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Nature, Bodies, and Land

Reframing Ownership and Property in Early Modern Spanish
America

by

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Nature, Bodies, and Land

Reframing Ownership and Property in Early Modern Spanish America *

Manuel Bastias Saavedra, Alina Rodríguez Sánchez **

Rooted in medieval juridical thinking, early modern legal culture saw community's law as the expression of an underlying order of things, something defined not by the willing agreement of the parts that constituted the community, but rather by nature and nurture. For the Iberian world, this belief was expressed in the idea of the 'señorío natural', which according to legal doctrine was a bond that linked subjects to the land where they were born and subjected them to a common jurisdiction (Hespanha, Uncommon Laws). Communities and all kinds of corporate bodies thus also had a natural origin, which points to an intertwinement, and not a contradiction, between nature and different kinds of collective bodies. These bodies—corporations, guilds, communities, families, and so on—were the basis for the assignment of rights, obligations, privileges, and duties, but also for the distribution of access to land. This article seeks to reframe ownership and property within this framework as a way of rethinking the ways in which communities defined their relations to land.



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1. Introduction

In our contemporary society, property and nature are legally intertwined, albeit in a unilateral way. Nature is often seen as a compound of appropriable resources that can be exploited for human consumption and aims. This representation required the construction of a sharp division between the natural and the human realms which, seen in historical terms, was a sharp break with tradition. Over the past decades, nature has come back with a vengeance. The global climate crisis has forced a need to rethink the relationship between people and nature, and the inherent interdependency between natural and human existence. The idea of the Anthropocene, as a new geological epoch brought about by the excesses in human consumption and production of the past two-hundred years, is a way to rethink the human and the natural worlds once again as an inherent unity. In this context it is perhaps worth remembering the way in which the legal tradition conceived of the relationship between nature, property, and human existence.

Early modern jurists still saw the world as a unity composed by nature, humans, and supernatural entities. They derived order from nature and found it in the regularities and patterns of conduct and behavior. These regularities and patterns were considered part of a natural order, common to all living things, which had quasi-divine qualities and, though they were beyond human control, had all kinds of consequences for the human realm. Many institutions—such as marriage or lordship—had a ‘natural’ content, meaning that they were not bound to a specific faith, culture, or kingdom but were shared by all people. And the rectitude of this natural order was so irrevocably binding that it could only be ignored by the sick and the insane. Domingo de Soto argued as much in his *Tratado de la Justicia y el Derecho (De iustitia e iure)* of 1553: “Nowhere—he wrote—can there be a mortal being, even the most savage and barbaric, *as long as they are of sound mind*, for which these truths [i.e., the principles of natural law] are not accessible”.¹ In the early modern world, nature, law, and society stood in a tight bond that pervaded all kinds of social relationships.

¹ Domingo de Soto [Fray], *Tratado de la justicia y el derecho*, 1 (Madrid: Editorial Reus, 1922 [1553]), 98. Italics added. The complete text in the original: “Es la primera que la ley natural, en cuanto se extiende solamente a los principios, es la misma en todos los mortales, no sólo cuanto a la verdad de la rectitud, sino también cuanto al conocimiento. Porque los principios de la razón

That the relation between people and land in the early modern period was also understood within this framework is often neglected in contemporary historical research. This is probably influenced by the profound transformations undergone by the concepts of ‘nature’ and, especially, ‘property’ since the early-19th century. On the one hand, nature moved from being considered a divine-made order ingrained in all human behaviors, to being separated from, and even opposed to, the moral sphere. Nature slowly became synonymous with the physical world, no longer a reflection of God’s design, but rather seen as a generous, if capricious, provider for human desires.¹ On the other hand, the multiple relations that tied land to different and overlapping interests was replaced by a concept of property that made it a central piece of a new liberal theory of society. In this new conception, property became a natural and unalienable right that reflected the individual will and freedom, and was considered private, absolute, and perpetual.²

These contemporary notions pervade much of the research on land tenure in the early modern period, where anachronistic distinctions such as individual and common have come to dominate the analysis, especially in colonial contexts.³ Paolo Grossi has long argued that framing the relationship between man and land in terms of ‘property’ inevitably places the individual at the center, whereas the early modern juridical worldview was actually *reicentric*, placing “the thing as the protagonist of the cosmic and social order”.⁴ Emanuele Conte has recently pointed to the ‘Christian model of ownership’ that was ‘silently’ present in early modern doctrine relating to the relationship between people and land. In this model, ownership was not ascribed to private or public persons, but to communities as natural entities as well as to things and places

práctica son semejantes a los principios especulativos en que son verdaderos en todas partes con verdad inconcusa, y son clarísimos por luz natural. En ninguna parte se puede dar un mortal, aun el más salvaje y bárbaro, con tal que esté en su sano juicio, para el cual no sean aseguibles estas verdades”.

¹ Katharine Park, “Nature in Person: Renaissance Allegories and Emblems”, in *The Moral Authority of Nature*, ed. Lorraine Daston and Fernando Vidal (Chicago: University of Chicago Press, 2003), 68.

² António M. Hespanha, “O jurista e o legislador na construção da propriedade burguesa liberal em Portugal”, *Análise social* 16 (1980): 211-12.

³ Manuel Bastias Saavedra, “The Normativity of Possession: Rethinking Land Relations in Early Modern Spanish America, ca. 1500-1800”, *Colonial Latin American Review* 29, no. 3 (2020).

⁴ Paolo Grossi, *El orden jurídico medieval* (Madrid: Marcial Pons, 1995), 111-12.

themselves, and humans enjoyed the lands and the goods as members of those communities or inhabitants of those places.¹

This article takes this special issue as an opportunity to rethink the relationship between nature and property by placing it squarely within the Early Modern worldview. In this sense, it proposes moving away from the—individualistic, formalistic, and rights-centered—conceptual framework of property towards the corporate structure that characterized social and legal relations in the early modern period. Reframing ownership and access to land in this way means understanding the relationship between nature and property as one of precedence—nature acts as the foundation, and not the object, of ownership. Thinking about the relationship in these terms requires focusing research on different kinds of questions and objects of research. It means taking different communities' claims seriously and considering their relationship to land not exclusively in proprietary terms but also in their relationships of belonging to the land. The idea of belonging in this period was tied to both the land and the communities that inhabited it: land did not belong to individuals; individuals belonged to lands and communities and legal relationships arose from this basis. When thinking of ownership and property in this context, it is necessary to focus on the regulatory and normative functions exerted by both the community as a corporate body and by the land itself as establishing a bond with families, towns, and different instances of authority.

In the following, we explore these ideas by referring to the place nature had in establishing the general order of the world, making it the basis for both law and human relationships. In the next section, we discuss the idea of society as being constituted by corporate bodies, as natural and political communities, which gave individuals their rights and obligations and were the main *loci* for the normative regulation of local interactions. The final section argues that it is important to look for ownership practices within the corporate bodies since access and distribution of land was managed at this level. We use some examples from colonial New Spain to illustrate how ownership was managed within the context of early modern Spanish America. This analytical framework should, in principle, be replicable in the Peninsula as in other places of the Spanish empire.

¹ Emanuele Conte, "The Many Legal Faces of the Commons: A Short Historical Survey", *Quaderni storici* 168, no. 3 (2021)

2. Nature as a Universal and a Local Order

For the late medieval Christian world, nature, as everything else, had been created by God, and as such it was his gift and grace. Nature could refer both to “that which makes something the kind (or species) of thing it is” and to “the flora, fauna, and landscape of a particular place”.¹ It was at the same time the material world, but also the order that had shaped it and continued to rule it, determining cycles, proclivities, and behavior. The fact that God had created nature, automatically infused nature with divinity and moral authority by proxy.² Nature acted as an intermediary of God, imparting the order his creation had to follow, from the movements of the skies, the cycles of animals and plants, even including human behavior. It was, as such, not merely a physical entity but was much more “the active shaper of natural phenomena and spokesperson for the moral order of God’s creation”.³ This order rested on the expectation of repetition and the belief that the shapes and cycles it commanded were the best possible ones according to the place and circumstances.

Nature embodied the certainty given by regularity, undeterred by human interference. The confidence in this ‘metahuman stability’ cemented the notion of nature as the only source of norms and gave great normative power to facticity.⁴ At the center of this order was not personhood or individuality, but things. In a world not centered on personhood and individuality, but on facts and things, the forces of everyday life took center stage: land, blood, and time (sustenance, lineage, and stability) were the primary natural forces which themselves produced and reproduced normativity.⁵ This *reicentrism*—an order based on the centrality of things—was the basis for the importance of custom, considering it as the pure expression of an underlying order of things, decipherable if one paid direct attention to the facts occurring in a certain place.⁶

¹ Lorraine Daston, “The Morality of Natural Orders: The Power of Medea” in *The Tanner Lectures on Human Values 24*, ed. Grethe B. Peterson (Salt Lake City: University of Utah Press, 2004), 375.

² Lorraine Daston, “Nature’s customs versus Nature’s Laws”, in *The Tanner Lectures on Human Values 24*, 411.

³ Park, “Nature in Person”, 68.

⁴ Grossi, *El orden jurídico medieval*, 76.

⁵ Grossi, *El orden jurídico medieval*, 89-91.

⁶ Grossi, *El orden jurídico medieval*, 91.

As it relied on repetition through time and the attention to local particularities, custom and communitarian life was often considered a “second nature”.¹ Moreover, constant repetition of certain behavior could become part of someone’s or something’s nature. These traits of nature in custom were also inscribed in the idea of law. In fact, the connections between nature and law were many. European late medieval thought encouraged localism and contextualization of law and regarded it as the expression of a compulsory underlying order of things, something already in existence—not to be defined by the willing agreement of the parts that constituted the community, but rather by nature and nurture.²

Though the order of nature was all-encompassing and common to all living creatures, it was not thought to be homogenous and universal, but rather local and custom-oriented. In the Spanish world, the concept of nature was also drawn in a localist, polysemic manner, attuned with the moral order rather than against it. In the *Siete Partidas*, for example, nature alluded to both an uncontested order mandated by God (*natura*), as well as to a harmonic order based on the love between men (*naturaleza*). If *natura* bonded men by lineage, then *naturaleza* was a bond forged by the appropriate type of love and affection. This harmonic order created by men’s tendency to love each other (*naturaleza*) was similar to God’s order (*natura*), but not quite the same. *Natura* was “a virtue that makes all things to be in the state that God ordered them to be”, while *naturaleza* was something that “provided aid to the existence and maintenance of *natura*”.³ *Naturaleza*—the bond—supported and reproduced nature—the desired order.

¹ Donald R. Kelley, “‘Second Nature’: The Idea of Custom in European Law, Society, and Culture”, in *The Transmission of Culture in Early Modern Europe*, ed. Anthony Grafton and Ann Blair (Philadelphia, PA: U. of Pennsylvania Press, 1990), 131.

² António Manuel Hespanha, “Uncommon Laws: Law in the Extreme Peripheries of an Early Modern Empire”, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 30, no. 1 (2013): 181-82

³ “Naturaleza tanto quiere decir como debdo que han los homes unos con otros por alguna derecha razón en se amar et se querer bien. Et el departimiento que ha entre natura et naturaleza es este, que natura es una virtud que face seer todas las cosas en aquel estado que Dios las ordenó: et naturaleza es cosa que semeja á la natura, et que ayuda á ser et á mantener todo lo que decende della”. In Law 1, Title XXIV, Partida 4, *Las siete partidas del Rey Don Alfonso el Sabio, cotejadas con varios códices antiguos por la Real Academia de la Historia* (Madrid: Imprenta Real, 1807).

Although Law 1, Title 24 of the fourth *Partida* makes a clear differentiation between *naturaleza* and *natura*, the subsequent use is ambiguous.¹ The *Partidas* imply that *naturaleza* was not just something divine externally imprinted into the community but was also an intrinsic bond between people. The bond, meant to glue communities and all kinds of corporate bodies, rooted the existence of those communities and political bodies in nature. The *Partidas* recognized many different types of bonds, listing ten forms of *naturaleza*. While conversion to Christianity or marriage were among these forms, the first and highest form was that which bonded men to their *señor natural* (natural lord). This bond also tied people and their ancestors to the land where they were born, rooting them to the land and ascribing them to the ‘natural lord’. The relationship established between communities and land was thus not understood in proprietary terms but in terms of identity: communities belong to the land and are shaped by it.

As such, they had obligations towards the land: “the people have to act with love towards the land of which they are *naturales*,² nourishing and improving it, and creating lineage to populate it: and in each one must act as is convenient, because in no other way can they show true love to the land on which they live”.³ Love towards the land was also the basis of marriage, as it was destined to reproduction, hence, for the sake of the land.⁴ The land had to be made plentiful, whether by working on it or by populating it. The duties dictated by nature towards reproduction and improvement of the land were intertwined with further obligations, such as the duty of *naturales* to love their lord, which was also framed as a natural obligation (*debedo de naturaleza*).⁵ The normative

¹ This ‘linguistic manipulations’ are studied by Georges Martin, “Estrategias discursivas y lingüísticas de los leuistas alfonsíes: de nuevo sobre *naturaleza*”, e-Spania [online] 2013

² The translation of this term is difficult. Tamar Herzog has translated it as ‘natives’, which comes close to capturing the idea. Georges Martin has pointed out the unusual use of the adjective *natural* as a substantive, which is innovative also for the Castilian language. See Tamar Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America* (New Haven: Yale UP, 2003); Martin, “Estrategias discursivas”.

³ Title XX, Partida 2. *Siete Partidas*.

⁴ Law 1, Title XX, Partida 2. *Siete Partidas*.

⁵ “A los señores deben amar todos sus naturales por el debedo de la naturaleza que han con ellos et servirlos por el bien que dellos resciben ó esperan haber, et honrarlos por la honra que resciben dellos, et guardarlos porque ellos et sus cosas son guardadas por ellos, et acrescentar sus bienes porque los suyos acrescentan por ende, et rescebir buena muerte por los señores si menester fuere

framework thus linked place of birth, political allegiance, and the obligations of labor and reproduction to a natural order.

One can see these relationships clearly in a 1575 petition by cacique don Juan of Suta in Nueva Granada reacting to community lands being taken for the founding of a new town, Villa de Leyva. He argued that “it should not be allowed that our lands and settlements we have of old and were held by our ancestors for more than one hundred years until today be taken” (*no se deve permitir que se no tomen nuestras tierras y açientos que antiguamente tenemos y tuvieron nuestras antepasados de mas de çien años a esta parte*), because great harm would come to his community, due to them being “forced to move to strange lands and abandon our nature” (*forçados yrnos a tierras estrañas y dexar nuestra naturaleza*).¹ Other caciques that participated in the proceeding argued that they could not be “dispossessed and deprived of our nature and homeland” (*despojar y privarnos de nuestro natural y patria*).² The lands were not valuable insofar as productive plots but were rather endowed with familiarity and belonging, being thus essential to the group’s identity. Nature was understood here in a polysemic manner, being, at the same time, the land, the homeland, and the community.

The word *natural* developed a further meaning with the Castilian’s arrival to the New World. The core associations would remain, but new connotations and semantic load developed. The native populations received the label of *naturales* (of the Indies) simply referring to their belonging to the land. Over time it became a synonym of *Indio*, that had different implications, as it was also a legal category. As Baltasar Álamos de Barrientos stated in 1598: “in the New World there were two types of *naturales*: the Indios, who are naturals by origin, and the Spaniards, who are so by birth”.³ The bond between land, kinship, and nature fleshed out by the *Partidas* in the figure of the *señorío natural* (natural

por la buena et honrada vida que hubieron con ellos. Et á la tierra han gran debdo de amarla, et de acrescentarla et morir por ella si menester fuere (...)” Law 4, Title XXIV, Partida 4. *Siete Partidas*.

¹ “Fundación de la Villa de Leiva, disposiciones del resguardo”, Fondo: POBLACIONES-BOY:SC.46,2, D.10, Archivo General de la Nación – Colombia, f. 38or. I thank Katherine Godfrey for providing me with and allowing me to cite this and the following document.

² Archivo Histórico de Tunja, Legajo 8, Archivo Histórico Regional de Boyacá, f. 18or.

³ Quoted by Tamar Herzog in “Naturales y extranjeros: Sobre la construcción de categorías en el mundo hispánico”, *Cuadernos de historia moderna* 10 (2011): 29.

lordship) was also wielded in the New World. During the early decades of colonization, in the context of the discussion on how to rule the *naturales* there were arguments in favor of keeping what the Spaniards recognized as natural lordships of the New World: political and territorial units ruled by a native political chief with a recognized lineage among *naturales*, that would swear fealty to the Spanish king. That position had many sympathizers and defenders during the rule of Charles V but would start its decline during the rule of Philip II. In 1538 the Crown forbade calling them *señores naturales* and instead imposed the term cacique, erasing both the distinctions and nuances between different titles and offices of the nobility of preconquest times, as well as the multiple regional variations.¹ The figure of these political chiefs remained, stripped of their prerogative to administer justice, keeping their status and possessions among the rest of the *naturales* to maintain the political order in the new territory of the Crown and facilitate tribute extraction.

Beyond the idea of an evident correspondence between the natural and moral spheres or the repeated naturalization of bonds between people, the idea of nature in regard to the New World started to lean towards the physical world, to the observed environment that was perceived as radically different. An author such as José de Acosta saw the natural and moral orders as complementary but separate parts of God's work. The objective of his work, *Historia natural y moral de las Indias* (1589), was to worship God by giving "an account of the natural creations that the wise author of this nature has made" and to "help the Indios to achieve and remain in the Gospel (...) by knowing their customs and traits".² The structure of the work is telling. While the first section, dedicated to the natural world, described and offered explanations about the characteristics of the landscape, the air, the mountains, animals, fruits, minerals of the Indies, the second part narrates the history of the Inca and the Mexica, describing their customs and knowledge. The work of nature appeared in contrast to the work of free will, the latter being the actions and customs of men: "por ser no sólo de las obras de naturaleza, sino también de las del libre albedrío, que son los hechos y costumbres de hombres. Por donde me pareció darle nombre de His-

¹ Gudrun Lenkersdorf, "Caciques o concejos: dos concepciones de gobierno" *Chiapas* 11 (2001): 77-78.

² José de Acosta, *Historia natural y moral de las Indias*, (Sevilla: Casa de Juan de León, 1590), 11.

toria natural y moral de las Indias, abrazando con este intento ambas cosas”.¹ This partition of nature and moral histories was gaining importance in the intellectual production of the epoch, attested by the popularity of natural history in Europe at the time, developed along the early exploration and colonization enterprises. In Acosta, observing nature served many useful purposes such as praising God, and even just satisfying curiosity and providing entertainment, but nature does not appear as a principle of order.

Despite these movements towards a more physical and passive meaning of nature, by the early seventeenth century the word ‘nature’ still retained the meaning of an order underlying all things. In Covarrubias’ *Tesoro de la lengua castellana o española* (1611) the term *naturaleza*, nature, “means the same as *natura*”, and can mean “condition [(...)] lineage [casta], homeland [patria] or nation” as well as “the divine order of all things, by which all things move and rise [(...)] Some have said that this is God, by whom all things are created”.² It meant both the entity that provided certain natural conditions, such as rain, fruits, the fertility of lands, as well as determining *condición* in peoples, thus pointing to status and social position.

This latter term acquired another dimension when used to talk about the New World. In his *Política Indiana* (1647), Solórzano Pereyra employed *condición* to describe the Indios and establish their position within the viceroyalty. Solórzano argued that Indios were by nature propense to work the lands, but would not work for the benefit of the kingdom unless compelled to do so. Thus, nature as a legal fiction linked them to the land in terms of belonging (as *naturales*), but less as lords than as productive agents who owed labor to the Spaniards. Thus, by the 17th century there were efforts by learned Creoles in Spanish America to ascribe to both Indios and Spaniards natural tendencies of behavior that could not be changed, independent of repeated actions or conditions, such as custom or weather. These ideas attempted to counter the claims that the American conditions would make the European body more like that of the Indio after a certain period of time.³ This added a layer, which we could

¹ Acosta, *Historia natural y moral de las Indias*, 10.

² *Tesoro de la lengua Castellana o Española*, by Sebastián de Covarrubias Orozco (Madrid: Luis Sánchez, 1611) s.v. “Naturaleza”.

³ Jorge Cañizares Esguerra, “New World, New Stars: Patriotic Astrology and the Invention of Indian and Creole Bodies in Colonial Spanish America, 1600-1650” *American Historical Review* 104,

call racial, to the semantic conglomerate of nature—*natural* and *naturaleza*—in Spanish America. Nevertheless, nature maintained its strong ties to custom: repeated actions could still be seen as reflecting nature. Naturalization, for example, as becoming a *natural* of a kingdom or territory, was still possible by spending certain time in the new territory.¹ As stated by Solórzano custom, even a bad one, can convert into nature.²



3. Bodies – Society as Corporative System

Nature was thus always, at once, general and particular. This was consistent with the early modern juridical experience, which was characterized by a holistic worldview that presupposed both unity and difference. Unity was based on the indivisibility of God and the order he gave his Creation, while difference was sustained through the image of the body and the harmony achieved by the necessary diversity and autonomy of its organs. This conception encompassed both society and nature: each part of this whole had to play its own differentiated role, contributing to the realization of the higher objective. “In other words, each ‘order’ of creation—and, within them, each species, and, within the human species, each group or social body—had its own and irrepressible objective to achieve within this destiny”.³ The natural, the supernatural, and the human world all contributed to this harmonious universal order given by divine Creation.

The universal order of Creation was reflected in the human realm as a multitude of particular orders. Communities of all kinds were considered to arise

no. 1 (1999): 61-62.

¹ *Tesoro de la lengua Castellana o Española*, s.v. “Naturaleza”.

² “la costumbre, aunque mala, convertida en naturaleza no pudo extirparse [(...)]” In Juan de Solórzano Pereira, *Política indiana: sacada de la lengua castellana de los dos tomos del Derecho y gouierno municipal de las Indias Occidentales* (Madrid: Diego Díaz de la Carrera), 134.

³ António Manuel Hespanha, *História das instituições* (Coimbra: Livraria Almedina, 1982), 206.

from a kind of instinct (*affectus societatis*) that was essential to human nature. The image of totality and particularity that characterized the holistic worldview was reproduced in the relationship between community and individual. The individual in isolation was considered to be incapable of achieving completeness; instead, his fulfillment was achieved by belonging to a larger, ordered unity.¹ Humankind was thus thought to naturally tend towards political organization oriented towards the common good.² It was in the community—and not independently of it—that the individual fulfilled specific roles, acquired rights, privileges, and obligations, and contributed to the realization of the perfection of the community.

The existence and necessity of hierarchies and inequalities were presupposed. Harmony was the way in which different elements were integrated into a larger unity, and order was seen as the existence of a hierarchy of functions, offices, and persons. The idea of person was not related to the physical individual and his rights, but rather was tied to status, as reflecting the social role that linked the individual to different entities. Status (*estado*) referred to the place that both humans and things had within the order of Creation and the mutual relations and dependencies thereby established. All creatures, whether animate or inanimate, had a utility and could exert functions according to their status, thus having both rights and obligations in relation to one another. In this sense, because the holder of rights was not the human individual but the status (*estados*), humans, things, and supernatural entities all enjoyed (unequal) rights and obligations according to their position within the larger totality. An individual without status was thus not a person: he could enjoy no rights or obligations.³ The punishments of disinheritance, banishment, and excommunication were thus grave because they removed and excluded the individual from the family/lineage, the city, or the religious community, constituting a kind of civil or political death.

Human existence was thus tied to the ontological and juridical primacy of the community and the corporate organization of society. Society was under-

¹ Grossi, *El orden jurídico medieval*, 93.

² António Manuel Hespanha, *Imbecillitas: As bem-aventuras da inferiordade nas sociedades de antigo regime* (2008), 27-28.

³ Hespanha, *Imbecillitas*, 35.

stood to be composed by a combination of autonomous collective bodies (*corpora*), each of them pursuing their own particular purpose. These bodies enjoyed differentiated juridical status and possessed great autonomy and capacity for self-regulation. They had the capacity to issue their own rules, govern their internal affairs, and define the criteria for inclusion and exclusion. Families, guilds, parishes, villages, cities, universities, dioceses, religious orders, the kingdom, and the Christian republic are some examples of these corporations. Besides the family, which was governed by domestic discipline, all of these *corpora* were endowed with jurisdiction (*iurisdictio*), as the basic ability to govern by declaring the law and establishing fairness. Autonomy and self-government were considered to be necessary so that each of these collective bodies could fulfil their specific functions and purpose.¹ In the metaphor of the body, jurisdiction occupied the place of the soul: “just as living beings are governed by a soul, the community has its jurisdiction”.²

The most fundamental and natural of these bodies was the family and the household. The family was considered a natural entity because, beyond its juridical and theological conditions, its origin lay in the natural fact of procreation. As such, the family was born out of a particular kind of bond, love, that was ruled by irrevocable norms. This love created both reciprocal feelings and bonds of identity. On the one hand, it generated an identity between the father and his offspring, insofar as children were considered to be an extension of the person of the father. This is why fathers were personally responsible for the acts of the children, and why jurists in principle excluded the possibility of contracts between father and children (juridically, they are the same person). On the other hand, it generated the identity of the spouses, becoming one and the same person through marriage, metaphorically becoming “one flesh”.³ But love was also the basic bond between the head of the household and his servants, which secured the relationships of protection and obedience.⁴

¹ Hespanha, *História das instituições*, 208.

² Alejandro Agüero, “Las categorías básicas de la cultura jurisdiccional”, in *De justicia de jueces a justicia de leyes: hacia la España de 1870*, ed. Marta Lorente (Madrid: Consejo General del Poder Judicial, 2007), 35.

³ António M. Hespanha and Nuno G. Monteiro, “A Família”, in *Historia de Portugal: o antigo regime (1620-1807)*, ed. António M. Hespanha (Lisboa: Editorial Estampa, 1992).

⁴ Romina Zamora, *Casa poblada y buen gobierno: “œconomía” católica y servicio personal en San*

The family was thus a unity whose members were considered to follow common interests guided by the authority of the father (*pater familias*). This definition extended the idea of the family beyond the spouses and children to include everyone who was subject to the authority of the father. This included extended kinship, servants, slaves, the public offices and privileges granted by the king, as well as the lands and estates of the household. The family, understood in this broad sense, was ruled by the father through domestic discipline (*œconomia*).

The old concept of *œconomia* was the government of the house and the administration of its relations and goods. The good government of the house consisted in the careful instruction of virtuous fathers, who administered with prudence; who gave charitably to the poor; were unimpeachable examples of virtue; who gifted their friends liberally; and who commanded their children, wife, slaves, and servants with love.¹

Unlike jurisdiction (*iurisdictio*), this power was not guided towards justice nor did it have a political character, but was considered to be a kind of natural authority. The authority and command of the father secured the unity of the family, and was expected to ensure the prosperity, reputation, and reproduction of the group. Displays of wealth and ostentation, as well as of hospitality and charity, were considered central to the government of the house, insofar as they secured the social position and political relations of the family.

The identity of the unit, however, did not eliminate the hierarchies within the group and the differentiated rights and duties of each member. The members of the family and household were bound together by different kinds of reciprocal obligations. In relation to their children, fathers had the obligation of their education, which included spiritual, moral, and political instruction, and could include reading and writing, and providing for their further instruction either professional or academic. Additionally, fathers had to provide food, shelter, clothes and shoes, and medication. Finally, he was obligated to provide for their marriage. Children owed their father gratitude, obedience, and gifts. Gratitude generated the obligation to provide for their fathers in case of necessity and, once passed, to provide for obsequies, burial, and mass for their souls. Under the duty of obedience, children had to respect and comply with the

Miguel de Tucumán, Siglo XVIII (Buenos Aires: Prometeo Libros, 2017), 124

¹ Zamora, *Casa poblada y buen gobierno*, 111.

decisions of the father. The duties of gift required assistance and unpaid work for the father in whatever he required. While under the authority of the father (*patria potestas*) this duty was unrestricted. In relation to the wife, there were reciprocal obligations of support and fidelity, as well as obligations of the father to command and provide defense and sustenance. In relation to the servants, in exchange for their service and obedience, the father had the duty to protect, house, and feed them.¹

The family was the most basic unit of society, endowing its members with status and defining their primary roles in regard to broader society. In this regard, the city was seen as a larger collective body composed of these families and households, and its political body was composed exclusively by the heads of household who were recognized as neighbors. A neighbor was not simply someone who resided within the city, but the family head who displayed good government by having a large family, many dependents, and prosperous lands and household. Neighbors thus had a prominent role within the city and were entitled to access the collective political and fiscal rights and privileges that were granted by the king to the city.² This was also the case in Portuguese America, where the members of the political body were usually the members of the main families of the place, known as ‘*homens bons*’ (good men).³ The status of citizen also gave them access to other collective bodies, such as brotherhoods and municipal councils. Displaying a good government of the household was thought to transpose to the government of the republic: the city should be governed with the same prudence and responsibility with which the father governed his family. The status of neighbor/citizen was thus dependent on the status of the *pater familias*, both within his family and among the other families of the city. The government of the city also did not exist “independently of the main families, but was rather composed by these heads of households, as an extension and a reflection, at the same time, of their domestic functions”.⁴

¹ Hespanha and Monteiro, “A família”, 275-277.

² Zamora, *Casa poblada y buen gobierno*.

³ Maria F. Bicalho, “O que significava ser cidadão nos tempos coloniais?”, in *Ensino de história: conceitos, temáticas e metodologia*, ed. Martha d. A. Esteves and Rachel Soihet (Rio de Janeiro: Casa da Palavra, 2003); Beatriz Catão Cruz Santos and Bernardo Ferreira, “Cidadão – vizinho”, *Ler história*, no. 55 (2008).

⁴ Zamora, *Casa poblada y buen gobierno*, 112.

Society was thus seen as an aggregate of collective bodies and not of individuals. This logic of aggregation of bodies into larger units was illustrated by 17th-century scholar Juan Pablo Martir Rizo:

There are four sorts of community: that of the household; that of the neighbourhood; that of the city; and that of the kingdom. And just as a household is composed of many people together, in the same way many households make up a neighbourhood, many neighbourhoods a city, and many cities a kingdom.¹

The kingdom—and hence, the empire—was ultimately a compound of multiple autonomous collective bodies that enjoyed varying privileges and stood in diverse relationships with each other. The consequence of understanding the centrality of collective bodies in the early modern worldview is that it changes the way in which law should be understood. Thus, alongside the unavailable orders of divine and natural law, which could not be modified by human will, law could originate from multiple jurisdictional orders—including professional guilds, municipalities and city councils, kingdoms, the church, and rural communities. Different rules thus applied, variably, in the same territories and over the same populations, creating a complex set of overlapping juridical orders that were not hierarchically organized and, therefore, allowed for various simultaneous juridical solutions to any given circumstance.²

This also meant that the traditional distinction between public and private law, traditional to the 19th century, did not exist. António Manuel Hespanha has spoken of the contemporary distinction between public and private law as a ‘frequent anachronism’ attributed to Roman law or the European *ius commune*. In the latter normative systems, the voice ‘public’ was used topically, and ‘public law’ did not begin to constitute a doctrinal system until the late seventeenth century.³ Rather, the more important distinction was between general

¹ Quoted in I. A. A. Thompson, “Castile, Spain and the Monarchy: The Political Community from Patria Natural to Patria Nacional”, in *Spain, Europe, and the Atlantic World: Essays in Honour of John H. Elliott*, ed. J. H. Elliott, Richard L. Kagan and Geoffrey Parker (Cambridge: Cambridge UP, 1995), 128.

² Jesús Vallejo, “El Cáliz de Plata: articulación de órdenes jurídicos en la jurisprudencia del *Ius Commune*”, *Revista de Historia del Derecho* 38 (2009): 13.

³ António Manuel Hespanha, *Como os juristas viam o mundo. 1550-1750: direitos, estados, pessoas, coisas, contratos, ações, e crimes* (Lisboa: CreateSpace, 2015).

and special laws. As Alejandro Agüero has argued, in the 1555 glosses of Gregorio López to the *Siete Partidas*, the autonomy of norm-making by local jurisdictions was sustained alongside the power of the king or emperor to make general laws for the kingdom. Even in 19th-century editions of the *Partidas*, the *ius commune* principles persisted, allowing a conciliation of “the legislative power of the [Prince] and the natural power of self-regulation assigned to every human community”.¹

This basic model of local self-government accompanied the Portuguese and Castilian crowns as they extended their rule to other parts of the Iberian Peninsula, as well as to the Americas. This model, however, was not only deployed by royal institutions but was also replicated through the corporate structure of society, tied to the corporations that accompanied the expansion of the Iberian empires— the Church, the Inquisition, brotherhoods, religious orders, *cabildos* and *câmaras*, guilds, cities, provinces, etc.—and to the vernacular bodies that organized local rule—especially the indigenous *pueblos* prevalent in Spanish America. These corporations sometimes acquired explicit privileges granted by the monarch, but also developed their own local, unwritten norms based on longstanding practices and conventions. The principle underlying this was that every community was endowed with an inherent capacity for self-government. Importantly, neither the laws of the king nor those of other instances of general law-making—e.g., the Church—could supersede or contravene the law and the law-making capacities of these corporations. Ownership, division, distribution, succession, and use of land was more often than not defined at this level. The study of land tenure and usage regimes must thus be understood according to the hierarchies, social positions, and social roles as they were defined within different kinds of corporate bodies.



¹ Alejandro Agüero, “Local Law and Localization of Law: Hispanic Legal Tradition and Colonial Culture (16th–18th Centuries)”, in *Spatial and Temporal Dimensions for Legal History: Research Experiences and Itineraries*, ed. Massimo Meccarelli and María J. Solla Sastre (Frankfurt a.M.: Max Planck Institute for European Legal History, 2016), 105.

4. Corporate Landholding and Primordial Titles in New Spain

The natural and social order were thus seen as conjunction rather than opposition. Political and social relationships were taken as natural relationships, established with the family, the community, and the lord. The bond of the people to the land, by birth and reproduction, naturalized the bond to the lord. Lordship in this case was constituted in different layers, to the father of the household, to the *natural lord* of the land, and, after conquest, to the king. This placed access to land and ownership at the level of corporate bodies (and not individuals) and made these bodies the main site of regulating the distribution and use of land. Seen from this vantage point, the norms that granted access to land were not restricted to those of the Crown but included a variety of normative sources that ranged from the domestic *œconomia*, which regulated the life and economy of the household, to the customs of towns and cities, going through canon law which regulated ecclesiastical lands. The ways in which peasant and native communities organized land also depended on a further level of norms of kinship groups and status, with deep cultural roots and particular ways of regulating division and succession of family and community lands. Some of these norms found expression in the juridical literature and in doctrine but much of it was neglected, considered to belong to the natural regulation of the *rustici*.¹ Thus, understanding how access to land was regulated within these corporate bodies cannot be easily drawn from written law or doctrine but requires shifting attention towards archival documents and interdisciplinary research to reconstruct how these relations were organized in practice.

Lands held by native inhabitants reflected the difficulties of this complex order particularly well since, as long as they paid their contributions dutifully, both the Portuguese and the Spanish empire largely left rural villages and *pueblos* to function according to their own traditions. These very local arrangements can be observed in the indigenous *pueblos* of the Spanish empire, both in America and in the Philippines. The notion of *pueblo* provided an image of equivalent collective bodies that organized the affairs of the *Indios* integrated into the

¹ António M. Hespanha, “As fronteiras do poder: o mundo dos rústicos”, *Revista Sequência* 51 (2005).

Spanish empire but concealed what were in fact distinct forms of social organization that had roots in the pre-Hispanic period. In New Spain, for example, the term *pueblo* was superposed on different forms of social organization depending on the region, such as the *altepetl* in the Valley of Mexico, the *ñuu* among the Mixtec, or the *batabil* in the Yucatan Peninsula. These in turn were composed, respectively, by the *calpolli*, the *siqui/siña/dzini* (which varied depending on the Mixtec region), and the *cahob*, extended families or kinship groups that determined the distribution of common and family lands among its members. Access to land was reserved to heads of family through their membership in the broader kinship group.¹ In the Philippines, the term *pueblo* was used to designate the pre-Hispanic *bayan*, which grouped several extended families or kinship groups known as *barangay*. Access to land was secured, by family members, slaves, and dependents, through the *barangay* and rights of succession were also managed at this level.² In this section, we focus on some of these corporate arrangements among the Nahua and Mixtec of New Spain.

After the conquest and in the subsequent established regime in New Spain, Nahua commoners' main mechanism to access and work land continued to be their membership to the *calpolli*.³ *Calpolli*—a section of the *altepetl*, a group bound by the acknowledgment of relations of kinship between its members—retained the name and many functions once it was inserted into the Spanish juridical regime. It became one of its corporations, an indigenous one with specific duties—to provide labor and tribute to the Crown—but nevertheless a corporation with its own rights and duties. Although the *calpolli* was obliged to fulfill certain tasks for the Crown, internally, it could regulate itself. The patterns of

¹ Margarita Menegus, “Cacicazgos y Repúblicas de Indios en el siglo XVI: la transformación de la propiedad en la mixteca”, in *Configuraciones territoriales en la mixteca: estudios de historia y antropología*, ed. Manuel Hermann (México: CIESAS, 2016); Margarita Menegus and Rodolfo Aguirre Salvador, *El cacicazgo en Nueva España y Filipinas*, 1ª ed. (México, D.F., Barcelona: Universidad Nacional Autónoma de México, Centro de Estudios sobre la Universidad; Plaza y Valdés, 2005); Sergio Quezada, *Pueblos y caciques Yucatecos, 1550-1580* (México, D.F.: El Colegio de México, 1993)

² William H. Scott, *Barangay: Sixteenth Century Philippine Culture and Society* (Manila: Ateneo de Manila UP, 1994) Also: Grace Concepción, “Negotiating Land in the Spanish Philippines”, *Philippine Studies* 67 (2019): 3-4

³ Rebeca Horn, *Postconquest Coyoacan: Nahua-Spanish Relations in Central Mexico, 1519-1650* (Stanford: Stanford UP, 1997), 111.

land distribution and management remained an internal affair, not impervious or isolated from external conditions and impositions, but holding a degree of self-determination. The Spanish interference and influence in land-holding patterns of Nahuatl communities occurred in different times and degrees from region to region, from pueblo to pueblo; it happened earlier and more extensively in Coyoacan than, for example, Xochimilco.¹ The changes and adaptations did not preclude that the corporation remained fulfilling its land regulating functions. Lands of the *calpolli* (*calpollalli*) were referred in Spanish as *tierra de repartimiento* (lands for allocation). Members received land in usufruct, inalienable and taxable, because if *calpolli* membership came with the right to hold and work the allotted land, it also came with the duty to give tribute to the Crown and native nobility.

Although members were bound to pay tribute as members of a corporation and the land managed by its own officials, this did not necessarily imply that land was worked in common, as plots were allocated to a household, and once assigned they could be worked, held practically in perpetuity and inherited within that unit.² Once the household obtained the land, it passed down through inheritance, reproducing in this way the original allocation. This mechanism of internal allocation through inheritance did not break the household unit or the link with the initial allotment by the *calpolli*.³ While “inheritance and spontaneous sharing or division among the people holding and using the land was the principal mechanism of continuity and redistribution”⁴ after the initial allotment, the *calpolli* continued to act as the granting institution. When allocation did not reproduce itself through inheritance or spontaneous distribution, or when land became empty or uncultivated, the corporate authorities had the task to mend the situation in the *calpolli*.⁵

Although important differences existed in the duties imposed on landholding between Nahuatl commoners (*macehuales*) and the nobility (*pilli*), the pattern of

¹ See Rebecca Horn, *Ponconquest Coyoacan* and Richard M. Conway, *Island in the Lake: Environment and Ethnohistory in Xochimilco, New Spain* (New York: Cambridge UP, 2021).

² James Lockhart, *The Nahuas after the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries* (Stanford: Stanford UP, 1992), 142.

³ Lockhart, *The Nahuas after the Conquest*, 147.

⁴ Lockhart, *The Nahuas after the Conquest*, 148.

⁵ Lockhart, *The Nahuas after the Conquest*, 148.

holding land was shared by all: it consisted of a core plot, which had the better land for cultivation and was where the main residence was located, and other scattered plots that could sometimes be far away from the main core plot where families lived. The pattern prevailed in central Mexico but also in the central Valleys and the Mixtec area of Oaxaca.¹ The main plot (*callali*), appears in Spanish sources as ‘solar’.² *Callali*, which means ‘house-lands’, were meant to provide sustenance and were permanently linked to the household since, unlike the plots, it was and had to continue to be attached to it over time.³ Time thus added an important normative layer to landholding, since ‘old-land’ (*huehuetlalli*), i.e. land that had been inherited through generations, acquired a different status, granting the owner “full discretion and close association between holder and holding”.⁴ Oftentimes the *huehuetlalli* was associated with *callali*, the house-land, as well as to patrimonial land, translated as ‘patrimonio.’ Thus, the longer land was held within a household, the more far-removed it was from the instance of allocation, granting the household a stronger claim over said land. Although its origin and legitimacy rested in its allotment by the calpolli, households could still claim their *callali* as their own, and ‘tierra patrimonial’ was in practice distinguished from calpolli land and from purchased land.

The scattered plots could be of different kinds, have different soil, access to water, or other qualities, and were often used as backups for crops and harvests. This pattern of tenure was common to *pilli* and *macehuales* alike, both groups listing a *callali* and then the rest of their scattered plots by their toponymic names. Some of the difference between the groups rested in the number and the quality of the plots,⁵ and at which level these allotments were held. While the land of *macehuales*, whether core land or scattered plots, were within the terms and jurisdiction of the calpolli, *pilli*, as shown by their wills, could own land across over different calpolli within the altepetl. The reasons for this pattern of landholding are not altogether clear. As Horn suggests, it might have stemmed

¹ Kevin Terraciano, *The Mixtecs of Colonial Oaxaca: Ñudzahui History, Sixteenth through Eighteenth Centuries* (Stanford: Stanford UP, 2001), 204. The description of the Nahuatl *callalli* is located in Lockhart, *The Nahuas after the Conquest*, 141-76 and Horn, *Postconquest Coyoacan*, 111-43.

² Horn, *Postconquest Coyoacan*, 113.

³ Lockhart, *The Nahuas after the Conquest*, 179.

⁴ Lockhart, *The Nahuas after the Conquest*, 159.

⁵ Horn, *Postconquest Coyoacan*, 112-115.

from the need to diversify and secure harvest in difficult years. Lockhart has proposed that it was regulated in this way to improve distribution both within households and within the group, precluding the best lands from falling into the hands of a very small number of people. Terraciano adds that, besides these alternatives, it may have been to facilitate inheritance within households.¹



Changes in the management of the *calpolli* of course happened from the pre-conquest and postconquest eras. Among others, the demographic decline during the second half of the 16th century created a great amount of uncultivated land which had to be reallocated. This led to changes in the stringent requirements of measurement and record-keeping, becoming less precise once lands became readily available and there was no longer a need to carry a detailed register of the allotments. Additionally, tribute lands (*tequitlcatlalli*) were destined to raise tribute for the Spanish king in addition to the local nobility. Further, the circulation of land through purchase became more common, opening the possibility of losing the lands of the *calpolli* through sales to Spaniards. The lands of the Nahuatl nobility suffered greater changes after conquest. Unlike with the *calpollalli*, many of its divisions and intricacies would not survive beyond the first decades of the 17th century. The distinctions between palace lands, lord's land, and nobles' land ceased to exist. Although the indigenous nobility retained its status into the Spanish period, holding indigenous offices, receiving tribute and land, its prerogatives were diminished by the Crown.² The different types of lands held by the nobility fell into the category of the lands of the *cacicazgo*, which became land entailed in a *mayorazgo*, as patrimonial land of the

¹ Terraciano, *The Mixtecs of Colonial Oaxaca*, 204; Lockhart, *The Nahuas after the Conquest*, 152; Horn, *Postconquest Coyoacan*.

² See Margarita Menegus, "La destrucción del señorío indígena y la formación de la república de indios en la Nueva España", in *El sistema colonial en la América española*, ed. Heraclio Bonilla (Barcelona: Crítica, 1991): 17-51.

natural lord.¹ The *mayorazgo* was an institution of the Spanish nobility, structuring inheritance through primogeniture to avoid the dispersion and extinction of patrimonial lands. The land of the *cacicazgo* remained distinct from the lands of the calpolli, were unburdened by tribute and worked by *terrazgueros*—dependents—who were not part of the calpolli and as such were exempt from tribute.²

In the Mixtec area, the main path for accessing land during the colonial period was through the household, where the household held land and assigned plots to its members.³ As we have mentioned, the structure of core-land for the house (*huahi*) and scattered plots also operated in the Mixtec area, for native commoners (*ñandahi*) and nobility (*yya*) alike. The *cacicazgo* system, along with its relations to land, was also established in the region. Unlike the Nahuatl, however, the Mixtec nobility managed to hold control over great amounts of town lands (*ñuu*) as its patrimonial land, as well as the lands of the palace (*ñuhu aniñe*), with the corresponding *terrazgueros* that worked those lands.⁴ In fact, when compared to the Nahuatl, the community seems to have had a less central role in the allocation of lands. Instead, “the noble houses subsumed many of the landholding responsibilities in the Mixteca”.⁵

These lands were thus held and administered at diverse corporate levels, and in cases of conflict these lands were defended by these corporations due to natural and longstanding bonds to the land. In the viceroyalty of New Spain, the genre of documents known as *títulos primordiales*, primordial titles, elaborated by *naturales* were accepted as evidence in legal disputes over land limits and ownership.⁶ They appeared at the beginning of the 17th century and would continue to be submitted in disputes during the rest of the colonial period. The interested parties, either communities or caciques, presented them to cement their claim over land during conflicts about limits with neighboring estates or other communities. The titles usually recounted the story of a town’s founda-

¹ Lockhart, *The Nahuatl after the Conquest*, 174-176; Horn, *Postconquest Coyoacan*, 121.

² Horn, *Postconquest Coyoacan*, 140.

³ Terraciano, *The Mixtecs of Colonial Oaxaca*, 199.

⁴ Terraciano, *The Mixtecs of Colonial Oaxaca*, 205-206.

⁵ Terraciano, *The Mixtecs of Colonial Oaxaca*, 206.

⁶ Ethelia Ruiz Medrano, *Mexico’s Indigenous Communities: Their Lands and Histories, 1500-2010* (Boulder: UP of Colorado, 2010), 97.

tion, in occasions predating the Conquest, and described the town's borders in detail. They were intended to act as ancient land deeds, as they were considered to be of old manufacture by the time they were shown to Spanish authorities, basing the claims on the longevity of the group's presence on the land. Through the story and the description of the land of the pueblo, the titles wield one or more arguments for their claim to the land.

Groups and lineages, for example, staked their claims to their land by arguing that they had originally worked the land and made it inhabitable. In Ocoyoacac they appropriated their lands, mountains, and water, by *desmontando*, i.e. leveling the ground, sowing, as well as planting trees in the limits of the town.¹ In the title of Cuacuauzentlalpan, similarly, lands had been gained by their ancestors before the Conquest by taking them from the mountain and the lagoon, and had defended their limits against other occupants. The lands had also been defended against supernatural forces, against the *nahuales* of the night, sorcerers who could transform into animals intending to cause harm. Because of this, the descendants— which included all living descendants, even “the ones that still were on the floor” (babies), and those who were not yet born—received from their ancestors “*las tierras y las tierras del monte*” (the lands and the mountain lands).² Though the exact date when these acts had occurred was not clear, the claims were constructing a bond between the land and the history and the continuity of the community. The bond established an identity between land and community. The Sula title also drew on these themes: “we come from here and are the sons of the ancient ones, born in this valley, our grandparents are from here, they did not come from anywhere else, they are from the ancient time, their ancestors were gentiles, here we live (...)”³

Since access to land was grounded on the corporate level, these claims of ancestral possession were tied to collective claims from the community. Some claims referred to the granting of the land by the king to the town when it

¹ “Título primordial de San Martín Ocoyoacac” in Paula López Caballero, “Los títulos primordiales del centro de México. Introducción y catálogo, (B.A. diss., Universidad Nacional Autónoma de México, 2000), 128.

² “Título primordial de San Francisco Cuacuauzentlalpan” in López Caballero, “Los títulos primordiales del centro de México”, 229.

³ “Título primordial de Santiago Sula” in López Caballero, “Los títulos primordiales del centro de México”, 350.

was founded by gathering the peoples scattered all over the mountains, caves, and valleys in newly congregated towns. In other cases, the claims of the community as “poseedores de la tierra” (owners of the land)¹ come from an exclusive link between the pueblo and a divine force or a human authority—a bond that excluded Spaniards and other towns of natives from taking or inhabiting them.² Other arguments grounded possession on religious fealty by mentioning the early adoption of the Christian faith, the construction of the pueblo’s own church, or the delivery of labor and materials for an important church.

These corporate claims could also provide the ownership of the land to the patron saints of the town as well. The Milpa Alta title claimed that the land had been granted to them by a supernatural force. At a time when no water had been found, making it impossible to establish the town, the Virgin appeared (or a woman, depending on which of the three versions one refers to). The apparition provides information on where to find a spring of water, ‘*ojo de agua*’, in a mountain and orders the building of a church. The narrative including the spring of water was not an isolated case; it appears often in the titles: after difficulties, the people act accordingly, the town gets water, a patron saint, and a church. The Virgin, in turn, became owner of the mountain and the stone of the mountain was, for that reason, destined to build her church.³ In this and in other titles the land is for the patron saint⁴, which being inextricably linked to the community, makes it also land of the community. In the deeds, some higher jurisdiction, either Cortés or the viceroy, or directly a saint recognizes the community’s rights over land, precluding others to buy it, as it is often repeated that Spaniards are not allowed to possess that land⁵ or in warnings to their kin against selling to them.

¹ “Título primordial de San Francisco Cuacuauzentlalpan” 226.

² Some examples addressing explicitly that Spaniards should not hold these lands in: “Réedificación de la ville de Cuernavaca” 182; “Título primordial de San Francisco Cuacuauzentlalpan” 228, in López Caballero, “Los títulos primordiales del centro de México”.

³ “Título primordial de Asunción Milpalta”, in López Caballero, “Los títulos primordiales del centro de México”, 242.

⁴ “Título primordial de San Pablo Chapultepec”, in López Caballero, “Los títulos primordiales del centro de México”, 169.

⁵ “Título primordial de San Juan Tenango-Tepolula”, in López Caballero, “Los títulos primordiales del centro de México”, 343.

5. Conclusions

Throughout this article we have attempted to explore the relationship between nature and property within the early modern juridical framework. Doing so requires understanding the different ways in which nature, community, and land were interconnected. Nature as an all-encompassing order pervaded both the relationships between people in their natural communities and the relationships between communities and land. In this sense, land was not seen unilaterally as the object of property but was the main locus of identity for the community. Belonging in this sense was not understood as ‘the land belongs to the community’ but in the formula ‘we (the community) belong to the land’. Relations of ownership should be understood within this framework, linking the regulation of access, distribution, and succession of land to the corporate bodies that were charged with these functions, be it the family, the kinship group, the town, or the kingdom. Understanding the distribution of lands by the Crown from this vantage point shows that the empire was built on a multilayered system of collective bodies that connected households, communities, and kingdom through a variety of relationships that were built up according to various normative orders and tied the organization of land to different degrees of regulation.

Bibliography

- Acosta, José de. *Historia natural y moral de las Indias, en que se tratan las cosas notables del cielo, y elementos, metales, plantas, y animales dellas: y los ritos, y ceremonias, leyes y gouierno, y guerras de los Indios*. Sevilla: Casa de Juan de León, 1590.
- Agüero, Alejandro. “Las categorías básicas de la cultura jurisdiccional”. In *De justicia de jueces a justicia de leyes: hacia la España de 1870*. Edited by Marta Lorente, 21-58. Madrid: Consejo General del Poder Judicial, 2007.
- . “Local Law and Localization of Law: Hispanic Legal Tradition and Colonial Culture (16th-18th Centuries)”. In *Spatial and Temporal Dimensions for Legal History: Research Experiences and Itineraries*. Edited by Massimo Meccarelli and María J. Solla Sastre, 101-29. Frankfurt a.M.: Max Planck Institute for European Legal History, 2016.

- Bastias Saavedra, Manuel. "The Normativity of Possession: Rethinking Land Relations in Early Modern Spanish America, Ca. 1500-1800". *Colonial Latin American Review* 29, no. 3 (2020): 223-238.
- Bicalho, Maria Fernanda. "O Que Significava Ser Cidadão Nos Tempos Coloniais?" In *Ensino de história: conceitos, temáticas e metodologia*. Edited by Martha d. A. Esteves and Rachel Soihet, 139-51. Rio de Janeiro: Casa da Palavra, 2003.
- Cañazares Esguerra, Jorge. "New World, New Stars: Patriotic Astrology and the Invention of Indian and Creole Bodies in Colonial Spanish America, 1600-1650". *American Historical Review* 104, no. 1 (1999): 33-68.
- Catão Cruz Santos, Beatriz, and Bernardo Ferreira. "Cidadão – vizinho". *Ler história*, no. 55 (2008): 35-48.
- Concepción, Grace. "Negotiating Land in the Spanish Philippines". *Philippine Studies* 67, 3-4 (2019): 285-313.
- Conte, Emanuele. "The Many Legal Faces of the Commons: A Short Historical Survey". *Quaderni Storici* 168, no. 3 (2021): 625-40.
- Conway, Richard M. *Island in the Lake: Environment and Ethnohistory in Xochimilco, New Spain*. New York: Cambridge UP, 2021.
- Daston, Lorraine. "Nature's Customs versus Nature's Laws". In *The Tanner Lectures on Human Values* 24, edited by Grethe B. Peterson, 392-411. Salt Lake City, University of Utah Press, 2004.
- . "The Morality of Natural Orders: The Power of Medea". In *The Tanner Lectures on Human Values* 24, edited by Grethe B. Peterson, 373-392. Salt Lake City, University of Utah Press, 2004.
- Grossi, Paolo. *El orden jurídico medieval*. Madrid: Marcial Pons, 1995.
- Herzog, Tamar. *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America*. New Haven: Yale UP, 2003.
- . "Naturales y extranjeros: sobre la construcción de categorías en el mundo hispánico". *Cuadernos de historia moderna* 10 (2011): 21-31.
- Hespanha, António Manuel. "O jurista e o legislador na construção da propriedade burguesa liberal em Portugal". *Análise social* 16 (1980): 211-36.
- . *História das instituições*. Coimbra: Livraria Almedina, 1982.
- . *Imbecillitas: as bem-aventuras da inferiidade nas sociedades de antigo regime*. UFMG, 2008.
- . *Como os juristas viam o mundo. 1550-1750: direitos, estados, pessoas, coisas, contratos, ações, e crimes*. Lisboa: CreateSpace, 2015.
- . "Uncommon Laws: Law in the Extreme Peripheries of an Early Modern Empire". *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 130, no. 1 (2013): 180-204.

- Hespanha, António Manuel, and Nuno Gonçalo Monteiro. "A familia". In *Historia de Portugal: o antigo regime (1620-1807)*. Edited by António M. Hespanha, 273-286. Lisboa: Editorial Estampa, 1992.
- Horn, Rebecca. *Postconquest Coyoacan: Nahuatl-Spanish Relations in Central Mexico, 1519-1650*. Stanford: Stanford UP, 1997.
- Kelley, Donald R. "Second Nature": The Idea of Custom in European Law, Society, and Culture". In *The Transmission of Culture in Early Modern Europe*, edited by Anthony Grafton and Ann Blair, 131-172. Philadelphia, PA: U. of Pennsylvania Press, 1990.
- Lenkersdorf, Gudrun. "Caciques o concejos: dos concepciones de gobierno". *Chiapas* 11 (2001): 77-88.
- Lockhart, James. *The Nahuas after the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries*. Stanford: Stanford UP, 1992.
- López Caballero, Paula. "Los títulos primordiales del centro de México. Introducción y catálogo". B.A. diss., Universidad Nacional Autónoma de México, 2000.
- Martin, Georges. "Estrategias discursivas y lingüísticas de los legistas alfonsíes: de nuevo sobre naturaleza". *e-Spania* [en línea] (2013): <https://doi.org/10.4000/e-spania.22526>.
- Menegus, Margarita. "Cacicazgos y repúblicas de Indios en el siglo xvi: la transformación de la propiedad en la mixteca". In *Configuraciones territoriales en la mixteca: estudios de historia y antropología*. Edited by Manuel Hermann, 205-20. México: CIESAS, 2016.
- . "La destrucción del señorío indígena y la formación de la república de indios en la Nueva España". In *El sistema colonial en la América española*, edited by Heraclio Bonilla, 17-51. Barcelona: Crítica, 1991.
- , and Rodolfo Aguirre Salvador. *El cacicazgo en Nueva España y Filipinas*. 1ª ed. México, D.F., Barcelona: Universidad Nacional Autónoma de México, Centro de Estudios sobre la Universidad; Plaza y Valdés, 2005.
- Park, Katharine. "Nature in Person: Renaissance Allegories and Emblems". In *The Moral Authority of Nature*, edited by Lorraine Daston and Fernando Vidal, 50-73. Chicago: University of Chicago Press, 2003.
- Quezada, Sergio. *Pueblos y caciques Yucatecos, 1550-1580*. México, D.F.: El Colegio de México, 1993.
- Ruiz Medrano, Ethelia. *Mexico's Indigenous Communities: Their Lands and Histories, 1500-2010*. Boulder: UP of Colorado, 2010.
- Scott, William H. *Barangay: Sixteenth Century Philippine Culture and Society*. Manila: Ateneo de Manila UP, 1994.
- Solórzano Pereira, Juan de. *Política indiana: sacada de la lengua castellana de los dos tomos del Derecho y gouierno municipal de las Indias Occidentales*. Madrid: Diego Díaz de la Carrera.

- Soto, Domingo de [Fray]. *Tratado de la justicia y el derecho*, 1. Madrid: Editorial Reus, 1922 [1553].
- Terraciano, Kevin. *The Mixtecs of Colonial Oaxaca. Nudzahui History, Sixteenth through Eighteenth Centuries*. Stanford: Stanford UP, 2001.
- Tesoro de la lengua Castellana o Española*, by Sebastián de Covarrubias Orozco. Madrid: Luis Sánchez, 1611.
- Thompson, I. A. A. "Castile, Spain and the Monarchy: The Political Community from Patria Natural to Patria Nacional". In *Spain, Europe, and the Atlantic World: Essays in Honour of John H. Elliott*, edited by J. H. Elliott, Richard L. Kagan and Geoffrey Parker, 125-59. Cambridge: Cambridge UP, 1995.
- Vallejo, Jesús. "El Cáliz de Plata: articulación de órdenes jurídicos en la jurisprudencia del ius commune". *Revista de historia del derecho* 38 (2009): 1-13.
- Zamora, Romina. *Casa poblada y buen gobierno: "economía" católica y servicio personal en San Miguel de Tucumán, siglo XVIII*. Buenos Aires: Prometeo Libros, 2017.



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