

A Court of Sticks and Branches: Indian Jurisdiction in Colonial Mexico and Beyond

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IN THE HEART OF Ñudzahui (Mixtec) territory in southern Mexico, a group of indigenous commoners built a temporary court for a Spanish judge.¹ It was the rainy season, July 1683, and the court was made of movable materials—most likely sticks and branches, perhaps a reed roof or a piece of cloth to create shade, maybe a few flowers adorning it to make it like a ceremonial arch. Observers referred to it alternately as “receiving quarters” or a “receiving house,” and sometimes simply as a *recibimiento*, which in the Spanish of the time could connote an antechamber. The terms reveal that, despite being put up rapidly on land near wheat fields on the outskirts of four indigenous municipalities, the structure was intended for serious legal business.²

In fact, the Spanish colonial judge, known as the *alcalde mayor*, was on his way there. He was traveling to the area from the closest Spanish tribunal in the region, in Yanhuitlan, Teposcolula, in the Oaxaca region, to issue a summary decision in a land dispute between two native villages, San Andrés Sinaxtla and San Mateo Susuquitepeque.³ Word was that the ruling would favor San Andrés. Still, the formalities for the reading of the decision were required just the same. For obvious reasons, the villagers of San Mateo were not going to like the ruling, and a restless group of women and men from the pueblo gathered. They focused their ire on the makeshift court: the struc-

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¹ “Tay Ñudzahui” (“people of the rain place”) is the term of self-ascription used in the native language (the Ñudzahui language) in this region. See Kevin Terraciano, *The Mixtecs of Colonial Oaxaca: Ñudzahui History, Sixteenth through Eighteenth Centuries* (Stanford, Calif., 2002). In the scholarly literature, the term “Mixtec,” derived from Nahuatl (the indigenous language of central Mexico), is used most widely to refer to the people and the language, and “Mixteca” to the region.

² In the legal dispute showcased in this article, participants and witnesses consistently talked about the *recibimiento*, *rancho*, and *casa*, as it was alternately called, as “being [located] in” or “near” a *paraje*, which is a site or place. Thus it was expressly a structure—like a court—rather than a site alone. Archivo Histórico Judicial de Oaxaca [hereafter AHJO], Teposcolula [hereafter T], Criminal series [hereafter Crim.], legajo [hereafter leg.] 18, expediente [hereafter exp.] 28, 1683.

³ In the 1683 dispute examined here, the term *amparado* is used repeatedly, indicating that the litigating parties hoped for summary justice without a full and costly suit due to their status as native litigants. On natives’ adaption of the *amparo* mechanism, which had been part of medieval Spanish law, see Brian P. Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford, Calif., 2008).

ture was too close to San Mateo's community fields, they complained, and the villagers of San Andrés who were building the *recibimiento* to host the pronouncement of the sentence in their favor needed to move it.

Juan Matías, a villager from the winning pueblo, probably did not come onto the scene unnoticed. He rode in on a horse and had heavy spurs attached to his boots. Perhaps all this, plus his village's legal triumph, made him haughty, as his opponents would later report. They used a common phrase to describe imperial subjects who disrupted the overlapping layers of judicial authority that kept the peace in the empire: they said he "broke the staff of justice." Or maybe, as Juan Matías claimed later, the losing villagers from San Mateo had shown up ready to rumble, armed with sticks, not staffs. Whatever the case, a scuffle ensued, and Juan Matías was at the center of it. He would eventually be arrested and whipped by native authorities from San Mateo.

This dust-up around a temporary tribunal in a field was then captured in writing. It was at that point that it turned into a relatively commonplace legal case, recorded before and adjudicated by a Spanish judge. Unlike some rare documents from native Spanish America, it never reached Madrid or Rome; it was never graced by the signature "*yo, el Rey*." It never even made it to Mexico City, the capital of the Viceroyalty of New Spain, which encompassed a massive area, including parts of the Caribbean. Thousands of similar suits like it are filed away in regional archives around the former Spanish territories, almost invisible because they are so excessive.

For decades, ethnohistorians have patiently scrutinized local legal records for a clearer understanding of the dynamic and varied cultures that constituted native society under colonialism. Single case studies are less commonly the grist of legal history because the objects and practices that embodied native authority are not always immediately recognizable as "legal."⁴ But it is precisely for this reason that Juan Matías's case is so revealing. Approaching this case as a methodological intervention into legal history rather than only an artifact of native culture reveals how jurisdiction was constructed and can be reconstructed: from its on-the-books foundations in Spanish imperial law, through on-the-ground, unwritten practices and norms of native legal culture, and into its writing and archiving.

The very act of crafting the narrative that resulted from the dispute, which concerned possession of the lands as well as control of the bodies assembled at the movable court, both summoned Indian jurisdiction and aligned it within the framework of global imperialism.⁵ As various parties scratched out their written contributions to the case, they shuttled among local legal symbols and instruments, practices resonant across native cultures of Spanish America and the demands of Spanish imperial law. In reading Juan Matías's case alongside suits from southern Mexico and elsewhere in Spanish America, and over three centuries of colonial rule, it becomes clear that Indian jurisdiction was

⁴ The anthropological difficulty in analyzing law is something noted long ago by anthropologist Clifford Geertz when he puzzled over how to represent another culture's representation of legal facts. Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, 3rd ed. (New York, 2000), 174. Scholars have begun to pioneer methods for reading imperial sources against the grain to access a realm of "native legality." Saliha Belmessous, ed., *Native Claims: Indigenous Law against Empire, 1500–1920* (Oxford, 2011).

⁵ See, for example, the resonances with Miranda Johnson's discussion of how modern judges shifted hearings out of formal courtrooms into indigenous settlements, and thus made the law accommodate (and redefine) native rights. Johnson, *The Land Is Our History: Indigeneity, Law, and the Settler State* (Oxford, 2016), 6.

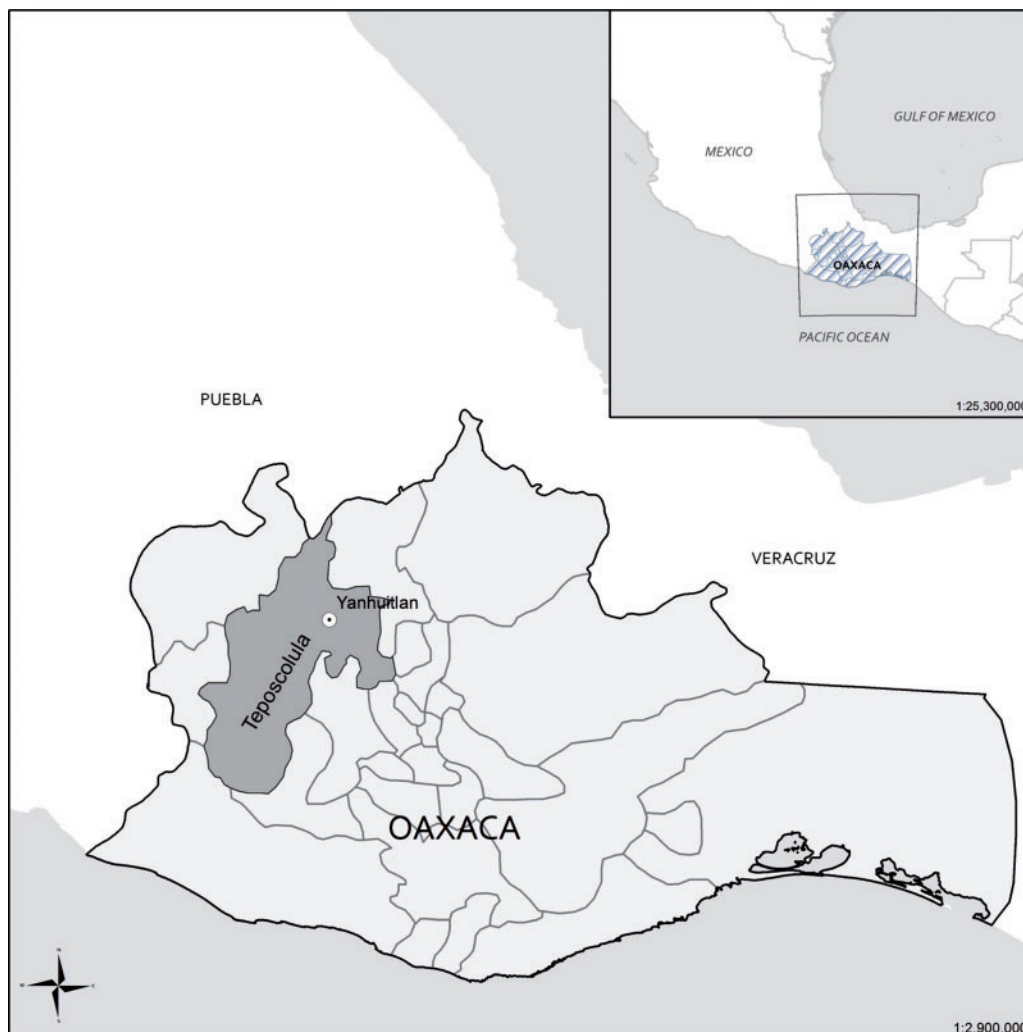


FIGURE 1: The *alcaldía mayor* (colonial district) of Teposcolula and the town of Yanhuitlan in the Oaxaca region of southern Mexico. Inset: The Viceroyalty of New Spain and Oaxaca. Map created by Sheyla Aguilar de Santana, Florida International University GIS Center, Maps and Imagery User Service.

established and maintained as a legitimate ambit of imperial rule not merely through metropolitan pronouncements but through thousands of pieces of paper capturing ordinary, often fleeting conflicts.

“Indian jurisdiction” here refers to more than native peoples’ interaction with Spanish colonial judges. And it involves more than pre-Hispanic genealogies of ethnically specific native concepts of law. Instead, it refers to a wide-ranging sphere of legal authority based on Spanish recognition of the legal personhood of subjects designated as “Indians” and the authority of the governing municipal bodies of native pueblos, known collectively as the “Republic of Indians.”⁶ Rather than a solid, immovable structure im-

⁶ In keeping with ethnohistories of Spanish America, our terminology marks a distinction between “native” or “indigenous” (original peoples) and “Indian,” a legal category applied by the Spanish crown to all indigenous peoples of the Americas. We use these terms to distinguish between a self- or community-

posed from Europe, Indian jurisdiction involved the constant edification of native judicial authority through patterned legal practices and rules that, like the *casa de recibimiento*, were at once locally rooted and also expansive enough to accommodate the expectations of Spanish officials.

To insist on the “jurisdictional” component of Indian jurisdiction is to put the soggy wheat fields in Mixtec southern Mexico at the center of new global legal histories. Jurisdiction is now the subject of cutting-edge scholarship on the very processes that shaped the modern world.⁷ According to Lauren Benton’s influential formulation, in the early modern period, before the rise of the modern state, the legal order was pluralistic, as multiple, decentered authorities—clergy, crown officials, the aristocracy—competed for power at the borders of territory and at the edges of contested legal issues, and in doing so, advanced ideologies that demarcated legitimate rule. This competition permitted intermediate judicial officials, such as colonial provincial magistrates, to accrue authority in an expanding empire.⁸

Still, as Benton herself has noted with Richard Ross, scholars have found it a challenge to capture the “elusive subjective beliefs” of historical actors who participated in jurisdictional conflict, or, put differently, to capture how law moved from the books to the ground.⁹ Juan Matías can help in this endeavor. In Spanish America, as elsewhere, local judges and litigants translated written Spanish legal norms into everyday practice.¹⁰ But in the crucible of jurisdictional competition, they then retranslated them into writing to be read by colonial judges. This was the blueprint for Indian jurisdiction,

ascribed local identity and an imperially imposed identity. Indigenous people used these terms in Spanish—*natural de* (native inhabitant of) and *indio* (Indian)—strategically in their interaction with Spanish officials. See Karen B. Graubart, “The Creolization of the New World: Local Forms of Identification in Urban Colonial Peru, 1560–1640,” *Hispanic American Historical Review* 89, no. 3 (2009): 471–499; Rachel Sarah O’Toole, *Bound Lives: Africans, Indians, and the Making of Race in Colonial Peru* (Pittsburgh, 2012); Nancy E. van Deusen, *Global Indios: The Indigenous Struggle for Justice in Sixteenth-Century Spain* (Durham, N.C., 2015); Mónica Díaz, ed., *To Be Indio in Colonial Spanish America* (Albuquerque, N.Mex., 2017).

⁷ Pedro Cardim, Tamar Herzog, José Javier Ruiz Ibáñez, and Gaetano Sabatini, eds., *Polycentric Monarchies: How Did Early Modern Spain and Portugal Achieve and Maintain a Global Hegemony?* (Brighton, 2012); Thomas Duve and Heikki Pihlajamäki, eds., *New Horizons in Spanish Colonial Law: Contributions to Transnational Early Modern History* (Frankfurt, 2015); Seán Patrick Donlan and Dirk Heirbaut, eds., *The Law’s Many Bodies: Studies in Legal Hybridity and Jurisdictional Complexity, c. 1600–1900* (Berlin, 2015).

⁸ Lauren Benton, *Law and Colonial Culture: Legal Regimes in World History, 1500–1800* (Los Angeles, 2001), especially 27; see also 24–28, especially 24 n. 31. See also Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge, 2010), 3.

⁹ Lauren Benton and Richard J. Ross, “Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World,” in Benton and Ross, *Legal Pluralism and Empires, 1500–1850* (New York, 2013), 1–17, here 5.

¹⁰ In recent efforts to develop a methodology for global legal history, translation is understood as originating with the global and moving to the local to be refashioned—from the books to the ground, through the adaptation of broadly applicable legal norms and practices and their incorporation into local languages and institutions. Mindie Lazarus Black, review of *Human Rights and Gender Violence: Translating International Law into Local Justice* by Sally Engle Merry, *Law and Society Review* 40, no. 4 (2006): 979–981; Peggy Levitt and Sally Merry, “Vernacularization on the Ground: Local Uses of Global Women’s Rights in Peru, China, India and the United States,” *Global Networks* 9, no. 4 (2009): 441–461; Thomas Duve, “European Legal History—Concepts, Methods, Challenges,” in Duve, ed., *Entanglements in Legal History: Conceptual Approaches* (Frankfurt, 2014), 29–66; Duve, “Global Legal History—A Methodological Approach,” May 20, 2016, Max Planck Institute for European Legal History Research Paper Series no. 2016-04, <https://ssrn.com/abstract=2781104>; Rune Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847–1911* (Leiden, 2007).

an intermediate plane of legal authority unique to empire, built on village justice but spanning the diverse ethnicities of native Spanish America.¹¹

To be clear, Juan Matías never submitted a single filing in Mixtec or any native language. Instead, the work of living out Spanish law initially involved its expression in physical objects of village justice such as makeshift courts, staffs, and whips.¹² Christopher Tomlins and John Comaroff have called on legal historians to investigate how, quite literally, “law becomes a fetish,” a cultural thing, “an abstraction made real, a highly animated abstraction to which is attributed the mythic, numinous capacity to configure the world in its own image.”¹³ In the 1683 dispute in southern Mexico, the cultural things that embodied law and made it real were not made only of sticks and branches. A “highly animated abstraction,” Indian jurisdiction was also channeled through papers, objects that Europeans had long fetishized. By translating local symbols and practices into Indian jurisdiction through writing, case records such as the fifty-plus pages constituting Juan Matías’s suit physically lodged native authority and territory within the legal archive and the larger structure of the Spanish Empire.¹⁴

¹¹ *Jurisdicciones indígenas en Nueva España y Perú*, a special issue of the Peruvian journal *Histórica* 40, no. 2 (2016), edited by José Carlos de la Puente Luna, is a welcome recent intervention highlighting the importance of native jurisdiction, as are Karen B. Graubart, “Competing Spanish and Indigenous Jurisdictions in Early Colonial Lima,” *Oxford Research Encyclopedia of Latin American History*, May 2016, <https://doi.org/10.1093/acrefore/9780199366439.013.365>; and Yanna Yannakakis and Martina Schrader-Kniffki, “Between the ‘Old Law’ and the New: Christian Translation, Indian Jurisdiction, and Criminal Justice in Colonial Oaxaca,” *Hispanic American Historical Review* 96, no. 3 (2016): 517–548. The literature on village justice and local law is vast, but key works informing our comparative understanding are Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, N.C., 2009); and Tommaso Astarita, *Village Justice: Community, Family, and Popular Culture in Early Modern Italy* (Baltimore, 1999). The tendency in this literature is to position village law in opposition to federal, metropolitan, or state law. Recent work on legalism challenges binaries such as state/non-state law and local culture/centralized law. See Hannah Skoda, “A Historian’s Perspective on the Present Volume,” in Paul Dresch and Hannah Skoda, eds., *Legalism: Anthropology and History* (New York, 2012), 39–54, here 39–40, 43–44.

¹² Roman Jakobson’s foundational work in linguistics conceives of translation beyond meanings in languages. Jakobson, “On Linguistic Aspects of Translation,” in Reuben A. Brower, ed., *On Translation* (Cambridge, Mass., 1959), 232–239. See also the recent turn toward “multimodality” or the concatenation of a variety of signs (visual, oral, written, material objects, bodily performance) to compose a message. William F. Hanks, *Converting Words: Maya in the Age of the Cross* (Berkeley, Calif., 2010), 112. Thus, a method that highlights the legality of physical objects is useful, since early modern European legal traditions were also embodied in symbols, spaces, and objects, and paperless administration of justice also applied to European subjects of the Spanish Empire. As Tamar Herzog comments, few ordinary inhabitants of the Iberian empires “depend[ed] on formal documents conserved in archives, on treaties, or even on the existence of border stones” to lay claim to their territories. Herzog, *Frontiers of Possession: Spain and Portugal in Europe and the Americas* (Cambridge, Mass., 2015), 8. Teofilo F. Ruiz analyzes the construction of royal authority in early modern Spain through the movement of the monarch to remote corners of his kingdom, and the performances and ephemeral symbols (including triumphal arches made of ivy) produced by local communities to honor and receive him. Ruiz, *A King Travels: Festive Traditions in Late Medieval and Early Modern Spain* (Princeton, N.J., 2012).

¹³ Christopher Tomlins and John Comaroff, “Law as . . . : Theory and Practice in Legal History,” *UC Irvine Law Review* 1, no. 3 (2011): 1039–1079, here 1066, 1067. Scholarship on law in colonial Africa points to the importance of objects associated with justice and rule in native-imperial jurisdictional contests. See Richard Rathbone’s analysis of royal stools, *Murder and Politics in Colonial Ghana* (New Haven, Conn., 1993); and Katherine Luongo’s examination of the objects and practices of “witchcraft,” *Witchcraft and Colonial Rule in Kenya, 1900–1950* (Cambridge, 2011).

¹⁴ Note the centrality that José Carlos de la Puente Luna gives to the writing practices of “intermediaries . . . trained in letters and religion” in the functioning of Indian jurisdiction in “Presentación,” *Histórica* 40, no. 2 (2016): 5–8, here 6. See also Adrian Masters, “A Thousand Invisible Architects: Vassals, the Petition and Response System, and the Creation of Spanish Imperial Caste Legislation,” *Hispanic American Historical Review* 98, no. 3 (2018): 377–406.

Given the voluminous scholarship on native justice under Spanish rule, it would seem that modern scholars have left few pages unturned in their studies of indigenous legality.¹⁵ Native litigants in Spanish America left a sizable written archive of activity before colonial judges. Despite their position as conquered subjects who owed tribute and labor to their conquerors, the Spanish crown recognized native people as legal persons, providing them access to a broad array of courts and venues, including the vaunted special “Indian court” of the *Juzgado de Indios* in Mexico City, where they could act to limit the encroachments or abuses of Spaniards as well as engage in inter-ethnic dispute.¹⁶ Assigned to the protected medieval legal category of *miserables*, in which they were likened to minors of age, widows, and orphans, natives received court-appointed legal counsel, and their cases were to be kept inexpensive and brief.¹⁷ Indigenous peoples exploited this categorization and, working the jurisdictional tensions in the pluralistic legal order of empire, jockeyed for advantage before various Spanish colonial magistrates.

A focus on these strategies unveils gripping stories of native legal agency, but at a larger scale of analysis, it also risks reproducing the imperial logic of the archive itself, which casts natives as ubiquitous petitioners, approaching sovereign Spanish judges in need of tutelage and mediation.¹⁸ As a result, in both the historiography and the archival documentation, Indian jurisdiction is often mentioned only in passing, buried in the numbing repetition of other bureaucratic features of lawsuits, and seemingly incidental to the disputes that reached Spanish magistrates, who were likely to be drawn to stable legal genres, institutions, and formal tribunals patterned on those of European origins.¹⁹

Indians were not only litigators, however, but also judges who administered civil and criminal justice in their communities. When native authorities exercised jurisdiction within the framework of semi-autonomous community councils, Spanish officials were not necessarily their audience, and in the main, their practices went unwritten. To be sure, this was not because native people did not engage with the European technology of Latinized writing. Four decades of pathbreaking scholarship has unearthed a rich

¹⁵ For a review of the literature on native justice and litigation in Spanish American courts, see Yanna Yannakakis, “Indigenous People and Legal Culture in Spanish America,” *History Compass* 11, no. 11 (2013): 931–947. Key works include Susan Kellogg, *Law and the Transformation of Aztec Culture, 1500–1700* (Norman, Okla., 1995); Ethelia Ruiz Medrano and Susan Kellogg, eds., *Negotiation within Domination: New Spain’s Indian Pueblos Confront the Spanish State* (Boulder, Colo., 2010); Steve J. Stern, *Peru’s Indian Peoples and the Challenge of Spanish Conquest: Huamanga to 1640* (Madison, Wis., 1982); Sergio Serulnikov, *Subverting Colonial Authority: Challenges to Spanish Rule in Eighteenth-Century Southern Andes* (Durham, N.C., 2003); Alcira Dueñas, *Indians and Mestizos in the “Lettered City”: Reshaping Justice, Social Hierarchy, and Political Culture in Colonial Peru* (Boulder, Colo., 2010); José Carlos de la Puente Luna, *Andean Cosmopolitans: Seeking Justice and Reward at the Spanish Royal Court* (Austin, Tex., 2018). On the *juzgado de indios*, the classic work is Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aids of the Half-Real* (Los Angeles, 1983). See also Owensby, *Empire of Justice*.

¹⁶ Natives’ diminished legal capacity is most famously captured in the work of the architect of *derecho indiano*, or Spanish colonial law, Juan de Solórzano Pereira, *Política Indiana* (1647; repr., Amherst, 1703), 122.

¹⁷ On “minors of age,” see Bianca Premo, *Children of the Father King: Youth, Authority, and Legal Authority in Colonial Lima* (Chapel Hill, N.C., 2005); Caroline Cunill, “El indio miserable: Nacimiento de la teoría legal en la América colonial del siglo XVI,” *Cuadernos intercambios* 8, no. 9 (2011): 229–248.

¹⁸ See, for example, the participation of native people in Spanish legal systems characterized as a “tragedy” of capitulation to colonial state hegemony in Stern, *Peru’s Indian Peoples*, 132.

¹⁹ On numbing excess in imperial archives, see Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, N.J., 2009).

cache of documents authored by native peoples in their own languages, as well as in Spanish.²⁰ But because the laws of the Indies required Spanish judges to adjudicate any disputes that spilled beyond single pueblos, indigenous subjects usually brought any notions of law they captured in writing to Spanish courts.

This leaves historians the task of discerning how Indian jurisdiction was constructed from sources formed interactively with European law, such as petitions, testimony, depositions, and even records in native languages submitted as evidence and translated into Castilian Spanish. The very coloniality of native jurisdictional sources conceals a methodological opportunity: precisely because their recording took place before official Spanish eyes, they contain traces of the ongoing translation of symbols, spaces, and objects of law that betrayed their neither wholly local nor imperial character.²¹ Whatever the contours of village justice, when native officials became “judges” in the imperial framework, their authority had to be recognizable, replicable, and rule-bound, yet distinct from that of a Spanish colonial magistrate. In this sense, producing the native judicial archive was tantamount to producing the “Indian” as a semi-sovereign juridical subject. Native authority had to be evoked, defined, and recorded in order to be subsumed under metropolitan control. At the same time, to legitimately exercise jurisdiction, native authorities had to make unwritten local law legible beyond their community.

When the Ñudzahui man on horseback at the center of the 1683 dispute crafted a complaint before a Spanish colonial judge concerning the reach of Indian jurisdiction in what today is the southern Mexican state of Oaxaca, he therefore became an unwitting ally of the modern historian facing the methodological challenge of reading Indian jurisdiction from Spanish sources. By detailing a miscarriage of native justice, Juan Matías captured in writing several unwritten rules of a broader system of indigenous legal authority in the empire. In turn, rendering his case intelligible to the modern legal historian necessitates—ironically, unavoidably—reproducing the work of translation that Juan Matías undertook in his own narrative.

The local ethnographic detail and clashes between pueblos in individual cases might

²⁰ The New Philologists pioneered social-historical analysis of native-language notarial records that provide local perspective on Indian jurisdiction over civil matters and crime. For an overview, see Matthew Restall, “A History of the New Philology and the New Philology in History,” *Latin American Research Review* 38, no. 1 (2003): 113–134. On wills, the genre most widely represented in indigenous notarial archives, see Susan Kellogg and Matthew Restall, eds., *Dead Giveaways: Indigenous Testaments of Colonial Mesoamerica and the Andes* (Salt Lake City, Utah, 1998); Mark Christensen and Jonathan Truitt, eds., *Native Wills from the Colonial Americas: Dead Giveaways in a New World* (Salt Lake City, Utah, 2015). For a sampling of Nahuatl, Yucatec Maya, and Mixtec-language notarial records in translation, see Matthew Restall, Lisa Sousa, and Kevin Terraciano, eds., *Mesoamerican Voices: Native-Language Writings from Colonial Mexico, Oaxaca, Yucatan, and Guatemala* (Cambridge, 2005). For the case of Indian jurisdiction over crime in the region studied here, see Kevin Terraciano, “Crime and Culture in Colonial Mexico: The Case of the Mixtec Murder Note,” *Ethnohistory* 45, no. 4 (1998): 709–745; Lisa Mary Sousa, “Women and Crime in Colonial Oaxaca: Evidence of Complementary Gender Roles in Mixtec and Zapotec Societies,” in Susan Schroeder, Stephanie Wood, and Robert Haskett, eds., *Indian Women of Early Mexico* (Norman, Okla., 1997), 199–221. On Zapotec-language Indian criminal records in the district of Villa Alta, see Martina Schrader-Kniffki and Yanna Yannakakis, “Sins and Crimes: Zapotec-Spanish Translation in Catholic Evangelization and Colonial Law in Oaxaca, New Spain,” in Otto Zwartjes, Klaus Zimmermann, and Martina Schrader-Kniffki, eds., *Missionary Linguistics V/Lingüística Misionera V: Translation Theories and Practices* (Amsterdam, 2014), 161–199; Yannakakis and Schrader-Kniffki, “Between the ‘Old Law’ and the New.”

²¹ On coloniality, see Mabel Moraña, Enrique Dussel, and Carlos A. Jáuregui, *Coloniality at Large: Latin America and the Postcolonial Debate* (Durham, N.C., 2008); Florencia E. Mallon, ed., *Decolonizing Native Histories: Collaboration, Knowledge, and Language in the Americas* (Durham, N.C., 2012).

seem to modern historians, as they sometimes did to Spanish judges, too singular to be of importance. So the dispute must be situated in “the law” in order to make a case that it is a matter for legal history writ large. While the story is presented here in all of its local color in a manner something like a microhistory, it also follows Juan Matías by locating local symbols and practices of jurisdiction within the range of legal repertoires available to native people in Spanish America.²² To signal where its lessons can be of use to other scholars of law, this retelling of the scuffle at the court of sticks and branches rests on observations from scores of native suits collected from diverse archives. Many originated from the same district court in Teposcolula to which Juan Matías was subject; others come from distinct ethnic communities in the neighboring district of Villa Alta, also in the Oaxaca region. These cases, removed in time and space from Juan Matías’s lawsuit, contain many of the same legal symbols and practices that appear in his dispute. The narrative or notes here also occasionally reach forward, into the eighteenth and even the early nineteenth centuries, and across the empire to coastal Peru—a place that possessed a thriving native legal culture and strong native chiefdoms and municipal councils but was in some important ways dissimilar from Oaxaca’s highland indigenous districts, especially in ethnic composition. Thus key symbols, spaces, and objects that embodied native authority were replicated and recognizable across the vast Spanish Empire and endured beyond the watershed of independence.

Beyond simply adapting metropolitan Spanish imperial law to local culture, then, Juan Matías and countless legal agents across the Americas experienced, instantiated, and embodied that law. They then retranslated it into an abstraction, “Indian jurisdiction,” in everyday written conflicts over land, political authority, and other disputes. This process can be summed up as law on the books, on the ground, and on the page, and all three stages are on display in the 1683 case. Law “on the books” refers to royal edicts issued for the New World and compiled from the sixteenth century onward. In Spain’s Roman-based civil law tradition, which did not operate on precedent, each case was judged by finding the corresponding royal or canon law that best applied. Codified Spanish laws and their silences about Indian jurisdiction framed what occurred the day that Juan Matías arrived at the contested court in the wheat fields. But they cannot tell the whole story. Another history occurred on the ground, as the events that landed Juan Matías in jail were not wholly idiosyncratic but rather followed patterns in other cases both in southern Mexico and beyond. Finally, the incident had a history on the page, in the litigation that was produced around the conflict. As Juan Matías captured his complaint in writing directed to a Spanish colonial judge, he adopted the genres of European law and expressed competition over authority in colonial institutional form, using letters to link his dispute to a larger imperial order. Each of these three histories must be told in order to fully reconstruct Indian jurisdiction using the archives of empire and ontologies of imperial law.

INDIAN JURISDICTION OCCUPIED an unusual position within the patchwork of institutions prescribed by written, codified law in the Spanish Empire. Due to the recognized semi-

²² Microhistorical approaches can be especially profitable for new imperial histories that seek to be mindful of both the “structures within empire and the subjects who were produced by empire.” Durba Ghosh, “Another Set of Imperial Turns?,” *American Historical Review* 117, no. 3 (June 2012): 772–793, here 782.

sovereignty of native subjects, it was at once parallel and subordinate to Spanish jurisdiction, a much larger sphere of authority that included courts of special prerogatives and cleaved the civil and ecclesiastical realms. The legal institution most proximate to natives was the indigenous *cabildo* (town council). Native concepts similar to “jurisdiction” survived the transition from the native rule of ethnic lords to a post-conquest Republic of Indians, which, though a conceptual governing body discussed by theologians and jurists, was comprised of thousands of very real native town councils staffed by elected officials on the model of Spanish municipal governance. In New Spain, most native *cabildos* had one or two judges of first instance (*alcaldes*) and legal functionaries such as aldermen, constables, and bailiffs (*regidores*, *alguaciles*, and *topiles*). Some towns also elected an Indian governor (*gobernador*), a position that local chiefs, or *caciques*, often filled. Indian governors could also be appointed by Spanish officials.²³

The *cabildo*’s civil authority entwined with the ecclesiastical authority of a body of native church officials: priests’ assistants (*fiscales*), sacristans, and choirmasters and schoolmasters. In remote areas without parish priests, these native churchmen exercised considerable authority in the community, including judicial authority. They could punish villagers for minor infractions against the faith such as failing to attend mass. Native Catholic confraternities also held some authority over village life, as they administered their own treasuries and lands, and in some regions they regulated local markets.²⁴ Village notables rotated in and out of local civil and ecclesiastical offices, making the boundary between them exceedingly porous.²⁵

At the time of Spanish conquest, Teposcolula—the region in which Juan Matías’s 1683 case emerged and was adjudicated—was home to powerful and wealthy indigenous polities (*yuhuitayu* in the Mixtec language). Due to its distance from the heart of the Mexica (Aztec) Empire and its rugged topography, Teposcolula, like most of southern Mexico, sat at a remove from the central administrative institutions, economic engines of mining and agriculture, and trade and transportation corridors of the Spanish Empire.²⁶ Until the end of the eighteenth century, a small corps of Spanish administra-

²³ For details about the jurisdiction of Indian *cabildos* in Spanish America, see James Lockhart, Frances Berdan, and Arthur J. O. Anderson, *The Tlaxcalan Actas: A Compendium of the Records of the Cabildo of Tlaxcala, 1545–1627* (Salt Lake City, Utah, 1986); Bernardo García Martínez, comp., *Los pueblos de indios y las comunidades* (Mexico City, 1991); Robert Stephen Haskett, *Indigenous Rulers: An Ethnohistory of Town Government in Colonial Cuernavaca* (Albuquerque, N.Mex., 1991); Margarita Menegus Bornemann, *Del señorío indígena a la república de indios: El caso de Toluca, 1500–1600* (Mexico City, 1994); Cynthia Radding, *Wandering Peoples: Colonialism, Ethnic Spaces, and Ecological Frontiers in Northwestern Mexico, 1700–1850* (Durham, N.C., 1997); Andrea Martínez Baracs, *Un gobierno de indios: Tlaxcala, 1519–1750* (Mexico City, 2008); Dueñas, *Indians and Mestizos in the “Lettered City”*; Karen B. Graubart, “Learning from the *Qadi*: The Jurisdiction of Local Rule in the Early Colonial Andes,” *Hispanic American Historical Review* 95, no. 2 (2015): 195–228; Caroline Cunill, “Nos traen tan avasallados hasta quitarnos nuestro señorío”: Cabildos mayas, control local y representación legal en el Yucatán del siglo XVI,” *Histórica* 40, no. 2 (2016): 49–80; Alcira Dueñas, “Cabildos de naturales en el ocaso colonial: Jurisdicción, posesión y defensa del espacio étnico,” *ibid.*, 135–167; William F. Connell, “De sangre noble y hábiles costumbres”: Etnicidad indígena y gobierno en México Tenochtitlan,” *ibid.*, 111–133.

²⁴ Yanna Yannakakis, *The Art of Being In-Between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham, N.C., 2008), 104–105.

²⁵ On the multifaceted careers of confraternity, *cabildo*, and native church officers, see Nancy M. Farris, *Maya Society under Colonial Rule: The Collective Enterprise of Survival* (Princeton, N.J., 1984), chaps. 6–11. On the porousness of the civil and ecclesiastical hierarchies in Nahuatl communities, see James Lockhart, *The Nahuas after the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries* (Stanford, Calif., 1992), 40.

²⁶ Ronald Spores, *The Mixtec Kings and Their People* (1967; repr., Norman, Okla., 1973); Spores, *The Mixtecs in Ancient and Colonial Times* (Norman Okla., 1984); Terraciano, *The Mixtecs of Colonial Oa-*

tors, merchants, and landholders made up no more than 5 percent of its population, and native lords in the Mixteca region, and in Oaxaca more widely, maintained their political power and landholding to a degree unmatched in other regions of Mexico.²⁷ As a result, Teposcolula's native authorities exercised first-instance jurisdiction over a broad population. Spaniards appointed governors drawn from ruling lineages in the major native settlements in the region, meaning governors were often also ethnic lords (known as *yya* in the Nudzahui language).²⁸ The smaller pueblos, such as those involved in Juan Matías's 1683 dispute, lacked governors, leaving the *alcaldes* as the primary native legal authorities.²⁹

Spanish colonial legislation was vague in regulating the functioning of native town councils, but it did spell out some of the powers and limits of native judges, including the authority to oversee local civil matters, the most important of which was the inheritance of property and communal land tenure.³⁰ Little is known about native civil jurisdiction in the Mixtec region beyond the administration of communal lands and inheritable property.³¹ In the late seventeenth century, the native *cabildo* of Yanhuitlan, a town that was simultaneously the seat of a *yuhuitayu* and a center for Dominican evangelization, adjudicated land disputes within the pueblo, but only in the absence of Spanish officials. Although the *cabildo*'s civil jurisdiction extended to land disputes, it did not include market transactions.³²

In the cases that natives throughout Spanish America brought before colonial judges over matters other than land disputes, it is obvious that native officials considered a wide array of civil matters, ranging from marital disputes to labor obligations, as proper to their jurisdiction. But in most regions, this jurisdiction was mostly implied or extrajudicial, asserted in verbal dispute settlements according to local practice. Spaniards referred to this ambit of law—whether in a peninsular or a New World village—as “custom.” Southern Mexican native communities construed custom to be dictated by “the old laws,” or native norms that dated to an era prior to the Spanish conquest.³³

xaca; Ronald Spores and Andrew K. Balkansky, *The Mixtecs of Oaxaca: Ancient Times to the Present* (Norman, Okla., 2013).

²⁷ Terraciano, *The Mixtecs of Colonial Oaxaca*, 3; William B. Taylor, *Landlord and Peasant in Colonial Oaxaca* (Stanford, Calif., 1972).

²⁸ Terraciano, *The Mixtecs of Colonial Oaxaca*, 183–186.

²⁹ Spores, *The Mixtecs in Ancient and Colonial Times*, 120, 123, 129–130. On Indian *alcaldes* as judges, see José Carlos de la Puente Luna and Renzo Honores, “Guardianes de la real justicia: Alcaldes de indios, costumbre y justicia local en Huarochirí colonial,” *Histórica* 40, no. 2 (2016): 11–47; Jeremy Ravi Mumford, “Las llamas de Tapacarí: Un documento judicial de un alcalde de indios en la Audiencia de Charcas, 1580,” *ibid.*, 171–185.

³⁰ Menegus Bornemann, *Del señorío indígena a la república de indios*; Arturo Güémez Pineda, “El poder de los cabildos mayas y la venta de propiedades privadas a través del Tribunal de Indios: Yucatán (1750–1821),” *Historia Mexicana* 54, no. 3 (2005): 697–760; Luis Alberto Arrijo Díaz Virruel, *Pueblos de indios y tierras comunales: Villa Alta, Oaxaca, 1742–1856* (Mexico City, 2011).

³¹ See, for example, Menegus on the enduring importance of *cacicazgos* (native señorial lands) in the Mixteca Baja, one of three subregions of the Mixteca. Teposcolula and Yanhuitlan were part of the Mixteca Alta. Margarita Menegus Bornemann, *La Mixteca Baja entre la revolución y la reforma: Cacicazgo, territorialidad y gobierno, siglos XVIII–XIX* (Oaxaca, 2009).

³² Terraciano, *The Mixtecs of Colonial Oaxaca*, 193, 248–249.

³³ *Recopilación de leyes de los reynos de las Indias* (Madrid, 1681), tomo I, libro II, título I, ley iiij: “Que se guarden las leyes que los Indios tenían antiguamente para su gobierno, y las que se hicieron de nuevo.” On the use of “custom” in Indian litigation, see Yanna P. Yannakakis, “Costumbre: A Language of Negotiation in Eighteenth-Century Oaxaca,” in Ruiz Medrano and Kellogg, *Negotiation within Domination*, 137–171; Bianca Premo, “Custom Today: Temporality, Customary Law, and Indigenous Enlight-

The jurisdiction of native *cabildos* also extended to the adjudication and punishment of minor crimes. A 1618 crown decree, later compiled in the *Recopilación de leyes de los reynos de las Indias* (1681), stated that Indian magistrates had the authority to investigate, arrest, and temporarily detain criminals for one day in their own jails before turning them over to the Spanish authorities in the district seat. The law also permitted native magistrates to physically punish their subjects for minor crimes such as missing mass and religious celebrations, and for other “similar crimes.” Repeated drunkenness merited especially rigorous punishment, though the law did not specify penalties. It did state that native judges should keep physical punishment moderate. Specifically, the law prescribed “six or eight lashes” as appropriate.³⁴ Beyond these prescriptive outlines in Spanish law, however, native criminal or civil jurisdiction functioned off the page. The vast majority of disputes settled by native authorities left no written record, presumably having been adjudicated orally or by other means. This was especially true of criminal cases.³⁵

ON JULY 8, 1683, THE *ALCALDE MAYOR* in Yanhuitlan received a petition from Juan Matías, a native of the pueblo of San Andrés Sinaxtla, claiming that indigenous authorities from a neighboring village had exceeded their jurisdictional authority when they arrested, punished, and jailed him at the site of a makeshift court. At first glance, the case is a straightforward dispute in which the different parties told their sides of the story and the judge decided whose version was most credible. But as is true with hundreds of similar cases, the superficial simplicity of the dispute conceals ethnographic detail about several patterned features of Indian jurisdiction.

Native competition over jurisdiction took place literally on the ground in the dispute that led to Juan Matías’s arrest. Recall that the Spanish magistrate was on his way to a receiving house (*casa de recibimiento*) located at the boundaries between four indigenous communities to read the decision of New Spain’s high court in a land dispute between San Mateo and San Andrés. Before he could arrive, officials and villagers from San Mateo appeared on the scene to disrupt this legal ritual. There were conflicting reports of what happened next, but all parties to the dispute agreed that representatives from San Mateo ordered those building the structure to dismantle it and move it off “their” land, a request that was tantamount to ordering the temporary dismantling of Spanish jurisdiction over the land dispute and a rejection of the ruling in favor of their rivals. The natives from San Andrés who were building the structure balked.³⁶

It was at this moment that Juan Matías rode up on horseback, dismounted, spoke to the crowd in defense of his fellow villagers from San Andrés, and ended up scuffling with the officials from San Mateo, who arrested him, tied him up, whipped him, and

enment,” *Hispanic American Historical Review* 94, no. 3 (2014): 355–379; Tamar Herzog, “Colonial Law and ‘Native Customs’: Indigenous Land Rights in Colonial Spanish America,” *The Americas* 69, no. 3 (2013): 303–321. See also Victor Tau Anzoátegui, *El poder de la costumbre: Estudios sobre el derecho consuetudinario en América hispana hasta la emancipación* (Buenos Aires, 2001).

³⁴ *Recopilación de leyes de los reynos de las Indias*, tomo II, libro VI, título III, “De las Reducciones, y Pueblos de Indios,” ley xvj, fol. 200, “Que los Alcaldes de las Reducciones tengan la jurisdicción, que se declara.”

³⁵ Yannakakis and Schrader-Kniffki, “Between the ‘Old Law’ and the New.”

³⁶ AHJO T Crim., leg. 18, exp. 28, 1683, fols. 9v–10.

took him to jail. A few days later, Juan Matías filed his written criminal complaint against the San Mateo officials and natives for “lacking authority and jurisdiction . . . and [exhibiting] a disdain for Royal Justice.”³⁷ In turn, the officials filed a counterclaim against him for insubordination. Written petitions, all rendered in Spanish, then volleyed between the parties for over a month before the Spanish judge ruled on the jurisdictional dispute.

The conflict over the placement of the *casa de recibimiento* was not unique to this case. A little over a decade later, in 1695, the native governor and officials of Yanhuitlan complained to the Spanish magistrate that Diego Ramírez, one of two *alcaldes* in their pueblo government, had disobeyed their order to build a customary receiving house (here written as *recebimiento o descanso*) for a ceremony of investiture in which the Spanish *alcalde mayor* would give the staff of justice to the Spanish lieutenant magistrate of the region.³⁸ It might appear that both jurisdictional disputes were fundamentally territorial, but the existence of the temporary court places architectural structures and people at the center of authority, as well. Put differently, human beings, land, and objects worked together to constitute jurisdiction.

For the Mixtec people of Teposcolula, jurisdiction over people and territory was exercised through a lord, from a structure built expressly for that purpose. In the eyes of the indigenous parties to the 1683 dispute, the *casa de recibimiento* quite literally housed jurisdiction. Notably, in his first petition to the Spanish magistrate, Juan Matías indicated that the inhabitants of San Juan were obligated “by custom” to build the structure in order “to receive your Mercy.”³⁹ The notion of housed jurisdiction had entangled roots in both Mixtec and Spanish cultures.

Ñudzahui lords ruled from a palace (*aniñe*), or a single-story stone structure built around a central patio. The *aniñe* was both a functional “palace” for native lords and a symbol; as the home of the *yuhuitayu*, it was the nucleus of the superordinate unit of sociopolitical organization in Ñudzahui society, which Spaniards glossed as a *cacicazgo*, a native hereditary kingdom or chiefdom whose authority derived from a noble lineage. The *yuhuitayu* consisted of smaller units organized into complex and reciprocal relations of service and obligation. In Ñudzahui-language documentation from the colonial period, the relationship of smaller units to the lordly complex was expressed with the Spanish loanword *jurisdicción* (jurisdiction), a translation that signals an effort to distinguish the Spanish concept from its Mixtec referent and to apply the imperial legal category to the local context.⁴⁰ Although there might have been multiple *yuhuitayu* in a single jurisdiction, the Spaniards designated only one as a “head town” to serve as the

³⁷ Ibid., fols. 1–1v.

³⁸ AHJO T Crim., leg. 21, exp. 1, 1695. The custom of building receiving houses for visiting judges and dignitaries extended late into the eighteenth century in Oaxaca. A contractual agreement between nobles (*principales*) and commoners from San Juan Yaée, Villa Alta, stipulated that building a *rancho de recevimiento* on the occasions for which one was needed counted as part of the customary labor and services that commoners were required to perform for the community. AHJO, Villa Alta [hereafter VA], Civil series [hereafter Civ.], leg. 22, exp. 20, 1774.

³⁹ AHJO T Crim., leg. 18, exp. 1, 1683, fol. 28.

⁴⁰ Terraciano, *The Mixtecs of Colonial Oaxaca*, 195–196, 248, 164–165. Lockhart argues that the concept of *tecpán*, or lordly house, as the administrative epicenter of nobility, governance, and landholding had parallels throughout central Mexico; *The Nahuas after the Conquest*, 104. It is notable that the Mixtecs commandeered the Spanish term *audiencia*, normally reserved for high courts and not municipal bodies, which they termed *cabildos*, for their own village and town councils. Terraciano, *The Mixtecs of Colonial Oaxaca*, 191, 196.

administrative and parish seat, leaving the others as “subject towns.” This inevitably led to conflict and efforts at pueblo “secession” from designated head towns. Indigenous legal evidence and testimony suggest that both San Andrés and San Mateo had claims to *yuhuitayu* status, which may have contributed to their enmity.⁴¹

The court constructed at the wheat fields was intended to align authority and concentrate jurisdiction, no different than if were a permanent structure. For native people and Spaniards alike, local legal power accumulated in architectural spaces of temporary character. People in rural communities in early modern Spain, as well as in indigenous communities throughout colonial Spanish America, built ceremonial arches of branches and flowers in honor of the arrival of a royal official or an itinerant parish priest.⁴² On both sides of the Atlantic, these makeshift structures contained and transmitted religious and legal authority. Not only did the *casa de recibimiento* share its temporary nature with ceremonial arches, but it also had an analogue in Ñudzahui and Iberian agricultural practice, in which farmers built simple structures on faraway fields so that they did not have to travel long distances to tend their crops during periods of intense labor. In this regard, the creation of a court of sticks and branches had both a ceremonial and a seasonal or telluric quality common to Iberian and Mesoamerican agrarian societies.⁴³ But in 1683, at the *casa de recibimiento* where Juan Matías rode up, a misalignment of jurisdiction occurred.

Juan Matías’s petitions narrated how the native judge of San Mateo, Diego Gutiérrez, left the territory of his pueblo to appear at the contested site of the *casa de recibimiento*, where he arrested Juan Matías. This claim heightened the accusation that the indigenous *alcalde* had transgressed his jurisdiction. This was not necessarily because there were strict boundaries limiting Gutiérrez’s authority. Juan Matías pointedly argued that Gutiérrez could have waited and turned him over to the Spanish magistrate at the actual site of the conflict. This suggests that under normal circumstances, Gutiérrez and the native officials of San Mateo legitimately could have exercised jurisdiction beyond the bounds of their own pueblos.⁴⁴ But these were not normal circumstances. According to Juan Matías, Gutiérrez and the villagers exceeded their jurisdiction not by arresting him on contested land but by traveling to a structure that was to be occupied by the Spanish magistrate, usurping the jurisdiction of a higher authority.

Notably, Gutiérrez would deny having traveled to the *casa de recibimiento*, and by implication having knowingly preempted the jurisdiction of the imminently arriving Spanish magistrate. Instead, he testified that his constable arrested Juan Matías at the contested site and then took him to San Mateo, where Gutiérrez was “quietly” and

⁴¹ In a 1690 land dispute with another pueblo, the native authorities of San Andrés Sinaxtla submitted a radial map that conveyed its superordinate relationship to its surrounding communities; the map portrayed Sinaxtla (“Atata” in the Ñudzahui language) as a *yuhuitayu*, though Spanish colonial authorities did not consider it a head town, or *cabecera*. In a 1679 case, the indigenous officials of Yanhuítlan acknowledged that San Mateo was a *yuhuitayu*, even though it remained subject to the authority of Yanhuítlan. Terraciano, *The Mixtecs of Colonial Oaxaca*, 58–59, 131. On secession from *cabeceras* and sociopolitical fragmentation in the region, see Rodolfo Pastor, *Campeños y reformas: La Mixteca, 1700–1856* (Mexico City, 1987).

⁴² Ruiz, *A King Travels*, chap. 4.

⁴³ *Ibid.*, 202.

⁴⁴ For cases in which Indian authorities arrested and whipped Indians from other pueblos, see AHJO VA Crim., leg. 2, exp. 5, 1668; AHJO T Crim., leg. 18, exp. 17, 1682; AHJO T Crim., leg. 18, exp. 31, 1684; AHJO T Crim., leg. 20, exp. 1, 1689; AHJO VA Crim., leg. 6, exp. 5, 1698; AHJO T Crim., leg. 23, exp. 21, 1708; AHJO T Crim., leg. 31, exp. 24, 1753; AHJO T Crim., leg. 45, exp. 16, 1801.



FIGURE 2: Drawings of *xacalli*, a term in Nahuatl, the native language of central Mexico, translated in annotation into Spanish as *casas* (houses) and *chosas* (huts). These simple structures for sheltering agriculturalists took many forms. The second figure to the right in the top row depicts what the Spanish translated as a “spire of hay” (*chapel de paxa*), which likely resembled the *casa de recibimiento*. From Bernardo de Sahagún’s *Florentine Codex* (also known as the *General History of Things of New Spain*), folio 243 verso.

“peacefully” minding his own pueblo’s business, as Spanish law indicated that Indian judges should. These competing testimonies make clear that in the eyes of Spain’s native subjects, Indian jurisdiction was not always hemmed into a specific territory, exercised in a court, or applied exclusively to the inhabitants of a single municipality. It could expand or contract depending on the physical proximity of a Spanish judge, the status of the pueblo from which the officials hailed, and the status and identity of the subject in question.⁴⁵

Gutiérrez’s claim to be keeping the peace rather than stirring the pot was not incidental. It indexed a rich colonial notion, advanced by indigenous and Spanish people alike, that native society placed a cultural premium on social harmony and community peace.⁴⁶ In their response to Juan Matías’s criminal complaint, Gutiérrez and the other officials of San Mateo appealed to the idea of harmony by interpreting Indian jurisdiction as a pact with the king to keep good order according to local custom in exchange for legitimacy in the imperial regime. In this schema, Juan Matías was a disrupter. Witnesses for the officials testified that Juan Matías was insolent and displayed scorn for royal justice by failing to respect both them and the officials from a neighboring pueblo, all of whom had gathered at the *casa de recibimiento*. The witnesses made sure to contrast Juan Matías’s behavior to that of the officials from San Mateo, who according to testimony asked “courteously” that the natives move the structure to their own lands.

The emphasis on courtesy, a crucial element of both Mesoamerican and Iberian legal authority, derived from the cross-cultural significance of honor, status, and ceremony in structuring interpersonal exchange in matters of public importance, including rituals of rule, law, and religion.⁴⁷ Courtesy also served as a foil to Juan Matías’s brash behavior while signaling the high value of harmonious social relations: if a lack of respect led to lawlessness, then courtesy implied order, lawfulness, and justice.⁴⁸ The importance of

⁴⁵ Native jurisdiction could be limited or contested if the person who was whipped or punished was not considered an Indian. A native woman from Chilapa, also in the district of Teposcolula, approached the Spanish *alcalde mayor* in 1795, complaining that officials from her pueblo had whipped her husband for theft. She objected to this exercise of jurisdiction in part because her husband was a *mestizo*, as well as a member of the local militia who enjoyed the privilege of being tried only in the military court (*fuero militar*.) Her repeated mention of the fact that her husband was not a pure Indian indicates that in determining which authority held jurisdiction over him, *who* he was mattered as much as *where* he was. AHJO T Civ., leg. 50, exp. 13, 1795. In coastal northern Peru, one group of native officials reported that they punished subjects who defied alcohol prohibitions differentially, “severely” punishing Indian drinkers, but only levying fines against “white youths” and people of African descent who were caught imbibing in their jurisdiction. Archivo Regional de la Libertad, Trujillo, Peru [hereafter ARL], Asuntos de Gobierno, leg. 107, causa 1921, 1727.

⁴⁶ Owensby, *Empire of Law and Indian Justice in Colonial Mexico*, especially 247; Bianca Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire* (New York, 2017), 161–165, 188–190. See also ethnographic literature on the discourse of social harmony in Oaxaca’s indigenous communities: Laura Nader, *Harmony Ideology: Justice and Control in a Zapotec Mountain Village* (Stanford, Calif., 1990); James B. Greenberg, *Blood Ties: Life and Violence in Rural Mexico* (Tucson, Ariz., 1989); Greenberg, *Santiago’s Sword: Chatino Peasant Religion and Economics* (Berkeley, Calif., 1981).

⁴⁷ On the value of courtesy in colonial Mesoamerica, see Nancy Farriss, *Libana: El discurso ceremonial mesoamericano y el sermón cristiano* (Mexico City, 2014).

⁴⁸ Courtesy as a marker of legal authority was also invoked through its opposite, the accusation of a miscarriage of justice through a native judge’s “discourteous” speech in the following case from Villa Alta: AHJO VA Crim., leg. 23, exp. 10, 1802, fol. 5. For cases in which the value of courtesy was emphasized by Zapotec judges in their legal discourse, see AHJO VA Crim., leg. 4, exp. 5, 1687, fols. 10v–12; AHJO VA Crim., leg. 6, exp. 5, 1698, fols. 7ff.; AHJO VA Crim., leg. 7, exp. 6, 1702, fols. 6–7; AHJO VA Crim., leg. 7, exp. 11, 1703, fols. 92–93; AHJO VA Crim., leg. 12, exp. 7, 1727, fol. 3.

courtesy is also evident in Juan Matías's petition, in which he claimed that he had displayed nothing but "humility and temperance" when the conflict broke out.⁴⁹

Native legal authority and the ideal of harmonious social order were further embodied in material objects that simultaneously conjured community and imperial order. Residents of San Mateo leveled countercharges against Juan Matías in a manner that should be familiar to all historians of law in the Spanish Empire: witnesses claimed that he had "broken the staff of royal justice" held by one native official and "failed to respect the authority" of the staff that another brandished. In Juan Matías's petition, he metaphorically protected the staff of justice in decrying the jurisdictional overreach of native authorities. He described his opponents as having "without any . . . authority . . . usurped the royal staff that Your Mercy [the Spanish *alcalde mayor*] administers."⁵⁰

But for Juan Matías, and for all subjects of the Spanish king, the staff was more than a metaphor.⁵¹ All royal officials of the Spanish Empire, from the most humble indigenous *alcalde* to the viceroy, carried staffs of justice (*varas de justicia* or *varas del rey*) to signal the authority vested in them by the Spanish monarchy.⁵² Staffs were also crucial symbols of authority in Mesoamerican society, and though their significance varied across regions, they were especially important for the Mixtecs. In the rich pre-Hispanic Mixtec pictorial record, which focuses on the histories of ruling lineages, staffs were utilized as royal insignia and ritual implements for the foundation of ethnic territory. In the Codex Vindobonensis, which recounts the Mixtec creation story, the Mixtec culture hero Lord 9 Wind carries a roll of paper and a quincunx, or five-faceted staff, over his shoulder, with which he creates the necessary conditions for the births of deities, sacred ancestors, and royal bloodlines.⁵³ Whereas staffs connected human beings to the realm of ancestors among Mixtecs—and, it must be said, in many native cultures across the Americas—in post-conquest pictographic genealogies and primordial titles from Oaxaca's Sierra Norte, staffs distinguish colonial-era rulers from their pre-Hispanic forebears, announcing the territorial foundation of their Spanish-style municipalities and channeling the power of the domain of Indian jurisdiction after conquest.⁵⁴

⁴⁹ AHJO T Crim., leg. 18, exp. 1, 1683, fol. 1.

⁵⁰ Ibid., fol. 1v.

⁵¹ Native disputes, like conflicts over officialdom throughout the Spanish Empire, are filled with metaphorical references to being dispossessed of staffs of office (*quitar la vara*), but at times the actual staffs were brandished as weapons of punishment, physically wrested from officials, and even embargoed by being put in jail. See AHJO VA Crim., leg. 2, exp. 5, 1668; AHJO VA Civ., leg. 18, exp. 7, 1764; Archivo del Poder Ejecutivo de Oaxaca, VA, Civ., leg. 25, exp. 11, 1784; AHJO VA Crim., leg. 20, exp. 8, 1792; AHJO VA Crim., leg. 23, exp. 10, 1802. In northern Peru, such cases include ARL, Asuntos de Gobierno, leg. 107, causa 1916, 1723; ARL, Corregidor, Civ., leg. 230, causa 2025, 1769. A similar allusion to the "king's staff" appears in AHJO VA Civ., leg. 3, exp. 3, 1690.

⁵² William B. Taylor, *Magistrates of the Sacred: Priests and Parishioners in Eighteenth-Century Mexico* (Stanford, Calif., 1996), chap. 9. On staffs of office in contemporary indigenous communities in the Andes, see Frank Salomon, *The Cord Keepers: Khipus and Cultural Life in a Peruvian Village* (Durham, N.C., 2004), chap. 4.

⁵³ On the importance of staffs for Mixtecs, see Justyna Olko, *Turquoise Diadems and Staffs of Office: Elite Costume and Insignia of Power in Aztec and Early Colonial Mexico* (Warsaw, 2005), 481. On the quincunx staff, see Maarten E. R. G. N. Jansen and Gabina Aurora Pérez Jiménez, *The Mixtec Pictorial Manuscripts: Time, Agency and Memory in Ancient Mexico* (Leiden, 2011), chap. 8; Elizabeth Hill Boone, *Stories in Red and Black: Pictorial Histories of the Aztecs and Mixtecs* (Austin, Tex., 2000), 89–96; Jill Leslie Furst, *Codex Vindobonensis Mexicanus I: A Commentary* (Albany, N.Y., 1978), chap. 4.

⁵⁴ Michel Oudijk, *Historiography of the Bénizáa: The Postclassic and Early Colonial Periods (1000–1600 A.D.)* (Leiden, 2000). Michel R. Oudijk and María de los Ángeles Romero Frizzi, "Los títulos primordiales: Un género de tradición mesoamericana, del mundo prehispánico al siglo XXI," *Relaciones* 24,



FIGURE 3: Lord 9 Wind descending from the heavens on a sacred cord carrying the implements of rule: a quincunx staff in his left hand and a roll of paper in his right. One of his monikers is "Lord who writes with the red and black ink." *Codex Vindobonensis Mexicanus* 1, facsimile edition (Mexico City, 1992), vol. 1, 48 obverse (image), and vol. 2, 90–93 (moniker and description).

Alongside the staff of justice, the whip represented one of the most recognizable implements of Indian judicial authority. According to Juan Matías's testimony, when he arrived at the site of the *casa de recibimiento* and tried to intervene in the dispute, he was beaten, bound at the wrists, and marched to the public jail in San Mateo. There Gutiérrez, the native *alcalde* of the pueblo, ordered the constable to whip Juan Matías, a course of action to which he would later admit without apology. Again, Spanish legislation allowed native judges to inflict physical punishment of six to eight lashes on subjects who committed crimes within their jurisdiction. Native authorities usually reported that they adhered to the law when punishing subjects, and six or eight strokes with a lash was, in a sense, the magic number in official reports. But, crucially, native authorities used these numbers not as limits but as multipliers in determining the appropriate punishment. There are examples from the jurisdictions of Teposcolula and Villa Alta that indicate that in specific circumstances, native authorities would openly exceed the prescribed number of lashes. Dating from 1689, 1703, 1712, 1727, 1748, 1753, 1754, 1798, and 1799, the cases bear a striking similarity in that native judges claimed to have ordered their bailiffs to administer lashes in multiples of six (for example, six in the morning and six more in the evening; a dozen, two dozen, thirty-six, or sixty at a time).⁵⁵ This practice stands in contrast to that of Spanish jurisdiction, in which lashes were doled out in multiples of twenty-five (twenty-five, fifty, one hundred, and two hundred). In some of the cases, native judges suggested that the extra lashes were the result of the criminals' lack of contrition. In others, officials reported that the inflated number was a response to the demands of the assembled villagers, to ensure that the criminals were taught a lesson, a dynamic that brings into view a realm of communal justice that informed, and perhaps at times trumped, the authority of native judges. Three additional cases, in 1823, 1828, and 1846, which date to the post-independence period, when whipping at the pillory by native judges was proscribed by law, demonstrate the durability of meting out lashes in multiples of six in Oaxaca's indigenous communities.⁵⁶

In San Mateo's counterclaim in the 1683 case, native *alcalde* Diego Gutiérrez said in his own defense that the six lashes he had ordered Juan Matías to endure were consistent with "ordinary legal transactions" in native pueblos. Juan Matías could not technically disagree, even as he lifted his shirt to display his wounds for the Spanish district magistrate to see. He did this not to prove that he was the victim of excessive punishment, but rather to prove that San Mateo's officials had exceeded their jurisdiction by arresting him in the first place. The substance of Juan Matías's complaint was that the

no. 95 (2003): 19–48; Margarita M. Cortés Márquez and Luis Reyes García, "Manuscritos coloniales de Santa María Tiltepec, Mixe, Oaxaca," *Cuadernos del Sur* 10, no. 20 (2004): 121–136; María de los Ángeles Romero Frizzi and Juana Vásquez Vásquez, "Memoria y escritura: La memoria de Juquila," in María de los Ángeles Romero Frizzi, ed., *Escritura Zapoteca: 2,500 años de historia* (Mexico City, 2003), 393–448; Michel R. Oudijk, "Espacio y escritura: El Lienzo de Tabaá I," *ibid.*, 341–392, here 371–376; María de los Ángeles Romero Frizzi and Juana Vásquez Vásquez, "Un título primordial de San Francisco Yatee, Oaxaca," *Tlalocan* 17 (2011): 85–120.

⁵⁵ AHJO T Crim., leg. 20, exp. 1, 1689; AHJO VA Crim., leg. 3, exp. 119, 1703; AHJO T Crim., leg. 24, exp. 34, 1712; AHJO VA Crim., leg. 12, exp. 7, 1727; AHJO VA Civ., leg. 13, exp. 17, 1750 [1748]; AHJO T Crim., leg. 31, exp. 24, 1753; AHJO T Crim., leg. 31, exp. 32, 1754; AHJO T Crim., leg. 43, exp. 40, 1798; AHJO T Crim., leg. 44, exp. 22, 1799.

⁵⁶ AHJO VA Crim., leg. 27, exp. 7, 1823; AHJO VA Crim., leg. 29, exp. 16, 1828; AHJO T Crim., leg. 64, exp. 26, 1846.

officials had not followed the proper legal procedures for arrest, punishment, and imprisonment. He claimed that when he was arrested, he was not given a chance to defend himself either physically or verbally. He was literally bound by the hands and metaphorically gagged: the judge of San Mateo proceeded “without permitting me to absolve myself and [give] my justifications” for his intervention into the conflict over the placement of the *casa de recibimiento*.⁵⁷ In other words, he was denied due process. This is a critical statement, suggesting that there was indeed a legal “forum” in native jurisdiction in which subjects could present their side of a dispute to native officials. Native justice, like Spanish justice, depended on proper procedure, like the ability to plead one’s case, especially, it seems, when the sentence might involve corporal punishment.

According to testimony, prior to being whipped, Juan Matías attempted to enact his own disciplinary ritual against the constable of San Mateo, even though he did not hold office or possess the legal authority to do so. Whipping by judicial order counted as only one form of physical punishment in a broader repertoire of indigenous criminal justice meted out not only by native officials but also by a shadow group of elders and authority figures made up of native elites. Community officials legitimized the exercise of native jurisdiction, and particularly physical punishment, according to notions of generational and gendered privilege. If they faced insubordination from one of their pueblo’s male subjects, they would punish him in a way that asserted generational dominance on the offender’s very body through cutting his hair and slicing his ears.

In many regions of Mesoamerica, men wore their hair in bunched sidelocks, known as *balcarrotas*. Indigenous men considered having these sidelocks cut to be a particularly humiliating punishment. In the pre-Hispanic period, victors in war cut the hair of their captives, symbolizing their submission and emasculation. Long hair was so important to the identity of indigenous men of all social ranks that Spanish law mandated that Indian men be allowed to wear their hair as they chose, and that their hair not be cut.⁵⁸ Despite this, as William B. Taylor notes, priests in Mexico cut parishioners’ sidelocks as a form of punishment for failing to observe Catholic rituals, duties, and doctrine.⁵⁹ Native authorities ignored the law and engaged in the practice as well. In a 1685 case from Teposcolula, an Indian official was charged with whipping a young itinerant laborer and cutting his sidelocks at the behest of an Indian noblewoman, and in a 1690 case from Villa Alta, a Zapotec *alcalde* found himself in hot water for having threatened to cut the sidelocks of the son of a powerful local man.⁶⁰

In Juan Matías’s case, he was accused of having pulled out a knife and threatened to cut the sidelocks off the constable of San Mateo. The threat made it clear that he occupied a space of authority that the San Mateo officials found threatening. He had ridden up to the *casa de recibimiento* on horseback while the others had walked. Not everyone could own or ride a horse; nor did many own a European-style knife—certainly not Indian commoners. Native nobility theoretically had to petition the high court in Mexico City for licenses to own and ride horses, and knives were implements of Spanish mate-

⁵⁷ AHJO T Crim., leg. 18, exp. 28, 1683, fol. 13.

⁵⁸ A 1587 royal law noted that when priests cut the long hair of the Indians they baptized, it elicited “grave sentiments, because returning to their lands, they suffer the note of infamy.” Calling the wearing of long hair an “ancient and venerable ornamentation,” the law instructed priests to let natives wear their hair as they wished. *Recopilación de leyes de los reynos de las Indias*, tomo I, libro I, título I, ley 18.

⁵⁹ Taylor, *Magistrates of the Sacred*, 234.

⁶⁰ AHJO T Crim., leg. 19, exp. 5, 1685; AHJO VA Civ., leg. 3, exp. 3, 1690.

rial culture possessed primarily by the native elite.⁶¹ Juan Matías wielded a knife, rode a horse, and wore boots with spurs, which ended up cutting the sole of the native constable's foot when they scuffled. The constable, for his part, either was shoeless or wore loose sandals, a sartorial difference between the two men that manifested a growing conflict between the authority of a native elite wrapped in the trappings of Spanish culture and that of native officeholders of lesser social status.

What most empowered Juan Matías to undercut the authority of the native judges and officials from San Mateo, however, was not his knife but his quill. His opponents specifically referenced his overzealous engagement with Spanish law. He was called *cabiloso* and *pleitista*, terms that can be translated as “excessively litigious” and were often invoked in legal disputes to disparage native litigants.⁶² While it is unclear what role he had played in the earlier lawsuit between his pueblo of San Andrés and San Mateo, no one testified that Juan Matías held an elected position in town government or an official role in the Spanish court. In fact, this may have been the reason he was singled out by the San Mateo officials: his informal legal authority seems to have threatened the town council's monopoly over the practice of law in the pueblos.

For the legal officials of San Mateo, Juan Matías's intervention into the conflict surrounding the *casa de recibimiento* was more than just a minor offense; it constituted a jurisdictional challenge. As they defended their actions, they presented a vision of their jurisdiction as competitive with and under threat from that of the Spanish magistrate, and at the same time, in alignment with that of the Spanish king. A lawyer representing two of the officials used language in their defense that indicated that Juan Matías wanted to provoke the Spanish colonial judge into jurisdictional competition with the native court. Claiming that the inhabitants and officials from San Mateo had arrived on the scene of the construction of the *casa de recibimiento* by chance, he argued that they had committed no crime when they arrested and castigated Juan Matías for insulting them and other native ministers of royal authority. In contrast, the officials' advocate argued, the Spanish *alcalde mayor*'s investigation had disrupted the link between native judge and king. The defender chose to use the word *competir*, “to dispute jurisdiction,” to label Juan Matías's criminal suit as an unnecessary intrusion into the proper exercise of ordinary jurisdiction.⁶³

This entire incident would have left no trace if Juan Matías had simply accepted the punishment. The principal criminal case—meaning his arrest, sentencing, and whipping—could easily have been adjudicated by native authorities, following the pattern of the rules and procedures of both imperial and local provenance examined here, without generating a single piece of paper. This possibility serves only to highlight the fugitive nature of native law compared to Indian jurisdiction: the daily interactions around law and disorder in a native pueblo could easily escape the imperial view. In fact, Gutiérrez and

⁶¹ Regarding the appropriation of Spanish material culture by native elites and petitions of native nobility to dress like Spaniards, carry swords and daggers, obtain and use firearms, and ride horses in the Mixteca, Villa Alta, and central Mexico, see Terraciano, *The Mixtecs of Colonial Oaxaca*, 203; John K. Chance, *Conquest of the Sierra: Spaniards and Indians in Colonial Oaxaca* (Norman, Okla., 2001), 126; Edward W. Osowski, *Indigenous Miracles: Nahuatl Authority in Colonial Mexico* (Tucson, Ariz., 2010), 57; Robert Haskett, “Coping in Cuernavaca with the Cultural Conquest,” in John E. Kicza, ed., *The Indian in Latin American History* (Boulder, Colo., 1999), 93–137. For sumptuary laws and regulations regarding firearms and the use of horses, see *Recopilación de leyes de los reynos de las Indias*, tomo III, libro VI.

⁶² AHJO T Crim., leg. 18, exp. 28, 1683, fol. 19v.

⁶³ *Ibid.*, fol. 15v.

his fellow officials responded to Juan Matías's legal complaint by fleeing their own pueblo. That two of the three officials that Juan Matías singled out in his criminal allegation were eventually detained and incarcerated by the Spanish magistrate for their role in this dispute owes much to Juan Matías's successful translation of events on the ground into Spanish words on the page.

JUAN MATÍAS DID IN FACT bring suit, and by translating the symbols, objects, and practices deployed during the conflict at the *casa de recibimiento* into a written petition and submitting it to a Spanish judge, he completed the third element in the construction of Indian jurisdiction. Indeed, it seems likely that Juan Matías himself even wrote his own petitions in a fluent though logically convoluted Spanish legalese, making him a powerful legal figure unrestrained by native officialdom. The case contains three different petitions on his behalf, each written in the first person and in consistent handwriting that matches the signature at the bottom.⁶⁴ This handwriting is distinct from all other writing in the case.

The handwriting alone does not prove that Juan Matías penned the documents himself, but there are other clues. The language of the petition, first and foremost its orthography and mixed indigenous-Spanish spelling and word formations—*yoo vierra* rather than *hubiera* and the use of *th* rather than *t* in common Spanish words such as *asoths* (*azotes*, or lashes) and *anthes* (*antes*, or before)—signals that the writer was a bilingual Mixtec speaker.⁶⁵ In addition, the legal argumentation does not precisely follow Spanish narrative logic or style. For example, the criminal complaint narrates how the native *alcalde* of San Mateo did not permit Juan Matías to tell his side of the story, and “*insofacto*,” by which he meant the Latin phrase *ipso facto*, “condemned me to be whipped, an enormous legal act in violation of law [*derecho*].” His use of Latin in this part of his petition signals an attempt to order the argument for colonial eyes, but there is a great deal in his statement that defies Western logical order: no violation is exactly prior to or causative of another. In fact, none of the argument in this petition—which amounted to the contention that only a hearing before a native authority would give that authority jurisdiction—is sequential. Yet Juan Matías chose to present it using a Latin phrase to index rationality and compliance with Spanish norms.⁶⁶

These linguistic slippages and the not-quite-successful mimicry of Spanish legal argumentation strongly suggest that Juan Matías was an indigenous “legal entrepreneur.”⁶⁷ The fact that witnesses in the case accused him of being overly litigious sug-

⁶⁴ The signature is missing from the second petition. *Ibid.*, fol. 13v.

⁶⁵ The *th* sound—an alveolar non-sibilant fricative—is relatively rare globally but common in the Mixtec language. See Ian Maddieson, “Presence of Uncommon Consonants,” in Martin Haspelmath, Matthew S. Dryer, David Gil, and Bernard Comrie, eds., *The World Atlas of Language Structures* (New York, 2005), 82–85, here 83.

⁶⁶ The improvisational nature of indigenous legal texts resembled that of native Christian texts, whose genres and styles varied according to their authorship, locality, audiences, and intended uses. Mark Z. Christensen, *Nahua and Maya Catholicisms: Texts and Religion in Colonial Central Mexico and Yucatan* (Stanford, Calif., 2013).

⁶⁷ Taylor, *Magistrates of the Sacred*, 376–384. Taylor looks at these “entrepreneurs” through the eyes of suspicious rural priests, seeing them as “devious outsiders or self-important men with private ambitions,” but he also allows that within the pueblo they could be trusted figures if they could assert rights in its name (377).

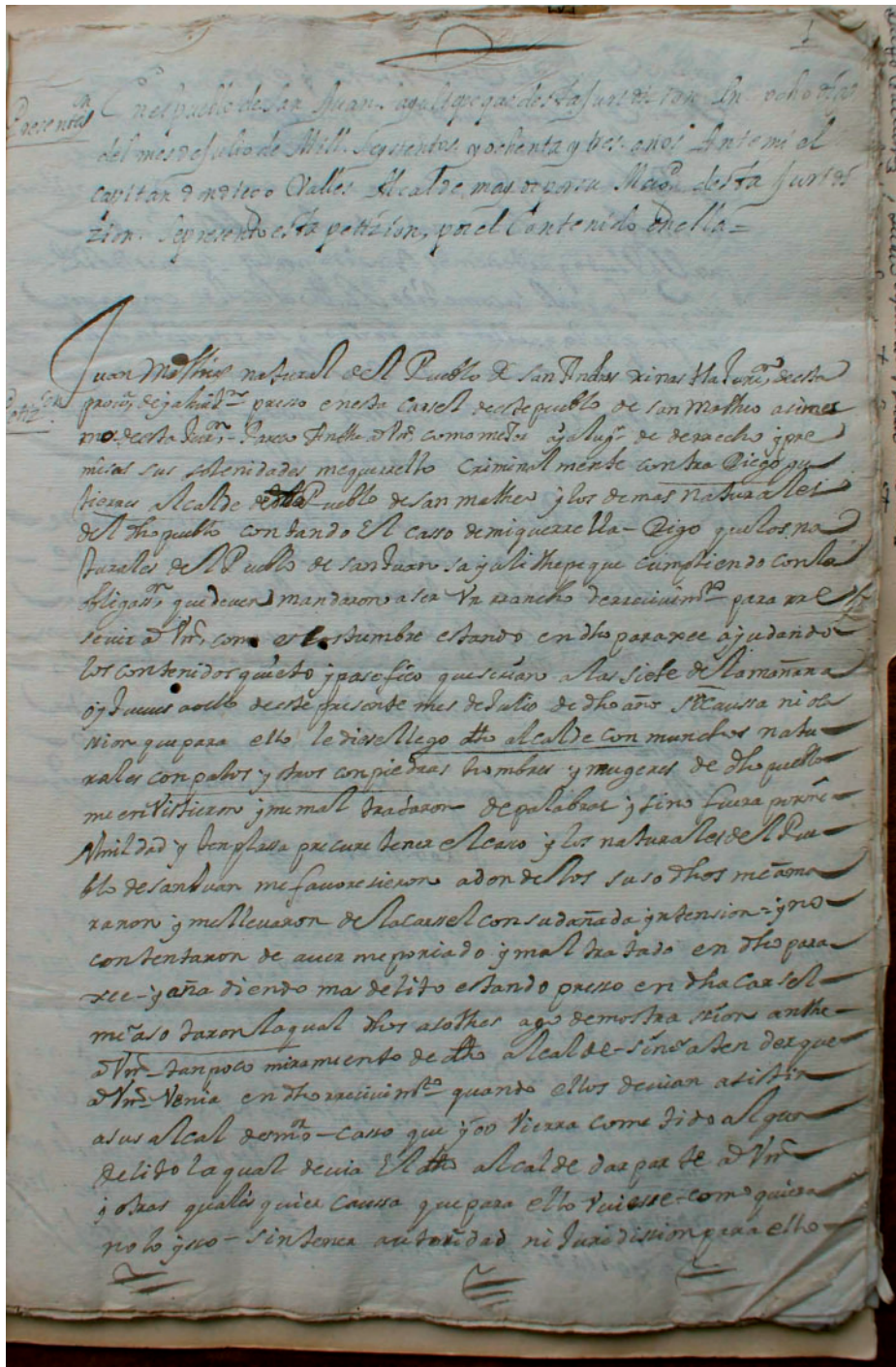


FIGURE 4: The first of three petitions that Juan Matías submitted to the *alcalde mayor*. While each is a recognizable Spanish legal genre (a criminal complaint, or *querrela*; a petition of response; and a statement of *excepciones*, or discounting of witnesses against him), all bear orthographic signs of being penned by a Mixtec speaker. The final two lines read: “the *alcalde* should have notified Your Mercy of [this] and any other cases and for whatever reason he did not, without having the authority or jurisdiction over [the case] / *devia el dho Alcalde dar parte a Vmd y otras qualesquier caussa que para ello vudiesse como quiera no lo yssio sin tener autoridad ni jurisdiccion para ello.*” Archivo Histórico Judicial de Oaxaca, Teposcolula, Criminal series, legajo 18, expediente 28, 1683, folio 1. Thanks to José Carlos de la Puente Luna for his paleographic intervention.

gests the same. So, while it is certainly possible that he had a single anonymous agent who wrote all three of the petitions submitted in his name during the suit, it is equally possible that he authored them himself and also acted as an amanuensis for indigenous litigants from the region in other cases.⁶⁸

The possibility that Juan Matías did his own writing in the case—or at least the lack of clarity about who authored his accusations—provides historians with another avenue for understanding Indian jurisdiction.⁶⁹ A large part of “going to court” involved the delegation of legal writing, but it did not necessarily involve complete surrender to the knowledge of another person. Creating legal documents was not a solitary endeavor. It involved sharing, communicating, and translating legal knowledge, and its artifacts often reveal a co-authorship of legal texts.

Whether or not he penned his own petitions, Juan Matías clearly saw himself as a legal translator. As he detailed what should have been standard native legal practice and what had gone awry, his petitions rendered unfamiliar practices of native law into a form that a Spanish audience would have recognized as “jurisdictional.” The ability of figures like Juan Matías to operate in multiple legal worlds at once endowed them with tremendous power in indigenous communities, but this power was as much feared as admired.⁷⁰ Juan Matías himself seemed sensitive to this fact. His insistence that he held no official office in his own town government, and the implication that he therefore had no role to play in the land dispute or reason to have acted insubordinately at the site of the *casa de recibimiento*, comes off as protesting too much.

Juan Matías’s performance of impartiality may have obscured his strong connections with his pueblo and vested interest in the land dispute. It also provides additional clues about the provenance of his legal literacy. That he traveled on horseback and wielded the implements of a horseman suggests that he likely engaged in long-distance trade. Though comparatively isolated, the Mixteca region was cut through by trade routes used by Spaniards, *castas* (mixed-race free people), and native people, and horses were a primary means of transporting people and goods.⁷¹ Native muleteers and merchants were more likely than their counterparts who engaged primarily in agriculture to be literate (or semi-literate), multilingual, and familiar with notarial formulae such as bills of sale and accounts. Sometimes native individuals and communities granted power of attorney to long-distance traders to enable the merchants to conduct legal business for them when they passed through major colonial centers.⁷²

Juan Matías might have been unusually literate in the law, but his role-shifting as

⁶⁸ Bianca Premo, “Legal Writing, Civil Litigation, and Historical Agency in the 18th-Century Spanish Imperial World,” in *The Oxford Research Encyclopedia of Latin American History: Spanish Empire* (New York, 2017), 1–22, <https://doi.org/10.1093/acrefore/9780199366439.013.247>.

⁶⁹ José Ramón Jouve Martín, *Esclavos de la ciudad letrada: Esclavitud, escritura y colonialismo en Lima, 1650–1700* (Lima, 2005); Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham, N.C., 2010); Sylvia Sellers-García, *Distance and Documents at the Spanish Empire’s Periphery* (Stanford, Calif., 2014); Joanne Rappaport and Tom Cummins, *Beyond the Lettered City: Indigenous Literacies in the Andes* (Durham, N.C., 2012); Gabriela Ramos and Yanna Yannakakis, eds., *Indigenous Intellectuals: Knowledge, Power, and Colonial Culture in Mexico and the Andes* (Durham, N.C., 2014).

⁷⁰ For native and Spanish perceptions of indigenous legal agents, see Yannakakis, *The Art of Being In-Between*.

⁷¹ María de los Ángeles Romero Frizzi, *Economía y vida de los españoles en la Mixteca Alta, 1519–1720* (Mexico City, 1990).

⁷² See Spores, *The Mixtecs in Ancient and Colonial Times*, 179–180, on power of attorney in the Mixteca; and Yannakakis, *The Art of Being In-Between*, chap. 1, on long-distance traders as legal agents in Villa Alta.

criminal accuser, possible writer, and counsel in his own defense, as well as self-appointed advisor to the Spanish judge, was not unusual. Native men of standing regularly occupied roles across jurisdictional boundaries. They entered and exited through the revolving doors of native municipal councils, church offices, and native judgeships multiple times over the course of a lifetime, developing broad legal literacy along the way.⁷³ The spottiness of education in rural settings, however, meant that within indigenous communities, the skill of writing was reserved for a few, and existed on a spectrum from writing fluency in multiple languages, to literacy in the local native language only, to semi-literacy.⁷⁴ Under these circumstances, translation by native legal intermediaries went far beyond the faithful reproduction of text from one language in another. It entailed the transmutation of local experience and practice onto paper, which demanded certain legal forms, genres, and formulae. It also involved recognizing that the more patterned and familiar the language—that is, the more that it invoked jurisdiction—the more likely it was that the case would gain traction with a Spanish judge.

Juan Matías was not the only writer in this criminal case displaying boundary-crossing legal knowledge and shifting authorial roles. In vast stretches of the empire, there was a serious shortage of personnel capable of filling the multiple offices that were presumed necessary for the smooth functioning of legal institutions.⁷⁵ In the idealized world of notary and lawyers' manuals, as well as in Spanish legislation, each step of a lawsuit or criminal complaint relied on the expertise of a specialized official: a procurator or other advocate; a *receptor*, or "receiver," who accepted the text of an opening petition or complaint; a court notary, who served as the tribunal's eyes, ears, and pen; an interpreter in regions where parties to the dispute and witnesses could not be counted on to speak Spanish; an attorney; a bailiff; a constable; and, of course, the judge and his lieutenant.⁷⁶ But in rural areas such as Teposcolula, a small number of men had to fill many of these positions themselves. The same people acted as functionaries in different roles and institutional settings. The law demanded extemporaneity, especially at the margins of empire.

While there were multiple witnesses to events in Juan Matías's case, only four other writers penned the various legal instruments, petitions, testimony, and rulings in its fifty pages. All were identified by name and signed on their own behalf. If they signed for a witness, they carefully noted that they were doing so because the witness "did not know

⁷³ See Schrader-Kniffki and Yannakakis, "Sins and Crimes"; Ramos and Yannakakis, *Indigenous Intellectuals*; Owen H. Jones, "Chinamitales: Defensores y justicias k'ichee'en las comunidades indígenas del altiplano de Guatemala colonial," *Histórica* 40, no. 2 (2016): 81–109.

⁷⁴ Dorothy Tanck de Estrada, *Pueblos de indios y educación en el México colonial, 1750–1821* (Mexico City, 1999); Tanck de Estrada, *Atlas ilustrado de los pueblos de indios: Nueva España, 1800* (Mexico City, 2005).

⁷⁵ See Sellers-García, *Distance and Documents at the Spanish Empire's Periphery*; Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700–1800* (Albuquerque, N.Mex., 1995).

⁷⁶ Legal manuals were especially important for judges presiding over rural areas without the machinery of the Spanish royal state, and while many Spanish editions remained popular in the colonies, Mexican legal experts began to produce their own manuals in the eighteenth century. See Charles R. Cutter, *Libro de los principales rudimentos tocante a todos juicios, criminal, civil, y ejecutivo, año de 1764* (Mexico City, 1994); Juan Ricardo Jiménez Gómez, *Un formulario notarial mexicano del siglo XVII: La Instrucción de escribanos de Juan Elías Ortiz de Logroño* (Mexico City, 2005). Indeed, these manuals underscore the great range of involvement that Spanish judges could have in a criminal case, depending on region. Ortiz de Logroño remarks that many judges had begun to believe that they could be absent for certain parts of criminal suits, such as interrogations, because other officials had the ability to oversee them—a sharp contrast to the situation of *alcaldes mayores* in Oaxaca, who worked with few personnel (311).

how to read or write,” as was the formula prescribed by Spanish law. These figures included an interpreter, auxiliary witnesses (*testigos de asistencia*), a court-appointed legal defender of the native officials from San Mateo, and finally the Spanish magistrate himself, the *alcalde mayor*.

Just as Juan Matías’s petitions confound strict categories of “litigant” and “legal representative,” the papers penned by the Spanish magistrate in the case defy simple description as “rulings.” Colonial judges were, by law, to serve only limited terms of office in any one district to prevent them from developing too many local attachments. This meant that they were almost always playing cultural catch-up in social and linguistic milieus that they little understood.

The *alcalde mayor* in this case, Don Diego Valles, found himself in precisely this position. With no receptor, court notary, or even public notary for miles around, he ended up penning the vast majority of the words that appear on the pages of the criminal complaint related to Juan Matías. He officially “accepted” Juan Matías’s documents; he attended the gathering of witnesses in the pueblos and in his office in Yanhuitlan; he ratified their testimony; and he was present during interrogations. Crucially, he transcribed witness testimony as it came out of the mouths of Mixtec-speaking witnesses and through an oral interpreter named Don Tomás de Burgoa. (And sometimes it appears that Burgoa was not on hand at the same time as the witness, meaning that Valles had to improvise.) The fact that the Spanish magistrate served as court notary, translator, and judge all at the same time left some interesting grammatical twists in the testimony. He recorded most testimony in the third person, but when a witness testified about him—for example, mentioning his impending arrival at the *casa de recibimiento*, his staff of justice, or especially his jurisdiction—he rapidly switched to first person: “my pending arrival,” “my royal jurisdiction.”⁷⁷

The fluidity of legal roles taken on by various actors, the improvisational quality of the texts they produced, and the interpenetration of forms of authority do not indicate that there was an absence of colonial jurisdictional order or power. Juan Matías’s criminal case resulted in a ruling, and his sentence resulted in a kind of post facto limit on the exercise of native jurisdiction. Putting on his judge’s hat, Valles decided twenty-seven days after Juan Matías’s initial complaint that he was ready to rule, and he notified the two San Mateo officials who had been imprisoned in the jail in Yanhuitlan to prepare for the verdict. In his sentence, he declared the native *alcalde* and constable of San Mateo guilty of having “mistreated” Juan Matías, and they were ordered to pay court costs and a fine of five pesos apiece.

This was a modest penalty, but Valles’s sentence did contain a detail of more consequence: it placed limits on the jurisdiction of San Mateo’s elected officials, going not only backward but also forward in time. He stated that the native officials from San Mateo were to “refrain from this point forward from punishing any prisoner without first taking him into custody and informing me, so that I can formalize [*fulminar*] the complaint and any others, and rule on them in justice.” In other words, the *alcalde mayor* attempted to completely subordinate the criminal jurisdiction of these native authorities to that of his own Spanish court, which worked in a “formalized” and written realm.

This ruling might have been a sign that the Spanish were seeking to curb Indian ju-

⁷⁷ Burns calls these kinds of curiosities or shifts “textual jolts”; *Into the Archive*, 107.

risdiction on the ground in a more systematic manner. Over the course of the eighteenth century, Spanish authorities seem to have grown increasingly wary about leaving physical punishment in the hands of native officials.⁷⁸ Still, any assertion of the omnipotence of Spanish jurisdiction over Indian officials and their courts was surely just that—an assertion. More than a mandate that actually constrained the everyday exercise of jurisdiction by native judges, Valles's sentence was just one maneuver in the ongoing dynamic and fluid process of colonial jurisdictional competition, made possible by translation onto the page by native legal entrepreneurs like Juan Matías.

RECENT LEGAL HISTORIES OF EMPIRE would suggest that the Spanish *alcalde mayor*, a secular judge whose authority was said to represent that of the king himself, faced constant rivalry from other jurisdictional authorities in the daily course of colonial politics, and that the push and pull of this competition was a central dynamic of maintaining empire. Jurisdictional competition took place with ecclesiastical officials, missionaries, and superior tribunals such as the Audiencia of New Spain and the viceroy in Mexico City. It is important to note that Spanish judges also competed with native judges, who saw themselves as ministers of the king, carried staffs of justice, wielded whips, and operated within the bounds of jurisdictions spelled out in Spanish legislation. Like village justice in locales across the globe, native justice transpired, for the most part, off the written page. When Juan Matías captured native legal authority in writing, he translated lived legal practices into the language of a criminal complaint, igniting jurisdictional competition and inserting native authority into the architecture of imperial law. In this regard, he has imparted lessons about using official imperial legal documents to understand how Indian jurisdiction was produced and maintained. This method, which involves following jurisdiction from the books to the ground to the page, is applicable to all settings where the archives are biased in favor of written state or imperial jurisdiction over local people.

Indian jurisdiction did not always follow familiar European patterns or reside in symbols immediately recognizable to Spanish officials. Or to modern legal scholars. In the 1683 case produced by the dust-up at the *casa de recibimiento*, imperial concepts of law animated locally meaningful objects, symbols, and practices as factions and individuals competed over legal authority and territory. In his petitions and testimony, Juan

⁷⁸ Despite wide-ranging judicial reforms under the Bourbons, the jurisdiction of native *cabildo* officials seems to have remained relatively untouched. See *Real ordenanza para el establecimiento é instruccion de intendentes de ejército y provincia en el reino de la Nueva-España* (Madrid, 1786), article 7, 11–12. Although there is ample evidence that native judges continued ruling as they had in the past, the inhabitants of one Mixtec village believed by the mid-eighteenth century that native officials could not impose physical punishment without first obtaining the approval of Spanish officials; AHJO T Civ., leg. 34, exp. 24, 1759, fol. 1v. A procurator on the north coast of Peru also interpreted the authority of native officials to inflict physical punishment very narrowly in the late eighteenth century; ARL Intend. Crim., leg. 353, causa 1833, 1784, fol. 25. Note that Taylor discusses a similar crackdown on parish priests' legitimate ability to whip parishioners. However, as we do, he finds more evidence that interpretations of priests' authority were narrowing rather than proof of actual laws curbing their authority; *Magistrates of the Sacred*, 215. For the case of late-eighteenth-century Villa Alta, Perig Pitrou finds that parish priests admitted to continued use of whipping in Indian communities even though the Bourbons attempted to curb the practice. Pitrou, "L'usage du fouet par le clergé local des communautés indiennes du diocèse de Oaxaca (Nouvelle-Espagne) à la fin du XVIII^e siècle," *Mélanges de la Casa de Velázquez*, new series, 40, no. 2 (2010): 179–197.

Matías's complaints about the procedural missteps and miscarriage of justice on the part of the officials of San Mateo produced Indian jurisdiction, complete with rules and norms governing the appropriate exercise and boundaries of authority. These rules were not necessarily prescribed in Spanish legislation; nor were they consistently recorded when practiced by native authorities. But they were rules nonetheless, and Juan Matías's written complaint reveals them in their breach.

Among the Mixtec people of Teposcolula, indigenous justice was simultaneously embodied in persons of authority and in buildings both permanent and temporary, such as the *aniñe* and the *casa de recibimiento*, as well as in territorial and sociopolitical units, such as the *yuhuitayu* and the *pueblo*. As such, it could be housed or mobile. Ritualized comportment, courtesy, and ceremonial speech, along with the sacred meaning of staffs and the social meaning of hair-cutting and ear-slicing—all these practices and symbols legitimized native legal authority as much as Spanish legislation regarding the appropriate reach of native *cabildos*. What is more, native judges took official prescriptions about the limits to their jurisdiction more as a guide than as an ironclad limit, finding ways of literally multiplying the authority they were granted in Spanish laws, as in the case of whippings.

Even if legal narratives provide local detail that at first seems immaterial or baffling, they often contain references to sometimes unsanctioned or extralegal jurisdictional understandings and practices. Juan Matías's case indicates that, rather than disentangling native and Spanish law, local and metropolitan norms, or cultural and legal practice, the goal should be to preserve the dynamic way in which they were constructed and reconstructed in relation to one another. Because it was a colonial creation, neither purely indigenous nor Spanish, Indian jurisdiction should be approached as more than an adaptation and application of Spanish legal norms to local practice. It required the additional work of translating local practice into words on the page for the eyes of Spanish judges.

People produced legal texts in space and time. Social interactions and relationships of a legal nature predated the entry of a case into the record. Reading a formal written legal document for references to unwritten verbal legal exchanges with multiple authorities, including village elders, priests, and other Spanish colonial judges, reveals a vibrant extralegal terrain. In other words, the beginning of a suit or complaint was rarely the beginning of a legal conflict, and many legal interactions are not captured on its pages. Determining who was writing, where the writing happened, who was present, and when records were made in relation to the events that they documented are key strategies for understanding the production of jurisdiction, as is looking beyond the "courts."

Imagining that law happens in a formally designated architectural space such as a tribunal reifies a boundary between law and culture and obscures how grounded cultural practices shape larger systems.⁷⁹ Native-European jurisdictional conflict was reproduced in colonial contexts across the globe where indirect rule—including legal rule—by in-

⁷⁹ This has been one of the fundamental observations of legal anthropology. In addition to notes 3 and 38, see June Starr and Jane F. Collier, eds., *History and Power in the Study of Law: New Directions in Legal Anthropology* (Ithaca, N.Y., 1989); Nader, *Harmony Ideology*; Peter Just, "History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law," *Law and Society Review* 26, no. 2 (1992): 373–412; and Dresch and Skoda, *Legalism*.

digenous intermediaries proved the only viable means of extending European sovereignty. Scholars of colonial Mexico have access to a uniquely deep and broad legal archive resulting from Spain's proclivity for written legal procedures and the unparalleled longevity of its domination. Reconstructing Indian jurisdiction from a single case within this expansive and enduring archive offers not only a clear view of what that archive contains but also a glimpse of the kinds of legal practices and understandings that often eluded it, even as they were foundational to its creation. Global legal orders may have been maintained in writing, but they were also built, stick by branch, through everyday conflicts such as a skirmish over a temporary court on native land in the far reaches of empire.

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