

# Rechtsgeschichte Legal History

[www.rg.mpg.de](http://www.rg.mpg.de)

<http://www.rg-rechtsgeschichte.de/rg26>  
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 26 (2018)  
<http://dx.doi.org/10.12946/rg26/434-436>

Rg **26** 2018 434–436

**Gustavo César Machado Cabral \***

## Forging an Empire in Writing

---

\* Universidade Federal do Ceará (Brasil), [gustavocesarcabral@gmail.com](mailto:gustavocesarcabral@gmail.com)

tos de indígenas, sino también de europeos, afro-americanos, mestizos y otras ›castas‹. El gran potencial para este tipo de estudios etnohistóricos – no restringidos a la población indígena – lo muestra, precisamente, el artículo de Tatiana Seijas. Desde estos postulados se podría incluir fácilmente a la América portuguesa, habitualmente ausente.

Aunque, al parecer, no existen testamentos indígenas en Luso-América, sí hay trabajos prometedores sobre la práctica testamentaria en Ibero-América que abarcan también el Brasil colonial.<sup>2</sup>

**Gustavo César Machado Cabral**

## Forging an Empire in Writing\*

The Portuguese crown held considerable territory in the early modern period and sought measures to preserve its political power, as in any other extended empire. A strategy based on official communications, particularly letters, was a very important instrument to govern not only the overseas territories, but also those in Europe located far from Lisbon. Understanding the role of these communications, as well as their practical application, is the focus of *Um reino e suas repúblicas do Atlântico: comunicações políticas entre Portugal, Brasil e Angola nos séculos XVII e XVIII* (»A kingdom and its republics in the Atlantic: Political Communication between Portugal, Brazil and Angola during the 17<sup>th</sup> and 18<sup>th</sup> Centuries«). Applying a transatlantic perspective, João Fragoso and Nuno Gonçalo Monteiro, the editors, generally study the political institutions of the Portuguese Empire, which were founded on a common architecture that included every single village in all territories of the kingdom as well as in America, Africa, and Asia. This particular analysis, however, is restricted to the states of Brazil and Maranhão in America and Angola on the Atlantic coast of Africa. In this context, the official communications played an important role in connecting the central authority to local powers, both by hearing and by command-

ing when necessary. This is exactly what the book intends to demonstrate.

We can clearly notice a common background, which the sources confirm throughout the book, in all the published texts. First, all of them refer to the cities and villages in the Portuguese Empire as communities with a considerable level of autonomy from the crown, constituting the »republics« mentioned in the title, in an unequivocal reference to the political thought of Aquinas and the scholastics, especially authors like Francisco Suárez. Local communities shaped social life most of the time, but this did not mean that the crown was powerless or irrelevant. As the editors write explicitly, the municipal councils were the heads of political communities endowed with jurisdiction.

On the other hand, all articles prove that intense contact between Lisbon and the »republics« of the kingdom was the key to this model's success. With its foundation after the Portuguese Restoration in 1640 and at least until the ascension of King Joseph I and the Marquis of Pombal in 1750, the *Conselho Ultramarino* became the center of political communication with the overseas possessions. Within the relevant *Projeto Resgate Barão do Rio Branco*, hundreds of thousands of documents of the *Arquivo Histórico Ultramarino* (where these docu-

2 Por ejemplo: ROBERTO GUEDES / CLAUDIO RODRIGUES / MARCELO DA ROCHA WANDERLEY (coords.), *Últimas vontades: testamento, sociedade e cultura na América Iberica (séculos XVII e XVIII)*, Rio de Janeiro 2015.

\* JOÃO FRAGOSO, NUNO GONÇALO MONTEIRO (eds.), *Um reino e suas repúblicas no Atlântico: comunicações políticas entre Portugal, Brasil e Angola nos séculos XVII e XVIII*, Rio de Janeiro: Civilização Brasileira 2017, 475 p., ISBN 978-85-200-1269-7

ments were archived in Portugal) are now available electronically. Many monographs about the colonial institutions, particularly theses and dissertations, published in the last two decades have been based on these documents. Despite the use of the same database, this volume has a different aim, which is not only to understand the nature and features of the documents written in America or Angola and sent to the kingdom, but also to see them as part of imperial governance, which depended on formal instruments, such as consultations answered by the council.

The book is divided into three parts, and the first one, *Arquitetura da Monarquia e circulação da comunicação*, is divided into three chapters, opening with a study by João Fragoso about »mercês« (i. e. grants of offices and gifts by the crown to vassals and their families) and their relevance for the relations between the center and the periphery in Portugal. According to the author, successful petitions for an office as compensation for vassal services to the commonwealth were clear manifestations of a »sentiment of belonging« to the Portuguese monarchy. People felt they were part of the empire, which is why Fragoso believes that the *mercês* were a crucial element in maintaining a »pluricontinental« and corporatist monarchy based on a negotiated coexistence of powers. The predominance of the *mercês* as a subject of correspondence corroborates this view in most of the captaincies analyzed. The two following chapters deal with the institutions involved in communication. Maria Fernanda Bicalho, José Damião Rodrigues, and Pedro Cardim look into the role of *cortes* (assemblies of states), *juntas* (boards of municipal councils and the governor of a captaincy) and of the procurators in political communication, noting their objective to pay attention to the local powers. The presence of representatives (procurators) of some overseas municipal councils in the Portuguese *cortes* after the Restoration and the organization of *juntas* as local assemblies in America can be seen as a means of managing the interests of cities and villages that reinforced the position of local institutions in guaranteeing royal authority. After that, Maria Fernanda Bicalho and André Costa discuss the *Conselho Ultramarino* as the institution responsible for overseas affairs, tracking the number of consultations documented in the database over time. This diachronic survey reveals the decrease in importance this Council suffered when the Secretariat of State was created, which

centralized most decisions about public affairs in the kingdom in the mid-18<sup>th</sup> century.

Part two, *Temas da comunicação*, starts with an impressive article by Pedro Cardim and Miguel Baltazar on the diffusion of Portuguese royal legislation. The authors discuss the complex typology of royal norms and use the database *Ius Lusitaniae*, which holds 6 574 laws enacted by the Portuguese kings between 1621 and 1808, to analyze the most repetitive themes, the process of publication, and how these norms circulated, were compiled and became mandatory in local juridical spaces, especially in the overseas territories. Carla Almeida, Antonio Carlo Jucá de Sampaio, and André Costa have prepared a chapter about the fiscal issues and how they can be understood from the perspective of political communication. Bearing in mind that the municipal councils also had the power to institute taxes, the authors realized, using the database, that some aspects of fiscal practice, such as the public sale of the right to levy and collect taxes, were usually based on urgent necessities and in agreement with local powers. War and military affairs are discussed by Roberto Guedes Ferreira and Mafalda Soares da Cunha in a chapter that highlights their relevance even during peacetime, when providing military offices according to local requirements was a common theme. Here we can also observe the logic of the *mercês*. Ending this part, Antonio Carlos Jucá de Sampaio debates issues of economic history, namely currency and commerce, in order to understand the practices of social life in an economy with scarce currency and dependence on exchanges. Such dependence explains why sugar became an important element of credit and sometimes an unofficial (though recognized by the crown) medium of exchange in many areas of Brazil until the development of mining during the 18<sup>th</sup> century.

Focusing on agents and institutional spaces of communication, part three begins with a chapter by Francisco Cosentino, Mafalda Soares da Cunha, Antônio Castro Nunes, and Ronald Raminelli about the governors and their duty of communicating with the crown. Almost one-fifth of the documents in the database were issued by governors, a general category that included viceroys, governors-general, governors of captaincies and *capitães-mores*. Therefore, most of them deal with questions of government. Mafalda Soares da Cunha, Maria Fernanda Bicalho, Antônio Castro Nunes, and Isabele Mello look into the administration

of justice in their chapter about the *corregedores* and *ouvidores* as agents in political communication. Their description leaves no doubt about how these documents were used juridically: they were not sources to reconstruct the content of lawsuits or procedural details (e.g. producing evidence and decision-making), but a consistent means to grasp some practical questions and the relations between the crown-appointed judge (*ouvidores*) and the central power. The chapter by Ronald Raminelli concerns the political power of the municipal councils, which their correspondence with Lisbon reveals. The growing amount of documents sent by the cities, according Raminelli, corresponds to their ability to negotiate with the crown, although this changed from 1750 on, when the Secretariat of State started dealing directly and more frequently with the governors. A specific analysis of the Angolan experience, mixing the databases of the *Arquivo Histórico Ultramarino* and the *Biblioteca Municipal de Luanda*, appears in the chapter by Roberto Guedes Ferreira about political communication in the municipal councils of Luanda and Benguela and the Governor of Angola, predominantly in the second half of the 18<sup>th</sup> century. Finally, the chapter by Nuno Gonçalo Monteiro and Francisco Cosentino tackles the petitions from corporative groups in some cities of the kingdom (Évora, Faro, Viana, and Vila Viçosa) and in the most important captaincies of America. These petitions, which were collective requirements from groups of interest (many of them popular economic activities such as tailors, carpenters, and blacksmiths), indicate intense correspondence with the center independent of individual requirements.

All contributions to this volume pay special attention to an important question that has recently been discussed in legal theory<sup>1</sup> and in a few

works by António Manuel Hespanha.<sup>2</sup> This book brings legal history into the very fruitful debate on the role of political communication, particularly the dynamics of power in the relations between the center and the peripheries of the empire, since localities asked for solutions and seemed to behave according to the answers they received. Furthermore, these studies enable a detailed look at the social (and juridical) life in many areas of the empire, even the farthest, and they are all integrated into a logic of belonging to the same political institutions. The crown and its possessions established much more complex relations than the simple reductions traditional historiography describe.

Even without stating it expressly, law is a central concern of this book, and this is why it is extremely relevant for legal historians studying the early modern period. There are some aspects, however, in which the legal-historical approach could go further, such as in conceptualizing law or describing what can be understood as contemporary law and sources of law, which is one of the central, but commonly neglected, issues in analyzing law in Portuguese America.<sup>3</sup> Legal historiography mostly identifies law and legal norms with those enacted by the king – a very restrictive concept that is not sufficient to describe other normativities that co-existed in the same juridical space<sup>4</sup> and cannot explain coherently, for example, the nature of the answers to consultations of the *Conselho Ultramarino*. A few problems of legal theory must be solved in order to understand the nature of these sources, but works like this book are a helpful starting point for this research agenda.



1 THOMAS VESTING, *Die Medien des Rechts*, Bd. 2: Schrift, Velbrueck 2011; THOMAS VESTING, *Die Medien des Rechts*, Bd. 3: Buchdruck, Velbrueck 2013.

2 ANTÓNIO MANUEL HESPANHA, Prefácio, in: *Um império e suas repúblicas no Atlântico*, eds. JOÃO FRAGOSO, NUNO GONÇALO MONTEIRO, Rio de Janeiro 2017, 9–11; ANTÓNIO MANUEL

HESPANHA, Prefácio, in: GUSTAVO CÉSAR MACHADO CABRAL, *Literatura Jurídica na Idade Moderna. As decisões no Reino de Portugal (séculos XVI–XVII)*, Rio de Janeiro 2017, XIII–XVI.

3 The research Project I coordinate (»Direito colonial brasileiro: mapeamento e análise crítica das fontes, séculos XVI–XVIII«) at the Federal

University of Ceará (Brazil) is particularly concerned about understanding the concepts of law and sources of law in Portuguese America.

4 About multinormativity, see THOMAS DUVE, *Was ist »Multinormativität«?* *Einführende Bemerkungen*, in: *Rechtsgeschichte – Legal History* 25 (2017) 88–101, <http://dx.doi.org/10.12946/rg25/088-101>.