Zeitschrift des Max-Planck-Instituts für Rechtsgeschichte und Rechtstheorie
Journal of the Max Planck Institute for Legal History and Legal Theory

Rechts Rg geschichte

Rechtsgeschichte
Legal History

www.lhlt.mpg.de

http://www.rg-rechtsgeschichte.de/rg34
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 34 (2026)
http://dx.doi.org/10.12946/rg34/241-243

Rg 34 2026 241 – 243

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»Times change, and wills change with them«

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»Times change, and wills change with them«*

There is no doubt that one of the merits of this book is the simple fact that it was written at all. It fills a significant gap in studies on justice in the period between the Portuguese empire and the Brazilian empire, a span of time that, despite attracting growing interest from recent historical research, has seldom received sustained analysis of its institutions. The very recent renewal of studies on the history of law in Brazil in the past few years has likewise failed to alter this picture, even in the face of the by now not-so-new collapse of traditional institutional studies that has marked the social sciences since the final decades of the 20th century. Since then, talk of institutions has moved far beyond descriptions of their traditional operating mechanisms, functions, and biographical profiles of the agents toward viewing institutions as spaces of power, as sites of the symbolic mechanisms of law, and even as social capillary phenomena – extending beyond the State itself – characterized by hierarchization, distinction, and social interaction, which has made them far more interesting objects from a critical standpoint. Yet the fact that this subject continues to attract little interest in Brazil is certainly linked to the disregard that historiography, even non-legal historiography, cast upon institutional and administrative themes when the critical movement swept through the field from top to bottom in the 1970s and 1980s. Having just emerged from the dictatorship, it is hardly surprising that many in Brazil looked with suspicion upon themes tied to the State and government, preferring instead to turn toward society, the forms of resistance of historical agents, and culture, steering clear of the legal realm.

The trajectory of the book's author, Arno Wehling, one of the most renowned legal historians in Brazil today, illustrates the particular academic path he would follow in this process of historiographic renewal. As professor of Theory and Methodology of History at the Federal University of Rio de Janeiro (UNIRIO), and a member of the Brazilian Historical and Geographical Institute (IHGB) since the late 1970s, Wehling had already signaled his interest in the history of Luso-Brazilian administration, which was the subject of one of his earliest books – *Administração portuguesa no Brasil, 1777–1808*, published in 1986. Immersing himself more deeply in the legal field, he would become, in the following decade, associate professor of the History of Law and Institutions at UNIRIO, and his work would increasingly come to occupy the gap mentioned at the outset. In breaking new ground in this area, he published in 2004, together with Maria José Wehling, an equally unprecedented history of the *Tribunal da Relação* (Appeal Court) of Rio de Janeiro *(Direito e justiça no Brasil colonial – o Tribunal da Relação do Rio de Janeiro)*, which was certainly a forerunner to the book reviewed here. The recognition of the need for studies on the history of justice in Brazil was, without a doubt, the fruit of his perceptive eye.

Even so, his current book is much more than a history of a single court. Its title already hints at the classical problem driving the investigation: grasping the concept of justice from the final years of the *Ancien Régime* to the early days of constitutionalism in Brazil, a period that began with the transfer of the Portuguese king to Rio de Janeiro and marked by Portugal's process of independence and a new »liberal« agenda. The story thus begins when the *Casa da Suplicação*, one of the most traditional high courts of the Portuguese monarchy, created in the 16th century, was established at the court in America. It was at this moment that the *Tribunal da Relação* of Rio de Janeiro, which had functioned in Portuguese colonial territories as a first appellate court, was elevated to the status of the *Casa*, with an expansion of its jurisdiction and competence to receive appeals in the name of the royal *suplicação* (supplication) – that is, those cases that were pleaded after having already passed a first

* Arno Wehling, Do Antigo Regime ao Constitucionalismo: a Casa da Suplicação do Brasil, 1808–1829/1833, Rio de Janeiro: Processo 2024, 674 p., ISBN 978-65-5378-198-6

recusal level. Thus, within the logic of the monarchy, this fact was far from merely formal, and the book is right to demonstrate its importance. To grasp the significance of this change, it is worth noting that in Spanish America the courts corresponding to the Portuguese *Relações (Audiencias)* had always held competence to judge appeals of supplication, even though cases could still be appealed once more to the courts in the Iberian Peninsula. In the Portuguese case, by contrast, this possibility did not exist prior to the king's arrival; for many cases, a petition to the *Conselho Ultramarino* (Overseas Council) was required so that the case could proceed to Lisbon and be seen by the king's highest court.

To address this history, the book is divided into three parts, corresponding to each of the concerns outlined above. In the first, entitled »Law and Justice in the Transition to Constitutionalism«, the author analyzes the context of transformations under way between the 18th and 19th centuries in the Portuguese empire, as well as the solutions and challenges faced by the monarchy and by the project of Brazilian independence. »Times change, and wills change with them« is the phrase the author elegantly borrows from Luís de Camões to express his aims. This part opens with a discussion of the meaning of law and justice at the dawn of »new« Enlightenment ideals, dwelling at length on the projects of judicial reform proposed to overcome the »crisis of the *Ancien Régime*«, with particular emphasis on the role played by the emblematic figure of D. Rodrigo de Sousa Coutinho. But the focus of this part is effectively to analyze the measures taken with regard to justice in Brazil from the king's arrival onward, as well as the profound impact that the constitutional moment would bring about.

In this sense, the leitmotif of this part is to demonstrate how an investment was made in expanding the judicial network in Brazil from 1808 onward, providing us with synthesized data on its territories and judgeships. Although the author chooses to treat this phenomenon as one of »centralization« and even of »state« advancement – referring to a process in which spaces previously reserved for private justice or local strongmen *(mandonismos)* were occupied – I would suggest that both terms are potentially misleading. First, because the centrality that existed was that of the king, not properly that of his institutions in their jurisdictional capacity. Second, as the author himself shows, the environment of »multinormativity« was so intrinsically bound up with the functioning of justice that there was no straightforward connection between the construction of a constitutional monarchy marked by the primacy of law and even the final projects of the Enlightenment – the inherent contradictions of which the book so effectively brings to light. Fittingly, the author devotes a chapter to the *Tribunais das Relações*, which, unlike the *Casa da Suplicação* – abolished only a few years after independence and identified with the »old times« – would continue to exist, even if reformulated, well into the 19th century.

In part two, Wehling rightly turns to an analysis of the *Casa da Suplicação* itself. By bringing several perspectives and themes to bear on this complex court, he provides key ideas for rethinking administrative and institutional history. First, and it could not be otherwise, he analyzes the functions, jurisdiction, and competences of the court, as well as the nature of the appeals it processed and their pathways. In light of the constitutional transition, he devotes several pages to the court that would eventually replace it, the Supremo Tribunal de Justiça, created in 1828, without failing to note the many traits the latter inherited from the former. Among these were its *desembargadores* (magistrates), all of whom came from the *Casa da Suplicação* and merit a close analysis of their social, economic, family, and career profiles in one of the chapters. The role of the *Casa* as a reviewing instance – which involved receiving criminal and civil appeals from lower courts, and likewise acting in the judgment of political officeholders by virtue of its jurisdictional standing as the supreme body – is illustrated using previously unpublished case data.

It is highly suggestive that the book devotes an entire chapter to the protocols, etiquette, and rites employed by the justice system, a topic the author refers to as »the trappings of power« *(galas do poder)* – a now classic theme in institutional analyses that take into account their apparatus of power. This is all the more striking because, immediately following this topic, Wehling turns in detail to the entire debate on justice within the Legislative and Constituent Assembly established in Rio de Janeiro shortly after independence, which bore the responsibility of designing a new constitutional framework for the imperial project headed by the Portuguese king's son, D. Pedro. In these pages, center

stage is taken by the controversies over the role to be assigned to the administration of justice and to its magistrates, amid the fierce debates over the separation of powers so central to the moment. All the distrust of and criticism toward the magistracy, which had forcefully emerged and were inspired by the revolutionary movements in France, resonated throughout the Americas and in the Brazilian Assembly at this time, when the idea of the inefficacy and corruption of the courts was very much in vogue in the public sphere. At the same time, however, Wehling argues that the magistrates of the high courts constituted an »inner circle of power«, forming a political, ideological, and professional elite that traversed the constitutional movement, surviving the »twilight« of the *Casa da Suplicação*, as he puts it.

As befits the tradition of legal history, the book could not close without a section devoted to examining the court's jurisprudential activity. This is the task of part three, entitled »Old Law and the ›New Constitutional Times‹«. In it, the author charts, across all its chapters, the pendulum swinging between the entire tradition of casuistic legal reasoning inherited from the *Ancien Régime* and the new science of law, which was meant to be grounded in the primacy of law and in a systematic form of legal interpretation. It is from this point that Wehling analyzes the emergence of the idea of public law, as well as conceiving of a veritable program for »dismantling« the legal past. The expression is a strong one, and even though this entire process did not amount to a genuine, total rupture with the Portuguese tradition – witness the caveat the author offers regarding the persistence of family law well into the empire – it is in this part that the author argues that, in the end, the primacy of the constitution would indeed assert itself. Yet he also concludes, toward the end of the book, that »the *Ancien Régime* was not torn out by the roots, nor was the new liberal agenda implemented fully and completely«. In this way, he tempers what would otherwise be an exaggeratedly rupture-driven tone, the kind we might be left with were we to rely solely on a reading of the laws and of certain contemporary jurists given to essentially laudatory accounts of the empire – sources with which one must always exercise caution.

This 600-page book is without question a work of great breadth, and the product of a lifelong scholarly trajectory devoted to the history of law. The guiding themes of the work, set out by the author himself early in the *Introduction*, help us synthesize the place the book occupies in the historiography. There, he argues for the need to view the *Casa da Suplicação not* as a deformation of »stateness«, but as »*another* political-legal reality«; he likewise rejects the idea of a »reception« of law in the colonial space, proposing instead that it is more productive to think in terms of »translation«, whereby local circumstances play a role in the gestation of a *new* law; and, finally, he calls for understanding that the life of legal norms is transformed not only through the »collapse of those that preceded them«, but through phenomena with greater or lesser social capillarity or the presence of particular agents. In this sense, even though the book is centered on a narrative that addresses the institution internally, as well as those who shaped it from within, the author's case for moving beyond stateness, and for taking local circumstances and norms into account, opens up perspectives for other histories of law. After all, the court also deserves to be examined from the standpoint of the *suplicantes*, that is, those who set the *suplicação* of the king in motion. Everything suggests that such people were numerous, and that the sheer volume of suits and claims may say a great deal about the court's reach, capillarity, and, perhaps, its eventual decline. The same holds for the themes addressed here, including jurisprudence, given that the social use of the courts is a fundamental vector of their histories. This, however, was not the book's intention, and it is equally to its credit that it provides »guidance and direction« for historians wishing to chart other paths toward understanding a history so important as that of the *Casa da Suplicação*.

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