

Land use and legislation; the impact of nineteenth century United States land legislation on the indigenous landscape of southern Arizona between 1853 and 1912

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Abstract

Land policies of nineteenth century United States significantly impacted the indigenous landscape and ways of life in southern Arizona after its purchase from Mexico in 1853. This research is to understand how the land legislation policies were interpreted and implemented, why the culture of the United States supported these policies and what impact they had on the indigenous cultures of the region. Contemporary accounts, land legislation at both regional and national level, as well as recent commentaries have been consulted to understand the prevailing nineteenth century cultural norms which supported and accepted policies that denuded indigenous people of their traditional lands and ways of life.

It will be determined that the land policies were deliberately prejudiced in their formation and were aggressive both in the use of and in their results on the indigenous landscape and people of southern Arizona. Both the Tohono O'odham and the Chiricahua Apache indigenous people have lost significant amounts of cultural heritage and ways of life because of their inability to challenge the laws and prevailing culture in the United States between 1853 and 1912, when Arizona became a state. This analysis of a little-known region in the United States could help to explain why the results of nineteenth century land policies are still resonating in both the indigenous experiences and on the land management of the region to this day.

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Chapter One

Introduction

Introduction

United States' land legislation and its impact on the indigenous populations in the nineteenth century is not a new or unique topic, however, there have not been many studies of this relationship published about land legislation and the indigenous environment in southern Arizona. This work is to understand how legislation legally permitted incoming settlers to remove traditional territory from the Tohono O'odham and Chiricahua Apache indigenous people, to change the way in which the land was used, and what impact this had on the indigenous environment and ways of life in the region. It includes a discussion about the environmental and cultural changes which have resulted from these land policies and how they have changed the indigenous populations' relationship with the land. It will end with a brief discussion of recent developments addressing these events. This chapter will introduce the terminology used in this thesis, the position of this study within the context of United States' history, as well as a bibliographical review of the main sources for each of the topics covered.

The main discussion will begin with a general overview and orientation of southern Arizona, the regions natural resources and history. Integrated throughout will be an examination of the pertinent legislation and the results of its implementation in southern Arizona which will include a discussion of some of the themes which will be analysed through the research, such as an understanding of imperial sovereignty, settler colonialism and various cultural expectations which developed in the United States, and their relationship to land legislation. Next will be an analysis about various land practices and the value of communication links, water and natural resources to an arid region such as southern Arizona. Lastly, the discussion will evaluate the

direct impact the extraction industries of southern Arizona had on the landscape, and the indigenous people. A concluding chapter will attempt to understand how the land legislation of the nineteenth century still resonates in southern Arizona to the present day in the long-term effects on both the indigenous cultures of the Tohono O’odham and Chiricahua Apache ways of life and on the management of the landscape. This research will also incorporate a brief look at how broader patterns of settler colonialism continues to inform the discourse, viewpoints and practices of many Anglo-American, Mexican American and Indigenous people alike, who work and reside in the region. This has a significant impact on how southern Arizona will move forward in the twenty-first century in the wake of current political activism and environmental concerns.

The main question posed through this work asks what happened in southern Arizona to remove one set of people from their ancestral lands and replace them with a non-indigenous other? What type of mechanisms were involved, were they legal and why were they sanctioned, and lastly, what were the consequences of these actions? The history of the United States is peppered with examples of indigenous people trying to establish a solid claim to their traditional lands and resources, and southern Arizona was no exception. But in a region where there is a tenuous hold on life, limitations on water supplies and extreme weather conditions, one wonders why was it so important to ‘take’ this land from the indigenous populations in the first place? How could it have been justified?

Terminology

For the purposes of this study, the term Anglo-American will be used to denote the non-indigenous, but predominately white European representatives of the United States, in contrast with the indigenous populations, particularly the Tohono O’odham and the Chiricahua Apache.

This term may not feel comfortable for some, but this is the term still in use in southern Arizona to denote those of European heritage as separate from those of indigenous and/or Hispanic origins. It is used as a generic term throughout the thesis and is not meant to be derogatory. It is also used to indicate dominant cultural features such as a Western democratic political philosophy and industrial production based upon capitalism and commercialism.

The Tohono O’odham Nation, who, until recently were called Papago in official documents, have a reservation on the western side of southern Arizona. However, as the nation was called the Papago tribe in historic sources, the term O’odham will be used to indicate both the historical name of Papago tribe and the current name of Tohono O’odham Nation. This is not to dismiss other O’odham groups but it will be used to aid with identification of the specific group associated with the current Tohono O’odham Nation Reservation. The Chiricahua Apache will be identified as such, to distinguish this Apache group from other Apache who were also active in southern Arizona during the nineteenth century. The Chiricahua Apache traditional lands encompass much of what is now the Coronado National Forest, predominantly the Dragoon and Chiricahua Mountains.

The term settler colonialism will be used to describe the movement of people from other regions to the American southwest and is used to explain how dominating countries can claim acquired land by policies permitting people to establish a permanent footprint on a new territory.¹ This is a specific term which distinguishes it from the European style of colonialism which colonized using small numbers of people and administrative control over the economy.² Settler

¹ Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Cambridge, MA: Harvard University Press, 1981), 240-241.

Walter L. Hixon, *American Settler Colonialism: A History* (New York: Palgrave Macmillan, 2013), 4.

² Gary Fields, *Enclosure: Palestinian Landscapes in a Historical Mirror* (Oakland, CA: University of California Press, 2017), 5.

colonialism is an influx of people who supersede the original occupants of a region and helps to provide an understanding of how particular 'land grabbing' techniques were used to gain land during the territorial expansionism of the United States. Therefore, the term settler colonialism will be used as an historic event to provide a framework that will help to interpret the distribution of property and land as a pivotal point of the implementation of legislation in southern Arizona.

This research is about the changes wrought on the landscape of southern Arizona and on the indigenous people who resided there in the nineteenth century. Indigenous environment is a term used to encompass both the flora and fauna of southern Arizona as well as the culture and lifeways of the indigenous people, whose understanding and interpretation of their surroundings is more inclusive than that of the Anglo-Americans during the nineteenth century.

Intention

The purpose of this research is to study the local effects of national land and property legislation in southern Arizona during the nineteenth and early twentieth century, helping to explain how underrepresented indigenous populations lost jurisdiction over their traditional lands, via the use and application of this legislation. Southern Arizona is the focus of this research because it holds a unique position in the United States, not only as the last piece of contiguous territory purchased by the United States, but also because it is subject to two international purchase treaties made between the United States and Mexico and is the location of a significant stretch of the international border between the two countries. This discussion will evaluate various pieces of land legislation and its impact on the indigenous environment and local indigenous people. It will also examine the influence of not only political policies but also the social, cultural and economic power and control of the local elites, in southern Arizona, which supported the extraction of land from its original indigenous occupants, and how this reflects the broader

policies and context being implemented throughout the United States, and more particularly in the American West.

This research is also an attempt to analyse the legal framework within which settler colonialism worked in southern Arizona historically and to provide a sociological analysis of the results of settler colonialism and land policy on the indigenous landscape. The term indigenous landscape will often be used to encompass the indigenous experience resulting from changes in the landscape and land use by the incoming settlers. Reference to the two regional indigenous people who were impacted by the legislation will be made to illustrate the devastating effects land legislation had on the indigenous experience. The primary focus will be on the reading and Anglo-American interpretation of the legislation and how it was implemented at a local level. There is a conscious disengagement from commentary on the cultural norms and values of the indigenous people beyond that of the impact of the legislation. As a researcher of European heritage and with little experience of the cultures, it is incumbent of me to focus on the results of the legislation, rather than to attempt to understand the decision making and thought processes of a culture I am unfamiliar with. There will also attempt to avoid an Americentric perspective, however, contemporary accounts from Anglo-Americans will be used because they reflect the dominant cultural interpretation of the indigenous communities during the time period and because accessible indigenous resources from the nineteenth century are difficult locate for a non-tribe member. Contemporary accounts also help to provide a cultural framework within which the legislation was developed and presented in southern Arizona. This is not to devalue the important histories and cultural practices of the indigenous people of the region, but to respect their heritage in attempting to understand how their modern lifestyles have been shaped by superimposed historical experiences. The period 1853 to 1912 chosen for study as it

represents the time between acquisition in 1853 and statehood in 1912, as such it is called the territorial period in many commentaries.

Although this research does not focus on a particular theoretical approach, it aligns with the broader aspects of settler colonial studies.³ It explores factors influenced by the incoming settler colonialists, such as the patterns of settlement, landscape use and environmental impact, all of which were developed within the legal framework of the United States established and implemented by, and for, Anglo-American settlers. These factors will include power relations and sovereignty, spatial distribution, creation of boundaries and the marginalization of underrepresented 'others' resulting from industrial development of material resources by capital investment and government incentives.⁴ Underlying much of the settler colonial aspect of this research will be how the forces of Anglo-American expansionism and capitalism influenced decisions executed on the indigenous landscape of southern Arizona to dispossess the people, who are now deemed rightful custodians of the environment.⁵

The intention is also to move beyond the ethnocentric contemporary interpretation of policy and is postcolonial in its attempt to understand how colonial policies have shaped the modern world,

³ Larry J. Griffin, 'Historical Sociology, Narrative and Event-Structure Analysis: Fifteen Years Later,' *Sociologica* no. 3 (2007): 1-17

Craig Calhoun, 'Explanation in Historical Sociology: Narrative, General Theory, and Historically Specific Theory,' *American Journal of Sociology* 104 no. 3 (1998): 846-871

⁴ George Steinmetz, 'Social fields, subfields and social spaces at the scale of empires,' *Sociological Review Monographs*, 64: 2 (2016): 79

⁵ Elizabeth Carlson, 'Anti-colonial methodologies and practices for settler colonial studies,' *Settler Colonial Studies* 7: 4 (2017): 509

Flannery Burke, *A Land Apart: The Southwest and the Nation in the Twentieth Century* (Tucson, AZ: University of Arizona Press, 2017), 25

Rebecca Solnit, *Savage Dreams: A Journey to the Hidden Wars of the American West* (Berkeley, CA: University of California Press, 1994, 2014), 163-172

impacted the indigenous environment and have executed the power dynamics of an imperial power upon the purchased territory of southern Arizona.

Thus, this thesis is not to analyse the actions of underrepresented indigenous populations nor produce an insight in their intentions and cultural nuances, it is designed to be a minute investigation into the legal processes which prevented indigenous people from challenging the way in which their indigenous territory was used by the incoming Anglo-Americans. It is intended to show how legislation was manipulated by social, political and economic forces of the United States to obtain land from others, but within the bounds of social and legal acceptability. The focus on southern Arizona will provide the locational framework to analyse how legislation was used locally and to evaluate the impact on it. The historical setting is to provide evidence of how the practices of specific social, political and economic policies continued over the formative decades of the state of Arizona, while at the same time considering the institutional inequality of the past that is still relevant in the present and the future of the region. As Peter Barnes explained in 1971, decisions of the past, particularly those which removed property rights, are revisited in the present by using the same procedures to further dispossess a group of already impoverished people. This, he explained, could have been avoided if the mechanisms in the late nineteenth century had not encouraged policies that placed land resources into the hands of the few.⁶

Context

Land in the modern United States is expansive: 3,147,593 square kilometres, of which 97% is considered rural, which equates to approximately 28,310 square metres per person and much of it

⁶ Peter Barnes, 'The Great American Land Grab,' *New Republic*, 1979 <http://peter-barnes.org>.

is owned and controlled by the United States government.⁷ During the eighteenth and nineteenth centuries the people of the United States coveted new land, and waves of settler movements spread from the original eastern seaboard states westward across the lower half of North American continent. Initially the waves of settlers just crossed the Appalachians into modern Kentucky and the Old Northwestern states, later, they pushed into the new territories of Louisiana, Missouri and Kansas and as far as Oregon, by the middle of the 1800's settlers were migrating into the newly purchased western territories of the Mexican cession. Towards the end of the nineteenth century the United States claimed all the indigenous territory found between the Atlantic east coast and the Pacific west coast as belonging to the United States and founded this supposition upon internationally recognised legal documents in the form of treaties and land legislation policies. Westward expansion was encouraged centrally by politicians in Washington D. C., which instigated contact, and clashes, between many of the settlers and the indigenous people residing on the coveted land. Unfortunately, for many indigenous people, this encounter often resulted in either forced assimilation into the dominant culture of the United States, enforced concentration into reservations, or elimination from the territory completely, either by removal or death, resulting, in most cases, to the disintegration of their traditional and sustainable way of life.

Historically the development of European settlement on the lower North American continent involved Spain, France and English establishing colonies and administration centres from which to control trade in the different regions they settled on. As the Europeans established themselves on the continent, the indigenous people were forced to live alongside these culturally different people, and one of the main issues which occurred between the indigenous occupants and the

⁷ United States Census *Summary* (2016) www.census.gov. Accessed 21 August 2018.

incoming colonisers was the reorganization and redistribution of land and landownership rights under land and property policies of the legal system superimposed by the incoming Europeans. When the current United States developed from the territories claimed by England, France and Spain, the government continued the policy of establishing legal jurisdiction over the territory while encouraging settlers to expand into other indigenous territories and to claim them for the United States.

The emerging culture of the United States held that land itself was cheap and could be exploited to provide important resources for the country. Legislation was built upon the premise that the propertied citizen was expected to use modern technology, of the time, and extraction techniques to enhance the commercial viability of their land for capital gain. The indigenous people, however, utilised and understood their land differently from the European practice of mass and systematic extraction of resources, and perceived land as life as opposed to land as commodity. It was this difference which caused a clash of cultures in the new territories. In the annals of the 'Wild West', the core of the conflict between the indigenous people and the incoming Anglo-Americans was not about aggressive lifestyles but was about this fundamental difference in the understanding of the value of land and its resources, which resulted in a contest over jurisdiction of the environment and the erosion of the autonomy of the indigenous people residing on it.

The underlying impetus for this research was a growing recognition that the original residents of southern Arizona traditionally used, before the Mexican cession in 1853, an extensive area of land, but, yet, were somehow removed from most of this land within the first 60 years of United States governance. As soon as the United States acquired the region, the local dynamics changed, and property jurisdiction moved from indigenous use to government control by the United States and her agents, whether political, economic or cultural. Southern Arizona was the

last major land purchase from Mexico to the United States and was a great coup for the United States as it allowed the country to run uninterrupted from the Atlantic coast to the Pacific Ocean, but also made it, and those who resided there, subject to the laws and regulations of the new country. One of the defining features of this new political arrangement was that the new territories, and resources thereon, automatically became public property of the United States government, held in trust for the people, unless legally proven otherwise. This was consistently supported by specific land legislation throughout the nineteenth century designed to distribute the land to provide private patches of land for Anglo-American citizens. The purpose of this study was to see how this legislation was specifically used in late nineteenth century and early twentieth century southern Arizona to this end, and to understand the results of it in terms of the indigenous experience and landscape.

Understanding land differently

Consequences of the legal land processes of the United States on the indigenous environment are the destructive elements which came with them especially in the way that land management was implemented in southern Arizona. The land and conservation practices which the indigenous residents had formally used as a way of life was barred to them, as well as indigenous legal recourse to defend their rights and jurisdiction over it. Indigenous lifestyles would be impacted, and their traditional practices and heritage would be challenged by Anglo American culture and society. The large influx of Anglo-Americans into southern Arizona during the latter decades of the nineteenth century, who brought with them their cultural ideas, economic structure and legal system. Practices from these features had a negative impact on the indigenous landscape because the land was understood in different ways by the incoming Anglo-Americans to that of the indigenous people residing in the region. The Anglo-Americans were from a culture which,

by the nineteenth century, valued land for its monetary worth by its ability to produce market-value resources from it. Their intention was to utilise the natural resources to enhance their own capital gain by advancing the productivity of the resources using technology which allowed for large scale extraction. The indigenous people living in the region, however, valued land for its intrinsic worth as a provider of life which was to be respected, cultivated and preserved for future generations. Their lifeways integrate the landscape with their cultural practices and inform their future decisions, they consider themselves as ‘stewards of the land’, as the Chiricahua Apache Nation explain.⁸ The interconnection of life and embedded history which the landscape represented in indigenous cultures did not correspond with the incoming Anglo-American worldview and resulted in a clash of ideologies and practices. The consequence of which suppressed the indigenous interpretation of their environment under that of the dominant Anglo-American cultural ideals which commodified the land. As Linda Tuhiwai Smith explains in her book about the Western intellectual influence on indigenous and colonial studies, indigenous people do not distinguish between time and space when recounting their stories or explaining experiences.⁹

A disregard for indigenous cultures and their traditional low environmental impact way of living can be seen in the high-rise buildings, multi-lane highways and swimming pools of modern urbanized southern Arizona. Even the indigenous populations in the region have access to many modern conveniences and make a living from the urban developments find it hard to continue their traditional way of life when so many changes have been brought about by the introduction of the Anglo-American extraction industries. Moreover, the destruction of the balanced

⁸ Chiricahua Apache Nation, accessed 18 April 2018. <http://www.chiricahuaapachenation.org>

⁹ Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous People* (London: Zed Books, 2012), 52-53

ecosystems, coupled with pressure to convert to Anglo-American agricultural practices, resulted in changes in diet and work practices, as well as a reduction of knowledge about traditional cultural activities, such as cactus harvests and *ak-chin* farming methods. The ecology of the Sonoran Desert is based upon survival in arid conditions and many animals, plants and people have developed mechanisms to conserve water, avoid the extreme temperatures and use the native flora and fauna for their nutritional survival. This has produced an environment where succulents, cacti and woody plants survive on the desert floor, and are fed by season rains, which bring moisture and nutrients from the mountains by way of rivers, creeks, arroyos and mountain streams. The plants have long roots which help to maintain the integrity of the thin soil and prevent erosion both on the mountain sides and on the desert floor. However, the increased use of the extraction industries coupled, now, with the modern style of living which involves heavy use of fossil fuels, precious minerals and copious amounts of meat products, all needing extensive water resources, have created a potential ecological disaster in southern Arizona.

Main bibliographical sources used

Few commentaries have been produced connecting land legislation to the inequalities and changes in land ownership imposed upon the indigenous people of Arizona, and, beyond a cursory mention within discussions about New Mexico and California, much of the experience in southern Arizona has been overlooked. Even the Chiricahua Apache, who produced such 'Wild West' legends as Cochise and Geronimo from the Apache Wars of the nineteenth century, do not receive much attention from historical commentaries beyond stories about them being considered as obstacles to expansionist policies of the United States government during this century.

Various sources, dating from the middle of the nineteenth century, provide first-hand impressions of the territory during its Anglo-American cultural formation. It has been useful to

gain contemporary descriptions of both the landscape, the resources on the landscape as well as interactions with the indigenous populations at the time. Later sources and modern commentaries have been used to provide insight or interpretations of these first impressions and of the implications of the legislation. In addition to primary and secondary sources, first-hand knowledge from my experiences and interactions in southern Arizona while engaging in preservation activities will be added where personal conversations with officials have occurred or where no published source is available.

Samuel Truett provides a great general land history of the southwest in *Fugitive Landscapes*, and the impact of early borderland politics on the landscape but does not provide specific information about southern Arizona.¹⁰ However, for a more pragmatic history of the American West, Richard White pulls no punches in his book *'It's Your Misfortune and None of My Own': A New History of the American West*.¹¹ White develops themes of landscape development, economics and suppression, and the development of regional city control centres, starting with a brief history of the west, but bringing the discussion into the twenty-first century where he explores the dichotomy between modern technological cities and the rural 'wild west' on the periphery, still in popular imagination. Patricia Nelson Limerick and Flannery Burke attempt to define the west as a specific region with regionally identifiable features beyond the 'wild west' stereotype. Limerick provides a general history of the west in Part One of her book and explores racial dynamics in the west in Part Two, emphasizing the west as a place as well as a continuous concept.¹² Burke limits herself to defining the southwest as a specific region in the west and

¹⁰ Samuel Truett, *Fugitive Landscapes: The Forgotten History of the U.S.-Mexico Borderlands* (New Haven: Yale University Press, 2006)

¹¹ Richard White, *'It's Your Misfortune and None of My Own': A New History of the American West* (Norman, OK: University of Oklahoma Press, 1991)

¹² Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York, NY: W.W. Norton, 1987)

identifies Arizona and New Mexico as the primary states which represent this region because of their shared experiences, which includes those of the United States-Mexican borderland region. Burke also includes racial themes as well as the use of land, resources and the development of commercial and industrial enterprises, and how the Anglo-American adaptations have enabled this group to use the land as they desired. For the purposes of this study, the focus on desert landscapes separates the southwestern areas of the United States from the generic American West, and specifically considers the borderlands experience of the southern Arizonan indigenous people.

Peter Barnes' article 'The Great American Land Rush,' is an informative discussion about the control of landscape and underrepresented people, especially as he covers the manipulation politics of the speculators and companies, supported by the government and the cattle barons of the west.¹³ The premise of his article is to explore the concept that 'land grabbing' in the United States, particularly in the large agri-business regions of the south and the west were responsible for land emasculation of minorities, who then, ended up the cities as the urban poor of the twentieth century. However, his focus is only on California and Texas. Both Valerie L. Kuletz and Rebecca Solnit draw upon their personal experiences with the nuclear weapons industry in the desert regions of the American West, specifically in the southwest, and the impact this has on both the landscape environment and specific indigenous experiences.¹⁴ Their studies include discussions about the continued government perception of the land being empty and how the industry is not disrupting indigenous ways of life. While these books cover many of the themes

Flannery Burke, *A Land Apart: The Southwest and the Nation in the Twentieth Century* (Tucson, AZ: University of Arizona Press, 2017)

¹³ Barnes, 'The Great American Land Grab'.

¹⁴ Valerie L. Kuletz, *The Tainted Desert: Environmental Ruin in the American West* (New York, NY: Routledge 1998) Rebecca Solnit, *Savage Dreams: A Journey to the Hidden Wars of the American West* (Berkeley, CA: University of California Press, 1994, 2014)

in this research such as the continued government misuse of the southwest landscape and the marginalization of underrepresented people of the region, they discuss events occurring a century beyond the scope of this research.

Ethnographer, Edward Spicer, provides a good examination of the impact which the Spanish, Mexican and United States' sovereignty over the American southwest in his 1969 book *Cycles of Conquest*.¹⁵ This was expanded later by Eric Meeks' investigation of how United States policy impacts the citizens who live in the borderlands near the international boundary between Arizona and Sonora, providing a very useful thematic approach to borderlands history of the twentieth century, and his revised 2020 edition brings the discussion up-to-date.¹⁶ Rachel St. John provides a powerful and interesting discussion about the meaning of the 'line in the sand' United States-Mexican international boundary of southwest borderlands to the region, and the ongoing border issues experienced by those living in and crossing the southwest borderlands.¹⁷ However, while the discussion is important to understand the arbitrariness of the international border line drawn between the United States and Mexico, St. John does not discuss the specific impact this has on bisected indigenous communities on the border. Christina Leza, however, is more specific and provides an intimate look at how border politics have influenced the cultural thinking patterns of those in the United States about people residing in the borderlands of Mexico.¹⁸ She points out that these politics have also damaged indigenous relationships with their Mexican community members and that there is a need to remove United States'

¹⁵ Edward Spicer, *Cycles of Conquest: The impact of Spain, Mexico and the United States on Indians of the Southwest, 1533-1960* (Tucson AZ: University of Arizona Press, 1967).

¹⁶ Eric V. Meeks, *Border Citizens: the making of Indians, Mexicans, and Anglos in Arizona*; Revised Edition (Austin, TX: University of Texas Press, 2020)

¹⁷ Rachel St. John, *Line in the Sand: A History of the Western United States-Mexico Border* (Princeton: Princeton University Press, 2011)

¹⁸ Christina Leza, "Indigenous Identities on the United States-Mexico Border," *Journal of the Southwest* 60:4 (2018): 914-936

ethnocentric discourse from conversations between north and south groups to remove these artificially created barriers to encourage greater unity among the groups. Meeks develops this discussion in a 2020 article where he calls for a need of a comprehensive strategy to recognise transborder issues and to give transborder indigenous communities greater autonomy over their transborder activities.¹⁹ He hopes that this would encourage a healing of the breach between community members.

These resources are invaluable to this discussion and have provided significant amounts of information to develop this research and have added wealth to the specific information and events of this research. More specific and localised resources include Thomas E. Sheridan and his extensive studies on land confiscation from the Tohono O’odham during the nineteenth century and his history of Sonoran Mexicans up to World War II.²⁰ In *Landscapes of Fraud* Sheridan discusses the history of land use in the Santa Cruz valley since the Spanish and provides a good overview of the specific land transfers during Spanish colonization and while it was part of Mexico. However, Sheridan’s book is exclusively about the transfer and legalities of mission land in the valley area and does not cover other sections of southern Arizona. Marilyn Strome Harris, in her master’s degree thesis in 1961 and Richard Wells Bradfute in 1975 both published detailed archival studies of the Private Land Claims Courts of the 1890’s.²¹ They provide extensive information about the Spanish and Mexican land grants in which they traced

¹⁹ Eric Meeks, “Navigating the Border: The Struggle for Indigenous Sovereignty in the Arizona-Sonora Borderlands,” *Journal of Arizona History* 61: 3, 4 (2020): 639-666

²⁰ Thomas E. Sheridan, *Los Tucsonenses: The Mexican Community in Tucson 1854-1941*. (Tucson, AZ, 1992). Thomas E. Sheridan, *Landscapes of Fraud: Mission Tumacacori, The Baca Float, and the Betrayal of the O’odham*. (Tucson, AZ: University of Arizona Press, 2006).

²¹ Marilyn Strome Harris, ‘Arizona Land Grants: Cases which appeared before the Court of Private Land Claims, 1891-1904’ (MA Thesis for San Diego State College, 1961). Richard Wells Bradfute, *The Court of Private Land Claims: The adjudication of Spanish and Mexican Land Grant Titles, 1891-1904* (Albuquerque: University of New Mexico Press, 1975).

most of the claims and the results of the claims courts decisions both invaluable resources for a land claims researcher for the area, while J.J. Bowden provides a useful critique of the land claims systems.²² Jay J. Wagoner is a very useful resource for Arizonan history, his Arizonan political history, in two volumes, provides valid information for the legislative and political processes of the implementation of various policies and their implications to Arizona.²³ Thomas Sheridan complements him with his large 2012 volume, *Arizona: A History*.²⁴ In addition, loosely related articles in locally produced publications, particularly the *Journal of Arizonan History* and articles from the commercial company Archaeology Southwest, provide useful mini-studies of local characters and events, allowing for the bigger picture of the impact of land legislation in southern Arizona to develop.²⁵

Other local information is provided by the scholars of indigenous history, such as Dan Thrapp, Donald Worcester, and Roger Nichols have provided useful general information about the Apache as a whole, and sometimes specifically about the Chiricahua Apache, which are more scholarly than the popular histories of the exploits of Cochise and Geronimo; a difficult task given the large volume of these stories on the shelves.²⁶

²² J. J. Bowden, 'A Critique of the Solution of the Southwest Private Land Claims Problem' (MA Thesis Dallas, TX: Southern Methodist University, 1969).

²³ Jay J. Wagoner, 'The History of the Cattle Industry in Southern Arizona 1540-1940' (MA Thesis: Department of History, University of Arizona, 1969).

Jay J. Wagoner, *The History of the Cattle Industry in Southern Arizona*. (Tucson, AZ: University of Arizona Press, 1952).

Jay J. Wagoner, *Arizona Territory 1863-1912: A Political History*. (Tucson, AZ: University of Arizona Press, 1970).

Jay J. Wagoner, *Early Arizona; Prehistory to Civil War*. (Tucson, AZ: University of Arizona Press, 1975)

²⁴ Thomas E. Sheridan, *Arizona: A History* (Tucson AZ: University of Arizona Press, 2012)

²⁵ Archaeology Southwest, available from www.archaeologysouthwest.org

²⁶ Dan L. Thrapp, *The Conquest of Apacheria*. (Norman, OK: University of Oklahoma Press, 1967). Donald E. Worcester, *The Apaches, Eagles of the Southwest* (Norman, OK: University of Oklahoma Press, 1979).

Roger L. Nicols, *Warrior Nations: The United States and the Indian Peoples* (Oklahoma: University of Oklahoma Press, 2013)

Janne Lahti uses ethnographies from the 1930's to investigate the Apache Wars from the perspective of the incompatibility of their military strategies.²⁷ He compares the how the United States and the Apache use of landscape informed how they developed their maneuvers during the Apache Wars of the nineteenth century, and how spatial challenges for the United States meant that they used more insidious methods to finally remove the Apache from the area. While, the scope of my research was not to retell the skirmishes of the Apache Wars, Lahti's book illustrates that the United States deployed various methods to eliminate any human obstacles impeding government policy.

Keith Basso's more culturally sensitive study *Wisdom Sits in Places* discussion of Apache interpretation and use of indigenous landscape is invaluable in understanding how the landscape informs Apache of their heritage and is a visual trigger to historic events, which once lost can be lost forever.²⁸ Maurice Crandall's article provides a discussion about identity and specifically about the Yavapai mission to become a Federally Recognized Tribe as separate from the Western Apache with whom they share a reservation.²⁹ This is redolent of the struggle the Chiricahua Apache are also experiencing in their attempt to be recognised as a separate entity from the Mescalero Apache Tribe. Both groups were forcibly removed from their traditional lands.

Tohono O'odham history is somewhat more elusive, and much of the information about the nation, aside from the Tohono O'odham Nation website, is provided by the manuscript of Father Bonaventure Oblasser, priest to the O'odham at San Xavier mission during the early twentieth

²⁷ Janne Lahti, *Wars for Empire: Apaches, the United States, and the Southwest Borderlands* (Norman OK: University of Oklahoma Press, 2017)

²⁸ Keith H. Basso, *Wisdom Sits in Places: Landscape and Language Among the Western Apache* (University of New Mexico Press, 1996), Kindle.

²⁹ Maurice Crandall, "Yava-Who?: Yavapai History and (Mis) Representation in Arizona's Indigenous Landscape," *Journal of Arizona History* 61: 3, 4 (2020): 487-510

century, and Winston Erikson whose book, *Sharing the Desert: The Tohono O'odham in History*, is used by O'odham secondary school students to explain their history in a traditional way.³⁰ I would also like to recognise my colleague Dr. Gregory Redhouse, an Apache/Navajo who is an O'odham scholar, and who kindly shared pertinent information about indigenous peoples of Arizona while I was teaching the History of the United States in Arizona.

Commentaries on the resources located in Arizona can be found in specific discussions such as in the collection of essays edited by Bill Broyles on the specific region in the Sonoran Desert called *Tinajas Altas* which discusses how the tinajas, or water tanks, were important water sources for the region.³¹ Donald Worster is a valuable reference for many authors about the arid west, although this is general and not particular to Arizona.³² Flannery Burke's chapter 'Water is the Earth's Blood' adds to the discussion about the centrality of water to the southwest and how it represents a society where a small group of elites control the production of water, and the impact this control has on indigenous communities.³³ Other specific studies were the Environment Defense Fund and the Nature Conservancy articles about the Santa Cruz River and the San Pedro River, respectively.³⁴ The largest piece of water legislation for southern Arizona

³⁰ *Tohono O'odham: History of the Desert People*, (Published by S.I.s.n, 1985)

'Tohono O'odham History 1916 to Present,' *Tohono O'odham*, last modified 2016, www.tonation-nsn.gov. Fr Bonaventure Oblasser, Files 1905-1937; Records and writings from Father Bonaventure. Arizona Historical Society; Tucson, call number AHS AZ 554.

Winston Erikson, *Sharing the Desert: The Tohono O'odham in History* (Tucson, AZ: University of Arizona Press, 1994).

³¹ Broyles et al, ed., *Last Water on the Devil's Highway: A Cultural and Natural History of the Tinajas Altas* (Tucson, AZ: University of Arizona Press, 2014)

³² Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York, NY: Oxford University Press, 1985)

³³ Burke, *A Land Apart*, 270-293

³⁴ Environmental Defense Fund, 'Celebrating Arizona's Rivers: The Santa Cruz River.' www.edf.org. (2012) Accessed 15 July 2019.

The Nature Conservancy, "The San Pedro River" 24 Dec 2020 www.nature.org; The Nature Conservancy, 'Returning Water to the San Pedro River.' www.nature.org. (2021)_Accessed 21 Jun 2021

was the 1877 Desert Land Act for which John Ganoe, in 1937, and Karl Landstrom in 1954 wrote articles about, discussing the impact this legislation had on desert regions, although not specifically about southern Arizona.³⁵ Dr. Sharon Megdal provides a more up to date discussion and more specific information about the legislation in her article about Arizona water law and the impact it has on the environment.³⁶

Jay J. Wagoner, whose 1949 thesis was published as a book in 1952, provides an extensive look at the southern Arizonan cattle industry, giving many details about the development of the industry from 1540 and the ranchers who became large industry players during the late nineteenth and early twentieth centuries.³⁷ This was complemented by William Collins, who wrote a National Register of Historic Places nomination for a multiple property district in 1996, revised in 2005, and Jonathan Mabry.³⁸ Both authors also used information provided by the general studies of the western cattle industry by Robert Ferris and Terry Jordan, as well as the specific information from Wagoner.³⁹ Dan Robinett discusses the cattle industry on O'odham reservation land which includes commentary on the changes in O'odham modern ranching practices and their concerns about land management while using European stock and

³⁵ John T. Ganoe, John T. , 'The Desert Land Act in Operation 1877-1891' *Agricultural History* Vol. 11 No.2 (April 1937): 142-157.

Karl S. Landstrom, 'Reclamation under the Desert Land Act' *Journal of Farm Economics*: 36 no 3 (Aug 1954): 500-508.

³⁶ Dr. Sharon Megdal,, Joanna Nadeau and Tiffany Tom, 'The Forgotten Sector: Arizona Water Law and the Environment'. *Arizona Journal of Environmental Law and Policy*: 1 no.2 (2011): 243-377

³⁷ Wagoner 'The History of the Cattle Industry'. Wagoner, *The History of the Cattle Industry*.

³⁸ William S. Collins, *Cattle Ranching in Arizona 1848-1950 Multiple Property Listing*. National Register of Historic Places Nomination for the National Park Service (1996/2005).

Johnathan Mabry, 'Cattle Ranching in Southern Arizona Before the Twentieth Century.' *Archaeology in Tucson Newsletter*: 11 no. 4 (1997): 10-11.

³⁹ Robert G Ferris, ed. *Prospector, Cowhand, and sodbuster: Historic Places Associated with the mining, ranching, and farming frontiers in the Trans-Mississippi West*, Vol XI (1967) (Washington DC: United States Department of the Interior National Park Service).

Terry G. Jordan, Terry G, *North American Cattle Ranching Frontiers: Origins, Diffusion, and Differentiation*. (Albuquerque NM: University of New Mexico, 1993).

techniques.⁴⁰ The transportation networks and their impact on the landscape by Pat Stein for Arizona State Historic Preservation Office is a detailed investigation of the history of transportation, and supported by articles from the Arizona Department of Transportation.⁴¹

Information about mining in Arizona has proved to be more elusive generally, although mining histories of specific mines can be gleaned from their websites, such as articles from Resolution Copper.⁴² However, a brief history of mining by Larry McBiles, and an article about the influence Charles Poston had on the mid-nineteenth century mining laws by John Lacy as well as one about Samuel Colts investment in the southern Arizona mining industry allow for more general information to be pieced together.⁴³ General information about mining and how mining impacts the environment are presented by Donald Hardesty and Randal Rohe which provide background information about the mining industry.⁴⁴ However, much of the specific knowledge of how the mines operated in Arizona comes from contemporary articles and documents, and reproduction newspapers which discussed the mining processes in detail mainly for prospective

⁴⁰ Dan Robinett, 'Tohono O'odham Range History.' *Rangelands*: 12 no. 6 (1990): 296-300

⁴¹ Pat H Stein, *Historic Trails in Arizona from Coronado to 1940*. (State Historical Preservation Office. Phoenix, Arizona, 1994).

⁴² Resolution Copper Mining <https://resolutioncopper.com/resolution-copper-mine/arizona-and-copper/> Accessed 01 September 2020.

'Statement of percentage of copper from Arizona,' *Resolution Copper*, accessed 1 September 2020. <https://resolutioncopper.com>

'A History of Mining in AZ: The Mission, Means and Memories of Arizona Miners,' *Resolution Copper*, accessed 1 September 2020, <https://resolutioncopper.com>.

⁴³ Larry McBiles, "A History of Mining in Arizona". *Arizona Foundation for Resource Education*, accessed 01 September 2020, 15-16.

John C. Lacy, 'The Mining Laws of Charles D. Poston, 1857-1865.' *The Journal of Arizona History*: 50, no. 2 (2009): 143-166.

Leah S. Glaser and Nicholas Thomas, 'Sam Colt's Arizona: Investing in the West.' *The Journal of Arizona History*: 56 no.1 (2015): 29-52

⁴⁴ Donald Hardesty, *Mining Technology in the Nineteenth Century*. (2010) www.onlinevada.org. Accessed 20 March 2019.

Randall Rohe, 'Man and the Land: Mining's Impact in the Far West.' *Arizona and the West*: 28 no. 4 (1986): 299-338

shareholders, such as the reports by the travel writers and mining engineers of the latter years of the nineteenth century.⁴⁵

Legislation and its impact on the management of the landscape is pivotal to this research and provides the premise with which to evaluate land and resource use in southern Arizona. It is relatively easy to find transcripts of the most important pieces of legislation online, such as through the Avalon Project, hosted by Yale Law School, the Library of Congress and the Office of the Historian⁴⁶. Much of the important national legislation have commentary from various scholars, but local Arizonan legislation is only discussed by scholars such as Jay J. Wagoner and Thomas E. Sheridan with reference to their impact on historical events.⁴⁷ A very well-respected historian of land legislation, Paul Wallace Gates, is the best writer to help understand and navigate through the land legislation of the United States, and by extension to understand Arizonan policies too.⁴⁸ With a career in politics which spanned over half a century, and with a focus on land laws, the frontier and the spatial and political impact of frontier politics, Gates is

⁴⁵ Richard J. Hinton, *The Hand-Book to Arizona: It's resources, History, Towns, Mines, Ruins and Scenery*. (Tucson AZ: Arizona Silhouettes, 1878). J. H. Dr. McKee, *Report on Mines of Tombstone Syndicate, 1879*. (San Francisco, CA: Bacon and Company, Book and Job Printers, 1879).

Patrick Hamilton, *The Resources of Arizona: Its mineral, Faring and grazing lands, towns and mining camps; its rivers, mountains, plains and mesas; with a brief summary of its Indian tribes, early history, ancient ruins, climate etc, etc. A Manual of Reliable Information Concerning the Territory* (San Francisco: AL Bancroft & Co. Printers, 1881).

William P. Blake, *Tombstone and It's Mines: A Report on the Past and Present Condition of the Mines of Tombstone, Cochise County, Arizona: for the Development Company of America* (New York: The Cheltenham Press, 1902).

⁴⁶ Avalon Project available from <https://avalon.law.yale.edu/>; The Library of Congress available from www.loc.gov and the Office of the Historian available from www.history.state.gov.

⁴⁷ Wagoner 'The History of the Cattle Industry'.

Wagoner, *The History of the Cattle Industry*.

Jay J. Wagoner, *Arizona Territory 1863-1912: A Political History* (Tucson, AZ: University of Arizona Press, 1970).

Jay J. Wagoner, *Early Arizona; Prehistory to Civil War*. (Tucson, AZ: University of Arizona Press, 1975).

Sheridan *Los Tucsonenses*.

Sheridan *Landscapes of Fraud*.

Thomas E. Sheridan, *Arizona: A History* (Tucson AZ: University of Arizona Press, 2012).

⁴⁸ Paul W. Gates, 'Public Land Issues in the United States.' *Western Historical Quarterly*, 12 no.4 (1971) 363-376.

Paul W. Gates, 'An Overview of American Land Policy.' *Agricultural History*: 50:1 (1976): 219-229.

an author who provided significant insight into how landscape legislation worked, particularly on the western experience in the nineteenth century.⁴⁹ A prolific writer, his crowning publication was the *History of Public Land Law Development*, written on behalf of the Public Land Law Review Commission in 1968.⁵⁰ Gates was also concerned about presenting the complexities of frontier experience including Mexican American and indigenous struggles with western expansionism and incursion on to their traditional lands, and the role which larger investors and policy makers held in these proceedings.⁵¹ Other commentaries about land legislation are provided by James Ely, Malcolm Ebright, Lisi Krall, Craig Smith and Scott Ellsworth and Jessica Shoemaker.⁵² A collaboration between Ebright and Rick Hendricks provide a discussion about indigenous rights to water in New Mexico and Texas, providing useful terminology and commentary on various legislative measures.⁵³ Richard del Castillo focused specifically on the tenets of the Treaty of Guadalupe Hidalgo, 1848, and although this does not apply directly to southern Arizona, it does provide techniques with which to interpret the articles of the Gadsden Purchase Treaty of 1853.⁵⁴

⁴⁹ David Baird, James Wright and Harwood Hinton, 'Western History Association Prize Recipient, 1986: Paul Wallace Gates.' *Western Historical Quarterly*: 18 no. 2 (1987): 133-140

⁵⁰ Allan G. Bogue, Margaret Beattie Bogue, Walter LaFeber and Joel Silbey, 'Paul Wallace Gates (1901-99).' (1999) www.historians.org. Accessed 21 November 2018.

⁵¹ Baird et al Western History Association Prize Recipient. Bogue et al, Paul Wallace Gates

⁵² James W. Ely, *Property Rights in American History* (Bosa Roca: Taylor & Francis Inc, 1997).

Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico*, (2008), accessed 17 September 2017 www.southwestbooks.org.

Lisi Krall, 'U.S. Land Policy and the Commodification of Arid Land (1862-1920)'. *Journal of Economic Issues*: 35 no. 3 (2001): 657-674.

J. Craig Smith and Scott M. Ellsworth 'Public Trust vs Prior Appropriation: A Western Water Showdown'. *Natural Resources & Environment*: 31 no. 1(2016): 18-22.

Jessica A. Shoemaker, 'Complexity's Shadow: American Indian Property, Sovereignty and the Future.' *Michigan Law Review*: 115 (2017): 487-552

⁵³ Malcolm Ebright, and Rick Hendricks, *Pueblo Sovereignty: Indian Land and Water in New Mexico and Texas* (Norman: University of Oklahoma Press, 2019)

⁵⁴ Richard Griswold Del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman, Oklahoma: Oklahoma University Press, 1990)

In addition, because of limited secondary sources, archival research was needed to provide more specific information about southern Arizona and how the land legislation would have impacted the region locally. Much research was performed in the University of Arizona's Special Collections Library and the Arizona Historical Society archives in Tucson. Therefore, together with legislation and secondary resources, reference will also be made to contemporary resources as a way of illustrating what southern Arizona was like during the period of study. Much primary source information was gleaned from letters, personal and public accounts from government officials, newspaper archives, local photographs, land plats, short print-run pamphlets, and many maps. This information was supplemented by visits to the Pima County Records Office to obtain property transaction records, development proposals and property maps. Pima county is the oldest county in southern Arizona followed by Cochise and Santa Cruz counties. However, Cochise County records were lost between Tombstone County Court and Phoenix where they were to be maintained, and Santa Cruz County records are not located in a single location, if they are to be found at all.⁵⁵

The travel writers particularly have provided a wealth of information about what southern Arizona was like during its formative and territorial years. They provide a picture of scarcity and dearth of abundant resources with optimism for potential capital productivity but also elevate southern Arizona from an arid non-productive region on the United States frontier to one with potential for settlers to exploit. They also describe their journeys, encounters and flora and fauna of the region, giving an often-vivid picture of southern Arizona during the late nineteenth century. These travel journal accounts from the latter half of the nineteenth century were written for a combination of reasons. Lt. John G. Parke's report in 1855 was one of the first official

⁵⁵ Conversation with historian in the archives of the Bisbee Mining and Historical Museum, Bisbee, AZ March 2015

reports from the region where he was sent as part of a survey team commissioned by Congress to survey potential routes for the new transcontinental railroad across the southwest territories to the gold fields of California.⁵⁶ His report, while geological and technical, also provides commentary on the environmental conditions and encounters with the residents of the region. Shortly after the overland postal route was established using Parke's survey reports, Waterman L. Ormsby, was first newspaper correspondent and first passenger to ride the entire postal route from east to west on the new Butterfield Overland Stagecoach line in 1858.⁵⁷ His journal, meticulously written, illustrated just how remote southern Arizona was, and gives an insight into the tone of despair in attempting to understand the value of the arid new territory, later traveller, Raphael Pumpelly in 1861, was not impressed either.⁵⁸ Even by 1869, J. Ross Browne was still in agreement. Not much had changed by the mid 1870's when Hiram C. Hodge was writing to promote travel to the region, commissioned by the then Arizona Territorial Governor A.P.K. Safford, to promote it as a destination and not just as stopover points *en route* to California.⁵⁹ Contemporary writers were Richard Hinton and the tome written by Patrick Hamilton, published in 1881.⁶⁰ Lt. George Bourke, writing about his adventures with General George Crook in

⁵⁶ John G. Parke, *Report of Explorations for that Portion of Railway Route near the Thirty-second Parallel of Latitude, lying between Dona Ana, on the Rio Grande, and Pimas Villages on the Gila*. (Washington: Government Printing Office, 1855).

⁵⁷ Waterman L. Ormsby, Lyle H Wright & Josephine M. Bynum eds, *The Butterfield Overland Mail, by Waterman L. Ormsby: Only Through Passenger on the First Westbound Stage*. (San Marino, CA: The Huntington Library, 1955 [1858]).

⁵⁸ Raphael Pumpelly, 'Affairs in Arizona: Terrible times in the territory experience in crossing the deserts.' *New York Times*, 1861. <https://www.nytimes.com/1861/10/05/archives/affairs-in-arizona-terrible-times-in-the-territory-experience-in.html>. Accessed 20 March 2020

⁵⁹ J. Ross Browne, *Adventures in the Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*. (New York: Harper & Brothers Publishers, 1869).

Hiram C. Hodge, 1877: *Arizona As It Was: Or the Coming Country; Notes of Travel During the Years 1874, 1875, and 1876*. (Chicago, Illinois: The Reo Grande Press, Inc, 1965 [1877]).

⁶⁰ Richard J. Hinton, *The Hand-Book to Arizona: It's resources, History, Towns, Mines, Ruins and Scenery* (Tucson AZ: Arizona Silhouettes, 1878). Patrick Hamilton, *The Resources of Arizona: Its mineral, Faring and grazing lands, towns and mining camps; its rivers, mountains, plains and mesas; with a brief summary of its Indian tribes, early*

‘subduing’ the discontented Apache evading the reservation system, notes how the region had changed from the 1870s’ Mexican influenced frontier town, into a more recognizably Anglo-American-centric environment, which he credits to the construction of the railroad network in the region.⁶¹ At the same time Adolf Bandelier was reporting on the history and pre-history of the region for the Archaeological Institute of America and on the condition of the inhabitants of the territory, after his travels there during the 1880’s.⁶²

First-hand reports from those who lived and worked in the region also help to provide an insight into the complexities of relationships between the indigenous environment and the Anglo-American settlers. Newspaper reports when discussing events and encounters are to be treated with caution as media accounts are often sensationalised for appeal, although their articles and advertising spreads provide a useful nugget in time. Other first-hand reports were written by early Anglo-Americans such as Silvester Mowry in his pamphlet to Congress about the new 1866 Mining Act, Charles Poston who wrote both a history of the region and an account of the Apache he had encountered, and a history of Tombstone by its founder Edward Schieffelin.⁶³ Other writings such as the diaries of George Kippen and George Hand, accounts of events, such as the Vails long cattle drive and pamphlets by Robert H. Forbes help to build a picture of life in southern Arizona during the territorial years.⁶⁴ The danger, however, of using these sources is a

history, ancient ruins, climate etc, etc. A Manual of Reliable Information Concerning the Territory (San Francisco: AL Bancroft & Co. Printers, 1881).

⁶¹ John G. Bourke, *On The Border with Crook* (Lincoln, Nebraska: University of Nebraska Press, 1971 [1891]).

⁶² A. F. Bandelier, *Final Report of Investigations Among the Indians of the Southwestern United States carried on mainly in the years from 1880 to 1885: Part II.* (Cambridge: Cambridge University Press, 1892).

⁶³ Silvester Mowry, *Arizona and Sonora: The Geography, History, and Resources of the Silver Region of North America* (New York: Harper and Brothers, Publishers, 1864).

Charles D. Poston, 1885. ‘History of the Apaches,’ University of Arizona Special Collections. AZ 169.

Ed Schieffelin, ‘History of the Discovery of Tombstone,’ University of Arizona Special Collections

⁶⁴ George Kippen, ‘The George Kippen diary, with introduction by Bill Hoy’ ([1854] 1969) University of Arizona, Special Collections. MS 307 Boxes 1-3.

focus on the Anglo-American-centric interpretation of the location, which is also sprinkled with prejudicial preconceptions.

It is also useful to have sociological analysis to place the events of southern Arizona into a broader theoretical context to help understand the social forces involved in the Anglo-American exploitation and attempt at control over the indigenous landscape and people. Settler colonialism is explained well by Walter Hixon in his *American Settler Colonialism: A History*, designed to give a comprehensive understanding of the term and what it means to United States expansionism studies.⁶⁵ This discussion is enhanced by Reginald Horsman who explored the concept of Anglo-Saxonism as the basis of expansionist tendencies and cultural ideas about racial superiority and control⁶⁶. Gary Fields provides a good analysis of how power and control are represented by boundaries and the division of the land into artificial segments, while Patrick Wolfe, along with the collaborative work of Alexander Laban Hinton, Andrew Woolford and Jeff Benvenuto, explore the controversial concept of genocide as an ongoing process in the elimination of both indigenous people and their culture in the United States.⁶⁷ Their attempt to place the continuum of settler colonial impact onto the current structures of the southwest is refined by Lorenzo Veracini's *Settler Colonialism: A Theoretical Overview*.⁶⁸ In his book,

Neil Carmoney, ed. and trans. *Next Stop: Tombstone. George Hand's Contention City Diary, 1882* (Tucson, AZ: Trail to Yesterday Books, 1995).

Alison Bunting, ed. *Diary of a Desert Trail; 1890 Cattle Drive from Arizona to California, by Edward L. Vail*. (Sonoita, Arizona: Empire Ranch Foundation, 2016 [1922]).

Prof. R.H. Forbes,, 1901. 'The Open Range and the Irrigation Farmer.' *The Forester*: VII no. 9 (1901): 216-219.

Robert H. Forbes, *The Penningtons: Pioneers of Early Arizona, a Historical Sketch*. (Arizona Archaeological and Historical Society, 1919).

⁶⁵ Hixon, *American Settler Colonialism*

⁶⁶ Horsman, *Race and Manifest Destiny*.

⁶⁷ Fields, *Enclosure*

Patrick Wolfe, "Settler Colonialism and the elimination of the native," *Journal of Genocide Research* 8:4 (2006): 387-409

Alexander Laban Hinton, Andrew Woolford and Jeff Benvenuto eds., *Colonial Genocide in Indigenous North America* (Durham, NC: Duke University Press, 2014).

⁶⁸ Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview*, (London: Palgrave Macmillan, 2010).

Veracini acknowledges the contribution of various authors to the development of settler colonial studies, explaining that the actual historical movement was about the exploitation of land and the elimination of the indigenous people, and that, structurally, this has continued, albeit in a more subtle way and despite increased indigenous activism against it. In his subsequent book, Veracini distinguishes four identifying features which settler colonies share, and emphasises the difference between colonialism and settler colonialism, such as permanency and the superimposition of European ways onto the surrounding environment.⁶⁹

Elizabeth Carlson places settler colonial studies into the broader academic discussion of colonialism, decolonialism and anti-colonialism.⁷⁰ She warns the researcher to be aware of settler colonial discourse and constructs in their analysis, and to consider the indigenous perspective more carefully. This is understandably hard for a researcher trained in Western methods, and Linda Tuhiwai Smith draws attention to the continued use of stereotypes, misrepresentation and imperialistic structures when researching, because of the constraints of established settler colonial discourse and narrative.⁷¹ She explains that researchers need to be mindful that while Western history and place is linear, indigenous people do not often separate time and space in their cultural understanding of history.⁷²

Conclusion

Several factors encouraged the Anglo-American development of this desert frontier region: the territorial imperialistic legislation of the United States, settler colonialism and industrial and commercial needs, as well as lucrative incentives for private enterprises. These factors are not

⁶⁹ Lorenzo Veracini, *The Settler Colonial Present*, (London: Palgrave Macmillan, 2015), 5

⁷⁰ Carlson, 'Anti-colonial', 496-517

⁷¹ Smith, *Decolonising Methodologies*

⁷² Smith *Deconoloising Methodologies*, 31-33

new to United States history as their *raison d'être* was played out time and again since Europeans first entered the continent. This research will be using these general concepts and to applying them to a specific region, the southern Arizonan section of the Gadsden Purchase area, predominantly Pima, Cochise and Santa Cruz counties. These factors were part of an overarching picture of the larger processes involved in the United States' frontier policy and will be applied to the impact this has on the indigenous environment and cultures of southern Arizona. The two indigenous populations who are included in this research, the Tohono O'odham and the Chiricahua Apache, were impacted by these land policies in different ways, but ultimately, they were both marginalized and severely underrepresented in the legal and political system of the United States at the time. As a result, their lives, in conjunction with multiple other indigenous populations in the United States, were irrevocably changed by the implementation of these policies. It has therefore become important to me to understand how established populations were legally denuded of their land and property, and how this was condoned by the cultural practices of the new governing body, who sanctioned aggressive land policies to be implemented in the region, to the detriment of the indigenous environment.

Chapter Two

Welcome to Arizona

Dante Alighieri, it has always seemed to me, made the mistake of his life in dying when he did in the picturesque capital of the Exarchate five hundred and fifty years ago. Had he held on to this mortal coil until after Uncle Sam had perfected the ‘Gadsden Purchase,’ he would have found full scope for his genius in the description of a region in which not only purgatory and hell, but heaven likewise, had combined to produce a bewildering kaleidoscope of all that was wonderful, weird, terrible, and awe-inspiring, with not a little that was beautiful and romantic.⁷³

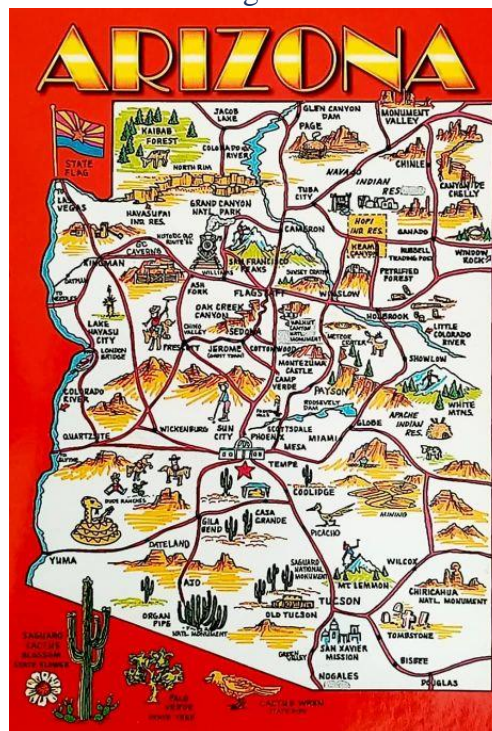
Introduction

It is not until the traveller has headed west through the moon-like Texas Canyon on Interstate 10 in Arizona, and descends into the San Pedro Valley, does the traveller enter into a unique region of the United States; the desert-scape of southern Arizona. The wind-sculpted columns of sandstone in Texas Canyon make a dramatic change from the dry, barren and monotonous landscape of New Mexico, and although the state border with New Mexico is several miles prior to the Chiricahua and Dos Cabezas Mountain gap, this is the first indication that the traveller is entering a region dominated by the vagaries of the Sonoran Desert. The unworldly aspect of Texas Canyon encountered by the modern traveller would not be too dissimilar from the experiences that the early European and Anglo-American travellers would have had two and three centuries before, when they explored the region for the first time. The landscape consists of a rich, but harsh desert environment, mountain ‘sky islands’ with multiple habitats ascending their slopes, and mineral-rich, water-poor hills rising from the desert floor. This breathtaking and harsh environment became part of the United States in 1853 when the national government purchased it from Mexico, initially to use as a communication link between New Mexico and the gold fields of California. The first Anglo-Americans to systematically record the unique landscape were the surveyors sent to mark not only the international boundary between the

⁷³ John G. Crook, *On the Border with Crook* (Lincoln NE: University of Nebraska Press, 1971 [1891] 1971), 1.

countries, but also potential railroad lines across the region. However, they were not the first Europeans to encounter and publish impressions of the region.⁷⁴ The romantic and adventurous tales of the Spanish Conquistadors had graced the libraries of the Europeans and Anglo-Americans for many centuries, the travels and gold hunting expeditions of Coronado, Dias, de Vaca and Niza had filled the imagination of many generations about the strange people and even stranger desert experiences where they travelled for days without water in the hunt for ‘savage’ people to Christianize and to find gold for Spain.⁷⁵

Image 2.1



⁷⁴ These Arabian Nights’ tales of New Spain would delight the imagination of many an armchair adventurer, but it was not until the 1850’s were these adventures realized into real experiences for many Anglo-American entrepreneurs. Tales of friendly tribes living along-side ‘barbarous’ tribes sharing the desert landscape would be played-out in the early Anglo-American experiences of the region, recorded with prejudiced voice and a belief in superiority over the indigenous inhabitants, which would then inform policy and action during the territorial years of this last Mexican cession state.

⁷⁵ J. Ross Browne, *Adventures in Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*, (New York: Harper & Brothers, 1869), 10.

William K. Hartmann, *Searching for Golden Empires: Epic Cultural Collisions in Sixteenth-Century America*, (Tucson: University of Arizona Press, 2015), 94-130.

Postcard of Arizona - tourist highlights (Anglo-American perspective)⁷⁶

Understanding the desert landscape is one of the most central features of survival in southern Arizona for the indigenous tribes who have called it home for centuries. The Tohono O'odham are one of the few of the indigenous groups of the North American continent who have survived in these harsh and austere surroundings of the Sonoran Desert and the patterns of the desert have informed their way of living, as well as the incursion of Anglo-American settlers and their industries. Their lives traditionally revolve around the windows of opportunity the desert offers to provide them with adequate nourishment, shelter and clothing to survive in the arid environment, which still, at times, defies modern developments. Other indigenous groups such as the Chiricahua Apache, who have had to adapt to different living conditions since the 1870's when they were placed on a reservation, culturally use landscape as their historical and moral markers as it provides them with their world view by informing them of where they come from and who they are.⁷⁷

However, while many of the Tohono O'odham Nation reside on a federally owned reservation in a section of their ancestral territory, they are deemed to be 'guests' of the government on their own traditional lands, according to United States law; a status that can be removed from them at any time. Also, the southern Arizonan Chiricahua Apache of the Western Apache have been so completely removed from their traditional lands, that they have lost much of their cultural identity because many of their stories identify with the lost landscape markers of southern Arizona.⁷⁸ How is it that the oldest inhabitants of the region have been excluded from control

⁷⁶ 'Arizona,' Artist Donna Nichols, *Mostly Postcards Inc.* (Scottsdale AZ).

⁷⁷ Keith H. Basso, *Wisdom Sits in Places: Landscape and Language Among the Western Apache*. (University of New Mexico Press, 1996) Kindle.

⁷⁸ Members of the Chiricahua Apache were exiled from Arizona in 1886, sent first to Florida, then to Oklahoma, after which some remained in Oklahoma and some moved to New Mexico.

and ownership of their own territories by the youngest inhabitants of the region? What processes have been set in place to displace them in a region that, while inherently beautiful, is so difficult to live successfully in that it supports only one out of the two listed in the entire state of Arizona, while the rest are small towns and settlements joined by a couple of snaking railroads and a few paved roads? What is it about the desert region of southern Arizona that has made it a battleground for resources, ideology, and survival by three different groups of people, and how is it that those without an inherent attachment to the landscape are able to direct the way in which it is worked and used?

My cultural journey

I came to know the landscape of southern Arizona first by independently exploring the region, and then as a volunteer custodian to some of the many prehistoric and historic sites in the area monitored by two organizations involved in site preservation in this region. These volunteer positions involved working with federal land managers to research, map and monitor sites in the area, and became a rewarding education about the multiple layers which make up the landscape of the region.⁷⁹ Southern Arizona is intriguing because it encompasses only two flowing rivers, miles and miles of trails leading to relics of the mining and ranching boom industries of the late nineteenth century, as well as the remains of important regional rail routes, some sites of

⁷⁹ 'Our Culture: Tribal History,' Mescalero Apache Tribe, accessed 21 November 2020.
<https://mescaleroapachetribe.com>.

⁷⁹ Under the tutelage of Chris Shrager, historical conservation manager for both the Bureau of Land Management, Tucson Field Office, and the National Forest Service, Coronado Forest Region, I collated historical information for the nomination of two historical ranches in the area onto the National Register of Historic Places. As a Site Steward for the Arizona State Preservation Office in the Sierra Vista Region, we attempt to monitor over about 1,500 out of 8,000 identified prehistoric and historic sites in Arizona, (Site Stewards Reporting site, restricted). Volunteers are trained to recognise, record and monitor culturally sensitive sites, which sometimes means a hike into the wilderness for several hours to monitor, record and protect numerous pictograph sites and other indigenous sensitive locations. We are bound by the Official Secrets Act and Antiquities legislation not to divulge the locations or how we monitor these specific sites.

notoriety such as the Clanton Ranch of Tombstone fame, and significant evidence of prehistoric activity.⁸⁰ It is now also a well-known illegal immigrant route from Sonora, Mexico into central Arizona and beyond. Along with other reserved lands of the federal and state governments, there is also evidence of occupation by pre-historic and historic indigenous people, where many have left pictorial records on the boulders and stones, remains of *metate* grinding hollows, and *wikiup* bases, ovals of stones to delineate brush and cactus ribbed shelters. However, as a landscape historian, I began to question why the region would have such a patchwork landscape of state and Federal land management, and how these particular sites used, and why, and what impact did they make on the historical development of a region so sparse in traditional Anglo-American recognized resources?

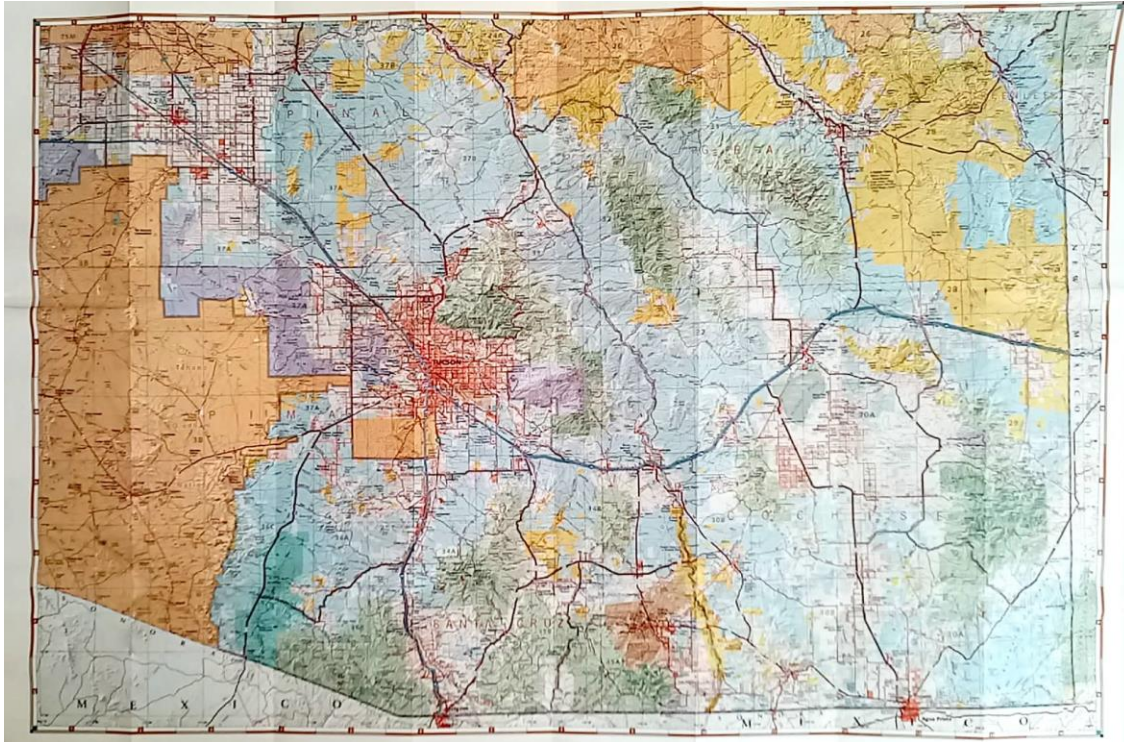
Map 2.1



⁸⁰ Tombstone was famous for its shoot-out between the Earp brothers and the Clanton and McLaury families at the OK Corral in 1881.

Southwest Arizona showing federal land management areas, including Tohono O’odham Nation reservation to the east in orange⁸¹

Map 2.2



Southeast Arizona showing federal land management areas, including the Tohono O’odham Nation reservation in orange to the west, public domain areas and platted townships⁸²

Three events led me to the specific questions of how did the Anglo-American footprint become superimposed over the top of an already extensive indigenous footprint, as recently as 150 years ago, and what was the impact? First, as part of my training as a Site Steward, I was taught how to identify rock formations which indicated a hut structure of the Sobaipuri indigenous group, considered a sub-group of the O’odham, who lived in riverside villages on the San Pedro River until the 1750’s, as well as recognising evidence of flood water farming and where their rock-art pictographs were located.⁸³ However, I wondered why did they disappear from record after the

⁸¹ *Benchmark Maps*, (Medford OR) www.benchmarkmaps.com

⁸² *Benchmark Maps*, (Medford OR) www.benchmarkmaps.com.

⁸³ For more information see ‘Appendix A Indigenous Identities.’

1750's and how much of their footprint was obliterated when the Anglo-American communities developed in the area about a century later? Second, myself and my regional supervisor and site partner, attempted to locate some pictographs on behalf of the Tohono O'odham Nation. We were asked to find and record some rock art in a location to the northwest of the Chiricahua Mountains on lands of a former ranch, which had been attained by the BLM during land swaps in the 1980's. Unfortunately, many of the rocks had been disfigured by some impressive and elaborate modern graffiti. While we were unsuccessful in our search, we pondered the many layers of land ownership represented in the area, from the O'odham site to the Anglo-American ranch ownership which was evident by the abandoned equipment at the site, and the modern footprints such as the graffiti and the 'Keep Out Federal Land' notices around the perimeter.

Image 2.2



San Pedro Riparian National Conservation Area⁸⁴

⁸⁴ Bureau of Land Management www.blm.gov.

The last event was very personal to my site partner. She was approached by some members of the Chiricahua Apache living in Oklahoma and asked to show them rock art and sites of their ancestors. They said they were direct descendants of Cochise, the leader of the Chokonen band of the Chiricahua Apache during the 1860's and 1870's, and were members of the displaced Chiricahua Apache families who were exiled with Geronimo during the second Apache uprisings in the 1880's. One of our sites features many rock shelters with extensive pictographs in an area known to be a stronghold of the Chiricahua Apache during the nineteenth century. The descendants wanted to reclaim some of their historical stories which are intricately interwoven with features in the landscape.⁸⁵

These experiences have raised questions concerning the removal and isolation of the indigenous populations in southern Arizona, and why this should happen. The layers of history in the region are important for all people, so why have the oldest occupants of the land lost jurisdiction over their ancestral territories, and what is the impact of these events on their lives and ways of living?

Geographical Information

The region of southern Arizona is not a well-known region, even by people who live in western United States. It was the last contiguous region to be purchased from Mexico by the United States for strategic purposes, it consists of mountains and desert floors, it is fed by just two north flowing rivers and contains only one city with several small towns. The region is heavily influenced by Mexican culture, contains a large reservation for the Tohono O'odham Nation, who are one of the two indigenous people identified with the region, and is the traditional home

⁸⁵ Basso, *Wisdom Sits in Places*.

to the Chiricahua Apache who were forcibly removed from the territory after the so called ‘Apache Wars’, in the last nineteenth century. It is also considered a backwater by some, and a winter holiday home by others. However, the remoteness, the development of the extraction industry, and the current environmental and political issues which occupy the residents are all connected with the way in which landscape legislation has been used, manipulated and abused for the commercial benefit of the United States.

Southern Arizona consists of a significant portion of the region which was purchased by the United States from Mexico in December 1853, ratified as the Gadsden Purchase Treaty in 1854.⁸⁶ It was carved from the northern section of the Mexican state of Sonora, and was called the *Pima Alta* during Spanish colonial times. This region is 29,670 square miles of land, 76,800 square kilometres, and was the last section of Mexico to be purchased by the United States. The Gadsden Purchase Treaty followed a similar format to a previous purchase treaty, the Treaty of Hidalgo Guadalupe, in 1848 between the United States and Mexico.⁸⁷ The 1848 treaty not only settled the terms of peace ending the Mexican American war of 1846-1848 but also gave the United States most of what is now the American southwest and is the longest running treaty between the United States and Mexico to this day.⁸⁸ The 1853 Gadsden Purchase secured the longest international border between the United States and Mexico, at 378 miles long, and is a part of the ongoing controversial border wall construction between the countries, particularly the

⁸⁶ It is usually called the Gadsden Purchase, named after James Gadsden the United States ambassador to Mexico who brokered the purchase, or *la Venta de La Mesilla*, in Spanish, indicating the Mexican town in which the treaty was signed: Office of the Historian, ‘The Gadsden Purchase’.

⁸⁷ ‘The Gadsden Purchase, 1853-1854,’ Office of the Historian, accessed 10 Jan 2018, <https://history.state.gov/milestones/1830-1860/gadsden-purchase>.

⁸⁸ Thomas E. Sheridan, *Arizona: A History*, (Tucson: Arizona University Press, 2012), 62-65.

75 miles which separate the northern section of the Tohono O’odham Nation from the southern section, which is located in Mexico.⁸⁹

The Gadsden Purchase area includes vast expanses of Sonoran Desert, some important regional water sources, and many ‘sky islands’ which predominate in the east of the region. It is sandwiched between the states of California and New Mexico and is bound to the north by the Gila River, and to the south by the Mexican state of Sonora. It shares 3 international border crossings with Mexico, Lukeville/Sonoyta, Douglas/Agua Prieta and Nogales, as well as two river headwaters of the main south to north running rivers of the region; the Santa Cruz, whose source is near Nogales, and the San Pedro whose source is between Nogales and Douglas to the east. The region consists of the northern half of the Sonoran Desert; the flora and fauna and ways of living are specific to the region.⁹⁰ However, with desert landscape comes the scarcity of water, indeed in the entire state of Arizona out of 113,642 square miles of land there is only 364 square miles of water.⁹¹ This slowly decreasing precious commodity, because of modern lifestyles and extended drought conditions in the last few decades, was lamented by the Center for Science and Public Policy in 2004 which stated that “35% of our natural perennial flowing rivers had been altered or lost altogether as a result of dams, diversions and groundwater pumping”.⁹² This depletion of the water sources will be addressed later with regards to the development of southern Arizona to support the commercial activities of the United States.

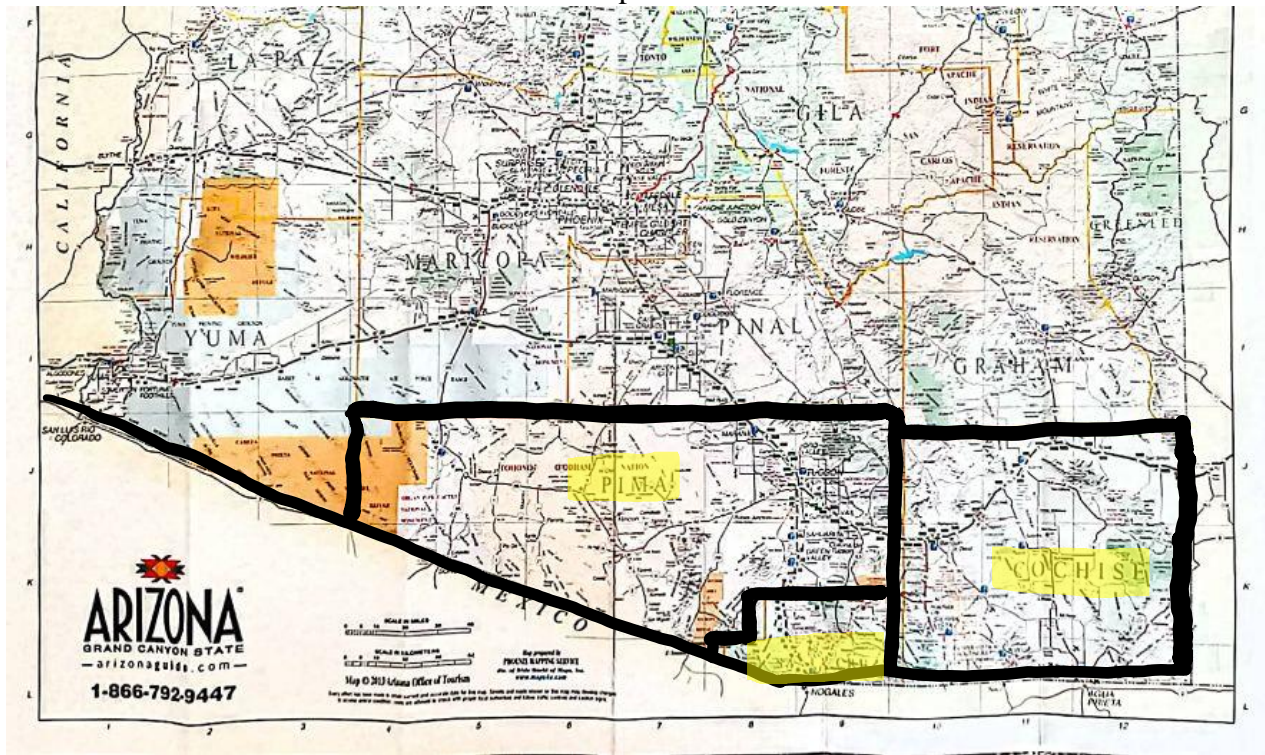
⁸⁹ Peter Heiderpriem, ‘The Tohono O’odham Nation and the US-Mexico Border,’ *American Indian Law Journal*: IV:1 (2015): 107-130.

⁹⁰ ‘The Chihuahua Desert,’ National Parks Service, accessed 1 September 2020, www.nps.gov

⁹¹ ‘Table: Land Area and Water Area of Each State,’ United States Geographical Service, last modified 2010, www.usgs.gov

⁹² Center for Science and Public Policy cited in ‘Arizona’s Rivers and Water,’ Arizona Conservation Service, accessed 12 Jan 2021, www.azconservation.org.

Map 2.3



Southern Arizona, showing Pima, Santa Cruz and Cochise Counties⁹³

Rivers

The two most important rivers for the region are the south-to-north flowing Santa Cruz River and the San Pedro River which converge with the Gila River to the northern edge of the Gadsden Purchase area and have many tributaries which feed into them along the way. If one were to look at a geological map of the area, one would see many blue lines crossing the valley floors of the valleys, but these river systems and tributaries are seasonal, and will often disappear completely, especially in the summer, when they become indistinguishable from the crisscross systems of washes, or *arroyos*; gullies created from the flood waters of the monsoons. For the purposes of this study, only the upper valleys of these rivers, that is, the rivers from their source

⁹³ Arizona Office of Tourism (Phoenix AZ, 2013) www.arizonaguide.com.

to when they cross the Interstate 10 corridor, will be the focus, although some mention of activity along the lower half of the rivers will be referred to at points.

The Santa Cruz River starts as a spring just below the international border near Nogales and, flows south for about 15 miles into Mexico and crosses the border again before travelling about 180 miles north to its confluence with the Gila River just south of Phoenix.⁹⁴ The river travels below ground for much of its length, only intermittently surfacing in the form of springs, overground runs and in *ciénegas*, or marshy areas, and only about 20% of its water is considered to be surface water.⁹⁵ Over the last hundred years the Tucson water table of the Santa Cruz watershed has dropped over 250 feet, resulting in only 6 miles of the river sustaining year-round surface flow.⁹⁶ The depletion of this natural water source concerns many environmentalists, geologists and biologists because the number of species are impacted because the watershed contains 15 endangered species in its three different biomes and is an important riparian corridor for migratory birds.⁹⁷

The San Pedro River is one of the longest undammed rivers in the United States, approximately one-third of the flow is now protected by the United States' Bureau of Land Management, BLM, and only runs at a depth of approximately 1.25 to 1.45 feet of water during the summer.⁹⁸ The San Pedro River is also an extremely important riparian corridor for the region, and 57,000 acres around it have been designated since 1988 by the United States as the San Pedro Riparian

⁹⁴ 'Celebrating Arizona's Rivers: The Santa Cruz River,' Environmental Defense Fund, 2012, www.edf.org.

⁹⁵ Thomas E. Sheridan, *Landscapes of Fraud: Mission Tumacacori, The Baca Float, and the Betrayal of the O'odham* (Tucson, AZ: University of Arizona Press, 2006), 14-15.

William L. Staudemaier, 'Arizona Groundwater Law' *The Water Report: Water Rights, Water Quality and Water Solutions in the West*: 33 (2006) 1-11.

⁹⁶ Environmental Defense Fund, 'Celebrating Arizona's Rivers.'

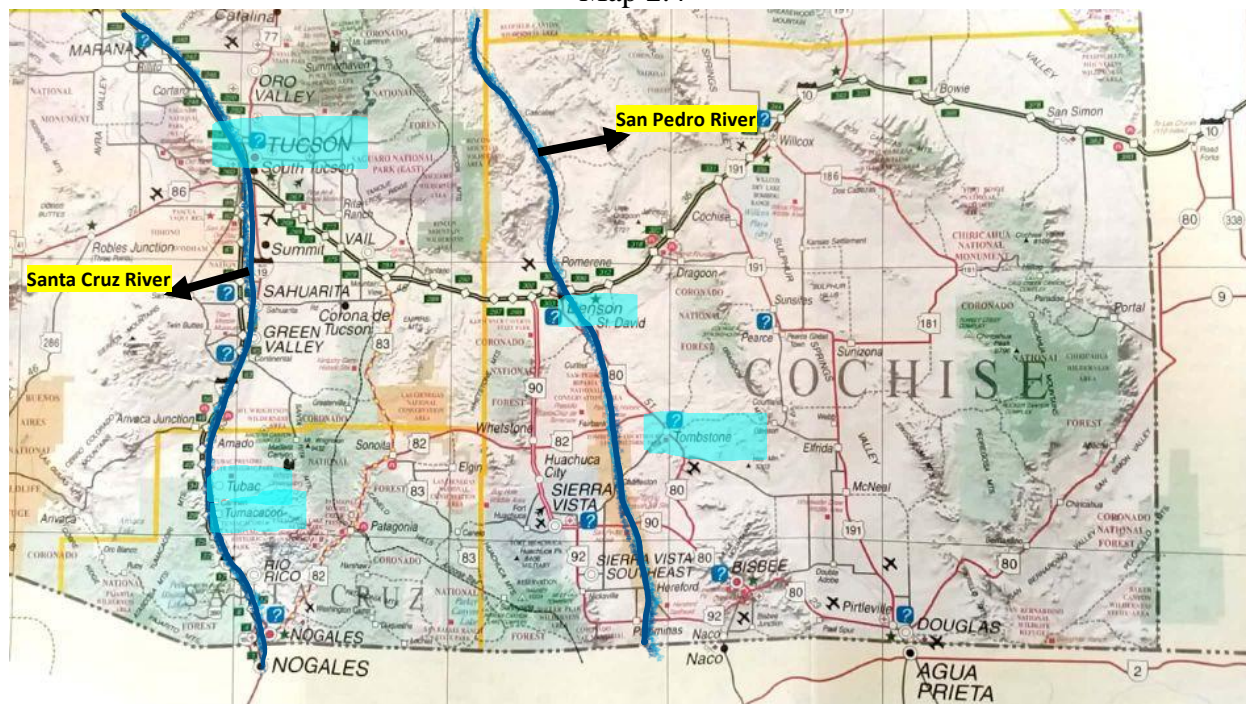
⁹⁷ Environmental Defense Fund, 'Celebrating Arizona's Rivers.'

⁹⁸ 'The San Pedro River,' The Nature Conservancy, 2018, www.nature.org.

United States Geographical Service. 'Table: Land Area and Water Area of Each State'.

National Conservation Area, SPRNCA. The valley area is home to not only important flora and fauna, but also to significant archaeological resources to the United States, as it is known to be a site of human occupation for thousands of years.⁹⁹ Originally the river had a greater flow, and was the location of a substantial beaver population, which enticed trappers into the region during the early 1800's, including many Anglo-American trappers.¹⁰⁰ The river head is located just south of the international border in Sonora, but heads 150 miles directly north on its travels downstream to empty into the Gila River north of Tucson near the mining town of Winkleman. The river is fed by many tributaries before reaching the Gila River, which, during the territorial years, often provided water sources for the mining industry with developed on the slopes of the mountains leading down to the river.¹⁰¹

Map 2.4



⁹⁹ San Pedro Riparian National Conservation Area, *The Friends of the San Pedro River* (Tucson Field Office, Bureau of Land Management).

¹⁰⁰ Environmental Defense Fund, 'Celebrating Arizona's Rivers.'

¹⁰¹ Environmental Defense Fund, 'Celebrating Arizona's Rivers.'

The main rivers and early settlement areas of southern Arizona; the Santa Cruz River, the San Pedro River, Tucson, Tubac, Tombstone and Benson¹⁰²

Therefore, despite their seasonal nature these two rivers were very important to not only sustaining life in the area, but also to the Anglo-American commercial growth which occurred in the last few decades of the nineteenth century. In recent years, however, the water table of the watershed has been depleted because of mass human development in the area, which is pulling much of the water from the aquifer and preventing sustainable water replenishment.¹⁰³ The need to harness water sources was vitally important for the Anglo-American development in the region as it provided the means to extract minerals from the mountain sides, help with the transportation of these minerals, as well as providing water for the surrounding ranches who initially established to provide meat for the local mining industry and the military outposts. These river systems were so vital to this style of regional development that they caused many issues for the local population and significantly influenced national policies and legislation.

Sky Islands

Rising out of the desert floor are significant mountain ranges, which give the region it's geological terminology of the 'basin and range zone'.¹⁰⁴ These mountain ranges are called Madrean 'sky islands' and they are between 4,000 to almost 10,000 feet above sea level.¹⁰⁵ Their name is indicative of the sea islands that emerge out of the oceans and have several self-contained biomes with a variety of species of flora and fauna. The biodiversity of the sky islands range from desert at the floor, to grasslands which then turn into evergreen forests, and sustain a

¹⁰² Arizona Office of Tourism 2013 Phoenix AZ www.arizonaguide.com.

¹⁰³ Environmental Defense Fund, 'Celebrating Arizona's Rivers.'

¹⁰⁴ 'Coronado National Forest,' United States Forest Service, accessed 15 August 2020 <https://www.fs.usda.gov/coronado>.

¹⁰⁵ United States Forestry Service, 'Coronado National Forest.'

variety of animals such as mountain goats, wolves, coatimundi, mountain lions, bears, deer and elk; the Santa Rita mountains contain the northern-most range of the jaguar.¹⁰⁶ Most of the sky islands in southern Arizona are managed by the United States Forest Service and are collectively known as the Coronado National Forest; they are located between the eastern edge and the central area of the region.¹⁰⁷ The remaining southern Arizonan sky islands are on the Tohono O'odham Nation reservation and are sacred to the Nation.

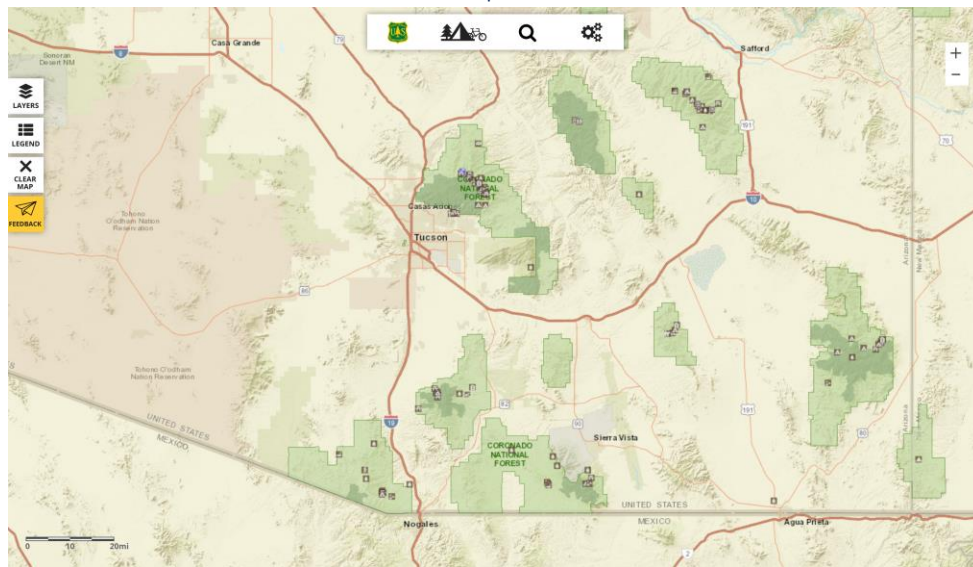
The sky islands are also vitally important for the region because they capture and harness water during the rainy season in winter and the monsoons in summer and are vital for sustaining not just life on the range, but also life on the desert floor as the snows from the peaks melt and runoff into the rivers and streams in the valleys and plateaus. They are also the main provider of building timber in the region, and it is these resources which also became a central feature in the ability for Anglo-Americans to secure and then expand into the region.¹⁰⁸

¹⁰⁶ United States National Parks Service, 'The Chihuahua Desert.'

¹⁰⁷ United States Forestry Service, 'Coronado National Forest.'

¹⁰⁸ The mountain ranges most discussed in this study are the ones which form a south to north parade between the international border with Sonora, Mexico, and the line of Interstate 10, these include, from west to east, the Baboquivari Mountains, the Santa Rita Mountains, the Huachuca and Whetstone Mountains, the Dragoons, and the Chiricahua Mountains will be mentioned the most, although others such as the Dos Cabezas, Patagonia, Mule, Santa Catalina and Rincon Mountains will also be mentioned.

Map 2.5



Southern Arizona showing the Coronado National Forest Sky Islands¹⁰⁹

The indigenous people of southern Arizona¹¹⁰

The Tohono O’odham tribe and the Chiricahua Apache were directly affected by Anglo-American intrusion into their traditional lands and were particularly affected by the policies of the United States from the time of acquisition onwards. The long lasting impacts these policies had on these indigenous groups forced them to adapt their lifestyles in accordance with the changing political and natural environments around them. The Tohono O’odham Nation’s reservation is located on the western side of the Santa Cruz River, and was mainly established between 1874 and 1917. The reservation includes the San Xavier mission reservation of the Wa:k O’odham who are believed to be descendants from the Sobaipuri O’odham, now considered a sub-group of the Tohono O’odham, who had ancestral lands on the San Pedro River. The Chiricahua Apache, one of many Apache groups in the state, traditionally held lands between the Dragoon Mountains and the Chiricahua Mountains, and to the south in the Sierr

¹⁰⁹ United States Forest Service <https://www.fs.fed.us>

¹¹⁰ For more information see Appendix A Indigenous Identities.

Madre Mountains of Mexico. This group, however, no longer call the state their home, and reside predominantly in Oklahoma.

Tohono O’odham – the People of the Desert

The Tohono O’odham¹¹¹ still live in an area which was known as *Papaguería* by the Spanish, located in the *Pimaria Alta* region of Spanish northern Sonora (Bonaventure Files). *Papaguería* comprised half of modern-day southern Arizona and extended south as far as Hermosillo and Magdalena in Sonora, Mexico, including Puerto Peñasco and Desemboque on the Gulf of California. Unfortunately, the lands of the traditional Tohono O’odham territory are now bisected by the international boundary line established by the Gadsden Purchase Treaty in 1853, both halves being designated as reservation lands for the Tohono O’odham Nation, within their respective nations.¹¹² The Tohono O’odham did not have much direct contact with Europeans until the Spanish Jesuit mission programme along the Santa Cruz River was established by Father Eusebio Kino and his fellow priests in 1687.¹¹³ The nation name O’odham is used to identify the groups labelled ‘Piman’ by the Spanish, who have reservations within the *Papaguería* region, and comprises the Akimel O’odham, Tohono O’odham and Wa:k O’odham, as well as the Hia C’eḍ and the Sobaipuri O’odham.

The O’odham are traditionally a semi-nomadic people who had winter and summer settlements, known as field villages and well villages.¹¹⁴ It is because of their two-season settlements that

¹¹¹ Pronounced in the English tongue as *Tone-o O’tam*, or *Au’autam*, as the Pima’s used to call them. Papago Tribe, *Tohono O’odham: History of the Desert People* (Salt Lake City, UT: University of Utah Printing Services, 1985), 3-5.

¹¹² Winston Erikson, *Sharing the Desert: The Tohono O’odham in History* (Tucson, AZ: University of Arizona Press, 1994), 74-78.

¹¹³ Papago Tribe, *Tohono O’odham*, 14.
Erikson, *Sharing the Desert*, 74-78

¹¹⁴ Dennis Gilpin and David A. Philips, Jr., *The Pre-historic to the Historic Transition Period in Arizona circa 1519-1692* (Phoenix, AZ: State Historic Preservation Office), 43-44.

Europeans often thought that the O’odham lands were devoid of inhabitants because of the temporary nature of their houses, or *rancheras*, in their semi-annual settlements.¹¹⁵ Most of the O’odham in *Papaguería* lived on the fringes of the newly established Spanish missions, mines and settlements, preferring to remain to the west of the Baboquivari Mountains, and away from European settlers.¹¹⁶ The main groups of O’odham who interacted the most with the Spanish were those who either lived on the rivers, the Gila River to the north or the Santa Cruz and San Pedro Rivers to the south, and those who came into contact with either travelers to and from California or the miners in the desert.¹¹⁷ O’odham traditional houses were wattle and daub huts, made of posts, beams and the ribs of the saguaro cactus, which easily deteriorated when not in use.¹¹⁸ This gave these semi- or non-permanent structures a sense of abandonment when they were empty and could have contributed to European estimations that the O’odham were declining rapidly in numbers and their traditional lands were empty and unused.¹¹⁹ The O’odham used *ak-chin*, or flood, farming to harness scarce water supplies to grow two annual crops of tepary beans and cotton, as well as maize, squash and other types of beans, around the rivers of southern Arizona. Flood farming involved channeling the flood waters from the rainy

Erikson, *Sharing the Desert*, 9-10.

¹¹⁵ Erikson, *Sharing the Desert*, 9-10.

Edward Spicer, *Cycles of Conquest: The Impact of Spain, Mexico and the United States on Indians of the Southwest, 1533-1960* (Tucson, AZ: University of Arizona Press, 1967), 119, 134-136.

¹¹⁶ A more remote group of O’odham, the Hia C’ed O’odham, or the ‘sand people’, who were hunter gatherers and traders of fish, shells and salt, retreated so far into the desert that there are conflicting reports to this day as to whether they all died out during the nineteenth century or if any of the tribe’s descendants are, in fact, still in existence: Gilpin and Phillips, *The Pre-historic to the Historic*, 44-50.

Erikson, *Sharing the Desert*, 9-10.

‘Tohono O’odham History 1916 to Present,’ Tohono O’odham, 2016, www.tonation-nsn.gov.

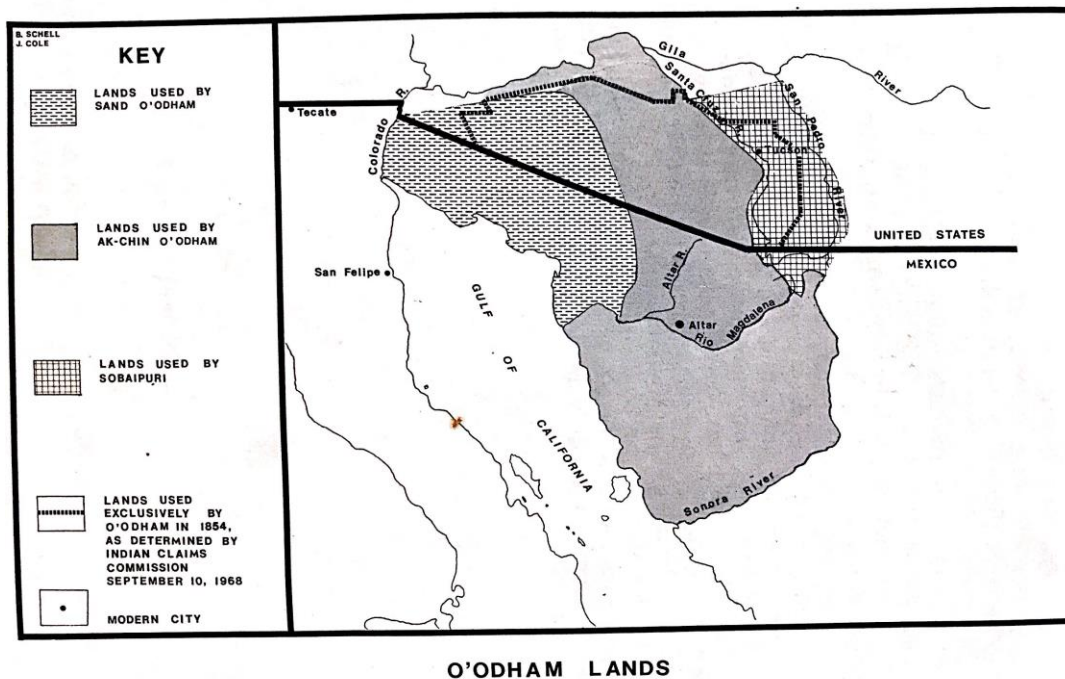
¹¹⁷ Bill Broyles and Gayle Harrison Hartmann, ‘Surveyors to Campers,’ in *Last Water on the Devil’s Highway: A Cultural and Natural History of the Tinajas Altas*, ed. Bill Broyles (Tucson AZ: University of Arizona Press, 2014), 115-140.

¹¹⁸ Gilpin and Phillips, *The Pre-historic to the Historic Transition Period*, 28-32.

¹¹⁹ Broyles and Hartmann, ‘Surveyors to Campers,’ 120.

seasons via irrigation channels and ditches and into *charcos*, or shallow ponds, to irrigate their crops.¹²⁰

Map 2.6



O'odham Traditional Lands¹²¹

Generally, the interaction between the Europeans and O'odham were fairly peaceful, however contention often emerged when Spanish and, later Mexican, miners and ranchers took the best irrigated land from the O'odham, introduced European methods of cultivation and then expected the O'odham attached to the missions to work for them. Naturally, the O'odham were reticent

¹²⁰ They also foraged the landscape for various seeds and cactus fruits, the desert is surprisingly bountiful when one knows where to look, and they also hunted for small animals to supplement their protein intake (Erickson 1994, p. 9-10). European crops, mainly wheat, and European tools and farm animals were introduced to the O'odham by the Spanish missionaries in the late seventeenth century: Bonaventure 1909-1937; Erickson, *Sharing the Desert*, 18-21.

¹²¹ Papago Tribe, *Tohono O'odham: History of the Desert People* (Salt Lake City, UT: University of Utah Printing Services, 1985) 5

about ‘helping’ the Europeans and rebelled from time to time.¹²² However, when the Apache caused much destruction to O’odham land, as well as to the European settlements, the O’odham became peace brokers between the Europeans and the Apache. As a result, the O’odham were recognized as a peaceful tribe who were friendly to the local European population, and by the 1870’s the San Xavier del Bac was established as a Papago/Sobaipuri reservation, but this was small and only serviced the O’odham around the mission lands. Later, the Tohono O’odham Nation was established on lands given to the O’odham to the west of Baboquivari Mountains in 1917.¹²³

The Tohono O’odham Nation reservation, created out of O’odham territory in 1917 by Executive Order 2524 from President Woodrow Wilson, covers an area in southern Arizona of 2.8 million acres, 4,460 square miles, and is divided into four communities.¹²⁴ The Tohono O’odham Nation reservation is the second largest in population and size in Arizona, after the Navajo Nation reservation, and is home for the 28,000 members of the Nation.¹²⁵ The largest community is Sells, and this is also considered the ‘capital’ or headquarters of the nation.¹²⁶ The reservation is located on the western side of the Baboquivari Mountains. These mountains are most sacred to the O’odham Nation because they are the location where the Elder Brother E’etoi or I’ittoi brought the O’odham people up from the underworld through a cave in the Baboquivari

¹²² Papago Tribe, *Tohono O’odham*.

¹²³ Executive Order 572 Establishing San Xavier Papago Reservation. 1874. Accessed 20 March 2019. www.loc.gov. Executive Order 2300 Establishing Papago Sells Reservation. 1916. Accessed 16 June 2021. Proquest. Executive Order 2524 Revising land provisions for the Papago Sells Reservation. 1917. Accessed 16 June 2021. Proquest.

¹²⁴ Tohono O’odham, *Tohono O’odham History*.

¹²⁵ ‘Appendix D: Indian Nations,’ *The American Indian Digest* (United States Department of the Interior Bureau of Indian Affairs, 1997).

Tohono O’odham, *Tohono O’odham History*.

¹²⁶ Tohono O’odham, *Tohono O’odham History*

Mountains, after the Earthmaker had made the world from a ball of dirt.¹²⁷ The Spanish traditionally recognized *Papaguería* as being located between the Baboquivari Mountains and the mining town of Ajo, and this still is approximately the location of the reservation established by the United States.¹²⁸

Close cousins of O'odham are the Sobaipuri O'odham,¹²⁹ who are believed to be ancestors of the San Xavier Mission Wa:k O'odham, were probably the first to have encountered the Spanish on their trek northward during the seventeenth century.¹³⁰ As settled *ak-chin*, or flood-farmers, they are mainly resided in the San Pedro River Valley area and were ministered to by Father Kino and his successors in the Santa Cruz River, Sonoita River and Babacomari Creek communities, which became the San Xavier del Bac, Tumacacori, Calabasas and Guevavi missions and *visitas*.¹³¹ By the late 1700's however, despite their great defensive and fighting skills, they forced by Apache incursions from their San Pedro and Sonoita River communities to reside closer to their cousins the Tohono O'odham for protection against Apache encroachment and are today considered full members of the Tohono O'odham Nation .¹³²

¹²⁷ Erikson, *Sharing the Desert*, 2.

'Casa Grande Ruins National Monument,' United States Park Service, accessed 15 August 2020, www.nps.gov/casagrande.

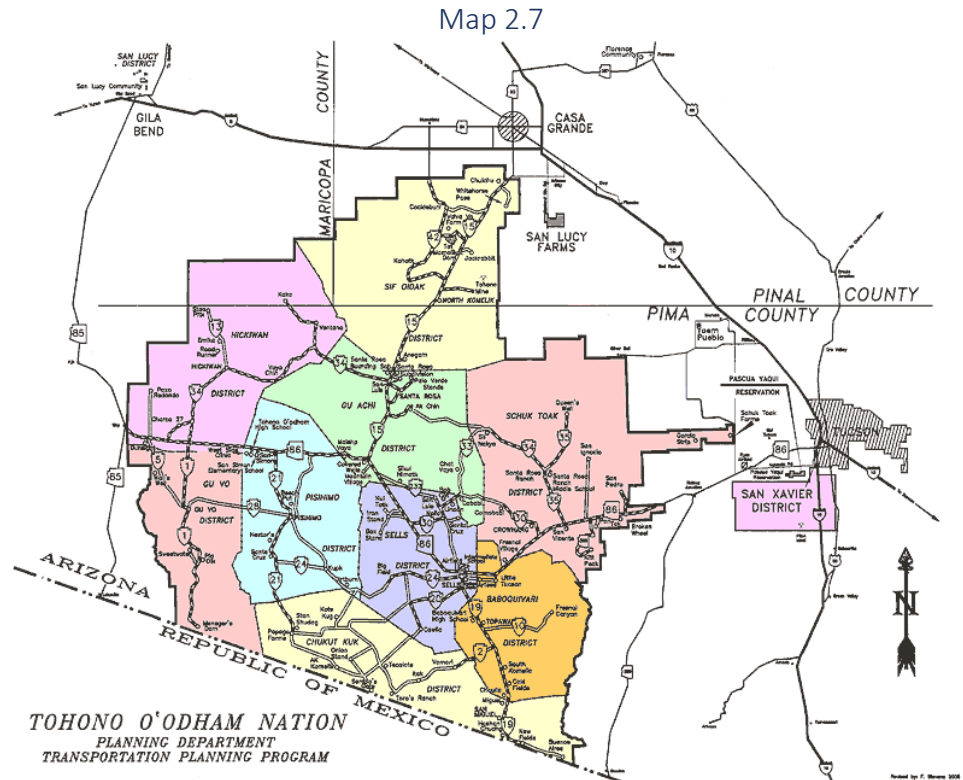
¹²⁸ Gilpin and Phillips, *The Pre-historic to the Historic Transition Period*, 34.

¹²⁹ Pronounced in the English tongue as *Sob-by-poorh-ee*.

¹³⁰ 'The Sobaipuri,' Deni Seymour, last modified 2017, <http://www.seymourharlan.com>.

¹³¹ Erikson, *Sharing the Desert*, 10.
Seymour, 'The Sobaipuri.'

¹³² Erikson, *Sharing the Desert*, 13.
Seymour, 'The Sobaipuri.'



Tohono O'odham Nation¹³³

Chiricahua Apache

The historical enemies of the O'odham were the Western Apache, probably because Apache groups often raided the *rancherías* of the O'odham communities along the San Pedro, Sonoita and Santa Cruz Rivers, which was the western edge of Apache territory.¹³⁴ The Apache also did not endear themselves to the Spanish, Mexican or Anglo-American settlers, either, as they often took advantage of the increased livestock on the settler's ranches to replenish themselves. The ranchers then retaliated with guns, hunting and scalping possies.¹³⁵ There were several groups of Western Apache in southern Arizona, but one particular group gained notoriety in the Anglo-American history books through the recorded exploits of their leaders; Chiricahua Apache

¹³³ Tohono O'odham Nation <http://www.tonation-nsn.gov/location/>.

¹³⁴ Deni Seymour, "How the Apache became Formidable Warriors", (*Globe Miami Times*, 2019): 2-4

¹³⁵ Jay J. Wagoner, *Arizona Territory 1863-1912: A Political History* (Tucson, AZ: University of Arizona Press, 1970): 23

groups led by Mangas Coloradas, Cochise and Geronimo.¹³⁶ Also, as the Chiricahua Apache mention on their website, they were yet another indigenous group impacted by the international division of their traditional territory which was also bisected in 1853 by the Gadsden Purchase Treaty.¹³⁷

Much of what is known about the Chiricahua Apache in the English- and Spanish-speaking world is from reports of people who encountered them during their time in southern Arizona either as travelers across their territory, called *Apachería* by the Spanish, or as settlers there.¹³⁸ It is these reports which inform the contemporary image of the Chiricahua Apache during the eighteenth and nineteenth centuries today. Initially, many of the early encounters recorded curiosity on both sides, but this relationship descended into hostility as European encroachment was resented by the Apache, and their raiding lifestyle was resented by the Europeans.¹³⁹

Unfortunately, many of these reports represent only one side of the story, and are not sympathetic enough to appreciate the pressure that the Apache found themselves in by trying to retain control over their traditional territories and water sources.¹⁴⁰ As well as documenting their relationship with the Apache, the European reports did attempt to identify the different Apache groups, using both Apache designations of themselves and the designations used by the O'odham for their enemies. Many leaders of the Chiricahua Apache are well-known from the annals of the

¹³⁶ Donald E. Worcester, *The Apaches, Eagles of the Southwest*. (Norman, OK: University of Oklahoma Press, 1979) Kindle, Chapter 1.

¹³⁷ Chiricahua Apache Nation, accessed 18 April 2018, <http://www.chiricahuaapachenation.org>.

¹³⁸ Colonel Thomas Hughes, "Apache Indian Raids on the Hughes Ranch: During the years of 1867, '70, '72, '75 and '76, Twenty Two (sic) Men Fell Victims to the Blood-thirsty and Merciless Savages." Newspaper Clippings. (C.1902-1912), University of Arizona Special Collections Library: AZ 209.

Mrs. A. M. Dyer, "An Indian Scare." *Arizona Historical Review* (1928): 45-49, Arizona Historical Society.

¹³⁹ Chiricahua Apache Nation.

John G. Parke, *Report of Explorations for that Portion of Railway Route near the Thirty-second Parallel of Latitude, lying between Dona Ana, on the Rio Grande, and Pimas Villages on the Gila* (Washington: Government Printing Office, 1855), 12-13.

¹⁴⁰ Chiricahua Apache Nation.

‘Apache Wars’ stories of the second half of the nineteenth century. They are known, usually, for their confrontations with United States authorities and from contemporary reports; the most famous leaders being the Chokenen Chief Cochise, and the Bedonkohe medicine-man Geronimo.¹⁴¹ Sadly, by the twentieth century the Chiricahua Apache members of southern Arizona were either removed from Arizona completely, or registered with the San Carlos or White Mountain Apache Reservations, large reservations located in east-central Arizona. Currently, in the twenty-first century there are no known Apache of direct Chiricahua Apache descent living on their traditional lands in southern Arizona.

The Chiricahua Apache way of life was somewhat different from the O’odham; they were hunter gatherers who usually moved around in small family groups, joining together for raids or revenge attacks on other indigenous groups, or later, Europeans.¹⁴² The Apache lived in mobile camps called ‘go-tahs’, usually rock or wikiup shelters, did not cultivate many plants, and used natural springs and *tinajas* for their water sources.¹⁴³ However, like the O’odham, they had a southern winter stronghold in the Sierra Madre mountain range, and a northern summer stronghold in the mountains of southeastern Arizona.¹⁴⁴ The mobile nature of their lifestyles meant that the Chiricahua Apache groups needed large areas in which to live to provide enough

¹⁴¹ Also known were Mangas Coloradas, fist-known leader of all the Chiricahua Apache and father-in-law to Cochise, Cochise’s sons Taza and Naiche, Victorio of the Chilhenne Apache, and Nednhi leaders Juh and Nana who escaped to the Sierra Madre mountain range, and whose descendants are believed to remain there to this day. Clum, John P. 1874-1877. Collection of agency notes and personal correspondence. Available at University of Arizona Special Collections. MS 284.

Worcester, *The Apaches*; Richard L. Perry, *Western Apache: People of the Mountain Corridor* (Austin, Texas: University of Texas Press, 1991): 179.

Edwin Sweeney, *From Cochise to Geronimo: The Chiricahua Apaches, 1874-1886* (Oklahoma: University of Oklahoma Press, 2010).

Roger L. Nicols, *Warrior Nations: The United States and the Indian Peoples*. (Oklahoma: University of Oklahoma Press, 2013).

Chiricahua Apache Nation.

¹⁴² Worcester, *The Apaches*, 7-8.

¹⁴³ Worcester, *The Apaches*, 5-8.

¹⁴⁴ Chiricahua Apache Nation

sustenance for their group members, and it also meant that their shelters were not always visible to incoming Europeans, giving rise to the belief that they, like the O'odham, had abandoned the area. Current archaeology indicates an active culture among the Chiricahua Apache with evidence of roasting pits in the mountains, stone rings and hearths and rock shelters with many historical pictographs on the walls and ceilings.¹⁴⁵

When southern Arizona became a territory of the United States the land unclaimed by Mexicans was considered to be public domain land and available for settlement. The influx of Anglo-Americans into Apache territory caused many conflicts, particularly after United States army presence was increased at the request of settlers.¹⁴⁶ By the end of the nineteenth century the 'Apache Problem', as the conflicts were called by the Europeans, was resolved by a series of Indian policies being implemented in southern Arizona, resulting in either many Western Apache being sent to the newly created Apache reservations in the territory, or, in the case of Geronimo and Nana's Chiricahua Apache groups, they were exiled forever from Arizona.¹⁴⁷

¹⁴⁵ Gilpin and Phillips, *The Pre-historic to the Historic Transition Period*, 70.

¹⁴⁶ Robert M. Utley, *A Clash of Cultures; Fort Bowie and the Chiricahua* (National Park Service, Washington D.C., 1977).

Worcester, *The Apaches*

¹⁴⁷ Dan L. Thrapp, *The Conquest of Apacheria* (Norman, OK: University of Oklahoma Press, 1967):102. Worcester, *The Apaches*, 317-324.

Map 2.8



Chiricahua Apache Nation ancestral lands, indicating the main Apache reservation locations¹⁴⁸

Conclusion

As an arid state, Arizona contains resources that have needed to be shared among the inhabitants, however, there is a disparity between the sustaining conservation practices of the indigenous people and the commercial extraction practices of the Anglo-Americans. The lack of understanding between the traditional practices and the Anglo-American practices has meant that the indigenous people of southern Arizona, in common with many indigenous groups on the North American continent, were forced to navigate new ways of existence because of change wrought by newcomers to the area. Europeans introduced different ways of living and imposed many of these ways onto the indigenous people regardless of specific environmental conditions and inherited preferred ways of living. However, this navigation also meant that they had to

¹⁴⁸ Courtesy of Chiricahua Apache Nation, accessed 27 November 2021 <https://chiricahuaapachenation.org/tribal-reunification/>.

readjust their relationships with the expanded world, and ultimately had to fight for their limited resources in the desert region.

The O'odham were able to expound upon their cooperative reputation and exploited this relationship to remain allies of the incoming European settlers. Unfortunately, this meant that their amiability was somewhat exploited by miners and ranchers who encroached on the traditional farming lands of the O'odham, and were, therefore, in competition for the scarce water sources on O'odham traditional territory. The Chiricahua Apache also experienced this type of competition for resources, however, they did not practice the same amiability as the O'odham and created enemies of the incoming Anglo-Americans during the territorial period. In addition, the Chiricahua Apache assert that their territory had never been conquered by the Spanish nor the Mexicans, and as such, did not relinquish sovereignty over their territory.¹⁴⁹ They, therefore, fought for their traditional lands defensively, and activity engaged in their traditional revenge activities, which did not endear them to any incoming Europeans. Unfortunately, for the O'odham, their friendliness was rewarded by being ignored for many decades by the United States government, and for the Chiricahua Apache their defensive practices meant that they were removed completely from the state. For both indigenous tribes, the exploitation of the resources and the destruction of the environment and landscape has affected their lifestyles and cultural practices to this day. The Anglo-Americans had many policies and actions backed by the central government of the United States, which followed a contractual and legalistic culture that excluded indigenous people from control and decision-making about their own territorial regions.

¹⁴⁹ However, again it was assumed by the Spanish, Mexicans, and later, the United States that the lands in eastern southern Arizona were there to be claimed by the national government at the time by means of territorial sphere of influence, and thus became absorbed as public lands.

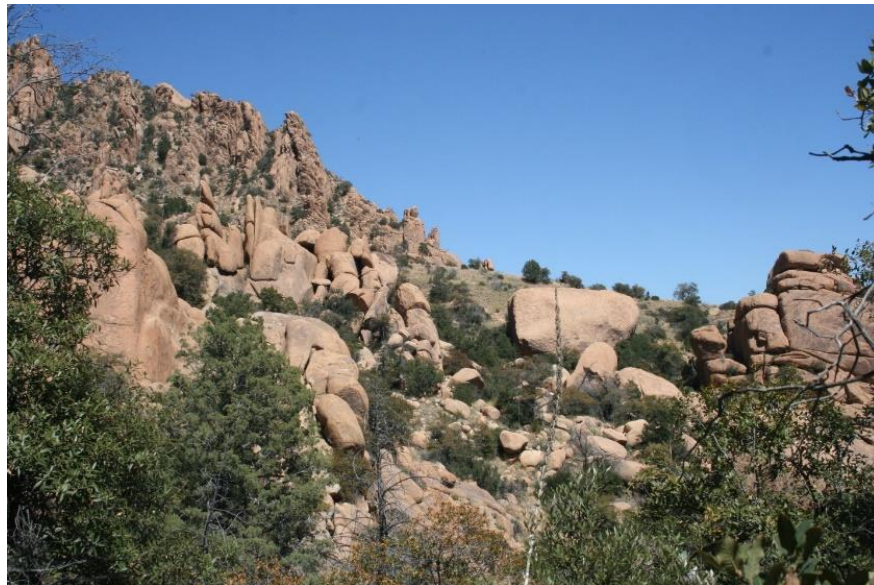
PLATES

Plate 2.1



Dragoon Mountains, moonscape

Plate 2.2



Dragoon Mountains, moonscape

Plate 2.3



Catalina Mountains, wind-sculpted columns

Plate 2.4



Clanton Ranch

Plate 2.5



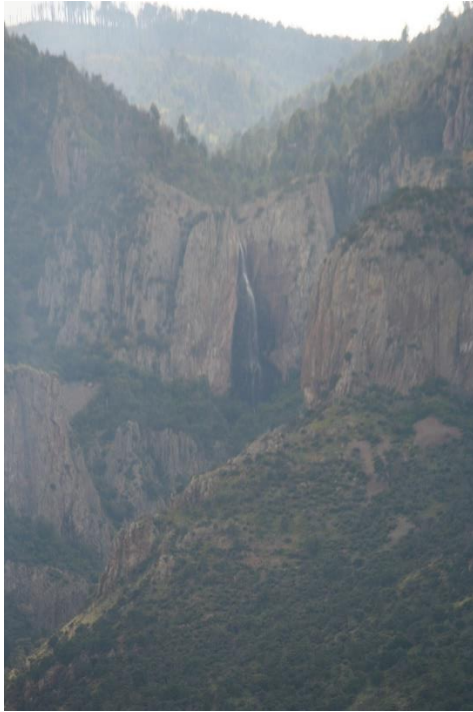
Casabell, Manos (grinder) and Metate (grinding basin)

Plate 2.6



Replica Wikiup, Apache Pass

Plate 2.7



Spring water in the Chiricahua Mountains

Plate 2.8



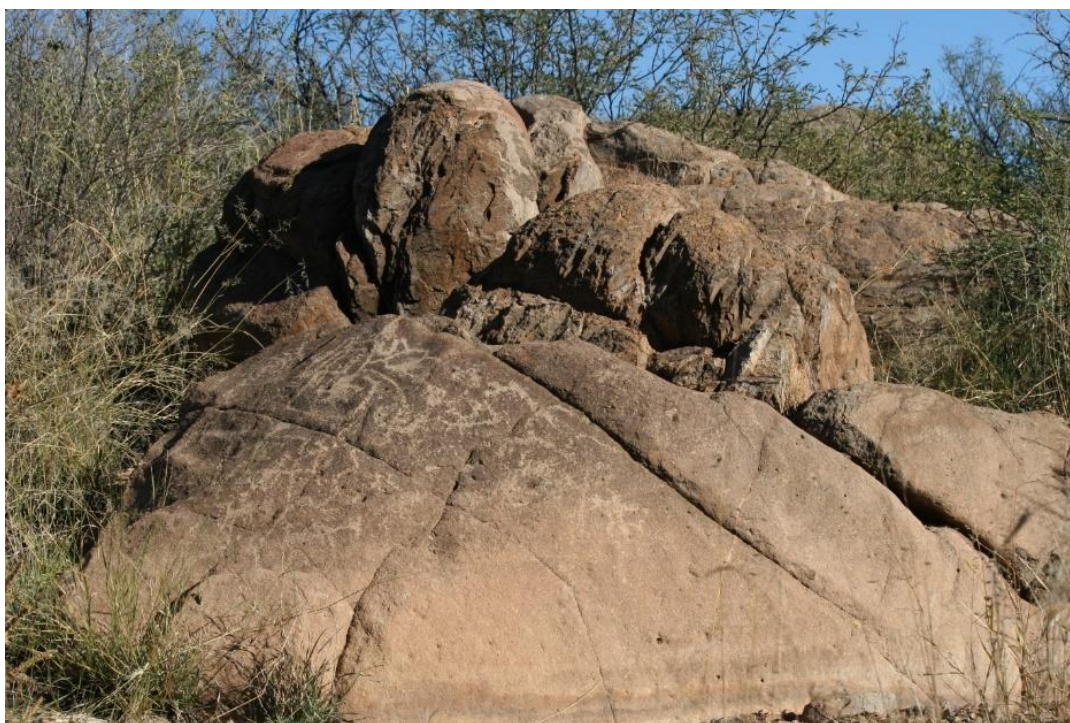
Metate (O'odham) and modern graffiti

Plate 2.9



Apache Pictographs

Plate 2.10



O'odham Pictographs

Plate 2.11



Sobaipuri Pictographs

Chapter Three

Early history and the State of Sovereignty

Introduction

Southern Arizona became a territory of the United States in 1853 when the United States purchased it from Mexico and signed the Gadsden Purchase Treaty stipulating the terms of transfer. The region prior to the purchase had been part of New Spain and, later, Mexico, and was the last portion of Mexico which the United States purchased.¹⁵⁰ The Spanish Conquistadores and Catholic missionaries were the first Europeans that the indigenous populations had contact with, and it was both a positive and negative experience for both. However, the transfer of control over the region from Mexico to the United States brought the indigenous people in to contact with the contractual land laws of the United States, and founding precepts which informed these laws, and which underlay post cession land legislation; the repercussions of which are still influencing land decisions in southern Arizona to this day.

The Spanish invasion

In the early 1500's members of the Spanish politico and army leaders, such as Alvar Núñez Cabeza, Fray Marcos de Niza and Francisco Vázquez de Coronado led early Spanish expedition across the region now known as southwestern United States.¹⁵¹ Historians are not exactly certain of their routes, but these are noted as being some of the early European forays into southern

¹⁵⁰ The Spanish had superimposed their culture on the Americas when they encountered the continents in the late 1400's and declared them to be part of the Spanish Empire as a 'right of conquest', meaning that regardless of the existence of the indigenous inhabitants Spain declared sovereignty over them all.

¹⁵¹ Thomas E. Sheridan, *Arizona: A History* (Tucson AZ: University of Arizona Press, 2012), 36-37.

Arizona.¹⁵² The expeditions did not record much of the people there nor the nature of the landscape, and it was over a century before Spanish records indicated significant communication with the indigenous people of southern Arizona.¹⁵³ Later, Father Eusebio Kino is credited with bringing many European goods and practices to the people residing in southern Arizona during his tenure as Jesuit missionary to the O'odham people from 1686 until his death in 1711.¹⁵⁴ He spent the last two decades of his life ministering to the indigenous people of the Santa Cruz, San Pedro and Gila River valleys from the missions he established, while introducing them to European methods of farming and husbandry. During the eighteenth and early nineteenth centuries the O'odham were gradually accepted as the friends to the Spanish, despite setbacks such as the Piman Uprising of 1751.¹⁵⁵ Most Spanish settlers, however, encountered the mobile units of Apache, who raided the settlements for provisions and who virulently defended their independence of New Spain.¹⁵⁶ To mitigate Apache raiding, the Spanish established a garrison and bribery system where a military *presidio*, or fort, provided provisions and supplies for the Apache groups as long as they relinquished raiding and settled down near the provision distribution centres, called *establecimientos de paz*.¹⁵⁷ The Apache were quite successful in exploiting this handout provision and periodically ceased raiding in exchange for easy provisions

¹⁵² Pat H. Stein, *Historic Trails in Arizona from Coronado to 1940* (Phoenix, Arizona: State Historical Preservation Office, 1994).

Arizona Department of Transportation 2011. *Arizona Transportation History: Final Report 660*. (Arizona Department of Transportation Research Center, 2011), 9.

¹⁵³ 'Sobaipuri,' Deni Seymour, last modified, 2017, <http://www.seymourharlan.com>.

¹⁵⁴ Edward H. Spicer, *Cycles of Conquest: The impact of Spain, Mexico and the United States on Indians of the Southwest, 1533-1960* (Tucson AZ: University of Arizona Press, 1967), 118-119.

¹⁵⁵ Spicer, *Cycles of Conquest*, 129-130

¹⁵⁶ The eastern side of southern Arizona was called *Apachería* and was often declared a dangerous place to remain if one were European; the only safe places to stay were around the missions of the Santa Cruz Valley area in *Papaguería*, named for the O'odham who lived there. The Spanish had tenuous hold on *Pimera Alta*, as *Papaguería* and *Apachería* were collectively known, but were able to maintain it throughout the late eighteenth and early nineteenth century and passed the region over to Mexico when they gained Independence from Spain in 1821: Spicer, *Cycles of Conquest*, 132.

¹⁵⁷ Sheridan, *Arizona*, 47-48.

during times of hardship; the sporadic cessation raiding then encouraged greater settlement of the southern Arizonan region by Spanish and, later, Mexican adventurers.¹⁵⁸

Early Spanish forays into mining and ranching by soldiers and Basque settlers in southern Arizona also began in the late eighteenth and early nineteenth centuries, when the Apache *establecimientos de paz* were in operation which were later used by Anglo-American settlers to renew operations.¹⁵⁹ There were eight *establecimientos de paz* in the region by the 1790's, housing around 2,000 Apache, and those who lived and remained around Tubac and Tucson, as well as along the Santa Cruz and San Pedro Rivers came to be known as Manso, or 'tame', Apache.¹⁶⁰ However, Apache raids caused many Spanish ventures to fail which discouraged extensive stays and heavy investments in the region.¹⁶¹ The Spanish authorities established a series of defensive presidios which lined the northern frontier land of Sonora in an attempt to encourage investment and settlement, a practice which the United States reestablished during the latter half of the nineteenth century.

After Mexican Independence, the new government wanted to reward their military supporters as well as establish a Mexican footprint in the *Pimera Alta* region by encouraging Mexican settlement of the area. They built upon a Spanish land grant system where loyal servants of the state could bid for vast tracts of land at a minimal price to establish ranches in the area.¹⁶² Not only were the loyal servants of the state rewarded, but the O'odham were also allowed to bid for

¹⁵⁸ Donald E. Worcester, *The Apaches, Eagles of the Southwest*, (Norman, OK: University of Oklahoma Press, 1979), 27-28.

¹⁵⁹ Worcester, *The Apaches*, 17-18, 27-28.
Sheridan, *Arizona* 42.

¹⁶⁰ These communities were eventually absorbed into the general composition of the regional towns during the early territorial years of Arizona: Spicer, *Cycles of Conquest*, 240.
Worcester, *The Apaches*, 27-28.

¹⁶¹ Worcester, *The Apaches*, 11-12.

¹⁶² Sheridan, *Arizona*, 57.

their own mission lands, and the titles of the lands belonging to the mission at San Xavier del Bac, and *visitas*, or satellite missions, of Tumacacori, Calabasas and Guevavi were given to them by the authorities.¹⁶³ Unfortunately, these titles were not honoured or respected by local Mexican authorities and over time the O'odham lost control over these grant lands, which caused great strife for the indigenous people in southern Arizona after Mexican cession in 1853 because many of these grant lands became an important factor in the settlement of the region under the United States.¹⁶⁴

By the time of the Mexican American War of 1846-1848 much of southern Arizona was deserted by the Mexicans, mainly due to increased Apache agitation in the area.¹⁶⁵ The Mexican government at the time had been unable to provide money to, firstly, maintain the *presidios* effectively to protect the new settlers, and secondly, to provide bribe provisions for the Apache using the *establecimientos de paz*. Thus, when the Apache were forced back into their raiding lifestyle again to survive, they targeted the new Mexican ranches and their cattle.¹⁶⁶ Fortunately, for the landowners many of the land grants had provisos in their title agreements which permitted them to maintain ownership of the lands if they had been forced to abandon them due to natural or human damage.¹⁶⁷ This proviso, however, later caused issues in the establishment of ownership lineage to these private land claims, which escalated during the last few decades of

¹⁶³ Sheridan, *Arizona*, 57.

¹⁶⁴ Richard Wells Bradfute, *The Court of Private Land Claims: The adjudication of Spanish and Mexican Land Grant Titles, 1891-1904*, (Albuquerque: University of New Mexico Press, 1975).

¹⁶⁵ Spicer, *Cycles of Conquest*, 244-261.

¹⁶⁶ Worcester, *The Apaches*, 36-37

¹⁶⁷ Marilyn Strome Harris, 'Arizona Land Grants: Cases which appeared before the Court of Private Land Claims, 1891-1904' (MA Thesis, San Diego State College, 2016) Arizona Historical Society, Tucson AZ.

the nineteenth century as many Anglo-Americans sort to gain vast quantities of land to secure for their mining and ranching ventures.¹⁶⁸

The Anglo-American factor

In the early decades of the nineteenth century, Anglo-American knowledge of the region was sparse, although fur trapping brought some Anglo-American frontiersmen, often illegally, into the region, particularly along the San Pedro River area.¹⁶⁹ However, it was not the elusive frontiersmen and trapper who eventually brought the region to the notice of the United States; it was war with Mexico. During the Mexican American War of 1846-1848 the United States transported their army along a corridor route long established by indigenous and local travelers in the region from southern Texas to California, which travelled along the bottom of New Mexico, into Arizona, and then through the Yuma crossing and into southern California.¹⁷⁰ It was this route which was used later, starting in 1849, to bring prospectors into southern California during the Gold Rush, who were often led by either O'odham guides or former soldiers who had either stayed in, or returned to, the region.

The Gadsden Purchase, agreed between Mexico and the United States in 1853, transferred 29,670 square miles of northern Sonoran territory from Mexico to the United States for \$10 million, creating southern Arizona.¹⁷¹ There were various clauses in this purchase document,

¹⁶⁸ Harris, 'Arizona Land Grants.

¹⁶⁹ The trappers hunted mainly beaver, which was a fashion fur used for the Top Hat market of the early 1800's. Unfortunately, over hunting eliminated the beaver population on the river by the middle of the century. Jay J. Wagoner, *Early Arizona; Prehistory to Civil War*. (Tucson, AZ: University of Arizona Press, 1975). Stein, *Historic Trails in Arizona*, 8.

¹⁷⁰ This route became known as the Southern Emigrant Route and was a broad corridor which used various trails either side of the current Interstate 10, towards Tucson, and either veered north to follow the course of the Gila River to Yuma, or veered south and followed the current international borderline through O'odham territory in the northern Sonora Desert: Stein, *Historic Trails in Arizona*, 8.

¹⁷¹ 'Milestones: 1830-1860,' Office of the Historian, accessed 13 January 2019, <https://history.state.gov>. 'Gadsden Purchase, 1853-1854,' Office of the Historian, accessed 13 Jan 2019, <https://history.state.gov/>.

some referenced similar clauses from the prior Treaty of Guadalupe Hidalgo of 1848, which ended the war with Mexico, and some amended clauses in the 1848 Treaty.¹⁷² Ultimately, the Gadsden land purchase provided a secure corridor for the United States from New Mexico into southern California, which included mineral lands and access to important water sources. The purchase, as well as the articles of the treaty, would have significant consequences for both the indigenous population and the landscape and resources of southern Arizona.

Image 3.1



The Gadsden Purchase Cession Lands¹⁷³

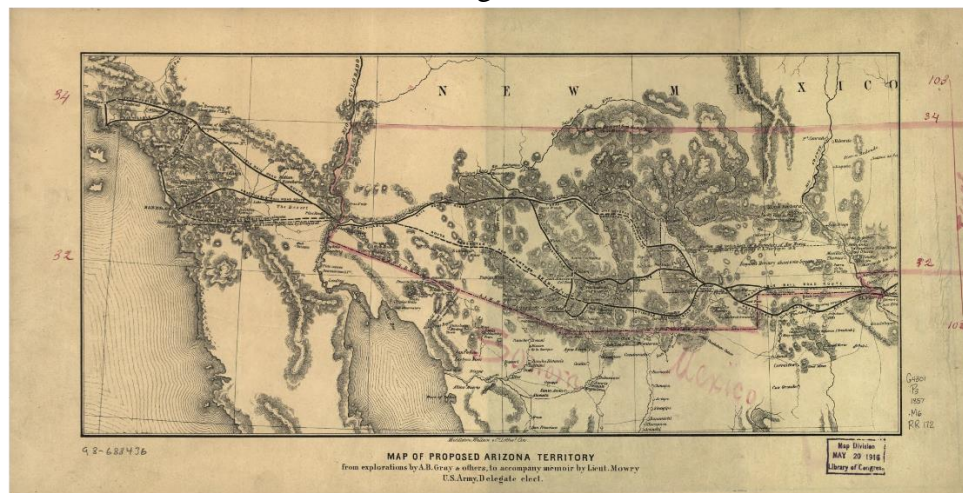
After the purchase, units from the United States army were garrisoned at various points throughout the region, mainly to protect the few Anglo-American early mining ventures and to safeguard the transportation routes across the region to California. Most of these ventures were small and just managed to survive during the 1850's but were curtailed with the outbreak of the American Civil War in 1861, when all the army posts were abandoned as troops were recalled to fight in the Civil War on the East Coast. Southern Arizona at this point was effectively

¹⁷² Richard Griswold Del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman, Oklahoma: Oklahoma University Press, 1990), 4-11.

¹⁷³ 'Gadsden Purchase, 1853-1854,' Office of the Historian, accessed 13 Jan 2019, <https://history.state.gov/>.

abandoned until 1863, when Union troops routed a couple of Confederate forays into the region and reestablished some of their garrisons to prevent it from falling into Confederate hands.¹⁷⁴ It was not until after the Civil War did the Anglo-American presence become firmly established in the region, and by 1870 more settlers were travelling to the region to live in one of the last frontiers of the American West.

Image 3.2



Proposed Arizona Territory before it became the current shape in 1863¹⁷⁵

It was this growing flood of new settlers who began to demand the use of legislation to legally establish their rights over land they claimed. They used the premise that the land was empty and devoid of any effective, European interpreted, productivity, and justified their claims by promising to exploit the natural resources to help with the commercial development of the nation.¹⁷⁶ Thus, legislative efforts were successively made to secure legal rights to land for

¹⁷⁴ Charles D. Poston, 'History of the Apaches,' (Manuscript, University of Arizona Special Collections, AZ 169, 1885). Wagoner, *Early Arizona*

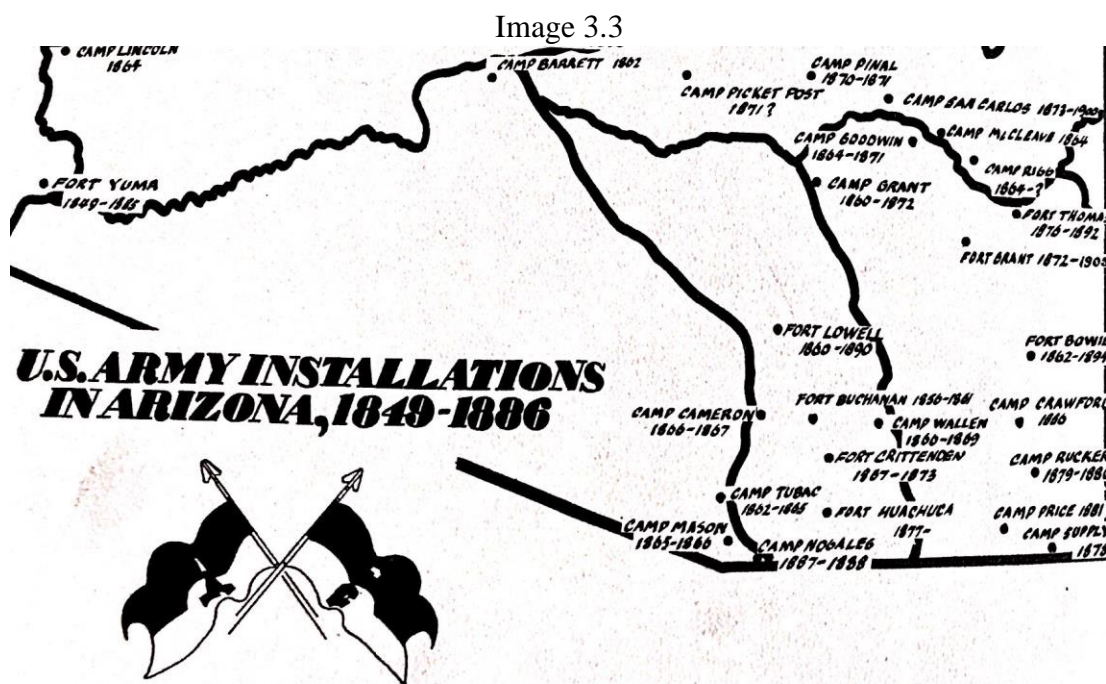
Dan L. Thrapp, *The Conquest of Apacheria*. Norman, OK: University of Oklahoma Press, 1967), 33.

¹⁷⁵ Silvester Mowry, *Arizona and Sonora: The Geography, History, and Resources of the Silver Region of North America*, (New York: Harper and Brothers, Publishers, 1864), accessed 22 August 2019. www.loc.gov.

¹⁷⁶ Anthony F.C. Wallace, *Jefferson and the Indians: The Tragic Fate of the First Americans* (Cambridge Mass; The Belknap Press of Harvard University Press, 1999), PAGE

John C Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900*, (Montreal, Canada: McGill Queens University Press, 2003), 81.

Anglo-Americans who demanded it, and provisions were made help establish any adventurer who wanted to help establish an Anglo-American footprint in the region. Also, starting in the 1870's, there was a growing interest to develop the region to be accepted as new state, and constant petitions to legislators in Washington to consider permitting Arizona and New Mexico to become full members of the union ensued until 1912, when statehood was finally granted.¹⁷⁷ Some of the issues which stalled statehood were the remoteness of the territory, clashes with the local indigenous cultures, the prevalence of Mexican influence in the southern half of the region, and the rough and ready lifestyle of Anglo-Americans who resided in this harsh frontier environment. Legislators in Washington were very hesitant to grant statehood until the two territories were declared Americanised, and 'civilised' enough to become full member states.¹⁷⁸



Army camps, posts and forts in southern Arizona¹⁷⁹

¹⁷⁷ Jay J. Wagoner, *Arizona Territory 1863-1912: A Political History*, (Tucson, AZ: University of Arizona Press, 1970).

¹⁷⁸ Silvester Mowry, *Arizona and Sonora: The Geography, History, and Resources of the Silver Region of North America*, (New York: Harper and Brothers, Publishers, 1864), 200.

Wagoner, *Arizona Territory*, 455.

¹⁷⁹ Jason Hook and Martin Peglar, *To Live and Die in the West: The American Indian Wars*, (Osprey Military, 2001).

It is important to recognise that many of the policies used in southern Arizona were a part of precepts which were imbedded in the culture and legislation of the country prior to the Gadsden acquisition. These laws had been established during the early republican period of the United States and informed later nineteenth century legislation as the country accommodated new developments. By the time of the Mexican cessions many of the policies established during the early Republic also informed the direction of the relationship between the government, the citizens and the indigenous people in the newly acquired regions. These early policies influenced the way in which legislation was used in southern Arizona and it is important to understand what they were and how they influenced the way in which the indigenous environment was exploited.

Land legislation and founding precepts

When southern Arizona was purchased by the United States it automatically become subject to the various land distribution laws that were in place from the 1780's. One of the guiding principles of the development of the United States was the ability to expand using the self-imposed legal boundaries. Therefore, the United States legislated policies to manage the rapid growth of the young country into territories beyond the original boundary of the Appalachian Mountains. These early policies laid the foundation of territorial growth throughout the formative years of the country and into the twentieth century, ending only when the last, 'acquired' contiguous areas of Arizona and New Mexico, fully entered into the union. The early pieces of legislation then informed subsequent policies, that were used during the territorial years of Arizona, and which had an impact on how the indigenous environment was manipulated by the Anglo-Americans in southern Arizona.

There were specific ideologies which drove the direction of expansion policies which also established the way in which new territory was handled prior to becoming states. It was these ideologies which determined how the natural resources and indigenous populations were coerced and subjugated in the western territories such as southern Arizona. These underlying beliefs also informed the policies for the management of the new areas and had to coexist with the provisions made in the treaties with Mexico over the governance of the cession areas. Unfortunately, the treaties compounded some of the problems that the people of southern Arizona encountered when the land policies were implemented during the territorial years, notwithstanding the unique desert environment that also influenced implementation of generic national policies at the local level.

One important local factor in southern Arizona was, and still is, access to water. Land which permitted access to this resource was coveted and influenced many decisions about land and property in the region. Therefore, any land legislation that was implemented locally was intricately connected to accessibility to important water sources, favouring those with local influence, and as such, caused much consternation for small businesses, settler Anglo-Americans, and the indigenous populations alike. Coupled with the ideologies of expansionism land legislation was particularly powerful in removing coveted land from 'unworthy' segments of society in southern Arizona ostensibly for the benefit of the nation. This was achieved by the wording and local implementation of the various policies which permitted certain actions in the new territories, as well as an understanding that acquired territory was under the immediate jurisdiction of the federal government upon acquisition. The Founding Fathers, cognizant of the rapidity with which the nation swelled westward established the Land Ordinance of 1785 to put the principles of expansionism into a formulated document, the Land Ordinance of 1785, which

dealt with the practicalities of acquiring, distribution and establishment of new territories.¹⁸⁰

This document was founded upon the principles and ideology of sovereign rights, *terra nullius*, squatters' rights, the commercial value of natural resources and the democratic ideals of the United States. These ideologies thus informed not just the Land Ordinance but subsequent legislation ranging from the 1787 Northwest Ordinance to the Desert Land Act a century later. These acts provided legal authority for many activities in southern Arizona and informed how the harnessing and management, or mismanagement, of water, land and other natural resources were to be implemented, often to the detriment of the environment and the original inhabitants. In addition, certain acts were also legislated, such as the Trade and Intercourse Act of 1790 and the Distribution and Pre-emption Act of 1841, which directed the way in which the indigenous people and their lands would be managed.

Sovereign Rights

In 1848 two governments, the United States and Mexico, negotiated and signed an agreement which passed a large area of indigenous territory from one government to the other in exchange for monetary compensation. Five years later they did the same again, albeit with a significantly smaller area of land. The resulting agreements, the Treaty of Guadalupe Hidalgo in 1848 and the Gadsden Purchase Treaty of 1853, established boundaries, sovereignty and jurisdiction over the landscape and lives of the occupants of the purchase areas. Via these agreements the two governments determined between them an international boundary which divided the purchased section from its original 'owner'. While this would seem an ordinary transaction as far as general international relations are concerned between two neighbouring sovereign governments,

¹⁸⁰ Paul W. Gates, 'An Overview of American Land Policy.' *Agricultural History* 50, no.1 (1976), 219-229.

it was actually based upon an assumption that the two governments represented all the people of the region, and that they were, themselves, indigenous, and thus had the jurisdiction to make such arrangements.¹⁸¹ This was not the case; the two governments of the United States and Mexico had developed from colonial activities by their parent countries, and, in turn, had established presumed rights of sovereignty over the lands involved in the exchange. The treaties also put a price on the land, thus commodifying the right of conquest. Therefore, in 1848 after a territorial war, the United States and Mexico upon a land transition in the peace agreement which involved the transfer of property; property which they technically had no right to claim ownership over because they had claimed the land via their mother-countries' assumption of the 'right of discovery'.¹⁸² 'Right of conquest' was claimed after vanquishing the indigenous inhabitants and confiscating their lands, usually by superior military strength coupled with force and violence; the operating rules for seventeenth and eighteenth century European warfare, and then by establishing a settler foothold on the area.¹⁸³

¹⁸¹ Richard Griswold Del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman, Oklahoma: Oklahoma University Press, 1990), xii.

John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal, Canada: McGill Queens University Press, 2003), 65-66.

Gary Fields, *Enclosure: Palestinian Landscapes in a Historical Mirror* (Oakland, CA: University of California Press, 2017), 4.

¹⁸² Before these treaties the land was historically 'controlled' by colonizers, Spain and England, the mother countries of Mexico and the United States respectively. The mother countries had invaded the North American continent and claimed them, by 'right of conquest', as their own (Dahl, 'Empire,' 19-20). Therefore, by extension, when the United States and Mexico, they 'inherited' the land upon which they were established and claimed sovereign ownership of it. Until released to individual entities, the standard practice for the governments was to claim this land as public domain and under the control of the sovereign nation: Churchill, 'The Tragedy,' 206. Adam Dahl, 'Empire of the People: The Ideology of Democratic Empire in the Antebellum United States,' (PhD Thesis, University of Minnesota, 2014), 19-20.

Ward Churchill, 'The Tragedy and the Travesty: The Subversion of Indigenous Sovereignty in North America,' in *Contemporary Native American Political Issue*, ed. Troy R. Johnson (Walnut Creek, CA: AltaMira Press, Sage Publications, 1999), 206.

Weaver, *The Great Land Rush*, 135.

¹⁸³ Dahl, 'Empire,' 19-20.

The jurisdiction for the transaction was based upon two imperial premises: the ‘right of discovery’ and the belief in *terra nullius*. ‘Right of discovery’ permitted and justified colonial governments to claim land where no other European power had jurisdiction. The belief in *terra nullius*, specifically in North America, sanctified the right of the European countries to ignore any indigenous inhabitants, and to claim the land as empty and devoid of occupation. They then used this as tacit permission to colonise the territory and establish European settlements and institutions on it. Ironically, it meant navigating the landscape with the help of the indigenous people, who *were* in existence and who, technically, had historical sovereignty over the land.¹⁸⁴

Thus, when the United States and Mexico exchanged land for money in 1848, and again in 1853, they were working on the premise that; a) Mexican sovereignty over the land was legitimate, and b) Mexico had the right to give it to another sovereign power who was not historically indigenous to the territory. This was then formalized as the Treaty of Guadalupe Hidalgo in 1848 and the Gadsden Purchase Treaty in 1853, which sanctioned the premise of sovereignty. They also dictated the boundaries between the countries, which succeeded in splitting two indigenous nations’ territory in half. These transactions were also recognised internationally. However, the consequences of these agreements ultimately had a huge impact upon the natural resources of the territories of agreement.¹⁸⁵

European cultures believed that while the landscape itself was immovable, the ownership of the rights to the land was transferable, and those who established legal proof of ownership, such as a documented title to the land, usually had the legal right to use the resources upon it.¹⁸⁶ The legal

¹⁸⁴ Dahl, ‘Empire,’ 19-21.

Fields, *Enclosure*, x-xiii.

¹⁸⁵ Del Castillo, *The Treaty of Guadalupe Hidalgo*.

¹⁸⁶ Weaver, *The Great Land Rush*, 24-26, 139-141.

proof of ownership falls under the jurisdiction of property rights, which is separate from sovereign rights, as property rights for public domain lands can be given and removed by the sovereign power of the land. Property rights are a contractual proprietary right to the title of the land, which is represented on paper as proof of a traceable, legitimate transaction, sanctioned by the sovereign power, and as a right to use the land and resources.¹⁸⁷ Thus, when the United States and Mexico agreed upon a transfer of land, they solidified it in contractual transfer treaties, and the United States acquired the sovereign right to distribute their public lands and the resources thereon as they saw fit.¹⁸⁸ In addition, according to United States law, they were only required to sell the title to the surface lands; the subsurface, usually containing minerals and subsurface water was retained by the United States; the right of mineral extraction particularly, being distributed by the government in separate mineral and water right contracts.¹⁸⁹

The United States government was able to presume some control over acquired western lands by asserting sovereign rights over them and solidifying it with prior land legislation and the purchase ‘contracts’ or treaties. The Louisiana Purchase lands of 1803, and the Mexican Cessions lands of 1848 and 1853, established these lands as federally controlled territories and as such were retained as public domain lands. Pockets of these lands were recognised as privately owned while other pockets were periodically released for private purchase or were federally reserved for specific purposes. Even when the treaty territories applied for statehood the Federal government still retained a significant amount of these lands and would not release them to the

¹⁸⁷ Allan G. Bogue and Margaret Beattie, eds., *The Jeffersonian Dream: Studies in the History of American Land Policy and Development* by Paul W. Gates. (Albuquerque: University of New Mexico Press, 1996), James W. Ely, *Property Rights in American History* (Bosa Roca: Taylor & Francis Inc, 1997) Weaver, *The Great Land Rush*, 13.

¹⁸⁸ Weaver, *The Great Land Rush*, 28-32.

¹⁸⁹ General Mining Law – ‘Chapter 152: Act of May 10, 1872, 17 Stat. 91. *Mining Claims and Sites on Federal Lands*. Bureau of Land Management, 2011. Accessed 23 July 2021. www.fs.fed.us. Weaver, *The Great Land Rush*, 28-32.

newly established state. This allowed the federal government to maintain a foothold in the state, implement law, and collect monies from these public lands, which the states in which they were located could not.¹⁹⁰ Some of the land gained by the Mexican cession, however, was legally claimed by private individuals, and as such were not a part of the public lands gained by the United States.¹⁹¹ But the United States claimed property rights over these lands until the individual could produce verified proof of purchase prior to cession, at which point the United States government would investigate the claim and determine if it was legitimate or not.¹⁹² This ‘burden of proof’ privilege, however, was only extended to Mexican and non-indigenous inhabitants and claimants, and involved years of claims and counterclaims throughout the second half of the nineteenth century.¹⁹³

¹⁹⁰ Gates, ‘An Overview.’

¹⁹¹ Bradfute, *The Court of Private Land Claims*

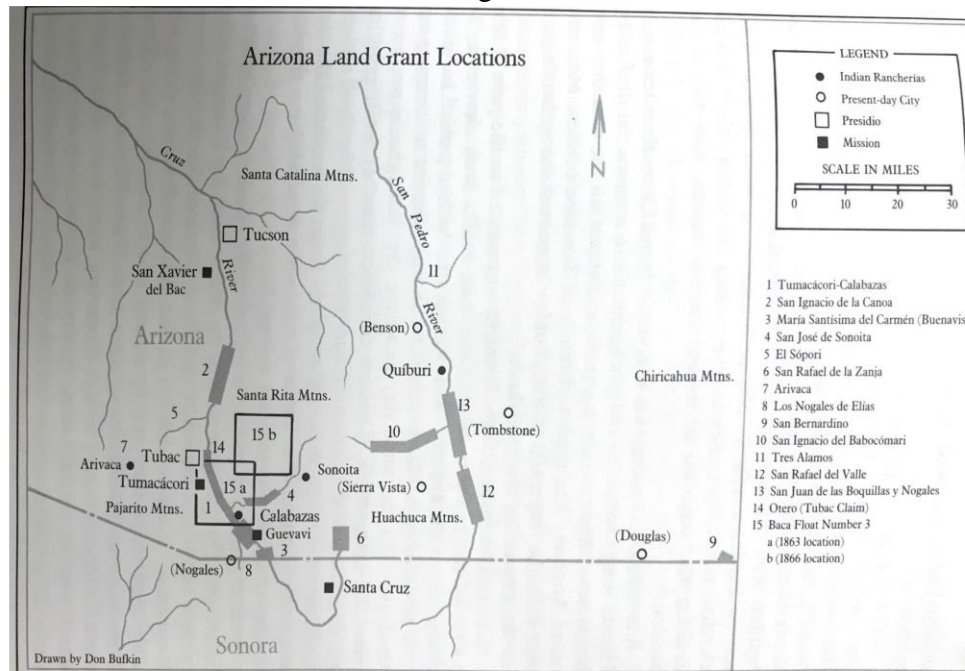
¹⁹² Thirty-third Congress, Office of Surveyor-General - ‘Chapter 103: An Act to establish the offices of Surveyor-General of New Mexico, Kansas and Nebraska, to grant Donations to actual Settlers therein, and for other purposes,’ (July 22, 1854), 308-311.

McFarland, N.C. Commissioner of the General Land Office. ‘Report No. 192, from 1883 – Certain Private Land Grants in Arizona Territory (To accompany bill H.R. 3235),’ Forty-ninth Congress, House of Representatives, (1886).

J. J Bowden, ‘A Critique of the Solution of the Southwest Private Land Claims Problem’ (MA Thesis, Laws in Oil and Gas. Dallas, TX: Southern Methodist University, 1969).

Del Castillo, *The Treaty of Guadalupe Hidalgo*, 72-77.

Image 3.4



The Land Grants of dispute¹⁹⁴

The indigenous people of the Mexican cession areas found themselves in a tenuous position, they were not considered as having sovereignty over their lands, as was the Mexican government's recognized position for them, and they were not allowed to claim any property rights within the United States, because they were not considered to be citizens, as they had been in Mexico.¹⁹⁵ Because of this the United States exercised juridical and sovereign rights over traditional indigenous lands, considered to be a right of confiscation from a defeated nation, but, also, as non-citizens the indigenous people had no legal jurisdiction to purchase property rights over their lands.¹⁹⁶ This meant that the indigenous people found themselves homeless and at the mercy of

¹⁹⁴ James E. Officer, Mardith Schuetz-Miller, Bernard L. Fontana editors, *The Pimeria Alta: Missions and More*, (Tucson AZ: The Southwestern Mission Research Center, 1996), 295.

¹⁹⁵ Del Castillo, *The Treaty of Guadalupe Hidalgo*, 73-77.
 Weaver, *The Great Land Rush*, 321.

¹⁹⁶ Before 1870 the United States claimed indigenous populations as 'domestic dependent nations', indicating that they could be considered as conquered nations which entitled the United States to sign treaties with them: Churchill, 'The Tragedy and the Travesty.'
 Del Castillo, *The Treaty of Guadalupe Hidalgo*;
 Weaver, *The Great Land Rush*, 332-333.

the sovereign government of the United States. While the United States did reserve vast tracts of land for the indigenous people to use, these lands were coveted by the Anglo-American population, and eventually these lands were claimed for public use and the indigenous people lost any tentative rights to their land, or they were removed to another location.¹⁹⁷

Excerpt President Andrew Jackson's Address, 1830¹⁹⁸

The consequences of a speedy removal will be important to the United States, to individual States, and to the Indians themselves. The pecuniary advantages which it promises to the Government are the least of its recommendations. It puts an end to all possible danger of collision between the authorities of the General and State Governments on account of the Indians. It will place a dense and civilized population in large tracts of country now occupied by a few savage hunters. By opening the whole territory between Tennessee on the north and Louisiana on the south to the settlement of the whites it will incalculably strengthen the southwestern frontier and render the adjacent States strong enough to repel future invasions without remote aid. It will relieve the whole State of Mississippi and the western part of Alabama of Indian occupancy, and enable those States to advance rapidly in population, wealth, and power. It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community.

The legal structure of the United States also established a hierarchy of land jurisdiction and distribution, and this informed the way in which the land was made available for individual parties. As the United States government asserted sovereign rights, they also claimed the right of distribution, and used various pieces of legislation to legally distribute and provide rules for land property rights.¹⁹⁹ The government was legally permitted to grant distribution rights to government officers, such as the governors and territorial secretaries, to the Department of the Interior, the Bureau of Indian Affairs, and the Department of War, who, in turn, distributed it to various organisations such as mining companies, speculators, and transportation companies. Excess land was then made available to smaller and more local organisations, such as townships,

Andrew Jackson, 'Annual Address to Congress, 1830.' Accessed 9 August 2018. www.ourdocuments.gov.

¹⁹⁷ Peter Barnes, 'The Great American Land Grab'. *New Republic*, 1971, <http://peter-barnes.org>.

¹⁹⁸ President Andrew Jackson, 'First Inaugural address to Congress. March 4, 1829,' accessed 9 August 2018, www.avalon.law.yale.edu.

¹⁹⁹ Weaver, *The Great Land Rush*, 281.

and private individuals such as merchants and ranchers, however, those who could claim squatters' rights or pre-emption rights under various laws, were also given application and land claim rights. Then last, but not least, inhabitants of cession lands were given the right of 'burden of proof' over any land that they believed they had legal ownership acquired before cession. The indigenous people had no claim to any property rights, and their traditional territory was claimed as public land by the government.²⁰⁰

*Terra Nullius*²⁰¹

Upon acquisition the United States government worked on the premise that the land was barely occupied, irrespective of the indigenous inhabitants, so therefore, it was considered as effectively empty and available for exploitation as the government saw fit.²⁰² Because the indigenous people of the United States were not citizens and therefore excluded from having property rights and because cession Mexican landowners had to prove their legal right to their land, the United States worked on the misconceived assumption that the land was all public domain, and available for settlement. However, unlike many other territorial purchases, the United States originally only required the area of southern Arizona to use as a thoroughfare between New Mexico and the gold fields of southern California, therefore originally, it was not considered as viable property to develop at that time. Therefore, as empty land, and as redundant land, the idea of *terra nullius* played into the favour of the indigenous people, initially, as they were free to use their ancestral

²⁰⁰ Weaver, *The Great Land Rush*, 281.

²⁰¹ This concept is often paired with the idea of 'vanishing Indian' but in the case of southern Arizona, the indigenous people were actively present during the formative years, and some were incorporated into the commercial development of the region.

²⁰² Bowden, 'A Critique,'

Bradfute, *The Court of Private Land Claims*, 1-3.

Del Castillo, *The Treaty of Guadalupe Hidalgo*, 4.

Weaver, *The Great Land Rush*, 108.

lands as they had done before. It was only after the Civil War that matters became fraught when larger numbers of Anglo-Americans sought to settle on the land as mineral discoveries were made and those who had land used new legislation to support and enhance their claims.²⁰³

The notion of empty land was also a concept which informed the initial policies of the early governments of the United States. Legislation such as the Land Ordinances of 1785 and 1787, the Trade and Intercourse Act of 1790 and even the federal constitution of 1787, were established on the premise that acquired land was completely available for settlement and the expansion of the United States once, however, various obstacles, such as the indigenous populations, were removed.²⁰⁴ According to Anthony Wallace, in his book *Jefferson and the Indians*, Thomas Jefferson believed that the indigenous populations wanted to sell their land to the Anglo-Americans so that they could pursue a more sedentary and European based agricultural way of life.²⁰⁵ By this change in their lifestyles, Jefferson anticipated that the indigenous people would start to 'disappear' from the United States and would thus leave their excess land available for settlement by others.²⁰⁶ In addition, the Trade and Intercourse Act of 1790 allowed for the removal of indigenous land from them as punitive measures against various uprisings against encroachment by the United States onto their traditional territory.

The land policy towards the indigenous people changed over the nineteenth century from the 1790 Trade and Intercourse provisions where the federal government signed treaties reserving land for indigenous groups, to bowing under expansionist pressure to legislate for a release of

²⁰³ Weaver, *The Great Land Rush*, 111.

²⁰⁴ Wallace, *Jefferson*, 162-163.

²⁰⁵ Wallace, *Jefferson*, 162-163.

²⁰⁶ Wallace, *Jefferson*, 162-163.

indigenous land for further development in the west.²⁰⁷ The original principle of indigenous removal and isolation, as various policies indicated, culminating in the devastating ‘Indian Removal’ policies of Jackson’s presidency, gave way to pure assimilation policies such as the reservation and acculturation practices and eventually the Dawes Allotment Act of 1887.²⁰⁸ These policies helped expansionism by pushing indigenous people onto marginal lands, by breaking up their traditional communal lands into predesignated individual units, or by eliminating them completely.²⁰⁹ This then negated the need for resident soldiers to protect against rebellious indigenous people, permitted more water and mineral rights’ applications, and released more land into the public domain for sale. In the case of Arizona, this allowed the ‘difficult’ indigenous people to be restricted to reservations and encouraged more Anglo-American settlers to establish, thus forwarding Arizona’s application to become a state, as directed by the requirements of the Northwest Ordinance.²¹⁰

The Land Ordinance of 1785 and the Northwest Ordinance of 1787 were instrumental in establishing both the rights of sovereignty, as well as the concept of *terra nullius*, including its distribution. The land ordinances also established the way in which new territory was to be processed through the legal system. The Land Ordinance of 1785 established what is now known as the Public Land Survey System, PLSS, which divided the land into quadrangles of 36

²⁰⁷ Trade and Intercourse Act 1790 – ‘An Act to regulate the trade and intercourse with the Indian tribes,’ (June 23, 1790), accessed 3 February 2021, www.loc.gov.
Indian Removal Act – Twenty-first Congress. ‘Chapter 148: An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi,’ (May 28, 1830), 411-412.

²⁰⁸ Ely Parker, *First Report of Ely Parker U.S. Commissioner of Indian Officers (1869)*, accessed 27 Oct 2019 www.pbs.org.

²⁰⁹ Gates, ‘An Overview.’

²¹⁰ Northwest Ordinance – ‘An Ordinance for the government of the Territory of the United States northwest of the River Ohio,’ (July 13, 1787), Articles 5 and 6, accessed 25 Jul 2018, <http://avalon.law.yale.edu>.

miles square, 6 miles on either side, designating unique coordinates for each segment. These segments were divided into numbered sections, each one mile by one mile square or 160 acres, and these could also be subdivided if necessary, each piece was labelled according to their compass point location and which PLSS section they belonged to. The land was further designated by north to south and east to west medians, labeled according to distinctive natural features, and with townships and range numbers and contained numerous quadrangles (Land Ordinance 1785). Thus, a property could have the legal designation of the east corner of section 13 in Township 17, south of Range 23, east of the Gila and Salt River Meridian, or in shorthand the east corner of sec 13 in T17S R23E.²¹¹ This official division of unseen and uncharted lands was a presumption on the part of the United States government that they had the right to superimpose this rigid system on any future lands they gained.²¹²

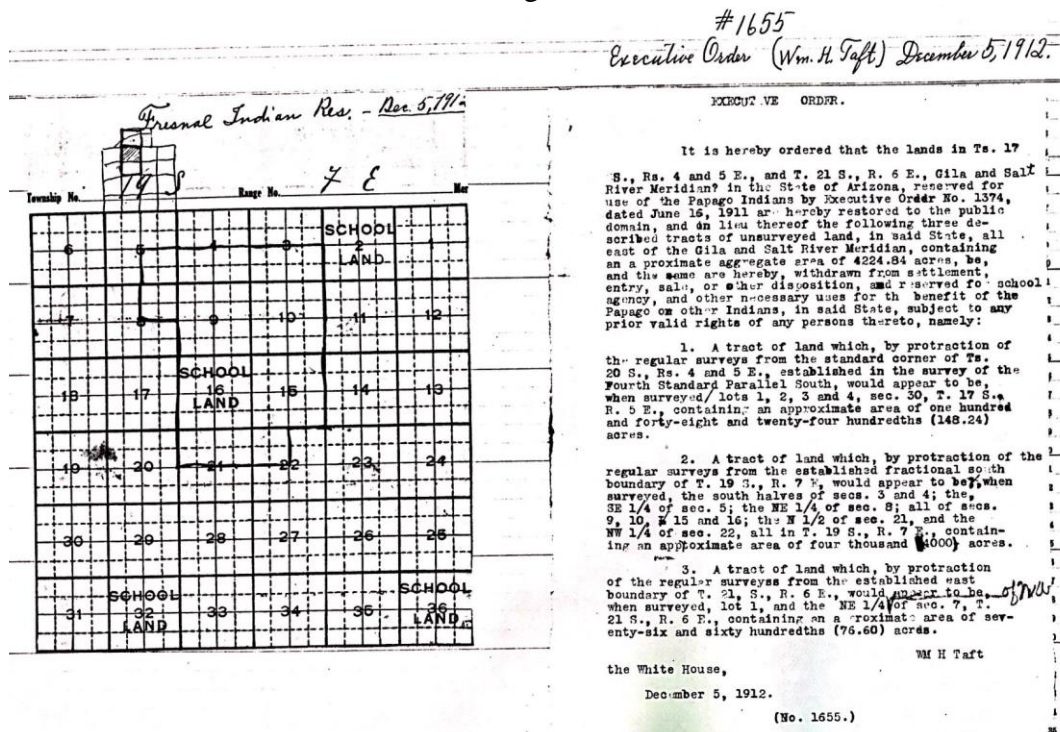
²¹¹ This is the PLSS designation for a mining claim in the Golden Rule Mining District in Cochise County, patent number 252691 in 1910 (SER Patent 252691).

²¹² This was developed because the United States disliked the unorganized or organic growth of European cities and urban area and wanted to establish rigid control over the development by this system and expected citizens to adhere to this legalized measurement and division of these unseen, unsurveyed lands, Gates, 'An Overview'.
Fields, *Enclosure*, 137.
Gates, 'An Overview.'

[illegible]

²¹³ Hinton, *The Hand-Book to Arizona*, 180.

Image 3.6



PLSS plats for Tohono O'odham Reservation 1911 – illustration of PLSS plats and how they land is designated²¹⁴

²¹⁴ Bonaventure Files, Forming the Reservation (Tohono O'odham Nation Reservation), 1.

Image 3.7

PHOENIX 012463 .

4-1081-R.

The United States of America,
To all to whom these presents shall come, Greeting:

WHEREAS, In pursuance of the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two, and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the Plat and Field Notes of Survey and the Certificate of the Register of the Land Office at **PHOENIX, ARIZONA,** accompanied by other evidence whereby it appears that **THOMAS ALLAIRE AND EDGAR H. REEVES**

did, on **DECEMBER 31, 1910,** duly enter and pay for that certain mining claim or premises, known as the **MANHATTEN AND PITTSBURG LOPE MINING CLAIMS,**

designated by the Surveyor-General as **SURVEY NO. 2855, EMBRACING A PORTION OF TOWNSHIP SEVENTEEN SOUTH OF RANGE TWENTY-THREE EAST OF THE GILA AND SALT RIVER MERIDIAN, AND A PORTION OF SECTION THIRTEEN SAID TOWNSHIP AND RANGE, IN THE GOLDEN RULE MINING DISTRICT, COCHISE COUNTY, ARIZONA,**

and bounded, described, and platted as follows:

Beginning **FOR THE DESCRIPTION OF THE MANHATTEN LOPE CLAIM AT CORNER NO. 1, A PINE POST SIX INCHES IN DIAMETER, TWO FEET ABOVE GROUND, MARKED 1-2855 NEOM SEED SWOP, IN MOUND OF EARTH AND STONE, IDENTICAL WITH THE SOUTHEAST CORNER OF THE DENVER LOPE CLAIM, UNSURVEYED, AND THE SOUTHWEST CORNER OF THE PELICAN LOPE CLAIM, UNSURVEYED, FROM WHICH THE WEST CORNER TO SECTIONS TWELVE AND THIRTEEN IN TOWNSHIP SEVENTEEN SOUTH OF**

25¹⁵
RECORD OF PATENTS: Patent Number **252691**
4-2053

Illustration of use of PLSS coordinates in a land patent²¹⁵

The Northwest Ordinance of 1787 determined who had a right to claim public domain lands and who would be allocated public domain lands according to their official jurisdictional title.

Therefore, the governor of a new territory, secretaries and judges were all given free public land to enable them to reside within their territorial jurisdiction. It also determined who was eligible

²¹⁵ This is the PLSS designation for a mining claim in the Golden Rule Mining District in Cochise County, patent number 252691 in 1910 (SER Patent 252691) accessed 18 January 2019 www.blm.org.

to apply for public domain that was available for purchase.²¹⁶ Indigenous claimants were not considered as they were designated as members of tribes or nations, which were considered as separate entities to the United States, in the legal parlance of United States' legislation, indicating that they were not citizens and were not eligible to apply for land.²¹⁷ Section 13 of the Northwest Ordinance also established the procedure of a territory to apply for statehood, one of the requirements being a population of 60,000 'free' citizens residing in the territory, something which stymied Arizonan efforts to become a state until 1912.²¹⁸ Therefore, it was in the best interests of a territory to make land available for settlement as much as possible to encourage United States' citizens to live in the territory and swell the Anglo-American numbers ready for application for statehood, which also brought with it the ability to raise their own taxes for the direct benefit of the state.²¹⁹

The provisions of these ordinances then provided the foundation upon which later legislation, such as the preemption laws, the Homestead and Desert Land Acts, was developed and which was designed to encourage Anglo-American settlement in the southwest, such as southern

²¹⁶ Northwest Ordinance, Sections 2, 3, 4 and 9.

²¹⁷ The discussion of where the indigenous people lay in the legal system of the United States was eventually clarified by a series of decisions by Chief Justice John Marshall of the United States Supreme Court. Marshall made a series of legal decisions between the 1820's and 1830's about the indigenous position eventually concluding that the indigenous people of the United States were to be legally considered as domestic dependent nations, an ambiguous title, which could be translated to determine that treaties with the indigenous people were subject to domestic needs and laws of the Constitution: Robertson, *Conquest by Law*, 95-116.

Grillot, 'Indian Nations,' 51-52.

Lindsay G. Robertson, *Conquest by Law: How the Discovery of American Dispossessed Indigenous Peoples of their Land*. (Oxford University Press, 2005), 95-116.

Thomas Grillot, 'Indian Nations, Indian Tribes: Notes on the Colonial career of twin concepts' *Revue Française d'Études Américaines* 3 no, 144 (2015): 51-52.

²¹⁸ Even by the end of the nineteenth century a significant portion of southern Arizona was Mexican or Mexican-American which confused the numbers of legal citizens required to legitimately apply for statehood, in addition to suspicions about the prevalent Hispanic culture, and therefore not Anglo-American, which prevailed in the region: Wagoner, *Arizona Territory*, 455.

Northwest Ordinance, Section 13.

²¹⁹ Arizona Enabling Act - 'Chapter 310: Enabling Act for Arizona and New Mexico,' (June 20, 1910), sections 19-35, 568-579, accessed 23 July 2018, <https://land.az.gov>.

Arizona. It also successfully excluded the indigenous population from control over their traditional lands, and actively encouraged legally sanctioned encroachment onto lands which were previously deemed marginal and not worthy, as much of southern Arizona had been designated at acquisition.

Commodification and commercial productivity

In the 1600's, the English understanding of land values shifted from land owning as a prestigious entity to land owning as a viable industry which could be improved into a commercial investment.²²⁰ This understanding of land values was carried across the Atlantic by the English settlers and embedded in the culture of the United States; however, this was at variance with the indigenous inhabitants of the United States who valued land as their heritage and survival.²²¹ The practice of 'improving' the land to encourage greater economic viability meant that when the Anglo-Americans ventured into southern Arizona, they deemed the indigenous cultivation practices as inferior and incapable of harnessing the potential productivity of the land.²²² This was compounded by the apparent abandonment of the land when the semi-nomadic lifestyle of the indigenous people left little evidence of constant and identifiable use according to European expectations.²²³ Therefore, when the United States acquired southern Arizona, they perceived that the indigenous population were not capable of exploiting the capital potential of the land, and this furthered the cause for the United States government to render the land available for purchase by citizens of the United States who would 'improve' the land and make it

²²⁰ Weaver, *The Great Land Rush*, 66

²²¹ Keith H. Basso, *Wisdom Sits in Places: Landscape and Language Among the Western Apache*. (University of New Mexico Press, 1996), Kindle.

²²² Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Cambridge, MA: Harvard University Press, 1981),

²²³ Weaver, *The Great Land Rush*, 132.

commercially viable. Each piece of the land had a price, and as set by the Land Ordinance of 1785, each acre was worth a minimum of \$1, this value would increase as further 'improvements' were implemented.²²⁴

Alexander Hamilton's financial system permitted the sale of land to help pay the debts of the new Republic, which was a departure from the traditional way of distributing land as part of official grants or via the head-right system that was in place during the Colonial period. This departure was codified in the Act of 4 August 1790, 1 Stat, 144, where any size of public domain lands could be purchased from the Federal government.²²⁵ Conflict between Hamilton's quick-fix scheme, the conservative attitudes of the easterners, and the energy of the western entrepreneurs meant that in principle the land needed to be thoroughly surveyed and reserved for the small scale farmers.²²⁶ In practice, the persuasiveness of the western land businessmen heralded an era of substantial investment and mass movement, aided, later, by manipulation of the 1841 Distribution and Preemption Act and the abuses of the 1862 Homestead Act and subsequent land acts.²²⁷ Initially, these acts were designed to curb abuses in the sale of western lands, but they resulted in encouraging large scale speculative ownership to the detriment of the small farmer of the Jeffersonian ideal. The of the clauses of many of the land acts required the new landowner to show improvement of the land into a commercially viable investment of capital, which was a requirement to gain full title to the property. This was initially tied into a Lockean concept of citizenship obligation as a landowner to develop a piece of property to fulfil

²²⁴ The Land Ordinance of 1785 wording already indicated the monetary value of lands, mineral rights, agricultural and ranching needs, including the value of salt licks and water, and assumes that this a standard way of determining resources.

²²⁵ Gates, 'An Overview,' 216-217.

²²⁶ The easterners mainly only wanted the land made available when all other land was accounted for, in order to prevent wholesale exodus of eastern workers: Gates, 'An Overview.'
Gates, 'An Overview.'

²²⁷ Gates, 'An Overview.'

the citizens' obligation of 'giving back' to the country for the privilege of being a citizen and all that it provided.²²⁸ The indigenous populations, however, were excluded from being citizens and were therefore not eligible to 'return the favour of citizenship'. It was also held that if they were citizens their lifestyles and culture would inhibit them from fulfill this duty in the first place.²²⁹ It was in the best interests of the United States to have willing participants of active citizenship who would invest in the new western lands and help develop the market economy espoused by the United States.²³⁰ Gradually during the nineteenth century changes in how society viewed land resources created legal re-interpretations and new legislation to permit more land to be placed into the hands of private businesses, and this development continued into the twenty-first century.²³¹

²²⁸ Weaver, *The Great Land Rush*, 140-141.

²²⁹ Horsman, *Race and Manifest Destiny*, 3.
Weaver, *The Great Land Rush*, 61-63.

²³⁰ Dahl, 'Empire,' 119-144.

²³¹ Alt National Park Service, 'Blog,' accessed January 2019, <https://altnps.org/blog>.

During the last fiscal year 8,095,413 acres of public land were disposed of. Of this quantity 3,698,910.05 acres were taken under the homestead law and 2,159,515.81 acres sold for cash. The remainder was located with military warrants, college or Indian scrip, or applied in satisfaction of grants to railroads or for other public uses. The entries under the homestead law during the last year covered 961,545 acres more than those during the preceding year. Surveys have been vigorously prosecuted to the full extent of the means applicable to the purpose. The quantity of land in market will amply supply the present demand. The claim of the settler under the homestead or the preemption laws is not, however, limited to lands subject to sale at private entry. Any unappropriated surveyed public land may, to a limited amount, be acquired under the former laws if the party entitled to enter under them will comply with the requirements they prescribe in regard to the residence and cultivation. The actual settler's preference right of purchase is even broader, and extends to lands which were unsurveyed at the time of his settlement. His right was formerly confined within much narrower limits, and at one period of our history was conferred only by special statutes. They were enacted from time to time to legalize what was then regarded as an unauthorized intrusion upon the national domain. The opinion that the public lands should be regarded chiefly as a source of revenue is no longer maintained. The rapid settlement and successful cultivation of them are now justly considered of more importance to our well-being than is the fund which the sale of them would produce. The remarkable growth and prosperity of our new States and Territories attest the wisdom of the legislation which invites the tiller of the soil to secure a permanent home on terms within the reach of all. The pioneer who incurs the dangers and privations of a frontier life, and thus aids in laying the foundation of new commonwealths, renders a signal service to his country, and is entitled to its special favor and protection. These laws secure that object and largely promote the general welfare. They should therefore be cherished as a permanent feature of our land system.

Squatters' rights

The United States is a country which had, and still has, vast tracts of land which is still considered in United States law as uninhabited, such as tracts in Cochise County in southern Arizona, are managed by a federal or state land manager, but have not, as yet, been sold to a private individual.²³³ It is, however, in the best interests of many colonising countries to establish a visible foothold on the land by allowing citizens to quickly occupy new lands, particularly in the outlier country.²³⁴ Spain and Mexico attempted to do this when they issued their grant lands for sale, and the United States encouraged this by allowing squatters to establish themselves in various places and then retrospectively apply for a title according to a piece of

²³² 'Presidency,' University of California, Santa Barbara, accessed 8 December 2020, www.presidency.ucsb.edu.

²³³ 'Government Property for Sale or Disposal,' U.S. General Services Administration, last modified 29 June 2021, www.gsa.gov

²³⁴ Weaver, *The Great Land Rush*, 60-62.

legislation which was best suited to their circumstance.²³⁵ This allowed the United States to quickly proclaim sovereignty over newly acquired land, much in the same way that Spain used the missions as the advance team to establish a foothold and imprint on their new territory.²³⁶ However, as more citizens settle on new land the central government can then begin to exert their sovereignty over them by imposing existing property legislation upon them.²³⁷ Squatter settlement also favoured resource development for the national interest. As more people settled the land, they deemed, and then established and invested in it, as their private property. Once it became secured as a vested interest then it is assumed that the property owner will defend it against the interests of others, be they indigenous people or encroachers, thus serving as a line of defense for the nation.²³⁸ A by-product was elimination of obstacles whether natural environment, or existing indigenous populations and the encouragement of infrastructure which, in turn, encouraged greater settlement.²³⁹ In addition, this establishes more resources and assets for capital industry and this investment encourages national stability.²⁴⁰

Therefore, passive encouragement of squatting on public domain was utilized by the United States government until such time that they could profit from it using the perquisites of the land distribution legislation such as the 1841 Preemption and 1862 Homestead Acts. The Preemption, Distribution, or Public Lands Proceeds Act of 1841, allowed squatters to maintain an interest in their property via a legal 'contract' with the United States government.²⁴¹ Aside from the benefit

²³⁵ Preemption Act (also known as Distribution Act or Public Lands Proceeds Act) – Twenty-seventh Congress, 'Chapter XVI: An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights,' (Sept 4, 1841), 453-458, accessed 19 August 2018, www.loc.gov.

²³⁶ Spicer, *Cycles of Conquest*, 129.

²³⁷ Weaver, *The Great Land Rush*, 91, 108.

²³⁸ Dahl, 'Empire,' 119-144.

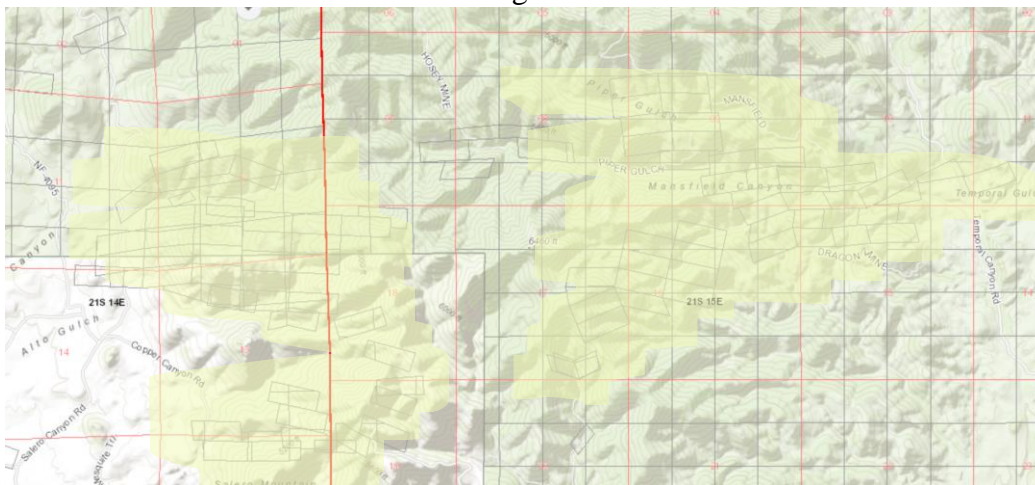
²³⁹ Dahl, 'Empire,' 119-129.

²⁴⁰ Ely, *Property Rights*

²⁴¹ Preemption Act, Sections 8-15.

of settler colonization, this piece of legislation had two additional advantages. The first encouraged efficient and easy settler colonization, which, if they were successful, and if the public domain were then ‘opened up’ for purchase, the squatters could quickly claim provisional title to their property, negating years of waiting in application. Secondly, it aided in fulfilling an ideology adhered to by Jeffersonians; that of a developing a nation based upon small homesteading farmers.²⁴² The premise behind this was to allow small agricultural concerns to be the commercial backbone of the country, an agrarian ideal, and as such, much of the land legislation held this at the core of its requisites, manifesting itself in the pivotal Homestead Act of 1862, and subsequent restrictive property legislation. Unfortunately, many of the restrictions on the idealistic agrarian settler legislation were manipulated by larger companies and speculative companies who would sweep up vast swaths of new territory before profiting themselves from private sale and distribution of it.²⁴³

Image 3.8



Detail of mine claims within the PLSS system²⁴⁴

²⁴² Horsman, *Manifest Destiny*, 21-23.

²⁴³ Weaver, *The Great Land Rush*, 114.

²⁴⁴ Bureau of Land Management Land Offices, accessed 18 January 2019 [Catalog \(blm.gov\)](https://catalog.blm.gov/).

Preemption rights were used in new states and territories and many financial incentives were provided to encourage settlement. In return, when the public land was released for sale, the squatter was asked to demonstrate improvement during residence on the land, either via cultivation or buildings. They were also required to have an official survey performed, prove that no-one else claimed any part of the property, reduce any excess to a maximum of 160 acres, and register it with the nearest land office for a nominal fee.²⁴⁵ The caveat was that the land needed to be registered within 3 months of the announcement of public sale of the land it was located on, and the claimant had 12 months from registration to complete the above requirements.²⁴⁶ Interestingly, many western territories considered the inclusion of these squatters' rights into their new state constitution, after Federal repeal of these rights, and indeed they are still permitted to this day in Arizona, such as payment of 3 years of back-taxes to secure the title of abandoned property.²⁴⁷

Preemption, however, was only available to citizens of the United States, which by definition excluded any indigenous land 'owners'. In addition, as indigenous land was, by default, property of the United States designated as public domain, squatters were legally entitled to remain on indigenous land if their claim to it was accepted. This was a double indemnity for indigenous cultures because they had to suffer encroachment onto their traditional land, and then the indignity of losing legally through the implementation of land legislation.²⁴⁸

²⁴⁵ Preemption Act, Sections 1-4, 8-13.

²⁴⁶ Preemption Act, Section 15.

²⁴⁷ 'Chapter 103 12-522 et seq,' Arizona Adverse Possession Laws, accessed 30 July 2018.
<https://statelaws.findlaw.com>.

²⁴⁸ Indeed, for the O'odham nation, they were required to wait for one family, the Hunter-Martins, homesteaders, to vacate and agree to sell up their land to permit the tribe to claim this parcel which was surrounded by their reservation, and this was only finally resolved in 1968, decades after the reservation was established: Papago Tribe 1985.

Democratic ideals

Adam Dahl determined that the United States was engaged in what he called democratic imperialism, where the country used settler colonialism as a vehicle of democratic expansionism. But this also involved taking over territory via land dispossession of those deemed unworthy to participate in the democratic process, which was how the indigenous people of the United States were traditionally portrayed.²⁴⁹ This presumed two principles, the first was the Jeffersonian idea of basing the economy upon the agrarian product of small farmers, who as citizens, land property laws required this, would be invested in participating in the democratic process to protect their property interests.²⁵⁰ Secondly, all new territory was the property of the United States, unless proved otherwise, and disposed according to the laws and regulations of the United States and was not the property of indigenous peoples.²⁵¹ According to the wording of the United States Constitution, that although the indigenous people did not have jurisdiction over their lands, they were permitted to sign treaties, as conquered 'domestic' nations, with the United States, which was codified in the Trade and Intercourse Act of 1790.²⁵² However, signing such treaties negated their right to be citizens, and therefore property owners, of the United States. Unfortunately, for the indigenous inhabitants of southern Arizona, the O'odham had never been enemies of the United States so did not have a treaty with them protecting or giving them their own lands. The Chiricahua Apache, however, did have a peace treaty signed with the United

²⁴⁹ Dahl, 'Empire,' 1-44.

²⁵⁰ 'Constitution of the United States,' (September 17, 1787), accessed 2 August 2018, www.archives.com, Article II Section 1 and Article V.

Wallace, *Jefferson*, 161-162.

²⁵¹ Constitution of the United States, Article I and Article VI.

²⁵² Trade and Intercourse Act 1790.

Constitution of the United States

Churchill, 'The Tragedy and the Travesty,' 19.

Robertson, *Conquest by Law*, 95-116.

States in 1853, but according to the 1787 Northwest Ordinance, which was reiterated in 1790, they lost their 'right' to the treaty because they were 'in rebellion' when they clashed with troops during the 1860's.²⁵³ The Abrogation of Treaties Act in 1862 and the Peace Policy of President Grant, codified as the Act of March 3rd, 1871, removed the ability of indigenous tribes 'in rebellion' to negotiate for a peace treaty with the United States, designed to protect themselves and their lands from encroachment and depredations, and by the 1870's lost their national sovereignty status entirely.

President Jackson expanded the precepts of *terra nullius* and squatter's rights in favour of promoting the democratic ideal when he forcibly and viciously evicted various indigenous nations who had treaties from their traditional lands to provide for settler expansionism.²⁵⁴ This was a political move on Jackson's part, where he recognized the advantage of the vested interest that propertied citizens would have in the political process, and thus, created an opportunity for the growing lower-class Anglo-American population to move westerly into frontier land, and gain property. This created a larger voting base for himself, and helped to forward his expansionist ideas, based upon the Jeffersonian premise of a country of small farmers. In reality, the frontier settlers also provided a great barrier between the commercial interests on the east coast and all foreign concerns beyond, such as encroachment by Britain and Spain and retaliation from the indigenous populations.

Discussion

The land legislation that was used by the settlers of southern Arizona was influenced by the early Republican concepts of sovereign rights, *terra nullius*, squatters' rights and democratic ideals

²⁵³ Worcester, *The Apaches*, 84-97

²⁵⁴ Andrew Jackson, 'Annual Address to Congress.'

which informed land legislation into the twentieth century.²⁵⁵ The most important piece of legislation for southern Arizona was the precedence set by the Homestead Act of 1862 which legally provided a way for settler colonialism to occur on land which was perceived as empty, and was purposefully designed to bring small homesteading farmers to the newly acquired regions. The basic tenets of the Homestead Act underpinned much of the settler legislation of the later nineteenth century, but which was also systematically abused to benefit those who had financial and political advantages.²⁵⁶ The Homestead Act established the baseline price of undeveloped land, established a standard homestead purchase size and put limitations both on the eligible applicants and on what was required to gain full title to the land at the end of a predetermined period.²⁵⁷ The Homestead Act of 1862 also set the precedence of a standard allotment being 160 acres, or one quarter section of a PLSS square section, purchase price of \$1.25 per acre, and a five-year window to prove ‘improvements’ to the allotment either by the construction of a building or viable improved ‘productivity’ of the property.²⁵⁸ However, these provisions were based upon the East Coast notion of adequate needs of the family farm which contained fertile soil and access to a water source. Unfortunately, as will be discussed later, the concept proved to be impracticable in remote arid regions such as southern Arizona, and the Act fell victim to the liberal interpretation of those who were able to manipulate the land offices in charge of the distribution of the Homestead Act lands.²⁵⁹ Despite this, it became the foundation

²⁵⁵ Gates, ‘An Overview,’

²⁵⁶ John T. Ganoë, ‘The Desert Land Act in Operation 1877-1891’. *Agricultural History* 11 no.2 (April 1937): 142-157.

²⁵⁷ The eligible application needed to be a citizen, or be actively pursuing citizenship, be of 21 years of age

²⁵⁸ Thirty-seventh Congress. Homestead Act – ‘An act to secure homesteads to actual settlers on the public domain,’ (May 20, 1862), accessed 24 Jun 2021, www.docsteach.org.

²⁵⁹ McFarland, Report No. 192, 59.

Ganoë, ‘The Desert Land Act.’

of subsequent acts such as the Timber Culture Act and the Desert Land Acts, as well as extensions to the Homestead Act itself, in 1909 and 1916.

These land policies often put the southern Arizonan indigenous populations at a disadvantage and prevented them from maintaining control over their ancestral lands. Initially, they were considered as nations who were beaten into submission by the ‘superior’ forces of the Europeans, although legislation such as Section 3 of the 1787 Northwest Ordinance and Article 11 of the Treaty of Guadalupe Hidalgo, established indigenous populations as likely to be aggressive and required to be placed under the control of the United States.²⁶⁰ After 1871 indigenous populations were reclassified as Wards of State, indicating that they were under the patronage of the United States, and it was the pastoral duty of the government to protect them from untoward encroachments.²⁶¹ This effectively removed their status as nations, emasculated them and legally prevented them from forming peace treaties with the United States. Once the Indian reservation system was established in southern Arizona, indigenous people were expected to adhere to the boundaries designated for them and stay on the reservations. These foreign principles imposed on the land to establish an Anglo-American cultural system that was not conducive to the indigenous lifeways in southern Arizona and many chafed at these presumptuous restrictions. The United States government also implemented aggressive land

²⁶⁰ As Churchill (1999) states, nations can retain sovereignty, but they might also relinquish this control voluntarily to a conquering nation: Churchill, ‘The Tragedy and the Travesty,’ 19.

The Chiricahua Apache emphatically stated that they did not wholly relinquish their sovereignty to the United States: Chiricahua Apache Nation, accessed 21 April 2018, www.chiricahuaapachenation.org.

Churchill, ‘The Tragedy and the Travesty,’ 20.

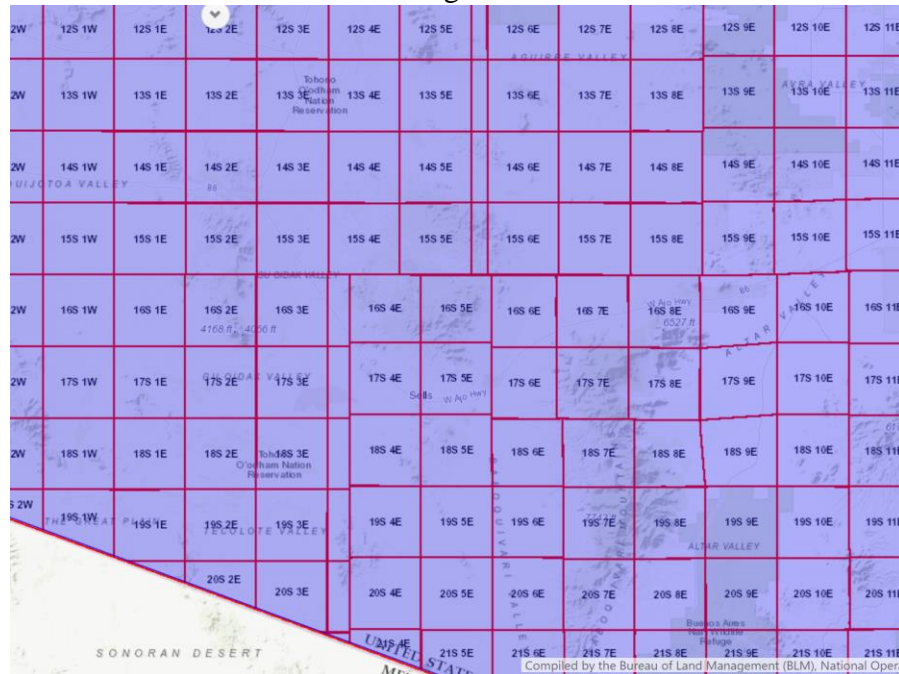
²⁶¹ Parker, *First Report*

Forty-first Congress. Act of March 3rd, known as Grant’s Peace Policy – ‘Chapter 120- An Act making appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June thirty, eighteen hundred and seventy-two, and for other Purposes,’ (1871), 544-571, accessed 20 March 2021. www.loc.gov.

United States Public Law 102 Statute 3641, 10 November 1988, accessed 10 November 2021, <https://uscode.house.gov>.

policies which were hard for the indigenous people to combat and allowed for the ruthless extraction of precious resources of the region, specifically the water resources. It also allowed for the devastation of the natural landscape through the extraction industries of mining and ranching that had and have great detrimental effects on the indigenous flora and fauna.

Image 3.9



Land Parcels on the Tohono O’odham Reservation, illustrating the superimposing of artificial division and some of the anomalies²⁶²

The Treaties of Guadalupe Hidalgo (1848) and the Gadsden Purchase (1853) established the boundaries and jurisdictions of the United States’ control and they also, importantly, established the rights of the people who were living in the acquired territory at the time.²⁶³ The arm of the

²⁶² Bureau of Land Management Land Offices, accessed 18 January 2019, [Catalog \(blm.gov\)](http://catalog.blm.gov).

²⁶³ Treaty of Guadalupe Hidalgo – ‘Treaty of peace, friendship, limits, and settlement between the United States of America and the United Mexican States concluded at Guadalupe Hidalgo,’ (February 2, 1848); Ratification advised by Senate with amendments, March 10, 1848; Ratified by President, March 16, 1848; Ratifications exchanged at Queretaro, May 30, 1848; Proclaimed July 4, 1848. Accessed 18 June 2018. www.mexica.net.
Gadsden Purchase Treaty – Gadsden Purchase Treaty, (December 30, 1853), accessed 10 June 2018, www.avalon.law.yale.edu.

United States government was extended into the area in two different ways, first by land and property legislation, and secondly by the agents and citizens who implemented and used the policies of the government. The agents of implementation fell into two categories, those who were government officials and part of the bureaucracy, and those who were private or commercial entities who applied the land and property legislation for their own means and gains. The government agencies were directly responsible for implementing the legislation at the local and regional level. They were divided into jurisdictional units and armed with government policies were charged with making them happen.²⁶⁴ The two largest government agencies which significantly impacted southern Arizona were the United States Army and the civil servants from the Bureau of Indian Affairs. These government servants were the one who came directly into contact with the indigenous populations, and who were responsible for imposing restrictions and maneuvering the indigenous people into restricted areas. At the local and region level the agencies of implementation were the private or commercial businesses that were built upon the extraction the resources available the area. These included both large and small entities ranging from railroad companies to smallholders, and from traders to suppliers to mining prospectors and ranchers, each with a vested/landed interest in the resources of the territory.²⁶⁵ This group of people was often on the frontline of legislation implementation, using it for their own footprint on the desert and were often at odds with the needs and wishes of the indigenous populations often against whom most of the measures were executed.

Thus, when southern Arizona was ceded to the United States it became subject to these ideas which permeated through Anglo-American culture and politics such as in the 1910 Enabling Act

²⁶⁴ Worcester, *The Apaches*, 175-190.

²⁶⁵ Weaver, *The Great Land Rush*, 307-308.

and the Arizona Constitution of 1912. Colonial settlers were encouraged to infiltrate the area and establish property, for which they were supported by various land legislation from the United States government. At the same time, they were deemed to be spreading egalitarian democratic ideals onto the frontier, including defense of property, turning ‘non-productive’ land into a commercially viable venture, and helping to eliminate the prevalent Mexican culture and indigenous obstacles from the region. In turn, for Arizona, the territory gained recognition for mineral wealth and stock-raising and moved them one step closer to statehood.²⁶⁶ The period between the purchase in 1853 and statehood in 1912, was when much damage occurred in the region of southern Arizona through the ‘Americanisation’ of the region by using destructive land legislation that permanently imprinted the region effecting the lives of those who resided there. The consequences of these policies are still resonating through the region today, and many of the premises behind the policies are continually played out as decisions and agreements are still made for growth of the region to the detriment of the natural resources, particularly water, and way of life that the fragile region supports.²⁶⁷

²⁶⁶ Arizona State Constitution – ‘Constitution of the State of Arizona,’ (1912) accessed 18 July 2020, <https://azmemory.azlibrary.gov>, Article 5.

Wagoner, *Early Arizona*, 288-197.

²⁶⁷ For example, the potential resource depletion of new exurbs to the north of Tucson, and agitation against new strip-mining developments in the Santa Rita Mountains.

PLATES

Plate 3.1



Evidence of beaver activity along San Pedro River

Plate 3.2



Beaver Dam

Plate 3.3



San Xavier Del Bac

Plate 3.4



Tohono O'odham Ramadas, selling fry bread at San Xavier Del Bac

Chapter Four

Acquisition and Treaties

Introduction

Three important land treaties were performed in the nineteenth century which ‘transferred’ sovereignty of large tracts of land to the United States, and significantly expanded the alleged political boundaries of the country. The first land treaty, the Louisiana Purchase in 1803, set the precedence for the last two treaties, the 1848 Treaty of Guadalupe Hidalgo and the Gadsden Purchase Treaty of 1853, as they were couched in much the same language and with the same ideas permeating the documents. The treaties presumed sovereignty over the indigenous territory they were purchasing, while establishing their control over inhabitants of the territory and excluding the indigenous people from legal jurisdiction over their ancestral lands. These actions were condoned and sanctioned by the ruling elites of the United States because they adhered to their understanding of property ownership and citizenship rights and furthered their cause for expansion and extraction into land which they presumed to have undisputed sovereignty over.

After the acquisition of the 1848 Mexican Cession lands, which were secured by the Treaty of Guadalupe Hidalgo, the United States then purchased a small portion of land tagged on the bottom of the 1848 Mexican Cession consisting of desert lands and little else, or so they thought. At the time of the ratification of the Gadsden Purchase Treaty in 1854, no one could understand why James Gadsden had been sent by the then Secretary of State, Jefferson Davis, to purchase a strip of land that did not even give direct access to the sea, from the Mexicans for \$10,000. Many understood the need for a southern route for the Transcontinental Railroad, and many also

sought to understand that this was a part of the sectional disagreements developing in the United States over the issue of states' rights and slavery, among others, however, why was this money wasted "on worthless land without adequate water to support settlements"?²⁶⁸ What was it about this so called '*terra incognita*' that made politicians spend money on it?²⁶⁹ The answer: minerals. However, Arizona, particularly southern Arizona, proved to be a difficult place to navigate and extract the resources from.

In the first few decades of Anglo-American 'control' of southern Arizona, many obstacles prevented the smooth development of Anglo-American hegemony as it transitioned from "Greaser" territory into an 'American' territory considered worthy, by the government, of full membership of the Union as a state in 1912.²⁷⁰ One of the issues was the innate prejudice the region experienced from those who visited it and from those who legislated for it. To mitigate this, the first Anglo-American travel-writers, who published their impressions of the region, advertised the many opportunities the new acquisition might provide, intended to encourage those adventurous enough to become among the first to invest in government supported schemes to settle and develop the resources of the region.²⁷¹ However, the transaction and settlement of the Gadsden Purchase lands greatly impacted the indigenous people southern Arizona, and the Tohono O'odham and Chiricahua Apache were caught up in the ambitions of Anglo-Americans to turn the region into one which best suited their needs. In essence, while many marveled, as one does now, over the 'Mars-like' scenery, the indigenous way of life in the region was not compatible with the Anglo-American ideas of productivity, action and industry.

²⁶⁸ J. Ross Browne, *Adventures in the Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*, (New York: Harper & Brothers Publishers, 1869), 16-17.

²⁶⁹ Browne, *Adventures in the Apache Country*, 16-17.

²⁷⁰ Browne, *Adventures in the Apache Country*, 10-11.

²⁷¹ For more information on the travel-writers, see Appendix B Contemporary Impressions.

The acquisition of the Mexican cession lands was performed in two parts, the first, which was the most significant, and purchased land as a result of the Mexican American War of 1846-1848, when the United States secured parts of New Mexico, Colorado and Wyoming, and most of the current states of Arizona, California, Utah and Nevada from Mexico.²⁷² The Treaty of Guadalupe Hidalgo solidified this large land acquisition and was signed in 1848 between the two sovereign nations who claimed jurisdiction. The second section was obtained several years later under the 1853 Gadsden Purchase Treaty, which gained a further 29,670 acres in southern Arizona for the United States and resolved some issues which had arisen from the Treaty of Guadalupe Hidalgo. One of the issues was establishing the international boundary line in the Mesilla Valley, giving rise to the Mexican name of the treaty: the *Treaty of Mesilla*. The mouth of the Rio Grande had been used as a designation point, however, the silting at the mouth changed the passage of the channels, thus giving confusion as to the correct line of demarcation.²⁷³ In addition, issues such as the requirement that the United States was failing in its responsibility to prevent indigenous raids into Mexico.²⁷⁴ The Treaty of Guadalupe Hidalgo is the oldest standing treaty between the United States and Mexico, and along with the Gadsden Purchase Treaty, has created one of the longest international borders of the world.²⁷⁵ The United States gained significant territory and resources by these acquisitions which enabled them to develop into the international power that they became in the twentieth century. However, a study of the treaties how the precepts of United States' land legislation informed the language

²⁷² 'Gadsden Purchase, 1853-1854,' Office of the Historian, accessed 13 Jan 2019, <https://history.state.gov/>.

²⁷³ Office of the Historian, 'Gadsden Purchase.'

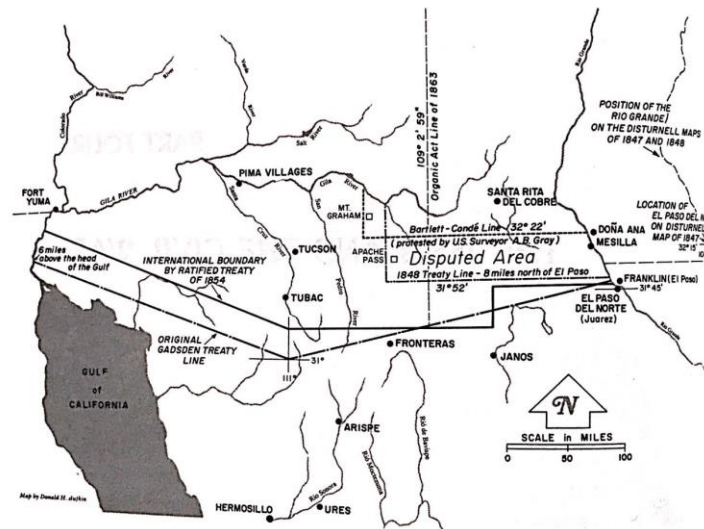
Office of the Historian, 'Gadsden Purchase.'

²⁷⁴ Richard Griswold Del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict*, (Norman, Oklahoma: Oklahoma University Press, 1990), 3.

²⁷⁵ Jay J. Wagoner, *Early Arizona: Prehistory to Civil War*, (Tucson, AZ: University of Arizona Press, 1975), 289

and land agreements of the acquisition areas, and how they impacted the indigenous populations and gave rise to Anglo-American hegemony in the region.

Image 4.1



Boundary controversy — Gadsden Purchase

Showing the disputed area around Mesilla Valley²⁷⁶

The Gadsden Purchase Treaty

In 1853 South Carolinian railroad promotor James P. Gadsden was sent by the Secretary of State to negotiate for a piece of territory approximately along the 32nd parallel to enable the United States realise their vision of a transcontinental railroad route to the gold fields of California.²⁷⁷

Davis knew that Santa Ana, President of Mexico, was in financial trouble and would probably be receptive to the idea of exchanging a sparsely occupied portion of the Sonoran Desert for some hard cash with the United States.²⁷⁸ Gadsden was sent with five potential purchase packages which varied in size of the land area and the price the United States was willing to pay for them.

²⁷⁶ Jay J. Wagoner, *Early Arizona: Prehistory to Civil War*, (Tucson, AZ: University of Arizona Press, 1975).

²⁷⁷ Wagoner, *Early Arizona*, 289.

²⁷⁸ Wagoner, *Early Arizona*, 289.

The preferred choice of Davis was the cheaper and smallest version Number 5 which became the option purchased by the United States, and now encompasses most of southern Arizona, with a small section in New Mexico; others preferred a much larger purchase which would have included coastline on the Gulf of California.²⁷⁹ Negotiations solidified the treaty in December 1853, which was ratified by both countries in 1854. The expansionist tendencies of the mid-century United States, as well as opportunity to engage in a fairly simple property transaction, encouraged this purchase, although at the time the small purchase was ridiculed as a waste of time and money by the contemporary press.²⁸⁰ Paul Frymer suggests that the smaller selection was deliberate on behalf of the government because they were conscious of the difficulties of inheriting territory already inhabited by many Mexicans which could inhibit the development Anglo-American hegemony in the area.²⁸¹ The fact that they were gaining a number of indigenous inhabitants did not feature into their considerations, as illustrated by a lack of recognition of indigenous claims, both in land and as Mexican citizens, at the time.²⁸²

Images 4.2, 4.3

Letter given to Lt. George Parke by Jefferson Davis, illustrating knowledge of the area and terrain.²⁸³

²⁷⁹ Wagoner, *Early Arizona*, 289-90

²⁸⁰ Wagoner, *Early Arizona*, 292

²⁸¹ Paul Frymer, "'A Rush and a Push and the Land is Ours': Territorial Expansion, Land Policy, and U.S. State Formation.' *Perspectives on Politics*, 12 no.1 (2014): 132-134.

²⁸² Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism*, (Cambridge, MA: Harvard University Press, 1981), 155-157.

²⁸³ All images from the Parke Survey, 1853, (Arizona History Society archives, call number AHS 917. 19. U58 rep).

H. Doc. 129.

3

REPORT.

WASHINGTON, D. C., August 22, 1854.

SIR: I have the honor to submit the following report of the operations of the party intrusted to my charge, for the examination and survey of railroad route to the Pacific, in obedience to the following instructions:

"WAR DEPARTMENT,
"Washington, November 18, 1853.

"SIR: The President of Mexico has given to this government authority to make surveys within the Mexican territory, in connexion with examinations of railroad routes to the Pacific, and you are selected to make such a survey, in accordance with the instructions below, provided a suitable party can, as is believed, be organized with the means which will be placed at your disposal.

"For this purpose a draft on the assistant treasurer at San Francisco for five thousand dollars is herewith enclosed to you, and orders have been given to Lieutenant Williamson to supply you with all the funds he can spare, and all the animals, equipments, &c., which may be disposable for the object, on the disbanding of his party.

"A similar order has been given to Lieutenant Whipple, though it is hardly expected that aid from him will be necessary should these instructions reach you before the party of Lieutenant Williamson is disbanded. If, however, Lieutenant Williamson should have sold his animals and equipments, you may find Lieutenant Whipple's assistance essential to your success. It is to be distinctly understood that neither of those officers is to deprive himself of anything necessary to the prompt completion of his report. The organization and outfit of your party are to be completed on the most economical scale that can be prudently adopted.

"The necessary orders have been given for the detail of an escort, and supplies for the same.

"You will confer with Lieutenant Williamson upon everything relating to the organization and outfit of your party, and to your plans for the prosecution of the work.

"You will use the utmost despatch in commencing and prosecuting the duty assigned to you, and observe the following instructions in regard to it:

"Referring to a sketch from the office of the Mexican boundary survey, hereto annexed, you will commence the barometric levellings on the Gila, a little above 'Pimas village,' at a place marked Dry creek; follow the line by 'Tucson,' thence by blue line marked Nugent's wagon trail, to angle in red dotted line marked 'Brackish pools,' east of Salt lake.

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"It may be that a shorter and better line exists from the point of departure on the Gila to the point on the San Pedro where blue line, or Nugent's wagon trail, strikes it. The mountains in that cut-off are described to be generally parallel to the river San Pedro, and the belief exists that a good route can be found through them on the line indicated.

"From the point marked 'Brackish pools,' just east of Salt lake, as far east as the first stream marked 'Sienega,' along the dotted red line, a survey and line of barometric levellings has been carried by the Mexican boundary survey. But it would be well to make the survey continuously along the red and blue line eastwardly until it strikes Cook's wagon trail, and thence by the shortest distance and most practicable route to the valley of the Rio Bravo, to some point between 'Doña Ana' and 'Frontera,' eight miles north of El Paso.

"A more eligible and direct route from the region of the said Salt lake to the point indicated on the Rio Bravo may be found. If information or observation on the ground shall so suggest, you will not confine yourself to the wagon trail described, but depart from the line indicated at any convenient point.

"Bear in mind these wagon trails are faint, and not as broad or well marked as the great emigrant trail known as Cook's route, which, having been sufficiently explored, will not receive your attention. The levels have been carried continuously by Major Emory along the valley of the Gila, and it might facilitate the operations not to unpack the barometer until the party shall have reached the point of departure from the Gila.

"As the whole country between the Gila and the Rio Bravo embraced in the parallels of latitude 32° and 34° has been well covered with astronomical observations, it will probably not be necessary for you to impede your progress in checking the run of your work by elaborate astronomical observations. A sextant and chronometer, by which you can obtain your latitudes, will, it is believed, prove sufficient to check your work.

"The profile of the region traversed, showing the gradients which a road passing over it must encounter, is the information most wanted. It is therefore recommended that you take the barometric height at every point on the line to be surveyed which may be important in the elucidation of this subject.

"On reaching the Rio Bravo, it may add little to the expense of your party to bring it all the way in to the settlements on the Red river. If so, you will take some new route from Doña Ana, passing through the northern part of Texas, and make a barometric levelling of the same.

"Very respectfully, your obedient servant,
"JEFFERSON DAVIS,
"Secretary of War.
"Lieut. J. G. PARKE,
"Topographical Corps, San Diego, California."

Image 4.3



Showing the Cienega's, now Empire Ranch land managed by the Bureau of Land Management, and location of the large ranching concern of the Vail and Boice families during the late nineteenth and the twentieth centuries

As Jefferson Davis was aware, President Santa Ana needed money and this put the United States in a superior negotiating position, allowing them to dictate many of the terms and negotiate for favourable resolutions for themselves.²⁸⁴ Some of the points that the United States brought to the negotiating table were concerned with elements of the previous Treaty of Guadalupe Hidalgo of 1848 that were not working well for the United States, and these changes became part of the ensuing Gadsden Treaty. The United States used the renegotiation of the international boundary was an instigator for reopening the conversation particularly as the Disturnell map, upon which the treaty boundaries were based, was inaccurate and established a falsely measured demarcation between the two countries. In addition, because of the silting of the Rio Grande, both countries

²⁸⁴ George A. Martinez, 'Dispute Resolution and the Treaty of Guadalupe Hidalgo: Parallels and Possible Lessons for Dispute Resolution under NAFTA.' *Bilingual Review/La Revista Bilingüe*, 25 no.1 (2000): 39-40.

claimed the Mesilla Valley region as their own.²⁸⁵ One issue was concerned with the clause requiring the United States to protect Mexican border communities from Apache raiding, which had proved both impractical and expensive for the United States to implement.²⁸⁶ For the Mexicans, aside from gaining money, they were very willing to relinquish land which had been barely used by Mexican settlers since an escalation of Apache activity during the 1840's had removed the settlers from this area of Mexican territory. Any of the land options provided the Mexican government the opportunity to relinquish land which contained the majority of the Apache groups in the region, thus absolving them of the responsibility of containment of the Apache, who, until the 1860's, had not been subjugated by any of the invading forces.²⁸⁷ The final item for negotiation was the need for the United States to have a transportation route available from Texas to California which would avoid lengthy and difficult navigation around Cape Horn, and for Mexico to retain a land connection with their state of Baja California.²⁸⁸ Ultimately, the purchase treaty included a definitive boundary, United States payment of compensation for Apache attacks that they were unable to prevent, in return for the elimination of the original Guadalupe Hidalgo clause requiring them to protect the border.²⁸⁹ It also provided a smaller purchase area which allowed Mexico to retain a land bridge with Baja California, while giving the United States free passage through the Isthmus of Tehuantepec in the south of Mexico from the Gulf of California into the Pacific Ocean.²⁹⁰

²⁸⁵ Del Castillo, *The Treaty of Guadalupe Hidalgo*, 55-59.

Office of the Historian, 'Gadsden Purchase.'

Del Castillo, *The Treaty of Guadalupe Hidalgo*, 55-59.

²⁸⁶ Christine A. Klein, 'Treaties of Conquest: Property Rights, Indian Treaties and the Treaty of Guadalupe Hidalgo,' *New Mexico Law Review*: 26 (1996): 201-204, 218-299.

²⁸⁷ Chiricahua Apache Nation, accessed 18 April 2018, <http://www.chiricahuaapachenation.org>.

²⁸⁸ Wagoner, *Early Arizona*, 291

²⁸⁹ Gadsden Purchase Treaty – Gadsden Purchase Treaty, (December 30, 1853), accessed 10 June 2018, www.avalon.law.yale.edu, Art 2.

²⁹⁰ Gadsden Purchase Treaty, Art 1 and 8.

Image 4.4

BOUNDARIES—DECEMBER 30, 1853	813	814	MEXICO
<p>tion who having communicated their respective Full Powers, and finding them in due and proper form, have agreed upon the Articles following.</p>			<p>considered annulled and abolished wherever it may not coincide with the present, and in the same manner remaining in full force where in accordance with the same.</p>
<p>ARTICLE 1st</p>			<p>ARTICLE 2nd</p>
<p>The Mexican Republic agrees to designate the following as her true limits with the United States for the future; Retaining the same dividing line between the two California's, as already defined and established according to the 5th Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande as provided in the fifth article of the treaty of Guadalupe Hidalgo, thence as defined in the said article, up the middle of that river to the point where the parallel of 31° 47' north latitude crosses the same, thence due west one hundred miles, thence south to the parallel of 31° 20' north latitude, thence along the said parallel of 31° 20' to the 111th meridian of longitude west of Greenwich, thence in a straight line to a point on the Colorado river twenty english miles below the junction of the Gila and Colorado rivers, thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.</p>			<p>The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo, and the said article and the thirty third article of the treaty of amity, commerce and navigation between the United States of America and the United Mexican States concluded at Mexico, on the fifth day of April, 1831,* are hereby abrogated.</p>
<p>For the performance of this portion of the Treaty each of the two Governments shall nominate one Commissioner to the end that, by common consent, the two thus nominated having met in the City of Paso del Norte, three months after the exchange of the ratifications of this Treaty may proceed to survey and mark out upon the land the dividing line stipulated by this article, where it shall not have already been surveyed and established by the Mixed Commission according to the Treaty of Guadalupe keeping a Journal and making proper plans of their operations. For this purpose if they should judge it is necessary, the contracting Parties shall be at liberty each to unite to its respective Commissioner Scientific or other assistants, such as Astronomers and Surveyors whose concurrence shall not be considered necessary for the settlement and ratification of a true line of division between the two Republics; that line shall be alone established upon which the Commissioners may fix, their consent in this particular being considered decisive and an integral part of this Treaty, without necessity of ulterior ratification or approval, and without room for interpretation of any kind by either of the Parties contracting.</p>			
<p>The dividing line thus established shall in all time be faithfully respected by the two Governments without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the Law of Nations, and in accordance with the Constitution of each country respectively.</p>			
<p>In consequence, the stipulation in the 5th Article of the Treaty of Guadalupe upon the Boundary line therein described is no longer of any force, wherein it may conflict with that here established, the said line being</p>			

Excerpt Gadsden Purchase Treaty, 1853, Articles 1 and 2²⁹¹

The Gadsden Purchase, however, was not written in isolation; it was based upon the Louisiana Purchase Treaty of 1803 which set the precedence for major land purchases from a foreign nation, and the Treaty of Guadalupe Hidalgo, which it attempted to tweak. All three of these land purchase treaties contained similar clauses, and these established the relationship of the United States with the new territory and residents established upon it.

²⁹¹ <https://digitalcommons.csumb.edu> accessed 10 June 2018.

Image 4.5



Territorial Acquisitions by the United States, showing the Mexican Cession and the Gadsden Purchase²⁹²

The influence of the Louisiana Purchase

The 1803 Louisiana Purchase of land from France set the precedence for the Mexican land purchase treaties and established the language and concepts which were used in all three. Some of the important articles which established the status of the land and of the residents were articulated later in the Mexican treaties and are important to illustrate the continuity of land policies and ideals throughout the nineteenth century, including those for handling the indigenous populations of the purchase areas. Article 1 of the Louisiana Purchase established the legal entity of the sovereign rights of France to sell land wholesale to the United States without reference to the populations contained within the territory. These sovereign rights made an assumption of ownership on behalf of France and the United States and established that land was automatically public domain under the control and ownership of the sovereign nation which transacted the deal. It also established that those who had legally documented private land in the

²⁹² Library of Congress, accessed 8 January 2006 www.loc.gov.

territory were required to prove to the government that they were, indeed, the full legal owners according to both the laws of France and of the United States.²⁹³ This ‘burden of proof’ became a bone of contention in southern Arizona when more Anglo-American settlers wanted to claim property for themselves during the latter decades of the nineteenth century, forcing many Mexican families to spend years in the courts proving their ownership.²⁹⁴

The treaty also commodified cession land as a pure monetary value rather than it being claimed as the spoils of war or given for ‘services rendered’ which was traditional in European countries, which was signed as a part of the treaty.²⁹⁵ As a departure from land as prize, it established system of wholesale purchase from a capitulating non-indigenous sovereign entity, solidifying land as a negotiable commodity and one which had a market value to be viewed in terms of taxes and profit. It was then sealed on paper as a sales contract between the two countries and called a treaty, simply because it was an agreement between two sovereign nations.²⁹⁶ The ceded territory thus was considered a valued resource in itself, retained for the public interest, but which could be released for sale or reserved as restricted land as circumstances required. The acquired land was also subject to the systematic division and sale requirements of Land Ordinances of 1785 and 1787, to help pay Congressional debts, as well as aid towards the

²⁹³ This onus upon the private owner to provide proof of ownership to the authorities meant that, later, many of the private Spanish and Mexican land grants went through rigorous court processes at vast personal expense to prove that their property was theirs and not part of the public domain.

Marilyn Strome Harris, ‘Arizona Land Grants: Cases which appeared before the Court of Private Land Claims, 1891-1904’ (MA Thesis, San Diego State College, 1961), Tucson, AZ: Arizona Historical Society, 30.

Richard Wells Bradfute, *The Court of Private Land Claims: The Adjudication of Spanish and Mexican Land Grant Titles, 1891-1904* (Albuquerque: University of New Mexico Press, 1975), 8-11.

²⁹⁴ Harris, ‘Arizona Land Grants,’ 30.

Bradfute, *The Court of Private Land Claims*, 8-11.

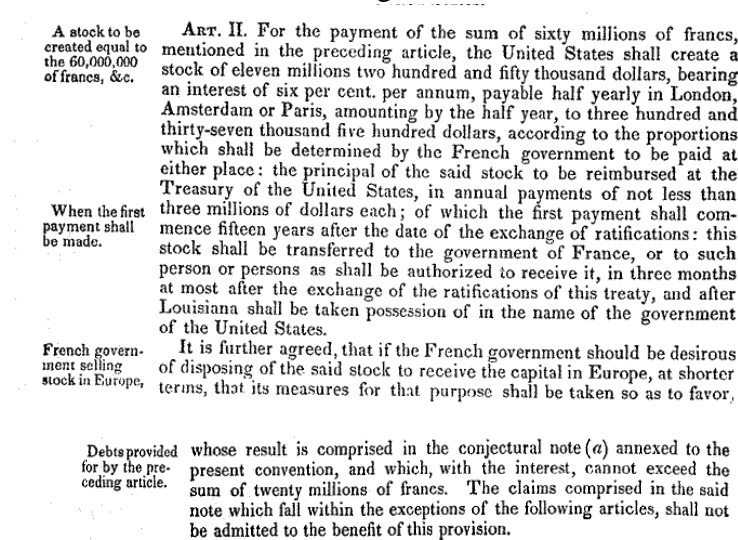
²⁹⁵ Louisiana Purchase Treaty - ‘Treaty between the United States of America and the French Republic,’ (April 30, 1803), accessed 17 September 2018, www.ourdocuments.gov.

Klein, ‘Treaties of Conquest,’ 201-204.

²⁹⁶ Klein, ‘Treaties of Conquest,’ 201-204.

‘democratic’ development of the region providing educational resources, infrastructure and accompanying institutions.²⁹⁷ Unfortunately, the terms of the treaty and the purchase of the Louisiana territory encouraged greater expansionist tendencies, at the expense of the indigenous populations, as well as incurring a greater rift between the eastern agrarian ideal and the western expansionist and individualist ideas. The repeat of these terms in the later treaties succeeded in alienating these two groups from each other on a political level when disputing sales returns and rights to profits from the sale of the land by the government, which spurred New Mexico and Arizona to continuously apply for statehood.²⁹⁸

Image 4.6



Excerpt Article 2 of the First Convention of the Louisiana Purchase Treaty, 30 April 1803²⁹⁹

²⁹⁷ Paul W. Gates, 'Public Land Issues in the United States.' *Western Historical Quarterly*, 12 no.4 (1971): 363-369.

²⁹⁸ Wagoner, *Early Arizona*, 292.

²⁹⁹ <https://memory.loc.gov> accessed 17 September 2018.

Article 3 of the Louisiana Purchase established the status of the residents in the cession territory and their relationship to the United States and their jurisdiction over their own property. While Article 2 permitted the existing residents to retain their religion and Mexican conferred property rights, as well as some other rights as future citizens, it did not actually provide a timeline for citizenship to be conferred.³⁰⁰ Therefore, until the next generation of Louisiana residents were born as natural citizens, citizenship was inferred rather than directly confirmed. This left the new members of the United States in a legal limbo because valid citizenship incurred greater privileges connected with undeniable property rights, the ability to vote and hold public office, as well as full legal representation in court. The rights to their private property, while permitted by the purchase treaties, were tenuous while the owner was not perceived as a citizen, which was a status French- and Mexican Americans held until citizenship was conferred in the new state constitutions; for New Mexico and Arizona this would not be until 1912.³⁰¹ Eric Meeks points out that in the Mexican cession areas, skin colour and heritage were important, permitting lighter-skinned, European-looking, Mexican citizens to claim full United States citizenry and property rights, whereas darker-skinned Mexicans were perceived as partly indigenous and did not retain any property rights because indigenous, or inferred indigenous, people were excluded from citizenship, regardless of their former status in Mexico.³⁰² This later had an influence on the size of the Gadsden Purchase area, as the United States government chose an area with few

³⁰⁰ 'Constitution of the United States,' (September 17, 1787), accessed 2 August 2018, www.archives.com.

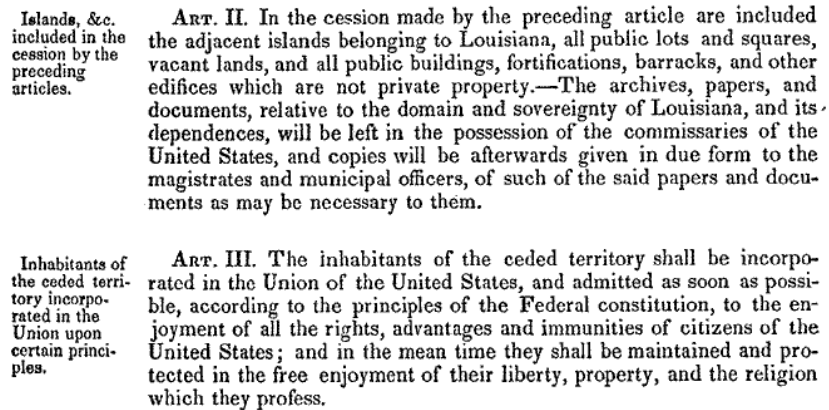
³⁰¹ Jay J. Wagoner, *Arizona Territory 1863-1912: A Political History* (Tucson, AZ: University of Arizona Press, 1970)

³⁰² Eric V. Meeks, *Border Citizens: the making of Indians, Mexicans, and Anglos in Arizona*; Revised Edition (Austin, TX: University of Texas Press, 2020), 12-13.

Edward Spicer, *Cycles of Conquest: The Impact of Spain, Mexico, and the United States on Indians of the Southwest, 1533-1960*, (Tucson, AZ: University of Arizona Press, 1968), 334-342.

Mexican and *mestizo*, or mixed heritage, inhabitants to in to encourage more Anglo-American settlement of the land.³⁰³

Image 4.7



Excerpts Louisiana Purchase Treaty, 1803, Articles 2 and 3³⁰⁴

The Treaty of Guadalupe Hidalgo

The Treaty of Guadalupe Hidalgo in 1848 established new territorial boundaries around a vast area of land, essentially the current western United States, an area which was mainly populated by indigenous people. The treaty was based upon the same ideas which were set in the Louisiana Purchase Treaty and were either elaborated upon or changed slightly according to the specific circumstances of the Mexican Cession of 1848.³⁰⁵ In addition, while the treaty ended the war between the United States and Mexico, the territory was not claimed as prize, it was purchased just like Louisiana, for which a payment plan was established within the document, thus putting a monetary value on the land again. This also established the treaty as a sales contract or

³⁰³ Frymer, "'A Rush and a Push,' 131-132.

Klein, 'Treaties of Conquest,' 201-204.

³⁰⁴ <https://memory.loc.gov> accessed 17 September 2018.

³⁰⁵ Treaty of Guadalupe Hidalgo – 'Treaty of peace, friendship, limits, and settlement between the United States of America and the United Mexican States concluded at Guadalupe Hidalgo,' (February 2, 1848), accessed 18 June 2018., www.mexica.net, Articles 5, 6, 7.

agreement, rather than a traditional treaty declaring the end to an armed conflict, thus giving the United States an incentive to commercially utilise the land they claimed as their property.

The provisions of citizenship and property rights established in the Louisiana Purchase document were retained in the Treaty of Guadalupe Hidalgo. However, the latter treaty added extra provisos that Mexican citizens had a year to declare their intention to retain their Mexican citizenship, after which all would be automatically assumed to be citizens of the United States. Also, that all proven private property, regardless of the residency or citizenship, was to be retained by the original Mexican owner.³⁰⁶ Although the provisos seemed a good gesture, the burden of proof remained, and in practice they contained many flaws. First, the Mexicans were probably not aware that they had to declare retention of Mexican citizenship within a year, or, secondly, if they did, they had to navigate the legal paperwork presented to them by the United States to legally claim their property. However, the paperwork was in a foreign language and under a foreign legal system; Mexico followed the Napoleonic Code whereas the United States followed the British adversarial system.³⁰⁷ Those who had the wherewithal to purchase the services of a translator and, or, a lawyer were the lucky ones. Unfortunately, as with the Louisiana Purchase, indigenous people were still excluded from establishing citizenship with the United States, thus directly impacting their rights as 'landowners'. Also, in a remote area such as the southwestern territories, this information might not have been disseminated effectively or served the population well; indeed, some O'odham did not even know the sovereignty of the region had changed until the twentieth century.³⁰⁸ These issues would continue when later

³⁰⁶ Treaty of Guadalupe Hidalgo, Article .8

³⁰⁷ Frymer, "'A Rush and a Push", 134-135.

Bradfute, *The Court of Private Land Claims*, 217.

³⁰⁸ Erikson, Winston, *Sharing the Desert: The Tohono O'odham in History*, (Tucson, AZ: University of Arizona Press, 1994), 84-86.

legislation required landowners to provide proof of ownership for private lands during the more aggressive settlement eras of the 1880's and 1890's. The citizenship and land ownership provisos were also retained by the Gadsden Purchase Treaty in 1853.³⁰⁹

Image 4.8

ARTICLE VIII.	ARTICULO VIII.
Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.	Los Mexicanos establecidos hoy en territorios pertenecientes antes á México, y que quedan para lo futuro dentro de los límites señalados por el presente tratado á los Estados Unidos, podrán permanecer en donde ahora habitan, ó trasladarse en cualquier tiempo á la república Mexicana, conservando en los indicados territorios los bienes que poseen, ó enagenándolos y pasando su valor á donde les convenga, sin que por esto pueda exigirseles ningun género de contribucion, gravamen ó impuesto.
Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.	Los que prefieren permanecer en los indicados territorios, podrán conservar el título y derechos de ciudadanos Mexicanos, ó adquirir el título y derechos de ciudadanos de los Estados Unidos. Mas la eleccion entre una y otra ciudadanía deberán hacerla dentro de un año contado desde la fecha del cange de las ratificaciones de este tratado. Y los que permanecieren en los indicados territorios despues de transcurrido el año, sin haber declarado su intencion de retener el carácter de Mexicanos, se considerará que han elegido ser ciudadanos de los Estados Unidos.
In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it	Las propiedades de todo género existentes en los expresados territorios, y que pertenecen ahora á Mexicanos no establecidos en ellos, serán respetadas inviolablemente. Sus actuales dueños, los herederos de estos, y los Mexicanos que en lo venidero puedan adquirir por

930 TREATY WITH THE REPUBLIC OF MEXICO. FEB. 2, 1848.

guaranties equally ample as if the same belonged to citizens of the United States.	contrato las indicadas propiedades, disfrutarán respecto de ellas tan amplia garantia, como si pertenesen á ciudadanos de los Estados Unidos.
--	---

Excerpt from Treaty of Guadalupe Hidalgo, 1848, Article 8³¹⁰

Most of the articles of the Gadsden Purchase Treaty of 1853 followed those established by the Treaty of Guadalupe Hidalgo, including a continued rejection of the provisions of Article 10, from the Treaty of Guadalupe Hidalgo negotiations, which would have secured a smoother

³⁰⁹ Gadsden Purchase Treaty, Articles 5, 6.

³¹⁰ <https://memory.loc.gov>, accessed 12 June 2018.

passage for proving landownership for the Mexican population of the cession areas. Article 10, which was removed by the United States before ratification in 1848, had required the United States to guarantee all private lands in the ceded territory, including those who had an incomplete, or imperfect titles, meaning those who were still completing their patent requirements before gaining full ownership of their land. It requested that the imperfect titles be legally allowed to continue to completion once the United States acquired the region. In addition, to clarify who was eligible for any property consideration, a subtle change from ‘residents’, which the Louisiana Purchase used, to Mexican citizens, was implemented for Article 9.³¹¹ This eliminated any foreign or non-citizen, which included Indigenous people, from gaining full property rights, technically reserving them for Mexican and U.S. citizens only.³¹² If Article 10 had remained in the treaty, it could have been used to force the United States recognise individual rights to all private land in the ceded territory, including those of indigenous people. Article 10 could also have been legally used by Spanish and Mexican property owners to recover their land from Anglo-American owners in Texas, who had claimed it during the Republic of Texas period between 1836 and 1845. To avoid any issues with prior claims, the United States did not permit the article at all and determined that only proved perfect titles would be considered; and only those completed before 1836 in Texas. By not recognising this article, the United States avoided the legal need to remove Anglo-American squatters from Mexican cession territory and allowing significant numbers of indigenous and Mexican people to own property. It

³¹¹ Protocol of Querétaro, (February 2, 1848), accessed 18 June 2018, www.mexica.net.

³¹² Del Castillo, *The Treaty of Guadalupe*, 63-67.

Frymer, “‘A Rush and a Push’,” 132.

D.F. Briggs, *History of the Ajo Mining District, Pima County, Arizona*, (Arizona Geological Survey, 2006)

also potentially avoiding an uprising of many powerful, slaveholding, Texan landowners, during the politically sensitive times of the antebellum years³¹³

Excerpt Treaty of Guadalupe Hidalgo, Article 10, struck out³¹⁴

ARTICLE X

All grants of land made by the Mexican government or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid, to the said territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican Government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited in the same respectively; such periods to be now counted from the date of the exchange of ratifications of this Treaty: in default of which the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this Article.

The foregoing stipulation in regard to grantees of land in Texas, is extended to all grantees of land in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and, in default of the fulfillment of the conditions of any such grant, within the new period, which, as is above stipulated, begins with the day of the exchange of ratifications of this treaty, the same shall be null and void.

Discussion

The wording of the both the Treaty of Guadalupe Hidalgo and the Gadsden Purchase Treaty was extremely important to the United States because they deviated from traditional treaties negotiated throughout the European-influenced world by becoming a property contract instead. As Christine Klein explains, they were unique because certain articles required further action by Congress to be enacted into law; meaning that they were not ‘self-executing’ treaties generally agreed to. Most treaties were considered ‘self-executing’ closed-ended documents because once ratified by the negotiating parties they were, in their entirety, formalized and ready to be enacted.³¹⁵ Most treaties made by the United States were agreements between sovereign

³¹³ Del Castillo, *The Treaty of Guadalupe Hidalgo*, 63-67.

³¹⁴ Treaty of Guadalupe Hidalgo, Article 10, accessed 18 June 2018, www.mexica.net.

³¹⁵ Klein, ‘Treaties of Conquest.’

countries required to be negotiated within the jurisdiction of the Executive, as stated in the Constitution and usually required no further action on behalf of the government.³¹⁶

Two provisions of the treaties, however, required further, and later, action by the United States legislature to be implemented; meaning that technically the treaties were subservient to United States legislation, especially the Constitution, and provisions required legal action from Congress. In the case of the Mexican cession treaties, they required further action on both determining the date for full citizenship to be conferred upon Mexican citizens and legislative approval of property ownership. This requirement became an obstacle to those who needed to prove citizenship or to those who were attempting to prove ownership of property being claimed by incoming settlers. This legal process was a deterrent to many Mexicans, who subsequently lost their property rights either because they could not prove citizenship or because they could not navigate the foreign legal system to prove their property rights. In some cases, if the Mexican-American citizen could not prove that they were resident in the territory when cession occurred, they also forfeited their property during the grant confirmation period in the Court of Private Land Claims during the 1890's and early 1900's. As unproved citizens, many Mexican residents were removed from property claimed by new owners of Spanish and Mexican grant property and were excluded from any legal ability to regain it because their citizenship status was in limbo.³¹⁷ A further catch was that both of these issues, the right to citizenship and the right to property, were determined under the laws of the Constitution of the United States, and once challenged had to be determined by Congress, as the treaties state, and approved by the

³¹⁶ Constitution of the United States, Article 1 Section 10.

³¹⁷ Martinez, 'Dispute Resolution,' 41-42.

In addition, proof of citizenship, often hard to prove during the early territorial days could prevent Mexican-Americans from claiming title to homesteaded land, even after adhering to the provisions of the 1862 Homestead Act (personal research of Lopez claim in *Las Cienegas*).

Supreme Court. Interestingly, for those who were successful in gaining Congressional approval for citizenship and, or, property ownership, the provisions of the treaty then became a piece of legislation and not a contract anymore. This meant that the treaty provisions, as specifically stated in Article 6 clause 2 of the Constitution, then became a law which fell under the jurisdiction of legislative and judicial branches of the government and were thus subordinate to the United States Constitution. Once this happened, the action of Congress became a domestic matter, and one which Mexico had no jurisdiction over. Therefore, once Congress had acted upon part of the treaty, Mexico could not complain that the interests of their former citizens were not being adhered to, and the United States thus avoided an international investigation into the rights of their citizens.

In a time and location when ordinary people were barely literate at best, and more likely to be illiterate, and when money was hard to come by, the burden of having to chase paperwork from the Mexican archives, process it through the United States legal system, with accompanying affidavits, and then wait, often for years, for it to wend its way through Congressional committees and Congress, and then gain the seal of approval from the Supreme Court proved to be too much for the Mexican farmers and ranchers in cession territory, and many lost out on claiming their property.³¹⁸ This is an important technicality for the occupants of the Mexican cession lands, particularly those who were of Mexican and indigenous extraction, and their status as landowners because many decisions about their property rights had to go through the court system, which were often stalled because of bureaucratic issues. For the indigenous people of the territory, it was impossible to even initiate the process, because they were automatically

³¹⁸ Thirty-third Congress, Office of Surveyor-General - 'Chapter 103: An Act to establish the offices of Surveyor-General of New Mexico, Kansas and Nebraska, to grant Donations to actual Settlers therein, and for other purposes,' (July 22, 1854), 308-311.

excluded from the attempt by the wording, the unknown legal procedures and the language barrier of both the treaties and the Constitution.

The Gadsden Purchase Treaty, as with the preceding treaties of the Louisiana Purchase and the Treaty of Guadalupe Hidalgo, was essentially a land sales contract with Mexico, articulating the specifics of the purchase, as well as the restrictions and requirements necessary to control the cession lands' population and their claims to the land. This purchase was negotiated between two governments who claimed sovereignty over indigenous land without reference to the actual people occupying it. Therefore, announcing total jurisdiction over the purchase area, promoting the idea that the land was barely inhabited and thus, effectively empty and available for exploitation, and providing discouraging procedures for private owners to establish their claims to property, permitted the government to assert their indisputable jurisdiction over the purchase lands. These ideas allowed for the government to dispose of the land as they saw fit, especially as the United States did not recognise indigenous ownership of the land, as any indigenous claims to the lands were erased with the purchase and automatically became property of the United States. For a while, this did not impact the indigenous populations greatly, they were still able to continue their traditional lives. However, when greater numbers of Anglo-American adventurers and entrepreneurs settled in the region during the latter decades of the nineteenth century, the issue of land jurisdiction and ownership came to the attention of the Federal government. They then had to concede to Mexican requests to finally determine private land from public domain as agreed in the treaty documents.³¹⁹ At the same time, they implemented a containment policy with the Apache to protect individual claims to the land, and for the

³¹⁹ Treaty of Guadalupe Hidalgo, Article 9.
Gadsden Purchase Treaty, Article 8.

O'odham this treaty continues to be a point of contention between the Nation and the federal government over jurisdiction and ownership of the borderlands on the Tohono O'odham reservation.³²⁰ Current members of the Nation are still have to cope with the finality of the international border bisecting their territory between Mexican claimed land and United States claimed land. There is resentment expressed by members of the Nation that they are unable to have free movement across their land, and that the border patrol guards are aggressive in their border protection and security duties.³²¹

The Mexican cession treaties, especially the Gadsden Purchase Treaty, reflected the policies of expansionism which were prevalent in the United States in the nineteenth century. The public understanding that the land was sparsely occupied was based on the lack of Mexican occupation in southern Arizona, as many of the grant lands had been abandoned. This was a desired situation to justify settler colonialism into a new territory, as well as superimposing Anglo-American culture onto the existing inhabitants easily. However, this was reinforced by the wording of the Gadsden Treaty which legally disallowed the two large indigenous populations who resided there, from making a claim to their ancestral lands because of the ambiguous wording of the treaty about citizens and previous judicial decisions which interpreted them as subjugated nations within a nation, rather than sovereign nations.³²²

³²⁰ Peter Heiderpriem, 'The Tohono O'odham Nation and the United States-Mexico Border,' *American Indian Law Journal*. Vol 4 no.1 (2016): 106-130

Joe Szymanski, 'The Tohono O'odham Nation: A Case for Sovereignty,' *Center for a Stateless Society* (2016), <https://c4ss.org>.

³²¹ Heiderpriem, 'The Tohono O'odham Nation.'

Szymanski, 'The Tohono O'odham Nation.'

Christopher Livesay, 'At the United States-Mexico Border a tribal nation fights the wall that would divide them,' *PBS News Hour* 13 Jan 2019, www.pbs.org/newshour. Transcript.

³²² In addition, only the Executive Office was allowed to make treaties with any nation, which would include foreign and as well as domestic.

Constitution of the United States, Article 1 Section 10.

However, even the treaties with federally recognised indigenous groups were complicated as they were technically contractual and non-self-executing peace treaties. In addition, as the United States deemed the indigenous people, in sovereign fashion, ‘conquered nations’, they claimed the land as a ‘right of conquest’, only permitting the indigenous people to live on land, which had been set aside for them.³²³ The non-self-executing status of the treaties gave the United States ultimate jurisdiction over the implementation of the terms because they were worded as pieces of legislation and failure to obey these laws meant penalties.³²⁴ Hence, the ability of the United States to, later, remove treaty agreements from indigenous people and legally changing their status from domestic dependent nations to that of ‘Wards of State’ during the 1870’s when President Grant was implementing his policy of containment and isolation of indigenous people under the Act of March 3rd 1871, now called, ironically, Grant’s Peace Policy.³²⁵ This was reaffirmed in 1988 as Public Law 102, statue 3641. Unfortunately, at the time of cession, neither the O’odham and the Chiricahua Apache were recognised officially either as a nation or as antagonistic towards the United States; indeed, both groups welcomed the presence of the United States against Mexico.³²⁶ Therefore, neither indigenous group received a

Lindsay G. Robertson, *Conquest by Law; How the Discovery of America dispossessed Indigenous Peoples of their lands*, (Oxford University Press, 2005)

Matthew L. M. Fletcher, ‘Tribal Membership and Indian Nationhood.’ *American Indian Law Review* 37 no.1 (2012): 1-18.

Jessica A. Shoemaker, ‘Complexity’s Shadow: American Indian Property, Sovereignty and the Future,’ *Michigan Law Review*: 115 (2017):531-534

³²³ Adam Dahl, ‘Empire of the People: The Ideology of Democratic Empire in the Antebellum United States’ (PhD Thesis, University of Minnesota, 2014): 19-20.

³²⁴ Klein, ‘Treaties of Conquest’

³²⁵ Thirty-seventh Congress. Abrogation of the Treaties - ‘Chapter 101: An Act to protect the Property of Indians who have adopted the Habits of civilized Life,’ (June 14, 1862), 427-428.

Ely Parker, ‘First Report of US Commission of Indian Affairs,’ (1869), accessed 27 October 2019, www.pbs.org.

³²⁶Fletcher, ‘Tribal Membership.’

treaty, which also excluded them from securing land at the time of cession under the 1830 Indian Removal Act.³²⁷

Reaffirmation of dependency of ‘Indian Tribes’³²⁸

§ 71.

Future treaties with Indian tribes

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired. Such treaties, and any Executive orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive order, or Act of Congress if section 7873 of title 26 does not permit a like Federal tax to be imposed on such income.

(R.S. § 2079; Pub. L. 100–647, title III, § 3042, Nov. 10, 1988, 102 Stat. 3641.)

Frymer claims that the Mexican cession treaties were a continuation of a population control policy established during the early Republic, and that the obstacles to land ownership were biased in favour of particular groups of the population.³²⁹ The claim that the land was devoid of private ownership, indigenous or otherwise, was a strong incentive for potential settlers and entrepreneurs, who were then able to use the preemption legislation and subsequent Homesteading Act to legally purchase the property they had squatted on. By placing obstacles in the legal processes to discourage small private Mexican farmers and indigenous communities from establishing rights to their lands, the treaties effectively placed these lands back into the public domain cache.³³⁰ The advantage to the United States was two-fold, first it encouraged

³²⁷ This act worked on the premise that the indigenous group was first recognised as a tribe and then allowed to reside on a piece of land designated by the federal government, albeit it in a different part of the territory, and had legal protection to keep it.

Twenty-first Congress. Indian Removal Act - ‘Chapter 148: An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi,’ (May 28, 1830), 411-412, accessed 13 August 2018, www.loc.gov, Section 2.

³²⁸ Office of the Law Revision Council; United States Code, accessed 10 November 2021, <https://uscode.house.gov>.

³²⁹ Frymer, “‘A Rush and a Push’”, 119.

³³⁰ For more information see Appendix C *San Juan de las Boquillas y Nogales* Grant.

Anglo-American settlement and second it provided a larger citizenship and tax-paying base for the cultural and financial development of the United States.³³¹ A third advantage could be the removal of the land base for groups of cession residents resistant to United States sovereignty.³³²

In addition, the premise behind many of the settler policies of the nineteenth century was to encourage small citizen farmer to invest in the new territorial property both to benefit commercial exploitation of the area, and to develop a loyalty base which would participate in the political system and pay property taxes, as was established by the Constitution in 1787. They would also defend their property in lieu of the overstretched small professional army which the United States could ill-afford to waste at the time.³³³ Many contemporary writers at the time, such as J. Ross Browne and Hiram Hodge, seemed to reflect the belief that only those of European heritage were capable of harnessing the resources in an efficient and productive way; there were many commentaries by contemporaries who disparaged the indigenous and Mexican business practices and work practices.³³⁴ The small farmer could then use the preemption laws,

³³¹ Paul W. Gates, 'An Overview of American Land Policy,' *Agricultural History*, 50 no.1 (1976): 222.

³³² Frymer, "'A Rush and a Push'", 119-120.

³³³ President Andrew Jackson, 'First Inaugural address to Congress. March 4, 1829,' accessed 9 August 2018, www.avalon.law.yale.edu.

Gadsden Purchase Treaty

Ely Parker, 'First Report of Ely Parker U.S. Commissioner of Indian Officers, 1869,' *PBS*, accessed 27 Oct 2019. www.pbs.org.

Charles D. Poston, 'History of the Apaches,' (Tucson: University of Arizona Special Collections, 1885, call number AZ 169).

³³⁴ J. Ross. Browne, *Adventures in the Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*, (New York: Harper & Brothers Publishers, 1869)

Hiram C. Hodge, *The Hand-Book to Arizona: It's resources, history, towns, mines, ruins and scenery*, (Tucson AZ: Arizona Silhouettes, [1877] 1965)

Flannery Burke, *A Land Apart: The Southwest and the American Nation in the Twentieth Century*, (Tucson, AZ: University of Arizona Press, 2017)

and subsequent land laws, such as the homesteading legislation, to claim land, imprint dominant Anglo-American culture onto the region.³³⁵

These pieces of land legislation also continued the process of dividing public lands into private ownership to the exclusion of many Mexican and indigenous residents. Frymer explains that the 'divide and conquer' tactics of United States land policies marginalised indigenous cultures as they became further removed from each other and their ancestral territories, preventing effective rebellion against United States jurisdiction.³³⁶ The treaties, as land sales contracts, established land as a commodity and a transferable item for the benefit of the United States. As landowner, the United States' government was permitted to distribute the land according to the needs and wants of the country, ideally to the small homesteader, but in reality to land speculators and extraction industry entrepreneurs; later this would include also the railroad barons and their subsidiaries. Gates explains that these concepts were contained within all land policies from the early Federal Republic and he articulates them as; revenue for the government, settlement for new communities, reward land scrips for war veterans, and the expansion of education, democratic institutions and to facilitate public works³³⁷ Therefore, irrespective of the claims by the private or indigenous owners, the United States utilized their sovereign landowning rights to compartmentalize and distribute the land for stability and financial gain. Interest in the cession lands increased after the Civil War and many expansionists applied pressure on the government to release land for private sale, with concessions to the squatters already there, which would provide funding for infrastructure, such as water and transportation, and to remove the

³³⁵ T. Edwin Farrish, *History of Arizona*, (Phoenix, AZ: The Filmer Brothers Electrotpe, 1915-1918), 353-356, Hathi Trust <https://babel.hathitrust.org>.

³³⁶ Frymer, "A Rush and a Push", 119.

Burke, *A Land Apart*, 42.

Shoemaker, 'Complexity's Shadow,' 489.

³³⁷ Gates, 'Public Land Issues,' 363-369.

indigenous people who were perceived as obstacles to such progression.³³⁸ The result of this movement was to harness a policy of elimination or reservation for the indigenous cultures who resisted such developments, and for the ownership of the Spanish and Mexican grant lands referenced in the treaties to be irrefutably determined, releasing additional land for sale. Thus, by effectively ‘vanishing the Indians’ and establishing available public domain lands, the cession areas marched with alacrity towards the homogenous goal of Anglo-American cultural predominance by the end of the nineteenth century.

The Mexican Cession treaties of Guadalupe Hidalgo and the Gadsden Purchase extended the land policies established in 1785 and 1787 as well as continuing the precepts of the land legislation, that is the understanding of sovereign rights, *terra nullius*, commodification and commercial productivity of the land, the claim of squatter rights and preemption, and the promotion of the Jeffersonian democratic ideas. The specific wording of the treaties permitted the United States to establish legally recognised control over land which was presumed to belong wholly to the country. However, the United States also wanted to establish uncontested legitimacy over the land purchase, and to do this they needed to discredit any previous use of the land and those who lived there. They were able to utilise the wording of the treaties, supported by previous legislation, to validly prove their claim and right to the region, as well as their actions to promote the region for Anglo-American development.

³³⁸ Gates, ‘An Overview,’ 218-220.

Chapter Five

Water: The Life Source

Introduction

Water is one of the most important resources in the desert, and when managed well, can adequately provide for most of the population in the area. The indigenous people of southern Arizona, as well as Sonoran Mexicans who learned from them, knew well the techniques needed to conserve this precious resource. A problem arises when more people infiltrate the region with water-rich demands for specific activities, in a region that currently experiences less than 12 inches/30 cm of rain a year.³³⁹ The activities which the incoming Anglo-American population brought with them after acquisition of the region in 1853, included mass transportation, large grazing herds, hydraulic mineral extraction, as well as more intense European agricultural practices, which further encouraged an increase in and denser population. Tucson, for example, grew from approximately 600 people when Parke went through the area in 1854, to 3,000-4,000 people in the 1870's, and as high as 8,000 in the 1880's because of its location next to the Santa Cruz River where it surfaces and the development of the commercial mining, ranching and accompanying transportation industries. By the 1930's Tucson was a little under 500,000.³⁴⁰ In a desert region, such as southern Arizona, the result of this increased burden upon the limited

³³⁹ 'Average rainfall: Tucson,' *United States Climate Data* (2021) www.usclimatedata.com.

³⁴⁰ Jay J. Wagoner, *Early Arizona; Prehistory to Civil War*, (Tucson, AZ: University of Arizona Press, 1975), 8.
Hiram C. Hodge, *1877: Arizona As It Was: Or the Coming Country; Notes of Travel During the Years 1874, 1875, and 1876*, (Chicago, Illinois: The Rio Grande Press, Inc Hinton, [1878] 1965), 153-155.

Patrick Hamilton, *The Resources of Arizona: Its mineral, Faring and grazing lands, towns and mining camps; its rivers, mountains, plains and mesas; with a brief summary of its Indian tribes, early history, ancient ruins, climate etc, etc. A Manual of Reliable Information Concerning the Territory*, (San Francisco: AL Bancroft & Co. Printers, 1881), 44-45.

Flannery Burke, *A Land Apart: The Southwest and the American Nation in the Twentieth Century*, (Tucson, AZ: University of Arizona Press, 2017), 272.

water resources meant that those who had the technological ability and the supporting legislation to harness this resource also had the ability to profit from it at the expense of others. In the nineteenth century, water, became a highly sought-after commodity and was the epicenter of many of the relationships between the Anglo-Americans and the indigenous inhabitants.

However, this relationship was uneven and favoured those who had the tools with which to harness the water and, also, the ability to navigate through the legal establishment of the United States to secure their jurisdiction over the land which contained access to water.

Despite the scarcity of such a valuable resource as water, Anglo-Americans were able to establish in the region because of government incentives through legislation, such as the Desert Land Act of 1877, and the establishment of communication networks across the region. These communication networks were often located along the navigable river valleys of the Santa Cruz River and the San Pedro River. These rivers had been used for centuries by the indigenous people, and, they were also instrumental in developing the Anglo-American extraction industries as well as providing a means of immigration into the region. This meant that resources, such as water, became increasingly sought after, the over-used, and as a result, more depleted. The indigenous populations bore the brunt of this increased Anglo-American activity on their traditional lands and saw their own ability to effectively manage their landscape eroded because of their inability to hold any legal standing within Anglo-American society. This lack of legal jurisdiction over their traditional lands meant that they were unable to maintain their traditional ways of living, while watching their ancestral lands suffer from over-exploitation. They were also excluded from their traditional livelihoods and were eventually forced into adapting their lifeways to prevent further erosion of their society; the O'odham were marginalized and accepted wage-labour practices, and the Apache became reservation residents. The reservations

themselves were an ongoing policy by the United States during the nineteenth century, which created designated areas of land in which the indigenous people were expected to reside. For the Apache in Arizona several smaller reservations were established in the 1870's, ostensibly to 'protect' the Apache from persecution by the Anglo-Americans, but in reality as a move to segregate the indigenous people from potentially lucrative lands which the Anglo-Americans coveted.³⁴¹ The Chiricahua Apache and the Wa:k O'odham had land reserved for them in 1872 and 1874 respectfully.

Indigenous use of water sources

The two main river valleys in southern Arizona, the Santa Cruz and the San Pedro, and their tributaries, mainly the Sonoita River and Babacomari Creek, were important locations for the indigenous people, particularly the O'odham. The Chiricahua Apache also obtained their water from arroyos and canyons on the desert floor as well as the mountain springs in their traditional lands. The various water sources were used to provide food from specific agricultural practices of the region, and were good locations for camps and settlements, however, after contact these water sources became more depleted because of specific European uses for water resources.

The use of the water resources by the indigenous people of southern Arizona was markedly different from the way in which the incoming Europeans used and codified it in legislative measures. Initially, the Europeans used the waterways as trailways which provided much needed water sources, but they were soon exploited to increase the European footprint in the area. First, the Spanish missions established their foothold, with the supplemental garrisons for protection,

³⁴¹ Ely Parker, *First Report of Ely Parker U.S. Commissioner of Indian Officers*, accessed 27 October 2019 www.pbs.org.

Donald E. Worcester, *The Apaches, Eagles of the Southwest* (Norman, OK: University of Oklahoma Press, 1979), 112, 329.

then, secondly, the United States, established their foothold by utilizing the seemingly abandoned missions and *rancherías* of both the indigenous and Spanish and Mexican ranchers, all of which depleted the water sources in the area. However, the indigenous people of the region had a specific way in which their water sources were used so that they could sustain life for the communities, and still be replenished by the natural weather patterns. Their way of life worked in conjunction with water provision and did not strip the area of water to replicate a European style way of life, which in arid environments was extremely water exhaustive, at the expense of harmony and the traditional environmental balance.

Water and the O'odham

The O'odham of the desert have made use of the sparse water supplies for centuries.³⁴² Their nomadic and semi-nomadic traditional lifestyles are suited to the seasonal desert precipitation levels, and they have adapted various techniques of harnessing this water to allow them to survive in the arid desert conditions. The nomadic Hia C'ed O'odham used their knowledge of water reservoirs along the desert trails travel to the Sea of Cortez to collect salt for trading to supplement their desert diet of cacti, desert plants and small animals with cultivated foods from other indigenous groups.³⁴³ The Tohono O'odham practiced the 'two-village' seasonal rotation method, which meant that they went into the mountains during the arid summer months relying on water trapped in cracks and crevices of the mountains, called *tinajas*, or water basins or tanks

³⁴² James E. Officer, Mardith Schuetz-Miller, Bernard L. Fontana eds. 1996. *The Pimeria Alta: Missions and More*. (Tucson AZ: The Southwestern Mission Research Center, 1996), 23-26.

Dianna Jennings, 'Together, We Will Succeed: T-W:EM AT O'NATO,' *Rural Cooperatives Magazine*, (March/April 2015): 10-11.

³⁴³ Gayle Harrison Hartmann, Mary Charlotte Thurtel and Gary Paul Nabhan, 'Native Peoples of the Tinajas Altas Region: Prehistory to Present,' in *Last Water on the Devil's Highway: A Cultural and Natural History of the Tinajas Altas*, eds. Bill Broyles, (Tucson AZ: University of Arizona Press, 2014), 43-75.

and collected water in *ollas* or hollowed gourdes.³⁴⁴ They then went down into the valleys and the swollen arroyos after the summer monsoon season to divert water into flood plains to grow their seasonal crops.³⁴⁵

The O’odham people, including their ‘cousins’ the Sobaipuri, are possibly the descendants of a strong irrigation culture known as Hohokam, or Huhugam, who practiced *ak-Chin* or flood farming agriculture mainly along the Gila and Salt Rivers.³⁴⁶ *ak-Chin* or flood farming techniques were where the waters of a river or a seasonal arroyo were diverted via a channel into a ‘holding’ area, during the ‘wet’ or monsoon season, and then channelled to irrigate crops planted in the area. The Hohokam were also well known for their extensive and technologically advanced irrigation ditch farming which were so well engineered that many are still use today.³⁴⁷ It is believed that the Sobaipuri O’odham practiced the closest ‘Huhugam’ system of agriculture further to the south of the region, in their communities along the San Pedro River. The O’odham practiced flood farming to cultivate such desert plants as bean, squash, corn and cotton in the flooded arroyos, to supplement their desert foraging diets.³⁴⁸ It was only when the indigenous populations were first introduced to European cultivation practices and crops by the Spanish missionaries during the eighteenth century, and later when they were forced to cultivate European crops on the San Xavier Reservation, did the traditional practices of hunting and

³⁴⁴ Hartmann et al, ‘Native Peoples,’ 46-52.

³⁴⁵ Dennis Gilpin and David A. Philips, Jr., *The Pre-historic to the Historic Transition Period in Arizona circa 1519-1692*, (Phoenix, AZ: State Historic Preservation Office, nd), 28, 32-34.

³⁴⁶ ‘Tohono O’odham History 1916 to Present,’ *Tohono O’odham Nation*, accessed 1 October 2017, www.tonation-nsn.gov.

³⁴⁷ The Hohokam built an irrigation system between the two rivers which consisted of a canal network estimated to be over 400 miles long, irrigating over 70,000 acres of land from the thirteenth to the fifteenth centuries. Jerry B. Howard and Gary Huckleberry, ‘The Operation and Evolution of an irrigation system: The East Papago Canal Study’ *Soil Systems Publications in Archaeology* No. 18 (1991)

Thomas E. Sheridan, *Arizona: A History*, (Tucson AZ: University of Arizona Press, 2012), 22.

³⁴⁸ Jennings, ‘Together, We Will Succeed’

gathering nomadic existence and flood-farming disappear, along with access to traditional foods.³⁴⁹ By the early twentieth century the O’odham began to develop commercially viable dry farming techniques for European crops, such as cotton, and advocated for a larger land area to be added to their new O’odham Reservation centred around the town of Oasis, now Sells; they were also concerned about encroaching Anglo-American cattlemen and wanted to secure their land and resources on it. They still use their traditional knowledge of how to harness water resources when they built ditches across their land to prevent flood waters from spilling into their European style agricultural and grazing lands as can be seen at the San Xavier Mission Reservation and the indigenous lands in Marana, northwest of Tucson.³⁵⁰

The traditional crops, such as squash and bean as well as some cotton, which were grown for subsistence, supplemented the foraging diet of deserts plants such as the prickly cactus, saguaro cactus and seed pods of the mesquite and palo verde shrubby trees.³⁵¹ This diet was low in carbohydrates which grain and wheat-based diets often supply in large amounts, low in glucose and also helps to reduce blood sugar levels while maintaining correct insulin levels.³⁵² When the

³⁴⁹ In 1887 the Dawes Allotment Act was enacted on the San Xavier O’odham Reservation, which required communal tribal land to be divided into individual allotments for personal cultivation. However, the reservation O’odham also practice a Spanish tradition of dividing property among the heirs upon death, meaning that the allotments began to be divided into ever-diminishing segments, preventing any type of sustainability and an inability to supplement diets with desert food-crops also
 Forty-ninth Congress, Dawes Settlement and Allotment Act – ‘An Act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes,’ (February 8, 1887), accessed 12 July 2018, www.ourdocuments.gov.

Oblasser, Fr Bonaventure Files 1905-1937, ‘Records and writings from Father Bonaventure,’ Arizona Historical Society, Tucson, no. AHS AZ 554.

Jennings, ‘Together, We Will Succeed’

Alyssa Landry, ‘Ulysses S. Grant: Mass Genocide Through ‘Permanent Peace’ Policy,’ *News Maven*, 2016, <https://newsmaven.io>.

Debbie Weingarten, ‘The Desert Blooms’. *Rodales Organic Life*, 2 no. 6 (November 2016): 78-85.

³⁵⁰ Oblasser ‘Records and writings,’ Papago Farmers Association notes.

³⁵¹ Hartmann et al, ‘Native Peoples,’ 52.

³⁵² Jennings, ‘Together, We Will Succeed’
 Weingarten, ‘The Desert Blooms’

O'odham people began to cultivate wheat, and other European commercial crops, for economic subsistence, flood farming became obsolete because of the low yields it produced. This was coupled with growing commercial cotton, so that all available labour and land was turned over to the European agricultural practices. In addition, factors such as reservation life, water and market pressures, led to the O'odham embracing wage-labour earning instead of maintaining their traditional subsistence farming.³⁵³ This, in turn, reduced the incentive to cultivate traditional foods which were supplemented with European foods that were readily available and bought with wage-dollars. Within a couple of generations of this change, obesity and diabetes now plague the Tohono O'odham Nation.

Currently, the O'odham communities of southern Arizona are not only fighting for increasingly scarce water supplies, but are also experiencing a major health crisis; nearly half of the Tohono Papago are suffering from diabetes because they were forced to adopt to a non-traditional, western, diet.³⁵⁴ It is estimated that the nation has some of the highest percentages of diabetes sufferers in the world.³⁵⁵ Fortunately, there is a small but growing interest in re-discovering the value of desert crops again among the Tohono O'odham, as well as Pima County Parks and Recreation and the state and national parks systems. Displays and classes have been presented illustrating the techniques used to harvest the desert plants and the different foods which can be made from them, such as cookies made from mesquite flour and cactus juice and grilled tepary beans packed with protein which were used while travelling across the desert.³⁵⁶ In addition,

³⁵³ Jennings, 'Together, We Will Succeed.'

Landry, 'Ulysses S. Grant.'

Weingarten, 'The Desert Blooms.'

³⁵⁴ Colin Samson, *A World You Do Not Know: Settler Societies, Indigenous Peoples and the Attack on Cultural Diversity* (London: University of London Press, 2014), 179-180, <http://humanities-digital-library.org>.

Weingarten, 'The Desert Blooms'

³⁵⁵ Jennings, 'Together, We Will Succeed'

³⁵⁶ Authors own experiences with the Arizona Parks and Recreation, 2014.

while members of the nation, such as Gabe Mendoza and the San Xavier Cooperative Association are encouraging a return to traditional crops and food sources, commercial companies in southern Arizona such as Cheri's Desert Harvest in Tucson and Arizona Cactus Ranch in Green Valley on the Santa Cruz River are introducing the general public to the health benefits and unique taste of indigenous desert plants.³⁵⁷

The Chiricahua Apache

The Chiricahua Apache were very protective of their sparse water sources. The Chiricahua Apache were nomadic and used many hidden locations in the mountains in and around the east southern Arizona. Their territory included two vast valleys, the San Simon and Sulphur Spring valleys which are crisscrossed by multiple canyons and crevices, fed by arroyos from some of the springs and snows which descend from the surrounding mountain ranges, predominantly the ranges of the Chiricahua, Dos Cabezas, Dragoons, Mule and Huachuca Mountains of southern Arizona and the Sierra Madres of the Sonoran/Chihuahua border in Mexico. Unfortunately, for the Chiricahua Apache, this area was also considered valuable by the incoming Anglo-Americans for grazing and transport needs. Later, when precious minerals were discovered, the water sources became particularly valuable as they were needed for the mining industry. In addition, this area was also used by Army garrisons to protect the miners, travellers and settlers from any raiding attacks by the Apache groups of southern Arizona, which also required large amounts of water. This intrusion into Chiricahua territory resulted the depletion of their previous

Weingarten, 'The Desert Blooms'

³⁵⁷Cheri's Desert Harvest in Tucson, www.cherisdesertharvest.com
Arizona Cactus Ranch in Green Valley, www.arizonacactusranch.com

water sources by the Anglo-Americans, which in turn, caused many disputes between the two groups, culminating into the Apache wars of the 1870's to 1880's.

One point through which most travellers went was a saddle between the Dos Cabeza and Chiricahua Mountain ranges, called Apache Pass, which brings the traveller into the grassy valley of Sulphur Springs, part of the northern territory of the Chiricahua Apache. This valley of vast grazing lands was very attractive to incoming ranchers, who supplied the United States Army and miners, which established on the mountains to either side, with beef products. Unfortunately, increase in traffic through Apache Pass began to compromise the water supply at Apache Spring nearby, long used by the Apache as a major watering point.³⁵⁸ In 1861, and again in 1862, the Army encountered agitated Chiricahua Apache and they clashed near Apache Pass.³⁵⁹ The result of these two confrontations was the establishment of Fort Bowie to protect the water source and the pass from further hostile relations, but it also prevented the Apache from using the area as they were no longer welcome in the area.³⁶⁰ Unfortunately, it also meant that the surrounding water supplies began to deplete, as it was used up by the Anglo-American

³⁵⁸ When Lt. John G Parke and his survey team stopped at Apache Spring, he admitted that they drank so much water that they ran it dry during their stay there (Parke, *Report of Explorations*, 13-14).

John G. Parke, *Report of Explorations for that Portion of Railway Route near the Thirty-second Parallel of Latitude, lying between Dona Ana, on the Rio Grande, and Pimas Villages on the Gila*, (Washington: Government Printing Office, 1855), 13-14.

³⁵⁹ The Bascom Affair, in 1861, was a series of unfortunate events at Apache Pass, which pitched an inexperienced Lt. George N. Bascom against the Chiricahua war leader Cochise over the kidnapping of the stepson of an Anglo-American farmer. The end result was Cochise being captured, falsely accused of kidnapping, escaping and a series of hostage taking and execution in this tit-for-tat encounter between the U.S. Army and Cochise. This was compounded in 1862 when Cochise ambushed a Union supply train at Apache Spring. The Apache were defeated by the early use of a Howitzer on their warriors, which severed any remaining amicable relations between the Chiricahua and the United States army for a decade. A year later Fort Bowie was established to protect this important watered passage across southeastern Arizona.

Dan L. Thrapp, *The Conquest of Apacheia*, (Norman, OK: University of Oklahoma Press, 1967), Chapter 2.

Jay J. Wagoner, *Arizona Territory 1863-1912: A Political History*, (Tucson, AZ: University of Arizona Press, 1970)

Robert M. Utley, *A Clash of Cultures; Fort Bowie and the Chiricahua*, (National Park Service, Washington D.C., 1977), 20-36.

³⁶⁰ Wagoner, *Early Arizona*, 243-244.

Utley, *A Clash of Cultures*, 7

extraction activities in the area, and thus denuded the Apache of guaranteed water supplies in the region. As more people began to settle the area this led to a greater destruction of the indigenous environment, which naturally led to greater attempts by the Chiricahua Apache to remove the newcomers from their land.³⁶¹

As a ‘conquering’ nation, that is, a nation which believed that it had decisive power over all the territory including the inhabitants, the United States claimed all the land and the water resources within the region when they signed the Gadsden Purchase Treaty with Mexico in 1853. As the sovereign nation they determined who would be eligible to access the water sources in the region and how it would be distributed. The indigenous populations who inhabited the area and had practiced water conservation and preservation techniques for centuries were not referred to when the water resources were harnessed, nor were their needs met when they were dismissed as non-entities in the Anglo-American development of the region. Indigenous people were not given any water rights and their needs were not taken into consideration when land distribution was implemented to encourage water-reliant commercial activity in the region. The most important piece of legislation was the Desert Land Act of 1877 which codified water resources, attempted to encourage private water reclamation initiatives and reiterated various ideologies which designated water as a commodity. At the heart of many disputes in southern Arizona, including ones between Anglo-Americans, were the laws which governed water supplies and land in the southwest territories, and these caused many to lay claim to water sources despite the legal jurisprudence, often relying on the confusing hybrid water legislation to justify land claims and water extraction rights.

³⁶¹ John G. Bourke, *On The Border with Crook*, (Lincoln, Nebraska: University of Nebraska Press, [1891] 1971)

Water legislation

Water as an integral part of survival in the arid conditions of the northern Sonoran Desert in southern Arizona was recognised early in the territorial years as being a limited resource which could stall the Anglo-American development of the region. Even as late as the 1890's it was still noted that the important watering points in southern Arizona were few and far between but were considered crucial in the Anglo-American development of the region.³⁶² Various legal policies were engaged to enhance the viability of the water resources of the region, and to provide incentives to private individuals and business to remove any barriers or concerns that might be raised when considering water supplies. During the late 1800's the Army southern Arizona became increasingly focused on the Chiricahua Apache, particularly as the O'odham did not clash with them and remained at peace with the local population, indeed they were also victims of Apache raiding on various occasions during this time period.³⁶³ One of the problems which southern Arizona had was how water, and land with water, was to be distributed, and what constituted and was considered as a public or private supply of water. The resource had to be codified and terms defined to provide a definitive understanding of the nature of the water source, and thus determine the use and ownership of each type of water source. Legislation was developed to encourage experimentation and to develop various ways to harness the water sources of the region. Certain acts, such as the pivotal Desert Land Act of 1877 and subsequent similar acts, permitted applications for large areas of land with which to develop commercial activities and enhance the Anglo-American use of the area.

³⁶² A.F. Bandelier, *Final Report of Investigations Among the Indians of the Southwestern United States carried on mainly in the years from 1880 to 1885: Part II*, (Cambridge University Press, 1892), 23.

³⁶³ Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West*, (New York, NY: Oxford University Press, 1985), 4-5.

Water legislation in southern Arizona represents a combination of English and Spanish common law and established Federal legislation of the United States. Common law determines that all water is for common usage and is protected from private claim.³⁶⁴ Therefore, property rights are separate from water rights, however, landowners whose property abuts a water source are permitted to extract just enough water to provide for the needs of whatever industry the landowner engaged in, such as agriculture and mining, and is called riparian rights.³⁶⁵ However, the United States Mining Act of 1866 legislated that riparian rights were transferred to the Federal government, but water rights, or exclusive access to water for abutted property, was permitted if the property was claimed before 1866.³⁶⁶ In southern Arizona this was further complicated by adherence to the prior appropriation doctrine, codified in the 1864 territorial laws of Arizona collectively called the Howell Code.³⁶⁷ Codifying prior appropriation as a ‘first in time, first in right’ doctrine, meant that even after 1866 those whose property bordered a water source had riparian rights, and were not required to allow others to traverse their property to reach the water source. Even by 1916, after statehood, there were no mandated easement requirements for common access.³⁶⁸ This had been challenged in the Arizona Territorial Supreme Court in 1888, in the *Clough v. Wing* case, but the court determined that prior appropriation and extraction-of-water rights for the ‘beneficial use’ of irrigating the property

³⁶⁴ Although in the Spanish colonies this was codified in the *Recopilación de leyes de reynos de las Indias*, the laws of the Spanish colonies.

Thomas E. Sheridan, *Landscapes of Fraud: Mission Tumacacori, The Baca Float, and the Betrayal of the O’odham*, (Tucson, AZ: University of Arizona Press, 2006), 90-91.

³⁶⁵ William L. Staudemaier, ‘Arizona Groundwater Law,’ *The Water Report: Water Rights, Water Quality and Water Solutions in the West*, 33 (2006): 1-11.

³⁶⁶ Worster, *Rivers of Empire*, 107-108.

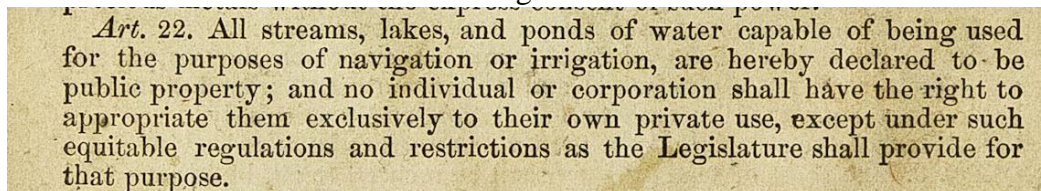
³⁶⁷ Howell Code – ‘The Howell Code: adopted by the First Legislative Assembly of the Territory of Arizona, 26 September – 10 November 1864,’ (Prescott, AZ: Office of the *Arizona Miner*, 1865), accessed July 20, 2018, <https://ualawlib.omeka.net>, Article 22 and Chapter 55, Section 17.

‘History of Water Management,’ *Arizona Water*, accessed 5 July 2019, www.azwater.gov.

³⁶⁸ A. E. Chandler, ‘The Appropriation of Water in California’. *California Law Review* 4 no. 3 (2016): 206-215.

were legal and permitted.³⁶⁹ The result of these decisions meant that first, disputes ensued between landowners over who could do what with the water that they believed they had rights to, and what type of water could be used for what purposes, particularly when the monsoon rains brought floods to the region and surface water to many ‘dry’ rivers. The second result was that any person who had legally recognized ownership rights to prime property, which included access to a secure water source, was entitled to claim any amount of the water for their own needs under the ‘prior appropriation and beneficial use’ entitlements.³⁷⁰ This led to some very extensive paper chases and legal proceedings, particularly on behalf of landowners claiming Spanish and Mexican grant land with river access from before the Mexican Cession. The Mining Act of 1866 also solidified the Public Trust Doctrine which the United States adopted representing the Spanish and English understanding that all flowing water was for public, and general, use, and belonged to the state, and not to private entities.³⁷¹

Image 5.1



Howell Code 1864, Bill of Rights, Article 22³⁷²

³⁶⁹ Worster, *Rivers of Empire*, 108.

Arizona Water, ‘History of Water Management.’

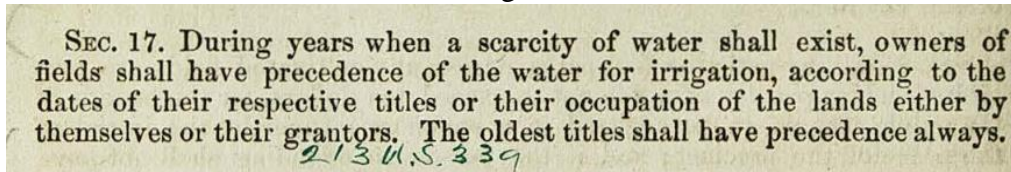
³⁷⁰ Chandler, ‘The Appropriation of Water,’ 2016-215.

Linda Mayro, ed. with contributions by Micaela K. McGibbon, *Ranching in Pima County, Arizona: A Conservation Objective of the Sonoran*, accessed 23 September 2017, www.pima.gov.

³⁷¹ Thirty-ninth Congress. Lode Mining Act – ‘Chapter 262: An act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes,’ (July 26, 1866), 251-253, accessed 23 July. 2021, <https://digitalcommons.csUMB.edu>, Sections. 5, 8 and 9.

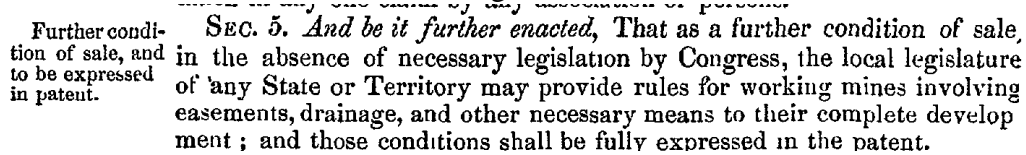
³⁷² University of Arizona, Digital Collections, accessed 21 July 2018, <https://arizona.app.box.com/v/CLL-Howell-Code-1964>.

Image 5.2



Howell Code 1864, Chapter 55, Section 17³⁷³

Image 5.3



Lode Mining Act 1866 Section 5³⁷⁴

Image 5.4

THIRTY-NINTH CONGRESS. SESS. I. CH. 262, 263. 1866. 253

SEC. 8. *And be it further enacted*, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. Right of way for highways.

SEC. 9. *And be it further enacted*, That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: *Provided, however*, That whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage. Owners of vested rights to use of water for mining, &c. to be protected, and right of way for canals and ditches granted. Damages.

Lode Mining Act 1866, Sections 8 and 9³⁷⁵

The Public Trust Doctrine, which was later absorbed into the Arizona State Constitution in 1912, was developed from the federal water rights, where the federal government retains certain rights to interstate water systems. Arizona water laws reflect this in the state version by declaring that the “beds of all watercourses located in the state” were the property of the state for the common

³⁷³ University of Arizona, Digital Collections, accessed 21 July 2018, <https://arizona.app.box.com/v/CLL-Howell-Code-1964>.

³⁷⁴ <https://digitalcommons.csumb.edu> accessed 23 July 2021.

³⁷⁵ <https://digitalcommons.csumb.edu> accessed 23 July 2021.

use of all people within the state, *except* [my italics] that which is claimed by prior appropriation.³⁷⁶ However, in southern Arizona this was not as clear-cut as it would appear; one of the more important rivers in southern Arizona, the Santa Cruz River, has surface water for only 6 miles near Tucson, the remainder of the river flows underground until it's confluence with the Gila River. This would seem, therefore, not to be considered as a surface river, appearing to be either subsurface or underground water, however, technically it is still considered a river because it has continual, albeit subface, flow from its headwaters to the confluence with the Gila River.³⁷⁷

The differences between surface, subsurface and groundwater in Arizona were extremely important in determining how the water resource was to be utilized. As water rights were important, the laws needed to confirm their water source definitions and establish jurisdiction of public water sources, as well as determining what construed private resources, which Arizona did in the 1904 court case of *Howard v. Perrin*.³⁷⁸ Currently, Arizona recognizes that any water flowing, either perennial or intermittently, whether underground, in canyons and any lakes or ponds as surface or subsurface water, is legislated as separate from groundwater.³⁷⁹ Therefore, groundwater was, and is, identified as a separate water system that is not connected to any surface or subsurface flow of water. This was updated in 1981 to clarify that groundwater falls under the Public Trust Doctrine, however, until groundwater is actually pumped to the surface, it is common law property.³⁸⁰ Arizona property law indicates that any landowner is permitted to

³⁷⁶ Dr. Sharon Megdal, Joanna Nadeau and Tiffany Tom 'The Forgotten Sector: Arizona Water Law and the Environment'. *Arizona Journal of Environmental Law and Policy*, 1 no.2 (2011): 261.

³⁷⁷ *Arizona Water*, 'History of Water Management.'

³⁷⁸ *Arizona Water*, 'History of Water Management.'

³⁷⁹ Arizona Chamber Foundation, *Water in Arizona: Our Past, Present and Future*, (Arizona Chamber Foundation, 2005), 2-3.

³⁸⁰ *Arizona Water*, 'History of Water Management.'
Megdal, Nadeau and Tom, 'The Forgotten Sector,' 243-277.

drill a well on their property to draw groundwater for their own use and neighbours cannot accuse them of stealing water from them. During the late nineteenth century and early twentieth century many business ventures did not perceive that there was a direct connection between the water table, groundwater and surface water, they considered these to be separate sources, and as such exploited their ability to draw from the aquifers on their private land, failing to understand that this ultimately impacted the levels of water in the rivers and generally in the area.³⁸¹ Unfortunately, this has led to a significant decrease in the underground aquifers, and currently wells on private land are required to be dug deeper each year to tap any remaining water sources.³⁸²

These legal definitions were very important at the turn of the twentieth century because the United States, attempting to develop the southwest for agriculture, passed the National Reclamation Act in 1902, and the Reclamation Act for Municipalities in 1906 to allow mass damming, irrigation and water storage projects to be developed in arid regions by government organisations.³⁸³ These projects resulted in the Theodore Roosevelt Dam and Reservoir, the Coolidge Dam, the San Carlos Dam, all located close to Phoenix and the San Carlos Apache Reservation, and later projects such as the Hoover Dam on the Colorado River, to be built at the expense of private and reservation land. For southern Arizona this permission meant that projects such as the Theodore Roosevelt Dam (1906-1911) were sanctioned by the government. Despite the advantage of additional wage-labour employment for the Apache on the San Carlos Reservation out of which some of the reservoir was carved, it also meant that for some Apache,

³⁸¹ Megdal, Nadeau and Tom, 'The Forgotten Sector,' 243-377.

³⁸² John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900*, (Montreal, Canada: McGill Queens University Press, 2003), 351-352.
Arizona Site Stewards Conference, July 2016

³⁸³ Worster, *Rivers of Empire*, 170-171.
Arizona Water, 'History of Water Management.'

specifically the Arivaipa Apache, a relocation to another part of the reservation where they had to reestablish their farms on more marginal land. After the dam was built, the San Carlos Apache constructed over 20 dams and irrigation projects to help enhance their agricultural subsistence. However, after the abolition of the rationing system in 1902, the Apache turned from agriculture to ranching, recognizing the economic viability of cattle raising when they leased grazing lands to Anglo-American ranchers. The San Carlos Apache have since come very successful cattle ranchers, which significantly supplements the wage-labour and recreational revenues of the reservation.³⁸⁴

The push by the United States to settle vast areas of public lands by private individuals in the late nineteenth century is reflected in the legislation they passed designed to enhance possibilities for ordinary Anglo-Americans to invest in their own private land in the newer territories. These acts stemmed from the provisions in the Homestead Act of 1862, which established 160 acres as the ideal size of land to establish a small holding on. Unfortunately, as many discovered, the arid conditions of the southwest required larger acreage to realise an economical profit from the land. In addition, much of the region of southern Arizona did not have reliable or perennial water sources near the land parcels available for purchase. Therefore, important legislation specifically designed for arid areas was passed, based upon the requirements of the Homestead Act, with the Desert Land Act of 1877 setting the precedence.

The Desert Land Act 1877 – Pivotal legislation

³⁸⁴ Edward H. Spicer, *Cycles of Conquest: The impact of Spain, Mexico and the United States on Indians of the Southwest, 1533-1960*, (Tucson AZ: University of Arizona Press, 1967), 250-261.

'Sovereignty 1.0,' *San Carlos Apache*, accessed 21 April 2018, www.sancarlosapache.com.

Unfortunately, with the construction of the San Carlos reclamation project during the 1930's the San Carlos Apache lost yet more of their land to house migrant white labourers who helped to build the project.

Worster, *Rivers of Empire*, 173, 224.

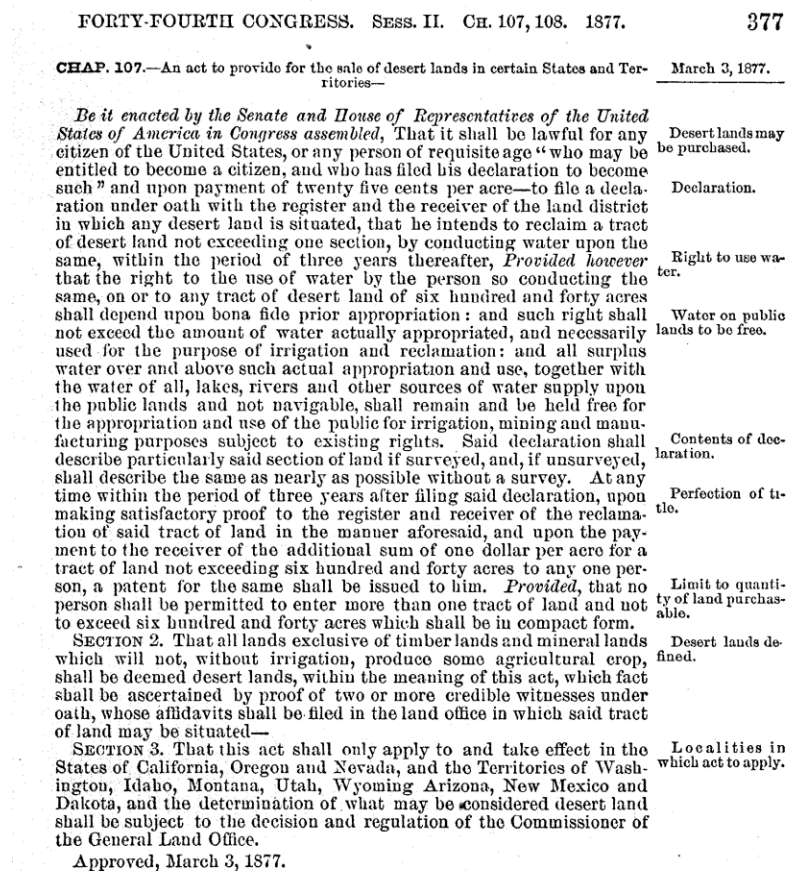
The 1877 Desert Land act was a lynchpin and a watershed for land policy for Anglo-American development of southern Arizona towards the end of the nineteenth century. It was a lynchpin because it brought together all previous and future new lands and arid lands policies which then impacted land use in Arizona. It was a watershed because it changed the national perception of Arizona into being seen as a potentially productive region which could, realistically, contribute to the productivity and industry of the nation. Prior to this revelation, visitors to the region had written disparagingly about the area, but this began to change once resources began to be commercially developed and as resource extraction was given sanction, and finances, by the Federal government.

The Desert Land Act was a single-page piece of legislation in the statute books of the 44th Congress, but one which spurred subsequent and more extensive legislation and a movement in Arizona to encourage settlers to reclaim as much land as they could under the provisions of this and previous settler acts, particularly the 1862 Homestead Act upon which it was based. The act itself is very simple, allowing eligible citizens to claim up to 640 acres of desert land, and which gave them up to 3 years to establish successful irrigation methods onto the land to make it potentially agriculturally productive.³⁸⁵ The cost was a small fee of 25 cents per acre for registering the claim, and a further \$1.00 per acre to receive for the perfect title to the claim, provided all the proofs and affidavits had been approved by the General Land Office. The 1862 Homestead Act required \$1.25 per acre and had the same citizenry requirements. However, it limited applications to 160 acres only, 5 years were permitted for improvements for gaining full

³⁸⁵ The size of the land parcels consisted of one regulated section of the squares created by the Public Land Survey System under the Land Ordinance Act of 1785, which reinforced the United States claim of sovereignty to divide the land into parcels.

title, and only a 6-month residency on the land was required.³⁸⁶ If the provisions of the application were not met after five years of the claim was, the land will then revert back into the public domain cache.³⁸⁷ The act also reiterated the sovereign status of the United States over land by permitting the federal government to retain any land deemed as mineral or timber land.³⁸⁸

Image 5.5



Desert Land Act, 1877³⁸⁹

³⁸⁶Thirty-seventh Congress. Homestead Act – ‘An act to secure homesteads to actual settlers on the public domain.

May 20, 1862. Accessed 24 Jun 2021. www.docsteach.org

Forty-Fourth Congress. Desert Land Act – ‘Chapter 107: An act to provide for the sale of desert lands in certain States and Territories,’ (March 3, 1877), 377, accessed 11 January 2020, www.loc.gov. Section 1.

³⁸⁷ Desert Land Act, Section 1.

³⁸⁸ Desert Land Act, Section 2 and 3.

³⁸⁹ <https://digitalcommons.csumb.edu> accessed 23 August 2019.

The distinguishing features of this act, when compared with the Homestead Act of 1862, is that the land claim areas are significantly larger, 640 acres instead of 160 acres, and cheaper, \$0.25 per acre instead of \$1.25 per acre, and that the provision of providing water to this area was central to the claims.³⁹⁰ The act stipulates that claimants have access rights to public surface water, such as lakes, rivers and other sources, provided they were non-navigable, and that only the amount needed for irrigation purposes was permitted to be extracted.³⁹¹ In 1877 it was assumed that all land not claimed prior to this act was public domain and therefore available for settlement when released by the government. This became complicated when the Spanish and Mexican grant lands were confirmed and many private individuals who had used the Homestead and Desert Land Acts to claim land had their claims revoked due to legally established prior ownership.³⁹²

The distribution of arid land parcels to individual citizens was designed to prohibit larger land speculators from establishing vast claims on the land, while encouraging the democratic ideal of providing property for small farmers. The release of these cheap and extensive public land parcels in southern Arizona indicated to many that the lands were viable for development, and all that was needed was a bit of water management to encourage crops and grasses to grow. It was deemed that this act was beneficial for the territory because the citizenship requirement would

³⁹⁰ Homestead Act, Sections 1 and 10.

Desert Land Act, Section 1.

³⁹¹ Desert Land Act, Section 1.

³⁹² The family of Luis Acuña were victims of the Baca Float evictions in 1919. Acuña received the title to his 1886 land claim in 1896, however after he died in 1911 it became more obvious that the family were to lose their land because of the Baca Float issues. The BLM later indicated that either the title was incomplete or that the family did not take advantage of the 5 year protest period before and after evictions, thus forfeiting their property Patricia Precido Martin, *Beloved Land: An Oral history of Mexican Americans in southern Arizona*. Tucson AZ: University of Arizona Press, 2004), 123-126.

Court cases included *Perrin v. United States* 1898, *Camou v. United States* 1898, *Herrick v. Boquillas Land Company* 1901/1906 and *Boquillas Land and Cattle Company v. Curtis, Curtis, Curtis & Summers* 1909 involved prior appropriation and titles to land during and after the Courts of Private Land Claims.

encourage more settlers with Anglo-American ideals, encourage private investment in the stability of the area, and thus import greater numbers of Anglo-American tax-payers who would enhance the chances of statehood for the territory in the future by diluting the Hispanic cultural identity which was prevalent at the time.³⁹³

Unfortunately, the scarcity of water and the extreme cost of bringing equipment into such a remote area were cost prohibitive for many small independent farmers, and eventually, much of the 'homesteaded' land fell into the hands of larger mining and cattle concerns.³⁹⁴ However, those who were able to use the preemption doctrine with the Desert Land Act and also claim prior appropriation of their water sources were successful in the retention of the lands they had previously squatted upon. In addition, this could also be used by cattle ranchers, who needed thousands of acres to adequately graze their cattle. Many of them claimed rights to waters sources that they used, some of which were not necessarily part of their claimed property, however they were able to eventually gain these land parcels through various quasi-legal manipulations.³⁹⁵ The small homesteader and the indigenous people did not have the resources to dispute such maneuvers.³⁹⁶

The Desert Land Act, along with the Mining Act of 1866, discussed later, commodified water as it became a significant and commercialized feature of Anglo-American development of southern Arizona. By putting a price on water and providing legislation which pivoted around the ability

³⁹³ Burke, *A Land Apart*, 34.

³⁹⁴ Worster, *Rivers of Empire*, 171-174.

³⁹⁵ John T. Ganoe, 'The Desert Land Act in Operation 1877-1891'. *Agricultural History*, 11 no.2 (April 1937): 142-157

Karl S. Landstrom, 'Reclamation under the Desert Land Act,' *Journal of Farm Economics*, 36 no 3 (Aug 1954): 500-508.

³⁹⁶ In 1885 the Tucson General Land Office actually reported to the General Land Office their concerns about stockman entry abuses with the Desert Land Act: Ganoe, 'The Desert Land Act,' 143.

to establish water reclamation and irrigation projects, water not only became an important life source, but also a financially rooted resource. The act, while commendable, for the United States government, in its promotion of the small farmer, resulted in vast areas of land becoming the property of speculators and large cattle ranchers, who also had the wherewithal to establish irrigation projects, fight in the courts for ownership of the Spanish and Mexican land grants and claim water rights over their neighbours.³⁹⁷

Discussion

Water can be conceived as the root of all good and evil in southern Arizona. This precious resource is at the essence of life for many who live in the desert. The unique features of the landscape and environment mean that water must be considered in every aspect of life and survival in southern Arizona, and has been the battleground for many disputes, pieces of legislation and discussions about land use and exploitation of the region. However, it was water which also created great changes and unrest for the indigenous people in southern Arizona. For many, this life source provided the key to existence on the edges of the European claimed lands, and who extended their imperial claim to the territory via the legislation they drew up to harness and exploit the water sources, often at the expense of the indigenous environment. This caused multiple changes to the balance of the region, which is still reeling from the changes in the twenty-first century, as still has a long way to go before recognizing and rectifying the damage inflicted upon the region.

The land and water acts of the United States during the nineteenth century superimposed the Public Land Survey System, PLSS, squares onto southern Arizona, dividing the land in unnatural

³⁹⁷ Ganoe, 'The Desert Land Act,' 350.

ways which was somewhat unsuitable for the arid conditions of the region.³⁹⁸ Each of the acts illustrated assumed sovereignty over the land, but did not consider the way resources, such as water, were to be adequately distributed in such an arid area. Weaver discusses this in the larger context of sovereign rights versus property rights and how this encourages settler colonialism. The Chiricahua Apache argue that the United States never had control of their traditional lands and had never conquered them as a nation. Therefore, the United States had no legal jurisdiction or sovereign claim over the water sources contained within them, and illegally divided and distributed the land away from the Chiricahua Apache, causing much heartache for them³⁹⁹ PLSS division often meant, however, that multiple sections of public domain lands were left entirely without access to any water sources. Therefore, even if the Public Trust Doctrine was adhered to, most landowners with water-sourced properties utilised the prior appropriation doctrine when their industries required extra amounts of water. In 1935 the Supreme Court defined water rights, determining that public trust rights were definitely riparian rights, and lands which were prior public domain lands were 'water righted' lands only, meaning they were permitted access to water for beneficial use only.⁴⁰⁰ This, in collaboration with preemption, meant that those who claimed land with access to water, were able to control the source. They were able to use the vague and unquantified clause 'for beneficial use' which could effectively denude those who lived downstream or away from water, thus requiring others, such as the indigenous people, to compete for consistently reduced amounts of water throughout the

³⁹⁸ Ganoe (1937) argues that the more appropriate way to divide arid lands was to follow the European way of having long thin land segments which ended or included a water source which was easily more divisible between property owners: Ganoe, 'The Desert Land Act,' 140-143.

³⁹⁹ 'Sovereignty,' Chiricahua Apache Nation, accessed 18 April 2018, <http://www.chiricahuaapachenation.org>.

⁴⁰⁰ Ganoe, 'The Desert Land Act,' 350.

J. Craig Smith and Scott M. Ellsworth, 'Public Trust vs Prior Appropriation: A Western Water Showdown'. *Natural Resources & Environment*, 31 no. 1 (2016): 18-22.

century.⁴⁰¹ This was legally upheld in the Arizona Territorial Bill of Rights, initially, and was later incorporated in the State Constitution.⁴⁰²

As Arizona law trumped the federal Public Trust Doctrine, Arizona did not recognise that riparian rights took precedence over water rights, so those who gained property through the various land acts had to fight for access to water to complete the terms of their contracts to gain full title to their land. This was particularly important for those who held Desert Land Act entries because irrigation was at the heart of the legislation requirements. Creating an irrigation system was an expensive undertaking in southern Arizona, and many smaller landowners and homesteaders had to overcome two specific issues, first was to gain access to a water source, and second, was to raise funds for their land improvement plans.⁴⁰³ Unfortunately, many of these issues stemmed from early settlement of riparian areas of southern Arizona, for example, along the rivers and tributaries by the Spanish and Mexican grant land holders. These grant lands were held in litigation for the majority of the territorial period in Arizona, and eventually ended up in the hands of wealthy entrepreneurs such as the Hearst family along the San Pedro River and

⁴⁰¹ Interestingly, the Arizona legislature attempted to defend the prior appropriation doctrine in a 1999 case against the use of the Public Trust Doctrine by ecological campaigners who wanted to remove specific land from private use and abuse. This legal action did not further because the Supreme Court concurred with Arizona, deeming it unconstitutional for the Public Trust Doctrine, federal, to take precedence over prior appropriation, state, intimating that it would require an unwarranted constitutional change to allow such a maneuver: Smith and Ellsworth, 'Public Trust'.

Megdal, Nadeau and Tom, 'The Forgotten Sector.'

⁴⁰² Prior appropriation was initially codified in the 1863 Arizona Territory Bill of Rights, adopted in 1875 and adapted in the first draft of the State constitution in 1891, where Article 18 elaborated upon the suggestion that there were to be no riparian rights or common law within the state, but water rights would be subject to the prior appropriation and beneficial use doctrines. It was later written into the formal State constitution. Arizona Enabling Act, 'Chapter 310: Enabling Act for Arizona and New Mexico (sections 19-35),' (June 20, 1910), 568-579, accessed 23 July 2018. <https://land.az.gov>. Article 17.

In 1919 the Arizona Water Code added more requirements and restrictions to the understanding of water in Arizona. It was only in the 1930's that Arizona recognised riparian rights: Williams, 'Land Code,' 86. O. C. Williams, 'Land Code of the State of Arizona including Federal Land Grants and State Laws Appertaining to State Lands and Water,' *Arizona State Land Department*, Arizona Historical Society: 333.3 A7191 1943

⁴⁰³ Ganoe, 'The Desert Land Act'

Smith and Ellsworth, 'Public Trust,' 19-21.

Colonel Sykes who secured lands in and around the Santa Cruz River.⁴⁰⁴ Other wealthy landowners had the wherewithal to negotiate access to water sources and also apply to financiers to fund their irrigation projects; smaller landowners could not. Smaller applicants were risky ventures to financiers, so their only recourse was to collaborate with others to collectively gain access across private land and establish themselves as a water and drainage company to build drainage and irrigation systems. Many investors were hesitant to provide funding for smaller desert entries because the landowners might fail before they received full title, and the lands would revert back into the public domain cache. Therefore, any investment would be lost, and the government could re-sell the land as 'improved' thus garnering a higher price for it. To mitigate this issue, it is now encouraged to improve just a section of land first, so the owner can illustrate successful, but limited, improvements as required by the act.⁴⁰⁵⁴⁰⁶ The rush to gain legal rights to the grant properties and the consolidation of property which ensued after the use of underhand techniques such as using dummy entrymen and acquisition of failed homesteads enabled larger property holders to fully exploit the resources on their property. This was not often challenged by the General Surveyor's Office, charged with administering such lands, because the underlying current in all land and water policies during the nineteenth century was to encourage productivity in remote areas, regardless of who managed it.⁴⁰⁷ For the indigenous

⁴⁰⁴ Elias documents, University of Arizona Library Special Collections, Tucson, Arizona: AZ 232
Alma Ready, *Calabasas: A True Story* (Nogales AZ: Alto Press, 1976).

⁴⁰⁵ United States Bureau of Land Management, 'Desert Land Entries: What is Desert Land?' Accessed 13 Sept 2018, www.blm.gov.

Desert Land Act.

Ganoe, 'The Desert Land Act,' 146.

⁴⁰⁶ Ganoe (1937) uses a report by the Governor of Arizona in the Department of the Interior's Annual Report for 1887, where it states that Arizona Territory had 400 miles of irrigation canals providing water for 200,000 acres of land which cost over one million dollars to construct. The report points out that the irrigation canals were mainly implemented by stock companies created by Desert Land Act landowners: Ganoe, 'The Desert Land Act,' 146.

Robert E. Ladd, 'Vengeance at the O.K. Corral'. *Arizoniana*, 4 no. 2 (1963).

Smith and Ellsworth, 'Public Trust,' 21-22.

⁴⁰⁷ Weaver, *The Great Land Rush*, 61-62.

populations, this meant a further set back in claiming their traditional territory as much of it became private land in the hands of large-scale landowners. It was only later, in the twentieth century, that the Tohono O’odham were able to consolidate their piecemeal reservation wrapped around private ranches, into one larger one as policies and legislation became more favourable to indigenous claims. Four land parcels were removed from Tohono O’odham traditional lands because of ‘private’ ownership – the ‘6-mile strip’ consisting of 475,000 acres which was removed in 1916 and returned in the 1930’s. Quitobaquito Spring and Lukeville international border crossing became the Organ Pipe Cactus National Monument in 1937, and the Cabeza Prieta National Wildlife Refuge and the area now known as Barry M. Goldwater Air Force Range were created out of traditional O’odham lands and their original reservation of 1917.⁴⁰⁸

The Desert Land Act was originally legislated for the agricultural settlement and development of specific arid regions by the Jeffersonian farmer, but this was not often the type of person who took advantage of it.⁴⁰⁹ However, some enterprising entrymen were able to legally use multiple land settlement acts to increase their property, often becoming successful in ranching ventures. A person could, feasibly, claim land under the 1841 Pre-emption Act, the 1862 Homestead Act, the 1873 Timber-Culture Act, as well as the 1877 Desert Land Act, if they so desired, in fact some territories advertised this advantage.⁴¹⁰ By doing so, the entryman could acquire up to

⁴⁰⁸ Oblasser ‘Records and writings’

‘History,’ Cabeza Prieta National Wildlife Refuge, accessed 10 Jan 2020, <https://cabezaprieta.org>.

The Papago Tribe, *Tohono O’odham: History of the Desert People*, (Salt Lake City UT: University of Utah Printing Services, 1985).

Lawrence F. Van Horn, ‘Dos Lomitas Ranch Historic Nomination,’ *National Register of Historic Places*, (Department of the Interior, National Park Service, 1994).

Erikson, *Sharing the Desert*, 58, 107).

⁴⁰⁹ Worster (1985) also points out that this was the premise of the Reclamation Acts of 1902 and 1904, but that the smaller farmer and homesteader was often pushed aside by larger concerns: Worster, *Rivers of Empire*, 173-174.

⁴¹⁰ Ganoë, ‘The Desert Land Act’

Lisi Krall, ‘U.S. Land Policy and the Commodification of Arid Land (1862-1920)’. *Journal of Economic Issues*, 35 no. 3, (Sept 2001): 657-674.

1,790 acres as a single male, and if married, they could add an additional 640 for their wife under the Desert Land Act of 1877. By encouraging the small homesteader these acts also expanded the tax-base of the territory and increase the eligible voting population, thus expanding the ‘democratic’ base of the territory for future statehood.⁴¹¹

In 1891 the 1877 Desert Land Act was amended by the 1891 Desert Land Act, which was part of the 1891 General Land Revisions Act, to correct some of the abuses which had occurred from the first act. Unfortunately, while the first act was designed to encourage private individuals to develop the marginal areas, the later amendments favoured later enterprises, but overall was successful enough to remain as active legislation to this day. The 1891 amendments tightened regulations on how an entryman could apply for a claim, with some provisions limiting the parcel size and who was eligible.⁴¹² It also required approval to be given for professionally made irrigation plans only, designed to negate hastily developed and impractical plans by unqualified applicants, thus guaranteeing property improvement. Additional payments were required to secure the continuance of improvements, which also had to be backed by an annually produced spreadsheet of expenditure proving an annual \$3 per acre outlay on irrigation projects, which also discouraged application by many smaller homesteaders.⁴¹³ Citizenship requirements were enforced to prevent foreign investors and absentee landowners, which were the antithesis of expanding the voting population, and to cull fraudulent entries.⁴¹⁴ It also repealed the

⁴¹¹ Paul W. Gates, ‘An Overview of American Land Policy.’ *Agricultural History*, 50 no. 1 (1976): 219-229. Adam Dahl, ‘Empire of the People: The ideology of Democratic Empire in the Antebellum United States,’ (PhD Diss., University of Minnesota, 2014), 87.

⁴¹² Landstrom, ‘Reclamation,’ 500-501.

⁴¹³ Forty-third Congress, Desert Land Act Amendment 1891 (part of General Land Revision Act, 1891, also called the Carey Act) – ‘Chapter 14: Grants of Desert Lands to States for Reclamation,’ (March 3, 1891), accessed 30 July 2021, <https://uscode.house.gov>, Section 321.

⁴¹⁴ Ganoe, ‘The Desert Land Act’

Preemption Act of 1841, as well as the Timber and Culture Act, thus eliminating prior appropriation claims and the accumulation of large properties under separate act.⁴¹⁵

Land with water began to grow in value as the scarcity of water and the land settlement legislation resulted in large swaths of land being owned by large scale enterprises, to the detriment of the Jeffersonian ideal and the indigenous people who became increasingly marginalised. Land with water became commodified as a marketable product as the century progressed, and by the end of the nineteenth century the Jeffersonian ideal became impracticable in many arid areas, and industrial companies and big businesses supplanted the smaller farmer and homesteader. This, coupled with the unsuitability of the arid lands for anything other than stock raising, has also meant a suppression of smaller enterprises, especially as the ranchers were able to take advantage of greater financial investments for irrigation and the use of overplus as grazing lands.⁴¹⁶ Lisi Krall in her discussion about the commodification of arid land, explains that the failure of the land acts to promote the Jeffersonian ideal was not because of the corporations, big business and politicians ‘stealing’ the land from the homesteader, but because the agrarian dream was not fulfilled, and could not be fulfilled, in the arid lands of the west.⁴¹⁷ The ideal homestead of 160 acres, which could sustain a small family on the east coast, was not translatable or adaptable in the southwest where water sources were few and far between and the yields per acre were less. This, coupled with the innate difficulties of getting produce to market and the impracticality of successfully cultivating 640 acres by a single family, meant that the Desert Land Act was doomed from the start.

⁴¹⁵ U.S. Bureau of Land Management, ‘Desert Land Entries’

⁴¹⁶ Ganoe, ‘The Desert Land Act’

⁴¹⁷ Krall, ‘U.S. Land Policy.’

Moreover, many pieces of land legislation were interpreted by the local population for their own purposes and in conjunction with existing local and common laws, which has resulted in challenges in court to clarify jurisdictions. Large landowning ranchers have also used their assets to control political decisions in the region, including those concerning environmental or ecological issues arising from confusion over the Public Trust Doctrine, riparian rights and prior appropriation water rights, particularly on property claimed prior to 1866, which permitted riparian rights on Spanish and Mexican grant claims. If, however, public challenges are deemed valid, the federal government can mandate the removal of water rights, control and water allocation jurisdiction from private landowners, in the interest of protecting the resource from misuse.⁴¹⁸ The Public Trust Doctrine also permitted large-scale water reclamation schemes, elicited by the governing bodies from private and public lands through the Reclamation Acts of 1902 and 1906. The first permitted private enterprise to apply for grant monies to build Federal water reclamation reservoirs and dams out of public domain, the second permitted states and territories to do so. This resulted in drastic changes to the southern Arizona landscape by creating large reservoirs, damming rivers, and more recently permitting the controversial Central Arizona Project to be built; all of which were designed to harness, control and direct water to industry across Arizona.⁴¹⁹ The main idea for these acts was to remove the burden of larger reclamation projects from individuals into the hands of corporations or state governments as trust funded projects. It was anticipated that up to 35,000,000 acres of land was expected to be

⁴¹⁸ Smith and Ellsworth, 'Public Trust,' 21-22.

⁴¹⁹ The Central Arizona Project, CAP, is controversial because not only it is solely for commercial purposes and is taken from the ever-decreasing water from the Colorado River, but the rate of absorption along its journey across the state, compared with its cost, is causing some consternation for environmentalists: Arizona Conservation Service, 'Arizona's Rivers and Water'.

'Arizona's Rivers and Water,' Arizona Conservation Service, last modified 2021, <http://azconservation.org>.

reclaimed by these projects, and the states would gain from the sale of these irrigated lands.⁴²⁰ Unfortunately for Desert Land entries, if their land was irrigated by water from the reclamation project before completion of their application, their Desert Land application would be deemed null and void, and they would have to relinquish all their land, except 160 acres of it, back into public domain.⁴²¹ If the entryman was able to prove that the land was privately irrigated before the reclamation, they could keep their property; once again the burden of proof fell onto the private individual citizen. These acts also illustrated government commitment to establishing an additional way to extract further resources from the land, and in the long run, put a strain on the water resources of the region. Thus, the impact on southern Arizona, is, therefore, great as the legislation has permitted the extraction industries to enlarge and absorb significant amounts of water. This, in turn, has resulted in changes to the environment and impacted the indigenous way of life.

⁴²⁰ The Secretary of the Interior was also permitted to divide 160 acres of reclaimed land into 10-acre parcels to establish townsites, according to the provisions of the Townsite Act of 1844.

Townsites Act 1844 – ‘Chapter 17: An Act for the relief of citizens of towns upon the lands of the United States under certain circumstances, (May 23, 1844), accessed 8 December 2020, <http://minnesotallegalhistoryproject.org>. Reclamation Act 1902 – ‘Chapter 1093: An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands,’ (June 17, 1902), accessed 9 April 2020, www.loc.gov.

⁴²¹ Fifty-ninth Congress, Reclamation Act 1906 – ‘Chapter 3559: An Act Providing for the subdivision of lands entered under the reclamation Act, and for other purposes,’ (June 27, 1906), 519-52, accessed 9 April 2020, www.loc.gov, Section 5.

Image 5.6



Central Arizona Project⁴²²

During the nineteenth century the indigenous populations of southern Arizona lost much of their water rights in their own territories, although they did eventually gain some water rights under the 1908 Reserved Rights Doctrine, providing they had officially recognized reservations.⁴²³ When the region was ceded to the United States, the United States claimed sovereign right to the land, and implemented the Public Trust Doctrine over it.⁴²⁴ The only way in which indigenous people could gain exclusive access to water before 1908 was either via a treaty or by the establishment of a reservation with water access. After 1908 the Reserved Rights Doctrine permitted water rights to be secured for reservation use, in which they allocated a certain amount

⁴²² Arizona Chamber Foundation, 2005. *Water in Arizona: Our Past, Present and Future*. Arizona Chamber Foundation, 5.

⁴²³ Megdal, Nadeau and Tom, 'The Forgotten Sector,' 252-253.

⁴²⁴ Northwest Ordinance – 'An Ordinance for the government of the Territory of the United States northwest of the River Ohio,' July 13, 1787), accessed 25 Jul 2018, <http://avalon.law.yale.edu>. Constitution of the United States,' (September 17, 1787), accessed 2 August 2018, www.archives.com, Article IV Section 3.

of acre-feet of water per year dating from the time that their reservation was established.⁴²⁵

Unfortunately, this has also meant decades of litigation for indigenous groups in Arizona between competing interests over water, including some between the San Xavier del Bac tribes and Tucson City Council for rights to water from the Santa Cruz River and its tributaries.⁴²⁶ One of the dilemmas encountered by the indigenous people in the Southwest is that while they traditionally conserve water, and fought for rights to the water while adapting to European agricultural ways, they have now found that it is more lucrative in some places to sell water back to the Anglo-Americans, further depleting this precious resource, which was the basis of their traditional life and diet.⁴²⁷

Ultimately, the lifestyles of the indigenous people were impacted by land developments and legislation which stymied their ability to access constant, and adequate water supplies. The O'odham were marginalized by the land claims and lost access to their main water sources from the Santa Cruz River, and were restricted to reservation water on the small San Xavier Reservation from the 1870's onwards. They were marginalized by society because they were not recognised as a tribe, did not profit from a treaty and, furthermore, did not receive a sustainable reservation officially until 1917. Therefore, they were only able to gain water for traditional lifestyles by retreating further into the desert, or by relinquishing their traditional ways and taking up wage labour which introduced them to the Anglo-American economy, lifestyles and

⁴²⁵ The measurement of acre-feet is to indicate the volume of water it takes to cover one acre to the depth of one foot. This is an equivalent of 43,560 cubic feet or 325, 851 U.S. gallons of water as specified by the Arizona Water Division of the Land State Department in 1943: Williams, 'Land Code,' 86. Arizona Chamber Foundation, *Water in Arizona*.

⁴²⁶ Acknowledgement that the Santa Cruz aquifer, which is located under the reservation, was becoming depleted from the growth and use of water in nearby Tucson, between the 1940's and the 1970's, so much that the O'odham were unable to extract adequate water for their own agriculture. The United States sued the city on behalf of the O'odham in 1975 and the suit was settled in 1982: The Papago Tribe, *Tohono O'odham* Jennings, 'Together, We Will Succeed,' 10-11.

⁴²⁷ Weingarten, 'The Desert Blooms'

foodstuffs.⁴²⁸ The result of these enforced choices drastically changed their diets and economy, effecting the health and culture of the traditional desert peoples.

Chiricahua Apache mobile lifestyles were also disrupted because of the accumulation and exploitation of range lands by business ranchers, particularly after the passage of the Desert Land Act, which increased property sizes and production.⁴²⁹ This Act allowed for more of the Chiricahua Apache traditional territory to be claimed by Anglo-Americans, who were prestigiously careful in defending their stock as well as their rights to water against any Apache interference. The Chiricahua Apache continued their residence on their traditional northern territory until forcibly removed by the United States because they demonstrated their grievances against Anglo-American encroaching which resulted in the Apache Wars and subsequent banishment from Arizona.

Water, by the turn of the twentieth century in southern Arizona, had lost its status as a life-source and had become a commercial product of the United States' industrialization, with an intrinsic economic value. Also, as periods of draught illustrate, the wealth of the region was, and still is, measured by the amount of water available for commercial productivity.⁴³⁰ The commodification of water was further fueled by the engineering and development of the larger

⁴²⁸ Peter Blaine, *Papagos and Politics; as told to Michael S. Adams*, (Tucson, AZ: The Arizona Historical Society, 1981).

Winston P. Erikson, *Sharing the Desert: The Tohono O'odham in History*, (Tucson AZ: University of Arizona Press, 1994), 96-99.

⁴²⁹ Even Bandelier in 1892 noticed the environmental effects of overuse of the water courses in southern Arizona, stating that the San Pedro River was muddied from mining tailings from the smelting and stamping mills of Charleston and Grand Central located on the *San Juan de los Boquillas y Nogales* Mexican grant lands (475).

⁴³⁰ Burke, *A Land Apart*, 290.

reclamation and reservoir projects which were supported by the Bureau of Reclamation formed in 1902.⁴³¹

Donald Worster, in his book *Rivers of Empire: Water, Aridity, and the Growth of the American West*, discusses how the capitalism of the United States were devastating for arid regions because they used technology to harness water for commercial development. He explains that the development of the 'hydraulic society' was imperialistic and expansionist in the way water was harnessed to control arid lands which were underpopulated by the United States.⁴³² Worster, in 1985, remarked that an understanding of the power of the needs of the hydraulic society had not been adequately accounted for in scholarly discussions about water and the western states.

Flannery Burke however, brings the topic up to date when he discusses developments such as environment degradation and the impact hydraulic technology has on indigenous populations and their life and cultural experiences by a society which is focused on the exploitation of water sources, and can still be seen as imperialistic capitalism.⁴³³

Water was at the core of Anglo-American development in southern Arizona during the nineteenth century, as Anglo-Americans discovered as they travelled through going from one 'oasis' to another on their way to California. As they traversed the region, they also discovered many of the resources the region had the potential to economically viable, particularly in minerals and meadowlands; however, the harnessing of water resources was an important initial

⁴³¹ The water reclamation projects which were implemented in the state included damming the Salt River near Phoenix and creating the Theodore Roosevelt Lake Reservoir out of the San Carlos Apache Reservation lands in 1911 (*Arizona Water*, 'History of Water Management.').

⁴³² The idea of 'hydraulic society' was initially eluded to by Karl Wittfogel, a member of the Frankfurt School, during the early twentieth century, and Flannery Burke (2017) uses Wittfogel and Worster in his understanding of hydraulic society as one which develops "on the profits of irrigated agriculture" (Burke, *A Land Apart*, 271). Worster, *Rivers of Empire*, 22-30.

⁴³³ Burke, *A Land Apart*, 271.

step. These discoveries were to change the lives of the indigenous people who were living there as well as disrupting the balance in the natural environment. As legislation opened southern Arizona to settlers, more Anglo-Americans infiltrated the region, and push for further settlement and statehood accelerated towards the end of the nineteenth century. This external pressure caused clashes between the indigenous populations, the Mexicans and the incoming Anglo-Americans. Many of these clashes involved resources, such as land, water and food, and were often resolved by development of, and referral to, expansionist land and water policies and legislation of the United States. Thus, as the region became more settled by Anglo-Americans, it became subject to the needs and wants of this 'majority' population, and those without voice were unable to negotiate the terms. Ultimately, the laws which supported these actions, and the extraction of the resources, particularly water, were implemented from the federal government regardless of prior indigenous management and were interpreted locally according to the incoming Anglo-American needs and wants. The results were devastating to the natural ecosystems and environment of southern Arizona.

PLATES

Plate 5.1



‘Furrow irrigation on Mr. A.B. Fowler's Ranch, 1911.’

Bureau of Reclamation Photograph, accessed 4 August 2019 , <https://www.usbr.gov>

Plate 5.2



‘Desert homestead along the Eastern Canal three miles east of Mesa, 1910.’

Bureau of Reclamation Photograph, accessed 4 August 2019 , <https://www.usbr.gov>

Plate 5.3



Coolidge Dam, Salt River, San Carlos Reservoir

Plate 5.4



San Carlos Reservoir

Plate 5.5



San Xavier Mission Reservation Cotton Fields

Plate 5.6



Squash at El Presidio Terrante, San Pedro River

Plate 5.7



Desert Plants

Plate 5.8



Desert Foods

Chapter Six

Trailways to California

Introduction

Southern Arizona is crisscrossed with many desert trailways which were the main communication routes for many who travelled through the region. Some of these routes have been made into modern highways, some are remnants from the mining boom towns, and some are still just packed ground leading the traveller into the heart of the desert or a mountain. These trailways were the means with which the Europeans penetrated the region, and as such, were the primary avenue through which connections with the indigenous people were made. They were also the vehicle by which the waters sources were reduced, and the extraction industries were able to gain a foothold in the region. Some trailways were more important than others because of the resources located along the route, and these became a bone of contention between the indigenous people and incoming Europeans, which escalated significantly during the late nineteenth century. The significance of these trailways for the indigenous people was that they provided the arteries through which the Anglo-Americans could superimpose their cultural values onto the indigenous people, while also representing the means through which the indigenous landscape could be divided and manipulated. The importance of these trailways is that they were a means of forwarding the capitalist, expansionist and hegemonic ideals of the United States, while marginalising the original inhabitants of the region.

The original trailways were networks established by the indigenous people of the southwest and were used for trade and communication between different families and groups of inhabitants.

The Europeans naturally also used these networks for their own travels across the region, but by

the time of Mexican control, the indigenous people were increasingly confronted with the overuse and exploitation of these appropriated networks and the resources along them. By the middle of the nineteenth century the migration of Anglo-Americans across the region, which had increased since the Mexican American war because of the gold booms in California and Colorado, meant that greater intrusion and greater damage was becoming noticeable along these routes. The Anglo-Americans also developed watering-points along the way which turned the trailways into established wagon roads, and later, railroads. This development further encouraged exploration of the region which unearthed the commercial potential of the region to support the growing industrial capital needs of the United States.

The trailways which run across southern Arizona have been used for centuries by both the indigenous population and incoming European settlers. Many of these trailways feature important water sources, allowing for natural stopovers at these replenishing points along the way. It is no coincidence that these trailways also furnished an avenue through which the European travellers and settlers were able to penetrate the region using these as portals into and through the desert. Establishing secure passageways through newly attained region was important to secure control and to encourage immigration, which would eventually lead to settlement and further control over the region for the new sovereign nation. This was a feature of the Spanish missionary line from the Santa Cruz River to the Gila River, allowing the Spanish to exert some authority over the indigenous population in southern Arizona, and it was a feature which would reoccur during the Anglo-American territorial period from the time of purchase to statehood. The trailways, especially the wagon roads and railroads established by the Anglo-Americans, were supported by official government backing which consisted of favourable legislation, grants, government surveys and various incentives to provide trailways and

passageways across the territory, culminating in the modern tarmac network for automobile traffic. This official encouragement also established cycles of transportation development, immigration, further transportation development, as well as the exploitation and depletion of resources, in turn, leading to greater development of extraction technology to be used in the region. This proved to be extremely detrimental to the balance of the climate and provision within the region.

As railways opened the region for settlement, the industries which supported settlement also increased thus putting further strain on the natural resources of the region, including water and indigenous flora and fauna. As more industries developed, additional networks were encouraged by the government, which provided further incentives for new migrants to enter the region, however, this also increased clashes between the Anglo-American settlers and the indigenous populations already living and surviving in the region. The army, then, became an important asset in the Anglo-American development of the region, and as such, was pivotal in the way in which the indigenous population were handled and the direction of early Anglo-American enterprises. The army not only provided armed protection for the transportation links across the region, but also security for the early Anglo-American settlers against any hostility, as well as needing provisions from the region themselves. Official and unofficial reports from the region also illustrated that the authorities perceived the indigenous populations as obstacles to development, in part because they were often located on land considered as a prime commodity with a market value which would increase as 'improvements' were implemented to develop further commercial potential. Thus, the antagonisms that increased between the Anglo-American residents and the indigenous populations, encouraged greater government support for Anglo-American activities, and gave incentive to many policies such as securing preemption

rights for the Anglo-Americans and the establishment of the enforced reservation system for the indigenous people.

The time period between 1854 and 1885 illustrates the way in which southern Arizona went from an obscure region with a network of desert trails to a region which hosted a section of the coast-to-coast transcontinental rail network, and commercially viable extraction industries, in just a matter of 30 years. The development of established wagon and postal routes, a network of communication lines between towns and military posts, and by 1880, the first major rail route all attest to the rapid infiltration and settlement of Anglo-Americans backed by the belief in the sovereign rights of the government to claim this ‘empty’ region for the citizens of the country to develop commercially viable enterprises out of the limited resources it provided. By using the citizens to provide these networks and allowing the wealthy commercial sectors to manage these routes, the United States was able to quickly infiltrate the area and establish a concrete foothold on it while superimposing Anglo-American cultural ideals over the existing indigenous and Mexican values. The trailways and railroads were also instrumental in ‘removing’ the indigenous populations from land deemed valuable by the Anglo-Americans.

Early territorial trailways

Southern Arizona has two major arteries which traverse the region; the east- to west- corridor represented in the present day by Interstate 10 and the Southern Pacific Railroad line, and one north- to south- route which travels along the Santa Cruz River valley, now Interstate 19.⁴³⁴

Other lesser routes are also predominantly north-to-south routes, mainly travelling from Interstate 10 to towns on the United States-Mexican border. The remainder of the minor, and

⁴³⁴ Interstate 19 is also the only Interstate in the United States to be measured in kilometers rather than miles; it goes between Nogales, on the border with Mexico, and Tucson to the north.

often unpaved, US routes represent the expansion and contraction of the mining and ranching industries of the late nineteenth century, others also travel across the Tohono O'odham reservation to the west. A combination of physical and environmental conditions such as deserts, mountains, canyons and arroyos, coupled with the hot desert sun and the needs of the extraction industries have shaped the modern passageways of the present day.

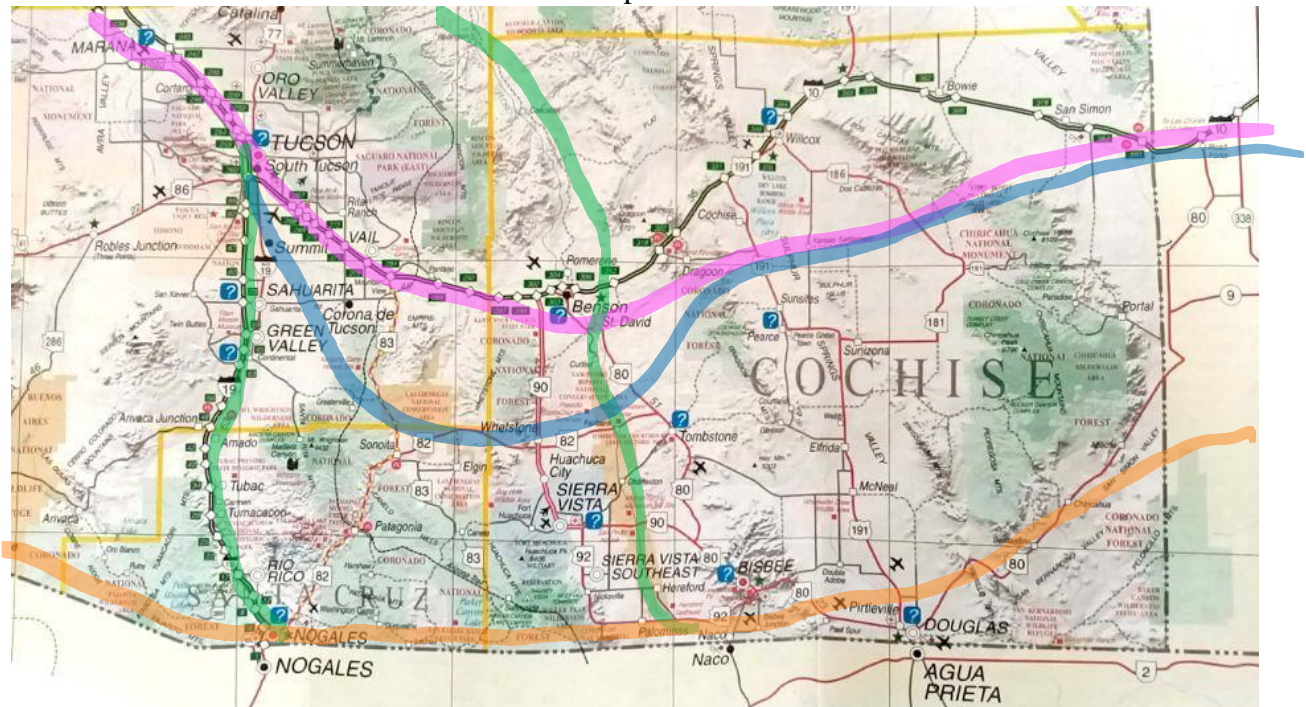
These routes were the results of centuries of trial and error by those who traversed across this arid region. Much of impetus of these routes was trade, dating from the pre-Columbian times when the O'odham people collected sea salt from the Sea of Cortez for trade with other groups in Arizona.⁴³⁵ Later, during the Spanish era, they were used for the missions and missionary work, including for pilgrimages to religious sites, and during the middle of the nineteenth century by the United States for early military needs and migration to and from the gold fields of California.⁴³⁶ These routes followed water sources, and many still adhere to the courses of rivers and other water sources that were well established by the nineteenth century, and which were used and mapped by the early surveyors from the United States on their missions to establish trailways across the region.

⁴³⁵ Winston Erikson, *Sharing the Desert: The Tohono O'odham in History*, (Tucson, AZ: University of Arizona Press, 1994), 15-18.

Thomas E. Sheridan, *Arizona: A History*, (Tucson AZ: University of Arizona Press, 2012), 41.

⁴³⁶ Edward H. Spicer, *Cycles of Conquest: The Impact of Spain, Mexico and the United States on the Indians of the Southwest, 1533-1960*, (Tucson AZ: University of Arizona Press, 1962), 132-133.

Map 6.1



Possible trails used by the Anglo-Americans⁴³⁷

People from the United States were introduced to the region during the Mexican American War of 1846-1848, when the army moved through the region on their way to California to fight with the Mexicans over territory. Prior to the Mexican American War most Anglo-Americans who knew the region were trappers or tradespeople who used or traversed the region for business. The early guides for the United States army were the indigenous O'odham people who knew these desert trailways well, and Anglo-American beaver hunters, frontiersmen and even scalp bounty hunters, who often moved between Texas, Sonora and Baja California on their business.⁴³⁸ It was this introduction to the region that illustrated to the United States its potential as a permanent southern route to California, especially after the impetus of the California gold

⁴³⁷ Arizona Office of Tourism 2013 Phoenix AZ www.arizonaguide.com.

⁴³⁸ Pat H. Stein, *Historic Trails in Arizona from Coronado to 1940*, (State Historic Preservation Office, Arizona, 1974), 8-12.

Donald E. Worcester, *The Apaches; Eagles of the Southwest* (Norman, OK: University of Oklahoma Press, 1979), 60.

rush in 1849. Most travellers and surveyors across the region initially used one of two main east-to-west corridors: the *El Camino del Diablo* route and the Gila or Southern Emigrant Route. The lower and most southern of these routes, *El Camino del Diablo*, ran from points in the south-east, along the current international border with Mexico and across the Sonoran Desert between Yuma and the Santa Cruz valley, using *tinajas*, water collection points, along the way. Part of this route is now commemorated by the United States, although much of it is predominantly on either Tohono O'odham Reservation land or curved out of the reservation and is now designated a protected highway on Federal Trust land.⁴³⁹ The upper southern Arizonan route, the Southern Emigrant Route, was one which incorporated several passages from the border of New Mexico and used either the Santa Cruz River or the San Pedro River to move the traveller north to the Gila River, using a series of watered mountain passes across the sky islands and flat plains. A significant part of this route now consists of Interstates 10 and 8, which join New Mexico with southern California. Therefore, the region was purchased in 1853 from Mexico as a United States territorial passage from New Mexico to California by the Gadsden Purchase Treaty 1853. Immediately after purchase, a group of surveyors were sent out to map the region for a potential transcontinental railroad link, thus beginning the establishment of a secured United States presence in southern Arizona.⁴⁴⁰

El Camino del Diablo – International boundary route

The O'odham people used this southern route, the 'Devils Road', across the Sonoran Desert when they moved from summer to winter camps, and also the Hia C'ed O'odham used these as

⁴³⁹ 'Organ Pipe Cactus National Monument,' *United States National Park Service*, accessed 18 July 2018. www.nps.gov.

⁴⁴⁰ Forrest Proper, *Description and illustrations of the Pacific Railroad Survey Reports*, (Sacramento, California: Central Pacific Railroad Museum, 2014) <http://www.cprr.org>

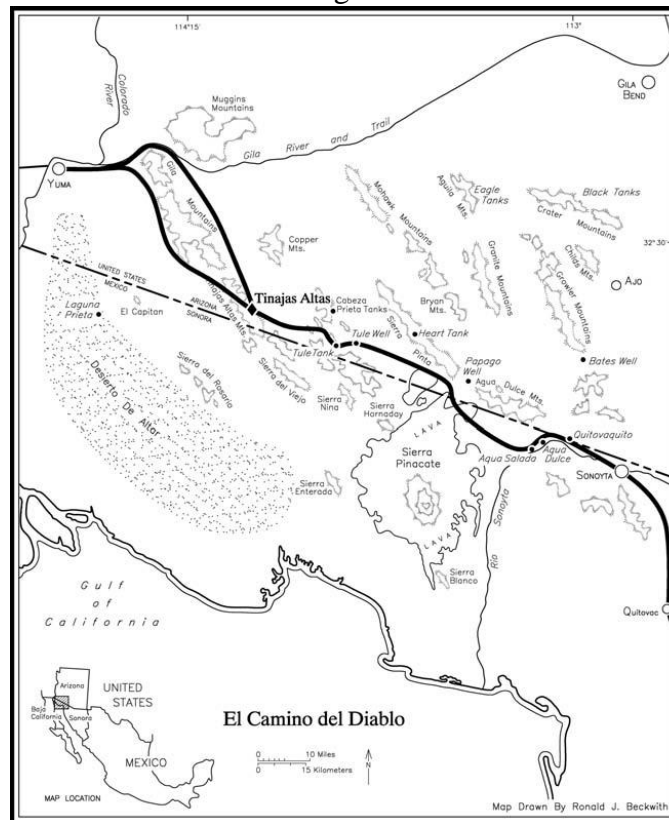
trade routes when they brought salt from the Sea of Cortez into the region.⁴⁴¹ They travelled between natural water collection points, or basins, called *tinajas*, where they collected water in hollowed out gourds called *ollas* to continue their journey to the next watering point.⁴⁴² The *tinajas* could be seasonal or permanent, and varied from year to year as to how much water they could yield. In the early years of Spanish settlement in the region, the Spanish missionaries often used the Camino del Diablo to connect their northern Sonoran missions with their headquarters at Sonoyta along the route.⁴⁴³ They also used it to travel to California via Yuma, an army garrison for both the Spanish army and later for Mexico and the United States. This was a convenient route for the Spanish because it provided a shorter journey to the west, as well as a relatively safe one. An alternative route was to use the Santa Cruz River north through Tucson to the confluence with the Gila River, however, while this provided greater water resources and less need for indigenous guidance, it was hazardous as it traversed through active Apache country.

⁴⁴¹ Gayle Harrison Hartmann, Mary Charlotte Thurtle and Gary Paul Nabhan, 'Native Peoples of the Tinajas Altas Region: Prehistory to Present,' in *Last Water on the Devil's Highway: A Cultural and Natural History of the Tinajas Altas*, edited by Bill Broyles, (Tucson AZ: University of Arizona Press, 2014) 43-70.

⁴⁴² Hartmann, Thurtle and Nabhan 'Native Peoples,' 53.

⁴⁴³ Deni Seymour, 'The Sobaipuri-O'odham Presence at Guevavi Mission, *Archaeology Advisory Commission Newsletter*, (2013): 7-15.

Image 6.1



Showing *El Camino del Diablo* across the current international border along the Tohono O'odham Nation Reservation⁴⁴⁴

Early Anglo-American explorers, hunters and bounty hunters also used this route from their launch points in Sonora, Mexico or from New Mexico and Texas, and as such became interested in the small mining operations started by both the missionaries, using O'odham labour, and early Mexican settlers who encroached upon O'odham land.⁴⁴⁵ Most of the early incursions onto O'odham territory were not resented by the indigenous people, they often provided guides to help the Europeans through the desert. Continued settlement by the Mexicans after 1820, however, caused a rift between the settlers and the O'odham which was only partially healed

⁴⁴⁴ *Last Water on the Devil's Highway*, edited by Bill Broyles, 4.

⁴⁴⁵ Spicer, *Cycles of Conquest*, 134-135.

Donald E. Worcester, *The Apaches, Eagles of the Southwest*, (Norman, OK: University of Oklahoma Press, 1979), 38.

during the later Apache attacks on their land.⁴⁴⁶ It was because of this rift that the O'odham did not hinder the Anglo-Americans in their capture and purchase of Mexican territory during the 1840's and 1850's. However, as a consequence of this allegiance, Spicer points out that this was rewarded by making them ineligible to broker a peace treaty with the United States which had some serious consequences for land ownership by the O'odham later.⁴⁴⁷

This route was one of the favoured routes for both the United States army during the Mexican American War of 1846-48 to move soldiers from New Mexico to California, and later for miners travelling to the California Gold Rush after 1849, despite the land being under Mexican jurisdiction. However, because of this knowledge, and reports by soldiers and prospectors of potential mining possibilities in O'odham territory in this region, it became a choice region to not only be considered for the transcontinental railroad route, but, also to harness the potential resource income that the region might produce for the United States.⁴⁴⁸ To this end, it is understandable that the Gadsden Purchase in 1853 should use the route as a partial boundary line between the two countries, garnering a majority of the potential mining district north of the line and in United States territory.

Although this route was fairly unpopular because of the harsh environment, thousands of Anglo-American migrants travelled along it to the potential riches of California. However, many of these travellers were unused to the harsh environment and the realities of desert travel and succumbed to the conditions the route presented. Unfortunately, the increased through traffic also depleted the already limited water supplies in the *tinajas* and increasing numbers of travellers were caught without water causing pack animals and themselves to die from thirst. It

⁴⁴⁶ Spicer, *Cycles of Conquest*, 132-133.

⁴⁴⁷ Spicer, *Cycles of Conquest*, 136.

⁴⁴⁸ Spicer, *Cycles of Conquest*, 136-137.

has been estimated that between 400 to 2000 travellers lost their lives along *El Camino del Diablo* between the late 1840s and the Civil War.⁴⁴⁹ After this time alternative routes became safer and much easier to travel along, and the Camino began to fall into decline. Interestingly part of *El Camino del Diablo* route which is now a commemorative trail which traverses along the southern boundary of the Cabeza Prieta Wilderness which was carved out of the Tohono O'odham traditional reservation lands in 1975 from a federally designated 'game range' which was established in 1939.⁴⁵⁰

Image 6.2



Showing an ancient Sonoran desert route⁴⁵¹

⁴⁴⁹ T. E. Sheridan and Bill Broyles 'First Europeans to Forty-niners, 1540-1854,' in *Last Water on the Devils Highway*, editor Bill Broyles, (Tucson: University of Arizona Press, 2014), 109

⁴⁵⁰ *United States National Park Service*, 'Organ Pipe Cactus National Monument.'

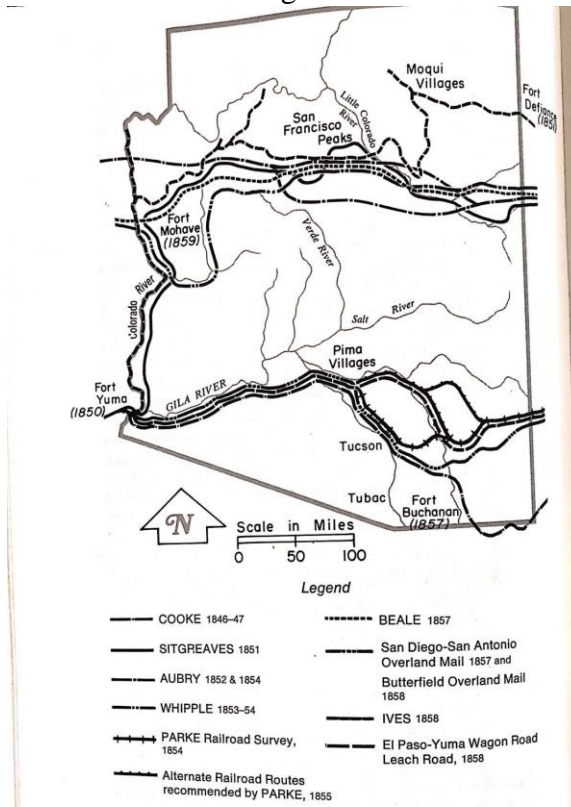
⁴⁵¹ *Last Water on the Devil's Highway*, editor Bill Broyles, (Tucson: University of Arizona Press, 2014), 65.

Image 6.3



Showing a *tinaja* or holding tank used extensively along the desert routes, for survival⁴⁵²

Image 6.4



Showing the routes used by many early Anglo-Americans⁴⁵³

⁴⁵² Broyles, *Last Water on the Devil's Highway*, 75.

⁴⁵³ Jay J. Wagoner, *Early Arizona: Prehistory to Civil War* (Tucson, AZ: University of Arizona Press, 1975), 275.

Establishing routes across southern Arizona became important for the Anglo-American growth of the region because they provided access to the mineral fields and grazing meadows for early incoming Anglo-Americans. They also helped to establish an assumption of ownership over indigenous land and sovereignty over the resources, while at the same time marginalising the indigenous populations by aggressive defense of their supposed property.⁴⁵⁴ By developing the wagon, and later railroads, from the early trailways, the United States could forward their commercial development of the precious minerals extracted from the region, such as gold and copper, as well as the beef from the grazing lands nearby. Unfortunately, these developments encroached upon the water resources of the region, which were fed by the brief winter snows and summer monsoon seasons only, so once gone they took another season or two to replenish. This encouraged the Anglo-American settlers to use technology to tap into the underground aquifers when other sources ran dry which, in turn, has had a detrimental effect upon the integrity of the ground and the ability to replenish water sources for indigenous plants, compounding the natural drought conditions experienced in the region.

Significance of the river routes

The Santa Cruz River valley was attractive to the early Spanish missionaries, who established their missions along the upper section of the river and used them as a base for further exploration and missionary work.⁴⁵⁵ The San Pedro River was believed to have been used by the early

⁴⁵⁴ Robert H. Forbes, *The Penningtons: Pioneers of Early Arizona, a Historical Sketch*, (Arizona Archaeological and Historical Society, 1919).

⁴⁵⁵ Deni Seymour, 'Sobaipuri-O'odham Sonoita Creek Spanish Colonial Period Villages Identified,' last modified 2015, www.seymourharlan.com
Fr. Bonaventure Oblasser, 'Records and writings from Fr. Bonaventure, 1905-1937,' (Tucson: Arizona Historical Society).

conquistadors as they searched for the famed villages of gold while exploring the continent.⁴⁵⁶

However, by the territorial era of Arizona, these river valleys were also used, and over-used, by the incoming Anglo-American settlers, and were the subject of many disagreements and legal maneuverings. In addition, the value of their water was instrumental in changing indigenous trajectories irrevocably.

El Camino del Diablo, along the current international border, was used extensively for a long time by east and west travellers across the region; but the increased traffic from Anglo-American travellers significantly depleted the already limited water sources, so that increasing numbers were caught without water, and succumbed to the harsh environment and realities of desert travel. Raphael Pumpelly, in his 1861 newspaper report of his experiences in southern Arizona provides a first-hand account of the realities of desert travel and how dangers came in many shapes and forms.⁴⁵⁷ It has been estimated that between 400 to 2000 travellers lost their lives along the route just between the 1850's and 1900. It was also the avenue through which some mines were established in the desert region between the Mexican border and the Gila River in O'odham territory.⁴⁵⁸ Therefore, although this route was relatively safe from attacks, it was eventually eclipsed by the greater use of the more dangerous, but watered, river routes linking Mexico and New Mexico with the Gila River and California. Although there were bandits along the route, it was deemed more secure than Apache territory to the east.⁴⁵⁹ Increased numbers of Anglo-American travellers along the rivers of the Santa Cruz and the San Pedro, exposed these

⁴⁵⁶ William K. Hartmann, *Searching for Golden Empires: Epic Cultural Collisions in Sixteenth-Century America*, (Tucson AZ: University of Arizona Press, 2014), 185-188.

⁴⁵⁷ Raphael Pumpelly, 'Affairs in Arizona: Terrible times in the territory experience in crossing the deserts.' *New York Times*, (1861), accessed 25 August 2021, <https://www.nytimes.com/1861/10/05/archives/affairs-in-arizona-terrible-times-in-the-territory-experience-in.html>.

⁴⁵⁸ Sheridan and Broyles 'First Europeans,' 109.

⁴⁵⁹ Sheridan and Broyles 'First Europeans,' 106-112.

richer more fertile valleys to the discovery of lucrative mineral veins, and later grazing lands, which led to greater Anglo-American settlement, use and exploitation of the area.

“We were sixty miles from any white settlement, one hundred from any doctor, and encamped under a tree in a Papago village, the thermometer 110 degrees in the shade. Mr. P_____ started with a guide to bring an ambulance from Arivacca [sic], while I remained with the sick man. P_____ and the guide both got lost. The latter was found, just on the point of death from thirst and hunger, four days afterwards, off in Sonora; and P_____, after two or three days' wandering, reached Arivacca [sic], also nearly dead, and learned that the Indians had stolen all his mules and horses, and had wounded three and killed one of his men. He could send no ambulance.”

Excerpt from the report by Raphael Pumpelly⁴⁶⁰

The Santa Cruz River: missionary corridor

The Santa Cruz River is divided into the lower and upper sections; the lower, or northern section, is sparsely populated as it is approximately 90 miles of desert from Tucson to its confluence with the Gila River.⁴⁶¹ However, the upper, or southern, section travels from its headwaters near the international border toward Tucson and contains the only section which travels above ground. The lower, north, section of the Santa Cruz River was often tough stage for historic travellers who watered at Tucson, where merchants provided the traveller with provisions to survive the journey.⁴⁶² Tucson itself was established as an O'odham village initially and, later, was absorbed

⁴⁶⁰ Raphael Pumpelly, 'Affairs in Arizona: Terrible times in the territory experience in crossing the deserts.' *New York Times*, (1861), accessed 25 August 2021 <https://www.nytimes.com/>.

⁴⁶¹ Waterman L Ormsby *The Butterfield Overland Mail, by Waterman L. Ormsby: Only Through Passenger on the First Westbound Stage* (San Marino, CA: The Huntington Library, [1858] 1955), 96.

J. Ross Browne, *Adventures in the Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*, (New York: Harper & Brothers Publishers 1869), 131-132.

⁴⁶² Patrick Hamilton, *The Resources of Arizona: Its mineral, Faring and grazing lands, towns and mining camps; its rivers, mountains, plains and mesas; with a brief summary of its Indian tribes, early history, ancient ruins, climate etc, etc. A Manual of Reliable Information Concerning the Territory* (San Francisco: AL Bancroft & Co. Printers, 1881), 44-45.

into the mission of San Agustín during the 1700's.⁴⁶³ This section was, and still is, significantly populated by both the indigenous Sonorans and the incoming Europeans because it provided a fertile watershed. Many Europeans established their *rancherías* along the upper section of the river, alongside many of the indigenous seasonal settlements, such as at Calabasas and Tubac. The banks of this river were used by O'odham to produce some cotton and squash crops, and, later, as grazing for European cattle.⁴⁶⁴ It is known as the 'missionary corridor' because it is the location of many of the Spanish Catholic missions and *haciendas* established by Father Kino in the 1690's, and who they were first to systematically remove this land from the O'odham.⁴⁶⁵ Although this was originally O'odham land, the Mexican government, after independence from Spain in 1821, claimed the missions and *rancherías* as public domain, and many properties were auctioned to private landowners or were given to chosen elite families as grants for their services to Mexico.⁴⁶⁶ When these grant lands were abandoned in the 1850's because of Apache agitation, the United States also claimed them as public domain, along with Anglo-American squatter, until ownership was proven through the legal processes of the late nineteenth century.⁴⁶⁷ Unfortunately, the due process of land title ownership meant that the United States

⁴⁶³ John G. Parke, *Report of Explorations for that Portion of Railway Route near the Thirty-second Parallel of Latitude, lying between Dona Ana, on the Rio Grande, and Pimas Villages on the Gila* (Washington: Government Printing Office, 1855).

Ormsby *The Butterfield Overland Mail*

Thomas E. Sheridan, *Los Tucsonenses: The Mexican Community in Tucson 1854-1941*, (Tucson, AZ: University of Arizona Press, 1992), 9.

⁴⁶⁴ Spicer, *Cycles of Conquest*, 129-133.

Jay J. Wagoner, *Early Arizona: Prehistory to Civil War* (Tucson, AZ: University of Arizona Press, 1975), Ch.6

⁴⁶⁵ Oblasser, 'Records and writings.'

Spicer, *Cycles of Conquest*, 118-129.

Thomas E. Sheridan, *Landscapes of Fraud: Mission Tumacacori, The Baca Float, and the Betrayal of the O'odham*, (Tucson AZ: University of Arizona Press, 2006), 26-28.

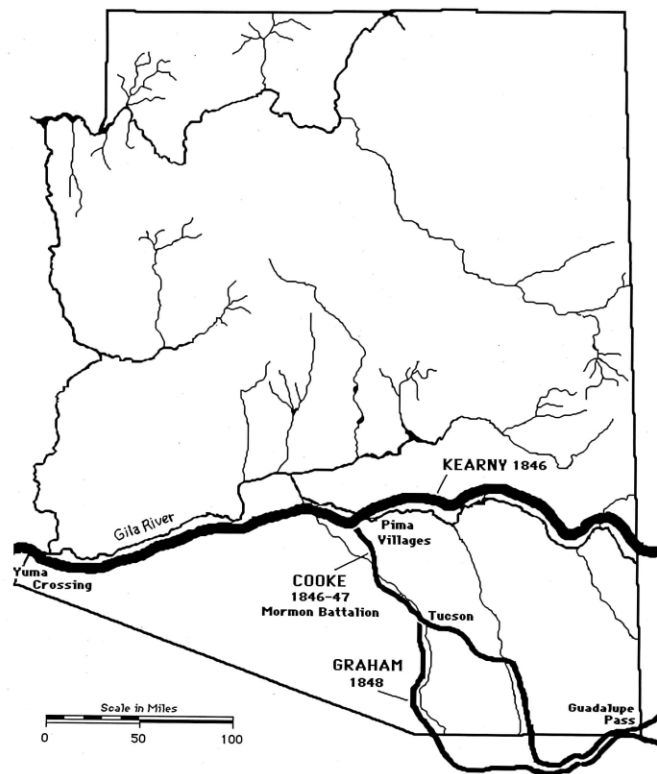
⁴⁶⁶ Sheridan, *Landscapes of Fraud*, 94-98.

⁴⁶⁷ Charles D. Poston, 'History of the Apaches, 1885'. (University of Arizona Special Collections: call number AZ 169).

Richard Wells Bradfute, *The Court of Private Land Claims: The adjudication of Spanish and Mexican Land Grant Titles, 1891-1904* (Albuquerque: University of New Mexico Press, 1975), 1-4.

was required only to go as far back as 1853, when they purchased the region, and the O’odham were not consulted as to whether they had a right to claim back their settlements and *haciendas* from the former mission lands and grantees. Indeed, in the case of the mission lands of Tumacacori, the O’odham had legal documentation claiming title to the mission and settlement lands but lost it to a Mexican official who wanted to borrow it and never returned it, selling it instead to a member of the Mexican Sonoran elite.⁴⁶⁸

Image 6.5



Routes of the Mexican War

From Walker and Bufkin 1986

Routes of the U.S. Military during Mexican American War⁴⁶⁹

⁴⁶⁸ Sheridan, *Landscapes of Fraud*, 100-102.

⁴⁶⁹ William S. Collins, Melanie Sturgeon & Robert Carriker *United States Military in Arizona, 1846-1945*, (Phoenix, AZ: Arizona State Historic Preservation Office, 1993), 9.

The Santa Cruz River missions also provided a watered north-south corridor for the Spanish, and later, Mexican and United States' armies to travel through the region. The Spanish established *presidios* or military posts, near the river, initially at Tubac and Tucson, as staging points to protect the settlers in the valley area.⁴⁷⁰ Tucson developed as an important watering hole before the 90-mile trek to the Gila River to the north.⁴⁷¹ This Santa Cruz River route was considered arduous, but despite the presence of potential Apache attacks, it was one of the more popular routes, especially for the Anglo-American traveller, because it did have stop-over and watering points near former fortified *presidios* and missions. Pete Kitchen was famous for saying “from Tucson, Tubac, Tumacacori and to hell”, a vivid description of the old missionary route along the Santa Cruz River.⁴⁷²

⁴⁷⁰ William S. Collins, Melanie Sturgeon & Robert Carriker *United States Military in Arizona, 1846-1945*, (Phoenix, AZ: Arizona State Historic Preservation Office, 1993), 8-12.

Sheridan, *Landscapes of Fraud*, 59-62.

⁴⁷¹ Ormsby *The Butterfield Overland Mail*

Hiram C. Hodge, *1877: Arizona As It Was: Or the Coming Country; Notes of Travel During the Years 1874, 1875, and 1876*, (Chicago, Illinois: The Reo Grande Press, Inc., [1877] 1965), 40.

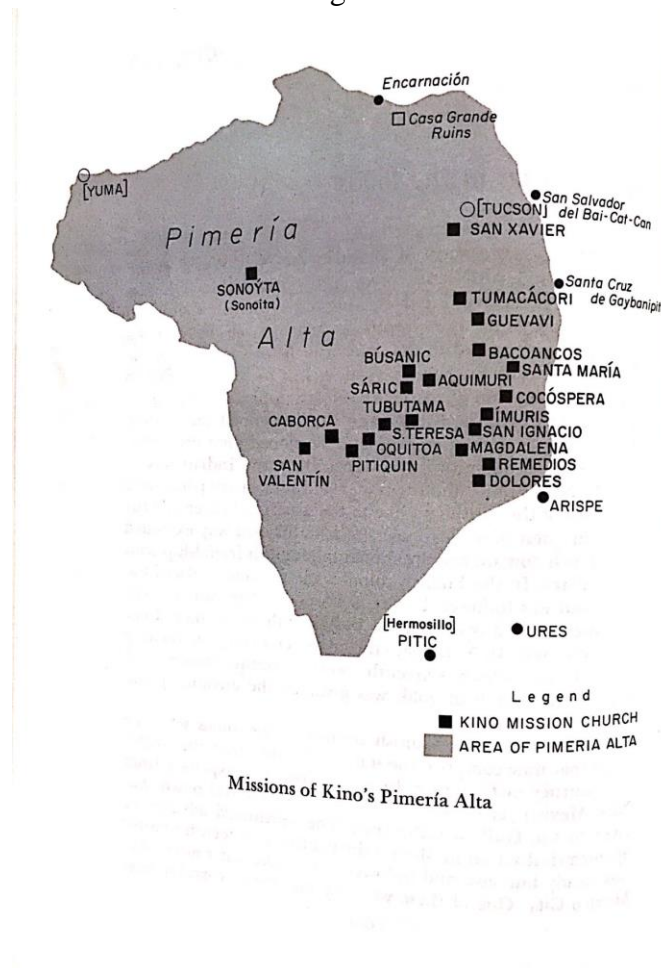
Hamilton, *The Resources of Arizona*, 11-12.

⁴⁷² Wagoner, *Early Arizona*, 424.

Ormsby *The Butterfield Overland Mail*

Robert G. Ferris, ed., *Prospector, Cowhand, and sodbuster: Historic Places Associated with the mining, ranching, and farming frontiers in the Trans-Mississippi West*, (Washington DC: United States Department of the Interior National Park Service, 1967), 150.

Image 6.6



Showing the missions in the Pima Alta area⁴⁷³

⁴⁷³ Wagoner, *Early Arizona*, 111

Image 6.7



Military Posts 1849-1864

From Walker and Bufkin 1986

Military Posts in Arizona before and after cession⁴⁷⁴

The fertile region and navigable passageway of the Santa Cruz River valley was attractive for many Anglo-Americans to settle in, often using the abandoned Mexican ranches and mission buildings for themselves. Robert Forbes traced the history of one early Anglo-American family, the Penningtons, who lived in southern Arizona during the 1850's and 1860's. They constantly moved between various Mexican ranches, such as Calabasas and Tumacacori, and Tucson before most of the family had died from either Apache attacks or natural causes. After the end of the

⁴⁷⁴ William S. Collins, Melanie Sturgeon & Robert Carriker *United States Military in Arizona, 1846-1945*, (Phoenix, AZ: Arizona State Historic Preservation Office, 1993), 11.

Civil War the two remaining members, sisters, lived out their lives in Tucson. Forbes explains that their constant moves were probably connected to security issues⁴⁷⁵ This fertile valley, and tributaries were also explored by prospectors, who had discovered minerals in the adjacent Santa Rosa and Patagonia Mountains, and by ranchers who grazed their cattle there often prior to cession in 1853.⁴⁷⁶ Subsequently, disputes over ownership and rights to resources, supported by the provisions of the Preemption Act of 1841, the Homestead Act of 1862 and the Gadsden Purchase agreement of 1853, brought the Mexican land grant claims to the attention of the United States' Commission of Private Land Claims, established in 1853, to deal with such issues. This procedure was established in New Mexico in 1854 to settle Spanish and Mexican grant claims to the land, according to the treaty agreements of Guadalupe Hidalgo and the Gadsden Purchase between the United States and Mexico. The treaties required the United States to honour land already titled to Mexican citizens at the time of cession. They had the interests of the Anglo-Americans in mind, as the United States wanted to determine which land could be absorbed as public domain lands for sale in the future.⁴⁷⁷

The Commission of Private Land Claims, and its successor the Court of Private Land Claims, were instrumental in denuding the O'odham of any current and future claim to their traditional lands, which had been taken by the Spanish missionaries, given up as public lands, then claimed by Mexican, and eventually, Anglo-American settlers.⁴⁷⁸ Tumacacori was sold in an underhand

⁴⁷⁵ Forbes, *The Penningtons*.

⁴⁷⁶ Ferris, ed., *Prospector, Cowhand, and sodbuster*, 21-22, 40.

⁴⁷⁷ Also see Chapter 7 The Land Grants.

J. J. Bowden, *A Critique of the Solution of the Southwestern Private Land Claims Problem*, (MA Thesis, Southern Methodist University, 1969).

Richard Griswold Del Castillo, *The Treaty of Guadalupe Hidalgo: A legacy of conflict*, (Norman: Oklahoma University Press, 1990), 78-81.

⁴⁷⁸ Papago Tribe, *Tohono O'odham: History of the Desert People* (Salt Lake City, UT: University of Utah Printing Services, 1985)

Sheridan, *Landscapes of Fraud*, 135-137.

manner to Alejandro de Aguilar by his brother-in-law Manuel Maria Gandara, a military *caudillo* or strongman and Governor of Sonora. He announced Aguilar's intention to buy the land in Guayamas, Sonora, without notice and without giving the O'odham the opportunity to dispute the purchase, as was permitted by Mexican law. Gandara himself laid claim to Calabasas, an old *visita* nearby on the Sonora Creek, also traditionally an O'odham settlement. Troops remained in the region until the 1880's after Apache attacks had significantly decreased due to their removal to reservations, and the army presence was decreased accordingly.⁴⁷⁹ Unfortunately, these issues also brought more troops to the region who established more garrisons in the area, which increased competition for the resources. One of the early Anglo-American ranchers, Pete Kitchen, sat out the Civil War and various Apache attacks in a fortified ranch near Potrero Creek, near the Santa Cruz River and was often used as a hide-out for many local settlers avoiding Apache raids.⁴⁸⁰ As a result, a majority of O'odham tacitly withdrew themselves from the valley to the western side of the Baboquivari Mountains, but also removing them from direct access to the river water.⁴⁸¹ Therefore, these disputes effectively removed the indigenous population from the Santa Cruz valley and resulted in a series of resource exploitation which changed the natural bounty of the river and valley to the present day. Water determined the growing importance, for the Anglo-Americans, of the Santa Cruz River, as many of the Anglo-American early settlers established their ranching and freight businesses in the river valley area to provide the local population and nearby army garrisons with cattle products and supplies.⁴⁸² The area became embroiled in a series of legal battles ranging from

⁴⁷⁹ Collins, Sturgeon and Carriker, *United States Military*, 23-31.

⁴⁸⁰ Ferris, ed., *Prospector, Cowhand, and sodbuster*, 150; Alma Ready. *Calabasas: A True Story*, (Nogales AZ: Alto Press, 1976), 8.

⁴⁸¹ Spicer, *Cycles of Conquest*, 136.

⁴⁸² Forbes, *The Penningtons*, 5-6.

false advertisements of paddle-steamers plying the river, to the reservation authorities illegally arranging and losing deals with nearby mining operators for the use of resources.⁴⁸³ One particular Mexican grant area around Calabasas was the centre of a controversy involving land exchanges, fictional paddle steamers using the river and a bankrupt land development company for almost a century. Even the O’odham reservation at San Xavier Mission became embroiled in controversy in the early 1880’s when they permitted the San Xavier Mining and Smelting Company to construct a road across the reservation to the river where the company was to build a smelter and mill to process their ore.⁴⁸⁴ Despite having the Governor’s blessing, this contract fell foul of the Bureau of Indian Affairs, and by extension, the U.S. Department of the Interior’s, jurisdiction over reservation land and the laws controlling them.⁴⁸⁵ However, by the end of the nineteenth century, however, the Santa Cruz River watershed became eroded and depleted from over-exploitation by the commercial operations of the ranches and Anglo-American settlements and continues to be exploited. Sadly, with the initial Spanish missionary settlements along this river route, the indigenous people, mainly the O’odham, were unrelentingly exposed to European land management, agriculture and products, which continued with the Mexican period, and which became more aggressive and pronounced with the Anglo-Americans.

Today the road between Nogales and Tucson, along the Santa Cruz River, is built up with contemporary housing areas, many of which have green lawns and swimming pools. The original indigenous village of Sahuarita has been transformed into an upper middle-class

Spicer, *Cycles of Conquest*, 132-133

Sheridan, *Landscapes of Fraud*, 122-128.

⁴⁸³ Sheridan, *Landscapes of Fraud*

⁴⁸⁴ Letter to U.S. Surveyor General in Tucson, John Wasson to Secretary of Interior, January 30, 1880,’ *San Xavier Mining files* (Arizona History Society: call number MS 307 Box 4)

⁴⁸⁵ ‘Letter to Governor Safford, February 21, 1880,’ *San Xavier Mining files* (Arizona History Society: call number MS 307 Box 4)

community of five-bedroomed houses surrounding a private community centre with a pool. Other indigenous communities have been built over as the old missionary and presidio settlements around Tubac, Tumacacori and Calabasas have grown into Anglo-American tourist attractions, promoting the Spanish and Mexican heritage of the valley and providing services for the guest ranches in the area. Also, looming in the distance, across the valley from the old early placer mines, are the corporation strip-mining businesses of the Pima and Duval mines, also responsible for significant water-depletion because of the hydraulic nature of the strip-mining process. These activities significantly reduce the water available to the Santa Cruz watershed, much to the detriment of the O'odham reservation to the west who rely on the water for their cotton and ranching industries.⁴⁸⁶

The San Pedro River: riparian scenic by-way

As an alternative valley trailway, the San Pedro River had long been used by Europeans as the entry into and through the region northwards from Mexico. It is believed by many historians that this route was used by the early Spanish conquistadores, and some of their first encounters with southern Arizonan indigenous people was with the Sobaipuri who resided there.⁴⁸⁷ The Sobaipuri abandoned this area during the 1700's, and while it is not known exactly why, Seymour and other authors have posited that it was the result of Spanish and Apache encroachment onto this northern Sonoran indigenous territory, which caused a clash over resources.⁴⁸⁸ The vacation of the land by the last settled indigenous group along the river, technically left the land 'available' for the Mexican government to distribute as public grant

⁴⁸⁶ 'Tohono O'odham History 1916 to Present,' *Tohono O'odham*, accessed 1 October 2017, www.tonation-nsn.gov

⁴⁸⁷ Seymour, 'Sobaipuri-O'odham.'

Hartmann, *Searching for Golden Empires*, 154-189, 225-227.

⁴⁸⁸ Seymour, 'Sobaipuri-O'odham.'

lands in the 1820's, and much was given to members of the powerful northern Sonoran Elias-Gonzales family, who later abandoned the land due to Apache raiding exploits during the 1840's.⁴⁸⁹

The San Pedro River and watershed provided some fertile land for not only the indigenous people, particularly the Sobaipuri O'odham and Chiricahua Apache, but also for Spanish and Mexican grant-land holders, predominated by the Elias-Gonzales family, called the *San Juan de las Boquillas y Nogales* grant.⁴⁹⁰ This grant land spans periods of land manipulation and control by both Mexico and the United States.⁴⁹¹ Originally Sobaipuri territory, this area became used for two commercial purposes and was involved in many court issues connected with the Mexican land grant system. The first purpose was as a watered trailway, which developed into a wagon road and, later, a branch railroad line which was to service the mining and cattle extraction industries in the area. The second purpose was to provide water for these two extraction industries, which enabled the Anglo-American grant owners to prosper during the twentieth century. The long and complicated legal history of the grant land also illustrates how interwoven the Anglo-American encroachment and development of region was with legislation and the wealthy Anglo-American entrepreneurs who used it. Basically, the original Elias-Gonzales grant, granted by Mexico in the 1820's, was abandoned in the 1840's and then squatted by many Anglo-Americans. George Hearst and his lawyer George Hill Howard approached many of the Elias-Gonzales descendants offering to represent them in the land claims courts, and after winning their cases against squatters, received the land in lieu of payment. After which

⁴⁸⁹ *San Juan de Las Boquillas y Nogales* Titulo (1833) translated 1897 for the US Court of Private Land Claims.

⁴⁹⁰ For more information about the legal dealings of the *San Juan de las Boquillas y Nogales* grant with the private claims commission and, later, in the private claims court, see Appendix C Boquillas Grant.

'Elias documents,' (University of Arizona Library Special Collections, Tucson, Arizona, call number AZ 232).

⁴⁹¹ For more information see Appendix C *San Juan de Las Boquillas y Nogales* Grant.

there were successive court cases where the Hearst family and later Kern County Cattle and Land Company defended their ownership, eventually establishing a large cattle concern on the old grant and mining lands.⁴⁹²

Additionally, the history of the grant illustrates the superimposition of the United States and capital needs over an indigenous area with an indelible history woven into the fabric of the land, visibly illustrated by pictographs and rock art left by the Sobaipuri and their ancestors, only just becoming appreciated in the last few years.⁴⁹³ Ironically, the valley itself is preserved as an important riparian trailway for migratory birds and animals and contains ruins from the expansion of the Tombstone mining industry. These remnants of the regions mining boom are slowly crumbling into the river and becoming intertwined with the vegetation, while the pictographs of the original people remain. One could say this is a fitting end to the explosion of the mining industry which threaded communication networks along the valley, made the wealthy rich and destroyed the natural environment, such as the cottonwood trees and arroyos which existed there.

The valley itself provides almost year-long water and is one of the more traversable river valleys in southern Arizona, and with its headwaters in the Patagonia Mountains and converging with the Gila River at Winkleman, it is a valuable water resource for southern Arizona. The most navigable section of the river is the southern section from its headwaters in the Patagonia Mountains, and towards present-day Benson and the junction with Interstate 10. As a trailway it was particularly used as a passage from Mexico to the Gila River and was part of the Southern Emigrant Route, which later evolved into the line for the Southern Pacific Railroad across the

⁴⁹² 'Elias documents.'

⁴⁹³ Seymour, 'Sobaipuri-O'odham.'

The railroads

The United States' railroad network came late to Arizona, particularly considering that one of the reasons for purchase was to develop a railroad transportation network across the region and represent the pinnacle of United States commercial expansionism into the region. The original network was stalled by the Civil War and was not reestablished as part of a southern transcontinental route until the 1870's, after the Southern Pacific Railroad Company was incorporated in San Francisco in 1865. By 1877 the Southern Pacific Railroad line had reached Yuma, and in 1880 was going through Tucson on its way to join with the Galveston, Harrisburg and San Antonio Railroad in Texas in 1883.⁴⁹⁷ Each development used existing legislation to establish jurisdiction over thousands of miles of easement across the United States. The development of the railroads in southern Arizona was encouraged the Pacific Railroad Act of 1862 was designed to help with settlement of the west by encouraging the movement of goods and people into regions sparsely populated by recognised citizens of the United States.⁴⁹⁸

The first significant piece of legislation for railroads was in 1850 when the Federal government established a grant scheme to railroad companies where they were given a specific amount of land, designated in a formulated way, to develop their railroad lines. Originally deemed a 'Right of Way' act for the development of railroads in Illinois, Mississippi and Alabama, the 1850 Act

⁴⁹⁷ 'History of the Southern Pacific,' *Southern Pacific Historical and Technical Society (SPHTS)*, accessed 18 Mar 2021, <https://sphts.org>.

George C. Werner, 'The History of the Southern Pacific,' *Texas State Historical Association*, accessed 18 March 2021 www.tshaonline.org

⁴⁹⁸ 'Landmark Legislation: The Pacific Railway Act of 1862,' *Senate*, accessed 18 Mar 2021 www.senate.gov/

became a standard through which other grants were established.⁴⁹⁹ This act established a standard process for the specific distribution of railroad lands, which earmarked alternate sections of land for the companies while retaining the other section as public domain, often called the ‘chequerboard’ pattern of railroad land distribution.⁵⁰⁰ Surplus railroad lands were permitted to be sold by the railroad companies to help finance their ventures.⁵⁰¹

In 1852, and again in 1854, provisions were made for the settlers who had already settled on land that was to be given to the railroads. In most incidences these settlers were not on the land legally, but the premise of ‘first in right’ - essentially private sovereignty over claimed ‘empty’ land - as well as the prevailing Jeffersonian ideology, meant that the 1841 Preemption Act permitted these settlers to retain their ‘railroad’ segments. These Acts protected these rights to the land or gave suitable compensation to the settlers who intended to quit the railroad grants, in return, the settlers were required to register their claim within 12 months of the railroad grant or the land would automatically revert back into public domain.⁵⁰² A further act, passed in 1852, encompassed other types of roads, listing “plank roads and macadamized turnpikes” which also were public lands’ ‘Rights of Way’, and encouraged public roads to be constructed. This act also

⁴⁹⁹ Thirty-first Congress, ‘Chapter 61: An Act Granting the Right of Way and making a Grant of Land to the States of Illinois, Mississippi, and Alabama, in Aid of the Construction of a Railroad from Chicago to Mobile,’ (September 20, 1850), accessed 20 March 2021, www.loc.gov, 466-467.

David Maldwyn Ellis, ‘The Forfeiture of Railroad Land Grants, 1867-1894’. *The Mississippi Valley Historical Review*, 33 no. 1(1946): 28-29

⁵⁰⁰ Ellis, ‘The Forfeiture of Railroad Land,’ 29.

⁵⁰¹ The legislation also contained provisos, such as if the railroad was not complete after 10 years from the initial grant they were to forfeit any remaining land back into the public. However, over the years, many extensions were granted to the companies, so that in the end, additional legislation was enacted to help mitigate this issue. This also became a bone of contention between the railroads and other interested parties vying for the locked up spare land, leading to anti-monopoly legislation.

Chapter 61: An Act Granting the Right of Way, 466-467.

Ellis, ‘The Forfeiture of Railroad Land,’ 29-30.

⁵⁰² Thirty-seventh Congress, ‘Chapter 78: An Act to protect actual Settlers upon the Land on the Line of the Central Railroad and Branches by granting Preemption Rights thereto,’ (August 2, 1852), accessed 20 March, www.loc.gov. 27.

established the water requirements for transport grants, requiring a depot and a “watering place” of no more than one square acre to be established at a minimum of every 10 miles; an extremely important provision in the arid southwest, and one which was instrumental in determining the direction of the routes.⁵⁰³

Images 6.9, 6.10, 6.11

Showing three of the camping places which Parke used on his geographical survey of the area for a potential railroad line through the southwest.⁵⁰⁴

Image 6.9

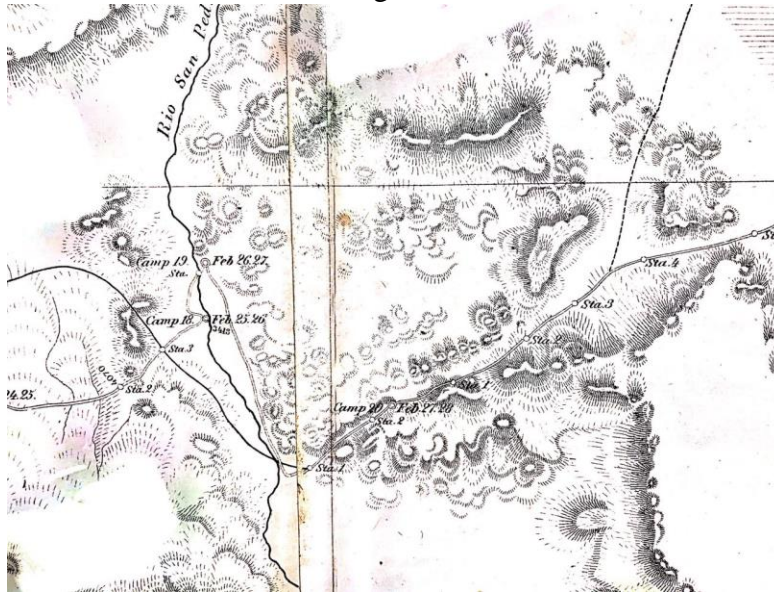


Tucson area, along the Santa Cruz River

⁵⁰³ Chapter 78: An Act to protect actual Settlers, 27.

⁵⁰⁴ All images from the Parke Survey, 1853, (Arizona History Society archives, call number AHS 917. 19. U58 rep).

Image 6.10



Passage from San Pedro River through the Dragoon Mountains near Dragoon Springs.

Image 6.11



Passageway through *Puerto Del Dado*, now the remains of Fort Bowie and Apache Pass, also showing the potential railroad line which was eventually used by the Southern Pacific Railroad

The pivotal act for the southwest was the 1862 Pacific Railroad Act, granting permission for the establishment of a transcontinental railroad “from the Missouri River to the Pacific Ocean and to

secure to the Government the Use of the same for Postal, Military, and other Purposes.”⁵⁰⁵ As this suggests, the transcontinental railroad was for government purposes first, and any periphery purposes such as commercial transportation, second. Although the provisions of this act were established for the Union Pacific Railroad, they were also applied to the development of the southern transcontinental railroad in the early 1870’s by the Southern Pacific Company.⁵⁰⁶

The 400-mile Arizona section of Southern Pacific line followed the Southern Emigrant Trail from Yuma to Casa Grande, now Interstate 8, and from Casa Grande, through Tucson, and east to Steins Peak into New Mexico, parallel to the present Interstate 10.⁵⁰⁷ Branch lines developed to the north and south from the main line and many new railroad towns, originally established on the wagon road junctions and watering stops, were established or adapted for the new railroad.⁵⁰⁸ The branch lines mainly serviced the local mining populations as well as local ranchers, who were building new markets in both California and the eastern states.⁵⁰⁹ The cattle industry developed from providing the local community with beef products into a large ranching industry. Before the advent of the railroad network in southern Arizona, many ranchers drove their cattle to both the local markets and the markets and fattening farms in surrounding states. The railroad enhanced their industry by preventing wear and tear, and even death, of the livestock, however, the freight was expensive, and the ranchers and railroads were often in opposition about the

⁵⁰⁵ Thirty-seventh Congress, Transcontinental Railroad Act - ‘Chapter 120: An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean and to secure to the Government the Use of the same for Postal, Military, and other Purposes,’ July 1, 1862. Accessed 20 March 2021, 489-498.

⁵⁰⁶ *SPHTS* ‘History of the Southern Pacific.’

Werner, ‘The History of the Southern Pacific.’

⁵⁰⁷ Hamilton, *The Resources of Arizona*, 94.

‘Arizona Transportation History: Final Report 660,’ *Arizona Department of Transportation*, (AZDOT), (Arizona Department of Transportation Research Center, 2011), 115.

⁵⁰⁸ *Arizona Department of Transportation (AZDOT)*, ‘Arizona Transportation History: Final Report 660, 115. Broyles & Hartmann 2014

⁵⁰⁹ For more information about the cattle industry see Chapter 8

optimal prices.⁵¹⁰ By 1886 refrigerated cars were added to the train and frozen carcasses could also be transported to the markets for sale.⁵¹¹

Patrick Hamilton pointed out in his 1881 travel journal that the railroad was instrumental in settling the southern counties, and that the branch lines enabled the telegraph to be expanded from the Southern Pacific line to the military establishments dotted around the region; a decade later John Bourke confirmed that the railroad had changed the area and provided more opportunities for settlers and soliders alike.⁵¹² As more minerals were discovered, and mining towns and ranches were established in southern Arizona during the late 1870's and early 1880's, more companies invested in developing railroad connections to supply these new businesses, and the railroad companies became competitive as more easement grants were applied for. Railroad companies, such as the New Mexico and Arizona Railroad line, were important for the local area because they were used extensively by the military posts in the area. The New Mexico and Arizona Railroad were also used to transport an estimated 3000 head of cattle daily from the ranches, and serviced many of the lucrative gold, copper and silver mines of the region; it was even used to transport Geronimo after his surrender in 1886.⁵¹³ However, despite the initial usefulness of the line, the decline of the mining industry, the changes in the cattle industry, the rise of Tucson, and the perennial flooding of the Sonoita Creek caused disuse of the line.

⁵¹⁰ Phil Brigandi, 'A Desert Cattle Drive of 1890,' *Desert Tracks* (June 2006): 1.

'Empire Ranch v. Southern Pacific, 1890,' *Empire Ranch Foundation News*, 5 no. 2 (May 2004): 3-4.

In fact, the Vails of Empire Ranch defied the 25% increase in rates in 1890 and drove their cattle in the traditional way to California for slaughter. Their drive was so successful that other members of the southern Arizona ranching community agreed to use the 'long drive' the following year if the Southern Pacific did not capitulate and remove the price hike: Brigandi, 'A Desert Cattle Drive,'

⁵¹¹ *SPHTS* 'History of the Southern Pacific.'

Werner, 'The History of the Southern Pacific.'

⁵¹² Hamilton, *The Resources of Arizona*, 96.

John G. Bourke, *On The Border with Crook*, (Lincoln, Nebraska: University of Nebraska Press, [1891] 1971).

⁵¹³ T. Johnson, *New Mexico and Arizona Railroad*, (Green Valley Hiking Club, 2017), 1.

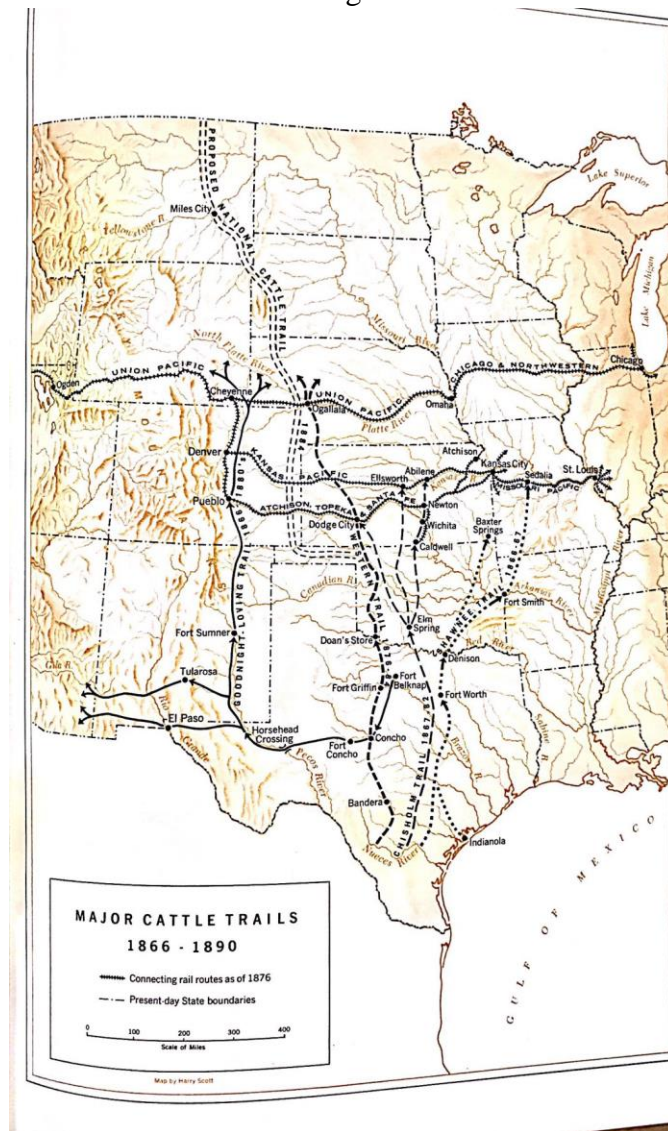
Eventually, it was superseded by a more direct line from Tucson to Nogales, and another, more secure line from Benson to Bisbee in 1902, by-passing the San Pedro River and Patagonia Mountain route completely. The Atchison, Topeka and Santa Fe Railroad was interested in developing a line from Tucson to Tombstone in 1881, but railroad transport for the Tombstone mining district and others was developed by a subsidiary company in 1882 called the New Mexico and Arizona Railroad, NM & AZ, which joined Benson on the Southern Pacific line with Nogales and the Sonoran Railroad on the Mexican border in 1882.⁵¹⁴ The NM & AZ railroad line ran through *las Boquillas* land grant and established the town of Fairbank as a staging point on the banks of the San Pedro River, within a mile of the mining mills and works of the local mining districts. From Fairbank the line turned southwest and headed along the Sonoita Creek to the Patagonia Mountains and the mining district there before going through Calabasas and joining with the Mexican railroad to the port at Guayamas ⁵¹⁵

⁵¹⁴ Hamilton, *The Resources of Arizona*, 94.

Johnson, *New Mexico and Arizona Railroad*, 1.

⁵¹⁵ Johnson, *New Mexico and Arizona Railroad*, 1-2.

Image 6.12



Showing the Cattle Drive routes including Railroad links⁵¹⁶

However, by the 1870's many disgruntled businessmen and politicians were complaining about the continual extensions to the 10 years' construction requirements and that the railroads were sitting on top of land considered to be of prime value, because they either were stalling in their railroad development or sat in litigation defending themselves against squatter's rights. The

⁵¹⁶ Robert G. Ferris, editor, *Prospector, Cowhand, and sodbuster: Historic Places Associated with the mining, ranching, and farming frontiers in the Trans-Mississippi West*, Vol XI, (Washington DC: United States Department of the Interior National Park Service, 1967).

railroad company boom of the 1870's was fictionalized by Anthony Trollop in his 1875 novel *The Way We Live Now*, where a sub-plot involves a spurious railroad line, from Salt Lake City to Vera Cruz, Mexico and an incorporated railroad company which had received grant lands and was advertising shares for sale. Trollop states "That the object of Fiskier, Montague and Montague, was not to make a railway to Vera Cruz, but to float a company" and thus make money with no outlay.⁵¹⁷ Speculators pushed for the approximately 80,000,000 acres of unsold grant land to be released back into public domain, and the railroads knew that if they did not actively violate their contracts, it took Congressional Action to legally forfeit their contracts, which created a slow and ponderous process.⁵¹⁸ States and territories were also aware that while the railroads sat on government granted land they were unable to sell or collect taxes from them. However, in 1885 the Southern Pacific Railroad was challenged in court by Santa Clara County, California, when it was determined that corporations were to be considered as individuals, and therefore were to be held accountable for their actions and legally required to pay regular land taxes.⁵¹⁹ An additional complaint was that the railroads also had tenants rather than selling the land outright, which also stymied the Jeffersonian ideal of small landholding citizens spreading democracy to the western territories.⁵²⁰ After 1885, however, unsold grant land slowly began to be released by the railroad companies but, to this day, they still own significant amounts of property and land across the United States.⁵²¹

⁵¹⁷ Anthony Trollop, *The Way We Live Now*, (Penguin Classics, 1875), Kindle, Chapter 9.
Ellis, 'The Forfeiture of Railroad Land,' 32-34.

⁵¹⁸ Ellis, 'The Forfeiture of Railroad Land,' 29, 30-32.

⁵¹⁹ *United States v. Southern Pacific, George Loomis et al.* 1901. Case: 184 US 49 (22 Supreme Court, 285, 46 Led. 425.

⁵²⁰ Ellis, 'The Forfeiture of Railroad Land,' 35.

⁵²¹ Darwin P. Roberts, 'The Legal History of Federally Granted Railroad Rights-of-Way and the myth of Congress's '1871 Shift''. *University of Colorado Law Review* 82, (2011): 85

During the late nineteenth century railroads became the most instrumental way to encourage Anglo-American settlement, industry and culture in southern Arizona. They were serviced by the established wagon roads and freight companies, although these smaller transportation concerns were not as dramatically important to the development of Anglo-American homogeneity in southern Arizona as railroads were. Initially, the main wagon roads from which the railroads took direction were sponsored by the federal government to provide the mail routes, with the intention that territorial taxes would maintain them.⁵²² However, Arizona, along with other southwestern territories and states did not have a citizenry numerous enough to provide money for the road systems, and so the government established a toll-road contract system in 1864 to expand the networks and thus encourage further immigration.⁵²³ Of the six toll-road contracts given to Arizona Territory, two were located in southern Arizona, enabling them to join the unconnected veins of private mining roads to the main networks, thus providing a more comprehensive system in the area. One of the main Arizonan companies operating in southern Arizona was the *Tucson Pose Verde & Libertad Road Company* which won a contract to build 3 main roads from Tucson to the mines in southern Arizona; however, these were never realised.⁵²⁴ By 1866 the jurisdiction of road construction moved from the territorial legislature into the separate counties that used a poll tax to provide funds for their construction and maintenance; needless to say, the citizens of southern Arizona did not provide much in the way of levies, and the onus of construction and transportation was left to the private enterprises needing such transportation networks for business. Also, despite money being appropriated by the territorial

⁵²² *Arizona Department of Transportation (AZDOT), 'Arizona Transportation History: Final Report 660', (Arizona Department of Transportation Research Center, 2011), 12.*

⁵²³ *AZDOT, 'Arizona Transportation History,' 15*

⁵²⁴ Jay, J Wagoner, *Arizona Territory 1863-1912: A political history*, (Tucson AZ: University of Arizona Press, 1970), 54-55.

legislature between 1877 and 1881 for the extensive construction of a transportation infrastructure, the restrictions of the 1886 Harrison Act prevented the territory from spending further money on the network. This this act prevented them from exceeding a pre-set debt limit, which Arizona had already exceeded, thus curtaining any future expenditure which would have benefited the wagon freight companies.⁵²⁵ Thus, even though there were attempts to raise money for an extended road network, the wagon-roads were superseded by the railroad company networks, and the stagecoach and freight companies were relegated to ‘taxi’ status to and from the stations.⁵²⁶ By statehood, in 1912, many rail and wagon networks were gradually being replaced by a government funded web of roads for automobiles, which removed more land from indigenous usage.⁵²⁷

Table 6.1

Toll Road Companies

1. Santa Maria Wagon Road Company - Prescott to the Colorado River
2. Tucson, Poso Verde and Libertad Road Company - three roads from Tucson to mines in southern Arizona
3. Arizona-Central Road Company - Prescott to La Paz (on the Colorado River)
4. Mohave and Prescott Toll Road Company - Prescott to Mohave (on the Colorado River)
5. Prescott, Walnut Grove, and Pima Road Company (King Woolsey, Jack Swilling, and others) - first north-south highway to Prescott
6. Prescott and Fort Wingate Road Company - Prescott to Fort Wingate, New Mexico

The six toll roads and companies with contracts in Arizona, 1864⁵²⁸

⁵²⁵ AZDOT, ‘Arizona Transportation History,’ 15.

Melissa Keene and J. Simon Bruder, preparers, *Good Roads Everywhere: A history of road building in Arizona*, (Arizona Department of Transportation; Environmental Planning Group, 2003). 55-56.

⁵²⁶ Many of the profitable stagecoach and freight companies of the early territorial years had been started by Sonoran Mexican Americans, such as Estevan Ochoa and Mariano Samaniego (Peterson, Jr., ‘Cash up or no go,’ 210-215; Meeks, *Border Citizens*, 25).

Thomas H. Peterson, Jr., ‘Cash up or no go: The Stagecoach Era in Arizona’ *Arizona Historical Society* 14 no. 3 (1973): 210-215.

Eric V. Meeks, *Border Citizens: The Making of Indians, Mexicans & Anglos in Arizona*, (Austin TX: University of Texas Press, 2007), 25.

⁵²⁷ Peterson, Jr., ‘Cash up or no go,’ 210.

⁵²⁸ Melissa Keene and J. Simon Bruder, preparers, *Good Roads Everywhere: A history of road building in Arizona*, (Arizona Department of Transportation; Environmental Planning Group, 2003). 55.

Discussion

The trailways and transportation networks of the territorial years in southern Arizona illustrated two ways in which the United States permanently levered themselves into the region and cut through the land depositing pockets of Anglo-American policies and procedures along the way. The first was the visible trails that the transportation networks provided in establishing a road and rail infrastructure between the various extraction industries, the military posts and the main settlement hubs. The second was to provide an avenue through which more Anglo-American immigration into the region which furthered United States' claim to the land. These two arms of influence illustrated the power and control which the United States exerted over the territory of southern Arizona applying the decrees of sovereignty, preemption and the principle of *terra nullius*, while promoting the ideologies of commercial productivity through the premise of the small farmer and democratic practice.

These networks were encouraged through a system of grants and legislative measures which provided incentives for transportation companies to establish the transportation structure throughout the southwest. The grants reasserted principle of *terra nullius* over the region by determining that all unclaimed territory belonged to the United States, to distribute as it saw necessary. The United States earmarked and gave away large swaths of land to the railroads, and only recognised private claims to the grant lands if the landowner used legislative procedures to appeal against the railroad claim. Unfortunately, lack of knowledge about the procedures and lack of citizenship status precluded any indigenous people from applying to gain legitimate control over their traditional lands.⁵²⁹ The dual ideology of preemption, such as prior claim, and

⁵²⁹ It often excluded many Mexicans from doing the same, also.

the need to promote small independent farmers in the southwest under the Jeffersonian democratic ideal encouraged the use of the 1841 Preemption Act by Anglo-Americans in southern Arizona, blithely ignoring any technical trespass onto traditional indigenous territory. Many of the claimants, particularly in the latter years of the nineteenth century, rigourously defended their claims, using the army and militia to fight off any physical challenge, indigenous or otherwise, to their land. Later, they used the courts to contest their claims against speculators, who were able to pursue large land grants, whether via railroad grants or through the Spanish and Mexican grant claims courts.

The growing industrial capitalism of the United States and its need to produce domestic raw materials for this growth meant that any adventurer willing to find and exploit natural resources in the new territories was encouraged by the government. Often potential settlers would find advertisements in their local newspapers encouraging prospectors and potential farmers to relocate to under-settled areas with the aid of government incentives, listed in the advertisements.⁵³⁰ Providing secure transportation networks, therefore, was instrumental in establishing a secure footing in and control over the area, which would, thus, encourage further settlement, who, armed with government legislation, could legitimately claim any ‘unoccupied’ lands in the territory. Unfortunately, for many territories, including Arizona, these networks also encouraged larger speculators who had the resources, means and wherewithal to utilise the same legislative initiatives to claim hundreds of thousands of acres for their own and defend their ownership in court, regardless of any prior claims.⁵³¹ Ultimately, it was the indigenous populations who suffered from the loss of jurisdiction and rights over their traditional lands, and

⁵³⁰ *Tombstone Epitaph* (reproduction). 1886. Vol. V No. 5; Miscellaneous Mining documents. Located in University of Arizona Special Collections. MS 307 Boxes 1-3)

⁵³¹ For more information see Chapter 7 The Land Grants.

from the inability to prevent the transportation networks from leading the migration inroads into their territories.

The Tohono O’odham Nation reservation today has very limited federally recognised roads penetrating it and no railroads, allowing the nation to utilize authority over their own transportation infrastructure on their reservation. The few federal roads and railroads which are located on or close to their reservation, were not as a result of recognition of O’odham jurisdiction but because the focus of Anglo-American industry was on the alluvial land near the rivers, particularly the Santa Cruz River, and the mineral veins such as the mining region of Ajo. By the end of the Civil War, as Anglo-American migration into southern Arizona increased, the O’odham moved away from both the Santa Cruz River area and the mining concerns to control contact with the Anglo-Americans. Fortunately, *El Camino del Diablo* became more infrequently used as Anglo-American infiltration favoured the Southern Emigrant and Gila route systems thus freeing the *tinijas* network from overuse.⁵³² The desert conditions of the current reservation land also discouraged many settlers from gaining a foothold in the area and also concentrated them on the more fertile lands of the Santa Cruz River. This resulted in the O’odham losing, irrevocably, a significant portion of their agricultural base as Anglo-Americans focused on developing, and claiming, the areas near the rivers and the mineral mountains. However, they were also saved from significant intrusion onto the western section of their traditional territory, first by the lack of transportation networks and, second, because of the lack of commercial water sources. For many of the early Anglo-American mines, these two obstacles restricted their mining and ranching operations in the area and caused many ventures to fail.

⁵³² Meeks, *Border Citizens*, 21-22, 24.

Unfortunately, the Tohono O’odham Nation are now experiencing a modern intrusion into their federally designated territory, illegal immigrants, as a direct result of the United States’ border policy. The illegal immigrants have been forced to use alternative routes to cross the international border between the United States and Mexico since the United States border policy has implemented stricter controls at the designated border crossings, and are now using desert trails across the O’odham territory to penetrate the country.⁵³³ The O’odham, who fought throughout the twentieth century to maintain their freedom of movement across the border, have since been restricted to one crossing in the middle of their territory provided they could give proof of Nation membership. This freedom of crossing without the intervention of international border restrictions has permitted them to maintain their connections between their southern relations and is an important part of maintaining their nation’s heritage.⁵³⁴ However, contention has arisen from the inability of the United States to guarantee security and safety of their property in the border areas where the immigrants are now crossing. The United States, as in 1853, has found the long desert border in O’odham territory difficult to maintain and to preserve a continuous presence there, and as a result the Tohono O’odham are plagued with property damage and a danger to themselves by immigrant crossers, who also include drug mules for the Mexican drug lords.⁵³⁵ A measure to resolve this problem has now been introduced, a new border fence, a nine-metre steel barrier, and a perimeter patrol road has been initiated by the United States government, to mitigate some of these intrusion issues.⁵³⁶ However, with it brings

⁵³³ Peter Heiderpriem, ‘The Tohono O’odham Nation and the US-Mexico Border,’ *American Indian Law Journal*; IV no. 1 (2015): 112-116.

⁵³⁴ Heiderpriem, ‘The Tohono O’odham Nation,’ 114.

⁵³⁵ Christopher Livesay, ‘At the United States-Mexico Border a tribal nation fights the wall that would divide them,’ *PBS News Hour*, 13 Jan 2019. Transcript. www.pbs.org/newshour

⁵³⁶ Livesay, ‘At the United States-Mexico Border.’

‘Native burial sites blown up for US border wall,’ *BBC*, 2020, www.bbc.co.uk/news/world-us-canada-51449739

new issues of cultural control and heritage, as well as continued problems with border patrol agents who undertrained in cultural sensitivity. As Tohono O'odham landmarks and burial sites are demolished to install the fence and the patrol road, the O'odham, once again, have lost jurisdiction over their own traditional heritage.⁵³⁷ Additionally, it has been noted by O'odham leaders that many O'odham are persecuted on their own lands by border patrol agents who incorrectly identify members of the Nation as illegal immigrants, and challenge them on their legitimacy to be near the border.⁵³⁸ This is an indelicate response to a Nation which has been infiltrated by non-indigenous intruders for centuries, and then bisected and claimed by the political premise of a nation which superimposed its jurisdiction to do so by making inroads, literally, into territory which was not theirs.

The Chiricahua Apache initially developed a good relationship with Anglo-Americans as indicated by Parke's encounter with the Apache family and a contract Cochise to provide timber for government sources⁵³⁹. However, this was not to last as greater competition, igniting agitation, over control of the trailways and their water sources in Apache territory increased. This ultimately led to clashes between the Chiricahua Apache and Anglo-Americans which resulted in a defensive network of army posts along those routes most used by travellers and the US postal services. Initial encroachment into Chiricahua territory began in 1846 when the Army of the West, travelled to California from New Mexico via the Gila River and Yuma with 2,000 dragoons, adventurers, traders and 500 soldiers of the Mormon Battalion. Kearny and William H. Emory from the Army Corps of Engineers surveyed the route, and Colonel Philip St. George Cooke, with the help of the Mormon Battalion built what became known as the Mormon

⁵³⁷ BBC 'Native burial sites'

⁵³⁸ Livesay, 'At the United States-Mexico Border.'

⁵³⁹ Parke, *Report of Explorations*, 13-14.

Battalion Route in 1847. The Mormon Battalion route used an entry point into southern Arizona through the Guadalupe Pass near the border of Mexico, and travelled westwards to the San Pedro River, followed the river north to the site of Benson and then headed westwards again towards Tucson, joining with the Santa Cruz River which it then followed to the Gila River and then west along the Gila River to Yuma.⁵⁴⁰

The river routes were chosen because of their easy navigation, from previous knowledge, and of course their water sources. However, they also traversed through traditional northern territory of the Chiricahua Apache. Unfortunately, as successive waves of Anglo-American travellers went through the region, misunderstandings and exploitation of resources marred the relationship between these potential allies against Mexico. As a result, the army established outposts to protect the postal and wagon routes, often strategically placed by watering points, which became stage stations, and the army became a permanent fixture in southern Arizona during the nineteenth century.⁵⁴¹ However, the army presence encouraged more entrepreneurs to establish in the region, and with the need for additional supplies, and cultural misunderstandings and confrontations became inevitable. As greater contact occurred, the Chiricahua Apache encountered increased opportunities to raid for supplies as well as an escalation of both unofficial and official Anglo-American policies of containment and elimination, to counter the raids. Securing the transportation networks became an important aspect of the army's duties in Arizona which was supported by the legislative measures designed to encourage settlement and facilitate the development of the land by Anglo-Americans. Speculators, often with significant

⁵⁴⁰Stein, *Historic Trails*, 8-10.

Stein, *Historic Trails*, 8-10.

⁵⁴¹ Wagoner, *Early Arizona*
Stein, *Historic Trails*, 8-10

financial backing, were in the position to harness many laws to establish their claims to the land, such as using others to apply for land in their stead. The term ‘dummy entrymen’ was used to describe hired individuals, or employees, who applied for grant lands, and then ‘sold’ them to a speculative entity; a loophole in the Homestead Acts exploited frequently. These speculators, along with many mining corporations, were able to influence transportation legislation in their favour as well as other territorial and federal land legislation.⁵⁴²

Trailways, for the Chiricahua Apache, proved to be the vehicle through which their encounters with Anglo-Americans and their removal by them from southern Arizona was implemented. The trailways provided citizens of the United States the means to explore and exploit Chiricahua Apache territory, were the kernel of the contention between the Chiricahua Apache and the incoming Anglo-Americans and were the avenue through which the removal of the indigenous group from the region occurred. The way in which many of the Chiricahua were taken from southern Arizona, by train and by wagon was an indignity which compounded loss of their traditional territory and can be seen as the death knoll of their cultural connections with it.⁵⁴³

The removal and dispersal of the southern Arizonan Chiricahua Apache to Florida, Oklahoma and New Mexico epitomizes the pinnacle of United States’ imperialism and disregard for the indigenous people. The fact that Chiricahua Apache now have to travel back into the region to rediscover and reclaim their heritage is a travesty, especially when they have to ask Anglo-Americans to, literally, show them the way to their cultural remains by guiding them up the

⁵⁴² Bradfute, *The Court of Private Land Claims*

Sheridan, *Landscapes of Fraud*

Leah S. Glaser and Nicholas Thomas, ‘Sam Colt’s Arizona: Investing in the West,’ *The Journal of Arizona History*, 56 no.1 (2015): 29-52

⁵⁴³ John P. Clum, ‘Collection of agency notes and personal correspondence, 1874-1877,’ (University of Arizona Special Collections: call number MS 284 - 1876 Voucher 9; Clum letter from Indian Commissioner Smith 30 May 1876;

John G. Bourke, *On The Border with Crook*, (Lincoln, Nebraska: University of Nebraska Press, [1891] 1971), 235, 434, 437.

trailways to them. As a Nation which was never ‘conquered’, and a Nation which has never been officially recognised by the United States, the Chiricahua Apache are still surviving and are active in establishing their rights to their heritage. While the Chiricahua Apache were given a reservation in the 1870’s, one of the arguments for revoking it was that it was never approved by the authorities, and official treaties were never signed with Cochise.⁵⁴⁴

Trailways, therefore, became an instrument through which the United States government was able to lay claim to their latest territorial gain, southern Arizona. At the same time, they provided active citizens with the means to which to penetrate the region, seemingly left vacant by both the indigenous population and the resident Mexicans, and which was presented as theirs for the taking. It was estimated that at the time of cession, the territory had less than 1000 Mexican and *mestizo* residents, predominantly in southern Arizona and congregated around the main military outposts and settlements such as Tubac and Tucson.⁵⁴⁵ With land legislation and supportive transportation legislation the entrepreneurial citizens of the United States sallied forth to conquer the last contiguous territorial acquisition of the United States.

⁵⁴⁴ Chiricahua Apache Nation, accessed 18 April 2018, <http://www.chiricahuaapachenation.org>

⁵⁴⁵ Meeks, *Border Citizens*, 24.

Mestizo is a term which was used by the Anglo-Americans and Mexicans to indicate a person of mixed heritage – Mexican and indigenous.

PLATES

Plate 6.1



Memorial to the Mormon Battalion whose only battle in the Mexican-American War was with bulls left to roam the Mexican ranches had been abandoned during the 1840's (post marker by the San Pedro River).

Plate 6.2



Dragoon Spring, showing a desert trailway through the Dragoon Mountains

Plate 6.3



Butterfield Stagecoach trail near Apache Pass

Plate 6.4



Apache Spring

Plate 6.5



San Pedro River

Plate 6.6



New Mexico and Arizona Railroad line from Benson to Nogales via Fairbank

Plate 6.7



New Mexico and Arizona Railroad crossing the San Pedro River

Plate 6.8



Ohnesorgan Stage-Coach Station, near Contention

Peterson, 'Cash up or go.'

Plate 6.9



Showing remains of migrants or drug mules along the San Pedro River near Boston Mill site

Plate 6.10



An old Cottonwood tree next to the San Pedro Ranch house, San Pedro National Riparian Conservation Area.

Plate 6.11



Fort Bowie

Plate 6.12



Dagoon Spring Confederate Graves

Plate 6.13



Remains of Stagecoach Station, Dagoon Spring

Chapter Seven

The Land Grants

Introduction

The land grants were specific segments of land which had been presented to members of the Spanish and Mexican army who had distinguished themselves in service to their country. In southern Arizona there were several such segments of land, many belonging to the prestigious Elias family, and when the United States acquired jurisdiction over the region, these grant lands were not to be absorbed into the public domain. These vast areas of land became coveted areas as more Anglo-American ventures established in the region, but they were, at the time, privately owned and untouchable. However, as many of these tracts had been abandoned because of Apache attacks, the United States established procedures to confirm continued private ownership of these grants, releasing unconfirmed claims into the public domain. Interested Anglo-Americans attempted to gain these lands, and by doing so, they removed yet more ancestral land from possible reclamation by the indigenous people of southern Arizona, while aiding and abetting further investment into the extraction industries.

The 1848 Treaty of Guadalupe Hidalgo and of the 1853 Gadsden Purchase both required that the United States honoured land which was in the hands of private Mexican citizens as exempt from being absorbed as public domain lands.⁵⁴⁶ However, many of these lands had been left abandoned by the Mexican title holders by 1853 and were classified as ‘unoccupied’ public lands

⁵⁴⁶ Treaty of Guadalupe Hidalgo – ‘Treaty of peace, friendship, limits, and settlement between the United States of America and the United Mexican States concluded at Guadalupe Hidalgo,’ (February 2, 1848), accessed 18 June 2018, www.mexica.net, Article 8 and 9.

Gadsden Purchase Treaty – Gadsden Purchase Treaty, (December 30, 1853), accessed 10 June 2018, www.avalon.law.yale.edu, Articles 5 and 6.

unless the owners came forth and provided documentation to prove their legal right to the land. However, it was to the benefit of the United States if the land was inadequately documented, and could not be legally claimed, as it provided greater land tracts for future public sale. The United States initially established a commission to investigate these claims, but, by the time the applications were processed, many land hungry Anglo-Americans had utilised the land legislation of the United States to establish their own claim to these pockets of land. The properties became embroiled in the politics and ideals of the late nineteenth century and illustrates how land rights and property claims were important vehicles for the United States to control the division and distribution of land they claimed to be theirs. Ultimately, though, Mexican and Anglo-American private claims superseded any attempt by the indigenous population to use legal proceedings to gain their territory back from the incoming Anglo-American interlopers.

When the United States purchased territory from Mexico between 1848 and 1854, they also acquired vast tracts of land which were privately owned and therefore prohibited from being incorporated into the public domain cache of the United States. These privately owned areas had been purchased from the Spanish and Mexican governments as grants for service to the state and often encompassed many hundreds of acres. In accordance with the provisions in the treaties of Guadalupe Hidalgo and of the Gadsden Purchase these grant areas were to be honoured as private holdings and therefore unavailable for public sale other than by legal transfer of title.⁵⁴⁷

The stumbling block came when the Southwest became an attractive location for Anglo-

⁵⁴⁷See Appendix F Treaty of Guadalupe Hidalgo and Appendix G Gadsden Purchase Treaty Treaty of Guadalupe Hidalgo, Articles 8 and 9. Gadsden Purchase, Articles 5 and 6

American settlers, and the United States government had to initiate some type of legal proceeding to separate trespassers and interlopers from legal property owners.

Treaty of Guadalupe Hidalgo, Articles 8 and 9.

ARTICLE VIII

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

ARTICLE IX

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States. and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the mean time, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without; restriction.

Gadsden Purchase Treaty, Articles 5 and 6

ARTICLE V.

All the provisions of the eighth and ninth, sixteenth and seventeenth articles of the treaty of Guadalupe Hidalgo, shall apply to the territory ceded by the Mexican Republic in the first article of the present treaty, and to all the rights of persons and property, both civil and ecclesiastical, within the same, as fully and as effectually as if the said articles were herein again recited and set forth.

ARTICLE VI.

No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the day-twenty-fifth of September-when the minister and subscriber to this treaty on the part of the United States, proposed to the Government of Mexico to terminate the question of boundary, will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.

Initially, the United States established the Office of Surveyor General in several of the southwestern territories and states to handle the opposing claims of Mexican landowner, Anglo-

American settler and the United States by determining if the land grants had acquired full titles by the time the United States gained the territory.⁵⁴⁸ This was important because if the titles were incomplete then the United States had legal precedence to claim the land as public domain and permit settlers to purchase it.⁵⁴⁹ If the titles were complete, then the United States would lose jurisdiction over the land and any subsequent resources it contained, including mineral and water sources. Thus, for the future of industrial and agricultural growth in the United States, and for money in the coffers, the United States needed a procedure to determine the legal ownership of the land grants. They first established the Private Land Claims Committee under the Office of Surveyor General, and then when this process became overwhelmed and cumbersome, they established the Courts of Private Land Claims which definitively determined legal ownership.⁵⁵⁰

The impetus to settle these grant claims came from the development of the extraction industries in the southwest and growing settlement by Anglo-Americans in the region as the industries proved more lucrative in the decades after the Civil War. At the same time, indigenous people were considered as obstacles for Anglo-American development plans, and it was argued that they would be best placed in reservations or pushed onto marginal lands, where subsistence living was all that could be achieved.⁵⁵¹ Either way, it meant that indigenous people were effectively removed from attempting to claim any past traditional lands, and legal precedence was given to

⁵⁴⁸ Thirty-third Congress. Office of Surveyor-General - 'Chapter 103: An Act to establish the offices of Surveyor-General of New Mexico, Kansas and Nebraska, to grant Donations to actual Settlers therein, and for other purposes,' (July 22, 1854), 308-311, accessed 25 July 2020, www.loc.gov.

⁵⁴⁹ Treaty of Guadalupe Hidalgo, Articles 8 and 9.

⁵⁵⁰ Office of Surveyor-General, Section 8.

Fifty-first Congress, U.S. Court of Private Land Claims – 'Chapter 539: An Act to establish a court of private land claims, and to provide for the settlement of private land claims in certain states and territories,' (March 3, 1891), accessed 20 March 2021, www.loc.gov. 854-862.

⁵⁵¹ Ely Parker, *First Report of Ely Parker U.S. Commissioner of Indian Officers*, (www.pbs.org, 1869)

Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism*, (Cambridge, MA: Harvard University Press, 1981), 240-241

those who could fight for ownership in the courts. Eventually, by the end of the Courts of Private Land Claims in 1904, each piece of land in the treaty areas had a designated land manager, whether it be private, public domain or federally reserved land, which was logged and recorded with the General Land Office with a Public Land Survey System designation.⁵⁵²

The events

Several pieces of legislation encouraged many new settlers to southern Arizona, which were advertised by the travel writers and in newspapers as a lucrative way to make money.⁵⁵³ Prior to the Civil War there were several pieces of legislation which provided avenues for acquiring property in the Mexican cession areas. In southern Arizona, settlers could use the 1841 Preemption law for rights to land they had squatted on, or they could claim their land by donation under 1854 legislation, which permitted, until January 1858, the Office of Surveyor General to give any citizen, who was white, male and over 21 years old, 160 acres, provided they improved the land within 4 years of receiving the grant.⁵⁵⁴ The 1862 Homestead Act sold parcels of 160 acres to homesteading applicants for a small fee, and again the stipulation of citizenry and property improvement before receiving full title to the property were required.⁵⁵⁵ If the applicant were a prospector or miner, they could also establish and patent mining claims in the area and receive title to the property that way.

⁵⁵² United States Department of the Interior, General Land Office, *The Unappropriated Public Lands of the United States; by Counties, Land Districts and States, on July 1, 1909* (Washington D.C.: Government Printing Office, 1909). 'Maps of land management,' *Arizona State Land Department*, accessed 20 Jun 2020 <http://land.az.gov>

⁵⁵³ J. Ross Browne, *Adventures in the Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*, (New York: Harper & Brothers Publishers, 1869).

Hiram C. Hodge, *1877: Arizona As It Was: Or the Coming Country; Notes of Travel During the Years 1874, 1875, and 1876*. Chicago, Illinois: The Reo Grande Press, Inc., [1877] 1965).

⁵⁵⁴ Office of Surveyor-General, Section 2.

⁵⁵⁵ Thirty-seventh Congress, Homestead Act – 'An act to secure homesteads to actual settlers on the public domain, (May 20, 1862), accessed 24 Jun 2021 www.docsteach.org.

The pressing need to determine ownership over the land was not in evidence until after the Civil War, as there were only a few mining claims and ranching operations established before the Civil War. However, between 1865 and 1880 several business opportunities developed which encouraged incoming settlers to the region, and more settlers migrated to the region.⁵⁵⁶ As the United States recovered from the Civil War, industrialization increased in the eastern and mid-western states, and many entrepreneurs moved to the ‘frontier’ lands to establish themselves independently.⁵⁵⁷ Prospectors, inspired by the 1859 Comstock Lode boom, and other western mining discoveries, entered the region with the intention of re-opening former mining operations or of finding their own potential claims in the mountains of southern Arizona.⁵⁵⁸ The open spaces and grasslands of southern Arizona appealed to those who supplied the increased demand for beef products by the local mining operations and camps.⁵⁵⁹ As these outfits became established freight and merchant companies also developed to supply the industries and other settlers.⁵⁶⁰ In addition, veterans of wars were given a promise of land in recognition for their service, called land scrip, which could either be sold on or exchanged for frontier land

⁵⁵⁶ Jay J. Wagoner, ‘The History of the Cattle Industry in Southern Arizona 1540-1940,’ (MA Thesis: Department of History, University of Arizona, 1949)

⁵⁵⁷ Jay J. Wagoner, *Early Arizona; Prehistory to Civil War* (Tucson, AZ: University of Arizona Press, 1975), 163.

⁵⁵⁸ Browne, *Adventures in the Apache Country*

Richard J. Hinton, *The Hand-Book to Arizona: it's resources, history, towns, mines, ruins and scenery* (Tucson, AZ: Arizona Silhouettes, [1874] 1954).

Patrick Hamilton, *The Resources of Arizona: Its mineral, farming and grazing lands, towns and mining camps; its rivers, mountains, plains and mesas; with a brief summary of its Indian tribes, early history, ancient ruins, climate etc, etc. A Manual of Reliable Information Concerning the Territory* (San Francisco: AL Bancroft & Co. Printers, 1883).

⁵⁵⁹ Wagoner, ‘The History of the Cattle Industry,’ 57.

William S. Collins, *Cattle Ranching: Multiple Property District Feature*, (National Register of Historic Places, 2005), 17-18.

⁵⁶⁰ Thomas H. Peterson, ‘Cash up or No Go: The Stagecoach Era in Arizona’. *Arizona Historical Society*, 14 no. 3 (1973): 205-222

Pat H. Stein, *Historical Trails in Arizona from Coronado to 1940*, (State Historical Preservation Office. Phoenix, Arizona, 1994), 24.

throughout the west. Many army veterans used their land scrip to return and settle in the area which they had encountered during the Civil War.⁵⁶¹

The Anglo-American settlers were also enticed by a series of legislation which further curtailed the independence of the indigenous people. President Grant's Peace Policy, initiated in 1871 as the Act of March 3rd, reflected a change in indigenous policy by removing their 'domestic dependent nation' status and establishing them as 'Wards of State' instead.⁵⁶² This meant that the indigenous people were denuded of their ability to negotiate treaties or became ineligible for a treaty because they were no longer perceived as separate entities within the United States. This marginalized indigenous people further because they were either pushed to the boundaries of fertile land or were forcibly persuaded to reside on the growing number of Indian reservations which were being established in the American Southwest to remove the indigenous people from land coveted by the Anglo-Americans.⁵⁶³ As Wards of State, the United States gave the indigenous people lands to use, the so called Indian Reservations, but they also lost complete jurisdiction over their traditional lands and over the way it was used.⁵⁶⁴ Thus, those who were sent to reservations or were marginalised were forced to rebuild their live on a piece of land which was limited in resources or that they had little affinity with.⁵⁶⁵

⁵⁶¹ Wagoner, *Early Arizona*.

⁵⁶² Parker, *First Report*

Alyssa Landry, 'Ulysses S. Grant: Mass Genocide Through 'Permanent Peace' Policy,' (<https://newsmaven.io>, 2016)

⁵⁶³ Thirty-seventh Congress, Abrogation of the Treaties - 'Chapter 101: An Act to protect the Property of Indians who have adopted the Habits of civilized Life,' (June 14, 1862), 427-428.

Parker, *First Report*

Edward Spicer, *Cycles of Conquest: The impact of Spain, Mexico and the United States on Indians of the Southwest, 1533-1960* (Tucson AZ: University of Arizona Press, 1967), 137.

⁵⁶⁴ Forty-first Congress, Act of March 3rd, known as Grant's Peace Policy – 'Chapter 120: An Act making appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June thirty, eighteen hundred and seventy-two, and for other Purposes,' (March 3, 1871), accessed 20 March 202, www.loc.gov. 544-571.

⁵⁶⁵ Donald Worcester, *The Apaches; Eagles of the Southwest* (Norman: University of Oklahoma Press, 1979), 284, 301, 317.

The move to place all indigenous people into reservations encouraged more settlers into the region, as they felt safer in expending the energy and time in establishing in the region. However, with more Anglo-Americans looking to invest in southern Arizona, the United States government needed to establish which areas were available for purchase by settlers and which land segments were still legally and privately owned. The federal Act of July 22, 1854 had established provisions to determine previous land ownership by Spanish and Mexican families and was in compliance with the mandates of the Treaties of Guadalupe Hidalgo and the Gadsden Purchase to honour complete titles to the grants.⁵⁶⁶ The procedure required the claims were to be sent to the Surveyor General who then advised Congress to confirm the claim or not. However, the procedure was cumbersome and by the 1880's the Commission did not have the capabilities to process all the claims that were flooding the offices of the Surveyor General.⁵⁶⁷ This system was also exploited by wealthy Anglo-Americans and their teams of specialist lawyers who began to manipulate the Spanish and Mexican claims through the US legal system gaining the land themselves in lieu of payment from the heirs of the original grantees.⁵⁶⁸

Access to water was also an important consideration for those concerned with developing business ventures in the territories of the southwest, and this was particularly apparent in

Gayle Harrison Hartmann, Mary Charlotte Thurtle and Gary Paul Nabhan, 'Native Peoples of the Tinajas Altas Region: Prehistory to Present,' in *Last Water on the Devil's Highway: A Cultural and Natural History of the Tinajas Altas*, editor Bill Broyles, (Tucson AZ: University of Arizona Press, 2014), 68-69.

⁵⁶⁶ Treaty of Guadalupe Hidalgo, Article 8 and 9.

Gadsden Purchase, Sections 5 and 6

⁵⁶⁷ J. J. Bowden, 'A Critique of the Solution of the Southwest Private Land Claims Problem,' MS Thesis, Dallas, TX: Southern Methodist University, 1969), 3.

Richard Wells Bradfute, *The Court of Private Land Claims: The Adjudication of Spanish and Mexican Land Grant Titles, 1891-1904*, (University of New Mexico Press, 1975), 13-15.

⁵⁶⁸ Marilyn Strome Harris, 'Arizona Land Grants: Cases which appeared before the Court of Private Land Claims – 1891-1904,' (MA Thesis, San Diego State College, 1961), Chapter III.

Bowden, 'A Critique,' 9-10.

Bradfute, *The Court of Private Land Claims*, 13-15.

southern Arizona where most of the grant lands lay along the important water sources of the region. Many were along the upper Santa Cruz and San Pedro Rivers and a couple of the grant claims were located on the substantial secondary rivers of the area such as the Babocomari and Sonoita Rivers. These water sources were not only of vital importance to the ranchers but also for the miners in the hills and mountains above the river valleys. The extraction techniques of the miners required water both at the prospecting and mining point, also at the processing point. It, therefore, was in the interest of the ranchers and miners to establish claims to their water sources and to prevent homesteaders from claiming the land from under them. In addition, the pre-emptive and homesteading legislation prevented public domain land with known minerals and salt licks from being acquired privately, however, if the land was unknown to contain minerals at the time of purchase, then the landowner could also claim the mineral rights, which otherwise would have belonged to the government.⁵⁶⁹

By the 1880's pressure for a swifter conclusion, or a smoother system, began to build which called for a revision of the system.⁵⁷⁰ In southern Arizona this included the need to settle Apache land as a defense against clashes with Apache over resources, particularly against the Chiricahua Apache whose territory contained extensive grazing lands and river property. This became particularly urgent for the United States as the industrial development of the mining and ranching industries in southern Arizona was rapidly occurring, encouraging the development of a railroad network in the region. Simultaneously, the government was establishing reservations for indigenous people, using the army to relocate them away from public domain lands released under the provisions of the 1873 Timber Culture Act and the 1877 Desert Land Act. The more

⁵⁶⁹ Wagoner, 'The History of the Cattle Industry,' 68-81.

⁵⁷⁰ Wagoner, *Early Arizona*, 165.

prominent resident landowners in southern Arizona began to become concerned that they would lose their pre-empted lands and pushed for more determinate legislation to legally secure their boundaries and water sources and to protect their property from the incursion from other incoming Anglo-American settlers.⁵⁷¹ Thus, there developed a greater demand to settle the land ownership claims towards the middle of the 1880's in accordance with the pressing concerns of those with influence in the southwest. The first Surveyor General's Office for Arizona was established in Tucson in 1870, which later became the Arizona Court of Private Land Claims established by the 1891 Act to finally resolve the Spanish and Mexican grant land claims.⁵⁷²

The Legislation

Surveyor-General Commission of Private Land Claims 1854-1891

In the provisions of the treaties of both Guadalupe Hidalgo and the Gadsden Purchase land which had been granted by the Spanish or Mexican governments prior to cession was to be recognised by the United States as privately owned and not to be included as public domain. However, the onus was on the landowner, or heirs, to provide valid documentation to prove ownership, and if abandoned, to prove that it was abandoned for external reasons, such as indigenous agitation or natural disasters, as permitted in their grant agreements.⁵⁷³ When the Office of Surveyor General was created for New Mexico Territory in 1853 these provisions were

⁵⁷¹ Wagoner, 'The History of the Cattle Industry,' 67-68.

Bowden, 'A Critique,' 2.

⁵⁷² Forty-first Congress. Arizona Office of Surveyor General – 'Chapter 246: An Act to make the Territory of Arizona a separate surveying District, and to establish the Office of Surveyor-General therein,.' (July 11, 1870), 230, accessed 10 June 2021, www.loc.gov
U.S. Court of Private Land Claims

⁵⁷³ Titulo *San Juan de las Boquillas y Nogales* (1833) translation 1897 in Elias documents (University of Arizona Library Special Collections, call number AZ 232).
Treaty of Guadalupe Hidalgo, Articles 8 and 9.

incorporated into the duties of the Surveyor General; namely to investigate each of the Spanish and Mexican grant claims to determine whether the Mexican title was valid and complete or if the land could be reverted to public domain.⁵⁷⁴ The Surveyor General was then required to send this report to the Secretary of the Interior for recommendation to grant the land title, or not, by a Committee of Private Land Claims who forwarded it to the House of Representatives for confirmation of the recommendation by an act of Congress.⁵⁷⁵

In 1870 the Office of Surveyor General for Arizona was established as a separate office from New Mexican, with the same duties and responsibilities as the Surveyor General for New Mexico.⁵⁷⁶ This office was established as land claims in Arizona were beginning to escalate as more Anglo-Americans were entering the territory. It became increasingly important to establish which lands could be available as public domain lands for sale, as pre-emptive or homestead claims, and could be reserved federal lands. Reserved lands also included any lands which were thought to have Spanish and Mexican private land grant titles but which still needed to be confirmed by Congress.⁵⁷⁷

However, between 1873 and 1888 the Surveyor General offices were so inundated with claims, that Bowden estimates that between 1854 and 1891 the Colorado, New Mexico and Arizona offices had 241 claims to investigate, gather all the legal paperwork for, and then to process

⁵⁷⁴ Office of Surveyor-General, Section 8

⁵⁷⁵ Office of Surveyor-General

McFarland, N.C. Commissioner of the General Land Office. 'Report No. 192, from 1883 – Certain Private Land Grants in Arizona Territory (To accompany bill H.R. 3235).' Forty-ninth Congress, House of Representatives, 1886.

⁵⁷⁶ Arizona Office of Surveyor General

⁵⁷⁷ Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico*, (Southwest Books, 2014), www.southwestbooks.org, conclusion.

General Land Office, *The Unappropriated Public Lands*

Thomas E. Sheridan, *Landscapes of Fraud: Mission Tumacacori, The Baca Float, and the Betrayal of the O'odham* (Tucson AZ: University of Arizona Press, 2006), 135-136

through the legal system.⁵⁷⁸ The office was required to put together a packet containing photographs, affidavits, and an official surveyor report of the land that grant contained, and to send this to the appropriate registrars office either in Mexico or in Spain. The registrars offices were then requested to confirm the boundaries of the claim, whether it held a perfect or complete, or an imperfect, title at the time of cession, or to confirm it was legally abandoned, in that it was neglected because of reasons other than those of Indian attack or natural events. After the packet had been returned to the United States, then the Surveyor Generals office had to translate all documents in Spanish, trace all the title paperwork to the grant from cession, and contact all surviving members and claimants to confirm legal transfer of the property between heirs or by external acquisition. Finally, after all the documentation had been collected and approved by the Surveyor General, they had to be then recommended for confirmation or rejection by the Secretary for the Interior before being presented to Claims Committee for an Act of Congress to be passed declaring the grant legal, privately owned and reserved from public domain.⁵⁷⁹

It was quickly determined that this procedure was too cumbersome and numerous claims were stalled by this longitudinal process. Therefore, in 1891, the United States Court of Private Land Claims was established and became the final stop for any Spanish or Mexican land grant owners to solidify their claims legally under United States laws and legislation. Community claims, however, were flatly not recognised in United States property law, and except for the Pueblos in New Mexico, all community claims were designated as public domain based on the premise that

⁵⁷⁸Jay J. Wagoner, *The History of the Cattle Industry in Southern Arizona*, (Tucson, AZ: University of Arizona Press, 1952), 37.

Bowden, 'A Critique'

⁵⁷⁹ McFarland, Report No. 192.

Wagoner, *Early Arizona*, 165.

most were former missions which were absorbed into public domain after Mexican Independence when the Spanish priests were evicted from the country.⁵⁸⁰ In southern Arizona, the mission and lands of Tumacacori were given to the O'odham who lived there as a community grant by the Mexican government prior to cession. However, the title was taken from them by the Sonoran governor Maria Gandara, who claimed the grant as a private property. This claim was researched by the Committee of Private Land Claims, who confirmed that it was a private grant at the time of cession.⁵⁸¹ Unfortunately, as many community grant claims were ignored by the legal system of the United States, this prevented any recourse indigenous people had to retain their lands which they had held during the Spanish and Mexican eras, further removing them from their indigenous heritage.⁵⁸² When the Court came a close finally in 1904, all claims were deemed finalized and determined as closed cases, although some were still being challenged by pre-emptive claimants in the Supreme Court at the time. Some of the challenges to the grants are illustrated in court cases such as *Herrick v Kern County Land and Cattle Company* (1901), *Herrick v Boquillas Land and Cattle Company* (1906) where squatters, or preemptive claimants were fighting extradition from the *San Juan de las Boquillas y Nogales* grant area by the owners Kern County Land and Cattle Company.⁵⁸³

The process was elongated because of the many issues that the Offices of the Surveyor General's encountered when trying to establish a legal lineage for the ownership and land titles.⁵⁸⁴ The

⁵⁸⁰ Ebright, *Land Grants*

General Land Office, *The Unappropriated Public Lands*

⁵⁸¹ Fr Bonaventure Files Oblasser, 'Records and writings from Father Bonaventure, 1905-1937, Arizona Historical Society; Tucson, call number AHS AZ 554

Sheridan, *Landscapes of Fraud*, 137

⁵⁸² Oblasser, 'Records and writings'

Sheridan, *Landscapes of Fraud*, 137

⁵⁸³ *Herrick v Boquillas Land Cattle Company*. No. 105 (U.S. Supreme Court January 2, 1906), accessed 20 May 2016, <http://caselaw.findlaw.com>.

⁵⁸⁴ Wagoner, *Early Arizona*, 164.

evidence, which the office had to uncover to prove a legal claim, was extensive. Establishing a grant title meant that the office needed good legal translators who could locate and then translate the Spanish-written documents in the Spanish and Mexican records offices.⁵⁸⁵ The office often encountered two stumbling blocks, first was to determine whether individuals had authority to give or sell land grants, aside from the Mexican government, and who was permitted to do so, and when. The Commission had to be very careful on the dates of the grants because many were deemed unlawful by the Mexican government.⁵⁸⁶ The second stumbling block was Article 5 of an 1853 Mexican law, signed 14th November, which stated that “all alienations [meaning transfer of property ownership rights] of public lands made by states and departments” were revoked and became null and void.⁵⁸⁷ Wagoner posits that this law was designed to sweeten the deal between the United States and Mexico for the Gadsden Purchase, and basically meant that any lands which were not granted by the central Mexican government were unsupported, so that the United States could lay claim to more public domain land than would originally appear. Wagoner posits that this law was designed to sweeten the deal between the United States and Mexico for the Gadsden Purchase, and basically meant that any lands which were not granted by the central Mexican government were unsupported, so that the United States could lay claim to more public domain land than would originally appear. Wagoner states that according to the *Arizona Citizen* in 1876, this law was repealed immediately after treaty ratification in 1854.⁵⁸⁸ This would have significant impact on the land claims proceedings both during and after the establishment of the claim’s systems beginning in the Surveyor General office in 1854.

⁵⁸⁵ Harris, ‘Arizona Land Grants’

Wagoner, ‘The History of the Cattle Industry,’ 133

⁵⁸⁶ Wagoner, *The History of the Cattle Industry*, 68-69.

⁵⁸⁷ Wagoner, ‘The History of the Cattle Industry,’ 133

⁵⁸⁸ Wagoner, ‘The History of the Cattle Industry,’ 133

Image 7.1

SEC. 7. *And be it further enacted,* That any of the lands not taken under the provisions of this act shall be subject to the operation of the Preëmption Act of fourth September, eighteen hundred and forty-one, whether settled upon before or after the survey; and, in all cases where the settlement was made before the survey, the settler shall file his declaration within three months after the survey is made and returned; and any person claiming a donation under this act shall be permitted to enter the land claimed by him at any time prior to the four years' occupancy and cultivation required, by paying therefor at the rate of one dollar and twenty-five cents per acre, and proving occupancy and cultivation up to the time of such payment.

SEC. 8. *And be it further enacted,* That it shall be the duty of the Surveyor-General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summons witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bonâ fide* grants, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico; and, until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act.

Land not taken under this act subject to the act of 1841, ch.16.

Time in which the land may be entered.

Spanish and Mexican claims to land to be ascertained.

Portion of such claims to be reported. Vol. 9, 922.

The report to be laid before Congress for action.

Lands covered by such claims reserved from sale.

1854 Act for Office of Surveyor General, Sections 7 and 8⁵⁸⁹

The office also had to find the boundaries of the properties and whether they were located within the United States. This was no mean feat when the original boundary markers were usually piles of stones or a natural marker such as a tree or a ravine, which had often been disturbed by years of land use, especially when the original grant sizes were not recorded in detail or had absorbed the overplus as part of the grant.⁵⁹⁰ An *overplus*, often claimed in the private land procedures as legal claims, was, in essence, public grazing lands that the property owners used exclusively as, and incorporated in, their own private property, these claims further encumbered the Surveyor General's work. As well as the physical features of the grant lands, the office needed to construct a paper trail of ownership if the land had passed from one member of the family to

⁵⁸⁹ www.loc.gov accessed 25 July 2020.

⁵⁹⁰ Wagoner, *The History of the Cattle Industry*, 63-64.

another, and/or into the hands of others who had acquired the property, or if the property had been irrevocably abandoned. Finally, the office needed to determine under which Mexican law each claim was established under and who were the patron of the grants and whether they were legally permitted to do so at the time.

Another issue was human fallibility. Mexican grantees were either dead or very old by the 1870's and 1880's. Their heirs were sometimes also old. In addition, many of Mexican descent were illiterate, and yet more had sold their property without filing the correct paperwork.⁵⁹¹ To compound matters, some of the properties were transferred as 'quitclaim' properties meaning that the receiver of the property accepts it without confirmation of legal ownership by the seller which often complicated the paperwork. Many quitclaim deeds were drawn up on the *San Juan de las Boquillas y Nogales* claim as the grant was going through litigation, first in the Claims Commission procedures and later in the Court of Private Land Claims.⁵⁹² Whether or not the grants were complete or incomplete as far as fulfilling the terms of their contracts with the Mexican government, many of the lands had squatters residing and working on them, and if the grants could be proved abandoned or have incomplete titles, then under United States law, the squatters could claim them as pre-emptive lands from the public domain.⁵⁹³

Several of the grants fell into one, or all, of these categories of issues, and the Surveyor General's office spent much time and energy in unravelling the lineage of the grant titles before they could send their reports up to the Secretary of the Interior to make recommendations to Congress on each grant.⁵⁹⁴ An 1886 recommendation to the Congressional Committee of Private

⁵⁹¹ Bowden, 'A Critique'

⁵⁹² 'Elias documents,' University of Arizona Library Special Collections, Tucson, Arizona, call number AZ 232, from Solomon to Ely 1887, Book 10, Deeds R.E. pp 62, 63, 64)

⁵⁹³ Wagoner, 'The History of the Cattle Industry,' 132-137.

⁵⁹⁴ Wagoner, *The History of the Cattle Industry*, 67-68.

Land Claims by the Secretary the Interior Commissioner McFarland, explained that after years of research questions remained and the case was not completely watertight. In the House Report 192 1886 Matis Ainsa a claimant for the *San José de Sonoita* grant was allowed to claim the grant even though he did not prove he was a member of the Crespo family who were the last recorded holders of the title, because, in McFarland's words he was a "well-known character."⁵⁹⁵

By the 1880's many of the grants had stalled in the hands of the Department of the Interior, and claimants were becoming insolvent as they retained lawyers to investigate and handle their case first in the commission and later in the courts. Wealthy individuals, such as the Hearst family, began to pressure the government to resolve the stalemate with the grants, and to establish ownership on the grants which could be proved and to release those which could not be proved as public domain for purchase. Ranchers, miners, financiers, and businessmen alike were pushing for a resolution to the situation, and eventually the Courts of Private Land Claims were established in 1891 to speed up the process by eliminating Congressional Action and definitively determining land jurisdiction for the Mexican cession areas as per treaty requirements with Mexico.⁵⁹⁶ The New Mexico Surveyor General George W. Julian proclaimed in a late 1880s report that up to 90% of the claims in the territory were based upon falsities and that a more stream-lined procedure might clean up the system, which could unequivocally decide upon grant cases in a more efficient manner.⁵⁹⁷ The New Mexico Surveyor General George W. Julian proclaimed in a late 1880s report that up to 90% of the claims in the territory were based upon falsities and that a more stream-lined procedure might clean up the system, which could

⁵⁹⁵ McFarland, Report No. 192, Section 2 and 3.

⁵⁹⁶ U.S. Court of Private Land Claims

⁵⁹⁷ Wagoner, 'The History of the Cattle Industry,' 132-137.
Bowden, 'A Critique'

unequivocally decide upon grant cases in a more efficient manner. President Harrison, when he gained office in 1889, recognised that a Court of Private Land Claims would be important to determine the cases in a speedier, more honest, fashion and established the court in 1891. This refined type of procedure benefitted those with who could navigate the system and use their influence to gain favourable outcomes for the ownership of the grants.⁵⁹⁸

The Legislation – U.S. Court of Private Land Claims 1891-1904

As the push for confirmation of grant titles escalated, the need for a speedier and more definitive process developed, as the existing system became clogged with claims and incapable of processing with the efficiency that many clamoured for. An additional incentive was forwarded by the politicians themselves as the late nineteenth century movement for conservationism and preservation of national resources, such as natural resources in the western territories, was gaining momentum.⁵⁹⁹ Therefore, as public land was being reserved for Indian reservations and the forest reserves were being established, thousands of acres were being removed from the public domain, therefore, securing legal title to unclaimed grant lands before they became unavailable was a political consideration also. Thus, many of the speculators and cattle industry businessmen lobbied Congress to establish the United States Court of Private Land Claims, a unique court which came into existence in 1891 and concluded its duty in 1904.⁶⁰⁰

⁵⁹⁸ Wagoner, 'The History of the Cattle Industry,' 132-137.

Bowden, 'A Critique'

Bowden, 'A Critique'

⁵⁹⁹ Wagoner, *Early Arizona*, 161-166.

⁶⁰⁰ Court Private Claims 1891 Act

Image 7.2

filed or not.

SEC. 7. That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe-Hidalgo, on the second day of February, in the year of our Lord, eighteen hundred and forty-eight, or the treaty concluded between the same powers at the city of Mexico, on the thirtieth day of December, in the year of our Lord, eighteen hundred and fifty-three, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed.

SEC. 8. That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

Proceedings after petition.

Powers, etc., of adjudication.

Scope of final decree.

Vol. 9, p. 322.

Vol. 10, p. 1031.

Every decree must include certain references and specifications.

Certain other claimants claiming under completed title may apply for confirmation.

Procedure.

1891 An Act establishing the U.S. Court of Private Land Claims, Section 7, with reference to the Mexican cession grants⁶⁰¹

The United States Courts of Private Land Claims were initially just two courts, the Santa Fe court and the Denver court which were established in 1891. However, by 1892 the Tucson court was added to help mitigate some of the claims in southern Arizona.⁶⁰² By the time the Tucson court was established there were 291 case files, and claimants still had until 1893 to file their claims.⁶⁰³ The initial claims, such as the ones which were close to being confirmed by Congressional Action prior to the establishment of the courts, went through very quickly and were confirmed by the Claims Courts without too much contention.⁶⁰⁴ However, some were

⁶⁰¹ www.loc.gov accessed 10 June 2020.

⁶⁰² Wagoner, *Early Arizona*, 161-166.

⁶⁰³ Bradfute, *The Court of Private Land Claims*, 214.

⁶⁰⁴ Bowden, 'A Critique'

stalled in their proceedings, and the Claims Courts took much longer than originally intended before they could close out their duties. By 1904, they had confirmed 289 cases which encompassed grants consisting of a total of 35,491,020 acres in the cession territories, mainly in New Mexico and Arizona, although New Mexico took the lions' share ⁶⁰⁵ As Ebright points out in his introduction, local interests were often balanced against the land grant claims decisions when placed before the Courts of Private Land Claims, although, many disputed grants were challenged in the Supreme Court later, who made the final decision.⁶⁰⁶

Imperfect claims had until 1893 to finish filing and this was directed to those whose grant conditions might not have been complete by cession, for example some were only two years into their five-year improvement plan when cession occurred. Again, they had the right to appeal a negative decision or rejection of their claim, in the Supreme Court. Sometimes, if they were able to prove that they would have completed the grant requirements to gain a perfect title, or had done so shortly after cession, then their claims would be confirmed, provided all else was recorded legally and correctly. Squatters on grant lands were able to appeal decisions too, however, their application needed to be supported by 20 years of residency and improvement of the land, and if the grant was confirmed they were permitted to claim 160 acres per adult, either in situ, or in lieu on other lands, dependent upon the landowner.⁶⁰⁷ This last group of people, however, were often evicted because few could prove residency of 20 years or more, and given the Apache raiding and transience of people residing in southern Arizona at the time, many appeals failed. Forbes gives an account of the Pennington family who frequently moved around the Santa Rita Mountain area and the Santa Cruz Valley eking out a living in the early territorial

⁶⁰⁵ Bradfute, *The Court of Private Land Claims*, 214

⁶⁰⁶ Ebright, *Land Grants*

⁶⁰⁷ Sheridan, *Landscapes of Fraud*

years. Originally a large family, who had arrived in southern Arizona in the late 1850's, a decade later only a couple of sisters were left, most members of their family having perished in the meantime, often at the hands of various Apache raids.⁶⁰⁸ In southern Arizona this was also complicated by a situation created by some floated land, centred around Tumacacori, called the Baca Float Number Three, which impacted a significant area in the region resulting in a loss of land for not only the Tohono O'odham but also for many Sonoran Mexican and smaller Anglo-American ranchers along the Santa Cruz and Sonoita River valleys.⁶⁰⁹ Most of these issues also caused the claims to drag through the court system and even after decisions had been confirmed many still ended in the Supreme Court for final confirmation.⁶¹⁰ However, in the long run, the Private Land Claim Courts did attempt to finalize the requirements of the Treaty of Guadalupe Hidalgo and the Gadsden Purchase Treaty where the United States needed to recognize and endorse all perfect, or potentially perfect, titles of the Spanish and Mexican grants. If it did not do it in the literal sense, it did maintain the spirit of intending to honour the clause, in accordance with concerns raised by Mexico, and pacify some expansionists at the time.⁶¹¹

⁶⁰⁸ Robert H. Forbes, *The Penningtons: Pioneers of Early Arizona, a Historical Sketch*, (Arizona Archaeological and Historical Society, 1919).

Other early Anglo-American settlers, such as the successful rancher and cattle baron Henry Clay Hooker, who tried various businesses and cattle ventures in Cochise County, southern Arizona.

Lynn R. Bailey and Don Chaput, *Cochise County Stalwarts: A Who's Who of the Territorial Years* Volumes I and II (Tucson, AZ: Westernlore Press, 2000), 183-190.

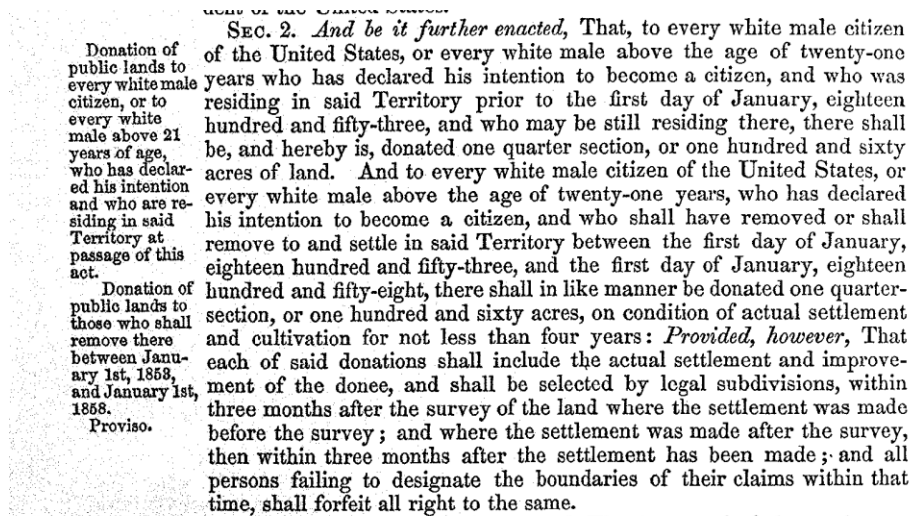
⁶⁰⁹ Sheridan, *Landscapes of Fraud*

The float was a land swap for the Baca family who were being removed from federally claimed land. They had 5 options to choose from, number 3 being the one in the Santa Cruz valley. Unfortunately for southern Arizona, it also consisted of one of the Mexican grants and because of this, and from inadequate survey measurements, the parcel 'floated' around the valley successively for several decades.

⁶¹⁰ Bradfute, *The Court of Private Land Claims*, 217.

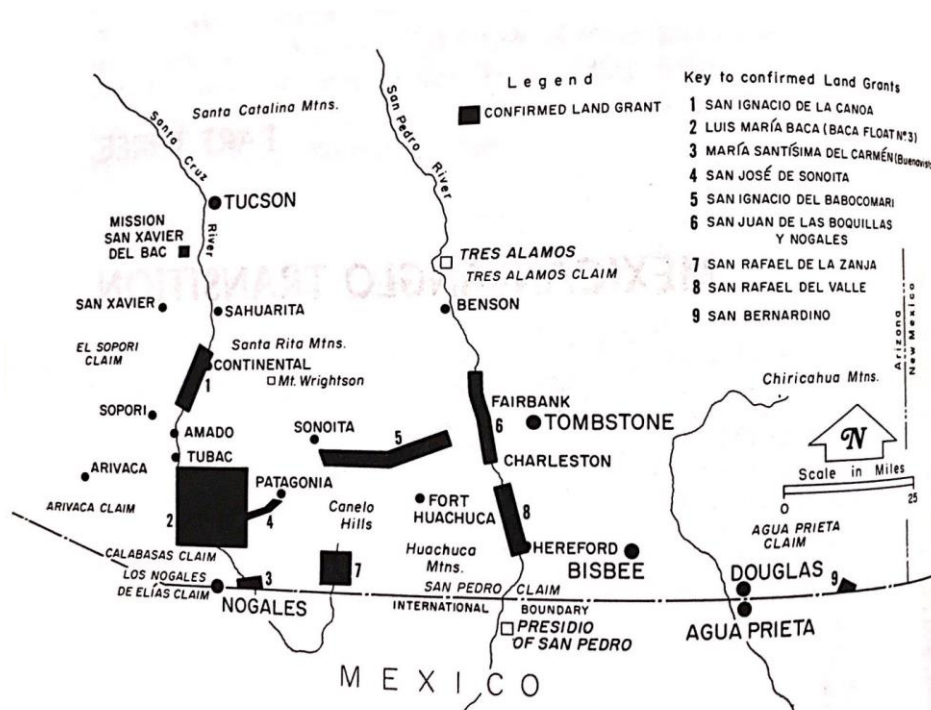
⁶¹¹ Bradfute, *The Court of Private Land Claims*

Image 7.3



1853 Act establishing office of Surveyor General, Section 2 establishing applicant provisions⁶¹²

Image 7.4

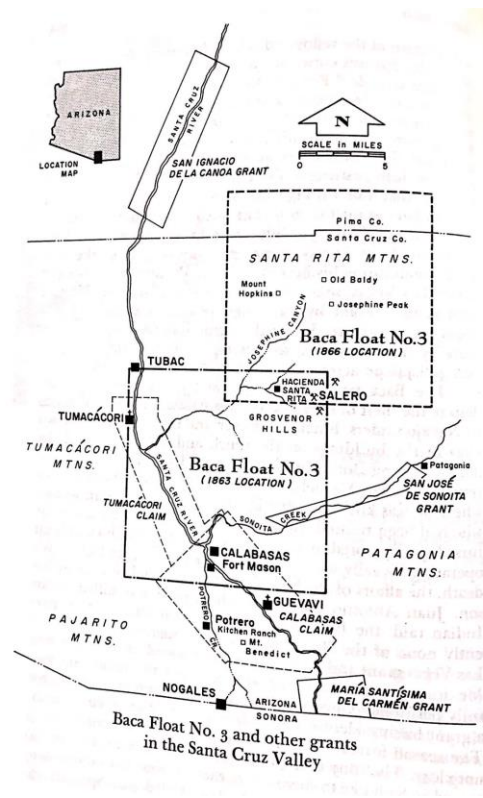


Plan Showing the Spanish and Mexican Grants confirmed by the Court of Private Land Claims in southern Arizona⁶¹³

⁶¹² www.loc.gov accessed 25 July 2020.

⁶¹³ Jay J. Wagoner, *Arizona Territory 1863-1912: A Political History*, (Tucson, AZ: University of Arizona Press, 1970).

Image 7.5



Showing the mobile Baca Float grant which complicated any further claims to the Tumacacori grants⁶¹⁴

Discussion

The land claims systems of the late nineteenth century, according to Richard Bradfute, were flawed from the outset.⁶¹⁵ The processes which were required were deemed too cumbersome for the ranchers, miners, and railroad executives, who pressed for quicker and more definitive decisions about the validity of the private land and grant claims as demand for available public land grew. The inherent lack of regulated and indisputable boundaries, the changeable size of the parcels, and the vagueness of established titles favoured those who had the money to pursue

⁶¹⁴ Wagoner, *Arizona Territory*.

⁶¹⁵ Bradfute, *The Court of Private Land Claims*, 216-222.

their grant claim through the United States legal system. This indication of graft and corruption, rewards and incentives, coupled with the inability to challenge a decision made by the Congressional Committee, has led to criticism of the system.

When the Arizona Surveyor General's Office opened in Tucson in 1870 it dealt with the over 20 land grant claims, mostly in southern Arizona. These, according to the Anglo-American settlers, needed to be determined so that the territory could be made available for public domain sale and development.⁶¹⁶ Anglo-American settlers, along with the United States government, supported the speedy resolution to the private Spanish and Mexican land grant ownership as it prevented the United States from establishing control and distribution rights over the land it deemed productive for industry. By exerting total control over the territory, the United States projected irrefutable sovereignty over the land, and was able to justify the removal of the original indigenous inhabitants as extra-legal entities which needed to be excluded. The impetus to resolve the land claims within the legal provisions of the treaties and the legal systems of both Mexico and the United States was the clamouring interest of the expansionists and land hungry capitalists.

Southern Arizona, by the end of the Civil War, drew the attention of many mining barons from California and Colorado who began to speculate in the fledgling Arizona mining industry. Many of these speculators had enough money to privately hire tenacious lawyers who went into Mexico to ferret out the legal documents to the acknowledged grant areas legally belonging to Spanish and Mexican families. At the same time, owners of the grant lands scrambled to get their titles recognised by the legal entities of the United States, so that they could fend off

⁶¹⁶ Wagoner, 'The History of the Cattle Industry,' 133-136.

trespassers and other settlers, and/or sell their vast claims to potential investors. The onus was on the landowner to prove their legal right to the property, and many were heavily invested in finding and producing the correct documents to their claims. In addition, most of the grant lands were situated on important water sources in the region, and it was important, in the wake of the Homestead and Desert Land Acts to secure the water rights, and if possible, the mineral rights to these lands.⁶¹⁷

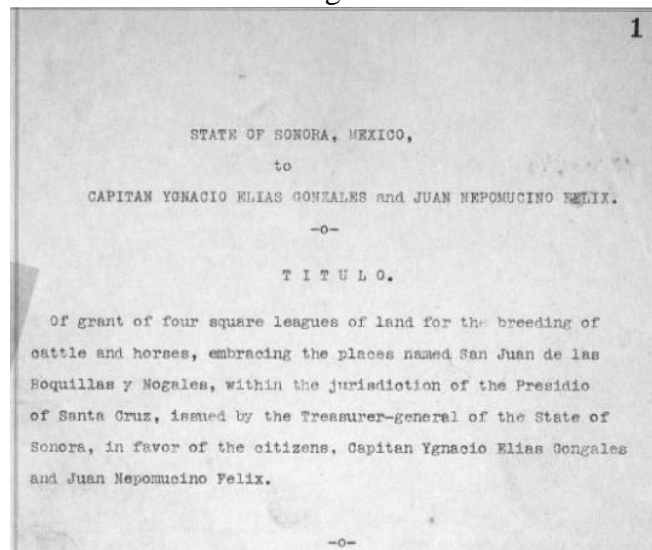
Unfortunately, on the other side, claimants also had to foot a considerable bill to secure their lands, and often it was the lawyers who gained the land in the long run as they accepted land sections in lieu of monetary payment. Bradfute (1975) is critical of the processes of the Courts, highlighting that for a claimant these courts were just as onerous as the earlier Claims Commission processes; the biggest part was because the onus was on the claimant to establish their legal ownership of a perfect title to the grant lands; this was a heavy burden for those unused to the U.S. legal system or with extra money to take it through the court system.⁶¹⁸ In addition, many claimants either did not know, or could not afford, to step forward and begin an appeal, therefore by not claiming, they lost their lands permanently into the public domain, as once determined there was no recourse to challenge the decision of the commission. Bradfute is critical because first the claimant had to file to prove their ownership, however, if the claim was rejected initially then the claimant had the right to appeal to the US Supreme Court, provided they refiled it within 6 months of the decision being published. If the claim was recommended for confirmation, then a survey was completed, any objections were registered, and if all concurred, the grant was confirmed. There was also the right to appeal in the US Supreme

⁶¹⁷ Wagoner, 'The History of the Cattle Industry,' 133-136.

⁶¹⁸ Bradfute, *The Court of Private Land Claims*, 216-222.

Court, which a few did, including the United States if the claim decision was not acceptable. If the claim was confirmed then the claimant had to pay for half of the survey costs, and if they could not afford that, they had to sell their land to pay for the costs, either privately or to the United States, which then became future public domain lands.⁶¹⁹ Thus, the Private Land Claims processes, on one hand settled the land grant disparities, but on the other, irrevocably prevented minorities from establishing their legal claims to their own lands. The heirs to the grant lands often became bankrupt or lost their lands in lieu of payments to their legal representatives who had to keep their claims alive in the legal system before the final Congressional confirmation.

Image 7.6



Translation of the 'Titulo' or title for the *San Juan de las Boquillas y Nogales* grant which had been translated for the Commission of Private Land Claims, in the Hearst pursuit of full title for the four square leagues of land⁶²⁰

The process for grants to wicker through the legal system and reach a decision, as laid out in their acts, was extensive. The Office of Surveyor General was required to put together a packet

⁶¹⁹ Bradfute, *The Court of Private Land Claims*, 133-136.

⁶²⁰ Elias documents, (University of Arizona Special Collections AZ 232).

containing photographs, affidavits, and an official surveyor report of the land that grant contained, and to send this to the appropriate registry office either in Mexico or in Spain. The registry offices were then requested to confirm the boundaries of the claim, whether it held a perfect or complete, or an imperfect, title at the time of cession, or to confirm it was legally abandoned, in that it was neglected because of reasons other than those of Indian attack or natural events. After the packet had been returned to the United States, then the Surveyor General's office had to translate all documents in Spanish, trace all the title paperwork to the grant from cession, and contact all surviving members and claimants to confirm legal transfer of the property between heirs or by external acquisition. Finally, after all the documentation had been collected and approved by the Surveyor General, they had to be then recommended for confirmation or rejection by the Secretary for the Interior before being presented to Claims Committee for an Act of Congress to be passed declaring the grant legal, privately owned and reserved from public domain.⁶²¹ Many issues dogged the extent to which the officers of the Surveyor General's Office could perform their duty effectively, and as such, much frustration led to a demand to cut corners for speedy decisions. Surveyors were hampered in their physical survey of the lands because of the remoteness of the area and the difficulties of terrain. Surveyors often had to rely on local knowledge of where the grants and their boundaries lay, and without precise information, the boundaries could be fudged by witnesses who were not neutral in the potential outcome. Monuments identified in the original land documents might have moved, changed, or been erased, again making it difficult to determine exact measurements of the grant lands. In addition, the United States restricted the grant sizes to 4 *sitios*, although many

⁶²¹ McFarland, Report No. 192.
Office of Surveyor-General, 308-311.
Homestead Act.
Wagoner, *Early Arizona*, 163-166.

disputed the exact translation in size of a *sitio*, and owners were often enthusiastic about including their *overplus* to the size. In addition, another drawback was a lack of expertise on the courts panels to effectively deal with the translations of language, custom, laws and weights and measures from the original Spanish into English.⁶²² The surveyors also had to contend with recurring animosity from disgruntled indigenous people in the area, particularly members of the Apache groups, although this eased somewhat in southern Arizona during the 1870's as the Chiricahua Apache Reservation and the San Carlos Apache Reservation were established.⁶²³ However, despite these issues, eventually over 20 claims were processed through the Tucson office, all, but one, were in southern Arizona. By 1879 the Arizona Surveyor General was able to make the first round of decisions which led to recommendations to the Department of the Interior for confirmation or rejection by the Congressional Claims Committee. By 1888 the Arizona office had thirteen grants ready for confirmation, two ready to be officially rejected and another five in the pipeline ready for the next round from Arizona.⁶²⁴ However, by this point the system was stalled with many claims, over 200 claims between Colorado, New Mexico, and Arizona, clogging the system and preventing any from being forwarded to completion.⁶²⁵

⁶²² Bradfute, *The Court of Private Land Claims*, 216-217.

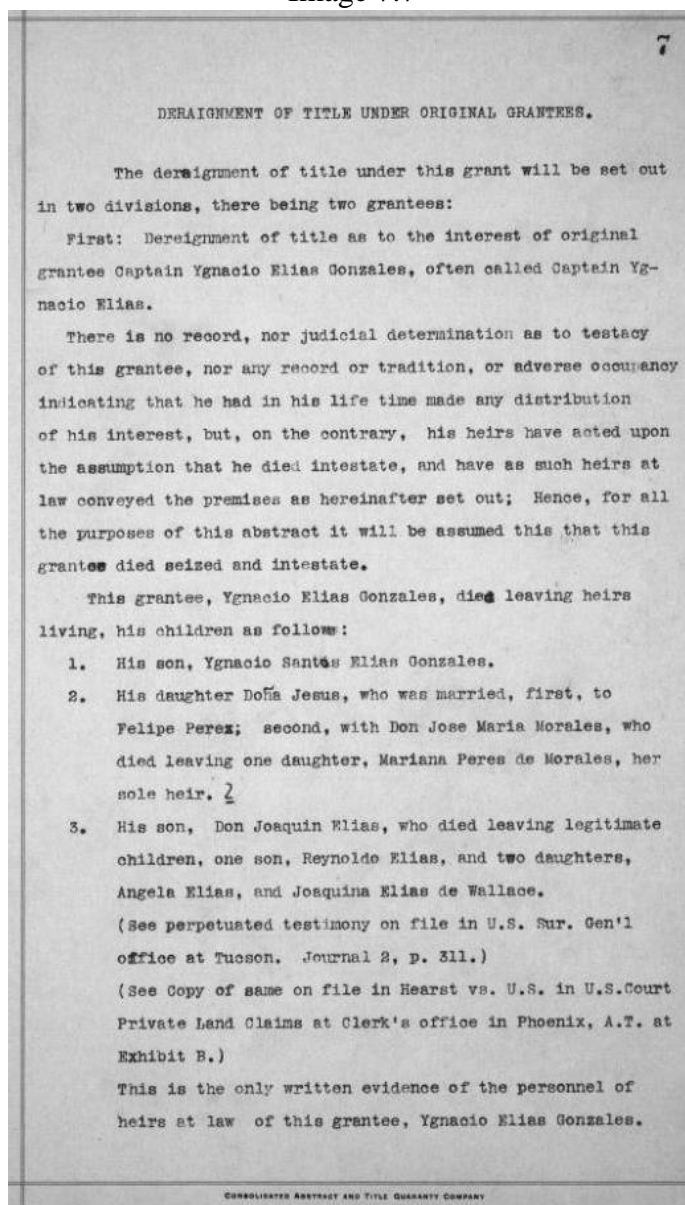
Bowden, 'A Critique'

⁶²³ John G. Bourke, *On The Border with Crook*, (Lincoln, Nebraska: University of Nebraska Press, [1891] 1971), 118-119.

⁶²⁴ McFarland, Report No. 192

⁶²⁵ Bowden, 'A Critique'

Image 7.7



Showing the complications involved in tracing the descendants of the Spanish and Mexican title holders. In the case of *San Juan de las Boquillas y Nogales* George Hill Howard had to trace both the Felix and Elias lines, who were still mainly located in Sonora to gather the titles to the individual parts of the property to forward the Hearst claim to it⁶²⁶

Bradfute claimed that one of the major issues with the Surveyor General-Claims Committee was that many members of the committee were corruptible by the wealthy and influential

⁶²⁶ Elias documents, (University of Arizona Special Collections AZ 232).

businessmen were able to manipulate the system and by-pass some of the requirements.⁶²⁷ The businessmen wanted to establish or gain vast areas of property without obstacles such as legal processes or squatters and homesteaders who could potentially have a legal claim to their property.⁶²⁸ However, Bradfute mentions that the government also ‘squared off’ the claims to comply more with the US Public Land Survey System and the way in which the US recorded territorial lands.⁶²⁹ If some of the claim was outside the ‘squared off’ area, then it would automatically be claimed as public domain for the United States.⁶³⁰ Those who were to lose the most in the Private Claims processes were the smaller ranchers, the heirs of the grantees and any groups, primarily indigenous, who had claims to community grants, which were not recognised at the time in United States property law.⁶³¹ The smaller ranchers who had been using the grant lands as free-range lands for their cattle would be unable to trace the land titles or even to purchase grants or parcels of the grants for their own use. In addition, regardless if any of them had legal homesteading or pre-emption titles to grant lands which had been vacant for decades, the new and confirmed owners had every legal right to evict them from their lands as their homestead and pre-emption titles were not legally on public domain, and therefore were null and void.⁶³² The heirs to the Spanish and Mexican grants were often disenfranchised because of their lack of knowledge of the United States legal system, exclusively written in English, or because they were limited in finances. In each case, more land was consolidated under the ownership of

⁶²⁷ Bradfute, *The Court of Private Land Claims*, 167.

⁶²⁸ Bowden, ‘A Critique’

⁶²⁹ Land Ordinance 1785 - ‘Ordinance for ascertaining the Mode of disposing of Lands in the Western Territory, Continental Congress,’ (May 20, 1785), accessed 25 Jul 2018. www.loc.gov.
Bradfute, *The Court of Private Land Claims*

⁶³⁰ Bradfute, *The Court of Private Land Claims*, 167.

⁶³¹ General Land Office, *The Unappropriated Public Lands*

⁶³² *Herrick v Boquillas Land Cattle Company*. No. 105 (U.S. Supreme Court January 2, 1906). Accessed 20 May 2016. <http://caselaw.findlaw.com>.

a larger and more extensive landowner, whose investment in the exploitation of the commercial productivity of the region was the most influential politically, and the most detrimental environmentally.

Furthermore, the Surveyor General's office, when investigating the claims often just traced legal ownership papers to the point of transfer of the territory in 1853. Only disputed claims were investigated further back in the historical legal documents, which were held either in Mexico or Spain. This limited trace of ownership often meant that illegally obtained indigenous land by Mexicans or Spanish could be easily deemed non-indigenous at the time of cession, and the indigenous people had no ability to depute this claim. In addition, another drawback was a lack of expertise on the courts panels to effectively deal with the translations of language, custom, laws and weights and measures from the original Spanish into English.⁶³³ Some properties were taken from indigenous people by underhand methods and false documents or took former missionary community land, given to indigenous people after the Mexican independence.⁶³⁴ One example was twice-Governor of Sonora, Manuel María Gandara, who was underhand at gaining Tumacacori from the O'odham only a few years before cession. However, he was recognised as legal owner of the property by the United States because he had paperwork for it in 1853.⁶³⁵ The O'odham had little recourse to establish a claim on the land even if they could prove that the land was obtained illegally prior to 1853. Other lands were taken by force, using settlers and government incentives, backed by specific legislation which permitted the elimination of indigenous people from coveted lands.

⁶³³ Bradfute, *The Court of Private Land Claims*, 216-217

⁶³⁴ Sheridan, *Landscapes of Fraud*, 100-102.

⁶³⁵ Sheridan, *Landscapes of Fraud*, 100-102.

The indigenous people of southern Arizona were not consulted in any of the land claims procedures, neither as original inhabitants and claimants of the land, nor as former citizens of Mexico, albeit as second-class citizens. Both the O'odham and the Chiricahua Apache were ignored in the legal proceedings therefore their claims did not feature in any of the applications or documents presented by either the commission or the claims courts. As such, the Chiricahua Apache were perceived as an obstacle to land settlement by the Anglo-Americans and were eventually excluded from their traditional lands by means of two maneuvers. The first was to restrict them to a specific location, between land grant areas, by means of an Indian reservation, and the second was to exile them permanently from their traditional lands. The Spanish and the Mexicans did not have much use for Chiricahua Apache land before cession so it was used extensively by the Chiricahua Apache who defended their right to use it as they wanted, and it required greater and closer land management than the Spanish and Mexican settlers could afford. The land was fertile, but the fertility needed to be managed as a precious resource, something which made the land less attractive to the settlers prior to the 1850's. However, as more ranchers and miners infiltrated the area after cession, there developed a pressing need for the United States to claim the land from the Chiricahua Apache as designated public land to aid the extraction of the important national resources which southern Arizona was able to supply, important minerals and beef cattle. Once the Chiricahua Apache were assembled on their reservation in the Dragoon Mountains, then the attractiveness of the land in eastern southern Arizona became greater and both the Department of the Interior and the Department of Agriculture wanted any claims to be decided quickly so that they could proceed with land distribution through the various Homestead Act processes which were implemented during the last half of the nineteenth century. A further added insult to injury was created by Congress in

1891 when they passed an act providing payment to those settlers who had suffered from ‘Indian Deprivations’, basically allowing Anglo-American settlers to gain reparations for taking land which originally, and was disputed by, indigenous communities.⁶³⁶

The O’odham were more fortunate than the Chiricahua Apache because they were provided with an ongoing reservation at San Xavier Mission which was not part of the Private Land Claims procedures that was on part of their traditional lands. In addition, as they were perceived as non-aggressive by the Anglo-Americans they were basically ignored by the incoming Anglo-Americans except as employees for the mines and ranches. But any further addition to the San Xavier mission reservation lands to accommodate the actual numbers of O’odham members was never considered until later in the early twentieth century, and even then, only because some advocates for the O’odham began to push for it. However, it was only after the land grant settlements had been completed and land allocated and distributed, and that Arizona had become a state, did the O’odham finally receive their own reservation in 1917 which was extensive enough to provide for the nation, albeit on marginal and desert land.⁶³⁷ The United States eventually recognised the O’odham as a legitimate indigenous group which warranted their own, larger, reservation, aside from the few thousand acres of the mission lands around the San Xavier mission. This, at least, allowed them to maintain a significant foothold on part of their traditional lands and to legally fend off intruders, albeit at the behest of the government as a ‘Wards of State’. As with other indigenous reservations, being ‘wards of state’ meant that their

⁶³⁶ Fifty-first Congress. ‘Chapter 538: an Act to provide for the adjudication and payment of claims arising from Indian depredations,’ (March 3, 1891), accessed 15 June 2021, www.loc.gov.

⁶³⁷ Executive Order 2300 Establishing Papago Sells Reservation. 1916. Accessed 16 June 2021. Proquest. Executive Order 2524 Revising land provisions for the Papago Sells Reservation. 1917. Accessed 16 June 2021. Proquest;

Oblasser, ‘Records and writings

David J. Endres, *The Politics of Religion, Recognition, and Accommodation: Father Bonaventure Oblasser, OFM, and the Making of the Tohono O’odham Reservation, 1911-193*, (www.researchgate.net, 2014).

reservation is Federal Trust land and therefore they have similar rights to the property as a government housing resident does. The Chiricahua Apache by this time were languishing in Florida as prisoners of war, still awaiting their final destination, which turned out to be Oklahoma and New Mexico.⁶³⁸

The need to settle the land claims proved to be very important in the development of Anglo-American Arizona and for Arizona's claim to statehood, and as most of the claims were located in southern Arizona, this impacted the indigenous people of the area. Land given to the Spanish and Mexican grantees was assumed by the Spanish and Mexican governments to be vacant and by right of conqueror, belonged to the national governments; a claim tenaciously disputed by the Apache.⁶³⁹ This assumed right ignored any claim the indigenous people had over their traditional territory and ignored their needs to have access to the prime land which the grantees now claimed from their national government. When the Mexican government sold southern Arizona to the United States in 1853, the assumption of sovereignty was also transferred along with the land. It was then up to the grant landowners to file a claim with the new government of the United States to wrest their lands back from the potential of becoming public domain.

In the eyes of the Anglo-Americans, the Land Claims systems did resolve some of the large, disputed land property claims, the Private Land Claims Courts with greater speed than the previous Claims Committee, although, sometimes the speed neglected details that would have changed a decision.⁶⁴⁰ Property fraud was uncovered where it might have been allowed to languish, and they determined which lands had mineral claims and were, therefore, eligible for

⁶³⁸ See Chapter 8 Extraction: Territorial Era Land Legislation for more commentary on the plight of the Chiricahua Apache.

⁶³⁹ *Chiricahua Apache Nation*, accessed 18 April 2018, (<http://www.chiricahuaapachenation.org>)

⁶⁴⁰ Bradfute, *The Court of Private Land Claims*, 216-217.

mineral licenses, thus enabling management mineral extraction claims. It also established which land was public domain, while permitting undisputed land to be set aside for reservations, and later, for forest reserves.⁶⁴¹ However, this also propagated the expansion of the extraction industries into more pockets of southern Arizona, solidifying the Anglo-American footprint onto the landscape, which in the eyes of the local indigenous populations pushed them further from their traditional ways of life.

Thus, the private land grant claims' courts were an important factor in promoting the settlement of southern Arizona, by permitting a greater distribution of claimed public domain lands to attract settlers to this cheaper territorial region, and to raise the money value of the area. It took approximately 50 years to make southern Arizona more predominantly Anglo-American and to exile the local indigenous people onto marginal land or from the region completely. In the wake of such measures, legal procedures took precedence over traditional or historical claims, and government sovereignty presided over resources and the control of space. Indigenous people were swept out of the path of incoming Anglo-American settlers who could establish commercial ventures for the benefit of the modern development and industrial progress of the country.

⁶⁴¹ Wagoner, *The History of the Cattle Industry*, 168

Chapter Eight

Extraction: Territorial Land Legislation

Introduction

Most of the damage to the indigenous environment in southern Arizona occurred during the territorial years of the region and were the result of the extraction industries which developed in the area, bringing with them an increase in Anglo-American settlement and commercial activity. In turn, the invasion of both Anglo-American settlers and the new industrial extraction techniques, encouraged by various commercial changes in mineral extraction and cattle ranching, wrought great changes onto the indigenous environment, and in turn impacted the lifeways of the indigenous people. The main extraction industries in southern Arizona were mining, ranching and to some extent timber harvesting. Legislation was used extensively to aid in the commercial development of these industries, with a view to developing the economic productivity of the territory. The legislation which was developed from the 1860's onward built upon previous land legislation and used similar precepts to encourage Anglo-American settlement of the region. It provided small parcels of land believed to be conducive to the development of commercially viable private enterprise, such as family-owned farming, ranching and mining businesses and concerns. However, as the Anglo-American expansionists discovered, the drier conditions of the southwest, such as those in southern Arizona, meant that the legislation needed to be adjusted to accommodate vast areas of land where there were limited resources.

Mining was the first large-scale commercial activity in southern Arizona, and with it came the auxiliary industries to support the ingress and egress of miners, their equipment and minerals, such as transportation and communication systems. Ranching developed alongside mining,

initially to provide local beef and dairy products to the miners and other settlers, and later, as a nationwide commercial activity with ties across the country. The timber industry was an auxiliary concern which provided wood for construction and fuel for both the mining and ranching industries, as well as the railroads. These extraction industries utilised the various land legislation provisions to establish and develop their businesses, as well as to legitimize and justify their actions against ‘obstacles’, such as indigenous agitation and access to water, regardless of the impact on the environment. However, the methods of extraction and the management of the industries implemented by the Anglo-American practices caused significant damage to the environment. In addition, as more settlers encroached upon the traditional territories of the indigenous populations various expansionist legislation policies were used more aggressively to ensure the permanent settlement of incomers and the segregation and removal of the indigenous residents from resource-rich land coveted by the incoming Anglo-Americans.

Extraction Legislation

The commercial extraction industries of mining, ranching and timber harvesting used supportive legislation to aid their claims to land in the southwest. Some legislation, such as the 1841 Preemption Act, the Homestead Act of 1862 and the 1877 Desert Land Act were designed to encourage small extraction businesses as much as small homesteads by providing them with incentives to commercially develop small plots of land in exchange for legally recognised land rights, at a small fee. In addition, specific federal acts, such as the 1866 Mining Law, the Leasing and Grazing Act of 1891 and the General Revision Act of 1891 helped to codify and develop the industries into larger commercial ventures. The timber industry, a necessary subsidiary of the mining and ranching industry, came under federal control by the end of the nineteenth century with the development of several forest reserve areas; in southern Arizona

most of these areas are in the Coronado National Forest. These pieces of legislation helped to expand the extraction industries by encouraging Anglo-American settlers to migrate to the area, and significantly removed swathes of public domain land from the indigenous people.

Homestead Act 1862: Section 1⁶⁴²

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: Provided, That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate on hundred and sixty acres.

Specific mining legislation was enacted to aid with the development of the mining industry from the 1860's onwards was codified at both the territorial and national levels as the Arizona Mining Law of 1864 and the national Lode Mining Act of 1866, respectively.⁶⁴³ The Lode Mining Act was later combined with the Placer Mining Act of 1870 to become the General Mining Act of 1872, which is still used today.⁶⁴⁴ Both laws codified the extraction and working practices of the mining industry and detailed how the mining claims should be declared. However, in the absence of concrete territorial mining laws before 1864, and an ill-defined mineral rights ownership clarification in the federal laws before 1866, many early prospectors and mining companies were able to freely explore, claim and excavate any sites which they had prospected

⁶⁴² Thirty-seventh Congress, Homestead Act – 'An act to secure homesteads to actual settlers on the public domain, (May 20, 1862), accessed 24 Jun 2021. www.docsteach.org

⁶⁴³ This act was actually called 'An Act granting Right of Way to Ditch and Canal Owners over Public Lands and for other Purposes'; the 'other purposes' consisted of 9 out of 11 sections pertaining to mineral law.

⁶⁴⁴ United States Bureau of Land Management, *Mining Claims and Sites on Federal Lands*, (U.S. Department of the Interior, 2010).

for signs of minerals. If challenged they were able to evoke the 1841 Preemption Act, and later, the 1862 Homestead Act, to stake an official property claim on their ‘discovery’ site and kept their claim under adverse possessory rights.⁶⁴⁵ Claims made prior to the Mining Acts were recognised as legal and the landowner retained both the land rights and the mineral rights to their claim. Therefore, the *laissez-faire* attitude of the territorial and federal governments prior to 1864 meant that the English Common Law interpretation of mineral rights was often used, which permitted the miners to claim mineral rights by indicating that the minerals were ‘discovered’ after their preemptive ownership claim.⁶⁴⁶ However, by the 1860’s the United States determined that all known mineral lands on the remaining public domain belonged to the sovereign government, the United States. Therefore, the United States had jurisdiction over the distribution of mineral rights’ contracts on public domain lands and was then codified as the federal Lode Mining Act of 1866.⁶⁴⁷

⁶⁴⁵ Sylvia L. Harrison, ‘Disposition of the Mineral Estate on U.S. Public Lands: A Historical Perspective,’ *Public Land and Resources Law Review*, 10, (1989): 142

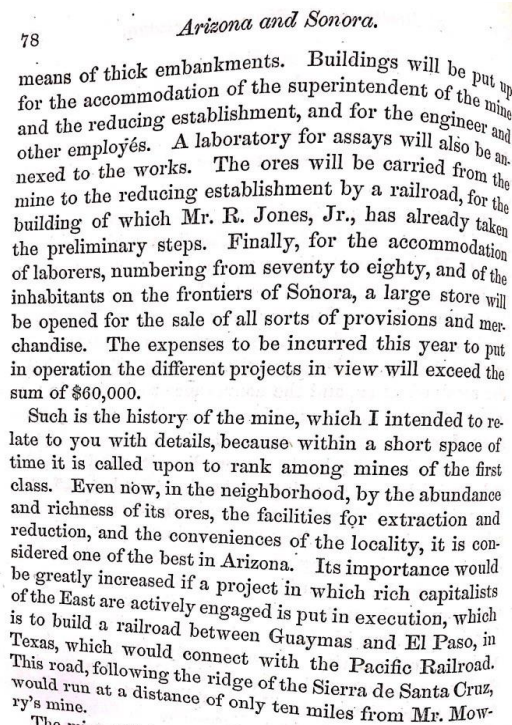
⁶⁴⁶ Sylvester Mowry, *Arizona and Sonora: The Geography, History, and Resources of the Silver Region of North America*, (New York: Harper and Brothers, Publishers, 1864), 77, 201-202.

Harrison, ‘Disposition,’ 135-139, 143

⁶⁴⁷ This is codified as possessory law in the General Mining Law – ‘Chapter 152: Act of May 10, 1872, 17 Stat. 91, *Mining Claims and Sites on Federal Lands*, (Bureau of Land Management, 2011), accessed 23 July 2021. www.fs.fed.us.

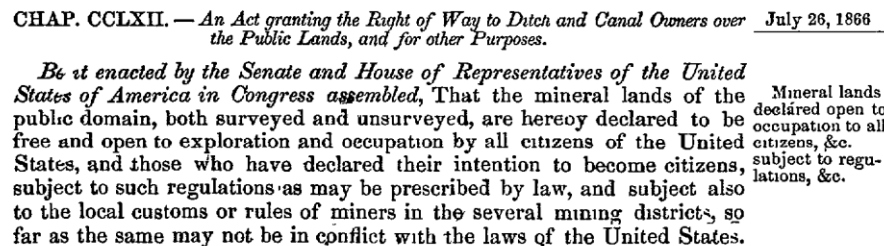
John C. Lacy, ‘The Mining Laws of Charles D. Poston, 1857-1865.’ *The Journal of Arizona History*, 50, no. 2 (2009): 156-159

Image 8.1



Sylvester Mowry's Report, illustrating the connection between the industries⁶⁴⁸

Image 8.2



An Act granting Right of Way to Ditch and Canal Owners, also known as the Lode Mining Act of 1866.⁶⁴⁹

The territorial and federal mining laws of the 1860's provided guidelines for resource claims which were incorporated into later laws and practices of other land and extraction industry

⁶⁴⁸ Sylvester Mowry, *Arizona and Sonora: The Geography, History, and Resources of the Silver Region of North America*, (New York: Harper and Brothers, Publishers, 1864), 78.

⁶⁴⁹ Thirty-ninth Congress, Lode Mining Act – 'Chapter 262: An act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes,' (July 26, 1866), accessed 23 July. 2021.

legislation.⁶⁵⁰ The Arizona Mining Law of 1864 granted a temporary, or possessory, mineral rights' contract to a prospector, who could mine the claim until the veins ran dry.⁶⁵¹ The prospector, after 1864, however, could no longer claim preemptive, or adverse possession on the land as mineral land remained under the jurisdiction of the federal government, and became part of the public domain after extraction was finished. In addition, the law established provisions for disputes and abandonment, as well as confirming mining districts jurisdictions and rights.⁶⁵² It also codified the 'first in time, first in right' doctrine, which allowed the first claimant to have first choice on a mineral vein, with subsequent claimants receiving sequential claims on the remainder of the vein.⁶⁵³ This doctrine was also applied to other laws, such as the Desert Land Act of 1877, when designating access to water on public trust water sources. New claims were required to be announced near the site to warn any other claimants of their application, claimants were not required, as they would be later by the federal Lode Mining Act, to advertise their claims in the local newspapers.⁶⁵⁴ This was detrimental for any other claimants who were either not in the area at the time, or did not know of the legal procedures, to enable them to dispute any mine claims in a timely way. For the indigenous people, the Chiricahua Apache for example, it was impossible to know about these announcements, not only because of legal and language barriers, but also because of the inability to get close to the proximity of the mines, as the miners

⁶⁵⁰ For example, the Desert Land Act of 1877 and subsequent grazing acts specify how claims were to be made, what rights the claimants had and how the water resources were to be harnessed.

⁶⁵¹ Howell Code – 'The Howell Code: adopted by the First Legislative Assembly of the Territory of Arizona, 26 September – 10 November 1864,' (Prescott, AZ: Office of the *Arizona Miner*, 1865), assessed July 20, 2018, <https://ualawlib.omeka.net>, Chapter 50 Sec 25.

⁶⁵² Howell Code, Section 25.

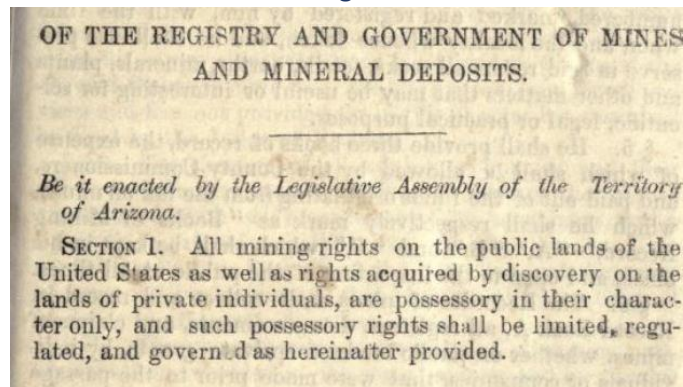
⁶⁵³ Howell Code, Section 23

⁶⁵⁴ Howell Code, Section 19.

Thirty-ninth Congress, Lode Mining Act – 'Chapter 262: An act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes,' (July 26, 1866), accessed 23 July. 2021. <https://digitalcommons.csumb.edu>, Section 3

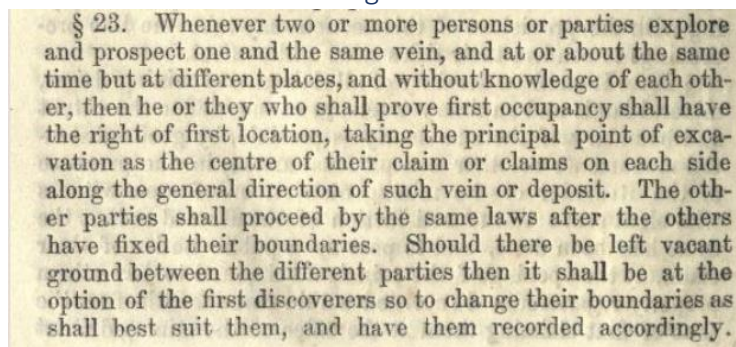
assiduously defended their mines from any interference.⁶⁵⁵ Interestingly, the Arizona Mining Act provided some provisions in the mining act for the Civil War period, stating that two years, and not one, were permitted for the extraction and registration of samples because of the “Indian wars and unsettled condition of the country”, indicating the antagonisms between the various Apache groups and the Anglo-American prospectors during this period.⁶⁵⁶

Image 8.3



1864 Arizona Mining Law, Section 1 - Possessory rights mandated⁶⁵⁷

Image 8.4



⁶⁵⁵ Leah S. Glaser and Nicholas Thomas, 'Sam Colt's Arizona: Investing in the West,' *The Journal of Arizona History*, 56 no.1, (2015): 29-52

⁶⁵⁶ Jay J. Wagoner, *Arizona Territory 1863-1912: A Political History*, (Tucson, AZ: University of Arizona Press, 1970), 145.

Howell Code, Section 30.

Wagoner, *Arizona Territory*, 148

⁶⁵⁷ 1864 Mining Law, Territory of Arizona. Prescott, AZ: Office of the *Arizona Miner*, (January 1, 1865), accessed 28 June 2021, <https://archive.org>

Any other parties shall locate in the order of the time of their arrival on the vein or mineral deposit.

§ 24. Whenever two or more parties shall select the same mine or mineral deposit for exploration, and the parties first on the ground, knowing the other parties to be at work, shall fail to give warning, either verbally or in writing, of their priority claim on such vein or deposit, then that portion of the mine situated between the main excavations of the two parties shall be equally divided between them, irrespective of the number of members each company may have; *Provided*, That the intervening portions shall not exceed the quantity of land allowed by the provisions of this chapter.

§ 25. The laws and proceedings of all mining districts established in this Territory for the denouncement, registration, and regulation of mines, mining claims, mineral lands and auxiliary lands, prior to the day this act takes effect, are hereby legalized and declared to be as valid and binding in all courts of law, as if enacted by this Legislative Assembly, to the extent and under the conditions and restrictions herein contained.

1864 Mining Law of Arizona, Sections 23 and 25

Image 8.5

After filing diagram of tract claimed, what proceedings to be had before patent issues. Notice to be published.

Survey of plat of premises.

Payment of five dollars per acre, and costs of survey, &c.

Survey, plat, &c. to cover only one vein, to be named in patent.

SEC. 3. *And be it further enacted*, That upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the register of the land office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the surveyor-general, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the register of the land office shall transmit to the general land office said plat, survey, and description; and a patent shall issue for the same thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued.

1866 Lode Mining Act. Section 3⁶⁵⁸

Not all miners were happy with these provisions, and southern Arizonan mine owner Sylvester Mowry wrote prolifically about the concerns miners had when the federal Lode Mining Law was being compiled because he was worried that the United States government would continue to

⁶⁵⁸ Lode Mining Act

hold mineral rights on preemptively claimed public land regardless of the private ownership of it. Mowry was an enthusiastic promotor of mining in southern Arizona, even after he was arrested and had his mine confiscated, under the Confiscation Act of 1862, for supplying Confederate troops during their occupation of southern Arizona in 1862.⁶⁵⁹ He thought that the mine owners would lose all their mining operations and land claims automatically to government ownership, and that they would be relegated to mere leaseholders. As an owner of a mine supporting several hundred people and 12 reduction furnaces, Mowry would have stood to lose a lot of money, but his property was confiscated before the passage of the Act, so he lost it all anyway.⁶⁶⁰ Ironically, this was the exact plight that many indigenous people, including those in southern Arizona, experienced by Anglo-American occupation of their traditional territory, and while the government came to a compromise with Anglo-American miners who were allowed to retain their possessive rights to the minerals on their land; no such concession was negotiated with the indigenous people of the region. Later, during the 1880's the Anglo-American miners infringed upon the San Carlos Reservation lands which resulted in compromises between the miners and the Indian Agents of the reservation.⁶⁶¹ The resident Apache, however, were not consulted. In the end the federal Lode Mining Act of 1866 provided a land patent, or lease, to post-legislation miners permitting mineral extraction rights on public mineral lands which would be extended until all the ore had been extracted; their operations and finds were to remain under the ownership of the miners.⁶⁶²

⁶⁵⁹ Mowry, *Arizona and Sonora*, 232.

⁶⁶⁰ Archaeology Southwest, 'Ranching Traditions (1680 to Present),' *Interpretive Themes and Related Resources*, (accessed 23 September 2017): 123-130 www.archaeologysouthwest.org
Mowry, *Arizona and Sonora*, 232.

⁶⁶¹ Wagoner, *Arizona Territory*, 145

⁶⁶² Sylvia L. Harrison, 'Disposition of the Mineral Estate on U.S. Public Lands: A Historical Perspective,' *Public Land and Resources Law Review* 10 (1989): 131-156.

Image 8.6

THE MINES OF THE WEST: SHALL THE GOVERNMENT
SEIZE THEM?

To the Editor of the World:

A resolution has been introduced in the House of Representatives authorizing the President of the United States to take possession of the mines of Colorado and Arizona. Various other propositions have been made, all looking to the best mode of devising a revenue from the mineral lands for the support of the general government. It is deemed, in view of these facts, eminently proper to submit to Congress and the country some facts and arguments upon these great questions, so important to the people of the frontier, so vital to the country, and so evidently misunderstood by the public men of the states.

penditure of more or less money, sometimes in great gain. Is it proposed, in "taking possession of the mines," to take possession also of the machinery, the houses, the mills, and the furnaces erected by individuals or companies at vast expense?

In Arizona, at the Mowry Silver Mines—individual property—more than \$300,000 in gold has been expended in improvements, \$50,000 of which went to defend the place against Indians when the government withdrew wholly its protection from Arizona. At the Heintzelman Mine probably a similar sum has been expended. At the San Antonio Mine a large amount. On Colorado River, in Arizona, at the newly-discovered silver and copper mines, a very large sum. In the Territory of Colorado, where the exclusive interest is in mining, as in Nevada, and every branch of industry dependent on it, millions have been expended in like improvements. Is it proposed, in taking possession of the mines, to take possession also of their improvements? They are all that make

Excerpts from Mowry Report, illustrating concerns of mine owners to retain all their rights.⁶⁶³

The 1864 territorial mining act also permitted mineral operations to expand and establish on additional public domain lands for the purposes of processing the ore. The law set regulations on the size of the auxiliary processing mill sites, a quarter of a Public Land Survey System, PLSS, section or less, and that it must contain a water source which was permitted to be dammed or diverted for milling purposes.⁶⁶⁴ In addition, the miner was required to sink a shaft or construct a tunnel within a year of registration, to get three samples of ore to the assayers office for registration, extended to two years during the Civil War.⁶⁶⁵ Section 51 encapsulated the

John C. Lacy, 'The Mining Laws of Charles D. Poston, 1857-1865,' *The Journal of Arizona History* 50, no. 2 (2009): 143-166.

⁶⁶³ Mowry, *Arizona and Sonora*, 101-102.

⁶⁶⁴ PLSS, or the Public Land Survey System, divided public land into six-mile square sections, subdivided these sections into 36 squares, each being 640 acres.

Land Ordinance 1785 - 'Ordinance for ascertaining the Mode of disposing of Lands in the Western Territory, Continental Congress.' May 20, 1785. Accessed 25 Jul 2018. www.loc.gov.

Therefore, one quarter section would be 160 acres, corresponding with the Homesteading Act requirements of 1862.

Howell Code, Section 18.

⁶⁶⁵ Howell Code, Sections 28 and 30.

relationship between the mineral industry and the indigenous populations at the time as it declared that taxes from the sale of any mining claims would go to the Territorial Treasurer for “the protection of the people of the Territory of Arizona against hostile Indians... for the purpose of destroying or bringing into subjugation all hostile Indian tribes...”.⁶⁶⁶ After this, the monies would go towards schools.⁶⁶⁷ As a piece of legislation this was quite an effective clause for Anglo-American Arizonans to encourage prospectors into the region to help fund the elimination of the indigenous presence. They were considered as obstacle to development and, ultimately, statehood, as one of the requirements for statehood, as provided by the Northwest Ordinance of 1787, were for the population to contain 60,000 “free inhabitants.”⁶⁶⁸ The federal Lode Mining Act of 1866 and the Placer Mining Act of 1870, which were amended into the General Mining Act in 1872, contained similar provisions. They also permitted water pre-emption rights for ditches and canals as required for mining purposes, however, the claimant was required to refer to local laws and customs for specific practices, and in the case of Arizona, this also included the ‘first in time, first in right’ provision.⁶⁶⁹

Excerpt from Article 5, Northwest Ordinance 1787.⁶⁷⁰

And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

⁶⁶⁶ Howell Code, Section 51.

⁶⁶⁷ One-third of the taxes of every mineral mine in the territory was required to be allocated to schools, as stated by the 1785 Land Ordinance.

⁶⁶⁸ Land Ordinance 1785, Article 5.

⁶⁶⁹ Lode Mining Act, Section 9.

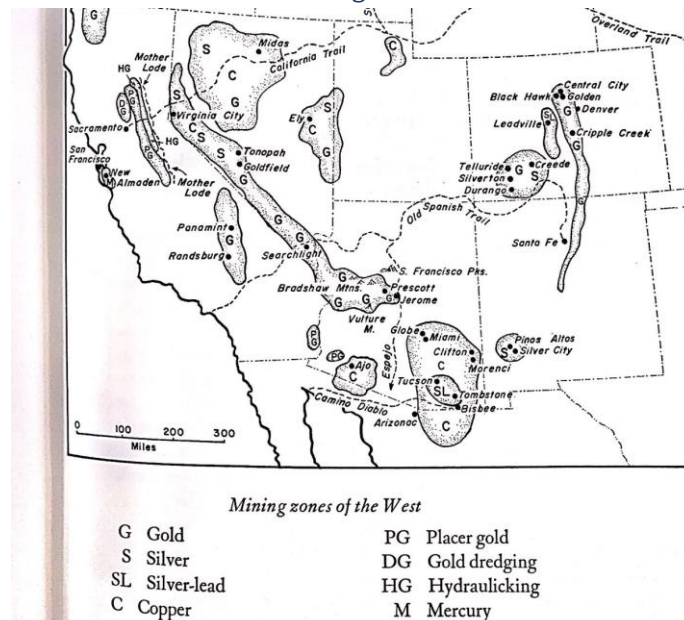
⁶⁷⁰ Northwest Ordinance – ‘An Ordinance for the government of the Territory of the United States northwest of the River Ohio.’ July 13, 1787. Accessed 25 Jul 2018. <http://avalon.law.yale.edu>, Article 5.

Image 8.7

§ 18. It shall be lawful for the claimants of a mine or mineral lands to locate and take possession of public lands for a mill site and other necessary works connected therewith, which shall not exceed one quarter section, containing a stream or other water suitable for the purpose. They shall have a right to place a dam or other obstructions on such stream, and to divert its waters for the above uses and purposes. They shall within the time and in the manner prescribed in this chapter for the registration and denouncement of mines, proceed to denounce and register the same with the Clerk of the Probate Court, and they shall be known as auxiliary lands. And if within three years from the day their notice of claim is so recorded, they shall expend in fitting the same for a mill, or in placing a mill or reduction works thereon, the sum of one hundred dollars, they may cause the record of such work to be made, and proceedings for confirming their title to be instituted as provided in section 29 of this chapter, with like effect, and receive a certificate of title as therein provided, conforming as nearly as they can to the requirements of that section. Instead of the work required by section 32 of this chapter they shall use the machinery or other works erected upon said land for mining purposes at least thirty days in each year. Such claims shall be subject to all the provisions of this chapter which are applicable to mining rights, and may be abandoned and re-located. All rights to auxiliary lands acquired under the laws of any mining district before this act takes effect shall be valid, and the owners of the same, upon complying with the provisions of this section may take the like proceedings to confirm their titles with a like effect.

1864 Arizona Mining Law, Section 18

Image 8.8



Mineral fields of southern Arizona⁶⁷¹

⁶⁷¹ Otis, E. Young, *Western Mining: An Informal Account of precious-metals prospecting, placering, Lode Mining, and milling on the American Frontier from Spanish times to 1893*, (Oklahoma: University of Oklahoma Press, 1970), 53

Ranchers and homesteading farmers, on the other hand, often used the Homestead Act of 1862, the Desert Land Act of 1877 and, later, the General Revision Act of 1891 to gain their property.⁶⁷² The Enlarged Homestead Act of 1909 and the Stockraising Act of 1916 were also used later providing additional provision to claim land for ranching. Later, the Enlarged Homestead Act changed the parcel size from 160 acres to 320 acres, and the Stockraising Act, with parcels of 640 acres, was specifically to encourage the ranching industry, which was flailing from poor market prices and adverse weather conditions. These laws were specifically designed to distribute lands to applicants for a minimal price, with the understanding that the lands would be ‘improved’ and developed over a specified time, and after for final fee, the applicant would be given full title to the property. Ranchers were careful in establishing their claims with either a salt lick or a water source in their application and used the surrounding lands as grazing lands. In 1891 the General Revision Act was passed, which was a series of legislation designed to streamline previous land acts which, while designed to encourage settlement, failed to work in the way anticipated by the Congressmen. The General Revision Act repealed the 1841 Preemption Act and two Timber Acts, the 1873 Timber Culture Act and the 1878 Timber and Stone Act, as well as the Swamp Lands Acts of 1849, 1850 and 1860. It also revised the 1877 Desert Land Act reducing the land parcels from the previously revised 640 acres to 320 acres.⁶⁷³ Each of these acts had provided for 160 acres of marginal lands to be sold to and cultivated by citizens of the United States, either by growing trees or by reclamation schemes, to improve productivity and a broader voter base. Unfortunately, with the cost of each acre at \$2.25, the remote locations and environmental conditions, the parcels were cost prohibitive for poorer

⁶⁷² J. J. Wagoner, *History of the Cattle Industry in Southern Arizona, 1540-1940*, (Tucson, AZ: University of Arizona Press, 1952), 63-64.

General Land Revision Act. ‘Chapter 561: An act to repeal timber-culture laws, and for other purposes.’. March 3, 1891. Accessed 23 July 2021. www.minnesotalegalhistoryproject.org/. 1095-1103, Sections 1, 2 and 4

investors, and speculators and larger concerns primarily benefitted from the acts; therefore, the acts were overturned as being effective to encourage smaller homesteaders to the western lands.

Excerpt General Revision Act 1891, Section 2 amending Section 7 of the 1877 Desert Lands Act⁶⁷⁴

... but no person or association of persons shall hold by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands, but this section shall not apply to entries made or initiated prior to the approval of this act.

The 1891 General Revision Act also contained a section which permitted the president to reserve sections of public domain and establish them as national forests by executive order, although this permission was later revoked and handed to Congressional vote in 1907.⁶⁷⁵ The reserved forests were designed to manage the timber industry with the intention to control extraction on the mountains for conservation purposes; although, it could be argued that the subsequent sale of timber harvesting permits would indicate a commercial intention. In addition, Congress gave permission to ranchers to apply for leases on ‘spare’ Indian reserved land, following the Dawes Severalty Act of 1887 which had divided some reservations into allotment parcels to be distributed among tribal members. This move created ‘spare’ public domain land or ‘empty’ reservation land.⁶⁷⁶ In southern Arizona, the O’odham at San Xavier Mission Reservation were the only ones who began the allotment division in the 1890’s, which ‘returned’ some land back

⁶⁷⁴ Douglas A. Hedin, editor ‘The Land Revision Act of 1891.’ (8 June, 2012), www.minnesotalegalhistoryproject.org/, 5

⁶⁷⁵ General Land Revision Act, Section 24.

‘Timeless Heritage: A History of the Forest Service in the Southwest,’ *United States Forest Service*, accessed 20 May 2019, www.usfs.gov

⁶⁷⁶ Fifty-first Congress. Leasing and Grazing Act – ‘Chapter 383: An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and eighty-seven, entitled “An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes.” February 28, 1891. Accessed 29 July 2021. <https://uscode.house.gov>. 794-796

into the public domain.⁶⁷⁷ Thus, the major extraction industries were encouraged by specific legislation, which ultimately lead to destructive practices and significant damage to the indigenous environment in southern Arizona.

Image 8.9

February 28, 1891.	CHAP. 383. —An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes."
Allotment of land in severalty to Indians on Indian reservations, etc.	<i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</i> That section one of the act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, be, and the same is hereby, amended so as to read as follows:
Vol. 34, p. 388, amended.	"Sec. 1. That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an Act of Congress or Executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed, if necessary, and to allot to each Indian located thereon one-eighth of a section of land: <i>Provided</i> , That in case there is not sufficient land in any of said reservations to allot lands to each individual in quantity as above provided the land in such reservation or reservations shall be allotted to each individual pro rata, as near as may be, according to legal subdivisions: <i>Provided further</i> , That
To each located Indian one-eighth of a section. <i>Provisos.</i> Allotment pro rata, if lands insufficient, as per legal subdivisions. Allotment by treaty or act, not reduced.	where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty to certain classes in quantity in excess of that herein provided the President, in making allotments upon such reservation, shall allot the land to each individual Indian of said classes belonging thereon in quantity as specified in such treaty or act, and to other Indians belonging thereon in quantity as herein provided: <i>Provided further</i> , That where existing agreements or laws provide for allotments in accordance with the provisions of said act of February eighth, eighteen hundred and eighty-seven, or in quantities substantially as therein provided, allotments may be made in quantity as specified in this act, with the consent of the Indians, expressed in such manner as the President, in his discretion, may require: <i>And provided further</i> , That when the lands allotted, or any legal subdivision thereof, are only valuable for grazing purposes, such lands shall be allotted in double quantities."
	To other Indians. Under existing agreements or laws. Vol. 34, p. 388.
	Double allotments of lands fit for grazing only.
	Existing allotments in certain cases to be augmented.
	No existing approved allotment to be reduced.
	Leases, by Secretary of Interior, of existing allotments where allottee disabled from occupancy, etc.
	Terms, etc.
	<i>Proviso.</i>
	Leases, by Indian agent, of certain lands occupied by Indian purchasers.
	Terms, etc.

⁶⁷⁷ Fr Bonaventure Oblasser, 'Records and writings from Father Bonaventure, 1905-1937,' (Arizona Historical Society, call number AHS AZ 554).

OF THE SECRETARY OF THE INTERIOR.

SEC. 4. That where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children, in quantities and manner as provided in the foregoing section of this amending act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions provided in the act to which this is an amendment. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

Certain Indians may make selection of public lands.

Patents to issue.

Vol. 24, p. 389.

Fees to be paid from the Treasury.

SEC. 5. That for the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of the fifth section of said act, whenever any male and female Indian shall have co-habited together as husband and wife according to the custom and

Determination of descent, etc.

Vol. 24, p. 389.

manner of Indian life the issue of such co-habitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child: *Provided*, That the provisions of this act shall not be held or construed as to apply to the lands commonly called and known as the "Cherokee Outlet": *And provided further*, That no allotment of lands shall be made or annuities of money paid to any of the Sac and Fox of the Missouri Indians who were not enrolled as members of said tribe on January first, eighteen hundred and ninety; but this shall not be held to impair or otherwise affect the rights or equities of any person whose claim to membership in said tribe is now pending and being investigated.

Provisos.
"Cherokee Outlet" lands excepted.
Certain Sacs and Foxes excepted.
Pending rights, etc., unimpaired.

Approved, February 28, 1891.

Leasing and Grazing Act 1891⁶⁷⁸

Extraction

Phylis Martinelli, in her evaluation of race in the mining industry of southern Arizona during the 1880s to 1920, explains that if mineral wealth had not been discovered in Arizona, then Arizona would have remained a backwater for Anglo-American policy and attention, for much longer than it did.⁶⁷⁹ The prospector's mineral finds pushed a need to use land settlement legislation more extensively to increase the Anglo-American footprint and also to remove the indigenous

⁶⁷⁸ Fifty-first Congress, Leasing and Grazing Act – 'Chapter 383: An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes," (February 28, 1891), accessed 29 July 2021. <https://uscode.house.gov>. 794-796.

⁶⁷⁹ Phylis Cancilla Martinelli, *Undermining Race: Ethnic Identities in Arizona Copper Camps, 1880-1920*, (Tucson, AZ: University of Arizona Press, 2009), 15-17.

people lands considered commercially valuable. This, in turn, would help to cement the territory in its bid for statehood in the early twentieth century which was stalled in Congress not because they did not have the required 60,000 citizen voters, but because the culture was not considered Anglo-American enough at the time.⁶⁸⁰ As legislation was used more aggressively to develop the region for Anglo-American enterprises, the regional extraction industries developed more complex networks of engineers, investors and specialists, who then reported on the need to harness resources and encouraged more invasive extraction methods to enhance the industries.

Commercial Mining

The Anglo-American history of southern Arizona is centred upon resource extraction, and thus the utility of the landscape to produce viable commodities which can be exchanged for their market value.⁶⁸¹ The California Gold Rush brought miners to the southwest, spurring the interest to develop a transcontinental railroad across the region to supply mineral extraction in California.⁶⁸² The industry grew significantly from 1870 onwards, which coincided with both the escalation of settlement legislation and the development of transportation networks across the region. This was also aided by a regular ferry crossing established on the Colorado River at Yuma by 1853.⁶⁸³ Commercial mining introduced by the Anglo-Americans proved to be destructive both for the natural environment and for the social and spatial relations of the region

⁶⁸⁰ Wagoner, *Arizona Territory*, 455.

Paul Frymer, '“A Rush and a Push and the Land is Ours”: Territorial Expansion, Land Policy, and U.S. State Formation,' *Perspectives on Politics*, 12:1 (2014): 131-132.

⁶⁸¹ Before cession Anglo-American extraction in the region was focused on beaver hunting, mainly in the San Pedro River valley area, predominantly during the 1830's and 1840's, to provide beaver pelts for the top hat industry Wagoner, *History*, 243.

⁶⁸² James Brand Tenney, *History of Mining in Arizona*, (Arizona Bureau of Mines, 1927-1929), 4-5. Archaeology Southwest, 'Ranching Traditions.'

⁶⁸³ Tenney, *History of Mining*, 5.

and although mining is still a commercial industry in southern Arizona, there is growing environmental concern about the impact of the industry on the natural ecosystems.

James Brand Tenney, in his report for the Arizona Bureau of Mines written between 1927 and 1929, identified three time periods for the development of Anglo-American mining during the latter half of the nineteenth century.⁶⁸⁴ The first period, approximately 1853 to 1861, encompassed the tentative, and in some cases quite lucrative, development of the old Spanish and Mexican mines, mainly by soldiers or miners from California, and who were often searching for the legendary *Planches de Plata*.⁶⁸⁵ Many of these early Anglo-American miners, such as Charles D. Poston, his partner Samuel P. Heintzelman, Frederick Brunckow, a well-known geologist, and Sylvester Mowry, who was a soldier before he turned prospector, established modest mining concerns and were financed by businessmen from the east coast. These men, along with others such as Herman Ehrenburg, had prospected, somewhat illegally during the Mexican period, and had discovered silver veins and copper deposits in the region; Brunckow also confirmed that gold could be found too.⁶⁸⁶ Thomas Childs discovered copper in

⁶⁸⁴ These were later used by Archaeology Southwest in their report for a proposal of a National Heritage Area between the valleys of the Santa Cruz and San Pedro Rivers, mainly focusing on the Anglo-American mining industry of southern Arizona.

Archaeology Southwest, 'Ranching Traditions,' 131-137.

Tenney, *History of Mining*.

⁶⁸⁵ These gold mines were thought to be near Arizonac, just south of the current international border

Richard J. Hinton, *The Hand-Book to Arizona: It's resources, History, Towns, Mines, Ruins and Scenery*, (Tucson AZ: Arizona Silhouettes, 1878), 194-195.

Archaeology Southwest, 'Ranching Traditions'

⁶⁸⁶ Hinton, *The Hand-Book to Arizona*, 186-188.

Mowry, *Arizona and Sonora*, 198.

J. Ross Browne, *Adventures in the Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*, (New York: Harper & Brothers Publishers, 1869), 17-19, 236-237.

Hinton, *The Hand-Book to Arizona*, 186-188.

Bill Hoy, 'Hardscrabble Days at the Ajo Mines: George Kippen's Diary, 1855-1858,' *The Journal of Arizona History*, 36 no.3, (1995): 233-250.

George Kippen, 'The George Kippen Diary, 1855-1858,' transcribed by Bill Hoy (1969), (*University of Arizona, Special Collections*, call number MS 307 Boxes 1-3).

O'odham territory, this was exploited by a group of investors who formed the Arizona Mining and Trading Company which financed the Ajo Mining Company. They also established a series of processing and supply stations across O'odham territory between present-day Lukeville on the international border and Gila Bend to the north.⁶⁸⁷ Once these mines were established, the miners often raised some limited funds to build basic processing plants for the minerals, such as stamping and reduction works, on nearby water sources, such as on Sonoita Creek. Poston, Heintzelman and Brunckow, focused their Sonora Exploring and Mining Company operations in the Santa Rita, Cerro Colorado and Arivaca Mountains, and in the Santa Cruz River valley with their headquarters at Tubac. Mowry established his lucrative mining operation in the Patagonia Mountains and invested in the Ajo Mining Company and the Sopori Mining Company.⁶⁸⁸

The second period is characterized by a contraction in the mining industry starting in 1861 with the temporary removal of the United States army because of the Civil War and ending in the late 1870's when the southern Arizona mining boom began.⁶⁸⁹ Prior to the Civil War the Anglo-American miners had found it increasingly difficult to operate for several reasons, which included Apache agitation from which the army had provided some protection. These mines were also hampered by burgeoning transportation costs, which would continue until the advent of the railroad across the region, and limited access to mining technological advancements.

⁶⁸⁷ Ajo mine was the first open-pit mine to be established in Arizona and did not close their doors until 1985.

Ajo Chamber of Commerce, 'History of Ajo,' last modified 2013, www.ajochamber.com.

Hinton, *The Hand-Book to Arizona*, 227.

Kippen, 'The George Kippen Diary

⁶⁸⁸ Browne, *Adventures in the Apache Country*, 17-19.

Pat Stein, *Historic Trails in Arizona from Coronado to 1940*, (Arizona State Historic Preservation Office, 1994), 8-12.

Lacy, 'The Mining Laws, 149-152.

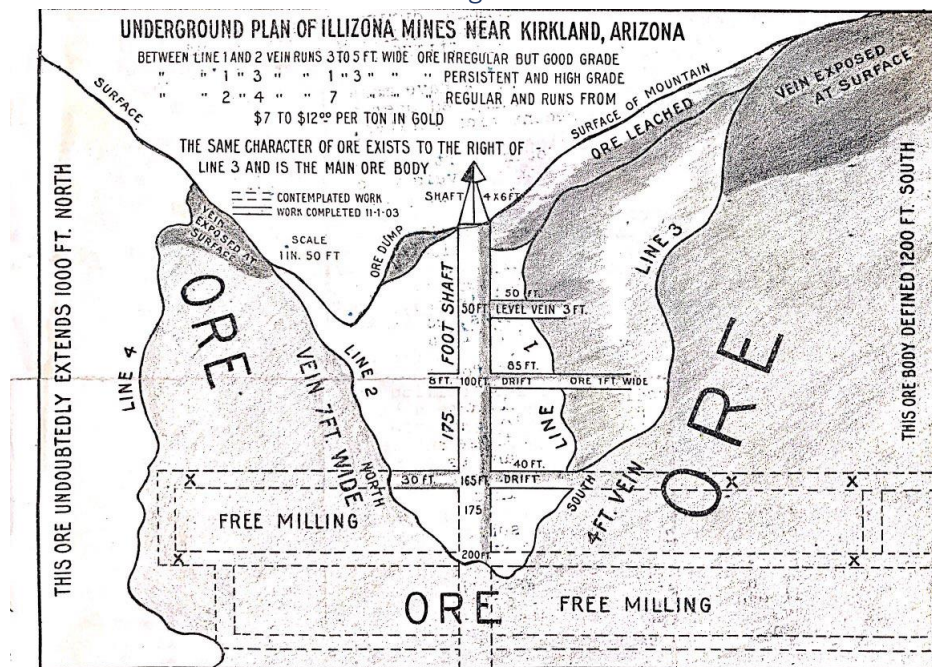
Kippen, 'The George Kippen Diary

⁶⁸⁹ In 1863 the return of the Union Army 'saved' southern Arizona from Confederate infiltration and from the Apache reclamation of their own territory.

Tenney, *History of Mining*

Operations, such as the Ajo Mining Company, were required to send their copper ore to places such as Swansea, in Wales, for smelting, which proved to be slightly cheaper than hauling processing equipment to their mines. Poston's Sonora Exploring and Mining Company, on the other hand, did invest in equipment and transported two 600-tonne boilers to the Cerro Colorado mining district, first by boat to the Rio Grande, then overland by horse-drawn wagon all the way to the Santa Rita Mountains.⁶⁹⁰ These difficulties resulted in many mines closing on the advent of the Civil War.

Image 8.10



Extraction at Kirkland⁶⁹¹

⁶⁹⁰ Browne, *Adventures in the Apache Country*, 21-22.

⁶⁹¹ Miscellaneous Mining Documents, (Tucson: University of Arizona Libraries, Special Collections, MS 307 Box 1-3).

Image 8.11

AMERICAN COPPER COMPANY,
11 BROADWAY,
NEW YORK.

CAPITAL STOCK, \$5,000,000 OF WHICH \$1,000,000 IS TREASURY STOCK. PAR VALUE SHARES, \$1.00.

NO PERSONAL LIABILITY ATTACHED TO
ANY STOCKHOLDER IN THIS COMPANY.

I HEREBY SUBSCRIBE FOR _____ SHARES OF THE TREASURY
STOCK OF THE AMERICAN COPPER COMPANY, AT FIFTY CENTS PER SHARE, FOR WHICH I ENCLOSE _____
DOLLARS IN PAYMENT OF SAME, CERTIFICATE FOR
THE ABOVE NUMBER OF SHARES OF FULLY-PAID AND NON-ASSESSABLE STOCK TO BE ISSUED TO ME ON THE RECEIPT
OF THIS AGREEMENT.

SIGNED _____
ADDRESS _____

IMPORTANT—TWO HUNDRED SHARES IS THE SMALLEST CERTIFICATE THIS COMPANY WILL ISSUE.
STOCK ABSOLUTELY NON-ASSESSABLE.
MAKE ALL CHECKS OR DRAFTS PAYABLE TO THE AMERICAN COPPER COMPANY.

Raising finances by selling shares to support the mining ventures⁶⁹²

The third period began in the late 1870's when a flurry of prospecting activity unearthed several mineral deposits and veins in southern Arizona and lasted until the beginning of the 1900's when both the veins and the market value bottomed out. Much of this later growth in the mining industry developed after the discovery of silver by Edward and Albert Schieffelin, and their partner Richard Gird in 1877.⁶⁹³ The Schieffelin and Gird *Toughnut* mine was established after several months of intensive prospecting and provided the catalyst for the large commercial mining industry in the region. Within months of the discovery the town of Tombstone was established, and the area was so inundated with prospectors that the population numbers swelled from 2,100 in 1880 to over 5,000 in 1882.⁶⁹⁴ In their wake, many new mining districts were established, and finances were secured for both the processing works, many on the banks of the

⁶⁹² Miscellaneous Mining Documents, (Tucson: University of Arizona Libraries, Special Collections, MS 307 Box 1-3).

⁶⁹³ Ed. Schieffelin, 'History of the Discovery of Tombstone,' University of Arizona Special Collections

⁶⁹⁴ Schieffelin, 'History'

Neil Carmoney, ed., *Next Stop: Tombstone. George Hand's Contention City Diary, 1882.* (Tucson, AZ: Trail to Yesterday Books, 1995).

'San Pedro Riparian National Conservation Area,' *The Friends of the San Pedro River*, (Tucson Field Office, Bureau of Land Management, nd).

San Pedro River, and transportation links required for the industry.⁶⁹⁵ Technological developments, media and political support and increased transportation lines encouraged mining engineers and travel writers to travel to the region and favourable reports advertising the fecundity of the mineral belts in southern Arizona proliferated.⁶⁹⁶ Transportation and investment difficulties still availed and for many of the smaller mines overcoming these became cost prohibitive as more mining discoveries in the region flooded the commercial market and reduced the price of the ore.⁶⁹⁷ Eventually, many smaller mines consolidated into one larger company, or into syndicated mining districts, to defray costs, encourage investors and railroad building, but which also brought significant numbers of non-indigenous people into the region.⁶⁹⁸ In the meantime, railroad companies competed for lucrative contracts and grant lands to build transportation links between their main lines and the mining fields.

⁶⁹⁵ Hinton, *The Hand-Book to Arizona*, 115-136.

Dr. J. H. McKee, *Report on Mines of Tombstone Syndicate, 1879*, (San Francisco, CA: Bacon and Company, Book and Job Printers, 1879), 1.

Patrick Hamilton, *The Resources of Arizona: Its mineral, Faring and grazing lands, towns and mining camps; its rivers, mountains, plains and mesas; with a brief summary of its Indian tribes, early history, ancient ruins, climate etc, etc. A Manual of Reliable Information Concerning the Territory* (San Francisco: AL Bancroft & Co. Printers, 1881), 33-41.

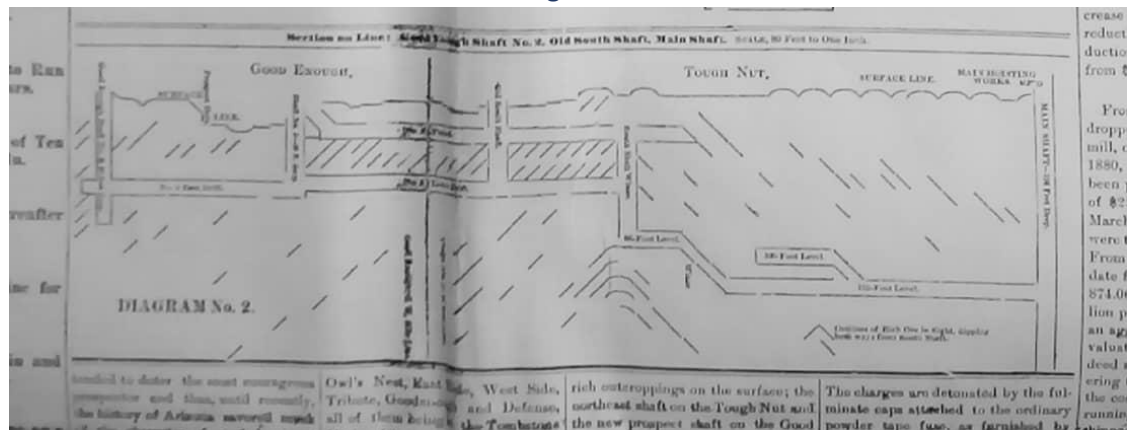
⁶⁹⁶ Wagoner discusses political support for the development of the mineral industry from Governor Safford during the 1870's.

Wagoner, *Arizona Territory*, 148.

⁶⁹⁷ D.F. Briggs, *History of the Ajo Mining District, Pima County, Arizona*, (Arizona Geological Survey, 2006).

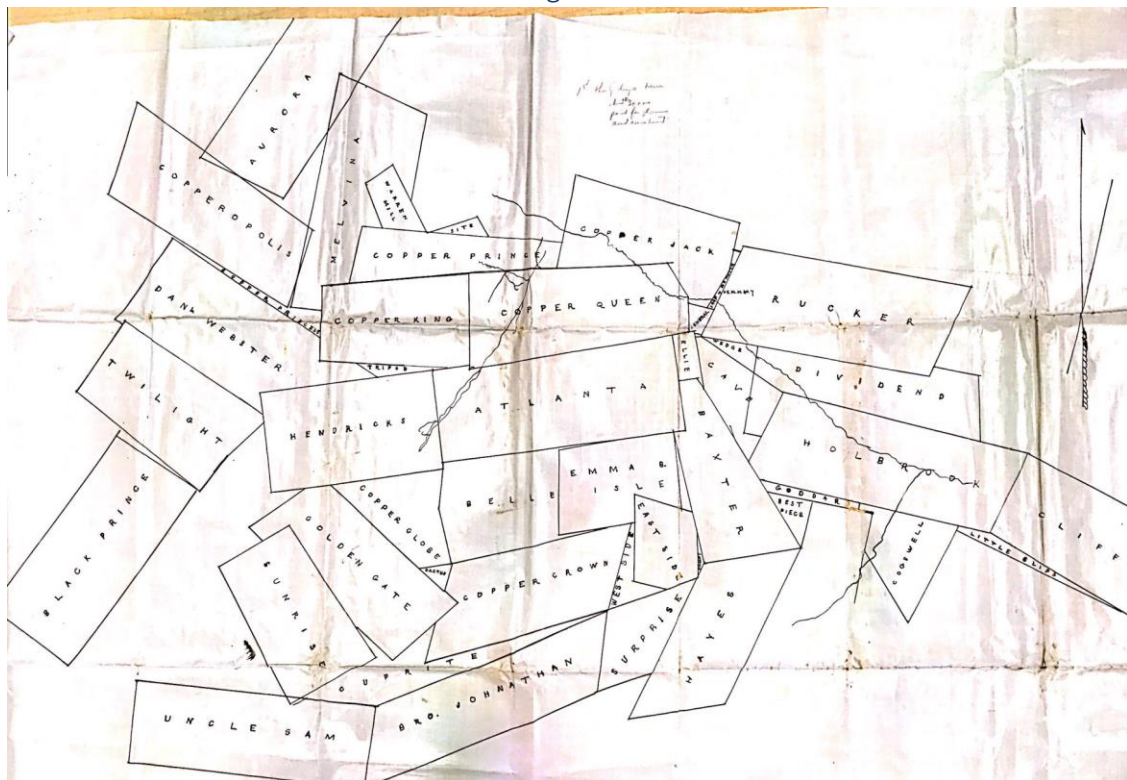
⁶⁹⁸ Martinelli, *Undermining Race*, 19-20.

Image 8.12



Toughnut Mine at Tombstone, diagram and plans⁶⁹⁹

Image 8.13

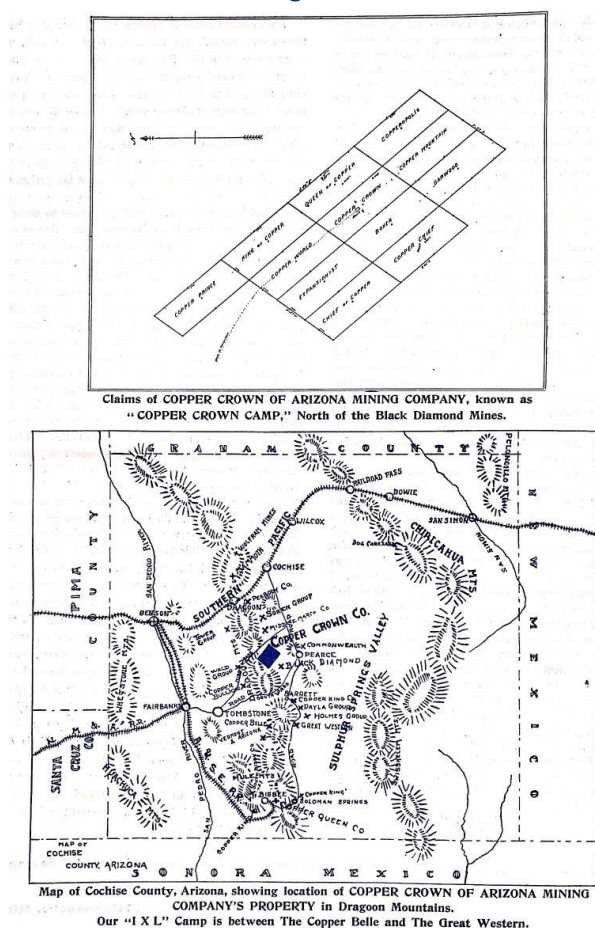


Showing the Copper Queen Mining District, Bisbee⁷⁰⁰

⁶⁹⁹ Reproduction *Tombstone Epitaph*, 1 no. 1 (1980 [1880]): 1

⁷⁰⁰ Miscellaneous Mining Maps, (Arizona Historical Society), AZ 307.

Image 8.14



Showing claims along a lode line, Copper Crown mining claims⁷⁰¹

Reports and advertising stimulated greater interest in the larger incorporated mines, which enabled the mines to dig deeper for minerals to increase profits. The Aztec and Tyndall mining districts in the Santa Rita Mountains, for example, had consolidated ten silver mines by 1878, while Tombstone mines had consolidated as the Tombstone Syndicate, according to an 1879 mining report by Dr. J. H. McKee to prospective mining financiers.⁷⁰² Dr. McKee also reported that the nearby Santa Rita Mountains had the potential to provide enough timber and water to support a reductions works, a smelting and reduction mill, and the accompanying steam

⁷⁰¹ Miscellaneous Mining Documents, (Tucson: University of Arizona Libraries, Special Collections, MS 307 Box 1-3).

⁷⁰² McKee, *Report on Mines*, 3.

engines.⁷⁰³ He also mentioned that Tombstone had great transportation potential and could support mills on the San Pedro River to process the copious amounts of ore anticipated to be unearthed.⁷⁰⁴ Patrick Hamilton corroborates this in 1883 by reporting that the district supported 140 stamps in its mills on the banks of the river.⁷⁰⁵ Little did McKee and Hamilton anticipate that within a few years, the mining shafts in Tombstone District, ironically, could not be sunk below a certain level because of flooding, and at that time hydraulic technology was not advanced enough to deal with such water issues adequately.⁷⁰⁶ This saved the area from further exploitation beyond the mid-1880's when the extractable ore had been lifted, despite attempts to revitalize it.⁷⁰⁷ Along-side official reports, diarists published their travels to the mining districts, such as the diary of George Hand whose three-month diary encapsulates the activity which surrounded the boomtowns in the San Pedro River region in 1882.⁷⁰⁸ He describes his journey on the railroads from Tucson to Fairbank, a newly developed freight depot on the *San Juan de los Boquillas y Nogales* grant lands, where he was visiting a friend who ran the saloon and whose wife was starting a school in Fairbank, in the company town of Contention. Contention, established in 1880, had just been incorporated and permitted a post office; by 1882 it had 452 residents, thus helping to establish this portion of the San Pedro River as an Anglo-American settlement.⁷⁰⁹ Advertising also brought many to the area, and the reports from the new

⁷⁰³ McKee, *Report on Mines*, 2.

⁷⁰⁴ McKee, *Report on Mines*, 2

⁷⁰⁵ Hamilton, *The Resources of Arizona*, 33.

⁷⁰⁶ William P. Blake, *Tombstone and It's Mines: A Report on the Past and Present Condition of the Mines of Tombstone, Cochise County, Arizona (for the Development Company of America)*, (New York: The Cheltenham Press, 1902), 16.

⁷⁰⁷ Blake, *Tombstone*.

⁷⁰⁸ He travelled on the Southern Pacific transcontinental line from Tucson to Benson, then took the Atchison, Topeka and Santa Fe's railroad New Mexico and Arizona branchline to Fairbank. If he wanted to go to Tombstone, he would be required to use one of the wagon or stagecoach services for this final leg at this time. Hand's journey took between 2-3 hours to complete (Hoy, 'Hardscrabble Days').

⁷⁰⁹ Carmoney, ed., *Next Stop: Tombstone*.

newspapers, such as the *Daily Nugget* and the *Epitaph* in Tombstone, disseminated news and information about the latest developments in the mining districts and informed the readers of the legislation which would enable them to stake their claims too.⁷¹⁰

Image 8.15

3c You Want to Make Money **3c**
LET US TELL YOU HOW

LOCATION.
IN THE SANTA RITA MOUNTAINS, NEAR VAIL'S STATION, ON SOUTHERN PACIFIC RAILWAY. CONSISTS OF FIVE FULL CLAIMS 600x150 FEET EACH.

CHARACTER OF ORE.
The ore is a free milling gold ore, showing considerable gold in many places. Assays give values:
Emma Tunnel, \$12.15 per ton.
Hanna Tunnel, \$11.80 per ton.
Oro Shaft, \$11.60 per ton.
These figures are based on \$14.60 per ounce for stamps of gold.
Note—Mr. Johnson has estimated on \$4.50 average of the ore, which from above assays is conservative.

Machinery and Equipment.
A Kendall Mill.
A 25 horse power slide valve engine.
A 30 horse power boiler in first-class condition.
An automatic feed pump.
A large Blake Crusher.
Good ore bins.
All in good building with an iron roof and good ore platforms.

We are just organizing the
HELENA GOLD MINES CO.
Capital, 1,500,000. 750,000 Shares in Treasury.
The owners have deeded 100 acres of rich gold property in Arizona. Five full claims. Already developed. Over 500 feet of work done and ore opened up.
Already equipped with machinery.
Already producing. The present mill saving over 70 per cent of the gold values.
Not a Prospect. Not a Hope to Be, but an Is.
Plenty of Ore. Plenty of Free Gold in the Ore.
Plenty of Water to run mills to extract the Gold in the Ore.
What we need is heavier and larger machinery and a

BIGGER AND BETTER MILL
Co-operate and help us get it, and we will all make money. We are in a hurry.
We want to hear the Stamps pounding.
To get started we offer you any part of
50,000 SHARES AT 3c A SHARE
Full-paid, non-assessable. No individual liability. Purchasers of this stock WILL GET THEIR MONEY BACK out of the first profits.
Write us at once, or telegraph at our expense amount you wish reserved, as this will go quick.

3 Cents.
Extracts from report on the property made by the Hon. Royal A. Johnson, ex-Surveyor General of the Territory of Arizona.
The property is easily accessible. The country is a gold section pure and simple.
The general country rock is granite. The gold is carried in a porphyry hearth by charged with felspar.
The veins present a healthy cropping in many places being continuous along the mountain side for hundreds of feet.
The ore of the vein which has been worked thus far shows free gold throughout.
The fact that rich seams exist in the crevices in the granite on the surface confirms my belief that a much larger body of ore in the vein will be encountered at no very great depth.
These little seams are enormously rich in native gold.
Very big per cent of the value can be saved by the most ordinary process of milling.

Estimate of Operating Expenses and Profits on Small Scale.
One Huntington Mill, 10 tons capacity, average yield of ore \$4.50, saving 80 per cent of battery assay, resulting in \$14.60 per ton.
Fuel \$1.00
Oil and quicksilver \$1.00
Superintendent \$1.00
Dry millman \$1.00
Night millman \$1.00
Dry mill laborer \$1.00
Night mill laborer \$1.00
Six miners \$12.00
One miller \$2.00
Horse keep \$1.00
Driver \$1.00
Coal \$1.00
Total \$18.00
This plan can be increased to \$14.10 Huntington at the same ratio of expenses and profit. A profit of \$14.10 per ton is a daily profit of \$14.10 per ton. What you want to know is what you want to know.

3c THE BENZIE INVESTMENT CO. **3c**
Jackson Building, Denver, Colo.

Illustrating the advertising of the mines and their shares in the newspapers⁷¹¹

The mining booms of the late nineteenth century were responsible for expanding the small mining industry into large mining corporations and the history of the mining industry in southern Arizona, along with the ranching industry, is peppered with examples of interconnected persons

Fairbank was the last town to be abandoned, the nearby company towns of Contention and Grand Central were abandoned by the turn of the century, Fairbank continued as a railroad depot until the 1950's: 'San Pedro Riparian National Conservation Area,' United States Bureau of Land Management, accessed 15 July 2019, www.blm.gov.

Kippen, 'The George Kippen Diary'

⁷¹⁰ The Epitaph was started in Tombstone by John P. Clum, who moved there after resigning his post as agent for the San Carlos Apache reservation, explaining that the new mining district needed a newspaper to provide up to date mining information: Lonnie E. Underhill, 'The "Autobiography" of a Frontier Newspaper: The *Tombstone Epitaph*, 1880-1885.' *The Journal of Arizona History*, 56 no. 2, (2015): 111-144

⁷¹¹ Miscellaneous Mining Documents, (Tucson: University of Arizona Libraries, Special Collections, MS 307 Box 1-3).

who had investments in many of the mining, ranching and transportation businesses. It was this web of connections helped to develop the large extraction industries and create a solid front when determining policies and practices. Companies, such as the Development Company of Tucson and the Development Company of America, were invested in both mines and transportation links in the region. The Development Company of Tucson was incorporated in 1906 to develop finances for a concentration plant for the Gold Boulder Mining Company in the Santa Cruz Mountains. Their board members and investors were from the local businesses and banks which would support this investment, each having a vested interest in the success of the mine.⁷¹² The Development Company of America employed engineer William Blake to report on the condition of the mines in the Tombstone District. Blake's report was commissioned by the president of the company, a Mr. F. M. Murphy, who was also the president of the Santa Fe, Prescott and Phoenix Railroad, which was in direct competition with the El Paso and Southwestern Railroad Company to build a rail link between Fairbank and Bisbee, the location of the productive Copper Queen Mine. The Copper Queen happened to be owned by the Phelps Dodge Company, which owned the El Paso and Southwestern Railroad Company. The founder of Tombstone, Edward Schieffelin, who had helped two assessors at Brunckow's mine after he had died, approached one of them asking him to join with him in his mining ventures.⁷¹³ The assessor declined the offer in favour of a better deal to establish a flourmill on the banks of the San Pedro River with the aid of a Desert Land grant application. Schieffelin later joined forces

⁷¹² The Tucson Development Company involved local businessman Mose Drachman and his business partners Charles H. Hoff and George F. Kitt. Kitt was a trust holder for shares in the Gold Boulder Mining Company, which was owned by William H. Sawtelle, a lawyer from Alabama who moved to Tucson sometime after 1906, and Mike and John Maloney and Bracy Curtis: Mose Drachman Papers, (*Arizona Historical Society* call number MS 0226).

⁷¹³ The cabin in which Brunckow lived and died is now one of the historic sites in the San Pedro Riparian National Conservation Area.

with former Territorial Governor A.P.K. Safford to sell Schieffelin mining company shares to investors on the east coast.⁷¹⁴

The connections between the mining businesses, their financiers, and stockholders meant that many of the mining concerns were interrelated and encouraged closed communication with each other to develop their shared interests and write contracts securing their investments. Edward Vail, for example, who owned the very large and successful Empire Ranch from the 1870's to the 1920's, financed many of his operations from the proceeds of his uncles' *Total Wreck* mine just north of the ranch.⁷¹⁵ These contracts were complex legal documents, where stock, property and land were transferred for as low as one dollar, thus creating a network for interested parties.⁷¹⁶ Shares were advertised in newspapers and prospectuses which declared that for a minute amount of money, often between five cents and one dollar per share, a minimum of fifty to one hundred shares could be purchased, with the promise of a good return for their investment, although mines often did not produce as expected.⁷¹⁷ Interestingly, the mining prospectuses often contained disclaimers asking the investor to 'do their homework', and had meticulous descriptions of the geology of the mine, diagrams of the shafts and mills and a report on how the company operated, including where their water source was located and how it would be used for

⁷¹⁴ Schieffelin, 'History'.

Blake, *Tombstone*, 14-15.

'Statement of percentage of copper from Arizona,' Resolution Copper, 2020, <https://resolutioncopper.com>

⁷¹⁵ John D. Rose, 'Total Wreck Mine and Total Wreck Ghost Town,' *Wyatt Earp Explorers*, (2018), www.wyattearpexplorers.com

⁷¹⁶ Bracy Curtis, shareholder of the Gold Boulder Mining Company, was a cashier for the bank which issued the promissory notes from the Tucson Development Company for shares sold to them by the Maloney's, for a transfer fee of \$1 for the entire transaction. The Maloneys deeded their share of the mine over the TDC. The Maloney's also had shares in other mining companies, not named in the documents (Mose Drachman Papers, Arizona History Society call number MS 0226).

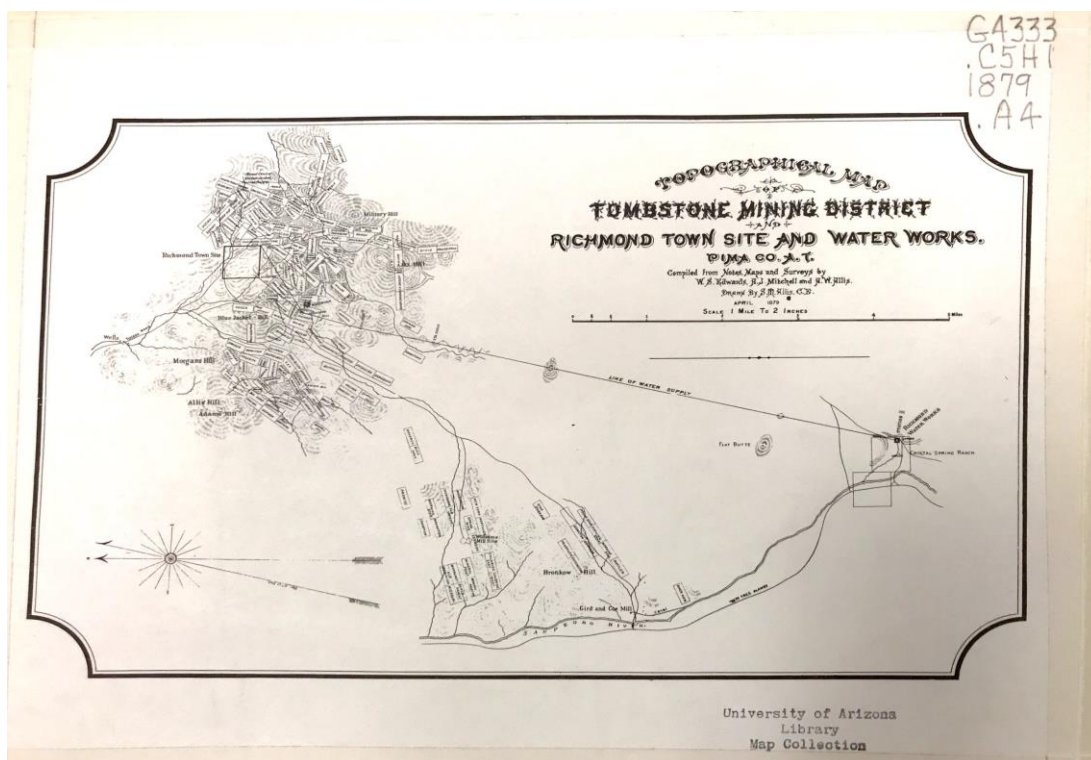
Elias documents, (*University of Arizona Library Special Collections*, call number AZ 232).

Mose Drachman Papers, (*Arizona Historical Society*, call number MS 0226).

⁷¹⁷ Miscellaneous Mining Documents, (*Arizona Historical Society*, call number MS 307 Box 1-3).

the operations.⁷¹⁸ Sometimes the shortcomings of the mining operations were exposed to the public such as when the Copper Belle Mining Company was accused of “failing to investigate a property before offering its stock for subscription,” indicating that the company gained investors’ money for a mining operation which did not produce any ore, thus losing significant amounts of money for its investors, who were often just ordinary people.⁷¹⁹

Image 8.16



Tombstone District and beyond, showing water pipes and transportation networks ⁷²⁰

These business intricacies left little room for ‘outsiders’ to penetrate the businessmen’s mining clubs while giving the illusion of ‘full disclosure’ about a business which was potentially financially unstable and destructive to the environment. The result was that many deals took

⁷¹⁸ Nickerson & Wilson Brochure, in Miscellaneous Mining Documents (*Arizona Historical Society*, call number MS 307 Box 1-3).

⁷¹⁹ ‘Exceptional Bargain is Worthless Stock,’ newspaper clipping, in Miscellaneous Mining Documents (*Arizona Historical Society*, call number MS 307 Box 1-3).

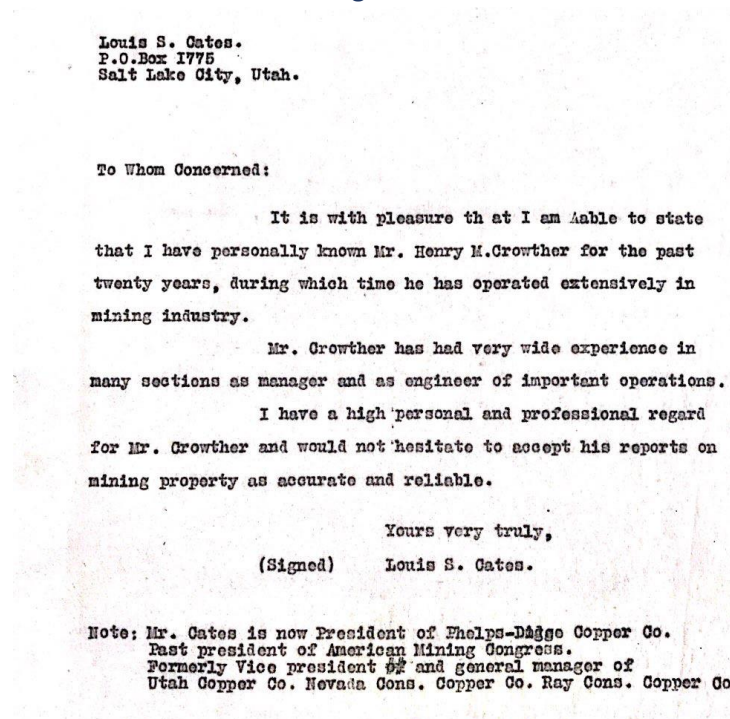
⁷²⁰ Tombstone Mining District. (University of Arizona Map Collection, G4333 C5 H1 1879 A4).

place behind closed doors and benefitted only those who participated in them, to the exclusion of all others who would want to provide an input. As Wagoner points out, loose groups of businessmen, such as the “Tucson Ring” were responsible for manipulating business arrangements to secure their own interests.⁷²¹ This effectively prevented anyone outside the circle from knowing and, perhaps, to dispute the methods and operations with which the miners operated. By the turn of the century the surface veins had run dry, thus requiring heavier equipment for deeper extraction, encouraging investment in the larger, and more powerful, regional and national mining corporations, such as the Phelps Dodge Corporation in Bisbee. By 1912 Arizona had become solidified as a viable commercial mining state and still currently produces over 70% of copper for the United States.⁷²²

⁷²¹ Wagoner, *Arizona History*, 149-155.

⁷²² Arizona Geological Survey. 2019. *The U.S. Geological Survey Commodity Report – 2019: Arizona’s Role in U.S. Production*, (2019) <https://blog.azgs.arizona.edu/>
'Commodities Summaries 2021,' *United States Geological Survey* (2021), <https://minerals.usgs.gov/minerals/pubs/mcs/>

Image 8.17



Letter of recommendation and introduction, and CV of Mr. Louis S. Cates⁷²³

Commercial Ranching and Timber Harvesting

It is unknown in southern Arizona what the original indigenous landscape would have looked like before the introduction of large numbers of European grazers, however, it is now known that commercial grazing activities cause extensive damage to the desert environment.⁷²⁴ As with the mining industry, ranching and timber harvesting were originally small concerns, which supported the local population and were auxiliary industries to mining and freight. Many of the older maps of the mountain areas are dotted with private sawmills which were mobile, moving to different timber felling locations as needed.⁷²⁵ However, later, Arizonan ranching evolved into

⁷²³ Miscellaneous Mining Documents, (Tucson: University of Arizona Libraries, Special Collections, MS 307 Box 1-3

⁷²⁴ Heather Smith Thomas, 'History of Public Land Grazing,' *Rangelands*, 6, no. 6 (December 1994): 250.

⁷²⁵ Royal S. Kellogg, *Report of An Examination of the Chiricahua Mountains in Arizona*. Report for the United States Forestry Service, (1902).

Noonan, 'Woodcutting I,' 10

large stockraising businesses, which sent raised cattle to fattening farms outside the territory, driving the cattle across the desert, and later in the cattle wagons of the railroads.⁷²⁶ At the same time, timber harvesting was often an auxiliary industry to ranching, as many ranchers also ran sawmills to provide for themselves, the mining industry and, later, the railroads. Towards the end of the nineteenth century growing forest conservation movements brought sawmill owners into the federal fold by creating national forests of the timber areas and leasing out timber rights; a relationship which has continued to the present day.⁷²⁷ As with mining, these extraction industries, including the conservation policies of the turn of the century removed vast acreage of land in southern from the indigenous people, and caused significant environmental damage. These issues, coupled with the devastation to the indigenous landscape of the commercial mining industry, still cause significant issues in the region today.

The early Anglo-American ranches were small concerns, with limited stock. Their homesteads were usually located at a water source, or sometimes a salt lick, and they used the extensive open public lands surrounding their homesteads to graze their cattle.⁷²⁸ This was a common practice which was justified by using a combination of English grazing Common Law and the Spanish term ‘overplus’, meaning that the ranchers justified grazing on public land surrounding their ranches.⁷²⁹ As with the mining industry, the ranchers evoked the 1841 Preemption Act, and later the 1862 Homestead Act, to claim to ranch lands, while using ‘overplus’ for extra grazing land.

⁷²⁶ Jay J. Wagoner, ‘The History of the Cattle Industry in Southern Arizona 1540-1940,’ (MA Thesis, *University of Arizona*, 1949), 68-81.

⁷²⁷ Susan Deaver Olberding, ‘Albert F. Potter: The Arizona Rancher Who Shaped U.S. Forest Service Grazing Policies,’ *The Journal of Arizona History* 50 no.2 (2009): 167-182.

⁷²⁸ Terry G. Jordan, *North American Cattle Ranching Frontiers: Origins, Diffusion, and Differentiation*, (Albuquerque NM: University of New Mexico, 1993), 142-144.

William S Collins, *Cattle Ranching in Arizona 1848-1950 Multiple Property Listing*, (National Register of Historic Places Nomination for the National Park Service, 2005), 16.

⁷²⁹ Jay J. Wagoner, *Early Arizona; Prehistory to Civil War*, (Tucson, AZ: University of Arizona Press, 1975), 156.

Later, the Desert Land Act of 1877 gave ranchers additional land, but also allowed wealthier ranchers to consolidate holdings by exploiting loopholes, enabling ranchers to increase their holdings by using ‘dummy entrymen’, such as adult family members or employees, to apply for additional homesteads. Between the ‘overplus’ and the public domain lands between the homesteads, the larger rancher was able to secure control of thousands of acres of rangelands. Sierra Bonita Ranch in Sulphur Springs established by Henry Clay Hooker in 1973, and later owned by John Slaughter, was admired by Robert Forbes because it was successful enough to increase the ranch holdings to encompass several water sources in the valley for their own use.⁷³⁰ The semi-legal growth of the larger ranches was exacerbated by the sale of surplus railroad lands after 1885 and the Leasing and Grazing Act of 1891, which gave wealthier ranchers access to even more acreage.⁷³¹ They then enclosed swathes of public domain with fencing enhanced with barbed wire, ostensibly to protect their stock from cattle rustlers, but really protecting their water sources and ‘overplus’ claims. However, enclosing public domain for private use was made illegal in 1885, as the government realised that this was a subversive way for ranchers to claim additional lands by preemption.⁷³²

The stock cattle in southern Arizona were initially Sonoran Mexican *crillo*, or Texas Long-horns which were a combination of *crillo* and English breeds which were hardy breeds adapted to the arid conditions of the southwestern territories. However, they were not meaty, and while they were suitable for the early settlers, they were eventually replaced by meatier European breeds as

⁷³⁰ Prof. R.H., Forbes, ‘The Open Range and the Irrigation Farmer.’ *The Forester*, VII no. 9, (1901): 216-219
Collins, *Cattle Ranching*, 19-22.

⁷³¹ Collins, *Cattle Ranching*, 30.

Wagoner, ‘The History of the Cattle Industry,’ 150-152.

Linda Mayro and Micaela K. McGibbon, *Ranching in Pima County, Arizona: A conservation objective of the Sonoran Desert Conservation Plan*, accessed 23 Sept 2017, www.pima.gov

⁷³² Collins, *Cattle Ranching*, 42-43.

the increase in the army presence as well as the development of mining booms towns changed the palates of southern Arizonans, who demanded more tender beef.⁷³³ This fueled the introduction of more specialty stock, such as the shorthair English Devon and Hereford breeds, which required greater water sources, irrigation systems, richer grazing lands and more fencing to contain them.⁷³⁴ However, it was only those ranchers with access to secure finances who were able to develop their herds in this way. By the late 1870's the grassland valleys of southern Arizona began to be carved up by the cattle barons, many of whom had subsidiary concerns in both mining and timber. In southern Arizona this included the Arivaca Land and Cattle Company in Santa Cruz valley, established in 1878, the Empire Ranch Land and Cattle Company in Las Cienegas, incorporated by the Vail family in 1882 and Slaughter's Sierra Bonita Land and Cattle Company in Sulphur Spring Valley, developed from Hooker's cattle concern in 1887. Other companies, such as the Tombstone Land and Cattle Company, and the Eire and Chiricahua Land and Cattle Company also held stock in other companies within Arizona and beyond.⁷³⁵

The development of commercial ranching in the 1880's changed the industry in several ways. As demand for quality beef products grew the ranchers recognized that their cattle could not be adequately fattened on the sparse grasslands of Arizona, and thus often sent their cattle to California for fattening before slaughter.⁷³⁶ The advent of the railroad development in southern Arizona meant that the cattle industry grew rapidly as it became easier and more financially

⁷³³ Jordan, *North American Cattle Ranching*, 297-298.

Collins, *Cattle Ranching*, 30-33.

⁷³⁴ Collins, *Cattle Ranching*, 68.

Bailey, *We'll All Wear Silk Hats*, 19-36.

⁷³⁵ John Chism used Sulphur Springs as a stockraising and waypoint between New Mexico and California for his cattle industry.

Bailey, *We'll All Wear Silk Hats*, 19-36

⁷³⁶ Jonathan Mabry, 'Cattle Ranching in Southern Arizona Before the Twentieth Century.' *Archaeology in Tucson* Newsletter 11 no. 4, (1997): 10-11, www.archaeologysouthwest.org.

viable to bring stock into the region, and to take their cattle to the slaughter markets in California, avoiding the torturous long drives across country which often deprived the ranchers of up to a quarter of their stock.⁷³⁷ The cattle barons held so much sway with the railroad business that when prices went up in the cattle drive year of 1890, the Vails of Empire Ranch refused to use the railroads and drove their cattle to California in the traditional way. Then, after they incited strike action with other southern Arizona ranchers against the railroads, the railroads capitulated and reduced prices for fear of bankruptcy.⁷³⁸ There were many interconnections between mining companies, cattle companies and railroads which produced some of the larger cattle barons and influential companies in the United States who were able to sway political decisions concerning their interest. George Hearst, father to Randolph Hearst, for example, went from being a mining baron to a cattle baron after he invested in Tevis and Haggins' Kern County Cattle and Land Company in California. After gaining the *San Juan de las Boquillas y Nogales* grant on the banks of the San Pedro River, the Hearst family transferred the holdings to Kern County Cattle and Land Company in a series of land maneuvers, who then ran a ranching concern there for many years until it was purchased in a land exchange by the United States Bureau of Land Management, BLM, in the 1980's.⁷³⁹ Interestingly, a branch of the Southern Pacific Railroad company laid lines from Benson to Fairbank on the Boquillas grant lands, and this was financed by Wells, Fargo and Company, in which Tevis was a president and Hearst had investments. In 1901 a subsidiary company of Kern County Cattle and Land Company, the Boquillas Land and Cattle Company was established to acquire the Boquillas grants lands from

⁷³⁷ Alison Bunting, ed. *Diary of a Desert Trail; 1890 Cattle Drive from Arizona to California*, by Edward L. Vail, (Sonoita, Arizona: Empire Ranch Foundation, [1922] 2016).

⁷³⁸ Bunting, ed. *Diary of a Desert Trail*

⁷³⁹ Jeff R. Bremer, 'The Trial of the Century: *Lux v. Haggin* and the Conflict over Water Rights in Late Nineteenth Century California.' *Southern California Quarterly*, 81 no. 2 (1999): 203).

Phoebe Hearst, executor to her late husband's estate, after the grant was confirmed by the U.S. Court of Private Land Claims.⁷⁴⁰

The commercial cattle boom, however, was sustainable for only a short period of time before overgrazing and depletion of resources by the 1890's resulted in significant long-term environmental problems for southern Arizona. Also, inadequate water was becoming increasingly problematic with the droughts of the 1880's and early 1890's, coupled with the growing impact of significant depletion of subsurface and ground water supplies. Jonathan Mabry states that severe drought between 1891 and 1893 reduced stock numbers by 50-75%, and contributed to the economic depression of 1893, which significantly impacted the ranching business.⁷⁴¹ This was coupled with prolific stockraising in the late 1880's which brought large amounts of beef onto the market at reduced prices. In addition, a withdrawal of government incentives for the railroads increased freight prices, and general economic issues reduced the monies available to stockmen. These issues, coupled with overgrazing, meant that the 1893 Depression hit the cattle industry significantly in southern Arizona. The struggling industry contracted, with numbers of smaller ranches unable to stay afloat, and larger ranches consolidated and used their might to appeal to the government for incentives to support their industry.⁷⁴²

Mabry estimates that by 1891 there were between one to one and a half million head of cattle in southern Arizona alone, and given the arid conditions this number is quite staggering, but this

Herrick v Boquillas Land Cattle Company. No. 105 (U.S. Supreme Court January 2, 1906), accessed 20 May 2016. <http://caselaw.findlaw.com>

Bremer, 'The Trial of the Century, 203

⁷⁴¹ Mabry, 'Cattle Ranching,' 11

⁷⁴² Prof. R.H., Forbes, 'The Open Range and the Irrigation Farmer.' *The Forester*, VII no. 9, (1901): 216-219.

also meant that cattle barons could manipulate and challenge land policies.⁷⁴³ Thus, to secure their ranges and grazing lands, influential ranchers formed associations and used political sway to encourage policies such as the Leasing and Grazing Act of 1891, which allowed the Secretary of the Interior to permit non-indigenous leasing of ‘unused’ Indian reservation lands, left ‘vacant’ by the contraction and redistribution policy of the 1887 Dawes Allotment Act. They also influenced the General Revision Act in 1891, by demanding greater government control over range jurisdictions against rustling and trespassing sheep herders, and extensions to the Homestead Act in 1909 and 1916.⁷⁴⁴ Later, ranchers lobbied for the Forestry Service to be moved from the Department of the Interior to the Department of Agriculture so they could secure grazing contracts, along with their timber harvesting contracts, on the reserved forests more effectively.⁷⁴⁵

⁷⁴³ Mabry, ‘Cattle Ranching,’ 11.

⁷⁴⁴ The ranchers were usually at odds with the sheep farmers, who they felt encroached upon their ‘overplus’ grazing lands and depleted their water sources.
Wagoner, *History*, 66.

⁷⁴⁵ Susan Deaver Olberding, ‘Albert F. Potter: The Arizona Rancher Who Shaped U.S. Forest Service Grazing Policies,’ *The Journal of Arizona History* 50 no.2 (2009).

Image 8.18



Courtesy of University of Southern California Libraries and California Historical Society
<http://digitalibrary.usc.edu/cdm/singleitem/collection/p15799coll65/id/11182/rec/1>. Public Domain. Release under the CC BY Attribution license --
<http://creativecommons.org/licenses/by/3.0/>
The Tombstone Mill and Mining Company used large amounts of timber. Teamsters initially brought lumber down from the Huachuca Mountains in ox drawn wagon trains, similar to the one here that was photographed somewhere in Arizona in approximately 1890. Transport by mule drawn wagons became more common as time went on.

Showing the importance of cattle and timber for the mining industry⁷⁴⁶

Timber is a very important resource in many industries, particularly for mining, railroads and ranching. As the extraction industries developed in southern Arizona the use of timber resources was also affected by the needs of the industry owners as well as how the government legislated for it. Forbes pointed out in his report, the term ‘forest’ needed to be extended to include the shrubby plants of the foothills and desert floors in the southwest, such as the mesquite, creosote bush, paloverde and desert ash. This would have influenced the Forest Service to include the foothills in their forest reserves of southern Arizona.⁷⁴⁷ In southern Arizona the elevated sky islands and their foothills provided a significant source of timber and water for the extraction

⁷⁴⁶ Gerald R. Noonan, ‘Woodcutting I: Wood for Construction,’ *Friends of the San Pedro River Round Up* (Winter 2019): 11.

⁷⁴⁷ Forbes, ‘The Open Range,’ 216.
Pierucci, ‘The Ancient Ecology of Fire.’
Wagoner, *History*, 66;
Mabry, ‘Cattle Ranching,’ 11.
Noonan, ‘Woodcutting I

industries, and it was of particular interest to the ranchers whose grazing lands often included the foothills. It was not until rolling ranching and timber contracts were awarded to private individuals on the reserved forestry lands, did vested interest in their conservation by proper resource management occur. This was particularly important in those areas affected by timber overharvesting and overgrazing by cattle, where the loss of soil integrity on the slopes resulted in washouts that cascaded down the mountain sides, flattening crops and killing cattle.⁷⁴⁸ This vested interest, however, in the forest reserves, and political sway that ranchers had in how the public domain was to be distributed, gave a significant boost to the cattle industry, while disregarding the needs of others in the area, especially those of the indigenous people. The ranching lobby, for example, retained a six-mile Anglo-American grazing strip which bisected the northern Tohono O’odham reservation lands until 1931.⁷⁴⁹

Image 8.19



Showing the interconnections between the different extraction industries.⁷⁵⁰

⁷⁴⁸ The first Chief of the Forest Service, Gifford Pinchot was advised by Albert Potter who had worked in Arizona in the cattle industry. Potter’s experience in the ranching business encouraged conversations between the ranching associations and his office with regards to lucrative timber contracts and to use the forest reserve areas for grazing: Olberding, ‘Albert F. Potter,’ 167-170.

Kellogg, *Report*

⁷⁴⁹ Papago Tribe, *Tohono O’odham: History of the Desert People*, (Salt Lake City, UT: University of Utah Printing Services, 1985).

⁷⁵⁰ Gerald R. Noonan, ‘Woodcutting I: Wood for Construction,’ *Friends of the San Pedro River Round Up* (Winter 2019): 14.

In the late nineteenth century concern about depletion of the natural resources of the United States was coupled with a growth in conservationism and a recognition of the unique environments within the country.⁷⁵¹ As wealthy elites began to explore the country as tourists it became necessary for territories such as Arizona, to harness and capture this interest, particularly as the dry environment in Arizona also aided in various health issues, such as tuberculosis.⁷⁵² A series of legislative and executive orders, fronted by Progressive politicians, who helped to create Yellowstone in 1872, formed the forest service, created more national parks, and also, passed the Antiquities Act of 1906, which recognised the importance of historic and pre-historic features of the landscape.⁷⁵³ These heralded a new appreciation of the indigenous landscape and opened the western lands to casual tourism, sanatoriums and later, ‘Dude’ Ranches.⁷⁵⁴

⁷⁵¹ The United States Forestry Service indicate that the conservation movement was spearheaded by an 1864 publication by George Bernard Marsh reporting about human impact on the environment. ‘Timeless Heritage: A History of the Forest Service in the Southwest,’ *United States Forestry Service*, accessed 13 May 2020, www.fs.usda.gov.

⁷⁵² Frank B. Norris, ‘The Southern Arizona Guest Ranch as a Symbol of the West,’ (MA Thesis, Tucson, AZ: University of Arizona, 1976). Olberding, ‘Albert F. Potter.’

Kim Frontz and David Tackenberg, ‘Promoting Tucson: Rudolf Rasmussen’s Legacy of Photographic Postcards, 1905-1920,’ *Journal of Arizona History* 55, no. 2 (2014): 187-204

⁷⁵³ Yellowstone, the first national park, was followed by several forest reserves as a result of a clause in the General Revision Act of 1891.

While the Antiquities Act is not of vital importance for this study, it did help to preserve some important cultural sites of the indigenous people.

⁷⁵⁴ The ‘Dude Ranches’ were used extensively by eastern and Californian businessmen as vacation ‘men’s clubs’ where further business transactions were made, while they were ‘roughing’ it in the ‘Wild West’: Norris, ‘The Southern Arizona Guest Ranch’

Thomas E. Sheridan, *Landscapes of Fraud: Mission Tumacacori, The Baca Float, and the Betrayal of the O’odham*, (Tucson, AZ: University of Arizona Press, 2006), 191.

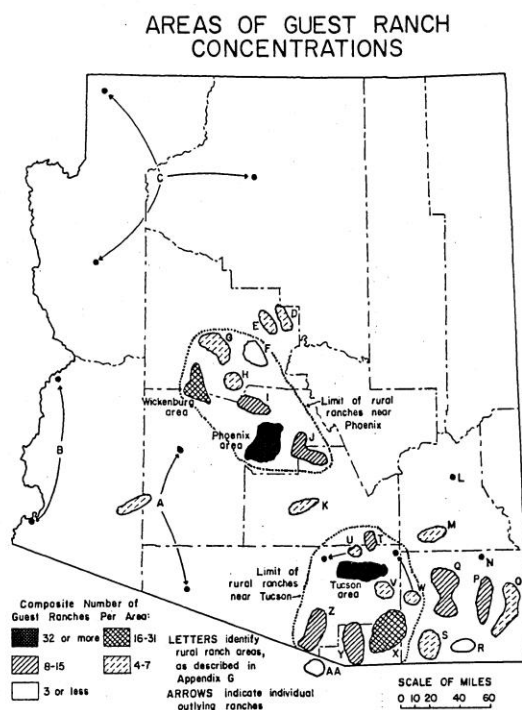


Fig. 2. Areas of Guest Ranch Concentrations

Guest, or 'Dude', Ranches in Arizona⁷⁵⁵

As a result of increased interest in the preservation of the natural environments, the Department of Agriculture temporarily established the Division of Forestry in 1881, to study the forests in the United States and elsewhere.⁷⁵⁶ This became a permanent department in 1886. Shortly thereafter, section 24 of the General Revision Act of 1891 permitted the President to reserve public domain lands from sale, ostensibly to preserve timber resources, but probably to control the last vestiges of their public domain.⁷⁵⁷ During the 1890's several forest reserves were established, and the administration for them fell under the jurisdiction of the General Land Office in the Department of the Interior. The rules and regulations for the use and protection of

⁷⁵⁵ Frank B. Norris, 'The Southern Arizona Guest Ranch as a Symbol of the West,' (MA Thesis, Tucson, AZ: University of Arizona, 1976), 19

⁷⁵⁶ Timeless Heritage,' United States Forestry Service

⁷⁵⁷ Timeless Heritage,' United States Forestry Service

the forest reserves were established by the Organic Act of 1897, and by 1905 the forest administrative leaders campaigned for the management of the forests to be completely held within the Forest Service under the jurisdiction of the Department of Agriculture.⁷⁵⁸ In southern Arizona the Santa Rita, Santa Catalina and Chiricahua Forest Reserves were created in 1902, the Baboquivari, Huachuca, Tumacacori and Peloncillo Forest Reserves in 1906, and the Dragoon Forest Reserve was established in 1907 as one of the midnight proclamations by President Roosevelt.⁷⁵⁹ Thus, by 1907 most of the important mountain ranges in southern Arizona were claimed as federal reserves and, thus, not open to either prospecting or timber harvesting, unless by contract. Ranchers lobbied for grazing permits on the forest reserves in the early 1900's and worked in cooperation with the Forest Service to maintain the reserves and preserve them for future use and continuance of their contracts.⁷⁶⁰

The impact commercial cattle ranching and forestry reserves had on the indigenous environment continues to be felt in southern Arizona to this day. Thus while, the European agrarian ideal, of small but sustainable homesteads with European stock, was always the underlying principle for post-cession land legislation, the realities of the arid southwest with sparse grazing and limited rainfall, pushed this ideal to the background. The disparity between the agrarian ideal and the agrarian reality manifested itself in the development of large and expansive ranches and stockholding companies that were able to survive in the southwest, despite constant efforts to encourage small-scale farming. In addition, the Anglo-American ways of land management in

⁷⁵⁸ In the meantime, political mechanisms were working to transfer the Executive right to establish forest reserves, to Congressional jurisdiction. This was achieved in 1907, but only after many 'midnight proclamations' by President Roosevelt, who established 100 million acres of reserved lands in 1906, before the power was signed over to Congress: 'Timeless Heritage,' United States Forestry Service.

⁷⁵⁹ United States National Park Service, accessed 20 May 2016, www.nps.gov., Chapter 9

⁷⁶⁰ Olberding, 'Albert F. Potter'

the southwest, where unsustainable water harvesting and heavy use of the soil were implemented, was vastly different from the Anglo-American practices developed in rich and fertile soils of the east coast and caused significant erosion of the environment. The failure of the larger cattle concerns to consult the indigenous way of farming in the region resulted in severe ecological issues in the future.

Population Concentration

A by-product of the mining, ranching and timber harvesting extraction industries was an increase in the Anglo-American population, and with it an increase in antagonisms between the incoming settlers and the indigenous residents of the region. As the settlements increased Anglo-Americans used specific legislation to become established as townships. At the same time, the indigenous people became subject to an aggressive reservation policy implemented by the government after the Civil War in southern Arizona. As a consequence, the indigenous people became further removed from their ancestral lands and subsequently their traditional lifeways. This heralded an increase in inappropriate methods to harness the resources of the region, as well as significant changes in, and removal of, indigenous ability to continue with their traditional practices. As a result, indigenous people were also removed from effective land management of their traditional lands and were marginalised both physically and in advisory positions in their attempt to guide the incomers in the best management practices for the limited resources of the area. Thus, the extraction industries impacted the settlement patterns and population distribution imposed by the Anglo-Americans in southern Arizona, which increased damage to the indigenous landscape into the twenty-first century.

As the mining boom towns developed around the successful veins and mineral deposits, towns such as Tucson, Tombstone and Benson developed as central hubs for services for the extraction

industries. In the early territorial period wagons had used them as stop-over points, albeit with primitive services for the passengers, so that by the 1870's many had become bustling frontier towns.⁷⁶¹ By the turn of the century, towns like Tucson, had changed from frontier towns into a large towns with regimented grid layouts for their streets, Anglo-American businesses where settlers could claim small parcels of land.⁷⁶² The Townsite Act of 1864, permitted groups of individuals to collectively purchase a townsite of no more than 640 acres, and distribute, or sell, small regimented parcels of it, to interested settlers. Sometimes land was 'sold' as a quitclaim title, meaning that the purchaser fully acknowledged that the seller did not have legal title to it, but in many cases, this was how townsites were established.⁷⁶³ The townships were subject to the PLSS parcel division system, and as required by the 1785 Land Ordinance, section 16 was reserved for schools.⁷⁶⁴ Those who had claims in these sections were permitted to exchange them for other parcels. The construction of the transcontinental railroad also helped to encourage more settlement around the boom towns and the railroad stations, thus swelling the numbers of Anglo-Americans in the region and encouraging other small urban centres to apply for township status too.⁷⁶⁵

While the boom towns and Tucson were developing in southern Arizona, the federal government

⁷⁶¹ Lacy, 'The Mining Laws'

⁷⁶² Tucson received Township status in 1871, and changed from a loose collection of streets and fields, to a highly regimented town divided into small rectangular segments following the PLSS land division system. Thomas E. Sheridan, *Los Tucsonenses: The Mexican Community in Tucson 1854-1941*, (Tucson, AZ: University of Arizona Press, 1992)

Lacy, 'The Mining Laws,' 335.

⁷⁶³ Lacy, 'The Mining Laws,' 335.

⁷⁶⁴ Land Ordinance 1785

⁷⁶⁵ Sheridan, *Los Tucsonenses*;
Lacy, 'The Mining Laws'

implemented policies which effectively removed the indigenous populations from resource-rich public domain to allow the lands to be exploited by non-indigenous individuals. Army experiences in southern Arizona during the Civil War indicated that indigenous people, such as the Chiricahua Apache, were agitated by the continued presence of Anglo-Americans on their traditional lands.⁷⁶⁶ In addition, pressure on the Arizonan territorial government by the mining and ranching concerns to remove indigenous presence from potential commercial properties encouraged the implementation of the United States' Indian Reservation provisions. In 1869 Ely Parker, then Commissioner of the Bureau of Indian Affairs, crafted a new style of 'Indian Policy', which instigated an aggressive reservation policy, for the 'benefit' of protecting the indigenous people from confrontations with Anglo Americans.⁷⁶⁷ This encoded as the Act of March 3rd, 1871, and was called President Grant's Peace Policy. This policy implemented a push to establish Indian reservations in the southwest, utilizing the army to 'round up' the indigenous populations and place them into the reservations.⁷⁶⁸

⁷⁶⁶ The ranchers who lived a precarious existence in southern Arizona during the Civil War years and thus helped to push the reservation policy were Pete Kitchen, who had a fortress-style ranch along the Santa Cruz, the large Pennington family who moved periodically from one abandoned ranch to another, and Bill Oury, who moved back and forth to Tucson from his ranch.

Robert H. Forbes, *The Penningtons: Pioneers of Early Arizona, a Historical Sketch*, (Arizona Archaeological and Historical Society, 1919), 22-38.

Collins, *Cattle Ranching*, 68.

Bailey, *We'll All Wear Silk Hats*, 19-36.

⁷⁶⁷ Ely Parker, *First Report of Ely Parker U.S. Commissioner of Indian Officers*. (1869), www.pbs.org

⁷⁶⁸ Forty-first Congress, Act of March 3rd, 1871, known as Grant's Peace Policy – 'Chapter 120: An Act making appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June thirty, eighteen hundred and seventy-two, and for other Purposes,' (March 3, 1871), accessed 20 March 2021. www.loc.gov. 544-571.

John G. Bourke, *On The Border with Crook*, (Lincoln, Nebraska: University of Nebraska Press, [1891] 1971)

Excerpt from Ely Parker, First Report as U.S. Commissioner of Indian Affairs, 1869⁷⁶⁹

The measures to which we are indebted for an improved condition of affairs are the concentration of the Indians upon suitable reservations, and the supplying them with means for engaging in agricultural and mechanical pursuits for their education and moral training. As a result, the clouds of ignorance and superstition in which many of these people were so long enveloped, have disappeared, and the light of Christian civilization seems to have dawned upon their moral darkness, and opened upon a brighter future.

Much, however, remains to be done for the multitude yet in their savage state, and I can but earnestly invite the serious consideration of those whose duty it is to legislate in their behalf, to the justice and importance of promptly fulfilling all treaty obligations and the wisdom of placing at the disposal of the department adequate funds for the purpose, and investing it with powers to adopt the requisite measures for the settlement of all tribes, when practicable, upon tracts of land to be set apart for their use and economy. I recommend that in addition to the reservations already established, there be others provided for the wild and roving tribes of New Mexico, Arizona and Nevada; also for the more peaceable bands in the southern part of California. These tribes, excepting the Navahos in the Territory of New Mexico, who under the Treaty of 1868, have a home in the western part of the Territory to which they have been removed, have no treaty relations with the government, and if placed upon reservations, it will be necessary that Congress, by appropriating legislation, provide for their wants, until they become capable of taking care of themselves.

President Grant, encouraged by an 1869 report by Ely Parker, Commissioner of Indian Affairs, initiated his so called 'Peace Policy' measures, which were interpreted in southern Arizona to begin a 'round up' of the Apache and place them into reservations.⁷⁷⁰ This policy was two-pronged in its implementation, first it was to establish reservations for indigenous people, to 'keep them safe' from clashes with the local Anglo-American populations, and secondly it was designed to keep the indigenous people in the reservations through bribery and terror.⁷⁷¹ The 'Peace Policy' was further encouraged by a report made by Vincent Colyer who was the Commissioner of the Peace Commission and encouraged the reservation idea indicating that the indigenous people wanted it too.⁷⁷² Colyer implemented the reservation policy in southern Arizona by giving permission for the Aravaipa Apache to have a reservation at Fort Grant, 63

⁷⁶⁹ Parker, *First Report*.

⁷⁷⁰ Parker report 1869; Act of March 3rd, 1871.

⁷⁷¹ President Grant's Second Annual Message to Congress, 5 December 1870, in 'Presidency,' *University of California Santa Barbara*, accessed 8 December 2020, www.presidency.ucsb.edu

⁷⁷² Dan L. Thrapp, *The Conquest of Apacheria*, (Norman, OK: University of Oklahoma Press, 1967), 102
Donald E. Worcester, *Eagles of the Southwest*, (Norman, OK: University of Oklahoma Press, 1979), 162-169

miles northeast of Tucson.⁷⁷³ His successor, General O.O. Howard is credited with establishing the Chiricahua Reservation in 1872.⁷⁷⁴

Excerpt from President Grant's Inaugural Address, 4 March 1869⁷⁷⁵

When we compare the paying capacity of the country now, with the ten States in poverty from the effects of war, but soon to emerge, I trust, into greater prosperity than ever before, with its paying capacity twenty-five years ago, and calculate what it probably will be twenty-five years hence, who can doubt the feasibility of paying every dollar then with more ease than we now pay for useless luxuries? Why, it looks as though Providence had bestowed upon us a strong box in the precious metals locked up in the sterile mountains of the far West, and which we are now forging the key to unlock, to meet the very contingency that is now upon us.

Ultimately it may be necessary to insure the facilities to reach these riches and it may be necessary also that the General Government should give its aid to secure this access; but that should only be when a dollar of obligation to pay secures precisely the same sort of dollar to use now, and not before.

...

The proper treatment of the original occupants of this land--the Indians one deserving of careful study. I will favor any course toward them which tends to their civilization and ultimate citizenship.

By 1872 the Peace Policy in southern Arizona was enacted under the direction of General George Crook, who is credited as being instrumental in curbing the confrontational activities of the Chiricahua Apache and of 'containing' them in reservations.⁷⁷⁶ The members of the Dutch Reform Church were then contracted to run the Apache reservations, order supplies and generally attempt to 'civilise' the indigenous people by introducing them to Anglo-American ways of living. One of the more influential superintendents of the Apache San Carlos Apache reservation was 22-year-old, John Philip Clum, who became friends with both Eskiminzin, Arivaca Apache chief and the Chiricahua Apache spiritual leader, Geronimo. He established the San Carlos Apache Police, an idea borrowed from by General Crook who used Apache Scouts to track Chiricahua Apache during Grants Peace Policy when they 'illegally' left their reservations.

⁷⁷³ Thrapp, *The Conquest*, 102-103.

⁷⁷⁴ Worcester, *Eagles of the Southwest*, 102.

⁷⁷⁵ Avalon Project, *Department of Law, Yale University*, accessed 8 December 2020, <https://avalon.law.yale.edu>.

⁷⁷⁶ Bourke, *On The Border*.

He was also instrumental in using reservation Apache to construct agency buildings and to self-monitor using his newly established, and controversial, Apache police and justice system.⁷⁷⁷

Excerpt from President Grant's Second Annual Message to Congress, 5 December 1870⁷⁷⁸

Reform in the management of Indian affairs has received the special attention of the Administration from its inauguration to the present day. The experiment of making it a missionary work was tried with a few agencies given to the denomination of Friends, and has been found to work most advantageously. All agencies and superintendencies not so disposed of were given to officers of the Army. The act of Congress reducing the Army renders army officers ineligible for civil positions. Indian agencies being civil offices, I determined to give all the agencies to such religious denominations as had heretofore established missionaries among the Indians, and perhaps to some other denominations who would undertake the work on the same terms--i.e., as a missionary work. The societies selected are allowed to name their own agents, subject to the approval of the Executive, and are expected to watch over them and aid them as missionaries, to Christianize and civilize the Indian, and to train him in the arts of peace. The Government watches over the official acts of these agents, and requires of them as strict an accountability as if they were appointed in any other manner. I entertain the confident hope that the policy now pursued will in a few years bring all the Indians upon reservations, where they will live in houses, and have schoolhouses and churches, and will be pursuing peaceful and self-sustaining avocations, and where they may be visited by the law-abiding white man with the same impunity that he now visits the civilized white settlements. I call your special attention to the report of the Commissioner of Indian Affairs for full information on this subject.

Image 8.21

We, the undersigned subscribers do hereby acknowledge to have received being payment in full for our services rendered as Laborers constructing C. of R.R. from January 1st to March 1st 1875. Each date inclusive. San Carlos.

Date 1875	Names	Occupation	Period of Service		Rate of Pay per month		Amount of Pay	
			Days	Months	\$	Cts.	\$	Cts.
March 1st	Night-kan	Day Laborer	77	"	"	50	38	50
"	Wah-let-is-Tah	"	77	"	"	50	38	50
"	Chin-wah	"	77	"	"	50	38	50
"	Chato-tudo	"	77	"	"	50	38	50
"	Chil-cargando	"	77	"	"	50	38	50
"	Hilt-z	"	77	"	"	50	38	50
"	Pan-z-z	"	77	"	"	50	38	50
"	Est-hel-is-ahit	"	77	"	"	50	38	50
Total amount							507	50

I certify on honor, that the above Roll is correct and just, and that
hundred and seven dollars,
 (Triplicates)

Payment for Apache Police, San Carlos Reservation⁷⁷⁹

⁷⁷⁷ Worcester, *The Apaches*, 169.

Thomas E. Sheridan, *Arizona: A History*, (Tucson AZ: University of Arizona Press, 2012), 94.

Thripp, *The Conquest*, 102-103.

Clum is an interesting character who, at the tender age of 24, was placed in charge of the San Carlos Apache reservation in its early years. He left his post after some differences of opinion with government authorities, then after establishing the *Tombstone Epitaph* and *Arizona Citizen* newspapers, moved to Alaska to begin a new postal career: *Tombstone Epitaph*, *The* (Reproduction). May 1, 1880. Available from The Epitaph Offices, Tombstone, AZ.

⁷⁷⁸ 'Presidency,' *University of California Santa Barbara*, accessed 8 December 2020, www.presidency.ucsb.edu

⁷⁷⁹ John P. Clum 1874-1877. Collection of agency notes and personal correspondence (UA Special Collections, call no. MS 284).

By the mid 1870's several Indian reservations had been established the region which were designed to concentrate the indigenous people to specific areas of the territory and, thus, away from Anglo-American activities and settlements.⁷⁸⁰ The Chiricahua Apache Reservation was established in the Dragoon and Chiricahua Mountains after a verbal treaty was made with Cochise in 1872.⁷⁸¹ Shortly thereafter, the O'odham were 'given' the small San Xavier Papago Reservation in 1874 on the Santa Cruz River which was established on the lands of the San Xavier Mission.⁷⁸² This land was too small for many of the O'odham to live on, so many removed to more western areas of their territory to survive and avoid the Anglo-Americans.⁷⁸³ Hamilton recorded in 1883 that the reservation system was "one of the brightest periods in Arizona history" for the Anglo-Americans because Apache raiding was curbed and the extraction industries were then able to develop more securely in the region.⁷⁸⁴ The Indian reservations were then barred from resource exploitation, which was resented by many Anglo-Americans. As Hinton explained in 1878, until 'these areas,' meaning the Chiricahua Apache reservation, were "formally restored to the public domain" they would remain as obstacles to development.⁷⁸⁵

⁷⁸⁰ John P. Clum, Collection of agency notes and personal correspondence, 1874-1877, (*University of Arizona Special Collections*, call number MS 284).

Bourke, *On The Border*, 437.

Paul R. Nickens and Kathleen M. Nickens, 'Victor of Old San Carlos: Portrait of a Captive Mexican and Apache Tag Band Chief,' *The Journal of Arizona History*, 56, no 3 (Autumn 2015): 286-288.

⁷⁸¹ Executive Order 541 Establishing Chiricahua and San Carlos Apache Reservations, Chiricahua Apache reservation cancelled 1876, Executive Order 600, (1872), accessed 20 March 2019. www.loc.gov.

Thrapp, *The Conquest of Apacheria*, 118.

Worcester, *The Apaches*, 209-212.

⁷⁸² Executive Order 572 Establishing San Xavier Papago Reservation, (1874), accessed 20 March 2019, www.loc.gov; Oblasser, 'Records and writings'

⁷⁸³ Winston Erikson, *Sharing the Desert: The Tohono O'odham in History*, (Tucson, AZ: University of Arizona Press, 1994).

⁷⁸⁴ Both Hinton in 1878 and Hamilton in 1883 had assessed the resources and concluded that southern Arizona could provide adequate timber and water for mining ventures.

Hamilton, *The Resources of Arizona*, 69.

⁷⁸⁵ Hinton, *The Hand-Book to Arizona*, 126.

In 1902 one Dr. Douglas was given permission to exploit mineral finds on a piece of land called 'the strip' on the San Carlos Apache Reservation, and the location was flooded with other miners and settlers. However, even after the San Carlos Apache had regained control of the land, mineral reports were still being written about the minerals

However, neglect meant that many non-indigenous people settled on the land, claiming pre-emption, homesteading and grazing rights, so that while the land was returned to the reservation, grazing curtailed were finally curtailed in 1973, but the government was still required to purchase privately owned land in the location under the Bill HR 7730.⁷⁸⁶ The Chiricahua Apache Reservation, located in the Dragoon Mountains, became a particular target for mining development as many minerals were discovered there and, directly below, the grazing lands of Sulphur Springs valley were coveted by ranchers. Therefore, political opinion soon found reasons to withdraw the reservation within four years of its establishment, and ranchers and miners soon flooded the area.⁷⁸⁷ In addition, interested Anglo-American parties soon discovered that General Oliver O. Howard had not brokered a written peace agreement with Cochise prior to the establishment of the reservation, which nullified the 1872 Executive Order to establish it.⁷⁸⁸ However, while these actions achieved the desired Anglo-American belief in indigenous subjugation and ‘cleared’ the land for settlement, it also destabilized the territory by increasing Chiricahua Apache antagonism and encouraged greater industry damage to the environment.

on the San Carlos Apache Reservation. The original contract with the San Carlos Apache was for the government to ‘borrow’ the land for mineral discovery in 1896 in exchange for net profits from the mineral extraction.

⁷⁸⁶ Tenney, *History of Mining*, 21-25.

President Ford Papers 1974. Box 15, Folder 12/22/74 HR 7730, accessed 29 July 2021, (White House Records Office).

⁷⁸⁷ Executive Order 600 Chiricahua Apache reservation cancelled, accessed 20 March 2019. www.loc.gov

In addition, Cochise died, and with his eldest son dead from contracting the flu while on a trip with Clum to Washington, D.C., his younger son was ineffective at leading the Chiricahua Apache, and divisions occurred when Clum was ordered to concentrate all Apache onto the San Carlos Apache reservation: Clum documents.

Tenney, *History of Mining*

President Ford Papers

Edwin Sweeney, *From Cochise to Geronimo: The Chiricahua Apaches, 1874-1886*, (Oklahoma: University of Oklahoma Press, 2010), 30-33.

⁷⁸⁸ In addition, Indian Agent Jeffords was accused of permitting raiding parties to use the reservation as a base of operations: Sweeney, *From Cochise to Geronimo* 30-35.

Sweeney, *From Cochise to Geronimo*, 22-33

Image 8.22



Indian Reservations in Arizona, 1960⁷⁸⁹

While the O’odham and San Carlos Apache have been unable to claim their own lands back from the United States or raise sanctions against private landowners during the nineteenth century, they were able to develop their cattle handling, *vaquero*, skills to gain wage labour opportunities when they were pushed to marginal lands. They have become well known for their *vaquero* skills, and as such were able to financially support their families more successfully, especially when indigenous crops were failing, and their traditional range was being contracted by Anglo-American expansion.⁷⁹⁰ The San Carlos Apache were able develop their own cattle industry on the reservation at the turn of the century, and have been extremely successful in producing quality stock for sale in the last 100 years.⁷⁹¹ Ultimately, however, a patchwork of land ownership in southern Arizona has meant that the Anglo-American ranchers, controlled the

⁷⁸⁹ Spicer, *Cycles of Conquest*, 3.

⁷⁹⁰ Dan Robinett, ‘Tohono O’odham Range History,’ *Rangelands* 12, no. 6 (1990): 296-300.

Harry T. Getty, ‘San Carlos Indian Cattle Industry,’ *Anthropological Papers*, No. 7 (1963), University of Arizona Press.

⁷⁹¹ Robinett, ‘Tohono O’odham,’ 300.

Getty, ‘San Carlos Indian Cattle Industry,’ 85.

region, retaining much of the good grasslands for their own use and abuse. It was only the extensive erosion and resource depletion, as a direct result of over-use of the land, that somewhat contracted the industry, caused strict land management practices and opened the land up for different land use which prevented the mining and cattle industries from completely dominating the landscape.

The cultural impact for the indigenous people was significant as their traditional lands were claimed, changed and destroyed. Unfortunately, the legislation which was implemented in the last half of the nineteenth century excluded the indigenous people from claiming their traditional lands for their own use, or even to retain lands ‘given’ to them by the government. This legislation, along with declarations of claims and pertinent announcements were printed in newspapers or pamphlets in English, discouraged any individual who could not read the language. This then excluded the non-English reader from investing in land claims, or from filing a complaint or challenging a land claim. In addition, the requirements of the patents for mining discoveries and land parcel applications, at least by the 1900’s, were complex, indicating that the applicant should know the laws for any water usage, be familiar with drainage and easement terms and conditions, and know which pieces of property were public and which were private, when establishing water extraction routes for the property.⁷⁹² Thus, the applicant either had to have sufficient knowledge of the law to follow many legal procedures for filing a land or mineral claim or enough money to hire an educated person to do this for them, which could be prohibitive for those who did not have access to the knowledge or finances. This also gave rise to the standard legal practice of paying for lawyers services with tracts of claimed land. Hill Howard, the Hearst family’s legal representative, often made such transactions, indeed that is

⁷⁹² 1910 Patent for Westerly Place in Golden Rule District SER Patent 307299

how the Hearst family claimed much of the Boquillas y Nogales grant lands. Hill Howard also made a name for himself representing the Pueblo community grant claims in New Mexico, receiving land in lieu of payment for his legal services.⁷⁹³ The extraction industries which thus developed on the indigenous landscape often disregarded the previous inhabitants and their footprints, and manipulated the environment to suit their own needs, even if this included the upheaval of the original features.

Conclusion

As the United States' industrial juggernaut headed with increasing rapidity towards the twentieth century, so southern Arizona was caught in its net to provide the raw materials for this development. The 1870's represented a watershed decade for southern Arizona. Valuable minerals were discovered or rediscovered in significant numbers during the late 1870's and prospectors found many more deposits in the 1880's. Ranching was growing significantly, and irrigation projects had been encouraged by government incentives such as the Desert Lands Act of 1877, all of which were aided by the growth in the railroad lines throughout the region. The 1870's and 1880's signified the end of the Apache raiding and opened up lands for more sustained Anglo-American encroachment and enhancement of the extraction industries, including greater agricultural enterprises. Unfortunately, this meant that the indigenous people became further removed from the level of land intimacy that they had enjoyed earlier in the century, and ultimately their way of living had to change with it.

Land legislation was fundamentally important in establishing the extraction industries in southern Arizona, which ultimately resulted in irreparable damage to the indigenous landscape

⁷⁹³ G. Emien Hall, *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800-1933* (Albuquerque: University of New Mexico Press, 1984).

and the lifeways of the indigenous people. The legislation was used to solidify the expansion into southern Arizona by Anglo-Americans, as land-entrepreneurs had realised that southern Arizona contained valuable mineral deposits and vast pastureland for ranching and stockraising. The commercial movement into region then accelerated the need of the United States to make more land available for settlement by pushing the need to survey regions, such as southern Arizona to determine which sections were available for public sale and which were to be reserved as federally controlled areas, such as reservations or forest reserves. Unfortunately, it also meant that the O'odham and Chiricahua Apache were separated and segregated from much of their ancestral lands as commercial productivity was valued above the survival of indigenous cultures. The result was a destruction of the traditional landscape and an erosion into the traditional lifestyles of the indigenous cultures, which still permeates to this day.

PLATES

Plate 8.1



Meadows of the Cienega

Plate 8.2



Spring on the Cienegas

Plate 8.3



Drawing water from the San Pedro River

Plate 8.4



Damming up the rivers

Plate 8.5



Tombstone

Plate 8.6



Breezeway, Empire Ranch

Plate 8.7



Permit holding cattle rancher in the Coronado National Forest

Plate 8.8



Loggers Cabins, Chiricahua Mountains

Chapter Nine

Erosion: Impact on the Indigenous Landscape

Introduction

The rise and subsequent effects of the extraction industries in southern Arizona brought with them major changes to the environment, which, in turn, changed the lifeways of the indigenous people living in the region. The development of the commercial extraction industries also had significant impact on how the land was managed in southern Arizona, including implementing and then addressing the devastating environmental damage which occurred, and which is still being felt to this day. The introduction of European extraction methods, such as strip mining and commercial ranching, resulted in irreparable changes in the indigenous landscape, both environmentally and culturally. The environmental changes were reflected in changes in the indigenous ecosystems, as well as the redistribution of water sources, and the depletion of the timber and shrub from surrounding districts. Cultural changes impacted the indigenous population from the location that they lived to how they made their livelihoods. The destruction of the natural environment was compounded by specific population management policies of the United States, such as the implementation of the reservation system and encouragement of Anglo-American townships near resource and transportation links. In addition, ownership and rights were defined, land was designated for specific ownership and purposes, and legislation was established to give advantage to those who had the ability to wield it. It was the implementation of these land legislation policies of late nineteenth century that was responsible for these changes as they sanctioned the overuse of resources for the betterment of industrial commercial productivity.

Erosion: Commercial Mining

As the mining industry developed so too did the technology used to extract the minerals. The methods used by the early Anglo-American miners, while invasive, were superseded by mass extraction technologies which eventually changed the way the ecosystems of southern Arizona worked. The result of these mass extraction techniques had significant detrimental effects on the landscape, while impacting indigenous lifeways, as well as raising the call for more ecological considerations for the natural environment when permitting commercial extraction industries to develop.

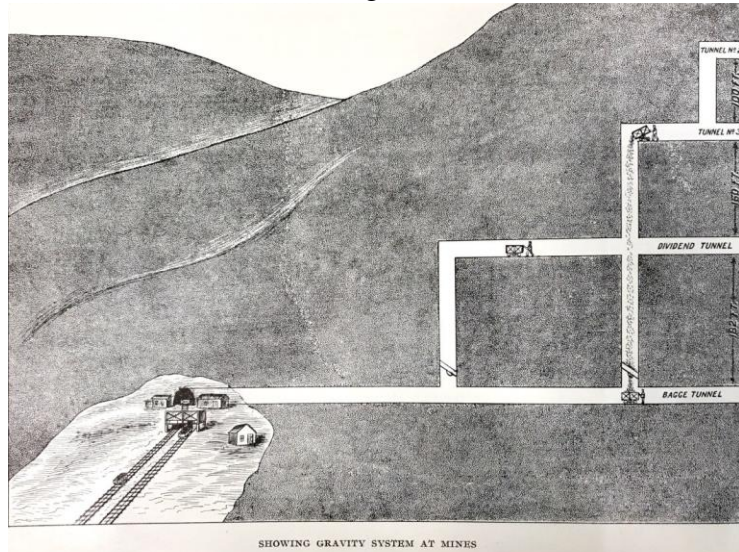
The techniques used by the mining industry to extract ore were, and are, very destructive, and leave a changed area in their wake. As more sophisticated technology was developed during the latter decades of the nineteenth century, minerals could be extracted from deeper veins with the help of corporate finances. Engineers were hired to construct deeper shafts, tunnels, and more efficient processors were used to extract the mineral for market.⁷⁹⁴ These methods required large amounts of water and timber. Even simple placer mining, associated with panning surface gravel, required water to extract ore from the gravel, whether by panning or by using hydraulic spray methods. Later, the hydraulic spray method, which used watermills and steam pumps to add pressure to the water, was applied to blast the ore from the soil.⁷⁹⁵ This method was then adapted to complement the strip-mining processes, often used to extract large amounts of copper, by blasting away the soil in a mine pit to expose the ore; this is still prevalent in Arizonan copper

⁷⁹⁴ Otis, E. Young, *Western Mining: An Informal Account of precious-metals prospecting, placering, Lode Mining, and milling on the American Frontier from Spanish times to 1893*, (Oklahoma: University of Oklahoma Press, 1970), 8-9.

⁷⁹⁵ Young, *Western Mining*, 125-127

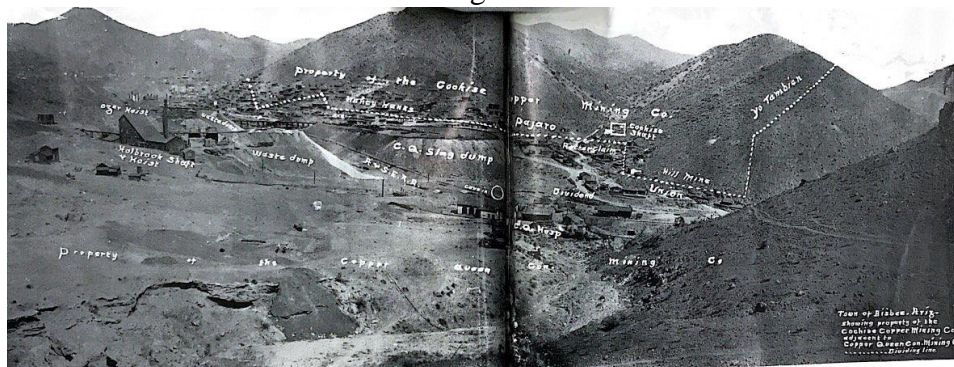
mining today.⁷⁹⁶ Harnessing water, to extract the ore from the soil deposits, diverted water courses and moved dirt from one location to another causing serious and detrimental riparian damage by removing important foliage or by changing water channels so that erosion and flooding occurred where it did not do so before.⁷⁹⁷

Image 9.1



Mining tunnels in the mountains⁷⁹⁸

Image 9.2



Tunnels at Bisbee⁷⁹⁹

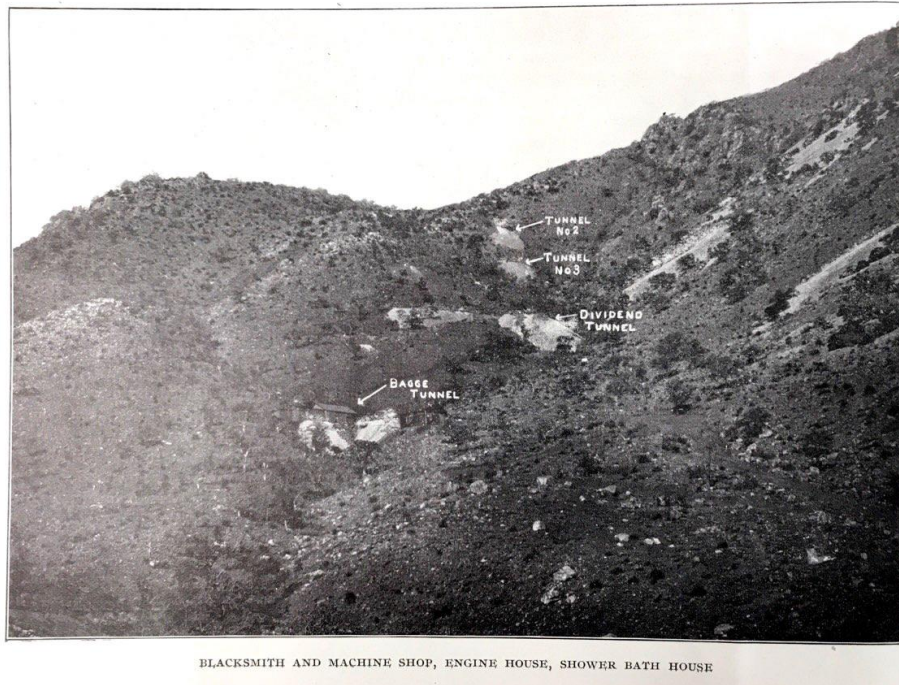
⁷⁹⁶ Donald Hardesty, 'Mining Technology in the Nineteenth Century,' *Nevada Humanities*, 10 December 2010, www.onlinevada.org.

⁷⁹⁷ Randall Rohe, 'Man and the Land: Mining's Impact in the Far West.' *Arizona and the West*, 28 no. 4, (1986): 299-338

⁷⁹⁸ Black Diamond Copper Mine, (University of Arizona, Mining MS 307 Box 1-3).

⁷⁹⁹ Miscellaneous Mining documents and ephemera, (University of Arizona, Mining MS 307 Box 1-3).

Image 9.3



Mining camp, Black Diamond Copper Mine⁸⁰⁰

Extraction techniques, such as dynamiting and blasting mountain sides, tunnelling, shafting and digging large amphitheatre-style pits in them and the removal of the excavated dirt to another location, all create visible changes in how the mountains look, and also how the natural environment enacts upon these new unnaturally made features.⁸⁰¹ Water was used in many mining processes, including blasting soil from the mountains and extracting out ore. As water was a limited resource in southern Arizona, it had to be piped from the source to the field of operation, and this caused damage to the balance of the water resources in the area. William Blake, the mining engineer for the Development Company of America, explained that the Tombstone Mining District used water from the Huachuca Mountains which was piped 25 miles across the land to Tombstone, and held in holding tanks and concrete reservoirs ready for use.

⁸⁰⁰ Black Diamond Copper Mine, (University of Arizona, Mining MS 307 Box 1-3).

⁸⁰¹ Rohe, 'Man and the Land.'
Hardesty, 'Mining Technology,'

Ironically, ground water seeping into the tunnels was an issue and the district needed two pumps, one at Grand Central and one at Contention to keep the tunnels free of water. Blake's report was to provide information about the viability of replacing these two pumps, both of which had been destroyed by fire, to continue deep level mining operations within the district. It was recommended by Blake that the replacements would not be cost effective to the potential ore anticipated to be mined.⁸⁰² In the case of the Greaterville Mining District, established in 1875, water had been carried to the mines by burros from the nearby Sonoita River and over the Santa Rita Mountains to the mines. However, after 1900 a series of pipes and tunnels were installed to transport the water from its source, and by 1902 a hydraulic blasting system and hose was installed to blast the hillsides with water to extract the ore. Unfortunately, there was only enough water in the winter and early spring to produce the required pressure to blast the rock, and the mines were abandoned. Later, in 1906 under the patronage of George McAneny they attempted to revise the district, although it was again abandoned by 1914.⁸⁰³ The southern Arizonan mines were constantly concerned with water sources, as they were to get fuel and construction materials from the timber supplies in the region.

⁸⁰² Blake, *Tombstone*, 2. These 12-inch pumps were "capable of raising 1,000,000 gallons in 24 hours... and 1,500,000 gallons.." for one at Contention and one at Grand Central.

Tombstone was not the only district to have piped water and holding tanks, the Sycamore Water Company built a reservoir near to the town of Dragoon in 1880 and Greaterville mining town was serviced with piped water after the 1900'.

Lynn R. Bailey, *Mines, Camps, Ranches, and Characters of the Dragoon Mountains*, (Tucson, AZ: Westernlore Press, 2008), 142-143

Hardesty, 'Mining Technology.'

Rohe, 'Man and the Land.'

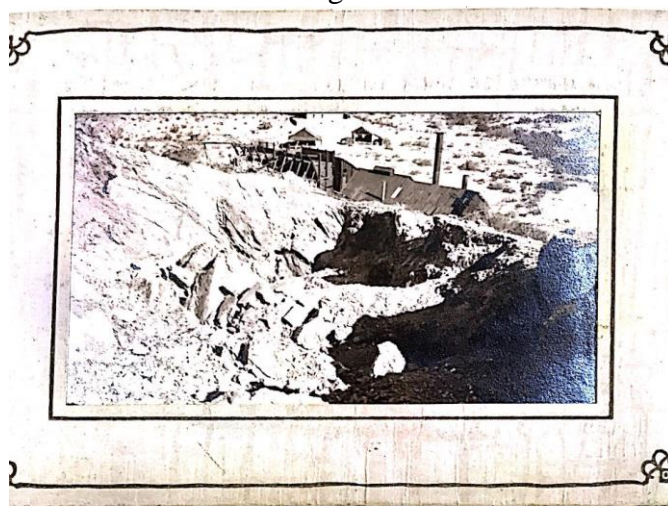
⁸⁰³ Combinations of mechanical and chemical methods were also used, such as the Washoe panning method or the Spanish Arrastra mill method.

William Ascarza, 'Mine Tales: The ghost towns of Greaterville and Kentucky Camp,' (2013) www.tucson.com

United States Forest Service, 'Timeless Heritage 'Tumacacori: Historic Resource Study,

Hardesty, 'Mining Technology.'

Image 9.4



GLORY HOLE TOP VIEW. THIS OPENING ON VEIN
SYSTEM IS ABOUT AN ACRE IN AREA AND MORE
THAN 100 FEET DEEP CONTAINING THOUSANDS OF
TONS OF LOW GRADE GOLD ORE.

Glory Hole⁸⁰⁴

Timber was required for tunnel- and shaft-supports, hoists and lifts, ventilation systems and to aid sunk-pump systems for tunnel drainage, as well as supplying fuel for the engines in the processing works. Much of the timber used in the mines was either from the mesquite bushes located in the vicinity, mainly as fuel for the engines, or from the 'sky island' regions where pine could be felled from the higher elevations, for use as construction materials.⁸⁰⁵ Tunnelling, to the present day, can cause unnatural dips and fissures in the landscape creating arroyos where level desert was before, or dangerously thin surfaces which can cave at any time, particularly during the monsoon rains. In addition, debris from these excavations were usually unceremoniously dumped in other locations, creating barriers to natural water flows, elevated

⁸⁰⁴ Miscellaneous Mining documents and ephemera, (University of Arizona, Mining MS 307 Box 1-3).

⁸⁰⁵ Gerald R. Noonan, 'Woodcutting I: Wood for Construction,' *Friends of the San Pedro River Round Up*, (Winter 2019): 9-19

ridges and removal of flora. Changes in plants also created changes in the wildlife, as their location is determined by the availability of specific foods. In addition, tunnelling affects the way in which the flora and fauna use the mountain slopes, how the water runs down them, and where the erosion patterns occur, particularly with the removal of some types of natural vegetation growth which increases the chances of mud slides, rock falls and fire.⁸⁰⁶

The minerals themselves were purified by various methods during the late nineteenth century. Sluicing, or mass volume panning, and crushing with stamps, or large hammers, were the more common extraction methods used in southern Arizona, and just required heavy-duty crushing and stamping equipment and steam engines residing in a shed and located near a riverbank. Many of the reports from the late nineteenth century often list the number of stamps a mill supported as a way of illustrating the wealth of the mining company; for example Hamilton in his 1881 travelogue itemized Harshaw as having a 20-stamp mill and steam hoisting works, Arivica had a 10-stamp mill, while Oro Blanco district had a roaster for gold and silver and timber to fuel it, California district was serviced with a 30-tonne smelter, but Empire district was waiting for its reduction works.⁸⁰⁷ Another method was to smelt the ore, generally copper and iron, using high temperature-blast furnaces and working the resulting molten metal.⁸⁰⁸ More complicated methods involved chemical processing by amalgamation reduction methods. Amalgamation uses either mercury or chloride leaching which combines the chemicals and mined rock with water or sulphates to create a chemical reaction, before panning or heating the

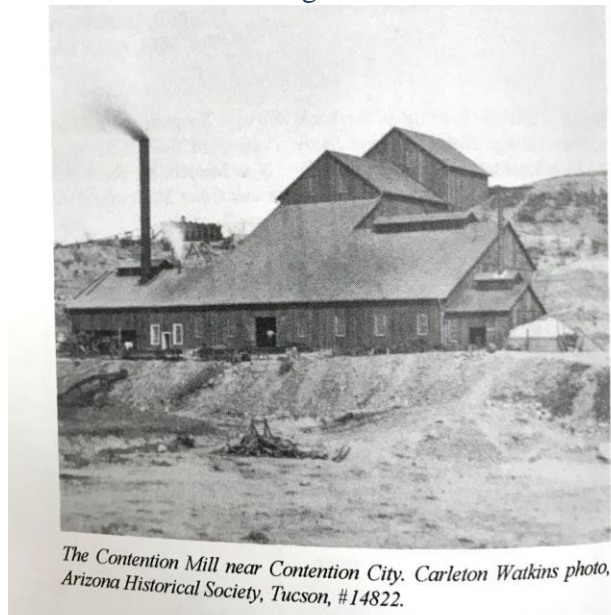
⁸⁰⁶ Rohe, 'Man and the Land' Hardesty, 'Mining Technology.'

⁸⁰⁷ Hamilton, *The Resources of Arizona*, 85. Young, *Western Mining*, 194-198

⁸⁰⁸ Dr. Madan M. Singh, *Water Consumption at Copper Mines in Arizona: Special Report 29*, (Phoenix, AZ: State of Arizona, Depart of Mines and Mineral Resources, 2010) Ronald James, 'Milling Technology in the Nineteenth Century,' *Nevada Humanities*, 15 July 2011, www.onlinevada.org.

extracted ore away from the unwanted detriment.⁸⁰⁹ The remains of any of these processes are called tailings, and during the late 1880's a further chemical amalgamation method was developed using cyanide on the tailings to extract any remaining ore. Blake noted that Tombstone used cyanide and smelting but needed more water if the tailings were to be gleaned for more ore.⁸¹⁰ Tailings are still visible today, indicating the location of former mill sites and accompanying mining boom town. Each of these extraction methods required large amounts of water and timber to achieve the desired amounts of extracted ore, and many of the travel journals and mining reports were prolific on their evaluation of the water and timbers resources available to the potential and established mining districts.⁸¹¹

Image 9.5



Contention Mill⁸¹²

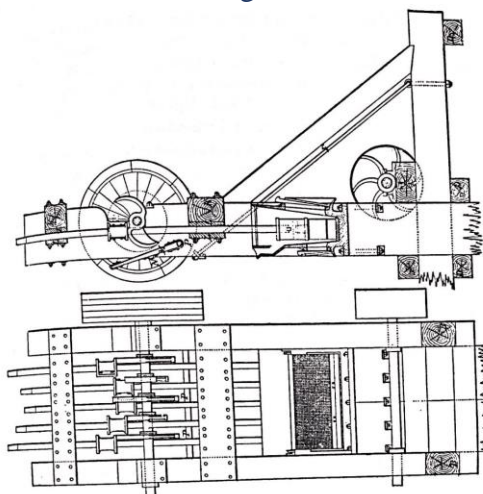
⁸⁰⁹ Singh, *Water Consumption*
James, 'Milling Technology.'

⁸¹⁰ Blake, *Tombstone*, 23.

⁸¹¹ Underhill, 'The "Autobiography",' 120.

⁸¹² Neil Carmoney, editor and transcriber, *Next Stop: Tombstone. George Hand's Contention City Diary, 1882*, (Tucson, AZ: Trail to Yesterday Books, 1995).

Image 9.6



Stamping Machine⁸¹³

The processing of the ore also causes significant damage at the mill location, notwithstanding the introduction of vast amounts of chemicals, such as mercury, cyanide and sulphur or sulphates, into the environment which leach into ground and subsurface water creating dangerous health hazards for the wildlife and people alike.⁸¹⁴ Stamping was performed either ‘dry’ or ‘wet’ meaning that the dry method just pulverized the dirt and soils releasing the dust into the atmosphere, whereas the wet method used water with the stamp to dissolve the dirt while crushing it; the removed dirt would then be washed away and dumped as tailings.⁸¹⁵ Tailings, along with tunnel and shaft soil dumps, also created unnatural piles of dirt on the landscape, causing flooding, water diversions, and the growth of different plant species. Sometimes other constructions, even housing, were built on top of the unstable, unpacked, tailings, and would cause landslides or other destructive events damaging the buildings.⁸¹⁶ Timber was needed to

⁸¹³ Otis, E. Young, *Western Mining: An Informal Account of precious-metals prospecting, placering, Lode Mining, and milling on the American Frontier from Spanish times to 1893*, (Oklahoma: University of Oklahoma Press, 1970), 197.

⁸¹⁴ Rohe, ‘Man and the Land.’

⁸¹⁵ Hardesty, ‘Mining Technology.’

⁸¹⁶ Rohe, ‘Man and the Land.’

fuel all these activities, while also providing for the needs of the working community around the mines and mills, therefore, the local supplies of timber were diminished, creating potential wildfire hazards, particularly as mature trees were felled at such a rate that they could not be replaced.⁸¹⁷ Tailings, water courses and soil changes, including stripping the soil to bedrock for sluicing, also meant that natural trees and bushes were unable to regrow, and as such, could not provide for the wildlife which relied on them for survival, thus changing the ecosystem at the same time.⁸¹⁸ Rohe suggests that Tombstone District during its short years of productivity probably burnt nearly 50,000 cords of timber, which is approximately 181,000 cubic metres of wood.⁸¹⁹ Therefore, the changes in the landscape of southern Arizona cannot be understated, they disrupted the course of the water, excavated sides of mountains, dug holes into the ground and changed the way the ecosystems functioned.

Unfortunately, close to many of the mining sites are many pre-historic and historic pictographs and other indications of culturally sensitive remains of former indigenous habitations.⁸²⁰ Miners have probably tramped over Chiricahua Apache resting places in the Dragoon Mountains to excavate mineral veins, and timber harvesting and access roads in the Chiricahua Mountains

⁸¹⁷ Antone Pierucci, 'The Ancient Ecology of Fire: Lessons emerge from the ways in which North American hunter-gatherers managed the landscape around them,' *Archaeology* (Sept/Oct 2017): 55-55-58, 62, 64.

Rohe, 'Man and the Land.'

⁸¹⁸ Pierucci, 'The Ancient Ecology of Fire.'

Rohe, 'Man and the Land.'

Personal knowledge from BLM rangers.

⁸¹⁹ A cord of wood in the United States measures 4 feet high, by 4 feet wide, and 8 feet long and has a volume of 128 cubic feet or 3.62 cubic metres. 50,000 cords of wood is 6,400,000 cubic feet of wood.

'Information,' *Department of Forestry and Natural Resources*, (Louisville: University of Kentucky),

<https://forestry.ca.uky.edu>, accessed 28 Jul 2021).

Rohe, 'Man and the Land,' 307-308.

⁸²⁰ Millville mining site in the San Pedro Riparian National Conservation Area is a prime example of remains of mills with tailings on the banks of the river located right next to indigenous pictographs, indicating a superimposition of Anglo-American industry onto indigenous culturally sensitive remains.

The Friends of the San Pedro River, 'San Pedro Riparian National Conservation Area,'

have probably destroyed Chiricahua Apache artefacts and sacred items.⁸²¹ At the time, indigenous populations were barred from formally seeking restitution because the location of the despoliations were either public domain ‘owned’ by the United States, or privately claimed public domain legally titled to non-indigenous owners. Fortunately by the turn of the twentieth century, acts such as the Antiquities Act of 1906, were created to start protecting important historic and pre-historic sites and artefacts, and efforts were made to identify important indigenous cultural sites.⁸²² Linda Mayro estimated, in 2017, that in Pima County, alone, 6,000 archaeological and historical sites have been identified, of which 40-60 percent have been destroyed by development.⁸²³ In addition, much of the landscape-based indigenous cultural identity in southern Arizona has been lost as important trees, springs and arroyos, have been destroyed and with them monuments to specific indigenous events and histories.⁸²⁴ A greater appreciation of the traditional environment in southern Arizona has arisen in recent decades, and state and federal reserved lands are now actively protecting the environment and indigenous sites, and limiting public knowledge to prevent further damage.⁸²⁵ The Bureau of Land Management, BLM, for the United States government has come under attack because they performed several land parcel exchanges with private extraction companies in the past few

⁸²¹ Sgt. Derwent Letter: Death of Cochsie. 1874, University of Arizona Special Collections call number AZ 322.

⁸²² Site Steward training, 2015.

⁸²³ Compiled by Linda Mayro and Micaela K. McGibbon, *Ranching in Pima County, Arizona: A conservation objective of the Sonoran Desert Conservation Plan*, accessed 23 Sept 2017, www.pima.gov.

⁸²⁴ Keith H. Basso, *Wisdom Sits in Places: Landscape and Language Among the Western Apache*. University of New Mexico Press, 1996), Kindle.

Personal Site Stewards knowledge.

⁸²⁵ Newspaper reports from the 1980’s discuss a county-wide campaign to prevent a large housing area to be built on what is now known as Las Cienegas, a conservation area run by the BLM.

‘Approved Las Cienegas Resource Management Plan and Record of Decision,’ *United States Bureau of Land Management*, (Tucson Arizona; Tucson Field Office, 2003).

Collins, *Cattle Ranching*, 52.

decades, which permitted previously reserved areas to be excavated for minerals, often disturbing the ecosystems of these sensitive areas.⁸²⁶

Erosion: Ranching and Timber Harvesting

Many environmental issues in southern Arizona have stemmed not only from the mining industry, but also from the increased numbers of cattle grazing coupled with drier weather patterns, and the timber denuded mountains. These issues were recognised as early as 1901 by Professor Robert Forbes, who discussed them in his report to the Forest Division, expressing great concern about the problems southern Arizona was having at the time. He highlighted the San Pedro valley and posited some suggestions for improved land management to help the cattle industry there in the future.⁸²⁷ As Forbes explained in his report, the increase in commercial cattle ranching and drier weather conditions significantly accelerated erosion in the desert and changed the ecosystem, the results of which are still of concern over 100 years later.⁸²⁸ These conditions also prevented indigenous grasses from replenishing quickly enough to provide enough food for the larger numbers of cattle grazing in the area.⁸²⁹ The cattle, therefore, wandered farther afield in search of enough grass to eat, and effectively removed the grasses from an increasingly larger grazing area, especially those not bred to arid conditions. Some ranchers imported non-indigenous grasses, such as buffelgrass, alfalfa and bluegrass, to help mitigate the issue to some success.⁸³⁰ However, these grasses required more water, coupled with

⁸²⁶ These exchanges involved land in both Pima and Cochise Counties, and involved the GAC and later Anamax corporations in filing for permission to develop housing on these exchanged lands.

Center for Biological Diversity, 'Judge Overturns Wildlife Agency's Approval'

⁸²⁷ Prof. R.H. Forbes, 'The Open Range and the Irrigation Farmer; Part II,' *The Forester*, Vol VII no. 10, (October, 1901): 254-258.

⁸²⁸ F.M. Conway, 'Rapid infilling of fresh earth fissure in southern Pinal County, Arizona with comment by Ken Ferguson,' *Arizona Geology e-Magazine*, 2019, (Arizona Geological Survey).

⁸²⁹ Collins, *Cattle Ranching*, 35-37.

⁸³⁰ BLM Ranger conversation 2016

the overstocking and overgrazing of non-indigenous cattle led to further erosion and water depletion.⁸³¹ As herds increased, the tramping of these animals across the valleys, coupled with decreased grass cover, led to the erosion of the sides of the gullies and arroyos, and banks of the rivers. This erosion, in turn, encouraged greater flash flooding as the natural channels became incapable of controlling the deluge from the mountains that occurred during the rainy seasons, particularly the summer monsoons.⁸³² The water from these floods could not be absorbed by the dry packed desert surface quickly enough, which prevented the soil and subsurface water table from retaining any of the water from the seasonal rains. In addition, those sides and banks which had not been damaged contained the water so well, that it cut deeper into the beds and gullies, creating ravine-like features, which also prevented the water from reaching the plants on the surface.⁸³³

Irrigation and dry farming for fodder exacerbated the problem of erosion too. Mass irrigation and dams redirected water away from the natural channels, causing silting and bank erosion, redistributed the water and depleted the subsurface reserves. The drier conditions and over-use of water and grazing areas caused the natural riparian areas and the *ciénegas* to lose their ability to sustain the larger trees, such as the desert willow and the cottonwoods, which also maintained the banks around the rivers, thus encouraging further erosion. The damage from the cattle industry was coupled with the dry farming practices of the homesteaders, which stripped the nutrients from the soil and created dry sunbaked surface sands. The dry sands were unable to prevent flood water from travelling across the stripped surface, which in turn destroyed crops,

⁸³¹Collins, *Cattle Ranching*, 35-37.

⁸³² Conway, 'Rapid infilling'
Rohe, 'Man and the Land'

⁸³³ Conway, 'Rapid infilling'
Rohe, 'Man and the Land'

damaged irrigation systems, and swept the surface clean of growth. Eventually these environmental issues changed the landscape of valleys from rolling grasslands to dry barren lands covered with cacti and shrubby wooded plants, such as the mesquite and desert sage bush, and deep arroyos, which feature in southern Arizona today.⁸³⁴ Another, and unforeseen, side effect is that cattle will ingest the harder seed of the bushes, such as mesquite, but their stomachs do not process them, so the seeds pass through the cow intact, and are deposited with a ready-made fertilizer pack for healthy germination. Unfortunately, this redistribution of these shrubby plants spreads them further afield and causes them to choke out even more of the grasses in the area, causing more erosive conditions.⁸³⁵ A decrease in the grasslands and changes to the water flow produced other side-effects such as the extinction of the Big-Horned Sheep and deer from the mountain ranges, overhunting of their predators, less groundcover for desert animals, and greater desertification. Ironically, small grazing herds maintain the grasslands by preventing conditions for the woody shrubs to grow in encouraging grasses to grow; a conundrum the BLM is contending with in the twenty-first century.⁸³⁶

Robert Forbes and his contemporary Richard Kellogg also expressed concerns that imbalance of tree cover from overcutting on the mountain slopes was detrimental to the ecosystems of southern Arizona.⁸³⁷ They explained in their reports that overharvesting stripped the area of water and soil retention abilities and of fire protection. First, without the retention ability of the trees, water run-off from the heavy seasonal rains could result in a gushing and eroding flood

⁸³⁴ Pierucci, 'The Ancient Ecology of Fire'

⁸³⁵ Winston Erikson, *Sharing the Desert: The Tohono O'odham in History*, (Tucson, AZ: University of Arizona Press, 1994), 95.

⁸³⁶ Mark Squillace, 'Grazing in Wilderness Areas.' *Environmental Law*, 44, (2014): 415-446.

⁸³⁷ Forbes, 'The Open Range, Part II.'

Royal S. Kellogg, 'Report of An Examination of the Chiricahua Mountains in Arizona,' (*The United States Forestry Service*, 1902), 11.

down the mountain slopes and into the valleys below. This was of particular concern to the Jeffersonian small homesteaders, who often skirted the base of the mountains in an attempt to harvest mountain moisture and use the subsequent rich base soils.⁸³⁸ This had the potential to change the passage of water at the base of the mountain, overcome the valley with alluvial soil and rocks, and by-pass the natural water collection points and tanks, valuable in the dry season. Secondly, the dearth of vegetation increased the risk of devastating fires because the natural firebreaks were created by the tree canopy inhibited the growth of grasses beneath thus preventing the fire from spreading.⁸³⁹ The destruction of trees, both in overcutting and by intense fires meant that the roots of the trees could no longer hold the thin soils together, and the resulting mudslides during the rains would, and still does, occur.⁸⁴⁰ Indigenous people of the southwest had practiced fire-management on the mountains, where they cleared small areas for farming by eliminating the grasses, which created natural firebreaks, thus preventing wholesale fires now prevent in the twentieth and twenty-first centuries.⁸⁴¹

⁸³⁸ Forbes, 'The Open Range, Part II.'

Kellogg, 'Report.'

Pierucci, 'The Ancient Ecology of Fire'

⁸³⁹ Pierucci, 'The Ancient Ecology of Fire'

⁸⁴⁰ Pierucci, 'The Ancient Ecology of Fire'

⁸⁴¹ Pierucci, 'The Ancient Ecology of Fire'

Image 9.7

Just before we reached the mountains, a surface fire extended over an area of about two sections southwest of Riggs's sawmill. It killed few of the large trees; but, of course, damaged the young ones in the usual manner.

Cutting.

Extensive cutting has taken place in Pine, Pinery, Rock, Morse, and Rucker canons. The cutting done in the noted Copper Queen case, which has recently been decided in the United States Supreme Court in favor of the company, was in Morse and Rock canons. This cutting was done in a wholesale manner without regard to results; consequently, much of the forest was totally destroyed. This condition has been aggravated by fires since then. In the area cut over 7 years ago, there is yet no reproduction of *Pinus ponderosa*. Soil conditions are bad and there is considerable washing. In various places the old skidways have been covered up by gravel and boulders. The sawmill in Rock Canon was located at 7000 ft., and the highest cutting reached an elevation of 8800 ft.

The only sawmill operating in the mountains now is that of Mr. Brannock Riggs, which, as before mentioned, is situated at an elevation of 8000 ft. in Barfoot Park. For about 6 years Mr. Riggs had his mill further down in Pine Canon, and it was moved to the present setting very recently. He has a 20 h.p. engine and can saw 5000 to 9000' a day. He has cut practically no trees under 20 in. in diameter in Barfoot Park, and has a proper appreciation of the needs of the forest.

It is generally claimed by the residents that there was much more water in the canons 20 years ago than at present. Whether this condition was due to a series of wetter seasons at that time or a better stand of timber on the slopes and in the bottoms of the canons, I do not know.

Recommendations.

I recommend that a Forest Reserve be established in the Chiricahua Mountains, with the boundaries shown upon the map prepared by Mr. Potter. The reserve as proposed will include the principal foothill country which already produces Oak and Juniper or evidently may be made to do so with proper treatment. There is no doubt that in furnishing a perpetual supply of timber, even though small in quantity, and in improving water conditions, a reserve would be of much benefit to the surrounding country. Under Forest Reserve management, enough cutting could be allowed without injury to the forest to greatly reduce the local price of lumber. When no lumber is being sawed in the locality, the dealers always charge a very high price for that which is shipped in. The general sentiment of the people is in favor of this reserve, and it could apparently be established without difficulty.



Tucson, Ariz., May 22d, 1902.

Discussion

The destruction of the balanced ecosystems in southern Arizona, coupled with pressure to convert to Anglo-American agricultural practices and unequal population distribution have resulted in changes in indigenous diet and work practices, as well as a reduction of knowledge about traditional cultural activities, such as cactus harvests and *ak-chin* farming. The ecology of the Sonoran Desert is based upon survival in arid conditions many animals, plants and people have developed mechanisms to conserve water, avoid the extreme temperatures, and use the

native flora and fauna for their nutritional survival. This has produced an environment where succulents, cacti and woody plants survive on the desert floor, and are fed by seasonal rains, which bring moisture and nutrients from the mountains by way of rivers, creeks and arroyos. The plants have long roots which help maintain the integrity of the thin soil and prevent erosion both on the mountain sides and on the desert floor. However, the increased use of the extraction industries coupled, now, with the modern style of living which involves heavy use of fossil fuels, precious minerals, and copious amounts meat products and water have created a potential ecological disaster in southern Arizona.

The extraction industries in southern Arizona have created a landscape scarred from commercial activities as well as encouraging large concentrations of population with water-rich lifestyles. The legislation which supported these developments also effectively removed indigenous input into how to manage the resources and balance the ecology of the region. These industries and practices, which caused many problems in the nineteenth century, are still causing issues in the twenty-first century, and by extension are impacting the lives of both the indigenous people and the natural environment.

However, there is hope for the future. Recently there has been a growing appreciation of the conservation practices of the indigenous people has developed in Anglo-American official bodies, such as Pima County Parks and the Federal Bureau of Land Management, and that these traditional practices are being consulted or even revived to save the environment from further damage.⁸⁴² The destruction of the indigenous, and historic, landscape by the mining industry is part of a controversial conversation as mineral companies still apply for permits to extract ore in

⁸⁴² Conversations between the Tohono O'odham and the government bodies are sporadic, but there is greater publicity and consideration of 'lost' indigenous land management practices which are permeating through decisions being made about the indigenous environment (personal knowledge).

the mountains of the region. The controversy stems from the push and pull between conservation and cultural protection on one hand and the need for industrial productivity on the other. One such conversation is determining what damage grazing livestock do apply to grasslands, and how this is to be managed. The BLM and the Forest Service are engaged in various experiments to determine the optimum number of cattle per acre in grassland areas, while also attempting to understand the ecology behind the indigenous plant systems. Currently, there are guidelines on these matters, but these need to be updated along with the data which produced them, and the legislation which permits specific activities.⁸⁴³

Another such concern is the Rosemont Copper Mine which is the centre of controversy as many oppose the expansion of the mining operation in the ecologically sensitive area of the Santa Rita Mountain region.⁸⁴⁴ This is an ongoing conversation about the development of a large-scale strip mine on the site of the old Rosemont mining district. The strip-mine received permission to build on this site during the 1980's but has been stalled in development as environmental impact reports indicate a certain depletion of the natural resources of the area. Strip mining, since the 1960's, has lost support in southern Arizona as greater acknowledgement of the destruction such mining practices can cause has arisen. Concerns over the biodiversity of the region, which includes the habitat of the northern-most Jaguar population, limited water resources, and general concern for the sensitive ecosystems have pitted environmentalists against industry for the past thirty years, and also involves the BLM.⁸⁴⁵

⁸⁴³ Squillace, 'Grazing in Wilderness Areas,' 433-435, 439-445.

⁸⁴⁴ 'Judge Overturns Wildlife Agency's Approval of Rosemont Copper Mine in Arizona: Biological Opinion Failed to Protect Endangered Jaguars.' *Center for Biological Diversity*, 2020 <https://biologicaldiversity.org>

⁸⁴⁵ Howard Fischer, 'Anamax plans Santa Rita open pit mine,' *The Arizona Daily Star*, 1983
Center for Biological Diversity, 'Judge Overturns Wildlife Agency's Approval'

In the 1980's the BLM rescued the historic Empire Ranch from becoming a housing area after Pima County Council were unable to raise the funds to purchase the ranch from developers who had acquired it from the land and cattle management company who owned it at the time.⁸⁴⁶ The owners of both the Rosemont mine and the Empire Ranch property were Anamax Mining company, who, during the 1980's were interested in a series of land exchanges with the BLM to expand their investments on and near their mineral concerns. These exchanges fell through after local pressure prevented them from occurring, and the BLM secured important some important ecologically sensitive land. The concern for the Empire Ranch area was the depletion not only of the wild grasslands, but also of the water systems of the cienega and surrounding stream system. Today, the BLM manage the ranch as both a wilderness wildlife and game reserve and a working ranch, while using it to explore the ecological heritage of the grasslands and the management of grazing animals upon it.⁸⁴⁷ It was designated by Congress as Las Cienegas National Conservation Area in 2000, which is an important designation as pre-historic indigenous artefacts have been discovered on the site.⁸⁴⁸

⁸⁴⁶ Anamax Mining ran the ranch, and had just sold rights to build on the land to Park Corporation, who were to develop the housing area.

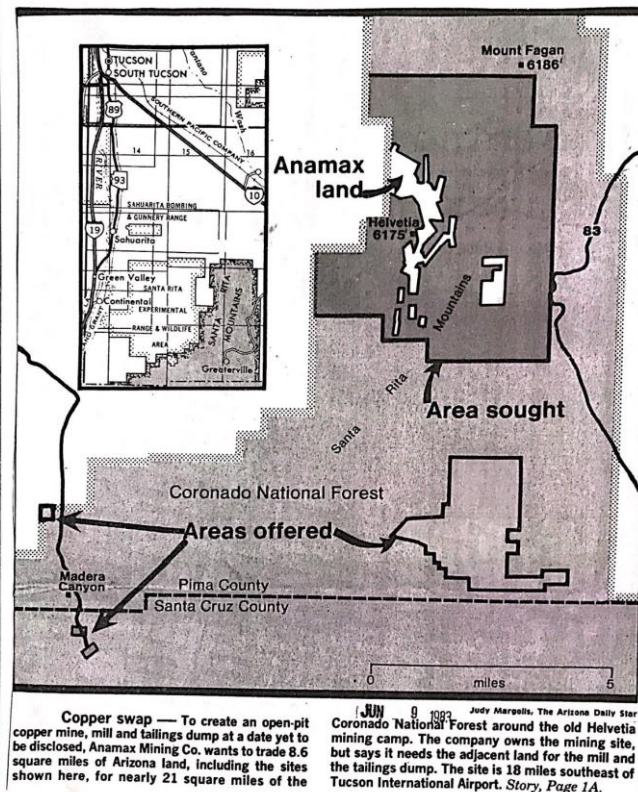
'Written Historical and Descriptive Data: Empire Ranch,' *Historic American Landscapes Survey*, (Washington D.C.: United States National Park Service, 2016), 15-17.

⁸⁴⁷ Personal knowledge from BLM ranger at Las Cienegas.

⁸⁴⁸ *Historic American Landscapes Survey*, 'Empire Ranch', 1.

Private email with Amy Sobiech, BLM Tucson Field Office Archaeologist, concerning archaeological finds, 20 May 2016.

Image 9.8



Anamax Plans for Las Cienegas National Conservation Area, 1980's⁸⁴⁹

Pima County Parks and Recreation has also responsibility by creating a 'green belt' on the western side of Tucson by establishing the Sweetwater Preserve recreational park. During the late 1980's Tucson expanded rapidly and began to climb the foothills of the surrounding mountains, so that by the early 2000's residents were becoming concerned about the extent of the city and wanted to curb further urban development. They purchased several hundred acres of land consisting of ranch and mining claims to contain development and create a green belt in the foothills of the Tucson Mountains.⁸⁵⁰ Now it is a recreational area containing several thousand indigenous plant and animal species including hundreds of Saguaro Cacti. These iconic cacti are indigenous to the Sonoran Desert and were the victims overgrazing from the commercial cattle

⁸⁴⁹ Arizona Historical Society, Empire Ranch files.

⁸⁵⁰ Notice board information at main entrance to Sweetwater Preserve, read in 2016. Further information accessible at <https://webcms.pima.gov>.

industry during the late nineteenth century and the early twentieth century. A growing understanding of the intrinsic value of these unique cacti during the twentieth century helped to establish two national parks around Tucson to preserve the remaining cacti. Initially, the first park to the west of Tucson was designed as a National Monument in 1933, and later became a National Park in 1994.⁸⁵¹ Later, a section to the east of Tucson in the Rincon Mountain valley was added to expand the protected areas. Cacti, including the Saguaro Cactus, are an important food source for the O’odham, and they have special techniques to harvest and process the fruit to make many delicious drinks and foods. However, good-intentioned policies of the Anglo-Americans are not always conducive to the continuance of traditional practices of the O’odham. Unfortunately, as the Saguaro Cactus National Park expands to save more cacti, it encroaches onto traditional Saguaro harvest areas, further restricting the O’odham to continue their traditional practices, although they do have permission to harvest the fruit in the National Park.⁸⁵²

While many Anglo-American activities can be destructive, there is hope that the growing recognition of the importance of the indigenous environment in southern Arizona will help to reclaim as many natural features and resources as possible. It is hard to say which is the most favourable, reservation of land for protection, or a moratorium on all expansionist activities of

⁸⁵¹ ‘SNP History,’ United States National Park Service (last modified July 13, 2019) www.nps.gov
The Saguaro Cacti take decades to grow to maturity, and it is only then that they produce the flowers and fruit which is used by the O’odham. Many cacti in and around Tucson are now only 60-100 years old, but some are much older, as indicated by the number of arms they have grown.

Pima County also has a requirement for builders to save a certain number of cacti from construction areas, to replant when construction is finished (local knowledge, confirmed by a builder).

⁸⁵² The O’odham use a special harvesting tool called a *kuipad*, which is made from Saguaro ribs to reach and pluck the flowers from the top of the arms. The Trust for Public Land ‘A traditional harvest at Saguaro National Park,’ <https://www.tpl.org/blog> Last updated 3 September 2020.

Anglo-American policies to prevent further damage. Either way, these developments and resulting conversations are good news for the Tohono O’odham generally, as they open the way for a modern reclamation of their traditional way of life.

Image 9.9



Federal Land Management Areas⁸⁵³

⁸⁵³ Location of Saguaro National Parks, assessed 10 June 2020, www.nps.gov.

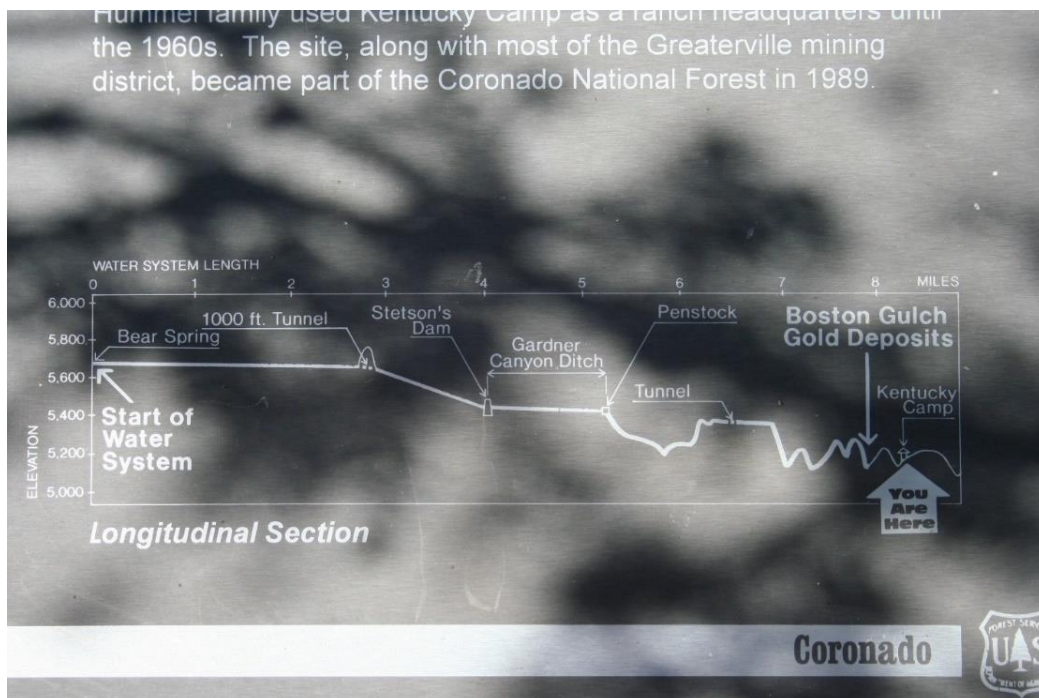
PLATES

Plate 9.1



Hydraulic blasting system, Kentucky Camp

Plate 9.2



Water system for blaster, KY Camp

Plate 9.3



Millville stamping works

Plate 9.4



Tailings

Plate 9.5



‘Glory Holes’ or excavation pits

Plate 9.6



Mining Shaft

Plate 9.7



Stamping Mill along San Pedro River

Plate 9.8



Prospectors Hole

Plate 9.9



Strip Mining, Bisbee

Plate 9.10



Gullied Arroyo

Plate 9.11



Gullied Arroyo

Plate 9.12



Clanton Ranch

Plate 9.13



Catalina Mountains fire damage

Plate 9.14



Neon 1950's 'Welcome to Tucson' showing iconic Saguaro Cactus

'Retro Tucson,' *Arizona Daily Star*, www.tucson.com accessed 4 December 2021.

Plate 9.15



Saguaro National Park, with strip mine in middle distance

Plate 9.16



Sweetwater Preserve and city of Tucson

Plate 9.17



Harvesting Saguaro fruit in traditional way

Children's programme, Desert Museum, <https://www.desertmuseum.org> from June 2021.

Plate 9.18



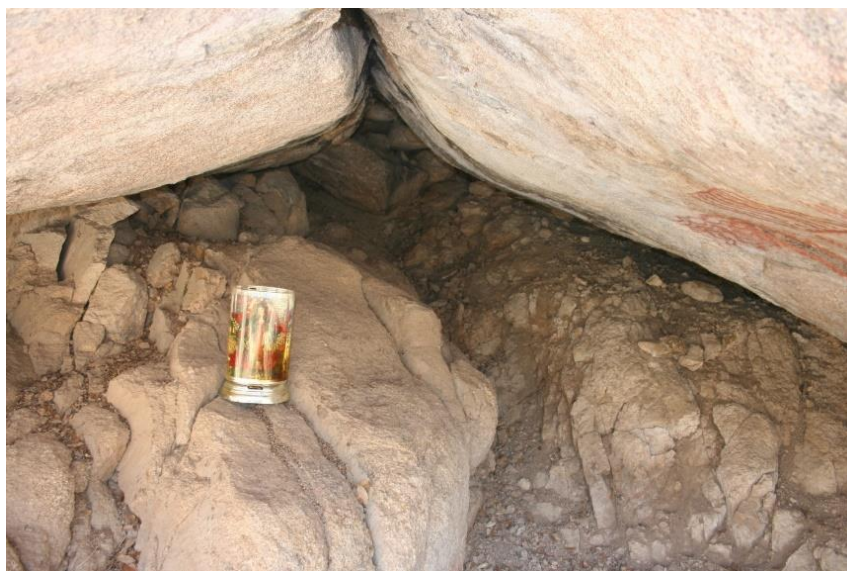
Typical forest road through the Chiricahua mountains which is graded, destroying any pre-historic and historic scatter and lithic scatter.

Plate 9.19



Pottery shard on forest road

Plate 9.20



Apache Heritage, with Our Lady Guadalupe statue placed near pictographs

Plate 9.21



Sulphur Springs Valley, modern agriculture

Plates 9.22



Rows of nuts trees, Sulphur Springs Valley

Chapter Ten

New Challenges to Old Issues

Introduction

Analysing how legislation in southern Arizona was applied during the nineteenth century is fundamental to understanding how the region has developed in the twentieth and twenty-first centuries. The imposition of Anglo-American cultural values and policies which accompanied this legislation still has a bearing on how the region is managed today. At the same time, the cultural impact of these influences can be seen clearly when reviewing the social position of the indigenous people and the changes wrought upon the landscape environment.⁸⁵⁴ The culture, political position and rights of the indigenous people within southern Arizona have been affected by ongoing issues resulting from settler colonial policies, and these issues are still prevalent at many different junctures in their lives today. Anglo-American values and practices are also a part of a broader discussion about the legacy of colonial sovereignty, power and control, that can partly result in a legal quagmire, such as the case in southern Arizona, from which both dominant and suppressed cultures find it difficult to escape.⁸⁵⁵ Scholars, such as Paul Frymer and Gary Fields, have provided commentaries to help unravel colonial processes that are present in many, similar, unequal societies, and these have been used to interpret the results of specific legislative policy practices in southern Arizona in the twenty-first century.⁸⁵⁶

⁸⁵⁴ Lorenzo Veracini, *Settler Colonial Present*, (London: Palgrave Macmillan, 2015), 5.

Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous People*, (London: Zed Books, 2012), 33.

⁸⁵⁵ Patrick Wolfe, 'Settler Colonialism and the elimination of the native,' *Journal of Genocide Research*, 8:4, (2006), 402-404.

Smith, *Decolonising Methodologies*, 22-27.

⁸⁵⁶Paul Frymer, "'A Rush and a Push and the Land is Ours': Territorial Expansion, Land Policy, and U.S. State Formation.' *Perspectives on Politics*, 12:1, (2014): 119-144.

Cultural impact

The effects of policies upon the indigenous landscape in southern Arizona between 1853 and 1912 were the result of a larger cultural and political process which was reflected in the Anglo-American management of the region. Land policies which had been implemented prior to the Mexican cession of the region in 1853 also informed later land policies and changed the way in which the landscape was used, which also changed the cultural practices of the indigenous people. The incoming settlers and business entrepreneurs of the nineteenth century were provided with the means and ability to finance their ventures by government-backed schemes and supportive infrastructure, including major financial investors, transportation networks and technological innovations.⁸⁵⁷ The Anglo-American development of the region was based upon specific interpretations of the land legislation which encouraged larger commercial entities to establish and extract the resources from the region. This, in turn, marginalised the indigenous people, isolating them from their traditional territory and practices, while Anglo-American destructive extraction techniques were practiced on the land instead. However, there is growing recognition of the complex position indigenous people find themselves in which has led to indigenous political and social movements, as well as academic scholarship, to challenge the legislation which still legally binds them to the Anglo-American cultural and political needs.⁸⁵⁸

Gary Fields, *Enclosure: Palestinian Landscapes in a Historical Mirror*, (Oakland, CA: University of California Press, 2017).

⁸⁵⁷ Peter Barnes, 'The Great American Land Grab'. *New Republic*, (2017) accessed 23 Sept 2018, <http://peter-barnes.org>

⁸⁵⁸ Peter Heiderpriem, 'The Tohono O'odham Nation and the US-Mexico Border,' *American Indian Law Journal*; IV:1, (2015): 107-130.

Jeffrey Schultz, *Are we not Foreigners Here? Indigenous Nationalism in the U.S.-Mexico Borderlands*, (Durham, NC: University of North Carolina Press, 2018).

Christina Leza, *Divided Peoples: Policy, Activism, and Indigenous Identities on the United States-Mexico Border*, (Tucson, AZ: University of Arizona Press, 2019).

Valerie L. Kuletz, *The Tainted Desert: Environmental Ruin in the American West*, (New York: Routledge, 1998).

The O’odham are working with local organisations to encourage a broader understanding of the value of indigenous foods, the Chiricahua Apache are challenging their non-recognised tribal status, and scholars, such as Peter Heiderpriem, are publishing calls for resolution to jurisdiction issues, such as those experienced by the Tohono O’odham with border security, which will be discussed below. The results of the Anglo-American mass resource extraction have been discussed within each chapter, but recent developments indicate a growing recognition of indigenous knowledge of the environment and sustainable practices to conserve it, and an indication that indigenous wise-ways are being incorporated into the policies of the larger land managers, such as the state and federal government land departments. In return, sadly, the influx of Anglo-American cultural norms and policies solidified the foothold and Anglo-American hegemony over the region, to the exclusion of the indigenous populations and their environment.⁸⁵⁹

Racism and control

Many of the results of the different legislative policies on the indigenous environment have been discussed within the chapters above, however, the impact of some of these policies are still being felt to this day and have embroiled the indigenous people in a tangled web of property jurisdiction in the twenty-first century. One issue is that many of the United States land policies enacted during the nineteenth century could be interpreted as inherently racist. Reginald Horsman and Paul Frymer, among others, discuss how racism and the belief in the superiority of

Maurice Crandall, ‘Yava-Who?: Yavapai History and (Mis) Representation in Arizona’s Indigenous Landscape,’ *Journal of Arizona History*; 61: 3 and 4 (2020): 487-510.

Eric Meeks, ‘Navigating the Border: The Struggle for Indigenous Sovereignty in the Arizona-Sonora Borderlands,’ *Journal of Arizona History*; 61: 3 and 4 (2020): 639-666.

⁸⁵⁹ Flannery Burke, *A Land Apart: The Southwest and the American Nation in the Twentieth Century*, (Tucson, AZ: University of Arizona Press, 2017).
Leza, *Divided Peoples*.

the Anglo-American culture over that of the indigenous in the United States is reflected in the way the legislation has been written and interpreted over that period.⁸⁶⁰ The ability to distinguish between the whites and non-whites in a century which expounded on the theories of human evolution and where expansionism meant progress can be used to understand some of the concepts behind the policies used in the American southwest, including southern Arizona.

As Frymer explains, in his article about United States land policy, the land legislation was racist in nature, and was intended to establish a predominantly white Anglo-American-centric culture firmly in new territories as a means to control the existing occupants.⁸⁶¹ However, while this was not prevalent in the new territory of Louisiana in 1803, where many inhabitants were of French origin at that time, it was considered important in the Mexican cession areas to distinguish between those of 'superior' western European cultural influences from those which were not, meaning indigenous, *mestizo* and Mexican cultural heritages.⁸⁶² As illustrated in the way the nineteenth century land policies were worded, many of them encourage citizens to apply for land parcels from the public domain, to the exclusion of those who were not declared as citizens or even citizens of the future.⁸⁶³ This can be interpreted a deliberate attempt to flood the Mexican cession areas with Anglo-Americans to 'whiten' the residents and culture ready to prepare the territories for statehood.

⁸⁶⁰ Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism*, (Cambridge, MA: Harvard University Press, 1981).

Frymer, "'A Rush and a Push.'

⁸⁶¹ Frymer, "'A Rush and a Push,' 119.

⁸⁶² The term *mestizo* was used by Mexicans indicating a person who had both Mexican and indigenous heritage, a common ethnic mix in the Sonoran Desert lands; Smith, *Decolonising Methodologies*, 22-27.

Frymer, "'A Rush and a Push,' 121.

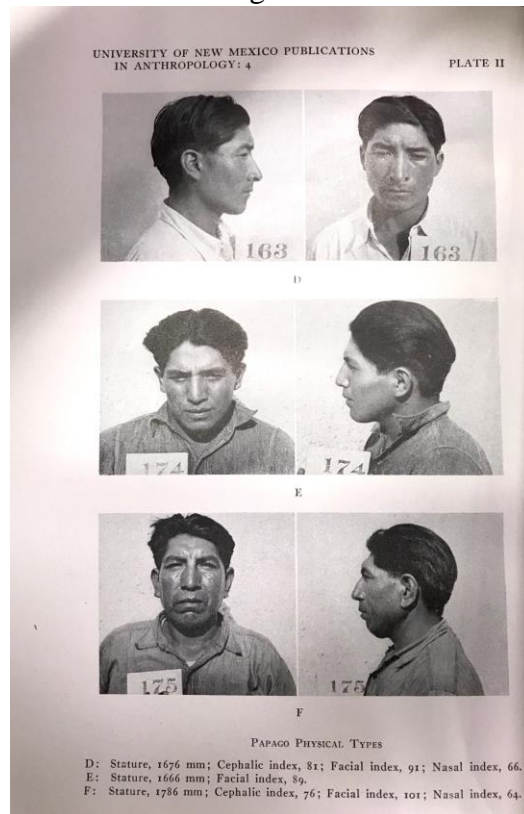
⁸⁶³ The requirements for citizenship and the restrictions on certain types of applicants is another argument about how the naturalized citizens of the United States were also chosen based upon racist ideas about different ethnicities.

Horsman illustrates, in his discussion about Anglo-Saxonism and Manifest Destiny, that the boundary lines between Mexico and the United States were specifically chosen to reduce the number of 'non-whites' in the cession territories, to avoid any confusion with the racially discriminated 'brown' ethnic features of the northern Mexican population.⁸⁶⁴ Legislation, therefore, could be used as an 'impartial', objective, and even 'innocent', vehicle through which to implement racist policies. It was one in which a hidden motive could potentially be undetected, especially by the international community, and could pass the legal processes if it contained clauses which advocated 'progress' and aid for the small Jeffersonian farmer. The consequence of these biased policies was that the focus remained on promoting Anglo-American claims at the expense of indigenous rights to the land. During the latter decades of the nineteenth century the indigenous people were excluded from procedures to establish ownership as they were never perceived to be legal owners of the land in the first instance. Therefore, as Frymer, building upon Horsman, contends, the underlying reason for the land policies in the United States were not to help and aid expansionism, although this is what they espoused, but for population control and to establish hegemony over the resources of the newly acquired land.⁸⁶⁵

⁸⁶⁴ Horsman, *Race and Manifest Destiny*, 210-219.

⁸⁶⁵ Frymer, "'A Rush and a Push,' 131-132.

Image 10.1



Racial Study of the O'odham

Norman Gabel, *A Comparative Racial Study of the Papago*, (Albuquerque: University of New Mexico, 1949), Plate II.

Thus, by establishing central control over the public domain gained from the Mexican cession, the federal government was able to manipulate, to a certain extent, who would be able to privately purchase federal lands, and when, where, and how they were able to do so.⁸⁶⁶ Fields, in his book about the impact of enclosure policies on land organization in Palestine, England and colonial America, illustrates how changing land from public and common use, to private and owner use only, can change the way the resources are used.⁸⁶⁷ More importantly it shows how

⁸⁶⁶ Wolfe, 'Settler Colonialism,' 388, 395.

⁸⁶⁷ Gary Fields discusses the use of land enclosure specifically in pre-industrial England, the experiences in colonial America and in Palestine/Israeli history, which can be directly applied in regional form to the experience in southern Arizona: Gary Fields, *Enclosure: Palestinian Landscapes in a Historical Mirror*, (Oakland, CA: University of California Press, 2017), 43-45.

the land can become a tool in the general political processes of the country. As he explains, the premise was to privatise public land to provide an incentive to capitalise on the resources of the land and to penalize the landowner who didn't improve the land satisfactorily. The processes were very similar in the studies he discusses; basically, the enclosure of land, which is initiated by the governing body, establishes formal boundaries out of the common or public land, that, once it is surveyed, is then made available to those who are eligible to apply for purchase. Boundaries and borders were then established to delineate the division between 'them', the indigenous unwanted and 'us', the favoured Anglo-American. This process then automatically changes the public land rights from customary to legal rights, and places a price upon the land, thus making it a commodity.⁸⁶⁸ As Wolfe explains, this type of zonal segregation is indicative of structural colonialism, it cannot, however, be classed as racist, because it is a division of land based upon the designation of the commercial value of the land, rather than an elimination of indigenous occupants.⁸⁶⁹ As an added incentive for the purchaser, Fields explains, water, particularly in arid areas, is deemed a common right, and is held in trust by the governing body for all to use.⁸⁷⁰ By permitting unrestricted water, new landowners are enticed by this free use of a basic necessity and, in return, are encouraged to invest in their property and to participate in the political processes of the country. This safeguards the region against undesirables, because the new owners will protect their property and rights, while the state secures loyalty from the landowner. This was fundamental to the post-cession land legislation in southern Arizona because it encouraged a federally controlled distribution of land to a specifically targeted

⁸⁶⁸ Fields, *Enclosure*, 126.

⁸⁶⁹ Wolfe, 'Settler Colonialism,' 403-404. Wolfe also explains that structural colonialism, found in legislation that erodes indigenous lifeways, such as the 1934 Indian Reorganization Act which Anglo-American indigenous governments, is responsible for the long-term genocide of indigenous peoples from coveted land; a political process which continues to this day, 400-401.

⁸⁷⁰ Fields, *Enclosure*, 98-102.

audience, while at the same time, legally dispensing those who were undesirable land occupants. The added advantage was that the favoured landowners were then embraced into the political realm with the electoral votes and were willing to provide defense to the area against undesirables at no expense to the central government.

Image 10.2



Man Holding a skull, entitled 'Indian skull found in Indian Ruins'

PC 151 *Western Ways* Photograph Collection, ca. 1950, in *Western Ways* March 1975, Folder 6, Arizona Historical Society, number 56377.

Jurisdiction

At the heart of the indigenous position and lack of control over their own territory and resources is understanding who has jurisdiction over what. Cultural resources, access to public water sources, defense of property and intrusive features are constantly being challenged by indigenous people who have been marginalised in the political process and excluded from decisions which would impact their cultural and natural environment. The Tohono O'odham have been able to reclaim land which was retained for Anglo-American cattle ranchers and the Chiricahua Apache

are beginning to reclaim their indigenous narrative in southern Arizona by corresponding with Coronado Forest rangers about their pictographs in the mountains.⁸⁷¹ Over the centuries indigenous people have endured encroachment into their lands, removal of natural resources and the destruction of sensitive cultural and spiritual sites and artifacts. This continues to this day in southern Arizona as the Tohono O’odham Nation are caught in a difficult position as their reservation is being actively used by non-members for illegal activities, such as transporting illegal immigrants and drugs across the desert to avoid the official international Ports of Entry on the main roads.⁸⁷² The Tohono O’odham Nation are currently using the media to expose their concerns over border jurisdiction with the Department of Homeland Security about who can cross the border, how the natural resources on the border are to be used, and who has rights over the land on the border.

Members of the Tohono O’odham Nation have labelled the international border between Mexico and the United States along their reservation as the “artificial barrier to freedom” and with good reason.⁸⁷³ Initially, after cession, the O’odham travelled freely across the border, which helped to maintain tribal integrity between the O’odham of the north, in the United States, and the O’odham of the south in Mexico. But slowly, over the next hundred and fifty years their freedom of movement has been increasingly restricted.⁸⁷⁴ However, in recent years restrictions have escalated so that certified members of the Nation, who include people from both south and

⁸⁷¹ Winston Erikson, *Sharing the Desert: The Tohono O’odham in History*, (Tucson, AZ: University of Arizona Press, 1994), 104.

⁸⁷² Andrea Filzen, ‘Clash on the Border of the Tohono O’odham Nation,’(2013), accessed 1 October 2017, <http://pulitzercenter.org>

Christopher Livesay, ‘At the United States-Mexico Border a tribal nation fights the wall that would divide them,’ *PBS News Hour*, 13 Jan 2019, www.pbs.org/newshour.

⁸⁷³ ‘Tohono O’odham History 1916 to Present,’ *Tohono O’odham*, accessed 1 October 2017, www.tonation-nsn.gov

⁸⁷⁴ Heiderpriem, ‘The Tohono O’odham Nation,’ 110-111.

Schultz, *Are we not Foreigners Here?*, 170-171.

Meeks, ‘Navigating the Border.’

north of the international border, are increasingly being challenged by border agents, even in the vicinity their own border crossing through the remote San Miguel station in the depths of their reservation.⁸⁷⁵ Encounters with border agents have not been pleasant for many O'odham, particularly for those members who reside south of the border.⁸⁷⁶ Unfortunately in the last couple of decades illegal activities, such as illegal immigration and drug carrying, have been increasing on the reservation because of the porous nature of the border there, which has encouraged an increase in border patrol agents patrolling the area. The Tohono O'odham Nation are torn between policing their own lands, which is hard to do because of limited resources, such as available people and finances to do so, or to allow the government to run border security on their lands. However, an intensification of the Border Protection programme to challenge any individual who could be a potential illegal person, increases both the Anglo-American presence as well as potential destruction of the indigenous environment and culturally sensitive sites, which has already caused issues in the borderland region.⁸⁷⁷ Also, while border security was established in the latter years of the nineteenth century as federal concerns about illegal

⁸⁷⁵ All O'odham members from both Mexico and United States are a part of the Nation, since 1937, and permitted to use the resources on the reservation, mainly the northern section in the United States, however, the Nation have been attempting to also get United States citizenship conferred on the southern members to prevent detention by the increasing numbers of border patrol agents on the reservation: Heiderpriem, 'The Tohono O'odham Nation,' 192-197; *Tohono O'odham*, 'Tohono O'odham History.'

⁸⁷⁶ Filzen, 'Clash on the Border.'

Heiderpriem, 'The Tohono O'odham Nation,' 92-97

Livesay, 'At the United States-Mexico Border.'

Meeks, 'Navigating the Border.'

⁸⁷⁷ Border security concerns developed during the 1880's and have been ongoing as additional border security concerns are raised, such as drug smuggling. Recently, the extension of the border security barriers has escalated concerns in the borderlands relating to the protection of property and rights.

Livesay, 'At the United States-Mexico Border.'

Emma Gibson, 'Indigenous group reaffirms importance of Springs amid border wall construction,' accessed 19 November 2020, <https://news.azpm.org>.

immigration and Mexican agitation began to increase, fears about the integrity of indigenous sites and federal encroachment have only come to the fore in the last few decades.

Image 10.3



Quitobaquito O'odham Pithouse c. 1920

www.nps.gov accessed 25 November 2021

The first United States border agent was Jeff Milton, who patrolled the 75-mile border by horse from 1887 until 1909's. Milton lived at a traditional O'odham water source called Quitobaquito Spring, close to the current Tohono O'odham Nation reservation, which later became the location for the first United States Customs and Immigration station.⁸⁷⁸ In 1907 President Roosevelt set aside a 60-foot-wide ribbon of land along the border for personnel to patrol the international border, and in 1923 President Coolidge marked off 40 acres around the Spring declaring the Spring as a public watering hole. At the same time he also expanded the

⁸⁷⁸ Peter S. Bennett and Michael R. Kunzmann, *A History of the Quitobaquito Resource Management Area, Organ Pipe Cactus National Monument, Arizona*, (Tucson, AZ: University of Arizona, 1989), 24.

Bill Broyles and Gayle Harrison Hartmann, 'Surveyors to Campers,' in *Last Water on the Devil's Highway: A Cultural and Natural History of the Tinajas Altas*, edited by Bill Broyles, (Tucson AZ: University of Arizona Press, 2014), 126. 'History,' *United States Customs and Border Protection*, accessed 27 November 2021, www.cbp.gov

Immigration station, and eventually the international Port of Entry, Lukeville, was established next to Quitobaquito in 1930.⁸⁷⁹ Organ Pipe Cactus National Monument was created out of several Anglo-American ranches surrounding this public watering hole, as well as a ranch next to Quitobaquito Spring run by the Hia C-ed O'odham Orosco family who were the designated caretakers of the spring from 1887 to 1957.⁸⁸⁰ The Orosco's were believed to be coerced by the United States government to sell their ranch and the watering hole in 1957 for \$13,000, ostensibly to protect the area from cattle damage.⁸⁸¹ However, the Organ Pipe Cactus National Monument was growing apace at this time, so were the visitors to the region and the Customs and Immigration agents in the area.⁸⁸² As Bennett and Kunzman point out in their history of Quitobaquito, why would the government purchase a water source from a private, indigenous family, when they had already declared it as public domain?⁸⁸³ They state that this conundrum has never been resolved.

⁸⁷⁹ Bennett and Kunzmann, *A History of the Quitobaquito*, 24.

⁸⁸⁰ Bennett and Kunzmann, *A History of the Quitobaquito*, 18-19.

'Organ Pipe Cactus National Monument,' *United States National Park Service*, accessed 18 July 2018, www.nps.gov.

Gibson, 'Indigenous group reaffirms importance.'

⁸⁸¹ Ironically indicating that the Orosco's cattle ranching operations was responsible for the extensive damage of the waterhole, irrespective of the numerous Anglo-American cattle ranches which surrounded the Orosco concern. Bennett and Kunzmann, *A History of the Quitobaquito*, 18-19.

⁸⁸² The post-World War II years saw an increase in tourism in the west as well as an increase in caution from subversive elements as communism and worker's rights began to enter the political arena (Mark E. Pry and Fred Anderson, *Arizona Transportation History: Final Report 660*, (Arizona Department of Transportation Research Center, 2011), 57-66.

Bennett and Kunzmann, *A History of the Quitobaquito*, 18-19.

⁸⁸³ Bennett and Kunzmann, *A History of the Quitobaquito*, 31.

Image 10.4



Quitobaquito Spring reservoir

www.nps.gov accessed 25 November 2021

Unfortunately, Quitobaquito Spring water hole is currently being used as a water supply for the cement to be used in the construction of the permanent border wall across the reservation.⁸⁸⁴

This desert spring has been used since pre-history and is integral to the history of the O’odham desert people. However, environmental and cultural concerns are being raised by various members of the Tohono O’odham Nation as well as observers and concerned non-indigenous groups and individuals. The water supply of the spring, as well as the underground aquifer, are being depleted as wall construction progresses, while the detritus and run-off from the construction site are contaminating the spring and damaging the natural habitat there and across the area.⁸⁸⁵ This is just one concern of many about the construction of the border wall across the reservation which has been ongoing since the first fence was raised along the border in 1918, allegedly to restrict Mexican border crossing from the Mexican Civil War and other non-tribal

⁸⁸⁴ Gibson, ‘Indigenous group reaffirms importance.’

Douglas Main, ‘Sacred Arizona Spring drying up as border wall construction continues,’ *National Geographic*, accessed 20 November 2020, www.nationalgeographic.com.

⁸⁸⁵ Gibson, ‘Indigenous group reaffirms importance.’

Main, ‘Sacred Arizona Spring drying up.’

members from encroaching upon the newly designated ‘Papago’ Reservation.⁸⁸⁶ However, as the eastern boundary of the reservation was fenced in 1928, one has to question whether it was to keep people out or to keep people in and controlled?⁸⁸⁷ Unfortunately, the current border wall is causing even greater destruction as construction crews are clearing the wall construction area without reference to the culturally sensitive sites located within the construction area.⁸⁸⁸ This is of great concern for the Nation as not only are sacred grave sites being blown up for materials for the wall construction, but also permission to do so without direct permission from the Tohono O’odham violates Native American Graves Protection and Repatriation Act passed in 1990 which requires the removal and repatriation of any indigenous remains.⁸⁸⁹ However, once again, the question of jurisdiction over the land arises as the United States government exercises control of the land on which the reservation is established, the 60-feet of border patrol road and the construction of the border protection wall.

According to Heiderpriem the Tohono O’odham Nation have several designations which they can use to determine where their nation lies in the hierarchy of government bureaucracy, such as if they are legally responsible to the state or the federal government.⁸⁹⁰ The Nation’s jurisdiction designation would depend upon which piece of legislation they would be evoking and who they would report to at the time to support their case.⁸⁹¹ Heiderpriem mentions that according to the 2002 Homeland Security Act they are considered equivalent to a local government, and therefore

⁸⁸⁶ Jay J. Wagoner, *The History of the Cattle Industry in Southern Arizona*, (Tucson, AZ: University of Arizona Press, 1952), 112.

⁸⁸⁷ Wagoner, *The History of the Cattle Industry*, 113.

⁸⁸⁸ Raul Grijalva, ‘Native burial sites blown up for United States border wall,’ accessed 11 February 2020, www.bbc.co.uk.

⁸⁸⁹ One hundred and first Congress. Native American Graves Protection and Repatriation Act, Public Law No. 101-601. 1990. Accessed 20 November 2021. www.congress.gov.

⁸⁹⁰ Heiderpriem, ‘The Tohono O’odham Nation,’ 122-129.

⁸⁹¹ Heiderpriem, ‘The Tohono O’odham Nation,’ 122-129.

would report any issues to the state. However, both the 1970 Clean Air Act and the 1972 Clean Water Act treats indigenous people as states, and therefore they will report any concerns to the federal government.⁸⁹² Alternatively, the National Resource Protection Act of 1988 holds them at state level, and permits border nations responsible for border security to apply for federal funds to do so.⁸⁹³ In addition, the 2007 United Nations Declaration of Rights of Indigenous People declared that people of bisected tribal lands should not be hindered from crossing the state borders in order to maintain tribal connections.⁸⁹⁴ For the Tohono O’odham Nation the border crossing station at San Miguel partially fulfills this expectation.⁸⁹⁵

In reality, however, jurisdiction over the indigenous environment and cultural resources for the Tohono O’odham Nation, among others, is still unresolved in the United States, and to quote Verlon Jose, the Tohono O’odham have “never crossed the border; the border crossed us”.⁸⁹⁶ If the United States government could treat the Tohono O’odham Nation as a state entity and hand over border jurisdiction, with funding, to the Nation, then maybe they could manage their own lands in their traditional ways, provide protection for the natural resources, and rebuild the indigenous environment, while maintaining tribal integrity without the interference of an invasive culture and policies, then the indigenous lifeways could be respected further.⁸⁹⁷

⁸⁹² Heiderpriem, ‘The Tohono O’odham Nation,’ 122-129.

⁸⁹³ Heiderpriem, ‘The Tohono O’odham Nation,’ 122.

⁸⁹⁴ A further problem has been recognised by Leza, where she discusses the shifting identities through which tribal members navigate during their lives, and that there is a disconnect between members north and south of the border: Leza, *Divided Peoples*, 133-135.

Heiderpriem, ‘The Tohono O’odham Nation,’ 126.

Meeks, ‘Navigating the Border,’ 639, 652.

⁸⁹⁵ Indigenous activists and members of transborder tribes are attempting to clarify cross-border documentation and procedures so that the authorities can identify member documents easily; Meeks, ‘Navigating the Border,’ Leza, *Divided Peoples*, 72-93, 123-143.

⁸⁹⁶ Livesay, ‘At the United States-Mexico Border.’

Meeks, ‘Navigating the Border,’ 648-649.

⁸⁹⁷ According to Heiderpriem, until recently there were only a few dozen indigenous border patrol personnel, to keep an eye on over 4,000 square miles of reservation land; ‘The Tohono O’odham Nation,’ 116.

Removal

The Chiricahua Apache, on the other hand, have a different sovereignty battle to fight over their traditional territory. The United States land policies advocated the sale of public domain lands, taken from the indigenous people, into the hands of private individuals to assert Anglo-American sovereignty and dominance over the Mexican cession lands. However, the resident indigenous populations, such as the Chiricahua Apache, resisted such intrusion into their traditional territories. Therefore, in an attempt to dispense public domain into the hands of private individuals, various measures were imbedded in land legislation to permit the lawful removal of indigenous groups 'in rebellion', from coveted land claiming that many had 'violated' their peace treaties with the United States. This permitted the Anglo-Americans official means to override much of the opposition of the indigenous people by evoking legislation which provided them with the legal basis for indigenous forfeiture of the traditional lands. Initially, the policies were to superimpose the Anglo-Americans onto indigenous lands with the hope that the indigenous people would 'disappear', either by assimilation or removal. However, indigenous isolation, segregation and removal from coveted land became increasingly implemented, and in southern Arizona many Apache members experienced these measures first-hand during the last decades of the nineteenth century.

Thus, once a parcel of public domain land had been designated for public sale by the United States government, the existing, and unwanted, occupants were displaced by either legal procedures or by force, and the boundaries would be defended against further intrusion.⁸⁹⁸

Therefore, in the United States, when Chief Justice John Marshall decreed in 1823 that the

⁸⁹⁸ Fields *Enclosure*, xiii, 10-11.

Maurice Crandall discusses this same struggle as members of the Yavapai in Arizona are attempting to regain their own separate identity from the Apache with whom they share a reservation; Crandall, 'Yava-Who?.'

indigenous populations in the United States were only permitted occupancy rights, this meant that the title holder who held possessive rights, could evict them at any time.⁸⁹⁹ This legal position gave the United States government, and any private land title holders, the right to forcibly remove and exclude indigenous occupants from land that they held the title to.⁹⁰⁰ However, by the Mexican cession, expansionism in the United States meant that there were limited spaces for the evicted indigenous populations to be sent to, and the reservation system was implemented with voracity.⁹⁰¹ In southern Arizona, several reservations for Apache members were established by President Grant during the 1870's under his Peace Policy. The United States government justified the establishment of the reservations by advocating that separation would provide the indigenous people a segregated and 'safe' life from the incoming Anglo-American population.⁹⁰²

In reality, the United States executive were hoping to use the reservations to prevent violence between the Anglo-American settlers and the indigenous people, to use them as facilities to 'Americanize' or assimilate the indigenous people and finally, to encourage greater settlement of the areas by the separation and containment of 'undesired' residents.⁹⁰³ The policy to change the

⁸⁹⁹ In the decision of *Johnson v McIntosh* (1823), and confirmed in 1831 and 1832 (*Cherokee Nation v Georgia* and *Worcester v Georgia*) Marshall interpreted the 1790 Nonintercourse Act legislation by determining that Section 4 (indigenous people did not have alienable rights to sell the land) meant that the indigenous people did not hold fee interests in the lands and the United States government held the sovereign interest: William, E. Dwyer, Jr. 'Land Claims Under the Indian Nonintercourse Act – 25 U.S.C. § 177,' *Boston College Environmental Affairs Law Review*, 7 no. 2 (1978): 259-265.

Dwyer, Jr. 'Land Claims,' 259-264.

Lindsay G. Robertson, *Conquest by Law; How the Discovery of America dispossessed Indigenous Peoples of their lands*, (Oxford University Press, 2005), 99.

⁹⁰⁰ Frymer, "'A Rush and a Push,' 120-121.

⁹⁰¹ Frymer, "'A Rush and a Push,' 120-134.

⁹⁰² Ely Parker, *First Report of Ely Parker U.S. Commissioner of Indian Officers, 1869*, assessed 27 Oct 2019, www.pbs.org

⁹⁰³ John C. Ewers, *The Role of the Indian in National Expansion*, (Washington D.C.: United States Department of the Interior National Park Service, 1938), 168

Dan L. Thrapp, *The Conquest of Apacheria*, (Norman, OK: University of Oklahoma Press, 1967), 79, 102, 162-165.

status of the indigenous people from ‘dependent domestic nations’ to ‘wards of state’ during Grant’s presidency also allowed an easier land transaction, on paper, for the removal of the indigenous people from their traditional lands.⁹⁰⁴ In southern Arizona, after it proved difficult to maintain several smaller reservations, either from agitation between the Apache groups and the local Anglo-Americans, or inability to ‘control’ the Apache residents, a shift in policy in 1876 mandated a large generic Western Apache reservation to be established. This was designed to concentrate all Apache located throughout Arizona, into the San Carlos Apache Reservation, established in 1873.⁹⁰⁵ When the policy changed to concentrating indigenous people into larger reservations, those groups who refused to comply were aggressively ‘punished’ for such transgression. General Crook was sent on two separate occasions to ‘round up’ the ‘rebellious’ Apache, to either force them to stay on the reservation or eliminate them.⁹⁰⁶ Members of the Chiricahua Apache were one of the last groups of indigenous people to rebel against the concentration policy and, as such, were exiled, in 1886, from Arizona in perpetuity.⁹⁰⁷ As a result, the Chiricahua Apache have been absorbed into other Apache tribes, such as the San Carlos Apache, or have remained as individuals in Anglo-American society. The Commanche

⁹⁰⁴ Parker, *First Report*.

⁹⁰⁵ Executive Order 541 Establishing Chiricahua and San Carlos Apache Reservations, Chiricahua Apache reservation cancelled 1876, Executive Order 600. 1872. Accessed 20 March 2019. www.loc.gov. Clum, John P. 1874-1877. Collection of agency notes and personal correspondence. University of Arizona Special Collections call number MS 284.

John G. Bourke, *On The Border with Crook*, (Lincoln, Nebraska: University of Nebraska Press, [1891] 1971), 103. Thrapp, *The Conquest of Apacheria*, 165.

⁹⁰⁶ Bourke, *On The Border with Crook*, 103.

Ewers, *The Role of the Indian*, 170-179.

Donald E. Worcester, *The Apaches, Eagles of the Southwest*, (Norman, OK: University of Oklahoma Press, 1979), 259-296.

⁹⁰⁷ During 1880’s Geronimo, a Bedonkohe Chiricahua Apache shaman, led his family and members of the Chokonen and Caliente Chiricahua Apache in an escape from San Carlos Apache Reservation, and became fugitives for several years. It was only after Geronimo surrendered to General Miles in 1886 did the so called Apache Wars finish and the fugitives were exiled first to Fort Pickens in Florida and then to Fort Sill in Oklahoma, where Geronimo died in 1897: Thrapp, *The Conquest of Apacheria*, 354-363.

Chiricahua Apache Nation, accessed 18 April 2018, <http://www.chiricahuaapachenation.org>.

Mescalero Apache Tribe, accessed 21 November 2020, www.mescaleroapache.org.

and Kiowa reservation in Oklahoma, where the Chiricahua Apache were sent in 1901, was decommissioned in 1911 and the indigenous residents could either remain on private allotments or move to another reservation.⁹⁰⁸ Some members of the Chiricahua Apache diaspora remained, and others moved to New Mexico to the Mescalero Apache Reservation, and became official members of the tribe in 1934 during the Indian Reorganization policy.⁹⁰⁹

Unfortunately, the policies of segregation, concentration and elimination have meant that the Chiricahua Apache have lost their separate identity and culture, as well as their traditional homelands, and have lost their official tribal status. To gain official tribal recognition and thus, to apply for a separate tribal reservation, the indigenous applicants must be recognised as a tribe on the official Federal Acknowledgement of Indian Tribes of the Federal Register.⁹¹⁰ The 35-page list of criteria for recognition is arduous and complex, although it is broken down into seven criteria requiring record of membership, designated homeland area, cultural identity and cohesiveness and non-membership with other recognised tribes, all of which must be identified as occurring after 1900.⁹¹¹ 1900 is a crucial date for the Chiricahua Apache as they have to establish continuity of tribal identity since that date, however, by 1900 they had been exiled from their traditional territory and were sent to a non-Apache reservation in Oklahoma under the status of ‘prisoners of war’, from which they were not released until 1913.⁹¹² After which, they were either released as individuals residing in Oklahoma, or were later absorbed into the Mescalero Apache tribe. In addition, as Jeffrey Schultz explains “the 1901 *Montoya v U.S.* case ...

⁹⁰⁸ *Chiricahua Apache Nation*

⁹⁰⁹ *Mescalero Apache Tribe*

⁹¹⁰ United States Department of the Interior Bureau of Indian Affairs, ‘25 CFR Part 83: Federal Acknowledgement of American Indian Tribes; Final Rule,’ *Federal Register*, 80, no. 126 (2015).

A procedure the Yavapai are also sifting through; Crandall (2020)

⁹¹¹ Bureau of Indian Affairs, ‘25 CFR Part 83, 11.

⁹¹² Worcester, *The Apaches*, 324.

established a distinction between being ‘recognized’ by the federal government and being ‘in amity’ with the federal government... the Supreme Court found that while the federal government had, in fact, recognized the Chiricahua Apache as a band, their status differed from that of other tribes owing to the fact that they were not ‘in amity’ with the United States at the time”.⁹¹³ Accordingly, they were neither recognised as a tribe, nor ‘in amity’ because of their detention as prisoners of war.

An activist movement has emerged among the Chiricahua Apache diaspora in recent years to begin the battle for the Chiricahua Apache to not only reclaim their 1872 reservation in southeastern Arizona, but also to gain official tribal designation from the United States government as reparations for the deprivations they received from such discriminatory policies. Thus, the question of sovereignty remains a subject of discussion and contention for indigenous people, and as such is being challenged by the political and social indigenous movements like the Chiricahua Apache Nation.

In 2007 members of the Chiricahua Apache Nation diaspora ratified a Declaration of Independence stating that as an autonomous entity they no longer considered themselves as a ‘domestic dependency’ of the United States.⁹¹⁴ They declared themselves to be an equal sovereignty with the United States government and claimed jurisdiction over their ancestral lands on the former Chiricahua Apache Reservation. They also stated that while terrible things had happened to their nation, they agreed to still abide by the laws of the United States provided they received reparation for the many injustices their nation endured.⁹¹⁵ This was a bold move for an

⁹¹³ Schultz, *Are we not Foreigners Here*, 169.

⁹¹⁴ ‘Declaration of Independence,’ *Chiricahua Apache Nation*, (2007), <http://www.chiricahuaapachenation.org>, Art I

⁹¹⁵ *Chiricahua Apache Nation*, ‘Declaration of Independence, Art. IV & Statement of Principles.

indigenous people who are not yet recognised by the United States as a registered tribe, and who had been estranged from their ancestral lands for over a century. This position of the Chiricahua Apache Nation, however, is tenuous within the United States legal system. The Chiricahua Apache Nation base their declaration upon two contracts made with agents of the United States in which the Chiricahua Apache agreed to peaceful relations in return for certain privileges from the United States government. The first agreement, the Treaty of Santa Fe in 1852, was a basic peace treaty where the Chiricahua Apache, under the leadership of Mangas Colorado, where each nation agreed to respect the other's boundaries; the second was the 1871 Cochise-Howard Agreement, a peace agreement which preempted the creation of the Chiricahua Apache Reservation located in and around the Dragoon Mountains and Sulphur Springs Valley.⁹¹⁶ According to the Treaty of Santa Fe, Article 11 bound the signatories to uphold the treaty agreements.⁹¹⁷ The Chiricahua Apache Nation also contend that they were not a conquered nation by Spain or Mexico, and therefore, as a sovereign entity, their territory should not have been subject to the cession treaties of Guadalupe Hidalgo and the Gadsden Purchase.⁹¹⁸ This indicates that they remained a sovereign nation through the formative years of United States jurisdiction until the 1870's when various Apache reservations were established in southern Arizona, the Chiricahua Apache reservation included. However, after the Chiricahua Apache Reservation was revoked in 1876, the Chiricahua Apache Nation could argue that the Cochise-Howard Agreement was rescinded by the government and they were released from obligation.

⁹¹⁶ *Chiricahua Apache Nation*

⁹¹⁷ Treaty of Santa Fe – 'Treaty with the Apache,' (July 1, 1852), accessed 15 November 2021, <https://avalon.law.yale.edu/>

⁹¹⁸ Ward Churchill, 'The tragedy and the Travesty: The Subversion of Indigenous Sovereignty in North America,' in *Contemporary Native American Political Issues*, Troy R. Johnson ed. (Walnut Creek, CA: AtaMira Press, Sage Publications, 1999).

However, certain legal policies were changed during the nineteenth century which would also give the United States grounds for refusing to accept the Declaration of Independence from the Chiricahua Apache Nation, despite their strong arguments otherwise. The first, is that when the 1852 treaty was signed more than half of their ancestral territory remained under the jurisdiction of Mexico, and therefore was not subject to the 1852 Santa Fe Treaty, although no boundaries were described in the treaty; a point which the Chiricahua Apache Nation are also aware of. Secondly, while the 1853 Gadsden Purchase Treaty removed the requirement of United States control over the ‘savage tribes’ and does not mention indigenous people in the treaty, it technically released the indigenous people from subjugation by the United States. However, the boundaries of the United States included land designated as Chiricahua Apache traditional territory, and the United States army engaged in armed warfare to ‘conquer’ the region.⁹¹⁹ Third, the United States could argue that the Abrogation of the Treaties Act in 1862 extended to all nations and tribes who engaged in armed warfare with the United States, which the Chiricahua Apache did during the 1860’s, 1870’s and 1880’s. Therefore, they would forfeit any previously standing peace treaties.

Unfortunately, as the Cochise-Howard agreement was made in 1871, it was deemed a contract not a treaty according to the Act of March 3rd, 1871 and fell victim to the vastitudes of bureaucracy and in-fighting of the government departments. The agreement, it was argued, was void because it was initially a verbal agreement and was not officially approved by the government.⁹²⁰ The Act of March 3rd, 1871, also determined that treaties after 1867 were not valid, and agreements were required to go through United States agencies, be in writing and be

⁹¹⁹ Bourke, *On The Border with Crook*, 105.

⁹²⁰ Edwin Sweeney, *From Cochise to Geronimo: The Chiricahua Apaches, 1874-1886*, (Oklahoma: University of Oklahoma Press, 2010), 22.

approved before being enacted. This, it was claimed by Howard detractors, did not happen with the agreement between Howard and Cochise.⁹²¹

Moreover, Thomas Jeffords, the Chiricahua Apache Indian Agent was a civilian, and disliked by the local Anglo-American community for his 'favouritism' of the Chiricahua Apache and their actions.⁹²² Jeffords was not supported by neither the army, who did not have jurisdiction over the reservation, nor the Dutch Reform Church who provided Indian Agents through a contract with the Bureau of Indian Affairs.⁹²³ As a result, Jeffords and the reservation became pawns in the tug-of-war between the two government entities and the policies of elimination or rehabilitation and assimilation, and local politics.⁹²⁴ In addition, he had a good relationship with Cochise and handed rations to any Apache who were at the reservation at the time, including those who, many thought, were using the reservation as a launch for raids into Mexico.⁹²⁵ Thus, by 1875, the Bureau of Indian Affairs was intending to remove Jeffords, dismantle the reservation, and move the Chiricahua Apache to either San Carlos Apache Reservation in Arizona, or to New Mexico with either the Mescalero Apache or to Ojo Caliente, another Chiricahua Apache reservation.⁹²⁶

⁹²¹ Forty-first Congress. Act of March 3rd, 1871, known as Grant's Peace Policy – 'Chapter 120: An Act making appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June thirty, eighteen hundred and seventy-two, and for other Purposes.' March 3, 1871. Accessed 20 March 2021. www.loc.gov. 544-571, Sections 3 and 14.

Sweeney, *From Cochise to Geronimo*, 22.

⁹²² Sweeney, *From Cochise to Geronimo*, 44.

⁹²³ Worcester, *The Apaches*, 175, 235.

⁹²⁴ The army were part of the War Department which was in charge of curbing indigenous aggression and maintain the indigenous people inside the boundaries of the reservations, and the BIA were responsible for the running of the reservations and the well-being of the inmates. Their jurisdictions constantly overlapped when detention after arrest were implemented for 'renegade' Apache.

Clum, Collection of agency notes.

Thrapp, *The Conquest of Apacheria*, 165-179.

Worcester, *The Apaches*, 142.

⁹²⁵ Thrapp, *The Conquest of Apacheria*, 169-175.

Worcester, *The Apaches*, 142.

Sweeney, *From Cochise to Geronimo*, 42-44.

⁹²⁶ Thrapp, *The Conquest of Apacheria*, 165-179.

Worcester, *The Apaches*, 133-134.

Image 10.5

25 CFR Part 83 - *Procedures for Federal Acknowledgment of Indian Tribes*

83.11 Criteria for Federal Acknowledgment

The mandatory criteria are:

- (a) **Indian entity identification:** The petitioner demonstrates that it has been identified as an American Indian entity on a substantially continuous basis since 1900 [evaluated under Phase II].
- (b) **Community:** The petitioner demonstrates that it comprises a distinct community and existed as a community from 1900 until the present [evaluated under Phase II].
- (c) **Political influence or authority:** The petitioner demonstrates that it has maintained political influence or authority over its members as an autonomous entity from 1900 until the present [evaluated under Phase II].
- (d) **Governing document:** The petitioner provides a copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures [evaluated under Phase I].
- (e) **Descent:** The petitioner demonstrates that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity [evaluated under Phase I].
- (f) **Unique membership:** The petitioner demonstrates that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe [evaluated under Phase I].
- (g) **Congressional termination:** The Department demonstrates that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship [evaluated under Phase I].

Abbreviated version. For complete criteria text, please refer to 2015 Regulations, 25 CFR Part 83.

Brief Criteria for Federal Recognition

United States Department of the Interior Bureau of Indian Affairs, '25 CFR Part 83: Federal Acknowledgement of American Indian Tribes; Final Rule,' *Federal Register* 80, no. 126 (2015).

If the Chiricahua Apache Nation are able to become a Federally recognised tribe and, also, gain jurisdiction over their original Chiricahua Apache Reservation in Arizona, the next legal battle would be to evict all the private landowners, and the United States government, from their reservation lands. The boundaries, as established by the reservation in 1872, are now a

Sweeney, *From Cochise to Geronimo*, 39, 44.

patchwork of private residences, incorporated townships, large government land agents and other federally reserved areas for resource management.⁹²⁷ In addition, many forestry, mining and ranching businesses are located in the area, all of whom have legal documentation to prove that the United States permitted them to own or lease these lands as former public domain lands. This would have serious implications for rights of sovereignty and public domain policies for the United States.⁹²⁸ This would publicly acknowledge, however, that the government did not have the sovereignty or jurisdiction to distribute it in the first place. This admission of legal fallibility could undermine the legitimacy of United States jurisdiction over any lands which contained indigenous people at the time of acquisition.

Discussion

In the nineteenth century the United States presumed control over a large area of land after acquiring it by contract from Mexico. Through a series of legal maneuvers, codified as land law legislation, incoming Anglo-American settlers were provided with the legal tools to acquire land in southern Arizona, with a blatant disregard for the indigenous people who already occupied the land. However, the language and requirements of the land legislation meant that indigenous people did not have access to the tools required to either take advantage of the policies or to dispute any claims of Anglo-Americans who used them. In addition, various classifications of types of sovereignty, property law and rights were evoked to eliminate the ability for any indigenous people to claim a part in land distribution proceedings. Thus, the Anglo-Americans,

⁹²⁷ 'Maps of land management,' *Arizona State Land Department*, accessed 20 June 2020, <http://land.az.gov>

⁹²⁸ In a similar case, Article X of the Treaty of Guadalupe Hidalgo was retracted by the United States because required all occupied land in the treaty area to be legally recognised as privately owned regardless of their title status at the time of cession. Article X would have insinuated that the United States would have to evict voting Anglo-Americans from the property they had purchased from the United States and give it back to the original owners.

with government support, were able to override any of the opposition that the indigenous people by evoking various pieces of legislation, which provided a legal basis for indigenous forfeiture of their traditional lands. These procedures established the legal rights of the Anglo-Americans, according to the United States legal system, to acquire indigenous land directly from the United States government. Thus, pockets of coveted land, such as the mineral-rich Santa Rita and Dragoon Mountains, grazing lands of the Sulphur Springs valley and water sources along the Santa Cruz and San Pedro Rivers were lifted from the hands of the indigenous people through the legal interpretation of possessive law, property law and rights as citizens. Although, the settlement of the land claim disputes with the Court of Private Land Claims, and later, statehood, resulted in a patchwork of land ownership in southern Arizona, much of which is still owned by the state and federal governments.

The borderlands of southern Arizona were created out of the territory of two indigenous people; the Tohono O'odham and the Chiricahua Apache.⁹²⁹ However, the ambiguity of the southern Arizona indigenous legal status within the United States, especially after enjoying citizenship under Mexican law, meant that traditional indigenous territories were perceived as being 'unclaimed' and therefore were absorbed into the federally controlled public domain lands. Unfortunately, any attempt to exert their rights and presence in the region was met with opposition, not enhanced by the contemporary writers' accounts of the O'odham being perceived as peaceful, but who failed to understand that they did not have free access to water sources, and the Apache as irreligious, aggressive and destructive.⁹³⁰ In addition, the indigenous people of southern Arizona were unable to, as non-citizens, legitimately establish their claim to their

⁹²⁹ *Chiricahua Apache Nation*
Tohono O'odham Nation

⁹³⁰ Charles D. Poston, 'History of the Apaches', (1885), University of Arizona Special Collections call number AZ 169.

traditional lands, so that their land was eroded away from them through a labyrinth legalistic paperwork and private claims. These indigenous groups continued, through the nineteenth century, to attempt to utilise their traditional lands which caused antagonisms between them and the incoming Anglo Americans. Also, their continued use of traditional migration routes across the international border by the people has proved to be of great consternation for the United States because the original residents have continued to assert their right to maintain the integrity of their traditional ways of life.

Legal procedures brought by the federal government against the border tribes resulted in the elimination of the Chiricahua Apache from southern Arizona, accompanied by the erosion of their ancestral landmarks and cultural identities, while the majority of O’odham were marginalised beyond the fertile valley of the Santa Cruz River. In addition, the extent of the Nations’ population was not recognised by the federal government until 1916, by which point some Anglo-American practices were becoming incorporated into the life patterns of the O’odham, eroding some of the traditional culture.⁹³¹ However, by the removal of the more defensive Apache from the borderlands, the United States believed they had ‘solved’ one of their border problems of the late nineteenth century, but the vast territory of the Tohono O’odham Nation continues to cause border protection problems, where there is ambiguity over jurisdiction and also of perception of the international border means for different people. Burke claims that the ‘conquer and divide’ techniques used in policies such as the land legislation and the cession treaties were a result of an inherent racial need to identify possible dissidents by their skin colour and physical features, and thus be able to either exclude or control them in society.⁹³² The net

⁹³¹ Fr Bonaventure Oblasser, Files 1905-1937, ‘Records and writings from Father Bonaventure,’ (Arizona Historical Society, call number AHS AZ 554).

⁹³² Burke, *A Land Apart*, 33-35.

result of policy-driven land redistribution was that the indigenous residents were subjugated to the dominant capitalist cultural and control of colonizing Anglo-American settler groups and business, losing control and jurisdiction over their traditional territories and cultural practices. Control of the land was, and is, in the hand of a few elite groups of people, who collectively control business, economics, politics and land resources, by using the legal system and specific legislation as tools to continue to enforce their cultural worldview on the indigenous communities, such as those living in southern Arizona.

Conclusion

There is hope for the future, however. The Tohono O'odham Nation are progressing towards an awareness of indigenous agricultural practices, starting in 1971 when the San Xavier Cooperative Association gained some control over the reservation by changing individual allotments back into communal grounds for development of traditional agricultural practices.⁹³³ In 1996 traditional food apprenticeships were established by the Tohono O'odham Community Action organization to increase this knowledge within the Nation, and to hopefully, tackle the continuing concern about the rise in diabetes among the Nation.⁹³⁴ Indigenous grasses are being reintroduced to help with erosion and invasive species as well as a curb on cattle ranching techniques to initiate lower impact ranching.⁹³⁵ In addition, lobbyists for environment concerns are campaigning against large scale mining projects in culturally and ecologically sensitive areas, which currently has stayed the development of large mining operations in these areas such as the

⁹³³ Debbie Weingarten, 'The Desert Blooms,' *Rodales Organic Life*, 2, no. 6, (Nov, 2016): 78-85.

⁹³⁴ Dianna Jennings, 'Together, We Will Succeed: T-W:EM AT O'NATO', *Rural Cooperatives Magazine*, March/April 2015, 10-11.

Weingarten, 'The Desert Blooms

⁹³⁵ Private conversations with BLM rangers between 2014-2017.

Rosemont Mine in the Santa Rita Mountains.⁹³⁶ The Bureau of Land Management are actively experimenting with ranching in their federally reserved wilderness management areas. Sadly, the lack of funding for the National Parks and conservation areas has illustrated that federally reserved areas are not perceived as important as they once were, and that potentially their resources are more valuable for extraction as they once were during the late nineteenth century.⁹³⁷

Increasingly Congress has been presented with the predicament to either preserve the reserved lands, and use public money to maintain them, or release them into public sale or grants for developments.⁹³⁸ Recent calls have been made to provide additional resources for the international border patrols on indigenous lands, to deflect calls to remove the protected status of tribes and not allow them to be exempted or have exceptional status, and to resolve the controversial use of land adjacent to Indian reservations which could cause environmental and cultural disasters.⁹³⁹ Additionally, the Chiricahua Apache are starting to reclaim their separate identity and heritage and may regain their tribal designation in the future. Therefore, it is hoped that the language of legislation will not place additional barriers to these concerns and prevent further investigation into the management practices of the American southwest.

⁹³⁶ 'Judge Overturns Wildlife Agency's Approval of Rosemont Copper Mine in Arizona: Biological Opinion Failed to Protect Endangered Jaguars,' *Center for Biological Diversity*, accessed 19 February 2021, <https://biologicaldiversity.org>

This fight is similar to the movements of the 1980's and 1990's where anti-nuclear weapons testing advocates campaigned against nuclear testing in the desert regions of Nevada and Arizona; Kuletz, *The Tainted Desert*, Rebecca Solnit, *Savage Dreams: A Journey to the Hidden Wars of the American West*, (Berkeley, CA: University of California Press, 1994, 2014).

⁹³⁷ 'Blog,' *Alt National Park Service*, accessed January 2019 <https://altnps.org/blog>

⁹³⁸ 'Judge Overturns Wildlife Agency's Approval' *Center for Biological Diversity*

⁹³⁹ Jennings, 'Together, We Will Succeed.'

Laurel Morales, 'Tohono O'odham Wall to cut Across Sacred Land'. *National Public Radio*, (2017), accessed 22 January 2019, www.npr.org.

'Judge Overturns Wildlife Agency's Approval' *Center for Biological Diversity*
Alt National Park Service, 'Blog.'

The United States is currently locked into land legislation policies which impede new directions in land management and ways to incorporate indigenous knowledge into new methods of operating. The colonial legacy of United States land legislation has resulted in changes in indigenous ways of life and in disrespectful treatment of the natural environment as well as the cultural sensitivities of the people. It has also caused discord between indigenous group members, as well as between agents of the United States and tribal entities. In addition, indigenous groups, such as the Chiricahua Apache, are also attempting to reestablish their officially recognised tribal status, which was removed from them because of outdated policies. The legal quagmire which many indigenous people and state agencies find themselves in over land management practices is a direct result of the superimposition of the colonial legacy of irrefutable sovereignty over all areas claimed as public lands, and continued dependence upon Anglo-American land management methods. These practices are water-rich and intrusive in the desert environment and have resulted in significant changes in the way the land and indigenous practices have been handled. Various issues have resulted from these practices, such as changes in diet, water availability, property and jurisdictional rights, which need to be unraveled and resolved before the affected groups can move forward in saving the indigenous landscape from further destruction.

PLATES

Plate 10.1



Border Fencing

Plate 10.2



Apache Shelter

Plate 10.3



Apache Pictographs

Chapter Eleven

Conclusion

The displacement and elimination of indigenous people has occurred multiple times in many locations across the United States. Numerous scholars have researched this occurrence and have provided informed studies to help explain the relationships between the incoming Anglo-American colonial settlers and indigenous communities, as well as the impact expansionism has on the indigenous landscapes.⁹⁴⁰ However, to understand the mechanisms of how one group of incoming migrants are able to depose the residential indigenous community from their ancestral lands involves understanding how multiple factors, ranging from cultural dynamics to politics, economics and the environment, were employed to implement such maneuvers. Cultural dynamics, such as racism or different military strategies, economic and technological differences, have been explored by researchers such as Horsman, Martinelli, Fields, Lahti and Burke, whose approaches have addressed various expectations and preconceived ideas of both the Anglo-Americans and the indigenous communities⁹⁴¹. Displacement, commercial and industrial technologies and environmental factors, along with the political initiatives these received, and their impact on the indigenous landscape into the twenty-first century have been

⁹⁴⁰Elizabeth Carlson, 'Anti-colonial methodologies and practices for settler colonial studies,' *Settler Colonial Studies*, 7:4 (2017): 496-517.

Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous People*, (London: Zed Books, 2012).

⁹⁴¹ Reginald Horsman,

Phyllis Cancilla Martinelli, *Undermining Race: Ethnic Identities in Arizona Copper Camps, 1880-1920*, (Tucson, AZ: University of Arizona Press, 2004).

Janne Lahti, *Wars for Empire: Apaches, the United States, and the Southwest Borderlands*, (Norman OK: University of Oklahoma Press, 2017).

Flannery Burke, *A Land Apart: The Southwest and the American Nation in the Twentieth Century*, (Tucson, AZ: University of Arizona Press, 2017).

Gary Fields, *Enclosure: Palestinian Landscapes in a Historical Mirror*, (Oakland, CA: University of California Press, 2017).

addressed by scholars such as Kuletz, Solnit, Leza and Crandall.⁹⁴² These authors recognise that the desert lands of the American West have been used and abused significantly since joining with the United States in the nineteenth century; southern Arizona among them. However, the legislative impetus behind such policies which formally dispossessed indigenous people of their heritages, has not been addressed in detail for this small region of the American southwest, which has the distinction of being purchased purely for commercial reasons.

This thesis analysed how specific legislation implemented by the United States during the expansion period of the nineteenth century, played an intimate role in establishing the current standing that indigenous communities have with the United States and the impact it had, and still has, on the indigenous environment. Southern Arizona was deliberately chosen because it was the last land acquisition by the United States from Mexico in 1853 and was specifically purchased to provide a transportation route from New Mexico to California gold fields. That the region also had commercial mineral and ranching potential was only discovered later, after the Civil War had introduced many soldiers and adventurers to the region. However, it was this commercial potential which caused many future problems for both the indigenous communities of the region and the environmental landscape. Initially the region was administered according to land legislation from the 1780's and the terms of both the Treaty of Hidalgo Guadalupe in 1848 and the Gadsden Purchase Treaty of 1853. Together, the early land laws and the treaties were the foundations of later land legislation, developed during the last decades of the nineteenth

⁹⁴²Valerie Kuletz, *The Tainted Desert: Environmental Ruin in the American West*, (New York: Routledge, 1998). Rebecca Solnit, *Savage Dreams: A Journey to the Hidden Wars of the American West*, (Berkeley, CA: University of California Press, 1994, 2014). Christina Leza, *Divided Peoples: Policy, Activism, and Indigenous Identities on the United States-Mexico Border*, (Tucson, AZ: University of Arizona Press, 2019). Maurice Crandall, 'Yava-Who?: Yavapai History and (Mis) Representation in Arizona's Indigenous Landscape,' *Journal of Arizona History*, 61:3 and 4 (2020): 487-510.

century, which were implemented in the region to exploit the resources for commercial profit. These laws also helped to dispossess the indigenous communities of their traditional territories by using specific and calculating language to remove their rights to the land and to prevent any opposition to these actions. This legislation continues to permeate the decisions made for the desert regions of the American West, resulting in a severe impact on the resources and indigenous environment, and the future use of the region.

However, it still begs the question of how, and why, could words on a piece of paper, defined by legislators living over 3,000 miles away from the impacted area and endorsed by local and international complacency, succeed in removing established indigenous communities from their ancestral lands, with no legal recourse to dispute or petition against these actions. Analysis of the provisions in both the Land Ordinance of 1785 and the Northwest Ordinance of 1787, as well as those of the 1848 and 1853 treaties, help to understand how the wording of such legislation manipulated the way land was managed and sold by the United States government. Later legislation, specifically the Desert Land Act of 1877, utilised the same wording and intent to forward policies which endorsed restrictive land distribution only to citizens of the United States. This excluded any indigenous applicant until citizenship in 1924.⁹⁴³ This study investigated how these laws enhanced major extraction industry development in southern Arizona, by prioritizing citizens and Anglo-Americans over other ethnic groups and by providing the former with to enable them to over-extract the resources from the land. It also considered the consequences these laws had on indigenous lifeways and the desert environment. The aim was also to provide material to further investigate land legislation, the meaning of sovereign control, as well as the

⁹⁴³ Indian Citizenship Act – Act of June 2, 1924, Public Law 68-175, 43 Stat 253, ‘To authorize the Secretary of the Interior to issue certificates of citizenship to Indians,’ assessed 10 November 2021, www.archives.gov.

power dynamics implemented in the region by settler colonials and the legacy of their transplanted political, cultural and technological ways of thinking about land usage.⁹⁴⁴

The last chapter introduced the peculiar legal position that many indigenous communities currently find themselves in as a result of historic federal land management policies and supportive legislation. Researchers, such as Meeks, Crandall and Leza, point to the uncertainty many indigenous people experience in attempting to identify themselves in the modern world, particularly their changing political status within the United States legal system.⁹⁴⁵ They also explore what cultural and economic changes mean for indigenous communal identity and the impact this has had on traditional cultural practices. These changes are a direct result of United States' fundamental claim of unchallengeable ownership over acquisition lands and of sovereignty over the resources and the extraction of them. By not embracing a respectful understanding of the desert environment, and combining holistic indigenous stewardship and conservative resource management, legal practices have encouraged conditions which have resulted in ecological disasters in recent decades. Additionally, a greater respect for indigenous people, as well as reparations such as returning official tribal statuses, would encourage pride and interest in indigenous practices and a revival of indigenous lifeways, which could help to save the desert from further destruction. Thus, while it is important to understand the legal mechanisms of land dispossession, it is also important to understand the consequences of it.

⁹⁴⁴ Carlson, 'Anti-colonial methodologies.'
Smith, *Decolonising Methodologies*.

⁹⁴⁵ Crandall, 'Yava-Who?'

Eric V. Meeks, *Border Citizens: the Making of Indians, Mexicans, and Anglos in Arizona*; Revised Edition, (Austin, TX: University of Texas Press, 2020).

Leza, *Divided Peoples*.

The current concerns over climate change have created environmental pressure groups who are growing increasingly worried about the delicate balance of the ecosystems in the desert regions. These concerns have been articulated in recent decades by authors such as Worster, Burke and Megdal et al, as well as various indigenous groups, who have attempted to highlight the results of irresponsible overuse and abuse of the desert resources.⁹⁴⁶ Activism both by indigenous groups and on behalf of other concerned environmental, biological and cultural interest groups and concerns, have attempted to address and establish a greater understanding of how land policies and practices need to change. The hope is that indigenous knowledge and experience will be incorporated within high level conversations about the environment, particularly concerning the American southwest. Issues, such as the commercial extraction of resources, the overuse of water supplies and the continued and escalated presence of government security measures, however, have raised the question of why is continued desert development important, and to what end?

As Kuletz and Solnit emphatically explain in their studies of nuclear weapons testing in the American southwest, the entire structure of the military defense industry, commercial extraction for profit and government claim to sovereignty over public desert lands severely undermines any attempts to preserve the indigenous environment and ecosystems.⁹⁴⁷ More simply, government decisions continue to perpetuate the delusion of *terra nullius*, disregarding any lives which still

⁹⁴⁶ Flannery Burke, *A Land Apart: The Southwest and the American Nation in the Twentieth Century*, (Tucson, AZ: University of Arizona Press, 2017).

Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West*, (New York: Oxford University Press, 1985).

Dr. Sharon Megdal, Joanna Nadeau and Tiffany Tom, 'The Forgotten Sector: Arizona Water Law and the Environment,' *Arizona Journal of Environmental Law and Policy*, 1:2 (2011): 243-377.

⁹⁴⁷ Valerie L. Kuletz, *The Tainted Desert: Environmental Ruin in the American West*, (New York: Routledge, 1998). Rebecca Solnit, *Savage Dreams: A Journey to the Hidden Wars of the American West*, (Berkeley, CA: University of California Press, 1994, 2014).

continue to exist in the deserts of the United States. This recurrent precept, deployed, for example, in the 1980's to justify nuclear weapons development and testing in the southwest, has been wielded again recently to permit large-scale lithium mining in the deserts of Nevada, under the premise that it is to provide 'clean' energy for Elon Musk's Tesla plant, which, itself, is a mile long steel structure.⁹⁴⁸ The scale of this commercial venture should send warning bells around the world, as a small town will be built in the desert to accommodate both the development of the mining and the factory, as well as the manning of them. While the indigenous and environmental impact of this venture is a disaster waiting to happen, the legislation which permitted this type of development is based upon the same land legislation laws and principles that were used in the nineteenth century, the consequences of which are reverberating to this day. Understanding the legal premise behind officially permitted, yet misguided, land management policies is important for contesting large scale extraction ventures and to provide informed opposition to challenge the legitimacy of these actions. It is also important to recognise indigenous authority in affected regions against such exploitation of valuable resources and destruction of the natural environment. It is hoped that future activism will push for a new premise upon which to build more environmentally sensitive policies; ones that will also permit indigenous communities to gain respect and status as undisputed stewards of their environmental heritage and allow them to renew traditional ways without unwanted and unwarranted encroachment into their territory, both physical and intellectual.

⁹⁴⁸ Personal knowledge from a friend whose company provided services for the construction of said factory.

Appendices

Appendix A: Indigenous Identities

The Tohono O'odham

The Tohono O'odham are an indigenous nation who live in southern Arizona, and have two reservations on the west side of the modern county of Pima, San Xavier Mission Reservation and the Tohono O'odham Nation Reservation. They are considered to be descendants of the Hohokam people, who practiced *ak-chin*, or flood farming, agriculture and who had extensive irrigation systems in the Gila River and Salt River valleys. The ancestors of the Tohono O'odham had their traditional lands centred around the Sonoran Desert, and their territory extended from Guaymas, in the south to the Gila River in the north. Their territory bordered the Yuman people on the west, and Chiricahua Apache to the east. The Tohono O'odham are famous for basketmaking, and many fine examples are on display at the Museum of Arizona History on the University of Arizona campus in Tucson. They also traded with the Hia C'ed O'odham for fish, shells and salt from the Gulf of California, and traded their alcoholic Tiswin, from Saguaro Cactus juice, beans and seeds from the desert with other indigenous groups.⁹⁴⁹

In *ñiok*, or the O'odham language, the names indicate how the groups can be identified, and what their main culture is based upon.⁹⁵⁰ O'odham means 'we, the people', and is used by all groups as a national identity, however, Papago means 'bean people', Tohono means 'desert or thirsty people', and Akimel means 'river people' who practice *ak-chin* agriculture.⁹⁵¹ The Wa:k

⁹⁴⁹ Winston Erikson, *Sharing the Desert: The Tohono O'odham in History*, (Tucson, AZ: University of Arizona Press, 1994), 18-21.

⁹⁵⁰ Bernard L. Fontana, 'The O'odham', in *The Pimería Alta: Missions and More*, edited by James E. Officer, Mardith Schuetz-Miller, Bernard L. Fontana, (Tucson, AZ: The Southwestern Mission Research Center, 1996).

⁹⁵¹ Papago Tribe, *Tohono O'odham: History of the Desert People*, (Salt Lake City, UT: University of Utah Printing Services, 1985).

O'odham are a community who became established at the O'odham village of Wa:k which was later latinised into Spanish as Bac, and is now the location of Father Kino's mission church of San Xavier del Bac.⁹⁵² The 'sand people' or 'forgotten people' are called Hia C'ed O'odham, although it is not known how many original families have survived into the twenty-first century, and as such are not a Federally recognized tribe.⁹⁵³ The Sobaipuri were probably not originally O'odham, but became absorbed into O'odham culture during the eighteenth century, and some believe that they were the foundation community of the Wa:k O'odham at San Xavier.⁹⁵⁴

When Father Kino established his missions and *visitas*, or sub-missions, in the Santa Cruz River and San Pedro valleys beginning in 1687, he attempted to understand the culture and language of the O'odham, which went a long way to ingratiating them with the Spanish authorities.⁹⁵⁵ This was reinforced by a later missionary, Father Garcés, who also made strides in developing a harmonious relationship with the O'odham.⁹⁵⁶ Father Kino is credited with naming the indigenous people he encountered in southern Arizona, recognizing that they spoke different dialects of the same language, now identified as Uto-Aztecan, and calling them Pimas; Spanish for 'pimahaitu' or 'pi-nyi-match' meaning 'I don't know' in Piman.⁹⁵⁷ Father Kino identified several different cultural groups within the Piman region, and called them Spanish derivatives of the names that they called themselves, mainly identifying the O'odham as either Akimel Pima or

Erikson, *Sharing the Desert*, 15.

⁹⁵² Fr Bonaventure Oblasser, 'Records and writings from Father Bonaventure, 1905-1937,' (Arizona Historical Society; Tucson, call number AHS AZ 554).

⁹⁵³ Tohono O'odham, *Tohono O'odham History 1916 to Present*, accessed 1 October 2017, www.tonation-nsn.gov.

⁹⁵⁴ Dennis Gilpin and David A. Philips, Jr., *The Pre-historic to the Historic Transition Period in Arizona circa 1519-1692*, (Phoenix, AZ: State Historic Preservation Office).

Deni Seymour, 'How the Apache became Formidable Warriors,' *Globe Miami Times* (2019): 2-4.

⁹⁵⁵ Fontana, 'The O'odham.'

⁹⁵⁶ Erikson, *Sharing the Desert*, 54-55.

⁹⁵⁷ Fontana, 'The O'odham.'

‘river people’, and the Papagos or ‘bean people’.⁹⁵⁸ He also identified other groups such as the Gila River, or Giliños, Pimas and the Salt River Pimas, and the Sobaipuri’s who lived along the San Pedro River valley.⁹⁵⁹ The name Papago which is the term used to describe the people now known as the Tohono, was a Spanish derivative of ‘papabotas’ meaning ‘first people’ in Piman.⁹⁶⁰

Father Kino’s missions were located along the upper Santa Cruz River in the O’odham villages of Bac, Saric and Guevavi, and were called San Xavier del Bac, Sonoita and San Miguel respectively, as well as missions near the village of Tubac called Tumacacori and San Agustin near Tucson.⁹⁶¹ The history of these missions is entwined with the history of the O’odham and with their attempts to keep a footprint on their traditional lands along the Santa Cruz River valley, while also introducing the O’odham to the cultivation of wheat, husbandry, and the *ranchería* style of community living. The O’odham had a history of warring with the Apache of the region and were used as a defensive force for the missions and the missionaries.⁹⁶² The O’odham reputation for being enemies of the Apache and friendly towards Europeans, meant that the Anglo-Americans used them as a poorly paid workforce, and as a result, they were very late in receiving reservation lands to secure them from Anglo-American encroachment and attempts at assimilation. Their reservation is second only to the Navajo in Arizona, in terms of acreage.⁹⁶³

⁹⁵⁸ Gilpin and Philips, *The Pre-historic to the Historic*.

⁹⁵⁹ Erikson, *Sharing the Desert*.

Thomas E. Sheridan, *Arizona: A History*, (Tucson AZ: University of Arizona Press, 2012).

⁹⁶⁰ Papago Tribe, *Tohono O’odham*.

⁹⁶¹ Sheridan, *Arizona*, 41.

⁹⁶² Edward H. Spicer, *Cycles of Conquest: The impact of Spain, Mexico and the United States on Indians of the Southwest, 1533-1960*, (Tucson AZ: University of Arizona Press, 1967), 126-127.

⁹⁶³ ‘Appendix D: Indian Nations,’ *The American Indian Digest*, accessed 13 September 2018, www.fs.fed.us.

Chiricahua Apache

The Apache call themselves *Nde* which means ‘the people’; the term Apache is a Spanish derivative of an O’odham label meaning ‘the enemy’. The Western Apache call their traditional territory, which spans across Arizona, New Mexico and into Utah, and is called *Nde Benai*, by the Western Apache, although the Spanish called it *Apachería*.⁹⁶⁴ The Chiricahua Apache were the most southern Apache group in the United States, and their traditional territory was western New Mexico, southeastern Arizona and the Sierra Madre mountain range of northern Mexico, on the western and eastern corners of Chihuahua and Sonora respectively.⁹⁶⁵

Non-indigenous scholars divide the Apache people into two distinct groups – the Eastern Apache and the Western Apache.⁹⁶⁶ They both speak dialects of the southern Athapaskan language, which is a language shared with the northern Alaskan and Canadian Athapaskan people and cultures.⁹⁶⁷ The Eastern Apache are now known as the Kiowa, or Plains Apache, and their cousins the Jicarilla and Lipan Apache, they are mainly located in Utah, Colorado and northern New Mexico.⁹⁶⁸ The Western Apache are usually identified as consisting of the Mescalero, or ‘mescal makers’ traditionally located in New Mexico and Texas, the Western Apache groups, consisting of New Mexican and Arizonan groups such as the Aravaipa and Coyotero Apache,

⁹⁶⁴ Chiricahua Apache Nation. Accessed 18 April 2018. <http://www.chiricahuaapachenation.org>
Richard L. Perry, *Western Apache: People of the Mountain Corridor*, (Austin, Texas: University of Texas Press, 1991), 2.

⁹⁶⁵ Donald E. Worcester, *The Apaches, Eagles of the Southwest*, (Norman, OK: University of Oklahoma Press, 1979, 7-8).

Perry, *Western Apache*

Jason Hook and Martin Peglar, *To Live and Die in the West: The American Indian Wars*, (Osprey Military, 2001).

⁹⁶⁶ Dan L. Thrapp, *The Conquest of Apacheria*, (Norman, OK: University of Oklahoma Press, 1967).

Worcester, *The Apaches*, 4-5.

Perry, *Western Apache*, 2-6.

⁹⁶⁷ Gilpin and Philips, *The Pre-historic to the Historic*.

Perry, *Western Apache*

⁹⁶⁸ Perry, *Western Apache*, 4-6.

Jason Hook and Martin Peglar, *To Live and Die in the West: The American Indian Wars*, (Osprey Military, 2001).

many of whom are now members of the San Carlos and White Mountain Apache reservations.⁹⁶⁹

The Aravaipa Apache were believed to be the most aggressive group of Western Apache, often blamed for being instigators of many attacks on European ranchers and miners, and are credited with destroying the Sobaipuri settlements and as such were considered the enemies of the O'odham.⁹⁷⁰

The Chiricahua Apache are usually divided into three large groups; the Gileños, the Chokonen and the Nednhi, based upon their location.⁹⁷¹ The Gileños were located along the Gila River, which runs east to west from New Mexico, across Arizona and empties into the Colorado River on the California/Arizona border. The Gileños are also called the Eastern Chiricahuas, and are descended from the Mogollon and Mimbrenos Apache, and contain the sub-groups of the Chihenne, or Ojo Caliente 'warm springs' Apache, and Bedonkohe Apache. The second group are considered to be the 'true' Chiricahua Apache and are called the Chokonen Apache. Their traditional territory was the Chiricahua Mountains to the east of Arizona, to the Dragoon Mountains to the west, and their southern boundary was the Sierra Madre mountain range in northern Mexico. The final group were called the 'enemy people' or Nednhi Apache, who are the southern-most Chiricahua group and who identified with the Sierra Madre mountain range.⁹⁷² The Chiricahua Apache were also considered the aiders and abettors of the raiding exploits of the

⁹⁶⁹ Worcester, *The Apaches*, 4-5.

Perry, *Western Apache*, 4-6.

Hook and Peglar, *To Live and Die*.

⁹⁷⁰ Poston 1885;

Worcester, *The Apaches*, 6-8.

⁹⁷¹ Hook and Peglar, *To Live and Die*.

⁹⁷² Worcester, *The Apaches*, 4-6.

Perry, *Western Apache*, 179.

Aravaipa Apache, especially as the Chiricahua northern stronghold was used as a trailhead for Aravaipa raiding forays into Mexico.⁹⁷³

In his book *The Apache: Eagles of the Southwest*, Donald E. Worcester explains how the southwestern Apache were caught in a pincer effect by the 1800's as a result of pressures from other indigenous and Apache groups being pushed westwards and southwards by Anglo American expansion, and by the Spanish and the Mexicans moving north and east wards also from territorial expansion.⁹⁷⁴ In addition, the traditional enemies of the Apache in southern Arizona – the O'odham – bordered the northwest and western boundaries of Apache territory, thus essentially fencing them, restricting their territory to western New Mexico and eastern Arizona.⁹⁷⁵ Their practice of revenge attacks and retaliation pitted them against the incoming Anglo-Americans, however this was part of their cultural practices as they would go to war with another group if one of their members had been injured or killed during a previous encounter, mainly to extract retribution. They would gather family groups together and use ambushes and guerilla tactics against the 'enemy' to revenge their group member, which is what they also used against the Anglo-Americans. Their dead, however, were considered 'untouchable' and were buried in unmarked graves as they were considered as vehicles through which evil spirits could emerge, which is why the burial site of Cochise is still not known.⁹⁷⁶ Chiricahua Apaches were respected by the Anglo-Americans because of their great war skills and great endurance as fighters. Unfortunately, their revenge warfare also meant that they were constantly at odds with the incoming Anglo-Americans who had efficient weapons such as guns, which often resulted in

⁹⁷³ Worcester, *The Apaches*, 158-162, 164-167.

⁹⁷⁴ . Worcester, *The Apaches*.

⁹⁷⁵ . Worcester, *The Apaches*.

⁹⁷⁶ Thrapp, *The Conquest of Apacheria*.
Hook and Peglar, *To Live and Die*.

Apache injury or death.⁹⁷⁷ That Mangas Coloradas was able to join such warring factions together during the 1850's is considered somewhat of a magnificent feat.

As President Grant's 'Peace Policy' developed during the 1870's many Chiricahua Apache found themselves engaged in warfare with General Crook and the United States army, as their orders were to place all Apache members into designated reservations. This was a tumultuous decade, where internal government department fighting between the army and the Indian Agents over control of the indigenous people and the reservations manifested itself in instability for the reservation residents, many Chiricahua Apache periodically left the reservation. They were then aggressively chased and forced back onto the reservations. The last time this cycle of events occurred, Geronimo, the Bedonko spiritual leader, and his group were exiled permanently from Arizona, and sent first to Florida, and then later to Oklahoma.

Sobaipuri

Over the last 30 years Deni Seymour has attempted to trace the group of indigenous people who Niza and Kino encountered and Christianised at these southern Arizonan missions.⁹⁷⁸ Seymour has located up to 80 settlements between the Santa Cruz River and the San Pedro River, indicating that the missions were established where there were larger settlements, in some cases as many as 900 inhabitants. This indigenous group has been identified as the Sobaipuri O'odham, a family of the O'odham Nation, of whom the Akimel, Tohono, Ce'd and Wa:k O'odham are also members. Seymour has constructed a history of the Sobaipuri people through extensive archaeological research, excavating on both private and state land within the greater middle Santa Cruz Valley. It was these indigenous people who were excluded from their lands

⁹⁷⁷ Hook and Peglar, *To Live and Die*.

⁹⁷⁸ Deni Seymour, 'The Sobaipuri,' last modified 2017, <http://www.seymourharlan.com>.

that were claimed by the Empire Ranch/Las Cienegas ranches and the Boquillas land grant, as well as others in the vicinity, including San Juan del Babacomari and the mission grant of the Baca Float #3 controversy, despite still using some of their settlements up to the early 1900's.⁹⁷⁹

The Sobaipuri have been largely absent from the history books because the lack of physical archaeological evidence although they were a thriving population sandwiched between the Tohono O'odham and the *Jocomé*, a 'mobile non-O'odham' group in the region using land to the east of the San Pedro River.⁹⁸⁰ Evidence of their occupation and settlement sites are difficult to identify and easily overlooked, suggesting to newcomers during the nineteenth century that the area was unoccupied.⁹⁸¹ This is probably because their building structures were different from other indigenous people in the area, they were constructed as ovals, approximately 12 feet by 6 feet wide, with the outline established by river stone and bent branches covered in either mats with dirt or mud, or brush forming dome-shaped structures, and unfortunately their lithic scatter is sparse.⁹⁸² In addition, because of changing river patterns, it is possible that the settlements moved or eroded over time in correspondence with the different flow patterns and locations of the floodplains, a suggestion that Seymour indicates in her archaeological research.⁹⁸³ As a result of extensive research by Seymour and other researchers such as Bruce Hilpert, it is now believed that the Sobaipuri moved mainly to the mission of San Xavier during the late eighteenth

⁹⁷⁹ Seymour, 'The Sobaipuri.'

⁹⁸⁰ Deni Seymour, 'Sobaipuri-O'odham Sonoita Creek Spanish Colonial Period Villages Identified,' last updated 2015, www.seymourharlan.com.

⁹⁸¹ Site Steward training with Bruce Huckell 2015

⁹⁸² Seymour 1993;

Seymour, 'The Sobaipuri.'

⁹⁸³ Seymour, 'The Sobaipuri.'

Ian M. Milliken and Melanie A. Medeiros, *Cultural Resources for a Proposed Water Line for the Town of Patagonia, Arizona*, (Tucson, AZ: William Self Associates, 2012).

century and it is their culture which is now identified as the Wa:k O'odham culture on the reservation.⁹⁸⁴

Early written evidence does mention the Sobaipuri as a separate group, such as that written by Niza and Kino, and Fray Bartholome Ximeo who recorded the displacement of 26 families near Sonoita Village because of an Apache attack in 1770-1771, despite their known military superiority over the Apache.⁹⁸⁵ It is possible that they moved, at least temporarily, to other community members at the San Xavier del Bac mission after the attack.⁹⁸⁶ Seymour also discusses the information provided the later Anglo-American travellers who were writing in the 1890's, specifically Bourke and Bandelier, about the Sobaipuri and the belief that they were pushed from their homelands along the San Pedro by increased Apache attacks so that by 1760 they had been absorbed into the Papago O'odham communities. Seymour does not deny that this probably occurred particularly because many of the O'odham in San Xavier Reservation show indications of Sobaipuri heritage, both in elements of their language and in their cultural practices; she also posits that the San Xavier Wa:k culture is more Sobaipuri than Tohono. However, her archaeological evidence also indicates that the Sobaipuri settlements along the San Pedro were continued to be used and re-used up until the early 1900's, and references American Archaeologist J.W. Hoover, in his study of "Generic Descent of Papago Villages" that the last self-identified Sobaipuri died in 1932⁹⁸⁷. Seymour despairingly mentions that the absorption of the remainder of the Sobaipuri into the Tohono O'odham Reservation group in 1916 was made for political ease, and thus the last definitive heritage of the Sobaipuri O'odham was been

⁹⁸⁴ Seymour, 'The Sobaipuri.'

⁹⁸⁵ Seymour, 'Sobaipuri-O'odham.'

Seymour, 'How the Apache became.'

⁹⁸⁶ Seymour, 'Sobaipuri-O'odham.'

⁹⁸⁷ Seymour, 'The Sobaipuri.'

subsumed into Tohono O'odham culture, apart from fleeting glimpses within the Wa:k O'odham cultural identity.⁹⁸⁸

The Sonoita River Valley and the San Pedro River Valley are known to have been occupied and used by indigenous cultures for millennia.⁹⁸⁹ There are even the remains of a Clovis era mammoth hunt in Murray Springs showcased in the San Pedro Riparian National Conservation Area, which visitors can go and see in the side of an arroyo bank.⁹⁹⁰ Archaeological records show evidence of indigenous settlement and occupation of the region from the Archaic (7,000-1 BC) to the Formative (AD 1-1450) periods, the most famous in the region being the Hohokam culture which left behind extensive canal systems and a four-story adobe called Casa Grande.⁹⁹¹ However, confusion begins when records discuss the occupation of the region from the demise of the Hohokam around 1450 AD. It is known that the Spanish missionaries encountered indigenous cultures in the area between the Santa Cruz and the San Pedro Rivers, called by some the 'greater middle Santa Cruz Valley' area.⁹⁹² Fray Bartholomew Niza records meeting and being welcomed by a group of indigenous people on the San Pedro River and being allowed to minister to them, very possibly the Sobaipuri.⁹⁹³ Also, in the 1690's Father Eusebio Francisco Kino established his chain of missions along the Santa Cruz River and to the east of the river

⁹⁸⁸ Seymour, 'The Sobaipuri.'

⁹⁸⁹ Bruce B. Huckell, 'Sobaipuri Sites in the Rosemont Area,' in "Miscellaneous Archaeological Studies in the Anamax-Rosemont Land Exchange Area," edited by M.D. Tagg, R.G. Ervin, B.B. Huckell. *Archaeological Series* 147 no. 4 (1984): 107-130.

⁹⁹⁰ San Pedro Riparian National Conservation Area. 'Information Leaflet.' *The Friends of the San Pedro River*. Published by the Tucson Field Office, Bureau of Land Management

⁹⁹¹ Jerry B. Howard and Gary Huckleberry, 'The Operation and Evolution of an irrigation system: The East Papago Canal Study,' *Soil Systems Publications in Archaeology* no. 18 (1991). Milliken and Medeiros, *Cultural Resources*.

⁹⁹² Milliken and Medeiros, *Cultural Resources*, 3. Seymour, 'Sobaipuri-O'odham.'

⁹⁹³ Milliken and Medeiros, *Cultural Resources*. Seymour, 'The Sobaipuri.'

along the Sonoita and Babacomari Creeks. Here he ministered to the indigenous people already believed to be located in settlements where he established his missions and *visitas*, or outreach missions, by 1697 in the Sobaipuri communities of Wa;k, Quivari, Tumacacori and Saric.⁹⁹⁴

Appendix D: Indian Nations⁹⁹⁵

Table D.1.—Indian Landholdings in Acres

Tribe/Nation	State	Tribal Trust Land	Individual Trust Allotments	Total Indian Land
Navajo	AZ, NM, UT	14,715,093	717,077	15,432,170
Tohono O’odham	AZ	2,773, 850	320	2,774,170
San Carlos	AZ	1,826,541	0	1,826,541

Table D.2.—State With the Greatest Acreages of Indian Land (in state)

State	Tribal	Individual	Government	Percent Land Total
Alaska	44,086,773	884,100	0	10.7
Arizona	19,775,958	311,579	90,697	27.7
New Mexico	7,252,326	630,293	270,276	10.5

⁹⁹⁴ Erikson, *Sharing the Desert*, 31.

Seymour, ‘The Sobaipuri.’

⁹⁹⁵ *The American Indian Digest*, accessed 13 September 2018, www.fs.fed.us.

Appendix B: Contemporary Impressions

The travel writers who went to southern Arizona, whether on official business or for pleasure, provide an important narrative of what the region was like shortly after cession and before it became inundated with Anglo-American settlers and the large extraction industries at the turn of the century. They help to provide an understanding of the mind-set of the late nineteenth century of some Anglo-Americans and give an insight into how the region changed during the fifty years of territorial status. Their writing and impressions are used throughout this thesis to provide contemporary impressions of southern Arizona, as well as some important information about the indigenous environment. As these Anglo-Americans entered the region they were drawn and repelled at the same time, however, their travel-journals represented the standard thought processes of the Anglo-American people about the southwest which informed their accounts of their personal experiences with southern Arizona. They were writing during the Anglo-American pathfinding years, when settlers experimented with viable commercial options, and attempted to entice investors to develop the specific style of Anglo-American development that was espoused by the regional promoters

The travel-journals written in the first few decades after acquisition were written for a combination of reasons. Lt. John G. Parke's was one of the first official reports from the region, where he was sent as part of a survey team commissioned by Congress to survey potential routes across the United States for the new transcontinental railroad designed to join the east coast with the west coast in light of the new gold discoveries in California.⁹⁹⁶ A couple of years after the

⁹⁹⁶ John G. Parke, *Report of Explorations for that Portion of Railway Route near the Thirty-second Parallel of Latitude, lying between Dona Ana, on the Rio Grande, and Pimas Villages on the Gila*, (Washington: Government Printing Office, 1855).

Parke's report, Volume VIII of a large report which was published in sections from 1857-1861 as they trickled in from the surveyors, comprised of 3 main report sections, topographical, geological and botanical, so while it is

survey expedition the overland postal route was established across Arizona, including a route across the south. Waterman L. Ormsby at the age of 23 was contracted by the New York Herald as a special correspondent to be the first east to west passenger on the new Butterfield Overland Stagecoach route in 1858.⁹⁹⁷ His journal, meticulously written, illustrated just how remote southern Arizona was and gives an insight into the tone of despair indicated in east coasters in their attempt to understand the reason for the Gadsden Purchase. Not much had changed by the time J. Ross Browne was writing for a collective general audience in 1869.⁹⁹⁸ However, by the time Hiram C. Hodge was writing promoting travel to the region, as requested by then Arizona Territorial Governor Safford between 1874-1876, the region was no longer viewed as a ‘stop-over’ place on the way to California, but as a location that could be developed into a productive area for the United States.⁹⁹⁹ Lt. George Bourke might not have wholeheartedly agreed with Hodge in the 1870’s, whilst accompanying General Crook on his mission to ‘subdue’ the Apache Indians at the time.¹⁰⁰⁰ However, in the mid 1880’s when Crook and company had been ordered back to ‘subdue’ the Apache again, Bourke would agree that the region had changed into a more recognizably Anglo-American territory. After the 1880’s the travel-journals and reports reflect a more Anglo-centric environment and are more about domestic productivity issues and the implementation of legislation which developed with a change in the regional direction and utility of its landscape and resources.

descriptive of the terrain it do not contain much detail about the inhabitants of the region nor their use of the resources.

⁹⁹⁷ Waterman L. Ormsby, *The Butterfield Overland Mail, by Waterman L. Ormsby: Only Through Passenger on the First Westbound Stage*, edited by Lyle H Wright and Josephine M. Bynum, (San Marino, CA: The Huntington Library, [1858] 1955).

⁹⁹⁸ J. Ross Browne, *Adventures in the Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*, (New York: Harper & Brothers Publishers, 1869).

⁹⁹⁹ Hiram C. Hodge, *1877: Arizona As It Was: Or the Coming Country; Notes of Travel During the Years 1874, 1875, and 1876*, (Chicago, Illinois: The Reo Grande Press, Inc., [1877] 1965).

¹⁰⁰⁰ John G. Bourke, *On The Border with Crook*, (Lincoln, Nebraska: University of Nebraska Press, [1891] 1971).

When Lt. John G. Parke was given the most southerly route of four railroad route options across the southwest in 1853, the region was not yet in the hands of the United States, which occurred in 1854 when the Gadsden Purchase Treaty was finally ratified.¹⁰⁰¹ In fact, the Mexican army post in the Tucson Presidio did not leave until 1856, and Parke's team actually camped outside the town along the Santa Cruz River, which was probably close to the original O'odham settlements in the area.¹⁰⁰² Parke's survey team's time in southern Arizona appeared to be unremarkable, and they encountered few difficulties along the way. They had two positive encounters with Apache in southern Arizona, however, it was with water that they experienced many of their issues; indeed, Parke often mentions the lack of reliable water sources in his report. One such issue, which is indicative of many water problems the resident indigenous people would have with the incoming Anglo-Americans, was that Parke's survey team drank the Apache Pass spring dry and Apache offered to direct them to a secondary spring to finish their refreshment.¹⁰⁰³ Secondly, they were told about a water source near Stein's Peak which was "under a large cedar tree."¹⁰⁰⁴ They never could find the water source, and if it was there, it might have been a *tinajas*, or tank, which had gone dry.¹⁰⁰⁵ This would be an issue that had plagued, and would continue to plague, many travellers and settlers across the region. Water sources that were stable and consistent could suddenly dry up, and people relying upon the inevitability of this water source, would suffer dire consequences from it, as J. Ross Browne mentions in his travel-journal in 1869.¹⁰⁰⁶ The over-use of this precious resource, and the

¹⁰⁰¹ Forrest Proper, *Description and illustrations of the Pacific Railroad Survey Reports*. Sacramento. (California: Central Pacific Railroad Museum, 2014), www.cprr.org.

¹⁰⁰² Parke, *Report of Explorations*, 8.

¹⁰⁰³ Parke, *Report of Explorations*, 12-13.

¹⁰⁰⁴ Parke, *Report of Explorations*, 13.

¹⁰⁰⁵ Parke, *Report of Explorations*, 13.

¹⁰⁰⁶ Browne, *Adventures in the Apache Country*, 282-282.

distribution of it, would feature in many accounts in the Anglo-American history of Arizona, and to this day concerns about overuse, the lowering of the underground water table, shifts in the weather patterns, and very importantly the impact of changes to the landscape itself continue to feature in the planning and development of the region.

When Waterman L. Ormsby traveled along the wagon route that Parke had surveyed, as the first Butterfield Overland Stagecoach transcontinental passenger in 1858, little had changed from 1855. Ormsby mentions the desert sections of his journey as the most “tedious portions of the route” and, like Parke, had few encounters with the Apache.¹⁰⁰⁷ However, by the time J. Ross Browne travelled into southern Arizona in 1863, in the company of Charles Poston, Anglo-American interest in the region was beginning to develop. Browne, a professional writer, was very expressive in his description of his travels with Poston and provided a full dialogue with the reader about his encounters in southern Arizona. Aside from waxing lyrical about his fantasies of Spanish Conquistadores and their hunt for gold in hostile country, and the missionaries achieving a Christian influence over the indigenous people, he was also very descriptive about the dichotomies of the region and how perplexed the Anglo-Americans could be about what to do with resources that seemed abundant and yet were difficult to extract.¹⁰⁰⁸

Browne was one of the first writers to illustrate the difference between the thought process of the indigenous people about the landscape and the processes of the Anglo-Americans, in their calculations of the utility of the southern Arizonan landscape. As Browne explained, southern Arizona was rich in resources such as lush grasslands and mineral potential, but these were

¹⁰⁰⁷ Ormsby, *The Butterfield Overland Mail*, 81, 83.

The stagecoach employees had actually been warned about Indian encounters in rule number 18 where they were directed not to communicate with any Indians they met and not to annoy them either; Ormsby, *The Butterfield Overland Mail*, cover insert.

¹⁰⁰⁸ Browne, *Adventures in the Apache Country*, 12-13.

difficult to exploit because of the remoteness of the area, the extremes in temperature, the polarities between the major tribes which lived there, and the inability for Congress and entrepreneurs to see these possibilities and also provide army protection to extract them.¹⁰⁰⁹ Browne and was of two minds about the region, first he was amazed by the potential in the apparent rich regions which the region provided, but secondly despaired that the few Anglo-Americans there were unable to exploit them any more than the “Greasers” had, who populated the area.¹⁰¹⁰ He pointed to some of the obstacles which needed government incentives and aid to overcome in order to exploit the region, such as challenging the remoteness of the region with stable transportation, producing incentives to harness the sparse water sources to develop the region for grazing and agriculture and providing adequate military support; a sentiment expressed many times by other contemporary authors since Ormsby’s visit in 1858.¹⁰¹¹ Browne’s sentiments were echoed almost a decade later, less sarcastically, when Hiram C. Hodge, writing to encourage immigration and illustrating the potential of the region, explained that the government needed to provide incentives for water irrigation projects to encourage the development of the region.¹⁰¹² The continued belief that the government willfully ignored the area was echoed by Richard J. Hinton during his travels between 1874-1876, where he lamented that much had been written about the Apache attacks and the mineral resources, more than a few surveys had been performed, yet the region was barely known.¹⁰¹³ Interest in the region was not

¹⁰⁰⁹ Browne, *Adventures in the Apache Country*, 288-289.

¹⁰¹⁰ Browne, *Adventures in the Apache Country*, 10.

¹⁰¹¹ Browne, *Adventures in the Apache Country*, 288-289.

¹⁰¹² An example of Browne and his sarcasm is when he is discussing the worthless purchase of Mr. Gadsden that it would be a good place to put worthless aspiring politicians to be able to either forget about them or allow them to prove themselves in an environment where “savage tribes of Indians” lived: Browne, *Adventures in the Apache Country*, 16-17.

Hodge, 1877: *Arizona As It Was*, vii.

¹⁰¹³ Richard J. Hinton, *The Hand-Book to Arizona: It's resources, History, Towns, Mines, Ruins and Scenery*, (Tucson AZ: Arizona Silhouettes, 1878), 197.

helped by reports describing the region as “burning deserts, dried rivers” where one encountered robbery, death by misadventure and starvation.¹⁰¹⁴

Richard Hamilton writing, in 1881, on the cusp of this development of the Southern Pacific Railroad in the region, noted the beginnings of ‘civilization’, although investment was still wanting to develop the region into a place which could contain “happy homes and prosperous communities”.¹⁰¹⁵ Bourke, in his travels with General Crook in 1891, noticed that Anglo-American development of the region had occurred between his time in southern Arizona during the early 1870’s and his later visit in the mid 1880’s, although he did miss the authentic Mexican cuisine during his second visit.¹⁰¹⁶ By Browne’s travels in 1863, there was evidence of some previously worked mines, but at the time most of the identifiable mining ventures were abandoned and deteriorating. By the 1880’s Hamilton was naming working mines and established mining towns such as Tombstone, Harshaw, Charleston and Galeyville as being active locations, listing well over 20 camps and districts in both Pima and Cochise counties.¹⁰¹⁷

During the middle decades of the nineteenth century most descriptions of settlements mention adobe houses, often in not a very flattering way, the prevalent Mexican culture and, especially, the lack of sanitation and waste control; the dead animals in the thoroughfares were a particular hazard mentioned by both Browne and Bourke.¹⁰¹⁸ Bourke mentioned the danger of walking down a street in Tucson and falling into one of the wells dug randomly all over the town, which

¹⁰¹⁴ Browne, *Adventures in the Apache Country*, 10-11.

¹⁰¹⁵ Patrick Hamilton, *The Resources of Arizona: Its mineral, Faring and grazing lands, towns and mining camps; its rivers, mountains, plains and mesas; with a brief summary of its Indian tribes, early history, ancient ruins, climate etc, etc. A Manual of Reliable Information Concerning the Territory*, (San Francisco: AL Bancroft & Co. Printers, 1881), 10, 12.

¹⁰¹⁶ Bourke, *On The Border with Crook*, 450.

¹⁰¹⁷ Hamilton, *The Resources of Arizona*, 64-160.

¹⁰¹⁸ Browne, *Adventures in the Apache Country*, 132-133.

Bourke, *On The Border with Crook*, 53, 61-63.

lacked coverings because of the scarcity of wood in the region.¹⁰¹⁹ In addition, many of the travellers, until the 1880's, also noticed the lack of accommodation for visitors to the town, that one either had to sleep in one of the corrals, or carry letters of introduction to stay in a private house.¹⁰²⁰ Browne provided a tongue in cheek anecdote in which he described a resident and his guest bedding down in the presidio square, literally where they fell after drinking, to which the visitor enquired if this was socially acceptable, the resident answering that it was a normal location for going to bed.¹⁰²¹ By the 1880's Tucson was being transformed from a frontier adobe town into a thriving recognisably Anglo-American town, where the adobe 'hovels' as Browne quotes from Poston, have been "done away with" because of the railroad development.¹⁰²²

One of the recurring themes of the travel-writers was the thousands of acres of pastureland available to the enterprising stockmen, particularly around the valleys of the Santa Cruz River, the San Pedro River and in the San Simon and Sulphur Springs Valley areas. They never failed to mention the lush grasslands that could provide good grazing for herds, some with quite a few available water sources, and even Ormsby who was particularly unimpressed with the boring countryside, mentioned the lush valley between Dragoon Springs and the San Pedro river.¹⁰²³

The promotion of the rangelands and potential for ranchers is a theme which many of the writers revert to. Interestingly, however, most of the industrial development ended up focusing on mineral extraction, with communication lines and ranching facilitating the mining boomtowns and providing supplies to the miners.

¹⁰¹⁹ Bourke, *On The Border with Crook*, 61-64.

¹⁰²⁰ Browne, *Adventures in the Apache Country*, 133.
Bourke, *On The Border with Crook*, 61.

¹⁰²¹ Browne, *Adventures in the Apache Country*, 133.

¹⁰²² Browne, *Adventures in the Apache Country*, 133.
Hamilton, *The Resources of Arizona*, 26.

¹⁰²³ Ormsby, *The Butterfield Overland Mail*, 85-86.

The Anglo-American evaluation of the landscape, of boring yet potentially great pasturage, abandoned yet with potential domestic development, scarce on surface water yet wells can be sunk, wild but potentially controllable, feature in most of the early travel-journals. This way of assessing the environment and its resources was indicative of an Anglo-American understanding of how landscape could be utilized and how it was evaluated by its ability to yield resources and whether these resources had been extracted properly to maximize the value of the extraction. The writers did not seem to value the experience of the different environment, ponder the ability of living things to survive there, they calculated the market value of the landscape and its industrial potential to the country. By presenting the possibilities of Anglo-American style development, the travel-writers were able to spark some interest in their fellow countrymen to rise to the challenge, which was rapidly realized by the 1880's.

Appendix C: *San Juan de Las Boquillas y Nogales* Grant

The legal wranglings of the Spanish and Mexican grant lands in the United States legal system during the second half of the nineteenth century illustrate the facets of United States policy over acquisitioned lands, and how land resources were represented in the legislative processes of United States. The long and complicated legal history of the Elias-Gonzales grant lands along the upper San Pedro River, known as the *San Juan de las Boquillas y Nogales* grant, used up precious time and energy of the Claims Commission resources. It also embroiled many Elias-Gonzales defendants in a legal theft of their property and displaced many small homesteaders and settlers in the process, while providing large Anglo-American speculative concerns to gain valuable grazing lands with a railroad easement, station, and established township.¹⁰²⁴

The Elias-Gonzales family were established and elite members of the Spanish and Mexican political, military and religious systems who were rewarded for their services by many land grants in southern Arizona and northern Sonora.¹⁰²⁵ The *San Juan de las Boquillas y Nogales* grant, the *las Boquillas* grant for short, which straddled both banks of the upper San Pedro River, was granted in 1828 and the title was given in 1833.¹⁰²⁶ This grant was surrounded by other Elias-Gonzales grant lands, many of which also included important water sources. The title to the grant permitted abandonment because of ‘external’ conditions, such as Apache attacks or extreme weather conditions, and by the 1840’s *las Boquillas* was duly abandoned because of prevalent Apache attacks along the valley.¹⁰²⁷

¹⁰²⁴ McFarland, N.C. Commissioner of the General Land Office. ‘Report No. 192, from 1883 – Certain Private Land Grants in Arizona Territory (To accompany bill H.R. 3235).’ Forty-ninth Congress, House of Representatives, 1886. San Pedro Riparian National Conservation Area (SPRNCA), ‘Information Leaflet,’ *The Friends of the San Pedro River*. (Tucson Field Office, Bureau of Land Management).

¹⁰²⁵ Jay J. Wagoner, *Early Arizona; Prehistory to Civil War*, (Tucson, AZ: University of Arizona Press, 1975), 192-194.

¹⁰²⁶ *San Juan de Las Boquillas y Nogales Titulo* (1833) translated 1897 for the U.S. Court of Private Land Claims

¹⁰²⁷ *San Juan de Las Boquillas y Nogales Titulo*

Until the 1870's only a few squatters used the land and it was a useful water source for the ranchers and travellers in the region. However, silver was discovered in nearby Tombstone in 1879, and the land around Tombstone, including the valley, became valuable to prospectors and speculators alike. Once Tombstone was established on the mining map many flocked to the area, and mining magnate George W. Hearst, father to Randolph Hearst of the newspaper business, employed George Hill Howard to trace the legal history and paperwork of the *las Boquillas* grant.¹⁰²⁸ Hill Howard was extremely diligent in tracking the legal documents as well as the Elias-Gonzales descendants, and offered to represent them in their court case to validate their grant title, and to move against squatters and prospectors invading their grant lands.¹⁰²⁹ The mining industry needed reliable water sources, and the San Pedro River grant lands proved invaluable to provide the necessary water to run the stamp and smelting mills to process the locally extracted minerals, and many people established businesses on *las Boquillas*.¹⁰³⁰ In addition, wagon roads were established to carry people, equipment, supplies and the minerals to and from the mining districts, the processing factories and the transportation hubs around the area. By 1880 the Southern Pacific Railroad had been built some 20 miles to the north of Tombstone and *las Boquillas*, and by 1882 the branch line from Benson on the Southern Pacific tracks to Fairbank, a new township developed to service the mills next to the river on the *las Boquillas* land. These developments meant that *las Boquillas* land became extremely valuable and Hearst was ready to gain it by every possible, semi-legal, effort.¹⁰³¹

¹⁰²⁸ Elias documents. Located at University of Arizona Library Special Collections, Tucson, Arizona. Call number AZ 232.

Ron Soodalter, 'George Hearst,' accessed 18 July 2020, <https://truewestmagazine.com>.

¹⁰²⁹ Elias documents.

¹⁰³⁰ SPRNCA, 'Information Leaflet.'

¹⁰³¹ Hearst used Hill Howard to scout the area who worked at the Court House in Tombstone in 1881 and 1882 as a candidate for district Attorney.

Over the next few years Hill Howard and Hearst slowly traced and acquired the various pockets of *las Boquillas* property, each time Hill Howard using the system of gaining property parcels as payment for representing the Elias-Gonzales claimants in the United States court system.¹⁰³² Eventually, Hill Howard, and Hearst, by transference of property, had gained most segments of *las Boquillas* and were ready to solidify their claim by Act of Congress, as the process required.¹⁰³³ The claim was confirmed as a valid grant in 1886 and Hill Howard with Hearst became verified owners of *las Boquillas*. By the time it was later confirmed again in 1901 in the Court of Private Land Claims, a mere legal formality, George W. Hearst had died, leaving his estate to his wife and son.¹⁰³⁴ When the grant ownership was first confirmed in 1886 those who were resident on the land were then deemed to be illegal squatters and asked to leave. Some ‘selected’ few were permitted to buy their land from the Hearst family provided they paid all the back-taxes on it from the beginning of their residency, which for some was at least 20 years or so, mirroring the provisions of the Pre-emption Act of 1841. Those who did not pay were forcibly evicted, which led to various court cases ending in unsuccessful petitions against eviction.¹⁰³⁵ Unfortunately the Elias-Gonzales descendants lost all claim to the land by having to

Lynn R. Bailey and Don Chaput, *Cochise County Stalwarts: A Who's Who of the Territorial Years* Volumes I and II, (Tucson, AZ: Westernlore Press, 2000), 191.

He later went on to present the Pueblo Indians of New Mexico Territory in the 1890's after, I believe, he was released by the Hearst family, who had another attorney representing them by this point in time according to the Elias documents.

Malcolm Ebright and Rick Hendricks, *Pueblo Sovereignty: Indian Land and Water in New Mexico and Texas*, (Norman: University of Oklahoma Press, 2019).

¹⁰³² Distribution of land to descendants segmented it out, and Hill Howard and Hearst moved the property between themselves and Hill Howard's wife for a nominal processing fee to avoid various duties and taxes on the property – a common practice during the 1800s and early 1900's.

Elias documents.

¹⁰³³ The 1891 Act which established the Private Land Claims Courts had a similar procedure to the previous Surveyor General's requirements in determining the lineage of the claims, however, instead of going to the Congressional Committee for an Act of Congress in confirmation, this performed by the Courts, and any appeals went to the Supreme Court for contestation.

¹⁰³⁴ Soodalter, 'George Hearst.'

¹⁰³⁵ Court cases include, *Camou v the United States* (1898), *Perrin v United States* (1898), *Herrick v Kern County Land and Cattle Company* (1901), *Herrick v Boquillas Land and Cattle Company* (1906)

give up their rights to it in lieu of establishing their legitimate claims to it in the United States legal system. Hill Howard and the Hearst family gained some valuable real estate on one of the only perennial rivers in southern Arizona.¹⁰³⁶

The legal maneuverings of Hill Howard, in the employ of Hearst, illustrate the way in which claimants lost their grant lands to lawyers and speculators who utilised the legal system to garner claims on property which was going through claims courts. Hill Howard was placed in situ in the early 1880's, as the County Attorney for Cochise County, whose seat was Tombstone; an ideal location to ferret out information about the Spanish and Mexican grants in the area. During this time, he made many trips to the records offices in Sonora to ascertain the legal documents for various Spanish and Mexican grants. He was able to find the information for las Boquillas, and proceeded, during the 1880's, to trace and acquire all the land he could find from the Elias-Gonzales claims.¹⁰³⁷ As noted in the deeds from the documentation, he acquired segments of the grant lands, the Mexican tradition was to divide land property among the children of the owner, by either representing them in court, or by doing various land exchanges for nominal fees. He then distributed the lands through either his wife or directly to Hearst, thus acquiring a majority of the grant area. Those lands which had been distributed by quitclaim or had other convoluted histories were then manipulated either privately or via the legal profession between lawyers, predominantly with Santiago Ainsa who represented other claimants to the property, into the

¹⁰³⁶ Interestingly, by 1901 the Hearst family had sold las Boquillas to the Kern Country Land and Cattle Company, a California ranching concern who both Hill Howard and Hearst had connections with. The final court cases between legalised squatters and Kern County, and their subsidiary the Boquillas Land and Cattle Company, concerned water rights and rights of way. Kern County maintained the land as a viable cattle ranch and sold out to Anmex, who then exchanged the land for other interests with the Bureau of Land Management in 1988. *Boquillas Land and Cattle Company v Curtis*. 213 US 339 (U.S. Supreme Court, April 19, 1909). Accessed 20 May 2016. www.law.cornell.edu.

¹⁰³⁷ E Ebright and Hendricks, *Pueblo Sovereignty*.

hands of Hill Howard.¹⁰³⁸ Most of these transactions were recorded legally, but usually were transacted for minimal fees of \$1-\$5.

This significance of this case illustrates the way in which land was claimed, how the legal processes worked and why speculators such as Hill Howard and Hearst went to such lengths to gain interests in property both near resources, such as water and minerals, and which could harness the railroad developments in the region. The advent of the railroad network in the southwestern territories and states provided to be invaluable for Anglo settlement of the region, and they became a pivotal point in which the territory of Arizona was able to move towards greater homogeneity with Anglo-American ideals and ideology.

Sample documents from the Elias files illustrating Hill Howard's legal maneuvers.

13

Janet G. Howard

—TO—

George Hill Howard.

Power of Attorney.

Dated September 26, 1879.
Recorded Book 1, Page 232.
Transcribed Records Powers of
Attorney.

Giving and granting full power unto said Attorney to let, lease, demise, convey, sell mortgage, any and all lands and real property situate in the Territory of Arizona.

Janet G. Howard. (Seal.)

Acknowledged September 26, 1879, before
(Seal) Edward Chittin.
Commissioner for Arizona Ty. in S. F. California.

Filed & Rec. Oct. 16, 1879.

CONSOLIDATED ABSTRACT AND TITLE GUARANTY COMPANY.

17

JANET G. HOWARD.

—TO—

GEORGE HILL HOWARD.

Recd.

DATED Dec. 26, 1879'
RECORDED - - - - -
BOOK - - - - -

CONSIDERATION, \$5.00 and
natural love and affection.

WORDS OF CONVEYANCE:- Grant, bargain, sell, quitclaim and give.

DESCRIPTION:-

"All her estate, both real and personal, wherever situated, in possession or expectancy, vested or contingent. Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

(signed) Janet G. Howard. (L.S.)

Witness: Geo. T. Knox.

ACKNOWLEDGED in City and County of San Francisco, California, on 26th, December, 1879, before Geo. T. Knox, Notary Public of City and County of San Francisco.

Also ACKNOWLEDGED in City and County of San Francisco, California, on March 8th, 1880, before Geo. T. Knox, Commissioner for the Territory of Arizona, residing in City and County of San Francisco, State of California.

CONSOLIDATED ABSTRACT AND TITLE GUARANTY COMPANY.

¹⁰³⁸ Elias documents.

State of Sonora.
Office of the National Notary Public Matias Moran.

Certified Copy of a deed of sale of one-sixth part of the Rancho known by the name of "San Juan e las Boquillas y Nogales", situated in the Territory of Arizona, executed by the heirs of Don Nepomuceno Felix in favor of the Senor Geo. Hill Howard.

Hermosillo - - 1890.

A seal which says: Administration of Rents of Hermosillo April 13th, 1890. I certify that the Senor George H. Howard has paid the sum of \$22.50 as the tax corresponding to \$1000., the amount of the consideration mentioned in a deed of sale, executed in his favor by the Senores Ignacio Bustamante, Sara Bustamante de Moreno, Maria Jesus Bustamante, Maria Bustamante de Lopez, Jesus Lopez Leon as legitimate tutor of his minor children Federico - Maria, Concepcion and Jesus Lopez; Manuel Bustamante, son of Don Manuel R. Gomez, for his wife Guadalupe Bustamante de Gomez, of one-sixth part which they inherit in the four square leagues of land in the Rancho known by the name of San Juan de las Boquillas y Nogales, situated on the San Pedro river, in Pima County, Arizona; which taxes are one and a half per cent on \$1000. the consideration mentioned in the deed - \$15.- twenty per cent additional in compliance with decree No. 24 \$3.00 twenty-five per cent federal \$4.50, making in all \$22.50 - Hermosillo, April 13th, 1890.

V. Aguilar.

At the City of Hermosillo, the Capital of the State of Sonora, Republic of Mexico, on the 10th day of the month of April 1890; before me, Matias Moran, a National Notary Public and a resident of this City, and in presence of the witnesses who will be named in this instrument, appeared Don Ignacio Bustamante, Dona Sara

CONSOLIDATED ABSTRACT AND TITLE GUARANTY COMPANY

Deed.

GEORGE HILL HOWARD, and his wife
JANET G. HOWARD, (by her atty. in
fact said George Hill Howard)

DATED Sept. 15, 1880.
RECORDED PIMA CO.A.T.
Sept 20, 1880, at 8:15 A.M
LISEN T. Deed Real Estate,
pp.433,36,35 and 36.
CONSIDERATION \$2500.00, and
other good and valuable
considerations.

GEORGE HEARST.

WORDS OF CONVEYANCE:- Grant, bargain, and sell, convey and
confirm.

DESCRIPTION:-

All the undivided one half (1/2) of in and so all that certain tract of land, grant or rancho known as and called the "San Juan de las Boquillas y Nogales", situated upon and along the San Pedro River, Pima County, Arizona Territory, and being the same tract of land as was, on or about the eighth day of May, A.D. 1833, granted by the Mexican Government to Captain Ignacio Elias Gonzalez and Nepomuceno Felix, and containing four (4) square leagues of land, more or less. Together with appurtenances, etc..

Provided, however, and this conveyance is made and accepted with the express understanding that the said parties of the first part do not warrant the title to the estate hereby conveyed in any respect, other than, - 1st, that previous to the time of the execution of this conveyance the parties herein herein of the first part or either of them have not conveyed the said estate, or any right, title or interest therein to any person or persons other than the said party of the second part, and - 2nd, that the said estate is now

1.

CONSOLIDATED ABSTRACT AND TITLE GUARANTY COMPANY

at the time of the execution of this conveyance free from incumbrances other than this years assessment of revenue purposes, done, made or suffered by the said parties of the first part or either of them or any person claiming under them or either of them.

(signed) George Hill Howard (seal)

Janet G. Howard (seal)

By George Hill Howard, her attorney in
fact.

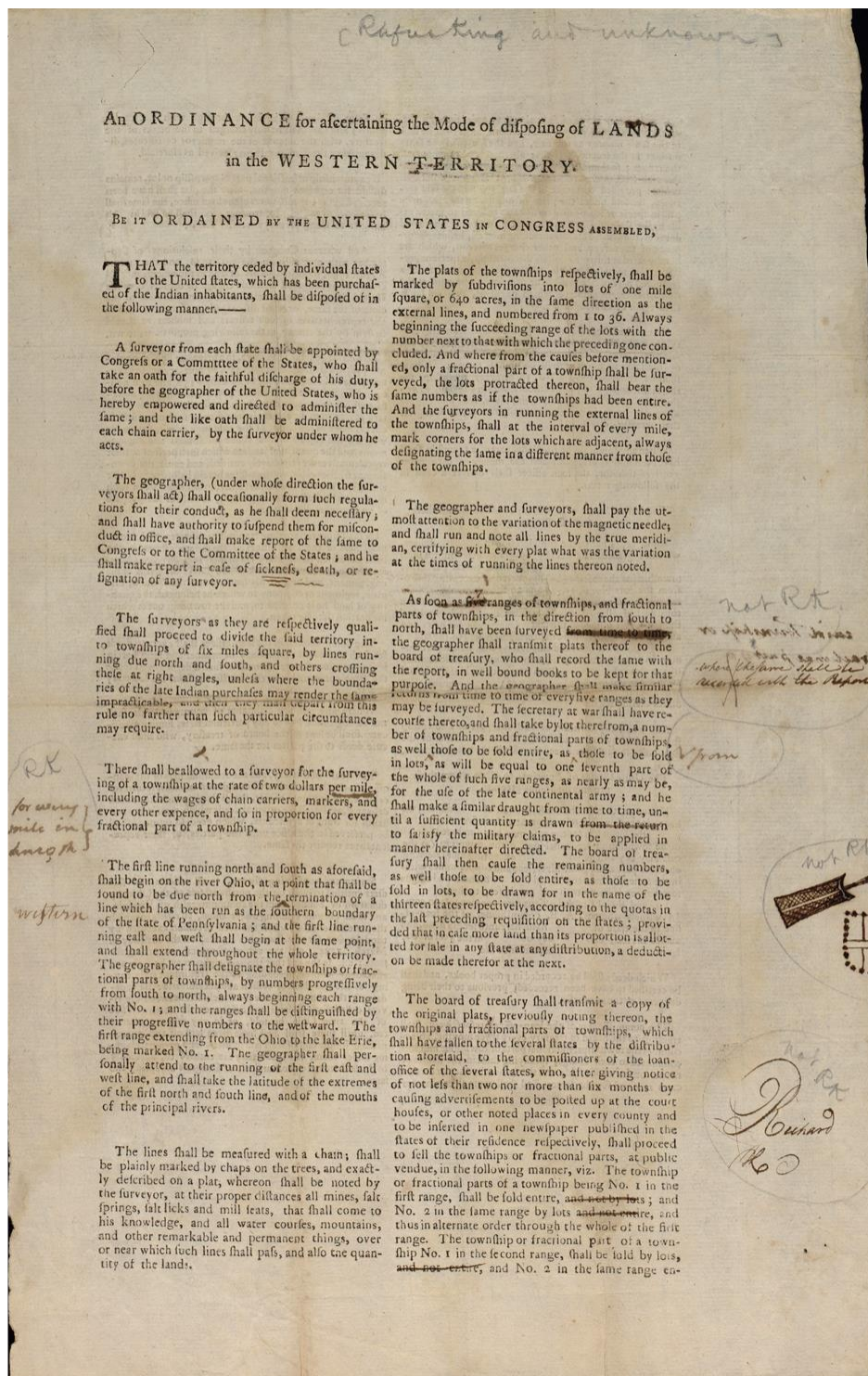
Witness

Holland Smith

L. G. Starke.

ACKNOWLEDGED in City and County of San Francisco, State of California, on Sept. 15, 1880, before Holland Smith, a Commissioner of Deeds for the Territory of Arizona, residing at the City and County of San Francisco, State of California, by George Hill Howard, and George Hill Howard as Attorney in fact of Janet G. Howard.

CONSOLIDATED ABSTRACT AND TITLE GUARANTY COMPANY



¹⁰³⁹ Land Ordinance 1785 - 'Ordinance for ascertaining the Mode of disposing of Lands in the Western Territory, Continental Congress,' (May 20, 1785), accessed 25 Jul 2018, www.loc.gov.

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the, and that by lots, and so in alternate order through the whole of the second range; and the third range shall be sold in the same manner as the first, and the fourth in the same manner as the second, and thus alternately throughout all the ranges; (4) that one half of the territory be sold in townships or fractional parts of townships, and the other half in lots: provided that none of the lands within the said territory, be sold under the price of one dollar thereon, to be paid in specie or loan-office certificates reduced to specie value by the scale of depreciation, or certificates of liquidated debts of the United States, including interest, besides the expense of the survey and other charges thereon, which are hereby rated at thirty six dollars the township, in specie or certificates as aforesaid, and so in the same proportion for a fractional part of a township or of a lot, to be paid at the time of sales, in failure of which payment, the said lands shall again be offered for sale.

There shall be reserved for the United States out of every township, the four lots, being numbered, 8, 11, 26, 29, and out of every fractional part of a township, so many lots of the same numbers as shall be found thereon. There shall be reserved the lot No. 16 of every township, for the maintenance of public schools within the said township. All one third part of all gold, silver, lead and copper mines, to be sold, or otherwise disposed of, as Congress shall hereafter direct.

When any township or fractional part of a township shall have been sold as aforesaid, and the money or certificates received therefor, the loan officer shall deliver a deed in the following terms.

The United States of America, to all to whom these presents shall come greeting.

Know ye, That for the consideration of _____ dollars, we have granted and hereby do grant and confirm unto the township or fractional part of the township [as the case may be] numbered _____ excepting therefrom the lots No. 8, 11, 26 and 29 for future sale, and the lot No. 16 for the maintenance of public schools, and one third part of all gold, silver, lead and copper mines within the same. To have to the said _____ his heirs and assigns forever, (or if more than one purchaser) to the said _____ and their heirs and assigns forever as tenants in common. In witness whereof, A. B. commissioner of the loan office in the state of _____ hath hereunto set his hand, and affixed his seal this _____ day of _____ in the year of our Lord _____ and of the independence of the United States of America the _____.

And when any township or fractional part of a township shall be sold by lots as aforesaid, the commissioner of the loan office shall deliver a deed therefor in the following form.

The United States of America, to all to whom these presents shall come greeting.

Know ye, that for the consideration of _____ dollars, we have granted, and hereby do grant and confirm unto the lot or lots (as the case may be) numbered _____ in the township or fractional part of the township (as the case may be) numbered _____ excepting and reserving one third part of all gold, silver, lead and copper mines within the same. To have to the said _____ his heirs and assigns forever; or if more than one purchaser, to the said _____ and their heirs and assigns forever as tenants in common. In witness whereof, A. B. commissioner of the loan office in the state of _____ hath hereunto set his hand, and affixed his seal, this _____ day of _____ in the year of our Lord _____ and of our independence the _____.

Which deed shall be recorded in proper books, and shall be certified to have been recorded, previous to their being delivered to the purchaser.

The commissioners of the loan-offices respectively, shall transmit to the board of treasury every three months, an account of the townships, fractional parts of townships and lots committed to their charge, specifying therein the names of the persons to whom sold; and the sums of money or certificates received for the same. And shall cause all certificates

by them received, to be struck through with a circular punch; and they shall be duly charged in the books of the treasury, with the amount of the money or certificates, distinguishing the same, by them received as aforesaid.

If any township or fractional part of township or lot, remains unsold for eighteen months, after the plat shall have been received by the commissioners of the loan office, the same shall be returned to the board of treasury, and shall be sold in such manner as Congress may hereafter direct.

And whereas Congress by their resolutions of September 16th and 18th, in the year 1776, and the 12th of August 1780, stipulated grants of land to the officers and soldiers who had engaged or should engage in the service of the United States during the war, and continue therein to the close of the same, or until discharged by Congress, and to the representatives of such officers and soldiers as should be slain by the enemy, in the following proportions, to wit,

To a major general 1000 acres, to a brigadier 850, to a colonel 600, to a lieutenant colonel 450, to a major 400, to a captain 300, to a lieutenant 200, to an ensign 150, and to a non-commissioned officer and soldier 100. For complying therefore with such engagements, be it ordained, That the secretary at war, from the returns in his office, or such other sufficient evidence as the nature of the case may admit, determine who are the objects of the above resolutions and engagements, and the quantity of lands to which such persons or their representatives are respectively entitled, and cause the township or fractional parts of townships herein before referred to for the use of the late continental army, to be drawn for in such manner as he shall deem expedient, to answer the purpose of an impartial distribution.

He shall from time to time transmit certificates, to the commissioners of the loan-offices of the different states, to the lines of which the military claimants respectively belong, specifying the name and rank of the party, the terms of his engagement, and time of his service, and the division, brigade, regiment or company to which he belonged, the quantity of land he is entitled to, and the township out of which his portion is to be taken.

The commissioners of the loan-offices shall execute deeds for such undivided proportions in manner and form herein before mentioned, varying only in such a degree as to make the same conformable to the certificate from the secretary at war.

Where any military claimants of bounty in lands shall not belong to the line of any particular state, similar certificates shall be sent to the board of treasury, who shall execute deeds to the parties for the same.

The board of treasury, and the commissioners of the loan-offices in the states, shall within eighteen months, return receipts to the secretary at war, for all deeds which have been delivered, as also all the original deeds which remain in their hands for want of applicants, which deeds so returned shall be preserved in the office until the parties, or their representatives require the same.

Saving and confirming always, to all officers and soldiers entitled to lands on the northwest side of the Ohio, by donation or bounty from the commonwealth of Virginia, and to all persons claiming under them, all rights to which they are so entitled, under the deed of cession executed by the delegates for the state of Virginia, on the first day of March, 1784, and the act of Congress, accepting the same; and to the end that the said rights may be fully and effectually secured, according to the true intent and meaning of the said deed of cession and act aforesaid: Be it ordained, that no part of the land included between the rivers called Little Miami and Scioto, on the northwest side of the river Ohio, be sold, or in any manner alienated, until there shall first have been laid off and appropriated for the said officers and soldiers, and persons claiming under them, the lands they are entitled to, agreeably to the said deed of cession and act of Congress accepting the same.

Northwest Ordinance; July 13, 1787¹⁰⁴⁰

An Ordinance for the government of the Territory of the United States northwest of the River Ohio.

Section 1. *Be it ordained by the United States in Congress assembled,* That the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Sec 2. *Be it ordained by the authority aforesaid,* That the estates, both of resident and nonresident proprietors in the said territory, dying intestate, shall descent to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them: And where there shall be no children or descendants, then in equal parts to the next of kin in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parents' share; and there shall in no case be a distinction between kindred of the whole and half blood; saving, in all cases, to the widow of the intestate her third part of the real estate for life, and one third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be (being of full age), and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered by the person being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however to the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents and the neighboring villages who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance, of property.

Sec. 3. *Be it ordained by the authority aforesaid,* That there shall be appointed from time to time by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1,000 acres of land, while in the exercise of his office.

Sec. 4. There shall be appointed from time to time by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Sec. 5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

¹⁰⁴⁰ Northwest Ordinance – ‘An Ordinance for the government of the Territory of the United States northwest of the River Ohio.’ July 13, 1787. Accessed 25 Jul 2018. <http://avalon.law.yale.edu>.

Sec. 6. The governor, for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Sec. 7. Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers not herein otherwise directed, shall during the continuance of this temporary government, be appointed by the governor.

Sec. 8. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

Sec. 9. So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect a representative from their counties or townships to represent them in the general assembly: Provided, That, for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to twenty five; after which, the number and proportion of representatives shall be regulated by the legislature: Provided, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; Provided, also, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

Sec. 10. The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

Sec. 11. The general assembly or legislature shall consist of the governor, legislative council, and a house of representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the Governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when, in his opinion, it shall be expedient.

Sec. 12. The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of congress, and all other officers before the Governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not voting during this temporary government.

Sec. 13. And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

Sec. 14. It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

Art. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Art. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

Art. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

Art. 4. The said territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the [Articles of Confederation](#), and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and, in no case, shall nonresident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the

citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

Art. 5. There shall be formed in the said territory, not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The western State in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due North, to the territorial line between the United States and Canada; and, by the said territorial line, to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line, drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however*, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

Art. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *Provided, always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23rd of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

Source:

Documents Illustrative of the Formation of the Union of the American States.
Government Printing Office, 1927.
House Document No. 398.
Selected, Arranged and Indexed by Charles C. Tansill

Feb. 2, 1848. TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT WITH THE REPUBLIC OF MEXICO.

Ratifications exchanged at Queretaro, May 30, 1848.
Proclamation made, July 4, 1848.

In the name of Almighty God:

En el nombre de Dios Todo-Poderoso:

Preamble.

The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence wherein the two people should live, as good neighbors, have for that purpose appointed their respective plenipotentiaries — that is to say, the President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon, and signed the following

Los Estados Unidos Mexicanos y los Estados Unidos de América, animados de un sincero deseo de poner término á las calamidades de la guerra que desgraciadamente existe entre ambas repúblicas, y de establecer sobre bases sólidas relaciones de paz y buena amistad, que procuren recíprocas ventajas á los ciudadanos de uno y otro país, y afianzen la concordia, armonia y mútua seguridad en que deben vivir, como buenos vecinos, los dos pueblos han nombrado á este efecto sus respectivos plenipotenciarios; á saber, el Presidente de la república Mexicana á Don Bernardo Couto, Don Miguel Atristain, y Don Luis Gonzaga Cuevas, ciudadanos de la misma república; y el Presidente de los Estados Unidos de América á Don Nicolas P. Trist, ciudadano de dichos Estados; quienes despues de haberse comunicado sus plenos poderes, bajo la proteccion del Señor Dios Todo Poderoso autor de la paz, han ajustado, convenido, y firmado el siguiente

Negotiators.

Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic.

Tratado de Paz, Amistad, Límites y Arreglo definitivo entre la República Mexicana y los Estados Unidos de América.

ARTICLE I.

Firm and universal peace to prevail between the two republics.

There shall be firm and universal peace between the United States of America and the Mexican republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

ARTICULO I.

Habrá paz firme y universal entre la república Mexicana y los Estados Unidos de América, y entre sus respectivos países, territorios, ciudades, villas, y pueblos, sin escepcion de lugares ó personas.

ARTICLE II.

Convention to be entered into

Immediately upon the signature of this treaty, a convention shall

ARTICULO II.

Luego que se firme el presente tratado, habrá un convenio entre

¹⁰⁴¹ Treaty of Guadalupe Hidalgo — ‘Treaty of peace, friendship, limits, and settlement between the United States of America and the United Mexican States concluded at Guadalupe Hidalgo.’ February 2, 1848. Accessed 18 June 2018. www.mexica.net

be entered into between a commissioner or commissioners appointed by the General-in-chief of the forces of the United States, and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reestablished, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III.

Immediately upon the ratification of the present treaty by the government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the government of the Mexican republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the republic shall be completed with the least possible delay; the Mexican government hereby binding itself to afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner orders shall be despatched to the persons in charge of the custom-houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican government to receive it, together

el comisionado ú comisionados del gobierno Mexicano, y el ó los que nombre el General-en-gefe de las fuerzas de los Estados Unidos, para que cesen provisionalmente las hostilidades, y se restablezca en los lugares ocupados por las mismas fuerzas el orden constitucional en lo político, administrativo, y judicial, en cuanto lo permitan las circunstancias de ocupación militar.

for the provisional suspension of hostilities.

ARTICULO III.

Luego que este tratado sea ratificado por el gobierno de los Estados Unidos, se expedirán órdenes á sus comandantes de tierra y mar previniendo á estos segundos (siempre que el tratado haya sido ya ratificado por el gobierno de la república Mexicana y cangeadas las ratificaciones,) que inmediatamente alcen el bloqueo de todos los puertos Mexicanos, y mandando á los primeros (bajo la misma condicion) que á la mayor posible brevedad comiencen á retirar todas las tropas de los Estados Unidos que se halláren entonces en el interior de la república Mexicana, á puntos que se elegirán de comun acuerdo, y que no distarán de los puertos mas de treinta leguas; esta evacuacion del interior de la república se consumará con la menor dilacion posible, comprometiéndose á la vez el gobierno Mexicano á facilitar, cuanto quepa en su arbitrio, la evacuacion de las tropas Americanas; á hacer cómodas su marcha y su permanencia en los nuevos puntos que se elijan; y á promover una buena inteligencia entre ellas y los habitantes. Igualmente se librarán órdenes á las personas en cargadas de las aduanas maritimas en todos los puertos ocupados por las fuerzas de los Estados Unidos, previniéndoles (bajo la misma condicion) que pongan inmediatamente en posesion de dichas aduanas á las personas autorizadas por el gobierno Mexicano para

Immediately upon the ratification of this treaty, blockade of the Mexican ports to cease.

Troops of the United States to be withdrawn from the interior to certain points near the seacoast, and evacuation of the interior to be completed with the least possible delay.

Custom-houses to be delivered up to the Mexican authorities, &c.

An account to be made out of the amount of all duties collected by the United States after the ratification of this treaty by Mexico; the same, after deducting costs, to be paid over to the government of Mexico within three months after exchange of ratifications.

with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due.

Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such custom-houses, or elsewhere in Mexico, by authority of the United States, from and after the day of the ratification of this treaty by the government of the Mexican republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications.

Evacuation of the capital of Mexico to be completed in one month.

The evacuation of the capital of the Mexican republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV.

All castles, forts, &c., taken and occupied by the United States within the limits of Mexico established by this treaty to be restored immediately after exchange of ratifications.

Immediately after the exchange of ratifications of the present treaty, all castles, forts, territories, places, and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican republic, as about to be established by the following article, shall be definitively restored to the said republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the government of the Mexican republic. To this end, immediately upon the signature of this treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the

recibir las, entregándoles al mismo tiempo todas las obligaciones y constancias de deudas pendientes por derechos de importacion y exportacion, cuyos plazos no estén vencidos. Ademas se formará una cuenta fiel y exacta que manifieste el total monto de los derechos de importacion y exportacion, recaudados en las mismas aduanas maritimas ó en cualquiera otro lugar de México por autoridad de los Estados Unidos desde el día de la ratificacion de este tratado por el gobierno de la república Mexicana; y tambien una cuenta de los gastos de recaudacion; y la total suma de los derechos cotizados, deducidos solamente los gastos de recaudacion, se entregará al gobierno Mexicano en la ciudad de México á los tres meses del cange de las ratificaciones.

La evacuacion de la capital de la república Mexicana por las tropas de los Estados Unidos, en consecuencia de lo que queda estipulado, se completará al mes de recibirse por el comandante de dichas tropas las órdenes convenidas en el presente artículo, ó antes si fuere posible.

ARTICULO IV.

Luego que se verifique el cange de las ratificaciones del presente tratado, todos los castillos, fortalezas, territorios, lugares, y posesiones que hayan tomado ó ocupado las fuerzas de los Estados Unidos, en la presente guerra, dentro de los limites que por el siguiente artículo van á fijarse á la república Mexicana, se devolverán definitivamente á la misma república, con toda la artilleria, armas, aparejos de guerra, municiones, y cualquiera otra propiedad pública existentes en dichos castillos y fortalezas, cuando fueron tomados, y que se conserve en ellos al tiempo de ratificarse por el gobierno de la república Mexicana el presente tratado. A este efecto, inmediatamente despues que se firme, se expedirán órdenes á los oficiales Americanos que mandan dichos castillos y fortalezas para asegurar

removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulations, as regards the restoration of artillery, apparatus of war, &c.

The final evacuation of the territory of the Mexican republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner if possible: the Mexican government hereby engaging, as in the foregoing article, to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico, in such case a friendly arrangement shall be entered into between the General-in-chief of the said troops and the Mexican government, whereby healthy and otherwise suitable places, at a distance from the ports not exceeding thirty leagues, shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to as comprehending the sickly season, shall be understood to extend from the first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to

toda la artilleria, armas, aparejos de guerra, municiones, y cualquiera otra propiedad pública, la cual no podrá en adelante removerse de donde se halla, ni destruirse. La ciudad de México dentro de la línea interior de atrincheramientos que la circundan queda comprendida en la precedente estipulación en lo que toca á la devolución de artilleria, aparejos de guerra, etc.

La final evacuación del territorio de la república Mexicana por las fuerzas de los Estados Unidos quedará consumada á los tres meses del cange de las ratificaciones, ó antes si fuere posible, comprometiéndose á la vez el gobierno Mexicano, como en el artículo anterior, á usar de todos los medios que estén en su poder para facilitar la tal evacuación, hacerla cómoda á las tropas Americanas, y promover entre ellas y los habitantes una buena inteligencia.

Sin embargo, si la ratificación del presente tratado por ambas partes no tuviere efecto en tiempo que permita que el embarque de las tropas de los Estados Unidos se complete, antes de qui comience la estación malsana en los puertos Mexicanos del Golfo de México; en tal caso, se hará un arreglo amistoso entre el gobierno Mexicano y el General-en-gefe de dichas tropas, y por medio de este arreglo se señalarán lugares salubres y convenientes (que no disten de los puertos mas de treinta leguas) para que residan en ellos hasta la vuelta de la estación sana las tropas que aun no se hayan embarcado. Y queda entendido que el espacio de tiempo de que aquí se habla, como comprensivo de la estación malsana, se extiende desde el día primero de Mayo hasta el día primero de Noviembre.

Todos los prisioneros de guerra tomados en ó mar tierra por ambas partes, se restituirán á la mayor brevedad posible despues del cange de las ratificaciones del presente tratado. Queda tambien convenido que si algunos Mexicanos estuviéren ahora cautivos en poder de alguna tribu salvage dentro de

Final evacuation of Mexican territory to be completed in three months from exchange of ratifications.

If ratifications should not take place in time to allow of embarkation of United States troops before commencement of the sickly season, healthy places to be designated for their residence until return of healthy season.

Prisoners of war to be restored.

be established by the following article, the government of the said United States will exact the release of such captives, and cause them to be restored to their country.

ARTICLE V.

Boundary line between the two republics established.

The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the River Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

Southern and western limits of New Mexico, as referred to in this article, defined.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "*Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell.*" Of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned plenipotentiaries.

los limites que pored siguiente artículo van á fijarse á los Estados Unidos, el gobierno de los mismos Estados Unidos exigirá su libertad y los hará restituir á su país.

ARTICULO V.

La línea divisoria entre las dos repúblicas comenzará en el Golfo de México, tres leguas fuera de tierra frente á la desembocadura del Rio Grande, llamado por otro nombre Rio Bravo del Norte, ó del mas profundo de sus brazos, si en la desembocadura tuviere varios brazos: correrá por mitad de dicho rio, siguiendo el canal mas profundo, donde tenga mas de un canal, hasta el punto en que dicho rio corta el lindero meridional de Nuevo México; continuará luego hácia occidente por todo este lindero meridional (que corre al norte del pueblo llamado *Paso*) hasta su término por el lado de occidente: desde allí subirá la línea divisoria hácia el norte por el lindero occidental de Nuevo México, hasta donde este lindero esté cortado por el primer brazo del Rio Gila; (y si no está cortado por ningun brazo del Rio Gila, entonces hasta el punto del mismo lindero occidental mas cercano al tal brazo, y de allí en una línea recta al mismo brazo;) continuará despues por mitad de este brazo y del Rio Gila hasta su confluencia con el Rio Colorado; y desde la confluencia de ambos rios la línea divisoria, cortando el Colorado, seguirá el límite que separa la Alta de la Baja California hasta el Mar Pacífico.

Los linderos meridional y occidental de Nuevo Mexico, de que habla este artículo, son los que se marcan en la carta titulada: *Mapa de los Estados Unidos de México segun lo organizado y definido por las varias actas del Congreso de dicha república, y construido por las mejores autoridades. Edición revisada que publico en Nueva York en 1847, J. Disturnell*; de la cual se agrega un ejemplar al presente tratado, firmado y sellado por los plenipotenciarios infra-

And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*, of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in con-

scriptos. Y para evitar toda dificultad al trazar sobre la tierra el límite que separa la Alta de la Baja California, queda convenido que dicho límite consistirá en una línea recta tirada desde la mitad del Rio Gila en el punto donde se une con el Colorado, hasta un punto en la costa del Mar Pacífico, distante una legua marina al sur del punto mas meridional del puerto de San Diego, segun este puerto está dibujado en el plano que levantó el año de 1782 el segundo piloto de la armada Española Don Juan Pantoja, y se publicó en Madrid el de 1802, en el Atlas para el viage de las goletas *Sutil* y *Mexicana*; del cual plano se agrega copia firmada y sellada por los plenipotenciarios respectivos.

Para conseguir la línea divisoria con la precision debida en mapas fehacientes, y para establecer sobre la tierra mojones que pongan á la vista los límites de ambas repúblicas, segun quedan descritos en el presente artículo, nombrará cada uno de los dos gobiernos un comisario y un agrimensor, que se juntarán antes del término de un año contado desde la fecha del cange de las ratificaciones de este tratado, en el puerto de San Diego, y procederán á señalar y demarcar la expresada línea divisoria en todo su curso hasta la desembocadura del Rio Bravo del Norte. Llevarán diarios y levantarán planos de sus operaciones: y el resultado convenido por ellos se tendrá por parte de este tratado, y tendrá la misma fuerza que si estuviere inserto en él; debiendo convenir amistosamente los dos gobiernos en el arreglo de cuanto necesiten estos individuos, y en la escolta respectiva que deban llevar, siempre que se crea necesario.

La línea divisoria que se establece por este artículo será religiosamente respetada por cada una de las dos repúblicas, y ninguna variación se hará jamás en ella, sino de expreso y libre consentimiento de ambas naciones, otorgado legalmente por el gobierno general de

A commissioner and surveyor to be appointed by each government to run and mark the boundary lines, who shall meet at San Diego within one year from exchange of ratifications.

They shall keep journals, &c.

Boundary line to be religiously respected.

formity with its own constitution.

cada una de ellas, con arreglo á su propia constitucion.

ARTICLE VI.

Free passage by the Gulf of California and River Colorado to vessels of the United States.

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the River Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the River Colorado, and not by land, without the express consent of the Mexican government.

An agreement to be entered into respecting the construction of a road, canal, or railway to run on the banks of the River Gila.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or in part run upon the River Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

Navigation of Rivers Gila and Rio Bravo below the boundary line to be common to vessels and citizens of both countries.

The River Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels, or persons navigating the same, or upon merchandise or

Navigation of said rivers not to be obstructed, and no tax to be levied on vessels or persons navigating

ARTICULO VI.

Los buques y ciudadanos de los Estados Unidos tendrán en todo tiempo un libre y no interrumpido tránsito por el Golfo de California y por el Rio Colorado desde su confluencia con el Gila, para sus posesiones y desde sus posesiones situas al norte de la linea divisoria que queda marcada en el artículo precedente; entendiéndose que este tránsito se ha de hacer navegando por el Golfo de California y por el Rio Colorado, y no por tierra, sin expreso consentimiento del gobierno Mexicano.

Si por reconocimientos que se practiquen se comprobare la posibilidad y conveniencia de construir un camino, canal, ó ferro-carril, que en todo ó en parte corra sobre el Rio Gila ó sobre alguna de sus márgenes derecha ó izquierda en la latitud de una legua marina de uno ó de otro lado del rio, los gobiernos de ambas repúblicas se pondrán de acuerdo sobre su construccion á fin de que sirva igualmente para el uso y provecho de ambos paises.

ARTICULO VII.

Como el Rio Gila y la parte del Rio Bravo del Norte que corre bajo el lindero meridional de Nuevo Mexico se dividen por mitad entre las dos repúblicas, segun lo establecido en el artículo quinto, la navegacion en el Gila y en la parte que queda indicada del Bravo, será libre y comun á los buques y ciudadanos de ambos paises, sin que por alguno de ellos pueda hacerse (sin consentimiento del otro) ninguna obra que impida ó interrumpa en todo ó en parte el ejercicio de este derecho, ni aun con motivo de favorecer nuevos metodos de navegacion. Tampoco se podrá cobrar (sino en el caso de desembarco en alguna de sus riberas) ningun impuesto ó contribucion bajo ninguna denomina-

effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it

cion ó título á los buques, efectos, mercancías ó personas que naveguen en dichos rios. Si para hacerlos ó mantenerlos navegables fuere necesario ó conveniente establecer alguna contribucion ó impuesto, no podrá esto hacerse sin el consentimiento de los dos gobiernos.

Las estipulaciones contenidas en el presente artículo dejan ilesos los derechos territoriales de una y otra república dentro de los límites que les quedan marcados.

ARTICULO VIII.

Los Mexicanos establecidos hoy en territorios pertenecientes antes á México, y que quedan para lo futuro dentro de los límites señalados por el presente tratado á los Estados Unidos, podrán permanecer en donde ahora habitan, ó trasladarse en cualquier tiempo á la república Mexicana, conservando en los indicados territorios los bienes que poseen, ó enagenándolos y pasando su valor á donde les convenga, sin que por esto pueda exigirseles ningún género de contribucion, gravamen ó impuesto.

Los que prefieran permanecer en los indicados territorios, podrán conservar el título y derechos de ciudadanos Mexicanos, ó adquirir el título y derechos de ciudadanos de los Estados Unidos. Mas la eleccion entre una y otra ciudadanía deberán hacerla dentro de un año contado desde la fecha del cange de las ratificaciones de este tratado. Y los que permanecieren en los indicados territorios despues de transcurrido el año, sin haber declarado su intencion de retener el carácter de Mexicanos, se considerará que han elegido ser ciudadanos de los Estados Unidos.

Las propiedades de todo género existentes en los expresados territorios, y que pertenecen ahora á Mexicanos no establecidos en ellos, serán respetadas inviolablemente. Sus actuales dueños, los herederos de estos, y los Mexicanos que en lo venidero puedan adquirir por

the same without the consent of both governments.

Mexicans established in territories ceded to the United States to be free to continue where they are, or to remove at any time, retaining their property or disposing of the same at pleasure.

Those who remain may either retain the title and rights of Mexican citizens or become citizens of the United States.

Election to be made within one year.

Property to be inviolably respected.

guaranties equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

How Mexicans remaining in the ceded territories may become citizens of the United States.

Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X.

[Stricken out.]

ARTICLE XI.

Incursions of savage tribes into the territory of Mexico to be restrained by the government of the United States or punished.

Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the government of the United States whenever this may be necessary; and that when they cannot be prevented, they shall be punished by the said government, and satisfaction for the same shall be exacted—all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own

contrato las indicadas propiedades, disfrutarán respecto de ellas tan amplia garantía, como si perteneciesen á ciudadanos de los Estados Unidos.

ARTICULO IX.

Los Mexicanos que en los territorios antedichos no conserven el carácter de ciudadanos de la república Mexicana segun lo estipulado en el artículo precedente, serán incorporados en la Union de los Estados Unidos, y se admitirán en tiempo oportuno (á juicio del Congreso de los Estados Unidos) al goce de todos los derechos de ciudadanos de los Estados Unidos conforme á los principios de la constitucion, y entretanto serán mantenidos y protegidos en el goce de su libertad y propiedad, y asegurados en el libre ejercicio de su religion sin restriccion alguna.

ARTICULO X.

[Suprimido.]

ARTICULO XI.

En atencion á que una gran parte de los territorios que por el presente tratado van á quedar para lo futuro dentro de los límites de los Estados Unidos, se halla actualmente ocupada por tribus salvajes, que han de estar en adelante bajo la exclusiva autoridad del gobierno de los Estados Unidos, y cuyas incursiones sobre los distritos Mexicanos serian en extremo perjudiciales; está solemnemente convenido que el mismo gobierno de los Estados Unidos contendrá las indicadas incursiones por medio de la fuerza siempre que así sea necesario; y cuando no pudiére prevenirlas, castigará y escarmenará á los invasores, exigiéndoles ademas la debida reparacion: todo del mismo modo, y con la misma diligencia y energia con que obraría, si las incursiones se hubiesen meditado ó ejecutado sobre terri-

territory, against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics, nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them and return them to their country, or deliver them to the agent or representative of the Mexican government. The Mexican authorities will, as far as practicable, give to the government of the United States notice of such captures; and its agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the mean time, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such

torios suyos ó contra sus propios ciudadanos.

A ningún habitante de los Estados Unidos será lícito, bajo ningún pretexto, comprar ó adquirir cautivo alguno, Mexicano ó extranjero, residente en México, apresado por los Indios habitantes en territorio de cualquiera de las dos repúblicas, ni los caballos, mulas, ganados, ó cualquiera otro género de cosas que hayan robado dentro del territorio Mexicano.

Y en caso de que cualquier persona ó personas cautivadas por los Indios dentro del territorio Mexicano sean llevadas al territorio de los Estados Unidos, el gobierno de dichos Estados Unidos se compromete y liga de la manera mas solemne, en cuanto le sea posible, á rescatarlas, y á restituir las á su país, ó entregarlas al agente ó representante del gobierno Mexicano; haciendo todo esto, tan luego como sepa que los dichos cautivos se hallan dentro de su territorio, y empleando al efecto el leal ejercicio de su influencia y poder. Las autoridades Mexicanas darán á las de los Estados Unidos, segun sea practicable, una noticia de tales cautivos; y el agente Mexicano pagará los gastos erogados en el mantenimiento y remision de los que se rescaten, los cuales entre tanto serán tratados con la mayor hospitalidad por las autoridades Americanas del lugar en que se encuentren. Mas si el gobierno de los Estados Unidos antes de recibir aviso de México, tuviere noticia por cualquiera otro conducto de existir en su territorio cautivos Mexicanos, procederá desde luego á verificar su rescate y entrega al agente Mexicano, segun queda convenido.

Con el objeto de dar á estas estipulaciones la mayor fuerza posible, y afianzar al mismo tiempo la seguridad y las reparaciones que exige el verdadero espíritu é intencion con que se han ajustado, el gobierno de los Estados Unidos dictará sin inútiles dilaciones, ahora y en lo de adelante, las leyes

Inhabitants of the United States not to purchase any Mexicans, &c., captured by Indians, nor to purchase horses, mules, &c., stolen by them within Mexican territory.

Persons captured in Mexican territory and carried into the territory of the United States to be rescued and returned to their country.

Government of the United States to pass such laws as may be necessary to give effect to the foregoing stipulations.

laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII.

Amount of money to be paid to Mexico in consideration of the extension acquired by the boundaries of the United States.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the government of the United States engages to pay to that of the Mexican republic the sum of fifteen millions of dollars.

How the same shall be paid.

Immediately after this treaty shall have been duly ratified by the government of the Mexican republic, the sum of three millions of dollars shall be paid to the said government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by the Mexican government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

que requiera la naturaleza del asunto, y vigilará siempre sobre su ejecucion. Finalmente, el gobierno de los mismos Estados Unidos tendrá muy presente la santidad de esta obligacion siempre que tenga que desalojar á los Indios de cualquier punto de los indicados territorios, ó que establecer en él á ciudadanos suyos; y cuidará muy especialmente de que no se ponga á los Indios que habitaban antes aquel punto, en necesidad de buscar nuevos hogares por medio de las incursiones sobre los distritos Mexicanos, que el gobierno de los Estados Unidos se ha comprometido solemnemente á reprimir.

ARTICULO XII.

En consideracion á la estension que adquieren los límites de los Estados Unidos, segun quedan descritos en el artículo quinto del presente tratado, el gobierno de los mismos Estados Unidos se compromete á pagar al de la república Mexicana la suma de quince millones de pesos.

Inmediatamente despues que este tratado haya sido ratificado por el gobierno de la república Mexicana, se entregará al mismo gobierno por el de los Estados Unidos, en la ciudad de México, y en moneda de plata ú oro del cuño Mexicano, la suma de tres millones de pesos. Los doce millones de pesos restantes se pagarán en México, en moneda de plata ú oro del cuño Mexicano, en abonos de tres millones de pesos cada año, con un rédito de seis por ciento anual: este rédito comienza á correr para toda la suma de los doce millones el dia de la ratificacion del presente tratado por el gobierno Mexicano, y con cada abono anual de capital se pagará el rédito que corresponda á la suma abonada. Los plazos para los abonos de capital corren desde el mismo dia que empiezan á causarse los réditos.

ARTICLE XIII.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three; so that the Mexican republic shall be absolutely exempt, for the future, from all expense whatever on account of the said claims.

ARTICLE XIV.

The United States do furthermore discharge the Mexican republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the government of the United States, whose awards shall be final and conclusive: provided, that in deciding upon the validity of each

ARTICULO XIII.

Se obliga ademas el gobierno de los Estados Unidos á tomar sobre sí, y satisfacer cumplidamente á los reclamantes, todas las cantidades que hasta aquí se les deben y cuantas se venzan en adelante por razon de las reclamaciones ya liquidadas y sentenciadas contra la república Mexicana conforme á los convenios ajustados entre ambas repúblicas el once de Abril de mil ochocientos treinta y nueve, y el treinta de Enero de mil ochocientos cuarenta y tres; de manera que la república Mexicana nada absolutamente tendrá que lastar en lo venidero, por razon de los indicados reclamos.

The United States also to assume and pay the amounts due on the claims liquidated against Mexico under the conventions between the two governments.

ARTICULO XIV.

Tambien exoneran los Estados Unidos á la república Mexicana de todas las reclamaciones de ciudadanos de los Estados Unidos no decididas aun contra el gobierno Mexicano, y que puedan haberse originado antes de la fecha de la firma del presente tratado: esta exoneracion es definitiva y perpetua, bien sea que las dichas reclamaciones se admitan, bien sea que se desechen por el tribunal de comisarios de que habla el artículo siguiente, y cualquiera que pueda ser el monto total de las que queden admitidas.

Mexican government discharged from all claims of citizens of the United States which have arisen previous to the signature of this treaty.

ARTICULO XV.

Los Estados Unidos, exonerando á México de toda responsabilidad por las reclamaciones de sus ciudadanos mencionadas en el artículo precedente, y considerándolas completamente canceladas para siempre, sea cual fuere su monto, toman á su cargo satisfacerlas hasta una cantidad que no exceda de tres millones doscientos cincuenta mil pesos. Para fijar el monto y validez de estas reclamaciones, se establecerá por el gobierno de los Estados Unidos un tribunal de comisarios, cuyos fallos serán definitivos y concluyentes, con tal que al decidir sobre la

The United States to make satisfaction for the same to an amount not exceeding three and a quarter millions of dollars.

Board of commissioners to be established to ascertain the validity of such claims.

claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; * and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

Books, records, and documents in the possession of the government of Mexico necessary to the decision of any claim, how to be obtained from that government.

If, in the opinion of the said board of commissioners, or of the claimants, any books, records, or documents in the possession or power of the government of the Mexican republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents, so specified, which shall be in their possession or power, (or authenticated copies or extracts of the same,) to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said board of commissioners: *Provided*, That no such application shall be made by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records, or documents, shall have been stated under oath or affirmation.

ARTICLE XVI.

Each party reserves the right to fortify any part of its territory.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its

validez de dichas reclamaciones, el tribunal se haya guiado y gobernado por los principios y reglas de decision establecidos en los artículos primero y quinto de la convencion, no ratificada, que se ajustó en la ciudad de México el veinte de Noviembre de mil ochocientos cuarenta y tres: * y en ningun caso se dará fallo en favor de ninguna reclamacion que no esté comprendida en las reglas y principios indicados.

Si en juicio del dicho tribunal de comisarios, ó en el de los reclamantes, se necesitáre para la justa decision de cualquier reclamacion algunos libros, papeles de archivo ó documentos que posea el gobierno Mexicano, ó que estén en su poder; los comisarios, ó los reclamantes per conducto de ellos, los pedirán por escrito (dentro del plazo que designe el Congreso) dirigiéndose al Ministro Mexicano de Relaciones Exteriores, á quien transmitirá las peticiones de esta clase el Secretario de Estado de los Estados Unidos: y el gobierno Mexicano se compromete á entregar á la mayor brevedad posible, despues de recibida cada demanda, los libros, papeles de archivo ó documentos, así especificados, que posea ó estén en su poder, ó copias ó extractos auténticos de los mismos, con el objeto de que sean transmitidos al Secretario de Estado, qui en los pasará inmediatamente al expresado tribunal de comisarios. Y no se hára peticion alguna de los enunciados libros, papeles ó documentos, por ó á instancia de ningun reclamante, sin que antes se haya aseverado bajo juramento ó con afirmacion solemne la verdad de los hechos que con ellos se pretende probar.

ARTICULO XVI.

Cada una de las dos repúblicas se reserva la completa facultad de fortificar todos los puntos que

* For these articles, see the end of this treaty, p. 128.

territory it may judge proper so to fortify, for its security.

ARTICLE XVII.

The treaty of amity, commerce, and navigation, concluded at the city of Mexico on the fifth day of April, A. D. 1831, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII.

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration of the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the government of the United States hereby engaging and pledging its faith to establish, and vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty of all officers and agents of the United States to denounce to the Mexican authorities at the respective ports any attempts

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para su seguridad estime convenientes en su propio territorio.

ARTICULO XVII.

El tratado de amistad, comercio y navegacion, concluido en la ciudad de México el cinco de Abril, del año del Señor 1831, entre la república Mexicana y los Estados Unidos de América, exceptuandose el artículo adicional y cuanto pueda haber en sus estipulaciones incompatible con alguna de las contenidas en el presente tratado, queda restablecido por el periodo de ocho años desde el día del cange de las ratificaciones del mismo presente tratado, con igual fuerza y valor que si estuviese inserto en él; debiendo entenderse que cada una de las partes contratantes se reserva el derecho de poner término al dicho tratado de comercio y navegacion en cualquier tiempo luego que haya expirado el periodo de los ocho años, comunicando su intencion á la otra parte con un año de anticipacion.

Treaty of 5th April, 1831, between the United States and Mexico, with certain exceptions, revived;

But may be terminated by either party's giving one year's notice.

ARTICULO XVIII.

No se exigirán derechos ni gravámen de ninguna clase á los artículos todos que lleguen para las tropas de los Estados Unidos á los puertos Mexicanos ocupados por ellas, antes de la evacuacion final de los mismos puertos, y despues de la devolucion á México de las aduanas situadas en ellos. El gobierno de los Estados Unidos se compromete á la vez, y sobre esto empeña su fé, á establecer y mantener con vigilancia cuantos guardas sean posibles para asegurar las rentas de México, precaviendo la importacion, á la sombra de esta estipulacion, de cualesquiera artículos que realmente no sean necesarios, ó que excedan en cantidad de los que se necesiten para el uso y consumo de las fuerzas de los Estados Unidos mientras ellas permanescan en México. A este efecto, todos los oficiales y agentes de los Estados Unidos tendran obligacion de

Supplies for the troops of the United States arriving in Mexico previous to the evacuation to be exempt from duty.

at a fraudulent abuse of this stipulation which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto; and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX.

Rules to be observed with respect to merchandise imported into Mexican ports whilst in the occupation of the forces of the United States.

With respect to all merchandise, effects, and property whatsoever, imported into ports of Mexico whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:—

Merchandise, &c., imported previous to the restoration of the custom-houses, exempt from confiscation.

1. All such merchandise, effects, and property, if imported previously to the restoration of the custom-houses to the Mexican authorities, as stipulated for in the third article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

The same exemption as to merchandise, &c., imported subsequently to the restoration of the custom-houses; but the same may be subject to payment of duties as provided for in the 20th article.

2. The same perfect exemption shall be enjoyed by all such merchandise, effects, and property, imported subsequently to the restoration of the custom-houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects, and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following article.

Merchandise, effects, &c., during continuance at place of importation, and upon leaving such place for the interior, exempt from duty, &c.

3. All merchandise, effects, and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt

denunciar á las autoridades Mexicanas en los mismos puertos, cualquier conato de fraudulento abuso de esta estipulacion que pudiéren conocer ó tuvieren motivo de sospechar; asi como de impartir á las mismas autoridades todo el auxilio que pudiéren con este objeto: y cualquier conato de esta clase, que fuere legalmente probado, y declarado por sentencia de tribunal competente, será castigado con el comiso de la cosa que se haya intentado introducir fraudulentamente.

ARTICULO XIX.

Respecto de los efectos, mercancías y propiedades importados en los puertos Mexicanos durante el tiempo que han estado ocupados por las fuerzas de los Estados Unidos, sea por ciudadanos de cualquiera de las dos repúblicas, sea por ciudadanos ó subditos de alguna nacion neutral, se observarán las reglas siguientes:—

1. Los dichos efectos, mercancías y propiedades siempre que se hayan importado antes de la devolucion de las aduanas á las autoridades Mexicanas conforme á lo estipulado en el articulo tercero de este tratado, quedarán libres de la pena de comiso, aun cuando sean de los prohibidos en el arancel Mexicano.

2. La misma exencion gozarán los efectos, mercancías y propiedades que lleguen á los puertos Mexicanos, despues de la devolucion á Mexico de las aduanas maritimas, y antes de que expiren los sesenta dias que van á fijarse en el artículo siguiente para que empiece á regir el arancel Mexicano en los puertos; debiendo al tiempo de su importacion sujetarse los tales efectos, mercancías y propiedades, en cuanto al pago de derechos, á lo que en el indicado siguiente artículo se establece.

3. Los efectos, mercancías y propiedades designados en las dos reglas anteriores quedarán exentos de todo derecho, alcabála ó impuesto, sea bajo el titulo de internacion, sea bajo cualquiera otro, mi-

from all duty, tax, or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

4. All merchandise, effects, and property, described in the first and second rules, which shall have been removed to any place in the interior whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

5. But if any merchandise, effects, or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the maritime custom-houses, and had there paid the duties conformably with the Mexican tariff.

6. The owners of all merchandise, effects, or property described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the custom-house at such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty, or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

entras permanescan en los puntos donde se hayan importado, y á su salida para el interior; y en los mismos puntos no podrá jamás exigirse impuesto alguno sobre su venta.

4. Los efectos, mercancías, y propiedades, designados en las reglas primera y segunda que hayan sido internados á cualquier lugar ocupado por fuerzas de los Estados Unidos, quedarán exentos de todo derecho sobre su venta ó consumo, y de todo impuesto ó contribucion bajo cualquier título ó denominacion, mientras permanescan en el mismo lugar.

Merchandise, &c., removed to places in the interior whilst in the occupation of the troops of the United States, also exempt from duty, &c.

5. Mas si algunos efectos, mercancías, ó propiedades de los designados en las reglas primera y segunda se trasladaren á algun lugar no ocupado á la sazón por las fuerzas de los Estados Unidos; al introducirse á tal lugar, ó al venderse ó consumirse en él, quedarán sujetos á los mismos derechos que bajo las leyes Mexicanas deberian pagar en tales casos si se hubieran importado en tiempo de paz por las aduanas marítimas, y hubiesen pagado en ellas los derechos que establece el arancel Mexicano.

But merchandise, &c., removed to places not occupied by the forces of the United States, may be subject to the payment of duties under Mexican laws, &c.

6. Los dueños de efectos, mercancías, y propiedades designados en las reglas primera y segunda, y existentes en algun puerto de México, tienen derecho de reembarcarlos, sin que pueda exigirseles ninguna clase de impuesto, alcabála ó contribucion.

Owners of merchandise, &c., to have the right to reship the same free of duty.

Respecto de los metales y de toda otra propiedad exportados por cualquier puerto Mexicano durante su ocupacion por las fuerzas Americanas, y antes de la devolucion de su aduana al gobierno Mexicano, no se exigirá á ninguna persona por las autoridades de Mexico, ya dependan del gobierno general, ya de algun estado que pague ningun impuesto, alcabála ó derecho por la indicada exportacion, ni sobre ella podrá exigirse por las dichas autoridades cuenta alguna.

Metals and other property exported from Mexican ports whilst occupied by the forces of the United States previous to the restoration of the custom-houses.

ARTICLE XX.

The tariff established by the United States at places occupied by their forces in Mexico to be in force for sixty days after the signature of this treaty.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the custom-houses, conformably with the stipulation in the third article, in such case all merchandise, effects, and property whatsoever, arriving at the Mexican ports after the restoration of the said custom-houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom-houses at the time of the restoration of the same. And to all such merchandise, effects, and property, the rules established by the preceding article shall apply.

ARTICLE XXI.

In case of disagreement between the governments of the two countries, mutual representations and pacific negotiations to be used to settle such differences.

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborhood, whether it

ARTICULO XX.

Por consideracion á los intereses del comercio de todas las naciones, queda convenido que si pasáren menos de sesenta dias desde la fecha de la firma de este tratado hasta que se haga la devolucion de las aduanas marítimas, segun lo estipulado en el artículo tercero; todos los efectos, mercancías, y propiedades que lleguen á los puertos Mexicanos desde el dia en que se verifique la devolucion de las dichas aduanas hasta que se completen sesenta dias contados desde la fecha de la firma del presente tratado, se admitirán no pagando otros derechos que los establecidos en la tarifa que esté vigente en las expresadas aduanas al tiempo de su devolucion, y se extenderán á dichos efectos, mercancías, y propiedades las mismas reglas establecidas en el artículo anterior.

ARTICULO XXI.

Si desgraciadamente en el tiempo futuro se suscitáre algun punto de desacuerdo entre los gobiernos de las dos repúblicas, bien sea sobre la inteligencia de alguna estipulacion de este tratado, bien sobre cualquiera otra materia de las relaciones políticas ó comerciales de las dos naciones, los mismos gobiernos, á nombre de ellas, se comprometen á procurar de la manera mas sincera y empeñosa a llanar las diferencias que se presenten y conservar el estado de paz y amistad en que ahora se ponen los dos paises, usando al efecto de representaciones mútuas y de negociaciones pacíficas. Y si por estos medios no se logrará todavia ponerse de acuerdo, no por eso se apelará á represalia, agresion ni hostilidad de ningun género de una república contra otra, hasta que el gobierno de la que se crea agraviada haya considerado maduramente y en espíritu de paz y buena vecindad, si no seria mejor que la diferencia se terminara por un arbitramento de comisarios nombrados por ambas partes, ó de

would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules; absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible:—

1. The merchants of either republic then residing in the other shall be allowed to remain twelve months, (for those dwelling in the interior,) and six months (for those dwelling at the seaports,) to collect their debts and settle their affairs; during which periods, they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hinderance, conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the

una nacion amiga. Y si tal medio fuere propuesto por cualquiera de las dos partes, la otra accederá á él, á no ser que lo juzgue absolutamente incompatible con la naturaleza y circunstancias del caso.

ARTICULO XXII.

Si (lo que no es de esperarse, y Dios no permita) desgraciadamente se suscitáre guerra entre las dos repúblicas, estas para el caso de tal calamidad se comprometen ahora solemnemente, ante si mismas y ante el mundo, á observar las reglas siguientes de una manera absoluta si la naturaleza del objeto á que se contraen lo permite; y tan exstrictamente como sea dable en todos los casos en que la absoluta observancia de ellas fuere imposible:—

1. Los comerciantes de cada una de las dos repúblicas que á la sazón residan en territorio de la otra, podrán permanecer doce meses los que residan en el interior, y seis meses los que residan en los puertos, para recoger sus deudas y arreglar sus negocios; durante estos plazos disputarán la misma proteccion y estarán sobre el mismo pié en todos respectos que los ciudadanos ó súbditos de las naciones mas amigas; y al expirar el término, ó antes de él, tendrán completa libertad para salir y llevar todos sus efectos sin molestia ó embarazo, sujetándose en este particular á las mismas leyes á que estén sujetos, y deban arreglarse los ciudadanos ó súbditos de las naciones mas amigas. Cuando los ejércitos de una de las dos naciones entren en territorios de la otra, las mujeres y niños, los eclesiasticos, los estudiantes de cualquier facultad, los labradores, comerciantes, artesanos, manufactureros, y pescadores que estén desarmados y residan en ciudades, pueblos ó lugares no fortificados, y en general todas las personas

Rules to be observed in case war should unhappily break out.

Merchants to be allowed time to settle their affairs and collect their debts, and at the end of that time to have liberty to depart with their effects.

Upon the entrance of the armies of either republic into the territories of the other, women, children, ecclesiastics, &c., to be unmolested.

Their property
to be respected;
and if taken, in
case of necessity,
to be paid for.

Churches, hos-
pitals, schools,
&c., to be re-
spected.

Prisoners of
war; their treat-
ment.

common subsistence and benefit of mankind, shall be allowed to continue their respective employments unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take any thing from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties, and the pursuit of their vocations.

2. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldier shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for its own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the

cuya ocupacion sirva para la comun subsistencia y beneficio del género humano, podrán continuar en sus ejercicios, sin que sus personas sean molestadas. No serán incendiadas sus casas ó bienes, ó destruidos de otra manera; ni serán tomados sus ganados, ni devastados sus campos por la fuerza armada en cuyo poder puedan venir á care por los acontecimientos de la guerra; pero si hubiere necesidad de tomarlos alguna cosa para el uso de la misma fuerza armada, se les pagará lo tomado á un precio justo. Todas las iglesias, hospitales, escuelas, colegios, librerías, y demas establecimientos de caridad y beneficencia serán respetados; y todas las personas que dependan de los mismos serán protegidas en el desempeño de sus deberes y en la continuacion de sus profesiones.

2. Para aliviar la suerte de los prisioneros de guerra se evitarán ciudadosamente, las prácticas de enviarlos á distritos distantes, inclementes ó malsanos, ó de aglomerarlos en lugares estrechos y enfermizos. No se confinarán en calabozos, prisiones ni pontones; no se les aherrójar, ni se les atará, ni se les impedirá de ningun otro modo el uso de sus miembros. Los oficiales que darán en libertad bajo su palabra de honor, dentro de distritos convenientes y tendrán alojamientos cómodos; y los soldados rasos se colocarán en acantonamientos bastante despejados y extensos para la ventilacion y el ejercicio, y se alojarán en cuarteles tan amplios y cómodos como los que use para sus propias tropas la parte que los tenga en su poder. Pero si algun oficial faltare á su palabra, saliendo del distrito que se le ha señalado; ó algun otro prisionero se fugare de los limites de su acantonamiento despues que estos se les hayan fijado, tal oficial ó prisionero perderá el beneficio del presente artículo por lo que mira á su libertad bajo su palabra ó en acantonamiento; y si algun oficial faltando así á su palabra, ó algun soldado raso saliendo de los límites que se le han asignado,

limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and during which, its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

fuere encontrado despues con las armas en la mano antes de ser debidamente cangeado, tal persona en esta actitud ofensiva será tratada conforme á las leyes comunes de la guerra. A los oficiales se proveerá diariamente por la parte en cuyo poder estén, de tantas raciones compuestas de los mismos artículos como las que gozan en especie ó en equivalente los oficiales de la misma graduacion en su propio ejército: á todos los demas prisioneros se proveerá diariamente de una racion semejante á la que se ministra al soldado raso en su propio servicio: el valor de todas estas suministraciones se pagará por la otra parte al concluirse la guerra, ó en los periodos que se convengan entre sus respectivos comandantes, precediendo una mutua liquidacion de las cuentas que se lleven del mantenimiento de prisioneros: y tales cuentas no se mezclarán ni compensarán con otras; ni el saldo que resulte de ellas, se reusará bajo pretesto de compensacion ó represalia por cualquiera causa, real ó figurada. Cada una de las partes podrá mantener un comisario de prisioneros nombrado por ella misma en cada acantonamiento de los prisioneros que esten en poder de la otra parte: este comisario visitará á los prisioneros siempre que quiera; tendrá facultad de recibir, libres de todo derecho ó impuesto, y de distribuir todos los auxilios que pueden enviarles sus amigos, y podra libremente transmitir sus partes en cartas abiertas á la autoridad por la cual esta empleado.

Y se declara que ni el pretesto de que la guerra destruye los tratados, ni otro alguno, sea el que fuere, se considerará que anula ó suspende el pacto solemnemente contenido en este artículo. Por el contrario, el estado de guerra es cabalmente el que se ha tenido presente al ajustarlo, y durante el cual sus estipulaciones se han de observar tan santamente como las obligaciones mas reconocidas de la ley natural ó de gentes.

The solemn covenant herein entered into not to be annulled on the pretence that war dissolves all treaties.

ARTICLE XXIII.

Treaty subject to ratification, and ratifications to be exchanged in four months from date of signature.

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; by the President of the Mexican republic, with the previous approbation of its General Congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

Signed in February, 1848.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty of peace, friendship, limits, and settlement; and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST, [L. S.]
LUIS G. CUEVAS, [L. S.]
BERNARDO COUTO, [L. S.]
MIGL. ATRISTAIN, [L. S.]

ARTICULO XXIII.

Este tratado será ratificado por el Presidente de la república Mexicana, previa la aprobacion de su Congreso General; y por el Presidente de los Estados Unidos de America con el consejo y consentimiento del Senado; y las ratificaciones se cangearán en la ciudad de Washington, ó donde estuviere el gobierno Mexicano, á los cuatro meses de la fecha de la firma del mismo tratado, ó antes si fuere posible.

En fé de lo cual, nosotros los respectivos plenipotenciarios hemos firmado y sellado por quintuplicado este tratado de paz, amistad, limites, y arreglo definitivo, en la ciudad de Guadalupe Hidalgo, el dia dos de Febrero del año de nuestro Señor mil ochocientos cuarenta y ocho.

BERNARDO COUTO, [L. S.]
MIGL. ATRISTAIN, [L. S.]
LUIS G. CUEVAS, [L. S.]
N. P. TRIST, [L. S.]

ARTICLES REFERRED TO IN THE FIFTEENTH ARTICLE OF THE PRECEDING TREATY.

First and Fifth Articles of the unratified Convention between the United States and the Mexican Republic of the 20th November, 1843.

ARTICLE I.

ALL claims of citizens of the Mexican republic against the government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the government of the Mexican republic, which, for whatever cause, were not submitted to, nor considered, nor finally decided by, the commission, nor by the arbiter appointed by the convention of 1839, and which shall be presented in the manner and time hereinafter

ARTICULO I.

TODAS las reclamaciones de ciudadanos de la república Mexicana contra el gobierno de los Estados Unidos, que se presentáren del modo y en el tiempo que en adelante se espresa, y todas las reclamaciones de ciudadanos de los Estados Unidos contra el gobierno de la república Mexicana, que por cualquier motivo no se presentáron á la junta ó que no fueron examinadas ó decididas finalmente por ella ó por el árbitro establecido por la convencion de 1839, y que se presentáren del

specified, shall be referred to four commissioners, who shall form a board, and shall be appointed in the following manner, that is to say: Two commissioners shall be appointed by the President of the Mexican republic, and the other two by the President of the United States, with the approbation and consent of the Senate. The said commissioners, thus appointed, shall, in presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs which shall be presented, the principles of right and justice, the law of nations, and the treaties between the two republics.

ARTICLE V.

All claims of citizens of the United States against the government of the Mexican republic, which were considered by the commissioners, and referred to the umpire appointed under the convention of the eleventh April, 1839, and which were not decided by him, shall be referred to, and decided by, the umpire to be appointed, as provided by this convention, on the points submitted to the umpire under the late convention, and his decision shall be final and conclusive. It is also agreed, that if the respective commissioners shall deem it expedient, they may submit to the said arbiter new arguments upon the said claims.

modo y en el tiempo que en adelante se espresará se someterán á cuatro comisionados que formarán junta, y serán nombrados del modo siguiente, á saber: Dos comisionados serán nombrados por el Presidente de la república Mexicana, y los otros dos lo serán por el Presidente de los Estados Unidos, con consentimiento y aprobación del Senado de los mismos. Los dichos comisionados, de ese modo nombrados, prestarán juramento en presencia unos de otros, de examinar y decidir imparcialmente las reclamaciones que se les sometan, y que legalmente deban considerarse segun las pruebas que se les presentáren y segun los principios de derecho y justicia de la ley de las naciones y de los tratados entre ambas repúblicas.

ARTICULO V.

Todas las reclamaciones de ciudadanos de los Estados Unidos contra el gobierno de la república Mexicana, que fueron examinadas por los comisionados y sometidas al árbitro nombrado con arreglo á la convencion de once de Abril de 1839, y que no fueron por el decididas, se someterán y decidirán por el árbitro que debe nombrarse conforme á esta convencion por lo relativo á los puntos que se sujetaron al árbitro establecido par la anterior convencion; y su decision será final y definitiva. A la vez se ha convenido que, si se juzga oportuno por los comisionados respectivos, podrán someterse por ellos al espresado árbitro, nuevas esposiciones sobre dichas reclamaciones.

BOUNDARIES (GADSDEN TREATY)

Treaty signed at México December 30, 1853

*Senate advice and consent to ratification, with amendments, April 25, 1854*¹

Ratified by Mexico May 31, 1854

*Ratified by the President of the United States, with amendments, June 29, 1854*¹

Ratifications exchanged at Washington June 30, 1854

Entered into force June 30, 1854

Proclaimed by the President of the United States June 30, 1854

*Article 8 terminated December 21, 1937, by treaty of April 13, 1937*²

10 Stat. 1031; Treaty Series 208

In the Name of Almighty God

The Republic of Mexico and the United States of America desiring to remove every cause of disagreement, which might interfere in any manner with the better friendship and intercourse between the two Countries; and especially, in respect to the true limits which should be established, when notwithstanding what was covenanted in the Treaty of Guadalupe Hidalgo in the Year 1848,³ opposite interpretations have been urged, which might give occasion to questions of serious moment: to avoid these, and to strengthen and more firmly maintain the peace, which happily prevails between the two Republics, the President of the United States has for this purpose, appointed James Gadsden Envoy Extraordinary and Minister Plenipotentiary of the same near the Mexican Government, and the President of Mexico has appointed as Plenipotentiary "ad hoc" His Excellency Don Manuel Diez de Bonilla Cavalier Grand Cross of the National and Distinguished Order of Guadalupe, and Secretary of State and of the Office of Foreign Relations, and Don Jose Salazar Ylarregui and General Mariano Monterde as Scientific Commissioners invested with Full powers for this Negotia-

¹ As a result of the United States amendments, the terms of the treaty were radically altered: arts. 1 and 2 were rewritten; arts. 3 and 4 were rewritten and combined as art. 3; art. 8 was deleted; and there were several minor corrections of the text. For a detailed study of this treaty, and texts of the articles as signed, see 6 Miller 293.

The text printed here is the amended text as proclaimed by the President.

² TS 932, *post*, p. 1023.

³ Treaty signed Feb. 2, 1848 (TS 207, *ante*, p. 791).

¹⁰⁴² Gadsden Purchase Treaty – Gadsden Purchase Treaty (December 30, 1853), accessed 10 June 2018, www.avalon.law.yale.edu.

tion who having communicated their respective Full Powers, and finding them in due and proper form, have agreed upon the Articles following.

ARTICLE 1st

The Mexican Republic agrees to designate the following as her true limits with the United States for the future; Retaining the same dividing line between the two California's, as already defined and established according to the 5th Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande as provided in the fifth article of the treaty of Guadalupe Hidalgo, thence as defined in the said article, up the middle of that river to the point where the parallel of $31^{\circ} 47'$ north latitude crosses the same, thence due west one hundred miles, thence south to the parallel of $31^{\circ} 20'$ north latitude, thence along the said parallel of $31^{\circ} 20'$ to the 111th meridian of longitude west of Greenwich, thence in a straight line to a point on the Colorado river twenty english miles below the junction of the Gila and Colorado rivers, thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

For the performance of this portion of the Treaty each of the two Governments shall nominate one Commissioner to the end that, by common consent, the two thus nominated having met in the City of Paso del Norte, three months after the exchange of the ratifications of this Treaty may proceed to survey and mark out upon the land the dividing line stipulated by this article, where it shall not have already been surveyed and established by the Mixed Commission according to the Treaty of Guadalupe keeping a Journal and making proper plans of their operations. For this purpose if they should Judge it is necessary, the contracting Parties shall be at liberty each to unite to its respective Commissioner Scientific or other assistants, such as Astronomers and Surveyors whose concurrence shall not be considered necessary for the settlement and ratification of a true line of division between the two Republics; that line shall be alone established upon which the Commissioners may fix, their consent in this particular being considered decisive and an integral part of this Treaty, without necessity of ulterior ratification or approval, and without room for interpretation of any kind by either of the Parties contracting.

The dividing line thus established shall in all time be faithfully respected by the two Governments without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the Law of Nations, and in accordance with the Constitution of each country respectively.

In consequence, the stipulation in the 5th Article of the Treaty of Guadalupe upon the Boundary line therein described is no longer of any force, wherein it may conflict with that here established, the said line being

considered annulled and abolished wherever it may not coincide with the present, and in the same manner remaining in full force where in accordance with the same.

ARTICLE 2nd

The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo, and the said article and the thirty third article of the treaty of amity, commerce and navigation between the United States of America and the United Mexican States concluded at Mexico, on the fifth day of April, 1831,⁴ are hereby abrogated.

ARTICLE 3rd

In consideration of the foregoing stipulations, the government of the United States agrees to pay to the government of Mexico, in the city of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established.

ARTICLE 4th

The Provisions of the 6th and 7th Articles of the Treaty of Guadalupe Hidalgo having been rendered nugatory for the most part by the Cession of Territory granted in the First Article of this Treaty, the said Articles are hereby abrogated and annulled and the provisions as herein expressed substituted therefor—The Vessels and Citizens of the United States shall in all Time have free and uninterrupted passage through the Gulf of California to and from their possessions situated North of the Boundary line of the Two Countries. It being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government, and precisely the same provisions, stipulations and restrictions in all respects are hereby agreed upon and adopted and shall be scrupulously observed and enforced by the Two Contracting Governments in reference to the Rio Colorado, so far and for such distance as the middle of that River is made their common Boundary Line, by the First Article of this Treaty.

The several Provisions, Stipulations and restrictions contained in the 7th Article of the Treaty of Guadalupe Hidalgo, shall remain in force only so far as regards the Rio Bravo del Norte below the initial of the said Boundary provided in the First Article of this Treaty That is to say below the intersection of the 31°47'30" parallel of Latitude with the Boundary Line established by the late Treaty dividing said river from its mouth upwards according to the 5th Article of the Treaty of Guadalupe.

⁴ TS 203, *ante*, p. 764.

ARTICLE 5th

All the provisions of the Eighth and Ninth, Sixteenth and Seventeenth Articles of the Treaty of Guadalupe Hidalgo shall apply to the Territory ceded by the Mexican Republic in the First Article of the present Treaty and to all the rights of persons and property both civil and ecclesiastical within the same, as fully and as effectually as if the said Articles were herein again recited and set forth.

ARTICLE 6th

No Grants of Land within the Territory ceded by the First Article of This Treaty bearing date subsequent to the day Twenty fifth of September—when the Minister and Subscriber to this Treaty on the part of the United States proposed to the Government of Mexico to terminate the question of Boundary, will be considered valid or be recognized by the United States, or will any Grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the Archives of Mexico.

ARTICLE 7th

Should there at any future period (which God forbid) occur any disagreement between the two Nations which might lead to a rupture of their relations and reciprocal peace, they bind themselves in like manner to procure by every possible method the adjustment of every difference, and should they still in this manner not succeed, never will they proceed to a declaration of War, without having previously paid attention to what has been set forth in Article 21 of the Treaty of Guadalupe for similar cases; which Article as well as the 22nd is here re-affirmed.

ARTICLE 8th ⁵

The Mexican government having on the 5th of February 1853 authorized the early construction of a plank and railroad across the Isthmus of Tehuantepec, and to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States by its Agents shall have the right to transport across the Isthmus, in closed bags, the mails of the United States not intended for distribution along the line of communication; also the effects of the United States government and its citizens, which may be intended for transit, and

⁵ Art 8 terminated by treaty of Apr. 13, 1937 (TS 932, *post*, p. 1023).

not for distribution on the Isthmus, free of custom-house or other charges by the Mexican government. Neither passports nor letters of security will be required of persons crossing the Isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican government having agreed to protect with its whole power the prosecution, preservation and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

ARTICLE 9th

This Treaty shall be ratified, and the respective ratifications shall be exchanged at the City of Washington, within the exact period of six months from the date of its signature or sooner if possible.

In testimony whereof, We the Plenipotentiaries of the contracting parties have hereunto affixed our hands and seals at Mexico the—Thirtieth (30th)—day of December in the Year of Our Lord one thousand eight hundred and fifty three, in the thirty third year of the Independence of the Mexican Republic, and the seventy eighth of that of the United States

JAMES GADSDEN	[SEAL]
MANUEL DIEZ DE BONILLA	[SEAL]
JOSÉ SALAZAR YLARREGUI	[SEAL]
J. MARIANO MONTERDE	[SEAL]

LAST REPORT OF JOHN P. CLUM AS AGENT
FOR THE SAN CARLOS AGENCY,
ARIZONA.

Florence, Arizona,
September 18, 1877.

Sir: I have the honor to submit the following as my fourth and last annual report of affairs connected with the Indians of the San Carlos Agency, in Arizona.

The past year has continued to mark the steady progress of the Apache Indians in civilization and usefulness, and the operations during the year have fixed and completed the complete success of my administration.

In September and October of 1876 I accompanied a party of twenty Apache Indians on a trip to the Eastern States. We visited all the principal cities, passed a week at the Centennial, and returned home greatly pleased and much enlightened. This party was composed of young chiefs and their wives and young friends. The benefit of this trip to the young chiefs, and the good influence to be wielded by them, will be of great service in the future control and advancement of these Indians. The burden of the expense of this trip was borne by private enterprise.

The capture of several noted renegades at the Hot Springs, N. Mex., and the removal of the Indians of the Hot Springs agency N. Mex., to San Carlos, Ariz., is one of the most important movements with which I have been connected while in the Indian service, and the result of this movement was a most complete success. The co-operation of the troops under General Hatch and Colonel Wade was perfect. On April 21, my Indian police arrested "Heronemo," "Gordo," "Ponca," "Francisco," and several other noted renegades, who were immediately lodged in the guard-house, in irons. The entire tribe of the Hot Springs Indians, numbering 453 souls, left that agency on May 1 by trail for San Carlos. I started the same day by road with the prisoners. On May 20 the Hot Springs Indians were located peacefully, and with satisfaction to themselves, on the San Carlos reservation, twenty miles east of the main agency buildings.

Since taking charge of the San Carlos agency in 1874 it has been my lot to consolidate five agencies into one, and to superintend the movement of about four thousand wild Indians to the San Carlos reservation; thus bringing together Indians, who, by their former locations, were separated by a distance of 600 miles; and also opening to ranchmen and miners three Indian reservations, including important tracts of agricultural and mineral lands.

¹⁰⁴³ Clum, John P. 'Collection of agency notes and personal correspondence, 1874-1877,' (University of Arizona Special Collections, MS 284).

These movements have all been effected without the loss of a single life, and without destroying the property of citizens.

The Indians under my jurisdiction have been held in complete subjection, and have remained quiet, industrious, and progressive. No murder or depredation has been traced to the Indians under my charge during the three years I have been at San Carlos. Large tracts of land are being cultivated, and many of the principal men have fine herds of sheep, cattle, and many horses. Very extensive and commodious agency buildings have been constructed without appropriation from the Government.

If the present Indian police system be continued under a firm, keen agent, the Indians will remain orderly, and continue to improve. Yet I would not assume to predict the results of the pending change in the administration of the San Carlos agency.

In my regime at San Carlos has mingled much that has savored of contention and annoyance, and much of success and satisfaction. I have met with firm support and bitter opposition. I have found just and true friends, and malicious enemies. My course and system at San Carlos have been both praised and blamed, lauded and censured. I have neither sought the one nor avoided the other, and when my worthy successor shall have relieved me from the last responsibility connected with that agency, I shall rest content. As agent for the San Carlos Indians I have sought to do my duty well. I claim nothing more than duty well done. Had I done less I would have been unworthy of my position and trust. Whatever may be the feelings of others, I am today proud of my work and record at San Carlos, and with extreme satisfaction I shall transfer to my trusty successor one of the most important positions on the Pacific slope.

I shall ever feel indebted to Mr. M. A. Sweeney for his faithful services throughout my administration.

Very respectfully, your obedient servant,

(SIGNED) JOHN P. CLARK,
Late United States Agent.

(TO) The Commissioner of Indian Affairs.

COPY from
Report of Commissioner of
Indian Affairs - 1877, pages 34 and 35.

4-feb-29

Bibliography

Primary and Secondary Publications

Ajo Chamber of Commerce. Last modified 2013. 'History of Ajo.' www.ajochamber.com.

Alt National Park Service. 'Blog.' Accessed January 2019. <https://altnps.org/blog>.

Archaeology Southwest. Ranching Traditions (1680 to Present). *Interpretive Themes and Related Resources*: 123-130. Accessed 23 September 2017. www.archaeologysouthwest.org.

Arizona Adverse Possession Laws. 'Chapter 103 12-522 et seq.' Accessed 30 July 2018. <https://statelaws.findlaw.com>.

Arizona Chamber Foundation. 'Water in Arizona: Our Past, Present and Future.' 2005. www.azchamberfoundation.org

Arizona Conservation Service. 'Arizona's Rivers and Water.' Updated 2021. <http://azconservation.org>.

Arizona Geological Survey. 2019. 'The U.S. Geological Survey Commodity Report – 2019: Arizona's Role in U.S. Production.' Accessed 4 Sept 2020. <https://blog.azgs.arizona.edu/>.

Arizona Land and Water Trust. 'Babocomari Ranch.' Accessed 13 August 2020. www.alwt.org.

'Tombstone Tragedy: William Green [sic] Terribly Revenges the Death of His Daughter.' *Arizona Republic*. July 4, 1897. www.newspapers.com.

Arizona State Land Department. 'Maps of land management'. Accessed 20 Jun 2020. <http://land.az.gov>.

Arizona Water. Nd. 'History of Water Management.' Accessed 5 July 2019. www.azwater.gov.

Ascarza, William. 'Mine Tales: The ghost towns of Greaterville and Kentucky Camp.' (2013) www.tucson.com.

Babacomari Ranch. 'History.' Accessed 13 August 2020. <https://babacomariranch.com>.

Bailey, Lynn R. *We'll All Wear Silk Hats: The Erie and Chirciahua Cattle companies and the rise of Corporate Ranching in the Sulphur Spring Valley of Arizona, 1883-1909*. Tucson, AZ: Westernlore Press, 1994.

Bailey, Lynn R. *Mines, Camps, Ranches, and Characters of the Dragoon Mountains*. Tucson, AZ: Westernlore Press. 2008

Bailey, R. Lynn and Don Chaput. *Cochise County Stalwarts: A Who's Who of the Territorial Years* Volumes I and II. Tucson, AZ: Westernlore Press, 2000.

Baird, David, James Wright and Harwood Hinton. 'Western History Association Prize Recipient, 1986: Paul Wallace Gates.' *Western Historical Quarterly* 18 no. 2: (1987): 133-140.

Bandelier, A. F. *Final Report of Investigations Among the Indians of the Southwestern United States carried on mainly in the years from 1880 to 1885: Part II*. Cambridge: Cambridge University Press, 1892.

Barnes, Peter. 'The Great American Land Grab.' *New Republic* (1971) <http://peter-barnes.org>. Accessed 23 Sept 2018.

Basso, Keith H. *Wisdom Sits in Places: Landscape and Language Among the Western Apache*. University of New Mexico Press, 1996. Kindle.

BBC. "Native burial sites blown up for US border wall". (2020). www.bbc.co.uk/news/world-us-canada-51449739.

Bennett, Peter S. and Michael R. Kunzmann. *A History of the Quitobaquito Resource Management Area, Organ Pipe Cactus National Monument, Arizona*. Tucson, AZ: University of Arizona, 1989.

Blake, William P. *Tombstone and It's Mines: A Report on the Past and Present Condition of the Mines of Tombstone, Cochise County, Arizona (for the Development Company of America)*. New York: The Cheltenham Press, 1902.

Blaine, Peter. *Papagos and Politics; as told to Michael S. Adams*. The Arizona Historical society, Tucson, 1981.

Bogue, Allan G. and Margaret Beattie, editors. *The Jeffersonian Dream: Studies in the History of American Land Policy and Development by Paul W. Gates*. Albuquerque: University of New Mexico Press, 1996.

Bogue, Allan G., Margaret Beattie Bogue, Walter LaFeber and Joel Silbey. 'Paul Wallace Gates (1901-99).' (1999) www.historians.org.

Bourke, John G. *On The Border with Crook*. Lincoln, Nebraska: University of Nebraska Press, [1891] 1971.

Bowden, J. J. 'A Critique of the Solution of the Southwest Private Land Claims Problem'. MA Thesis for Laws in Oil and Gas. Dallas, TX: Southern Methodist University, 1969.

Bradfute, Richard Wells. *The Court of Private Land Claims: The adjudication of Spanish and Mexican Land Grant Titles, 1891-1904*. Albuquerque: University of New Mexico Press, 1975.

Brigandi, Phil. 'A Desert Cattle Drive of 1890.' *Desert Tracks: Newsletter of Southwest Chapter of the Oregon-California Trails Association* (June 2006): 1-8.

Briggs, D.F. *History of the Ajo Mining District, Pima County, Arizona*. Arizona Geological Survey, 2006.

Browne, J. Ross. *Adventures in the Apache Country: A Tour through Arizona and Sonora, with notes on the Silver Regions of Nevada*. New York: Harper & Brothers Publishers, 1869.

Browning, Sinclair. 2004. 'The English Boys' Outfit: Part 2.' *Empire Ranch Foundation News* 5 no. 4 (2004): 5-6.

Broyles, Bill, editor. *Last Water on the Devil's Highway: A Cultural and Natural History of the Tinajas Altas*. Tucson, AZ: University of Arizona Press, 2014.

Broyles, Bill and Gayle Harrison Hartmann. 'Surveyors to Campers'. In *Last Water on the Devil's Highway: A Cultural and Natural History of the Tinajas Altas*, edited by Bill Broyles. Tucson AZ: University of Arizona Press, 2014.

Bunting, Alison editor. *Diary of a Desert Trail; 1890 Cattle Drive from Arizona to California, by Edward L. Vail*. Sonoita, Arizona: Empire Ranch Foundation, [1922] 2016.

Bunting, Alison. Linda Hummel Roslund interview transcript, 18 May, 2014. Empire Ranch Oral History Project.

Burke, Flannery. *A Land Apart: The Southwest and the American Nation in the Twentieth Century*. Tucson, AZ: University of Arizona Press, 2017.

Cabeza Prieta National Wildlife Refuge. 'History.' Accessed 10 Jan 2020.
<https://cabezaprieta.org>.

Calhoun, Craig. 'Explanation in Historical Sociology: Narrative, General Theory, and Historically Specific Theory.' *American Journal of Sociology*, 104, no. 3 (1998): 846-871.

Carlson, Elizabeth. 'Anti-colonial methodologies and practices for settler colonial studies.' *Settler Colonial Studies*, 7, no. 4 (2017): 496-517.

Carmony, Neil. Edited & Transcribed. *Next Stop: Tombstone. George Hand's Contention City Diary, 1882*. Tucson, AZ: Trail to Yesterday Books, 1995.

Center for Biological Diversity. 'Judge Overturns Wildlife Agency's Approval of Rosemont Copper Mine in Arizona: Biological Opinion Failed to Protect Endangered Jaguars.' (2000).
<https://biologicaldiversity.org>.

Center for Science and Public Policy in 'Arizona's Rivers and Water.' Arizona Conservation Service 2005-2021 (2004) www.azconservation.org.

Chandler, A. E. 'The Appropriation of Water in California'. *California Law Review* 43 (1916): 206-215.

Chiricahua Apache Nation. Accessed 18 April 2018. <http://www.chiricahuaapachenation.org>.

Chiricahua Apache Nation. 'Declaration of Independence.' Last modified 2007.
<http://www.chiricahuaapachenation.org>.

Churchill, Ward. 'The tragedy and the Travesty: The Subversion of Indigenous Sovereignty in North America,' *Contemporary Native American Political Issues*, edited by Troy R. Johnson. Walnut Creek, CA: AtaMira Press, Sage Publications, 1999.

- Circle Z Ranch. 'History of Circle Z.' Accessed 01 September 2020. www.circlez.com.
- Clum, John P. 'Collection of agency notes and personal correspondence, 1874-1877.' University of Arizona Special Collections, MS 284.
- Collins, William S. *Cattle Ranching in Arizona 1848-1950 Multiple Property Listing*. National Register of Historic Places Nomination for the National Park Service, 2005.
- Collins, Glendon E. *A History of the Lands in the NAS Research Ranch*. National Audubon Society, 2008.
- Collins, William S., Melanie Sturgeon & Robert Carriker. *United States Military in Arizona, 1846-1945*. Phoenix, AZ: Arizona State Historic Preservation Office, 1993.
- Conway, F.M. 'Rapid infilling of fresh earth fissure in southern Pinal County, Arizona with comment by Ken Ferguson.' *Arizona Geology e-Magazine*. Arizona Geological Survey, 2019.
- Crandall, Maurice. 'Yava-Who?: Yavapai History and (Mis) Representation in Arizona's Indigenous Landscape.' *Journal of Arizona History*, 61, nos 3 and 4 (2020): 487-510.
- Dahl, Adam. *Empire of the People: The Ideology of Democratic Empire in the Antebellum United States*. PhD Thesis: University of Minnesota, 2014.
- Daily Tombstone, The* (Reproduction) September 8, 1886. The Epitaph Offices, Tombstone, AZ.
- Del Castillo, Richard Griswold. *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict*. Norman, Oklahoma: Oklahoma University Press, 1990.
- Derwent, Sgt. 'Letter: Death of Cochsie, 1874.' University of Arizona Special Collections AZ 322.
- Diaz, David R. *Barrio Urbanism: Chicanos, Planning and American Cities*. New York: Routledge, 2001.
- Dowell, Gregory Paul. 'History of the Empire Ranch.' MA Thesis for University of Arizona, 1978.
- Drachman, Mose. 'Papers.' Arizona History Society, call number MS 0226.
- Dwyer, William, E., Jr. 'Land Claims Under the Indian Nonintercourse Act – 25 U.S.C. § 177,' *Boston College Environmental Affairs Law Review*, 7 no. 2 (1978): 259-292.
- Dyer, Mrs. A. M. 1928. "An Indian Scare." *Arizona Historical Review* (1928): 45-49.
- Ebright, Malcolm. *Land Grants and Lawsuits in Northern New Mexico*. Southwest Books, 2008. www.southwestbooks.org.
- Ebright, Malcolm and Rick Hendricks. *Pueblo Sovereignty: Indian Land and Water in New Mexico and Texas*. Norman: University of Oklahoma Press, 2019.

Elden, Stuart. *Understanding Henri Lefebvre Theory and the Possible*. Continuum: London, 2004.

Elias documents. Located at University of Arizona Library Special Collections, Tucson, Arizona. Call number AZ 232.

Ellis, David Maldwyn. 'The Forfeiture of Railroad Land Grants, 1867-1894'. *The Mississippi Valley Historical Review* 33, no. 1 (1946): 27-60.

Ely, James W. *Property Rights in American History*. Bosa Roca: Taylor & Francis Inc., 1997.

Empire Ranch Foundation. 'Empire Ranch History.' Accessed 20 May 2016.

www.empireranchfoundation.org.

Endres, David J. *The Politics of Religion, Recognition, and Accommodation: Father Bonaventure Oblasser, OFM, and the Making of the Tohono O'odham Reservation, 1911-1939*. Conference Paper, 2014, www.researchgate.net.

The Environmental Defense Fund. 'River of the Month Series: Celebrating Arizona's Rivers: The Santa Cruz River.' June 2012. www.edf.org.

Erikson, Winston. *Sharing the Desert: The Tohono O'odham in History*. Tucson, AZ: University of Arizona Press, 1994.

Ewers, John C. *The Role of the Indian in National Expansion*. United States Department of the Interior National Park Service. Washington D. C., 1938.

The Friends of the San Pedro River. 'Fairbank Historic Townsite Walking Tour and Hiking Guide.' Published by the Tucson Field Office, Bureau of Land Management.

Farrish, T. Edwin. *History of Arizona*. Phoenix, AZ: The Filmer Brothers Electrotpe, 1915-1918. <https://babel.hathitrust.org>.

Ferris, Robert G. editor. *Prospector, Cowhand, and sodbuster: Historic Places Associated with the mining, ranching, and farming frontiers in the Trans-Mississippi West*, Vol XI. Washington DC: United States Department of the Interior National Park Service, 1967.

Fields, Gary. *Enclosure: Palestinian Landscapes in a Historical Mirror*. Oakland, CA: University of California Press, 2017.

Filzen, Andrea. 2013. 'Clash on the Border of the Tohono O'odham Nation'. 2013. <http://pulitzercenter.org>.

Fischer, Howard. 'Anamax plans Santa Rita open pit mine.' *The Arizona Daily Star*, 1983.

Fletcher, Matthew L. M. 'Tribal Membership and Indian Nationhood.' *American Indian Law Review* 37, no 1 (2012): 1-18.

Fontana, Bernard L. 'The O'odham', in *The Pimería Alta: Missions and More*, edited by James E. Officer, Mardith Schuetz-Miller, Bernard L. Fontana. Tucson, AZ: The Southwestern Mission Research Center, 1996.

Forbes, Prof. R.H., 'The Open Range and the Irrigation Farmer, Part I.' *The Forester*, Vol VII no. 9. (September, 1901): 216-219.

Forbes, Prof. R.H., 'The Open Range and the Irrigation Farmer Part II.' *The Forester*, Vol VII no. 10. (October, 1901): 254-258.

Forbes, Robert H. *The Penningtons: Pioneers of Early Arizona, a Historical Sketch*. Arizona Archaeological and Historical Society, 1919.

Friends of San Pedro River. *Fairbank Town Site Brochure*. Published by Bureau of Land Management for San Pedro Riparian National Conservation Area.

Friends of the San Pedro River Round Up. 'Is the San Pedro Riparian National Conservation Area ready for cattle grazing?' (2019) www.sanpedroriver.org.

Frontz, Kim and David Tackenberg. 'Promoting Tucson: Rudolf Rasmussen's Legacy of Photographic Postcards, 1905-1920.' *Journal of Arizona History* 55, no. 2 (2014).187-204.

Frymer, Paul. "'A Rush and a Push and the Land is Ours": Territorial Expansion, Land Policy, and U.S. State Formation.' *Perspectives on Politics* 12 no. 1 (2014): 119-144.

Gates, Paul W. 'Public Land Issues in the United States.' *Western Historical Quarterly*, 12:4 (1971): 363-376.

Gates, Paul W. 'An Overview of American Land Policy.' *Agricultural History*, 50:1 (1976): 219-229.

Ganoe, John T. 'The Desert Land Act in Operation 1877-1891'. *Agricultural History* 11 no. 2 (April 1937): 142-157.

Getty, Harry T. 'San Carlos Indian Cattle Industry.' *Anthropological Papers*, No. 7 (1963), University of Arizona Press.

Gibson, Emma. 'Indigenous group reaffirms importance of Springs amid border wall construction.' (2020) <https://news.azpm.org>.

Gillespie, William. 'The Buildings of Kentucky Camp – inventories from the Early 20th Century.' *Kentucky Camp Chronical* (2008).

Gilpin, Dennis and David A. Philips, Jr. *The Pre-historic to the Historic Transition Period in Arizona circa 1519-1692*. Phoenix, AZ: State Historic Preservation Office.

Giles, Ben and Paulina Pined. 'Legislative staffers say pro-Trump supporters called them 'illegal' for being dark-skinned'. *Arizona Capitol Times* (2018) <https://azcapitoltimes.com>.

Glaser, Leah S. and Nicholas Thomas. 'Sam Colt's Arizona: Investing in the West.' *The Journal of Arizona History* 56 no.1 (2015): 29-52.

Goodwin, F.H. 'The Aravaipa Apaches.' Read at the Arizona Pioneers Society in Tucson, 1 March 1887. University of Arizona Special Collections Library; Call Number AZ 209.

Griffin, Larry J. 'Historical Sociology, Narrative and Event-Structure Analysis: Fifteen Years Later.' *Sociologica* no. 3 (2007): 1-17.

Grijalva, Raul. 'Native burial sites blown up for United States border wall.' Accessed 11 February 2020. www.bbc.co.uk.

Grillot, Thomas. 'Indian Nations, Indian Tribes: Notes on the Colonial career of twin concepts'. *Revue Française d'Études Américaines* 3 no. 144 (2015): 49-61

Hall, G. Emien. *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800-1933*. Albuquerque: University of New Mexico Press, 1984.

Hamilton, Patrick. *The Resources of Arizona: Its mineral, Faring and grazing lands, towns and mining camps; its rivers, mountains, plains and mesas; with a brief summary of its Indian tribes, early history, ancient ruins, climate etc, etc. A Manual of Reliable Information Concerning the Territory*. San Francisco: AL Bancroft & Co. Printers, 1881.

Hardesty, Donald. 'Mining Technology in the Nineteenth Century.' *Nevada Humanities*, 10 December 2010. www.onlinevada.org.

Harris, Marilyn Strome. *Arizona Land Grants: Cases which appeared before the Court of Private Land Claims, 1891-1904*. MA Thesis for San Diego State College, 1961. Tucson, AZ: Arizona Historical Society.

Harrison, Sylvia L. Disposition of the Mineral Estate on U.S. Public Lands: A Historical Perspective. *Public Land and Resources Law Review* 10 (1989) 131-156.

Hartmann, Gayle Harrison, Mary Charlotte Thurtle and Gary Paul Nabhan. 'Native Peoples of the Tinajas Altas Region: Prehistory to Present,' in *Last Water on the Devil's Highway: A Cultural and Natural History of the Tinajas Altas*, edited by Bill Broyles Tucson AZ: University of Arizona Press, 2014.

Hartmann, William K. *Searching for Golden Empires: Epic Cultural Collisions in Sixteenth-Century America*. Tucson: University of Arizona Press, 2015.

Harvey, David. *Spaces of Capital: Towards a Critical Geography*. Edinburgh: Edinburgh University Press, 2001.

Harvey, David. 'The Right to the City.' *New Left Review* 53 (2008): 23-40.

Hedin, Douglas A. editor 'The Land Revision Act of 1891.' 8 June, 2012. www.minnesotalegalhistoryproject.org/

- Heiderpriem, Peter. "The Tohono O'odham Nation and the US-Mexico Border". *American Indian Law Journal*; IV no. 1 (2015): 107-130.
- Hinton, Alexander Laban, Andrew Woolford and Jeff Benvenuto, editors. *Colonial Genocide in Indigenous North America*. Durham NC: Duke University Press, 2014.
- Hinton, Richard J. *The Hand-Book to Arizona: It's resources, History, Towns, Mines, Ruins and Scenery*. Tucson AZ: Arizona Silhouettes, 1878.
- Hixon, Walter L. *American Settler Colonialism: A History*. New York: Palgrave Macmillan, 2013.
- Hodge, Hiram C. *1877: Arizona As It Was: Or the Coming Country; Notes of Travel During the Years 1874, 1875, and 1876*. Chicago, Illinois: The Reo Grande Press, Inc., [1877] 1965.
- Hook, Jason and Martin Peglar. *To Live and Die in the West: The American Indian Wars*. Osprey Military, 2001.
- Horsman, Reginald. *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism*. Cambridge, MA: Harvard University Press, 1981.
- Howard, Jerry B. and Gary Huckleberry. 'The Operation and Evolution of an irrigation system: The East Papago Canal Study'. *Soil Systems Publications in Archaeology* no. 18 (1991).
- Hoy, Bill. Hardscrabble Days at the Ajo Mines: George Kippen's Diary, 1855-1858. *The Journal of Arizona History*, Vol. 36 No.3 (1995): 233-250.
- Huckell, Bruce B. 'Sobaipuri Sites in the Rosemont Area,' in "Miscellaneous Archaeological Studies in the Anamax-Rosemont Land Exchange Area," edited by M.D. Tagg, R.G. Ervin, B.B. Huckell. *Archaeological Series* 147 no. 4 (1984): 107-130.
- Hughes, Colonel Thomas. C.1902-1912. "Apache Indian Raids on the Hughes Ranch: During the years of 1867, '70, '72, '75 and '76, Twenty Two (sic) Men Fell Victims to the Blood-thirsty and Merciless Savages." Newspaper Clippings. University of Arizona Special Collections Library; Call number AZ 209.
- Intermountain Oil and Gas BMP Project. 'Oil and Gas, Indian Law.' University of Colorado at Boulder. Accessed 12 February 2019. www.oilandgasbmps.org..
- Jackson, Andrew President of the United States. 'First Inaugural Address to Congress, March 4th, 1829.' Accessed 9 August 2018. <https://avalon.law.yale.edu>.
- Jackson, Andrew President of the United States. 'Annual Address to Congress 1830.' Accessed 9 August 2018. www.ourdocuments.gov.
- James, Ronald. 'Milling Technology in the Nineteenth Century.' *Nevada Humanities*, 15 July 2011. www.onlinevada.org .

- Jennings, Dianna. 'Together, We Will Succeed: T-W:EM AT O'NATO'. *Rural Cooperatives Magazine*, (March/April 2015): 10-11.
- Johnson, T. 'Kentucky Camp History.' *Green Valley Hiking Club, Arizona*. Last modified 2014 www.gvhc.com.
- Johnson, T. 'Santa Rita Water and Mining Company.' *Green Valley Hiking Club, Arizona*. Last modified 2014. www.gvhc.com.
- Johnson, T. 'New Mexico and Arizona Railroad.' *Green Valley Hiking Club*. Last modified 2017. www.gvhc.com.
- Jordan, Terry G. *North American Cattle Ranching Frontiers: Origins, Diffusion, and Differentiation*. Albuquerque NM: University of New Mexico, 1993.
- Keene, Melissa and J. Simon Bruder. *Good Roads Everywhere: A history of road building in Arizona*. Arizona Department of Transportation; Environmental Planning Group, 2003.
- Kellogg, Royal S. 'Report of An Examination of the Chiricahua Mountains in Arizona.' *The United States Forestry Service*, 1902.
- Kippen, George. [1854] 1969. *The George Kippen diary, with introduction by Bill Hoy*. University of Arizona, Special Collections. MS 307 Boxes 1-3.
- Klein, Christine A. 'Treaties of Conquest: Property Rights, Indian Treaties and the Treaty of Guadalupe Hidalgo.' *New Mexico Law Review*: 26 (1996): 201-204, 218-299.
- Krall, Lisi. 'U.S. Land Policy and the Commodification of Arid Land (1862-1920).' *Journal of Economic Issues* 35 no. 3 (Sept 2001): 657-674.
- Kuletz, Valerie L. *The Tainted Desert: Environmental Ruin in the American West*. New York: Routledge, 1998.
- Lacy, John C. 'The Mining Laws of Charles D. Poston, 1857-1865.' *The Journal of Arizona History* 50, no. 2 (2009): 143-166.
- Ladd, Robert E. 'Vengeance at the O.K. Corral.' *Arizoniana* 4 no. 2 (1963): 1-10.
- Lahti, Janne. *Wars for Empire: Apaches, the United States, and the Southwest Borderlands*. Norman OK: University of Oklahoma Press, 2017.
- Landry, Alyssa. 'Ulysses S. Grant: Mass Genocide Through 'Permanent Peace' Policy. (2016) <https://newsmaven.io>.
- Landstrom, Karl S. 'Reclamation under the Desert Land Act.' *Journal of Farm Economics* 36 no 3 (Aug 1954): 500-508
- Lefebvre, Henri. *The Production of Spaces*; Translated by Donald Nicholson-Smith. Oxford: Blackwell, [1974] 1991.

- Lengermann, Patricia Madoo. 'Robert E. Park and the Theoretical Content of Chicago Sociology: 1920-1940'. *Sociological Inquiry* 58 no 4 (1988): 361-377.
- Leza, Christina. *Divided Peoples: Policy, Activism, and Indigenous Identities on the United States-Mexico Border*. Tucson AZ: University of Arizona Press, 2019.
- Limerick, Patricia Nelson. *The Legacy of Conquest: The Unbroken Past of the American West*. New York: W.W. Norton, 1987.
- Livesay, Christopher. 'At the United States-Mexico Border a tribal nation fights the wall that would divide them.' *PBS News Hour* (13 Jan 2019). www.pbs.org/newshour.
- Logan, John R. and Harvey L. Molotch. *Urban Fortunes: The Political Economy of Place*. Berkeley, CA: University of California Press, 1987.
- Lopez, Tomas. 'Homestead Patent: Number 253, 12 Jan 1885.' Tucson, Arizona: Pima County Records Office.
- Mabry, Jonathan. 'Cattle Ranching in Southern Arizona Before the Twentieth Century.' *Archaeology in Tucson Newsletter* Vol 11 No. 4 (1997): 10-11. www.archaeologysouthwest.org.
- Main, Douglas. 'Sacred Arizona Spring drying up as border wall construction continues.' *National Geographic* (2020) www.nationalgeographic.com.
- Marak, Andae M. and Laura Tuennerman. *At the Borders of Empires: The Tohono O'odham, Gender, and Assimilation 1880-1934*. Tucson AZ: University of Arizona Press, 2013.
- Martin, Patricia Precido. *Beloved Land: An Oral history of Mexican Americans in southern Arizona*. Tucson AZ: University of Arizona Press, 2004.
- Martinelli, Phylis Cancilla. *Undermining Race: Ethnic Identities in Arizona Copper Camps, 1880-1920*. Tucson, AZ: University of Arizona Press, 2009.
- Martinez, George A. 'Dispute Resolution and the Treaty of Guadalupe Hidalgo: Parallels and Possible Lessons for Dispute Resolution under NAFTA.' *Bilingual Review/La Revista Bilingüe*, 25 no. 1 (2000): 39-61.
- Mayro, Linda, compiler and Micaela K. McGibbon. *Ranching in Pima County, Arizona: A conservation objective of the Sonoran Desert Conservation Plan*. Accessed 23 Sept 2017. www.pima.gov.
- McBiles, Larry. 'A History of Mining in Arizona.' *Arizona Foundation for Resource Education*. Accessed 01 September 2020: 15-16.
- McKee, J. H. Dr. *Report on Mines of Tombstone Syndicate, 1879*. San Francisco, CA: Bacon and Company, Book and Job Printers, 1879.

Megdal, Dr. Sharon, Joanna Nadeau and Tiffany Tom. 'The Forgotten Sector: Arizona Water Law and the Environment'. *Arizona Journal of Environmental Law and Policy* 1 no.2 (2011): 243-377.

Meeks, Eric V. *Border Citizens: the making of Indians, Mexicans, and Anglos in Arizona*; Revised Edition. Austin, TX: University of Texas Press, 2020.

Meeks, Eric V. 'Navigating the Border: The Struggle for Indigenous Sovereignty in the Arizona-Sonora Borderlands.' *Journal of Arizona History*, 61, nos 3 and 4 (2020): 639-666.

Mescalero Apache Tribe. 'Our Culture: Tribal History.' Accessed 21 November 2020. <https://mescaleroapachetribe.com>

Milliken, Ian M. and Melanie A. Medeiros. *Cultural Resources for a Proposed Water Line for the Town of Patagonia, Arizona*. Tucson, AZ: William Self Associates, 2012.

Morales, Laurel. 'Tohono O'odham Wall to cut Across Sacred Land'. *National Public Radio*. (2017) www.npr.org.

Mowry, Silvester. *Arizona and Sonora: The Geography, History, and Resources of the Silver Region of North America*. New York: Harper and Brothers, Publishers, 1864.

The Nature Conservancy. 'Returning Water to the San Pedro River.' Accessed 21 Jun 2021. www.nature.org.

The Nature Conservancy. 'The San Pedro River.' Accessed 24 Dec 2020. www.nature.org.

Native Voices. 'Native Peoples' Concepts of Health and Illnesses.' National Library of Medicine. Accessed 16 April 2020. www.nlm.nih.gov

Nicols, Roger L. *Warrior Nations: The United States and the Indian Peoples*. Oklahoma: University of Oklahoma Press, 2013.

Noonan, Gerald R. 'Woodcutting I: Wood for Construction.' *Friends of the San Pedro River Round Up*. (Winter 2019): 9-19.

Norris, Frank B. 1976. *The Southern Arizona Guest Ranch as a Symbol of the West*. MA Thesis University of Arizona, Tucson Arizona, 1976.

Nolte, Kurt. Nd. *Pima Cotton*. Accessed 04 August 2019. <https://cals.arizona.edu>.

Oblasser, Fr Bonaventure. 'Records and writings from Father Bonaventure, 1905-1937.' Arizona Historical Society; Tucson, call number AHS AZ 554

Office of the Historian. 'The Gadsden Purchase, 1853-1854.' 2016 <https://history.state.gov/milestones/1830-1860/gadsden-purchase>.

Office of the Historian. 'Gadsden Purchase, 1853-1854.' Accessed 13 Jan 2019.

<https://history.state.gov/>

Officer, James E., Mardith Schuetz-Miller, Bernard L. Fontana editors. *The Pimeria Alta: Missions and More*. Tucson AZ: The Southwester Mission Research Center, 1996.

Olberding, Susan Deaver. 'Albert F. Potter: The Arizona Rancher Who Shaped U.S. Forest Service Grazing Policies.' *The Journal of Arizona History* 50 no.2 (2009): 167-182.

Ormsby Waterman L., *The Butterfield Overland Mail, by Waterman L. Ormsby: Only Through Passenger on the First Westbound Stage*, edited by Lyle H Wright and Josephine M. Bynum. San Marino, CA: The Huntington Library, [1858] 1955.

Oasis, The. 'Settler's Picnic.' Sept 21 1912.

Pacific Register, The. 'Report about the legal proceedings of heirs to George McAneny's estate.' CA: West Publishing Company (1912): 707-709.

Papago Tribe. *Tohono O'odham: History of the Desert People*. Salt Lake City, UT: University of Utah Printing Services, 1985.

Park, Robert Ezra. *Human Communities: The City and Human Ecology*. New York: The Free Press, 1962.

Parke, John G. *Report of Explorations for that Portion of Railway Route near the Thirty-second Parallel of Latitude, lying between Dona Ana, on the Rio Grande, and Pimas Villages on the Gila*. Washington: Government Printing Office, 1855.

Parker, Ely. 'First Report of Ely Parker U.S. Commissioner of Indian Officers, 1869.' *PBS*. Accessed 27 Oct 2019. www.pbs.org.

Pierucci, Antone. 'The Ancient Ecology of Fire: Lessons emerge from the ways in which North American hunter-gatherers managed the landscape around them.' *Archaeology* (Sept/Oct 2017): 55-55-58, 62, 64.

Perry, Richard L. *Western Apache: People of the Mountain Corridor*. Austin, Texas: University of Texas Press, 1991.

Peterson, Thomas H. 'Cash up or No Go: The Stagecoach Era in Arizona'. *Arizona Historical Society* 14 no. 3 (1973): 205-222.

Poston, Charles D. 'History of the Apaches.' Tucson: University of Arizona Special Collections, 1885, call number AZ 169.

Proper, Forrest. *Description and illustrations of the Pacific Railroad Survey Reports*. Sacramento, California: Central Pacific Railroad Museum, 2014.

Pry, Mark E. and Fred Anderson. *Arizona Transportation History: Final Report 660*. Arizona Department of Transportation Research Center, 2011.

Pumpelly, Raphael. 'Affairs in Arizona: Terrible times in the territory experience in crossing the deserts.' *New York Times*, 5 October 1861. <https://www.nytimes.com>.

Ready, Alma. *Calabasas: A True Story*. Nogales AZ: Alto Press, 1976.

Resolution Copper. 'Statement of percentage of copper from Arizona, 2020.' Accessed 01 September 2020. <https://resolutioncopper.com>

Resolution Copper. 'A History of Mining in AZ: The Mission, Means and Memories of Arizona Miners.' Accessed 01 September 2020. <https://resolutioncopper.com>.

'Celebrating Arizona's Rivers: The San Pedro River' *River of the Month Series* October 2012. www.westernresourcesadvocates.org.

Roberts, Darwin P. 'The Legal History of Federally Granted Railroad Rights-of-Way and the myth of Congress's '1871 Shift''. *University of Colorado Law Review* 82 (2011): 85-166.

Robertson, Lindsay G. *Conquest by Law; How the Discovery of America dispossessed Indigenous Peoples of their lands*. Oxford University Press, 2005.

Robinett, Dan. 'Tohono O'odham Range History.' *Rangelands* 12, no. 6 (1990): 296-300.

Rodda, Jeanette. 'Chug Wagons and Benzine Buggies: Arizona's Automotive Pioneers.' *The Journal of Arizona History* 34 no. 4 (1993): 391-418.

Rohe, Randall. 'Man and the Land: Mining's Impact in the Far West.' *Arizona and the West* 28 no. 4 (1986): 299-338.

Roslund, Linda Hummel. 'History of the Hummel Ranch.' *Kentucky Camp Chronicle* (2006): 1-7.

Samson, Colin. *A World You Do Not Know: Settler Societies, Indigenous Peoples and the Attack on Cultural Diversity*. London: University of London Press, 2014. <http://humanities-digital-library.org>

San Carlos Apache. 'Sovereignty 1.0'. Accessed 21 April 2018. www.sancarlosapache.com.

San Pedro Riparian National Conservation Area. 'Information Leaflet.' *The Friends of the San Pedro River*. Published by the Tucson Field Office, Bureau of Land Management.

San Xavier Mission. 'History.' Accessed 22 January 2019. <http://sanxaviermission.org>.

San Xavier Mining and Smelting Company. 'Correspondence 1880-1881.' University of Arizona Special Collections. MS 307 Box 4

Schlieffelin, Ed. 'History of the Discovery of Tombstone.' University of Arizona Special Collections.

Schultz, Jeffrey. *Are we not Foreigners Here? Indigenous Nationalism in the U.S.-Mexico Borderlands*. University of North Carolina Press, 2018.

The Senate. 'Landmark Legislation: The Pacific Railway Act of 1862.' Accessed 18 Mar 2021 www.senate.gov/

Seymour, Deni. 'In Search of the Sobaipuri-Pima: Archaeology of the Plain and Subtle.' *Archaeology in Tucson* 7 no. 1 (1993): 1-4.

Seymour, Deni. 'The Sobaipuri.' Last modified 2017. <http://www.seymourharlan.com>.

Seymour, Deni. 'The Sobaipuri-O'odham Presence at Guevavi Mission.' *Archaeology Advisory Commission Newsletter* (2013): 7-15.

Seymour, Deni. 'How the Apache became Formidable Warriors.' *Globe Miami Times* (2019): 2-4.

Seymour, Deni. 'Sobaipuri-O'odham Sonoita Creek Spanish Colonial Period Villages Identified'. Last updated 2015. www.seymourharlan.com

Sheridan, T. E. and Bill Broyles. 'First Europeans to Forty-niners, 1540-1854,' in *Last Water on the Devils Highway*, edited by Bill Broyles. Tucson, Arizona: University of Arizona Press, 2014.

Sheridan, Thomas E. *Los Tucsonenses: The Mexican Community in Tucson 1854-1941*. Tucson, AZ: University of Arizona Press, 1992.

Sheridan, Thomas E. *Landscapes of Fraud: Mission Tumacacori, The Baca Float, and the Betrayal of the O'odham*. Tucson, AZ: University of Arizona Press, 2006.

Sheridan, Thomas E. *Arizona: A History*. Tucson AZ: University of Arizona Press, 2012.

Shils, Edward. 'The Sociology of Robert E. Park.' *The American Sociologist* (Winter 1996): 88-106.

Shoemaker, Jessica A. 'Complexity's Shadow: American Indian Property, Sovereignty and the Future.' *Michigan Law Review* 115 (2017): 487-552.

Singh, Madan M. Dr. *Water Consumption at Copper Mines in Arizona: Special Report 29*. Phoenix, AZ: State of Arizona, Depart of Mines and Mineral Resources, 2010.

Smith, J. Craig and Scott M. Ellsworth, 'Public Trust vs Prior Appropriation: A Western Water Showdown'. *Natural Resources & Environment* 31 no. 1 (2016): 18-22.

Smith, Linda Tuhiwai. *Decolonising Methodologies: Research and Indigenous People*. London: Zed Books, 2012.

Solnit, Rebecca. *Savage Dreams: A Journey to the Hidden Wars of the American West*. Berkeley, CA: University of California Press, 1994, 2014.

Sonnichsen, C. L. *Colonel Greene and the copper Sky Rocket*. Tucson, AZ: University of Arizona Press, 1974.

Soodalter, Ron. 'George Hearst'. Accessed 18 July 2020. <https://truewestmagazine.com>.

Soullière, Laura and Paul J. Neidinger. Heart of the Empire: Historic Structure Report, Empire Ranch, Arizona. *National Park Service: Empire Ranch Foundation*. 1992.

Southern Pacific Historical and Technical Society. 'History of the Southern Pacific'. Accessed 18 Mar 2021. <https://sphts.org>.

Spicer, Edward H. *Cycles of Conquest: The impact of Spain, Mexico and the United States on Indians of the Southwest, 1533-1960*. Tucson AZ: University of Arizona Press, 1967.

Squillace, Mark. Grazing in Wilderness Areas. *Environmental Law* Vol. 44 (2014): 415-446.

St. John, Rachel. *Line in the Sand: A History of the Western United States-Mexico Border*. Princeton: Princeton University Press, 2011.

Staudemaier, L. William. Arizona Groundwater Law. *The Water Report: Water Rights, Water Quality and Water Solutions in the West*. Issue 33(2006): 1-11.

Stein, Pat H. *Historic Trails in Arizona from Coronado to 1940*. State Historical Preservation Office. Phoenix, Arizona, 1994.

Steinmetz, George. 'Social fields, subfields and social spaces at the scale of empires.' *The Sociological Review Monographs*, 64: 2 (2016): 98-123.

Stewart, Ron, 'The Boquillas Land Grant and the Evictions of 1906'. *Friends of the San Pedro River Round Up*, (Summer 2013).

Sweeney, Edwin. *From Cochise to Geronimo: The Chiricahua Apaches, 1874-1886*. Oklahoma: University of Oklahoma Press, 2010.

'Sweetwater Preserve.' *Pima County Natural Resources*. Accessed 3 March 2016. www.webcms.pima.gov

Szelenyi, Iván. 'Weber's theory of domination and past-communist capitalisms.' *Theoretical Sociology* No. 45 (2016): 1-24.

Szymanski, Joe. 2016. *The Tohono O'odham Nation: A Case for Sovereignty*. Center for a Stateless Society. Last modified 2016. <https://c4ss.org>.

Tenney, James Brand. *History of Mining in Arizona*. Arizona Bureau of Mines, 1927-1929.

Thomas, Heather Smith. 'History of Public Land Grazing.' *Rangelands*, 6, no. 6 (December 1994): 250-255.

The Trust for Public Land 'A traditional harvest at Saguaro National Park.' Last modified 3 September 2020. <https://www.tpl.org/blog>

Thrapp, Dan L. *The Conquest of Apacheria*. Norman, OK: University of Oklahoma Press, 1967.

Todd, Cecil. 'Metal Mining and its Associated Industries in Tucson.' *The Journal of Arizona History*, Vol. 22. No 1 (1981): 99-128.

Tohono O'odham: History of the Desert People. Published by S.I.s.n: the National Endowment for the Humanities, 1985.

Tohono O'odham. *Tohono O'odham History 1916 to Present*. Accessed 1 October 2017. www.tonation-nsn.gov.

Tombstone Epitaph. 'Picnic Next Month.' 30 Aug 1914.

Trollop, Anthony. *The Way We Live Now*. Penguin Classics, 1875. Kindle.

Truett, Samuel. *Fugitive Landscapes: The Forgotten History of the U.S.-Mexico Borderlands*. New Haven: Yale University Press, 2006.

Underhill, Lonnie E. 'The "Autobiography" of a Frontier Newspaper: *The Tombstone Epitaph*, 1880-1885.' *The Journal of Arizona History*, Vol. 56 No. 2 *2015): 111-144.

United States Bureau of Land Management. *Approved Las Cienegas Resource Management Plan and Record of Decision*. BLM: Arizona; Tucson Field Office, 2003.

United States Bureau of Land Management. 'Desert Land Entries.' Accessed 13 Sept 2018. www.blm.gov.

United States Bureau of Land Management. *Mining Claims and Sites on Federal Lands*. U.S. Department of the Interior, 2010.

United States Bureau of Land Management. *Final Environmental Impact Statement for the Rosemont Copper Project*. Department of the Interior, BLM: Tucson Field Office, 2013.

United States Bureau of Land Management. 'San Pedro Riparian National Conservation Area.' Accessed 15 July 2019. www.blm.gov.

United States Climate Data. 'Average rainfall: Tucson.' Accessed 2019-2021 www.usclimatedata.com.

United States Department of the Interior Bureau of Indian Affairs. 'Appendix D: Indian Nations.' *The American Indian Digest* (1997).

United States Department of the Interior Bureau of Indian Affairs. '25 CFR Part 83: Federal Acknowledgement of American Indian Tribes; Final Rule.' *Federal Register* 80, no. 126 (2015).

United States Department of the Interior Bureau of Indian Affairs. 'Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs.' *Federal Register*. Last modified 29 January 2021. www.federalregister.gov.

United States Department of the Interior: General Land Office. *Annual Report of the Commissioner of the General Land Office to the Secretary of the Interior, 1885*. Accessed 28 March 2020. www.babel.hathitrust.org.

United States Department of the Interior: General Land Office. *The Unappropriated Public Lands of the United States; by Counties, Land Districts and States, on July 1, 1909*. Washington D.C.: Government Printing Office.

United States Department of Justice. 'Federal Trust Doctrine First Described by US Supreme Court.' Online. Last modified 2015. www.justice.gov.

United States Forest Service. 'Coronado National Forest.' Accessed 15 August 2020. <https://www.fs.usda.gov/coronado>

United States Forestry Service. 'Timeless Heritage: A History of the Forest Service in the Southwest.' Accessed 13 May 2020. www.fs.usda.gov.

United States Forest Service. 'Kentucky Camp History.' Accessed 20 May 2016. www.usda.gov

United States General Accounting Office. *Report to Congressional Requesters: The Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico*. Last modified 2004. Document number GAO-04-59.

United States General Land Office. 'Land Patents for the Hummel Family.' Accessed 20 May 2016. www.glorerecords.blm.gov.

United States General Services Administration. 'Government Property for Sale or Disposal.' Last modified 29 June 2021. www.gsa.gov.

United States Geological Survey 2010. 'Table: Land Area and Water Area of Each State'. Last modified 2010. www.usgs.gov

United States Geological Survey. *Commodities Summaries 2021*. Reston, VA: U.S. Geological Society. Last modified 2021. <https://minerals.usgs.gov/minerals/pubs/mcs/>

United States Office of the Historian. 'Gadsden Purchase, 1853-1854.' Accessed 13 Jan 2019. <https://history.state.gov/>

United States National Park Service. 'Casa Grande Ruins National Monument.' Accessed 15 August 2020. www.nps.gov/casagrande.

United States National Park Service. 'Written Historical and Descriptive Data: Empire Ranch.' *Historic American Landscapes Survey*. Washington D.C.: United States National Park Service, 2016.

United States National Park Service. 'Chapter 9: GAC and the Empire Ranch.' *Tumacacori: Historic Resource Study*. Accessed 20 May 2016. www.nps.gov.

United States National Park Service. 'Organ Pipe Cactus National Monument.' Accessed 18 July 2018. www.nps.gov.

United States National Park Service. 'Saguaro National Park.' Accessed 1 August 2018. www.nps.gov.

United States National Parks Service. 'The Chihuahua Desert.' Last modified 2018.
www.nps.gov.

Department of Forestry and Natural Resources, University of Kentucky. 'Information. Accessed 28 Jul 2021. <https://forestry.ca.uky.edu>.

Utley, Robert M. *A Clash of Cultures; Fort Bowie and the Chiricahua*. National Park Service, Washington D.C., 1977.

Van Horn, Lawrence F. 'Dos Lomitas Ranch Historic Nomination.' *National Register of Historic Places*. Department of the Interior, National Park Service, 1994.

Veracini, Lorenzo. *Settler Colonialism: A Theoretical Overview*. London: Palgrave Macmillan, 2010.

Veracini, Lorenzo. *Settler Colonial Present*. London: Palgrave Macmillan, 2015.

W.W.G. 'Waters: Riparian Rights: Desert Land Act'. *California Law Review* 24 no. 3 (1937): 349-352

Wagoner, Jay J. 'The History of the Cattle Industry in Southern Arizona 1540-1940'. MA Thesis: Department of History, University of Arizona, 1949.

Wagoner, Jay J. *The History of the Cattle Industry in Southern Arizona*. Tucson, AZ: University of Arizona Press, 1952.

Wagoner, Jay J. *Arizona Territory 1863-1912: A Political History*. Tucson, AZ: University of Arizona Press, 1970.

Wagoner, Jay J. *Early Arizona; Prehistory to Civil War*. Tucson, AZ: University of Arizona Press, 1975.

Wallace, Anthony F.C. *Jefferson and the Indians: The Tragic Fate of the First Americans*. Cambridge Mass; The Belknap Press of Harvard University Press, 1999.

Weaver, John C. *The Great Land Rush and the Making of the Modern World, 1650-1900*. Montreal, Canada: McGill Queens University Press, 2003.

Werner, George C. *The History of the Southern Pacific*. Texas State Historical Association. Accessed 18 March 2021. www.tshaonline.org.

Weingarten, Debbie. 'The Desert Blooms'. *Rodales Organic Life* 2 no. 6 (November 2016): 78-85.

Weston, William. 'The Power Elite and the Philadelphia Gentlemen'. *Sociology* 47 (2010): 138-146.

White House, The. 'President Ford Papers 1974. Box 15, Folder 12/22/74 HR 7730.' White House Records Office. Accessed 29 July 2021. www.whitehouse.gov

White, Richard. *'It's Your Misfortune and None of My Own: ' A New History of the American West*. Norman OK: University of Oklahoma Press, 1991.

Wilkins, David E. *American Indian Politics and the American Political System*. Lanham, Maryland: Rowman and Littlefield, Inc., 2011.

Williams, O. C. State Land Commissioner. 'Land Code of the State of Arizona including Federal Land Grants and State Laws Appertaining to State Lands and Water, 1943.' *Arizona State Land Department*. Arizona Historical Society, call number 333.3 A7191 1943.

Wilson, Eldred D., J.B.Cunningham and G.M. Butler. *Arizona Lode Gold Mines and Gold Mining*. Tucson, AZ: Arizona Bureau of Geology and Mineral Technology, University of Arizona, 1967.

Wirth, Louis. *On Cities and Social Life: Selected Papers; edited by Albert J. Reiss Jr.* University of Chicago Press, 1964.

Witkind, Max and Keith Hughes. 'Pronghorn on the Empire.' *Empire Ranch Foundation News* 5 no. 1 (2004): 3-4.

Wolfe, Patrick. 'Settler Colonialism and the elimination of the native.' *Journal of Genocide Research*, 8, no. 4 (2006): 387-409.

Worcester, Donald E. *The Apaches, Eagles of the Southwest*. Norman, OK: University of Oklahoma Press, 1979.

Worster, Donald. *Rivers of Empire: Water, Aridity, and the Growth of the American West*. New York, NY: Oxford University Press, 1985.

Young, Otis, E. *Western Mining: An Informal Account of precious-metals prospecting, placering, Lode Mining, and milling on the American Frontier from Spanish times to 1893*. Oklahoma: University of Oklahoma Press, 1970.

Miscellaneous and Unpublished Documents

Miscellaneous Mining documents. Located in University of Arizona Special Collections. MS 307 Boxes 1-3.

Federal Acts of Congress

Arizona Enabling Act. 'Chapter 310: Enabling Act for Arizona and New Mexico (sections 19-35).' June 20, 1910. Accessed 23 July 2018. <https://land.az.gov>. 568-579.

Arizona 1864 Mining Law, Territory of Arizona. Prescott, AZ: Office of the *Arizona Miner*, January 1, 1865. Accessed 28 June 2021. <https://archive.org>.

Arizona State Constitution – ‘Constitution of the State of Arizona.’ 1912. Accessed 18 July 2020. <https://azmemory.azlibrary.gov>.

Articles of Confederation. Agreed to by Congress November 15, 1777; ratified and in force, March 1, 1781. Accessed 19 August 2018. www.usconstitution.net.

Constitution of the United States. September 17, 1787. Accessed 2 August 2018. www.archives.com.

Executive Order 2300 Establishing Papago Sells Reservation. 1916. Accessed 16 June 2021. Proquest.

Executive Order 2524 Revising land provisions for the Papago Sells Reservation. 1917. Accessed 16 June 2021. Proquest.

Executive Order 541 Establishing Chiricahua and San Carlos Apache Reservations, Chiricahua Apache reservation cancelled 1876, Executive Order 600. 1872. Accessed 20 March 2019. www.loc.gov.

Executive Order 572 Establishing San Xavier Papago Reservation. 1874. Accessed 20 March 2019. www.loc.gov.

Fifty-first Congress. Leasing and Grazing Act – ‘Chapter 383: An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and eighty-seven, entitled “An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes.” February 28, 1891. Accessed 29 July 2021. <https://uscode.house.gov>. 794-796.

Fifty-first Congress. U.S. Court of Private Land Claims – ‘Chapter 539: An Act to establish a court of private land claims, and to provide for the settlement of private land claims in certain states and territories.’ 1891. Accessed 20 March 2021. www.loc.gov. 854-862.

Fifty-ninth Congress. Reclamation Act 1906 – ‘Chapter 3559: An Act Providing for the subdivision of lands entered under the reclamation Act, and for other purposes.’ June 27, 1906. Accessed 9 April 2020. www.loc.gov. 519-520.

Forty-first Congress. Act of March 3rd, 1871, known as Grant’s Peace Policy – ‘Chapter 120: An Act making appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June thirty, eighteen hundred and seventy-two, and for other Purposes.’ March 3, 1871. Accessed 20 March 2021. www.loc.gov. 544-571.

Forty-first Congress. ‘Chapter 55-59: An Act to Repeal an Act entitled “An Act for the Survey of Grants or Claims of Land,” approved June second, eighteen hundred and sixty-two.’ Feb 28 1871. 416.

Forty-first Congress. Placer Mining Act – ‘Chapter 235: An act to amend ‘An act granting the right of way to ditch and canal owners over the public lands, and for other purposes.’ July 9, 1870. Accessed 1 August 2021. www.miningrights.com.

Forty-fourth Congress. Chapter 107: An act to provide for the sale of desert lands in certain States and Territories. March 3, 1877. 377

Forty-Fourth Congress. Desert Land Act – ‘Chapter 107: An act to provide for the sale of desert lands in certain States and Territories.’ March 3, 1877. Accessed 11 January 2020. www.loc.gov. 377.

Forty-ninth Congress. Dawes Settlement and Allotment Act – ‘An Act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.’ February 8, 1887. Accessed 12 July 2018. www.ourdocuments.gov.

Forty-third Congress. Desert Land Act Amendment 1891 – ‘Chapter 14: Grants of Desert Lands to States for Reclamation.’ March 3, 1891 (part of General Land Revision Act, 1891, also called the Carey Act). Accessed 30 July 2021. <https://uscode.house.gov>.

Forty-third Congress. Desert Land Act Amendment 1894 – ‘Chapter 301: Grant of desert land to States.’ Aug 18, 1894.

Gadsden Purchase Treaty – Gadsden Purchase Treaty. December 30, 1853. Accessed 10 June 2018 www.avalon.law.yale.edu.

General Land Revision Act. ‘Chapter 561: An act to repeal timber-culture laws, and for other purposes.’. March 3, 1891. Accessed 23 July 2021. www.minnesotalegalhistoryproject.org/. 1095-1103.

General Mining Law – ‘Chapter 152: Act of May 10, 1872, 17 Stat. 91. *Mining Claims and Sites on Federal Lands*. Bureau of Land Management, 2011. Accessed 23 July 2021. www.fs.fed.us.

Hedin, Douglas A. editor ‘The Land Revision Act of 1891.’ (8 June, 2012), www.minnesotalegalhistoryproject.org/

Howell Code – ‘The Howell Code: adopted by the First Legislative Assembly of the Territory of Arizona, 26 September – 10 November 1864.’ Prescott, AZ: Office of the *Arizona Miner*, 1865. Accessed July 20, 2018. <https://ualawlib.omeka.net>.

Indian Citizenship Act – Act of June 2, 1924, Public Law 68-175, 43 Stat. 253, ‘To authorize the Secretary of the Interior to issue certificates of citizenship to Indians.’ Accessed 10 November 2021. www.archives.gov.

Jackson, President Andrew. ‘First Inaugural address to Congress. March 4, 1829.’ Accessed 9 August 2018. www.avalon.law.yale.edu.

Land Ordinance 1785 - ‘Ordinance for ascertaining the Mode of disposing of Lands in the Western Territory, Continental Congress.’ May 20, 1785. Accessed 25 Jul 2018. www.loc.gov.

Louisiana Purchase Treaty - 'Treaty between the United States of America and the French Republic.' April 30, 1803. Accessed 17 September 2018. www.ourdocuments.gov.

McFarland, N.C. Commissioner of the General Land Office. 'Report No. 192, from 1883 – Certain Private Land Grants in Arizona Territory (To accompany bill H.R. 3235).' Forty-ninth Congress, House of Representatives, 1886.

Naturalization Act (1790) – 'An act to establish a uniform Rule of Naturalization.' March 26, 1790. Accessed 27 October 2019. www.mountvernon.org.

Naturalization Act (1795) – 'An act to establish an uniform rule of Naturalization; and to repeal the act heretofore passed on that subject.' January 29, 1795. Accessed 27 October 2019. www.mountvernon.org.

Northwest Ordinance – 'An Ordinance for the government of the Territory of the United States northwest of the River Ohio.' July 13, 1787. Accessed 25 Jul 2018. <http://avalon.law.yale.edu>.

One hundred and first Congress. Native American Graves Protection and Repatriation Act, Public Law No. 101-601. 1990. Accessed 20 November 2021. www.congress.gov.

Parker, Ely. 'First Report of US Commission of Indian Affairs.' 1869. Accessed 27 October 2019. www.pbs.org.

Preemption Act (also known as Distribution Act or Public Lands Proceeds Act) – Twenty-seventh Congress. 'Chapter XVI: An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights.' Sept 4, 1841, 453-458. Accessed 19 August 2018. www.loc.gov.

Protocol of Querétaro. February 2, 1848. Accessed 18 June 2018. www.mexica.net.

Reclamation Act 1902 – 'Chapter 1093: An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.' June 17, 1902. Accessed 9 April 2020. www.loc.gov.

Territory of Arizona. 'Constitution for the State of Arizona, as adopted by the Constitutional Convention, October 2, 1891.' Accessed 12 March 2020. <https://azmemory.azlibrary.gov>.

Thirty-first Congress. 'Chapter 61: An Act Granting the Right of Way and making a Grant of Land to the States of Illinois, Mississippi, and Alabama, in Aid of the Construction of a Railroad from Chicago to Mobile.' 1850. 466-467.

Thirty-ninth Congress. Lode Mining Act – 'Chapter 262: An act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes.' July 26, 1866. Accessed 23 July. 2021. <https://digitalcommons.csumb.edu>. 251-253.

Thirty-second Congress. 'Chapter 78: An Act to protect actual Settlers upon the Land on the Line of the Central Railroad and Branches, by granting Preemption Rights thereto.' 1852. 27.

Thirty-second Congress. ‘Chapter 80: An Act to grant the Right of Way to all Rail and Plank Roads and Macadamized Turnpikes passing through the Public Land belonging to the United States.’ 1852. 28-29

Thirty-seventh Congress. Abrogation of the Treaties – ‘Chapter 135: An Act making Appropriation for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes for the Year ending June thirtieth, eighteen hundred and sixty-three.’ July 5, 1862. 512-530.

Thirty-seventh Congress. Establishing the Territory of Arizona – ‘Chapter 56: An Act to provide a temporary Government for the Territory of Arizona and for other Purposes.’ 1863. Accessed 20 March 2021. www.loc.gov. 665.

Thirty-seventh Congress. Confiscation of Rebel property – ‘Chapter 195: An Act to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other Purposes.’ July 17, 1862. 589-592.

Thirty-seventh Congress. ‘An Act for the Survey of Grants or Claims Lands Chapter 90.’ 1862. Accessed 20 March 2021. www.loc.gov. 410-411.

Thirty-seventh Congress. Abrogation of the Treaties - ‘Chapter 101: An Act to protect the Property of Indians who have adopted the Habits of civilized Life.’ June 14, 1862. 427-428.

Thirty-seventh Congress. Homestead Act – ‘An act to secure homesteads to actual settlers on the public domain. May 20, 1862. Accessed 24 Jun 2021. www.docsteach.org.

Thirty-seventh Congress. Transcontinental Railroad Act - ‘Chapter 120: An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean and to secure to the Government the Use of the same for Postal, Military, and other Purposes.’ 1862. 489-498.

Thirty-third Congress. Office of Surveyor-General - ‘Chapter 103: An Act to establish the offices of Surveyor-General of New Mexico, Kansas and Nebraska, to grant Donations to actual Settlers therein, and for other purposes.’ July 22, 1854. 308-311.

Thirty-third Congress. ‘Chapter 245: An Act declaring the Southern Boundary of New Mexico.’ August 4, 1854. 575.

Thirty-third Congress. ‘Chapter 35: Act for the Relief of Settlers on Lands reserved for Railroad Purposes.’ 1854. 269.

Timber Culture Act – ‘Chapter 277: An Act to encourage the growth of Timber on Western Prairies.’ March 3, 1873. Accessed 11 March 2020. www.minnesotalegalhistoryproject.org/ 605-607

Townsites Act 1844 – ‘Chapter 17: An Act for the relief of citizens of towns upon the lands of the United States under certain circumstances. May 23, 1844. Accessed 8 December 2020. <http://minnesotalegalhistoryproject.org>.

Townsites Act 1867 – ‘Chapter 177: An Act for the Relief of the Inhabitants of Cities and Towns Upon Public Lands,’ March 2, 1867. Accessed <https://archives.utah.gov>

Trade and Intercourse Act 1790 – ‘An Act to regulate the trade and intercourse with the Indian tribes.’ June 23, 1790. Accessed 3 February 2021. www.loc.gov.

Treaty of Guadalupe Hidalgo – ‘Treaty of peace, friendship, limits, and settlement between the United States of America and the United Mexican States concluded at Guadalupe Hidalgo.’ February 2, 1848. Accessed 18 June 2018. www.mexica.net.

Treaty of Santa Fe – ‘Treaty with the Apache.’ July 1, 1852. Accessed 15 November 2021. <https://avalon.law.yale.edu/>.

Twenty-first Congress. Indian Removal Act - ‘Chapter 148: An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi.’ May 28, 1830. 411-412. Accessed 13 August 2018. www.loc.gov.

United States Public Law 102 Statute 3641, 10 November 1988, accessed 10 November 2021, <https://uscode.house.gov> .

Court Cases

Boquillas Land and Cattle Company v Curtis. 213 US 339 (U.S. Supreme Court, April 19, 1909). Accessed 20 May 2016. www.law.cornell.edu.

Herrick v Boquillas Land Cattle Company. No. 105 (U.S. Supreme Court January 2, 1906). Accessed 20 May 2016. <http://caselaw.findlaw.com>.

House Report 192, 1886. Certain Private Land Grants in Arizona Territory. 49th Congress 1st Session. January 29th 1886. House of Representatives. General Land Office report.

Howard v Perrin. 200 U.S.71, No. 110. (U.S. Supreme Court January 2, 1906). Accessed 7 July 2021 <https://supreme.justia.com>.

San Juan de Las Boquillas y Nogales *Titulo* (1833) translated 1897 for the U.S. Court of Private Land Claims.

Santa Clara County v Southern Pacific Railroad Company. Docket Number 118 US 394, 396. (United States Supreme Court 1885). Accessed 18 Jan 2019. <http://balletpedio.org>.

United States v. Southern Pacific, George Loomis et al. Case: 184 US 49 (22 Supreme Court, 285 1901) 46 Led. 425.

Miscellaneous Legal Documents

Annual Report of the Commissioner of the General Land Office to the Secretary of the Interior/ United States Department of the Interior, 1885. (General Surveyor, Tucson, Arizona, October 18, 1884) Page 59. <https://babel.hathitrust.org> (accessed 27 October 2020).

1862 'Landmark Legislation: The Pacific Railway Act of 1862,' *Senate*, accessed 18 Mar 2021 www.senate.gov/

1880 'Letter to Governor Safford, February 21, 1880,' *San Xavier Mining files* (Arizona History Society: call number MS 307 Box 4)

1888 'Letter to U.S. Surveyor General in Tucson, John Wasson to Secretary of Interior, January 30 1880,' *San Xavier Mining files* (Arizona History Society: call number MS 307 Box 4)