

Rechtsgeschichte Legal History

www.rg.mpg.de

<http://www.rg-rechtsgeschichte.de/rg24>

Rg **24** 2016 154 – 170

Oswaldo Rodolfo Moutin

More than Copy and Paste. The Drafting of the Judicial Order in the Decrees of the Third Mexican Council

Dieser Beitrag steht unter einer
Creative Commons cc-by-nc-nd 3.0



Abstract

This article compares the legislation promulgated by the Synod of Granada (1572) and the Third Mexican Provincial Council (1585) regarding procedural canonical law. Diego Romano, bishop of Puebla, served as a vehicle between the Spanish and Mexican Assemblies, and he was clearly inspired by the former when drafting the latter. The article pays attention to the level of appropriation and via a comparison of the texts addresses the question whether it is possible to say that Iberian procedural law was copied by the prelate.



Oswaldo Rodolfo Moutin

More than Copy and Paste. The Drafting of the Judicial Order in the Decrees of the Third Mexican Council*

1 Introduction

When analyzing legislation, the question of originality tends to arise sooner rather than later, and often more than once. The question is narrowly conceived if it seeks to determine simply whether a rule is entirely new with regard to its formal and material content; however, a broader analysis is possible if we start from a different premise: that there are antecedents to each norm, but that each new norm is also subject, to varying degrees, to the autonomy and self-inspiration of its editor.¹ Nevertheless, finding an appropriate nomenclature with which to describe and analyze these nuances is difficult without an empirical basis.² As a result, in order to explore this key means of legal transfer, this paper analyzes the results of a comparison focusing on a set of decrees issued by two ecclesiastical assemblies held within 15 years of each other: the first in Granada in 1572 and the second in Mexico in 1585.³

The Third Mexican Council had a more profound influence than expected because it was in force until the beginning of the 20th century in some parts of the then Mexican Ecclesiastical Province, which stretched from the south of the

United States to Guatemala and included the Philippine Islands. The legislation covered the main spheres of the religious and social life and served as a source for the drafting of other legislation by provincial councils across Spanish-America until the 19th century.

Scholars have long discussed the many personal ties that bound these two ecclesiastical assemblies.⁴ Attention has also been given to the textual relationship between the two sets of legislation issued by the assemblies.⁵ My own research on these questions has concluded that almost all of the procedural law promulgated by the Third Mexican Provincial Council could be attributed to Don Diego Romano.⁶ In this article, I propose to return to this procedural legislation in order to analyze it more closely and generate a more accurate classification system. It is clear that the Diocesan Synod of Granada served as an inspiration for subsequent norms, and a superficial reading of the sets of legislation on procedural matters suggests at first glance that Diego Romano simply copied this earlier legislation into the Mexican text. However, a more careful reading, with recourse to statistical analysis and especially a thorough comparison of processes of drafting the content of the decrees by

* The author wishes to thank Dr. Juan F. Cobo Betancourt and Christian Pogies for their assistance in proof-reading the contribution as well as Dr. Lena Foljanty, Dr. José Luis Egjo and Karla Escobar for their comments and feedback.

1 Regarding originality, adaptation and reception of the provincial councils and diocesan synods in Spanish America, see, for example: ESPONERA CERDÁN (1988), MARTINI (2000).

2 This work is inspired from the theoretical point of view by the results and questions formulated in FOLJANTY (2015).

3 The Mexican decrees in CARRILLO CÁZARES (2009a) 41–234; the Granadian constitutions in: Constituciones

Synodales del Arçobispado de Granada. Hechas por el Illustrisimo Reuerendisimo Señor Don Pedro Guerrero Arçobispo de Sancta Yglesia de Granada. En el sancto Synodo que su Señoría Reuerensima celebro a quatorze días del mes de Octubre del año M.C.LXXII, Con licencia Impresas en casa de Hugo de Mena, Granada, 1573. When citing both texts, the book is indicated in Roman numerals, followed by the title and the decree or constitution in Arabic numbers (separated by comas). In the case of the Mexican decrees, the paragraph number is also indicated following the numbering Luis Martínez Ferrer used in his edition, MARTÍNEZ FERRER (2009).

4 Cf. DÍAZ DE LA GUARDIA Y LÓPEZ (2013); LUQUE ALCAIDE (2008) 148–159.

5 A key work is GALINDO BUSTOS (2010) 127–154, updated in MARTÍNEZ FERRER (2009). Another interesting and comprehensive work comparing the Third Mexican Provincial Council and the Peruvian ecclesiastical assemblies is TERRÁNEO (2010).

6 Cf. MOUTIN (2016).

the prelate, yields a clearer insight into the production of this legislation and the specificity of its variation in the Mexican case.

My goal is not to analyze the canonical procedural law, nor to contribute to a reflection on Mexican culture from a legal perspective.⁷ It is also beyond the scope of this work to make a contribution to the history of the Third Mexican Provincial Council or that of the diocesan synod of Granada of 1572. On the contrary, my purpose here is both to present the results of a close reading of the surviving working materials of the Mexican assembly and a careful comparison of both sets of legislation, which I propose allow us to analyze this case as an example of a legal transfer.

To do so, this article is divided into three parts. The first introduces Don Diego Romano, the editor of the »judicial order«, his intellectual formation and his ecclesiastical career. The second part presents the »Judicial Order« of the Mexican text and makes an initial quantitative comparison with the Granadian text. The final section highlights the different degrees of reproduction of Granadian texts in the Mexican legislation, arriving at a new statistical analysis that allows us to appreciate the real differences present throughout the judicial matters written by Don Diego Romano.

The working method is comparative, and the individual results of this comparison are recorded in a table presented as an appendix, divided into four columns. In the first column, and ordering the chart, is the »judicial order« of the Third Mexican Provincial Council – that is, the section running between the eighth title of the first book and the end of the second – with a row for each decree or paragraph according to Don Diego Romano's own numbering.⁸ The second column indicates the Granadian constitution, which in-

spired each of the Mexican decrees, assuming there is one. The third column indicates with a letter (A–D) the results of the comparative analysis of the matter and content contained in the decrees and constitutions indicated in the first two columns.

In addition to the decrees issued in Mexico in 1585, the Granadian constitutions, and other legal corpora, I will also make use of the working materials of the Third Mexican Provincial Council, which are preserved in the Bancroft Library⁹ and were published by *El Colegio de Michoacán* between 2006 and 2011.¹⁰

2 Don Diego Romano, Bishop of Tlaxcala¹¹

The Third Mexican Provincial Council was in session between 20 January and 20 October 1585. Seven bishops of the then vast ecclesiastical province of Mexico took part. Two more bishops, unable to attend, sent their procurators. A tenth bishop explained he was on his way to Spain. Among those present was Don Diego Romano, diocesan bishop of Tlaxcala.¹² Unfortunately, a full biography is still lacking.¹³ He was born in Valladolid in 1537, and while the details of his academic career remain uncertain, it has been suggested that he studied at the universities of Salamanca and Granada, obtaining a doctorate of law at the latter. He was a diocesan priest in the Archdiocese of Granada, where he was later appointed canon in the cathedral chapter. He also was *provisor*¹⁴ and inquisitor under Archbishop Don Pedro Guerrero, a renowned Tridentine reformer in Spain.¹⁵ Guerrero presided over the provincial council of Granada in 1565 and later the Diocesan Synod of 1572. The question about the role Diego Romano played in these assemblies, nevertheless, remains open. Did

7 See TERRÁNEO (2015).

8 The text that was promulgated in 1585 and sent for Roman and royal approval contains some differences in content and distribution compared to the first printed edition of 1622. Regarding the approval process, see FORNÉS AZCOYTI (2005), and MARTÍNEZ FERRER (2009) 97–126.

9 For a description of these materials and how they came to be held in the USA, see LUNDBERG (2006).

10 Cf. CARRILLO CÁZARES (2006), CARRILLO CÁZARES (2007), CARRILLO

CÁZARES (2009b), CARRILLO CÁZARES (2009a), CARRILLO CÁZARES (2011b). In these working materials the procedural law is called »orden judicial« (judicial order).

11 See MOUTIN (2016) 120–125.

12 This diocese was also known as *Puebla de Los Ángeles* or *Carolense*.

13 Brief biographies, with few differences between them, can be found in CASTELLANOS DE LOSADA (1865) 502–503; BERMUDEZ DE CASTRO (1746) 288–291; GONZÁLEZ GARCÍA-VALLADOLID (1893) 352–354; SALA-

ZAR (2005) 73–88. For a recent, more detailed biography, see DÍAZ DE LA GUARDIA Y LÓPEZ (2013).

14 *Provisor* was the ecclesiastical official established by canon law and given ordinary legal authority (*potestas ordinaria vicaria*) to judge within the diocesan jurisdiction – in other words, an *alter ego* of the diocesan bishop. The modern equivalent, *mutatis mutandi*, would be the judicial vicar.

15 Cf. MARÍN OCETE (1970).

he intervene in these assemblies? Did he play any part in the drafting of their legislation?

What is clear is that Romano had a solid legal and canonical training, one which would serve him well on several occasions¹⁶ after he became bishop of Puebla in 1578 – the see he presided over until his death in 1606 – not least the Mexican ecclesiastical assembly of 1585. For example, he was the one commissioned by the provincial council to carry out the investigation in the case of the litigation between the cathedral chapter of Mexico and the priests who had pastoral care in the same temple.¹⁷

The composition process of the decrees by the Mexican council is documented in the notebooks of the conciliar secretary, the priest Juan de Salcedo, which are now part of the materials held in the Bancroft Library.¹⁸ In very broad terms, while the council was convened, the bishops produced the bulk of the decrees in four successive drafts, each of which involved reviewing and revising the constitutions of the first two Mexican councils alongside the materials of other ecclesiastical assemblies and treatises (*memoriales*) submitted by religious and secular institutions and individuals.¹⁹ Already in the first draft, annotations made by Juan de Salcedo to constitutions 76 through 88 of the First Provincial Council of Mexico stated that they were the »Judicial Order« and noted that they should be given to the »Reverend of Tlaxcala«, Don Diego Romano. This note is repeated in the second draft, before being omitted – without comment – from the third and fourth revisions.²⁰ The »judicial

order« – that is, those regulations concerning the constitution and personnel of the tribunal and judicial procedure – consists of 163 paragraphs.²¹ There is no explicit indication of why and when the task of drafting the »judicial order« was assigned to Romano, but it is not surprising that it was at such an early date – at the latest in April 1585. It is very likely that this assignment was the result of his solid training, his experience as *provisor* and inquisitor in the archdiocese of Granada before being appointed bishop in the New World and finally his almost six years as Bishop of Puebla. Intellectual training and first-hand knowledge of local realities were, after all, two essential ingredients for drafting procedural rules.²² Although regulating procedural law in provincial councils and Diocesan synods was not a novelty, it was clear that at the diocesan level, only the bishop could legislate without breaking the general rules of process, and only he could exercise the judicial role, whether directly or through his delegates, without losing his *potestas*.²³

3 The »Judicial Order« of the Third Mexican Provincial Council

The provincial council of Granada of 1565 was never approved or implemented owing to the opposition of the archdiocesan cathedral chapter.²⁴ As a result, Archbishop, Pedro Guerrero, then convened a Diocesan Synod, held in 1572, where these norms were finally promulgated.²⁵ As

16 Cf. SÁNCHEZ BELLA (1991) 170.

17 Cf. CARRILLO CÁZARES (2006) 154–159, 820–838.

18 Cf. CARRILLO CÁZARES (2006) 591–780.

19 On the influence of legal corpora cited in the marginal notes of the 1622 edition, see GALINDO BUSTOS (2010). On the influence of the Peruvian councils, see TERRÁNEO (2010).

20 Cf. CARRILLO CÁZARES (2006), 1st revision: 677–678; 2nd revision: 613–614; 3th revision: 653; 4th revision: 757. See also: MOUTIN (2016) 92–120.

21 *Libro Primero: Título octavo. De officio iudicis ordinarii, et vicarii* (32 paragraphs); *Título noveno. De officio fiscalis, et iure fiscali* (25 paragraphs); *Título 10. De officio notarii, et de fide instru-*

mentorum (36 paragraphs); *Título XI De officio exequutoris iustitiae* (8 paragraphs); *Título XII. De officio custodis, et custodia reorum* (11 paragraphs); *Libro segundo: Título 1º. De ordine iudiciorum* (22 paragraphs); *Título 2º. De procuratoribus* (3 paragraphs); *Título 4º. De dolo et contumacia* (4 paragraphs); *Título 5º. De testibus, et probationibus* (10 paragraphs); *Título 6º. De sententia, et re iudicata* (3 paragraphs); *Título 7º. De apellationibus et recusationibus iudicum* (9 paragraphs). In contrast, *Libro primero. Título XIII* (3 paragraphs) and *Libro 2º. Título 3º. De feriis* (several unnumbered paragraphs) are not considered here, because they were drafted instead by council secretary Juan the Salcedo, cf. MOUTIN (2016) 165–166.

22 Cf. GALINDO BUSTOS (2010) 133.

23 Cf. DELLAFERRERA (1999).

24 Cf. MARÍN OCETE (1962), PÉREZ DE HEREDIA (1990).

25 Canonically, there is a major difference between councils (whether provincial, national, or regional) and diocesan synods. Although both are ecclesiastical assemblies, in councils the bishops are members of a corporation and legislate collegially for all the dioceses of the jurisdiction; in diocesan synods, the members are different juridical or physical persons, and while in some cases they could be presided someone other than the diocesan bishop, the legislator is the diocesan bishop.

stated previously, Diego Romano was canon in Granada at the time, and as a result, he knew the Granadian constitutions of 1572 all too well. They were printed in 1573, and this was the version that was used at the Third Mexican Provincial Council.²⁶ There Diego Romano presented notes on this synod, along with recommendations to incorporate a number of its constitutions to the Mexican province, only three of which were of procedural law.²⁷ Besides Diego Romano, the Jesuit priest Juan de la Plaza also took part in the council, as a theologian.²⁸ Nevertheless, it would have been unusual if Diego Romano did not have his own copy of the Granadian Council of 1572.

A cursory look at the titles listed in the constitutions of both assemblies shows, as previously mentioned, that the Mexican procedural decrees amount to 163 paragraphs, while the Granadian Synod had 157 paragraphs. However, only 101 paragraphs of the Mexican text had a Granadian influence, while 17 paragraphs from the Granadian legislation were not used in the Mexican decrees.²⁹ In addition, three titles have no parallels in the Mexican legislation.³⁰

Of the remaining 22 paragraphs, seven are inspired by the procedural rules of the first two Mexican provincial councils.³¹ 11 decrees were drafted in the process carried out by the conciliar secretary, Juan de Salcedo, and are indicated in the Appendix below, which includes references to their wording.³² Two decrees reiterate the need to apply rules of classical canon law, and their composition can be attributed to Diego Roma-

no.³³ It has so far proven impossible to determine the sources behind the remaining decrees.³⁴

The question of why Don Diego Romano chose to draw so heavily from the Granadian regulations deserves more attention. After all, the Synod of Granada was less than 15 years old. It was also certainly drafted in the spirit of the catholic reform that was spearheaded by the Council of Trent, as a result of Bishop Pedro Guerrero's efforts. Diego Romano had participated in the application of this Synod in Granada as *provisor*. Could it be that later, as bishop in the New World, he identified the pertinence of incorporating these constitutions into a new Mexican legislation in the same light? His notes to this council suggest this was more than likely.³⁵

4 Different Degrees of Appropriation in the Composition of »Judicial Order«

This is not the place for a history of canon law, much less one on canonical procedural law. However, in order to understand the legislative work of the Third Mexican Provincial Council and, above all, the drafting process conducted by Don Diego Romano, it is essential to examine the legal regulations then in force. The law in Spanish America at the end of the 16th century, known as *Derecho Indiano*, was an order composed of written legislation, the opinions of jurists, theology (especially moral theology) and finally custom. Indigenous law was generally integrated as customary law,

26 Constituciones Synodales del Arzobispado de Granada, 1573. In 1805, Archbishop Juan Manuel de Moscoso y Peralta reprinted these constitutions once more, highlighting how, regardless of their age, they remained of value for the archdiocese, but were difficult to find. Cf. Constituciones sinodales del arzobispado de Granada hechas por el Ill.mo R.mo Señor Pedro Guerrero ... Segunda Edición a expensas del Ex.mo e Ill.mo señor Don Juan Manuel de Moscoso y Peralta, Arzobispo de Granada, En la imprenta de Sancha, Madrid, 1805, págs. V.

27 The notes can be found in CARRILLO CÁZARES (2006) 549–560. On these notes, see LUQUE ALCAIDE (2008) 147–159; MOUTIN (2016) 75–78. The

constitutions noted were constitutions seven to nine, out of total of 96. Cf. CARRILLO CÁZARES (2006) 553.

28 On the role of Juan de la Plaza SI, see LUQUE ALCAIDE (2008); some information about his role in Granada in ZUBILLAGA (1961) 181–183.

29 Synod of Granada: I, 8, 10; I, 9, 20; I, 9, 25; I, 10, 3; I, 10, 4; I, 10, 21; I, 11, 4; I, 11, 6; I, 11, 7; I, 12, 1; I, 14, 1–7; II, 1, 1–3; II, 2, 4; II, 2, 6; II, 2, 7; II, 2, 8; II, 2, 9; II, 6, 1; II, 8, 3; II, 8, 5; II, 9, 3. Also of interest are the comparative tables in GALINDO BUSTOS (2010) 234–235; 240–241.

30 Synod of Granada I, *De officio Nuntii*; II, *De foro competentis*; II, *De iure lurando*.

31 The decrees of the Third Mexican Provincial Council I, 8, 4; I, 8, 10; I, 9,

3; II, 1, 7; II, 1, 22 (also with Granadian influence); II, 5, 9; II, 6, 3 contain an explicit note, probably by Diego Romano himself, that they were based on the constitutions of the First Mexican Council of 1555.

32 See: Third Mexican Provincial Council I, 8, 29; I, 8, 30; I, 8, 31; I, 8, 32; I, 10, 16; I, 10, 33; I, 10, 34; I, 10, 35; I, 10, 36; I, 12, 11; II, 5, 10; also note the observations in the appendix at the end of this paper, below.

33 See the decrees II, 7, 5 and 9.

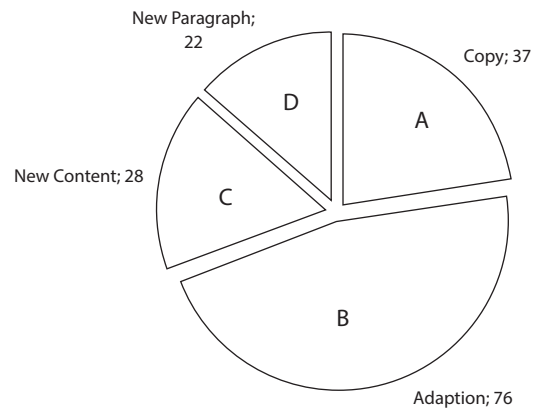
34 See the decrees I, 8, introduction; I, 8, 24; I, 12, 11; II, 7, 4.

35 See note 25.

provided it (indigenous law) did not contradict positive and natural divine law. In material terms, the sources brought to the New world by missionaries, theologians and jurists included – with regard to canon law – medieval legislation, especially the *Decretum Gratiani* and compilations of papal decrees, which is known today – together with its glosses and legal-theological treatises – as the *Corpus Iuris Canonici*.³⁶ This was joined by Spanish legislation, especially the medieval *Siete Partidas* and its 16th century glosses, as well as the Laws of Castile, which acted as a supplementary law. Royal Decrees, known as *Reales Cédulas*, were promulgated by the Spanish monarch, even concerning spiritual matters as a result the Royal Patronage. Anyone wishing to exercise an act of government, including a judiciary act, could draw upon a variety of sources from various origins in the search to find a solution his conscience judged fairest, taking into account this collection of formal and material sources.³⁷

As the bishops themselves explained in another decree, earlier Mexican legislation was in force and in need of renewal, not least because new situations had arisen over time. It was necessary to draft a new body of law.³⁸ In this context Don Diego Romano prepared the »judicial order« that the Third Mexican Provincial Council promulgated. As a result, this legislation should not be interpreted as a procedural code, or as an abrogation of general canonical or civil rules. Rather, it is a normative adaptation, according to the possibilities of justice in the New World, necessarily linked to the canonical and royal legal order. Otherwise, it would have created a parallel legal system, with no real possibility of application. This undoubtedly explains why, looking at the paragraphs promulgated by the Third Mexican Provincial Council as a whole, many rules appear to be straightforward copies of the Granadian legislation. However, the task of harmonizing this legislation with that of the first and second Mexican Provincial Councils, not to mention the realities prevailing in Mexico, in fact resulted in varying degrees of appropriation.

The graphic below illustrates the distribution of different levels of appropriation of the Granadian texts in the Mexican legislation, which are explained in greater detail in the next sections:



A = copy (37 paragraphs)

In terms of the arrangement of the titles, setting aside the several titles that are omitted, it becomes clear that only the title »*De procuratoribus*« is relocated in the Mexican legislation. Examining the rest shows that 37 paragraphs are *verbatim* copies of Granadian legislation, a total of 23% of the Mexican legislation.

B = adaptations (76 paragraphs)

The widespread impression that the Granadian legislation was copied by Diego Romano is difficult to dispel given the fact that an additional 76 paragraphs also seem – at first glance – to have been verbatim copies. However, to be clear, only at first glance. Diego Romano did not mechanically copy this legislation. He was aware that the jurisdictional status of the lawmakers involved in the Mexican case was different: this was a provincial council, so bishops were the legislators, while in the Diocesan Synod the legislator had been the one diocesan bishop. He also had to correct certain

36 An introduction to the medieval canon law sources in: HELMHOLZ (1996) 1–32.

37 On the role of law on the conquest, especially concerning the officials, see MALAGÓN-BARCELÓ (1961).

38 See CARRILLO CÁZARES (2009a) 55; MARTÍNEZ FERRER (2009) § 25. Also MOUTIN (2016) 145–159.

idiomatic terms that did not sit well in conciliar legislation. As a result, he replaced the use of the royal »we« with the phrase »the prelate« to refer to the bishops, whether singular or plural. Similarly, instead of speaking of »our« officers – regardless of to whom this referred – Romano changed the text to refer to »the« judges, »the« notaries and so on. Another variation that can be identified is the change of the currency mentioned, namely, replacing ducats and *maravedís* with *pesos* or *pesos de tipuzque*, yet without changing the sum of penalty or making the fee any more or less burdensome.³⁹ The same was the case when the monetary penalty was not made tangible, but rather was proportional to the money collected. Finally, further changes made by Don Diego Romano did not affect the contents of the decree, but simply adapted them to the particularities of American reality, such as court schedules or the extension of legal deadlines, due to the enormous expanses of American ecclesiastical jurisdictions compared to their Spanish counterparts. A perfect example of this is the comparison of the Granadian constitution and the Mexican decree that limited the power of the episcopal vicars. These adaptations are underlined in the passages below (cf. text 1, p. 162).

There is no difference in content between the two paragraphs beyond the changes noted. Such adaptations are not limited to the paragraphs labelled with the letter B in the table, but can also be seen in other decrees that also include more extensive changes. Although the reliance on Granadian constitutions is evident in such constitutions – as the section quoted above makes clear – it is also essential to distinguish them from those that are *verbatim* copies, and to recognize the attention and effort made by Diego Romano to adapt the new constitutions, terminologically speaking, both from a canonical standpoint and a social one. This category totals 76 paragraphs, constituting 46% of the decrees. Added to those of the first category, the two kinds of constitution make up 69% of the »judicial order« section of the Third Mexican Provincial Council that draws from the Granadian text.

C = new content (28 paragraphs)

The comparison of both bodies of law leaves no room to believe that the process of appropriation was limited to changes of style in the decrees. In at least 28 paragraphs, Don Diego Romano made changes to the content, setting these texts apart from the Granadian constitutions. This is clear, for example, in the paragraph quoted below, concerning the intervention of prosecutors, which is prohibited in both private and public suits (cf. text 2, p. 163).

In addition to the adjustments mentioned in the previous section, it is clear that Diego Romano here also introduced something new: specifying the cases in which prosecutors could not intervene by referring to those specified in the provincial council itself, singling out causes concerning the indigenous population and eliminating the prohibition of requiring restitution. In the second and third ways just mentioned he changed the content of the Granadian constitution. Don Diego Romano, in these cases, retained the structure and vocabulary of the decree, but inserted new provisions not covered by the Granadian law, resulting in an important divergence in juridical normativity.

It is in paragraphs such as this that we can see the performance of Diego Romano as an autarkic editor of the new decrees: going beyond the inspiration of other legislation, while, at the same time, connected with the resolutions of the bishops concerning other conciliar themes, which were addressed in other decrees. Being an *ex officio* member of the Mexican provincial council, he was also present during debates in the conciliar chamber. This is, for example, how he knew about the other issues central to the council. One such issue was the protection of the indigenous population,⁴⁰ considered by the then current canon law doctrine as *persona miserabilis*, thus having special court privileges and consideration, among other prerogatives.⁴¹ It is not difficult to see that he adapted procedural norms along these lines to protect them.⁴²

39 On currencies in New Spain, see HARING (1915).

40 A topic that was the subject of a more in-depth investigation is the perception of the indigenous population by

the Provincial Council. See, for example: BENITO R. (1990), CORCUERA DE MANCERA (2005), LLAGUNO FARIÁS (1963), MARTÍNEZ FERRER (2011), NAVARRO (1944).

41 On the notion of *persona miserabilis* in early modern canon law in Spanish America, see DUVE (2008).

42 Cf. CARRILLO CÁZARES (2011a); LLAGUNO FARIÁS (1963).

Another example in which these changes in wording helped was when it came to determining how judges could exercise their power when given licenses and avoiding the commerce of these practices (cf. text 3, p. 163).

By comparing both of the paragraphs below, we can see that judges were prohibited from asking for fees when issuing licenses. In the Mexican decree, it adds four particularities not contemplated in the Granada Synod: 1. the judge could not ask for anything in return when lifting the prohibition of eating meat during penitential days and lent; 2. in order for an exemption to be approved, a careful examination was required, the medical exemption had to be in written form, it could only be granted for a limited period of time, and it had to be requested by a »bodily medic« (physician); 3. it would only be possible according to the case referred to in the provincial council decrees; 4. and, finally, the penalty would not consist in merely returning what was given for the license, but the penalty established by the Provincial Council.

The norm specified a New World practice, where it was not easy for Christians to follow the penitential meals, due not only to the lack of resources, but also due to the abuse inflicted by judges as a result of this deficiency. To ensure that only sick people could eat meat in order to promote their recovery, certain conditions were established: actual need for recovery, a written physician's recommendation, and that the exception only be for as long as medically necessary. In at least two instances, this decree makes reference to other Mexican decrees outside the »judicial order.« Regarding abstinence from meat and the penalties upon whom these prohibitions were inflicted, the norms were specified in the 21st title of the third book, »De observatione jejunionrum.« Two *memoriales* had short clauses referring to this decree. A petition with this content was introduced at the provincial council by the secular priest and theological consultor of the provincial council, Doctor Ortiz de Hinojosa. There he stipulated, without

providing further reasons, that the physicians should request the license by taking an oath.⁴³ More specifically, it was the physician Doctor Pedro López who requested that bishops should »again« restrain the licenses the physicians had been giving to the sick to allow them to eat meat during Lent. He felt that this exception was being abused, and that they (the physicians) handed them out for insufficient medical conditions, such as »a little headache«, especially to wealthy people, so that, according to Ortiz de Hinojosa, »they have better delicacies during Lent, than the poor who doesn't have them.«⁴⁴

Although it does not reflect exactly the content of the *memoriales*, with its particularities, the new decree reflects the desire of the petitioners. We can see how Diego Romano introduced a norm that placed limits on judges, physicians and, perhaps, even rich people, who abused the fasting licenses.

D = new paragraphs (22 paragraphs)

There are also 11 paragraphs that were not inspired by the Granadian legislation. Eight resulted from the renewal of the constitutions of the two first Mexican provincial councils, as is noted in the margins of the original manuscript of the decrees.⁴⁵ Also, the first paragraph of the »judicial order« is an *arenga* for the rest of the text on procedural law.⁴⁶

11 other paragraphs were added to the judicial order that were not written by Diego Romano and were instead the work of Juan de Salcedo.⁴⁷ These decrees have been left out of this analysis, because they do not have a parallel in the Synod of Granada of 1572. Nevertheless, despite the strong presence of the Synod of Pedro Guerrero in the constitutions of Mexico, we are reminded that it was not the exclusive source.

One question that has not yet been sufficiently addressed is how far Diego Romano followed the structure of Granada in his titles. Galindo Bustos has shown that the body of the Mexican decrees

43 Cf. CARRILLO CÁZARES (2006) 408.

44 Cf. CARRILLO CÁZARES (2006) 421. On the figure of Pedro López, see RODRÍGUEZ-SALA/MARTÍNEZ FERRER (2013).

45 The Appendix to this article includes the exact references to where these paragraphs can be found.

46 Cf. *Libro Primero, Título octavo. De officio iudicis ordinarii, et vicarii*, in: CARRILLO CÁZARES (2009a) 71; MARTÍNEZ FERRER (2009) § 71.

47 These decrees are indicated with an asterisk (*) in the Appendix below.

followed the structure of the Granadian text and, as a result, also that of the Gregorian Decretals.⁴⁸ The Bishop of Tlaxcala also respected the internal order of the titles, making only a few changes.⁴⁹ This can be observed even when he made changes to the formal content of the decrees, for he maintained the thematic order of the text on which he drew. A valuable illustration of this can be found in the Mexican decree that regulated the letters of excommunication that were required to be issued at the beginning of Lent (cf. text 4, p. 164).

When the fifth constitution of the First Mexican Provincial Council was renewed,⁵⁰ the secretary of the Council had indicated that the resolutions concerning these letters of excommunication, which ordered that they were to be issued once a year at the beginning of Lent, had already been communicated to the Bishop of Tlaxcala. There is no novelty in those who threaten with excommunication, but the Mexican decree is particular as to how and where a letter of excommunication should be announced: not just in the parishes but also in monasteries, mines as well as established the procedure about what do to with the denunciations. In this way, Diego Romano took what were clearly the first lines of the Granadian Synod and undoubtedly redrafted the rest of the decree to comply with the wishes of the rest of the bishops. This example clearly shows how Diego Romano consistently maintained the structure of the Synod of Granada, even within the titles themselves, but without doing so mechanically, rather than harmonizing the constitutions with the new dispositions.

Two further paragraphs explicitly indicate how to interpret decretals contained in the *Liber Sextus*.⁵¹ When reviewing these paragraphs, the archbishop protested saying that it should not mention the decretal but just declare that the common law

(«derecho común») should be observed.⁵² This was on May 14th, which gives us the impression that the «judicial order» had at least a first draft by that date, meaning after three months the council started and five months before the closure.

5 Conclusions

A period of only 15 years elapsed between the two assemblies. The person who drafted the «judicial order» of the Third Mexican Provincial Council was, at the very least, a witness to the Diocesan Synod of Granada, and, in his role as a translator, he had one foot on each side of the Atlantic. He belonged both to the church and to the royal bureaucracy, and in both cases took on the role of a functionary, drafting legislation not only for others but also for himself as its subject. In doing this, he maintained the classical framework of canon law and drew from the constitution of Granada, adapting them in the Mexican decrees. The paragraph-by-paragraph comparison makes it possible to detect subtle changes and identify how Diego Romano appropriated a functional scheme and made use of it, making neither a *verbatim* nor a conceptual copy. The Granadian order served him well as a kind of timber frame, but the prelate completed the construction with specific rules that were closer to the Mexican reality.⁵³ The legal transfer can take place, discretely or concurrently, on three levels: in wording, in structure and in underlying idea(s). So far we have shown that Diego Romano's transfer took place along the first two: wording and structure. Further research, delving more deeply into the drafting of the Mexican «judicial order» and the judicial practice, both of post-synodal Granada and post-conciliar Mexico, including the separate court rules issued by the

48 GALINDO BUSTOS (2010) 134–141.

49 In the «Judicial order» the most notable change is the movement of the title «De procuratoribus» from the end of Book II to the second title of the same book.

50 «El párrafo 2º deste capítulo 5º, en su lugar se ponga a la letra el capítulo 4º de acción 2ª del concilio de Lima, y que el edicto se lea el primer domingo de quaresma, así en la catedral como en todas las parrochias, y monasterios de frayles y monjas, y leydas, se fixen

en las puertas de dichas yglesias, y se embien a los pueblos de los españoles y minas. (Al margen) jhs. este edicto para españoles e indios está rremitado al señor obispo de Tlaxcala.», en CARRILLO CÁZARES (2006) 712.

51 Cf. Libro II, Título 7º «De appellationibus, et Recusationibus ludi-cum», paragraphs 5º and 9º.

52 Cf. CARRILLO CÁZARES (2007) 16.

53 Cf. MOUTIN (2016) 150–154.

Mexican assembly,⁵⁴ could provide a glimpse into whether there was a master idea behind the drafting of the decrees.

Meanwhile, it is possible to reach the following conclusion: that a legal norm has a materiality, in the broadest sense of the term, that is, a special linguistic construction. However, in a legal system, which has in its horizon the idea of justice, language becomes the instrument and expression of the notion of justice, but not its foundation. The written norm had a certain distinctive plasticity, in that it was malleable in new situations because its content expressed justice. In this way it differs from current legal systems, where the wording of the

norm is a sovereign expression of the law, and not its consequence, thus making it possible for a new interpretation of the law to be established; one which may not have been contemplated at the time of its initial drafting.⁵⁵ Returning to this case study, Don Diego Romano fashioned the Mexican norms from pre-existing materials, making slight structural modifications, leaving aside what seemed not particularly useful (from entire titles and paragraphs to small semantic units), through a process of appropriation and adaptation of written norms.

■

Text 1

Tercer Concilio Provincial Mexicano
Libro I, Título 8° De officio iudicis ordinarii, et vicarii.

25. Los vicarios conozcan solamente en los casos y de la manera que en sus poderes y provisiones se contiene. Y lo contrario haziendo, por la primera vez yncurran en pena de ocho pesos, la terçia parte para el denunciador y las otras dos para gastos de justicia, la segunda vez por doze pesos, y dos meses de suspensión, la tercera vez doblado, applicado de la misma forma. Y en los negoçios que no fueren de su iurisdicción, avissen a los juezes y fiscales, como arriba se contiene. Y aviendo peligro o neçessidad, hagan cabeça de proçesso y ynformación, y prendan y remitan las tales causas a los provisosores dentro de treynta días, en las partes distantes: y en los lugares propinquos sea con la brevedad possible, sin más les detener, so pena de quatro pesos de tipuzque; y sin las dissumlar, so pena de veynte pesos y privación de sus officios, y embienlas con persona que se obligue de las entregar, y lleve recaudo bastante de ello, so la dicha pena aplicada como está dicho. Y en las causas matrimoniales, o de saevitia, o binas nuptias, aviendo peligro, pueda proçeder hasta hazer depósito; y hecho, remítanlo en la manera que está dicho, so la dicha pena. (CARRILLO CÁZARES (2009a) 78; MARTÍNEZ FERRER (2009) § 91.)

Sínodo de Granada de 1572
Libro I, Título 8° De officio iudicis ordinarii, et vicarii.

22. Nuestros vicarios conozcan solamente en los casos y de la manera que en sus poderes y provisiones se contiene. Y lo contrario haziendo, por la primera vez yncurran en pena de quatro ducados, la terçia parte para el denunciador, la segunda vez por seys ducados, y dos meses de suspensión, la tercera vez doblado, applicado de la misma forma. Y en los negoçios que no fueren de su iurisdicción, avissen a nuestros juezes y fiscales, como arriba se contiene. Y aviendo peligro o neçessidad, hagan cabeça de proçesso y ynformación, y prendan y remitan las tales causas a nuestros provisosores dentro de doce días, sin más les detener, so pena de dos ducados; y sin las dissumlar, so pena de diez ducados y privación de sus officios, y embienlas con persona que se obligue de las entregar, y lleve recaudo bastante de ello, so la dicha pena aplicada como está dicho. Y en las causas matrimoniales, o de saevitia, o binas nuptias, aviendo peligro, pueda proçeder hasta hazer depósito; y hecho, remítanlo en la manera que está dicho, so la dicha pena. (Constituciones Synodales del Arçobispado de Granada, 1573, 18r–18v.)

54 Cf. CARRILLO CÁZARES (2009a) 237–253.

55 On the concept of plasticity in a written culture, see MALABOU (2007), where she states: »The concept of

plasticity tends to become at once the dominant motif of interpretation and the most productive exegetic and heuristic tool of our time« (439).

Text 2

Tercer Concilio Provincial Mexicano
Libro I, Título 9º De officio fiscalis, et iure fisci

14. No se entremetan en los negoçios que fueren propios de partes, si no fuere quando a ellos los juezes les mandaren assistir, o en las que están declarados por este sancto Conçilio; como son las causas de indios; y en estas, ni otras causas de su offiçio, usen dilaciones yllicitas, so pena de dos pesos por cada vez que lo hizieren. (CARRILLO CÁZARES (2009a) 83–84; MARTÍNEZ FERRER (2009) § 118.)

Text 3

Tercer Concilio Provincial Mexicano
Libro I, Título 8º De officio iudicis ordinarii, et vicarii.

14. No lleuen derechos los juezes por las liçençias que dieren para exercitar algùn sacramento, ni por la que dieren para comer carne en días prohibidos o quaresma. Y éstas no las darán, sino examinada bien la causa y »in scriptis«, y por tiempo limitado; y preçediendo la de el médico corporal quando le le hubiere. Ni las darán en los demás casos que el sancto Conçilio les está prohibido, so las penas que en él están puestas. (Cf. CARRILLO CÁZARES (2009a) 75; MARTÍNEZ FERRER (2009) § 83.)

Sínodo de Granada de 1572
Libro I, Título 9º De officio fiscalis, et iure fisci

13. No se entremetan en los negocios que fueren propios de partes, si no fuere quando a ellos nuestros juezes les mandaren assistir, ~~ni por ellos pidan restituciones,~~ y en ellas, ni otras causas de su offiçio, usen dilaciones yllicitas, so pena de quatro reales por cada vez que lo hizieren. (Constituciones Synodales del Arçobispado de Granada, 1573, 21v–22r.)

Sínodo de Granada de 1572
Libro I, Título 8º De officio iudicis ordinarii, et vicarii.

13. No lleuen derechos nuestros juezes por las licencias que dieren para exercitar algun sacramento, so pena de bolver con otro tanto. (Cf. Constituciones Synodales del Arçobispado de Granada, 1573, 17r.)

Text 4

Tercer Concilio Provincial Mexicano
Libro I, Título 8º De officio iudice ordinarii et
vicarii

9. Tengan cuydado espeçial de castigar los pecados públicos, como son juegos, amañebamyento, blasfemias, usuras, y otros semejantes. Y para que esto tenga efecto, cada año la primera dominica de quaresma den carta generales, y las hagan publicar hasta anathema, assí en la cathedral como en todas las parrochias y monasterios, y después de leydas se fixarán en las puertas de las dichas yglesias y también se embiarán a los pueblos de españoles y minas, para que allí se haga lo mesmo; mandando con çensuras a todas las personas que supieren de todos los tales deliquentes, que los vengan a declarar y denunçiar ante ellos, o a lo menos a ante los curas de sus parrochias, ante notario, o escrivano público, de manera que conste jurídicamente. Y estos edictos y cartas de generales se den por el tenor ordenado y aprobado por este sancto Conçilio, y no por otro. Y en lo que toca a los delictos de amañebados, se leerá el dicho edicto también en la primera dominica de Adviento. (CARRILLO CÁZARES (2009a) 73–74; MARTÍNEZ FERRER (2009) § 78.)

Sínodo de Granada de 1572
Libro I, Título 8º De officio iudice ordinarii &
vicarii

8. Tengan cuydado espeçial de castigar los peccados publicos, juegos, amañebamientos, blasphemias, usuras, y otros semejantes, para esto den sus cartas de edictos generales al principio de la cuaresma. Y los curas de las parrochias desta ciudad por sus personas en fin de cada mes, y los de los lugares, vega y tierra, en fin de cada dos meses, y los vicarios en fin de cada tres, de palabra, o por escrito le den noticia de quien son, y del tiempo que han perseverado en ello, y de los remedios que han usado con su parecer, para que con mas facilidad administren justicia, y para estos tengan un libro adonde asienten los avisos que destes casos se les dieren, los nombres de los culpados por abecedario; pongan al margen el nombre del lugar o parrochia donde biven, y alli se sienta el día en que se les hizo saber.

Appendix: Comparison Scheme of the »Judicial Order« of the Third Mexican Provincial Council and the Diocesan Synod of 1572

The first column refers to the decree of the Third Mexican Provincial Council of 1585. The second column indicates the pertinent constitution of the Diocesan Synod of 1572 that served as inspiration for the Mexican decree. The third column indicates the nature of this influence (A: Copy; B: copy with adaptations; C: change of content; D: new paragraphs). The last column contains additional important information.¹

Third Mex. Prov. Council	Synod of Granada of 1572	Influence	Observations
I, 8, introduction		D	
I, 8, 1	I, 8, 1	B	Cf. CARRILLO CÁZARES (2006) 722–773.
I, 8, 2	I, 8, 2	C	
I, 8, 3	I, 8, 3	B	
I, 8, 4		D	Marginal note: »Ex constitutionibus Mexicanis sub Archiepiscopo Montúfar, c. 84.« in MARTÍNEZ FERRER (2009) § 74.
I, 8, 5	I, 8, 4	B	
I, 8, 6	I, 8, 5	A	
I, 8, 7	I, 8, 6	A	
I, 8, 8	I, 8, 7	B	
I, 8, 9	I, 8, 8	C	Cf. CARRILLO CÁZARES (2006) 712.
I, 8, 10		D	Marginal note: »Ex constitutionibus Mexicanis sub Archiepiscopo Montúfar, c. 84.«, in CARRILLO CÁZARES (2009a) 74; MARTÍNEZ FERRER (2009) § 79.
I, 8, 11	I, 8, 9	B	
I, 8, 12	I, 8, 11	B	
I, 8, 13	I, 8, 12	A	
I, 8, 14	I, 8, 13	C	
I, 8, 15	I, 8, 14	B	
I, 8, 16	I, 8, 15	C	
I, 8, 17	I, 8, 16	A	Cf. CARRILLO CÁZARES (2006) 773.
I, 8, 18	I, 8, 17	A	
I, 8, 19	I, 8, 18	C	
I, 8, 20	I, 8, 19	A	
I, 8, 21	I, 8, 20	A	
I, 8, 22	I, 8, 21	C	
I, 8, 23	IV, 2, 2.	C	
I, 8, 24		D	
I, 8, 25	I, 8, 22	B	
I, 8, 26	I, 8, 23	B	
I, 8, 27	I, 8, 24	B	
I, 8, 28	I, 8, 25	B	
I, 8, 29*		D	Cf. CARRILLO CÁZARES (2006) 712.

1 The quotations are indicated in this way: Roman numerals indicate the book, followed by the title and paragraph number assigned in the original manuscripts or printed editions.

Third Mex. Prov. Council	Synod of Granada of 1572	Influence	Observations
I, 8, 30*		D	Cf. CARRILLO CÁZARES (2006) 750.
I, 8, 31–32 ²		D	Cf. CARRILLO CÁZARES (2006) 712.
I, 9, 1	I, 9, 1	B	
I, 9, 2	I, 9, 2	B	
I, 9, 3		D	Marginal note: »Ex constitutionibus Mexicanis sub Archiepiscopo Montúfar, c. 80.«; »Ex constitutionibus Mexicanis sub Archiepiscopo Montúfar et e Lex regia 4 tit 10 lib 8 Recopilationis«, in CARRILLO CÁZARES (2009a) 81; MARTÍNEZ FERRER (2009) §§ 106–107.
I, 9, 4	I, 9, 3	B	
I, 9, 5	I, 9, 4	B	
I, 9, 6	I, 9, 5	A	
I, 9, 7	I, 9, 6	B	
I, 9, 8	I, 9, 7	A	
I, 9, 9	I, 9, 8	A	
I, 9, 10	I, 9, 9	B	
I, 9, 11	I, 9, 10	B	
I, 9, 12	I, 9, 11	B	
I, 9, 13	I, 9, 12	B	
I, 9, 14	I, 9, 13	C	
I, 9, 15	I, 9, 14	B	
I, 9, 16	I, 9, 15	B	
I, 9, 17	I, 9, 16	B	
I, 9, 18	I, 9, 17	A	
I, 9, 19	I, 9, 18	A	
I, 9, 20	I, 9, 19	B	
I, 9, 21	I, 9, 21	C	
I, 9, 22	I, 9, 22	A	
I, 9, 23	I, 9, 23	B	
I, 9, 24	I, 9, 24	B	
I, 9, 25	I, 9, 26	C	
I, 10, 1	I, 10, 1	B	
I, 10, 2	I, 10, 2	C	Cf. CARRILLO CÁZARES (2006) 757.
I, 10, 3	I, 10, 5	C	
I, 10, 4	I, 10, 6	B	
I, 10, 5	I, 10, 7	B	
I, 10, 6	I, 10, 8	B	
I, 10, 7	I, 10, 9	B	
I, 10, 8	I, 10, 10	B	
I, 10, 9	I, 10, 11	B	
I, 10, 10	I, 10, 12	B	
I, 10, 11	I, 10, 13	A	

2 See TERRÁNEO (2010) 202–204; 205–209.

Third Mex. Prov. Council	Synod of Granada of 1572	Influence	Observations
I, 10, 12	I, 10, 14	B	
I, 10, 13	I, 10, 15	C	
I, 10, 14	I, 10, 16	B	
I, 10, 15	I, 10, 17	C	
I, 10, 16*		D	Cf. CARRILLO CÁZARES (2006) 743.
I, 10, 17	I, 10, 18	B	
I, 10, 18	I, 10, 19	C	
I, 10, 19	I, 10, 20	A	
I, 10, 20	I, 10, 22	B	
I, 10, 21	I, 10, 23	B	
I, 10, 22	I, 10, 24	B	
I, 10, 23	I, 10, 25	A	
I, 10, 24	I, 10, 26	B	
I, 10, 25	I, 10, 27	B	
I, 10, 26	I, 10, 28	C	
I, 10, 27	I, 10, 29	C	
I, 10, 28	I, 10, 30	A	
I, 10, 29	I, 10, 31	A	
I, 10, 30	I, 10, 32	C	
I, 10, 31	I, 10, 33	B	
I, 10, 32	I, 10, 34	B	
I, 10, 33*		D	Cf. CARRILLO CÁZARES (2006) 717.
I, 10, 34*		D	Cf. CARRILLO CÁZARES (2006) 743.
I, 10, 35*		D	Cf. CARRILLO CÁZARES (2006) 772.
I, 10, 36*		D	Cf. CARRILLO CÁZARES (2006) 769.
I, 11, 1	I, 11, 1	C	
I, 11, 2	I, 11, 2	C	
I, 11, 3	I, 11, 3	A	
I, 11, 4	I, 11, 5	B	
I, 11, 5	I, 11, 8	B	
I, 11, 6	I, 11, 9	C	
I, 11, 7	I, 11, 10	C	
I, 11, 8	I, 11, 11	B	
I, 12, 1	I, 13, 1	B	
I, 12, 2	I, 13, 2	A	
I, 12, 3	I, 13, 3	A	
I, 12, 4	I, 13, 4	B	
I, 12, 5	I, 13, 5	A	
I, 12, 6	I, 13, 6	B	
I, 12, 7	I, 13, 7	B	
I, 12, 8	I, 13, 8	B	
I, 12, 9	I, 13, 9	B	

Third Mex. Prov. Council	Synod of Granada of 1572	Influence	Observations
I, 12, 10	I, 13, 10	B	
I, 12, 11*		D	Cf. CARRILLO CÁZARES (2006) 612.
II, 1, 1	II, 2, 1	B	
II, 1, 2	II, 2, 2	C	
II, 1, 3	II, 2, 3	B	
II, 1, 4	II, 2, 5	A	
II, 1, 5	II, 2, 22	C	
II, 1, 6	II, 2, 10	B	
II, 1, 7		D	Marginal note: »Ex constitutionibus Mexicanis sub Archiepiscopo Montúfar, c. 83.«, in CARRILLO CÁZARES (2009a) 101; MARTÍNEZ FERRER (2009) § 195.
II, 1, 8	II, 2, 11	A	
II, 1, 9	II, 2, 12	A	
II, 1, 10	II, 2, 13	A	
II, 1, 11	II, 2, 14	B	
II, 1, 12	II, 2, 15	B	
II, 1, 13	II, 2, 16	B	
II, 1, 14	II, 2, 17	B	
II, 1, 15	II, 2, 18	B	
II, 1, 16	II, 2, 19	A	
II, 1, 17	II, 2, 20	A	
II, 1, 18	II, 2, 21	C	
II, 1, 19	II, 2, 23	B	
II, 1, 20	II, 2, 24	A	
II, 1, 21	II, 2, 25	C	
II, 1, 22	II, 2, 26	C	Marginal note: »Ex constitutionibus Mexicanis sub Archiepiscopo Montúfar, c. 77.«, in CARRILLO CÁZARES (2009a) 104; MARTÍNEZ FERRER (2009) § 210.
II, 2, 1	II, 9, 1	B	
II, 2, 2	II, 9, 2	B	
II, 4, 1	II, 4, 1	B	
II, 4, 2	II, 4, 2	A	
II, 4, 3	II, 4, 3	A	
II, 4, 4	II, 4, 4	B	
II, 5, 1	II, 5, 1	B	
II, 5, 2	II, 5, 2	A	
II, 5, 3	II, 5, 3	B	Cf. CARRILLO CÁZARES (2006) 737.
II, 5, 4	II, 5, 4	B	
II, 5, 5	II, 5, 5	B	
II, 5, 6	II, 5, 6	B	
II, 5, 7	II, 5, 7	B	
II, 5, 8	II, 5, 8	A	

Third Mex. Prov. Council	Synod of Granada of 1572	Influence	Observations
II, 5, 9		D	Marginal note: »Ex constitutionibus Mexicanis sub Archiepiscopo Montúfar, c. 86.«, in CARRILLO CÁZARES (2009a) 114; MARTÍNEZ FERRER (2009) § 240.
II, 5, 10 ³		D	Cf. CARRILLO CÁZARES (2006) 761; 191.
II, 6, 1	II, 7, 1	A	
II, 6, 2	II, 7, 2	B	
II, 6, 3		D	Marginal note: »Ex 1º Conc. Mexic. 1555, cap. 76«, in CARRILLO CÁZARES (2009a) 116; MARTÍNEZ FERRER (2009) § 244.
II, 7, 1	II, 8, 1	A	
II, 7, 2	II, 8, 2	B	
II, 7, 3	II, 8, 4	B	
II, 7, 4		D	
II, 7, 5		D	
II, 7, 6	II, 8, 6	C	
II, 7, 7	II, 8, 7	A	
II, 7, 8	II, 8, 8	A	
II, 7, 9		D	

3 See TERRÁNEO (2010) 223–226.

Bibliography

- BENITO R., JOSÉ A. (1990), La promoción humana y social del indio en los concilios y sínodos americanos, in: *Revista de Estudios Histórico-Jurídicos*, 299–328
- BERMUDEZ DE CASTRO, DIEGO ANTONIO (1746), *Theatro Angelopolitano O Historia de La Ciudad de La Puebla*
- CARRILLO CÁZARES, ALBERTO (2006), *Manuscritos del Concilio Tercero Provincial Mexicano (1585)*. Edición, estudio introductorio, notas, versión paleográfica y traducción de textos latinos, vol. 1, 5 Vol., El Colegio de Michoacán, Universidad Pontificia de México, Zamora
- CARRILLO CÁZARES, ALBERTO (2007), *Manuscritos del Concilio Tercero Provincial Mexicano (1585)*. Edición, estudio introductorio, notas, versión paleográfica y traducción de textos latinos, Vol. 2, 5 Vol., El Colegio de Michoacán, Universidad Pontificia de México, Zamora
- CARRILLO CÁZARES, ALBERTO (2009a), *Manuscritos del Concilio Tercero Provincial Mexicano (1585)*. Edición, estudio introductorio, notas, versión paleográfica y traducción de textos latinos, Vol. 3, 5 Vol., El Colegio de Michoacán, Zamora
- CARRILLO CÁZARES, ALBERTO (2009b), *Manuscritos del Concilio Tercero Provincial Mexicano (1585)*. Edición, estudio introductorio, notas, versión paleográfica y traducción de textos latinos, Vol. 4, 5 Vol., El Colegio de Michoacán, Zamora
- CARRILLO CÁZARES, ALBERTO (2011a), La procuración de justicia a la población indígena en el Concilio Tercero Provincial Mexicano (1585), in: ZABALLA BEASCOECHEA, ANA DE (ed.), *Los indios, el Derecho Canónico y la justicia eclesiástica en la América virreinal, Iberoamericana, Frankfurt am Main, Madrid*, 69–84
- CARRILLO CÁZARES, ALBERTO (2011b), *Manuscritos del Concilio Tercero Provincial Mexicano (1585)*. Directorio de Confesores. Edición, estudio introductorio, notas, versión paleográfica y traducción de textos latinos, Vol. 5, 5 Vol., El Colegio de Michoacán, El Colegio de México, Zamora
- CASTELLANOS DE LOSADA, BASILIO SEBASTIÁN (1865), *Biografía eclesiástica completa. Vidas de los personajes del Antiguo y Nuevo Testamento; de todos los santos que venera la Iglesia, papas y eclesiásticos célebres por sus virtudes y talentos, en orden alfabético*, Vol. 23, Imprenta de D. Alejandro Gómez Fuentesnebro, Madrid
- *Constituciones sinodales del arzobispado de Granada hechas por el Ill.mo R.mo Señor Pedro Guerrero ... Segunda Edición a expensas del Ex.mo e Ill.mo señor Don Juan Manuel de Moscoso y Peralta, Arzobispo de Granada*, En la imprenta de Sancha, Madrid, 1805
- *Constituciones Synodales del Arçobispado de Granada. Hechas por el Illustrisimo Reuerendisimo Señor Don Pedro Guerrero Arçobispo de Sancta Yglesia de Granada. En el sancto Synodo que su Señoría Reuerensima celebro a quatorze dias del mes de Octubre del año M.C.LXXII, Con licencia Impressas en casa de Hugo de Mena, Granada, 1573*
- CORCUERA DE MANCERA, SONIA (2005), *Cuestión de palabras. El indio en el III concilio provincial mexicano (1585)*, in: MARTÍNEZ LÓPEZ-CANO, MARÍA DEL PILAR, FRANCISCO JAVIER CERVANTES BELLO (eds.), *Los concilios provinciales en Nueva España. Reflexiones e influencias*, Universidad Autónoma de México, Benemérita Universidad Autónoma de Puebla, México, 169–202

- DELLAFFERRERA, NELSON C. (1999), El obispo, único juez en la diócesis, in: Cuadernos de historia 9 (1999)
- DÍAZ DE LA GUARDIA Y LÓPEZ, LUIS (2013), Granada y el derecho en el Concilio Tercero Mexicano (1585), in: LIRA, ANDRÉS, ALBERTO CARRILLO CÁZARES et al. (eds.), Derecho, política y sociedad en Nueva España a la luz del Tercer Concilio Provincial Mexicano (1585), El Colegio de Michoacán, El Colegio de México, México, 147–177
- DUVE, THOMAS (2008), Sonderrecht in der Frühen Neuzeit. Studien zum *ius singulare* und den *privilegia miserabilium personarum, senum* und *indorum* in Alter und Neuer Welt, Vittorio Klostermann, Frankfurt am Main
- ESPONERA CERDÁN, ALFONSO (1988), ¿Los Concilios Provinciales americanos realizaron una recepción creativa de Trento?, in: AA.Vv. (ed.), Los Sínodos diocesanos del pueblo de Dios: actas del V Simposio de Teología Histórica (24–26 octubre 1988), Facultad de Teología San Vicente Ferrer, Valencia, 345–354
- FOLJANTY, LENA (2015), Legal Transfers as Processes of Cultural Translation: On the Consequences of a Metaphor, in: Max Planck Institute for European Legal History Research Paper Series 2015-09, <http://ssrn.com/abstract=2682465>, Date Access: 1.02.2016
- FORNÉS AZCOYTI, IGNACIO (2005), El proceso de la aprobación romana del III Concilio de México, 1585–1589, Roma
- GALINDO BUSTOS, JESÚS (2010), Estudio del Aparato de Fuentes del Concilio Tercero Provincial de Mexico (1585), El Colegio de Michoacán, Gobierno del Distrito Federal, Secretaría de Cultura, México
- GONZÁLEZ GARCÍA-VALLADOLID, CASIMIRO (1893), Historia biográfica de la M. L. M. N. H. y Excm. Ciudad de Valladolid, vol. 1, Editorial Maxtor, Valladolid
- HARING, CLARENCE H. (1915), American Gold and Silver Production in the First Half of the Sixteenth Century, in: The Quarterly Journal of Economics 29,3, 433–479
- HELMHOLZ, RICHARD H. (1996), The spirit of classical canon law, University of Georgia Press, Athens, London
- LLAGUNO FARIÁS, JOSÉ ALBERTO (1963), La personalidad jurídica del indio y el III Concilio Provincial Mexicano (1585). Ensayo histórico-jurídico de los documentos originales, Porrúa, México
- LUNDBERG, MAGNUS (2006), Las actas de los tres primeros concilios mexicanos. Historia diplomática y estudio de su itinerario, in: Anuario de historia de la Iglesia 15, 259–268
- LUQUE ALCAIDE, ELISA (2008), Iglesia en América Latina (Siglos XVI–XVIII). Continuidad y renovación, Ediciones Universidad de Navarra, Pamplona
- MALABOU, CATHERINE (2007), The End of Writing? Grammatology and Plasticity, in: The European Legacy 12,4, 431–441
- MALAGÓN-BARCELÓ, JAVIER (1961), The Role of the Letrado in the Colonization of America, in: The Americas 18,1, 1–17
- MARÍN OCETE, ANTONIO (1962), El Concilio provincial de Granada en 1565, in: Archivo Teológico Granadino 25, 23–178
- MARÍN OCETE, ANTONIO (1970), El arzobispo Don Pedro Guerrero y la política conciliar española en el siglo XVI, 2 vol., CSIC, Zaragoza
- MARTÍNEZ FERRER, LUIS (2009), Decretos del Concilio Tercero Provincial Mexicano 1585. Edición histórico crítica y estudio preliminar por Luis Martínez Ferrer, 2 vol., El Colegio de Michoacán, Universidad de la Santa Cruz, Zamora
- MARTÍNEZ FERRER, LUIS (2011), La defensa de la libertad de indios y negros para contraer matrimonio en el Tercer Concilio Mexicano (1585), in: ZABALLA BEASCOECHEA, ANA DE (ed.), Los indios, el Derecho Canónico y la justicia eclesiástica en la América virreinal, Frankfurt am Main, Madrid, 85–105
- MARTINI, MÓNICA PATRICIA (2000), Las Constituciones sinodales indianas. Entre la adecuación y la originalidad, in: Revista de Historia del Derecho 28, 377–400
- MOUTIN, OSVALDO RODOLFO (2016), Legislar en la América hispánica en la temprana edad moderna. Procesos y características de la producción de los Decretos del Tercer Concilio Provincial Mexicano (1585), Max Planck Institute for European Legal History, Frankfurt am Main
- NAVARRO, BERNABÉ (1944), La Iglesia y los indios en IIIer Concilio Mexicano, in: Ábside 8, 389–453
- PÉREZ DE HEREDIA, J. (1990), El Concilio provincial de Granada de 1565, in: Anthologica Anua 37, 493–495
- RODRÍGUEZ-SALA, MARÍA LUISA, LUIS MARTÍNEZ FERRER (eds.) (2013), Socialización y religiosidad del médico Pedro López (1527–1597) de Dueñas (Castilla) a la ciudad de México, Instituto de Investigaciones Sociales, UNAM, México
- SALAZAR, JUAN PABLO (2005), Obispos de Puebla. Periodo de los Austria (1521–1700), Editorial Porrúa, México
- SÁNCHEZ BELLA, ISMAEL (1991), Derecho indiano: Estudios. Las visitas generales en la America española (siglos XVI–XVII), vol. 1, Publicaciones de la Facultad de Derecho de la Universidad de Navarra, Pamplona
- TERRÁNEO, SEBASTIÁN (2010), La recepción de la tradición conciliar limense en los decretos del III Concilio Provincial Mexicano, Buenos Aires
- TERRÁNEO, SEBASTIÁN (2015), El oficio del juez en la Iglesia indiana, in: Anuario argentino de derecho canónico 21 (2015) 357–374
- ZUBILLAGA, FÉLIX (1961), Tercer concilio mexicano, 1585. Los memoriales del P. Juan de la Plaza, in: Archivum Historicum Societatis Iesu 30, 180–244