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in the Humanities & Social Sciences

Brian Philip Owensby. *Empire of Law and Indian Justice in Colonial Mexico.* Stanford: Stanford University Press, 2008. x + 379 pp. $65.00 (cloth), ISBN 978-0-8047-5863-5.

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Published on H-Law (December, 2008)
Commissioned by Michael J. Pfeifer

Law and Indigenous Peoples in Seventeenth-Century Mexico

With the acquisition of its American colonies, Spain became the first European power to wrestle with issues such as the justification for conquest, the place of the indigenous population in colonial society, and their role as subjects to the crown. Conquest brought new subjects as well as new challenges to the crown, which accepted the defeated as "inferior" subjects of the empire.

Legislation sought to separate the conquered from the conquerors by establishing two "republics" that, although complementary, were to be kept separate. Legally, such division continued to exist into the seventeenth century but in reality both encroached on each other and were separated by a large gray area rather than a clear line. *Empire of Law and Indian Justice in Colonial Mexico* explores the role played by the legal processes "in mediating the relationship among people very differently situated in Spain's empire in the New World." (p. 3) The concept of rule of law is at the heart of Owensby's argument; not the modern "impartial, rational, impersonal rules" that govern a legal process foreign to Latin America, but a legal process that is "part of a wider societal conversation about what is right or wrong" (p. 7). Law was to facilitate the peaceful *convivencia* of both republics and offer the conquered a means to defend their position and possessions despite their disadvantaged situation. Furthermore, the author argues that the law also provided the link joining a distant monarch to his faithful Indian subjects and these to the outside world. The ability to litigate and participate empowered Indian communities to carve out a space for themselves in the colonial world.

Legislation provided the rules but the responsibility of adjudicating competing rights fell ultimately to a monarch, who also had the obligation to protect his weaker vassals and to maintain peace and order in society. The medieval roots of the monarch's role as protector may be found in the *Siete Partidas* that established the obligation of the king to look after the weakest members of society, such as orphans, widows, the poor, and others who were described as "miserables." After the conquest the indigenous peoples came to join this group and learned to avail themselves of this category to give more weight to their appeals.

The crown's role as protector was contradicted by the realities of colonization. Indigenous peoples might be protected but they also had to be exploited in the service of the empire. Thus the dichotomy: a protective system that ensured the natives' welfare while at the same time subordinating them to the needs of the conquerors and the state. *Empire of Law and Indian Justice in Colonial Mexico* centers on the double role of this system and on the resulting "dialogue between rulers and ruled."

Owensby's work concentrates on the seventeenth century after the initial chaotic years of Spanish rule. By then, the indigenous peoples had familiarized themselves with Spanish legislation and legal procedure and were more willing to engage in litigation. The work is divided into nine thematic chapters dealing with land, governance, rebellion, and punishment. Owensby starts by providing the reader with a historiographical background, the definition of relevant terms, and a clear statement of the goals in writing this work.

The succinct analysis of the development of the *encomienda* (labor grant), the *repartimiento* (forced paid labor) and the *congregaciones* (relocation of Indigenous communities) included in the second chapter is of great value to non-specialists. Of special interest is the process by which the crown tried to insure the peaceful and "fair" occupation of land. Pre-conquest political and landholding structures remained largely intact and corporate until 1580 when population decline and the forced relocation of the *congregaciones* opened new opportunities for those wishing to acquire land. By the late sixteenth century the non-Indian population began to acquire properties either

legally (through purchase) or illegally (through occupation). In order to regularize the confusing situation resulting from the many sales, vacancies, and occupations the authorities resorted to the *composición* (a process by which a claimant obtained the title of vacant land). By opening a wider door to land acquisition, the *composición* and the *congregaciones* accelerated the non-Indigenous acquisition of lands. The process is considered a mere land grab by many scholars but Owensby disagrees. Although these measures did indeed contribute to the loss of Indigenous lands they must be understood within the context of the needs and legislation of the time.

The *composición* was an effort to legalize the changes occurring in a chaotic landholding system and to recognize land usage and productivity as claims of possession. The *composicion* should also be analyzed in the context of contemporary government protective measures. First, the lands vacated by the communities forced to relocate were to remain unoccupied and returned to the Indian communities that chose to return to their original locations. Second, the authorities introduced the *amparo*, (a legal device to prevent any change or action until a final decision had been reached) to prevent immediate losses or sudden, illegal occupation. Third, at the petition of the viceregal authorities, the king ordered the establishment of the General Indian Court to provide a choice to indigenous claimants who decided to engage in litigation. With this legislation the crown provided the means by which a conversation between the different parties could begin and, hopefully, reach accommodation.

It was not long before the indigenous peoples mastered Spanish legal concepts, learned the relevant vocabulary, and became familiar with laws and decrees. They learned how to avail themselves of the *amparo* and other legislation; they learned the language of negotiation indispensable for their survival. Indians also learned that the power of the king was limited, diffused by distance and intermediaries. Nonetheless, they appealed to the royal conscience and to the image of the protector king responsible for the welfare of his weakest subjects. Various examples illustrate their manipulation of concepts to give more weight to individual and communal demands. Indians embraced their status of inferior subjects, of "miserables" according to contemporary legal terms, and appealed to the monarch´s conscience, often referring to his duty as protector and his long arms reaching down to them to impart justice. The records indicate that at least some Indian leaders and commoners knew the laws and were familiar with recent decrees. More than anything, they persevered and as Owensby states, "law was kept alive by the Indians' energy and engagement and by their insistence in pursuing their goals and defending their interests in the face of enormous challenges" (p.306).

Empire of Law and Indian Justice in Colonial Mexico analyzes other important issues such as the administrative and power changes caused by colonization. Preconquest political and landholding structures remained largely intact; power continued to be concentrated in the hands of a select number. Municipal and village posts were transferred according to the area's traditions but the power of local leaders was now limited by the community's ability to appeal to higher authorities. Individuals and entire villages began to appeal to the courts to curb abuse and usurpation of power. Factionalism and local and outside interests often obscured legitimate claims and complicated the judge's task. Justice, the author warns us, was more in the process than in the result. Common people wanted their voices heard regardless of the outcome. Law gave communities and individuals a sense of empowerment, cooled tempers, smoothed relations between accused and accuser, and provided room for accommodation.

In chapter 8, "Rebellious Subjects," the author changes his approach by concentrating exclusively on the 1660 Indigenous rebellion in the Tehuantepec and neighboring Oaxaca regions and the reaction of the authorities. The chapter suffers from some weaknesses. The narrowing of the discussion parameters undermines the comprehensive picture offered by the rest of the work; some interpretations of the surviving evidence are not completely convincing; and the many phrases in the conditional tense are less than reassuring. Despite these problems, the cases are compelling and will no doubt open a fruitful debate.

The book closes with the ascent of the Bourbons to the Spanish throne and a summary of the consequent administrative and political reforms imposed on the empire that undermined the Indians' ability to partake in the "conversation." As a more pragmatic approach took hold, the authorities condemned the Indians' litigiousness and tried to discourage it by abolishing the General Indian Court. With independence, liberalism changed the rules of the game, forcing the Indians to adapt to a theoretically egalitarian system that did not recognize the old values and arguments. Indians lost the few defenses that their inferior status had provided them in colonial times without gaining anything in return. The conversation ended, leaving them increasingly marginalized.

Despite some minor problems, *Empire of Law and Indian Justice in Colonial Mexico* is a compelling work that

offers a new approach to the relations between indigenous peoples, their king, and his representatives and to the different meanings of law in the colonial context. Its clear summary of legal concepts is invaluable for the understanding of early colonial Mexican history and society and it will be of great appeal to legal and labor history specialists as well as those interested in indigenous issues and colonialism. Well crafted and clearly written, this work offers a fascinating view of seventeenth-century Mexican society that will engage its reader regardless of specialization.

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Citation: Luz Maria Hernandez-Saenz. Review of Owensby, Brian Philip, *Empire of Law and Indian Justice in Colonial Mexico.* H-Law, H-Net Reviews. December, 2008.
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