CHAPTER 20

PUEBLOS OF NEW MEXICO[1]

TABLE OF CONTENTS

The peculiarities of federal Indian law with respect to the Pueblos of New Mexico arise primarily from the peculiar status which was accorded to the Pueblos under Spanish and Mexican law. It is necessary, therefore, in order to understand the present legal status of these Pueblos to allude to certain basic principles developed prior to the acquisition of New Mexico by the United States.

SECTION 1. STATUS OF PUEBLOS UNDER SPANISH LAW

When the Spaniards entered the Rio Grande Valley in the sixteenth century they found certain Indian groups or communities living in villages and these Indians they designated "Indios Naturales" or "Indios de los Pueblos" to distinguish them from the "Indios Barbaros," by which term the nomadic and warlike Indians of the region were designated. The Indians who were called Pueblo Indians were not of a single tribe and they had no common organization or language. Each village maintained its own government, its own irrigation system, and its own closely integrated community life.

From an early date the Spanish Government enacted legislation to protect the lands of the Pueblos from trespass. Grants were made to the individual Pueblos for the purpose of defining and protecting the boundaries of pueblo lands. The general practice developed of fixing Pueblo boundaries at one league in each of the cardinal directions from the central church. Thus each grant normally comprised 4 square leagues or 17,712 acres. The policy of the Spanish Government towards the Pueblo Indians of New Mexico is set forth and documented in a recent study of "Pueblo Indian Land Grants of the 'Rio Abajo,' New Mexico" (1939) by Herbert O. Brayer of the University of New Mexico,[2] from which the following summary of the status of the Pueblos is excerpted:

> 1. The Pueblo Indians of New Mexico were considered wards of the Spanish crown.
>
> 2. The fundamental legal basis for the Pueblo land grants lies in the royal ordinances. The 1689 grants, purporting to convey land to the Indians, are spurious.
>
> 3. Only the viceroy, governors, and captains-general could make grants to the Indians, and only these officials had the authority to validate sales of land by the Indians.
>
> 4. All non-Indians were expressly forbidden to reside upon Pueblo lands.
>
> 5. The Spanish Government provided legal advice, protection, and defense for the Indians. Provincial officials had the authority to appeal cases directly to the audiencias in Mexico.
>
> 6. The Indians had prior water rights to all streams, rivers, and other waters which crossed or bordered their lands.
>
> 7. The Pueblo Indians held their lands in common, the land being granted to the Indians in the name of their pueblo.

The most important of the Spanish laws governing the Pueblo Indians are: the Act of March 21, 1551,[3] providing that the Indians should not live separated in the mountains, deprived of spiritual and temporal benefits, but should all be brought to

[1] The phrase "Pueblos of New Mexico" is commonly used to designate the Rio Grande Pueblos, which at the present time, comprise:

> Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Pojoaque, Picuris, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia.

The Zuni Indians of New Mexico and the Hopi Indians of Arizona are classed as Pueblo Indians, anthropologically, but administratively and politically they have frequently been excluded from rules and laws applicable to the Rio Grande Pueblos. For this reason they are not considered within the scope of this chapter except as particularly noted.

The Pueblo of Pecos, nearly extinct in fact, was merged with the Pueblo of Jemez by the Act of June 19, 1936, 49 Stat. 1528. A similar legislative merger of the Pueblos of Pojoaque and Nambe was recommended in a report on the "Status of Pueblo of Pojoaque" submitted on November 3, 1932, by George A. H. Fraser, Special Attorney.

[2] The University of New Mexico Bulletin No. 334, p. 16.

[3] Recopilacion de las Indias, law 1, title 2, book 6.

live in villages (Pueblos); the Acts of December 1, 1573, and October 10, 1618,[4] defining the areas and rights of the Pueblos; the royal cedula of June 4, 1687, authorizing the viceroy and president of the royal audiencia to define the areas of land granted to the Indians and increasing the amounts hitherto granted; which is in turn amended so as to reduce the areas in question, by the royal cedula of July 12, 1695; the statute[5] requiring sales of land and of personal property by Indians to be made before a judge with prescribed formalities; the decree of February 23, 1781, prohibiting unlicensed sales of real property by Indians; the decree of January 5, 1811, for the protection of Indians in their person and property; and Decree 31 of February 9, 1811, guaranteeing to the Indian and Spanish residents of New Spain full political equality with the European Spaniards.[6]

Through this course of legislation one finds the same problems that are dealt with by Congress in the Pueblo Lands Act of June 7, 1924.[7] The Indians complain that the areas of land granted them by the central government are infringed upon by their non-Indian neighbors. The non-Indian neighbors claim that lands which they have acquired and improved in good faith are subsequently claimed by the Indians. The central government is grieved to find that white ranch owners "are encroaching upon the lands of the latter (Indians), taking the same away from them, either by fraud or violence, by reason of the poor Indians abandoning their houses and settlements, this being what the Spaniards long for and aim at."[8] Through the language of all the laws and decrees enacted for the protection of the Indians there runs an implicit recognition that past laws to achieve this protection have not been adequately enforced, and the implicit hope that more adequate enforcement will attend the new legislation.

[4] Recopilacion, law 8, title 3, book 6.
[5] Recopilacion, law 27, title 1, book 6.
[6] These laws are translated and discussed in chaps. 7 and 8 of Hall's Laws of Mexico (1885).
[7] 43 Stat. 636. See sec. 4c.
[8] Royal cedula June 4, 1687, translated in Hall, Laws of Mexico (1885) p. 64.

SECTION 2. THE PUEBLOS UNDER MEXICAN RULE

The status of the Indian under Mexican rule is well summarized in the opinion of the Supréme Court of the Territory of New Mexico, in *Territory* v. *Delinquent Taxpayers.*[9] In that case the court, after noting that the Pueblo Indians "seem to have been considered by the Spanish as wards of the government, and entitled to special privileges and protection," went on to declare, *per* Parker, *J.*:

> But a complete change took place in the status of these people when Mexico threw off the Spanish yoke. Among those engaged in that struggle for independence, this Aztec race far outnumbered the Mexicans and its success was due in a large measure to their efforts. It was but natural and fitting that in the formation of the new government they should take a prominent, if not a leading, part, and that they should be placed upon an equal footing as to all civil and political rights. And so we find that the revolutionary government of Mexico, February 24, 1821, a short time before the subversion of Spanish power, adopted what is known as "The Plan of Iguala" (Iguala was the place of the revolutionary army headquarters), in which it is declared that: "All the inhabitants of New Spain, without distinction, whether Europeans, Africans or Indians, are citizens of this monarchy, with the right to be employed in any post according to their merit and virtues;" and that: "The person and property of every citizen will be respected and protected by the government." I Ordenes y Decretos, by Galvan, page 3; *U. S.* v. *Ritchie*, 17 How. (U. S.) 524, 538; *U. S.* v. *Lucero*, *supra* [1 N. M. 422 (1869)].
>
> The same principles were reaffirmed in the Treaty of Cordova, of August 24, 1821. 1 Ordenes y Decretos, by Galvan, page 6, and in the Declaration of Independence, of October 6, 1821. Id., page 8.
>
> The Mexican congress thereafter followed with at least four acts in each of which "The Plan of Iguala" was uniformly considered as a fixed principle of Mexican law. *U. S.* v. *Ritchie*, *supra;* 2 Ordenes y Decretos, pages 1 and 92, and 3 Id. page 65.
>
> This latter act was passed August 18, 1824, only twenty-four years before the Treaty of Guadalupe Hidalgo, whereby we acquired this Territory and these people. (Pp. 142–143.)

The United States Supreme Court in *United States* v. *Ritchie*,[10] in 1854, commented on the foregoing Mexican statutes in the following terms, *per* Nelson, *J.*:

> The Indian race having participated largely in the struggle resulting in the overthrow of the Spanish power, and in the erection of an independent government, it was natural that in laying the foundations of the new government, the previous political and social distinctions in favor of the European or Spanish blood should be abolished, and equality of rights and privileges established. Hence the article to this effect in the plan of Iguala, and the decree of the first Congress declaring the equality of civil rights, whatever may be their race or country. These solemn declarations of the political power of the government had the effect, necessarily, to invest the Indians with the privileges of citizenship as effectually as had the declaration of independence of the United States, of 1776, to invest all those persons with these privileges residing in the country at the time, and who adhered to the interests of the colonies. 3 Pet., 99, 121.[11]

The historian Brayer presents persuasive evidence[12] that the grant of citizenship to the Pueblo Indians, under Mexican rule, did not dissolve the status of wardship or the limitations upon land alienation established under Spanish sovereignty. It would be beyond the scope of this work to enter into this controversial field of historical research, but the conclusions of the historian cited are worthy of notice:

> 1. That the Pueblo Indians of New Mexico were still considered wards of the government even though they were given the title "citizens."
>
> 2. Only the most important of the government officials could authorize the sale of Indian lands. That the local officials in New Mexico continued to exercise the same powers as they had during the Spanish regime throughout the entire period of Mexican sovereignty.
>
> 3. That the Spanish laws in force previous to 1821, relative to the Pueblo Indian and to land policy, remained in full force.
>
> 4. That because of the laxity on the part of local officials during the Mexican period a great many non-Indians were able to obtain holdings on Indian lands. The legality of such holdings needs little consideration, but the failure of the Mexican government to take action left the problem up to the United States after 1846.
>
> 5. That the title to the Pueblo lands remained in the name of the individual Pueblos, and that no individual Indian held the title to any portion thereof.[13]

[9] 12 N. M. 139, 76 Pac. 307 (1904).
[10] 17 How. 525, 539–540 (1854).
[11] See also *United States* v. *Lucero*, 1 N. M. 422, 428–435 (1869).
[12] Pueblo Indian Land Grants of the "Rio Abajo," New Mexico (1939), pp. 18–19.
[13] Pueblo Indian Land Grants of the "Rio Abajo," New Mexico (1939), pp. 19–20.

SECTION 3. THE PUEBLOS UNDER THE NEW MEXICAN TERRITORIAL GOVERNMENT

By Article 8 of the Treaty of Guadalupe Hidalgo,[14] the residents of the territory ceded by Mexico were given the option of retaining their Mexican citizenship by declaring such intention within a year from the date of exchange of ratifications,

> * * * and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

None of the Pueblo Indians elected to retain Mexican citizenship, according to the opinion in the *Lucero* case:

> Colonel Washington made proclamation requiring the people to elect by signing a declaration before the clerk of the courts in the different districts, if they wished to retain the title and rights of Mexican citizens. In that test, which is a public printed document, the name is not found of a single Pueblo Indian; and hence, by the express terms of the eighth article of the treaty, they became citizens of the United States, as they were previously citizens of the Mexican republic. (P. 440.)

While the conclusion that the Pueblo Indians thus became citizens of the United States cannot be considered free from doubt, in view of the comment[15] of the Supreme Court in *United States* v. *Sandoval*, "it remains an open question whether they have become citizens," it would appear that the historical evidence supports the claim that the Pueblo Indians did enjoy citizenship, both under Mexican and under United States rule.[16] It seems clear, in any event, that, as Mexicans, they were protected by section 9 of the Treaty of Guadalupe Hidalgo which promised, eventually, "all the rights of citizens of the United States" and, immediately, "free enjoyment of their liberty and property."[17]

A. HISTORY OF PUEBLO LEGISLATION

For several years following the Treaty of Guadalupe Hidalgo, Congress apparently took little notice of the Pueblo Indians. Until 1854, at least, the local authorities appear to have legislated in pueblo matters with such congressional approval as was given by silence. The course of this local legislation was thus summarized by the Chief Justice of the territorial supreme court, in *United States* v. *Lucero*:[18]

> * * * General Kearny, after taking possession of New Mexico, eighteenth of August, 1846, established a system of civil government in New Mexico, organized courts, appointed judges, and convened a legislative body, and in December, 1847, that legislative assembly passed the following act:
>
> "INDIANS.
>
> "SECTION 1. That the inhabitants within the territory of New Mexico, known by the name of pueblo Indians, and living in towns or villages built on lands granted to such Indians by the laws of Spain and Mexico, and conceding to such inhabitants certain lands and privileges to be used for the common benefit, are severally hereby created and constituted bodies politic and corporate, and shall be known in the law by the name of the pueblo de ———— (naming it) and by that name they and their successors shall have perpetual succession, sue and be sued, plead and be impleaded, bring and defend in any court of law or equity all such actions, pleas, and matters whatsoever proper to recover, protect, reclaim, demand, or assert the right of such inhabitants, or any individual thereof, to any lands, tenements, or hereditaments possessed, occupied, or claimed, contrary to law, by any person whatever, and to bring and defend all such actions, and to resist any encroachment, claim or trespass made upon such lands, tenements, or hereditaments belonging to said inhabitants, or any individual:" See Compiled Laws of New Mexico, 470.
>
> On the tenth of January, 1853, a law was passed, prohibiting the sale of liquor to Indians, with a proviso, "that the pueblo Indians that live among us are not included in the word Indian:" See Compiled Laws, p. 472, sec. 5. January 21, 1861, an act was passed, requiring the pueblos of Indians to work *acequias* (ditches) and highways, and extending the act of January 13, 1860, over the pueblo Indians as to trespasses of their stock on the fields of their neighbors: See Id. 470, 471. On the sixteenth of February, 1854, the legislative assembly of New Mexico passed the following act, section 70: "That the pueblo Indians of this territory for the present, and until they shall be declared by the congress of the United States to have the right, are excluded from the privilege of voting at the popular elections of the territory, except in the elections for overseers of ditches to which they belong, and in the elections proper to their own pueblos to elect their officers according to their ancient customs." The seventh section of the organic act of September 9, 1850, invests the legislative assembly of New Mexico with the power to legislate upon all rightful subjects of legislation consistent with the constitution of the United States and the provisions of that act, and further provided that "all laws passed by the legislative assembly and governor, shall be submitted to the congress of the United States, and if disapproved, shall be null and of no effect."
>
> As this act of the sixteenth of February, 1854, passed by the legislative assembly of New Mexico, has never been disapproved by congress, it must be regarded as in force in New Mexico, and deprives the pueblo Indians of one of the dearest and most valued rights, the right to be heard by their ballots in the selection of agents to make laws for their government. (Pp. 438–440.)

By the Act of July 22, 1854,[19] Congress provided for the appointment of a Surveyor-General for New Mexico who was, "under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; * * * shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land." (P. 309.) This reference to "Pueblos" made no distinction between Indian Pueblos and non-Indian Pueblos.

The Pueblo Indians are mentioned in the annual Indian Department Appropriation Acts of August 30, 1852,[20] and July 31, 1854.[21] The former of these acts contains this item:

> For defraying expenses incident to the visit of the Pueblo Indians and their attendants from New Mexico to Washington, and to defray their expenses to their homes, the sum of seven thousand five hundred dollars. (P. 55.)

The second of the acts cited contains a provision:

> For the expenses of making presents of agricultural implements and farming utensils to the bands of Pueblo Indians in the territory of New Mexico, ten thousand dollars: * * *. (P. 330.)

[14] Signed February 2, 1848, ratification exchanged May 30, 1848, proclaimed July 4, 1848, 9 Stat. 922.

[15] 231 U. S. 28, 39 (1913). See also *United States* v. *Joseph*, 94 U. S. 614, 618 (1876); *Jaeger* v. *United States*, 29 C. Cls. 172, 173 (1894).

[16] Brayer, *op. cit.* 17–18, 23–24.

[17] See fn. 14, *supra*.

[18] 1 N. M. 422 (1869).

[19] 10 Stat. 308.

[20] 10 Stat. 41.

[21] 10 Stat. 315

The Pueblo Indians are next mentioned by Congress in the Indian Department Appropriation Act of March 3, 1857,[22] which contains this provision:

> For expenses of surveying and marking the external boundaries of Indian pueblos, in the Territory of New Mexico, three thousand seven hundred and fifty dollars. (P. 184.)

On December 22, 1858, Congress acted favorably upon the report of the Surveyor-General for the territory of New Mexico, confirming pueblo land claims of the following Pueblos: Jemez, Acoma, San Juan, Picuris, San Felipe, Pecos, Cochiti, Santo Domingo, Taos, Santa Clara, Tesuque, San Ildefonso, Pojuaque, Zia, Sandia, Isleta, and Nambe.[23]

This congressional confirmation of pueblo titles is subject to the usual proviso "That this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights, should such exist."

To the foregoing list of confirmed pueblo claims there was added, in 1869, the claim of the Pueblo of Santa Ana.[24] Many years later, a similar patent was issued to the Zuni Pueblo Indians.[25]

> All that the United States could give was a quit-claim deed, transferring to the Pueblo Indians its own share; it could not transfer property from one private owner to another.
>
> The courts of the United States would always have the right, on due consideration of all the facts involved, to determine the actual ownership of any given piece of land. But it has never been within the power of either the legislative or the executive to change private land titles. The judicial power alone could settle the question of the encroachments upon the lands of the Pueblo Indians—encroachments dating back for centuries, arising partly from greed, partly from interrelationship, partly from the need of a common defense against "Indios barbaros." Some of these settlers outside the pueblo walls claimed title from Mexican and Spanish grants, as did the Pueblos themselves; some had obtained their land by purchase from the Indian communities; some were intruders pure and simple, no doubt; some, beginning with a valid title, had skillfully enlarged their holdings by less defensible means. All these problems came as an unhappy heritage to the new government of the land.[26]

In the Appropriation Act of July 15, 1870,[27] a sum is appropriated "to be expended in establishing schools among the Pueblo Indians," and similar provisions reappear in later acts.

In the Act of May 29, 1872,[28] the Indian Department Appropriation Act for 1873, and regularly in succeeding appropriation acts,[29] provision is made for pay of an Indian agent at the Pueblo Agency. Thereafter congressional appropriations for the work of the Indian Department among the Pueblo Indians of New Mexico are gradually elaborated.

In the Indian Department Appropriation Act for 1875,[30] and in subsequent appropriation acts, provision is made for pay of interpreters at the Pueblo agency.

The Appropriation Act for 1883[31] contains the following provision embodying the first assumption of federal responsibility for "civilizing" the Pueblo Indians:

> For civilization and instruction of the Pueblo Indians of New Mexico, including pay of teachers and purchase of seeds and agricultural implements, seven thousand five hundred dollars; and of this sum not exceeding one thousand five hundred dollars may, in the discretion of the Commissioner of Indian Affairs, be used in constructing irrigating ditches at Zuni and Jemez Pueblos. (P. 83.)

The foregoing provision is substantially repeated in subsequent Indian Department appropriation acts.[32]

The next addition to the scope of congressional responsibility for the Pueblo Indians appears in the appropriation act for 1899,[33] which establishes the post of "special attorney for the Pueblo Indians of New Mexico" by virtue of the following provision:

> To enable the Secretary of the Interior to employ a special attorney for the Pueblo Indians of New Mexico, one thousand five hundred dollars.

This provision is reenacted, in substance, in succeeding appropriation acts.[34]

The Appropriation Act of March 3, 1905, for the fiscal year 1906 contains the following item of permanent legislation, called forth, apparently, by the decision of the New Mexico Territorial Court rendered on March 3, 1904, in the case of *Territory* v. *Delinquent Taxpayers*.[35]

> That the lands now held by the various villages or pueblos of Pueblo Indians, or by individual members thereof, within Pueblo reservations or lands, in the Territory of New Mexico, and all personal property furnished said Indians by the United States, or used in cultivating said lands, and any cattle and sheep now possessed or that may hereafter be acquired by said Indians shall be free and exempt from taxation of any sort whatsoever, including taxes heretofore levied, if any, until Congress shall otherwise provide. (P. 1069.)[36]

Up to the admission of New Mexico to statehood, there is no further federal legislation for the Pueblo Indians of that state except in the Indian Department appropriation acts (redesignated, beginning with the Act of April 4, 1910,[37] as the Bureau of Indian Affairs appropriation acts). These acts include special appropriations for irrigation for the Zuni Pueblo,[38] and for the building of two bridges across the Rio Grande at or near Isleta and San Felipe Indian Pueblos, with preference given to Indian labor.[39]

---

[22] 11 Stat. 169.

[23] 11 Stat. 374.

[24] Act of February 9, 1869, c. 26, 15 Stat. 438.

[25] Act of March 3, 1931, c. 438, 46 Stat. 1509.

[26] Seymour, Land Titles in the Pueblo Indian Country (1924), 10 A. B. A. Jour. 36, 38.

[27] 16 Stat. 335, 357.

[28] 17 Stat. 165.

[29] See *Romero* v. *United States*, 24 C. Cls. 331 (1889).

[30] Act of June 22, 1874, 18 Stat. 146.

[31] Act of May 17, 1882, 22 Stat. 68.

[32] Act of March 1, 1883, 22 Stat. 433; Act of July 4, 1884, 23 Stat. 76; Act of March 3, 1885, 23 Stat. 362; Act of May 15, 1886, 24 Stat. 29; Act of March 2, 1887, 24 Stat. 449; Act of June 29, 1888, 25 Stat. 217; Act of March 2, 1889, 25 Stat. 980; Act of August 19, 1890, 26 Stat. 336; Act of March 3, 1891, 26 Stat. 989; Act of July 13, 1892, 27 Stat. 120; Act of March 3, 1893, 27 Stat. 612; Act of March 2, 1895, 28 Stat. 876; Act of June 10, 1896, 29 Stat. 321; Act of June 7, 1897, 30 Stat. 62; Act of July 1, 1898, 30 Stat. 571; Act of March 1, 1899, 30 Stat. 924.

[33] Act of July 1, 1898, 30 Stat. 571, 594.

[34] Act of March 1, 1899, 30 Stat. 924; Act of March 3, 1901, 31 Stat. 1058; Act of May 27, 1902, 32 Stat. 245; Act of March 3, 1903, 32 Stat. 982; Act of April 21, 1904, 33 Stat. 189; Act of March 3, 1905, 33 Stat. 1048; Act of June 21, 1906, 34 Stat. 325; Act of March 1, 1907, 34 Stat. 1015; Act of April 30, 1908, 35 Stat. 70; Act of March 3, 1909, 35 Stat. 781; Act of April 4, 1910, 36 Stat. 269; Act of March 3, 1911, 36 Stat. 1058; Act of August 24, 1912, 37 Stat. 518; Act of June 30, 1913, 38 Stat. 77; Act of August 1, 1914, 38 Stat. 582; Act of May 18, 1916, 39 Stat. 123; Act of March 2, 1917, 39 Stat. 969; Act of May 25, 1918, 40 Stat. 561; Act of June 30, 1919, 41 Stat. 3; Act of February 14, 1920, 41 Stat. 408; Act of March 3, 1921, 41 Stat. 1225; Act of May 24, 1922, 42 Stat. 552; Act of January 24, 1923, 42 Stat. 1174; Act of June 5, 1924, 43 Stat. 390; Act of December 6, 1924, 43 Stat. 704; Act of March 3, 1925, 43 Stat. 1141; Act of May 10, 1926, 44 Stat. 453; Act of January 12, 1927, 44 Stat. 934; Act of March 7, 1928, 45 Stat. 200; Act of March 4, 1929, 45 Stat. 1562; Act of May 14, 1930, 46 Stat. 279; Act of February 14, 1931, 46 Stat. 1115; Act of April 22, 1932, 47 Stat. 91; Act of February 17, 1933, 47 Stat. 820.

[35] 12 N. M. 139, 76 Pac. 307 (1904). See p. 384, *supra*.

[36] 33 Stat. 1048. *Cf.* Chapter 13, sec. 2.

[37] 36 Stat. 269.

[38] Acts of April 30, 1908, 35 Stat. 70; March 3, 1909, 35 Stat. 781.

[39] Act of March 3, 1911, 36 Stat. 1058.

B. HISTORY OF JUDICIAL AND EXECUTIVE ATTITUDES TOWARDS PUEBLOS

During the period which the foregoing history of federal legislation covers, judicial and executives attitudes towards the Pueblos were undergoing a gradual change parallel to the gradual increase in the activities of the Indian Bureau among the Pueblo Indians.

For many years after the accession of New Mexico the Pueblos were not considered Indian tribes within the meaning of existing statutes. During the 23 years that elapsed between the Treaty of Guadalupe Hidalgo and the Act of March 3, 1871,[40] which terminated the practice of making treaties with Indian tribes, no treaty was ever negotiated with any of the Pueblos. The reasons for distinguishing between the Pueblo Indians and other aborigines are set forth at length and in colorful terms by the Supreme Court of New Mexico Territory, in the case of *United States* v. *Lucero*,[41] decided in January 1869. That case involved an attempt by the United States to invoke section 11 of the Indian Intercourse Act[42] of June 30, 1834, which made unauthorized settlement of tribal lands a federal offense, as extended by section 7 of the Appropriation Act of February 27, 1851,[43] "over the Indian tribes in the Territories of New Mexico and Utah."

The territorial court dismissed the suit on demurrer, declaring, *per* Watts, *C. J.*:

> * * * If these pueblos, twenty-one in number, were really included in the provisions of the intercourse act, intended for a different class of Indians, the Indian department, during the last twenty years that they have been under their pretended control, would have had spread upon our statutes at large certainly not less than eighty treaties with these twenty-one *quasi* nations. (P. 437.)
>
> * * * It will thus be seen by a reference to the acts of congress above cited, that no person has ever been authorized by congress to be appointed agent for the pueblo Indians, nor has any one ever been commissioned as agent for them, and the designation of an agent for the pueblos by the Indian department is without any authority of congress or the decision of any judicial tribunal authorized to pass upon the question, and the transfer of eight thousand of the most honest, industrious, and law-abiding citizens of New Mexico to the provisions of a code of laws made for savages, by the simple stroke of the pen of an Indian commissioner, will never be assented to by congress or the judicial tribunals of the country so long as solemn treaties and human laws afford any protection to the liberty and property of the citizens. (P. 438.)

After reviewing the history of territorial legislation with regard to the pueblo Indians of New Mexico, the court continued:

> * * * it is the right and duty of the courts to see that every citizen of the territory of New Mexico, in conformity with the ninth article of the treaty of Guadalupe Hidalgo, "shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."
>
> This court, under this section of the treaty of Guadalupe Hidalgo, does not consider it proper to assent to the withdrawal of eight thousand citizens of New Mexico from the operation of the laws, made to secure and maintain them in their liberty and property, and consign their liberty and property to a system of laws and trade made for wandering savages and administered by the agents of the Indian department. If such a destiny is in store for a large number of the most law-abiding, sober, and industrious people of New Mexico, it must be the result of the direct legislation of congress or the mandate of the supreme court. This court feels itself incompetent to construe them into any such condition. This court has known the conduct and habits of these Indians for eighteen or twenty years, and we say, without the fear of successful contradiction, that you may pick out one thousand of the best Americans in New Mexico, and one thousand of the best Mexicans in New Mexico, and one thousand of the worst pueblo Indians, and there will be found less, vastly less, murder, robbery, theft, or other crimes among the thousand of the worst pueblo Indians than among the thousand of the best Mexicans or Americans in New Mexico. The associate justice now beside me, Hon. Joab Houghton, has been judge and lawyer in this territory for over twenty years, and the chief justice for over seventeen years, and during all that time not twenty pueblo Indians have been brought before the courts in all New Mexico, accused of violation of the criminal laws of this territory. For the Indian department to insist, as they have done for the last fifteen years, upon the reduction of these citizens to a state of vassalage, under the Indian intercourse act, is passing strange. A law made for wild, wandering savages, to be extended over a people living for three centuries in fenced abodes and cultivating the soil for the maintenance of themselves and families, and giving an example of virtue, honesty, and industry to their more civilized neighbors, in this enlightened age of progress and proper understanding of the civil rights of man, is considered by this court as wholly inapplicable to the pueblo Indians of New Mexico. (Pp. 441–442.)
>
> It has already been shown that the people of Cochiti are a corporate body, and that a full and ample remedy is given them to protect and defend their title to their individual and common lands, and that they do not need any assistance from the penal statutes of the United States to accomplish that purpose. * * * let the Indian department have placed under their control the twenty-one pueblos of New Mexico, and get the laws of trade and intercourse, designed to regulate the commerce of the country with savages, extended over these peaceful and industrious citizens, and in less than six months they will have fifty lawsuits on hand about questions settled by a former government fifty years ago. (Pp. 444–445.)

One of the grounds of the *Lucero* decision was demolished when the Appropriation Act of May 29, 1872,[44] made provision for an agent for "the Pueblo agency," thus treating the Pueblos on a parity with other tribes. The United States thereupon renewed the effort that had been defeated by the *Lucero* decision, to invoke the Act of June 30, 1834, for the protection of pueblo lands against trespass. Again the territorial court denied the applicability of the statute to the Pueblos,[45] and this time the United States took an appeal to the Supreme Court. The Supreme Court, in *United States* v. *Joseph*,[46] affirmed the decision of the territorial court, offering these reasons for its holding:

> The character and history of these people are not obscure, but occupy a well-known page in the story of Mexico, from the conquest of the country by Cortez to the cession of this part of it to the United States by the treaty of Guadaloupe Hidalgo. The subject is tempting and full of interest, but we have only space for a few well-considered sentences of the opinion of the chief justice of the court whose judgment we are reviewing.
>
> "For centuries," he says, "the pueblo Indians have lived in villages, in fixed communities, each having its own municipal or local government. As far as their history can be traced, they have been a pastoral and agricultural people, raising flocks and cultivating the soil. Since the introduction of the Spanish Catholic missionary into the country, they have adopted mainly not only the Spanish language, but the religion of a Christian church. In every

[40] 16 Stat. 544, 566.
[41] 1 N. M. 422 (1869).
[42] Act of June 30, 1834, sec. 11, 4 Stat. 729, 730.
[43] 9 Stat. 574.
[44] 17 Stat. 165.
[45] *United States* v. *Santistevan*, 1 N. M. 583 (1874); *United States* v. *Varela*, 1 N. M. 593 (1874); *United States* v. *Koslowski*, *ibid.*, *United States* v. *Joseph*, *ibid.*
[46] 94 U. S. 614 (1876).

pueblo is erected a church, dedicated to the worship of God, according to the form of the Roman Catholic religion, and in nearly all is to be found a priest of this church, who is recognized as their spiritual guide and adviser. They manufacture nearly all of their blankets, clothing, agricultural and culinary implements, &c. Integrity and virtue among them is fostered and encouraged. They are as intelligent as most nations or people deprived of means or facilities for education. Their names, their customs, their habits, all similar to those of the people in whose midst they reside, or in the midst of whom their pueblos are situated. The criminal records of the courts of the Territory scarcely contain the name of a pueblo Indian. In short, they are a peaceable, industrious, intelligent, honest, and virtuous people. They are Indians only in feature, complexion, and a few of their habits; in all other respects superior to all but a few of the civilized Indian tribes of the country, and the equal of the most civilized thereof. This description of the pueblo Indians, I think, will be deemed by all who know them as faithful and true in all respects. Such was their character at the time of the acquisition of New Mexico by the United States; such is their character now."

At the time the act of 1834 was passed there were no such Indians as these in the United States, unless it be one or two reservations or tribes, such as the Senecas or Oneidas of New York, to whom, it is clear, the eleventh section of the statute could have no application. (Pp. 616–617.)

The tribes for whom the act of 1834 was made were those semi-independent tribes whom our government has always recognized as exempt from our laws, whether within or without the limits of an organized State or Territory, and, in regard to their domestic government, left to their own rules and traditions; in whom we have recognized the capacity to make treaties, and with whom the governments, state and national, deal, with a few exceptions only, in their national or tribal character, and not as individuals.

If the pueblo Indians differ from the other inhabitants of New Mexico in holding lands in common, and in a certain patriarchal form of domestic life, they only resemble in this regard the Shakers and other communistic societies in this country, and cannot for that reason be classed with the Indian tribes of whom we have been speaking.

We have been urged by counsel, in view of these considerations, to declare that they are citizens of the United States and of New Mexico. But abiding by the rule which we think ought always to govern this court, to decide nothing beyond what is necessary to the judgment we are to render, we leave that question until it shall be made in some case where the rights of citizenship are necessarily involved. But we have no hesitation in saying that their *status* is not, in the face of the facts we have stated, to be determined solely by the circumstance that some officer of the government has appointed for them an agent, even if we could take judicial notice of the existence of that fact, suggested to us in argument.

Turning our attention to the tenure by which these communities hold the land on which the settlement of defendant was made, we find that it is wholly different from that of the Indian tribes to whom the act of Congress applies. The United States have not recognized in these latter any other than a passing title with right of use, until by treaty or otherwise that right is extinguished. And the ultimate title has been always held to be in the United States, with no right in the Indians to transfer it, or even their possession, without consent of the government.

It is this fixed claim of dominion which lies at the foundation of the act forbidding the white man to make a settlement on the lands occupied by an Indian tribe.

The pueblo Indians, on the contrary, hold their lands by a right superior to that of the United States. Their title dates back to grants made by the government of Spain before the Mexican revolution,—a title which was fully recognized by the Mexican government, and protected by it in the treaty of Guadaloupe Hidalgo, by which this country and the allegiance of its inhabitants were transferred to the United States. (Pp. 617–618.)

If the defendant is on the lands of the pueblo, without the consent of the inhabitants, he may be ejected, or punished civilly by a suit for trespass, according to the laws regulating such matters in the Territory. If he is there with their consent or license, we know of no injury which the United States suffers by his presence, nor any statute which he violates in that regard. (P. 619.)

Some years later, the Supreme Court would ascribe the views expressed in 1876 in the *Joseph* case to inaccurate information,[47] but for nearly four decades the *Joseph* case fixed the law governing the New Mexico Pueblos.[48]

In 1891, the Attorney General ruled[49] that federal statutes authorizing the Commissioner of Indian Affairs to license and regulate Indian traders[50] had no application to the Pueblos.

In 1894, the Assistant Attorney General for the Department of the Interior ruled that laws relating to the approval of leases of Indian tribal land had no application to the Pueblos.[51]

In 1900, in the case of *Pueblo of Nambe* v. *Romero*,[52] the territorial court, in a suit to quiet title brought by an alleged conveyee of pueblo lands, issued a decree against the Pueblo, basing such decree upon a finding that the Pueblo had validly granted away the land in question and upon a holding that the territorial statute of limitations[53] ran against the Pueblo.

In 1904, in the case of *Territory of New Mexico* v. *Delinquent Taxpayers*,[54] the attempt to collect taxes on pueblo lands was upheld by the territorial court on the basis of the reasoning in the *Lucero* and *Joseph* cases. This ruling, however, as we have seen, was reversed by congressional enactment.[55]

In 1907, in *United States* v. *Marcs*,[56] the territorial court held that the Pueblo Indians were not covered by Indian liquor laws[57] making it an offense to sell or give intoxicants to "any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the government, or to any Indian a ward of the government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the government, through its departments, exercises guardianship."

This ruling, again, was reversed by Congress, in the New Mexico Enabling Act, which will be treated in the following section.

By way of summary, it may be said that during the period from the accession of New Mexico to the granting of statehood, the Pueblos had a legal status sharply distinguished from that of most other Indian tribes and comprehended under Indian legislation only where Congress had expressly so provided, as in the matter of agency maintenance, "civilization" appropriations, and tax exemption. In all other respects, each Pueblo had a status substantially similar to that of any other municipal corporation of the territory.[58]

---

[47] See *United States* v. *Sandoval*, 231 U. S. 28, 48 (1913). See *infra*, sec. 4.

[48] The effect of this decision was to confirm the opinions and judgment that had before that time been rendered with respect to the Pueblo Indians. As they were further advanced in civilization than the nomadic tribes, better versed in the arts and industries of ordinary life, so they were recognized as deserving the treatment accorded to civilized and industrious people. But with the greater freedom and privilege of their status went a greater responsibility. If their land was their own they must use their own judgment in the disposition of it. The Supreme Court had decided that the United States had no right to interfere.

Our highest tribunal had spoken. Through many years the decision went unchallenged. The Pueblo governors managed the lands of their people as they had always done, and back of every sale was the assurance of the Supreme Court that they had a perfect and complete right to make it. (Seymour, Land Titles in the Pueblo Indian Country [1924] 10 A. B. A. Jour. 36, 39.)

[49] 20 Op. A. G. 215 (1891).

[50] Acts of August 15, 1876, sec. 5, 19 Stat. 176, 200; July 31, 1882, 22 Stat. 179.

[51] 19 L. D. 326 (1894).

[52] 10 N. M. 58, 61 Pac. 122 (1900).

[53] N. M. Compiled Laws (1897) sec. 2938

[54] 12 N. M. 139, 76 Pac. 316 (1904).

[55] *Supra*, p. 386.

[56] 14 N. M. 1, 88 Pac. 1128 (1907).

[57] Act of January 30, 1897, 29 Stat. 506

[58] See, however, fn. 137, *infra*.

SECTION 4. THE PUEBLOS IN THE STATE OF NEW MEXICO

While New Mexico was a territory and thus an agency of the Federal Government there was a tendency to leave to the territorial government control of the Pueblos, and the territorial authorities sought generally to assimilate the Pueblos to the status of other municipal corporations of the territory. This tendency, as we have seen, was checked in the matter of taxation, but in all other respects the relation of the Pueblos to the federal executive was extremely tenuous.

With the admission of New Mexico to statehood, however, a sharp reversal occurred in these tendencies. The termination of the territorial government created a clear distinction between state and federal authority and the center of control over the Pueblos shifted from Santa Fe to Washington. Thus the Pueblos came to be treated more and more as other Indian tribes.

The first important step in this direction was taken in the New Mexico Enabling Act, which contained a specific provision that "the terms 'Indian' and 'Indian country' shall include the Pueblo Indians of New Mexico and the lands now owned or occupied by them." [60]

A. THE SANDOVAL DECISION

The constitutionality of this extension of federal control over the Pueblos was upheld in 1913 in the case of *United States* v. *Sandoval*.[60] That case involved a prosecution for the offense of introducing liquor into the Indian country. The Supreme Court held that Congress had expressed a clear intent to reverse the rule laid down by the territorial court in *United States* v. *Mares*.[61] On the question of the constitutionality of this extension of federal control, the court pointed out that neither the outright ownership of land by the Pueblos nor the claim of the Pueblo Indians to citizenship (the validity of which was not here passed upon) stood as an obstacle to the exercise of federal guardianship by Congress. The court declared, *per* Van Devanter, *J.*:

> Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts. (P. 46.)
>
> We are not unmindful that in *United States* v. *Joseph*, 94 U. S. 614, there are some observations not in accord with what is here said of these Indians, but as that case did not turn upon the power of Congress over them or their property, but upon the interpretation and purpose of a statute not nearly so comprehensive as the legislation now before us, and as the observation there made respecting the Pueblos were evidently based upon statements in the opinion of the territorial court, then under review, which are at variance with other recognized sources of information, now available, and with the long-continued action of the legislative and executive departments, that case cannot be regarded as holding that these Indians or their lands are beyond the range of Congressional power under the Constitution. (Pp. 48–49.)

B. EFFECT OF THE SANDOVAL DECISION

The effect of the *Sandoval* decision was to spread consternation among the people of New Mexico who held lands to which the Pueblos laid claim. The situation is thus described in a letter to the Attorney General, dated June 11, 1929, from George A. H. Fraser, who served for some years as special assistant to the Attorney General:

> The great majority of the claimants had bought and possessed their lands in good faith and in reliance on a series of decisions of the Territorial Supreme Court of New Mexico, beginning in 1859 and extending to about 1908, to the general effect that the Pueblo Indians were emancipated, that they had the right to sell their lands and the liability of losing them by adverse possession, and that the Nonintercourse Act of 1834 did not apply to them. The last-mentioned idea was supported by the Joseph case in 94 U. S., decided in 1877, in which the United States was defeated in an attempt to remove settlers from the Pueblo of Taos under the provisions of said Act. Up to 1913, therefore, when the Sandoval case was decided (231 U. S. 28), all the law there was, including that announced by the highest tribunal, was to the effect aforesaid. The Sandoval decision came as a great surprise, and it was natural that any proceedings interfering with titles so long supposed to be valid should be resisted in every possible way.[62]

Herbert O. Brayer, author of the leading history of pueblo land grants,[63] comments on the *Sandoval* decision in these terms:

> From the Sandoval decision, in 1913, to the passage of the Pueblo lands act of 1924, every possible means to evade the consequences of the supreme court decision was utilized by those non-Indians who were in possession of Pueblo lands.[64]
>
> [64] Leo Crane, *Desert Drums* (Boston, 1928), 275–311.
>
> The constant friction between the non-Indian claimants and the Pueblo Indians finally culminated in an investigation by the sixty-seventh congress. This investigation disclosed that there were approximately three thousand non-Indian claimants to lands within the exterior boundaries of the Pueblo grants. It was estimated that these three thousand claimants represented families aggregating twelve thousand persons. With the seriousness of the situation impressed upon them by these figures, congress began to seek a remedy for the situation. Senator Holm O. Bursum of New Mexico introduced into the senate of the sixty-seventh congress a bill entitled, "An act to quiet title to lands within Pueblo Indian land

[60] Act of June 20, 1910, 36 Stat. 557. The pertinent portions of the act provide:

> SEC. 2. * * * that * * * the said convention shall be, and is hereby, authorized to form a constitution and provide for a state government for said proposed State, all in the manner and under the conditions contained in this Act. * * *
>
> And said convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said State—
>
> First. That * * * the sale, barter, or giving of intoxicating liquors to Indians and the introduction of liquors into Indian country, which term shall also include all lands now owned or occupied by the Pueblo Indians of New Mexico, are forever prohibited.
>
> Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title * * * to all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States; * * * but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing, as other lands and other property are taxed, any lands and other property outside of an Indian reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any Act of Congress, but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as Congress has prescribed or may hereafter prescribe.
>
> * * * * *
>
> Eighth. That whenever hereafter any of the lands contained within Indian reservations or allotments in said proposed State shall be allotted, sold, reserved, or otherwise disposed of, they shall be subject for a period of twenty-five years after such allotment, sale, reservation, or other disposal to all the laws of the United States prohibiting the introduction of liquor into the Indian country; and the terms "Indian" and "Indian country" shall include the Pueblo Indians of New Mexico and the lands now owned or occupied by them.

[60] 231 U. S. 28 (1913).

[61] 14 N. M. 1, 88 Pac. 1128 (1907). See sec. 3B, *supra*.

[62] D. J. File No. 232544.

[63] Pueblo Indian Land Grants of the "Rio Abajo," New Mexico (The Univ. of New Mexico Bulletin No. 334, 1939), pp. 26–28.

grants and for other purposes." On the surface the bill seemed to be just what was needed. A close study of the Bursum bill disclosed, however, that it would have served to place the non-Indian holders of Indian land in a favorable position to obtain a clear title to holdings within the Pueblo grants, and to have put the burden of disproving the right of these private land holders upon the government. This would have entirely reversed the usual procedure with regard to land claims. [The burden of proof in such cases is always upon the claimant.] One authority, notably biased in favor of the Indians, distinctly charges an attempt on the part of Senator Bursum and the secretary of the interior, at that time, Albert B. Fall of New Mexico, to provide an easy means by which the non-Indians could make certain of obtaining a title to their lands which would be forever secure.[45]

The Bursum bill received the backing of the Harding administration and seemed slated for enactment. To the defense of the Indians, and to the attack on the Bursum proposal, a strong opposition developed, led by two groups, the small New Mexico association on Indian affairs and the general federation of women's clubs. The latter organization, in 1921, had formed a committee on Indian welfare. Under the leadership of Mrs. Stella M. Atwood, this organization employed Mr. John Collier, a student of Indian affairs, as field representative. As legal counsel the services of Francis C. Wilson of Santa Fe were obtained. Two congressional committees heard the case against the Bursum bill. The arguments presented by Mr. Wilson were strong and conclusive, and, together with the testimony of many who opposed the enactment of the proposed law, succeeded in "killing" the bill.

A counter-proposal known as the Jones-Leatherwood bill was suggested by the adversaries of the Bursum act, but this measure also failed to obtain the approval of the congress. Pressed by constituents from New Mexico, Senator Bursum introduced a new measure on December 10, 1923, which called for the appointment of a commission to investigate Pueblo land titles. Congress failed to pass the measure during the 1923 session. In 1924, however, the act was revived and approved by congress on June 7. Known as the *Pueblo Lands Act*, this measure provided the means by which a final solution was made of the thousands of non-Indian claims within the lands of the Pueblo Indians.[46]

C. THE PUEBLO LANDS ACT

The Pueblo Lands Act established a "Pueblo Lands Board" consisting of the Secretary of the Interior, the Attorney General, and a third member appointed by the President. This board was, by section 2 of the act, given the duty of determining "the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise," and to determine the status of all lands within such boundaries, subject to the requirement that a finding that Indian title had been extinguished required a unanimous vote of the board.

The Attorney General was directed, in section 3 of the Pueblo Lands Act, to bring suit to quiet title to all lands listed as pueblo lands by the Lands Board.

Section 4 of the act provided that non-Indian claimants, in order to substantiate their claims, must demonstrate either (*a*) continuous adverse possession under color of title since January 6, 1902, supported by payment of taxes on the land, or (*b*) continuous adverse possession since March 16, 1889, supported by payment of taxes, but without color of title.

With respect to all lands and water rights found to have been lost by the Pueblos which might have been recovered by seasonable prosecution on the part of the United States, the United States was to reimburse the Pueblos the fair market value of the lands and water rights. (Sec. 6.) On the other hand, the board was to report back to Congress the value of all improvements lost by non-Indian claimants whose claims were rejected. (Secs. 7, 15.)

Other provisions of the Pueblo Lands Act provided for the filing of suit by the United States "in its sovereign capacity as guardian of said Pueblo Indians" in the nature of a bill of discovery (sec. 1); the investigation of lands and improvements of successful non-Indian claimants which might be purchased for the benefit of the Pueblos (sec. 8), the patenting of lands to successful non-Indian claimants (sec. 13); the adjudication of non-Indian claims superior to the original Pueblo grants and the filing of recommendations by the Secretary of the Interior respecting such adjudications (sec. 14); and various other matters of procedure (secs. 6, 9, 10, 11, 12, 18, 19).

Where lands for which the pueblo title was confirmed were inconveniently located, the Secretary of the Interior "with the consent of the governing authorities of the pueblo" might order them to be sold and the proceeds, after deducting the value of improvements of a losing claimant, were to "be paid over to the proper officer, or officers, of the Indian community." (Sec. 16.)

Section 17 of the Pueblo Lands Act is a measure of substantive law directed to the prevention of future disputes rather than to the settlement of past disputes.

Inasmuch as past disputes had arisen generally out of controversies concerning the validity of purported transfers of land or interests in land by pueblo authorities or individual Pueblo Indians, this section laid down an absolute rule that no such transfer should be of any validity in the future, unless approved in advance by the Secretary of the Interior. Thus the final step was taken in assimilating pueblo lands to the status of other tribal lands.[64] The section in question declares:

> No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.[65]

The constitutionality of the Pueblo Lands Act was upheld in a series of cases in the federal courts in which its provisions were applied.[66] The end results of the Pueblo Lands Act are thus described in the study of Herbert O. Brayer:[67]

> Following the final adjudication of the pueblo titles, the special attorney for the Pueblo Indians was faced with

[45] Crane, *loc. sit.* Leo Crane was connected with the Indian service for many years, serving as agent to the Hopi and Navajo Indians in Arizona and later becoming Indian agents for the Pueblo Indians of New Mexico.

[46] *An Act to Quiet Title to Lands within Pueblo Indian Land Grants, and for other Purposes*, 43 Statutes 636.

[64] See Chapter 15, sec. 18, for a discussion of the restrictions upon alienation of tribal lands generally.

[65] The possible application of this statute to internal pueblo affairs is discussed in sec. 5 of this chapter.

[66] *United States* v. *Wooten*, 40 F. 2d 882 (1930), holding that tax payments, within the statutory requirement, need not have been made prior to delinquency; *Garcia* v. *United States*, 43 F. 2d 873 (1930), discussed at p. 398, *infra*; *Pueblo de San Juan* v. *United States*, 47 F. 2d 446 (1931), holding burden is upon Pueblo to show error in finding of Pueblo Lands Board that lands lost by Pueblo could not have been recovered by seasonable prosecution on the part of the United States; *Pueblo of Picuris in State of New Mexico* v. *Abeyta*, 50 F. 2d 12 (1931), discussed at p. 397, *infra*; *Pueblo de Taos* v. *Gusdorf*, 50 F. 2d 721 (1931), holding that redemption of land by claimant after tax sale is not payment of taxes within the requirements of the statute; *United States* v. *Algodones Land Co.*, 52 F. 2d 359 (1931), holding claimant's adverse possession under color of title presumably extends to entire area covered by such title; *Pueblo de Taos* v. *Archuleta*, 64 F. 2d 807; *Same* v. *Anaya* (1933), dismissing pueblo suits for want of seasonable prosecution where pendency constituted cloud on settlers' titles. See also Op. Sol., I. D., M. 28850, December 16, 1936, interpreting sec. 13.

[67] Pueblo Indian Land Grants of the "Rio Abajo," New Mexico (The Univ. of New Mexico Bulletin No. 334, 1939), pp. 30–31.

the tremendous task of ejecting those claimants whose titles had been declared invalid. This official and the superintendent of the United Pueblos agency withheld any action in this regard until the awards made by the Pueblo lands board had been provided for by the congress of the United States and paid to the holders of the rejected claims. Following this settlement the special attorney began the tedious process of clearing the Indian lands of all persons having no right to be upon them. At this writing, August 10, 1938, the special attorney for the Pueblo Indians, Mr. William Brophy of Albuquerque, states that all such non-Indian claimants have been removed. For the first time, therefore, since late in the seventeenth century, the Pueblo Indians of New Mexico are free from land controversy.

Under a special acquisition program the Indian service is proceeding rapidly to purchase such lands as were confirmed to non-Indians by the Pueblo lands board and the courts, and which were deemed desirable for the needs of the Indians. With the conclusion of this program the Pueblo Indians will have no grounds for further disputes over lands granted them by the Spanish authorities and confirmed by the United States.

The Pueblo Lands Act was implemented by a series of enactments carrying into effect the purposes of that act. Sums of money were appropriated for the expenses of the board [68] and for payments to the Pueblos and to non-Indian claimants, in the cases covered by the Pueblo Lands Act and in other cases which Congress deemed worthy of special consideration because of inadequacy of awards or special hardships.[69]

The Pueblo Lands Act was further implemented and amended by the Act of May 31, 1933,[70] a comprehensive measure directed primarily to the execution of awards under the original act. Section 1 of the Act of May 31, 1933, provides that appropriations for awards to the Pueblos

> * * * shall be expended by the Secretary of the Interior, subject to approval of the governing authorities of each pueblo in question, at such times and in such amounts as he may deem wise and proper; for the purchase of lands and water rights to replace those which have been divested from said pueblos under the Act of June 7, 1924, or for the purchase or construction of reservoirs, irrigation works, or other permanent improvements upon or for the benefit of the lands of said pueblos.

Section 2 of the act authorizes awards in addition to those made by the Pueblo Lands Board to the following Pueblos: Jemez, Nambe, Taos, Santa Ana, Santo Domingo, Sandia, San Felipe, Isleta, Picuris, San Ildefonso, San Juan, Santa Clara, Cochiti, and Pojoaque. The Secretary of the Interior is directed to report back to Congress errors or omissions in the authorizations contained in this section "measured by the present fair market value of the lands involved" (p. 108–109).

Section 3 of the act authorizes money awards to white settlers and non-Indian claimants whose claims have been rejected by the Pueblo Lands Board (p. 109). Again the Secretary of the Interior is directed to report back to Congress errors in the amount specified measured by the present fair market value of the lands involved (p. 109).

Section 4 of the act directs the Secretary of Agriculture to issue a permit to the Pueblo of Taos "upon application of the governor and council thereof," such permit to grant to the Pueblo the right to use certain designated lands "upon which lands said Indians depend for water supply, forage for their domestic livestock, wood and timber for their personal use and as the scene of certain of their religious ceremonials" (p. 109).[71]

Section 5 of this act regulates the manner in which the Secretary of the Interior may disburse funds awarded to the Pueblo in purchasing lands, water rights, options, etc. (p. 110). This section contains the following provisos establishing the policy of pueblo control, subject to departmental consent, in the utilization of pueblo funds:

> That the Secretary of the Interior shall not make any expenditures out of the pueblo funds resulting from the appropriations set forth herein, or prior appropriations for the same purpose, without first obtaining the approval of the governing authorities of the pueblo affected: *And provided further*, That the governing authorities of any pueblo may initiate matters pertaining to the purchase of lands in behalf of their respective pueblos, which matters, or contracts relative thereto, will not be binding or concluded until approved by the Secretary of the Interior. (P. 110.)

Section 6 of this act safeguards the right of the Pueblos to prosecute independent suits for the recovery of lands claimed by third parties. This section also provides that the Pueblos may enter into agreement with the Secretary of the Interior to abandon such suit and to accept instead awards provided by this act.

Section 7 of the act amends section 16 of the Act of June 7, 1924, the original Pueblo Lands Act, providing that the Secretary of the Interior may, "with the consent of the governing authorities of the pueblo," order the sale of land to the highest bidder where such land although awarded to the Pueblo is not wanted (p. 111).

Section 8 of the act regulates the fees of attorneys employed by the Pueblos (p. 111).

Section 9 safeguards existing water rights (p. 111).

Section 10 provides that the awards authorized to be appropriated under section 2 of this act to the Pueblos shall be appropriated in three annual installments beginning with the fiscal year 1937 (p. 111).

D. THE DEVELOPMENT OF FEDERAL CONTROL

The development of plenary federal control over the Pueblos of New Mexico, inaugurated in the Enabling Act, confirmed in the *Sandoval* case, and carried into effect by the Pueblo Lands Act and supplementary statutes, characterizes congressional legislation, judicial decisions, and administrative policies in the period from 1910 to the present. This period in the legal history of the Pueblos is characterized by several legislative developments which parallel the solution of pueblo land problems:

(1) A marked increase in the federal services provided for the New Mexico Pueblos by the Bureau of Indian Affairs, under authority of the regular appropriation acts.

(2) As a correlative of this extension of federal services, the imposition of various debts and liens against the Pueblos.

(3) A prohibition against the alienation of pueblo lands.

(4) A number of lesser statutes further defining the status of the Pueblo Indians.

[68] Act of January 20, 1925, 43 Stat. 753; Act of February 27, 1925, 43 Stat. 1014; Act of March 3, 1926, 44 Stat. 161; Act of April 29, 1926, 44 Stat. 330; Act of February 24, 1927, 44 Stat. 1178; Act of February 15, 1928, 45 Stat. 64; Act of May 29, 1928, 45 Stat. 883; Act of January 25, 1929, 45 Stat. 1094; Act of April 18, 1930, 46 Stat. 173.

[69] Act of December 22, 1927, 45 Stat. 2; Act of March 4, 1929, 45 Stat. 1562; Act of May 14, 1930, 46 Stat. 279; Act of February 14, 1931, 46 Stat. 1115; Act of March 4, 1931, 46 Stat. 1552; Act of April 22, 1932, 47 Stat. 91; Act of July 1, 1932, 47 Stat. 525; Act of February 17, 1933, 47 Stat. 820; Act of June 16, 1933, 48 Stat. 274; Act of June 16, 1933, 48 Stat. 254; Act of May 9, 1935, 49 Stat. 176; Act of August 26, 1935, 49 Stat. 800; Act of June 4, 1936, 49 Stat. 1459; Act of June 22, 1936, 49 Stat. 1757; Act of May 15, 1936, 49 Stat. 2294; Act of August 9, 1937, 50 Stat. 564; Pub., No. 15, 76th Cong., 1st sess. (March 28, 1939); Pub., No. 68, 76th Cong., 1st sess. (May 10, 1939).

[70] 48 Stat. 108. An exhaustive analysis of the reasons for this legislation will be found in pt. 20 of the Survey of Conditions of the Indians in the United States (71st Cong., 2d sess., Hearings, Sen. Subcomm. of Comm. on Ind. Aff.) pp. 11081–11317. And see American Indian Life, Bulletin No. 19 (January 1932), pp. 1–7.

[71] *Cf.* Act of March 27, 1928, c. 255, 45 Stat. 372, protecting the watershed of Taos Pueblo within the Carson National Forest.