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SUSAN KELLOGG

## Introduction—Back to the Future

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*Law, Politics, and Culture in Colonial  
Mexican Ethnohistorical Studies*

Historians who surveyed the schools of interpretation within North American scholarship on colonial Spanish America in the 1980s described how social history, history from the bottom up, emerged out of institutional and political history.<sup>1</sup> But because all social groups exist within and make use of dense networks of meaning, less than ten years later, a more cultural history—focused on images, mentalities, and the deconstruction of both colonial and scholarly representations of people, places, and processes of change—emerged.<sup>2</sup> As issues of representation, memory, and the cultural meanings of hierarchy, hegemony, and power surged to the fore, scholars such as Edward Said and Ranajit Guha wrote evocatively and provocatively about the construction and consciousness of dominators and those who were dominated in the Middle East and South Asia, respectively. Such interests inevitably brought historians back to the study of political and legal institutions.<sup>3</sup> These institutions played important, if not determinative, roles in structuring everyday life in racially and class-stratified colonial societies in many parts of the world.

Inspired by books that have taken up these questions in the Latin American context, such as *Reclaiming the Political in Latin American History*, edited by Gilbert M. Joseph, and Peter Guardino's *The Time of Liberty*, the essays in this volume turn to earlier periods of time and focus intensively on indigenous interaction with imperial legal and political institutions in colonial New Spain.<sup>4</sup> Collectively, they ask, was the colonial political-legal domain simply an instrument of domination or did councils, courts, and legal personnel allow for or adjust to the assertion of agency? While the authors find a nuanced middle ground, they place a special emphasis on the role of indigenous efforts at negotiation in the emergence of a colonial legal culture during the sixteenth century and show that legal culture changed and adapted to different regions, environments, cultures, and new patterns of governance in the eighteenth.<sup>5</sup>

Many forces shaped this legal culture—political, social, cultural, textual, material, even environmental. Charles Cutter has defined it as a highly flexible set of practices (and, I would add, meanings), the roots of which may be found in the judicial free will (*arbitrio judicial*) held by officials high and low, whether judges of the Real Audiencia (known as *oidores*) or local officials, *alcaldes*, and in the “convergence of written law, *doctrina* (the opinions of jurists), custom, and *equidad* (a communally defined sense of fairness).”<sup>6</sup> The essays included here, by both Mexican and North American scholars, focus on the roles played by a variety of indigenous cultures and communities in the emergence, functioning, and local varieties of this culture over space, across time, and in combination with the extreme regional diversity that constituted the viceroyalty of New Spain.

While many North American scholars, beginning with Charles Gibson, have contributed in meaningful ways to the study of both the impact of the Spanish colonial project on native people and the ways these people not only reacted to but shaped that project, Mexican ethnohistorians also took up these very important questions. The work of Luis Reyes, for example, with his deep knowledge of the Nahuatl language and Nahua culture, was particularly important. His scholarship bridged the earlier emphasis on the study of pre-Hispanic peoples either archaeologically or through Spanish- and indigenous-language texts and the later emphasis on colonial indigenous peoples who drew upon, yet simultaneously reshaped, earlier cultural traditions. He, James Lockhart, and numerous others contributed studies that not only advance our understanding of regionally and culturally specific responses to the Spanish presence but also help to create a usable, practical rendering of the past with implications for the present by showing, for example, that indigenous languages not only were preserved but were viewed by the institutions of colonial governance as legiti-

mate forms of communication, even in the legal arena. This scholarship establishes that while colonial rule led to many negative consequences for native peoples, resistance occurred, and cultural vitality and creativity existed and have a lengthy history.<sup>7</sup> While noting that Mesoamerican native peoples engaged in significant acts of resistance and rebellion, this vitality and creativity help explain why communities and individuals often turned to negotiation to deal with conflicts and ameliorate the conditions and consequences of colonial rule. The negotiating pattern had consequences for the development of colonial New Spain's and, later, Mexico's legal system as well as for indigenous-state relations.<sup>8</sup>

Thus, even when writing about the earliest part of the colonial past, ethnohistorians are providing reconstructions and interpretations of that past that help explain the legal, political, and economic contexts in which today's indigenous people define themselves and their political projects. Ethnohistorical studies often involve the realm of law simply because large numbers of natives interacted with colonial courts and legal personnel, thereby leaving an extensive documentary trail. But this pattern of interaction developed primarily because an important function of law in both empires and nation-states is to furnish an institutionalized means through which political and economic power, the search for such power, or conflicts over it can be expressed, negotiated, and controlled. Indigenous individuals and communities were thus led to seek out legal practitioners and institutions to deal with the myriad of political, economic, and social problems set in motion by the arrival of new populations with very different customary practices relating to land, labor, governance, and legal practices. By defining rights and providing a context through which conflicts over competing interests can be mediated and sometimes resolved, empires and states provide forms of conflict resolution between individuals and/or groups and institutions. Yet forms of conflict resolution may themselves help shape states and their political formations at particular times.<sup>9</sup>

This collection of essays reveals that the forms of conflict resolution, as these evolved through dialogue, negotiation, resistance, and conflict between indigenous people and the representatives and institutions of the Spanish Crown, indeed shaped aspects of colonial governance from the sixteenth through the eighteenth centuries. At the same time, the growing dependence of indigenous communities and people on colonial legal institutions for dispute resolution affected political power and officeholding within native communities and the construction and reconstruction of ethnicity in many regions. Given the array of legal compilations that councils and officeholders had to draw upon and given that bureaucrats and councils carried both administrative and judicial responsibilities,

competing jurisdictions and overlapping laws led litigants, almost inevitably, in both Spain and New Spain to seek to exploit the system to their advantage.<sup>10</sup> The issues of political authority and legitimacy, land tenure and inheritance, and rights to and abuse of labor became sources of grave conflict within indigenous communities and between indigenous individuals and communities and Spaniards. In the words of Woodrow Borah, “litigation before Spanish courts and petitions for administrative review and protection became the principal means of carrying on the long series of disputes unleashed by the conquest over land, status, and virtually all other relationships.”<sup>11</sup>

The right of native peoples to access legal authorities and institutions grew out of medieval elements of Spanish law granting protection to *miserables* (or the poor and wretched) in combination with the need to adjudicate the new kinds of disputes to which Borah referred as well as the Crown’s tendency to use law as a means of establishing its authority in the America.<sup>12</sup> It is also true that the ability of the Crown to assert authority—whether by Isabella in the Caribbean and early sixteenth-century New Spain or the Hapsburgs in later sixteenth-century New Spain and Peru—lay in part in the willingness of the indigenous population to accept that authority. Use of indigenous intermediaries as negotiators, an example of the transactional “go-betweens” described so ably by Alida Metcalf for colonial Brazil, became crucial to Crown authority early on, whether these were the sixteenth-century Tlaxcalan nobles as described in Jovita Baber’s essay or the eighteenth-century *apoderados* (individuals empowered by local community councils, *cabildos*, to oversee cases through the early states of litigation) as described by Yannakakis. Bourbon governance, less flexible, more concerned with hierarchy and order, was more authoritarian and thus less dependent on negotiation as a means of consolidating or reinforcing authority. Nevertheless, Bourbons, like the Hapsburgs before them, had to accept the reality of the size of indigenous populations and the force of “customary” practices (by this time, most often a hybrid and flexible mix of indigenous and Spanish traditions in response to changing colonial conditions). Ultimately, Bourbon rulers did not so much try to do away with negotiation as they tried to limit and reserve it for use in peripheral areas where their authority was not as secure.<sup>13</sup>

The first group of essays emphasizes the political maneuverings of native communities as they dealt with governmental institutions and governing officials, sometimes at the highest levels. The chapters by Baber, Ruiz Medrano, and Osowski show how indigenous leaders in the central region influenced Spanish policies, creating and using the room to strategize, maneuver, and negotiate even as such policies created limits on that

maneuvering. A second set of articles, by Romero Frizzi and Yannakakis, focuses on law, politics, and cultural practices internal to Oaxacan communities. They examine how communities and leaders operated in judicial settings while developing innovative ways to function as part of those processes and helping to fashion a colonial legal culture. The final essays look at indigenous groups and colonial governance on the northern and southern peripheries of New Spain in the eighteenth century. Both Velasco Ávila and Chávez-Gómez illustrate ways the Bourbon Crown faced at least three challenges in these regions: from other imperial powers; from the more mobile ways of life that characterized both areas; and the Crown's own weakness in dealing with threats arising out of competition among imperial powers and the cultural diversity of native peoples.

R. Jovita Baber's essay about the dealings of Tlaxcalan nobles as they pursued the status and title of "Loyal and Noble City of Tlaxcala" argues that their legal efforts not only helped the Tlaxcalan nobility gain certain privileges and protection for themselves but in so doing influenced the development of the imperial bureaucracy during the sixteenth century. She shows that leading figures among the Tlaxcalan nobility succeeded in obtaining a royal order prohibiting Tlaxcala and its native population from being granted as an *encomienda* (grant of tribute and labor). The order proved helpful as the nearby city of Puebla de los Angeles was founded because it provided a basis for the Crown to place Tlaxcala under its jurisdiction rather than Puebla's. This status allowed the Tlaxcalans, in Baber's view, a large degree of self-rule, which helped them defend themselves in a series of disputes over boundaries between communities, disputes that involved both native leaders of other communities as well as Spaniards who had taken up residence in the area.

Baber demonstrates that while the formation of more compact territories has traditionally been seen as a process imposed by Spaniards, conflicts between indigenous communities (some reflecting long-standing tensions probably predating the colonial era) played a role in setting boundaries between communities.<sup>14</sup> Community representatives skillfully negotiated new legal, political, and economic terrains and, in the process, provided a model, the author argues, that the Crown used to create other "self-governing" municipalities. Yet this model of self-governance ultimately strengthened the monarchy in its battle to assert royal power against local Spaniards who sought influence and power outside the Crown-sanctioned bureaucracy as that bureaucracy was emerging in the mid- to late sixteenth century.

Attempts by indigenous leaders in mid-sixteenth-century Mexico City to negotiate with a Spanish Crown that was building and asserting its power is an issue taken up by Ethelia Ruiz Medrano in another essay

that focuses on indigenous strategies in the political arena. Drawing from her detailed knowledge of early colonial politics, particularly the conflicts and intrigues among elite Spaniards of the mid-sixteenth century in New Spain's capital city, Ruiz Medrano chronicles several episodes that took place from 1564 to 1566 in which a group of *encomenderos* (those who held the right to labor and tribute known as *encomienda*) sought to break away from royal control and crown the second Marqués del Valle, Martín Cortés, king of New Spain. On one occasion, a dinner held by the *encomendero* Alonso de Ávila Alvarado, he and his guests dressed themselves as Mexica nobles, with Ávila dressing as Motecuhzoma and offering his crown to Cortés. The oidores of the Real Audiencia (Royal Court) had other ideas, however, and not only had members of the conspiracy arrested but later beheaded.

While in large measure a struggle over political power, conflict over control of resources—especially indigenous labor and the tribute that labor created—fueled disagreements between the Crown and *encomenderos* and between Archbishop Montúfar and the Franciscan friars and their elite indigenous allies. The latter were fighting the imposition of a new tribute system, one that the descendants of the pre-Hispanic nobility well understood would weaken them economically and politically. The friars and, more importantly, the indigenous nobility were not without supporters of high status and influence, including Bartolomé de las Casas. However, not even las Casas could challenge the growing power of Philip II, as both Martín Cortés and Don Luis de Santa María Cipac, the last direct descendant of the Mexica ruling dynasty to serve as governor of Mexico Tenochtitlan, would, to their sorrow, learn.

The establishment of a more absolutist royal power, although spelling the end for the political power of most ancient royal lines and houses, did not mean the end of indigenous political influence, as Edward Osowski shows in his essay on Indian government in eighteenth-century Mexico City. Discussing the period between Semana Santa and the festival of Corpus Christi, whereas Ruiz Medrano found Spaniards dressed as Indians, Osowski finds Nahuas and Afro-Mexicans dressed as Roman soldiers and so deeply involved in the ritual practices that made up the celebration of Corpus Christi that he argues that Europeans depended on “indigenous leaders to deliver community participants . . . necessary for the symbols [of a conquering Catholicism] to work.” He describes the sources of indigenous power that underlay the native ability to negotiate and shape local expressions of imperial rule. These included the long-standing practices based on which Spanish authorities depended on native leaders and institutions, especially the indigenous *cabildos* (city or town councils) of Mexico

City and Tlatelolco, to provide resources; the actual resources of labor and goods necessary to build the arches; the commerce between Indians and non-Indians that underlay festival practices such as the renting and wearing of centurion costumes; and the legal resources inherent in the General Indian Court, or the Juzgado General de Indios, upon which the indigenous population could call if need be.

These resources allowed native leaders to defend their customary roles and practices when—in the late eighteenth century—Bourbon officials, especially the viceroys Bucareli and the second Revillagigedo, attempted to reform such practices to prevent labor abuses and to strengthen the role of the Spanish *cabildo* at the expense of indigenous *cabildos*. While indigenous legal rights played a role in Indian ability to withstand reform pressures coming both from the *visitador general* (general inspector), José de Gálvez, and viceroy Revillagigedo, their economic power and the way they helped underwrite a festival economy from which non-native craftsmen and merchants profited also was an important factor.

While Baber and Osowski emphasize the ability of native communities to create some space for self-rule, María de los Ángeles Romero Frizzi, like Ruiz Medrano, points out that such efforts often carried significant costs. Analyzing conflicts among eighteenth-century Zapotec communities of the Sierra Norte area of Oaxaca, she finds energy and a will to protect community landholdings (an effort with echoes even today, she points out, in the solutions sought by native communities to contemporary agrarian problems). But before turning to particular conflicts, Romero Frizzi discusses the problems inherent in using texts that are a product of the complicated and multilayered conjunction of two legal, cultural, and linguistic systems. The documents, written in both Zapotec and Spanish, nonetheless allow the detailed reconstruction of Zapotec social organization. Conflicts within *yetze* (a quasi-kinship system with hierarchical elements) gave rise to household and community fragmentation, leading to migration, a pattern that predated the arrival of the Spanish. In the pre-Hispanic era, such events were recorded both orally and in written form in *lienzos* (pictorial genealogies) and screenfold manuscripts. In the colonial era, the *títulos primordiales* (primordial titles) served this function and had both a legal and, Romero Frizzi argues, a sacred character.

Through the lens of a case that began in 1715, involving the communities of Tanetze and Juquila, Romero Frizzi examines how the colonial legal system served as a kind of filter through which indigenous custom became reinterpreted. The lengthy litigation led to the production of mountains of paper and the multiplication of fees. Neither local-level nor higher-level judges ever acquainted themselves with Juquila's documentation in

Zapotec (and translated into Spanish) that explained the community's political history in quite culturally specific and sacred terms. Nor did they seem to recognize the system of mutual aid, *guelaguetza*, by which Tanetze further justified its demands for payments from Juquila. In 1725, the Real Audiencia in Mexico City decreed that the lands of the two communities at issue would be split in half, a sentence promulgated by lower-level judges ten years earlier but never carried out. While the failure to impose the decision in 1715 might be read simply as a weakness of the Spanish judicial system, that failure related fundamentally to a complex and ever more bureaucratic legal system that promoted lengthy court cases. The length and indeterminacy of cases reinforced the power of the Spanish judicial system in indigenous communities, a power that, as Romero Frizzi shows, led Zapotec leaders to collaborate in the weakening of traditional legal and political norms.

Although Baber argues that indigenous nobles could serve as effective advocates who sometimes acted as legal innovators and Romero Frizzi notes their creativity and energy, the latter sees them also as tragic figures, because their efforts so often came at the cost of loss of sovereignty and the modification of cultural traditions. Yanna Yannakakis also explores questions of cultural loss in an essay that scrutinizes native deployment of the Spanish concept of *costumbre* (custom) in another eighteenth-century case that involved the Zapotec community San Juan Tanetze. Describing the religiously and politically fraught atmosphere of the Villa Alta region in the early years of that century, Yannakakis focuses on the efforts of the community of San Juan Yae to attain *cabecera* (head town) status and end its dependent relationship on Tanetze. Reminding us how important it is *not* to see indigenous communities as unified actors but instead to examine *who* within communities pursued *which* ends, Yannakakis highlights the roles played by apoderados, who were accountable to communities, or at least their collective leadership as represented in the cabildos. She argues that the apoderados brought local elites and Spanish lawyers together. The latter, along with the apoderados, crafted legal strategies for the community. Each side in the lawsuit deployed the notion of *costumbre*, of course in ways designed to aid each side's argument. One side of litigants defined *costumbre* as a set of political rights emerging out of a far distant past and emphasized the egalitarian relations among villages in the region. The other promoted a more hierarchical version of intercommunity relations, a model that squared with desires of both church and state to impose a more hierarchical political structure.

The judges of the Real Audiencia did not allow for multiple definitions or uses of the concept of *costumbre*. Instead they interpreted it as

a set of vertical relations among communities as implied by the *cabecera-sujeto* (head town–dependent town) model of governance imposed across Spanish America. They saw the concept as something for which evidence could be found in documents, not in the everyday political relations among localities. As the Bourbon state increasingly concentrated political and legal power in the king and his ministers, local practices and rhetorics, whether in Spain or the Americas, lost autonomy and legitimacy. Nevertheless, however compromised such autonomy became, it did not altogether die out, and clashes within and between indigenous communities based on the conflict between those who prize cultural autonomy and those who seek to use relationships with the national government to their own or community advantage continue even today.

While Bourbon officials tried to deny autonomy and weaken the ability of native communities to negotiate, neither ever disappeared completely, and as Cuauhtémoc Velasco Ávila's essay shows, negotiation even became the preferred mode for regularizing relations between native peoples and the Spanish in parts of the northern borderlands in the late eighteenth century. Even though Spanish officials such as Hugo O'Connor, *comandante inspector* (commandant inspector) of the northern border from 1771 to 1776, abhorred what he and others viewed as the ferocity of groups such as the Comanches and Apaches, the inability of the Spanish to subdue such groups was readily apparent to both sides. Thus, officials from O'Connor on set about to use time-honored European traditions of inducing groups to trade and enter into political alliances based on negotiations as well as playing groups off against each other. Velasco Ávila describes the efforts made by an array of officials as they bowed to the reality of the size, power, and forms of leadership and political practice (something Velasco sensitively details in careful readings of officials' correspondence) of these and other groups and sought more stable and predictable relations through peaceful means.

But Velasco Ávila also reminds us of the ripple effect that such agreements had, as word of the Comanche negotiations induced other groups like the Utes to make peace. He also notes the complexity of negotiations because of differences of approach to diplomacy within the Spanish and Indian sides. Such was especially the case with the Mescalero Apaches about whom Spanish officials could not agree upon a unified approach and who were themselves divided into independent bands that, on occasion, suffered from their own internal divisions. The cross-ethnic discussions were not conversations between equals. Instead they became the means through which Spain asserted sovereignty over native peoples as a form of forced dependency. Even though reservations were not the outcome for

northern native peoples of what became the nation of Mexico, at least not in the Mexican period, greater dependence (which some might prefer to call economic integration) and second-class citizenship became the norm for New Spain's indigenous groups as the eighteenth century gave way to the nineteenth.

If Velasco Ávila only alludes to the complex imperial political geography of empire at the edges of northern New Spain, this competitive geography and its consequences for ethnogenesis among Maya groups of southern Mesoamerica, particularly the Lacandon, is discussed in detail by José Manuel A. Chávez-Gómez. His article depicts how both Mayas and Spaniards responded to the small but active British presence in the seventeenth- and eighteenth-century Tabasco region.<sup>15</sup> The essay details the movements of Mayas from both Campeche and the Yucatán, some of whom moved into the forested areas of the central Petén during these centuries, others of whom moved north into the province of Tabasco, where they began to develop trade relations with various English settlements forming as the English desire to explore the rivers and estuaries of this coastal region and participation in piracy increased. Searching for *palo de tinte* (logwood), English filibusters then began to move away from the coast into the forests.

Their movement set off great concern among Spanish officials of the Yucatán because the government was having obvious difficulty maintaining control over parts of the region. Early in the eighteenth century, for example, a Spanish expedition set out to capture so-called apostate Mayas who had fled the northeastern Yucatecan community of Atasta and interrogate them about the developing Anglo-Maya political economy. The judicial proceeding that followed shows the ways that Maya community leaders used a discourse relating to political exploitation, the spread of disease, and loyalty to the Catholic faith to account for their presence and way of life, which included trade with the British. Indigenous witnesses downplayed the depth of the developing economic relationship, and Spanish authorities, rather than heavily penalize the Maya captives, mediated between the local and the imperial and provided resources so that the Mayas could secure their community. Colonial authorities paired that response with a plan to find and root out the English presence militarily, which the Spanish succeeded in doing, at least for the short term.

As this last essay and the others in the volume demonstrate, indigenous peoples of colonial Mexico negotiated with representatives and institutions of what became an imperial state. Although those negotiations—legal, political, and cultural—helped shape certain aspects of colonial rule and preserved some geographic and cultural space for autonomy,

such interactions also often led to the creation or reinforcement of various forms of dependency. Yet because the past is always in some sense part of the future, these negotiating processes also helped to protect languages, lands, and retention of cultural beliefs and practices.

The past is also part of the future in historiography. Many forces led to the emergence, first, of social history and, then, cultural history and influenced both the Mexican and North American scholarship represented in this volume. For social history, these forces include transnational intellectual trends such as the rise and impact of the demographic studies of the so-called Berkeley School, the application of Marxist theoretical concepts, as well as the development of dependency theory. North of the border, the political and social trends associated with protests against the Vietnam War and liberation movements seeking to empower African Americans, Mexican Americans, and women that grew out of or developed alongside the student and antiwar movements also influenced the turn to ethnohistory as a more important topic within colonial history. In Mexico, trends such as the slow disintegration of the PRI, the student movement and the 1968 massacre at Tlatelolco, and especially the increasingly apparent contradictions between the ideology of *indigenismo* (positively valuing the *idea* of indigenous culture and history) and the actual treatment and condition of contemporary indigenous peoples underlay the desire to understand the material conditions, power relations, and changing cultural practices associated with the imposition of Spanish rule over Mexico's large and diverse indigenous population.<sup>16</sup>

Mexican scholars were responding to political and cultural changes in their country by questioning conceptualizations of the pre-Hispanic past and the impact of Spanish rule and native responses to it. Scholars on both sides of the border thus became more concerned with epistemology and the politics of representations. These themes underlie historical writings such as the essays in this volume. They constitute "usable scholarship" that might provide a resource for contemporary or future native peoples as they seek to redefine and revitalize their identities and assert rights relating to language and religion, ownership of lands and natural resources, rights of self-determination and self-government, and protection of cultural and intellectual property.<sup>17</sup>

## NOTES

1. I acknowledge helpful insights and suggestions from Ethelia Ruiz, John Hart, Rebecca Horn, Matthew Restall, and Yanna Yannakakis. For historiographical essays tracing the rise of social history approaches and some of the consequences,

see Benjamin Keen, "Main Currents in United States Writings on Colonial Spanish America, 1884–1984," *Hispanic American Historical Review* 65, no. 4 (1985):657–682; William B. Taylor, "Between Global Process and Local Knowledge: An Inquiry into Early Latin American Social History, 1500–1900," in *Reliving the Past: The Worlds of Social History*, ed. Olivier Zunz (Chapel Hill: University of North Carolina Press, 1985), 115–189; John Kicza, "The Social and Ethnic Historiography of Colonial Latin America: The Last Twenty Years," *William and Mary Quarterly*, 3rd ser., 44, no. 3 (1988):453–488; Steve J. Stern, "Feudalism, Capitalism, and the World-System in the Perspective of Latin America and the Caribbean," *American Historical Review*, 93, no. 4 (1988):829–872; and Enrique Florescano, *El nuevo pasado mexicano* (México DF: Cal y Arena, 1991), chap. 2. A special 1972 issue of *Historia Mexicana* (21, no. 2), "En Su Vigésimo Aniversario," features historiographic essays. Especially relevant for social history and ethnohistory are the pieces by León Portilla, González, and Borah and Cook.

2. On cultural history, particularly for colonial Mexico, see James Lockhart, "A Historian and the Disciplines," in *Of Things of the Indies: Essays Old and New in Early Latin American History* (Stanford, CA: Stanford University Press, 1999), 333–367; *ibid.*, "Charles Gibson and the Ethnohistory of Postconquest Central Mexico," in *Nahuas and Spaniards: Postconquest Central Mexican History and Philology* (Stanford and Los Angeles: Stanford University Press and UCLA Latin American Center Publications, 1991), 159–182; *ibid.*, "A Vein of Ethnohistory: Recent Nahuatl-based Historical Research," (Stanford and Los Angeles: Stanford University Press and UCLA Latin American Center Publications, 1991), 183–200; Janine Gasco, "Recent Trends in Ethnohistoric Research on Postclassic and Colonial Central Mexico," *Latin American Research Review* 29, no. 1(1994):132–142; John Kicza, "Recent Books on Ethnohistory and Ethnic Relations in Colonial Mexico," *Latin American Research Review* 30, no. 3 (1995):239–253; Susan Deans-Smith, "Culture, Power, and Society in Colonial Mexico," *Latin American Research Review* 33, no. 1 (1998):257–277; Cynthia Radding, "Cultural Dialogues: Recent Trends in Mesoamerican Ethnohistory," *Latin American Research Review* 33, no. 1 (1998):193–211; Eric Van Young, "The New Cultural History Comes to Old Mexico," *Hispanic American Historical Review* 79, no. 2 (1999):211–247; Murdo J. MacLeod, "Mesoamerica since the Spanish Invasion: An Overview," in *The Cambridge History of the Native Peoples of the Americas*, vol. 2, part 2, Mesoamerica, ed. Richard E.W. Adams and Murdo J. MacLeod (New York: Cambridge University Press, 2001), 1–43; Matthew Restall, "A History of the New Philology and the New Philology in History," *Latin American Research Review* 38, no. 1 (2003): 113–134; and Susan Kellogg, "Encountering People, Creating Texts: Cultural Studies of the Encounter and Beyond," *Latin American Research Review* 38, no. 3 (2003):261–274.

3. Ranajit Guha, *Elementary Aspects of Peasant Insurgency in Colonial India* (Delhi: Oxford University Press, 1983); Edward Said, *Orientalism* (New York: Pantheon, 1978).

4. Gilbert M. Joseph, ed., *Reclaiming the Political in Latin American History: Essays from the North* (Durham, NC: Duke University Press, 2001); and Peter F. Guardino, *The Time of Liberty: Popular Political Culture in Oaxaca, 1750–1850* (Dur-

ham, NC: Duke University Press, 2005). Also see Ricardo D. Salvatore, Carlos Aguirre, and Gilbert M. Joseph, eds., *Crime and Punishment in Latin America: Law and Society since Late Colonial Times* (Durham, NC: Duke University Press, 2001).

5. While anthropologists have discussed negotiation and mediation as part of non-Western systems of dispute resolution (see, e.g., P. H. Gulliver, *Disputes and Negotiations: A Cross-Cultural Perspective* [New York: Academic Press, 1979]), a strong interest in both as part of efforts to develop alternative dispute resolution systems to lessen litigation in the U.S. legal system has developed. Goldberg and colleagues define negotiation as “communication for the purpose of persuasion” and mediation as “negotiation carried out with the assistance of a third party”; Stephen B. Goldberg, Nancy H. Rogers, Sara Rudolph Cole, and Frank E.A. Sander, *Dispute Resolution: Negotiation, Mediation, and Other Processes* (Frederick, MD: Aspen Publishers, 2007), 17, 107. Also see E. Wendy Trachte-Huber and Stephen K. Huber, eds., *Mediation and Negotiation: Reaching Agreement in Law and Business* (Cincinnati: Anderson Publishing Company, 1998). For a historically relevant discussion of mediation and arbitration by “go-betweens,” see Alida Metcalf, *Go-Betweens and the Colonization of Brazil, 1500–1600* (Austin: University of Texas Press, 2005).

6. Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700–1810* (Albuquerque: University of New Mexico Press, 1995), quote on 34, also see 35.

7. Representative works by Luis Reyes García, ed., include *Documentos sobre tierras y señoríos en Cuauhtinchan* (México DF and Puebla: Fondo de Cultura Económica and Estado de Puebla, 1988); Luis Reyes García, ed. and trans. *¿Como te confundes? ¿Acaso no somos conquistados? Anales de Juan Bautista* (México DF: CIESAS, 2001 [1560s]); Luis Reyes García, ed., *Documentos nauas de la Ciudad de México del siglo XVI* (México DF: CIESAS and Archivo General de la Nación, 1996). Also see Paul Kirchoff, Lina Odena Güemes, and Luis Reyes García, eds., *Historia tolteca-chichimeca* (México DF: INAH, 1976 [ca. 1550]); and Francisco González-Hermosillo Adams and Luis Reyes García, eds., *El codice de Cholula: La exaltación testimonial de un linaje indio* (México DF: INAH, 2002 [late 1500s]). Important works by other Mexican scholars in the field of ethnohistory, especially of the central region, include (but are not limited to) Mercedes Olivera, *Pillis y macehuales: Las formaciones sociales y los modos de producción de Tecali del siglos XII al XVI* (México DF: CIESAS, 1978); Hildeberto Martínez, *Tepeaca en el siglo XVI: Tenencia de la tierra y organización de un señorío* (México DF: CIESAS, 1984); Hildeberto Martínez, *Codiaban la tierra: El despojo agrario en los señores de Tecamachalco y Quecholac (Puebla, 1520–1650)* (México DF: CIESAS, 1994); Bernardo García Martínez, *Los pueblos de la sierra: El poder y el espacio entre los indios del norte de Puebla hasta 1700* (México DF: El Colegio de México, 1987); Margarita Menegas Bornemann, *Del señorío indígena a la república de indios: El caso de Toluca, 1500–1600* (México DF: Consejo Nacional para la Cultura y las Artes, 1994); and Francisco González-Hermosillo Adams, ed., *Gobierno y economía en los pueblos indios del México colonial* (México DF: INAH, 2001). For other areas, see, for example, Marcelo Carmagnani, *El regreso de los dioses: El proceso de reconstitución de la identidad étnica en Oaxaca, siglos XVII y XVIII* (México DF: Fondo de Cultura Económica, 1988); María de los Angeles Romero

Frizzi, *El sol y la cruz: Los pueblos indios de Oaxaca colonial* (México DF: CIESAS, 1996); and Pedro Bracamonte y Sosa, *La memoria enclaustrada: Historia indígena de Yucatán 1750–1915* (México DF: CIESAS, 1994). While I provide these citations so that readers see works produced by scholars on both sides of the U.S.-Mexican border (the English-language literature is discussed thoroughly in the citations in note 2), I also intend to suggest that, at least in the realm of ethnohistory, Eric Van Young's comments in an overview of English language that "one worrisome trend lies in the increasing divergence of the two national historiographies—the Mexican still committed to fairly traditional (although still compelling) questions, methods, and materialist paradigms, while at least part of the American scholarship is apparently flying off into the empyrean" are overstated. See "Two Decades of Anglophone Historical Writing on Colonial Mexico: Continuity and Change since 1980," *Mexican Studies / Estudios Mexicanos* 20, no. 2 (2004):275–326. While there are differences in approach and perspective, Mexican and North American ethnohistorians have much in common, as the essays in this collection suggest. The idea of "usable" scholarship is related to Lois Parkinson Zamora's discussion of a "usable" or "useful" past, referring to a past—or in this case, scholarship—that has value or utility (conceived of in ways that go beyond a "single-minded functionalism" in the area lying between the research and writing of scholars, on the one hand, and the readings and uses by readers). See her book, *The Usable Past: The Imagination of History in Recent Fiction of the Americas* (Cambridge: Cambridge University Press, 1997), ix; also see chap. 1.

8. Robert W. Patch's essay, "Indian Resistance to Colonialism," in the *Oxford History of Mexico*, ed. Michael C. Meyer and William H. Beezley (New York: Oxford University Press, 2000), 183–211, provides a wide-ranging overview on the subject of indigenous resistance. Also see Susan Schroeder, ed., *Native Resistance and the Pax Colonial in New Spain* (Lincoln: University of Nebraska Press, 1998). On Indian legal strategies and interactions throughout Mexican history, see Ethelia Ruiz Medrano, *Mexico's Indigenous Communities: Their Lands and Histories* (Boulder: University Press of Colorado, 2010).

9. Useful discussions of how legal systems function across a variety of societies can be found in Sally Falk Moore, *Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880–1980* (Cambridge: Cambridge University Press, 1986); June Starr and Jane F. Collier, eds., *History and Power in the Study of Law: New Directions in Legal Anthropology* (Ithaca, NY: Cornell University Press, 1989); Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working Class Americans* (Chicago: University of Chicago Press, 1990); Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton, NJ: Princeton University Press, 2000); Mindie Lazarus-Black, *Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda* (Washington, DC: Smithsonian Institution Press, 1994); Lauren A. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002); and Laura Nader, *The Life of the Law: Anthropological Projects* (Berkeley: University of California Press, 2002). Important studies of the history of law in Mexico include Toribio Esquivel Obregón's *Apuntes para la historia del derecho en México* (México DF: Editorial Polis,

1937); Rafael Altamira's *Técnica de investigación en la historia del derecho indiano* (México DF: J. Porrúa e Hijos, 1939); Andres Lira González, *El ámparo colonial y el juicio de ámparo mexicano; antecedentes novohispanos del juicio de ámparo* (México DF: Fondo de Cultura Económica, 1972); Jorge Mario Magallon Ibarra, *Los sonidos y el silencio de la jurisprudencia mexicana* (México DF: UNAM, 2004); Guillermo Floris Margardant S., *Introducción a la historia del derecho mexicano* (México DF: UNAM, 1971); Javier Barrientos Grandón, *La cultura jurídica en la Nueva España* (México DF: UNAM, 1993); and Stephen Zamora, José Ramón Cossío, Leonel Pereznieta, José Roldán-Xopa, and David Lopez, *Mexican Law* (New York: Oxford University Press, 2004). On colonial law generally, see Ricardo Levene, *Introducción a la historia del derecho indiano* (Buenos Aires: V. Abelardo, 1924); Rafael Altamira, *Técnica de investigación en la historia*; Rafael Altamira, *Manual de investigación de la historia del derecho indiano* (México DF: Instituto Panamericano de Geografía e Historia, 1948); M. C. Mirow, *Latin American Law: A History of Private Law and Institutions in Spanish America* (Austin: University of Texas Press, 2004); José María Ots Capdequí, *El estado español en las Indias* (México DF: El Colegio de México, 1941); José María Ots Capdequí, *Manual de historia de derecho español en las Indias y del derecho propiamente indiano* (Buenos Aires: Talleres Gráficos de A. Baiocco, 1943); Ismael Sánchez Bella, Alberto de la Hera, and Carlos Díaz Rementería, *Historia del derecho indiano* (Madrid: MAPFRE, 1992); and Victor Tau Anzoátegui, *Nuevos horizontes en el estudio histórico del derecho indiano* (Buenos Aires: Instituto de Investigaciones de Historia del Derecho, 1997). For social and political histories of the legal system in colonial Mexico, see William B. Taylor, *Drinking, Homicide, and Rebellion in Colonial Mexican Villages* (Stanford, CA: Stanford University Press, 1979); Colin MacLachlan, *Criminal Justice in Eighteenth-Century Mexico: A Study of the Tribunal of the Acordada* (Berkeley: University of California Press, 1974); Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkeley: University of California Press, 1983); Teresa Lozano Armendares, *La criminalidad en la ciudad de México, 1800–1821* (México DF: UNAM, 1987); Cutter, *The Legal Culture of Northern New Spain*; Susan Kellogg, *Law and the Transformation of Aztec Culture, 1500–1700* (Norman: University of Oklahoma Press, 1995); Brian P. Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford, CA: Stanford University Press, 2008); and Gabriel Haslip Viera, *Crime and Punishment in Late Colonial Mexico City, 1692–1810* (Albuquerque: University of New Mexico Press, 1999).

10. Richard L. Kagan, *Lawsuits and Litigants in Castile, 1500–1700* (Chapel Hill: University of North Carolina Press, 1981), 31; Kellogg, *Law and the Transformation of Aztec Culture*, 5–6. Important compilations or commentaries on law included *Las Siete Partidas* (thirteenth century), the *Leyes de Toro* (1505), the *Recopilación de Leyes de los Reynos de las Indias* (1681), and *Política Indiana* by Juan de Solórzano Pereira (1647). Benton's term "multicentric legal order," "one "in which the state is one among many legal authorities," would seem to apply to the legal system of both Spain and New Spain; *Law and Colonial Cultures*, 11. It is important, however, to recognize that the use of the term "state" to describe the governance of Spain or New Spain, especially in the early colonial period, may, as Alejandro Cañeque

has pointed out, be problematic. See *The King's Living Image: The Culture and Politics of Viceregal Power in Colonial Mexico* (New York: Routledge, 2004) 3–11.

11. Borah, *Justice by Insurance*, 40. Also see the citations in note 8.

12. *Ibid.*, 11–16, 80–83; MacLachlan, *Criminal Justice in Eighteenth-Century Mexico*, 13–14.

13. For a thoughtful discussion of the similarities and differences between the Hapsburg and Bourbon administration of justice, see Michael C. Scardaville, “(Hapsburg) Law and (Bourbon) Order: State Authority, Popular Unrest, and the Criminal Justice System in Bourbon Mexico City,” *The Americas* 50, no. 4 (1994):501–525. On types of go-betweens, see Metcalf, *Go-betweens and the Colonization of Brazil*, 9–11. Also see Yanna P. Yannakakis, *The Art of Being In-Between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham, NC: Duke University Press, 2008), especially chaps. 3–6. In Benton’s terms, Bourbon attempts to enhance the power and efficiency of the legal system constitute an example of a “state-centered” legal order in which “the state has at least made, if not sustained, a claim to dominance over other legal authorities”; *Law and Colonial Cultures*, 11.

14. François Chevalier, *Land and Society in Colonial Mexico: The Great Hacienda*, trans. Alvin Eustis (Berkeley: University of California Press, 1963); Charles Gibson, *The Aztecs under Spanish Rule: A History of the Indians of the Valley of Mexico, 1519–1810* (Stanford, CA: Stanford University Press, 1964). Also see Frederic Hall, *The Laws of Mexico: A Compilation and Treatise Relating to Real Property, Mines, Water Rights, Personal Rights, Contracts, and Inheritances* (San Francisco: A. L. Bancroft, 1885); George McBride, *The Land Systems of Mexico* (New York: American Geographical Society, 1923); Silvio Zavala, *De encomiendas y propiedad territorial en algunas regiones de la América española* (México DF: Antigua Librería Robredo de J. Porrua e Hijos, 1940); Lesley Byrd Simpson, *The Encomienda in New Spain: The Beginning of Spanish Mexico* (Berkeley: University of California Press, 1950); Menegus Borneman, *Del señorío indígena a la república de indios*; and Martínez, *Codicaban la tierra*.

15. See Edward Spicer, *Cycles of Conquest: The Impact of Spain, Mexico and the United States on the Indians of the Southwest, 1533–1960* (Tucson: University of Arizona Press, 1962); Elizabeth A.H. John, *Storms Brewed in Other Men's Worlds: The Confrontation of Indians, Spanish, and French in the Southwest, 1540–1795* (College Station: Texas A&M University Press, 1975).

16. The rise of social history approaches to Latin American history is chronicled in citations in note 1. On student and indigenous movements in Mexico, as well as both longer-term and more recent political changes, see Guillermo Bonfil Batalla, *México profundo: Una civilización negada* (México DF: SEP and CIESAS, 1987); Elaine Carey, *Plaza of Sacrifices: Gender, Power, and Terror in 1968 Mexico* (Albuquerque: University of New Mexico Press, 2005); Wayne A. Cornelius, *Mexican Politics in Transition: The Breakdown of a One-Party-Dominant Regime* (La Jolla, CA: The Center for U.S.-Mexican Studies, University of California, San Diego, 1996); José Antonio Crespo, *PRI: De la hegemonía a la oposición; Un estudio comparado, 1994–2001* (México DF: Centro de Estudios de Política Comparada, 2001);

Neil Harvey, *The Chiapas Rebellion: The Struggle for Land and Democracy* (Durham, NC: Duke University Press, 1998); Aída Hernández Castillo, *Histories and Stories from Chiapas: Border Identities in Southern Mexico*, trans. Martha Pou (Austin: University of Texas Press, 2001); Donald Clark Hodges, *Mexico: The End of the Revolution* (Westport, CT: Praeger, 2002); Teresa Losada, *Rebelion desde la cultura* (México DF: Editorial Joaquín Mortiz, 1988); Elena Poniatowska, *La noche de Tlatelolco: Testimonios de historia oral* (México DF: Ediciones Era, 1971); Julia Preston and Samuel Dillon, *Opening Mexico: The Making of a Democracy* (New York: Farrar, Straus and Giroux, 2004); Jorge Volpi Escalante, *La imaginación y el poder: Una historia intelectual de 1968* (México DF: Ediciones Era, 1998); Garbriel Zaid, *Adios al PRI* (México DF: Oceano, 1995); and Sergio Zermeño, *México: Una democracia utópica; El movimiento estudiantil del 68*, 2nd ed. (México DF: Siglo Veintiuno Editoriales, 1981). For histories of the social impact of Vietnam and 1960s social movements in the United States, see Robert Buzzanco, *Vietnam and the Transformation of American Life* (Malden, MA: Blackwell, 1999); Todd Gitlin, *The Sixties: Years of Hope, Days of Rage* (New York: Bantam Books, 1993); and Maurice Isserman and Michael Kazin, *America Divided: The Civil War of the 1960s* (New York: Oxford University Press, 2000).

17. For a brief but useful discussion of the rights of indigenous peoples from many parts of the world, including Latin America, see “The Rights of Indigenous Peoples, Fact Sheet No. 9” (Rev. 1), *Office of the High Commissioner for Human Rights*, <http://www.unhchr.ch/html/menu6/2/fs9.htm>. In the fall of 2007, the UN adopted the Indigenous Human Rights Declaration. The text can be found at <http://www.un.org/esa/socdev/unpfi/en/drip/html>. Also see Rodolfo Stavenhagen, *Derecho indígena y derechos humanos en América Latina* (México DF: El Colegio de México and Instituto Interamericano de Derechos Humanos, 1988); Rodolfo Stavenhagen and Diego Iturralde, eds., *Entre la ley y la costumbre: El derecho consuetudinario indígena en América Latina* (México DF: Instituto Interamericano de Derechos Humanos and Instituto Indigenista Interamericano, 1990); Enrique Sánchez, ed., *Derechos de los pueblos indígenas en las constituciones de América Latina* (Santa Fé de Bogotá: Disloque Editores, 1996); David Maybury-Lewis, ed., *The Politics of Ethnicity: Indigenous Peoples in Latin American States* (Cambridge, MA: The David Rockefeller Center Series on Latin American Studies, Harvard University, 2002). Histories of indigenous rights movements in various countries and regions of Latin America are beginning to be written by scholars from a variety of disciplines. General or comparative treatments include Kay B. Warren and Jean E. Jackson, *Indigenous Movements, Self-Representation, and the State in Latin America* (Austin: University of Texas Press, 2002); Erick D. Langer, ed., *Contemporary Indigenous Movements in Latin America* (Wilmington, DE: SR Books, 2003); Donna Lee Van Cott, *From Movements to Parties in Latin America: The Evolution of Ethnic Politics* (Cambridge: Cambridge University Press, 2005); and Deborah J. Yashar, *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge* (Cambridge: Cambridge University Press, 2005).