

**MAKING THEIR VOICES HEARD: THE NAHUA FIGHT TO SECURE AGENTY  
THROUGH THE SPANISH COLONIAL LEGAL SYSTEM 1575-1820**

A Master's Thesis

Presented to

The Graduate College of  
Missouri State University

In Partial Fulfillment

Of the Requirements for the Degree

Master of Arts, History

By

Micaela Wiehe

July 2021

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# **MAKING THEIR VOICES HEARD: THE NAHUA FIGHT TO SECURE AGENCY THROUGH THE SPANISH COLONIAL LEGAL SYSTEM, 1525-1820**

History

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## **ABSTRACT**

This thesis examines the evolution of the Spanish colonial legal system from 1525-1820 and analyzes the way that the indigenous Nahua people influenced, manipulated, and commanded a powerful conversation with their distant King through interactions with and within the law. By analyzing the extant Spanish colonial legal documents including court records, indigenous codices, land titles, and more, this thesis will attempt to support the theory that the indigenous people in New Spain maneuvered within the many facets of the Spanish legal system to establish themselves as powerful legal actors regaining a significant portion of the freedom taken from them during the Spanish conquest. By taking this revisionist view on the development of Spanish colonial law that focuses on the indigenous influence, the thesis presents the reader with a more comprehensive understanding of colonial development in New Spain; and a more accurate representation of how the indigenous peoples of New Spain transitioned from passive objects of conquest into active Spanish vassals and legal actors shaping, transforming, and adapting Spanish colonial law.

**KEYWORDS:** Nahuas, New Spain, legal cultures, General Indian Court, indigenous legal agency

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In the interest of academic freedom and the principle of free speech, approval of this thesis indicates the format is acceptable and meets the academic criteria for the discipline as determined by the faculty that constitute the thesis committee. The content and views expressed in this thesis are those of the student-scholar and are not endorsed by Missouri State University, its Graduate College, or its employees.

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## INTRODUCTION

Not only have [the Indians] shown themselves to be very wise peoples and possessed of lively and marked understanding, prudently governing and providing for their nations ... and making them prosper in justice; but they have equaled many diverse nations of the world, past and present, that have been praised for their governance, politics and customs...

Fray Bartolomé de las Casas, *Apologética historia sumaria de las gentes destas Indias que escriba Bartolomé de las Casas*, 1566.

On November 27, 1769, in Mexico City, the General Court of the Indians heard the case brought against Doña Juana Pérez Bontilla by San Miguel Tixáa on behalf of the natives of the province of Teposcolula (see fig. 1).<sup>1</sup> One day early that year, while the indigenous community of what is now the modern day state of Oaxaca, peacefully attended their Sunday mass, a tumultuous group of Spaniards approached their church. Waiting outside for them, a group of sixty Spanish men, backed by more Spanish officials with tools and oxen gathered, ready to plow up a highly disputed plot of land belonging to the natives. The Spanish officials reportedly followed the orders of the alluring Doña Juana Pérez Bontilla, a beautiful local Spanish landowner with whom many claimed to be in love. For months, entranced by her beauty and charm, these local Spanish officials acted at her beck and call, imprisoning anyone who would not sign documents drawn up in her favor. For this reason, the natives complained to the *Juzgado General de Indios*, or the General Indian Court, of the Viceroyalty demanding justice. Yet, on the day set by the court for the case, instead of an investigation, the *alcalde mayor*<sup>2</sup> discharged

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<sup>1</sup>Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkeley and Los Angeles, CA: University of California Press, 1983), 137.

<sup>2</sup> *Alcalde Mayor*: The term *Alcalde Mayor* referred to the Spanish official appointed by the provincial governor to administer a district composed of one or more towns and their countryside. The chief political and military officer in the district who presided over the cabildo meetings with a tie-breaking vote. He had judicial responsibility on a local

his men on the unsuspecting natives killing one woman and one child. They arrested the other wounded victims and dragged them along tied to the tails of their horses to the jail. Eventually, they locked up three men and four women in chains. Angered by the violent response to their pleas for help against the encroaching Spanish landlord, the town's native officials desperately appealed back to the General Indian Court to send immediate help. The viceroy then sent his order to the Spanish magistrate nearest to Teposcolula that under the threat of a 200 peso fine for disobedience, he should go directly to the site and investigate the issue and ensure that the natives should receive justice.<sup>3</sup>

Although this is where the surviving record of this story ends, it remains as one of hundreds of Spanish colonial court cases that offer the historian a glimpse into the nature of the colonial legal encounter between Spaniards and the indigenous people of Mexico. These records are stored in the *Archivo General de la Nación* of México City, the *Archivo General de Indias* in Seville, and in other archives all over the world. They are particularly valuable, not only for the way that they provide a description of one of the most complex and advanced legal systems of the colonial era, but also because they provide precious insight into the way that a colonial inter-ethnic society functioned, illustrating for us what the people valued, and how they interacted with each other.<sup>4</sup> Furthermore, these records are of particular value to this proposed thesis project because these legal records serve as some of the only transcriptions of the daily lives,

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or district level. Local chief magistrate and administrative officer of a province. Equivalent of a *Corregidor* or a Deputy Governor. See, Lillian Ramos Wold and Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHAAR Press, 1998).

<sup>3</sup> *Mandamiento del virrey a la justicia más inmediata a la jurisdicción de Teposcolula para que averigüe con toda exactitud los asuntos sobre tierras del pueblo, presentado por el regidor común y naturales del pueblo de San Miguel Tizaá*, 1769, AGN, *Ramo de Indios*, , Volumen 61, Exp. 352, folios 324v-327v.

<sup>4</sup> Brian Philip Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008), 7.

experiences, and contributions of a people often overlooked by historical record: the indigenous peoples of Mexico.

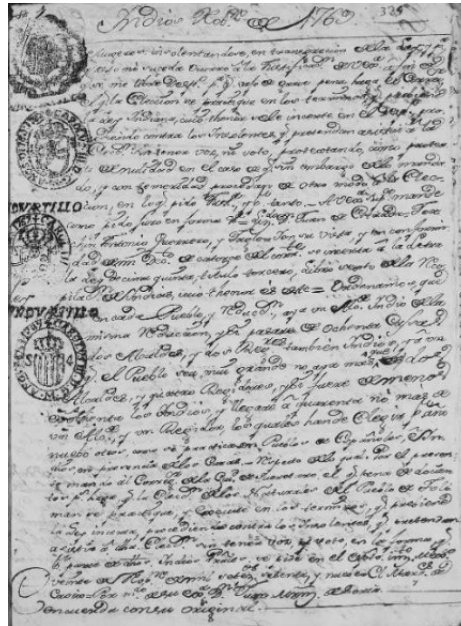


Figure 1. *Mandamiento del virrey a la justicia de jurisdicción de Teposcolula para que averigüe los asuntos sobre tierras del pueblo de San Miguel Tizaá*, AGN, Ramo de Indios, 1769, Vol. 61, Exp. 352, folio 324v.

When Spanish *conquistador*, Hernán Cortés, first laid eyes on the magnificent Aztec capital of Tenochtitlán in 1519, he could not have conceived of the magnificent implications of that moment. He could not have imagined the way that this clash of civilizations would impact the world throughout the centuries, changing history forever. The fall of Tenochtitlán represented the beginning of the colonial story of the Spanish Americas and the creation of a new colonial society. Inherent to the designing of a new social order required the establishment of social organizations and regulations outlined by the imposition of a new, and for the indigenous people, foreign, system of law. As renowned Latin American historian Woodrow Borah mentioned in the opening of his study of Spanish colonial law, “Indeed they [systems of law] are basic to the

experience of mankind wherever and whenever two peoples have come into contact for more than very short periods. The closer the contact and the longer the period, the greater will be the need for accommodation and adjustment between differing ideas and provisions of law, equity, and morality.”<sup>5</sup> This statement became especially true of the Spanish and Indigenous colonists.

Law and its impact within the development and spread of Spanish colonization holds significance because of how fundamental the concepts of law and order remained to the Spanish world. This high level of emphasis on the development and imposition of law exists uniquely to the Spanish colonial process when placed in contrast to other European colonial systems. Spain prided herself on creating an extremely comprehensive and intricate system of laws connecting every Spanish citizen to the King himself. Any law established by the King, Spaniards perceived to be divinely inspired, and Spanish notaries took obsessive and meticulous record of nearly all legal proceedings, ensuring that no one acted freely outside of the law.<sup>6</sup> Consequently, the Spanish legal records that exist today dating back to the early 16th century provide extremely detailed and reliable insight into the daily lives of those under Spanish rule. Again, the *Archivo General de La Nación de México* in Mexico City, and the *Archivo General de las Indias* in Seville, and other related archives house millions of pages of colonial era manuscripts thoroughly describing the multitude of interactions between not only the indigenous people and the law, but between everyone touched by Spanish rule.

From the dawn of the initial expansion of Spanish colonization, written law played a major part in the creation of a colonial state. The indigenous people of the New World

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<sup>5</sup>Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkeley and Los Angeles, CA: University of California Press, 1983), 1.

<sup>6</sup> For an excellent contemporary discussion of Spanish Colonial notaries and their protocols, records and formularies see Javier García, Francisco Javier and Juan Colom, *Instrucción jurídica de escribanos, abogados y jueces ordinarios de juzgados inferiores: dividida en tres libros* (Madrid: Imprenta de Francisco Javier García, 1779).



experienced Spanish law issued by royal decree from their first encounter with the conquistadors.<sup>7</sup> As early as 1513, the Spanish conquistadors became obligated to read to the indigenous people a legal document called a *requerimiento* informing the people of their contractual position with the expanding Spanish monarchy and its claims to their lands, and their obligations to the Roman Catholic Church.<sup>8</sup> Once bound by this indisputable contact (which happened when the Spanish discoverer or conqueror read the document publicly to the natives), the Spanish gave the indigenous people the option of either accepting the Catholic Church as “Ruler and Superior of the whole world” or entering into immediate rebellion and combat.<sup>9</sup> From that moment on, whether aware or not, the indigenous people became accountable to Spanish law as vassals of the Catholic monarch who claimed their lands through the conquistadors serving as his representatives and agents of empire.

The Catholic monarchs and the following Habsburg dynasty, maintained indirect legal power over the native people by means of establishing local courts, councils, tribunals, and perhaps the most useful legal tool afforded to the indigenous people themselves: The General Indian Court (*El Juzgado General de Indios*).<sup>10</sup> As it will be made increasingly clear, after the Spanish Crown founded the General Indian Court and its legal supporting system in 1592, this court and its ministers would ultimately provide the indigenous people with the most important

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<sup>7</sup> The most important collection of these earliest decrees that established the colonial legal system and rights, privileges, and obligations of the Indigenous peoples of New Spain is found in Vasco de Puga, *Provisiones, Cédulas, Instrucciones para el Gobierno de la Nueva España* (1563). (Madrid: Ediciones Cultura Hispánica, 1945).

<sup>8</sup> See Lewis Hanke, “The Development of Regulations for Conquistadores,” in *Contribuciones para el estudio de la historia de América. Homenaje al doctor Emilio Ravignani* (Buenos Aires: Editores: Peuser Ltda, 1941), 71-87.

<sup>9</sup> Owensby, *Empire of Law and Indian Justice*, 2.

<sup>10</sup> *Juzgado General de Indios*: A General court with jurisdiction over Indians, offering them free legal representation and legal aid in all of their cases, both civil, criminal and ecclesiastical. Paid for by the imposition of a ½ silver real coin of extra tribute per year paid by all Indigenous tributaries. See Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkley and Los Angeles, CA: University of California Press, 1983), 114-125.

opportunity to claim and defend their rights and privileges, giving them more access to justice than in any other period of Spanish rule, including even the egalitarian reforms brought about by Bourbon dynasty's ascent to the Spanish throne. Although their own perception of their rights and experience of justice would be different from what they experienced before the conquest, the indigenous peoples of colonial Mexico would, as a whole, utilize every legal tool available to them to not only act as participants in the legal process, but also to act as actual agents and active creators of colonial law.

### **Main Goals and Overview of this Thesis**

Many historiographical explorations of the effects of the Spanish conquest, particularly in Mexico, focus generally on the impact that the Spaniards had on the lifestyles, customs, and traditions of the indigenous people. Many of these studies find their roots in 16th century Spanish colonial discourse on “discovering” and “inventing” the New World.<sup>11</sup> Little scholarly attention had been given to the native people's rights and participation in this historical process until the pivotal work by Lewis Hanke and his contemporaries in the early 1930's. Modern Latin American scholarship has begun to expand the colonial narrative with a far more representative platform especially through the studies of those like Woodrow Borah (1983) and Brian Owensby (2008).<sup>12</sup> These two studies, especially Borah, have provided the field with extensive analysis of the legal tools available to the indigenous people and the ways they regularly used them. The Indigenous interactions with colonial courts and Spanish law are now well known. However, the

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<sup>11</sup>For a more detailed discussion on the effects that the conversations between colonial explorers and European royal had on constructing the image of the New World, see José Rabasa, *Inventing America: Spanish Historiography and the Formation of Eurocentrism* (Oklahoma: University of Oklahoma Press, 1994).

<sup>12</sup>See, Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkley and Los Angeles: University of California Press, 1983). Also see Brian Philip Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008).

field has not yet provided a thorough revisionist study on how the King reacted or interacted with this extensive Indigenous litigation.

My goal for this thesis is to look specifically into the evolution of the Spanish colonial legal system from 1574-1820 and examine the way that the indigenous Nahua people influenced, manipulated, and commanded a powerful conversation with their distant King through interactions with and within the law. By analyzing the extant Spanish colonial legal documents including court records, indigenous codices, land titles, and more, this thesis will attempt to support the theory that the indigenous people in New Spain maneuvered within the many facets of the Spanish legal system to establish themselves as powerful legal actors regaining a significant portion of the freedom taken from them during the Spanish conquest.

It is the purpose of this thesis, by taking this revisionist view on the development of Spanish colonial law that focuses on the indigenous influence, to present the reader with a more comprehensive understanding of colonial development in New Spain; this may provide a more accurate representation of how the indigenous nations transitioned into Spanish vassals. The aim of this thesis is to acknowledge the power, agency, and aptitude of the Nahua population by first providing a background for what the pre-Hispanic Nahua society and legal system looked like and then explaining what rights, as Spanish vassals, the Crown afforded the native people after the conquest. Then, the thesis gives the reader a better look at the role of the native elite in colonial politics and also the new court systems designed especially for the native litigants. Lastly, I hope to show the reader that the Nahua people were able to navigate and litigate powerfully enough within this system to render favorable responses from the King himself.

This thesis will be divided into six chapters. The first chapter delves deeper into the historiography of the Nahua natives of Central Mexico and their involvement in the Spanish

colonial legal system. It includes an introduction to the historiography, methodology, and primary sources that informed this research. This chapter focuses on the historiography of those who wrote about the Nahua in colonial law in an attempt to make sense of the story told about their role. This first chapter looks at the early ethnographic research done by Spanish colonists and follows chronologically to the development of modern scholarship on the theme to show the shift in focus. This first chapter covers nearly 500 years of colonial scholarship in order to examine the evolution in the European/American view of native Mexican peoples during the colonial period and their role in new colonial society. Tracking how this perspective has been revised in modern scholarship, this chapter attempts to place a stronger emphasis on the power embodied by the indigenous people through the legal system. This first chapter concludes by mapping out the most recently revised Spanish colonial legal scholarship that shows the ways in which the native people served as serious participants.

The second chapter introduces Spanish colonial law, how it worked in theory, and how it evolved locally in the post-conquest colony of New Spain. This chapter helps the reader to become more familiar with the historic debate over the legal status of the indigenous people, how that ideology became established in colonial administrative law, and what it meant for the people in New Spain. Chapter two provides the reader with a better understanding of the social, political, and legal position that the indigenous people occupied in the new colonial world order as well as how aspects of pre-conquest Nahua customary and consuetudinary law survived and became incorporated into the Spanish colonial legal reality. Lastly, in an attempt to prepare the reader to understand the broader legal culture of colonial New Spain, this section gives a general view of how these advantages, with the aid of the Spanish Crown's protections, put the indigenous people in an extremely advantageous position to better protect themselves against the

abuses of the local Spanish colonists. As this chapter will show, the legal status of minority that the Spaniards assigned native peoples and the Spaniards' attitude of the need for paternalistic colonial protections for the natives, both laid the foundation for the colonial legal institutions and interactions that the indigenous people took part in during this period.

The third chapter examines the impact that indigenous leadership had on colonial law in order to begin exploring the ways in which the Nahua participated in the legal and political system. This chapter chronicles and examines the imposition of the Spanish municipal government system, known as the *cabildo* system, and the royal degrees and *Leyes de Indias* which directed how local indigenous elected officials worked. Then this chapter provides the reader with in-depth information about how the imposition of the Spanish municipal town government system changed and complicated traditional indigenous local politics, especially concerning the indigenous nobility. This chapter also examines the traditional role played by the Nahua nobility before the conquest and then how indigenous noble leaders used their positions within the new municipal government systems for their own personal and family gain and to maintain privileged position within colonial indigenous society. Finally, chapter three delves into an analysis of the how the Nahua indigenous nobility and their struggle to maintain their ruling power during the early colonial period by extension, many times, promoted agency within the indigenous communities.

Chapter four will then move on to describe the all-important General Indian Court (*Juzgado General de los Indios*) in the viceroyalty of New Spain. This chapter will provide for the reader a comprehensive view of the General Indian Court's jurisdiction, ministers, finances and its uses by the indigenous Nahua people and their communities for their self-defense and the protections of their legal rights to their lands, privileges and positions. This chapter will address

how the court worked, who formed part of it, and detail the way in which the Indigenous people masterfully navigated its processes and turned it into a powerful weapon against their colonial abuses.

The subsequent chapter five builds on the research from the previous chapters and is the culmination of this study. This final core chapter provides the reader with a definitive analysis of how the indigenous people used the entire legal system to establish their own agency and how they, in turn, changed the colonial order and its laws to work in their own favor. In this analysis, this thesis traces a massive collection of actual cases and trial transcripts from the General Indian Court to examine the actual practice of indigenous defense and agency against Spanish colonial abuses. Whereas chapters two and three chronicle the legal theory behind the juridical place of the Indigenous people in the colonial order, the fifth chapter looks at the actual application of the law and the legal theories in practice. In this analysis, this thesis uses a primary source database that contains more than eight hundred cases, petitions, and court cases presented before the Viceroy and the General Indian Court from 1585-1820 used in this thesis. In the end, this chapter seeks to demonstrate for the reader the powerful relationship between Indian litigation and the Royal Spanish response.

The final section, chapter six, will conclude with an examination of how these beneficial legal systems all collapsed for the natives with the National Independence Movement in Mexico. It will outline what these changes meant for indigenous rights and the significant effects this loss of legal agency has had on the indigenous people for their lives even evidenced today. With the eradication of their privileged legal status, and the abolition of the General Indian Court, the Nahua people and other indigenous groups in Mexico lost one of their most effective protections against encroaching land seizures by Spaniards and creoles, their legal powers to defend against

illegal treatment, and their ability to seek the redress of other human rights abuses. This chapter attempts to illustrate just how unique and powerful this period was for the indigenous communities and to challenge the traditional view of Spanish colonial rule as a result.

### **Major Sources Consulted for this Thesis**

I primarily utilized an extensive corpus of published and unpublished primary sources that chronicled the ways in which the indigenous Nahua people interacted with the Spanish legal system and the way that the Spanish administration responded in turn. Archival material is of very significant value to this project because of the way that it gives particular insight into the lives of the indigenous peoples. For centuries, the histories of people who are minorities have been overlooked or simply not recorded. Moreover, most of the source material about the native people themselves were written from the perspective of the colonizer. Little documentary evidence exists to trace the contributions of Mexico's indigenous people to the development of colonial Mexican society, save for difficult to access codices and other Nahua sources and petitions written in Nahuatl. For that reason, examining legal records the Spanish archives provides one of the major source bases of this thesis. These sources are valuable because they, for the most part, are simply records or transcripts of court proceedings and legal documents of fact, and we can consider them perhaps the least biased record of indigenous influence in a Spanish colonial society.<sup>13</sup>

In the National Archives in Mexico City, Mexico (*Archivo General de la Nación*) and the General Archives of the Indies in Seville, Spain (*Archivo General de las Indias*), thousands of

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<sup>13</sup>For this thesis I used the finding aid produced by Dr. Linda Arnold to locate Indigenous court cases and litigations, judgements, and degrees from the General Indian Court. See Linda Arnold, "Guía para el ramo de indios del Archivo General de la Nación (México)" (Mexico City: ARGENA CD-ROM Archival Guide, 2010).

legal proceedings and appeals case records are preserved. These legal proceedings, categorized into various finding aids and indexes such as the *Ramo de Indios*, exclusively documented the legal proceedings regarding natives (see fig. 2); together with the *Ramo de Tierras* which recorded cases related to land, haciendas, village disputes, or ranching; *Correspondencia de Autoridades* which held the correspondence between the various civil and political authorities of the colonial administration; *Ramo de Civil*, which outlined civil disputes; and *Ramo de Criminal*, which of course documented the criminal cases brought before the Court of the Audiencia and the Viceroy.

Fortunately, many of these documents have been digitized and are accessible on the website of the *Archivo General de la Nación de México*. This thesis will use a large compilation of these legal documents as they are available in digital format. In addition, there are a multitude of translated and untranslated cases recorded in many of the secondary source publications that are useful for this thesis as well. Chief among these publications is Woodrow Borah's book *Justice by Insurance*, Brian Owensby's *Empire of Law and Indian Justice*, and Charles Cutter's *The Protector de Indios*, three of the most important studies available for this thesis. Trial documents in Nahuatl and in translation are also found in the work of James Lockhart, including his pioneering study utilizing Nahuatl documentation, *The Nahuas After the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth Through Eighteenth Centuries* (1992) and his volume entitled *Nahuas and Spaniards Postconquest Central Mexican History and Philology* (1991). Stanford, Calif: Stanford University Press, 1992.<sup>14</sup>

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<sup>14</sup> See James Lockhart, *The Nahuas After the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth Through Eighteenth Centuries* (Stanford: Stanford University Press, 1992); and James Lockhart, *Nahuas and Spaniards Postconquest Central Mexican History and Philology* (Los Angeles: Stanford University Press, 1991).



These archival court transcripts give evidence in detail about the legal action taken by the Indigenous peoples of Mexico on matters of land rights, family law, abuse cases, human rights, religious/social rights, and political justice. This thesis will also be utilizing the primary source pictographic material and codices produced by the Nahua people in their attempts to submit their own pictographic sourced documents as evidence in many of these court cases. In order to interpret these valuable indigenously created pictographic sources, I have focused mainly on the interpretations and work of Elizabeth Boone, included in her book *Stories in Red and Black: Pictorial Histories of the Aztecs and Mixtecs*. Elizabeth Hill Boone in this work offers the first comprehensive collection and analysis of the indigenous Mexican painted histories helping to broaden our understanding of how pre-conquest Mexicans used pictographic histories for political and social ends. The wealth of Indigenous authored materials in these many painted *lienzos*<sup>15</sup> and codices offer us a very important Indigenous voice to the history of Nahua-Spanish legal encounters.

The majority of the primary source material that will support this project is derived from research conducted on the primary source material of both recorded court cases and royal orders known as *cédulas*.<sup>16</sup> The recorded case documents come from the archival records contained in *Ramo de Indios*, *Ramo de Tierras*, *Correspondencia de Autoridades*, *Ramo de Civil*, *Ramo de Criminal*. The *Ramo de Indios* section specifically contains a multitude of records of Indian litigation between the years of 1574-1820. I used a summarized list of the titles of case

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<sup>15</sup>*Lienzos*: *Lienzos* were colonial Indigenous maps and other pictographic paintings on large cloths or linen textiles which the natives often produced and submitted as evidence of legal claims and as pre-contract proof of land titles. See, Lillian Ramos Wold and Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHAAR Press, 1998).

<sup>16</sup>*Cédulas*: A *cédula* was a Royal decree or order, Ibid.

documents taken from the *Ramo de Indios* section of the *Archivo General de la Nación* in Mexico (see fig. 2).

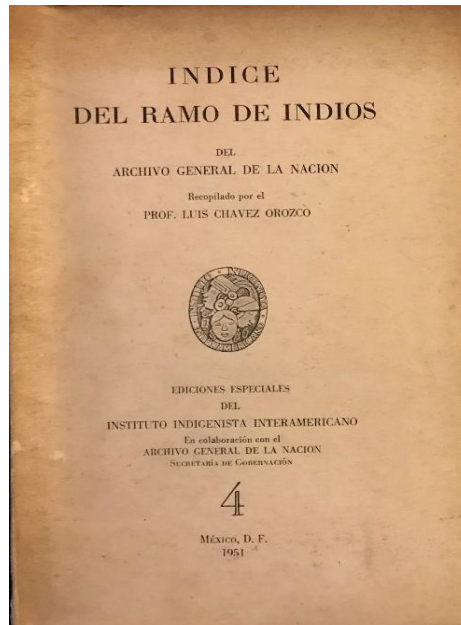


Figure 2. Luis Chávez Orozco, *Índice del Ramo de Indios: Volumen 1*, (México, D.F.: Instituto Indigenista Interamericano, 1951).

The royal *cédulas* were found in what some prominent colonial historians have called, “one of the most humane, and one of the most comprehensive codes published for any colonial empire.”<sup>17</sup> That is the *Leyes de Indias* that were compiled by King Charles II in 1681 and reprinted in 1841 (see fig. 3). Book Six, laws pertaining to indigenous peoples of the *Recopilación de Leyes de los Reynos de las Indias* (Compilation of the Laws of the Kingdoms of the Indies) contains 521 *leyes*, or laws, in 19 different chapters organized by themes ranging from the liberty of *los Indios* to tribute to *encomenderos*<sup>18</sup> to expectations for caciques, as well as

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<sup>17</sup> Clarence H. Haring, *The Spanish Empire in America* (New York, NY: Oxford University Press, 1947), 110-114.

<sup>18</sup> *Encomendero*: The encomienda system was a tribute institution used in Spanish America in the sixteenth century. The Spaniard granted one of these positions of *encomendero*, received Indians in “trust (*encomendado*)” to protect and to Christianize them, but in return he could demand tribute (including labor). See, Lillian Ramos Wold and

rules about *servicio personal*, or personal tribute services required of the natives. These laws compiled here offer us an extremely comprehensive and representative measure of the direct responses of the Spanish Monarchs to the colonial legal activity. By comparing these two sets of documents, one can begin to detect the unique, synergetic relationship that they share, and this thesis intends to analyze what this relationship demonstrates about colonial history.

In addition to these two valuable sources, I will also be strengthening this thesis by the secondary research done by Woodrow Borah in *Justice by Insurance*. In his work, Borah dives deeper into a large volume of sample cases from the General Indian Court. I was able to cross reference the case titles from *Ramos de Indios* with Borah's work and discover even more critical details about the types of cases being brought before the courts by Indian litigants. Borah also provides meaningful information about the background of why many different types of cases reached the General Indian Court, and in so doing, he creates an invaluable context used to draw the crucial conclusions contained in this chapter. By using Borah's case summaries to augment my own research in *Las Leyes de Indias* and the *Ramos de Indios*, it is my intent to add considerable research to the body of Spanish colonial legal historiography. This thesis project will be the first official comparison of *royal cédulas* and the cases brought before the General Indian Court.

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Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHAAR Press, 1998).



Figure 3. Antonio de León Pinelo, *Recopilación de leyes de los reynos de las Indias* (Madrid: Por Julián de Paredes, 1681).

My hope for this study is that it may serve to provide more evidence in support of the new way of thinking about the role that the indigenous Nahua played in creating an interactive legal conversation with their distant King. This thesis will help demonstrate that, despite the Spanish imposition of a new and foreign legal system on the indigenous population, these indigenous people did not remain passive receivers. This perspective will help historians better understand the nature of colonial Spanish legal society which, in turn, will help historians better understand a more complete and accurate story of the relationship between the Spanish colonizers and the indigenous nations. I believe that this revisionist view of the role that the Nahua people played in maneuvering and changing the Spanish legal system from below will provide scholars with a new way to recognize the indigenous people not just as pawns in an unjust colonial system imposed on them, but rather as political, social, and legal actors responsible for generating real and significant change within that colonial system. Looking at the legal discussions through this lens provides the reader with many details that can illuminate

much for the modern scholar concerning the Nahua's accomplishments in defending their own liberties with regards to land rights, labor laws, royal provisions, protections against abusive local powers, and other human rights abuses. It is my hope that this project contributes to an ever-growing historiography that depicts indigenous people not as the victims of Spanish rule, but instead as active agents of their own encounters with the colonial reality to forge their own myriad destinies.

## CHAPTER ONE

### **LOS MISERABLES Y POBRES: THE HISTORIOGRAPHY OF THE NAHUA RELATIONSHIP WITH SPANISH COLONIAL LAW**

After 1580, the term [*miserables*] soon entered official correspondence as evidenced by a letter of Friar Juan Binero reminding the King of his royal obligation towards the ‘miserable Indians’ of which he was ‘tutor and caretaker.’

Mauricio Novoa, *The Protectors of Indians in the Royal Audience of Lima*, Boston: Brill, 2016

Since the earliest scholarly works began examining the history of the indigenous people of the Americas in general, and the nature of their roles in Spanish colonial society in particular, the historiography has shifted and changed dramatically. Scholars’ thoughts today on the nature of the Native Americans and their contributions to the colonial world have evolved tremendously over the last 300 years compared to the views of the colonial, Spanish administrative reports and the works of 16th century scholars. Early thinkers and scholars described the native inhabitants of Mexico as ‘depraved,’ ‘savage,’ and ‘miserable.’<sup>19</sup> However, modern scholars, through in-depth archival research have, of course, forsaken such simplistic and judgmental terminology to describe the complex and established Indigenous groups that inhabited the territory of the Viceroyalty of New Spain. Modern constructs now view the indigenous people of Mexico and the surrounding regions as highly advanced and resilient in both the Mesoamerican and Spanish colonial contexts.

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<sup>19</sup> Charles Cutter, *The Protector de Indios in Colonial New Mexico, 1659-1821* (Albuquerque: University of New Mexico Press, 1986), 32. In this passage, Cutter explained that the word *mecho* was used in Mexico at this time to mean “rude” or “savage,” and was often applied to the *indios bárbaros* of northern Mexico. For more on the way that Spaniards referenced indigenous people in colonial Spanish writing, see Francisco J. Santamaría, *Diccionario General de Americanismos* (Mexico: Editorial Pedro Robredo, 1942).

Many scholars throughout the 500 years since the Spanish arrival in the New World in the 16th century have studied and written on the indigenous populations of the Americas. Although most scholars in the past have chosen to simply focus on the European influence on the preexisting American civilizations, or present an overly simplified descriptive analysis of the native people and their customs, some have gone on to provide important information on the significant role that indigenous people played in shaping Spanish colonial society. Especially in light of the overwhelmingly Eurocentric colonial scholarship that emerged from the European world over the last several centuries, the revisionist study of the Indigenous people from colonized regions has become a popular topic as diverse groups of scholars attempt to construct a more holistic, historical narrative of colonial contact. However, it was only after the opening of the Spanish colonial legal archives during the last century that scholars have begun to fully understand and appreciate the deeply significant implications inherent in the reciprocal relationship between the native peoples and their European King.

### **An Analysis of the First Hand Accounts (FHA) and the Development of the Colonial Era Historiography of this Legal Relationship**

During the early developing years of the Spanish New World, there were several notable early clergymen and Friars of the religious orders who were very impactful in beginning the study of indigenous people and championing the ideology of an early concept of human rights for natives. These first-hand accounts by mostly religious missionaries are considered the beginning of the Latin American colonial historiography. Most of these accounts were written in the form of letters, religious documents, and early ethnographic mission histories.<sup>20</sup> These

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<sup>20</sup> The most representative of this group of early friars and missionaries for New Spain and the Nahua region included among others Fray Toribio de Motolinia. For more information see Fray Toribio de Motolinia, and

documents, combined with other reports and treatises of Royal Officials, magistrates and judges, such as the *Oidor*<sup>21</sup> of the *Real Audiencia*<sup>22</sup> of Mexico (the highest colonial court), Alonso de Zorita, provide a very unique perspective into how the indigenous people of the Americas came to be represented legally within the European scholarship.<sup>23</sup>

Two very important figures at the beginning of the European discussion on the indigenous people of Latin America, and especially the Nahua peoples of Mexico, were the Franciscan friars Fray Bernardino de Sahagún and Fray Juan de Torquemada. Although both highly motivated by their religious evangelism, their collective records of Nahua history, culture, language, and society still remain some of the most important first-hand accounts from the

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Edmundo O'Gorman, *Historia de los indios de la Nueva España: relación de los ritos antiguos, idolatrías y sacrificios de los indios de la Nueva España, y de la maravillosa conversión que Dios en ellos ha obrado* (México: Porrúa, 1995); Fray Gerónimo de Mendieta, *Historia eclesiástica indiana: que trata de la introducción del evangelio y fe cristiana en la isla Española y sus comarcas, que primeramente fueron descubiertas* (Barcelona: Linkgua Ediciones, 2008); Fray Bernardino de Sahagún and Alfredo López Austin, *Historia general de las cosas de Nueva España: versión íntegra del texto castellano del manuscrito conocido como Códice florentino* (México: Dirección General de Publicaciones, 2002); and Fray Andres de Olmos and Georges Baudot, *Tratado de hechicerías y sortilegios: paleografía del texto náhuatl, versión española* (México: Universidad Nacional Autónoma de México, 1990).

<sup>21</sup>*Oidor*: An oidor was a high court judge of the Audiencia, or highest Supreme Court of the colonial Viceroyalty. See Lillian Ramos Wold and Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHAAR Press, 1980).

<sup>22</sup>*Real Audiencia de Mexico*: An Audiencia served as the highest royal court of appeals within a jurisdiction, serving at the same time as a council of state to the Viceroy or Governor. The Audiencia de Mexico also served as a court of first instance in certain cases (*casos de corte*), usually involving higher level officials. The court was divided into two chambers, one for criminal cases (*sala del crimen*) and it had legislative and executive functions in addition to their judicial ones, and thus represented the king in his role as maker of laws and dispenser of justice. The judges of the audiencia (*oidores*) varied in number. In 1583 the Audiencia of Mexico had six justices. The term was also applied to the area of district under the audiencia's jurisdiction. See Lillian Ramos Wold and Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHAAR Press, 1998).

<sup>23</sup>The visiting judge, Licenciado Alonso de Zorita, came to Mexico from Spain in order to launch a visita, or investigation into corrupt practices for a decade from 1556-1566. During this time period he examined the system of justice, both of the pre-conquest Aztecs, and of the early colonial courts, and in his report "The Brief and Summary Relation of the Lords of New Spain" he made recommendations and observations both of Aztec consuetudinary law and the legal system the Spaniards had first imposed on the Nahuas from 1521-1556. His observations and recommendations for reform are essential to understand the nature of early colonial law and Nahua legal representation. For a discussion of Alonso de Zorita and his work see Alonso de Zorita and Benjamin Keen, *Life and Labor in Ancient Mexico: The Brief and Summary Relation of the Lords of New Spain* (Norman: University of Oklahoma Press, 1940), 12-25.



period. First, after mastering the Nahuatl language, Fray Bernardino de Sahagún produced extraordinary works of ethnography and anthropology about the Nahua people of central Mexico. He is most well-known for his project, *General History of the Things of New Spain* (*Historia general de las cosas de la Nueva España*) within which is included the co-called *Florentine Codex* a multi-volume work full of Nahua pictographs and Latin letter-based Nahua texts, poems, legends, and histories describing their culture, religion, history, and the conquest (see fig. 4). Fray Sahagún's work gives evidence to his advanced ethnographic methods for his time, and for that reason, Sahagún has even been referred to as the "Father of American ethnography."<sup>24</sup>

Second, Fray Juan de Torquemada also compiled two very dense pieces of indigenous ethnography that would widely influence historians of the Nahua culture until the 20th century. In his work, the "Indian Monarchy" (*La Monarquía Indiana*), Torquemada fits together a range of indigenous pictographs and manuscripts as well as interviews with the older generation of Nahua people about their ancestors and oral traditions.<sup>25</sup> This publication provided Europeans with extensive knowledge of the Mexica, Totonac, Pipil and Nicoya cultures. Again, the historiographical discourse at the time of both Fray Juan de Torquemada and Fray Bernardino de Sahagún was rooted in the scholastic scholarly ideas of the merciful act of Divine Providence. Torquemada portrayed the conquest as God's placing the Spanish in the New World to "free the

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<sup>24</sup> The most significant English Language translation of this massive 13 volume work of the Franciscan friar is Fray Bernardino de Sahagún, Miguel León Portilla, Charles E. Dibble, and Arthur J. O. Anderson. *The Florentine Codex*, (Santa Fe: The School of American Research and the University of Utah, 1982).

<sup>25</sup> For a complete edition of the volumes of Fray Juan de Torquemada's work see Fray Juan de Torquemada and Miguel León Portilla, *Monarquía Indiana de los veinte y un libros rituales y monarquía Indiana, con el origen y guerras de los indios occidentales, de sus poblaciones, descubrimiento, conquista, conversión y otras cosas maravillosas de la misma tierra* (México: Universidad Nacional Autónoma de México, Instituto de Investigaciones Históricas, 1983).

native people from their lost and backward ways.”<sup>26</sup> This perspective on the Nahua people permeated virtually every account of the native Nahua at the time.



Figure 4. The Arrival of the “Twelve Franciscan Apostles, 1524. Source: Diego Muñoz Camargo, *Descripción de la ciudad y provincia de Tlaxcala*, Glasgow University Library, MS Hunter 242, folio 239v.

Nevertheless, there was one individual who has been credited for challenging this historiographical trend viewing the savagery of the Indigenous people in the relation of the cultures of the *indios*. He was arguably the most prominent chroniclers of the indigenous people and also advocated for their civil rights. This was the Dominican friar Fray Bartolomé de las Casas (1474–1566). Las Casas arrived in the New World in 1502 and nearly a decade later received his share of an *encomienda* in Cuba. After observing first-hand the abuses and destruction wreaked by this system, Bartolomé de las Casas resigned his *encomienda* and took

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<sup>26</sup> Miguel León-Portilla, *Biografía de Juan de Torquemada: Fray Juan de Torquemada, Monarquía Indiana (in Spanish)*. Vol. 7. (Mexico City: Instituto de Investigaciones Históricas, Universidad Nacional Autónoma de México (UNAM), 1983), 351-361.

holy orders as a Dominican friar. Finding no means of addressing the injustices of the colonial regime in the New World, Las Casas decided to return to Spain and fight for the indigenous people of the Americas and their human rights, and to ensure the creation of new laws to ensure that the Spanish regime treated them as the protected vassals that they had become. During this early period, Franciscans who affirmed the full humanity and capacity of indigenous people even to become clergy were sometimes perceived as suspect by colonial officials and even by their fellow Dominican Order. Some of the latter, such as Fray Domingo de Betanzos, saw in the Franciscans rapid conversion and mass baptism program without prior religious instruction that the Franciscan Friars were endorsing idolatry.<sup>27</sup> The Dominicans especially warned that the friars had to be careful in pursuing and defining their interactions with indigenous people, but this did not stop Las Casas. After the death of King Ferdinand, Fray Bartolomé de las Casas was able to approach the regent Cardinal Francisco Jiménez de Cisneros with his petitions to end the maltreatment of the Indians and establish a just system of governing in the new colonies.<sup>28</sup> Without this contribution on the part of Fray Bartolomé de las Casas, it's impossible to know when the native people might have been afforded even the basic legal rights as humans much less a voice to be heard in the legal system. Las Casas emerges as a significant actor in creating a body of scholarship on the indigenous Nahua, and in advocating for concrete legal reforms as early as 1517. According to the scholar, Thomas Urque, Las Casas used his legal education and juridical argumentation to convince Cisneros with his own eye-witness experience in the Indies,

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<sup>27</sup> For more discussions of these differences and conflicts between the Franciscans and Dominicans in New Spain see Lino Gómez Canedo, "La cuestión de la racionalidad de los indios en el siglo XVI: nuevo examen crítico," *Actas y Memorias del Congreso Internacional de Americanistas* 36, no.4 (1966): 157-165.

<sup>28</sup> For the texts of these early appeals from Las Casas see Henry Raup Wagner and Helen Rand Parish, *The life and writings of Bartolomé de Las Casas* (Albuquerque, New Mexico: University of New Mexico Press, 1967). For the impact that Las Casas' early mission to the Regent Cardinal Cisneros played in the development and changes to laws in the Indies see Manuel Giménez Fernández, *Bartolomé de las Casas: delegado de Cisneros para la reforma de las Indias 1516-1517* (Madrid: Consejo Superior de Investigaciones Científicas, 1984).

that the indigenous peoples of the New World needed stricter protections from abuse. According to Urque, Las Casas's response to the existing legislation from the era of the Catholic Kings and the continued abuses of the Indigenous peoples saw him make "recourse to a genre of juridical literature known as the *memorial*. This form of juristic writing, which was widely used during the first half of the sixteenth century, combined a description of the facts (*los hechos*) with an exposition of the juridical (*el derecho*) on which foundation some *merced* (favor or action) was solicited from the authority addressed."<sup>29</sup> Accordingly, Las Casas' in this 1516, *Memorial de remedios* to the Castilian regent Cardinal Cisneros, "offered a juridical perspective that took into account natural rights, natural and canon law, and the Laws of Burgos." In this significant brief and legal petition, Las Casas argued for a new remedy and system in order to stop what he called "the devastation of the Indies." Las Casas presented fourteen specific remedies for reform, incorporating into his vision a discussion of natural rights into his plan. It is here also that Las Casas also argued using the ideas of European Canon Law which had exposed the ideas of "subjective natural rights when it stipulated that the *miserables personae* could take from the rich what was needed for life's basic necessities."<sup>30</sup>

Following the early argumentation in the initial *Laws of Burgos*<sup>31</sup>, Las Casas also "upheld the rationality of Indigenous people." He argued for their rational capability and natural right to

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<sup>29</sup> See David Thomas Orique, "The Unheard Voice of Law from an Often-Heard Text: A New Rendition of Bartolomé De Las Casas' *Brevisima Relación de la Destrucción de las Indias*," (MA Thesis, University of Oregon, 2007), 140.

<sup>30</sup> Ibid, 140-141.

<sup>31</sup> See John F. Chuchiak, "Laws of Burgos-1512" in *Encyclopedia of Latin America, Volume 1, "Amerindians through Foreign Colonization to 1580*, Facts on File Series, (Santa Barbara, CA: ABC-CLIO, 2009), 183-184. For the first a detailed look at these first initial laws for the governing of the New World's possessions promulgated in 1512 and their impact on Indigenous access to the law see Lesley Byrd Simpson, *Royal Ordinances for the Good Government and Treatment of the Indians: The Laws of Burgos of 1512-1513* (San Francisco: John Howell Book, 1960).

“live by themselves and govern themselves.”<sup>32</sup> Still, fearing the further abuses of the Spaniards in the New World, Las Casas advocated for a type of clerical guardianship and supervision of the Indigenous people, and here he appealed to the medieval Spanish Laws of the *Siete Partidas*, looking at the natives in their innocent state as *menores y miserables*, a legal minority status in which they needed a legal “Protector” who would advocate for them in legislative matters and also provide them with a protection in the colonial system.

Even more importantly for the Crown, the good government that these laws brought about (and the later New Laws of 1542 created at the behest of further legal arguments from Las Casas) all helped to justify the Spanish Monarchies “right to rule” in the New World.<sup>33</sup> As Las Casas argued throughout his life, the “establishment of a well-ordered, peaceful, and “godly” government so desired by the Catholic monarchs” helped to cultivate the Spanish myth of just titles to the New World legally against other European powers, using a concept known as “*translatio imperii* (transfer of empire), which regarded Spain as “the legitimate heir to the Western [Roman] empire.”<sup>34</sup> Still, Las Casas, and other reformers often met resistance to their plans of reforming the legal protections of the Indigenous peoples in practice. In a letter to the Crown, Las Casas later from his bishopric of Chiapas lamented that “the most serious obstacle ... to the implementation of the New Laws was the fact that the royal officials who were entrusted with their enactment had been corrupted by self-interest.”<sup>35</sup>

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<sup>32</sup> Ibid, 142.

<sup>33</sup> For a more complete view of the role of Las Casas’s legal argumentation and role in the eventual Promulgation of the New Laws of 1542 see David Orique, “New Discoveries about an Old Manuscript: The Date, Place of Origin, and Role of the Parecer de fray Bartolomé de las Casas in the Making of the New Laws of the Indies,” *Colonial Latin American Review* 15, no. 4 (2010): 1–23.

<sup>34</sup> Ibid, 63.

<sup>35</sup> Orique, “The Unheard Voice of Law,” 262.

Nevertheless, the efforts of Fray Bartolomé de las Casas did establish a sense of responsibility within the Catholic clergy. Las Casas also began a serious discussion in the field of indigenous human rights and helped create reforms in the legal relationships between the natives and Spaniards which lasted for hundreds of years.

### **Bourbon Era Ideological Shift on Indigenous Legal Status/Action**

The fall of the Habsburg dynasty in Spain, and the rise of the French Bourbon dynasty ushered into Spain and its New World colonies massive change and legal, social, political and even religious reform.<sup>36</sup> Many of these changes negatively impacted upon the Indigenous people and their colonial privileges and legal rights that had been established during the Hapsburg dynastic rule from 1517-1713. Still, intellectual shifts brought about by the European Enlightenment, renewed a focus on the issue of natural rights, and the rights of indigenous peoples in the colonial context. Some of the historians who looked to examine the ancient history of the Nahua and others in Mexico, utilized the archaeological evidence and early first-hand accounts to lift up the view of the Mexican Indian as a “noble savage” and one whose cultural achievements were worthy of adulation and reevaluation. One of the most important of these Jesuit writers and "Christian philosophers" of the 18th century was the Mexican Creole Jesuit, Francisco Xavier Clavijero.<sup>37</sup> Clavijero was at the same time a devoted Jesuit, a teacher of philosophy, a Historian, an ardent student of Indigenous culture, a polemicist, and arguably a nascent Creole patriot. He borrowed much from the earlier first-hand accounts of Fray Juan de

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<sup>36</sup> For an excellent recent coverage of the major Bourbon Reforms in the Spanish New World see Allan Kuethe and Kenneth J. Andrien, *The Spanish Atlantic World in the Eighteenth Century: War and the Bourbon Reforms, 1713-1796* (Cambridge: Cambridge University Press, 2014).

<sup>37</sup> See John F. Chuchiak, “An Able American: The Many Faces of Francisco Xavier Clavijero and the New World - Old World Polemic,” *Occasional Papers in Colonial Latin American Historiography*, (New Orleans, Tulane University Seminar Series, 1995), 1-29.

Torquemada and others, but he brought about a new 18<sup>th</sup> century appreciation for the cultural achievements of the Mexican Indians, especially in their laws and legal systems which he expounds upon as evidenced of the “civilized” nature of the Aztec empire of the Nahua peoples.

Along with Mexican Independence in the early 19<sup>th</sup> century, came a shift in focus on the colonial past, with 19<sup>th</sup> century authors viewing the corruption and lack of legal protections of the Indigenous peoples, as a leading cause in their impoverishment during their own times. In the final chapter of his book *Justice by Insurance*, the leading survey of the Nahua relationship with Spanish law, Latin American specialist, Woodrow Borah concluded by describing the vast ideological shifts that occurred in the discussion of the native people in the late 18th and early 19th century New Spain. Borah tells the story of how, in the later Bourbon period, the increasing mistrust in traditional governmental organization and dreams of a society unified with no special privileges, eventually left no room for the General Indian Court, the *medio real de ministros*, and the protection system for natives as a whole. His research presents how losing these provisions actually left room for an increased number of Indigenous land seizures, labor exploitation, plundering of native villages, and much more all the while removing the Indians’ ability to efficiently seek legal protection. Borah supports these claims by referencing the first-hand accounts of liberal activists like Justo Sierra O’Reilly and José María Luis Mora, both of whom added to a historical and political discussion in the following century about colonial indigenous life and legal representation under Spanish rule.<sup>38</sup>

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<sup>38</sup> For the case of Justo Sierra O’Reilly’s see John F. Chuchiak “Intellectuals, Indians, and the Press: The Politicization of Justo Sierra O’Reilly’s Journalism and Views on the Maya while in the United States” in Ingrid Elizabeth Fey and Karen Racine, *Strange Pilgrimages: Exile, Travel, and National Identity in Latin America, 1800-1990’s* (Wilmington, Del: SR Books, 2000), 59-74. For José María Luis Mora’s case see, *Luis Mora, El clero, la educación y la libertad* (México, D.F: Empresas Editoriales, 1949).

In his historical novel *Las Guerras de Justo* (1847), Justo Sierra O'Reilly, political activist and historian, described in great detail the tumultuous and often violent politics in Mexico, especially in relation to the indigenous people; nevertheless, he supported the fight for a more liberal state for all Mexicans. Here marks another shift within the historiographical discourse on the indigenous position within the changing Spanish-Mexican nation. The changing views of the Bourbon Era that was highly influenced by Enlightenment ideals of equality could be summarized in the following royal order written by King Ferdinand VII in 1812:

His Majesty, after having heard the council of state and agreeing with its opinion, has deigned to declare that because by the constitution all free men born and residing in Spanish territory are Spaniards, without distinction, not only have the Indians emerged from their state of minority to which before they were subjects, but also they should be equal in all else to Spaniards of both hemispheres.<sup>39</sup>

The Bourbon rulers dreamed of a kingdom that boasted legal equality that removed all special privileges from indigenous communities, claiming that the Indians had “emerged from their state of minority.” All the while many of the revolutionists who fought for Independence from Spain supported these initial ideas found in the Constitution of Cadiz of 1812, mostly in order to take away special privileges from an elite, postcolonial class, which they hoped would aid them in moving the new nation of Mexico toward a modern, liberal state. To this end, José María Luis Mora of Madrid who was a historian, politician and liberal idealist, wrote many critiques of the previous Catholic Monarchy and its effects on Mexico. One of his most important works, *Memoria que para informar sobre el origen y estado actual de las obras emprendidas para el*

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<sup>39</sup> See the royal order of 1812 in AGN, *Reales Cédulas* 4. 990. This royal order was translated and recorded by Charles R. Cutter in his book, *The Protector de Indios*, 99.



*desagüe de las lagunas del valle de México* (1823), looked to blame the Spanish colonial regime for the lack of infrastructure and the failures of the post-Independence period. Historians and political actors of this period like Justo Sierra O'Reilly and José María Luis Mora engaged in the Enlightenment and Liberal ideals of simple, radical freedom to an all-encompassing degree. Still, when looking at the indigenous peoples of their own time, they saw a backward, uneducated mass of impoverished citizens whom they blamed on the colonial legacy of Spain. Consequently, from a legal standpoint, the concept that the indigenous people were in need of special governmental support lost all popularity among popular discourse. What many of these 19<sup>th</sup> century writers advocated for instead was education and liberal political values for the Mexican Indians. The focus was on moving forward and keeping up with the changing geopolitical work of the 18th and 19th centuries. The Spanish colonial period, for these 19<sup>th</sup> century historians, they viewed with derision and at best suspicion. The hundreds of years of social, political, and legal, colonial history of the Spanish colonial institutions of the Hapsburg and Bourbon periods were relegated to the archives where they, and the struggles of the Nahuatl people, were ignored for the most part until the end of the 19<sup>th</sup> century.

### **Twentieth Century Shift toward the Study of Egalitarian Colonial Representation**

The legal documents archived by the Spanish, as mentioned above, are nearly endless, and these two-, three-, and four-hundred-year-old manuscripts have been poured over by many researchers from a variety of academic disciplines throughout the years following Mexican Independence. Historical interest, specifically into the Spanish colonial legal documentation, increased drastically during the early twentieth century but specifically focused on colonial

jurisprudence and the moral code that it represented.<sup>40</sup> However, much less often have historians focused on the indigenous people's involvement with the legal processes themselves and the way that these affected the relationship between the colonizer and the colonized.<sup>41</sup> Still, a few studies did look into different specific aspects of the indigenous peoples' roles in the legal system.

As historians in the 20th century performed more extensive studies of archival material, they continued to construct a more comprehensive historical narrative concerning the Nahua's role in the Spanish legal system. A little after the turn of the century, Lesley Byrd Simpson, a Missouri native and master of both Hispanic literature and Mexican history rose to be one of the most widely read and impactful Latin Americanists of the century.<sup>42</sup> He, along with his skilled pupil Woodrow Borah, published a great number of studies examining the Spanish attempts to control the native population through labor and then tracing the native response through archival material. They both meticulously researched in the recently opened archives of many of the surviving colonial court documents, and the pair published prolifically and provided large volumes of new primary source information on the Nahua and Spanish relationship. The work of these two sparked decades of crucial demographic research into the indigenous Mexican populations at Berkeley University for which historians to this day are indebted.

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<sup>40</sup>See Owensby, *Empire of Law and Indian Justice in Colonial Mexico*, 3.

<sup>41</sup> Ibid, 3. For a few more recent exceptions to this see the early work of Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Dallas, Texas: Southern Methodist University Press, 2002); Laura Lewis, *Hall of Mirrors: Power, Witchcraft, and Caste in Colonial Mexico*. (Durham: Duke University Press, 2006); Osvaldo F. Pardo, *Honor and Personhood in Early Modern Mexico* (Ann Arbor: University of Michigan Press, 2015); and Bianca Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire* (New York: Oxford University Press, 2017). For the Andean region see Jose Carlos de La Puente Luna, *Andean Cosmopolitans: Seeking Justice and Reward at the Spanish Royal Court* (Austin: University of Texas Press, 2018).

<sup>42</sup> Woodrow Borah, "Lesley Byrd Simpson (1891-1984)." *The Hispanic American Historical Review* 65, no. 2 (1985): 353-56.

Lesley Byrd Simpson did his doctoral studies at the University of California, performing research specifically concerning the colonial *encomienda*, which he argued was simply a system of forced native labor.<sup>43</sup> Simpson was highly interested in the ways that the Spanish maintained control of the native populations, especially by labor in New Spain. After completing his dissertation, published in 1929, he continued to publish studies on indigenous slavery, the *repartimiento* labor system, the Laws of Burgos, and the *congregación* in a four part Ibero-Americana series.<sup>44</sup> Simpson's research on the labor laws and expectations for the indigenous people especially in relationship to the Law of Burgos were both extremely important to the content of this thesis. Simpson wrote many other books, two of which influenced the contents of this project. Those were and *Studies in the Administration of the Indians in New Spain: III. The Repartimiento System of Native Labor in New Spain and Guatemala* (1938) and *Many Mexicos* (1941). His book, *Many Mexicos*, an important study looking at the reach and implications of the Spanish land grant system for indigenous communities; and it is still widely circulated and consulted today.

After Lesley Byrd Simpson retired, historian Woodrow Borah, his protégé, continued following in his footsteps. Arguably one of the most important 20th century studies of native interaction with the Spanish law, is found in Woodrow Borah's book *Justice by Insurance*, which focused on the native's arguably most dynamic legal asset: *The General Indian Court*. From 1592 until 1820, the colonial government of New Spain utilized this special court and its legal representation available freely to all Indigenous people to handle all cases involving the *Indios*.

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<sup>43</sup> See Lesley Byrd Simpson, *The Encomienda in New Spain, Forced Native Labor in the Spanish Colonies, 1492-1550* (Berkeley: University of California Press, 1929).

<sup>44</sup> See Lesley Byrd Simpson, *Studies in the Administration of the Indians in New Spain: Part II, The civil congregation* (Berkeley, Calif: University of California Press, 1934); and Lesley Byrd Simpson, *The Laws of Burgos of 1512-1513: Royal Ordinances for the Good Government and Treatment of the Indians* (San Francisco: John Howell Books, 1960).

Borah's work, the product of decades of research, provides historians with perhaps the most comprehensive and detailed record of all that this court system entailed.<sup>45</sup> He expounded upon the formation of the court, describing the factual, philosophical, and political background of the General Indian Court. Borah also provided textual and documentary evidence from the *Ramos de Indios, Civil, Criminal, Tierras, Tributos* and more when describing the interactions that the Nahua had within the General Indian Court, which helped to open the door for new scholarship based upon the references and details that Borah provided.

That reference, which is possibly the most impressive aspect of his work, recounted in detail, over one hundred cases processed by the court in a meticulously organized manner. Borah's compilation and translation of the summaries of over 174 court cases processed by the *Juzgado* provided access to crucial primary source material for decades of future study. As scholarly literature of this quality on colonial legal structures is rare, *Justice by Insurance* is truly an irreplaceable point of reference for this study of the ways that the indigenous people were able to use various legal institutions to fight for their rights and shape the colonial world.

With an already solid rapport as a Latin American historian, Professor Lewis Hanke similarly contributed to updating the historiographical discussion on the indigenous people's position within colonial law around this same time. Lewis Hanke published many works during his career, but is best known for his extensive research on Fray Bartolomé de Las Casas and his impact on indigenous rights. Hanke remains one of the leading revisionist historians of the 20th century and his revisionist history projects in Latin American history helped to offset much of the "Black Legend" historiography from both Mexico and other English language authors who vilified Spain for its conquest and colonial rule in the Americas. Hanke and his colleagues were

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<sup>45</sup> See Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkeley and Los Angeles, University of California Press, 1983).

some of the first to dedicate themselves to correcting the inaccuracies of the Black Legend historiography of indigenous people. In his research, Hanke shifted away from the traditional, bleak view of simple, colonial oppression and instead entertained the concept of a “Spanish struggle for justice in the conquest of America.”<sup>46</sup> He also published extensive research on Fray Bartolomé de las Casas reframing him for the first time as a political activist, theorist, and historian who was actually a leader in a movement supporting indigenous rights not simply a stand-alone, pro-Indian enthusiast. Hanke’s work, especially *Las teorías políticas de Bartolomé de Las Casas* (1935) and *The Spanish Struggle* (1949), were two very significant catalysts in the shift toward acknowledging the Spanish legal system and its opportunities for the indigenous populations.<sup>47</sup>

During this mid-century shift in Latin American studies in the United States, another historian, Charles Gibson, was also working hard to rewrite the historical narrative of the colonial period. Gibson’s first major publication was a study on the Nahuas of Tlaxcala (1952), who were a powerful ally for the Spaniards during the Mexican conquest.<sup>48</sup> This piece was important to the historiographical discourse as it was the first significant study of the conquest and early colonial period written from an indigenous perspective. This paradigm shift created an entire sub-discipline, ethnohistory, and this book remains a model for academics researching Mesoamerican ethnohistory, including this thesis. Perhaps the most important of Gibson’s works on colonial-era Nahuas was *The Aztecs under Spanish Rule: A History of the Indians of the*

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<sup>46</sup> Lewis Hanke, *Spanish Struggle for Justice in the Conquest of America* (Philadelphia: University of Pennsylvania Press, 1949).

<sup>47</sup> Published in Argentina, Lewis Hanke’s work on the political and legal impact of Las Casas and his work for reforming the laws and regulations of the New World was revolutionary. See Lewis Hanke, *Las Teorías Políticas de Bartolomé de las Casas* (Buenos Aires: Facultad de Filosofía y Letras, 1935).

<sup>48</sup> See Charles Gibson, *Tlaxcala in the Sixteenth Century* (Stanford: Stanford University Press, 1952).

*Valley of Mexico, 1519–1810* (1964), which held powerful weight in restructuring the research methodologies for the colonial historians of his time in terms of researching the impact and interactions of the Nahua people with the colonial legal system.<sup>49</sup>

About a decade later, the momentum created by 20th century Latin American revisionists continued to grow. In 1968, another colonial historian, James Lockhart, also published his own ground breaking dissertation chronicling the inner workings of *Spanish Peru* from 1531-1560. His approach was significant in this historiographical discussion because he was the first of his contemporaries to focus his research on the formation of the Spanish colonial social order during this period focusing on the indigenous impact and less on the complicated political events of the era. This shift to a micro-historical approach that specifically acknowledged the indigenous people was highly transformative for his time and is the basis for the historiographical approach of this thesis project. In addition, during the 1970's James Lockhart also contributed greatly to the Latin American discourse by pioneering many translations and analysis of archival Nahuatl-language texts from central Mexico. This work led to the creation of a new historical school, known as the "New Philology" which advocated for the creation of Indigenous ethnohistorical studies utilizing before unused Indigenous language sources written in the Latin alphabetic script.<sup>50</sup> In many of his books, Lockhart collaborated with other scholars, such as Arthur J.O. Anderson and Frances Berdan in *Beyond the Codices* (1976), and linguist Frances Karttunen, in

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<sup>49</sup> Charles Gibson, *The Aztecs under Spanish Rule: A History of the Indians of the Valley of Mexico, 1519–1810* (Stanford, California: Stanford University Press, 1964).

<sup>50</sup> A number of James Lockhart's students and others have advanced these methodologies for the study of colonial indigenous histories. A representative sample would include Matthew Restall, Pete Sigal, and John Chuchiak (working on the Maya), Kevin Terraciano and Lisa Sousa (Mixtec and Zapotecs of Oaxaca), Stephanie Wood and Robert Haskett (working on the Nahua) and many others. For a complete study of this field of the "New Philology" 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.

*Nahuatl in the Middle Years* (1976) and *The Art of Nahuatl Speech* (1987). These works, among many others, provided invaluable tools for the future of Nahua studies including this thesis.

During the latter part of the 20th century, Charles R. Cutter also, in his research, examined a principally important character for the native people in terms of colonial legal defense: the official known as the *protector de Indios*.<sup>51</sup> The figure of the *protector* served as a legal representative assigned to the native people without cost in order to represent them both inside and outside of the courtroom.<sup>52</sup> He dedicated his work to describing how this position came to be and the way that their role remained crucial in the function of the General Indian Court. Without this representative, the legal system would not have been able to adequately provide the justice it claimed to ensure. His work is of marked value for this thesis because of his specialized approach to unpacking just one of the many ways that this court system provided for the needs of the native people by giving them the best access to community building. Cutter's study reinforces the shifting emphasis on the native autonomy and power to act that they gained in acquiring knowledge about the law and the Spanish legal system from their *Protectores de indios*.

Charles Cutter's research also delved into not only analyzing the role of the protector but also in the termination of this position and other legal services funded by the half real tax. With the royal *cédula* appearing in 1821 that forbade all special privileges for select citizens, the role of protector became abruptly terminated. One very significant aspect of Cutter's research though is the positive case that he built for Indian legal success after Independence. His study showed

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<sup>51</sup> Although his work specifically looks at the role of the Protector in colonial New Mexico, his results and discussions are applicable throughout New Spain. See Charles R. Cutter, *The Protector de Indios in Colonial New Mexico, 1659-1821* (Albuquerque: University of New Mexico Press, 1986).

<sup>52</sup> The earliest and most complete study of the role, duties, and actions of the *Protector de Indios* remains the work of Constantino Bayle. See Constantino Bayle, *El Protector de Indios*, Publicaciones de la escuela de estudios hispano-americanos de la universidad de Sevilla 1<sup>a</sup>, no. 5, (Sevilla: Escuela de estudios hispano-americanos, 1945).

that by receiving extra support in the early colonial period in order to begin participating in the legal system, the native people quickly learned how the legal system worked and acquired a large legal vocabulary that they were then able to use in the 19th century to continue defending themselves. Although they were presented with extra difficulties without the added legal support of the *Juzgado General de Indios*, Cutter claimed that without the help of the *protector* in the centuries before, the natives would not have been able to defend themselves efficiently and would have suffered greatly as they tried to navigate the pitfalls of the early national Mexican legal system.

### **Recent Studies on the Nahua's Actual Role in Legal System**

More recent studies of the Indigenous peoples' experiences with the colonial legal system have built upon these earlier legacies to present us with a more nuanced examination of the role of Nahua legal actions using both Spanish and Nahuatl language sources. Most recently, Brian Owensby's book *Empire of Law and Indian Justice in Colonial Mexico* is one of the most recent and detailed primary research projects done on the early development of the Spanish colonial legal system with special regard for the role of the native people.<sup>53</sup> His research outlined the way in which law was used as a method of ordering the encounter of two very distinct civilizations. In primarily his first three chapters, Owensby outlined masterfully the events from conquest to the formation of the General Indian Court. Additionally, Owensby examined the ways in which the Spanish administration legitimized indigenous local leadership which, Owensby argued, is meaningful because of the way that it allowed the native people to act politically. This reinforced the values written into Spanish law which included the natives' rights to engage in politics, the

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<sup>53</sup> Brian Philip Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008).



importance of a direct relationship with the Spanish king, all of which equalized the value of leaders regardless of ethnicity on the basis of their accountability to the law. For this thesis, Owensby's work is particularly valuable within the broader study of indigenous participation in colonial law because, apart from simply providing a factual outline of events, Owensby connects the long history of the philosophies, beliefs, and traditions (Spanish and Nahua) that truly supported the indigenous people's journey toward legal equality.

Along similar lines, the works of Ethelia Ruiz Medrano, namely *Mexico's Indigenous Communities: Their Lands and Histories* and her work with Susan Kellogg in *Negotiation within Domination: New Spain's Indian Pueblos Confront the Spanish State* are all very relevant to the study of indigenous legal action.<sup>54</sup> She skillfully described in her research the ways in which indigenous communities turned to negotiation to deal with conflicts and improve the consequences of colonial rule. She emphasized the way that this affected not only the development of legal systems in New Spain and Mexico but in turn the survival and continuation of traditional cultures. Moreover, Ethelia Ruiz Medrano's focus on a series of individual cases, has proven to be of tremendous importance in the protection of indigenous land rights in the present day on the basis of colonial law. By drawing up and preserving historical documents-in particular, maps, oral accounts, and painted manuscripts-her research has supported numerous Indian pueblos presenting their cases in colonial and national courts to defend their rightful land.

Also, at the turn of the century, Elizabeth Boone provided her research in the book *Stories in Red and Black*. In her work, Boone highlighted another aspect of the General Indian

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<sup>54</sup> See Ethelia Ruiz Medrano, and Susan Kellogg, *Negotiation Within Domination: New Spain's Indian Pueblos Confront the Spanish State* (Boulder: University Press of Colorado, 2011); Ethelia Ruiz Medrano, Julia Constantino, and Pauline Marmasse, *Reshaping New Spain: Government and Private Interests in the Colonial Bureaucracy 1531-1550* (Boulder: University Press of Colorado, 2012); Ethelia Ruiz Medrano and Russ Davidson, *Mexico's Indigenous Communities: Their Lands and Histories, 1500-2010* (Boulder: University Press of Colorado, 2011).

Court designed to ensure comprehensive justice was provided for Indian litigants. She analyzed how, with time, the Spanish court officials noticed that part of including this diverse and separate people group into the Spanish legal system involved accepting all of the documentary material that this group brought related to their cases. This meant that the Spanish were consequently forced to accept the Nahua pictorial records, *lienzos* and *codices* as valid, legal evidence.

Although this may not seem significant at first, Boone's work illustrates just how remarkable this aspect of the *Juzgado General* was, not only in legitimizing the history, culture, traditions, and values of the Nahua people at the time, but also in the way that it served to gather years of Nahua documents to be preserved for historians for centuries to come.<sup>55</sup> This work remains extremely valuable within the recent historiography of the Nahua people because of the way that it again accentuates their crucial role in influencing the General Indian Court through their creation, use and submission as legal evidence of their pictographic materials.

Finally and most recently, there is the work of Yanna Yannakakis in her book *The Art of Being In-between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca*.<sup>56</sup> Her work examined the indigenous political intermediary leadership of the district of Villa Alta, Oaxaca from 1660-1810 through documentation ranging from civil and criminal cases to indigenous pictorial histories located within Mexican, American, and European archives. She combined this textual evidence with secondary sources to create individual case studies that show how "through their negotiations, native intermediaries achieved more than the immediate goal of local autonomy; they actively shaped colonial political culture and the state itself."<sup>57</sup>

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<sup>55</sup> Elizabeth Hill Boone, *Stories in Red and Black Pictorial Histories of the Aztecs and Mixtecs* (Austin: University of Texas Press, 2014), 246.

<sup>56</sup> Yanna Yannakakis, *The Art of Being in-between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham: Duke University Press, 2008).

<sup>57</sup> Yannakakis. *The Art of Being in-between*, 23.

Yanna Yannakakis' work is an important study in recent historiography because, although her research focused primarily on the intermediaries in the Oaxaca region, her conclusions can be used to understand trends and relationships that occurred all throughout New Spain. She provided an even more exhaustive study of what the native nobility were able to contribute to the political structure of New Spain describing how these leaders recognized how much the Spanish needed them to help maintain order in the New World. They were able to then use their vital position to ensure that indigenous culture, language, and customs existed in a type of "hybrid colonial culture."<sup>58</sup> These intellectual and political elites among the Nahua, as others such as Argelia Segovia Liga have more recently argued, played a major role in creating, preserving and using Nahuatl language sources and their own legal knowledge to better defend their Nahua communities' interests.<sup>59</sup>

Yannakakis also traced the impact of the native intermediary roles and how life changed for both them and the common indigenous citizens when their services were no longer needed as the House of Bourbon began introducing new unifying policies to the New World. Yannakakis' study is meaningful in this era of study because she uncovered how by taking away these intermediary leadership positions, much of the native tradition and custom was lost because there was no longer one with power willing to protect it.<sup>60</sup> As a notable part of late colonial legal scholarship, her research accentuated the value of these individuals in building colonial society and shows the damage done when these intermediary positions are annulled.

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<sup>58</sup>Ibid, 3.

<sup>59</sup> See Argelia Segovia Liga, "*The Rupture Generation*": Nineteenth-century Nahua intellectuals in Mexico City, 1774-1882" (Ph.D. Thesis, Leiden University, 2017).

<sup>60</sup>Yannakakis, *The Art of Being In-Between*, 161-165.

As this brief historiographical review has shown, issues concerning the Nahua people's access and interactions with the Spanish Colonial legal system have evolved and transformed in reaction to political and intellectual changes from the 16<sup>th</sup> through the 21<sup>st</sup> centuries. This thesis will attempt to add to this ongoing scholarly examination of the role that the indigenous populations played in the Spanish colonial legal system. By tracing the impact of the early historical views on indigenous legal status such as the concept of *los miserables* and *pobres* and the paternalistic power structure of the early colonists, this thesis will show the ways in which the native people used this ideology and the institutions it supported to their own advantage. In doing so, this thesis will seek to contribute to the revised historiography of the significant role that the Nahua people played in navigating the law of the colonial system and demanding a powerful response from their distant King.

## CHAPTER TWO

### CONQUEST AND *VASALLAJE*: RIGHTS AND OBLIGATIONS OF NAHUA VASSALS IN THE KINGDOM OF NEW SPAIN

Their kings and lords were true kings and they had royal dominion over their vassals, and the vassals, in their lands and possessions enjoyed *jure gentium*, for the dominion and lordship that all men have in these things, neither is founded on faith, nor on charity, because a Gentile and an Idolater are true lords just as much as the Christian lord, and by the same title. To strip kings of their titles, and their lords of their lordships, and to subjugate them to others, to force them to be vassals and tributaries of new kings, it is not enough for them to be unfaithful, especially if they are living in peace and without harming Christians and the kingdoms of Spain

Fray Alonso de la Vera Cruz, “*Legal Opinion of 1554*,” published in Mariano Cuevas, *Documentos Inéditos del siglo XVI para la Historia de México*, 1975, 176.

During the early days of March in 1634, the General Indian Court ruled in a very long land suit brought before various lower courts many times before between the village of Ixtlán from the province of Antequera and the village of Calpulalpan including two of its *sujetos*.<sup>61</sup> The leaders of Ixtlán claimed that the two *sujeto* communities were tenants on their land and part of the Antequera province, proving their version of a rental agreement dating back to 1629. The two smaller *sujeto* communities claimed that this document was fraudulent and that the Indians of Ixtlán falsified the record in order to obtain rights to their water resources. When the viceroy heard this case originally in 1631, he ordered the *alcalde mayor* of Antequera to perform an investigation into the land records by reviewing the Indigenous pictographic records and

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<sup>61</sup> *Sujeto*: A *sujeto* was an Indigenous town subject to the political jurisdiction of a larger town known as a *cabecera*, or head town. See Lillian Ramos Wold and Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City: SHAAR Press, 1998).

agreements transcribed and translated from the Zapotec language in a sworn account.<sup>62</sup> Later in 1632, the viceroy heard from the response from the *alcalde mayor* and finally ruled in favor of Ixtlán that August (see fig. 5).

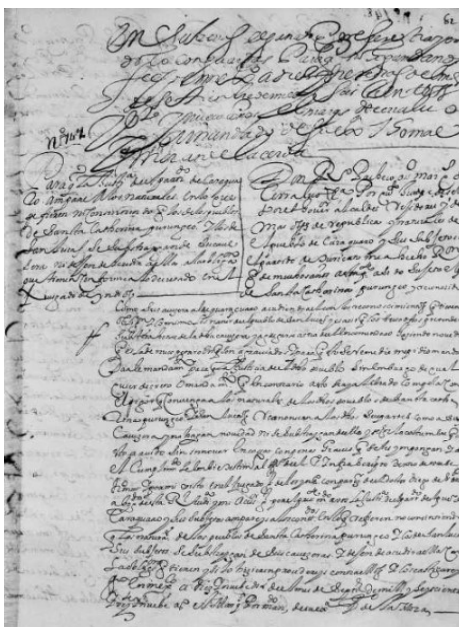


Figure 5. *Mandamiento del Tribunal de Indios, en el pleito con los naturales de Ixtlán, Capulalpa y Guelatao, 1632, AGN, Ramo de Indios, Vol. 10, Exp. 147, folio 362r.*

However, Calpulalpan did not accept this decision. Less than a month later, they petitioned to the General Indian Court again to reopen the case. In their claim, they considered the land agreement that the *alcalde mayor* reviewed unlawful evidence because the town had not authorized the individuals who signed it to act on the town's behalf. They also asserted that the *alcalde mayor* investigated with prejudice, motivated by his own self-interest. After hearing their appeal, the viceroy appointed the *corregidor* of Teococuilco to perform another, special

<sup>62</sup> *Su Excelencia declara pertenecer el conocimiento de la causa criminal de los Naturales de Ixtlán al Alcalde Mayor de Antequera por ser de su jurisdicción al cual mando que en la posesión de las tierras que piden guarden los decretos aquí citados, jurisdicción Oaxaca, pueblo de Itepec, AGN, Ramo de Indios, 1631, Vol. 10, Exp. 141, folio. 358r.*

investigation into the disagreement. After intense review and hearing the cases made by both parties, the *corregidor* decided that the land clearly belonged to Ixtlán, per the original agreement. On March 6, 1634, the viceroy, upon recommendation by the *corregidor* and assessor, signed a formal judgement giving access to the two *sujetos* to the town of Ixtlán and requiring them to pay 6 pesos per year to help maintain the local church with the additional obligation to bring flowers to the feast of St. Thomas, the patron saint of Ixtlan.<sup>63</sup>

Other similar records and codices created by indigenous communities such as the Nahuatl town of Zempoala, also served as proof of land claims and boundaries and borders of indigenous communal lands. The Nahuatl community of Zempoala submitted what is now known as the Codex Zempoala as evidence for its own land claims in another dispute (see fig. 6). This pictographic record represents one of the many Nahuatl and other indigenous documents brought before the Spanish courts as a means of defending pre-Hispanic land rights.

As a member of the so-called *Techialoyan Group* of Indigenous colonial records, the *Codex Zempoala* describes the land and records the names, acreage, and boundaries of Zempoala's districts.<sup>64</sup> It depicts churches, city halls, and houses of Nahuatl tribute-payers. It also shows the primary crops cultivated in the area, which include maguey and nopal cactus. The significance of this document lies in its format which invokes pre-Hispanic origins of ownership through the depiction of the mountain (*Tzinquilocantepetl*) which established the boundary, and the presence

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<sup>63</sup> *Mandamiento de lo determinado en el Tribunal de Indios, en el pleito con los naturales de Ixtlán, Calpulalpan y Guelatao, en que se declarase terrasgueros de los de Ixtlán y haberles de pagar seis pesos de renta cada año y reconocer a acudir con flores y ramos el día de Santo Tomas que es la fiesta de su advocación y demás obligaciones, jurisdicción de Oaxaca, pueblo de Ixtlán*, AGN, *Ramo de Indios*, 1634 Vol. 12, Exp. 101, folio. 58v.

<sup>64</sup> For the most important discussion of the *Techialoyan Group* of codices which were painted between 1700 and 1743 in response to pressure on Indian landholdings see Donald Robertson "Techialoyan manuscripts and paintings: With a Catalog," in Robert Wauchope, ed, *Handbook of Middle American Indians*, Vol. 14, Guide to the Ethnohistorical Sources (Austin: University of Texas Press, 1975), 253-280. Also see Elizabeth Boone, *Stories in Red and Black Pictorial Histories of the Aztecs and Mixtecs*, 248-249.

of the Aztec Lord Ixtlilxochitl, a royal ancestor of the Aztec lineage, and one of the Indigenous lords who became Hernan Cortés' ally in the final conquest of Mexico. In one single document, the lords and town of Zempoala both proved their pre-Hispanic lineage and rights to land, and linked them to their loyal status as vassals and lords who fought with Cortes under the Crown.



Figure 6. Records of the names, acreage, and boundaries of Zempoala's districts, *Codex Zempoala*, Ink on amatl, c. 1700-43.<sup>65</sup>

These cases and hundreds of others provide us excellent examples of both the legitimacy of the Indian pictographic civil records within the Spanish legal system and the tenacity with which the Indian communities fought for the rights to their lands both pre and post conquest. Throughout the early decades of Spanish colonial rule, the native people and the Spanish administration negotiated a series of long, complex legal agreements that both established the

<sup>65</sup> This pictographic record represents one of the many indigenous documents brought before the Spanish courts as a means of defending Mesoamerican land rights. As a member of the so-called Techialoyan group of Indigenous colonial records, the *Codex Zempoala* describes the land and records the names, acreage, and boundaries of Zempoala's districts. The significance of this document lies in its format which invokes Mesoamerican origins of ownership through the depiction of the mountain (Tzinquilocantpetl) which established the boundary, and chronicles the geneology of Ixtlilxochitl, a royal ancestor and Cortés' ally.



*Indios* as royal vassals to the Spanish King, but also recognized them as subjects with certain inalienable rights and obligations, but which guaranteed them the rights and free access to their land, life, and labor.<sup>66</sup> As this chapter will detail, the road to negotiating this legal precedence began years before the Spanish even arrived on the American continent. Nevertheless, this critical discussion between Indian leaders, Spanish administrators, Church clergyman, centuries of Spanish law, and similar indigenous laws, laid the foundation for years of future litigation. Through this process, the Nahua and other Indigenous Peoples in New Spain realized the power of Spanish law and they managed to carve out their own notable space within it.

### **Indigenous Rights and Obligations: The Foundation of Law**

As described in chapter one, the basic concepts of law and order remained at the foundation of the Spanish idea of civilization. This chapter intends to provide a historical background for the Spanish colonial framework and also for the ideological background that supported indigenous engagement with colonial Spanish law and the exercise of their rights as free subjects of the Spanish Crown.<sup>67</sup> The eventual, juridical structure of the colonial period that provided the native people various tools for participating in legal matters resulted from centuries of Spanish legal evolution; it developed, in part, long before the birth of the idea of the New World.

The development of the Spanish juridical basis for the protection of the native people owed its existence to a few particular elements. The first element included the Spanish policy of

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<sup>66</sup> For an excellent recent study on the concept of Indigenous vassalage and the rights and obligations guaranteed to Spain's indigenous subjects in the New World see Margarita Menegus Bornemann, "El gobierno de los indios en la Nueva España, siglo XVI. Señores o cabildo" *Revista de Indias* 59, no. 217 (1999): 599-617.

<sup>67</sup> For an excellent discussion of the Spanish Crown's legal relationship with the Indigenous people see Brian P. Owensby, "Pacto entre el rey lejano y subditos indígenas. Justicia, legalidad y política en Nueva España, siglo XVII," *Historia Mexicana* 61, no.4 (2011): 59-106.

dealing with and incorporating into its colonial legal systems, aspects of consuetudinary, or local Indigenous customary law, already established in the Aztec civilization and its pre-conquest legal systems.<sup>68</sup> This provided the natives with an understanding of the legal process and an expectation of their active participation. The second element included the governing, economic, and legal structures of the Spanish colonies themselves as they developed from the very first efforts at colonization in the Caribbean and expanded to include more complex systems of colonial law in government under the viceroyalty system as it developed in the mainland of the Spanish Americas. These governing institutions provided specifically outlined cooperation between the indigenous and Spanish subjects of the new viceroyalties.

Combined with these institutional and legal concepts, the next element in the colonial policies to deal with the Indigenous peoples focused on creating new legal and juridical concepts and assumptions about the basic nature of the native peoples of the Americas. These new juridical concepts the Spanish sought to use to better delineate the legal status of the indigenous people in the new colonial legal system. Initially finding in the natives a total lack of understanding of European legal matters, and fearing that they could easily be abused or tricked into losing their rights and privileges as subjects, the Spanish Crown sought to resurrect ancient medieval concepts of the necessity of a type of “protectorate” status for the natives, since they viewed them as living in a “miserable and child-like state.”<sup>69</sup> The natives, thus fell under the medieval status of *Miserables y Pobres* (a poor and miserable class of people) who needed the

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<sup>68</sup> For an excellent recent study that looks at this pre-conquest Aztec legal system and its impact and importance in three early colonial Nahua court cases in Mexico see Susan Kellogg, *Law and the transformation of Aztec culture, 1500-1700* (Norman: University of Oklahoma Press, 2005). See especially her introduction which lays out a brief comparative study of pre-contact Aztec law and its interactions with colonial Spanish law (pp. xiii-xxxiii).

<sup>69</sup> A good study of this juridical concept is found in Caroline Cunill, "El Indio Miserable: nacimiento de la teoría legal en la América colonial del siglo XVI," *Cuadernos Intercambio Sobre Centroamérica y el Caribe* 8, no. 7, (2011): 229-248.

benign protection of the Crown and its ministers which afforded them generous privileges within the law as a protected class of underprivileged peoples, likening their status to that of children, minors, widows, and the mentally infirm. Finally, we can also discern undoubtedly the moral compass of a select few, mostly clergy, that guided the expectation for how native people should be treated as human beings who ultimately influenced the Crown's conscience and aided in the creation of a high moral code for the subsequent creation of humane laws eventually codified into massive compiled legal code known as the *Leyes de las Indias*, or "Laws of the Indies."

### **Spanish Conquest and the Origins of the Colonial Order**

After the fall of Tenochtitlán in August 1521, life for the Aztecs in Mexico changed and set forth on the transformative road of colonialism. Still, for the most part, the previous political, economic, and social structures of the early 16th century remained fairly familiar to the Nahua people. Indigenous civilizations in the Americas pre-conquest, experienced many of these new policies in one form or another, including the protection of the power of Aztec ruling elites, issues involved in communal land holding, and the collecting of tribute from Nahua subjects of the Aztec emperor, or *Tlatoani*. Traditionally, historians consider Spain to have a threefold motivation at the core of its expeditions to the New World: the expansion of its growing empire, the attainment of wealth, and the spread of Christianity. Almost immediately upon the arrival of the *Conquistadors*, the Spanish crown began their attempts to create a colony that could accomplish in an organized and Crown responsive fashion all of these goals. After the brief and brutal rule of the conquistador Hernan Cortés and his soldiers, the so-called "Age of the Adelantado" from 1520-1530, King Charles I of Spain helped to establish the *Real y Supremo Consejo de las Indias* (The Council of the Indies) in 1524; the first *Audencia* or governing

supreme court in 1527; and finally in 1535, the Crown declared Don Antonio de Mendoza as the first Royal Viceroy of the newly titled Kingdom of New Spain. This new colonial organization along with help from the Dominican and Franciscan Friars both supported the long term goals of empire building in the New World.

Legally speaking, as early as his first instructions to Hernan Cortes, the Emperor Charles V ensured the legal protections of his new Nahua subjects. In his letters of instruction to Hernan Cortes in 1524, he reminded Cortes: “God our lord created the said Indians and raised them to be free and not to be subjected, and as such we cannot force them to be entrusted nor given in servitude to the Christians there.”<sup>70</sup> In the same royal order, however, he also claimed them formally as his royal vassals, with all the rights and obligations that entailed. The Crown reiterated in this royal order that it alone had the right to receive the tribute and services of the Indigenous people, who now had become vassals of the Spanish monarchy by law and all legal reasoning:

For it is a just and reasonable thing that the native Indians of the land should serve and give homage to us as their Lord and King, and pay tribute in recognition of the lordship and service that as our subjects and vassals they owe Us, and we are informed that they also among themselves had a habit of giving their main nobles and lords some ordinary tribute.<sup>71</sup>

The intentional protection of the indigenous populations and their rights that developed very shortly after they established their New World colony markedly separates Spanish colonization from the other European colonizing powers of the time, such as England, Portugal,

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<sup>70</sup> The royal order and instructions concerning these limits placed on the granting of *encomiendas* and the Crown’s desire that the Indigenous people were free subjects of the Crown cited in Silvio Zavala, *La Encomienda Indiana* (México: Porrúa, 1992), 44.

<sup>71</sup> See Zavala, *Encomienda Indiana*, 44-45.

or France. Some historians have addressed this comparatively benevolent treatment by the Spanish as an attempt to imitate their own treatment under Moorish rule.<sup>72</sup> Other scholars have also cited Spain's long history of valuing civil rights in their vast collection of legal documentation. Regardless, although the Aztecs moved from being a powerful state level society on the North American continent, to becoming tribute paying vassals of Spain owing vassalage through the payment of labor and resources, the Spanish colonial system and its ideology of human rights preservation *de jure*, placed the indigenous Mexicans in a very unique position to participate actively in the development of New Spain. In order to arrive at this conclusion though, one must be conscious of viewing colonial history not through an anachronistic lens of present-day ideas and perspectives placed upon depictions of the past. Historian Brian Owensby warns readers that the most accurate assessment of this history and what it means lies only in its study within the context of what it meant to have rights as a vassal, as a human, and as a part of the colonial Spanish empire.<sup>73</sup> It is only then that one might scrutinize this system for what it took from the indigenous population, all the while accurately acknowledging what it also provided to them within its own historical context.

### **Nahua Culture Pre-Conquest: Society, Law, and Economy**

Long before the arrival of the Spanish, the various Nahua communities had designed and established an extremely complex, highly developed, civilization rooted in a legal order that applied to most areas of everyday citizens' lives. The Aztec society functioned under a strict social hierarchy. The Aztecs referred to those in the highest classes in Nahuatl as *pipiltin* a social

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<sup>72</sup> Woodrow Borah, *Justice by Insurance*, 7.

<sup>73</sup> Brian Philip Owensby. *Empire of Law and Indian Justice*, 4-9.

level that consisted of government and military leaders, highest level religious leaders, nobles and lords called *tecuhтли* who could also be landowners or judges (see fig. 7).

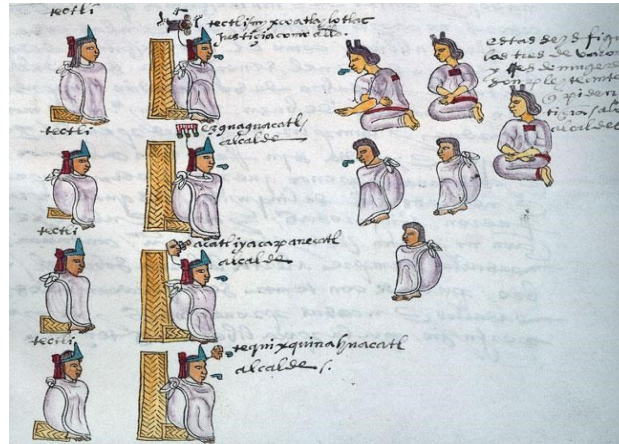


Figure 7. An Aztec Court of Justice ('Teccalli'); 1541, *Codex Mendoza*, fol. 68r.

Below them laid the commoner class (*macehualtin*) which included agriculturalists, merchants, craftsmen, and the lower level priests. These people typically owned a specific means of production and operated with some amount of agency within society.<sup>74</sup> Finally, at the bottom of the social pyramid lived the *tlacotin*, the landless serfs and slaves. This class of individuals worked the land or worked in the service of their slave owner without many civil freedoms. An Aztec could become a slave as a form of punishment for crimes, as a way to pay a debt or tribute, or as a prisoner of war. Generally, slaves remained slaves for life unless their owner died or they had the opportunity to marry their owner.

Within this chain of command, nobles received tribute from commoners in the form of goods, services, and labor. Also, the Aztecs spent efforts conquering neighboring regions in order to collect tribute and obtain captives. They had established a well-organized society before

<sup>74</sup> For the most comprehensive coverage of these topics of the Aztec social structure, and the roles of the nobles *pipiltin* and *tecuhтли* see James Lockhart, *The Nahuas After the Conquest*, 102-110.

the arrival of the Spanish which would serve to prepare them to act powerfully within the new colonial system to come.

Before the conquest, the Nahua found themselves not only well versed in complex social organizations, they also had a long history of operating under an advanced legal system of their own which the common Nahua believed to have been a fair and equitable system. They had based this system on royal decrees and traditions passed down generationally, similar to the system in place in Spain. Various levels of judges interpreted and implemented their law in court, and the Nahua had already begun to codify their legal system at the time of the conquest recording it into various pictographic codices (see fig. 8).



Figure 8. Aztec Judge conducting a Court Hearing (Sahagún, *La Historia Universal de las Cosas de Nueva España*, 1545-1590).

Tragically, Spanish conquistadors and missionaries destroyed most of these codices by burning them or through their neglect. Nevertheless, most of the surviving information about the Aztec civil and criminal justice system that remains can be found in the 12 volumes of the *Florentine Codex* (1545-1590), the *Codex Mendoza* (1541), and the *Libro de Oro Codex/The Codex Ixtlilxóchitl* (1568-1578).

The economies of the Nahua rested primarily on three parts: trade, agricultural goods, and tribute collection. Trade happened on both a local and regional level and operated very efficiently. For agricultural goods, they used two main intensive farming methods: the floating gardens known as *chinampas* and the use of terracing. *Chinampas* were simply man-made islands or raised bed gardens on the surface of Lake Texcoco's shallow waters. However, a very large portion of their economy operated on the basis of collecting tribute from their conquered subjects and also from the commoner class regionally. They referred to the regions in which most every day Nahua people lived as *altepetl* or a city-state or province. Either nobles referred to as *tlatoani* or stewards of these rulers, called *calpixqui*, governed these city-states.

The *calpixque* and their overseers, *huecalpizque*, played a significant role in collecting and managing the 38 tributary provinces of the Aztec empire along with their payment of tribute.<sup>75</sup> During the reign of Moctezuma I, the Aztec emperor, or *Tlatoani* assigned two *calpixque* per tributary province. He stationed one in the province itself, likely for the duty of supervising the collection of tribute. The other resided in the capital of Tenochtitlán, for supervising storage of tribute. Then, officials redistributed the tribute into the economy and distributed it to the noble class.<sup>76</sup>

Undoubtedly, the Nahua had familiarized themselves with the concepts of a social hierarchy of leadership, a structured system of civil rights, tribute payments, and compulsory service in war before the time of the Spanish encounter. Spain would use this to their own advantage after the conquest. Instead of destroying the social, political, and economic systems that the Nahua had in place, they chose to simply “cut off the head” by removing the highest

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<sup>75</sup> According to James Lockhart, these Nahua *Calpixque* were those entrusted with the collection of the tributes. See Lockhart, *The Nahuas After the Conquest*, 43.

<sup>76</sup>See Alonso de Zorita, *Life and Labor in Ancient Mexico*, 120-127.



level native leaders, and replaced those with Spaniards, but daily life and even much of the legal system at the local level in many ways continued as usual.<sup>77</sup> This new method of colonial rule employed a wide variety of indigenous leadership, something that would serve to be an enormous asset for the native people in giving them a voice in the shaping of the creation of a new legal and political New World.

### **The Spanish Conquest and Aftermath**

In 1521, after a three-month siege and countless lives lost, Spanish forces led by Hernán Cortés captured the Aztec capital of Tenochtitlán, during this siege they began leveling the city, and eventually captured Cuauhtémoc, the last independent Aztec emperor. This capture marked the official end of the Aztec dynasty and the beginning of Spanish rule in central Mexico. Cortés had a long line of bloody and impulsive conquests trailing behind him in the Spanish New World spanning back to 1504. After founding the colony with the first establishment of the city of Veracruz with its Spanish town council in 1519, mainly for the purpose of becoming captain general again on the American mainland, Cortés began preparing his army for his largest conquest yet: the Aztec capital of Tenochtitlán.

On the way to attack the Aztec capital, Hernan Cortés ran into several Mesoamerican indigenous groups, such as the Nahuatl speaking nation of the Tlaxcalteca, whom he employed as allies to fight with him against the reigning Montezuma II. After being welcomed into the gates of Tenochtitlán, Cortés' soldiers seized the Aztec king and began the takeover of his kingdom. Following three long years of tragedies and battles, on May 1521, Cortés returned to Tenochtitlán, and after a three-month siege the city fell. This victory marked the conclusive fall

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<sup>77</sup> Owensby, *Empire of Law*, 42-43.

of the Aztec empire, and Cortés became the Spanish ruler of a vast Mexican empire in the name of the King of Spain, Emperor Charles V.

The aftermath of the conquest can be classified as almost equally chaotic and brutal than the military phase of the conquest itself. The Spanish embarked on the enormous task of establishing their new empire upon the ruins of the previous Nahua one and bringing the European way of life to the New World. During this Age of Discovery (1450-1700), one of the primary focuses of the European colonizers included spreading their own religious beliefs (which also influenced most of their social, legal, and political structure) to their newly founded colonies.

The Catholic monarchs of Spain primarily funded the expansion of Catholicism specifically, but they enjoyed unquestionable support and authority over the Church under the *patronato real* system outlined by the Pope to ensure that missionary work remained at the center of the broader project of the Spanish conquest. Therefore, Franciscan, Dominican and Augustinian friars became the pioneers of what would become the culture and structure of New Spain. The Franciscan friars particularly traveled to the New World with high hopes of spreading the Catholic gospel to the lost and untouched people around the globe.<sup>78</sup> This desire took root, not only as a result of the benevolent motivation to keep souls out of hell, but these religious leaders found great religious meaning in their work of evangelizing these new people of the earth, many believing this could usher in the second coming of Christ.<sup>79</sup> This, along with the hope of creating a new society in the New World revived by the spirit of missionary Christianity,

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<sup>78</sup> Edwin Edward Sylvest, *Motifs of Franciscan Mission Theory in Sixteenth Century New Spain: Province of the Holy Gospel* (Washington DC: Academy of American Franciscan History, 1975).

<sup>79</sup> John Leddy Phelan, *The Millennial Kingdom of the Franciscans in the New World* (Berkeley: University of California Press, 1970).

which brought waves of religious leadership to the colonies of New Spain to begin their work. When these friars arrived, they began employing the native people to construct churches and monasteries and evangelizing them.<sup>80</sup> However, before they could do that, the friars knew that they had to learn the indigenous language, in this case Nahuatl, and they also had to teach the natives Spanish. For this reason, the religious friars became not only the first anthropologists and ethnographers of this region, they also became the first teachers.<sup>81</sup> Through this exchange of language some of the earliest and only surviving records of Nahua history have survived.

Although in many tragic instances the friars burned, neglected, and destroyed much of Aztec and Nahua material culture (statues, figures, codices etc.), many others, like the Dominican friar Fray Bartolomé de las Casas (see fig. 9) and the Franciscan Fray Bernardino de Sahagun, seemed to truly value not only their Catholic faith but also the Nahua culture, lifeways, and their humanity. Missionary clergy like them encouraged the Nahua to learn how to read and write both in Spanish and in Nahuatl using Roman alphabetic letters.<sup>82</sup> This had a significant impact for two reasons. The Nahua found with some of these religious leaders (certainly not all) a type of ally willing to make arguments for their humanity and basic rights.

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<sup>80</sup> For more on early period of missionary zeal, see Robert Ricard, *The Spiritual Conquest of Mexico: An Essay on the Apostolate and the Evangelizing Methods of the Mendicant Orders in New Spain, 1523-1572* (Berkeley: University of California Press, 1982).

<sup>81</sup> For a thorough study of Franciscan mission education and the colleges and schools founded for the education of the Nahua and other Indigenous peoples of New Spain see John F. Chuchiak IV, “*Sapientia et Doctrina*: The Structure of Franciscan Education in the Province of San José and the Teaching of Alphabetic Literacy among the Maya of Yucatan, 1545-1650” in Jay Harrison, David Rex Galindo, *The Franciscans in Colonial Mexico: Five Centuries of Cultural Influence* (Boulder: University Press of Colorado, 2021): 101-148.

<sup>82</sup> For best coverage of this interaction see James Lockhart, *Nahuas and Spaniards: Postconquest Central Mexican History and Philology* (Stanford, Calif: Stanford University Press, 1991).

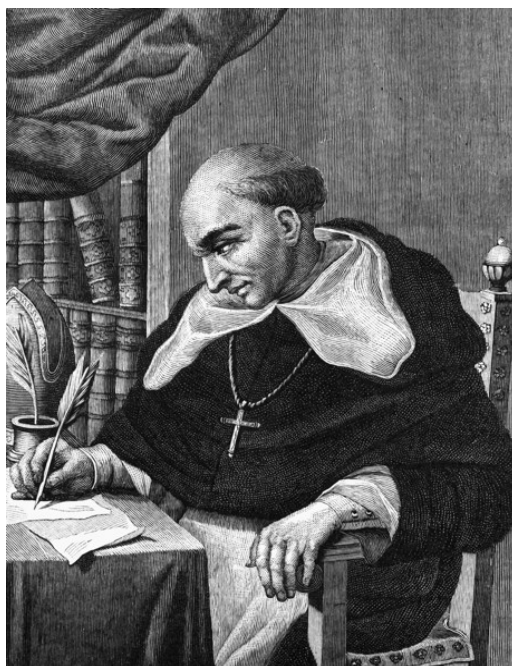


Figure 9. Bartolomé de Las Casas (1484 - 1566) from *Archivo General de los Indias*.

Although the Spanish stopped educating the native people after they realized the power it provided them, this small bit of time learning how to read and write their Nahuatl language with Latin letters prepared the indigenous people in an enormous way to be active participants in the colonial legal system and society at large.<sup>83</sup>

### **Developing a Concept of Indigenous Rights**

During the early developing years of the Spanish New World, several notable friars have been considered significant actors in championing the ideology of human rights for the natives. One of the most prominent advocates of Indigenous rights was Fray Bartolomé de las Casas (1474–1566). Las Casas arrived in the New World in 1502 and nearly a decade later received his

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<sup>83</sup> Other scholars have viewed this acquisition of Latin letter based literacy in the indigenous languages of Mesoamerica as an act of resistance. For a recent example see John F. Chuchiak IV, "Writing as Resistance: Maya Graphic Pluralism and Indigenous Elite Strategies for Survival in Colonial Yucatan, 1550-1750," *Journal of Ethnohistory* 57, no. 1 (2010): 87-116.

share of an *encomienda* in Cuba. After observing first-hand the abuses and destruction wreaked by this system, Fray Bartolomé de las Casas decided to return to Spain and fight for the indigenous people of the Americas to be treated as humans. During this period, the colonial officials and the Dominican Order often perceived the Franciscans who affirmed the full humanity and capacity of indigenous people as suspect; some of the latter even hinting that the Franciscans through their mission ideology endorsed idolatry (see fig. 10).



Figure 10. The “Franciscan Apostles” Fighting Aztec Demons. In Diego Muñoz Camargo, *Descripción de la ciudad y provincia de Tlaxcala*, Glasgow University Library, MS Hunter 242, folio 242r.

Fray Domingo de Betanzos especially held the nature of the Indians and their capacity for Christianity with suspicion. In fact, Betanzos remained one of the leaders in “the condemnation

of Indian languages and indeed of the Indians themselves as unfit for Christianity.”<sup>84</sup> Many other clergymen also argued that the friars had to be careful in pursuing and defining their interactions with indigenous people, but this did not stop Las Casas. After the death of King Ferdinand, Bartolomé de las Casas approached Cardinal Francisco Jiménez de Cisernos with his petitions to end the maltreatment of the Indians and establish a just system of governing in the new colonies. Due to this plea, Cisernos created a council of leadership to initiate these reforms. Some of these goals for protecting the Indigenous people included the suppression of all *encomiendas*, a separation of Spanish towns from native towns, the granting of legal freedoms for the Indians, and the creation of official clerical administration in the colonies.<sup>85</sup> Without this advocacy on the part of Fray Bartolomé de las Casas, it’s impossible to know when the native people might have been afforded even the basic rights as humans much less a voice to be heard in the legal system.

### **Needing Protection: The Creation of the *Protector de los Indios*, 1516**

After the creation of this council, Cardinal Cisneros with the help of Las Casas, created the first colonial administrative board to ensure these reforms and sent them to the New World to help carry out the care of the Indians. Fray Bartolomé de las Casas did not serve as a member of this first board. Instead, the Cardinal appointed him as the first holder of a new official position, that of the *Protección de los Indios* or Protectorate of all the Indians in the Indies. In 1516, Las Casas and the newly formed council sailed back to the New World to begin their work in the Caribbean island possessions. Eventually, this attempt to empower a religious order specifically to be held accountable for the fair treatment of the native people did not last; however, the efforts

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<sup>84</sup> See Nancy Farris, *Tongues of Fire: Language and Evangelization in Colonial Mexico*, (Oxford: Oxford University Press, 2018).

<sup>85</sup> Cutter, *The Protector de Indios*, 10.

of Fray Bartolomé de las Casas did establish a sense of responsibility for the wellbeing of the Indigenous people within the clergy that would last for hundreds of years.

Unfortunately, the Spanish political authorities did not always support the utopian ideas of this council and its power to enforce them. In México, Archbishop Juan de Zumárraga came face to face with just how reluctant the Spanish officials of the new courts of the *audiencia* would be to give up jurisdiction and control over protecting the natives and prosecuting their abusers. After calling attention to the mistreatment of Indians by members of the *audiencia*, these officials, the *oidores* (judges), pushed back, going so far as denying the validity of Zumárraga's position within the church, and blocking his attempts to bring to light cases of abuse, and, in 1529, they brought matters all the way to the King himself.<sup>86</sup> In August of 1530, the King of Spanish issued a royal *cédula* (order) to the New World outlining the role, power, and jurisdiction of the *Protección de los Indios* as well as establishing who could be punished and for what abuses.<sup>87</sup> This proved to be a setback for the egalitarian ideals of the clergy who had before held the positions as *Protectores*.

It became increasingly clear that the Crown had sided with the political leadership of the *audiencia* with regards to the overall prosecuting and punishing power against those who abused the natives. The decree stated that the *protector* could send appointed members out within his ecclesiastic jurisdiction to check on Indian wellbeing, but they had to have the approval of the royal *audiencia* court to do so. The *protector* and his representatives could investigate cases of misconduct by the Spanish toward the Indians, but they had to send their findings to the judges

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<sup>86</sup> The particulars of this case of the struggle between Mexico's first bishop and the first supreme court or Audiencia in New Spain are best covered in Ethelia Ruiz Medrano, Julia Constantine, and Pauline Marmasse, *Reshaping New Spain Government and Private Interests in the Colonial Bureaucracy, 1535-1550* (Boulder: University Press of Colorado, 2012) 16-20.

<sup>87</sup> Vasco de Puga, *Provisiones, Cédulas, Instrucciones Para el Gobierno de la Nueva España*, Facsimile Reprint Edition, (Madrid: Ediciones Cultura Hispánica, 1945), folio. 65r.

of the courts for further prosecution and adjudication. Moreover, they could then only impose a punishment of a fine up to fifty pesos or ten days in jail; anything warranting a higher sentence had to go through the *audiencia* court. Although this gave the ecclesiastical order some power and responsibility in maintaining the good treatment of the indigenous people, it became clear through multiple contacts with the King into the mid-16th century that Spanish royal policy would lean toward civil control over clerical Indian protection. Many of the early indigenous observers in New Spain, often commented that they found justice mostly with the friars and their God. One noble reported and complained to a judge of the royal *audiencia*, “It’s not for our good; judges and *visitadores* daily come to us, we don’t know why. Heaven’s justice alone is good.”<sup>88</sup> The greatest impact, however, of this struggle ultimately laid in establishing by royal order that the native people must be treated decently and this they communicated to them, which for many Indians made it patently clear that the power and preponderance of their struggle for justice could only be had in the legal court systems.

### **A New Colonial Law: *Leyes De Burgos*, 1512**

The body of laws initiated by King Ferdinand II of Aragon with the *Laws of Burgos* certainly influenced the compliance displayed by Cardinal Cisneros in creating a system of protection for the native people and its later expansion into the mainland colonies. The entire collection of decrees organized in the *Leyes de Indias* from 1512-1573, represented an attempt to royally regulate Spanish interaction with the native peoples, an issue about which the Crown became concerned soon after the voyages of Christopher Columbus and the problems and abuses of his early governorship (see fig. 11). The *Laws of Burgos*, the first set of decrees focused

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<sup>88</sup> Zorita, *Life and Labor in New Spain*, 126.



particularly on the wellbeing of the indigenous people, explicitly forbade the maltreatment of the indigenous people and endorsed their conversion to Catholicism. In the wake of the abuses of the *conquistadores* and following colonists, this body of law was Spain's first attempt to bring order and justice to their new colonies.



Figure 11. The title page of the massive compilation of the many royal cédulas and laws of the Indies known as *Recopilación de las Leyes de los Reinos de las Indias*, 1681.

These laws outlined many aspects and regulations concerning the lives of the indigenous people and their rights and obligations as vassals. This codified corpus of royal laws explained what the Crown permitted on the *encomiendas*, such as how many native people could be expected to work on certain plots of land, what their salaries would be, their living quarters, and even what provisions they should be provided. These laws prohibited any form of punishment inflicted on the natives by *encomenderos*. The Spanish administration considered this type of maltreatment active interference with the justice system in place.

The Spanish administration considered this type of maltreatment active interference with the justice system in place. These laws also mandated that religious orders must indoctrinate the *indios* with Christian values through peaceful means. Finally, this legal code also served to legitimize the indigenous Nahua nobility giving them a special position in society as intermediaries, something that would prove to be increasingly important in the coming years. So on December 27, 1512, the King put these initial *Laws of Burgos* into effect. These regulations included thirty-five laws in total, which legally secured the freedom of the Indigenous peoples of the Americas and which guided the enforcement of formal indigenous re-congregations forcing them into new towns with rules governing their conversions and government. Subsequently, the King also made a very important amendment to the *Laws of Burgos* the following year stating that, “after two years of service, the Indians are free to go [leave the *encomiendas*]. By this time they will be civilized and proper Christians, able to govern themselves.”<sup>89</sup>

Many historians, and even contemporary clergymen like Las Casas rightfully criticized these early laws claiming that they did not, in fact, achieve the grand reform and improvement in the lives of the Indians they initially sought. However, on the other hand, the very fact that the Spanish went so as far as drafting and promulgating laws with the sole purpose of improving the treatment of the Indians should still be recognized as a significant advance.<sup>90</sup> It should also be noted that the legal accountability these laws established in that moment would formally establish the means by which the Indigenous people could bring abuse cases to the courts in the future. Despite this, the position that native people held within early colonial society, still faced a

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<sup>89</sup>See Lesly Byrd Simpson, *The Laws of Burgos of 1512-1513. Royal Ordinances for the Good Government and Treatment of the Indians* (San Francisco: John Howell Books, 1960).

<sup>90</sup> Lewis Hanke argued throughout his career that these early attempts at ensuring the defense of the rights of the New World’s indigenous peoples was unique among European powers, and in fact it served as one of the more positive legacies of the Spanish Empire in the New World. See Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (University Park, Texas: Southern Methodist University Press, 2002).

long road ahead both on a cultural and political level. The egalitarian ideology upon which this new body of laws existed also clashed with some of the guidelines that had governed European law making for centuries. As we will see, it would be more than a century from the arrival of Columbus in the Americas before true egalitarian legal reforms would exist.

### **A Long History of Legal Protections: The Role of the *Siete Partidas* (1265) in Colonial Law**

Although the Spanish could no longer technically consider the Nahua as “slaves” under the *Leyes de Indias*, in practice, they still treated them legally and administratively as inferiors. The practice of civil slavery outlined by the 13th century Castilian statutory code of law known as *La Siete Partidas*, first compiled during the reign of Alfonso X of Castile (1252–1284), legally supported many of the various types of slavery and other similar unequal treatment of the Indians of the New World. According to this code, a person could be treated as a slave if either of their parents were slaves, if they were convicted as a criminal, were subject to great poverty or debt, or if they participated in unnatural or inhuman acts like cannibalism.<sup>91</sup> In 1503, Queen Isabel further defined these qualifications on the bases of testimony from friars and other merchants of the New World to state that the *indios caribes*, or cannibalistic Indians, were to be rightfully classified as slaves under the law due to their sub-human or barbaric lifestyle.<sup>92</sup> Later expansions of this concept of “barbaric” status of certain Indigenous peoples, their rebellion, resistance or violent warlike ways, would further justify Indian slavery on the mainland as well.

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<sup>91</sup>Nancy van Deusen, *Global Indios: The Indigenous Struggle for Justice in Sixteenth-Century Spain*. (Durham and London: Duke University Press, 2015) 3. We must note, however, that most of these same conditions also justified slavery in Aztec society before the conquest as well.

<sup>92</sup> See *Real Provisión para poder cautivar a los caníbales rebeldes, Segovia, 30 de octubre, 1503*, published in Richard Konetzke, *Colección de documentos para la historia de la formación social de Hispanoamérica* (Madrid: Consejo Superior de Investigaciones Científicas, 1958), Vol. 1:14-16.

In addition, the native peoples' religious affiliation largely determined their social status, as the long standing tradition in Spain commanded. As we saw in the first chapter, the legal document of the the *Requerimiento*, of 1513, also dictated that if those encountered by the Spanish conquistadores, in this case the Nahua, were unwilling to succumb to Catholic rule, which included adopting the Catholic faith, they were considered to be rejecting their vassalhood and could be enslaved. Also, because the Spanish monarchy believed, until well into the 16th century, in the divine ordination that their conquest of the New World, any indigenous group that made armed attempts to resist their conquerors could also be considered warlike in nature and because of this "bellicose nature" they too could be enslaved according to law.

Nevertheless, by the middle of the 16th century, the Spanish could no longer keep Indians in bondage, nor take them as slaves (even though they were still forced to work for low wages under the *encomienda* system), as the Indians had by then become recognized as having the *ingenio* or *capacidad* of understanding and accepting Christianity.<sup>93</sup> For that reason, in terms of their humanity, these new laws forced Spain to recognize them as legally human. Nevertheless, even though these New Laws against Indigenous slavery existed, many Spaniards in Mexico found ways around them to continue to force the natives to labor for them without pay. Similarly, because of their conversion status and their "barbaric" civilization, even the Spanish Crown also viewed the indigenous people of the New World as new legal dependents unable to govern themselves. This perception of dependency and a general view of their childishness translated itself seamlessly into their classification into a legally protected minority status by the century's old category found in the laws of the *Siete Partidas*: the legal status of being considered *Misérables y Pobres*.

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<sup>93</sup> Rumeu de Armas, *La Política indigenista de Isabel la Católica*, 37-38.

### **Legal Classification of Minority Status: *Misérables* and *Pobres***

It is also from the *Siete Partidas* that the Spanish colonists would establish specific legal precedents with relation to the treatment of the native people that would last all the way into the 19th century. These medieval laws explicitly stated that those under Spanish Royal rule and vassalage who were particularly vulnerable or without protection should be held under special protections and considerations within the law.<sup>94</sup> Therefore, along with children, mentally disabled people, widows, the elderly, and slaves, indigenous citizens were given a minority status which afforded them very specific rights, privileges, and protections within the law. Native people were placed in this status on the basis of the prevailing Spanish legal ideology that spanned all the way back into the medieval era. Although there were mentions of this legal status in reference to the native people in the early legal codes established by the Catholic monarchs themselves, the setting of this official status can be traced much later to a royal order drafted by King Philip II in 1563. Under the interpretation of this order, the people in this special minority status were afforded not only protection from litigation outside of their place of origin, it also gave them access directly to royal courts, a guarantee of quickly processed legal cases, and it waived judicial fees, and appointed them free legal representation. All of these advantages, and more, put the indigenous people in an extremely advantageous position among all those being ruled over as vassals by the Spanish crown at the time.

The overt legal privileges that the Spanish colonial administration gave to indigenous peoples with this minority status in court not only helped them to establish their protected legal status, but this position also supported a general Spanish colonial cultural understanding of their simplistic nature itself. Most Spaniards, particularly those in religious and civil leadership,

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<sup>94</sup> See Samuel Parsons Scott, Robert Ignatius Burns, and King Alfonso X, *Las siete partidas*, 5 Vols. (Philadelphia: University of Pennsylvania Press, 2001), Vol. 1, L. 41, 18.

viewed the indigenous people as children for which the law obligated them to graciously care and protect. Official correspondence reflected this attitude as shown in an exchange between the King and a friar named Juan Binero when he spoke to the King of his God given duty to the ‘miserable Indians’ of which he saw himself a ‘tutor and caretaker.’<sup>95</sup> Records show that this ideology to be particularly popular among the religious leaders and missionaries in New Spain, who although they were primarily tasked with the spread of Spanish Catholic doctrine, were also very much responsible for the spreading of Spanish law and civil order due to the nature of the interwoven church and state relationship in the indigenous communities. Even if they converted to the Christian faith, religious leaders viewed them as having the minds of children in need of care and direction.

This attitude spread to all members of Spanish colonial leadership and as a result of this supposed cultural and legal naivety and clear ignorance concerning the indigenous people’s very nature, the natives were able to use their underestimated status in the law and their protected position in society in a way that the Spanish never expected them to be able to do. One friar writing in 1561 to the king argued that the suffering and lack of protections for the Indians would bring tears to his majesty’s face:

These natives are *pobres y miserables* and they cry tears for justice, seeing how they are dispossessed of their patrimony, their belongings, and their services, and we can only hope that our Lord hears their cries and that these will move your Majesty’s heart so that with mercy he can order that now that he governs them, that they these *pobres* will have respect along with their religious friars who give them their doctrine.<sup>96</sup>

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<sup>95</sup> Charles R. Cutter, *The Protector de Indios*, 8.

<sup>96</sup> See *Carta de Fray Agustín de Coruña al Rey Don Felipe II, exponiéndole las razones en cura virtud la orden de San Agustín adocrina a los indios en la Nueva España, 10 de julio, 1561*, published in *Cartas de Indias*, (Madrid: Ediciones Atlas, 1974), Vol. 1, 154-155.

## **Rights and Obligations: Nahua Rights to Land**

With the foundation of centuries of law and a definition of human rights, the Spanish continued outlining what position the indigenous people would have within their new society. With news of continuing abuses by the colonists and officials reaching Spain, King Charles V passed a new body of laws in 1542, called the *Nuevos Leyes* or New Laws. The laws the Crown passed with hopes of regulating and ultimately abolishing the abuses of the *encomienda* system in the Americas. Because of the way that colonial Mexico established itself based on an agrarian economy, land and the production on it remained at the center of many conflicts and rights violations. Spanish elites continuously tried to take and usurp indigenous lands for themselves and also to force them to farm them for little or no wages. However, these *New Laws* set forth to principally abolish the *encomienda* system as it existed and to better legally define the rights to land and to work that the native people maintained in Spanish society as new vassals of the Crown and the way that they would interact with Spanish colonial landowners.

The *New Laws* clearly affirmed the following: First, that the natives were required only to pay tribute to the *encomenderos*; if they worked, they were to be paid wages in exchange for their labor. Also, the laws prohibited using indigenous people to work in the mines (where many had died) unless absolutely necessary, and then under the same working conditions as Spanish mine workers. The laws explained that Indians were to be taxed fairly and treated well, and that *encomienda* grants would not be passed on via inheritance to the next generation but would be cancelled at the death of the individual *encomendero* currently holding this feudal lordship. Lastly, it denied *de facto* the ownership of Indian land by Spanish elites simply for living or working there. It explained that through the *encomienda* system, the Spaniards may have a right

to Indian labor, but not to their land itself.<sup>97</sup> Although this seemed less significant at the time the *New Laws* reached Mexico because of the way that the indigenous people were still recovering from war, slavery, and sickness, these land guarantees would present themselves as tremendously important in the years to come and in the indigenous fight for power and justice through the law. Although, once again, these reforms were not fully accepted by the colonists and even revoked for a time by the King himself, they were eventually reestablished in the coming decades and continued to heavily influence the order and rule of law.

### **Rights and Obligations: Nahua Rights of Labor**

Well into the mid-16th century, after the indigenous population had significantly diminished due to the Spanish encounter, the Spanish government began resettling the remaining native people into organized and distinct areas with the hope of revitalizing the colonial economy. There came to be populated in specific Indian controlled villages, completely separate from Spanish colonists who lived in neighboring *haciendas* or Spanish cities. This movement called *congregación*<sup>98</sup> along with the abolition of the *encomienda* system helped to truly redefine the labor rights of the natives. Under the previous economic system, the Spanish had a right to the labor of local indigenous people. However, under the new reforms the Crown created a new

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<sup>97</sup> For a more detailed discussion of these issues and the impact of the New Laws on the *encomienda* system and labor of the Nahua in New Spain see Lesley Byrd Simpson, *The Encomienda in New Spain, Forced Native Labor in the Spanish Colonies, 1492-1550* (Berkeley: University of California Press, 1929). Also see for these impacts on the Nahua peoples of central Mexico Charles Gibson's classic and well documented work *Aztecs under Spanish Rule*, (Stanford: Stanford University Press, 1964).

<sup>98</sup> *Congregación*: The system of *congregación* refers to the formal Spanish policy of concentrating Indians from dispersed hamlets and widely spread out smaller populations into large established Indigenous governed head towns (called *cabeceras*) or their surrounding smaller villages (called *sujetos*). See Lilian Ramos Wold and Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHAAR Press, 1998).



labor draft system known as the *repartimiento* system which dictated that the Spaniards were only to be given a number of indigenous workers (about 5-10% of their tribute taxpayers) to work as a form of tribute payment for the colony.<sup>99</sup> A colonist who wished to be granted a *repartimiento* had to make his request to the *viceroys* or the *audiencia*, stating that he required extra labor on his plantation and that this help would provide the colony with beneficial contributions. Although these labor grants were strictly outlined and controlled directly by the Crown and its royal officials, hoping to curb labor abuses and to serve to benefit the Indians in the court of law, they were often openly disregarded and abused by the Spanish.

Another aspect of indigenous labor that the Spanish regulated to a great degree included the payment and process of collecting Indigenous tribute. The colonial administration modeled their system of tribute after the tribute and corvee labor that the Mexica rulers had demanded from native Nahua communities before the conquest. They had paid this tribute, of course, in the form of both goods and services (see fig. 12). Under the *encomienda* system, the Spanish and Indians established a relationship similar to that of a feudal relationship, in which they traded military protection for certain tributes or the performance of specific work or labor. After the *encomienda*, and under the *repartimiento*, indigenous workers technically owed their tributary labor to the King himself, not the colonists.

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<sup>99</sup> The best coverage of the repartimiento system is found in Clarence Haring, *The Spanish Empire in America*, 43-45. Haring defines *repartimiento de indios* as "...the allotment of Indians for necessary tasks in the Spanish community, such as building, mining, agriculture, or transport of goods. It also denoted the Indian labor gang itself" (p. 45 n3).



Figure 12. “A Pre-Conquest Tribute List,” from the *Codex Mendoza*, Folios 51 (verso) and 52 (recto) 1542, Attributed to the Nahuatl scribe and nobleman Francisco Gualpuyogualcal.

This system of tribute represented the very powerful link that the native people had directly to the Crown. Legally, the work period could not exceed two weeks, three or four times annually, and wages were to be paid. The Spanish Crown clearly defined what it expected of the Indians in terms of labor given as a symbol of their vassalage, although those stipulations were often ignored on the local level. However, as the native people became more aware of the rights they bore in the Spanish system of *vasallaje* and its place in the political system, they became empowered, as primary source case studies will indicate in this thesis, to demand to be treated as the law stated.

### A New Social Order: The Developing Colonial Legal Process

As implied above and in any civilization ruled by monarchy, the King represented the pinnacle of Spanish law. This virtually absolute legal power defined legal proceedings on the

Iberian Peninsula in the 16th century and thus extended itself to the New World through colonization efforts. Shortly after the Spanish conquered the Nahuas entirely in 1521, the Royal Spanish Crown established legal jurisdiction and administration in the Americas by means of the creation of the *Consejo Real y Supremo de las Indias* (Supreme and Royal Council of the Indies) founded in 1524.<sup>100</sup> Until well into the 18th century, this Council of the Indies, with direct support from the King, held administrative jurisdiction over military actions, finances, trade, religion, and ultimate legal authority. The King held this institution responsible for communicating law to the people and this Council also acted as the final court of appeals for the colonies and all of their legal actions. Throughout the following two centuries, the Council of the Indies would see thousands of cases from indigenous people pass through their doors.

However, at the local level Spanish colonial administrative law had other courts and institutions which assured direct royal control. Directly under the Council of the Indies sat a collective legal bureaucracy composed of archbishops (responsible for the religious wellbeing of the native people), viceroys (literally regional vice-kings), and the judges of the *audiencias* (royal courts). As a secular actor, the viceroys of New Spain acted as legal advisors to the tribunal of the Council of the Indies, and they sat as presiding heads of the *audiencias*, and exercised a wide array of law making and executive rights afforded to them by the king.<sup>101</sup> Within the legal system, prior to 1585, the viceroys were expected to allot at least one day every week to hear the cases brought to the courts by indigenous subjects. However, due to the ever-increasing number of grievances brought before the courts by the natives, in 1585, Viceroy Don

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<sup>100</sup> For a detailed account of the jurisdictions and powers of the Council of the Indies see Haring, *The Spanish Empire in America*, 102-118.

<sup>101</sup> For an in-depth description of the powers, position and executive and legislative powers of the Viceroy see Haring, *The Spanish Empire in America*, 119-127.

Luis de Velasco ordered the creation of a special court dedicated specifically to hearing the cases of the natives. This court, aforementioned, called the *Juzgado General de Indios* (The General Indian Court) would prove to be arguably one of the most significant contributions to indigenous legal power because of the way it dedicated itself to providing the natives with swift legal review, free or nearly free legal representation, and rapid summary judgements often in their favor.

Another significant member of the legal process, particularly for the indigenous people, were judges of the *audencia*. After the initial lawlessness of the *conquistadores*, the Spanish Crown established the *audencia* courts as an effort to resolve the conflicts of all Spanish subjects in the outlying regions of Spanish territory. Depending on their relative physical distances from the viceregal capitals, the judges in these courts were able to exercise more and less jurisdictional freedom over litigants. Nevertheless, several instances of power abuse and other conflicts of jurisdiction and unaccounted for powers and privileges led to frequent challenges to the authority of the viceroy in these courts. However, despite the inevitable exploitation the indigenous people experienced at the hands of these courts, they were able to use the strain between the many structural levels of legal authority in terms of legal interpretation and the often overlapping jurisdictional powers of these many courts and officials to gain advantage in the reviewing and appealing of their own cases.

Another member of this political structure, that will be discussed at length in the following chapter, was the hereditary position of Indigenous *cacique* or the rulers from the indigenous nobility that were given power to administer over their communities of native people. As cultural mediators, these Nahua caciques often worked directly with the many levels of Spanish officials in charge of governing the pueblos of New Spain. Some of these Spanish

officials included the regional or provincial governors, the *corregidores*, and the regional *alcaldes mayores*; however, the position of *cacique* held tremendous importance because of the connection they shared with the indigenous people. One of the primary duties of the *cacique* focused on helping to set the tribute amount for the community and to serve as intermediaries in the system of colonial rule, all the while ensuring the wellbeing of the indigenous people under their jurisdiction. According to law, within indigenous communities, local native authorities maintained their right of hearing legal cases in the first instance and sometimes they decided criminal and civil cases—using native customary law and practice.

All of these legal authorities and the local authorities (including the religious ones) served to inspire the creation of the actual laws promulgated by the king. In general, royal laws were created in response to the specific concerns, complaints, and cases of the lower courts. Although this would serve to establish an extensive collection of very specific laws, it did give the Spanish subjects, including the indigenous people, opportunity to impact the creation of royal decrees or *cédulas* which would be recognized upon their promulgation as universal laws throughout the colonies. The earliest compilation of these laws, as mentioned previously, was created in 1513 and called the *Law of Burgos* (later refined in 1542 as the *New Laws*). In addition, acting legal authorities recognized the importance of compiling the royal ordinances as well as the legal decisions that had been made by the official courts into a single compilation of all the laws of the Indies. They did so first in a text called the *Recopilación* (Recompilation) *de Juan Ovando* and then in many more to come.<sup>102</sup> This form of legal evolution is often referred to as the development of colonial case law. In this system, every time the indigenous people appealed a case to court and won, it set a precedent for all future cases and the creation of new

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<sup>102</sup> See Rafael Altamira, “El primer proyecto de Recopilación de Indias, hecho por D. Juan de Solórzano Pereyra,” *Bulletin Hispanique* 42, no. 2 (1940): 97-122.

codified laws with the issuance of a new royal order or *cédula*. Even more, support from the King meant everything. As it has been demonstrated, at least on paper, this was something the native people had on their side.

These ever-developing collections of laws gave the indigenous people the opportunity set into motion laws that would directly benefit them and their communities as a result of the grievances they brought to the courts and the cases they won. Additionally, according to the colonial legal system based on Castilian tradition, as early as 1530, the crown mandated that officials were to protect native customs and traditions in legal decisions insofar as it did not directly violate Catholic tradition or natural law. Although the interpretation of this mandate was subjective, both of these aspects of the functions of Spanish colonial law put the indigenous people in a powerful position to act effectively and advance their legal protection and rights within the law. The agility of this legal system to both address and give effective legal action to the Indigenous people, some scholars have argued, had the added benefit of helping to limit and avoid outright colonial Indigenous rebellions.

### **Theory versus Practice: These Ideologies on the Local Level**

Although many historians praise the Spanish royal order for its advanced human rights protection efforts and its legal mercy for its colonial subjects, there is no denying the inconsistency between the ideologies and what actually transpired on a local level. Despite what their distant King decreed, abuses continued by the local Spanish officials. Fray Bartolome de las Casas himself complained in 1545 that the local judges and royal officials are oftentimes the biggest abusers. He wrote that “the very same justices and ministers of the King have been and

still are today (removing those few who we should take out of this for being upright ministers, but they are very few) the most unjust and cruelest tyrants with the Indians.”<sup>103</sup>

The system of local justice presented itself as also problematic because local bureaucrats a Las Casas and other argued, had strong incentives to favor local elites and even the local *caciques* could be swayed away from their morals with the right bribe.<sup>104</sup> However, the indigenous people were not helpless; many of them were now able to read and speak Spanish. Many of them also understood their rights promised by the King as protected vassals. Most importantly, they deeply understood the power of law in the Spanish world. They recognized the legal system as their ticket to restitution and justice, and they were willing to fight for it. When the visiting judge Alonso de Zorita, sent to look into these abuses of the local Spanish officials, questioned one Nahua nobleman in 1556 asking him why the natives were so prone to litigation, the native replied:

Because you don't understand us, and we don't understand you and don't know what you want. You have deprived us of our good order and system of government; that is why there is such great confusion and disorder. The Indians have thrown themselves into litigation because you egged them on to it, and they follow your lead. But they never get what they want, for you are the law and the judges and the parties to the suit, and decide matters as you please. Indians who live apart from you and have no dealings with you do not litigate but live in peace. When we were pagans there were very few lawsuits, men told the truth, and cases were decided quickly.<sup>105</sup>

Still, Nahua frustration with this new system, mostly because of the corruption of local Spanish officials, is evident even though the system gave them the ability to maneuver and

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<sup>103</sup> *Carta de Fray Bartolomé de las Casas al Rey*, AGI, *Patronato*, 1545, f. 184r.

<sup>104</sup> Borah, *Justice by Insurance*, 148-150.

<sup>105</sup> Zorita, *Life and Labor in Mexico*, 125-126.

litigate in the new courts. These types of complaints did not fall on deaf ears, as the Crown continually sent out visiting judges to audit the local Spanish officials and to provide the natives with access to justice. Many of these very investigations occurred thanks to an Indigenous complaint or petition which arrived at the Council of the Indies. As we will see, with this hope of justice in mind and a powerful system of law and protections backing them up in their litigation and legal actions, the everyday indigenous subject began flooding the court system with cases. In order to deal with the backlog of cases related to Indian justice, the Crown decided to create a court system designed specifically to hear the cases of the native people. Thus, the *Juzgado General de Indios*, or the General Indian Court was born.



# CHAPTER THREE

## FROM *TECUHTLI* TO *GOBERNADOR*: THE POSTCONQUEST

### SURVIVAL OF NAHUA INDIGENOUS NOBILITY AND THEIR ROLE AS

### CULTURAL MEDIATORS

The benefits these lords [*tecuhtli*] received were these: Their people gave them personal service in their households and brought them fuel and water, the assignment of tasks being made by the lord. Their people also worked certain fields for the lords, the size of the fields depending upon the number of people. Because of this they were exempt from their own service to the ruler and from working his fields, and their only other obligation to the ruler was to service in time of war, from which no one was excused. In addition, the ruler furnished them with wages, meals, and lodgings, for they served as nobles and gentlemen in waiting on his palace . . . The lords also had the duty of looking after the people in their charge, or defending and protecting them. These lords were appointed and intended to serve the general as well as their private good.

Lic. Alonso de Zorita, *Brief and Summary Relation of the Lords of New Spain*, 1566: 105.

After the fall of the capital of the Aztec empire, Tenochtitlán, the Spanish began the process of reconstructing the political and social systems of their newly conquered subjects to meet their colonial needs. They wished to create a system that allowed for a smooth transition from indigenous Nahua to Spanish rule. In terms of the legal transition, and to make it less traumatic for the local Nahua tribute payers, the earliest Spanish conquistadors attempted to change as little as possible. The local native lords, or nobles, the *Tecuhtli*, served as intermediaries for them with their Nahua communities. The scholar George Baudot perhaps best sums up the Spanish goals of maintaining the Nahua nobility since as he argued “the native nobility could serve as an indispensable chain of command, and as ideal intermediary agents to

institute methodical exploitation.”<sup>106</sup> Hernan Cortes, in 1524, used in this manner some of the very same Aztec nobles who held positions under the Aztec Tlatoani, Moctezuma, as useful tools in his attempts to control and repopulate the devastated city of Tenochtitlán:

I charged *Tlacotzin*, whom I had known in the time of Moctezuma with the task of repopulating it [Tenochtitlán]. And so that he should have more authority I gave back to him the title he held when his lord was in power, which was that of *Cihuacoatl*, which means lieutenant of the king [*tlatoani*]. I likewise appointed chieftains whom I had known previously to the offices in the government of this city which they had once held.<sup>107</sup>

Moreover, Alonso de Zorita, a visiting judge in the mid-sixteenth century described this early legal and governing system of the continuation of the Aztec nobles in their old positions during the post-conquest period succinctly:

When New Spain was conquered by the Spaniards, this mode of government of the natives was retained and continued for some years. Moctezuma alone lost his kingdom and dominion, which were vested in the royal Crown of Castile . . . All the other lords of the provinces, both those who were subject to him and those who were independent, including the rulers of Texcoco and Tacuba, possessed, ruled, and governed their lands, but they did this as representatives of Your Majesty.<sup>108</sup>

As the Crown gradually sought to exercise greater direct control over the newly conquered lands, the first step involved the creation of a structure of legal courts. The first *Audiencia*, or “Supreme Court” of New Spain, arrived with the first judges in 1529. However, this first *Audiencia* is known mostly for its corrupt judges and illegal abuses and Nahua

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<sup>106</sup> Georges Baudot, Bernard R. Ortiz de Montellano and Thelma Ortiz de Montellano, *Utopia and History in Mexico: The First Chronicles of Mexican Civilization, 1520-1569*, (Boulder: University of Colorado Press, 1995), 45.

<sup>107</sup> Hernan Cortes, *Letters from Mexico*, 321.

<sup>108</sup> Zorita, *Land and Labor in Ancient Mexico*, 113.

complaints made it back to Spain. In response, in November 1529, the Crown decided to replace these judges and establish a second *audiencia* court, along with the “appointment of a royal representative endowed with the fullest powers” as a Viceroy, or Vice-King. The man chosen was Antonio de Mendoza, from one of the most distinguished Castilian families.<sup>109</sup> King Charles V gave the new Viceroy Mendoza specific orders and instructions on how to govern and one of those instructions concerned his respecting local Nahua customary law as long as it did not conflict with Spanish or Royal laws. Thus, as early as 1530, the Crown mandated that officials protect native customs and traditions in legal decisions insofar as they did not directly violate Catholic tradition or natural law.<sup>110</sup> To this end, instead of replacing all of the native leaders with Spanish officials, a large number of those Nahua leaders and noblemen remained in positions of relative power within colonial society, with the responsibility of enforcing many of the ancient Aztec laws within their communities, as well as the duty of ensuring that these Nahua indigenous communities also obeyed Spanish laws and regulations (see fig. 13). As the scholar William Connell noted “such continuity with the past likely bred stability in indigenous communities.”<sup>111</sup> Through this position, at least for a while, the Nahua people maintained their local Indigenous leadership and legal customs which gave them a sense of political representation, and a Spanish approved Nahua official who worked to advocate on their behalf before the Spanish government. Through this divided political and legal structure, the indigenous people influenced the growing body of Spanish law in a tangible way all the while preserving their Nahua language as well as many of their local legal customs and practices. The Nahua nobles, or lords, also ensured the

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<sup>109</sup> Haring, *The Spanish Empire in America*, 78-79.

<sup>110</sup> Owensby, *Empire of Law*, 211.

<sup>111</sup> See William Connell, *After Moctezuma: Indigenous Politics and Self-Government in Mexico City* (Norman: University of Oklahoma Press, 2012), 16.

continued celebrations, ceremonies and traditions which kept their communities contented, all the while also acquiring wealth and new found power for their noble indigenous families. The surviving writings and documents from this Nahua political elite are crucial for our knowledge of colonial era Nahuas.<sup>112</sup>

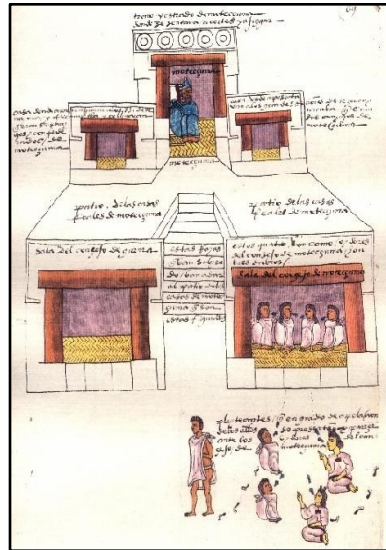


Figure 13. Montezuma's Palace, *Codex Mendoza*, 1541, Section III, folio 69r.

During the colonial transition, the Spanish recognized the hierarchical and sociopolitical organization that the indigenous people already had set in place. They presumed it more prudent to utilize this already established leadership of the Nahua nobles as intermediaries in the Spanish colonial system rather than immediately replacing them and risking a societal collapse or revolt by their removal. The Spanish administration recognized indigenous nobility, also known as *caciques* in Central Mexico, by the prestigious titles of *don* or *doña* and even provided them with

<sup>112</sup> For a comprehensive analysis of the pivotal role that local, indigenous elite played in preserving the identity of the Nahua, see James Lockhart, *The Nahuas after the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries* (Stanford: Stanford University Press, 1996).

entitled landed estates and privileges called *cacicazgos*.<sup>113</sup> Although the Crown limited the power of the indigenous nobility, the Spanish realized their need for indigenous leadership to establish the colonial order. This need positioned the indigenous nobility in a powerful position as they began negotiating their terms of survival in the Spanish colonial rule of the early 16th century.

By the beginning of the 1600's, Spanish authorities had placed many of the Nahua elite in political positions in order to create "self-ruled," separate and closed corporate indigenous communities, or *pueblos de indios*. These officials did not operate free from Spanish governance and oversight entirely; the Spanish administration expected them to report upward to their appropriate jurisdictional and regional Spanish rulers as well as continue paying and organizing the collection of the local tributes from their town's tributaries. However, this bit of political influence allowed Nahua towns to choose their own leadership by means of community elections in the same way that the Spanish citizens elected their own municipal officers such as their local magistrates (*alcaldes*) and town councilmen (*regidores*).<sup>114</sup> These local level justices and indigenous *gobernadores* then reported upward, through a direct line of authority, to their local Spanish overseers and magistrates called *corregidores*, on to the regional Spanish *alcaldes mayores*, and from them onward to the judges of the *audiencia*, funneling up to the chief executive of the colony, the viceroy of New Spain, and ultimately to the King of Spain himself. Having the ability to petition and report directly to the Spanish Crown and his Council of the Indies gave the leaders of indigenous blood the opportunity to not only advocate for their people, but it also gave the native people enough political power to begin making changes locally. This

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<sup>113</sup> For a discussion of these titles of prestige and their usage among the early colonial Nahua nobles and elite see Lockhart, *The Nahuas After the Conquest*, 125-127.

<sup>114</sup> Owensby, *Empire of Law*, 211.

is significant to people of indigenous heritage as it served to secure the political power of their noble lineages; and to this day, the Spanish title of Duke of Moctezuma is held by a Spanish noble family descended from the Aztec emperor.<sup>115</sup>

### **The History of Indigenous Nobility**

Among the limited primary source materials that chronicle the history of the Nahua nobility, Bernal Díaz del Castillo's *Historia Verdadera de la Conquista de la Nueva España* and Fray Bernardino de Sahagún's *Historia General de las Cosas de Nueva España* provide essential, first-hand information on the Nahua nobility, the roles the nobility played in the construction of New Spain, and the Spanish perception of these members of society. Although historians must remain aware of the inherent bias in the Spanish primary source material, this record is tremendously significant for its pictorial representation of Nahua life.

The Spanish conquistador Bernal Díaz del Castillo included descriptions of what the Nahua nobility looked like, how they distinguished themselves from their subjects, and what roles they held in their society. The Franciscan friar Sahagún's work is full of records that have preserved the life ways and practices of indigenous Nahua daily life, including the many roles and identifications of Aztec leadership. The two different generations represented in these two works most clearly accentuate the roles and leadership of the native people during the first sixty year period of colonial reconstruction. For this reason, the insight Bernal Díaz del Castillo and Fray Bernardino de Sahagún provided is invaluable when examining how Nahua political and

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<sup>115</sup> Juan José Marcilla de Teruel-Moctezuma y Valcárcel, 6th Duke of Moctezuma de Tultengo currently holds this title. His father had assumed the title and was re-granted the title of "de Tultengo" (as the second Count of Moctezuma was in 1639) by King Juan Carlos I of Spain in 1992.

legal power structures continued into the new Spanish colonial societal order, offering us insight into how the Nahua lords used this new found power.

Montezuma II, or as the Nahua chronicles called him *Motecuhzoma Xocoyotzin*, reigned in the Aztec capital city of Tenochtitlán, as the Nahua *Huey Tlatoani* (“Great Speaker” in Nahuatl) from 1502 to 1520. He commanded a vast empire by the time of Spanish encounter. During his reign, the Nahua Empire expanded to its greatest size. Through warfare, Moctezuma expanded his territory as far south as *Xoconusco* in Chiapas and the Isthmus of *Tehuantepec*, and incorporated the Zapotec and Mixtec peoples into the empire.<sup>116</sup> Many of the surviving Spanish historical records describe Montezuma as weak-minded or fearful of the Spanish invaders, even assuming them to be from the divine realm. However, the obvious biases of the Spanish historical sources make it difficult to truly understand his actions and character during the Spanish invasion. The Tlatoani Montezuma was eventually killed by some of his own people during the early conquest battles. Nevertheless, the title that Montezuma held, *tlatoani* of the Nahua nation, remained a highly revered position of power pre-conquest and it would continue to be recognized, among other indigenous nobles, as a title for the earliest powerful Nahua leaders during the early colonial restructuring.

The Nahua nobility consisted of rich and wealthy families of noble blood outside of just the *tlatoani* and his family itself. The nobles primarily held the positions of political and social power within Nahua society. They operated the government, commanded the army, and owned much of the land, slaves and servants. Most of the power that the nobles enjoyed rested on their control over the distribution and use of the land, the organization and use of labor, and the collection of tribute. At the height of Nahua rule, three rank levels of nobles and nobility existed.

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<sup>116</sup> Ross Hassig, *Aztec Warfare: imperial expansion and political control* (Norman: University of Oklahoma Press, 1988), 231.

The first and foremost, as mentioned, was the *tlatoani* or the Aztec emperor. This individual, elected to power by a board of counselors, served as the ultimate owner of land in the empire. The *tlatoani* also received tribute, oversaw markets and temples, led the military, and resolved judiciary disagreements. Under him, there existed a noble lordly class, the *tecuhtin* class, or the high lords. Considered the ruling nobles, the *tecuhtin* primarily held the responsibility for governing city-states other than the capital of Tenochtitlán. The *pipiltin*, or lesser nobility, served as regular lords, slightly under the *tecuhtin*. The *pipiltin*, as members of the hereditary nobility also held other high ranking positions in the priesthood, the army, and the government. They also formed the city council which helped to rule the city-states.

Each rank within the noble classes held a different position in society and came with a different set of privileges. The nobles enjoyed tremendous wealth and had a considerable amount of ruling power outlined by Nahua law. Nobles remained entitled to receive tribute from commoners in the form of goods, services, and labor. As in most nobility classes in empires around the world, noble status passed on regularly through lineage. However, even though most of the prestigious ranks in Nahua society belong to those of the inherited noble families, devotion, loyalty and hard work, particularly service in the military context, could give Nahua citizens the possibility of entering into these noble ranks. These elite Nahua remained in charge of civil administration both domestically and in foreign affairs. This made them some of the first native people to interact with the Spanish *conquistadores*.

**The Transitional Period: 1521-1545.** In Chapter 46 of Book III of *Historia Verdadera de la Conquista de la Nueva España*, Bernal Díaz del Castillo describes the many encounters that Hernan Cortes had with the native leadership as he made his way from Cuba to the Mexica region. He commented about the way that these nobility, or as he calls them *caciques*, began



building alliances with Cortes to rise up against the “tyrannical” rule of Montezuma. Fray Bernardino de Sahagún, in his account, written in Nahuatl with the help of Indigenous Nahua scribes and nobles, dedicated his entire eighth book to unpacking what it meant to be a member of the nobility in the Aztec world.<sup>117</sup> From the very beginning of the conquest effort, Spanish leaders recognized first the powerful and respectable status that these leaders held in their society, and then also the value of creating alliances with indigenous leadership and using their influence to build the Spanish colony. This value would set the stage for centuries of inclusion of native nobility in the establishment of the New World, and in turn, give the Aztecs a position with which they could defend their interests.

Cortes’ allies proved crucial in ultimately overthrowing the empire ruled by Montezuma II. On the march to Tenochtitlán, Cortés had enlisted the enthusiastic help of the Nahuatl speaking empire of the Tlaxcalans, who aided him both in men and supplies. The thought of causing the collapse of the Aztec hierarchy led many other local communities to believe that they could free themselves from heavy tribute and the systematic capture of their people to be sacrificed at the Aztec capital. However, this is not exactly what would follow. Montezuma II, killed during the battle in which the Spanish fled Tenochtitlán, would only have a few of his descendants survive. The result of this though, was not autonomy for the subject indigenous nations. Rather it merely meant a symbolic shift of power. The Spanish would simply maintain the hierarchy of leadership for their newly acquired subject tributaries to create a new normal not that much different from their previous political system. To this end, not only were Montezuma’s descendants crucial, but so were the wide variety of indigenous nobilities which had survived the conquest. The Spanish needed them and they recognized the native leadership keeping them in

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<sup>117</sup> Fray Bernardino de Sahagún, *General History of the Things of New Spain: The Florentine Codex*. Book VIII: *Kings and Lords*, (1577).

power. Although losing much of their real control, this nevertheless enabled the Nahua nobles to retain their indigenous identity and agency. So jealous of their hereditary privileges, the Nahua nobles, even late into the colonial period, complained when the Spaniards attempted to raise someone of a non-noble lineage to the position of a lord, or *tlatoani*. Mostly, these early Spanish attempts to by-pass the hereditary nobles the Crown reversed upon complaint, revealing the power that the early Nahua nobility had in defending their interests.

One important case in point occurred when the first *audiencia* judge Nuño de Guzman attempted to place a commoner into a high position in government. The Aztec nobleman Chimalpahin later complained that Nuño de Guzman, a corrupt judge of the first *Audiencia*:

Appointed don Pablo Xochiquentzin to govern the Tenocha as if he were *tlatoani*, even though he was not of noble birth and previously had served only as a *calpixqui*, or minor official, in Mexico . . . the two most recent rulers [he appointed] were only *quahpipiltin* and thus not from the governing families of Tenochtitlán, the *tlazopipiltin*, who descended from the recognized nobility.<sup>118</sup>

As the scholar William Connell noted, the Aztec nobleman Chimalpahin, “purposely contrasts the two [noble groups]” as the “term *quahpipiltin* (eagle noble)” suggests “that a non-noble could be elevated to the status of the nobility through service.”<sup>119</sup> The term “*tlazopipiltin* (a person of noble or legitimate birth) indicates “a legitimate child from the ruling family who possessed the right to succeed.”<sup>120</sup> In one of the first acts of defense of their noble status and privileges, the Aztec nobles of Tenochtitlán appealed to the new Viceroy, Don Antonio de Mendoza, who restored the rightful hereditary noble line into the position of *tlatoani* in Tenochtitlán (now

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<sup>118</sup> Charles Gibson, *Aztecs under Spanish Rule*, 168-169.

<sup>119</sup> Connell, *After Moctezuma*, 12.

<sup>120</sup> *Ibid.*, 12.

Mexico City), which created the “foundation for stability that endured, with only minor interruption until 1565.”<sup>121</sup>

In order to understand the significance of the continuity of pre-conquest indigenous structures, it is essential to understand the role of indigenous leaders during the critical moments of colonial social construction. Before the conquest, Nahua politics and political power centered upon one leader, the position of *tlatoani* (speaker) or *señor* (lord) in Spanish. An entire network of lesser nobles, or *tlatoque* supported political leadership under their *Huey Tlatoani*, “Great Speaker.” These *tlatoque* directly managed the military, and all economic action including tribute collection, and general social and legal management. The transition to Spanish leadership in the Nahua region began, of course, by removing the Lord, el *señor* Montezuma, and replacing him with the Spanish Crown. However, after that, the Spanish left the ruling classes of the lesser *tlatoque* to manage the vassals of the indigenous communities (see fig. 14).



Figure 14. “Hernan Cortes Meets an Indian Cacique on His Way to Tlaxcala” Baltazar Brito Guadarrama, *Códice Tonalámatl de Aubin*. México: Biblioteca Nacional de Antropología e Historia, INAH, 2018.

<sup>121</sup> Ibid., 12.

As long their subjects paid tribute and they collected it, and the people did not participate in activities in direct conflict with Spanish law and Catholicism, these lesser lords' maintained power over their towns and communities. Ultimately, the Spanish knew that these leaders served as the key to a smooth transition to colonial rule.<sup>122</sup> To this end, the Spanish administration agreed that these native leaders should exercise a certain amount of political and social power. After nearly two decades of mitigating the colonial system, the native nobles finally settled into their new colonial leadership positions.

**Differing Conceptions of the Nahua Elite: Conquistadores vs. Friars.** From the beginning of the newly established colonial system, the Spanish recognized the indigenous elite as nobles and reinforced the *caciques'* status with privileges that included the noble Spanish title *Don* for noblemen and *Doña* for noblewomen. However, as a result of the *encomienda* system, Spaniards still retained early control over managing the native people in the towns entrusted to them in *encomienda*, and some lived among them and began to take their lands away (something they were not allowed to do by law). Initially, throughout New Spain, the Spanish *encomenderos* faced next to no accountability for their ill treatment of the *indios*. For example, on September 20, 1542, Indians from Nochixtlán complained to the viceroy that their *encomendero*, Pedro de Maya, abused them, levied unreasonably excessive tributes, and prevented the Indians from traveling to Mexico City to bring their grievances to the viceroy or the *audiencia*. Fortunately, in their case, the viceroy did hear their complaint and he ordered that Pedro de Maya cease from hindering anyone from going to Mexico City to appeal to the courts again under the penalty of a

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<sup>122</sup> Owensby, *Empire of Law*, 25-28.

500 peso fine and that he would have to excuse the Indians on his land from paying tribute for a year should he continue to do so.<sup>123</sup>

However, the indigenous peoples' endless struggle against the Spanish *encomenderos* did not always end so favorably. The *Indios* continued to petition that this system, in and of itself, violated their rights as Spanish vassals. At the same time, the friars, who had left their home lands with grand aspirations of evangelizing the native people and bringing them to the Catholic faith, also felt that this labor and tribute system was not conducive to converting the *indios*.

First, those like Fray Bartolomé de las Casas (as seen in chapter 2), argued that the colonial labor system resembled basic slavery and a simple injustice according to the Catholic beliefs and the preexisting laws of Spain. What's more, the friars desired to have nearly unlimited access and control over the lives of the natives because their primary concern was on developing the Christian religious practices of their flock. The friars emphasized the abuses of the Spanish settlers toward natives and continuously brought these complaints, sometimes quite elaborately, to the king himself. They proposed creating a community of exclusively indigenous people, free from daily Spanish interference. In one case in particular, they stated, "for the same reason that there cannot exist a good manner of republic and friendship between wolves and sheep, there cannot exist a good manner of republic confederation and league between Indians and Spaniards."<sup>124</sup> However, no one specific royal decree officially created this separation between the Republic of the Spaniards and the Republic of the Indians. However, through a series of orders in 1550, almost a decade after overt slavery had been forbidden, the Spanish Crown issued the first significant decrees to separate the Spanish from the native populations.

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<sup>123</sup> *Mandamiento y merced del Virrey sobre que amparen a los indios en sus tierras*, AGN, *Ramo de Mercedes*, 1542, Vol. 1, Exp. 324, folio 150r.

<sup>124</sup> Owensby, *Empire of Law*, 25.

These orders forbade Spanish “vagabonds” from living in Indian villages and required that Spanish *encomenderos* obtain official permission before going or even sending servants into these Indian villages.<sup>125</sup>

Between this time and 1578 when the King officially banned Spaniards, Africans, mestizos, and mulattoes from living among the natives in their villages, the Nahuatl began the process of organizing themselves socially and politically under Spanish rule.<sup>126</sup> Naturally, as the Spanish continued to recognize them as local leaders, the indigenous nobility rose to positions of local power by various means. Most importantly, these leaders had received years of preparation to act in what essentially became powerful local positions that many Spaniards simply viewed as patronizing, merely symbolic, or emblematic.<sup>127</sup>

During the first several decades of the 16th century, the friars, both Franciscan and Dominican, had been, perhaps unintentionally, equipping these natives with the tools they would need to act powerfully within their new political and legal systems. In an effort to expose the native people to the Christian faith, they instilled in the native elite their most valuable weapon with which they were able to fight for their rights: the Nahuatl and Spanish languages with their alphabetic literacy. The Spaniards then faced the reality that ruling their subjects with these linguistic, political, and legal tools meant admitting that the native people had the ability to negotiate and contest every action legally to their own benefit.<sup>128</sup>

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<sup>125</sup> See Magnus Mörner, *La Corona Española y los foráneos en los pueblos de indios de América* (Madrid: Ed De Cultura Hispánica, 1999): 264-65, 464, 512.

<sup>126</sup> See Antonio de León Pinelo, *Recopilación de leyes de los reynos de las Indias* (Madrid: Por Julián de Paredes, 1691), Libro VI, Título III, Ley I, *Que los indios sean reducidos de poblaciones*, 20 de mayo de 1578.

<sup>127</sup> Borah, *Justice by Insurance*, 410.

<sup>128</sup> Owensby, *Empire of Law*, 39.

## **A New Political Order: The Changing Nature of Colonial Government, 1545-1580**

Armed with sociopolitical recognition and enough of a grasp on alphabetic written communication in both Spanish and Nahuatl after 1550, the indigenous nobility began negotiating with the Spanish authorities to establish and maintain their relationship and control over local political power for the rest of the 16th century and beyond. From the conquest up until the 1560's the Spanish authorities honored and preserved the borders and traditionally held communal landholdings of most indigenous areas. Within the Aztec *alteptls*, pre-conquest Nahua city states, the Spanish began establishing their new colonies, new Spanish *encomienda* grants, and the religious orders built their monasteries and churches along the outer borders of these Indian towns and villages. In addition, despite the *congregaciones* or *reducciones* which had reduced many disperse indigenous settlements into larger formal towns, many of the prehispanic borders for Nahua town lands remained the same. However, the less rural the area, the more likely the Spaniards reorganized these towns and villages from the 1560's onward into the *corregimiento* system. Although many of the previously separate *alteptls* remained grouped together by the Spaniards, this new system of local government for the native people sustained the same sociopolitical order until the Bourbon reforms of the later 18th century.

These *corregimiento* districts became part of the new social order in which the indigenous people received positions of power to rule within their local government, but ultimately answered to a regional Spanish magistrate known as a *corregidor*. Understanding the political and social organization of these local governments is critical to understanding the agency and actions that the native nobility practiced to defend themselves and their local communities' rights and privileges. In the 16th century, exclusively native towns organized into regional Spanish administered *corregimientos* had been the only form of indigenous government.

These usually included a couple of “villages” of various sizes previously referred to as *Nahua alteptls*, but by then they held the title of a “*republica de indios*.” An indigenous ruler, known as the *cacique-gobernador* led each of these towns. The *caciques* descended from the *Nahua* nobility or had earned their title by military service. As time progressed, native communities began to elect their own *caciques* democratically, most likely from among their own local elite families. Then the municipal *cabildo*, a council of indigenous officers, supported and balanced the executive, legislative and judicial powers of the local *cacique*. The members of this council included *alcaldes* (a type of mayor or magistrate that often acted in a judicial capacity), *regidores* (councilmen that often acted in a legislative capacity), and *escribanos* (scribes charged with the invaluable task of keeping all civil and legal records). The Indian community selected these members through various democratic elections within the community held annually each year. Usually only the position of town scribe came to be held perpetually due to the requirement that the holder of the post had to know how to read and write in alphabetic literacy.<sup>129</sup> This usually means that even when the local nobility may have lost control over the powerful position of the post of *cacique*, they still hereditarily held the posts of scribes as mostly the nobles had learned and maintained their literacy.<sup>130</sup>

Moving upward within this system, both the *caciques* and the *cabildo* councils answered to the Crown- appointed Spanish *corregidores* or the provincial or regional *alcaldes mayores* (these were not the same as the *alcaldes ordinarios* of the *cabildo*). These Spanish magistrates and administrators held quite a bit of power, especially in the municipal areas far from the capital. They held both judicial power and administrative power, and being usually Spanish, they

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<sup>129</sup> Chuchiak, “Writing as Resistance,” 92-100.

<sup>130</sup> Lockhart, *The Nahuas After the Conquest*, 40-41.



interacted with the native subjects of their *corregimiento* through the *caciques* or the local town councils. For the indigenous communities, the *corregidor de Indios*, served as this officer or Spanish administrator in charge. Theoretically, in areas close to Mexico City the *corregidores* answered to the Council of the *Audiencia* and the presiding officer of the court, or its president: the Viceroy. The local Indigenous municipal executives and judiciary council members held power to appeal to the *Audiencia*, as well as to Spain to the Council of the Indies, and ultimately by this means to the Spanish Crown in order to enforce the rights established by Spanish law. To this end, occasional visiting judges also took time to both travel and observe the processes of governing and the local realities in the more rural areas. The judges of the *Audiencia* even dedicated two days of their work week to hearing legal cases brought by the native people. This fully equipped system of justice contained acting officers and legal personnel including judges, prosecutors, bailiffs, chancellors, notaries, interpreters, and solicitors who all acted, at least in theory, on behalf of the natives. The system in law and theory afforded the natives the opportunity to access justice that was rightfully theirs by royal Spanish laws and customs.<sup>131</sup>

### **From *Tecuhlli* to *Gobernador*: Political Influence of Elite Nahua Caciques**

The Spaniards' official recognition of the existing leadership in the villages of *indios* presented itself as a key tool in connecting natives to a myriad of possibilities for defending their rights. As subjects of the King of Spain, indigenous people held the right of personal appeal to the monarch, and well into the 1530's, records show that native people often brought cases dealing with violations against their rights and privileges before their local *corregidor*, to the

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<sup>131</sup> Owensby, *Empire of Law*. 42-43; Borah, *Justice by Insurance*, 40.

Audiencia of Mexico City, or even to the Viceroy himself.<sup>132</sup> For example, on January 29, 1544, an Indian nobleman of Tepeapulco named Don Julian protested to the viceroy to review a land settlement dispute between the elite and the commoners of his village. He believed the settlement unfair because they had not given him enough notice during the first land investigation on this case. The viceroy ruled that the governor and noblemen of the town meet in the following month in order to resolve their differences under a penalty of 50 pesos per person if they could not come to an agreement.<sup>133</sup> In this way, indigenous people worked tirelessly through the mid and later 16th century to advocate for themselves and maintain social freedom. This was not an easy feat, as the Crown soon recognized, but in this era of colonial development where the native people fought to retain administrative control over themselves, they accomplished many very important things.

First, indigenous, noble leadership acted as middlemen between the indigenous townspeople and the Spanish government making the laws that affected their daily lives. Through this position, they often represented the natives in court which, through the Crown's legal systems, gave the Spanish King ample opportunities to issue royal decrees in favor of the indigenous people. Second, in a similar way, through their political positions, the native nobles used their powers in the *repúblicas de indios* to maintain native identity and customs insofar as they did not contradict the Catholic laws. Third, this leadership system gave the native people the ability to participate in a relatively democratic election system giving them, actually, more agency and power as local citizens to act within their government than they were even able to do pre-conquest in the Nahua system. Of course, the Spanish and Nahua elite frequently abused,

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<sup>132</sup>Ibid., 43.

<sup>133</sup> *Mandamiento y merced del Virrey sobre una disputa de tierras de los indios de Tepeapulco*, AGN, *Ramo de Mercedes*, 1544, Vol. 2, folios 253r-253v.

sabotaged, and manipulated this electoral system. Nevertheless, the system remained in place and functioned as designed on most recorded occasions. Finally, the governing power given to native people allowed them to keep wealth within indigenous families which in turn allowed them and their descendants to continue to act within society. Even though disproportionately affected by the poverty of vassal hood, as time went on, this continued wealth, education, and resources served them well on the quest for equality in society.

**The Impact of the Cacique.** The indigenous community official who potentially exercised the most direct contact with Spanish officials was the *cacique*. *Caciques* fulfilled the tremendously important job of advocate and mediator between the Spanish and the native subjects, usually in the form of a language translator. Records show these individuals ensured that the native people produced their required tribute in the form of labor, foodstuffs, precious materials, or handmade items of value collected and reported as required by law. Even as early as the mid-16th century, the *caciques*, under viceroy Antonio de Mendoza, along with the *principales* possessed nearly unrestricted access to the Spanish court system which included standard legal counsel. As Borah noted, these nobles made full use of these privileges by the 1550's bringing an extremely heavy load of court cases that had to do with Indian rights to the courts.<sup>134</sup> For example, in 1575, *Cacique* Don Martin de Castillo petitioned and protected the farm land for his community in the village of Tepehuacan so that they could cultivate their land freely and receive protection from excessive tributary requirements.<sup>135</sup> Similarly, in 1576, *Cacique* Don Melchor de Guebara also brought a land protection plea to the Audiencia in order

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<sup>134</sup>Woodrow Borah. *Justice by Insurance*, 74. The Spanish administration was clearly concerned with the extent and subsequent cost of the Indian communities' litigation efforts as can be seen in multiple *cédulas* directed to New Spain such as *Real cédula mandando que se observe las ordenanzas para evitar costos en los procesos*, 1569, AGN, *Ramo de Cédulas*, Vol. 47, folios. 54v-55r.

<sup>135</sup> *Licencia a los naturales de este pueblo, para que cada año le beneficien una sementera a Don Martin de Castilla, por ser Cacique*, AGN, *Ramo de Indios*, 1575, Vol. 1, Exp. 42, folio 16v.

that his village be permitted to cultivate a communal cornfield for him of 150 fathoms allowing him to keep the crops that they harvested.<sup>136</sup> These are but a small sampling of the many cases that the indigenous nobility brought before the Spanish courts in order to advocate for their communities and to protect their own privileges. As a result of their tireless litigation, in the 1560's, King Phillip II passed an order establishing a uniform tributary tax on all the subject areas. Furthermore, in 1578, he ordered a clear schedule for tribute collection and payment (see example in fig. 15).<sup>137</sup> Both of these orders further protected the natives from *encomenderos*, church leaders, or even corrupt native nobles from requiring excessive payment which they took for themselves. Even more than just protecting indigenous villages from Spanish officials, the courts also protected them from other indigenous villages.<sup>138</sup>

Oftentimes, the *caciques* or high ranking nobles brought matters like this to the high courts for their communities. For example, in May of 1542 a Nahua noble, Lorenzo de Luna, brought to the viceroy a complaint made by the Indians of Ocuila. They stated that the natives of Jalatlaco and Malinaco had attempted to move the boundaries and woodlands between the towns illegally to take their land. The viceroy commissioned Lorenzo de Luna and gave him the power

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<sup>136</sup> *Petición que hacen los naturales de este pueblo para que se les permita hacer una Sementara de Maíz, de ciento cincuenta brazas cada año, a Don Melchor de Guebara Su Cacique*, AGN, *Ramo de Indios*, 1576, Vol. 1, Exp. 71, folio 27v.

<sup>137</sup> See *Recopilación de leyes de los reynos de las Indias*, Libro VI, Título V, Ley VII, *Que los indios solteros tributen desde diez y ocho años si no estuviere introducido otro tiempo*, 5 de julio de 1578.

<sup>138</sup> The Spanish legal system provided that native subjects of the *Repúblicas de Indios* could even bring court cases against their own abusive indigenous leadership. For example, in 1583, the courts issued an order to the *alcalde mayor* of Yanhuítlán that Don Juan de Orozco, governor of Soyaltepec, should not force the natives into personal services without an expressed mandate from his Majesty. This is one of many similar cases. See *Mandamiento al Alcalde Mayor de Yanhuítlan a fin de que Don Juan de Orozco, Gobernador de Soyaltepec, no obligue a los naturales a servicios personales, sin expreso mandamiento de Su Señoría*, AGN, *Ramo de Indios*, 1583 Vol. 2, Exp. 1005, folio 231r.

to return to the villages and act as the legal arbitrator between these peoples. Required to record his findings, Luna returned back to the court in Mexico City with his recommendation.<sup>139</sup>

Although there were instances of abuses of the role of *cacique*, which will be made clear through cases brought before the General Indian Court, still in most instances these nobles used their power, especially in the years before the Indian court was established, to represent their people.

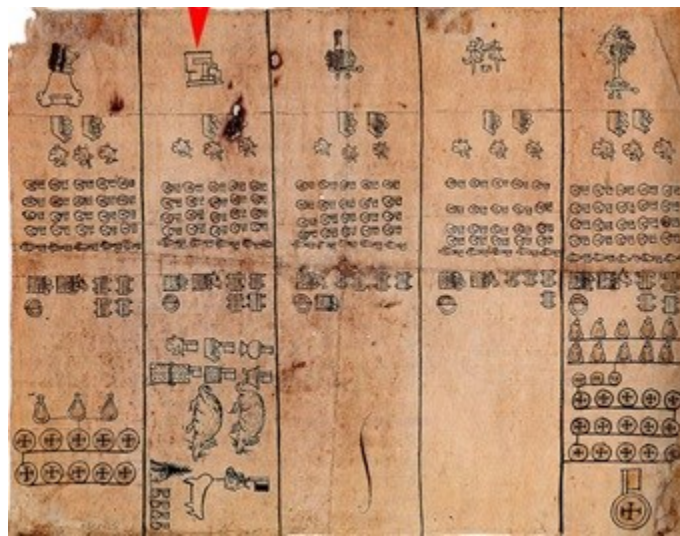


Figure 15. Colonial village tribute assessment to be paid by each *barrio* in the town of Tepozotlan, *Codex of Tepozotlán*, 1550.

**The Impact of the Cabildo Council.** Another new branch of native community government, called the indigenous cabildo council, evolved by the decade of the 1560s. This council included the posts of *alcaldes* (magistrates/mayor), *regidores* (town councilman), and *escribanos* (scribes) as mentioned above. This council, along with the royally appointed *corregidor*, exercised considerable judicial power within native communities. These councils

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<sup>139</sup> *Mandamiento a Lorenzo de Luna Indio Principal para que averigüe sobre las tierras que tiene en términos de Ocuila y Jalatlaco*, AGN, Ramo de Indios, 1542, Vol. 1, Exp. 12, folios 40v-41r.

varied in size, but in a larger and politically active city like Mexico City, it included about 12 members; in smaller towns this number could range from 8-10. This council brought power to the native people in the form of democratic agency. A small pool of eligible nobility generally elected the *cabildo* council through a democratic process as they also did with its counterpart: the *cacique*. By the 1560's the King issued decrees establishing the election cycles for both the *cabildo* and the *caciques*.<sup>140</sup> This decree granted indigenous citizens a way to elect their own leadership in a way that differed from under their previous Nahua rule, where they had not possessed the right to do.

The *cabildo*, perhaps even more than the position of the *cacique*, practiced defending the rights of the native communities to the Viceroy and also to the King of Spain, particularly during the 16th century. Court records show their petitionary roles clearly and they serve as a testimony to the advocacy work done on behalf of the native people. In a preserved letter from the Nahua *cabildo* of Tenochtitlán to the King of Spain in 1554, the council petitioned the King, pointing out the inconsistencies that existed in the daily treatment of the native people and what they knew well to be the laws set in place by the Crown. They reverently appealed for orders to stop nonindigenous people from entering their *altepetl*, to remedy unreasonably harsh forced labor obligations, and mishandled tribute collection.<sup>141</sup> The phrasing used in this letter displayed not only power rightfully endowed to them to address their King directly, but also the faith that they had in the Spanish law and the King's willingness to uphold what he had decreed. In their opening paragraphs, the Indigenous officials wrote:

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<sup>140</sup>See *Recopilación de Leyes de los reynos de Indias*, Libro IV, Título VIII, Ley Primera, *Que las elecciones y cabildos se hagan en las casas del ayuntamiento y no en otra parte*, 1559.

<sup>141</sup> This letter was translated from Nahuatl by James Lockhart in his UCLA History 165C reader and was based on the original transcription of the Nahuatl language document by Günter Zimmerman, *Die Relationen Chimalpahin's zur Geschichte Méxicos* (Hamburg: De Gruyter, 1963):15-16.

Your benevolence appears in the very good orders with which you and your precious father our great emperor have defended us. If your orders for us had been carried out, we would have had no concern and would have lived in great happiness. Please listen, our much revered ruler and prince: although you have sent a great many orders here to benefit us your humble commoners, those who serve you and guard your rule here in New Spain do not carry them out for us, which causes us great suffering and loss of many possessions and much property.<sup>142</sup>

Although there were instances where the *cabildo* tragically abused their power against their indigenous subjects, still the existence of this direct connection to the Crown afforded the Nahua commoners and their nobles' valuable tools within the colonial legal and political systems.

### **The Colonial Service of the Indigenous Nobility**

Besides simply the political and legal advantages that the native nobility brought to the indigenous communities, they also played another significant part in making sure that the natives actively participated in establishing the New World. In a critical way, they held the power to conserve Indigenous Nahua identity, customs, and language post-conquest. Throughout the majority of the 16th and 17th centuries, the indigenous leadership acted largely within the capacity as linguistic and cultural mediators between the native people who spoke Nahuatl or other local languages and the leadership who spoke Spanish. Instead of native languages being wiped away, because of the advocating done by friars at the time, the native people legally kept using their own languages and depended on their nobility to translate for them if needed. In addition, in having indigenous leaders who understood the native customs, values, and traditions, native people perpetuated their own identities while at the same time entering into the Spanish world. This, of course, did not last forever. As the Nahua and Spanish worlds continued to

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<sup>142</sup> Ibid., 15.

intertwine economically, socially, relationally, many natives who hadn't already been taught by friars learned Spanish. Nevertheless, these educated leaders, by acquiring Spanish language and working inside this new social structure, allowed for agency in the new colony that included preserving the Nahua language, celebration of ceremonies, tradition, and even preserving their traditional oral history through writing.<sup>143</sup>

Lastly, by maintaining their high social status, the native nobles kept wealth and education within native families. In contrast, other subjects like African slaves found themselves set even further back as the New World evolved and they remained divorced from the literacy and learning not afforded to them. Typically, the Spanish Crown provided Nahua nobles, particularly the *cacique*, with an estate upon their selection referred to as a *cacicazgo*. According to Spanish law, a *cacique* served as the singular heir and possessor of a *cacicazgo* estate, which consisted of land and often a labor force to work it. As can be observed in many cases brought before the Audiencia and General Court of the Indians, conflicts over the inheritance of *cacicazgos* became common; however, the litigants' arguments help to form the basis for understanding their rights to land.<sup>144</sup> Many of these estates survived well into the 19th century, until the changing nature of later colonial laws with the Bourbon Reforms attacked these privileges. When the shifting Spanish leadership eliminated the concept of *cacicazgo* estates, the wealth, privilege, and rights that they represented still served to empower indigenous people in the form of struggles for land tenure, matters of sovereignty, and jurisdiction.

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<sup>143</sup> Borah, *Justice by Insurance*, 26.

<sup>144</sup> One of many cases brought before the courts concerning noble inheritance was titled *Mandamiento al Alcalde Mayor de Metztitlán, para que sea amparado Juan Acatzin en las tierras que heredó de sus padres en la parte que llaman Tecoloco, Tlamaya, Zacualtitlan Y Tlattecomate*, AGN, *Ramo de Indios*, 1583, Vol. 2, Exp. 1002, folio 230v. In this case, the court ordered that the *alcalde mayor* of Metztitlán assure the possession of Don Juan Acatzin of the lands that he inherited from his parents in the villages called Tecoloco, Tlamayan, Zacualtitlan, and Tlattecomate. As a nobleman, he had the right of patrimonial ownership to these lands and the court honored his rights.



## Legacy of the Indigenous Elite

As time went on, Spanish and Nahua communities slowly began interacting more and more. They did business together, they intermarried, and began creating a new culture taking from both worlds. The power and legitimacy awarded to native nobility in the early and mid-1500's allowed indigenous people, especially leaders, to more confidently bring their native identity to the table when it came to constructing New Spanish society. The Spanish law recognized and valued their positions and respectfully connected them as vassals to the King himself. Although some may argue that these positions were devalued by Spanish manipulation of elections or decision making, the case documentation, royal petitions, and decrees clearly show that the native elite used their positions of political power when they could oftentimes with favorable outcomes.

Corruption on the side of the Spanish certainly impacted the roles of the indigenous nobility. Still, from the beginning, natives had access to the evolving legal system in order to hold Spanish officials accountable to the law. As early as the 1530's, records account for indigenous claimants bringing their case before either the *corregidores* or even the *Audiencia* itself. They brought cases against both abusive Spanish officials or *encomenderos* and also various corrupt native nobles who abused their power to the harm of their fellow people. In a letter to the Spanish King, Franciscan missionary Pedro de Gante insisted that *caciques* had become "avid litigators" and that it was off the "sweat of the Indian commoners, whose belongings are sold in order to litigate," that the *Indios* strived to protect their communities.<sup>145</sup> The Nahua nobility had "given themselves over to lawsuits" as one nobleman explained to Alonso de Zurita, and no matter how hard they worked, they still did not feel that they could

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<sup>145</sup> Borah., *Justice by Insurance*, 43.

adequately advocate for the natives in this legal system.<sup>146</sup> By the end of the 16th century, Viceroy Luis de Velasco II heard the pleas of the Indian litigants and in 1590 wrote to the King requesting that he create a special court dedicated only to hearing the matters of the Indians. In response, the King established a new court of the Spanish colonial judicial system called the *Juzgado General de Indios* (General Indian Court). This court would serve as the main tool the natives had long awaited, and along with its ministers the arrival of the *Juzgado* represented an important advancement in the indigenous fight for justice.

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<sup>146</sup> Ibid., 43.

## CHAPTER FOUR:

### A LEGAL ASSET FOR THE INDIGENOUS STRUGGLE FOR JUSTICE: THE CREATION OF THE GENERAL INDIAN COURT

The Indians have given themselves over to lawsuits because you [the Spaniards] have forced them to. We never reach what we want, because you are the law and the judges and the parties, and you cut into us wherever you want, and whenever and however you like.<sup>147</sup>

Spoken by an unnamed Indian noble to the Judge Alonso de Zorita, 1570

On April 6, 1633, the highest court in Mexico City ruled in favor of the Indians of Atorpay and Chicuasontepec in their case against the local *alcalde mayor* of the province of Veracruz. For months, this Spanish official had subjected the native people of these villages to various abuses. José de Celi, the *Protector de los Indios*, testified on behalf of the Indians to the court concerning their sufferings at the hand of the *alcalde mayor*. He described how this official, who is not named, carried out an excessive number of community inspections charging exorbitant fees to the indigenous communities for them (see fig. 15).<sup>148</sup> De Celi also implicated the official's role in administering the native elections, presumably accusing him of either tampering with the election results or forcing the natives to bribe him for the exercise of their right to hold their community elections. Even more damning, the *Protector* de Celi cited that the *alcalde mayor* forced native people to work for him in his private business endeavors. Some of these included taking and carrying heavy loads as *tamemes* all the way to Mexico City or Puebla,

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<sup>147</sup> Alonso de Zurita, "Breve relación de los señores de la Nueva España," In *Relación de Texcoco: Breve relación de los señores de la Nueva España varias relaciones antiguas* (México: Ed. Salvador Chávez Hahyde, 1914), 101.

<sup>148</sup> *Mandamiento al Alcalde Mayor de Veracruz a fin de que cumpla la instrucción y en su conformidad no haga más visitas al pueblo de Atorpay y Chicuasontepec*, AGN, *Ramo de Indios*, 1632, Vol. 10, Exp. 142, folio 359v.

forcing the Indians to fish for him, or taking their horses and mules without pay. If the *Indios* resisted, he fined them, and his actions appeared similar to the personal services of the *encomienda* system or even outright slavery both of which were certainly illegal at the time of this case. The *alcalde mayor* also allowed some of those from Veracruz to stop natives from selling their produce for equitable prices in the marketplace. Instead the Spaniards took the produce from them, gave them a much lower price, and then resold the items in the markets, making a profit and denying the natives their fair market value. He similarly allowed his friends to force native people to sell their chickens and eggs to Spaniards for less than one half of the established prices, all acts clearly violating the royal *cédulas* on these practices.<sup>149</sup>

After hearing of the ways in which the *alcalde mayor* atrociously violated the native people's rights to paid labor, to democratic elections, and to fair market prices, the court released a series of decrees against the corrupt Spanish official. First, the court ordered him to cease charging excessive fees for his duties and instead return what extra he had collected fourfold as restitution for the abuses. Then, the Court decreed a general fine of 100 pesos for anyone caught taking goods or produce from the native people at sub-standard prices to sell for themselves. The court further ruled that the *alcalde mayor* must immediately desist from using Indians to work for his personal business and required him to pay the *Indios* fairly for any goods or service rendered to him. The Court further ordered the *alcalde mayor* to send evidence of his compliance with this decree to Mexico City and reminded him of the penalties he would incur if he disregarded the order.<sup>150</sup>

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<sup>149</sup> *Que los indios no sean agraviados sobre traer bastimentos de las ciudades, Recopilación de las Leyes de Indias*, 1552, Libro VI, Título X, Ley X.

<sup>150</sup> *Mandamiento al Alcalde Mayor de Veracruz a fin de que cumpla la instrucción y en su conformidad no haga más visitas al pueblo de Atorpay y Chicuaztepec*, 1632, AGN, *Ramo de Indios*, Vol. 10, Exp. 142, fs. 359v. A summary of this case was translated and summarized by Woodrow Borah in his book *Justice by Insurance*, 87.

The case of the corrupt *alcalde mayor* in Veracruz represents just one of the thousands of cases that indigenous people brought before the General Indian Court (*Juzgado General de los Indios*) in Mexico City. From its official founding in 1590 to its dissolution in the early 19th century, this court, designed specifically to hear cases brought by the indigenous Mexican subjects, put forth thousands of rulings in favor of the native people. Over the entirety of the 16th century, the Indians struggled to situate themselves fairly as fellow subjects of the Spanish kingdom. As vassals in the Spanish kingdom, the King had afforded the native people specific rights to land, to wages, to democracy, and military protection by the Crown as well in exchange for labor and tribute payments. The early colonial era, during the 1500's, became a time of intense social and political change for both the indigenous communities and their new leaders. However, the establishment of the General Indian Court epitomized a new era of social justice. With this tool, the native people finally had what they needed to take direct action and negotiate the terms of their *vasallaje* within the colonial world.

Some historians consider the era in which the General Indian Court existed as definitively representative of the start of the early modern history of Mexico.<sup>151</sup> As described in Chapter 1, this court, and the wider judicial system that it developed as a whole, is profoundly significant in discussing the power and position of the indigenous people within colonial society. As Bryan Owensby put it superbly in his opening references to the General Indian Court, "...however local a dispute may seem, legal process was always part of a wider societal conversation about what is right or wrong, acceptable or unacceptable, just or unjust in a given "normative universe."<sup>152</sup> In this way, establishing a court dedicated exclusively to hearing the grievances of the natives and

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<sup>151</sup> Owensby, *Empire of Law*, 7-8.

<sup>152</sup> Ibid., 7.

protecting their rights represented a moment in colonial history in which two civilizations that met in violence, chaos, and change finally began the process of coming together to live in a new society under a shared legal order. This period of increased legal protection positioned between the initial European encounter and the era of independence served to empower the local, native people and communicate to the New World society that surely from a legal standpoint, the indigenous subjects were to be included among the Crown's protected vassals (see fig. 16).

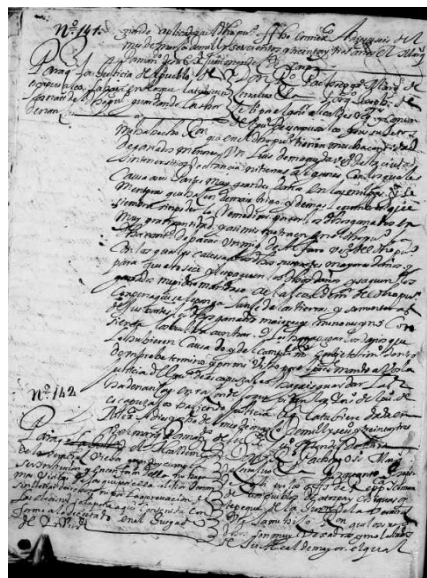


Figure 16. *Mandamiento al Alcalde Mayor de Veracruz a fin de que cumpla la instrucción y en su conformidad no haga más visitas al pueblo de Atorpay y Chicuzontepec*, AGN, Ramo de Indios, 1632, Vol. 10, Exp. 142, folio 359v.

The significance of the General Indian Court laid not only in its direct legal and social implications but also in its function as a potent tool for the indigenous populations to participate alongside their Spanish counterparts in the creation of the colonial society in which they were to also live. Due to the innate structure of the Spanish colonial legal system, law and its defense undeniably represented an ongoing conversation between what had been royally ordered by the

King or his viceroyalty and the everyday experiences of those orders as they functioned for his vassals.

As various encounters within the empire resulted in new complaints about rights violations or crimes, the King issued new rulings and new orders, in essence, expanding and evolving the law to meet the needs of the people. Without adequate access to this system upon which the weight of social change laid, the Crown's vassals would have very little capacity to ensure the service of the law. For that reason, the General Indian Court truly represented an administrative attempt to give a voice to the indigenous people and their needs.

### **Conflicting Jurisdictions and the Need for Change**

The Spanish colonial legal system gave birth to the General Indian Court in response to several needs within the currently developing colonial judicial system of the time. Although to a large degree the Spanish administrators created this new branch of justice out of compassion for the native people's plight and struggle for justice and social power, they also acknowledged how it served to bring logistical order and relief to a very complex legal system. The Spanish could not have truly predicted how their New World society would operate before the encounter. New Spanish politics and empire building presented itself as somewhat of an experimental process, one of trial and error. For the legal system, the Spanish first attempted to recreate a New World version of the peninsular Spanish legal system. This worked partially, but the added factor of the native populations, of their rights, needs, wants, and relationships to the Spaniards forced them to modify the system. As colonial civilization grew throughout the 16th century, a few legal issues arose in relation to the native peoples' legal participation. First, there arose tremendous controversy surrounding under whose jurisdiction the Indian people would fall. Also, as

indigenous people began to realize the powerful asset of the legal system to protect their rights, cases from natives began to flood the courts making it impossible to process all the cases in an expeditious manner. Finally, because of the native people's lower position within society in comparison to their Spanish contemporaries, they began to notice how the system categorically denied them access to legal services because they were unable to pay the high costs to be represented nor did they have the access to legal knowledge and procedures to represent themselves. These three problems, over time, put a tremendous amount of pressure on the existing colonial court system and the members of the Royal Audiencia knew a change must be made.

First, the struggle for jurisdictional control of the native people can be traced back to the very birth of the Spanish colonies.<sup>153</sup> For nearly half a century prior, Friars like Fray Bartolomé de las Casas and Fray Francisco de Vitoria advocated in royal courts for the legal and representative rights of the native people as mentioned in Chapter 2 of this thesis. However, citing Spanish law dating all the way back to the Middle Ages, in legal codes like the *Siete Partidas*, the friars tried to make the case that the Indians should have access to fair and equal justice, but that the Church should take responsibility to take care for them as they were considered poor and needy.<sup>154</sup> Not only that, many Franciscan millenarians also believed that God had called them to usher in the second coming of Christ which is something that would only occur once all nonbelievers in distant lands had embraced Christianity.<sup>155</sup> For this reason,

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<sup>153</sup> Owensby, *Empire of Law*, 42.

<sup>154</sup> Ibid., 8; For the text of the *requerimiento en derecho* of Las Casas to the Audiencia, on October 22, 1545, see Fray Bartolomé de las Casas and Juan Pérez de Tudela y Bueso, *Obras escogidas de fray Bartolomé de las Casas* (Madrid: Atlas, 1958), Vol. 5 (*Opúsculos, cartas y memoriales*):218-21.

<sup>155</sup> For the nature of this Franciscan Millenarianism and its impact on missionary concepts of the Indians and their nature again see John L. Phelan, *The Millennial Kingdom of the Franciscans in the New World*.



especially, they wished to keep a tight grip on the control over the native people; that way they would be able to evangelize them uninterruptedly and usher in the Kingdom of Christ.

Unfortunately, this plea did not set well in the secular and civilian sector. Many of the original *conquistadores* and *encomenderos* advocated for native people to remain largely under the control of the secular Spanish officials, largely to perpetuate using free Indian labor.<sup>156</sup> In addition, in the judicial sphere, the Spanish wanted to keep native people coming to their secular courts, of course, because it served to increase their revenues brought in by the excessive legal fees they charged them.<sup>157</sup> Aside from the age old struggle between the religious sector and the secular one over the care and jurisdiction over the native people, the local governments and the vice royal courts also both vied for control over native litigation. The original legal system forced native people to present their cases to both the local audiencia and the viceroy as both fought over their jurisdiction which created an enormous financial burden on both the Indians and the colonial court system.<sup>158</sup> The defense of Indian rights cases brought before the audiencia at first was the duty of the prosecutor, or *fiscal*.<sup>159</sup> However, this official soon became so occupied with other cases, that their advocacy for the Indians fell away. By the first half of the 17<sup>th</sup> century, the viceroys were required to create a specialized advocate for the Indians called the *procurador de los indios*, whose duty it was to advocate for their cases in the courts, but they too became ineffective and often negligent.<sup>160</sup> These jurisdictional disputes and the lack of advocacy

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<sup>156</sup> Borah, *Justice by Insurance*, 50-53.

<sup>157</sup> *Ibid.*, 75.

<sup>158</sup> For a detailed summary of these conflicting jurisdictions and the development of jurisdictional matters relating to Indigenous justice see Haring, *The Spanish Empire in America*, 47-59.

<sup>159</sup> *Ibid.*, 61.

<sup>160</sup> *Ibid.*, 61.

for the Indians generated constant chaos and discord among Spanish officials and Spanish courts so much so that the administration soon admitted that the issues had to be reassessed.

The courts to which native people originally brought their cases not only caused logistical disarray, but the courts simply could not sustain the sheer number of complaints brought to their doors. By the middle of the 16th century, the *audiencia* fully devoted two days of the week to reviewing the cases of Indians. Nevertheless, a large number of native people complained that it took weeks or even months or years to have their cases heard in court.<sup>161</sup> By the 1580's, it became obvious that the native population had not been receiving true access to justice. Even Viceroy Luis de Velasco II reported to Spain that at that time, the *audiencia* would need at least two more judges if they were to even continue hearing cases that included native people.<sup>162</sup> Then, by the 1590's, Velasco wrote again begging for the creation of a specialized court just to handle Indian matters.<sup>163</sup>

Finally, both the secular and ecclesiastical leadership agreed that the Indians were not financially or educationally equipped to function within the Spanish legal system as it was without proper advocacy and legal protections, especially in light of the constant abused from local Spanish officials. Across all levels of jurisdiction, legal officials felt concern for the low level native vassals as the current legal system excluded them from their right to due process. First, most of the ordinary Indian vassals had not amassed personal wealth and could not afford to pay even the basic minor legal fees. Viceroy Luis de Velasco II wrote at the beginning of his administrative term in 1590 that the native people desperately needed governmental support,

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<sup>161</sup> Borah, *Justice by Insurance*, 77-80.

<sup>162</sup> *Ibid.*, 89.

<sup>163</sup> Owensby, *Empire of Law*, 43.

“because of their poverty and misery.”<sup>164</sup> Similarly, even ten years before, Viceroy Martin de Enriquez wrote for his successor that the Viceroy had an obligation to act as a father to the natives with reference to ensuring justice for them. He wrote, “...and this has to be without cost or expense to them, for most of them do not have the means to find a single *real* unless they sell themselves....”<sup>165</sup>

A large part of the reason that the Indians could not afford their legal fees resulted from abuse from Spanish officials in the form of charging excessive fees for legal services. In an effort to increase the volume of legal business, records show that Spanish governors regularly tried to enter Indian towns during routine visitations, insisting that they administer legal proceedings, and charging exorbitant fees paid to himself and his notary.<sup>166</sup> In local cases like these, the native people often found themselves without any options, and in many instances the fees that the officials charged them were illegal and unwarranted, such as the Spanish notaries charging them extra fees for the certifications of their elections.<sup>167</sup> If they could not pay the fees charged by the Spanish officials, they possessed no manner in which to adequately represent themselves due to their lack of legal training and education. Alonso de Zurita, a judge of the audiencia from 1556–

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<sup>164</sup> Borah, *Justice by Insurance*, 75; also see *Memorial del Marqués de Villamanrique*, Mexico City, February 8, 1590, in Lewis Hanke and Celso Rodriguez, *Los virreyes españoles en América durante el gobierno de la casa de Austria* (Madrid: Atlas, 1980), Vol. 2:93. Additionally, the word used for misery, “*miserable*” is a reference to the legal and juridical status of native people.

<sup>165</sup> *Ibid.*, 82; September 25, 1580, in HM, I:204.

<sup>166</sup> *Mandamiento al Alcalde Mayor de Yanhuítlan, para que las causas y libranzas y asientos de poca consideración que entre ellos se ofrecieron y estuvieren pendientes ante el gobernador se las deje conocer a los naturales*, 30 de Agosto 30, AGN, *Ramo de Indios*, 1590, Vol. 4, Exp. 957, fs. 256v. A brief translated summary of the case see Woodrow Borah, *Justice by Insurance*, 87 (although Borah has the incorrect citation for the *expediente* number-citing it as Exp. 95 when it is 957).

<sup>167</sup> See an earlier case of a Spanish notary’s abuses and illegal fees from the same Indigenous Mixtec town of Yanhuítlan, *Mandamiento al alcalde mayor de Yanhuítlan, para que no admita que el escribano de su juzgado cobre derechos a los naturales por escribir las certificaciones*, AGN, *Ramo de Indios*, 1589, Vol. 4, Exp. 158, folio 51r.

1564, heard a plea from an anonymously recorded native saying that the Indians felt helpless in the legal system. They felt forced to defend themselves legally, something they were never trained to do before, or after the European encounter, nor was schooling in law even a possibility for them.<sup>168</sup> It became overwhelmingly clear by the last three decades of the 16th century that, if the Spanish administration claimed to provide just and equal legal access to all of its citizens, they must administer a change to their system of law in terms of the processing of indigenous cases before the courts.

### **Creating the *Juzgado General de los Indios* (General Indian Court)**

Well into the second half of the 16th century, the Spanish could not deny that their legal system in the New World was not fully equipped to provide the type of justice that the Indigenous subjects of the Spanish Crown had come to expect. Indigenous nobles and municipal town officials wrote to the King regularly begging him to remedy the expensive, complicated, and drawn-out legal processing of their litigation that they experienced.<sup>169</sup> In 1590, the King appointed Don Luis de Velasco II, son of Luis de Velasco I, as the new Viceroy of New Spain. From the start, Viceroy Velasco II painstakingly dedicated himself to seeing the wishes of the King for legal reform of indigenous justice carried out; which made him a crucial character involved in creating the General Indian Court.

In the first year of his tenure in office, Viceroy Velasco began performing kingdom wide investigations into the quality of justice that the native people received, or rather did not receive, in New Spain. He recounted to the King that the local Spanish officials constantly took

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<sup>168</sup> Owensby, *Empire of Law*, 101.

<sup>169</sup> Ibid., 79.

advantage of the native people and, in order to make up for being grossly underpaid, they routinely charged the natives random and extravagant fees for access to the legal system.<sup>170</sup> The viceroy also recorded that any previous well intended attempt at simplifying the judicial process for the natives had been wildly unsuccessful. Velasco wrote that under the present legal system of his day, the official indigenous defenders had to force Indians to appear before multiple courts, in multiple proceedings, in different areas just to ensure that they received a legitimate fair ruling.<sup>171</sup> Therefore, in the year 1590, Viceroy Velasco II penned two letters to the King Philip II of Spain to propose a solution. First, in June of that year, he wrote that there needed to be an official appointment of a public defender of the Indians for Mexico City, an official called the *defensor de los indios*, who would act as the legal defense attorney in all cases involving natives.<sup>172</sup> The viceroy proposed that this person be paid from the tax monies levied from the tribute paid to the crown, and not by a new imposition on the Indians themselves. He suggested that the royal treasury could set aside a half-real of the contribution of each whole tributary and half of a half-real from the partial tributaries, such as widows and unmarried single adults, in order to pay for the salary of the new position.<sup>173</sup> Then in October of 1590, Velasco wrote again recommending solving the issue of jurisdictional control and the prolonged nature of the

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<sup>170</sup> These records and letters are preserved as *Correspondencia de Don Luis de Velasco II con Felipe II y Felipe III acerca de la administración de los Virreinos de Nueva España y del Perú durante los años 1590 a 1601*, Manuscript Number 3636, Biblioteca Nacional de España, 295 folios; These specific accounts of the abuses can be found in AGN *Ramo de Indios*, vols. 3 and 4; as well as described in the various sections of the Viceroy's letter to the Crown, especially see *Carta del Virrey Luis de Velasco II al rey, Felipe II, 2 de diciembre, 1590*, Biblioteca Nacional de España, Manuscript Number 3636, folio 49r-54v.

<sup>171</sup> *Ibid.*, *Carta del Virrey Velasco II al rey Felipe II, 28 de octubre, 1590*, folio 33r-v.

<sup>172</sup> See especially *capítulo 6* of the letter *Carta del virrey Luis de Velasco II al Rey Felipe II sobre la necesidad de un defensor de los indios, 2 de junio, 1590*, Manuscript Number 3636, Biblioteca Nacional de España, folio 5v-14r.

<sup>173</sup> Whole tributaries were defined as married adult males and half tributaries were subjects like widows, widowers, and single adults (Borah, 104). Because of the system of tributary payment, these officials became known as the "Legal Aides of the Half-Real."

Indigenous litigation process. He suggested confirmation of an exclusive court under the executive jurisdiction of the viceroy that would be designed to hear all legal cases involving *Indios*. He sent these letters and then awaited the King's reply (see fig. 17).

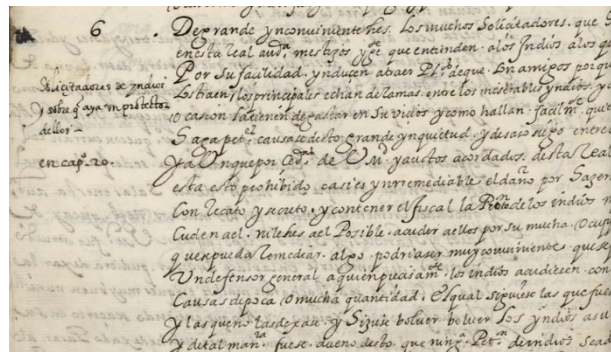


Figure 17. *Capítulo 6 de la carta del virrey Don Luis de Velasco II al Rey Felipe II pidiendo la creación del puesto de Defensor y Protector de los indios*, 2 de junio, 1590, Biblioteca Nacional de España (BNE), MS 3636, folio 6v.

The King's reply, coming all the way from Madrid to Mexico City, arrived on April 9, 1591. In this letter addressed to Velasco II, King Phillip II outlined the improvements to be made. He ordered the following:

I command that henceforth he who is or may be my viceroy of the said New Spain may take cognizance in first instance of any manner of suits that may arise among the said Indians, suits of Indians with other Indians, and also suits between Spaniards and Indians in which the said Indians are the defendants; and for which Indians are the plaintiffs, it is my will that they sue before the ordinary justices or before my royal audiencia as in done at present... And since, furthermore, I understand that the welfare of the said Indians requires that they have a *protector-defender*, a *letrado*, and an attorney to present and further their causes, you shall search for and appoint qualified persons worthy of being entrusted with a duty of such importance....to be paid from fines or through levy on the Indian community treasuries...[and] they may in no wise charge fees, under heavy penalties that you shall set.<sup>174</sup>

<sup>174</sup> Borah, *Justice by Insurance*, 94. The text of the royal cedula and excerpts from the royal letter can be found in *Real cédula ordenando la creación de un Juzgado General de los Indios en la Nueva España*, 1637, AGN, *Reales*

Thus, King Phillip II sketched the first blueprint for the creation of the General Indian Court. Upon receiving this letter, Velasco II quickly went to work hiring officials and organizing the new court. After several months of work and of spreading the news of the newly established specialized legal defense system, the General Indian Court heard its first case in February 1592. This represented a tremendous victory for Viceroy Velasco II and for the legal aid for the *Indios*. On June 15, 1592, Viceroy Velasco II reported to Philip II that he noticed already the benefits of the new system. He even went so far as to commend the King for this work in agreeing to the establishment of the court saying that the new system was one of the best things that the King had done for the New Spanish territory.<sup>175</sup>

By the end of Velasco II's tenure as viceroy in 1595, the General Indian Court had evolved and settled into its new place within the Spanish colonial legal system. In the beginning, the viceroy and the *audiencia* alternated hearing the first instance suits that Indians brought against each other and that Spaniards brought against Indians. Even for cases brought by native people against Spaniards that did not expressly fall under the new court's jurisdiction, colonial practice formed during the rule of Viceroy Mendoza that allowed for these cases to be brought to the viceroy as cases of administrative remedy as well.<sup>176</sup> By the early years of the 17th century, the General Indian Court was hearing Indian criminal cases, land cases, heritage right cases, and very importantly, local official abuse cases. The General Indian Court was located in Mexico City and overseen by the

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*Cédulas*, Vol. 103, f. olíos. 160v-161v.; the translation found in *Justice by Insurance* was made from a transcription of the original document from 1637.

<sup>175</sup> See *Carta del virrey Don Luis de Velasco II al Rey Felipe II, 15 de Junio, 1592*, BNE, MS 3636, folios 127v-128v. For a discussion of the impact of the new court see Borah, *Justice by Insurance*, 101.

<sup>176</sup> *Ibid.*, 121.

viceroys who were, in turn, supported by a large legal team including lawyers, notaries, and solicitors. All of these members took part in providing justice directly to the native subjects (see fig. 18).

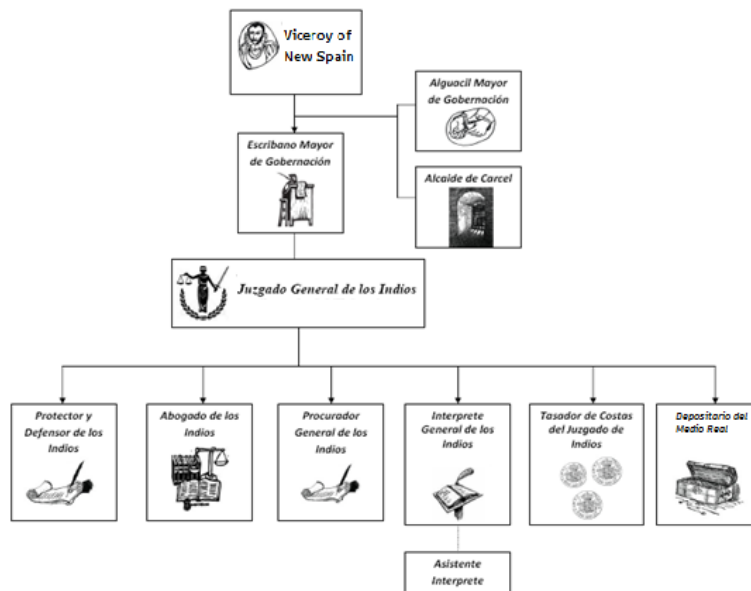


Figure 18. Chart of the Ministers of the General Indian Court in New Spain

It became apparent shortly after the creation of the court that indigenous claimants quickly came to prefer the service of the *Juzgado* over any other court or institution. They praised the efficient manner in which the court handled their cases and how inexpensive this service had become in comparison to the costs of the previous legal system. Moreover, the indigenous people took full advantage of their legal right to apply for administrative relief from abuses that the Spanish inflicted upon them, and this became reflected in a particularly large number of requests for legal *amparos* in the early



1600s.<sup>177</sup> It quickly became clear that the General Indian Court served its intended purpose.

When Viceroy Luis de Velasco II left Mexico City after his term was complete, he wrote a sort of memoir of his time as viceroy in which he concluded,

The good effects [of the General Indian Court] are many. Each day more than I can mention appear, without our being fully aware of them. The handling of Indian matters is quicker, more continuous, and less complicated. For the Indians now can present their complaints with great ease and speed and denounce abuses as they could not do easily before, because the justices steered them to friends among the *letrados* and attorneys. The owners of textile workshops, artisans, and all manner of people complain because the Indians now easily can get hearings and remedy for their wrongs.<sup>178</sup>

The General Indian Court and its salaried ministers went on to serve the indigenous people of New Spain for close to 200 years, empowering them to not only create legal meaning, but to also negotiate the terms of their colonial world.

### **What did the General Indian Court Provide?**

Establishing this court represented a distinct era in colonial history spanning from the court's founding in 1582 to its abolishment at the hands of Bourbon reforms in 1820. The existence of this new legal system of protections provided the native people with several tools with which they maintained agency, contributed to the definition of Spanish-indigenous relationships, and established themselves as active legal participants with protected rights within

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<sup>177</sup> Owensby, *Empire of Law*, 44.

<sup>178</sup> See *Carta y memorial del virrey Don Luis de Velasco II a su sucesor*, 1596, BNE, Ms 3636, folios 200v-202v. Also see Borah, *Justice by Insurance*, 109; and Lewis Hanke, ed., *Los virreyes españoles en América durante el gobierno de la casa de Austria: México*, Vol. 2:102-104.

the administration and government of New Spain. They had the ability to do this because the court provided for them, first, direct connectedness to their far away Spanish King in both an ideological and literal sense. Second, it provided them quick, effective, and far easier access to legal proceedings than they ever had before. Third, it allowed them equal (if not better) access to legal protection than that afforded to any other Spaniard or vassal of European descent. Next, it provided ordinary indigenous vassals the power to bring cases not only against the Spaniards, but also against their own local leaders, a privilege they didn't even have before the conquest. And, the court and its processes also served to legitimize indigenous record keeping in the eyes of the Spanish government by allowing Nahua codices (both pre-contact and those created during the colonial encounter) to be used in legal proceedings as supportive evidence. Finally, it gave the native people a tremendous amount of power to be involved in the creation of local colonial case law in the Viceroyalty and act as catalysts for the issuing of future *cédulas* or laws from the King.

**Providing Legal Access: Bringing a Distant King a Little Closer.** To begin, one of the most significant aspects of the General Indian Court for the natives was the way that it materialized and manifested their direct link to the highest power in the Spanish empire: *el Rey* (the King). In everyday life, the average Indian subject of New Spain did not feel a sense of closeness to the leader of the Spanish world nor would they ever be in physical contact with a European King living thousands of miles away in the Iberian Peninsula. Owensby poetically described this lack of a sense of connection succinctly, “one could say they felt royal authority as one might feel the subterranean rumblings of distant power.”<sup>179</sup> However, the General Indian Court changed this perception, and it helped to bring the King closer to the Indian people of New

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<sup>179</sup> Owensby, *Empire of Law*, 37.

Spain in two specific ways. First, it allowed them direct, affordable and simple access to the viceroy and the Audiencia in Mexico City. These officials were of the highest status in New Spain and they worked directly under the King of Spain. As the King's appointed representatives, the attention and support of these individuals was perhaps the closest thing possible to speaking directly to the King of Spain in the New World. In addition to this indirect royal connection, the General Indian Court also gave the indigenous people a way to understand the intentions and the values of their Spanish ruler and directly respond to his orders as he responded to their requests.<sup>180</sup> This type of legal communication is represented in the collection of many letters and petitions that were sent from indigenous litigants directly to the King through the help of the General Indian Court.

As early as the decade of the 1560s, Nahua Indigenous officials from towns petitioned directly to the King of Spain. For instance, the Nahua nobles of Huejotzingo appealed directly to the crown, with reverence and respect, though they complained that their entreaties never reached the Crown as the local Spanish authorities often blocked them:

Our lord sovereign with our words we stand before you, we of Huejotzingo, who guard for you your city. Very humbly we implore you, Oh unfortunate are we, very great and heavy sadness and affliction lie upon us, nowhere does your pity and compassion extend over us and reach us. We do not deserve, we do not attain your rulership. And all the while since your subjects the Spaniards arrived among us, we have been looking toward you, we have been confidently expecting that sometime your pity would reach us.<sup>181</sup>

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<sup>180</sup> Ibid, 35. Owensby says, "Increasingly over the sixteenth century and into the seventeenth century, indigenous petitioners conjured an image of the king in legal documents."

<sup>181</sup> See *Carta del cabildo y oficiales de Huejotzingo al Rey Felipe II*, 1560 in Arthur Anderson, Frances Berdan and James Lockhart, *Beyond the Codices the Nahua View of Colonial Mexico* (Berkeley: University of California Press, 1976), 176-177.

Other petitions, by even local Nahua laborers, also appealed directly to the King, through his local officials, for things as mundane as the payment for labors for which they had not been paid on public and Church works in their own communities. One instance from the Nahua painters from the town of Tulancingo, illustrates just how attuned even the commoners became to their right to petition for justice in the name of the King:

To the very magnificent lord: Here is that with which we have come before the Lord our Ruler, we painters whose home is here in Tulancingo; we address ourselves to the rulership of our great ruler the king, His Majesty, and to the Lord our Alcalde Mayor. Here is what we announce about our work; in the present year we worked three months for the holy church; the total of what we did is that we painted four houses and six large cloths for coverings, for which the altepetl has not granted us any of our pay. We have told the rulers (the cabildo members) but they do not want to grant us anything. Therefore, we have come before our ruler, for very often they withhold our pay for our work. This is all with which we have come before the Lord, our ruler and with which we kiss his rulerly hands and feet. Let us be paid in his presence, so that we will not be falsely accused of something. This is all with which we implore the lord our ruler.<sup>182</sup>

Whereas earlier appeals like these petitions had to go through the local authorities like the *Alcalde Mayor* before they reached the Crown, the new General Indian Court gave the indigenous litigants a direct channel to reach the Crown. The new Court helped the indigenous people to not only feel empowered as they now had a tremendous unhindered access directly to the most powerful figure in the Spanish empire, but it also gave them the most reliable method of getting their concerns from their local towns directly into the hands of the Spanish monarch.

Next, the *Juzgado* served the Indian communities tremendously by providing them quick, simple, affordable, and effective access to litigation. Without the privilege of having cases heard and ruled, native people would not be able to feel the effects of their rights as protected subjects.

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<sup>182</sup> See "Petition from a group of painters to the Spanish Alcalde Mayor for payment from the altepetl for their work," Tulancingo, 1570, Folder 1, cited in Lockhart, *Nahuas and Spaniards*, 92-93.

The General Indian Court gave this opportunity to them by creating a system exclusively dedicated to hearing their indigenous cases without excessive legal expenses. While mixed in with the general Spanish cases, native litigants could go months or even years waiting for their cases to be heard. But on their own, they found their voice and their concerns rapidly addressed. Viceroy Velasco even commented in 1595, “before it had not been easy for Indians to be heard in court, but now they do so with great ease and brevity.”<sup>183</sup>

In addition, the *Juzgado* also provided access to the court financially by waiving (or greatly reducing) all legal fees charged to native people who brought matters to this system. Because the half-real tax funded the Court, per the suggestion of Velasco mentioned above, the native people brought their cases to be heard by the judges of the *Audiencia* and the viceroy while being represented by an attorney trained in Spanish law paid through a sort of insurance system.<sup>184</sup> To this end, legal representation for the natives typically came at the hands of an official appointed by Spanish administration called the *protector de los indios*, as referenced briefly in Chapter 2. Officially reinstated by Phillip II in 1589, this official, whose salary was also funded by the half-real tax, provided free legal counsel and representation to the already greatly impoverished native populations. Forbidding the legal staff from charging fees to the indigenous people and providing simplified legal procedures, in Borah’s estimation, the General Indian Court offered the Indigenous peoples the greatest possibility of securing an adequate solution to the decades long struggle to be heard in court.<sup>185</sup>

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<sup>183</sup> Ibid, 56; 1596, See Sect. 7, in Lewis Hanke, ed., *Los virreyes españoles en América durante el gobierno de la casa de Austria: México*, Vol. 2:102-104

<sup>184</sup> This is the reason that Borah’s book is called *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real*.

<sup>185</sup> Borah, *Justice by Insurance*, 64.

**Defending the Sheep from the Wolves: Protecting the Nahua from Spaniards.** The implications of not having to pay legal fees to bring cases to the *Juzgado* translated directly into the third benefit that the General Indian Court provided which was the way that it allowed the Indigenous people the greatest opportunity to bring abuse cases against Spaniards to court. Although technically the Indian Court did not have judicial jurisdiction over cases brought by Indians against Spaniards, through the loophole of administrative remedy, complaints against Spanish provincial governors, their subordinates, and many other Spanish officials made up the second most common category of cases brought before the General Indian Court after land claims.<sup>186</sup> The large number of claims brought to the General Indian Court overall serves to prove the effectiveness of this means of defending their rights for the native people. The fact that the court would not charge legal fees to indigenous plaintiffs but that the Spanish defendants did have to pay heavy legal fees also served as an added incentive for Spaniards to avoid legal disputes with the native people all together for fear of facing imminent bankruptcy in lengthy court cases. The large number of cases ruled in favor of Indian justice drew an extremely large number of Indian claimants from all around the colonial empire to this court in Mexico City. The General Indian Court represented a seriously powerful opportunity to level the legal playing field among native people and Spaniards, giving equal, if not better, opportunities for justice to the indigenous.

**Protecting the Nahua from their Own: Redress of Commers against Abusive Native Nobles.** In addition to bringing protection for the native people against corrupt Spanish officials, the General Indian Court was also significant for the way that it protected the ordinary indigenous commoners from abuse by their own native leadership on a local level. Although

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<sup>186</sup> Ibid, 128.

many native local officials, *caciques*, *gobernadores*, *alcaldes* etc, served to promote the wellbeing of the indigenous people, still some disloyal officials chose to use their power to exploit their Nahua brothers and sisters under their leadership. Before the creation of the General Indian Court, the indigenous commoners faced ruinous expenses, and even “dangers along the road” as the Judge Alonso de Zorita noted, in trying to take their cases directly to the Audiencia. Unscrupulous lawyers and other colonial officials profited greatly by their legal difficulties, and few if any commoners received justice in this older system. Now, the Indian subject commoners considered this aspect of the General Indian Court to be critical as represented by the very large number of cases brought by Nahua commoners against Indian officials particularly in the first few years of the court’s existence. In fact, through Owensby’s own research, he illustrates the fact that during the first year of the court’s operation, the indigenous people more frequently brought petitions for reconciling abuse against other Indians than they did against Spaniards.<sup>187</sup>

Since the *Juzgado General de Indios* exclusively heard cases brought against Indians, the native subjects had a wide variety of legal categories from which they could bring cases against corrupt native leadership to the court’s attention. The most common category was through a petition of *amparo*.<sup>188</sup> This type of petition solicited legal protection for the vulnerable in cases where some aspect of their legal rights was being abused. Owensby and Borah both claim that their analyses of the cases brought by the native population support the conclusion that in the early years of the court, in certain issues like land seizures, the Indians felt they needed just as much protection from their native counterparts as they did from the Spaniards.<sup>189</sup> The General

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<sup>187</sup> Owensby, *Empire of Law*, 57, 59.

<sup>188</sup> As mentioned before, a petition and grant of *amparo* (meaning aid or protection), which was a type of legal document issued by the General Indian Court directed to local officials which served as a legal protection of the petitioner against further abuses.

<sup>189</sup> Ibid., 59; Borah, *Justice by Insurance*, 129.

Indian Court was, in this way, crucial because of the way that it forced the native leadership, put in place to be powerful advocates for the good of the native communities, to act in the manner consistent with the purpose of their positions.

**Painting the Truth: Protecting the Nahua Pictographic Records.** Next, the General Indian Court supported the native people in their struggle for agency and freedom in another way, and that by design, as it forced the Spanish government to recognize, value, and protect the pictographic records kept by the Nahua people and allow them to be presented as “proof” and evidence in its case law. For hundreds of years, the Nahua kept incredible religious, historic, and civil records in the form of pictographic codices. Tragically, various religious orders destroyed many of these documents in the first few years of the conquest in an effort to rid the New World of what they believed contained nothing but heretical doctrine. During those years, the Spanish reduced centuries of history, religion, community records, and origin stories, to ash or dust. However, when the Spanish administration established the *Juzgado General de Indios*, it established a court system specifically designed to resolve cases related to Indians, and the Spanish authorities realized that they had to accept the evidence, records, and documentation the Nahua had produced as evidence: i.e. the new court validated the probative value of the paintings and the Nahuas pictorial record.

Elizabeth Hill Boone, in her book *Stories in Red and Black: Pictorial Histories of the Aztecs and Mixtecs*, described that as colonial civilization developed, and Spanish law actively included indigenous people into society and incorporated them into their legal system. She wrote, “the Spanish officials had no choice but to accept painted records if they wanted information from the Aztecs, because at first these were the only records that existed, and the



pictograph was the only writing system the people knew.”<sup>190</sup> This held a number of implications for the native people. First, it helped them to establish themselves legally as having legitimate “original rights” to certain lands. It allowed them to effectively protect the land that Spanish law still recognized as belonging to them communally. Second, it served to protect and preserve an abundance of cultural records from the Nahua people which in turn allowed them to preserve their identity and culture as a people. As early as the 1530’s, the King of Spain sent forth a royal *cédula* requiring Spanish officials, both secular and religious, to preserve and reproduce many indigenous codices for the purpose of legal and tributary record keeping (see fig. 19).<sup>191</sup> In this way, a very large portion of what historians know about Nahua history in addition to the indigenous culture that is still practiced today can largely be attributed to this era of colonial law.

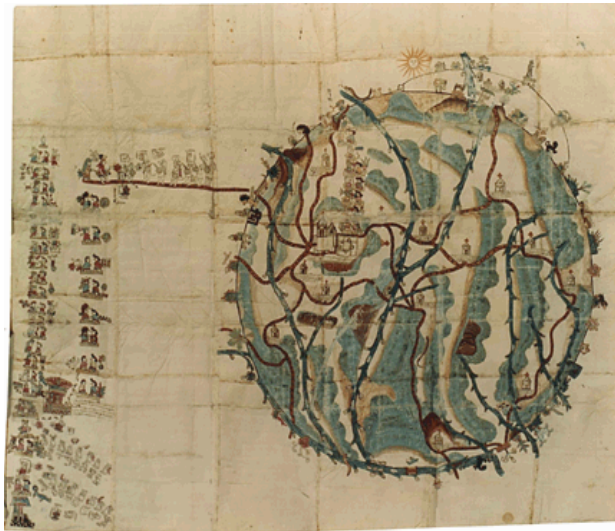


Figure 19. An Aztec Territorial Map, 1580, *Mapa de Tezacoalco*, Benson Latin American Collection, University of Texas at Austin.<sup>192</sup>

<sup>190</sup>Boone, *Stories in Red and Black*, 244.

<sup>191</sup> Ibid., 246.

<sup>192</sup>The *Mapa de Tezacoalco* is a *lienzo* or territorial map created in January 9-21, 1580 by local native artists in response to a census survey sent out by the viceroy requesting information about the town’s founding and the history of its leadership. See Elizabeth Hill Boone, *Stories in Red and Black Pictorial Histories of the Aztecs and Mixtecs* (Austin, TX: University of Texas Press, 2014), 130.

**Appealing before the King: Creating a Legal Conversation.** Finally, perhaps one of the most important opportunities for agency that the General Indian Court brought to the native population was the ability to, with regularity, participate in negotiating their own legal rights by inciting the creation of new royal *cédulas* in reaction to the cases they brought to the General Indian Court and establishing a precedent for future generations of Indigenous litigants through the case law methods used in the Spanish courts. The Spanish legal culture, as a descendant of medieval Roman law, stressed the importance of judgements occurring by applying legal principles and ideas to various conflicts or “particular cases.”<sup>193</sup> Their style of judicial proceeding, which put more power in the hands of judges and their decision making than the letter of the law, intended to provide the greatest freedom for true justice to be provided through the exercise of scrupulous and upright judges. This meant that law, in colonial New Spain, was a *ley viva*, living and active, and designed to serve the needs of the people.

The indigenous people recognized the power that this could provide for them early on which inspired them to take forceful legal actions. They expressed their own amazement with the legal power afforded them in a letter from 1570 that indigenous *caciques* and nobles from Mexico City wrote to the King. In this letter, they expressed their wonder and appreciation for the legal protection of the distant King and comment on their own penchant for litigation since the arrival of the Spaniards, acknowledging the legal system as “an instrument of survival and agency.”<sup>194</sup> The General Indian Court truly opened the door for thousands of cases to be heard, and each new case that ruled in favor of the Indian rights, the more reasonable it would be for future cases to be ruled and adjudicated in a similar manner.

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<sup>193</sup> Borah, *Justice by Insurance*, 45.

<sup>194</sup> Owensby, *Empire of Law*, 47; also see Fray Gerónimo de Mendieta, *Codice Mendieta: Documentos Franciscanos, Siglos XVI y XVII*, Biblioteca de facsimiles Mexicanos, no. 4, Tomo I (México: Díaz de León, 1971).

In the end, this process of adjudication of Indigenous cases from the very common cases through the most complex cases, would be sent from the viceroy, all the way to the King who had the power to create new royal orders upholding new standards for the treatment of native people.

None of these rulings would have come to fruition without the opportunities available through the exercise of Indigenous justice in the General Indian Court and the tireless efforts of the Indian litigants. Owensby remarks, “the elaboration of law was not exclusively a process dictated from on high. Royal edicts and vice-regal willingness to enforce them are indispensable. But without indigenous participation, it is unlikely laws regarding treatment of the Indians could have retained much force or legitimacy among conquered people.”<sup>195</sup> This observation and a review of the cases at our disposal in the *ramo de indios* certainly goes to support his claim from the closing pages of his book that surely the research shows that the General Indian Court and its supporting legal system really did provide the indigenous people with the greatest number of opportunities to claim and defend their rights than in any other period of Spanish rule including the egalitarian reforms brought about by Bourbons ascent to the Spanish throne.<sup>196</sup>

### **Tracking the Case Law: What the Case Files Represent**

In Borah’s research, he compiled, translated, and analyzed 174 cases that are recorded to have been brought before the General Indian Court in Mexico City. He drew his data from the sworn affidavits of two *solicitadores* who had worked for the General Indian Court in 1784. These individuals were able to look back over more than a hundred years of operation and give a

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<sup>195</sup> Ibid., 47.

<sup>196</sup> Ibid., 304-309.

reliably comprehensive record of what types of cases were brought before the judges. Borah's research, along with that of his research partners, is summarized below (see table 1).

Table 1. Legal Categories of Cases Before the General Indian Court from August- September 1784

Legal Categories of Cases <sup>1</sup>	Number of Cases
Land and easements on land	32
Complaints against local Spanish officials	26
Labor: Indian vs. Spaniards	12
Other Land Property	6
Complaints arising from town government	5
Private Indian suits (not over land)	5
Land Inheritance	3
Miscellaneous	3
Extension of time on debts	2
Not Stated	2
Land Affected Licenses	2
Complaints against priests	1
Money (not peonage)	1
Family quarrels and offenses	1
Total (due to rounding)	101

<sup>1</sup> Source of data: Woodrow Borah, *Justice by Insurance*, 128; also see *Declaraciones de los solicitadores del Juzgado General de los Indios de la Nueva España sobre los casos en el juzgado*, 1784-1786, AGI, *Audiencia de México*, 1286, folio 45v-72v.

### Protecting and Expanding Communal Rights: The Land Cases

As seen in the data above, Borah and his team concluded from the data held in the *Ramo de Indios* section of the Mexican National Archive (AGN) that the largest overall portion of cases were related to maintaining rights to land whether it is by means of inheritance, property

seizure claims, or other land rights claims.<sup>197</sup> This very significant category of legal claim represented the tremendous value that land held for the indigenous people both economically and communally. Spanish law already protected the indigenous people from the unlawful seizing of their lands and provided them a separate area in which they could live, work and grow their land (a very large portion of their economy), and remain as active members of colonial society as a whole. If the native people did not have the General Indian Court in which they were able to bring claims to protect the lands that belonged to them, they would likely not have been able to survive as a functioning community nor as significant contributing members of the New World society. The Spanish, and many times empowered indigenous leaders or other communities, could have easily taken their lands and left them with nothing. In this way, the Indians used the General Indian Court skillfully to maintain their sense of agency and control within their ever changing colonial world.

As early as the 1570s, complaints about Spanish livestock grazing without permission on Indigenous communal lands became frequent. The Judge Alonso de Zorita complained that the unauthorized grazing of cattle on Indian lands had caused grave damages to them, their agriculture and their economy:

Because the cattle are so numerous and wander about without herdsman, the Indians cannot stop their foraging, although large numbers of the Indians take turns in watching their fields. As a result they suffer from two serious injuries; a great many people waste their time in guarding against the cattle, to the detriment of their farm work and the other tasks; and the cattle eat, trample, and otherwise damage their crops.<sup>198</sup>

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<sup>197</sup> Borah, *Justice by Insurance*, 126.

<sup>198</sup> Zorita, *Brief Relation of the Lords of New Spain*, 269.

Typical cases for this type of complaint of the usurpation of communal lands for pastures by Spaniards became common in the General Indian Court. For example, on April 16, 1633, the local Indigenous *procurador*, or solicitor, on behalf of the native people of Comanja, Cockapoo, and other towns in the province of Michoacán reported to the court that Don Juan de Haro had been stealing the communal pasture lands from these native communities to use for himself. The Spaniard processed no farmland or fields of his own, so he used the native peoples' lands to graze his personal livestock. Upon hearing this complaint, the General Indian Court granted an *amparo* to the Indian communities. The court ordered that Don Juan de Haro return the lands that belonged to the native people and pay for the damages he caused them in turn. This successful outcome for the Indigenous communities represents one of hundreds of examples of the way that Spanish law as exercised in the General Indian Court protected the native communities and their lands.<sup>199</sup>

### **Defending against Spanish Abuse Cases**

The second greatest number of cases (26% at least) involved specific violations of Indigenous rights and complaints brought against Spanish officials; Spanish priests could also be included in this category. Besides just the sheer number of cases, primary source records from officials at the time also note the regularity by which Indigenous subjects brought abuse cases against their Spanish leadership. Viceroy Croix, at the end of his term as viceroy in 1754 wrote, "...It is certain that the Indians are customarily oppressed by the priests and *alcalde mayores* with demands for services and taxes. When the two representatives in a district are united is when

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<sup>199</sup> See *Al Alcalde Mayor de Michoacán a fin de que ampare a los naturales de Comanja y otros pueblos de la provincia en la posesión de sus tierras*, 1633, AGN, *Ramo de Indios*, Vol. 10, Exp. 161, folio 370v.

they most afflict the Indians.”<sup>200</sup> Of course, an eternal power struggle existed between colonizers and colonized whereby Spanish officials viewed the native people as a means to their own end of accumulating wealth and power in the New World. However, the Indigenous Nahua people knew that through their vassalage, Spanish law also owed them certain rights and reciprocal obligations. Through the General Indian Court, they were able to successfully expose the many rights violations and abuses enacted against them by Spaniards. In such a way, the General Indian Court served to hold accountable those who held more social and political power in the New World order and who committed abuses against the Crown’s Indigenous subjects. Nevertheless, the native people used the court as an incredible tool to actively defend their rightful position within society, not as slaves but as subjects.

### **Fair Wages for a Days Work: Labor Abuse Cases**

Another arena of constant complaint against both Spaniard and Indian alike was the abuse of Indigenous labor and their forced labor without pay. For instance, on March 20, 1630, Melchor Lopez de Haro, as the *Procurador General de los Indios*, or Indian solicitor, brought before the court a request for an order of *amparo* on behalf of the Indian commoner Melchor de los Reyes who is referred to as an *indio chino* (likely a native from the Philippines). He requested an *amparo* for Reyes in order that he be protected from any interference or unnecessary restriction in his occupation of producing and selling his alcohol called *aguardiente de maguey*. This document, which speaks of the “burning water of the maguey,” is actually one of the earliest documented references to the alcohol distilled from the *maguey* (agave) plant. Although this record does not specifically define which species of agave was used, most historians agree

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<sup>200</sup> Borah, *Justice by Insurance*, 127; also see Carlos Francisco de Croix and Norman F. Martin, ed, *Instrucción del virrey que deja a su sucesor Antonio María Bucareli*, (México: Jus, 1960):56-57.

that this was a description of the origin and popularization of the liquor that has come to be so representative of Mexico: tequila.<sup>201</sup>

This case is a powerful example of the way in which indigenous populations were able to use the General Indian Court in a way that established their agency and legal and economic presence within the colonial world that still has ripple effects in the world today. Melchor de los Reyes, an indigenous man, felt it imperative to request legal protection for both his business endeavor and his right to make his own mark on the Spanish colonial economy and society. A vast number of the total cases brought before the General Indian Court represent this same type of thing: Royal legal protection for Indigenous commoners in their attempts to make their mark on the colonial economy and society. These cases represent a portion of the population fighting to defend their rights to agency, participation, and growth within the new colonial Spanish World that had been so suddenly thrust upon them. The *Juzgado General de Indios*, although not perfectly, provided them with an opportunity to make that happen. It took work. It forced them to travel long distances, endure hardships and abuses while they waited for court hearings, collected years of evidence and compiled claims, placing their trust in the system designed to serve them. However, in the ways that they were able to persevere in this system, they defended their rights and made an impression and impact on colonial society in New Spain. And it is truly extraordinary that some of the marks that indigenous people were able to make on colonial Mexico through the judicial system, like Reyes with his requests for protection of his tequila business, ultimately allowed them to become a part of forming some of the most defining characteristics of their world for centuries to come.

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<sup>201</sup> Borah, *Justice by Insurance*, 147; also see *Para que la justicia de su majestad, no impida a Melchor de los Reyes Indio natural de Manila hacer y vender aguardiente de magüey*, 1630, AGN, *Ramo de Indios*, Vol. 10, Exp. 212, folio 115r-v.



## CHAPTER FIVE:

### FROM *RAMO DE INDIOS* TO *LAS LEYES DE INDIAS*: FORGING A POWERFUL AND RECIPROCAL LEGAL RELATIONSHIP WITH THE CROWN

And We, in imitation of our Catholic and pious zeal, ordain and command the royal viceroys, presidents, audiencias, governors and justices, and entrust the archbishops, bishops and ecclesiastical prelates, to keep this clause very present which was given in the provisions and laws for the conversion of the natives and their Christian and Catholic doctrine, ensuring their teaching and that they be given good treatment.<sup>202</sup>

Royal *cédula* by Empress Isabel as regent in the name of Emperor Charles V, 1525, in *Leyes de Indios*, Libro XI, Título X, Ley Primera.

In January 1653, Juan García, an Indigenous resident of Santa Catalina Xochitepec filed a petition to the General Indian Court explaining that he had been serving on a hacienda in Oaxaca for more than nine years. Throughout the duration of his service, the hacienda had changed ownership several times. First, it changed from the original owner to his wife upon the owner's death. Then, it moved from the wife to her new husband and finally and on from that husband to a new buyer named Don Rodrigo de Lucera. Juan García once again outlived the owner of the land on which he continued to work, but this time, when Rodrigo de Lucera passed away, the management of his land and farm went to his *mulatto* slave, Nicolás, an exchange highly unusual in that time. Juan García explained to the Court that Nicolás, a man of African descent, “with a

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<sup>202</sup> In Spanish this royal *cédula* reads, “Y Nos, á imitación de su católico y piadoso celo, ordenamos y mandamos á los virreyes, presidentes, audiencias, gobernadores y justicias reales, y encargamos á los arzobispos, obispos y preladados eclesiásticos, que tengan esta cláusula muy presente, y guarden lo dispuesto por las leyes, que en orden á la conversión de los naturales y su cristiana y católica doctrina, enseñanza y buen tratamiento están dadas.”

powerful hand was made bold by the death of his master,” and he cruelly forced García to work for him, whipping him often (see fig. 20).

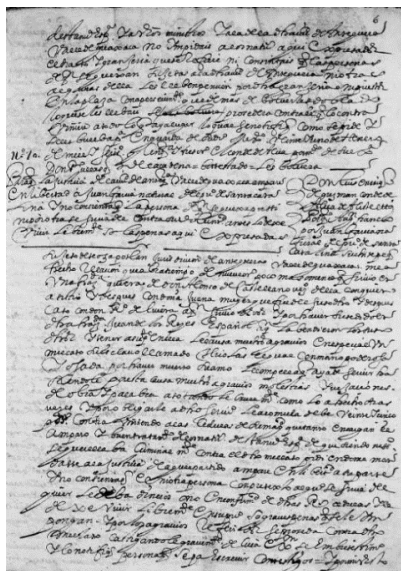


Figure 20. *Para que la justicia de Antequera, ampare en su libertad a Juan García, natural de Santa Catalina Xochitepec, y no consienta que la persona de quien se quejan por sí ni por otra se sirva de él contra su voluntad, 1653, AGN, Ramo de Indios, Vol. 19, Exp. 10, folios 6r.*

Moreover, according to the complaint, Nicolás also forced Juan García into a twenty-five peso debt which kept him bound to the hacienda. García, an *indio*, brought his case to the General Indian Court fully prepared to launch a criminal complaint against his new master. The tribunal of the Indian Court fully supported Juan García’s plight and his attempt to live freely (*vivir libremente*), and to be able to live where he wanted, work where he wanted, and remain free from harm at the hands of his fellow men. The Court proceeded to prosecute Nicolás, the unusual mulato hacienda owner, for his gross violation of Indian rights that had been clearly established by the mid-17th century.<sup>203</sup>

<sup>203</sup>*Para que la justicia de Antequera, ampare en su libertad a Juan García, natural de Santa Catalina Xochitepec, y no consienta que la persona de quien se quejan por sí ni por otra se sirva de él contra su voluntad, 1653, AGN, Ramo de Indios, Vol. 19, Exp. 10, fs. 6r-v.*

This case is an excellent example of an individual plea brought before the General Indian Court that included nearly all of the most common legal themes that kept the native communities returning to the courtroom of the General Indian Court time and time again. As this project has outlined, over time, the legal system afforded the Nahua people of Mexico various tools within their own local context to participate and litigate in Spanish colonial society. Empowered native intermediaries and elites governed their local communities, interceded on behalf of their common native subjects, and protected the indigenous language, culture, and customs. The General Indian Court, funded by the half real tax and supplemented by the *Protector de Indios*, gave the Nahua and other indigenous people of New Spain, direct and efficient methods by which they could bring their grievances and violations of their rights before a sympathetic judge. Both of these institutions protected the indigenous populations of colonial New Spain through a legal system and code law that had evolved over several hundreds of years of Spanish jurisprudence.

With all of these legal and political tools in hand, and through the very way in which the Spanish legal system was designed, the central Mexican *indios* managed to act, litigate and protect their rights and communal properties in a powerful way. By the extant data recorded in the court cases and legal dockets of the General Indian Court, in comparison with the many *royal cédulas* compiled in the *Leyes de Indios*, this chapter will examine the evidence of the power of this indigenous litigation and its direct relationship to indigenous agency within the colonial legal regime. Also, the research for this chapter will serve to support the underlying theme of this thesis project which is, by the rights and tools afforded to the native people under Spanish law, the indigenous litigants became able to actively participate in not only protecting themselves

within colonial society, but actually their role in this colonial court and its litigation helped them to negotiate the colonial system under which they lived.

### **The Juridical Nature of the General Indian Court: A System Designed to Allow for Change**

As briefly described in chapter two, the way in which the legal system allowed for this proposed level of influence is mostly due to way in which the Spanish administration created and distributed laws within their empire. Signed legislation and royal orders issued by the ruling monarch of Castile, called *cédulas* served as a decisive, legally binding orders throughout the Spanish world. In the New World, a Royal *cédula* held more weight than any order put forth by any other governing institution such as the Council of the Indies, any previous royal decrees, or any command of a local magistrate, or even a member of the ecclesiastical leadership. Many times, the King issued royal *cédulas* to require action among the colonists or to appoint new leadership or create new legal or political customs. However, other times, the monarch released these orders in response to recurring disputes within the kingdom, or one of the New World colonies. As many of the same complaints or confusions may have come through the Spanish court systems from various regions, *El Rey o La Reina* themselves would produce specific royal orders, or *cédulas*, in an attempt to resolve legal issues as their orders acted as the highest ruling in both the judicial and legislative system.

Once the King issued a royal decree, legal officials printed, signed, and distributed these orders throughout the Spanish Empire and then dutifully enforced them as they served as the direct words of the King. It is by this system that, as the native people diligently brought case after case to the General Indian Court and the Courts of the Audiencia, their voices made their way all the way to the King of Spain. These legal clamoring on the part of the Indigenous

peoples demanded a juridical response. Their dedication to actively participate in the Spanish legal system they lived in with these legal tools enabled even simple Indigenous people like Juan García to bring about great change. Indigenous litigants often helped to create legal changes in the colonial system by their litigation. Changes that are readily observable in the legal records that remain today. As part of the methodology of this thesis, a comparison of the indigenous Nahua litigation records with the contemporary lists of royal orders (*cédulas*) can aid us in measuring the impact and significance of indigenous legal agency and their impact on the colonial legal system. By using Borah's case summaries to augment my own research into the corpus of colonial laws (*Las Leyes de Indias*) and my own work in examining the cases in the *Ramo de Indios* section of the AGN, I will build my case to support this claim.

### **Analyzing this Proposed Trend of Recorded Data (*Ramo de Indios*-AGN)**

With knowledge of the way in which Spanish law evolved, in the form of royal *cédulas*, and the recorded success and frequency by which the native people used the General Indian Court and the Court of the Audiencia, I suggest that there is significance and meaning to be found by examining the cases brought before the General Indian Court and the subsequent royal *cédulas* made by the King in the following years.<sup>204</sup> I examined eight hundred and sixteen case extracts from the Archivo General de la Nación's *Ramo de Indios* that span from 1574-1820 which I translated and organized alongside a thorough review of the nineteen chapters of royal *cédulas* compiled in the *Leyes de Indias*. This comparative study of these primary sources suggests a strong correlation between the types of cases that were frequently brought before the General Indian Court and the subsequent royal *cédulas* that the various Spanish monarchs

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<sup>204</sup> Owensby, *Empire of Law and Indian Justice*, 36-39.

directed to the New World, which often appear to be in reaction to specific indigenous cases brought to the Crown's notice.<sup>205</sup>

By drawing the connection between these two sets of data, I hope to support my thesis that the Nahua people as a whole did not simply sit back and allow for the Spanish to take advantage of their diminished social status. Instead, they chose to use the legal system and the tools they had at their disposal to defend the rights promised to them by Spanish colonial law. And, in the absence of said laws for their protection, Indigenous litigants became catalysts for the creation of new royal laws that would better serve them. In doing so, the Nahua positioned themselves prominently within colonial society, claiming through their active legal agency the ability to create and mediate the terms of their own status and rights as vassals. Also, I assert that these legal tools allowed them the best means of achieving success in defending and upholding their indigenous rights better than any other similar avenue in the history of the colonial empire.

### **How the Data is Organized: An Examination of the Data**

On August 1, 1686, record shows that all of the *caciques* from the town of Tlaxiaco, in the province of Teposcolula, brought a suit against the Spaniard Mateo Vázquez to the General Indian Court. According to the native testimony, Vázquez, who held the title of *principal* in the town, and his nephew commandeered a very lucrative plot of land on the river, by using their own political influence (see fig 21).<sup>206</sup> They subsequently built three mills for themselves on this

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<sup>205</sup> Brian Owensby discusses in depth this Spanish legal ideology referred to as “casuistry” in chapter 2, pages 44-46 of *Empire of Law and Indian Justice*. He explains that the Spanish believed that an effective government viewed law in the spirit of *ley viva* which meant that law was alive and should be modified and applied as it best fit the needs of citizens.

<sup>206</sup> *Se ordena al alcalde mayor de la jurisdicción de Teposcolula, averigue si son propiedad de Mateo Vázquez, principal del pueblo de San Pedro Tiqui, sujeto de San Mateo del Peñasco, las tierras en donde pretende fundar un molino de trigo*, 1686, AGN, *Ramo de Indios*, Volumen 28, Exp. 271, folios 228r-228v.

land. The people of the town of Tlaxiaco became highly upset as a result, because the land that Vázquez seized previously held a community mill held by the community in common where many of the locals had worked.

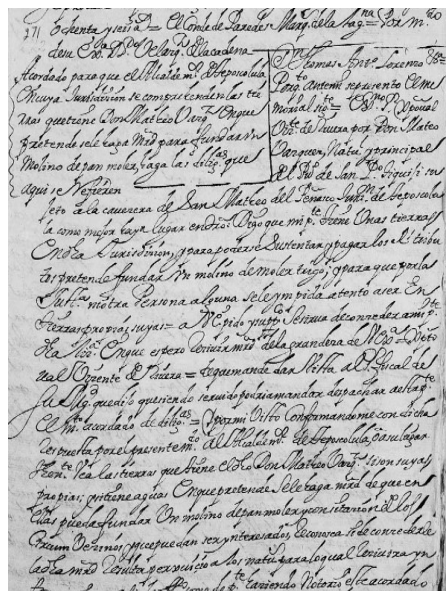


Figure 21. Orden al alcalde mayor de la jurisdicción de teposcolula, averigue si son propiedad de Mateo Vázquez, principal del pueblo de San Pedro Tiqui, sujeto de San Mateo del Peñasco, las tierras en donde pretende fundar un molino de trigo, 1686, AGN, Ramo de Indios, Vol. 28, Exp 271, folios 228r.

The native people explained that the revenues they had earned from the community mills used to go toward paying their tributary fees as well as the expenses they gave for the church. Without this income, they argued, they could not pay these necessary expenses. Therefore, they gathered together and petitioned the court to require that Mateo Vázquez present the government issued license allowing him to have these mills and perform business on the land. The Viceroy agreed, requiring Vázquez to present these documents along with a report on the damage he had caused to the town all within fifteen days. The native litigants, commoners in this case, successfully challenged the rights and privileges of a native *principal*. Although this is where the case ends, the documentation is an excellent representation of what is, throughout the more than

two hundred years of its operation, one of the General Indian court's most frequent types of cases: Land Protection suits. According to Woodrow Borah's analysis, between the months of August-September of 1784, an overwhelming 43% of all cases brought to the General Indian Court involved land disputes (see fig. 22).<sup>207</sup>

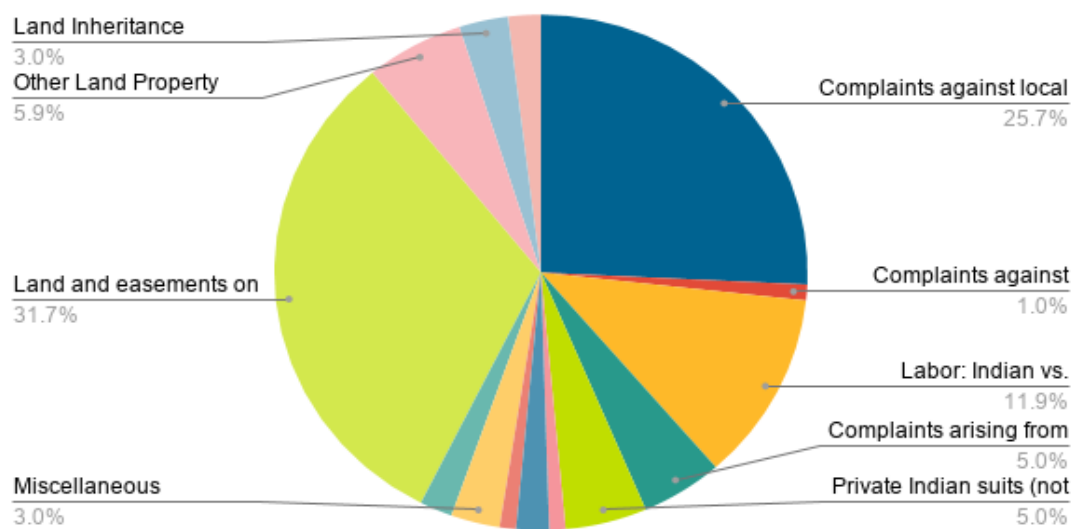


Figure 22. Borah's summary of cases from General Indian Court between August-September of 1784. Source: Borah, *Justice by Insurance*, 1

Very similarly, in my own research which examined more than 816 cases in the *Ramo de Indios* during all the years that all the native people it appears from the data that both commoners and elites had direct access to the courts during the period from 1585 to 1820. Of these recorded cases during this period, land protection claims comprised a total of 18.3% of all the cases analyzed. The second most frequent type of case submitted to the court during this period, only one percentage point higher (19.3%), were the specific legal petitions and requests for special privilege licenses which came predominately from the indigenous elite (see fig. 23).

<sup>207</sup> Borah, *Justice by Insurance*, 1.



### Ramo De Indios Database 1585-1820

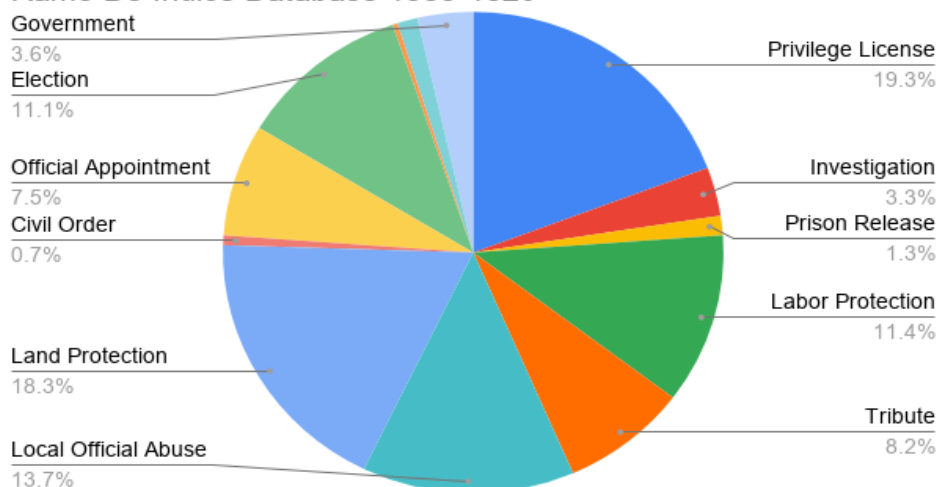


Figure 23. The cases most frequently brought to the courts between 1585-1820, Source: Database of 816 representative cases from the *Ramo de Indios* examined in this thesis.

And while land related disputes appear to be highly common (Borah claimed that they were at all times the largest category) they were far from the only type of cases brought through the doors of the General Indian Court in its functioning years.<sup>208</sup> By my own analysis of a representative selection of 816 cases from the years 1574-1820, the cases presented to the General Indian Court could be organized into the following fifteen major overarching categories:

- 1). Tribute
- 2). Land Protection
- 3). Claims of noble heritage Rights
- 4). Appointments of Officials
- 5). Requests for Royal Orders
- 6). Election certifications/disputes
- 7). Salaries of Officials
- 8). Cases of Civil Disorder
- 9). Local cases of Abuse of Officials
- 10). Requests for Prison Release
- 11). Formal Investigations
- 12). Labor Protection cases
- 13). Requests for Privileges or Licenses
- 14). Protection of Native Customs
- 15). Government Reconstruction.

<sup>208</sup> Borah, *Justice by Insurance*, 129.

Although there could be many ways to organize this complex set of data, these fifteen major themes appeared to be the most consistent and relevant within my compiled data set. In addition to organizing my data by theme, I also organized these cases by chronological date range. An enormous amount of change occurred between the years of 1575 and 1820 in colonial New Spain, so in a manner that would allow me to track these changes and the impacts of various legal reforms, I divided the data into four major date ranges.

**The Pre-General Indian Court Years, 1575-1592.** The first period includes cases that transpired between the years of 1575-1592. This range represents the records of legal documentation that existed before the King officially founded the General Indian Court. The majority of the cases in this data set (up to 1582) are all contained within Volume 1 of the *Ramo de Indios* data set which I translated and organized in its entirety. This era is unique in the way that it embodied the period in which the Spanish administration began the process of restructuring indigenous government and lifeways, and defining the legal limits of colonial society. During this time period, only native nobility and elites enjoyed access to the Spanish court system, and they most often brought their cases before the Court of the Audiencia or the Viceroy himself. The data in this range is quite reflective of the motivations of the native elite at the time.

**Early General Indian Court Period, 1592-1650.** The second period in the chronological range includes documents which date from between 1592-1650. After the General Indian Court began operating in full swing and the common indigenous people were able to present petitions and cases before the court without charge.

**Mid-Colonial Period of the General Indian Court, 1650-1750.** The third period of the documentation under examination occurred during the mid-colonial period starting in 1650 and running for the next century. During this period a shift occurred, and the needs and concerns of

the everyday *indio* commoners and their complaints and issues became apparent. During this period, a sharp decline in the population of indigenous people affected both the types and nature of the cases during this one hundred year span. The native population reportedly dropped from between 5-20 million inhabitants at the European arrival to a low point of about 1.5 million by 1650. As the colonial economy boomed and more Spaniards continued to immigrate to the New World, the native people of this time faced increased challenges when it came to defending their personal and communal land rights.

**The Bourbon Reforms and the Late Colonial Period, 1750-1820.** Finally, the fourth and last range in the periodization of the major indigenous court cases brought before the General Indian Court spans from 1750 to 1820. This period of course, includes the powerful Bourbon Reforms of the 18th century and also the changes in the legal system with the Constitutional period and the early Independence movements. The influence of the Independence wars, and the changing legal, political, and social status of the *Indios* during this time took a dramatic turn and this largely impacted upon the cases that the indigenous people brought before the Court.

In addition to this data and the cases from the *Ramo de Indios* section of the General Archive of the Nation, I also collected, translated, and annotated the many royal *cédulas* created by the Kings of Spain during the colonial years which the Spanish monarchy compiled in the publications *Recopilación de Leyes de Indias* (1680-82) as well as the *Novísima Recopilación de Leyes de Indias* (1805). I used the royal *cédulas* and the topics that they addressed to serve as one indicator for cross-referencing them with the cases in the Ramo de Indios, and this method enabled me to trace and track the changes in the legal system that these official orders represented.

## **General Discussion of the Data Trends**

In the same way that the types of cases brought before the present-day legal system tend to reflect both the cultural values of the people and the political climate in which they are living, the types of cases and their frequency reflected similar trends in colonial New Spain. Throughout the different time periods under observation, I noticed the rise and fall in frequency of certain cases at different times. This not only guided me to consider the historical contexts in which these cases occurred, it also prompted me to consider the ways in which other political and legal influences might have affected these cases and vice versa. After discovering the natural trends and shifts within the case types and frequencies, I moved to look at the laws and *cedulas* that were passed by the King at these times; the results were striking. My findings from the data that I collected were both fascinating and remarkable within the context of this project, and the relationship within these data sets holds tremendous significance.

### **The Pre-General Indian Court Years, 1575-1592 in the *Ramo de Indios***

For this first time period, the two most commonly recurring themes in the cases brought before the court focused on salaries and tribute, followed closely by requests for privileges and licenses, and finally labor protection. Although this period witnessed a majority of its petitions being filed before the courts by the indigenous nobility, occasional cases from local indigenous commoners also existed. These trends can be easily observed in the table below which breaks down the representative sample of the cases from the primary source documentation collected in the database of this thesis project pertaining to the cases examined which the indigenous people presented before the various colonial courts of the viceroyalty which existed before the formal establishment of the General Indian Court during this first period (see table 2):

Table 2. Legal Categories of Cases Brought Before the General Indian Court from 1572-1595

Legal Categories of Cases <sup>2</sup>	Number of Cases
Salaries	282
Tribute	49
Privilege License	45
Labor Protection	44
Land Protection	31
Official Appointment	19
Local Official Abuse	19
Election	9
Investigation	8
Civil Order	4
Total	518

<sup>2</sup> Source of figures: Representative Selection of cases from AGN, *Ramo de Indios*, Vol 1-100.

**Cases involving Salaries, 1575-1592.** By far, the most overwhelmingly frequent case brought to the court system during this first period pertained to the setting salaries for indigenous caciques and early cabildo members. As I mentioned before, during this time, only the elites and nobles litigated in the colonial court systems of New Spain. During this period as well, the Spanish colonial administration became tasked with organizing the political structure of its government which meant they regularly took and gave power and rights to different individuals depending on the needs of the empire. This was also the time in which the administration established the administrative governance of the *cacique* and *cabildo* systems of government which reassigned certain responsibilities that had been handled previously by very important

native elites which and been passed down by inheritance.<sup>209</sup> Under Spanish law, the *cacique/cabildo* system diversified this power and officials received appointments by either election or official royal order, and not through inheritance. In addition, the King mandated the existence of a Castilian-style ruling structure in the indigenous municipalities that included governors, *alcalde mayores*, *regidores*, and other local officials, all of whom enjoyed membership (if only temporarily) in an upper class of Nahua society and all of them certainly wished to be compensated as such.<sup>210</sup> All of these historical factors help to contextualize the trends displayed in the graph below which shows what types of cases the indigenous people brought before the court during this first period from 1575-1592 (see fig. 24).

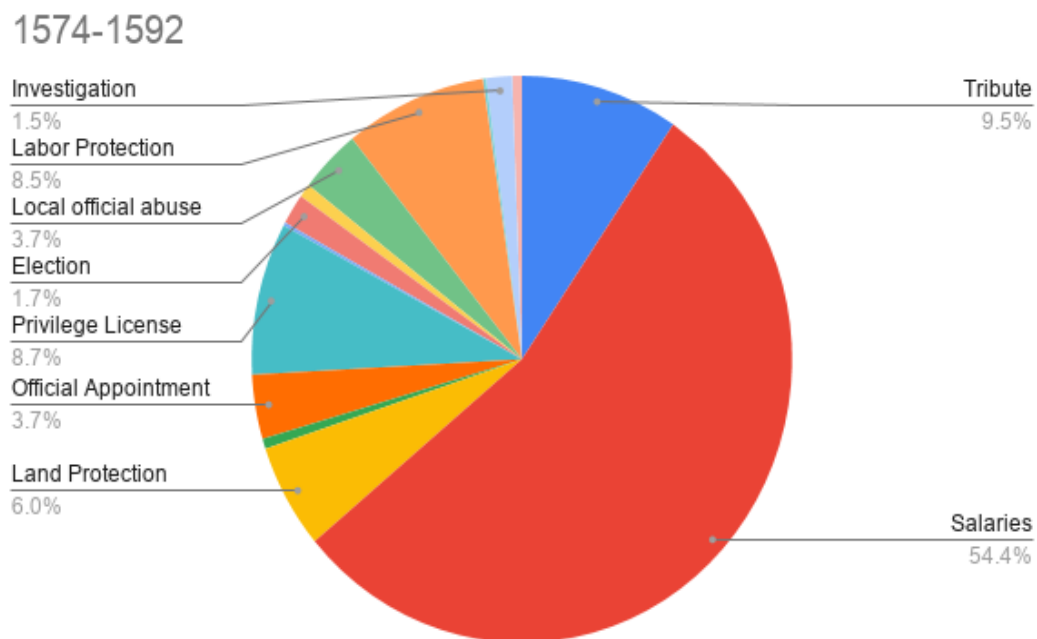


Figure 24. Cases most frequently brought to the courts 1574-1592 (*Salaries*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vol. 1-6.

<sup>209</sup> Borah, *Justice by Insurance*, 187.

<sup>210</sup> Owensby, *Empire of Law*, 36-39.

As this graph clearly shows, more than half of the cases brought to both the Court of the Audiencia and the General Indian Court after its founding in 1585, were all about establishing salaries and ensuring that each one of the local officials received a set salary that was as much as the colonial authorities believed he should obtain. Cases involving the setting of these indigenous officials' salaries, whether it was in the case of a *cacique*, governor, *alcalde mayor*, etc, became the most numerous in this era. In order for a case to fall under the category of salaries, the case title typically began with the word “*tasación*” which translates roughly in English to the word “appraisal” and this typically referred to when the court appraised the value of the work done by the local officials and established a set salary of how much they should be paid out of the tribute that their community collected. An example of how one of those cases occurred in the case that follows. In 1575, there was case brought from the Nahua town of Tetela whose legal docket title read, “*Appraisal: What is to be given to Don Pablo Vazquez from the leftover tribute in order to help support him for being the Cacique of said town* (see fig. 25).”<sup>211</sup>

The petition on part of the *cacique* most probably occurred during this transitional period when the native cabildos were taking administrative control of the functions of Nahua town government. It is likely that this *cacique*, Don Pablo Vazquez, with his petition wanted to assure that the shifting town and local governments would not negate his privileges. The Nahua nobleman perhaps felt in danger of losing some of the power and prestige he had previously enjoyed, and with this court order his salary remained securely written into law. Between the years of 1574-1582, there were approximately 281 other similar petitions and court orders just like Don Pablo Vazquez's case.

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<sup>211</sup> *Tasación que se le hizo a Don Pablo Vázquez, de las sobras de tributos, para ayuda de su sostenimiento por ser cacique de dicho pueblo*, AGN, *Ramo de Indios*, 1575, Vol.1, Exp. 40, folio 16r.

Another interesting aspect of this data is the way that it began to change in terms of cases directly after the General Indian Court was founded in 1585. I translated and categorized every case available in the *Ramos de Indio* archive between 1574 (the first case recorded) and 1585. During that that period, 55.4% of all cases that existed related to establishing some type of salary. However, in the following seven years up until 1592, this amount of salary petitions and cases drops in its percentage. This percentage only continues to drop drastically (by more than 10%) over the following fifty years into the next period under study (see figs. 26-28).

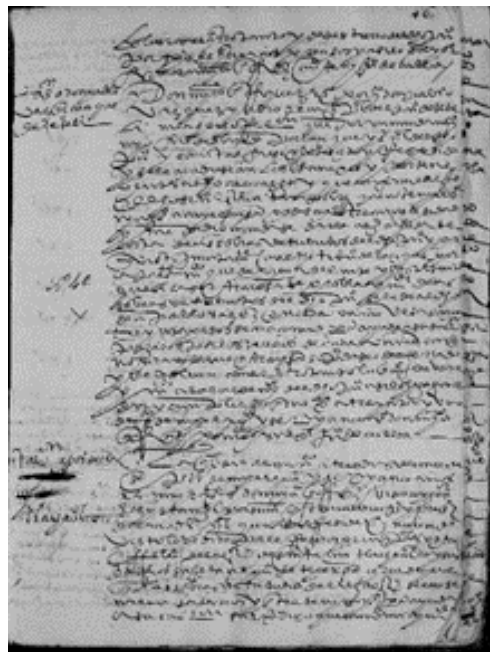


Figure 25. *Tasación que se le hizo a Don Pablo Vázquez de las sobras de tributos, para ayuda de su sostenimiento por ser cacique de dicho pueblo, 1575, AGN, Ramo de Indios, Vol. 1, Exp. 40, folio 16r.*

**Cases involving Tribute, 1575-1592.** The second most frequently referenced cases seen in Table 2 related mostly to the concerns of the nobility as well. These were the tribute related cases that made up 9.4% of all cases brought before the courts between the years of 1574-1592. As Owensby stated in chapter two of *Empire of Law and Justice in Colonial Mexico*, tribute



played a vital role in forging the colonial relationship between the indigenous people of the New World and their new, distant ruler.<sup>212</sup> In his estimation, outside of religion, no aspect of colonial life concerned the native citizens greater than producing and collecting tribute for their King, especially in the first century after the conquest.<sup>213</sup> It is logical then that during this time period, the documentary record also reflects these concerns, and references to cases relating to the collection, distribution, and use of tributary material is the second most important type of case in the archives.

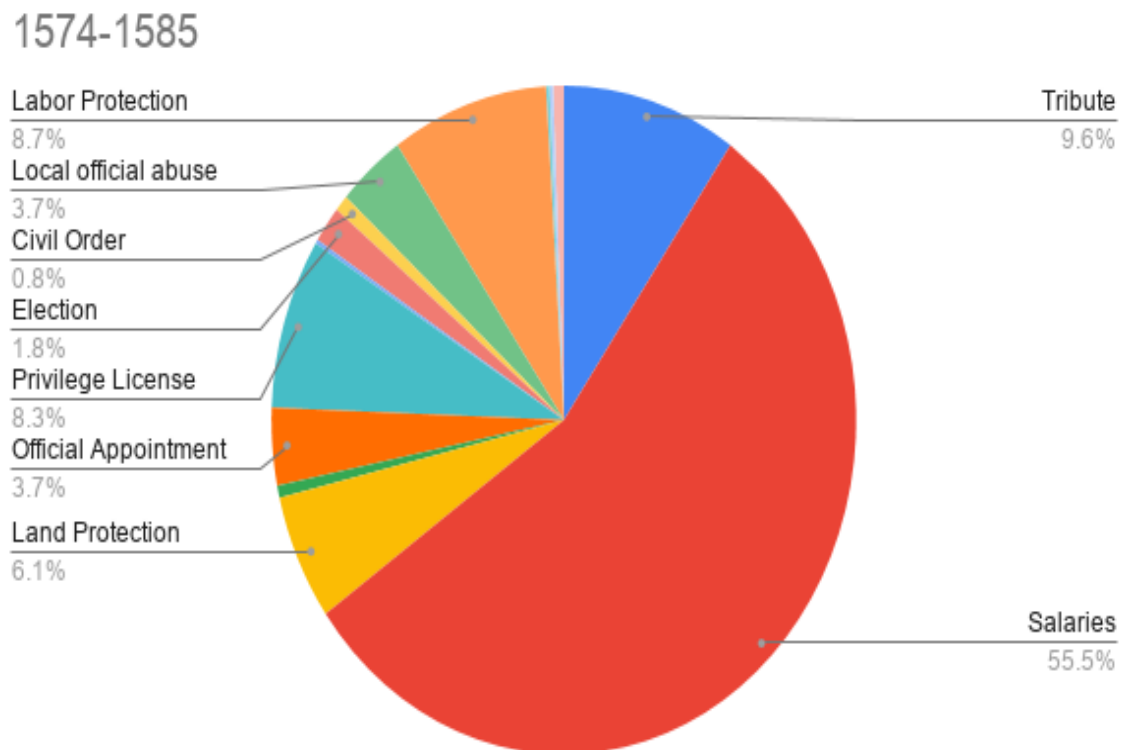


Figure 26. Cases most frequently brought to the courts 1574-1585 (*Salaries*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vol. 1

<sup>212</sup> Owensby, *Empire of Law*, 36

<sup>213</sup> Ibid., 37.

1574-1600

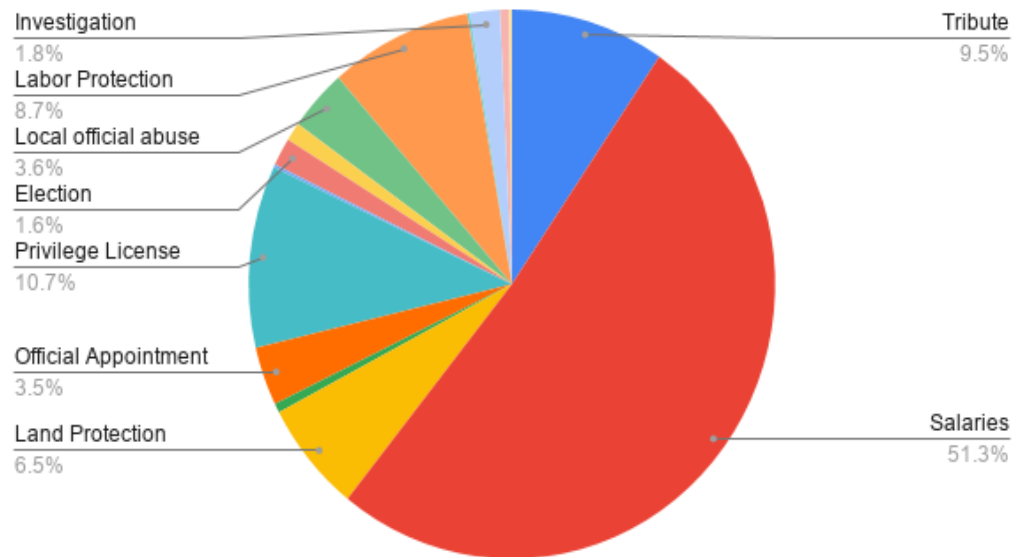


Figure 27. Cases most frequently brought to the courts 1574-1600 (*Salaries*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vols. 1-6.

1574-1650

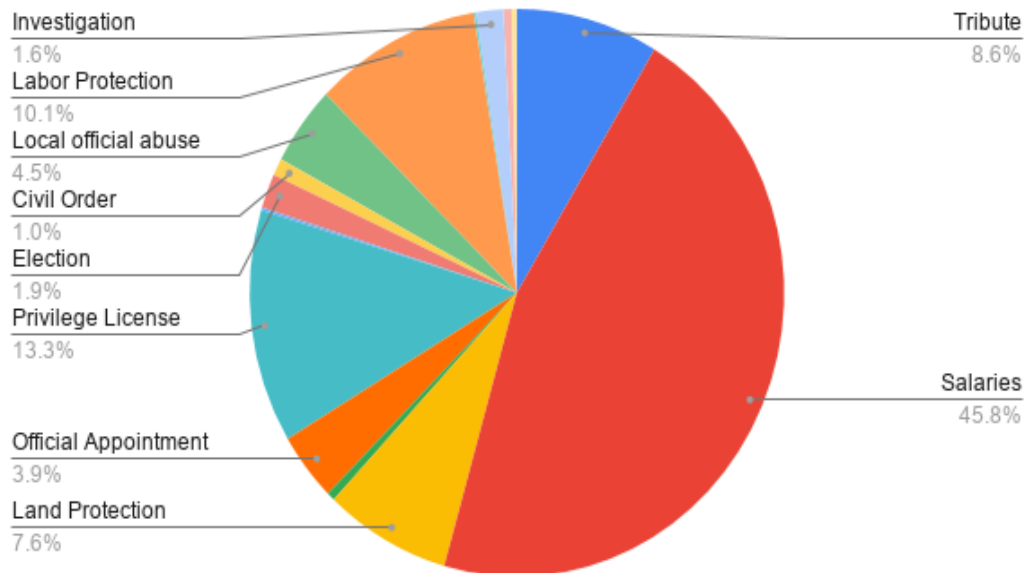


Figure 28. Cases most frequently brought to the courts 1600-1650 (*Salaries*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vols. 1-17.

Within my data set, one indigenous community that regularly brought cases pertaining to tributary matters to the courts were the Tlaxcalans, the historic allies of Cortés against the Mexica during the conquest. Shortly after the Europeans arrived in the Americas, Cortés and his army joined forces with the Tlaxcalan warriors to overtake their common adversary: the powerful Aztec. The Tlaxcalan King, Xicotencatl, agreed to help Cortés upon a few conditions. He requested that under Spanish rule in this new empire, the Tlaxcalan people must receive first perpetual exemption from tribute; second, a share of the spoils of the conquest; and third control over two provinces that bordered their traditional lands.<sup>214</sup> Cortés accepted these conditions and joined with more than 6,000 Tlaxcalan warriors in November of 1519 to defeat the Mexica. The Tlaxcalans remained loyal to the Spanish until the Aztec capital of Tenochtitlán fell in 1521 and as the first allies of the Spaniards they received special privileges and exemptions.

Despite even a royal decree made by the Spanish King in 1545 securing the city of Tlaxcala in special status, the Tlaxcalans did not enjoy their exceptional tributary privilege without serious litigation and consistent petitions to the King.<sup>215</sup> In fact, during the years of 1526-1585, Tlaxcala sent six different commissions to Spain with regards to their status.<sup>216</sup> In addition to these many letters, the Tlaxcalans also petitioned the courts of New Spain many times between 1575 and 1592 to ensure that officials protected their rights particularly with concern for

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<sup>214</sup> See Richard Lee Marks, *Cortés: The Great Adventurer and the Fate of Aztec Mexico* (New York: Alfred A. Knopf, 1994), 97.

<sup>215</sup> This decree stated, “At no time in the future of the world will the city of Tlaxcala be severed or released from our royal crown...we will instead preserve it forever incorporated into it.” This can be found in Carlos Sempat Assadourian and Andrea Martinez Baracs, eds, *Tlaxcala: textos de su historia, siglo XVI* (Tlaxcala: Gobierno del Estado de Tlaxcala, 1991), 256.

<sup>216</sup> Charles Gibson, *Tlaxcala in the Sixteenth Century*, 158-94. See also Borah. *Justice by Insurance*, 302-304.

forced tributary labor.<sup>217</sup> For example, in 1582, the court responded to the *alcalde mayor* of Tlaxcala and ordered him that an Indian named Luis should not be forced to return to work crafting what was likely a tributary offering against his will.<sup>218</sup> It is clear from the data I collected that in terms of protecting their rights, especially when it came to tribute (the second most frequent theme in the data set), the natives of Tlaxcala stopped at nothing to fight for what was promised to them.

### **A Comparative Review of the Royal *Cédulas* in the *Leyes de Indias* issued during this first period, 1574-1592**

**Salaries (Creation of Cabildo).** In comparing the cases that came and went through the colonial courts from this first period with the *cédula reales* issued during the same time some noticeable trends occurred in terms of indigenous cases. Many instances occurred in which, after the King released a certain royal order that established specific rights for the native people, there followed a sharp increase in the number of cases submitted by the Indigenous elite pertaining to the topic of that specific order, because the indigenous nobles possessed the means to appeal to the highest legal authority (the King) to support their cases. Similarly, many instances occurred in which the King produced a decree, but it was consistently ignored by the local colonial authorities. In those circumstances, the local colonial violations of these decrees led to further

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<sup>217</sup> Some of the cases brought by the Tlaxcalans to the General Indian Court between 1575-1592 include but are not limited to the following: *Para que los naturales de dicho pueblo no sean obligados al servicio personal por los Principales del pueblo de Tetipac*, AGN, *Ramo de Indios*, Vol. 2, Exp. 318, folio 78v; *Se concede licencia a Juana Núñez, India, para tener en sus tierras doscientos borregos, guardando la ordenanza*, 1583, AGN, *Ramo de Indios*, Vol. 2, Exp. 583, folios 135r; *Al Alcalde Mayor de Tlaxcala a fin de que ordene que a Doña Brígida, India, natural de Tlaxcala no se le quiten sus bienes ni se le haga agravio*, 1583, AGN, *Ramo de Indios*, Vol. 2, Exp. 433, folio 103v; *Para que el Alcalde Mayor reciba la información que los naturales de Huamantla dieron contra Diego Muñoz a fin de que sea castigado*, 1583, AGN, *Ramo de Indios*, Vol. 2, Exp. 454, folios 109r-v.

<sup>218</sup> *Para que el Alcalde Mayor de Tlaxcala no consienta sea compelido Luis, Indio, a volver a un obraje sin su voluntad*, 1582, AGN, *Ramo de Indios*, Vol. 2, Exp. 114, folio 29r.

repeated indigenous petitions and case rulings in the courts. In response to these, the King would release the same *cédula* again in more stringent warning to strongly reinforce that it should be observed. In this way there were instances in which a *cédula* affected the local litigation directly, and in other instances, indigenous petitions and litigation appeared to directly influence the creation of or re-issuing of a subsequent royal decree (see fig. 29).

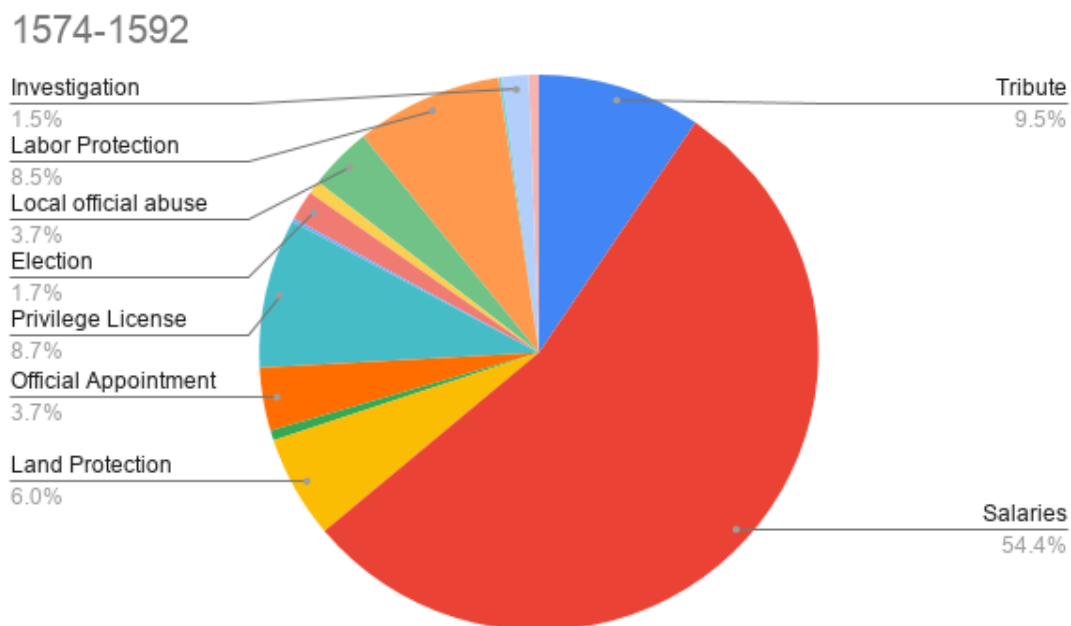


Figure 29. The cases most frequently brought to the courts between 1574-1592 (*Tribute*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vols. 1-6.

The large number of salary related cases that appear in the legal records covering 1574-1592 surely correlated directly to the royal *cédula* that created the official position and scope of the administrative and governmental functions of the *cacique* in 1557. On February 26, King Philip II sent to the New World his royal order with a title that read, “That the audiencias should

listen in justice to the cases of the common Indians about their caciques”<sup>219</sup> Within this order the King declared that:

Some natives of the Indies were, in the time of their infidelity, chiefs (*caciques*) and lords of towns, and because after their conversion to our Holy Catholic Faith, it is just that their rights are preserved, and having come to our obedience they should not be left in worse condition.<sup>220</sup>

Once this position was created, the local Indian leadership recognized their chance to secure their place and salary in legal writing. In this way, the indigenous leadership at the time took agency into their own hands to use the court system to defend what the King had already ensured was theirs. This is an example of a way in which the Nahua people secured their position within the colonial structure in response to a legal decree.

**Royal Cédulas Related to Tribute (The Special Case of the Indios of Tlaxcala).** Many times the King sent royal decrees which often produced a direct legal reaction on the part of the Indigenous communities in order to ensure that the decree was honored by reluctant or resistant colonial officials. In other instances, the Spanish King actually wrote his *cédulas* in response to petitions and cases from the indigenous people. The tribute related cases from the *Indios* of Tlaxcala exemplify this latter trend. Although both Hernan Cortes and the Spanish monarch promised the Tlaxcalans exemption from owing tribute/tributary labor, it is obvious from the repeated Tlaxcalan delegations sent to Spain and subsequent litigation that on the local level,

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<sup>219</sup> See *Recopilación de leyes de los reynos de las Indias*, Libro 6, Título 7, Ley I, *Que las audiencias oigan en justicia a los indios sobre los cacicazgos*, 1557.

<sup>220</sup> In Spanish this read: “Algunos naturales de las Indias eran en tiempo de su infidelidad caciques y señores de pueblos, y porque después de su conversión a nuestra Santa Fé Católica, es justo que conserven sus derechos, y el haber venido a nuestra obediencia no los haga de peor condición”

colonial Spanish officials did not honor these promises. In response to the Tlaxcalan petitions, the cases mentioned above, and many more between the years of 1526-1592 comprehensively, King Philip II produced seven consecutive *cédulas* addressing the town of Tlaxcala in particular.<sup>221</sup> In 1585, he sent a royal order entitled, “That the ordinances of Tlaxcala be observed.”<sup>222</sup> In this he explicitly stated:

The principal Indians and chiefs (caciques) of the four districts of Tlaxcala request us out of mercy that the ancient customs be guarded through the conservation in the province, city, and republic, of the orders conforming with the ordinance given by the government of New Spain in the year 1545, confirmed by a royal provision...once again, we approve this, and confirm, and mandate that they be guarded, observed, and executed by our Viceroys, Audiencias, and justices, and that they do not consent to the contents being infringed upon in any way.<sup>223</sup>

From this mandate, it is clear that the King responded directly to the petitions and litigation of the Tlaxcalan natives. In *Ley XLV* of the same *título*, the King wrote another royal order entitled, “That the Indians of Tlaxcala may write directly to the King.” In this he mandated that if the *indios* of Tlaxcala have any reason to doubt the wellbeing of their town, or if they are bothered in any way, it is the King’s will that they write to him directly and freely and that no Viceroy, Audiencia, judge, or justice prevent them from doing so.<sup>224</sup> By granting this incredible privilege

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<sup>221</sup>See *Recopilación de leyes de los reynos de las Indias*, Libro 6, Título 1, Leyes XXXIX-XLV, 1585-1594.

<sup>222</sup>*Ibid*, *Que se guarden las ordenanzas de Tlaxcala*, Libro 6, Título 1, Ley XXXIX, 1585.

<sup>223</sup>In Spanish it read: “Los principales, y caciques de las cuatro cabeceras de Tlaxcala nos suplicaron por merced, que se les guardasen sus antiguas costumbres para conservación de aquella provincia, ciudad, y república, conforme a las ordenanzas dadas por el gobierno de la Nueva España el año de mil quinientos y cuarenta y cinco, confirmadas por provisión real....de nuevo las aprobamos, y confirmamos, y mandamos que se guarden, cumplan, y ejecuten por nuestros virreyes, audiencias, y justicias, y que no consientan que en todo su contenido se contravenga en ninguna forma.”

<sup>224</sup>*Ibid*, *Que los indios de Tlaxcala puedan escribir al rey*, Libro 6, Título 1, Ley XLV, 1594.

of direct access, King Philip II reinforced for the Indian population of Tlaxcala that they certainly possessed the power to hold even the King accountable to the letter of the law (see fig. 30). With the attention of the King himself, the natives of Tlaxcala became true active catalysts of a *cédula* that could not be disputed by those local Spanish colonial officials, even those at the highest level, who abused them.<sup>225</sup>



Figure 30. *Real cédula y concesión de privilegios a los indios de Tlaxcala, 1732-1808.*

<sup>225</sup>Gibson mentions that there is record of Cortés exploiting the privileges of the Tlaxcalans by requiring that they pay tribute (labor or material) to him, creating for himself a de facto *encomienda*. It is highly likely that this practice continued into the later 16th century resulting in many tribute and labor abuse related cases. See Gibson, *Tlaxcala in the Sixteenth Century*, 62-64.



### The Cases in the *Ramo de Indios* during the Early General Indian Court Period, 1592-1650

As the review of the litigation case data moves into the early middle of the colonial era, the trends and types of cases presented before the new General Indian Court also shift (see table 3). For this period, the most frequent types of cases that the indigenous peoples brought, now exclusively before the General Indian Court, dealt not only with continuing privilege and license requests, but now also labor protections, followed by cases dealing with communal and individual land protection cases.

Table 3. Legal Categories of Cases Brought Before the General Indian Court from 1592-1650

Legal Categories 1592-1650 <sup>3</sup>	Number of Cases
Privilege License	37
Labor Protection	21
Land Protection	16
Local Official Abuse	10
Tribute	5
Official Appointment	5
Election	3
Prison Release	2
Investigation	2
Civil Order	2
Total	103

<sup>3</sup> Source of figures: AGN, *Ramo de Indios*, Vols. 6-16.

**Cases involving Petitions for Privileges and Licenses, 1592-1650.** After the conquest, the Spanish government prohibited the native people from participating in economic activities and other cultural practices considered distinctly Spanish in order that they may be easily

distinguishable and to prevent indigenous uprisings.<sup>226</sup> Some of these activities considered unacceptable for the indigenous subjects included the carrying of a sword or dagger, riding a horse, or dressing like a Spaniard.<sup>227</sup> However, as the native elite gradually wished to distinguish themselves and their noble status in their community and also to ease the burden of collecting tribute through the entire area on foot, they began to bring many cases to the General Indian Court that involved requests for special privileges. Despite a bit of resistance from Spanish administration, the Nahua people continued to petition to the courts especially in instances where local officials attempted to suppress or penalize the native people for these activities or when they felt that they had the rights to these privileges and special licenses that granted them the ability to carry arms, own and ride horses, and dress in Spanish-style clothing as marks of distinction.<sup>228</sup> As the native populations began to steadily decline due largely to the spread of European disease and their communities moved and consolidated over great distances, it became a greater need for local native leadership to be able to legally ride horses in order to collect tribute by traveling long distances if necessary. Also, as Spanish customs became established as the widespread standard of power and superiority, in an effort to boost their own status, the native elites were very interested in obtaining these privileges as well. These factors all contributed to the increase in the frequency with which they brought privilege and license related cases before the General Indian Court in these years from 1592-1650. It is clear (see fig.31) that approximately 36% of the cases within my data set from this time period concerned native elite requesting special rights and privileges to either ride a horse, carry a sword, or dress like a

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<sup>226</sup>Borah, *Justice by Insurance*, 214.

<sup>227</sup> See *Recopilación de leyes de los reynos de las Indias*, Libro 6, Título 1, Ley XXXI, *Que no se pueden vender armas a los indios, ni ellos las tengan*, 1501; also see Ibid., Libro 6, Título 1, Ley XXXIII, *Que los indios no pueden andar a caballo*, 1568.

<sup>228</sup> Borah, *Justice by Insurance*, 214

Spanish person. Of these thirty-seven cases, twenty-nine of them, or 78%, specifically requested the right to ride a horse. Not only was riding a horse an indicator of both wealth and prestige at that time, but it also was extremely convenient for them as they performed their leadership duties. The majority of the cases related to requesting a license to ride a horse appeared in the records similarly titled to the case of Don Fernando de Alvarado of Teposcolula in 1594:

“License granted to Don Fernando de Alvarado, principal of Teposcolula, in order to ride a horse.”<sup>229</sup>

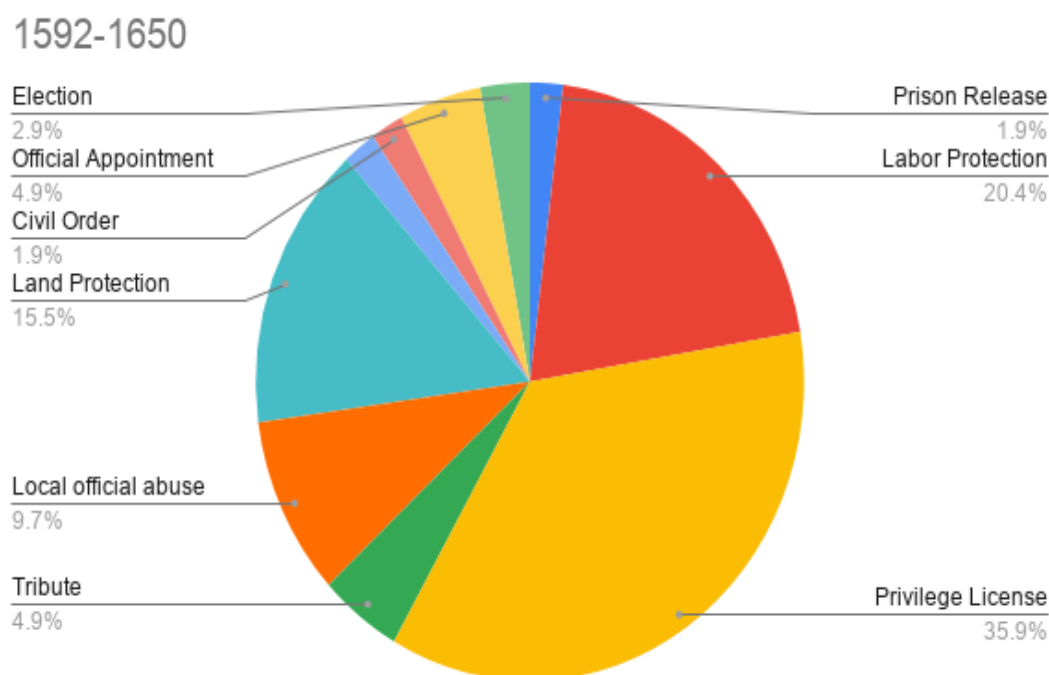


Figure 31. Cases Most Frequently Brought to The Courts Between 1592-1650 (*Privilege or License*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vols. 6-16.

<sup>229</sup>*Licencia a Don Fernando de Alvarado, principal de Teposcolula, para montar a caballo*, 1594, AGN, *Ramo de Indios*, Vol. 6, Exp. 821, folio 220r.

Unfortunately, most of what has been preserved in the historical records of these Indigenous cases like this is the legal docket entry only. This case is the most typical request for permission and license made by an indigenous nobleman, in this case Don Fernando de Alvarado, Principal Indian of Teposcolula. Some cases are left at that, simply a request for a privilege or license, while others provide more specific details about the circumstances surrounding the case. For example, on June 15, 1632, Don Juan Vizcaíno, *cacique* of Sichú requested the court's permission for the privilege to have and use an harquebus (a firearm), to ride a horse, and a request that he may be accompanied by three to four Indian guards also mounted on horseback with saddles and bridles in the Spanish fashion (see fig.32).<sup>230</sup>

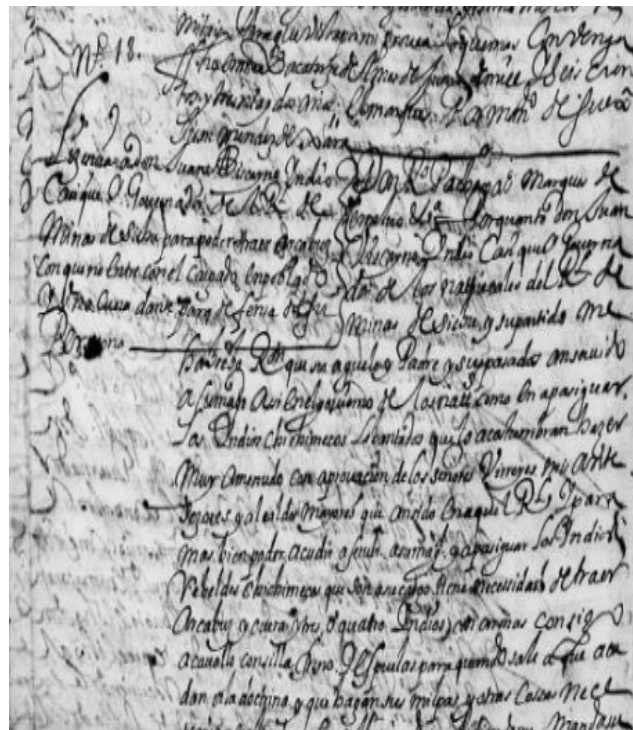


Figure 32. *Licencia a Juan Vizcaíno, cacique del real de minas de Sichu, para portar arcabuz, 1632, AGN, Ramo de Indios, Vol.10, Exp. 18, folio 301v.*

<sup>230</sup> *Se concede licencia a Juan Vizcaíno, cacique del real de minas de Sichu, para portar arcabuz* AGN, *Ramo de Indios*, 1632, Vol. 10, Exp. 18, folio 301v.

Don Juan had made this request expressly to provide protection against the Chichimeca Indians who he claimed he and his family had been fighting for three generations in their loyalty to the King of Spain. The Viceroy granted this request on the basis of his faithfulness to the King and the success of the mines in Xichú. It must be noted, however, that my data set represents only a small number of the large total corpus of requests for special privileges that can be found between the years of 1592-1650 in the *Ramo de Indios* section of the National Archive.

**Cases involving Indigenous Labor Protections, 1592-1650.** The second most frequent type of case brought before the court during this time period (at 18.4%) were those cases related to petitions and litigation concerning indigenous labor protections. These cases all pertained to protecting native people from being exploited for their labor by various sectors of colonial society. After the series of royal decrees by King Charles V given from 1526-1542, the indigenous people of the Americas could not be subjected to servitude or forced to work against their will as slaves as they had been forced to do under the rule of the conquistadors and the *encomienda* system.<sup>231</sup> However, the tributary and wage labor system shifted and this period saw large numbers of indigenous peoples bound by debt (an early type of debt peonage) which left much room for the continuation of labor abuses which led to *defacto* forcing the natives into arrangements that led to their providing forced free labor.<sup>232</sup> Many of the court rulings, especially in the earlier years, provided protections by specifically outlining the jobs, locations, and periods of time in which an *indio* or indigenous vassal was obligated to provide service so that they could clearly dispute their case if their employer exceeded these legal limits. For the distribution of these types of cases during this second period (see fig. 33).

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<sup>231</sup>See *Recopilación de leyes de los reynos de las Indias*, Libro 6, Título II, Ley I *Que los indios sean libres y no sujetos a servidumbre*, 1526, 1530, 1532, 1540, 1542.

<sup>232</sup>Borah, *Justice by Insurance*, 178.

1592-1650

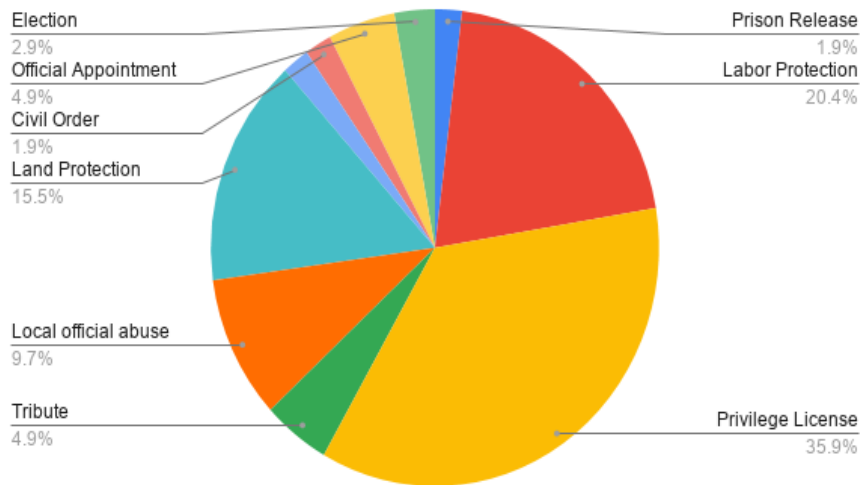


Figure 33. Cases most frequently brought to the courts 1592-1650 (*Labor Protection*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vols. 6-16

By law, the Crown decreed that the debt peonage system be strictly regulated for the protection of the natives. Laws mandated that an Indian could indeed be held for labor to pay his debt, but only for the period of one month's wages and then only by his original creditor. In addition, the Indian debtor could return to his home every night and the law prohibited any severe punishment inflicted upon the Indian laborer while working off the debt. Finally, only a colonial court had the legal authority to mandate and deliver an Indian debtor for service to a creditor in order pay his debts. This prevented creditors from simply seizing native people they claimed owed them money and forcing them to work without regulation. Although local or provincial courts handled many labor related suits, a significant number of them made it all the way to the General Indian Court on appeal if the native laborer did not agree with the lower courts' decision. For example, on April 8, 1633, José de Celi represented the Nahua Indians Juan Miguel and his wife, Ana Maria, both native to Puebla. He reported that Alonso Morena, Spanish *obrajero*, abused his clients by keeping the two as prisoners for two years in his textile workshop

in order that they pay off the debt they owed for the cost of their marriage.<sup>233</sup> While these expenses should not have been more than 10 *reales*, Morena refused to let the two go on claims that they owed him 115 *reales*. The Indians claimed he made them work day and night, including on holidays and with very little food. The Viceroy ruled in favor of the natives and ordered the *justicia mayor* of Puebla to ensure that Morena freed the two Indians (see fig.34).



Figure 34: Orden para que Antonio de Miranda justicia mayor de Los Angeles saque del obraje en que están Juan Miguel y Ana María su mujer y no consienta sean detenidos en el, 1633, AGN, Ramo de Indios, Vol.10, Exp. 149, folio 363r.

<sup>233</sup> Para que Antonio de Miranda justicia mayor de Los Angeles saque del obraje en que están Juan Miguel y Ana María su mujer y no consienta sean detenidos en el, 1633, AGN, Ramo de Indios, Volumen 10, Exp. 149, folio 363r.

In addition to working off personal debts, the law obliged native people, as a tributary measure, to provide seasonal or personal service at the request and mandate of the colonial courts in the form of labor drafts known as *repartimientos*. These *repartamientos* were sometimes services involving paid positions, but they were granted and restricted to a specific period of time. Often communities or individuals petitioned to the court when they felt abused in their allotted *repartamiento* services (see fig. 35).

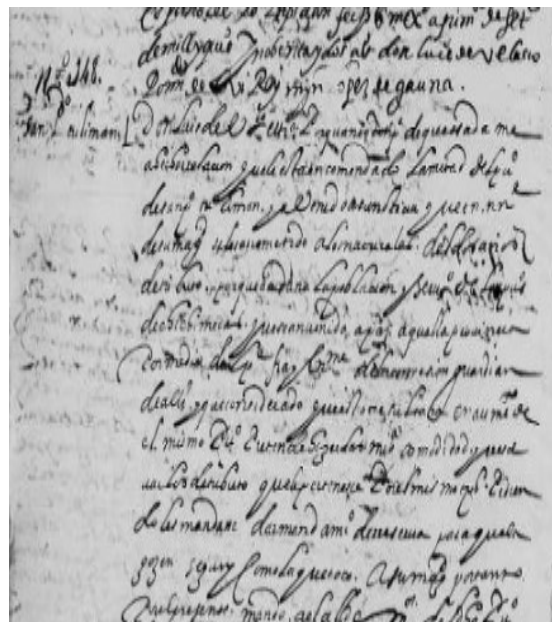


Figure 35. *Reserva del tributo de repartimiento por tiempo de dos años, y manda a los oficiales que no se den, se pidan, ni lleven indios de servicio, 1592, AGN, Ramo de Indios, Vol.6, Exp. 348, folio 93v.*

For example, the township of San Luis Potosi, known for its lucrative silver mines, petitioned multiple times that the courts suspend or lesson their labor requests in the representative sample contained in my data set. For example, in 1592, the General Indian Court ruled that the natives of San Pedro Tuliman in San Luis Potosi were reserved from having to



comply with similar service requests for a period of two years. During this period, the court ruled that they could not be requested or forced to provide any extra labor (see fig. 36).<sup>234</sup>

Again in 1594, the General Indian Court ruled that the natives of Temapache in San Luis Potosi also are not charged the basic labor service tax of four *reales* of his Majesty for two years.<sup>235</sup> From other similar rulings, we can presume that because the Spanish administration required so much from the natives of this city in terms of faithful labor extracting silver from the mines, they were regularly willing to grant certain exemptions to labor requests at that time. That is one of the large reasons that there would be such a large number of labor protection related suits brought before the General Indian Court between the years of 1592-1650.

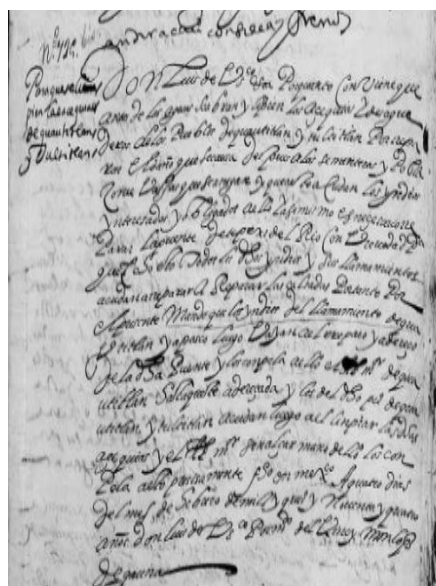


Figure 36. *Orden al alcalde mayor del partido de los valles, a fin de que a los indios de Temapache y sujetos, no se cobre el servicio de los cuatro reales de su majestad, por el tiempo de dos años, 1594, AGN, Ramo de Indios, Vol.6, Exp. 726, folio 195r.*

<sup>234</sup> *Reserva del tributo de repartimiento por tiempo de dos años, y manda a los oficiales que no se den, se pidan, ni lleven indios de servicio, 1592, AGN, Ramo de Indios, Vol. 6, Exp. 348, folio 93v.*

<sup>235</sup> *Orden al alcalde mayor del partido de los valles, a fin de que a los indios de Temapache y sujetos, no se cobre el servicio de los cuatro reales de su majestad, por el tiempo de dos años, 1594, AGN, Ramo de Indios, Vol. 6, Exp. 726, folio 195r.*

## **A Comparative Review of the Royal *Cédulas* in the *Leyes de Indias* issued during this second period, 1592-1650**

**Privileges & Licenses (Permission to Ride a Horse).** After comparing the privilege related cases in this time period to the Royal *cédulas* issued by the Crown, the data trend seems to support the contention that the impact of consistent indigenous litigation influenced changes in Royal law. On August 1, 1568, King Philip II ordered an initial *cédula* prohibited the indigenous peoples from being able to ride horses, titled, “That Indians are not able to ride horses.”<sup>236</sup> Obviously mandating that this *cedula* at the request of the local Spanish authorities that the indigenous people not be allowed to ride horses. However, extensive litigation over the following sixty-five years appears to have led to the several following legal modifications to this initial law.

Within my data set of the permission requests to ride horses, it appears that local Indigenous *gobernadores* specifically made 27% of all of these requests for special licenses and permissions to ride horses. Since my data set was not comprehensive of all the cases that exist, it is likely that the overall number and percentage of this type of special request for exemption from this restrictive law is quite higher. Nevertheless, in response to these indigenous governors’ petitions and legal cases, in 1633 King Philip IV issued another decree titled, “That the governors did not carry the same rights as the common Indians as this law mandates.”<sup>237</sup> This law stated that indigenous governors could indeed possess a higher standard of privileges and rights than other common Indians. In this law, the King outlined their legal distinctions, ordering:

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<sup>236</sup>See *Recopilación de leyes de los reynos de las Indias*, Libro 6, Título I, Ley XXXIII, *Que los indios no puedan andar a caballo*, 1568

<sup>237</sup> Ibid., *Que los gobernadores no lleven derechos de los indios por lo que en esta ley se manda*, 1572.

However, if it is forbidden, that the common Indians can ride on horseback, the governors surpass them in their privileges, they are given license to be able to do so, and they bear by this case, and in giving their signatures to the elections of republic offices, and other different offices, they should not exceed their rights: We command, that they keep and comply with the provisions, and orders given, which are executed without remission.<sup>238</sup>

With this decree, the King gave native governors official and indisputable support for all of their future privilege requests relating to riding a horse, certifying the elections of local officials and conducting other official business of the local indigenous government, with the proviso that they should not exceed the customary fees or honorarium allowed for these duties. By responding to the great many requests made by both governors and other local indigenous officials, King Philip IV recognized the special status of the local indigenous officials, and his action demonstrated the living and responsive nature of Royal Spanish law. Similarly, the natives again proved their ability to make their voices heard and ensure that their needs were met through exercising their right to appeal and petition for redress through the process of pursuing litigation and petitions in colonial law.

**Labor Protections (The Indios of San Luis Potosi).** With the natives of mining centers in and around the province of San Luis Potosi, we once again we can see another example during this second period of the King responding to the cries and the demands of the indigenous people. With the many lawsuits specifically addressing the labor requirements of the mining towns, not just from San Luis Potosi, but also from the larger city after which San Luis was named, la villa Imperial de Potosi in Bolivia, in 1626, King Phillip IV released a royal decree in response to the

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<sup>238</sup> In Spanish, this read: “Sin embargo de estar prohibido, que los indios puedan andar á caballo excediendo los gobernadores, les dan licencia para poderlos tener, y llevan por esta causa, y las firmas de elecciones de oficios de república, y otros diferentes despachos, excesivos derechos: Mandamos, que guarden y cumplan lo proveído, y órdenes dadas, las cuales se ejecuten sin remisión.”

mining cities that reissued a previous *cédula* that King Phillip II announced in 1572 entitled, “That the Indians of the mines are not charged more tribute than they ought to pay.”<sup>239</sup> In this royal order, from his predecessor, King Phillip II had ordered:

To alleviate the Indians as much as possible, and especially those who go to work in the mines: We order that no more tribute be paid by those who go to work there in the mines than they should pay, and that this be collected with all gentleness.<sup>240</sup>

From this mandate, and other subsequent orders, the Crown directly responded to those natives from mining cities who had faced rising labor demands that violated the moderate labor tributes and *repartamiento* labor requirements established by law. King Phillip II and his Hapsburg successors ordered that the burden of tribute (in both materials and labor as noted in an earlier law) should be eased and their rights in terms of labor abuses be protected.<sup>241</sup> In this way, as the documentation studied for this thesis illustrates, when there was a matter frequently brought to the General Indian Court by the native peoples, the King of Spain often proved his willingness to respond in kind in order to keep the peace with his indigenous subjects and ensure their legal protections from local abuses on the part of his Spanish subjects. The native people once again proved the value of bringing forth their complaints in the new court in order to secure their legal protections, and acquire other rights and privileges that they needed to mitigate against the worst abuses of the colonial system.

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<sup>239</sup> See *Recopilación de leyes de los reynos de las Indias*, Libro 6, Título V, Ley XIII, *Que a los indios de las minas no se les cargue más tributo del que deberían pagar*, 1626.

<sup>240</sup> In Spanish this read, “Por aliviar á los indios en todo lo posible, y especialmente á los que acuden á labor de las minas: Ordenamos, que á los que fueren á trabajar á ellas no se les reparta más tributo del que deberían pagar, y éste se cobre con toda suavidad.”

<sup>241</sup> See *Recopilación de leyes de los reynos de las Indias*, Libro 6, Título V, Ley XII, *Que se modere el exceso de tasas a los indios que trabajaron en minas*, 1601.

### **The Mid-Colonial Period of the General Indian Court, 1650-1750 in the *Ramo de Indios***

During the third period of the activity of the General Indian Court, from 1650-1750, we can see that the cases most frequently presented to the General Indian Court during this third period shifted again in their emphasis (see table 4). In this third period, the two most important types of cases most frequently litigated in the General Indian Court focused on cases against the abuses of local officials and requests and cases dealing with land protections, followed by continued requests for privileges. This third period involved the largest period of time covered in the data set for this thesis, but it actually covers the high point of the colonial era and then as this period comes to an end the colonial system has already begun its decline into ultimate late eighteenth century reforms and the eventual revolutions of independence.

This period of time from 1650-1750 also witnessed the greatest declines in the indigenous populations from waves of epidemic disease and demographic collapse. With the loss of massive numbers of indigenous peoples, the surviving indigenous subjects of New Spain saw the power and communal lands of their indigenous communities under attack by further encroachments by Spanish landowners and a growing class of large-landed estate owners: the *Hacendados*. Taking advantage of the declining indigenous population, and their influence in the colonial courts, these landed estate owners began to illegally usurp traditional Indigenous communal lands, and annex them illicitly into their haciendas. Thus, after a period of great population decline in native communities and the subsequent restructuring of the population landscape, the Spanish recognized a prime opportunity to seize power and land from the indigenous people. The General Indian Court records from this century track the Nahua peoples' desperate fight to preserve their claims to their communal lands and privileges that were rightfully theirs despite these demographic, economic and political changes.

Table 4. Legal Categories of Cases Brought Before the General Indian Court from 1650-1750

Legal Cases 1650-1750 <sup>4</sup>	Number of Cases
Local Official Abuse	25
Land Protection	19
Privilege License	16
Labor Protection	15
Election	12
Tribute	10
Official Appointment	4
Native Custom Protection	1
Heritage Rights	1
Total	103

<sup>4</sup>Source of figures: AGN, *Ramo de Indios*, Vols. 16-56.

**Cases involving Abuses by Local Officials, 1650-1750.** From the time of the first European encounter with Hernan Cortes and his armies, the indigenous commoners suffered various abuses from both the local Spanish officials and then also by the native elite that the Spanish had empowered as intermediaries. However, after Bartolome de las Casas and others helped advocate for the creation of basic rights and protections for the native people to be written into law, these commoners began to find a greater opportunity than ever before to demand that their rights be honored through their exercise of litigation and petitions in the established legal system. By the mid-17th century, the native people became well versed in Spanish law and the basic indigenous rights that it protected. They also came to feel more prepared than ever to fight legally within the newly found Indigenous court systems. In no other avenue of legal redress did the indigenous commoners of New Spain find more legal relief than in cases which dealt with complaints against abuses by local officials. According to the case study of Woodrow Borah,

even as late as 1784, 26% of the suits that he analyzed related to complaints against local Spanish officials, and another 5% were about complaints arising from improprieties of local indigenous town government officers.<sup>242</sup> My own research showed very similar ratios of official abuse cases brought to the General Indian Court (see fig. 37).

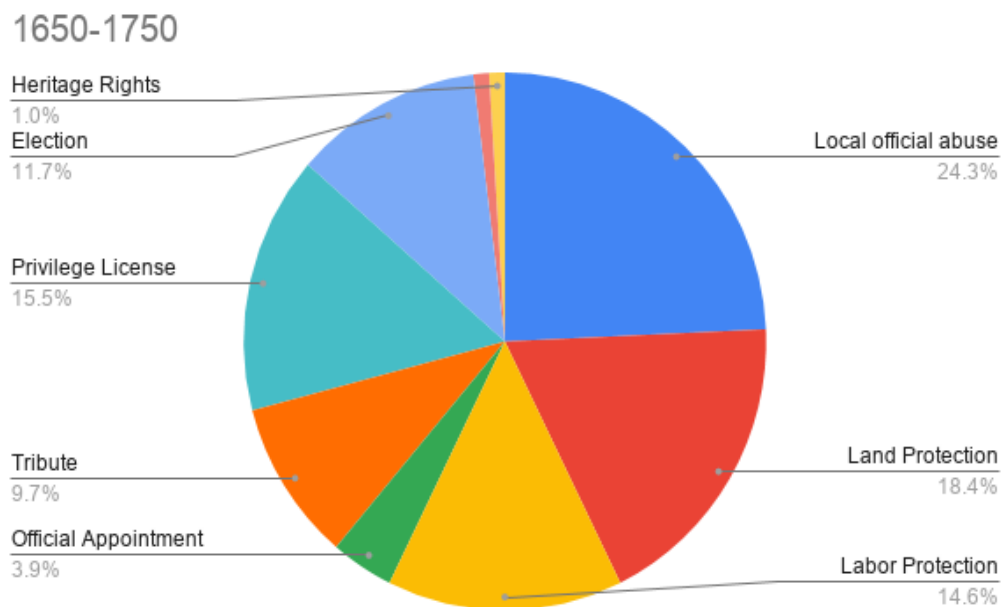


Figure 37. The cases most frequently brought to the courts between 1650-1750 (*Local Official Abuse Cases*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vols. 17-55.

As shown here, 24.3% of the suits heard by the General Indian Court in the sample of cases during this third period referred to some sort of abuse by a local authority. In my data set, this included both Spanish and native official abuse cases in order to place emphasis on the power that the indigenous commoners held within this legal system. The abuses mentioned in these cases ranged from certain officials preventing natives from leaving their town and going to another, to preventing native livestock from grazing on certain fields. Other cases involved

<sup>242</sup> Borah, *Justice by Insurance*, 128.

specific individual complaints or demands against Spaniards who beat or killed natives, or local Spaniards who usurped communal rights by using land and water belonging to the natives for farming. Still other cases included accusations of Spaniards preventing natives from conducting their own businesses, or extorting money from them, or simply cases of Spaniards and other *castas* disturbing the peace of native communities.

While there exists a wide range of accusations mentioned, most of them appealed for a writ of *amparo* from the court in order to grant protection of the specific rights being threatened, or to guarantee that a certain indigenous right would be restored. The *amparo* was one of the earliest types of legal protections for human rights in the New World with the first one being granted by the first Viceroy of New Spain.<sup>243</sup> After that, all executive officials and courts of the Viceroyalty had the power to grant the protection of an *amparo*, and for that reason, many such requests found their way to the General Indian Court. An example of one of these cases within my data set was the case that follows: “Order of *amparo* to the justices of Santa Maria Malacatepec which protects those contained in this order so that without the consent of the people they should not be forced to live in the place they refer to against their will, 1654”.<sup>244</sup>

In this case, the General Indian Court ruled that the Justices of the indigenous town of Santa Maria in Malacatepec should protect the freedom of the natives who brought this suit to the court stating that they should not be forced to live in a certain village against their will. Although that case pertained largely to residence on the land, many other similar *amparo* cases mentioned labor protections and the securing of permissions to run and operate local businesses.

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<sup>243</sup>For the best discussion of these writs of protection of specific rights in New Spain see Andrés Lira González, and Alfonso Noriega G. *El amparo colonial y el juicio de amparo mexicano: antecedentes novohispanos del juicio de amparo*. (México: Fondo de Cultura Económica, 1979).

<sup>244</sup> *Orden a la justicia de Santa Maria Malacatepec a fin de que ampare los contenidos de este mandamiento en su libertad, sin consentir de las personas de quien se quejan los obliguen a vivir en la parte que refieren contra su voluntad*, 1654, AGN, *Ramo de Indios*, Vol. 17, Exp. 19, folios 30v-31r.



For example, the Indians of Nochixtlán complained to the court that their Spanish *corregidor*, Diego Ladrón de Guevara, prevented them from producing and selling the alcoholic drink *pulque*; and that he even punished anyone found making the drink with heavy fines.<sup>245</sup> Their lawyer, José de Celi reminded the court that producing *pulque blanco* was a legal pursuit under a specific royal order, and the Viceroy ordered that the *corregidor* should cease from preventing the natives from making this drink or from imposing any fine on them. The court's order also threatened that if he did do these things, that he would be punished harshly.<sup>246</sup> Although the law protected making and selling *pulque*, due to the strong Catholic hostility toward alcoholic substances like these that had been associated with the pre-Hispanic pagan rituals of the Nahua, the native people litigated regularly for their right to produce this drink free from Spanish official abuse. Within my data set from 1650-1750, I found many references to cases involving Spaniards trying to prevent natives from producing or selling this native intoxicant pulque. For example, in 1651, the courts specifically granted the Indian woman Francisca Moreno, a license and legal protection to freely sell *pulque blanco* in the public plaza in Puebla. In this order, the Viceroy explicitly mentioned that the justices of the town were no longer to prevent or bother this Indian woman in engaging in this business activity (see fig. 38).<sup>247</sup>

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<sup>245</sup> *Pulque* was a drink made by fermenting the juice extracted from a maguey plant. This drink was prehispanic and considered by the Nahua to be a drink of the gods.

<sup>246</sup> See *Al corregidor de Nochistlan, a fin de que no impida a las indias a vender pulque blanco conforme a las ordenanzas*, 1616, AGN, *Ramo de Indios*, Vol. 7, Exp. 20, folio 8v.

<sup>247</sup> *Su Excelencia concede licencia a Francisca Moreno, para que libremente pueda vender en la plaza pública, pulque blanco y las justicias de su majestad no se lo impidan*, 1651, AGN, *Ramo de Indios*, Vol. 16, Exp. 52, folio 48r.

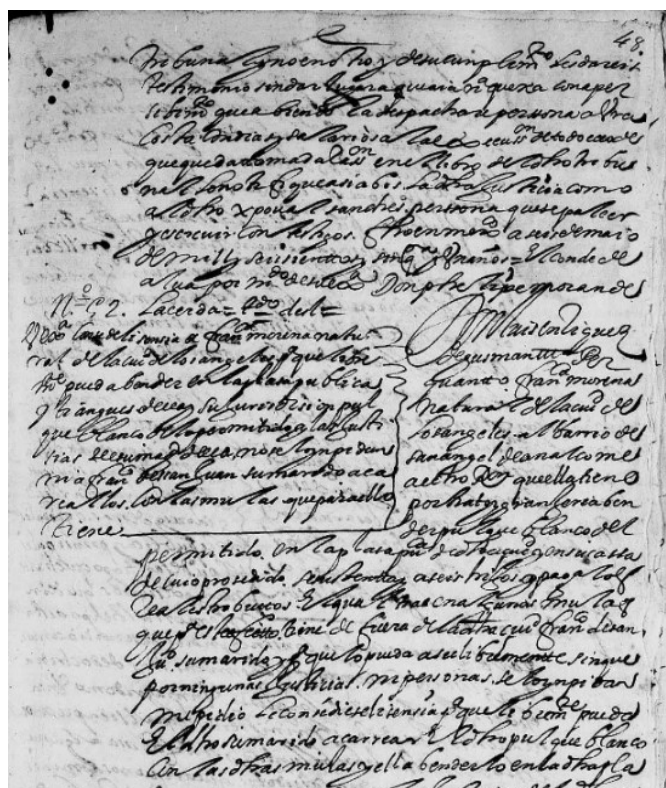


Figure 38. Su Excelencia concede licencia a Francisca Moreno, para que libremente pueda vender en la plaza pública, pulque blanco y las justicias de su majestad no se lo impidan, 1651, AGN, Ramo de Indios, Vol. 16, Exp. 52, folio 48r.

Again in 1655, natives from the town of Azcapotzalco petitioned to the court with a complaint that the indigenous justices of their town had seized their mules and their profits from their *pulque* businesses as they were transporting them. The General Indian Court decreed that and mandated that the justices of the town could not prevent the natives from transporting or selling *pulque* and that whatever monies or other things that belonged to them must be returned (see fig. 39)<sup>248</sup> It is clear that among the many local official abuse cases from this time period, the local Spanish leadership specifically targeted this pre-Hispanic practice, and the natives fought consistently to protect their rights to commerce in it in the courts.

<sup>248</sup>See *Para que las justicias de su majestad no impidan a los naturales contenidos en el expediente trajinar el pulque blanco permitido y el alcalde mayor de Cuautitlán haga se les devuelvan las mulas y lo procedido en dinero de las cargas de pulque*, 1655, AGN, Ramo de Indios, Vol.19, Exp. 116, folio 87v.

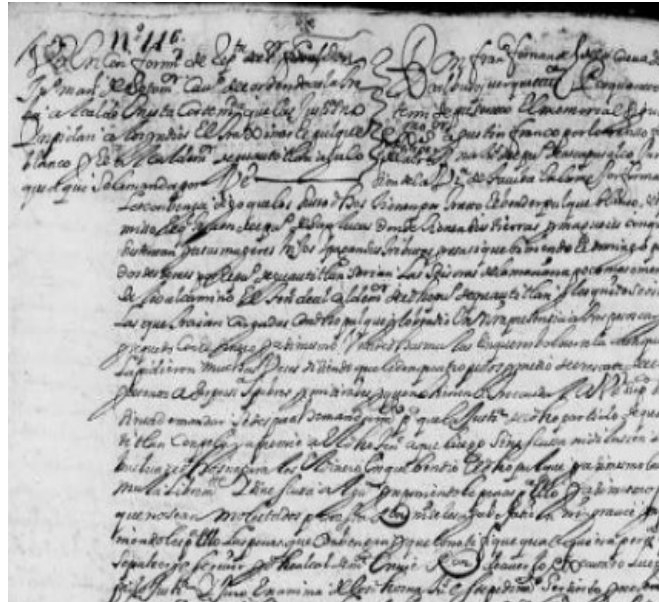


Figure 39. Orden para que las justicias de su majestad no impidan a los naturales contenidos en el expediente trajinar el pulque blanco permitido, 1655, AGN, Ramo de Indios, Vol. 18, Exp. 116, folio 87v.

**Cases involving Land Protections, 1650-1750.** As Borah mentioned previously, Indigenous land disputes most certainly made up the largest category of disputes brought to the General Indian Court overall, and this trend also holds up to an examination in the data set from this third period in the operations of the General Indian Court.<sup>249</sup> However, Borah noted another interesting point, commented on by the observations of other historians, that particularly during the latter half of the colonial period, Indian villages litigated just as fiercely among themselves over land cases as they did against Spaniards defendants accused to usurping their lands.<sup>250</sup> This trend can be seen in many of the cases brought before the General Indian Court and it is a large part of the reason that land related disputes made up the second most frequent case type brought to the court during this third period of the General Indian Court's operations from between 1650-

<sup>249</sup> Borah, *Justice by Insurance*, 129.

<sup>250</sup> *Ibid.*, 129.

1750. This trend is also born out in my own data set as shown below in percent distribution of the cases brought before the Court during this third period (see fig. 40).

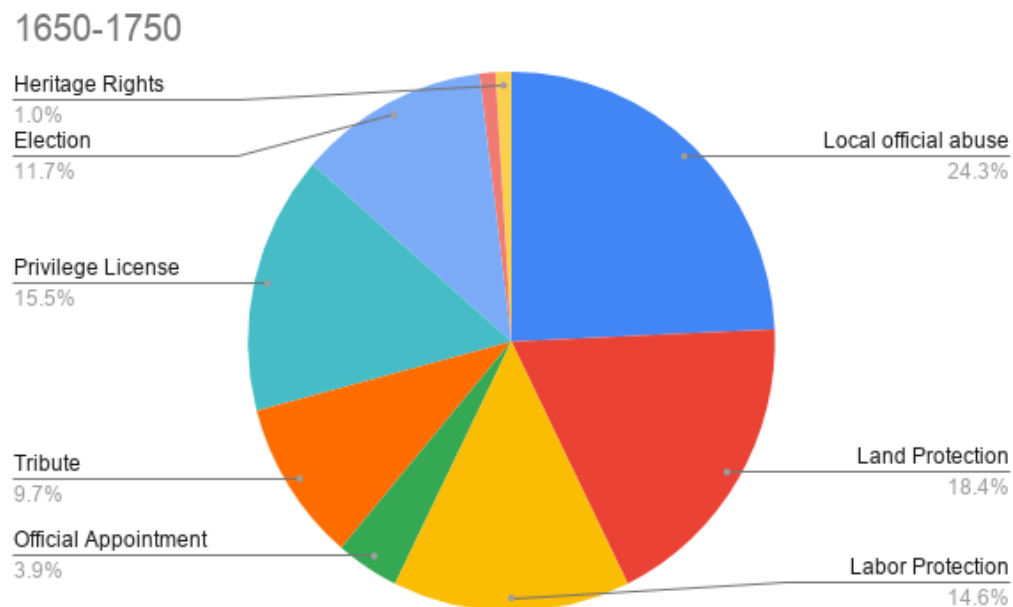


Figure 40. Cases most frequently brought to the courts 1650-1750 (*Land Protection*), Source of figure data comes from cases in AGN, *Ramo de Indios*, Vols. 17-55.

During this period of time, as the native communities had become well accustomed to using the Spanish legal system for their own advantages, they also began to increasingly use this power to settle disputes among themselves, especially inter-communal land conflicts that had often involved violence and open conflict before the Conquest and even in some cases during the early colonial period. Some cases of this type of violent communal conflicts over tribute demands, cabecera or head-town status, and other tax, labor and tribute disputes involved claims of and demands for the recognition of pre-conquest community rights for towns that had been forcibly re-congregated together. Old political and regional rival towns sometimes found themselves forced into section of a new town, causing inter-communal conflicts and attempts to

enforce old prehispanic privileges. One such instance in the earlier colonial period even generated various legal cases and even the production of several Nahuatl language codices and other pictographic documents created during these inter-communal conflicts.<sup>251</sup>

By the later 1650s, most of these similar conflicts over land protections and privileges occurred mostly in the audience chambers of the General Indian Court. For example, on October 22, 1685, the native community of Santa María Ocotepec brought a suit against the natives of Santiago Nuyóo. The petitioners from Santa María claimed that its community had rented a plot of land from the town of Chalcatongo upon which they planted bananas. However, on the night of August 27, 1685, certain Indians from the town of Santiago Nuyóo went with axes and other tools and destroyed all of their crops because they claimed that the land traditionally belonged to them. Upon reviewing the titles for land ownership and the rental agreement, the General Indian Court and Viceroy ordered that the Spanish *alcalde mayor* of the district protect the rights of the natives of Santa María Ocotepec in the use of the land, furthermore ordering that the defendants pay for the damages to their crops.<sup>252</sup> Likewise, within my own data collection, most of the land related claims of cases between indigenous communities appeared similar to the case entitled, “Order that the justices of Chichicapan certify the true relationship of what Martin

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<sup>251</sup> One recent publication chronicles just this type of inter-communal conflicts over the rights of a previously prehispanic head town to not have to pay extra community tributes for the Church repairs and construction of a new town. The barrios or neighborhoods of San Juan and San Francisco Ixtacamaxtitlan in the region of Puebla erupted into various open conflicts which ended in various court cases and the creation of at least one labor and tribute codex document to chronicle the complaints. For complete coverage of this interesting mixed Nahuatl alphabetic and pictographic codex or “*tira de tributos*” see Argelia Segovia Liga and John F. Chuchiak IV, “The *Tira de Tributos de Ixtacamaxtitlan*: An Unknown Fragmentary Aztec Pictographic Manuscript in the Gilcrease Museum, Tulsa, Oklahoma,” *Mexicon: Journal of Mesoamerican Studies* 42, no. 2 (2020): 148-152. In this case, the natives of San Francisco Ixtacamaxtitlan appealed to the new General Indian Court for redress from what they viewed as unjust tribute and taxation impositions. See *Mandamiento al corregidor de Tlaltlaquitepec, para que informe la causa que tienen los naturales del pueblo de San Francisco para pedir servicio de indios, indias, gallinas, y otras cosas para proveimiento del mesón*, AGN, *Ramo de Indios*, 1590, vol. 4, exp. 831, folios 225r–v.

<sup>252</sup> *Se ordena al alcalde mayor de la jurisdicción de Teposcolula, no permita que los naturales de Santiago Nuyoo estropeen las plantas que los del pueblo de Santa Maria Ocotepec tienen en un pedazo de tierra que el pueblo de Chalcatongo les dio para que lo cultivasen*, 1685, AGN, *Ramo de Indios*, Vol. 29, Exp. 97, folio 89v-90r.

Gómez, Indian Principal of San Miguel, requests along with an order that they compel the people to restore to him the property that they have taken from him, or replace its value.”<sup>253</sup> In this ruling, the General Indian Court and Viceroy ordered the indigenous justices of Chicicapan on behalf of Martin Gomez, an indigenous *principal*, or nobleman from the barrio of San Miguel, that he be restored in ownership to the land and goods that were taken from him, or compensated for their fair value . In cases like these, land titles were extremely important as evidence and proof of ownership. However, the deadly epidemics of the sixteenth and seventeenth centuries along with the way in which the Spanish government had forced the native communities to reconsolidate themselves into separate larger congregated communities, through the process of forced *congregación*, created what was legally referred to in the colonial period as vast swaths of “empty” lands. Although apparently abandoned, many Indigenous communities held traditional communal possession of these apparent “*tierras baldíos*” and some communities used older Nahuatl pictographic codices, or created new ones to submit to the court as evidence of their pre-Hispanic claims to these communal lands (for example see fig. 41).

The many disputes over land ownership in the late seventeenth and early eighteenth centuries served to secure the legalization of land titles. In the midst of these many suits, indigenous communities both located and created many new land titles in their hybrid Nahuatl pictographic and alphabetic traditions to document their land ownership. These land documents, written in Nahuatl and described by detailed pictorial representations of the Nahuatl’s historic ownership of the areas in question, often served as legitimate evidence for the General Indian Court of the indigenous communities claims. In suits that involved Indians and their lands, the

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<sup>253</sup> *Orden para que la justicia de Chichicapan, constando de relación verdadera, lo que pide Martin Gómez, Principal de san miguel, compela a las personas de quienes se queja le restituyan los bienes que le han quitado o el valor de ellos*, 1654, AGN, *Ramo de Indios*, Vol. 17, Exp. 25, folio 36v-37r.

native peoples' rights to bring their own pictographic land grants and titles to the court as valid evidence remained crucial.



Figure 41. *Tira de Tributos de Iztacamaxtitlan* (ca. 1590), Nahua Codex Fragments in the Helmerich Center for American Research at the Gilcrease Museum Collections, Tulsa, Oklahoma.

For example, in the early 18th century case brought by the community of San Francisco Mazapan, the neighboring Indian community and its legal team used the document represented below in their case to help prove the boundaries of their communal lands (see fig. 42). In their map of their land claims, the ancient city of Teotihuacan's Pyramid of the Moon and Pyramid of the Sun served as important landmarks shown on the document in order to help settle their dispute.



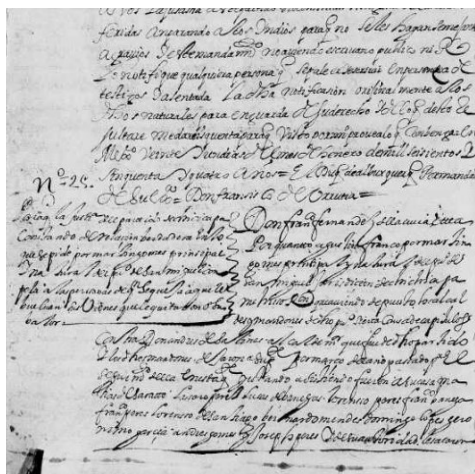


Figure 42. Orden para que la justicia de Chichicapan, constando de relación verdadera, lo que pide Martin Gómez, Principal de San Miguel, compela a las personas de quienes se queja le restituyan los bienes que le han quitado o el valor de ellos, 1654, AGN, Ramo de Indios, Vol.,17, Exp. 25, folios 36v-37r.

All of the many land disputes like these made up a large majority of the cases brought before the General Indian Court in the third period under study, between 1650-1750, as the native communities made the most of the tools that they had to call upon the ancient authorities of their traditional pictographic traditions to protect their lands before that opportunity would soon be taken away during the legal reforms of the late colonial period (see fig. 43).



Figure 43. Map of San Francisco Mazapan (Teotihuacan) Ink on amatl, ca. 1700-1767, Newberry Library Vault oversize Ayer MS 1907.<sup>254</sup>

<sup>254</sup> This map represents a Nahuatl pictographical record that was accepted as legally binding evidence in a Spanish court. This was incredibly significant because of the way that it validated the claims, history, record keeping, and rights of the indigenous people. For a comprehensive discourse on central Mexican pictographic histories and their



## **A Comparative Review of the Royal *Cédulas* in the *Leyes de Indias* issued during this third period, 1650-1750**

**Abuse by Local Officials (Pulque).** Upon examining the compilation of royal decrees compiled in the *Leyes de Indias*, I found quite a few instances in which royal *cédulas* appear to have been issued in reaction to indigenous litigation. Several cases of royal orders concerning permissions for the manufacture and trade in *pulque* offered the indigenous people explicit royal favor in terms of carrying out these businesses related to the manufacture, trade and sale of *pulque*.

One of the most lengthy royal orders, or *cédulas*, was first issued by King Charles V as early as August 24, 1529. This *cédula* entitled, “About the drink *pulque* used by the Indians in New Spain,” outlined extensively how the drink could be made, sold, and consumed.<sup>255</sup> This specific order was fascinating because of the way that it captured, by the language that the King used, the local Spanish colonial attitudes of suspicion, fear, and religious denunciation of the drink *pulque*. The fear of the relationship of this alcoholic beverage with the natives’ idolatry pervades this language and the overall colonial attitude which contributed greatly to what motivated the local officials (particularly Spanish ones) to abuse their power and attempt to prevent the natives from making or selling this native unfortified drink, called *white pulque*, which they had been permitted to make by royal decree. In this lengthy document, King Charles V warned not about the *white pulque* which had a low alcohol content, but rather about certain roots or other things that adulterated the simple form and increased its alcohol content:

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value as submission in colonial legal cases see Elizabeth Hill Boone’s, *Stories in Red and Black: Pictorial Histories of the Aztecs and Mixtecs*, Austin, Texas: University of Texas Press, 2000.

<sup>255</sup>See *Recopilación de leyes de los reynos de las Indias*, Libro 6, Título I, Ley XXXVII, *Sobre la bebida del pulque usada por los indios de la Nueva España*, 1529-1672.

The Indians of New Spain use a drink, called *pulque*, distilled from the maguey plants of great benefit for different purposes, and although it is tempered, it could be tolerated, because they are already accustomed to it, but notable damages have been experienced when it is made with such strength by adding certain roots to it so that it forces them to lose consciousness, burns the main members of the body, and makes them sick, dull and kills often with great ease; and what is more, when they are out of their minds, they commit idolatries, they make ceremonies and sacrifices of paganism, and furiously they fight and quarrel amongst each other, and they kill themselves, committing many carnal, nefarious, and incestuous vices... and by the documents and provisions of the viceroy, and royal audiencia, these are prohibited. And we, in order to extirpate so many vices, and take away the opportunity to commit them, because we wish the spiritual and temporal good of the Indians, and even of the Spaniards who also use it: We order and command, that in the making of the simple native juice of the maguey that no root can be added, nor any other ingredient, that makes it stronger, warmer, and spicier, as well as by any admixture, distillation, or infusion, or by any other form that causes these effects.<sup>256</sup>

With these words, the King struck a Godly fear of the adulterated version of the fermented drink *pulque* into the hearts of his faithful Catholic officials. Later in the order, he wrote that the Viceroys and Audiencia of Mexico should take great care to ensure that the number of places where the drink is made and sold does not exceed a certain amount. In the years following this decree, as shown in my data set, there were many abuses of the rights that the native people had to make and sell their simple form of *pulque*, which was legally permitted. And so, in 1671, the Crown noted in a subsequent royal *cédula* that was re-sent to the New World referencing an expanded version of the earlier orders of the Viceroy and Audiencia of

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<sup>256</sup> In Spanish this read, “Usan los indios de la Nueva España de una bebida, llamada pulque, que destilan los magueyes, plantas de mucho beneficio para diferentes efectos, y aunque bebida con templanza se podría tolerar, porque ya están acostumbrados á ella, se han experimentado notables daños , y perjuicios de la forma con que la confeccionan, introduciéndose algunos ingredientes nocivos á la salud espiritual y temporal...con que toma tanta fuerza, que les obliga á perder el sentido, abrasa los miembros principales del cuerpo, y los enferma, entorpece y mata con gran-dísima facilidad; y lo que más es , estando enajenados, cometen idolatrías, hacen ceremonias y sacrificios dela gentilidad, y furiosos traban pendencias, y se quitan la vida, cometiendo muchos vicios carnales, nefandos, é incestuosos...y por autos y acuerdos del virrey, y real audiencia , se prohíba. Y Nos, en atención á extirpar tantos vicios, y quitar la oca-sión de cometerlos, por lo que deseamos el bien espiritual y temporal de los indios, y aun de los españoles, que también la usan: Ordenamos y mandamos, que en el jugo simple, y nativo del maguey no se pueda echar ningún género de raíz, ni otro ningún ingrediente, que le haga más fuerte, cálido, y picante, así por inmisión, destilación, o infusión , como por otra cualquiera forma, que cause estos semejantes efectos.”

Mexico, issued on July 23, 1671, which created an expanded version of instructions relating to how to use the drink. In those eight chapters, by royal instruction, the local colonial officials reinforced the Indians' rights to this drink and established that there could be a total of thirty-six *pulquerias* in the towns of New Spain, and in this means the privileges and restrictions concerning pulque were reinforced. These new instructions came about shortly after a large spate of Indigenous complaints and cases against local officials for interfering in their exercise of their legal right to manufacture this beverage occurred from the 1650s to the early 1670s. It is clear that because making and using *pulque* was of such importance to the native people and their culture, they were willing to fight within the courts to secure their rights. This is yet another instance in which the King and his colonial officials often responded to indigenous complaints and their effective litigation of issues concerning the use, manufacture and sale of *pulque*.

**Cases involving Land Protection (Land Titles).** The problem of cases involving land protections during this third period from 1650 to 1750 was extensive and repeatedly addressed in the royal decrees sent by the Crown to the New World. Cases relating to land, supported by original laws and decrees that were set in place previously, set the stage for a very large number of legal cases of competing land titles in the future. That being said, one of the most important royal orders relating to land that helped protect the rights of the native people of Mexico to their traditional communal landholdings was another very lengthy law which can be traced all the way back to 1480 issued the Catholic Monarchs Ferdinand and Isabella. In this law titled, "Order to be observed for the restitution of the borders occupied by the villages,"<sup>257</sup> Here, the monarchs stated that they felt it necessary, after a series of complaints, to address some of the people who "unfairly and not properly, take and occupy the places, jurisdictions, terms, meadows, pastures,

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<sup>257</sup>See *Recopilación de leyes de los reynos de las Indias*, Libro 7, Título XXI, Ley V, *Orden que ha de observarse para la restitución de los términos ocupados a los pueblos*, 1480.

and watering places of the villages that come with them or anything from them.”<sup>258</sup> In order to resolve this problem, the Crown established a system of land holding and communal claims to territory and land use rights. In order to claim ownership of new lands, an individual must show that he owned the land by a just and legal title. If he could not, the local justices of the town would take thirty days to investigate the land claim and see if anyone else owned the land. If no one apparently owned the land, the initial petitioner could claim the land and apply for a royal title which recognized that person’s ownership of the lands in question. In the New World, especially during this third period under study from 1650-1750, with the rapid demographic collapse of the indigenous populations and the abandonment of many traditionally held communal lands, Spanish legal officials had a difficult time regulating the stealing or seizing of lands. Many Spaniards pushed Indians off of their own lands because simply not enough legal infrastructure existed to hold them accountable to the local officials. However, in the years to come, the Indians used the basis of this ancient Castilian law to not only retain the rights to their communal lands in suits against the Spanish, but also to guard their own communities’ borders from other eager native communities who hoped to use the decreasing populations of many regions to stake claim to more of these abandoned lands by making a legal claim to their ownership. By the end of the Hapsburg period in 1715, the situation was such that the new Bourbon monarchs of Spain wished to create serious legal, political, economic and religious reforms to reign in what they viewed of the chaotic colonial government that the colonial inhabitants had created in the preceding periods to avoid many of the centralized royal controls of their Hapsburg predecessors. For the Bourbon monarchy nothing was riper for reform than the economic and judicial systems of its New World possessions.

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<sup>258</sup> In Spanish this read, “injusta y no debidamente, toman y ocupan los lugares, jurisdicciones, términos, prados, pastos y abrevaderos de los lugares que comarcan con ellos o qualquier cosa dellos.”

## **The Bourbon Reforms and the Late Colonial Period in the *Ramo de Indios*, 1750-1820**

The fourth and final period of study of the colonial documentation in the *Ramo de Indios*, spans from the period from 1750 until the end of the colonial era in 1820, and it contains the cases from the last seventy years of General Indian Court's existence. During this time, the House of Bourbon took control over the Spanish throne after the *War of the Spanish Succession*, 1701-1714 and the French Bourbon dynasty instituted a multitude of centralizing reforms within their colonies that will be discussed in greater detail in the following final chapter. This period saw Bourbon attempts to rid its colonial administration of many of the legal and institutional legacies of the Habsburg monarchy, in the name of reforming and centralizing power and control directly under the Bourbon Monarchs. These reforms resulted in abolition and reforms of many of the institutions that served the native communities, and specifically led to the ultimate abolishment of the General Indian Court.

Also, during this time, the Mexican people as a whole began fighting for their own reforms, which eventually led to the independence movement. The Napoleonic invasion of Spain, also led to a governing Spanish Junta to create a constitutional convention to draft a governing document to rule in exile during the captivity of the Spanish monarch Fernando VI. This Constitution of Cadiz in 1812, also revolutionized the legal rights of most colonists, declaring the distinctions between Spaniards, *castas* and *indios* extinct, making all vassals in the New World equal "citizens" with equal rights among all new Spaniards. This new constitution eliminated the hated indigenous tribute, but it also inadvertently eliminated the indigenous peoples' special privileges and protections (prime among them the need for a special General Indian Court).

During this period, the Spanish administration in Spain struggled to maintain control over their empire and when Ferdinand VI came back to power after the ousting of the usurper King Joseph Bonaparte, he pushed back against the growing clamors for more freedoms and the early revolutionary movements. This all happened many times in the form of the imposition of various new types of taxation to fund the Spanish military, and this period also saw to Indian land seizures for both military and civil usage, and a legal shift in the way many local political offices and officers of government functioned. In this new unfamiliar era of legal and political reforms, the indigenous communities were at a disadvantage, and soon without their special legal privileges and protections.

Within my data set for the years between 1750 to 1820, the most frequent cases brought to the courts were, once again, and increasing amount of land protection cases and a new focus on contested and contentious local indigenous *cabildo* elections, followed by petitions and complaints concerning official appointments of local officials as new legal and political forms reshaped the political landscape of the indigenous communities (see table 5). Of these categories, the cases involving elections and official appointments contain some similarities, the only difference being the cases involving official appointments appear to refer mostly to when the Spanish government specifically offered an individual the title of a certain office by decree, while the elections cases, of course, pertained to issues involving someone holding a local indigenous political office chosen by an election of the local indigenous people. This data must be understood within the context of the sociopolitical atmosphere of the crumbling Spanish empire that existed in the later 18<sup>th</sup> and subsequent 19<sup>th</sup> centuries. The changes implemented by the Bourbon Crown fundamentally changed the way that the Spanish Empire functioned from the inside out.

Table 5. Legal Categories of Cases Brought Before the General Indian Court from 1750-1820

Legal Categories <sup>5</sup>	Number of Cases
Land protection	21
Election	19
Official Appointment	14
Local Official Abuse	11
Government Reconstruction	11
Tribute	11
Privilege License	3
Heritage Rights	3
Labor Protection	2
Prison Release	2
Investigation	1
Total	98

<sup>5</sup> Source of figures: AGN, *Ramo de Indios*, Vols. 59-100.

**Land Protection Cases from 1750-1820.** The first, and certainly most important type of suit brought before the General Indian Court during its final period of existence focused once again on land protection cases. Protecting the lands that the Indian communities legally owned and held title to assuredly represented one of the courts' greatest concerns all the way up until the doors of the General Indian Court closed upon its abolishment. During the late colonial period, when the entire foundation of Habsburg New Spain began to erode, the needs and wellbeing of the native people slowly started to be less of a concern for the Spanish administrators who instead faced a host of other threats to the stability of their empire. Nevertheless, the Indian communities did not stop litigating for their rights to the lands that the Spanish had already promised to them. Despite their dwindling power, the indigenous people fought to the very end of the colonial period for the land assured to them

As shown, land protection cases made up approximately 21.4% of cases within my data set that occurred between the years from 1750 to 1820 (see fig. 44).

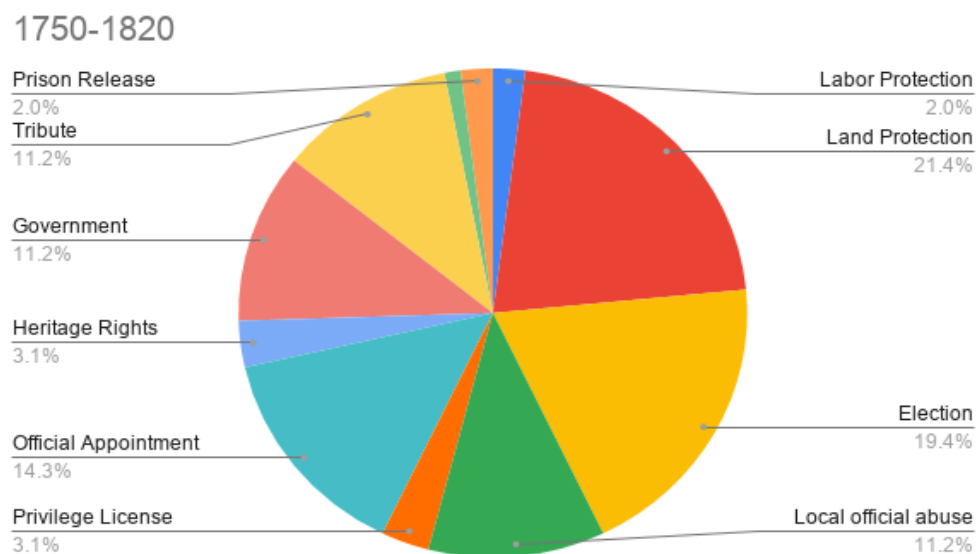


Figure 44. Cases most frequently brought to the courts 1750-1820 (*Land Protection*), Source of figures: AGN, *Ramo de Indios*, Vols., 59-100.

As society changed and power shifted hands rapidly between an evolving series of local officials with the Bourbon reforms, the native communities, to the best of their abilities, tried to hold onto as much autonomy as they could. For example, throughout the colonial era, the Crown promised that each native community was entitled to a minimum endowment of protected communal lands around their communities. Throughout the years from 1750-1820, as the colonial bureaucracy attempted to strip native villages of their communal lands, the *indios* pointed back to those promises and backed up their claims with their ancient land titles and pictographic codices which claimed primordial titles to these lands.

For instance, on February 28, 1800, in Mexico City, the Indian town of Teotitlán petitioned the General Indian Court, complaining that the ranch of their Spanish neighbor Don



Manuel Dionisio Güenduláin encroached upon the boundaries of their own communal lands.<sup>259</sup>

An investigation into the case showed that the town of Teotitlán truly suffered from a lack of pasture land and water. However, their Spanish neighbor involved in the case counter-claimed that increasing the Indians' lands would interfere and infringe upon his own ranch and legally titled landholdings. The fiscal *protector* of the Indians in this case held strongly to the native people's rights to have sufficient enough land for their maintenance, and for this reason, the Viceroy ruled in favor of the native community and sent an order to the new Spanish officials, or the *subdelegados* of Teotitlán and Teposcolula in order for them to establish the new and just borders of these two communities.

Many cases similar to this appeared within my data set, especially during this final period in the activity of the General Indian Court when pressures on indigenous land rights increased following the major Bourbon Reforms. Cases relating to the petitions and litigation concerning usurpations or illegal claims to lands that belonged to the native communities included many such as the following:

The Viceroy in assessing the petition and request of the Natives of the village of Xocotiapac, sends an order to the *subdelegado* of Teposcolula to survey the lands, pastures, and waters to inquire which lands they can grant to the Natives with the lowest amount of injury to the neighboring communities.<sup>260</sup>

In this case, the Viceroy granted the natives of the town of Xocotiapac the amount of land, pasture, and water that they needed in order to ensure the vitality of the community with as little

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<sup>259</sup> *El virrey manda se devuelvan a la subdelegación de Teposcolula las diligencias que su antecesor práctico, relativas al entero del subdelegado que corresponde a los Indios de Xocotipac y manda a dicho subdelegado, acompañado del de Teutitlan, verifique dicha citación de los interesados y lo demás que se previene*, 1800, AGN, *Ramo de Indios*, Vol. 70, Exp. 157, folios 175r-176v.

<sup>260</sup> *El virrey accede a la solicitud de los naturales del pueblo de Xocotiapac, manda al subdelegado de Teposcolula haya reconocimiento de las tierras, pastos, y aguas que puedan concedérseles con el menor perjuicio de los colindantes*. 1796, AGN, *Ramo de Indios*, Vol. 70, Exp. 78, folios 68v-69r.

harm to their surrounding neighbors as possible. Although at this same time the native peoples' resources had dwindled considerably due the land encroachments by the Spaniards and other communities, at times that they appealed back to a long-standing royal decree made by the King or another provision of earlier Viceroy, in order to secure redress for the apparent usurpations of their lands, and it was through the last years of the existence of the General Indian Court that they found a means of still making their voices for justice heard.

**Election Cases from 1750-1820.** The second most common type of cases during these final years of the activity of the General Indian Court during this fourth and final period from 1750-1820 concerned indigenous *cabildo* elections. During the years of 1750-1820, within my data from this period these election cases comprised nearly 20% of the total number of cases sampled as shown below (see fig. 45).

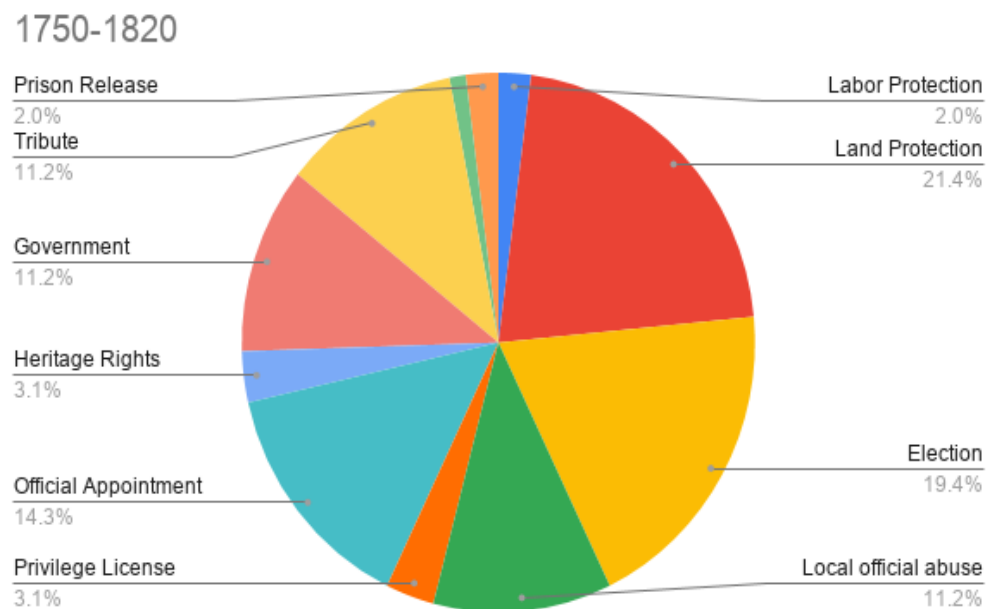


Figure 45. Cases brought most frequently to the courts 1750-1820 (*Election Cases*), Source of figures: AGN, *Ramo de Indios*, Vols., 59-100.

The local officials of Indian towns were typically elected for yearlong terms and had to be approved and confirmed by either the local Spanish justice or by the Viceroy himself. Because confirming an elected official was in all senses an administrative matter not a judicial one, if the Viceroy chose, he could handle the process without ever involving the General Indian Court. However, since these local offices oftentimes held the highest positions of power that an Indian could hold, and along with these positions came both money and prestige, the disputes surrounding many of the confirmations appeared in front of the Court officials for investigation. The Viceroy was typically motivated to send these cases to the General Indian Court to try to avoid any appeal to the Court of the Audiencia and also out of a general practice of sending all matters relating to natives to a centralized location.<sup>261</sup>

Most cases in my representative sample from this fourth period dealt with the official Spanish certification of the indigenous *cabildo* elections of officials in the native communities. Most of these documents consist mostly of the formal certification of the election results and they were similar to the 1763 case of the certification of the election results from the Nahua town of San Nicolas Actopan: “The Viceroy approves and confirms the election results of the governor and other officials of the republic of the town and *cabecera* of San Nicolas Actopan made for this present year,” (see fig 46).<sup>262</sup>

Although legal practice mandated that all indigenous *cabildo* elections of native officials be confirmed by the Viceroy and upper levels of the Spanish government throughout the entire colonial period, there was a noticeably sharp increase in the number of official certifications and petitions and litigation concerning election related issues in the 1750-1820 data range.

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<sup>261</sup> Borah, *Justice by Insurance*, 200.

<sup>262</sup> *El virrey aprueba y confirma la elección de gobernador y demás oficiales de república del pueblo y cabecera de San Nicolás Actopan, hecha por este presente año*, AGN, *Ramo de Indios*, 1763, Vol. 59, Exp. 273, folio 290r.

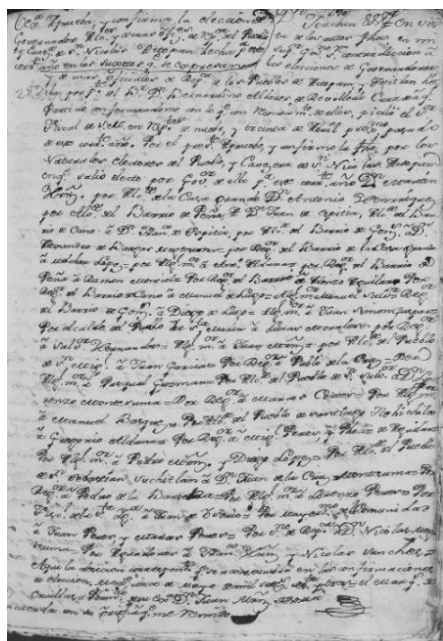


Figure 46. *El virrey aprueba y confirma la elección de gobernador y demás oficiales de república del pueblo y cabecera de San Nicolás Actopan, hecha por este presente año. 1763, AGN, Ramo de Indios, Vol. 59, Exp. 273, folio 290r.*

This trend no doubt indicates that the local native officials were surely taking advantage of the political instability of the Spanish empire at that time to hold onto what little power they had left.<sup>263</sup> One example of an abuse concerning indigenous elections was brought before the General Indian Court from June 4-July 21, 1772. In this case, the town of Cuautempan, a *sujeto* of Tlayacapan, brought a case against their *alcalde mayor*, Luis de Santiago, before the General Indian Court to protest his continuance in office.<sup>264</sup> As a bondsman for the local *repartimiento* labor drafts, Luis de Santiago had been regularly extorting money and labor from the Indians of his town. The Viceroy ordered that the charges be investigated, and if they showed to be true, that a new election be held and that they return to him with the results of the election. During the investigation, the indigenous *alcalde* had his accusers jailed and their belongings seized. Even

<sup>263</sup> Borah, *Justice by Insurance*, 199.

<sup>264</sup> AGN, *Ramo de Civil*, Vol. 2285, Exp. 2.

with his reprisals against them, the Indian commoners of the town bravely returned to the General Indian Court to report the actions of their indigenous *alcalde* Luis de Santiago. With the advice of the fiscal and assessor, the General Indian Court issued an order that Luis be punished with six years of service in an *obraje* for imprisoning innocent townspeople and that a new election be held immediately, and justice be served to the aggrieved parties.<sup>265</sup> Although many cases existed where local officials abused the election system and they went unpunished, it does appear from the evidence of the representative sample of cases from this fourth and final period, that when the native people were able to bring their case all the way to the notice of the General Indian Court and the Viceroy, generally the courts most often ruled in their favor.

#### **A Comparative Review of the Royal *Cédulas* in the *Leyes de Indias* issued during this final fourth period, 1750-1820**

**Land Protection Cases of the *Fundo Legal* from 1750-1820.** As mentioned in the previous section, ancient Castilian law contained several royal decrees from its earliest period that served in the New World to protect the Indians' rights to their traditional communal lands. This ancient fundamental legal claims helped to bolster later royal legislation that ensured the continued protection of the native land rights. One of these later decrees subsequently established in the second half of the colonial period a new legal conception of patrimonial and traditional indigenous community landholdings known as the *fundo legal*. This juridical concept, the *fundo legal*, referred to the minimum necessary legal endowment of land that the Crown was willing to promise and provide for each Indian town or village. The first attempt to institute this concept

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<sup>265</sup> *Obraje*: An *obraje* was principally a site like a make-shift factory or work house where wool, cotton, and other fibers were carded, spun, and woven into textiles. See Lillian Ramos Wold and Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHAAR Press, 1998).

and ensure the vitality of the Indigenous land holdings occurred under the Viceroy, the *Marqués de Falcés*, in 1567 when he ordered that there must be at least five hundred *varas*<sup>266</sup> between an Indian village and any surrounding haciendas.<sup>267</sup> However, it wasn't until June 4, 1687 that the King offered an official royal *cédula* to ensure that each Indian town received the endowment of six hundred *varas* of communal lands outside of the village limits that was to be measured from the outermost huts of the village drawn as a concentric circle outward in all directions. On July 12, 1695, the King expanded this order to also include an extent of land measuring a minimum of 1,100 *varas* in distance required between any Indian town and the surrounding Spanish livestock ranches.<sup>268</sup> Apparently even this royal order was often ignored by local Spanish ranchers during the time of the demographic collapse of the Indigenous population, and increasing litigation necessitated that the King reissue this order twice more, once on October 15, 1713 and then again in 1786 due to the large number of continued indigenous cases presented before the General Indian Court concerning abuses and Spanish usurpations of these legal land rights which went through the court system.<sup>269</sup> The royal *cédulas* of both 1687 and 1695 laid a secure foundation for the future indigenous litigation surrounding the land protection cases brought to the courts in the future. In addition, the consistent legal fights for land protection during the following decades, particularly during this final period in the activity of the General Indian Court

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<sup>266</sup> *Vara*: A *vara* (meaning a rod or measuring pole) was a unit of length or distance in the old Castilian system of units often translated as "yard" in English. It is equal to approximately 2.74 ft in the present day, according to the standard Imperial System of Measurements. See Lillian Ramos Wold and Ophelia Marquez, *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHAAR Press,) 1998.

<sup>267</sup> See Eusebio Buenaventura Beleña, Juan Francisco de Montemayor and María del Refugio González, *Recopilación sumaria de todos los autos acordados de la Real Audiencia y Sala del Crimen de esta Nueva España* (1787) Edición Facsimilar, 2 Vols. (México: Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 1991), Vol. 1, Part 1:167-68, no. 102.

<sup>268</sup> *Ibid*, Vol. 1, Part 5: 207, no. 382.

<sup>269</sup> *Ibid*: Vol. 1, Part 5, 208, no. 384; also see Beleña, *Recopilación sumaria*, Vol. 2: appendix, xxi-xxii; as well as Borah, *Justice by Insurance*, 137.

from 1750 to 1820, undoubtedly led to the regular reinstatement of these royal orders and policies and greater legal agency within which the native communities could defend their rights to these communal lands. The struggling Spanish empire fought to keep rights to the land over which they once enjoyed ownership. However, after the reforms of the Bourbon crown and the wars for independence that followed, this was nearly impossible. Slowly but surely, the Spanish Crown lost all rights to the land they once claimed.

**Official Approvals and Certifications of Local Indigenous Cabildo elections (Official Election Approvals).** The second most important type of case that appeared most frequently in the General Indian Court during these years was that of election certifications and other litigation concerning elections of local indigenous officials, totaling approximately 19.4% of all cases litigated during this period (see fig. 44 above). These cases concerning the certification of indigenous cabildo official elections and abuses of local elections were extremely important because of the way that they protected the local native communities from local official abuse and also ensured their access to their ability to elect their own indigenous officials without the interference of the local Spanish residents, or even the missionary clergy who often before played an unofficial role in the election process. In response to the many disputes about indigenous elections, especially concerning the election of the local justice officials like the local native *alcaldes*, King Charles IV made an official decree ordering the official certification by the Spanish authorities of all of these local indigenous election results entitled, “Acknowledging the Elections of the Justices in the Villages ” on August 12, 1793.<sup>270</sup> In this document, the King decreed concerning a royal consultation with his colonial officials: “Having been advised by the

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<sup>270</sup> See *Recopilación de leyes de los reynos de las Indias*, Libro 7, Título IV, Ley XVII, *Conocimiento en las elecciones de justicias en los pueblos*, 1793.

repeated consultations and appeals that have been made to me, that the election period is the most important and frequent reason for the rivalries.”<sup>271</sup> In this order, and other orders issued both before and after, the King responded to conflicts in election results by helping to settle a jurisdictional dispute caused by the elections in Indian villages. King Charles IV wrote this and several other laws after many appeals and indigenous litigation, and his decrees would serve to further centralize the process of the certification of the elections of local indigenous officials in the native towns. During this final period, a review of the royal orders issued in terms of the process and certification of indigenous election results illustrates for us for a final time, that even the later Kings of the Bourbon dynasty ultimately interacted with indigenous petitioners and thereby reinforced the value of continuous indigenous litigation.

### **Conclusion: Overall Data Trends**

The compelling relationship displayed within my data set of the frequent court cases brought to the General Indian Court and their power to elicit the King’s response with new royal *cédulas* shows the power and ability that the native litigants had in shaping the colonial juridical process in order to protect their rights. That the Spanish Crown often chose to respond directly to increasing indigenous litigation in the General Indian Court with the issuing of specific orders to stem perceived abuses and infringements on indigenous rights is truly a powerful trend within the context of this thesis project. The intention of this research as stated at the outset was to demonstrate that, to a large degree, the Nahua and other indigenous communities of New Spain played an active role in initiating the eventual laws and legal limits that ordered the colonies in which they lived. The data set that I collected and examined from over eight hundred case

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<sup>271</sup>Ibid.



rulings, in addition to examining and translating several centuries' worth of royal orders, or *cédulas*, offers tangible proof of this initial thesis. In cases relating to the protection of land, of the redress of local officials' abuse, the certification of indigenous election results, and more, by their constant and dedicated efforts, the native people during the colonial years obtained the legal responses that they required and often deserved from their local Spanish leadership. As the Nahua Indians continued to interact with the legal system by bringing their grievances before the General Indian Court, and having them heard without unnecessary extra legal expenses beyond their medio-real tax, they brought an increasing number of successful cases to bear on the colonial legal system that helped ensure that their native rights were honored. By exercising this effective legal agency through their cases in the General Indian Court, the natives of New Spain readily demonstrated their tremendous influence in constructing the legal and political colonial world.

The analysis of the cases in this chapter provides a suggestion of hope for how the story of Doña Juana Pérez Bontilla and the town of San Miguel Tixáa from chapter one might have ended.<sup>272</sup> Unfortunately, in this 1769 case in which Spanish local officials, apparently helplessly in love with Doña Juana, had unjustly signed documents and aided in the seizing of Indian lands on her behalf, the final ruling of the case was not preserved. However, based on the trends of the decisions in the more than eight hundred cases analyzed in this thesis, it is not hard to imagine that the clamors of the aggrieved indigenous petitioners of Tixáa were heard in the end. The story and documentation ends with the Viceroy ordering the nearest Spanish justice to make a

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<sup>272</sup> *El virrey, manda a la justicia más inmediata a la jurisdicción de Teposcolula, el que pena de doscientos pesos, pase a dicha jurisdicción, y con la integridad e imparcialidad, que demanda la naturaleza de la causa, averiguación toda exactitud y claridad los asuntos sobre tierras del pueblo, presentado por el regidor común y naturales del pueblo de San Miguel Tiza, se refieren y que hallando ser cierto estar heridos los indios e indias que se nominan, ejecute lo que se le ordena y quedé cuenta dentro de quince días con las diligencias, 1769, AGN, Ramo de Indios, Vol. 61, Exp. 352, folio 324v.*

thorough investigation and report back. By examining the multitude of other land protection and official abuse related cases that were ruled in favor of the native community, it is seriously likely that the native people of San Miguel Tixáa received the justice they deserved in the end of this case.

The promising ending in the case against Doña Juana Pérez Bontilla rests upon a confidence in the structure of Spanish law as it existed and was executed by the General Indian Court. This legal system was not only an example of “*leyes en viva*” as the Spanish claimed but the process of colonial litigation itself proved to be a conversation between the colonizer and colonized in which both parties negotiated their terms of coexistence. Although the Spanish certainly ruled heavily over the native people and sometimes ignored the royal laws that protected them on a local level, the respect for Spanish law within the colonial empire indisputably gave the native peoples the tools to fight back. By Brian Owensby’s estimation, it was ultimately the indigenous peoples’ commitment to carve out a livable and tolerable space for themselves within the vastness of colonial rule that would lead to the relative peace and longevity of the Spanish colonial empire despite its immense size and large indigenous population.<sup>273</sup> There is no doubt that colonial life, society, and even law would not have been the same without the active and powerful participation of the skilled indigenous Nahua litigants.

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<sup>273</sup> Brian Owensby. *Empire of Law*, 308.

**CONCLUSION:**  
**THE BOURBON ERA, THE END OF INDIGENOUS PRIVILEGE,**  
**AND BEYOND**

Some will tell Your Lordship that the Indians are simple and humble people without malice, pride, or covetousness. Others will insist upon the opposite, and claim that they are very rich and lazy and do not wish to cultivate their lands. Do not believe one group or the other. Rather deal with the Indians as with any other people, without making special rules, and with caution for the devices of third parties, for there are few in this land who have no personal interest, whether it is earthly or spiritual wealth, passion or ambition, or vice.

Letter of Viceroy Antonio de Mendoza to Don Lu s de Velasco in his *Relaci n de mando*, 1550.<sup>274</sup>

His Majesty, after having heard the council of state and agreeing with its opinion, has deigned to declare that because by the constitution all free men born and residing in Spanish territory are Spaniards, without distinction, not only have the Indians emerged from their state of minority to which before they were subjects, but also they should be equal in all else to the Spaniards of both hemispheres.

Royal Order of King Ferdinand VII given on January 11, 1821

The claim that indigenous litigants, vassals in the Spanish world, can be directly credited for participating in the shaping of Spanish Colonial society by direct discourse with their King may seem like a drastic shift in historical narrative for some readers and even for the contemporary colonialists at large. However, as studies like this one have shown, the real truth behind narratives of the past lies in examining the events of the past at every social level, not simply from the hegemonic perspective of those colonial elites at the top of society. Studies like these expose active participants at every turn from this special class of *indios vasallos*. Past

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<sup>274</sup> *Relaci n de mando del virrey Don Antonio de Mendoza*, 1550, AGN, *Reales C dulas*, Vol. 4, folio 990r. This royal order was translated and recorded by Charles R. Cutter in his book, *The Protector de Indios*, 99.

scholars have taken particular interest in the social, political, and legal action taken by the indigenous subjects of the Spanish colonies, as we have seen, but this present study contributes to the ongoing reevaluation of the colonial narrative by uncovering the direct results of these contributions and the changes they inspired. In this way, I this thesis has provided readers with a better understanding of the indigenous vassal and their relationship with the Spanish monarchs on a larger scale by providing a detailed study of their interactions in this project.

While these court cases and the responses they gained in the form of Royal *cedulas* form by the King build a solid case for the direct impact of the indigenous people on the development of colonial normative practices, perhaps an equal significant testament to the power that they developed during the birth of the colonies lies in examining the changes in the centuries that followed. As power shifted and political ideology evolved at the hands of the Enlightenment thinkers, the indigenous peoples' abilities to participate in legal and political activism changed significantly. For the Mexican people to ultimately gain their independence from Spain, indigenous people lost their special protection and relationship that they had fostered with their distant King for centuries. What followed only accentuates the value of their work to establish that relationship and the impact that it made. As this final concluding chapter will show, the changes brought about through the 18th and 19th centuries in Mexico, once again, presented the native populations with yet a new system of governing, a distinct role in this new system, which they would once again have to negotiate and overcome.

From February 18 to April 24, 1820, The General Indian Court of Mexico City heard the case brought by the general attorney for the *parcialidades*, Ignacio Flores Alatorre.<sup>275</sup> In this

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<sup>275</sup> See *Autos y proceso de los parcialidades sobre la petición de ser exentos de la nueva contribución sobre los propiedades rurales*, 1820, AGN, *Ramo de Civil*, Vol 2259; Exp.10. This case was translated and summarized by Woodrow Borah in his book *Justice by Insurance*, 222.

case, the *Indios* from the provinces of Mexicaltzingo, Churubusco, and Culhuacán petitioned the court to be exempt from the extra, steep new taxation imposed on rural properties by the Spanish authorities. The Spanish administration had levied these taxes in order to pay the extra royal expenses that came with managing and suppressing the simmering uprisings surrounding the independence movement in Mexico. The indigenous members of these communities on the fringe of the capital felt as though this was not their fight to pay these extra funds and through their representative they requested exemption from taxation similar to the exemption granted previously in the province of Ixtapalapa. After the investigation by the fiscal and their protector and with documented support from the royal tax collector of Coyoacán, the court decreed that the extremely impoverished natives of these villages should not be required to pay the extra tax. The *Indios* once again enjoyed another legal victory in what they would soon discover was one of the last cases ever to be heard by the General Indian Court.

The 19th century brought waves of ideological, political, social, and administrative reform to Europe. The effects of the Enlightenment, the French Revolution, and the establishment of the Spanish Royal House of Bourbon inspired tremendous change in the way that Spain chose to rule its increasingly restless colonies. In an attempt to promote peace, equality, and a unified state, Spanish administration issued a number of transformative changes and amendments to the colonial system of New Spain. These reforms found their roots in a nominal desire to create an equal, unified Spanish colonial region both in territory and in its redefined concept of *vasallaje* and the new ideas of citizenship.<sup>276</sup> However, as these changes came to fruition, and the institutions that provided the indigenous communities with an extra measure of support and separate privileges met their end; the end result resembled nothing of the

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<sup>276</sup> Woodrow Borah, *Justice by Insurance*, 410.

initial ideas of Indigenous equality as citizens. Rather, the provincial natives actually found themselves in a more disadvantageous position entering the 19th century than they had been through the last three centuries of the colonial rule.

As mentioned in Chapter Two, the Spanish intentionally designed their colonial administration from the 16th-18th centuries under the Catholic Monarchs and House of Habsburg to promote the long standing values of Spanish law. Some of these values included protecting *los miserables y pobres* (the legal category that included the natives) from exploitation and protecting and “caring” for these members of society in a paternalistic way. Additionally, these ideals supported separating the native peoples from the Spaniards and allowing them to operate as their own political and cultural entities, i.e. a separate *republica de indios*. This Habsburg colonial system produced paternalistic institutions like the General Indian Court, the institution of the *Protector de los Indios*, the legal powers of native intermediaries, and even entirely and legally separate indigenous communities. However, as the grand Habsburg colonial era started on the decline, these antiquated values could not be reconciled with the egalitarian reforms of the 18<sup>th</sup> century. As such, the mediums and means by which the Indians had established themselves and their protections legally, politically, and socially suddenly began to disappear, leaving the still impoverished, racially profiled, and culturally outcast natives at a loss.

### **The Bourbon Reforms and the Independence Movements in Indigenous Communities**

The House of Bourbon came to power in Spain in the year 1700, after the death of Charles II of Spain that left the Spanish Habsburgs extinct in the male line. King Charles II, who left no heir, willed the second grandson of Louis XIV of France to be his successor. So, the

prince, who at the time was Duke of Anjou, became Philip V of Spain and represented the first Bourbon monarch. The Bourbon administration left a long lasting legacy of commitment to cultural, political, and economic reforms both on the European peninsula and in the New World. The ideological revolution occurring in Europe at the time which promoted a movement to Hispanicize the natives and establish *de jure* equality for all citizens largely influenced the reconstruction of Spanish colonial life. Additionally, the need for economic stimulation after the decline and loss caused by the Seven Years' War (1756-63) also highly influenced the path to reform taken by the Bourbons. The Spanish rulers, most notably Charles III (1759-88) believed that consolidating political, economic, social power within their empire into one uniform system administered directly by the King was the key in bringing order and stability to the empire.<sup>277</sup>

This type of Bourbon administration has been commonly referred to as “Enlightened Absolutism.” The Bourbon monarchs’ resolutions have been presented as egalitarian decrees intended to remove any one group’s privileges over another. However, for every time Spanish elites lost a social, political, or legal advantage, the natives and other members of the lower classes lost an equal or greater number of special protections. The members of specially considered categories lost legal, economic, political, and social agency within society as power increasingly centralized in the hands of the Spanish Crown (see fig. 47). These changes began with the Bourbons and ultimately set the stage for the latter liberal reforms in the Constitution of Cadiz in 1812, and then the reforms instituted after the Independence Movement of 1821. These rapid socio-political changes forced the native peoples to cope with losing the important institutions that lifted them from poverty, exploitation and social disadvantage in order to

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<sup>277</sup> Yannakakis. *The Art of Being in-between*, 163.

compete fairly with their Spanish counterparts and find new ways to act as equal subjects of the Crown.

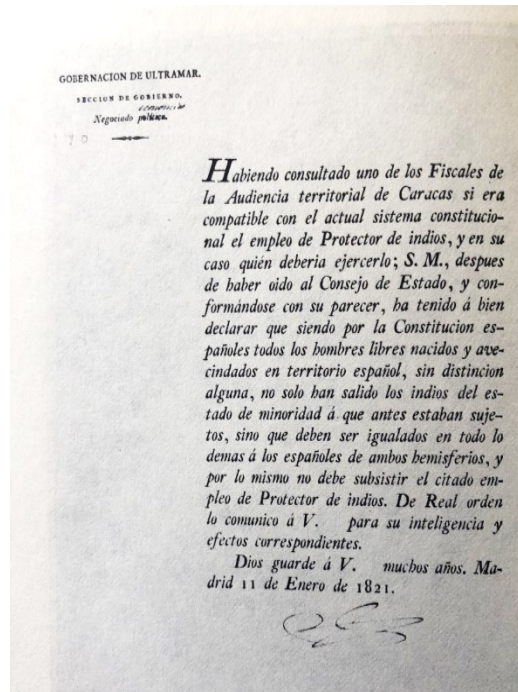


Figure 47. *Real cédula del rey Fernando VII, 1812, AGN, Reales Cédulas, Vol.14, folio 99r.*

In the New World, the administrative reforms impacted many different systems. In the political sphere, the desire to unify the kingdom of New Spain and bring control back to the King played out in many ways that directly affected the natives. First, the Bourbons had to subdue any political influences that threatened their control. The largest challenge to their hegemonic power remained the Catholic Church, and the Bourbon House swiftly and efficiently put an end to its Hapsburg-era powers. Prime among these changes included the expulsion of the Jesuit order which had opposed this new Absolutist tendency on the part of the Bourbons, affirming their direct allegiance to the Popes. The Jesuit expulsion also had a direct impact on the role of education for Indigenous Nahuas in several colleges such as the *Colegio de San Gregorio* which



had been established for the education of Nahua noble children. This expulsion and the precious situation of other educational institutions open to the Indigenous peoples had a detrimental effect on their ability to further the education of the Nahua intellectuals and their learning of the Spanish legal system.<sup>278</sup> However, their other greatest political competitors in New Spain were the native noble leaders such as the *gobernadores* and *caciques* in the Indigenous communities, as well as the regional Spanish *alcaldes mayores*, sub-provincial administrators who held a great deal of power in the Habsburg system. The Crown abolished the position of *Alcalde Mayor*, and the political powers that these leaders held, as it provided too many opportunities to prioritize local needs over the desires of the Crown. These and the *repartimiento* system were replaced with administrative *subdelegados*, supervised by provincial level *intendentes* who served as an extra layer of bureaucracy that answered directly to the King.<sup>279</sup> Many native elites, through the process of this so-called “Revolution in Government,” even lost their jobs to Spanish *peninsulares*. The intendancy system greatly reduced any influence that the indigenous elite might have had to advocate as intermediaries for the needs of the natives of their communities.<sup>280</sup>

Changes made to the economic system also had perhaps an even greater effect on the native’s power during this time. Bourbon economic reforms aimed to revitalize colonial industries and restructure the taxation system in order to direct as much capital as possible into

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<sup>278</sup> For a study on the detrimental impact of the expulsion of the Jesuit order and the impact on the Nahua intellectual elite see Argelia Segovia Liga, “The Rupture Generation” Nineteenth-century Nahua intellectuals in Mexico City, 1774-1882” (Ph.D. Dissertation, Leiden University, 1999), 98-117.

<sup>279</sup> For the specific regulations on the suppression of the powers of the native nobles and the new institution of the *Intendentes* and their *subdelegados* see *Real ordenanza para el establecimiento é instrucción: de intendentes de ejército y provincia en el reino de la Nueva-España* (Madrid: Imprenta Real, 1786), folios 15-23.

<sup>280</sup> The reactions of indigenous communities and their local nobles often led to violence, especially after some of the economic and agricultural reforms. For one instance of a violent rebellion against the 1764 Bourbon monopolization of tobacco which caused outright violence and push back from native frustrations in the Papantla region. See Jake Frederick, *Riot! Tobacco, Reform and Violence in Eighteenth-Century Papantla, Mexico* (Sussex: Sussex Academic Press 2019).

the hands of the King. To do this, the King seized control of the local treasuries and the *cofradía* accounts resting their control out from under the native nobles. Spain also forced rural towns to pay extra fees to the *subdelegados* for conducting elections, for operating religious confraternities, and for a new education system. The King directed officials also to create more productive workers by strictly disciplining the natives accused of crimes of religious heterodoxy, unruly public rituals, and even offenses against Catholic concepts of proper Christian sexuality.<sup>281</sup> In a wave of what has been called a “second conquest,” the native people, once again worked tirelessly for the Spanish King’s profit.<sup>282</sup> Although the Bourbon reforms did away with the economic servitude that had been allowed under the *repartimiento* system, their continual control of community resources left the natives in arguably the same position.<sup>283</sup>

Moreover, the social reforms of the Bourbon period had a tremendous impact on the native people’s ability to retain their own traditional identity or agency. Some of the most significant of these included prohibiting local festivals or fiestas that they perceived as a drain on local economies and also instituting a Spanish language only policy for any official business, education, or religious institution which took away the need to teach indigenous languages and further marginalized Nahuatl as an official recognized legal language.<sup>284</sup> As opposed to their Habsburg predecessors, the Bourbons did not look to the native elites as cultural or linguistic

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<sup>281</sup> For the best study of how the later 18<sup>th</sup> century enlightenment impacted on the definitions of these new “superstitious practices” and their punishment by the Archiepiscopal courts of the *Provisorato de Indios* in Mexico see Gerardo Lara Cisneros, *¿Ignorancia invencible?: superstición e idolatría ante el Provisorato de Indios y Chinos del Arzobispado de México en el siglo XVIII* (México, D.F.: Universidad Nacional Autónoma de México, Instituto de Investigaciones Históricas, 2015).

<sup>282</sup> Yannakakis, *The Art of Being in-between*, 164.

<sup>283</sup> Peter Guardino, *The Time of Liberty: Popular Political Culture in Oaxaca, 1750-1850* (Durham: Duke University Press, 2005), 91-121.

<sup>284</sup> Segovia Liga, “The Rupture Generation,” especially “7. 7.1 *Ihcuac tlahtolli ye miqui* (When a Language Dies): The Decline of the use of Nahuatl in Bureaucratic and Legal Spheres in Mexico City,” 244-249.

mediators, rather more than ever, they expected these individuals to act as hispanized Spanish puppets who served to spread Hispanicism to their native commoners, or *macehual* counterparts.<sup>285</sup> In order to unify their very diverse American empire, the Bourbon house sought to replace the various cultural practices previously permitted during the early Habsburg colonial period with a standardized expectation of a unified Spanish linguistic and cultural lifestyle.

All of these radical systemic changes lead to a great period of social unrest during the late 18th and early 19th centuries which culminated in the Constitutional reforms of 1812 and the subsequent Independence movements in Mexico (1810-1821). Although these periods also were motivated by a desire for freedom and equality, by removing Mexico from Spanish administration, the native people once again lost more of the special protections that they had enjoyed before. Due to the exploding political and social changes brought about by the French Revolution and the Napoleonic invasion of Spain, the revolutionary political ideas of those like John Locke, the Baron of Montesquieu, and Jean Jacques Rousseau spread rapidly through the Spanish empire.<sup>286</sup> These ideas advocated for sovereignty in the hands of citizens, reductions in the power of monarchs, reduced simply to the executive branch of government, and the creation of checks on absolute powers which held monarchs accountable to other offices of government, and of course the new ideas that all men should be viewed equally under the law.<sup>287</sup> As the values of the Enlightenment flowed through the Spanish leadership into New Spain, there arose

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<sup>285</sup> Yannakakis. *The Art of Being in-between*, 162.

<sup>286</sup> What some scholars have terms a Creole Nationalism was born out of the later colonial elite's interpretations of these dramatic changes brought about with the French Revolution. For the classic study on Creole nationalism see, David Anthony Brading, *The First America: The Spanish Monarchy, Creole Patriots, and the Liberal State 1492-1867* (Cambridge: Cambridge Univ. Press, 2004). For the best single study of these intellectual impacts of the enlightenment on the indigenous elite in Colonial Mexico see Peter B. Villella, *Indigenous Elites and Creole Identity in Colonial Mexico, 1500-1800* (New York: Cambridge University Press, 2017).

<sup>287</sup> Borah, *Justice by Insurance*, 393.

not only an uneasiness with the political, economic, and social realities of Mexico, but also the legal institutions that upheld them. Legal reform brewed under the surface of the American world. The vulnerable Spanish monarchy faced maintaining order and control over the native people while the natives faced functioning within a new reality in which they would lose their General Indian Court, their special *protector*, and the valuable role of their traditional native intermediaries.

### **Bourbon Legal Reforms: The General Indian Court, *El Protector*, and the Native Elite**

The House of Bourbon supported its social, economic, and political reforms by creating a tremendous shift in the Spanish legal system. The trend of centralizing all power, including legal powers, directly into the hands of the King is considered a distinct mark of the Bourbon enlightened absolutism.<sup>288</sup> As such, throughout the 18th and 19th centuries in New Spain, all legal traditions and institutions that placed the power of litigation into the hands of the natives and local forms of governments instead of the Crown were abolished. One significant change in the legal process that underlined many systemic changes included moving away from accepting local and indigenous *costumbres* (customs) as valid legal documentation for community defense.<sup>289</sup> As described in Chapter Two, the colonial legal system before the Bourbon Reforms had allowed for native custom and tradition to be upheld as long as it did not contradict Catholic values. However, during the 18th century the courts increasingly disregarded local indigenous customs replacing them with the universal hispanizing policies of the Bourbon Kings.

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<sup>288</sup> The Spanish colonial bureaucracy before the period of the Bourbon Reforms was characterized by a decentralized power structure with competing and overlapping jurisdictions and privileges. For a good source to understand this system pre-Bourbon Reform see Brian Hamnett, *The Mexican Bureaucracy Before the Bourbon Reforms, 1700-1770: A Study in the Limitations of Absolutism* (Glasgow: Institute of Latin American Studies, University of Glasgow, 1979).

<sup>289</sup> Yannakakis, *The Art of Being in-between*, 127.

This legal transformation can be seen reflected in the many of the royal *cédulas* sent to the New World beginning as early as 1721. On December 13, 1721 the King sent a royal order to the Audiencias in the New World that reinstated the supremacy of royal law and the expectation that those laws should be interpreted literally and absolutely.<sup>290</sup> Later, in 1742 the Viceroy of New Spain received similar stern instructions from the Council of the Indies that read, “You are to observe without exception the laws of the Kingdom, no matter the custom introduced or intended by the Viceroys and Ministers.”<sup>291</sup> Spanish officials, jurists, and councilmen embraced these orders with great enthusiasm and launched many campaigns in favor of *la potestad legislativa* (legislative power).<sup>292</sup> For instance, in 1765 the jurist, Juan Francisco de Castro wrote in his work, *Discursos críticos sobre las leyes y sus intérpretes*:

It is more useful for the republic to adorn itself with the laws that are the fruit of the sleepless nights of our wise legislators than to vacillate due to a system of law that is so uncertain and rife with variations, as is the case with customs...it would therefore serve the public peace to banish all custom since it is derogatory to the law.<sup>293</sup>

As every branch of the Spanish government continued ideologically moving away from legitimizing local and native legal customs and toward assimilating these communities into the Spanish nation, the legal structures like the General Indian Court, *El Protector de Indios*, and native intermediaries remained an obstacle, and the colonial government worked towards their

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<sup>290</sup> Ibid, *Acuerdos del extinguido cabildo de Buenos Aires* Archivo General de la Nación, ser. 3, Vol.4, (Buenos Aires: Talleres gráficos de la Penitenciaría nacional, 1907), 3ª Serie, Vol. .4, folios 606v-609r.

<sup>291</sup> Yannakakis, *The Art of Being in-between*, 127; also see *Recopilación de Leyes de Indias*, Ley 1, Libro II, 1792.

<sup>292</sup> Ibid., 128.

<sup>293</sup> Juan Francisco de Castro, *Discursos críticos sobre las leyes y sus intérpretes* (Madrid, Por J. Ibarra, 1765), 1:118-119.

eventual disappearance. This attack against these legal protections represented a tremendous loss for the native populations in many ways.

**Serious Legal Setbacks: Losing the General Indian Court.** The official royal order to close the doors of the General Indian Court came in 1820 as a way to once again instate the provisional functioning of the Spanish Constitution of 1812.<sup>294</sup> Under the Constitution drafted by the liberal activist Cortes de Cádiz, the legal system abolished the General Indian Court in order to ensure “the equality of rights among the European Spaniards and those overseas.”<sup>295</sup> However, this *igualdad* or equality, according to Borah, came at a very great cost to the native people. He points to the loss of protection in the form of the *Juzgado General* and the services of the half real as contributing factors to the native decline into what became a severely impoverished peasantry in the 19-20<sup>th</sup> centuries.<sup>296</sup> He says that as Spanish officials seized native lands for the purpose of nation building, any abuse that the Indians experienced under their *caciques* or *principales* only amplified under Spanish authorities and became far more difficult to defend against with no court specifically designed to hear cases from the Indians.<sup>297</sup> Borah references two liberal advocates of the time, Justo Sierra O’Reilly and Jose Maria Luis Mora, who spoke emphatically on the negative effects of the change of legal status and the removal of the General

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<sup>294</sup> Borah, *Justice by Insurance*, 406.

<sup>295</sup> Cortes de Cádiz, *Diario de las discusiones y actas de las Córtes*. Vol. 2. (Cádiz: En la Imprenta Real, 1811), 418. The original Spanish reads, “igualdad de derechos de los españoles europeos y ultramarinos.”

<sup>296</sup> Borah, *Justice by Insurance*, 412.

<sup>297</sup> *Ibid.*, 412.

Court on the Indians.<sup>298</sup> Without the Court and its special protections, the native's voices were silenced and the Spanish officials took their lands without consequence.

In addition to simply losing access to due process, Borah also mentions the losses surrounding the payment of the half real legal insurance system. As the revolution in Mexico reached its peak, the provisional *junta* of the Mexican Liberal Party began negotiating a new system of governmental operation. In the early months of 1822, they addressed the special taxes and services provided to the Indians. Outside of the General Indian Court and its employees, this tax known as the “half-real” covered the costs of the salaries of the court's ministers, and another contribution known as the *medio real de hospital* allowed the Indigenous peoples access to a specialized Indian hospital, and a separate real and a half tax contributed to the payment of funds for community functions in their Indigenous town. On February 21, 1822, the junta issued a decree that abolished all of these services and the taxation that supported them.<sup>299</sup> However, the junta did enact provisions for the native populations stating that the Indians should be accepted into all hospitals as every other citizen. Nevertheless, the new governmental authorities realized that many of these taxes provided essential services to the indigenous peoples, so they agreed to temporarily continue supporting the School of Anatomy and General Indian Hospital financially to assist in the transition between the cessation of these specialized services and the creation of new national ones theoretically open to all new citizens, not just the Indigenous peoples.

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<sup>298</sup> Ibid., 412. cit. Justo Sierra O'Reilly, “Consideraciones sobre el origen, causas, y tendencias de la sublevación de los indígenas, sus probables resultados y su posible reducción.” *El Fenix*, Campeche, July 25, 1849; and Jose Maria Luis Mora, *México y sus revoluciones*, 3. Vols. (México, Porrúa, 1986). I: 67-73; 168-184.

<sup>299</sup> Ibid, 405. See Mexico; Manuel Dublán and José María Lozano, *Legislación mexicana; ó, colección completa de las disposiciones legislativas expedidas desde la independencia de la república, [1687-1902]*. (México: Imprenta de E. Dublan, 1876), Vol. I: 596; Vol. 2 (Mexican Empire, 1822-23): 315-318, 329-331; also see Lucas Alaman, *Disertaciones sobre la historia de la república mejicana: desde la época de la conquista que los españoles hicieron a fines del siglo XV y principios del XVI de las islas y continente americano hasta la independencia*. (México: Jus, 1969), Vol. 5: 298-299.

Although the independent Mexican government did consider the indigenous populations in this transition, the poverty and low social status that the native people found themselves occupying in the new system at the turn of the 19th century inescapably marginalized them even more, setting them further back in comparison to the Spaniards than they had been during the later colonial regime.

**Another Harsh Blow: Losing *El Protector de Indios*.** The office of the *protector de Indios* worked hand in hand with the General Indian Court and the services provided by the half real levy. Of course, the courts employed the individual in this role to provide legal representation for the native people in the court system while also providing legal counsel and direction for their legal cases. Because the Indians were initially unfamiliar with the Spanish legal system, Spanish language, and even Spanish law, the assistance provided by the *protector* was considered essential during the early colonial period in order to ensure that justice was served in native cases.

However, after the Enlightenment reforms, the Constitution of 1812, and the Mexican declaration of Independence in 1821, the distinct status of the Indigenous people as a legal minority within the legal system no longer fit into the changing political philosophy. It was especially the decrees of the Constitution of Cadiz of 1812 that really brought into the question the need for these continued special legal institutions for the indigenous peoples of the New World, if that is, they were now considered to be free and equal “citizens” with all of the Spaniards. In effect these decrees did away with the old caste system of the Habsburg period and eliminated the distinctions of race and caste, declaring all now were equally Spanish citizens. This is why when the territorial authorities in the New World Audiencias asked the royal



leadership in January 1812 if the *protector de indios* fit into the new constitutional system, they sent back a royal cédula which stated,

...Not only have the Indians emerged from their state of minority to which before they were subject, but also they should be equal in all else to Spaniards of both hemispheres and for this same reason the office of *protector de indios* should not exist.<sup>300</sup>

According to Charles Cutter in his own study of the office of the *Protector de Indios* in colonial New Mexico, "undoubtedly, the absence of the *protector de indios* served to further hinder the Indians' ability to secure legal redress."<sup>301</sup> Most often, the impact of the loss of the services of the *protector de indios* led to negative outcomes for the Indigenous peoples, mostly in the way of land seizures. With no overt protections, Indians lost their lands more frequently to Hispanic encroachment on what were once communal lands at a quickening pace. Cutter claims that the native communities of New Mexico felt the loss of the *protector* deeply and points to appeals made by the pueblo of San Juan in 1822 to protect them from an abusive priest and his extortions for labor and services. The natives claimed that without a protector in this case, they were, "as orphans because we do not understand Castilian well, and because our understanding [of legal matters] is not as complete as that of the *vecinos*."<sup>302</sup> Nevertheless, the native people felt the loss of the *protector de indios* strongly and his absence forced them to step forward and fight even harder on their own without many legal remedies or assistance.

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<sup>300</sup>Cutter, *The Protector de Indios*, 99; also see AGN, *Reales Cédulas* Vol.4. folio 900r.

<sup>301</sup>*Ibid.*, 103.

<sup>302</sup>*Ibid.*, 99. Cutter cited "Petition of Indians of San Juan, [Chihuahua]," 1 January 1822, MANM Vol. I, folio, 1184.

**The Final Loss: Losing their Native Intermediaries.** Finally, governmental structures during the Bourbon era and beyond shifted from allowing the legal existence of two separate legal communities (the Spanish republic and the Indian republic) to coexist and meld into only one (the Mexican). After the King officially mandated all public business be performed in Spanish, the need for indigenous intermediaries as interpreters and the role of the native elite as advocates became obsolete. As stated by Yanna Yannakakis, “the history of the role of native nobility, although sometimes exploitative, generally served to mediate between litigants and Spanish officials; this role was almost always viewed as a collective effort, and an interethnic affair, and regulated by cultural bonds of debt and obligation.”<sup>303</sup> Nonetheless, as Borah mentioned, however bad as the abuses of the native elite were, their absence left a void filled by even worse Spanish abuse.<sup>304</sup> Before, the native communities held indigenous intermediaries responsible, as described in Chapter Three, for protecting the culture and identity of the Indigenous communities through the legal and political systems. However, due to the added layer of bureaucracy that came with the intendancy system and the mandated Spanish-only laws for the conducting of legal cases, these native officials became all at once debilitated and marginalized even more.

### **What Did This Legal and Political Shift Represent?**

The shock to native communities that these abrupt legal changes caused is undeniable. For the previous three centuries, the indigenous people had learned, adapted, and used the unique Spanish Habsburg legal system to not only secure their own rights as colonial citizens but also to

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<sup>303</sup>Yannakakis, *The Art of Being in-between*, 121.

<sup>304</sup>Borah, *Justice by Insurance*, 396.

participate in the construction of Spanish colonial society as a whole. Then, with one political shift, everything changed, leaving them arguably worse off than before.<sup>305</sup> Still, the legal revisions of the Bourbon House and the Independence Movement did not simply represent legal, political, and economic setbacks for the native members of the Mexican nation. Instead, this sudden changed and the Indian peoples' reaction to it speaks to a far larger story belonging to the indigenous people. The legal reform that started in the early 18th century served both to emphasize the power and the agency of the Nahua people in the early colonial era and also highlight their ever continuing adaptability and aptitude that supported them in continuing to act and influence into the 19th century and beyond.<sup>306</sup>

Certainly, the Spanish conquest of the Americas came as a devastating blow to the indigenous nations that were already established on the continent. As referenced in Chapter Two, the Aztec people specifically had already formed a complex system of government, law, and society. After the arrival of Cortes, conquistadors, and the religious orders, it seemed at first that their new reality under Spanish rule would be one of slavery in the name of economic growth and subservience and cultural loss in the name of religion. However, thanks to reforms largely brought about by advocates like Fray Bartolomé de las Casas and also the legal integrity of the King himself, the native peoples found an opportunity to enact change and defend their communal interests. While being highly underestimated by Spanish law makers and provided with the assistance necessary to learn the new systems in which they functioned, the native people learned to litigate tenaciously throughout the 16-19th centuries. By the 1700's, the legal

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<sup>305</sup>Ibid., 396-412.

<sup>306</sup> Again, for the renewed advocacy of a final "rupture generation" of Nahua nobles, leaders and intellectuals, and their desperate attempts to adapt to and battle the negative impacts of these Bourbon and Early National Mexican reforms see Argelia Segovia Liga, "The Rupture Generation," 104-149.

system had become, according to Brian Owensby, the principle way in which they defended their liberty, land, and autonomy.<sup>307</sup> The Indians, though shaken, chose to rise and fight with the tools they had been given and they did so effectively as we have seen.

The loss of the special legal status and of their direct political influence ultimately emphasizes the competency and impact that the native people had created in the period before the Bourbon Reforms in two ways. First, the stark contrast between the way that the native people successfully secured their voice and their rights in the Habsburg colonial period versus the Bourbon era goes to show just how proficient and effective they had become in learning to navigate this new legal system. Borah remarks that despite the obvious shortcomings of the half-real court and their special privilege status, the native people used the legal system masterfully to protect against provisional governors and local Spanish land abuses. He points to the large number of cases brought before the General Indian Court despite the often lengthy journey to Mexico City to underscore the value that the natives placed on using this avenue of legal defense.<sup>308</sup> Owensby also comments on the way that in just a short time, law and legal action had become a central aspect of the Indian's lives and that they quickly adapted to using legality as a way to both bridge the distance between the Spanish and the Indians while also creating boundaries.<sup>309</sup> By connecting themselves to their distant King and appealing to the rights that he promised to them, native communities and individuals skillfully acted on their own behalf for their own justice. Similarly, as the indigenous people proved their versatility, capability, and power through legal action in the Habsburg colonial period, when the Spanish administration

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<sup>307</sup>Owensby, *Empire of Law*, 296.

<sup>308</sup>Borah, *Justice by Insurance*, 410.

<sup>309</sup>Owensby, *Empire of Law*, 296.

removed the unique legal institutions and status; once again, the Indians responded in a very organized and powerful way. Charles Cutter notes in the final chapter of his own work that despite the great changes of the late colonial era, the familiarity with the legal system that the Indians had acquired in the centuries before actually carried over into 19th century, and that the native people seem to have remained confident in their abilities to further their causes and pursue justice.<sup>310</sup> Yanna Yannakakis also observes how the early General Indian Court had served like a school where the indigenous people, through the early colonial years, learned to use the laws even as their status changed.<sup>311</sup> Contrary to a traditionally essentialist view of the native people, they continued to maneuver impactfully within Spanish society and participate in defending their own liberties regardless of the complex system they found themselves in despite their initial losses of special privileges.

In the end, although this project contains many sources and is a comprehensive study of the impactful relationship that the native populations of Central Mexico developed with the King of Spain, the findings of this thesis are, in my estimation, only the tip of the proverbial iceberg. There is much more to be done in the area of the study of the indigenous participation in and navigation of colonial society. However, it is my hope that more study will be done on the active roles that these members, often overlooked, had in influencing the society in which they lived. Constant examination of the extant archival record of the lives of everyday members of the colonial structure is key to accurately reconstructing the past. It is my hope that this and other later studies will lead into a greater understanding of the true Indigenous actors in the pivotal, Spanish colonial effort, and in so doing, it will continue making their voices heard.

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<sup>310</sup>Cutter, *The Protector de Indios*, 103.

<sup>311</sup>Yannakakis, *The Art of Being in-between*, 122.

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*Petición que hacen los naturales de este pueblo para que se les permita hacer una sementera de maíz, de ciento cincuenta brazas cada año, a Don Melchor de Guebara su cacique, 1576, AGN, Ramo de Indios, Vol. 1, Exp. 71, folio 27v.*

*Mandamiento a Lorenzo de Luna Indio Principal para que averigüe sobre las tierras que tiene en términos de Ocuila y Jalatlaco, 1577, AGI, Ramo de Indios, Vol. 1, Exp. 109, folios 40v-41r.*

*Para que el Alcalde Mayor de Tlaxcala no consienta sea compelido Luis, Indio, a volver a un obraje sin su voluntad, AGN, Ramo de Indios, 1582, Vol. 2, Exp. 114, folio 29r.*

*Para que los naturales de dicho pueblo no sean obligados al servicio personal por los Principales del pueblo de Tetipac, AGN, Ramo de Indios, 1582, Vol. 2, Exp. 318, folio 78v.*

*Al Alcalde Mayor de Tlaxcala a fin de que ordene que a Doña Brígida, India, natural de Tlaxcala no se le quiten sus bienes ni se le haga agravio. AGN, Ramo de Indios, 1583, Vol. 2, Exp. 433, folio 103v.*

*Para que el Alcalde Mayor reciba la información que los naturales de Huamantla dieron contra Diego Muñoz a fin de que sea castigado, AGN, Ramo de Indios, 1583, Vol. 2, Exp. 454, folio 109r.*

*Se concede licencia a Juana Núñez, India, para tener en sus tierras doscientos borregos, guardando la ordenanza, 1583, AGN, Ramo de Indios, Vol. 2, Exp. 583, folios 135r-v.*

*Al Alcalde Mayor de Metztlán, para que sea amparado Juan Acatzin en las tierras que heredó se sus padres en la parte que llaman Tecoloco, Tlamaya, Zacualtitlan Y Tlaltecomate, 1583, AGN, Ramo de Indios, Vol. 2, Exp. 1002, folio 230v.*

*Mandamiento al Alcalde Mayor de Yanhuitlan a fin de que Don Juan de Orozco, gobernador de Soyaltepec, no obligue a los naturales a servicios personales, sin expreso mandamiento de Su Señoría, 1583, AGN, Ramo de Indios, Vol. 2, Exp. 1005, folio 231r.*

*Mandamiento al alcalde mayor de Yanhuitlan, para que no admita que el escribano de su juzgado cobre derechos a los naturales por escribir las certificaciones, 1589, AGN, Ramo de Indios, Vol. 4, Exp. 158, folio 51r.*

*Mandamiento al corregidor de Tlaltlauquitepec, para que informe la causa que tienen los naturales del pueblo de San Francisco para pedir servicio de indios, indias, gallinas, y otras cosas para proveimiento del mesón, 1590, AGN, Ramo de Indios, Vol. 4, Exp. 831, folios 225r-v.*

*Mandamiento al Alcalde Mayor de Yanhuitlan, para que las causas y libranzas y asientos de poca consideración que entre ellos se ofrecieron y estuvieren pendientes ante el gobernador se las deje conocer a los naturales, 1590, AGN, Ramo de Indios, Vol. 4, Exp. 957, folio 256v.*

*Reserva del tributo de repartimiento por tiempo de dos años, y manda a los oficiales que no se den, se pidan, ni lleven indios de servicio, 1592, AGN, Ramo de Indios, Vol. 6, Exp. 348, folio 93v.*

*Orden al alcalde mayor del partido de los valles, a fin de que a los indios de Temapache y sujetos, no se cobre el servicio de los cuatro reales de su majestad, por el tiempo de dos años, 1594, AGN, Ramo de Indios, Vol. 6, Exp. 726, folio 195r.*

*Licencia a Don Fernando de Alvarado, principal de Teposcolula, para montar a caballo, 1594, AGN, Ramo de Indios, Vol. 6, Exp. 821, folio 220r.*

*Licencia a Juan Vizcaíno, cacique del real de minas de Sichu, para portar arcabuz, 1632, AGN, Ramo de Indios, Vol. 10, Exp. 18, folio 301v.*

*Su Excelencia declara pertenecer el conocimiento de la causa criminal de los naturales de Ixtlán al Alcalde Mayor de Antequera por ser de su jurisdicción al cual mando que en la posesión de las tierras que piden guarden los decretos aquí citados, jurisdicción Oaxaca, pueblo de Itepec, 1631, AGN, Ramo de Indios, Vol. 10, Exp. 141, folio. 358r.*

*Mandamiento al Alcalde Mayor de Veracruz a fin de que cumpla la instrucción y en su conformidad no haga más visitas al pueblo de Atorpay y Chicuaztepec, 1632, AGN, Ramo de Indios, Vol. 10, Exp. 142, folio 359v.*

*Mandamiento del Tribunal de Indios, en el pleito con los naturales de Ixtlán, Capulalpa y Guelatao, 1632, AGN, Ramo de Indios, Vol. 10, Exp. 147, folio 362r*

*Para que Antonio de Miranda justicia mayor de Los Angeles saque del obraje en que están Juan Miguel y Ana María su mujer y no consienta sean detenidos en el, 1633, AGN, Ramo de Indios, Vol. 10, Exp. 149, folio 363r.*

*Al Alcalde Mayor de Michoacán a fin de que ampare a los naturales de Comanja y otros pueblos de la provincia en la posesión de sus tierras, 1633, Ramo de Indios, Vol. 10, Exp. 161, folio 370v.*

*Para que la justicia de su majestad, no impida a Melchor de los Reyes, indio natural de Manila hacer y vender aguardiente de magüey, 1630, AGN, Ramo de Indios, Vol. 10, Exp. 212, folio 115r-v.*

*Mandamiento de lo determinado en el Tribunal de Indios, en el pleito con los naturales de Ixtlán, Calpulalpan y Guelatao, en que se declarase terrasgueros de los de Ixtlán y haberles de pagar seis pesos de renta cada año y reconocer a acudir con flores y ramos el día de Santo Tomas que es la fiesta de su advocación y demás obligaciones, jurisdicción de Oaxaca, pueblo de Ixtlán, 1634, AGN, Ramo de Indios, Vol. 12, Exp. 101, folio. 58v.*

*Su Excelencia concede licencia a Francisca Moreno, para que libremente pueda vender en la plaza pública, pulque blanco y las justicias de su majestad no se lo impidan, AGN, Ramo de Indios, 1651, Vol. 16, Exp. 52, folio 48r.*

*Orden a la justicia de Santa Maria Malacatepec a fin de que ampare los contenidos de este mandamiento en su libertad, sin consentir de las personas de quien se quejan los obliguen a vivir en la parte que refieren contra su voluntad, AGN, Ramo de Indios, 1654, Vol. 17, Exp. 19, folios 30v-31.*

*Orden para que la justicia de Chichicapan, constando de relación verdadera, lo que pide Martin Gómez, Principal de san miguel, compela a las personas de quienes se queja le restituyan los bienes que le han quitado o el valor de ellos, AGN, Ramo de Indios, 1654, Vol. 17, Exp. 25, folios 36v-37r.*

*Para que la justicia de Antequera, ampare en su libertad a Juan García, natural de Santa Catalina Xochitepec, y no consienta que la persona de quien se quejan por sí ni por otra se sirva de él contra su voluntad, 1653, AGN, Ramo de Indios, Vol. 19, Exp. 10, folios, 6 - 6v.*

*Se ordena al alcalde mayor de la jurisdicción de Teposcolula, averigüe si son propiedad de Mateo Vázquez, principal del pueblo de San Pedro Tiqui, sujeto de San Mateo del Peñasco,*



*las tierras en donde pretende fundar un molino de trigo, 1686, AGN, Ramo de Indios, Vol. 28, Exp. 271, folios 228r-228v.*

*Se ordena al alcalde mayor de la jurisdicción de Teposcolula, no permita que los naturales de Santiago Nuyoo estropeen las plantas que los del pueblo de Santa Maria Ocotepec tienen en un pedazo de tierra que el pueblo de Chalcatongo les dio para que lo cultivasen, 1685, AGN, Ramo de Indios, Vol. 29, Exp. 97, folios 89v-90r.*

*El virrey aprueba y confirma la elección de gobernador y demás oficiales de república del pueblo y cabecera de San Nicolás Actopan, hecha por este presente año, 1763, AGN, Ramo de Indios, Vol. 59, Exp. 273, folio 290r.*

*Mandamiento del virrey a la justicia más inmediata a la jurisdicción de Teposcolula para que averigüe con todo exactitud los asuntos sobre tierras del pueblo, presentado por el regidor común y naturales del pueblo de San Miguel Tizaá, 1769, AGN, Ramo de Indios, Vol. 61, Exp. 352, folios 324v-327v.*

*Mandamiento del virrey a la justicia más inmediata a la jurisdicción de Teposcolula para que averigüe con todo exactitud los asuntos sobre tierras del pueblo, presentado por el regidor común y naturales del pueblo de San Miguel Tizaá, AGN, Ramo de Indios, 1769, Volumen 61, Exp. 352, folios 324v-327v.*

*El virrey manda se devuelvan a la subdelegación de Teposcolula las diligencias que su antecesor práctico, relativas al entero del subdelegado que corresponde a los Indios de Xocotipac y manda a dicho subdelegado, acompañado del de Teutiltan, verifique dicho intero, on citación de los interesados y excelente lo demás que se previene, 1800, AGN, Ramo de Indios, Vol. 70, Exp. 157, folios 175r-176v.*

*El virrey accede a la solicitud de los naturales del pueblo de Xocotiapac, manda al subdelegado de Teposcolula haya reconocimiento de las tierras, pastos, y aguas que puedan concederse les con el menor perjuicio de los colindantes, 1796, AGN, Ramo de Indios, Vol. 70, Exp. 78, folios 68v-69r.*

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*Mandamiento y merced del Virrey sobre que amparen a los indios en sus tierras, 1542, AGN, Ramo de Mercedes, Vol. 1, Exp. 324, folio 150r.*

*Mandamiento y merced del Virrey sobre una disputa de tierras de los indios de Tepeapulco, 1544, AGN, Ramo de Mercedes, Vol. 2, folios 253r-253v.*

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*Carta del virrey Don Luis de Velasco II al Rey Felipe II*, 15 de junio, 1592, Biblioteca Nacional de España (BNE), MS 3636, folios 127v-128v.

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