

2-1-1998

The Legal Culture of Northern New Spain, 1700-1810, by Charles
R. Cutter

Michael C. Scardaville
University of South Carolina - Columbia, mscardaville@sc.edu

Follow this and additional works at: https://scholarcommons.sc.edu/hist_facpub



Part of the [History Commons](#)

Publication Info

Published in *Hispanic American Historical Review*, Volume 78, Issue 1, 1998, pages 131-132.

<http://www.hahr.pitt.edu/>

© 1998 by Duke University Press

This Book Review is brought to you by the History, Department of at Scholar Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

ity and knowledge than in the original Spanish. Likewise, Christ is presented as a dutiful and obedient son, lacking the drive to disobey his parents and ancestors, which undercuts the crucial Christian concept of free will. In accord with Nahua culture, the translator downplayed the individual's moral decisions to emphasize the salvation of the larger community and the person's duty to be an obedient member. Furthermore, time repeats itself in the new version, as Christ's passion parallels or fulfills parts of the Old Testament, instead of moving inexorably forward to the Last Judgment called for in Christian doctrine.

Christianity, as presented, is made ancient and predictable in indigenous cultural terms. The natives sought to reconcile Christianity to their cultural beliefs, thus giving their own history and culture continued meaning and elevating their moral standing, though still within a colonial framework. While the Spaniards and their regime may have remained foreign and imposed, the natives saw the Church and Christianity as arriving separately and naturally to redeem them and their societies.

Burkhart affords a full history of the composition and provenance of this translation. She also presents the play as an example of a dramatic genre within both Spain and Mexico. The author demonstrates her sophisticated knowledge of Christian thought and of the history of drama, besides her command of Nahuatl culture and linguistics.

After slightly more than 100 pages of such history and commentary, Burkhart provides a side-by-side English translation of the Spanish and Nahuatl versions of "Holy Wednesday" encompassing some 50 pages. Her impressive annotations to these two versions take up another 90 pages. A useful appendix offers five selections from other sixteenth-century Nahuatl texts on the same themes treated in the play. On the final page of the book, the University of Pennsylvania Press advertises that an electronic version of both the original Spanish and Nahuatl play is available for sale separately.

JOHN E. KICZA, Washington State University

The Legal Culture of Northern New Spain, 1700–1810. By CHARLES R. CUTTER.
Albuquerque: University of New Mexico Press, 1995. Plates. Maps. Notes.
Bibliography. Index. xii, 227 pp. Cloth, \$39.95.

According to Charles Cutter—and contrary to what is commonly posited by Borderland scholars—typically justice on the northern frontier of colonial Mexico was not abusive, arbitrary, and corrupt. As over 600 criminal and civil cases from New Mexico and Texas repeatedly demonstrate, defendants had several opportunities to state and recast their positions in the course of a trial; the courts systematically provided legal counsel; defendants successfully challenged the acceptability of potential witnesses; magistrates aggressively sought out the "facts" of the case; and they seldom called for corporal and capital punishment, relying instead on sentences that generally sought compromise and conciliation. How could this be, particularly in that region of New Spain in which the local judiciary had no formal training? Such judicial practices, asserts

Cutter, are testimony to the strength of the Hispanic legal culture, a belief system shared and put into practice by the state and subjects alike, and that reached beyond the major urban and administrative centers to the peripheries of Spain's colonies.

This highly flexible and adaptive legal culture, especially on the frontier and other rural areas of the Spanish American empire, was shaped by the notion of *derecho vulgar*, a Hispanic version of popular or common law through which subjects from all social strata constructed a judicial system based more on local custom and sense of community-defined fairness (*equidad*) than on royal legislation and juridical texts. Cutter's detailed analysis of judicial procedure in cases of ordinary (i.e., neither military nor ecclesiastic) royal justice reveals a legal system that repeatedly met the needs of most colonists and the crown, thereby fostering and embodying a "convergence of community expectations and royal law" (p. 144). Such conclusions will undoubtedly spark debate with historians who tend to emphasize social conflict over social harmony and who focus on colonial subjects who confront or resist the state and other dominant institutions and groups. Cutter is no apologist, however, for a system designed to uphold the prescribed social order and community, rather than individual, aspirations. Through a careful reading of contemporary judicial discourses and extant court cases, he offers an understanding of the legal culture on its own terms, not ours.

This important monograph challenges historians to rethink their views of the colonial judiciary. Although Cutter does not explicitly situate his study in the theoretical literature on issues of power and authority, he does recognize and amply documents the key role that the legal system played in fostering the hegemony of the Spanish colonial state. His meticulously researched study is indispensable reading for those who wish to envision Hispanic colonial law as it was articulated and used by royal officials and by many colonists from all walks of life.

MICHAEL C. SCARDAVILLE, University of South Carolina

The New Orleans Cabildo: Colonial Louisiana's First City Government, 1769–1803.

By GILBERT C. DIN and JOHN E. HARKINS. Baton Rouge: Louisiana State University Press, 1996. Illustrations. Notes. Bibliography. Index. xvii, 330 pp. Cloth, \$45.00.

In 1768, members of the French Superior Council led the revolt against the cession of Louisiana to Spain. Thus it is not surprising that in repressing the revolt in 1769, Alejandro O'Reilly replaced the Superior Council with a *cabildo*, the standard form of municipal government in Spanish colonies. The *cabildo* continued to function until 1803, when Spanish domination of Louisiana came to an end. *The New Orleans Cabildo*, coauthored by Gilbert Din and John Harkins, is a substantially revised and updated version of latter's 1976 doctoral dissertation (Memphis State University, 1976). It provides a background sketch of the population and social life of New Orleans in the Spanish era, an account of the events leading to O'Reilly's imposition of the *cabildo*, and a description of the complex internal structure and place of the *cabildo* at the bottom of Spain's imperial administrative and judicial systems. Flowcharts show lines of authority