HISTORICAL DOCUMENTS

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.

The Autry National Center of the American West, Griffith Park Campus

THE AUTRY LIBRARY, GRIFFITH PARK CAMPUS — THE MIEHLE AND SEPÚLVEDA FAMILY PAPERS

José Sepúlveda's anxious note to his compadre, Juan, is part of the Miehle and Sepúlveda Family Papers.[7] Apparently, the collection of papers arrived at the Autry National Center in a painted steamer trunk. The Sepúlveda family was a major player in the settlement and development of Southern California. After the U.S.-Mexico War and subsequent peace treaty, Juan moved quickly to accommodate the emergence of an integrated politics. For example, he served as *alcalde* (district magistrate or mayor) alongside Abel Stearns in the early 1850s. The more prominent members of the Sepúlveda family, including Juan, had prospered when California was part of Mexico; they received a rather substantial land grant of nearly 32,000 acres known as the Rancho de los Palos Verdes. Spanning the years 1834–1952, the family papers include an eclectic mix of letters, notes, ranching ledgers and account books, newspaper clippings, photographs, tax receipts, blueprints, maps, and legal documents. One particular source — the *Diario del Ganado Vacuno*, or the Cattle Journal — handwritten on blue paper and part of an old, brittle ledger with tissue paper to separate individual items, demonstrates continuity in prescriptive ranching practices among Hispanic families in California in the years following the establishment of American rule.

Spaniards started to move cattle and other livestock from Baja to Alta California in 1769 when Gaspar de Portolá and the Franciscan priest, Junípero Serra, made their *entradas* and initiated the Spanish colonial enterprise there. A few years later in 1775–1776, Juan Bautista de Anza left the Arizona–Sonora frontier with California's first Spanish settlers and about 1000 livestock, including 355 cattle. The Franciscan missionaries, striving for self-sufficiency and protective of their Native charges, embraced ranching as an economic activity up and down their extensive mission line. After Mexican independence from Spain in 1821, however, and the secularization of the missions that followed, more than 800 ranchos were granted to former presidial soldiers, and soon Alta California had cattle

[7] The finding aid can be found at http://www.oac.cdlib.org/findaid/ark:/13030/c8zk5fc8/.

grazing on "a thousand hills."[8] Mexican ranchers engaged regional and global commercial networks via the sale of hides and tallow, while their families and neighbors consumed beef. By the time the first Anglos entered California, the Mexicans were quite experienced stockmen, with a ranching culture fashioned as much by rules of conduct and legal custom as by Mother Nature.[9]

As a member of the Los Angeles County stockmen's association, Juan Sepúlveda was appointed to its governing board and entrusted with enforcing the regulations that were enumerated in the *Diario*. Mirroring the functions and hierarchical organization of the Mesta established by Spaniards in sixteenth-century central Mexico, the cattlemen's group that emerged in Mexican Los Angeles accommodated Americans like Abel Stearns who had embraced the ranching culture through marital ties with leading Mexican families. In fact, when the *Diario* took effect on October 1, 1857, Stearns was listed as the president of the association. He, Sepúlveda, and other ranchers in the area — such as Andrés Pico, José Antonio Aguirre, Vicente Lugo, and Ricardo Vejar — pledged to work together and protect their rural property (livestock and land), "always relying on the support of the law."[10]

These regulations prescribed the manner in which neighboring ranchers were to gather for *rodeos*, or the round-ups on horseback that took place in the open pastures for identifying and branding all the livestock in the district. In an effort to halt rustling, neither ranchers nor their *vaqueros* were to remove cattle or horses from their own property without the presence of neighbors or the rural police force that the regulations had established. Moreover, as a way to reduce illicit sales of beef, ranch hands without any livestock of their own, were prohibited from using unknown branding irons. Cattle remitted to family members or sold to the local slaughterhouse were expected to carry a certificate showing the branding mark of ownership, the number of livestock being given or sold, and the name and location of the buyer. The association eliminated the practice of

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[8] Beverly Lane, "Here's the Beef: A History of Cattle Ranching in the San Ramon Valley," *The California Historian* 59, nos. 1-2 (2014): 43–44.

[9] Ibid., 44.

[10] *Diario del Ganado vacuno que se mata en la Ciudad de Los Angeles . . . 1° de Octubre de 1857*, ANCAMC, MSFP, MSA.31. The original Spanish reads "contando siempre con el apoyo de la ley . . . ."

putting down stray livestock from nearby ranches and, instead, agreed to return the animals to their rightful owners. On the other hand, if the rural police apprehended someone trying to rustle livestock, the local authorities were to be notified immediately, while the local rancher whose property was threatened would initiate legal proceedings against the accused.[11]

Cooperation was essential if the stockmen's association was to properly safeguard the pastoral lifeways of Los Angeles. Fines of five pesos were levied, therefore, against those ranchers who failed to attend the executive meetings of the association, which were scheduled every two months to discuss business. Ranch foremen, or *mayordomos*, hired to ensure a ranch's smooth operation and enforce the association's regulations, were expected to carry papers — signed by the ranch owner — certifying their employment. Finally, the *Diario* empowered the governing body to hire attorneys when it became necessary to defend their interests in courts of law.[12]

With ranching so firmly established in California by the time of the territorial cession, it is not surprising, then, that the *Diario del Ganado* of 1857 hued closely to the laws passed in 1850–1851 by the new state legislature, which, in turn, had recognized Hispanic ranching practices as one of Spain's most important legacies in North America.[13] The discovery of gold at Sutter's Mill, of course, had promoted a sizable influx of new settlers looking to strike it rich. These newcomers provided California with its first substantial market for beef, encouraging a ranching boom between 1849 and 1856. As geographer Terry Jordan has noted, the gold rush led to two distinct pastoral regions in California: Southern California, with its largely Hispanic population, was an isolated and poorer area that witnessed a depopulation of its pastures as many livestock ended up near mining camps.[14] It is no wonder that Sepúlveda, Stearns, and other Los Angeles ranchers sought to impose order and transparency on the ranching sector after it had been turned upside down as a result of the mining boom. Hispanic pastoral traditions had proved so durable and reliable prior to

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11 Ibid.

12 Ibid.

13 William H. Dusenberry, *The Mexican Mesta: The Administration of Ranching in Colonial Mexico* (Urbana: University of Illinois Press, 1963), 195–197.

14 Terry G. Jordan, *North American Cattle-Ranching Frontiers: Origins, Diffusion, and Differentiation* (Albuquerque: University of New Mexico Press, 1993), 246.

Sutter's Mill, however, that even most new Anglo landowners simply embraced the culture. Even so, as Jordan points out, of the 130 large-scale cattle ranchers residing in Southern California by 1860, nearly two-thirds were still Hispanics working their old land grants.[15]

The northern and interior reaches of California, on the other hand, including the fertile Central Valley, quickly reflected a more hybrid approach to ranching, including the use of Anglo cowboys and the move away from hides and tallow to beef production.[16] By the end of 1850s, 81 percent of all large cattle ranches in the region were in the hands of Anglo ranchers who had introduced mid-western cattle to the range in addition to hiring Anglo ranch hands, thus hastening the disappearance of Spanish cattle breeds and a decline in the vaquero workforce.[17] Soon this northern Pacific and interior ranching sector, with its new animal bloodlines and human workforce, eclipsed Southern California as the pastoral engine of California.[18]

Despite intermarriage and the adoption of Hispanic ranching traditions in Southern California, relations between Anglos and the Hispanic community frayed over time as political power, economic clout, and social prestige transferred to the newcomers at the expense of the Hispanic establishment. Thirty-five years after José Sepúlveda urged his compadre to return to Los Angeles as quickly as possible because the attorneys had arrived, Juan Sepúlveda left an ominous note that made its way to the Miehle and Sepúlveda family papers at the Autry Library. Just like with José's note, there are no circumstances given. Neither the preceding nor subsequent documents provides the historian with any contextual assistance. Several Anglo surnames appear in the brief note, but we are not privy to their backgrounds there. Dated January 15, 1885, and coming from San Pedro, California, Juan (or someone on his behalf) wrote the following awkward yet powerful lines in English: "On this date Mr. Johnson came to see me in San Pedro, La Barraca and asked me to let Mr. Banning go on with the work on the water tank. I answered it was my duty not to let any stranger work on my property. The hired men said that Mr. Bixby, then that Mr. Banning then Mr. McDonald. Mr. Johnson told me this and I would get

15 Ibid.
16 Ibid., 246–247.
17 Ibid.
18 Ibid., 247.

the water free. Juan Sepulveda."[19] The note continues: "They told me they would give me water and I answered, I had a wagon and horses to bring it. Because Mr. Banning does not come and make such proposition in person. Instead I was arrested. Juan Sepúlveda."[20]

It is unknown whether Juan wrote the note himself or had a relative, neighbor, attorney, or scribe do it for him. Other documents bearing his name and signature in the family papers are in Spanish. As previously noted, Juan was part of a prominent Hispanic family in Southern California prior to the territorial cession. What is so striking about the note is the heavy presence of Anglos and the intimidation that they brought to bear as they tried to persuade Juan to allow access to his water tank. After trespassing on his property, these men — hired muscle, it seems — offered Juan his own water for free if only he would allow them to work on his water tank. Under the Hispanic civil law of property, water originating within the confines of one's property — as rainfall, snowmelt, groundwater, or percolating springs — was private water, or *propiedad perfecta*. Property owners could impound such waters in tanks or reservoirs for their own personal use, and were not obliged to share the water with neighbors. If ecological conditions changed — say, for example, a drought had developed — local authorities under Hispanic law could oblige the owners of these private waters to share the precious resource with neighbors, but they were entitled to compensation.[21]

It would seem that Mr. Banning, presumably the one calling the shots here, chose not to confront Juan in person. When Juan refused their demands, he was arrested. Taking measured but creative license with this late nineteenth-century document, we might imagine Juan Sepúlveda feeling insulted, even outraged, that Banning had neither the honor nor

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[19] Note from Juan Sepúlveda, January 15, 1885, ANCAMC, MSFP, MSA.31. We cannot discount the possibility, of course, that another Juan Sepúlveda wrote the note; perhaps an immediate relative or a member of the extended family.

[20] Ibid.

[21] Galván Rivera, *Ordenanzas*, 3–4. Groundwater under the laws of Spain and Mexico has not received the same kind of treatment in the scholarly literature as surface water. Two essays that address the general parameters of groundwater in the Spanish civil law of property are Daniel Tyler, "Underground Water in New Mexico: A Brief Analysis of Laws, Customs, and Disputes," *New Mexico Historical Review* 66 (July 1991): 287–301; and Michael C. Meyer, "The Living Legacy of Hispanic Groundwater Law in the Contemporary Southwest," *Journal of the Southwest* 31 (Autumn 1989): 287–299.

SOUTHWEST MUSEUM OF THE AMERICAN INDIAN, MOUNT WASHINGTON CAMPUS OF THE AUTRY NATIONAL CENTER OF THE AMERICAN WEST

the decency to make his demands in person.[22] Instead, he sent a bunch of associates — probably hired guns — to take care of his business. Under what pretense Juan was arrested remains unknown, nor do we know for how long he sat in jail, but this short document makes its reader feel uneasy and evokes the maxim popular throughout the North American West: "whiskey is for drinking and water is for fighting over."

THE BRAUN RESEARCH LIBRARY, MOUNT WASHINGTON CAMPUS — THE YORBA–COTA FAMILY PAPERS

The Yorba and Cota families were prominent members of the Hispanic landowning elite. In return for their military service and participation in expeditions, Pablo Antonio Cota and José Antonio Yorba received substantial tracts

[22] A well written, nicely conceived study that examines the values and sentiments that permeated Hispanic California during this time is Jeanne Farr McDonnell, *Juana Briones of Nineteenth-Century California* (Tucson: University of Arizona Press, 2008).

of land in California. The family papers reflect their vast holdings. Consisting primarily of legal documents such as land grants, chains of title, deed transfers, bills of sale, land petitions, powers of attorney, and boundary descriptions, the Yorba-Cota papers offer the legal historian plenty of opportunities to ascertain the fundamentals of Hispanic natural resource law in the context of judicial transitions in frontier California between 1837 and 1897.[23]

Municipal governments in Spanish North America held in trust for their citizens the common lands attached to towns. Often called *ejidos* or *montes* in the documentary record, these rather extensive tracts were home to a plethora of activities, including the grazing and watering of livestock, the cutting of timber to heat homes and cook food, and the gathering of wild fruits and nuts; more importantly, these activities were usufructuary property rights under the Spanish and later Mexican civil law. In 1845, Leonardo Cota wrote a letter to the Los Angeles City Council that, while not explicitly enumerating woodcutting as a property right, articulated Hispanic understandings of communal ownership of natural resources and the shared responsibility that accompanied citizenship. Cota reminded council members that one of the primary functions of municipal government was to develop wooded areas so its citizens would have access to firewood. In reciprocity, according to Cota, citizens should be obliged to enclose or fence these wooded areas, as well as all lands under cultivation within the municipal boundaries as a way to ensure the beauty and health of the land.[24] Cota also recommended that all future land grants issued within city limits require recipients to fence off their properties; those who failed to do so would be subject to a fine.[25]

Inspired by Enlightenment ideas of democracy and progress, nineteenth-century liberals in central Mexico began to question the economic feasibility of the common lands and found in these tracts the ingredients

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[23] The finding aid can be found at http://oac.cdlib.org/findaid/ark:/13030/c8q7js4/.

[24] Leonardo Cota to the Ayuntamiento of Los Angeles, August 8, 1845, Braun Research Library, Autry National Center of the American West, Los Angeles, California, The Yorba-Cota Family Papers [hereinafter BRL, YCFP], MS.1061, 248-L-17. The original Spanish reads "Siendo una de las principales atribuciones de los ayuntamientos formar montes artificiales y procurar que los vecinos pongan cercos brotados, para que los pueblos se provean de madera y leña…comprometen a los ciudadanos a que pongan cercos brotados en todas las tierras labranticias de esta Ciudad . . . con eso se logrará el objeto propuesto y los terrenos gozarán de hermosura y salubridad . . . ."

[25] Ibid.

for the ideal citizen–property owner who, motivated by self-interest, would work and irrigate individual parcels in a manner that reflected the values of the nation-state instead of the *patria chica*, or little homeland.[26] After Mexican independence from Spain, liberals in California sought a break with the colonial past by targeting the missions (and their extensive holdings) for secularization and elevating liberal institutions at the expense of an older, colonial military ethos.[27] It would seem in Hispanic Los Angeles, however, at least according to one of its leading citizens, that social equilibrium was best maintained via hybrid patterns of land tenure: individual parcels carved out of municipal lands for private ownership, and common lands held in trust by the city council for the common good, albeit with obligations imposed on the citizenry. The reader also senses that Cota had embraced the nineteenth-century aesthetic ideal that sought order and harmony through fenced enclosures in an effort to clearly delineate private property while at the same time setting apart the municipal commons.[28]

A source in the Yorba–Cota family papers that sheds light on the more procedural elements of Hispanic civil law is Leonardo Cota's efforts in the summer of 1845 to explain to the local judge the delay in building a house on the land that he had been granted. Spanish and Mexican property titles stipulated conditions that had to be satisfied if the grant, as a legal instrument, was to maintain its validity under the law. For example, the abandonment of one's land grant without just cause or prior authorization by competent authority (due to Indian attacks, for example), or the failure to put the land to beneficial use through irrigation or grazing, could lead to forfeiture under Hispanic law.[29] In this brief document, Cota

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[26] See, for example, Michael T. Ducey, *A Nation of Villages: Riot and Rebellion in the Mexican Huasteca, 1750-1850* (Tucson: University of Arizona Press, 2004), and Margarita Menegus Bornemann, ed., *Problemas agrarios y propiedad en México, siglos XVIII y XIX* (Mexico City: El Colegio de México, 1995).

[27] Rose Marie Beebe and Robert M. Senkewicz, eds. *Lands of Promise and Despair: Chronicles of Early California, 1535-1846* (Norman: University of Oklahoma Press, 2015), 341–342, 345.

[28] For a conceptually sound and empirically driven study that examines the nineteenth-century Mexican preoccupation with landscapes and social order, see Raymond B. Craib, *Cartographic Mexico: A History of State Fixations and Fugitive Landscapes* (Durham, NC: Duke University Press, 2004).

[29] Ebright, *Land Grants and Lawsuits*, 93.

acknowledged that the year before (1844) he had received lands contiguous to the home of his late father, and that he was going to build a home on his newly acquired parcel. The lack of draft animals to haul the adobes, dirt, water, and wood, however, made it impossible for him to erect the building. As such, Cota petitioned the judge "to take into account these reasons" as sufficient enough to give him more time to build the house, which he stated that he would do in the current year (1845), "preserving the property that I have acquired with just title."[30] The judge's signature at the bottom of the document appears to indicate that Cota's petition was approved.

Another procedural element of the Hispanic civil law was its stipulation that legal transactions, including the issuance of land grants and property rights, have a prescribed number of witnesses, with a municipal clerk or court notary recording the transaction on officially approved, sealed paper. The lack of any one of these elements, in theory, could render the transaction illicit or even invalid. Scarcity of approved paper, the absence of trained scribes and notaries, and inadequate storage had posed certain challenges on Mexico's far northern frontier since the earliest days of colonial rule, however, making it difficult to comply fully with the finer details of Spanish property law.[31] In fact, the inability to follow the procedural steps in precise fashion was quite common in the more remote areas of the Spanish empire, although such lack of precision in no way invalidated property rights. Often frontier authorities reminded their counterparts in central Mexico and Spain of the absence of the procedural accouterments of property law by employing in the documentation such language as "for lack of a public or royal notary, there being none in this province."[32]

Leonardo Cota's petition to the judge contained such language: "I made use of common paper for the lack of [having any] sealed [paper here]."[33] In the document that follows Cota's petition — a conditional deed for a

[30] Leonardo Cota to Judge Francisco Marquez, July 5, 1845, BRL, YCFP, MS.1061, 248-L-20. The original Spanish reads "suplico tomar en consideracion las razones manifestadas . . . y se sirva darlas para suficientes . . . conservandose la propiedad de el que he adquirido con justo titulo."

[31] Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995), 36–37, 99–102.

[32] Ebright, *Land Grants and Lawsuits*, 132, 316n.23.

[33] Cota to Judge Marquez, BRL, YCFP, MSA.1061, 248-L-20. The original Spanish reads "me desprende el uso de papel comun por falta de sellado."

vineyard dated and issued in 1848 to Esteban Jourdain — similar language appears: ". . . on this common paper for lack of sealed [paper]."[34] The same document mentions the use of local witnesses rather than a notary public, since Los Angeles, like so many other frontier towns in the far north, often did not have the means to regularly support the office.[35] Another document in the series, describing the debt that Juan Peralta owed Bernardo Yorba in 1848, ends with the line, "thus . . . I signed the present document on this common paper for [the] lack of sealed [paper]."[36] Despite the paucity of approved paper, or the dearth of notaries and clerks with formal training, Hispanic law maintained its vigor and fashioned the rhythms of daily life in Hispanic California.

As seen earlier, Abel Stearns moved comfortably in Hispanic social circles. Part of a broader movement of Anglo merchants, speculators, and shipping agents that moved to California under Mexican rule, Stearns married Arcadia Bandini, the daughter of a prominent Hispanic family in San Diego with commercial holdings in Los Angeles.[37] He purchased his first rancho in 1842 — Rancho Los Alamitos — which was spread over 26,000 acres between the city of Los Angeles and the harbor. As his investments in ranching, mills, and transportation paid off, Stearns would acquire seven other Mexican ranchos and immerse himself in local politics and civic associations. In addition to being president of the Los Angeles Stockmen's Association — as noted above — he represented Los Angeles to the U.S. military government at the end of the U.S.-Mexico War, served as state assemblyman, L.A. County supervisor, and city councilman. The deed to Rancho Los Alamitos is part of the Yorba–Cota papers, and it, too, reveals the fundamentals of Hispanic property law in the waning years of Mexican sovereignty.

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[34] Conditional Deed to Esteban Jourdain, August 10, 1848, Los Angeles, California, BRL, YCFP, MSA.1061, 248-L-21. The original Spanish reads "en este papel comun por falta de sellado."

[35] Ibid. The original Spanish reads "ante mis testigos de asistencia, con quienes actuo por receptoria a falta de escribano publico."

[36] Recognition of Juan Peralta's Debt to Bernardo Yorba, April 5, 1848, BRL, YCFP, MSA.1061, 248-L-22. The original Spanish reads "asi . . . firme el precente documento en este papel comun por falta del sellado . . . ."

[37] Pitt, *Decline of the Californios*, 19.

Dated July 12, 1842, the deed established the late José Figueroa, former governor of California, as the previous owner of Los Alamitos; his executor, Franco Figueroa, acting on behalf of all the heirs-in-interest, authorized the sale of the rancho to "Señor Don Abel Stearns."[38] Quite tellingly, the ranch consisted of six *sitios de ganado mayor*, two more than what was traditionally granted under Hispanic law. Set aside for the larger livestock such as cattle and horses, a *sitio de ganado mayor* carried a maximum size of 25,000,000 square *varas*,[39] which was equal to one square league or 4338 acres. On Mexico's far northern frontier, however, particularly after independence from Spain, local authorities in California and Arizona, for example, granted much larger tracts of land in an effort to combat hostile Apache groups, which was the case in Arizona and Sonora, or, in the case of California, to encourage the rapid expansion of the ranching sector in light of secularization of the Franciscan missions. Exception to the 'four sitio rule' was made for prominent citizens who were proven ranchers and stockbreeders, and whose pockets were deep enough to pay for the extra sitios.[40] Despite his Anglo background, Abel Stearns, bearing the honorific Spanish title of 'Don' in the document, had little difficulty demonstrating social prestige and economic prosperity. If the grant's previous owner, José Figueroa, could afford to pay for the two extra sitios, Don Abel had more than enough income and savings to purchase Rancho Los Alamitos intact.

Under Hispanic property law, grazing grants did not typically include water rights for irrigation.[41] Cattle and horses pastured these allotments, and water sources originating within the confines of the grant were only for the animals. In the deed issued to Stearns for Los Alamitos, the following language was used to describe both the general contours of the grant and the natural resources attached to it: ". . . with all the ingresses (entrances), egresses (exits), stock waters, wooded mountains, meadows, stubble pasture, watering places, buildings, extensions, uses, customs, privileges,

[38] Deed of Rancho Los Alamitos to Abel Stearns, July 12, 1842, BRL, YCFP, MS.1061, 248-L-39.

[39] The vara was slightly less than a yard or approximately 33 inches.

[40] See the discussion of the Babocómari Ranch in James E. Officer, *Hispanic Arizona, 1536–1856* (Tucson: University of Arizona Press, 1987).

[41] Michael C. Meyer, *Water in the Hispanic Southwest: A Social and Legal History, 1550–1850* (Tucson: University of Arizona Press, 1984), 124–125.

easements, and other things adjunct that it [the grant] has had, haves, and [that] pertains to it according to the law, for the amount of 1500 pesos."[42] Had the grant authorized irrigation, it would have included "*aguas*" in the enumeration of natural resources or employed explicit language to denote irrigable land, such as *tierras de labor* or *tierras de pan llevar*. Moreover, the deed included a side purchase of the ranch's branding mark and numerous branding irons, as well as the extant livestock still pasturing the land, thus reinforcing its 'grazing' nature. Don Abel, no doubt, had other parcels set aside for irrigation and farming. Besides, large agricultural fields were rare in Hispanic California at this time; most Mexican rancheros cultivated grains, vegetables, and fruits for domestic consumption rather than for sale on the open market.[43]

The deed also makes reference to a Spanish law code that has eluded legal historians of the far northern frontier for some time. In 1805, the *Novísima recopilación de las leyes de España* was compiled and reflected all Spanish laws, as they existed at the beginning of the nineteenth century. Unfortunately, with scarce references in the case law, scholars have yet to establish with any documentary rigor the general application of the *Novísima* to Spanish North America. In colonial Mexico, the wars of independence broke out a mere five years after the compilation was issued, although formal separation from Spain neither abrogated the property rights acquired under the mother country nor extinguished the Spanish colonial regimen of laws, customs, and usages that had operated in Mexico since the early sixteenth century. Stearns's 1842 deed, therefore, provides a rare glimpse of the *Novísima* in California twenty-one years after Mexican independence from Spain.

Heirs of the Figueroa estate were satisfied with the sale price that had been agreed upon with Don Abel (1500 pesos); even the time frame allotted for making payments met their expectations (two installments in less than two years).[44] In an effort to 'lock in' the agreed upon price, the attorneys

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[42] Ibid. The original Spanish reads, "con todas las entradas salidas, pastos abrevaderos, montes vegas dehesas aguajes, sensos fabricas estencion usos costumbres, regalia servidumbres y demas cosas anecsas que ha tenido tiene y le pertenecen segun derecho, por la cantidad de mil quinientos pesos . . . ."

[43] Lane, "Here's the Beef," 45.

[44] Deed of Rancho Los Alamitos, BRL, YCFP, MS.1061.

for the Figueroa family cited laws in the *Novísima* related to sales and contracts. Although drafted to protect the buyer in a sales transaction, the attorneys stipulated that their client (the seller) had waived those laws in the *Novísima* that allowed Stearns (the buyer) to revisit the transaction later if conditions or circumstances changed.[45] Despite the apparently harmonious relations between the two families, the Figueroa heirs, or so it seems, wanted to protect themselves from the vagaries of the real estate market. If land prices dropped before buyers had finished making their payments, they might want to renegotiate the original asking price. Moreover, the deed also stipulated that the seller waived the law in the *Novísima* that allowed buyers to rescind transactions within a four-year period, thus bringing a degree of certainty, if not finality to the transaction.[46] For their part, the Figueroa heirs were not looking back. They relinquished their complete ownership of Rancho Los Alamitos to Don Abel without reservation or prejudice. As the buyer and new owner, Stearns could "change, alienate, use, and dispose of [the property] as he wished, like something of his acquired with legitimate and just title."[47]

This essay began with a document that heralded — with much trepidation — the arrival of lawyers at the home of a prominent Hispanic family, the Sepúlvedas. The Yorba–Cota family papers contain a handwritten copy of the law organizing the Supreme Court of Mexico (probably derived from the Constitution of 1824). Leonardo Cota's name appears at the bottom of the document. The section of the law that seems to have captured Cota's attention was chapter 5, "On Attorneys," since it is the only part of the law that he or his scribe copied down or acquired. No date is listed, so we are unsure of when Cota came into possession of it (or when and where

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45 Ibid. The original Spanish reads, "Que por tanto renuncia la escepcion que en este asunto pudiera oponer por no constar de presente la ley (9) titulo (1) parte cinco, formaliza a favor del comprador la mas firme y eficacia carta de pago que a su seguridad condusca, y asimismo declara que el justo precio y verdadero valor del repetido terreno es el puesto en esta escritura, que no vale mas ni allo quien tanto le halla por ello . . . ."

46 Ibid. The original Spanish reads ". . . renuncia la ley dos titulo uno novisima recopilacion que trata de los contratos de venta, trueque y de otros en hay lecion en mas o menos de la mitad del justo precio, y los cuatro anos que prefina para pedir su resicion o suplemento a su justo valor . . . ."

47 Ibid. The original Spanish reads, ". . . cambie enagene, use y disponga de ella a su eleccion, como de cosa suya adquirida con legitimo y justo titulo."

he had access to the law for copying). With the rancho movement in full bloom under Mexican rule, coupled with the arrival of Anglos, Cota and his Hispanic contemporaries looked to the legal profession to assert their rights and defend their interests in courts of law. At first these courts were organized under the laws of Mexico; after 1848, U.S. laws and California statutes took over. During the Mexican period, California might not have had a sufficient supply of sealed paper or an adequate number of trained notaries and clerks, but Cota knew what to expect in terms of attorneys' fees. Chapter 5 enumerated in numbing detail the fees that Mexican lawyers were authorized to collect. When drawing up a legal document for "easy and simple" cases, for example, the attorney charged six pesos per sheet; if the case proved difficult, he could charge up to ten pesos.[48] It is unclear whether both sides of a sheet counted as one, since it was common to write on both sides due to the scarcity of paper — common, sealed, or otherwise. After the transition to American rule, chains of title became bulky and cumbersome, as documents written in Spanish often were translated into English so American judges, clerks, and attorneys could read them. Whether under Spain, Mexico, or the United States, however, ranchers, merchants, and miners sought to protect and expand their property rights through various means — acquisition, endogamy, legislation, litigation — all of which required the services of an attorney in some fashion. In a very real sense, then, the lawyers had always been part of the California landscape. These family papers, which form part of the Autry's splendid archival and manuscript collections, allow the historian to evaluate the agrarian traditions of Hispanic California within a social context sensitive to judicial transitions in the wake of American rule.

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[48] Untitled, Capítulo V, De los Abogados, no date. BRL, YCFP, MSA.1061, 248-L-60. The original Spanish reads, "Por todos los escritos que hagan . . . cobraran a razon de seis pesos por pliego, si fuesen sobre puntos facilies y sensillos . . . y si fuesen dificiles podran hasta diez pesos."