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Víctor Tau Anzoátegui. *El Jurista en el Nuevo Mundo.* Global Perspectives on Legal History Series. Frankfurt am Main: Max Planck Institute for European Legal History, 2016. 284 pp. EUR 14.19 (paper), ISBN 978-3-944773-06-3.

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Since the 1980s, VÃctor Tau AnzoÃ¡tegui, an Argentine legal scholar, has played an instrumental role in reinvigorating the study of Derecho Indiano, the distinct legal order of colonial Spanish America. In numerous articles and books, he has carefully historicized Derecho Indiano, highlighting its pluralism and liberating it from legalistic perspectives that only revealed its apparent shortcomings. As he demonstrated in his landmark 1992 study, *Casuismo y sistema: IndagaciÃ³n histÃ³rica sobre el espÃritu del derecho indiano*, judges in Spanish American drew on a wealth of normative sources besides state law to decide cases. They approached each case on its own terms, sensitive to local peculiarities. This casuistic approach helped to produce a flexible legal order that successfully undergirded Spanish rule for almost three centuries. In this new volume of eleven short essays, written in lucid Spanish and previously published between 1977 and 1998, AnzoÃ¡tegui focuses on the central role that jurists played in building, explaining, and defending the colonial legal order from the sixteenth to the eighteenth century.[1]

Although Derecho Indiano diverged from its Spanish parent, notably in its greater acceptance of custom as law and its sharper distinction between matters of justice and matters of government, it retained the *ius commune* reverence for juridical authorities. Colonial lawyers and judges constantly invoked the writings of learned jurists, whether glosses on canon or Roman law or commentaries on Spanish legislation, for help in resolving particular cases. This *Doctrina de los autores* did not compete with state legislation, as its critics contended. Rather, by providing a range of interpretative possibilities, it helped to make often rigid law more pliable. In Spanish America, four juridical texts in particular gained *auctoritas*, or authoritative status: Gregorio Lopezâs edition of the *Siete Partidas* (1555); JerÃ³nimo Castillo de Bobadillaâs manual for governors, *PolitÃca para corregidores* (1597); Juan Hevia BolaÃ±osâs procedural guidebook, *Curia Philipica* (1603); and Juan de SolÃ³rzano y Pereiraâs *PolÃtica Indiana* (1647), which AnzoÃ¡tegui calls âwithout a doubt, the most important jurisdictional work that fixed the legal order of the Indiesâ (p. 17).

AnzoÃ¡tegui argues that historians have unfairly neglected the creative jurists of Spain and Spanish America. They were the first, after all, to grapple with the challenge of fitting the New World into a legal framework still defined by the *ius commune*. This led in sixteenth-century Salamanca to the first flourishing of natural law theorizing under theologian-jurists like Francisco de Vitoria. AnzoÃ¡tegui gives the additional example of Juan

de Matienzo, a Spanish-born magistrate in the 1560s on the Audiencia of Charcas, one of the high courts of royal justice in America. He brought to the task of analyzing how Spain should govern Peru his vast erudition in philosophy, history, theology, and law, as well as his humanistic curiosity toward the strange new things he witnessed in America. One reason for the neglect of his pioneering 1567 manuscript *El Gobierno del Peru* was that it literally took four centuries for it to be published in its entirety.

The greatest jurist of Derecho Indiano was incontestably SolÃ³rzano (1575-1655). After gaining valuable American experience as an Audiencia magistrate in Peru, he returned to Spain in the 1620s and wrote two massive treatises on colonial legality, *De Indiarum Iure*, published in two parts in Latin in 1629 and 1639, and *PolÃtica Indiana* in 1647. To read *PolÃtica Indiana* is to understand Spanish colonial legality from the inside. AnzoÃ¡tegui quotes one jurist in 1733 who noted it was âeasier to set aside the disposition of a law than the authority of this authorâ (p. 208). *El Jurista en el Nuevo Mundo* includes three essays that examine key aspects of SolÃ³rzanoâs thinking. AnzoÃ¡tegui analyzes his conception of justice, stressing the importance the jurist placed on the independent power of the Audiencias in the administration of justice. He looks at SolÃ³rzanoâs appreciation of the diversity of America and the lawâs duty to accommodate it, not to suppress it. As SolÃ³rzano remarked in *PolÃtica Indiana*, âplaces should not be made to conform to the law, but rather the law to placesâ (p. 217). AnzoÃ¡tegui also examines SolÃ³rzanoâs murky role in the long delay in the publication of the *RecopilaciÃ³n de Indias*, the compendium of royal legislation completed in 1636 but not published until 1680. He suggests that although SolÃ³rzano helped Antonio de LeÃ³n Pinelo finish the *RecopilaciÃ³n*, he lost interest in it after his own works gained esteem. That the Crown would support the publication of *PolÃtica Indiana* but not its own collection of laws indicates not only SolÃ³rzanoâs exalted stature but also the continuing importance of *Doctrina* in the legal firmament.

In the eighteenth century, critics imbued with Enlightenment rationalism began to view *Doctrina* not as a rich garden of juridical wisdom but as a labyrinth of contradictory opinion. They pushed to standardize rules across the empire on the basis of state legislation. AnzoÃ¡tegui points out, however, that the frequency of the criticism of *Doctrina* indicates how entrenched the practice of citing juridical authorities remained. The question arises whether the Bourbon Crown, by turning its back on the pluralistic legal tradition represented by SolÃ³rzano, was not in fact abandoning its best tool for colonial control? Was it an accident that Spanish rule in America began to crumble just as the know-it-alls in Madrid let loose their disdain of traditional colonial legality as unwieldy, irrational, and archaic?

El Jurista en el Nuevo Mundo serves as an excellent introduction to AnzoÃ¡teguiâs thinking on Derecho Indiano, and especially his explanation for the significance of SolÃ³rzano. It is not, however, indispensable like such earlier works as *Casuismo y sistema* (1992), *Nuevos horizontes en el estudio histÃ³rico del derecho indiano* (1997), and *El poder del costumbre: Estudios sobre el derecho consuetudinario en AmÃ©rica hispana hasta la emancipaciÃ³n* (2001). Nonetheless, scholars of early modern and colonial law, Spanish intellectual history, and general Latin American history should all appreciate this compact volume, published by the Max Planck Institute in its excellent series, Global Perspectives on Legal History.

Note

[1]. This book is available free of charge at `http://www.rg.mpg.de/publications/gplh-7`.

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