

THE ROOTS OF ARIZONA GOVERNMENT

THE SPANISH EMPIRE

In the Introduction, we have seen why it is important to study Arizona Constitution and government. But constitutions and governments almost always borrow things from the past. Arizona's governmental roots lie in ancient British and Hispanic legal traditions, which today form the foundation of Arizona law.



Arizona government today is largely patterned after British models in the New World but still owes much to its Hispanic heritage.

After 1519, Mexico City became the capital of the King of Spain's holdings in the New World. He owned the colonies and everything in them. His agent was the viceroy, a title which literally means "in the place of the king."

The Spanish Empire produced vast riches for the mother country. The Council of the Indies did the day-to-day work of administering the colonies and military government was utilized. The Roman Catholic Church was also very important in the ruling of the lands, because only Roman Catholics were allowed to live there.

In Spanish Mexico, as elsewhere, there were three important institutions: the mission or church, the presidio or fort, and the pueblo or town. To this day, Mission San Xavier del Bac near Tucson survives as an example of a great mission. In nearby Tubac, the first Arizona presidio was established in 1751. The pueblo of Tucson, founded in 1775, was once a walled city where people lived for protection.

Because Spain's population in the New World was so small, they were encouraged to intermarry with Indians. Even so, relatively few people lived in an enormous land area.

Life in the Spanish Empire was often very difficult. There was little self-government as we know it. Taxes were high and settlers were often caught in the contradictions of conflicting military and church law. Yet for many years, people in the New World remained loyal to the King of Spain.

Then, in the 1820's, they broke away from Spain and formed the Republic of Mexico. Immediately, the new government became involved in its own problems. That meant that people living in the northern frontier states were often left to work things out for themselves.

The government of Mexico tried to create a new state called Occidente with claims as far north as the Gila River. But this arrangement never really worked, and the people of Arizona remained part of Sonora until the 1840's and 1850's.

HISPANIC LEGAL INFLUENCES

Today, Hispanic influences still survive in Arizona's legal system. For example, Arizona water law is derived from non-British sources. Instead of using the so-called riparian water rights which means that the owner of the source of water owns all the water, the Arizona Constitution of 1910 chose the doctrine of prior beneficial appropriation. It says that land and water are inseparable. The first person to own the land and to take water for a useful purpose has the highest right so long as the water is not wasted or used inappropriately.

Much of Arizona's mining law also comes from Spanish sources.

But the best known Spanish influence on our laws is the institution of community property between husband and wife. Under British law, a woman did not have a secure

claim upon her husband's possessions unless he made a will in her favor. Community property says that a wife who is a homemaker is entitled to half of the earnings of her husband who works outside of the home.

THE UNITED STATES AND THE SOUTHWEST

In 1836, the Republic of Texas claimed all the land west to the Rio Grande River. When Texas became a state in 1845, the United States upheld that claim.

Then, in the spring of 1846, President James Polk asked the United States Congress for a declaration of war against Mexico when shooting broke out between United States and Mexican troops on the Texas border.

The United States was also interested in acquiring California. Colonel Stephen W. Kearny, in command of the Army of the West, proclaimed U.S. authority over the southwest from the Palace of the Governors in the Sante Fe, New Mexico. Later, his troops marched to California across Arizona. The Mormon Battalion took control of Tucson for a time and then went on to California.

In 1848, the Treaty of Guadalupe Hidalgo ended the Mexican War and settled boundaries between the two nations. The disrupted areas of Texas, California and most of the land in between was transferred to the United States. The Gila River became the southern boundary of the United States. Tucson and southern Arizona, for the time being, were returned to Mexican jurisdiction.

As part of the Compromise of 1850, the United States Congress created the Territory of New Mexico with its capital at Sante Fe. It included what is now both New Mexico and central and northern Arizona.

At the time, there was growing interest in building a transcontinental railroad. One proposed route ran from New Orleans to Los Angeles through Arizona. The Mormon Battalion had marked a trail across southern Arizona in the 1840's, part of which became Cooke's Wagon Road.

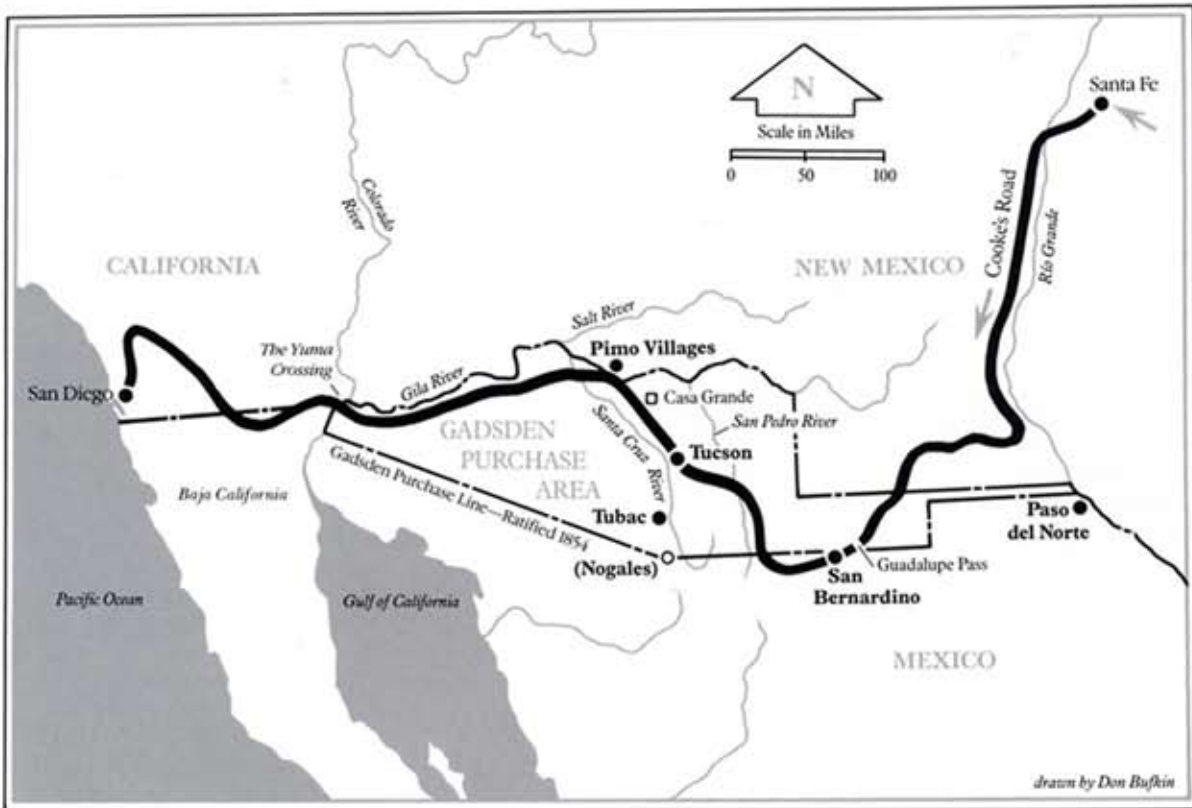
In 1853, the United States decided to buy this land from Mexico but there was opposition in Congress. Senator Thomas Hart Benton said the land was so "desolate, deserted, and God-forsaken" that, as Kit Carson put it, "a wolf couldn't make a living on it."

The United States finally scaled down its promised payment from \$15 million to \$10 million, and the Gadsden Purchase was made. The new land was made part of the New Mexico Territory.

Neither the United States nor Mexico were much interested in having a U.S. seaport established on the Gulf of California so Arizona's curious southern border took its present shape (see SOUTHERN BORDER).

Some settlers and miners began arriving here even before the area was organized. There was little law and order, the land had not yet been surveyed and there was no secure way to acquire ownership of property.





SOUTHERN BORDER

A favorite tale is told of why Arizona's southern border got its peculiar crooked shape. The story goes that Arizona's border was supposed to run straight east and west but when the surveyors got to a point near present-day Nogales, they became so thirsty for liquor that they made a beeline straight for Fort Yuma.

The true story is that during the Mexican

War, the United States Navy and volunteers from New York occupied Baja California. The Treaty of Guadalupe Hidalgo ended the war and returned Baja to Mexico. Later, the United States bought southern Arizona as part of the Gadsden Purchase in order to acquire Cooke's Wagon Road across the territory. By the 1870's, the United States realized that a seaport on the Gulf of California would be very valuable but it was too late. Mexico was not interested in selling any more land in the area.

BRITISH LEGAL INFLUENCES

Even though Arizona was part of the Spanish Empire and Republic of Mexico for nearly 300 years, most Arizona law and government have come from British sources.

During the Middle Ages, the people of England slowly developed and wrote down a system of common law. It was meant to be law which was "common to all" (rather than law just for "commoners") and placed great emphasis on the equality of all before the law.

The English colonies in America adopted common law, slowly modifying and adapting it to the needs of the emerging American government and its states. Arizona's laws were written in this tradition and, today, English common law can be found at the root of most state law.

Similarly, state governments in the United States were patterned after the English form of colonial government. This includes a three part system of government, divided into executive, legislative and judicial branches. Each branch has specific, limited powers which are checked and balanced by the powers of the other branches.

The governor exercises executive functions. The legislature is divided into two houses or chambers with the lower

house originating tax laws and deciding how state money should be spent. Judges serve terms of good behavior and exercise many of the same powers today as they did in colonial times.

In addition, county and city government as we know it today originated in the colonies.

CHAPTER SUMMARY

As part of the Spanish Empire and later the Republic of Mexico, Arizona inherited several important legal traditions. Arizona water law, mining law and the community property provisions all derive from Hispanic sources.

Most Arizona law and government today comes from British sources. When Arizona became part of the United States, English common law as adapted by the English colonies in America became the root of most Arizona law. Also, the English form of colonial government was adopted by Arizona. It includes a three branch system of government with checks and balances which limit and define the power of any one branch.