

JUZGADO GENERAL DE INDIOS
DEL PERU
O JUZGADO PARTICULAR DE INDIOS
DE EL CERCADO DE LIMA

by

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For students of colonial institutions in the Viceroyalty of New Spain, and in particular the Audiencia of Mexico, reports of the existence in Peru of a *Juzgado General de Indios del Perú* paralleling the *Juzgado General de Indios de la Nueva España* in nature and function have presented something of a puzzle. The Mexican tribunal has been described sufficiently in colonial reporting so that its general nature and functions are known. It was a special tribunal of sweeping jurisdiction in Indian cases, civil and criminal, whether the Indian was plaintiff or defendant, of summary procedure, with a staff of salaried officials paid from the yield of a special annual tax of a half silver real on Indian tributaries, who were thereby entitled to access to the court and its ministers without fee or charge of any kind. The judge was the viceroy, sitting in regular session with an assessor, an oidor of the audiencia. The territorial coverage of the court included all of the Audiencia of Mexico except Yucatan. Technically the Mexican court was a special court of first instance with appeal to the audiencia, but since its jurisdiction superseded that of any court of first instance in which the case was being heard or had been heard, it functioned also in effect as a special court of appeals for Indian cases, intermediate between urban or provincial tribunals and the audiencia. In addition, because its judge was the viceroy with his wide administrative powers, the General Indian Court of New Spain functioned as a tribunal for redress of abuse of power by administrative officials¹.

¹This is clear from the wide sample of cases of the General Indian Court of New Spain still preserved in the Archivo General de la Nación, México, in the *ramo* of Civil. (The archive will be designated AGN hereinafter.) A selection

of cases by Lesley Byrd Simpson in photocopy has been deposited by him in the Bancroft Library of the University of California, Berkeley, and very kindly has been made available to me.

At least one writer on Peruvian institutions, John Preston Moore, has held that there existed in Peru a parallel institution: "In 1603 a special court of appeals, the *Juzgado general de indios*, was established in Peru, following the example of New Spain, which has appellate jurisdiction over decisions and acts of the *corregidores* in matters relating to Indians, in particular for suits involving natives and Spaniards"². However, when one hunts for evidence of functioning, one encounters a curious contrast. For the General Indian Court of New Spain, there is mention and discussion in codes³ and in the *relaciones de mando* of the viceroys⁴. There is further an extensive series of case records and orders emanating from the tribunal scattered through the various *ramos* of the Mexican national archive and in many of the provincial archives. On the other hand, documentation on the General Indian Court of Peru is virtually non-existent. There is not mention of it in the *relaciones de mando* of the viceroys of Peru. A search of the Peruvian national archive turns up no records of cases, and the only possible mention in the imperial and viceregal codification is the vague reference in the *Recopilación de leyes de los reynos de las Indias* approving the operation of the General Indian Court of New Spain and any others like it: "...y donde estuviere fundado este Juzgado por órdenes nuestras, o costumbre legítima, se guarde y continúe"⁵.

If one turns to Cobo's *Fundación de Lima*, there is a chapter entitled "Del juzgado de los indios", which describes a tribunal of

²*The Cabildo in Peru under the Hapsburgs. A Study in the Origins and Powers of the Town Council in the Viceroyalty of Peru, 1530-1700* (Duke University Press, Durham, N. C., 1954), p. 234.

³*Recopilación de leyes de los reynos de las Indias*, lib. II, título XVII, ley XXX; lib. III, título III, ley LXV; and lib. VI, título I, ley XLVII; Juan Francisco Montemayor y Córdova de Cuenca, *Sumarios de las cédulas, ordenes, y provisiones reales, que se han despachado por Su Majestad, para la Nueva España, y otras partes* (3 pts. in 1 vol., México City, 1678), pt. I, fol. 157v, sum. VIII; Eusebio Buenaventura Beleña, *Recopilación sumaria de todos los autos acordados de*

la Real audiencia y sala del crimen de esta Nueva España, y providencias de su superior gobierno; de varias reales cédulas y órdenes que después de publicada la Recopilación de Indias han podido recogerse (6 pts. in 2 vols., México City, 1787), II, copias, # 47 (pp. 199-203) et passim.

⁴For example, *Instrucción reservada que dio el virrey don Miguel José de Azanza a su sucesor don Félix Berenguer de Marquina* (Prólogo y notas de Ernesto de la Torre, México City, 1960), sections 15-16, pp. 45-46, de *Instrucción* is dated at San Cristóbal, 29 April 1800.

⁵*Recopilación... de Indias*, lib. VI, título I, ley XLVII.

special and unusually broad jurisdiction for Indians, with a salaried staff so that the Indians would be charged no fees, and with the Corregidor of the Cercado of Lima as judge by special grant of power from Viceroy Luis de Velasco II in 1603. The jurisdiction of the Corregidor of the Cercado as *juez particular* extended to all cases of Indians living in the Cercado of Lima, in the City of Lima and its province, and to the numerous non-resident Indians who flocked to Lima from all parts of Peru⁶. We may date Cobo's information as not later than 1629 since in that year he sailed from Peru to Mexico, there to remain until 1642 and to complete the *Fundación de Lima* in 1639⁷. Cobo's description suggests a tribunal considerably different from the General Indian Court of New Spain, one of local rather than national jurisdiction and of somewhat different powers. The differences of the Peruvian and Mexican colonial administrations in arrangements for protecting the Indian against mistreatment and for handling their complaints and litigation, that were so marked in the later sixteenth centuries, may not have been altered by Luis de Velasco II when he came from his first administration in Mexico to serve as Viceroy of Peru.

Although deeply affected by regional ethnic peculiarities and by systematization before the Spanish Conquest by very different imperial states, the problems of Indian complaints and cases that had to be solved in the two viceroyalties were not dissimilar in general aspects⁸. There was first the matter of the differences between Spanish

⁶In *Obras* (Estudio preliminar y edición del P. Francisco Mateos, 2 vols., Biblioteca de Autores Españoles, vols. 91-92, Madrid, 1956), II, pp. 349-350.

⁷*Ibid.*, I, pp. xxvii-xxviii and xxxiv, and II, p. 279.

⁸The literature discussion of the problem of Indian suits and grievances in both viceroyalties is enormous. For Peru, an excellent summary by oledo may be found in his memorial, n. d. but ca. 1582, and in his ordinances for Cuzco, Checacupí, 18 October 1572, ordinances for all of the kingdom, Arequipa, 6 November 1575 and 10 September 1575, La Plata, 22 December 1574, and further the order of the Conde de Nieva, Lima, 17 April

1563, all in Peru (Viceroyalty), *Relaciones de los vireyes y audiencias que han gobernado el Perú* (3 vols., Lima, 1867-1872), I, pp. 19-21, 66-71, 161-169, 185-186, 207-208, 237-266, and 364-366. The order of the Conde de Nieva is wrongly dated 1573. For New Spain, see Alonso de Zorita, *Breve y sumaria relación de los señores de la Nueva España* (ed. by Joaquín Ramírez Cabañas, Mexico City, 1942), pp. 37-50; *relación de mando* of Antonio de Mendoza for Luis de Velasco, ca. 1551, in *Colección de documentos... de Indios* (42 vols., Madrid, 1864-1884), VI, 489-90, 498-499, 504-505; the correspondence of Gerónimo de Mendieta, in Joaquín García Icazbalceta,

law and native law and custom, which necessarily involved the entire fabric of rights and relationships. Theoretically at least, the Spanish were bound to respect native usage unless it was clearly contrary to natural law, the custom of nations, or Christian theology⁹. In practice, as litigation moved upward in the Spanish levels of tribunals, Spanish practice tended to be imposed. There was second the extraordinary litigiousness of the natives, who found in the Spanish courts the possibility of undoing arrangements imposed by force in earlier times, of gaining new advantage, or of achieving redress. The flood of native litigation brought with it heavy legal costs, much fleecing by Spanish legal personnel, and a great deal of upset in Indian life as substantial numbers of Indians travelled to the seats of courts. The Spanish solution in both viceroyalties was to order hearings by summary process, with rapid decisions and a ban upon much of the litigation¹⁰. There was third the need to ensure that the Indians had a means of securing protection and redress against the innumerable continuing instances of mistreatment and extortion to which they were subjected. The Spanish solution in both viceroyalties was to designate protectors and to establish procedures for summary hearings and issuance of orders for redress. In Peru, Francisco de Toledo systematized and perfected the arrangements of his predecessors, building particularly upon those of the Conde de Nieva. The Toledan ordinances provided for a Protector of the Indians in each province and at least one *Juez de Naturales*, with the necessary staff of subordinate officials. In the capital, the system headed up in a Protector General de Indios and his staff. All such officials were given salaries and were forbidden to levy fees. All Indian litigation and complaints, if before Spanish officials and courts, had to be made known to the protectors, who were to act as agents for the Indian. The jurisdiction of the jueces de naturales covered cases between Indians of rela-

ed., *Nueva colección de documentos* (5 vols., Mexico City, 1886-1892), I, and v passim. The section that follows is based primarily upon these and upon the additional citations in it.

⁹Juan de Solórzano y Pereira, *Política indiana* (2^a ed., 5 vols., Madrid and Buenos Aires, 1930), I, p. 386 (*lib. II, cap. xxv*).

¹⁰Recopilación, *lib. II, tit. xv, leyes*

lxxxii and lxxxv; *lib. v, tit. x, ley x*.

¹¹N. M. Farriss, *Crown and Clergy in Colonial Mexico 1759-1821. The Crisis of Ecclesiastical Privilege* (London, 1968), pp. 150-151.

¹²Ordinances of Toledo for Cuzco, Checacupí, 18 October 1572, in Peru (Viceroyalty), *Relaciones de los virreyes y audiencias*, I, 70.

tively minor import, minor criminal cases, and suits by non-Indians against Indians, this last in accordance with the medieval principle that *actor sequitur forum rei*¹¹. A striking departure for the time, particularly so since it meant a surrender of privilege by the conquerors, was Toledo's provision that in complaints or suits of Spaniards against Indian ...*también sea juez contra el español si incidentemente sucediese algo, o el indio se lo pidiere por vía de reconvencción, y pueda sentenciar la dicha causa como las demás que le están cometidas*¹². The jueces de naturales, in some provinces were appointed by the corregidores and formed part of their staff, but in Spanish cities, such as Cuzco, were appointed by the Spanish municipal council¹³. In Lima, many complaints and what might ordinarily have been the basis for suits were dealt with by the viceroy in regular semi-weekly audience by administrative process¹⁴, that is by summary hearing and decision and direct order.

In Mexico, the system was far less elaborate down to 1593. There were protectors, sometimes separate officials but after the mid-century usually *fiscales* and other officials were assigned this function. Indian cases and complaints were heard by local officials and judges, who might be provincial ones or municipal ones, and, of course, in Indian towns, were themselves Indians. Many complaints and cases came to the viceroy in Mexico City, where they were heard in regular audience, with summary procedure and decision under administrative process. Inevitably viceregal hearings became a substitute for judicial process. It was resistance of the Sala del Crimen and the Audiencia of Mexico itself to invasion of its prerogatives that led to establishment of the Juzgado General de Indios de la Nueva España, formally confirming exercise of judicial power by the viceroy in Indian cases and instituting the extraordinary advance for that time and this of the system of legal insurance embodied in the general Indian tax of the *medio tomin de ministros*. The Juzgado General and the tax were initiated by Luis de Velasco II, who in the end gave to the court, with royal

¹¹Michèle Colin, *Le Cuzco à la fin du XVIIe et au début du XVIIIe siècle* (Université de Caen, Faculté des Lettres et Sciences Humaines, Publications, N° 7, Caen, 1966), pp. 29 and 70.

¹²García Hurtado de Mendoza to the King, Lima, 20 January 1595, in Peru (Viceroyalty), *Gobernantes del*

Perú, cartas y papeles, siglo XVI (comp. by Roberto Levillier, 14 vols., Madrid, 1921-1926), xiii, pp. 238-239. See also the ordinances of Toledo on the Defensor General de los Naturales, Arcquipa, 10 September 1575, in Peru (Viceroyalty), *Relaciones de los virreyes y audiencias*, I, 243.

approval, supersessory jurisdiction in first instance over criminal cases Indians and in civil cases between Indians or against them, and concurrent jurisdiction in suits and cases instituted by Indians against Spaniards¹⁵. This last power was an even more radical and striking innovation than that by Francisco de Toledo, the daring of which can only be understood if one considers the firm rule of the Middle Ages that each man must be sued in his court and under his *fuego* (a rule abridged only by the overriding right of the Crown), and the deep-seated, jealous Spanish attachment to rights under *fuegos*¹⁶.

When Luis de Velasco II came as viceroy to Peru in 1595, he found that the provisions of the Toledan ordinances governed the handling of Indian complaints and suits. As is true of most arrangements and systems for the protection of a lower class largely at the mercy of an upper class differing in color, language, and customs, and holding its position through conquest, it cannot be said that the Toledan ordinances were outstandingly successful. With his normal care to familiarize himself thoroughly with any situation he dealt with, Luis de Velasco II waited until the last year of his long administration in Peru before he issued new legislation on the handling of Indian cases. His innovations can hardly be regarded, therefore, as a mere transfer of Mexican practice to Peru but came after nearly eight years of steady, semi-weekly audiences devoted to Indian needs and complaints.

The new legislation of Velasco on Indian cases was embodied in a long public proclamation of 5 June 1603, reaffirmed in another shorter one of 11 June 1603¹⁷. The longer proclamation consists of the customary preamble setting forth the reasons for the new legislation and the actual legislation. The preamble is a long recital of failure of the Toledan ordinances, ostensibly in a petition of Pedro Balaguer de Salcedo, Protector General of the Indian of Peru, setting forth the

¹⁵For a brief sketch of the General Court of New Spain and the *Medio Real de Ministros*, see Woodrow Borah, "Social Welfare and Social Obligation in New Spain: A Tentative Assessment", International Congress of Americanists, XXXVI sessions, 1966, *Actas y memorias* (4 vols., Sevilla, 1966), IV, pp. 54-55.

¹⁶Farriss, *Crow and Clergy in Colonial Mexico*, pp. 150-151.

¹⁷The two documents are copied into the proceedings of 1685 before the Duque de la Plata, copy of 30 April 1735, 20 ff., ms, in Archivo Nacional del Peru, section of Superior Gobierno, leg. 6, cuaderno 93. (The archive will be designated hereinafter as ANP). I am indebted to Dr. Karen Spalding for a typescript of the document.

abuses which required remedy: Despite the requirement of royal cédulas and ordinances that Indian complaints and suits be handled by summary process without costs, Indians were forced to pay costs in order to secure justice. If they did not, their cases were left unhandled or were subject to long delays while the courts and legal officers gave preference to more important and fee paying cases. Notaries, who acted as trustees for funds in litigation, tended to hold on to them and often could be forced to release them only by additional litigation. In their suits with Spanish, Indians were especially at a disadvantage because of their need to sue in Spanish courts and were denied the summary justice without fee they were supposed to have. Ordinary Spanish judges, furthermore, were too burdened with litigation to be able to give Indian suits the requisite speedy dispatch and summary process. The result of all of this was to burden the Indians with costs even though their suits were often over trivial amounts and matters, to force them to lose much time from work, and to keep them in Lima even though they might live as far away as the Sierra. The remedy, continued the petition of the Protector General, lay in the establishment of a special court with sole jurisdiction as had already been envisaged in the ordinances of Toledo and further had been ordered by the Crown in real cédula of May 1594 [actually 30 April 1591] ordering establishment of a special court for Indian suits in New Spain. Since it was the royal will that the Indians be given protection and means of legal defense, the Protector General petitioned the viceroy for establishment of a special court with sole jurisdiction in first instance over all matters requiring judicial consent and all Indian cases, civil and criminal, among Indians and between Indians and Spaniards, without regard to whether the Indians were plaintiffs or defendants. Jurisdiction should be formally in the viceroy but should be delegated to a person of his confidence. There should also be a salaried notary forbidden to collect fees even from Indian caciques and communities.

After the long recital of the petition, the viceregal order, agreeing with the terms of the petition, ordered the establishment in Lima of a special tribunal for Indian cases of all kinds. It was to have sole jurisdiction in first instance over all criminal cases of Indians and of all civil cases between Indians and in which Indians were defendants. For civil suits of Indians against Spaniards, the new court was to have concurrent jurisdiction with regular tribunals, the Indians being free to choose the court in which to bring their suit. The new court was

to have its own notary, paid a salary and forbidden to collect fees. For suits and other matters that were within the sole jurisdiction of the special tribunal, all provincial and ordinary justices and all other notariés were forbidden to prepare or handle any document or intervene in any way. The language of the order is so sweeping and radical that it is worth quoting:

...mando: que se haga e instituya juzgado particular de todas las causas de los indios así civiles como criminales que unos indios traten con otros o con españoles o cualquiera género de gentes contra indios, que en estos casos la dicha jurisdicción ha de ser y sea privativa en primera instancia para que ninguna justicia de provincia ni ordinaria ni escribanos conozcan ni escriban en ellas en manera alguna, y se abstengan del conocimiento y determinación de las dichas causas y de los asientos y escrituras y contratos de los dichos indios, a los cuales desde luego los inhibía e inhibo, y en las causas de indios actores siendo contra españoles y otro género de gentes sea por ahora y en el entretanto que por Su Señoría otra cosa se proveya y manda cumulativa donde los dichos indios quisieren pedir e intentar sus demandas y querellas contra los otros...

Appeal from juzgado was to lie to the Audiencia of Lima or to its Sala de Crimen. While the jurisdiction of the new Indian court was to be part of the viceregal prerogative, Luis de Velasco II delegated the actual exercise of the prerogative to the then Corregidor of El Cercado de Lima and to his successors. The corregidor was to select a seat for the court and appoint a salaried notary to assist him, the latter to charge no fees under penalty of loss of office and a fine of four times the amount charged.

The additional proclamation of 11 June 1603 resulted from an immediate protest on behalf of the city council of Lima by Simón Luis de Lucro, regidor and procurador general of the city, on 6 June, the day following issuance of the first proclamation. Although the second proclamation does not state the grounds for the protest, it can only have been because the new Indian court substantially limited the jurisdiction of the municipal *alcaldes ordinarios*, who thenceforth were forbidden to take cognizance of any Indian cases. The protest merely led the viceroy to reiterate the terms of the proclamation of 5 June and set a fine of a thousand gold pesos as the penalty for any violation of his order.

The first judge of the new Indian court was José de Rivera, then Corregidor de El Cercado. Within a few years the tribunal had a larger staff than that envisaged by Luis de Velasco II. At the time that Cobo gathered his information, approximately 1629, the staff of the court and their salaries were as follows¹⁸:

Corregidor-Judge	1,000 pesos ensayados	
Assessor	300	
Notary	500	
Bailiff (Spanish)	200	
Indian Alcaldes (two)	100	each
Indian Bailiffs (two)	?	

A legal assessor was automatically necessary under Spanish law if the corregidor was not a *letrado* as was almost invariably the case. The presence of two Indian alcaldes suggests that the pressure of minor cases was so great that the corregidor, in turn, had to delegate hearing of them.

What was it that came into being in 1603? The terms of Luis de Velasco's proclamation are somewhat ambiguous. It is perhaps the ambiguity that has given rise to the idea that he instituted a special Indian court with jurisdiction throughout the Audiencia of Lima, paralleling the General Indian Court of New Spain in the Audiencia of Mexico. The petition of the Protector General de Indios does mention that Indians came from all parts of the district of the Audiencia of Lima, including the Sierra, to secure justice. The viceroy's order did forbid any provincial or ordinary justice and all notaries to interfere in the operations of the court or to assert alternate jurisdiction. The territory within which the new Indian court was to have jurisdiction was not specified, and in the terms set forth could conceivably have been as broad as that of the General Indian Court of New Spain. On the other hand, the fact that protest came only from the city council of Lima suggests that it was only the municipal jurisdiction over Lima and its *comarca* that was abridged. Later objections over the functioning of the court, again, came only from Lima. The jueces de naturales continued to function within their provinces and cities without indication that their jurisdiction suffered from the

¹⁸Fundación de Lima in *Obras*, II, p. 350.

existence of the court. In Cuzco the city council continued to appoint the jueces de naturales for the city and its comarca¹⁹. The only innovation in the provinces which has come to light was that in Piura by the end of the eighteenth century the subdelegado was exercising exclusive jurisdiction over Indian cases in first instance and successfully defended his jurisdiction against the alcaldes ordinarios of the Spanish city, the basis for decision in favor of the subdelegado being immemorial custom and the example of Lima²⁰.

One is led to the conclusion that what was established in 1603 was a special and somewhat unusual application of the Toledan juez de naturales within the Cercado and the city and province of Lima. Appointment of the judge was removed from the control of the city, and a salaried staff was established to end the intervention of notaries and other legal officials, who, although bound to give Indians service without fee as to *personas pobres y miserables*, either contrived in the end to secure fees or transacted business grudgingly or not at all. The innovations of Luis de Velasco II lay in organizing the functioning of the juez de naturales in the area of the capital so that it was bound to be far more efficient—the arrogation to the corregidor, who already was judge in the Cercado, of the judicial functions of the municipal justices of Lima was a master device—and the giving to the new court of concurrent jurisdiction in suits of Indians against Spaniards and other non-Indians, in effect, access to relatively effective justice without fees for redress against the group likely to be a major, if not the major, source of grievances. The influence of Mexican innovation is to be seen in the provision of full, exclusive legal service by salaried officials forbidden to collect fees and in the truly remarkable breaching of the medieval rule that *actor sequitur forum rei*. An innovation beyond Mexican practice or Toledan precedent was the extension of the right to legal service and hearing without fee or cost by the court and its ministers to caciques and Indian communities. That the new Indian court did not replace the viceregal audience in matters requiring administrative relief is evident from the fact that subsequent viceroys regularly scheduled hearings on Indian petitions²¹.

¹⁹Colin, *Le Cuzco*, pp. 29 and 70.

²⁰Investigation into jurisdiction of subdelegados of Piura over Indian cases at order of the Marqués de Osorno, Lima and Piura, 8 August 1796-22 January 1805, 12 ff, MS, ANP, Superior

Gobierno, leg. 25, cuaderno 755.

²¹See the *relaciones de mando* of Mancera to Salvatierra, Lima, 8 October 1648, and of Salvatierra to Alba de Liste, Lima, 22 March 1651, in Peru (Viceroyalty), *Memorias de los virreyes*

In the years after 1603 the special Indian court of the Cercado and its privilege were the subject of protest and attack from the notaries and the municipal justices of Lima²². In 1618 the then viceroy, the Principe de Esquilache, reaffirmed the powers and jurisdiction of the court and its ministers, ordering that provincial and other notaries of Lima might not invade the functions of the ministers of the court and might accept Indian petitions only if signed by a royal fiscal or one of the special *abogados* or other appointed defenders of Indians. Such petitions, one presumes, could be presented for administrative decisions, or in suits of Indians against Spaniards when the Indian chose to sue in a Spanish court, or in appeals. The viceregal order specified that notaries might accept petitions under the ordinances, they should charge fees only of caciques and then in accordance with the fee schedule of Castile; Indians of ordinary status were to be given service free. Penalty for infraction was set at a fine of ten pesos of eight reales each. The proclamation of Velasco and the new order of Esquilache were to be proclaimed publicly and each notary was to be given separate and distinct notice.

In 1639 the entire proclamation of Velasco, together with that of the Principe de Esquilache, was ordered proclaimed publicly again by the Conde de Cinchón. Again each notary was to be given separate and distinct notification. The penalty for infraction was raised to five hundred pesos, undoubtedly because of repeated and flagrant violations.

Attack from the city justices came again in 1685 through the criminal case of Juan Yolao or Golao, an Indian involved in the murder of Doña Petronila de Soto, with three non-Indian accomplices, one a Negro slave of the Dominican convent. The entire group was tried before Fernando de Espinosa y Pastrana, alcalde ordinario of Lima, with the appropriate appointment of a special protector for the Indian, and passed in review to the Sala del Crimen. Two of the non-Indian accomplices were sentenced to death and duly executed; the Negro slave was given a lesser penalty on the intercession of his masters that there were extenuating circumstances in his favor. While

del Perú Marqués de Mancera y Conde de Salvatierra (ed. by Toribio Polo, Lima, 1891), pt. 1, p. 7 and pt. 2, pp. 21-22.

²²The paragraphs which follow are based upon the transcript of the pro-

ceedings of 1685 (made in 1735) that copied into the proceedings all discussions and viceregal orders from 1603 to 1685. 20 ff, MS, ANP, Superior Gobierno, leg. 6, cuaderno 93.

the case was under review in the Sala del Crimen, the Corregidor de el Cercado, had the Indian delivered to his special court on the plea of exclusive jurisdiction. Opon new trial, the corregidor found the Indian guilty but assessed a lesser penalty than death. Espinosa y Pastrana promptly protested to the viceroy that the action of the corregidor was arbitrary and unjustified since the *alcaldes ordinarios* automatically had concurrent jurisdiction in instances of serious crime and the jurisdiction of the corregidor could not be exclusive in criminal matters. He further pointed to the discrepancy in the penalties exacted. However, after careful review of the viceregal proclamations establishing the Indian court and reaffirming its jurisdiction, the Duque de la Palata, on the advice of his fiscal, reaffirmed the jurisdiction of the Indian court. The emotional plea of Espinosa y Pastrana of atrocious crime and the discrepancy in penalties lost much of its power when it was pointed out that the Negro slave of the Dominicans had not been sentenced to death.

That the Indian court in the Cercado was still functioning in the last decades of the colonial regime in Peru is clear through one document from the viceregal records. It is the case of Gregorio Quesquén, Indian and master barber, who on 13 October 1802 petitioned the viceroy for protection²⁸. According to Quesquén's petition, he worked on shares as a barber for a Spaniard, Julián Ramírez, in the Calle de Aldabas. When Quesquén wanted to se up shop for himself with the aid of local merchants, Ramírez secured the aid of one of the royal fiscales for whom his wife worked as a servant, alleging unpaid debts of twenty-four pesos. Thereupon the fiscal embargoed the person and goods of Qisquén, who worked an additional four months for Ramírez. At the end of the four months, upon discovering that unliquidated debts were still claimed to exist, Quesquén left to set up his own shop, but was forced to flee when Ramírez via the fiscal pursued him. The petition asked the viceroy to remove the matter from the jurisdiction of the fiscal and refer it to the Corregidor of El Cercado of Lima for hearing in his "tribunal privativo por ser asunto índico". In a brief marginal note, the viceroy ordered the petition sent to the corregidor for hearing. The further notations and entries on the document are the order of the corregidor on receipt of the petition for citation of the parties, a summary of the testimony at the hearing which indicated that in the four additional months

²⁸2 ff, MS, ANP, Superior Gobierno, leg. 29, cuaderno 915.

Quesquén worked for Ramírez, although he received nine pesos a month, he paid nothing on his debts, and the corregidor's decision on 28 October that Quesquén be free to work where he wished but that he must pay Ramírez eighteen pesos at the rate of one peso a month and that if a month passed without payment, he would be prosecuted. The record was returned to the viceregal secretariat by way of report, and so has survived. The entire document consists of two folios, with no notation of fees or costs as was required if any were charged. Accordingly, no fees or costs were assessed either party. The brevity of the record shows that summary procedures were used as was enjoined for Indian cases. Furthermore, the jurisdiction of the special Indian court in the Cercado was upheld. Equally clearly, the court was functioning normally.

One would surmise that, at the least, the court continued in existence until the prohibition of the Spanish Constitution of 1812 against special tribunals and *fueros*²⁴ was implemented in Peru. That would have been less likely on the first proclamation of the Constitution of 1812 than of the second one in 1820. Again, the disturbed circumstances of the Viceroyalty of Lima at the time may well have kept the special Indian court in the Cercado in existence until the last viceroy was forced to evacuate Lima.

From the evidence adduced here, it is clear that what Luis de Velasco II founded in Lima was hardly a *Juzgado General de Indios del Peru*, and indeed was in its functions and territorial coverage very different from the *Juzgado General de la Nueva España*. It was instead a special local court of first instance for Indian cases that relieved the viceroy of much of the pressure of Indian petitions for redress, and really meant an extension of the jurisdiction of the *jueces de naturales* to the court of the *Corregidor de El Cercado*, with the unusual force of a special jurisdiction exercised for the viceroy by a delegate and with the striking innovation, probably copied from the Viceroyalty of New Spain, of concurrent jurisdiction over cases in which the Indians sued Spaniards and other non-Indians. The actual terms of the viceregal proclamation establishing the court in El Cercado were not markedly different from those establishing the Mexican tribunal; what was markedly different was the restriction of jurisdiction in practice to the city and province of Lima. Here, the

²⁴Article 248. Articles 249-250 did and the military.
permit special *fueros* for the clergy

prior existence in Peru of a strongly established system of special Indian tribunals and a prior structure of Indian protectors and defenders, heading up in a staff at the viceregal court and audiencia, probably precluded a development of jurisdiction like that in Mexico. The delegation of power by the viceroy to the Corregidor of El Cercado, by removing the immediate presence and authority of the viceroy from the functioning of the tribunal, aided measurably in restricting it to provincial status and estopping its emergence as a country-wide tribunal.