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Introduction

The pueblo of San Miguel Ecatepec, Tequiscistlán, located in the Oaxacan district of Tehuantepec, presented a “faithful copy” of a colonial codex to the agrarian authorities. The copy, done in black and white on paper and certified by the municipality’s agent, was produced in “San Miguel Yautepec, Oaxaca, on 5 November 1941.” This document clearly incorporates aspects of an important local oral tradition as well as information gleaned from what seems to be a colonial codex. The pueblo’s authorities presented it to an agrarian tribunal to verify their community’s long history. The fact that Indian pueblos would still copy the codex in the mid-twentieth century is interesting enough, but giving these exercises—undertaken over matters of land—even greater interest was their recovery and recounting of ancestral myths and stories.¹

In Mexico, numerous Indian pueblos zealously guard ancient documents for a variety of purposes, among which the issue of land and its rightful ownership looms large. Indeed, the practice of drawing up and preserving historical documents has been a determining factor in the history of Mexico’s Indian communities, especially since the beginning of the sixteenth century. In this work, I examine the historical documents of Indian communities in both the state of Oaxaca

and the central part of Mexico from the sixteenth century to the present, focusing in particular on the genres of painted manuscripts, maps, and oral accounts.

In Chapter 1, I review the ways the principles informing and underlying royal power created the legal foundation on which conquered vassals of the Castilian king could bring charges in court against powerful men who represented him in his overseas colony. The king's legitimacy resided in offering justice to his vassals, which necessarily involves a consideration of both the rights those vassals possessed and the different political mechanisms such rights engendered for the purposes of commanding and negotiating power.

I also demonstrate that only through the presence of cultural intermediaries were the Indian pueblos capable—soon after they were conquered—of understanding and employing the Spanish system of justice to their own advantage, albeit with all the cultural problems and difficulties of legal terminology inherent in the situation. These intermediaries (missionary priests, royal functionaries and officeholders, lawyers, legal representatives, interpreters, and persons of mixed race) opened a path to the courts and legal authorities that enabled the Indian communities, and members of the native nobility in particular, to bring lawsuits and argue claims before the colonial powers. At the same time, however, the Indians' capacity to engage and steer through the complicated apparatus of the colonial legal system implied a certain measure of autonomy on their part. Since at least 1531, they had possessed the right, when bringing lawsuits before the courts and tribunals, to employ some of their own customs and traditions. The evidence in every such legal proceeding, for example, was presented in the form of codices or pictorial documents (which enjoyed the same legal status as notarial deeds and records); furthermore, their oral testimony was given in the Indians' language. A large number of translators or interpreters were invariably used in all judicial cases.

This autonomy was exercised within a system of delicate balances or constraints. Clearly, it was essential to recognize that, as part of a complex system of legitimacy, it was the king who ultimately dispensed justice—a condition that applied even to those who had become his vassals through conquest in faraway lands—and that in the case of New Spain, the incorporation of the native population into the colonial judicial system was accomplished in part through the aid of cultural intermediaries. Yet it also followed, as a consequence, that judicial practices had to be comprehensible to the Indians. For that to happen, it was necessary that such practices make sense within their own cultural frame of reference.

The context and circumstances that prevailed at the end of the sixteenth century have led me to believe even more strongly that it was the Indians who managed to negotiate the introduction of evidence in a manner that coincided

with their own practices and customs. I argue that, operating in a decidedly complex economic and political environment, the Crown chose in general to distance itself ideologically from the political need to legitimate its power. This development entailed a series of changes with respect to the social condition of the Indians. The Crown and the colonial regime sought (with all its consequences) to assimilate the Indians into the kingdom without evidencing an interest in, and even prohibiting the use of, their native practices and customs, especially insofar as they involved recounting the Indians' history prior to the conquest. What is more, in this environment, those who played the role of cultural intermediary—the missionaries and native nobility in particular—lost political influence and force.

In Chapter 2, I deal with a related problem—that of the presentation of historical evidence, or proof, by the Indians—within an evolving historical context that showed little favor toward Indian communities in the seventeenth and eighteenth centuries. During an initial stage of research, I assumed that if indigenous practices and customs were forgotten and, moreover, were assigned no “legal” meaning within the colonial administrative structure, I would fail to encounter any codices or pictorial representations the Indians presented before the colonial courts.

Fortunately, however, this proved not to be the case. Notably in the central part of New Spain and in what today constitutes the state of Oaxaca, various Indian communities continued (by utilizing different negotiation strategies) to present judicial arguments pictorially, with recourse to maps in particular. What is more, in the mid-seventeenth century some pueblos began to advance a new type of legal argument while pleading their cases. The novelty took the form of narrating their local histories, especially as they concerned disputes and litigation over issues of land and property. In cases of this nature, representatives of the pueblo would describe, both orally and in writing (on some occasions using Nahuatl), the story of their arrival at or migration to their community and the various rites by which they took “possession” of their lands. To reinforce their position and give their arguments greater force, they also presented pictorial documents, or painted manuscripts, whose antiquity—a condition asserted by the Indians in many instances—presumably verified the early history of the pueblo.²

To my way of thinking, making sense of the concept of indigenous-inspired negotiation, accounting for its workings and success in the colonial context, calls for a particular type of analysis that I undertake in Chapter 2 by examining actual cases as I came across them in the archives. Such a study of specific cases allows one to gain insight into the different negotiation strategies the pueblos employed, a process that might be termed “the presentation of culturally complex evidence before the colonial courts.”

In Chapter 3, I extend the time frame and endeavor to learn whether the process of indigenous negotiation with state power, based on the Indians' use of old, long-held records, continued into the postcolonial period. The fact that Mexico's nineteenth-century governments took a particularly hard line toward the Indian pueblos is common knowledge.³ The idea that the Crown's Indian vassals required special protection⁴ disappeared with the advent of the Mexican national state (a development that repeated itself in Spain's other former New World colonies).⁵ In rapid order after independence was achieved, the native population—to a person—was granted the status of citizen. Thus, the transition the Indians abruptly experienced—from being protected vassals of the king to becoming citizens of the state, with specific rights and obligations—forced upon them a new reality and a new set of problems. How were they to assert their newfound rights outside the boundaries maintained by the protector state? The legislation enacted to break up communal property⁶ was especially destructive of the collective rights to land the Indian pueblos had long enjoyed,⁷ and the laws passed later during the 1890s, under Porfirio Díaz's rule, continued the process of privatizing the ownership of land.⁸ In the face of these developments, the pueblos' margins for negotiation became ever narrower, although as more studies are done of the political agendas the Indian pueblos crafted during these years, the seeming inevitability of this conclusion may be called into question.⁹ This situation, although generally the case, did not hold true everywhere. Recent research has shown that the laws of *desamortización* (disentailment) enabled some pueblos to preserve their land. The present-day state of Oaxaca stands out in this regard. There, by taking legal steps sanctioned in the agrarian legislation, pueblos that lacked productive, arable land—such as those in the Mixteca Alta and Mixteca Baja—could apparently stave off the loss of their land and consolidate its communal status.

Under such circumstances, it stretches the imagination to think that Indian communities would maintain the practice of introducing pictorial documents in the national courts, let alone the custom of recounting the history of how they came to take possession of particular lands, as a way of validating their claim to those lands. Against all such assumptions, however, cases exist of the Indians doing precisely that. I particularly encountered these examples in the section called *Buscas*, in the Archivo General de la Nación.¹⁰ It suffices to note here that this section of the archive begins with documents produced shortly before passage of the *Leyes de Reforma*¹¹ and is composed of requests by Indian pueblos that searches be undertaken for the primordial titles and other historical documents that guaranteed their claims of landownership, along with the related request that the archive certify the authenticity of these documents so they could be submitted as evidence in court cases. In short, during the nineteenth century

a substantial number of Indian pueblos continued to negotiate with judicial officials for the use of both pictorial maps and historical narrative as legal arguments in conflicts over land.

Even more remarkable, a department *ex profeso* of paleography was created at the Archivo General de la Nación in 1854 for this express purpose, so that copies—exquisitely produced and hand-colored—could be made (and rendered in translation, when necessary) of original Nahuatl and Spanish pictorial maps, codices, and other historical documents. Those who carried out the department's work were excellent copyists who succeeded in locating numerous manuscripts of this sort. Some even undertook the copy work in their homes, a form of artisan labor that has continued to the present day and is motivated by the same purpose—to deliver copies of documents to the pueblos that bear a certificate of historical authenticity, that identify and furnish evidence of their lands. Of the hundreds of Indian pueblos whose existence is officially recorded in Mexico, a small number have failed to discover the historical documents that would uphold their claim to have possessed certain lands. The majority, however, have been successful in this endeavor.

In light of this record, I began to ask whether the process might not have continued after the revolution, likely spurred on by Mexico's agrarian reform program.¹² The agrarian legislation enacted in 1917 had specifically mandated that Indian pueblos, to be legally granted *ejidos* (common or communal lands), establish the date of their founding. Paralleling this directive are indications that reveal exactly how the pueblos' primordial titles served as privileged documents in furthering the process by which ejidos were granted or restituted.¹³ In this manner, throughout the twentieth century some pueblos continued to present pictorial material (maps) and historical accounts that attested to the fact that their possession of certain lands dated back centuries.

In Chapter 4, I offer modern-day case studies related to the overall theme of this book. In 2003, in the Nahua pueblo of Atliaca, state of Guerrero, I met Maestro Modesto Vázquez Salgado, a village schoolteacher and lawyer who, together with the people of his pueblo, fought for several years to recuperate land illegally occupied by a rich mestizo rancher. One of the strongest arguments that enabled them to win the case before the court was their ability to prove that the state had recognized Atliaca as a pueblo for more than half a century, under the communal lands system. I recount this experience for the people of Atliaca, showing the continuing importance for Mexican pueblos of the search for historical documents—in this case, those concerning their more recent history. I particularly trace Modesto's role in the dispute over Atliaca's land.

Also in Chapter 4, I follow the case of a pueblo in the Mixteca Alta of Oaxaca named Santa María Cuquila. I got to know the people of this village in 2004

because of their interest in obtaining a paleographic transcription of a document dated near the end of the sixteenth century, lodged in their community museum. Over the years I have also collaborated with the residents in the search for other historical documents that belong to them, held by different archives. As a result of this contact, I have gained insight into Cuquilans' perception of their local history, the reasons they are interested in tracing it, and especially the emphasis they place on the age and prestige of their pueblo. Cuquila has an agrarian history closely tied to its primordial titles, of which it has a special understanding. I try to show what such a perception is and how, in recuperating their history, they are recuperating themselves, thereby ensuring a better future for their families and the community as a whole.

In sum, my intention in this work is to demonstrate how, over a long period, Indian pueblos have pursued a complex process of political negotiation through the introduction of historical evidence—both written and pictorial—and to underscore that in some cases the history of the pueblos, as appropriated by the pueblos themselves, serves as an important marker of identity as well as a political weapon by which the pueblos can improve their present condition and gain hope for the future.

NOTES

1. See Chapter 3 of this work. Similar cases occur in other parts of Latin America. The Aymara people of Coroma, in the southern Altiplano of Bolivia, have developed a very moving and picturesque custom. Inside the folds of traditional textiles, some of which date to pre-Hispanic times, they wrap up old documents that tell the story of their lands, and, with these bundles draped over their backs, they begin to dance. For these Aymara the woven fabrics of dazzling color guard the souls of their ancestors and—as the swaddled documents recount—the history of their community as well. Cristina Bubba, “Los rituales a los vestidos de María Titiqhawa, Juana Palla y otros fundadores de los Ayllu de Coroma,” in Thérèse Bouysse-Cassagne, ed., *Saberes y memorias en los Andes. In Memoriam Thierry Saignes, 377–400* (Lima: Institut des Hautes Études de l'Amérique Latine, Institut Français d'Études Andines, 1997).

2. Kevin Terraciano and Lisa Sousa, “The ‘Original Conquest’ of Oaxaca: Late Colonial Nahuatl and Mixtec Accounts of the Spanish Conquest,” *Ethnohistory* 50, 2 (2003): 349–400; Roskamp Hans, *La historiografía indígena de Michoacán: El lienzo de Jucutácato y los títulos de Carapan* (Leiden: Research School of Asian, African, and Amerindian Studies [CNWS], Universiteit Leiden, 1998); Michel Oudijk, *Historiography of the Bénizáa: The Postclassic and Early Colonial Periods [1000–1600 A.D.]* (Leiden: CNWS, Universiteit Leiden, 2000); Stephanie Wood, “Don Diego García de Mendoza Moctezuma: A Techialoyan Mastermind?” *Estudios de Cultura Náhuatl* 19 (1989): 215–259; Wood, “The Cosmic Conquest: Late Colonial Views of the Sword and the Cross in Central Mexican Títulos,” *Ethnohistory* 38, 29 (1991): 176–195; Wood, “El problema de

la historicidad de los títulos y los códices Techialoyan,” in *De tlacuilos a escribanos*, Xavier Noguez and Stephanie Wood, eds., 167–211 (Mexico City: El Colegio de Michoacán and El Colegio Mexiquense, 1998); Wood, *Transcending Conquest: Nahuatl Views of Spanish Colonial Mexico* (Norman: University of Oklahoma Press, 2003); Paula López Caballero, ed., *Los títulos primordiales del Centro de México* (Mexico City: Consejo Nacional para la Cultura y las Artes [CONACULTA], Colección Cien de México, 2003); Robert Haskett, *Visions of Paradise: Primordial Titles and Mesoamerican History in Cuernavaca* (Norman: University of Oklahoma Press, 2005); Ethelia Ruiz Medrano, “El espejo y su reflejo: Títulos primordiales de los pueblos indios utilizados por españoles en Tlaxcala, siglo XVIII,” in Danna Levin and Federico Navarrete, eds., *Indios, mestizos y españoles interculturalidad e historiografía en la Nueva España*, 167–202 (México: Universidad Autónoma Metropolitana, Instituto de Investigaciones Históricas, and Universidad Nacional Autónoma de México, 2007).

3. Antonio Escobar O., ed., *Indio, nación, y comunidad: En el México del siglo XIX* (Mexico City: Centro Francés de Estudios Mexicanos Centroamericanos [CEMCA] and Centro de Investigaciones y Estudios Superiores en Antropología Social [CIESAS], 1993); Victoria Chenaut, *Aquellos que vuelan. Los totónacops en el siglo XIX*, Colección Historia de los Pueblos Indígenas de México (Mexico City: CIESAS and Instituto Nacional Indigenista, 1995); Leticia Reina Ayoma, *Caminos de luz y sombra: Historia indígena de Oaxaca en el siglo XIX*, Colección Historia de los Pueblos Indígenas de México (Mexico City: CIESAS and Comisión para el Desarrollo de los Pueblos Indígenas, 2004).

4. Juan de Solórzano y Pereyra, *Política Indiana. Edición facsimilar tomada de la de 1776 (Madrid)*, 2 vols. (Mexico City: Secretaría de Programación y Presupuesto, 1979), chap. 28, 206–213: “*Que los indios son y deben ser contados entre las personas, que el derecho llama miserables: Y de que privilegios temporales gocen por esta causa, y de sus protectores.*” [That the Indians are and must be considered as among those people whom the law deems wretched: and what temporal privileges do they therefore enjoy by virtue of this condition and from their protectors.]

5. More on this development is found in Brooke Larson, *Trials of Nation Making: Liberalism, Race and Ethnicity in the Andes, 1810–1910* (Cambridge: Cambridge University Press, 2004).

6. “On 25 June 1856, the federal government passed the ‘Law of *desamortización*,’ better known as the Ley Lerdo, breaking up both rural plots of land and urban property belonging to religious and civil corporations. This piece of legislation, by calling for the disentanglement of lands held by civil and religious entities, hastened the dissolution of the indigenous communities which had been established by the colonial regime. Lands ceased to belong to communities, or to the town or village councils which depended on them. Instead, they were split up, their ownership handed over to individuals—tenants or *comuneros*—who now possessed them outright or in usufruct” (241) “or they became the property of persons from entirely outside the community, who sued to obtain them” (238). Daniela Marino, “La modernidad a juicio: Pleitos por la tierra y la identidad comunal en el Estado de México (Municipalidad de Huixquilucan, 1856–1900),” in Romana Falcón, ed., *Culturas de pobreza y resistencia: Estudios de marginados, proscritos y descontentos México*,

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1804–1910, 237–264 (Mexico City: El Colegio de México and Universidad Autónoma de Querétaro, 2005).

7. Edgar Mendoza García, “Distrito político y desamortización: Resistencia y reparto de la propiedad comunal en los pueblos de Cuicatlán y Coixtlahuaca, 1856–1900,” 209–235, and Marino, “La modernidad a juicio,” both chapters in Romana Falcón, ed., *Culturas de pobreza y resistencia: Estudios de marginados, proscritos y descontentos México, 1804–1910* (México: El Colegio de México and Universidad Autónoma de Querétaro, 2005).

8. “Historians and contemporary observers are in agreement that in Mexico, during the regime of Porfirio Díaz, the ownership of land became concentrated to a degree heretofore unknown,” in John H. Coatsworth, *El impacto económico de los ferrocarriles en el porfiriato, II*, 2 vols. (Mexico City: Sep-Setentas, 1976), 2: 42. Reina Ayoma, *Caminos de luz y sombra*: “Between 1881 and 1906, the alienation of empty or uncultivated lands [*terrenos baldíos*] in Mexico amounted to 49 million hectares, equivalent to a quarter of the country’s land surface, of which 81 per cent was owned by North Americans” (141–142). Without question, as the author notes, the Porfirian laws affecting such lands, and the companion laws of colonization constitute a new version of the Leyes de Reforma. Reina Ayoma likewise concludes that in the case of the state of Oaxaca, this complex of Porfirian laws left the Indian pueblos landless (142).

9. Florencia E. Mallon, *Peasant and Nation: The Making of Postcolonial Mexico and Peru* (Berkeley: University of California Press, 1995); John Monaghan, “Mixtec Caciques in the Nineteenth and Twentieth Centuries,” *Cuadernos de Historia Latinoamericana* (Special number of Códices, Caciques and Communities 5) (1997): 265–281; Chris Kyle, “Land, Labor and the Chilapa Market: A New Look at the 1840s’ Peasant Wars in Central Guerrero,” *Ethnohistory* 50, 1 (Winter 2003): 89–130; John Monaghan, Arthur Joyce, and Ronald Spores, “Transformations of the Indigenous Caciczgo in the Nineteenth Century,” *Ethnohistory* 50, 1 (Winter 2003): 131–150.

10. In 2003, in an effort to understand the origin and operation of this section of the national archive, I carried out a series of detailed interviews with its director, Soledad Villafuerte. She informed me that in her twenty years as head of the department, I was the first researcher to voice such an interest. One of the director’s key responsibilities was to assist campesinos who had made their way to the office from different parts of the country to locate their “primordial titles.” With Villafuerte’s special approval, I had the opportunity to observe several of her interviews with campesinos engaged in this task. In addition, she spelled out how in many instances the lawyers the Indians retained, who were specialists in agrarian law, deceived their clients—for example, by collecting up to 10,000 pesos from them for certified maps for which, by law, the archive charged fewer than 100 pesos. For that and other such reasons, Villafuerte explained, she preferred to deal directly with the campesinos and not with their lawyers in all matters pertaining to the search for relevant historical materials.

11. Manuel Fabila, *Cinco siglos de legislación agraria [1493–1940]*, 2 vols. (Mexico City: Secretaría de la Reforma Agraria, Centro de Estudios Históricos del Agrarismo en México, 1981), vol. 1, book 5, 159–168; José Blas Gutiérrez, *Leyes de Reforma: Colección de las disposiciones que se conocen con este nombre, publicadas desde el año de 1855 al 1868*.

Formada y anotada por el Lic . . . catedrático de procedimientos jurídicos en la Nacional Escuela de Jurisprudencia (Mexico City: Imprenta de El Constitucional, 1869); Juan N. Rodríguez de San Miguel, *Pandectas hispano-megicanas* [Estudio introductorio de María del Refugio González], 3 vols. (Mexico City: Universidad Nacional Autónoma de México [UNAM], 1991); “Decreto de Maximiliano de Habsburgo publicado en español y en náhuatl, sobre el fundo legal de los pueblos,” in Ascensión H. de León-Portilla, *Tepuztlahuicuilolli. Impresos en náhuatl. Historia y bibliografía* (Mexico City: UNAM, 1988), vol. 1, 289–291.

12. Guillermo Palacios, “Las restituciones de la Revolución,” in *Estudios campesinos en el Archivo General Agrario*, Ismael Maldonado Salazar, Guillermo Palacios, and Reyna María Silva Chacón, eds. (Mexico City: Registro Agrario Nacional and CIESAS [Colección Agraria], 2001), vol. 3, 119–161.

13. Fabila, *Cinco siglos de legislación agraria [1493–1940]*, vol. 1, circular no. 15: “Concerning the separate data that must be collected in the proceedings for granting ejidos. I. Population census. II. Agrarian census. III. Classification of the lands which the pueblo seeks to be granted. IV. Area of land that should correspond to each family head who possesses the status of farmer, as part of the final distribution as determined in accordance with the enabling law. V. The climate of the location. VI. Pattern of rainfall, if known. VII. Physical qualities of the land and native vegetation. VIII. The type of crops cultivated, or that could be cultivated, on the land in question. IX. Distance to and from the immediate surrounding pueblos. X. List of properties to be affected by the grant, stating, when possible, the total area comprised by the farms involved and the type of land on which they sit. XI. *Date on which the pueblo was established accompanied by a copy of the founding document . . .* México, 24 January 1917,” 301 [emphasis added]; vol. 1, circular no. 18: “Resolving particular cases pertaining to either the restitution of ejidos or the concession of new grants, when the primordial titles do not indicate whether the land had been legally granted, México, 21 March 1917,” 313–314; vol. 1, circular no. 30: “Giving notice to the Local Agrarian Commissions that during the processing of files pertaining to the restitution or granting of ejidos, evidence and summary statements may be admitted on the part of the owners of land . . . Mexico, 3 October 1917,” 331.