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Abstracts

Church councils as an agent of authorization
The ordination to the priesthood of *mestizos* before the Third Provincial Council of Lima (1582/83) and the communication about law in the Spanish monarchy

Legal Historians are usually interested in Church Councils because of their function as the institutional setting for the production of canons, one of the major sources of the history of canon law. Nonetheless, Church Councils were also important places of communication about law and politics, an important function which often did not find any expression in the normative framework enacted by these assemblies. Taking a petition submitted by a group of *mestizos* from the Viceroyalty of Peru as a starting point, this article tries to analyze the way this growing interest group tried to perceive its goal – the admission to the ordination of priesthood – by making strategic use of the procedures and communication structures the Council offered for the resolution of disputes that had arisen in the Church Province. Looking carefully at the steps taken in what the *mestizos* themselves called a »process«, it can be shown that the Council did not only take its own decision on the matter of sacramental law, but that it was also employed by the petitioners to validate their arguments and thus prepare a submission to the King. By introducing their own arguments into the process, they transformed them into »proofs« that finally served as arguments for reaching their main goal, the revocation of a Royal Decree prohibiting their ordination, dictated by the Crown in 1578 and revoked ten years later, making explicit mention of the arguments collected before the council. This case study, based on material from the Archive of the Indies, thus not only shows how deeply intertwined secular and ecclesiastical jurisdictions were in the Indies, but also gives an insight into communication about law and legal culture in an important centre of the polycentric Spanish monarchy.

Thomas Duve

The Bourbon militarisation of the Indies as a historical backdrop for revolutionary political experiences in the River Plate

As an expression of the line of investigation that the author has pursued for several years, this essay examines not only the renewed administrative design that the Bourbon kings implemented in Spanish America during the 18th century but also its impact on the region.

It is worth noting that it describes the characteristics and institutional modalities that are inherent in the militarization of the monarchy, which implied the transfer to the civil sphere of the military order, hierarchy, precision and uniformity.

All this came about through the conviction that the perspectives and political absolutist styles represented unavoidable elements in the later construction of an institutional identity of the Hispano-American states of the 19th century; nevertheless, adequate historiographical attention has not been devoted to this phenomenon.

Ezequiel Abásolo

»To alleviate the cruelties of war«
The role of the Argentinian federal judiciary in the provincial uprisings 1860–1880

This paper addresses the role played by federal judicial institutions in Argentina during the nineteenth-century rebellions and civil wars, thus adding a dimension of the Argentine state-building process frequently neglected in historiography. Contrary to received interpretations emphasizing the institutional mechanisms introduced by the 1853/60 Constitution to limit the concentration of power in the hands of the national executive and the subordination of judges to political authorities, this article aims to recover the ways in which judicial institutions protected civilians involved in military conflicts and guaranteed due process to the rebels. Using judicial decisions from provincial judges and the National Supreme Court as sources, the article covers episodes in the establishment of federal jurisdiction over military or provincial tribunals in the treatment of rebels, the protection of civil liberties and economic interests of civilians in wartime, and the limitation of the responsibility of

civilians involved in acts of rebellion against political authorities. Finally, following the pioneering work of Jonathan Miller, the article reflects on the role played by the court in creating a »spirit of moderation« towards political opposition, thus contributing to the establishment of modern political institutions.

Eduardo Zimmermann

Republican state and indigenous land: The experiences of the Andean region in the 19th century

The advent of the republican state involved the imposition of liberalism as the central value of the new institutional Latin-American order. Such a process, justified by the prestige of the European experience, was supported by the proliferation of a set of laws aimed at cancelling any reference to the colonial system. In its economic profile, the new ideology gravitated around the establishment of individual freedom of disposition over the most valued asset according to the European values of physiocracy: the land. For this reason, the process of economic consolidation led to the establishment of an increasing market in land based on individual titles to property, and to the eradication, through an exhaustive legislative production, of any obstacle to the free alienability of land.

This paper illustrates, within the wider legal framework required to carry out this operation, the ideological and normative approach that altered the structure of the land tenure systems of the Andean indigenous groups during the 19th century. Our analysis will focus on the principal legal milestones enacted in four countries of the Andean area: Argentina, Bolivia, Chile and Peru, with particular regard to the experience of the Bolivian state during the period between 1825 and 1880.

The study seeks to reflect about the legal transplant of possessive individualism in order to provide a critical review of the impact of the rule of law in the arrangement of the indigenous agrarian system during the 19th century.

Rodrigo Míguez Núñez

Latin American constitutionalism and the wave of constitutional reforms in the Andean region

The purpose of this paper is to examine the general outline of the constitutional reforms approved in the countries of the Andean region in the past decades. It is preceded by a general consideration of the meaning of constitutions and constitutional development in Latin American juridical culture. It also approaches the origins and political meaning of some constitutional processes and analyzes recent attempts to revise the constitution carried out in the region.

Jesús M. Casal H.

Protection of possession and interdicts against the administration

Jurisdictional culture and bourgeois revolution in Spain

This work is based on the need to provide a satisfactory explanation of the origins of article 445 of the Spanish Civil Code of 1889. The author argues that this provision contains within it the summary possessory remedy known by medieval and modern jurisprudence by several names such as *mandatum de manutenendo*, *interim*, etc. This procedural instrument was characteristic of a traditional way of viewing rights *in rem* as compatible with the division of property and the protection of land tenure. The continuation of this procedure throughout the 19th century depends primarily on its use in the process of abolition of the feudal regime in Spain. It was thus an instrument for the creation of the individual owner, because the *summary procedure* was employed by former landowners to keep their incomes in the face of non-payment by those who considered them abolished by revolutionary legislation. However, the use of this procedure was not permitted against actions of the Administration because the process of dissolution of the feudal regime was considered more as nationalisation than as abolition of rents. Finally, the role of judges and courts as protagonists is yet another indication of the *Sonderweg* of the constitutionalisation within Hispanic political society and is related to the maintenance of a jurisdictional rather than legal form in the management of political power during the 19th century.

Fernando Martínez Pérez