

1-1-1996

The Legal Culture of Northern New Spain, 1700-1810 by Charles R. Cutter

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Recommended Citation

G. Emlen Hall, *The Legal Culture of Northern New Spain, 1700-1810 by Charles R. Cutter*, New Mexico Historical Review (1996).

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Uff as a Mexican Society. By Margaret Mack. (Mexico: University of Mexico Press, 1995. 280 pp. Illustrations, maps, bibliography, index. \$39.95.)

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David T. Little
Journal of Texas Geography, 1996, 23(1)

The Legal Culture of Northern New Spain, 1700–1810. By Charles R. Cutter. (Albuquerque: University of New Mexico Press, 1995. xii + 227 pp. Illustrations, maps, notes, bibliography, index. \$39.95.)

In this elegant, short survey, Charles Cutter has given Borderlands scholars a badly needed description of Spanish legal institutions covering New Mexico and Texas (but not Arizona and California) in the period between 1700—when surviving documents appear—and 1810, when the drive to Mexican independence begins and Spanish sovereignty starts to crumble. Using sources ranging from background Castilian legal institutions to directives establishing ultramarine legal structures, to their particular expression in more than 600 actual civil and criminal cases, Cutter describes a Borderlands legal system that existed, that was understood, and that, by and large, worked.

Simply in accomplishing that, Cutter helps overcome a couple of centuries denigrating eighteenth-century Borderlands law as at best the crudest form of frontier justice. As such, *The Legal Culture of Northern New Spain* breaks the same new ground for legal institutions that Marc Simmons' *Spanish Government in New Mexico* (1968) did almost thirty years ago for Borderlands government bodies.

Both books grew out of University of New Mexico doctoral dissertations. Cutter's book, like Simmons', never quite shakes its academic shackles. Some parts of *The Legal Culture of Northern New Spain* seem overwrought and over-intellectualized. For example, what are we to make of sentences like this one from the book's conclusion: "[t]he convergence of crown and subject in the administration of justice underscores the consensual hegemony that characterized the Spanish colonial regime"? Other parts never quite touch the kind of detailed law-in-action which tells how an idealized system in fact grounds itself.

Generally, *The Legal Culture* stresses the processes of eighteenth-century New Mexico and Texas law over its substance and the structure of law over its contents. In this context, Cutter's chief conclusion, that there was more law on these frontiers during this period than previously acknowledged, is new and true and important.

The conclusion is not as enlightening as it might have been, however, had Cutter gone further in suggesting what that law was and how its implementation worked to mold colonial New Mexico and Texas societies. The 600 civil and criminal cases that Cutter reviewed surely do more than suggest the general legal structure of which they formed a part. Those cases are the concrete embodiment of the substance of frontier justice and we could learn a lot more from their particulars than Cutter provides here. For example, Ramón Gutiérrez's *When Jesus Died the Corn Mothers Went Away* (1991) makes much more exciting (and controversial) use of some of the same case materials by focusing on their contents.

There are other small cavils with the focus of this book. Cutter is clearly correct in stressing the importance of the role of colonial New Mexico governors in legal affairs. Surely eighteenth-century New Mexico governors Velez Cachupin and Mendinueta deserve the reputations they enjoy as particularly strong legalists. Cutter doesn't show us why, however.

Some comparative law also would have strengthened the unique portrait that Cutter offers. The New Mexico governors of the period Cutter covers were remarkable for the executive, legislative, and judicial powers they simultaneously exercised. Separation of powers, so characteristic of our common law tradition, was completely alien to the Spanish colonial one in New Mexico. The merger of power in the governor lent a strange tinge to the administration of justice here. Some recognition of these contrasts would have better brought out the unique system that Cutter describes.

These minor complaints ask Cutter to write a different and longer book. The one that he has written breaks new ground on its own terms. *The Legal Culture of Northern New Spain* is an indispensable, unique, and new addition to Borderlands legal studies.

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