
Crime And Punishment In Colonial New Mexico

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In 1886, the *Santa Fe Daily New Mexican* printed a brief item copied from the *Las Vegas Optic*, another of New Mexico's leading newspapers. The article noted that in the "old Spanish days," of New Mexico, legal matters were settled in the ancient Palace of the Governors "with certainty and silence." According to the article, when a man was arrested, he was sentenced and executed "all within an hour."

The anonymous author of this tidbit expressed a common, but erroneous perception of the Spanish colonial experience in the New World. While it is true that the Spanish government and church officials could be overbearing and sometimes brutal, those that paint an image of the Spanish colonial judicial system as cruel and unjust ignore the fact that the Spanish system was one of law. The documentary evidence from New Mexico's own Spanish Archives makes it very clear that New Mexicans regularly exercised their rights of petition and appeal allowed by that law. This included frequently successful legal actions against overbearing officials who exceeded their authority as well as those incompetent ones who ignored their responsibilities.

This essay will be a brief overview of what New Mexico's Spanish and Mexican period archives tell us of how that judicial system worked. The *Spanish Archives of New Mexico, 1621-1821*, and

the *Mexican Archives of New Mexico, 1821-1846*, contain hundreds of civil and criminal cases. These remarkable manuscript collections provide an opportunity to examine how crime was investigated and offenders punished during these periods of New Mexico's history. These manuscripts clearly show that the Spanish colonial judicial system was not administered by corrupt and evil officials who inflicted horrendous and arbitrary punishments on a downtrodden populace.

The Spanish judicial system was generally not punitive in its judgements. This is not to say corporal punishments were not used. The use of stocks (*el cepo*), public flogging and confinement in chains were relatively common. Whipping as a punishment for persons convicted of certain crimes, was abolished by royal decree in 1813, but later re-instituted by the

Kearny Code of 1846. Long prison terms were rarely imposed. The concept of using a prison term as punishment was seen as a useless expense. Instead of imprisonment or corporal punishments, the adjudication process in Spanish Colonial New Mexico emphasized payment of compensatory damages and other sentences such as exile, monetary fines and imposition of labor at public works or at *obrajes* (mills that produced woolen products). In this system, convicts were contracted to private enterprise, helping to finance the judicial system. This also provided cheap labor for municipal projects and manpower to bolster defenses along the frontier. Finally, the death penalty was reserved for cases of treason, rebellion, desertion, and premeditated murder.

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TYPICAL PROCEDURE

Generally, the judicial process began when a local official reported that a crime had been committed. The reporting officer described the crime scene, provided preliminary sworn statements from witnesses, indicated whether there was a suspect. If an arrest was made, the suspect was often ordered sent in chains and under guard to Santa Fe because local facilities for securing prisoners were generally inadequate.

The governor, who in addition to his civil and military duties, served as the chief judicial authority in the province, reviewed the report, and if necessary, returned it to local officials with instructions on how to proceed. Additional testimony was collected as needed, sometimes including a personal interrogation of the suspect or witnesses by the governor. These investigations and reports often included testimony by persons commissioned to examine wounds and offer an opinion on the seriousness of injuries incurred in assault. In murder cases, these reports served as a post-mortem examination that include descriptions of bruises, wounds or other injuries which may have been the cause of death. A few even required an exhumation.

THE CAREO

To settle differences in testimony, judicial officials often utilized an interesting procedure called a *careo*. This was a face-to-face [*cara* is the Spanish word for face] encounter between the accused and witnesses or between witnesses with conflicting stories. Here, each was read the other's testimony in the presence of both, and each was asked if they had anything to add or change. Often, the *careo* accomplished nothing, as

both sides stuck to their differing stories, but occasionally, the process resulted in confessions or admissions of perjury.

BOND AND BONDSMEN

Suspects were often held in jail for the time it took to determine the facts of a case. This was not utilized as punishment, but from concern that suspects would escape or seek sanctuary. Suspects were sometimes allowed a form of "house arrest" while awaiting a determination of their case. Those held in jail, however, could petition the governor for release so they could see to the needs of their families, crops and livestock. This type of request was granted after the suspect's property was inventoried and a lien placed on it to assure his appearance at sentencing and payment of any subsequent fines or court costs. On several occasions, the official authorized to do the inventory reported the person charged with the crime had no property of value, or was in contemporary terms, indigent. To obtain a release under these circumstances, the suspect had to find bondsmen who often provided it by binding the prisoner to personal labor. The wording of these bond cases leaves one with the impression that bondsmen committed themselves to serve the sentence or pay the fine imposed in the case if the person they bonded did not show up for sentencing.

THE AUTO DE SENTENCIA

Finally, sometimes over a period that extended through several years in serious or complicated cases, the governor pronounced a sentence and ordered the prisoner be informed. This *auto de sentencia*, or formal reading of the

sentence, was a fascinating procedure in which the sentence was read to the prisoner in the presence of witnesses, and in which the prisoner certified that he/she not only understood, but would comply. Often, the *auto* noted the prisoner had placed the document on which the sentence was written

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to their forehead to denote they understood what it contained.

THE SIETE PARTIDAS AND RECOPIACION

All this was done, of course, without benefit of a jury. Guilt, innocence and sentence were solely the responsibility of the governor, who based his decision upon his knowledge of the *Recopilación*, or published compilation of Spanish colonial law. This compilation, often called the "Laws of the Indies," was published and distributed to the Spanish colonies after 1680. These laws are themselves based on the *Siete Partidas*, a 13th-century compilation done by the Iberian King Alfonso el Sabio [Alfonso the Wise].

The *Siete Partidas* specified that punishments could be made only

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after a crime had been proven or a confession obtained, and that judgments could not be based on suspicions, signs, or presumption. These precepts carried over to the *Recopilación*, including the limitation of the death penalty in criminal cases to the premeditated killing of another and certain cases of treason and rebellion.

As the governor contemplated each case brought before him, he sometimes sought legal advice from an *abogado* or *licenciado*. Colonial New Mexico, however, seldom enjoyed the services of lawyers. This lack of legal expertise forced the governor to refer serious or complicated cases to officials in Mexico for review and comment before he reached a decision. How well this process worked often depended on the knowledge and personal abilities of individual governors, and seems to have varied greatly through the various administrations.

The documentation shows that fines, terms of public service, and exile were the most common punishments for all crimes, including serious felonies such as murder. The longest sentence found in New Mexico's archives is 10 years of labor at the *obraje* at Encinillas in northern Chihuahua, imposed on Juan Francisco Gonzales and Manuel Baca for murder in 1800.

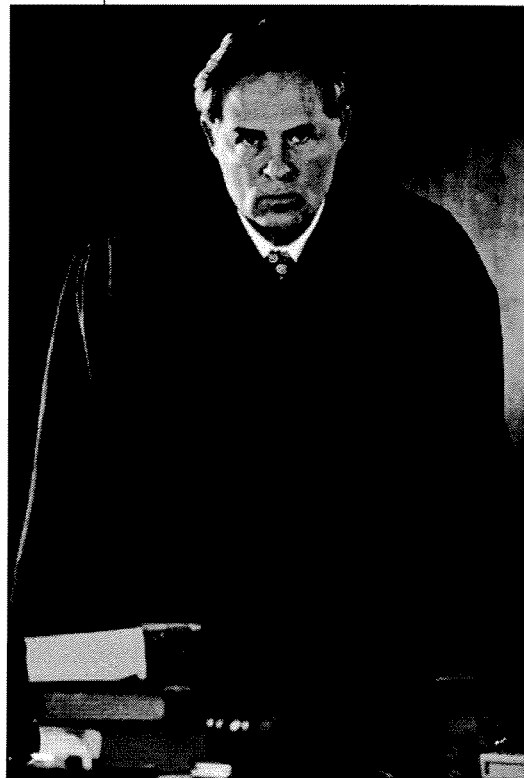
The length of sentence is consistent with guidelines found in the *Siete Partidas* and the *Recopilación*.

FINES AND RESTITUTION

One of the heaviest fines was levied against Silvestre Pacheco, a soldier found guilty of killing Joseph Baca during a fight at El Paso del Norte in 1687. Pacheco had been initially sentenced to death, but when he appealed, the governor decided there was a serious lack of experienced soldiers along the frontier and rescinded the sentence. Instead, he fined Pacheco 100 pesos and ordered him back to service with the troops at the El Paso *presidio*. In 1768, a 100-peso fine was imposed on Domingo de Luna at Albuquerque for refusing to take part in a Navajo campaign.

Fines also took the form of restitution for losses incurred by a victim and his family, or to cover the costs of medical care when someone was injured during an assault. Sometimes the fine or restitution was ordered paid from the wages earned by the prisoner at

the *obraje* or public works project to which he was assigned. The costs of prosecution were also charged against the person convicted, and liens were sometimes levied on their property to assure recovery of



these expenses. The 70-peso fine imposed on Antonio de Ortega in 1740 for mistreatment of his Indian servants, for example, specified that

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20 pesos of this were to be applied towards court costs and medical care for the injured servants. Forty pesos of the fine were to be paid off by doing repairs on the Palace of the Governors.

EXILE OR BANISHMENT

One of the most interesting judicial sentences was exile. Persons convicted of crimes such as slander, assault, petty theft, and various types of scandalous behavior that disturbed the peace or were blatant violations of public morals (such as adultery or cohabitation), were exiled to various points throughout the province as well as to Chihuahua and Sonora. Bernalillo, Santa Cruz de La Cañada, Belen, Chimayo and El Paso del Norte are only some of the places to where individuals were exiled within New Mexico. It should be noted that while a few individuals were exiled to Chimayo, there is no evidence of the long-held belief that Chimayo was utilized as a penal colony.

Terms of exile were usually for a specific period, although some were apparently permanent. In 1705, a very angry Governor Francisco Cuervo y Valdes, the founder of *villa* of Albuquerque, exiled an offender and his family to Bernalillo "for the time as it may please me." A terse warning added that future acts of disobedience would result in a 10-year sentence of royal service at the Pueblo of Zuñi, a sentence that many perceived to be the New Mexico equivalent of being sent to Siberia.

CAPITAL PUNISHMENT

One of the most significant findings of this research into New Mexico's Spanish archives is that they contain evidence of only two death sentences imposed and

carried out by civil courts in Spanish Colonial New Mexico. One is the fascinating case of a Cochiti woman and her daughter who were executed in 1779 for the murder of the daughter's husband. The other is the 1809 execution of two men at Santa Cruz de La Cañada for the murder of the French merchant Jacques D'Eglise. Both cases clearly show Spanish officials went to great lengths to establish premeditation before seeking to impose the death penalty.

The reader should note that in speaking of "only" two executions, one cannot ignore the fact that under certain circumstances, the Spanish were capable of, and did inflict some barbarous punishments. The sentences imposed on the survivors of the January 1599 native revolt at Acoma is but one such example. The sentences imposed by Juan de Oñate following the Acoma trials held at Santo Domingo specified that all males over the age of 25 were to have "one foot cut off" in addition to 20 years of personal servitude.

Several other Pueblo uprisings in the 17th century were suppressed by means that can be described as brutal by our contemporary standards. The executions that concluded the internal political struggle known as the "Rosas Affair" in 1643 were by means of beheading and garroting. Despite the undeniable severity of these punishments, it is important to understand these 17th-century executions were carried out in the aftermath of extraordinary circumstances such as revolution, rebellion or treason – and in a period before the *recopilación* was instituted.

SANCTUARY

Many judicial cases in the Spanish and Mexican archives are incomplete because they were never fully adjudicated after they developed into cases of sanctuary. When a suspect managed to take refuge in

a church or church grounds, he came under the protection of the Catholic Church, and could not be removed or interrogated without the consent of an ecclesiastical official. Even when civil officials were allowed to talk to a suspect, their questions were answered only by the standard sanctuary response, *iglesia mi llamo* –literally, "the church is my name." Entire interrogations done in sanctuary cases often consist of questions followed by nothing but this answer, a sort of "Fifth Amendment" protection against self-incrimination. Many suspects claiming sanctuary disappeared in the dark of night and were seldom heard from again.

CONCLUSIONS

The entire judicial process in colonial New Mexico centered around the governor, who in addition to his administrative and military duties, functioned as the principal judicial officer. *Alcaldes* and other persons commissioned by him could conduct investigations and develop judicial cases, but sentencing was his responsibility alone. When he needed advice on points of law or due process, he had to send the case to Mexico for review and consultation because New Mexico was served by very few lawyers for most of the Spanish and Mexican periods. These consultations delayed the judicial process due to distances between Santa Fe and legal authorities in Chihuahua, Durango, or even Mexico City. When these consultations pointed out procedural errors or problems arising from the lack of notaries, seal paper, and other nuances of due process, cases often had to be reconstructed.

These problems were compounded by a general lack of education among local officials. The 1832 "Supplement" to Pedro Bautista Pino's 1812 report on New Mexico contended that crime in

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New Mexico was seldom punished because there was "absolutely no one who [knew] how to conduct an examining trial, to prepare a defense, or to prosecute a case." Similar complaints were periodically voiced by Spanish and Mexican governors.

Whether or not New Mexican officials were ill-trained and unqualified to conduct judicial proceedings, the documentation makes it clear they went to great lengths to determine the facts of a case and to assure that justice was served. While this essay is only a cursory review of the judicial system of colonial New Mexico, it may serve to show that although this colonial judicial system had its defects, it was also painfully careful in its deliberations, and above all, remarkably humane in its judgments. The term that often comes to mind when reviewing these ancient cases is "creative sentencing," but a creativity that was deeply rooted in law and due process.

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- 4 George P. Hammond and Agapito Rey, *Don Juan de Oñate, Colonizer of New Mexico, 1595-1628* 2 Vol. (University of New Mexico Press, 1953)
- 5 Jill Mocho, *Murder and Justice in Frontier New Mexico, 1821-1846* (University of New Mexico Press, 1997)
- 6 Marc Simmons, *The Last Conquistador* (University of Oklahoma Press, 1991)
- 7 The Spanish and Mexican archives used in this research are located at the New Mexico State Records Center and Archives in Santa Fe. The microfilm edition of these collections is available at several locations, including the University of New Mexico, New Mexico Highlands in Las Vegas, and the public libraries in Albuquerque and Española.



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