1998

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The Treaty of Guadalupe Hidalgo
Still Relevant Today
By Roberto Rodríguez and Patrisia Gonzales
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From 1996 to 1998 marked the 150th anniversary of the Mexican-American War. The most important individual anniversary was the signing of the Treaty of Guadalupe Hidalgo, which took place on February 2, 1848, and which formally ended the two-year conflict between the United States and Mexico.

While some people (and many U.S. courts) see the treaty as dead, others see it as the basic document that governs relations between both countries. Still others see it as a living human rights document that pertains to people of Mexican origin residing in the United States.

Many of us were raised with the idea that the war against Mexico was simply a pretext for stealing its territory, and the treaty, negotiated under military duress and signed by a corrupt dictator, simply formalized the theft of half of Mexico's territory - a violation of international law. (As a result of the war, Mexico lost land that now makes up the Southwestern United States).

While many Mexican Americans view the treaty in this context, it did guarantee Mexicans and their descendants who remained in the ceded territories certain political rights, including land rights. But by the end of the century, most Mexicans had lost their land, either through force or fraud.

During the early Chicano movement in the 1960s, New Mexico land rights crusader Reyes López Tijerina and his Alianza movement invoked the Treaty of Guadalupe in their struggle. In 1972, the Brown Berets youth organization also invoked it in their symbolic takeover of Catalina Island, off the Southern California coast.

"The key to understanding the treaty, however, is not so much what's in it, but rather, what isn't in it."
For more than 15 years, many Chicano indigenous groups have cited the treaty in their struggle for the human rights of Chicanos in international forums, such as the U.N. They maintain, however, that the Mexican and indigenous peoples living in what is today the Southwest U.S. were not signatories. Native American peoples have also referred to it in their legal disputes.

Despite the fact that “It’s not our treaty,” says Rocky Rodríguez, national director of the Denver-based National Chicano Human Rights Council, Chicanos in the United States today are also covered by it.

However, when it comes to fighting for human rights cases, especially those of land theft and law enforcement abuse, seeking relief through U.S. courts is basically of no use to Chicanos, says Rodríguez. People of Chicano/Mexican origin rarely win when they use or encounter the judicial system, she says.

Richard Griswold del Castillo, a San Diego State University history professor, considers the treaty a living document, and studies the subject in his recent book, *The Treaty of Guadalupe: A Legacy of Conflict*. Upon examining the document and its 23 articles negotiated by both countries, the most startling thing that stands out is that article 10 is missing. That article, which was deleted by the U.S. Senate upon ratification, explicitly protected the land rights of Mexicans. Additionally, article 9, which deals with citizenship rights, was weakened.

The key to understanding the treaty, however, is not so much what’s in it, but rather, what isn’t in it.

According to precedents set by U.S./Indian treaties, people do not automatically lose their rights when they lose a war. People possess inherent and universal human rights and when treaties are negotiated, the people involved can lose only the rights specifically agreed upon.
In American Indians, American Justice, by Vine Deloria and Clifford M. Lytle, the authors state that courts, in recognizing the past exploitation and the use of force against American Indians, developed a set of judicial rules in dealing with disputes. In effect, they are guiding principles when dealing with U.S./Indian treaties. According to the authors, one of the rules states: "Treaties reserve to Indians all rights that have not been granted away."

This is known as the "reserved rights doctrine."

It thus follows that Mexicans in the U.S. did not lose their rights, unless that was stipulated in the treaty. And of course, no such stipulation was made. Also, these same rules call on judges to interpret treaties in the manner that reasonable people would interpret them. And it can be assumed that reasonable people don’t "give away" their lands or rights in treaties.

Armando Rendon, author of Chicano Manifesto, a 1971 book that’s also about the treaty and which is being republished, is a strong believer in the work of the council. He believes a test case is on the horizon, seeking redress on behalf of Chicanos, based on Guadalupe Hidalgo.

We too predict that a test case—with legal merit—will soon arise on the issue of either language rights or land grants, based on the treaty and predicated on the fact that Mexicans (or their descendants) living in the ceded territories did not lose their universal rights as a result of the war.

Reflecting over the United State’s history of violated treaties, Rodríguez says, "Indian prophecies predicted trickery in the north [America] and brute force in the south. Here [in the Southwest U.S.], both have been used."

Latino Spectrum is a nationally syndicated column, distributed by Chronicle Features. Rodríguez/Gonzales can be reached at xccroberto@aol.com. (Published in LatinoLink.com)