

**TERRITORIAL RIGHTS FOR INDIVIDUALS, STATES, OR PUEBLOS?
ANSWERS FROM INDIGENOUS LAND STRUGGLES
IN COLONIAL SPANISH AMERICA**

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Abstract

Who should have rights to territory? Dominant political theories hold that either individuals or state-based groups (states, nations, or state-based civic peoples) have foundational territorial rights. However, they cannot accommodate some Indigenous peoples' claims that the land should be subject neither to private ownership nor to sovereign state control. Given these claims, some scholars have recently revised these theories to mediate between state jurisdiction and private property. But those revisions have thus far neglected the views of Indigenous peoples who did not experience Anglo-American settler colonialism. This article therefore examines contemporary territorial rights theories in light of the experience of colonial Spanish America. Using sixteenth-century documents in which Indigenous communities conceptualized and asserted their rights to territory, historical evidence of political struggles between these communities and the colonial state, and interpretations of colonial legal thinkers from the seventeenth century (particularly Juan de Solórzano Pereira), I argue that, in addition to individuals and state-based groups, we should consider another subject of territorial rights: *pueblos*, or grounded communities.

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In April 2021, Tepetlaoxtoc, a town on the outskirts of Mexico City, proclaimed itself a “*pueblo originario*”: an originary people/town. It petitioned to be recognized as such by Mexico’s National Institute for Indigenous Peoples. “We want to return to ancient ways of government, to protect ourselves from urban encroachment and from mining corporations,” explained one of the townsfolk (Salinas Césareo [Reference Salinas Césareo2021](#), 43). By doing this, Tepetlaoxtoc, like many Indigenous [Footnote ¹](#) communities across the hemisphere, was organizing to confront the threats of violence caused by resource extraction, the shadow of territorial dispossession, and socioeconomic inequality. Indeed, over the last half-century, these communities have been ramping up their legal and political mobilization. Indigenous activists across the globe are increasingly connecting with one another and using international law to push legislation in national courts. And they are bringing ever more litigation aimed at creating new practices of self-determination within and across traditional state boundaries (Bernal [Reference Bernal2011](#); Lightfoot [Reference Lightfoot2016](#); Riofrancos [Reference Riofrancos2020](#)).

In these struggles, the territorial state occupies an ambiguous position. On the one hand, it protects Indigenous peoples’ rights through law. On the other, it makes them vulnerable by sponsoring commercial corporations, encouraging urban development, and fostering large-scale development projects that threaten their territories and ways of life. This ambiguity reveals that current legal systems and normative theories still lack the resources to accommodate both these peoples’ collective rights and the rights of private individuals.

How then should we address these struggles over control of territory and natural resources? In international border conflicts, neighboring states dispute which of them has rights to jurisdiction in a given area. But in territorial and natural-resource conflicts involving Indigenous peoples, the disputes often concern not which state has jurisdictional rights, but what *kind* of agent has those rights. Are water, gas, or oil the private property of those who own the land where they are found? Or are these collective resources? Do states have the ultimate right to decide how they are used? Or do Indigenous communities also have such rights when resources are taken from the lands on which they live? To answer these questions, we must examine who is and should be the subject of territorial rights.

In recent years, scholars have addressed this question through new theories of territorial rights (Kolers [Reference Kolers2009](#); Miller [Reference Miller2012](#); Moore [Reference Moore2015](#); Simmons [Reference Simmons2016](#); Stilz [Reference Stilz2019](#)) and of natural resources (Armstrong [Reference Armstrong2017](#)) that explain how people, institutions, and particular places relate to each other. The relations they specify justify which subject has control over land, resources, and borders (Moore [Reference Moore2015](#), 8). Conversely, they also explain why some ways of occupying land are usurpations. All these theories ground their accounts of these relations in one of three ideas: that the foundational subject of territorial rights is the state, or the whole people/nation in the state, or the individuals whose rights are prior to the state or the people. Hence these theories still struggle to accommodate the collective rights of Indigenous peoples, because their claims are not based in individual rights, nor do they demand statehood, and still less do they claim to be the whole people in a state.

However, Indigenous ideas and institutions themselves may offer a solution. Examining these ideas and institutions reveals that there are other possible subjects of territorial rights: we are

not limited to individuals, statewide peoples, or states. To explore this further, I turn to the history of New Spain—the colonial jurisdiction roughly corresponding to present-day Mexico and the southwestern United States—which has a history of Indigenous struggles over land that offers an alternative. In New Spain, the main subject of territorial rights was neither the individual, the state, nor the state’s organized people but rather *pueblos*: grounded communities. Pueblos are communities attached to the land, usually as a town or village (“Pueblo” can be translated from the Spanish as both “people” and “town”). In New Spain and Mexico, they were and are commonly treated as the ground of territory. Moreover, many were and are constituted of Indigenous people who used the pueblo as their main form of political organization within the colonial order and its successor republics. These communities were known as *pueblos de indios* (henceforth, “pueblos” will mean *pueblos de indios*, which refers both to the town and the people, unless the context shows otherwise). In Mexico, pueblos descended from a form of civic organization used by the Nahuas in pre-Hispanic times: the *altepetl*, a polity essentially related to land and water that claimed something akin to territorial jurisdiction.

All this is well known to historians of New Spain and Mexico, who have analyzed pueblos as subjects of territorial rights. Indeed, there is a large body of historical evidence of the political struggles of Indigenous peoples found in legal records, as well as interpretations of seventeenth-century legal thinkers. But this material is not well known to normative theorists of territory. Exploring pueblos from this perspective can thus enrich current debates on territorial rights. Pueblos offer an alternative to dominant models of territory because they offer not only a different subject of territorial rights but also a different focus than those theories, which focus on the legal rights to own the land held by one of their three accepted subjects. By contrast, pueblos—as communities attached to a particular place and landscape—have since the sixteenth century been place-based groups that constitute a unified subject of land rights, similar to an individual who owns private property. Unlike an individual, however, pueblos do not have property over land. Instead, they have legal jurisdiction over the territory, just like a state. These traits have historically allowed pueblos to assert themselves both against the state and against the encroachment of private property holders from the outside (Kourí [Reference Kourí, Caballero and Acevedo-Rodrigo2018](#)).

Pueblos thus afford both a theoretical and an historical perspective that offers alternatives to contemporary territorial rights theories. Theoretically, they offer a genuinely different subject of territorial rights than individuals, states, or statewide peoples. For while individuals and states/civic peoples are defined independently of territory and then connected to it through rights, pueblos are not independent from the land nor from the environmental relations they create. And whereas ethnic groups or nations (which are also defined in connection to the homeland) are defined by identity, pueblos are instead defined spatially. The reason is that pueblos arise from political contestation and are justified by the value of place-based mutual obligations.

Historically, pueblos offer a *live* alternative to ethnic, individualist, or state-based theories. They were the center of social life in colonial New Spain, and they continue to be at the center of politics in independent Mexico. They and their claims to land and independence are the main character of a historical mythology, which runs parallel to that of the national state. Pueblos have foundational stories, heroes, and documents that have been central to the political and social imaginary of Mexico since its independence in the nineteenth century (Ochoa Espejo [Reference Ochoa Espejo2012](#)) and remain so to this day.

I therefore argue that contemporary theories should add pueblos to their catalog of subjects of territorial rights. Including pueblos in ongoing discussions about territorial rights would allow us to compare and refine mainstream theories; yet pueblos have wider implications for political theory and political science more generally. Their history reveals how hegemonic lenses in philosophy and law have marginalized Indigenous thought and experience. Moreover, investigating Spanish colonial history is not just an exercise meant to find “familiar themes in unfamiliar works,” as Joshua Simon ([Reference Simon2014](#), 809) put it; it can also unearth viable alternatives within what it reveals as a shared past. The arc of Spanish American colonial history shows that Indigenous ideas and institutions do not reside in an alien space or in a forgotten past: in fact, they are live alternatives in a history that European settlers share with Indigenous peoples. These alternatives seem marginal, forgotten, or destined to disappear only when seen from Euro-centered political theory’s conventional “narrative of unilinear historical development” (Westler [Reference Westler2015](#), 394), which has framed the Spanish Empire and the experiences of its Indigenous inhabitants as outliers of modernity (Caraccioli [Reference Caraccioli2021](#), 5). In doing so, it erases an important part of our common intellectual history from the study of political thought. But we need not see things this way. We can instead treat Indigenous and non-Anglophone ideas and institutions as real alternatives in a shared but diverse past.

The erasure, moreover, is arguably more than just an oversight. When it comes to Indigenous history in both English and Spanish America, it is a strategy to avoid facing injustice (Bruyneel [Reference Bruyneel2021](#); Ferguson [Reference Ferguson2016](#)). Just as often happens when presenting legal arguments, those in theoretical discussions who decide what counts as evidence and who set the terms of the debate are also those who (directly or indirectly) control the resources. Changing those terms often requires struggle, as the history of pueblos abundantly illustrates.

Using evidence from the literature on law and litigation in early colonial Spanish America (particularly from New Spain), this article sketches the historical trajectory of pueblos as holders of territory. I draw on historical accounts based on legal records and petitions, particularly the sixteenth-century *Memorial de los indios de Tepetlaóztoc* (Valle [Reference Valle1994](#)), and on legal commentary: Juan de Solórzano Pereira’s seventeenth-century compendium of Spanish colonial law, *Política Indiana* (reprinted in 1972). I use these historical and legal sources to describe a process by which political relations became attached to places rather than to ethnic groups. Pueblos had rights to territory, and the rationale offered in these legal discussions was that places were foundational for the grounded community’s common good and collective freedom. On this view, liberty was not the right of each individual in the abstract but rather a web of mutual obligations mediated by place and relations to land and water. Pueblos, then, provide an alternative approach to perennial problems in territorial rights theories that often cannot accommodate the territorial rights of Indigenous groups, which are neither grounded on individual rights, national or statewide civic peoples, nor on statehood.

The first section describes how Indigenous peoples’ struggles for land reveal internal problems in contemporary theories of territorial rights and then explains how studying pueblos complements recent attempts to solve these problems. Section two examines the development of pueblos as a legal institution, and section three gives an account of the legal doctrines they used to

defend their territorial rights. The last section specifies how place and collective liberty gave legal and political foundations to pueblos' territories.

Pueblos: An Alternative Subject of Territorial Rights

Indigenous peoples' claims highlight problems in liberal theories of territorial rights, which are today the most common justifications of territory. When these groups question the state's legitimacy, they force theorists to ask what justifies authority in a specific geographic area. Liberal thinkers disagree on whether territorial rights originate in individual rights (Lockean views) or whether they depend on states (Kantian views). Both views have problems, as Moore ([Reference Moore and Zalta2020](#)) shows, and as I explain later, recent theories try to mediate between these two (Moore [Reference Moore2015](#); Nine [Reference Nine2022](#); Stilz [Reference Stilz2019](#)). Because they offer a different subject of territorial rights, pueblos can be used to build on these recent efforts to transcend the dichotomy.

Pueblos are political entities that claim a partial right to self-rule and stand between individuals and states. This position is due not only to their size but also to the type of political and social relations they instantiate. Pueblos' institutions arise from mutual obligations among residents, such as clearing roads or keeping the water clean, maintaining the commons, building public works, and organizing religious festivals. These depend on material conditions that only obtain because of people's presence in specific places. Unlike individuals, pueblos are not assumed to be natural but are seen as the product of legal and political contestation. Unlike states, pueblos' rules are constituted by customary practices rather than by written laws. Their claims to land are justified by the moral value of their mutual obligations and by their connections to the environment. In this, pueblos' justifications of territorial authority resemble theories based on ethnicity or Indigenous peoples' experiences in other areas, which also ground territorial claims in mutual obligations and connections to place (Coulthard [Reference Coulthard2014](#); Kolars [Reference Kolars2009](#)). Where the two justifications differ is that pueblos depend fundamentally on the places where they are located, whereas ethnic groups do not. If you move an ethnic community to another place, it still remains largely the same community. But you cannot move a pueblo to a different place. Moreover, pueblos have traditionally included different ethnicities. These characteristics make them an interesting alternative to subjects of territorial rights that are better known to political theorists.

To motivate this view, which we can call "the pueblos thesis," recall this article's opening example of how pueblos challenge states' territorial rights. Tepetlaoxtoc partly bases its claim to be recognized as an autonomous Indigenous community on its historical continuity with its pre-Hispanic predecessor. That continuity is depicted in a famous sixteenth-century document known as the *Memorial de los indios de Tepetlaóztoc* (also known as Codex Kingsborough), in which the townspeople of Tepetlaóztoc, as it was spelled then, ask the Spanish king to lower their taxes and protect them against the colonizers' abuses. On its face, the town's sixteenth-century petition to the king seems to instantiate the same paradox as when it petitioned the state in 2021. For the demands to be effective, those who petition must accept the legitimacy of the state that grants rights and offers legal resources. But the colonial state also causes the injustice they decry. For Henderson ([Reference Henderson, Menno Boldt and Bear1985](#), 187) and other Indigenous scholars who have reflected on this paradox, the problem is that territorial rights theories confuse

aboriginal ownership with the state's fundamental title. This makes it impossible for Indigenous peoples to exercise their rights without accepting the very state that dispossessed them. In Henderson's pithy phrase, "The rule of law cannot cure aboriginal injuries if it is itself the disease" (218). Thus, in the twentieth century, the experience of Indigenous peoples challenges the very idea of rights and becomes a way of critiquing the colonial state (Coulthard [Reference Coulthard2014](#), 159).

These claims pose a challenge to liberal states because, on closer examination, we can see they are not only a problem for Indigenous peoples but also beset anyone who thinks of territorial legitimacy in the terms offered by mainstream liberal theories of territorial rights. For those theories cannot themselves establish the legitimacy of the rights on which they are founded. If they claim that there are original (or pre-state) rights to land, then the state cannot be the origin of those rights, and territorial claims must then depend on a common culture that sees the rights of private property or occupation as natural or self-evident. If there is no such culture (as is often the case in pluralistic and colonized societies), then the theory must rely on the state's authority to create these rights. But then we must ask, Why does this state claim to have authority in this area? Where did that state get the right to establish territorial jurisdiction here in the first place? To give liberal justifications for those claims, the state must appeal to individuals' occupation or their property. Hence, there is always a tension in mainstream liberal theories of territorial rights between the liberal claims of individuals to have original rights or private property and the liberal state's claim to have exclusive jurisdiction (or eminent domain). Indigenous demands make this tension even more apparent (Dahl [Reference Dahl2017](#)).

This tension defeats mainstream liberal theories of territorial rights, whether Kantian or Lockean. On the one hand, statist or Kantian theories affirm that state rights must be prior to those of individuals, given that individual rights are conventional. Moreover, rights are also necessary, because individuals dealing with each other need them to fulfill their obligation to enter a civil state. Only then can they peacefully settle disputes, especially those over private property, through law (Kant [Reference Kant, Guyer and Wood1996](#)). Thus, state territorial jurisdiction ensures individual freedom and equality through a civic order that, in turn, justifies the state. However, these theories do not explain why specific civic orders correspond to specific geographic areas nor why specific states' claims are justified *there* (Waldron [Reference Waldron2011](#)). And that is what they must do, because a state cannot have legitimate territorial jurisdiction without a legitimate claim to that particular territory.

For example, after the Mexican Cession and the Gadsden Purchase, the United States established the rule of law and the conditions for holding private property in the lands that are now Arizona. This made it possible to attain individual freedom and equality through a liberal civic order, but does it justify the United States' seizure of the territory from the Mexican state (which lost these territories after the United States invaded Mexico in 1846 and then forced the Gadsden Purchase in 1854)? Does this justify that the land is today the jurisdiction of the state of Arizona and of the United States, rather than of the traditional institutions of the Tohono O'odham, which were there before the Mexican government? Why should the land be the jurisdiction of one state or one people, rather than another? A theory of territorial rights must explain not only why a state is justified, but also how a given area relates to a specific group of people and a particular set of institutions. Yet, because the state's function is to provide a *generic* civic order, it is hard to explain

why a *particular* individual or people should be part of one specific civic state rather than any other. Solving this problem is important for liberal political theories, then, because otherwise they are vulnerable to those who challenge the legitimacy of colonial states.

On the other hand, individualist or Lockean theories also fail to resolve the tension, because they deal with the issue of legitimacy by claiming that rights are natural and thus (logically) prior to the political order. In their view, individuals occupy, possess, or change some empty land to which they subsequently have a right. They create territories by bringing their plots of land together (Locke [Reference Locke and Laslett1988](#); Simmons [Reference Simmons2001](#)). However, it is hard to assert that the right to private property is natural when not every culture recognizes the existence of private property before the state imposed it. Indeed, the Lockean view is alien to some Indigenous traditions (Coulthard [Reference Coulthard2014](#); Nichols [Reference Nichols2020](#)). It is precisely because of this skepticism about the foundational role of individual property rights that many scholars believe that such Lockeanism is more responsible than other territorial justifications for the wrongs of colonialism (Arneil [Reference Arneil1996](#); Henderson [Reference Henderson, Menno Boldt and Bear1985](#)).

So neither mainstream Lockean nor mainstream Kantian theories have succeeded in resolving the tension. Given these difficulties, several territorial rights theorists have recently addressed the challenge by offering hybrid accounts that blend statist and individualist views. These new theories study how people connect to the land through occupancy and through the life plans of individuals (Stilz [Reference Stilz2019](#)) or groups (Moore [Reference Moore2015](#)); they hold that occupancy and life plans anchor individual rights to land and that the need to protect those rights connects people and groups to states. This justifies the latter's territorial sovereignty.

The pueblos thesis complements these hybrid theories because it also refuses the dichotomy of statism or individualism. And like other new theories (Nine [Reference Nine2022](#)) it examines people's connections to the land. Yet, it does so by offering a different subject of territorial rights and a different account of how people relate to the land. First, pueblos are a different subject partly because they, unlike individuals or peoples, are mainly spatial entities—not only because they are located in a specific place but also because they depend on specifically located activities. These activities—defined both by material and symbolic forces—not only determine the spatial limits and the scope of action for individuals and institutions but also explain how people relate to places through place-specific obligations (Ochoa Espejo [Reference Ochoa Espejo2020](#), 151–57). Second, pueblos have a different way of explaining how people relate to land. Where the hybrid theories attach them through occupancy and individual's life plans, in pueblos the land is defined by place-based practices. Pueblos justify claims to territory because their networks of moral and political obligations produce political orders with their own boundaries. As we see later, those orders can justify territory without needing a prior state or natural law. Eventually they can become the building blocks of statewide communities (Ochoa Espejo [Reference Ochoa Espejo2012](#)).

As with states, nations, or civic peoples, in pueblos there are relations of mutual aid among commoners coordinated by political authorities. But in pueblos these relations arise differently than they do in those other territorial subjects. In pueblos, mutual-aid obligations define those communities that are limited by place and resources. They form webs of mutual obligation that

only arise in specific places and give pueblos political, material, and symbolic order. These webs emerge from common concerns (such as the obligation to help each other in times of flood, drought, or external attacks) and through political contestation (within the town and against other legal entities such as the state).

The political ground of those webs is reciprocities among people caused by their physical nearness. That is not the case in states, civic peoples, or nations, where the relationships arise through collective identity or loyalty to the legal order. In pueblos, by contrast, political institutions arise from mutual relationships mediated by those places, specifically the land. Historically, pueblos have defended these material resources in conflicts that were not a generic “struggle for land and water” but instead “a struggle to protect their ability to maintain a way of life which depended on their combining the growing of crops in different soils and moisture conditions with the gathering and harvesting of various plants and animals from the surrounding ecosystem and allowed them greater flexibility with regard of how they engaged value regimes” (Candiani [Reference Candiani2014](#), 295). Moreover, these webs of mutual obligation give rise to values and relations that are preserved in the religious and social life of pueblos, particularly in their distinctive views of the relationship between people, the land, and water, as well as the symbolic role of these resources in creating communities.

It is to these webs of mutual obligation that pueblos appeal to justify their territorial rights. Thus, the difference between pueblos rights and individual and state rights concerns how pueblos understand social ontology. This can best be seen by examining their understanding of liberty and the origin of social relationships. On the one hand, like other theories of territorial rights, pueblos have appealed to liberty to justify their claims to territory. But for pueblos, liberty is communal, not individual. On the other hand, for pueblos, relationships among individuals and to resources are not the product of individuals working together to produce common goods. Instead, those relations are the foundation that makes individual action possible. Pueblos take grounded communities as given. They are the natural standpoint from which both individual actions and state organization derive.

Hence the main difference between mainstream liberal views and the pueblos thesis is that they have different conceptions of the *subject* of politics: they have different social ontologies. For pueblos, the web of place-based connections dissolves the boundaries between individuals and resources. For mainstream liberal views, by contrast, those boundaries are the origin of private property and indeed of liberal theories of territorial rights. Pueblos give normative priority to webs of relations among human persons, the places in which they are located, and the natural and supranatural forces within them. From these webs, such communities derive the rights of individuals and of states—rather than the other way around.

It is this different social ontology that leads pueblos to reverse the order in which other theories connect a group to a place. Territorial theories focused on civic communities (such as statewide peoples) admit that such communities can be connected to specific places, but they require that we first define the legitimacy of law and government, as well as the legal jurisdiction where these laws apply. Only then, they say, can the civic people be attached to a place. Pueblos, instead, were constructed through legal and political contestation over time undertaken in a

particular place (as is shown in the following sections). The place comes first; the governing institutions come later.

Some territorial theories based on ethnic communities, such as nations (Miller [Reference Miller2012](#)) or identity groups (Kolers [Reference Kolers2009](#)), agree with the pueblos thesis that a group's relationship to land precedes institutions. However, these theories see the land in terms of a previously defined identity: it is a home for a given group. For them, territory logically depends on this prior identity. By contrast, for pueblos, mutual relations mediated by located material interests precede the creation of a common identity. A web of place-based relations of mutual obligation underpins the pueblo's functioning. These relations depend on productive activities that form the land and the social and symbolic activities that order life around them.

Another difference between pueblos and the other mainstream subjects of territorial rights concerns their standing vis-a-vis states and individuals. In traditional Western political thought, between individuals and the state there stand "intermediate" groups and corporations that exist within the state but predate it and that take an adversarial stance toward it on behalf of their members' freedom (Levy [Reference Levy2015](#)). Among these intermediate groups, cities and towns stand out. The claims they make against other social bodies do not come from abstract natural rights but from the relations between individuals living next to each other and sharing common goals. The same holds true for pueblos, which are a particular kind of town. Unlike the universal claims made by contemporary territorial rights theories on behalf of all individuals and all states, the claims of pueblos and other towns depend on their specific history and context. Hence the pueblos thesis also reveals what the theory of intermediate associations can offer to debates over territorial rights.

In sum, pueblos differ from civic and ethnic communities in that, to cement the connection between people and territory, they depend neither on the state's law nor on recognized natural rights of private property. Instead, they forge this connection through webs of located mutual obligations. Thus, pueblos provide an alternative subject of territorial rights that I claim is worth examining; we should add them to the list of possible subjects of territorial rights. This is not to say that pueblos are *superior* to other such subjects. Here I cannot provide a full analytical argument for the superiority of pueblos vis-a-vis other views, explore the ethical grounds of their place-based justifications of territory, or compare them with similar justifications offered in other parts of the world—such as Glen Coulthard's ([Reference Coulthard2014](#), 60–61) account of "grounded normativity" among the Dene, which also justifies place-based practices and norms as the ontological field that sustains inherently valuable relationships among people and land. Thus, questions remain regarding the legitimacy of the legal and political practices of contestation that ground pueblos: Who determines who has legal standing? Why this authority rather than others? There are also questions whether pueblos can truly be defined by space, rather than by the particular ontology of land that turns physical space into meaningful places (Kolers [Reference Kolers2009](#); [Reference Kolers2017](#), 144). What I can do in this article is show how pueblos themselves have answered these questions through their history. In doing this, we gain insight into what those analytical arguments would look like, and we confront real evidence that pueblos are a live institutional alternative. As we see, they were, and still are, a different subject of territory.

Pueblos and their Territorial Rights

For five centuries, many have appealed to the native pueblo to explain the connection of certain populations to specific land and resources. From the legal suits in the sixteenth century to the Zapatista uprising in the twentieth, there is a legal tradition of demanding territorial rights on these terms. In the last few decades, this appeal was taken up by the Neo-Zapatista movements, and it is finding a place in nascent political-environmental coalitions where pueblos are at the center of “defense of water and territory.”^{Footnote 2} Pueblo institutions, moreover, have historically held legal jurisdiction and established local institutional continuity across different political and legal orders—from pre-Hispanic polities to kingdoms, empires, and the current territorial state. How pueblos mediate between individualist and statist groundings of territorial rights can be best seen by studying their history.

Pueblos were central to political organization throughout the Spanish Empire, and they remain central to politics throughout present-day Spanish America. Yet they have different origins in different regions and have followed different trajectories. Here, I focus on pueblos of pre-Hispanic Nahua origin. The Nahua were and are Nahuatl-speaking groups in what is today central Mexico, of which the historical Mexica, or Aztecs, are the best known. I concentrate on Nahua pueblos because the Spaniards used them as a model for most colonized towns and villages in the viceroyalty of New Spain, a realm that stretched from Florida to the Philippines, and from the Orinoco River to the Canadian Shield. Its center was the area that is now the country of Mexico.

Just as later happened with the pueblos in today’s southwestern United States, so the Nahua pueblos gave continuity to precolonial territories by creating a legal subject that asserted collective rights. They used these rights to resist pressure from the state and the encroachment of colonizers seeking to extend individual property. Paradoxically, during colonial times, one of the resistance strategies they used was litigation through the new empire’s courts, as I explain later.

Before the expansion of the Spanish Empire in Mesoamerica, the center of political and social organization among the Nahua was known as the *altepetl* (pl. *altepeme*). The literal meaning of this term is “water-mountain” (*atl* = water, *tepetl* = mountain), a name that symbolically attaches a given population to the land and makes connections between soil and living things, as well as to political institutions (Cosío Villegas et al. [Reference Cosío Villegas2000](#); García Martínez [Reference García Martínez1987](#), 73; Lockhart [Reference Lockhart1992](#), 15). Although *altepeme* had other names, the term “pueblo” (Spanish for “town”) soon became the translation of choice (Cosío Villegas et al. [Reference Cosío Villegas2000](#), 255; Lockhart [Reference Lockhart1992](#), 56) and was applied to the Indigenous towns that the Spaniards encountered in other areas (including Peru to the south and Nuevo Mexico to the north).

In this context, then, the term “pueblo” does not refer to a village or a collection of houses but rather to a territorial unit, “a city-state,” “a corporate town” (Gibson [Reference Gibson1964](#), 267), or “a small kingdom” (Escalante Gonzalbo [Reference Escalante Gonzalbo and García2010](#), 184). This translation was particularly fitting because, as already mentioned, in addition to meaning “town,” pueblo also means “people” in Spanish. According to James Lockhart ([Reference Lockhart1992](#), 15), “In that sense the Spanish term was perfect, for each altepetl imagined itself as a radically separate people.” These pueblos were governing units with independent life,

including their own languages, customs, and institutions. Although many of these towns were subjected to more powerful ones and paid them tribute, altepeme considered themselves independent. Incorporating them into the Spanish Empire and thereafter into the Mexican state was a violent and difficult political project. Arguably, that project has not yet been completed.

During colonization, altepeme adapted to new social orders, legal jurisdictions, and external powers. The formerly independent town-states retained much of their autonomy during the early colonial period, partly because 97% of the force that defeated the Aztec Empire were Indigenous enemies of the Aztecs. In the first several decades after 1521, the “Spanish conquest of Mesoamerica” was thus more accurately an Indigenous conquest of the Aztec Empire. But as the Spanish colonial influence grew throughout the 1500s, the ruling classes in the pueblos gradually converted to Christianity. By the 1600s, the colonizers were arguing that these conversions justified their dominion over the pueblos (Castañeda [Reference Castañeda and Tellkamp2020](#); Solórzano Pereira [Reference Solórzano Pereira1972](#), III, XXVI, 3–5). So as the sixteenth century passed into the seventeenth, altepeme became defined primarily by their locations and their spatial jurisdiction, and these two features were recognized by the developing colonial legal order. Thus, altepeme came to see themselves as pueblos. As this happened, they adapted to (and resisted) the Spanish Empire by emphasizing these two features.

Through this process of adaptation and resistance, *altepeme-pueblos* cocreated a new kind of territorial organization that redefined territory beyond the state or individual. In this new organization, they formed a unique jurisdictional relationship with the Spanish Empire, ultimately grounding their territorial rights in their (recognized) independence from the state. Within the empire’s legal structure, communities of pre-Hispanic origin became known as *repúblicas de indios* to differentiate them from political communities founded by European settlers (*repúblicas de españoles*). The institution of *pueblo de indios* came to describe native settlements and their independent political institutions. Pueblos de indios were parallel to ethnic Spaniards’ cities and villages in the governance structures of the kingdom of New Spain; they were subjects of the crown but not directly under local Spanish authorities. Within the Spanish Empire, pueblos were juridical corporate persons, with local institutions (*cabildos*), including secular and religious authorities, and local law. Hence pueblos retained many prerogatives and rights against the rapacious Spanish settlers, particularly the right to elect their rulers, to organize their population around reciprocal obligations and communal work, and to collect the taxes that would eventually reach Mexico City or Madrid (Ouweneel [Reference Ouweneel, Ouweneel and Miller1990](#)). Moreover, they also enjoyed collective rights against the private interests of colonizers and of other corporations (including the church).

Pueblos created a new territorial form in response to the fraught internal relations of different players in the Spanish Empire. In the early colonial period in and around Mexico, many of these pueblos became free vassals of the crown, and some others were given in *encomienda* (charge) to Spanish conquistadors (Castañeda [Reference Castañeda and Tellkamp2020](#); Graubart [Reference Graubart, Owensby and Ross2018](#), 154). *Encomenderos* were conquistadors officially charged with protection, government, and evangelization of autonomous pueblos; in practice, they became lords over the Indigenous population and used the pueblo as a reservoir of labor for their fields or mines. Yet they had limited powers, because, according to Spanish colonial law, the Indians’ land could not be taken by prescription; that is, by adverse

possession: legal title acquired simply by the passing of time (Solórzano Pereira [Reference Solórzano Pereira1972](#), II, XXIV, 43–44). Since it was in the Spanish crown’s interest to control rising local powers and to curb the encomenderos’ greed, pueblos received official land grants attesting to their “primordial titles” (Menegus Bornemann [Reference Menegus Bornemann1994](#)) and corporate privileges regarding local governance. These titles were celebrated in illuminated documents that acquired wider symbolic and ritual significance (McDonough [Reference McDonough2017](#)).

Thus were the pre-Hispanic altepeme incorporated within the colonial legal structure. This not only preserved the altepetl’s political core as a holder of territory, but also changed it over time as it became a Spanish legal title. Some of these changes were caused by new economic and social conditions and others by new laws. By the beginning of the seventeenth century, many pueblos had reorganized. This was mainly in response to the crown’s introduction of the policy of *congregaciones* or *reducciones*, which aimed to concentrate population in specific areas of the pueblo’s territory, whereas previously they had often been scattered across its countryside (García Martínez [Reference García Martínez1987](#); Gibson [Reference Gibson1964](#); Gerhard [Reference Gerhard1977](#); Lockhart [Reference Lockhart1992](#)).

This policy of spatial centralization into villages was violent, but it did not spur as much resistance as one would expect, for two reasons. First, the population had been drastically reduced by the European-borne epidemics of the sixteenth century. Second, the pueblos were themselves composed of autonomous communities (*tlaxilacalli* or *calpulli*, the social and territorial building blocks of the altepetl) whose resilience came from their ability to swiftly change alliances and settle local rivalries through tributary/taxation deals, marriages, negotiation, and warfare. This internal differentiation among the building blocks of pueblos allowed for political dealmaking and local struggles that created the backbone of the Spanish Empire and the substratum of political relations that sustained it. Some heads of towns also received tribute from the new *reducciones*. And some calpulli were in a position to take advantage of the *congregaciones*, subjugating or co-opting other established neighborhoods. Hence it was pueblos, rather than individuals or states, that functioned as the foundational units of empire and of the republics that superseded it (Johnson [Reference Johnson2018](#)).

In this way, the populations of the pueblos were relocated to villages inside their territories, and their politics and social life were now thoroughly tied to the territory’s land and its boundaries (García Martínez [Reference García Martínez1987](#), 151). This concentration of population in towns occurred across the Spanish Empire. It often forced together people from different altepeme and even different ethnic groups. It also transformed other pre-Hispanic social and political structures within altepeme. However, it symbolically preserved the altepetl’s core in the pueblo’s center and in its new visual symbols, such as the church and the central square (García Martínez [Reference García Martínez1987](#), 152–53). Hence, through these transformations and spatial rearrangements, as well as through legal changes recognizing the rights of towns (or *ayuntamientos*) in Spain (Owensby [Reference Owensby2011](#)), pueblos in New Spain continued to be the main jurisdictional unit, just as the precolonial altepeme had been for the precolonial Nahuas. The pueblo thus became a new spatial-political order and a (legal) holder of territorial rights.

From pre-Hispanic times to now, pueblos have been central to the territorial order. They have also conserved and developed Indigenous cultures in Mexico and much of what was once New Spain. Their independent institutions created a sense of belonging that protected local practices and traditions: through adaptation, they lessened the blows of exterior forces, particularly those dealt by individuals and by the state. Pueblos also provided the solidarity and physical space to reproduce cultural institutions. Thus, specific pueblos, and pueblos in general, remain politically and culturally salient to this day.

Beyond Just Titles: How Pueblos Used Derecho Indiano to Defend Territorial Rights

The territorial claims of pueblos exist in legal documents and in the pueblos' histories. By examining early Spanish colonial law (*derecho indiano*) through both the authors who sought to systematize it and the historical records of litigation (Herzog [Reference Herzog2013](#); Owensby [Reference Owensby2008](#); Yannakakis [Reference Yannakakis2013](#)), we can see the arguments that launched pueblos as a subject of territorial rights and how they mediate between the individual and the state.

The Spanish Empire held two separate discussions over the moral appropriateness of conquering land in the New World. The better-known debate is associated with the justification of empire by thinkers such as Francisco de Vitoria and Bartolomé de las Casas (Pagden [Reference Pagden1998](#); Tellkamp [Reference Tellkamp2020](#)). It took place in the Spanish court and its scholarly circles. The pueblos did not directly partake in it.

The second discussion was conducted through legal forums in the Americas. It therefore had much to say about the actual practices of colonization and resistance because it occurred in the areas where pueblos were fighting to protect their communal land, private properties, and jurisdictional spaces, both on the ground and in courts of law. Hence it turned on uncertainties within the positive law, not on general moral principles. Pueblos took a large role in these discussions. Indeed, they started using the uncertainty and ambiguity in colonizers' own laws against those laws' excesses (Owensby [Reference Owensby2011](#), 96).

The justification of pueblos' territorial rights emerged from legal praxis and local law: the *derecho indiano*. It is an American vernacular legal corpus born from practice in the early colonial years. Its language stems from the *ius commune* (medieval interpretations of Roman Law), royal enactments, and new legal interpretations adapted to the colonial context. Its leading scholars, such as Juan de Solórzano Pereira and Juan de Matienzo, relied on existing authorities and took royal and papal authority for granted; they grounded the validity of the law of the Indies on the king's legitimacy, the religious imperative of evangelization, the authority of Roman Law and its commentators, and patristics and Holy Scripture. Although they grounded this practice in Spanish law, they adapted it to the new American reality and to native customs (which was uncontroversial, given that European law relied heavily on customary law [[Anzoátegui Reference Anzoátegui1997](#); Herzog [Reference Herzog and Tellkamp2020](#)]). According to Solórzano ([Reference Solórzano Pereira1972](#), II, VI, 23), "just like an octopus changes colors depending on where he attaches himself, a prudent and attentive legislator changes his views according to the region to which the law is aimed."

In the *derecho indiano*, we can see pueblos' concerns because the formal recognition of local custom brought native practices into the sphere of Spanish law, making it American in the process (Herzog [Reference Herzog2013](#)). According to Solórzano, whose writings systematize the legal arguments used by pueblos, the Spanish crown recognized all Indigenous persons' individual freedom and the right to own property. To the monarchy, the natives' rights were equal to those of any other subject of the crown, in Castile or elsewhere (Solórzano Pereira [Reference Solórzano Pereira1972](#), II, I, 7). Thus, acknowledging Indigenous rights, even if only in theory, created a stream of legal thought and praxis to which those rights were central. This legal recognition offers a window from which we can observe the practices and the ethical concepts that made pueblos a subject of territorial rights.

According to *derecho indiano*, pueblos had limited collective territorial jurisdiction based on a collective right that differed from the individual right to property or the king's territorial sovereignty (Peset and Menegus Bornemann [Reference Peset and Bornemann1994](#)). The adaptation of altepeme's customs to colonial rules allowed indigenous lords (whom the Spanish called *caciques* or *indios principales*) to oversee the collection of taxes and communitarian work. These lords were also responsible for granting rights to and for distributing private plots and buildings within those pueblos (García Ruíz [Reference García Ruíz2015](#); Gibson [Reference Gibson1964](#)). These rights guaranteed some political independence.

Pueblos justified such legal rights through creative litigation because they had many obstacles to overcome if they lost legal title. The original rights of Indigenous people to lands they had continuously inhabited could not be ignored. Yet *derecho indiano* held that this required proof of continuous occupation through specific uses, and once lost or in doubt, the claims were hard to prove (Herzog [Reference Herzog2013](#)). Moreover, many colonial judges dismissed documents or sources from the "time of gentility"; that is, from before evangelization; Herzog ([Reference Herzog2013](#), 307) gives many examples from Quito. Many jurists also rejected the lapsed authority of the Incas and the Aztec kings as a source or law or title. They argued that natives' previous Aztec and Inca masters had practiced barbaric customs, harshly overtaxed their subjects, or (in the case of the Incas) cruelly forced entire towns to resettle in far-away places (Solórzano Pereira [Reference Solórzano Pereira1972](#), II, XXIV, 28). So, claiming autochthony was not sufficient to recover land or assert rights over disputed territory.

What then to do? Many pueblos bought land from intruders, showed proof of titles (or forged them when needed), renewed the communities' historical accounts about the origins of the town (García Ruíz [Reference García Ruíz2015](#)), or sought to show that their version of customary law was the "true" one (Yannakakis [Reference Yannakakis2013](#)). As an overall legal strategy, many relied on the legal argument described by Solórzano Pereira ([Reference Solórzano Pereira1972](#), I, IX, 19) that all territorial rights in the New World were grounded in the religious and moral imperative to evangelize and protect the natives' lives, and that this imperative trumped all other laws (II, II–III). Therefore, the colonizers had to respect communal property over lands that Indians presently occupied, because they were foundational to the pueblo's life. Such lands could not be expropriated and could not be prescribed. But the justification for holding them was neither autochthony nor occupation. In litigation pueblos defended their rights by appeal to place and liberty.

Place and Liberty as Foundational Grounds of Pueblos' Rights

As we have seen, pueblos became subjects of territorial rights both because of their economic and political standing in the colonial order and the legal struggles in which their inhabitants engaged. Thus, the justifications they gave to defend their land in the first centuries of colonial rule introduced new political ideas. Unlike individuals and states, pueblos' territorial claims are not justified by reference to their natural rights. Their rights are not natural (or pre-political) but originally civic. Yet they are structured by ongoing spatial practices of government that were framed as foundational and normatively non-negotiable. These practices defined the space of the common good and gave the pueblo its liberty. In practice, litigation to defend land created the law, which in turn formalized the town's title. The law did so by placing a limit on state sovereignty (on the one hand) and on private property (on the other).

Moreover, pueblos are intrinsically territorial. They were born from resistance and adaptation to colonial practices like *congregaciones*, which sought to concentrate population and tax and extract labor and were originally imagined in spatial terms. Pueblos thus have political rather than ethnic origins, and they acquired their land through legal processes, ultimately creating a new way of establishing territory outside of identity. In turn, these processes produced the community's geographical limits. The altepeme's communities had been defined collectively by the individual's personal obligations to the *tlatoani* (the altepetl's ruler). But as altepeme became pueblos, these political relations were redefined in terms of space. The new pueblo inhabitants were often not related by ethnic or family ties, yet they shared communal obligations by virtue of living in the same place. Spanish scholars made an analogy between these new place-defined subjects of territorial rights to similarly place-defined corporations: they used the Roman municipality as a model (Solórzano Pereira [Reference Solórzano Pereira1972](#), II, XXIV, 29, cited by Owensby [Reference Owensby2008](#), 159). In ancient Rome, municipalities enjoyed a special legal status because they could only be established for the sake of the common good. To make his point, Solórzano ([Reference Solórzano Pereira1972](#), II, XXIV, 8–9) cites Aristotle, Cicero, St. Thomas, “and many other gentile and Christian” authors to argue that human life should be ordered like a city: “a perfect congregation” that is the right way for men (neither God, nor beast) to order life in common. In the city “everyone helps and defends each other, wherefrom this settlement takes the Latin name of *oppida ab ope mutua*.” That is, the city is a stronghold of mutual support. This new legal definition of pueblos also reinforced obligations to places, rather than to traditional kin groups (Graubart [Reference Graubart, Owensby and Ross2018](#), 156).

Pueblos were thus redefined as territorial entities justified by the good of the political community. Their justification followed colonial legal processes found across the new Spanish kingdoms in the Americas and clearly seen in Solórzano's *Politica Indiana*. There, Solórzano tries to justify “taxation” of the Indians in the form of forced labor. To prove its point, this argument must explain why the Indians—who in principle had rights equal to any other subject of the Spanish crown—could be compelled to work for other subjects of the king, whereas Spaniards, like Castilians in Iberia, could not. Solórzano begins the justification by claiming that Indians could not be enslaved: the land had been conquered and occupied for their sake. So, occupation depended on ensuring their evangelization and protection and could not be a justification for uneven treatment. Instead, Solórzano argues that, for the sake of the common good, Indians, like any other subject in the Old and the New World, had an obligation to provide mutual aid within a

republic. Work, like obeying the law and paying taxes, was a part of this mutual aid (Solórzano Pereira [Reference Solórzano Pereira1972](#), II, VI, 17). Given that it was widely agreed that obedience to government and taxation may be coerced on these grounds, work could also be compelled. Thus, a tax, in the form of labor, was required for the common good and general well-being of the territorial community that was born as the product of that work: the *pueblo de indios*.

Yet, for such common-good arguments to succeed, these communities had to be defined in terms of place, rather than as belonging to an ethnicity or institution. Doing so allowed mutual aid to redefine territory. For Solórzano, Spaniards and Indians could not be seen as belonging to different political communities, even though they indeed belonged to different ethnic groups: instead, they had to be seen as members of a single commonwealth. In short, he argued that the original colonial division between a commonwealth of Indians and a commonwealth of Spaniards had been superseded by a single common republic (Solórzano Pereira [Reference Solórzano Pereira1972](#), II, VI, 1).

The unity of this new republic, however, was not that of a natural body, like those other communities that grounded political theories in the Old World. It instead arose from local circumstances and new “temperaments, usages and conditions” (Solórzano Pereira [Reference Solórzano Pereira1972](#), III, XXIII, 39). Hence for Solórzano and other legal scholars, what unified the community and grounded arguments appealing to the common good was that people lived together in a particular place and needed to provide each other mutual aid. Such place-based living together required that people attend to shared obligations arising from common needs in specific circumstances. When Solórzano ([Reference Solórzano Pereira1972](#), II, VI, 17) cites Alciato’s emblem of the blind man and the lame man helping each other, he underlines the idea of *vicissitude* rather than common interest. Those who must help each other are brought together by circumstances, particularly by obligations that arise in a given place: in other words, by place-specific duties.

Another way in which Solórzano defined communities in terms of place rather than identity or ethnicity was in his views on taxation. For him, individuals should not be taxed according to their ethnicity or identity. Instead, taxation had to depend on residence or domicile. Indeed, this seems to have been standing practice throughout the Spanish Indies: a person was taxed in the place where he was domiciled and considered a neighbor (Solórzano Pereira [Reference Solórzano Pereira1972](#), II, XX, 54). As elsewhere, taxation decided who deserved the benefits of civic life and who should shoulder its obligations. So, in the Spanish Indies, it was residence or domicile that decided who acquired these benefits and burdens, not identity or ethnicity.

Solórzano used this residence-based argument to justify the taxation (and labor exploitation) of natives even in those cases where they had been resettled. In this, his practical goal was to explain why “foreign” Indians could be commanded to render service in the new settlements.^{Footnote 3} His philosophical goal was to determine what exactly brought a people together if it was no longer a mystical union within the body of the church nor a well-defined ethnic community. He also rejected arguments that appealed to established institutions recognizing individual (natural) rights. That is why he searched for a grounding in the practical aspects of living together in shared places.

Altogether, place-based arguments like those systematized by Solórzano had a wide impact in the Spanish Indies: they both helped territorialize and de-ethnicize the law. Spanish settlers used such arguments to justify land grabs and to extend their private property into the pueblos' territories. The pueblos used the same arguments to defend themselves, justify their territorial rights, and keep both the state and private interests at bay. Their arguments ultimately succeeded in the colonial and imperial courts, transforming the legal order—which was shaped by the communities' accounts of their own customs—so that it grounded communities in the obligations of place, rather than of ethnicity or identity. According to Owensby ([Reference Owensby2008](#), 160), “Indian villages were made into legally defensible collectivities grounded by the idea of place.” They used this spatial understanding “to be free of arbitrary encroachments and to fend off those who would take unlawful advantage of them.”

In this way, pueblos grounded their territorial rights in places and collective place-specific obligations and converted contemporary authors like Solórzano and others to their point of view. When contemporaries in Spain asked whether political union is always a product of positive law or whether it could emerge from natural capacities common to all men, they began to hold that place-based relations were the bases of political union. According to Annabel Brett, these discussions reached a high point in the work of the Jesuit Juan de Salas (1609), who held that “people do not need to form a moral ‘one,’ a mystical body, before they can legislate; all they need is to be living together in the same place” (Brett [Reference Brett2011](#), 220). So, it is likely that colonial legal arguments shaped metropolitan Spanish political theory. In the early 1600s, it was the pueblos' and the *derecho indiano*'s idea that place and the common good, rather than ethnicity and established institutions, justified a territory's being subject to one authority rather than another.

In all this, the pueblos used a particular type of place-based argument: they claimed that land was foundational to fulfilling their place-specific duties. In early colonial times, this can be seen in how they identify themselves in legal documents as traditional *altepeme*. Again, take the *Memorial de los indios de Tepetlaóztoc*, a document in which the town of Tepetlaoztoc asked the Spanish king to lower taxes that it had to pay to the *encomenderos* (Valle [Reference Valle1994](#)). In this codex, the first element is the physical description of the pueblo. It is depicted in the pictographic writing of the Nahuatl and introduced in a map ([figure 1](#)) of forests, water, and other towns described as *altepeme*. Tepetlaoztoc (in the top left quarter) is depicted using the Nahuatl glyph for *tepetl* (a mountain underlined in red), which is crowned by the open mouth of an “earth monster,” possibly the Goddess Tlaltecuhli, (Valle [Reference Valle1994](#), 33), representing a cave (*oztoc* in the *altepetl*'s toponymic). In this document, geography—the water mountain—describes and justifies the letter writers as the holders of territorial rights. The map reveals not only how relations of mutual aid among commoners were mediated by political authorities and material resources but also how these relationships in turn created institutions. Some of these, such as the *tlaxilacalli* or *calpulli* (the smaller *barrio* units that formed the building blocks of pueblos), provided the basis for pueblos' political resilience by maintaining authority and organizational capacity through the mutual obligations of small communities (made up of five to ten households) distributed across the countryside.



Figure 1 *Memorial de los indios de Tepetlaóztoc* (p. 2).

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This was a place-based argument because calpulli were intrinsically connected to and could effectively manage their own ecological niches (Johnson [Reference Johnson2018](#), 43). According to Alfredo López-Austin ([Reference López-Austin1980](#), 73), calpullis' place-based practices can be traced to the pre-Hispanic Mesoamerican economy where groups settled in “microhabitats familiar to them and favorable to their economic activities.” It was this specialization across ecological variety in the rugged landscape that allowed these groups to create exchange and markets. Thus, these small spaces were particularly suitable to generating wealth and symbolic order, and they provided the backbone for any empire that could negotiate with the local leadership and bring tlaxilacalli together under the government of a single altepetl, which could then unify the pueblos under a common rule.

Thus, these places provided continuity to social and political organization. Indeed, the agricultural land of the tlaxilacalli described in the *Memorial* and other codices (Johnson [Reference Johnson2018](#), 54) show limits and landmarks that are discernible to this day: the terraced hillsides—which were modified and worked by the Tepetlaoztoc tlaxilacalli—are still etched on the ground in the pueblo. Contemporary geographers can trace the town’s limits and relate them to the partitions found in ancient codices: there are “fossilized patterns of landholdings

that remain visible in modern times... their boundary markers still intact” (54). This illustrates how altepeme were constituted by these smaller units. It also reveals that resilience was tightly connected to the segmented composition of altepeme, which was, in Johnson’s words, the fruit of “struggle and accommodation more than formal command” (8). This struggle was always shaped by mediated connections to the land.

Pueblos also relied on what later became known in the eighteenth century as “*fundo legal*,” a legal allotment of 600 square *varas* (roughly 600 square yards) of land granted to all pueblos (Wood [Reference Wood, Ouweneel and Miller1990](#), 118). In early colonial days, this allotment was not seen as a royal grace but was held to be a foundational right recognized by the king (de la Maza [Reference de la Maza1893](#), 25, cited by Wood [Reference Wood, Ouweneel and Miller1990](#), 118). This original land allotment was meant to constitute the village, or urban center, of each pueblo. These lands were owed to pueblos because the Indian population needed them to live, and these villages were *pueblos de por sí* (García Martínez [Reference García Martínez1987](#), 223; Gibson [Reference Gibson1964](#), 26). That is, the land allotment recognized that pueblos were autonomous and existed in their own right; hence they enjoyed a foundational right to have a minimum amount of land. This way of seeing pueblos generated more conflict in the eighteenth century, when each village wanted to assert itself as an independent subject of territorial rights.

For example, the Indian representatives of Huexotla stated in court that Huexotla did not depend on Texcoco (another *pueblo de indios*) because Huexotla was a *pueblo de por sí* (Gibson [Reference Gibson1964](#), 52). As Stephanie Wood ([Reference Wood, Ouweneel and Miller1990](#), 119, 126) has shown, the right was seen as foundational because the legal allotments were called “*tierras por razón de pueblo*” (territories by right of township). Clearly, the argument is circular, which shows that the pueblos’ right to land was considered foundational.

The territorial rights of pueblos were also foundational in a second sense: access to communal land and legal jurisdiction were seen as necessary for individual and collective liberty. The word *libertad* (freedom) often appears in litigation documents. According to Brian Owensby, *libertad*, when used this way, should be interpreted not as “abstract freedom” but as the “locally and spatially defined” right to be collectively in one’s own place. Pueblos were the space where Indians could enjoy “security, peace, and calm—the liberty of being where they belonged and where others may be prevented from disturbing them” (Owensby [Reference Owensby2008](#), 150). Owensby argues that in seventeenth-century petitions, the ability to have lands and live in them was tied to the idea of liberty, which trumped any other consideration: pueblos’ “*libertad* was not the liberty of ‘free cities’ which enjoyed political autonomy, but the liberty to be free of arbitrary encroachments and to fend off those who would take unlawful advantage of them” (160).

In sum, the pueblos thesis shows that relations among individuals mediated by the land and other common resources need *not* be interpreted as the product of individuals seeking to act in concert to produce common goods. Instead, they can be seen as the foundation that makes individual action possible. Many contemporary theories of territorial rights assume that individual rights are the natural ground that sustains conventional law and territorial organization. In contrast, pueblos take grounded communities as given. They are the natural standpoint from which both individual actions and state organization derive. Hence the main difference between traditional liberal views and the pueblos thesis is their different social ontologies that I described earlier.

These different views of freedom came head to head when colonizers began to settle in pueblos and assumed that freedom was associated with their private property and their right to abstain from communal obligations. For the pueblo this was tantamount to juridical “extraterritoriality” (García Martínez [Reference García Martínez1992](#), 136). Territorial conflicts have been couched in these terms since the seventeenth century and continue to do so in the fights over mining in twenty-first-century Tepetlaoxtoc (Salinas Césareo [Reference Salinas Césareo2021](#)).

Conclusion

To this day, pueblos are seen as subject of territorial rights in Mexico. These rights—namely, a right to jurisdiction and a right to control borders and natural resources—are not always accepted by the state nor by the national or international community. However, the pueblo is widely understood to exist as a unitary subject of rights.

Contrast that with well-known views of territorial rights in Anglo-American political philosophy, which assume that the original subjects of territorial rights are either individuals, states, or civic collectives defined by the state. All three types of theories rely on an analogy between the civic collective and the individual who owns property: the state’s people is like an individual rights-bearer, she is the subject of rights independently of where she is and what she owns. Thus, in Anglo-American thought, a people or a nation is a subject that can claim rights over land, regardless of where it currently is. In other words, the state’s people are not defined by territory but are logically prior to it.

By contrast, the pueblo thesis tells us that territorial rights belong to the community being forged in a particular place. Place grounds the community because it is sustained by relationships among individuals that are shaped by the land. Moreover, these grounded communities give normative priority to webs of relations among human persons, to the places in which they are located, to the natural beings within them, and to supranatural forces. López-Austin ([Reference López-Austin1980](#), 66) argued that, for the Nahuatl individual, “It was impossible to separate his interests from those of the group, since such an act would immediately render him helpless to face the terrible, always dynamic divine forces present on the face of the earth. Men depended completely on collective activity.” This way of imagining life in common persisted during colonial times and was translated into a Christian version of webs of mutual obligation that had to be preserved for the pueblo’s common good. From these webs, such communities derive the rights of individuals and of the state, rather than the other way around.

For the pueblos thesis, place shapes individuals in the process of constituting the community. The legal process of fighting for territorial rights (on the ground and in court) produces both the community and the territory to which that community has a right. Those who participate in the process count as the people (“el pueblo”) of a given town (“un pueblo”). The original practices that create this grounded community were not established by a founding legal act nor guaranteed by a preexisting people. Instead, they emerge from a process of political contestation that used the colonial state against itself.

All in all, the pueblo as subject of territorial rights has allowed some independent communities to conserve and develop land, culture, language, and resources through five centuries

of colonial politics. And as we have seen, the pueblo can explain the relation of grounded communities to the land and their institutions without relying on ethnic identity.

Each pueblo, moreover, has an independent mythical and affective history—what Rogers Smith ([Reference Smith2004](#)) calls “stories of peoplehood.” The mosaic of all these pasts creates a common history—that of all separate and independent pueblos—which can symbolically match the mythology of the national state. Hence, pueblos, as the subjects of such rights, can also inspire alternative forms of dealing with other environmental problems, such as the politics of climate change. For pueblos are the *kind* of agent who can have jurisdiction and determine how communities grounded in place ought to relate to the land and to the water. We have all the more to learn, then, from the petitions of Tepetlaoxtoc.

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Footnotes

1 I use “Indigenous” to refer to peoples who existed in any territory before imperial colonization, as well as those of their descendants who conserve close relations to these peoples and their institutions. The term is problematic, however, because it homogenizes different peoples, and it is an identity imposed by colonizers (cf. Ferguson [2016](#)). I use “Indian” to translate the Spanish *indio*, a term that Spanish colonial institutions used to refer to Indigenous people from the Americas.

2 Activists frequently use the phrase “defensa del agua y el territorio” (see, for example, La tribu yaqui [2015](#)).

3 Indigenous populations were discouraged from relocating by Spanish (and indigenous) authorities, but according to García Martínez ([1987](#), 261) there was “relative free mobility.” Not unlike contemporary national states, both communities of origin and receiving communities wanted to tax migrants, and there were often conflicts over who belonged where. Spanish legislation was not clear on the matter, although the most common solution was to tax the migrants for the first year in their original community and then in their new place of residence (260–65).

References

Anzoátegui, Tau. 1997. Nuevos horizontes en el estudio histórico del derecho indiano. Buenos Aires: Instituto de Investigaciones de Historia del Derecho.[Google Scholar](#)

Armstrong, Chris. 2017. Justice and Natural Resources. Oxford: Oxford University Press.[CrossRefGoogle Scholar](#)

Arneil, Barbara. 1996. John Locke and America: The Defence of English Colonialism. Oxford: Clarendon Press.[CrossRefGoogle Scholar](#)

Bernal, Angelica. 2011. "Power, Powerlessness and Petroleum: Indigenous Environmental Claims and the Limits of Transnational Law." *New Political Science* 33(2): 143–67.[CrossRefGoogle Scholar](#)

Brett, Annabel. 2011. *Changes of State: Nature and the Limits of the City in Early Modern Natural Law*. Princeton, NJ: Princeton University Press.[Google Scholar](#)

Bruyneel, Kevin. 2021. *Settler Memory: The Disavowal of Indigeneity and the Politics of Race in the United States*. Chapel Hill: University of North Carolina Press.[Google Scholar](#)

Caraccioli, Mauro José. 2021. *Writing the New World: The Politics of Natural History in the Early Spanish Empire*. Gainesville: University of Florida Press.[Google Scholar](#)

Candiani, Vera. 2014. *Dreaming of Dry Land: Environmental Transformation in Colonial Mexico City*. Stanford, CA: Stanford University Press.[Google Scholar](#)

Castañeda, Felipe. 2020. "Spanish Colonialism as Perpetual Dominion in the Writings of Solórzano Pereira." In *A Companion to Early Modern Spanish Imperial Political and Social Thought*, ed. Tellkamp, Jörg Alejandro, 273–95. Leiden: Brill.[Google Scholar](#)

Cosío Villegas, Daniel, et al. 2000. *Historia General de México*. Mexico City, México: El Colegio de México.[Google Scholar](#)

Coulthard, Glen. 2014. *Red Skins, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota Press.[CrossRefGoogle Scholar](#)

Dahl, Adam. 2017. "Nullifying Settler Democracy: William Apress and the Paradox of Settler Sovereignty." *Polity* 48 (2): 279–304.[CrossRefGoogle Scholar](#)

de la Maza, Francisco 1893. Código de colonización y de terrenos baldíos de la república mexicana. Mexico City: Oficina de la secretaría de fomento.[Google Scholar](#)

Escalante Gonzalbo, Pablo. 2010. "El posclásico en Mesoamérica." In *Historia general de México ilustrada: Volumen I*, eds. García, Erik Velásquez et al., 133–200. Mexico City: El Colegio de México.[Google Scholar](#)

Ferguson, Kennan. 2016. "Why Does Political Science Hate American Indians?" *Perspectives on Politics* 14 (4): 1029–38.[CrossRefGoogle Scholar](#)

García Martínez, Bernardo. 1987. *Los pueblos de la sierra: El poder y el espacio entre los indios del norte de Puebla hasta 1700*. Mexico City: El Colegio de México.[Google Scholar](#)

García Martínez, Bernardo. 1992. "Jurisdicción y propiedad: Una distinción fundamental en la historia de los pueblos de indios del México colonial." *European Review of Latin American and Caribbean Studies* 53 (December): 47–60.[Google Scholar](#)

García Ruíz, Luis J. 2015. "La territorialidad en la república de indios de Orizaba: Entre la separación de los sujetos y la preponderancia española 1740–1828." *Historia Mexicana* 64 (4): 1415–61.[CrossRefGoogle Scholar](#)

Gerhard, Peter. 1977. "Congregaciones de indios en la nueva España antes de 1570." *Historia Mexicana* 26 (3): 347–95.[Google Scholar](#)

Gibson, Charles. 1964. *The Aztecs under Spanish Rule*. Stanford, CA: Stanford University Press.[CrossRefGoogle Scholar](#)

Graubart, Karen B. 2018. "'Ynuvaciones malas e rreprouadas': Seeking Justice in Early Colonial Pueblos de Indios." In *Justice in a New World: Negotiating Legal Intelligibility in British, Iberian, and Indigenous America*, eds. Owensby, Brian P. and Ross, Richard J., 151–80. New York: New York University Press.[Google Scholar](#)

Henderson, James Youngblood. 1985. "The Doctrine of Aboriginal Rights in the Western Legal Tradition." In *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights*, eds. Menno Boldt, J. Anthony Long, and Bear, Leroy Little, 185–220. Toronto: University of Toronto Press.[CrossRefGoogle Scholar](#)

Herzog, Tamar. 2013. "Colonial Law and "Native Customs: Indigenous Land Rights in Colonial Spanish America." *The Americas* 69 (3): 303–21.[CrossRef](#)[Google Scholar](#)

Herzog, Tamar. 2020. "Colonial Law: Early Modern Normativity in Spanish America." In *A Companion to Early Modern Spanish Imperial Political and Social Thought*, ed. Tellkamp, Jörg Alejandro, 105–27. Leiden: Brill.[Google Scholar](#)

Johnson, Benjamin. 2018. *Pueblos within Pueblos: Tlaxilacalli Communities in Acolhuacan, Mexico ca. 1272–1692*. Boulder: University Press of Colorado.[CrossRef](#)[Google Scholar](#)

Kant, Immanuel. 1996. "The Metaphysics of Morals." In *Practical Philosophy*, ed. Guyer, Paul and Wood, Allen, 353–604. Cambridge: Cambridge University Press.[Google Scholar](#)

Kolers, Avery. 2009. *Land, Conflict, and Justice: A Political Theory of Territory*. Cambridge: Cambridge University Press.[CrossRef](#)[Google Scholar](#)

Kolers, Avery. 2017. "Latin America in Theories of Territorial Rights." *Revista de Ciencia Política* 37(3): 737–57.[Google Scholar](#)

Kourí, Emilio. 2018. "The Practices of Communal Landholding: Indian Pueblo Property Relations in Colonial Mexico." In *Beyond Alterity*, eds. Caballero, Paula López and Acevedo-Rodrigo, Ariadna, 31–61. Tucson: University of Arizona Press.[Google Scholar](#)

La tribu yaqui. 2015. "Por la defensa del agua, el territorio, el trabajo y la vida." *Fundar*. <https://fundar.org.mx/por-la-defensa-del-agua-el-territorio-el-trabajo-y-la-vida/>.[Google Scholar](#)

Levy, Jacob T. 2015. *Rationalism, Pluralism and Freedom*. Oxford: Oxford University Press.[Google Scholar](#)

Lightfoot, Sheryl. 2016. *Global Indigenous Politics: A Subtle Revolution*. London: Routledge.[CrossRef](#)[Google Scholar](#)

Locke, John. 1988. *Two Treatises of Government*, ed. Laslett, Peter. Cambridge: Cambridge University Press.[CrossRef](#)[Google Scholar](#)

Lockhart, James. 1992. *The Nahuas after the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries*. Stanford, CA: Stanford University Press.[Google Scholar](#)

López-Austin, Alfredo. 1980. *The Human Body and Ideology*. Salt Lake City: University of Utah Press.[Google Scholar](#)

McDonough, Kelly S. 2017. "Plotting Indigenous Stories, Land and People: Primordial Titles and Narrative Mapping in Colonial Mexico." *Journal for Early Modern Cultural Studies* 17(1): 1–30.[CrossRefGoogle Scholar](#)

Menegus Bornemann, Margarita. 1994. "Los títulos primordiales de los pueblos de indios." *Estudis* 20: 207–30.[Google Scholar](#)

Miller, David. 2012. "Territorial Rights: Concept and Justification." *Political Studies* 60(2): 252–68.[CrossRefGoogle Scholar](#)

Moore, Margaret. 2015. *A Political Theory of Territory*. Oxford: Oxford University Press.[CrossRefGoogle Scholar](#)

Moore, Margaret. 2020. "Territorial Rights and Territorial Justice." In *The Stanford Encyclopedia of Philosophy*, ed. Zalta, Edward N.. Summer 2020. <https://plato.stanford.edu/entries/territorial-rights/>.[Google Scholar](#)

Nichols, Robert. 2020. *Theft Is Property! Dispossession & Critical Theory*. Durham, NC: Duke University Press.[Google Scholar](#)

Nine, Cara. 2022. *Sharing Territories: Overlapping Self-Determination and Resource Rights*. Oxford: Oxford University Press.[CrossRefGoogle Scholar](#)

Ochoa Espejo, Paulina. 2012. "Paradoxes of Popular Sovereignty: A View from Spanish America." *Journal of Politics* 74(4): 1053–65.[CrossRefGoogle Scholar](#)

Ochoa Espejo, Paulina. 2020. *On Borders: Territories, Legitimacy, and the Rights of Place*. New York: Oxford University Press.[CrossRefGoogle Scholar](#)

Ouweneel, Arij. 1990. "Altepeme and Pueblos de Indios: Some Comparative Theoretical Perspectives on the Analysis of the Colonial Indian Communities." In *The Indian Community of*

Colonial Mexico, eds. Ouweneel, Arij and Miller, Simon, 1–37. Amsterdam: CEDLA.[Google Scholar](#)

Owensby, Brian P. 2008. *Empire of Law and Indian Justice in Colonial Mexico*. Stanford, CA: Stanford University Press.[CrossRefGoogle Scholar](#)

Owensby, Brian P. 2011. “Pacto entre rey lejano y súbditos indígenas. Justicia, legalidad y política en Nueva España, siglo XVII.” *Historia Mexicana* 61(1): 59–106.[Google Scholar](#)

Pagden, Anthony. 1998. *Spanish Imperialism and the Political Imagination*. New Haven: Yale University Press.[Google Scholar](#)

Peset, Mariano, and Bornemann, Margarita Menegus. 1994. “Rey propietario o rey soberano.” *Historia Mexicana* 43(4): 563–99.[Google Scholar](#)

Riofrancos, Thea. 2020. *Resource Radicals: From Petro-Nationalism to Post-Extractivism in Ecuador*. Durham, NC: Duke University Press.[Google Scholar](#)

Salinas Césareo, Javier. 2021. “Comunidad del Edomex se declara pueblo originario.” *La Jornada*, April 19.[Google Scholar](#)

Simmons, A. John. 2001. “On the Territorial Rights of States.” *Philosophical Issues* 11(1): 300–26.[CrossRefGoogle Scholar](#)

Simmons, A. John. 2016. *Boundaries of Authority*. Oxford: Oxford University Press.[CrossRefGoogle Scholar](#)

Simon, Joshua. 2014. “The Americas’ More Perfect Unions: New Institutional Insights from Comparative Political Theory.” *Perspectives on Politics* 12(4): 808–28.[CrossRefGoogle Scholar](#)

Smith, Rogers. 2004. *Stories of Peoplehood: The Politics and Morals of Political Membership*. Cambridge: Cambridge University Press.[Google Scholar](#)

Solórzano Pereira, Juan de. 1972. *Política Indiana*, 6 vols. Madrid: Ediciones Atlas.[Google Scholar](#)

Stilz, Anna. 2019. *Territorial Sovereignty: A Philosophical Exploration*. Oxford: Oxford University Press.[CrossRefGoogle Scholar](#)

Tellkamp, Jörg Alejandro. 2020. *A Companion to Early Modern Spanish Imperial Political and Social Thought*. Leiden: Brill.[CrossRefGoogle Scholar](#)

Valle, Perla, ed. 1994. *Memorial de Tepetlaóztoc o Códice Kingsborough*. Toluca: El Colegio Mexiquense.[Google Scholar](#)

Waldron, Jeremy. 2011. "The Principle of Proximity." *NYU School of Law*. Public Research Law Paper no. 11-08. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1742413.[CrossRefGoogle Scholar](#)

Westler, Brendon. 2015. "Between Tradition and Revolution: The Curious Case of Francisco Martínez Marina, the Cádiz Constitution, and Spanish Liberalism." *Journal of the History of Ideas* 76(3): 393–416.[CrossRefGoogle Scholar](#)

Wood, Stephanie. 1990. "The *fundo legal* or Lands *Por razón de pueblo*: New Evidence from Central New Spain." In *The Indian Community of Colonial Mexico*, eds. Ouweneel, Arij and Miller, Simon, 117–29. Amsterdam: CEDLA.[Google Scholar](#)

Yannakakis, Yanna. 2013. "Indigenous People and Legal Culture in Spanish America." *History Compass* 11(11): 931–47.[CrossRefGoogle Scholar](#)