



Establishment of New Mexico's American Identity:  
A Survey of Governance and Events highlighting  
The Kearny Code, the first American Rule of Law  
and the Civil War Battles in New Mexico

**Karen Dziurzynski Cox**

Capstone Project

Submitted in Partial Fulfillment of  
the Requirements for the Degree of  
Master of American History and Government

**Ashland University**

**Ashland, Ohio**

**April 2013**

Author:

\_\_\_\_\_  
Signature Date

Approved by:

\_\_\_\_\_  
Capstone Advisor Signature Date

\_\_\_\_\_  
Second Reader Signature Date

\_\_\_\_\_  
Director, MAHG Signature Date

\_\_\_\_\_  
Chairman, MAHG Signature Date

## Table of Contents

### Narrative

- I. Introduction
- II. Spanish Law vs. American Law (British Jurisprudence)
- III. The Spanish and Mexican Periods
- IV. Manifest Destiny and the New Mexican Perspective
- V. The Mexican-American War: The Kearny Code, the first American rule of law in the New Mexico Territory
- VI. Civil War Battles in New Mexico
- VII. Conclusion – An American Identity

### Works Cited and Lessons Resources

### Lesson Plans

#### Unit I, New Mexico's Territorial Government: The Kearny Code

- Guiding Questions and Learning Objectives N.M. Territorial Government: The Kearny Code
- “Lesson for Interpreting History” (A)  
The Birth of Territorial and Frontier Democracy: The Influence of the US Bill of Rights on the Territorial Government of New Mexico-The Kearny Code
- Note-Taking and Pre-Write Guide For analyzing the US Bill of Rights and the Kearny Code
- Worksheets, Foundation of Our Rights – NM Statehood: (B) Bill of Rights for the Territory of New Mexico – Kearny Code and Constitution of the United States: Bill of Rights
- Document Study Sheet-Primary Source (C)
- Letter of General Kearny to the Adjutant General

#### Unit II, NM Maps and Boundaries through the U.S.-Mexican War and Statehood

- Map Skills Worksheets (A) and (B)
- Maps  
Spanish Empire and El Camino Real  
New Mexico Territory and The Santa Fe Trail  
Texas Annexation of New Mexico and Treaty of Guadalupe Hidalgo  
Civil War Battle Sites in New Mexico, Battle of Valverde and Battle of Glorieta

#### Unit III, Law of the Indies Cooperative Learning Lessons

- Law of the Indies Background
- Constitutional Rights Foundation Lesson and Essay:  
Law of the Indies, Spain and the Native Peoples of the New World  
Mock Trial in New Spain (A)

#### Appendix: The Kearny Code:

Bill of Rights and Law of Government in the N.M. Territory

## I. Introduction

It would be inappropriate to make an attempt to learn about the development of New Mexican governance devoid of its historical background and without learning about its people, their problems and tragedies, their failures and successes, and their hopes and dreams. Only when one moves from the Spanish period through the Mexican to the American may one proceed to place this universe of information within the context of New Mexico's political governance and sometimes reluctant relationship with Spain, Mexico and the United States. To understand the plethora of influences on New Mexico, and the significance of the establishment of an American identity, one must realize that events did not necessarily occur chronologically nor in a vacuum; but rather the depth and breadth were simultaneous, concurrent and permeating.

Key elements that helped establish New Mexico's American identity were The Kearny Code, American first rule of law and governance, during the U.S.-Mexican War, and the Civil War battles fought on New Mexican soil such as the Battle of Glorieta Pass. After enduring a turbulent territorial period New Mexico's American identity was firmly established by these events and celebrates 100 years of statehood in the United States of America.

## II. Spanish Law vs. American Law (British Jurisprudence)

*I know who I am and who I may be, if I [am able to] choose.*

*Miguel de Cervantes Saavedra, Don Quixote, 1547-1616, Spanish poet & writer*

As a part of the Spanish Empire for several hundred years, New Mexico was shaped by Spanish law, culture, language, politics and governance. However, unlike the rest of the Spanish Empire, New Mexico eventually became defined as an outpost, a frontier society, that was not considered critically important. This definition of frontier differed greatly from the American

definition, which would eventually serve to the American advantage. The northernmost Mexican hinterland came to merely serve as a geographical buffer between the more populated areas of Nueva Espana and the Native peoples hostile to the Spanish colonial settlement that began in the 17<sup>th</sup> century. When the Mexican government inherited the area in the 19<sup>th</sup> century “New Mexico went from being a Spanish province to being a part of the Mexican state, to a territory, to a department and then a prefecture. In all these administrative changes of supervision, New Mexico remained a frontier outpost ruled from Mexico City. Eventually New Mexico came to be governed by [acceptable] officials born in New Mexico” which set a precedent for use of local indigenous leadership through which to self-govern. (Vasquez 223) Throughout this 400 year history, New Mexicans were “a contentious and independent lot who were in constant conflict with the established tradition” from Spain. (Vasquez 224) By the time that Mexico had separated from Spain to become a free and sovereign nation in 1821 the governmental infrastructure had been decimated and governments rose and fell for the next 25 years. There were Spanish attempts at re-establishment, Tejas broke away from Mexico and established itself as Texas, and even the French attempted intervention and influence when they attempted to collect outstanding European debts. Yet they lost at the Battle of Puebla which is to this day commemorated in Cinco de Mayo celebrations world over. This quarter to half century of internal turbulent Mexican history, with and without Spanish governance, served to perpetuate the long-held New Mexican tradition of independent local rule and governance on the New Mexican frontier.

The history of the state of New Mexico predates its American statehood. Again, it is significant to realize that before the vast area of New Mexico was part of the United States, it was part of the Kingdom of Spain and later the Mexican Republic. The current capitol of Santa

Fe was founded around 1608 and is the oldest city in the United States. It has served three nations throughout its 400 year history: the Kingdom of Spain, Mexico and the United States of America. This change of guard, if you will, did not seem to change Santa Fe very much architecturally, but it has had a significant impact on the political, cultural and socio-economic development of New Mexico. While the flavor of Santa Fe and New Mexico has remained nearly the same for several hundred years, the different political, legal and cultural ingredients have blended to enhance the state's identity. During the territorial period, and after the U.S.-Mexican War, it took a while to get it just right. The largest city in New Mexico is Albuquerque which was established along the Rio Grande in 1702. The first trip along the Santa Fe Trail was taken in the early 18<sup>th</sup> century; and American exploration and trade was firmly established along this route by 1792. One hundred years earlier conquistadores began their quests and explorations into the Land of Enchantment. Thus, even though New Mexico was under rule of the Spanish Crown for several centuries, because it was so far north from the main government and settlements in Central Mexico, it was often became an administrative afterthought. Even so, the El Camino Real, or Royal Road, remained an important north-south political and economic corridor linking Mexico City to northern Nuevo Espana.

Negotiations with the government of the United States continue to this day for these pueblo people who claim, essentially, dual citizenship as Americans and in their own indigenous nations. However, their history is extremely complicated, including current treaties with the American Government, and will not be explored here.

In addition to the significant religious impact on the area are traditions of Roman Catholic governance which impacted Spanish Law; Spanish Law incorporated Catholic hierarchy and Canon Law, when traced, demonstrate aspects of Roman Law. Spanish law was based on

Civil Law, whereas English Law was based on Common Law. Therefore, New Mexico's Spanish ancestry is civil-Catholic (canon)-Roman law, if you will, and the United States government's is common law inherited from Britain. This underlying ideological difference is a factor in New Mexican governance which continues to influence New Mexican society to this day. Laws inherited from the Spanish period tend to be exacting and authoritarian; whereas those American laws derived from English Common law reflect the process of self-governance and majority consent. Both traditions, as well as aspects of Native American tribal law, thrive concurrently in the Land of Enchantment.

Resonating simultaneously in New Mexican governance are the political, philosophical and ideological differences between Spanish and American law. As a colonial outpost of the kingdom of New Spain, this northernmost province was governed by the basic law of the parent sovereign, that of Castile. The Spanish had a strict caste system which enslaved many and was enforced through administrative codes. By the 1570's, Spanish households in the New World numbered 25,000 but were surrounded by a vastly greater indigenous native population. To preserve their wealth, power, and privileges, the Spanish created a caste-like system, with Spaniards in the top group. Others were ranked below based on their percentage of Spanish blood. This classification system was used to determine access to rights and privileges, professions, and institutions on the basis of European Spanish ancestry. In 18th-century central Mexico, this complex system of ethnic classification reflected the Spaniards' sense of racial European superiority by illustrating an orderly hierarchical society where socio-economic status depended on skin color. As was with early colonial Americans, the former citizens of New Spain and later the New Mexico Territory, lived as subjects not citizens; they were beholden to the Crown or his or her representatives and they were, most definitely, not all equal. When Mexico

gained its independence from Spain, most of these Spanish European legal and governmental systems were maintained. A ruling class system slid into place to replace the caste system; political and economic power were based upon the class system with those of European or Spanish heritage at the top and those of indigenous ancestry at the bottom. (CABQ 2) The Colonial bureaucracy in New Spain was extensive and did not have the interest of its peoples in mind; all were beholden to the King or Queen, as it were. Remember, this very authoritative and tyrannical rule is precisely what American Colonials objected to; in New Mexico this type of rule and governance continued on for several hundred years.

Our Founders derived American law upon John Locke's notion of natural rights and common law. Concepts in the Declaration of Independence include -- "all men are created equal", and entitled to "life, liberty and the pursuit of happiness", and that "just power is derived from the consent of the governed". The U.S. Constitution declared and made law the desire "to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for common defence, promote general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity". (Constitution) However, as law this would have been extremely foreign to the many New Mexican inhabitants who were former Spanish and Mexican subjects.

Even after the Spanish and Mexican periods, and in spite of the encroaching influence of the governmental tradition from the Americans, many aspects of Spanish law defined and continue to define the very fabric of everyday lives. For example, governance inherited from Spanish law exists in many communities throughout the U.S. Many local New Mexico communities still use water and agricultural ordinances incorporated into the New Mexico Territory; included is a code of law dating back to Spain's King Charles V entitled "Law of the Indies". The Law of the Indies was a body of governmental law created and named by King

Charles V which regulated and influenced the Spanish colonial peoples and settlements that later become part of present day U.S. “The Indies” is a misnomer for what came to be known as the New World or the America; this set of laws was labeled as such because European explorers initially thought that they had been sailing to “the Indies”. Many American cities, towns and villages still display architectural characteristics that reflect this Spanish influence: Albuquerque and Santa Fe in New Mexico, Laredo in Texas, Fernandina in Florida, and Tucson in Arizona. The Law of the Indies included very detailed instructions on how to find water resources, fell timber, design plazas and build fortified haciendas. In 1680, these “laws to build the community” were forwarded to Spanish conquistadors with regard to areas discovered, conquered and settled. In Book IV of the 1680 compilation of The Laws of the Indies outlined in highly detailed plans regarding every facet of creating a community and they continue to serve as an example of architectural design and guidelines for communities today. Examples of the diverse range of rules include:

- Guidelines to select a new settlement site “where the town is to be built, it must, as already stated, be in an elevated and healthy location; [be] with means of fortification; [have] fertile soil and with plenty of land for farming and pasturage; have fuel, timber, and resources; [have] fresh water, a native population, ease of transport, access and exit; [and be] open to the [north wind](#); and, if on the coast, due consideration should be paid to the quality of the harbor and that the sea does not lie to the south or west; and if possible not near lagoons or marshes in which poisonous animals and polluted air and water breed;
- They [Spanish Colonists] shall try as far as possible to have the buildings all of one type for the sake of the beauty of the town. Within the town, a [commons](#) shall be delimited, large enough...that there will always be sufficient space where the people may go... (Leyes 20-22)

This is an important aspect unique to New Mexican historical inheritance. New Mexico is a land with a rich political and cultural perspective which reflects Spanish, Mexican, New Mexican, Native American, European and American influences.

Briefly, a foray into New Mexico's Native American contact with Spaniards: the Native American creation tradition of Clovis people dates back to 10000 B.C; the ancient agricultural inhabitants of Chaco Canyon date to 1000 A.D.; first contact with European Spanish Explorers occurred in the 1500's. Coronado's infamous search for "The Cities of Gold" established the Kingdom of Spain in New Mexico at this time, making Santa Fe the capitol for New Spain in 1598. The royal road, El Camino Real, established and linked Mexico City and Santa Fe economically and politically for over two centuries. Economically, New Mexico had long been a potentially vital economic link. Throughout the 1600's the Spanish conqueror-explorers and the Pueblo peoples were in conflict. With lands granted to them by the King of Spain, these conquistadores, conqueror-explorers, became landowners and established plantations or encomiendas which ultimately did enslave many [of these] native peoples. (Archivo 5) Adherence to Spanish Law included a very strict colonial code which established villages and towns through a peonage system and, often times, forced conversions. It is interesting to note that the Government of Spain banned enslavement of Native Americans in 1812 as a precaution against intruding "North" American troops (many were from Texas and the South) wanting to capitalize on this system of enslavement. Ultimately, this proved to be an indication of the lessening of Spanish power and momentum of the American in the area.

As we move forward in time we find that the first American forays along the Santa Fe Trail were taken in the early 1700's. American exploration and economic trade was firmly established along this route by 1792. The present city of Albuquerque was established along the Rio Grande in 1702. Trade along the Santa Fe Trail was firmly established by entrepreneurial Americans who encountered Mexican troops and Indian raids. Mexico, and therefore the area and population that became the state of New Mexico, won its independence from Spain and

established themselves as the Kingdom of Mexico in 1821. Thus, this area that was once claimed by the Kingdom of Spain in the 1600-1700's, the Kingdom of Mexico and the Mexican Republic in the early 1800's, (and for a short time, the brief independent nation of Texas with and without the Mexican state of Coahuila) was also claimed in the late 1800's by American citizens asserting dominance into the vast area in their own quest for political independence and economic power. Thrown into this mix was the American Frontier ideology of Manifest Destiny encouraged by the U.S. government. All of these political, cultural and legal traditions influenced, and continue to impact, the peoples, politics, government and boundaries of this land.

### III. The Spanish and Mexican Periods in New Mexico

*El que no conoce su historia...es extranjero en su propia tierra.*

*[If you do not know your own history...you are a stranger in your own land.]*

*Dr. Carlos Vasquez, Director, Literary Arts,*

*National Hispanic Cultural Center, Albuquerque, NM, 2009*

The long period of Spanish-then-Mexican rule left strong cultural roots. To this day, even after a century of American statehood, many New Mexicans identify more strongly with their Spanish or Mexican heritage than with their American-ness. It is in this cultural preference that we also find traces of the old Spanish caste system instituted back in the 1700's with the first conquistadores on their encomiendas and haciendas. This preference for things 'Spanish' rather than 'Mexican' is extremely complicated and is not necessarily reflected in all areas. Perhaps this unspoken preference is due to the feelings of isolation and abandonment that many New Mexicans experienced when the new Mexican Republic chose to abandonment its northernmost post at Santa Fe? Or perhaps New Mexicans identify independence, autonomy and stability with Spain rather than with Mexico? (Vasquez 227) Upon further study one finds that this preference harkens back to what Professor Maria Elena Martinez calls the European 'purification of the

bloodlines' which was practiced in Spain and then the New World to strengthen and maintain political power. (Martinez 5) Although this sentimental preference for a European colonial and authoritarian practice is inconsistent with the republican ideals and democratic values of the American State of New Mexico, traces of this relationship between race and class can be found in New Mexican, and many Hispanic and Latin, cultures today.

To understand this dynamic one must understand that life in Spanish Colonial America was structured; it was organized for economic trade that would benefit the Crown. The men chosen to rule in the New World were men of great socio-economic significance in Spain. They often held positions of power almost equal to the King and were royals in their own right. Their position in the New World was that of Viceroy and they ruled in the place of the King of Spain. Underneath the Viceroy were various positions such as judges, legislators and military officials. At the bottom of this society created in the New World was the citizen or vecino; and not just any one could become a citizen. A vecino usually had to be of Spanish ancestry not indigenous or African. These highly regulated Spanish colonies existed to serve Spain. (Mabry 1-7)

Historically, Mexico served three fundamental objectives for Spain's expansionist policies: first, its vast and varied natural resources and numerous indigenous peoples were perceived and treated as a source of immense wealth and cheap labor for the exclusive benefit of Spain. Second, the New Spain was utilized as a strategic territorial base for the conquest and domination of other lands and resources in the Americas; and, third, the new Spanish colony provided Spain with the opportunity to propagate the Catholic faith -as a component of Spain's culture, jointly with the Spanish language- by evangelizing the indigenous peoples in the Western Hemisphere. The sword and the cross were the salient symbols of Spain during this long colonial period. Accordingly, it would only be logical to expect certain remnants and influences of Spanish law in today's [new] Mexican law. (Vargas 6)

Mexico's fight for independence from Spain was influenced by both the American and French revolutions in the 1700s. It began in earnest in 1808 when King Ferdinand VII abdicated in Madrid and Spain was preoccupied by war and French occupation. Mexican independence

was triggered by a rousing speech addressed to workers given by a local priest named Miguel Hidalgo y Costilla in 1810. In 1820 Augustin de Iturbide joined the rebels and demanded independence from the Crown. Mexico won independence from Spain in 1821. He ruled the Mexican Empire briefly before the Mexican Republic overthrew him in 1824. In the process of consolidating political power the Mexican Republic virtually abandoned the Mexican territory of Nuevo Espana (Nuevo Mexico). At the same time the U.S. began exerting influence over the region. The quest for Mexican independence from Spain coincided with President Jefferson's expansion of U.S. lands in the early 1800's: the Louisiana Purchase, the Lewis and Clark Expedition and the Adams-Onís Treaty establishing the Mexico-US boundary giving Florida to the U.S. The vast geographical region west of the Louisiana Purchase seemed a tabula rosa for Americans wanting to leave the growing industrial centers of the U.S. and explore and settle in the vast region west of the Mississippi, including New Mexican lands along the north-south El Camino Real and the east-west Santa Fe Trail. By this time Mexican Tejas had finally become an independent Texas. This, combined with an onslaught of Comanche raids in the New Mexico territory, led to conflict over just who was responsible for the safety of Mexican families and American settlers there; which led to conflict over which government laid claim to the area. After seeming abandonment the Mexican government had also begun to regroup and was trying to reclaim its people and lands in New Mexico. Texans used the Mexican Republic's failure to protect American settlers from Comanche raids as a pretext for greater American military protection and influence.

Historically, colonial New Mexico had been strictly forbidden from engaging in any commercial economic enterprise not central to Spanish colonial interests; under the Mexico Republic free enterprise was briefly encouraged with American merchants and entrepreneurs but

in reality was monopolized by wealthy rancheros, who had illegally developed lucrative trade relations long before, with markets in Missouri, New York, California, London and Liverpool.(Vargas 2-3) This brief Mexican period in New Mexico was one of expanding trade and diversity for those with the wherewithal to take advantage of it. It was also a time of political chaos and governmental inconsistencies in New Mexico as conflict arose between and among Spanish laws, Mexican instability and American encroachment.

#### IV. Manifest Destiny and the New Mexican Perspective

*Go West, young man, go West and grow up with the country!*

*Publicized by Horace Greeley, mid-1800's*

*...a man's destiny must unfold itself like a flower, with only the sun and the earth and water making it blossom, and no one else meddling in it.*

*Rudolfo Anaya, Bless Me Ultima, New Mexican author, b. 1937*

The period of the Mexican Republic had left New Mexicans in a dilemma. Many longed to belong legitimately to Mexico yet acknowledged that they had, in essence, been abandoned by the new Republic of Mexico which demonstrated continuing chaos. This caused a tremendous cultural backlash as many Hispanic New Mexicans developed an aversion to things Mexican and feigned from identifying with things Mexican. Dr. Carlos Vasquez asserts that this “Mexican phobia” was the New Mexican reaction to the ineptness of Mexican rule and indicated a shift in preference for things American after Mexican independence. (Vasquez 223) Thus, during this period of the 1840s immigration from Mexico to the territory of New Mexico increased. From the south came those disillusioned with the new and independent Mexico; and from the east came those that “were to have a greater long-term impact on New Mexico... American adventurers, deserters, merchants and in some cases, government spies reconnoitering of the

region for what American Manifest Destiny already clearly foretold – the expansion of the U.S. and the incorporation of Mexican territory into the American Union.” (Vasquez 223)

The mid-19<sup>th</sup> century was also a time when many Americans in the East were growing disillusioned with the life-style that resulted from a rejection of materialism and, perhaps, embraced utopianism. The editor of the *United States Magazine and Democratic Review*, John L. O’Sullivan, coined the phrase Manifest Destiny; to him this seemed to capture the “spirit of expansionism that boasted about the dream of the territorial expansion of the United States westward, perhaps as far as the Pacific coast itself.” (Bergeron 65) Thus inspired, many Americans chose to “Go West” and confidently expand into the western territories. The technological advances of the newspaper greatly advanced the spread of this doctrine of expansion with the American public. It is not known whether the newspapers shaped public opinion or reflected it: What is known is that eastern American merchants desired ports on the Pacific coast:

“territorial expansion excited the economic interests of...Americans, who believed that the life line of the country was dependent upon finding new markets for agricultural products. As a matter of fact, anxieties over farm surpluses stirred the conviction that expansionism was the answer...Closely akin to such economic concerns were the more philosophical or ideological ones about industrialization and urbanization...The neo-Jeffersonian arguments attracted considerable attention and support among ardent expansionists”; it was a position with which many...could identify. It was their hope that the geographical extension of the nation’s boundaries would summon the people to a renewed commitment to an agrarian lifestyle. (Bergeron 65)

While in the abstract this ideology of American expansion may at first seem to run counter to philosophy of the American Revolution, it is consistent with the development of Thomas Jefferson’s “freedom of natural right”. In 1799 and 1801, while Jefferson was reiterating that “enlargement of territory can never be the object of pursuit”, and that America was “a chosen country, with room enough for our descendant to the thousandth and thousandth

generation”, Spain had ceded Louisiana to the powerful Napoleonic France. (Weinberg 28) This meant that yet another foreign power might threaten the security of the U.S. via the navigable waterways in the region. In reaction to the continued colonial intentions of the Spanish Empire, Jefferson expanded his notions of American natural rights to include: a natural right to free navigation and a natural right for security; this would be the beginning of a new claim supporting an American natural right to growth and expansion. (Weinberg 20-27) “While it is true that Jefferson, Hamilton, John Adams and others envisaged the eventual gravitation to the Union of the new territories to which American pioneers and frontiersmen wandered”, it is also true that they did not adopt expansion as a deliberate program. (Weinberg 28) In the early 1800s historical events and circumstances caused Jefferson to formulate in the real world what had heretofore been philosophical assertions of natural rights. Jefferson’s paradoxical conception of natural law confounded many, but his philosophical genius applied a different code of natural right which correlated to the application of geography, i.e. territorial security. (Weinberg 29-30) This led to yet another notion of natural right and destiny which was later asserted by the American public in the late 1800s, as discussed in the *New York Times*:

It was that American discovery, the right of the pursuit of happiness...It belongs of right to the United States to regulate the future destiny of North America. It is ours; ours is the right to its rivers and to all the sources of future opulence, power and happiness, which lay scattered at our feet; and we shall be scorn and derision of the world if we suffer them to be wrested from us... (Weinberg 31)

After living so long under Spanish colonial rule and enduring inept Mexican governance this resonated with many New Mexicans. This echoed the sentiments of Texas opportunists when they invaded New Mexico with the intention of making Santa Fe their western-most border in a new Texas republic (which would later leave a legacy of distaste for all things Texan that remains with many New Mexicans to this day). (Vasquez 225) Even though Texas and New

Mexicans were geographically at odds with each other, they were both ideologically mirroring American sentiments rather than their Mexican inheritance. This attitude also reflected the American tendency towards and reinforced the uniquely American formation of a conceptual association between expansion and natural boundary, which historian Albert K. Weinberg referred to as geographical predestination. (Weinberg 45) Many, including New Mexicans, would come to think of the convergence of events during those turbulent fifty years of the 1800s as geographical inevitability. (Vasquez 225)

On an ideological level the American government was fueled by the impetus of Manifest Destiny and the ideology of the Monroe Doctrine. President Polk was taking in to consideration the protection American borders and interests while striving to keep foreign powers out, thereby making the ideology of the Monroe Doctrine a reality. (Weinberg 254) All of this, coupled with promises made by President Polk in 1844, led Americans to brace for a battle for dominance of the American Southwest. At the time, however, things on the ground in New Mexico, *en la tierra*, were not as clear. While many New Mexicans had already changed ideological allegiance away from Mexico, they were not quite aligned with an America hell-bent on “settling” their frontier. All of this, along with a Mexican Republic that seemed to finally awaken to what was looming on their northern-most horizon, made war likely.

The most popular explanation of the impact of the development by American historians of this westward movement in (to) this expansive territory has been from the perspective of Manifest Destiny, or movement from east to west, if you will. This phrase, used by leaders and politicians in the 1840s to explain continental expansion by the United States, is said to have revitalized the American people with a sense of mission and national destiny, who felt it was their mission to extend the boundaries of freedom to others by imparting their idealism and belief

in democratic institutions to those who were capable of self-government. Ironically, however, the concept of Manifest Destiny did not (and still may not) resonate with the already democratic, fiercely self-reliant and largely egalitarian people in the lands of New Mexico who, in spite of the Spanish caste system, had developed a taste for self-government when they were left to their own devices by both the Spanish and Mexican governments. For them, a different definition and viewpoint of Manifest Destiny exists; Manifest Destiny amounted to a take-over by American citizens who wanted New Mexican lands so they could start over because they were disillusioned with their own lives. For them, “New Mexican History” was and is not solely based upon affiliation with the United States.

After abandonment by the fading Spanish Empire-then-Mexican Republic in the 1800s, New Mexicans were well aware that the political tides were changing, and that alliance with the Norteamericanos might be their only hope for legitimacy and solid governance. What was challenging for territorial Nuevomexicano inhabitants is that, at best, the United States act[ed] as a sharer of a sort of enlightened government, or Empire of Liberty, based upon self-government, liberty and freedom; at worst, the U.S. emulate[d] the very imperialistic nature colonials reacted to when they fought in the American Revolution during our Founding. (White 277) The opportunity on the horizon for the Nuevomexicano was the hope of becoming what they had observed; that the American does seem to flourish when the creative spirit of expansion is allowed to fully develop. From the Jeffersonian perspective this would be termed a spirit of democracy. Perhaps it is a matter of exploring the definitions of this “spirit of democracy” and of “expansion”. Jefferson advocated that the development of liberty and democracy was nurtured when the restless nature or spirit of the American was able to be satisfied.

For those who ventured westward and thrived in the vastness of the Frontier, and in whom the American spirit of democracy was (re)born; a sort of wanderlust that grabbed hold of an individual and allowed them to expand and grow into an even better citizen of our democratic republic. Originally a German word, wanderlust refers to a kind of spiritual longing or desiring or aching for travel to distant places and experience of something new. The word also refers to a combination of two other German words which combine lust and wandering-roaming-strolling or expanding of horizon. Some of the most profound words in our Declaration of Independence are the words Life, Liberty and the Pursuit of Happiness. These unalienable rights, by mutual consent, guaranteed that we may pursue, we may choose, we have the freedom to pursue that which makes us happy, that which makes us (feel) free, and that which nourishes our life. What a concept; wanderlust by choice, wanderlust guaranteed; wanderlust satisfied. Is this the ingredient necessary for the spirit of American democracy, this opportunity and right to expand, settle, create and self-govern? It does seem so. In what became the American Southwest, this American wanderlust literally expanded along the Santa Fe Trail and down the El Camino Real, and across the New Mexico Territory.

Frederick Jackson Turner's Frontier Thesis speaks to this tendency of the Anglo-American towards wanderlust, expansion and settlement and asserts that it is essential to American democracy. The New Mexico Territory was prime real estate on which this could be fulfilled. What he also observed was a phenomenon peculiar to the United States; that American social and governmental development was able to "continually beginning over and over again" as it advanced along the Frontier, and which was continually being redefined as America developed. The advancement westward and settlement of white (European ancestry) Americans, due the perception of the existence of an area of free land, also explains how the nation

progressed historically; this process of moving from East to West repeatedly and continually transformed the land and the people into modern civilization; thus, continually renewing the American ideas of democracy and individualism. Synchronistically, this rebirth of American democracy on the Frontier occurred with the “abandonment” of the New Mexico territory by Mexico, and provided a “wild west” in which the American spirit could renew itself again. What is peculiarly American is the ability and compulsion to adapt to change, to expand, to cross a continent, win a wilderness and develop in each area out of primitive economic and political conditions:

“This perennial rebirth, this fluidity of American life, this expansion westward with its new opportunities, its continuous touch with the simplicity of primitive society, furnish the forces dominating the American character. The true point in the history of this nation is not the Atlantic coast, it is the great West...the frontier is the outer edge of the wave – the meeting point between savagery and civilization...The most significant thing about the American frontier is, that it lies at the hither edge of free land...The term is an elastic one, and for our purposes does not need sharp definition.” (Turner 230-232)

In light of this, another impetus of note is that when settling in the American West many Americans had the notion that the Frontier was closing. People believed that they had to take advantage while it was still open; they also believed that “without a frontier...No longer would frontiering furnish a new field of opportunity, a gate to escape from the bondage of the past”, their old lives in the eastern U.S.; many honestly believed that never again would there be an opportunity to conquer a challenging environment, a process which helped Americans continually forge and renew their American exceptionalism. (Ridge 271)

What Americans would have to do, and what many would argue they did indeed do, is do what they do best -- apply this spirit of democracy and redefine what was meant by “Frontier” with a capital “F”. This is exactly what occurred regarding the New Mexico Territory. Yet was America developing the very imperialistic traits that it abhorred, as asserted by historian William

Graham Sumner? (Sumner 350-351) Or was venturing into the New Mexican Frontier a process necessary for the rebirth of the democratic spirit? The many images of the Western Frontier – wagon trains, cowboys, vistas, songs, poems -- captured the national imagination and served as a salve for those 19<sup>th</sup> century Americans routinized and bureaucratized by industrial culture. (Haynes 46) These images and the idea of ‘The Wild West’ vicariously represented the forces of development (growth-evolution-process-expansion) that many were unable to experience in their increasingly industrialized world.

New Mexico seemed just such a frontier. One might recall that the European Spanish, and the class-conscious Mexican Republic, came to categorize Nuevo Mexico as a rugged frontier outpost and individualistic hinterland, but they had not meant this as a compliment. They asserted that this out-of-way area rugged landscape was unsophisticated and uncivilized. Because of this attitude, Nuevomexicanos were largely left to their own devices. In the pre-territorial period they were long used to independent governance, however undesired, because it meant they were an administrative afterthought. Yet, because they were left out there on their own locals gained leadership experience; the precedence was set for what amounted to experience in self-rule, which did not really exist in other former Spanish colonies. It is important to realize that in spite of the caste system in place most local New Mexican inhabitants did not self-categorize or self-define as unsophisticated peons. Many could (and still do) claim Spanish European heritage and education and land and property granted by the King of Spain. Nuevomexicanos were well aware that change was on the horizon; that their undesirable rugged and individualistic colonial hinterland was undergoing a transformation and now represented the rebirth of the American spirit. Much like the fiery cuisine of the area, it is locally understood in both English and Spanish, that this transformation in identity, and eventually governance, in New

Mexico was and still is complex. The many independent spirited, however inadvertent, began to identify with America. Even after 100 years of American statehood, many present day New Mexico citizens still sentimentally identify more strongly with the long affiliation and traditions of Spain, and for some families, (even) Mexico; they exist side by side with those that welcomed and continue to celebrate American governance. The influx of settlers from the east provided New Mexicans with the opportunity to observe the free-spirited, self-confident and economically successful Americanos intent on manifesting their own destiny which, in turn, gave Nuevomexicanos traders and merchants the impetus to seize an American style success and identity for themselves. (Pena 235)

Thomas Jefferson came to personify the ideals of the great American spirit of transformation. His ideas about liberty and freedom became our nation's ideals. To explain American forays into the former Spanish acquisitions one must also understand the evolution of Jefferson's concepts of territory. His conception of boundary was almost a philosophical or ideology rather than specific places on a map; intrinsic rather than extrinsic. He recognized that Americans flourished, and were primed, when they were able to explore and expand their wings; and if this development required actual physical expansion, so be it. Because his ideal was the agrarian farmer rather than industry and commerce, being hemmed in and unable to expand both literally and figuratively meant that the American spirit would also then be limited. Many expressed concern that Jefferson seemed remarkably indifferent to precise American boundaries, but Jefferson was confident in the capacity of the American people to reinvent themselves without borders. (Wood 15) He was confident in the capacity of his fellow Americans unexpectedly reinterpreted the meaning of the pursuit of happiness and territorial security. (Weinberg 31) Like his fellow Americans, Jefferson, when he deemed necessary by political

expedience, expanded his definition of natural right to include a redefinition of territorial expansion and border security. For many, the Santa Fe Trail and territorial New Mexico represented just that, a borderless landscape where one could pursue their happiness and feel secure. Was this, perhaps, too literal and interpretation of Manifest Destiny by the American settler? Had Jefferson intended an ideological rather than geographical pursuit? A major ingredient in the thought of the time was the conviction that geographical aggrandizement was linked with the nobler desire to spread American liberty and freedom.” (Bergeron 67) Westward expansion into the New Mexico territory forever changed the New Mexican landscape as the U.S. expanded East to West.

#### V. The Mexican-American War and The Kearny Code

*Don't be surprised that among us there has been no love or manifestation of joy and enthusiasm in seeing this city occupied by your military forces. To us, the power of the Mexican Republic is dead. No matter what her condition, she was our mother. What child would not shed abundant tears at the tomb of his parents?*

*Juan Bautista Vigil y Alarid, last Mexican Governor of New Mexico  
& first citizen of the New Mexican Territory, Santa Fe, 1846*

In the United States during the period just prior to and during the Mexican-US War, a more realistic and less ideological opinion of the political climate was that territorial expansion was more “the clash of cultures and peoples was [more] complicated and ambiguous, hardly reducible to a catchphrase like Manifest Destiny.” (Hietala 49) At this point, the conglomeration of events that was occurring was that eastern Americans merchants desired Pacific ports; a briefly independent Texas had been threatened by Mexico and was now part of the U.S., European powers were trying to reassert their influence in the Americas in spite of the Doctrine set forth by President Monroe a short time earlier to keep them out of the region. (At least three European powers, France Spain and Britain had threatened interference when Texas and Mexico

were in conflict, and had not the U.S. sent military support to Texas, there may well have been a different outcome.) Beneath the collective consciousness for most Americans was that the ‘gaping hole’ in the continental–extension program had to be possessed: the vast track of land that stood between Texas and the Pacific Coast was New Mexico, and New Mexico was a large piece of the puzzle of Manifest Destiny

What President Polk would set out to do is yoke the two concepts peculiar to the mid-1800s: “somehow American imperialism would be different from that seen elsewhere in the world. Expansionism by the United States would, it was argued, be more benign, more tolerant, less revengeful; and it would be accompanied by the dispersal of lofty ideals of republicanism and liberty...democracy within the United States itself would be enhanced by a program of territorial extension.” (Bergeron 65) The American public, as well as and the U.S. Government, looked to a future that seemed to have endless possibilities.

Meanwhile, Mexico struggled to maintain control over the vast lands it had inherited from the Spanish Empire after its long war for independence. Mexico, however, lacked the resources to oversee much of this territory, including to the extreme north, New Mexico. It also suffered from deep internal political divisions. Many Mexicans, and New Mexicans, looked to their Spanish past for a sense of meaning, harkening back to a time when Nueva Espana had once promised to be the continental power of the New World. (Vasquez 223-224)

Up to this point President Polk’s strategy had really been one of trying to come to an agreement with Mexico through channels other than war; “Polk had sought peaceful means to achieve his territorial objectives...he launched at least three recognizable peace initiatives during the two years of the struggle with Mexico.” (Bergeron 68) Polk was optimistic that the Mexican officials might accept the inevitability and reality of Texas being annexed in to the United States

and that the border between the Texas, and therefore the U.S., and Mexico was the Rio Grande; his envoy William S. Parrott indicated that things might be able to be settled with comparative ease. (Bergeron 69) As the months went by, however, the Mexican government weakened; Mexicans were disillusioned with the annexation of Texas and the expansionist policy of the United States.

At the same time, Mexico had refused to recognize either the independence of Texas or its annexation by the United States, even though this is what was desired by Texans. When annexation occurred, they broke relations and their minister was withdrawn from Washington. As encouraged by foreign relations protocol of the time, Polk tried to restore diplomatic relations and sent a special temporary envoy to Mexico, John Slidell, Congressman from Louisiana. The Mexicans expected that the envoy would offer an indemnity to settle the Texas question and then receive a permanent minister, but instead, Polk made Slidell permanent minister and instructed him to open negotiations for the sale of California, and ignored the Texas question completely. This did not suit the Mexican government at all and a diplomatic chess game ensued. If Mexico started by making a concession on Slidell's status they would probably never get any settlement on Texas. Polk had also backed up Slidell by sending troops to the Rio Grande, which Texans claimed as their proper boundary. The new Mexican president Jose Herrera proved not to be very powerful. He did not dare receive Slidell for fear of being overthrown by his opposition, General Paredes, who accused him of planning to betray the country by selling Texas. Things were at an impasse. Paredes questioned Slidell's credentials arguing that he could not receive Slidell who was "only empowered to settle Mexican grievances...and that Slidell's appointment as minister plenipotentiary had never been confirmed by the United States Senate"; since he could not be received, Slidell left Mexico City in discouragement and awaited the impending revolution

which did bring Paredes to power and who was even less inclined to receive Slidell than his predecessor. (Merk 87) In spite of the overthrow of the Herrera government in Mexico, Polk's envoy Slidell attempted to keep negotiations going even after General Paredes marched into Mexico City. Slidell decided to take a tough stance on his own which ultimately resulted in failure of his mission. Paredes communicated a stronger anti-American tone. The U.S. may have been able to come to an understanding with Mexico about this territory had President Polk had the opportunity to try a different approach. Although he did promote flexibility as his motto, and he at first kept any territorial ambitions 'close to his vest', he did ultimately admit that through his motto, "with the olive branch in one hand, and a sword in the other", he wished "Upper California, as well as New Mexico, [to] become part of the United States." (Bergeron 82)

Thus, along with Secretary of State Buchanan, Polk devised a tougher stance toward the Mexican government and resorted to tactics of pressure. War was on the horizon as Britain and France hinted at entering any conflict on the side of Mexico. In the meantime, trade along the Santa Fe Trail in the New Mexico territory had been flourishing. Trappers and traders began bringing caravans and wagons from St. Louis, Missouri, and goods began trading back and forth. The Santa Fe Trail grew into a massive enterprise generating millions of dollars for these business savvy Americans and Nuevomexicanos. Mexican and Texan ambitions threatened this. President Polk fully considered the profitability of taking control of the Santa Fe Trail and the natural resources the New Mexico territory made available. (Pena 234-237)

Due to what he saw as rebuffs by the Mexican government, Polk ordered that Army under Zachary Taylor, held until then at Corpus Christi, to advance across the disputed Texas boundary at the mouth of the Rio Grande. General Taylor blocked the port and food could not

get to the Mexican army stationed there. Polk had expected to fight a few skirmishes at the most on the Rio Grande and then to be able to start negotiating. Instead, the general commanding their troops on the Rio Grande sent a force across the river and ambushed a detachment of Americans and killed or captured all of them. Taylor sent news of this Mexican attack and President Polk concluded that war exists and “notwithstanding all of our efforts to avoid it, exists by the act of Mexico herself”. (Merk 87-88) Polk and his cabinet prepared a declaration of war and encouraged Congress, who had been divided between war and peace, to support the American soldiers under attack by voting to send supplies and reinforcements; shortly thereafter Congress decided that they might as well declare war altogether.

The U.S. was divided because the U.S. Army, while confident, was not ready for war and had never fought so far from home. Polk’s stand regarding Mexico was a risky one with Americans. While thousands of Americans were inspired to go westward to fulfill their own American Dreams, many did not desire armed conflict; yet there were still others who were of the opinion that a war with Mexico would be easily won. The New Mexico territory became the ground on which all of these ambitions could be fulfilled, both figuratively and literally.

Yet Polk still had not expected the Mexicans to put up much of a fight and had not expected a long drawn out war. When he had taken office in 1845, the Texans occupied most of what is now east Texas, and San Antonio was only a frontier settlement. The Texans, like most American westerners, wanted to expand, and several years before Polk became president, they had sent a military expedition to take Santa Fe, to the west. They had lost to the Mexicans, so they had no claim to that part of the Rio Grande valley. In return, the Mexicans also tried to reconquer the rest of Texas but had failed, so an uneasy balance remained. When the United States annexed Texas, Polk promised to protect the Texans from Mexico’s. When Slidell went to

Mexico, the Texas boundary dispute was a subject ripe for negotiation with Mexico, but the President's stubborn, self-confident personality made it part of his strong stand. His early political victories, and defeats, had tempered Polk into a man of who "had to learn to live with challenge and conflict...certainly there was plenty of it from the Congress and from the nation at large." (Bergeron 39) Due to delays in the delivery of official communique both President Polk and the government of Mexico, before and after Slidell's departure, had the impression that each side was stalling diplomatically and ramping up for war. This, the Mexican attack, and dealing with a new, weak, and fumbling Mexican government only served to strengthen Polk's resolve. (Bergeron 68) This approach was exactly the wrong tactic to employ against Mexico if he had really had any hope of solution. It offended the Mexican sense of honor inherited from Spain and made the Mexicans dig in their heels and fight harder, even in a losing cause. The poverty and neglect they had suffered under both Spain and the various fledgling governments of Mexico meant that the Mexican people were long weary of the oppression that they had suffered. (Weinberg 181) They were still learning how to exercise their independence and did not desire to be taken over by the United States. Although Polk's own diaries indicate that he always sought peaceful and diplomatic solutions, as even Secretary of State James Buchanan observed, "he was prepared for war."; it seemed inevitable that the U.S. was inching towards armed conflict with Mexico over territory. (Pena 236)

American public support was enthusiastic. The U.S.-Mexican War was seen as patriotic and as a way of fulfilling the mission of the Founding Fathers as a "pathway of human liberty throughout the world." (Johannsen 4-5) In this was mixed President Polk's observation that, like Jefferson's before, traditional American nationalism, due to the encroaching threat by the European powers of Britain, France and Spain, had to transform to include a policy of expansion

for the sake of national security; and that this element of territorial expansionism, while at first paradoxical, “was nourished by the dogma of a manifest destiny to extend and protect democracy in America.” (Weinberg 416-418) Later, this would come to be interpreted by some as the literal manifestation of the Monroe Doctrine as an interventionist policy in Latin America; yet most Americans would continue to view the U.S.-Mexican War as validation “of providential responsibility” and “another step forward in the attainment of manifest destiny...dedicating the New World to liberty and republicanism” and that the war “must be fought because it is the manifest destiny of this Republic to stand forever upon the Western Hemisphere a sentinel of liberty.” (Weinberg 418-421) What Polk, and most Americans for that matter, would underestimate was the resolve of the Mexican people to oppose American expansion. This stubborn resistance incensed many Americans who had also tied expansion to the regeneration or betterment of the Mexican people who were deemed of a lesser race. (Belohlavek 25-27) Mexican leaders such as General Antonio Lopez de Santa Ana (remembered for his role at the Alamo in Texas) had seized upon this attitude of racial superiority displayed by Americans and used it as a rallying cry for support against the U.S. by telling the Mexican people that Manifest Destiny and the war itself were a war upon their race, their religion and their land. (Hietala 155)

In May 1846, in the New Mexican theater, General Kearny had sent Captain Philip St. George Cooke ahead to New Mexico with a flag of truce, hoping to negotiate a peaceful surrender of New Mexico. Cooke first arrived in the town of Las Vegas where he was hospitably received by the Alcalde, Juan de Dios Maes. Cooke then went on to Santa Fe, arriving on August 12. Cooke and his party met with Governor Manuel Armijo, and presented him with a letter from Kearny which asked for his surrender. Armijo declined to surrender and instead issued a call to arms which brought an enthusiastic but completely untrained crowd of New

Mexicans to Santa Fe. Meanwhile, Captain Cooke and U.S. consul Manuel Alvarez, and local merchants James Magoffin and Henry Connelly (who had married in to a prosperous and influential Hispanic family) all met with Armijo to urge him not to fight. Ultimately, Armijo's reluctance to oppose Kearny was most likely based upon the hard facts of the situation: the strength of the U.S. forces and the comparative weakness and inexperience of the volunteers under his command. . On August 14, 1846 Governor Armijo had instructed the volunteers he had sent to defend Apache Canyon to the east to stand down; he had decided not to oppose Kearny and sent the volunteers home. Armijo then retreated to Chihuahua with his mounted infantry. Kearny and his troops advanced from Bent's Fort to Las Vegas on August 15 where he met no opposition. Alcalde Maes assembled the citizens in the plaza, and Kearny informed them that they were no longer under Mexican sovereignty and that he had replaced Armijo as their governor; he pledged to respect their Catholic religion. Then Kearny continued westward where he gave the same speech. On August 18 General Kearny and his troops took possession of Santa Fe without a battle, graciously if sadly welcomed by acting governor Juan Bautista Vigil y Alarid. In front of the Palace of the Governors in Santa Fe, the General again told the assembled citizens they were no longer under Mexican rule. In response to questions from the crowd he noted that national sovereignty was to be decided later by the cabinets in Mexico City and Washington, not by the local people. (Pena 234-237)

The U.S.-Mexican war exacted intangible costs in the Western hemisphere. Latin Americans had usually looked up to the U.S. as a model of a liberal, democratic society and government. After the attack on Mexico, there began to be talk of "the colossal power of the United States." (Belohlavek 25) The Texas border and annexation question, and even more the U.S.-Mexican war itself, only served to exacerbate the open wound of sectionalism in the U.S.

The potential spread of slavery as U.S. territory expanded rose to the top of the list of public problems demanding solution. Ultimately, the U.S.-Mexican War seemed to serve as a training ground for a generation of soldiers, and citizens at large, poised for the civil strife to come.

VI. The Kearny Code, establishment of the first American rule of law in the New Mexico Territory

*We come as friends, to better your condition and make you part of the Republic of the United States. We mean not to murder you or rob you of your property. Your families shall be free of molestation; your women secure from violence...I hereby proclaim that, being in possession of Santa Fe, I am therefore in possession of all New Mexico.*

*Brig. Gen. Stephen Watts Kearny, U.S. Army of the West, Santa Fe, 1846*



*Gen. Kearny proclaiming New Mexico part of the U.S., 1846*

On September 22, 1846, approximately one month after taking possession of Santa Fe, Brigadier General Stephan Watts Kearny sent a letter to the U.S. War Department from the headquarters of the Army of the West, Santa Fe, New Mexico. His letter documents the creation of the first American government for the Territory of New Mexico. Brigadier General, a commander in the Mexican-American War, ably assisted by Col. Alexander W. Doniphan of Missouri and Private Willard P. Hall, established New Mexico's first American rule of law which was dubbed the 'Kearny Code'. Documents submitted by Kearny to the U.S. War Department at the time reveal that he based his territorial code of governance on the following documents, which Col. Doniphan kept in his saddle-bags: the U.S. Constitution and the Bill of Rights, the Missouri State Constitution, and the bilingual Constitution of Coahuila y Texas. Although the Kearny Code was later slightly amended by both the New Mexico territorial and

state legislatures, it has remained substantially unchanged for 100 years. It is also significant to note that the Kearny Code fully incorporated the U.S. Bill of Rights a full 20 years before other states in the eastern U.S.; and New Mexico's first American rule of law incorporated the U.S. Constitution in its entirety. This is significant. While other states in the Union were bickering over whether or not to accept the U.S. Bill of Rights, Brig. Gen. Kearny with the intent of stabilizing the New Mexico territory fully embraced the Constitution in toto as the law of the land in the New Mexico Territory.

Traditionally, the Kearny Code is often referred to as a military government, one Kearny established before he headed west to California to deal with other battles in the U.S.-Mexican War. Yet upon closer examination the Kearny Code offered New Mexico more than that. By fully adopting the U.S. Constitution and the Bill of Rights into his Code, the lands and people of New Mexico were claimed not only for the U.S., but for democracy. Rather than planting the seeds of democracy in the New Mexico Territory, Kearny's Code nurtured the already independent and self-governing spirit which had been breaking ground in that direction all along. Recent historians have begun to emphasize that army officers like Kearny policing the borderlands may have played multifaceted diplomatic roles rather than those associated with territorial expansion. Between 1815 and 1846, officer's such as Kearny "had diverse reactions to the contingencies of territorial expansion"; sometimes their seemingly motives, trends and reactions actually displayed a growing sense of accountability to the national government that often restrained expansionist sentiments. (Watson 69)

Under the federal territorial system the process of geographic expansion was one of nation-state formation as well as one of extending the existing pattern of local self-government; expansion therefore contained the potential for both social reproduction in the decentralized agrarian mode envisioned by Jefferson and for institutional elaboration and political consolidation of a more powerful nation-state. During this process...army officers served the cause of national expansion in 1846, but they did so as members of a bureaucratically structured

and constitutionally accountable organization under national control, not as individuals or representatives of a single sectional and economic interest...In the final analysis...[this] led army officers to restraint rather than belligerence in their responses...(Watson 70-71)

On behalf of the U.S., the establishment of the Kearny's Code, laid claim to lands that had changed back and forth in a turbulent fifty year period (the Kingdom of Spain, the Mexican Empire, the Government of Mexico and even an independent Texas). Gen. Kearny expressly stated that the code of law he created to stabilize and govern these lands was guided by the ideals established by our Founding Fathers and the United States Constitution:

“These laws are taken, part from the laws of Mexico - retained as in the original - a part with such modification, as our laws and constitution made necessary; a part are from the laws of the Missouri territory; a part from the laws of Texas; and also of Texas and Coahuila; a part from the statutes of Missouri and the remainder from the Livingston Code. The organic law is taken from the organic law of Missouri territory. (See act of Congress, June 4, 1842.)” (SFArchives)

All of the documents that Kearny and his soldiers used are significant and valid areas for examination; yet the focus here will be on the Brig. General's use of the U.S. Constitution and the Bill of Rights. This code of law governed the New Mexico Territory until 1912 when New Mexico's bid for statehood was granted by the government of the U.S. Again, it is important to note that the Kearny Code incorporated the U.S. Bill of Rights into the territorial government of New Mexico in 1846, approximately 20 years before their incorporation in to other more well-known state constitutions which had the intention of making the Bill of Rights binding to all States. Kearny's incorporation of the American Constitution and the U.S. Bill of Rights solidified America's presence in the territory between east and west and established the territorial New Mexican government. This significantly changed the geo-political landscape of the United States and contributed to the expansion of the U.S. from sea to shining sea. As early as 1823 an American statesmen named Baylies had envisioned “the greatness, the grandeur and

the power that await us...with two oceans, washing our shores...our natural boundary is the Pacific Ocean. The swelling tide of our population must and will roll on until that mighty ocean interposes its waters, and limits our territorial empire.” (Weinberg 56-58)

The table below details where Brig. General Kearny and his able team applied the U.S. Bill of Rights to his governmental code; first and foremost he stated “that all political power is vested in and belongs to the people”:

***The Birth of Territorial and Frontier Democracy:  
The Influence of the US Bill of Rights  
on the Territorial Government of New Mexico-The Kearny Code.***

<p><b>U.S. Bill of Rights</b></p> <p><a href="#">I. Freedom of Speech, Press, Religion and Petition</a></p> <p>Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.</p>	<p><b>Bill of Rights &amp; Laws for the Government of the Territory of New Mexico (Kearny Code)</b></p> <p>Done at the government house, in the city of Santa Fé, in the territory of New Mexico, by Brig. General Stephen W. Kearny, by virtue of the authority conferred upon him by the government of the United States, 22 Sept., 1846.</p> <p>2nd. That the people have the right peaceably to assemble for their common good, and to apply to those in power for redress of grievances by petition or remonstrance.</p> <p>3rd. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can ever be hurt, molested or restrained in his religious professions if he do not disturb others in their religious worship; and that all Christian churches shall be protected and none oppressed, and that no person on account of his religious opinions shall be rendered ineligible to any office of honor, trust or profit.</p> <p>12th. That the free communication of thoughts and opinions is one of the invaluable rights of freemen, and that every person may freely speak, write or print on any subject, being responsible for every abuse of that liberty.</p> <p>13th. That no vicar, priest, preacher of the gospel nor teacher of any religious denomination shall ever be compelled to bear arms or to serve on juries, work on roads or perform military duty.</p>
<p><a href="#">II. Right to keep and bear arms</a></p> <p>A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.</p>	<p><i>Not addressed until New Mexico's First Constitution 1850</i></p>
<p><a href="#">III. Conditions for quarters of soldiers</a></p> <p>No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.</p>	<p><i>Not addressed until New Mexico's First Constitution 1850</i></p>
<p><a href="#">IV. Right of search and seizure regulated</a></p>	<p>11th. That the people shall be secure in their persons, papers, houses and effects from unreasonable searches and seizures,</p>

<p>The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.</p>	<p>and that no writ shall issue for a search or seizure without a probable cause of guilt is made out under oath.</p>
<p><u>V. Provisions concerning prosecution</u></p> <p>No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.</p>	<p>Kearney Code, Laws for the Government for Territory of NM, see Attachments, Sections 1 – 22.</p>
<p><u>VI. Right to a speedy trial, witnesses, etc.</u></p> <p>In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.</p>	<p>Kearney Code, Laws for the Government for Territory of NM, see Administration, Attorney General &amp; Circuit Court Attorney, Clerks, Constables, Costs, Crimes &amp; Punishments, Attachments, Articles I, II &amp; III, Decision of Superior Court, Elections, Fees, Guardians, Habeas Corpus, Jails &amp; Jailors, Jurors, Laws, Practice at Law (Civil &amp; Criminal), Witnesses</p>
<p><u>VII. Right to a trial by jury</u></p> <p>In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.</p>	<p>Kearney Code, Laws for the Government for Territory of NM, see Administration, Attorney General &amp; Circuit Court Attorney, Clerks, Constables, Costs, Crimes &amp; Punishments, Attachments, Articles I, II &amp; III, Decision of Superior Court, Elections, Fees, Guardians, Habeas Corpus, Jails &amp; Jailors, Jurors, Laws, Practice at Law (Civil &amp; Criminal), Witnesses</p>
<p><u>VIII. Excessive bail, cruel punishment</u></p> <p>Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.</p>	<p>9th. That all persons shall be bailed by sufficient sureties, except in capital offenses where proof of guilt is evident, and the privileges of a writ of habeas corpus cannot be suspended except the public safety shall require it in the case of rebellion or invasion.</p> <p>10th. Excessive bail shall not be required, excessive fines imposed, nor cruel and unusual punishment inflicted.</p> <p>Kearney Code, Laws for the Government for Territory of NM, see Articles I, II &amp; III</p>
<p><u>IX. Rule of construction of Constitution</u></p> <p>The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people</p>	<p>1st. That all political power is vested in and belongs to the people.</p> <p>12th. That the free communication of thoughts and opinions is one of the invaluable rights of freemen, and that every person may freely speak, write or print on any subject, being responsible for every abuse of that liberty.</p>
<p><u>X. Rights of the States under Constitution</u></p> <p>The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.</p>	<p>1st. That all political power is vested in and belongs to the people.</p>

To reiterate the significance of the application of this American governance to the vast New Mexican geographical territory, again, one has to realize that the rule of law in New Mexico for over 200 years was Spanish Law based upon the “Law of Castile” or the law of the King of Spain. People in what later came to be called New Mexico were not citizens; they were subjects of the King. The Kearny Code applied a very different rule of law and legal tradition. Nuevomexicanos did not come together to create this law as the Founders had, it was applied by a military general during war. Yet because American General was very respectful of the Constitution and his intention was not one of military conflict but of creating stable governance, it worked. Kearny, himself, was very respectful of the rule of law long established by the Spanish in what became the Mexican and New Mexican arena. It is said that Kearny specifically sought to include anything already established that would not be in direct violation of the U.S. Constitution, including the bilingual Constitution of Coahuila y Texas. In addition to full inclusion of the U.S. Bill of Rights, The Kearny Code (and subsequently the New Mexico State Constitution) incorporated detailed civil, canon or codified Spanish/Mexican law not found in other states of the Union. Fascinating examples range from codified criminal law to canon law, and reflect punitive sentences that harken back to the harshness of Old World European courts:

Sec. 43 Courts and Judicial Powers - Appeals shall be allowed from judgments of alcaldes when the debt or damages do not exceed fifty dollars...provided that an appeal may be taken from the judgment of the alcalde within ten days of rendition of judgment;

Article I Sec. 3 – Every person who shall be convicted of robbery or burglary shall be imprisoned at hard labor nor exceeding ten years and receive on his bare back thirty-nine stripes well laid on, and if death ensue to any innocent person or persons from such robbery or burglary, the perpetrator or perpetrators...shall be punished with death.

Article II Sec. 1 – If any person shall have carnal knowledge of any woman by force and against her will, he shall on conviction thereof be castrated or imprisoned not exceeding ten years or fined not exceeding one thousand dollars. (SFArchives)

Many aspects of the Kearny Code, while acknowledging precedence set by codified civil law, such as the previous examples, also seemed primed to support the coming influx of

Americanos interested in a land claim in the New Mexican “lands of enchantment”. Land Grants were a huge issue of conflict in Territorial New Mexico. Nuevomexicanos of Spanish ancestry had received plots of land from the Spanish Crown. American settlers considered the territory ripe for the picking, thus conflict ensued. The Kearny Code did acknowledge this but did not do much to support the claims of the Spanish speaking Nuevomexicanos whose written legal documents were in Spanish. While this did much to acknowledge land grants claims this also complicated land grant issues between Nuevomexicanos and frontier settlers:

Register of Lands, Sec. 5 & 6 – Every person claiming lands in this territory by virtue of Spanish or Mexican grant may deliver to the register of lands a notice in writing stating the nature and extent of his claim...for purpose of being recorded...party shall pay...twelve and one-half cents per hundred words contained in such written evidence of the claims; When there is no written evidence of the claim the claimant may take evidence in writing...showing the nature and extent of his claim...of land actually cultivated and inhabited by himself...If any person shall neglect to deliver such evidence and notice of this claim as prescribed in this and preceding section, within five years from the first day of next January such claim shall be void. (SFArchives)

The Official Land Grant documentation supporting the claims of Nuevomexicanos had been kept in Mexico City and were, of course, in Spanish, which caused land claim conflicts; as former Spanish and Mexican subjects Nuevomexicanos did not readily have access to the former royal records and did not have the money to purchase translation services needed to create American-style legal land and property documentation. This would later give rise to much belligerence between those Hispanics families that had inherited land grants from the Spanish Empire and were guaranteed this property by the Treaty of Guadalupe Hidalgo and frontier settlers determined to manifest their ambitions in the New Mexico Territory.

The onset of the U.S.-Mexican War in May 1846 brought the occupation of New Mexico by American troops. Ultimately, this validated the notion that the New Mexico territory

provided the link between the eastern States and ambitions for a western United States. One of the main and most important conflicts between the U.S. and Mexico was the dispute over this vast New Mexico territory. While the Kearny Code claimed New Mexico for the U.S., the Treaty of Guadalupe Hidalgo (between Mexico and the United States) formally ended the war in 1848. The hard-to-control lands and people northern most outpost of Mexico legally became part of the southwestern United States. This contributed to the assertion and fulfillment of America's Manifest Destiny and the ambition of controlling all lands from the Atlantic to the Pacific.

What Brig. General Kearney was tasked to do through American military and governmental control was to bring order and establish governance in this vast geographical territory; a huge area already populated by soon-to-be Americans of Hispanic, Anglo and Native American heritage. (The Caucasian American settlers in the area came to be called "Anglos" by most Hispanics in the Southwest. Some believe that this may be a Spanish reference to their British and/or Colonial heritage or may be due to translation from Spanish to English or vice-versa.) Eventually all these lands became part of the United States, including what later became Arizona. Incorporation of this territory also enhanced acquisition of what were to become Colorado, California, and stabilized an American state of Texas. Kearny brought order to a land ruled for over 200 hundred years by the Spanish code of law and solidified claims to the vast region by instilling American ideals and concepts through his Code.

This is the socio-economic climate Kearny encountered when tasked with forming an American government in the New Mexico territory during the U.S.-Mexican War. Consider all of these factors in concert with the events of the U.S.-Mexican War. Again, the creation of the New Mexico Territorial Government, called The Kearny Code, was a substantial feat. He

honored the Spanish and Mexican past, while forming a stable American territorial governmental foundation on which to build. Although the Kearny Code was later amended slightly by both the NM territorial and state legislatures, it has remained substantially unchanged for approximately 100 years. By establishing the first American bill of rights, code of law and government, Kearny laid the foundations for New Mexico's bid for American statehood in 1912.

In spite of much local sentimentality for the Mexican culture, most Nuevomexicanos fully embraced American governance. It was not a difficult decision for Kearny to make or, for that matter, New Mexicans ready for change. With the stroke of a pen more than 100,000 Mexicans living on the lands of New Mexico, Arizona, Texas and California became citizens of the United States; and they soon found themselves immersed in a national dispute over slavery. (NPS 4) That is not to say that it was an easy adjustment. Perhaps this is because of the negative impact of the strict codes of Spanish law where one did not question the authority of government. Perhaps this blanket acceptance, if you will, of the entire U.S. Constitution and Bill of Rights was due to the sense of abandonment and isolation felt by New Mexicans by the Mexican government. Perhaps it was because New Mexicans were also long used to what was, essentially, "self-rule" because they had long been left to sort things out on their own. New Mexicans knew that there had to be some form of governance in this vast region; Native American tribes were continually asserting their own territoriality by conducting raids, and lawless Americans from the east took advantage as well and often posed as American lawmen. It is also true that many, long used to the strict laws of governance laid down by Spanish traditions, continued to adhere to their own brand of Spanish laws and traditions. Yet others began trying to enforce an American type of governance they perceived to be practiced in the States to the East. This ideological conflict may have been a factor that contributed to the stereotypical image of the

‘The Wild West’. Conflict may not have been so much from a lack of law, but rather from conflict between past and future laws and governance, Spanish civil law vs. American common law, if you will. What developed in this turbulent territorial time was perhaps also due to this conflict between outgoing Spanish hierarchical systems and incoming American style governance; authoritarian government vs. democratic government.

Decisions made during the U.S.-Mexican War have been long lasting. The Treaty of Guadalupe Hidalgo ended the U.S.-Mexican War in February 1848 and is the oldest treaty still in force between the United States and Mexico. As a result of the treaty, the United States acquired more than 500,000 square miles of valuable territory and, as desired by President Polk, emerged as a world power. The Treaty of Guadalupe Hidalgo looms larger in the history of Mexico than in that of the United States. Partly because of the loss of valuable territory, Mexican historians and politicians assert that the treaty ensured that Mexico would remain an underdeveloped country well into the twentieth century and is a bitter lesson in U.S. aggression; that the treaty established a pattern of political and military inequality between the two countries, and this lopsided relationship has stalked Mexican-U.S. relations ever since. Although enforcement has often times proved inequitable, this treaty has had implications not only for relations between the two countries but for Nuevomexicanos in the area. The Treaty “made Mexicans in Mexico’s northern territories (that were ceded to the United States) citizens of the United States with all of the rights and of citizenship guaranteed by the U.S. Constitution” also guaranteeing that their persons, property and religion would be protected: (SFArchives)

Beyond territorial gains and losses, the treaty has ever since been shaping the international and domestic histories of both Mexico and the United States. During the U.S.-Mexican War, U.S. leaders viewed the military victory and its forcible incorporation of almost one-half of Mexico's northern national territory as an event preordained by providence, fulfilling Manifest Destiny to spread the benefits of U.S. democracy to the lesser peoples of the continent (Pena 237-239)

Many Nuevomexicanos did not readily to adjust to this new American identity. They were uncomfortable ending the centuries long Hispano affiliation of New Mexico with Spain and Mexico and, under the provisions set forth in the Treaty, many voluntarily repatriated to Mexico. (Pena 245)

## VII. Civil War Battles in New Mexico and the establishment of an American Identity

*The question is...of saving New Mexico and defeating the Confederates in such a way that an invasion of this Territory will never again be attempted.*

*Major Gen. Ed.R.S Canby, U.S. Army of the West, New Mexico Territory, 1862*

*Battle brings all speculation to a point.*

*Ovando J. Hollister, Colorado Volunteer, New Mexico Territory, 1862*



*Battle at Glorieta Pass, Pigeon Ranch, NM*

The onset of the U.S.-Mexican War in May 1846 brought occupation of New Mexico by American troops. One of the main and most important conflicts between the U.S. and Mexico, besides the Texas border and the fate of California, was the dispute over this vast New Mexico territory. As explored, when the lands and people of this northernmost part of the Mexican Republic legally became part of the southwestern United States, this contributed to the assertion and fulfillment America's Manifest Destiny and the ambition of controlling all lands from the Atlantic to the Pacific. The Treaty of Guadalupe Hidalgo (between Mexico and the United States) formally ended the war in 1848.

After the U.S.-Mexican War, and the resulting Kearny Code and the Treaty of Guadalupe Hidalgo, many Hispanic New Mexicans felt betrayed and abandoned by Mexico. Many of these new American citizens had been granted titles and land grants by the Kingdom of Spain and later had held positions of honor in Mexico. (Pena 245) Many were confused by their new status as territorial Americans even while embracing the ideals of democracy which did resonate with these fiercely independent and often already democratic people. Often the old Spanish political and cultural sentiments would take hold and they continued to influence Hispanic New Mexicans who continued to grasp to the old rule of governance with which they were familiar. Most Hispanics saw the incoming Caucasian American Anglos as intruders who usurped and disrespected both American law and established Spanish traditions. Most Americans settling in the area from the East felt they were honoring the governments call to expand from sea to shining sea; these Americans of Hispanic descent in New Mexico, or *Nuevomexicanos*, were seen not by settlers as fellow Americans but as a people to conquer politically and economically. They were not seen as equal by their fellow Americans. They were seen as an inferior people to overcome, rather than as the descendants of European explorers that many were. While many *Nuevomexicanos* lacked formal military training, these descendants of Spanish pioneers were excellent horsemen, knew the terrain, and had combat experience fighting the Native American. (Pena 245) This would prove vital during the Civil War battles that occurred on New Mexican soil.

In spite of this attitude most Hispanics in the Southwest made the personal decision to support the Union; unlike many Spanish decedents in the South, enamored as they were by imperial traditions long past, who sided with the Confederacy. The result was a scattering of loyalties until Texas became a stalwart supporter of the Confederacy and for *Nuevomexicanos*

the choice became clear – the Union. Further exacerbating the situation was that in spite of guarantees granted by the Treaty of Guadalupe Hidalgo, many Hispanics lost their land grant property when claims and conflict arose between American jurisdiction and application of Spanish law. The New Mexico Territory, due to the seemingly availability of vast tracts of land, fast became a pawn in the whole slave state question. This would only prove to add yet another layer of complication as sectionalism, the question of whether or not the territory would eventually be a slave or free state in the Union, would rear its ugly head in the New Mexico Territory. (Potter 76)

Texas had continually desired to acquire New Mexican lands up to the Rio Grande. Sectionalism, and then the subsequent Southern Secession, only added fuel to the fire. Texas continually sought dominance over this vast area in their quest for political independence and economic power. This was the tumultuous climate that existed in the New Mexico Territory after the U.S.-Mexican War. Citizens of New Mexico had been ruled by Spanish law for several hundred years. In the space of fifty years they went from citizens of Spain and then Mexico, to not-yet Americans overrun with ambitious Anglo American settlers and land-hungry Texans. Texas had never been satisfied with the Compromise of 1850. (Krannawitter 55)

Shortly thereafter the Civil War began, and New Mexican Anglos and Hispanics were forced under fire, if you will, to choose their identity. When Texas Confederate ambitions for the New Mexico territory became apparent, things came to a head during two key battles: the Battle at Valverde and the Battle of Glorieta, which is also known as the Gettysburg of the West. New Mexican Anglos and Hispanics band together to fight for the Union and against a Texas aligned with the Confederacy. This declaration, coupled with the U.S. government's economic interest

in the region, ultimately rallied the bid for New Mexico statehood in the United States of America in 1912.

Prior to the Civil War there were some in New Mexico that had practiced the Spanish peonage system of slavery. The type of slavery practiced in New Mexico was not necessarily agriculture-based as in the Deep South. Under Spanish rule the *encomienda* system encouraged an indentured servitude with the Native Americans based upon the Spanish caste system. In New Mexico deep divisions existed over this continued practice, especially when Hispanics no longer had to demonstrate their allegiance to a Mexico that they felt had abandoned them. In spite of the Spanish tradition of the peonage system, local Mexican law had prohibited slavery. Territorial New Mexico had been organized without any restriction to slavery; but this did not necessarily mean it was open to slavery. Politicians of the day avoided the question in the New Mexico Territory by avoiding its status of statehood. The question of slavery in New Mexico, whether or not it would become a free or slave state, had been avoided, not settled. (Potter 116) Eventually this would result in a clash between Northern and Southern American ideologies that would ultimately solidify the identity of both the Anglo settler and former Mexican Hispanic in New Mexico. Within a mere fifteen years the Civil War would begin.

The Territorial period was a turbulent and trying time in New Mexico. The U.S. Army had built up an extensive network of military forts and arsenals along the Santa Fe Trail and *El Camino Real* to thwart attacks by the many local Native American tribes. At one point, the whole western portion of the New Mexico Territory west of the Rio Grande was abandoned due to the ferocity of indigenous tribal attacks. Many Hispanics, while grateful for new liberties, missed the more familiar Spanish law which honored their ancestry and seemed to be more effective in skirmishes with the raiding Native American population. In spite of their American citizenship,

Hispanics were not treated well nor respected by incoming Americans who did not recognize their entitlement, as defined by the Treaty of Guadalupe Hidalgo.

When the Civil War began the local New Mexicans, Anglos and Hispanics, were forced to reconsider their opposition to each other. Ambitious Texas forays into the eastern portion of New Mexico forced, if you will, New Mexican Anglos and Hispanics to cooperate with each other, which in turn forged their American identity. New Mexican Anglos and Hispanics came together to fight for the Union and against the then independent Texas, which was aligned with the Confederacy. Things came to a head during the Battle of Glorieta Pass, which is also known as the Gettysburg of the West, where Texas Confederate territorial ambitions became apparent. For New Mexicans, fighting in the Civil War was more against fighting Texas and less about fighting the Confederacy; it was more about legitimacy and less about slavery. These were the immediate New Mexican concerns.

Very few people, in the East or the South, really understood that New Mexico Territory might just be a key factor for the success or failure of the Confederate States of America. It was a dream of the Confederacy Empire stretching from sea to sea that fueled Confederate ambitions in New Mexico. Without a good portion of the American West, the Confederacy could not establish a viable nation. It is sometimes wondered how the war for secession would have turned out if the Confederate States of America had gained control of the territories of New Mexico, Colorado, Utah and the State of California; it was even supposed that the intention was to use New Mexico as a base for the conquest of northern Mexico thereby creating a large, two-ocean country. (Pittman 119) For many reasons, including its unmonitored sparse population, New Mexico was seen as weak, which made it the key to the entire Southwest and opened up the gold fields of Colorado, Arizona, Mexico and California. (Pittman 11) It was rumored that the post at

Ft. Union was a prime target because the Confederate volunteer troops desperately needed the supplies there; it held various supplies, weapons, and ammunition. Union soldiers also feared that Texans might attack the indispensable supply trains coming west from Fort Leavenworth to Fort Union. Suddenly the key to the Southwest for the Confederates was the New Mexico Territory. (CABQ 10)

Both Union and Confederate leaders underestimated New Mexican sentimental attachment to the Union, and New Mexican animosity for Texans. Many inhabitants of southern New Mexico Territory (and in the present state of Arizona) were easily won over to secession; but the majority of New Mexicans, residing along the Rio Grande from the middle of New Mexico north, were not fond of Texans and did not trust Texas, and they would readily join Union troops to resist an occupation force comprised primarily of Texas volunteers.

Another aspect that both Union and Confederates failed to grasp was the economic and ideological importance of the Santa Fe Trail to New Mexicans. In much the same way that the north-south El Camino Real had served as a vital link to Spain and Mexico, the Santa Fe Trail on its east-west axis now fulfilled the same significant purpose linking them to the eastern United States. Because of this perspective, New Mexicans had long understood the strategic potential the New Mexico Territory held for the Confederacy. However, many Union and Confederate commanders viewed the still Spanish-speaking Hispanics as inferior “Mexicans” and, therefore, insignificant. This was unfortunate because many had previously held posts of leadership, power and influence were well-trained and highly educated in Europe by both the Spanish and Mexican governments. They were not ignorant of the geo-political significance of the area; these same underestimated New Mexicans realized just what was at stake in the Civil War. After all, many of these volunteers were descendants of explorers and had often traversed the entire region from

Santa Fe to Mexico City along the El Camino Real; they were quite familiar with the strategic political, military and economic value of the region. Although many had lacked formal military training, nevertheless, these decedents of Spanish pioneers were excellent horsemen, knew the terrain, and had combat experience fighting the Native American tribes. (NPS 7) A few, like Capt. Jose Sena and Capt. Rafael Chacon, had practiced law and graduated from a Mexican military academy, respectively, which made them all the more valuable to the Union cause. Chacon led the New Mexico Volunteers in twenty-two engagements during the war. (Romero 262) Yet, when Texas sided with the Confederacy, the South became their new enemy. These circumstances only served to exacerbate New Mexican animosity for all things Texan.

As the Confederacy wound their way north up the Rio Grande the first Civil War incursion occurred just south of Socorro, New Mexico. On February 21, 1862, New Mexico Volunteers teamed up with Arizona Rangers near a volcanic geographic feature called Mesa de Contadero which was near the abandoned village of Valverde situated near an old river bed. Although not considered to be a strategic battle, the Battle of Valverde turned out to be one of the bloodiest battles in the West. In the desolate wintry desert both sides suffered. Confederates were out of needed supplies. After resupplying at Ft. Craig, Union soldiers had situated themselves in the protection of a cottonwood grove near Valverde.

Looking for food, shelter, supplies and water during difficult weather conditions, Confederate soldiers ventured down and around the mesa towards Valverde. As they were filling their canteens they encountered Union soldiers. Both sides had underestimated and surprised the other. Union soldiers had access to their artillery and cannon and began firing; reinforcements soon arrived. The Confederates were chased across the riverbed to the base of the mesa. Although the Rebels and Arizona Rangers fought valiantly, the Union Army was



In the second Civil War battle in the NM Territory, New Mexico territorial volunteers, both Anglo and Hispanic, teamed up with Colorado volunteers. Confederate troops invaded New Mexico from Texas in late summer of 1861. In spite of strong defensive Union tactics here and there they were able to make it north to Santa Fe by the following March. Confederate troops, however, were not as prepared as their superiors supposed and all underestimated the effectiveness of the New Mexico volunteers loyal to the Union. Looting by Rebel troops took its toll on native New Mexicans. Already extremely poor, they suffered greatly when Confederate and Texas soldiers swept through and “indiscriminate looting had worsened an already intense hatred for Texans by Spanish-speaking New Mexicans.” (Pittman 57) Throughout New Mexico and Colorado, recruitment of more volunteers continued and the troops were making preparations and waiting for the Texans to commit themselves to a definite line of attack. They were very effective in their harassment of Confederate troops and often attacked them in small numbers from behind while they were on the move and from the mesas above while they moved through canyons. They were also effective at attacking on hills and tree-laden areas; not a strategy the Confederate troops were used to. (Pittman 35) It seems that the New Mexico volunteers had learned a thing or two while defending themselves from Native American raids and used this knowledge against the Confederate soldiers.

Shortly thereafter, things came to a head in New Mexico just south of Santa Fe at Glorieta Pass. Union troops had been destroying supplies when they retreated to prevent the Confederate Texans from capturing them, thus, they were bad in need of supplies. Yet, up to this point, the Confederate Texans had not been defeated in New Mexico and were extremely confident. Remember, Ft. Union was strategically situated along the Santa Fe Trail with regular deliveries from Ft. Leavenworth. After winning at the Battle at Valverde, Confederates had

thought that they could continue north to Santa Fe and east over to Ft. Union and take what they needed with virtually no opposition.

The New Mexicans, however, were able to use their knowledge of the land to advantage. The New Mexico volunteers had been effectively harassing the Confederate and Texas troops any chance they got as they headed north towards Santa Fe. This successful harassment prompted the strong-headed Colorado volunteers to join in on the Union cause once again. The Texas Confederates underestimated the combined voraciousness of these New Mexico and Colorado volunteers. The Colorado volunteers were comprised of tenaciously independent and sturdy men who had gone west to work at Pike's Peak in the gold mines. The New Mexico volunteers were comprised of both Anglo and Hispanics who had survived many an attack from the fierce native tribes and saw this as an opportunity to defend their legitimacy. Although the New Mexico and Colorado volunteers fought the good fight just outside of Santa Fe, to the southwest in Glorieta Pass, after many skirmishes the Confederacy actually beat the New Mexico and Colorado volunteers in battle. Yet, the New Mexico and Colorado volunteers were not easily defeated and rallied, and as fate would have it the Confederacy would end up losing the war in the West just hours later.

In other words however unlikely it would seem, the Confederacy, literally, won the battle but lost the war in the West at Glorieta Pass. Union troops were encamped near a Santa Fe stagecoach stop along the Santa Fe Trail called Koslowski's Ranch which had been set up by an entrepreneurial Polish-American immigrant. Unawares, Confederates camped at Johnson's Ranch nine miles west at other end of Apache Canyon. Two sections of the Union troops were separated and waiting to meet up, but one unit encountered and lost to Confederate troops at Pigeon Ranch before that happened. Union troops were on the defensive, and Confederates had

claimed the field. This apparent Confederate victory at Pigeon's Ranch would prove deceptive. When darkness began to fall, with both sides near sheer exhaustion after nearly six hours of battle, things deteriorated quickly when Confederates received the news that the Union troops had delivered a decisive blow at nearby Johnson Ranch. In this strategic battle of the New Mexico campaign the conclusive action of the clash took place near Johnson's Ranch on the west side of the mountain pass near Apache Canyon. They had successfully destroyed not only a piece of artillery, but approximately 70 supply wagons containing food, ammunition, clothing, baggage, forage, medical supplies, and other personal items. Wagons and supplies had all been run together and set afire until all ammunition had been destroyed. A quick-minded New Mexico Hispanic volunteer, guided by Chivington's Lt. Col. Manuel Chavez, had the foresight to not only secure Union supplies as they retreated to another nearby ranch, but to destroy the Confederate supply train. (NPS 12) As the Confederates took stock, both literally and strategically, they realized what this loss of food and ammunition meant; they had won the battle on the field at one end of Apache Canyon, but had lost the means to win the war of the West at the other end at Glorieta Pass. Because the entire Confederate supply train was destroyed and they were extremely low on ammunition, they were unable to follow up their success on the field. During the night after the Battle of Glorieta Pass it had turned cold and snowed. The Confederates had to retreat to Santa Fe for food, blankets and medical supplies and they suffered intensely. (NPS 13)

This was the beginning of the end of Confederate occupation in New Mexico. What the Confederates ended up losing was the overall strategic battle, and they knew it. The engagement at Glorieta Pass was the turning point of the war in the Southwest; it is referred to by historians with strategic military understanding as the "Gettysburg of the West." The Confederacy was

forced to abandon their planned attack on Ft. Union, and was driven from New Mexico during the late spring and early summer of 1862. The New Mexico and Colorado volunteer troops had saved the New Mexico Territory for the Union. In doing so, by literally having to fight together against the Texas Confederates to save New Mexico, Anglo and Hispanic New Mexicans solidified their identity as Americans.

About this same time the U.S. House of Representatives, controlled by Republicans now devoid of the southern Democrats, passed a bill to create the United States Arizona Territory. They used the north-south border of the 107th meridian to divide New Mexico. To the Apaches in the region this had no meaning as they continued to ignore all boundaries; however, the use of this vertical border had the politically convenient effect of denying ratification of Arizona as a Confederate Territory and thwarting Confederate ambitions to use the area as a base for its expansion into California and, perhaps, Mexico. The final bill passed the Senate and was signed into law by President Abraham Lincoln on February 24, 1863 the date of the official organization of the US Arizona Territory. (Potter 76)

#### VIII. Conclusion – An American Identity

*...Out there the sun is a little brighter...where the bonds of home are a wee bit tighter...out where the skies are a trifle bluer...where there's more reaping and less sowing...out where the world is in the making...that's where the West begins.*

*Arthur Chapman, Out Where the West Begins, 1873-1935*

After moving from Spanish law to Mexican independence, from Spain through the U.S.-Mexican War, New Mexico's identity was understandably confused. The Empire of Spain and the Mexican Republic had not considered the rugged New Mexican frontier worthy of development, but the American redefinition of Frontier as democratic rebirth and renewal

nurtured an inherent independence of spirit. This territory was used as an economic, military and socio-political pawn by Spain, Mexico, Texas and the Confederacy; it was used to try to clarify the American issues of slavery and Confederate expansion. It can also be said that New Mexico's frontier was also used by the American ideology of Manifest Destiny to promote an U.S. expansionist policy. What made all the difference was the convergence of this ideology of democracy with the sense of isolationism that the Nuevomexicano had felt. Kearny and the New Mexican inhabitants seized the opportunity to turn this already fiercely independent landscape into an American territory. Nuevomexicanos experienced a very personal internal battle for identity and sovereignty; they knew they needed governance; they knew that the rigid law of Spain was gone; but they also knew that the new rule of the Mexico Republic was chaotic and ineffective; so rather than be a Confederate pawn, they too chose. Incorporation of the U.S. Constitution and Bill of Rights into the New Mexico Territorial Law and Governance acknowledged the seeds of liberty that already existed.

Kearny's Code, although applied with military intention, led to the formation of the first American rule of law in the Southwest. Because the former Spanish colonial territory was left to its own devices by the Spanish Empire and the Mexican Republic, and independent spirit manifested itself in and set the ground for self-government. It really does seem that the convergence of circumstances –isolation from governance in Mexico City, territorial exploration by American settlers, geographical predestination – really did create an American style uniqueness; a predestination of sorts that capitalized on what had already formed in the New Mexico Territory, an independent “American” spirit ready to be nourished and fed; ready to independently pursue, desire, expand, settle and create. However complicated and worrisome American expansion into the New Mexico territory might prove for the government of the

United States, for New Mexicans it had to mean the opportunity to redefine what it meant to be a *hinterland* frontier society; from that of an unsophisticated outpost left to its own devices by Spain and then Mexico, to one on an energetic, renewable landscape capable of revitalizing human potential as American. New Mexicans took the narrative of Manifest Destiny and applied it to their own lives. So “powerful were these [stories] that the [American] West had become as much an American story as an American experience. The story could take on a life of its own, and a variety of other Americans attempted to place their own stories within it...the ability to make the story ‘live and grow’ – really belonged to [the] wider group of Americans.” (White 296-299) Territorial New Mexicans, Americans, took the stories of the West and used them to create their own American stories and apply this nourishing and unique American narrative to their own lives.

New Mexico’s American identity was founded when Gen. Kearny created The Kearny Code during the U.S. Mexican War. Due to the veracity of the fiercely independent and already democratic New Mexicans, who had endured fifty years of ever changing identity and rule of law and government, a recognizable spirit of independence took root. This identity was tempered under fire in Civil War battles fought on New Mexican soil. Tempered, thus, during the Civil War at the Battle of Glorieta, both Hispanic and Anglo New Mexicans chose to be American. Because of this diverse experience, and in spite of it, New Mexico’s unique American identity was forged, tempered and solidified. In this year of New Mexico’s Centennial celebration, New Mexico has come into its own in the United States of America.

## Works Cited

### Narrative

Archivo General de la Nacion. Comment on Indian Slavery, 1734, Mexico City, Mexico, Inquisicion 1734, 854.

Belohlavek, John M. Haynes, Sam W. and Morris Christopher, ed. Manifest Destiny and Empire American Antebellum Expansionism: Race, Progress and Destiny. Arlington: University of Texas, Texas A & M Press, 1997.

Bergeron, Paul H. The Presidency of James K. Polk. Norwalk: The Easton Press, 1987.

City of Albuquerque, Territorial Period, Albuquerque: City of Albuquerque, 2001.

Constitution of the State of Coahuila and Texas. Austin: Tarleton Law Library, University of Texas at Austin, 182 <http://tarlton.law.utexas.edu/constitutions/text/1827index.html>

Declaration of Independence and Constitution of the United States of America. Ohio: Ashbrook Center.

Fink, Leon. Major Problems in the Gilded Age and the Progressive Era: The Language of Empire. Belmont: Wadsworth Cengage Learning Center, 2001.

Haynes, Sam W. and Morris Christopher, ed. Manifest Destiny and Empire American Antebellum Expansionism. Arlington: University of Texas, Texas A & M Press, 1997.

Haynes, Sam W. and Morris Christopher, ed. Manifest Destiny and Empire American Antebellum Expansionism: Anglophobia and the Annexation of Texas: The Quest for National Security. Arlington: University of Texas, Texas A & M Press, 1997.

Hietala, Thomas R. Manifest Design: Anxious Aggrandizement in Late Jacksonian America. Ithaca: Cornell University Press, 1985.

Hietala, Thomas R. Haynes, Sam W. and Morris Christopher, ed. Manifest Destiny and Empire American Antebellum Expansionism: "This Splendid Juggernaut", Westward a Nation and its People. Arlington: University of Texas, Texas A & M Press, 1997.

Hoffman, Lou. Territorial Period, City of Albuquerque, 2013.

Johannsen, Robert W. To the Halls of Montezuma: The Mexican War in the American Imagination. New York: Oxford University Press, 1985.

Johannsen, Robert W. Haynes, Sam W. and Morris Christopher, ed. Manifest Destiny and Empire American Antebellum Expansionism: The Meaning of Manifest Destiny. Arlington: University of Texas, Texas A & M Press, 1997.

Krannawitter, Thomas L. Vindicating Lincoln: Defending the Politics of Our Greatest President. Lanham: Rowman & Littlefield Publishers, 2008.

Mabry, Ronald J. Government and Law in Spanish Colonial America. Tennessee: Llumina Press Historical Text Archive, 2001.

Mandigo, Axel & Crouch, Dora. The City Planning Ordinances of the Law of the Indies Revisited: Part I: Their Philosophy and Implications, Town Planning Review, 1977: July 48:3 pp. 247-268.

---

Martinez, Maria Elena. Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico. Palo Alto: Stanford University Press, 2008.

Martinez, Maria Elena, When Worlds Collide: Social Order in the Spanish New World. Los Angeles: Community Television of Southern California, 2010.

Merk, Frederick. Manifest Destiny and Mission in American History, A Reinterpretation. Westport: Greenwood Press, 1963.

Nagle, P.G. Glorieta Pass. New York: Evennight Press, 1999.

National Park Service. Hispanics and the Civil War , Dept. of the Interior , 2011

New Mexico State Record Center and Archive. September 22, 1846 Letter from Brig. General S.W. Kearny, Army of the West, Santa Fe, New Mexico to Adjutant general, War Dept. Washington, D.C., USA., 2004- 2013

Pittman, Dr. Walter Earl. New Mexico and the Civil War. Charleston: The History Press, 2011.

Potter, David. The Impending Crisis 1848-1861. New York: Harper & Row, 1976.

Ridge, Martin, The Life of an Idea: The Significance of Frederick Jackson Turner's Frontier Thesis. Montana: Magazine of Western History, 1991.

Roybal, Georgia, ed. Nuevo Mexico Anthology: Treaty of Guadalupe Hidalgo, Las Vegas: SEMOS Unlimited New Mexico Highlands, 2009.

Stevens, Henry, ed. The New Laws of the Indies: Leyes de Indies 1542 London: The Chiswick Press, 1893, pp. iii-xvii, passim.

PBS Series, U.S.-Mexican War 1846-1848 The War That Transformed A Continent, Dallas/Fort Worth: KERA <http://www.pbs.org/ker/usmexicanwar/prelude/>

Pena, Juan Jose, Roybal, Georgia, ed. Nuevo Mexico Anthology: The U.S.-Mexico War in Nuevo Mexico. Las Vegas: SEMOS Unlimited New Mexico Highlands, 2009.

Romero, Orlando. Roybal, Georgia, ed. Nuevo Mexico Anthology: The Civil War in New Mexico. Las Vegas: SEMOS Unlimited New Mexico Highlands, 2009.

Sampson, Robert D. John L. O'Sullivan and His Times. Kent: The Kent State University Press, 2003.

Sumner, William Graham. The Conquest of the United States by Spain

Turner, Frederick Jackson. The Frontier in American History: The Significance of the Frontier in American History. New York: Henry Holt & Company, 1921.

Vargas, Jorge A. Introduction to Mexico's Legal System. San Diego: University of San Diego School of Law, 2008.

Vasquez, Dr. Carlos. Roybal, Georgia, ed. Nuevo Mexico Anthology: When We Were Mexicans Las Vegas: SEMOS Unlimited New Mexico Highlands, 2009.

Watson, Samuel J. Haynes, Sam W. and Morris Christopher, ed. Manifest Destiny and Empire American Antebellum Expansionism: The Uncertain Road to Manifest Destiny, Army Officers and the Course of American Territorial Expansionism, 1815-1846. Arlington: University of Texas, Texas A & M Press, 1997.

Weinberg, Albert K. Manifest Destiny: A Study of Nationalistic Expansionism in American History. Baltimore: The John Hopkins Press, 1935.

White, Richard. When Frederick Jackson Turner and Buffalo Bill Both Played Chicago in 1893, Berkeley: University of California Press, 1994.

Wood, Gordon. The Empire of Liberty: The Rising Glory of America Oxford: Oxford University Press, 2009

Wroth, William H., Stephen Watts Kearny, New Mexico State Record Center and Archive, 2004-2013 fileID=550.

## Works Cited

### Lessons\*

Constitutional Rights Foundation: Bill of Rights in Action; Clash of Cultures and Law, Law of the Indies: Bria 15 4c Law of the Indies: Spain and the Native Peoples of the New World, 1999

Letter of Brig. General Kearny to Adjutant General-War Dept. from Headquarters-Army of the West, Santa Fe, New Mexico, September 22, 1846

<http://conwaygreene.com/nmsu/lpext.dll/nmsa1978/30433/30447?fn=document-frame.htm&f=templates&2.0>

---

### Maps, in chronological order

Spanish Empire and El Camino Real

[http://www.google.com/imgres?imgurl=http://mapasdemexico.org/images/newspain.jpg&imgrefurl=http://mapasdemexico.org/maps/newspain.html&h=1534&w=2000&sz=238&tbnid=NqKB8NitUuo8FM:&tbnh=90&tbnw=117&prev=/search%3Fq%3Dnew%2Bspain%2Bmap%26tm%3Disch%26tbo%3Du&zoom=1&q=new+spain+map&usq=\\_Kc7y2EWsrvn5io8RIfdDUC2wjCI=&docid=JU-mu4ymgw2NXM&hl=en&sa=X&ei=TkWjUJGjM4asqAGq4YHoDw&ved=0CC0Q9QEwAA&dur=4267](http://www.google.com/imgres?imgurl=http://mapasdemexico.org/images/newspain.jpg&imgrefurl=http://mapasdemexico.org/maps/newspain.html&h=1534&w=2000&sz=238&tbnid=NqKB8NitUuo8FM:&tbnh=90&tbnw=117&prev=/search%3Fq%3Dnew%2Bspain%2Bmap%26tm%3Disch%26tbo%3Du&zoom=1&q=new+spain+map&usq=_Kc7y2EWsrvn5io8RIfdDUC2wjCI=&docid=JU-mu4ymgw2NXM&hl=en&sa=X&ei=TkWjUJGjM4asqAGq4YHoDw&ved=0CC0Q9QEwAA&dur=4267)

El Camino Real <http://www.nps.gov/elca/planyourvisit/maps.htm>

New Mexico Territory <http://en.wikipedia.org/wiki/File:AZ-NM1867.jpg>

The Santa Fe Trail [http://www.google.com/imgres?imgurl=http://mappery.com/maps/Santa-Fe-Trail-Map.mediumthumb.jpg&imgrefurl=http://mappery.com/Santa-Fe-Trail-Map&h=490&w=600&sz=82&tbnid=5SdCau4wRdQNqM:&tbnh=90&tbnw=110&prev=/search%3Fq%3Dthe%2Bsanta%2Bfe%2Btrail%2Bmap%26tm%3Disch%26tbo%3Du&zoom=1&q=the+santa+fe+trail+map&usq=\\_CooAb4YfglphBMLdsYP0GKsJRm4=&docid=7cbfvxoX8-HajM&hl=en&sa=X&ei=tkqjUOGbBIjmqQGOzYCYAw&ved=0CDMQ9QEwAg&dur=3737](http://www.google.com/imgres?imgurl=http://mappery.com/maps/Santa-Fe-Trail-Map.mediumthumb.jpg&imgrefurl=http://mappery.com/Santa-Fe-Trail-Map&h=490&w=600&sz=82&tbnid=5SdCau4wRdQNqM:&tbnh=90&tbnw=110&prev=/search%3Fq%3Dthe%2Bsanta%2Bfe%2Btrail%2Bmap%26tm%3Disch%26tbo%3Du&zoom=1&q=the+santa+fe+trail+map&usq=_CooAb4YfglphBMLdsYP0GKsJRm4=&docid=7cbfvxoX8-HajM&hl=en&sa=X&ei=tkqjUOGbBIjmqQGOzYCYAw&ved=0CDMQ9QEwAg&dur=3737)

Texas 1848 U.S. Annexation with Treaty of Guadalupe Hidalgo from Constitutional Rights Foundation Forum <http://www.crfforum.org/topics/?topicid=35&catid=8&view=image&id=32>

Treaty of Guadalupe Hidalgo [http://en.wikipedia.org/wiki/File:Mexican\\_Cession\\_in\\_Mexican\\_View.PNG](http://en.wikipedia.org/wiki/File:Mexican_Cession_in_Mexican_View.PNG)

Civil War Battle Sites in New Mexico: Battle of Valverde and Battle of Glorieta

<http://ninemexico.com/legends/civil-war.php> and <http://www.nps.gov/peco/historyculture/copy-of-battleofglorieta.htm>

New Mexico Office of the State Historian & Compilation Commission, Santa Fe, NM 2004-2013

PBS Series, U.S.-Mexican War 1846-1848 The War That Transformed A Continent, Dallas/Fort Worth: KERA <http://www.pbs.org/keras/mexicanwar/prelude/>

The Codes Project: Anthology of Regulations that Have Shaped Urban Reform, The Law of the Indies, Phoenix: Arizona State University, current National Endowment for the Arts <http://codesproject.asu.edu/codes/>

Walbert, David. Map skills and higher-order thinking. . <http://www.learnnc.org/lp/editions/mapping/6417>  
Walbert, Kathryn. Reading primary sources: An introduction for students, A step-by-step guide for students examining primary sources, with specific questions divided into five layers of questioning. <http://www.learnnc.org/lp/pages/745>  
Chapel Hill: University of North Carolina

\*attached separately