On the eve of California’s statehood, numerous debates raged among the drafters of its constitution. One argument centered upon the proposed retention of civil law principles inherited from Spain and Mexico, which offered community property rights not conferred by the common law. Delegates for and against the incorporation of civil law elements into California’s common law future used dramatic, fiery language to make their cases, with parties on both sides taking opportunities to deride the “barbarous principles of the early ages.” Though invoked for drama, such statements were surprisingly accurate. The civil law tradition in question was one that in fact derived from the time when the Visigoths, one of the so-called “barbarian” tribes, invaded and won Spanish territory from a waning Roman Empire. This feat set in motion a trajectory that would take the Spanish law from Europe to all parts of Spanish America, eventually reaching its last settled territory, Alta California.

This migration of legal tradition happened over the course of more than a millennium. New and changing frontiers produced territorial, political and social demands that shaped legal culture and practice. As one of the last frontiers of Spanish settlement in America, California did not have a civilian population until nearly the end of the eighteenth century, over two hundred years after a vast system of royal courts had been established to administer justice from central Mexico to South America. When Spanish settlers did arrive in Alta California in the 1770s, they brought with them the civil law system that would govern the territory through Mexican independence from Spain to US statehood, bringing Spain’s ancient past to the farthest corner of this new society.

California from Early Settlement to Statehood

At the remotest northern edge of Spanish America, California remained largely unexplored until well into the 1700s. The establishment of missions and presidios began in Baja California in the 1680s and slowly moved north, with interest in this last frontier spurred in the mid-eighteenth century by Russian exploration and territorial interest in North America. Exploration was largely coastal until the Anza expedition, the first extensive overland journey through upper California, brought the first Spanish settlers as far as the Bay Area to settle in 1775–6. With the settlers arrived civilian government and the establishment of colonial administrative and judicial institutions on this northern frontier.

The vast territory and natural resources of California were a focus of interest for government and settlers alike. Many of the legal issues and controversies that have shaped California’s history have revolved around property rights. Within decades of their arrival in Alta California, many of the original Spanish settlers received large land grants from the crown. The Mexican government granted many more ranchos after independence from Spain in 1821. A relatively small number of Spanish and Mexican families whose names are recognizable in the Bay Area today—such as Vallejo, Castro, Bernal, and Peralta—formed the nucleus of a small Californio population that forged its own community and enjoyed in relative isolation the territory’s natural wealth and splendor. This all changed almost overnight. The end of the Mexican-American war and the Gold Rush in 1848 brought a sudden

Right: A Natural and Civil History of California, 1759
influx of American and international fortune-seekers. These events had dramatically transformed California’s population and its political and economic landscape by the time statehood was granted in 1850. The great opportunities of wealth that California presented to newcomers brought with them continuous legal challenges in the form of ever-evolving and competing claims to ownership.

***

California became a state in September 1850, and in the months leading up to statehood a great debate on the laws that were to be adopted in the state constitution was waged, with some of the fiercest arguments surrounding the question of community property in marriage. Several U.S. and Californio delegates supported the inclusion of existing Mexican civil law statutes that upheld a wife’s vested interest in community property and separate property rights. They faced fierce opposition from those who wished to strictly impose American common law, which gave sole ownership of property to the husband. In the end, the civil law proponents carried their point, and Article XI, Section 14 of the constitution adopted in November 1849 established that “All property, both real and personal, of the wife owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as to that held in common with her husband.”

The decision to write a definition of property rights based on Spanish civil law into the state law would prove to have important ramifications for California in the twentieth century. The origins of the Robbins Collection at Boalt Hall are closely tied to this unique aspect of California’s legal heritage. Founder Lloyd M. Robbins’s parents, Reuel and Saditha Robbins, were wealthy Bay Area ranchers and bankers with sizeable property. In 1918, the couple attempted to file separate federal tax returns, each for half of the income of their jointly accumulated property, which would have saved them a considerable sum. The government rejected the returns, however, and they were forced to pay the tax assessed upon the husband as sole owner of the income. Shortly thereafter, Reuel Robbins died. His widow, with the assistance of her son Lloyd, sued to recover the tax difference by disputing the historical definition of community property in California. Lloyd Robbins’s argument, which he took to the United States Supreme Court, asserted that community income should be taxable in equal halves to husband and wife, based upon
the community property principles that California inherited from Mexican and Spanish civil law, which established that a wife has a vested interest in the marital property.

The Supreme Court ultimately decided against the Robbins family in 1926, on the grounds that the state law was not explicit enough in declaring the vested property interest of the wife. But the case set other wheels in motion, and in 1927 the California code was amended specifically to recognize that a wife had a “present, existing and equal interest in community property,” establishing the rights that remain in effect in California today.

***

Jesuit administrator Miguel Venegas was born in Puebla, Mexico, and never set foot in California. Yet in the 1730s he was charged with writing a treatise on the history, geography and ethnography of Baja California. Using existing accounts and letters and soliciting additional reports from Jesuits active in the California missions, Venegas submitted a manuscript of nearly 700 pages to his order in 1739. The manuscript languished for over a decade before another Jesuit scholar, Andrés Marcos Burriel, was assigned to edit and publish it as the Noticia de la California in 1757. English, French, German and Dutch editions appeared by 1770, attesting to the growing interest in this last frontier of Spanish America during the eighteenth century.

Though not a legal text, Noticia de la California reflects the efforts of California missionaries to comprehend and chronicle the systems of governance and social mores of the native peoples they were sent to convert. The work thus offers insight into the establishment of early colonial law and order in a territorial outpost and the intersection of secular and religious authority.

Spanish Civil Law Tradition

To understand the historic roots of the legal tradition that California brought with it to statehood, one must go all the way back to Visigothic Spain. The Visigoths famously sacked Rome in 410 AD after years of war, but then became allies of the Romans against Vandal and Suevian tribes. They were rewarded with the right to establish their kingdom in Roman territories of Southern France (Gallia) and Spain (Hispania). By the late fifth century, the Visigoths achieved complete independence from Rome. King Euric established a code of law for the Visigoths under his rule, which was the first codification of Germanic customary law, though it also incorporated principles of Roman law. Euric’s son, Alaric, ordered a separate code of law for Hispanic Romans living under Visigothic rule. In 654 AD these two codes were consolidated — a significant
departure from the ancient tradition of maintaining different codes of law for Romans and non-Romans. Known as the Liber Judiciorum or, in its later Spanish version, the Fuero Juzgo, this new code created one jurisdiction for all inhabitants of Visigothic territories and became the law across Hispania.

When the Moors invaded the Iberian peninsula in 711 AD, the legislative and political unity of Visigothic Spain was shattered, but Visigothic law did not disappear. The Muslim rulers of Al-Andalus, as Moorish Iberia was called, allowed Christian and Jewish inhabitants to maintain religious and legal autonomy in civil matters within their own communities. At the same time, a small number of Christians who successfully resisted the Muslim invasion retreated to the northern edges of Iberia and launched a territorial reconquest from these strongholds. This military effort finally resulted in the complete expulsion of the Moors from the peninsula with the fall of Granada in 1492. Through seven centuries of Reconquest, Spanish Christians established new kingdoms and municipalities that restored the principles of the Visigothic law embodied in the Fuero Juzgo, with its Germanic and Roman elements, and incorporated them into local customs and charters as well as the fueros generales, or general bodies of law.

This was the case in the kingdom of Castile, where Alfonso the Wise issued the Fuero Real in 1255 AD, which brought legal uniformity to the fueros and customs across Castile. A decade later he promulgated the Siete Partidas, which combined existing Spanish law with Roman law and canon law into the most comprehensive and influential legal compilation of the middle ages. Spain's evolution into an imperial power after 1492, with Castile as the center of royal authority, meant that Castilian law would become the law of Spanish colonial territories as well. The
medieval Spanish codes remained the principal sources of law for Latin America even through the establishment of modern national civil codes in the nineteenth century. It was in this way that Roman and Visigothic legal traditions that developed in medieval Spain would become the legal heritage of California, as a territory first of Spain and then Mexico.

***

The Visigothic code promulgated in 654 AD became known by many names including Lex Visigothorum, Liber Iudiciorum, or Book of Judges, as it was called in the oldest known copy of the code, and Forum Iudicum, or Fuero Juzgo in its later Castilian form. Carrying forward Germanic customs first codified by Euric, the Fuero Juzgo notably upheld property and inheritance rights for women that did not exist in Roman law. Though the Fuero Juzgo was reproduced for centuries in manuscript forms, this 1579 Latin edition, published in Paris by Pierre Pithou as the Codices legum Wisigothorum, libri XII, is the first printed edition.

***

Originally called the Libro de las leyes, Alfonso the Wise’s monumental work known as the Siete Partidas was heavily influenced by the compilation of Justinian, reflecting the rediscovery of Roman law and the development of medieval civil law tradition that flourished across Europe. However, the compilation also incorporates local customs and Castilian fueros as well as principles of canon law and Islamic law. Comprehensive in scope and lauded as the most important compilation of medieval law in Europe, the Siete Partidas became the principle source for civil law throughout the Spanish Empire and played an important role in the development of Latin American law. This 1550 edition includes the renowned commentary of jurist and royal official Alfonso Díaz de Montalvo, which first appeared in 1491.

Spanish Law in America

New ordinances and laws promulgated in the Spanish kingdoms at the end of the middle ages were a response to the growing need for legislative clarity and unity. This was particularly true during the joint reign of Ferdinand and Isabella, whose union dramatically consolidated royal power across the peninsula. This need only increased as Spain rapidly evolved into an imperial power with its colonial expansion into the Americas. The Spanish crown extended Castilian law to the New World, where it remained the foundation of private law in Spanish America through the colonial period and beyond. But the distinct social, political and economic conditions of the expanding colonies increasingly demanded that public law be crafted specifically for them.

The earliest laws created for the Indies were the Leyes de Burgos of 1512–3. The Laws of Burgos were promulgated for the island of Hispaniola (today Dominican Republic and Haiti), founded by Columbus during his 1492 journey as the earliest site of colonial settlement. This set of thirty-nine laws sanctioned the establishment of the encomienda system, which placed indigenous peoples under the responsibility and protection of conquistadores and early Spanish settlers, who were allowed in turn to extract their labor and wealth. The Dominican friar Bartolomé de Las Casas, one of the earliest and most outspoken defenders of indigenous rights, railed against the ineffectiveness of the Laws of Burgos to prevent corruption and abuses against native peoples. Though abuses continued, the protests of Las Casas and his contemporaries did not go unheard. Recognizing the need for direct royal authority and presence in the colonies, in 1524 Spain created the Council of the Indies to exercise executive, legislative, and judicial power on behalf of the monarchy. The Leyes Nuevas (New Laws) of 1542 established a system of viceroyalties and Audiencias (royal courts) within the Council to carry out the work of royal administration and justice. The New Laws also attempted, unsuccessfully, to phase out the corrupt encomiendas system. Though these early laws proved ineffectual, their limitation made clear the need for a
more formal and effectively applied system of colonial law.

The traffic of scholars and intellectuals between Spain and the colonies increased throughout the sixteenth and seventeenth centuries. The earliest American scholars were to be found among the countless missionaries and clergy who went to serve in the institutions established to carry out Spain’s religious mission in the colonies. Charged with the spiritual education and governance of native peoples, the missionary orders led efforts to record and preserve indigenous history, language, and culture, and they founded the earliest American universities. A growing number of Spanish jurists also arrived to serve in the viceregal Audiencias. These jurists began to produce theoretical and instructional treatises based on their firsthand experience of colonial law and practice.

Royal and religious administrators directly faced the challenges of colonial rule and bureaucracy. As a result, they produced a diverse body of work that combined their understanding of Castilian law with their experience of the unique legal issues of Spanish America and the governance of its European settlers and native peoples. These treatises on law and legal theory helped to build a coherent set of laws for the Indies that evolved throughout the colonial period, putting into place the legal framework and heritage with which California would approach statehood at the end of the 1840s.

***

Fray Alonso de la Vera Cruz’s *Speculum conjugiorum* was printed by the first printer in the New World, Juan Pablos, in Mexico City and is one of the earliest American law books. It is also the first American book printed in italic type, which was considered a great qualitative improvement over Gothic types. Born Alfonso Gutierrez, he trained in philosophy and was a pupil of famous scholar Francisco de Vitoria at the University of Salamanca. He took orders as an Augustinian friar upon his arrival at Veracrúz in 1535, was elected provincial of his order in 1548, and established numerous convents and libraries. Vera Cruz, considered one of early colonial Mexico’s leading intellectuals, helped found the first American university, the Real y Pontificia Universidad de México, which opened its doors in Mexico City in 1553. His works illuminate the central role that questions of canon law played in the establishment of colonial order in the Americas. Devoted to legal issues and other problems of matrimony, the *Speculum conjugiorum* is structured in three parts dealing with questions of marriage, conversion, and divorce. The work is rich with information about the laws and customs of the native peoples of Mexico and analyzes legal questions arising from marriage between natives and Spaniards.

***

Juan de Solórzano is often considered the foremost scholar of derecho indiano, Spanish colonial law.
Trained as a jurist at Salamanca, he also taught there for a decade before accepting an appointment as an oidor in the Audiencia of Lima. He served as a royal judge in Lima for nearly twenty years before returning to Spain in 1627, where he was soon made a royal advisor in both the Council of Castile and the Council of the Indies. In 1629 he published the first volume in Latin of his famous work, *De Indianorum jure*, a systematic treatise of Spanish American law and politics. The first volume, which examined the discovery of the Americas and the legality of their conquest and occupation, instantly became an indispensable text for royal and colonial administrators. Rewarded by the crown for his work, Solórzano went on to complete a second volume, published in 1639, that dealt further with the principal institutions of colonial government, *encomienda*, and indigenous society. The Spanish translation of both volumes, *Política Indiana*, followed in 1648, and the work remained central to legal administration throughout the colonial period.
PREFACIO.

CAP. LXXXVII.—Ley para que se traduzca al Idioma Español, y que ordene el que se imprima las porciones de leyes vigentes de los Estatutos de los años de mil ocho cientos cincuenta y de mil ocho cientos cincuenta y uno.

[Aprobada en 2 de Abril, de 1859.]

El Pueblo del Estado de California, representado en el Senado y Asemblea, decreta lo siguiente:

SECCION 1. El Secretario de Estado queda por la presente autorizado y requerido de contratar con Miguel Smith, agente de la testamentaria del finado W. E. P. Hartnell, la traduccion al Español de leyes e indices requeridos de publicarse y que se hallan en los estados anexos á la Resolucion unida, relativa á la imprecision y distribucion de ciertas leyes en Español, que se encuentran indicadas en las paginas tres ciento sesenta y uno, trescientas sesenta y dos, tres ciento sesenta y tres, tres ciento sesenta y cuatro y tres ciento sesenta y cinco de los Estatutos del año de mil ocho cientos cincuenta y ocho, encabezadas leyes de mil ocho cientos cincuenta y de mil ocho cientos cincuenta y uno, ahora vigentes, y para la correccion de las pruebas impresas de las dichas leyes; por un precio que no esceda de cincuenta centavos por folio; lo que se pagará del fondo para traduccion de leyes, bajo la direccion de la Junta de Examinadores. La suma de mil pesos queda por la presente apropiada, para pagar los gastos ocasionados en virtud de las provisiones de esta seccion.

SECCION 2. El Secretario de Estado hará el que se imprima y empasten dos cientos copias de dichas leyes en Español; y las distribuirá de la manera prescrita por ley para la distribucion de los Estatutos en Español. Los gastos de imprecision y empaste se pagarán del fondo de imprecciones, de conformidad con la ley.

Es traduccion del Ingles del Capítulo CLIII de los Estatutos de California del año de 1859.

THOMAS R. ELDREDGE, Traductor del Estado.
CODICIS
LEGVM WISIGOThORVM
LIBRI XII.

ISIDORI HISPALENSIS EPISCOPI DE
GOTHIS WANDALIS ET SVEVIS
Historiae sue Chronicon,

EX Bibliotheca PETRI PITHOEI L.C.

PROCOPII CÆSARIENSIS RHETORIS
ex lib. VIII. Histor. locu Gotorum origine qui in exempla-
ribus editis hactenus desideratur.

PARISIIS,
Anud Sebastianum Nivellium, sub
Siete Partidas
Lyon, 1550
Speculum conjugiorum
Fray Alonso de la Vera Cruz
Mexico, 1556
Política Indiana
Juan de Solórzano Pereira
Madrid, 1648