New Mexico Historical Review

Volume 69 | Number 3 Article 6

7-1-1994

Traces of the Spanish Legal System in New Mexico

Jose Ramon Remacha

Follow this and additional works at: https://digitalrepository.unm.edu/nmhr

Recommended Citation

Remacha, Jose Ramon. "Traces of the Spanish Legal System in New Mexico." *New Mexico Historical Review* 69, 3 (1994). https://digitalrepository.unm.edu/nmhr/vol69/iss3/6

This Article is brought to you for free and open access by UNM Digital Repository. It has been accepted for inclusion in New Mexico Historical Review by an authorized editor of UNM Digital Repository. For more information, please contact disc@unm.edu.

Traces of the Spanish Legal System in New Mexico

JOSÉ RAMÓN REMACHA

The old Spanish legal system was applied in many areas of today's United States of America from the early part of the 16th century until about 1850. These areas include parts of what is now Florida, Georgia, Louisiana, Arkansas, Missouri, Kansas, Texas, Arizona, Utah, Nevada, Oklahoma, New Mexico, Colorado and California. Spanish law was used over the greater part of this period in the Southwest, and it is there where it has left its most persistant traces, but it also had a considerable effect on the legal system of Louisiana. This was effected through specific Spanish legislation for the Indies, as well as through enforcement and adjudication performed locally by the governors and other officials appointed in those areas.

The Spanish legal system considered here is not the one currently applied in Spain. Since 1888, a substantial legal reform has taken place in Iberia for the sake of uniformity and centralization, much in the mode of the Napoleonic codes. In particular civil law adopted the French patterns and became part of the so-called Continental law.[1] Up to a certain degree this was also the case for the American republics born in the nineteenth century, but not at all for the Spanish territories which became part of today's United States of America.

The primary sources for this study are the records of the Spanish administration during the colonial period which can be located in several archives in the United States. The sources considered have been the Spanish Archives of New Mexico and from 1621 to 1821.[2] The legal sources of the system are found mainly in the compilation known as the Laws of the Indies or *Recopilación de Leyes de los Reynos de las Indias*."[3]

José Ramón Remacha is professor of Public International Law, University of Valladolid, Burgos School of Law. From 1988 till 1992 he was Minister for Cultural Affairs at the Embassy of Spain in Washington D.C. His current field of research is frontiers.

The substantive and procedural laws of Castile were to be fully observed on all matters not regulated by the Laws of the Indies. Consequently, the Compilation of 1680 was the basic legislation reinforced by the laws of Castile whenever they might be needed for the completion of the legal system. Law 2.1.2 of the compilation states "We order and decree that in all cases, transactions and lawsuits in which that which should be provided for is neither determined nor declared by the laws of this Recopilación . . . the laws to be followed be those of Our Kingdom of Castile."[4] An important consequence of that definition of the legal sources was the role of custom. This was a crucial element of the legal system of Spain until the 19th century, and it is also a particular feature of the Laws of the Indies as can be seen in Law 4.1.2, "We ordain that the rules and good customs which the Indians have of yore. . . and their usages and customs . . . be kept and executed."

Spain has always been a legal-minded nation. The number of lawyers per inhabitant continuously has been one of the highest in the world. No wonder then, that in the sixteenth century Spain attempted to transfer to the New World as much of her institutional legal system as possible. But a vexing problem which Spain faced was the status of the indigenous people encountered in the new lands. One has to recall that in the year of 1492, the legal tradition of Europe was rooted in medieval philosophy, for which there were different classes of subjects before the law.[5] There was a different legal status for different kinds of citizens—Christians, Muslims, Jews, noblemen, clergymen, graduates, soldiers—all had their particular set of civil and procedural rights. The Indians, though, were not within the scope of the law.

To resolve that problem, legal disputes took place in the 16th century—out of which came the first, though scant, legislation ever made for the Indies (*Leyes de Burgos*, 1512 and *Leyes Nuevas*, 1542). Philosophical writers such as Vitoria and Las Casas are credited for having promoted that legislation. The spirit of those laws, particularly of the *Leyes Nuevas*, inspired the rest of the large body of legislation for the Indies which came later.[6]

It is said that Spanish colonial authorities often failed to uphold well-intentioned legislation. But a global approach does not scientifically fit a broad and complex subject which covers almost three centuries of legal history. We can rebut that criticism by pointing out specific testimonies of the Spanish legal system as it was applied in many areas of today's United States. I have chosen the evidence found in New Mexico, because there is material enough to throw new light on this issue. The archives of New Mexico (SANM) embrace over 100,000 documents including administrative, fiscal and judicial records. Among them, many land grant records of that period can be found.[7]

It took about two centuries to put together the laws produced for the Indies. The Compilation, finally completed in 1680, included over 10,000 laws, systematically distributed in nine books. The complete set was first published in 1681. Of the 3,300 copies, 1646 were sent to the Indies, and the rest remained in Madrid. Of these, 1,326 were sent to the Council of the Indies in Seville in 1695. By 1740, only ten sets remained in that city.[8] The first'dispatch to the Indies consisted of 500 copies sent to Nueva España, of which 100 were delivered to the audiencia of Guadalajara.[9] Presumably some of those were in New Mexico and Texas by the end of the seventeenth century.

This code has been praised by legal historians for its advanced protection of human rights and for its flexibility in regulating every aspect of social life.[10] Nevertheless, there has also been considerable criticism—not of the Compilation itself, but to the way that legislation was applied. A great deal of sentimental ethnohistory has been written, deploring the effect of Spanish colonization. This accounts for the oblivion of the Laws of the Indies. The ensemble of all these laws constitutes the corpus of the Compilation, approved in 1680 by the king of Spain. Its structure consists of nine books, each dealing with a different matter: religious and spiritual affairs (Book 1), temporal affairs (Book 2), the Spaniards in the Indies (Books 3 and 4), the judicial administration (Book 5), the Indians (Book 6), other subjects (Book 7), the royal treasure (Book 8), and commerce and navigation (Book 9).

If we go to the Plaza in Santa Fe, we can see the Indians in the porticos of the Palace of Governors selling their products and souvenirs, from jewelry to pottery. Thomas Chávez, Director of the Palace Museum, recently wrote : "Indian vendors sell their wares in front of the Palace of Governors, occupied continously since 1610." In fact, this is an old habit sanctioned as a custom by the Laws of the Indies. Law 28.1.6 in English reads as follows : "Be it not forbidden that the Indians set up their old markets in their own villages and be it not allowed that the Spaniards or other persons fetter the Indians from going to the towns to sell their commodities, blankets, chickens, corn or any other item."

The historical origin of this rule (considered by the kings before the founding of Santa Fe), is a decree given by Carlos I in Madrid on 2 March 1552, and reconfirmed by Felipe II in the same city on 26 April 1563. Two kinds of commercial activities are contemplated in that rule. One is the daily selling of commodities, and the other is the occasional markets that the Indians organize at certain times of the year. The evidence of the latter is the Indian market of Santa Fe which still takes place in the Plaza every year on 22-23 August. The point is that custom has been a crucial element in the Spanish legal system until late 19th

century. According to the laws of Castile, custom was, in many instances, equal to the rule of law. Eventually it could be more consistent than the rule of law itself (contra legem).

For most of the few American scholars who have been curious about this subject, the importance of the role of custom is taken incorrectly as evidence of the lack of written rules, and consequently of a system which is not sufficiently elaborate or complete in itself.[11] In fact, the rule of law incorporates the role of custom into the legal system, as seen in laws 22.2.5 and 4.1.2.

The first, given by Carlos I in Madrid on 12 July 1530, exemplifies two categories of custom. It reads, "Governors and Justices must pay special attention to the order, ways of life, and supplies of the Indians, and shall report to the Viceroys or Audiencias and they must keep the good ways and customs of the Indians in as much as they do not collide with our Religion." According to this, there is custom contrary to the rule of law and there is custom compatible with it. The former is banned, and the latter is endorsed by the law. Consequently, the Indian customs which were not contrary to the Christian religion were to be observed by a general rule of law. In the same tenor is law 4.1.2. given by Carlos I at the end of his reign, on 6 August 1555. It runs "We ordain that the rules and customs which the Indians had of yore and their customs and usages adopted after being Christianized, and which are not contrary to the Sacred Religion nor to the laws of this book, must be kept and executed and We approve and confirm them." Therefore, the rule of custom was not always uniform as different customs could be in force for different groups of subjects.

Custom was an integral element of the legal system applied in the Indies. And being so important, the issue of what can be considered as a rule of custom was given by the Compilation. Law 21.2.2 gives the legal concept as follows: "We declare that this [custom] does not consist on two or three acts alone, but on many ones performed continously and without interruption nor contrary order. And the grants which we can make because of custom, must be based on settled, fixed, uninterrupted custom without prohibition and based on many acts of the same genre confirming the same." This definition comes from a Decree given on 29 September 1628 by Felipe IV, and it was substantively the same established by the old legal system in Castile.

Basically, the administration of justice was the duty of three kinds of officials: the *alcaldes mayores*, or mayors, who, with their assistants (*tenientes de alcalde*), were also the chief justices; the provincial governor; and the *oidores* or justices of the respective audiencia. For the province of New Mexico, the audiencia of Guadalajara was the corre-

sponding court of appeals. It was legally possible to address personally any of the three levels with a petition. In Law 1.1.5, the *Recopilación* provided that each province—and New Mexico was one—should be divided into *partidos judiciales* under an alcalde mayor. The number in the 18th century varied between six and eight.[12] As a matter of fact, most of the cases were addressed to the mayors or to the Governor within the same province. Illustrating this, we find that a petition for lands at the Bracito, made by a Juan Gid in 1823, was declined because the original grant had been made by the Governor of Durango and not by the authorities of New Mexico.[13]

There were also Indian justices, elected annually on New Year's Day by the respective Pueblo and confirmed by the Governor. They could hear in first instance all cases in which only Indians of their community were involved. Sometimes Pueblo Indians called on Spanish officials to settle internal squabbles.[14] Another way of adjudication was provided by the itinerant justice of the Governor, a practice which resembled that of the medieval judge going from town to town. The governor was obliged to visit once—and only once—every place in his province during his tenure.

Most of the cases brought by the Indians for adjudication went directly to the Governor. When doing this, they were often assisted by the good offices of the Protector.[15] This rule generated a practice which goes, with some interruptions, from late seventeenth century until the early territorial period of New Mexico under American administration. The *protector de indios* was designated by the viceroy upon election. He could be removed only by the audiencia, but he was not allowed to designate a substitute.[16] His task was to defend the rights of the Indians. The first protectores were named among the clergy. Fray Bartolome de Las Casas became the first protector of Indians by appointment of the crown. But by the mid-sixteenth century, a clear shift toward civil control of Indian protection characterized royal policy.

The legal culture acquired by the population was notorious and accounts for the extensive use that both Spaniards and Indians made of the legal machinery.[17] The institution of the protector of Indians accounts partially for that result. Although the post was vacant several times, it encouraged the use of the judicial system by Indians. Neither England nor France, the other two contemporary colonial powers, had a comparable official. Under those regimes, Indians had little or no access to similar colonial legal machinery.[18] Not until the twentieth century did native Americans had a similar opportunity through the court system of the United States.[19]

It should be noted that the protector as a legal institution was quite different from the Indian agent typical of the nineteenth century. The latter had a dealing nature, while the protector was more a counsel for the Indians in legal affairs.

Famous protectores in New Mexico were Diego Romero(1659), Alonso Rael de Aguilar (1704), Nicolas Ortiz (1712) Juan de Atienza (1713), Ignacio Sánchez Vergara and Felipe Sandoval. The last was designated in 1810 upon request of the Pueblo Indians of Cochiti, who sent Juan José Quintana, Sandoval's countryman, on a special journey to Chihuahua to request that a protector be named. The audiencia of Guadalajara approved his petition.[20] Some times the protector represented an Indian community, but there is evidence also of his acting on behalf of individual Indians.[21] Let us consider now some areas of adjudication according to the records held in New Mexico: Indian customs, real property, water rights and Indian labor.

Cases of witchcraft were considered as a matter of Indian customs and consequently subject to the civil jurisdiction not to the ecclesiastical one. According to Ley 35.1.6, the prosecution of Indians in cases dealing with faith and religion corresponded to the Bishop, not to the Inquisition, but if witchcraft was involved adjudication would be performed only by the civil judges. Because of that, Alcalde Manuel Garcia was punished in 1799 for not having prosecuted a case of witchcraft denounced at San Ildefonso. Instead, he left the matter to the local priest, who was the denouncer. Both the mayor and his *teniente de alcalde* (assistant) were barred from holding any public office for the period of eight years.[22]

Senator Tom Benavides of New Mexico referred to me a witchcraft case judged by his ancestor, Juan Gonzalez Bas, mayor of Albuquerque, in 1733. According to the records, a Vicente Garcia and his wife accused Melchor Trujillo, governor of Isleta Indian Pueblo, of practicing black magic.[23] The first witnesses were Isleta Indians who, through translators, declared that the cacique was nothing more than a medicine man who ministered to the sick, and that he based most of his treatments on the use of peyote. The testimony of Trujillo, however, was that he had special powers coming from the use of idols, and that unless he delivered his powers to the mayor, all his patients would continue to suffer from their ailments. He even revealed the names of several of his patients, and among them was the priest of Albuquerque. This self-compromising statement was overruled by the mayor, who persuaded the medicine man to deliver his talisman so that his special powers were beneficially used. So he did, and the mayor declared that the accusation should be dismissed.

The legal base of this ruling, although not mentioned in the proceedings, is in Book VII, crimes and punishments, of the Compilation. Also, Law 17.8.2 allowed judges to admit compromise if there was a petition of the parties, no inconvenience resulted to the public order, or the matter was not important. All three circumstances, it seems, were taken into consideration by the judge to dismiss the case by compromise.

A similar judgement was given in the case of Jeronimo Dirucaça, ex-governor of Picuris Pueblo in 1713. The records document the intervention of the Protector de Indios, Juan de Atienza.[24] Dirucaca was facing charges of witchcraft because he had been seen preparing a concoction of maize flour, which "after mixing, he placed in an anthill so that the ants might eat it and just as they ate it, so was eaten a corresponding portion of a girl whom he had sought." Jeronimo denied the charges and leaked word that he knew the whereabouts of a silver mine. Handcuffed, but with a promise of pardon, he was taken to the canyon of Picuris where they found four veins of silver. The records say "from all four came silver, which, it is hoped, will provide complete relief for this wretched kingdom." Dirucaca paid the court costs and was banished to a Tiwa pueblo of his choice.

Typical of Indian custom is the case caused by a petition of the Isleta Pueblo Indians in 1791.[25] They appealed to Governor Fernando de la Concha to remove their priest, because the mission father denied them the right to perform customary dances and to carry out the traditional rabbit hunt. "We understand that our king does not deprive us of such diversion." The priest was discretely removed a few months later.[26] There was no sign of the intervention of a protector in this case. Consequently, it seems that at the end of the seventeenth century the Indians were aware of the relevance accorded to custom in the legal system of the Indies.

New settlers had rights to acquire lands and plots under certain rules. Title 12 of Book 4 deals with this crucial matter. Land grants were to be authorized by the Governor. Each land grant consisted of certain units called *peonías* and *cavallerías* and had to be distributed on a basis of equality and fairness, giving the same treatment to all the settlers.[27] Plots could not be sold for a period of four years counting from the date of the first grant. The lands of the Indians could not be given by means of grant, but they could be acquired by contract.

The ownership of the Indian lands was to be recognised in all cases. In Law 9.3.6, there is a general protection of this right. Other rules provide for a fair treatment of the Indians (Law 1.10.6), and for the preservation of their ways and lands. Spaniards and non-Indian persons were forbidden from inhabiting or staying more than three days in the Indian villages (Law 21.3.6). The same applied even if the Spaniards had ac-

quired real property among the Indians (Law 22.3.6) or if they were journeying through the Indian country (Law 23.3.6) or simply doing business with them (Law 24.3.6).

A big share of the total amount of documents kept in the Spanish Achives of New Mexico deal with real property rights. In this field of social relations, resort to litigation was very common. The implementation of the law was mostly by of adjudication. Three types of interests were usually present in those cases: the crown, the Spanish settlers and the Indians. It seemed that for the sake of pacification, the interest of the former coincided with that of the latter. That is clear in the scope and spirit of the law, but it also appears in judicial and administrative decisions. Due to the strong interests in contest, the implementation of the law might have failed at times, but there is evidence that adjudication and the legal machinery worked in this major field .

A petition for lands by Spanish citizens was presented to Governor Diego de Vargas on 26 February 1704.[28] The lands were at a place called Angostura at that time occupied by the Indians of Pueblo San Felipe. The claim was dismissed because the lands had been in the possession of the Indians since the foundation of the settlement, and the petitioners had a great deal of livestock which would trespass on the Indian lands.[29]

The foundation of Santa Fe took place in 1609. But the initial settlement of the Spaniards in that area was made farther north, on the banks of the Rio Grande about 30 miles from Santa Fe. San Juan de los Caballeros was the place chosen by Oñate in August 1598. The legal base for both cases is in the Compilation of the Laws for the Indies.[30] The ownership of the Indian lands was to be recognised in all cases. If the law had been respected when the first settlement took place, Santa Fe could well be at least ten years older than it is.

In 1715, a claim on behalf of the Pojoaque Indians, relative to certain lands alleged to have been sold to them by some Spaniards, was submitted by Juan de Atienza, Protector of the Christian Indians of New Mexico.[31] The testimonies indicate that a Spaniard by the name of Miguel Tenorio de Alva had sold part of the land to the Indians and another part to other Spaniard, Baltasar Trujillo. Some of the Indians had not paid their portion of the purchase price. The Protector alleged that those lands were formerly held by the Indians and belonged to them.

In 1798, the heirs of the first settlers of the Canyon de Jemes (San Diego) applied for a quantity of uncultivated land, adjoining lands belonging to the Indians of Jemez. In their claim, they protested they would not injure the Indians with their persons nor their stock. The grant was finally made by Governor Fernando Chacon. The natives of Jemez were summoned and in their presence possession of the land was given by the mayor of Jemez, don Antonio de Armenta, on 14 March 1798.[32]

The return of don Diego de Vargasto New Mexico in 1703 marked a new era: no longer would the encomienda serve as the bases of land and labor exploitation. The Governor initiated the practice of land grants to the smallholders who were less dependant upon native labor. On 23 December 1703, don Diego de Vargas made a grant of lands near the Indian Pueblo of Cochiti to Jacinto Sánchez, who claimed he had owned those lands until recent times. But some weeks later, the grant was revoked on terms that no injury should be done to the Indians who rightfully opposed it. According to these records, it seems that the right of the Indians to a disputed land was decided upon oral testimonies of previous rights (prior in tempore), while for the Spaniards it was usually required to produce the title of acquisition.

Every village had its commons following the old legal system of Castile. The size of one square league was mandated by the Compilation of the Indies in law 8.3.6. This provision was quickly aprehended by the Pueblo Indians, incorporating it into their legal culture as a homemade product. In the proceedings, the normal expression for it is "*la legua de* . . .", followed by the name of the pueblo.[33] As this grant of land spread over a big area (3,1055 Ha), quite often private land grants interfered with the Indian commons, giving grounds for claims and litigation.[34] So in 1704, when Captain Alfonso Rael de Aguilar, protector de indios, petitioned on behalf of those of San Ildefonso that the grant made to Ignacio Roybal be revised, he alleged that the inclusion of the lands west of the Rio del Norte, opposite the Pueblo of San Ildefonso, was in violation of the royal ordinances and to the detriment of the Indians, to whom those lands belonged since ancient times.[35] Captain Rael requested the Governor to make Roybal present his instrument of title for examination and to give to the Indians the four leagues of land to which they were entitled. He described the land as lying between the lands of the pueblo of Santa Clara and the Caja del Rio. Roybal filed an answer in which he denied that his grant interfered with the Indians. On 9 October 1704, the alcalde, Cristóbal de Arellano, in compliance with orders, went to San Ildefonso and made a measurement of the four leagues.

Another claim sponsored the same year by Protector Rael dealt also with the concept of the Indian league. Two Spaniards petitioned for land in the Angostura area, on the west bank of Rio Grande between Bernalillo and San Felipe.[36] They argued that the pueblo's holdings exceeded the league measure. Rael, on his part, declared that, because of the proximity of the proposed grant to the native's fields, the Spaniards' livestock might easily damage their crops, in clear violation of the law.[37] He also argued that the league should be comprised of the most suitable lands

next to the pueblo and that the rugged mesa to the west of San Felipe made that portion of the league unsuitable for agriculture. Governor Diego de Vargas denied the neighbors' request.

On 17 August 1818 Juan de Aguilar made a petition to the Governor, complaining that the alcalde of El Bado, Vicente Villanueva, had made measurements from the Pueblo of Pecos in defiance of the accepted rule for such operations. Starting the measurements at the limits of the pueblo instead of beginning from the church.[38] The alcalde reported that he had followed that method because otherwise a disadvantge might result for the Indians, given the fact that the church of Pecos was located not in the middle, but at the edge of the pueblo. He added that, although the custom was to take the cemetery as the starting point, this was not a general rule. The Santa Clara and San Ildefonso boundaries dispute in 1786 was resolved in the same sense, favoring the Indian interests in case of doubt.[39] The extension of the league was fixed, but not its shape nor its location.

Water resources were considered commonable according to law 7.17.4 of the Compilation : "The mountains, the pastures and the waters included in the grants, already given or to be given in the future in the Indies, must be of common use for Spaniards and for Indians." This provision was to be applied to land grants which included water resources.[40]

In 1724, Juan and Antonio Tafoya petitioned for lands in the Cañada of Santa Clara, west of the lands belonging to the Santa Clara Indians.[41] The Indians stated that if the Tafoyas were going to cultivate lands on the tract in question, it would result grave injury to the pueblo, as there was insufficient water in the stream. The petitioners stated that they wanted the land only for keeping cattle, not for cultivation. The grant was made. Ten years later, the Tafoyas petitioned for the right to cultivate the same land. This time they argued that they had found one spring in the cañada which they could use without interfering with the water of the river. On 4 March 1734, Governor Cruzat ordered don Juan Paez Hurtado to investigate the lands in question and report to him. In his report, he stated that he found the mentioned spring, that it discharged its waters in the marsh and farther on into the river, and that he examined the pieces of land which the Tafoyas said could be cultivated without irrigation, but that they were actually under irrigation. On 13 March 1734 the Governor decided that the prayer of the petitioners could not be granted.

The same principle was clearly applied in 'Bartolome Fernández Grant' in 1767.[42] The facts are as follows: A grant of pasturelands was made to the Fernández close to the Navajo Indians upon condition that the Apache Indians did not object the grant. A particular feature of that land was the fact that there was a source of water in it. The terms of the

grant were, that in case the Apache claimed access to that source of water, Fernández and his heirs should be obliged to change the limits of their range as much as might be necessary to allow free access to the water. The legal justification of this benefit favoring the Apache Indians is law 7.17.4.

Water rights during the colonial period—as Daniel Tyler explains—mainly referred to surface water resources (percolating water).[43] Most water right cases were decided according to custom and law and there was not need for a customary rule to regulate water systems or subsurface waters (acquifers). It is presumable that, if a sociological need for such regulation had arisen, the provisions of the Castilian Law (*Partidas*), recognizing the right of anyone to dig wells in his own land, would have been developed into a permisive rule limited by the principles of not causing prejudice to third party and taking into consideration the general interest.[44] By and large, in the Laws of the Indies both principles are present.

Under Law 3.10.6, it was forbidden to oblige the Indians to work unless it was for good reason and they were paid good wages. In 1732, Gervasio Cruzat y Gogora, Governor of New Mexico, had to decide a case between the mayor of Bernalillo and the priest of Zia Pueblo.[45] Fray Diego Arias de Espinosa accused the alcalde Ramon García Jurado of using the people of Zia, Santa Ana, and Jemez pueblos as unpaid labor. The friar pointed out that this violated the law. The alcalde retorted that the friar tried to undermine secular authority, was new at his current post, and did not understand how things were done. During the legal fight, he even accused the priest of being drunk and of visiting a woman. The Governor sent Captain Antonio Ulibarrí to make a proper investigation on the spot. He sent the officer to interview the people of the three pueblos (Zia, Santa Ana, and Jemez). The outcome of the visita was fully in support of the friar's allegations. The governor's judgment was that García would be exiled to the Zuni region for two years and he would pay a fine of 872 pesos plus six reales to the people of the three pueblos from an auction of the Mayor's properties. The legal base for this ruling can be found in the compilation.[46]

In the same sense, the claims presented by the Indians of Santo Domingo against the Alcalde Mayor Manuel Baca in 1718 for making them work on cleaning the acequias were decided.[47] The Indians of Pecos in 1723 also were successful in their claim against the former Governor Felix Martínez in a case of unpaid labor.[48] This was done during the customary *residencia* proceedings that every Governor had to face at the end of his tenure, according to Laws 4, 28 and 29 of Title 15, Book 5.

Finally, although I have not found evidence of adjudication concerning city planning, the regulations issued for city planning were generally observed. According to the *Ordenanza de Poblaciones* decreed by King Felipe II, "The main plaza where settlement will start must be built at the landing place if the town is situated on the sea coast; if the town is in land it should be built so as to be the middle of the town. The plaza should have the shape of a quadrangle with half its width for length inasmuch as this will be the best for fiestas in which horses are used. Its size shall be proportionate to the number of inhabitants, and taking into consideration that towns normally tend to grow, let it be no less than hundred feet wide and three hundred feet long, and no more than eight hundred feet long and five hundred and thirty-two feet wide. A medium sized plaza will be six hundred feet long and four hundred feet wide." These provisons were repeated in the Compilation.[49] We can verify that the existing plaza at Rancho de Taos complies with those measures and the original Plaza of Santa Fe in New Mexico measured precisely six hundred by four hundred feet.[50]

The research should go on considering other legal issues. Besides the archival materials I have referred to I have come across documents related to family law, contracts, mine registrations, health and medical matters, Negro slavery, wills, military affairs, and ecclesiastical topics. There is abundant archival material waiting for legal historians in those archives.

My aim has been only to verify to what extent there was a legal system in force in the Southwest during the Spanish colonial period. I have been overcome by the amount of evidence kept in SANM, showing that there was a legal system based on the application of the Laws of the Indies and that it was truly operative. It is true that the proceedings dealt with in this research rarely mention the specific legislation. But it is also remarkable, that upon browsing in the rules of the Recopilacion, it is has been easy to find the legal grounds implicit in every case. All in all, it can be asserted that for over 200 years the formative years of the Southwest, there was a legal system in force, effectively applied. The inhabitants of those lands made use of it and incorporated the notions of justice and the usefulness of the legal machinery into their own culture, making them part of their collective conscience.[51]

NOTES

1. For the influence of foreign law in the xixth century see Federico Castro y Bravo, *Derecho Civil de España*, vol.1, (Madrid, 1955), 338-61. Also Alfonso Garcia Gallo, *Curso de Historia del Derecho Español,* vol.1, (Madrid, 1950), 463-97.

2. Spanish Archives of New Mexico (SANM).

3. *Recopilación de las Leyes de los Reynos de las Indias* 4 vols., In facsimile edition (Madrid: Cultura Hispanica, 1973).

4. Law 2, Title 1, Book 2 of *Recopilación*. Hereinafter we will quote the laws in this sequence.

5. See Eelco Nicolas van Kleffens, *Hispanic Law until the end of the Middle Ages* (Edinburgh: Edinburgh University Press, 1968).

6. Francisco De Vitoria (c.1546), was given late recognition as "the founder of modern international law" by Dr. James Brown Scott because of his work and teaching at the University of Salamanca to solve that problem.

7. The Archives of New Mexico have been located in Santa Fe since 1923 when the Library of Congress returned them to the Palace of the Governors and they are now at the State of New Mexico Records Center. I want to state here my acknowledgements to the Hispanic Law Division of the Library of Congress for its help in giving me access to the microfilm records of the SANM kept in the Manuscript Division where my research started. And last but not least to Richard Salazar, Director of the State Archives of New Mexico, where I had the privilege of working on the field with primary sources.

8. Dora P. Crouch, Daniel J. Garr, and Axel I. Mundigo, *Spanish City Planning in Northamerica* (Cambridge: MIT Press, 1982), 26.

9. Juan Manzano Manzano, *Historia de las Recopilaciones de Indias*, t. II, (Madrid: Ediciones Cultura Hispanica, 1991), 363.

10. Cf. HANKE Lewis, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia: University of Pennsylvania Press, 1949).

11. Daniel Tyler, "Underground Water in Hispanic New Mexico," *New Mexico Historical Review*, 66 (1991), 294.

12. Marc Simmons, *Spanish Government in New Mexico*, (Albuquerque: University of New Mexico Press, 1968), 159.

13. Spanish Archives of New Mexico (SANM), I, roll 3, frame 119.

14. SANM, II, roll 10, frame 662: "Autos seguidos a pedimento del Pueblo de San Agustin de la Isleta contra Mariano Beitia, coyote del mismo Pueblo," 4 July 1771.

15. Charles R. Cutter, *The Protector de Indios in Colonial New Mexico 1659-1821* (Albuquerque: University of New Mexico Press, 1986). See also Ley 13.10.5 of the Compilation.

16. Laws 1.6.6, 5.6.6, and 6.6.6.

17. Cutter, 59. "The natives made active use of the legal machinery, including the Protector as their representative, to preserve their land base. In the course of the eighteenth century, the Pueblo Indians of New Mexico became quite familiar with Spanish notions of Justice".

18. Wilcomb E. Washburn, "The moral and legal justifications for dispossessing the Indians" in James Morton Smith, ed., *Seventeenth-Century America, Essays in Colonial History* (Chapel Hill: Univerisity of North Carolina Press, 1972), 26. In the case of Johnson and Graham's Lessee v. McIntosh, in 1823, the Supreme Court declared that the Indians did not possess an unqualified sovereingty because of the original fundamental principle that discovery gave exclusive title to those who made it.

19. In 1946, after nearly twenty years of consideration, the Congress passed the Indian Claims Commission Act. Clause 5, Sec.2 of the Act provided for "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity". Quoted in Washburn, 29.

20. Cutter, 82.

21. For instance, in 1704 Xtobal and Juan Barela Jaramillo petitioned for lands near the pueblo of San Felipe, but the petition was denied because the Protector de Indios claimed the Indians were using the lands (SANM, I, roll 1, frame 568). The same year, Protector Rael de Aguilar acted on behalf of the Pueblo of San Ildefonso complaining that Captain Ignacio de Roybal had acquired lands in violation of the royal ordinances and to

the detriment of the Indians (SANM, I, roll 6, frame1347). In 1715, Protector Juan de Atienza litigated against Captain Miguel Tenorio over Pojoaque Pueblo lands (SANM, I, roll 1, frame 117). In 1763, Miguel Antonio Lobato, on behalf of the Indians of Santo Domingo, requested a remeasurement of indian land (SANM, I, roll 6, frame 1763).

22. SANM, II, roll 14, frame 427. Governor Pedro de Nava punished the two officials and suggested the removal of the priest.

23. SANM, II, roll 7, frame 35.

24. SANM, II, roll 4, frame 840.

25. SANM, II, roll 12, frame 762.

26. Cutter, 46.

27. Law 1.12.4: "Que a los nuevos pobladores se les den tierras, y solares y encomiendas de Indios; y qué es peonia y cavalleria". A "peonia " was a unit of lands for common settlers. It included a plot of land for building of 50 feet by 100 feet and a fixed area of pasture and labor lands. A "cavalleria" was a unit of lands to be granted to esquires (*hijosdalgo*). It included a plot twice as big as the former and lands for cattle and cultivation totalling five peonias.

28. SANM, I, roll 1, frame 571.

29. For legal grounds of this ruling see Law 12.12.4 (quoted in note 37)..

30. See Laws 9.3.6, 21, 22, and 23 (quoted above). Also law 9.3.25: "Que los caminantes no tomen a los Indios ninguna cosa por fuerza."

31. SANM, I, roll 1, frame 117.

32. SANM, I, roll 3, frame1495.

33. In SANM, I, roll 6, frame1588: "las leguas de Santa Clara y de San Ildefonso". In SANM, I, roll 6, frame 1844 "la legua de Santo Domingo".

34. The measure called the "League of Castile" was 5,572 kms. or 20,000 pies (feet) and the Castilian square league 3,105.5 Ha (Real Academia de la Lengua, Diccionario). The equivalence comes to 7,763.75 acres.

35. SANM, I, roll 6, frame 1347. The expression "the four leagues of land" refers simply to the geometrical figure resulting on the spot when fixing the perimeter of the plot of land. In this case, it seems, it was a square of one by one.

36. SANM, I, roll 1, frame 571.

37. Law 12.12.4: "Que las estancias para ganados se den apartadas de Pueblos y sementeras de Indios."

38. SANM, I, roll 1, frame 441.

39. SANM, I, roll 6, frame 1588.

40. For the adjudication of water disputes in the colonial history of the Southwest see Michael C. Meyer, *Water in the Hispanic Souhwest, A Social and Legal History 1550-1850* (Tucson: University of Arizona Press, 1984).

41. SANM, I, roll 5, frame 1724 and roll 5, frame 573.

42. RSG 78, roll 21, frame 139.

43. Daniel Tyler, "Underground Water in Hispanic New Mexico: A Brief Analysis of Laws, Customs, and Disputes," *New Mexico Historical Review* 66 (1991), 287-301.

44. Partida 3, title 33, law 19.

45. SANM, I, roll 5, frame 1010.

46. Law 1.10.6, 13.10.6, 21.10.6.

47. SANM, II, roll 5, frame 702.

48. SANM, II, roll 5, frame 89.

49. See Law 9.7.4.

50. Referred to this author by Dr. Thomas Cháves.

51. Consequently the treaty of Guadalupe Hidalgo 1848 refers implicitly to this reality and affirms explicitly that the rights acquired under the previous legal system should be recognized by the new Administration (arts. VIII and IX).