

Clash of Cultures and Law **Laws of the Indies: Spain and the Native Peoples of the New World**

Columbus not only claimed the New World for Spain, but also found people already living there. For the next century, Spanish conquistadors, missionaries, scholars, and lawmakers debated how to treat the people of the New World.

When **Columbus** came back from his first voyage to America (which he called the Indies), he brought with him some Indians to display to Spain's monarchs, Ferdinand and Isabella. The Native Americans caused great curiosity and wonderment at the Spanish royal court. Columbus shortly returned to America and to show the potential economic value of the Indians, sent a shipload of them to Spain to be sold as slaves.

In 1495, the crown ordered the money from the sale of the Indian slaves to be set aside until certain troubling questions could be answered: Did Spain have "just title" over the Indies? Could Spain legitimately make war on the native peoples and thereby enslave or otherwise force them to work? Did the Indians have the capacity to accept Christianity and to live like Spaniards? Were the Indians even human beings?

The questions dominated Spanish colonial policy and lawmaking for most of the next century. They caused a massive collection of royal decrees, ordinances, and law codes that together made up the "Laws of the Indies." Although many laws concerning the Indians proved to be humane and even enlightened, the Spaniards in the New World often ignored them in their greedy quest for gold.

God and Greed

The question of the "just title" to the Indies was seemingly settled in 1493. Pope Alexander VI issued a declaration passing legal possession of the newly discovered lands to Spain. The pope, however, made this "donation" to Spain for the purpose of converting the native peoples to a belief in God and the Catholic faith. Whether Spain could also legally take Indian lands and possessions by force became a disputed matter among Spanish scholars for many years. Of course, the Indians had no say in any of this.

Over the next decade, Ferdinand and Isabella issued royal orders to Spanish officials in Hispaniola, Spain's first colony in the New World, on how to treat the native peoples. Missionaries were to inform the natives about Christianity, and the governor of the colony was supposed "to make certain that the Indians are well treated." In return, Ferdinand and Isabella expected the Indians to pay them tribute in gold or goods. Furthermore, the Spanish monarchs directed their officials to "compel" the Indians to work for wages to prevent "idleness."

In America, events took their own course. The Spanish conquistadors, who went to Hispaniola and then to other Caribbean islands and finally to the mainland, were rough and violent. They took what they wanted, and when the Indians resisted--or even when they did not--the conquistadors attacked and slaughtered them. By 1499, Columbus was rewarding his men for helping conquer the Indies by forcing Indians to work for them. This prompted Queen Isabella to ask, "By what authority does the Admiral give my vassals [subjects] away?"

Within a few years, however, the crown authorized this practice, called the *encomienda* system. Instead of

being a grant of land, the *encomienda* was a grant of people. Typically, an *encomienda* included an entire village, up to several hundred men, women, and children. Their Spanish masters could force them to mine gold, cultivate crops, or carry goods like beasts of burden. The masters were supposed to pay the Indians, but the law only obligated them to give Indians minimal clothing and food rations. During the first decades of the Spanish occupation of the New World, hundreds of thousands of native peoples died. Some perished from starvation, others from diseases brought from the Old World, and some were simply worked to death.

The Laws of Burgos

In 1511, Antonio de Montesinos, a Dominican missionary in Hispaniola, delivered a sermon that shocked and angered his Spanish listeners. Montesinos condemned their cruel treatment of the Indian people. "You kill them with your desire to extract and acquire gold every day," he said. He then asked, "Are these not men? Have they not rational souls?" This marked the first open protest against the mistreatment of native peoples in America.

The year after his revolutionary sermon, Montesinos traveled to Spain to take his grievances directly to King Ferdinand. (Isabella had died in 1504). The king listened sympathetically and ordered Spanish scholars to prepare a code of laws regulating the treatment of Indians. Drawn up in 1512 and 1513 in the city of Burgos, Spain, the Laws of Burgos became the first code of laws written by Europeans for the New World.

The [Laws of Burgos](#) were remarkably enlightened for the time. Although this law code continued to recognize the *encomienda* system, its 39 articles laid down specific rules to prevent abuse of Indian workers. For example, it forbid using Indians as carriers of goods in place of pack animals. It granted 40 days of rest to *encomienda* Indians who had mined gold for five months. It prohibited Indian children under 14 and pregnant women from doing heavy work in the mines or fields. It banned Spanish masters from beating, whipping, or calling any Indian "dog." Moreover, the code required that the Catholic faith "shall be planted and deeply rooted so that the souls of the said Indians may be saved."

In spite of the good intentions of Burgos code, most of its laws were not enforced. After all, Spain and King Ferdinand were a long way from America.

Defender of the Indians

In 1524, the king of Spain, now Charles V, established the Council of the Indies. This powerful body held primary authority under the king concerning the Indies. The council wrote laws, acted as a court of appeal in some cases, decided which books about the Indies could be published, approved matters relating to religion, regulated commerce, and directed the administration of colonial governments in America. The council also heard complaints about the continued mistreatment of the Indian population.

[Bartolome de Las Casas](#) was the most persistent defender of the Indians during the early years of the Spanish conquest of America. Starting out as a conquistador with his own *encomienda*, Las Casas later became a Dominican friar who passionately spoke out against the brutal treatment of the Indians.

In several books and in speeches before the Council of the Indies, Las Casas described in graphic detail how the Spanish moved into an unconquered territory and terrorized Indian people. In one technique,

Spanish soldiers rounded up Indian leaders, hanged them in groups with their feet barely touching the ground, and then burned them alive. In another, soldiers let loose large, vicious dogs to attack, tear apart, and then eat the Indians. "Nor did this cruelty take pity on [pregnant] women," wrote Las Casas, "whose bellies they ripped up taking out the infants to hew them to pieces."

Las Casas went on and on cataloging the tortures employed by the conquistadors--throwing Indians into pits with sharpened stakes, spearing them from horseback as they tried to escape, grilling children over a fire. The Dominican friar finally charged that after the survivors had been enslaved or forced into *encomiendas*, their Spanish masters started "killing them slowly with hard labor."

In 1542, due to the constant protests of Las Casas and others, the Council of the Indies wrote and King Charles V enacted the [New Laws of the Indies for the Good Treatment and Preservation of the Indians](#). The New Laws abolished Indian slavery and also ended the *encomienda* system. After the current *encomienda* masters died, their Indians would become vassals of the crown. They would then owe the king tribute in goods, but not in labor.

The new *encomienda* law produced tremendous opposition in America. *Encomienda* holders argued that not only they but the entire Spanish colonizing effort would fail without forced Indian labor. The viceroy of New Spain (Mexico) suspended enforcement of the new *encomienda* law because so many refused to accept it. In Peru, a violent revolt resulted in the beheading of the viceroy there.

Finally in 1545, Charles V backed down and revoked the offending law. This allowed masters to pass on their *encomienda* Indians to their heirs. The *encomiendas* thus continued for a while, but eventually disappeared as the Indian population declined sharply because of forced labor, disease, and intermarriage with Spaniards. The Laws of the Indies considered the children of these mixed marriages free and outside the *encomienda* system.

The Great Debate

Even though he was on the losing side in the fight to abolish *encomiendas*, Las Casas stubbornly pressed on with his Indian cause. Pope Paul III helped when he declared that Indians were human beings. Then in 1550 and 1551, Las Casas participated in a remarkable debate. Sponsored by the king himself, it questioned the entire Spanish colonization enterprise in the New World.

The great debate took place at Valladolid, Spain, before a special group of scholars and royal officials. They were to decide whether the conquest of the native peoples in the New World was morally justified. A brilliant religious scholar, Juan Gines de Sepulveda, argued that the Indians were barbaric and "slaves by nature." If "those little men in whom one can scarcely find any remnants of humanity" resisted Spanish rule, Sepulveda reasoned, war was justified.

Las Casas contended that the Indians were free, rational human beings whom he compared favorably to the Egyptians, Greeks, Romans, and even the Spanish themselves. "All the peoples of the world are men," he said, and thus possess basic natural rights. Therefore, it was wrong for the Spanish to force their rule and religion onto the Indians. Las Casas concluded that the conquest must stop, Spain must end its rule over native peoples, and religious conversion must take place peacefully and voluntarily.

The panel of scholars never declared a winner in the debate, although both Sepulveda and Las Casas

claimed victory. The conquest continued, but the ideas that Las Casas presented during the great debate influenced the development of the Laws of the Indies and the rights of Indian peoples over the next 300 years.

For Discussion and Writing

1. What were the "Laws of the Indies"? How effective were they?
2. What was the *encomienda* system? How did the conquistadors justify it? How did Las Casas and other critics condemn it?
3. How would you have decided the great debate on the conquest of the Indians? Give reasons for your decision.

A C T I V I T Y: Laws for the Indies

The Council of the Indies considered at one time all the proposed laws for the Indies listed below. Divide the class into the following role groups for a simulated Council of the Indies lawmaking session:

- 1. Conquistadors:** Soldiers and *encomienda* masters who conquered the New World for Spain
- 2. Viceroy:** The king's representatives in the New World. Each heads the government of a Spanish colony.
- 3. Missionaries:** Members of religious orders who want to convert the Indians to Christianity
- 4. Indian Defenders:** People like Las Casas who protest the mistreatment of Indians and defend their human rights
- 5. Council of the Indies:** The lawmaking body for the Indies

The first four role groups should prepare a position with arguments on each of the proposed laws while the last group (the council) develops questions to ask. Each group will then present its position on the first proposed law before the Council of the Indies. The council may ask questions of each group after it has finished. The council will then discuss and decide whether to approve, disapprove, or modify the proposed law. The same procedure should be followed in considering the other proposed laws.

Proposed Laws

1. Indians shall not be permitted to go without clothing, worship idols, or make human sacrifices.
2. Sons of Indian leaders will be instructed in reading, writing, and the Catholic faith at the expense of their *encomienda* masters.
3. The *encomienda* system will be phased out. When a current *encomienda* master dies, his Indians shall become vassals of the crown.
4. Books by Juan Gines de Sepulveda shall not be printed or distributed in the Indies.