

Rechtsgeschichte Legal History

www.rg.mpg.de

<http://www.rg-rechtsgeschichte.de/rg28>

Zitiervorschlag: Rechtsgeschichte – Legal History Rg 28 (2020)

<http://dx.doi.org/10.12946/rg28/342-344>

Rg **28** 2020 342–344

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The Making of Mexico's Indigenous Other

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Habermas oder Luhmann die Leitreferenzen für rechtshistorische Umbrüche; die sogenannte Vor-moderne dient eigentlich nur als Kontrast zur Moderne und wird entsprechend verzeichnet; rein ideengeschichtliche und eurozentrische Perspektiven dominieren das Bild. Es gäbe also viel Stoff für ein gemeinsames Nachdenken, das der Rechts-

geschichte in ihrer etwas ermüdeten Suche nach dem ›Wozu‹ ihres Tuns sicherlich mindestens ebenso gut täte wie der politischen Philosophie und der Rechtstheorie auf der Suche nach den Gründen des Sollens. ■

Yanna Yannakakis

The Making of Mexico's Indigenous Other*

In Mexican society, the category »indigenous« carries enormous weight. Following the Mexican Revolution of 1910, the nation's élite refashioned national identity around a mythical indigenous past. The cultural and intellectual movement known as *indigenismo* cast Aztec Tenochtitlán as the cradle of Mexican civilization and valorized indigenous cultural and racial heritage as the feature that distinguished the Mexican people. At the same time, post-revolutionary nation-builders targeted people they categorized as indigenous as objects of modernization and development policies. *Beyond Alterity* analyzes the long and contested history of the relationship between rural peasant communities and colonial and national institutions in order to trace how state actors, anthropologists, and scientists produced a seamless link between indigenous identity and alterity in modern Mexico.

Beyond Alterity draws from the disciplines of history, anthropology, history of science, and science and technology studies, and is divided into two parts, the first focusing on the theme of »land and government«, and the second on »science«. In their Introduction, editors Paula López Caballero and Ariadna Acevedo-Rodrigo present an analytical framework organized around the tension between experience, which allows for self-identification, and categories, which others devise to indicate belonging. Through attention to changes in

the historical experiences of people who identify and are identified as indigenous, and transformations in the meaning of the category indigenous, the volume treats indigenous alterity not as an »explanation, but as an object to be explained« (287).

All of the essays argue directly or indirectly that identification with a community constitutes an essential feature of the ideology of indigenous alterity, an insight with important repercussions for Mexico's legal history. This is especially clear in the tension between private and communal landholding in the long history of colonial and national agrarian policy. Emilio Kourí and Gabriela Torres-Mazuera challenge popular assumptions that identify indigenous people with communal landholding by analyzing how land tenure adapted to changing legal regimes and agrarian economies. In his lucid synthesis of secondary literature, Kourí argues that during the 18th century, the Spanish Crown's program of land titling (*composiciones de tierras*) catalyzed two intertwined processes: the development of private property relations within designated communal lands, and the unequal allocation of communal lands based on social hierarchies within *pueblos de indios*. Torres-Mazuera analyzes the responses of Yucatec Maya-speaking peasant farmers to the neoliberal reform of Article 27 of Mexico's federal constitution in 1992, which allowed for the privatization and alienation of *ejido*

* PAULA LÓPEZ CABALLERO, ARIADNA ACEVEDO-RODRIGO (eds.), *Beyond Alterity: Destabilizing the Indigenous Other in Mexico*, Tucson: University of Arizona Press 2018, 312 p., ISBN 978-0-8165-3546-0

lands. Article 27 provided for the restitution of communally held lands that had been expropriated from the promulgation of the Ley Lerdo in 1856 until the onset of the Mexican Revolution in 1910, and for the creation of collectively held farms known as *ejidos*. The ideology of the revolutionary state posited communal landholding – and by extension, the *ejido* – as an uninterrupted inheritance from the pre-Columbian period. Torres-Mazuera undercuts this assumption by showing how the region's *ejidos* were the product of post-revolutionary policy rather than ancestral claims. His research demonstrates that most *ejidatarios* opted out of dividing and privatizing their lands, not out of an impulse to defend communal ownership since most land had long been parceled de facto, but as a pragmatic response to local needs and power relations.

Peter Guardino and Michael Ducey's essays on the late colonial and early national periods argue against prevailing wisdom concerning the marginalization of indigenous peasant communities from regional and national politics. Of particular interest for legal historians, the essays underscore how colonial legal culture provided a framework with which rural villagers could articulate ideas about justice, sovereignty, and citizenship, and interface with broader movements and institutions at local, regional, and national scales. Guardino highlights the role of *tinterillos* (village scribes or lay lawyers) in translating ideas about local autonomy into the legal idiom of the Crown, and later, the Mexican state. Ducey shows how during district-level elections, indigenous participants articulated ideas about political representation through language that evoked the act of granting and holding power of attorney for a town. Such language was honed over centuries of colonial legal practice, and adapted by indigenous peasants to apply to notions of citizenship in a new national context.

In their essays on Spanish-language education, Ariadna Acevedo-Rodrigo and Elsie Rockwell build upon the idea that mastery of legal and notarial genres of Spanish-language writing was crucial to the engagement of indigenous communities with the state. In her study of elementary education in the Oaxaca and Puebla sierras from 1876–1911, Acevedo-Rodrigo challenges the view that rural schools failed to serve either state or local objectives by demonstrating how village authorities fought to keep them. She argues that because the schools served local needs, they facilitated the

»subordinate inclusion« (121) of remote indigenous communities into the nation. Undoubtedly, one of the functions of rural schools was the development of instrumental literacy, including the skills necessary to interact with the legal and administrative apparatus of the state. Rockwell's ethnographic fieldwork with elders of the Malintzi region of Tlaxcala emphasizes the high value that indigenous communities placed on legal knowledge and literacy, and how elders acquired Spanish literacy through the exigencies of the cargo system and village administration.

Part two, which focuses on the scientific production of the category of indigenous, excavates the history of knowledge production that has undergirded the laws and policies affecting the lives of indigenous people. Laura Cházaro and Vivette García Deister analyze how medical and genomic science have pathologized indigenous bodies by casting indigenous bones and genes as susceptible to dysfunction and disease. In both contexts, racist assumptions about the inferiority of indigenous biological heritage fuse with science to produce an indigenous »other« in need of medical and social intervention. Paula López Caballero and José Luis Escalona Victoria trace how social-scientific debates among Mexican, European, and U.S. anthropologists produced ideas that were central to state policies toward Mexico's rural population. López Caballero shows how in the 1940's Mexican anthropologist Julio de la Fuente carved a middle path in the transnational debate about the »Indian problem« by arguing that the category indigenous should be defined by self-ascribed belonging to a community. This definition continues to be the benchmark of indigenous identity as defined by the Mexican census. Escalona Victoria's study of Evon Vogt's theory of encapsulation as applied to the Maya underscores the way that anthropologists collapsed indigenous people's historical experience into a static continuum from the pre-Hispanic period to the present. Diana Lynn Schwartz demonstrates that these ideas had real-world effects in her essay documenting the symbiotic relationship between anthropology and development from the 1940s–1970s. She shows how anthropologists working for the National Indigenous Institute (INI) shaped the first national experiment in integrated regional development through the Papaloapan Commission, and how the category indigenous served as a justification for particular policies concerning

population resettlement, land tenure, and resource allocation. Over time, anthropologists abandoned *indigenista* concerns to take up the role of local power brokers (*caciques*) who distributed patronage and the benefits of modernization to the local population.

In Paul K. Eiss's closing reflection on Guillermo Bonfil Batalla's classic work, *México profundo*, he asks whether »we can ever go beyond alterity without at the same time going beyond Occidentalism« (288). This is an important question that has haunted the disciplines of anthropology and ethnohistory for some time. *Beyond Alterity* holds

a mirror up to scholars and policy-makers, provoking us all to reflect on how we project deep-seated values and assumptions onto our objects of study, especially when they are people who work the land in regions far removed from educational, administrative, and economic centers. How should the ongoing relationship between indigenous identity and lack of access to arable land and a range of social, economic, and political resources be resolved? This volume suggests that the answer does not lie with academics or policy-makers. ■

Reinhard Zimmermann

Ein Hamburger Potpourri*

Wer, wie der Verfasser dieser Zeilen, sein Studium im Sommer 1972 an der juristischen Fakultät Hamburg begann, hatte eine gute Wahl getroffen. Er wurde von einer Reihe von Professoren unterrichtet, die bei aller Unterschiedlichkeit in Temperament und Stil hervorragende akademische Lehrer waren und damit einen bleibenden Eindruck hinterließen. Hans Hermann Seiler wirkte durch seine nüchterne Klarheit, Albrecht Zeuner durch Schwung und Intensität seines Vortrags. Eberhard Schmidhäuser vermittelte seine teleologische Straftatlehre mit solcher Überzeugungskraft, dass man nachmittags über »Vorsatzbegriff und Begriffsjurisprudenz im Strafrecht« nachzulesen begann. Der viel zu früh, im Alter von 52 Jahren, verstorbene Wolfgang Martens vermochte sogar das allgemeine Verwaltungsrecht zu einer überaus anregenden Angelegenheit zu machen. Der weithin gefürchtete Karl August Bettermann lud immer wieder Studenten, die ihm auffielen, zu Semesterabschlussabenden bei sich zu Hause in der Alten Landstraße ein und entpuppte sich als ausgesprochen zugewandt. (Die

Anfängerübung zum öffentlichen Recht bot damals sein Assistent Wassilios Skouris an, der bei diesen Semesterabschlussabenden natürlich auch zugegen war.) Ingo von Münch kündigte Kolloquien an, in denen es um Recht und Rechtswissenschaft während der Zeit des Nationalsozialismus ging (für uns damals ein ganz neues und aufrüttelndes Thema), und in Peter Ulmers Seminar konnte man die Kontroversen kennen- und verstehen lernen, die dem Erlass des Gesetzes zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen vorausgingen. Man hörte von einem jungen Star namens Claus-Wilhelm Canaris, der drei Jahre lang in Hamburg unterrichtet hatte, dann aber 1971 als Nachfolger seines Lehrers Karl Larenz (von dem einige Schriften, für uns zunächst seltsamerweise, nicht frei zugänglich waren) nach München gewechselt war. Später profitierten wir als erster Jahrgang von einem universitären Repetitorium, das die Hamburger Fakultät unter maßgeblicher Mitwirkung von Götz Landwehr etabliert hatte – eine echte Pionierleistung in der damaligen Hochschullandschaft, die

* TILMAN REPGEN, FLORIAN JESSBERGER, MARKUS KOTZUR (Hg.), 100 Jahre Rechtswissenschaft an der Universität Hamburg, Tübingen: Mohr Siebeck 2019, VIII + 761 S., ISBN 978-3-16-157562-4