

THOMAS DUVE
HEIKKI PIHLAJAMÄKI (EDS.)

New Horizons in Spanish Colonial Law

Contributions to Transnational
Early Modern Legal History

Ezequiel Abásolo

Víctor Tau Anzoátegui and the Legal Historiography of
the Indies | 151–159



MAX PLANCK INSTITUTE
FOR EUROPEAN LEGAL HISTORY

ISBN 978-3-944773-02-5
eISBN 978-3-944773-12-4
ISSN 2196-9752

First published in 2015

Published by Max Planck Institute for European Legal History, Frankfurt am Main

Printed in Germany by epubli, Prinzessinnenstraße 20, 10969 Berlin
<http://www.epubli.de>

Max Planck Institute for European Legal History Open Access Publication
<http://global.rg.mpg.de>

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The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie;
detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

Cover illustration:

Max Ernst, Humboldt Current, 1951–52, Öl auf Leinwand, 36 × 61 × 2 cm, Fondation Beyeler,
Riehen/Basel, Sammlung Beyeler, Foto: Robert Bayer, Basel, © VG Bild-Kunst, Bonn 2014

Cover design by Elmar Lixenfeld, Frankfurt am Main

Recommended citation:

Duve, Thomas, Pihlajamäki, Heikki (eds.) (2015), *New Horizons in Spanish Colonial Law. Contributions to Transnational Early Modern Legal History, Global Perspectives on Legal History*, Max Planck Institute for European Legal History Open Access Publication, Frankfurt am Main, <http://dx.doi.org/10.12946/gplh3>

Víctor Tau Anzoátegui and the Legal Historiography of the Indies

1. Truth be told, it is always difficult to conduct any kind of historiographical analysis. Now, where the task does not only entail the works of a contemporary author, but the works of an author who is both a significant intellectual reference point and a personal friend of the analyst, the task becomes ever more difficult. I confess that such is my situation in regard to Víctor Tau Anzoátegui and his works. So, though aware of my limitations, I assume the responsibility I took on when I was invited to participate in this collective work. More specifically, I will attempt to share a critical and comprehensive analysis of what his ideas and contributions imply within the legal historiography of the Indies. Thus, I shall not address the remainder of his prolific output of scientific writing. I would also like to clarify that, besides the fact that I am not in a position to treat all of his contributions thoroughly here, I shall not attempt to provide the reader with a catalogue of his fruitful intellectual work. I have a different objective: attempt to outline the central aspects of the historiographical thinking of this renowned Master, whose studies have, for decades, attracted the attention of his colleagues and of many others interested in recreating the Spanish American past both in the Americas and in Europe. As regards the author and the role that he plays within this discipline, I believe that the same words that Tau himself dedicated to García-Gallo when making an account of his intellectual background can be rightfully applied to him as well; i. e., that the Argentine legal historian also has an “outstanding profile”, given that he has drafted various works on method and guidance which have contributed “decisively to the setting of guidelines within the discipline.” Similarly, it can be truly asserted that, as a researcher, he “critically welcomed the legacy of previous scholars and developed new criteria, most of which received academic consensus”, and that we owe him “sharp analyses that covered different theoretical perspectives, with no opponents of his stature, except for partial disagreements.”¹

1 TAU ANZOÁTEGUI (1993) 9.

It is appropriate to describe Víctor Tau as a legal historian who understands Law as the expression of a way of seeing the world, that is, a legal tradition. This is his natural *observatory*. Now, it is worth recalling that as a member – possibly, the most prominent – of what can be identified as the third generation of great experts in the history of the Law of the Indies – the same generation that reviewed and went beyond the guidelines set by the two highest exponents of the first generation, Rafael de Altamira and Ricardo Levene, and the most renowned of the second generation, such as García-Gallo, Alamiro de Avila Martel and Ricardo Zorraquín Becú –, Víctor Tau Anzoátegui has excelled as an intellectual leader for several decades. Certainly, that suffices to warrant a piece of writing such as this. Nonetheless, my desire to elucidate the guidelines of his legal-historical criteria also responds to another reason and has a very specific goal: helping to cover, at least in part, the deficit in self-reflection that the legal history of the Law of the Indies has. This discipline, despite its relative theoretical weakness, currently spurs considerable academic interest, and is continuously and constantly nurtured by large amounts of varied monographs.

2. As for the praise received by the works of Víctor Tau, I understand that their main impact results from his creativity in the proposal of new topics and the treatment of areas that were left behind by ancient masters and colleagues.² Far from intending to make a thorough record of this kind of contributions, I can underline, from among his original concerns and reconsiderations, the detailed analysis of the set of sources of Law; his preoccupation for the local and concrete practice of normativity; his early and clear awareness of the integration of the Law of the Indies into the intellectual framework of the European legal tradition. In fact, a key aspect of the legal historical thinking of Tau has been his flexible notion of what must be considered Law of the Indies. In this regard, he has affirmed that “against a classical, unitary, rigid image of the Law of the Indies imposed from the Peninsula, there arise new images of a multiple, unbounded Law of the Indies, stemming from the different regions of the New World, in accordance with the diverse geographical and human realities of the vast continent.”³

2 For an example see TAU ANZOÁTEGUI (1980) 331 and 332.

3 TAU ANZOÁTEGUI (1997) 85.

However, I must regret that his fine style has not always bore fruit as expected. Thus, among what Tau himself described as “uncharted profiles”, I understand that the set of his very subtle and valuable conceptual creations – like “oscillations”⁴ or “satellite-texts”,⁵ to mention just two of them – have not yet become an integral part of the consolidated lexical tools that I believe he can still provide to academia. Besides, I must also admit that I personally do not always agree with his opinions. Far from sharing his assertion that “the bans of good government take the most popular place within the legal system,”⁶ I tend to think the opposite.

Apart from the foregoing, it must also be stated that Tau’s work stands out, again and again, due to his concern to verify the points of view outlined initially, and because of his honesty at the time of warning on the potential weaknesses of the evidence offered. Thus, there have been plenty of opportunities in which he engages in a dialogue with his readership on the difficulties experienced. By way of example, when he presented his works on the customs of the Indies, and after warning that “in successive studies during the last 25 years” he “gradually [noted that the] Law of the Indies increasingly differed from contemporary Law in its conception and structure,” he did not fear to admit that the recreation of American customs demanded of him “an arduous task, not always explicitly expressed, not always along safe paths.”⁷

Besides, while one of his concerns has been to replace the ancient *legalist* focus of the legal system of the Indies for one based on the notion of *legal tradition*⁸ (a goal derived from the conviction about anachronistic deviations imposed by 20th century dogmatism), his historiographical endeavor is also featured by a fascinating intellectual exercise, where the subtle and intelligent use of the most varied sources⁹ coexists with a formidable rigor and accuracy in the delimitation of the objects of study and the exposition of results.¹⁰

4 TAU ANZOÁTEGUI (1977) 88.

5 TAU ANZOÁTEGUI (2004) 18.

6 TAU ANZOÁTEGUI (2004) 22.

7 TAU ANZOÁTEGUI (2001) 14.

8 TAU ANZOÁTEGUI (1997) 43.

9 TAU ANZOÁTEGUI (1997) 88.

10 Cfr., for example, TAU ANZOÁTEGUI (1977) 86.

3. Now, as important as the foregoing may be considered, I do not find it the most distinguished of Tau's contributions. In my opinion, there are other more relevant aspects. His propositions have fostered and encouraged research by others more than once, to a certain extent, because they are courteously open to academic debate, and because they are noted for the formulation of manifold conclusions defined by a provisional factor¹¹ inherent in the conviction that no scientific research can ever be considered a "close" piece.¹²

I would like to point out that several of the distinctive features of Tau's works are along the lines of those of the most salient exponents of the Law of the Indies traditional scholars, especially in the formulation identified with the members of the so called *School of Levene*. Among the most important features of this line of historiography, it is worth stressing the insistent heuristic concern mentioned above, and the firm conviction that a true understanding of legal phenomena requires the integration of past Law into an ample framework of complex socio-cultural expressions; thus, the constant concern of the Argentine Professor to link legal history and social history.¹³ It is precisely based on this conception of the nature of legal phenomena that Tau affirms, among other considerations, that "Law accepted as such by the political authority or by jurists has a scope of influence and application that hardly ever reaches all the corners of society."¹⁴ Likewise, as a consequence of such outlooks, which integrate Law into the social fabric, our author admits: "I would like to draw attention to an approach that recognizes laws as social events and which, after establishing laws as one of the mechanisms for the creation of the Law, verifies their coherency and tension with the other sources, confirms the presence of social and political forces in their origin and enforcement, notes their unique manners of application, observes their use and lack of use, unveils social acceptance and resistance mechanisms, examines their presence in legal proceedings, notarial records, literature and daily conversation." Thus, "questions arise: what is the role played by jurists within this process and to what extent do laws support the growing strength of state power; do laws reflect social aspirations;

11 TAU ANZOÁTEGUI (1980) 333.

12 TAU ANZOÁTEGUI (2000) 123.

13 TAU ANZOÁTEGUI (1992b) 4 and 5.

14 TAU ANZOÁTEGUI (1997) 24.

do they propose goals, principles, standards; are all social groups aware of their provisions, or is this awareness limited to legal experts? These are some of the questions that ought to make laws a matter of joint concern by legal historians and by political, social, economic and cultural experts, among others”, each addressing such questions from their special viewpoint.¹⁵

Another frequent feature of Víctor Tau’s research style is his fine selection of the materials and the clear examinations to which they are subjected. Our author has recognized his “interest in researching into the notion of justice of a certain author does not have a mere academic purpose, of intellectual delight, for sheer academic speculation. Without underestimating this aspect, my purpose is to examine the use of this notion in legal practice. And thus verify to what extent scholarly contributions are accepted, appreciate how such notion operates in the arguments of jurists, and observe the value given to it in the then prevailing mindset. To that end, it is necessary to consider that casuist thinking, which is twisted in itself, requires notions and rules to support the formulation of particular solutions. The absence of strict tenets within the legal system led to the appreciation of certain notions such as justice, which has played a key role as a guide, end and limit at the same time.”¹⁶

4. Strictly speaking, and although at present he may be the historian studying the Law of the Indies most concerned in defining and specifying a sound and original conceptual-theoretical framework, his scientific program has not always been presented within a neat organic structure, even despite Tau’s manifest tendency on the matter.¹⁷ Therefore, it can be argued that a considerable portion of his thoughts on program and method are more or less scattered through his works. Among the notes that are most repeated within such work, his rigorous analytical attitude is worthy of mention. Thus, far from indulgent and excessive praise, Tau has undertaken to “introduce the scalpel of criticism”¹⁸ more than once, urging his counterparts to “come out of the narrow environment where Dogmatism has enclosed the notion of Law, disregarding all spheres of normativity not estab-

15 TAU ANZOÁTEGUI (1992b) 5 and 6.

16 TAU ANZOÁTEGUI (1992c) 609.

17 TAU ANZOÁTEGUI (1997) 13.

18 TAU ANZOÁTEGUI (1997) 8.

lished by the written law of the State. Such a restrictive conception cannot be applied to our Law of the Indies, nor to other legal systems of the time.”¹⁹

Tau Anzoátegui’s recognized sharpness benefits from the fact that many of his thoughts have been enhanced after long analysis and the subsequent revision of his lucid initial propositions. That is to say, that his style stands out because of valuable and sustained intellectual endeavors. Such is the case, among many others, of the process that he finalized after two decades with the publication of his organic work on the bans of good government.²⁰ Based on his disciplined and continual formulation of ideas, perspectives and interests, the works of Tau are defined, more than by “surprises”, by the pre-announcement of a series of hypotheses which, having undergone corrections and adjustments, tend to conclude into firm global statements. It can be said that his intuition brings about numerous unique studies, which, eventually, enable him to formulate suggestive and appealing global recreations of the legal past. Thus, he explains, for instance, and I believe that with some degree of exaggeration in terms of their randomness, that the works that make up *La Ley en América hispana* [*Law in Spanish America*] did not respond to “a previous plan, but rather, arose in isolation, fostered by various intellectual concerns and realized through academic commitment.”²¹ Besides, endowed as he is with an acute sense of appreciation of the value of the different historical evidence, Tau benefits from the smallest traces offered by the wide set of documents that he has gathered in his multiple and fruitful incursions into archives.

5. I understand that the key of his thoroughness resides, above all, in the exercise of a constant and considered preoccupation, especially the firm preoccupation with conceptualizing the legal-historical processes of the Indies. Of course, Tau can thus only reject simplifying schemes,²² even those endorsed by the best-established tradition in the discipline. Hence, for example, his concern to disentangle the normativity of the Indies led him to overcome the once-respected, distorted and retrospective legalism to contend that the Law of Spanish America was integrated into an order in which

19 TAU ANZOÁTEGUI (1997) 22.

20 TAU ANZOÁTEGUI (2004) 15.

21 TAU ANZOÁTEGUI (1992b) 18 and 19.

22 TAU ANZOÁTEGUI (1992b) 12.

custom had a prominent role,²³ and to extol the virtues of legal scholars in their role as “directive source” within the Spanish American legal culture.²⁴ In the same sense, he has stressed that while “the rejection of downgrading the Law of the Indies to the *Recompilación* [Compilation] or to peninsular legislation has frequently been noted by ancient and modern masters of our discipline,” such criterion has not always been applied, “at times, even by themselves.”²⁵

All in all, Tau Anzoátegui’s works and activity stand out for a ubiquitous and considered preoccupation with the activity of legal historians, and the need to “encourage the renewal and expansion of the content of our discipline.”²⁶ Consistent with his condemnation of any kind of “implied” historiographical theory,²⁷ more than once Tau has made the effort to introduce “among us, in an organic fashion, and with a view to methodological debate and gradual acceptance,” several thoughts on the appropriate approach to understanding the Law of the Indies. Against this backdrop, he has noted that “review is a claim common to all disciplines and times, but in certain opportunities, it is a pressing issue,” and he has endorsed setting out precise “general guidelines” which will allow “fixing new [disciplinary] scopes with further clarity.”²⁸

To a certain extent, Tau’s rigorous theoretical preoccupation benefits from his frequent – and intelligent – readings of the best legal historiography. Nonetheless, the latter was impossible on several occasions, such as when he decided to address topics lacking an adequate monograph base.

Tau himself has described his style in *Casuismo y Sistema* [*Casuistry and System*]: “at the outset and during the course of this research – he comments – I have borne in mind the ideas put forward and the possibility of their multiple usefulness. That has decisively encouraged me to put them into action. For a long time, I have gathered the material that I use as support, and in the last years I have intensified searches, chiefly in Spanish libraries and archives. As presumed, testimonial evidence is scattered throughout numerous ancient, printed and handwritten documents. Often, the value

23 TAU ANZOÁTEGUI (1992b) 9.

24 TAU ANZOÁTEGUI (1992c) 609.

25 TAU ANZOÁTEGUI (1997) 88.

26 TAU ANZOÁTEGUI (1997) 128.

27 TAU ANZOÁTEGUI (1992b) 3.

28 TAU ANZOÁTEGUI (1997) 7 and 8.

of such evidence lies in discovering the spirit underlying the words. There are no thematic indexes or files that facilitate the search. Though I have always pursued to select writings or examples that are representative and sufficient to minimize an error in judgment, this does not prevent other testimonies or new interpretations of known texts from taking to standpoints that may soften or directly contradict the opinions I state. Far from exhausted, the research I present remains open to new searches and reflections.”²⁹

Certainly, the extraordinary academic dissemination enjoyed by Tau’s works is connected to the most distinguished historiographical tradition of the Law of the Indies. However, there is evidence of an unbiased and critical perspective, which has encouraged him, more than once, to overcome ancient disciplinary paradigms ...

In Tau’s view, previous historiographical products make up an important disciplinary intellectual capital. Nonetheless, that does not prevent him from suggesting the careful employment of accepted paradigms, and of what he considers model investigations.³⁰ In this regard, Tau says, generically, that “our studies, in continuous formation, have a gradual progress – not linear or conformist – through the contributions of successive generations. Thus, when we look back to the past of our discipline, we do much more than an act of evocation; instead, we engage in a necessary exercise of introspective knowledge of our activities, both cumulative and critical, which eventually leads us to consolidate the current foundations of our work.”³¹ Hence, there is an imperative need to foster new approaches to the discipline, especially after noting the persistence of stagnant legalist views,³² and the inappropriate “application of the set of sources of Law in the formulation of monographs of the Indies.”³³

Based on the preceding arguments, I believe that in the future, to a good extent, the works of Tau shall bear the responsibility to fulfill a prediction analogous to the one conveyed by Altamira to Levene in their time: “It is possible to believe that in some years colonial history will differ radically from what has been revealed up to the present time.”³⁴

29 TAU ANZOÁTEGUI (1992a) 14.

30 TAU ANZOÁTEGUI (2000) 121.

31 TAU ANZOÁTEGUI (1990) 475.

32 TAU ANZOÁTEGUI (1997) 41.

33 TAU ANZOÁTEGUI (1997) 47.

34 TAU ANZOÁTEGUI (1990) 483.

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