

**REIMAGINING LA SIERRA: HOW COMMUNAL LAND IS BEING
“RE-PERFORMED” IN THE SAN LUIS VALLEY**

A THESIS

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Fig. 1. The town of San Luis, Colorado, facing west with La Sierra visible in the distance (Photo by Author).

Introduction

There is an approximately 77,000-acre mountainous parcel of land in the San Luis Valley in southern Colorado that has been home to a long dispute over rights to the land (Lindner 2012b). The mountain, or La Sierra, as it is called in San Luis and the surrounding Rio Culebra villages is part of the Sangre de Cristo Land Grant, which was issued by Manuel Armijo, the provincial governor of Mexico, in 1843 (Montoya 2000). La Sierra follows the familiar trajectory of other communal lands tethered to Spanish and Mexican land grants in what is now the American Southwest. After the Mexican American War, common lands, in part due to weak treaty language and the U.S. method of confirming land grants were not awarded the same protections that there were under Mexican law. In many cases they were severed from the land grant and deeded to become private property (Correia 2013). Although La Sierra shared this same fate, it diverged from similar cases of enclosed commons, when in 2002 the Colorado Supreme Court sided with the plaintiffs of the *Lobato v. Taylor* case and restored particular historical use rights to the mountain tract (Lindner 2012a; *Lobato v. Taylor* 2002).

After the Mexican-American War, the Treaty of Guadalupe Hidalgo in 1848 ushered in a new dominant construction of land ownership and property. Common lands, which were central to the organization of Spanish and Mexican land systems, were in many instances not left intact (Correia 2008). A contributing factor to the separation of the vital commons from the land grant communities that depended on them was the result of a court decision in 1897. *United States v. Sandoval et al.*, 167 U.S. 278 (1897) determined that Mexico, not the land grant communities, held title to the common lands that were enacted before 1848 (Poling & Kasdan, 2001). The ruling set a legal precedent

which Ebright (2008) finds to be informed by a misinterpretation of Spanish and Mexican law, which in the case of community land grants, firmly tied communal property rights to individual tracts of privately owned land (Ebright 2008). This voiding of property rights initiated an era of deceptive and exploitative land grabbing in the Southwest that left many Mexican and Colorado citizens with nothing (Correia 2008).

In the twenty-first century the struggles over land rights have not expired. This thesis examines some of the elements of the historic commons and land dispossession under the imposed U.S. legal system in what is now the American Southwest. It explores how communities responded to and judiciously navigated imperfect legal mechanisms that did not support or protect communal land. In addition, it interrogates how property is *performed* and can be recognized as not merely an object, but informed by social, cultural and historical realities. From there it scrutinizes common misconceptions about private property and contextualizes and unpacks important histories and social legacies that are often cast as apolitical. It examines how acts of resistance and alternative conceptualizations of property are *performed* and “*re-performed*” on La Sierra from the imaginative to the ordinary. Finally, it explores the legal limitations of the *Lobato v. Taylor* case and the orchestrated efforts to “re-perform[]” property on La Sierra despite these imperfections, in an attempt to revitalize a unique connection to landscape and restore a system of communal governance. Ultimately, La Sierra remains a contended form of landscape with competing conceptualizations of property, governance, stewardship and relationship to land. I assert that these constructs are all intricately connected and rooted in what it means to *perform* and ultimately “re-perform[]” property on La Sierra.

Methods

This thesis draws from the existing literature, legal testimony and the arduous efforts of activists, scholars and legal experts. During a two and a half week period in San Luis, Colorado, I conducted semi-structured interviews with individuals connected to La Sierra in numerous ways. Some are heirs of the original settlers of the of the Sangre de Cristo Land Grant, activists, grazers as well as members and leaders within the Lands Rights Council (LRC), the organization that spearheaded the *Lobato v. Taylor* law suit, and is committed to “perserv[ing] the mountain’s natural resources for years to come” (Land Rights Council, INC). As Weiss (1994) describes in his work on methods, this gave me the opportunity to speak with a “panel” from a formal organization rather than simply a “sample.” Although the body of my questions remained the same throughout the interview process, many interviews were tailored to the interests or expertise of particular individuals. In addition, I added and dropped particular questions, as I became more aware of leads that were important to follow and previously held assumptions that did not hold weight. I also had the opportunity to participate in what Dewalt & Dewalt (2002) refer to as moderate or passive participation as I sat in on a community meeting pertaining to land issues, as well as economic development meetings.

A Commons for What? A Commons for Whom?

“You’ve been tied to it. It’s been a part of your history. That mountain there, it was set up that way so people would settle here. If you think about it, if they did not have access to that mountain, it would have been tough” (Franklin Kuhn, Interview by Author 2016).

It is important for readers to understand the role of communal land within Mexican and Spanish land grant systems. Firstly, one must recognize that communal lands were not inherent to all presentations of this land tenure system. Montoya (2000)

distinguishes between three different types of land grants that could be conferred by a Mexican governor. The first was an individual grant, which was often given by the governmental powers at be as a sign of gratitude for successfully completing an act or duty. The second was an *empresario* grant, a type of grant that was larger than an individual grant and typically situated in remote regions. These grants were beneficial to the government in the sense that they would expand and strengthen the margins of Mexico's territory (Montoya 2000). The *empresario* would sell land to others with the intent to work the land in order to promote settlement on the periphery of the state. The final genre, the community land grant, was the result of a collective of people who would request a tract of land to settle in cohort. Settlers would receive private sections of land for their personal usage. These tracts included a place for a house, known as a *solar* and an area for farming, or a *suertes* (Montoya 2000). The sections of the grant that were not private were communal lands, and provided important resources such as food, herbs, plants, wood and a place to graze animals (Montoya 2000).

For people who owned a parcel within a community land grant, their use of the commons was not obstructed (Montoya 2000, 126). These common lands, however, were not open to everyone. It was reserved for the settlers as a "village-level resource" (Correia 2013, 35). Richard Olevas, an heir to the Sangre de Cristo Land Grant explains that the notion of the commons can sometimes be difficult for Americans to grasp: "the best pieces of property belong to no one," he explained (Richard Olevas, Interview by Author 2016). Settlers actively denied access to those who were not landowners within the grant and looked to the state to adhere to and reinforce this organization (Correia

2013). Correia (2013) stresses the importance of recognizing that communal land within the grant system is strictly bound to private property. He explains,

“These valuable private claims, however, were not possible without various common property obligations such as digging acequias, sharing common grazing areas, and comanaging and using uplands for hunting and gathering. Land grant property relations, in other words, developed in relation to particular conditions and circumstances as a way to manage and exploit important resources within the unique challenges of settling a dangerous and semiarid region” (Correia 2013, 35).

In other words, what is important to realize is that communal lands were carefully constructed “complementary” types of land. They were intended to optimize the ability of settlers to survive in a harsh and sometimes unforgiving environment in partnership with private tracts of land (Correia 2013, 35).

Although the Sangre de Cristo Land Grant did not begin under the typical community land grant origins that Montoya (2000) outlines (she explains that community land grants were enacted when a community approached a governor to ask for a parcel of land to settle), the Sangre De Cristo Land Grant assumed the function of a community land grant as parcels of land were set aside for the communal use of the settlers. In 1863 these rights were penned by a man named Carlos Beaubien, the father of one of the original grantees, in what is known as the Beaubien Document, before he sold the grant to a man named William Gilpin, the first territorial governor of Colorado in the following year (Montoya 2000). Before his death, Beaubien laid out in writing the usufructury rights to the communal property where settlers could practice wood and timber collection and were ensured access to water and space to graze (Montoya 2000, 129).

In a section from a translation of the 1863 Beaubien document, one can indeed recognize that access to the commons was designated to the nineteenth century settlers who

lived within the boundaries of the grant, and that the communal land was governed by rules that were intended to prevent the destruction of resources. This particular section from an English translation of the document refers to the *Vega*, a low land commons that is part of the Sangre de Cristo Land Grant.

“The vega, after the measurement of three acres from it in front of the chapel, to which they have been donated, will remain for the benefit of the inhabitants of this plaza and those of the Culebra as far as above the plaza of Los Ballejos...Likewise, each one should take scrupulous care in the use of water without causing damage with it to his neighbors nor to anyone. According to the corresponding rule, all the inhabitants will have enjoyment of benefits of pastures, water, firewood and timber, always taking care that one does not injure another” (*Lobato v. Taylor* 2002).

This particular section of the Beaubien Document reflects what is known about communal lands on other Spanish and Mexican land grants. Their usage was tied to individual lots of privately owned land and these spaces provided important resources for communities (Correia 2013). This document also signals an environmental awareness, and a requirement to not burden the land to the point where important resources will not be available to all. Ebright (2008) has also documented rules and customs pertaining to land and resource use that were tied to communal lands. Enclosing or severing communal land was not only divergent from Spanish and Mexican law, but the denial of access to these spaces was particularly disruptive for communities that depended on its resources (Correia 2013). In the case of the Sangre de Cristo Land Grant, Lindner (2012a) identifies how access to La Sierra was denied in various forms after the land was sold to Gilpin, but the most highly publicized modern events came with the purchase of the mountain tract in 1960.

The Modern Day Land Rights Struggle

“A lot of people left the Valley when Taylor took over because they could not access La Sierra to get what they needed” (Junita Martinez, Interview by Author 2016).

Before La Sierra was called Cielo Vista Ranch (as it is called by the current land owners) it was known as the Taylor Ranch and was owned by the Taylor family for almost forty years. Jack Taylor, a lumberman from North Carolina, purchased the property in 1960. Upon Taylor’s acquisition of the property, he barred Hispano heirs of the Sangre de Cristo Land Grant access to historical use rights. As the landowner, he saw the land users as violating his private property rights (Montoya 2005; Lindner 2012b). In the 1990’s Taylor began an extensive logging operation in the highlands, which fueled opposition in the valley below and kicked off protests that received national attention (Lindner 2012b; Lindner 2013; Farmer 1996). The acequia farmers in the valley rely on the high forests in the Culebra basin to protect the watershed. Junita Martinez, who sits on the acequia board in San Luis, described the impact that it had on the downstream users. “We are attached. The watering system is attached to that land, to the mountain... they took out all of those logs, and you should see the environmental impact that that had” (Junita Martinez, Interview by Author 2016). The protests drew support from across the region, and attracted well-known environmental groups such as the Ancient Forest Rescue, Greenpeace and Earth First! (Farmer, 1996). This set into motion heated feuds as the owner of the ranch fought to keep heirs of the Sangre de Cristo Land Grant off the mountain tract and heirs fought for the recognition of their historical use rights (Lindner 2012b).

The protests against the logging in the 1990s received a significant amount of attention, but it was not the first time that the residents of San Luis and the surrounding villages had defended their right to the mountain tract. In 1981 a group of landowners and heirs to the Sangre de Cristo Land Grant, filed a lawsuit on the grounds that they had rights to La Sierra (Lindner 2012a). After a long history of resistance and struggle for access rights to La Sierra, the Colorado Supreme Court ruled in favor of the plaintiffs and awarded them the rights to graze, harvest timber and collect firewood. This decision came about in 2002, more than twenty years after the original lawsuit was filed against Taylor, and more than forty years since access to La Sierra was severed (Curtin 2005, Lindner 2012a, *Lobato v. Taylor* 2002). Although this was an incredible victory for the descendants of the land grant settlers, it is important to note that although locals were able to once again use the land, the court defined access in a limited way, permitting certain activities while forbidding others This presents a very interesting case for how communal governance is partially reinstated, practiced and affirmed in this example of a *partial commons* (Lindner 2013).

Performing Property

Property: “a bundle of sticks, with which one can beat one’s neighbor” (Blomley 2004 as cited in Correia 2013, 7)

Performing property, which Correia (2013) identifies as an often-neglected facet of how we understand the concept of ownership, has a dynamic legacy in the American Southwest. Correia (2008 & 2013) discusses how property ownership was not only affirmed in legal deeds, but was actively pronounced by the carrying out of particular

actions. In this way, property is a *performance* (Correia 2008 & 2013). Not only were particular conceptions of property challenged with the arrival and presence of different cultural groups, but the processes by which property was recognized were also transformed. The signaling of ownership to those both participating in some form of ownership and those who were not changed as different communities inhabited land in the Southwest (Montoya 2005). Montoya (2005) illustrates this notion in her work focusing on the Maxwell Land Grant. She writes, “From the moment that its first human inhabitants, the Jicarilla Apaches, set foot on what would become known as the Maxwell Land Grant, people told stories that marked boundaries on the landscape” (Montoya 2005, 19). Montoya (2005) emphasizes these shifting conceptions and practices by chronicling the Jicarilla’s recognition of territory as a practice delineated by the land’s topography. They identified their land in relation to the four rivers that surrounded their territory (Montoya 2005).

The arrival of the Spanish introduced new methods of establishing and recognizing land ownership. This is particularly obvious in Gen. Juan de Ulibarrí’s exploration of regions inhabited by the Jicarilla Apache in 1706. The Spanish practice of conveying ownership was embodied in assigning names to features in the landscape. The act of giving a mountain a name, for example, was synonymous with labeling it as claimed. In an account of his exploration, it is described that members of the Jicarilla Apache tribe guided Ulibarrí through a landscape that they knew well. To Ulibarrí however, the unfamiliar terrain was “terra incognita” (Montoya 2005, 26). Despite the Jicarilla’s recognition of particular features, Ulibarrí insisted on naming a river that was already known, and named prior to his arrival (Montoya 2005). Later, when land grants

began to be distributed in the Southwest, figures like Carlos Beaubien and Gaudalupe Miranda would establish ownership by using maps to outline the boundaries of their property as well as other performances that demonstrated “the physical act of taking possession” (Montoya 2005,19).

This performance was showcased by the Spanish settlers who received individual home lots known as *solares* as well as rights to communal land for grazing, hunting and other subsistence practices. Individuals who commemorated a new grant: “plucked up herbs, leaped, cast stones, and shouted with joy” (Correia 2008, 91). The representation and confirmation of land governance was expressed visually and reaffirmed by the continued use of the allotted land (Correia 2008). Recipients of Spanish and Mexican land grants would participate in other practices that also fell into the “tradition of conveying property” (Montoya 2005, 33). This would entail the recipients walking the circumference of the property. They used the topography of the land as a way to identify the peripheries of the grant and would make use of cairns in places that lacked these delineating features. Their scouting would result in a map depicting the extent of the grant (Montoya 2005). Taking ownership of the property was also exemplified by a demonstration, which in the case of the Maxwell Land Grant was led by a Justice of the Peace. “[He] took them by the hand, walked with them, caused them to throw earth, pull up weeds and show other evidences of possession” (Montoya 2005, 33). According to Montoya (2005) this staging functioned as an indicator that the land was now in their possession and signified their intent to work the land and better their new acquisition.

The vivid descriptions of these practices that Montoya (2005) illustrates bolster Correia’s (2013) argument that challenges us to view property outside of familiar tropes.

He asserts that property is more than just an object to be possessed, but rather a set of relationships, which he demonstrates in his account of the history of disputes surrounding the Tierra Amarilla Land Grant in New Mexico (Correia 2013). As Bloomley (2003) defines it, property can be thought of as more than, “apolitical, impersonal and inevitable” (Correia 2013, 6). Property, instead, is an ongoing exchange between both owners and outsiders to establish and reaffirm particular notions of ownership and relationship to land while challenging others (Correia 2013). As Correia (2013) defines it, “Property, in other words, is about social orderings: who gets what, who gets excluded, and how” (Correia 2013, 7). In order to understand the conflict over La Sierra, it is important to understand Correia’s (2013) plea to nuance how we understand property. Property gains legitimacy through performance. We must not limit our definition of ownership as only a preserved or ancient right, but rather see property as an active and continuous process that gains standing only through its continued reproduction (Lindner 2013, Correia 2013).

Performances of Access and Resistance on the Sangre de Cristo Land Grant

In the modern day conflicts over La Sierra, both the assertion of land use rights and governance have not lost their performative components. Lindner (2013, 12) describes how property and control in the San Luis Valley is expressed as an active “process.” Prior to the arrival of the Taylors in 1960, even though the tract of land was technically private property, the space was not enforced as such. Land users and grazers moved on and off the mountain with little interference from the previous owner (Lindner, 2013). The Taylors engaged in the performance of property by establishing clear

borders, putting up fences and hiring armed guards to reinforce these boundaries. Taylor's actions exemplified how competing notions of control and rightful use of property remains active and ongoing (Lindner 2012a; Lindner 2012b). Alternative performances of property and performances of resistance have a legacy not only within the larger land grant history, (Correia 2013) but also in relation to the Sangre de Cristo Land Grant (Lindner 2012a; Lindner 2012b; Lindner 2013, Peña 2003). Huberto Maestas remembers an incident in which Taylor blocked a gate that was used to access La Sierra in Cañón. According to Maestas, he dug a trench that prohibited anyone from entering, but a response came from an unlikely source, the local sheriff. Huberto explains, "He [Taylor] was up there digging trenches to keep people from driving through, so the local law enforcement went up there with his own tractor and put dirt back in the trenches so people could continue to drive through. That says a lot" (Huberto Maestas, Interview by Author 2016). This story demonstrates that performances of property can assume diverse forms. It speaks to Blomley's (2012) idea that simple or "mundane" acts, such as digging or filling a trench, communicate a larger message about access and ownership (Blomley 2012, 23).

Even after the passing of *Lobato v. Taylor* in 2002, active assertions of private property by the ranch ownership have continued (Lindner, 2013). Adolpho Lobato, an heir to the Sangre de Cristo Land Grant, recalls a time when he states he was rightfully hunting on the land next to Cielo Vista and was confronted and assaulted by guards hired by the ranch owners (Lindner 2013). The court's decision in 2002 signified progress for Lobato, but it was not the ultimate end-all-be-all to the land rights struggle. Lobato comments, "We've gotten somewhere with [the case], and I hope it's not too late, like

they say...But for a lot of people it is too late. My descendants might enjoy something that I never did...but still we go out there, they still go against the courts, arresting us, and intimidating us, and beating us up. We're tired of that, you know?" (Lindner 2013, 17). Lindner (2013) reminds us here of the limitations of conceptualizing land governance and control as strictly judicial in nature. For it is clear that modes and expressions of governance and control are "ongoing" and reproduced and reaffirmed in many ways (Lindner 2013). To fail to recognize this element of land sovereignty, property and ownership which Lindner (2013) recognized post *Lobato v. Taylor*, and Correia (2008) identifies in other regional land grant disputes, is to neglect how struggles over contested landscapes manifest beyond the courtroom. In order for the rights of the plaintiffs in *Lobato v. Taylor* to be recognized, it is important to understand that simply granting legal access does not ensure that these rights will be honored, especially in spaces that have long histories of land disputes and alternative constructions of property (Lindner 2013).

Malleable Property: The "Myth" of Fee, Simple and Absolute

The *Lobato v. Taylor* case in many ways highlights not only the performative nature of property, but also begins to nuance a rigid and commonly held misunderstanding about property. Blomley's (2012) work as well as other progressive property scholarship is focused on challenging this misconception. Blomley (2012) looks to the work of Joseph Singer (1996) to explore what he calls the "ownership model," a concept that is "premised on consolidated, permanent rights vested in a single identifiable owner, identified by formal title, exercising absolute control, distinguished from others

by boundaries that protect the owner from non-owners by granting the owner the power to exclude” (Blomley 2012, 6). When viewed in this way, it is difficult to imagine property in any other form than strictly private in nature: *it’s mine. It’s off limits to you.* Blomley (2012) acknowledges this conception of property as being entrenched and hard to shake, but asks if this definition is an accurate description of property? (Blomley 2012).

Blomley (2012) takes a step beyond the assertions of progressive property scholars, and echoes the ideas of Singer, arguing that this dominant understanding of property inhibits our ability to institute other constructions of property, which he sees as an ethical dilemma. In addition, he argues this understanding is a distorted one. He quotes Singer (2000), who explains, “If we observe the operation of private property systems, we see that full consideration of property rights in the same person is the exception rather than the rule” (Blomley 2012, 7). In other words, there are sundry forms of property and ownership that are often overshadowed by forms based on the notion of exclusive individual ownership, even though these lesser thought of imaginations of property might in fact be more common (Blomley 2012).

Blomley (2012) starts to deconstruct the falsehood that property rights are rigid and purely meant to serve the self-interests of individuals. He asserts that it is much more tied to and influenced by society than is commonly believed (Blomley 2012). Take for example, the doctrine of prescription, the type of easement that was used in *the Lobato v. Taylor* case. Under the newly renovated Restatement of Servitudes, the requirements to qualify for an easement by prescription depend on the use of the land being “(1) open or notorious (2) continuous without effective interruption for 18 years (Colorado’s statutory

time period), and (3) either adverse of pursuant to an attempted but ineffectively conveyed grant” (Golten 2005, 486-487). In the *Lobato v. Taylor* case, a lower court had previously denied the prescriptive claim, on the grounds that the usage of the mountain tract was “neither exclusive nor adverse” (Golten 2005, 479). For legal scholars who may be familiar with these types of easements, this may come as no surprise, but to the layperson these legal mechanisms may diverge from common understandings of property. Common law does not enable property owners to forget about their possessions once they sign the deed. Instead, it encourages property owners to actively participate in the performance of ownership: put up fences, buy locks, and communicate to the world that *this is off limits* (Blomley 2012) If not, it gives others a pathway to stake their own claim. It is important to note, that prescription is only a use right, but in cases in which owners neglect to actively reinforce their holding, they may be required to relinquish the title, which is what is known as adverse possession (Cornell University Law School; Rose 1994).

Staking a Claim

Thinking about property as performance can be a way to understand property as more than just a physical object and rather view it as grounded in relationships. Blomley (1998) encourages us to consider the “social dimensions” of property, and in doing so evokes the idea of landscape as a tool for understanding the spaces around us: “The concept of landscape is a useful bridging device here, given its double meaning as both a material space and as a particular way of seeing space.” Blomley (1998) also discusses

the different ways in which collective claims to property are “staked out” by means of “material use, production, and representation” (Blomley 1998, 567).

Rose (1994) also explores the idea that property is a social phenomenon. Rose (1994) explains how the stability and legitimacy of an ownership claim depends on making that ownership clear to others. Rose (1994) then asks the question: how is it displayed or performed to others in ways that reaffirm its status? Thinking about a particular court case, she writes,

“Possession now begins to look even more like something that requires a kind of communication, and the original claim to property looks like a kind of speech, with the audience composed of all others who might be interested in claiming the object in question. Moreover, some venerable statutory law requires the acquirer to *keep on speaking*, lest she lose title through the odd but fascinating doctrine of adverse possession” (Rose 1994, 14).

Rose (1994) acknowledges that the performance of property is an act that is ongoing and in need of constant upkeep. For the individuals that have been involved in the struggle to access La Sierra as it has been used historically, their efforts have centered around not only asserting their right within the legal arena, but also focused on creating a narrative outside of the courtroom that identifies them as rightful and responsible users of the mountain tract. Both Lindner (2012a) and Gonzales (2007) have documented the way that this has taken place in a long history of grassroots activism. Some of the ways that narratives have been formed is through locally produced publications, expressions of art that have manifested as acts of resistance and protest (Gonzales 2007) and in assertions of land use and stewardship (Lindner 2012a).

For those involved in the land grant movement in San Luis, this active reproduction of message, as well as usage of the mountain tract, continues to be an important part of the struggle and their efforts to reinstate communal land governance.

Lindner (2013) identifies this process in his work which asserts “that sovereignty and property, as forms of boundary drawing, are unfinished and contested projects rather than abstract, achieved universals” (Lindner 2013). Lindner (2013) also argues that post *Lobato v. Taylor* there are still many ways in which the land dispute has not ended. La Sierra still remains a contested landscape (Linder 2013). Shirley Romero Otero, the current sitting president of the Land Rights Council (LRC) also speaks to the importance of a continuous process in fostering conditions that allow systems of communal governance to be successful. She explains, “people have to be educated and constantly reminded about what a land grant is, what it means to be an heir and what rights come with that. And people have to keep relearning that. I guess it’s just human nature, I don’t know what else to call it at this point in the struggle. But you have to keep reminding and re-teaching.” (Shirley Romero Otero, Interview by Author 2016).

Rose (1994, 17) pulls from Fish’s (1980) work and explores the idea of property as a “text.” In other words, it communicates a particular narrative to an “audience” (Rose 1994, 14). Again the “social nature” of property becomes very apparent here she argues that the act of declaring ownership or staking a claim essentially means nothing unless an audience is present to witness as well as legitimize the claim (Rose 1994, 4). Systems of property and the foundations of ownership do not rest solely on individuals, the integrity and durability of property claims depends on social relationships. Property is not an island. It is a network (Rose 1994).

Rendering the Obscure: Blending Two Institutions of Law

The debate surrounding the correct usage of La Sierra and who should rightfully have access to the land has been heated and reflective of a larger ideological dispute over systems of land ownership that began well over a century ago when the United States absorbed territory that formally belonged to Mexico after the signing of the Treaty of Guadalupe Hidalgo (Correia 2008). According to Correia (2008) part of the motivation for the acquisition of Spanish land and denial of the standing of the commons could be attributed to the fact that “[Spanish and Mexican] property claims and subsistence livelihoods were in the way of commercial exploitation” (Correia 2008, 89). This particular quote could easily be applied to La Sierra in the late 20th century, for Taylor saw the land grant community’s use of the mountain tract as a threat to his rights and commercial interests (Montoya, 2005). Bobby Hill, a Texan who owned the property in 2005, had this to say in an interview with the Denver Post: “I’m not interested in painting a historic, romantic, mystical picture of this. This is about communal sharing of private property. Five hundred people today, 1,000 tomorrow, sharing my land. What happened to private-property rights?” (Curtin 2005).

Hill’s sentiments embody a particular construct of land sovereignty, one that is based on the U.S. system of private property and does not recognize the Mexican system of governance (Montoya, 2005). But his comments also embody a particularly narrow view of private property within the U.S. legal system. This is the conception of property that Blomley (2012), has attempted to dispel. The United States has a long history of failing to recognize Spanish and Mexican land grants, which has been perpetuated not only through legal mechanisms, but also the deployment of particular rhetoric and

performances of property and the subsequent rejection of others (Lindner 2013; Correia 2008).

Montoya (2005) notes how in the case of *Espinoza vs. Taylor* (a former name of the *Lobato v. Taylor* suit) in which the plaintiffs were seeking access rights to La Sierra, the court had trouble balancing the two claims of communal and private land. According to Montoya (2005) the action of validating one essentially undoes the other. The acknowledgement of Hispano land users and their rights would have tricky implications for the institution of private property. The Sangre de Cristo Land Grant was intended to provide “usufructuary” rights to landowners and their descendants. This essentially meant that those who owned *solares* around the commons had the right to use the land as long as they were not depleting its resources or contributing to its destruction (Montoya, 2005). Montoya (2005) when examining Taylor’s self-proclaimed right to log, makes the assertion that these two systems of governance are at odds: “To recognize the usufructuary rights would be to shut down logging and mining operations and other aspects of sole and often despotic domination so tied to the free simple absolute that American citizens recognize as private property” (Montoya 2005, 4). It is this particular discord in the two constructs of land governance that makes them so hard to integrate or reconcile. Yet, the *Lobato v. Taylor* ruling challenges the understanding of these two systems of law as being strictly incompatible (Golten 2005; Lindner 2012a).

Despite this legal victory, there still may be elements of the court decision that are problematic. On the subject of loss of land grant lands in the Southwest, Ebright (2008) asserts that this dispossession can be attributed to the fact that “land grants were established under one legal system and adjudicated by another” (Correia 2013, 29).

Following his same line of thinking, perhaps there are limitations when historical use rights are established under a particular legal system and *restored* under another.

A Clear Commodity: How Capitalism Depends on Distinct Performances

The reliance on American law to deal adequately with a land tenure derived under a different legal system can be challenging and its shortcomings have been apparent. As Montoya (2005) argues, the two regimes embodied two distinct ways to conceptualize, enforce and display or *perform* property. Montoya (2005) explains how one stark distinction between the two regimes was that the Mexican system was rooted in “personal connection and patronage” (Montoya 2005, 2). The Beaubien Document exemplifies this difference, as Montoya (2005) asserts Beaubien’s intent to preserve usufructuary rights for the settlers on the grant was apparent for those who had studied and were familiar with this element of land grant history. Montoya (2005) explains that many of these land grant transactions did not rely extensively on written documentation: “The document’s ambiguity simply exemplified the way people did business in mid-nineteenth century New Mexico: people knew one another, tended to trust those with good reputations, and rarely asked for more-formal assurances” (Montoya 2005, 3). Montoya (2005) goes on to say that the fact that the settlers’ rights were even recorded was fairly unique since it was not a common practice in New Mexico at the time (Montoya 2005, 3). What was clear to those who understood this system may have seemed dubious to an outsider. The distinctions between the two systems were not only difficult for the U.S. to both

“translate” and “incorporate,” but also may have ruffled capitalist feathers (Montoya 2005, 2).

Montoya (2005) discusses a push by investors to chalk up titles in a way that would make them compatible with a capitalistic system (Montoya 2005, 117-118). This meant, “eliminate[ing] dependence on space-bound customary norms” (Montoya 2005, 118). She identified how this in turn led to severe land loss. She writes, “Moreover, the method of incorporation and land dispossession followed a similar path regardless of time period or location. Businessmen seeking maximum returns from their property investments transformed the nature of their land entitlement by regulating the recognition process and enforcement regimes” (Montoya 2005, 117). As Rose (1994) lays out in her book *Property and Persuasion*, stark classifications of property, meaning property that is defined in way that is widely understood and unquestionable has real economic benefits. Property can participate in a global economic market when it is clear-cut and discernable. It is difficult for something that is ill-defined to be incorporated into a capitalist system (Rose 1994). Rose (1994) and Montoya (2005) both highlight the benefits for particular groups in performing property in a particular way. Their analyses shed light on the idea that performance is dependent on who is watching. Language or practice that clearly indicates ownership on one stage, may receive little or no recognition from another audience.

Beyond the Pale: Using Mexican “Law and Custom” for Legal Contextualization

“Because [the Beaubien document], like any document, has to be interpreted. And one has to go beyond it to understand the geography. The document contains place names. One has to know where those place names are. It refers to different types of land. One

has to know what those lands are, where they are. All of those kinds of things are necessary in order to interpret such a document... (Marianne Stoller as cited in *Lobato v. Taylor 2002*).

The Colorado Supreme Court decision in 2002 was monumental, at least in its implications for understanding property. After decades of legal battles and struggle both inside and outside of the courtroom, the courts finally ruled in favor of the plaintiffs. This decision was striking, not only because it returned some historical use rights to the people of San Luis and the Culebra villages, but because it modeled an entirely novel approach for courts to handle Mexican and Spanish land grant claims. The court did so by removing their blinders to Mexican “law and custom,” which were formerly beyond the pale of the court’s legal scope. In other words, for the first time “In recognizing these rights at common law, the court considered evidence of Mexican law and custom and used it to interpret the intent and expectations of the original nineteenth century settlers of the Grant...” (Golten 2005, 458). The court pivoted their focus away from solely considering how land grants of this era could fit into a U.S. legal analysis and asked a very common sense question: what did Carlos Beaubien intend to express about land use rights in his written document? (Golten 2005). According to Golten (2005) “honoring parties’ intent and expectations” is a well-established tradition in American common law (Golten 2005, 458). The court, was straightforward with its opinion of the treatment of this issue by the lower courts:

“We are attempting to construe a 150 year-old document written in Spanish by a French Canadian who obtained a conditional grant to an enormous land area under Mexican law and perfected it under American law... It would be the height of arrogance and nothing but a legal fiction for us to claim that we can interpret this document without putting it in its historical context” (Golten 2005, 464).

A critical factor in the *Labato v. Taylor* case was the recent alteration of something called the Restatement of Servitudes. According to Golten (2005) the law had differentiated between various mechanisms of property use such as equitable servitudes, easements and covenants. This change no longer mandated stringent and nonessential “technicalities,” which in the *Labato v. Taylor* decision aided the plaintiffs in making their case. This recent modification of the law allowed the plaintiffs to use the Beaubien document to reclaim historical use rights, even though it lacked the “magic language” or the distinct terminology that an American court would recognize. It leaned on the Restatement of Servitudes as well as Colorado easement law in order for the rights outlined in the Beaubien document to be recognized as an “implied servitude” (Golten 2005, 486). The plaintiffs ultimately won their case on the grounds of prescription, estoppel and prior use (Golten 2005).

The legal change in the Restatement of Servitudes law contributed to the success of the plaintiffs by widening the avenue to pursue these types of claims. No longer did they need to check particular boxes or adhere to limiting legal definitions that were ultimately amended (Golten 2005). Golten (2005) explains that the court was convinced of Beaubien’s “intent” to burden the land, or in other words, gives settlers rights to the mountain tract. She explains that they were leveraged by Dr. Marianne Stoller’s report and testimony that the resources on the mountain track, that were chronicled in the document, could not be found on any other portion of the land grant. The court was also persuaded by the language in the deed that belong to Taylor which mentioned the “settlement rights” and the evidence that the mountain track had been used by the plaintiffs, a practice that extended back to the original settlers of the grant. This evidence

linked a legacy of use of La Sierra that dated back more than 100 years (Golten 2005, 467).

The 2002 *Lobato v. Taylor* decision is a clear example of how performance of property is recognized within both the Mexican and U.S. legal systems. The act of performing rights to La Sierra, such as collecting firewood and grazing animals were necessary components to the court concluding that these rights should be recognized under United States common law. Despite the saliency of these physical acts of performance, the court ultimately decided that despite evidence that the communal land had been used historically for hunting, fishing and recreation as well as other activities, only the rights explicitly penned in the Beaubien Document were recognized (*Lobato v. Taylor* 2002; Golten 2005).

The decision echoes the words of Correia (2013) when he describes the powerful impact that performances can have, but acknowledges that they lack the strength of the written word in common law doctrine, as they are often not as effective or persuasive in the eyes of the law. He acknowledges Rose's treatment of property as a "text," or a successful telling of the property owner's legitimacy in regards to their claim. He adds that this "text" is supported in particular legal cases such as quiet title or ejectment claims by physical acts of performance by providing evidence of ongoing use such as grazing animals. Correia (2013) explains that these narratives of ownership become particularly powerful when one possesses "color of title," a circumstance under U.S. common law, by which individuals seeking their ownership validated can tether their narrative of ownership to a written document (Correia 2013, 87). In the end, what was written in the

Beaubien Document was more pertinent to the court than any physical act of performance (Golten 2005).

It is important to clarify, however, that although the court in the 2002 decision allowed for the contextualization of documents that were produced under Spanish and Mexican property regimes, the court's decision did not spring from this system of law; it was based on American common law. In addition, the case also makes apparent some of the shortcomings of the Treaty of Guadalupe Hidalgo. As Golten (2005) acknowledges in her title, the Restatement of Servitudes made up for some of the shortcomings of the Treaty of Guadalupe Hidalgo. Legal precedent made revisions to decisions concerning land grants formerly made by congress tricky, and the Restatement of Servitudes presented a new channel by which to negotiate some land grant claims. Seen in another light, however, this particular ruling, according to Lindner (2013), serves to bolster the already established position of the current legal system and makes it more difficult for others seeking access to historical land rights to use this case as a precedent. This is due to the fact that the courts decision is not based on the Treaty of Guadalupe Hidalgo or the recognition of Mexican law (Lindner 2013). Lindner (2013) ultimately sees this court decision as reinforcing the institution of private property, rather than truly honoring past land grants in a way that would have far reaching implications for others seeking to reclaim land grant land that was lost under the U.S. legal system. In this way, this court decision can be viewed as an imperfect success for the plaintiffs and other land grant communities seeking justice (Lindner 2013).

Partial Rights, Partial Commons

Justice Martinez dissented to the Colorado Supreme Court's finding in the *Lobato v. Taylor* case that access rights does not include hunting, fishing, recreation or collecting a variety of plants herbs (*Lobato v. Taylor* 2002). The dissent highlights the fact that expert testimony identified these activities as historically performed on the land grant. He writes: "In sum, the evidence presented at trial and through expert reports, as well as the testimony of at least one lay witness, supports the trial court's findings of the fact that fishing, hunting, and recreation were an important part to the settlers' activities in the region that includes the Taylor Ranch at the time the Beaubien document was authored in the 1860s" (*Lobato v. Taylor* 2002). Martinez goes onto say that the court concluded that the Beaubien document "must be construed by considering the social, economic, historical, and geographic context in which it was authored, and not strictly based on the actual text" (*Lobato v. Taylor* 2002). He argues that to truly interpret the Beaubien document in context, the court should indeed recognize that the commons was used for many activities beyond the historical use rights that were strictly expressed in writing (*Lobato v. Taylor* 2002).

Justice Martinez also identified Emilio Lobato's testimony in the dissent in which Lobato shares memories of "hiking, horseback riding, just exploring" on La Sierra when he was young (*Lobato v. Taylor* 2002). A full interpretation of the document in its proper context would have pulled from Montoya (2000), for example, who references Victor Westphall's book, which focuses on the Mercedes Reales Land Grant. Her work reveals the diversity of uses that were practices on communal land including recreation. She writes, "Common areas were classified according to use. For example, the *dehesa* was

pasture land, the *monte* was wood for gathering, the *ejido* was located outside of the town for recreation and the *propio* was located in town and used for municipal funds” (Montoya 2000, 141). A wider lens does reveal that communal land was used for more than merely the rights that the court allowed. This restriction of use rights, however, may pose limitations for reinstating a commons, when pieces of its former design have been chipped away.

Maneuvering the Legal Fix: Property “Re-Performed”

Correia (2013) describes the way in which narratives of “resistance” within the land grant movement are overshadowed by the stories of land seizure, such as the land-grabbing legacy of the infamous Santa Fe Ring. As a result, acts of resistance by both settler and indigenous communities can get lost in the noise (Correia 2013, 30). Correia’s (2013) book, offers examples of individuals and communities who artfully maneuvered a foreign legal system. Although land loss as a result of U.S. policies is well documented by authors such as Montoya (2005) and Ebright (2008), Correia (2013) eyes land dispossession at this time as not strictly a bulldozing force, but instead, something that was met with tactical opposition. He writes:

“In the face of new legal authorities and emerging commercial challenges, Utes and land grant settlers alike asserted, performed and defended their diverse property claims against Santa Fe Ring speculators. The resistance of Capote Utes and the complicated legal struggles for property waged by land grant communities suggest that Indian and Mexican claimants did not mistake the law as an autonomous force mediating the struggle for property but rather understood law and property as a tool for resistance and a site for social struggle” (Correia 2013, 30).

One of Correia’s more potent examples of how property is performed is a case that involved the Tierra Amarilla land grant, a neighbor to the southwest of the Sangre de

Cristo Land Grant. The notion of performance adds nuance to Montoya's (2005) assessment of the two incompatible legal systems colliding in time and space. In 1860, congress affirmed what was historically a community grant as a private grant and designated the land to Francisco Martínez. Later, he sold parcels of private land to settlers, who were also promised use of common lands in writing. Congress, however, confirmed the grant as a private grant. Ebright (1994) makes clear that unlike community land grants that protected communal lands from sale, lands within a private land grant could be put up for sale by the grantee (*Lobato v. Taylor* 2002).

Martínez needed to figure out a way to preserve the grant's integrity as communal, and ensure that the settlers' rights to use the commons would not be stripped away, despite the land's designation by Congress. In order to do this, he used a different legal mechanism by issuing *hijuelas*. *Hijuelas* were in some ways very similar to common property grants (Correia 2013). Prior to U.S. presence and even for a period of time after the Mexican American War, they were used frequently in the wills of the deceased to parcel out and split up common property to successors identified in a will. Later, however, they were used to tightly bound rights to communal land and deter attempts under the U.S. legal system to pry these rights away (Correia 2013). Martínez employed *hijuelas* as a tool to maintain the performance of communal land, even though it was called by a different name under the U.S. legal system. Correia (2013) explains,

“By using *hijuelas* Martínez distributed collective resource rights to settlers while still preserving private property claims. The use of *hijuelas* in Tierra Amarilla, it seems, reflects an attempt to identify and adapt a more flexible conveyance form capable of resolving the challenges to common property relations. The *hijuelas* made the Tierra Amarilla land grant common in practice, while it remained private by law” (Correia 2013, 39)

Correia (2013) suggests that perhaps Martínez's use of *hijuelas* was a strategy to make unique and intricate land grant law appear more digestible to U.S. property authorities. Seen in this light, this tactic can be understood as a judicious attempt to maneuver the U.S. legal structure and apply a legal fix to an ill-fitting property system (Correia 2013). Analyzing the implementation of *hijuelas* by Martínez, Correia (2013) writes, "The possibility of partition was precisely the threat that the *hijuelas* appeared to resolve. In an estate a *hijuela* served as a kind of receipt ensuring that common property rights survived a person's death" (Correia 2013, 39). In other words, although the legal framework no longer existed to preserve the commons as it did under Mexican law, Martínez found a way within the U.S. legal code to make the land he sold to settlers behave, or *perform* like a commons, without actually being one. Although Correia (2013) goes on to explain how the *hijuela* method may have been imperfect, it did in some ways serve as an innovative strategy that allowed the settlers to perform property in a way that protected their lands (Correia 2013).

The way that *hijuelas* were being deployed in the Southwest in the mid-eighteen hundreds could also be thought of as what Blomley calls property that has been "re-performed" (Blomley 2012, 31). Blomley (2012) explains property that is "re-performed" in the context of treaty arrangements between the Canadian government and Indigenous communities (Blomley 2012, 31). He draws from challenges that First Nations face with colonial codes of law. Some First Nations in Canada hold "treaty settlement lands" in a title known as "fee simple plus." As Blomley (2012) explains, the fee simple plus title, although it has some unique features such as a stipulation that assigns ownership to the community rather than an individual, for all intents and purposes, it can still be

recognized as a fee simple title. He writes, “Fee simple plus *acts* like fee simple in the world, to the extent that it can be “fit into” a fee simple assemblage...” (Blomley 2012, 30). The fee simple plus title has not transformed to the extent that it can no longer participate in lending markets or cannot be classified in a land registry system. It is still an identifiable and usable title for the Canadian judicial and economic systems. Reich (2003) in his piece about the *Lobato v. Taylor* case also identified a parallel between the historical use rights that have been returned to the plaintiffs in the *Lobato v. Taylor* case and indigenous land use rights, as he asserts that the current U.S. legal system can be used as a tool for mediating some of these injustices. Ultimately, these cases, he says, contribute to dispelling the commonly held fallacy that property is fundamentally based on the rights of the individual (Reich 2003).

The fee simple plus title that Blomley examines, though its name may seem to suggest that it is a malleable solution to reconciling treaty land issues, in practice may not serve the full interests of some of the First Nations of Canada. For some First Nations, a relationship to land extends beyond a market-friendly classification: “Far from being simply a disinterested instrument that will bring about economic certainty it is, for them, part of a much larger assemblage of sovereignty, history and geography, the effect of which is to negate any indigenous relationship to land and territory” (Blomley 2012, 31). Blomley’s (2012) work is important because it identifies a connection to land that transcends the strictly economical. For First Nations, a system of land governance or ownership informs a diverse set of relationships between land and community, an imposed system, however, as Blomley (2012) asserts can nullify these connections.

As Blomley (2012) explains, however, some First Nations are working within the confines of the fee simple title. Within this legal classification, communities are presenting unique and alternative performances of property, that aim to promote indigenous law and refute the ownership model as an absolute form. The ability to navigate an incongruous legal title and uphold distinct performances of ownership and connection to land, Blomley (2012, 31) asserts, is how property is “re-performed.” He explains, “Rather than a common law grant from the Crown, it is, for them a form of allodial property. This performance of property rests on their ability to enact multiple, wide-ranging indigenous laws, the effect of which is to reconstitute the relationship between people and land” (Blomley 2012, 31). Examples of a similar relationship to land are evident in the Sangre de Cristo Land Grant community. As both Blomley (2012) and Reich (2003) assert in their work, contemporary legal systems can be used to return historical use rights to communities that have lost access to particular practices and spaces under the imposition of colonial codes of law. These innovative legal solutions, however, are not without their weaknesses (Blomley 2012).

It is apparent that the easement, which allows the plaintiffs in the 2002 Colorado Supreme Court Case to use La Sierra for particular activities, *performs* property in an entirely novel way than the legal system that was the scaffolding to the historical land grant commons. Since the 2002 victory, the question that remains is how to make La Sierra, to use Blomley’s (2012, 30) language, “*act*[.]” like a commons, despite its legal classification as private land. In San Luis and the surrounding Culebra Villages, there are many diverse and identifiable acts that “re-perform[.]” property, by promoting an alternative imagination of La Sierra in the face of competing performances that champion

the ownership model and private property as strictly fee, simple and absolute in classification (Lindner 2012a, Lindner 2012b, Lindner 2013). The easement that was awarded to plaintiffs in 2002, although it restored some access to La Sierra, did so in a limited capacity (Lindner 2012a; Lindner 2013). As Blomley (2012) reminds us in his work focusing on treaty lands for First Nations in Canada, legal solutions that do not have the capacity to accommodate alternative conceptualizations or relationships to land can often fall short of performing property in a way that is satisfactory to communities that have more complex connections to land and property.

The Limitations of Law

“It’s more than just the laws and the Land Rights Council working within the legal system...it’s more of a community attachment to the land, a feeling for the land, a respect for the land” (Rocky Madrid, Interview by Author 2016).

In Lindner’s (2012b, 2013) opinion, restored access does not necessarily mean resolution for individuals who lost access to La Sierra (Lindner 2013). Lindner (2013) points out that although grazing rights were returned, the same was not done for hunting and fishing rights as well as plant collection, which may be a significant hindrance to land-user livelihoods. Returning some historical use rights to land users might also not be satisfactory considering the lengthy stretch of time that residents were restricted from accessing La Sierra and its resources. Since Taylor bought the property in 1960, close to 7,500 residents have moved away and the number of families using acequia irrigation for farming diminished from roughly around 650 to close to 270 families (Lindner 2013).

Pete Espinoza, who is now 57, remembers moving away from La Sierra in 1962 after the Taylor family enclosed the land. His family relocated to Colorado Springs where his father was employed as a maintenance man and his mother as a maid: “We had to live in a society we knew nothing of,” he recounts (Curtin 2005). Gene Martinez, a rancher from the San Francisco village who’s family has been using the mountain tract for generations, speaks to the environmental degradation that occurred on La Sierra as a result of Taylor’s logging operation and to the challenges of trying to teach land ethics to his children who have grown up disconnected from the countryside: “Our children after 40 years have lost their spiritual connection to the land. People think we should be happy we got the land back. Why should we be happy?” (Curtin 2005). Martinez speaks of a relationship to La Sierra that is not solely based on utility, but rather one that is more complex. He describes a “spiritual connection” to the land that has been lost over time as a result of being unable to physically access the mountain (Curtin 2005).

Peña (1993, 9; 2003) describes in his work how physical access and the performances of particular activities on La Sierra informs a “sense of place” and identity. He describes La Sierra as a space that allows for a myriad of physical and metaphysical uses from religious and family practices, to the utilization of resources and agriculture. The comments above from Hispano land users who have returned to La Sierra adds more dimension to Lindner’s (2013) argument that simply granting legal access rights may not restore all that was lost in the many years grazers and other community members were kept off the land. Junita Martinez described the impact that the separation from the mountain tract had on the community as omnipresent and consequential, “it affected

every family in this little town. It would be like an earthquake” (Junita Martinez, Interview by Author 2016).

The court’s decision in 2002 awarded back partial access to La Sierra, but not all of the activities that had been practiced there historically, as was aforementioned. The court’s decision defined and permitted usage of La Sierra on the sole basis of a labor relationship. Indeed labor has been an important component of the relationship of the land grant community to the mountain tract. From its very beginnings the commons was a resource that was crucial to the survival of the settlers of the Sangre de Cristo Land Grant, something that was acknowledged by the court, based on the testimony and work of Anthropologist Marianne Stoller (*Lobato v. Taylor* 2002; Golten 2005). Franklin Kuhn, an heir to the land grant acknowledged this historical connection and invaluable resource that enabled the original settlers of the land grant to survive in a harsh and unforgiving climate: “It was set up that way, so people would settle here. If you think about it, if they did not have access to the mountain, it would have been tough” (Franklin Kuhn, Interview by Author 2016).

When Taylor fenced off the ranch, the severing of this labor relationship had a significant impact on the community. Junita Martinez explained how the enclosing of Taylor Ranch created an economic disturbance that sent shock waves through the community, “a lot of people left the valley when Taylor took over because they could not access the ranch” (Junita Martinez, Interview by Author 2016). She explained how people migrated to larger urban centers like Colorado Springs, Denver and Pueblo. Today, La Sierra’s resources are crucial to community members who depend on their

availability and accessibility: “its still part of the livelihood of some people here” (Huberto Maestas, Interview by Author 2016).

In addition to the economic impacts that resulted from the severance of the heirs from the land, it is also important to note the connections to La Sierra felt by some of the heirs that transcend the strictly pragmatic in nature. Alonzo Lobato, who currently grazes on La Sierra, describes his commitment to good stewardship, and his support for a management plan on the mountain along with his particular connection to the land: “I grew up there and it has a very special place in my heart. It’s not just like a place...in my case it tends to go a lot farther (Alonzo Lobato, Interview by Author 2016). Franklin Kuhn is an heir to the land grant who owns property in Chama Canyon and by his own estimate is the first person to graze sheep on the mountain in more than twenty years. He explained that he started grazing on La Sierra this past summer and that he has been cautious in his approach. He has been grazing in a “limited way” since there is currently not a management plan that has been implemented, “at least on paper anyway,” he explains, as there is a historical tradition and knowledge of grazing in the area. He describes how his commitment to the protection of La Sierra’s resources is rooted in a personal connection to the land: “I grew up here. I am tied to it. So when I take my animals up there I am looking at it as not just a place to graze, but a place that my family has used...to support our past generations.” Franklin makes clear, “It’s not just a piece of ground to go throw my animals on all summer,” he says, “it means more to me than just that.” (Franklin Kuhn, Interview by Author 2016).

The separation from La Sierra during the time when the land was fenced off meant that particular skills and knowledge could not be passed along to the next

generation. Junita Martinez explains, “It’s really a cultural loss, we have a loss that can’t be replaced and even if tomorrow they were to okay things, we have a generation of kids who don’t know how to cut wood properly, who have never been fishing up there [and] don’t know where the best fishing is” (Junita Martinez, Interview by Author 2016).

Junita’s comments touch upon a performative note and an understanding of a connection to La Sierra as relational. A single court decision, although it is a tremendously powerful victory for the land grant community, cannot undue a relationship that has been severed or grant the knowledge that is only obtainable through physical access to that space.

Juanita’s comments make it clear that accessing knowledge is also an important element of this struggle, for the knowledge of how to live off the land and the understanding of how to govern a commons fades as people are removed from the context overtime (Lindner 2012a). For much of the generation that grew up apart from the mountain tract, there was no setting by which to learn. Blomley (1998) pulls from Jeremy Waldron (1991) to stress that we must recognize the importance of space and how it is tied to property: “Everything that is done has to be done somewhere. No one is free to perform an action unless there is somewhere he is free to perform it” (Blomey 1998, 570).

The efforts of those involved in the struggle to regain access rights to La Sierra are centered around having rights to the mountain tract restored, but beyond simply *staking a claim*, the effort is also about reinvigorating a relationship: a historical connection to the mountain as well as a system of communal land governance that cannot persist without spatial access (Lindner 2012a). Heir of the Sangre de Cristo Land Grant and former president of the LRC, Charlie Jaquez shared concerns of the implications that decades of separation from La Sierra has had on young people in the community: “When

I was growing up, we took the mountain for granted, we could go up there. Our youth today, I don't know if they even see the mountain," he thinks that in some ways, they see it as "a backdrop." It is a new relationship that has been partially shaped by the separation of the younger generation from the mountain: "They have been removed," says Charlie. (Charlie Jaquez, Interview by Author, 2016). Many of the individuals that I interviewed relayed memories of being on the mountain when they were young. Mathew Valdez who now sits on the Lands Rights Council shared how he used to go fishing and camping on the mountain tract when he was in high school (Mathew Valdez, Interview by Author 2016).

Heir to the Sangre de Cristo Land Grant, Jose Martinez, remembers the 4th of July celebration that used to be held on La Sierra, "Every 4th of July all of the communities from every canyon would go to the mountain and celebrate up there and just have a huge community picnic" he says, "people would share food and all that good stuff, and we have not done that since 1960" (Jose Martinez, Interview by Author 2016). In addition to a place where community gathered, some describe the mountain tract as fostering an important connection to history: "it's part of your history, it's part of who you are, it's part of your story" (Dana Maestas, Interview by Author, 2016). For the generations that grew up after Taylor fenced it off the mountain, or who do not engage in any of the particular historical use-rights that were awarded back in the 2002 decision, many have to observe the mountain from a distance. Despite these challenges, there is a strong effort in the land grant community to strengthen this connection to the mountain tract and restore a relationship to communal land (Lindner 2012a).

“Trespassers in Our Own Land,” Attempting to Revitalize a Connection to La Sierra with Limited Access

The Move Mountains Youth Project is a community initiative that engages young people from San Luis and the surrounding Rio Culebra villages. The project’s secretary of the board, Miguel Huerta, says the program is “centered around what we call the four pillars: art, entrepreneurship, earth and community action” (Youth Leaders Summer Program Video, 2016). One of the objectives that the group focuses on is gaining an understanding of the “deep history of Chicano resistance to encroachment on communal land rights” (Youth Leaders Summer Program Video, 2016). Shirley Romero Otero, the executive director of the project also spoke of the importance of exposing young people to the history and traditions of the San Luis Valley: “Most importantly, we would like these young people to understand the rich history, culture and traditions of this community” (Leaders Summer Program Video, 2016). As part of a summer program, the Move Mountains group created an oral history project and collected stories from community members. Students edited their footage and condensed their work into digestible short films.

One group of students interviewed Rocky Madrid, who now sits on the LRC board, about his activism during the protests in the 1990s that objected to Taylor’s logging on La Sierra. They were positioned at one of the nine gates that serve as an access point to the mountain tract. While they were filming, a car with a New Mexico license plate drove up to the fence. A man who was accompanied by two kids was driving it. They were visiting from out of state and explained that they were headed Culebra Creek to fish, an activity that individuals who have access rights due to the 2002

court decision are not allowed to partake in. Shirley describes the moment as impactful for a group of young people who had been learning about the land grant struggle, and the efforts to restore rights to the mountain tract, she explains “We had been having these discussions and the kids were like, this kid comes from Arkansas and he can go up, yet we can’t?” (Shirley Romero Otero, Interview with Author 2016).

Delaney (1997) draws attention to how dynamics of power are entrenched in particular spaces. A physical barrier, like the fence by which the students conducted their interview, not only controls and orders physical spaces, but also the actions, “social relationships” and “experiences” of those who move past the fence and those who do not (Blomley 1998, 569). Blomley (1998) explains how geographical space can inform the identities of distinct political actors in contrasting ways. The 2002 court decision designated landowners the right to participate in certain activities on the mountain tract, deeming them rightful users when performing particular actions. Land grant heirs who were to engage in alternative activities on the mountain, not sanctioned by the courts, would no longer be deemed rightful users, but intruders. Access to La Sierra is not merely dictated by *who you are*, but also informed by *what you do*: “Yeah the kids felt it” Shirley shared, “these kids [from Arkansas] can just go right by and here we are, right here, literally trespassers in our own land.” (Shirley Romero Otero, Interview by Author 2016).

The story that Shirley shared demonstrates the ways in which certain members of the land grant community are separated from the mountain. As documented by Lindner (2012a), there have been concerns about the accessibility of La Sierra for young people. Shirley Romero Otero explains how spatial access to La Sierra can be viewed as an

important element in fostering a land ethic among young people: “Getting kids up on that mountain, physically getting kids on that mountain, that’s one of my goals...because they’re still removed from that mountain -some of the kids, not all of the kids, but the majority of them. I think you can start instilling that passion, for the love and the stewardship of that mountain and its resources that my generation had and the previous generations had. But that definitely is our greatest challenge the way I see it” (Lindner 2012a, 277). Alexandra, an 8th grader in San Luis and member of Move Mountains, speaks about the tangible consequences of this spatial separation. She shared a time when the Move Mountains group wanted to go camping on La Sierra, an activity that they had been planning and working toward for some time.

The group’s ability to go camping depended on the permission of the owners of the ranch, since it was not an activity designated by the 2002 Colorado Supreme Court case. Ultimately, they were turned down. Alexandra explains, “I think the whole reason why it made us so mad that they did not let us go camp on the mountain is because the majority of the move mountains youth group, we’re heirs...but they let people from other states come and they let them fish and they let them hunt” (Alexandra, Interview by Author 2016). Alexandra expressed her frustration with the incident, and described how the lack of physical accessibility impacts her and her peers: “I think if we had been able to go there and camp on it, all the youth...they would have some sort of attachment to that, but by not letting us camp on it, it’s kind of like separating us from it, it makes us feel like it’s not ours, which technically it is” (Alexandra, Interview by Author 2016).

Alexandra shed light on how fostering the next generation of stewards may be contingent in some ways upon accessing La Sierra. She describes a time when she was in

the mountains with her father in an area called the Rincon, from which she could see La Sierra. Over on the mountain tract she observed a large area where trees had fallen. Her father explained to her that that was an area that used to be logged: “It just hit me hard, I was like oh my gosh. I always knew that it was a problem, but I think that seeing it actually made me realize, dang that really was a problem” (Alexandra, Interview by Author 2016). Alexandra makes a clear connection between the accessibility to La Sierra for herself and her peers and how that shapes their knowledge and awareness of the ecological realities on the mountain. The oral history that Rocky Madrid shared that recounted his participation in the logging protests becomes more than a story when Alexandra was able to witness the destruction for herself: “They have to see it with their own eyes to be able to believe it” she said. (Alexandra, Interview by Author 2016).

The *Lobato v. Taylor* decision was an incredible victory that had a tangible impact on the Sangre de Cristo Land Grant community, but it is important to recognize some of the shortcomings of this decision. In many ways, access is still limited. It seems that the restricted access to La Sierra is a hindrance to both young people and others to fully engage with an important historical and cultural resource. Alexandra shared that her knowledge about La Sierra comes from learning about the land grant movement in the Move Mountains program and from her parents, but not at school: “They teach us about the history all over the world, but the history that we need to know is *our* history” (Alexandra, Interview by Author 2016).

“Re-Performing” Governance, Stewardship and the Challenges of an Incongruent Easement

For Shirley Romero Otero, the current sitting president of the Lands Rights Council (LRC), a management plan is an important part of ensuring La Sierra’s resources will be available for generations to come. She sees the management plan as both an educational tool to inform community members as well as document knowledge of land use practices and stewardship principles that could not be exercised or taught to younger generations when Taylor closed off the mountain. Shirley explains, “There has to be a management plan and although people say, well we did without one years ago, yes I understand, but times have changed. Times have changed in terms of stewardship, climate change.... all of those things and many others need to be considered” (Shirley Romero Otero, Interview by Author 2016). Shirley explains the importance of incorporating both scientific and local or “grass-roots” knowledge into an effective management plan that preserves the ecological integrity of the mountain. Shirley explains, “That was very important to the people... we live here, we do this everyday. We have something to bring to the table” (Shirley Romero Otero, Interview by Author 2016). She references the connection and understanding that the heirs to the Sangre de Cristo Land Grant have to La Sierra, a unique knowledge that comes from generations of personal contact and use.

Linder’s (2012a) work examines the history of both cooperative and individual grazing on La Sierra as well as systems of communal governance such as acequia irrigation, which is still actively practiced in the San Luis Valley. Due to the lack of access to La Sierra when Taylor excluded heirs from the mountain and prior to the 2002

court decision, there was no space to perform communal governance as it had been practiced in the past (Lindner 2012a). The creation of a management plan can be thought of as an act of “re-perform[ance].” This initiative reflects an effort to reinstate historical communal governance and preserve collective resources within a community land grant commons, despite the fact that the legal scaffolding to govern the commons as it would have been under Mexican law and custom no longer exists (Lindner 2012a).

In the *Lobato v. Taylor* ruling, the historical use rights to La Sierra were awarded back not just to the heirs, but to all the individuals who own land within the designated boundaries of the land grant. Among these landowners, there is no legal imperative to communal governance or any of the “common property obligations” that existed in the legal and social scaffolding of the historical land grant commons (Correia 2013, 35; Lindner 2012a). As a result of the Colorado Supreme Court’s decision those who make use of La Sierra’s resources “are constituted as private property owning individuals in ways that erase historical, cultural, and other differences...” (Lindner 2012a, 266). The work by the LRC to create a management plan that reintroduces collective practices, revitalizes a land ethic and communicates local knowledge as well as modern ecological understandings, can be seen as an effort to adapt to new challenges and revive a system of governance that supported historical community land grants (Lindner 2012a).

The LRC continues a tradition of “re-perform[ance]” in the Southwest and has been an active force in working to revitalize a system of communal governance. They have been doing so through community and educational events as well as collaborating with the Colorado Natural Heritage Program and the Forest Guild in order to ensure ecologically sound management (Lindner, 2012b; Lindner 2012a). In addition to focusing

on ecological factors, the management plan that was developed in partnership with the Forest Guild also concentrated on “map[ing] *culture*” (Lindner 2012a, 279). The production of a map that identifies different areas of La Sierra by historically used names is an attempt to reanimate a connection to La Sierra that suffered when the heirs’ access to the land was obstructed (Lindner 2012a).

Arnold Valdez, an heir to the Sangre de Cristo Land Grant and author of the management plan, explains the effort as, “the recognition of local places, and the labeling of place names, a rekindling of the historical memories that exist in some of the older people so that we can try to bring back those names” (Lindner 2012a, 271). In this way, nature and culture are no longer seen as distinct entities, but bound in an important way (Lindner 2012a). Wilson (1999) explores how particular portrayals of the mountain “serve to dissect the historical socio-environmental relations practiced in San Luis, relations which are embedded in a notion of community which extends to and encompasses both San Luis *and* La Sierra” (Wilson 1999, 12). The work by the LRC to simultaneously map ecological and cultural resources can possibly be seen as an attempt to refashion a relationship to land and landscape that does not detach ‘nature’ from ‘society’ (Wilson 1999, 12). As Lindner (2012a) explains in reference to his interview with Arnold Valdez, “the goal has not just been to instill environmental knowledge or merely bring back tradition, but also to re-vitalize a cultural way of life” (Lindner 2012a, 280).

There has been an ongoing and determined effort by the LRC and other community members and organizations to *perform* La Sierra in a way that allows it to behave like a commons, despite its legal identifier. However, as Linder (2012a) and

others argue, this has been challenging due to La Sierra's classification as private land, the way that the Colorado Supreme Court awarded back some of the historical use-rights, and the substantial period of time that the heirs to the Sangre de Cristo Land Grant have been separated from the Mountain (Lindner 2012a, Junita Martinez, Interview by Author 2016, Shirley Romero Otero Interview by Author 2016). The easement rights that plaintiffs were granted restored some historical use rights, but on an individual basis. Lindner (2012a) explains, "the resource users –and the LRC- were constituted as simply private landowning individuals who must interact with one another in that capacity" (Lindner 2012a, 186). As Blomley (2012) points out, all legal mechanisms are not created equal in serving the needs of communities who have alternative or complex relationships to land. Lindner (2012a), in his extensive work documenting how conceptions of stewardship and governance are deployed and take shape on La Sierra, sees this as a challenge and argues that this new legal structure can be problematic for multiple reasons. Lindner (2012a) observes the "uncertainty, ambivalence, and difficulty of collective governance of resource use in a context in which resource users...were simply constituted as private landowning individuals" (Lindner 2012a, 186).

This flaw in the legal mechanism used to restore historical access rights can be viewed as having tricky implications for not only putting a management plan in place, but also enforcing a plan (Lindner 2012a). Franklin Kuhn, an heir who grazes on La Sierra explains: "That's the key question right there...what are we going to do if somebody [doesn't] want to graze the way they are suppose to or something? What are we going to do with them?" (Franklin Kuhn, Interview by Author 2016). Franklin expressed his dedication to preserving the resources on La Sierra and his support for a management

plan, but explained that there are questions of enforceability and ways of encouraging participation among all the landowners who have access rights (which includes not just heirs to the Sangre de Cristo Land Grant, but anyone who owns property within the boundaries designated by the court (Lindner 2012a)) that are yet to be answered.

Shirley Romero Otero, the newly elected president of the Land Rights Council, explained that her main objectives for the LRC are to ensure that the organization has the resources to remain a visible and active presence in the community, and to update and work towards implementing the extensive management plan that the LRC developed in the early 2000s. She expressed that it is important to reexamine the plan and work with consultants to make sure that it is up to date and applicable. Shirley explained, “I think the first things that has to happen with that management plan is to take it off the shelf and take a look at it [and] work with the original consultants or someone of that caliber...” (Shirley Romero Otero, Interview by Author 2016). Shirley explained that both of these initiatives further the LRC’s original mission, which is “the protection of land and water resources for the heirs on the Sangre de Cristo Land Grant” (Shirley Romero Otero, Interview by Author 2016).

The Social Construction of *Stewardship* as a Mechanism for Control

In contrast to the affirmation of private property, the legitimacy of the commons has long been questioned and challenged by groups with alternative social constructions of adequate land governance. Probably the most famous contemporary deductive case against the commons is Hardin’s (1968) *Tragedy of the Commons*, which argues for enclosure based on the reasoning that people acting in a rational manner will freely

exploit common resources, leading to overuse and ultimately environmental degradation. This paper has become one of the most frequently cited social science texts and has left a profound legacy on the notions and constructions of land tenure and ecological governance. In the eyes of many, Hardin (1968) simply reified the notion that established private property is vital to protecting and managing natural resources (Hardin 1968 as cited in Robbins et al. 2014). In contrast to Hardin's narrative that has gained a stubborn traction in informing popular notions of governance and stewardship, Reich (2003) identifies multiple recorded examples of successful communal resource governance, from Spain in the sixteenth-century to modern day fishing collectives (Reich 2003).

The Tragedy of the Commons, which is bolstered by legal assumptions in the United States, contributes to a particular social construction of land use and what constitutes effective governance. Wilson (1999) examines the idea of how different conceptualizations of nature and society are embedded with both cultural meaning and particular power dynamics. Wilson pulls from Williams' (1973) work and explains, "ideas of nature have been altered and reconfigured in different historical periods in order to legitimize dominant relations to social power in modern capitalist society" (Wilson 1999, 7). This exemplifies how different constructs of stewardship that can present as seemingly apolitical are interlaced with power structures and can serve as justification for particular practices. Although seemingly innocuous, the framing of particular environmental problems or concepts of stewardship can serve to promote and validate the agenda of a particular group while dismantling other claims. In this way, individual actions serve to reinforce particular constructions of land use, and the power dynamics that shape these constructs (Wilson 1999). Wilson (1999) reminds us that particular

notions of nature are not set in stone and do not go unquestioned. Instead, he iterates that they are points of dispute and resistance (Wilson 1999).

After the *Lobato v. Taylor* ruling, the next question to be answered was how is the mountain tract going to be used? Lindner (2012a, 2012b) identifies the debate surrounding responsible and correct stewardship as a current source of contention. Both the landowners and land users accuse the other of being the true cause of environmental harm. On the mountain tract, it seems that the notion of correct stewardship is simultaneously being deployed as a mechanism for harnessing control (Lindner 2012b). Robbins et al. (2014) defines a social construction as “any category, condition, or thing that exists or is understood to have certain characteristics because people socially agree that it does” (Robbins et al. 2014, 121). Understood in this way, a social construct is built on socially agreed upon notions that may not exist universally or in different contexts. Robbins et al (2014) asks us to consider the different political implications of particular social constructs by deliberating on questions such as, “How did this claim remain ‘true’ and widely believed even in the face of evidence to the contrary. Whose interests are served by its remaining “true”? Who becomes more powerful and who is less powerful in the establishment of a certain set of environmental facts as ‘true’ ones?” (Robbins et al. 2014, 125). Ultimately, he asks how do particular social constructions benefit some groups over others?

According to Lindner (2012b) disputes over governance and land on La Sierra are in many ways tied to what Pulido (1998) calls “ecological legitimacy” (Pulido 1998). It was specified by the Colorado Supreme Court that La Sierra must be used in a “reasonable” way, but what the court actually considered to be *reasonable* land use was

left ambiguous. The vague language leaves room for competing definitions to arise. On the mountain tract this seems to be what is occurring, alternative constructions of stewardship are competing for “ecological legitimacy” (Lindner 2012b, 375). As Linder (2012a) asserts in his dissertation, however, it is important to place these competing constructions of stewardship within their historical contexts and give due consideration to the power structures that are imbedded in different constructions of stewardship, compelling him to consider the legacies of capitalism, colonialism and racism in his examination of how *governance* and *stewardship* is defined on the mountain tract (Lindner 2012a)

The concept of “ecological legitimacy” is explored by Pulido (1996) in her analysis of a grazing conflict in the Ganados del Valle in New Mexico. This particular case involved Hispano sheep grazers who were barred from grazing. Pulido (1996) examines Anglo explanations for Hispano poverty. One particular narrative blames Hispano land users for their bad decision making, rather than examining the structural forces that shape conditions of poverty: “Poor resource management- in particular, overgrazing – has been central to explanations of poverty. Not only do such narratives deny the ecological legitimacy of Hispanos, but they exonerate Anglos and capitalism for the region’s deep poverty” (Pulido 1996, 43). By deploying rhetoric that depicts Hispano land users as ultimately responsible for their own fate, rather than operating within a particular set of structural limitations, private property and capitalism are not questioned and are viewed as ecologically sound (Pulido 1996).

Challenging Constructs, Asserting Stewardship

A study performed in 2007 for the Cielo Vista Ranch examined a particular set of ecological factors on La Sierra. The report specifically examined carrying capacity and the impacts of grazing. It urged grazers to stay off “fragile” high elevation zones due to the harmful ecological impacts of cattle (Roath 2007 as cited in Lindner 2012b). It could be argued, however, that this report relies on a school of neo-Malthusian thought that focuses on the notion of environmental limits, or the idea that particular environments can only support certain populations based on resource availability (Robbins et al. 2014; Lindner 2012b). The Land Rights Council also commissioned a report that was executed by the Natural Heritage Program of Colorado (Lindner 2012b). This report had a different ecological focus than the report commissioned by the Cielo Vista Ranch, as it focuses on seven areas on La Sierra that are important to protect in order to preserve the abundance of a diverse host of flora and fauna to support “a complex mosaic of mixed human use and conservation areas” (Lindner 2012b, 377). These two reports clearly have distinct constructions of stewardship and sustainability, resulting in different conclusions that promote contrasting prioritizations of particular resources and therefore what management actions should be taken (Lindner 2012b). For the land users of La Sierra, a healthy landscape is one that is abundant with biodiversity. Going one step beyond that, successful ecological stewardship includes the incorporation of grazing practices, farming and creating usable roads for transportation (Lindner 2012b).

It is in this context that a social constructionist lens becomes useful in analyzing not only these two distinct reports, but also the dispute between the ranch owners and the members of the land grant community as they imagine La Sierra in different ways. The

unique foci of both of these reports, however, contribute to particular discourses of what are considered to be sound ecological practices (Lindner 2012b). It is important to contextualize performances and assertions of property, stewardship and governance in the San Luis Valley within larger social histories in the Southwest. Montoya (2005) identifies the longstanding narrative distinctly rooted in Manifest Destiny ideology: “Americans argued that both Indians and Mexicans “wasted” their land, misusing its resources. They therefore felt justified in advocating dispossession and improvement of both the land and its inhabitants” (Montoya 2005, 13-14). Peña (2003) also identifies assertions of proper stewardship as a tactic to assert the legitimacy of private property and also portray Hispano activists confronting the Taylor descendants as “ignorant” and “lawless” thereby dislodging them from possible positions of control by casting doubt on their land ethic (Peña 2003, 153). The use of this particular discourse can be seen both from the Taylor family and in the ranch ownership post *Lobato v. Taylor* (Lindner 2012b, Lindner 2013, Peña 2003).

An individual who grazes on La Sierra comments, “I am in these meadows a lot. I see elk everywhere, but hardly any cattle. So who is overgrazing?” (Lindner 2012b, 376). This rancher’s remarks can be seen as a resistance strategy, one which fights the private property narrative that Hispano grazers are responsible for environmental degradation, by asserting that the abundance of elk are the true cause of overgrazing (Lindner 2012b). On the Mirr Ranch Group Website, where the Cielo Vista Ranch is currently listed for sale, sport hunters are showcased repeatedly, leading viewers to believe that this is one of the biggest attractions for potential buyers (Mirr Ranch Group). By pointing to elk as the problem rather than cattle, this local rancher is casting doubt on the landowners’

perceived notions of an ecologically sound environment, which apparently is one that has an abundance of elk. This particular rancher is promoting an alternative construction of stewardship by contributing to a narrative that focuses on the health and privilege of certain species over others (cattle over elk) (Lindner 2012b).

Although elements of the “poor ecological steward” rhetoric that Montoya (2005) references can be identified in multiple stages of the La Sierra struggle, it is also important to note that it is not the only narrative being deployed, as is demonstrated by the rancher’s aforementioned comment about elk overgrazing. Blomley (1998) references Neal Miner’s (1993) work examining how disputes over land in Hawai’i involve the recruitment of narratives, “recounting stories of identity, settlement, and struggle” (Blomley 1998, 569). Property in this sense, when performed for others, is used as a mechanism by which to gain legitimacy. He highlights how certain representations or performances of property can be used as a strategy for resistance and can push back against dominant or competing claims (Blomley 1998).

Resistance tactics that fight false narratives can be identified in other Hispano struggles for land-access in the Southwest. In Carson National Forest, grazing rights were banned due to the presence of an endangered owl that occupied habitat on the edge of the forestlands. One Nuevomexicano activist calling for grazing rights to be reinstated, had this to say in response to those who questioned the soundness of their ecological practices, “We’re environmentalists, we have been for hundreds of years. Nobody around here wants to destroy the forest or the land- we live off it” (Masco 2006, 186). By fighting to change this paradigm, Hispano land users on La Sierra and in the greater Southwest are actively shaping the discourse around what the notion of correct

stewardship means. Blomley's (1998) work is helpful in thinking about how narratives or other performances of property can become oppositional forces of resistance, but it is also important to remember the systems of power that stand behind particular actors. One single act can put an end to more than 100 years of land use. This is precisely what happened when Taylor was able to use Torrens Law to permanently sever heirs of the Sangre de Cristo Land Grant from their rights to the land (*Lobato v. Taylor* 2002; Lindner 2012b).

The struggle for La Sierra involves battling not only for a contested landscape, but also against a competing narrative. The honoring of land claims distributed under Mexican and Spanish law, promised by the treaty of Guadalupe Hidalgo, has fallen short. Within the Court of Private Land Claims, which was the system that was put into place after the congressional confirmation of land grants, it is estimated that only 155 of a total of 295 grants were confirmed (Poling & Kasdan, 2001). Descendants of Spanish and Mexican land grants have been removed from both land and livelihood at the hands of the judicial system and opportunistic land-grabbers (Montoya 2005; Correia 2013). In an environment in which treaty promises have not been honored, developing and fostering a strong narrative in order to communicate this ongoing injustice and assert alternative imaginations of property, governance and stewardship seem to be a critical part of the activist movement in San Luis. Those involved in the land grant movement in the San Luis Valley have been actively rebuking competing narratives and performing others (Gonzales 2007; Pena 2003; Linder 2012a; Lindner 2013b). Charlie Jaquez explained his perception of a competing narrative, which is an understanding of property as strictly individual in nature and ultimately bound to a fee, simple, absolute title: "this is

America...this is private property...kick those people off” (Charlie Jaquez, Interview by Author 2016). The performance of property by the heirs of the Sangre de Cristo Land Grant has worked and continues to work toward debunking this type of rhetoric, a view that is ahistorical- as it discounts the legitimacy of Mexican law and custom, ignores American treaty promises, and also takes on an extremely limited view of property law in the United States (Lindner 2012a; Lindner 2012b; Peña 2003; Rose 1994; Blomley 2012).

Conclusion

The efforts by members of the Sangre de Cristo Land Grant community to regain historical access rights to La Sierra have been long and arduous. The success in 2002 when the Colorado Supreme Court ruled in their favor was an incredible victory for the heirs of the land grant. It was the result of a decades-long legal struggle and was a unique and novel success in a legacy of land grant dispossession in the Southwest. The decision allowed for spatial access to the mountain that had been interrupted for more than forty years. This triumph is significant and it had a tangible impact on heirs of the land grant, but it did not restore the entirety of what was lost when La Sierra was severed from the land grant and deeded as private property.

Understanding the full impacts of dispossession in this context requires a comprehension of property as more than just an object, but entangled with and informed by complex historical, social, political and cultural realities. Performance breathes life into property. It informs how different and sometimes competing constructions of property manifest and *behave* across time and space. This understanding of property is useful in recognizing the shortcomings in the *Lobato v. Taylor* case, as particular legal

mechanisms may not be compatible or entirely supportive of alternative or nuanced conceptualizations of property and relationships to land. Despite these limitations there are heirs to the land grant that remain committed to restoring a cultural connection to landscape, revitalizing a commitment to sustainable resource use, and ultimately reinstating a system of communal governance. The San Luis Valley is home to acts of tactical resistance that work to improvise and maneuver within an imposed code of law, to preserve not only structures of property, governance and stewardship, but also the social and cultural practices that perform them into existence. Ultimately these efforts can be seen as challenging competing notions of governance, stewardship and property that attempt to delegitimize Hispano land users.

La Sierra presents an interesting case of how governance is exercised in this unique *partial* commons. Heirs to the Sangre de Cristo Land Grant are still operating in an environment with competing performances of property, which can make particular acts of “re-perform[ance]” challenging and difficult to implement. The history of La Sierra is delineated with clear examples of contending conceptions of property, which is important for understanding not only the realities of systems of property, but how performances can embody assertions of ownership, acts of resistance, as well as make clear how actors can maneuver challenging legal obstacles. It is apparent that competing assertions of property are far from settled on the mountain as actors continue to reimagine and “re-perform[]” La Sierra.

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