AGRARIAN LIFEWAYS AND JUDICIAL TRANSITIONS FOR HISPANIC FAMILIES IN ANGLO CALIFORNIA:

Sources for Legal History in the Autry National Center of the American West

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An immediate and unmistakable sense of urgency permeates the brief letter that José Sepúlveda sent his *compadre*, Juan Sepúlveda, on August 23, 1850. "Come at once because the lawyers are here and are just waiting for you so they can start business. I hope you hurry and, with tomorrow's train, Tuesday, leaving at 9:00, I assured them that you would be here . . . today the lawyers started [to address] the matter."[1] Unfortunately for us, José failed to identify "the matter" at hand, nor did he establish the broader context and delineate local circumstances for the contemporary reader. It is clear from his imperative tone, however, that the territorial cession of 1848 — and subsequent statehood for California in 1850 — promoted angst and uncertainty among many Hispanic families. José's letter

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[1] The original Spanish reads, "Benga U. inmediatamente por que aqui estan los abogados y solo se espera a U para comenzar el negocio. Espero pues no pierda momento y con el tren de mañana martes a las nuebe, este U aqui asi les asegure yo a ellos . . . [H]oy comensaron los Abogados el asunto." José L. Sepúlveda to Don Juan C. Sepúlveda, August 23, 1850, Autry National Center of the American West Archive and Manuscript Collections, Los Angeles, California, Miehle and Sepúlveda Family Papers [hereinafter ANCAMC, MSFP], MSA.31, document 8.

conjures images of American lawyers descending upon Juan Sepúlveda's home in Los Angeles, armed with judicial decisions and legal documents that perhaps challenged his rights to the land and water he and his family had enjoyed for years under the laws of the prior sovereign, Mexico.

Land dispossession was quite common throughout the North American West in the years following the Treaty of Guadalupe Hidalgo despite its explicit guarantees to protect the property rights of those Mexicans who were prejudiced by the territorial cession.[2] In California, the rapid move to statehood in light of events at Sutter's Mill and the Gold Rush that followed led to federal passage of the Land Act of 1851, which subjected Hispanic property rights to adjudication in U.S. courts. A potent combination of chicanery, intimidation, and indebtedness resulted in the transfer of nearly 40 percent of Hispanic land in California to American ownership.[3] Territorial cession, therefore, set up a clash of legal cultures as the more established Hispanic civil law, which had defined the nature and scope of property rights and agrarian lifeways in Spanish North America since the sixteenth century — and in Alta

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[2] For California, see the classic accounts by W.W. Robinson, *Land in California* (Berkeley & Los Angeles: University of California Press, 1948), and Leonard Pitt, *The Decline of the Californios: A Social History of the Spanish-Speaking Californians, 1846–1890* (Berkeley & Los Angeles: University of California Press, 1966). The literature on New Mexico is vast. Malcolm Ebright summarizes quite nicely the changing political, social, and legal landscapes there in his *Land Grants and Lawsuits in Northern New Mexico* (Albuquerque: University of New Mexico Press, 1994). For Arizona, see the interdisciplinary study by Thomas E. Sheridan, *Landscapes of Fraud: Mission Tumacácori, the Baca Float, and the Betrayal of the O'odham* (Tucson: University of Arizona Press, 2006). David Montejano evaluates how land dispossession unfolded in Texas in his well-researched study, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin: University of Texas Press, 1987). Article VIII of the Treaty of Guadalupe Hidalgo protected "property of every kind." The best survey of the treaty remains Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman: University of Oklahoma Press, 1992). Arizona south of the Gila River to present-day Nogales, as well as southwestern New Mexico, were not part of the 1848 territorial cession and remained in Mexico's hands until the Gadsden Purchase of 1854, which in Mexico is known as *La Venta de La Mesilla*. See William S. Kiser, *Turmoil on the Rio Grande: History of the Mesilla Valley, 1846–1865* (College Station: Texas A&M University Press, 2011).

[3] Shirley Ann Wilson Moore, "We Feel the Want of Protection: The Politics of Law and Race in California, 1848–1878," in John F. Burns and Richard J. Orsi, eds., *Taming the Elephant: Politics, Government, and Law in Pioneer California* (Berkeley & Los Angeles: University of California Press, 2003), 102.

California since 1769 with the establishment of San Diego, followed in earnest by the *rancho* movement in 1784 — was forced to make way for American common law understandings of property rights *and* the onslaught of attorneys representing Anglo land speculators and mining interests.

The property rights tradition that evolved in Spain, and later Mexico, classified natural resources as property in ways that were quite distinct from Anglo common law, thus ensuring confusion after 1848 when adjudication took place in the newly acquired territories. Since water was considered property under the laws of Spain and Mexico prior to the territorial cession, U.S. courts were being called upon by both international law and American case law to act as surrogates for the Hispanic civil law of property.[4]

Spanish (and later Mexican) jurisprudence recognized three kinds of property rights that are fundamental to understanding the intersection of law and rural economic activities in places like California, Arizona, New Mexico, southern Colorado, and Texas, which were once part of the Spanish dominion in North America. Surface water was *propiedad imperfecta*, or a property right that was subject to qualification and measured against the rights of others.[5] For example, unlike Anglo common law, the Spanish civil law did not recognize riparian rights to running rivers or streams. If a piece of property fronted on a creek or river the owner could only use the water for domestic purposes and *not* for irrigation. The Spanish crown (and later an independent Mexico) conveyed rights to surface water for agricultural and industrial purposes via several mechanisms: *merced de agua* (a specific grant of water); *repartimiento de aguas* (a judicial procedure that divided surface water according to certain criteria such as need, intent, and legal right); *composición* (the judicial process of authenticating

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[4] For a summary of these international and national contexts, see Michael C. Meyer and Michael M. Brescia, "The Treaty of Guadalupe Hidalgo as a Living Document: Water and Land Use Issues in Northern New Mexico," *New Mexico Historical Review* 73 (1998): 321–345. For the California context, see Peter L. Reich, "Dismantling the Pueblo: Hispanic Municipal Land Rights in California since 1850," *The American Journal of Legal History* 45 (2001): 353–370, and Peter L. Reich, "Mission Revival Jurisprudence: California Courts and Hispanic Water Law since 1850," *California Supreme Court Historical Society Yearbook* 2 (1995): 3–47.

[5] For an explanation of the distinctions between *propiedad imperfecta* and *propiedad perfecta*, see Mariano Galván Rivera, *Ordenanzas de tierras y aguas, o sea formulario geométrico-judicial* (Mexico City: no publisher, 1849), 3–4.

asserted water rights); or if the land grant itself contained language that conveyed water rights for irrigation (for example, if a parcel of land was identified in the granting instrument as *tierras de pan llevar* or *tierras de labor*, both of which meant irrigable land).

Groundwater was classified as *propiedad perfecta* in the Spanish civil law of property. Ownership of spring water, rainwater, snowmelt, or water percolating under the ground was nearly absolute, and landowners could not be easily deprived of these waters once conveyance was extended by competent authority, even if use of such water caused damage to neighbors. The paucity of disputes over groundwater during the Spanish colonial period suggests that the nascent science of hydrology had not yet informed jurisprudence in the Spanish world. Most disputes in the documentary record reflect concerns over access to surface water rather than groundwater.

Propiedad usufructuaria, or usufructuary property, rounds out the third property right in the Hispanic civil law.[6] Usufruct is the right to use and enjoy the property of another, and to draw profit from it provided that such acts neither alter nor eliminate the purpose or substance of the property being used. In the case of Spanish New Mexico, usufructuary property was manifest in the common lands attached to Spanish municipalities, Indian pueblos, and, in northern New Mexico, informal agrarian hamlets known as *acequias* or *plazas*. Individual Spanish citizens (*vecinos*) residing in a town (or Native peoples in their pueblos) enjoyed a property interest in the common lands, which were used for recreation, hunting, fishing, for pasture, the gathering of wild fruits and nuts, for the watering of livestock, and for cutting wood. Citizens of the community, rich and poor alike, enjoyed equal access to the commons. In fact, most settlers would have found it difficult to make a living and support their families without regular access to the commons. The activities cited above, therefore, were usufructuary property rights, and, although our understanding of these rights is not nearly as nuanced as our knowledge of water rights, it is clear from the statutory and case law that Spanish jurisprudence recognized them as such.

Fortunately for historians and legal scholars, the Autry National Center of the American West in Los Angeles is home to two impressive research libraries that contain plenty of primary source materials for the study of

6 Meyer and Brescia, "The Treaty of Guadalupe Hidalgo," 323.

law, legal custom, and agrarian lifeways during the critical transition period between Spanish colonialism and American rule. The Autry Library, located at Griffith Park, and the Braun Research Library, which until very recently was located at the Southwest Museum of the American Indian on the Mount Washington campus but is moving to its new state-of-the-art facility in Burbank, include papers from several prominent Hispanic families that reveal both glimpses and panoramic views of change and continuity in their social circles, material well-being, and rural practices. Moreover, these resources also show how quickly the Americans became part of the California landscape even before the transfer in sovereignty, as some married into Mexican families and experienced firsthand the traditions and practices of Hispanic ranching culture, while others employed to their economic advantage the new political and legal infrastructure established under U.S. sovereignty. Finally, the Autry National Center has a user-friendly online catalogue that allows researchers to search its multiple archival and manuscript collections. The historical vignettes that follow identify and evaluate select items found within certain family papers, emphasizing what the sources tell us about the legal and cultural values that fashioned agrarian life for Hispanic families in California.

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