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The End of Empires

Introductory Remarks

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The End of Empires

Introductory Remarks

The end of an empire is almost always marked with legal acts, which often serve as the founding documents of a new order. There the beginning and the end converge. For example, the constitutional documents of Hispanic America after 1810 simultaneously heralded the dawn of new states and the twilight of the Spanish Empire. Since constitutions and the state institutions they help to build are deeply imbued with symbolic power, they are an important element in constructing, perhaps even in »inventing«, nations. They provide raw materials for our regimes of memory and divide history into a »before« and an »after«, through which they also exert a stabilising effect.

On closer inspection, though, the seemingly clear boundaries become blurred, as they always do. In relation to the Iberian empires discussed in three of the four contributions to this *Fokus*, such blurring is apparent not only in the slow, gradual semantic shifts that recent conceptual histories have traced so convincingly. The range of actors' perceptions also reveal the ambiguity, which lasted for decades, as to whether the empires still existed or not. Their ambiguous status endured not only due to the persistence of political privileges, but also because the imperial space, especially in the case of Spain, was steadily shrinking throughout the 19th century. By contrast, the Portuguese crown did not erect the so-called First Empire of Brazil until the beginning of the 19th century. Was Portugal an empire at all prior to 1808, or did it only become one in Brazil for the first time? The Brazilian legal historian Arno Wehling poses exactly this question in his contribution to this Focus section. As with many other problems, it becomes more complex as scrutiny extends past the general discourse on empires and into the particular historiographical narrative on the legal history of early modern Iberian empires, including the political aspects of their colonial projects.

Legal history in particular reveals several factors that foster continuity alongside the transformative dimensions. The debates about forms of state, institutions and laws are where actors negotiated the transformation, and they are where law reveals itself in all its ambivalence. After all, the vocabulary

of law was their medium. At the same time, though, legal orders prove to be resilient, retarding the pace of change with their structural conservatism. While constitutional and political orders may change, juridical logics and practices endure, and they often tame the lofty ambitions of political change. This applied all the more when law itself was embedded in the indelible discursive contexts of the 19th century. First among these was religion, as the Spanish legal historian José M. Portillo shows in his contribution. But, due to the progressive exclusion of the state from our perspectives on law in the early modern period and increasing sensitivity for the differentiation between law and politics in the 19th century, there is considerable movement here too. To what extent can we continue to interpret many factors as sources of continuity given the tendency of law and politics to differentiate? This is the fulcrum of Manuel Bastias Saavedra's ruminations.

Only rarely does the national-state perspective on the new states disclose the international entanglements and connections between these processes of state building. Especially in the 19th and 20th centuries, the new orders of national statehood were embedded in transnational contexts that now often seem like a perpetuation of colonial structures. In her analysis of the significance of the international legal dimensions – in connection with a project on legal and institutional modernisation according to Western standards – Eliana Agusti develops this very aspect in relation to the transformation processes of the Ottoman Empire. These factors also beg the questions as to when empires are really »over«, what they really are, and what role law plays in the processes of transformation.

How deeply does the power of empires as a normative order penetrate the new age? What factors constrain the transformation, and which ones guide it? What role do processes of differentiation between politics and law play in other global regions beyond Europe? Do different forms of imperial order simply replace one another? What is the relation between the end of empires and the pursuit of imperial strategies? Such ques-

tions suggest interesting methodological challenges for legal history, including: exploring the significance of transitional periods as intervals of legal experience; examining the extent to which European thought patterns and traditions were applicable to non-European contexts; observing the range of colonial dynamics; and testing the utility of legal, sociological and philosophical theories in describing such phenomena.

These are but a few questions that informed the discussion of a conference in November 2017 in the context of the History Programme of the Institute for Advanced Studies at the Goethe University (Bad Homburg) in cooperation with the Max Planck Institute for European Legal History and the Collaborative Research Center on *Dis-*

course of Weakness and Resource Regimes, which is sponsored by the German Research Council (DFG). Entitled *The End of Empires? Legal historical perspectives on Latin America and Europe in 19th and 20th centuries*, the conference sought to elucidate the seldom-studied legal dimension of the transformation from empires to national states in the 19th century. Should these four articles stimulate more informed dialogue about the significance of law to empires and inspire a more comparative approach to the history of empires, especially one that grants more prominence to the Iberian empires of the early modern period, then they will have achieved their goal.

