Love, Honor, and the Power of Law: 
Probating the Avila Estate in Frontier California

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INTRODUCTION

On October 19, 1850, with the assistance of a scribe, elite ranchero Antonio Ygancio Avila set about to record his last will and testament. In earlier days, it might have been remarkable only that Avila was not on his deathbed. But the fall of 1850 marked a time of significant legal change and uncertainty in the newly-admitted State of California. One of the earliest acts of the legislature was to decree the state a common law jurisdiction, although the American conquest four years earlier had already weakened the force of Mexican civil law governance. Married Californios like Avila may have taken some comfort in the constitutional guarantee of community property rights, but there was no telling how an Anglo-dominated legislature would effectuate that mandate. Thus, as the scribe recorded Avila’s testamentary wishes, even the basics were in flux. If Avila had been relying on Mexican social and legal structures to guarantee smooth transference and maintenance of his family’s wealth, he would be sorely disappointed. In fact, on that October day in 1850, he had no way of knowing how the will would be probated, or even what property would be considered part of his estate. But Avila’s window of testamentary capacity was probably closing quickly, and much was at stake: a 22,500-acre rancho and thousands of head of cattle to pass down to a wife and numerous children and grandchildren. Certainly, it was never Avila’s wish that his family lose its legacy. However, it would have taken a more functional Californio family to resist the effects of the Americanization of law and society post-statehood.¹

¹ For a discussion of both the adoption of common law and community property law, see Donna Clare Schuele, “A Robbery of the Wife”: Culture, Gender, and Marital Property in California Law and Politics, 1850-1890 (PhD diss. U.C. Berkeley, 1999), ch. 2 passim. For gradual adoption of common law
THE AVILA FAMILY

Don Antonio Ygnacio Avila was born in Mexico in the early 1780s, into one of the founding families of the pueblo of Los Angeles. His early life was shaped by the needs of imperial Spain - Avila apprenticed as a blacksmith, served in the military, and held local government positions. With the demand for artisans decreasing and land ownership rights increasing after Mexican independence, Avila devoted himself to ranching and continued to serve as a government official. In return, he was given permission to graze his cattle on land known as Rancho Sausal Redondo, an area encompassing today's Los Angeles International Airport. In 1826, he built a home and stocked the ranch with about three thousand head of cattle. The Mexican government confirmed 22,500 acres to him in 1837, giving him ownership rights in the land.²

² For information on Avila’s early life see Hubert Howe Bancroft, The Works of Hubert Howe Bancroft, v. 19 (San Francisco: A.L. Bancroft & Co., 1885), 349-50 n.25, 351, 566, 664-65 n.24, 736; Mardith K. Schuetz-Miller, Building and Builders in Hispanic California, 1769-1850 (Santa Barbara: Santa Barbara Trust for Historic Preservation, 1994), 16, 27, 32, 54-55; Orange County Genealogical Society, Saddleback Ancestors: Rancho Families of Orange County, California (Orange, CA: 1969), 20 [hereafter Saddleback Ancestors]; Alfonso Yorba, trans., “Don Juan Avila’s ‘Notas Californias’,” Orange County History Series, v. 3 (Santa Ana, 1939), 1-6, passim [hereafter Juan Avila Testimonio]. Avila served as an alcalde (a quasi-judicial position) in 1820, rejidor (member of the town council) in 1820-21, and juez de campo (judge of the plains, charged with enforcing law regarding cattle ownership) almost continuously from 1835-1848. See Bancroft, v. 19, 350-51, 706; v. 20, 634-35. The Spanish government singled out artisans such as Avila for land use rights, and later Antonio Ygnacio received one of the earliest grants under the authority of the Mexican government, in March, 1822, which promised ownership rights upon investment in the land. Schuetz-Miller, 32; W.W. Robinson, Ranchos Become Cities (Pasadena, CA: San Pasqual Press, 1939), 130-133.
In 1803, Antonio Ygnacio married Rosa Ruiz, from another founding family, who gave birth to upwards of a dozen children, of which five daughters and four sons lived into adulthood: Francisca, Ascencion, Juan, Jose Martin, Rafaela, Concepcion, Pedro, Pedro Antonio, and Marta. Not unusual among elite Californios, large families were considered a fulfillment of duty to church and nation. These families existed within a patriarchal structure particular to the Spanish/Mexican culture. Mexican Californian patriarchy included a set of values known as the “honor/shame complex,” where male honor ideally rested on a set of positive accomplishments – the ability to show force of will and command over others, the ability to protect and provide for one’s dependents, and respect for the rank of other powerful men – whereas female virtue depended on a more passive ability to show submission to husbands, fathers, and elders, strict adherence to sexual propriety, and respect for social decorum.

But also, in this dynamic of father-elder dominance, “[o]ne’s generation . . . is at least as important as one’s gender in determining relationships of rights, obligation, and dependence,”

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4  Louise Pubols, The Father of All: The de la Guerra Family, Power, and Patriarchy in Mexican California (Berkeley: University of California Press, 2009), 30 (estimating the average family size of elite Californios at eight or nine children). See also Miranda, “Hispano-Mexican Childrearing Practices in Pre-American Santa Barbara,” 309 (“[f]or some Californians, having larger families was considered a mark of status”); Miroslava Chavez-Garcia, Negotiating Conquest: Gender and Power in California, 1770s to 1880s, Tucson: Univ. of Arizona Press, 2004, 20, 23 (noting that reproduction was critical to population growth during a lull in colonization from 1790 to 1830).
such that “[a]t every level of society, a person’s age and stage in the life cycle further ranked him or her in family and community hierarchies of deference and authority.”

While the terms of Mexican Californian patriarchy were always under negotiation, its framework was embedded in the ancient concept of patria potestas (paternal authority) whereby male heads of household had complete authority over dependents, and obligations of parental respect and obedience prevailed into children’s adulthood. Both age and marital status determined the nature and extent of children’s independence as adults. Single daughters and sons, no matter their age, remained under their father’s authority during his lifetime except under certain conditions such as emancipation or the father’s incapacitation. The legal regime supported the patria potestas requirement that children under the age of majority, twenty-five, gain their father’s consent to marry or risk being disinherited, but once married they were released from his paternal authority. On the other hand, the Catholic Church’s sacramental approach to marriage required consent by both parties, thereby at least theoretically protecting children from being forced into unwanted unions.

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5 Pubols, 8. See also Douglas Monroy, Thrown Among Strangers: The Making of Mexican Culture in Frontier California (Berkeley: University of California Press, 1990), 140-142 (“[t]he Californio family model provided the patterns of submission, hierarchy, and obligation that prevailed between patriarchs and their women, children and Indian laborers in the golden age of the ranchos”).

6 Pubols, 26, 30, 58 (patriarchy “was not something imposed from without, but a set of relationships and assumptions under continual negotiation”); Arrom 57, 69, 148 (“in the late colonial period, the Crown increasingly restricted the freedom of marriage sanctioned by the Catholic Church”). Chavez-Garcia notes that Spanish law also prohibited parents from forcing marriage on a child. Chavez-Garcia, 32. Even married children did not gain legal rights until they reached the age of majority; before then they were subject to guardianship for legal transactions. Arrom, 58. Besides the right to regulate children’s marriages, patria potestas gave fathers control over children’s education, legal transactions and property (including a right to use that property), and gave fathers the right to use physical punishment or take legal action against their children. Ibid., 69. During the 1820s and 30s, some Mexican jurisdictions adopted reforms aimed at reducing the authority of fathers, by reducing the age of majority, thus allowing children to marry without paternal consent earlier, and releasing single adults from patria potestas while their father was still alive, but there is no indication that these changes were adopted, either formally or informally, in Alta California. See ibid., 92.
In Mexican Californian society, hierarchically defined by landholdings and the notion *gente de razon*, the doctrine of *patria potestas* provided the basis for ensuring that children’s marriages facilitated rather than disrupted the family economy. Spanish concerns about marriages between unequals were expanded in the Americas to include concerns about wealth, and landed fathers focused on arranging marriages, particularly of daughters, that would bolster kinship networks and increase the family’s economic position. Under Mexican law, property might nominally be owned jointly by married couples or by individual members of a family, but the patriarchal structure guaranteed that family members would act predictably and in unison, not competing against each other. Ranchos were operated under a single manager, father or brother, “enabling the extended kin network to consolidate its holdings and direct management from a single source, and thus to increase its economic power.”

This meant that married children, including married daughters, remained on the rancho under the watchful guise of the patriarch.

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7 For a discussion of the status of *gente de razon* in Alta California, see Lisbeth Haas, *Conquests and Historical Identities in California, 1769–1936* (Berkeley: University of California Press, 1995), Ch. 1 passim; Monroy, 22-23, 139-140; Gloria E. Miranda, “Gente de Razon marriage Patterns in Spanish and Mexican California: A Case Study of Santa Barbara and Los Angeles,” *Southern California Quarterly* 63: 1-21 (1981). Regarding the father’s right to arrange marriages, see Pubols, 36-37, 122-23 (“[f]athers claimed a special interest in controlling the marriages and sexuality of girls because … a father’s masculine honor … depended on his ability to protect his wife and daughters from sexual dishonor”); Griswold del Castillo, 64-65; Monroy, 140, 159; Miroslava Chavez, “‘Pongo mi Demanda’: Challenging Patriarchy in Mexican Los Angeles, 1830-1850.” In *Over the Edge: Remapping the American West*, edited by Valerie J. Matsumoto and Blake Allmendinger (Berkeley: University of California Press, 1999), 274-75. Fathers might arrange marriages without their children’s knowledge (Monroy, 140), but Chavez-Garcia notes that daughters were successful in appealing to authorities to block undesired paternal marriage arrangements (278). Pubols (124) notes that daughters were left more vulnerable after Mexican independence due to the weakening of church authority. In the end, according to Pubols (126), most daughters were willing participants in arranged marriages because they identified with their families’ interests and saw the marriage as a way to benefit themselves long-term.

As his children matured, Antonio Ygnacio’s ability to exercise his paternal prerogative shifted. His first two daughters, Francisca and Ascencion, married in a double ceremony in 1825, when Antonio Ygnacio’s patriarchal authority and status in the community was rising, and he chose well: each wed into founding families of Los Angeles, Sepulveda and Sanchez, whose patriarchs, similar to Avila, engaged in ranching and held various governmental posts. Seven years later, Antonio Ygnacio’s eldest son wed into the Yorba family, the holder of one of the largest and earliest Spanish land concessions. Through these marriages, Antonio Ygnacio’s children demonstrated a strong commitment to strengthening the family kinship network and economy. Upon these and subsequent weddings, Antonio Ygnacio presented each child with a gift of cattle, no doubt assuming that the stock would continue to graze on his land, further investing these now-emancipated children in the family economy. In fact, the 1836 census indicates the married Juan, and his unemancipated, unmarried brothers, Pedro and Pedro Antonio, working Rancho Sausal Redondo along with their father, aided by a new brother-in-law.9

However, around the time that Juan got married, a tension inherent in patriarchal authority threatened to disrupt the Californio family economy. As adults, second-generation native sons yearned to escape their fathers’ control, establish themselves as patriarchs, and gain the honor that would come with the position. A change in inheritance law after independence left eldest sons particularly vulnerable; no longer could they hope to be the sole beneficiary of their fathers’ land, as property would equally descend to all children in the family. But any

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rebellion on the part of this next generation was dangerous to the family economy. “[W]hen a son came of age and struggled to become an independent patriarch,” historian Louise Pubols argues, “[a] family could split apart at that moment, and the careful webs of alliances and obligations unravel.”

The process of secularization of the missions, from 1829 to 1846, particularly under Governor Figueroa beginning in 1833, provided an opportunity for the younger generation to gain the land they’d been hungering for and establish themselves independently of their fathers. Ironically, it was family connections to the commissioners appointed to administer the mission lands that allowed this second generation to free themselves of the patriarchal authority and economy restricting them, and to do so without rejecting the system of patriarchy altogether. The pattern of marriage and land acquisition for the Avila family in the 1830s reflected this new reality, the shift towards independence aided by the appointment of Francisca’s father-in-law, Francisco Sepulveda, as commissioner of the deteriorating Mission San Juan Capistrano, sixty miles to the south.

Soon after his marriage, Juan received permission from Sepulveda to graze his cattle on the abandoned mission lands. By 1836, Francisca’s husband Jose Sepulveda had established himself as an independent ranchero, formalizing his presence in San Juan Capistrano with a land grant in 1837. When, in the early 1840s, the Mexican government established a new pueblo

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10 Pubols, 149-195, passim (“[t]o be dominated by another was to be a man without honor”); Arrom, 84.

11 In conjunction with Figueroa’s implementation of secularization while ignoring earlier mandates to provide land to mission Indians, the territorial legislature issued a law that “ordered [] ‘vacant’ mission lands to be granted according to the Mexican colonization laws,” whereupon “the floodgates opened, and scores of new grants, carved from mission estates, transferred to the hands of the native sons each year thereafter.” Pubols, 187. For the secularization of Mission San Juan Capistrano and Sepulveda’s role, see Zephyrin Englehardt, O.F.M., San Juan Capistrano Mission (Los Angeles: The Standard Printing Co., 1922).
and undertook officially to populate the area, Juan, along with his now-widowed sister Ascencion, sought and gained the 13,000-acre Rancho Niguel.\(^\text{12}\)

With opportunities opening up for the second generation, the ability if not the interest of patriarchs to employ the marriages of daughters (and sons) to bolster the family economy declined. The next few marriages connected the Avilas with other founding families, but those that were landless and thus less elite. Perhaps Antonio Ygnacio was most concerned with adding additional sets of hands to work Sausal Redondo, yet the outcomes of these marriages were more variable and later ones highlighted the social disruption that was creeping into Californio society. At first it appeared that the exodus to San Juan Capistrano would continue. Rafaela’s new husband quickly moved from working Antonio Ygnacio’s rancho to establishing himself in the new pueblo, formalizing his presence through one of the last land grants before the American conquest in 1846. And Jose Martin’s marriage into a branch of the Feliz family in 1838 also left open the possibility that he too could take advantage of the in-law connections at the old mission.\(^\text{13}\)

\(^\text{12}\) For the importance of Francisco Sepulveda to the Avila family’s establishment in San Juan Capistrano, see Haas, 47. For Jose Sepulveda’s grant, see Saddleback Ancestors, 84, 103-106 (noting that, with a grant of additional acreage in 1842, Sepulveda formed the 49,000-acre Rancho San Joaquin). For the grant of Rancho Niguel, see Haas, 45-47, 83; Chavez-Garcia, 57. Land grants to women were uncommon. Ascencion’s participation may have been a strategic ploy to assist her brother in obtaining a larger than allowed grant. Originally, Juan and Ascencion requested a grant of over 70,000 acres, five leagues greater than the maximum eleven leagues that could be granted to an individual. When Indians of the mission contested the request, arguing that under the secularization plan all of the former mission land should be left for common use, the grant was reduced to three leagues. Robert H. Becker, Designs on the Land: Disenios of California with Ranchos and Their Markers (San Francisco: Book Club of California, 1969), Disenio 37.

\(^\text{13}\) Rafaela married Emidgio Vejar around the age of 16, prior to 1835. ECPP, Los Angeles Baptismal Record no. 00483; Northrop, v. 1, 54. See also Shuetz-Miller, 56 (giving the marriage date as Dec. 7, 1834). The couple settled in San Juan Capistrano a few years before Emidgio was formally granted the 6,600-acre Rancho Boca de la Playa. Saddleback Ancestors, 96-98. Jose Martin initially married Maria Ygnacia Feliz at the age of 23. Northrop, v. 1, 54.
It was the wedding of sixteen-year-old daughter Concepcion in 1836 that seemed to set the family on an unfortunate path. Concepcion was married to her first cousin, Servulo Varelas, whose landless family had spiraled downward after the death of his mother, Antonio Ygnacio’s sister, when he was very young. Servulo’s father was subsequently unable to control the sexuality of his two motherless daughters, who went on to have thirteen out-of-wedlock children between them, one even being publicly branded a “mala vida” just prior to Servulo’s marriage. Most likely Antonio Ygnacio was acting out of a sense of patriarchal responsibility to provide a better life for his nephew, although it is hard to believe that Concepcion would have any enthusiasm for sacrificing her virtue in the face of the shamed status of the Varelas family.\textsuperscript{14}

It is nearly impossible to imagine that the Avila family would soon and again become connected through marriage with another equally notorious family. Jose Martin remarried in the early 1840s to a widow who could also trace her roots to early settlers, but her family had been marred by shame when her sister was executed by vigilantes in 1836, for having abetted her lover in killing her elite ranchero husband. Perhaps at this point Antonio Ygnacio gave up on

\textsuperscript{14} Northrop, v. 1, 54 (indicating Concepcion and Servulo’s marriage). Shortly before the wedding, both Servulo and his father were listed as “flagrantly” having no profession. \textit{1836 Padron}, p. 32 of reprint; Layne, 82. For information on the Varelas daughters and their children, see ECPP San Gabriel Baptismal Record no. 08237, and Los Angeles Baptismal Record nos. 00196, 00234, 00379, 00558, 00936, 01158, 01283, 01619, 01636, 01657; Marie E. Northrop, \textit{Spanish-Mexican Families of Early California: 1769-1850}, v. 2 (Burbank, CA: Southern California Geneological Society, 1984), 144, 255; Marie E. Northrop, \textit{Spanish-Mexican Families of Early California: Los Pobladores de la Reina de Los Angeles}, v. 3 (Burbank, CA: Southern California Geneological Society, 2004), 184; \textit{1836 Padron}, p. 32 of reprint; Layne, 82; \textit{1844 Padron}, 395; \textit{1850 Census}, 62, 66; Chavez-Garcia, 46. For a discussion of the effect of sexual impropriety and out-of-wedlock births on the reputation of the family, see ibid., 26, 45 ("women who dishonored . . . fathers with sexual indiscretions brought dishonor to the entire family"). Chavez-Garcia argues that the label “mala vida” did not indicate that the woman was a prostitute, but nonetheless was an attempt by authorities outside the family to control these women’s sexuality and to make them serve as an example to other women. Ibid., 47-48. Sexual misconduct was not confined to this arm of the Varelas family. Servulo’s aunt produced three children during a period of widowhood and later was ordered by officials to leave her lover and return to her second husband. Ibid., 41; Los Angeles Plaza Church Baptismal Record nos. 00001, 00096, 00196. In addition, after he was married, Servulo agreed to have a cousin, who was charged with prostitution, placed under his watch. Chavez-Garcia, 190 n.28.
finding honorable spouses among the local population. Pedro wed an outsider from Monterey in 1841, but he too could not escape social disorder, as he fathered an illegitimate child during this marriage.\textsuperscript{15}

By the time of the 1844 census, Antonio Ygnacio’s children who had wed well were all living off of Rancho Sausal Redondo, benefiting from the establishment of the pueblo of San Juan Capistrano. Pedro and Jose Martin were the only married children living on the rancho, their life circumstances leaving few options but to remain tied to the patriarchal homestead. Unmarried Pedro Antonio (Pedrito) and Marta, still under the age of majority, also resided on the rancho, although perhaps Antonio Ygnacio emancipated Pedro Antonio when he gave his son a wedding-gift allotment of cattle notwithstanding his single status. Most likely, Concepcion and her husband also were tied to the rancho.\textsuperscript{16}

\textsuperscript{15} Jose Martin married Maria del Pilar Villa around 1841 or 1842, possibly to legitimate their first-born child. San Gabriel Mission Marriage record no. 01887, Los Angeles Death record no. 00496, Northrop, v. 1, 54, v. 3, 279. For the execution of Maria del Rosario Villa, see Chavez–Garcia, 43-45. Pedro wed Juana Nepomucma Altamirano at age 20 (1841). ECPP San Gabriel Mission Marriage record no., 01925; San Gabriel Mission Baptismal record no. 08528; Northrop, v. 1, 54. There is some indication that this marriage was not successful. In the 1850 census, Pedro is listed as living with another woman and a three-year-old child, not his. Juana and their three young children do not appear in the census. Maurice H. Newmark and Marco R. Newmark, eds., \textit{Census of the City and County of Los Angeles, California, for the Year 1850} (Los Angeles: The Times-Mirror Press, 1929) [hereafter 1850 Census], 75; ECPP Los Angeles Plaza Church Baptismal Record no. 01841.

\textsuperscript{16} See \textit{Juan Avila Testimonio}, 20 (referring to having returned his brothers Pedro and Pedro Antonio to “their rancho”, presumably Rancho Sausal Redondo, after a battle in January, 1847). In 1844, Pedro served as juez de campo. Bancroft, v. 21, 633. Pedro Antonio remained single until his father's probate closed in 1868, marrying just afterwards at the very late age of 44 years old. Northrup, v. 1, 54. Later events indicate that Concepcion’s marriage may have been troubled. After her husband’s death, Rosa placed her interest in Rancho Sausal Redondo in trust for her daughter, free of the control of Concepcion's husband. Deed of Trust, December 18, 1859, Abstract of the Title to the Ranchos Sausal Redondo and La Centinela, and the tract of land know as the “Stuart Tract,” February 16, 1885, 25, 26 [hereafter Abstract of Title], 50. Concepcion later sold this interest for a mere $1,000. Deed, Ascencion [sic] Abila de Barela to Ygnacio del Valle, April 3, 1867, ibid., 64. Interestingly, Antonio Ygnacio included a provision in his will calling for Francisca to be appointed the guardian of Marta’s property "if she is not married and still a minor" at his death. Will Translation. Marta had just reached the age of 25 when Antonio Ygnacio executed his will, although he (or the scribe) might have been uncertain of
At some point in the 1840s, Antonio Ygnacio’s mental and physical capacities began to diminish, probably due to a stroke. He resigned as juez de campo in 1848, by then unable to even mount a horse. Tenets of patria potestas dictated that Marta, as the only unmarried daughter, would become her father’s caretaker. Although Marta’s marriageable years ticked by, no doubt her father would have opposed any union that interfered with her filial duties. While a connection can only be surmised, Marta’s life changed dramatically soon after her father executed his will in 1850. By early March, 1851, Antonio Ygnacio, Rosa, and Pedro Antonio were residing with Juan in San Juan Capistrano. Marta, now past the age of majority under Mexican law, married the month before at the nearby rancho of her cousin. For the remainder of Antonio Ygnacio’s life, Pedro took over operation of Rancho Sausal Redondo, apparently acting as his father’s agent in matters involving the ownership of the ranch. Little else is known about the family’s next seven years, but as Antonio Ygnacio’s health declined, his financial position actually improved. No doubt this good fortune allowed the family to ignore the factors that were pushing it apart. Antonio Ygnacio passed away at age 75 in 1858, leaving what looked to be a significant estate.\textsuperscript{17}

\textsuperscript{17} Conversation with Joseph Barnes, Antonio Ygnacio’s great-great-great-grandson, July 20, 2010 (stating that Antonio Ygnacio suffered a stroke that left one side of his body paralyzed). A stroke would explain the ending of Antonio Ygnacio’s long tenure as juez de campo in 1848, and a drawing that appears in Northrup, v. 1, in which an elderly, frail Antonio Ygnacio grasps a cane while one corner of his mouth twists downward unnaturally. Northrup, v. 1, at 53–54. For information on the Avila family in early 1851, see 1850 Census, 67, 75, 104, 108. Regarding Pedro’s assertion of typical rights of ownership, see Mortgage, Pedro Avila to Teodosia Saiz, Dec. 12, 1854; Lanfranco v. Abila, Case No. 380, First District Court, Los Angeles County, Abstract of the Title, 25, 26 [hereafter Abstract of Title]; Robert G. Cowan, Ranchos of California (Fresno, CA: Academy Library Guild, 1956), 195–96, 437. In his will, Antonio Ygnacio referenced a part of Sausal Redondo known as Las Salinas, 214 acres of lucrative salt flats around the unsettled boundary with Rancho San Pedro. In 1855, after execution of the will, Pedro failed in an attempt to claim Las Salinas as part of Sausal Redondo. Robert G. Cowan, Ranchos of California (Fresno, CA: Academy Library Guild, 1956), 38; Robert Cameron Gillingham, The Rancho San Pedro (Los Angeles: Cole-Holquist Press, 1961), 121, 180, 195–96, 242; "The Avila Heirs," \textit{Los Angeles Times}, Sept. 9, 1895. Gillingham attributes ownership of Sausal Redondo at this point to Pedro. Ibid., 195. See also 1850 Census, 75, 116, listing Pedro as a
THE WILL CONTEST

Rosa presented her husband’s will to the Los Angeles County Probate Court and petitioned to be appointed co-executor along with sons Juan and Pedro Antonio. Gone were the days of “the civil-law easy-going, not judicially supervised, settlement of the affairs of a decedent” during the Mexican period. The State of California had established an estate administration process that was based on “the Anglo-American concept of fiduciary management under a close judicial supervision.” The new system not only decreased the executors’ control over estate administration, but it also allowed room for individual interests to trump those of the family.\textsuperscript{18}

Exploiting a contradiction in the law’s notice requirement, Marta was able to delay the proceedings to admit the will to probate long enough to formulate a challenge to its validity. During the Mexican period, Californianas had a long history of seeking judicial resolution of disputes, through procedures that respected Californio social and family hierarchy.\textsuperscript{19} If Marta believed that resort to Anglo-American legal process would feel the same, then she sorely underestimated the bite of the adversarial system.

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\textsuperscript{18} Avila Probate, Petition to Admit Will to Probate and for Appointment of Executors, Notice of Hearing, Oct. 4, 1858; Powell, 178.
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\textsuperscript{19} Motion to Dismiss, October 15, 1858, and November 1, 1858; Opposition to Probate of Will, November 1, 1858, Avila Probate. Under Mexican law, Marta would have needed her husband’s permission to bring a lawsuit. Arrom, 67. Here, Marta’s husband’s name was included in the caption of the will contest and there is no evidence that he opposed her filing of the suit. Meanwhile, focusing on Mexico City, Arrom states that “[f]amily members could not, as a general rule, bring suit or testify against each other.” Ibid., 307 n.69. But see ibid., 67 (noting that she was allowed to sue her husband without his permission). Californianas were not shy about seeking judicial resolution of disputes, including disputes against husbands. See Chavez-Garcia, \textit{passim}; Haas, esp. Ch. 2.; Langum, Ch. 9.
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Marta’s claims centered on a lifetime gift of cattle to her brother Juan memorialized in the will. Antonio Ygnacio recounted entrusting 800 head of cattle to Juan in 1842, praised him for increasing the herd to 2,000 head over the next eight years, and declared that any further increase in the herd during his lifetime would belong to Juan. With a cattle market focused on hides and tallow and Antonio Ygnacio in failing health, the gift may have appeared reasonable at the time. However, the 1850s were boon years for Southern California rancheros as the Gold Rush set off an unprecedented market for beef soon after the will was executed. Moreover, Antonio Ygnacio survived an additional eight years. From the vantage point of 1858, Antonio Ygnacio’s gift to Juan now looked scandalously generous, even detrimental to the family’s interest.

It may have been the gift’s violation of Californio family economy norms that motivated Marta to seek its avoidance, but she had to present her arguments in the context of American legal culture and doctrine. Nineteenth-century American law was increasingly individualistic; it cared little about family cohesion and filial respect once children reached adulthood, and the Spanish/Mexican doctrine of patria potestas was irrelevant. In the American law of estates, the measure of the validity of a gift or will was not its accordance with family interests, but instead the focus was on the capacity and state of mind of the individual donor.

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20 The will stated: "On the Ranch of my son Juan, I placed eight hundred (800) head of meat cattle. Eight years ago and through the cares of this good son who has worked in the increase and preservation of this stock with his own horses and servants, I had wherewith to maintain me the greater part of my old age, with my family; and which to pay many of my debts . . . which all of my family is informed, and I declare that my aforesaid son Juan has paid part of my liabilities with his own money, and that only by his care and expenses has my cattle been able to amount at this date to the amount of two thousand head . . . ." Will Translation. This declaration was essentially an inter vivos (lifetime) gift that would begin taking effect upon the birth of additional cows from Antonio Ygnacio’s herd at Rancho Niguel and would continue until Antonio Ygnacio’s death.

21 Haas, 51; Griswold del Castillo, 42.

22 For the evolution of domestic relations law in 19th century America, see Michael Grossberg, Governing the Hearth: Law and Family in Nineteenth-century America (Chapel Hill: University of North Carolina Press, 1985).
Having been close witness to her father’s declining health in the 1840s, Marta contended that the lifetime gift to Juan was void, either because her father lacked the capacity by 1850 to make the gift or because Juan procured the gift through fraud. In addition, Marta argued that the will itself was void, due to lack of testamentary capacity or by virtue of Juan’s fraud and undue influence in securing favorable provisions. According to Marta, by 1850 Antonio Ygnacio had already been "incompetent by reason of mental imbecility and unsoundness of mind to transact any business or to make said will" for several years. She acknowledged that Juan had become his father’s agent some time before the will was executed, but argued that this arrangement resulted from Antonio Ygnacio’s diminished capacities rather than any agreement between the two. If so, American law might provide Juan with the value of his services, but that figure would not be tied to the increasing value of the cattle.\textsuperscript{23}

Alternatively, Marta contended that Juan committed fraud by underreporting by 2,500 head the number of Antonio Ygnacio’s cattle that had been born on Rancho Niguel between 1842 and 1850. According to the terms of the gift, such an underreporting would allow Juan to lay claim to significantly more cattle and profits between 1850 and 1858 than he would otherwise be entitled to. Should Marta prevail, the excess cattle and profits would become a part of her father’s probate estate, to be divided among her and her siblings. Marta’s focus on this personal property, in the context of the vast real property included in this estate, was a product of both deep-seated culture and more recent economics. Unlike Anglos, Californios had not commodified their land, and livestock was seen as families’ source of wealth.\textsuperscript{24} Even still, it is hard to imagine that this lawsuit was really about additional cattle.

Evidence of fraud on Juan’s part was circumstantial at best. The day before his father died, Juan sought and received a conservatorship.\textsuperscript{25} Perhaps he had an inkling that his sister was

\textsuperscript{23} Avila Probate, Motion to Dismiss, Exception to Court’s Decision to Admit Will to Probate, Nov. 1, 1858.

\textsuperscript{24} Ibid. Regarding Californios’ relationship to the land, see Haas, 64.

\textsuperscript{25} Guardianship of Jose (Antonio Ygnacio) Avila, Case No. 115, Los Angeles County Probate Court Records (stating that Antonio Ygnacio was “imbecile in mind and wholly incompetent to manage his said property”). The Probate Court
prepared to contest his handling of his father’s affairs and he became worried that his informal management would not withstand the scrutiny of American law. And certain provisions in the will could be read as ham-handed attempts by Juan to cover his tracks. While the will acknowledged uneven treatment of Antonio Ygnacio’s children, both with regard to lifetime and testamentary gifts, it justified the inequality as being motivated by "justice in favor of those who have been most meritorious," a statement certain to exacerbate rather than temper hard feelings. The will also blatantly implored the siblings not to cause trouble over the uneven treatment, with a pointed reference to Juan: "I wish, and it is my will that no one disturb him for reason of the increase [in the herd] nor for other cause whatsoever, since I am satisfied that he has conducted himself very well." According to Marta, these provisions were Juan’s idea, “the better to conceal his frauds . . . and to protect himself,” and agreed to by Antonio Ygnacio only due to his “imbecility” and vulnerability to Juan’s undue influence.26

Juan Avila was probably the last Californio his countrymen would expect to be accused, by a younger sister no less, of dishonorable behavior. By 1858, he was one of the most elite and wealthy members of San Juan Capistrano. If anything marked a gente de razón, it was his reputation as a man of reason, a man of his word. Elite Californios embraced a sense of reciprocity and obligation, where wealth was merely the means to act honorably. Acting in a self-interested, acquisitive way was unacceptable.27


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26 Will Translation.
27 Monroy, 136-140 ("the amount of honor one had made a reputation, not the amount of money") (emphasis in original). Regarding Avila’s reputation and wealth, see Bancroft, v. 19, 736 ("Don Juan was a man of excellent repute"); Anita L. Alexander, “Life of Don Juan Avila, ‘El Rico,’” Orange County History Series 3 (1939), 33, 40 (Juan Avila lived his life “honorably, industriously, and according to the best tradition of his people”); Marjorie Tisdale Wolcott, ed., Pioneer Notes from the Diaries of Judge Benjamin Hayes, 1849-1875 (Los Angeles: Priv. Print, 1929) [hereafter, Diaries of Judge Hayes], 113 (Hayes described Juan as "indulging in none of the vices of his countrymen, and steadily accumulating wealth. Without being a miser, he is reputed to save money . . . "); Saddleback Ancestors, 22-26 (noting that, before the ruinous drought of 1863-64, Avila’s cattle herd numbered 8,000).
It would be difficult to explain Marta’s radical step of suing her eldest brother if there had not been some sort of estrangement between her and her family, including a breakdown in the patriarchal structure and family economy so critical to Californio culture. Certainly, the decampment to San Juan Capistrano in the mid-1830s of her siblings who wed well, the series of odd and even shame-ridden marriages of other siblings beginning around the same time, and Antonio Ygnacio’s declining health in the 1840s indicate that the family had ceased functioning as a patriarchal unit long ago, perhaps the dysfunction only temporarily masked by a booming cattle market in the 1850s. The gift to Juan may have simply been the breaking point, while Marta’s marriage, coming on the heels of the execution of Antonio Ygnacio’s will, may hold clues to explain her decision to sue.

Perhaps Marta had married against her family’s wishes, and, unable to stop the wedding, they instead responded by ostracizing her. Marta’s husband, Juan Nepomuceno Padilla, was an outlaw who had become an infamous target in the American conquest. When he joined the defense against the Bear Flag Revolt in 1846, two Americans were killed and their bodies mutilated under his command. Pursued, Padilla hid out in southern California for two years, returned north to sell his interests in two ranchos (his adobe having been burned to the ground in retaliation by the Americans), and returned south in 1850 flush from the land sales, marrying Marta soon afterwards.28

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28 Bancroft described Padilla as a “Mexican barber of no influence or standing whatever,” who was a saloon-keeper in San Francisco when he served briefly and controversially as an alcalde in 1845. Bancroft, v. 21, 666-667 n.12, 765; Bancroft, v. 22, 160. For Padilla’s role in the Bear Flag Revolt, see Bancroft, v. 22, 160-66, 173; Barbara R. Warner, The Men of the California Bear Flag Revolt and Their Heritage (Spokane, Wash.: Arthur H. Clark Pub Co., 1996), 243-46 (describing the mutilation at length and generally adopting a highly Anglo-centric view of the event); Rose Marie Beebe and Robert M. Senkewicz, Testimonios: Early California through the Eyes of Women, 1818-1848 (Berkeley, CA: Heyday Books, 2006), 28-29 (testimonio of Rosalia Vallejo, Governor Mariano Vallejo’s sister). Neither did Padilla enjoy a good reputation with regard to his land grants. He was accused of forgery and his testimony to the Land Commission was deemed not credible by the U.S. Supreme Court (which also pointed to his (legally irrelevant) role in the killing of the two Americans). Salmon v. Symonds, 30 Cal. 301 (1866); U.S. v. Galbraith, 63 U.S. 89 (1859). Sources regarding Padilla’s life in Los Angeles are scant and do not appear to connect him to the famous events...
If Marta had hoped to marry Padilla during his first stay in Los Angeles, Antonio Ygnacio may still have had the power under patria potestas to block the wedding, and at least could have threatened her with disinheritance. But by 1851, there was little the patriarch could do. First, with the institution of American law, including civil marriage and a lower age of majority, Marta would have met the qualifications to marry without parental consent. Second, although American law would not have stopped Antonio Ygnacio from disinheriting his daughter, he probably lacked the mental capacity to alter his will after its execution. Moreover, the reality most likely was that Antonio Ygnacio was too incapacitated by the time of Marta’s wedding to exercise any authority over her choice of spouse.

Yet, under the dictates of patria potestas, Marta would not have been left to her own devices once her father became disabled. Instead, eldest son Juan would have stepped into the shoes of his father, and there is good reason to conclude that Juan Padilla would not have been his first choice of spouse for his youngest sister. Notwithstanding his elite status, Avila was known more for his lack of involvement in the political and military skirmishes that marked the nineteenth-century history of Alta California, which positioned him to deliver the “flag of truce” to the American military headquarters in Los Angeles.29 Put simply, Juan Avila and Juan Padilla were on opposite sides of a determinative issue.

Surprising, however, Juan and his wife, Soledad served as witnesses to the Avila-Padilla wedding. Perhaps the family was relieved that Marta, at such an advanced age, could find any

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29 Regarding the place of an eldest son, see Monroy, 141 (quoting Jose Sepulveda, husband of Juan’s sister Francisca, that the eldest son “‘stood in the position of father to the family’” upon the death of the patriarch). Regarding Juan’s noninvolvement in military and political matters, see Bancroft, v. 19, 736 (noting that Avila “avoided political complications”); Diaries of Judge Hayes (describing Avila as one who “seemed to get along smoothly, 'minding his own business!'”); See also Saddleback Ancestors, 22 ("[w]hile many relatives played hostile roles in the periodic controversies, Don Juan usually pursued the course of conciliator"). Regarding Avila’s role in the American victory at Los Angeles, see Juan Avila Testimonio, 17-21.
spouse, and willing to overlook Padilla’s pedigree. But circumstances point to a darker possibility, that this marriage was actually arranged by the eldest son over his sister’s objections. Perhaps Juan was simply worried that his sister would remain dependent on the family, but more likely he was nervous that the social and legal changes wrought by the Americanization of California had left this particular family ill-equipped to guard the sexuality of an unmarried, legally emancipated adult daughter. (After all, he had only to look at his deceased aunt’s family, the Varelases, to see the manifestations of a lack of parental control over daughters.) The church marriage record notes that an impediment had to be overcome before the couple could marry. Might Marta have indicated to the priest, early on, that she did not consent to the marriage, only to capitulate later in the engagement?  

On the one hand, Marta’s choice to sue her brother can be explained by the Americanization of law and society in post-statehood Los Angeles. Spanish-Mexican law gave wives as much of an identity before the law as husbands, and women were not shy about defending their rights both pre-conquest, but Spanish/Mexican law had not permitted family members to sue each other. Thus, these women may have been uniquely positioned to take advantage of the individualistic nature of American law in order to act on a modern sense of rights contrary to the Californio tradition of family unity. Such an explanation situates Marta’s lawsuit as an attempt not only to gain a better deal for herself than if she had she kept quiet

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30 Los Angeles Plaza Church Marriage Record no. 209. Interestingly, the wedding did not take place at the church, but instead at the San Juan Capistrano rancho of the Avilas’ first cousin, who was particularly close to Juan, which may have allowed the event to be kept more private. Ibid. Indicating at least some sort of a relationship between Padilla and Avila, in 1858, the same year that Marta sued her brother, he and her husband both served as officers in the Democratic party in Los Angeles. Griswold del Castillo, 154-55.

31 Haas notes Californianas’ sense of entitlement to the land, which "rested, in part, on the fact that Spanish and Mexican law gave them the right to control their property and wealth and to litigate on questions related to their person, their families, and their holdings." Haas, 81. Arrom, 307n.69.
during the probate process, but also to undermine her brother’s public reputation and eliminate his ability to control the administration of the estate.

But the work of historian Miroslava Chavez-Garcia offers another explanation that locates Marta with a foot in each culture. Californio patriarchy was not marked merely by a daughter’s obedience to her father. Instead, it was defined by a reciprocity of obligations insisted upon by Californianas not afraid to resort to official enforcement. As Chavez-Garcia notes, daughters seeking to hold their fathers accountable were not attempting to overthrow the system of patriarchy, but instead were seeking “to challenge patriarchal authority figures who had failed to behave according to the gender and social roles prescribed for them.”

Perhaps this lawsuit was an action not only against a brother who allegedly dishonored the family and disrupted its economy by acting in a self-interested way, but also, in abstentia, against a father who failed in his duties to his youngest daughter.

Yet, even if Marta was motivated by Californianas’ traditional use of the courts, her case was facilitated by changes in the law a few years after statehood that gave children a present, individualized interest in their father’s estate. The new order provided a greater incentive to contest a parent’s will and allowed children to do so during the lifetime of their widowed mother. Meanwhile, the challenge to Antonio Ygancio’s will would take place, not in the conciliatory setting of the Mexican dispute resolution process, but in the adversarial setting of the Anglo-American legal system. This was a system that cared little about the cost of a lawsuit – financial,

32  Chavez-Garcia, xviii, 26. Chavez-Garcia notes that women were not always successful in these actions, as “courts interpreted the law in ways that reflected deeply rooted gender biases.” Ibid, 26.

33  If Marta saw herself acting out of filial duty, it is worth noting that she received no assistance from her other siblings. Only niece and nephew Juana and Guadalupe Sanchez, heirs of their deceased mother Ascencion, joined in the will contest. Perhaps they felt they have been short-changed in the settlement of their mother’s estate, and perhaps they believed Juan played a role. The details of the distribution of Ascencion’s estate are unknown except that the administrator, eldest son Tomas, failed to include two hijas naturale (children born outside of marriage). (In her widowhood, Ascencion gave birth to two additional children by Governor Pio Pico.) See “The Avila Heirs,” Los Angeles Times, Sept. 9, 1895.
emotional, or otherwise. Marta probably had no idea what she was getting into when she hired an American lawyer to represent her interests in an American court.\textsuperscript{34}

The will contest would be tried before a jury in District Court. In the end, it was the battle over jury instructions that was determinative. Marta primarily focused on the issue of whether her father lacked testamentary capacity, almost ignoring the more incendiary charge that Juan had engaged in dishonest behavior. According to Marta, her father lacked capacity if he did not fully understand "the whole of said will in all its parts and the results" that would flow from the provisions. Juan argued that Antonio Ygnacio would have had to be "totally deprived of reason"; "imbecility of mind in the Testator merely, will not avoid his last will and testament." Marta’s position would have required Juan to admit just how disabled his father had become by 1850. Perhaps Juan was reaching for a shred of pride for the old man, grasping for any outcome that would preserve his father’s memory as the hero Juan believed him to be. Juan never lost his reverence for Antonio Ygnacio, and, twenty years after his death, impossibly remembered his father as a good horseback rider, “a faculty which he did not lose up to the last moment of his life.”\textsuperscript{35}

\textsuperscript{34} The goal of the Mexican dispute resolution system was to do the least harm to the community, even if that meant shortchanging an individual. Chavez-Garcia, 66. For changes in inheritance law, see Powell, 200. For Mexican property and inheritance law, see Arrom, 63, 67-68, 91. Griswold del Castillo notes the difficulties that Californios faced in hiring attorneys from the all-Anglo bar in Los Angeles. While these lawyers were quite content to represent their interests, Californios were handicapped by the lack of Spanish-speaking lawyers. Interestingly, Marta’s attorney, Jonathan Scott, was one of the few who did have some facility with the language. Griswold del Castillo, 116-117.

\textsuperscript{35} Until 1862, the Probate Court lacked the power to convene a jury, so issues of fact were certified to the district court for resolution. See D.P. Belknap, The Probate Law and Practice of California, containing all the provisions of the codes, of 1871-72, and other statutes relating thereto (San Francisco: Bancroft Co., 1873) 2, 8. For proposed jury instructions, see Proposed Jury Instructions and Contestant’s Instructions, December 10, 1858, Juan Avila v. Juan Padilla, Case No. 585, District Court of the State of California, First Judicial District [hereafter District Court proceedings]. For Juan’s recollections of his father, see Juan Avila Testimonio, 1.
Occupying the bench was Judge Benjamin Hayes, who was charged with deciding which instructions would be submitted to the jury. Hayes accepted Juan's over Marta's, even though Marta's represented the more common standard of testamentary capacity. Nonetheless, the first jury deadlocked in late 1858. After a second trial, before an all-Anglo jury, a verdict was reached the following April. The jury found that in fact Antonio Ygnacio was of "sound and disposing mind" when he executed his will, and that he did not do so “under undue influence or restraint," or "under fraudulent representation.” But perhaps there was more to this verdict than simply the jury applying law favorable to Juan. Given that filial obligations and a sense of a family economy were less central to the American experience, American jurors might have seen the cattle gift as an appropriate reward for Juan going above and beyond what would be required of an American son.36

Sadly, the cattle that was so valuable at the start of the will contest ultimately disappeared. As the demand for cattle continued to increase, Californios responded by increasing supply in the 1850s. But their monopoly was broken when midwestern cattle producers tapped into the California market, and a disastrous two-season drought in 1863-64 led to a mass starvation of cattle. Meanwhile, Juan’s lawyers billed the estate for $1,200 for defending against the will contest. In a cash-poor economy, debts for estate administration

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36 Hayes knew Juan Avila well, often partaking of Juan’s generous hospitality on his travels as district judge. Diaries of Judge Hayes, 113. But Marta was represented by Jonathan Scott, an attorney who had been in practice with Hayes before he became a member of the bench. W.W. Robinson, Lawyers of Los Angeles: A History of the Los Angeles Bar Association and of the Bar of Los Angeles County (Los Angeles: Los Angeles Bar Association, 1959), 33-37, 43. Thus it was hard to determine which side was in the better graces of the judge. For results of the trials see Petition for Special Letters of Administration, January 11, 1859 (noting hung jury in first trial), Probate Court proceedings; Verdict, April 27, 1859, District Court proceedings. While the first jury summons contained a few Californio names, the second jury was assembled from a nearly all-Anglo panel. With Antonio Ygnacio’s long deterioration more likely to be known in the Californio community, an Anglo jury favored Juan. The experience in the second trial is consistent with Griswold del Castillo’s larger finding that Californios and Mexicans “were conspicuously absent on [Los Angeles] juries.” Data for 1863, a few years after this trial, demonstrates that Spanish-surnamed men made up only 13% of all petit and grand juries, while comprising nearly 60% of the population. Griswold del Castillo, 117-118.
would eat away at the estate itself, requiring sale of assets. To avoid this, the defendants obtained an order that Marta and her nieces pay the estate's legal costs out of their separate property. But the women made successive appeals to the California Supreme Court. The high court upheld the jury's verdict in the will contest but the women were eventually relieved of the order to pay costs. These appeals further drove up the costs of administration, setting a pattern that was to haunt the estate until the end.\textsuperscript{37}

\textit{A LEGACY LOST}

The will contest appeared to exact a psychic toll from both Marta and Juan. Once the will was admitted to probate, Juan declined to serve as an executor because it would be "inconvenient." Yet Juan may also have wanted to distance himself from the public display of family discord and move on with his independent life. Soon after, both siblings distanced themselves further from their father's estate by selling off their interests, which included the lands of the rancho, a move thoroughly inconsistent with Californio cultural norms that emphasized the connection between the land and the family unit.\textsuperscript{38}

Marta sold her interest to an outsider, Scotsman Robert Burnett, and when he purchased the adjacent rancho the following year, a plan dangerous to the Avila family's interests emerged. Under Mexican law, Burnett would have had no incentive, and really no opportunity, to buy into

\textsuperscript{37} Regarding the collapsing cattle market, see Griswold del Castillo, 42. Notice of Appeal, June 20, 1859, Avila Probate (appealing from the May 23, 1859 order of the Probate Court admitting the will to probate); Abila v. Padilla, 14 Cal. 103 (1859) (upholding the jury verdict); Judgment for Costs, February 18, 1860, Avila Probate; Notice of Appeal, March 14, 1860; Abila v. Padilla, 19 Cal. 388 (1861) (overturning judgment for costs).

\textsuperscript{38} Renunciation of Juan Avila, May 13, 1859, Avila Probate. In 1860, Juan exchanged his interest for his brother-in-law Emidgio Vejar's rancho nearby Rancho Niguel. W.W. Robinson and Doyce Blackman Nunis, \textit{Southern California Local History: A Gathering of the Writings of W.W. Robinson} (Los Angeles: Historical Society of Southern California, 1993), 302-303. See also Deed, Juan Avila to Emidgio Vejar, August 16, 1860, Abstract of Title, 53. Marta sold her interest for $4,000. Deed, Juan N. Padilla and Marta Abila de Padilla, his wife, to Robert Burnett, July 15, 1859, Abstract of Title, 48-49.
the Avila estate. Mexican law had discouraged the alienability of granted land in order to keep
the ranchos intact and in the family. The land could pass only through inheritance to family
members, typically the children. Once the land became co-owned, further restrictions kept the
grant intact. The widow, who took her share as common property, was given a use right in the
children’s share. No matter their age, children had to wait until their mother’s death to assert any
legal control over their share. And joint owners could assert only an undivided interest: they
had no claim to particular acreage. Moreover, there was little motivation to seek individual,
parceled ownership of grazing acreage: in a grazing economy where land was plentiful, it was
more important to assert ownership over a particular animal than a defined piece of land. 39

By the time of Antonio Ygnacio’s death, the California legislature had upended this
scheme. The law eliminated the widow’s use rights, and now permitted actions for partition,
allowing one co-owner to seek a particular piece of the property or to ask the court to sell the
property and divide the proceeds. Only the inability of the property to be divided or sold would
stop a partition; that the property may have been more valuable if kept intact was irrelevant.
These changes in the law severely undermined the unity of family interest that permeated
California culture. Now, individual interests in a rancho were more marketable, to more people,
earlier in an heir’s lifetime. Thus, the law now facilitated heirs like Marta and Juan, who
wanted distance themselves from their families and from what could be an arduous probate
process, even if doing so was not in the best interest of the family economy. 40

The threat of a Burnett partition action now hovered over the estate, but Burnett appeared
to value more the legal right of standing, which allowed any interest-holder, no matter how
insignificant, to invoke the oversight of the court in the estate administration. Each time this
oversight was invoked, the costs of administering the estate would rise. The power of the court

39 Deed, Joseph Lancaster Brent to Robert Burnett, November 16. 1860, Abstract of Title, 22-23. See also Petition to Revoke Order of Sale, April 25, 1865, Avila Probate (noting that Burnett purchased Marta’s interest on July 15, 1859). For Mexican and American property law, see Haas, 49-50, 64 ("granted land was to be held communally as inalienable property").
40 Ibid.
to order cash payments for legal fees was magnified in the cash-poor economy of Southern California, and Californios had to sell assets of the estate to pay these costs. Consequently, for a relatively modest sum, Burnett was able to buy his way into a position where he could affect the devolution of the entire rancho.  

The costs of the will contest had bored down on the estate just as the booming cattle market began collapsing in the early 1860s. To meet these obligations, Pedro Antonio first sold livestock, which brought in about a third less than the appraised value. Beginning in 1865, he concluded that he would have to sell off real property in order to cover the additional expenses of administering her estate. This pressure only increased once his mother died the following year and he incurred additional expenses from the administration of her estate. Selling off estate assets required an order of sale from the court opposable by any stakeholder, which opposition could further increase costs of administration. Indeed, Burnett contested Pedro Antonio’s petition for an order of sale, relying on ambiguities in Antonio Ygnacio’s will, born of the uncertainty surrounding American adoption of the Mexican-based marital property law and Anglo-American judges’ unfamiliarity with that system. His arguments went nowhere in the probate court, but his appeal to the California Supreme Court succeeded in stopping a piecemeal sale.

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41 Inventory and Appraisement, June 22, 1859; Order for Sale of Personal Property, February 22, 1860; Petition for Approval of Final Accounting, May 16, 1868 (noting that sale of livestock was for less than appraised value); Avila Probate. Abstract of Title, 48-49. Burnett actually did file a partition lawsuit in 1866, perhaps as a strategic move to keep pressure on the estate to sell the rancho. Burnett v. Sanchez, Case No. 1163, District Court, 1st Judicial District, Los Angeles County, March 21, 1866, Abstract of Title, 61.

42 Burnett had an initial Order of Sale for the rancho set aside on the basis of lack of notice and other defects in 1865. He portrayed his concern as one of an interest-holder seeking to convey a valid, unencumbered title. Petition for Order of Sale, March 2, 1865; Petition to Revoke Order of Sale, April 25, 1865; Order Vacating Order of Sale, May 1, 1865, Avila Probate. Pedro was successful in having a second order of sale granted the following year, which Burnett appealed to the California Supreme Court. Amended Petition for Order of Sale, April 22, 1866 (claiming that the estate owes over $7,000 in expenses of administration and taxes); Order of Sale, September 24, 1866 (ordering piecemeal sale of estate’s interest in Rancho
The Supreme Court's reasoning, while faulty, provided only a temporary roadblock to sale of the real property, which was all that Burnett needed. Burnett’s actions drove the costs of administration even higher. With the debts of the estate now amounting to nearly $8,400, Burnett had Pedro Antonio right where he wanted him. Pedro Antonio now had no choice but to liquidate all of the real estate. He filed yet another Petition for Order of Sale in January, 1868. There now being no opposition, the court ordered the sale of “All that certain lot or parcel of land known as the Sausal Redondo rancho,” these cryptic words not even beginning to capture the Avila family’s loss. On the appointed day, April 18, 1868, Burnett, living on the adjoining rancho, was ready to purchase all 22,500 acres, which he did for $29,550.43

**CONCLUSION**

A few years after Burnett purchased Rancho Sausal Redondo, a grandson of Antonio Ygnacio hatched a plan to return the property to the family. Tomas Sanchez, Ascencion’s son, had been elected Sheriff of Los Angeles County from 1860-67, one of just a few Californios to successfully plant a separate foot in the rapidly Anglicizing Los Angeles. Adopting Avila as his middle name, he became the face of his family’s interests, notwithstanding that his uncles were still alive. The terms of patriarchy were now being negotiated on an American stage, where

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43 Abila v. Burnett, 33 Cal. 658, 666-67; Second Amended Petition for Order of Sale, January 17, 1868; Order of Sale, March 9, 1868; Return and Account of Sale, April 23, 1868; Administrator's Final Accounting, May 6, 1868 (showing that Rancho Sausal Redondo sold for nearly $23,000 over its appraised value), Avila Probate; Deed, Pedro Angoni Abila to Robert Burnett, May 8, 1868, Abstract of Title, 67. Burnett then dismissed his partition lawsuit. Burnett v. Sanchez, August 5, 1868, Abstract of Title, 62. As Haas notes of outsiders like Burnett, "Their ability to invest in land and other economic ventures contrasted sharply to the situation of most Californios, the majority of whom lost their ranchos during the 1860s. . . . The new migrants, with their regenerative wealth (money to loan and to invest in land, farming, livestock, and other capital ventures), gained substantially during this decade." Haas at 66.
generational differences mattered less and positions of public leadership and honor would be claimed by those garnering the most votes. After convincing his aunts, uncles, siblings and cousins to quitclaim to him their interests in the rancho, he filed suit against Burnett, alleging a fraudulent conspiracy between him and Pedro Antonio to run up expenses of administration in order to trigger a sale of Sausal Redondo. The lawsuit failed.44

In pursuing his claim, what Sanchez did not acknowledge was that the first domino along the path to losing the land fell not because of an outsider’s wrongdoing, but because a daughter was unwilling to swallow what she perceived as an injustice inside her own family. Whether she perceived the injustice as to her, her father, or her family, we will never know. However, had Sanchez acknowledged Marta’s role, he would have had to look back further to see that his family had, years before Antonio Ygnacio’s death, already experienced a fatal weakening of the patriarchy, honor, and devotion to family economy so crucial to holding the rancho enterprise together. And had he looked forward from his grandfather’s death, he would have seen how vulnerable this family was to further erosion by the Americanization of law and society, where individual interests trumped the collective good. By 1868, the idea of the land meant little to this fractured family, with only a grandson’s nostalgic yearning to keep the cause alive. To the Avila family, each pocketing the few dollars doled out from the sale of their legacy, modernity tasted bitter indeed.