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BOOK REVIEW

Justice by Insurance, by Woodrow Borah. Berkeley, Cal.: University of California Press, 1983. 479 pp.

In his groundbreaking study, Borah, an emeritus professor of the University of California at Berkeley, examines a historical innovation in the Spanish judicial system, which was a response to the problems of harmonizing dissimilar systems of law and custom of two cultures. In this instance, the cultures were the native Indians of Mexico and their Spanish conquerors; their ideas of the proper governance of society differed in almost all fundamental aspects. In evolving an institutional response, the Spanish drew on their own experience as a subjugated people under the rule of the Roman Empire and the Moors.¹

The Spanish solved the problems of adjusting the expectations of two cultures within a common political administration and of providing a legal remedy for the politically disadvantaged by creating a special jurisdiction vested in the viceroy of New Spain and a special legal staff. This was the General Indian Court, which operated continually from 1592 to 1820.

In ten chapters, Professor Borah traces the development of this special court system and its professional corps of legal administrators and attorneys—the legal aides of the Half-Real—from the pre-Conquest experiences of the Spanish through the system's glory years to its eventual demise under pressure to strip the native population of any special legal protections. In New Spain the Spanish conquerors initially tried to maintain native laws and customs that were not deemed contrary to Christian morals. The Spanish royal judiciary, however, began a wholesale overturning of the traditional Indian way of life. In response, the Indian population began vast amounts of litigation, using the royal court system as a formidable weapon to delay the depredations of their European conquerors.² In return, the Spanish court functionaries, whose income depended on fees and gifts from the litigants, preyed on Indians seeking legal enforcement of their rights by charging excessive fees. The colonial judicial system soon became bogged down to the point of paralysis.

The compromise necessary to restore the court system to efficiency was the creation of the General Indian Court, which pro-

1. Compare the Roman *ius gentium* in its application to foreign subjects of the empire with the Moslem practice of allowing subject Christian people to apply their own law in most disputes.

2. W. BORAH, *JUSTICE BY INSURANCE*, at 40-41.

vided free legal services to Indians and applied simplified procedures in their legal controversies.³ The system provided legal services for the Indian population at little individual cost, and the expenses of the entire program were paid from regular, mandatory contributions from the native communities, in effect a nationwide legal insurance system.⁴ Although modern times have seen a resurgence of interest in prepaid legal insurance programs, no system extant approaches the scope or longevity of this mandatory legal insurance scheme.

Eventually, as might be expected of an innovation designed to aid society's least fortunate, the convenient procedures and low group cost legal services afforded by the General Indian Court were challenged as a threat to the dominant members of society. When the Indians were culturally separate and a potential danger, they were accommodated in special ways to direct their protests into accepted channels; when the Indians had economically adjusted to the Conquest so as no longer to constitute a threat, the accommodation was withdrawn. The intellectual climate of the time provided the justification for this deprivation—the aftermath of the French Revolution of 1789 and the writings of Locke, Rousseau, and Montesquieu promoted an ideology of equality of all citizens under the law, a rationalization that effectively deprived the oppressed native population of the few special protections they enjoyed under the law.⁵ The General Indian Court vanished in 1820, the victim of real and imagined shortcomings.

The General Indian Court of Mexico and its unique legal insurance program for the Indians disappeared. Some may question the relevance of this book at all, since it examines a program that has not existed for more than a hundred and sixty years. Professor Borah answers this accusation best himself:

The problems which the Spanish government tried to solve in colonial Mexico by establishing a system of legal insurance . . . are basic to the experience of mankind wherever and whenever

3. These ideas were borrowed from the ideas of a legally recognized class of *miserables* in Spain, who were represented free of charge by an *abogado de pobres*, usually a salaried municipal or state official.

4. In fact, certain limited areas were exempt from the General Indian Court's jurisdiction, most notably the seigniorial estates granted to Hernan Cortes as a reward for the conquest of Mexico.

5. This is reminiscent of Voltaire's observation that "the law in its majesty forbids both the rich and the poor from sleeping under bridges."

two peoples have come into contact for more than very short periods. The closer the contact and the longer the period, the greater will be the need for accommodation and adjustment between differing ideas and provisions of law, equity, and morality.⁶

A study of the General Indian Court may provide a guide to the fate of any program to compensate for Indian nations' historical exploitation.

Bruce Freeman

6. BORAH, *supra* note 2, at 1.

