

SPANISH INDIES LEGISLATION AS A MODEL FOR THE PROTECTION OF HUMAN DIGNITY

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Abstract

This paper is a review and legal analysis of the legislation decreed by the Spanish authorities to regulate the Spanish presence in the West Indies following their discovery in 1492, relationships with the indigenous people, their work, the teaching of Christian doctrine, and many other matters. Starting with the testament of Isabella the Catholic and covering up to the laws contained in the seventeenth-century *Recopilación de Leyes de los Reinos de Indias* (*Compilation of the Laws of the Indies*), all these rulings are shown to reveal the same inspirational principle that permeated their underlying ideology over the years: the protection of the life, family and property of the inhabitants of these lands. Not always applied, this specific area of the Laws of the Indies is unquestionably a true legal model – unprecedented in the world at that time – showcasing the very highest echelon of respect for human dignity.

Keywords

Laws of the Indies, indigenous people, Indians, dignity, human rights.

Isabella the Catholic died in Medina del Campo (Castile) on 26 November 1504. Six weeks earlier on 12 October, to commemorate an extremely important date from her reign – the anniversary of the Discovery of the Americas – she wrote her will, in which she referred to the annexation of the ‘Islands and Mainland of the Ocean Sea’ to Castile. However just three days before her death on 23 November, aware of some howling omissions in her testamentary provision,

the queen issued a codicil to her will. Of note is its thirteenth clause, which included a strict instruction to Ferdinand the Catholic – as well as their daughter Joanna and her husband, Philip the Handsome – to protect the inhabitants of those lands, as well as instruct them in the Catholic faith:

“Item, por quanto al tiempo que nos fueron concedidas por la Sancta Sede Apostolica las Yslas e Tierra Firme del Mar Oçeano, descubiertas e por descubrir, nuestra principal yntençion fue ... de procurar de ynduzir e traer los pueblos dellas e les convertir a nuestra sancta fe católica, e enbiar a las dichas Islas e Tierra Firme prelados e religiosos e clérigos e otras personas doctas e temerosas de Dios, para ynstruir los vezinos e moradores dellas en la fe católica, e les ensennar a doctrinar buenas costumbres, e poner en ello la diligencia devida ... por ende, suplico al rey, mi sennor, muy afectuosamente, e encargo e mando a la dicha prinçesa, mi hija, e al dicho príncipe su marido, que así lo hagan e cunplan, e que este sea su prinçipal fin, e que en ello pongan mucha diligencia e non consientan nin den lugar que los yndios, vezinos e moradores de las dichas Yndias e Tierra Firme, ganadas e por ganar, reçiban agravio alguno en sus personas ni bienes, mas manden que sean bien e justamente tratados, e si algund agravio han reçebido, lo remedien e provean por manera que no se exçeda en cosa alguna lo que por las letras apostolicas de la dicha conçession nos es iniungido e mandado”¹.

The literal tenor of this provision – a faithful reflection of the Catholic queen’s policy towards the Indians – has been the subject of much praise and many comments. Among them, that of Vidal González Sánchez, who, on the one hand summarises, in simple words, one of the queen’s main concerns before she died: “As she was dying... she was deeply concerned about the possibility that, once she was gone, such a detestable abuse of power [referring to a shipment of 500 slaves that Columbus sent to mainland Spain and whom the queen ordered to be freed] against the dignity of human beings might be repeated”. And, on the other, he concludes by pointing out the spirit that guided Queen Isabella in relation to the recently discovered lands and their inhabitants both throughout her reign and on her deathbed: “That is why she reaffirms the rights of her vassals, from a Christian point of view. That they not be subject to grievance; that they be justly and well treated: they are neighbours and inhabitants of places governed by the laws of

¹ Codicil granted by Isabella the Catholic on 23 November 1504 (in *El Testamento de Isabel la Católica y otras consideraciones en torno a su muerte*, Madrid, 2001, p 50).

Castile. They should always enjoy freedom, the broadest right of ownership, because they were upright men, sons of God and protected by law”².

Unquestionably, this mandate by the queen informed the Spanish monarchy’s policy and legislation regarding the Indies for centuries to come. Even more so after the famous ‘Sermon of Montesinos’, delivered by a Dominican friar named Antonio or Antón in December 1511 on the island of Hispaniola in the presence of other friars, various authorities, among them Governor Diego Colón, son of the discoverer, Spanish soldiers and agents such as Bartolomé de las Casas and, of course, a number of indigenous people. The most famous paragraph in this sermon is reproduced here; in its brevity we can find its grandeur:

“This voice,’ he said, ‘says that you are all in mortal sin and in it you live and die, because of the cruelty and tyranny you use against these innocent people. Tell me, by what right and under what justice do you hold these indigenous people in such cruel and horrible servitude? By what authority have you waged such detestable wars on these people who were in their calm and peaceful lands, where infinite numbers of them, with unheard-of deaths and ravages, you have devoured and destroyed? Why do you keep them so oppressed and exhausted, without giving them enough to eat or curing them of the sicknesses they incur from the excessive labour you give them, and they die, or rather you kill them, in order to extract and acquire gold every day? And what care have you for those who indoctrinate them, that they may know their God and Creator, and be baptised, hear mass, and keep the feasts and Sundays? Are they not men? Do they not have rational souls? Are you not obliged to love them as yourselves? Do you not understand this? Do you not feel this? How are you so deeply and lethargically asleep? Be assured that, in the state you are in, you can no more save yourselves than the Moors or Turks who lack and do not want the faith of Jesus Christ”³.

A call to respect every man regardless of his condition; a cry for personal freedom; an appeal to Christian love and the protection of human dignity that should prevail over and guide

² González Sánchez. V.: “Estudio”, en *El Testamento de Isabel la Católica y otras consideraciones en torno a su muerte*, p 208.

³ De las Casas, Fray B.: *Historia de las Indias* (selection, edition and notes by J. M. Martínez Torrejón, Alicante, 2006, at www.cervantesvirtual.com).

the Spaniards' actions in the Indies: that is the central idea of this sermon prepared in full conscience during the previous days by the entire Dominican community on the island.

These words pronounced by Montesinos on the island that today consists of the Dominican Republic and Haiti, entailed – as we will see below – the onset of a major controversy within the Spanish monarchy regarding the Spanish presence in those newly discovered lands, as well as concerning the treatment that the indigenous people received at the hands of some Spaniards. However, in addition – and precisely because of this – they gave rise, as Domínguez Nafría points out, to some of “... the most brilliant pages in the history of Spanish legal thought... the controversies regarding the treatment of the Indians, the immediate polemic about the rightful titles of ownership over the Indies and the new doctrines relating to fair warfare, together with the Laws of the Indies as a legal specification of such questions, as a whole represent an important testimony of the Spanish intellectual vitality of the sixteenth century”⁴.

After the denunciations against this sermon received at the Court in the following weeks, Ferdinand the Catholic adopted the position of a good Christian ruler, the same that his wife, Isabella the Catholic, who died in 1504, would have taken: he convened a meeting of theologians and jurists in the Castilian city of Burgos with the intention of deliberating on what could already be called the ‘Indian problem’. After this council was held, the *Royal ordinances for the good governance and treatment of the Indians*, also known as the *Laws of Burgos*, were approved. These *Ordinances* constitute the first major body of law with some weight dictated from Spain for these new lands, although the Capitulations of Santa Fe, signed between the Catholic Monarchs and Christopher Columbus on 17 April 1492, six months before his discovery, have the merit of being considered as the earliest legal document in time that inaugurated the category that would later be defined as the Laws of the Indies, since not in vain these provisions established “... the legal foundations for the government of the New World”⁵.

Although a certain sector of legal historiography denigrates the *Laws of Burgos* and even considers the traditional analysis of their content from the perspective of the birth of Human Rights fallacious, a careful reading of their 35 paragraphs shows quite clearly that, after acrimonious debates within the Council, the laws promulgated on 27 December 1512 by King Ferdinand reflect participants' agreement – as related by Sagarra Gamazo – on these seven points or principles: “the freedom of the indigenous people; their right to be instructed in faith; the

⁴ Domínguez Nafría, J. C., “Influencias de la conquista de América en la doctrina sobre el *ius in bello*”, en *Derecho y Administración Pública en las Indias Hispánicas. Actas del XII Congreso Internacional de Historia del Derecho Indiano*, Cuenca, 2002, pp 503-545, 503.

⁵ Castán Vázquez, J. M.: “El Derecho español en América”, en *Verbo*, Madrid, 1993, issues 319-320, pp 1081-1094, 1083.

advantage of their working while being treated well; their need to rest; their right to private property – own houses and haciendas –; living alongside Christians as a method for conversion; their right to a fair wage, in kind, in gowns and objects to meet their needs”⁶. Every personal and institutional reality must always be analysed by considering the prevailing values of the society in which such realities have come into being; otherwise, we would incur a fatal anachronism that would distort the judgment made. In this sense, in application of this maxim to the subject matter presented here, there is no doubt that the use of legal concepts such as fair wages, right to rest, private property and personal freedom are perhaps more typical of the nineteenth and twentieth and, even in some communities, of the twenty-first century, than of the beginning of the Modern Age. However, these concepts can be appreciated without any difficulty in the *Laws of Burgos*, whose paragraphs are analysed below⁷.

Regardless of the overriding concern for the evangelisation and religious instruction of the natives of the lands of the Indies, which derives from the literal reading of the first paragraphs: “hordenamos y mandamos quel vesyno a quien se encomendares los dichos indios sea obligado de les tener una cassa para iglesia ...” (par. 3); “... que asy mismo les enseñe los diez mandamientos y siete pecados mortales e los artyculos de la fe a los que a la tal persona pareciere que tengan capacidad e avilidad para los aprender ...” (par. 4); “... porque nuestra voluntad es que a los dichos indios se les busquen todos los mejores medios que se pudieren hallar para ynclinillos a las cossas de nuestra santa fee católica ...” (par. 6); “... hordenamos y mandamos que en las minas donde oiere copia de gente se haga una iglesia en lugar conveniente ...” (par. 8); “... hordenamos e mandamos que todos los vecinos e pobladores que tovieren yndios en encomienda sean obligados de hazer bautysar todos los indios niños que nacieren dentro de ocho días ...” (par. 12), a series of mandates are listed below. In some cases, they recognise the rights of the indigenous people, while others prohibit poor treatment, including with threats of severe fines for those who harm the former or violate the latter.

These provisions sought to organise and consolidate – this is undeniable – the system or regime of *encomiendas* (the Spanish labour system that rewarded conquerors with specific numbers of native workers), but in circumstances much more favourable to the Indians, modifying the working conditions that had existed until then, precisely those which Montesinos had decried in his sermon. Thus, for example, they prohibited “... ninguna persona que tenga yndios en

⁶ Sagarra Gamazo, A.: “Burgos 1512: la ciudad, los hombres, y las leyes”, in *XX Coloquio de Historia Canario-Americana*, Gran Canaria, 2016, pp 355-365, 355-356.

⁷ A copy of these *Royal Ordinances* can be viewed... in PARES (Portal of Spanish Archives), where the one in the AGI (General Archive of the Indies) is reproduced, Indiferente, 419, L. 4, folios 83r-96v. Nonetheless, the one that we use herein is the copy deposited at www.banrepcultural.org, cultural network of the Bank of the Republic, Colombia’s central bank.

encomienda e otra persona alguna heche carga a cuestras de los yndios para los yndios que andovieren en las minas” (par. 11), and detailed a forty-day rest period after five months working in the gold mines: “... que cojan oro con los yndios que las tales personas tovieren encomendadas cinco meses al año e que cumplidos estos cinco meses huelguen los dichos yndios quarenta días ...” (par. 13). Women with child were also prohibited from working in the mines from the fourth month of their pregnancies: “Otrosy hordenamos y mandamos que a ninguna muger preñada despues que pasare de quatro meses no le enbien a las minas ni ha hacer montones ...”, employing them in less exhausting jobs such as service “... en las cosas de por casa asy como faser pan e guisar de comer ...”, and determining another three-month period from the time of the birth during which the woman could not work in the mines either: “... e despues que pariere crie su hijo fasta que sea de tres años syn que en todo este tiempo le manden yr a las minas ni faser montones ni otra cossa en que la criatura reciba perjuysio ...” (par. 18). They also established the obligation for the *encomenderos* (the conquerors who were rewarded with land and vassals) to provide room and board to the indigenous people they were bequeathed under the *encomienda* and to provide them on Sundays and other holidays with “... pots of stewed meat ...”, as well as giving them “... pan e axi e les den una libra de carne cada día e quel día que no fuere de carne le den pescado sadinas o otras cossas con que sean mantenydos ...” (par. 18).

However, not only were the working conditions of the indigenous people the object of attention in the *Laws of Burgos*, but other family and/or personal issues were also addressed. For example, paragraph 16 states that the indigenous people must be taught monogamy: “... faserles entender como no deben tener mas de una muger e como en vida de aquella no pueden tener otra ni dexar aquella ...”, and it also prohibited endogamic marriages within the same family, both customs that were very deeply rooted among these peoples; the obligation of basic instruction, reading and writing, for the children of the caciques – or native chiefs – from the age of four, so that they could teach what they had learned to the rest of their people in the future (par. 17); the obligation was also established to give each of the Indians “... una hamaca en que duerman contnyuamente e que los non consyentan dormir en el suelo como fasta aquí se ha hecho ...” (par. 19), and provide them for the value of one peso in gold each year “... en cossas de vestyr ...” (par. 20), as well as prohibiting any type of harassment, insult or injury to their Indian vassals: “hordenamos y mandamos que persona ni personas algunas no sean osados de dar palo ni acote ni llamar perro ni otro nombre a ningun yndio sino el suyo o el sobre nombre que toviere ...” (par. 24). As mentioned, steep fines were also established for those who violated these provisions. For example, *encomenderos* were punished with five pesos of gold each time they whipped an indigenous person, and with one peso of gold in case of insult or simply for calling the indigenous people entrusted to them by a name other than their own.

In order to better supervise and guarantee compliance with the provisions of the *Laws of Burgos*, paragraph 29 stipulated that

“... en cada pueblo de la dicha ysla aya dos visitadores que tengan cargo de visitar todo el pueblo o minas o estancias o porqueros o pastores e sepa como son los yndios criados en las cossas de nuestra fe e como son trahados sus personas e como son mantenidos y como guardan e cunplan ellos e los que les tyenen a cargo estas dichas nuestras hordenancas ...”,

visits that were to be made to each town, mine, and so forth, at least twice a year “... once at the beginning and once in the middle of the year ...” (par. 31). In turn, these inspectors would be investigated and judged once every two years to “... determine how said inspectors make use of their offices ...” (par. 34).

It is up to the readers of this work to make their own personal judgement on the contents of the *Laws of Burgos* of 1512. However, their ‘originality’ is certainly an undeniable truth, their absolutely novel character for the time, the onset of the sixteenth century, during which they were enacted, as well as the fact that they represented incontestable progress, and this is the key, with respect to the situation in which the indigenous population had carried out their work in the preceding years. Whether from the perspective of the recognition of certain individual rights or the improvement of family, social and labour conditions for the Indians, they did represent an unequivocal advance.

The *Laws of Burgos* were partially amended one year later, on 28 July 1513, establishing a prohibition that the women of indigenous men could not be forced to work with them in the same mines, as well as proscribing minors under fourteen years of age of either gender from working.

A few decades after the promulgation of the *Laws of Burgos*, the denunciations of Bartolomé de las Casas, now a priest, in defence of the Indians, the impact caused by the lessons of a fellow Dominican, Francisco de Vitoria, at the University of Salamanca, and the Spanish Monarchy’s decisive action in favour of the protection of the Indians led to the approval of what were called the *New Laws* on 20 November 1542, now in the reign of Charles I. In addition to proceeding to review, relax and prohibit for some authorities of the *encomienda* system, they declared the freedom of the Indians, prohibiting their slavery, even in the event of war. As Alvarado Planas states, the “... Laws of Burgos of 27 December 1512 were a consequence of the denunciations of the Dominican Montesinos, and the New Laws of 20 November 1542 were

inspired by Bartolomé de las Casas. Because of this, the Spanish Monarchy became aware of the need to protect the Indians, by laws, from the abuses of the *encomenderos* and other colonists”⁸.

It was Philip II who, complying with the mandate received from his father on 18 January 1548 to always urge the protection and shelter of the indigenous people: “... y para que se obvie a las opresiones de los conquistadores, y otros que han sido allá con cargo y autoridad y so color desto, con sus dañadas intenciones, han hecho y hacen; y para que los indios sean amparados y sobrellevados en lo que fuere justo ...” (*Instructions of Charles V*) convened a new Royal Council of theologians and jurists, in this case in Valladolid, whose main members included Bartolomé de las Casas and Ginés de Sepúlveda, advocates of glaringly opposing positions. Although there was no final decision at the conclusion of the meeting in 1551, it should be noted that once again, at the behest of the monarch himself, Spain was engaged in a controversy or dispute with religious and philosophical overtones about its presence in the Indies and the policy adopted with respect to its inhabitants.

Finally, in 1573, Philip II promulgated the *Ordinances for Discoveries, New Settlements and the Pacification of the Indies*, which would end up regulating the legal system or framework – no longer on the conquest, a term or concept that would be banned from that time onward – but on the new settlements to be created in those distant territories. Always respecting the freedom of the indigenous people, “... a now absolutely unalterable principle, the use of force was denied in the event that they refused to receive religious instruction. Thus, only the missionaries would enter the mission land if they did not come across armed resistance. If they did encounter hostility ranging from mild to strong, the missionaries would enjoy the protection of Spanish soldiers, but always under an invariable premise: respect for the Indians’ wishes concerning Christianity”⁹.

The judgement cast about the *Ordinances* in doctrine can be summarised well in these words by Del Vas Mingo: “what can be clearly appreciated, during the new stage marked by the ordinances of 1573, is the Crown’s effort to make justice and Christian morality compatible with policies, as at this time its main characteristic is a highly-defined ethical and religious sense”¹⁰.

Up to this point, the most relevant legislative milestones of colonial policy by the Spanish Monarchy during the first century after the discovery of the Americas have been pointed out: the testament of Queen Isabella the Catholic, the Laws of Burgos, the New Laws, the Ordinances of

⁸ Alvarado Planas, J.: “Fundamentación historicista de los Derechos Humanos”, in *Pasado, presente y futuro de los Derechos Humanos*, Mexico, 2004, coord. Yolanda Gómez Sánchez, pp 61-91, 74.

⁹ Pérez Fernández-Turégano, C.: “Máximo religioso vs. Conquista de las Indias: el paradigma de Isabel la Católica y otros monarcas españoles”, in *Stromata. Revista de Cultura*, Madrid, 2012, no. 13, pp 69-95, 86.

¹⁰ Del Vas Mingo, M. M.: “Las Ordenanzas de 1573. Sus antecedentes y consecuencias”, in *Quinto Centenario*, Madrid, 1985, no. 8, pp 83-102, 94.

1573, and so forth. In addition to all of them, there were countless legal provisions issued by the Spanish authorities, always with the same common denominator: the guardianship and protection of the persons and properties of the American Indians. It is evident that this objective had to be combined with what Bernal Gómez considers to be the main concern of the Monarchy and the friars in the Indies, the conversion of the Indians to the Catholic faith. In this case, both objectives can easily coincide, but as the same author points out, there were other very heterogeneous interests, such as those of the conquerors and colonisers, whose main aim was enrichment, or that of the Crown itself, which wanted to avoid at all costs “... the colonisers from acquiring economic power that would eventually become political power, in prejudice and detriment to its centralist interests”¹¹. These reasons, as well as the fact that the Spanish mainland authorities (Council of the Indies) were ignorant of the American reality, caused this Indian legislation to be described as temporary, particularist and unstable, in short, ‘trial and error’ law¹².

Today, these laws can be consulted in several editions that have been published of the *Recopilación de Leyes de los Reynos de las Indias mandadas imprimir y publicar por la Magestad Católica del Rey Don Carlos II nuestro Señor*¹³. It would be exhaustingly excessive – as well as simply lacking the space – to reproduce all of the provisions included in Title X of Book VI of this *Compilation*... Under the meaningful title ‘Concerning the good treatment of the Indians’, a series of laws passed from the end of the sixteenth century to the reign of the last Hapsburg, Charles II, are included.

The first of the provisions included in Title X orders the precise compliance with the provisions of the codicil of Isabella the Catholic regarding the good treatment of the Indians: “... Y Nos á imitacion de su Católico, y piadoso zelo, ordenamos y mandamos á los Virreyes, Presidentes, Audiencias, Gobernadores, y Justicias Reales, y encargamos á los Arzobispos, Obispos, y Prelados Eclesiásticos, que tengan esta cláusula muy presente, y guarden lo dispuesto por las leyes, que en orden á la conversión de los naturales, y su Christiana, y católica doctrina, enseñanza, y buen tratamiento están dadas”¹⁴. From that point on, and taking as a main reference the aforementioned codicil of Queen Isabella, and the ensuing laws dictated, the Spanish authorities in the Indies were required to take special care to watch over the good treatment of the Indians, as Philip II ordered in 1595: “Los Virreyes, y Gobernadores tengan siempre mucha

¹¹ Bernal Gómez, B.: “El Derecho indiano. Concepto, clasificación y características”, in *Ciencia jurídica*, Mexico, 2015, no. 7, pp 183-193, 190.

¹² *Ibidem*.

¹³ The facsimile edition was employed in this paper, executed in 1998 by the Printing House of the Official State Gazette (BOE) of that which was published in Madrid in 1791 ‘by the Widow of Mr Joaquin Ibarra, Printer of said Royal and Supreme Council’.

¹⁴ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law 1.

vigilancia, y cuidado, y procuren entender, y saber como proceden los Corregidores, y Administradores de Indios en su buen tratamiento, y para mas acierto reconozcan las leyes, y órdenes dadas en favor de los Indios ...”¹⁵.

This good treatment of the Indians, as a formal general declaration, should be expressed in concrete actions and attitudes, such as the prohibition of not being forced “... to make clothing for the Chief Magistrates, or for other Ministers of Justice, Priests, or people who administer to them ...”, to sell poultry, hens or other things below their value “... to the Ministers of Justice ...”, or to go with provisions to markets that were more than three leagues away from their respective settlements.¹⁶ It was also expressly forbidden to force the indigenous people to clean the streets without pay, but rather they were to be paid ‘competent daily wages’. There was another ban on locking the Indians in pens or any other place to ‘spin and weave clothing’, since they should be free to do so in their homes.¹⁷ Likewise, in accordance with the aforementioned particularist or casuist nature of this legislation, laws were passed on numerous occasions for specific territories and cases. This was the case – for example – of the law approved by Charles II in relation to the Indians of Chile, urging the good treatment of the natives:

“Todos los Indios domésticos del reyno de Chile, que voluntariamente sirvieren en las familiares, sean bien tratados, y los dueños de ellas cuiden de su sustento, vestido, abrigo, cura en las enfermedades, y doctrina, para que sean instruidos en nuestra Santa Fe Católica, y el Presidente, Audiencia, y Protectores los amparen, y defiendan con especial cuidado, y no aguarden á ser requeridos”¹⁸.

However, whether these legal provisions were effectively enforced depended not only on the unwavering will of the Spanish authority or official to enforce them, but also on the imposition of punishment by such an authority in the event of non-compliance. By way of example, the provisions below can be cited, which are included in the *Compilation*:

“*Ley II. Que el buen tratamiento de los Indios sea de forma que no dexen de servir, y ocuparse.* D. Felipe II en cap. 47 de Instrucción. ... encargamos y mandamos á los Virreyes, y Presidentes Gobernadores ... que por sus personas, y las de todos los demas Ministros, y Justicias

¹⁵ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law 5.

¹⁶ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, laws 9, 11 and 12.

¹⁷ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, laws 13 and 15.

¹⁸ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law XX.

averigüen y castiguen los excesos y agravios, que los Indios padecieren ...”¹⁹.

“*Ley III. Que los Virreyes, y Audiencias se informen si son mal tratados los Indios, y castiguen á los culpados.* D. Felipe II Ordenanza de Audiencias de 1563. En Longuisana á 24 de Abril de 1580. D. Felipe III en Madrid á 26 de Septiembre de 1635. Uno d ellos mayores cuidados, que siempre hemos tenido es, procurar por todos medios, que los Indios sean bien tratados ... Mandamos á los Virreyes, Presidentes, y Oidores de nuestras Audiencias Reales, que tengan siempre mucho cuidado, y se informen de los excesos, y malos tratamientos, que se hubieren hecho, ó hicieren a los Indios incorporados en nuestra Real Corona ... y castigando los culpados con todo rigor, y poniendo remedio en ello ...”²⁰.

“*Ley IIII. Que las Justicias Reales procedan contra culpados en malos tratamientos, y los castiguen severamente.* El Emperador D. Carlos en Valladolid á 26 de Junio de 1523. El Principe Gobernador allí á 13 Septiembre de 1543. D. Felipe II en Lisboa á 11 de Junio y á 27 de Mayo de 1582. D. Felipe III en Madrid á 12 de Diciembre de 1620. Mandamos a ... todos nuestros súbditos, naturales, y habitantes en las Indias, que no les hagan mal, ni daño en sus personas, ni bienes, ni les tomen contra su voluntad ninguna cosa ... pena que cualquier persona, que matare, ó hiriere, ó pusiere las manos injuriosamente en cualquier indio, ó le quietare su muger, ó hija, ó criada, ó hiciere otra fuerza, ó agravio, sea castigado conforme á las leyes de estos Reynos de Castilla, y Nueva Recopilación”²¹.

Precisely, in order to obtain a greater guarantee that the indigenous people would be treated well, and that possible violators would be punished, the former could access certain judicial courts in order to file a complaint: “*Ley XVIII. Que los Indios de Señorío, siendo agraviados, se puedan quejar en las Audiencias.* D. Felipe II en el Bosque de Segovia á 10 de Agosto de 1562. Si los Indios de Señorío recibieren algun agravio del Alcalde mayor, Justicia, ú otra cualquier persona, puedan ir libremente á la Audiencia Real del distrito á dar su queja, pedir satisfaccion del agravio, y que se les haga justicia, y no se les ponga impedimento”.²² They even

¹⁹ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law 2.

²⁰ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law 3.

²¹ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law 4.

²² *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law 18.

foresaw the possibility of sending an inspector in the event that the offenses and abuses against the indigenous people did not cease in a specific place:

*“Ley XXII. Que donde no cesaren los agravios hechos á Indios se avise, para que vaya Visitador. El mismo [Felipe II] en Lisboa á 11 de Junio de 1582. Conviene enviar Jueces Visitadores á las Provincias de las Indias, para que conozcan de los agravios, que reciben los Indios, y reformen los abusos introducidos contra nuestra voluntad, que siempre será de remediar los que padecen, y obviar las vexaciones, y molestias con que son ofendidos, y maltratados; y aunque sobre esto está proveído con los Oidores Visitadores de las Audiencias: Ordenamos y mandamos, que los Virreyes, Presidentes, Audiencias, y Gobernadores nos envíen en todas ocasiones relacion de lo que pareciere mas digno de remedio, y mayor providencia, para que Nos tomemos la resolucion, que mas convenga á la libertad, y buen tratamiento de los Indios”*²³.

In times so distant from the date of the Discovery, when two centuries of Spanish presence in the Indies had already passed, at the end of the seventeenth century, King Charles II repeated the obligation to comply with those provisions approved by his father, King Philip IV, which prohibited the personal service of the Indians and sanctioned those who failed to comply with ‘exemplary’ punishments:

*“Ley XXIII. Que se guarde lo ordenado sobre el buen tratamiento de los Indios por cláusula del Rey, escrita de su Real mano, y leyes dadas. D. Carlos II y la Reyna Gobernadora ... Y porque nuestra voluntad es, que los Indios sen tratados con toda suavidad, blandura, y caricia, y de ninguna persona Eclesiástica, ó Secular ofendidos: Mandamos á los Virreyes, Presidentes, Audiencias, y Justicias, que visto, y considerado lo que su Magestad fue servido mandar, y todo quanto se contiene en las leyes de esta Recopilación, dadas en favor de los Indios, lo guarden, y cumplan con tal especial cuidado, que no dén motivo á nuestra indignacion, y para todos sea cargo de residencia”*²⁴.

The above list of provisions does not cover all the laws issued by the Spanish authorities with the laudable purpose of protecting the indigenous people and punishing offenders. However, they do constitute a good example of such legislation, an unprecedented paradigm in all the

²³ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law 22.

²⁴ *Recopilación de Leyes de los Reynos de las Indias*, Book VI, Title X, law 23.

conquests that had taken place until that time, and certainly unrepeatably in later occupations and/or invasions in territories not far from the scenario studied here (see the English and French conquest of present-day North America).

Critics of Spanish action in the Indies allege as one of their main arguments that this legislation would not be applied in those distant lands, or at least not in its entirety. However, as García-Gallo pointed out in a very wise reflection:

“By means of the Law, through its well-intentioned norms – albeit possibly not always correct – Spanish rulers, when the whole world lacked the slightest experience in how to handle and coexist with peoples with little culture at a time when anthropological knowledge was null, tried to solve problems that not infrequently overwhelmed them, due to their magnitude and complexity. As so often has happened over the course of history, these rules had to be enforced and applied by men whose indifference at times led them to not take them into account, and others disregarded them due to their own interests. However, this was not the general rule, because the courts and authorities, if only to please the king who had dictated them, took constant care to enforce them”²⁵.

The same author has rightly suggested the perspective under which the legislation dictated for the Indies should be judged: “It is not fair to emphasise what the laws of the Indies could not avoid, or the bad that they could cause due to an unforeseeable effect, despite their good intentions. The fairest course of action is to highlight what they achieved, even if it was not everything they intended”²⁶.

Indeed, although the incredible distance sometimes complicated the full application of some rules, even foreign historiography has recognised that the content of the Laws of the Indies was not only a mere theoretical formulation, but that, as a result of the deliberation of jurists and theologians, the Monarchy put all the means at its disposal for their effective enforcement:

“Moreover, Spanish colonial activities throughout the sixteenth century must be recognised as unique and very different from the expansion of all other European peoples. This is due to the fact that Spanish jurists and ecclesiastics not only developed theories, but sometimes succeeded in putting them into practice as well. The Spaniards of that decisive sixteenth

²⁵ García-Gallo, A.: “La condición jurídica del indio”, in *Los orígenes españoles de las instituciones americanas. Estudios de Derecho Indiano*, Madrid, 1987, pp 743-756, 755.

²⁶ *Ibidem*, p 756.

century, medieval and modern, should be given the honour and glory of having attempted, seriously and conscientiously, for the first time in the modern world, of putting Christian conduct into operation on a large scale”²⁷.

What is certain is that no other conquering or colonising nation, except Spain, wanted or knew how to initiate a debate within their countries concerning certain actions that were at odds with the Christian spirit that should inspire their presence in the Indies. No other nation convened a council, commission or similar to deliberate, as Spain did, on the personal and legal status of the inhabitants of the conquered territories. No other nation enacted so many legal provisions with the purpose of protecting the life, family and property of the Indians as Spain did over the course of more than three centuries of presence in those lands. This is an indubitable fact that should at least give pause to so many scholars who in their obfuscation only appreciate one side of the historical account. As Céspedes del Castillo rightly pointed out,

“Both the unfolding of the debate and the legal texts and political decisions that resulted from it represent a unique event in history: a people submitting their own conduct to harsh self-criticism and applying the most severe moral scrutiny to their greatest political and military successes. While undeniable that the conquerors imposed the law of the strongest, which traditionally informed human relations, it is also true that the protest against the excesses was much more widespread and longer lasting than is generally believed”²⁸.

Coinciding with the 500th anniversary of the discovery of the Americas, Pope John Paul II reflected on the Church’s thoughts on this issue in his Address of 28 November 1992 to the new Spanish Ambassador to the Holy See, Pedro López Aguirrebengoa:

“Those self-sacrificing missionaries were, in parallel, determined defenders of the indigenous peoples and bequeathed to them, in addition to the precious gift of faith, inestimable treasures of culture and art, whose traces are still alive in the peoples of the Americas. Through these evangelists, Spain brought the principles of the Law of Nations reformulated by the famous School of Salamanca to the New World, and put into effect a set of laws with which the Crown tried to respond to the sincere desire of Queen Isabella of Castile that “her children” the Indians

²⁷ Hanke, L.: *La lucha por la justicia en la conquista de América*, ed. Madrid, 1988, p 450.

²⁸ Céspedes del Castillo, G.: “Los reinos de Indias en la Monarquía española”, in *España como Nación*, Barcelona, 2000, Royal Academy of History, pp 113-157, 123.

– as she called them – be recognised and treated as human beings, with the dignity of children of God and free men, on an equal footing with the other citizens of her Kingdoms”.

The recognition of the work of the Spanish Monarchy and of the missionaries in the Indies was not an obstacle for the Church itself (Popes John Paul II and Benedict XVI and, more recently, Pope Francis) to express on various occasions its contrition and regret at possibly less than vigorous attitudes in defending the rights of the Indians, by the missionaries sent to the Indies.

And indeed, abuses did exist. As has been pointed out, it was precisely these men of the Church who were sent to evangelise those distant lands by mandate of the Crown. Their reports aroused – as has also been reported – intense debates within the Monarchy and its even more decisive action in favour of defending those who from the beginning were considered subjects of the Monarchs, the indigenous people, the ‘American Spaniards’. As in any human or institutional action, the positive and negative aspects of the Spanish conquest and evangelisation of the Indies can both be discerned, although there is more good and less bad. If we place each of the tangible realities resulting from the Spanish presence in the Americas on the scale – at least until the independence processes started around 1820 – it would tip by an absolutely overwhelming majority in favour of the Spanish social and evangelising action in the Indies: “The slogan “*men first then Christians*” launched multiple initiatives including hospitals, shelters, schools, universities... in addition to the effort shown to learn the languages of the peoples in order to preach to them in terms that they could understand ...”²⁹.

When exactly two centuries have passed since the end of Spanish rule in the Americas, the powerful fruits of the Hispanic presence there can still be appreciated, works that stem from the application of one of the most powerful transformative instruments of a society, Law, in this case the Laws of the Indies. This occurred with the indigenous languages (Aymara, Quechua and Guarani, among others), still official today in some of these American nations. So says Muñoz Machado, director of the Royal Spanish Academy at the time of writing this paper: “From very early on, in the legislation dictated by the Catholic Monarchs, there appeared orders and instructions to teach Castilian to the Indians. But these prescriptions were always modulated by the recommendation to respect the ways of life and customs of the natives, as long as they were compatible with their evangelisation. The balance between these prescriptions led, in practice, to abandon the forced imposition of the Castilian language”³⁰. The same can be said of the survival

²⁹ Saavedra, M. & J. Amate: *Indigenismo y Evangelización. La primera expansión del Cristianismo en América*, Madrid, 2016, p 243.

³⁰ Muñoz Machado, S.: *Hablamos la misma lengua. Historia política del español en América, desde la Conquista a las Independencias*, Barcelona, 2017, p 10.

in these same nations of the descendants of the natives that the Castilians had come into contact with since 1492. The legal provisions, set out above, favouring mixed marriages and miscegenation between European Spaniards and Americans, today reach their real expression in the numbers – certainly enormous – of the indigenous and mestizo population: Mexico, Guatemala, Bolivia, Peru, Ecuador, Honduras, Nicaragua, Paraguay, etc., still have a percentage of no less than 50%, in some cases close to 90%, of their population originally indigenous or the result of miscegenation of various kinds, an ethnic condition that some of the presidents elected in these countries in recent decades treasure: Ollanta Humala, Evo Morales and Hugo Chávez, to name just a few. These realities coincide with the statements made by García-Gallo regarding the Laws of the Indies analysed herein: “The fact that the indigenous population remained and has survived to the present day, that it was not annihilated or enslaved as in so many other parts of the world, that its cultural level was raised – to the limited extent that a distant state and a minority of Spaniards were able to effect in an immense world like the Americas – is due to the observance of the precepts contained in the Laws of the Indies”³¹.

I would like to end with a few words from the aforementioned American historian Hanke, who summed up the spirit of Spanish action in the Indies with these beautiful words:

“... whatever means men develop, however, to destroy their fellow men, the real problems between nations do not lie in the realm of mechanics. They lie in the more difficult field of human relationships. Some Spaniards long ago discerned this truth, which the whole world must understand today if it is to survive. The specific methods used to apply the theories worked out by sixteenth-century Spaniards are now as outmoded as the blowguns with which Indians shot poisoned arrows at the conquistadors, but the ideals that some Spaniards tried to put into practice as they opened up the New World will never lose their shining brightness as long as men believe that other peoples have a right to live, that just methods may be found for the conduct of relations between peoples, and that essentially all the peoples of the world are men”³².

³¹ García-Gallo: *La condición jurídica del indio*, p 756.

³² Hanke: *La lucha por la justicia en la conquista de América*, p 452.