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Beiträge mögliche Richtungen zukünftiger Forschung und stellen konkrete integrative Faktoren hinsichtlich des Verhältnisses von territorialer und Reichsgerichtsbarkeit heraus. Demnach ist der Zusammenhalt des Reiches in der Frühen Neuzeit vor allem von sieben Konstanten abhängig: (1) von der zentralen Rolle von Justiz und Reichsgerichtsbarkeit bei der Herrschaftsausübung, (2) von der reichszusammenhaltenden Klammer des Lehnswesens (Dorfner, Flurschütz da Cruz), (3) von der friedensstiftenden Funktion des Rechtes (Hillen), (4) von der Appellation als rechtliches Bindeglied zwischen Reichsgerichtsbarkeit und Territorialjustiz (Baumbach, Riemer), (5) vom Stellenwert der zeitgenössischen juristischen Literatur als verbindendem Element des Rechtswesens in den Territorien mit der Rechtswissenschaft des Reiches (Jörn, Stodolkowitz), (6) von den personellen Beziehungen als wichtige vertikale Verbindung zwischen Reichs- und Territorialgerichtsbarkeit (Flurschütz da Cruz, Solterbeck) sowie (7) von der Rechtsprechung und ihrer Rechtspraxis (Jörn, Schulze, Solterbeck, Hillen, Riemer, Stodolkowitz). Neben diesen integrativen Faktoren bleiben – wie die Herausgeber des Sammelbandes in der Einleitung vermerken – weitere Fragen offen, so etwa die Geltung des materiellen gemeinen Rechts auf die

Reichs- und Territorialgerichte, die Bedeutung der Schriftlichkeit bei gerichtlichen Verfahren und Konfliktlösungen, die Rolle weiterer Institutionen des Reiches (etwa Reichstage, Reichskreise, Reichskanzlei etc.) sowie die Rolle der handelnden Akteure für den Zusammenhalt des Reiches (19–20). Wir können dem endgültigen Schluss der Herausgeber der Publikation nur zustimmen (20): Die Reichsgerichtsverfassung band die Territorien und ihre Gerichte an die Zentren des Reiches und wirkte damit am Zusammenhalt des Reichs wesentlich mit. Dessen ungeachtet tragen die sich voneinander unterscheidenden, aber dennoch ineinander verflochtenen Reichs- und Territorialgerichte dazu bei, die vielen Facetten des Kosmopolitismus zu verstehen, die das Alte Reich seit jeher auszeichneten. Damit leisten die hier versammelten Einzelbeiträge einen wichtigen Beitrag zur längst noch nicht abgeschlossenen Erforschung des Verhältnisses zwischen Reichs- und Territorialverfassung sowie der integrativen Faktoren zum Zusammenhalt des Reiches und tragen dazu bei, dieses »Institutionengefüge« (20) nicht nur auf der Ebene der Reichsgeschichtsforschung, sondern auch im europäischen Panorama (neu) zu verstehen.



Oswaldo Rodolfo Moutin

Barely Known Old Legal Texts Come to Light*

In the recent historiography on the canon law of the early modern Spanish Empire, legal historians have been considering many forms of normativity. Nevertheless, law still remains, and there is no reason to think otherwise, as a primary source of legal orders. In the case of canon law, many of the legislations drafted remained largely unknown due to their lack of *recognitio* by the Holy See and *pase regio* granted by the Spanish Monarch. Such texts were not printed and only circulated in manuscript form, likely resulting in a very low and uncertain

degree of compliance. During the 20th century, gradually but fragmentally, many of these texts became known in academic publications. The book reviewed here finally gathers together in a single volume all the legislative texts drafted at church assemblies celebrated in the archdiocese of Santafé (today Bogotá) before 1625.

The two editors' fields of expertise complement each other in providing not just a paleographic transcription of the texts, but also an introduction into their historical context, a survey of the current

* JUAN FERNANDO COBO BETANCOURT, NATALIE COBO (eds.), *La legislación de la arquidiócesis de Santafé en el período colonial* (Colección Biblio-

teca del Nuevo Reino de Granada), Bogotá: ICANH 2018, LX + 810 p., ISBN 978-958-8852-31-7

state of research and an explanation of the editorial decisions made in preparing the transcriptions, as well as the translation of the Latin originals into Spanish. Juan Fernando Cobo Betancourt received his doctorate in history from the University of Cambridge and is currently Assistant Professor at the University of California at Santa Barbara. He is also the author of the monograph *Mestizos heraldos de Dios*, a study on the ordination of mixed-race priests at the end of the 16th century.¹ Natalie Cobo is also a historian trained at the University of Cambridge and currently working on her doctorate in history at the University of Oxford. Both are co-founders of the »Fundación Histórica Neogranadina«,² a non-profit organization that digitizes and publishes manuscripts and ancient books and for this purpose also develops tools in the field of digital humanities. The present volume is a direct result of this project.

The book contains four documents resulting from the diocesan synods and provincial councils celebrated in Santafé between the years 1556 and 1625: the diocesan synods of 1556, 1576 and 1606 and the provincial council of 1625. A sixty-page introduction gives the historical context, brief prosopographical information on the respective bishops who presided over the assemblies, a summary of what we know about the events of the meetings and the fate of the documents in their manuscript transmission, as well as an assessment of any previous printed editions. A broad bibliography accompanies the text, which not only contains the main historiography on the topic but also potentially interesting studies on other areas, mainly Mexico and Lima. The transcription of the documents indicates textual variations in the extant manuscripts and in previous printed editions. Furthermore, the present edition provides information on the sources used to draft the new documents. In many cases, this was found in the manuscripts as marginal notes; but for more than a few provisions, this was not the case, and the editors provide the information, indicating the source

from which material was taken and the degree of similarity between the original version and its reception.

As it has been said, the law should be pondered along with other types of normativity as the primary source for legal historiography. Although never fully neglected in the scholarship of so-called *Derecho Indiano*, the importance of the constitutions in canon law should extend to other forms of normativity linked to ecclesiastical assemblies. The editors are therefore right to include the catechism promulgated at the Diocesan Synod presided over by Luis Zapata de Cárdenas in 1576 alongside the other legal documents.

The text of the Provincial Council of 1625 is transcribed with a Spanish translation done by the editors. As in the case of the Diocesan Synod of 1606, the Provincial Council's texts renewed many constitutions of the Third Provincial Council of Lima (1582/1583). As the introduction points out, the text's decretal scheme closely – but not completely – following that of the Third Mexican Provincial Council (1585), from which many of the constitutions were also taken.

Considering that the present edition is a source that will be used frequently, the quality of the bookbinding and the paper reassure readers that the book will not disintegrate in their hands, something that researchers doing a close reading of sources always fear. The scholarly quotations follow a somewhat strange system. Some are indicated in the body of the text in the introduction, others added as a footnote, without an explicit criterion for this diversity.

On top of all the merits mentioned above, this edition also provides a great opportunity to complement studies of the circulation of legal texts and ideas within the internal frontiers of the Spanish Empire. Comparison between Mexico and Lima has already begun.³ Thanks to this edition Nueva Granada can now be included in such comparative projects. ■

1 JUAN FERNANDO COBO BETANCOURT, *Mestizos heraldos de Dios: la ordenación de sacerdotes descendientes de españoles e indígenas en el Nuevo Reino de Granada y la racialización*

de la diferencia, c. 1573–1590, Bogotá 2012.

2 www.neogranadina.org

3 SEBASTIÁN TERRÁNEO, *La recepción de la tradición conciliar limeño en los*

decretos del III Concilio Provincial Mexicano, Buenos Aires 2010.

Manuel Bastías Saavedra

Property and the Early Modern Condition*

Interest in the relations between land and law in the early modern period has been growing steadily among historians of the Americas in recent decades. While some authors have made this a central focus of research, others have explored it in the broader context of how law structured intercultural relations between European colonizers and native populations. Alan Greer's book *Property and Dispossession* places both of these issues in the center of its analysis, and makes the very correct argument that capitalist development, private property, and modernity played a very limited role in the early colonization of North America (3). This argument does not seek to establish a difference between European and American developments. Rather it is a manner of stating that since modern representations of the economy and control over land did not exist anywhere in Europe during the early modern period (18), colonization was not a process of ›introducing‹ property or modernity between developmentally asymmetrical world regions. Greer's argument thus seeks to deconstruct a widespread historiographical narrative about colonization that assumes that property ideas came from Europe to the Americas fully formed and ready to use. Instead, Greer proposes focusing on ›concrete on-the-ground actions, actions that had the effect of instituting colonial property for both settlers and surviving indigenous populations‹ (4). For these insights alone, this book is a must-read for anyone interested in the problems of colonialism, colonization, land relations, and indigenous dispossession in the Americas.

The author selects three different experiences of European colonization in three very different regions, making it necessary to spend many pages bringing the reader up to speed on the manifold differences between British, French, and Spanish colonization and the different local indigenous social conditions they found upon their arrival.

The layout already suggests some problems in Greer's ambitious approach. The five chapters of part 1 serve more as introductory chapters that lay the groundwork for the analytical chapters of part 2, which seems particularly long given that these chapters offer not much more than a summary of the state of the art for each particular topic. Perhaps the most important payoff of these chapters is that they reveal that there was no paradigmatically ›European‹ approach to land tenure; the manner in which land was regulated in different colonial spaces was determined by local conditions; and different empires approached the question of land tenure with different interests and rules.

The most compelling chapters of the book are those of part 2, dedicated to studying different ›aspects of property formation‹: the colonial commons (chap. 7); the spatial dimensions of property (chap. 8); surveying (chap. 9); and the relation between colonial sovereignty and property formation (chap. 10). The final chapter gives an outlook into the 19th century.

Chapters 7, 8, and 9 are particularly persuasive, containing nuanced and counterintuitive accounts of how the native inhabitants of America and Europeans represented land and their claims to it. In the chapter on the colonial commons, for example, Greer correctly notes that ›common property was, in fact, a fundamental feature of landholding in both the New World and the Old in the early modern centuries‹ (248). The chapter describes the diverse forms in which common holdings were treated in Spanish, English, and French law, and how these forms of communal landholding played an important role in the dispossession of indigenous land. In the chapter on ›Spaces of Property‹, the author presents ›European‹ representations of space by showing the limitations of mapping and measurement, and by highlighting the importance of *place* among Euro-

* ALAN GREER, *Property and Dispossession. Natives, Empires, and Land in Early Modern North America*, Cambridge: Cambridge University Press 2018, 464 p., ISBN 978-1-316-61369-6