

“What Distributive Justice Requires:” Negotiating Empire and Local Orders in Sixteenth and Seventeenth-Century New Spain

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Theories of distributive justice played an important role in negotiations between the Spanish crown and the inhabitants of the Indies. Whereas historians have often equated the notion of distributive justice with a vassal's unvarying right to be rewarded by his lord for services rendered, contemporaries used these theories in more than one way to reflect on the just distribution of offices, privileges, and honors within a hierarchically ordered society. This paper examines how ideas about what distributive justice required changed in the process of aligning the shifting necessities of the crown to that of different groups in the viceroyalty of New Spain during the sixteenth and early seventeenth centuries. I argue that these theories on the one hand prompted a common interest in the mapping of the viceroyalty and its inhabitants, as well as the creation of an archive of meritorious (personas beneméritas). On the other hand, I contend that the changing meaning of distributive justice rendered visible a paradox that would contribute to an important shift in the use of this archive in the process of negotiating empire and local orders.

KEY WORDS: *distributive justice; conquistadores; New Laws; archive; negotiation.*

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INTRODUCTION

On October 4, 1543, Juan de Zumárraga, Martín de Hojacastró, and Francisco de Soto wrote an alarming letter to Charles V.² The Franciscan friars warn that some of the provisions in the recently promulgated New Laws (*Leyes Nuevas*) posed a threat to the American Church and the evangelization of the Indian population. By abolishing the *encomienda* system, they note, the crown was weakening the bond of love between the Spaniards and the Indians, debilitating the mystical body in which the former constitute the bones and the latter “the thin flesh.”³ To prevent the terrifying possibility of “the flesh tearing apart its own bones, and the bones separating themselves from the flesh,” the king is urged to fulfil his role as the soul of the body politic, providing to each of its parts the favors that animate and strengthen the whole. Furthermore, to ensure that Spaniards would settle in the newly conquered lands and were ready to defend them, they appeal to the king to establish some form of distinction “between the higher, middle, and lower ranks, which is what distributive justice requires of the body politic, which is the Republic in which it is not desirable when all are equal.”⁴

Historians of the Spanish conquest and colonial Latin American societies have often associated the early modern notion of distributive justice with expectations about the monarch’s role as purveyor of favors and rewards.⁵ Officials, soldiers, clergymen, merchants, and artists deemed it the king’s responsibility, in the words of Alejandro Cañeque, “to reward those services rendered by his vassals, giving to each one according to his merits.”⁶ The principle of reciprocity that developed during centuries of social upheaval, war, and internal colonization has played a significant role in recent scholarship on colonial Latin America. It has shaped interpretations of various types of texts written during the colonial period, including histories, codices, and the bureaucratic *relación de méritos y servicios*.⁷ It also has influenced understandings of the increasing tensions between the monarch and his overseas subjects during the sixteenth and seventeenth centuries. In this well-known

² Carta del Obispo de Méjico Fray Juan de Zumárraga, Fray Martin de Hojacastró y Fray Francisco de Soto al Rey de España Carlos I, 4 de Octubre 1543, Biblioteca Nacional de España, Madrid (BNE), Mss. 20285/3, ff. 10-24.

³ *Ibidem*, f. 13.

⁴ *Ibidem*, f. 15.

⁵ Powers, 1988: 112-135.

⁶ Cañeque, 2004: 141.

⁷ Regarding the development of the genre of the *relación de méritos y servicios*, see: MacLeod, 1998. Gregori Roig, 2007. Folger, 2011: 16-52.

narrative claims for distributive justice have been presented as a response to the crown's efforts to halt the formation of a "feudal aristocracy" or to the monarch's violation of the "social pact."⁸

In this article I argue that contrary to common presumptions, early modern notions of distributive justice did not only refer to a vassal's inviolable right to be rewarded for his services.⁹ Theories on the just distribution of society's benefits and burdens were shaped, too, by a profound concern with the proportionate distribution of offices, privileges, and honors within a hierarchically ordered society. As the seventeenth-century jurist Antonio de León Pinelo points out, the claim to equality inherent in the idea of distributive justice concerned not just the debt, nor just the merit, "but the proportionality that the individual parts are supposed to maintain in relation to the Republic as a whole, and its estate and governance, without respect of persons, and with attention of qualities (*calidades*)."¹⁰ Traditional historiography has hardly paid attention to the role of this problem of proportionality in distributive struggles among Spanish *beneméritos*. By exploring theories of distributive justice and the political interests that shaped them, I aim to shed fresh light on these disputes and the ways in which empire and local orders were negotiated in them.

This essay focuses on the expectations of both the persons who demanded justice from the crown and those officials who were responsible for meeting those demands. It considers the impact of these actors' ideas about a just distributional process on the development of the communicative, knowledge-gathering, and archival practices through which empire and local orders were negotiated in the viceroyalty of New Spain. I argue that the categorization and hierarchization of the meritorious became central to the efforts of both the Spanish crown and its overseas vassals to map the overseas territories and its inhabitants during the sixteenth century. On the other hand, I contend that the meaning of this system of negotiations was increasingly undermined by the distributive justice paradox. By studying this paradox and its origin, I intend to demonstrate that the practice of rewarding services was not simply a stable given. Rather, the identification of the *beneméritos*, the production of different types of documentation, and the interactions with the archive changed as new political necessities led to different ideas about what it was that distributive justice required.

⁸ Elliott, 2006: 40, 130. Bernard Lavallé notes that creole authors blamed the crown for acting against distributive justice, neglecting one of the main principles of the social pact between lord and vassal. Lavallé, 2000: 37-42.

⁹ Cárceles de Gea, 1984-1985: 98.

¹⁰ León Pinelo, 1630: 73r. Compare also: Brendecke, 2009: 55.

THE ORIGINS OF DISTRIBUTIVE JUSTICE THEORY

The term distributive justice emerged in Spanish political discourse from the early sixteenth century. Appearing first in the works of scholastics like Francisco de Vitoria and Domingo de Soto, it gradually found its way into a wide array of genres, ranging from treatises on the functioning of the political system and the behavior of the virtuous Prince to tracts on medicine and natural history.¹¹ While this changing vocabulary reflected significant developments in Castilian legal and political thinking, the ideas that authors used regarding the just distribution of society's benefits often were not new. Early modern subjects of the Spanish crown built on the work of medieval canon lawyers, theologians, and noblemen, who had already established a kind of bandwidth within which the terms of a just distributive process were debated. Three strands of thought, all inspired by Aristotelian notions of justice, were particularly influential in shaping this framework. One originated in the so-called wisdom or *sapiental* literature, another in the *Siete Partidas*, and yet another in Thomas Aquinas' *Summa Theologiae*.

The contribution of the sapiental tradition to early modern thinking about distributive justice concerned first and foremost the idea that the king's patronage was subjected to a rational logic or rule.¹² From the twelfth century, works started to circulate that explained how the monarch's acquaintance with his vassals and ability to judge their nature was essential to selecting the right candidates for an office or reward. Influential Pseudo-Aristotelian treatises like the *Secreto de los secretos* and *Poridat de las poridades* described how to render legible a person's inner nature with the help of his complexion, astrological nativity, or customs and manners. Through a careful assessment of such information it could be determined if the person's talents and inclinations were those required to fulfil the office of royal counselor.¹³ Similar

¹¹ For a more detailed account of sixteenth-century ideas about distributive justice, see also: Cárceles de Gea, 1984-1985. Chafuen, 1985. Allusions to the theory of distributive justice emerged in a wide variety of genres. Compare, for example, Marco Antonio de Camos's *Microcosmia, y gobierno universal del hombre christiano, para todos los estados y qualquiera de ellos* (Barcelona, 1592). Pedro Fernández de Navarrete, *Conservación de Monarquías y discursos políticos sobre la gran consulta que el consejo hizo al señor Rey Don Felipe Tercero* (Madrid, 1626). Juan Huarte de San Juan's *Examen de ingenios para las ciencias* (Baeza, 1575).

¹² The "sapiental tradition" forms a heterogeneous corpus of texts that emphasizes the significance of wisdom (*sapientia, sabiduría, seso*) as a guiding principle in a person's life. On the role of this tradition in the development of medieval political thinking, see: Bizzarri, 1995. Adeline Rucquoi and Bizzarri, 2005.

¹³ The *Secreto de los secretos* and the *Poridat de las poridades* were two distinct translations of the Arab *Kitab sirr al-asrâr*. Each presents a different logic for the selection of the

ideas about the king’s knowledge of his vassals were also formulated for the realm as a whole. As was written in the *Libro de los doze sabios*, a thirteenth-century political treatise, the monarch was supposed to investigate “what good persons can be found in every city or town or place, and what their customs are, and who is best suited for war and who is for office, and who is greedy, disorderly and moderate, so that to each one he gives and provides what in his opinion he is entitled to, so that nothing will be done without order or reason.”¹⁴ Through this idea about the informed assessment of people’s nature, the sapiential literature made an enduring contribution to the rationalization of the distributive process, turning this from a mere act of royal benevolence (*voluntad*) into an act of reason or mediation between divine or natural and worldly orders.¹⁵

In Alfonso X’s *Siete Partidas* such ideas about the monarch’s responsibility to assess his vassals was merged for the first time with a discourse about justice. The second part of this thirteenth-century legal codex presents a model of the polity with the help of the classical analogy of the human body. According to the *Partidas*, the binding tissue of this body politic was strengthened by means of a reciprocal system of glorification and rewarding. Vassals had a responsibility to honor and render services to God, their natural lord, and their patria.¹⁶ The lord, in turn, had the duty toward his vassals to reward and honor them by moving them to the place in the mystical body that corresponded to “either their lineage or excellence or service.”¹⁷ The king also was supposed to praise and remember their deeds and ensure that others did the same. By rewarding excellent deeds he would show his acknowledgement of he who did the good, and his justness as king, because “justice consists not only in punishing wicked actions but also in requiting good ones.”¹⁸ The *Siete Partidas* thus laid the foundation of the most common understanding of this form of distributional justice in early modern political discourse. At the same time, by formulating three distinct criteria determining a person’s position in society – lineage, virtue, and merit – the codex also inspired lasting contro-

king’s councilors. The first explains how the heavenly bodies can be used to determine a person’s inclinations to be a good councilor, the second describes how a person’s inclinations could be read through his physical qualities. Pseudo-Aristóteles, 2010: 91-94, 139-157.

¹⁴ Walsh, 1975: 87-88.

¹⁵ Compare, for example, Fernández de Navarrete, 1626: 271. Philip III’s royal chaplain repeats the idea that the king had an obligation to keep track “of the services and virtues (*partes*) of those even in the most remote hamlets of his monarchy.”

¹⁶ *Las Siete Partidas*, 1972: Part. II, Tit. xii, paragraph, 93.

¹⁷ *Ibidem*, Part. II, Tit. x, Law 2, 88.

¹⁸ *Ibidem*, Part. II, Tit. xxvii, Law 2, 306.

versies over which factor should hold primacy in the administration of justice. On the Peninsula this concerned the ongoing disputes over the nature of nobility and, as we will see below, similar disputes also emerged in the context of the Indies concerning the status of the *conquistadores*.¹⁹

It was from Thomas Aquinas' *Summa Theologiae* that Spaniards derived the actual term distributive justice. In this thirteenth-century theological summary, St. Thomas follows Aristotle in distinguishing two forms of justice that should ensure that each member of the polity receives that what is due to him. One is commutative justice, or that what governs the mutual dealings between two persons and the recognition of the specific prerogatives and obligations of each.²⁰ The other is distributive justice, which concerns the community as a whole and the appropriate distribution of the common goods among its individual members. "In distributive justice," Aquinas explains, "a person receives all the more of the common goods, according as he holds a more prominent position in the community."²¹ Prominence in the Thomist tradition is defined by dignity, understood as both a person's meritorious deeds and an ontological quality of his being. The equality this type of justice inheres is one of geometric proportionality, meaning that a greater share of the common goods ought to be provided to those who possess greater dignity. Contrary to the *Partidas*, in the Thomist tradition there is no place in a just distributive process for an individual's personal conditions (e.g., nationality, wealth, family, or appearance). In fact, these conditions were to be discarded entirely, because "respect of persons" (*acepción de personas*) was considered a violation of distributive justice.²²

These three intellectual traditions together defined a complex set of, in part contradicting, ideas about what it was that constituted a just distributive process. The expectations that these ideas shaped concerning the king's knowledge of his vassals, the significance for the body politic of the act of rewarding, and the use of the proportionate distribution of society's benefits also were of great importance to persons involved in Spain's overseas expansion. Conquest and empire-building raised urgent questions about how to distribute the wealth of newly conquered lands, as well as the privileges of changing colonial societies. Meanwhile the growing distances within the burgeoning

¹⁹ On the role of the *Siete Partidas* in introducing a new notion of nobility and the political debates this prompted, see for instance: Rodríguez Velasco, 1996. Nieto Soria, 2008.

²⁰ Aquinas, 1947: Q[61], A[1], 3290. On the theory of distributive justice in Thomist thinking, see also: Beever, 2013: 99-117.

²¹ Aquinas, 1947: Q[61], A[2], 3292.

²² Compare: Zapata y Sandoval, 2008 [1610]: 101-111.

empire produced practical problems with respect to the fulfillment of expectations about the king’s responsibilities to honor the inhabitants of far-flung territories and provide to each what they deserved. In their negotiations over how to distribute benefits and shape new colonial and imperial orders, people relied on diverging ideas about distributive justice to develop, legitimize, or dispute competing designs.

ADMINISTERING JUSTICE IN THE NEWLY CONQUERED LANDS

During the early phase of the Spanish expansion in the Atlantic world, the distribution of wealth and benefits in the Indies was a predominantly local matter. Governors and captains in settlements in the Caribbean and Tierra Firme were accustomed to allot to their men gold and precious stones, land plots, offices, and Indian towns turned into *encomiendas*. This pattern was repeated when in 1519 Spanish conquerors penetrated Central Mexico and Hernán Cortés became the main distributor of the spoils of war.²³ Yet, during the years following the fall of Mexico-Tenochtitlan in 1521, Cortés’ position as the sole arbiter of economic and social rewards became increasingly problematic.²⁴ In New Spain unrest grew about the governor’s authoritarian behavior and unwillingness to recognize the services some conquistadores had rendered. As one disgruntled conqueror phrased it during the judicial review (*residencia*) to which Cortés was subjected in 1526, he seemed like the “absolute lord in the land without any superior and like this he gave and took legal and other offices at his own discretion.”²⁵ Dissatisfaction and dispute were further fueled by the efforts of Cortés’ lieutenants to create their own networks of patronage. They used Cortés’ absence from New Spain between 1524 and 1526 to redistribute *encomiendas*, prompting strong feelings of injustice being done to those who were deprived of their source of income. As Jason Lemon has observed, with the gradual undermining of Cortés’ power, the number of claims for justice regarding the distribution of *encomiendas* and other benefits increased.²⁶

²³ Regarding the introduction of the *encomienda* system in New Spain and Cortés’ role in distributing *encomiendas* among the conquistadores, see: Zavala, 1985. Simpson, 1950: 56-72; Himmerich, 1991: 9-15.

²⁴ Lemon, 2000: 76-81.

²⁵ *Sumario de la residencia* (1852), I: 440.

²⁶ Lemon, 2000: 87.

Petitions for justice coming from New Spain prompted various reactions at the royal court. The unauthorized introduction of the *encomienda* system among indigenous people who lived in political order and peace led to growing doubts about the legitimacy of the conquest.²⁷ Moreover, suspicions rose about Cortés' political intensions and the effects these could have on the crown's interests in the Indies. Not only was the monarch's role weakened by Cortés' control over the distributive process, but due to the lack of royal justice in New Spain factional strife came to be considered an increasing threat to the existence of the new colony. The crown therefore responded with a series of measures taken to improve the crown's capacity to administer royal justice. New royal authorities were dispatched to New Spain, an appellate court (*audiencia*) was established in Mexico in 1527, and a viceroy appointed in 1535. At the same time, incentives were created to improve communication between the Indies and the court, while new knowledge-gathering mechanisms were developed to gather data about these unknown lands and their inhabitants.²⁸

In recent years, scholars have pointed out the importance of the production of geographical, natural historical, and historical data in empire-building processes. Such data played a role in the search for new revenues, the conversion of the indigenous population, and the legitimation of royal authority.²⁹ It also played an important role in dealing with questions related to the distributive process. Issues like the legitimacy of the *encomienda* system or the distribution of wealth, honors, and offices required information to make decisions that were acceptable to imperial subjects, who, as their actions demonstrated, felt little loyalty to the monarch in Spain.³⁰ To increase the legitimacy of royal decision-making processes, the members of the recently created Council of the Indies (1524) started to request information on a wide variety of topics, including the nature of New Spain, the customs and habits of its natural inhabitants, and the cities and towns in which they resided. Such information played a role in discussions about the qualities of the Indians that determined if they were to be placed in *encomiendas*. Another use for this information

²⁷ For a discussion of these debates, see Hanke, 1965. Gomez, 2014.

²⁸ Royal provisions encouraged people to communicate to the king what was happening in the overseas territories by presenting the act of informing as a service to the crown. Real cédula sobre el derecho de ynformar libre al rey, 15 de diciembre de 1521, Archivo General de Indias, Sevilla (AGI), Indiferente General, 420, L.8, f.339.

²⁹ Bustamante, 2000. Brendecke, 2009.

³⁰ With respect to the significance of data in the decision-making process, Arndt Brendecke has argued that the use of the legal formula of the king and his councilors being fully informed (*tener entera noticia*) was of great importance to legitimize their decisions. See: Brendecke, 2009: 62.

was for the appropriate distribution of the Indian towns among Spaniards. As becomes clear in a set of instructions for the *audiencia* of Mexico in 1528, the appellate judges (*oidores*) were to oversee a perpetual distribution of *encomiendas* and carefully map

for us and for the kings coming after us the administrative centers (*cabeceras*) and provinces that you come across in the preparation of the said *información* composed as a service to us and to our state and Royal Crown. And of the remaining Indians, towns, and lands you will prepare a memorial presenting how these are distributed among the said conquistadores and first settlers (*pobladores*), taking into consideration the quality of their persons and services, as well as the quality and quantity of the said land, populations, and Indians that you believe we should give and distribute.³¹

Similar instructions would be sent during the following years to succeeding *oidores*, ecclesiastical officials, and viceroys. Over and over again these men were asked to provide information about the Spaniards residing in these lands, and “the quality of their person, and the services they have rendered.”³² New Spain’s first viceroy, Antonio de Mendoza (1535–49), for example, was instructed in 1535 to inform the king on who were the conquerors and settlers, which one of them were alive and married, what their qualities were, and what services they had rendered in the conquest or settlement of the land.³³ By creating such an overview of the land and its residents the monarch not merely sought to optimize his exploitative power over both. He also sought to fulfill an ideal about a just distributive process as it had been defined in the sapiential tradition concerning the king’s ability to assess his overseas vassals in order to provide to each the share they deserved. Initiatives like these toward the gathering of information was essential to the negotiating of empire in the developing colonial society.

To the same end, overseas subjects were offered the opportunity to have themselves subjected to a process of assessment. Analogous to the Royal Council and Cámara of Castile, the Council of the Indies started to implement legal and bureaucratic practices meant to standardize this process.³⁴ Persons

³¹ “Provisión dirigida a la Audiencia de México y ciertos preladados, 1528,” Encinas, 1945, II: 187-188.

³² “Provisión cerca de la descripción que se mando hazer de las tierras y provincias de la Nueva España. 5 de abril de 1528,” in Encinas, 1945, I: 339–41, esp. 340. “Real cédula a la audiencia de México, 10 de diciembre de 1531,” *Ibidem*, I: 273.

³³ “Instrucciones para el virrey Mendoza, 25 de abril de 1535,” in Hanke, 1976, I: 22-31, esp. 26.

³⁴ Regarding the procedures of the Cámara de Castilla, see Dios, 1993: 380-407.

planning to petition the Council or the king for a *merced* or exclusive right (*asiento*) were instructed to acquire from a local or appellate judge an official opinion (*parecer*) testifying to their quality, condition, and services.³⁵ To residents of New Spain, especially those who had not been able to win the favor of Cortés or his lieutenants, this developing bureaucratic apparatus offered new possibilities to claim royal rewards. Dozens made use of this opportunity, as is illustrated by the *probanzas* and *relaciones de méritos y servicios* that arrived at court during the 1520s and 1530s.³⁶ Many of these petitions stemmed from more modest and lower ranking conquistadores who had not received any form of reward till this moment. The inclusive nature of these practices was essential to fulfilling expectations about the monarch's obligation toward his overseas vassals and a just distributive process. At the same time, by drawing these actors into the royal bureaucracy, the conflictive potential inherent to distributive struggles was exploited to the king's ends. Acting as the ultimate arbiter in the administration of justice, the king provided a strong reason to residents of the Indies to remain loyal to the crown, which offered the promise of being able to intervene on their behalf in local negotiations.

The initiatives of the 1520s and 1530s presented the first steps toward the development of an imperial distributive apparatus through which the crown sought to guarantee its involvement in the making of a new colonial order. Still, these measures did not resolve all tensions. Conflicts continued to rise. In part, this was the result of a discrepancy between the expectations of Spanish conquerors and settlers and the crown's ideas on how to reward them. Whereas many of the former dreamt of an *encomienda*, the latter articulated that preference had to be given to the "most qualified" conquistadores and to those who came to New Spain with Cortés rather than during "second conquest."³⁷ Partly, these tensions also were the result of a dynamic inherent to a system in which local authorities, especially the viceroy, oversaw the distributive process. As Cortés already found out, even if one rewarded a person according to his qualities and services, this was no guaran-

³⁵ "Real provisión a los que vinieren a pedir alguna merced o gratificación, 5 de Junio de 1528," in Encinas, 1945, II: 175.

³⁶ The sub-section *relaciones de meritos y servicios* of the first discoverers conquistadores, and settlers of New Spain runs from 1524 to 1649. The first two *legajos* (AGI, Patronato, 54 and 55) which were produced during the period from 1524 to 1539, contain 60 *informaciones*.

³⁷ "Provisión, 1528," in Encinas, 1945, II: 187-188. "Cédula al virrey Antonio de Mendoza, 7 de Octubre de 1535," in Encinas, 1945, I: 65-66. "Provisión, 5 de abril de 1528," in Encinas, 1945, I: 340.

tee that the respective person or others in his community accepted the decision.³⁸ Persons who were affected by unfavorable decisions still felt unjustly treated and often expressed their discontent to the monarch. These dynamics were not only of great importance to the interactions between the viceroyalty and the metropole, but they had lasting effects on the organization of the colonial order as well.

THE NEW LAWS AND ITS REDISTRIBUTIVE PROGRAM

Complaints from conquistadores and first settlers accusing the crown of ignoring their needs played an important role in a striking attempt of the Spanish monarch to redistribute New Spain’s wealth during the early 1540s. This initiative formed part of a set of policy reforms recorded in the famous *Leyes Nuevas*, that were promulgated on November 20, 1542, and annexed on July 4, 1543. The New Laws are especially known for their role in the struggle for justice of the Indian population.³⁹ Written in response to the horrifying stories about the Spaniards’ treatment of the Indian population, the objective of these laws was first and foremost to eradicate the excesses of the *encomienda* system. The crown determined that under no condition Indians could be enslaved, used to carry loads, or work in circumstances that could cause a risk to their life or health. It also decided that new *encomiendas* were no longer to be created and that after an *encomendero*’s death all Indians had to revert to the royal patrimony. Furthermore, royal officials and prelates were prohibited from possessing *encomiendas*. While the protection of the indigenous population was a major goal of the New Laws, the crown tied this reform to a redistributive program that would fundamentally alter negotiations over the distribution of royal favor in New Spanish society.

For years the crown had already been trying to take away some of Cortés’s excessive possessions. With the promulgation of the New Laws it directed its attention to other *encomenderos* as well.⁴⁰ This initiative to redistribute New

³⁸ In an instruction to his deputy concerning the distribution of *encomiendas* in the region of Coliman, Cortés explains for example that it is important “to know if someone of the said citizens was affronted in [the *repartimiento*] or if anyone was given more than he deserves according to the quality of his person.” Carta de Hernán Cortés a Francisco Cortés, Archivo General de la Nación, Mexico City (AGN), Hospital de Jesús, Leg. 271, Exp. 11.

³⁹ Hanke, 1965: 87-88. Adorno, 2007: 74-78.

⁴⁰ The New Laws actually mention the names of several persons, which the crown believed to possess an excessive number of Indians. This list includes the names of Juan Infante, Diego de Ordaz, Francisco Vázquez de Coronado, Francisco Maldonado, Bernaldino Vázquez de

Spain's wealth and benefits among its conquistadores may have been triggered by a petition of Francisco Tellez and 84 other conquistadores and pobladores, who blamed the king in 1541 for not having gratified their services with Indians as was laid down by "use and custom."⁴¹ The New Laws directly address the needs of this group. Already in the first set of laws it is stated that all persons of the "quality" of first conquistador were to be given a share of the tributes paid by Indians that were to be reverted to the crown for their "moderate subsistence and honest diversion."⁴² Even more significant promises were made in the 1543 annex. Here it is stipulated that in the distribution of *corregimientos* and other benefits "first conquistadores," followed by "married settlers," should always be preferred over other candidates.⁴³ No benefit was to be provided to any other person until all able men of that quality had been rewarded. Finally, the "sons of the first conquistadores" who did not possess an *encomienda* and were born from legitimate marriages were to be assessed and rewarded "as their fathers would have been if they still had been alive."⁴⁴

Two related deliberations may have inspired the remarkable legal actions taken in the 1543 annex. The crown's apparent failure to comply with people's expectations about distributive justice still was considered a threat to the monarch's interests in the Indies. On the other hand, the king's councilors may have deemed it useful to arouse new hopes of reward in order to gain loyalties at a moment of growing social tensions in the viceroyalty. By promising to redistribute the tributes paid by the Indians liberated by the New Laws, a wedge was driven between the conquistadores who would win from these laws and those who had the most to lose, the *encomenderos*. This strategy could help to divide the interests of the inhabitants of the Indies, and ensure that sufficient persons remained loyal to the crown even when others were confronted with an unpopular policy reform. The decision to reward also the conquistadores' sons further extended the number of persons who had something to gain. By turning the category conquistador into a quasi-quality, similar in function though not in dignity as the *hidalgo*, the crown established new privileged lineages that provided its members an honorable status and a claim to the viceroyalty's benefits.⁴⁵

Tapia, Juan Jaramillo, Martín Vázquez, Gil González de Benavides, and Gil González de Ávila. I use the transcription of the New Laws in Gomez, 2014: 192-210, esp. 200.

⁴¹ Información de los méritos y servicios de varios conquistadores de México, 28 de febrero de 1541, AGI, Patronato, 56, N. 2, R. 1.

⁴² Gomez, 2014: 200.

⁴³ Ibid, 206-207.

⁴⁴ Ibid, 207.

⁴⁵ Precedents for this decision were the unfulfilled promise of a perpetual repartimiento in 1528, a royal cédula from 1534 promising the widows and sons of *encomenderos* that they

While this argument seems to contradict the commonly accepted idea that the crown sought to halt the formation of an American nobility, the two do not necessarily oppose each other.⁴⁶ In fact, since the thirteenth century the creation of lineages of “moderate station” had proved to be a successful strategy to strengthen the crown’s position in relation to the aristocracy. As the *Partidas* explain, much more than aristocrats, men of middle rank were inclined to serve the monarch, as they would be grateful for any favor bestowed upon them.⁴⁷ At the same time, lineage ensured that dignity was passed along through the blood, while the fear of bringing shame on the family’s name prevented persons to commit atrocities. By promising inclusivity and the opportunity to become part of such a service elite, the crown offered an alternative to the *encomienda* and a new chance for the less fortunate conquistadores. An additional advantage of such a decision was, moreover, that just like on the Peninsula the problem of the identification and recognition of members of this privileged group would help to strengthen the crown’s position, even when no actual financial investment was required.⁴⁸ The significance of this marker in social negotiations both in New Spain and at court provided an alternative reason for people to tie their own faith to that of the monarch, who was responsible for remembering their deeds and guaranteeing the social status that they and their ancestors could derive from them.

Encomenderos were obviously not impressed by the crown’s offer to make up for the loss of status and income that they faced. Throughout the Indies the New Laws were heatedly contested, at times through open rebellion to the crown.⁴⁹ That is not to suggest that the crown’s redistributive intentions were not observed. Amidst the unrest impoverished conquistadores did seek to profit from the new opportunities offered to them. In June 1544, Viceroy Mendoza reflected on these attempts in a letter to the king. As he discusses the disadvantages of the New Laws, he tells about a conquistador who came to him looking for a reward for himself and his eight legitimate sons. Because the man “was not even of half a quality,” Mendo-

could inherit the *encomienda*, and the so-called *Ley de Sucesión* of 1536 that promised to grant *encomiendas* for two life times to those who joined the conquest of Peru.

⁴⁶ Elliott, 2006: 40.

⁴⁷ *Las Siete Partidas*, 1972: Part. II, Tit. ix, Law 2, 58-59.

⁴⁸ Michael J. Crawford has argued that the Spanish crown constantly sought to protect its role as the ultimate arbiter of the law in order to exploit legal disputes to its own ends. On the other hand, it did little to the enforcement of its decisions or even encouraged municipal resistance against people claiming *hidalgo* status, thereby maintaining the cost – in this case in the form of loss of tax revenues – in check. Crawford, 2014: 41-42.

⁴⁹ Hanke, 1965: 95-102. Simpson, 1950: 132-144.

za explains how he gave him an annual pension of two hundred pesos. This decision left the recipient unsatisfied, prompting from him a bitter complaint that “his children would have been better served with him being dead than alive.”⁵⁰ Mendoza’s letter reveals how residents of the viceroyalty saw new ways to improve their situation and their children’s. Yet it also contains an important caution: What if the petitioner would no longer have been alive, would each one of his sons have been given the same amount as this unqualified conquistador received?

Mendoza’s anecdote suggests that the viceregal authorities were well aware of a new problem that was caused by the crown’s attempts to distribute justice. This came on top of an aversion they felt to the monarch’s intention to gradually abolish the *encomienda* system. As members of the Castilian nobility, men like Mendoza and Mexico’s Bishop Zumárraga believed that social order was achieved through a strict stratification of society. For this reason, Mendoza had used the first seven years of his tenure to cautiously consolidate an elite of *encomenderos* and officials, who he believed to deserve these positions because of their Old World qualities or the exceptional services they had rendered in the Indies.⁵¹ The New Laws interrupted this political project not only because of the existential threat to the *encomienda* system it contained but also because of its promise to claim rewards solely based on past services. Suddenly, the group of people who felt entitled to the crown’s favor increased exponentially, while the incentive for these men to render new services was reduced. It is not for nothing that as the two men orchestrated their protest against the New Laws, they urged the king to perpetuate grants and ensure that possessions were inherited by the first son only.⁵² For in so doing, a social hierarchy would be created existing of people of higher, middle, and lower ranks, which was, as Zumárraga wrote in his letter to the monarch what distributive justice actually required.⁵³

The crown saw things different, however. When in 1546 Prince Philip, under extreme pressure coming from the Indies, informed viceregal authorities about his decision to retract some of the laws, he ordered the viceregal au-

⁵⁰ “Carta al rey del presidente y oidores de la Audiencia de México. 20 de junio de 1544,” in Paso y Troncoso, 1939, IV: 119.

⁵¹ Ethelia Ruiz Medrano has shown how Mendoza’s politics with respect to the *encomienda* and *corregimiento* benefited an elite of *encomenderos*, comprising conquistadores and new arrivals who had rendered services in war or in the viceroyalty’s economic development. Ruiz Medrano, 1991: 161.

⁵² Carta del Obispo de Méjico, 4 de Octubre 1543, BNE, Mss. 20285/3, ff. 20-21.

⁵³ *Ibid.*, f. 15.

thorities to explore the possibilities of executing a general and perpetual redistribution.⁵⁴ He thus ignored Mendoza's advice on how to establish a colonial order and his reflections on the promise made to the conquistadores' descendants. The effects of the decision not to revise the order became increasingly apparent during the second half of the sixteenth century. As the recognition of conquistador and, to a lesser extent, poblador became formally tied to the enjoyment of economic and political privileges, people's identification as such suddenly acquired new significance.

JUSTICE AND THE EXPANDING ARCHIVE OF MERITORIOUS

The crown's promise to see to it that justice was done to all conquistadores and first settlers and their descendants put great pressure onto the distributive apparatus. As Viceroy Luis de Velasco II (1590–95) explained toward the end of the sixteenth century, in every household there used to be only one person to whom the monarch owed an obligation for being a conquistador or settler, but now there are in each "ten or twelve or more sons, grandsons, and son-in-laws that all pretend the title in order to be remunerated."⁵⁵ Velasco's complaints are illustrative for the difficulties that viceregal authorities experienced as a result of the new expectations that residents of New Spain had about their legal entitlements. To understand how this situation came into being it is worthy to focus on the development of the archive of *beneméritos* during this period. Although it was commonly agreed that this archive was key to fulfilling the promise of justice, the crown, viceregal authorities, and inhabitants of New Spain held different ideas about its precise use and significance in the distributive process.

These diverging visions became apparent during the years following Prince Philip's 1546 order for the *repartimiento general*. Although the crown's decision to once again change its *encomienda* policy caused an outburst of happiness on the streets of Mexico City, Viceroy Mendoza remained skeptical about this new turn. Reluctant to deprive *encomenderos* of their Indians, he decided to grant instead to poor conquistadores *vacaciones* and *quitas* with an annual worth of 50 to 250 pesos, as well as parts of *encomiendas* and *corregimientos* that belonged to the royal patrimony.⁵⁶ Yet this compromise backfired when the news

⁵⁴ "Cédula al virrey don Antonio de Mendoza, 14 de abril de 1546," Encinas, 1945, II: 189-190.

⁵⁵ Carta del virrey Luis de Velasco, 5 de junio de 1590, AGI, México, 22, N. 14.

⁵⁶ Zavala, 1973: 447-458. *Quitas* and *vacaciones* were small pensions that became available by reducing the wages of *corregidores* and *alguaziles* with a small percentage, and by

spread that the repartimiento was completed without “taking anything from anyone.”⁵⁷ Complaints from disgruntled conquistadores considerably damaged Mendoza’s authority at court and prompted Prince Philip to repeat his original orders concerning the investigation of the desirability of a redistribution of encomiendas.⁵⁸ New Spain’s secular and ecclesiastical authorities were instructed once more to cooperate in preparing for the Council of the Indies a proposal on how to redistribute the viceroyalty’s Indians among deserving Spaniards.

A response to this order was brought to court in the summer of 1552 by Mendoza’s son, Francisco de Mendoza. He carried his father’s advices on the government of the Indies, as well as the results of a unique knowledge-gathering project aimed at providing a complete overview of New Spain’s encomiendas and beneméritos.⁵⁹ This material included a book containing the descriptions of around 900 Indian towns, which surveyors had been gathering during the previous years.⁶⁰ It also included a register with the memorials of 1,385 persons, who had responded to the viceroy’s invitations to provide information on their place of residence, nativity, ancestors, qualities, services, and earlier rewards.⁶¹ Unique about this collection of memorials is the way in which they were ordered into different categories, each one of them expressing a different degree of worthiness and necessity. The book distinguishes for instance the *relaciones* of those who came to New Spain with Hernán Cortés and Pánfilo de Narváez (entry 1–209) from the memories of the wives and sons of the conquistadores (entries 210–362), and those of the pobladores (363–1,385). These three main categories are subsequently subdivided into eight, three, and six subcategories respectively, describing the petitioners’ moment of arrival, possession of Indians, marital status, family situation, and place of residence. As such, the book, together with the detailed mapping of

maintaining these positions unfilled for short periods of time. See: Hanke, 1976, I: 48.

⁵⁷ “Carta al rey de Jerónimo López, 20 de enero de 1548,” in Paso y Troncos, 1939, V: 75.

⁵⁸ “Real cédula al arzobispo de México, 27 de noviembre de 1548,” in Solano, 1988: 5–7.

⁵⁹ “Carta al rey de virrey Antonio de Mendoza, 6 de mayo de 1552,” in Paso y Troncoso, 1939, VI: 161.

⁶⁰ This manuscript has been edited and published by Francisco del Paso y Troncoso as the *Suma de visitas de pueblos por orden alfabético: manuscrito 2800 de la Biblioteca Nacional de Madrid*. (Madrid: Establecimiento Tip. Sucesores de Rivadeneyra, 1905).

⁶¹ The manuscript has been published by Francisco A. de Icaza as *Conquistadores y pobladores de Nueva España: diccionario autobiográfico*. 2 vols (Madrid: El adelanto de Segovia, 1923).

the Indian towns and their productive value, presented ideal tools for the crown to initiate a general distribution.⁶² Yet nothing of that all happened.

The reasons for the crown’s decision to refrain from pursuing the project it had initiated a decade earlier are not entirely clear. It undoubtedly played a role that both Mendoza and his successor, Luis de Velasco (1550–64), advised against it.⁶³ Both men agreed that such a far-reaching intervention into the viceregal order would do more damage than good to the viceroyalty’s stability, with discontent being not so much resolved as it was shifted. Another reason behind this decision may have been that the crown’s interests were actually better served by promising justice than by enforcing it. If the crown had kept its promise to reward all those persons whose petition had been included into Mendoza’s register, this would not only have had a high cost but it would also have rendered obsolete the qualities it just created. The existence of the privileged category conquistador and poblador was legitimized by the necessities of those who had been insufficiently rewarded for their ancestors’ feats.⁶⁴ Rather than executing a general redistribution and fulfil at once its debts, there were direct advantages of having inhabitants of the viceroyalty struggle over the recognition of their status.⁶⁵ Disputes about the classification of individuals would ensure a rising demand for royal justice and made royal institutions, including the crown’s own archive of beneméritos, increasingly indispensable to local distributive struggles.

Considerations like these could explain why during the following decades the crown’s attention shifted back to the assessing of individual petitioners and the gathering of information about them. The Council of the Indies promulgated for instance new and detailed instructions on how to prepare and

⁶² My interpretation differs from Robert Himmerich y Valencia’s, who believed Mendoza was “taking inventory of individual holdings as a step toward satisfying royal desires to dissolve the encomienda system.” And also from Rolena Adorno’s, who has argued that the viceroy promised new rewards to appease inhabitants of New Spain after the promulgation of the New Laws. Compare: Himmerich y Valencia, 1991: 301. Adorno, 2007: 175-176.

⁶³ “Informe de Antonio de Mendoza, sin fecha,” in Hanke, 1976, I: 57-58. “Carta al emperador de virrey Luis de Velasco, 21 de febrero de 1552,” in Paso y Troncoso, 1939, VI: 140.

⁶⁴ Gomez, 2014: 200.

⁶⁵ The *Recopilación de las Leyes de Indias* (1681) illustrates how the crown reaffirmed on at least seven occasions between 1538 and 1621 its intention to give preference in the distributive process to the first discoverers of the Indies, and subsequently to the conquistador – or pacifiers (*pacificadores*) as the correct legal term was at the time – and settlers and those that are born in these provinces, as long as their merits are the same as the other contenders. *Recopilación de Leyes de los Reinos de las Indias*, 1973, Book 3, Title ii, law XIV.

processes *relaciones de servicio* and *relaciones de oficio*.⁶⁶ Royal authorities travelling to New Spain began to inspect retrospectively the claims people had made to obtain certain benefits.⁶⁷ Moreover, with the reforms of the Council of the Indies that were initiated by Juan de Ovando y Godoy during the 1570s, new efforts were made to obtain in a systematic way information about the land and its inhabitants.⁶⁸ The so-called *relaciones geográficas* that were sent to the Indies in 1573 also asked members of municipal councils to provide information about the conquistadores and their descendants. Lists had to be prepared for each town and city, containing the names of all inhabitants divided among eight distinct categories. Persons claiming the “title” of conquistador or descendant of conquistador could only be recognized as such after this quality was confirmed by a justice, who saw to it that all procedures were carefully observed.⁶⁹ At a time that rebellions in New Spain and Peru pointed once more at the monarch’s precarious position in the Indies, such measures reaffirmed the worthiness of being recognized by the crown in a certain way, while furthering at the same time the legitimacy of a proportional distributive process.

New Spain’s inhabitants responded in various ways to these developments. As is well known, claims for justice rose among encomienda holders, who were afraid of losing their grants after two or later three or four generations.⁷⁰ These men flooded the viceregal authorities with petitions, demonstrating their own or their ancestor’s services in the conquest and pointing out the king’s responsibility of rewarding them for giving their blood for the crown. Yet insecurities about the encomienda were not the only reason for people to claim that justice was served in order to “relieve Your Majesty’s conscience.”⁷¹ The New Laws provided an incentive to every person who believed to have a claim to the status of conquistador or poblador to make sure that his name was included in the archive of beneméritos.⁷² Passing all the procedures was a way

⁶⁶ A series of instructions for royal officials and inhabitants of the Indies on the procedure of petitioning for royal favors is included in Encinas, 1945, I: 175-183.

⁶⁷ “Relación de algunas personas de las a quien se han proveído corregimientos. 1564,” in Scholes and Adams, 1961: 205-217.

⁶⁸ On these reforms and their objectives, see: Portuondo, 2009: 115-136.

⁶⁹ See Item 92 of the “Real cédula y cuestionario para la formación de descripciones geográficas y eclesiásticas del arzobispo de México, 23 de enero de 1569.” Solano, 1988: 46.

⁷⁰ Brading, 1991: 293.

⁷¹ “Carta de García Aguilar al rey. Ciudad de los Angeles, 10 de abril de 1570,” in Paso y Troncoso, 1940, XI: 82.

⁷² Exemplary is the letter that Cristóbal de Tapia, son of the conquistador Andrés de Tapia, sent to the king from Mexico City on April, 1562, asking for rewards for himself and his

to open new possibilities for one’s children and grandchildren to claim rewards from the crown. This situation made it not only important for those who had never received a reward to petition the crown to see to it that justice was served, but also those who had actually already been provided. The growing preoccupation with recording the memories of the conquest is illustrated by Bernal Díaz de Castillo in his *Historia verdadera de la conquista de la Nueva España* (1568). In a book that was written to correct Francisco de Gómara’s history of the conquest from 1552, he wrote that he did not have “any other riches to leave my children and descendants, besides this, my truthful and notable account”⁷³ The wives, children, and grandchildren of the deceased conquistadores and pobladores eagerly used such accounts, especially those already included into the royal archives, to claim justice.⁷⁴ This tendency explains the increase of the relaciones de méritos entering the royal archive of persons whose status as descendants of conquistador or poblador was confirmed, its number reaching a peak with 110 cases during the 1570s.⁷⁵

The obsession the crown inspired in the viceroyalty with the identification of the conquistadores and pobladores reveal the importance that a far-flung king acquired in the lives of persons, of whom many had never even been to the Peninsula. The promise of royal justice stimulated people to inform the crown about what was going on in New Spain, and gave them a reason to recognize royal institutions that could protect their acquired privileges or get the crown to intervene on their behalf. In spite of this important contribution to empire-building, the creation of new quasi-qualities also caused serious challenges. As the gap grew between that what inhabitants of New Spain believed they were entitled to and what the crown, the viceregal authorities, and local elites believed, collisions and conflict was inevitable. Such disputes

brothers. Paso y Troncoso, 1939, VI: 156-159.

⁷³ Díaz del Castillo, 1960: 38.

⁷⁴ Illustrative for this tendency to make new claims for rewards based on a relación de méritos y servicios approved at an earlier moment are the attempts of the descendants of Bernal Díaz de Castillo to obtain benefits from the crown. The conquistador’s original relación reappears in the probanza prepared for his son Francisco Díaz de Castillo (AGI, Patronato, 75, N. 3, R. 1), in that of his daughter-in-law Jacoba del Valle Coral (AGI, Patronato, 88, N. 3, R. 2), and finally in that of his grandson Ambrosio Díaz del Castillo (AGI, Patronato, 89, N. 3, R. 2).

⁷⁵ This number reflects not all the cases that appeared before the viceregal authorities during the 1570s, but the ones that were approved by them and that entered into the royal archive. Today, these files correspond to the following legajos AGI, Patronato, 70-75. In comparison, during the first two decades after the conquista of Mexico, only 76 were filed in the royal archive.

became visible in the competing accounts about the conquest or lists of ben-
eméritos that people produced.⁷⁶ They also surfaced in the theoretical debates
about the crown's necessities and obligations toward its overseas vassals that
was fueled by the growing significance of the Thomist notion of distributive
justice. Ideas belonging to this tradition turned out to be increasingly difficult
to rhyme with the distributive practices that had been created in the Indies
during the half century after the conquest.

THE DISTRIBUTIVE JUSTICE PARADOX

Worries that the crown's distributive policies in the Indies actually opposed
the requirements of distributive justice grew steadily from the final third of
the sixteenth century. The increasing number of claims preoccupied members
of local elites, descendants of the conquistadors themselves, who used this as
a reason to urge the crown to quickly terminate the perpetual repartimiento.⁷⁷
Even more preoccupied with the apparent flaws of the current distributive
system and the unrealistic expectations it inspired were New Spain's viceroys.
In their letters to the king and the Council of the Indies, they bitterly complain
about the matter. One related disapprovingly how his predecessor had been
yelled at by disappointed petitioners.⁷⁸ Others voiced their frustration about
the ways in which disgruntled petitioners set out to damage their personal
reputation and the prestige of their office.⁷⁹ On other occasions they also
warned for the public unrest caused by those using sentiments of injustice to
mobilize agitators.⁸⁰ Faced with these negative consequences of the distribu-
tive system for the social order, their position and that of the crown in vice-
regal society, the viceroys asked the crown for guidance or even to reconsid-
er his promise to the descendants of the conquistadores. For the latter they
had one particularly weighty argument: the law on which people based their

⁷⁶ Exemplary here is Baltasar Dorantes de Carranza *Sumaria relación de las cosas de la Nueva España* (1604). Written at the moment that tensions within the viceroyalty over the question of the suitability of American-born Spaniards led to public protests, Dorantes de Carranza's work presented at the same time an argument for and an archive of New Spain's true "nobility of conquistadores and pobladores."

⁷⁷ "Carta al rey de varios conquistadores antiguos pobladores y encomenderos al Rey, 17 de febrero de 1564," in Paso y Troncoso, 1940, X: 4-12.

⁷⁸ "Relación del Marques de Montesclaros, 2 de agosto de 1607," in Hanke, 1977, II: 280.

⁷⁹ "Carta de D. Luis de Velasco II a Felipe II, 24 de mayo de 1592," in Cuevas, 1914: 442.

⁸⁰ Carta del virrey Luis de Velasco II al rey, 30 de agosto de 1607, AGI, México, 27, N. 32.

claim for rewards made it more interesting to prove services rendered by one’s ancestors than rendering those services himself.

New Spain’s viceroys repeatedly expressed their critique of this perverse effect of the New Laws. According to them, it prompted a tendency among petitioners to rake together all conquistadores and to ignore the differences in social status or moment of arrival of those involved in the conquest. Viceroy Juan de Mendoza y Luna (1603–7), for instance, ridiculed this tendency, explaining that people expected the same remuneration “for the carpenter who built the brigs, and the smith who forged the nails, and he who paved the street of Mexico, [...], as for the Marquis of the Valle who conquered it.”⁸¹ The viceroys were even more critical about the belief that people who possessed the “quality of being born in this land [and that of] son of conquistador” were immediately fit for office as well.⁸² They considered many of the persons that petitioned them for a legal office to be unfit to be true aristocrats because of their mixed blood and qualities, while the fact that they had to resort to begging showed that they were not at all of the caliber requisite for such a responsibility.⁸³ It was therefore, Viceroy Juan de Mendoza y Luna wrote in a report of his tenure, that it should be made clear to persons claiming conquistador descent that to determine their worthiness “one has to take into consideration the virtue of each one of them, rather than equating conquistadores with corregidores. For doing so, will animate them to earn by means of their personal talents that what at the moment they believe to be theirs by right of birth.”⁸⁴

Undoubtedly, the viceroys’ negative assessments of the qualities and capacities of the American-born descendants of the conquistadores served to counter accusations of nepotism, and legitimize the viceroys’ decisions to provide offices to more recent arrivals, many of whom were family members and *criados*.⁸⁵ Still, the response of these imperial agents also reveals a collision of diverging interpretations about what distributive justice required.⁸⁶ In an increasingly hierarchized colonial society, the attempts of a group of people who were unable to fulfil the viceroys’ expectations about what made a person worthy of such an office – including wealth, customs and manners,

⁸¹ “Relación del Marques de Montesclaros,” in Hanke, 1977, II: 281.

⁸² “Advertimiento de Martín Enriquez al Conde de La Coruña, 25 de noviembre de 1580,” in Hanke, 1976, I: 211–12.

⁸³ “Relación del Marques de Montesclaros,” in Hanke, 1977, II: 281.

⁸⁴ *Ibidem*, 282.

⁸⁵ Brading, 1991: 299–300.

⁸⁶ Similar issues were being discussed on the Peninsula in particular in treatises on the nature of nobility. Guillén Berrendero, 2012.

education and experience – to move upward was observed with suspicion. It was not necessarily the case that the viceroys did not want to recognize the claims of the descendants of the conquistadores, both their letters and their actions attest to this. Yet their idea about distributive justice was defined more strongly by the notion of proportionality than that of some of the petitioners they encountered. Such an attitude not only reflected their own interests as members of the high nobility, but also corresponded to a discourse about the professionalization of administrative and military positions that emerged in Castile during the second half of the sixteenth century. The development of this discourse, which itself cannot be disconnected from the growing competition over the distribution of limited benefits, went hand in hand with new interests in the Thomist notion of distributive justice. Precisely this idea that a just distributive process ought to consider only an individual's personal virtues conflicted with the principle on which many descendants of the conquistadores and first settlers based their claims.

This tension between distributive practice and theory was not merely a political problem with which the viceroys grappled in their day-to-day activities. It also developed into a theoretical problem that drew the attention of specialists in canon and secular law. One of the most influential treatises on this matter was Juan Zapata y Sandoval's *De iustitia distributiva et acceptione personarum* (Valladolid, 1609). Although this work was a scholastic treatise, the Augustinian's objectives to write the book may not have been purely intellectual. Zapata y Sandoval, who was born in New Spain, had a personal interest in the matters on which he wrote, as he sought to rise through the ranks of the church administration. In the light of this struggle for an episcopal seat, it does not come as a surprise that he set out to demonstrate that natives of the Indies – both Spaniards and Indians – should be favored in the distributive process.⁸⁷ At the same time, he sought to defend the claim of the descendants of the conquistadores, to which he himself belonged, of their right to be rewarded by the crown.⁸⁸ While in theory the law already gave priority to both groups, Zapata y Sandoval was well aware that such a prioritizing

⁸⁷ Roberto Heredia Correa has described how Zapata's defense of natives' access to benefits of clergy and civil posts included not only creoles, but indigenous and mestizos as well. Heredia Correa, 2011.

⁸⁸ He was the grandson of the conquistador of Mexico Pedro de Sandoval. Información de la genealogía y limpieza de linaje de Fray Juan de Zapata y Sandoval, Agustino. 1608. AGN, México, Inquisición, 282, Exp. 8. Compare also the *parecer* written by the Council of the Indies as it sought to fill the vacant episcopal seat in Chiapas included in Ramírez Trejo, 2011: 349.

implied the respect of persons and thus opposed the Thomist principle of distributive justice.

The Augustinian’s solution for resolving this conflict between the law and legal theory rested on two main arguments. First, he contended that nativity contributed to a person’s suitability to fulfil civil or religious offices in the Indies. Even when other candidates for an office were more dignified because of their training or experiences, when they lacked knowledge of the land and the languages spoken there they would achieve less than he who was born in the land.⁸⁹ Taking into account this beneficial factor on a person’s suitability for office, the Council of the Indies should subject candidates to a careful assessment and select those who were the most suitable for the specific needs of a place *and* who, in accordance to the principle of distributive justice, were the most capable and meritorious. Second, he argued that the monarch’s obligation toward the conquistadores’ descendants was perpetual not because of what distributive justice required but because of the rule of commutative justice. To underline that the monarch and the community had a continuous obligation toward these men, even the ones whose ancestors had already received a reward for their services, he compared the reciprocity of service and reward to a contractual transaction. Just like someone buying something with money, the conquistadores acquired through their services and the reward that this deserved a possession that was irrevocable.⁹⁰ Although Zapata y Sandoval sought to legitimize the preferential treatment of this one group in New Spanish society, he is careful to make sure that the principle of distributive justice was still applied to its members. Any form of distribution among them, he stressed, should occur so that each would receive what was due to him according to his merits and dignity.⁹¹

Zapata y Sandoval’s highly erudite argument presented an attractive way out of a paradox that weakened the claims of the conquistadores’ descendants. Undoubtedly, the argument allowed him to advance his own interests and stress different aspects that made him worthy of receiving a position in the American Church. Still, the argument was valued by his contemporaries, including legal specialists like Antonio de León Pinelo and Juan de Solórzano Pereira. The former followed the Augustinian in his own reflections on the distributive justice paradox in his *Tratado de confirmaciones reales* (Madrid, 1630). Contrary to Zapata y Sandoval, Pinelo arrived at this problem not from the perspective of legal theory but that of the law. He considered the specific value that the law

⁸⁹ Zapata y Sandoval, 2008, Pt. II, Ch. 1 and 2: 141-157.

⁹⁰ Ibidem, Pt. III, Ch. último: 413-419.

⁹¹ Ibidem, Pt. III, Ch. último: 419.

had ascribed to the moment of people's arrival to the Indies and the privileges they could claim because of it. He lists five categories of merit the law recognized (e.g., descubridores, conquistadores, pobladores, pacificadores, and beneméritos), as well as their various claims to royal rewards and the problems these caused.⁹² In his reflection on the impact of the New Laws on the claims of the descendants of the conquistadores, he reveals his own ideas about the paradox. On the one hand, he argues that the conquistadores and their oldest sons always ought to be preferred in the distribution of encomiendas, because of the contracts the king had signed with the captains, obliging them to comply with the rule of commutative justice.⁹³ The distribution of offices, on the other hand, concerned the relation between the individual and the Republic as a whole. In such a partition of common goods those had to be preferred "who served the best, without distinction of persons, nor times." Because, he continues, the objective of distributive justice is "the preservation of the beneméritos, and this consists in gratifying past services, and reward future ones, which would be more difficult if only old ones were preferred."⁹⁴

Zapata y Sandoval and Pinelo, both in their own way, defended the law and the privileged position it granted to the descendants of the conquistadores in the distributive process. Yet this promise was no longer based on the principle of distributive justice. As Pinelo's words illustrate, the suggestion that this was the case only worked as a disincentive for people to serve the crown in the defense and administration of the empire. This also was the crown's position. In 1623 it decided that the descendants of the conquistadores were to be rewarded according to their qualities and merits in an open "concourse with other beneméritos."⁹⁵ Although this decision did not immediately render the category conquistador obsolete – people continued to claim some form of descent – it did have an effect on the archive of the beneméritos in New Spain. Only a few more relaciones de méritos y servicios recognizing a person's descent were filed during the following years.⁹⁶ With the changing needs of empire, and corresponding shifts in the idea of distributive justice, an old archival practice was left behind as the hierarchy of meritorious was replaced with a single notion of the benemérito.

⁹² León Pinelo, 1630, Part I, Cap. 9, ff. 50v.-53v.

⁹³ Ibidem, f. 72v.

⁹⁴ Ibidem, f. 73v.

⁹⁵ *Recopilación de Leyes de los Reinos de las Indias*, 1973, Book 3, Title ii, law XLV.

⁹⁶ Between the years 1624 and 1632 only nine petitions were filed, the final one, in 1632, from Tomás Díaz del Castillo, grandson of Bernard Díaz del Castillo and great grandson of Bartolomé Bacerra, conquistadores of New Spain and Guatemala. AGI, Patronato, 89.

CONCLUSION

As I have attempted to show in this article, notions of distributive justice were deployed again and again in negotiations over empire and colonial orders. To the crown, the promise of distributive justice was essential to its efforts to bind its overseas vassals and subjects to an absent monarch. By systematically gathering information and bringing distributive struggle into the royal courts, it sought to strengthen the sense of its legitimacy to intervene in local negotiations and, simultaneously, provide reasons to the people in the Indies to remain loyal to the crown. As such, the development of the distributive apparatus, together with its bureaucratic and archival infrastructure, became essential to the constitution of empire. For the crown's vassals and subjects in New Spain, the notion of distributive justice was essential when it came to expressing their own ideas about the crown's involvement in the making of local orders. Some used it to defend the institution of the *encomienda* as a means to create a highly hierarchical order, with clear differences between the higher and the middle ranks. Others sought to use the promise of royal liberality to improve their social position, even if, in a strict sense of distributive justice, this position and the refusal of viceregal authorities to do something about it was perfectly legitimate. Again others sought to rhyme the law with the Thomist notion of distributive justice to highlight their worthiness of receiving privileges in colonial society's or the imperial administration. In a field of shifting social and political relationships, notions of distributive justice thus played a role in discussions about the organization of the social order as well as negotiations about the place of individual actors within them. The significance of these notions was not static, however. As the necessities and interests of the crown, royal authorities, local elites, and others changed, so did ideas about what it was that distributive justice required.

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«Según lo require la justicia distributiva»: negociando imperio y órdenes locales en la Nueva España, siglos XVI y XVII

Las teorías de la justicia distributiva desempeñaron un papel importante en las negociaciones entre la corona española y los habitantes de las Indias. Mientras que los historiadores a menudo equiparan la noción de justicia distributiva con el derecho invariable de un vasallo a ser recompensado por su señor por los servicios prestados, los contemporáneos usaron estas teorías en maneras distintas para reflexionar sobre la distribución “justa” de oficios, privilegios y honores de una sociedad jerárquicamente ordenada. Este trabajo examina cómo las ideas sobre qué la justicia distributiva requiere cambiaron en el proceso de alinear las necesidades cambiantes de la corona a la de diferentes grupos en el virreinato de la Nueva España durante el siglo XVI y principios del XVII. En este artículo, argumento que estas teorías, por un lado, despertaron un interés común en el mapeo del virreinato y sus habitantes, así como en la creación de un archivo de personas beneméritas. Por otro lado, sostengo que el significado cambiante de la justicia distributiva hizo visible una paradoja que contribuiría a un cambio importante en el uso de este archivo en el proceso de negociación del imperio y las órdenes locales.

PALABRAS CLAVE: *justicia distributiva; conquistadores; Leyes Nuevas; archivo; negociación.*
