



El jurista en el Nuevo Mundo: Pensamiento. Doctrina. Mentalidad

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BOOK REVIEW

El jurista en el Nuevo Mundo: Pensamiento. Doctrina. Mentalidad (Global Perspectives on Legal History 7), by Víctor Tau Anzoátegui, Frankfurt am Main, Germany, Max Planck Institute for European Legal History, 2016, 267 pp., €14.19 (pbk), ISBN 978-3-944-77306-3

As part of its Global Perspectives on Legal History series, the Max Planck Institute for European Legal History presents 11 articles authored by Argentine jurist Víctor Tau Anzoátegui. These works were originally published in Spanish and German in the 1980s and 1990s in journals and collective works in Argentina, Chile, Mexico, Spain and Germany, and are now offered in an edition revised by the author.

As stated by Tau Anzoátegui in the prologue, the work revolves around the need to devote a special volume to the Castilian and Indies jurists acting in the New World as participants in the establishment and to the application of a peculiar and novel legal system. Against this backdrop, the author's considerations rest on three central points: thought, scholarly writing and mind-set. Thus, in Tau Anzoátegui's words, this volume seeks to highlight the role of the jurist in the New World 'as a builder and executor of a science and art put at the service of the organization and development of public powers and the new society, confronted in this task with so diverse realities and situations' (x, prologue).¹

The volume begins with an introduction entitled 'Entre Castilla y las Indias' (Between Castille and the Indies), specially written for this edition. It provides a characterisation of the archetypal Castilian and Indies jurist, who was trained in law and acted at a time of great geographical discoveries and transformations in legal culture. Tau Anzoátegui explores the profile of the jurist in Sebastián de Covarrubias' work, and then looks at the role of lawyers between the fifteenth and seventeenth centuries and their subsequent insertion in the New World. The author further examines the intellectual and public circles in which jurists were educated and moved, the beliefs and mind-set prevalent among them and their role in the articulation and application of old and new elements as the *ius commune* culture was integrated into the new geographical spaces.

Next, in chapter one, entitled 'La idea de Derecho en la colonización española en América' (The idea of law in the Spanish colonisation of America), Tau Anzoátegui engages in a discussion of what he calls 'the plasticity of the Law transplanted in the Indies' in light of the breadth, variety and mutability of the new legal system (25). The author examines the relationship between law and religion in the Hispanic world, natural and positive law, morals and law, and law and justice. The chapter finally addresses the role played by jurists at the early

¹Translation of all quotations into English by this reviewer.

stages of the Spanish colonisation as a rising group in a stratified society, their work in the universities of the New World and their contributions at the time of the fall of the Spanish monarchy in the early nineteenth century and the rise of the new Hispanic American states.

In chapter two, entitled '¿Humanismo Jurídico en el Mundo Hispánico? A propósito de unas reflexiones de Helmut Coing' (Legal humanism in the Hispanic World? A proposition on the reflections of Helmut Coing), Tau Anzoátegui examines the dissertation delivered by Coing in Murcia in 1985, published in Spanish under the title 'La contribución de las naciones europeas al Derecho común' (The contribution of the European nations to the common law). Coing argued for the need to rectify some aspects of the image of legal science as it developed in Europe between the sixteenth and eighteenth centuries. In this chapter, Tau Anzoátegui establishes a link between European legal science and the Hispanic world and studies the participation of the Indies in that intellectual movement. He further seeks to integrate the Indies' own features into Coing's proposal and to explore the influence exerted by Castilian legal culture on European legal thought in the sixteenth and seventeenth centuries, and thus rethink the relationships between humanism and theology and between humanism and Hispanic law.

Chapter three, 'El Gobierno del Perú de Juan de Matienzo. En la senda del humanismo jurídico' (The government of Peru by Juan de Matienzo: on the path of legal humanism), examines Matienzo's work against the background of what Tau Anzoátegui characterises as 'the critical situation facing the viceroyship in Peru at the time' (45). Tau Anzoátegui makes a reference to Matienzo and his work, which he then analyses as a Renaissance expression of Hispanic legal humanism. For such analysis, Tau Anzoátegui relies on the sources used by Matienzo, his views about the reality he described in his book, his ethical and moral postulates and his idea about Law. This enquiry leads Tau Anzoátegui not only to agree with Peruvian historian Guillermo Lohmann Villena that Matienzo is 'the most prominent legal writer in the Indies in the sixteenth century' but also to consider his *Gobierno del Perú* as the key to understanding one of the branches of humanism with a Renaissance spirit (69).

Drawing on Antonio Joseph Álvarez de Abreu's *La Víctima Real Legal (The Real Legal Victim)*, Tau Anzoátegui reflects once again in chapter four on the legal culture of the Indies. For such a purpose, the author engages in a study of Álvarez de Abreu and the structure of his work, its ideological sources and the main ideas of the book regarding the speciality of the Law of the Indies, the greatness of Spanish monarchy and political providencialism, the titles to the Indies' conquest and the image of the king. Tau Anzoátegui further examines the meaning of some terms used in Álvarez de Abreu's work – such as 'authority', 'novelty' and 'tradition' – and argues that Álvarez de Abreu cannot be pigeonholed as belonging to the Baroque or the Illustration, as he was ultimately 'a critical traditionalist and a traditional modernist' (96).

In chapter five, 'La doctrina de los autores como fuente del Derecho castellano-indiano' (Authorial doctrine as a source of Castillian-Indies law), Tau

Anzoátegui continues to explore the modes of creation of the law of the Indies and concludes on its key role in the legal structure of the Indies in the sixteenth to eighteenth centuries. The author goes beyond the study of legal texts and, drawing on a historical approach, analyses scholarly writing in the early Modern Age and its process of subsistence and criticism that eventually led to its decline and submission to the law during the period of codification.

Chapter six, entitled ‘Entre leyes, glosas y comentarios. El episodio de la Recopilación de Indias’ (Between laws, glosses and commentaries: the episode of the Compilation of the Laws of the Indies), looks at the lengthy process culminating in the Compilation of the Laws of the Indies in 1680 undertaken by Juan de Solórzano Pereira and Antonio de León Pinelo. The author enquires into the delayed promulgation of the Compilation, caused by the tension between the prevalence of law and jurisprudence.

The modes of creation of the law of the Indies are examined once again in chapter seven, entitled ‘El ejemplar, otro modo de creación jurídica indiana’ (The copy: another form of creation of Indies law). Tau Anzoátegui studies the *ejemplar* – an instrument of work used by jurists in the mid Modern Age – covering issues such as its meaning and legal basis, the use of the term in Juan de Solórzano Pereira’s *Política Indiana* and its use and invocation in the day-to-day tasks of the Supreme Government. The chapter ends with an analysis of the fate of the *ejemplar*, its decline and displacement towards the eighteenth century along with other sources of law such as custom and usage and scholarly writing.

In chapter eight, entitled ‘La noción de Justicia en la *Política Indiana* de Solórzano’ (The notion of justice in Solórzano’s *Politics of the Indies*), Tau Anzoátegui reflects on Juan de Solórzano Pereira’s notion of justice as contained in his work. Through the study of this issue, the author sheds light on the way of thinking and arguing of the jurists of the Indies – in this case, of the jurist that authored in Tau Anzoátegui’s view ‘the most significant work of jurisprudence that systematized the legal system of the Indies’ (17). Moreover, Tau Anzoátegui explores the different contexts in which Solórzano used the notion of justice, such as in the fields of social virtue, as the basis of social order and in the context of legal procedure, among others.

Turning once again to Juan de Solórzano Pereira’s *Política Indiana*, Tau Anzoátegui examines the issue of variety in the law of the Indies in chapter nine, titled ‘La variedad indiana, una clave de la concepción jurídica de Juan de Solórzano’ (The variety of the Indies: a key to the legal conception of Juan de Solórzano). The author puts forth his own views on the subject and uses examples from Solórzano’s work to show Solórzano’s conceptions of variety as an element of a reality to which jurists had to attend. All of this contributed in turn to finding answers to the legal problems arising in the New World.

The issue of casuism is discussed further in chapter ten – ‘La disimulación en el Derecho Indiano’ (Dissimulation in the law of the Indies) – as Tau Anzoátegui explores the law of the Indies as a legal system formed by a diversity of sources. The author looks at the legal background and the configuration of casuism in the

Indies, along with its use in the seminal *Política Indiana* by Juan de Solórzano Pereira. The chapter ends with an analysis of dissimulation in legal texts and the literary world.

Finally, in chapter eleven, ‘El Abogado del Cabildo de Buenos Aires durante el Virreinato’ (The lawyer of the administrative council of Buenos Aires during the Viceroyalty), Tau Anzoátegui analyses the role of the lawyers of the *Cabildo* (administrative council) of Buenos Aires during the period of the Viceroyship, in order to underscore the relevance of their work within the *Cabildo* activities. The author begins by making a reference to the legal profession, and then looks at its denomination and characterisation, the methods and terms of appointment of lawyers as well as their powers, duties, honours and remuneration. Tau Anzoátegui’s observations are mainly sourced from the Agreements of the extinct *Cabildo* of Buenos Aires and they reflect the rise of a profession that became increasingly necessary within the bureaucratic structure of the new Viceroyship of the Río de la Plata.

In sum, Tau Anzoátegui’s work provides an excellent opportunity for legal historians to revisit, or perhaps consult for the first time, indispensable reading on the legal culture of the Indies. The time elapsed since Tau Anzoátegui wrote the first article – in 1977 – only highlights the wide currency and contributions of the research presented in his work. At the same time, the questions posed by the author continue to open paths for new research into legal history.

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