

Bourke (John G.)

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IN THEIR

APPLICATION TO THE AMERICAN INDIANS

BY

JOHN G. BOURKE

CAPTAIN THIRD CAVALRY, UNITED STATES ARMY

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[FROM THE AMERICAN ANTHROPOLOGIST FOR APRIL, 1894]

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WASHINGTON, D. C.,  
JUDD & DETWEILER, PRINTERS

1894



## THE LAWS OF SPAIN IN THEIR APPLICATION TO THE AMERICAN INDIANS.

BY JOHN G. BOURKE, CAPTAIN THIRD CAVALRY, U. S. A.

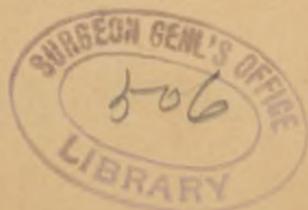
Probably no portion of American colonial history has been more neglected than that which relates to Spanish domination. It has been represented and believed by many that the unvarying characteristic of Castilian contact with the aborigine was blood-thirsty cruelty and a bigoted oppression, or at best a sublime indifference to the necessities, rights, and aspirations of the conquered. It cannot be denied that for believing all this there have been most excellent grounds since the incoming tide of Spanish civilization bore upon its crest a flotsam and jetsam of brutal, illiterate humanity, which despised every restraint of law and was bound together only by the attraction of a common greed.

But, so far as the enactment of wise laws could bring about such a result, it may be stated broadly that the Spanish Crown, from the very first days of the Discovery, seems to have aimed at the elevation, civilization, and Christianization of its new subjects. How far these laws were made inoperative by the inertness or rascality of minor officials would be a subject scarcely admitting of discussion in this paper, which merely presents the synopsis of each law and leaves untouched any extended criticism upon its efficacy or mode of operation. All nations, our own included, have passed laws which have gradually been allowed to fall into disuse or been openly abrogated.

The code in question has been taken very carefully from an interesting work\* which was lent to me by my friend Colonel Jorge Green, special commissioner from Mexico to the Columbian Exposition. A synopsis only of each law is given in English, but it is believed that scholars interested in a more extended study of the subject will find all the assistance needed in the

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\* "Recopilacion de Leyes de los Reynos de las Indias," published in Madrid, in 1681, by Julian de Páredes, 4 vols., 8°.



numerous titles, books, and chapters appended, as well as in the name of the particular sovereign enacting the law, which in nearly every case is given.

The Spaniards found themselves confronted by a problem which involved the destruction or the gradual assimilation and amalgamation of large populations, generally sedentary, tenacious of old usages, superstitious to a degree, and suspicious of all strangers.

The Spaniard, to his lasting honor be it said, accepted the alternative of assimilation, and, although he sometimes faltered in his high purpose and was often guilty of cruelty, oppression, and the rankest injustice, yet he has left upon the American continent solid communities of aborigines whose social and moral condition has been most appreciably improved by the introduction of horses, cattle, sheep, goats, hogs, and chickens, the planting of orchards of peaches, oranges, and other fruits, as well as vineyards, and instruction in such new trades as carpentry, saddlery, blacksmithing, and wagon-making, or the improvement of such prehistoric handicrafts as stone-masonry, weaving, basket-making, and pottery.

The keynote of the Spanish regulative system, in this connection, may be found in the last will and testament of Queen Isabella, signed by her at Medina del Campo the day previous to her death, in 1504, and on exhibition among other historical treasures at the monastery of "La Rabida," in the Columbian Exposition at Chicago. It reads thus :

Quando nos fueron concedidas por la Santa Sede Apostolica las Islas, y Tierra firme de el Mar Océano, descubiertas, y por descubrir, nuestra principal intencion fué al tiempo que lo suplicamos al Papa Alexandro Sexto de buena memoria, que nos hizo la dicha concession, de procurar, inducir, y traer los Pueblos de ellas, y los convertir à nuestra Santa Fé Catolica, y enviar à las dichas Islas, y Tierra firme, Prelados, y Religiosos, Clérigos, y otras personas doctas, y temerosos de Dios, para instruir los vecinos, y moradores de ellas à la Santa Fé Catolica, y los doctrinar y enseñar buenas costumbres, y poner en ello la diligencia debida, segun mas largamente en las letras de la dicha concession se contiene. Suplico al Rey, mi Señor muy afectuosamente, y encargo, y mando à la Princesa mi hija, y al Principe su marido, que assi lo hagan, y cumplan, y que este sea su principal fin, y en ello pongan mucha diligencia, y no consientan, ni dén lugar à que los Indios vecinos, y moradores de las dichas Islas, y Tierra firme, ganados, y por ganar, reciban agravio alguno en sus personas, y bienes : mas manden,

que sean bien, y justamente tratados, y si algun agravio han recebido, lo remedien, y provean de manera, que no se exceda cosa alguna lo que por las letras apostolicas de la dicha concession nos es inyungido, y mandado. (Law 1, titulo 10, lib. 6.)

Following is the English translation :

“When we had conceded to us by the holy Apostolic See the islands and the terra firma of the ocean sea, discovered or to be discovered, our principal intention was, at the time, that we besought the said concession from Pope Alexander VI, of good memory, to gather and bring together and prevail upon the people of said islands and main land, and convert them to our holy Catholic faith, and to send to them prelates and religious clerics and other persons learned in the faith and possessed of the fear of God, in order that they might instruct the said inhabitants in the holy Catholic faith and indoctrinate and introduce good customs among them and better modes of life, as has been more fully set forth in the text of said concession ; therefore I most affectionately beseech my Lord, the King, and I charge and command the princess, my daughter, and the prince, her husband, that they shall make it their principal object diligently to execute and carry out this my will, and that they neither consent nor allow any of the Indians native of or residing in said isles and main land to receive any harm whatever, either in person or property, but that they command them to be well and justly treated ; and if they have received any injury, that they remedy it and so provide that in no manner shall the precepts enjoined and commanded in the apostolic letters of said concession be neglected.”

The laws now following are not inserted chronologically, but rather by subjects, although, generally speaking, they begin with the Emperor Charles V, who quotes the terms of the above will as the fundamental principle of all Spanish Indian legislation :

All officials, ecclesiastical as well as military, were enjoined to do all in their power to carry out the purpose of these beneficent laws. Law 1, Emperor Charles V.

The Indians were to be allowed to marry freely. Law 2.

But Indians were not to marry before attaining legitimate age. Law 3.

Punishment was decreed against Indian men or women who married more than one wife or husband. Law 4.

This provision applied equally to infidel as to Christianized Indians. Law 5.

No Indian could sell his daughter, in matrimony or otherwise. Law 6.

Indians should marry in their own villages, except in the case of widows, who could return to the village of their birth. Law 7.

An Indian woman having children by a Spaniard could change domicile with him. Law 8.

Indians should not be separated from their fathers or relatives. Law 9.

The children of married women should be considered as belonging to the village of the father; those of unmarried women, to the mother's village. Law 10.

Indians should be allowed to have their children brought up in trades and other useful occupations without hindrance from anybody. Law 11.

Indians living in peace should be allowed to go freely from place to place. Law 12.

Indians should not be transported from hot lands to "tierra fria" or the reverse. Law 13.

Indians should not be carried off to Spain. Law 14.

Indians who had been smuggled into Spain should be returned to the New World at the cost of the Crown when the name of the man who had brought them across the sea could not be discovered. Law 15.

Schools for the instruction of the aborigines in the Castilian language should be established in each village without delay. This law was passed by the Emperor Charles V as early as 1550.

The Emperor Charles V, in 1551, established the Universities of Lima and Mexico, whose graduates were to enjoy the same privileges as the graduates of Salamanca (Law 1, libro 1, titulo 22). These universities were established "Para servir á Dios, nuestro Señor, y bien publico de nuestros Reynos conviene que nuestros Vasalles, subditos y naturales tengan en ellos Universidades y estudios generales." Other universities were established at a much later date by Philip IV in the cities of Santo

Domingo, Santa Fé de Bogota, Santiago de Guatemala, Santiago de Chile, and Manila de Filipinas. *Idem.*

But Charles V had done more than this; he had previously founded, or rather accepted the foundation of, the Franciscan University or College of Tzintzontin, on Lake Patzcuaro, in Michoacan. This college was established prior to 1543, and by 1581, as I have shown in a previous article in the AMERICAN ANTHROPOLOGIST,\* had become the great university whose ruins are among the most impressive on our continent. In one of the four churches belonging to this ruined university still hangs one of Titian's masterpieces, "The Entombment of Christ."

Ley XII. "Declaramos, que pertenecen à nuestro Patronazgo Real el Colegio de Españoles, Mestizos è Indios, para que estudien Gramatica, y el Hospital de pobres enfermos de la Ciudad de Mechoacan de la Nueva España, y aceptamos la cession, que en nuestra Real Corona hizo el Fundador, porque los Estudiantes y pobres sean mas bien favorecidos, y administrados." Charles V, Barcelona, May 1, 1543, in lib. 1, tit. 23.

The Indians were to be free and not slaves. Law 1, libro 6, titulo 2, Charles V, 1526.

"Encomenderos" were prohibited from selling Indians as slaves. Law 2, lib. 6, titulo 2, Charles V, 1541.

Indian caciques were prohibited from holding their subjects as slaves (Law 3, *idem.*, Charles V, 1538). Several other laws, of the same general purport in regard to the freedom of the Indians, are to be found in the same title. One provides for the pursuit and severe punishment of the Portuguese of Brazil, who had made it a practice to raid the missions of Paraguay in order to carry the Indians into slavery (Law 6, *idem.*, Philip IV, 1628). It was even prohibited to sell Indian captives taken in war, and this prohibition was so strongly worded that it read that no man could sell, barter, transfer, or exchange any such captive, even with the captive's own will. Law 7, lib. 6, tit. 2, Philip III, 1618.

The Spaniards had a dread of the unwholesome influence of half-breeds, squaw-men, and refugees. No Spaniard, unless sick and unable to travel, was permitted to remain in an Indian village more than one full day, not counting the day of arrival or the day of departure. A penalty of fifty dollars in gold was imposed upon each infraction of this law.

\* Vol. vi, p. 65, January, 1893.

No Spaniards, negroes, mulattoes, or mestizoes were permitted to live in Indian pueblos (Law 22, lib. 6, titulo 3, Philip IV, 1646), not even when they had bought land of the Indians.

Ningun Español, que fuere de camino à qualquier parte que sea, sin justa causa no demore, ni esté en los Pueblos de Indios por donde hiciere el viage mas tiempo del día que llegare, y otro, y al tercero se parta, y salga del Pueblo, pena de que si mas se detuviere, pague por cada dia cincuenta pesos de oro de minas, aplicados por mitad, à nuestra Camara, y Fisco, y la otra al Juez, y Denunciador, por iguales partes. (Law 23, lib. 6, titulo 3, Charles V, at Valladolid, November 20, 1536.)

This law of exclusion is observed to this day in many of the Indian pueblos, particularly among the Yaquis.

Philip III, in 1600, extended the privilege to merchants, so that they could remain three days (Law 24, lib. 6, titulo 3). In visiting a pueblo white men were not allowed to stop at the house of an Indian when "mesones" or places of entertainment had been established. Law 25, lib. 6, titulo 3, Philip II, 1563.

Titulo 5, libro 6, is devoted to the general subject of taxes and tributes to be paid by the Indians. We learn that Indian caçiques and other officials were not to pay taxes of any kind; but, on the other hand, this exemption applied only so long as they abstained from participation in the dances, drinking bouts, feasts, and other ceremonies of the natives.

No half-breed could be a caçique among the Indians. Law 6, lib. 6, titulo 7, Philip II, 1576.

In Titulo 7 of libro 6 are many beneficent laws for the regulation of the internal life of the Indian pueblos. No caçique could hold one of his own people in slavery, draw excessive tribute from them, receive their daughters in vassalage, or kill any of them at the time of the funeral of another caçique. (For the last item, see Law 15.)

Tlascalans were to be treated with special consideration in gratitude for services rendered to the Spaniards under Cortez. Law 39, Philip II.

The Indians of Tlascala were to be permitted to write to the King of Spain direct, without hindrance from the viceroys of Mexico or anybody else. Law 45, Philip II, 1581.

Indians could sell their property holdings under the supervision of the legal authorities. Law 27, Philip II, 1571.

Indians were to be permitted to hold their own "tianguetz" or markets as of yore. Law 28, Charles V, 1552.

Severe penalties were imposed upon those Spaniards who should endeavor, in collusion with the caçiques or others of the Indians, to get up "corners." Law 29, Charles V, 1551.\*

Arms were not to be sold to Indians. Law 31, Ferdinand and Isabella, in Grenada, 1502.

Ecclesiastics were forbidden to receive bequests for church purposes from rich Indians when there were natural heirs. Law 32, Philip II, 1580.

Indians were not allowed to ride on horseback (Law 33, Philip II, 1568), but special license might be given by governors, and Indians could also carry official dispatches or use horses in other cases of emergency. Law 34, *ibid.*

Indian dances were to be conducted with decency and moral cleanliness. Law 38, Philip II, 1576.

No liquor was to be sold to Indians. Law 36, Philip II, 1575.

Civil judges alone should try cases of witchcraft among Indians. Law 35, Philip II, 1575.

Indians were to be kept in their own villages as much as might be possible with kindness, so that the ecclesiastics appointed over them might all the more readily become acquainted with them and be able to advance them in Christianity and civilization; the natives were to be told why this law was passed. Law 20, Charles V, 1532.

No work of any kind was to be imposed upon recently subjugated Indians, and no taxes of any kind levied for the space of five years (Law 20, Philip III, 1618). The same law provided that in the meantime every effort should be made to instruct them in useful work.

Indian officials could retain their offices; laborers should cultivate their fields according to their own customs; idleness was

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\*This Law 29 was interpreted most rigorously and was followed by others of much the same tenor. Indians could sell only in the designated market place, plaza or "tianguetz;" they could not go to the house of any civil, military, or ecclesiastical dignitary to dispose of their wares. This was expressly to prevent their being cajoled or intimidated into accepting low prices. Neither could an Indian sell to any person whom he met in the road on his way to market. Strange as it may seem, this law is observed to our own day by the Pueblos of New Mexico and the Indians of Mexico in many places.

to be discountenanced and prohibited in every way. Law 22, Charles V, 1552.

Indians were to be encouraged to raise live-stock. Law 22, Charles V, 1551.

Free commerce was to be encouraged between Indians and Spaniards. Law 23, Philip III, 1602.

Indians should freely sell their fruits and other productions. Law 25, Charles V, 1551.

Indians should wear clothing. Law 22, *op. cit.*

Special attention was to be paid to Indian trade, to the end that the natives should not be cheated, overcharged in business, or made to pay excessive fines; this duty was imposed upon the viceroy. Law 26, Philip III, 1601.

Indians were not allowed to sell or alienate in any way their property. Law 2, lib. VI, tit. 2, Philip III, 1609.

The Caribs, who were alleged to be cannibals and to be making war upon the tribes of the mainland for the purpose of securing human victims, were exempted from the provisions of these laws. Law 13, lib. VI, tit. 2, Philip II, 1569.

In every "reduccion" or mission of Indians there was to be a chapel in which mass could be said with decency, and this chapel was to be provided with a door which was to be locked with a key (Law of Philip III, 1618). In these chapels there were also to be sacristans, one for each, and two or three "cantores" or singers. Philip III, 1618.

Indians who were employed as servants in houses were to be properly supported, fed, taught the Christian doctrine, and treated when sick. A sick Indian could break a contract when he did not receive proper medical attention, and his master was obliged to pay him all dues, and when the Indian recovered his health the master had no claim upon him for services. Law 22, lib. VI, tit. 13, Philip III, 1618; also Law 23, by the same king.

A church ornament (kind not mentioned), a chalice, with its paten, and a bell were ordered given from the royal treasury to each and every new monastery established in the Indies. Law 5, lib. I, tit. 3, Philip II, August 24, 1588.

At a still later date, but too late for incorporation in this "Recopilacion," laws were passed confirming in perpetuity to each Indian pueblo in New Spain one league of land in each of the four cardinal directions.

There were other enactments concerning the inheritance of the "repartimientos" and "encomiendas" granted to the early "conquistadores" and their immediate descendants, but these applied less to the aborigines than to the Spaniards.

An explanation of the term "conquistadores," as applied to the early Spanish explorers, must be found in the use of terms in old Spain. We may find that "conquest here means maintaining the struggle or the duty of conquering. While the Moors were still unconquered in the south of Spain, certain parts of their territory were said to belong to the Conquest of Castile, others to the Conquest of Aragon." Alvarez, "Abyssinia," Hakluyt Society, London, 1881, p. 114, foot-note.

I did not find in the "Recopilacion" any laws upon the subject of Indian "peonage." All such laws would seem to have been passed by the Spanish colonies after separation from the mother country or by the viceroys in the decadence of Spanish supremacy.

For these laws, which practically reduced men to slavery for debt, no palliation whatever can be found; but they were by no means peculiar to Spain or to Spanish America. Imprisonment for debt, merely another name for slavery, prevailed in England down to the first years of Victoria's reign and until Charles Dickens assailed the system with his powerful pen. In France less than two centuries ago the brilliant Pascal, in his "Lettres Provinciales," bitterly assailed the Jesuits for advancing the heretical doctrine that insolvency might be innocent or fraudulent, and that to imprison innocent debtors meant destruction to commerce and the state.





