

## Lawyers and Legal Borderlands

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### ABSTRACT

This article explores the role of the legal profession in urban development along the U.S.-Mexico border in the nineteenth century. It argues that lawyers, through their tripartite roles as land brokers, boosters, and social engineers, were one of the primary forces in social and legal transformation during this period. Drawing from research on one particular border town, that of El Paso, Texas, this article counters prior scholarship that has largely either underplayed the role of lawyers in western development all together, or treated them merely as instruments of capitalists and cattle ranchers. Lawyers in El Paso had a direct role in the conversion of El Paso from an isolated, frontier community to a burgeoning border metropolis. A key part of this change was the shift from a cooperative multiethnic community – where Anglo Americans, Mexican Americans, and Tigua Indians shared in the governance of the county and the disposition of the law – to one that was dominated by Anglo Americans only. This article demonstrates that as El Paso became more connected to other metropolitan areas, to state and federal governments, and to transnational commercial networks, it simultaneously became profoundly more stratified by race and national identity. By looking to El Paso’s legal history and the changes in its legal culture during this time of transition, we can see how deeply involved were local lawyers not just in economic growth but also in racial and cultural boundary-drawing. These findings have repercussions for how we understand both the role of the legal profession and the mechanics of urban growth and development during the nineteenth century.

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**INTRODUCTION**

The county of El Paso, Texas, in the year 1870 was a quintessential frontier community. Located in the far western tip of Texas, in 1870 it was difficult to reach from any major metropolis. Although officially a part of Texas, the lack of any railroad connection and the presence of hostile Indian tribes in this period made for a long, dangerous journey to and from other population centers in the region. El Paso was also a community on the borderline, bordered to the west by New Mexico and to the south by Mexico. The population of only 4,000 was predominantly of Mexican descent.<sup>1</sup> Many of its residents had lived in the region since before the Mexican-American War, when the U.S. gained the El Paso area (and more than one-third of Mexico’s northern territories) in the Treaty of Guadalupe-Hidalgo.<sup>2</sup> Due in large part to its isolation and its preexisting Mexican legal and cultural traditions, El Paso in 1870 was a hybrid place, where American law was present but practiced in Spanish, where those of Mexican and

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<sup>1</sup> J. Lawrence McConville, *A History of Population in the El Paso-Ciudad Juárez Area*, 76, 80 (1966) (unpublished master’s thesis, The University of New Mexico) (on file with author).

<sup>2</sup> Treaty of Guadalupe Hidalgo, Feb. 2, 1848, U.S.-Mex., art. VIII, 9 Stat. 922. See RICHARD GRISWOLD DEL CASTILLO, *THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT* (1990).

American descent served side-by-side in the institutions that governed the county, and residents still celebrated Mexican Independence Day along with the Fourth of July.<sup>3</sup>

El Paso, Texas, in the year 1890 was a very different place. The population of the county had quadrupled, to more than 15,000. The city of El Paso saw even greater population growth, from a few hundred residents in 1870 to more than 10,000 in 1890.<sup>4</sup> The majority was still of Mexican descent, but now the population of those of Anglo-American descent was growing steadily.<sup>5</sup> Travelers could now reach El Paso by not one but three different major railway lines, which connected the county not only to Austin but also to San Francisco, St. Louis, and Mexico City. The old adobe courthouse, where those of Mexican and American descent had sat side-by-side to administer justice, was now replaced by an imposing brick edifice in a European style, where those who spoke only Spanish were no longer allowed to serve on juries as they had for decades before.<sup>6</sup> By the end of the decade, juries were no longer majority Mexican-American, trials were no longer conducted largely in Spanish, and residents were chastised for celebrating Mexican holidays. The balance of power had shifted from one racial/ethnic group to another.

In the span of only twenty years, El Paso changed from a close-knit, multicultural frontier community to a burgeoning, increasingly racially-segregated border metropolis. Its legal culture morphed from a hybrid, bilingual system to a strictly American, monolingual one. What El Pasoans experienced was unique in some respects – particularly the presence of a powerful Mexican legal tradition and its rapid demise – but in other respects it was typical of other western cities in this period, which also experienced rapid growth and marked social, legal, and political change.<sup>7</sup> How do we explain these dramatic changes over such a short period of time? Historical and popular accounts tend to give three primary explanations for the transformation of the towns of the west in the late nineteenth century: the arrival of the railroads, the dramatic increase

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<sup>3</sup> See W.H. TIMMONS, *EL PASO: A BORDERLANDS HISTORY* (1990), 135-168, 175; Allison Brownell Tirres, *American Law Comes to the Border: Law and Colonization on the U.S./Mexico Divide, 1848-1890*, 1-20, 116-162 (2008) (unpublished Ph.D. dissertation, Harvard University)(on file with author);

<sup>4</sup> U.S. Bureau of the Census, *Report on the Population of the United States, Eleventh Census, 1890* (1895), 31, 41-42, 241, 332.

<sup>5</sup> OSCAR J. MARTINEZ, *BORDER BOOM TOWN: CIUDAD JUAREZ SINCE 1848*, app. At 159 tbl.2 (1978); J. Lawrence McConville, *A History of Population in the El Paso-Ciudad Juárez Area* 76, 80 (1966) (unpublished master's thesis, The University of New Mexico) (on file with author);

<sup>6</sup> See *infra* Part III.

<sup>7</sup> See DAVID HAMER, *NEW TOWNS IN THE NEW WORLD: IMAGES AND PERCEPTIONS OF THE NINETEENTH-CENTURY URBAN FRONTIER* 113-138 (1990); RICHARD WHITE, "IT'S YOUR MISFORTUNE AND NONE OF MY OWN:" A NEW HISTORY OF THE AMERICAN WEST 298-327 (1991); Carol A. O'Conner, *A Region of Cities*, in *THE OXFORD ENCYCLOPEDIA OF THE AMERICAN WEST* 535-563 (Clyde A. Milner, II, Carol A. O'Connor, and Martha A. Sandweiss, eds., 1994).

in white settlement, and the consolidation of land in fewer hands.<sup>8</sup> Each of these elements contributed to the modernization and urbanization of western communities, and to the modernization of the western United States as a whole.

There is truth in each of these explanations. Yet missing from many of these accounts is an understanding of the people behind these historical dynamics.<sup>9</sup> Who convinced the railroads to come to that particular locale, who crafted El Paso's image to draw increased white settlement, and who created the mechanisms that placed land in fewer hands? This article argues that the legal profession, more than any other segment of society, was the main engine behind each of these changes. Lawyers in El Paso had a direct hand in bringing the railroads to the area, attracting Anglo-American settlers, and consolidating land ownership in an Anglo-American elite. They also increased the prominence of legal and political institutions – and hence of state and federal power – in the county, permanently altering political dynamics. The work that lawyers did during this period elucidates the mechanisms behind urban development in the nineteenth century. Studying this work also helps us see social transformations not as inevitable winds of change but rather as the product of individual choices and actions.

Looking at the role of lawyers in the transformation of El Paso aids our understanding of nineteenth-century law and society in three important ways. First of all, it demonstrates that the transformations that occurred in El Paso – and in other similarly situated towns – were at base about the movement of political power from local institutions to state and federal ones. Recent scholarship in nineteenth-century legal history has stressed the powerful role that localized regulation – at the level of town, municipal, and county government – played in structuring communities in this period.<sup>10</sup> This article does not dispute this perspective, but shows that as such towns underwent urbanization, they relied far more on state and federal power and far less on local power.

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<sup>8</sup> For studies of colonization and development in the nineteenth-century west, see PATRICIA NELSON LIMERICK, *THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST* 55-77 (1987); WHITE, *supra* note \_\_, at 61-388 (1991). For the classic formulation of the meaning and the “closing” of the western frontier, see Frederick Jackson Turner, *The Significance of the Frontier in American History* (1895), reprinted in *REREADING FREDERICK JACKSON TURNER: THE SIGNIFICANCE OF THE FRONTIER IN AMERICAN HISTORY, AND OTHER ESSAYS* (John Mack Faragher, ed., 1994).

<sup>9</sup> See, e.g., MONTEJANO, *supra* note \_\_, at 76 (“Facilitated by an expanding railroad network, the new settlements basically Americanized the old Spanish-Mexican towns of the region”); LIMERICK, *supra* note \_\_, at 62 (“In a variety of ways – huge grants to subsidize railroad construction, grants to states, the distribution of land warrants to veterans, the sale of tracts made available by further reductions of Indian reservations – much desirable land was taken from the reach of homesteaders”). I would argue that the passive voice in these examples is not just a stylistic choice but also an indicator of how much more there is to understand about the people behind these processes of colonization in the west.

<sup>10</sup> See WILLIAM J. NOVAK, *THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* (1996); Meg Jacobs and Julian E. Zeiler, *The Democratic Experiment: New Directions in American Political History*, in *THE DEMOCRATIC EXPERIMENT* 1-19 (Meg Jacobs, William J. Novak, and Julian E. Zelizer, eds., 2003); William J. Novak, *The Legal Transformation of Citizenship in Nineteenth-Century America*, in *id.* at 85-119.

Lawyers were the conduit for this shift from the local to the national. Lawyers brought the outside in, changing a peripheral community that had relied in large-part on town and county governance to a connected yet segregated metropolis, reliant on state and federal institutions and large-scale commerce as sources of power. Lawyers played an integral, and understudied, role in this transition.

This shift in the locus of power had repercussions for El Paso's racial climate. As El Paso became more connected – to other metropolitan areas, to state and federal governments, to transnational commercial networks – it simultaneously became profoundly more stratified by race and nationality. The second contribution of this article to legal history more generally is to elucidate the interplay between local legal culture and race. All of the trained lawyers in El Paso during the nineteenth century were of Anglo-American descent.<sup>11</sup> In the first three decades after American occupation and control, the legal profession in El Paso shared power with justices of the peace, county judges, and county commissioners, almost all of Mexican descent. These community leaders had no formal legal training in American law but were experienced in dispute resolution. By 1890, this power-sharing regime had largely been replaced by a regime of command and control by Anglo-American lawyers and district judges. Mexican-American leaders were largely relegated to the smaller towns, where they retained only modest local control. While this is a story about the development of the legal profession, it is also a story about the racialization of the legal culture as a whole. By looking to El Paso's legal history and the changes in its legal culture during this time of transition, we can see how deeply involved were local lawyers not just in economic growth but also in racial and cultural boundary drawing.

Finally, this article speaks to the current literature on the legal profession more generally. It counters the prevalent perceptions that law and lawyers were either largely absent from the frontier, or were present only as lackeys of corporations and white cattle ranchers.<sup>12</sup> The lawyers in this study clearly had particular agendas, but they were not uniformly of one mind about development in El Paso. They cannot be understood merely as the instruments of colonization, but rather must be analyzed within the particular historical context of which they were a part.

This article proceeds in three parts, each showing the ways that the actions of the legal profession in El Paso contributed to this dramatic transformation in El Paso's society and culture. We see three primary dimensions of the legal profession: lawyers as land brokers, lawyers as boosters, and lawyers as social engineers. Part I focuses on lawyers as land brokers. It describes the pivotal role that local lawyers played in bringing the railroads to El Paso, starting decades before their actual arrival. It argues that the promise of the railroads served as a major incentive for changing patterns of landownership in the county, as lawyers – joined at times by politicians and investors – sought to capitalize on the profits that the railroads could bring. The end result was a

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<sup>11</sup> MORGAN J. BROADUS, *THE LEGAL HERITAGE OF EL PASO* (1963); Tirres, *supra* note \_\_, at 78 n.13.

<sup>12</sup> *See, e.g.*, ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991); LIMERICK, *supra* note \_\_, at 55-77; DAVID MONTEJANO, *ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836-1986* (1987).

remapping of land ownership in El Paso County, as land was concentrated in fewer hands and shifted from Native-American and Mexican-American owners to Anglo-American.

Part II focuses on lawyers as boosters. It demonstrates how the legal profession sought to promote the area to eastern investment and settlement once the railroads had arrived. It elucidates a core tension in the rhetoric that El Paso's promoters used. On the one hand, they sought to portray the great benefits of transnational connection to Mexico, styling El Paso as the "great metropolis of the southwest" and the "gateway to Mexico."<sup>13</sup> At the same time, however, they also attempted to downplay and distance themselves from the area's Mexican past, as well as from its current Mexican residents. The participation of the legal profession in this promotion is important here, because they were able to translate this tension – between boosting Mexican ties, on the one hand, and denigrating Mexicans, on the other – into social reality.

Part III focuses on lawyers as social engineers. It examines the outcome of this booster rhetoric on legal culture in El Paso. With the coming of the railroads, local Anglo-American lawyers and judges replaced the former adobe courthouse with a grand brick edifice in the American style. This transformation in legal culture extended beyond the courthouse steps to also include other realms of society in El Paso. For the first time, the county witnessed segregation in housing, schools, and public services, each of which this part discusses. The local legal elite partnered with politicians and merchants to push for these changes, each of which was a departure from the way El Pasoans had structured their lives in the past.

Part IV reflects upon the larger significance of the findings of this article for the emerging field of border studies and the law.<sup>14</sup> What happened in El Paso was not only about urbanization but was also about the creation of new boundary lines. El Paso was transformed from a frontier community located on a border line to a true border town, with distinct and hardened boundaries between those of differing nationalities and races. Surprisingly, the boundary that truly came to matter to El Paso's residents in this period was not the U.S.-Mexico borderline itself, but rather the divide of race and nationality within the county lines on the American side alone. Residents had far more difficulty crossing the latter than the former. Attorneys, as this article will show, were deeply involved in this boundary-drawing.

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<sup>13</sup> Map No. 2 of Satterthwaite's Addition to El Paso, 1884, in C. L. SONNICHSEN, *PASS OF THE NORTH: FOUR CENTURIES ON THE RIO GRANDE* 469 (1968).

<sup>14</sup> See, e.g., *LEGAL BORDERLANDS: LAW AND THE CONSTRUCTION OF AMERICAN BORDERS* (Mary L. Dudziak and Leti Volpp, eds., 2006); *Symposium: Surveying Law and Borders*, 48 *STAN. L. REV.* \_\_\_ (1996). See also Allison Brownell Tirres, *Law and Paradox* (Review of Mary L. Dudziak and Leti Volpp, eds, *LEGAL BORDERLANDS: LAW AND THE CONSTRUCTION OF AMERICAN BORDERS*), *H-Law, H-Net Reviews*, May, 2007, available at <http://www.h-net.org/reviews/showrev.cgi?path=38871185291299> (last visited Nov. 8, 2007).

## I. REMAPPING THE BORDERLANDS

In June of 1881, large crowds gathered in El Paso for the much-anticipated arrival of the first passenger car of the Southern Pacific Railroad.<sup>15</sup> The train, en route from southern California, rolled in to the cheers of the crowd and a cannon salute. A welcoming party of community leaders boarded the train for a short trip to a newly constructed pavilion, where dignitaries – including Charles Crocker of the Southern Pacific, one of the famed “Big Four” who built the western railroads<sup>16</sup> – made formal presentations. Later that evening, guests were invited to a formal banquet and dance, many of them dancing and drinking until the next morning.<sup>17</sup>

To residents of the El Paso area, the railroad was a potent symbol of progress and civilization. The tracks connected a once isolated frontier to the major centers of population in the nation. Up until the Treaty of Guadalupe in 1848, the area we now know as El Paso County was a part of Mexico. Settlements straddled the Rio Grande, with the primary town center and cathedral on the southern banks. After American occupation, the national borderline divided the communities, leaving those on the northern bank in U.S. territory and those on the southern in Mexico.<sup>18</sup> Despite this newly-created borderline, residents retained strong connections across the divide. Border enforcement was weak to non-existent, at least in forms that we would recognize today, and residents continued to have families, businesses, and cultural ties to both sides. The county retained a majority Mexican-American population. Up until the 1880s, despite some population growth, the area remained a frontier outpost, for both the U.S. and Mexico.

The railroads reshaped the landscape of the El Paso area in profound ways. Travel that once would have taken weeks via stagecoach now took only a few days. The county’s population skyrocketed, growing from 3,845 in 1880 to 15,678 in 1890 and

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<sup>15</sup> EL PASO HERALD, June 1, 1881.

<sup>16</sup> On Charles Crocker, see generally Oscar Lewis, *THE BIG FOUR: THE STORY OF HUNTINGTON, STANFORD, HOPKINS, AND CROCKER, AND OF THE BUILDING OF THE CENTRAL PACIFIC* (1938); Richard Rayner, *THE ASSOCIATES: FOUR CAPITALISTS WHO CREATED CALIFORNIA* (2008).

<sup>17</sup> EL PASO HERALD, June 1, 1881.

<sup>18</sup> While we are accustomed to considering the Rio Grande a north-south divide between the United States and Mexico, in the El Paso region it is actually more accurately described as an east-west divide. What we today call El Paso County, Texas, developed out of the Spanish colonial town of El Paso del Norte (today’s Ciudad Juárez, Chihuahua, Mexico) and its surrounding settlements. The primary settlement up until the 1880s was El Paso del Norte, on the west bank of the Rio Grande. Land on the east bank, where the city of El Paso, Texas, is now located, was during the Spanish colonial period only sparsely inhabited and used mostly as a source of firewood and pasture lands for residents on the other side of the river. The terminology becomes clearer after 1888, when El Paso del Norte was renamed Ciudad Juárez, after the Mexican President Benito Juárez, who lived for some time in the city that now bears his name. For the geography and development of the sister cities of Juárez and El Paso, see Milo Kearney and Anthony Knopp, *BORDER CUATES: A HISTORY OF THE U.S.-MEXICAN TWIN CITIES* (1995).

24,886 in 1900.<sup>19</sup> Merchants, investors, lawyers, laborers and their families used the new rails to seek their fortunes. With population growth came growth in commerce as well as in the borders of the county itself, as the settlements grew to accommodate more homes, schools, and businesses. In addition to bringing new workers, investors, gamblers, and others to El Paso, the railroads ended the county's perceived isolation from the rest of the nation. Now, instead of taking weeks to travel to San Antonio or San Francisco, residents could get there in a matter of days.

This is a familiar story in nineteenth-century history, of the ways that the railroads altered the character of the cities and towns they passed through, creating boom towns out of previously isolated enclaves.<sup>20</sup> There is a plentiful scholarship on the economic and demographic change that the railroads brought. There has also been increasing attention in recent years to the social, cultural, and legal history of the railroads. Scholars such as Kenneth Mack and Barbara Welke have demonstrated the ways that the space of the railroad cars themselves, and litigation over that space, shaped conceptions of liberty and equality in the nineteenth century.<sup>21</sup> John Ely, in his book *Railroads and American Law*, has shown the remarkable extent to which the railroads shaped ideas of law and commerce in a range of areas, contributing in significant ways to modern conceptions of interstate commerce, corporate law and labor relations.<sup>22</sup>

Most of this current scholarship on the history of the railroads focuses on state and federal regulation and litigation. A much less familiar story, and one which this section seeks to explore, is that of the relationship between railroad development and the local legal profession.<sup>23</sup> What we find when we look locally – at the level of town and

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<sup>19</sup> McConville, *supra* note \_\_, at 76, 80. The city of El Paso saw the largest percentage growth, from a population of 738 in 1880 to 10,338 in 1890. The other major settlements in the county and the historic centers of population – San Elizario, Socorro, and Ysleta – grew as well. *Id.*

<sup>20</sup> See, e.g., THOMAS, *supra* note \_\_, at 2 (noting the transformation in southern towns once the railroads ended their isolation). There is an extensive historical literature on the development of the railroads in the nineteenth and twentieth centuries and their effects on urban growth. See, for example, WILLIAM CRONON, *NATURE'S METROPOLIS: CHICAGO AND THE GREAT WEST* (1994); ROBERT REIGEL, *THE STORY OF THE WESTERN RAILROADS* (1926); WHITE, *supra* note \_\_, at 246-258. It is also important to note that the railroads did not just encourage the growth of small towns and cities but also supported the growth of major urban areas. As historian Keith L. Bryant, Jr., notes, “[T]he urbanization of the West reflected the coming of the railways, with cities as diverse as Dallas, Los Angeles, Tacoma, Spokane, and Denver largely owing their existence, and their growth, to the presence of railways tapping their hinterlands.” Keith L. Bryant, Jr., *Entering the Global Economy*, in *THE OXFORD HISTORY OF THE AMERICAN WEST* (Clyde A. Milner, II, Carol O'Connor, and Martha A. Sandweiss, eds., 1994), at 224.

<sup>21</sup> See generally BARBARA YOUNG WELKE, *RECASTING AMERICAN LIBERTY: GENDER, RACE, LAW, AND THE RAILROAD REVOLUTION, 1865-1920* (2001); Kenneth Mack, *Law, Society, Identity and the Making of the Jim Crow South: Travel and Segregation on Tennessee Railroads, 1875-1905*, 24 *LAW AND SOCIAL INQUIRY* 377 (1999). See also ELY, *supra* note \_\_, at 138-143, 145-146.

<sup>22</sup> ELY, *supra* note \_\_, at vii, 281-286.

<sup>23</sup> Historian William G. Thomas has written about the connections between local lawyers and railroad development in the South. See generally THOMAS, *supra* note \_\_.

county governance – is that the interaction between railroad corporations and the legal system occurred not just in Congress or before the Supreme Court but also in local courthouses and town council meetings. This section highlights the fact that the relationship between railroads and law was not between disembodied corporations and disembodied legal systems, but between actual human actors in a local context.<sup>24</sup> In El Paso, local lawyers played key roles in ensuring the railroad would come through their particular locale. Importantly, their efforts to ensure a path through the county had a profound impact on land ownership within the county, even before the tracks themselves were laid down. As land ownership changed, so did the political and economic fortunes of El Paso's population.

### A. *Railroads on the Borderline*

Railroad lines did not reach El Paso until the early 1880s, but railroad interests had already had a profound impact on the very creation of the U.S./Mexico borderlands as a whole. The desire of the U.S. government to obtain portions of northern Mexico in the 1840s grew in large part out of expectations of further expansion of railroad development. After the Mexican-American War, the U.S. government fought to include in the spoils of war sufficient and appropriate lands for a southern transcontinental railroad route through the southwest. In 1850, the United States negotiated the purchase of an additional portion of southern New Mexico for precisely this reason. James Gadsden, who was sent to Mexico to seal the agreement, reportedly told President Santa Ana that “The projected railroad from New York to California must be built by way of the Messila [sic] Valley because there is no other possible route.”<sup>25</sup> El Paso, just east of the Mesilla Valley in southern New Mexico, was considered a possible stop on this projected route, which was one of several that had already been surveyed by the War Department of the federal government.<sup>26</sup>

We are accustomed to considering the railroad as an extension of federal power, but most early railroad development occurred at the state, rather than federal, level. In fact, during the first half of the nineteenth century, the chartering and development of railroad corporations occurred almost exclusively at the state level.<sup>27</sup> Railroads in this era tended to be the product of private investment, but also received public assistance in the

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<sup>24</sup> Part of the goal of this project is to situate economic development in its local legal context. Here I am aided by an observation by Duncan Kennedy, who writes: “[E]conomic activity can't be understood as something autonomous in relation to a set of passive institutional and legal conceptual constraints....Legal institutions and ideas have a dynamic, or dialectical, or constitutive relationship to economic activity.” Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850-2000*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 19-73*, 19 (David M. Trubek & Alvaro Santos, eds., 2006).

<sup>25</sup> S.G. REED, *A HISTORY OF THE TEXAS RAILROADS* 96 (1941). On the Gadsden Purchase and railroad development, see also ELY, *supra* note\_, at 49.

<sup>26</sup> Mildred L. Jordan, *Railroads in the El Paso Area 33-62* (1957) (unpublished M.A. thesis, University of Texas at El Paso) (on file with author).

<sup>27</sup> ELY, 2.

form of state aid and private donations, as well as the ability to exercise the power of eminent domain.<sup>28</sup> The eminent domain power was typically granted in the charters or incorporation statutes.<sup>29</sup> These methods of development not only supported railroad growth, but also, as we will see in the case of El Paso, had the power to reshape local land ownership.

In Texas, the process of railroad development grew precipitously in the 1850s. Seeing the prospects for a transcontinental railroad upon the transfer of Mexican lands after the U.S.-Mexico War, the state legislature was quick to act on its western border. In February of 1850, shortly after passing a law to organize the county of El Paso under the laws of Texas, the legislature passed another law that approved the incorporation of the Rio Grande Railway and Turnpike Company, with its western terminus “not further up than the place called El Paso del Norte.”<sup>30</sup> Between 1850 and 1860s, Texas acted to incorporate more than 50 more companies, traversing the state.<sup>31</sup>

The incorporation of railroad companies in western Texas drew new settlers there. Many of those arriving in El Paso in the 1850s assumed that the railroad line would be completed in short order, and they hinged their futures there on that prospect. One such resident, Henry L. Dexter, who had arrived in the area in 1854, wrote confidently to his sister in 1857 that “our Pacific Railroad is progressing finely and will doubtless reach El Paso in time.”<sup>32</sup> The railroads were not immune from national politics, however, and the advent of the Civil War put all such development on hold. Dexter and other residents of the El Paso area counting on the railroad’s swift arrival would have to wait almost three more decades to see their dreams realized. “I felt sure that the first road to the Pacific Ocean would pass through El Paso,” wrote local resident W.W. Mills, “and *so it would*, had it not been for the Rebellion.”<sup>33</sup> As newspaper editor S.H. Newman recalled, “El Paso had been a pretty flourishing place about the time that the first railroad across the continent was projected before the war between the States. But the war came on and it was not until 20 years afterwards that the [sic] El Paso began to realize her ‘manifest

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<sup>28</sup> For state assistance, see ELY, 19-30; for individual donations, 37.

<sup>29</sup> ELY, 35-39.

<sup>30</sup> An Act to establish the Rio Grande Railway and Turnpike Company, Feb. 5, 1850, H.P.N. Gammel, ed., *The Laws of Texas, 1822-1897*, 10 vols. (Austin: Gammel Book Company, 1898), vol. 3, 551-54.

<sup>31</sup> Jordan, *supra* note \_\_, at 13. Few of these dozens of companies actually succeeded in building track, but a number of them were purchased by larger corporations in the Reconstruction period and consolidated into the major lines.

<sup>32</sup> Letter from Henry L. Dexter to Mary Dexter Roundy, October 9, 1857, in Art Leibson, “A Stranger in an Alien Land: The Letters of Henry L. Dexter, 1854-1869, Part 1: ‘This Heaven Forsaken Country,’” *Password* 38, no. 2 (1993).

<sup>33</sup> WILLIAM WALLACE MILLS, FORTY YEARS AT EL PASO, 1858-1898, 28 (El Paso, Tex.: C. Hertzog, 1962) (1901).

destiny.”<sup>34</sup> During the war, many El Pasoans supported the Confederacy in part because of the connection between the southern transcontinental railroad route and the president of the Confederacy, Jefferson Davis. As head of the War Department in the 1850s, Davis had promoted a transcontinental route through El Paso, versus competing routes which would have taken the southern transcontinental further north.<sup>35</sup> Some residents apparently thought that their railroad fortunes were most secure in the hands of the Confederacy for this reason.

Of course, the Confederacy failed to deliver with its defeat in 1865. During Reconstruction, efforts began anew to develop railroad routes in the southwest. After the war, the federal government became more involved in railroad development all across the country.<sup>36</sup> In 1871, Congress authorized the Texas & Pacific Railroad Company to build a line through the El Paso area, granting them twenty square miles of public land for every mile of track completed.<sup>37</sup> The Texas & Pacific began building from New Orleans, reaching Fort Worth by 1876. Meanwhile, the Southern Pacific railroad was also building track, but from the west, seeking to be the first to complete the southern transcontinental route by linking the rest of the south and southwest to the Central Pacific line in California. When financial difficulties slowed the development of the Texas & Pacific line, leaving it stymied in Fort Worth, the Southern Pacific company increased its speed, building track on what would have been the Texas & Pacific right-of-way through Arizona. The future looked dire for the Texas & Pacific until 1880, when financier Jay Gould purchased the line and enabled it to begin rapid construction once again. By 1880, the two lines were both racing towards El Paso. The Southern Pacific made it first, however, arriving in El Paso on May 19, 1881. The first passenger train entered on June 1. The company continued building east of El Paso, but under a different name: the Galveston, Harrisburg, & San Antonio railroad, which was the Southern Pacific’s Texas subsidiary. The Galveston line connected El Paso to San Antonio in January of 1883.<sup>38</sup>

The Texas & Pacific, for its part, had continued building toward the west, but made an agreement with the Southern Pacific in November of 1881 to stop building at Sierra Blanca, a few miles east of El Paso, and to connect with the Galveston line.<sup>39</sup> By

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<sup>34</sup> S.H. Newman, *Reminiscences* (1906) (unpublished manuscript, Simeon H. Newman Collection, MS 060, C.L. Sonnichsen Special Collections Department, University of Texas at El Paso).

<sup>35</sup> Edward A. Leonard, *Rails to the Pass of the North*, 48 *PASSWORD* 11 (2003).

<sup>36</sup> ELY, *supra* note \_\_, at 43.

<sup>37</sup> See *id.* at 21. The 1871 act turned out to be the last major land grant given to the railroads by Congress, which was facing increasing public disapprobation over such large-scale contributions to the railroads. See ELY, *supra* note \_\_, at 58.

<sup>38</sup> Jordan, *supra* note \_\_, at 132.

<sup>39</sup> The two companies reached their agreement only after first taking each other to court in El Paso and submitting claims and counterclaims to the Interstate Commerce Commission. See *THE LONE STAR*, Nov. 2, 1881 (reporting on the litigation between the two railroads); Jordan, *supra* note \_\_, at 127-31.

agreeing to use each other's lines, the two companies finally connected a southern transcontinental route, connecting their lines at Sierra Blanca on December 16, 1881.<sup>40</sup>

On July 1, 1881, just one month after the Southern Pacific began service between San Francisco and El Paso, yet another railroad line arrived: the Atchison, Topeka & Santa Fe. This line came down from the northeast, beginning in Kansas City and passing through Colorado and New Mexico. Just west of El Paso, in Deming, New Mexico, the Santa Fe line connected with the Southern Pacific and continued on to California. The same corporation financing the Santa Fe also provided financing for the Mexican Central railroad, to run between El Paso del Norte and Mexico City. Construction of this line began in 1881 and was finally completed in 1884.

The arrival of two transcontinental railroads in the El Paso area – running east to west and north to south – was understandably met with great excitement on the part of most residents of El Paso, for a whole host of reasons. For merchants, it promised a method of shipping and receiving goods as well as a new clientele to buy their goods. For farmers, it meant the opening of bigger and better markets for their crops. For ranchers, it provided a faster and more efficient method of shipping beef cattle. For all residents who had traveled between El Paso and other parts of Texas or the rest of the country, the railroads promised a safer, faster means of transport. Many were the complaints about stage coach travel, which left passengers not only bruised and exhausted but also vulnerable to Indian attacks. On his first trip from San Antonio to El Paso in the spring of 1871, newly-appointed district attorney James P. Hague traveled on a stagecoach accompanied by a military escort as well as an Indian scout to determine the safest routes. The coach had to change course due to a recently reported Apache “massacre” along the more-traveled route. Hague reported wearily to his new wife back in San Antonio, “The speed of a coach depends upon how frightened the horses are, or how drunk the driver is, and how many Indians we hope to never meet. Take those things into consideration for it is by the grace of God that we arrived with our scalps on.”<sup>41</sup>

Hague had other reasons besides personal comfort to look forward to the railroads' arrival in El Paso. As an attorney, Hague stood to gain professionally from railroad transit for a number of reasons. Like farmers and merchants, he would benefit simply from the prospect of a bigger population in the county, which would presumably mean more clients and more litigation. He and his fellow lawyers would also benefit from being able to travel more easily to other parts of Texas, such as San Antonio, where all federal cases originating in El Paso went for trial. Up until the railroads' arrival, pursuing federal cases in San Antonio or appealing state cases to Austin was prohibitively expensive for clients, due to the costs and amount of time involved. As a group of residents stated in a petition to the U.S. Congress in 1883, “the enormous

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<sup>40</sup> Leonard, *supra* note \_\_, at 20-25.

<sup>41</sup> Letter from James P. Hague to Flora Hague (April 25, 1871), *reprinted in* Lillian Hague Corcoran, *He Brought the Railroads to El Paso -- the Story of Judge James P. Hague*, 1 PASSWORD 47 (1956).

expense attending the production of witnesses and the attendance of parties [in San Antonio] is often a practical denial of justice.”<sup>42</sup>

What made the professional prospects of lawyers even more hinged on the railroads was the symbiotic relationship that developed between railroad investors and directors and local lawyers. El Paso’s legal profession as a whole was deeply intertwined with – and greatly benefited from – the arrival of the railroads. Hague and several other prominent lawyers and judges aided the railroads, some of them from the very beginning of American occupation, by lobbying for them before the state legislature, representing them in court, and brokering deals to ensure that they received rights-of-way and the grants of land that they needed to pass through the area. Railroad corporations and politicians were central to the overall development, but it was local lawyers who laid the groundwork, capitalizing on the momentum begun by leaders in Austin and Washington, D.C.

Land was an essential precondition for railroad development. While railroads were granted the rights of eminent domain, exercising this power could prove expensive and time-consuming. Many railroad corporations preferred either to accept donations of land, at no cost to them, or to buy land outright.<sup>43</sup> In El Paso, the railroads did not need to exercise eminent domain. Thanks to the local legal profession, El Paso delivered the land they needed, either for free or for a nominal fee. By 1886, railroad corporations owned or controlled almost one-third of all land in El Paso County.<sup>44</sup> Railroad leaders, in turn, granted local lawyers seats on their boards of directors and hired them as counsel. By tracing the involvement of three of the most prominent of these lawyers – Josiah Crosby, A.J. Fountain, and James P. Hague – we can begin to understand how the local legal profession was integral in bringing the railroads. Such an examination shows the ways that the promise of the railroads redrew the boundaries in El Paso even before the 1880s, by changing ownership of land in profound ways.

### ***B. Lawyers and Land***

When the U.S. government received more than 500,000 square miles of Mexican territory after the U.S.-Mexico War, it pledged to recognize all preexisting land rights.<sup>45</sup> Attempting to ascertain the status of land in the southwest proved difficult, however, for a whole host of reasons. First of all, much of the land throughout the new southwestern

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<sup>42</sup> See *Petition from Citizens of El Paso County to Congress, December 1883*, in THE LONE STAR, Dec. 29, 1883. The petition was drafted after the railroads arrived, when even a 700-mile train ride seemed too onerous. Residents were finally appeased in 1885, when El Paso became a seat of the Western Judicial District of Texas.

<sup>43</sup> See ELY, *supra* note \_\_, at 38.

<sup>44</sup> EL PASO BUREAU OF INFORMATION, THE CITY AND COUNTY OF EL PASO, TEXAS, CONTAINING USEFUL AND RELIABLE INFORMATION CONCERNING THE FUTURE GREAT METROPOLIS OF THE SOUTHWEST, ITS RESOURCES AND ADVANTAGES FOR THE AGRICULTURALIST, ARTISAN, AND CAPITALIST 62 (El Paso, Times Publishing Company 1886).

<sup>45</sup> Treaty of Guadalupe Hidalgo, *supra* note \_\_.

portion of the U.S. was under the control of Indian nations and tribes, either by custom (in the case of nomadic tribes such as the Apache) or by actual long-standing land grants from the Spanish crown (in the case of settled tribes such as the Tigua Indians of El Paso). Those portions occupied by Mexican settlers were often also owned under grants of either the Spanish crown or the Mexican government, which declared independence after 1821. Some of these grants had been to private individuals, while others were given in common to multiple families.<sup>46</sup> While there was a tradition in Anglo-American law of recognizing communal land grants, by the mid-nineteenth century this had fallen out of favor.<sup>47</sup> Hence many of the instruments of land ownership under Spanish and Mexican law were not immediately translatable into Anglo-American legal terms. Furthermore, many Anglo-American dominated state and local governments in the southwest were loathe to acknowledge the land claims of their Mexican-American and Indian fellow citizens, especially given the land needs of the increasing number of Anglo-American settlers to the southwest. Through a combination of outright fraud, subtle deception, and costly litigation, states and municipalities managed to divest a great number of Mexican and Indian landholders.<sup>48</sup>

The push for railroad development was part of this overall story of land ownership in the southwest in the nineteenth century.<sup>49</sup> Railroads needed land, but not just any land: they sought secure titles in order to ensure their investment was sound. Titles to land along the border – thanks to this occupation by the U.S. and the shifts in policy – were uncertain, to say the least. One of the first lawyers to tackle the challenge of unclear titles in the El Paso area was Josiah Crosby. Crosby arrived in El Paso in 1852 and served as the area's district attorney. He had high hopes for the eventual settlement and expansion of the area. As district attorney, private counsel, and later state representative, Crosby made many efforts to make sure the lands within the county had secure titles, in order to foster such development, as well as to enhance his own financial standing.

When Crosby arrived, the county of El Paso consisted of several settlements, spread out along the banks of the Rio Grande. Three of these – San Elizario, Socorro,

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<sup>46</sup> For traditions of land ownership in Mexico and their interpretation in the southwestern United States, see MARÍA E. MONTOYA, *TRANSLATING PROPERTY: THE MAXWELL LAND GRANT AND THE CONFLICT OVER LAND IN THE AMERICAN WEST, 1840-1900* (2002).

<sup>47</sup> On Anglo-American law and communal property, see EDWARD T. PRICE, *DIVIDING THE LAND, EARLY AMERICAN BEGINNINGS OF OUR PRIVATE PROPERTY MOSAIC* 29-48 (1995); Carol Rose, *Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 720 (1986).

<sup>48</sup> See Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a 'Naked Knife'*, 4 MICH. J. RACE & L. 39, 78-133 (1998).

<sup>49</sup> John Coatsworth has demonstrated the ways that railroads contributed directly to the concentration of land ownership in Mexico in the nineteenth century, by making agriculture more profitable and thus raising land prices as a result. He notes that the railroads “provid[ed] a powerful and unexpected incentive for legal and illegal expropriation of rural properties by men of wealth and political influence.” JOHN H. COATSWORTH, *GROWTH AGAINST DEVELOPMENT: THE ECONOMIC IMPACT OF RAILROADS IN PORFIRIAN MEXICO* 15, 149-174 (1981).

and Ysleta – had been founded during the colonial era. The vast majority of the population was of Mexican descent, with approximately 200 Tigua Indians living in Ysleta as well. The fourth main settlement in 1850s El Paso was known as Franklin. Here most of the area’s few Anglo-American settlers lived, although there were several scattered in the other settlements as well. Ysleta was the largest, with close to 1,000 residents, and it served as the county seat.

Crosby had a eye for a new development. His vision for El Paso’s future growth did not have immediate effect in the 1850s; rather, his importance was in laying the groundwork during that time for the eventual take over of Anglo-Americans in the county as a whole. He purchased the Ponce de León grant – one of the first grants of land on the now-American side of the river – from one of his clients, William T. Smith, in late 1859 with the express purpose of developing the area in preparation for the railroads that, they believed, were destined to come. He and his business partners, who called themselves the El Paso Company, hired Anson Mills to survey and subdivide the grant, dividing it into parcels that could be sold for homes and businesses upon the railroad’s arrival. Crosby and his associates assumed that the growth that the projected railroad line would bring had, as Mills later recalled, “made it necessary to enlarge the village [of Franklin].”<sup>50</sup> Crosby’s efforts to prepare Franklin, which was then the smallest and least developed of the settlements in El Paso County, for the railroad’s arrival eventually paid off. In the 1880s, under its new name as the city of El Paso, it would become the railroad hub of the county, bypassing the other settlements in the process.

When railroad development began again after the Civil War, it was another El Paso lawyer, Albert J. Fountain, who laid new ground work for the railroads’ arrival. Fountain had arrived in the area during the Civil War, while serving as an officer with the Union Army. Under the army’s command, he pursued Mescalero Apaches, who were thought to be providing support to Confederate forces. After the war, thanks to the influence of the local Republican Party leadership, he became deputy collector of customs, then was elected a member of the state senate in 1868.<sup>51</sup>

Whereas Crosby had established a new town plot aimed at attracting the railroads, Fountain engineered the reorganization of the three already-established settlements in the county: San Elizario, Socorro and Ysleta. In the process, he managed, with the help of other local lawyers and politicians, to alter profoundly the landholding pattern of the county’s Tigua Indians, as well as to establish a new precedent for the further privatization of Spanish communal land grants.

By the late 1860s, Fountain had parlayed his status as Indian fighter and staunch Republican into a powerful position in the state legislature, as chairman of the Senate Indian Affairs Committee. He also served on the boards of directors of two of the

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<sup>50</sup> ANSON MILLS, *MY STORY* 53 (1918). Franklin was the first name of the area that would eventually become known as the city of El Paso. It was named for Benjamin Franklin Coons, one of the first Anglo-American settlers in the area after the Treaty of Guadalupe Hidalgo.

<sup>51</sup> *See* A.M. GIBSON, *THE LIFE AND DEATH OF COLONEL ALBERT JENNINGS FOUNTAIN* 22-23 (1956).

railroad companies.<sup>52</sup> These two areas of state government were intimately related, since the extermination of Texas Indians was seen as one of the paramount preconditions to a civilized society that could be built around the railroads.<sup>53</sup> The railroads also needed land, some of which was still in the hands of Indians like the Tigua. Fountain was deeply connected, therefore, to efforts in Reconstruction Texas to “civilize” the remaining frontier areas, which for men like Fountain meant corralling or exterminating Indians and making as much land as possible available for capital investment.

On March 3, 1871, the Congress of the United States authorized the Texas & Pacific Railroad Company to build a transcontinental line through the El Paso area.<sup>54</sup> It was a move that El Paso residents had long anticipated, and politicians from El Paso were quick to act. Just one month later, Fountain, who had been elected a state senator by El Pasoans and others in the eleventh congressional district in 1868, introduced laws to incorporate the towns of San Elizario, Socorro and Ysleta.<sup>55</sup> Prior to this, they had been unincorporated towns, meaning that there was no municipal government to oversee town land or to levy taxes. In addition to bringing “civilization” to Texas through the modernizing forces of local government, the process of town incorporation also served the important purpose of settling land titles in the newly incorporated towns. The laws established a town council for each of the settlements, composed of a mayor and nine aldermen, all of whom would be elected by the residents of the town. Each town would also have a constable, secretary, treasurer, assessor and collector, and “alcalde of acequias,” as the laws stated (the *alcalde* was similar to a justice of the peace under the Mexican legal system).<sup>56</sup> The town government would be able to tax its residents and would be given the power to regulate all manner of industries and activities, including licensing disorderly houses, regulating the running of sheep, swine, horses, and dogs, and overseeing the maintenance of the *acequias* (irrigation ditches).<sup>57</sup>

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<sup>52</sup> Nicholas P. Houser, *The Ysleta Grant (to the Place of Beginning)*, in YSLETA DEL SUR PUEBLO ARCHIVES 99 (2000).

<sup>53</sup> On the relationship of the state of Texas and Indian tribes, see GARY CLAYTON ANDERSON, *THE CONQUEST OF TEXAS: ETHNIC CLEANSING IN THE PROMISED LAND, 1820-1875* (2005); Brian Delay, *The War of a Thousand Deserts: Indian Politics in the Era of the U.S.-Mexican War* (2004) (unpublished Ph.D. Dissertation, Harvard University) (on file with author); Brian Delay, *Independent Indians and the U.S. Mexican War*, 112 *AMERICAN HISTORICAL REVIEW* \_\_ (2007).

<sup>54</sup> *United States Statutes at Large*, 16:673-679 (1871).

<sup>55</sup> “Act to Incorporate the Town of San Eleceario [sic], in El Paso County,” April 5, 1871, in H.P.N. Gammel, ed., *The Laws of Texas, 1822-1897*, 10 vols. (Austin: Gammel Book Company, 1898), vol. 6, 1221-27; “An Act to Incorporate the Town of Socorro in El Paso County,” April 26, 1871, in Id., vol. 6, 1314-21; “An Act to Incorporate the Town of Ysleta, in El Paso County,” May 9, 1871, in Id. vol. 6, 1435-41. *The Laws of Texas* can be found on-line at <http://texinfo.library.unt.edu/lawssoftexas/> (last visited Sept. 5, 2008).

<sup>56</sup> On the *alcalde*, see CHARLES CUTTER, *THE LEGAL CULTURE OF NORTHERN NEW SPAIN, 1700-1810* (1995).

<sup>57</sup> Acts to Incorporate the Towns of San Eleceario, Socorro, and Ysleta, *supra* note \_\_.

Most significantly, the town council was given the power to “grant or sell portions of real estate” within the town limits. The acts in essence provided a vehicle for the town government to tax and sell the “unoccupied” lands in the settlements, as well as allowing residents to perfect title to occupied lands. In San Elizario and Socorro, no action was taken to fulfill the incorporation statutes until the late 1870s.<sup>58</sup> In Ysleta, however, the incorporation law had an immediate impact. Over the course of four years, the town council approved hundreds of land conveyances.<sup>59</sup> By the mid-1870s, the land of Ysleta was consolidated in far fewer hands, since a few investors were able to buy up plots of land while poor farmers were forced to sell due to inability to pay the taxes now levied.

Ysleta provided a good target for men seeking to capitalize on land in the El Paso area. Unlike San Elizario and Socorro, Ysleta still had a large population of native Indians, the Tigua. The Tigua Indian community had been resident in the El Paso area since the Pueblo Revolt in 1680.<sup>60</sup> Their rights to the land within the Tigua settlement had actually been certified by the state of Texas in 1854, but by the 1870s such Indian land rights were increasingly challenged all across the state. Communal land, in particular, was in an ambiguous position at this time: all such property that was once recognized in Mexico was supposed to be respected under the terms of the Treaty of Guadalupe Hidalgo, but American property law at that time rarely recognized communal rights to land. The Tigua themselves were in an ambiguous position as American citizens as well. Under the Treaty of Guadalupe-Hidalgo, all Indians should have been made citizens of the United States, since they were by that time full citizens of Mexico. Under American policy, however, many Indian communities were still considered wards of the state, thereby lacking significant rights such as the right to vote and to alienate their lands.<sup>61</sup> Thus it is hard to define exactly what the Tigua’s rights of citizenship were by the 1860s and 1870s. Under the original Spanish grant of 1751, they were not allowed to sell or will to their heirs any of the communal property granted to them. Yet we have clear proof that they did so after the Ysleta Incorporation. As wards of the state, they were not granted the franchise, yet there is clear evidence that some of the Tigua did vote in county and state elections and hold office in the 1860s and 1870s.<sup>62</sup>

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<sup>58</sup> J. J. BOWDEN, SPANISH AND MEXICAN LAND GRANTS IN THE CHIHUAHUAN ACQUISITION 153, 58-59 (1971); RICK HENDRICKS AND W.H. TIMMONS, SAN ELIZARIO: SPANISH PRESIDIO TO TEXAS COUNTY SEAT 86 (1998).

<sup>59</sup> Deed Records, Book B, El Paso County Records, MS 132, C.L. Sonnichsen Special Collections Department, University of Texas at El Paso.

<sup>60</sup> On the Tigua of Texas generally, see Nicholas P. Houser, *The Ysleta Grant (to the Place of Beginning)*, in YSLETA DEL SUR PUEBLO ARCHIVES (2000); Thomas A. Green, *Folk History and Cultural Reorganization: A Tigua Example*, 89 THE JOURNAL OF AMERICAN FOLKLORE (1976); MARK EDWIN MILLER, FORGOTTEN TRIBES: UNRECOGNIZED INDIANS AND THE FEDERAL ACKNOWLEDGMENT PROCESS 209-255 (2004).

<sup>61</sup> *Lipan Apache Tribe v. United States*, 180 Ct. Cl. 487 (1967).

<sup>62</sup> The voting activity of Tigua Indians is gleaned from a comparison of the 1867 Voter’s Registration List for Ysleta with a list compiled by Nicholas Houser of known Indian landholders in the 1871 Tays Survey of Ysleta. See 1867 Voter Registration Records, Texas State Library

The Tigua themselves lost the most in the incorporation, since their communal lands were divided up into lots by the council and put up for sale. The Tigua were able to petition for these lots, but many quickly sold them, apparently because they could not afford the taxes or were seeking quick cash to supplement their meager incomes as farming families.<sup>63</sup>

Fountain was not the only one to benefit from the incorporation. Others who also benefited from the incorporation were the members of the town council, other lawyers providing services to the town, and a few land investors. One of those benefiting was José María Gonzáles. Gonzáles was the mayor of Ysleta and at one time a surveyor, *alcalde*, and head of the county commission. Gonzáles' family had been resident in Ysleta since at least the Mexican period, when his father was an *alcalde* under Mexico. Gonzáles was married to a woman from Senecú, a Mexican settlement across the river, named María Andrea Rubio. She herself was the daughter of an *alcalde* from that town. His ties went beyond just the Mexican-American population; he also partnered with Anglo-American lawyer William Pierson, with whom he operated a ferry service across the Rio Grande.<sup>64</sup> After the incorporation of Ysleta, José María Gonzáles served as mayor and head of the town council. His brother, Benito Gonzáles, served alongside him as an alderman on the town council. In their positions on the town council, the Gonzáles brothers were able to control local politics through their control of land, as well as to increase their personal profits by gaining control over supposedly "unused" lands in Ysleta.

One of the primary purchasers of land granted by this petition process was Ward Blanchard. Although the historical record is not clear, it appears that Blanchard was an agent for the railroads, charged with purchasing lands for their eventual passage through the area. The El Paso County deed records contain a gift of 640 acres near Ysleta from the San Antonio & Mexican Gulf Railway Company to Blanchard in 1860, which he filed with the county clerk in 1874.<sup>65</sup> It is possible that this deed was in payment for Blanchard's services as a land agent in the El Paso area. Whether he was acting on his own auspices or at the bequest of outside investors, it is clear that Blanchard bought up most of the land that was sold by petitioners after they had acquired their deed from the town council.<sup>66</sup>

Fountain, Gonzáles, and Blanchard all attempted to pave the way for railroad development in El Paso County. They did so by attempting to create a firm title to lands – an attractive prospect for railroad companies, which wanted to avoid land litigation

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and Archives Commission, MF Reel VR-4; Nicholas P. Houser, *The Ysleta Grant (to the Place of Beginning)*, in YSLETA DEL SUR PUEBLO ARCHIVES \_\_ (2000).

<sup>63</sup> Deed Records, Book E, El Paso County Records, MS 132, C.L. Sonnichsen Special Collections Department, University of Texas at El Paso; Id., 100-08.

<sup>64</sup> Houser, *supra* note \_\_, at 86-88.

<sup>65</sup> See Deed Records, Book E, p. 375, El Paso County Records, MS 132, C.L. Sonnichsen Special Collections Department, University of Texas at El Paso.

<sup>66</sup> Houser, *supra* note \_\_, at 106.

wherever possible.<sup>67</sup> Although the railroads themselves did not arrive until the 1880s, this land speculation, which resulted from the announcement of their plans and the actions of these local politicians, greatly effected the community long before.

The same year that Ysleta became incorporated, another lawyer arrived in town. James Hague. Hague was born in Missouri, studied law in Jefferson, Texas, and was admitted to the Texas bar when he was just 21-years-old. He was serving as a clerk in the Texas senate when the governor, E.J. Davis, appointed him to be the district attorney for El Paso County. Hague arrived in El Paso via stagecoach in 1871.<sup>68</sup>

Initially, Hague made strong ties with Ysleta. He served as their counsel in a lawsuit against Senecú, a neighboring town across the Rio Grande in Mexico. For his services, he was awarded land from the Ysleta town council as well.<sup>69</sup> But his hopes for the future were pinned on the town of Franklin, where he resided along with most of the county's Anglo-American legal establishment.<sup>70</sup> On July 4, 1871, he wrote prophetically, "The growth of El Paso depends upon the Southern Pacific coming to this exact spot, which will make El Paso a great town in a few years."<sup>71</sup>

In June of 1873 Hague was one of the cofounders of the El Paso Real Estate and Immigration Company. His fellow founders, Joseph Magoffin and Simeon Hart, had lived in El Paso much longer than he but shared his vision of a burgeoning and modernized county.<sup>72</sup> In addition to acquiring land in Ysleta, Hague had also either purchased or been given, in exchange for legal services, a portion of the original Ponce de León grant. On April 9, 1881, he deeded his portion of this land to the Galveston, Harrisburg and San Antonio Railway Company. Six other El Paso residents did the same, providing in total a 21.4 acre parcel upon which the Southern Pacific, the owner of the Galveston railway, was able to build freight and passenger depots as well as machine shops and residence quarters for employees.<sup>73</sup> It is unclear whether Hague himself first approached the Southern Pacific or if they came to him; his daughter later recalled that

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<sup>67</sup> When the railroad finally did pass through Ysleta, however, few profited directly from their arrival. The railroads were able to capitalize on their power of influence to receive a right-of-way through Ysleta for no consideration. *See id.* at 99.

<sup>68</sup> BROADDUS, *supra* note \_\_, at 113-14.

<sup>69</sup> Deed Records, Book E, 284, 287-288, 541-542, El Paso County Records, MS 132, C.L. Sonnichsen Special Collections Department, University of Texas at El Paso.

<sup>70</sup> Hague and his family initially rented a house from Louis Cardis, who was killed by Charles Howard in 1877. See Aileen Hague Hill, interview by Jo Ann Hovious, April 10, 1973, Interview 79, p. 1-2, Oral History Institute, University of Texas at El Paso; Lillian Hague Corcoran, *He Brought the Railroads to El Paso -- the Story of Judge James P. Hague*, 1 PASSWORD \_\_ (1956).

<sup>71</sup> Letter from James P. Hague to Flora Brinck Hague, September 4, 1871, in Corcoran, *supra* note \_\_, at 47.

<sup>72</sup> *Handbook of Texas Online*, s.v. "James Price Hague," <http://www.tsha.utexas.edu/handbook/online/articles/HH/fhaff.html> (accessed November 9, 2006).

<sup>73</sup> *Stevens v. Galveston, Harrisburg & San Antonio Railway Company*, 169 S.W. 644, 648 (1914 Tex. App.).

Hague had planned carefully to attract the railroad. “[I]n order to bring [the Southern Pacific] in,” she noted, “my father donated land right through the center of town. He donated that land as a special gift with the understanding that if it stopped being used as railroad property it would revert back to the heirs.”<sup>74</sup>

The consideration given by the Galveston railway for the property was nominal: only one dollar in most cases. In Hague’s case, the land was given as a gift. It was clear that the real benefit to be gained by Hague and the other sellers was the proximity of their businesses and other properties to the land in question. As the Texas Court of Appeals found in a later lawsuit over the parcel, the “real consideration” was the “probability that [sellers’] other land would be enhanced in value” by the railway’s location there, thereby allowing Hague and others “to derive a profit therefrom.”<sup>75</sup>

Less than a year after Hague granted land to the railway, he was in court representing the Southern Pacific in its suit against the Texas & Pacific Railroad.<sup>76</sup> One year later, in 1882, a local paper noted that Hague was employed not just by one but two railroad companies.<sup>77</sup> His fellow lawyer and judge, Allen Blacker, was also employed by a railroad company. Hague’s law practice was in part responsible for his ability to attract the railroads to El Paso, since he was able to afford to purchase and donate land because of his business dealings. Like other lawyers practicing in El Paso during this period, Hague was sometimes paid by his clients in land rather than cash, either because cash was not at hand or because the cases themselves involved land and he was able to negotiate a portion of this land as his payment upon a successful verdict. In turn, Hague was then able to profit from the railroad’s presence, since he became one of their primary attorneys in the area. One of his heirs noted proudly that Hague left “a large estate,” being one of the wealthiest men in El Paso before his untimely death from tuberculosis in 1895.<sup>78</sup>

The stories of these three lawyers – Crosby, Fountain, and Hague – demonstrate the deep involvement that those in the legal profession had in reshaping the community. In the 1850s, Josiah Crosby laid the groundwork for the railroads to pass through El Paso by introducing and passing legislation regarding titles to land, purchasing such land himself, and having it surveyed in preparation for the new populations the railroads could bring. In the late 1860s and early 1870s, Albert Fountain passed incorporation statutes which profoundly altered patterns of land ownership in the county. And in the 1870s and early 1880s, James Hague managed to entice the railroads to pass through Franklin with grants of land, becoming counsel for the railroads in the process. Hague’s actions also managed to ensure that the Anglo-American-dominated part of the county – which by the 1880s was known not as Franklin but as the city of El Paso – would receive the benefits

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<sup>74</sup> Aileen Hague Hill, interview by Jo Ann Hovious, April 10, 1973, Interview 79, transcript, p. 11, Oral History Institute, University of Texas at El Paso.

<sup>75</sup> *Stevens v. Galveston, Harrisburg & San Antonio Railway Company*, 169 S.W. at 646.

<sup>76</sup> See THE LONE STAR, November 2, 1881, 3.

<sup>77</sup> THE LONE STAR, March 4, 1882, 2.

<sup>78</sup> Corcoran, *supra* note \_\_\_, at 54.

of railroad business. The lines bypassed the other settlements of Socorro and San Elizario, and had only a spur route to Ysleta.

After the railroads arrived in El Paso, there was yet more work to do. Members of the local elite sought to draw migrants and money to the area. Local lawyers like Hague and his fellow lawyer and district judge Allen Blacker became important boosters of the borderland region. These attorneys' actions thus included not only legislative and financial support for the railroads but also, importantly, rhetorical support and promotion of the area as a whole. One of the remarkable things about this promotion is how it drew on El Paso's border location as a point of strength, thus situating the railroads as key mechanisms of transnational commerce. The next section will explore this role of the railroads in transnational commerce and the ways that the local legal profession in El Paso shaped this new social vision.

## II. PROMOTING THE BORDER

Let us return now to that June day in 1881 when the first passenger car of the Southern Pacific Railroad arrived in El Paso. In the fanfare and excitement, the festivities were much the same as those that occurred in other cities in the U.S. once the railroad pulled in. These momentous occasions were typically marked by triumphant speeches and civic celebrations. There was one key difference in El Paso, however: the arrival was celebrated not only in American but also in Mexican style. The stores and homes in the town were decorated not only with flags and bunting in red, white, and blue, but also in red, white, and green – the colors of the Mexican flag. Canons fired salutes not only to Texas and California (the starting point of the Southern Pacific), but also to Mexico. Dignitaries from Mexico were present, sharing the well-wishes of their fellow Mexican citizens. Those there to witness the celebrations were themselves predominantly of Mexican descent, including many residents of the Mexican city directly across the Rio Grande, El Paso del Norte. Mexican officials were invited to the formal ball that evening, and the guests were entertained with Mexican music from a band from El Paso del Norte.<sup>79</sup>

The difference between El Paso and cities in the interior of the U.S. extended beyond just the methods of celebrating the railroad's arrival. There was also a key difference in the expectations that local residents brought. They perceived of the railroad as a tool not just for transcending national divides – tying New York to San Francisco, for example – but also international ones. Local residents of El Paso were keen to capitalize on the opportunity afforded by such a connection. El Paso's lawyers – along with merchants and local politicians – worked to promote the city and attract investors,

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<sup>79</sup> EL PASO HERALD, June 1, 1881. The cross-cultural character of the railroad welcoming celebration was typical of other major celebrations in many border towns in the nineteenth century. As historian Rachel St. John notes, "All along the [U.S./Mexico] boundary line, Americans and Mexicans celebrated national holidays together. Washington's Birthday, Mexican Independence Day, Cinco de Mayo, and the Fourth of July were all commemorated with enthusiasm and pageantry that blended national traditions." St. John, *Line in the Sand*, *supra* note \_\_, at 124.

industry, and labor. They were quick to note the advantage of El Paso's border location and its access to the markets and goods of Mexico. In fact, the era witnessed a new level of economic and commercial partnership between residents of El Paso and El Paso del Norte as both attempted to take advantage of the easy passage of goods across what they portrayed as a relatively open border.<sup>80</sup>

In their perceptions of the railroad's promise, local residents were not wrong. The railroad was a key mechanism in the push towards transnational connection in the nineteenth century. It opened up markets for Mexican goods in the U.S. and vice versa. It also enabled American corporations to utilize Mexico's rich natural resources, which now could be brought much more easily via railroad to industrial sites located along the border.<sup>81</sup> In El Paso, for example, the railroads contributed directly to the creation of a major smelting plant, the American Smelting and Refining Company (ASARCO).<sup>82</sup> This industry dominated El Paso's economy for much of the twentieth century.

The railroads did not only bring commercial opportunity, however. They also brought a new way of talking about the border and about the people living there. Contemporaries in the borderlands heralded the railroads as a way to connect people not only across state lines but also across international ones. They touted the ways in which these new lines would supersede the border and create vital transnational commercial ties. As Judge Allen Blacker declared in his speech upon the arrival of the Southern Pacific, the railroads represented "the iron bands which shall bring us together," across divides of space and national sovereignty.<sup>83</sup>

It was no coincidence that two lawyers – Judge Allen Blacker and District Attorney James Hague – spoke at the formal celebration of the arrival of the Southern Pacific in June of 1881.<sup>84</sup> Hague also presided at the opening of the new Santa Fe, Atchison, & Topeka depot in November of that year.<sup>85</sup> Their prominent place in the festivities is logical given the efforts they had made personally and professionally to bring the railroads through El Paso, as well as the general position of prominence that legal professionals had in nineteenth-century communities. Their role went beyond public oratory, however, to encompass the vigorous promotion of El Paso as the "great metropolis of the southwest," as one newspaper article christened it.<sup>86</sup> Local lawyers

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<sup>80</sup> For further discussion of the development of transborder economies, see Rachel C. St. John, *Line in the Sand: The Desert Border between the U.S. And Mexico, 1848-1934*, 74-123 (2005) (unpublished Ph.D. dissertation, Stanford University) (on file with author).

<sup>81</sup> For the history of railroad development in Mexico, see COATSWORTH, *supra* note \_.

<sup>82</sup> See MARIO T. GARCÍA, *DESERT IMMIGRANTS: THE MEXICANS OF EL PASO, 1880-1920*, 18-21 (1981); Monica Perales, *Smelertown: A Biography of a Mexican-American Community, 1880-1973*, 42 (2004) (unpublished Ph.D. Dissertation, Stanford University) (on file with author).

<sup>83</sup> Allan Blacker, quoted in *THE EL PASO HERALD*, June 1, 1881.

<sup>84</sup> *EL PASO HERALD*, June 1, 1881.

<sup>85</sup> *THE LONE STAR*, Nov. 5, 1881.

<sup>86</sup> *THE LONE STAR*, Oct. 15, 1881.

partnered with merchants, investors, and journalists to craft a vision of El Paso as a land of progress and civilization.<sup>87</sup>

This section explores the role of local attorneys and other members of the civic-commercial elite in the promotion of El Paso after the railroads arrived, and explains how the rhetoric they used created a vision of the city as a key transnational hub. The discourse encouraged a vision of a borderless economy, open to opportunities from either the U.S. or Mexico. At the same time, this rhetoric of transnational promise also drew on a conception of Mexicans themselves as backwards and primitive. Boosters insisted that El Paso was now open to progressive development, free of the shackles of its Mexican ties. They created a vision of the city as simultaneously fully American yet innately transnational. A connection to *Mexico* – to its markets and goods – was portrayed as a great benefit, while a connection to *Mexicans* – in the form of residents and neighbors on the American side – was not. Such a formulation began in this first wave of globalization in the nineteenth century, but it continues to echo in today's discourses on trade and migration.

#### ***A. The Transnational Future***

“Boosterism,” as it is known, was a common feature of nineteenth-century urban growth. Boosters, writes historian Richard White, “aspired to be human magnets.”<sup>88</sup> They sought to draw new populations to towns and cities in large part to increase their own wealth, since growth pushed up property values and thus, in theory, raised the financial profile of all those living in the boosted area. Boosters could be single individuals, acting to promote particular land schemes, or they could be full-fledged community organizations, sponsored by local chambers of commerce or by national corporations such as the railroads.<sup>89</sup>

There were many in El Paso in the 1880s who were interested in promoting its future and encouraging further investment and population growth. Among them were men like J. Fisher Satterthwaite, a businessman from New York who had invested in land northwest of the town of El Paso and who planned to subdivide and sell plots to new arrivals.<sup>90</sup> A map of the Satterthwaite addition to El Paso, which was circulated throughout the country to encourage prospective immigrants to the city, touted El Paso's

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<sup>87</sup> Hague and Blacker were both, for example, financial contributors to one of the city's first newspapers, the *El Paso Times*, which was founded expressly to promote El Paso to the rest of the county JOHN MIDDAGH, FRONTIER NEWSPAPER: THE EL PASO TIMES 5-6 (1958).

<sup>88</sup> RICHARD WHITE, IT'S YOUR MISFORTUNE AND NONE OF MY OWN: A NEW HISTORY OF THE AMERICAN WEST 417 (1991)

<sup>89</sup> For a discussion of different types of boosters, see Allan G. Bogue, *An Agricultural Empire*, in THE OXFORD HISTORY OF THE AMERICAN WEST (Clyde A. Milner, II, Carol O'Connor, and Martha A. Sandweiss, eds., 1994), at 279-288; Don Harrison Doyle, *Social Theory and New Communities in Nineteenth-Century America*, 8 WESTERN HISTORICAL QUARTERLY 151, 152-154 (1977).

<sup>90</sup> See TIMMONS, *supra* note \_\_\_, at 171.

new status as “the only railroad frontier town and gateway to Mexico,” a status which would “very materially aid in making El Paso the metropolis of the Southwest.”<sup>91</sup> Satterthwaite was not alone in drawing attention to El Paso’s border location in his attempts to boost the area. Such border rhetoric permeated all efforts to promote El Paso in this period. This recurrent theme – of the “natural advantage,” as one writer put it, of El Paso’s border geography<sup>92</sup> – could be found in newspapers, public speeches, advertisements, and city propaganda. As an unnamed “special correspondent” to the *Dallas Morning News* wrote in 1886: “A glance at the geographical situation of El Paso will readily convince any one that her future is assured and that she will acquire importance with the development of the country at large.” The geographical situation to which the writer referred was El Paso’s proximity to other key commercial centers. “The city is said to be 1200 miles from everywhere, that being the distance in round numbers from San Francisco, St. Louis, City of Mexico and New Orleans.”<sup>93</sup>

The article that ran in the *Dallas Morning News* was no doubt informed by a pamphlet, published shortly before, that touted these same advantages, glowingly called “The City and County of El Paso, Texas, containing useful and reliable information concerning the Future Great Metropolis of the Southwest, Its Resources and Advantages for the Agriculturalist, Artisan, and Capitalist.” It was published by the newly formed “El Paso Bureau of Information,” a 38-member organization comprised for the most part of lawyers, merchants, builders, and city officials. James Hague, not surprisingly, was a member, as were several other attorneys. The president of the organization was district judge T.A. Falvey. It was, according to newspaper reports, widely circulated around the country to encourage investment in and immigration to El Paso.<sup>94</sup>

In this pamphlet, the city’s boosters were intent to highlight El Paso’s advantageous commercial connections not only to the rest of the United States but also, importantly, to Mexico. Its authors (who were unnamed) argued that the proximity to Mexico “is in many respects, perhaps, the most important and brilliant commercial prospect we have; and the rich traffic that it promises, and results that must follow, cannot be overestimated. The commerce of Chihuahua, Durango, Zacatecas, and other Mexican states, which are cut off from the ocean by high mountain barriers, is now passing through this city in a steady stream.”<sup>95</sup> In even more triumphalist language, the

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<sup>91</sup> Map No. 2 of Satterthwaite’s Addition to El Paso, 1884, in C. L. SONNICHSEN, *PASS OF THE NORTH: FOUR CENTURIES ON THE RIO GRANDE* 469 (1968).

<sup>92</sup> “El Paso’s Bright Future,” *DALLAS MORNING NEWS*, Feb. 8, 1886, p. 6.

<sup>93</sup> “El Paso’s Bright Future,” *DALLAS MORNING NEWS*, Feb. 8, 1886, p. 6.

<sup>94</sup> For details of the pamphlet’s dissemination, see *El Paso’s Bright Future*, *DALLAS MORNING NEWS*, Feb. 8, 1886, pg. 6.

<sup>95</sup> *EL PASO BUREAU OF INFORMATION, THE CITY AND COUNTY OF EL PASO, TEXAS, CONTAINING USEFUL AND RELIABLE INFORMATION CONCERNING THE FUTURE GREAT METROPOLIS OF THE SOUTHWEST, ITS RESOURCES AND ADVANTAGES FOR THE AGRICULTURALIST, ARTISAN, AND CAPITALIST* 8 (El Paso, Tex.: Times Publishing Company, 1886).

pamphlet declared this new stage of connection through the railroads as another era of American conquest:

Commerce is the weapon, the all-powerful arm, with which we have entered in earnest, and with every prospect of success, upon our conquest of Mexico, – a conquest not unlike that of Hernando Cortez, or Scott, or Taylor, yet we shall enter the halls of the proud Montezumas in greater triumph and return with a far richer reward than they, and with no stain or suspicion of wrong or oppression upon our consciences. We shall conquer Mexico with our arts of peace, our commerce; and El Paso will be the great highway through which it must be accomplished.<sup>96</sup>

Residents of El Paso del Norte, across the river in Mexico, may have cringed at such language of conquest, but the elite among them also proposed great commercial success to be gained from the railroad connection. During each opening ceremony for the railroad depots, at least one representative from El Paso del Norte was invited. Father Ramón Ortiz, the parish priest of El Paso del Norte, sounded an optimistic note in his remarks at the opening of the Santa Fe depot in November of 1881. The local paper reported that Ortiz “expressed the joy it occasioned the Mexican people to find themselves in the march of progress and enlightenment brought about through American enterprise; and he hoped the grand schemes of commerce which were now being concocted on this frontier would result in more closely uniting the two republics and placing them in advance of the civilization of the European monarchies.”<sup>97</sup> Shortly after the coming of the railroads, city leaders in El Paso and El Paso del Norte collaborated to create another mode of transportation connecting their two sides: a streetcar line. It was touted as “the only international street car line in the world,” since it traveled across a bridge over the Rio Grande to connect the U.S. and Mexico.<sup>98</sup>

While leaders in El Paso del Norte were thus invited to celebrate the railroad’s arrival as well as to plan for greater connections between the two sides, those of Mexican descent in *American* El Paso played a more uncertain role. Of the 38 members of the El Paso Bureau of Information, none had a Spanish surname. This might not be surprising for other towns in this era, but for El Paso this was a significant departure from the ways that business had been done in the past. Most daily business and governance up until the 1880s had been dominated by Mexican Americans, despite the predominance of Anglo-American attorneys in the area.<sup>99</sup> But the boosting of the El Paso area after the railroads proceeded in a different way, leaving out those Mexican-American businessmen, politicians, ranchers, and others who also had a stake in the future of El Paso county. Missing were men like José María Gonzáles, the one-time *alcalde*, mayor, and county commissioner in Ysleta, who had benefited from the incorporation scheme in the 1870s,<sup>100</sup> and Mariano Samaniego, a wealthy doctor and community leader on both sides

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<sup>96</sup> *Id.* at 22.

<sup>97</sup> “Formal Opening,” *THE LONE STAR*, Nov. 5, 1881.

<sup>98</sup> “El Paso on a Boom,” *KANSAS CITY STAR*, Feb. 6, 1886.

<sup>99</sup> See Tirres, *supra* note \_\_\_, at 71-82.

<sup>100</sup> See *supra* Part II, at \_\_\_.

of the border.<sup>101</sup> The lack of involvement of the Mexican American elite in the vision of this transnational future is a first sign of the contradictions within such rhetoric, which sought to play up the connections to Mexico but downplay the Mexican population within El Paso.

### ***B. The Mexican Past***

Boosters were quick to attempt to distance the city not only from its current Mexican population, but also from its Mexican past. The 1886 pamphlet admitted that

The population of El Paso County hitherto has not, unfortunately, been of the progressive kind. The Spanish or Mexican Indian race – of whom, until the advent of the railways, four years ago, about ninety-nine hundredths of the population was composed, and of which one-half of it is still composed – has caused the country to progress scarcely a move in the great march of material wealth and improvement, beyond what it was in the days of the Spanish vice-royalty in Mexico, to which it was once subject.<sup>102</sup>

Other writers described El Paso before the railroads as “an ungainly village of adobe houses,” as composed of “primitive buildings” and “ancient adobes.” Their critique addressed not only architectural style and building materials but also the supposed failure to properly use and improve the land. As one article argued, the “Mexican style of cultivation” had failed to bring the area to its full potential.<sup>103</sup>

It bears noting that such comments were a remarkable contrast to the observations made by Anglo-American newcomers in the 1850s and 1860s, who were impressed by the agricultural production of the area. One such traveler, Waterman L. Ormsby, wrote glowingly in 1858 of El Paso’s “vineyards and comfortable ranches built of adobe and looking extremely neat.” “The onions as well as the grapes of this locality,” he continued “are of world-wide celebrity, and El Paso wines are universally appreciated....”<sup>104</sup> What had changed was not, in fact, the crops themselves, but rather Anglo-American attitudes towards those who were producing them.

The distancing from the Mexican past was not only a rhetorical device. This contradiction, which permeated booster rhetoric about El Paso, came to have a lasting effect not only on perceptions of El Paso’s history but also on the futures of its *mexicano* residents. Such rhetoric was transformed into action in the mid- to late-1880s, as adobe buildings were razed and replaced by brick and wooden ones. One newspaper article,

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<sup>101</sup> See TIMMONS, *supra* note \_\_, at 163.

<sup>102</sup> EL PASO BUREAU OF INFORMATION, *supra* note \_\_, at 3.

<sup>103</sup> “City’s Remarkable Growth Shown in Rapid Increase of Tax Values,” EL PASO INTERNATIONAL DAILY TIMES, Jan. 14, 1902, p. 18; “El Paso’s Bright Future,” DALLAS MORNING NEWS, Feb. 8, 1886, pg. 6; “The New Southwest: Railroad Centres of the New Mexico System,” SAN FRANCISCO BULLETIN, Feb. 28, 1881, pg. 1.

<sup>104</sup> WATERMAN L. ORMSBY, THE BUTTERFIELD OVERLAND MAIL 77-78 (1960).

entitled “El Paso’s Bright Future: Indeed the Marvel of the Far West,” reported approvingly that “the ancient adobes that lined the commercial thoroughfares and fulfilled the demands of trade before the railroads, and when the city was but a straggling and unknown frontier village, are being torn down to make room for massive and lofty edifices for business and office purposes.”<sup>105</sup> In a similar vein, El Paso boosters claimed in 1886 that “[t]he old adobe buildings are fast giving way to business blocks as substantial and elegant as can be found in Texas; while of residence property there has been erected, on all sides of the business center, properties which have transformed an open common into a beautiful city of comfortable and elegant homes.”<sup>106</sup>

The writers may have celebrated the demise of the “open common” as an aesthetic matter, but it was of much greater significance than this. The open commons in the heart of the town had been a key feature not just in El Paso but in most Spanish and Mexican settlements throughout the borderlands.<sup>107</sup> In colonial times, the commons allowed settlers shared pasturage for their animals. Residents literally owned the land in common, and no one family or individual was able to claim the space as their own. It also provided a key gathering place for residents. Its transformation from common space to private homes, which the above article recounts, was part of the overall shift away not only from Spanish architectural style but also from El Paso’s Spanish and Mexican legal heritage, since it favored privatization over common resources. In this way it was similar to the process of town incorporation in the 1870s, which also shifted commonly-owned lands to private hands.<sup>108</sup>

The process of proclaiming El Paso’s transnational future and decrying its Mexican past involved law and lawyers in multiple ways. Several of the major figures in this process were attorneys or judges, as we have seen, including James Hague and Allan Blacker as well as Judge T.A. Falvey and several others. Their participation in boosting the El Paso area is logical given the stakes they themselves had in the area and the ways that they could benefit from increased investment and migration. But the involvement of the legal profession went beyond mere promotion. It included direct attempts to “Americanize” the legal culture of El Paso. Such attempts ranged from proclaiming English as the language of law to moving the seat of justice to the Anglo-American part of the county. In the process, those of Mexican descent in the county lost not only the open commons but also their prior ability to participate fully in American citizenship.

### III. TRANSFORMING LEGAL CULTURE

While Blacker’s so-called “iron bands” did connect El Paso to markets in Mexico and other parts of the United States, they also created and became representations of deep and lasting divides between El Paso’s Mexican-American and Anglo-American populations. Up until the 1870s, Anglos and *mexicanos* in El Paso had cooperated in

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<sup>105</sup> “El Paso’s Bright Future,” *Dallas Morning News*, Feb. 8, 1886.

<sup>106</sup> EL PASO BUREAU OF INFORMATION, *supra* note \_\_, at 9.

<sup>107</sup> See DAVID J. WEBER, *THE SPANISH FRONTIER IN NORTH AMERICA* 60-91 (1992).

<sup>108</sup> See *supra* Part I, at \_\_.

local law and governance, bringing together customs and concepts from Anglo-American, Spanish, and Mexican legal systems in the local legal regime. During the 1870s, however, those of Mexican descent began to lose political and legal power, due in part to the landmark Texas Supreme Court case, *Lyles v. State*,<sup>109</sup> which barred non-English speakers from juries, and to a violent uprising over the possession of local salt beds, known as the El Paso Salt War.<sup>110</sup> These two events had already taken their toll on the county's Mexican-American population, removing them from traditional positions of power and increasing animosity and suspicion between Anglo-Americans and their *mexicano* neighbors. In the 1880s, the coming of the railroads exacerbated this downward slide, triggering further changes in El Paso's legal culture and political leadership. The 1880s witnessed a profound shift in El Paso, not just in population growth but also in the transfer of power from the county's majority *mexicano* population to the still-minority Anglo-American community. By the 1890s, those of Mexican descent occupied a far different space in the county of El Paso, both literally and figuratively.

Of course, the steel tracks themselves were not responsible for these changes. After the railroads arrived, city and county officials passed increasingly unequal and discriminatory regulations aimed at controlling and segregating El Paso's *mexicano* population. As El Paso's boosters – many of them Anglo-American lawyers – touted the city's new transborder connections to Mexico, they also worked to establish tighter social boundaries between Mexicans and Americans within the county itself, as well as to diminish the significance of El Paso's Mexican past.

One of the most important aspects of the shifts in the political organization of the county occurred several years after the first railroad, when men like Hague and Blacker successfully worked to shift the seat of justice in the county from Ysleta to the city of El Paso. The key component of this change was the transfer of the county seat from Ysleta to El Paso. The county seat transfer had more than just geographical significance: it was a move that significantly changed the legal culture of the county and further disenfranchised Mexican Americans. The transfer was both a result of and a further catalyst for increasing legal, social, and economic segregation within the county of El Paso.

### ***A. The Courthouse Vote***

On February 15, 1886 – just five years after the first railroad train arrived in El Paso – residents gathered for yet another civic celebration: the dedication of a new county courthouse. The courthouse was unlike anything yet built in the county: it was a three-story brick structure with wooden verandas, fifteen foot ceilings, pine and maple walls and trim, and walnut staircases. It was topped with an imposing cupola and clock tower; a short time later two alabaster statues of “Blind Justice,” the classic pose of a woman

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<sup>109</sup> *Lyles v. State*, 41 Tex. 172 (1874).

<sup>110</sup> On the Salt War, see generally PAUL COOL, *SALT WARRIORS: INSURGENCY ON THE RIO GRANDE* (2008); Note, *Law, Race, and the Border: The El Paso Salt War of 1877*, 117 HARV. L. REV. 941 (2002); Tirres, *supra* note \_\_\_, at 163-210.

wearing a blindfold and holding the scales of justice, were added.<sup>111</sup> Shortly after its completion, the *Dallas Morning News* called it “one of the largest and best structures of the kind in the Southwest,” and “first class in every way.”<sup>112</sup> A later article noted that the city of Marfa, in the neighboring county of Presidio, would be modeling its new courthouse after the one in El Paso.<sup>113</sup> El Pasoans celebrated that February night with a dinner, formal presentations, and dance, all held in the district courtroom, which could accommodate such functions once the chairs were moved.

Two years in the making, the courthouse was not just a symbol of the city’s growth and prosperity but also its new clout as the county seat, a status it captured from Ysleta with a countywide vote in 1883. In style and size, it was a remarkable contrast to the surrounding buildings, which were still primarily made of adobe and in a Spanish style. The new county courthouse, completed in February, 1886, was not only a symbol of the new wealth that the railroads brought in but also of the ascendance of an American-dominated legal and political future. It was a key element of a larger cultural transformation, which altered not only the balance of power in the county itself – placing “American” El Paso over the “Mexican” settlements of Ysleta, San Elizario, and Socorro – but also the spaces that El Paso’s residents of Mexican descent could occupy.

The location of the county seat was important for many reasons. As the center of government activity, it was central to the local life of the county. Particularly when the district court was in session, the county courthouse became not only a legal site but also a social and cultural one, as residents traveled from across the county to serve as jurors, defendants, plaintiffs, witnesses, or simply to watch the trials and inquire about their outcome.<sup>114</sup> Ysleta, reports historian J. Morgan Broaddus, was “overpopulated with visitors” when the district court was in session.<sup>115</sup> This benefited merchants and farmers in and near Ysleta, who had a larger crowd to buy their goods while the court was in session. “The district court has dragged its slow length along into the seventh week of the session,” one local paper reported in 1882, noting that this state of affairs “is all very well for Ysleta, but not so for litigants.”<sup>116</sup>

The transfer of the seat of county government from Ysleta to the city of El Paso may seem like an inevitability now, given what we know of El Paso’s ascendance as a

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<sup>111</sup> Herb Marsh, Jr. and Robert Dinsmoor, *El Paso Courthouses: Past and Present*, 40 *PASSWORD* 80-81 (1995).

<sup>112</sup> “Courthouse Accepted,” *DALLAS MORNING NEWS*, Jan. 21, 1886, p. 3.

<sup>113</sup> “Struggle for the Postoffice – New Courthouse at Marfa – Postal Matters,” *DALLAS MORNING NEWS*, Feb. 10, 1886, p. 3.

<sup>114</sup> Historians writing about southern courtrooms have noted the close connections between the local courthouse and the larger community. See generally Laura F. Edwards, *Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South*, 112 *AM. HIST. REV.* \_\_\_ (2007); ARIELA J. GROSS, *DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM* \_\_\_ (Athens & London: The University of Georgia Press, 2000).

<sup>115</sup> J. MORGAN BROADDUS, *THE LEGAL HERITAGE OF EL PASO* 130 (1963).

<sup>116</sup> *THE LONE STAR*, Nov. 22, 1882.

commercial and legal center of the county. It is clear, however, that it did not seem inevitable to those living in Ysleta at the time. In 1880, just one year before the railroad's arrival, Ysleta was a "flourishing town," as newspaper editor S.H. Newman recalled.<sup>117</sup> District judge T.A. Falvey and his wife settled in Ysleta in 1881, the first year of his judgeship. Mrs. Falvey later recalled that "Ysleta was more of a city than El Paso at that time," although her house there had dirt floors and adobe walls.<sup>118</sup> Contemporary newspaper accounts describe Ysleta as a bustling settlement with, as historian J. Morgan Broaddus writes, "a new hotel under construction, three large stores, one saloon, a church, a school, a steam gristmill, two doctors, and three lawyers."<sup>119</sup>

In fact, county leaders had begun making plans for a new courthouse in Ysleta in 1881. Jury members had complained that the prior quarters of the county government, which the county rented from a local resident, were cramped and "alive with vermin," as one newspaper reported.<sup>120</sup> The county commissioners court levied a tax for a new courthouse in November 1881, and accepted a contractor's bid in December. The land for the new courthouse was donated by Pablo Duran. By September of 1882, just three months before the vote to move the county seat, the Ysleta courthouse was almost completed. It was a far more modest building than the one that El Paso residents would build just a few years later: it was a two-story structure built of native sandstone.<sup>121</sup> But its construction, however modest, signaled to the populace that the seat of government would continue to have a home in Ysleta.

Residents of El Paso, however, were determined to wrest control. Under Texas law, a vote to move the county seat could not take place unless residents submitted a petition with at least 100 signatures requesting a vote. In addition, a county seat vote could only take place once every five years.<sup>122</sup> In the fall of 1882, two El Paso residents – A.M. Loomis and Joseph Sweeney – began circulating a petition to support the holding of a vote.<sup>123</sup> "Judge" Loomis, as the local paper referred to him, had served as sheriff and tax collector in the 1870s. He was likely hopeful that his sponsorship of such a petition would earn him more votes in the next election, when he was planning to run for the position of county judge.<sup>124</sup> Sweeney and others involved in law and politics in El Paso

<sup>117</sup> S.H. Newman, *Reminiscences* (1906) (unpublished manuscript, Simeon H. Newman Collection, MS 060, C.L. Sonnichsen Special Collections Department, University of Texas at El Paso) (on file with author).

<sup>118</sup> Minutes of the Association of Pioneer Women of El Paso, May, 1922, in Nancy Hamilton, *El Paso's Pioneer Women*, 50 *PASSWORD* \_\_\_\_ (2005).

<sup>119</sup> BROADDUS, *supra* note \_\_\_, at 130 (citing THE THIRTY-FOUR, Sept. 17, 1879).

<sup>120</sup> THE LONE STAR, Nov. 22, 1882.

<sup>121</sup> For history of the Ysleta courthouse, see Broaddus, *supra* note \_\_\_, at 138-39; Marsh and Dinsmoor, *supra* note \_\_\_, at 75-76.

<sup>122</sup> See Act approved March 28, 1881, in Gammel, ed., *The Laws of Texas, 1822-1897*, vol. 9, 159.

<sup>123</sup> THE LONE STAR, Nov. 7, 1883.

<sup>124</sup> Loomis lost the election to J.A. Buckler. See THE LONE STAR, Nov. 12, 1884; BROADDUS, *supra* note \_\_\_, at 142; Hammons, *supra* note \_\_\_, at 81. Joseph Sweeney's identity is harder to

had practical reasons for wanting to move the county seat. Many complained of the difficulty of traveling to Ysleta to conduct business, since the majority of Anglo-Americans had settled in El Paso but needed to conduct their official transactions in Ysleta. Yet their desire to move the county seat cannot be explained by practicalities alone. After all, Ysleta had not been bypassed by the railroads; to the contrary, the town had its own stop on the Southern Pacific line. And in 1881, the Southern Pacific was already running trains between El Paso and Ysleta, even changing the schedule in order to ease the trip for those traveling between the two settlements when the district court was in session.<sup>125</sup> The desire of some El Paso residents to move the county seat grew not only out of practicalities but also out of a perception of Ysleta's identity as a "Mexican" town. For the growing Anglo-American population of El Paso, Ysleta was not just too far away or too difficult to reach, it was also too Mexican.

This critique against Ysleta had begun even before the railroads arrived. In 1879, a newspaper editor in the nearby town of Mesilla, New Mexico, wrote disapprovingly of the population's failure to celebrate July 4<sup>th</sup>. "There was not a flag hoisted or a single shot fired in Ysleta to greet the coming of the greatest of our National Holidays," he wrote. "Business has been conducted throughout the day as usual and to the shame of Ysleta there has been no display of patriotism by anyone."<sup>126</sup> In 1881, the same paper reported with dismay that "of the twelve grand jurors now in session in Ysleta, ten of them cannot speak English," a fact which is interesting not only for the critique but also because, if true, it indicates that officials in Ysleta were not abiding by the Texas Supreme Court decision in *Lyles v. State*, which had declared English-only juries in 1874.<sup>127</sup> In 1882, another newspaper editor complained that the justice of the peace in Ysleta was unable to speak English and had to have an interpreter present in order to explain his rulings to some members of the jury, who did not speak Spanish.<sup>128</sup>

There was no doubt that Ysleta was primarily governed, at this time in its history, by those of Mexican descent. In the election of 1882, the town's mayor, three out of four alderman, and town marshal all had Spanish-surnames.<sup>129</sup> County government was also almost completely comprised of men with Spanish surnames. The slate of the justices of the peace was similarly composed. This was not at all a novel situation in El Paso county, since most legal and commercial business had been conducted in Spanish ever

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confirm. This may have been the father of a practicing lawyer and founding member of the bar association, also named Joseph Sweeney, who was born in San Antonio in 1875 and came to El Paso as a small child. Sweeney served two terms as mayor of El Paso. See BROADDUS, *supra* note \_\_, at 227.

<sup>125</sup> THE LONE STAR, October 26, 1881.

<sup>126</sup> MESILLA VALLEY INDEPENDENT, July 12, 1879, cited in Rex E. Gerald, *Aboriginal Use and Occupation by Tigua, Manso, and Suma Indians*, in APACHE INDIANS, ed. David Agee Horr (New York and London: Garland Publishing, 1974), 176.

<sup>127</sup> THE LONE STAR, October 29, 1881.

<sup>128</sup> THE LONE STAR, Feb. 1, 1882.

<sup>129</sup> THE LONE STAR, April 8, 1882, 3 ("A. Guerra, Mayor; Candelario, T. Provencio, T. Yrigoyen, J.V. Piarote, and Frank Mayer, aldermen; C. Benavidez, marshal").

since the Anglo-American occupation began in 1848. The fact that it would draw such attention and disapprobation in the late 1870s and early 1880s was a foreshadowing of further isolation of Spanish and Mexican culture to come.

Despite the general dissatisfaction among Anglo-Americans with the location of the county seat, El Paso's petition failed to achieve the requisite number of signatures. There are indications that some residents failed to sign not because they did not want the county seat to move, but rather because they thought the petitioning process was too soon, and preferred to wait another year or two to attempt the process. Otherwise, they would fail at the polls and then have to wait five years before trying again.<sup>130</sup>

It was Ysletans themselves who filed a successful petition, apparently assuming that their chances were better sooner rather than later, and that they would easily win a vote, due to their larger size, and be able to retain the seat for at least another five years. After receiving the successful petition in November of 1883, county judge Marshall Rogers declared that the vote would take place on December 3, 1883. In one month, El Paso's boosters worked hard to gain as many votes in their favor as possible. Texas law stated that in order to move the county seat more than five miles from the geographical center, the winners would require a two-thirds majority.<sup>131</sup> With at least 1,000 registered voters in the county, this would mean more than 600 would have to vote in El Paso's favor. Community leaders not only encouraged current voters to vote through bribery but also sought to register new voters as quickly as possible. They were shameless about their push. *The Lone Star* encouraged as many votes as possible: "There is no registration required nor any vexatious preliminaries...the large body of Mexicans...has but to go before the clerk of the district court and declare their intention to become citizens of the United States and then, if they lived in the legal period in the state and county, they are entitled to vote...every ballot counts..."<sup>132</sup>

News of the upcoming vote went as far as San Francisco. A local paper there reported on the eve of the vote: "In anticipation of the election for a change of county seat on tomorrow, many Mexican citizens were naturalized by the Deputy County Clerk in the Council rooms. About one hundred qualified before Saturday night. The merchants of El Paso will close their stores on election day and work at the polls."<sup>133</sup> El Paso's merchants did, indeed, do their part to encourage voting. One paper reported that area merchants were "remaining on the streets all day and hurrying back and forth, on foot and in carriages, buggies, and wagons, hunting up and bringing in the voters." Not only the merchants but also railroad employees helped on election day, running special trains for residents around the county to reach their polling places. As the *Lone Star* wrote approvingly, "The Santa Fe railroad men did nobly yesterday. They not only voted

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<sup>130</sup> THE LONE STAR, Nov. 7, 1883.

<sup>131</sup> BROADDUS, *supra* note \_\_, at 141.

<sup>132</sup> *Id.*

<sup>133</sup> *County Seat Election*, SAN FRANCISCO BULLETIN, Dec. 3, 1883, p. 3.

solidly for El Paso but they worked like beavers to bring in the vote along the line of the road between this city and the state line.”<sup>134</sup>

El Paso won the vote easily: 2,252 for El Paso versus 476 for Ysleta, for a total of 2,728.<sup>135</sup> Given that there were only 1,000 officially registered voters in the county, Ysletans immediately noted the outright fraud and sought indictments against those responsible. Where such calls for legal action had been heard in the past, such as the granting of an injunction by the district judge when Ysleta attempted to gain the seat from San Elizario in 1874, this time there was no response. It was not helpful that the district attorney, who would have been responsible for pursuing such indictments, was James Hague.

The ironies of the transfer of the county seat are clear. In an effort to distance El Paso from its Mexican past, as represented by Ysleta and its sandstone courthouse, leaders in El Paso had to enlist the help of a Mexican-American and Mexican electorate. They sought quickly to make new citizens of such men in order to further their immediate purposes. The paramount goal – to have “justice” take its seat in its proper place as part of Anglo-American culture – was attained through injustice.

### ***B. The End of “Mexican Justice”***

The movement of the county seat was not just a geographical switch but also a cultural one, one that had the power to alter the racial/ethnic balance that had prevailed to date in the county. Up until the transfer of the county seat from Ysleta, men of Mexican descent had dominated county government. In 1876, 1880, and 1884, for example, the county judge and three out of four county commissioners had Spanish surnames.<sup>136</sup> After the county seat transfer was completed in late-1884, far fewer men of Mexican descent served as county officials. By 1886, in fact, the proportions had been reversed: the county judge and all but one commissioner had non-Spanish surnames.

The transfer effected jury composition as well. The composition of petit and grand juries in El Paso had already been changed irreparably by the *Lyles* case, which prohibited the participation of any citizens who could not speak English. The county seat transfer also had a lasting effect on jury composition, but through informal practice rather than formal adjudication. It was common practice in many late-nineteenth-century towns for the sheriff to round up jurors on the streets of the county seat when the formal jury

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<sup>134</sup> THE LONE STAR, Dec. 5, 1883.

<sup>135</sup> BROADDUS, *supra* note \_\_, at 141.

<sup>136</sup> For 1876, the county judge was Joseph Magoffin and the county commissioners M.C. Alderete, Guadalupe Lucero, Julian Arias, and J.N. Garcia; in 1880, the county judge was José Baca and the commissioners were Pablo Romero, B.S. Dowell, Demetrio Urtiaga, and Gregorio Garcia; in 1884, the county judge was J.A. Buckler and the commissioners were J. Cobos, J.M. Gonzales, R.F. Campbell, and J. Armendariz. See Hammons, *supra* note \_\_, at Appendix B, 83-84.

summons had failed.<sup>137</sup> In 1881, for example, a local paper reported that only half of the 36 jurors summoned to serve in the fall term of the district court in Ysleta had appeared, and only 8 of these were qualified jurors. In order to find more candidates, reported the paper, “[t]he sheriff was ordered to summon a sufficient number of talesmen to fill out the panel. He was in town yesterday carrying out his instructions.”<sup>138</sup> The makeup of these “talesmen” (a word describing jury members who had been summoned through this informal procedure) depended upon who happened to be in town on the day that court had convened.<sup>139</sup> In El Paso, those hanging around the courthouse were far more likely to be of Anglo-American descent than of Mexican descent, due to the general demographic differences between the two settlements. As a result, the juries called in the county of El Paso after the seat moved were far less likely to contain those of Mexican descent than they had been before 1884, when the seat was in Ysleta.

Overall jury selection depended on both the sheriff and the court clerk, who was charged with creating the list of eligible jurors from which the *venire* would be drawn each court term. After 1884, both the sheriff and the clerk (who served as both county and district clerk) was far more likely themselves to be of Anglo-American descent. In fact, Manuel E. Flores, who had been clerk since 1880, was defeated in the first election after the removal of the county seat. His opponent, Frank P. Clark, won by 407 votes, 1186 to 779.<sup>140</sup>

Whether due to the change in location or to outright discrimination, the participation of those with Spanish surnames decreased precipitously after 1884. In 1885, El Paso gained a federal district court. Citizens had sent a lengthy petition in 1885 declaring their dire need for a federal court close by. In the first jury panel drawn for the federal court, only one out of the 32 jurors had a Spanish surname.<sup>141</sup> This was a far cry from the composition of district juries just ten years before, which would have been composed of a majority of those with Spanish surnames. It also was not an accurate

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<sup>137</sup> As Ariela Gross describes, in the antebellum South “it was permissible to convene bystander juries composed of qualified men who happened to be at court that day, if there were not enough jurors from the regular *venire*.” ARIELA J. GROSS, *DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM* 37 (2000).

<sup>138</sup> THE LONE STAR, October 26, 1881. The article does not directly state why so few of those reporting were qualified, but a related article in the same issue reported that “it is said that quite a number of the jurors on the *venire* summoned for last Monday were residents of Mexico, which is, to say the least, somewhat peculiar.”

<sup>139</sup> *Black’s Law Dictionary* defines a “talesman” as “A person summoned to act as a juror from among the by-standers in the court.” HENRY CAMPBELL BLACK, *BLACK’S LAW DICTIONARY* 1014 (1991).

<sup>140</sup> THE LONE STAR, Nov. 12, 1884. See also Nancy Lee Hammons, *A History of El Paso County, Texas, to 1900* (El Paso: The University of Texas at El Paso, 1983), Appendix B, 83.

<sup>141</sup> Doris Wallingford Busalacchi, *History of the Federal Judiciary District of Western Texas*, 6-7 (1950) (unpublished seminar paper, University of Texas at El Paso) (on file with author). The man in question was J.D. Ochoa, who was one of the few elite *mexicanos* still included in positions of power in El Paso. He had also been the lone *mexicano* member of the official welcoming party for the Southern Pacific railroad in 1881. EL PASO HERALD, June 1, 1881.

reflection of the county's demographics, since those of Mexican descent still represented more than 50% of the population.<sup>142</sup>

Some of the changes in county government and jury composition can be attributed to the massive influx of Anglo Americans to El Paso during the 1880s, which no doubt swelled the ranks of those voting for Anglo American candidates for city, county, and statewide office. But such demographic change cannot account for the drastic nature of the change, since men with Spanish surnames still represented a majority of those on the voter registration lists for the county as a whole. A larger cultural shift was at hand, one that shunned the prior influence of Mexican Americans on the legal culture as a whole.

With the county courthouse and the county government in the hands primarily of Anglo-Americans, complaints about the remaining Mexican-American legal officials and their style of "Mexican justice" in the surrounding towns increased.<sup>143</sup> In 1885, a grand jury investigated the state of the justice courts in El Paso county. "We find the justices-of-peace [sic] at Ysleta, Concordia, Cuadrilla, and Socorro incompetent and their dockets are found in unsatisfactory condition. In most cases, we find them kept in the Spanish language, and not in proper form, as required by Law. The constables in most precincts do not speak English."<sup>144</sup>

Attacks on "Mexican" voters also increased, an ironic state of affairs given the extent to which the vote for the removal of the county seat had most likely depended on such voters, whose citizenship status may have been unclear. In November of 1884, just one year after the county seat vote, local papers reported fighting and arrests at several polling places in the city of El Paso. "Quite a number of Mexican votes were challenged," one article states. In addition to arresting suspicious voters, other onlookers also taunted and teased those attempting to vote with cries of "that fellow lives in Chihuahua," "take him out," and "he belongs to the Zacatecas gang."<sup>145</sup> Contemporaries mostly took a mocking, skeptical view of the voting process in El Paso as a whole; as one newspaper editor noted, "It was no uncommon sight [on the day of voting] to see a Mexican, and sometimes an American stretched full length upon the ground just around some corner or crouched up in some doorway chock full of election booze."<sup>146</sup>

Historians have followed suit in assuming that most election victories in El Paso in this era were obtained through "election booze" and other enticements; as C.L. Sonnichsen wrote in his tome on El Paso history, politicians would round up voters by the dozens and treat them to "barbecue, beer, music and dancing."<sup>147</sup> Such generalizations about fraudulent voting practices may have had some truth, but they fail

<sup>142</sup> See McConville, *supra* note \_\_, at \_\_.

<sup>143</sup> THE LONE STAR, October 29, 1881 (discussing "an amusing illustration of Mexican justice" in the case of a cattle rustler who, the paper claimed, was improperly exonerated by a *mexicano* justice of the peace).

<sup>144</sup> Report of the Grand Jury, *reprinted in* the EL PASO TIMES, Nov. 24, 1885.

<sup>145</sup> THE LONE STAR, Nov. 5, 1884, 3.

<sup>146</sup> *Id.*

<sup>147</sup> C. L. SONNICHSEN, PASS OF THE NORTH: FOUR CENTURIES ON THE RIO GRANDE 346 (1968).

to note the increasing prevalence of such critiques in the 1880s, signaling a new level of scrutiny and suspicion of “Mexicans” and their citizenship status. Such suspicions reached not only those who were confirmed Mexican citizens but also all those of Mexican heritage, whose very appearance was now an indicator of possible illegality at the polls.<sup>148</sup>

Triumphant residents of the city of El Paso lost little time in sealing their victory. They promptly began plans for the new courthouse, which would serve as both a literal and symbolic marker of the changes they had won. Boosting the future of El Paso as a great metropolitan center, for boosters like Hague and Blacker, meant divorcing it not only from its Mexican past but also its Mexican present. The new brick courthouse would be a clear sign of this break from the past. It would also indicate the ascendance of the city of El Paso to the leadership of the county as a whole. As one resident concluded triumphantly after the vote transferring the county seat to El Paso, “Nobody now doubts that this city rules El Paso county.”<sup>149</sup>

### *C. New Boundaries: Americanization and Segregation*

The transfer of the county seat was part and parcel of an attempt to erase the county’s Mexican past and ensure its commercial future. In fact, the Mexican past did not disappear, but rather was relegated to certain parts of the county, namely the older settlements of Ysleta, Socorro, and San Elizario. In these towns, Mexican Americans continued to hold most positions of power, and town council minutes continued to appear in a mix of Spanish and English.<sup>150</sup> These historic settlements returned to small, close-knit, self-sufficient communities centered on agriculture. The distance, both literal and figurative, from the burgeoning industrial city of El Paso allowed residents of these towns to retain customs and procedures from an earlier era and also allowed political presence for those of Mexican descent.

The same could not be said for residents of Mexican descent in the city of El Paso, where attempts to “Americanize” did not stop with the county courthouse. In the newly-ascendant city, lawyers and politicians – who were sometimes one and the same – in the late 1880s and 1890s institutionalized inequality in schools, neighborhoods, the police department, and other public services. This was a marked departure from how things had been for the first forty years after the Treaty of Guadalupe Hidalgo. Their actions resulted, hence, not just in the segregation of the county as a whole – with the centers of Mexican-American political power now in the outlying settlements – but also with the segregation of the city itself.

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<sup>148</sup> For a nuanced discussion of the politics of patronage and voting practices in a border context, see BENJAMIN HEBER JOHNSON, *REVOLUTION IN TEXAS : HOW A FORGOTTEN REBELLION AND ITS BLOODY SUPPRESSION TURNED MEXICANS INTO AMERICANS* 13-17 (2003).

<sup>149</sup> *THE LONE STAR*, Dec. 5, 1883, 3.

<sup>150</sup> Oral Histories in Socorro and San Elizario, Texas (Center for Anthropological Research, New Mexico State University) (unpublished paper) (on file with author).

To be sure, residential segregation was not only the result of intentional action but also the outcome of preexisting economic inequality between the populations, as well as from the desire of new migrant populations – of both Anglo-American and Mexican-American descent – to settle in neighborhoods with people of similar ethnic, religious, and national backgrounds. But city leaders actively accommodated and fostered the divisions within the city through municipal regulation.

The city had been divided into justice precincts, called “wards,” when first incorporated in 1873.<sup>151</sup> These wards, each of which had their own justice of the peace, became increasingly segregated by nationality or racial or ethnic background after 1881. By 1900, the vast majority of the city’s *mexicano* population was living segregated neighborhoods in southeastern El Paso.<sup>152</sup> Not coincidentally, these communities, known as “Chihuahuita,” “Segundo Barrio,” and East El Paso, were also the closest to the Rio Grande, which would periodically flood and destroy all the surrounding homes. A fourth settlement of *mexicanos* was established after such a flood, when residents of Chihuahuita attempted to move further north to rebuild on safer ground.

The railroad tracks proved a strong and lasting border not only between “Mexican” and “American” El Paso, but also between “white” El Pasoans and all others. Not coincidentally, El Paso’s burgeoning Chinese-American community also lived almost completely “south of the tracks.”<sup>153</sup> One resident later recalled that the Chinese residents, many of whom had worked on the railroads that led into the city, “all lived down in south El Paso. That’s where the Mexicans, most people who were not Anglo-Saxons, lived.”<sup>154</sup>

Historian Mario García notes that the barrier proved strong enough to prevent the growth of these non-white neighborhoods any further north. He writes that, “the rigidity of this boundary forced the Mexican district to grow in an eastward direction but still south of the tracks and along the border.”<sup>155</sup> Proximity to the border meant not only the risk of repeat flooding by the Rio Grande, but also the threat of land dispossession, since

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<sup>151</sup> See “An Act to incorporate the City of El Paso,” May 17, 1873, in Gammel, ed., *The Laws of Texas, 1822-1897*, vol. 7, 1138-71.

<sup>152</sup> Monica Perales, *Smelertown: A Biography of a Mexican-American Community, 1880-1973*, 42 (2004) (unpublished Ph.D. Dissertation, Stanford University) (on file with author).

<sup>153</sup> On Chinese American communities in El Paso and the southwest more generally, see Leo M. Jacques, *Have More Quick Money Than Mandarins: The Chinese in Sonora*, 17 *JOURNAL OF ARIZONA HISTORY* \_\_ (1976); Erika Lee, *Enforcing the Borders: Chinese Exclusion Along the U.S. Borders with Canada and Mexico, 1882-1924*, 89 *JOURNAL OF AMERICAN HISTORY* \_\_ (2002); Clifford A. Perkins, *Reminiscences of a Chinese Inspector*, 17 *JOURNAL OF ARIZONA HISTORY* \_\_ (1976); Anna Louise Fahy, *Chinese Borderland Community Development: A Case Study of El Paso, 1881-1909* (2001) (unpublished master's thesis, University of Texas at El Paso) (on file with author).

<sup>154</sup> Mrs. Hugh White, interview by Leon Metz and Robin Fuller, June 3, 1968, Interview 48, transcript, p. 11, Oral History Institute, University of Texas at El Paso.

<sup>155</sup> MARIO T. GARCIA, *DESERT IMMIGRANTS: THE MEXICANS OF EL PASO, 1880-1920*, 131 (1981).

a large portion of this southeastern land, called the “Chamizal,” was still contested by the U.S. and Mexico.<sup>156</sup> Many of these communities were also, not coincidentally, located near various industrial operations that employed the increasingly large numbers of Mexican immigrants at the turn-of-the-century.<sup>157</sup> A sizable community grew next to the smelter plant, known Smelertown, as well. Even this industrial town was segregated, however. Historian Monica Perales notes that “a high wooden fence” separated the wood and brick homes of the Anglo-American management from the adobe tenements of the Mexican and Mexican-American workers.<sup>158</sup>

The city of El Paso’s first school district was established in 1882, but made no provision for the schooling of children who did not speak English. In fact, the school board declared that only English-speaking students could attend the district schools. At the same time, however, they took notice of the continuing prominence of Spanish in the county, adding Spanish language instruction to their elementary education program.<sup>159</sup> While English-speaking students would learn Spanish, Spanish-speaking students had no similar opportunities to learn English. As a result, few, if any, students of Mexican descent enrolled in the first public elementary school in El Paso.<sup>160</sup>

In 1887, a local resident, Olivius V. Aoy, created a private elementary school expressly for Spanish-speaking students.<sup>161</sup> Five years later, the school was incorporated by the school district and named the “Mexican Preparatory School.” In 1899, the district opened a second school for Spanish-speaking students, since overcrowding at the Mexican Preparatory School had become extreme. By this time, the initial rationale for segregating the schools by language ability had morphed into general race- and nationality-based segregation, in part because the schools grew out of and were located in racially-segregated neighborhoods.<sup>162</sup> By the 1920s, school officials were referring to the

<sup>156</sup> See SHELDON B. LISS, *A CENTURY OF DISAGREEMENT: THE CHAMIZAL CONFLICT, 1864-1964* (1965); Luis Torres, *Chamizal National Memorial* (1994).

<sup>157</sup> GARCÍA, *supra* note \_\_.

<sup>158</sup> Perales, *Smelertown*, *supra* note \_\_, at 58. For residential segregation in El Paso, see also DAVID DORADO ROMO, *RINGSIDE SEAT TO A REVOLUTION: AN UNDERGROUND CULTURAL HISTORY OF EL PASO AND JUÁREZ, 1893-1923*, 193-244 (2005).

<sup>159</sup> While the school board did not want to educate Spanish-speaking students, they did offer Spanish instruction to English-speaking students, at least in during the mid-1880s. See Jo Ann Platt Hovious, *Social Change in Western Towns: El Paso, Texas, 1881-1889*, 123 (1972) (unpublished master’s thesis, University of Texas at El Paso) (on file with author).

<sup>160</sup> Conrey Bryson, *A Man Named Aoy*, 35 *PASSWORD* 95 (1990) (“The rolls of the first public school, opened March 5, 1883, show an enrollment of 94 pupils, and not a Spanish surname in the list”).

<sup>161</sup> Aoy was born in Spain and had been ordained a Catholic priest. After traveling to the U.S., he left the priesthood and converted to the Mormon faith. He assisted in the first translation of the *Book of Mormon* into Spanish in the 1880s. See *id.* at \_\_.

<sup>162</sup> As Ariela Gross explains, lawmakers used this equation between language and race repeatedly throughout the early twentieth-century to discriminate against those of Mexican descent. Ariela J. Gross, *The “Caucasian Cloak”: Mexican Americans and the Politics of Whiteness in the 20th-Century Southwest*, 95 *GEORGETOWN LAW JOURNAL* 95 (2006).

elementary schools located “south of the tracks” as being part of “the Mexican District,” while referring to those schools “north of the tracks” as part of “the American district.”<sup>163</sup> Throughout the early twentieth century, the “Mexican district” schools were typically overcrowded, under funded, and placed the greatest emphasis on vocational training, rather than general education or preparation for high school and college.<sup>164</sup>

The process of segregating Spanish-speaking (“Mexican”) and English-speaking (“American”) children was not foreordained or automatic. Up until the early 1880s, children of both Anglo-American and Mexican descent had been educated together, although typically it was only the children of elite families who could afford to send their children to school. Mary Dowell, for example, who was the daughter of Ben Dowell, the one-time mayor of Franklin, and Juana Márquez Dowell, a Tigua Indian, received instruction in 1866 alongside the son of José María Flores and the children of the Gillett brothers, who had fought for the Confederacy in the Civil War.<sup>165</sup> In 1868, the wife of Judge Gaylord Clarke taught school in the El Paso area, attracting as pupils both Anglo-American and Mexican-American children. After she left the area in 1870, Joseph Tays replaced her, continuing to teach classes that included children with both Spanish and non-Spanish surnames.<sup>166</sup> The division within schools of “Mexican” and “American” children was thus a historical process, not an automatic practice.

City leaders, in addition to segregating school children, also segregated lawful and lawless activities within the city limits. By the turn of the century, Chihuahuita had become the home of El Paso’s legally-sanctioned red-light district.<sup>167</sup> The district was home to brothels, gambling houses, and other such otherwise prohibited activities. As such, it gave rise also to other types of violent crimes. The area had first sprouted on Utah Street in the early 1880s. By the 1890s, however, the neighborhood around Utah Street was dominated by Anglo-Americans who complained vociferously to the city council. Rather than close it down, as local moral reform groups desired, the city government moved the red-light district to the more acceptable and “remote” barrio of Chihuahuita.<sup>168</sup> For Chihuahuita residents, the new presence of the red-light district only added more fuel to the fire, since the community already suffered from high crime rates. In the mid-1880s residents had complained about the lack of police protection in south El Paso. The city government eventually assigned a Mexican-American patrolman to the

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<sup>163</sup> See report cited in *Alvarado v. El Paso Independent School District*, 426 F. Supp. 575, at 579 (1976) (affirmed by 593 F.2d 577).

<sup>164</sup> See GARCÍA, *supra* note \_\_, at 110-114; Bryson, *supra* note \_\_, at \_\_; *Alvarado v. El Paso Independent School District*, 426 F. Supp 575, 578-579 (1976).

<sup>165</sup> NANCY HAMILTON, BEN DOWELL: EL PASO'S FIRST MAYOR 43 (1976), 43.

<sup>166</sup> *Id.* at 44.

<sup>167</sup> See Ann R. Gabbert, *Prostitution and Moral Reform in the Borderlands: El Paso, 1890-1920*, 12 JOURNAL OF THE HISTORY OF SEXUALITY (2003).

<sup>168</sup> EL PASO HERALD, Feb. 20, 1900, cited in Gabbert, *supra* note \_\_, at 587. Ten years later, facing further complaints from moral reform groups, the city moved the vice district yet again, this time to the Chamizal, a disputed area of land along the border. *Id.* at 597.

area. He received a salary of \$30 per month, while the seven other patrolmen for the city, none of whom had Spanish surnames, received \$75 per month.<sup>169</sup>

By the end of the 1890s, new borders crisscrossed the space of El Paso County. Although the railroads did not, themselves, create the borders, they came to represent them, marking off the difference between “American” and “Mexican,” between white and other. When we look closely at these lines of division, we see that these internal borders shaped the lives of El Paso’s residents to an equal or even greater extent than did the international line dividing them from Mexico. As new economic relationships and connections formed across the borderline, the borders within the county – between different racialized groups and between El Paso and the “Mexican” towns of Ysleta, San Elizario, and Socorro – hardened.

#### IV. FROM FRONTIER TO BORDER

Studies of the U.S.-Mexico border region commonly note that the border – although created on paper in 1848 – was not truly a reality until the advent of federal regulation in the late-nineteenth and early-twentieth centuries.<sup>170</sup> Even then, the border was not closed to anyone but those of Chinese descent, who had attempted to get around the restrictions of the Chinese Exclusion Act, passed in 1882, by entering through Mexico. The first border patrolmen were “Chinese Inspectors,” whose task was merely to search for smuggled Chinese migrants, not to restrict the free passage of those of American and Mexican descent.<sup>171</sup> Only in the late 1920s and 1930s did the U.S. begin its first efforts to police the crossing of Mexicans into the U.S. over the border.<sup>172</sup>

Scholarly accounts stress the fluidity of the border up until the 1930s, characterizing it as a place of dual identities and easy passage. This article does not dispute this characterization, but instead draws attention to a phenomenon that is too often overlooked: the internal stratification and segregation of border communities themselves. For El Paso, as this article shows, the moment of transition from a frontier (of both the U.S. and Mexico) to a true border county occurred not when the federal government established immigration and trade restrictions against its southern neighbor, but instead when local officials – most particularly lawyers – fostered new divides of race and nationality within the border community itself. During this period, those of Mexican descent in El Paso could still pass freely between the two nations, carrying on business, family, and cultural connections. Yet they could no longer be full participants in the civic, political, and legal life of the county of El Paso. For them, the border that truly

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<sup>169</sup> James H. Daross, *A History of the El Paso Police Department, Part One, 1873-1900*, 25-26 (1953) (unpublished seminar paper, no. 55, University of Texas at El Paso) (on file with author).

<sup>170</sup> See, e.g., PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* (2000); MAE NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 50-71 (2004).

<sup>171</sup> See Erika Lee, *Enforcing the Borders: Chinese Exclusion Along the U.S. Borders with Canada and Mexico, 1882-1924*, 89 *JOURNAL OF AMERICAN HISTORY* (2002).

<sup>172</sup> See NGAI, *supra* note \_\_, at 64-75.

mattered was not that dividing the two countries, but that dividing the two racial groups on the American side.

But we may ask: why then? Why did not Anglo-American lawyers and politicians, a contingent of whom were present soon after the Treaty of Guadalupe Hidalgo, create these racial borders in the 1850s? Certainly there were other towns in Texas that became segregated much earlier. In San Antonio, for example, the Mexican American elite was pushed out of power shortly after the end of the Mexican-American War. Even Mexican families who had fought side-by-side with Americans in defeating the Mexican Army were shunned.<sup>173</sup> El Paso presents a completely different timeline. While there are multiple reasons for this difference, this article demonstrates that one of the most salient has to do with the timing of El Paso's opportunity to attract outside investment and settlement. In the 1880s El Paso had its first real opportunity to attract outsiders. Attracting such settlement meant making El Paso County accord with eastern views. As historian Carol O'Connor notes, "the future of urban places in the West depended in large measure on the good opinion of the East," since it was eastern settlers and investors whom western towns sought to attract.<sup>174</sup> Few easterners, and, for that matter, Californians, had any experience living in hybrid cultural communities, where those of differing racial backgrounds shared political and legal power.<sup>175</sup>

This push to transform El Paso to appeal to outsiders evidenced itself in a variety of ways. The built environment of El Paso changed: in addition to razing the old adobe buildings, Anglo-American residents imported Bermuda grass from Austin for their lawns and lumber from California for their homes, seeking to make El Paso look more like Ohio and less like Mexico.<sup>176</sup>

Change went beyond the aesthetic, however, to incorporate the legal and the political. In order to attract the railroads, the county needed to have a land system that provided secure title – thus the impetus to privatize communal landholdings. In order to attract settlers, El Paso needed to replicate the racial order to which these newcomers were accustomed – thus the push to segregate the courthouse, schools, county government, and other institutions.

In sum, El Paso's transformation from frontier outpost to border metropolis was dependant not on federal intervention, or on merely the arrival of the railroads, but rather on the actions of specific actors as they attempted to make the area conform with a profoundly different vision. The social vision of hybridity and cooperation of the earlier decades was replaced instead by one that easterners could understand: separation and

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<sup>173</sup> See MONTEJANO, *supra* note \_\_, at 26-30.

<sup>174</sup> Carol A. O'Connor, *A Region of Cities*, in THE OXFORD ENCYCLOPEDIA OF THE AMERICAN WEST, *supra* note \_\_, at 537. See also David Hamer, *New Towns in the New World: Images and Perceptions of the Nineteenth Century Frontier* (1990).

<sup>175</sup> *But see* LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (2007) (describing shared power between Mexicans and Americans in New Mexico in the nineteenth century).

<sup>176</sup> See Minutes of the Association of Pioneer Women of El Paso, May, 1922, in Nancy Hamilton, *El Paso's Pioneer Women*, 50 *PASSWORD* 116-17 (2005) (comments of Mrs. W.J. Fewel).

Americanization. By 1900 El Paso was far more connected to the outside world, yet its people were far more disconnected from each other. This hardening of the racial order was a direct outcome of the efforts of local attorneys – at times by joined by merchants and politicians – to draw the outside in.

## CONCLUSION

For the city of El Paso, the arrival of the railroads spelled both the beginning and the end: the beginning of its modern incarnation as a transborder trade hub; and the end of a particular form of hybrid culture and shared power between Anglo-Americans and Mexican-Americans – in other words, the marginalization of its Mexican cultural, legal, and political heritage. Under one interpretation, we could see this history as emblematic of the historical processes of commercial development, industrialization and urbanization, which were each sparked by the railroads. Under this reading, the changes in El Paso between 1870s and 1890 – particularly the increase in segregation and marginalization of the area's *mexicano* populations in the legal system – are simply a logical result of demographic and economic change, the expected, albeit unfortunate, outcome of modernization.<sup>177</sup> According to this interpretation, the increasing restriction of the rights of American citizenship to only those of Anglo-American descent was inevitable. The railroad brought more Anglo-Americans and more capital, and it was only logical that this burgeoning population would then also assert their power over the local legal culture.

This article has proposed a different interpretation, one that does not take as inevitable the demise of El Paso's hybrid legal culture and the segregation of its *mexicano* populations. It has argued instead that we must look to the specific actions of local legal players to understand the transformation of El Paso from frontier outpost to border metropolis. The changes of the late nineteenth century depended upon a particular social vision, which used law both to promote El Paso's transnational future as well as to dismiss its Mexican past. Lawyers in El Paso contributed directly to the creation of this social vision, through their tripartite roles as land brokers, boosters, and social engineers.

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<sup>177</sup> Recent work in law, colonization, and modernization has undermined some of the assumptions of inevitable decline. In his study of the southwestern frontier under Mexico, for example, Andres Reséndez argues persuasively that “American expansionism did not materialize at the Mexican frontier as a force of naked conquest....Instead, expansionism worked in far more interesting, devious, and unexpected ways.” ANDRÉS RESÉNDEZ, *CHANGING NATIONAL IDENTITIES AT THE FRONTIER: TEXAS AND NEW MEXICO, 1800-1850* (2005), 267-68. For other recent, nuanced studies of law and the process of colonization and modernization in the United States, see ARMANDO C. ALONZO, *TEJANO LEGACY: RANCHEROS AND SETTLERS IN SOUTH TEXAS, 1734-1900* (1998); MIROSLAVA CHÁVEZ-GARCÍA, *NEGOTIATING CONQUEST: GENDER AND POWER IN CALIFORNIA, 1770S TO 1880S* (2004); LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (2007); DAVID J. LANGUM, *LAW AND COMMUNITY ON THE MEXICAN CALIFORNIA FRONTIER: ANGLO-AMERICAN EXPATRIATES AND THE CLASH OF LEGAL TRADITIONS, 1821-1846* (1987); SALLY ENGLE MERRY, *COLONIZING HAWAII: THE CULTURAL POWER OF LAW* (2000); MARÍA E. MONTOYA, *TRANSLATING PROPERTY: THE MAXWELL LAND GRANT AND THE CONFLICT OVER LAND IN THE AMERICAN WEST, 1840-1900* (2002).

Promoting El Paso as a gateway to Mexico, to this group of the legal elite, meant downplaying any connection to the Mexican people in their midst.

Inherent in the actions of these players was a distinctive tension, between promoting El Paso's transnational promise and denigrating its Mexican past. Importantly, this dynamic connection between commercial expansion and legal exclusion may have things to teach us not only about the nineteenth century but also about today's border politics. When we look at local border communities today, we see some of the ways that this dynamic tension can play out. These communities continue to experience a major paradox: they are commonly touted as rich transnational zones, representing the best of a borderless world, yet they suffer racial segregation and economic deprivation to an extent not typically seen in the interiors of the U.S. or Mexico.<sup>178</sup> It may be that now, as in the late nineteenth century, transnational legal and commercial endeavors can actually spell further hardening of borders of race and class in local communities.<sup>179</sup>

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<sup>178</sup> On the economic and social conditions of border towns, see, for example, Victor Ortiz, *El Paso as an Eternal Yet Not Last Frontier*, in *ETHNOGRAPHY AT THE BORDER* 236-250 (2003) (ed. Pablo Vila).

<sup>179</sup> For thoughtful analyses of this contradiction in contemporary U.S. immigration and trade policy, see Kevin R. Johnson, *Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States*, 27 U.C. DAVIS L. REV. 937 (1994); Douglas S. Massey, *Backfire at the Border: Why Enforcement Without Legalization Cannot Stop Illegal Immigration*, Cato Institute, Center for Trade Policy Analysis, 5 (2005) available at <http://www.freetrade.org/node/32> (last visited 8/6/2008).