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Modern History Sourcebook: The New Laws of the Indies, 1542

The Laws and ordinances newly made by His Majesty for the government of the Indies and good treatment and preservation of the Indians created a set of pro-Indian laws - so pro-Indian that they some had to be revoked in Mexico and in Peru due to settler opposition. where the viceroy was killed when he attempted to enforce them.

The conflict was between "feudalists" who favored the encomienda system because it maintained society as in the Old World, and the more centralizing "regalists" who wanted to preserve royal power in Spain's new Empire. Eventually the encomienda was allowed to continue.

Charles by the divine clemency Emperor ever august, King of Germany. . . . To the Most Illustrious Prince Don Philip our very dear and very beloved grandson and son, and to the Infantes our grandsons and sons, and to the President, and those of our Council of the Indies, and to our Viceroys, Presidents and Auditors of our Audiencias and royal Chanceries of our said Indies, Islands and Continent of the Ocean Sea; to our Governors, Alcaldes mayores and our other Authorities thereof, and to all the Councils, magistrates, regidores, knights, esquires, officers, and commoners of all the cities, towns, and villages of our said Indies, Islands, and Tierra-firme of the Ocean Sea, discovered and to be discovered; and to any other persons, captains, discoverers, settlers, and inhabitants dwelling in and being natives thereof, of whatever state, quality, condition and pre-eminence they may be. . . .

Know ye, That having for many years had will and intention as leisure to occupy ourselves with the affairs of the Indies, on account of their great importance, as well in that touching the service of God our Lord and increase of his holy Catholic faith, as in the preservation of the natives of those parts, and the good government and preservation of their persons; and although we have endeavoured to disengage ourselves to this effect, it has not been possible through the many and continual affairs that have occurred from which we were not able to excuse ourselves, and through the absences from these kingdoms which 1 the King have made for most necessary causes, as is known to all: and although this incessant occupation has not ceased this present year, nevertheless we commanded persons to assemble of all ranks, both prelates and knights and the clergy with some of our Council to discuss and treat of the things of most importance, of which we had information that they ought to be provided for: the which having been maturely debated and consulted upon, and in presence of me the King divers times argued and discussed: and finally having taken the opinion of all, we resolved on commanding to enact and ordain the things contained below: which besides the other Ordinances and Provisions that at different times we have commanded to be made, as by them shall appear, we command to be from henceforwards kept inviolably as laws. . . .

Whereas one of the most important things in which the Audiencias are to serve us is in taking very especial care of the good treatment of the Indians and preservation of them, We command that the said Audiencias enquire continually into the excesses or ill treatment which are or shall be done to them by governors or private persons; and how the ordinances and instructions which have been given to them, and are made for the good treatment of the said Indians have been observed. And if there had been any excesses, on the part of the said Governors, or should any be committed hereafter, to take care that such excesses are properly corrected, chastizing the guilty parties with all rigour conformably to justice. The Audiencias must not allow that in the suits between Indians, or with them, there be ordinary proceedings at law, nor dilatory expedients, as is wont to happen through the malice of some advocates and solicitors, but that they be determined summarily, observing their usages and customs, unless they be manifestly unjust; and that the said Audiencias take care that this be so observed by the other, inferior judges.

Item, We ordain and command that from henceforward for no cause of war nor any other whatsoever, though it be under title of rebellion, nor by ransom nor in other manner can an Indian be made a slave, and we will that they be treated as our vassals of the Crown of Castile since such they are.

No person can make use of the Indians by way of Naboria or Tapia or in any other manner against their will.

As We have ordered provision to be made that from henceforward the Indians in no way be made slaves, including those who until now have been enslaved against all reason and right and contrary to the provisions and instructions thereupon, We ordain and command that the Audiencias having first summoned the parties to their presence, without any further judicial form, but in a summary way, so that the truth may be ascertained, speedily set the said Indians at liberty unless the persons who hold them for slaves show title why they should hold and possess them legitimately. And in order that in default of persons to solicit the aforesaid, the Indians may not remain in slavery unjustly, We command that the Audiencias appoint persons who may pursue this cause for the Indians and be paid out of the Exchequer fines, provided they be men of trust and diligence.

Also, We command that with regard to the lading of the said Indians the Audiencias take especial care that they be not laden, or in case that in some parts this cannot be avoided that it be in such a manner that no risk of life, health and preservation of the said Indians may ensue from an immoderate burthen; and that against their own will and without their being paid, in no case be it permitted that they be laden, punishing very severely him who shall act contrary to this. In this there is to be no remission out of respect to any person.

Because report has been made to us that owing to the pearl fisheries not having been conducted in a proper manner deaths of many Indians and Negroes have ensued, We command that no free Indian be taken to the said fishery under pain of death, and that the bishop and the judge who shall be at Venegueta direct what shall seem to them most fit for the preservation of the slaves working in the said fishery, both Indians and Negroes, and that the deaths may cease. If, however, it should appear to them that the risk of death cannot be avoided by the said Indians and

Negroes, let the fishery of the said pearls cease, since we value much more highly (as is right) the preservation of their lives than the gain which may come to us from the pearls.

Whereas in consequence of the allotments of Indians made to the Viceroy, Governors, and their lieutenants, to our officials, and prelates, monasteries, hospitals, houses of religion and mints, offices of our Hazienda and treasury thereof, and other persons favoured by reason of their offices, disorders have occurred in the treatment of the said Indians, it is our will, and we command that forthwith there be placed under our Royal Crown all the Indians whom they hold and possess by any title and cause whatever, whoever the said parties are, or may be, whether Viceroy, Governor, or their lieutenants, or any of our officers, as well of Justice as of our Hazienda, prelates, houses of religion, or of our Hazienda, hospitals, confraternities, or other similar institutions, although the Indians may not have been allotted to them by reason of the said offices; and although such functionaries or governors may say that they wish to resign the offices or governments and keep the Indians, let this not avail them nor be an excuse for them not to fulfill what we command.

Moreover, We command that from all those persons who hold Indians without proper title, having entered into possession of them by their own authority, such Indians be taken away and be placed under our Royal Crown.

And because we are informed that other persons, although possessing a sufficient title, have had an excessive number of Indians allotted to them, We order that the Audiencias, each in its jurisdiction diligently inform themselves of this, and with all speed, and reduce the allotments made to the said persons to a fair and moderate quantity, and then place the rest under our Royal Crown notwithstanding any appeal or application which may be interposed by such persons: and send us a report with all speed of what the said Audiencias have thus done, that we may know how our command is fulfilled. And in New Spain let it be especially provided as to the Indians held by Joan Infante, Diego de Ordas, the Maestro Roa, Francisco Vasquez de Coronado, Francisco Maldonado, Bernardino Vazquez de Tapia, Joan Xaramillo, Martin Vazquez, Gil Gongales de Venavides, and many other persons who are said to hold Indians in very excessive quantity, according to the report made to us. And, whereas we are informed that there are some persons in the said New Spain who are of the original Conquistadores and have no repartimiento of Indians, We ordain that the President and Auditors of the said New Spain do inform themselves if there be any persons of this kind, and if any, to give them out of the tribute which the Indians thus taken away have to pay, what to them may seem fit for the moderate support and honourable maintenance of the said original Conquistadores who had no Indians allotted to them.

So also, The said Audiencias are to inform themselves how the Indians have been treated by the persons who have held them in encomienda, and if it be clear that in justice they ought to be deprived of the said Indians for their excesses and the ill-usage to which they have subjected them, We ordain that they take away and place such Indians under our Royal Crown. And in Peru, besides the aforesaid, let the Viceroy and Audiencia inform themselves of the excesses committed during the occurrences between Governors Pizarro and Almagro in order to report to us

thereon, and from the principal persons whom they find notoriously blameable in those feuds they then take away the Indians they have, and place them under our Royal Crown.

Moreover, We ordain and command that from henceforward no Viceroy, Governor, Audiencia, discoverer, or any other person have power to allot Indians in encomienda by new provision, or by means of resignation, donation, sale, or any other form or manner, neither by vacancy nor inheritance, but that the person dying who held the said Indians, they revert to our Royal Crown. And let the Audiencias take care to inform themselves then particularly of the person who died, of his quality, his merits and services, of how he treated the said Indians whom he held, if he left wife and children or what other heirs, and send us a report thereof with the condition of the Indians and of the land, in order that we may give directions to provide what may be best for our service, and may do such favour as may seem suitable to the wife and children of the defunct. If in the meantime it should appear to the Audiencia that there is a necessity to provide some support for such wife and children, they can do it out of the tribute which the said Indians will have to pay, or allowing them a moderate pension, if the said Indians are under our Crown, as aforesaid.

Item, We ordain and command that our said Presidents and Auditors take great care that the Indians who in any of the ways above mentioned are taken away, and those who may become vacant be very well treated and instructed in the matters of our holy Catholic faith, and as our free vassals. This is to be their chief care, that on which we principally desire them to report, and in which they can best serve us. They are also to provide that they be governed with justice in the way and manner that the Indians who are under our Royal Crown are at present governed in New Spain. . . .

Source:

From The New Laws of the Indies, ed. Henry Stevens (London: The Chiswick Press, 1893), pp. iii-xvii, passim.