

## The Office of Escribano in Sixteenth-Century Havana

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THE STUDY of bureaucracy, both in Latin America and in other parts of the world, has shown how much can be learned about government, economy, and society from the record books and the wastebaskets of officialdom. Red tape is just as much an artifact as farm implements, textile machinery, or weapons of war. An example of bureaucracy put to historical use is the *escribano* of colonial Latin America—the notary of many types who kept the records and produced the documents filling the archives today. This study will be limited to the *escribanías* of sixteenth-century Havana, an area little noticed in Hispanic American colonial research until relatively recent times.

The office of *escribano* in America was regulated by a series of ordinances issued during the Conquest and colonization. These regulations were originally issued in isolated and specific circumstances, and they were later collected in the *Recopilación de leyes de Indias*. Book V, Title VIII of this code of laws is devoted to the nature and prerogatives “de los escribanos de gobernación, cabildo y número, públicos y reales, y notarios eclesiásticos.” It specifies the number of *escribanos* in any given locality and describes their functions, which as a rule were neither new nor different from those of the other notaries in the rest of the Spanish territories and in Castile.

Unique to the institution in America, however, were the problems posed by the Conquest and by the colonization itself. For example, the mines—both the real ones in New Spain and Peru and the mostly imaginary and much sought-after ones in Cuba and Santo Domingo—together with the problems of ultramarine navigation, brought about the need to expand the functions of the *escribanos*. Thus the *escribano* of mines and of the register developed.

The slowness and uncertainty of communications gave disproportionate authority and jurisdiction to the governors, *adelantados*, and

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viceroy and transformed the notariate into an entirely new institution. The need to preserve the estates and possessions of the deceased settlers for their survivors in Spain expanded the functions of an office already in existence, the escribano of cabildo. He became juez de bienes de difuntos, one of the three magistrates in the tribunal of estates (or "public trustees" as John H. Parry translates the term), with his own register and treasury.<sup>1</sup> The other two magistrates were an alcalde and a regidor. After continued expansion, the functions of the judge were later entrusted to a general depository of estates with its own escribano.

All things conspired to multiply the number of notarial instruments and deeds needed: the operations of the royal audiencias from the moment the first one was established in Santo Domingo;<sup>2</sup> the characteristic Spanish red tape, that Parry has called "the bureaucratic nature of the pedantic legalism of the administration"; the numerous lengthy lawsuits started by the punctilious and "quarrelsome litigiousness of many Spaniards."<sup>3</sup> As the attorneys, the legal representatives, the depositions, and the legal instruments increased, so did the work of the notaries. Thus they led very busy lives indeed.

The *Actas capitulares del Ayuntamiento de la Habana* show that it was an established custom to incorporate into the records of the council meetings, in original form, the documents discussed or introduced as evidence.<sup>4</sup> Sometimes a notarized copy was used; at other

<sup>1</sup> John H. Parry, *The Sale of Public Offices in the Spanish Indies under the Hapsburgs* (Berkeley, 1953), 30.

<sup>2</sup> The audiencia of Santo Domingo was not organized until September 4, 1526, although the right of appeal was established by royal cédula of October 5, 1511, and an adequate tribunal was created. See E. Ruiz Guiñazú, *La magistratura indiana* (Buenos Aires, 1916), 57; Ricardo Levene, *Obras . . .*, (3 vols., Buenos Aires, 1962), Vol. III: *Introducción a la historia del derecho indiano*, 65, n. 14, and others.

<sup>3</sup> Parry, *The Sale of Public Offices*, 6.

<sup>4</sup> The most important printed collections of documents dealing with the history of Havana are *Actas capitulares del Ayuntamiento de la Habana, 1550-1565* (3 tomes in 4 vols., La Habana, 1937-1942), ("Colección de documentos para la historia de Cuba") edited by Emilio Roig de Leuchsenring (hereafter *Actas capitulares*). *Cedulario cubano; los orígenes de la colonización*, Vol. 1: 1493-1512 by José María Chacón y Calvo (Madrid, 1929), in *Colección de documentos para la historia de Hispanoamérica*, VI. *Papeles existentes en el Archivo General de Indias relativos a Cuba y en especial a la Habana* (2 vols., La Habana, 1931). This forms part of the Colección Carbonell edited by Joaquín Llavéras, director of the Cuban National Archives and is kept in the Academia de la Historia de Cuba. My *Índice y extractos del Archivo de Protocolos de la Habana* (2 vols., La Habana, 1946-1947). See also *Colección de documentos inéditos relativos al descubrimiento, conquista y colonización de las antiguas posesiones españolas de América . . .* (hereafter *CODOIN . . . de América*) (42 vols., Madrid, 1864-1884), and second series (25 vols., Madrid, 1885-1932), and "Ensayo histórico sobre la

times a duplicate which had come with the documents from Spain or elsewhere might be sewn to the council records. As a result, here and there in the records we find memoranda presented by neighbors, royal documents, decisions of the audiencia, proceedings of lawsuits, and credentials of new officers.<sup>5</sup> The problem of red tape was aggravated by the widespread corruption present in the colonial administration from the first arrival of the Conquistadores. There were frauds of many kinds: misrepresentations at all levels, purposely confusing details in judiciary procedure, and many others.

All of these complications extended lawsuits for years, even decades<sup>6</sup> and resulted in literally tons of documents. The dangers of transportation required that many documents be prepared in duplicate and sometimes in triplicate; each copy was sent by a different ship or land route in order to insure that at least one of them reached its destination.<sup>7</sup> Moreover, in view of the existing immorality, settlers involved in litigations protected their interests with documented testimonials and notarized statements of whatever they said or heard, for use months, years, or even generations later when it came to trial.

Thus circumstances made an escribano necessary to the settlers, just as in Cuba they required natives from the Canary Islands to till their lands and tend their pig herds, or Indians and imported Negroes to work the sugarcane plantations.

The colonial office of escribano evolved into four distinct and well-established notarial institutions, not counting the church notaries, who had the same functions in Cuba as in Castile. The four types were: 1) the royal escribano, also called del número or público; 2) the escribano of gobernación; 3) the escribano of register, mines, and reports; and 4) the escribano of cabildo. All of them called themselves His Majesty's escribanos when, as was often the case, they did not exercise any specific notarial functions in a given locality. All four types of escribanos are found in Havana, and all of them appear in the extant documents.

legislación de los estados españoles de Ultramar" by Antonio María Fabiá (2nd ser., I, i-cxxxix).

<sup>5</sup> This fact is easily ascertained by examining the original books and noting that the hand writing of the regular escribano, one of the members of the Pérez de Borroto family, is frequently interrupted by that of other escribanos.

<sup>6</sup> A memorandum of Juan Bautista de Rojas to the king, May 17, 1594, on several occurrences in the government of the island states: "Antes que se deshaga un agrauio de un governador, a veces se acauan las vidas de los agrauiaidos" (Llaverías [ed.], *Papeles*, II, 256).

<sup>7</sup> Archivo General de Indias (hereafter AGI), 139-1-4, lib. 2, fol. 139v-140r; Chacón y Calvo, *Cedulario cubano*, 225-228; Libros de acuerdos, II, fol. 115v; *Actas capitulares*, III.

It was not until April 6, 1638, that a royal decree was issued establishing a new notariate: the escribano anotador de hipotecas, or "recorder of mortgages," thus increasing the number of offices in Havana to five.<sup>8</sup> The new office was bestowed on Francisco Hidalgo, who had just been appointed to one of the offices *acrecentados* (or newly created). This decree specified that no mortgage could be binding unless registered in the protocol of the escribano anotador.

All the other escribanos in Havana objected strenuously that this privilege constituted a virtual monopoly and was abusive and unfair to them. Hernando Pérez Borroto, escribano of the cabildo, who had been entrusted *ex officio* with the duties now assigned to Hidalgo, started a protest movement, and soon the escribanos incited the public to demonstrate in the streets against the "usurpation." The city council then joined the movement, and the minutes of a session held on October 29, 1638, contain a copy of its letter to His Majesty setting forth the issue. Since the conquest of Cuba and the establishment of Havana, began the council, there had been three escribanos in the city. The two escribanos recently added were really needed because of the population growth. The office of escribano de hipotecas had always been included in the duties of the escribano de cabildo; but now that it had been given to Hidalgo, the three existing escribanos were protesting. Neither the protest nor the memorandum had any effect, however, and Hidalgo kept his new office.

In theory, according to the letter of appointment, the jurisdiction of the escribanos extended over the whole island and made it possible for them to exercise their functions anywhere in Cuba. But the established practice of presenting their titles to the local cabildo for swearing in limited the offices, practically speaking, to the locality to which the escribano had been assigned by the Crown. Regardless of the individual escribano who had authorized the notarial instruments, these were valid anywhere in the Spanish territories as well as in Castile itself. The notary's sign, a very complicated hand-drawn rubric that always preceded his personal signature, was described and included in the official document of appointment. This *signo notarial* is sometimes missing in documents issued for local use, but it never fails to appear when the document is intended for circulation elsewhere. Moreover, as in Castile, if the document was to be used outside the local community to which the notary had been assigned—i. e. beyond the jurisdiction of the local authorities—both the signature and the notarial sign had to be authenticated by two other local notaries.

<sup>8</sup> Libros de acuerdos (July 9, 1638).

In contrast, the escribanos of registry and mines, as well as those of the governorship, exercised jurisdiction throughout the territory to which they were accredited, but not beyond that of the governor or lieutenant governor. In other words, their acts were valid all over the territory of the provincial division and not merely in the villages. The instruments issued by the escribanos of Havana were effective all over the island if they came from the escribano of registry and mines or the escribano of the governorship. Documents emanating from the escribano of cabildo, however, were valid only locally in the transaction of municipal business. This latter notary was the one who kept the municipal records and issued certified copies of their content.

A comparison between the functions of these notaries and those of present-day officials suggests that they were not very different in the two periods, despite the problems posed for the colonial notariate by distance and new settlements. After the Church, the judiciary is the most tradition-bound institution in Latin countries. The public escribano or del número was the counterpart of today's public notary. The escribano of registry, mines, and reports resembled the private property registrar in Spain and the real estate notary, recorder of deeds, and recorder's office in the United States. He dealt with the ownership and exploitation of mines and the registry and certification of incoming and outgoing loads of freight cargoes as well as passengers.<sup>9</sup>

The other types of colonial notaries also showed parallels with modern offices. In Cuba both rural and urban properties, *corrales*, *hatos*, *ejidos*, and *realengos*, as well as city lots or *solares*, were assigned by the city and registered by the escribano de cabildo. Property titles remained in the city archives under his custody. The escribanos de gobernación were directly under the governor and his lieutenants. Sometimes we find other public officials with enough influence and power to have their own personal notary, also called escribano de gobernación. Such was the case with several alcaides of the fortress in Havana.<sup>10</sup> Finally, the ecclesiastic notary registered baptisms, marriages, and burials.

As Ots Capdequí has correctly established,<sup>11</sup> public offices in the Indies were considered Crown privileges, and the king might fill them

<sup>9</sup> In connection with the creation of the escribanía of registry, mines and reports, see *Recopilación de leyes de Indias*, lib. VIII, tit. V.

<sup>10</sup> See note 20 below.

<sup>11</sup> José M. Ots Capdequí, *Estudios de la historia del derecho español en las Indias* (Bogotá, 1940), 10, 70.

as he wished, unless it was otherwise indicated on the capitulaciones, the contracts of discovery, conquest, or settlement. The Crown was jealous of this prerogative, which dated from the first capitulaciones of Granada, April 17, 1492.

Unfortunately, available documents do not furnish enough information for us to know the exact procedure or practice for granting offices during the first half of the sixteenth century, as they give us little more than the names of the notaries who authorized the transactions and a few minor details.<sup>12</sup> A royal cédula issued on December 2, 1502, to Gonzalo Cervantes instructed him to assign notaries on board ships.<sup>13</sup> This practice was not new, and it continued until 1508, when the ordinance began to be disregarded.

A royal cédula of April 30, 1508, contains more significant material for later administrations. Issued in Valladolid to Nicolás Ovando, it deals with several questions concerning gubernatorial matters raised by Antonio Serrano and Diego de Nicuesa, solicitors (*procuradores*) of Hispaniola. In answer to one of these questions the king ordered that alguaciles and notaries in the colonies be elected by the alcaldes and regidores and appointed by the governor. Before a certain date they had to have in their possession and present to the council the royal confirmation of their offices, but in the meantime they might exercise these offices "con la carta de vuestra nombramiento." We can see here in embryo the whole procedure that was to be followed thereafter.<sup>14</sup>

On June 2, 1517, the king and queen signed in Madrid a royal cédula addressed to Bartolomé Ruiz de Castañeda and to one Licenciado Ximénez. According to this cédula, Castañeda and Ximénez were to seal and register two blank letters to the Hieronymite fathers authorizing them to appoint two persons of their own choosing as notaries, after having examined them and found them qualified for the office.<sup>15</sup> There is no doubt that during the first half of the six-

<sup>12</sup> A royal provision of Zaragoza, January 15, 1519, appoints a Cristóbal de la Torre as escribano del número of Santiago de Cuba, *Libros de acuerdos*, II, 67-68, which leads us to believe that at the time, the appointment of escribanos was still a personally exercised royal prerogative. In Havana we find Francisco de Madrid (1515-1523), Diego de Calçadilla (1523-?), Juan de Rojas (perhaps of the Havana family, originally from Madrid, Soto-Rojas) (1525-?), Sebastián de Ledesma (?-1546), Hernando de Florencia (1545-1550). The escribanos of the Francisco Pérez de Borroto family, who held the office during the second half of the century and well into the seventeenth century, appear already in the first extant Libro de cabildo, 1550.

<sup>13</sup> AGI, 139-14; Llaverías (ed.), *Papeles*, I, 46.

<sup>14</sup> *CODOIN . . . de América*, 2nd ser., V, 140-141.

<sup>15</sup> A copy of this document, taken from the AGI, appears in Llaverías (ed.), *Papeles*, I, 47.

teenth century the same procedure was followed in America as in Castile, except for changes required by new circumstances and problems.

When we examine the system in Havana, we find that here, as everywhere else in the Indies, the middle of the sixteenth century brought a definite change in the procedure of appointing notaries. The dividing line is marked by a royal *cédula* of Valladolid, dated June 17, 1559, which deals with growth of existing offices, the creation of the new office of *alférez mayor* in the American communities, and the sale of all these offices.<sup>16</sup> "This decree," writes J. H. Parry, "was the first general act authorizing the sale of offices in the Indies."<sup>17</sup> The *cédula* began by admitting the lack of information in Castile about the importance and needs of the newly founded cities. It directed the governor to determine how many offices should be created in each, to sell such positions at public auction, and to install the candidates. Also as a result of this *cédula*, another office of notary public (*del número*) was added to the one already existing, which had been served by the *escribano* of the Havana *cabildo*. Tomás Guerra was appointed to take over this expanded office.

The traffic in offices became common practice after 1560, when the first one was sold in Cuba. It was confirmed by another royal *cédula*, issued in Lisbon on November 13, 1581. This established detailed rules for the renouncement and transfer of offices *por otra vida más*, i.e. for the lifetime of the recipient.<sup>18</sup> At his death the privileges reverted to the Crown to be granted anew. This device of renouncement and transfer was expanded early in the following century by a decree of Madrid, dated December 14, 1606, which allowed the officeholders themselves to transfer their offices freely.

Under the *cédula* of 1559 and its successors we see for the first time the governor and the officers of the treasury intervening per-

<sup>16</sup> This law, together with the *memoria*, or regulations for its application, was issued by the Infanta of Portugal with the avowed purpose of replenishing the public treasury, badly drained by "the war against the Turk." This law (AGI, Indiferente general, 532, 24, VI, 1559) is transcribed in *Libros de acuerdos*, I, fol. 294-296. It stems from a consultation of the Council of the Indies of March 12, 1558 recounted in Parry, *The Sale of Public Offices*, 12.

<sup>17</sup> Parry, *The Sale of Public Offices*, 12.

<sup>18</sup> A copy of this *cédula*, sent to the governor of Havana, Gabriel de Luxán, on January 27, 1584, is transcribed with the minutes of the council of Havana of January 17, 1592 (*Libros de acuerdos*, III, fol. 362r-364v). José Torre Revello mentions another copy addressed to the viceroy of Perú, Martín Enríquez, whose original call number is AGI, Indiferente general, leg. 606, lib. I, fol. 4r-v; in "La nobleza colonial," *Boletín del Instituto de Investigaciones Históricas* (Buenos Aires, 1938), XXIII, 5-6.

sonally, together with the cabildo, in the selection of new escribanos. The auction was conducted by the governor, who drew up the appropriate diploma after the beneficiary had paid the legal fees to the treasury. Within three years the escribano thus appointed had to show the royal confirmation to the council. The cabildo then accepted the appointee as escribano.

All proceeds from the sale of the first office were credited to the royal treasury, but after this time it received only one-third of the selling price, a practice confirmed in the *cédula* of 1581. The actual delivery of the money to the treasury was often postponed or paid in two installments. It was also delayed by the appointment of guarantors. These were sworn before a notary public, or at times before the cabildo itself, and, like present-day cosignatories, they guaranteed payment in case the newly designated notary defaulted. If the office should be renounced, the proceedings always included the appraisers' report of its value. There are many peculiar examples of such appraisals in the records of the Havana cabildo.

These records also include depositions by leading citizens who knew the prospective candidate, his "partes y calidades," his honesty, the purity of his lineage (*limpieza de sangre*), the legitimacy of his birth, and his good reputation, as well as his cultural fitness for the office. Other conditions to be satisfied were age (twenty-five years or older) and lay status. Ecclesiastics were automatically excluded, and the candidate had to swear that he would resign the office in case he became an ordained priest. Moreover, he was liable to a heavy fine if he were to receive holy orders *de corona* at any time.

The candidate also had to appear before the royal audiencia of Santo Domingo, which drew up the preliminary document for his appointment. The records of the cabildo of Havana during the sixteenth century contain only one case of this procedure, that of Gaspar Pérez de Borroto, who passed his examination in Hispaniola before the president and oidores of the audiencia on April 8, 1570. In 1607 Gaspar's son, Luis Pérez Costilla, also passed his examination in Santo Domingo. Luis was found able and fit for office, even though he had been dismissed as notary of the cabildo for being implicated in a case of smuggling.<sup>19</sup>

These were the official regulations. As often happened in the the colonies, however, there were exceptions and abuses. In several instances the escribanos were under the influence and control of the

<sup>19</sup> Luis Pérez Costilla had become a public escribano in 1592 by renunciation to him by his father, Gaspar Pérez de Borroto, who was at the time "old, sick, and feeble." *Libros de acuerdos*, III, f. 357r.



governors and of the captains general who put personal interests above those of the Crown and exerted all the pressure at their command. But these higher officials were not always at fault. On December 7, 1582, for example, the governor of Cuba, Diego de Luxán, in a lengthy memorandum to the crown about the general situation of the administration in the island, complained that the alcaide of the fortress, Diego Fernández de Quiñones, had named "un moço de hasta diez y ocho años" as his escribano.<sup>20</sup>

On December 14, 1606, a new royal *cédula* regarding the transfer and renunciation of offices was put into practice. Although it is mentioned in every new appointment henceforth, its complete text does not appear to have been circulated. According to the new regulations, the office of escribano (or *oficios de pluma*) could be renounced and sold more than once, contrary to the order of November 13, 1581, which stipulated that it could be sold once only. Those who were in possession of an office for a second life at the time of the renunciation had to pay to the royal treasury half the value of the office rather than the third that had been established twenty-five years before. Thereafter, each time the office was transferred, the price was one-third of its value. In order to avoid abuses, any escribano who renounced his office must remain alive for at least twenty days after the renunciation, and this circumstance was certified in all future documents of transfer. The examination of candidates was required, and the deadline for presenting the royal confirmation was extended from three years to four. The initial renunciation, however, had to be presented to the royal chamber or royal *audiencia* within sixty days.

The authorization to renounce office was also extended to certain offices other than those *de pluma*, such as *alguaciles mayores*, *regidores*, *alfereces mayores*, and others.

The *escribanía* of registry, mines, and reports (*relaciones*) was one of the typical *escribanías* of the colonies. Its functions were to keep a register of cargo on every ship that sailed to and from the Indies and an accurate list of the crew and passengers, including residences and other information. At the same time, the *escribanía* was to record the ownership of mines and later on, when land was granted to the settlers, that of real estate also.

This *escribanía* evolved from the instructions for the trips of discovery which were given to the general accountant of the realm,

<sup>20</sup> "Has appointed a lad barely 18 years old as his escribano." AGI 54-22: 1-15; Irene A. Wright, *Historia documental de San Cristóbal de la Habana en el siglo XVI, basada en los documentos existentes en el Archivo de Indias de Sevilla* (2 vols., La Habana, 1927), I, 297-310. Llaverías (ed.), *Papeles*, II, 175.

Bartolomé de Pisa, at Barcelona on June 7, 1493.<sup>21</sup> These orders committed to him the registry of all the revenue due to the crown and the supervision of both goods sent to the Indies and freight brought to Castile. Bartolomé de Pisa was to receive from the accountant Juan de Soria the register of ships in the fleet, their equipment, and crews. At the same time, a building was to be erected somewhere in the new lands—in “that island,”—where cargoes might be unloaded before being processed in or out. Special care was to be taken of the gold and above all of the royal share.

By royal disposition of Burgos, March 30, 1508, King Ferdinand granted the *escribanía mayor de minas* of the Indies to his private secretary López Conchillos with the provision that nobody could mine there without written permission from the *escribano mayor* or his lieutenants.<sup>22</sup> The first *escribano* of mines appointed for the Indies by Lope Conchillos was Juan de Serralonga, who was installed by Diego Colón as soon as he took the office of Governor of Hispaniola in 1509. In Cuba the first assistant *escribano* of mines was Bernardino de Santa Clara, who was also appointed by Conchillos and confirmed by royal *cédula* of May 12, 1513.<sup>23</sup>

From these beginnings developed the independent office of *registro, minas y relaciones* in America. After 1530 the notary thus established became the *escribano* for the *casa de contratación* of Seville and its branches in America. As time went on, the office acquired other functions as well. For example, under *cédulas* of May 4, 1535, and July 9, 1565, the *escribano* of mines received the added duty of keeping books “de las cosas que surjan,” i.e., of whatever might come up.<sup>24</sup>

When the custom houses were established and their functions regulated, the *escribano* of mines was also called *escribano* of customs, and his functions became those of the modern customhouse official. The first *escribano* to assume this title in Havana was Luis Pérez Costilla, appointed by Governor Pedro Valdés and confirmed by Philip III on May 1, 1607. His exact title was *escribano público de minas, relaciones, visitas y aduanas*. The royal *cédula* was presented and accepted at the council meeting of May 1609.

In Havana as elsewhere the *escribano* of *cabildo* had many duties. He kept the books of the *cabildo* and the minutes of its meet-

<sup>21</sup> Chacón y Calvo, *Cedulario cubano*, 1-4.

<sup>22</sup> *CODOIN . . . de América*, 2nd ser., V, 121-125. See also Antonio María Fabié, “Ensayo histórico,” *ibid.*, lxxi-lxxii.

<sup>23</sup> Llaverías (ed.), *Papeles*, I, 9-10.

<sup>24</sup> All these regulations were later gathered in the *Recopilación de leyes de Indias*, lib. VIII, tit. V, ley 293.

ings. He filed the royal documents received and assumed custody over books, papers, and the treasury of the city.<sup>25</sup> He took the census of town residents, kept the register of haciendas assigned to the settlers and of the *sisá* (taxes), and also accounted for the property of all deceased, recorded in a special book. In Havana he even kept a check on cabildo members by visiting the homes of regidores not attending meetings in order to ascertain the reason for their absence. He also visited sick members and recorded their votes.

In early years the care of the books must have been grossly neglected, since all of those prior to the escribano Francisco Pérez de Borroto have disappeared. The explanation that the historic assaults of pirates in 1538 and 1555 destroyed the books is highly suspect, for the records have been preserved from the exact day that Pérez de Borroto was installed in July 1550.

The list of books that the escribano had to keep is ascertained from the request of the famous visitador Alonso de Cáceres, on December 9, 1573. He asked the cabildo to hand him: 1) the book of royal provisions; 2) the book of privileges; 3) the deeds and judgments issued in favor of the *concejo*; 4) the cédulas that dealt with the water and the special account of la Chorrera, the city's water supply; 5) the accounts rendered by the treasurer and other officers; and 6) the minutes of council meetings.<sup>26</sup> The fact that the escribano of cabildo was at the same time the escribano of register is stated in several resolutions of the council. On February 12, 1574, the same visitador, Cáceres, requested that the escribano of cabildo, Francisco Pérez de Borroto, return to the notary Bartolomé de Morales the original royal provision attesting that the audiencia of Santo Domingo had assigned him (Morales) the office of escribano of registros in the island.<sup>27</sup>

Finally, the escribano was bound to secrecy about matters and business transacted in his presence. This obligation, says Ots Capdequí, was so strict that orders were issued to the audiencia that it must not force the escribanos to break such secrecy under any circumstances.<sup>28</sup> In the meeting of the council of April 4, 1585, the following resolution is found: "In this cabildo, the said gentlemen justices and council gave orders to me, the present escribano [Gaspar

<sup>25</sup> The complete text of Cáceres' ordinances is transcribed in Francisco Carrera Justiz, *Introducción a la historia de las instituciones locales de Cuba* (2 vols., La Habana, 1905), II, 225-300.

<sup>26</sup> *Actas capitulares*, II, 293.

<sup>27</sup> *Libros de acuerdos*, I, 524r; *Actas capitulares*, II, 152. This document is misplaced in the original minutes; it appears with the minutes of the year 1561.

<sup>28</sup> Ots Capdequí, *Estudios*, 181.

Pérez de Borroto] to keep secret everything that is transacted in the same council under the penalty of losing [my] office."<sup>29</sup> Such a resolution may suggest that the escribano was less discreet than he should have been.

The *escribanía de bienes de difuntos* was perhaps the only exclusively American notariate; for it was not transplanted from Castile, but improvised as the need for it arose. Usually three judges were appointed with the title of *tenedores de bienes de difuntos*, which may be translated as "custodians of the estates and possessions of the deceased." The escribano of the *cabildo* was *ex officio* member of the group, acting both as judge and as escribano of the tribunal, according to a regulating ordinance of June 16, 1550.<sup>30</sup>

The precedent for the custodian is found in the already mentioned royal *cédula* of August 26, 1504, to the officers of the Casa de Contratación in Seville. As a result of a question presented by Doctors Matienzo and Francisco Pinelo, the king created a new office to receive the last will of anyone who died in Española so as to guarantee its delivery to the heirs in Spain.<sup>31</sup> The following year, 1505, new ordinances seem to have been issued dealing with jurisdictional matters concerning the Casa de Contratación.<sup>32</sup> These ordinances apparently directed ship masters to deliver possessions of deceased passengers or crew members to the officers of the Casa de Contratación, where they were kept in a triple-lock coffer. The dispositions regulating these goods must have been widely disregarded; for not a single document among those consulted attests to the surrender of these goods.

New regulations are found in the second ordinances of the house, Monzón, June 15, 1510, and in the royal *cédula* of Seville, June 6, 1511. These include instructions to Diego Colón upon assuming the office of admiral. Directive No. 15 stated that the possessions of the deceased were to be sent to the Casa as soon as possible, so that they could be surrendered to the heirs.<sup>33</sup>

The depositor (*tenedor*) of the possessions of the deceased in

<sup>29</sup> Libros de acuerdos, III, fol. 76v.

<sup>30</sup> *Recopilación de leyes de Indias*, lib. IV, tit., XXXII, ley 1.

<sup>31</sup> *CODOIN . . . de América*, XXXXI, 241; see Ots Capdequí, *Estudios*, 281.

<sup>32</sup> Fabié claims to have found the ordinances, but gives neither date nor source to support his assertion. "Ensayo histórico," lix; Ots Capdequí states that he had been unable to find the ordinances. *Estudios*, 282, n. 1.

<sup>33</sup> *CODOIN . . . de América*, XXXVI, 296; Martín Fernández de Navarrete, *Colección de los viajes y descubrimientos que hicieron por mar . . .* (5 vols., Buenos Aires, 1945-1946), II, 394-395; Ots Capdequí, *Estudios*, 282; Chacón y Calvo, *Cedulario cubano*, 317. (In this latter collection June 11 appears as the date.)

Havana in 1524, was Juan de Olías, whom Governor Velázquez mentions in his last will,<sup>34</sup> the same whose name appears spelled "Xuan de Lías" in a royal cédula of Burgos, May 21, 1524. This cédula put an end to the claims of the heirs of Juan Ponce de León. After he died in Havana, his possessions had not been delivered to his family, and their request had not been honored.<sup>35</sup>

The records yield innumerable complaints about the mishandling of these matters in Cuba. On November 9, 1526, the emperor complained to the governor and officers of Fernandina (Cuba) that the properties of the deceased were badly administered and especially that the guardians appropriated them.<sup>36</sup> In a royal cédula of Madrid, August 21, 1528, the emperor issued a resolution at the request of a Juana Hernández, resident of Segura de León. She complained that she had not been able to recover her husband's last testament or 150 gold ducats which he had willed to her before an escribano in Havana. The emperor ordered that the governor or the judge of residence in the island pass on the matter with the utmost speed and that the widow be given her inheritance.<sup>37</sup> Another royal cédula, of Toledo, November 6, 1538, directed the bishop of Havana that even when deaths occurred without heirs, he should conduct funerals in keeping with the prominence of the deceased and the value of the estate left behind. The cédula ordered the tenedores to pay the bishop the amount considered adequate—undoubtedly a tenuous disguise legalizing the exploitation so prevalent at the time.<sup>38</sup>

In Havana, local regulations concerning the estate and possessions of the deceased were adopted on August 21, 1551, as a result of an answer which the cabildo gave to a royal provision of Valladolid, April 16, 1550. It was decided that each year, in addition to the escribano, an alcalde and a regidor be elected to take charge of the possessions of the deceased.<sup>39</sup>

This was the normal procedure until the royal cédula of Lisbon, November 13, 1581. As has been seen, this cédula was the second to authorize the general sale of offices for the lifetime of the recipient.

<sup>34</sup> Manuel Pérez Beato, *Habana antigua: apuntes históricos: Toponimia. La fundación y traslados de la villa de San Cristóbal de la Habana* (La Habana, 1936), 8, n. 1.

<sup>35</sup> *Ibid.*

<sup>36</sup> *CODOIN . . . de América*, 2nd ser., I, 356; Llaverías (ed.), *Papeles*, I, 106-107.

<sup>37</sup> Llaverías (ed.), *Papeles*, I, 149.

<sup>38</sup> *Ibid.*, 156.

<sup>39</sup> *Libros de acuerdos*, I, f. 33r. According to the text given by Ots Capdequí, paragraph 25 of the ordinance required the officers to send such possessions to the Casa for delivery to the heirs. *Estudios*, 282.

It also created a new office, the depository of the possessions of the deceased.<sup>40</sup> The *cédula* of 1581 and another of January 27, 1584, confirming it, superseded the one of April 16, 1550.<sup>41</sup> On August 28, 1584, the council of Havana discussed the new post, which was now combined with the depository of the chamber fines (*penas de cámara*). After lengthy and bitter proceedings the combined depository was auctioned off to one Manuel Díaz for 550 ducats.<sup>42</sup>

Thus ended the separate existence of the *escribanía de bienes de difuntos*. Not all persons favored the new arrangement, for on January 31, 1587, Bartolomé de Morales, regidor of Havana for life protested before the council about the sale of offices. Quoting almost literally the resolution of August 21, 1551, he asked the council to restore the three judges with their special book and three-lock coffer and the old practice of sending possessions of the deceased to the Casa de Contratación in Seville for delivery to the heirs.<sup>43</sup> All to no avail; after functioning for less than thirty years, the three judges and the *escribano* had joined the ghostly bureaucracy of discarded officials.

<sup>40</sup> There is a copy of this royal *cédula* in *Libros de acuerdos*, III, fols. 362r-364v.

<sup>41</sup> The original authorization had been given in the royal *cédula* of June 9, 1559, which has been discussed above; *Recopilación de leyes de Indias*, lib. IV, tit. XXXII, leyes i-x.

<sup>42</sup> *Libros de acuerdos*, III, fol. 5 ff. The minutes of this *cabildo* of August 28, 1584, contain the proceedings and the discussion about Manuel Díaz and his office together with the lengthy depositions of the witness covering several pages.

<sup>43</sup> *Libros de acuerdos*, III, fols. 169v-170r.