States, a proponent of Manifest Destiny, and a general in the Mexican American War (among others) (Horton 1997: 17; Mondragon-Valdez 2006: 187) – explained that the Land Rights Council had misled the poor villagers by perpetuating myths of historic rights: “I believe most of them are truthful when they say they believe they have a right,” Taylor is quoted as saying, “But they have been misled by a few. Their own attorneys will give them false hopes. Their leaders are giving them a false sense of hope. … Would you rather live your daily life without stress or would you rather have someone come to you and tell you you stand to claim an inheritance? These folks are riling up good people for no good reason. They’re dangling carrots in front of their mouths that they know they’ll never eat” (Horton 1997: 16). Apparently forgetting his father’s intentions in purchasing the land in the first place, Taylor blamed the local Hispanos themselves for the logging operations he oversaw on La Sierra in the late-1990s, which sparked intense protests in and out of San Luis (Wilson 1999): had the Lobato v. Taylor lawsuit not prevented the sale of the land at full market value, the Taylor family would not have been forced to log. “We needed to make a profit from our investment,” said Zachary. “It’s the villagers and their lawsuit who are responsible [for the logging]” (Horton 1997: 17).

174 In the Preface, Johnston describes the rejection of his book manuscript by three successive university presses, with reviewers for the first two explicitly calling the book racist. Johnston attributes these rejections to the fact that he “did not support the Hispanic group’s position” and intimates that “political correctness” played a role (Johnston 2006: xi-xii). The book was eventually published by AuthorHouse, a self-publishing company. While Johnston insists that these reviews led him to “try to present both sides of the controversy” (xii), traces of racism remain.
and the unwillingness to give up the fight against Taylor created only a “drain on the 
energies of the San Luis community [that] continued decade after decade” (2). For Johnston, 
“their lifestyle [and] environment” are clearly causes of, and not bulwarks against or partially 
produced by, the region’s economic poverty or relations of private property and resource 

Hill’s descriptions of San Luis residents as “innocent” and “sweet” echo Johnston’s; 
Johnston casts the “villagers” as “isolated” (1) and “a pastoral Hispanic culture” (2), with 
some of “The Activists” from the LRC (who are listed by name, occupation, and family 
history) living “quietly” (3) and “on inherited farmland” (4) (in contrast, Jack Taylor is 
introduced as “a tough timberman” in the book’s first paragraph [1] and “a hard-bitten 
Anglo timber dealer” shortly after [3]). Like Johnston, Hill also found fault with certain 
Hispanos in our conversation: while most were “good” and “responsible,” others “abuse 
their rights, [and] leave trash on the mountain like beer and whiskey bottles.” Hill’s moral 
project to “do the right thing,” too, shares much in common with Johnston’s, both in terms 
of its embrace of the normative ideal of private property (see below) and in the ways in 
which fundamentally flawed subjects must redeem themselves through positive actions – in 
Johnston’s case, to pursue “at least one permanent project that would provide good-paying 
jobs and increase tax revenues” (2), and in Hill’s, to “do the right thing for the land.” 
Hispanos emerge here as a burden for both men – on public tax revenues for Johnston and 
on the private property of someone else for he and Hill – out of place and at times morally 
negligent subjects who require fixing in one form or another.

175 The entirety of Johnston’s book is animated by the opposition between the private property-owning Anglos who have 
worked for their wealth, on one hand, and the poverty stricken Hispanos who have inherited what little they have and seek 
to claim or steal from others what they do not.
Hill’s words mirrored Johnston’s even more closely when it came to private property rights. Johnston, in sub-titling his book *Property Rights Die*, leaves little doubt about his stance on the book’s framing question (itself worded in loaded language): “Would – or should – a court or a governor give, without payment, a $23 million piece of private property to a few hundred people, or permit them to have extensive free use of the property, because their ancestors had used the land with little opposition for one hundred years and because the property is a remnant of a Mexican land grant?” (x). The normative ideal of private property as fee simple absolute, central to the sovereign stories of U.S. colonial power and long used as a tactic to enclose resources and dispossess Latinos in the San Luis Valley (see Chapter 1), forms Johnston’s unquestioned starting point. Hill, too, cited the ideal of fee simple absolute in our 2008 conversation. When I asked why, knowing the land was ensnared in intractable conflict, Hill and his partners bought the land in the first place, Hill responded, “someone had to take a stand” and he thought he was the person to do so. District Court Judge Gaspar Perricone, Hill believed, was “trying to do the right thing for the land” in ruling against the Latino plaintiffs in *Lobato* twice before being overruled by the Colorado Supreme Court each time (see Chapter 2). “If God is just,” Hill continued, “the pendulum will swing back again in the other direction.” That other direction, of course, was towards the restoration of the title to the mountain tract into private property free from the burdens of Latino claims.

Private property was also a central theme in Hill’s public discourse: at that first community meeting in 2004, Hill discussed his plans to engage in small-scale logging as part of a sustainable resource management plan, regularly bring fee-paying climbers onto the land during summer months to scale the “14er” (over 14,000 feet) Culebra Peak (the only privately owned 14er in Colorado), and host recreational hunters for paid elk hunts. He also
indicated that Cielo Vista reserved the right to develop the resources of the ranch, including its minerals: “You are going to exercise your rights to the fullest extent,” Hill instructed the audience. “We intend to do the same” (Carlos Mora 2004c). Yet this idea of the mutual exercise of property rights quickly gave way to exasperation once the district court began awarding access rights to large numbers of plaintiffs: “We are disappointed and overwhelmed when we have this many people granted access with no rules or regulations,” Hill said in January 2005 (Frazier 2005a). A few months later, Hill lamented that “I knew what I was getting into when we bought the ranch, but how do you make plans with this many people involved? It tremendously depresses the value of the property” (Carlos Mora 2005b). Following another major access order later that year, Hill told the Denver Post, “I’m not interested in painting a historic, romantic, mystical picture of this. This is about communal sharing of private property. Five hundred people today, 1,000 tomorrow, sharing my land. What happened to private property rights?” (Curtin 2005: 11). Speaking to me in 2008, Hill continued on a similar theme: “We’re talking upwards of 7,000 properties certified by the court,” he told me. “This is really becoming a significant burden on my rights.”

Reflecting this shifting discourse, Hispanos described Hill to me in often ambivalent ways. “With Hill,” Norman told me, “at least we can talk to him. We couldn’t with anyone here in the past. Pai never talked to us, he thought he could do whatever he wanted. And, well, you know about Taylor.”176

“The Hills are the best owners we’ve had up here, no question,” Jose Martinez told me. “You can actually talk to them. I have talked to Bobby at his house and in town … it’s

176 Author interview, San Luis, 2010-02-08.
amazing that a few people can own that land and that mountain, but they are the best
owners we’ve had.”\textsuperscript{177}

This sentiment was one I encountered often in San Luis, and Hispano resource users
did potentially share common ground with Hill: like many Hispanics I spoke with, in our
2008 conversation Hill also expressed his displeasure at the proliferation of “outsiders”
getting rights to his property, saying that he thought nearly 7,000 certified properties was
decidedly \textit{not} what the Colorado Supreme Court intended.

Yet other Hispanics expressed to me skepticism and mistrust of Hill. His public face
of friendly neighborliness is sometimes seen as an attempt to deceive, a façade to conceal his
true interests. “He’ll smile and pat you on the back,” Shirley Romero told me, “while doing
everything possible to limit your rights. Take a look at what his lawyers are doing to see the
\textit{real} Bobby Hill.”\textsuperscript{178} Indeed, Hill himself explicitly told me about the importance of public
relations in our conversation, adding that his wife, Dottie, “is great at PR.”\textsuperscript{179}

“Somebody was telling me a story the other day about Hill getting in an argument
with someone,” LRC activist Charlie Jacquez told several LRC members and me in spring
2010, “and Hill said to him, ‘I’m going to take those rights and shove them in your face.’”
Charlie paused. “Now, I don’t know if that’s true or not, but I do think that is his intent.”

“He tries to make deals with a few that will bind many,” Esteban Delplain told the
LRC board in April 2009 while describing some of Hill’s spatial strategies to divert and close
roads. “Work with me,’ he says. I’ll work with him, but not when he’s only looking out for
his best interests.”

\textsuperscript{177} Author interview, San Francisco, 2010-02-08.
\textsuperscript{178} Author interview, San Luis, 2008-07-23.
\textsuperscript{179} Cielo Vista has also held periodic “woodfests” to help its public image, a common practice among large landowners in
the region whereby anyone is allowed to come onto the ranch to fill up a truckload of wood for a minimal fee (Carlos Mora
2005c).
“I don’t know about that guy,” another LRC member told me succinctly. “I just don’t know what his intentions are, but I know I’m suspicious.”

In this overdetermined context, Hill met with a group of Herederos to discuss grazing and other issues on La Sierra in October 2010. Along with Hill at the meeting that evening were ranch manager Carlos DeLeon and range scientist Roath. With them around the table in the tiny Land Rights Council office were eight grazers, two standing for lack of chairs, and me, sitting on a second smaller table against a side wall. Roath and Hill had just surveyed the mountain earlier that day, and the two of them had come to discuss what they found. The discussion centered on grazing issues, but also ranged to include concerns with timber, firewood, and access to the mountain in general. Throughout the meeting, Roath and Hill both attempted to articulate CVR interests as shared interests or as in the best interests of the grazers, an attempt to enroll resource users as environmental subjects as defined by the ranch – a project that, on this day, was largely unsuccessful. Hill’s efforts represent an attempt to suture together a hegemonic articulation with “nature” as its nodal point or master signifier (Laclau and Mouffe 2001: xi), around which all other objects and subjects are arrayed and connected. Hegemonic articulations, however, are “the expression of a certain configuration of power relations, the result of hegemonic moves on the part of specific social forces … [T]his hegemony can be challenged” (ibid.: xvi; cf. Hall 1996; Valdivia 2005).

Hill began the meeting, describing the day he and Roath had spent on the mountain. “We found a lot of good things,” he told the room, “and some things we can improve on.” Hill continued, “I know you love the mountain and want to take care of it, and so do I. That’s why meetings like this are important, we have to communicate, we have to work together.” Cooperation between Cielo Vista and Hispano resource users was something that

---

180 Author interview, San Luis, 2010-10-18.
Judge Perricone had often urged, informally, in court. Hill discussed what he called “a few minor issues,” such as wood cutters leaving behind stumps “as high as this table,” stressing “table” while gesturing back and forth with his hand. “They’re a hazard to wildlife, to livestock, heck, even to people,” he continued, adding in his thick and slow southern drawl, “and it just looks bad.” There is potential for shared benefit here, Hill implied, in that resource users could clear out dead wood, downed trees, and the significant debris left behind from logging operations in numerous slash piles scattered around the mountain tract – situating Hispanics as agents that could clean up his property and reduce the risk of fire while also getting the wood they desired. But “instead of making the mountain look better,” by leaving behind such uncut stumps “we could make it look worse.”

Hill was careful throughout not to directly accuse anyone in the room of wrongdoing, and situated himself and his staff and the Hispano grazers within common projects and shared challenges – we could make the mountain look better or worse. Hill reminded the room of the gravest threat to them all, further articulating a common bind through nature: “the biggest enemy we all have is a catastrophic fire.” He passed the floor to Roath, situating the range ecologist, not the grazers in the room, in an apolitical position of authority: “I’ll turn it over to Roy,” Hill said, leaning back in his chair. “He’s the expert here.”

Roath began his remarks by reciting the regulatory norm of nature, articulating the subject position of the good steward and enrolling himself, and the subjects around the table, within it: “You all care deeply about the land. I care deeply about the land, too. That’s why I do what I do, I try to help people manage the land to get the best outcomes.” Roath described his observations from the day, and articulated a similar narrative as the one found in his 2007 report: in certain localized areas, particularly riparian corridors, “use is a little
heavier than we’d like to see,” Roath said carefully drawing out the “i” in “little.” He explained the problems overgrazing along creeks could cause and, like Hill, articulated his concerns as the shared concerns of all: on the ranch, overgrazed areas would be slow to recover the following year, leading to less feed for cattle. In riparian areas, compacted, bare soil would hold less moisture, causing creeks to dry up more quickly and potentially leading to a faster flow of water in summer and threatening acequia irrigation in the villages below. Not only will the pasture be in worse shape for your cows, Roath told the grazers, but your farms could suffer as well. “The good news,” he continued, “is that away from the creeks, use is minimal. There is a real opportunity here for distribution of use. You guys know this country. We have opportunities to work together and get the best use.”

Throughout the evening, Hill and Roath articulated the interests of Cielo Vista as synonymous with the interests of the grazers, and in doing so repeatedly appealed to the health of the land – the ultimate shared interest among all proper environmental subjects. In response to complaints about the damage that high elk populations caused for Hispano farmers – “they graze our properties in the winter, and we put up with that,” one grazer said, “they take feed off of our cattle, and we can’t do anything about it” – Roath argued that keeping cattle out of the higher elevations would leave more feed for elk to “hold them up there longer.” The spatial strategies of the Roath report, where elk and their hunters occupy high elevations while Hispanics and their livestock are distributed in low elevations, here emerge as a shared benefit. Later, Hill appealed to morality as part of his argument for why court-sanctioned rules were necessary, saying he would like to see a regulation that says any resource user cannot move the cattle of another because “that’s just not right.” Another rule Hill suggested was a set timeframe for when resource users could and could not graze on the mountain tract: “In our experience,” Hill said, “not on this mountain, but on other
mountains, June 1 to October 1 seems to work well.” He continued, “if one person tries to beat everyone else up to get that first bit of grass each year, and then someone else does it, we’ve got this negative cycle.” Later, the discussion turned to a single grazer who still had his cattle on the mountain, which for most (if not all) in the room was problematic that late in the year.

Hill’s appeals to justice worked towards forging a common discourse where, in Roath’s words, “the land is the bottom line.” Roath suggested a yearly trip up to the mountain at the end of each grazing season so that the HLGA and Cielo Vista could assess that bottom line together. “We could go see,” he repeated to the group several times. “We can all go up and see what we did that is good, and see what we need to do better.”

A large chunk of the meeting was spent discussing individual grazers who were causing problems by not rotating their herds, moving the herds of other grazers, or grazing a disproportionately large number of cattle for the size of land they owned. Throughout my fieldwork, nearly every person I talked to about such problems, on both sides of the legal case, agreed that the majority of resource users were responsibly exercising their rights, but a small number of rights-holders were simply not good stewards. As I discussed in Chapter 5 the unresolved question, though, was what to do about such recalcitrant subjects. That some form of enforcement power was necessary was a sentiment shared by Hill and the grazers. “We need a higher authority,” Hill had said early on.

Later, several grazers agreed. “We need to have enforcement from somewhere,” said one. “We need some kind of backing, we need the power to throw people out if they don’t cooperate.”

“We do,” responded Hill and another grazer simultaneously.
CVR’s lawyers had tried repeatedly without success to get the court to impose resource use rules, and now Hill was coming directly to the grazers for help in that pursuit—and he did so by foregrounding the health of the land and stressing the need to do the right thing. Hill’s hope was that collectively the group could decide on a set of rules, a few things that everyone could agree upon. “We won’t come up with twenty,” Hill said, “but I bet there are three or four or a half dozen things we can agree on.” Those rules, with a letter signed by the grazers, Roath, and Hill, would then go to the court for legal adoption. “If we don’t do something different,” Hill warned, “you’re going to wake up three years from now, and the grass is going to be half of what it is now. If your [grazing] organization can pass a resolution, and we can take it to the court together, I bet the court will do the right thing.”

For Hill, “the court would put some teeth into it.” Without legally enforceable restrictions, Hill argued that “we will just keep running into the same problems.” For him, certain individuals were disregarding the land and thinking only of themselves: “What could happen is that we go to the court together and say this person is violating their rights, and they should no longer have them.”

“We don’t want to be overgrazing and causing problems,” one grazer said of those in the room, “but others don’t care.” Several grazers expressed a desire to settle problems collectively, among the grazers themselves, instead of getting lawyers and the court involved: “it will just get messy if that happens,” said one. Hill agreed – but reiterated his view that the same problems would just keep happening without collectively enrolling the force of the law.

At several points the discussion turned to overgrazing, at times contentiously. In response to Roath’s charges of overgrazing in a particular area, one grazer grew animated, saying “I’m in that meadow a lot. I see elk, but no cattle. So who is overgrazing?” Carlos, the ranch manager, insisted to the contrary that he saw more cattle than elk in that pasture.
Later, Hill asked another grazer about a different area, asking if he would agree that a certain pasture in the San Francisco drainage is overgrazed.

“I would,” responded the grazer, who was frequently on the mountain and kept his herd close by. “I try to push my cattle up further than that, but somebody keeps pushing them down [to the overgrazed pasture].”

Another grazer interjected, saying that if the Torcido gate wasn’t closed as it had been, the situation wouldn’t be nearly as bad because it would help distribute cattle on the mountain. “If other places are overgrazed all around the Torcido,” this grazer said, “the closed gate is part of the reason why.”

The discussion wove in and out of the Torcido issue. At one point, Esteban Delplain turned to Hill, saying “I want to ask you directly, is it [the closed gate] benefitting you directly?”

“Yes, I think it is,” Hill replied.

Several grazers, including Esteban, expressed their displeasure at the closed gate and argued that the court’s rulings meant that the gate must be opened. Another grazer asked Hill how, exactly, the closed gate benefitted him.

“Well, I can’t list out for you five or six reasons right now,” responded Hill, “but with the amount of impact there is on the ranch, from every direction…” He trailed off, paused, and resumed with a different line of thought: “If I was coming to your house, and I had nine doors to walk into, it seems to me to be an imposition to ask for a tenth. It’s a personal issue with me.”

But if Hill articulated a passion for the land and a personal connection to it, situating it as his intimate personal possession, so did the grazers. “I want people to respect your

---

181 As I describe in Chapter 5, eventually a settlement was reached to re-open the gate (Hildner 2011).
property, but I want them to respect mine too,” said one, claiming the mountain as his property as well as Hill’s. He continued, turning squarely to face Hill and Roath:

When my mother was pregnant with me, she and my dad were up on the mountain getting a load of wood. This was back when we were free to go up there. They were getting wood, and my mother feels a pain, and some moving around. They go down the mountain, and four hours later, I was born. I could have been born up there, brother. Do you see what I’m saying? That mountain is in my heart.

The meeting ended with little resolution. I was not entirely sure whether or not the group had decided to draft a letter to send out to all grazers, as had been discussed. Many of the suggestions that Hill had made in terms of rules to regulate grazing practices were shared by the grazers, yet the grazers themselves were afraid of ceding their control and authority over their own resource use practices to Cielo Vista or the court. They were also highly cognizant of how court-backed rules could lead to restricted or even lost access rights. As I discuss in the next chapter, the struggle to protect locally-based forms of authority and decision-making over resource use practices is an ever-present one for Hispanos in San Luis.

Once Hill, Roath, and Carlos left, the grazers talked for a while about what had happened. Norman, who had listened quietly for much of the meeting, now took the lead. “He’s trying to restrict our rights,” Norman said, explaining that the court was not likely to recognize the HLGA or LRC as an authority, and joining Hill to ask the court for rules could easily backfire. “We have to be careful,” he cautioned. “The last thing we want is the court making rules about grazing. They could say you get 1 cow for every 5 acres of land you own, when they don’t know anything about grazing.” Returning to Hill’s intentions, Norman said, “The court won’t do it, so he’s trying to get us to make his rules, so he can have some teeth behind him. I think we should have guidelines, but not rules.”
The group seemed to be in agreement that Hill’s intentions were to enroll the authority of the HLGA to get the rules and restrictions Hill had been seeking for years without success. And while some of those rules may in fact be in the best interests of Hill, the land, and the grazers as a group, the dangers of giving Cielo Vista the legal authority to restrict or dispossess certain individuals of their rights were too high. “We certainly don’t want to go to the court with rules,” said the grazer who had cautioned earlier that involving lawyers and the court would get messy, “and then have them start enforcing them on us where we can’t do anything about it. Like if we still have our cows up there on October 3rd and the next thing you know, they’re penning them up and fining us for trespassing.” That same grazer, along with his brother, had been praised by Carlos during the meeting for being “pretty good stewards of the land.” Both had refrained from taking their herds onto the mountain that year until mid-August, out of a belief that the pasture was not in good enough condition for them to do so.

“We have talked a lot about riders,” Norman said. “Hill wants us to move cows around, to make sure pastures have enough time to recover. Well, why can’t he help pay for riders? He wants us to do certain things, we need to ask him for things also.” He turned to the grazer who had asked Hill if the closed Torcido gate was beneficial: “When you asked him about the Torcido, did he bend at all? No, he said it’s a benefit. To him, not to us.”

Whether or not Hill is truly acting out of a desire “to do the right thing for the land,” his efforts to enroll HLGA members in a project to regulate resource use with court-backed rules have been largely unsuccessful. Throughout the meeting, complex and shifting affinities, alliances, and negotiations had emerged and dissolved, been asserted and contested. Both Hill, Roath, and Carlos, on one hand, and the grazers, on the other, had articulated the importance of thinking and acting as environmental subjects, and there was
also widespread agreement on the necessity of enforcement. Everyone present, in other words, attempted to occupy the subject position of the good steward, to become environmental subjects through repetition of the regulatory norm of nature. In one instance, Roath suggested a united front of CVR, the HLGA, and himself as outside scientific expert in confronting the recalcitrant grazing subjects at issue, to which one grazer replied “there you go, that’s what we need.”

Yet, other lines were drawn that re-asserted and hardened the differences, distinctions, and conflicts between Cielo Vista and the Herederos. In contrast to the ways in which Hill and Roath articulated the issues at hand as fundamentally technical and scientific questions – where “the land is the bottom line” – these Hispano grazers articulated a highly politicized understanding of the environmental governance processes they were participating in. Roath had told the grazers that they “know this country,” but knowing the country, apparently, was not enough to know how to manage it without the proper expertise. Roath’s invitations to “go see” the land each year reinforced his status as a detached outsider, a scientific observer who could see the truth written on the landscape and prescribe proper environmental practices accordingly.

For the Hispanics in the room, however, the keys to successful and sustainable grazing were not solely dependent upon the practices of scientific expertise. “Our forefathers never abused that mountain,” one grazer had said to Roath. “Never. They took care of it. I’m not trying to say it was perfect, there was some abuse – but it was minimal.” Another pointed out that historically Hispanics had grazed over 2,000 sheep and cattle on the mountain without serious environmental degradation, and now there were only a few hundred cattle and no sheep. Further, there was the issue of elk: while CVR seemed to downplay elk and stress overgrazing by cattle, Hispano grazers repeatedly argued that if the
“natural limits” of CVR’s iterations were in fact being breached, elk were central to the reasons why. The uncertain effects of CVR’s iterations of the regulatory norm manifest themselves here in two ways: first, the Hispanos in the room contested how that norm of limits has been cited by pointing out its incomplete accounting of the impacts of elk. Second, these Hispanos contested the implications of overburdened natural limits, arguing that a failure to achieve sustainability is not a question of technical expertise or knowledge. The real problem, for these Hispano grazers, was not one of expertise, but rather of power and authority; more salient than rules on resource use was the question of who or what would be empowered by such rule-making. As I show in the next chapter, these grazers and other Hispanos remain engaged in a struggle to assert authority and control over the resources of the mountain tract, a struggle that, like the use of ecologically sound grazing practices, their ancestors had long been engaged in.

Conclusion

This chapter has examined the efforts of Cielo Vista Ranch to articulate diverse subjects, scientific expertise, and the force of law in a common project of good stewardship. In and out of court CVR has recited notions of the tragedy of the commons by constructing a discourse of carrying capacity, ecological limits, and population pressure on resources, and has mobilized this discourse as a mechanism to restrict and regulate resource access and use. Through notions of the health of the land and moral imperatives to “do the right thing,” CVR has tried to enroll themselves and Hispano resource users as environmental subjects in an effort to produce court-approved rules for and restrictions on resource access and use bound up in CVR’s fundamentally spatial strategies. Hispano resource users in the LRC and HLGA have reiterated the necessity of good stewardship, and many have agreed with CVR
that new forms of enforcement power are necessary; yet many have resisted pursuing binding rules through the court. These Hispanics, I argue, have articulated a highly politicized understanding of environmental governance in two ways: first, by situating cultural and historical resource use practices as a source of moral and environmental legitimacy alongside scientific expertise; and second, by working to maintain control over the practices of resource access and use to prevent the erosion of resource rights by the court or CVR. As Cielo Vista has worked to enroll resource users in the subject position of the good steward, Hispanics have attempted to define good stewardship in divergent ways. In the next chapter, I take up these themes by more fully examining the efforts of the Land Rights Council to produce specific kinds of cultural and environmental subjects – a project that has also not been fully successful.
Figure 4. Cielo Vista Ranch north headquarters. Photo by author, July 2010.
Figure 5. Cattle grazing on Salazar Meadow, Cielo Vista Ranch. Photo by author, July 2010.
Figure 6. Demonstrating overgrazing on Cielo Vista Ranch. Photo by author, July 2010.
Chapter 7: Good Stewards and Uncertain Subjects

[T]he commons does not maintain itself, but requires a continual investment of effort and particular technologies to shape and replenish it (Gibson-Graham 2006a: xiii).

On a chilly spring night in 2010, I ducked into an old storefront office wedged between the barber shop and general store on Main Street in San Luis and took a seat in a wooden chair. The long, narrow room was mostly filled with office furniture and supplies—a large desk with telephone and telephone book sitting on top of it near the door, lots of paper files and envelopes and maps in boxes and stacked on shelves and pinned up on the walls, an assortment of wooden and metal folding chairs scattered about, most arranged around a large table in the very back of the room. My chair sat back a few feet from the large table, up against a side wall. I made small talk with a few others as we waited for that night’s meeting of the Sangre de Cristo Acequia Association (SCAA) to begin. Formed in 1998, the SCAA acts as an umbrella organization for the dozens of local acequia ditches, each with its own board, bylaws, and governing structure. The SCAA facilitates dispute resolution among ditches and between ditches and their members, or parciantes; provides information and technical assistance; and promotes research on and advocacy for acequias in and out of San Luis (“Culebra Farmers” 1998).182

The main issue of the meeting was a conflict involving water allocation on the San Francisco ditch. Miguel Ceraño, a relative newcomer from northern New Mexico, had

182 For example, during SCAA meetings that I attended throughout 2009-2010, I witnessed dispute resolution procedures regarding the Cerro, San Francisco, and People’s (San Luis) ditches. The SCAA describes itself as “a 501(c)3 organization representing 73 acequias, which in turn support approximately 270 families,” and its mission “is to preserve acequias as the core social, political, and economic institution of the Rio Culebra and Rio Costilla watersheds and to protect the water rights and unique governance structures that will ensure the viability of the acequia system, and the rich ecology, heritage, and food production it supports, for generations to come.” See http://www.sangracequias.org/index.html (last accessed 2012-07-30).
constructed a pond on his land to store water from the acequia to use for livestock, an act that likely violated Colorado law and certainly violated the historical and contemporary practices of acequia farmers as promoted by the SCAA and the San Francisco and other ditches around San Luis. The San Francisco ditch had already made repeated requests to Miguel to remove the pond stretching back over a year, and the engineer from the local office of the Colorado Division of Water Resources had also sent Miguel a letter requesting its removal; Miguel responded with a letter to the Division of Water Resources insisting that he had a right to install and utilize the pond and, the members of the SCAA board would learn shortly into the night’s meeting, a petition in water court to legally formalize that right. The Acequia Association, following up on prior personal requests to remove the pond that went unheeded, had also written Miguel a letter several months before expressing surprise and dismay that Miguel, “[a]s a paisano” and “a fellow Hispano,” would disregard the traditional acequia values of cooperation, mutual reliance, and neighborliness by putting in a pond and refusing to remove it. The letter also stressed the importance of keeping disputes like this one “in house” so that it could be dealt with cooperatively and locally, and requested Miguel’s presence at an upcoming SCAA meeting to discuss the issue.

Miguel arrived shortly after the start of the meeting. The board summarized the timeline of events up until that point, and in ensuing discussion, learned of Miguel’s water court filing. The group hadn’t seen notice of Miguel’s legal action in the local paper, and Miguel hadn’t brought any of the relevant documents with him to the meeting. “We have to table this issue,” concluded the SCAA president, “until we see these court documents.” What followed, however, was 20 to 30 minutes of at times heated discussion and argument in which Miguel insisted that he had a right to the pond, and the SCAA board members insisted that Miguel was not acting the way he should. For Miguel, the issue was a simple
one, where the relevant question was one of law: “You are a governing body, and I have to abide by what you say,” he told the SCAA board. “But I have water rights for beneficial use. … I have rights, and I pay my dues.” For the SCAA, however, the issues were more complex; several board members spoke at length about the nuances of the acequia system, stressing its interdependent and cooperative nature. The president of the San Francisco ditch, who had also been invited to the meeting to help resolve the dispute, told Miguel that “we have our rules and regulations here, a way we do things, and when you come in here and don’t follow them, it rubs me the wrong way. When you bring cows in here, and expect us to cater to you… well, it should be the other way around.”

Miguel and the rest of the parciantes around the table never fully found common ground. SCAA members grew frustrated when Miguel kept reiterating his perceived legal rights no matter how many times they explained how local acequia water allocation proceeds, and Miguel had been upset from the beginning at the notion that he was doing something wrong – while the SCAA was trying to educate Miguel on acequia rules and customs, Miguel simply insisted he had done his research and already knew how things worked. At an apparent impasse, the issue was tabled until the SCAA could review the appropriate legal documents. As Miguel stood up to leave, Joe Gallegos, a long-time acequia activist and parciente on the San Luis People’s Ditch (Gallegos 1998), spoke for the first time since the meeting started. Collectively, he told Miguel, we can deal with these issues as long as we get along, and we don’t want to let these things go to court. At previous SCAA meetings, I had heard Joe express his distrust for “Anglo law” and “the state,” saying that when the law gets involved, Hispanics start losing rights. Yes, Joe continued to tell Miguel, these issues can be emotional – some people in the room have fought for their water for decades and decades – but we are also going to be living together for a long time, so let’s be
good neighbors. Your fellow parciantes on the San Francisco ditch, Joe continued, will help to protect you and your water, they will make you prosperous – but only if we are all working together. Joe’s words were a passionate defense of the practices of local governance, of working together according to tradition, cooperation, fairness, and mutualism rather than simply following the letter of the law.

Miguel thanked Joe and expressed his desire to be a good neighbor, saying, “I know the tradition, and I was taught to respect the water. I want to work with you.” He continued, “If I have to provide some kind of genealogy to aquí (here)…” Earlier in the meeting, Miguel had protested that he should not be discriminated against because he is from New Mexico, and in any case he had family ties to Chama and likes San Luis: “The earth is no one’s,” he told the parciantes, “we all have to care for it. That’s how I was raised.”

Those around the table insisted, however, that where a parciante was originally from was not the real issue; rather, what matters most is knowing and following the cultural traditions of a place.

“My heart and my soul say that I want to work with you,” said Miguel as he stepped to the door. “I want to protect the land, the water, and everything that goes with it.”

After the meeting, Joe explained to me that the Acequia Association was formed in part to have legal standing to help people and ditches get the representation they need in court – but the overriding goal was really to stay out of court. Maybe Miguel does have a legal right to a pond, Joe said, but that’s not how things are done here: “It’s not culturally right, it upsets the rhythm of the acequia. Otherwise they would have dug ponds 100 years ago for the cows. Miguel now has to prove to us, not vice versa, that he is not damaging the people below him. He’s creating a situation that is not conducive to the acequia – I don’t think he knows that.”
“It does offend me that he comes from another place and does this,” added the San Francisco ditch president. “I don’t care if he abides by the law in this case, what he’s doing is not how we go about things here.”

Joe turned to me. “I don’t trust the law, there have been too many injustices done against this community.” He paused, chuckling. “Maybe you should write about that.”

A week and a half later, the SCAA convened a special meeting to address the pond issue, again with Miguel and members of the San Francisco ditch present. The SCAA board slowly assembled around the back table and began reading the letters and legal documents now in their possession. One of the letters under consideration was the one written to Miguel by the president of the San Francisco ditch, which stressed a number of points in opposition to the pond: those parciantes downstream are negatively affected; water is scarce, evaporation is already a problem and will increase with a pond; below-ground seepage into the rocky, porous subsoil will increase water loss; the pond is larger than the 30x40 foot size reported to the court; and for over 100 years our ancestors wisely never allowed ditches because they would negatively impact acequia flow. The letter also mentions that Miguel is not from San Luis and is violating established governance procedures and cultural traditions. In the legal documents, the board discovered that Miguel had not obtained a stay from the court, as he had told them previously, but rather had filed a petition for an augmentation plan – a discrepancy that did not sit well with the board members.183

A few minutes into the meeting, Joe arrived with Devon Peña, an anthropologist who has written extensively on environmental justice in the U.S. Southwest (e.g. Peña 1998d; 2005) and whose work with Gregory Hicks was central in the eventual recognition of

---

183 Joe explained an augmentation plan later in the meeting, saying, “it doesn’t really work, but in theory, if you dry up some land in one area, you can draw water from another. For the state, the world is big and everything is connected, so all this stuff will even out.” Miguel’s plan was to dry up a portion of his land in order to store water in the pond.
acequia law by the State of Colorado in 2009 (Hicks and Peña 2003). Long involved in land and water rights issues in San Luis, Peña is also a landowner and parciantes on the San Luis People’s ditch and was elected secretary of the SCAA. He did not like what he read in the documents waiting for him – only several minutes after taking his seat at the table, Peña stopped reading and then stopped the meeting. “Well, I’m going to advise everyone not to say anything and that this meeting is over,” he told the room. “This is now a legal matter.” Exasperated, Peña turned to Miguel, telling him that despite Miguel’s assurances that he wanted to be a good neighbor and work with his fellow parciantes, he was showing no respect for acequia law and took matters to the state rather than resolve them according to local governance procedures. Miguel began to defend himself, but Peña interrupted, saying that nothing could be done to resolve the issue: this meeting is no longer a dispute resolution procedure, because you took this issue to the state; now, this is a legal matter and the SCAA has no choice but to take legal action.

The ensuing discussion was again heated, now more so than in the previous meeting. Miguel continued to insist that “I have a right, I have water!” even adding, “This is a free country!” The SCAA board continued to explain the acequia system, including the complexities of sediment, flow, sloughs, the water table and aquifer, topography, and terrain. But above all, as one board member told Miguel, “you violated due process, and took the issue to court before we could solve it here.” The SCAA stressed the interdependence of the acequia system: regardless of what the law says, the parciantes are connected by the flow of water and must work together for this system to be successful. What Miguel failed to understand, Joe told him, was that “the problem doesn’t go away just because you have a right. In fact, it gets worse. That’s because when your neighbors get mad, things only get

---

worse. What I worry about is if you get one [a pond], there could be another, and another, and another, and all that disrupts the community’s traditions that have gone on for generations.”

“1996 seems like a long time ago,” Peña added, referring to the year in which Miguel’s beneficial use claim had originated, “but this ditch goes back to the 1850s. You are erasing that history that has a set of rules and norms and traditions, and you know this. That’s what I find so puzzling, that you know this history, but you’re going against it.”

This chapter examines the efforts of the Land Rights Council (LRC) to fashion particular kinds of subjects and natures as part of the ongoing process of governing the returned commons. I argue that these efforts are rooted in a historical and cultural context of struggle over resource access and use that extends from the earliest days of Hispano settlement on the Sangre de Cristo grant, and of which the processes and histories of acequia governance form a crucial part. I seek to draw historical continuities rather than find a rupture before and after 2002: the contemporary work of the Land Rights Council has emerged from a historical context rooted in decades of organizing and struggle against enclosure, appropriation, and dispossession of livelihoods, land, and natural and cultural resources. For many Hispanos, the task for the LRC and others today goes beyond simply “governing the commons” to encompass the maintenance and strengthening of a cultural way of life and collective relationship to the nonhuman world.

Like all communities, the residents of San Luis are diverse; I do not intend to speak for the LRC or other Hispanics, nor do I attempt to define or render transparent Hispano identity and culture. Rather, my aim in this chapter is to show how particular formations of identity and nature are mobilized as part of struggles over resources in San Luis, and how in
the process, constructs such as “Hispano” and “Anglo” (or more often in this case, “heir” and “outsider”) emerge relationally and do particular kinds of political work. Forging common political, economic, and cultural projects in San Luis has often relied upon the reiteration of binaries such as one between land grant heir and outsider, as well as particular formations of nature. In the context of decades of struggle against resource enclosure and displacement, this chapter argues that Hispanos in San Luis have attempted to discursively and materially fashion particular types of socio-natural assemblages that rely on collective notions of identification and collective strategies of livelihood provision and environmental governance.

I understand the Land Rights Council, my primary focus in this chapter, as a social movement organization in a mutually constitutive relationship with other organizations in San Luis (e.g. surrounding collective acequia and grazing management) and elsewhere (e.g. the broader land grant movement concentrated in New Mexico). These organizations constitute “institutional intersections, where complex overlapping, and at times contradictory social, cultural, and political processes conjoin” (Perreault 2003a: 587). Following Perreault (ibid.), such organizations play a “dual role” of both “implementing … projects aimed at improving the livelihoods of their constituent members” while also “defending … rights to citizenship, resources, and territory.” On one hand, these organizations mediate and engage in a complex cultural politics through which “[g]lobal discourses … are inflected and reworked by local peoples’ organizations” in contested and contingent projects of articulation (ibid.: 584; cf. Asher 2009; Escobar 1998; 2008; Gupta 1998; Hodgson 2011; Li 2000; Kosek 2006; Moore 1999; 2005; Moore et al. 2003; Nelson 1999; Perreault 2001; 2008; Radcliffe and Laurie 2006; Sawyer 2004; Valdivia 2005; Wolford 2004; 2005; 2010). On the other, social movement organizations mediate livelihood strategies and shape “the material
conditions of … existence” (Bebbington 2000: 498; cf. Asher 2009; Bebbington 1999; 2004; de Haan 2000; de Haan and Zoomers 2005; Peña 1998d; Perreault 2003b; 2008). These processes are connected through the mobilization of specific concepts, identities, and spatial and scalar formations to “link the material practices of everyday life with politicized discourses of identity formation and citizenship rights” (Perreault 2008: 840). Notions of collective water management, for example, can shape both “the institutionalization of water management and the cultural politics of livelihood claims” (ibid.: 836; cf. Hicks and Peña 2003). Following Bebbington (2000: 498), “[m]aking a living, making living meaningful, and struggling for the rights and possibility of doing both are all related.” In this conceptualization, space, place and scale are seen “not as pregiven but rather as continuously produced at the intersection of livelihood practices (understood as making a living and making it meaningful), local politics, institutional interventions, and the wider political economy. Understood thus, place would be less something that people defended, and more something whose means and practices of production they aimed to control” (ibid.).

As Hicks and Peña (2003: 401-4) argue in the case of acequia governance, the framework of water law in Colorado, based on prior appropriation, has made it difficult for Hispanos to enforce the norms based on mutualism and shared scarcity upon which acequia governance rests: “commitment to the older [acequia] norms,” they write, “must of necessity be voluntary and based on mutual persuasion by those within the acequia communities” (401). Further, Hicks and Peña note that in practice, acequia users “are acutely aware of the relative priority of their water rights under present day Colorado law. They often insist on those priorities” (401) in the protection and exercise of their water rights,

185 The principle of prior appropriation “grants an absolute, exclusive right in surface water and underground streams to the first beneficial user” (Reich 1995: 649). In practice, the doctrine has functioned historically by “creating private rights in a historic public resource, running water, and by imposing minimal sharing rules through the beneficial use doctrine” (Tarlock 2001: 770). For discussions of the changing role of prior appropriation in western water law, see Tarlock (2001) and Huffaker et al. (2000).
even as the same individuals may “have often chosen to adjust the exercise of their water rights to the needs of their junior neighbors and to the functioning of the *acequia* delivery system as a whole” (403). To protect and exercise their rights, in other words, *acequia* farmers in *San Luis* will strategically rely upon the state water law that marginalizes *acequia* norms and practices even as they participate in, reiterate, and work to extend *acequia* governance. Hicks and Peña, for example, describe responses of *acequia* farmers to adverse conditions of drought and water scarcity based on strategies of mutualism and collective provisioning rather than maximizing individual gain. Similarly, in the dispute with Miguel described above, the members of the SCAA and San Francisco ditch had selectively and strategically deployed state power and expertise via the Colorado Division of Water Resources by enrolling a state official to pressure Miguel to remove the pond, even as the parciantes had collectively drawn sharp distinctions between local *acequia* governance and outside forces such as Anglo law and the state.

Hispanos in *San Luis*, I argue, have long been engaged in struggles to be self-governing: to achieve and maintain authority and decision-making power over the access to and use of natural resources in ways that perpetuate collective cultural norms and practices. These struggles and processes have also involved continually producing distinctions between insiders and outsiders; this iterative work is not simply about drawing distinctions, however, but also requires fashioning particular kinds of collective subjects and natures – in part because, as Hicks and Peña point out, dominant forms of law and property in Colorado and the U.S. typically work against the forms of collective provisioning and resource access grounded in land grant practices. Such processes of subjection and struggle extend across and implicate multiple practices and domains in *San Luis*, including the governance and use of water- and land-based natural resources; meeting livelihood needs in diverse ways; and
organizing against inter-linked processes of capital accumulation, resource enclosure, racism, and other forms of power. Through concepts such as “resource frontier” and “working landscape,” which implicitly and explicitly contrast to apolitical and ahistorical concepts of the nature of La Sierra as existing in isolation from Hispanics and broader power relations, the LRC re-asserts difference and transversal histories. Through historical discourses of difference and shared histories of intimate personal and collective ties to nature, on one hand, and the shared histories of loss and injustice through enclosure and dispossession, on the other, the contemporary work of the Land Rights Council is aimed at constituting local spaces and subjects in new ways.

Below, I examine certain moments in the “continual investment of effort and particular technologies to shape and replenish [the commons]” (Gibson-Graham 2006a: xiii) as the Land Rights Council attempts to mobilize discursive and material assemblages of nature, culture, and subjectivity. I first situate the contemporary work of the LRC in relation to historical struggles for resources on the Sangre de Cristo grant, highlighting the scalar strategies through which fundamentally local struggles over resources are connected through the shared marginalizations of capitalism, colonialism, racism, and other forms of power. I then turn more fully to the contemporary work of the LRC, focusing on its efforts to create new types of subjects and natures in ways that combine scientific expertise with local knowledge, re-assert the difference of land grant heirs, and combine particular formations of nature and culture. After considering questions of agency and assemblage as they relate to natures and subjects, I argue that the strategies of the LRC have been only partially successful. In the chapter’s conclusion, I return to questions of ecological legitimacy.

---

186 In this view, “the commons” is not “a past instance of harmony to which we must return, but rather a future-oriented social form that must be actively produced. … [T]he commons is often articulated … as a primordial or natural state … found in the absences of negative power rather than a dynamic and positive force in its own right” (Maclellan and Talpalaru 2012: 2).
raised in the previous chapter to consider what is enabled, but also foreclosed, by LRC strategies.

**Fighting for tierra y libertad**

In her history of land rights activism on the Sangre de Cristo grant, Nikki Gonzales (2007: 42) argues that the activists who formed the Land Rights Council in San Luis in the 1970s “found themselves heirs to a well-defined culture of resistance.” Gonzales traces the long histories through which a “communal environmentalism” and “culture of opposition” emerged and developed in relation to decades of struggle over resource enclosure, appropriation, and dispossession. Grounded in cooperative resource governance institutions – most notably the system of acequia governance along with strategies for collective management of sheep and cattle, including the common land of the vega pasture outside San Luis (29-34) – this oppositional and collective approach to the control, management, and use of the natural resources of the grant found its political expressions in a series of land rights organizations formed to protect local resource control against incursions by powerful political and economic interests (see Chapter 1), including *El Comité de la Merced* (The Land Grant Committee) formed in 1871, The Defensive Association of the Land Settlers of the Río de Costilla formed around the turn of the century, and *La Asociación de los Derechos Cívicos* (The Association for Civic Rights) formed in 1959 (Gonzales 2007; Hicks 2006: 307).

On July 21, 1871, a meeting of roughly 250 local residents in Costilla (just south of San Luis and now located in New Mexico) led to the formation of *El Comité de la Merced*, which “addressed the most pressing issue of the day – the threats to settlers’ existence by big-moneyed, international corporations” and, more broadly, “outside challenges to
This chapter argues that the contemporary work of the Land Rights Council is rooted in this long history of struggle to protect local control of natural resources, itself a project that involves continually reiterating the distinction between insiders and outsiders. Notions of “Hispano” and “Anglo,” I argue, emerge relationally in part through such iterative practices. Local forms of resource governance surrounding agriculture, grazing, and land use have emerged in response to processes of enclosure and dispossession (just as “private property” emerged in the San Luis Valley as a tactic to separate Hispanics from natural resources, see Chapter 1). The success and coherence of these governance institutions and practices has hinged on a set of shared narratives that have been repeated with a difference across time and space. These narratives articulate notions of power, politics, property, nature, resources, identity, and more; they function through the continual work of drawing distinctions between inside and outside, contrasting a local Hispano community as legitimate stewards and intimately connected to the mountain and its resources through sustainable and cooperative governance institutions and practices, with primarily Anglo-American “outsiders” who coalesce within projects of enclosure and dispossession that exist through and extend formations of capitalist, state, and colonial power. Distinctions between local Hispanics and outside Anglos have been a key organizing strategy among Hispanics and frame narratives through which Hispanics articulate their practices as shared projects.

In the early years of LRC organizing, Hispano activists produced the *Tierra y Libertad* newspaper to raise awareness, educate the community, and articulate an organizing vision in

---

187 Even before *El Comité* in 1871, Gonzales (2007: 58) describes “the San Luis community’s initial step toward political organizing” as their collective efforts to push Beaubien to provide formal written deeds and legal agreements to formalize Hispano ownership of land and communal use of *La Sierra*. For Gonzales, “This would be the first of many political actions that the San Luis community would engage in to protect and defend its legal land rights” (ibid).
the struggle against enclosure. The paper provided news not only on Land Rights Council activities and the legal case against Taylor, but also on other events and struggles of concern locally, regionally, and globally. Several prominent themes emerge across the pages of *Tierra y Libertad*, including the centrality of land and self-determination, a critique of power and oppression, and a sense of shared struggle that linked the work of the Land Rights Council to struggles for justice around the world. One article in the inaugural January 1979 issue, for example, argues that “Without Land, We Have Nothing”:

*Tierra y Libertad* has been a rallying cry of the oppressed throughout history. For without land, no liberation movement can succeed.

In El Valle de San Luis, the Mountain Tract has been the lifeblood of la gente [the people], providing the water, wood, pastures and wildlife for the last 108 years prior to the arrival of Jack Taylor in 1960. …

In the major urban centers in this country today, Chicanos and other poor people are confronted by police brutality, grand jury abuse, la migra [immigration officials], and many other oppressive forces. … No sound solution to any of these or to other problems will be found until Chicanos regain control of the land that was ruthlessly stolen from us. …

From the PLO in the Middle East, to the guerrilleros in Africa and the Sandinistas in Nicaragua, the struggle is the same: Land, which translates into control over your own destiny and freedom. …

The Mountain Tract is no different. For la gente to be denied this nourishment is illegal and immoral. At the same time, la gente understand that for the Mountain Tract to be free while other land remains exploited in foreign hands is unjust ("Without Land" 1979: 6).

---

188 *Tierra y Libertad* was published beginning in 1979 and continued in the 1980s and 1990s; other papers were also published, such as *¡Ya Basta!* in the 1990s. Shirley Romero and Ray Otero were central in these efforts. Shirley described to me the importance of these newspapers as an early organizing tool for the LRC, and stressed the centrality of a group of journalists based in Pueblo, CO who were “products of the Chicano movement.” These journalists published *La Cucharacha* and were instrumental in starting, writing, and publishing *Tierra y Libertad*. Shirley told me that “without them, La Cucharacha and their staff, I don’t think we would have gotten as far as we did, because it was the tool to politicize and educate folks. Not only on the land grant issue, but all the other issues that all weave themselves into this particular struggle. … They did La Cucharacha, but then we started publishing *Tierra y Libertad*, which was an alternative newspaper that dealt just with land grant issues, land rights issues. They would publish that as well, so they became meshed with the struggle, and we supported each other. It truly was the tool that allowed us to educate not only folks in this community, but throughout the country, because it was a very well read newspaper. Wow, what a tool, what an organizing tool that was for us. Extremely helpful.” Author interview, San Luis, 2011-06-28.

189 The inaugural issue of *Tierra y Libertad* in January 1979, for example, includes articles with the following titles: “People ‘Driving Force’ Behind Land Struggle,” “Land Rights Council Seeks ‘To Defend What Is Ours,’” “History of the Land Struggle,” “He Loved That Mountain,” “Without Land, We Have Nothing,” “Taylor Must be Stopped; Land Communal Property,” and “Land Movement is International.”
Similarly, in direct response to the efforts of the State of Colorado to purchase the mountain tract 15 years later, a 1994 article titled “Local Control Critical to Future Progress of Land Rights Struggle in El Valle” begins,

The local community in Costilla County faces an incredible challenge of bringing resolution to the land rights issue! Outsiders must realize that any progress in regaining and maintaining the Mountain Tract in the future demands a total local community decision, because it is the local people whose survival depends on this land. Hence the locals deserve the right to make any decisions which will impact them in their daily lives (“Local Control” 1994: 2).

Of course, not all in San Luis have articulated the same radical critiques of power and visions for the future. In the face of diverse community factions and interests, the Land Rights Council has worked hard to achieve and maintain its legitimacy as the voice of the community while organizing to pursue rights to the land (Gonzales 2007).

Throughout, the drawing of distinctions between local and outsider has remained a central scalar strategy of LRC activists: struggles for La Sierra are, on one hand, fundamentally about protecting local autonomy and control over natural resources, and on the other, fundamentally linked to other local, place-based struggles for justice through the shared oppression and marginalization generated by the structural power of capitalism,

---

190 In the mid-1990s, for example, two clear factions emerged surrounding the effort by the State of Colorado to buy the mountain tract from Taylor. The LRC came to oppose the sale to the state, reiterating notions that “the land cannot be bought or sold.” Shirley Romero, for example, said at the time that “If you steal something from me, I’m not gonna buy it back” (quoted in Gonzales 2007: 224). Also central in LRC opposition to the plan were fears of conservation-related gentrification, unwanted tourism, and the opening of the land to the public at large were it to become a park or similar conservation area (Mondragon-Valdez 1994). As Arnold Valdez told me, “people weren’t too eager to have the state run the mountain. That meant that the state would then have to open it to all of Colorado, and then it wouldn’t be exclusive use for the land grant community. I think that was the main … concern.” Author interview (conducted with John Hultgren), San Luis, 2008-06-01. A second group organized mainly through the La Sierra Foundation (itself founded in 1993 to raise money to purchase the land) and Costilla County Conservancy District supported the sale, and ultimately blamed what it saw as the radicalism of LRC activists for its failure. La Sierra Foundation mobilized discourses of environmental conservation and aligned itself with state agencies and mainstream environmental organizations; the LRC, by contrast, often saw such agencies and organizations as opponents and has stressed social and environmental justice (Gonzales 2007: 215-28).
globalization, colonialism, imperialism, racism, patriarchy, militarism, and the state.\footnote{At the same time, the LRC has sought to articulate its struggles with as many allies as possible, including Anglos like myself or the largely white, affluent environmental activists the LRC brought together as the “Culebra Coalition” to protest logging on La Sierra in the mid-1990s (Peña 1997; Wilson 1999). Since its founding, the LRC has cultivated extensive alliances with diverse groups, which Gonzales (2007) treats as a central factor in the successes and longevity of the LRC. Discussing \textit{Tierra y Libertad}, Shirley told me, “[The mainstream media did not want to cover the issue. We would send our articles to all the media, but the mainstream media just wouldn’t pick it up, which really made the staff at \textit{La Cucaracha} realize, if we’re here to make a change in the community, then we have to cover this issue, and not only that, but we have to draw parallels with the struggle here to other parts of the United States and in other parts of the world. We made that connection with the Palestinians, we made that connection with the blacks in the south who also have land grants, and of course we made that connection with the Native Americans, because it was a direct correlation, if you know anything about who we are as Mexicans. So we were able to draw those parallels, which really helped our case, because it showed this community… We would have annual land grant conferences in July. They were huge, we had two, three, maybe four, huge conferences, where people came from all over the country. The blacks, the Indians, white people who understood our struggle, young people. People would often ask us, well, why are the blacks here? What do they have to do with that? Why are the Indians here? So we would educate them, \textit{they} would educate them at these conferences: we’re here because we have the same struggle in South Carolina as we do in North Dakota or as we do across the European Continent or as we do in Africa – we had folks that came from Africa. So we were able to draw that support, that if you’re a landless people, and we exist all over the world, and what that meant, and how we were a displaced people. Some people in the community still questioned it, but progressive people made those parallels, and it validated our issue – to say, boy, we’ve got support outside of the Valley, outside of Colorado, outside of the [United] States. We made those parallels with the indigenous native populations in Mexico, and we supported each other, at the court hearings, financially, with food, whatever it was we needed. We were able to broaden this struggle and bring that awareness. Looking back in hindsight, absolutely. Because those were some of the folks who would pack those court hearings when we couldn’t take all our folks from here when those hearings were held in Denver. But those courtrooms were always packed, so it showed those three judge panels or that individual judge, there’s support, there is a people and a face with the struggle, it’s not isolated. We know that because the judges told us that after it was all said and done, that they saw the support. The busloads of kids that we would take, or just the young people that would show up – the judges thought they were all from here, but it wasn’t. We owe those people a lot.” Author interview, San Luis, 2011-06-28.} This chapter argues that the contemporary work of the LRC to govern the returned commons after 2002, alongside parallel governance institutions and practices such as the acequia system, is embedded in this history. Consider, for example, the continuities between the above quotations and a Land Rights Council planning document from 2005:

LRC’s core membership have taken legal action and/or organized local challenges to environmental exploitation and critical land issues in Costilla County since the 1970s. As an example, in 1979 LRC was one of two groups involved in preventing “coal line slurry” from transporting water out of the Río Culebra Basin. Later, LRC again took legal action against a landowner who was encroaching onto \textit{vega} lands (a community low-land common pasture). Many of our board members and a core of local supporters have individually worked on community related environmental issues and promoted land use regulations. This included a challenge to scale back Battle Mountain Gold Mine; a failed state-of-the-art project that continues to pollute our ground water with cyanide. In the 1990s, most of our members were involved to varying degrees in protesting reckless and irresponsible logging taking place on La Sierra.
Because Costilla County is treated as a resource colony, environment related issues are circuitous and unending. Since Costilla County contains minimal public land (rock and ice at the far north and a narrow band along the Rio Grande corridor) and as the uplands and watershed are in total private ownership, the community is subordinated to the whims of large absentee landowners. Because this area is one of three counties in Colorado without public lands, this is the most subdivided county in the state. In short, we are surrounded by open space, to which we have no access. Yet most residents consider themselves to be caretakers of La Sierra. Unlike absentee landowners, residents of the area depend on the health of the mountain to survive. LRC and its core membership have in the past, and will continue in the future, to seek remedies to protect the Culebra River Basin from exploitation, and to open the upland to residents (Land Rights Council 2005).

Such repetitions (with a difference) distinguish between locals and outsiders and reiterate the necessity of local control over land and natural resources in through politicized critiques of power.

The chapters of Part II have explored the contexts of power and subject formation constitutive of the environmental governance process in San Luis after 2002: resource users are constituted as private property owning individuals in ways that erase historical, cultural, and other differences; questions of enforcement are individual legal matters between private parties; and Cielo Vista Ranch, the only actor with enforcement power in most circumstances, is constituted as a “burdened” subject in relation to private property in ways that work against dispute resolution and instead invite its personnel to act as agents of surveillance. In multiple ways, Hispanos have re-asserted cultural and historical difference and re-politicized struggles over resource access and use: in the account of acequia governance that opens this chapter, members of the Sangre de Cristo Acequia Association articulated notions of collective Hispano identity grounded in mutualism, cooperation, and environmental stewardship and stressed the importance of maintaining local autonomy and decision-making through acequia law and customary practice; these formations were juxtaposed to “the state” and “Anglo law” and the dispossessions they have historically
wrought. Similarly, I argued that through the environmental governance process Hispanics have re-asserted cultural and historical difference that has been erased by the district court’s formation of resource users as ahistorical private property-owning subjects: one resource user, for example, told me that “We care about that mountain, it sustains us. Our ancestors always took care of that mountain. But outsiders don’t care about it. They’ll trash it and there’s nothing we can do.” Further, I described LRC efforts to resist court-sanctioned rules and restrictions on resource use, reflecting desires to maintain autonomy and decision-making control over resource access and use.

From resource colony to working landscape: The contemporary work of the LRC

In response to this formation of subjects and context of power, and reflecting on an overriding focus on the Lobato legal case, the Land Rights Council began to re-ground its focus in the work of organizing. “Our work is changing,” Shirley told the LRC board and me at a two-day retreat and visioning session in Pueblo in March 2010. “Enrolling people in ideas, that is what the Land Rights Council is now about. Enrolling people in ideas.” Shirley’s words were a direct response to the LRC’s lack of legal enforcement power: to govern the commons sustainably, equitably, and effectively, the LRC would have to enroll people in ideas – what I refer to here as creating particular kinds of subjects.

Earlier that year, Shirley had described to me the LRC’s changing work as transitioning away from legal work (though the ongoing legal process in Lobato remains critical) and towards the work of political organizing. “So much needs to be done, just day to day,” she said. “It’s a struggle to organize.” For Shirley, the LRC had to play an organizing and more political role; she stressed the mundane work that must continue every day:

attending meetings, having one-on-one talks with people, keeping on top of community events, holding local officials accountable, and always being vigilant about the ever-present threats to local livelihoods and rights to land and water – “it’s vigilance, it really is,” she said.

Shirley also drew historical continuities with past organizing and spoke about the importance of working with youth, “training them just like I was trained by people like Apolinar Rael and Juan LaCombe.”

In this section I describe some of that organizing work and its goals: after 2002, the Land Rights Council has sought to shape governance of the returned commons through a multi-faceted effort to shape new kinds of environmental and cultural subjects. However, in contrast to the efforts of Cielo Vista, which rely upon the authority of science to define good stewardship in ways that displace historical and cultural difference and depoliticize the ability to speak for nature, the LRC has attempted to combine scientific expertise with forms of cultural and historical knowledge and, in turn, repoliticize decision-making authority and control over resource access and use.

The LRC has engaged in a wide array of activities since the 2002 *Lobato v. Taylor* ruling, which include holding ongoing community legal workshops and organizing pro bono legal teams for grant heirs in need of ongoing legal assistance; formation of the Herederos Livestock Grazing Association (HLGA) to spearhead grazing plans (see below) and the LRC Women’s Group to increase the involvement of women in new and old LRC activities; organizing and hosting an annual Land Grant conference in San Luis; and carrying out regular organizational activities such as the publication of a quarterly newsletter, updating LRC bylaws to reflect post-2002 goals and actions, holding elections for board members, and membership and fund-raising drives. In addition, consistent with the political

---

193 Author interview, Denver, 2012-01-11.
articulations of *Tierra y Libertad*, immediately before or during my fieldwork members of the LRC board were directly engaged in a number of inter-related conflicts over land, resources, and socio-environmental justice; some of the most high profile included plans for a large-scale electricity transmission line in the San Luis Valley (Jaffe 2009), permitting and regulation of local subdivision developments (Valdez 2006), and multiple plans for conservation initiatives in the San Luis Valley emerging from the federal government (Hildner 2009a; 2012b).

Most directly related to the governance of the commons have been ongoing efforts to produce plans and guidelines for sustainable grazing and firewood and timber collection and a cultural place names map of La Sierra, united within a larger document referred to as a resource management plan (Valdez 2005f). The management plan for La Sierra is a massive and ambitious document that not only formulates and collects plans to manage resource access and use in the present, but also places these plans within the historical and cultural context of the Sangre de Cristo land grant. At about 150 pages, the document is more of a book than a management plan, and features chapters on geology and geography, historical settlement patterns, traditional practices on the grant, the legal case and long history of community struggle for land rights, the scientific principles behind sound grazing and forest management, and more. The plan draws from scientific knowledge to define good stewardship, mirroring Cielo Vista’s efforts, but it also re-asserts the historical and cultural difference of land grant heirs that have been erased by the court’s processes of subject formation, situating scientific evidence and expertise in relation to these cultural and historical discourses.

Through reports, maps, meetings, newspaper articles, community events, and personal interactions these efforts have resulted in the steady dissemination of resource use
guidelines and strategies to community members, coupled with historical and cultural narratives (see Figure 7). In turn, these efforts have emerged from a series of collaborative efforts between the LRC, sources of scientific expertise, and local residents and resource users. Beginning in 2005, the LRC conducted a series of community forums designed to distribute information about the status of the legal case and adjudication of access rights as well as guidelines for how to access and use La Sierra, but also to *elicit* information from community members that would inform the strategies and discourses of the LRC master management plan. From these forums in 2005 sprang concurrent and later community meetings to construct grazing and wood harvesting strategies: community meetings with grazing experts from New Mexico were held beginning in 2005194 and the LRC began collaborating with the Santa Fe-based NGO Forest Guild in 2006 (Maestas 2008) (see the account of a 2008 meeting with the Forest Guild in Chapter 5). In combining scientific with local knowledge, the LRC implicitly contests the distribution of expertise and legitimacy mobilized by Cielo Vista Ranch, locating authority within, not outside of, histories of sustainable and cooperative practices of resource access and use among Hispanos on the Sangre de Cristo grant.

In discussing the goals and strategies of the management plan, I draw heavily from two interviews with its author, Arnold Valdez, in 2008 and 2010.195 Arnold explained his task to me as, in part, articulating what the “reasonable use” of La Sierra, required by the Colorado Supreme Court, means in practice:

---

194 The LRC worked closely with grazing expert and long-time social justice activist Maria Varela in 2005 (Valdez 2005e; Varela 2005). Through the Vega Board, local grazers that year also worked with Virgil Trujillo, Superintendent of Ranchlands for the Ghost Ranch in Abiquiu, NM and a director of the Abiquiu Land Grant (Anderson 2005).

195 The management plan was not yet published by the end of my fieldwork and I have been unable to obtain a final copy, however I was able to review a draft in 2010. Therefore, in describing the plan I rely on interviews as well as reports and articles based on the plan that have been disseminated locally, such as through the local newspaper *La Sierra* (e.g. Sanderson 2005; Valdez 2005c; 2005d; 2005e). My interpretations are also shaped heavily by many discussions throughout my fieldwork with other LRC activists.
That’s what the plan is all about, how do we translate land use management into reasonable use? … Reasonable means you have to correlate what you take as far as resources, to what can be used in a household. Reasonable means for domestic purposes, it doesn’t mean going up there and cutting wood so that you can go out and sell it, that’s commercial. Reasonable means whatever it takes to sustain a household. And we’ve been a little ambiguous ourselves because we also don’t want to quantify it, to certain numbers of cords of wood and that sort of thing. Mr. Hill’s been wanting to do that, but we’ve been opposing that through the court. We want sort of to leave it open-ended, and see how it goes, and if it is getting to be a problem, then we would have to work on some sort of allocations. The grazing is one component that does have limitations, and that’s one of the things we’re trying to do is to figure out what the capacity is, so that we can correlate the appropriate number of animals that can be grazed, because there’s some limitations on the pasture. Eventually, the same thing may be true with wood, that there may be certain limitations, and therefore we may have to do it allocated evenly. But that’s something that the community will have to determine, based on the … practices that are being observed, and also the demand for the resources.196

Arnold stressed the importance of “a science-based approach” and noted that he drew on the expertise of the Forest Guild and grazing expert Maria Varela (see below) in constructing the plan.197

The management plan, however, is not simply based on ecological calculations of resource limitations or proper allocation; the document also places resource access and use today – and itself intervenes – in a historical, cultural, and political economic context. In discussing the cultural place names map created by the LRC, a central dimension of the plan, Arnold highlighted “the recognition of local places, and the labeling of place names, a rekindling of the historical memories that exist in some of the older people so that we can try to bring back those names.” Arnold articulated the goal of the map, and the broader management plan, as practical as well as educational: “[the] map of local place names

196 Author interview (conducted with John Hultgren), San Lais, 2008-06-01.
197 Author interview, Santa Fe, 2010-04-26.
correlate to being able to access the land, because certain places are known by local names and people are more likely to recognize those names than they are a name in a USGS [United States Geological Survey] map. … And it also serves to inform and educate the younger generation on the historical uses of the mountain.”[^198] For Arnold and other LRC members, the management plan is seen “as an educational tool in addition to a guidebook for the local community. … It is important for the community to be learning the history, about the landscape and things in the environment. One of the best elements of it is the community education part, in addition to the management parameters and guidelines.”[^199]

Arnold also described the map and management plan as an organizing tool in the goal of building a successful “organizational structure amongst [resource users], so that we can have a cohesive, self governance model,” saying:

> we have to form a community structure, and that can be done in conjunction with the organizing work that Land Rights Council is doing. … [T]aking the next step [is] to work with the certified property owners, to get them to support and buy into the plan. The plan is just voluntary too, its not mandated by the court, but the court advocates for it and so does Mr. Hill, and so does the community – we all realize that if there isn’t a plan in place, then its going to be chaos, and there will be lots of mismanagement of resources and conflicts with the property owner. … I think community education is key… [and] I think that the organization is key.^[200]

Echoing Shirley and drawing a scalar distinction between local and outsiders, Arnold told me that “Community vigilance is important. The community has to look out for each other, and when they see something that isn’t right, they need to bring it to the attention of the rest of the community and try to deal with it locally, before it gets to other levels, like the state or

[^198]: Author interview (conducted with John Hultgren), San Luis, 2008-06-01.
[^199]: Author interview, Santa Fe, 2010-04-26.
[^200]: Author interview (conducted with John Hultgren), San Luis, 2008-06-01.
Hill, because they will view it differently, in terms of breaking laws, or what is legal and not legal.”

Ultimately, for Arnold and others, the context of power within which the management plan seeks to intervene requires not only vigilance and organizing, but also the creation of particular kinds of subjects – subjects who work to protect land and resources in common – as well as particular kinds of landscapes:

Costilla County is one of the most subdivided counties in the whole country, I think next to Florida – you know we just don’t have that much open land. We have the vega out here, the [lowland grazing] common, but restoring the commons, the highlands [La Sierra], would make a big difference as far as solidifying the reconnection of people with the land. I think it would bring back some of the values of sustainability for the community, to start looking at grazing animals again, maybe initiating more agricultural practices, that sort of thing, and then also just protection of the water, and access to resources. [La Sierra] is an essential resource for the community.

Arnold elaborated on these themes in our 2010 conversation through the concepts of resource colony and working landscape, both of which form part of the analytical narrative of the management plan. “The land is all privatized,” Arnold told me, “which is a big contrast to the land grant system, where land is a community resource, there is a large commons. When land becomes privatized the only incentive is to sell that land, or to capitalize on it in some way, be it through speculation, or timber, or mining, or marketing water rights, and on and on. … All of it is related to resource speculation; the land and resources have clearly been up for sale.” In contrast, the management plan articulates a vision of Costilla County not as a resource colony, but as a working landscape, “a landscape that is being utilized in some capacity, be it through ranching, or agriculturally, or forestry of

---

201 Author interview, Santa Fe, 2010-04-26.
202 Author interview (conducted with John Hultgren), San Luis, 2008-06-01.
some kind. There is a direct link to subsistence, survival, and the livelihood of a community. It isn’t stale conservation land but is used day to day, and that use does benefit to the landscape.” La Sierra, for Arnold and other Hispanos, “is not a conservation landscape, it’s a community landscape.”

Documenting and recreating

Across all of these efforts, I argue, the LRC has engaged in a dual strategy. First, to document the historical and cultural ties to La Sierra in order to demonstrate ecological legitimacy (Pulido 1998): to show that the historical and cultural resource use practices of Hispanos are and have always been sustainable, based on fundamentally ecological and cooperative principles that bind people and mountain in an interconnected whole; and second, to recreate and refashion such practices and socioecological relationships, a project made necessary by the rupture between Hispanos and La Sierra created by Jack Taylor’s enclosure of the mountain tract.

The first interview John and I conducted in San Luis, which I have quoted extensively above, began with Arnold saying the words, “you know, we were all accessing the mountain up until the 1960s.” The management plan carefully documents how that access was organized through the institutions, norms, and practices of cooperative grazing

---

203 He continued, “It’s a speculator’s dream to come into the county and see no regulations, no control of any kind. That’s why I got involved in land use planning, there is a need for regulations and oversight. Otherwise, it’s a free for all for developers – there are no rules to play by.” Author interview, Santa Fe, 2010-04-26. Saying that the county is “really extensively subdivided,” Arnold linked these critiques to his prior career trajectory, also illustrating strategic mobilization of state power and resources. “I worked as the Land Use Administrator here for several years, working on the comprehensive plan, and it has been subdivided since the early 1970s, and we now have over 50,000 absentee property owners, and there’s lots of platted lots. Fortunately not a lot of those lots have been settled, but the potential is there, and it is very difficult to understand how that could’ve happened. Also the potential for the population increasing, I think the only limitations are resources again. Most of those subdivided areas don’t have water, sewage, and so unless a person is willing to be self-sufficient… It is very difficult to settle in this area, although there are several settlements: Wild Horse Mesa up there on the Melby development, they’ve pretty well populated that upper part of the mesa, and unfortunately, some of those people that live up there are also able to qualify for use rights because their properties happen to be plotted on the vara strips or the extensiones. That’s another point of contention the community holds.” Author interview (conducted with John Hultgren), San Luis, 2008-06-01.
strategies, the cooperative governance of acequia irrigation through dozens of acequia users’ associations, the management of the lowland vega grazing commons, and broader norms of mutualism and sustainability (see Figure 8). “There is already a historical system of self-governance,” Arnold told me.204 “We have some models already that have been successful, like the acequia model, [and] that’s one model that is still in place.”205 This history of cooperative organizations and institutions to govern resource use in sustainable and equitable ways figures centrally in LRC strategies to govern the mountain today.206

The cultural place names map described above, which features predominantly Spanish place-names across La Sierra, is a component of this effort to demonstrate historic and cultural ties to the land. By demonstrating intimate knowledge of and connection to the mountain and its spaces, the map renders the nature of La Sierra a fundamentally social nature. Many of the place names were identified throughout the series of community forums held in 2005; the local knowledge gathered at these forums links historical use zones on the mountain to each village below, so that specific watersheds and locations on La Sierra are intimately tied to particular places below (“LRC Announces” 2005). Certain ranchers would claim particular pastures or areas on the mountain as part of the informal customs and regulations that ensured proper distribution and rotation of livestock and prevented overgrazing (Gonzales 2007: 31-2). “From the feedback received” in the community forms, Arnold explained, “it appears that just about every inch and corner of La Sierra was explored and used by the nearby communities. San Francisco is associated with the southern section

204 Author interview, Santa Fe, 2010-04-26.
205 Author interview (conducted with John Hultgren), San Luis, 2008-06-01.
206 According to Gonzales (2007: 277-8), Apolinar Rael and other members of the Asociación de los Derechos Civicos created a detailed management plan for use of La Sierra according to traditional practices, and the LRC incorporated it into their own management plan: Apolinar’s “plan provided detailed instructions for firewood collecting, timber harvesting, grazing, hunting and fishing, and herb and fruit collecting” (Gonzales 2007: 277).
of the mountain tract while San Pedro/San Pablo and San Luis correlate to the middle and Chama to the northern area” (Valdez 2005b: 10).

The LRC, then, has attempted to document these practices, knowledges, and connections, to demonstrate the ecological legitimacy of Hispano resource users – re-citing the regulatory norm of nature – to argue that Hispanics are good stewards, precisely through these historical and cultural practices that constitute the community. “We, the community, can preserve what is on that [mountain],” Shirley told me. “We understand that very clearly. It was done before Taylor came and it can be done again. … Now we’re [more] sophisticated, best practices are in place, there are environmental groups who can work with us… We can manage our own land.”

Yet, simply documenting the sustainability of historical and cultural practices has not been sufficient, and there has also been an effort to re-create and re-shape such historical and cultural connections – to create new subjects. Themes of rupture and disconnect from the mountain after Taylor’s enclosure were prominent in my interviews, especially in reference to youth, and many LRC members place heavy emphasis on community education and getting kids involved with the work of the LRC. Arnold spoke to me about the importance of education because of “a generational gap” in terms of knowing the mountain and how to use it. “Historically,” he said, “I think there was a great sense of land stewardship, and land-based values. I’m not sure we have that today, especially among the younger generation. They might not care, and that is really my biggest fear in this whole

---

208 Several LRC members and others spoke with me about the younger generation being raised differently after Jack Taylor, because livelihood possibilities in San Luis were so limited. For example, Norman told me, “The culture has changed. The young people have adopted a new culture, which is the capitalist culture.” He continued, starting to laugh, “We didn’t raise our kids to be subsistence-type, we raised them to be BMW-types, you know? To drive nice cars, to have nice homes in nice cities. We pretty much moved our kids away from here. … I think it was … tied to this Taylor thing, because otherwise I think we would have continued in the same way.” Author interview, San Luis, 2010-04-05. About the younger generations, Junita Martinez told me, “They’re not like us, they don’t connect with the culture like we do. They don’t get that concept in the same way. My kids are becoming Americanized and city-fied.” Author interview, San Luis, 2010-10-20.
thing, that could really be problematic in the future. That’s also why community education is so critical.”

“Getting kids up on that mountain, physically getting kids up on that mountain, that’s one of my goals, to get people up there,” Shirley told me, “because they’re still removed from that mountain – some of the kids, not all of the kids, but some of the kids are, a majority of them. Then I think you can start instilling that passion, for the love and the stewardship of that mountain and its resources that my generation had and the previous generations had. But that definitely is our greatest challenge the way I see it.”

For the LRC, then, becoming a good steward is not simply about becoming an environmental subject, but a collective subject as well, one deeply bound up in the histories and cultural practices of resource use among Hispanos on the Sangre de Cristo grant. “Things are needed to bring about a new way of looking at resources,” Arnold told me. Revitalizing traditional building practices, just one example Arnold discussed, “would bring back traditions, but [would] also help revitalize a culture and way of living. Not just getting wood for the sake of having wood piles, but working to revitalize a culture.”

The ways in which the *Lobato v. Taylor* case has fixed access to the commons to the ownership of private property has also made the formal ownership of land – which under the land grant system historically was never as important as membership in the community (Ebright 1987: 35; Hicks 2006) – central to LRC efforts: “We’re encouraging our land grant heirs to not sell,” Shirley told me. “Don’t sell your land, keep it within your family, and pass it on in perpetuity the way the laws of the land grants read. Educate yourself on what it means to be an heir to that land grant, and what it means to buy property within those land

---

209 Author interview, Santa Fe, 2010-04-26.
210 Author interview, San Luis, 2010-06-28.
211 Author interview, Santa Fe, 2010-04-26.
grants.” More broadly, the LRC has centered its efforts specifically on heirs to the land grant, a re-assertion of difference in the context of thousands of non-heirs receiving access to La Sierra.

Many San Luis residents that I spoke to are optimistic about the future, as the *Lobato* decision has created conditions under which those historical and cultural connections to La Sierra and a land grant-centered way of life can be recreated. Norman, for example, told me about an increase in gardening and desires to irrigate among his neighbors on the Cerro ditch, saying “I can’t tell you the trend is directly attributed to [the *Lobato* decision], but I’m seeing that more and more and more. … [People] seem to have been empowered by this decision. I think now with the decision in place, they feel safer, they feel like they can go ahead and do things that they couldn’t do before.”

In response to questions about how they use the mountain, many resource users told me about plans and desires to expand that use in the future. “We’re starting to use the mountain more,” one resource user, Weylen Vigil, told me. “Just for firewood, but we haven’t gotten too much. … What I want to use it for as well is I want to build a log home, because we have access for that. I want to try to design that this year so we can go and cut some logs.” Norman also told me about future use of the mountain for timber, saying that he thought a community sawmill would help people re-connect to the mountain in addition to providing lumber for home and farm buildings.

“We may have been disconnected from that mountain from 1960,” Shirley told me, “but now at least we can go up there and get our timber to build. You see people building up

---

213 Author interview, San Luis, 2010-04-05.
214 Author interview, San Luis, 2010-04-14.
215 Author interview, San Luis, 2010-04-05.
their corrals and building up their herds, and it has brought some hope back into this community.”

Similarly, Norman told me, “We’ve got other young kids coming up right now, … maybe 20 years younger than me, and they’re barely starting to learn how to use the mountain. You have to imagine, they never had the chance before, so now, this is giving them an opportunity to learn how to use it.” He continued,

I don’t think the younger generation has that motivation [of the older generation] yet, but as we get them involved more and more, through the other organizations, even in collaboration with the acequia associations, these young kids are eventually going to see that it’s important. It’s important to keep that water running into your fields, it’s important to do this and do that. … That’s something that we have to encourage.”

Mapping nature, mapping culture

The LRC, then, has attempted to map the nature of La Sierra in ways that mirror the efforts of Cielo Vista (see Chapter 6). In 2004, Arnold argued that “resource mapping” – “gathering data on the ecological processes and natural resources of the mountain tract” – was the necessary initial step toward creating an effective resource management plan (Valdez 2004). Resource mapping was needed, for Arnold, because “There … needs to be that detailed knowledge of the environment, so people can know limits and know what can and can’t be done.” The LRC has pursued this project through efforts like the Colorado Natural Heritage Program report (Sanderson 2004) and collaborative work with the Forest Guild. Yet the LRC has also attempted to map culture, in ways that intimately link nature and culture into an interconnected whole – as I quoted Arnold above, the goal has not just been

---

216 Author interview, San Luis, 2010-06-28.
217 Author interview, San Luis, 2010-04-05.
218 Author interview, Santa Fe, 2010-04-26.
to instill environmental knowledge or merely bring back tradition, but also to re-vitalize a cultural way of life.

In thinking about agency, discourse, and subject formation, a number of geographers have argued that the discourses that produce subjects are multiple, overlapping, and even contradictory; hence possibilities for agency arise as individuals move between or across these discourses or situate them in relation to another (e.g. Birkenholtz 2009; Pratt 2004; Sundberg 2004, 2006). For example, Pratt (2004: 20) writes, “discourses emerge as situated practices in particular places; they are inherently geographical… Contradictions within and across discourses come to light through the day-to-day practice of living within and moving through them.” For Pratt (2004: 20-1), physical movement “through places may involve moving between discursive formations”; traveling from one geographical space to another might therefore involve confronting highly divergent “materialised discursive formations” in ways that enable “individuals [to] become aware of the contradictions between discourses.”

I have suggested that nature functions as a regulatory norm in the governance of La Sierra in that it compels particular practices or performances; here, however, nature is repeated with a difference, deeply and intimately tied to discourses grounded in history and culture. While Pratt stresses physical movement between bounded places where discursive formations are readily materialized, I argue here that it is precisely the failure of any single discourse to fully take hold that is central. La Sierra, as a single “place,” is itself constituted ambivalently and contradictorily through multiple discourses in ways that stem from the transversality of the San Luis Valley (see Chapter 1): as this dissertation has shown, materializing the socioecological relationships of private property or the commons is the uncertain effect of iterative practices, and neither has been fully achieved. Movement between discourses for LRC activists occurs less as a result of movement between bounded
places than through the continual work of reiterating and refashioning collective practices and identities against the incursions and enclosures of other systems of power grounded in private property, law, and U.S. sovereign authority.

This repetition of ecological discourse with a difference works to produce and legitimate a social nature, one that binds bodies, historical practices, cultural formations, lived spaces, and ecological processes in a common frame. The regulatory norm of nature is cited, yet tied to an alternate set of regulatory norms emerging from land grant spaces and relationships. In the process, the LRC attempts to rework discourses of race and nature that have been used to disqualify the environmental and spatial practices of Hispanos (Pulido 1998). Questions of power, authority, legitimacy, and control over resource access and use are at stake in these uncertain repetitions of nature and culture. Working within the constraints of the regulatory norm of nature as well as the court’s specification of “reasonable use,” the LRC ambivalently articulates nature alongside culture in ways that enable Hispano resource users to become intelligible as environmental subjects and the legitimate stewards of the mountain. The expertise of scientists and the state mobilized by the Roath Report (Roath 2007) and the strategies of Cielo Vista Ranch are subverted by the knowledge and authority that comes from status as an heir to the Sangre de Cristo grant: a resource user appears as a good steward, for the LRC, according to subjection as a specific type of environmental and cultural subject. Legitimacy as a resource user and environmental decision maker emerges from historic and cultural knowledge, and attempting to occupy the subject position of the land grant heir in this way has been a central part of how the Land Rights Council has attempted to control for the risks of uncertain performative iterations of nature (Gregson and Rose 2000: 447): the settlers and heirs of the Sangre de Cristo land grant have sustainably used La Sierra for generations, and nature ultimately becomes tied to,
and subsumed within, culture; land grant subjects are, by definition, environmental subjects. 219

While nature may function as a regulatory norm, it also takes shape within assemblages that are every bit as material and spatial as they are discursive. The collective practices and institutions of resource access and use in San Luis have emerged historically with particular configurations of the landscape, so that nature’s materiality as well as the ways in which nature has been mobilized within the histories of property, law, and race on the Sangre de Cristo grant come to form contingent assemblages that themselves shape subjects. 220 Nature is an effect that produces effects (e.g. Sundberg 2011), and more specifically, a relational effect of contingent assemblages that gives rise to subjects by enrolling subject positions and forces of subjection within those broader assemblages.

For instance, over the course of numerous meetings of acequia irrigation associations, I came to recognize mechanisms of subject formation in terms of the imperative among parciantes to exercise one’s water rights: if such rights are not exercised under Colorado law, they could be lost. This imperative is narrated alongside the history of water law in Colorado as well as the histories of water loss in the San Luis Valley in which Hispano subsistence farmers, typically marginalized and precarious, have repeatedly lost water rights to unscrupulous but politically and legally connected Anglo-American or other “outsider” business interests (cf. Gallegos 1998). These histories and the way they are narrated combine with the materialities and spatialities of the acequia landscape, in which

219 As I note in Chapter 6, there have been unintended consequences of the LRC’s repetitions of nature, including threats of restrictions on or loss of resource access and use as pursued by Cielo Vista Ranch.

220 Work on the materiality of nature in critical nature-society geography has largely focused on how the properties of specific resources have shaped the uneven commodification and mobilization of nature within capitalist and neoliberal projects (e.g. Bakker and Bridge 2006; Kaika 2005; Prudham 2005; Sneddon 2007; Swyngedouw 2004). A small but growing literature has begun to examine how nature’s materiality shapes subject formation (e.g. Robbins 2007; Valdivia 2008). Here, I locate the materiality of nature as an effect of broader socionatural assemblages (e.g. Mitchell 2002) and trace how forces of subjection emerge as effects within these assemblages.
hand dug ditches and canals channel water downhill and across the properties of successive neighbors; vara strips run perpendicular to the flow of the acequia channels, so that an individual parciante will find him or herself intimately bound up with their upstream and downstream neighbors, connected by this flow of water in ways that work to enroll subjects in a common project to protect and use that water in particular ways – and to maintain and extend that assemblage (see Figure 9).

Within this contingent assemblage, any individual parciante is shaped by mechanisms of subject formation that instill imperatives to direct the flow of water (and hence the use of specific agricultural techniques) in particular ways. Not only must a parciante use and protect the water of the acequia for their own benefit, the intimate interconnections of acequia landscapes and the histories of water loss among Hispanos mean that any individual must be a collectively-oriented subject as well. As illustrated by the story of Miguel and his pond at the start of this chapter, the project of using and protecting water emerges as a collective project that requires proper collective subjects.

The subject effects of socionatural assemblages can be seen elsewhere, such as the case of Satch, a resource user from Chama who was re-establishing his historic family farm which had stopped operating after Taylor’s enclosure. Satch described his use of the mountain to me, saying:

I’ve just been going for firewood … I also plan on grazing. As a matter of fact I’m probably going to be forced to do that, because of the hay that I have [grown on my farm]. I have so much hay that it’s going to spoil if I don’t buy some animals. Because of the land, I’m really being forced to graze. Not only that, but because of the water – if I don’t use that water, then I lose it, so not only am I being forced to graze, I’m being forced to farm [laughing]. It’s funny, but I’m being pushed to do that… I’m being pushed back. Yes, I think I’ll be using [the mountain] a lot more in the future.221

221 Author interview, San Luis, 2010-04-05.
This farmer – and future grazer – is articulating his ongoing formation as a certain type of subject, one that he associates with his ancestors: I’m being pushed to farm and graze, I’m being pushed back, to the way things used to be done for those who were members of a land grant community. In Satch’s narrative, a parciante exercises their water rights because of Colorado law, but that imperative is also reinforced by collective pressure (a threat to any individual is a threat to all) and translated into land grant-specific practices: irrigation water is used to grow hay that is used as winter feed for livestock, and in summer those livestock are grazed on the mountain. Constituted within and dependent upon this interconnected assemblage of nature and culture, a resource user must always remain vigilant to losing rights and resources to outsiders. Beyond just the citation of a normative discourse, natures and subjects take shape in specific ways within this socionatural assemblage.

On a more general level, LRC activists today clearly understand nature as a force constitutive of subjects in ways that are deeply bound up in the materiality of physical connections and interactions. As Shirley stressed above, physically taking youth on the mountain was a central commitment for her, because only then could values of passion, love, and stewardship for La Sierra be understood. Similarly, before I had a chance to go up to the mountain myself, LRC board member Jose Martinez told me that he had to take me up soon, because just the act of physically being on the mountain would tell me more than his words ever could: he told me, “then you’ll see why we’re so passionate!” On many other occasions, Jose had described his relationship with La Sierra as fundamental to why he worked with the LRC. “I thank God every day I can go on that mountain,” he told me. “Just

---

222 Author interview, San Francisco, 2010-05-05.
the fact that I can go up whenever I want now just means so much to me.”223 In a meeting with a long-term funding partner in March 2010, LRC board member Charlie Jaquez described that connection, saying “we grew up on the mountain, we have a connection with it, that’s how we were raised. Our kids could never go up there, many of them have never been. To them it is just background. They don’t have that connection, the spirituality of it. To us, it is alive, it is real.” He continued, “We have to get them up there. After just one or two trips, it’s magical. When you’re up there it’s just like it’s you, God, and the mountain.” I highlight the invocation of nature as possessing magical powers not to dismiss such a suggestion, but rather to foreground how LRC activists have attempted to mobilize physical connection to particular formations of nature as a central part of their efforts to shape new types of subjects.

**Good stewards and uncertain subjects**

The strategies of the Land Rights Council in its efforts to create good stewards of the land by both documenting and re-fashioning socionatural assemblages, and the land grant subjects who help to constitute them, have been partially successful. Jose, for example, told me, “I never thought of myself as an environmentalist, but you know what? We need to take care of that land. And our ancestors always did – we need to re-learn those values.”224

Even among those who have come to explicitly orient their resource use practices around ecological principles, however, differences about how to govern the commons remain. Alfred Mondragon, a small farmer and grazer, fully recognizes and engages in environmentally sound principles – yet hesitates about participating in certain cooperative grazing practices. He told me, “A cooperative approach is good, but you know what? I rotate

---

223 Author interview, San Francisco, 2010-02-08.
224 Author interview, San Francisco, 2010-05-05.
my cattle just fine on my own. If I joined others to do that, we would all need to get the same breed of cow … [But] certain people want this breed, others want that breed. So grazing together doesn’t always work.”

Other grazers have fully embraced a cooperative approach; after one Herederos Livestock Grazing Association meeting in 2010 I spoke with several grazers who expressed desires for stronger collective grazing institutions and practices, including seasonal migratory grazing patterns, shared corrals and staging areas on La Sierra, full-time paid riders to properly rotate cattle herds and prevent localized overgrazing, and even tree-planting and pasture reseeding programs to help ensure sustainable pasture and watershed conditions.

These differences between individual and cooperative grazing strategies in San Luis are not new; as the LRC management plan underscores, both approaches have historically been used by Hispano grazers on La Sierra. In areas like San Francisco, according to Arnold, ranchers have historically tended to graze individually. This system has worked because San Francisco sits so close to La Sierra, providing for easy access on a regular basis to check on and rotate herds and a greater degree of control for each grazer. In areas like Chama, by contrast, more collective grazing strategies thrived historically (Gonzales 2007: 34). “I think there is room for both,” Arnold told me. “Proximity to the landscape is a factor, and it makes sense to manage your own cattle when you can be close to them and be able to monitor them. But when people are scattered here and there, then going a cooperative direction seems like something that would work.” In part these differences reflect the contingent and uncertain work of continually redefining not only proper environmental practices, but the proper practices of an always-evolving culture as well.

225 Author interview, San Luis, 2010-10-20.
226 Author interview, Santa Fe, 2010-04-26.
Others, like Ricardo Hernandes, a grazer who has done a tremendous amount of work to implement and spread sustainable grazing and farming practices regionally, have been uncertain subjects in other ways. “We have to re-litigate this case,” he told me, not as private citizens under U.S. property law, but “as heirs to the Sangre de Cristo Land Grant,” with full rights over the commons, not just an easement to gather wood and graze.227 Ricardo, like the Land Rights Council, is re-asserting the cultural and historical difference of land grant heirs. But for Ricardo, the Land Rights Council has not gone far enough in this regard; because the Land Rights Council has gone along with the court’s implementation process, it has too easily accepted its constitution as a private landowner. “They don’t fight for our rights anymore,” Ricardo told me about the Land Rights Council, and since reaching this conclusion his involvement with Land Rights Council has declined.228 Even among those who have been enrolled in ecological ideas, and Alfred and Ricardo would be the first to talk about their importance, there are still difficulties and problems to cooperatively govern the commons as the Land Rights Council has attempted.

Still others have not bought into these ecological and cooperative ideas. One grazer told me that the people who would not join the grazing association, who want to do whatever they want, are the same people who never worked with the community in the long struggle for rights. “So many feel like they have rights and that’s it,” this grazer told me, “so why worry about an association? … They didn’t care then, and now they got rights, and they

227 Author interview, San Luis, 2010-06-22.
228 The Land Rights Council has always worked to shore up its legitimacy as an organization representing the San Luis community (Gonzales 2007), and today as in the past faces difficulties in doing so. LRC board members are well aware of local criticisms against the LRC regarding the ways in which Lobato v. Taylor was decided and has been implemented. Many, including LRC board members, are unhappy with the limited access rights (excluding hunting, fishing, gathering, and recreation) and the awarding of access rights to outsiders. These outcomes have led some grant heirs to criticize the LRC. At a meeting in March 2010, board member Charlie Jaquez noted that the LRC has gotten a lot of community support since 2002, but has also “got in trouble with some of the community. Our goal was to get the heirs use rights. Well, then the use rights came, and they came to everyone who had property. … People say ‘Oh, you’re [the LRC is] representing the people on the mesa now?’” Shirley Romero replied, “It was not a perfect decision,” adding, “we’ve caught a lot of flack for it.”
still ignore us when we tell them we need to work together.”

Certain areas on La Sierra, such as the Salazar Meadow, are widely thought to be overgrazed, including by LRC members, and the Herederos Livestock Grazing Association has had difficulty convincing all grazers to join the Association and abide by its grazing strategies. The LRC project of creating good stewards, then, has been only partially successful.

Conclusion

As we discussed land grant activism in and beyond San Luis, Shirley told me,

We don’t want money for our lands. It’s the land that we want, so that we can continue culturally as a people like we’ve always been, because if that doesn’t happen then we’re going to lose who we are, culturally as a people we will assimilate and kind of dissipate. I don’t see that happening, but it’s important that that educating and that organizing keep on going because [land grant activism] is alive and well, and I see people with the same passion that I’ve had, and that others have had, and that’s the glimmer of hope that I have that this struggle will continue.

This chapter has argued that the contemporary work of the Land Rights Council is grounded in a historical context of power relations. Against interlinked processes and projects of enclosure and marginalization, Hispanics in San Luis have long attempted to create and maintain collective forms of livelihood provisioning grounded in particular types of socionatural assemblages. In re-asserting the historical and cultural difference of heirs to the 

229 Author interview, San Francisco, 2010-04-08.
230 Norman told me, for example, “we’re trying to advertise the grazing association, and to get people involved. It’s like pulling teeth sometimes.” Author interview, San Luis, 2010-06-30. On many other occasions Norman and I discussed the difficulties of organizing for both the LRC and HLGA, though for Norman the latter was having greater difficulty in getting all grazers to join and participate in the organization. Another plaintiff in his early 40s told me, “There are young people [and] people my age who farm and graze but don’t want to be involved. … They think, I already have a right, I have my key, why should I pay [dues to] the grazing association?” Author interview, San Luis, 2010-09-13. Conversely, another grazer told me of difficulties he had had in convincing older generations to join the grazing association, suggesting that they were too stuck in their ways: “A lot of the old timers, they want to do their own thing out there.” He noted, however, that these grazers were members of the HLGA, so “they will have to obey by the by-laws.” Author interview, San Luis, 2009-11-10. See also the discussion of enforcement in Chapter 5.
Sangre de Cristo land grant, the LRC has attempted to establish the ecological legitimacy of Hispano resource users as a central element of its strategies to assert control and authority over the access to and use of La Sierra.

Laura Pulido (1998: 121) notes that “‘ecological legitimacy’ … attaches to a group when it is seen as a valid environmental actor, when its commitment to preserving the environment is not regarded as suspect. Ecological legitimacy is associated with environmental stewardship, or the practice of caring for the land in a sustainable manner.” Strategies based on ecological legitimacy can overturn conventional discourses of race and nature and have been increasingly successful and powerful tools in pressing claims for land, resource, and socio-political rights among environmental justice, indigenous, peasant, and other marginalized groups (Pulido 1998; Wainwright and Bryan 2009). As Pulido (1998: 122-3, 134) argues, notions of ecological legitimacy can form powerful counterhegemonic discourses capable of challenging entrenched social relations, such as those grounded in private property, that could not be challenged otherwise.

Yet, the repetition of such discourses can produce unintended consequences in potentially threatening ways for groups like the LRC. Historically, the LRC has avoided one of the dangers that Pulido identifies as the tendency to privilege culture as an explanatory value in ways that hide other power relations, such as political economic exploitation. As this chapter has shown, through outlets like Tierra y Libertad the LRC has long advanced arguments about the ecological legitimacy of Hispano culture in ways that link ecological practices to capitalist political economy, colonialism, racism, and other oppressive forms of power. The structural critiques of LRC activists (as well as those of academic fields like political ecology, e.g. Peña 1998a) open up the space to assert alternative arguments grounded in the ecological legitimacy of marginalized actors (Pulido 1998: 129).
However, because they rely on what Pulido (122) calls “culturalist arguments” – that is, arguments about the practices of a particular culture as inherently sustainable – strategies grounded in ecological legitimacy can perpetuate essentialist arguments that elide the historical variation and evolution of cultural practices, even as there exists evidence of historical stewardship (134; Perreault 2008). More salient, however, are the ways in which such culturalist arguments can reify cultural differences – such as that between Hispano and Anglo, heir and outsider – in ways that overlook the social relations within which these differences are embedded. By highlighting cultural differences, strategies grounded in notions of ecological legitimacy threaten “to reproduce the existing social formation” by rendering its social relations and enactments of power invisible or subsumed within reified cultural difference (Pulido 1998: 135).

In the governance of the returned commons in San Luis since 2002, these dangers congeal around questions of responsibility. More specifically, arguments based on ecological legitimacy can serve to authorize the evaluation of environmental outcomes on highly moralized and apolitical cultural as well as individual grounds. In short, evaluating the success or failure of environmental governance – whether or not resource users are exercising their rights to La Sierra in “reasonable” ways – threatens to become solely a question of “doing the right thing for the land” in absence of broader power relations. As Jeff Goldstein, the head lawyer for the LRC for nearly three decades, put it to me in November 2009 (see Chapter 5), “The question now, really, is whether this community will validate or invalidate the tragedy of the commons.”

After 2002, this framing of the return of access rights quickly became hegemonic. Not only have Bobby Hill and Cielo Vista insisted that the question is whether or not resource users will “do the right thing for the land” (see Chapter 6), but so have the LRC
and resource users themselves. After the initial access order by the court in 2004, for example, Shirley was quoted by the local newspaper as saying “The judge said we have to be responsible. We will never have another opportunity like this. It is up to us to either make this work or fail” (quoted in Frazier 2004b, emphasis added). The legal team for the plaintiffs has echoed this sentiment: “This is a whole new challenge,” said LRC lawyer David Martínez after the Colorado Supreme Court’s 2002 ruling. “Now the responsibility shifts … to the community. It’s up to you to figure out how the rights are to be exercised and the mountain is to be preserved” (quoted in Green 2002: 3). Similarly, Arnold told me in 2010 that, “there has to be a trial run with this community.”

The ways in which “reasonable” access to and use of the commons has become a moralized question of responsibility – has any given resource user done the right thing or not? – illustrates precisely Pulido’s argument about the dangers of eliding a broader context of power relations. As Chapters 4 and 5 have shown, complex social relations surrounding private property and legal individualism have emerged as key forces shaping use of La Sierra in the present, yet such power relations quickly disappear within discourses of morality and responsibility. As I detailed in Chapters 4 and 5, the Land Rights Council or other organizations like the Herederos Livestock Grazing Association have been unable to exercise effective enforcement power in environmental governance precisely because of the ways in which private property and law have come to structure the interactions of resource users and the field within which they interact. Even before any individual resource user can choose to “do the right thing” or not, the context within which that decision takes place has already

232 Author interview, Santa Fe, 2010-04-26. In our 2008 interview, Arnold noted that many have “celebrate[d] the [legal victory in Lobato] as a triumph of community over large private property owners.” Author interview (conducted with John Hultgren), San Luis, 2008-06-01. There is much truth to this framing, and yet it also serves to elide the continued work of private property in shaping the outcomes of the decision in the present.
been formed in ways that prevent the institutionalization of rules, norms and practices to ensure proper environmental practices are followed.

To what extent the Land Rights Council’s strategies of ecological legitimacy will contribute to this framing of responsibility and with what effects remains to be seen, however there is potential that by mapping nature and culture in an interconnected whole – by documenting and insisting upon the historical sustainability of Hispano cultural practices – the LRC can invite the assessment of resource use on environmental grounds in ways that do not fully account for the broader power relations that work against the ability of Hispanos to live up to their portrayals as environmental subjects (Wainwright and Bryan 2009: 165). In turn, such iterations may help Cielo Vista Ranch’s project of limiting resource rights on environmental grounds. “[T]he failure to practice an appropriate environmental ethic” (Pulido 1998: 127), I argue, has more to do with the inability of resource users in San Luis, because of the court’s iterations of property and law, to collectively implement effective rules, norms, and institutions to govern the commons (Ostrom 1990; Hicks and Peña 2003) than it does with a moralized individual or collective failure to “do the right thing.”

These arguments do not mean the Land Rights Council or other groups should not advance arguments grounded in ecological responsibility; rather, an essential component of such arguments must be a recognition and analysis of how other forms of power and social relations influence environmental outcomes: that, in short, Lobato’s iterations of property, law, and sovereign power have created the conditions within which a tragedy of the commons can occur. Any “failure to practice an environmental ethic” is less a question of “doing the right thing” than of the social relations and processes of subject formation that enable and disable particular forms of socio-ecological practices. As it has done historically,
the Land Rights Council can also articulate critiques of private property and the injustices of the law. Alongside critiques of how private property and law have inhibited effective governance of the commons, the strategies of the LRC to document the ecological legitimacy of Hispano cultural and resource use practices – for example, the long history of collective sheep and cattle management among Sangre de Cristo grant heirs – strongly position the Land Rights Council and other local organizations such as the Herederos Livestock Grazing Association and Sangre de Cristo Acequia Association as appropriate groups to oversee the governance of the commons. The court could formally recognize the HLGA, for example, in ways that require any resource user to pay dues and abide by HLGA rules as a precondition of grazing on La Sierra. There are dangers to this strategy as well: as previous chapters discuss, the LRC has resisted the formal institutionalization of rules for resource access and use because of fears that Cielo Vista Ranch or the courts will be empowered instead or at the expense of Hispano resource users. As the Land Rights Council continues to negotiate this contested terrain, the struggle to maintain, shape, and replenish the commons in socially and environmentally just ways will continue.
Figure 7. Land Rights Council community meeting. Photo by author, June 2011.
Figure 8. Remains of an old grazing corral on La Sierra. Photo by author, 2010.
Figure 9. An acequia farmer irrigates in San Francisco, CO. Photo by author, 2010.
Conclusion

‘I learned a good lesson,’ a young man grumbled in Spanish as he sat in the newly remodeled restaurant/bar/general store in this hamlet of about 180 mostly Hispanic residents. ‘I learned never to be so stupid as to trust an outsider again’ (Flores 1989: 1).

Ethnographies are documents that pose questions at the margins between two cultures (Van Maanen 2011: 4).

[E]thnography offers a unique perspective on the sorts of practices that seem to undo the state at its territorial and conceptual margins… not because it captures exotic practices, but because it suggests that such margins are a necessary entailment of the state (Das and Poole 2004: 4).

Operation San Luis Valley

In the early morning hours of March 6, 1989, 274 armed federal and state wildlife officials from across the country moved into San Luis and surrounding towns and villages under the cover of planes and helicopters. Targeting local hunters for alleged poaching violations, the agents stormed homes, some with weapons drawn, and pulled terrified residents from bed.233 “I woke up and thought it was an invasion,” said one. “[M]aybe of aliens, or Russians. Then I found out it was our government” (quoted in Marchant 1989). When the dust had settled on “Operation San Luis Valley,” these officials had arrested 108 individuals on charges related to the poaching of wildlife, 103 of whom would eventually plead guilty.234

---

233 At the time, the raid and investigation of which it was a part formed the US Fish and Wildlife Service’s “largest commercial-market-hunting investigation in the seventeen Western states. … The covert operation was huge by any standards’’ and drew “many resources from one federal and two state agencies”: US Fish and Wildlife, Colorado Division of Wildlife, and New Mexico Game and Fish (Grocz 2004: 122).

Two and a half years prior, federal agent George Morrison – or as he became known locally, “John Morgan” – set up a taxidermy store about 15 miles north of San Luis in Fort Garland, CO. Morrison made it known that he would buy what local hunters brought him, and wouldn’t ask questions. Morrison distributed fliers addressed to “hunters and outfitters” that read, “I will buy all unwanted capes, skins and antlers in good condition” accompanied by a list of his prices: $45 for bull elk capes, $40 for buck deer capes, $15 for mountain lion skulls, $2.50 for a bear claw (Flores 1989: 3). Pete Espinoza, the county sheriff at the time, began to get reports that Morgan had started asking for, and purchasing, items that weren’t on his flyers, including endangered species like golden and bald eagles. Morgan would “drum up his business” in local bars and restaurants, according to one local, who continued, “[e]veryone here hunts to eat, but when John Morgan arrived on the scene, people began to think differently” (quoted in Flores 1989: 3). “He offered top dollar,” said Espinoza, “$250-350 for an eagle,” adding that locals would never think to kill an eagle until a lucrative market for them had suddenly appeared (quoted in Flores 1989: 3). Soon after setting up shop, Morgan took his burgeoning taxidermy business south to nearby Costilla, NM; his Colorado suppliers now violated federal law by crossing state lines with poached wildlife (Marchant 1989). Over the course of two and a half years, Morrison claimed he had purchased 96 poached animals and countless more animal parts – many hunted on La Sierra – from local hunters (Gonzalez 2007: 200).

In the aftermath of the raid, a range of views permeated public discourse. For many in the State of Colorado, economic poverty was no justification for poaching or any kind of theft. For many law enforcement agents, violation of the law required whatever response was necessary. One who helped coordinate the raid, U.S. Attorney Mike Norton, said, “[w]e will not tolerate the theft of the public’s wildlife resources. We will use every available legal
means to stop this activity” (quoted in Marchant 1989). Another, Tod Stevenson of the New Mexico Department of Game and Fish, argued that the raid was for the local people’s own good. “Deterrence,” he added, “is a form of education” (quoted in Flores 1989: 3). One description of the raid, a first-person account in Terry Grosz’s *The Thin Green Line: Outwitting Poachers, Smugglers, and Market Hunters* (2004), describes Grosz’s view of local hunters from his position at the time in the U.S. Fish and Wildlife Service: “[t]he killing [of wildlife] was so gross and wasteful,” he wrote, “calling into question [the] … morality and actions” of the locals and signaling the “the out of control lawlessness” of the San Luis Valley, that “the skilled wrath of agencies mandated to ‘protect, preserve, and enhance’ the wildlife populations” was all but required (Grosz 2004: 122). For Grosz, Operation San Luis Valley meant a “larger project of bringing the law back to the land and providing a means for future cultural change” (ibid.).

Charges of racism were hurled from all angles and in all directions (e.g. Digby 1989; Licis and Weber 1989; “Racism” 1989). An investigative commission appointed by Colorado Governor Roy Romer found no fault with the way officials handled the raid, only criticizing the decision to let a helicopter hover over San Luis all morning and suggesting that mobilizing 274 officials was perhaps not the wisest use of force. Legitimizing the broader undercover operation and downplaying accusations of entrapment, the commission reasoned that the poachers should have been allowed to surrender themselves (Weber 1989).

Among Hispanos in San Luis, the raid left a lasting legacy of bitterness, anger, and distrust – not only toward government agents, but “outsiders” in general.235 In the face of an

---

235 Gonzales (2007: 201-2) writes, “Long after ‘the poaching raid’ ended, memories of it lingered. Activists continued to justify not only their political resistance in their land rights struggle, but also their deep suspicion of the State by continually referencing the poaching raid. For them, the raid represented entrapment, as an undercover agent had lured economically-strapped local hunters to participate in illegal hunting and sales. The raid also offered yet another example of their community’s ill-treatment at the hands of the American government – just one more incident in a long history of problematic relations between their community and the State. The incident left a permanent scar on relations between the
official commission that elided any institutional racism or wrongdoing, a host of questions were left unanswered for residents of San Luis: why us? Why so much force? Why were no local law enforcement officials involved in the effort, finding out about Operation San Luis Valley the same way as everyone else? Sheriff Espinoza called that part of the raid “intolerable,” saying that the “lack of local lawmen [sic] in the raid and the importation of outsiders from other jurisdictions did not help the perception that the raid was ‘an invasion.’” He continued, “I would not need 274 armed men, [with] helicopters hovering 20 feet over homes to make the arrests” (quoted in Flores 1989: 3), adding, “I could have taken six men out there and done the whole thing without traumatizing every woman and child in the county” (quoted in Marchant 1989). Some likened the operation to an act of war: “So many of us [in San Luis] are veterans,” said one local. “We know war tactics when we see them. We have applied them to others in the name of this country. I never, never believed this could happen to us here. But it will never, never, happen again.” He added, “There is an endangered species in this valley, and everyone knows it’s us” (quoted in Flores 1989: 3).

Two decades later, at the beginning of my long-term research in San Luis, I was clearly still confronting and living through the lasting effects of Operation San Luis Valley. Even without Morrison’s smooth-talking, easy-going demeanor that enabled him to befriend many in San Luis before betraying them, by most all accounts a widespread distrust of outsiders had long characterized life in San Luis. After all, it was an outsider, Jack T. Taylor, who initiated the decades-long struggle for land and resources examined in this dissertation when he purchased the mountain tract and closed it to local use. And even before Taylor, a community and the State of Colorado. The consequences of this troubled relationship would surface in the mid-1990s, when officials from the State of Colorado attempted to step in and help resolve the land rights conflict.”
succession of land companies attempted to populate Sangre de Cristo grant lands with European and Anglo-American settlers and displace its Hispano population while also financing large-scale exploitation of natural resources backed by investors from as far away as the Netherlands.

But there is no question that the raid sharpened local sentiment against outsiders, particularly Anglo-American outsiders, and twenty years later I heard the event invoked almost ritualistically in interviews and conversations time and again. Never before had the community at large allowed an Anglo outsider to become so well-liked, so trusted, so much a part of San Luis life; only to see that outsider betray those who had given him their trust. And as more than one local vowed, never would it happen again.

Arriving in this overdetermined context, I began to touch base with many of the people I had heard or read were most central in the struggle for La Sierra – prominent community voices, respected elders, tireless activists, plaintiffs in the *Lobato v. Taylor* legal case, local scholars and officials. In one of my first requests for an interview, I called a man who I would later see quoted in news reports of Operation San Luis Valley expressing sentiments similar to those above: never again will an outsider be trusted (to maintain his anonymity he is not quoted above). Over the course of two thirty minute phone conversations on consecutive days, the man decided that he did not wish to grant me an interview nor, for that matter, ever talk to me again.

During the course of our conversations, the man articulated a powerful, compelling, and thorough critique of my presence and intentions in San Luis, describing how outsiders have historically represented Hispanics (in San Luis and elsewhere) in ways that do not benefit, and in fact usually harm, actual Hispano communities. He recounted other authors who had come to San Luis, extracting historical and ethnographic data and writing a story or
two that yield financial and professional benefits for the author, while residents of San Luis get nothing but to be the subject of someone else’s story. While at times he insisted that he didn’t think he could help me, and therefore was hesitant to conduct an interview, the man ultimately challenged me with the reverse: what could I do for him and others in San Luis? Concluding that the answer was nothing – the benefits of my work would only be my own – the man refused an interview. In response to my feeble attempts to legitimize my research by saying the Land Rights Council wanted me to help it document local history, he also informed me that years ago Hispanos in San Luis had already conducted such research as part of the preparation for the *Lobato v. Taylor* lawsuit. Not only would my historical work be superfluous and therefore unnecessary, this man made it clear that he did not want outsiders like myself ever using – or even getting a look at – that research. This body of knowledge did not belong to me, and it was not my decision as to how it could be used. The man drew a clear and hard distinction between “the Anglo perspective” and local knowledge: histories written by outsiders, he said, are not our histories. Finally, he linked processes of intellectual and material colonization: just as Anglo outsiders came to San Luis to write books full of lies and mis-representations, they came to San Luis – as they go to other distant places such as Afghanistan, Iraq, and Vietnam – to steal land and resources. These processes are fundamentally linked as part of the same processes of imperial expansion and colonization. He ended our second conversation by informing me that his ancestors predicted that his people were not going to hang on much longer, and sure enough, every day they are being surrounded and attacked more and more.
Confronting my complicity in colonization – and not the first ethnographer to do so\textsuperscript{236} – I initially made sense of this challenge by situating it alongside the raid and its intensifications of distrust towards Anglo outsiders. And indeed, it would be easy to chalk our conversations, and the refusals they contained, up to an ingrained distrust of outsiders. I began to simply lament the poor judgment or ill intentions of all of those “Anglo outsiders” who had come before me and now cost me what I saw as a valuable research opportunity. Surely, I was engaged in a different project than my predecessors, and surely my perspective was different than the “Anglo perspective” this man had cited with such hostility.

There is no doubt that these predecessors contributed to my conversation with this man years later in very significant ways: part of a long history of sedimented past events, the raid and many other interactions with outsiders continue to manifest themselves as traces in collective and individual memories in the present. Yet leaving this encounter there, as only attributable to a generalized distrust of outsiders and Anglo-American outsiders in particular, elides what I now perceive as a deeper critique of academic practices.\textsuperscript{237} Even further, I read this man’s critique and refusal as a recognition of and claim to the very practices through which certain individuals and groups, at the expense of others, become structurally located in positions of power, authority, and material benefit in the construction of space and knowledge in contemporary economies of expertise. In these “capitalist circuits of knowledge” that are constitutive of geographic fieldwork, Gidwani (2008a: 236) underscores,

\textsuperscript{236} The discipline of Anthropology has long struggled with the central role of ethnography in colonialism and imperialism (e.g. Lewis 1973; Commarroff and Commarroff 1992), often as part of debates over a perceived crisis of representation (e.g. Clifford and Marcus 1986). For examples within geography, see Katz (1996) and Wainwright (2008).

\textsuperscript{237} This encounter – a refusal to become part of my research process – nevertheless deeply shaped that very research process (Winders 2001). It took months before I could again pick up the phone to call someone I had not already gotten to know to ask for an interview, and in ways that were both explicit and implicit at the time I began to de-prioritize formal interviews with Hispanics in favor of, on one hand, less-structured conversations where I asked questions but did not decide the overall framework of our interaction; and on the other, collaborations and interactions surrounding activist work in which I attempted to fill the role of an ally/activist-researcher rather than ethnographer of local history and culture. These decisions work against prevailing academic structures that privilege large sample-sizes and formalized approaches to data collection, yet were necessary for me to negotiate my place and role in San Luis in ways that were acceptable both to myself and the Land Rights Council.
“those who control means of production – credentialized northern researchers – profit most heavily.”

The man made this point quite clear to me: only I would benefit from my research, and he did not wish for me to have access to, and therefore benefit from, knowledge that had been produced by he and other Hispanos. He made a related point quite clear as well: Hispanos already possess legitimate knowledge about the ecology and proper use of La Sierra, yet the court demands the outside expertise of scientists. As Shirley Romero put it (see Chapter 7), “We can manage our own land.”

Residents of San Luis, he told me, know their own history, and know how to conduct themselves in the present – yet outsiders continue to insist otherwise. Just as the production of knowledge over what is “sustainable” and “reasonable” on La Sierra today has been a site of struggle – Land Rights Council members and other Hispanics in San Luis have attempted to both mobilize outside authority to their benefit while also resisting the displacement of expertise and laying claim to legitimate environmental knowledge production themselves – my academic representations and interpretations in/of San Luis also help to constitute a power-laden site of struggle.

In short, the iterative practices of research and writing that produced this text, in turn, help to iteratively produce a “San Luis” that is coherent and examinable from the outside, as a matter of expertise. My structural location in the American academy, able to seamlessly move between sites of knowledge extraction (“the field”), production, and dissemination in ways not available to the subjects and objects of my research, elicit a privilege and authority in circuits of knowledge that are, as Gidwani points out, thoroughly capitalist. This dissertation and the practices of academic and professional labor deeply bound up with/in it – of migratory fieldwork; of theorizing, contemplation, and fits and

---

238 In a lucid analysis, Gidwani (2008a: 236) writes, “knowledge is produced as a commodity within a spatial division of labor that characteristically profits researchers in the metropole. … To count as ‘knowledge,’ information must be moved from the peripheries to a metropolitan location and be given recognizable form within prevailing disciplinary protocols and debates.”

starts of writing; of classroom teaching, conference presentations, job interviews, and scholarly publications in which I both eagerly display and profit from my expertise – work not only to position me in a location of external authority (in turn eliciting concrete financial and professional benefit), but also to shore up the very circuits through which bounded local places and the Others who reside within them can become subject to the colonizations of outside expertise, authority, and control – in Wainwright’s (2005: 1038) words, “a contained place, a bounded region set within the real world, with a specific form of external and expert knowledge appropriate to it.” As this man made clear, such interventions are best understood as, precisely, colonizations (cf. Tuhiwai Smith 2012).

Of course, before I set off for “the field,” I was acutely aware of these “politics of fieldwork,” the “unequal power relations that not only shape the collection and interpretation of knowledge, but also help constitute the very conditions that enable research” (Sundberg 2003: 181). As I discuss in the introduction, my approach was, and continues to be, to attempt to articulate the conflicted and contradictory process of ethnographic knowledge production within a position of alliance – an effort both challenged and strengthened by my conversations with this man (see footnote 4 above). In such a project, the academic gaze is strategically deployed as part of a larger political project that is supported, but not directed, by the researcher (Lindner and Stetson 2009). As Dove (1999: 239-40) argues, “[h]istorically, there has been a characteristic directionality to the ethnographic gaze … that has driven ethnographers to study distant grammars, distant places, and distant times. … These studies have served to denaturalize the social reality of local organizations of resistance rather than central organizations of oppression.” By working in alliance with a “local organization of resistance,” I hoped to direct my gaze and
critical analysis towards the processes and institutions of oppression that constrain and marginalize Hispanics in San Luis.

Ethnographies, to rework Van Maanen (2011: 4), pose questions less between the margins of two cultures, and more in ways that help to constitute those margins. And as Das and Poole (2004: 4) suggest, such margins are also central to state power – and, I would add, the power of other “outsiders” – in that the categories they construct “may in fact only perpetuate … [t]he power and authority of [the] state … [through] the imposition of norms regarding what sorts of things are represented, and by whom” (Dove 1999: 234). In the poaching raid, for example, members of the policing apparatus of the state relied upon strict boundaries not only between Hispano and Anglo and legal and illegal, but that also enclosed a particular space – San Luis – that could be mapped as a margin between law and lawless and therefore in need of militarized intervention. To the extent that my academic work contributes to the reiteration of such margins and boundaries, even in its reiteration of the practices through which the outsider-expert comes to and comes to know San Luis as an observable, definable, and diagnosable space, perhaps I contribute to the conditions that enable things like the poaching raid to occur, rather than those conditions simply affecting my ability to carry out interviews and collect data.

In response (Nealon 1998), I have tried to “shift away from analyses that reify difference as pregiven and, instead, begin asking how difference is constituted through interconnections and interdependencies” (Sundberg 2003: 188). My strategy, following Glissant (1997), has been to re-direct the ethnographic gaze from its historical focus on rendering difference transparent, to ask questions about the construction of power relations and the geographic processes and institutions that have historically marginalized and dispossessed Hispano claims to land and natural resources – chiefly U.S. sovereign authority
and private property. While I examine the formations of nature and identity advanced by the Land Rights Council, my primary concern has been to interrogate the contexts of power that elicit, shape, and discipline these efforts. Further, the Land Rights Council has long chosen to embrace and cultivate such alliances with outsiders, including myself, as a means to further its strategic objectives.240

And yet, ethnographic knowledge production remains fraught with dilemmas of power, positionality, representation, and responsibility in aporetic ways (Gidwani 2008a: 236): these questions, differences, and relations of power can be negotiated but never fully resolved (Cahill et al. 2007; Hodgson 1999; Katz 1996; Pratt 2000; Sparke 1996; Stacey 1996; Sultana 2007). In constructing a narrative, “I control the conditions of my own and others’ visibility” within the text (Pratt 2000: 641), and as “narrative itself recuperates continuity … it is not always possible to sustain the caution required to produce an interrupted account that is alert to its own conditions of possibility” (Gidwani 2008a: xviii). Further, the material effects of academic representation are not controllable and, like the ongoing struggles over the commons in San Luis, uncertain. Below, I conclude this dissertation with a summary of its arguments and contributions and a discussion of some uncertainties that may lie ahead in San Luis.

**Contested past, contested future**

The overarching argument of this dissertation is that social and spatial forms must be continually enacted. In exploring struggles over the commons in the San Luis Valley over roughly 150 years, I have shown how U.S. sovereign authority and private property, as well as Hispano and Anglo, nature, La Sierra, and other categories and spatial formations remain

contingent, contested, and ongoing enactments. This dissertation demonstrates the continued importance and relevance of land grant activism for critical geographic debates: not only do sovereignty and property remain unfinished and contested projects deeply entangled with the claims of Hispanos in the San Luis Valley, they also intersect with shifting and uncertain formations of nature, identity/difference, and space. These shifting imbrications, as I have explored in the San Luis Valley, have continued and changing implications for questions of rights, livelihoods, and more broadly, environmental justice.

In Part I of the dissertation, I argued in Chapter 2 that the 2002 *Lobato v. Taylor* decision by the Colorado Supreme Court continues the iterative processes of sovereign boundary drawing first evident in the San Luis Valley through the actions of William Gilpin and a series of land companies, explored in Chapter 1, that sought the enclosure of natural resources through new regimes of private property. In granting rights to the commons, *Lobato* also more fully bound Hispano subjects to U.S. sovereignty and private property, simultaneously relying on the *production* and *erasure* of difference in complex and ambivalent ways. While the court mobilized notions of the historical difference and separateness of Hispanos in San Luis, thereby obscuring relations of colonialism and the dispossessions of private property on the Sangre de Cristo land grant, Hispano claims to rights were simultaneously territorialized as fully locatable within the historical trajectory and sovereign authority of the U.S. nation-state. In granting rights to the commons, however, the court undid its own production of difference by rendering access to the commons solely a question of the ownership of private property: before the law, resource users are nothing more and nothing less than private landowning individuals.

Part II of the dissertation explores the implications of these configurations of sovereignty, property, law, and subject formation for resource access and use and the
environmental governance of the commons after 2002. The specific ways in which subjects have been constituted through property and law – resource users as the private owners of “benefited” property and Cielo Vista Ranch as owner of “burdened” property able to seek redress, and all subjects interacting in a context of legal individualism – have deeply shaped struggles over governance. While hegemonic framings of the tragedy of the commons have sought to render resource users responsible for appropriate environmental practices in the “reasonable use” of La Sierra, Lobato’s configurations of power and subjectivity have reshaped social relations in such a way as to make such a tragedy possible. Chapters 4 and 5 explored how the commodification of access rights has created both an explosion in the number of resource users beyond heirs to the land grant and heightened tensions and divisions between “heirs” and “outsiders.” Widespread uncertainties, confusions, passions, and frustrations have been constituted by these configurations, and in turn have been constitutive of the governance process in ways that have worked against the monitoring and control of resource use practices and the effective resolution of disputes. In this context, Chapters 6 and 7 examined how Cielo Vista Ranch and the Land Rights Council have attempted to create new types of environmental subjects through particular formations of identity, responsibility, nature, knowledge and expertise, though in ways not fully successful.

More broadly, this dissertation shows the significance of colonial legacies in contemporary environmental conflicts in the U.S. Southwest. Following Wainwright (2005: 1034), “the geographies of the Americas cannot be understood without a careful analysis of colonial practices.” Here I flag two ways in which colonial legacies continue to shape struggles over the commons in San Luis. First, the Lobato decision granted returned rights to the commons, but in ways that transformed rights into a commodity and erased differences among resource users. That is, in this case, “[s]uccess reinscribes territorial state power as
guarantor of property” (Wainwright and Bryan 2009: 164). The extension of rights in the wake of past injustices and dispossessions borne out of colonial encounter has occurred in highly ambivalent ways. This dissertation has shown how Lobato has reiterated U.S. sovereignty and private property in ways that have simultaneously extended rights while also containing and translating them in particular ways: Lobato awarded rights to property, but in the process did not overturn entrenched inequalities nor address the broader political demands to territorialized forms of autonomy and control over resources that underwrote the claims of the Hispano plaintiffs (Wainwright and Bryan 2009: 167-9). For many in San Luis, as I discussed in Chapter 7, the next step after Lobato is to pursue rights to the commons as heirs to the Sangre de Cristo land grant, not as owners of private property. The extension of rights in Lobato bears significance for related processes of sovereign boundary drawing, typically constraining indigenous rights claims, in both the U.S. and elsewhere (e.g. Bruyneel 2007; Olund 2002; Kauanui 2008; Shapiro 2004; Shaw 2008; Wainwright and Bryan 2009). Rights to the commons in San Luis have been circumscribed not through racialized logics, as in Hawai‘i (Kauanui 2008), but precisely through their erasure via private property ownership. Private property has been mobilized elsewhere in the U.S. as a mechanism for both the dispossession of rights to land and resources and the extension of U.S. sovereignty (Olund 2002), and the erasure of difference through property in Lobato mirrors the use of discourses of neoliberal equality as a mechanism to erase difference and contain the rights-claims of indigenous subjects (Daum and Ishiwata 2010).

Wainwright and Bryan (2009: 169) argue that “[s]uch recognition [of property rights] reinforces state power and deepens capitalist social relations.” This assertion is undoubtedly true in San Luis, as I have explored, yet I have also highlighted the deep ambivalence of such postcolonial politics (cf. Braun 2002a; Nash 1999). After Lobato, for example, the Land
Rights Council can now make strides in re-fashioning collective institutions, and in myriad ways Hispano identifications surrounding status as a land grant heir have become strengthened since the decision. While state power and capitalist social relations have been reiterated through U.S. sovereign authority and private property, these configurations have not fixed Hispanos in San Luis once and for all. Rather, many are more determined to press for rights as heirs, not property owners, and as part of a broader land grant movement. In other words, the significance of Lobato’s simultaneous extension and conscription of rights, and these contested iterations of power that remain contested and ongoing, continue to demand critical geographic attention.

Colonial legacies are also significant through “the ways that conflicts over nature always already entail struggles over the constitution of the world and its spaces” (Wainwright 2005: 1039). I have tried to “cultivate an awareness of the multiple, contested natures … of colonized spaces” (Wainwright 2005: 1034). In part, this effort has involved tracing the ways in which identities emerge relationally within the processes and struggles of colonial encounter; as Winders (2005: 392) argues, postcolonial theory directs critical “attention to the production and maneuvers of power and difference.” Yet the very constitution of geographic space is at issue in colonial encounters as well, and I have shown how the spaces of the San Luis Valley remain transversal, constituted by and constitutive of multiple and intersecting histories, spatial practices, and forms of sovereign authority (Glissant 1989; Soguk and Whitehall 1999). To conclude, I briefly signal three ways in which the iterative constitution of the San Luis Valley – as well as the outcomes of Lobato’s return of access rights to the commons – promise to remain contested and uncertain in the future.

First, the commodification of access rights through Lobato threatens to accelerate processes of rural gentrification (Darling 2005) and transition to a “new west” economy
based on amenity migration (e.g. Robbins et al. 2009). Across many interviews and conversations, the transformation of Taos, New Mexico stood as a symbol of what could happen in San Luis, particularly as subdivision developments begin to market access rights to La Sierra in selling their certified properties. Recent conflict over an electricity transmission line proposed to electricity generated from large-scale solar plants in the San Luis Valley to Colorado’s urban front range corridor raise related fears. LRC activist Matthew Valdez explained his fears to me that the transmission line could increase the amount of infrastructural development in the valley in ways that enable greater settlement on subdivided properties (the vast majority of which are not currently connected to the electrical grid): “All this subdividing,” he said, “and if people start moving in here? This whole area will be a different place.”

Second, and related to fears of accelerated gentrification, are recent proposals by the federal government to pursue conservation initiatives in the San Luis Valley (Hildner 2009a; 2012a; 2012b). As of early 2012, the shape and direction of these plans are largely unknown: after a meeting with Secretary of the Interior Ken Salazar, a San Luis Valley native who is spearheading new conservation efforts, Shirley Romero said that she was “leaving with more questions than I came with” about how Salazar’s plans would impact use rights to La Sierra (quoted in Hildner 2012a). It remains to be seen what impact projects of conservation will have on both processes of rural gentrification and the exercise of rights to the commons.

Finally, as we discussed the efforts of the Land Rights Council to govern the commons, Arnold Valdez expressed his concerns to me about “the impacts of climate change on historical and cultural resources, the integrity of the landscape and its ability to support wildlife, availability of water, forest health – all of these things are interrelated in the

241 Author interview, San Luis, 2010-09-17.
landscape. Changes in the climate could impact all of these things, and in turn they can play a role” in the exercise of rights to the commons.\textsuperscript{242} With dry conditions in both 2011 and 2012 (Finley 2012), the threats of regional climatic changes and their impacts on the exercise of rights to the commons and local livelihood strategies such as those grounded in acequia irrigation remain a concern.

The long-term outcomes of \textit{Lobato v. Taylor} remain to be seen. This dissertation has traced roughly 150 years of struggles over La Sierra, and those struggles promise to continue, repeated with a difference, well into the future. As Cielo Vista Ranch continues to attempt to exclude resource users and restore its private property, the Land Rights Council remains focused on expanding rights to the commons and extending and re-working cultural practices, livelihood strategies, and equitable and just practices of environmental governance. These processes and broader struggles over sovereignty, property, nature, identity, and justice ensure that resource access and the environmental governance of La Sierra will remain highly contested.

\textsuperscript{242} Author interview, Santa Fe, 2010-04-26.


Minneapolis, MN: University of Minnesota Press.


Hildner, M. (2011, July 31). Deal Pending in Dispute Over Road to Taylor Ranch. *Pueblo Chieftain*.


Martinez, M. C. (2009). Interview with Former LRC Attorney Jeff Goldstein. La Sierra, December 11, p3-5.


Memoranda of Matters Discussed and Arranged at Costilla Meeting with Governor Gilpin, Newell V. Squarey and W. Blackmore. (1871). William Blackmore Land Records. State Records Center and Archives, Santa Fe, NM.


Duke University Press.


Rivera, B. (1983). An Indian Without Land is Not an Indian! In K. Ohland & R. Schneider (Eds.), *National Revolution and Indigenous Identity: The Conflict between Sandanistas and Miskito Indians on Nicaragua’s Atlantic Coast* (pp. 64-67). Copenhagen: IWGIA.


Robertson, M. (2007). Discovering Price in All the Wrong Places: The Work of Commodity
Definition and Price under Neoliberal Environmental Policy. *Antipode, 39*(3), 500-
526.


Routledge, P. (2002). Travelling East as Walter Kurtz: Identity, Performance, and
Collaboration in Goa, India. *Environment and Planning D: Society and Space, 20*(4), 477-
498.


Rutherford, S. (2007). Green Governmentality: Insights and Opportunities in the Study of

Hopkins University Press.


Salazar, A.A. vs. Donacio Martinez et al. (1909). Land Rights Council Archives. San Luis,
CO.

Salazar, Antonio, Delfino Salazar and William F. Meyer vs. Endrique Jacquez. (1908). Land
Rights Council Archives. San Luis, CO.

College. Colorado Springs, CO.

Sanderson, J. (2004). Natural Heritage Inventory of La Sierra. San Luis, Colo.: Colorado
Natural Heritage Program, Colorado State University.


*Environment and Planning A, 37*(6), 1045-1048.


Case Studies from Indonesia and West Africa. In R. Peet & M. J. Watts (Eds.),


Vita

Author: Keith W. Lindner

Place of Birth: Tonawanda, NY

Date of Birth: April 11, 1982

Degrees Awarded:

B.A. in Political Science, 2004, Allegheny College

M.A. in Political Science, 2007, Colorado State University