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The Ecclesiastical Court of San José de Toluca, 1675-1800

A dissertation submitted in partial satisfaction of the requirements for the degree

Doctor of Philosophy

in

History

by

Francisco Laguna Álvarez

Committee in charge:

Professor Christine Hunefeldt, Chair
Professor Nancy Caciola
Professor Milos Kokotovic
Professor Eric Van Young
Professor Dana Velasco Murillo

2021

The thesis of Francisco Laguna Álvarez, is approved, and it is acceptable in quality and form for publication on microfilm and electronically.

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2021

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[1] Richard Rice, *The Parish Book of Chant, second edition* (Richmond: Church Music Association of America, 2013), 174-176.

VITA

2012 B.S. in History – Universidad de Alcalá, Spain

2013 M.S. in History – Universidad de Alcalá, Spain

2015-2017 Reader, University of California San Diego

2017-2021 Teaching Assistant, University of California San Diego

2021 PhD in History – University of California San Diego

ABSTRACT OF THE DISSERTATION

The Ecclesiastical Court of San José de Toluca, 1675-1800

by

Francisco Laguna Álvarez

Doctor of Philosophy in History

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Professor Christine Hunefeldt, Chair

This dissertation studies the development of ecclesiastical courts in medieval Europe and their implementation in the viceroyalty of New Spain. In order to understand the repercussions that religious tribunals had on local colonial society, I focus on the ecclesiastical court of San José

de Toluca, in the archdiocese of Mexico, from 1675 to 1800. In particular, I xvii analyze four criminal categories that this court prosecuted: right of asylum, cases against ecclesiastics, indigenous idolatry, and offenses against the sacrament of marriage.

First, right of asylum cases illuminate how the Church and the Spanish Crown negotiated the ecclesiastical jurisdiction in the Americas, and how ecclesiastical judges defended their privileges before royal officials. Second, accusations against ecclesiastics are key to explain the social and political interaction between indigenous communities and parish priests. These cases are also fundamental to understand how the Church maintained good moral customs in colonial society by correcting the misdemeanor of members of the clergy. Third, I study indigenous idolatry cases to explain how local ecclesiastical courts promoted the evangelization of indigenous peoples and eradicated religious unorthodoxy. Finally, the last criminal category I analyze relates to marital issues, which include crimes that threatened or violated the Catholic sacrament of marriage, including adultery, fornication, concubinage, and domestic violence. Put together, these four criminal categories allow us to understand the role of ecclesiastical courts in enforcing good customs, facilitating governance, promoting social harmony, and eradicating "public sins."

This dissertation argues that ecclesiastical courts, including that of San José de Toluca, were an essential piece in the governance of the Spanish Empire in the Americas. For the Spanish Crown, ecclesiastical courts were a useful tool to reinforce the *Patronato Regio*, administer justice in collaboration with royal officials, support the evangelization of indigenous peoples, settle disputes in indigenous towns that could develop into problematic rebellions, appease God's wrath, and to supervise the morality and sexuality of the colonial population.

Introduction: Local Religion and The Ecclesiastical Court of the City of San José de Toluca, 1675-1800

> God Our Lord has given us, in his infinite mercy and goodness and without our merit, a great part of this world… and considering ourselves more obliged than any other prince of the world to serve Him and to employ all the forces He has given upon us so He will be known and worshipped by the entire world as the True God and creator of all things, visible and invisible, we have brought the Holy Catholic Roman Church to the innumerable peoples who live in the Western Indies and other regions subjected to our rule… and we instruct all the Spaniards and *naturales* [Indians], and any other Christians who dwell in our kingdoms and lordships… to firmly believe in the mystery of the Holy Trinity, Father, Son and Holy Spirit, three persons and only True God, and the articles of the Holy Faith, and everything that the Holy Mother Catholic Roman Church teaches. And, if [some people], with a stubborn and obstinate spirit errs and refuses not to believe what the Holy Mother Church teaches, they will be punished with the penalties imposed by the law.[2]

This quotation from the *Recopilación de las Leyes de Indias* encapsulates well the formal religious purpose of the Spanish Empire: the evangelization of all the nations of the world. After the first Columbus travel to the Americas in 1493, the papacy recognized Spanish dominion over the New World, and exhorted them to spread the faith.[3] In 1507, the pope Julius II granted the Spanish Crown the right of patronage (*Patronato Regio*), a privilege that permitted the kings to intervene in all ecclesiastical matters in the Indies.[4] Thanks to this privilege, the Crown gained the right of choosing the ideal persons for all the metropolitan churches, cathedrals, monasteries, dioceses. However, the patronage entailed a series of responsibilities. In exchange for this right, the king, as patron of the Church, had the obligation to build and equip all the temples of the New World, implement the administration of the sacraments and doctrine, and had to guarantee the

[2] *Recopilación de leyes de los reynos de las Indias*, *1680* (Madrid: Ivlian Paredes, 1681), libro 1, tomo 1, ley 1.
[3] Ma. de Lourdes Bejarano Almada, "Las Bulas Alejandrinas: Detonates de la evangelización en el Nuevo Mundo," *Revista Col. San Lui*s vol.6 no.12 San Luis Potosí July/December (2016): 243.
[4] Eerdmans Brill, *The Encyclopedia of Christianity, Vol. 3* (Linden: William B. Eerdmans Publishing Company Brill, 2003), 177.

evangelization of the indigenous peoples.[5] Since the expansion of Christianity required proper punishment for those who rejected it, the Spanish Crown, in collaboration with the papacy, strove to implant ecclesiastical justice in the Americas. The prelates, mirroring the work of the papal court in Rome, maintained diocesan courts in their dioceses that heard ecclesiastical cases and that made the justice of the pope available to the faithful. When the Spanish monarchs sought to implement this system in the New World, they found several difficulties.

After the conquest of Mexico in 1521, the Spanish king tasked mendicant orders such as the Franciscans, Dominicans, and Augustinians with the huge process of evangelizing the indigenous peoples of the New World. The papal bull *Alias Felicis* of Leo X of 1521, and later the *Exponis Nobis Nuber* issued by Adriano VI, gave the regular clergy the right to preach, confess, baptize, excommunicate, and marry their parishioners as long as there was no bishop in the jurisdiction.[6] Empowered by these privileges, the orders created, reorganized, and controlled hundreds of indigenous towns named *doctrinas*, which became their centers of political power. The problem began when the Spanish Crown supported the establishment of the secular clergy in the Indies, with bishops and secular parish priests.[7] When the first bishop of Mexico, Juan de Zumárraga, arrived at Mexico City in 1528, he found his bishopric was under the power of the regular friars, who refused to accept his jurisdiction. The Spanish king understood that without the support of the mendicant orders, the evangelizing task would collapse in the absence of a solid secular clergy in the Indies. The monarchs were concerned about the unlimited growth of the

[5] Jorge E. Traslosheros, "Los indios, la inquisición y los tribunales eclesiásticos ordinarios en Nueva España. Definición jurisdiccional y justo proceso, 1571-c.1750" in Jorge E. Traslosheros y Ana de Zaballa Beascoechea (coords)., *Los indios ante los foros de justicia religiosa en la Hispanoamérica virreinal* (Mexico: Universidad Nacional Autónoma de México Instituto de Investigaciones Históricas, 2010), 51.
[6] Bejarano Almada, "Las Bulas Alejandrinas," 243.
[7] The term "secular" in this context refers to those clerics that were not part of a regular order.

regulars that limited the authority of the secular clergy they appointed. For this reason, throughout the sixteenth and seventeenth centuries, the Spanish Crown gradually supported the jurisdiction of the secular clergy over the regulars.[8] King Philip II, through a royal decree issued in February 1575, entrusted the ecclesiastical judges (*ordinarios eclesiásticos*), in collaboration with the royal justice, with the responsibility of eradicating indigenous unorthodoxy.[9] The Spanish Crown tasked the ecclesiastical authority with the duty of ensuring social order, public morality, and supervising indigenous customs.[10] These duties permitted the ecclesiastical justice to monitor sexual morality, economic activities, cultural expressions, and social relations in the colonial society.

Despite the attempts of the secular clergy and the Mexican bishops to subject the mendicant orders to their jurisdiction throughout the sixteenth century, the friars preserved their privileges. This situation changed when both the secular clergy and the royal officials sent complaints to the Spanish monarchs in the second half of the seventeenth century, protesting that the regulars used their privileges to disobey the *Patronato Regio*. In addition, Mexican bishops emphasized the regulars were no longer necessary since there were already secular clerics who could take care of the *doctrinas*. The dismantlement of the privileges of the mendicant orders occurred during the tenure of the archbishop Payo Enríquez de Rivera (1668-1680), who enacted radical measures to reinforce the episcopal jurisdiction through the appointment of eighteen

[8] Antonio Rubal García (coord.), *La Iglesia en el México Colonial* (Mexico: Universidad Nacional Autónoma de México, Seminario de Historia Política y Económica da de la Iglesia en México, Instituto de Investigaciones Históricas, 2013), 48-49.
[9] *Recopilación de leyes de los reynos de las Indias*, *1680*, libro 6, título 1, ley 35: “Por estar prohibido a los Inquisidores Apostólicos el proceder contra Indios, compete su castigo a los ordinarios eclesiásticos, y deben ser obedecidos y cumplidos sus mandamientos: y contra los hechiceros, que matan con hechizos y usan de otros maleficios, procederán nuestras justicias reales.”
[10] Ibid, libro 2, título 15, ley 83: "los gobernadores y justicias reconozcan con particular atención la orden y forma de vivir de los indios, policía, y disposiciones de los mantenimientos, y avisen a los virreyes o audiencias, y guarden sus buenos usos y costumbres en lo que no fueren contra nuestra sagrada religión."

ecclesiastical judges in the archbishopric of Mexico.[11] One of these tribunals was the ecclesiastical court of the city of San José de Toluca. This court started its activity in 1675, and heard ecclesiastical cases, granted matrimonial licenses, punished indigenous peoples in criminal matters that lacked gravity, validated, and resolved disputes related to testaments, and eradicated indigenous unorthodoxy.[12] This court served as an intermediary between the parishioners of the Toluca Valley and the diocesan courts of the Archbishopric in Mexico City. [13] Implementing local ecclesiastical courts ultimately reinforced the political control of the bishops and the Spanish kings, and monitored and supervised the good customs and morality of local colonial societies. Despite the friars' protests, the Bourbon Reforms established diocesan tribunals. The king Philip V (1700-1746) supported the creation of the ecclesiastical courts to better control the local populations, reduce the power of the mendicant orders, and to reinforce the power of the bishops under the control of the Crown.[14]

This dissertation studies the ecclesiastical court of the city of San José de Toluca from 1675 to 1800. In a complementary way, I include an assessment of some judicial cases prosecuted by neighboring religious courts in the Toluca Valley, such as that of Tenango del Valle-Calimaya, that also affected the city of San José de Toluca. From an institutional perspective, I explore the legal foundations and the development of local ecclesiastical courts in the archbishopric of Mexico. This work also examines the repercussions that the ecclesiastical court of San José de Toluca had on the colonial society through the analysis of four criminal categories.

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[11] Leticia Pérez Puente, *Tiempos de crisis, tiempos de consolidación: La catedral metropolitana de la Ciudad de México, 1653-1680* (Mexico: Pérez y Valdés, 2005), 244.
[12] Archivo Histórico del Arzobispado de México (AHAM), *Juzgado Eclesiástico de Toluca*, 1750, caja 67, expediente 47.
[13] Gustavo Watson Marrón, *Guía de documentos del Archivo Histórico del Arzobispado de México: del primer imperio a la república liberal: 1821-1862* (Mexico: Archivo Histórico del Arzobispado de México, 2004), 7.
[14] Rodolfo Aguirre Salvador, "El establecimiento de jueces eclesiásticos en las doctrinas de indios. El arzobispado de México en la primera mitad del siglo XVIII," *Historia Crítica* 36 (2008): 20.

First, I explore jurisdictional conflicts between ecclesiastical judges and royal officials through the analysis of right of asylum cases. Second, I use denunciations against ecclesiastics, mostly filed by indigenous peoples, to examine the social and political interaction between indigenous communities and parish priests. These cases are also fundamental to understand how the Church maintained good moral customs in colonial society by correcting the misdemeanor of members of the clergy, who were expected to behave exemplarily so the faithful could imitate them. Third, I study indigenous unorthodoxy to explain how ecclesiastical courts promoted the evangelization of indigenous peoples and eradicated heterodoxy. Superstition case also open a window onto indigenous devotions, culture, and social strategies of reciprocity and solidarity that I examine. Finally, the last criminal category I analyze relates to marital issues, which include crimes that threatened or violated the Catholic sacrament of marriage, including adultery, fornication, concubinage, and domestic violence.

This dissertation argues that ecclesiastical courts, including that of San José de Toluca, were an essential piece in the governance of the Spanish Empire in the Americas. For the Spanish Crown, ecclesiastical courts were a useful mechanism to enforce the *Patronato Regio,* and administer justice in collaboration with royal officials. When ecclesiastical laws or privileges such as the right of asylum proved to be a hindrance in the maintenance of social order, the ecclesiastical justice accepted the Crown's decision to restrict those privileges or to eliminate them when necessary, showing its subjection to the authority of the Spanish monarchs. Ecclesiastical courts operated as an extension of the episcopal (and papal) justice by protecting the jurisdiction of the Church and supporting the evangelization of Indians through the extirpation of indigenous unorthodoxy and the enforcement of religious instruction. The performance of these duties permitted ecclesiastical courts to penetrate the local colonial society, solving political

disputes in Spanish and indigenous towns, and ensuring social peace. In addition, the defense of the sacrament of marriage allowed ecclesiastical judges to influence moral and sexual relationships in the colonial society and to monitor families by reconciling married couples and by punishing offenders. Although ecclesiastical courts were key in the maintenance of the Spanish Empire, their most important duty, from a Catholic theological perspective, was the eradication of "public sins," such as idolatry, fornication, and adultery in order to avoid God's anger. The advantages of these tribunals were multiple: they facilitated political governance, maintained social peace, and secured spiritual protection.

1. Literature Review

1.1. Historiography of the Toluca Valley

Since the 1990s the Toluca Valley has received a growing attention from the colonial literature, specialized in regional, cultural, and institutional history. With an institutional and economic history approach Margarita Menegus wrote in 1994 *Del Señorío a la República de Indios. El caso de Toluca 1500-1600*, a work that explores the building of the indigenous *cabildo* (town council) in the early viceregal period, focusing on the continuities that existed between pre-Hispanic and colonial forms of indigenous political organization[15].

Also studying the institutional development of the region under Spanish rule, Rosaura Hernández Rodríguez surveys the political and institutional conflict between the Marquisate of the Valley of Oaxaca and the Spanish imperial authorities in the sixteenth century. After the

[15] Margarita Menegus Bornemann, *Del señorío indígena a la república de indios: El caso de Toluca 1500-1600* (Mexico: Consejo Nacional para la Cultura y las Artes, 1994). This author has also focused on the economic development on the region, covering the indigenous participation in local markets in the early and late colonial period in Margarita Menegus, "La participación indigena en los mercados del valle de Toluca a finales del periodo colonial," in *Circuitos mercantiles y mercados en Latinoamérica, siglos XVIII-XIX, edited by* Jorge Silva Riquer, Juan Carlos Groso and Carmen Yuste (Mexico: Instituto de Investigaciones Dr. José María Luis Mora, IIH-UNAM, México, 1995).

conquest of Mexico, conquistador Hernán Cortés received a huge land grant known as the Marquisate of the Valley of Oaxaca, that included the Toluca Valley. Concerned with the great extension of the state, the Spanish imperial authorities tried to limit the jurisdiction exercised by the Marquis and his descendants in their possession, questioning whether those lands legally belong to Cortés or the Spanish Crown.[16] The migration of Spaniards and mestizos (mixed people) to the region of Toluca was further analyzed by James Lockhart, who demonstrates in his work that Spanish migrants achieved a high social status, even over the local indigenous nobility, despite the high presence of native populations in the region.[17]

Moving from an institutional to a cultural perspective, Stephanie Wood, following the work of Sarah L. Cline and Miguel León-Portilla on Nahuatl testaments in Colonial Culhuacan[18], analyze the utilization of Christian imaginary in indigenous last wills. In her study, the author poses that indigenous women and men, wealthy and poor, of high status and low, all reflect in their testaments an acceptance of Catholicism.[19] Catherina Pizzigoni has written the most comprehensive and recent work on Toluca based on testaments to uncover issues of gender, language, land tenure, definitions, and kinship. Focusing on the analysis of last wills and the

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[16] Rosaura Hernández Rodríguez, *Toluca 1603: Vista de ojos* (México: El Colegio Mexiquense, 1997), 11. This book also includes a primary source, a *"vista de ojos"* (eye's view), that is to say, a walking tour through the surrounding villages of Toluca, made by the officials of the viceroyalty and the indigenous government of Toluca. The content of the document records the statements of the witnesses, and reveals the situation of the place with ethnographic details: the languages spoken in the region, number of inhabitants of each settlement, occupations, the limits of the town, the main economic activities, etc.

[17] James Lockhart, "Españoles entre indios: Toluca a finales del siglo XVI," in *Haciendas, pueblos y comunidades. Los Valles de México y Toluca entre 1530 y 1916,* edited by Manuel Miño Grijalva (México: Conaculta, 1991).

[18] Sarah L. Cline and Miguel León-Portilla (eds), *The Testaments of Culhucan* (Los Angeles: UCLA Latin American Center Publications, 1984).

[19] Stephanie Wood, "Adopted Saints: Christian Images in Nahua Testaments of Late Colonial Toluca," *The Americas*, Vol. 47, No. 3 (1991): 259-293.

household, Pizzigoni explores colonial spirituality, means of subsistence, production, consumption, property, and the physical and social configuration of the material units.[20]

Georgina Flores García, explores, from a social and cultural perspective, the lives of people of African descent in the Toluca Valley such as blacks and mulattos during the sixteenth and seventeenth centuries, centering on issues of labor, slavery, litigation, economy, and religious activities in local brotherhoods (*cofradías*).[21] Using testaments and other sources such as legal and economic documents, Flores García shows how wealthy Spaniards donated slaves to their brotherhoods to work as assistants to the local priest, thus providing a window to understand the relationship between religion, slavery, and the local economy.[22] Regarding religious brotherhoods, Karen Ivett Mejía Torres examines in a recent work the impact of cofradías in the economy of the Toluca Valley between 1794 and 1804, offering an economic and institutional study of late colonial cofradías and their credit activity. Mejía Torres demonstrates that the Bourbon Reforms in the eighteenth century did not mark the extinction of cofradías, since both the Crown and the Church still relied on the value of these organizations, because they were not only a mechanism for economic development but also a means to defend community autonomy before the increasing control of royal and ecclesiastical authorities in the eighteenth century.[23]

The study of local religion in the Toluca Valley is still scarce in the historiography. Gerardo Lara Cisneros is one of the main contributors in this field, with his work on the episcopal court of the Archdiocese of Mexico, the *Provisorato*, mostly studying indigenous idolatry cases.

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[20] Caterina Pizzigoni, *The Life Within: Local Indigenous Society in Mexico's Toluca Valley, 1650-1800* (California: Stanford University Press, 2012), 8.
[21] Georgina Flores García, *Catálogo y estudio introductorio de las personas de origen africano y afrodescendentes durante los siglos XVI y XVII en el valle de Toluca* (Mexico: Universidad Autónoma del Estado de México, 2017).
[22] Flores García, *Catálogo*, 40.
[23] Karen Ivett Mejía Torres, *Las cofradías en el Valle de Toluca y su relación con el crédito, 1794-1809* (México: El Colegio Mexiquense, 2014).

Although Lara Cisneros does not focus only on the Toluca Valley, he examines some cases of religious heterodoxy in indigenous towns in the Toluca region, while providing information on the local ecclesiastical courts.[24] Following the path of Gerardo Lara Cisneros, Jorge Cazad Reyes currently explores issues of popular religion and idolatry in the Toluca Valley, using as sources manuals written by the Spanish friar Jacinto de la Serna in the seventeenth century[25], and documents from the ecclesiastical court of Toluca.[26] Beyond these works, there are no monographs that profoundly study the role of the ecclesiastical courts in the Toluca Valley beyond its relations with popular religion and indigenous heterodoxy. This dissertation seeks to fill this gap by investigating the role of the ecclesiastical court of San José de Toluca to understand how this tribunal interacted with the local colonial society.

1.2. Local Religion, Evangelization, and Indigenous Cultural Continuities

The study of local colonial religion and evangelization has revolved around two historiographic approaches: cultural history and institutional history. The cultural history paradigm has focused on the newly created colonial identities and processes of adaptation and acculturation that occurred during and after the evangelization of the indigenous peoples. Institutional history examined the criteria that determined the actions of the Church from the analysis of its judicial foundations and theological concepts that defined the Christianization

[24] Gerardo Lara Cisneros, *¿Ignorancia Invencible?: superstición e idolatría ante el Provisorato de Indios y Chinos del Arzobispado de México en el siglo XVIII* (México: Universidad Autónoma de México, Instituto de Investigaciones Históricas, 2014). See also by this author, Gerardo Lara Cisneros, *El cristianismo en el espejo indígena. Religiosidad en el occidente de Sierra Gorda, siglo XVIII* (México: Archivo General de la Nación, Instituto Nacional de Antropología e Historia, 2002).
[25] Jacinto de la Serna, *Manual de ministros de indios para el conocimiento de sus idolatrías y extirpación de ellas (1656)* (Madrid: Impr. Del Museo, 1982).
[26] Jorge Cazad Reyes, "La religión popular en el Valle de Toluca, siglos XVII al XVIII: A través del *Manual de Ministros* de Jacinto de la Serna y los documentos del Juzgado Eclesiástico de Toluca" (Master's thesis., Escuela Nacional de Antropología e Historia, 2013).

process.[27] A common characteristic of these two tendencies is the incorporation of anthropological methodology (ethnohistory) in the analysis of indigenous imaginaries and beliefs.[28] Cultural historians have coined the terms "catholic heterodoxy," "local religiosity," "religious deviation," "popular religion," or "local religion," to describe this phenomenon.

A compilation edited by Martin Austin Nesvig, *Local Religion in Colonial Mexico*, gathers several scholars that exemplify some historiographic approaches to local religion. In this compilation, Carlos M. N. Eire, defines popular religion as a set of beliefs that are experienced and practiced, and not merely defined and prescribed. In this respect, he argues that cultural historians, anthropologists, and ethnographers shared a vision of popular religion as marked by binary components: clergy and laity, heterodoxy, and orthodoxy, urban and rural, the elites and the non-elites, the sacred and the profane. However, Carlos M. N. Eire contends that duality poses some problems. For instance, both the laity and the clergy took part in the same myths, rituals, and symbols, since the religious life of the laity was never distinct from or totally independent of the clergy, or vice versa.[29] In relation to this issue, William A. Christian poses in his study of local religion in Spain that popular devotion did not differ from that of the elite, and that the economy was not the factor that triggered religious devotion; rather it was the daily life problems and crisis that encouraged people to find a supernatural remedy. As he notes, both the rich and the poor; the

[27] Gerardo Lara Cisneros, "Superstición e idolatría en el Provisorato de Indios y Chinos del Arzobispado de México, siglo XVIII" (PhD diss., Universidad Nacional Autónoma de México, 2011), 31.
[28] In addition, this historiography has also examined the religious beliefs of popular marginalized groups in cities and towns, characterized by mixing public and private beliefs from Catholicism and different African, and Mesoamerican traditions.
[29] Martin Austin Nesvig (ed.), *Local Religion in Colonial Mexico* (Albuquerque: University of New Mexico, 2006), 21.

elite and the populace mostly shared the same devotion. For Christian, local religion was about community-centered devotions, locally specific saints, pilgrimages, shrines, and customs.[30]

However, not all scholars share this understanding of local religion. Brian Larkin argues that although William Christian's emphasis on Catholic practice in the local setting is admirable, "the concept of local religion privileges the study of extra liturgical practices so much that it ignores the powerful influence of liturgy."[31] In addition, Larkin criticizes Christian's view of modern religion as an instrumental tool to ensure their health, while ignoring Catholic's concerns about death, judgement, and resurrection. For this reason, Larkin studies cofradías at a local level to show Spanish perceptions of death rituals in eighteenth-century Mexico City. David Tavárez, analyzing local native religion in Oaxaca, argues that elements of popular or local religion are seen in the local foundational accounts and sites for communal ceremonies that converge within the social unit with its own foundational narrative.[32] Similarly, Antonio Rubal García exemplifies this framework of local religion in his work of Catholic saints in Indian towns. Rubal García argues that the presence of a Christian saint as founder of a village not only shows the rapid process of penetration that Christianity had among Indians, but also the important role that religion played as a vehicle for integrating worlds, as a factor of cohesion.[33]

In a general trend, studies on local religion examine the similarities and differences between forms of popular and "elite religion," community expressions of religious devotions,

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[30] William A. Christian, *Local Religion in Sixteenth Century Spain* (Princeton: Princeton University Press, 1981). John Bossy also argues that there was not a substantial difference between the elite and popular religiosity during the Middle Ages and the Baroque period, seeing them as two pieces of the same fabric. See John Bossy, *Christianity in the West, 1400-1700* (Ofxorf: Oxford University Press, 1985).

[31] Brian Larkin, "Confraternities and Community: The Decline of the Communal Quest for Salvation in Eighteenth-Century Mexico City," in *Local Religion in Colonial Mexico*, edited by Martin Nesvig, 191.

[32] David Tavárez, "Autonomy, Honor, and the Ancestors: Native Local Religion in Seventeeth-Century Oaxaca," in *Local Religion in Colonial Mexico*, edited by Martin Nesvig, 119-144.

[33] Antonio Rubal García, "Icons of Devotion: The Appropriation and Use of Saints in New Spain" in *Local Religion in Colonial Mexico*, edited by Martin Nesvig, 47.

conflicts derived from the encounter between Spaniards and Church officials with native population, the local impact of religious institutions such as the cofradía, and also the indigenous experience and adaptation before the evangelization process. For this latter topic, the long chronology of studies that emphasized indigenous interpretation of Catholicism started with Jacques Lafaye's controversial work *Quetzalcóatl and Guadalupe* (1976), in which Lafaye inquiries into the Mexican "collective consciousness" and the historical function of the Quetzalcóatl and Guadalupe myths in the development of the Mexican nation.[34] With a more consistent ethnographic and cultural approach, Alfredo López Austin and Roberto Martínez González write extensively on indigenous beliefs in the pre-colonial and the Spanish viceregal period, focusing on the figures of the *nahual* (an indigenous sorcerer), shamans, and healers, to analyze the continuities and disruptions of native belief systems from one period to the other.[35] Similarly, a series of works produced by Serge Gruzinski and more recently by León García Garagarza on colonial Man-Gods seek to understand the changes of Indian's spirituality in the process of conquest and evangelization, focusing on how some indigenous spiritual leaders based the rejection of Christianity on their own religious pre-Hispanic traditions.[36]

In a more local perspective, Guy Stresser-Péan explores the process of Christianization of indigenous peoples of the Sierra Norte de Puebla, analyzing the parish administration in colonial Mexico, native traditional ceremonies, and the development of local religion throughout the

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[34] Jacques Lafaye, *Quetzalcóatl y Guadalupe: La formación de la conciencia nacional* (Mexico: Fondo de Cultura Económica, 2015)
[35] Alfredo López Austin, *De hombres y dioses* (Zinacantepec: Estado de México, Colmich/ El Colegio Mexiquense, 1997); Alfredo López Austin, "Cuarenta clases de magos del mundo náhuatl," *Estudios de Cultura Náhuatl* 7 (1967): 88-117; and Roberto Martínez González, *El Nahualismo* (Mexico: Instituto de Investigaciones Históricas, Universidad Nacional Autónoma de México, 2011).
[36] Serge Gruzinski, *Man-Gods in the Mexican Highlands: Indian Power and Colonial Society. 1520-1800* (Stanford: Stanford University Press, 1989); and León García Garagarza, "The Return of Martin Ocelotl: A Nahua Eschatological Discourse in Early Colonial Mexico" (PhD diss., University of California, Los Angeles, 2010).

sixteenth and seventeenth centuries.[37] In his book, the author interrogates the concept of "Cultural Fatigue," used by Hugo Nutini to explain that indigenous peoples converted to Catholicism because of a spiritual and cultural crisis that they experienced in the first two centuries of the colonial period.[38] Stresser-Péan contends that Indians did not seek to shed their ancient religion. They kept the figurines of their idols hidden and maintained clandestine ceremonies. However, it was also rare to encounter an indigenous person who advocated for the eradication of the Spaniards and for the total rejection of Christianity.[39]

This dissertation contributes to this historiography by examining the formation of local religion in the city of San José de Toluca and its surrounding areas in the Toluca Valley. I argue that local religion in the Toluca Valley cannot be explain only through the autonomous development on the part of the indigenous peoples, who either voluntarily converted to Catholicism, or syncretized their religious tradition with some elements of Christianity. I contend that regular orders and local ecclesiastical judges that prosecuted indigenous unorthodoxy profoundly changed Indian religion. In this respect, we cannot comprehend the changes experienced by indigenous spirituality without the intervention of colonial authorities who sought to extirpate all those religious practices that violated the principles of the Catholic faith. There was a clear asymmetry in this relation between the victorious Spanish clergy and the defeated indigenous masses, that despite having some leeway to preserve portions of their pre-Hispanic spirituality, had no other remedy but to accept Catholicism. Ecclesiastical judges and their Spanish informants actively suppressed and eradicated Indian idolatry, superstitious healing rituals, and

[37] Guy Stresser-Péan, *The Sun God and the Savior: The Christianization of the Nahua and Totonac in the Sierra Norte de Puebla* (Colorado: University Press of Colorado, 2009)
[38] Hugo G. Nutini and Jean F. Nutini, *Native Evangelism in Central America* (Austin: University of Texas Press, 2014).
[39] See also Nancy M. Farriss, *La sociedad maya bajo el dominio colonial: La empresa colectiva de la supervivencia* (Madrid: Alianza/Sociedad Quinto Centenario, 1992).

other forms of communal ceremonies during the colonial period. Chapter eight of this investigation shows how this process was practiced by examining indigenous idolatry cases prosecuted by the ecclesiastical court of San José de Toluca. In addition, I include in this chapter a study to show how Catholic European theologians reacted to indigenous beliefs, how they categorized them and how Spaniards resisted or participated in Indians' devotions and practices.

1.3. The Judicial System in the Viceroyalty of New Spain

Through much of the twentieth century, the study of colonial law focused almost exclusively on jurisprudence and its philosophical foundations. The study of the vast corpus of law and learned commentary that regulated the Spanish Empire in the Indies known as *derecho indiano*[40] (the law of the Indies), was conducted by scholars such as Rafael Altamira[41], Ricardo Levene[42], Ots Capdequí[43], Andrés Lira[44] and José Luis Soberanes[45]. These historians, writing in Spanish, draw on royal decrees, the compilation of the laws of the Indies, and judicial treatises on civil and canon law written by eminent jurists such as Juan de Solórzano Pereira and Pedro Murillo Velarde.

Another wave of Spanish-speaking scholars stressed the corporate regime of the Catholic Monarchy and the relationship between law and society. This historiography examines the variety of legal statuses and jurisdictions that bonded individuals and institutions together. For instance, they subjected clerics to canon law and enjoyed the prerogative of being prosecuted only by

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[40] *Recopilación de leyes de los reynos de las Indias*, 1680.
[41] Rafael Altamira, *Estudios sobre las fuentes de conocimiento del derecho indiano: la costumbre jurídica en la colonización española* (Austin: University of Texas Press, 2007)
[42] Ricardo Levene, *Las Indias no eran colonias* (Madrid: Espasa Calpe, 1951).
[43] José María Ots Capdequí, *Manual de historia del derecho español en las Indias y del derecho propiamente indiano* (México: ED. Losada, 1945).
[44] Andrés Lira, *El amparo colonial y el juicio de amparo mexicano* (Mexico: FCE, 1972).
[45] José Luis Soberanes, *Historia del sistema jurídico mexicano* (Mexico: UNAM IIJ, 1990); José Luis Soberanes, et al., *Los tribunales de la Nueva España* (Mexico: UNAM: IIJ, 1980).

ecclesiastical tribunals, while indigenous peoples could resort to different courts that offered them a special status. This legal macrocosm allowed individuals (depending on their birth, condition, or work) to be part of several corporations. Miguel Ángel Ladero Quesada, Clara García Ayulardo, Jaime del Arenal Ferochio, and Bartolomé Yun Castilla have been some authors that have examined the corporate regime of the Spanish Empire both in Europe and the Indies.[46]

One of the most important debates in the legal historiography was whether the Spanish imperial law represented reality. While historians such as Ricardo Levene celebrated the Spanish legal system, other scholars such as Clarence Haring came to see Spain's law in the Americas as an impressive formalism, disregarded in practice.[47] The debate over law and its role in Spanish America eventually converge on whether a Black Legend of Spanish cruelty toward the Indians or a White Legend (*Leyenda Rosa*, or *rosada*, in Spanish) of benevolence best describes Spain's New World empire.[48] While some argued for a more nuanced approach in seeking to understand the interplay of the economic and humanitarian motives of empire, historians such as Lewis Hanke dismissed the law as irrelevant for the everyday lives of Indians.[49]

Woodroh Borah's innovative study on the General Indian Court, established between 1592-1605 in Mexico City with the purpose of offering indigenous peoples free legal services,

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[46] Clara García Ayluardo, *El privilegio de pertenecer: las comunidades de fieles y la crisis de la monarquía católica* (Mexico: CIDE, 2005); Miguel Ángel, *Historia Universal. Edad Media Volumen II* (Barcelona: Vicens Vices, Sexta edición 2007) 404-406; Jaime del Arenal Fenochio, "Justicia civil ordinaria en la ciudad de México durante el primer tercio del siglo XVIII," *Memoria del X Congreso del Instituto Internacional de Historia del Derecho Indiano (México:* ELD/UNAM: IIJ, 1995, Vol 1. 1995) 39-63; Bartolomé Yun Casalilla, *La gestión del poder. Corona y economías aristocráticas en Castilla (siglos XVI-XVIII)* (Madrid: Akal, 2002).
[47] Clarence Haring, *Los bucaneros de las Indias Orientales en el siglo XVII* (Sevilla: Renacimiento, 2003), 16.
[48] Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (New York: Little, Brown, 1965); and Charles Gibson, *Spain in America* (New York: Harper & Row, 1966).
[49] Brian Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008), 10.

refuted this latter claim. Borah argues that indigenous peoples utilized the Spanish royal courts as a weapon to protect themselves and their communities from the depredation of the European colonizers.[50] Similarly, a more recent work by Brian Owensby's *Empire of Law*, examines the legal disputes that took place among Indians and Spaniards in colonial New Spain in the seventeenth century. The book covers judicial cases involving indigenous men and women who brought petitions and filed lawsuits in cases of struggles over land possession, disputes regarding labor relations and liberty, tribute relations, and village autonomy and governance. Owensby poses that Indian claimants connected with and helped to forge a powerful new vocabulary of legal meaning during this process of litigation.[51] Therefore, the natives' propensity to litigate was not a sign of weakness, but the confirmation that Indians thought that royal courts could redress the injustices of their colonial situation. Writing in Spanish, Ana de Zaballa explores the jurisdictional differences that existed between Spain and the Indies, devoting part of her analysis to reject the idea that indigenous peoples in colonial Mexico were passive agents that lacked agency and freedom before the Spanish courts. She poses that indigenous peoples utilized their privilege of *miserables* (meaning defenseless in this context) to litigate in secular and ecclesiastical courts to protect their interests.[52] Susan Kellog further demonstrates the importance of law in indigenous lives by examining how Spanish law and the courts diffused and channeled indigenous dissent, and helped transform indigenous society, allowing Spanish hegemony. According to Kellogg, "during the early colonial period, the court system served as a critical arena

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[50] Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico* (Berkeley: University of California Press, 1983), 308.
[51] Owensby, *Empire of Law*.
[52] Ana de Zaballa Beascoechea, "Del Viejo al Nuevo Mundo: Novedades jurisdiccionales en los tribunales eclesiásticos ordinarios en Nueva España," in *Los indios ante los foros de justicia religiosa en la Hispanoamérica virreinal,* edited by Jorge Traslosheros and Ana de Zaballa Beascoechea (México: UNAM, Instituto de Investigaciones Históricas, 2010*),* 19.

of cultural conflict and transformation. The courts served both as an instrument of cultural resistance through which the Mexica contested colonial authority, sought redress for political and economic grievances, resisted tribute and labor demands, and opposed Spanish encroachment on Mexica lands as an instrument of cultural conversion and acculturation."[53]

Yanna Yannakakis offers another example of this trend, by exploring how indigenous leaders in the district of Villa Alta (Oaxaca, New Spain) served as intermediaries between the Spanish authorities and their communities, shaped the dynamics of native rebellions, and co-constructed the symbolic order that allowed Spanish colonialism to endure for three hundred years. Historiographically, scholars have portrayed these figures as social climbers, sell outs, power seekers, and other negative labels. However, Yannakakis argues that intermediaries took advantage of the divisions among missionary orders, Spanish magistrates, and rival Indian communities. This phenomenon is what Daniel Ritcher named cultural brokerage, since indigenous membership in two or more interacting groups allowed them to obtain a profit from both sides.[54] In sum, this historiography does not show indigenous people as passive agents, but intelligent authors that can create their own responses to the challenges of colonization.

Other studies of the legal Spanish system in colonial Mexico have used criminal cases as a window to delve into the lives of colonial peoples. William Taylor surveys patterns of drinking, homicide, and rebellion in indigenous peasant communities of central and southern New Spain. Concerning drinking, Taylor rejects the ingrained colonial idea that Indians were victims to mass

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[53] Susan Kellogg, *Law and the Transformation of Aztec Culture, 1500-1700* (Norman: University of Oklahoma Press, 1995), 214.
[54] Daniel Ritcher, "Cultural Brokers and Intercultural Politics: New York-Iroquois Relations, 1661-1704," *The Journal of American History*, vol. 75, No. 1 June (1988): 40-67. See also Yanna Yannakakis, *The Art of Being In-Between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham: Duke University Press, 2008), 14.

alcoholism, showing that there is little evidence to support this view. However, he notes that drinking could express village solidarity, and that during episodes of uprising drinking meetings brought villagers together in a collective act that reaffirmed community membership. Regarding rebellion, Taylor argues that village uprisings and *tumultos* (small local riots) directed against an outside authority, including the priesthood; and, normally, all the dwellers of the village participated in it.[55] Similar to Taylor, Gabriel Haslip-Viera's book on crime in Mexico City examines social disorder and the working of Spanish criminal tribunals,[56] while Lyman L. Johnson and Sonya Lipsett-Rivera edited a volume on sex, shame, and violence in Spanish America.[57] At a historiographical level, Kevin Terraciano and Lisa Sousa contend that these studies "show that the criminal justice system, despite its biases and limitations, did not simply police and regulate passive subjects. Criminal records reveal a cross-section of society, including economically marginal people who appear infrequently in notarial or civil records and who used and sometimes manipulated the justice system to their benefit."[58]

For the study of the Catholic Church and its judicial organization in the New World, most of the scholars have centered their studies around religious tribunals such as the Inquisition. In the historiography, the work of Richard Greenleaf in 1969 clarifies the inquisitorial and episcopal

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[55] William B. Taylor, *Drinking, Homicide, and Rebellion in Colonial Mexican Villages* (Stanford: Stanford University Press, 1979), 118. In general terms, Taylor notes the justification for rebellion was the defense of indigenous liberty, custom, and way of life. In response to these uprisings, the Spanish officials utilized the military force, but also negotiation to pacify these uprisings. Once the *tumultos* (riots) concluded, Indian towns usually gained some redress of immediate grievances, and punishment was usually limited to exemplary sentences for one or a few supposed leaders.

[56] Gabriel Haslip-Viera, *Crime and Punishment in Late Colonial Mexico City* (Albuquerque: University of New Mexico Press, 1999).

[57] Lyman L. Johnson and Sonya Lipsett-Rivera, eds., *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America* (Albuquerque: University of New Mexico Press, 1998).

[58] Kevin Terraciano and Lisa Sousa, "Historiography of New Spain," in *The Oxford Handbook of Latin American History*, edited by José C. Moya (Oxford: Oxford University Press, 2012), 41.

jurisdictions in sixteenth-century colonial Mexico.[59] The work of Greenleaf was later expanded by Solange Alberro and Gabriel Torres Puga, who study the development of the Holy Office in the viceroyalty of New Spain during the entire colonial period. [60] These authors explain that the establishment of the ecclesiastical justice diverged from the European model when Philip II formally established the Inquisition in colonial Mexico in 1571. According to a real cédula from January 25th, 1569, the king ordered that indigenous peoples were to remain outside the jurisdiction of the Holy Office, as they were "new Christians."[61] Diocesan courts, under the control of bishops, were the ones charged with supervising and eradicating indigenous unorthodoxy. In the archbishopric of Mexico, the diocesan court created a special tribunal for Indians called "Metropolitan Tribunal for the Faith of the Indians and Chinese of Mexico," "Provisorato of Indians," and "Vicariate of Indians."

Regarding the study of the Provisorato and other diocesan courts, the literature is still scarce. José Llaguno[62] and Toribio Medina[63] were the first scholars who examined the workings of diocesan courts in colonial Mexico from an institutional point of view: describing their foundation, jurisdiction, and their relationship with indigenous peoples and the Inquisition. Jorge Traslosheros has written one of the most comprehensive works on diocesan courts, studying the relationship between the ecclesiastical justice and the society of New Spain in the sixteenth and

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[59] Richard Greenleaf, *The Mexican Inquisition of the Sixteenth Century* (Albuquerque: University Press of New Mexico, 1969).
[60] Solange Alberro, *Inquisición y sociedad en México. 1571-1700* (Mexico: FCE, 1988); and Gabriel Torres Puga, *Los últimos años de la Inquisición en la Nueva España* (México: Porrúa/Conaculta: INAH, 2004).
[61] *Cédua real, January 25, 1569,* cited in Roberto Moreno de los Arcos, "La Inquisición para indios en la Nueva España (siglos XVI a XIX)" *in X Simposio Internacional de Teología de la Universidad de Navarra*, Vol. 2 (1990): 1471-1484.
[62] José Llaguno, *La personalidad Jurídica del Indio y el III Concilio Provincial Mexicano* (Mexico: Porrúa, 1963).
[63] José Toribio Medina, *Historia del Tribunal del Santo Oficio de la Inquisición en México*, 2 ed., (Mexico: Fuente Cultural, 1952).

seventeenth centuries. One argument of the author is that the Church's judicial system played a crucial role in maintaining political and social stability in the viceroyalty. For Traslosheros, the high court of the Archbishopric of Mexico demonstrated its efficiency in providing relief to the discontent, social tensions, and daily problems in various settings, such as "last wills, the defense of episcopal jurisdiction, civil and criminal justice, married life, and crimes committed by the indigenous population against the Catholic Church, also referred to as superstition and idolatry."[64] In a similar venue, Rodolfo Aguirre Salvador stresses the important role of ecclesiastical judges in consolidating the episcopal authority in the seventeenth and eighteenth centuries. Aguirre explains how bishops employed local ecclesiastical judges to increase the influence of secular priests in indigenous towns, paving the way for the secularization of doctrines and parishes controlled by the mendicant orders such as the Dominicans and Franciscans in the eighteenth century.[65]

In this context, William Taylor explores in his book *Magistrates of the Sacred*, the impact of the Bourbon Reforms on the Church and the colonial society. For this purpose, Taylor reviews issues of local religion, the activities of cofradías, episodes of leadership and dissension in indigenous towns, and examines the relationship between ecclesiastical and secular authorities. One of the main conclusions of the author is that the priests' traditional role as judges changed in the eighteenth century. While the Habsburg kings respected the ecclesiastical authority in matters

[64] Jorge Traslosheros, *Iglesia, Justicia, y Sociedad en la Nueva España: La Audiencia del Arzobispado de México, 1528-1668* (Mexico: Editorial Porrúa, 2004). XI
[65] Rodolfo Aguirre Salvador, "El establecimiento de jueces eclesiásticos en las doctrinas de indios," 14-35; and Rodolfo Aguirre Salvador, "El ascenso de los clérigos de Nueva España durante el gobierno del arzobispo José Lanciego y Eguiluz," *Estudios de Historia Novohispana*, Vol. 22, Mexico, UNAM: IIH (2000): 77-110.

of indigenous idolatry, the executions of wills, the handling of criminals who took asylum in the parish church, the Bourbons limited the priest's jurisdiction.[66]

In *Crown and Clergy*, Nancy Farris analyzes the evolution of the relationship between the Spanish Crown and the Catholic Church in the Americas during the colonial period.[67] She poses that the Bourbons Reforms of the eighteenth-century had an economic utilitarianism that sought to improve the imperial economy and to eliminate the major obstacles to prosperity, such as the immense material wealth that the Church had accumulated over the centuries in the Indies. In this respect, the Bourbons envisioned the wealth of the Church as an obstacle to prosperity that also reduced the Crown's revenues.[68] In order to reduce the role of the clergy in society, the Bourbons reduced the clergy's participation in education, the healthcare system and, especially, in the judicial jurisdiction. Both Farris and Taylor argue that the Bourbon Reforms finished the decentralized political system of the Habsburgs and imposed new fixed, regularizing laws which ultimately subordinated the Church to royal authority.[69] Following this line of historiographical inquiry, Matthew O'Hara explores how secular magistrates of the Church and royal officers lobbied for the "secularization," which meant transferring the Indian parishes from the religious orders (such as Franciscans, Dominicans, Augustinians, and Jesuits) that had previously staffed them to diocesan-trained priests. Ultimately, they hoped that the removal of the religious orders

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[66] William Taylor, *Magistrates of the Sacred: Priests and Parishioners in Eighteenth Century Mexico* (Stanford: Stanford University Press, 1996), 158. For instance, royal administrators in the eighteenth century narrowed the judicial authority of *curas* (parish priests) and relieve them of jurisdiction over gambling, drinking, and sexual misconduct, thus making teaching and preaching their main function. However, parish priests were still expected to work for the prevention of public sins such as idolatry, witchcraft, superstitious practices, concubinage, adultery, prostitution, gambling, and drunkenness, but they were not to assist the royal judges or make a secret report to the bishop. See also by this author, "De corazón pequeño y ánimo apocado. Conceptos de los curas párrocos sobre los indios en la Nueva España del siglo XVIII," Relaciones, No. 39 (1989): 1-59.

[67] Nancy Farriss, *Crown and Clergy in Colonial Mexico, 1759-1821: The Crisis of Ecclesiastical Privilege* (London: Athlone, 1968).

[68] Ibidem, 92.

[69] William B. Taylor, *Magistrates of the Sacred*, 14.

would make Indian parishes less Indian, by promoting Spanish over indigenous languages, reforming religious celebrations, and channeling communal resources toward economic production.[70] The Bourbons criticized the evangelism that the mendicant orders had developed in the previous centuries and considered it necessary to incorporate some indigenous peoples into the priesthood. Matthew O'Hara argues that these reforms allowed natives to take part in the reformist debate and express criticisms on the Spanish colonial project.[71]

1.4. Ecclesiastical Courts, Diabolism, and Idolatry

One of the most controversial topics in the historiography is how Provisoratos and ecclesiastical courts eradicated indigenous heterodoxy. Roberto Moreno de los Arcos, a pioneer in the study of these tribunals, argues that diocesan courts were an Inquisition for Indians.[72] Victoria Reifler Bricker reinforce the idea that diocesan courts mirrored the Holy Office [73], and John Chuchiak defends the existence of an "Inquisition for Indians" in Yucatan.[74] Jorge Traslosheros, Ana de Zaballa and Gerardo Lara Cisneros disagree with this claim, stating that the

[70] Matthew O'Hara, *A Flock Divided: Race, Religion, and Politics in Mexico, 1749-1857* (Durham: Duke University Press, 2010), 11.

[71] Ibidem, 232. Following an enlightened approach, the Bourbons considered that if the Indian had continued practicing their idolatries it had to do not only with the influence of the Devil, but rather because they were ignorant and lacked proper education. Yet on this issue, David A. Brading argues that the brutal celerity with which secularization was enforced by viceroys and bishops, elicited vigorous protests from the friars and the creoles; whom complained that as a result of the reforms, they were in extreme misery and with their honor shattered. In the same vein, the Franciscans reminded the king of their pioneering role in the conversion of the Mexicans Indians, and asserted that the spiritual conquest had created right as strong and as enduring as those won by the force of arms. See David A. Brading, *Church and State in Bourbon Mexico: The Diocese of Michoacan 1749-1810* (New York: Cambridge University Press, 1994), 64

[72] Roberto Moreno de los Arcos, "Autos seguidos por el provisor de naturales del arzobispado de México contra el ídolo del Gran Nayar (1722-1723)," *Tlalocan: Revista de fuentes para el conocimiento de las culturas indígenas de México*, vol. 10 (1985): 377-447; and by the same author " La inquisición para indios en la nueva España (siglos XVI a XIX)."

[73] Victoria Reifler Bricker, *The Indian Christ, the Indian King. The Historical Substrate of Maya Myth and Ritual* (Austin: University of Texas Press, 1981).

[74] John F. Chuchiak, "The Indian Inquisition and the Extirpation of Idolatry: The Process of Punishment in the Provisorato de Indios of the Diocese of Yucatan, 1563-1812" (PhD diss., Tulane University, 2000).

Provisorato was not an "inquisition for the Indians."[75] In order to differentiate the Inquisition from the Provisorato, Traslosheros and Zaballa list several aspects that sat them apart. First, while the Inquisition mostly dealt with strictly religious cases, the Provisorato was more concerned with the supervision of good customs than crimes against the faith.[76] Second, while the Inquisition maintained a secret prosecution, the ordinary diocesan justice was not. During all the process the defendants knew who had accused them, and who were those testifying against them.[77] Traslosheros argues that despite some disputes and complaints, the ecclesiastical courts and the Inquisition worked harmoniously and in constant collaboration. For that reason, the archbishops of Mexico did not use the extirpation of idolatry as a platform to affirm their authority over rebellious Indian towns, but they preferred to take advantage of canonical visitation to do so.[78]

Since Catholic priests believed the Devil lay at the root of indigenous idolatry, scholars have surveyed the role of diabolism in both the ecclesiastical courts and the process of evangelization at large. Fernando Cervantes, in his work *The Devil in the New World,* explores how the concept of the Devil influenced indigenous peoples in the Americas. The author notes that the historiography has not dealt with this issue of diabolism until the cultural turn of the 1980s, dismissing it as irrational and superstitious, something that modern scholarship should not take seriously.[79] In this debate, Cervantes challenges the traditional assumption that diabolism was a characteristic of the popular classes, while the intellectual elite rejected it. In the relationship

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[75] Gerardo Lara Cisneros, "Superstición e idolatría," 44.

[76] Traslosheros, *Iglesia, Justicia y Sociedad en la Nueva España,* 110 and Zaballa, "Del Viejo al Nuevo Mundo," *44.*

[77] Traslosheros, "Los indios, la Inquisición y los tribunales eclesiásticos ordinarios en Nueva España. Definición jurisdiccional y justo proceso, 1571-1750," in *Los indios ante los foros de justicia religiosa en la Hispanoamérica virreinal*, 47-74.

[78] Traslosheros, *Iglesia, Justicia y Sociedad en la Nueva España*, 131.

[79] See for example, Jeffrey.B. Russel, *The Devil: Perceptions of Evil From Late Antiquity to Primitive Christianity* (New York: Cornell University Press, 1977), as one of the early studies that dealt seriously with the subject of diabolism.

between diabolism and anti-Christian tendencies in indigenous peoples, Cervantes argues that "the evidence of anti-Christian tendencies among Indians should not be interpreted as evidence of a conscious native opposition to the new religion."[80] Another scholar that has contributed to the study of diabolism is Félix Báez-Jorge, who surveys the influence of Spanish demonology on indigenous beliefs in the sixteenth and seventeenth century in colonial Mexico. In addition, he also explores the reasons some Spanish friars in the early colonial period, such as Bernardino de Sahagún and Andrés de Olmos identified the indigenous god Tezcatelipoca as the Christian equivalent of the Devil.[81]

To better understand how cultural, legal, and intellectual concepts were employed in colonial Mexico, Lisa Sousa examines how indigenous peoples used diabolism in the Spanish courts as a justification for the crime they had committed in Nahua, Mixtec and Zapotec communities between 1558 and 1684. Sousa found the Devil lost power in the mind of some Spanish ecclesiastics and administrators by the late seventeenth century, and that "diabolic" excuse had lost credibility with Spanish authorities in the eighteenth century. Spanish judges considered diabolism to be part of indigenous' superstition and they did not accept it as a mitigating cause, thus giving the defendants harsh sentences.[82] In a similar analysis, Magdalena Chocano contrasts the behavior of the Church before denunciations in cases of idolatry in the sixteenth and seventeenth centuries, finding the same differences as Sousa.[83]

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[80] Fernando Cervantes, *The Devil in the New World: The Impact of Diabolism in New Spain* (New Haven: Yale University Press, 1994), 46.

[81] Félix Baez-Jorge, *Los disfraces del diablo* (Veracruz: Universidad Veracruzana, 2003); and by the same author *Entre los naguales y los santos: religión popular y ejercicio clerical en el México indígena* (Veracruz: Universidad Veracruzana, 1998).

[82] Lisa Sousa, "The Devil and Deviance in Native Criminal Narratives from Early Mexico," *The Americas*, Vol. 59, No. 2, October (2002): 161-179.

[83] Magdalena Chocano Mena, *La fortaleza docta. Élite letrada y dominación social en México colonial (siglos XVI-XVII)* (Barcelona: Ediciones Bellaterra, 2000).

Following the historiographical questions posed by Traslosheros, Gerardo Lara Cisneros in his study of the *Provisorato de Indios y Chinos* of the Archbishopric of Mexico, discusses the organization, ideological postulates, and procedures the episcopal tribunals and the ecclesiastical courts of the archdiocese of Mexico in the seventeenth and eighteenth centuries. From a cultural and institutional perspective, Lara Cisneros analyzes cases of idolatry and explored the major differences between the baroque and Bourbon-enlightened persecutions of indigenous heterodoxy. For the latter, the author argues that the ecclesiastical hierarchy blamed the negligence of the Catholic priests and the ignorance and the lack of religious education of the Indians as the reasons for the existence of idolatry in the late colonial period. Idolatry was not only a problem of diabolism but also a problem of ignorance and superstition. To solve this problem, the Church supported the secularization of *doctrinas* (indigenous towns supervised by regular friars), the reinforcement of episcopal authority, and the reorganization of teaching centers, among others.[84]

From a cultural history point of view, David Tavárez explores the persecution of Indian idolatries in the archdiocese of Mexico and Oaxaca. In his book, he poses that idolatry cannot be employed as a systematic analytic category, and that indigenous heterodoxy had an uncertain ontological status that became attached to specific practices through the conjunction of legal discourses, doctrinal rhetoric, and specific accusations and acts of avowal. Tavárez emphasizes that the multiplicity of local devotions did not make up a unified religious field; rather, these devotions should be understood as forms of epistemological dissent, which occasionally led to violent acts of resistance against colonial Christianity.[85] According to Serge Gruzinski, the

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[84] Lara Cisneros, "Superstición e idolatría," 278-280.
[85] David Tavárez, *The Invisible War: Indigenous Devotions, Discipline, and Dissent in Colonial Mexico* (Stanford: Stanford University Press, 2011), 271.

conflict in Indian towns was not only tied to religious disputes, but it related some of them to internal power struggles, control over lands, and fights for political autonomy.[86]

In the viceroyalty of Peru, the problem of the indigenous heterodoxy was so problematic that episcopal authorities promoted a series of campaigns to extirpate idolatries. [87] Nicholas Griffiths demonstrates that idolatry trials in Peruvian Indian communities were less an automatic response of a zealous parish priest in the face of stubborn pagan practices than a chosen strategy employed to gain the advantage in the game of local power relations. In this way, the parish priest, the sorcerer, and the higher echelons of the indigenous cabildo (*gobernadores* and *fiscales*) constituted rival sources of political-religious authority within the community.[88] However, scholars such as David Tavárez notes that the struggles over idolatries and ancestral devotions cannot be only reduced to a manifestation of local rivalries. Rather, they were also a set of practices that cemented local identities and that occasionally led to violent acts of resistance against colonial authority, or church officials such as parish priests.[89]

Ana de Zaballa and Jorge Traslosheros hold that the excessive focus on the persecution of idolatries has limited our understanding of the episcopal court as an institution. These authors claim that new studies on the ecclesiastical courts should stress the assimilation of Christian and Spanish culture by indigenous peoples, the utilization of the episcopal tribunals by the Indians to

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[86] Ver Serge Gruzinski, *La colonización de lo imaginario. Sociedades indígenas y occidentalización en el México español. Siglos XVI-XVIII* (México: Fondo de Cultura Económica, Sección de obras de Historia, 1991).

[87] For an example see Pierre Duviols, *Procesos y visitas de idolatrías. Cajatambo, siglo XVII* (Lima: Pontificia Universidad Católica del Perú, Fondo Editorial 2003/Instituto Francés de Estudios Andinos, 2003).

[88] Griffiths Nicolas, *The Cross and the Serpent: Religious Repression and Resurgence in Colonial Peru* (Norman: University of Oklahoma Press, 1995), 147.

[89] Tavárez, *The Invisible War,* 271. For Another work that studies how pre-Hispanic religious devotions reinforced communal identities in the Nahuas of central Mexico see Jorge Klor de Alva, "Aztec Spirituality and Nahuatized Christianity," in *South and Meso-American Native Spirituality: From the Cult of the Feathered Serpent to the Theology of Liberation,* edited by H. Gossen and Miguel León-Portilla (eds.), (New York: Crossroad, 1993), 173-197.

advance their own agendas, and the parish management of these courts.[90] In particular, Zaballa stresses the importance of incorporating canon law in the study of the colonial Church and its interaction with indigenous peoples and the colonial society at large."[91] Moreover, Gerardo Lara Cisneros criticizes historians who mostly use legal explanations from judicial documentation without extending their analysis beyond this sphere. Instead, he argues that scholars should unite legal and cultural explanations, since it is necessary to know the legal institutions to understand how they influenced society, but it is equally important to examine how society determined the normative aspects of the ecclesiastical jurisdiction. For instance, the differences in legal procedures in the Church of the Renaissance differ from the conceptualization of justice during the Bourbon Reforms. Institutional history alone is incapable of explaining the social and cultural reality to which the ecclesiastical courts answered to. Cultural history needs the underpinnings and precision that institutional history provides.[92]

This dissertation explores the role of the ecclesiastical court of Toluca at a local level. Borrowing from the works of Ana de Zaballa, Jorge Traslosheros, and Gerardo Lara Cisneros, I use a combined cultural and institutional history approach to examine internal functioning of the ecclesiastical court of Toluca, its jurisdictional foundations and limitations, its conflicts with the royal justice, and its ability to monitor local society.

Although this work analyzes in depth the role of the diocesan tribunal in extirpating idolatry and enforcing religious orthodoxy, it moves beyond this topic to incorporate some issues disregarded in the historiography, such as the role of ecclesiastical judges in settling cases of *amistad ilícita* (adultery and extramarital relations), domestic violence, denunciations against the

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[90] Zaballa, "Del Viejo al Nuevo Mundo," 45.
[91] Ibidem, 46.
[92] Gerardo Lara Cisneros, "Superstición e idolatría," 51.

priesthood, and the conflict between secular and ecclesiastical jurisdiction.[93] Although some scholars such as María del Pilar Martínez[94], Dora Dávila Mendoza[95], and Sergio Ortega Noriega have used the ecclesiastical legal system to study particular topics such as *capellanías y obras pías* (chaplaincies and pious works), ecclesiastical divorces, or sexual abuses by parish priests[96], the literature still needs a comprehensive study of the variety of issues that a local ecclesiastical court had jurisdiction on. This dissertation seeks to understand the role of the ecclesiastical court of San José de Toluca in influencing colonial society through the supervision of "good customs and morality," and local religion. In this latter sense, this dissertation helps clarify how ecclesiastical judges forced Spaniards and Indians to practice religious devotions under their jurisdiction.

2-. Methodology

<u>2.1. Challenges Encountered</u>

The research of ecclesiastical courts is challenging, as most judicial records produced by these institutions have been rarely preserved intact in just one archive. The ecclesiastical court of San José de Toluca is perhaps an exemption since most of its records can be found at the *Archivo Histórico del Arzobispado de Mexico*. However, there are a substantial number of records

[93] Religious asylum or *"inmunidad eclesiástica"* is a privilege granted by the Spanish crown to sacred places. Its antecedents go back to Roman Law, and, in Castile, to the *Partidas* (a corpus of law from the kingdom of Castile written under the rule of Alfonso X the Wise in the thirteenth century). This privilege grants procedural protection or pardon to the criminals who take shelter in a church, and impedes the secular or royal judges to remove the asylum-seekers from the religious building. In the eighteenth century, the Bourbon Reforms restricted the requirements by which criminals who committed lesser crimes could enjoy this privilege, thus empowering the secular justice. However, many ecclesiastical judges protested this change, and on some occasions engaged in serious political conflicts with the king's representative in cities such as Toluca, the *corregidor*.

[94] María del Pilar Martínez López-Cano (Coord.), *Cofradías, capellanías y Obras pías en la América colonial* (Mexico: UNAM: IIH, 1998).

[95] Dora Dávila Mendoza, *Hasta que la muerte nos separe. El divorcio eclesiástico en el Arzobispado de México 1702-1800* (Mexico: El Colegio de México, Centro de Estudios Históricos, 1998).

[96] Sergio Ortega Noriega (ed.), *De la santidad a la perversión, o de por qué no se cumplía la ley de Dios en la sociedad novohispana* (Mexico: Grijalbo, 1986).

produced by this court at local parish archives such as *El Sagrario of Toluca*, and the *Archivo General de la Nación*, in Mexico City. That implies that the sources for the study of a specific ecclesiastical court could be scattered in various archives. A myriad of reasons could explain this. From accidents in archives such as fires, loss of archival material (including willful disappearance), the transportation of ecclesiastical records to different dioceses or national archives, the exchange of documents between courts, and on and on.

A second challenge found relates to the diverse character of the sources themselves. Ecclesiastical courts did not specialize in the prosecution and punishment of just one crime. In fact, they heard different cases: from idolatry to domestic violence, including accusations against ecclesiastics, monetary debts, and disputes over testaments. This documental diversity makes it difficult for the researcher to apply just one methodology or approach to understand these colonial sources, and therefore researchers have to adapt their method to suit the specific type of crime to be studied. For example, idolatry cases should not be treated in the same way as a case of domestic violence. While idolatry requires a more intellectual, ethnographic, and cultural approach given the profound theological and philosophical connotations of this crime, cases of *sevicia* and domestic violence should include a discussion on gender roles in colonial society. This distinction does not mean that there are no cultural or philosophical factors in sevicia cases; they exist, but they played a lesser role in this realm of discussion, and were more important within a discussion of sex and gender roles. Similarly, specific social, economic, and political factors should be considered when analyzing different crimes. Given the vast diversity of sources and their content, it limited this research to the study of just four criminal categories, these being jurisdictional conflicts between ecclesiastical courts and secular authorities, cases against ecclesiastics, idolatry and superstition, and marital conflicts. Therefore, I have deliberately left out other interesting

documents, such as the disputes over testaments, inheritance, and *capellanías*. Incorporating all those cases would have kept us from a deeper analysis of the chosen categories and would have required much more space. For this reason, the four selected categories intend to reflect how the ecclesiastical court of San José de Toluca interacted with the local colonial society and how it worked together with other tribunals and institutions at a political and institutional level.

Another challenge I found is that judicial records sometimes do not contain the whole procedure, from the initial denunciation to the sentence. Most times, documents only include the accusation, and a series of interrogatories, confrontations, but not so the conclusion of cases, or the sentences. However, this incompleteness does not mean that the documents are useless. In fact, we can learn a great deal about the reasons people accused their neighbors of a particular crime by just looking at the accusations. In other cases, when records also include portions of the judicial investigation and the justification of the denunciation through witnesses or other types of valid evidence, we can speculate with a real foundation what could be the most likely sentence given by the ecclesiastical judge. I recognize that in this last scenario it entirely based my interpretation on the facts and background information available through these records.

2.2 Spacial Delimitation

The dissertation covers a period extending from 1675 to 1800. In 1675 the *Juzgado Eclesiástico de la ciudad de San José de Toluca* (ecclesiastical court of the city of San José de Toluca) started its activity under the tenure of the Archbishop of Mexico, Payo Enríquez de Rivera. This period encompasses the transition between the Baroque spirituality, which began with the Catholic Counter-Reformation of the sixteenth century, and that lasted until the first half of the eighteenth century; in which the influence of the Enlightenment and colonial policies replaced previous forms of understanding religion in the Spanish viceroyalties of the Americas.

Whereas baroque religiosity emphasized collective enactment of religious devotion, the importance of intercessors and mediators with God, the Catholicism of the eighteenth-century stressed individualism, rationality, and incorporated some ideas of the Enlightenment.[97] The reason why this dissertations stops in 1800 is because most documents regarding right of asylum cases, accusations against ecclesiastics, offenses against the sacrament of marriage and idolatry cases occurred during the eighteenth century, with only few records for the early nineteenth century.

This dissertation focuses on the Toluca Valley due to the availability of sources to support this study at the *Archivo del Arzobispado de Mexico*. This repository is the only archive for an ecclesiastical court that exists barely intact for the Archbishopric of Mexico. The archive holds a myriad of documents related to criminal cases prosecuted by the ecclesiastical court of San José de Toluca. In addition, the archive also shows how the ecclesiastical judges worked to ensure religious orthodoxy and good morale in the region, which allows me to reconstruct the political, social, and religious life of Toluca at the local level.

2.3. Sources

Regarding sources, this dissertation uses judicial records produced by the ecclesiastical court of San José de Toluca and the *Provisorato de Indios y Chinos*. Most of this documentation is in archives from Mexico City and the city of Toluca such as the *Archivo General de la Nación* de México (Mexican General Archive of the Nation), the *Archivo Histórico de la Parroquia del Sagrario San José Toluca, Estado de Mexico* (Historical Archive of the Parish Church "El Sagrario de San José de Toluca"), and the *Archivo General del Poder Judicial del Estado de Mexico, Toluca* (General Archive of the Judicial Power of the State of Mexico, Toluca). These repositories conserve

[97] For a more detailed explanation of this issue see Pamela Voekel, *Alone Before God: The Religious Origins of Modernity in Mexico* (Durham: Duke University Press, 2002).

rich criminal records, episcopal ordinances, cofradía books, and judicial resolutions. Similarly, the *Archivo Histórico del Arzobispado de Mexico* (Historical Archive of the Archbishopric of Mexico) contains most of the documentation concerning the ecclesiastical court of San José de Toluca. These records are key to reconstruct the Spanish legal system, the disputes between the secular and ecclesiastical powers, local practices of religion, and to evaluate the personal and mental profile of the peoples involved in a judicial process.

Beyond the records produced by the ecclesiastical courts of the Toluca Valley and the Provisorato, I use a specialized series of primary sources devoted to canon law produced by colonial jurists, guides for parish priests, catechisms for the evangelization of indigenous peoples, and manuals for the extirpation of idolatries. For the study of canon law in the Spanish legal system I use the decrees issued by the Mexican Provincial Councils from the sixteenth to the eighteenth centuries, which defined the strategies of conversion and evangelization, the management of Indian parishes, the enforcement of episcopal jurisdiction, and the operation of the ecclesiastical courts, among many other issues. These sources are fundamental to understand the formal institutional organization of the Church in New Spain. In addition, this study also surveys the compilation of royal decrees, ordinances, and laws from the *Siete Partidas*, *Recopilación de los Reynos de las Indias*, the *Novísima Recopilación*, and the works on canon law produced by colonial jurists such as Solórzano Pereyra[98], and Pedro Murillo Velarde[99].

Manuals for parish priest in Indian towns elaborate on the relationship between the magistrates of the Church and indigenous people. The most relevant and widely cited work in the colonial period was Alonso de la Peña Montenegro's "*Itinerario para párrocos de indios.*"

[98] Juan de Solórzano Pereira, *Política indiana*, *2 Vols* (Mexico: Secretaría de Programación y Presupuesto, 1979) and De *Indiarum Iure*, 5 Vols (Madrid: CSIC, Corpus hispanorum de pace, Series II, 1994-1999).
[99] Pedro Murillo Velarde, *Curso de derecho canónico hispano e indiano* (Mexico: Colmich/UNAM: FD, 2008).

Montenegro, bishop of Quito in the mid-seventeenth century, emphasized the role of the parish priests as the keeper of community morality, teachers of civility, and protectors of the Indians (*Protectores de Indios*). In sum, these manuals expressed the author's reflection on the decrees of the Council of Trent, royal cédulas, episcopal decrees (from both the Peruvian and Mexican provincial councils), and other pastoral and theological works. They are key to understand why the priests acted in the way they did when interacting with indigenous peoples, but also to explain the juridical an intellectual background they brought with them.

Along with guides, I use manuals of the "extirpation of idolatries" written in the seventeenth century. Although in colonial Mexico there were no Church officials called "extirpator of idolatry," some veteran parish priests wrote these manuals to help their ecclesiastical colleagues and *"jueces visitadores"* (visiting judges) appointed by the bishops to identify indigenous heterodoxies in their parishes, and punish them accordingly.[100] These manuals provide concrete studies on well delimited regions (for my study, the Toluca Valley) on how native peoples adapted and redefined Christianity. The authors examine and explain some aspects of indigenous practices such as "medicine, spells, and poetry. The contextualization of many of the rituals at a sociological and intellectual level helps the reader to understand the purpose indigenous religion had in terms of the social, economic, and political configuration. For instance, the spells and rituals connected with subsistence were in everyday use among farmers, hunters, fishers, lime-burners, and traveling merchants; while others that required a more specific

[100] Iris Gareis, "Extirpación de idolatrías e identidad cultural en las sociedades andinas del Perú virreinal (siglo XVII,)" *Boletín De Antropología*, 18(35) (2010): 262-282; Jorge Hidalgo Lehuedé, "Redes Eclesiásticas, procesos de extirpación de idolatrías y cultos andinos coloniales en Atacama. Siglos XVII y XVIII," *Estudios Atacamaños Arqueología y Antropología Surandinas*, San Pedro de Atacama, Chile, Universidad Católica del Norte (2011): 113-152. See also Pierre Duviols, *Cultura andina y represión. Procesos y visitas de idolatrías y hechicerías, Cajatambo, Siglo XVII* (Lima: Pontificia Universidad Católica del Perú Fondo Editorial, Instituto Francés de Estudios Andinos, 2003).

knowledge, such as healing, were left in the hand of specialists. These manuals also describe strategies that indigenous peoples employed to continue their old traditions disguised under Christian devotion.[101] For the Toluca Valley, we have the manuals written by Jacinto de la Serna and Hernando Ruiz de Alarcón, which reported during the seventeenth century that this area counted many indigenous settlements where idolatry was especially common. [102] According to these authors, the rugged mountains, existence of caves, and the thick forests that surround this region allowed indigenous "idolaters" to carry out their rituals away from the gaze of their Spanish supervisors.

[101] Michael D. Coe and Gordon Whittaker, *Aztec Sorcerers in Seventeenth Century Mexico: The Treatise on superstitions by Hernando Ruiz de Alarcón* (New York: University of New York at Albany, 1982). For a Spanish version see Hernando Ruiz de Alarcón, *Tratado de las supersticiones y costumbres gentílicas que hoy viven entre los indios naturales de esta Nueva España* (Linkgua, 2014).
[102] Lara Cisneros, "Superstición e idolatría," 185.

3. Distribution of Chapters

Chapter one explores the creation of canon law and the setting up of ecclesiastical courts in Medieval Europe, focusing on the legal basis and sociopolitical dynamics that made it possible for the Church to exercise judicial authority over its Christian subjects. The study of the early ecclesiastical courts in Europe during the twelfth and thirteenth centuries explains why the tribunals of the Church in the Americas acted in the way they did. The juridical procedure of the colonial ecclesiastical courts, the canonical sources they used to pronounce their judgments, and the punishments they applied to criminals were not random and gratuitous; rather, they were part of a long tradition, dating back to Late Antiquity and the Middle Ages.

Chapter two explores the establishment and development of ecclesiastical justice in New Spain, through the analysis of royal law and the canons of the Mexican Councils from the sixteenth to the eighteenth centuries. I cover the major differences between medieval and colonial ecclesiastical courts while analyzing the role that the Spanish monarch, as patron of the Church, played in this judicial system. In addition, this chapter explains the operation of diocesan courts in the Archbishopric of Mexico, from the Provisorato to the ecclesiastical court of San José de Toluca.

Chapter three offers a general view of the Toluca Valley and its habitants, focusing on their ethnicity, population patterns, ways of life, and daily experience. I also offer a description of the city of San José de Toluca, along with several maps and censuses that permit the reader to understand the setting of this dissertation.

Although this dissertation examines in depth just four criminal categories (jurisdictional conflicts, cases against ecclesiastics, indigenous unorthodoxy, and marital issues) diocesan tribunals prosecuted crimes, including monetary debts, disputes over testaments and chaplaincies.

Therefore, the purpose of Chapter four is to offer a general study of the ecclesiastical court of San José de Toluca, its functions, jurisdiction, and to explore all the different cases that this tribunal prosecuted.

Chapter five studies how the ecclesiastical court of San José de Toluca defended the jurisdiction of the Church through cases of "*inmunidad eclesiástica"* and conflicts with royal officials. The right of asylum or the immunity of churches (*inmunidad*) were a battleground in which secular and spiritual interests clashed. While the Church considered the right of asylum an ancient privilege that highlighted the sacredness of temples, the Spanish Crown saw "immunity" as a privilege that hindered royal authority and endangered public safety. This divergent understanding of *inmunidad* permits us to analyze the relationship between secular and religious justice, and to assess the role played by the Crown in restricting ecclesiastical jurisdiction in the Americas.

Chapter six analyzes cases against members of the clergy. Since ecclesiastical courts had the duty to uphold morality and good customs, it was imperative that the ministers of the Church lived exemplarily so the faithful could imitate their behavior. When parish priests did not meet Catholic moral standards, mismanaged their duties, or abused their parishioners, the faithful could sue them at diocesan tribunals. In the eighteenth-century, most parishioners accused their parish priests of violating local customs, collecting excessive fees, and physical aggression. Besides examining these crimes, chapter six seeks to present the political dynamics of indigenous towns and to explain the importance of the fiscales, middlemen, and lay assistants to parish priests.

Chapters seven and eight examine "superstition" and "idolatry" in the Toluca Valley through judicial records, manuals on the extirpation of idolatry. Local ecclesiastical courts in New Spain had the responsibility to punish indigenous unorthodoxy and to protect the evangelization

of Indians. In order to understand the mentalities of both indigenous peoples and Spaniards, this chapter explores how the concepts of superstition and diabolism developed from the Middle Ages to the eighteenth century. In addition, I offer a comparative analysis of the symptomatology of demoniacs and the bewitched.

Finally, chapter nine examines offenses against the sacrament of marriage, including fornication, adultery, concubinage and domestic violence. The study of these criminal categories allows us to comprehend how ecclesiastical justice enforced sexual morality and good customs on colonial society, and how, from a Catholic perspective, these tribunals appeased God's anger by prosecuting and punishing sinful behaviors. This chapter explains the different terms and categories used by canon law jurists to classify the many sexual crimes against marriage found in colonial society. This dissertation ends by offering a general conclusion based on my findings, surveying the methodological challenges found in our research, and posing potential future lines of research.

Chapter 1. Canon Law and Ecclesiastical Courts in the Late Medieval Period

1. Introduction

During the eleventh and twelfth centuries, the Catholic Church experienced a revolution in Western Europe. The late Medieval popes expanded the authority of the papacy in order to protect the Church from the transgressions of secular kings that had previously usurped the ecclesiastical jurisdiction. The development of the canon law and the ecclesiastical courts, along with the Medieval inquisitions, were the platform by which the Church asserted its jurisdiction and its role as supreme moral arbiter of the Christian community. After the Spanish conquest of the New World, the Church did not sit idle. Embracing their duty to convert the native peoples to Catholicism, the ministers of the Church embarked on a journey in which they brought their Medieval knowledge with them.

Once in the Americas, the ecclesiastical authorities faced several challenges. The Church encountered large numbers of new indigenous converts to Christianity that required religious instruction, and that despite being Catholics in name, they still practiced their own native devotions. The Church found that Spaniards themselves and their bad customs hindered the evangelization of the indigenous peoples. Spanish Catholics on some occasions blasphemed against God, committed fornication, disrespected the priesthood, engaged in adultery, beat their wives, and indulged in chance games and drunkenness. All these practices were not only sinful, but also set a bad example for the Indians that were struggling to become good Christians. The clergy, however, were not innocent either. Some priests misbehaved, mismanaged their parishes, abused their parishioners, engaged in the same activities as laypeople, broke their chastity vows, practiced open concubinage, and lived in a scandalous way. As the Church did in Europe, they

utilized in the Americas both canon law and ecclesiastical courts to enforce religious orthodoxy and to maintain good Christian customs in colonial society. Although the tribunals and the laws of the Church worked as those in Europe in the late Middle Ages, there were significant differences.

To understand these differences, we need first to examine how the juridical machinery of the Church originated during the Middle Ages in Europe, and how it changed through time. This chapter explores the creation of canon law and the implantation of ecclesiastical courts in Medieval Europe, focusing on the legal basis and social and political dynamics that made it possible for the Church to exercise spiritual and judicial authority over its Christian subjects. In this respect, the study of canon law is key to understand the institutional development of the Catholic Church in terms of discipline, organization, morality, religious doctrine, structure, and its relationship with other secular political and juridical organizations. Canon law is equally important to understand how the Church regulated social human conduct through its principles, norms, and decrees. For Medieval Christians in Europe (and it will be the same for the new indigenous converts of the Americas), canon law was not an abstract construct or mere jurisprudence, it was rather an important part of their lives. For instance, sacraments were the point of contact between individuals and the legislation of the Church. The faithful had to go through clear and formal procedures when receiving the sacrament of baptism, confirmation, penance and reconciliation, holy orders, the Eucharist, and matrimony. All these rituals and ceremonies helped to regulate societal norms, liturgical life, and as such, became part of daily customs, beliefs, and traditions.[103]

[103] Kriston R. Rennie, *Medieval Canon Law* (Amsterdam: Arc Humanities Press, 2018), 59-60.

As Kriston R. Rennie argues, canonical norms offer "a tangible outcome of developing sacramental practice, textual interpretation, and enactment. The *need* for such rule-making stemmed primarily from regulating behavior, whose contemporary problems (fornication and adultery, murder, theft, false witnesses, blasphemy) and proposed solutions led to increasingly stricter guidelines."[104] Therefore, the study of the early ecclesiastical courts in Europe during the twelfth and thirteenth centuries explains why the tribunals of the Church in the Americas acted in the way they did. The juridical procedure of the colonial ecclesiastical courts, the canonical sources they used to pronounce their judgments, and the punishments they applied to criminals had medieval roots. For that reason, we cannot fully grasp the organization of these tribunals without understanding the intellectual, cultural, and social basis under which they were born in Europe.

1.1 Historiography

Most academic works in the historiography of Medieval canon law have utilized manuscript material as sources, disregarding juridical case documents found in the European courts in the late Middle Ages, and other type of archival material.[105] Charles Donahue criticizes this literature, contending that by focusing on the theoretical aspects of canon law, historians did neither examine how law was practiced in the ecclesiastical courts, nor analyzed what impact these tribunals had on the Christian society of the Middle Ages.[106] One of the main works that fought against this historiographic flaw is a collection of essays compiled by Wilfried Hartmann and Kenneth Pennington, whose purpose is to provide scholars with sources for investigating the

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[104] Ibid, 60.

[105] Charles Donahue, "The Ecclesiastical Courts: Introduction," in, *The History of Courts and Procedure in Medieval Canon Law,* edited by Wilfried Hartmann and Kenneth Pennington (Washington D.C: Catholic University of America Press, 2016), 247.

[106] See, Charles Donahue, *Why the History of Canon Law Is Not Written* (London: Selden Society Lectures, 1984).

works of Medieval courts, and to show "the relationship between jurisprudence that governed judicial procedure and what happened in the courtroom."[107] Donahue demonstrates that ecclesiastical courts were part of the daily lives of the faithful, who resorted to them to seek redress of their grievances in a local scenario.[108] Another work that emphasized the interplay between canon law and society is the monograph *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s*, by Richard H. Helmholz, on ecclesiastical in Medieval England.[109] R.H. Helmholz explores judicial cases to study the daily operation of ecclesiastical courts at the local level, while analyzing how the canon law and the Church's tribunals developed in England from the early Middle Ages to the early Modern period after the Reformation.

A second flaw found in the historiography of the canon law and the ecclesiastical courts in Medieval Europe is that most of the works focused on England, France, and Italy, with no equivalent for the Iberian Peninsula.[110] Although prominent scholars such as Alfonso García-Gallo, who surveys the contribution of the Spanish synods and councils to the Medieval canon law, there are few works that actually explore how the Church's tribunals functioned in Medieval Spain and Portugal.[111] Some exceptions to this rule are the works of Yolanda Serrano Seoane[112], that studies the penal system in the ecclesiastical tribunal of the dioceses of Barcelona in the late

[107] Wilfried Hartmann and Kenneth Pennington, *The History of Courts and Procedure in Medieval Canon Law* (Washington D.C: Catholic University of America Press, 2016), VII.
[108] Donahue, "The Ecclesiastical Courts: Introduction," 292. For the cases brought to the ecclesiastical courts see 269-276.
[109] R.H. Helmholz, *The Canon Law and Ecclesiastical Jurisdiction from 597 to 1640s* (Oxford: The Oxford History of the Laws of England, 2004).
[110] For a whole list of monographies on canon law in different European countries see Donahue, "The Ecclesiastical Courts: Introduction," 248, footnote 2.
[111] One of the most important councils of the Spanish late Middle Ages is that of Coyanza, in 1055. This council is explored and discussed by Alfonso García-Gallo, *El concilio de Coyanza: contribución al estudio del derecho canónico español en la Alta Edad Media* (Madrid: Instituto Nacional de Estudios Jurídicos, Anuario de Historia del Derecho Español, 1951).
[112] Yolanda Serrano Seoane, "El sistema penal del tribunal eclesiástico de la diócesis de Barcelona en la Baja Edad Media: Estudio," *Clío y Crimen* 3 (2006): 334-429.

Medieval period, and Antonio García y García, whose studies revolved around the ecclesiastical procedure in the Spanish Middle Ages.[113] García y García argues that the absence of legal records and sources dating back to the Medieval Iberian courts might be an explanation for this absence of literature. While the canon 38[114] of the Fourth Lateran Council of 1215 obliged courts to write down and preserve the legal records they produced, García y García wrote that in the Iberian peninsula this rule may have not been observed.[115] This author proposes that new studies on the ecclesiastical justice in the Iberian Middle Ages should examine "the origin and evolution of ecclesiastical tribunals, the jurisdictional division between ecclesiastical and secular courts, and the judicial procedure used in the administration of justice in the various in Medieval Spain."[116]

This dissertation combines two historiographic approaches proposed by Donahue and García y García in relation to canon law and the ecclesiastical courts. I explore the interplay between canon law, ecclesiastical courts, and society, while analyzing the evolution of the laws and the tribunals of the Church through the seventeenth and eighteenth centuries in the Toluca Valley, colonial Mexico. In addition, this chapter includes a theoretical analysis of jurisprudence and its sources, to better explain the case documents in which these juridical principles were practiced at a local ecclesiastical court.

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[113] Antonio García y García, "Ecclesiastical Procedure in Medieval Spain," *The History of Courts and Procedure in Medieval Canon Law*, 392-425. By this author, see also *Iglesia, Sociedad y Derecho* (Salamanca: Universidad Pontificia de Salamanca, 1985).
[114] Fordham University, "Medieval Sourcebook: Twelfth Ecumenical Council: Lateran IV 1215." https://www.bibme.org/citation-guide/chicago/website/, canon 38: "A judge must employ a notary or two competent men to put in writing the acts of the judicial process, so that if a dispute arise regarding any action of the judge, the truth can be established by referring to these documents. If any difficulty should arise because of a neglect of this, let the judge be punished."
[115] García y García, "Ecclesiastical Procedure in Medieval Spain," 394-395.
[116] Ibid.

2. Origins of Canon Law in Europe: From Late Antiquity to the Middle Ages

2.1. Canon Law: Historical Context and Emergence

The eleventh and twelfth centuries were characterized by an intense political and religious reform in the Catholic Church. Pope Gregory VII (1073-1085) faced several problems that affected the Church at that time, such as the emergence of heretical movements in Western Europe like those of the Cathars, and the Waldesians. In addition, the papacy struggled to eradicate simony, that is, the buying or selling of ecclesiastical offices, and the practice of open concubinage in the priesthood[117]. In this period, the increasing power of the secular kings over the Catholic bishops permitted the usurpation of ecclesiastical goods by noblemen, and the decadence of discipline and morality in the Church hierarchy. Denouncing the excessive power of the feudal lords and secular aristocracy over the ecclesiastical influences, Gregory VII championed an intense ecclesiastical reform to regain the control of the bishops and to subject the secular power to the authority of the Church.[118] To do so, Gregory VII and the following popes asserted that the papacy had the duty to confront the usurpation of the temporal power, and to secure justice not only for clergy, aggrieved by the trespasses of the secular authorities, but also for all members of the Church, which included the regular laypeople. The intention of the popes was to create a new intellectual and juridical system that could allow them to intervene in the ordinary lives of the faithful throughout Western Europe.[119] One pope that represented this movement of reform was Boniface VIII (1294-1303), who opposed the king Philip V of France for having taxed the clergy and seized the Church's revenue without the permission from the pope. Among the bulls that this

[117] Wermer Goez, "Ecclesiastical Reform-Gregorian Reform" Translated by W. L. North from "Riforma Ecclesiastica-Riforma Gregoriana," *Studi Gregoriani XIII*, Rome (1989):167–178.
[118] Joaquín Sedano. "El Corpus Iuris Canonici." Universidad de Navarra, 2014. http://www.unav.es/biblioteca/fondoantiguo/hufaexp31/03e.html
[119] Helmholz, *The Canon Law and Ecclesiastical Jurisdiction*, 91

pope issued to reinforce his authority against the French monarch was the famous *Unam Sanctam*, in 1302. In this bull, Boniface VIII asserted that the “spiritual power surpasses in dignity and in nobility any temporal power whatever, as spiritual things surpass the temporal,” and that “it belongs to spiritual power to establish the terrestrial power and to pass judgement if it has not been good.”[120]

Claiming the superiority of spiritual power over temporal power was revolutionary, but in the twelfth century the Church did not have neither the judicial machinery nor the institutional capacity to enforce it. In order to achieve this goal, it was crucial for the popes to endow the Church with a powerful judicial apparatus that could both empower and shield its authority against the trespasses of secular kings. The weapon developed by the Church to enforce its spiritual supremacy was the canon law.[121] The canon law is defined as the body of laws and regulations made by or adopted by ecclesiastical authority for the government of the Catholic Church and its members. The word canon derives from the Greek *kanon*, meaning a rule or practical direction, that soon gained an exclusive ecclesiastical signification.[122] In the fourth century AD, this term applied to the ordinances produced by ecumenical councils, assemblies of patriarchs, bishops, and the popes. The purpose of an ecumenical council is to define doctrine, enforce ecclesiastical discipline, enact canons, remove theological errors (heresies), consolidate dogmas, create new or clarify previous judicial procedures, and reaffirm truths of the Faith.[123] Regarding its sources,

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[120] Papal Encyclicals Online. “Unam Sanctam.” https://www.papalencyclicals.net/Bon08/B8unam.htm.

[121] The conflicts between the Old and the New Law is present in the epistles of Saint Paul in the first century AD. The apostle tried to prevent new converts from following legal and traditional observations, such as circumcision, that could have repelled them from the Gospel. See for instance Romans 2:25-29, and 1 Corinthians 7:18.

[122] Auguste Boudinhon, "Canon Law," in *The Catholic Encyclopedia. Vol. 9* (New York: Robert Appleton Company, 2019).

[123] Joseph F. Kelly, *The Ecumenical Councils of the Catholic Church: A History* (Collegeville: Liturgical Press, 2009), 2-10.

canon law draws on the Scripture, mainly on the commandments and prescription established by Jesus and the apostles in the New Testament. The Mosaic law contained in the books of Leviticus and Deuteronomy were used as references but not strictly observed when contradicting the new laws of the New Testament, or when it could not dictate an exact set of rules about new ecclesiastical matters. [124]As such, canonists and popes departed from a literal reading of the Old Testament during the early Medieval period. Besides the Bible, the Church nurtured from the writings of the Fathers of the Church, and the canons of early councils.

Despite the existence of a previous legal tradition, the Church in the late Middle Ages encountered a vast corpus of canonical texts, decrees and constitutions that sometimes contradicted each other or were rendered obsolete.[125] Around the year 1140, European universities founded by the Catholic Church received and reviewed a compilation of canons titled *Concordia discordantium canonum,* also called the *Decretum Gratiani* (or Gratian's Decree in English).[126] Gratian's Decree covered the philosophical and juridical principles of the law of the Church, defined the role of ecclesiastical persons and their function, and regularized matters of ecclesiastical and sacramental administration.[127] The universities that made possible the

[124] The conflicts between the Old and the New Law is present in the epistles of Saint Paul in the first century AD. The apostle tried to prevent new converts from following legal and traditional observations, such as circumcision, that could have repelled them from the Gospel. See for instance Romans 2:25-29, and 1 Corinthians 7:18.
[125] Boudinhon, "Canon Law."
[126] The compilation is named after Gratian, a Benedictine monk, canon lawyer and teacher at Bologna, Italy, during the 1130s and 1140s. To know more about his biography, see Kenneth Pennington, "The Biography of Gratian, the Father of Canon Law," *Villanova University, Charles Widger School of Law*, Rev. 679 (2014): 679-706.
[127] The Gratian's Decree is divided into three parts (*ministeria, negotia, sacramenta*). The first part is devoted to the introduction to the general principles of canon Law and ecclesiastical persons and their function. The second part revolves around matters of ecclesiastical administration, marriages and the Sacrament of Penance. Finally, the third part treats of the sacraments and other sacred things and contains 5 distinctions. Each distinction or question contains *dicta Gratiani*, or maxims of Gratian, and *canones*. This section consists of legal questions and problems answered by *auctoritates*, i.e. canons of councils, decretals of the popes, texts of the Scripture or of the Fathers. For a more detailed description see Alphonse Van Hove, "Corpus Juris Canonici," *The Catholic Encyclopedia. Vol. 4*. (New York: Robert Appleton Company, 2019), online version: http://www.newadvent.org/cathen/04391a.htm.

compilation of this code, especially the University of Bologna, in Italy, were also responsible for the rediscovery of Roman law during the twelfth century. Italian jurists recovered the *Corpus Iuris Civilis*, a legal code compiled by the byzantine Emperor Justinian in the sixth century, which provided the Church with an older and more sophisticated legal corpus that was added to the canons.[128] However, it is important to emphasize that Roman law complemented rather than replaced Medieval canon law. In fact, the new canon law dealt with ecclesiastical matters that were not covered by Justinian's code, such as titles on baptism, penitence, religious life, and specific contemporary problems ignored by the old Roman law.[129]

After the Gratian's Decree, the second half of the twelfth century was marked by the abundant legal production of popes such as Alexander III, Innocent III, and Gregory IX. The legal codes produced by pontiffs were incorporated into a canon law compilation named *Liber Extra*, or the Decrees of Gregory IX, promulgated in 1234.[130] The same process occurred during the thirteenth and fourteenth centuries, with the bishops of Rome issuing and compiling new canons such as the *Liber Sextus Decretalium* under Boniface in 1289, the *Constitutiones Clementinae* of Pope Clement V in 1317, the *Extravagantes Johannis XXII,* and the *Extravagantes Comunes* of John XII in 1325. Finally, in 1580-1582 Gregory XIII promulgated the *Corpus Iuris Canonici*, the final compilation of all these collections that became the official corpus of canonical law of the Church, in force until 1918.[131] This complete set of decrees and constitutions reinforced the

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[128] For a detailed analysis of this process see Stephan Kuttner, "The Revival of Jurisprudence," in Robert Benson and Giles Constable, eds., *Renaissance and Renewal in the Twelfth Century* (Toronto: University of Toronto Press, 1991), 299-323.
[129] Helmholz, *The Canon Law and Ecclesiastical Jurisdiction*, 86-89.
[130] Papal decretals are formal answers to questions that had come before a pope. These responses become part of magisterial teaching, and as such they gained legal force in the canon law.
[131] Juan Pablo Pampillo Baliño, "El *Corpus Iuris Canonici*: su importancia e influencia en la tradición jurídica occidental," *International Studies of Law and Education*, *Univ. do Porto* (2015): 70.

power of the papacy and solidified the legal system of the Church, mirroring the model that the Byzantine emperor Justinian established in his *Corpus Iuris Civilis* between 529 to 534.[132] However, the impact of canon law was not limited to the papacy and the Church. According to Anders Winroth, during the late Middle Ages, "canon law regulated areas that would today be thought of as thoroughly secular, such as business, warfare, and marriage."[133] For this reason, canon law was studied at European universities, and became the foundation of local judicial practice and the standard of local law codes.[134]

2.2. The IV Lateran Council and Challenges to the Spiritual Supremacy of the Church in the Late Medieval Period

One consequence that followed the creation of the canon law was the solidification of the principle of ecclesiastical supremacy and spiritual sovereignty over the laity. Since the Church affirmed that the clergy should not submit to the commands of the temporal power, the late Medieval popes used the canon law to separate the clerics from society, distinguishing them from the ordinary lives of laypeople. We can see this purpose in the canons of the Fourth Council of Lateran, summoned by the pope Innocent III in 1215. This ecumenical council represented the most significant papal assembly of the Later Middle Ages, and its decrees regulated the organization of the Church, defined the role of the clergy in ecclesiastical and secular tribunals, enforced a series of measures to correct the morality of the clergy, and stressed the obligation of auricular confession at least once a year. The assessment of these canons is key, as they allow us

[132] Sedano, "El Corpus Iuris Canonici," 70.
[133] Anders Winroth, *The Making of Gratian's Decretum* (New York: Cambridge University Press, 2000), 2
[134] Ibid, 2.

to comprehend how the Church portrayed itself as supervisor of the Christian society, and the role played by the priesthood and the faithful, in this new paradigm.

Various canons produced by the Council aimed to put an end to ecclesiastical immorality and indiscipline, that was one of the chief complaints used by laypeople and temporal powers to undermine the ecclesiastical authority.[135] The Church affirmed that in order to regain the respect of the laypeople, clerics must behave decently, by abstaining from drunkenness, playing games of chance, and by not taking part in the same secular activities as the lay people. [136] The aim of this reform was to consolidate good Christian customs and morality in the priesthood, that could serve as an example for the rest of the faithful. This was not a new teaching by the Medieval Church. The doctor of the Church, John Chrysostom, had already taught in the fourth century that there were no better miracles to attract the gentiles (non-Christian pagans) than a good Christian life by following the example of the prophets and apostles. Chrysostom insisted that the disciples of Jesus gained the attention of the crowds not because they could work miracles, but because their way of living was a miracle.[137]

[135] Donald Logan, *A History of the Church in the Middle Ages* (London: Routledge, 2012), 189.

[136] IV Lateran 1215, canon 16: "Clerics shall not hold secular offices or engage in secular and, above all, dishonest pursuits. They shall not attend the performances of mimics and buffoons, or theatrical representations. They shall not visit taverns except in case of necessity, namely, when on a journey. They are forbidden to play games of chance or be present at them."

[137] St. John Chrysostom, "Homily 46 on Matthew," in Philip Schaff, *From Nicene and Post-Nicene Fathers, First Series, Vol. 10* (Christian Literature Publishing Co., 1888). This text became central to emphasize the necessity of good Christian life in priests and missionaries, and such was extensively cited by Spanish jurists and clerics in the Americas such as the bishop of Quito Alonso de la Peña Montenegro. For a explicit citation of this passage see Alonso de la Peña Montenegro, *Itinerario para párrocos de indios, libros I-II* (Madrid: Consejo Superior de Investigaciones Científicas, 1995), 312-313.

In terms of jurisdiction, canon 18 prohibited secular tribunals to prosecute priests[138], while canon 42 mandated that priest themselves must not usurp the secular jurisdiction.[139] This law also prohibited priests from participating in trials by ordeal for the secular tribunals, that in the later Middle Ages were seen by scholastics and theologians as a form of tempting God, and thus sinful.[140] Finally, the council reinforced the Sacrament of Penance and Reconciliation by forcing all the faithful to confess their sins and do penance at least once a year.[141] Although this sacrament already had a long tradition and was practiced since the early Christian Church,[142] the obligation to receive it annually was an innovation. Scholars such as Dyan Elliott, have pointed out that auricular confession was utilized as a method to proof the orthodoxy of the faithful in a time plagued by religious dissidence and heretical movements. [143] From a social and juridical perspective, the canons of the Fourth Lateran Council allowed the papacy to control people's lives. Laypeople could now encounter the law of the Church not only at the ecclesiastical courts, but also in the confessionary, where their most intimate thoughts could be examined and judged. The fact that the Church produced laws to resolve an existing problem of morality in the clergy reveals that canon law did not function as an abstract and juridical construct of jurists and

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[138] IV Lateran 1215, canon 18: "No cleric may pronounce a sentence of death, or execute such a sentence, or be present at its execution […]. Wherefore, in the chanceries of the princes let this matter be committed to laymen and not to clerics."

[139] Ibid, canon 42: "we forbid all clerics so to extend in the future their jurisdiction under the pretext of ecclesiastical liberty as to prove detrimental to secular justice."

[140] A trial by ordeal was a juridical practice by which the guilt or innocence of an accused person of certain crime was determined though a supernatural act. For instance, the defendant had to walk a couple of meters holding a red-hot iron. If the accused was free of injury, it was believed that God protected him and that as a result he was innocent. See F. Allan Hanson, *Testing: Social Consequences of the Examined Life* (Berkeley: University of California Press, 1993), 36.

[141] Ibid, canon 21: "Everyone who has attained the age of reason is bound to confess his sins at least once a year to his own parish pastor with his permission to another, and to receive the Eucharist at least at Easter."

[142] The biblical foundations of the Sacrament of Confession/Penance according to the Catholic Church is John 20:22-23. See also Anthony Uyl, ed., *Ambrose: Selected Works and Letters* (Devoted Publishing, 1917), On Repentance, 342.

[143] Dyan Elliott, *Proving Woman: Female Spirituality and Inquisitional Culture in the Later Middle Ages* (Princeton: Princeton University Press, 2004), 15.

theologians, but as a tool to solve the challenges posed in the daily interaction between the priesthood and the laity. By reading the decrees and constitutions of the canon law, we can learn more about the society they sought to regulate.

3. Claiming Jurisdiction in Canon Law: The External and the Internal Forums

In juridical terminology, the word *forum* refers to either the place of trials or the exercise itself of judicial authority. The Catholic Church during the late Middle Ages utilized canon law to claim jurisdiction on two types of forums: the external forum and the internal forum. The *fori externi* (external forum) encompassed all sins that publicly transgressed divine law and the law of the Church. This distinction means that in the ecclesiastical forums a sin is treated as a crime committed against God and the Church, which as aggrieved party, had the right to prosecute and punish the transgressor. The *fori interni* (internal forum) refers to the private sins and transgression of the faithful, whose crimes were punished and forgiven through the administration of the sacrament of reconciliation and penance.[144] Therefore, issues related to the fori interni were dealt in the confessional, and judicial cases concerning the fori externi were settled at ecclesiastical courts. The fori interni is a voluntary forum which can only be entered of one's own free will, and where the penitent is simultaneously plaintiff and defendant.[145] The external forum follows specific and carefully devised procedures under the supervision of experienced judges, lawyers, and trained personnel.[146] From the canon law's perspective, a person may have jurisdiction "*in foro interno*," but not "*in foro externo*." For instance, parish priests have

[144] S.B. Smith, *Elements of Ecclesiastical Law: Ecclesiastical Persons, vol. I, Sixth* Edition (Benziger Brothers, 1887), 93.
[145] Joseph Goering, "The Internal Forum and the Literature of Penance and Confession," *The History of Medieval Canon Law in the Classical Period*, edited by Wilfried Hartmann and Kenneth Pennington, 1140-1234.
[146] Ibid, 380.

jurisdiction in the internal forum as they administer sacraments, but they are not ecclesiastical judges, and they do not have a competence in the external forum. In the same way, civil authorities do not have any jurisdiction over the "fori interni" at all.[147]

3.1 The External Forum

Medieval canon law claimed jurisdiction in the external forum *"ratione personae'* (by reason of the person) over all cases in which a member of the clergy was the defendant. We have seen that the Fourth Lateran Council prohibited secular tribunals to prosecute clerics, a canon that reinforced previous laws in Gratian's Decree that punished lay aggression on the priesthood.[148] Although the Church distinguished between ecclesiastical and secular courts, the borders of these tribunals were not that separated in practice. Medieval courts followed the legal maxim *Actor forum rei sequitur,* so suits must heard by the forum of the defendant. For example, in civil matters a layperson could not be prosecuted by an ecclesiastical court, but only by a secular judge. Although canon law did not claim jurisdiction over actions were laypeople were the defendants, sometimes medieval ecclesiastical courts heard cases involving the physical and verbal assault on the clergy, mixing the competence of secular and ecclesiastical tribunals.[149] In this respect, authors like Helmholz note that the legal maxim of actor forum rei sequitur "was tempered by the rule that if the subject-matter of the litigation was inherently spiritual in nature (heresies, marital issues), the parties voluntarily submitted themselves to ecclesiastical jurisdiction."[150] The application of this legal rule varied from country to country. In France there was a strong secular challenge to ecclesiastical courts, with secular jurists trying to keep laypeople from being brought

[147] S.B. Smith, *Elements of Ecclesiastical Law*, 93.
[148] Decretum Gratiani. "Gratian's Decretum." http://gratian.org/, C. 17 4.4 C. 29.
[149] Donahue, "The Ecclesiastical Courts: Introduction," 275.
[150] Helmoz, *The Canon Law and Ecclesiastical Jurisdiction* 509.

before ecclesiastical tribunals at all; while in England laypeople brought their suits to the bishops of their dioceses, who would start the legal process.[151]

Despite this interaction between clerics and laypeople in ecclesiastical courts, the canon law dissuaded laymen from filing accusations against members of the clergy.[152] Reasons for this measure have to do with the Church's determination to preserve the dignity of the clergy, considering that priests could lose honorability and respectability if their parishioners could sue them. However, these norms were not always observed, as laypeople could sometimes sue a member of the clergy. For instance, if a priest had assaulted a layperson, he had the right to accuse him at an ecclesiastical court, but he was prohibited to press charges against a cleric in the name of another person, or act as witness.[153] Public crimes that affected religious orthodoxy and the social order such as heresy could be brought to an ecclesiastical court by a layperson.[154] In short, this rule did not grant immunity to the clergy in criminal offenses, but it forced laypeople to bring those judicial cases to religious tribunals.[155] Complaints against the clergy revolved around cases of misbehaving, mismanagement of sacraments, damages to the local church by the parish priest (in case he appropriated for his private use parts of the church), and sexual misconduct. In his investigation of cases brought by laypeople to ecclesiastical courts in England, Helmholz found consistent allegations of drunkenness, sodomy, simony, public hunting, revealing secrets learned

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[151] Ibid, 509-510.

[152] Bibliotheca Augustana. "Decretalium Gregorii Papae IX compilationis." http://www.hs-augsburg.de/~harsch/Chronologia/Lspost13/GregoriusIX/gre_5t01.html, Book 5, title 1, chapter 10: "Laici vel inimici clericos accusare non possunt."

[153] Decretalium Gregorii Papae IX compilationis, Book 2, Title 20, chapter 14: "Laicus in criminali non testificatur contra clericum, accusat tamcn pro sua vel suorum iniuria."

[154] Cases of heresy were sometimes heard in ecclesiastical courts. However, in some areas and in some periods, special inquisitors were appointed by the popes to deal with matters of heresy. See Donahue, "The Ecclesiastical Courts: Introduction," 266.

[155] Helmhoz, *The Canon Law and Ecclesiastical Jurisdiction* 516.

in confession, leaving consecrated hosts unprotected, habitual non-residence, and failure to provide church services.[156] Helmholz poses that although all this accusation seemed to have violated the Church's prohibitions against accusation of clerics, such prosecutions were an intellectual effort to define public crimes. Helmholz argues that in a strict reading, canon law only prohibited bringing an accusation against a man in holy orders, but that in formal terms, these prosecutions were brought "*ex officio*" by the ecclesiastical courts; and laypeople were just only reporting a crime, letting the ecclesiastical tribunal carry out the investigation and punishing the offender.[157] As I will explore in the sixth chapter of this dissertation, some of the above accusations against members of the clergy also appear in the Toluca Valley, with some notorious exceptions such as sexual offenses. This similarity shows that ecclesiastical courts in eighteenth-century New Spain still kept some of the canonical jurisprudence that defined ecclesiastical courts in the late Middle Ages.

The Church claimed jurisdiction *ratione materiae* (by reason of matters), over spiritual matters concerning the faith, administration of sacraments, ecclesiastical property and benefits, marriages, tithes, revenues, rights of patronage, issues of discipline and the cure of souls.[158] Finally, the Church claimed jurisdiction on special cases in which *miserabilis personae* (miserable persons) such as the poor, widows, and orphans were involved. In canon law, miserable persons are those who, because of their specific personal situation, they lack the resources to sustain and protect themselves, and therefore are entitled to a special form of charity and protection from the law. According to the *Gratian's Decretum*, bishops had the obligation to defend widows and

[156] Ibid, 518.
[157] Helmholz, *The Canon Law and Ecclesiastical Jurisdiction,* 19.
[158] Fournier, *Officialités* 64–127.

orphans, and if they neglected this duty, they ought to be severely punished.[159] Another canon permitted clerics to intervene in secular matters (*negociis secularibus*) if in those cases orphans and widows were involved.[160] Although absent in the Gratian's Decretum, the concept of *miserabilis personae* appears for the first time in the Decretals of Pope Gregory IX in 1230, stating that the ecclesiastical forum has competence on the matters with miserable persons involved.[161] This concept of miserabilis personae would have a tremendous impact in the Spanish legal system in the Americas, since indigenous peoples were considered by both the Church and the Spanish Crown as "miserable," and therefore in need of special protection from the Spanish monarch.[162] I will deal with this issue in the next chapter.

Regarding criminal cases, the Church reserved its right to hear them based on the notion of *ratione peccati* (by reason of sin), interpreting that some crimes fell on a specific category of sin. However, this interpretation does not mean that the canon law claimed jurisdiction on virtually all crimes. For instance, murder was a sinful transgression against the Fifth Commandment ("thou shalt not murder"), but the Church did not intervene in those cases whose competence belonged to the secular courts. Charles Donahue contended that crimes under the jurisdiction of the Church were concerned first with an individual's relations with God or the Church; and second, with sex. For the first category sins and crimes revolved around heresy,

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[159] Decretum Gratiani, Distinction 86, c.6: "Aut cui ipsius civitatis episcopus ecclesiasticarum rerum commiserit gubernacula, et orphanorum atque viduarum, que indefense sunt, aut earum personarum, que maxime ecclesiastico indigent amminiculo propter timorem Dei. Si quis vero transgressus fuerit hec precepta, ecclesiastice correctioni subiaceat."

[160] Ibid, Distinction 88, C.1: "Decrevit sancta sinodus, nullum deinceps clericum aut possessiones conducere, aut negociis secularibus se miscere, nisi propter curam aut pupillorum aut orphanorum aut viduarum, aut si forte episcopus civitatis ecclesiasticarum rerum sollicitudinem eum habere precipiat."

[161] Decretalium Gregorii Papae IX compilationis, Cap. XV: "Miserabilis persona potest laicum interdicto unde vi coram iudice ecclesiastico convenire, etiamsi res substracta dicatur feudalis."

[162] See for instance Thomas Duve, "Algunas observaciones acerca del Modus Operandi y la prudencia del juez en el derecho canónico indiano," *Revista de Historia del Derecho 35,* (2007): 195-226.

sacrilege, witchcraft, and perjury; while for the second category it encompassed sexual offenses such as fornication, adultery, and sodomy. The only offense that did not fit well into this classification or that was enforced in some ecclesiastical courts in some periods was usury.[163] We should consider that the classification of sins and crimes depended on the country and region. While in the English courts most of the crimes were related to sexual offenses, in the Spanish ecclesiastical tribunals there is a scarcity of those cases.[164]

3.2 The Internal Forum: Confession and the Sacrament of Penance and Reconciliation

The Church based the Sacrament of Confession on the Scripture. In several passages of the New Testament the evangelists stated that the blood of Jesus has the power to cleanse all sins, and that Christ Himself is the expiation of sins.[165] In the first centuries of the Church's history, sinful Christians confessed their sins committed after Baptism and were reconciled by priests after completing a long public penance. There is an example of this type of penance in the Acts of the Apostles. During his stay in Ephesus, the apostle Paul instilled in some sectors of the local population a deep belief in repentance and the remission of sins according to the new Christian paradigm. Moved by this conviction, Ephesians who had committed sorcery confessed their sins and publicly burned their scrolls of magic.[166] Besides the apostles, emerging religious authorities such as St. Clement of Rome, writing around 96 AD, admonished Christians in Corinth to "submit to the presbyters, and accept chastisement for repentance."[167] In *The Apostolic Tradition*, a collection of writings attributed to the saint and theologian Hippolytus of Rome in AD 215, he

[163] Donahue, "Ecclesiastical Courts: Introduction," 276.
[164] See for instance Serrano Seoane, "El sistema penal del tribunal eclesiástico de la diócesis de Barcelona en la Baja Edad Media," 334–428; 430–508.
[165] 1 John 1:7 and 1 John 2:1-2.
[166] Acts 19:18-19 NIV: " [18] Many of those who believed now came and openly confessed what they had done. [19] A number who had practiced sorcery brought their scrolls together and burned them publicly. When they calculated the value of the scrolls, the total came to fifty thousand drachmas."
[167] Robert L. Fastiggi, *The Sacrament of Reconciliation: An Anthropological and Scriptural Understanding* (Chicago: HillenBrand Books, 2015), 37.

manifested the belief that priests had authority to forgive sins according to the Scripture during this early Christian period.[168] In the same way, the Christian scholar Origen of Alexandria wrote in 248 that the remissions of sins could be obtained “from declaring his sin to a priest of the Lord and from seeking medicine for his sins.[169]

In short, during the first three centuries of the Church’s existence, Christians who committed grave sins such as idolatry, murder, or adultery were subjected to rigorous disciplines, with penitents doing public penance for long time (even years) before they were reconciled.[170] However, what we encounter in the early Middle Ages is a gradual transition from public forms of confession and penance, as the writings of the early Christian and theologians show, to a more intimate practice. The first Pope to pronounce himself on this matter was Leo I, who on March 6, 459 AD, sent a letter to the bishops of Campania (Italy), affirming that confessing a sin in secret was an apostolic regulation. He clarified that “it suffices that the states of conscience be made to the priests alone in secret confession.”[171]

Ecumenical councils of the Church further elaborated on regulating penance and made specific clarifications depending on the person who committed sin and that sought reconciliation. For instance, the 16 canon of the Fourth Council of Constantinople, in 869-870, mandated that influential persons in a position of authority that mocked holy things had to be excommunicated

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[168] Hippolytus of Rome, T*he Treatise on The Apostolic Tradition* (The Alban Press, Reissued version with additional corrections, 1992), 5: “[Father] who knowest the hearts, grant upon this Thy servant whom Thou hast chosen for the episcopate to feed Thy holy flock and serve as Thine high priest, that he may minister blamelessly by night and that, that he may unceasingly propitiate Thy countenance and offer to Thee the gifts of Thy holy Church. And that by the high priestly Spirit he may have authority “to forgive sins” according to Thy command, “to assign lots,” according to Thy bidding, to “loose every bond” according to the authority Thou gavest to the Apostles…”
[169] Origen of Alexandria, *Homilies on Leviticus, 1-16* (Washington D.C: The Catholic University of America Press, 2010), 2:4, 47.
[170] Catechism of the Catholic Church. “The Sacrament of Forgiveness.”1447. http://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c2a4.htm
[171] Fastiggi, *The Sacrament of Reconciliation*, 44.

by the patriarch of the time and his fellow bishops. Then, the sinner should repent quickly and accept the corrective practices and penances established by the divine priesthood.[172] Likewise, the First Lateran Council of 1123 stipulated that members of the clergy who had concubines had to undergo penance.[173] The most significant council to enshrine the obligation of confession and penance was the Fourth Lateran Council in 1215, which established in its canon 21 that "everyone who has attained the age of reason is bound to confess his sins at least once a year to his own parish pastor."[174] This mandate was further reinforced by later councils such as the First Council of Lyon, that emphasized that God granted the apostles (and their successors, the Church and its ministers) the authority to pardon sins in confession;[175] while the Council of Trent finally entrenched this sacrament and defined its procedure in 1551.[176]

In summary, the canon law helped to organize and articulate the internal forum through the obligation of auricular confession. According to Dyan Elliot, the sacrament of penance and reconciliation became the most useful tools used by the inquisitors to fight against heresy and to survey individual piety. The emergence of auricular confession as a proof of orthodoxy coincides

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[172] Papal Encyclicals Online. "Fourth Council of Constantinople 869-870." https://www.papalencyclicals.net/councils/ecum08.htm, canon 16: "If any emperor or any powerful or influential person should attempt to mock holy things in such a way, or with evil intent to carry out or permit such a great wrong to be done against the divine priesthood, he must first be condemned by the patriarch of the time, acting with his fellow bishops, and be excommunicated and declared unworthy to share in the divine mysteries, and then he must accept certain other corrective practices and penances which are judged appropriate. Unless he repents quickly, he must be declared anathema by this holy and universal synod as one who has dishonored the mystery of the pure and spotless faith."

[173] Papal Encyclicals Online. "First Lateran Council 1123." https://www.papalencyclicals.net/councils/ecum09.htm, canon 21:

[174] IV Lateran Council 1215, canon 21.

[175] Papal Encyclicals Online. "First Council of Lyon 1245." https://www.papalencyclicals.net/councils/ecum13.htm, constitution 5: "We therefore, trusting in the mercy of almighty God and in the authority of the blessed apostles Peter and Paul, do grant, by the power of binding and loosing that God has conferred upon us, albeit unworthy, unto all those who undertake this work in person and at their own expense, full pardon for their sins about which they are heartily contrite and have spoken in confession."

[176] Papal Encyclicals Online. "Council of Trent 1551." https://www.papalencyclicals.net/councils/trent/fourteenth-session.htm, session 14.

with the beginnings of a shift in contemporary systems of establishing proof, concretely represented in the ordeal's decline and the gradual rise of the inquisitional procedure.[177] For instance, some manuals to persecute heretics written by inquisitors envision the sacrament of penance sharing the guidelines of an inquisitional process. The authority of the parish priests, reinforced by the 21 canon of the Fourth Lateran Council, obliged parishioners to confess their sins to their parish priest, and to seek for permission if they wanted to make their confession to someone else. In this respect, Joseph Goering argues that, as members of the local communities, confessors became well acquainted with their people and their sins.[178] That means that local priests obtained through auricular confession an extraordinary tool to better control their flocks. However, this practice did not imply that parish priests could pardon all types of sins; rather, the sacrament of penance linked all the different hierarchies of the Church from bottom to top by differentiating the sins that the local clergy could forgive. As an example, the absolution for arson, murder, forgery, the annulment of marriage, and other grave matters were reserved variously to the bishop or the pope.[179]

Despite the distinction between the external and internal forums, in practice, they were not isolated from each other. Although the 21 canon of the Fourth Lateran Council punished parish priests who breached the "seal of confession" [180], in some circumstances sins confessed in the confessional ended up being brought to the external forum at the ecclesiastical courts because of their extraordinary severity. In this respect, confessing a sin such as heresy or idolatry did not

[177] Elliott, *Proving Woman,* 15.
[178] Goering, "The Internal Forum and the Literature of Penance and Confession," 384.
[179] Ibid, 386.
[180] IV Lateran Council 1215, canon 21: "He [the confessor] who dares to reveal a sin confided to him in the tribunal of penance, we decree that he be not only deposed from the sacerdotal office but also relegated to a monastery of strict observance to do penance for the remainder of his life."

prevent the sinner from being prosecuted by the external forum, especially for those offenses that were so scandalous that a public punishment could be exemplary for the society. In fact, as Joseph Goering contends, "the new juridical procedure of "inquisition," and the emphasis on law as a means of active intervention in moral governance, gradually encouraged ecclesiastical authorities… to seek out sinners and to do for them in the external forum what they were unwilling to do for themselves in confession."[181] This interplay between the two forums was not limited to the late Middle Ages. During the seventeenth and eighteenth centuries in the ecclesiastical court of San José de Toluca, colonial Mexico, it was not uncommon for plaintiffs to claim that they were denouncing a case following the advice or mandate of their confessors, and in order to "unload their conscience." For instance, in 1765, the Spaniard Desiderio José Gutiérrez "by following the order of his confessor" (*por mandado de mi confesor*) denounced an indigenous woman named Manuela that had allegedly cast a spell on his wife after a personal dispute.[182] The same thing did another Spaniard named Cayetano Pérez in 1745, who was "sent by his confessor" (*enviado de su confesor*) to the ecclesiastical court of San José de Toluca, accusing a group of Indians who had committed a crime against the Catholic faith.[183] This practice shows that the internal and the external forum were interdependent, and that the former ultimately helped to reinforce the former. Both forums were ruled by the same canon law, and they shared the same purpose of eradicating sins, correct morality, and ensure orthodoxy in the faithful. In consequence,

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[181] Goering, "The Internal Forum and the Literature of Penance and Confession," 387.

[182] Archivo del Arzobispado de México (AHAM), Juzgado Eclesiástico de Toluca, 1765, caja 92, expediente 3.

[183] AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 2, foja 1 anverso: "Esteban Cayetano Pérez, español vecino de este pueblo, diciendo que enviado de su confesor venía a hacer cierta denuncia que toca recibirla a este juzgado, y por ser acerca de unos indios que han cometido crimen en que se hacen sospechosos contra nuestra santa fe católica…"

confessors, as internal judges, sometimes drove penitents to the ecclesiastical courts so they could admit their own crimes or to accuse someone else if they had committed a specific sin or offense.

4. Ecclesiastical Courts and Inquisitions in the late Middle Ages

4.1 Papal Appeal and the Formation of the Ecclesiastical Courts in Western Europe

Claiming jurisdiction on the external and the internal forum forced the Church to devise new institutions to put in practice its legal power. One method that the bishops of Rome utilized to expand their authority was the system of appeal, established in the Council of Serdica, today Bulgaria, in 343. A series of canons provided by this council allowed prelates to appeal to the pope when claiming unfair treatment from judgment by their peers.[184] Thanks to this legal development, a bishop could appeal to the high court of the pope to reverse a decision or judgment taken by a lesser synodal or diocesan court. However, the pope's capacity to interfere in procedural affairs was minimal in the late Antiquity. The plenary Council of Carthage in 418 restricted the authority of Roman bishops by prohibiting any priest to appeal beyond the seas, which arouse enmity from Rome.[185] In response, Pope Zosimus summoned another council at Carthage in May 419, which reaffirmed the decisions enacted at Serdica.[186] Although the system of appeal never disappeared in the early Middle Ages, the expansion of canon law in the Middle Ages gave the papacy a new platform to exercise its judicial power.

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[184] Council of Serdica 314, Canon IV: "When any bishop has been deposed by the judgment of those bishops who have sees in neighboring places, and he [the bishop deposed] shall announce that his case is to be examined in the city of Rome— that no other bishop shall in any wise be ordained to his see, after the appeal of him who is apparently deposed, unless the case shall have been determined in the judgment of the Roman bishop." To check all canons produced by this council see Philip Schaff, *Nicene and Post-Nicene Fathers Series II, Volume 14: The Seven Ecumenical Councils* (Charles Scribner's Sons, New York, 1905). For a monographic study of this council see Hess, Hamilton Hees, *The early development of Canon law and the Council of Serdica* (Oxford: Oxford University Press, 2004).

[185] Council of Serdica (314), Canon XXVIII (Greek XXI): "Presbyters, deacons, or clerics, who shall think good to carry appeals in their causes across the water shall not at all be admitted to communion."

[186] Rennie, *Medieval Canon Law*, 71.

This renewed system of appeal was based on two key principles: the recognition of the Pope as the supreme arbiter and judge in all ecclesiastical matters throughout Christendom, and the existence of a powerful administrative legal apparatus that could handle the myriad of complaints to the Holy See.[187] Since the papacy had neither the institutional machinery nor the capacity to resolve all cases that arrived to Rome before the period of the Gregorian Reform, the popes delegated their judicial power to their ecclesiastical officials (mainly bishops), who became judges in all ecclesiastical matters in distant dioceses. However, these delegations were not enough to make the pope's justice available to all the faithful. Besides the tribunal of the papacy and local synods organized by bishops, there were not organized ecclesiastical courts in Western Europe around the year 1200.[188] Since the late Roman Empire, bishops had heard cases related to ecclesiastical matters such as Church discipline in local councils and synods, and played an important role as peacekeepers, mediators and conciliators in disputes between secular and ecclesiastical parties.[189] The ecclesiastical synods of the Carolingian reforms of the ninth century entrenched these diocesan functions and exhorted bishops to enforcing discipline in their dioceses and resolving disputes in marital issues. Given that many of the bishops of the Carolingian period were chosen by the emperor, they used their delegated power to create their own curiae in the image of the secular courts, organizing synods staffed by local ecclesiastical officers. Charles Donahue notes that this jurisdiction was not exempted from the intervention of the secular power. In fact, the secular power that controlled bishops extended its grasp on the synods, allowing

[187] Ibid, 62.
[188] Donahue, "The Ecclesiastical Courts: Introduction," 251.
[189] Adrian J. B. Sirks, "The episcopalis audientia in Late Antiquity," *Droit et Cultures* 65 (2013) 79–88. See also Francisco José Cuena Boy, *La 'episcopalis audientia'* (Valladolid: Serie Derecho 3, 1985).

laypeople to control the ecclesiastical jurisdiction and making it indistinguishable from the secular courts.[190]

This secular intrusion was one target of the Gregorian reforms of the eleventh century, as I have examined in previous pages, that sought to liberate the ecclesiastical jurisdiction from the control of laypeople by separating it from the secular jurisdiction. With this purpose, late Medieval popes sent judge delegates to most dioceses in Western Europe in order to hear cases related to the ecclesiastical jurisdiction. However, these papal agents were not enough to hear all petitions and complaints addressed to them, and the papacy was forced to empower bishops to regain the control of their local synods. The prelates were now encouraged to create their own diocesan tribunals by mirroring the papal court.[191] That means, that bishops gained the right to administer justice themselves or to appoint delegates in their own episcopal tribunals.[192]

The *episcopalis audiencia* or the bishop's court, was a first instance court that served the prelates to exercise jurisdiction in their dioceses, either by administering justice themselves or by delegating this function to a professional judge denominated *officialis*, or principal official. The importance of the official judge explains why sometimes these ecclesiastical courts are also known as "officialities."[193] What is important for this investigation is that these early ecclesiastical tribunals were the base of later Church tribunals that will be implanted in colonial Mexico in the seventeenth and eighteenth centuries. As their Medieval counterparts, the ecclesiastical court of San José de Toluca, in New Spain, exercised the law of the Church under the direction appointed by the archbishop of Mexico City (head of the dioceses) and under the approval of the Spanish

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[190] Donahue, "The Ecclesiastical Courts: Introduction," 254.
[191] Ibid, 250-251.
[192] Ibid, 251.
[193] Helmholz, *The Canon Law and Ecclesiastical Jurisdiction,* 231.

king. In the late Middle Ages, these officials were the prelate's alter ego, and their judgement had the same legal force as if the local bishop had pronounced it. Therefore, if someone sought to appeal that verdict, they had to file a complaint at the papal court.[194]

The organization and the personnel employed by these ecclesiastical courts varied from dioceses to dioceses, making those tribunals held by archbishops the largest and most professional.[195] Ideally, every court was headed by the above judge officials appointed by the bishop, that were assisted by experienced advocates and proctors with training in both Roman and canon law. Notaries were also widely used in these courts, as they were required to write the acts of the judicial process, so "the truth can be established by referring to these documents" when a dispute arose.[196]

Besides the episcopal tribunal, bishops exercised ordinary jurisdiction through canonical visitation. This practice, dating back to early Christian times, required bishops to visit their diocese to inquire about existing ecclesiastical issues in their jurisdiction, inspect the state of parish churches, correct immorality, indiscipline, and unorthodoxy, and administer justice at least once a year.[197] Therefore, parochial visitation was an opportunity to enforce canon law at the local level by summary processes. During the twelfth and thirteenth centuries, different councils issued canons to force bishops to take written records of their findings[198], limiting the size of their entourages, and dissuading them from burdening their subjects with taxes and impositions.[199]

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[194] Donahue, "Ecclesiastical Courts: Introduction," 260.
[195] Helmholz, *The Canon Law and Ecclesiastical Jurisdiction,* 216.
[196] IV Lateran 1215, canon 38.
[197] Decretalium Gregorii Papae IX compilationis, Book 1, title 23, chapter 6: "Archidiaconus semel in anno, nisi necessitas exigat plus, visitat suam provinciam, id est paroeciam."
[198] First Council of Lyon 1245, Constitution 2, II.
[199] Third Lateran Council 1179, canon 4: "Therefore we decree that archbishops on their visitations of their dioceses are not to bring with them more than forty or fifty horses or other mounts, according to the differences of

Although canonical visitation would not be fully defined and organized until the Council of Trent in 1563,[200] these medieval measures suggest that visitations, along with canon law and ecclesiastical courts, they were tools used by the Church to regulate and influence local Christian societies.

4.2. The Medieval Inquisitions

Ecclesiastical courts in late Medieval Europe mostly dealt with criminal cases that revolved around the external forum. Although some officialities sometimes heard cases related to heretical movements and religious dissidence, most of them were entrusted to the Medieval inquisitions. The existence of heresy in the Middle Ages was nonexistent in Western Christendom until the appearance of some organized groups in the eleventh-century France. The historiography has debated to find some causes that respond to that sudden emergence. Scholars have pointed out that the increase of literacy rates among the population (in particular in urban areas), the revival of cities, and an interchange of ideas between Europe and the Middle East after the crusades, are some reasons that explain the reappearance of religious dissident groups. R. I. Moore argues that the emergence of heresy was a response to the reforming Church and its theological and pastoral innovations, especially after the Council of Lateran in 1215.[201] In this way, a heretic was a person who persistently denied a particular truth of faith and that refused to subscribe to the doctrines that the Church required. In a political sense, heretics embodied a real danger for the papacy, since they denied its authority, hierarchy, and doctrine.[202] Moore emphasizes that heresy

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dioceses and ecclesiastical resources; cardinals should not exceed twenty or twenty-five, bishops are never to exceed twenty or thirty, archdeacons five or seven, and deans, as their delegates, should be satisfied with two horses. […]. We also forbid bishops to burden their subjects with taxes and impositions."

[200] Council of Trent (1563), 24 session, chapter III.

[201] R. I. Moore, *The Formation of a Persecuting Society: Authority and Deviance in Western Europe 950-1250* (Hoboken: Blackwell Publishing, 1987), 67.

[202] Herbert Grundmann, *Religious Movements in the Middle Ages* (London: University of Notre Dame Press, 2002), 15.

can only arise in a process of centralization of the medieval society and of the Church in particular. Moore notes that the aggrandizement of the papacy "came to resemble its secular counterparts in its conduct, outlook, and objectives."[203] Other scholars such as James Given contend that the centralization of the late Medieval Church in the twelfth and thirteenth centuries was in line with a larger movement of expansion and professionalization of the European staff and bureaucracy, in which the political power became concentrated and organized through the creation of specialized, permanent institutions of governance. Therefore, the secular kings and the popes, thanks to the greater rationality and efficiency of these new techniques of governance (like the development of canon law and ecclesiastical courts), could penetrate and control society in unprecedented ways.

However, the centralization of the power of the Church was not the only reason that explains heresy. Donald Logan argues that the blatant affluence of the Church and its lack of morality and discipline explain the emergence of religious dissent.[204] That means that laity became repulsed by the immorality and scandals of the clergy, thus turning away from the Church and developing their own model of Christianity that resembled previous forms of primitive Christian piety. This is the case of the Cathars, a heretical sect popular in the South-West of France. In Logan words, "Catharism was not a sect in opposition to the Catholic church. It had bishops and dioceses… They bound themselves to an austere life of fasting and abstinence from sex and from all products of coition such as meat, milk, cheese and eggs."[205] With the rise of religious dissent, some of the highest authorities of the Church admitted that the vices of the

[203] R. I. Moore, *The Formation of a Persecuting Society*, 146.
[204] Logan, *A History of the Church in the Middle Ages*, 189.
[205] Ibid, 191.

priests were sometimes the justification of heresy. [206] The canons of the Fourth Lateran Council of 1215, that aimed at reforming the discipline of the clergy, had the purpose to put an end to the immorality that motivated the nascent of heretical groups.[207] As we will see in the sixth chapter of this dissertation, the ecclesiastical judges of San José de Toluca punished abusive ecclesiastics to preserve the discipline of the clergy and set a good example for the new indigenous neophytes.

The first papal Inquisition was established under Gregory IX in 1233. This first inquisition was headed by Dominican friars, that went to Southern France to dismantle the Catharian heresy. The Inquisitors were papal agents with the power to investigate, prosecute, and punish heretics in a criminal process. However, the inquisitorial process was more characterized by its emphasis on investigations and interrogation than by accusation.[208] Before the foundation of these inquisitions, it was the duty of local bishops to persecute heterodoxy. However, as the years passed and the appearance of more heretical groups continued, pope Alexander IV in 1257 reinforced the power of the inquisitors by making them independent from bishops.[209] Therefore, inquisitors were not liable to excommunication while in charge of their duties, nor could they be suspended by any delegate of the Holy See. Only the popes had authority over them.[210] However, these inquisitions did not work independently. A series of papal bulls encouraged the collaboration of the secular arm with the inquisitors to persecute heretics by building jails and offering advice.[211]

As instruments of the papacy, Medieval inquisitions were also useful mechanism for the Church to classify and identify society. The production of manuals and books for inquisitors went

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[206] Henry Charles Lea, *A History of the Inquisition in the Middle Ages, Volume* 1 (The Macmillan Company, 1888), 61.
[207] IV Lateran 1215, canon 14.
[208] Logan, *A History of the Church in the Middle Ages*, 195.
[209] Ibid, 335.
[210] Ibid, 344.
[211] Ibid, 340.

hand in hand with innovative methods of interrogation and classification of heretics. In doing so, inquisitors created stereotypes and forged concrete ideas about certain groups of individuals, not only heretics but also women, Jews, witches, and so forth.[212] For example, inquisitors deliberately wrote books about heretics to advise their colleagues on how to identify the doctrine of a particular heterodox group, and to teach techniques to be applied in interrogations against heretics. As a result, the active use of record keeping by the inquisitors allowed them to construct an analytic network that could generate much useful information once a suspected heretic had been placed within it.[213]

This is the same process that extirpators of idolatry used in the Spanish America to classify indigenous witches and sorcerers, sometimes drawing on medieval treatises on heretics and witches.[214] These treatises were produced to identify, categorize, and hunt down all those groups of people that posed a threat to the social order, regardless of being real or imaginary. In the same way, when Mexican ecclesiastical courts of San José de Toluca prosecuted and punished indigenous orthodoxy, they adopted some practices devised by the Medieval inquisitions.

5. Ecclesiastical Courts, Canon Law, and *Ius Commune* in Medieval Spain

5.1 Visigothic Spain and the Councils of Toledo

From the Visigothic Kingdom of Toledo (418-711) to the twelfth century, ecclesiastical courts in the Iberian Peninsula were ruled by Visigothic legal norms and the canons of the Councils of Toledo. The Toledan councils were political and ecclesiastical assemblies summoned

[212] R. I. Moore, *The Formation of a Persecuting Society*, 164.
[213] Given, "The Inquisitors of Languedoc and the Medieval Technology of Power," 350.
[214] See for instance Andrés de Olmos, *Tratado de Hechicerías y Sortilegios* (Mexico: Universidad Autónoma de México, 1990). This is one of the earliest examples of manuals on indigenous sorcery that utilized Medieval sources to describe the witchcraft he found in colonial Mexico.

by the Visigothic kings that primarily dealt with doctrinal matters of the Church.[215] However, these meetings also discussed strictly secular topics, such as the method of choosing a new monarch. The first council that dealt with ecclesiastical matters was the Fourth Toledan Council, after the Visigothic king Reccared I converted to Catholicism in 587. The fact that the kings summoned these councils could be interpreted as a sort of political intervention by the secular power, but during the late Antiquity it was not uncommon for the secular princes to organize and preside such meetings. The emperor Constantine convened the Council of Nicea in 325, and secular authorities adopted the same practice in the early Medieval period.[216] The relevant aspect of the Toledan councils is that they sometimes functioned as tribunals to judge delicate questions affecting temporal and spiritual matters. As such, they were for the Spanish case the embryo of a mixed court, with secular and ecclesiastical attributes, that created the foundation of later ecclesiastical courts that appeared after the Gregorian reforms of the twelfth century. We can observe an example of this procedure in the Sixteenth Council of Toledo of 693, which prosecuted the archbishop of Toledo, Sisbert, for having failed to make an oath of loyalty to his sovereign, the king Egica. As punishment, the council inflicted on him the penalty of excommunication, seized all his property, and exiled him.[217]

5.2 The Hispana and the Council of Coyanza

After the Islamic invasion of the Iberian Peninsula that eliminated the Visigothic Kingdom of Toledo in 711, the Christian kingdoms of Medieval Spain developed their own codes of secular and canon law. Among them, the most famous is the *Hispana*, a compilation of Spanish canon

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[215] Gonzalo Martínez Díez, "Los Concilios de Toledo," *Anales toledanos*, no.3, (1971): 138.
[216] Ibid, 125.
[217] García y García, "Ecclesiastical Procedure in Medieval Spain,"399.

law of the early seventh century called *Collectio canonium Isidoriana* and attributed to Isidore of Seville (570-636). This collection of law coexisted with a myriad of legislative codes produced by local churches that organized, collected, and unified local and imported legal norms from the Holy See. The collection gathered multiple sources of canon law produced by ecumenical councils and papal decretals, from the pope Damasus (366-384), to Gregory I (604). In addition, this compilation included canons of the different Toledan councils, plus eleven Greek councils, eight African councils and seventeen French councils, in chronological order. The *Hispana Collectio* had a great importance of the history of law, since it was used in Medieval France to impulse the Carolingian reform.[218] However, the Hispana was not the only source of canon law in the Iberian Peninsula, since this legal code coexisted with a myriad of legislative texts produced by local churches that maintained their own norms.[219] During the time of the Gregorian Reform of the eleventh century, the legal tradition of the Spanish law became enriched with new canonical rules issued by the Council of Coyanza. This council, convened by the king Ferdinand I of León in 1055, was marked by the spirit of the Gregorian Reform that sought to correct the morality priesthood. The canons of the Council of Coyanza stated that the purpose of the assembly was to reform Christianity ("*ad restaurationem nostrae Christianitati*s"), and to correct and guide the regulations of the Church ("*pro corrigendis ac dirigendis regulis vel tramitibus Ecclesiae")*.[220] The canons of Coyanza attempted to restore the canonical tradition of the Spanish Church

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[218] For a concrete study on the Hispana collection see Manuel Díaz y Díaz, "Pequeñas aportaciones para el estudio de la 'Hispana," *Revista española de derecho canónico 17* (1962): 373-390.
[219] Jean-Ives Lacoste (ed.), *Encyclopedia of Christian Theology* (Taylor and Francis Inc., 2004), Volume 1, Gratian Entry.
[220] Gonzalo Martínez Díez, "García-Gallo y el Concilio de Coyanza. Una monografía ejemplar," *Cuadernos de Historia del Derecho, 18* (2011): 101.

gathered in the Hispana collection, and laid the foundations for the later adoption of the corpus iuris canonici in the following centuries.[221]

The bishops gathered at Coyanza manifested the will to impose canonical life on the local clergy, and to subject all existing churches of a diocese to its bishop, in a process of centralization that mirrored similar ecclesiastical process in Western Europe during the Gregorian Reforms.[222] This council regularized the administration of sacraments and exhorted secular authorities to treat their subjects with justice. This exhortation drew on the past Visigothic Toledan council, that encouraged bishops and the priesthood to teach temporal rulers good morality and sound doctrine, so the kings could rule in a Christian manner for the common good of the faithful.[223] An important aspect of the council of Coyanza is that it explicitly recognized the right of asylum in Catholic churches, were certain types of wrongdoers could seek refuge without being persecuted; with canons that mandated monetary and spiritual punishments (such as excommunication) for those individuals that breached this law.[224] The right of asylum would be further developed and discussed in the Laws of the Indies and works of Spanish jurists after the Spanish conquest of the Americas. Its importance was key, as it was one point of confrontation between the ecclesiastical and secular jurisdiction during the eighteenth century.

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[221] Martínez Díez, "García-Gallo y el Concilio de Coyanza," 110.

[222] García-Gallo, *El concilio de Coyanza*, see canon 3. For some works that explore the Gregorian Reform in Medieval Spain see José María Magaz, "La reforma del clero secular en el Concilio de Coyanza," in *La reforma gregoriana en España: Seminario de historia de la iglesia,* edited by J. M. Magaz and Nicolás Álvarez de las Asturias (Madrid 2011) 17–54; and Gonzalo Martínez Díez, "Alta edad media: La reforma religiosa y el concilio de Coyanza," in *La Iglesia en la historia de España,* edited by José Antonio Escudero (Madrid: Fundación Rafael del Pino, 2014) 185–198.

[223] Martínez Díez, "García-Gallo y el Concilio de Coyanza," 108.

[224] Ibid, 109, and Alfonso Sánchez Candeira, *Castilla y León en el Siglo XI: Estudio del Reinado de Fernando I* (Madrid: Real Academia de la Historia, 1999), 127.

In relation to the Iberian ecclesiastical courts, they followed the models of other European countries such as France and England that I have analyzed in previous sections of this chapter. Thanks to the expansion of the canon law, the Iberian bishops used synods and their own curiae to settle litigious matters. García-García contends that the legislation of these synods distinguished between cases that had to be heard by the bishop or his vicar-general at the episcopal court, and those that could be brought to lesser ecclesiastical dignitaries. Among all the different synods, this author cites the *Synodicon* of Portugal of 1500, and the Synod of Oviedo in 1377, to show that cases that went to the bishop's tribunal were disputes concerning matrimonial and criminal cases.[225] They also reserved for the ecclesiastical courts all matters dealing with the ownership of tithes, last wills, monetary debts, and Church properties and benefices, in line with the canon 44 of the Fourth Lateran Council of 1215, which forbade laypeople to alienate ecclesiastical property.[226]

These synods also made clear the separation between ecclesiastical and secular courts in Medieval Spain. For instance, the synod of Valença do Minho of 1444 promulgated a sentence of excommunication against secular authorities who violently abduct people who were sheltered in the churches under the law of asylum, so the violation of this ecclesiastical right was an existing problem to be tackled by the synod.[227] This law was connected to the canon 42 of the Fourth Lateran Council, that prevented any cleric from extending his jurisdiction as to become

[225] García-García, "Ecclesiastical Procedure in Medieval Spain," 403.
[226] IV Lateran Council 1215, canon 44: "Alineation of ecclesiastical properties by laymen without the legitimate consent of ecclesiastical authority is forbidden."
[227] García-García, "Ecclesiastical Procedure in Medieval Spain," 408.

detrimental to secular justice. As a result, these laws tried to harmonize ecclesiastical and secular justice, making their boundaries clear so each forum could respect each other's jurisdictions.

Comparing the cases brought to ecclesiastical courts in Spain and other European countries such as England in the Middle Ages we can see the episcopal court heard similar cases as Charles Donahue and R.H. Helmholz prove in their own investigations.[228] In addition, García-García notes that in the Synod of Salamanca in 1451 bishops were referred as temporal lords, and exhorted ecclesiastical jurisdiction to be respected before the existing transgression of secular authorities.[229] These ecclesiastical procedures show that throughout the late Middle Ages, the Spanish Christian kingdoms combined their own canonical tradition with the new rules coming from the Holy See in Rome.[230] In addition, the juridical practice of canon law became reinforced by jurists trained in Italy that later taught at universities, cathedrals or were employed at ecclesiastical courts. Therefore, all these elements contributed to the introduction and development of ecclesiastical law and the *ius commune* (the combination of Roman and canon law) in the Iberian Peninsula. However, according to García-García, implementing the canons of the Fourth Lateran Council was different depending on Spanish kingdom to be analyzed. For instance, while the observance of the canons was weak in Castile, it was strong in the Crown of Aragon.[231]

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[228] See for instance Helmholz, *The Canon Law and Ecclesiastical Jurisdiction,* 509-518; and Donahue, "Ecclesiastical Courts: Introduction," 270-276.
[229] García-García, "Ecclesiastical Procedure in Medieval Spain," 405 and 425.
[230] Ibid, "Ecclesiastical Procedure in Medieval Spain," 401.
[231] Ibid, 401-402.

5.3 Las Siete Partidas and Collaboration Between Ecclesiastical and Secular Courts in Medieval Spain.

Las Siete Partidas is a legal code written during the kingdom of Alfonso X (1252-1284) of Castile, with the purpose of consolidating juridical unity in the Crown of Castile. Regarding its sources, the Partidas used the *Corpus Iuris Civilis of Justinian*, the *Decretals* of the pope Gregory IX, and traditional Spanish customs and laws, thus making this legal code a pinnacle of the ius commune by combining Roman, canon, and custom law. The articles of the Partidas encompassed all the juridical knowledge of its time, dealing with ecclesiastical, constitutional, commercial, civil, and criminal law.[232] The Partidas included commentaries on passages of the Bible, philosophical works of classic authors such as Aristotle and Seneca, while also including texts written by Isidore of Seville, Thomas Aquinas, and other theologians. This legal code was not only important for the late Middle Ages in Spain but also for the Americas after the Spanish conquest of 1492, since many of its legal provisions were taken to the New World and developed as new royal decrees or compilations such as the *Recopilación de las Leyes de las Indias* and the *Novísima Recopilación*. In fact, the *Recopilación* established Castilian right, including the Partidas, ought to be observed when there was not a specific piece of legislation covered by the laws of the Indies.[233]

The analysis of the Partidas is fundamental to understand how the secular authority, in this case the Castilian king, envisioned the role of the Church in society, in its capacity to legislate

[232] José María Torres Pérez. "Las Siete Partidas." Biblioteca UN, Universidad de Navarra, 2007. https://www.unav.edu/documents/1807770/2776220/Siete_Partidas.pdf, Introducción.
[233] The legal content of the Partidas was modified throughout the centuries, but it was transferred to the Americas where it gained legal force as a complementary source of Castillian right. In the seventeenth century compilation of the Law of the Indies of 1680, that regularized the Spanish America at a juridical level the following, we read the following in the libro 2, título 1, ley 2: "Que se guarden las leyes de Castilla en lo que no estuviere decidido por las de las Indias."

religious rules that had to be enforced and respected by the secular powers. In the First Partida, the text claims that all men must believe and keep the faith of Jesus Christ, and that they must live orderly according to the will of God.[234] This statement is further reinforced by other laws that mandate public worship of God and that clarify that the purpose of law is the "common good of all" (*el bien comunal de todos*) and the service of God.[235] Some of these religious concepts were replicated by later codes of law, such as the *Recopilación de las Leyes de los Reynos de las Indias.*

The fact that the Partidas include a definition of Catholic dogmas and articles of the faith such as the Holy Trinity shows that the secular power was genuinely interested in the spiritual health of its subjects, and that the principles of the canon law were incorporated in this secular legal code.[236] Additionally, the Partidas utilize some of the canons of the Catholic Church as direct sources to describe the requirements that the clergy must possess in order to hold office. For example, it is mandated that bishops and clerics should not eat and drink excessively, that they should be chaste, devoting their body to Jesus Christ, that they should dress honestly according to the dignity of his office, and that they must have a good reputation and good customs.[237] All these precepts perfectly match those of the canons of the Fourth Lateran Council of 1215, that obliged clerics to live chastely and virtuously.[238]

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[234] Gregorio López, *Las Siete partidas del rey D. Alonso El Sabio, 4 Vols., glosadas por Gregorio López, del consejo Real de las Indias, en esta impresión se representa a la letra el texto de las partidas que de* Orden del *consejo Real se corrigió y publicó Berdi en el año de 1758* (Valencia: Imprenta de Benito Monfort, 1767), partida 1, título 1, ley 1.

[235] Ibid, partida 1, título 1, ley 9.

[236] Ibid, partida 1, título 3.

[237] Ibid, partida 1, título 5, laws 36, 37, 38, and 39. These laws are further reinforced by the partida 1, título 6, ley 36, that emphasizes that clerics must wear an ecclesiastical dress, and punishes all those laymen who dress like a cleric, monk or nun, to be whipped and expelled from their village *("debe ser echado a azotes de aquella villa o de aquel lugar donde lo hiciere.")*

[238] IV Lateran 1215, see canons 14 and 15. Other laws in the Partidas that coincide with these canons are the laws that forbid clerics to hunt (partida 1, título 6, ley 46) and to engage in trading activities (partida 1, título 46, ley 47).

Other laws manifest the intention of the temporal authorities in safeguarding and protecting the Church from criminal acts such as the physical aggression on members of the clergy, the theft of holy objects, and the invasion of holy places, crimes that are labeled as sacrilege.[239] This legal code confirmed the right of asylum or *inmunidad eclesiástica*, and allowed individuals, under certain circumstances, to take refuge inside a Catholic church or temple.[240] In this respect, the Partidas mandate that individuals that steal from a church or from any religious place must be killed along with those who helped the criminal to perpetrate those acts.[241]

In other instances, the Partidas recognize the authority of the Church to punish and excommunicate those individuals that assault the clergy, burn or destroy churches, commit heresy, provide weapons to the unfaithful, and misrepresent apostolic letters.[242] For the cases when secular authorities tax the clergy, misappropriate Church property, or remove priests from their jurisdiction, the Partidas do also affirm that bishops have the authority to excommunicate those individuals.[243] This legal code explicitly asserts that some matters are of exclusive competence of ecclesiastical courts. The Fourth Partida affirms that procedures for marital matters must follow the directions of the Church since marriage is a Sacrament instituted by God, and that is indissoluble[244]. However, the Partidas permitted the intervention of both the civil and the

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[239] López, *Siete Partidas*, partida 1, título 18, ley 2.
[240] Ibid, partida1, título 11, 2 ley: "Franqueza a la Iglesia e su cementerio: ca todo ome que fuyere a ella, por mal que oviesse fecho, por debda que debiesse, o por otra cosa cualquier, debe ser amparado, e non lo deben ende sacar por fuerza, nin matarlo, e nin darle pena en el cuerpo ninguna, nin cerrarlo al derredor de la Eglesia nin del cementerio, nin vedar que non le den a comer, nin a beber. E este amparamiento se entiende que debe ser fecho en ella, en sus portales, e en su cementerio."
[241] Ibid, partida 7, título 14, ley 18: "a quienes fuere probado que hizo hurto en alguna de estas maneras, debe morir por ello él, y todos cuantos dieron ayuda o consejo a tales ladrones para hacer el hurto…"
[242] Ibid, partida 1, título 9, ley 2.
[243] Ibid, partida 1, título 9, ley 13.
[244] Ibid, partida 4, título 2, ley 3.

ecclesiastical courts for cases concerning adultery.[245] The Partidas did also recognize the authority of the Church in relation to the Sacrament of Reconciliation and Penance, with decrees that mirroring canon law stipulate how this sacrament must be administered by the priesthood and received by the faithful.[246] The fact that all these decrees referred to the law of the Church is a direct indicator that canon law was not practiced in isolation, but that it rather influenced and was incorporated into the legal codes produced by the secular power.

Although the Partidas recognized the jurisdiction of the Church, and mandated the secular authorities to respect it, it claimed mixed jurisdiction in some crimes. In the juridical language of the late Middle Ages and the early Modern period, when a crime could be prosecuted by both the ecclesiastical and the secular courts, it was considered to be *mixtifori*, or of mixed forum jurisdiction. Since temporal authorities proclaimed themselves to be Christians, they pledged to protect the Catholic faith and to persecute all those who may pose a threat to it. Therefore, secular justice envisioned sins such as heresy and adultery as crimes that not only aggrieved physical persons but also the social order and the divine law they had to defend.[247] For these reasons, in the Spanish secular law, the crimes of heresy, idolatry, sorcery, adultery, and bigamy were mixtifori, which entailed that both the secular and the ecclesiastical forums had the competence to prosecute and punish those crimes.

[245] Ibid, partida 4, título 17, ley 15. This law mandated that men condemned for adultery must be killed, while women had to be publicly punished and locked up in a monastery. In the case a husband found the man whose wife is having an infidelity with at a church, he should not attack or seize him, but rather allow the priest or the bishop to do it, so they could send him him [the lover] to the court to be prosecuted.
[246] Ibid, partida 1, título 4, leyes 59, 62, 72, 73, 85, and 90.
[247] See for instance the exhortation of the Council of Coyanza to the secular power, encouraging kings to rule in a just way, and the partida 1, título 1, ley 15.

The juridical term mixtifori was further developed in the Spanish legislation in the seventeenth and eighteenth centuries, when jurists and legislators clarified the boundaries of crimes that could be prosecuted by the ecclesiastical and secular forums. Pedro Murillo Velarde, a Spanish ecclesiastical and a canon law jurist of the eighteenth century, wrote in his work *Curso de derecho canónico e hispánico*, that a person condemned by the ecclesiastical forum on a mixtifori crime could not be prosecuted again by the secular court, and that both forums should rather collaborate than opposing each other in punishing these crimes.[248] The collaboration between the ecclesiastical and secular forum proved to be of extreme importance after the conquest of the Americas in the fifteenth century, when millions of indigenous peoples became new subjects of the Spanish crown. The Indians, as they were called by the Spaniards, presented challenges to both the Spanish kings and the clergy, since they were neophytes in the faith that required special care to uproot their traditional religious practices, that according to the Church, entailed prohibited forms of sorcery and idolatry. The fact that in the late Middle Ages there were several juridical innovations such as the creation of Medieval inquisitors and the expansion of canon law to persecute unorthodox religious movements and forbidden magical practices, permitted the persecution of the same crimes by the ecclesiastical courts in the seventeenth and eighteenth centuries in colonial Mexico. In this respect, the Partidas were an important legal precedent that combined Roman (secular), custom and canon law to consolidate religious orthodoxy for the common good of all. These laws, as we will see in the next chapter, were maintained or adapted to the circumstances of the New World.

[248] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro 2, título 1, párrafo 13, and libro 1, título 31, párrafo 333.

6. Conclusion

The purpose of this chapter was to show that the ecclesiastical and legal institutions that were implanted in the Americas by the Spaniards had its origins in Medieval Europe. We have reviewed how the Catholic Church experienced a clear institutional and juridical expansion in the late medieval period. Challenged by the trespasses of secular authorities in the Holy Roman Empire and France against the ecclesiastical jurisdiction, and new heretical movements, the bishops of Rome embraced a project to reinforce the power of the papacy and renovate the Church. The recovery of Roman law in Italian universities and a larger process of centralization of power in both European monarchies and the Church permitted the development of Medieval canon law. In addition, the papacy aggrandized the system of appeal by making it accessible to all Christians in Western Europe through diocesan tribunals and local ecclesiastical courts, also called officialities. In this respect, ecclesiastical courts of all sorts became platforms for the Church to regulate and influence Christian society. However, this relationship was not unidirectional. Local Christians affected by several issues in their daily lives resorted to the ecclesiastical courts and the Church to find redress for their problems. Therefore, canon law and ecclesiastical courts were not just an abstract construct in the minds of the popes and the archbishops, it was a material reality that defined what the faithful believed, and that determined their social behavior and how they approached religious rituals and their relationships to their neighbors.

However, the impact of canon law was not limited to the Church and the Christian community. In the same way as Roman law had nurtured canonical rules and decrees, the canon law influenced secular legal codes, becoming an inseparable part of the European common law, or ius commune. One example of this type of legislation is the Siete Partidas, a legal code

elaborated in the thirteenth century in the Crown of Castile, Medieval Spain. The Partidas are key to understand the relationship between Church and the Castilian Crown, that became reinforced and stretched after the Spanish conquest of the Americas in the fifteenth and sixteenth centuries. The Spanish legislation that was brought to the New World not only incorporated the Castilian law but also new secular and canonical codes that ultimately strengthened many of the concepts established in the Partidas.

The next chapter explores how canon law and ecclesiastical courts were established in the viceroyalty of New Spain during the colonial period. In this respect, I will cover the major differences between the Medieval and the colonial ecclesiastical courts, focusing on its several adaptations and transformations, while analyzing the role that the Spanish monarch, as defender and patron of the Church, played in this scenario.

Chapter 2. From Europe to the New World: Episcopal Jurisdiction in the Archbishopric of Mexico

1. Introduction: Papal Bulls and *Patronato Regio* in the Sixteenth Century

Between the years 1493 and 1508, the papacy recognized the Catholic kings of Spain as the lords of the New World and granted them with the right of patronage. The Spanish monarchs, as patrons of the Church in the Americas, were entrusted with the obligation to build all the temples of the New World and equip them with material goods so ecclesiastical ministers could sustain themselves.[249] In addition, the Spanish Crown became responsible for implanting the administration of sacraments and the teaching of Christian doctrine to Spaniards, indigenous peoples and other inhabitants of the Americas with mixed ethnic backgrounds (referred in the colonial times as "*castas*"). As a compensation for all these efforts and monetary expenditures that required the construction of new churches in the Americas, the pope recognized the control and possession of the Spanish Crown over the new discovered lands, and the right to extract tithes from the dwellers of the new continent.[250] The tithe, an ecclesiastical tax that every adult faithful had to pay annually, was based on their agricultural or monetary production. With this income, the Spanish Crown was supposed to build churches and provide them with all the required materials for the divine worship and the sustenance of the members of the clergy.

All the privileges and obligations delegated by the papacy to the Spanish Crown, known as *Patronato Regio*, were gathered and regulated in the *Ordenanza del Patronato*, of 1574. In this

[249] Alexander VI, 1501: "…con que primero realmente y con efecto por vosotros, y por vuestros sucesores de vuestros bienes y los suyos, se haya de dar y asignar dore suficiente a las iglesias que en las dichas indias se hubieren de erigir, con la cual sus prelados y rectores se puedan sustentar congruamente y llevar las cargas que por tiempo incumbieren a las dichas iglesias, y ejercitar cómodamente el culto divino a honra y gloria de Dios Omnipotente." Cited by Solórzano y Pereyra, *Monarquía Indiana*, libro IV, capítulo 1, 499.
[250] Solórzano y Pereira, *Monarquía Indiana*, libro IV, capítulo 1, 499.

ordinance, the Spanish Crown affirmed its authority to nominate the bishops for every diocese in the Indies, along with the right to appoint the members of the cathedral council in every diocesan headquarter along with all ministers that held ecclesiastical benefices. [251] The Spanish kings also gained the privilege to divide the territories of the bishoprics (in collaboration with the ecclesiastical authorities), parishes, ecclesiastical benefices, and to allow or not the edification of new temples in the Americas. Although the Spanish Crown gained enormous political dominance thanks to the Patronato Regio, it did not mean that the papacy was left powerless. The popes still had to ratify the bishops nominated by the Spanish kings, and they continued issuing papal decrees with administrative and dogmatic repercussions that concerned the faithful and all the ecclesiastical institutions in the Americas. However, these documents had now to be sanctioned by the Council of the Indies, the supreme organ of the Spanish Empire in the Americas.[252] In addition, the pontiffs intervened as mediators in the numerous cases of conflicts between the Spanish kings and the religious orders whose headquarters were in Rome and that were exclusively subjected to the authority of the papacy.[253]

As declared in the *Siete Partidas*, the right of patronage had a canon law precedent. In the Iberian Peninsula, the Christian kings had been previously considered as vicars and collaborators of the ecclesiastical ministers in defending the faith and enforcing all the mechanisms necessary (in legal terms) to ensure the salvation of their subjects. In the Medieval civil and canon law, the right of patronage was understood as the right to present a cleric to be appointed at a specific

[251] Cédula real de 22 de junio del año de 1591: "Por cuanto perteneciéndome como me pertenece por derecho y bula apostólica, como a rey de Castilla y León, el patronazgo de todas las iglesias de las Indias Occidentales y la presentación de las dignidades, canongías, beneficios, oficios y otras cualesquier prebendas eclesiásticas de ellas." Cited by Solórzano y Pereyra, Monarquía Indiana, libro IV, capítulo 2, 505.
[252] Antonio Rubal García, *La Iglesia en el México Colonial, 35.*
[253] Ibid, *La Iglesia en el México Colonial,* 35.

parish or ecclesiastical benefice. The obligation of the patron, because of that privilege, was to sustain the material needs of that church.[254] A main difference between Medieval forms of patronage (in the Middle Ages and the early Modern period) and the Spanish-colonial patronage was that the Spanish king was not required to obtain the permission from a bishop to build a new church, since this authorization was explicitly granted by the pope in the Patronato Regio. Another difference is that the right of patronage allowed the king to receive the income from tithes, something strictly forbidden by canon law in other cases.[255] Although the concessions given by the papacy to the Spanish Crown were enormous and extraordinary from the perspective of canon law, they still had to follow some of its principles. For example, the Council of Trent determined that those persons nominated for an ecclesiastical benefice must fulfill the requirements for said position. Therefore, if a layperson (whether the king or any other person) nominated an unworthy or unprepared person, he automatically committed a serious sin.[256]

Overall, thanks to the Patronato Regio, the Spanish monarchs ended up having an overwhelming authority over the Church itself in the Americas. As noted by authors such as Jorge Traslosheros and Ana de Zaballa, this is one of the biggest differences between the canon law of the Middles Ages and that of the Spanish Empire during the entire colonial period.[257] Therefore, legal sources for the Spanish Americas *(derecho indiano*) became delimited and defined through royal decrees, and the canons that the Catholic Church produced through its provincial and diocesan councils and the ecumenical council of Trent in the sixteenth century. As a result, in the

[254] López, *Las Siete Partidas*, partida 1, título 15, ley 3.
[255] Pedro Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro III, título XXXVIII, párrafo 291.
[256] Council of Trent, 1563, Session 14, chapter 18; and Pedro Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro III, título XXXVIII, párrafo 338.
[257] Jorge Traslosheros, "Orden judicial y herencia medieval en la Nueva España," 1125; and Ana de Zaballa Beascoechea, "Del Viejo al Nuevo Mundo: novedades jurisdiccionales en los tribunales eclesiásticos ordinarios en Nueva España,"24.

Spanish Indies, there was a combination of canon and royal law that was applied in both ecclesiastical and secular courts.[258] In addition, the Patronato Regio permitted the Spanish king to become the supreme judge of the judicial system, merging its temporal power with the spiritual power delegated by the pope and regulated by the Ordenanza del Patronato.[259]

2. The Construction of Episcopal Authority in the Archbishopric of Mexico, from the Sixteenth to the Eighteenth century

2.1. The episcopal Authority and Jurisdictional Conflict with Mendicant Orders in the Early Sixteenth Century

After the conquest of Mexico in 1521, the Spanish monarchs entrusted Catholic mendicant orders such as the Franciscans, Dominicans and Augustinians with the huge process of evangelizing the indigenous peoples of the New World.[260] The papal bull *Alias Felicis* of Leo X of 1521, and later the *Exponis Nobis Nuber* issued by Adriano VI, gave the regular clergy the right to preach, confess, baptize, excommunicate, and marry their parishioners as long as there were no bishops in the jurisdiction.[261] The reason behind these papal documents was the lack of secular clergy in the Spanish Indies. In addition, since friars were the pioneers in aiding the Spanish kings and conquistadores in exploring new territories and converting Indians to Catholicism, the papal privileges allowed them to create or reorganize hundreds of new

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[258] Ana de Zaballa Beascoechea, "Del Viejo al Nuevo Mundo," 24.

[259] The Spanish monarchs exercised their temporal power through a series of judicial forums that depended on the Council of the Indies, and that were divided into different royal courts (*reales audiencias*). The audiencias consisted of two juridical bodies. The first one was composed of internal courts in which governors, *corregidores* (administrative and judicial representatives of the kings in country subdivisions), and town councils exercised the administrative jurisdiction of the Crown. Traslosheros, "Orden judicial y herencia medieval en la Nueva España," 113.

[260] The Church in New Spain had a corporative organization with two types of clergy: regular and secular. The first one was structured around a disciplinary rule, and its members were friars from the different mendicant orders that were implanted in the Americas, such as the Franciscans, Benedictines, and Dominicans. The secular clergy were inscribed in the ecclesiastical province of the Archbishopric of Mexico, and they were subjected to the authority to the archbishop. Rubal García, *La Iglesia en el México Colonia*l, 40.

[261]Ma. de Lourdes Bejarano Almada, "Las Bulas Alejandrinas: Detonates de la evangelización en el Nuevo Mundo," *Revista Col. San Luis* vol.6 no.12 San Luis Potosí July/December (2016): 243.

indigenous towns named *doctrinas*, and administer them. However, the papal documents and the royal decrees specified that regular friars could only manage these doctrinas until there were sufficient members of the secular clergy that could handle them.[262] The conflict between the mendicant orders and the diocesan jurisdiction originated in the early sixteenth century, when the Spanish Crown sent the first bishop of Mexico in 1528, fray Juan de Zumárraga, who asked the friars to abandon their indigenous doctrinas and give up their papal privileges. The friars, however, refused to accept new the episcopal authority.

In order to cement the power of the secular clergy, Zumárraga, supported by Charles V, summoned an episcopal meeting (*Junta eclesiástica*) in 1539. The result was the elaboration of 25 brief chapters in which the bishops of New Spain confirmed the episcopal authority over the mendicant orders in relation to Indian affairs. For instance, the prelates entitled themselves with the faculties of organizing parish life, supervising life and customs of the faithful, and administer ecclesiastical justice.[263] In matters of justice, like in Europe, the bishops differentiated between two types of ecclesiastical forums. The first one, called "internal forum," encompassed all those individual sins that could be settled though the sacrament of confession. The second was the "external forum," which included the sins with a public and scandalous component, and that set a bad example for other Christians.[264] In short, this meeting allowed bishops in the sixteenth century to claim their right to punish laypeople and clerics alike, not only with fines and censures

[262] Royal decree of December 6th, 1583: "Os ruego, y encargo, que de aquí adelante, habiendo clérigos idóneos, y suficientes, los proveáis en los dichos curazgos, doctrinas, y beneficios, prefiriéndolos a los frailes, y guardándose en la dicha provisión la orden que se refiere en el título de nuestro Patronazgo." Cited by Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo XVI, 635,
[263] Joaquían García Icazbalceta, Don fray Juan de Zumárraga, "Capítulos de la junta eclesiástica de 1539, Volumen, III, documento 37, capítulo 19; cited by Traslosheros, *Iglesia, Justicia y Sociedad*, 18.
[264] "Porque para que se tome entero ejemplo, los pecados públicos requieren penitencia pública 'etiam in foro conscientiae'; pero es de advertir que esa penitencia pública se ha de mandar hacer por los prelados diocesanos o por sus provisores, confirme a Derecho […] y así mandamos y vedamos que por otras personas no se jaha sin nuestra especial comisión." Ibid., "Capítulos de la junta eclesiástica de 1539," volumen III, documento 37, capítulo 24. Cited by Traslosheros, *Iglesia, Justicia y Sociedad en la Nueva España*, 19.

but also with imprisonment, whippings, and other corporal punishments except death penalty, which ultimately reinforced their authority in a setting of confrontation against the regular friars. In case a member of the clergy committed a crime that deserved death, he had to be relaxed to the secular authorities so they could punish him accordingly.[265]

In relation to the jurisdictional dispute between bishops and mendicant orders, the prelates defended that all the papal bulls enjoyed by the friars could only be applied in those regions where there were no bishops. However, in case there was a prelate in the area, the mendicant orders could only continue with their missionary activities as long as they were allowed by the local bishop to do so.[266] Although the creation of the Ecclesiastical Province of Mexico in 1548 consolidated the nascent power of the secular clergy in New Spain, the mendicant orders still had a significant influence in indigenous towns or doctrinas, challenging the authority of the bishops. Embracing the papal bulls, the friars affirmed they did not require the bishop's permission to erect new churches and convents, and defended that they will not subject their doctrines to the diocesan visit. The First Mexican Council, convened in 1555 by the archbishop of Mexico, Alonso de Montúfar, represented another offensive against the regulars. Some of its chapters were explicitly devoted to undermining the jurisdictional claims of the friars and consolidate the authority of the secular clergy. For example, the council adopted the measure to prohibit the regular orders from administering sacraments (including confession) and building new monasteries and temples[267]

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[265] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro I, título XXXI, párrafo 32.
[266] Traslosheros, *Iglesia, Justicia y Sociedad*, 19.
[267] María del Pilar Martínez López-Cano (coord..), *Concilios provinciales mexicanos. Época colonial: "Constituciones del arzobispado y provincia de la muy insigne y muy leal ciudad de Tenochtitlán, México, de la Nueva España Concilio Primero"* (México: Universidad Nacional Autónoma de México, Instituto de Investigaciones Históricas, 2004). Primer Concilio Mexicano, 1555, capítulo XXXV: "Que ninguno edifique iglesia, monasterio, ni ermita sin licencia, ni en esta tierra haya ermitaños."

without the permission of the bishops.[268] The edicts of the council affirmed ecclesiastical freedom and immunity against secular or temporal power,[269] and institutionalized the episcopal visit in the Mexican dioceses, making it compulsory for the local bishops to visit their jurisdiction every year.[270]

Jorge Traslosheros contends that the First Mexican Council centralized the administration of justice around the figure of the prelate and established a new jurisdiction in New Spain, granting ecclesiastical courts the authority to hear cases related to crimes committed against the faith, misconduct of the priesthood, marriages, matters relating to wills, tithes, chaplaincies, and pious works. These competences are not necessarily new since ecclesiastical courts in Medieval Europe had the same jurisdiction. However, Traslosheros notes that despite the intentions of the First Mexican Council, no measure that affected the interests of the friars actually came into force. The regular orders, empowered by the bulls of Leo X and Adriano appealed to the Council of the Indies, which protected them and granted them with a series of royal decrees to secure some of their privileges, such as the right to build churches without a license from the bishops.[271] Likewise, Philip II limited the power of the bishops by banning the publication of the edicts of any synod or council held by the bishops without first being sent for approval to the Council of the Indies.[272]

Despite these limitations, during this period, the bishops of New Spain were in control of the so-called Episcopal or Apostolic Inquisition (from 1522 to 1571), that prosecuted crimes

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[268] Ibid, capítulo IX: "Que los sacerdotes religiosos no oigan de penitencia sin que para ello tengan la licencia y aprobación que el derecho requiere."
[269] Ibid, capítulo XXX: "Que ningún ocupe, ni encastille las iglesias, ni saquen los retraídos de ellas, ni les veden los mantenimientos, ni echen prisiones dentro, ni las cerquen, ni hagan leyes o constituciones contra la libertad eclesiástica."
[270] Ibid, capítulo CX: "LXV. Que cada año se dé vuelta a la doctrina cristiana examinando a cada uno de los indios en particular y que se busquen todos los que nunca se han confesado y se les mande se confiesen, y sepan los indios que se casan la doctrina."
[271] Traslosheros, *Iglesia, Justicia y Sociedad*, 29-30.
[272] Ibid, 29.

against the faith and that had jurisdiction over Spaniards and Indians alike. Bishop Juan de Zumárraga, as Richard Greenleaf argues in his studies of the Holy Office in the early colonial period, launched the Indian Inquisition between 1536 and 1543, that punished "those native leaders who by word and deed tried to undermine the spiritual conquest."[273] The most famous case of this time was the burning of the cacique don Carlos de Texcoco in 1539, for having hindered the teachings of the friars and urging the Indians to embrace their pagan religious devotions, rejecting Christianity. The harsh execution of don Carlos triggered criticism from the royal authorities in Spain that removed Zumárraga and that reconsidered whether the Inquisition should deal with indigenous peoples, as they were newcomers to the faith and had inadequate instruction.[274] The debate extended until 1571, the year in which the Mexican Tribunal of the Holy Office of the Inquisition was established. This court refused to hear indigenous unorthodoxy cases, which remained under the jurisdiction of the bishops.

2.2. The Council of Trent, and the Second and Third Mexican Councils

On July 12, 1564, Philip II issued a royal decree by which he ordered to obey, with the full support of the royal authority, the canons of the Council of Trent, whose main aim was to fight the new heresy of Protestantism in Europe and to promote the reformation of customs. The royal approval of the decrees of Trent favored the consolidation of the secular clergy in colonial Mexico, as they recognized the authority of the bishops over the mendicant orders. For example, the Council of Trent mandated all bishops to conduct a canonical visitation to all the parishes of their dioceses once a year, a law that the previous First Mexican Council had tried to impose on the friars, who refused to have their doctrinas inspected by episcopal authorities. According to the

[273] Richard Greenleaf, "The Inquisition and the Indians of New Spain: A Study in Jurisdictional Confusion," *The Americas*, Vol. 22, No. 2 (1965): 139.
[274] Ibid, 140.

canons of Trent, the purpose of the canonical visitation was to allow the prelates to control the orthodoxy of the faithful, banish heresies, maintain good morals, and to correct errors.[275]

In order to swear the resolution of the Council of Trent and adapt its canons to the Mexican Church, the bishops of New Spain gathered at the Second Mexican Provincial Council, in 1565. The Second Council ratified the existence and the privileges of the ecclesiastical province of Mexico, dealt with the matter of ecclesiastical discipline, and instructed the priesthood to learn indigenous languages, and live in an exemplary.[276] The promulgation of the *Ordenanza del Patronato*, in 1574, with numerous royal decrees that mandated the regular clergy to be subjected to the episcopal jurisdiction also reinforced the authority of the prelates in New Spain. In the same period, right after the Second Mexican Council, the archbishop of Mexico, Alonso de Montúfar (1551-1572), appointed several priests to the position of *provisor general* (the main official of the new episcopal court in Mexico City), and sent new appointed ecclesiastical judges to exercise the episcopal jurisdiction in his archdiocese.[277] The bishops demanded the friars to abandon the management of their doctrinas, in order to divide them and assign them to the growing secular clergy. [278] Despite the Crown did not approve these resolutions, the Second Mexican Council represented another example of the determination of the prelates to exercise their jurisdiction and subject the mendicant orders through canonical visitation.

[275] Council of Trent, 1563, twenty-four session, chapter III.

[276] Leticia Pérez Puente, Enrique González González y Rodolfo Aguirre Salvador, "Estudio introductorio. Los concilios provinciales mexicanos primero y segundo," *Concilios provinciales mexicanos. Época colonial,* edited by Martía del Pilar Martínez López Cano (México: Universidad Nacional Autónoma de México, Instituto de Investigaciones Históricas, 2004), 20-23.

[277] Aguirre Salvador, "El establecimiento de jueces eclesiásticos en las doctrinas de indios," 15.

[278] Rubal García, *La Iglesia en el México Colonial*, 48-49.

2.3. Third Mexican Council, 1585, and the Episcopal Jurisdiction in the Archbishopric of Mexico

A new offensive to subject the regulars to the authority of the bishop took place during the Third Mexican Council, held in 1585, headed by Pedro Moya de Contreras, archbishop of Mexico and then also viceroy of New Spain. Although the decrees of this synod were promulgated in 1585, the Spanish Crown did not approve and publish them until 1622, when they gained full legal force in the viceroyalty of New Spain. For this dissertation, the Third Mexican Council is important because it established the basis of the episcopal legal system and the ecclesiastical courts in the archbishopric of Mexico until the Fourth Mexican Council in 1771. That is to say, that the vast majority of the judicial cases prosecuted by the ecclesiastical court of Toluca were subjected to the canons and laws promulgated by the Third Mexican Council.

Regarding the bishops themselves, the Third Mexican Council, following the instructions of previous synods, determined that they must live an exemplary live, preach the gospel, supervise the faithful as if they were their "guardian angels," and lead the divine worship for the benefit of the "health of the people."[279] This principle was not exactly new, since already in the European Middle Ages the Fourth Lateran Council (1215), reformed the clergy in order to dissuade the faithful from joining heretical movements, and exhorted priests to respect the dignity of their office and set a good example to the community. Although not an innovation, the legal texts produced in Spain and the Americas during the sixteenth century emphasized the necessity for bishops to be exemplary, especially when dealing with indigenous peoples that ignored Christianity and were called to hear the gospel. In this respect, while the bishops and priests of the Middle Ages were admonished to maintain a life free of vices to prevent heresy, the prelates

[279] "Concilio III Provincial Mexicano, celebrado en México el año 1585," in *Concilios provinciales mexicanos. Época colonial*, libro III, título I: del ministerio de los obispos y de la pureza de su vida, capítulos I y II.

of colonial Mexico were exhorted to set a high moral example and behave like the apostles so the Indians could become Christians more easily.[280]

Following the canons of Trent, the Third Mexican Council mandated that bishops must visit their dioceses, at least every two years, or to appoint a person (*vicario visitador*) to do it if they were not capable of doing it themselves.[281] An important resolution to settle the conflict between regular and secular clergy was to determine that friars could not be promoted to orders, confess, to exercise ecclesiastical ministry outside their convents without previous examination and approval of the bishop. Among other provisions, prelates gained the power to visit all the doctrinas under their jurisdiction, including those in the hands of the friars, and receive information on everything that related to churches, the divine cult, and the healing of souls (*cura de almas*) that the friars performed.[282] Another important point raised by the synod is that bishops, in order to exercise justice in their dioceses, they were obliged by the Council of Trent Council to appoint a general vicar (*vicario general* or *"provisor"*) and ecclesiastical judges.[283]

The friars did not sit idle before the expansion of the episcopal authority, and protested to the Spanish Crown, stating that the decrees and canons of the Third Mexican Council and the Council of Trent did not cancel the bulls they were given by papacy. In particular, the friars mentioned the papal brief of Pius V, published in 1567, that affirmed the right of the mendicant orders to manage their doctrinas and administer sacraments without the permission of the bishops. The friars emphasized that another document issued by Gregory IX in 1591 renovated this brief.

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[280] Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo VII, 542.
[281] Concilio III Provincial Mexicano, 1585, libro III, título I: de la visita de la provincial, capítulo I.
[282] Ibid, libro III, título I: de la visita, capítulo III.
[283] Ibid, libro I, título VIII: Del oficio del juez ordinario y del vicario, capítulos I and IV.

[284] In sum, the regulars posed that the Council of Trent did not cancel their privileges, and that as a result, the bishops in New Spain had neither the right to force them to go through examinations, nor to concede them explicit permission to exercise as parish priests. In 1587, after receiving many complaints from the friars, the Spanish Crown determined that the mendicant orders were not to be removed from their doctrinas.[285] This royal decree was reinforced by another one issued in October 1595, by the king Philip II, who commanded that when bishops could not visit personally the doctrinas under the control of the friars, they must not send secular priests as visitors to do so, but only priest from those regular orders.[286] Thanks to this decision, the regulars maintained their authority in indigenous towns until the second half of the seventeenth century. This situation of jurisdictional struggle marked the secularization of the doctrinas, defined by the attempt of the bishops of New Spain to dominate the mendicant orders, cancel their privileges, and impose on them the episcopal jurisdiction.

2.4. Post-Third Mexican Council Until 1675, the Foundation of the Ecclesiastical Court of San José de Toluca

Although the Spanish Crown, as patron of the Church in the Americas allowed the regulars to keep their doctrinas, this decision did not mean that the mendicant orders gained perpetual possession of them. In fact, the bulls and briefs given by the popes to the regulars observed that the friars could maintain their doctrinas until there were enough ministers from the secular clergy

[284] Solórzano y Pereyra cites the papal brief of Pius V in *Política Indiana*, libro IV, capítulo XVI, 637. It is as follows: "que puedan los regulares, aunque sean mendicantes, de aquellas provincias, con sola licencia de sus prelados, obtenida en sus capítulos provinciales, ejercer el oficio de párrocos, celebrando matrimonios, administrando los sacramentos de la Iglesia, y predicar, y confesar, sin necesidad de pedir ni obtener licencia de los ordinarios de los lugares, ni de otra persona alguna."

[285] Royal decree issued on 16th December, in Madrid, 1587: "Dejando las dichas doctrinas a las dichas religiones, y religiosos libre y pacíficamente, para que las que han tenido, tienen, y tuvieren, las tengan como hasta aquí, sin hacer novedad alguna, ni en la forma de proveerlos, ni de presentarlos de ellas." Cited by Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo XVI, 638.

[286] Archivo General de la Nación de México (AGNM), *Bienes Nacionales*, 1595, legajo 1285, expediente 23.

that could deal with them. This aspect became a problem in the first half of the seventeenth century, when in the archbishopric of Mexico secular clerics complained that they could not get an ecclesiastical benefice because the regulars occupied them.[287] This issue caused conflicts and unrest not only between the secular and the regular clergy but also between the friars and the royal authorities. Viceroys and other officials asserted that the mendicant orders were using their papal privileges to disobey the Patronato Regio, and recommended the Spanish Crown to secularize the doctrinas of the friars and entrust them to the secular clergy. This problem was especially urgent for the viceroyalty of New Spain, but not for the viceroyalty of Perú. Since the government of Francisco de Toledo (1569-1581), the viceroys of Peru did not allow the friars to enter their doctrines until they swore the Patronato Regio, passed proper examination, and received licenses from their bishops.[288] The friars, besides resorting to the papal privileges to justify the status quo, argued that since they had been responsible for evangelizing the indigenous peoples and building new temples in the early sixteenth century, they merited maintaining their doctrinas and privileges. In addition, authors such as José Acosta, a Jesuit friar writing in the second half of the sixteenth century, favored the idea that the mendicant orders were better than the secular clergy in instructing and converting Indians to Christianity, since they lived exemplary lives and had mastered indigenous languages. However, Acosta posed that when the secular clergy had the same quality and merit as the regulars, they must be preferred to manage indigenous doctrinas.[289] Colonial jurists such as Solórzano y Pereyra, despite recognizing the outstanding job of the friars,

[287] Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo XVI, 640.
[288] Ibid, libro IV, capítulo XVI, 638.
[289] Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo XVI, 643.

still wrote in favor of the secularization of the doctrinas given the concern that the regular orders were undermining the Patronato Regio.[290]

Despite the mendicant orders kept their doctrinas in the early seventeenth century, the Spanish Crown, warned by the concerns of the secular clergy and its royal authorities in the Indies, issued a series of measures to reinforce the episcopal authority in New Spain. In a royal decree issued on June 22nd, 1614, the king Philip III affirmed the right of archbishops and bishops to visit themselves the regulars' doctrinas and supervise them in anything related to the "cure of souls," visiting the churches, sacraments, and religious sodalities. This decree also permitted prelates to punish friars within the jurisdiction of their doctrinas. However, this law stipulated that when friars committed any form of abuse, they had to be corrected first by their superiors in the mendicant order, but if they neglected to do it, the bishops could admonish them.[291] Since this decree favored the episcopal jurisdiction, the friars bitterly complained that their papal privileged were under attack. However, in three decrees dating from 1624, 1628 and 1634 the Spanish Crown reaffirmed its position, giving prelates the right to examine, visit, and remove regular friars from their doctrinas if necessary. In fact, these decrees also empowered royal authorities, which were concerned with the friars not obeying the Real Patronato. For instance, mendicant orders were forced to present to the viceroy in New Spain three regulars, from which the viceroy, as representative of the king, would choose one for the management of a particular doctrina.[292] In this way, the Crown reminded the friars that their papal privileges did not cancel the Patronato

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[290] Ibid, Libbidro IV, capítulo XVI, 641-643.

[291] Ibid, Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo XVI, 645.

[292] Royal decree, December 17th, 1634: "Y en las elecciones, y proposiciones, que se hicieren para las dichas doctrinas, y curatos por las dichas religiones, han de nombrar el provincial, y capítulo, para cada una tres religiosos, de los cuales el dicho mi virrey, o gobernador, que ejerciere mi Patronazgo, elegirá a uno, cual le pareciere." Cited by Solórzano y Pereyra, Política Indiana, libro IV, capítulo XVII, 647-648.

Regio, and that the Spanish monarchs, as patrons of the Church in the Indies, had the absolute right to provide the mendicant orders with doctrinas, or remove them from their possessions if that was necessary.

Empowered by these decrees, the definite establishment of the episcopal jurisdiction over the mendicant orders took place during the rule of the archbishop Payo Enríquez de Rivera (1668-1680).[293] This archbishop established the episcopal and other ecclesiastical courts in Mexico, including the one of the city of Toluca. This court, that started its activity in 1675, supervised and resolved problems among *cofradías* (sodalities), granted matrimonial licenses, punished indigenous peoples in criminal matters that lacked gravity, validated, and resolved disputes related to testaments, and eradicated indigenous heterodoxy.[294] This court served as an intermediary between the parishioners of the Toluca Valley and the diocesan courts of the Archbishopric in Mexico City.[295] Therefore, these tribunals diminished the authority of the regular orders, reinforced the political control of the bishops and the Spanish kings, and monitored and supervised the good customs and morality of local colonial societies.

2.5. The Bourbon Reforms, Secularization of Doctrinas and Consolidation of Ecclesiastical Courts

The Bourbon Reforms, a series of political measures that sought to renovate the Spanish Empire in order to regain a lost position of dominance in the world, marked the eighteenth century in New Spain. Authors such as Nancy Farris and William Taylor argue that the Bourbon Reforms had an economic utilitarianism that sought to improve the imperial economy and eliminate the

[293] Leticia Pérez Puente, *Tiempos de crisis, tiempos de consolidación: La catedral metropolitana de la Ciudad de México, 1653-1680* (Michoacán: El Colegio de Michoacán, 2005), 244.
[294] Archivo Histórico del Arzobispado de México (AHAM), Juzgado Eclesiástico de Toluca, Inventario del juzgado, 1750, caja 67, expediente 47.
[295] Watson Marrón, *Guía de documentos del Archivo Histórico del Arzobispado de México,* 7.

major obstacles to prosperity, such as the immense material wealth that the Church had accumulated over the centuries in the Indies, which includes the mendicant orders and their possessions.[296] The Spanish Crown considered the doctrinas to be anachronisms, relics of a sixteenth-century missionary church that did not belong in central New Spain. Ultimately, the Bourbons expected that the removal of the religious orders would make Indian parishes less Indian, by promoting Spanish over indigenous languages, reforming religious celebrations, and channeling communal resources toward economic production.[297] The Bourbons criticized the evangelism that the mendicant orders had developed in the previous centuries, and considered necessary the incorporation of some indigenous peoples into the priesthood.[298] In short, the Reforms finished the decentralized political system of the Habsburgs and imposed new fixed, regularizing laws which ultimately subordinated the Church to the royal authority.[299] Rodolfo Aguirre Salvador poses that ecclesiastical courts and the episcopal jurisdiction were consolidated during the eighteenth century thanks to the Bourbon Reforms, despite the friars' protests. King Philip V (1700-1746) decidedly supported the establishment of the ecclesiastical courts to reduce the power of the mendicant orders and to reinforce the power of the Crown.[300] For example, in a royal decree of October 2, 1701, the monarch claimed that no law, canonical or royal, limited the bishop's power to delegate the canonical visitation of religious doctrinas at his own discretion.[301]

Other scholars such as David A. Brading note that the process of secularization promoted by the Bourbon Reforms in other dioceses, such as that of Michocacán, also affected the local

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[296] Farriss, *Crown and Clergy in Colonial Mexico*, 92.
[297] O'Hara, *A Flock Divided,* 11.
[298] O'Hara, *A Flock Divided*, 232.
[299] William B. Taylor, *Magistrates of the Sacred*, 14.
[300] Rodolfo Aguirre Salvador, "El establecimiento de jueces eclesiásticos en las doctrinas de indios," 18-19.
[301] AGNM, Bienes Nacionales, legajo 1285, expediente 23. Cited by Salvador, "El establecimiento de jueces eclesiásticos en las doctrinas de indios," 20.

mendicant orders, which lost economic power at the expense of a new enlightened ecclesiastical elite that supported the Crown.[302] In the case of the archbishopric of Mexico and the ecclesiastical court of Toluca, the process of secularization started in the second half of seventeenth century, but culminated in the first half of the eighteenth century. In this respect, I argue that the Bourbon monarchs were following the path set by the latest Habsburg kings, that in a gradual process of centralization of power, supported the authority of viceroys and bishops, who served the king to control the regular orders and to guarantee that they were subjected to the Patronato Regio. Therefore, the Bourbon Reforms helped to reinforce a series of measures that were already developing throughout the seventeenth century.

The archbishop José Lanciego Eguilaz (1712-1728) represented well this policy. The prelate promoted the secularization of doctrinas, consolidated the ecclesiastical courts, and increased the requirements for priestly ordinations.[303] In addition, he collected the ecclesiastical subsidy (*subsidio eclesiástico*), a 10% tax imposed by the Crown on all the ecclesiastical income. In the Americas, Philip V intended to use this revenue to reduce the expenses caused by the Patronato Regio, which forced him to maintain all the infrastructure of the Church in the New World.[304] During the government of this archbishop, from 1723, the ecclesiastical judges not only supervised the population, keeping good customs and religious orthodoxy, but they also acted as executors of the orders of the monarch, and received an economic compensation for their tasks of collecting the ecclesiastical subsidy around 1727.[305] Towards 1731, the new archbishop, Jose

[302] Brading, *Church and State in Bourbon Mexico.* For another study on how the reforms impacted the Church and its wealth see Michael P. Costeloe, *Church Wealth in Mexico: A Study of the Juzgado de Capellanías in the Archbishopric of Mexico, 1800-1856* (New York: Cambridge University Press, 1967).
[303] For a study of this topic see Rodolfo Aguirre Salvador, "El ascenso de los clérigos de Nueva España durante el gobierno del arzobispo José Lanciego y Eguilaz," *Estudios de Historia Novohispana* 22 (2000): 77-110.
[304] Rodolfo Aguirre Salvador, "El subsidio eclesiástico y la política de Felipe V en la Iglesia indiana: un camino por explorar," *Tzintzin. Revista de estudios histórico*s, n 60, Michoacán, Julio/Diciembre (2014).
[305] Aguirre Salvador, "El subsidio eclesiástico."

Antonio Vizarrón Eguiarreta (who governed between 1730-1748), confirmed and endorsed the titles of ecclesiastical judges in an edict destined to all his ministers.[306]

3. The Provisorato of the Archbishopric of Mexico and Local Ecclesiastical Courts

3.1. The Provisorato de Indios y Chinos in the Archbishopric of Mexico: Bureaucratic Structure

The court of the archbishop of Mexico, the Provisorato, subjected and controlled the ecclesiastical court of San José de Toluca. At a bureaucratic level, the legal system of the archbishopric of Mexico worked in the following way.

[306] AGNM, Bienes Nacionales, legajo 1231, expediente 25 "Cordilleras para que se presenten títulos de jueces eclesiásticos." "Me ha parecido conveniente el que vuestras mercedes, por si o por sus procuradores, presenten en mi secretaría, dentro de un mes que les asigno por término perentorio, los títulos en cuya virtud ejercen la judicatura eclesiástica para reconocerlos, y en su vista, si lo estimare por necesario mandar, o que se refrenden o que se despachen de nuevo, y en el ínterin que vuestras mercedes hacen la presentación de los referidos títulos, dentro del término prefijo, se les confiere la facultad de ejercer dicha judicatura eclesiástica. Dios guarde a vuestras mercedes muchos años. México y junio cinco de 1731. Juan Antonio, arzobispo electo de México [rúbrica]." Cited by Aguirre Salvador, "El establecimiento de jueces eclesiásticos," 22.

***Table 1*. Bureaucratic Structure of the Provisorato of the Archbishopric of Mexico**

Bureaucratic Hierarchy
Archbishop
Provisor general (general vicar).
Fiscal general/promotor fiscal (attorney general).
Alguacil mayor (major bailiff).
Notario público del Juzgado Eclesiástico del Arzobispado (public notary of the episcopal court/provisorato of the archbishopric).
Notario receptor ((notary who recorded accusations or denouncements).
Promotor fiscal del Arzobispado (public prosecutor of the archbishopric, he also worked as *fiscal* of the *Real Audiencia* of Mexico)
Procurador y Defensor de pobres (attorney and defender of the poor).
Intérprete de la Audiencia Arzobispal (interpreter of the episcopal court).
Cura beneficiado, juez vicario in capite (he was the main ecclesiastical judge at a regional/local ecclesiastical court, appointed by the archbishop).
Other ecclesiastical judges in curatos or doctrinas.
Local notaries and court clerks

Source: Gerardo Lara Cisneros, "Superstición e idolatría en el Provisorato de Indios y Chinos del Arzobispado de Mexico, siglo XVIII," 173.

At the highest echelon was the archbishop, followed by the *provisor oficial* or *vicario general* (general vicar) of the archdiocese, appointed by the prelate at the episcopal court in Mexico City, and to whom all officials and the administration of the ecclesiastical justice were subjected. The *provisor oficial* enjoyed a great judicial authority, to the extent that their sentences could not be appealed to the bishops. In his study, Traslosheros notes that *provisores* firmly acted against individuals who committed perjury during trials (as it was a grave offense against God), defamers who accused the innocent, public sinners and scandalous people that induced their neighbors to sin with their bad example.[307] In the second rank of importance was the fiscal general

[307] Traslosheros, *Iglesia, Justicia y Sociedad*, 40.

(attorney general) of the Provisorato, who could supervise his officials and to start legal prosecutions. The promotor fiscal represented the Church in all criminal cases. Its function was to impede abuses against the ecclesiastical jurisdiction and counseled the provisor by suggesting punishments and evaluating accusations. The promotor fiscal was normally a presbyter appointed directly by the archbishop of Mexico.[308]

Under the control of the archbishop and his provisores were the *jueces comisionados* (comissioned judges), that were charged with collecting information somewhere far from Mexico City on a particular judiciary issue, and then sending their findings back to the provisor, so he could dictate sentence.[309]Along with this innovations, the Third Mexican Council mandated bishops to choose provincial vicars whose duty was to inquire in the life and the customs of the local clergy, and send their assessment to the provisor.[310] Since bishops enjoyed plenty of freedom to appoint their provisores generales and regional judges, assigning each of them certain judicial capacity, the character and the goals of the ecclesiastical courts in New Spain depended on the prelate. This variation explains that the episcopal jurisdiction, in dealing with issues such as indigenous idolatry, had a different approach in every diocese. For example, according to Ana de Zaballa, in Chiapas and Oaxaca there were peaceful periods in which Indians were left to their own whims, to times in which bishops promoted campaigns to extirpate native idolatries.[311] We will see how this topic developed in Toluca in the seventh and eight chapters.

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[308] Lourdes García Villafuerte, Teresa Lozano Armendares, Sergio Ortega Noriega, and Rocío Ortega Soto, "De la sevicia y el adulterio en las causas matrimoniales en el Provisorato de México a finales de la era colonial. Un estudio de la técnica procesal jurídica," *Estudios de Historia Novohispana*, Número 38 (2008): 89-90.
[309] Traslosheros, *Iglesia, Justicia y Sociedad*, 49-50.
[310] Concilio III Provincial Mexicano, 1585, libro I, título VIII: Del oficio del juez ordinario…, capítulo XXIX.
[311] Ana de Zaballa, "Del Viejo al Nuevo Mundo," 21-22. See also by this author "La hechicería en Michoacán en la primera mitad del siglo XVII.," *El Reino de Granada y El Nuevo Mundo. V Congreso Internacional de Historia de América* (Granada: Diputación Provincial de Granada, 1994).

3.2. Differences in Jurisdiction Between Late Medieval and Colonial Ecclesiastical Courts

The episcopal jurisdiction and its ecclesiastical courts, as in the European Middle Ages, were charged with supervising public morality and good customs, ensuring the discipline of the clergy, and supervising the orthodoxy of the faithful. One of the big differences is that ecclesiastical judges in colonial Mexico, unlike their counterparts in late Medieval Europe, recognized a secular lord (the king of Spain) as their supreme judge. For example, ecclesiastical judges in New Spain were required to pass examinations and obtain the approval of the Spanish Crown so their bishops could choose them and appoint them with an ecclesiastical benefice.[312] Although secular kings could influence the administration and organization of medieval ecclesiastical courts, there is no equivalent to the Patronato Regio and the great authority that the Spanish monarchs exercised in the legal system of the Church in the Indies.

An important difference between the European and American episcopal tribunals is that in the Americas, the ecclesiastical courts heard unorthodoxy cases when the defendant was an indigenous person, and not the Holy Office.[313] A royal decree by Philip II issued on February 1575 mandated that ecclesiastical judges under the control of bishops were the ones responsible for eradicating indigenous heterodoxy in collaboration with royal officials and prohibited the Inquisition from prosecuting Indians.[314] Royal law thus established that the crimes against the faith committed by Indians were under the jurisdiction of the ecclesiastical and the secular courts (especially when dealing with idolatry and superstition), as a *mixtifori* crime; and instructed that

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[312] Solórzano y Pereyra, *Política Indiana*, libro IV, Capítulo XV, 624-625.

[313] In the late Middle Ages, as seen in chapter 2, most heresy cases were heard and prosecuted by the different inquisitions created by the papacy, and not the local ecclesiastical courts. However, sometimes ecclesiastical courts dealt with heresy cases. See Donahue, "The Ecclesiastical Courts: Introduction," 266.

[314] *Recopilación de leyes de los reynos de las Indias*, *1680,* libro 6, título 1, ley 35: "Por estar prohibido a los Inquisidores Apostólicos el proceder contra Indios, compete su castigo a los ordinarios eclesiásticos, y deben ser obedecidos y cumplidos sus mandamientos: y contra los hechiceros, que matan con hechizos y usan de otros maleficios, procederán nuestras justicias reales."

bishops could absolve indigenous peoples of the sin of heresy in the internal and the external forum.[315] In addition, the Spanish Crown entrusted the secular and ecclesiastical authorities with the duty of supervising and respecting the cultural customs of the Indians as long as they were not against the Catholic faith.[316]

Geography also explains other differences between the episcopal jurisdiction in Europe and the Americas. One of the most important innovations of canon law in the Spanish Indies was the prohibition to appeal a sentence given by a bishop in the Americas to the Holy See in Rome. A papal brief granted by Pope Gregory XIII on May 15, 1573, ordered that all legal causes arising in the Americas had to be completed in those lands. The major reason given by the papacy to concede this brief was the long distance between the New World and Rome that made difficult and very costly the right to appeal to the pope.[317] Thus, the American prelates would be full owners of the justice administered in their ecclesiastical province. That does not mean that there was not any form of appeal. As Solórzano y Pereyra explains, if a suffragan bishop gave judgement[318], his sentence could be appealed to the metropolitan archbishop. However, if the archbishop or the metropolitan had ruled in the first place, his sentence had to be appealed to the closest suffragan bishop to the archdiocese or metropolis. In the case the first two rulings agreed in a specific sentence, the case was finished ("*tiene fuerza de cosa juzgada"*). If the first two

[315] Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo XXIV, 702-703.

[316] *Recopilación de leyes de los reynos de las Indias*, *1680,* libro 2, título 15, ley 83: "los gobernadores y justicias reconozcan con particular atención la orden y forma de vivir de los indios, policía, y disposiciones de los mantenimientos, y avisen a los virreyes o audiencias, y guarden sus buenos usos y costumbres en lo que no fueren contra nuestra sagrada religión."

[317] Solórzano y Pereyra, Política Indiana. This brief can be found in: libro IV, capítulo IX, 565: "*las partes de las ciudades, tierras, lugares, pueblos y señoríos del mar Océano, por estar tan distantes de la Curia Romana, era muy dificultosos poder alcanzar Breves Apostólicos, y que por eso las apelaciones de cualquier sentencias…". Se also* Zaballa, *"Del Viejo al Nuevo Mundo", 22-24.*

[318] Suffragan bishops are those subordinated to a metropolitan bishop or to an archbishop within an ecclesiastical province. In the case of New Spain, the metropolitan archdiocese was that of Mexico.

sentences disagreed, the appeal could be extended to a third bishop. Finally, if the two last sentences agreed, the episcopal judge that ruled the final sentence had to execute it.[319] This system of appeal is an innovation that did not exist in the European canon law, neither for the late Middle Ages nor the early Modern period.

The distance between the Spanish Indies and Rome and the difficulties in communicating with the Holy See also forced the papacy to grant the American bishops with more faculties that their counterparts enjoyed in Europe.[320] In particular, the bishops of the Americas could absolve from any of the sins punished with excommunication as listed in the papal bull "*In Coena Domini*." These criminal sins included apostasy and heresy (only for the Indians), falsification of apostolic briefs, violence and molestation done to ecclesiastical judges, the usurpation of church goods, and the interference of secular judges in capital or criminal causes of ecclesiastics, among others.[321] The colonial jurist Solórzano y Pereyra wrote that bishops in the Americas also had the authority to protect indigenous peoples, widows, and other miserable persons that were aggrieved and afflicted by other parties. That means that they protected the "*miserables*," which in the American scenario was a term mostly used to refer to indigenous peoples. However, the secular justice also had jurisdiction over the miserables. In this respect, the ecclesiastical justice was expected to intervene in cases with "miserables" involved as long as the secular judges had been notoriously negligent in offering protection to those persons in need, or had not acted at all.[322]

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[319] Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo IX, 567.

[320] Justo Donoso, *Instituciones de derecho canónico americano* (Mexico: Librería de la Avenida de Ch. Bouret, 1897), Tomo III, libro IV, capítulo III.

[321] In Coena Domini was a papal bull published in 1363 under the pope Urban VI and updated by different pontiffs until the nineteenth century. It listed twenty-one sins and crimes that were punished with excommunication. Check the list in Roman Catholic Church, *The Papal Bull, "In Coena Domini*" (London: John Hatchard and Son, 1848), 11-18

[322] Solórzano y Pereyra, *Política Indiana*, Libro IV, capítulo VII, 547: "Esto puede verificarse en las Indias, y partes muy remotas, donde sin gran dificultad y sin esperanza de oportuno remedio, no se podría ocurrir (recurrir) al rey o al superior para colegirle y desagraviar a los miserables, tiranizados, y oprimidos, que en tal caso el obispo

This is another difference with the European Middle Ages when ecclesiastical justice did not share jurisdiction over miserable persons with secular courts.[323]

Solórzano y Pereyra notes that bishops and ecclesiastical judges must allow first the secular judges to deal with cases of miserable persons, since in some situations, under the excuse of piety, ecclesiastical judges invaded the secular jurisdiction, creating a jurisdictional conflict. This intrusion was problematic in the legal system of the Spanish Empire, as the secular and ecclesiastical arms were called to collaborate, and not to oppose each other.[324] The laws of the Indies explicitly ordered bishops not to meddle in the royal jurisdiction.[325] This rule was not unidirectional, since the Crown also mandated the royal judges of the Indies not only to respect the ecclesiastical jurisdiction, but to give support and help church ministers to administer it.[326] According to these provisions, American bishops and their officials had to exercise justice moderately by not usurping secular jurisdiction and by not abusing their power to excommunicate laypeople, especially those that worked as royal judges and officials.[327] In this respect, I find a similarity, since ecclesiastical courts in the European late Middle Ages also emphasized the respect of the secular jurisdiction, and exhorted priests not to usurp it.

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o juez eclesiástico podrá hacerlo por la dilación, distancia o imposibilidad para poder recurrir al superior a que quite la opresión."

[323] Decretalium Gregorii Papae IX compilationis, cap. XV: "Miserabilis persona potest laicum interdicto unde vi coram iudice ecclesiastico convenire, etiamsi res substracta dicatur feudalis."

[324] Solórzano y Pereyra, *Política Indiana*, libro IV, capítulo VII, 548-549.

[325] *Recopilación de leyes de los reynos de las Indias*, *1680,* libro III, título I, ley V: "Que los prelados no se entrometan en lo tocante a la jurisdicción real, y en casos notables avisen al Rey."

[326] Ibid, libro 1, título VII, ley LIV: "Que no se impida a los prelados la jurisdicción eclesiástica, y se les da favor y auxilio, conforme a derecho."

[327] A royal decree of August 27th, 1560, commands: "por ende rogamos y encargamos a los dichos prelados y sus vicarios y oficiales, y a cada uno de ellos; según dicho es que de aquí adelante no descomulguen en los casos que tuvieren jurisdicción por casos y cosas livianas, ni echen penas pecuniarias a los legos, porque no se dará lugar a que haga lo contrario, por los inconvenientes que de ello resultan." Cited by Solórzano y Pereyra, *Política Indiana*, 549.

4. The Eradication of Public Sins and God's Anger

From a Catholic perspective, the most important function of ecclesiastical courts was not to make papal justice available to all the faithful, or to facilitate secular governance, but to appease the wrath of God. The idea that God becomes angry at human sin is tightly connected to the Old Covenant, by which man and God entered an agreement. According to the Old Testament, God gave Moses the Law, and the people of Israel swore to obey it. The benefits of following the commandments were wisdom,[328] divine protection[329], sanctification,[330] knowledge of the holiness of God[331], and so the people of Israel stay well and for their good.[332] However, if the Israelites dared to disobey, there were nefarious consequences for them. In the Book of Deuteronomy, chapter 28, there are a series of curses and punishment that would befell in Israel if they breached the Law. In this respect, the Old Testament teaches that although individual sin exists, it is the sum of all the people's sins that make a collective offense to God, who punishes not only the individuals, but the entire community of sinners.

I should emphasize that collective punishment is not restricted to Israel for having breached the Covenant. In the Old Testament, even pagan nations were punished by God by sins such as idolatry, wickedness, injustice, cruelty, oppression towards the needy, etc.[333] The case of Sodom and Gomorrah[334], the destruction of the Temple by Nebuchadnezzar and the Deportation and Exile to Babylon[335] are some examples in which the Israelites saw the fury of God acting

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[328] Deuteronomy 4:6–8.
[329] Ibid, 28:9–10.
[330] Leviticus 11:44-45; 19:2; 20:7-8.
[331] Ibid, 19:2.
[332] Deuteronomy 5:29; and Deuteronomy 10:13.
[333] See the oracles of the prophet Isaiah against the nations. Book of Isaiah, chapters 13-23; and Jonah 1:2.
[334] Genesis 19.
[335] Jeremiah 25:4-12.

against their sins.[336] However, in Scripture, God's wrath is not a blind destructive fury, but has a profound corrective connotation. The prophets see the punishment of God as purifying, edifying, and as a reminder for Israel to not repeat the same sins again. In this respect, God's wrath comes hand in hand with promises of forgiveness and restoration for the future generations of Israelites, who will learn from the errors of their forefathers and will become just and holy.[337] Therefore, God's punishment in the Old Testament works as a demonstration of justice, care, and love for His people.

This understanding of God's wrath continues in the New Testament. Although Jesus threatens sinners with eternal damnation in Hell[338], there are also consistent examples of divine punishment occurred in this temporal life. Paul in his epistle to the Romans warns that "the wrath of God is being revealed from heaven against all the godlessness and wickedness of people."[339] and Ananias and Sapphira die after lying and testing God.[340] Theological interpretations of these episodes see God showing the nascent Christian community what not to do so they could remain holy. The exemplary character of these punishments would have significant influence over early Christian theologians and canon law jurists. Tertulian in the third century envisioned God's anger as a sign of his justice, and warned his audience not to confuse human anger with that of the Creator, as "He can be angry without being shaken, can be annoyed without coming into peril, can be moved without being overthrown."[341] Other authors such as Lactantius (c. 250- c.325) supported this vision of divine wrath and argue that the fear of an incoming punishment of God

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[336] The fifth chapter of the Book of Jeremiah offers a good summary of the rebellion of Judah and the reason why God punished this kingdom. See also Ezekiel, chapters 5 and 16.
[337] Jeremiah, chapters 30 and 31. See also Isaiah
[338] Matthew 25:41-46; Mark 9:42-48; Luke 16:19-31; Book of Revelation 22:12-16.
[339] Romans 1:18.
[340] Acts 5:1-10.
[341] Cited, by Michael C. McCarthy, "Divine Wrath and Human Anger, "*Institute for Faith and Learning at Baylor University* (2014): 40.

deterred humans from committing crimes. In his own words: "[C]onscience greatly checks people, if we believe we are living in the sight of God; if we realize that not only what we do is seen from above but also what we think or say is heard by God."[342] Augustine of Hippo endorsed the concept that God's anger is a sign of his justice, while interpreting that Biblical descriptions of divine emotions as either metaphors or analogies adapted to the human language to understand the actions of God.[343] Within this context, Augustine saw God's wrath as medicinal corrections for the sake of humans, and for their salvation. Augustine wrote that the very idea of God's anger is useful so humans themselves could become angry at observing a transgression against the divine commandments.[344] Although these authors interpreted God's wrath through metaphor, analogy or as different to human anger, they insisted that the punishment of sins happened and had a real effect in the world, as it represented God's immutable will to correct and save His creatures. That is the reason a theoretical vision of God's anger cannot be separated from a juridical obligation in human legislation as it existed in the Law of Moses and in canon law.

The first law of the *Recopilación de las Leyes de las Indias* proclaimed the obligation of the Spanish monarchs, as Christians, to invest all their strengths and power they had received from God so "He could be known as worshiped in the entire world as the True God and the Creator of

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[342] C. McCarthy, Michael. "Divine Wrath and Human Anger." *Theological Studies 70* (2009): 845-874.
[343] Joseph M. Hallman, "The Emotions of God in the Theology of St. Augustine," *Recherches de théologie ancienne et médiévale*, January-December, 1984, Vol. 51 (1984): 8-10. Classical theist authors such as Athanasius, Augustine, Anselm, Thomas Aquinas, Maimonides, Averroes think that God, as the simplest and noncomposite possible being, does not and cannot change. For example, in Thomas Aquinas, *The Summa Theologiæ of St. Thomas Aquinas (London: Burns Oates & Washbourne, 1920-1935),* Question XIX: "On the Will of God," 11th article: "Some things are said of God in their strict sense; others by metaphor, as appears from what has been said before (I:13:3). When certain human passions are predicated of the Godhead metaphorically, this is done because of a likeness in the effect. Hence a thing that is in us a sign of some passion, is signified metaphorically in God under the name of that passion. Thus, with us it is usual for an angry man to punish, so that punishment becomes an expression of anger. Therefore, punishment itself is signified by the word anger when anger is attributed to God. [...] Thus, punishment is not a sign that there is anger in God; but it is called anger in Him, from the fact that it is an expression of anger in ourselves."
[344] Jewish theologians in the 1st century such as Philo of Alexandria already had this notion in mind. Philo posed that Moses wrote about God's anger so humans could be properly admonished and taught about the severity of their sin. McCarthy, "Divine Wrath and Human Anger."

all things visible and invisible."[345] This obligation required that the ecclesiastical ministers appointed by kings in the Americas were expected to do all within their power to avoid God's anger. There is a more explicit intention of ecclesiastical justice to appease God in some canons of the Third Mexican Council of 1585. In one law, the Council instructs all bishops to pray at least one hour per day, so they could receive from God the grace to understand the Passion of Christ, and the gift to desire the good of all souls. This law exhorts prelates to do penance for their sins and for the negligence they might had committed in punishing the sins of the faithful. The purpose of this obligation was the avoid God's anger at the Judgment Day, when the Creator would reclaim "the blood of the sheep who died in the hands of careless shepherds."[346] The passage on the blood of the sheep references John 10:11-18 and Ezekiel 34:2-10, in which rulers of Israel are represented as bad shepherds, who did not stop idolatry, injustice and oppression in their kingdom, and that because of their negligence they caused the damnation of their subjects, who were exposed to these crimes. The result of this mismanagement is a collective punishment of God to correct the community, but also a particular harsher penalty for the shepherd who did not fulfill his duty. Therefore, the Third Council explicitly used these passages to state that one purpose of the justice of the bishop is to be diligent in the punishing of the sins of the people to avoid God's anger. This obligation was not restricted to prelates, but to the priesthood. In another law the Council decrees that parish priest should eradicate public sins, as these were the ones which provoked the anger of God.[347]

[345] *Recopilación de las Leyes de las Indias*, 1680, libro I, título 1, ley 1.
[346] Concilio III Provincial Mexicano, 1583, libro 3, título 1, ley 3.
[347] Ibid, 1585, libro 3, título 2, ley 1: "Entre las graves obligaciones que impone a los curas el alto ministerio que desempeñan, una de las principales es en verdad poner el remedio oportuno a los pecados públicos que se cometen y con los cuales se provoca la ira de Dios, cerrando al efecto la entrada a todos los vicios."

In short, from a Catholic theological perspective, the primary duty of episcopal justice, and by extension local ecclesiastical courts was to appease God's anger by punishing public sins. In doing so, ecclesiastical justice simultaneously would save the souls of the faithful, keeping the friendship and the gifts of God, and avoiding a temporal punishment that could endanger the Church and the Monarchy, as they were the ones responsible of enforcing the divine commandments.

5. Conclusion

This chapter has explored the development of ecclesiastical justice in the Americas and the differences between ecclesiastical courts in Europe and the New World. As I have stressed, the implantation of the ecclesiastical jurisdiction in New Spain was not a simple task. In the sixteenth century, the pope granted the right of patronage to the Spanish kings for building and equipping all the new temples of the New World. However, not only the Crown was bathed by papal concessions. The Mendicant Orders, such as the Franciscans and the Dominicans, did also receive copious privileges from the papacy. Jurisdictional problems between the Mexican regular and secular clergy started in the early sixteenth century, when the first bishop of Mexico, fray Juan de Zumárraga, arrived in Mexico City in 1528. Zumárraga and his successor, Alonso de Montúfar, attempted to impose the authority of the secular clergy by prohibiting the regular orders from administering sacraments and by making it compulsory for all the bishops in New Spain to visit their dioceses every year. However, the friars, embracing their papal bulls, refused to accept the authority of the prelates, and protested to the Holy See and the Council of the Indies.

Despite the resistance of the friars, the archbishop Payo Enríquez de Rivera (1668-1680), supported by the Crown, reinforced diocesan jurisdiction and established ecclesiastical courts in

the archdiocese of Mexico, including that of San José de Toluca in 1675. In this respect, the expansion of ecclesiastical courts and the episcopal jurisdiction went hand in hand with the reinforcement of royal authority in New Spain. The establishment of ecclesiastical courts was possible thanks to a growing body of secular clergy, born in the Americas, that demanded an ecclesiastical benefice.

As happened in Europe during the Middle Ages, the colonial ecclesiastical courts had the duty to enforce good customs and Christian morality in the faithful, supervise the discipline of the clergy, secure religious orthodoxy and resolve criminal cases that lacked gravity. However, there were also important differences. While some ecclesiastical courts in Europe dealt with cases of heresy and sexual misdemeanor of priests, in New Spain, the Holy Office of the Inquisition had exclusive jurisdiction on cases of heresy, bigamy, and sexual offenses committed by the priests in the confessional. The tribunals of the bishops in colonial Mexico still dealt with cases of unorthodoxy, superstition, idolatry, and sorcery when indigenous peoples were the offenders, but they shared this jurisdiction with secular judges as in *mixtifori* cases.

Another big difference stressed in this chapter is that European ecclesiastical courts did not have secular kings as supreme judges and mediators, as in the ecclesiastical justice of the Spanish Americas, under the control of the Spanish Crown thanks to the Patronato Regio. In addition, in the late Medieval Europe, individuals had the right to appeal to the tribunal of the pope the sentences of lesser ecclesiastical courts at the provincial level. In the Spanish Americas, because of the distance between the Holy See and the New World, the system of appeal was restricted, and all the cases started in the Americas had to be finished in the same continent, without the possibility to appeal to the pope. These differences made the ecclesiastical courts of

New Spain special, less dependent on the papacy, but more controlled and subjected to the Spanish monarchs.

After having presented in chapters one and two the origins and development of ecclesiastical courts until their implantation in the Americas, chapters three and four explain the social material reality of the indigenous peoples of the Toluca Valley, and the operation of the ecclesiastical court of San José de Toluca at the local level.

Chapter 3. The Toluca Valley: Political Organization and Population

1. The Toluca Valley: Population and Political Organization

Figure 1. **Map of the Toluca Valley. From Peter Gerbard, *A Guide to the Historical Geography of New Spain*, 279.**

The Toluca Valley is a region within the archbishopric of Mexico, around 65 km to the west of Mexico City, in New Spain. This Valley is the most elevated area in New Spain, with an average of 2.600 meters above the sea level.[348] Stephanie Woods, in her doctoral dissertation, divided the region of Toluca in three areas. In the south, the Valley is characterized by a warm

[348] María del Carmen León García, *La distinción alimentaria de Toluca: El delicioso valle y los tiempos de escasez, 1750-1800* (México: Centro de Investigaciones y Estudios Superiores en Antropología Social, Porrúa, 2002), 98-99.

climate and fertile lands, and where the silver mines of Zacualpa, Sultepec and Temascaltepec, that employed indigenous peoples, were located. In this area we also find a mountainous *sierra* and the Nevado of Toluca, or Chiuhnautzin (also called Xinantécatl) at 4,560 meters above the sea level. The central region of the Toluca Valley is composed of fertile lands, devoted to the production of wheat, barley and corn, and the exportation of pork and beef meat. Contrasting with the other two regions, the north of the Valley is cold, arid, and dry, with an economy dependent on animal husbandry. [349]

During the pre-colonial and colonial periods, different indigenous ethnicities populated the Toluca Valley. The Matlatzincans, an indigenous group that spoke the Matlatzinca language, occupied the central region of the Toluca Valley. The north of the valley was populated by Otomí ethnicities, while the south was in control of the Ocuiltecs, ethnically and linguistically related to the Matlatzincans.[350] As in other regions of Mesoamerica, the people of the Toluca Valley settled the land in various *altepetl*, a Nahuatl term which denoted a well-defined political organization, or indigenous lordship, around a city, village, or town. In Mesoamerica, a powerful indigenous lord, called *tlatoani*, who had absolute authority over his territory, ruled the altepetl. Each altepetl was composed of several subdivisions called in Nahuatl *tlaxicalli, calpolli*, or *tecpan*, which were controlled by separate seigneurial houses or aristocratic families. A lesser tlatoani, and a group of nobles named pipiltin administered each of these calpolli. The indigenous nobility assisted the tlatoani, controlled the priesthood and top positions in the army and the government.[351] Below the

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[349] Stephanie Wood, "Corporate Adjustments in Colonial Mexican Indian Towns: Toluca Region, 1550-1810" (PhD Diss., University of California Los Ángeles, 1984), cited by León García, *La distinción alimentaria de Toluca*, 99.
[350] Margarita Menegus Bornemann, "La organización económico-espacial del trabajo indígena en el Valle de Toluca, 1530-1630," in *Haciendas, pueblos y comunidades,* edited by Manuel Miño Grijalva (Conaculta, 1994), 22
[351] Bernardo García Martínez, *El Marquesado del Valle. Tres siglos de régimen señorial en Nueva España* (Mexico: El Colegio de Mexico, 1969), 66-78.

pipiltin there were commoners, or *macehuali,* who worked the land, took part in the military, paid tribute to their indigenous lords, and provided personal service to the nobility.[352]

Before the colonial period, Mesoamerican empires maintained a complex network of alliances with other altepetl, most of which were dominated by another state. When one altepetl was conquered by another, the land was divided by the conquerors and settled by immigrants from the dominant *altepetl*.[353] On some occasions the new population that colonized the subjected altepetl belonged to the same ethnicity or linguistic group, but in other scenarios they were completely different. Indigenous lordships presented a great diversity depending on the area and the military and imperial forces that existed within a particular region. In the fifteenth century, the Toluca Valley had 39 altepetl dominated by the Triple Alliance of Tenochtitlán, Tlacopan, and Texcoco. When the *huey tlatoani* (the Mexica emperor) Axayacatl conquered the Matlazinca in 1474, he divided the Toluca Valley in five provinces, allotted to the noble indigenous lords of the Triple Alliance. These lords repopulated the region, formerly controlled by Otomi peoples, with Nahuas from the Mexico basin. The new settlers founded colonies or joined older Otomi altepetl, creating separated calpolli where they lived.[354]

The various altépetl of the Toluca Valley paid tribute to the Triple Alliance until the Spanish conquest in 1521.[355] When the Spaniards arrived at the region, they gained the support of the subjected Matlazinca and Otomi lords who had been conquered by the Mexica. Once the

[352] Pedro Carrasco, "Los linajes nobles del México antiguo," in *Estratificación social en la Mesoamérica prehispánica*, edited by Pedro Carrasco and Johanna Broda (México: Centro de Investigaciones Superiores, Instituto Nacional de Antropología e Historia, 1976), 19-54.
[353] René García Castro, "De señoríos a pueblos de indios. La transición en la región otomiana de Toluca (1521-155)," in *Gobierno y economía en los pueblos indios del México colonial*, edited by Francisco González-Hermosillo Adams (México: Instituto Nacional de Antropología e Historia, 2001), 196.
[354] García Castro, "De señoríos a pueblos de indios," 201-203.
[355] Peter Gerhard, *A Guide to the Historical Geography of New Spain* (Norman: University of Oklahoma Press, 1993), 330-332.

conquest of Tenochtitlan concluded, Hernán Cortés summoned the court of Coyoacán in 1522 and issued various measures to reorganize the territory, which included the destitution of the Tenochca imperial officials, and the restitution of power to former native lords in those altepetl which had been conquered by the Mexica.[356]

During the sixteenth century, many of the biggest existing altepetl in the Toluca Valley became *cabeceras*, head towns within a certain district, with smaller units subjected to it called *sujetos*. In the cabeceras, the Spaniards established *corregimientos de indios*, or *alcaldías mayores*. The function of the *corregidor de indios*, also called *alcalde mayor* in this administrative division, was like that of the Spanish corregidor as they could hear any criminal and civil cases started in their jurisdiction: between indigenous peoples and Spaniards, or only between Spaniards or Indians. Because of this attribute, it was difficult to distinguish a *corregidor de indios* from another type of *corregidor*, since their functions were similar.[357] However, the major difference was that the Crown tasked *alcaldes mayores* with the collection of the tribute, which they had to negotiate with the indigenous officials of the town (who helped them to collect the local tribute) within their jurisdiction.[358] In the Toluca Valley, there was the Spanish corregimiento of the villa of San José de Toluca, and the *alcaldía mayor* of the town of Metepec and Tenango del Valle.

After the Spanish conquest, the Toluca Valley was populated by new ethnic groups such as Spaniards, mulattoes, blacks, and *mestizos*. According to Peter Gerhard, around 1697 there were 1300 families of Spaniards, mestizos, and mulattoes in the Toluca Valley.[359] A book

[356] García Castro, "De señoríos a pueblos de indios," 193.
[357] Alberto Yalí Román, "Sobre alcaldías mayores y corregimientos en Indias: un ensayo de interpretación," *Anuario de Historia de América Latina* (JBLA), n9 (1972): 19.
[358] Yalí Román, "Sobre alcaldías mayores y corregimientos en Indias," 15-17.
[359] Gerhard, *A Guide to the Historical Geography of New Spain*, 331.

recording the canonical visitation by archbishop José Lanciego y Eguilaz (1714-1728) to the Toluca Valley included a series of *padrones* (a *padrón* is a census) on the population of the region in the early eighteenth century. A compilation of this data by Caterina Pizzigoni offers the following results:

***Table 2*. Population Census of the Toluca Valley, 1714-1728**

Settlement (Cabecera + pueblos)	**Spaniards/gente de razón (including mulattoes, and mestizos)**	**Indians**	**Total Inhabitants**
Toluca	6474	9151	15625
Metepec	474	4173	3474
Tenango del Valle	736	2814	3550
Zinacantepec	504	2915	3419
Xalatlauhco/Xalatlaco	352	2193	2545
Capulhuac	258	932	1190
Atengo	20?	2033	2050
Texcalyacac	-	1650	1650
Total numbers	8818	25861	34679

Source: Caterina Pizzigoni, *The Life Within: Local Indigenous Society in Mexico's Toluca Valley, 1650-1800* (Stanford: Stanford University Press, 2012), 14. This data is based on the canonical visitation conducted by the archbishop Lanciego y Eguilaz in the Toluca Valley.[360]

This table reflects that indigenous peoples (around 75% of the population according to the census of 1717) outnumbered Spaniards, mulattoes, and mestizos in the early seventeenth century, which in part explains why most people that were involved in the cases brought to the ecclesiastical court of Toluca were Indians.

[360] For the Toluca census see Rodolfo Aguirre Salvador (coord.), *Visitas pastorales del Arzobispado de México, 1715-1722, vol*
umen II (Mexico: Instituto de Investigaciones sobre la Universidad y la Educación, 2016), 281.

2. The City of San José de Toluca

The first Spaniards settled in the city of Toluca after 1522. The name of the town, from the Nahuatl *Tollohcan*, or "place of the god Tolloh" in English, was consecrated to Saint Joseph in the early sixteenth century, and renamed to San José de Toluca.[361] For most of the colonial period Toluca had the category of "*villa*," which in the Spanish Empire both in Iberia and the Americas designated an urban settlement with certain privileges, such as tax exemptions, the right to organize markets, or to have a cabildo or corregimiento.[362] The *vecinos* (neighbors or residents) of San José de Toluca sued the Marqués del Valle in 1677 to purchase the title of city (*ciudad*) for San José de Toluca, but they lost the litigation.[363] However, since the second half of the seventeenth century, most of the documents of the ecclesiastical courts of the archdiocese of Mexico and the Real Audiencia refer to San José de Toluca as a city and not a villa. That is the reason in this dissertation I also designate Toluca as a city. The official elevation of San José de Toluca to the category of a city occurred in 1799, through a royal decree of Charles IV, which shows the importance of the settlement in New Spain.[364]

Since its foundation, the new Spanish city was placed at the intersection of various trade routes. To the West, there was a road between Toluca and Michoacán, while the Northwestern way led to Querétaro and Celaya. To the Southwest, one road connected the valley to the Royal Road (*Camino Real*), that led to Cuernavaca and Malinalco. Finally, the Eastern Road, widely

[361] Frances Karttunen, *An Analytical Dictionary of Nahuatl* (Norman: University of Oklahoma Press, 1992), 244.
[362] Susana Truchuelo García, "Villas y aldeas en el Antiguo Régimen: conflicto y consenso en el marco local castellano," *Mundo Agrario*, vol. 14, n. 27, Diciembre (2013).
[363] Estado de México, "Enciclopedia de los Municipios y Delegaciones de México," Toluca de Lerdo. http://www.inafed.gob.mx/work/enciclopedia/EMM15mexico/municipios/15106a.html
[364] Ibidem.

mentioned in the documents, led to Mexico City.[365] As in other new founded settlements in the Americas, the Spaniards adopted a square grid to redesign the city, with a central square as an organizing point, surrounded by the main church, the town hall or government palace and the market stalls. The *traza*, the district where the Spaniards lived, occupied the central parts of San José de Toluca, while the indigenous neighborhoods were scattered around the periphery or outside the city limits.[366]

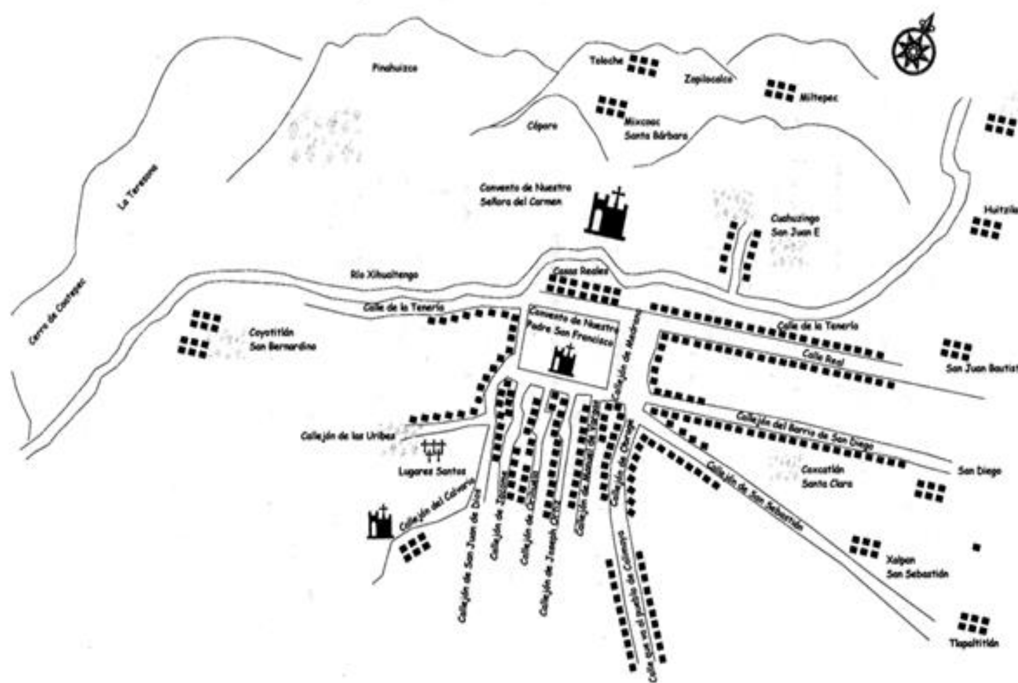

Figure 2. **Map of the City of San José de Toluca, 1725-1726. From Iracheta Cenecorta, "El aprovisionamiento de agua en la Toluca Colonial," 97.**

As we can see on the map, the convent of Saint Francis (*Convento de Nuestro Padre San Francisco*) dominated the center of the plaza, which occupied a great extension of territory. To

[365] María del Carmen León García, *La distinción alimentaria de Toluca: El delicioso valle y los tiempos de escasez, 1750-1800* (Mexico: Centro de Investigaciones y Estudios Superiores en Antropología Social, Porrúa, 2002), 90; and María del Pilar Iracheta Cenecorta, "El aprovisionamiento de agua en la Toluca Colonial," 83.
[366] León García, "Olor y salubridad en Toluca," 177.

the north of the main plaza, the river Verdiguel (or Xihualtengo), provided the town with water and divided it into two parts, communicated by bridges. To the west, the plaza contained a *picota*, a sort of column where convicts were taken to be publicly punished, the public jail of the villa, and the *Casas Reales*, a building paid for by the Crown that housed the government of the city with a *corregidor*.[367] The corregidor of Toluca, appointed by the king with military and administrative functions, served as a first instance judge in all cases under the jurisdiction of the secular arm.[368] Regarding its population, the *matricula* (a list of residences) of 1725 registers a total number of 523 houses with their respective plots of lands, or s*olares*.

[367] Iracheta Cenecorta, "El aprovisionamiento de agua en la Toluca colonial," 84.
[368] María Luisa Pazos Pazos, *El ayuntamiento de la ciudad de México en el siglo XVII. Continuidad institucional y cambio social* (Sevilla: Diputación de Sevilla, 1999).

Figure 3. **Perspectiva de San José de Toluca, 1791. From Cervantes, Julieta (2009): "Los Carmelitas Descalzos en el Valle de Toluca" en Arquitectura2009. No. 36, Año IX, otoño 2009, Toluca, Estado de Mexico.**

The painting "Perspectiva de San José de Toluca, 1791," by an anonymous painter describes the city in the following way: "[This city], which once belonged to the Marqués del Valle, comprises over 50 stores, 4 convents, a hospital, and a girls' school that is called the *Beaterio*. On Fridays there are so many people who attend the *tianguis* (an indigenous form of an open-air market) and fairs, that all commerce does not fit in the market square, so it spreads through the Calle Real and the Calle del Maíz, and others. [The city] has a *plaza mayor* (main square), 8 streets, 37 alleys, 2 small squares, 2 corners, 1 suburb and neighborhoods. There are

845 houses with a total population of 5155 persons, seven of them who are hidalgos."[369] The population number given in the "Perspectiva" is corroborated by the census of 1791, which shows 5155 people living in the Spanish traza of San José de Toluca, including mestizos (mixed people), and *castizos* (also mixed people, but considered with a higher proportion of Spanish blood than mestizos), while excluding the Indians of the periphery.[370]

Table 3. **Summary of the Padrón of the City of San José de Toluca, 1791.**

	Men	**Women**	**Male children**	**Female children**	**Total**
Hidalgos	7				
Noble	25	43	15	25	108
Spaniards	712	1113	440	473	2738
Castizos	89	138	159	169	555
Mestizos	440	805	253	249	1747
Total	1273	2099	867	916	5155

Source: María del Carmen León García, "Olor y salubridad en Toluca al final del siglo XVIII," in *Historia Mexicana*, El Colegio de Mexico, Vol. 52, Number 1, 205, Julio-Septiembre (2005): 182.

The people of San José de Toluca shared the economic activity of the indigenous peoples of the Toluca Valley, but there were some differences. In the city lived hacienda owners, agricultural workers, masons, architects, painters, carpenters, and people of other professions that organized themselves under the same guild principles as their counterparts in Mexico City.[371] The Spanish residents entertained themselves with cock fights, bullfighting, horse racing, and playing

[369] Perspectiva de San José de Toluca, 1791 in Cervantes, Julieta (2009): "Los Carmelitas Descalzos en el Valle de Toluca," *Arquitectura*, No. 36, Año IX, (2009): "Esta ciudad, que fue del Marqués del Valle, consta de más de cinquenta tiendas, cuatro conventos, uno hospital, un colegio de niñas que está fundado llamado el Beaterio, y los viernes es tanto el gentío que ocurre a los tianguis y ferias, que no cabe en la plaza el comercio, y se difunde por la calle real y la del maíz, y otras. Cuenta con la plaza mayor, 8 calles, 37 callejones, 2 plazuelas, 2 rinconadas, un arrabal, y barrios. Total 845 casas con 5155 habitantes, 7 de ellos hidalgos."
[370] León García "Olor y salubridad en Toluca al final del siglo XVIII," 183.
[371] Ibid, 183.

card games (*naipes*). However, some indigenous peoples also traveled to the city to meet business partners, family members, or sell their products, textiles, pulque, among others.[372] In addition, as this dissertation explores, some indigenous peoples also visited the city to protest at the ecclesiastical court of Toluca, in the parish's complex of San Francisco, at the center of the traza, and close to the old public jail of the city. The old convent of San Francisco no longer exists today, as a cathedral built between 1867 and 1978 replaced it. However, some documents produced by the ecclesiastical court of Toluca are still housed at the parish of San José el Sagrario, part of the oldest Catholic temple in the city, built in 1575.

3. The Indians of the Toluca Valley

Although indigenous peoples were the ethnic minority in the city of San José de Toluca, they comprised approximately 75% of the total population in the Toluca Valley, as observed in Table 2. The documents of the ecclesiastical court of Toluca, from criminal cases to testaments, shed light on the lives of the indigenous inhabitants, reflecting their housing patterns, professions, social relationships, language, cultural customs, and religious beliefs. The following pages offer a general analysis of the cultural profile of the indigenous people of the Toluca Valley, who were the ethnic group that resorted the most to the services of the ecclesiastical court of San José de Toluca.

3.1. Language

Regarding language, most indigenous peoples in the eighteenth century required an interpreter to testify at court. Interpreters at the ecclesiastical court of Toluca translated declarations, citations, and sentences from Otomi and Nahuatl, the two most spoken native

[372] Ibid, 183.

languages in the region, to Spanish.[373] However, there was also an increasing number of indigenous peoples who spoke Spanish (*indios ladinos*) in the late eighteenth century because of the Bourbon policy concerning the hispanization of Indians, and because Spanish speaking Indians worked for Spaniards in haciendas and workshops.[374] These findings are consistent with James Lockhart's three-stage model, which poses that there were three different stages of cultural interaction between Spaniards and Nahuas in the viceroyalty of New Spain. The first stage from 1519 to 1550; the second around 1545-1650 and the third from 1650 to the end of the colonial period in 1820. According to Lockhart, with the passing of time, European culture became more pervasive and esteemed by the natives, who adopted Spanish vocabulary, utterances, music, daily life customs, and culture.[375] In her study on indigenous testaments in the Toluca Valley, Caterina Pizzigoni also poses that indigenous languages, mainly Nahuatl, paralleled Spanish terminology to refer to a wide range of topics, from household organization to family relations. This change was because of the existence of bilingual Indians, and the increase of contacts between Indian and Spaniards.[376]

3. 2. Housing Patterns and Land Possession

During the first two centuries of the colonial period, Indian houses comprised two or three residential buildings around a patio, each occupied by separate nuclear families, recreating at the household level the principle of cellular organization of the altepetl.[377] However, in the eighteenth century, indigenous peoples adopted Spanish housing patterns and built houses with all the

[373] See for example AHAM, Juzgado Eclesiástico de Toluca, 1765, caja 92, expediente 14.
[374] Lara Cisneros, "Superstición e idolatría en el Provisorato de Indios y Chinos del Arzobispado de México, siglo XVIII,"291. For an example of indios ladinos who worked for Spaniards in haciendas see AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 20.
[375] Lockhart, *the Nahuas After the Conquest*, 446.
[376] Pizzigoni, *Life Within*, 105.
[377] Ibidem, 22

members of the family sharing the same roof in a single residential unit. This transition seems to have originated conflicts and disputes among families, especially in those situations in which a recently wed couple had to live with parents or parents-in-law in the same household. The ecclesiastical court of Toluca registered cases of spouses denouncing their partners and demanding them to acquire a new house so the couple could live away from their potentially conflictive family members.[378]

Regarding the material construction of the houses, we learn from the census of 1791, that houses in the city of Toluca and surrounding areas were made of adobe and a mixture of lime and sand, while some residences in the neighborhoods and suburbs, mostly occupied by Indians, were built with adobe and mud.[379] Besides a house, the indigenous peoples of the Toluca Valley normally possessed a plot of land (in Spanish the term is "*solar*") where the house was built, and that the Indians also used to plant vegetables, medicinal herbs, flowers. Among the most cultivated plants were corn and maguey, the latter used in Mexico since pre-colonial times to produce alcoholic beverages (*pulque*) but also to make textiles and medicines. The possession of maguey-lands or *magueyal* seems to have been extremely common among the indigenous peoples of the Toluca Valley, as most of them list the possession of one or more *magueyales* in their testaments.[380] Testators also mention the possession of animals such as oxen to help them with agricultural work.[381]

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[378] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 22, and AHAM, Juzgado Eclesiástico de Toluca, 1755, caja 74, expediente 8.
[379] AHEM, Archivo Histórico del Estado de México, Toluca. Padrones, 1791, vol. 7, exp. 52, f. 1. Cited by León García, "Olor y salubridad en Toluca." 184.
[380] Pizzigoi, *Life Within*, 30, and for some examples from the documents see AHAM, Juzgado Eclesiástico de Toluca, 1731, Caja 45, Expediente 39, foja 1; and AHAM, Juzgado Ecleisástico de Toluca, 1732, caja 46, expediente 51, foja 1
[381] AHAM, Juzgado Eclesiástico de Toluca, 1731, caja 45, expediente 39, foja 1; and AHAM, Juzgado Eclesiástico de Toluca, 1732, caja 46, expediente 51, foja 1.

3.3. Work and Labor

In terms of labor, the Indians of the Toluca Valley had a wide range of occupations. A good number of them, as reflected in the documents, were agricultural workers or laborers (*labrador* and *peón/gañán*), either in their own pieces of land or employed by Spanish hacienda owners.[382] Many Indians also worked as merchants and sold textiles and maguey-derived products in local markets or at the plaza mayor of San José de Toluca.[383] In only few documents some Indians mention that they or their family members went to the mines of Sultepec, in the Southern part of the valley, to work as miners.[384]

Finally, some indigenous peoples were employed by Spaniards in an *obraje* (workshop), where they made clothes in San José de Toluca. However, this type of work was not always voluntary. Sometimes, ecclesiastical judges used paid work at an obraje for a certain time to punish indigenous persons and/or to repay a debt.[385] For example, in 1728, an indigenous man named Bartolomé was convicted of superstition and punished with two years of work at an obraje, with a salary of 70 pesos for the Indian to pay the costs of the judicial process.[386]

3.4. Interaction with Spaniards

In the eighteenth century, Spaniards and indigenous peoples interacted at various levels. The documents of the ecclesiastical court of Toluca shows Spanish men hiring Indians as workers in haciendas, personal healers, or business partners.[387] On other occasions Indians befriended Spaniards to the point they trusted them to be their testament executors, or their *fiador,* a person who was legally obliged to supervise the behavior of an individual condemned by the justice so

[382] AHAM, Juzgado Eclesiástico de Toluca, caja 75, expediente 9
[383] Perspectiva de San José de Toluca, 1791 in Cervantes, "Los Carmelitas Descalzos en el Valle de Toluca."
[384] AHAM, Juzgado Eclesiástico de Toluca, 1752, caja 71, expediente 12.
[385] AHAM, Juzgado Eclesiástico de Toluca, 1739, caja 56, expediente 64.
[386] AHAM, Juzgado Eclesiástico de Toluca, 1727, caja 38, expediente 5, foja 4 reverso:
[387] AHAM, Juzgado Eclesiástico de Toluca, 1764, caja 90, expediente 14; and AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 20.

they could not commit any other crime, or that paid in advance a fine in the name of a convicted person.[388] The Indians of the Toluca Valley also had close dealings with their Spanish parish priest, and other colonial officials such as *corregidores*, *alcaldes mayores* and judges in ecclesiastical courts. The relation between Spanish priests and indigenous parishioners seems to have been mostly peaceful in the Toluca Valley during the eighteenth century, with notable exceptions of unrest and violent incidents that emerged after disputes over ecclesiastical fees, personal labor, and physical abuse, that I study in chapter 6 of this dissertation. In addition, there were marriages between Spaniards and indigenous peoples, and instances in which a Spanish family member adopted Indian minors.[389] However, as other scholars have shown, Spaniards and Indians mostly and, preferably, married members of their own race.[390]

3.5 Religion

Testaments and court records show that most indigenous peoples in the Toluca Valley were Catholic. They regularly went to mass, knew the basic prayers, and had images of saints in their houses that their descendants could inherit.[391] In addition, most indigenous towns had their own religious brotherhood (*cofradía*), that organized celebrations to honor their patron saint. However, the eighteenth century saw a rise in cases of superstition and idolatry, that proves that Indians still kept many beliefs and practices from their pre-Columbian religious tradition. The widespread belief in the *nahuales* (an indigenous type of witch or sorcerer), the performance of healing ceremonies with pre-Hispanic ingredients, and the clandestine worship of idols in caves

[388] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 22, foja 7 anverso.
[389] Ibid.
[390] In his study of marriages in Mexico City, Douglas Cope argues that all groups except black males had endogamy rates over 50 percent, with Spaniards being the ethnic group who showed the most marked propensity for in-group marriages, with endogamy rates for Spanish men and Spanish women around 94.3 percent and 97.4 percent, respectively. For the complete study see R. Douglas Cope, *The Limits of Racial Domination*, 78-79. For some exemplary cases in the ecclesiastical court of Toluca see for example AHAM, JET, 1756, Caja 75, Expediente 27, 40 fojas.
[391] AHAM, Juzgado Eclesiástico de Toluca, 1729-1737, caja 41, expediente 4, 4 fojas.

and houses coexisted in a syncretized way with Christianity.[392] Chapter 7 extensively analyzes the religion of the indigenous peoples of Toluca. For now, the point to make is that although the indigenous peoples of Toluca during the time of this study were "hispanizing," both culturally and linguistically, they still retained many aspects of their native traditions.

4-. The Indigenous Cabildo

Although the Spanish settlers founded new towns and cities, many of the old indigenous altepetl survived as indigenous towns (*pueblos de indios*).[393] However, during the sixteenth century, many old altepetl disappeared because of the indigenous demographic loss caused by illnesses and violence, and a new royal policy that sought to congregate the existing indigenous population in new towns, in a process called *congregación* (congregation). According to Peter Gerhard and Cheryl Martin, many former indigenous altepetl disappeared at the beginning of the sixteenth century, which led to the concentration of power in fewer political entities.[394] Besides this process, in the Toluca Valley, many indigenous towns that were initially administered by the Franciscan order as doctrinas, were eventually secularized in the second half of the seventeenth century and the eighteenth century, as explained in the previous chapter.

The indigenous towns of the second half of the sixteenth century and beginning of the seventeenth century mirrored the Spanish urban model by incorporating a parish church and a town council (*cabildo*), with administrative and judicial functions. The Spanish cabildo in the Americas had judicial, administrative, military, and economic functions. During the meetings, the municipal council issued ordinances to regulate the *buen gobierno* (good government), prepared

[392] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 20; and AHAM, Juzgado Eclesiástico de Toluca, 1765, caja 92, expediente 31.
[393] Robert Haskett, *Indigenous Rulers, 12.*
[394] Gerhard, *A Guide to the Historical Geography of New Spain*, 97-98.

elections, regulated the economic life of the urban settlement, watched the operation of guilds, fixed measures, and prices, established the military defense of the city, and managed the communal goods and infrastructure of the town (plazas, bridges, widening of streets and so on).[395] Despite these roles, the cabildo in the Americas was not autonomous, they were expected to follow royal ordinances and viceregal decrees and not to contradict these with their own local regulations.[396]

The Indian cabildo functioned like its Spanish counterpart. Indigenous officials could promote local interests, but the colonial authorities also imposed a series of duties that they had to fulfill. These were: "represent their community, organize the community's response to emergencies; assemble residents for meetings, solicit contributions to support litigation in defense of pueblo interests, and perform administrative jobs such as supervising labor and managing community property."[397] Besides those general requirements, the different offices in the cabildo had their own specific duties.

The most important office in the cabildo was the governorship, led by a *gobernador*, or governor, a figure that did not exist in the Spanish model. The office of the governor stemmed from the indigenous ruling family that in the pre-Colombian era kept the position of tlatoani within a specific altepetl.[398] In the case of the Toluca Valley, after the fall of Tenochtitlan, the former Otomi lords recovered the political power they had lost during the Mexica conquest, and were appointed by Spaniards as *caciques gobernadores* of the new towns.[399] The term cacique, from

[395] Constantino Bayle, *Los cabildos seculares en la América española* (*Madrid:* Sapientia S. A. de Ediciones*, 1952.* 1952).
[396] On this matter see Ricardo Levene, *Introducción a la historia del derecho indiano* (Buenos Aires: Academia Nacional de la Historia, 1962).
[397] Taylor, *Magistrates of the Sacred*, 347.
[398] Hakett, *Indigenous Rulers*, 100.
[399] García Castro, "De señoríos a pueblos de indios," 197.

the Arawak term for "ruler," was used during the Spanish conquest to designate the traditional rulers and successors of Mesoamerica and other colonial regions, such as the tlatoani, or the *kuraka* in the Andes. However, the colonial caciques of the sixteenth century differed from previous forms of indigenous lordship. For example, the caciques of the Toluca Valley could extend their jurisdiction over territories where they had never ruled before. Caciques could also ride a horse, own slaves, and wear Spanish clothes.[400] In addition, to prove their loyalty to the conquerors, caciques adopted Spanish names and the prestigious title of "don," that signaled their noble origin. Despite these changes, caciques also retained old privileges, such as receiving personal work from dependent laborers (*macehuales*).[401] According to Spanish friar Bernardino de Sahagún, the candidates for the governorship had to be members of the highest nobility, being a fully blooded Indian, skilled in warfare, upright, sober, intelligent, charitable, well spoken, and they were expected to treat the commoners well, and not to have been born out of legitimate marriage.[402] The duties of indigenous governors were to collect the Indian tribute, settle local disputes, allocate plots of community land to commoners, and hear minor cases concerning debts, petty thefts and similar cases.[403]

During the seventeenth and eighteenth centuries, the number of caciques gobernadores decreased because of epidemics, the loss of population that eliminated lines of succession, and a reduction of tribute income. This situation pushed Spaniards to open the governorship for non-cacique Indians. The caciques of the late colonial period no longer usually meant the holder of a *cacicazgo* or indigenous governorship, but the membership to the indigenous aristocracy.[404]

[400] Ibid, 195-198.
[401] Rebecca Horns, "Cacique Entry," in *The Oxford Encyclopedia of Mesoamerican Cultures*, edited by David Carrasco (Oxford University Press, 2006).
[402] Robert Haskett, *Indigenous Rulers*, 33.
[403] Ibid, 101-102.
[404] Rebbeca Horns, "Cacique Entry."

Despite the loss of importance of the nobility in governorships, indigenous governors still played an important role in the Toluca Valley. The documents of the ecclesiastical court of Toluca show *gobernadores* leading the Indian cabildo, collecting the indigenous tribute, starting lawsuits on their own volition, and acting as witnesses of testaments and marriage promises.[405] In addition, some governors, due to their delicate duties, became targets of their malcontent neighbors. The governor of the town of San Pablo, José Valeriano was allegedly killed by an indigenous sorcerer who bewitched him after a dispute over the collection of the tribute, and his "bad government."[406] On other occasions, Indian governors were accused at the ecclesiastical court of Toluca under charges of superstition, bigamy, or adultery.[407] Indian governors were also charged with favoring their associates in the distribution of community lands, diverting communal labor for their own uses, accepting bribes, and extorting contributions.[408]

Below the governorship was the *fiscalía*, occupied by fiscales. Most fiscales were indigenous nobleman, or *principales*, and served as lay assistants to their local parish priests. The fiscales promoted the divine cult within their communities, supervised religious orthodoxy, and collected clerical fees. Although in most pueblos there was only one fiscal, some big cabeceras could have two. Colonial priests expected fiscales to act as their informants, reporting cases of idolatry and sexual immorality within their communities.[409] In addition, fiscales sometimes assumed the governorship in periods when there was not an acting governor, or the cabildo was electing a new one.[410] Although in chapter 6 I will explain the function of the Indian fiscalía more extensively, the records of the ecclesiastical courts in the archdiocese of Mexico show that the

[405] AHAM, Juzgado Eclesiástico de Toluca, 1755, caja 74, expediente 12, 1 foja.
[406] AHAM, Juzgado Eclesiástico de Toluca, 1764, caja 90, expediente 36, foja 3 reverso.
[407] See for example, AHAM, Juzgado Eclesiástico de Toluca, 1767, caja 98, expediente 46, 2 fojas.
[408] Taylor, *Magistrates of the Sacred*, 349.
[409] Ibid, 325.
[410] Haskett, *Indigenous Rulers*, 116-117.

fiscales were some of the most controversial figures in the Indian cabildo because of their role as middleman between the Church and their communities. When the indigenous town denounced their local priest, the fiscal found himself in a difficult predicament, and they were forced to define their loyalties. When fiscales supported the parish priest against the indigenous cabildo, they usually experienced legal retaliation or physical aggression.[411] On the contrary, if the fiscales rebelled against the orders of the parish priest to favor their community, the clerics usually imprisoned the fiscales or punished them, often with corporal punishments.[412]

The third office of importance in the Indian cabildo was the *alcaldía*, held by the *alcaldes*. The alcaldes were judges at the first justice instance in Iberia. As *de facto* lieutenant governors, alcaldes had different functions, like taking censuses, administrating their district's landholding, and sometimes policing. In the case of the indigenous cabildo, the alcaldes helped the Indian governor in the tribute's collection. Like governors, they handled any of the tribute debts arising in their own terms. At the beginning of the colonial period, only *principales* were eligible for the office of alcalde. However, as the Indian cabildo changed, well supported commoners managed to be elected.[413] Below the alcaldes, there were *regidores*. They differed from their Iberian counterparts as they were subordinated rather than superordinate to alcaldes. Indigenous *regidores* oversaw labor on community property, were involved in market regulations, and took care of municipal buildings. In general, they carried out a mixture of administrative, fiscal, and constabulary duties.[414]

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[411] AGNM, GD14 Bienes Nacionales, 1739, volumen 905, expediente 2.
[412] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 10, foja 3 reverso.
[413] Pedro Pérez Herrero, *La América Colonial*, 294.
[414] Haskett, *Indigenous Rulers*, 107.

Alcaldes and *regidores* commonly appear in the records of the ecclesiastical court of Toluca as witnesses in testaments,[415] judicial cases,[416] and as representatives of their communities in lawsuits against Spaniards, parish priests, or other Indian towns.[417] Still, some alcaldes and regidores were accused of crimes such as adultery,[418] sorcery, or violating the local custom to benefit themselves or other colonial officials such as the parish priest (*cura*).[419] William Taylor notes that high officials in the cabildo were accused of skimming off a portion of the tribute (and other taxes) by collecting the full amount but underreporting the number of tributaries, or collecting more from their *macehuales* than was required.[420]

Among the petty offices of the cabildo, we find *alguaciles mayores*, which fulfilled the role of constables and maintained public order. Other little offices comprised mayordomos, who functioned as stewards in charge of corporate property and cofradías, and who kept written records of the material possessions of the town. The cabildo also had an *escribano*, who was among the few literate Indians living in the community. The indigenous escribanos had roots in the prehispanic *tlacuiloque* (singular *tlacuilo*, or one who writes/paints something), and were tasked with recording, normally in their native languages, the daily political, economic, public, and private dealings of New Spain's Indian towns. They also acted as municipal accountants and wrote documents for private persons, petitions, land documents, and wills. [421] Finally, indigenous cabildos also had an *alcaide* (jailor) in towns that had jails.

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[415] AHAM, Juzgado Eclesiástico de Toluca, 1733, caja 47, expediente 26, 1 foja.
[416] AHAM, Juzgado Eclesiástico de Toluca, 1758, caja 79, expediente 16, 4 fojas.
[417] AGNM, GD37 Criminal, 1711, volumen 217, expediente 4, fojas 19-26.
[418] AHAM, Juzgado Eclesiástico de Toluca, 1752, caja 71, expediente 10, 2 fojas.
[419] AHAM, Juzgado Eclesiástico de Toluca, 1763, caja 88, expediente 1, 14 fojas.
[420] Taylor, *Magistrates of the Sacred*, 349.
[421] Charles Gibson, *The Aztecs Under Spanish Rule* (California: Stanford University Press, 1964), 181.

Regarding the way indigenous peoples chose the members of the cabildo, there was not a uniform procedure. In the early colonial period, some towns had a rotational structure, by which the governorship and the fiscalía rotated annually among the noble families of the pueblo, while in other places the fiscal was appointed by the cura, or by the members of the community during a voting session.[422] In the first half of the eighteenth century, most indigenous towns in central Mexico elected all the pueblo officials through annual elections. For example, in 1751, the fiscal of the town of San Pedro Totoltepec was elected by the Indians of the community in a voting session. However, the Provisorato in Mexico City had to approve the election, after which the winning candidate entered the fiscalía for one year.[423] Furthermore, it was common that an indigenous principal had served as an alcalde for one or two years before they were chosen as a fiscal.[424] In the second half of the eighteenth century, the viceregal government issued a series of measures to gain control over pueblo elections. In 1763, the viceroy of New Spain, don Joaquín de Montserrat, implemented a royal decree for fiscales to be elected in the annual elections, like other village officials, and in 1770 he also mandated that all elected officials must be Indians who knew the Spanish language. Finally, the *Ordenanza de Intendentes* of 1789 forced royal judges to be present during the election of pueblo officers.[425]

Despite the institutional changes imposed by the Spaniards, it would be wrong to conclude that indigenous cabildos became more "Spanish" and less "Indian" over the years.[426] According

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[422] For some examples of the organization of the indigenous cabildo in the sixteenth century see Francisco González-Hermosillo Adams, "Macehuales versu sseñores naturales: una mediación franciscana en el cabildo indio de Cholula ante el conflicto por el servicio personal (1553-1594)," in *Gobierno y economía en los pueblos indios del México colonial,* edited by González Hermosillo Adams, 129-132.
[423] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 10, foja 6 anverso y reverso.
[424] AHAM, Juzgado Eclesiástico de Toluca, 1756, caja 75, expediente 9, 8 fojas.
[425] Taylor, *Magistrates of the Sacred*, 354.
[426] Pedro Carrasco, "The Civil-Religious Hierarchy in Mesoamerican Communities: Pre-Spanish Background and Colonial Development," *American Anthropologist* 63 (1961), 483-497.

to the documents of the ecclesiastical court of Toluca, the indigenous cabildo in the eighteenth century still maintained most of the above functions and its members actively took part in denunciations and accusations brought to the religious tribunals of the archdiocese of Mexico. Indigenous noblemen, or principales are still widely mentioned in the documents, either as members of the cabildo or playing an important role as witnesses, plaintiffs, and defendants in a wide range of legal cases prosecuted by the ecclesiastical court of Toluca.[427] Members of the indigenous cabildo, as I will explain in more depth in chapter 6, represented their communities when their sovereignty and authority were at risk. For instance, when a parish priest abused the community through high clerical fees, physical aggression, or any other abuse, the pueblo officials reacted by collectively filling an accusation against the parish priest to the religious tribunals of the archdiocese of Mexico. In those legal files, the members of the cabildo included their full names, and their political office, along with a sentence that emphasized that they represented the rest of the Indians of a certain town.[428]

5. Conclusion

The reconstruction of the colonial society of the Toluca Valley is possible thanks to thousands of colonial documents that registered the daily experiences and practices of its population. Ecclesiastical courts dealt on a daily basis with Spaniards, mestizos, blacks, mulattos, and Indians, who resorted to the justice of the Church to seek redress for their grievances. All these ethnicities filed denounces that affected different aspects of their lives. Indian town officials

[427] See for example an accusation of sorcery in which a principal of the town of San Pedro is involved. AHAM, Juzgado Eclesiástico de Toluca, 1758, caja 80, expediente 26, 3 fojas.
[428] AHAM, Juzgado Eclesiástico de Toluca, 1742, caja 57, expediente 36, foja 1 anverso: "Don Nicolás Feliciano, alcalde actual, Miguel Diego, teniente; Francisco Ignacio, regidor mayor; don Francisco Gregorio, fiscal y demás común y naturales del pueblo de San Miguel Tocuitlapilco, de esta jurisdicción (Metepec)."

accused their parish priests of violating local custom, women denounced their husbands when they mistreated them, the Spaniards reported to the ecclesiastical judge that they had found signs of indigenous idolatry in a remote cave, families litigated over testaments, and local neighbors accused each other of having illicit friendships with individuals of infamous reputation.

The diverse nature of the accusations led ecclesiastical judges to intervene in the daily life of the people of the Toluca Valley during the seventeenth and eighteenth centuries. Ecclesiastical judges reconciled opposing marriages, arrested abusers, extirpated idolatries, registered wills, and sought solutions to instruct heterodox Indians in the Catholic faith. In carrying out their work, the judges gained a complete picture of the society they were trying to regulate. The Church, thanks to its courts, knew the property that natives and Spaniard inherited, how they administered their brotherhoods, their sexual deviations and illicit love affairs, intra-family conflicts in cases of domestic violence, and even their secret religious beliefs. Therefore, the ecclesiastical justice influenced society. Ecclesiastical judges forced Indians to cultivate their idolatries in private, encouraged parish priests and parishioners to come to understandings, punished abusers, and promoted social harmony between the ecclesiastical and the secular justice.

In the next chapters I explain how ecclesiastical courts interacted with different aspects of colonial life through the study of the right of asylum and the immunity of churches, cases against ecclesiastics, idolatry, and marital causes.

Chapter 4. The Ecclesiastical Court of San José de Toluca

1. Function and Jurisdiction

The ecclesiastical court of San José de Toluca was part of the local-level ecclesiastical tribunals within the episcopal jurisdiction of the archbishopric of Mexico since its foundation in 1675. This tribunal mainly exercised jurisdiction over its *curato*. The documents kept at the *Archivo del Arzobispado de Mexico* show the ecclesiastical judges of Toluca settling cases originated in Metepec, Lerma, Tenango del Valle, Zinacantepec, Calimaya, Atengo, Sultepec, Malinalco, Tenango del Valle, Tarasquillo, San Bartolomé Otzolotepec, Huitzilac, Tlacotepec, Almoloya, and Totoltepec, among many other small indigenous towns and haciendas belonging to the Toluca Valley.[429] In the seventeenth and eighteenth centuries, the ecclesiastical court of Toluca coexisted in the capital city with a *corregidor*, an official appointed by the king with military and administrative functions, and that served as a first instance judge in all cases under the jurisdiction of the secular arm.[430] Besides the corregimiento in San José de Toluca, there were two *alcaldes mayores* in Metepec and Tenango del Valle with similar functions. The ecclesiastical court of San José de Toluca served as the headquarters of all ecclesiastical courts of the Valley.[431] Although there were other ecclesiastical judges besides that of Toluca, such as those in Tenango del Valle-Calimaya, and Metepec, residents from those *curatos* had the option to file their

[429] See for instance AHAM, Juzgado Eclesiástico de Toluca, 1727, caja 38, expediente 5, 5 fojas.
[430] Pazos Pazos, *El ayuntamiento de la ciudad de México en el siglo XVII. Continuidad institucional y cambio social*.
[431] AHAM, Juzgado Eclesiástico de Toluca, 1742, Caja 57, Expediente 36, 8 fojas. In this particular document, neighbors from the town of San Miguel Totocuitlapilco, belonging to the curato of Metepec, went to the ecclesiastical court of San José de Toluca to accuse their parish priest. See also AHAM, Juzgado Eclesiástico de Toluca, 1739, caja 56, expediente 34, foja 1 anverso.

complaints in San José de Toluca.[432] In addition, sometimes the *provisores* commissioned the ecclesiastical judges of Toluca with investigating their counterparts from neighboring *curatos*.[433]

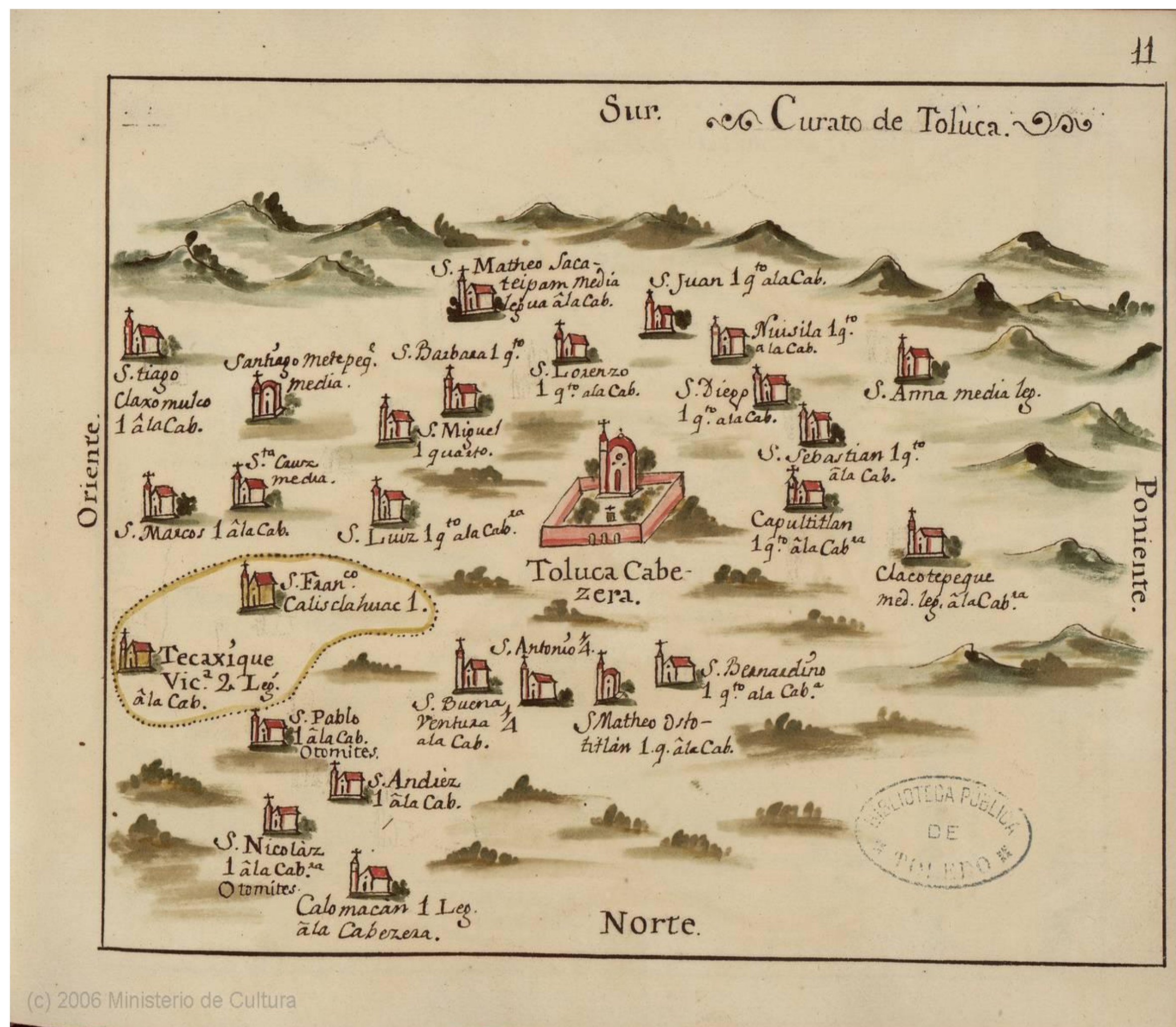

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***Figure 4.* Curato of Toluca. From José Antonio de Alzate y Ramírez, *Atlas eclesiástico del Arzobispado de Mexico* (Mexico, 1767), foja 11 reverso.**

[432] AGNM, GD14 Bienes Nacionales, 1739, volumen 905, expediente 2.

[433] Ibid 2, foja 11 reverso.

Table 4. **Ecclesiastical Judges of San José de Toluca**

Name of ecclesiastical judge:	**Tenure and dates:**
Bachiller José Gómez Maya	1682-1684.
Bachiller Juan de Vetancurt	1684-ca.1689.
Bachiller Nicolás de Espinosa	1689- ca.1691.
Bachiller Juan Díaz del Castillo	1691-ca.1709.
Bachiller Juan de Peraza	ca.1709-ca.1716.
Bachiller Fernando Miguel de Alarcón.	1716-1717.
Bachiller Juan Barón de Lara	1718-1733.
Bachiller Nicolás de Villegas	ca. 1733-ca.1740
Bachiller Nicolás de Espinosa	1739.
Bachiller Diego Carlos de Orozco	ca.1740-1747
Licenciado Juan del Villar	1747-1756
Licenciado Jorge Martínez	1756-1767
Licenciado Matías José de Eguiluz	1767-1774
Bachiller Alejo Antonio Vetancourt	1774-1782
Bachiller José Manuel Gil	1783-ca.1808.
Bachiller José Policarpo Berra	ca. 1815-1821.

Source: Own elaboration based on the classification of the material belonging to the Juzgado Eclesiástico de Toluca, at the Archivo Histórico del Arzobispado de Mexico (AHAM) and the digital catalogue updated in September 2018, which expands the previous work by Watson Marrón, *Guía de documentos del Archivo Histórico del Arzobispado de Mexico.* The first year of tenure of each ecclesiastical judge is normally marked by a document named "nombramiento," by which the archbishop of Mexico appointed a certain person to the ecclesiastical court of Toluca. In the cases in which the nombramiento is not included, I have distinguished the beginning and the end of the tenure of the ecclesiastical judge in question by examining the year of the first and the last judicial proceeding carried out by that judge.

In the late seventeenth and eighteenth century, the ecclesiastical court of San José de Toluca was led by a "*cura beneficiado y vicario in capite*" (head vicar), appointed by the archbishop to administer justice and to defend the ecclesiastical jurisdiction. As our investigation shows, these ecclesiastical judges could be appointed temporarily for a short period, while other

served for decades until they died. For example, don José Manuel Gil served for twenty-three years, while other judges such as don Juan Barón de Lara remained in office for only five years. On average, ecclesiastical judges in San José de Toluca stayed in office between six to eight years.

Sometimes, these officials were not only local ecclesiastical judges, but worked at the same time for the Inquisition as commissaries or judges (*juez comisionario del Santo Oficio*), a shared function that permitted them to avoid any jurisdictional conflict between the Holy Office and the diocesan courts, as they were familiar with the crimes that each of these tribunals prosecuted.[434] Local ecclesiastical judges were obligated by the canons of the Third Mexican Council to live in the city where their tribunal was located, and they could not delegate their authority to other persons.[435] These stipulations entailed that local ecclesiastical judges appointed by the archbishop exercised their jurisdiction on a particular area, having no authority outside it. Traslosheros notes that during the sixteenth and the seventeenth centuries, the jurisdiction of the Provisorato expanded from the center of Mexico City to the periphery thanks to the figures of these vicars, ecclesiastical judges, and the *jueces comisionados*; a fact that I also encountered in the case of the Toluca Valley.[436]

In terms of jurisdiction, local ecclesiastical judges had the right to hear cases that were not grave (such as murder, under the jurisdiction of royal courts), and had competence to hear all the

[434] Lara Cisneros, "Superstición e idolatría," 160-161 and 175.

[435] Concilio III Provincial Mexicano, 1585, libro 1, título VIII: Del oficio del juez ordinario…, capítulo III.

[436] These judges were appointed by the bishops to carry out a specific investigation. The Third Mexican Provincial Council stipulates the limitations of duties of these comisionados in libro 1, título VIII, capítulo XXIV. A wider description is found by Traslosheros in a document dated on November 21th, 1614, in which a Dominican friar named Joseph de Lorenzana was appointed as vicar and ecclesiastical judge of Acapulco. In this source the juez comisionado is given faculty to hear civil cases, except in matters related to tithes. However, he is not allowed to hear criminal cases, which are reserved to the provisor. In this context the juez comisionado could gather summary information on a crime and even capture and send a suspected person to the episcopal jail so the provisor can prosecute him. The document allows the right of appeal to the episcopal courtand cited by Traslosheros in *Iglesia, Justicia* y *Sociedad*, 50. The original is found at AGNM, Matrimonios, volumen 10, expediente 1.

cases related to the ecclesiastical jurisdiction. They supervised the management of local *cofradías* (including those of the Indians, Spaniards, and *castas*), the administration of sacraments, punished the faithful in criminal matters that lack gravity, protected the ecclesiastical immunity of churches and cemeteries, enforced religious orthodoxy, and settled indigenous unorthodoxy cases. Some other crimes were also reserved to the ecclesiastical and not the secular judge. Those were the cases when a cleric was the defendant, following the legal maxim actor forum rei sequitur, already applied in the courts of the late Middle Ages in Europe.[437] That is, they had jurisdiction over testamentary affairs, chaplaincies and pious works, the defense of ecclesiastical jurisdiction, everything related to marriage (except for bigamy, prosecuted by the Inquisition) and heard civil and criminal cases in which clerics were involved.[438] In order to be effective in their office, the canons of the Third Mexican Provincial Council allowed these episcopal officials to issue decrees of excommunication.[439]The ecclesiastical courts also had jurisdiction on everything related to marriage, as it was a sacrament. As such, the judges appointed by the archbishop punished those who engaged in clandestine marriage or committed adultery, and they settled domestic violence, dowry disputes, fornication, and divorce cases.[440] However, for the marriages of the unfaithful, that were considered a mere contract, the secular judges had authority over them, and not the Church.[441] Moreover, according to the Laws of the Indies, the ecclesiastical judges had no jurisdiction over civil or criminal cases in which an unfaithful was involved.[442]

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[437] Donahue, "The Ecclesiastical Courts: Introduction," 275.
[438] Zaballa, "Del Viejo al Nuevo Nuevo Mundo," 20.
[439] Concilio III Provincial Mexicano, 1585, libro I, título VIII: Del oficio del juez ordinario…, capítulo VIII.
[440] AHAM, Juzgado Eclesiástico de Toluca, 1750, caja 67, expediente 47.
[441] Pedro Murillo Velarde, *curso de derecho canónico hispano e indiano*, libro II, título I, capítulo 8.
[442] *Recopilación de leyes de los reynos de las Indias*, *1680,* libro I, título X, ley IV: "Que los jueces eclesiásticos no conozcan de causas civiles ni criminales de infieles."

An episcopal edict issued during the canonical visitation of the city of Toluca on April 10th, 1751, by the archbishop Manuel Rubio y Salinas, clarified the role of ecclesiastical judges and their competence. In this edict, the archbishop instructed local ecclesiastical judges to prosecute those priests who did not dress in clerical habit, that played games, attended cockfights, or that engaged in illicit trade. This text emphasized that clerics who behaved immorally, and that the faithful imitated committed "public sins" committed by the priesthood. For this reason, ecclesiastical judges enforced discipline both in the laity and the clergy.[443] An interesting aspect of this document is that the archbishop mentions that the ecclesiastical judge of Toluca protested because he was little respected ("*ha dicho nuestro juez eclesiástico [que] se le respeta poco*"), since some clerics did not recognize his authority to hear judicial cases related to them.[444] The edict neither refers whether it is the secular or the regular clergy that disrespects the ecclesiastical judge appointed by the bishop, nor it states how the authority of the tribunal was challenged. However, the prelate reinforced the power of the ecclesiastical judge by commanding all clerics to obey and respect his judge, under a penalty of a fine of twelve pesos (to be invested in pious works), and one year of imprisonment in jail.[445] In the following chapters I will examine how the ecclesiastical judges of Toluca dealt with challenges to their authority, but the point to make here is that it was crucial for the ecclesiastical judges to have social and religious respectability. Ecclesiastical judges were not only officials selected by the bishop but also the moral arbiters of society that supervised and disciplined laypeople and clerics alike.

[443] AHAM, Juzgado Eclesiástico de Toluca, 1751, caja 69, expediente 41, foja 1.
[444] Ibid, 1.
[445] Ibid, foja 2: "mandamos a todos los clérigos de esta ciudad y su partido se obedezcan y guarden el mayor respecto [al juez eclesiástico] con apercibimiento de que al que no lo hiciere multaremos en doce pesos que destinaremos a obras pías y procederemos contra su persona y proponiéndole un año de cárcel y las demás penas que haya lugar en derecho para que otros no comentan iguales excesos."

In order to enhance the social upstanding of its ecclesiastical judges, the archdiocese of Mexico adopted various measures. For instance, in Toluca, ecclesiastical judges enjoyed the right to have a seat at the presbytery of his parish priests and all other churches from his district, even those under the control of the mendicant orders. In addition, he had preference over the local clergy in all public functions and they were the only officials who had the right to appoint a notary to exercise justice.[446] These judges had some ceremonial and institutional privileges in San José de Toluca, such as heading the religious procession in the day of the corpus Christi, and presiding the *cabildos* (meetings) of all the cofradías in his jurisdiction.[447] These peculiar characteristics caused that the ecclesiastical court of San José de Toluca gained the proportions of an ecclesiastical curia, that served as an intermediary between the parishioners of the parish church in the Toluca Valley, and the diocesan tribunals of the archbishopric in Mexico City.[448]

In relation to the law that the courts of the bishops applied in the administration of justice, Pedro Murillo Velarde, in his *Curso de derecho canónico hispano e indiano*, stated that ecclesiastical judges in the Indies must follow the canon law, and when there was not an specific instruction or precedent to settle a case, they had to resort to the royal law, including the decrees of the Spanish monarchs, the compilation of laws of the Indies and Castile, and the Partidas.[449] In cases of *mixtifori* crimes, such as adultery, and sorcery, both ecclesiastical and secular courts could prosecute them. Pedro Murillo Velarde clarifies that if a layperson has been previously punished by the ecclesiastical court, that person could not be prosecuted again by the secular arm. However, he wrote that if the ecclesiastical judge only punished the layperson with a mere

[446] AHAM, Juzgado Eclesiástico de Toluca, caja 67, expediente 59, foja 1, puntos 1 and 16.
[447] Ibid, foja 1, puntos 2 and 9.
[448] Watson Marrón, *Guía de documentos del Archivo Histórico del Arzobispado de Méxic*o, 7.
[449] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro I, título XXXII, capítulo 344, p. 418.

"medicinal" sentence (that is, without penalty fees, jail sentence, or corporal punishment), the secular forum could demand additional punishment since that person had offended both the ecclesiastical and secular forums.[450] Given this jurisdictional overlap, ecclesiastical judges had the duty to determine whether the cases that were brought to their tribunals were under their jurisdiction, or whether they had to be prosecuted by other courts, such as the Holy Office, the episcopal court in Mexico City, or at the royal court of the corregidor. This means that ecclesiastical judges functioned as *calificadores*, or qualificators, since they were responsible with discerning which authority had competence to hear the cases that arrived at their tribunals. In addition, local ecclesiastical judges examined the identity and the titles of the clerics arrested by a secular judge.[451]

The local ecclesiastical courts employed notaries who carried the daily life of the court, and a series of lawyers (*procuradores*) that offered their services in the court.[452] In the ecclesiastical court of San José de Toluca, they also had an *alguacil ejecutor* who collaborated with the secular arms in the detention of prosecuted offenders, and seized the goods of debtors. Finally, since most of the litigants were indigenous peoples from different local ethnicities, the ecclesiastical court of Toluca maintained an interpreter that translated from Otomí and Náhuatl to Spanish. Authors such as Gerardo Lara Cisneros note that the hierarchical structure of the Provisorato was not complex, especially when compared to other colonial institutions. As such,

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[450] Ibid, libro II, título 1, capítulo 13: "Pero si sólo fue impuesta en el fuero eclesiástico una pena medicinal, o en el fuero penitencial, aunque la penitencia hubiere sido pública, o una pena, aún judicial, pero no condigna al delito, todavía en el fuero secular puede suplirse lo que falta al justo castigo. Pues quien cometió un crimen de fuero mixto ofendió a ambas repúblicas, a saber: la eclesiástica y la secular, por lo mismo, es justo que por las dos sea castigado. Y por esta razón, si un laico acusado de un delito de fuero mixto es absuelto por el juez eclesiástico, puede ser condenado por el secular," 39.

[451] Concilio III Provincial Mexicano, 1585, libro III, título XIX, capítulo V; and Council of Trent, 1563, session twenty-three, chapter 6. See also Gerardo Lara Cisneros "Superstición e idolatría," 173.

[452] Jorge Traslosheros, *Iglesia, Justicia y Sociedad*, 45-47.

the number of public servants at the episcopal court was rather modest; being the most important the archbishop and its provisor at the head, and the ecclesiastical courts working as the base.[453]

2. List of Cases Prosecuted by the Ecclesiastical Court of San José de Toluca and Brief Description of its Categories

The ecclesiastical court of Toluca heard a wide variety of cases. Marriage proceedings, domestic violence, monetary debts, disputes over testaments, and idolatry were some of the crimes that fell under its jurisdiction. Given the abundance of documents produced by this tribunal and their diverse nature, this dissertation exclusively focuses on four criminal categories: 1) Jurisdictional and political conflicts in right of asylum cases ("inmunidades"); 2) Cases against ecclesiastics; 3) Indigenous unorthodoxy or superstiion; 4) Marital issues. Since my investigation, for reasons of space and scope, leaves out certain judicial matters that are important for the understanding of colonial religious tribunals, I offer in this chapter a general analysis and description of the crimes that the ecclesiastical court of Toluca prosecuted. Although I have organized different types of crimes into several judicial matters, I have followed the terminology found in our documental materials and the classification adopted by the *Archivo Histórico del Arzobispado de Mexico.*

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[453] Gerardo Lara Cisneros, "Superstición e idolatría," 173-174.

Table 5. **Types of Cases Prosecuted by the Ecclesiastical Court of San José de Toluca According to the Archivo Histórico del Arzobispado de México**

Judicial Matter/Case	**Number of *expedientes* (records)**
Diligencias matrimoniales (marriage proceedings).	1859
Incumplimiento de palabra (Breach of marriage promise).	84
Estupro y violación (rape).	22
Extracción de mujer y rapto (Kidnapping of females/women).	23
Maltrato (sevicia), *violencia doméstica* (Domestic violence and mistreatment).	44
Amistad ilícita e incontinencia y adulterio (adultery, and incontinence).	63
Autos contra eclesiásticos (cases against ecclesiastics).	17
Autos por pesos (Monetary debts).	42
Superstición, hechicería, idolatría, maleficio (Superstition, sorcery, idolatry).	46
Capellanías y obras pías (Chaplaincies and pious Works).	123
Cofradías (religious sodalities)	65
Autos por bienes y tierras (goods and lands cases).	15
Testamentos y testamentarías (Testaments).	105
Inmunidad y jurisdicción eclesiástica (Ecclesastical immunity and ecclesiastical jurisdiction).	10
Other judicial matters (edicts, decrees, inventaries, letters, consults).	249
Total	2770

Source: Own elaboration based on my findings and the classification of the material belonging to the Juzgado Eclesiástico de Toluca, at the Archivo Histórico del Arzobispado de Mexico (AHAM) and the digital catalogue updated in June 2020, which expands the previous work by Watson Marrón, *Guía de documentos del Archivo Histórico del Arzobispado de Mexico.*

A word of caution: this classification is by no means exact, and it represents an approximation based exclusively on the records kept by the *Archivo Histórico del Arzobispado de México* (AHAM). In this investigation, I also incorporate other documents preserved by the *Archivo General de la Nación de México* (AGNM) and other small archives that expanded the number of cases prosecuted by the ecclesiastical court of San José de Toluca, but they are not included in the above table.

Although I have tried to distinguish the 2770 expedients belonging to the ecclesiastical court of San José de Toluca depending on their topic, archival classification, or judicial matter, I have found that categories overlap. For example, the crime of *amistad ilícita*, mostly refers to premarital sexual relationships (but sometimes not sexual, just scandalous) between two or more individuals. As such, this term can be associated with cohabitation (*amancebamiento*), fornication, incontinence, and sometimes to adultery (*amistad ilícita adúltera*).[454] This means that crimes prosecuted by the ecclesiastical court of Toluca do not fall on one exclusive category. Another example are judicial lands and material goods cases (*autos por bienes y tierras*). These documents normally refer to a dispute over a piece of land (such as "magueyales"), in which the parties used last wills to claim their right over some goods in dispute.[455] Since it was the ecclesiastical court of San José de Toluca, the institution that produced these records, they also resolved some disputes that arose after their creation. Few cases of disputes over land might contain accusations of sorcery or *maleficio*. Documents that contain valuable information on

[454] AHAM, Juzgado Eclesiástico de Toluca, 1751, caja 69, expediente 39, 3 fojas: "María de Zamora contra su esposo Juan Rodríguez, por la amistad ilícita que mantiene con Gertrudis de Albarrán." In this document, the fact that the wife is accusing his husband of having "Amistad ilícita" with another woman also implies a form of adultery, which shows how these categories can overlap in some cases.

[455] See for instance, AHAM, Juzgado Eclesiástico de Toluca. 1701-1751, caja 68, expediente 14, 6 fojas. In this document, an Indian woman named Josefa Úrsula, resident (vecina) of the town of Metepec, under the jurisdiction of Toluca, accuses Blas de Nolasco, her brother-in-law, and his son, Simón, for having attempted to dispose her from her land. This woman, Josefa Úrsula, resorts to a testament in náhuatl to demonstrate her right over the land.

indigenous sorcery can also fall in the category of *autos criminales* or *autos por tierras*.[456] This is the principal reason why I recognize that this classification is only approximate and does not completely reflect what a document may contain.

2.1. Marriage and Sex Offenses

One reason that brought individuals to the ecclesiastical court of Toluca had to do with the sacrament of marriage and marital issues. Most of these documents comprise *diligencias matrimoniales* (marriage proceedings and certificates), but also a good part of them (84 documents) are lawsuits on *incumplimiento de la palabra dada*, which are breaches of marriage promises. This category is also difficult to examine. An "incumplimiento de la palabra" refers to the situation when a man has had a premarital sexual relationship with a woman, in most cases a virgin, under the promise of marrying her. According to canon and royal law, this crime was a form of non-violent rape (*estupro*), and it could be prosecuted by ecclesiastical courts, as our documents show. Therefore, many cases that contain this type of rape sometimes include the breach of marriage promise, *amistad ilícita* or both.[457]

This interpretation of the law explains why "incumplimiento" and rape cases could be interrelated, but not always. In other situations, plaintiffs did not accuse men of rape, but they demanded reparations or asked ecclesiastical judges to force them to marry the women they had

[456] AHAM, Juzgado Eclesiástico de Toluca, 1722, caja 32, expediente 71, 5 fojas. In this document, an Indian man named Diego Martín, from the town of Metepec, denounces his neighbor, Miguel de Santiago, whom allegedly casted a spell on him after a dispute they had over a piece of land.

[457] Murillo Velarde, *Curso de derecho canónico hispano e indiano,* libro V, título XVI, capítulo 187, párrafos 145-146: "El estupro cometido por completa violación se castiga con la pena capital [por el derecho civil]. Cuando el estupro no es completo, ni la virgen ha sido efectivamente desflorada, aunque el estuprador, usando la fuerza, haya llegado al acto próximo, se castiga sólo con deportación o azotes. […] Si la doncella, con caricias, promesas, regalos, u otros fraudes y engaños, consiente en su desfloración, entonces el estuprador no es castigado con la pena ordinaria de muerte, de otra forma, casi siempre debería infligirse al estuprador la pena capital, ya que casi nunca faltan tales promesas y persuasiones, así con otros. […] Pero actualmente, por costumbre general y en la práctica, en lugar de esta pena [muerte o destierro], se observa la pena del derecho canónico, que obliga al estuprador a contraer matrimonio con la estuprada, o dotarla."

deceived. That is the case of a *castiza* woman (term referred for a person with two quarters of Spanish blood and one quarter of Indigenous blood) named Francisca Jacinta, that petitioned the ecclesiastical court of Toluca to imprison Antonio Rubio, a Spaniard who had deflowered her and three other women under false promises of marriage. She did not accuse him of rape, but she requested the ecclesiastical judge to keep the man in jail until he fulfilled the promise of marrying her.[458] However, not all cases of violent and non-violent rape include a breach of promise. For this reason, in the table I included above, I separated those categories, putting cases of incumplimiento de la palabra dada and rape in different classifications. Finally, criminal offenses related to domestic violence or *sevicia*, may include other crimes such as illicit friendship.

When calculating the total sum of all these expedients, I found that marriage and sexual offenses related to this sacrament they make up most of the judicial matters prosecuted by the ecclesiastical court of Toluca. That is, an approximate number of 2100 expedients out of a total of 2770. These cases are important since they permit us to know how the Catholic Church regulated human relationships and sexuality in the colonial period. In this way, by keeping fornicators, adulterers, rapists, and other sexual deviants under control, they were also enforcing morality and good customs, which is precisely one of the main duties of the ecclesiastical justice.

2.2 Cases Against Ecclesiastics

Besides controlling the morality of the faithful and the laypeople, the ecclesiastical court of San José de Toluca enforced discipline in the priesthood. In most records, indigenous parishioners accused their parish priest of physical aggressions, introducing changes that violated the custom of the community, and charging them with excessive clerical fees (a*ranceles* and *derechos parroquiales*). As observed in table 5, there are only 17 cases against ecclesiastics

[458] AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 41, fojas 2-3.

prosecuted by the ecclesiastical court of Toluca and preserved by *Archivo del Arzobispado del Mexico*. However, some cases against ecclesiastics are also classified as "*autos por pesos*," when there was an ecclesiastics involved in a monetary debt.[459]

The reason why ecclesiastical judges of Toluca did not prosecute that many lawsuits against clerics is because some plaintiffs accused parish priest directly at the episcopal court, the Provisorato, in Mexico City. Sometimes, the Provisorato commissioned local ecclesiastical judges to investigate accusations, especially if the accused parish priest belonged to their jurisdiction. When this scenario happened, the ecclesiastical court of Toluca produced records, but they were kept by the Provisorato first, and today by the *Archivo General de la Nación* under the category of *Bienes Nacionales* and *Criminal*. Because of this document division, chapter six, on cases against ecclesiastics, uses documents from the AHAM and the AGNM. In particular, there are 14 cases against ecclesiastics at the *Archivo General de la Nación* that involve the ecclesiastical judges of San José de Toluca, and that I add to the 17 cases preserved by the AHAM. As a result, chapter six uses 31 cases against members of the clergy.[460]

Another reason why there is a scarcity of these documents is that ecclesiastical courts in New Spain did not have jurisdiction to hear all cases against members of the clergy, especially if

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[459] In one of these cases, don Andrés Ortiz denounced the priest Domingo de la Hermosa, for not having paid the rent of a house (for a total amount of 80 pesos per year), for more than two years, thus owning him 170 pesos in total. The landlord asked the ecclesiastical judge to make the priest pay whatever he owed him, at the expense of his goods. The court of Toluca investigated this issue by the explicit petition of the Provisorato of Mexico City, that instructed the priest to satisfy his debt. AHAM, Juzgado Eclesiástico de Toluca, 1712, caja 24, expediente 4, 3 fojas.

[460] Some cases against ecclesiastics at the AGNM that involve the Toluca Valley or the ecclesiastical judge of San José de Toluca at the AGNM are Criminal,1794, volumen 637, expediente 9, fojas 330-359; Criminal, 1773, volumen 219, expediente 13, fojas. 163-255; Criminal, 1763, volumen 695, expediente 18, fojas 407-416; Criminal, 1794, volumen 637, expediente 9, fojas 330-359; Criminal,1797, volumen 607, expediente 17, fojas 152; Bienes Nacionales, 1739, volumen 905, expediente 2; Bienes Nacionales, 1732, volumen 1072, expediente 39; GD14 Bienes Nacionales, 1778, volumen 1287, expediente 4; and GD14 Bienes Nacionales, 1605, volumen 1253, expediente 3.

they were sexual offenses occurred in the confessional. These types of abuses were known as the crime of "*solicitación ad turpia*" and were not prosecuted by the tribunals of the bishops, but by the Inquisition. A *solicitación* included all the words, acts and gestures by the confessor that had the purpose of sexually inciting or seducing the penitent during, or immediately before or after the confession. The Holy Office reserved the right to prosecute this crime from the second half of the sixteenth century until the end of the Inquisition at the beginning of the nineteenth century.[461] Canon law interpreted that solicitación was not only a crime but also a sin against the sacrament of reconciliation and penance. As a punishment, the pope Gregory XV (1621-1623) instructed that priests that committed this crime were to be excommunicated.[462] In these cases, women victim of solicitación had to denounce the priest, even if they consented the seduction. Likewise, those individuals who heard or saw a confessor requesting sexual favors from a different person had to press charges against him.[463]

For sexual offenses that did not occur in the confessional, I have only found one of them at the *Archivo del Arzobispado de Mexico*. There is one case, in 1804, in which the priest José Luis Tirado is explicitly accused by a neighbor named Francisco Martínez Infante of having "*solicitado*" (sexually requested or abused) his daughter. However, this document only contains the denounce, and not the whole judicial process, which could mean that the case was diverted to a different tribunal, such as the Inquisition.[464] Unlike the ecclesiastical courts of the late Middle

[461] For a monography on this topic see Adelina Sarrión Mora, *Sexualidad y confesión: La solicitación ante el tribunal del Santo Oficio, siglos XVI-XIX* (Madrid: Alianza Universidad, 2007).
[462] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro V, título I, capítulo 17, párrafos 37-38.
[463] Ibid: "El que oyó a un confesor solicitar, está obligado a denunciarlo a los inquisidores, conforme a la calidad de la noticia. Igualmente, debe ser denunciado el confesor, si besa al penitente, le toca torpemente, le pisa el pie, o acaricia a la mujer, le toca los pechos, o riñe o pida celos a la concubina. O si inmediatamente después de la confesión conduzca a un niño a la recámara, para entregarle la boleta de la confesión, y ahí lo provoca a cosas deshonestas."
[464] AHAM, Juzgado Eclesiástico de Toluca, 1804, caja 149, expediente 29, foja 1.

Ages, in the Toluca Valley, most of the accusations against priests were related to the ecclesiastical fees, physical aggression, and innovations against local custom than sexual crimes.

2.3. Controlling the Faith: Superstition and Idolatry

Another reason why people in Toluca resorted to their local ecclesiastical court was to denounce crimes related to the faith. The archbishop of Mexico, and his judges in Toluca had the spiritual duty to preach the Catholic faith, evangelize the Indians, and to eradicate all forms of native idolatry that challenged Christian orthodoxy.

Regarding the offenses committed, 28 out of 45 documents notify that the crime being reported was primarily "sorcery" (*hechicería* or *maleficio*). This category included evil witchcraft with the purpose of causing harm to somebody. Although documents that exclusively include superstitious practices such as healings (6 out of 45) or hail conjuring (5 out of 45) are scarce, these practices do also appear where an individual had been accused of maleficio. It was quite common that the same sorcerers who had allegedly inflicted pain through sorcery were hired by their victims so they could heal them, as indigenous peoples embraced the pre-Columbian idea that the one who could inflict pain could also heal it.[465] Although only 4 documents mention that the accusation was idolatry, or the worship of dolls and idols at private houses or caves, some Indians used dolls during the healing ceremonies. This is the reason it is exceedingly difficult to separate these documents into clear, distinctive categories.

In most cases, both the plaintiff and the defendant were indigenous peoples, but there also examples of Spaniards and mixed peoples denouncing an Indian healer that failed to heal their illnesses or to counter the spell casted by another sorcerer. Although the total of cases that dealt

[465] Ruiz de Alarcón, *Tratado de las supersticiones,* Tratado VI, párrafo 370.

with superstition, sorcery and idolatry is relatively small compared to the expedients related to sexual offenses of marriage, it is still a valuable quantity that allows us to investigate the way in which ecclesiastical courts maintained religious orthodoxy and supervised the local population in matters of faith. As such, these documents give us a window to explore local forms of indigenous magic, rituals, beliefs, and show how other ethnicities participated in them. I examine these records in depth in chapters seven and eight.

2.4. *Capellanías* and *Obras Pías*

The ecclesiastical court of Toluca kept records about local religious institutions such as cofradías and chaplaincies (*capellanías*). The chaplaincies were a form of pious work, comprising a religious foundation for the celebration of a series of annual masses at a specific church, chapel, or altar. The founder of a chaplaincy normally chose and provided payment to a priest (a "*capellán*) entrusted with giving masses for the soul of a deceased person. Documents recording capellanía contracts were usually made when the recipient of the masses was still alive, at the ecclesiastical court, or through a testament.[466] Authors such as Gisela von Wobeser and Robert Knowlton have studied the social, religious and economic impact of the chaplaincies in the colonial society of the eighteenth century.[467] Von Wobeser argues that families utilized chaplaincies to guarantee the economic subsistence of their members by establishing the requirement of choosing a chaplain from the founding family. Besides supporting the clergy and religious devotion, chaplaincies were a source of credit since its capital permeated the society through loans and irregular deposits. This money stimulated the economy of New Spain and

[466] Gisela Von Wobeser, "La función social y económica de las capellanías de misas en la Nueva España del siglo XVIII," *Estudios de Historia Nueva Hispana,* UNAM, No. 16 (1996): 120-124.
[467] Robert Knowlton, "Chaplaincies and the Mexican Reform." *Hispanic American Historical Review,* vol. 48 (1968): 421-437.

contributed to fund economic activities such as mining, agriculture, and the textile industry.[468] However, one of the major problems associated with chaplaincies is that the founder, or the inheritors of the founders, could not face the expenses derived from the maintenance of the chaplaincy. Many chaplains protested at local ecclesiastical courts denouncing that they were owed a certain amount of money. These cases were dealt both by the *Juzgado de Capellanías y Obras Pías* Court of Chaplaincies and Pious Works at the Provisorato in Mexico City, but also by local ecclesiastical courts such as that of Toluca. For instance, the chaplain José Antonio González Gómez complained that for one year and two months he had not received a payment from a chaplaincy founded by Francisco Bernal on 1,500 pesos imposed over a hacienda (land estate) owned by two neighbors of Toluca. The Juzgado de Capellanías y Obras Pías of the archbishopric of Mexico commissioned the ecclesiastical judge of Toluca to demand the owners of the hacienda to pay the quantity that they owed to the chaplain through cattle, seeds, or any other good until they satisfied the debt.[469] This document shows the collaboration and interaction between different institutions such as the Provisorato and the secular arm, and exemplifies the role of the ecclesiastical court in resolving conflicts over debts that were one of the most common sources of dispute on this issue.

A similar situation applied to the records related to religious sodalities or cofradías. A cofradía is a Catholic religious organization promoted after the Council of Trent to bolster social piety and devotion. The faithful created cofradías in their parishes own their own volition or by the suggestion of local priests (especially in indigenous towns).[470] These religious sodalities had

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[468] Won Wobeser, "La fundción social y económica de las capellanías de misas en la Nueva España del siglo XVIII," 127.
[469] AHAM, Juzgado Eclesiástico de Toluca, 1712, caja 25, expediente 3, 4 fojas.
[470] Rubal García, *La Iglesia en el México Colonial*, 58.

different devotional purposes, such as the celebration of masses for the death, works of charity in hospitals, the devotion of a particular saint, archangel, the Virgin Mary, or the blood of Christ, among others. A characteristic of cofradías in the Spanish Indies is that they gathered a group of homogenous individuals. There were cofradías that entirely comprised Indians, Spaniards, blacks, or members of a specific profession, such as artisans.[471] This element of the colonial cofradías helped its members to forge a local identity around the religious sodalities they founded or supported.

Although the archive of the ecclesiastical court of Toluca at the *Archivo Histórico del Arzobispado de Mexico* does not have complete books of the different cofradías that existed in the city of Toluca and its surroundings towns, they have some interesting complementary documents that show the role of the ecclesiastical judge in the management of local cofradías.[472] For example, the archive keeps many "*patentes*" of different cofradías. The patentes are documents that include a series of obligations and benefits for the members of a religious sodality. In most cases, the *cofrade* (a cofradía member) was supposed to pay a certain amount of money, both weekly and annually, to support the activities of the sodality. For the cofradía of Santa Febronia in San José de Toluca, from 1752 to 1792, the *cofrade* had the obligation to attend the masses for the souls of the deceased brother of the sodality, and to pay half a real every week, and 2 *reales* every year to fund the procession of the Holy Blood *("de la sangre")* during Holy Week. In exchange, the cofradía had the obligation to give the cofrade, in his/her hour of death, 25 pesos,

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[471] Ibid, 59.

[472] Most books of the cofradías of Toluca can be found at the *Archivo Histórico de la Parroquia del Sagrario San José Toluca, Estado de México* (Historical Archive of the Parish Church "El Sagrario de San José de Toluca"). This archive also keeps contains numerous colonial records of baptisms, marriages, censuses, and sixty confessions before the Holy Office about heterodox idolatrous practices.

a coffin and a funeral pall for his/her burial. [473] This document is an example of the social function of a cofradía in the colonial period that served not only as a religious organization but also as a form of social insurance for their members.

As happened with the capellanías, a primary source of conflict is that cofrades sometimes did not pay their contribution, and they were denounced at the ecclesiastical court. The role of the judge was then to investigate and to punish the debtor. On other occasions, the debtors went along with cofradía officials to the ecclesiastical court to swear that they will pay the amount they owed under certain conditions. For instance, the Indians Lucas Antonio y Rafael Antonio, neighbors, and residents of the city of Toluca, swore to pay 15 pesos, the amount they owed to the cofradía of San Antonio, within seven months of the judgment. In order to satisfy the debt, the debtors willingly subjected to the judges of His Majesty (including secular and ecclesiastical judges) to satisfy their debt at the expense of their domicile, residency, and their personal goods.[474] Other duties of the ecclesiastical court in relation of cofradías was to supervise their elections, examine their accounting books, and resolve litigations between religious sodalities at the local level. Unfortunately, the archive of the ecclesiastical court of Toluca keeps only a few of these cases, being most of them in local parish archives, such as that of Historical Archive of the Parish Church *El Sagrario de San José de Toluca*.

[473] AHAM, Juzgado Eclesiástico de Toluca, 1752-1792, caja 71, expediente 16, foja 1: "Doña Antonia Sánchez [como cofrade], tiene obligación de dar medio real cada semana, y dos reales cada año para ayuda de sacar la procesión de sangre (salga o no salga), y dicha cofradía ha de tener obligación de darle, en muriendo, veinte y cinco pesos en reales, paño y ataúd para su entierro; y será participante de las misas, y aniversario que hace dicha cofradía por los hermanos difuntos."

[474] Ibid, 1775, caja 114, expediente 36, foja 1: "cuya cantidad se obligan a pagar dentro del término de siete meses, y para el cumplimiento de lo expresado se obligan con sus personas y bienes habidos y por haber, y con ellas y ellos, se someten al fuero y jurisdicción de todos los señores jueces y justicias de Su Majestad para que a ello les compelan con todo rigor de justicia, renunciando como expresamente renuncian, a su domicilio y vecindad."

2.5. Right of asylum ("i*nmunidades*") and Jurisdictional Conflict

One of the chief duties of the courts of the bishops was to defend and enforce the ecclesiastical jurisdiction. For many people, especially criminals, this jurisdiction was not just an abstract concept in legal codes, but a material reality. When some individuals committed a crime, they entered temples, churches, and sanctuaries, seeking refuge from the secular justice. The right of asylum was a right enshrined in the *Siete Partidas*, and other codes of law in the European Middle Ages. Both canon law and the *Leyes de las Indias* recognized the right of criminals, under certain strict conditions, to seek refuge inside a church.[475]

However, this privilege was progressively restricted by the Spanish Crown in the eighteenth century, as some criminals abused it and endangered public safety. Despite the gradual elimination of the right of asylum, ecclesiastical judges fought against royal officials to preserve their judicial privileges. In the fifth chapter of this dissertation, I use the records of the *Archivo del Arzobispado de Mexico* to illustrate how right of asylum cases were settled in practice by the ecclesiastical court of San José de Toluca.

3. General Judicial Procedure

Although the judicial procedure varied according to the crime (we will see specific differences in the next chapters), there were three phases in the proceeding that were common to all crimes: the *incoación*, or the initiation, the *prosecución* or prosecution, and the conclusion. During the *incoación*, plaintiffs filed their protest at their local ecclesiastical court or the Provisorato in Mexico City. The first thing ecclesiastical judges did was to verify whether their court had competence to hear the case in the first place, based on royal and canon law

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[475] *Recopilación de leyes de los reynos de las Indias*, *1680,* libro I, título V; and López, *Las Siete Partidas*, partida 1, título 11, ley 2.

requirements.[476] For example, if a Spaniard had committed a crime of faith, such a heresy, diocesan tribunals referred that case to the Inquisition, which had competence to hear those crimes. When judges confirmed that the crime fell on their jurisdiction, they admitted the denounce. Once the complaint was admitted, the ecclesiastical judge notified the accused party, and summoned it to declare at court. Jorge Traslosheros has pointed out that unlike the Inquisition, diocesan tribunals did not have *secreto de sumario* (confidentiality surrounding judicial proceedings), and the denounced were entirely informed about the charges lifted against them.[477]

After the defendant was informed, he or she had four possibilities: 1) Recognize the content of the denouncement and confess that they were guilty; 2) Reject partially or entirely the content of the denounce; 3) Reject the complaint and offer a counteraccusation against the plaintiff; 4) Ignore the judicial notice and did not appear.[478] When the accused party recognized the accusation, there was no need of prosecution, as he or she had confessed their crime, and therefore the ecclesiastical judge gave judgment on that case. When the defendant rejected the denouncement without filing a counteraccusation, then the next phase in the judicial procedure was the prosecution. However, if the defendant pressed charges against the plaintiff, then the procedure became more complex, as an additional process was started.[479] In those cases in which the accused did not show up at court, ecclesiastical judges could either use threats of excommunication to compel the denounced to appear and declare, or they started the prosecution without the defendant.

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[476] Concilio III Provincial Mexicano, 1585, libro III, título XIX, capítulo V; and Council of Trent, 1563, session twenty-three, chapter 6. See also Gerardo Lara Cisneros "Superstición e idolatría," 173.
[477] Traslosheros, "Los indios, la Inquisición y los tribunales eclesiásticos ordinarios en Nueva España," 47-74.
[478] Villafuerte García, Lozano Armendares, Ortega Noriega, and Ortega Soto, "De la sevicia y el adulterio en las causas matrimoniales en el Provisorato de México a finales de la era colonial," 92.
[479] Ibid, 93.

The second phase of the judicial procedure was the prosecution, in which the plaintiff was required to present evidence to justify and support his denounce. As above, canon law accepted the free confession (without coercion) of the accused party as evidence. The most utilized evidence by plaintiffs in many crime was the presentation of suitable and trustworthy witnesses (*prueba testifical*). According to Murillo Velarde, a suitable witness needed to have their mental capabilities intact, be over fourteen years old, not have physical defects such as blindness, have a good social standing (*tener buena fama)* in the sense of not being officially known as a person who lies or who has been prosecuted and sentenced by a tribunal, and be Catholic. In addition, the witnesses must have precise knowledge about the persons involved or the place in which the crime had been committed, and they could not be related through parenthood with those who had to declare (expressed in the legal language as "*las generales de la ley no le tocan*").[480] When witnesses were presented by the plaintiff at the ecclesiastical court, the judge made them swear in the name of God and the sign of the Holy Cross (they had to fast before pronouncing the oath) that they will say the truth about whatever they knew or they were asked about.[481] The oath was an important part because it put a significant psychological pressure on the witness. The eight-commandment ("You shall not bear false witness against your neighbor") conceived perjury and false witness against a very serious crime against the law of God, which could be subject to legal prosecution by a religious tribunal for the crime of *falsedad* and perjury.[482] After the plaintiff and all the witnesses had declared, notaries recorded this information (*sumaria información*) and

[480] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, volumen II, título XX, párrafos 148-152.
[481] See an example in Spanish AHAM, Juzgado Eclesiástico de Toluca, caja 72, expediente 20, foja 3 reverso: "a efecto de recibirle su declaración [al testigo] le recibí juramento que hizo por Dios Nuestro Señor y la señal de la Santa Cruz según derecho, so cuyo cargo prometió decir verdad en lo que supiere y fuere preguntado…"
[482] In canon law there was a distinction between *calumnia* (slander), understood a false accusation; falsedad, which is false witnesses or the modification of a written document, and perjury. Slanders and false witnesses were punished arbitrarily, normally with the sentence originally intended for the plaintiff. Perjury, however, could be punished with the confiscation of material goods, infamy, or others. See Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro V, título XXXVII, párrafos 347 and 353.

ecclesiastical judges interrogated the defendant, who were also forced to swear the above-mention oath, or organized a *careo* (confrontation) between all of them.

Other proofs accepted by canon law were instrumental evidence in which the plaintiff utilized documents or objects (such as idols or dolls in indigenous idolatry cases) to support the denouncement, and *presunción* (presumption). Presunción in this context refers to a consequence inferred by the law or the magistrate over a known fact in order to find out the truth about an uncertain or unknown fact.[483] Ecclesiastical courts used two types of p*resunciones*: *"presunción legal*" and *"presunción de hombre."* The *presunción legal* was the one that had such legal strength that did not admit any evidence against it. For example, if a married couple had sexual relationship while they are, at that moment, litigating over their separation, the judge presupposed they had effectively reconciled, and therefore put an end to the proceedings.[484] The presunción de hombre is the interpretation taken by the judge based on the previous, current, and subsequent circumstances of the fact being investigated. For example, Spanish neighbors who see an Indian man taking dolls to a remote cave could suspect that he is an idolater. However, this suspicion required more conclusive evidence, and is the ecclesiastical judge who determined the weight of that *presunción*.[485]

The third and final phase was the "*estado de sentencia*". Once the ecclesiastical judge finished evaluating all the evidence and declarations offered by the parties, he was ready to give judgment and punish the offender. I should emphasize that local ecclesiastical judges such as those of San José de Toluca frequently forwarded their cases to the Provisorato in Mexico City to

[483] For a detailed explanation on pruebas see Murillo Velarde, Curso de derecho canónico hispano e indiano,
[484] Villafuerte García, Lozano Armendares, Ortega Noriega, and Ortega Soto, "De la sevicia y el adulterio en las causas matrimoniales en el Provisorato de México a finales de la era colonial," 99.
[485] Ibid, 100.

ask for instruction on how to proceed. In fact, some crimes related to the defense of the jurisdiction of the Church such as the right of asylum could not be prosecuted without notifying the provisores first.[486] That is to say, that local ecclesiastical courts did not work in complete isolation, but rather in strict collaboration with other local or higher tribunals.

4. Jails and Punishment

As officials appointed by the bishops, ecclesiastical judges had the authority to punish offenders with fines, corporal punishments, and imprisonment. However, in San José de Toluca, the ecclesiastical court did not have its own private jail, and ecclesiastical judges had to incarcerate (with the assistance of the secular arm) all the criminals under its jurisdiction in the public jail of the city, controlled by the local corregidor. In the Laws of the Indies this restriction was not limited to the ecclesiastical judges (except for the jail of the archbishop in Mexico City), but also to the parish priest, who could not have their own personal or private jails in their parishes to arrest indigenous peoples. In addition, this law forbade clerics from certain practices to punish Indians, such as shaving their hair, or whipping in public unless they had the commission of their bishops to do so.[487] That means that unless they were ecclesiastical judges appointed by the bishops, parish priests could not resort to those strategies to discipline their parishioners.

In the eighteenth century, despite this rule was in force for over one century, parish priests still utilized personal jails to punish indigenous peoples. An Indian resident in the town of San Bartolomé, Metepec, denounced to the ecclesiastical court of Toluca that his parish priest had

[486] See for example AHAM, Juzgado Eclesiástico de Toluca, 1742, caja 57, expediente 36.
[487] *Recopilación de leyes de los reynos de las Indias*, *1680,* libro 1, título XIII, ley VI, "Nuestros Virreyes, Gobernadores y justicias no permitan ni consientan á los curas y doctrineros, clérigos ni religiosos que tengan cárceles, prisiones, grillos y cepos para prender, ni detener á los indios, ni les quiten el cabello, ni azoten, ni impongan condenaciones si no fuere en aquellos casos que tuvieren comisión de los Obispos."

arrested ("*puesto en depósito*") several indigenous women after having found them in "i*ncontinencia*" (meaning fornication, or having premarital sex).[488] The ecclesiastical judge of San José de Toluca sent this case to the Provisorato in Mexico City, asking for further direction on how to proceed. The curia of the archbishop instructed the ecclesiastical judge of Toluca to remind the parish priest of Metepec that the royal law forbids curas to have private jails, and hearing judicial cases related to the external forum without permission from the bishop.[489]

The correction given to the cura of Metepec contrasts with the penalty that a layperson would have received if he had dared to build and keep his own private jail to punish indigenous peoples or any other person, since royal law punished those illegal activities with the death penalty.[490] One maxim of the canon law in the Indies is that clerics that committed a crime were to be punished secretly and with discretion. The Third Mexican Council mandated bishops and ecclesiastical judges to avoid public exposure of the crimes of the priesthood to both avoid public scandal and to safeguard the dignity and honor of the clergy.[491] As the above-mentioned case exemplifies, canon and royal or civil law punished the same crime differently. As Pedro Murillo Velarde writes, with adultery, canon law punished priests that committed this crime with confinement in a monastery. In addition, the Council of Trent mandated that if adulterers

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[488] Real Academia de la Lengua Española. "Diccionario de Autoridades - Tomo IV (1734)." http://web.frl.es/DA.html: "INCONTINENCIA. s. f. El vicio opuesto a la castidad. Es voz Latina. SAAV. Empr. 66. Porque si se detienen los casamientos, peligra la sucessión, y la República padece con la incontinéncia de los mancebos por casar."

[489] AHAM, Juzgado Eclesiástico de Toluca, 1739, caja 56, expediente 34, foja 1: "y por lo que mira a los pecados públicos y escandalosos en cumplimiento de la obligación de su ministerio procure evitarlos con las paternas correcciones correspondientes."

[490] The Partida 7, título 29, ley 15, and the Recopilación de Castilla, libro 4, título 23, ley 5, mandated that the owners of a private jail, built and maintained without the license of a king, should be put to death.

[491] Concilio III Provincial Mexicano, 1555, libro 1, título VIII, ley IX: "este sínodo establece y manda que las causas graves de los clérigos de esta provincia se agiten y terminen secretamente, tanto en el modo de proceder, como en el de reducir a prisión a los culpados. También ordena que los jueces en causas de esta clase tengan, si pudiese ser, notarios clérigos. Todas estas cosas, sin embargo, háganse cuando el delito no fuere tal y tan público…"

continued with this sinful practice after having been admonished three times by the ecclesiastical authorities, they were to be excommunicated.[492] However, in the civil right, Pedro Murillo Velarde notes that adultery was punished diversely according to the different historical periods. In the Spanish law of the eighteenth century, adulterers were delivered, with their goods, to the husband of the adulterer wife, so he could do whatever he wanted with them. As such, if the husband opted to kill his treacherous wife, he could do it as long as he had the delegation of the secular judge.[493]

In this respect, the punishments sentenced by the ecclesiastical court of San José de Toluca depended on the condition of the offender. When the criminal to be penalized was an indigenous person, who represents most of the offenders according to the records of the ecclesiastical court of Toluca, colonial jurists debated on what type of punishment was proper for them. Alonso de la Peña Montenegro, bishop of Quito between 1653-1687, and author of a widely used manual for parish priests in the seventeenth century, considered Indians to be less intelligent than Spaniards, and he recommended the priesthood and ecclesiastical judges to be more merciful with them. Montenegro argues that, since Indians had a weaker judgement and less intellectual capacities, the natives had an improper knowledge and a lack of malice when they committed a crime or a misdeed. Therefore, he exhorted judges to contemplate these facts and adjust the punishments to the Indians.[494] Solórzano y Pereyra shared a similar opinion, and he recommended that given the simplicity and misery of the Indians, judges should be benign with them, mitigating as much as possible the punishments they received.[495] The Third Mexican Council and other sources of

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[492] Council of Trent, 1563, Twenty-Fourth session, chapter 8.
[493] *Recopilación de Castilla*, libro 8, título 20, ley 5.
[494] Alonso de la Peña Montenegro*, Itinerario*, libro 2, tratado 1, sección 2.
[495] Alonso de la Peña reproduces this quotation from Solórzano y Pereyra in his manual: "La miseria, rudeza y simplicidad de estos indios hace que en sus causas, tanto en civiles como en las criminales, no deban los jueces

colonial law repeated this stereotype about indigenous weakness, and instructed the priesthood to treat Indians softly because of their shy and pusillanimous character.[496] Since royal and canon law viewed indigenous peoples as miserable individuals in need of special protection, the concept that they deserved a different treatment in colonial courts was a notion accepted by many jurists and legal codes of the time. Moreover, the fact that not all ethnicities were punished equally or by the same tribunal is further proved by the existence of the Holy Office of the Inquisition, that did not prosecute indigenous peoples for being considered neophytes in the faith.

When ecclesiastical judges punished indigenous peoples, they reflected this mentality, especially in cases related to sexual immorality, drunkenness, and idolatry, as we will see in the incoming chapters. However, the ecclesiastical approach to physical punishments, such as whippings, varied over the centuries. As William Taylor observes, corporal punishments were accepted by the Church of the sixteenth and seventeenth centuries, although moderately, as a valid practice even for parish priests to discipline Indians.[497] This ecclesiastical approach changed in the eighteenth century. The archbishop of Mexico, Rubio y Salinas emphasized in his pastoral letter of February 2, 1762, that priests were to correct Indians with charity, and not rigor.[498] In addition, there were particular cases in which ecclesiastical judges preferred reconciliation between the confronted parties than the application of corporal punishment. As I will explain in chapter 6, cases against members of the clergy and domestic abuse were normally solved through settlements and reconciliations promoted by ecclesiastical judges.

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atenerse al rigor del derecho, sino más bien ser benignos con ellos y, en cuanto sea posible, atenuar las penas que hayan de imponerles." Cited by De la Peña, *Itinerario*, libro 2, tratado 1, sección 2, 390.

[496] Concilio III Provincial Mexicano, 1555, libro 3, título 2, ley VI.

[497] Taylor, *Magistrates of the Sacred*, 216.

[498] Ibid, 216.

Despite these peaceful resolutions, ecclesiastical judges could still apply corporal punishments to indigenous offenders. For instance, in 1729, the ecclesiastical judge of Toluca punished an indigenous healer, Pascual de los Reyes, with twenty-five whippings (*azotes*) for the crime of superstition.[499] Another indigenous man sentenced for the same crime in 1736 did not receive whippings because of his old age. In exchange of this penalty, the man had to be educated in the Catholic faith by his parish priest, whom, after masses, should teach him the "*pater noster*," the "*credo*," the divine commandments of the Law of God and the Church, and the mysteries of the Holy Trinity.[500] In the following chapters, I examine how ecclesiastical justice applied punishment in crimes *of inmunidad*, cases against ecclesiastics, idolatry and superstition, and marital issues.

5. Conclusion

The justice of the Church stemmed from the Provisorato in Mexico City to local ecclesiastical courts such as that of San José de Toluca. The task of the ecclesiastical judges was to enforce good Christian customs in colonial society. These judges had the authority to prosecute crimes that fell under the ecclesiastical jurisdiction, such as offenses against the sacrament of marriage, including adultery, illicit friendship, but also domestic violence. Ecclesiastical courts also had the duty to maintain the purity of the faith and monitor religious practice at the local level. As such, they persecuted indigenous unorthodoxy, and regulated religious sodalities, chaplaincies, and pious works. The performance of these functions sometimes was problematic

[499] AHAM, Juzgado Eclesiástico de Toluca, 1729, caja 41, expediente 9, 5 fojas.
[500] AHAM, Juzgado Eclesiástico de Toluca, 1736, caja 51, expediente 29, foja 6: "Y le imponía e impuso su señoría por penitencia saludable medicinal espiritual, que por tiempo preciso de tres meses asista todos los domingos y días festivos a la misa, para que después alternativamente se le explique por el párroco el pater noster, credo, mandamiento de la ley de Dios y de la iglesia, los misterios de la Santísima trinidad, encarnación del divino verbo, su pasión y muerte por salvar el género humano, premio eterno para los buenos e igual castigo para los malos."

when certain privileges such as the right of asylum hindered or invaded the jurisdiction of royal officials. Although harmony and collaboration reigned between ecclesiastical and secular judges, there were moments of conflict that the colonial system sought to remedy through royal decrees and reconciliation.

The following five chapters will offer a detailed analysis of the four categories that I particularly study in this dissertation: 1) jurisdictional conflict between the secular and the ecclesiastical arm through the study of the right of asylum; 2) cases against ecclesiastics; 3) superstition and idolatry cases; 4) marital causes and offenses against the sacrament of marriage. As explained both in the introduction and in this chapter, the reason I focus on these topics is that they are the ones that best encapsulate the operation of ecclesiastical courts. Conflicts on jurisdiction tell us how the ecclesiastical court of San José de Toluca dealt with their secular counterparts and protected their jurisdiction, cases against ecclesiastics show us how the Church maintained the discipline of the clergy so they could set a good example to the rest of the colonial society; superstition and idolatry cases illustrate how the Church maintained the purity of the faith, and finally marital cases are key to explain how ecclesiastical courts punished deviant sexual behavior, enforced morality, and controlled local societies.

Chapter 5. *Inmunidad Eclesiástica* and Jurisdictional Conflict Between Secular and Ecclesiastical Judges in the Eighteenth-century city of San José de Toluca

1. Introduction

One of the principal obligations of ecclesiastical courts was to defend the immunity of the Church and its jurisdiction.[501] In the Spanish Empire of the seventeenth and eighteenth centuries, with several corporations and ethnicities subjected to different legal systems, this was not a simple task. For example, the Inquisition could not prosecute indigenous peoples in the Americas, and Spaniards were not eligible to become government officials in Indian towns.[502] This legal system became even more complicated when ecclesiastical and secular judges had jurisdiction over a same crime. Adultery, sorcery, and idolatry were some crimes that could be legally prosecuted by both arms. However, on some occasions, secular authorities intervened in cases that exclusively belonged to the jurisdiction of the Church, and vice versa. *inmunidade eclesiástica* (right of asylum) cases reflect this problem.

The historiography on the inmunidad eclesiástica in the Spanish Empire is scarce, and is divided into two areas. The first one studies the origin and historical developments of the ecclesiastical immunity from the late Antiquity to the early modern period, while the second one examines how this right of asylum adapted to the circumstances of the Spanish Indies. This second trend mostly utilizes the canon law produced by colonial provincial councils and synods in different viceroyalties to compare how each region or area responded to the challenges posed by the new American scenario.[503] Focusing on the Spanish Empire in the Americas, one pioneer was

[501] Concilio III Provincial Mexicano, 1585, libro 1, título VIII: Del oficio del juez ordinario…, capítulo III.
[502] Robert Haskett, *Indigenous Rulers*, 33.
[503] Miguel Luque Talaván, "La inmunidad del sagrado o el derecho de asilo eclesiástico a la luz de la legislación canónica y civil indiana," in *Los concilios provinciales en Nueva España. Reflexiones e influencias,* edited by María

Tomás de Aquino García y García, writing in 1930.[504] More recent scholarship on this topic includes the works of Adriana López Ledesma,[505] Sandro Olaza Pallero,[506] Guillermo F. Margadant,[507] and Miguel Luque Talván.[508] Some of these recent works, such as in the case of López Ledesma and Olaza Pallerno, they include document analysis of colonial archival records to study how inmunidad cases were handled by ecclesiastical and secular courts. Following the latest trends in the historiography, this chapter of the dissertation thus combines a brief discussion of the origins of right of asylum, its adaptation in the archbishopric of Mexico, and the analysis of various cases to exemplify how the ecclesiastical court of San José de Toluca dealt with this issue in practice.

2. Inmunidad Eclesiástica: Definition and Historical Evolution

After the Spanish conquest of the Americas in the fifteenth and sixteenth centuries, the right of asylum extended to the new American churches. In the compilation of the Laws of the Indies, the Crown commanded to keep and respect holy spaces, ecclesiastical ministers, and the immunity of the churches.[509] In the same way, the Catholic Church supported the idea that churches could be utilized as a shelter from the persecution of secular authorities and sanctioned

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del Pilar Martínez López-Cano and Francisco Javier Cervantes Bello (Universidad Nacional Autónoma de México, 2005), 255.

[504] Tomás de Aquino García y García, *El Derecho de asilo en Indias (*Madrid: Editorial Reus, 1930).

[505] Adriana López Ledesma, "La inmunidad eclesiástica en la Alcaldía Mayor de San Luis Potosí: ¿Un enfrentamiento entre fueros?," *Cuadernos de Historia del Derecho, vol. extraordinario* (2010).

[506] Sandro Olaza Pallero, "Significado y uso del asilo en sagrado en el derecho canónico indiano," in *IV Jornadas de Estudio del Derecho Canónico,* edited by Sebastián Terráneo and Osvaldo Moutin (Argentina, 2018).

[507] Guillermo F. Mardagant, "El recurso de fuerza en la época novohispana: El frente procesal en las tensiones entre Iglesia y Estado en la Nueva España," *Revista de la Facultad de Derecho de México*, números 172-173-174, (1990): 105.

[508] Miguel Luque Talaván, "La inmunidad del sagrado."

[509] *Recopilación de las leyes de las Indias*, libro 1, título 5, ley 1: "Que se guarde toda reverencia y respeto a los lugares sagrados y ministros eclesiásticos, y la inmunidad de las iglesias." This law is based on a royal decree issued by the king Philip II on October 18th, 1569.

this privilege in different councils such as that of Trent in 1563, and the Third Mexican Council.[510] In this later synod, the Mexican clergy swore to protect and defend the ecclesiastical jurisdiction, and the immunity of the Church.[511] The Third Mexican Council decreed that nobody, regardless of their condition or quality, should promulgate laws against the ecclesiastical immunity, or invade or occupy churches.[512] Nobody, without the permission of the ecclesiastical arm, could neither extract convicts from sanctuaries nor set an armed guard outside the limits of the churches and cemeteries to capture sheltered offenders.[513] Those who acted in this way ought to be excommunicated and penalized with monetary fines.[514]

The Third Mexican Council provided a general guideline for those who took refuge inside a temple. Since those criminals, legally protected by the ecclesiastical jurisdiction, were on holy ground, they could not bring with them suspicious women of bad reputation and play any musical instrument at the cemetery and at the church's gates. When a secular official (that wanted to capture them) was passing in front of the church, the criminal was instructed to hide away.[515] If the refugees failed to comply with these instructions, the Third Mexican Council ordered priests and ecclesiastical judges to rebuke them first. However, if criminals persisted in their

[510] Council of Trent, 1563, Session 25, chapter 20.
[511] Concilio III Provincial Mexicano, 1585, libro I, título VIII, ley III. In addition, the promotor fiscal at the episcopal court in Mexico City, had as one of its main duties to safeguard the immunity of churches and ecclesiastical property (libro I, título IX, ley I).
[512] In this situation, only the Spanish Crown, in collaboration with the corresponding ecclesiastical authorities (the pope and bishops) could make laws on ecclesiastical immunity. However, other seculars rulers in the Spanish Indies such viceroys, governors, and others, could not change these laws on their own volition, as the synod ordered.
[513] Concilio III Provincial Mexicano, 1585, libro III, título XIX, ley I: "Este concilio decreta y manda que ninguno, de cualquiera calidad que sea, promulgue leyes, haga estatutos contra la libertad eclesiástica, ni cerque, invada u ocupe las iglesias, ni impida la libre entrada o salida de ellas; ni extraigan de las iglesias a los que se retraen o refugian a ellas, y puedan disfrutar de esta inmunidad, sin ponerles prisiones ni guardas en las iglesias o cementerios."
[514] Ibid, libro III, título XIX, ley I. This law was a confirmation of the penalty of excommunication for violating the ecclesiastical immunity as decreed in the Council of Trent, in 1563.
[515] Ibid, libro III, título XIX, ley II.

misdemeanor, they had to be expelled them from the temple, or imprisoned.[516] Finally, since the right of asylum could be used by criminals to delay existing legal proceedings against them, the Third Mexican Council ordered that criminals could not stay for over nine days in the church where they had taken refuge without the authorization of the bishop. If the offenders stayed in the church in order to avoid a sentence of exile, they had to be expelled if their lives were not threatened by any risk or danger.[517]

According to the constitutions of Gregory XIV (159-1591), the canon law permitted peoples of both sexes, age, and conditions (noble, commoner, laypeople, or cleric), to enjoy the right of asylum. Individuals convicted of exile, excommunication, sacrilege, blasphemy, and common crimes (those which lack gravity such as murder), could legally enter a temple and gain immunity.[518] Medieval royal law in the Crown of Castile, under the Partidas, did also recognize some of these privileges. In the Partidas, prisoners who escaped from jail, servants who fled from their lieges, and individuals sentenced for monetary debts such as taxes or private traders could enjoy the right of asylum.[519] However, some laws on immunidad eclesiástica consecrated in the Partidas were vastly changed in the Spanish Americas with the purpose of reinforcing the Patronato Regio, and protecting the subjects of the king from persons who abused the inmunidad in order to advance their economic and personal interest.

For example, in the viceroyalty of New Spain in the sixteenth century, many traders and individuals who owed money to the royal treasury or private creditors sought refuge in churches

[516] Ibid, libro III, título XIX, ley II and III: "Pues en tal caso se les ha de dar otra corrección, echándoles prisiones dentro de las iglesias. Y si violaren este decreto, los sacristanes, o los que cuidan de las iglesias, darán parte a los oficiales, para que tomen la providencia oportuna."
[517] Ibid, 1585, libro III, título XIX, ley IV.
[518] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro III, título XLIX, capítulo párrafos 444 and. 419.
[519] López, *Las Siete Partidas*, partida 1, título 11, ley 2.

in order to avoid payment. In some circumstances, these persons did also try to escape from the sentences of the secular arm, which forced them to remain at the service of their creditors until they satisfy the debt.[520] Because there were many individuals that proceeded in this way, to the point that trade and public safety were compromised, the king Philip II issued a royal decree on December 13th, 1573, commanding that those criminals were no longer under the protection of the inmunidad eclesiástica.[521] This law was confirmed in the *Novísima Recopilación* of 1775, that allowed secular judges to extract this type of criminal from churches even without the permission from an ecclesiastical court.[522]

Since the existence of the immunidad eclesiástica entailed a reduction of the jurisdiction of the secular arm, especially in churches and cemeteries, these types of laws were negotiated between secular and ecclesiastical authorities. Royal decrees, compilations of Castilian and American law *("derecho indiano")*, along with the canons issued by the councils and synods of the Church, limited the types of criminals that could enjoy the inmunidad eclesiástica. These were:

1) "Public thieves" or highwaymen, who attacked people in open, public roads, or in the seas, such as pirates could not claim right of asylum.[523] However, as Pedro Murillo Velarde noted, thieves who did not utilize violence still enjoyed the right of asylum.[524] 2) Arsonists.[525] 3) Hitmen or individuals that hired assassins to kill another person. 4) People convicted of heresy or apostasy, and heretical blasphemy, but not simple blasphemy. 5) Individuals convicted of high treason

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[520] *Novísima Recopilación*, 1775, libro 1, título IV, ley II.
[521] Luque Talaván, "La inmunidad del sagrado," 260.
[522] *Novísima Recopilación*, 1775, libro 1, título IV, ley II.
[523] López, *Las Siete Partidas*, partida 1, título 11, ley 1: *"Así como los ladrones manifiestos, que tienen los caminos, e las carreras, matan los omes, e los roban."* This law was confirmed in the *Novísima Recopilación*, libro I, título IV, ley V.
[524] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro III, título XLIX, párrafo 446.
[525] *Novísima Recopilación*, título IV, ley I.

(*Lèse-majesté*) against the Crown. 6) Some types of murderers who had murdered their parents, wife, liege, or that had procured an abortion. In this category, Murillo Velarde wrote that people who killed their enemies from their back or without previous provocation also lost the right of asylum.[526] 7) Individuals who killed or mutilated somebody at a church or cemetery, hoping to be protected by the inmunidad eclesiástica also lost this privilege according to the Partidas.[527] 8) Individuals that set churches on fire or that vandalized them.[528] 9) Soldiers that desert from the army or convicted to row in a galley.[529]

Canon canon and royal law limited the places where criminals could seek refuge. These locations were: Parish churches, along with its cemeteries, episcopal palaces, some hospitals with altars, and "*ermitas*" (hermitages).[530] During the sixteenth and seventeenth centuries, the monasteries and convents of the mendicant orders where legal places were criminals under the crimes protected, had the right of asylum. However, in a concordat ratified by the Spanish Crown and the Holy See in 1737, rural churches, some regular convents and hermitages were eliminated from the list of places protected by the inmunidad eclesiástica. This measure intended to undermine the activity of bandits and highwaymen in the territories of the Spanish monarchs, thus reinforcing the authority of the Crown at the expense of the Church.[531] These additional measures occurred under the Bourbon dynasty, which promoted a larger process of centralization of power

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[526] Murillo Velarde, *Curso de derecho canónico hispano e indiano,* libro III, título XLIX.
[527] López, *Las Siete Partidas*, partida 1, título 11, ley 4: "Los que matan, o fieren en la Eglesia, o en el Cementerio, enfiuciándose de ampararse en ella."
[528] Ibid.
[529] *Recopilación de Castilla*, libro 8, título 24, ley 9: "Pues siendo, como son, condenados a servicio personas de galeras, no deben, ni pueden gozar de la inmunidad, y privilegios de la Iglesia, y que acogiéndolos, y amparándolos, y no los queriendo entregar, las nuestras justicias los saquen, como lo es, y debe ser permitido por justicia y derecho." Cited by Murillo Velarde, libro III, título XLIX, párrafo 420.
[530] López, *Las Siete Partidas*, partida 1, título 11, ley 2 and Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro III, título XLIX, párrafo 455.
[531] Luque Talaván, "La inmunidad del sagrado," 259 and 262.

to decrease the ecclesiastical privileges and the influence of regular orders. In another royal decree issued on November, 2nd, 1773, the Spanish Crown instructed that big cities must only have two churches (that were not under the control of the regulars) designated as legal shelters covered by the inmunidad eclesiástica.[532] The final blow against the privileges of the inmunidad was delivered through two royal decrees issued in 1783 and 1787, by which the Spanish king Charles III decreed that any person who took sheltered in a church, regardless of the crime, had to be immediately extracted by a secular judge (although always notifying the ecclesiastical judge).[533] These latter laws did not longer permit criminals to seek refuge in churches, and consigned the entire judicial process to the royal justice, only allowing some reduction of the penalties if the convict was protected by the inmunidad, such as imprisonment or forced labor instead of corporal punishment.[534]

As a summary, it should be noted that the right of asylum, or inmunidad eclesiástica, was significantly reduced throughout the colonial period, eliminating, or reducing the list of crimes under which a person could legally enter a church to seek asylum. The Spanish Crown, especially during the Bourbon Reforms of the eighteenth century, diminished the privileges of the inmunidad in order to reinforce the Patronato Regio, that permitted monarchs to abrogate certain ecclesiastical laws and privileges if they proved to be abusive or harmful to his subjects. For this

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[532] *Novísima Recopilación*, 1775, libro I, título IV, ley V: "[…] Se mandó á los Prelados y Ordinarios eclesiásticos de España é Indias, que con la mayor prontitud, y á lo mas dentro de un año, señalasen en cada lugar sujeto á su jurisdicción una , ó á lo mas dos Iglesias o lugares sagrados, según su población , en las cuales se guardase y observara solamente la inmunidad y asilo, según la forma de los sagrados Cánones y constituciones Apostólicas, y no en otra de las demás; previniendo, que á las que así quedaren sin inmunidad, se' les tenga el correspondiente respeto, culto y veneración…"

[533] AHAM, Juzgado Eclesiástico de Toluca, 1783, Caja 121, expediente 38, foja 1 anverso; and Royal decree issued on March 15th, 1787, cited by Sandro Olaza Pallero, "Significado y uso del asilo en sagrado en el derecho canónico indiano ": "Si el reo no pierde la inmunidad, se le destinará por cierto tiempo, que nunca pase de diez años, a presidio, arsenales sin aplicación al trabajo de bombas, trabajos públicos, etc," 128.

[534] AHAM, Juzgado Eclesiástico de Toluca, 1783, Caja 121, expediente 38, foja 1 anverso.

reason, when Spanish kings undermined the inmunidad eclesiástica, they claimed they were doing so in order to safeguard public security or the common good, as I have shown in the examples of the debtors who fled their creditors, and the bandits that utilized rural hermitages to escape from the secular justice.

3. Inmunidad Eclesiástica: Judicial Procedure and Cases

Since the right of asylum depended both on the type of crime that a convict had committed and the threat these criminals posed to society, the judicial process in these cases entailed the close collaboration of secular and ecclesiastical authorities. This procedure worked in this way:

1) When an ecclesiastical judge received the information that someone had taken refuge inside a church, the first thing he had to do is to verify that the individual who claimed asylum had committed a crime legally protected by the inmunidad eclesiástica.[535] Therefore, the ecclesiastical judge sent the notary of his court to the church in question to certify the crime. However, this early certification was not a final sentence by which the ecclesiastical judge declared the convict enjoyed the right of asylum. Sometimes, ecclesiastical judges skipped this first step, and used the certification to check that there was indeed a criminal sheltered at a certain church.

2) Most times, the corregidor of the city knew that there were criminals sheltered inside a temple, and he had already taken measures such as sending a unit of armed men (depending on the number of criminals who claimed asylum and their dangerousness) to prevent him/them from

[535] This process was common throughout the eighteenth century and became the general rule for ecclesiastical and secular judges to deal with inmmunidad cases as described in the *Novísima Recopilación,* 1775, libro I, título IV, ley VI.

escaping. If the corregidor acted in this way, he had to send a notary to the ecclesiastical court to inform the ecclesiastical judge about his actions.[536]

3) The regular procedure for ecclesiastical judges in Toluca was to inform the provisor in Mexico City when an inmate took refuge in a church, in order to ask him for further instruction. In fact, provisores admonished ecclesiastical judges when they allowed the corregidor to extract the convicts without notifying the Provisorato first. For example, the provisor scolded the ecclesiastical judge of Toluca in 1780, when he resolved to give a license to the local corregidor to extract a soldier named Juan Pedro Quiñones, who had taken refuge in the parish church after having killed somebody. Since this crime was not protected by the inmunidad, as observed in the *Novísima Recopilación* of 1775[537] and previous royal decrees, the ecclesiastical judge had permitted the corregidor to extract him from the temple. However, the provisor was not satisfied with this proceeding, and commanded the ecclesiastical judge of Toluca to never permit the extraction of a convict without reporting to the tribunal of the archbishop.[538]

4) If the ecclesiastical judge or the provisor approved the extraction, the secular judge issued a *caución juratoria*, an authorization that permitted the ecclesiastical justice to arrest the criminal and safeguard him accordingly.[539] At this point, it was unnecessary that the ecclesiastical judge had given judgement on whether the criminal had committed a crime that was protected by the inmunidad or not. In most cases, criminals were arrested in this fourth step to prevent them from escaping while their particular case was under study.

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[536] López Ledesma, "La inmunidad eclesiástica en la Alcaldía Mayor de San Luis Potosí," 257-258.
[537] *Novísima Recopilación*, 1775, libro I, título IX, leyes III, IV.
[538] AHAM, Juzgado Eclesiástico de Toluca, 1780, Caja 118, Expediente 36, foja 1 anverso y reverso: "le prevenimos que en lo sucesivo no vuelva a entregar reo alguno sin dar cuenta primero a este tribunal para que se le ministren las correspondientes órdenes."
[539] *Novísima Recopilación*, 1775, libro I, título IV, ley VI.

5) When the criminal was extracted from the church, always with assistance of a royal official, he was imprisoned in the royal or public prison of Toluca, but remaining protected in the name of the Church (*preso in nomine Ecclesiae*).[540] After the imprisonment of the criminal, the secular judge redacted a summary to inform the ecclesiastical judge about the criminal and the alleged crimes he had committed, so he could rule whether the offender could enjoy the right of asylum or not.[541] The corregidor or secular official also had to go to the ecclesiastical court of the city to swear (before a notary) that he would maintain the convict in his jail, and that he would bring him to the ecclesiastical tribunal as many times as necessary. In addition, corregidores swore that they would only receive the declaration of the criminal without torturing or mutilating his bodily members or endangering his life.[542] In the case the convict did not enjoy the inmunidad, he was handed over to the secular justice and punished accordingly.[543] During this phase, ecclesiastical courts redacted the *sumaria información*, and received the testimonies of witnesses or the parties involved.

6) If the ecclesiastical court determined that the crime committed by the offender was under the protection of the inmunidad eclesiástica, the ecclesiastical judge issued another "caución juratoria," instructing the secular justice to release the criminal from the public prison so he could be returned to the church where he was extracted from. If the secular authorities violated the caución juratoria, they were to be punished with excommunication[544].

[540] Luque Talaván, "La inmunidad del sagrado," 264.
[541] *Novísima Recopilación*, 1775, libro I, título IV, ley IV, punto 7.
[542] AHAM, Juzgado Eclesiástico de Toluca, 1755, Caja 74, Expediente 34, foja 1 anverso.
[543] Ibid, 1775, libro 1, título IV, ley VI, puntos 5-6.
[544] Council of Trent, 1563, Session twenty-five, chapter 20.

7) After this proceeding, the secular judge was requested to either accept or reject the resolution of the ecclesiastical judge.[545] If the complainant, prosecutor, or judge of the secular arm did not agree with this decision of returning the criminal to the church, the secular judges had the right to file a "*recurso de fuerza*" (that worked as an appeal) within ten days before the *Real Audiencia*, a secular tribunal of the king.[546] However, if the secular judge complied with the judgment of the ecclesiastical resolution, he restored the inmate to the Church from which he was extracted.[547]

8) What happened with the convict next depended on the historical period. According to the Third Mexican Council of 1585, criminals could not stay over nine days in the church without the authorization of the bishop, so they could not postpone their judicial proceedings.[548] In addition, the Castilian jurist Vicente Vizcaíno Pérez wrote that once a convict was restored to the church, he was not free of charges. Rather, the ecclesiastical justice consigned him again to the secular arm, so the royal justice could give judgment, through a plenary trial, on this matter. As long as the secular judge determined to imprison the convict, and not punishing him with dishonor, mutilation or corporal punishment, the ecclesiastical judge could then indicate the place of the imprisonment ("*presidio*"). However, if the convict escaped the presidio assigned by the ecclesiastical judge, the secular justice could arrest him and imprisoned him as the sentence

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[545] López Ledesma, "La inmunidad eclesiástica en la Alcaldía Mayor de San Luis Potosí," 257-258.
[546] The recurso de fuerza was a legal resort by which an individual (normally a layman), appealed to the Crown or the secular arm to correct an abuse made by an ecclesiastical tribunal, which had ruled on a case without its jurisdiction. However, in these inmunidad cases, the recurso de fuerza was utilized as an appeal to try invalidating the judgment of an ecclesiastical judge. This concept reinforced the Patronato Regio, since it subordinated the justice of the Church to the monarch as the supreme arbiter and protector of all the inhabitants of the Spanish Indies. Mardagant, "El recurso de fuerza en la época novohispana," 105.
[547] López Ledesma, "La inmunidad eclesiástica en la Alcaldía Mayor de San Luis Potosí," 260.
[548] Concilio III Provincial Mexicano, libro III, título XIX, ley IV: "Mas porque no es justo que los delincuentes establezcan en la iglesia su propia habitación y domicilio, practicando con flojedad las diligencias para salir con seguridad fuera del asilo manda este sínodo que no se les permita estar en la iglesia más de nueve días sin licencia especial del obispo."

dictated.[549] After 1783 and 1787, years by which the Spanish Crown obliterated the inmunidad by mandating that secular judges must extract immediately all convicts sheltered in churches, the royal justice assumed the entire judicial process. In the scenario in which the ecclesiastical judges refused to consign the case of inmunidad to the secular justice, royal ministers were instructed to present a recurso de fuerza in order to invalidate the judgement of the ecclesiastical judge, thus maintaining the prosecution under the exclusive jurisdiction of the royal justice.[550]

After reading this complicated judicial procedure, we can wonder what the benefit of the inmunidad was if at the end of the process the criminal ended up being prosecuted by the secular justice again. The advantages of the inmunidad eclesiástica were three. First, the convict could avoid immediate judicial prosecution and persecution from the secular judges and gain some time to organize their defense and request help from family members or the ecclesiastical justice. Second, when criminals were prosecuted again by the secular judge, they could have their charges reexamined or acquitted. Third, even in cases in which inmates were finally sentenced to a particular punishment, their sentences could be diminished, sometimes evading corporal punishment in exchange of imprisonment under the protection of the Church. In sum, all these

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[549] Vicente Vizcaíno Pérez, *Código y Práctica criminal, arreglado a las leyes de España*)Madrid, 1797), 313: "no por esto se le ha de dejar en libertad absoluta, sino que se hace segunda consignación de él á la Justicia real, para que esta después de oírle sus excepciones en plenario, se le imponga alguna pena, ó le absuelva según los méritos de sus exculpaciones y probanzas, con tal que no sea pena capital ni corporal de mutilación de miembro, ni afrentosa para que de algún modo pague el reo su culpa, y si le sentencia á presidio, se recurre al Juez Eclesiástico para que se la señale en el presidio (1) y el Juez Seglar en la sentencia le consigna á la Iglesia del presidio que está señalada para refugio, expresando en la sentencia, que si la quebranta, sufrirá los años de presidio que en la misma sentencia le señale, cuyo tiempo empieza á correr desde que desampare el sagrado, y se le arreste fuera de él. (1) Breve del Nuncio de 20 de junio de 1748." Cited by López Ledesma, "La inmunidad eclesiástica en la Alcadía Mayor de San Luis Potosí," 260.

[550] Royal decree issued on March 15th, 1787, cited by Sandro Olaza Pallero, "Significado y uso del asilo en sagrado en el derecho canónico indiano," X. Si el juez eclesiástico denegase la consignación del reo, o formase instancia, el juez dará cuenta al tribunal, o jefe respectivo, quien introducirá el recurso de fuerza, de que siempre se harán cargo los fiscales del rey, para cuyo efecto siempre se pasarán los autos a la Audiencia, y ésta los devolverá, finalizado el recurso, de que no podrá escucharse el eclesiástico. XI. Decidida la fuerza procederá el juez conforme al artículo 9; pero no haciéndola, providenciará el tribunal, o jefe el destino del reo, conforme a lo prevenido en el art. 5. XII. Cuando el refugiado sea eclesiástico, se hará la extracción, y carcelamiento por su juez competente, y procederá en la causa con arreglo a justicia, auxiliándosele por el brazo seglar con todo lo que necesite y pida."128-129.

benefits explain why many criminals sought refuge in churches, and why the Crown sought to undermine the inmunidad in order to reinforce the Patronato Regio and dissuading offenders from abusing these privileges.

To exemplify how the judicial procedure worked in practice, I offer the analysis of two significant inmunidad cases, taken place in the city of San José de Toluca in the eighteenth century.

3.1. Thieves at the Convent

On October 5th of 1722, the ecclesiastical judge of San José de Toluca, don Juan Barón de Lara, was informed that the corregidor of the city, the captain don Antonio Barreda, had placed soldiers both at the cemetery and the doors of the convent of San Francisco. The ecclesiastical judge sent the notary of his court to instruct the corregidor to remove his armed forces from the church under the threat of proceeding against him if he did otherwise.[551] The corregidor justified his action of setting soldiers around the convent in order to protect the life of the neighbors of the city, since in the last twenty days there had been ten robberies committed by the thieves who had taken refuge into the convent of San Francisco. The corregidor pointed out that those thieves, with no fear of God, had previously utilized the same convent as shelter in order to escape from his justice. Given these serious circumstances, the corregidor requested permission from the ecclesiastical judge to arrest the convicts and extract them from the church without harming them.[552] On the same day, October 5th, the ecclesiastical judge responded that there was no reason to allow the corregidor to extract the convicts, and that the thieves had to be removed by the ecclesiastical ministers with the collaboration of the secular arm. To do so, the ecclesiastical

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[551] AHAM, Juzgado Eclesiástico de Toluca, 1722, Caja 32, Expediente 7, foja 1 anverso.
[552] Ibid.

judge, don Juan Barón de Lara, requested the corregidor to offer his *auxilio* as necessary, which he did.[553]

These passages exemplify how the procedure in inmunidad eclesiástica cases worked in practice. The corregidor equivocally set armed forces around the church without notifying the ecclesiastical court first, which explains why the ecclesiastical judge felt that and the jurisdiction of the Church was being compromised. The corregidor justified his action by emphasizing the thieves were deliberately leaving the convent at certain moments in order to commit several crimes, which denotes that the custody of the persons who had taken refuge in that church was not strict, as these offenders were free to roam about as they pleased. It is worth noting how the ecclesiastical judge, after being requested permission from the corregidor to extract the criminals from the convent, declined the petition and preferred to send his own minsters. This procedural scrupulosity is a good example of how zealous the ecclesiastical justice was in preserving the immunity of the church, not allowing the secular arm to usurping its functions.[554]

The proceeding continues with the ecclesiastical judge and the corregidor entering the convent together, as a proof of the collaboration between the ecclesiastical and secular arm. Once inside, the *padre guardián* (the local superior of a Franciscan convent or monastery) of the convent, fray Bernardo de Ribera, informed the ecclesiastical judge that he had seen no criminals in the complex. In order to avoid a problem (a *"desgracia"),* the ecclesiastical judge asked the corregidor to remove his soldiers from the building and proceeded along with fray Bernardo to register all parts of the convent, including the church, chapels, roofs, doors, and the sacristy.[555]

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[553] Ibid, foja 2 anverso.
[554] Ibid, foja 2 reverso.
[555] Ibid, foja 2 reverso and foja 3 anverso.

Since they could not find any convict, the ecclesiastical judge gathered all the friars of the convent, and asked them, while they kneeled before him *("hincados y postrados"),* whether they knew anything about the thieves he was looking for or not. One friar named Fernando de Castro said that he saw an unknown man at the chapel, while other friar, fray Juan de Moreina, mentioned that he had encountered two men at the reader's room, whom he thought they could be refugees, but he emphasized he did not know them.[556]

Although the canon law mandated the ecclesiastical justice to supervise the convicts sheltered in churches, we can observe in this passage the absolute lack of control that existed in the convent of San Francisco, in the city of San José de Toluca.[557] The padre guardián, who was to administer the convent, ignored the presence of dangerous thieves in his convent. This situation seems to explain why the corregidor besieged the convent to capture the thieves. Two days after registering the convent of San Francisco, on October 7th, 1722, the corregidor notified the ecclesiastical court that the thieves had returned to the convent, and he requested the ecclesiastical judge to check the place again to arrest the convicts. Unfortunately, the document finishes here, and we do not know what happened next. However, this record shows a couple of elements that need to be remarked.

First, it illustrates the close collaboration between the secular and the ecclesiastical arm in dealing with cases of inmunidad eclesiástica. Although in the first moment the ecclesiastical judge threatened the corregidor for besieging the convent without his permission, once that incident is resolved, the secular and the ecclesiastical authorities worked in perfect harmony. Second, this

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[556] Ibid, anverso.
[557] Ecclesiastical personel were required to watch over convicts to ensure they were behaving properly when on holy ground. See for instance Concilio III Provincial Mexicano1585, libro III, título XIX, ley II and III.

document shows that in the early eighteenth century, the process of secularization was advanced in Toluca, and that an ecclesiastical judge appointed by the archbishop of Mexico could enter a convent of a mendicant order, in this case belonging to the Franciscans, and were capable of registering it completely without any impediment. The act of making the local friar's knee before the ecclesiastical judge when he asked them on the whereabout of the thieves would have been unthinkable one century prior to this case. Finally, this document demonstrates how criminals abused the inmunidad eclesiástica to prevent secular judges, such as the corregidor, from capturing them by entering a holy space.

3.2 The Case of Andrés Salguero

In 1755, the corregidor of Toluca, don Ignacio José de Valverde, sent his ministro the vara to visit the house of the ecclesiastical judge of the city, don Juan del Villar. The ministro the vara informed the ecclesiastical judge that the corregidor requested his authorization to extract a convict from the atrium of the parish church of Toluca. Although don Juan del Villar declined to give his authorization to remove the criminal at first, the ministro the vara insisted, and told the ecclesiastical judge that the corregidor was waiting for him in the church's atrium. The ecclesiastical judge agreed to the petition and went to the parish church himself, where he found the corregidor along with an escribano, his ministro the vara and two priests. The corregidor, don Ignacio José de Valverde, reassured the ecclesiastical judge by emphasizing that he was there just to avoid the loss of lives that could be endangered if the convict escaped.

Once at the church, the ecclesiastical judge interrogated the criminal sheltered there, who introduced himself as Andrés Salguero, Spaniard, and neighbor of the city of Toluca. He confessed that the reason he had taken refuge in the church is because he had attempted to kill an *alcabalero* (a royal tax collector) and his assistant with a blunderbuss, since the alcabalero tried

to collect from him three *reales*. Salguero recognized he entered the church because he knew that the tax collectors would not violate the inmunidad eclesiástica (*"temía no hicieren un absurdo en desdoro de la inmunidad"*). Through this testimony we can appreciate one of the main reasons by which criminals entered churches: to escape from taxes, monetary debts, and the persecution of the royal justice. These causes impeded most times the administration of justice, which explains why the Spanish Crown limited throughout the centuries the crimes that could enjoy the right of asylum. After hearing about the criminal, the ecclesiastical judge asked the corregidor to issue a caución juratoria so the convict could be removed from the church and put in the public jail of Toluca under the custody of the ecclesiastical jurisdiction. However, until the caución was processed, the criminal was left in the parish church. In the meantime, the ecclesiastical judge of Toluca wrote a letter to the provisor of the archbishopric in Mexico to ask him for instructions.[558] Although this case is another good example of the harmonious collaboration between the Corregidor and the ecclesiastical judge of Toluca, the latter makes the mistake of conceding the authorization to extract the prisoner almost immediately, without studying whether the crime of the convict enjoyed the right of asylum or not. This is an error that would be later noted by the provisor.

In the middle of the judicial process, María Guadalupe Quiñones, wife of Andrés Salguero, the convict imprisoned in the public jail of Toluca, appeared before the ecclesiastical judge of Toluca, and declared that one month ago (that should be in January 1755), his husband had a confrontation ("*un disgusto*"), with the *alcabalero* (tax-collector) of the city, don Juan de Casaonda, on three reales that Andrés Salguero owed to the royal treasury.[559] María Guadalupe

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[558] AHAM, Juzgado Eclesiástico de Toluca, 1755, Caja 74, Expediente 34, foja 1 anverso.
[559] Ibid, foja 3 anverso.

said that one night, Casaonda, in the company of eighteen men, when to her house to arrest her husband Andrés. Upon seeing the tax collectors, Andrés Salguero left his domicile and run away from them through the streets of Toluca. The taxman and his companions persecuted Salguero and allegedly shot him. In order to escape, Salguero shot them back (although the wife stressed he shot at the air and not at them) and escaped. After losing his target, Casaonda came back to the house of María Guadalupe and dragged her out to imprison her in the "Casa de las Espinosas," a place to punish "public women" and other female criminals.[560]According to her testimony, on their way to prison, María Guadalupe skulked away from their captors and entered the cemetery of the convent of San Francisco. However, she claimed that the alcaide of the public jail, Antonio de Rojas, that was part of the entourage of Casonda, dragged her out from the cemetery, which she noted that did not imply a violation of the inmunidad eclesiástica. Although María Guadalupe was imprisoned ("*puesta en depósito*") in the Casa de las Espinosas, she denounced the incident at the ecclesiastical court of Toluca once she was released, with the purpose of requesting the ecclesiastical judge to restitute her husband Andrés to the parish church so his enemies could not persecute him.[561]

The ecclesiastical judge, after hearing the complaint of María Guadalupe, wrote the provisor at the episcopal court of Mexico City, informing him about the case. On March 5th, 1755, the provisor, don Francisco Gómez de Cervantes, replied to the letter of the ecclesiastical judge of Toluca, reprobating how he was handling the proceeding. The provisor first noted that since the ecclesiastical judge never verified whether the crime of Andrés Salguero was exempted from the inmunidad eclesiástica or not, he should have never extracted him from the church. The

[560] Ibid, fojas 3 reverso and 4 anverso.
[561] AHAM, Juzgado Eclesiástico de Toluca, 1755, Caja 74, Expediente 34, foja 5 reverso.

provisor emphasized that the justification of the corregidor, that wanted to remove Salguero from the church in order to guarantee public safety, needed more evidence, and not just his word. In addition, the provisor stressed that the corregidor had behaved irreverently by entering first into the parish church, where he waited for the ecclesiastical judge to come. The provisor scolded the ecclesiastical judge of Toluca by writing that "in Toluca the secular judges are not afraid of the (ecclesiastical) admonitions, or that the ecclesiastical judge is not aware of his obligation of defending the inmunidad of the Church."[562] This fragment remarks the zeal of the clergy in defending the ecclesiastical jurisdiction, especially in a historical period in which the Bourbon dynasty is slowly restricting the right of asylum.

Finally, the provisor instructed that Andrés Salguero was to be restituted to the church again, and ordered the ecclesiastical of Toluca to interrogate the alcaide of the public jail of the city, Antonio de Rojas, for having allegedly violated the inmunidad eclesiástica when he dragged out María Guadalupe from the cemetery, as her denouncement affirmed. The ecclesiastical judge of Toluca immediately followed the instructions from the provisor, returned Andrés Salguero to the parish church where he was, and summoned the alcaide of the public jail to interrogate him. The alcaide, Antonio de Rojas, after appearing at the ecclesiastical court, manifested that María Guadalupe lied when she affirmed that she had been removed from the cemetery. In his version, Antonio de Rojas declared that María Guadalupe never entered the cemetery because he prevented her from doing so, and that it is false that he violated the inmunidad eclesiástica.[563] The document finishes with this last declaration, which could mean that the case was resolved, or that the concluding pages are lost. Even if Andrés Salguero was finally restituted to the church, the canons

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[562] Ibid, foja 7 anverso: "En Toluca parece que los jueces seculares no temen las censuras, o que aquel juez eclesiástico no se conceptúa de la estrechísima obligación que tiene de defender la inmunidad."
[563] AHAM, Juzgado Eclesiástico de Toluca, 1755, Caja 74, Expediente 34, foja 9 reverso.

of the Third Mexican Council mandated that criminals could not stay for over nine days in the church where they had taken refuge, which could imply that Andrés ended up being delivered to the secular justice to be prosecuted and punished accordingly.[564]

4. Jurisdictional Conflict: Secular and Ecclesiastical Judges

Colonial law mandated ecclesiastical and secular judges to collaborate, to preserve institutional order and social harmony. However, the defense of the immunity and churches, and the reduction of ecclesiastical privileges throughout the eighteenth-century stimulated conflict between the spiritual and temporal authorities. One of the key tactics used by ecclesiastical judges to make secular authorities respect the ecclesiastical jurisdiction was excommunication or threats of excommunication. The Third Mexican Council and the Council of Trent in the late sixteenth century allowed episcopal officials to utilize this method to punish all those who usurped or challenged their authority.[565] In Toluca, ecclesiastical judges threatened to excommunicate laypeople who did not show up at court, alcaides of the public jail who refused to safeguard the prisoners of the Church, and even high secular officials such as corregidores, who dared to violate the inmunidad eclesiástica.

However, since excommunicating a royal official appointed by the king caused social scandal and disrupted the harmony between the secular and royal arms, the Spanish Crown encouraged the ecclesiastical authorities to be moderate when applying these punishments.[566] To

[564] Concilio III Provincial Mexicano, 1585, libro III, título XIX, ley IV.
[565] Concilio III Provincial Mexicano, 1585, libro I, título VIII, and Council of Trent, 1563, Session twenty-five, chapter 20.
[566] A royal decree of August 27th, 1560, commands: "por ende rogamos y encargamos a los dichos prelados y sus vicarios y oficiales, y a cada uno de ellos; según dicho es que de aquí adelante no descomulguen en los casos que tuvieren jurisdicción por casos y cosas livianas, ni echen penas pecuniarias a los legos, porque no se dará lugar a que haga lo contrario, por los inconvenientes que de ello resultan." Cited by Solórzano y Pereyra, *Política Indiana*, 549.

illustrate this point, I am going to examine various instances of conflicts between ecclesiastical and royal authorities, to see how they developed, and how the colonial system resolved them.

4.1. Massive Excommunication of Royal Officials in Calimaya

In 1742, the *comisario* (lesser official of the colonial police) Pedro Escamilla was traversing the road that communicated Calimaya with the town of San Lucas, trying to arrest a thief named Lorenzo Robles. Just before arriving to San Lucas, the thief Robles tried to kill his persecutor and shot him. However, Escamilla avoided the bullet, which injured one of the comisario's companions, his *cuadrillero* (assistant) Juan Gil.[567] Once in San Lucas, the comisario Pedro Escamilla arrested Lorenzo Robles before he took refuge into the local church. The Indians of the town, hearing the shouts of the prisoner, came to the rescue, and violently snatched Lorenzo Robles away from Pedro's grip, and took him to the local parish church. After losing his prisoner, the comisario ran away when the Indians started throwing stones at him. However, Pedro Escamilla did not give up. He came back to Calimaya and requested the help of the teniente de *alguacil mayor* (constable lieutenant, a secular official), don Sebastián de los Reyes.[568]

The teniente de alguacil mayor arrived in the town of San Lucas at night, with three armed men, and went to a local house to visit Juan Gil, the cuadrillero who had been shot by the thief. In the meantime, the parish priest of Tenango del Valle and ecclesiastical judge of Calimaya, the doctor don Juan de Inostrosa[569] arrived at the town, and extracted the thief Robles from the church

[567] A cuadrillero or quadrillero, was an armed man who rode along with the comisario or judge in the pursuit of criminals. Gilbreath Montgomery, "The Evolution of Rural Justice in New Spain," 125.
[568] AHAM, Juzgado Eclesiástico de Toluca, 1742, Caja 57, Expediente 20, foja 1 anverso. The teniente was an assistant, in this case, to the alguacil mayor. An alguacil mayor was the chief constable at the audiencia, or secular court. However, at the municipal setting such as this one, an alguacil mayor worked as a sheriff, in charge of persecuting and arresting criminals, enforcing morality and collecting taxes. For a study of alguaciles mayores see Gustavo Rafael Alfaro Ramírez, "¿Quién encarceló el alguacil mayor de Puebla?: La vida, los negocios y el poder de don Pedro de Mendoza y Escalante, 1695–1740," *Estudios de Historia Novohispana*. 17 (1997): 31-62.
[569] The doctor don Juan de Inostrosa was also involved in an important case in which he was denounced by the Indian officials of the town of San Francisco, that is analyzed in the next chapter.

of San Lucas, without notifying the teniente de alguacil. In addition, the ecclesiastical judge of Calimaya excommunicated the comisario Pedro Escamilla; the teniente de alguacil mayor, don Sebastián de los Reyes; the cuadrillero, Juan Gil; and another *ministro de vara* named José Asensio, for having violated the inmunidad eclesiástica. According to the document, the doctor Inostrosa hanged a board (a "*tablilla*") with the names of the secular officials in the local church so everybody could see that they had been excommunicated.[570] Here we observe a confrontation between the secular and the ecclesiastical justice. In particular, the ecclesiastical judge interpreted that the secular judges exceeded their jurisdiction by trying to extract the thief Robles from a church without requesting the authorization of an ecclesiastical judge. Since the secular justice did not proceed in this way, they were excommunicated. However, the ecclesiastical judge did also resort to excommunication quickly, without notifying neither the provisor nor the representatives of the justice of the king first.

After this incident, the four excommunicated men travelled to Mexico City and submitted a complaint to the Provisorato of the archbishop, informing about the happenings. The provisor of the episcopal court, don Francisco Javier Gómez de Cervantes, absolved them, but determined to imprison them in the episcopal jail until the issue was resolved. However, the four men complained again, protesting that their children and wives were being neglected, as they could not work from prison. The convicts also emphasized that when they persecuted the thief Lorenzo Robles, they never violated the inmunidad eclesiástica, since they did not enter the church or set guards around it ("*poner guardias*").[571] Considering these aspects, the four men asked the provisor to invalidate the resolution of the ecclesiastical judge of Tenango del Valle, and to instruct him to

[570] A ministro the vara is an assistant to the royal justice, normally at the service of an alcalde mayor or a corregidor. AHAM, Juzgado Eclesiástico de Toluca, 1742, Caja 57, Expediente 20, foja 1 reverso.
[571] AHAM, Juzgado Eclesiástico de Toluca, 1742, Caja 57, Expediente 20, foja 2 anverso.

remove the board ("*tablilla*") that he had placed in Calimaya with their names as public excommunicated persons. The provisor of the episcopal court in Mexico City, don Francisco Javier Gómez de Cervantes, ruled in favor of the imprisoned men, and instructed the ecclesiastical judge of San José de Toluca to inform his counterpart, the doctor Juan de Inostrosa, that he must abandon any legal proceedings on this issue. Finally, the ecclesiastical judge of Tenango and Calimaya was ordered to remove the boards and signs ("*rótulos y tablillas*") of the excommunicated men.[572]

This document shows how secular justices could resort to the Provisorato in order to seek redress for some problems they had with local ecclesiastical judges, especially when excommunication was utilized to defend the inmunidad eclesiástica. Here, the Provisorato agreed with the four excommunicated men, and considered that the ecclesiastical judge of Tenango had to be removed from the case, most likely (although they never specify it) because they did not approve how their minister acted. The reason for this disapproval could be that the ecclesiastical judge of Tenango never informed the Provisorato before formally excommunicating the secular ministers, or because he did not collaborate with the secular arm, as expected in these types of cases.

4.2. The Excommunicated Corregidor

Although the Provisorato could resolve conflicts between secular and ecclesiastical authorities, some royal officials preferred to file their complaints to other secular courts, such as the Royal Audiencia in Mexico City. This procedure was observed when a royal official tried to invalidate the sentence of the archbishop by presenting a recurso de fuerza. That was the case of don Juan de Terán, corregidor of San José de Toluca, who in 1744 presented a recurso de fuerza

[572] Ibid.

at the Real Audiencia of Mexico City against the ecclesiastical judge of Toluca for having posted him on a board as a public excommunicated person ("*fijado como público excomulgado*"). According to the corregidor, the archbishop of Mexico, doctor don Manuel Rubio y Salinas, had excommunicated him after receiving some information from the ecclesiastical judge, that accused him of having violated the ecclesiastical jurisdiction. In order to defend his honor, the corregidor submitted a summary to the royal justice and petitioned to have his excommunication removed.[573]

The corregidor informed the Real Audiencia that he was a member of the Tercera Orden de Penitencia de San Francisco with the rank of "*ministro hermano mayor.*"[574] According to the corregidor, his problems with the ecclesiastical judge of San José de Toluca originated over a burial dispute when he denied the right of another member of the order, don Manuel Santín, to be buried in the chapel of the *Tercera Orden* in Toluca. According to the corregidor, he mandated to bury the corpse of don Manuel Santín in a cemetery located at the outskirts of San José de Toluca because the deceased man had died of an infectious illness, and local physicians were afraid that he could infect other people living in the city.[575]

This document does not show the procedure carried out by the ecclesiastical judge of Toluca. The only thing that the corregidor reports is that he had been excommunicated by the archbishop at the request of the ecclesiastical judge, but he never explains why. Despite not having neither the viewpoint of the ecclesiastical judge, nor the explicit reasons by which he asked the archbishop to excommunicate the corregidor, we can reconstruct what could have happened by examining the canon law. According to the Recopilación de Castilla, as cited by Pedro Murillo

[573] AGNM, Bienes Nacionales, 1778, vol. 1287, Expediente 4, foja 395 anverso.
[574] The Tercera Orden de la Penitencia was a religious Franciscan order for laymen.
[575] AGNM, Bienes Nacionales, 1778, volumen 1287, expediente 4, foja 399 anverso.

Velarde in his *Curso de derecho canónico hispano e indiano*, only an ecclesiastical judge had the faculty to rule over a burial dispute. Murillo Velarde wrote that in the instance of determining whether a person had the right to be buried in a certain church, only the ecclesiastical judge could hear and give judgment on these cases.[576] Murillo Velarde noted that secular judges could see these cases if they only revolved around non-spiritual factors, such as the payment due for a burial.[577] According to the *Siete Partidas*, another instance in which a secular judge or layperson could intervene in a case of burial was when there were no members of the clergy or parish priests available, which is not the case in Toluca.[578] In fact, both the Third and Fourth Mexican Councils issued explicit norms, that required to notify the local bishop or the *vicario general* of the diocese when one body was transferred from one location to another, a procedure which the corregidor seems to have disregarded.[579]

For all these reasons, it is likely to interpret that this is the root of the problem, and the cause that explains why the corregidor of Toluca was excommunicated. The corregidor, according to the document, was the one who denied don Pedro Santín, father of the deceased man, the right to bury his son in the chapel of his choice. In addition, the corregidor went as far as determining to bury the late don Manuel Santín in the cemetery outside Toluca, which was a decision that only an ecclesiastical judge could take. Since the actions of the corregidor clearly infringed the above-

[576] Murillo Velarde, *Curso de derecho canónico hispano e Indiano*, libro II, capítulo, título I, capítulo 8.
[577] Ibid: "Si alguna cuestión de derecho versa acerca de la sepultura, o si se intentare una acción de un hecho (como por ejemplo si a Fulano le corresponde el derecho de sepultura en cierta iglesia), en tales casos sólo el juez eclesiástico conoce y decide. Sin embargo, si la cuestión versa sólo acerca de un mero hecho (si Mengano se comprometió a pagar los gastos del derecho de Fulano, pero al final no lo hizo), entonces conoce el juez secular, porque conoce sólo del hecho, pero no del derecho espiritual, que es el único que le está prohibido."
[578] López, *Las Siete Partidas*, partida 1, título 13, ley 3.
[579] Concilio III Provincial Mexicano, 1585, libro III, título XIII, ley 6: "No se puede hacer traslación de los cuerpos de los difuntos de una iglesia a otra sin licencia expresa por escrito del obispo." And Fourth Mexican Council, 1771, libro III, título X, ley VII: "Si se ha sepultado el cadáver en la iglesia, en virtud de un derecho de propiedad, de ningún modo se acceda a que sea trasladado a otra sin expresa licencia del obispo, o de su oficial, o del visitador general."

mentioned laws, the ecclesiastical judge of Toluca could have interpreted that this measure taken from a secular judge implied a usurpation or a violation of the ecclesiastical jurisdiction. Therefore, the ecclesiastical judge could have written the Provisorato, informing about the issue, and having the corregidor effectively excommunicated. Although this reconstruction could explain the excommunication, the document shows that the corregidor presented a recurso de fuerza at the Real Audiencia of Mexico City in order to appeal to the royal justice, and to have the resolution of the ecclesiastical justice annulled. This petition worked in favor of the corregidor, since the king himself instructed the archbishop of Mexico, don Manuel Rubio y Salinas, to absolve the corregidor of Toluca, don Juan de Terán, which he did.

In sum, in this document, there is another example of an excommunication being actively appealed by a secular authority. In a case analyzed in previous pages, a comisario, a teniente de alguacil, a cuadrillero and a ministro the vara, also appealed, in this case to the Provisorato, to have their excommunication removed. These two documents show that in the eighteenth century, although excommunications (or threats of excommunication) sometimes happened when there was a conflict between ministers of the secular and the ecclesiastical arms, both the Provisorato and the Real Audiencia adopted measures to absolve the excommunicated persons in order to maintain harmony.

4.3. Papal Bulls versus Royal Decrees

Excommunication was not the only reason why secular and ecclesiastical authorities clashed. The vast amount of colonial and canon law sometimes caused legal conflicts and disputes, particularly when a very recent royal decree eliminated old ecclesiastical privileges such as the right of asylum.

In 1765, the corregidor of San José de Toluca visited the house of the ecclesiastical judge late at night, and requested him the authorization to extract a thief named José Montero, who had taken refuge at the local parish church. The ecclesiastical judge refused to concede such a license because he had to study first the bull of the pope Gregory XIV to verify whether the crime of the wanted convict was protected by the inmunidad eclesiástica or not. The next day, on January 30th, 1765, the corregidor went to see the ecclesiastical judge again, and showed him a new royal decree issued on April 5th, 1764.[580] This decree permitted secular authorities to extract dangerous criminals from the churches, even if ecclesiastical judges did not give them the license to do it. In this way, secular judges could prevent criminals from escaping or fleeing the churches, as happened in previous centuries.[581] The ecclesiastical judge replied that the new law was in line with the bulls of Gregory XIV and San Benedict XIII, and recommended the corregidor to write the provisor in Mexico City so he could clarify this disagreement. The ecclesiastical judge is referring in this passage to the bulls of Gregory XIV and Benedict XIII: "*Cum alias*" and "*Ex quo divina*" respectively. These bulls excluded assassins, persons who had killed somebody on holy ground, highwaymen, bandits, public thieves, falsifiers of apostolic letters, and others from the immunidad eclesiástica.[582] However, since the ecclesiastical judge was concerned that the

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[580] The corregidor refers to the royal decree issued on April 5th, 1764 which restricts certain criminals from enjoying the right of the inmunidad. These restrictions were incorporated in the Novísima Recopilación of 1775, and these were: highwaymen, road robbers, and individuals convicted of high treason (Lèse-majesté). See *Novísima Recopilación*, 1755, libro I, título IV, ley IV.

[581] This decree is cited by Sandro Olaza Pallero, "Significado y uso del asilo en sagrado en el derecho canónico indiano," 125: "Que los virreyes, presidentes, etc., arzobispos, y obispos, observen y hagan observar en la extracción de los reos de sagrado, lo prevenido por real cédula de 18 de octubre de 1750, con la declaración, que sucediendo cometerse delitos enormes exceptuados por notoriedad de la inmunidad, pueden y deben las justicias seculares extraerlos del sagrado, a que se refugien, únicamente para asegurarlos; que para esta extracción se debe pedir licencia al eclesiástico, sin precisión de manifestarle la sumaria, ni otra formalidad, que la caución juratoria de no causar extorsión al delincuente, hasta que por el mismo eclesiástico se declare, si debe o no gozar del sagrado; que si el juez eclesiástico se negase a dar la licencia, las justicias seculares deben proceder a la extracción, asegurándolos en las reales cárceles, sin molestarlos hasta la declaratoria de su inmunidad."

[582] *Novísima Recopilación*, 1755, libro I, título IV, ley IV, pie de página 5: "[Quedan exceptuados aquellos] que con ánimo deliberado *y* premeditado osaran matar á su próximo , ó hacer dentro de Sagrado muertes ó mutilación de miembros ; y también los salteadores de caminos y calles, ladrones públicos y famosos, taladores de campos y

corregidor could cause a scandal, he himself wrote the provisor and reported him the confrontation. The provisor don José Becerra instructed the ecclesiastical judge of San José de Toluca to give a license to the corregidor so he could extract the thieves, since their crimes were serious and were exempted from the inmunidad eclesiástica, as observed by the decree issued on April 5th, 1764. Since the case ends here, we can interpret that the order was properly carried out and that the convicts were delivered to the royal justice.

As seen above, one source of conflict had to do with the various royal decrees that along the eighteenth century, the Bourbon kings issued to restrict the inmunidad eclesiástica. Here, the corregidor and the ecclesiastical judge utilized royal decrees and papal bulls to determine the way they should proceed. Whereas the ecclesiastical judge answered that the royal decrees did not cancel the papal bulls, the corregidores and alcaldes mayores normally assumed the contrary, and they brandished the most recent cédulas to ask the ecclesiastical judges to extract the convicts from churches. However, the ecclesiastical tribunals and the Provisorato not only protested, but also sometimes determined to not permit the extraction of the refugees even in cases that were exempted to the inmunidad according to the latest cédulas, but only as long as the crimes were not particularly scandalous.

For example, in 1783, the ecclesiastical judge of Zinacantepec informed the Provisorato about a man named don Francisco Barrientos, who had caused a flesh wound to a woman called María Bernal. Although the wound was not serious ("*la herida no fue de consideración*") the gravity of the crime rested on the fact that the man had used a knife ("*navaja*") to cause the injury.

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heredades, alevosos, herejes , traidores y falsificadores de letras Apostólicas; los Superiores y empleados en Montes de piedad, ú otros fondos ó Bancos públicos, que cometieren hurto ó falsedad los monederos falsos, cercenadores de moneda de oro y plata; los fingidos ministros de Justicia que entraren á robar las casas con muerte o mutilación de miembro."

After committing the crime, don Francisco Barrientos entered the local church to gain "inmunidad." However, the alcalde mayor (a royal official of the secular justice with similar functions to a corregidor) of Zinacantepec intended to extract him based on the latest royal decree issued in 1783, which stated that all convicts of inmunidades had to be removed from churches.[583] The ecclesiastical judge of Zincantepec told the alcalde mayor that although he was aware of that royal decree, he asked him to wait until informing the provisor so he could determine how to act in this case. The ecclesiastical judge also emphasized in his text that many convicts in Mexico City that had taken refuge in churches before the publication of this decree had remained in the temples after it was published. In addition, he wrote that since the convict had taken refuge in an indigenous parish, it was reason of great scandal for the alcalde mayor to enter the church and remove the inmate, since "Indians do not understand about decrees, and they think that they royal judge is being irreverent."[584]

For these reasons, the ecclesiastical judge argued that it would be very inconvenient for the Provisorato to permit the extraction of all convicts from the churches, especially in Indian parishes for all kinds of crimes, even if they are not serious. The ecclesiastical judge of Zinacantepec received an answer from both the promotor fiscal and the provisor of the Provisorato. The former wrote that in the cases of those convicts who had taken refuge in a church and there still not a ruling over them, they must not be extracted from the holy ground unless there is evidence that they had committed an atrocious crime that was not protected by the inmunidad. Therefore, the promotor fiscal commanded the ecclesiastical judge to impede the alcaide mayor from removing any inmate from churches until the case was studied and the Provisorato had given

[583] AHAM, Juzgado Eclesiástico de Toluca, 1783, Caja 121, expediente 38, foja 1 anverso.
[584] Ibid: "en una parroquia de indios causa gravísimo escándalo sacar a un reo de la iglesia, porque ellos no entienden de reales cédulas, y lo atribuyen a poca religiosidad en el juez real."

judgment on that matter.[585] The provisor on his part, commanded the ecclesiastical judge to stick to the instructions given by the promotor fiscal and not allow, under any circumstance, the extraction of don Francisco Barrientos or any other criminals who had not committed one of the notoriously exempted crimes.[586]

5. Conclusion

This chapter has shown how the ecclesiastical justice defended the right of asylum and the immunity of the Church in the eighteenth century. From the early Middle Ages to the Council of Trent of 1563, the Catholic Church maintained a legal tradition that ensured criminals the right of asylum in churches under certain conditions. The Spanish Crown slowly restricted these conditions in the Indies to guarantee public safety. However, ecclesiastical judges, as instructed by the Provisorato in Mexico City, were zealous in protecting the immunity of the Church despite the gradual loss of privileges well in the second half of the eighteenth century.

In San José de Toluca, ecclesiastical judges threatened to excommunicate laypeople who did not showed up at court, alcaides of the public jail who refused to safeguard the prisoners of the Church, and even high secular officials such as corregidores who dared to violate the inmunidad eclesiástica. However, since excommunicating a royal official appointed by the king caused social scandal and disrupted the harmony between the secular and royal arms, the Spanish Crown encouraged the ecclesiastical authorities to be moderate when applying these punishments. As our records show, when an ecclesiastical judge went as far as excommunicating secular judges, they immediately resorted to the Provisorato to ask the archbishop or the provisor to absolve them. While the frequent support of the Crown to the royal officials can be interpreted as detrimental to

[585] Ibid, foja 2 anverso.
[586] Ibid, foja 2 anverso-reverso.

the ecclesiastical justice, threats of excommunication sufficed to make laypeople or secular authorities to comply with the instructions of ecclesiastical judges.

Although the collaboration between secular and ecclesiastical authorities was the norm, sometimes to the point that provisores complained that the local ecclesiastical judge was being too docile to their secular counterparts, there were cases of direct conflict between the corregidor and the ecclesiastical judge. In addition, during the eighteenth century, the increasing amount of cédulas that restricted the right of asylum seems to have caused trouble and confusion between the temporal and the spiritual arms. For example, in some documents the ecclesiastical judge and the corregidor of Toluca had arguments over the validity of papal bulls and royal decrees to determine whether a convict was covered by the inmunidad eclesiástica or not. Despite these issues, harmony and collaboration between ecclesiastical and secular authorities was the rule, and the conflicts analyzed in this chapter represent some exceptions.

The next chapter moves beyond conflicts between jurisdiction between the secular and the spiritual arm to focus on how the Church administered its own law internally, in this case, prosecuting and punishing members of the clergy. As we will see, cases against ecclesiastics allowed not only the Church to disciple its members but also to resolve potential conflicts with laypeople and indigenous communities.

Chapter 6. Cases Against Ecclesiastics

1. Introduction

Ecclesiastical courts in the Americas enforced proper Christian customs *("arregladas costumbres cristianas")* and religious orthodoxy over the colonial population. In order to do so, they prosecuted laypeople who were denounced for having committed crimes such as adultery, fornication, blasphemy, and idolatry. However, since good customs and orthodoxy depended on the teachings of the clergy and on the exemplarity of their lives, ecclesiastical courts also prosecuted priests who abused their parishioners or broke the canon law. Following the legal maxim "*rei sequitur,*" non-serious judicial cases in which an ecclesiastic was the defendant, had to be settled through a tribunal of the Church. In the archdiocese of Mexico, the Provisorato and the ecclesiastical court of San José de Toluca at a local level dealt with these types of cases. Although there are cases in which a layperson, a Spaniard or a mestizo denounced a parish priest for reasons connected to monetary debts or personal offenses, most documents revolve around accusations presented by officials of indigenous towns against their *curas*.

Disputes between parish priests and indigenous peoples have received a great deal of attention by recent scholarship, although each author focuses on a particular theme. For instance, William Taylor, María Teresa Huerta, and Patricia Palacios understand these conflicts as part of minor rebellions against colonial authorities. Taylor argues that these types of rebellions were spontaneous, local, unorganized, and focused on a particular person who was the origin of the distress they suffered, such as a royal official or a member of the clergy.[587] These uprisings (known in colonial records as *"tumultos"*) were not necessarily a well-articulated rebellion

[587] Taylor, *Drinking, Homicide, and Rebellion*, 118.

against the colonial apparatus. Rather, these movements expressed popular anger, and demanded a redress when justice failed to provide a quick solution. In their work on indigenous rebellions in the colonial period, María Teresa Huerta and Patricia Palacios note that although economic issues such as compulsory forced labor stimulated these minor rebellions, it was not a sufficient cause to trigger a large revolt. In particular, many of these "tumultos" were localized, and revolved around a specific grievance that was not shared by other indigenous communities, or lacked a charismatic leader that led the protest.[588]

William Taylor argues that conflicts between parish priests and indigenous parishioners skyrocketed in the second half of the eighteenth century in the archdiocese of Mexico for two reasons.[589] First, the Bourbon Reforms allowed royal ecclesiastical officials to extract clerical fees ("*aranceles*") from Indian communities through monetary payment, which increased local conflicts. Second, Taylor contends a new series of royal and episcopal decrees issues throughout the eighteenth century, that punished ecclesiastics for abusing their parishioners, reinforced a sense of "Indian rights" among indigenous peoples, who did not longer tolerate mistreatment from their curas.[590]

In many scenarios, accusations against priests became a form by which indigenous peoples defended their traditions and ways of life against the aggression of colonial church officials. [591] The defense of local devotions was a major source of conflict. In this regard, authors such as

[588] María Teresa Huerta and Patricia Palacios, *Rebeliones indígenas de la época colonial*.
[589] Taylor, *Magistrates of the Sacred*, 352-362.
[590] Ibid, 352. See also Cuarto Concilio Mexicano, libro III, título III, ley 24: "Los indios no pueden ser instruidos en la religión católica si primero no se les enseña a que sepan ser hombres y vivir como tales, porque la vida espiritual presupone la vida racional y política y así los ministros que cuidan de su conversión deben persuadirlos, no con imperio violento y severo, sino con amor paterno el que dejen sus fieras y agrestes costumbres y vivan como hombres congregados en pueblos…" and libro II, título III, ley 20.
[591] Taylor, *Drinking, Homicide, and Rebellion,* 130-131.

David Tavárez, Gerardo Lara Cisneros, and Yanna Yannakakis argue that the defense of traditional religious ceremonies, endangered by extirpator of idolatries, triggered acts of resistance.[592] Tavárez poses that the adoption of a more intensive policy to extirpate idolatries by the bishops and the ecclesiastical judges provoked a local conflict between the ecclesiastical authorities and the indigenous peoples that sought to defend their traditional ceremonies.[593]

In agreement with the most recent historiography, the documents produced by the ecclesiastical court of San José de Toluca also show that indigenous peoples mostly accused their curas of verbal and physical mistreatment, requiring personal labor, and charging excessive clerical fees. However, our records do not show, at least not so clearly, that the defense of indigenous devotions was the direct cause of conflict between parish priests and indigenous communities. Considering this background, this chapter examines conflicts between parish priests and parishioners to understand what role ecclesiastical courts played at resolving acts of indigenous resistance against colonial authorities. In addition, this chapter studies the how cases against ecclesiastics affected domestic politics in the indigenous cabildo.

2. Judicial Procedure

The judicial procedure in cases against ecclesiastics followed this pattern:

1) Denunciations were submitted at the complainant's closest local ecclesiastical court, such as that of Tenango del Valle, Metepec, or Calimaya. However, in other cases the plaintiffs preferred to protest at the head ecclesiastical court of the region, which was that of San José de Toluca, or at the Provisorato in Mexico City.[594] Although Spaniards and other ethnicities could

[592] See Yannakakis, Art of Being in Between, 14; and Lara Cisneros, "Superstitición e idolatría,"
[593] Tavárez, "Autonomía Local y Resistencia Colectiva," and Tavárez, *The Invisible War*.
[594] See for example, AHAM, Juzgado Eclesiástico de Toluca, 1737, Caja 52, Expediente 26.

submit accusations against parish priests at the tribunals of the archdiocese of Mexico, given the demographics of the Toluca Valley, most lawsuits were filed by the representatives of indigenous communities. Complainants comprised current and previous cabildo officials such as governors, alcaldes, fiscales, and also elders of the town, as their testimony was considered reliable by colonial courts.[595]

2) Once a denunciation had been submitted, ecclesiastical authorities tended to assume that the accusation of the indigenous peoples was true, either entirely or at least partially, even in those situations in which the Indians only submitted their testimony as evidence. Some documents explain that his way of doing things was a way for the Provisorato and local ecclesiastical courts to both speed up the process, and prevent Indians from spending money in further litigation. Ecclesiastical courts initially ordered their priest not to bother their indigenous parishioners, and to rectify their behavior.[596] For example, in case the cura had mistreated his parishioners, he was ordered to abandon such practices under the penalty of proceeding against him.

3) However, when a cura or any other of the involved parties protested the ecclesiastical judge's initial resolution, the religious tribunals opened an investigation and recorded a *sumaria*. For example, if a priest denied having mistreated his parishioners, the ecclesiastical judge of San José de Toluca interrogated the accused priest or local witnesses to certify the veracity of the accusation. Sometimes, when the accusation was serious and involved violence, the ecclesiastical

[595] We can find many examples of the usage of elders in litigation processes. But to see major study on this issue check Margarita R. Ochoa, "Culture in Possessing: Land and Legal Practices among the Natives of Eighteenth-Century Mexico City," in *City Indians in Spain's American Empire: Urban Indigenous Society in Colonial Mesoamerica and Andean South America*, 1530-1810, edited by Dana Velasco Murillo and Mark Lentz (Sussex Academy Press, 2012), 199-220.
[596] AGNM, GD14 Bienes Nacionales, 1739, volumen. 905, expediente 2, foja 2 reverso and foja 3 reverso.

judge of Toluca preferred to inform the Provisorato before conducting an investigation, and then waited for further instructions.

When those complaining had first resorted to the Provisorato, it was the provisor who contacted the ecclesiastical judge of Toluca with instructions.[597] In those cases in which the provisor commissioned an investigation, the ecclesiastical judge had to constantly inform the Provisorato about his findings. If the ecclesiastical judge of Toluca rendered a judgement on a particular issue, the plaintiffs could appeal his sentence to the Provisorato.[598]

4) Sometimes confronted parties privately reconciliated and filed withdrawals. In these situations, the plaintiff normally withdrew from the case ("*se aparta*"), and filed an *apartamiento* (withdrawal), which had to be processed by an ecclesiastical court. Brian Owensby notes that "if parties agreed to some outcome other than conviction and punishment, the apartamiento signaled the accusing party's surrender of any right to further redress."[599] Parties withdrew from cases for lack of funds, a private settlement, for lack of witnesses or for having forgiven their accusers or offenders, among others.[600] However, in the cases in which a peaceful resolution was not possible, the justice of the Church normally removed the parish priest that caused trouble and appointed a new one. The same thing happened when it was an indigenous official (especially the fiscal), the responsible for distress in an indigenous town.

5) In most cases, ecclesiastical judges scrupulously followed this procedure. However, there is evidence of an ecclesiastical judge in Tenango del Valle who abused his authority to

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[597] AHAM, Juzgado Eclesiástico de Toluca, 1747, caja 63, expediente 24.
[598] AHAM, Juzgado Eclesiástico de Toluca, 1742, caja 57, expediente 36.
[599] Owensby, *Empire of Law*, 201.
[600] See an example in AGNM, GD37 Criminal, 1763. volumen 695, expediente 18, and Owensby, *Empire of Law*, chapter 6.

organize a confrontation in his house between him and his accusers, who were brought by the secular authorities. Although I cover this case in the next section of this chapter, it should be stressed that this form of intimidation was not permitted by the ecclesiastical justice, which mandated all the legal proceedings to be carried out at an ecclesiastical court, following the procedure, and under the supervision of the Provisorato.[601]

As the judicial procedure could vary depending on the causes of the conflict, the next section studies various cases to demonstrate how the ecclesiastical justice settled denunciations against parish priests in practice.

3. Causes of Conflict Between Parish Priest and Parishioners in the Eighteenth Century

3.1. Demands of Personal Labor and Violation of "*La Costumbre*"

One of the most important causes of disputes between parish priests and indigenous communities revolved around demands of personal labor and violations of local custom. According to the *Recopilación de las Leyes de las Indias*, the regular clergy could not require service from Indians except in specific situations, and always paying for their services.[602] In the seventeenth century, various royal decrees prevented parish priests from abusing their parishioners by demanding personal labor without a wage.[603] In the eighteenth century many parish priests still demanded a personal service, thus creating a conflict with their parishioners, who now were more likely to denounce abuses or violations of colonial law. In this respect,

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[601] AGNM, GD14 Bienes Nacionales, 1739, volumen 905, expediente 2, foja 11 reverso.
[602] *Recopilación de leyes de los reynos de las Indias*, *1680*, libro 1, título 14, ley 81: "Que los religiosos no se sirvan de los indios, y en casos muy necesarios, sean pagándoles."
[603] Ibid, libro 1, título XIII, ley 11: "Porque se ha entendido que los curas doctrineros, clérigos y religiosos hacen muchas vejaciones y molestan gravemente a los indios, y obligan a las indias viudas y a las solteras que viven fuera de los pueblos principales y cabeceras, en pasando de diez años de edad, a que con pretexto de que vayan todos los días a la doctrina, se ocupen en su servicio, y especialmente en hilados y otros ejercicios, sin pagarles nada por su trabajo y ocupación."

William Taylor notes that the major differences between earlier suits over labor service and the many new ones after 1760 were "that (1) Indian plaintiffs increasingly demanded pay for their labor and seem to have been more keenly aware that unpaid labor for the parish priest could be regarded as intolerable servitude; and (2) royal courts were inclined to narrow the scope of what constituted appropriate church service."[604] As such, the issue revolved around which personal services were acceptable by the Indian pueblo, or which ones went beyond a perceived limit.

However, the problem over personal service was not limited to colonial law. In fact, many Indians complaint that labor demands not only violated royal decrees but also the local *costumbre* (custom) of an indigenous town. What was "*la costumbre*" in the Spanish legal system and why was utilized by indigenous peoples to avoid personal labor demanded by priests? The *Siete Partidas* define costumbre as the non-written right by which people used to do certain things for a long time, such as cultivating for some months the land of their priest, or providing him with a domestic servant.[605] In order to create a new costumbre, a certain service had to be publicly practiced by most of the people of a town or region. The *Partidas* also state that the costumbre must be done with uniformity, and with the perspective of making it compulsory for everybody in the long term.[606] In addition, for the costumbre to gain legal force ("*fuerza de ley*"), it had to meet three requirements. The first one is that the costumbre itself must be reasonable. The juridical treatises of the early modern and colonial periods understood as reasonable all those acts that were not against the natural or divine laws. For example, a costumbre would be unreasonable if it deprived food to the parents of a family or if it attacked the doctrine or the possessions of the

[604] William Taylor, *Magistrates of the Sacred*, 360.
[605] López, *Las Siete Partidas*, partida 1, título 2, ley 4: "Costumbre es derecho, o fuero, que non es escrito, el qual han usado los homes luengo tiempo, ayudándose de él en las cosas, e las razones sobre que lo usaron."
[606] Ibid, partida 2, título 5, leyes 2-3.

Church.[607] A second requirement was that the costumbre must replace a written secular law after being in practice for ten years, or an ecclesiastical law for at least forty years. That is to say, the costumbre must be practiced for some time before gaining legal force. The third and final requirement was that the costumbre had to be approved by the "prince," that is, a secular authority when the costumbre revolved around temporal things, or by a bishop or the pope if it affected spiritual matters.[608] Only when these three requirements were met, the costumbre gained legal force. Still, the king or colonial officials in the Spanish Indies always had the authority to cancel a costumbre or to impose a new one when necessary.[609]

The records of the ecclesiastical court of San José de Toluca demonstrate the flexibility of local costumbre. In one case, the indigenous representatives of the town of San Miguel Tocuitlapilco, jurisdiction of Metepec, travelled to San José de Toluca in 1742 to protest against a demand of personal labor requested by fray Anastasio Antonio Pérez, the *padre guardián* (the head of a convent or monastery) of the convent of San Juan Bautista, Metepec. The alcalde, teniente, regidor mayor and a fiscal of the town, denounced that the padre guardián had requested them to work on a *milpa* (a field devoted to agriculture) and pay one real every fifteen days in order to re-edify the church of Metepec. However, the Indians refused to comply with these demands, because such requests were against the custom of the town.[610] As a solution, the *padre guardián* asked his parishioners to send twenty men each day to help building the church, but the Indians refused to do it since that petition was again against the local custom. According to the denouncement, once the indigenous officials refused the request of personal labor, fray Anastasio

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[607] López, *Las Siete Partidas*, partida 1, título 2, and Murillo Velarde, *Curso de derecho canónico hispano e Indiano*, libro I, título IV, 284.
[608] Ibid, partida, 1, título 2, ley 3.
[609] Murillo Velarde*, curso de derecho canónico hispano e Indiano*, libro I, título IV, 286.
[610] AHAM, Juzgado Eclesiástico de Toluca, 1742, caja 57, expediente 36, foja 1 anverso and reverso.

verbally mistreated the Indians and arrested the fiscal of the town. After receiving the complaint, the ecclesiastical judge of Toluca instructed the padre guardián respond to the accusations of the officials of San Miguel Tocuitlapilco. In his response, fray Anastasio manifested that the Indians were not telling the truth. The friar clarified that all the towns subjected to the doctrina of Metepec were participating in the material construction of the parish church, each one contributing according to their social and economic possibilities.[611] When the Indians of San Miguel refused to collaborate, the priest reminded them that according to royal laws, the parishioners were obliged to help in the edification of churches. In addition, he recognized that although he had arrested the fiscal of the above-mentioned town, he had already set him free.[612]

After reading the writ of fray Anastasio, the ecclesiastical judge of San José de Toluca mandated the Indians of San Miguel to work in the milpa, as petitioned by the padre guardián of Metepec. However, the pueblo officials appealed the decision of the ecclesiastical judge of Toluca and protested to the Provisorato, complaining that the sentence was against their custom, and that they could not do such as a job as they had "to do joint work in their town to support themselves" ("*por tener que hacer en su pueblo sus menesteres comunes para su sustento*"). The provisor was not convinced by the officials' petition, and mandated them to work in the construction of Metepec's parish church. The Provisorato also commanded the ecclesiastical judge of Toluca to compel the Indians to work with the aid of the military forces of the corregidor of San José de Toluca if they disobeyed.[613] On this occasion, the Indians complied, and stated that they would work two *almudes* (a Spanish unit of measure) of corn and deliver any earnings to the padre

[611] Ibid, foja 2 reverso.
[612] The padre guardián is referring here to some royal laws consecrated in the Leyes de las Indias. See for example libro I, título II, leyes II and III.
[613] AHAM, Juzgado Eclesiástico de Toluca, 1742, caja 57, expediente 36, foja 4 anverso.

guardián of the convent to fund the construction. Finally, they declared that from that moment onwards, they would consider this new activity to be part of their costumbre.

As observed in this document, claiming costumbre was not always a successful strategy, especially when there were royal decrees that nullified that custom, as the one that the padre guardian of Metepec cited to force the Indians to collaborate in the construction of the local church. As such, a costumbre could be immediately created and legally recognized if there were pressing political or economic conditions, such as the necessity of edifying a new church, that required certain indigenous labor through the costumbre. In fact, the existence of old customs that allowed the employment of indigenous work was not ignored by local curas, who sometimes claimed that certain personal services were part of the costumbre of certain pueblos, and they considered themselves entitled to that labor. Hence, some parish priests requested a stable boy or a certain number of young Indian men to work for him in his residence. However, lawsuits on personal service show indigenous peoples emphasizing that their current situation was not the same as it was in the past, and that given their poverty or lower numbers they could no longer maintain their old costumbre which the cura invoked when requiring personal labor.[614]

That was the case of the Indian representatives of the *barrio* (neighborhood) de la Concepción of San Pedto Totoltepec, Toluca, who in 1763 filed a complaint at the Provisorato of Mexico City. Although the Indians recognized it had been the custom of their community to endow their parish priest with a cook, they emphasized their numbers had dwindled since that costumbre started, and that they could not provide further services.[615] The provisor declined the Indians' petition and mandated that the Indians of the barrio de la Concepción must keep serving

[614] AHAM, Juzgado Eclesiástico de Toluca, 1763, caja 88, expediente 1, 14 fojas.
[615] Ibid, foja 2 reverso and foja 3 anverso.

their curas with a cook. However, the community sent another letter to the Provisorato, reiterating again that not only their numbers had been reduced to only eight families, but that their barrio was already providing the cura with a fiscal and a stable boy (c*aballerango*).[616] The promotor fiscal of the Provisorato then instructed the ecclesiastical judge of Toluca, don Jorge Martínez, to organize a meeting between the Indian cabildo of the town and the representatives of the barrio de la Concepción, so they can come to terms and decide the services they will provide. The pueblo officials finally decided that the Barrio de la Concepción would contribute with a cook for one week each month, and a fiscal as they had been doing since time immemorial.[617]

These two cases studied in this section exemplify how the idea of local custom was utilized by indigenous peoples as a mechanism to resist demands of personal labor and to unite the community against local or outside forces, to the point that the Indian officials could denounce a priest and to appeal a judgment given by an ecclesiastical judge. Although the existence of a costumbre could be used by curas and other colonial officials to demand labor, ecclesiastical courts such as the Provisorato tried to offer solutions and reconciliations when problems arose. Therefore, provisores and local ecclesiastical judges organized a meeting between the pueblo officials, or between the cabildo and the parish priest to look for accommodations, especially in those situations in which the indigenous peoples claimed that their current situation no longer permitted them provide a set of customary services to their curas. When the parts agreed to renew a custom or to create a new one, ecclesiastical courts registered those agreements and enforced them when necessary. As such, we can observe that local custom was not a fixed set of practices,

[616] AHAM, Juzgado Eclesiástico de Toluca, 1763, Caja 88, Expediente 1, foja 9 anverso.
[617] AHAM, Juzgado Eclesiástico de Toluca, 1763, Caja 88, Expediente 1, foja 12 anverso y reverso.

but a flexible concept that adapted to local circumstances, and that involved the participation of actors outside the indigenous community, like ecclesiastical judges and other colonial officials.

3.2. Violence and Corporal Punishment

Violence was another important cause of conflict between curas and parishioners. Since the early colonial period, it was customary and even acceptable for a parish priest to use corporal punishment to discipline indigenous peoples. For example, the *Itinerario*, the manual for parish priests written by Alonso de la Peña de Montenegro can give us an approximate idea of the punishments applied by curas. De la Peña Montenegro discussed in his manual that parish priests, while being amorous and sweet, they could utilize corporal punishment to discipline their parishioners. Citing the Councils of Lima and the Synod of Quito of 1596, Montenegro wrote that Indians who left their wives or husbands had to be given fifty lashes; and that those who did not go to mass on Sundays had to receive twenty-four lashes in public the first time, and fifty the second time.[618] However, in the eighteenth century, ecclesiastical authorities rejected corporal punishment to discipline parishioners, and restricted its application to ecclesiastical judges appointed by bishops alone. For parish priests, ecclesiastical authorities recommended parish priests to employ "paternal corrections" and soft forms of punishment and charity, that included verbal reprimands, religious instruction, or compulsory attendance to mass.[619] When ecclesiastical authorities found a cura usurping judicial functions, they acted quickly to punish the priest. For example, in 1739, the indigenous town officials of Metepec went to the ecclesiastical court of San José de Toluca to denounce their parish priest, who had used private jails (in rooms) as punishment for cases of sexual incontinence, breaches of marriage promise (which normally entailed

[618] Alonso de la Peña de Montenegro, *Itinerario*, libro 1, trat 4, secc XI: "Si el cura para evitar pecados en su doctrina, podrá castigar con azotes y otras penas a los indios." 229-230.
[619] See for example AHAM, Juzgado Eclesiástico de Toluca, 1739, caja 56, expediente 34.

fornication), and others. Upon receiving the complaint from indigenous people, the ecclesiastical judge of Toluca, don Nicolás de Villegas, realized that the priest of Metepec was eroding the ecclesiastical jurisdiction by acting as a judge and dealing with judicial matters, when he had no such authority to do so.[620]

As usual in cases against members of the clergy, the ecclesiastical judge of Toluca wrote the Provisorato to report this case. In his response, the provisor cited a law from the *Recopilación de los Reynos de las Indias*, which forbade curas and doctrineros to have prisons, jails, and mantraps to restrain indigenous peoples without the authorization of a bishop.[621] In addition, the provisor noted that parish priests, whether regular or secular, did not have jurisdiction in the external forum and therefore they had no authority to hear cases that were the exclusive realms of ecclesiastical judges. However, parish priests had jurisdiction over the internal forum, strictly associated to the sacrament of penance and reconciliation. As such, curas could punish parishioners with certain penances to expiate their sins and serve as an example to other sinners. Finally, the provisor instructed the ecclesiastical judge of Toluca to send the notary of his court to notify the cura of Metepec that he should procced in accordance with the above-mentioned law, and never intervene again in such judicial cases.[622] If this parish priest had to punish his

[620] Ibid foja 1 anverso: "Dicho Reverendo Padre cura perjudicar la jurisdicción, entrometiéndose en negocios que no le tocan, con el título de cura, queriendo entender en lo contencioso así en el conocimiento de las memorias o testamentos de naturales, como en negocios matrimoniales cuando se ofrece entre ellos negarse las palabras que se tienen dadas, o hallándose en incontinencia, poniendo en depósito y en su capítulo."
[621] *Recopilación de leyes de los reynos de las Indias*, *1680,* libro 1, título 13, ley 6: "Nuestros virreyes, gobernadores y justicias no permitan ni consientan a los curas y doctrineros, clérigos ni religiosos que tengan cárceles, prisiones, grillos y cepos para prender, ni detener a los indios, ni les quiten el cabello, ni azonten, ni impongan condenaciones si no fuere en aquellos casos que tuvieren comisión de los obispos, y en que conforme a derecho y leyes de esta Recopilación la pudieren dar, ni tengan ni pongan fiscales, porque esto toca a sus obispos, según y en la forma dada por la ley 32, título 7, de este libro…"
[622] The reason why the ecclesiastical judge of Toluca is sent to correct his counterpart is because the ecclesiastical court of the city of San José de Toluca is the head of the district.

parishioners due to scandalous sins, he was commanded to utilize paternal corrections ("*paternas correcciones*"), but not private jails or similar methods.

In the late colonial period Church officials now emphasized sweetness and paternal love to discipline parishioners, restricting the application of corporal punishments such as lashes, left only to the discretion of ecclesiastical judges and never to curas. For this reason, curas were exhorted to employ verbal admonitions or religious instruction to correct their parishioners, and not violence. However, these documents show that some priest still felt entitled to use corporal punishments as they had done in previous centuries, or to intervene in local crimes as if they were ecclesiastical judges. Despite these abuses, ecclesiastical courts in the eighteenth century did not tolerate this usurpation of functions and intervened when Indians denounced their parish priests.

It should be stressed that if these cases reached ecclesiastical courts is because indigenous officials in the eighteenth century no longer tolerated corporal punishments from their curas, especially if they were severe, and filed accusations. Therefore, Indians not only denounced their priest when they acted this way, but they also told ecclesiastical authorities that they would leave their towns if the violent cura was not replaced by a new one.[623] There is an example of this attitude in the lawsuit presented at the Provisorato by the pueblo officials of San Marcos, Texacique. In their writ the Indians accused their parish priest, the Franciscan friar Marcelo de Albuero, of various abuses. The Indians reported that their cura had whipped parishioners, had shaved the hair of some of them, and had verbally mistreated them.[624] Because of these circumstances, the representatives of the town of San Marcos informed the provisor that they were

[623] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 10, foja 1 reverso.
[624] According to the plaintiffs, the parish priest had committed these abuses for only minor reasons. For example, when the sacristan was absent to give tortillas to his sick children, the friar shaved his head, and beat another Indian inside the church. See AHAM, Juzgado Eclesiástico de Toluca, 1747, caja 63, expediente 24, foja 1 anverso and reverso.

afraid of their pastor and asked the ecclesiastical justice to remove their cura from the town and send them a new one.[625] The provisor agreed to the Indians' request and ordered the ecclesiastical judge of Toluca to visit the town of San Marcos to notify the friar that he should refrain from mistreating the Indians, under the penalty of proceeding against him if he disobeyed. The Provisor remarked that the legal dispositions of the crown and Christian charity compelled all parish priests to treat Indians well. The ecclesiastical judge of Toluca, José de Isla, informed the provisor that he would visit the town of Tecaxique to appease the Indians and, that he would talk with the officials of the Franciscan order, for them to replace friar Marcelo with another regular.[626]

This document shows that when suffering violence from a priest, indigenous peoples could immediately resort to the Provisorato, instead of to their local ecclesiastical court. In this case, the provisor supported the petition of the indigenous representatives and asked the ecclesiastical judge of Toluca to remedy the problem. The justice of the Church, following royal laws, did not allow unauthorized corporal punishments impinged upon indigenous parishioners by priests, and took a quick measure to admonish and remove the abusive cura. As such, this case demonstrates again that the ecclesiastical justice could favor indigenous towns, a fact that explains why Indians trusted these institutions when seeking redress for their grievances.

3.3. Clerical Fees and The Arancel

Along with violence and personal service, indigenous officials complained about the collection of aranceles or clerical fees. The arancel in the colonial period is a series of fees to be paid for certain religious services such as baptism, funerals, burials, or weddings performed by priests, payments which contributed to pay for the subsistence of the clergy. Unlike the practice

[625] AHAM, Juzgado Eclesiástico de Toluca, 1747, Caja 63, Expediente 24, foja 1 anverso and reverso.
[626] Ibid, foja 2 anverso.

in the Iberian Peninsula of funding the wages of priests through portions of the diezmo (tithe), in the Americas the high clergy was forced to find and alternative source of income for parish priests, since the *diezmo* was appropriated by the Spanish Crown to support the Patronato Regio. The Third Mexican Council of 1585 found a solution to this issue. Members of the Council mirrored the method of regular orders that collected a series of personal services, alms, and economic offerings from their parishioners and local caciques to support the cura and the doctrina. The Third Mexican Council of 1585 allowed bishops to organize the collection of the clerical fees (*"aranceles y derechos parroquiales*") according to the circumstances of the dioceses in New Spain, and in consultation with local elites, in order to reach a consensus.[627]

In 1638, the archdiocese of Mexico established a fixed price for burials, baptisms, weddings, and some celebrations.[628] This arancel continued throughout the seventeenth and the first half of the eighteenth century, until the archbishop Lorenzana in 1767 instituted a new series of clerical fees, replacing old customs. The reason why Lorenzana supported a reform was because of the numerous local conflicts between parish priests and parishioners, who disagreed on the amount and how the payments were collected.[629] Finally, the Bourbon Reforms introduced a series of changes that ended up exacerbating conflicts in indigenous towns. In the Archdiocese of Mexico, echoing the royalist measures, a new law published in 1767 permitted indigenous towns to pay their fees with cash instead of labor.[630] This could explain that in the absence of the

[627] Aguirre Salvador, "La diversificación de ingresos parroquiales," 199-201.
[628] Ibid, "La diversificación de ingresos parroquiales," 202.
[629] Ibid, 205.
[630] Taylor, *Magistrates of the Sacred*, 357-360.

usual personal labor, the curas demanded it; and as a result, they were accused of not paying decent salaries (or not paying at all), breaking the law or the costumbre.[631]

Rodolfo Aguirre Salvador argues that before the new arancel of Lorenzana, clerical fees were negotiated locally, and that each priest charged parishioners according to their economic situation. However, Aguirre Salvador stresses that the secular and ecclesiastical authorities of the viceroyalty knew and permitted these negotiations in order to reach social harmony and a consensus, and that this case-by-case scenario should not be interpreted as a chaotic form of institutional disorganization.[632] In those scenarios in which parish priests imposed new aranceles or demanded an excessive amount of clerical fees parishioners could not pay, the indigenous officials protested both at the Provisorato in Mexico City or at local ecclesiastical courts such as that of San José de Toluca. On some occasions, indigenous peoples accused their curas of seizing the animals of their community, or forced young men to work for them as a compensation for not having paid the clerical fees that they owed to their parish priest.[633] Besides filing accusations, indigenous officials frequently utilized their dreadful economic situation as a strategy to avoid payment of clerical fees. According to the decrees of the archdiocese of Mexico, poor people could legally receive proper burials or other services paying no fee, especially when the person to be buried was an Indian because Indians deserved to be treated mercifully given their condition as Indians.[634]

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[631] AHAM, Juzgado Eclesiástico de Toluca, 1763, caja 88, expediente 1, 14 fojas.
[632] Agurre Salvador, "La diversificación de ingresos parroquiales," 205.
[633] AGNM, GD14 Bienes Nacionales, 1739, volumen 905, expediente 2, foja 1 reverso.
[634] AHAM, Juzgado Eclesiástico de Toluca, 1737, caja 52, expediente 26, foja 1 anverso: "y en atención a que si en todo tiempo están obligados los párrocos a enterrar sin estipendio a los que mueren pobres, con mejor razón deben hacerlo en la presente ocasión, por ser dignos los naturales de la mayor conmiseración y para que no se les añada aflicción a la que padecen y que los que pudieren pagar sea con arreglamiento al arancel sin que les acrezcan derechos [parroquiales] ni se les impongan nuevas obligaciones."

I can exemplify this situation through a case occurred in 1737, by which the indigenous representatives of the town of Zinacantepec denounced their parish priest at the ecclesiastical court of San José de Toluca, accusing him of extorsion and charging them with high ecclesiastical fees (“*aranceles y derechos parroquiales*”) for burials. The Indians emphasized they were poor, and that they were suffering from an epidemic that had worsened their economic situation; and that, as a result, they were not willing or able to pay the fees demanded by their priest. The ecclesiastical judge of Toluca, don Nicolás de Villegas, forwarded this accusation to the Provisorato of Mexico City. The provisor, don Francisco Rodríguez Navarejo, having seen the documentation, noted in his answer that parish priests had to preside funerals and burials for free. Moreover, he considered that since indigenous peoples had to be treated with mercy, only those Indians who could afford the payment should pay the standard arancel established by the Provisorato.[635] Finally, the provisor ordered the ecclesiastical judge of Toluca to send the notary of his court to notify the parish priest of Zinacantepec to not charge his parishioners with new payments and fees. The provisor stressed that if this parish priest dared to charge poor people who could not afford to pay or disturbed the indigenous peoples of the town (with similar or other abuses), the ecclesiastical justice would proceed against him.[636]

Here we find a formal denunciation against a parish priest based on an excessive demand for clerical fees for burials. Those defending the Indians stressed the plaintiffs were poor, and that they were suffering the consequences of a general epidemic that swept across the Toluca Valley during 1737. Moreover, the document mentions that the Indians were subjected to certain violence

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[635] Ibid, foja 1 anverso: “y en atención a que si en todo tiempo están obligados los párrocos a enterrar sin estipendio a los que mueren pobres, con mejor razón deben hacerlo en la presente ocasión, por ser dignos los naturales de la mayor conmiseración y para que no se les añada aflicción a la que padecen y que los que pudieren pagar sea con arreglamiento a el arancel sin que les acrezcan derechos [parroquiales] ni se les impongan nuevas obligaciones.”
[636] Ibid, foja 1 reverso.

and extorsions ("*extorsiones y violencias*") from their parish priest to exact the payment. The plaintiffs' strategy worked, the Provisorato ruled in their favor, and admonished the parish priest to not charge his parishioners with additional fees not approved by the Provisorato.

3.4. False Accusations

Although many accusations against parish priests portrayed actual cases of abuse and exploitation, some of them were false. In canon law, false accusation constituted a crime of slander (*calumnia*). The crime of calumnia was regularly punished by the ecclesiastical judge according to the circumstances and gravity of the crime, normally with the payment of the fees and expenses of the judicial procedures, or with other punishments, such as working for certain time at an obraje.[637] However, not all false accusations ended up in harsh sentences. On some occasions, the parties reconciled before the judges sentenced the slanderer. There are examples of parish priests forgiving his parishioners and neighbors when they had accused him of any crime that he had not committed, as a strategy to heal the wounds within the community and resume the harmonious relation that a Christian priest was expected to have with his parishioners.

That was the case of the priest don Bartolomé Velasco de la Torre, who in 1775 received the unexpected visit of don Juan de la Cruz, a resident of San José de Toluca. In tears and sighs, don Juan de la Cruz confessed to the priest that he had discredited him in a trial, saying many lies about him.[638] The priest Bartolomé said to don Juan de la Cruz that since he had falsely accused him at court, he had to ask for his forgiveness at a tribunal. For this reason, Bartolomé appeared before the ecclesiastical judge of San José de Toluca to report to him what had transpired at his

[637] According to the constitution of the pope Pius V, "cum primum" of March 27th, 1566 false slanderers could be punished with the *lex talionis* (eye for an eye), which entails that the punishment prepared for the crime of the accused could be used to punish the false accuser. For more information on this crime see Murillo Velarde, *Curso de derecho canónico*, libro V, título 2, párrafo 23.

[638] AHAM, Juzgado Eclesiástico de Toluca, 1776, caja 115, expediente 20, foja 1 anverso.

house, and petitioned the judge to summon don Juan de la Cruz, so he could restore his reputation and good name among the local population. The ecclesiastical judge of Toluca agreed to the petition of the presbyter and summoned don Juan de la Cruz to his court. The slanderer recognized that what Bartolomé had said was true. Don Juan clarified that he did not lie in the trial in which he participated a long time ago, since he had answered the questions of the interrogatory with the knowledge that he had about the priest back them. However, he emphasized that by now his opinions on Bartolomé had changed; now he knew that the priest Bartolomé had a suitable behavior. After the declaration of don Juan de la Cruz, the ecclesiastical judge of San José Toluca reconciled the two men, and the priest don Bartolomé forgave his neighbor.[639] This case, which represents a mixture of a private settlement and a judicial litigation to restore a person's reputation, proves that ecclesiastical courts could be used as an instance to mediate reconciliations in cases of slander and false accusations.

There is also evidence of false accusations against members of the clergy submitted by royal officials, a practice that was dangerous, as it disrupted the harmony and collaboration between secular and ecclesiastical institutions. In 1763, don Lorenzo López, teniente general of the corregidor of Toluca, presented an accusation against the presbyter don Joaquín Serrano at the Provisorato of Mexico City. Don Lorenzo reported that one night, following the instructions from the viceroy, the corregidor of San José de Toluca, don Francisco Javier Ramírez, and he were looking for some deserters that had taken refuge in the house of certain women next to the river (the river Verdiguel) that crosses the city of Toluca. When they approached the house in which they suspected that there could be deserters, the bachiller don Joaquín Serrano, who lived behind the residence they were seeking, left his house and shouted at them. According to the complainant,

[639] Ibid, foja 2 anverso.

the presbyter left his house with a blunderbuss in his hands, and in company of other people, chased the royal officials and insulted them with denigrating words such as "dogs" and "thieves," forcing the corregidor and his assistant to leave the area.[640]

Considering that the behavior of the priest was scandalous, the teniente general presented these occurrences to the Provisorato. The complainant asked the provisor to put a remedy to the situation described and to punish the priest in order to ensure social peace and prevent some criminals (who could eventually follow the priest's bad example) from attacking the corregidor or other royal officials of the city.[641] After receiving these allegations, the provisor immediately instructed the ecclesiastical judge of San José de Toluca to interrogate individuals who had witnessed the scandals provoked by don Joaquín Serrano, and to imprison the priest (with the auxilio of the "royal arm") in the jail of the Provisorato in Mexico City, in case all of what had been described proved to be true.

The ecclesiastical judge of San José de Toluca did as he was told and summoned three Spaniards that lived next to the domicile of the presbyter don Joaquín Serrano and, who had witnessed the events. The three witnesses responded that the declarations by the teniente general were entirely false and full of lies. The witnesses clarified that when the priest left his house; he carried a *garrote* (a club), but not a blunderbuss. All the witnesses denied having seen don Joaquín Serrano threatening the corregidor, as stated by the complainant.[642] After receiving the testimonies of the three witnesses, the ecclesiastical judge of Toluca recorded them and sent the report back

[640] AGNM, GD37 Criminal, 1763, volumen 695, expediente 18, foja 408 reverso: "Pero no valió esto, para aquietar el fogoso ardimiento de dicho bachiller, pues este, con comitiva de otras personas y al parecer de las inquilinas de dicha casa, nos iba a los alcances, con grande estruendo y vocería, provocando y gritándonos con palabras injuriosas y denigrativas, como las de perros, pícaros."
[641] Ibid, foja 409 anverso.
[642] Ibid, fojas 413-415.

to the Provisorato, so the provisor could provide his judgement. The promotor fiscal read the information and responded that all the witnesses had agreed in indicating that what the teniente general claimed had occurred was false. Since there was no evidence against don Joaquín Serrano, the promotor ruled that the priest was innocent and instructed the ecclesiastical judge of Toluca to admonish the teniente don Lorenzo López, reminding him that when he presented his allegation to an ecclesiastical judge, he would have been expected to speak the truth, especially when accusing a presbyter as respectable as don Joaquín Serrano.[643]

In this case, it is interesting to note the sober and soft response of the Provisorato when viewing an alleged false accusation against a priest, which was considered a crime of slander (*calumnia*). The promotor fiscal, in his judgment neither referred this case to the royal justice nor did a retaliation against the teniente general ensue. The case ended with the ecclesiastical judge of Toluca admonishing the teniente general. This "moderate judgement" could have serviced the purpose of not causing further conflicts between the secular and ecclesiastical branches, given that the case confronted a priest and a royal official.

4. Controversial Fiscales and Political Infighting in Indigenous Communities

Cases against ecclesiastics provide not only information about the relationships between priests and parishioners but also between officials in the indigenous municipal or town council, the *cabildo*.[644] These officials, mostly governors and alcaldes, were *principales*, members of the

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[643] AGNM, GD37 Criminal, 1763, volumen 695, expediente 18, fojas 416: "Se prevenga al citado teniente don Lorenzo López la verdad y sinceridad con que se debe instruir el ánimo de los jueces eclesiásticos, y más contra un presbítero cuyo respetable carácter se recomienda mucho la mayor circunspección y tiento en semejantes denuncias."

[644] In a similar way as happened with the Spanish cabildos, their indigenous counterparts had judicial attributions to deal with crimes and to regulate local trade. They also acted as land courts when they distributed plots or other communal property. However, Indian cabildos were controlled by the local indigenous nobility, the principales, who controlled the most important political offices, such as the governorship and the alcaldía.

indigenous nobility who had social and political influence that could provide them with a platform to eventually lead a movement of resistance and discontent against the curas. Although alcaldes and governors played a key role in these disputes, the most controversial figure was that of the *fiscal*. As explained in the third chapter of this dissertation, the fiscal was a lay assistant to the parish priest and a member of the Indian cabildo, responsible for "promoting the divine cult" within the indigenous community, supervise religious orthodoxy, and collect the clerical fees. In addition, church officials expected the fiscal to be the *cura's* eyes and ears, advising him of suspicious behavior, teaching the catechism in the church; and informing about cases of sexual immorality and idolatry.[645] The fiscales' participation in administering the sacraments and teaching the catechism to their communities carried the same possibilities for both a greater spiritual role and conflict with parishioners. In their role as spiritual masters, the fiscales were sent out to hear confessions; they assisted at baptisms, marriages, and funerals, receiving a small sum for their services. All these prerogatives empowered the fiscales to the point that some of them considered themselves above the ordinary justice of the indigenous communities.[646]

This phenomenon was not new. Already in pre-Hispanic times, the political and religious spheres became indivisible. As a result, native rulers performed both secular and spiritual duties together, a role that some officials in the cabildo, such as the governor and the fiscal, maintained throughout the colonial period.[647] For instance, Robert Haskett notes in his study of indigenous towns in Cuernavaca, that in the absence or the incapacity of secular officers of greater authority in the cabildo, the fiscales acted as temporal governors and assumed themselves the direction of

[645] Taylor, *Magistrates of the Sacred*, 325.
[646] Ibid, 327.
[647] Lockhart, *The Nahuas After the Conquest*, 206.

all facets of town government.[648] Therefore, in the overlap of their religious and secular functions, indigenous governors played (along with the fiscales) an important role in negotiating both the political and the sacred in their communities.

Although in theory the fiscales were loyal to the Spanish priests and had to collaborate with them, this was not always the case. Ecclesiastical and criminal court cases show that fiscales could act independently, becoming adversaries and sometimes rivals for spiritual leadership. In some scenarios, fiscales accused priests of charging the town's dwellers with excessive fees, illegal requests of personal labor, brutal corporal punishment, and other types of abuse.[649] Moreover, the colonial records show fiscales engaging in idolatry, abusing their power for economic or political gains, or inciting the people to disobey or oppose the local parish priests.[650] Fiscales were controversial because they were the middlemen between the cura and the indigenous community. For this reason, in moments of conflict between parish priests and parishioners, the fiscales were sometimes trapped in the middle, or were forced to take sides. This dynamic is what Yanna Yannakakis and Daniel Ritcher refer to as "cultural brokerage," because the fiscales' membership of two or more interacting groups allowed them to obtain benefits from both sides. However, these authors pose that cultural brokers were also primary targets of violence.[651] For example, when some fiscales of the Toluca Valley supported their parish priest in litigations, their indigenous peers retaliated against them, seeing them as whistleblowers and traitors, to the point

[648] Haskett *Indigenous Rulers*, 116.
[649] See for example AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 10.
[650] These type of rebellions normally focused on a particular person or place such as the local priest or the fiscales. As such, they were more related to the negotiation of local grievances and abuses rather than being planned anti-colonial revolts. For a more detailed analysis of these rebellions see Taylor, *Drinking, Homicide, and Rebellion in Colonial Mexican Villages*.
[651] Yannakakis, *The Art of Being in Between*, 14.

that some fiscales were killed, or simply replaced by another one who was more loyal to the community.[652]

Yannakakis argues that in other episodes, fiscales used their position to bring down local rivals and enemies by charging them with violations of the faith, such as idolatry, heresy, and so forth. This abuse caused the rebellion of San Francisco de Cajonos in 1700, in Oaxaca, Mexico. The Indian commoners who took part in the rebellion captured and allegedly "disappeared" (read, killed) the local fiscales of the town because they had revealed to the Spaniards the existence of clandestine meetings at a certain house in the pueblo where idolatrous ceremonies took place led by some officials of the cabildo. Yannakakis poses that in the case of San Francisco Cajonos, the villagers considered the fiscales' denunciation of the gathering "as a breach of the community boundaries and solidarity necessary to preserve a space for semipublic native ritual, or more broadly for native autonomy."[653] In those instances in which the fiscal incited the town against the local cura, or hindered his priestly duties, it was an ecclesiastical tribunal or the parish priest himself who sought to punish the rebellious fiscal and have a new one being elected.

The records of the ecclesiastical court of San José de Toluca also illustrate a similar scenario. In 1753, don Salvador de Santiago, the alcalde of the town of San Pedro Totoltepec, in representation of his indigenous community, appeared before the ecclesiastical judge of San José de Toluca and accused a Franciscan friar named fray Bartolomé, the *cura coadjutor* (priest assistant) of his town, of verbally and physically mistreating the local Indians. Don Salvador declared that fray Bartolomé had given a severe beating to the fiscal of the town, hitting his face

[652] AGNM, GD14 Biens Nacionales, 1739, volumen 905, expediente 2.
[653] Yanna Yannakakis, *The Art of Being In-Between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham: Duke University Press, 2008), 70.

and head so hard that he almost died ("*pudo haberle costado la vida*"). In addition, the friar used to lock up certain women and their children in the rooms of the convent ("*en el capítulo*") of the friar. Protesting that the community could no longer bear more abuses and that some families were leaving the town because of the bad character of the cura, the alcalde of San Pedro Totoltepec asked the ecclesiastical judge of Toluca to remove fray Bartolomé from his position and replace him with another cura.[654]

After hearing that his parishioners had accused him, fray Bartolomé de Rojas presented a writ at the court of the Provisorato, in Mexico City. In his statement, fray Bartolomé declared that he had tried to teach the Christian doctrine to his indigenous parishioners, but that the current fiscal of the town, Miguel de la Cruz, had organized the community against him. Fray Bartolomé denounced that the fiscal abused and mortified the local people, abusing his position, also setting a bad example, for he was always drunk. Fray Bartolomé manifested that the reason why the Indians of the town had denounced him in San José de Toluca, is because the fiscal and one of his friends, an indigenous man named Julián Ramirez, had forced the representatives of the town to do so.[655] Fray Bartolomé petitioned the Provisorato to punish the fiscal Miguel de la Cruz and remove him from his position, since he had been in the office for far too long and lacked the authorization of the Provisorato to exercise his functions.[656] The provisor, don Francisco Jiménez

[654] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 10, foja 1 reverso: "Sea de servir vuestra merced de providenciar medio en que quitándosenos dicho religioso se nos ponga otro que nos mire y cuide como a hijos, como lo han hecho los anteriores sin dar lugar a queja."
[655] Ibid, foja 4 anverso y reverso, foja 5 anverso.
[656] Ibid foja 5 anverso: "nombrándose por vuestra señoría uno idóneo que cumpla con sus obligaciones, previniéndose que entre ellas a la que más debe atender es a conducir a los indios e indias, pequeñitos, a la doctrina cristiana."

Caro, instructed the ecclesiastical judge of Toluca to visit the town San Pedro Totoltepec to depose the current fiscal Miguel de la Cruz, so a new fiscal could be appointed.[657]

Fulfilling the orders from the provisor, the ecclesiastical judge of Toluca, don Juan del Villar; the interpreter of the court, don José Escalona; and the notary, Juan Gil Taboada, went to the town of San Pedro Totoltepec and met with fray Bartolomé de Rojas and the representatives of the indigenous community, including the fiscal Miguel de la Cruz, who had been publicly deposed ("*a vista de los ancianos y la mayor parte del común de naturales del pueblo*"). Then, the interpreter, at the order of the ecclesiastical judge, organized the election of the new fiscal. Three older indigenous men and principales of the town listed don Juan Bernabé, don Juan Esteban and don Cayetano Matías to become the candidates. Most of the Indians of San Pedro Totoltepec voted for Cayetano Matías, who, thanks to his knowledge of the Christian doctrine in his language (Náhuatl), was finally elected. The cura coadjutor fray Bartolomé Rojas accepted the result of the election and reconciliated with his parishioners, thus concluding the case.[658] The document also mentions that the new fiscal needed to wait for the approval of the Provisorato before entering office. In the meantime, the elected fiscal don Cayetano, following the costumbre of his pueblo that permitted the fiscal to choose an assistant, appointed an Indian named Francisco Jacobo as his *teniente* (assistant).

This document illustrates how a fiscal was elected in the eighteenth century. Before the year 1560, local priest and bishops appointed fiscales. The viceroy of New Spain instructed the archbishop of Mexico, through a royal decree, that the clergy should not appoint fiscales in Indian

[657] Ibid, foja 5 reverso.
[658]Ibid, foja 6 anverso y reverso.

towns, but that the indigenous officials should do it themselves.[659] Nevertheless, this procedure did not mean that priests did not intervene to support a favored candidate. Since the fiscal was a key assistant to the parish priest in teaching the doctrine and collecting clerical fees, the clergy emphasized the need to supervise them. In the eighteenth century, as occurred with other pueblo officials, the community elected the fiscal. However, the Indian cabildo was not completely autonomous. In the above-mentioned case, the election of the fiscal takes place in front of the cura, an ecclesiastical judge, and had to be ratified by the Provisorato.

4. 1. The "Malice" of the Indians of San Francisco and the Case of the Cura Inostrosa

The separation of cases against ecclesiastics in clear, distinctive categories is difficult, since a lawsuit could include charges of physical violence, disputes over aranceles, usurpation of judicial functions, violation of the costumbre, political conflict between an indigenous fiscal and his cabildo, and maybe a defense of idolatrous devotions. The case that I analyze in the next pages is particularly illustrative, as it contains all the above-mentioned categories and situations.

In December 1738, the alcalde don Ignacio de Santiago, along with other indigenous officials of the town of San Francisco, Tenango del Valle, appeared before the Provisorato in Mexico City to denounce their parish priest and ecclesiastical judge of Tenango del Valle, doctor don Juan de Inostrosa. As a reminder, Juan de Inostrosa is the same judge that excommunicated various royal officials in a case analyzed in the previous chapter, who resorted to the Provisorato to have their excommunications lifted. Inostrosa also appears in an indigenous idolatry case that I analyze in chapter 7, occurred in 1737, in which he instructs some Spaniards to seize some idols found at a cave named Xuxutepec, in the area of Tenango del Valle.[660] This information is

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[659] Gómez García, "La Fiscalía en la Ciudad de los Ángeles," 184.
[660] AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 7, foja 3 anverso.

important to understand the following case, as I suspect that the Indians of San Francisco may be retaliating against Inostrosa for having seized indigenous idols.

The denouncement of the representatives of San Francisco emphasizes that Inostrosa had physically and verbally mistreated them, and that he had seized a number of animal from them as a payment for the arancel. The indigenous officials stressed in their complaint that they would move their parish to the jurisdiction of Tenancingo in case their protest would be disregarded.[661] The promotor fiscal of the Provisorato read the petition of the Indians of the town of San Francisco and noted that the evidence submitted by the accusers was only their own testimony. However, in order to avoid further litigation and to prevent the Indians from spending more money in the proceedings, the promotor fiscal instructed doctor don Juan de Inostrosa to immediately restore the animals to his indigenous parishioners. The provisor approved these measures, emphasizing that if cura Inostrosa needed to correct his parishioners, he should do so in a paternal way. On the contrary, he would undergo a proceeding against him.[662]

When the ecclesiastical judge and parish priest of Tenango del Valle, don Juan de Inostrosa received the notification from the Provisorato, he wrote back to clarify. According to him, the Indians' claims were entirely false and untrue. In order to restore his reputation, the priest summoned the alcalde mayor of Tenango (a secular official, similar to a corregidor) "in the name of the Church," and requested he bring the indigenous accusers to his home. The alcalde mayor, captain don Antonio Sánchez del Abandero agreed to the priest's request and brought the indigenous accusers to the domicile of the cura.[663] Although it was not out of the ordinary for the

[661] AGNM, GD14 Bienes Nacionales, 1739, volumen 905, expediente 2, foja 2 anverso.
[662] Ibid, foja 2 reverso and foja 3 reverso.
[663] Ibid, foja 4 anverso.

confronted parties to gather in private to put an end to an existing dispute, in this case, cura Inostrosa utilized the royal justice to organize a judicial encounter outside the courtroom (a *careo*) with his opponents. This way of doing things was problematic, since a *careo* usually should be organized by a neutral ecclesiastical judge appointed by the Provisorato, i.e., someone who would be in a position of listening to both parties and provide judgement, and not a royal judge invited to the scene by the accused party. As we will see in the following pages, this was a situation that did not go unnoticed by the Indian officials of San Francisco.

In front of the cura, an interpreter interrogated the Indians about the content of their complaints, and asked them whether the priest don Juan de Inostrosa had seized a number of animals and had forced certain young Indians to work for him as a payment for aranceles they owed him. The Indians answered that this accusation was against the truth, since the cura had taken no animals from them. Before concluding the *careo*, the indigenous fiscal of San Francisco manifested that the Indians of his town did not want to attend mass, and that they constantly prevented him from teaching the Christian doctrine to their children. The resistance of the Indians of San Francisco to receive Christian education could be related to the episode in which Inostrosa seized a number of idols from the hill of Xuxutepec the previous year.[664] At the very least, not attending to mass could indicate that the indigenous peoples of that community did not fully embrace Christianity, if at all, and that they preferred to practice their native devotions. I should indicate that this document never makes a connection between Inostrosa's collection of idols in 1737, and the accusation submitted against him by the Indians of San Francisco. However, we should not discard this correlation.

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[664] AHAM, Juzgado Eclesiástico de Toluca, 1745, Caja 62, Expediente 7, foja 3 anverso.

The indigenous fiscal also emphasized that his fellow town officials had caused him troubles when he tried to fulfill his obligation, to a point where he was fearing for his life. The fiscal also stated that the town owed the cura 1,100 pesos in clerical fees (aranceles), of which the priest had condoned them 800 pesos. The fiscal explained that the reason he could not collect the 300 pesos the town had agreed to pay was because the current alcalde, Ignacio de Santiago, and his allies were causing unrest in the town. In order to solve this situation, the fiscal recommended the alcalde mayor and cura Inostrosa should banish these problematic men from the curato.[665] What we observe in this situation is a fiscal who is publicly showing his loyalty to the cura, confronting the other indigenous officials of his town. This was a risky movement for a fiscal especially in the middle of a lawsuit, as he could end up confronting his own town and being rejected.

When the *careo* was about to end, several indigenous officials from neighboring towns arrived in Tenango del Valle, and cura Inostrosa, taking the opportunity, invited them to come to his house and to take part in the *careo*. The Indian officials from the town of Santa María Xoquisingo, Istlahuaca, and San Pedro Tlanisco entered Inostrosa's house and joined the gathering. Then, the cura asked them to answer whether he had ever mistreated them.[666] The Indians, which included governors, alcaldes and fiscales, all responded that don Juan de Inostrosa, their cura, had never mistreated them. In fact, they declared that the opposite was true, since their priest had always given them alms and other forms of material and spiritual support during the

[665] AGNM, GD14 Bienes Nacionales, 1739, volumen 905, expediente foja 6 anverso: "Que no querían oír misa los naturales de dicho su pueblo, ni que las hubiese en dichos días, ni que podía reducir a que los niños y niñas fuesen a la doctrina, y sobre querer compelerlos se le ofrecían muchas pesadumbres y disturbios con los naturales, y que por querer cumplir con su obligación temía lo matasen, y esto dijo el dicho fiscal, y declaró en presencia de todos los de dicho su pueblo, a que no hubo ninguno que le contradijese."
[666] Ibid.

epidemic that ravaged the Toluca Valley in 1736, and that he had condoned them the clerical fees they owed him. Once the alcalde mayor concluded the careo, cura don Juan Inostrosa sat down to write a letter to the provisor in Mexico City, asking him to remedy the "malice of the Indians of San Francisco." In his letter, the priest accused the alcalde of the town, don Ignacio de Santiago of being the chief person responsible for the violence and disobedience he had experienced in San Francisco; the Indians—he wrote—had elected him as their alcalde knowing that he tended to disturb and disobey priests.[667] This fragment reveals more data about pueblo politics and the sometimes-difficult relationship between indigenous parishioners and their cura. In particular, it shows that political positions in the indigenous cabildo could oppose colonial authorities, in this case the demands of Spanish priests, and to protect the community from outsiders or internal "traitors," such as the fiscal of this case that sides with cura Inostrosa.

Despite the priest countered their accusations, the Indians of San Francisco did not capitulate. In fact, the officials of the town went to Mexico City again to continue litigating. Alcalde don Ignacio Santiago, the alleged main conspirator, informed the provisor that cura Inostrosa had intimidated them by summoning them at his house, where the alcalde mayor and his assistants were waiting. The Indians manifested that their parish priest had accused them of presenting false claims, and that he had not fully condoned them their debt (of the aranceles) that they owed him, although they were poor and could not pay. In addition, the indigenous officials of San Francisco complained about their current fiscal, who had allied with the cura and had blamed all of them in front of the alcalde mayor of various false wrongdoings. For this reason, they asked the provisor to remove the current fiscal, who was enabling the abuses the priest

[667] Ibid, foja 8 anverso: "Antes sí buscan el indio más caviloso para los oficios de alcalde con el fin de que no estime a su cura, como sucedió el día de ayer, que dijeron: pongamos por alcalde para este año a Santiago Ignacio, que este dará muchas pesadumbres al cura, y no hará lo que le mande."

imposed on them, so he could be replaced by another fiscal, one who could be approved by the people of the town ("*poniéndose en su lugar otro que sea del gusto del pueblo").*[668] As previously mentioned, the complaining Indians stressed in their second accusation that they had been intimidated by the cura and the secular justice, and that this fact constituted a procedural irregularity. In addition, it should be noted that in this passage the town officials of San Francisco retaliated against their fiscal, who supported priest Inostrosa, and sought to replace him. This situation once more shows the risky situation fiscales could find themselves in as middlemen, especially when they publicly sided with a priest and neglected their communities' best interest.

After examining the new claims of the Indians, both the promotor fiscal and the provisor in Mexico City agreed to start an investigation to find out what was really happening in San Francisco. For this purpose, the provisor wrote to the ecclesiastical judge of Toluca, don Nicolás de Villegas, and commissioned him with interrogating several "trustworthy and dispassionate" (*personas fidedignas y desapasionadas*) people from Tenango del Valle who could shed light on this serious issue. Following the instructions of the provisor, the ecclesiastical judge of Toluca went to San Francisco, and summoned five residents as witnesses. All witnesses confirmed Inostrosa's descriptions, pointing out that the Indians of San Francisco had lied when accusing their parish priest, and that Indians of this town were very rebellious and disobedient. The witnesses added that the vast majority of the indigenous peoples in the jurisdiction of Tenango loved cura Inostrosa, as he treated them with charity and love, and that only the naturales of San Francisco were problematic.[669] The ecclesiastical judge of Toluca, when he finished compiling all these declarations and testimonies, provided his own analysis of the entire situation: he considered

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[668] Ibid, 2, foja 11 reverso.
[669] Ibid, fojas 14-20.

that given all the evidence, cura Inostrosa was innocent, that he was an excellent parish priest, loved by all except by the Indians of San Francisco.

Upon receiving all the information from the ecclesiastical judge of Toluca, the provisor observed that the evidence proved the malevolence of the Indians of San Francisco and determined that cura Inostrosa had committed no crime or abuse. The provisor instructed the ecclesiastical judge of Toluca to notify the indigenous representatives of the rebellious town to obey and respect their parish priest and to abandon further complaints and "malicious movements" (*movimientos maliciosos*), under the penalty of proceeding against all of them if they disobeyed. In addition, since the main instigator and slander was the alcalde Ignacio de Santiago, the provisor sentenced him with six months working at an *obraje* (workshop) in the city of San José de Toluca. The purpose of this punishment was to correct the alcalde and to use him as a public example, so the rest of the Indians of his town would not imitate his behavior. If the alcalde Ignacio de Santiago dared to resist, the ecclesiastical judge of Toluca was authorized to put him in the obraje with the help of the royal justice.[670]

5. Conclusion

Verbal and physical mistreatment, disputes over aranceles, and innovations against local custom constituted the vast majority of the causes by which parishioners denounced their curas. Authors such as Yannakakis, Jorge Traslosheros, David Tavárez, and Gerardo Lara Cisneros note that, on some occasions, the defense of idolatry is one the reasons that triggered acts of indigenous resistance against parish priests.[671] With the ecclesiastical court of San José de Toluca, the defense of indigenous devotions does not seem to be an obvious reason that originated disputes between

[670] Ibid, foja 23 reverso.
[671] Lara Cisneros, "Superstición e idolatría," 149-150.

Indians and curas. While accusations of idolatry could be a reason Indian towns retaliated against ecclesiastics, our records show that most curas and parishioners emphasize their quarrel originated after an act of physical abuse, violation of a local custom, or the collection of clerical fees, but not religion. There are only a few documents in which a fiscal or a parish priest recognized their parishioners resisted religious instruction, as seen in the case against the cura Inostrosa, who could have been victim of retaliation after he seized the idols of the hill of Xuxutepec. In these cases, there could be a clearer connection between indigenous religiosity and retaliation against priests at ecclesiastical tribunals, but for the rest of the cases it is not that easy to know whether the defense of traditional devotions was the real motivation to denounce a parish priest or not.

Although there are examples of violence and disobedience, Indians used an institutional channel (local ecclesiastical courts and the Provisorato) to resolve their problems peacefully. This element should be stressed, since it shows that indigenous peoples trusted colonial institutions and employed them more frequently than being overtly violent. That the Provisorato was prone to back the Indian parishioners and proceed against their abusive curas, even when indigenous officials offered little or no evidence at all to support their claims, could explain why the naturales of the Toluca Valley resorted so often to these tribunals. However, since false accusations were leveled against parish priests, both by Spaniards and indigenous peoples, the courts of the archbishop of Mexico commissioned investigations to local ecclesiastical judges, such as that of Toluca, to investigate these incidents. In this respect, local ecclesiastical courts, already consolidated in the eighteenth century, were a key piece in the judicial network of the Church, that permitted American bishops to settle internal conflicts within their diocese effectively. The mobility of ecclesiastical judges, who could carry out investigations outside their regular jurisdictional area, permitted a rapid coordination between them and the Provisorato of Mexico

City in resolving these judicial proceedings. The ecclesiastical justice of the eighteenth century dealt with cases against members of the clergy moderately. Favoring understanding over punishment, ecclesiastical judges attempted to reconcile parish priests with their parishioners, and to conclude existing litigations as soon as possible. However, when reconciliation was not possible, ecclesiastical courts punished, admonished, or replaced those individuals that were the principal cause of the conflict, such as local curas or pueblo officials, particularly fiscales, from indigenous towns.

In addition, I need to stress that ecclesiastical courts were instrumental in creating new socioeconomic realities in indigenous towns by negotiating or adapting local customs. As we have seen, the costumbre regulated certain services that indigenous communities offered to their local priests, such as working a milpa to fund the reparation of a church. Therefore, the religious tribunals of the archdiocese of Mexico not only facilitated harmony and political governance, but they could also have an economic and cultural impact in indigenous towns.

Finally, cases against ecclesiastics reveal a great deal about local politics in Indian towns. Despite the importance of high indigenous officials such as alcaldes that could incite their community against the cura, I argue that fiscales were even a more controversial and relevant figure in these cases. Fiscales, as middlemen between their towns and their parish priests, were sometimes trapped in between, and forced to choose allegiances when a conflict arose against the cura. In those situations, fiscales could either support their neighbors or side with their parish priest, but their decisions would never be inconsequential. If fiscales testified against their communities, they sometimes were targets of physical violence or retaliation from their neighbors, who considered them traitors. In the same way, when fiscales opposed or conspired against the cura, the ecclesiastical justice sought to punish and replace them.

After having analyzed how the justice of the Church disciplined its members and resolved local disputes with indigenous communities, the next two chapter focus on the cultural and ideological control exercised by the Church over the colonial population, particularly indigenous peoples, in cases of idolatry and superstition.

Chapter 7. Superstition, Idolatry and Diabolism: Theological Background and Evolution in Colonial Mexico

1-. Introduction

This chapter traces the evolution of the theological and ideological principles of idolatry, superstition, and Diabolism from the Old Testament to the manuals of extirpation of idolatry written by Spanish priests such as Jacinto de la Serna. This chapter also provides the cultural and religious background of both indigenous peoples and Spaniards for a proper understanding of the analysis of superstition and idolatry cases that I study in chapter 8. I utilize theological works, canon law, manuals of extirpation of idolatries, and the documents produced by the above tribunals to explore whether Spaniards in the colonial period believed in the reality of indigenous sorcery. Although we cannot know the real internal thoughts of the people that lived three hundred years ago in the viceroyalty of New Spain, we can have an approximate idea of their public or official opinion. By public opinion I mean those thoughts and ideas that were recorded in manuals, treatises, or judicial records, and that theoretically reflected the opinion of their authors. Since the belief in magic justified some of the denounces filed at the ecclesiastical court of Toluca, it is important to discuss how people in the colonial period thought about magic, and more concretely, about indigenous sorcery. How did it work in their opinion, why did it happen, what did they consider magic, and why did they have to denounce it? Both indigenous peoples and Spaniards of different social conditions went to the ecclesiastical tribunals to denounce someone who had bewitched them or somebody they knew. These beliefs were not abstract, and they had an importance repercussion in the legislation and in the judicial arena of those times.

1.1. Superstition, Idolatry and "*Maleficio*" in Catholic Theology

Before dealing with superstition and idolatry cases, we need to understand what Christians referred to when they utilized these terms, and in order to do so, we need to trace its origins in the Old Testament.

The biblical concept of idolatry is the worship of objects and creatures (both natural and supernatural) that are not God, a devotion which entailed the violation of the First Commandment: "You shall have no other gods before me."[672] However, idolatry was not only the worship of beings who are not God, but also a form of religious practice. In Ancient Mesopotamia, pagans produced images of their gods and performed a ritual by which the spiritual power/presence of that god inhabited the idol and was localized in a concrete geography (such as temple or a city).[673] Although biblical writers' mock idols as nothing more than wood or stone,[674] they kept the concept that inside the idols there could be spiritual beings that manipulated humans.[675] In his epistle to the Corinthians, Paul the Apostle clarifies this distinction well when he writes: "Do I mean that the food sacrificed to an idol is anything, or that an idol is anything? No, but the

[672] Exodus 20:3, New International Version; and Deuteronomy 5:7.
[673] For more information on idolatry in the Old Testament see Thomas A. Judge, *Other Gods and Idols: The Relationship Between the Worship of Other Gods and the Worship of Idols Within the Old Testament* (Bloomsbury Publishing, 2019).
[674] See for example Isaiah 44:9-20.
[675] Some passages of the Old Testament reflect the Ancient Israelite belief that God put the nations of the Earth under the control of the divine beings of his heavenly court, who acted as spiritual "rulers." See for example Psalm 58, 82, Sirach 17:17, and Deuteronomy 32:8). However, at some point (the Bible never indicates when exactly) those gods became corrupt, snared people to obtain their worship, and committed injustice (Psalm 82). In the Book of Daniel, these malevolent entities are called "princes," and they appear opposing the angelic forces of God. Due to their corrupt rule of the nations under their care, God punishes the gods and decrees them do die as humans (Psalm 82). In this respect, the Old Testament hints that the pagan gods "exist," in the sense that the forces behind pagan pantheons could be the fallen sons of God/demons that should not be worshipped and that seduced humans into idolatry. See Michael Heiser, "The Divine Council in Late Canonical and Non-Canonical Second Temple Jewish Literature." PhD diss., University of Wisconsin Madison, 2004. And from the same author "Deuteronomy 32:8 and the Sons of God," *Bibliotheca Sacra"* 158 (2001): 52-74.

sacrifices of pagans are offered to demons, not to God, and I do not want you to be participants with demons."[676]

The second concept that needs to be clarified is that of superstition as defined by Christian theology. The most influential definition of superstition was offered by the Medieval theologian Thomas Aquinas, who defined it as "a vice contrary to religion by excess, not that it offers more to the divine worship than true religion, but because it offers divine worship either to whom it ought not, or in a manner it ought not."[677] Following this idea, and drawing from the Old Testament, Aquinas considered idolatry a form of superstition, by which an individual worships creatures, represented as an idol, that are not God.[678] As such, there could be forms of superstition that were idolatrous such as the worship of idols, and others which did not require any form of worship, such as the belief that by lighting more candles to God, he was going to respond sooner to the devotee's prayers.

Regarding magic, doctors of the Church such as Thomas Aquinas and Augustine of Hippo considered it to be a vain art and noxious superstition, involving an explicit or implicit pact with demons.[679] The Spanish term utilized to refer to the superstitious magical art with the purpose of harming somebody is called *maleficio*, or *hechicería* (translated in this dissertation as sorcery).[680] These definitions influenced the Spanish Jesuit Francisco Suárez, who in the sixteenth century reinforced the idea that idolaters maintained an explicit or implicit pact with the Devil to operate

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[676] 1 Corinthians 20:20, New International Version.
[677] Thomas Aquinas, *Summa Theologiae*, Second Part, Question 92.
[678] Ibid, Second Part, Question 94.
[679] Ibid, Second Part of the Second Part, Question 96.
[680] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro IV, título 21, párrafo 253: "La magia, que es el arte de obrar cosas admirables, una es natural o, otra supersticiosa. La natural es aquella que por causas naturales produce algunos efectos admirables […]. La supersticiosa es, cuando tales cosas se obran por acción del demonio: invocándolo expresa o tácitamente, por medio de signos que no tienen ninguna conexión natural con el efecto. Si tiende a dañar a otro, se llama maleficio, o hechicería."

magical wonders.[681] This interpretation became so prevalent that after the Spaniards conquered the New World that colonial jurists such as Pedro Murillo Velarde included them in their manuals on canon law.[682] For this reason, these theological definitions were not just theological theories, but key ideas that informed the judicial procedure on cases of superstition in the eighteenth-century Toluca Valley. Therefore, the crime of superstition in the Spanish America encompassed a wide variety of practices: the idolatrous worship of pre-Columbian deities through idols; the unorthodox worship of angels, saints, and the Holy Trinity; and the performance of superstitious healings, in which the healer utilized religious figures (both Christian and non-Christian), along with medicinal herbs, rituals, and incantations. All these practices belong to the category of superstition, with idolatry and sorcery as specific subcategories.

2. From *Maleficium* to Idolatry: Witches, the Decalogue and Nominalism

From the antiquity to the Middle Ages, the Catholic Church functioned as a repository of supernatural power that helped the faithful in their daily battles against the demonic forces that threatened them. For instance, by using the sign of the cross or by aspersing holy water on a particular object, the believer could keep demons away. In the same way, theologians and priests promoted the belief of miraculous healings through the worshipping of relics, pilgrimages to holy places, and prayers.[683] Although the Medieval Church strengthened the belief that the environment could be manipulated through supernatural means, ecclesiastical authorities attacked

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[681] Lara Cisneros, "Superstición e idolatría," 95.

[682] See for example Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro V, título 21, párrafo 256: "En todas estas especies de supersticiones, cuantas veces interviene un pacto explícito con el demonio, por el que éste es invocado expresamente, como es del todo ilícito tener comercio con el enemigo jurado de Dios, se comete, sin duda, un pecado grave, más aún, de por sí, también es pecado grave cuantas veces interviene un pacto implícito, suele, sin embargo, excusarse por la simplicidad, o por la ignorancia, no crasa, ni afectada de los que hacen esto, o también, porque no creen firmemente en estas cosas, sino sólo con cierto temor y sospecha del suceso futuro y, hacen esto, sólo por cierta vana curiosidad."

[683] Thomas Keith, *Religion and the Decline of Magic* (Oxford University Press, 1971), 32.

rival forms of non-sanctioned magic, whose origins instead of being divine, were believed to derive from the Devil. However, such as Augustine of Hippo theologians believed that the Devil was incapable of working miracles. Following this interpretation, the *Canon Episcopi* (circa 906 AD), a very influential text of canon law during the Middle Ages, reinforced this notion and asserted that the Devil used illusions and superstitions to deceive Christians, and that he could only work illusory wonders.[684] This concept of superstition resonated with the vision that the Church had on different types of magic, in particular with *maleficium*; which referred to those superstitious and magical practices whose aim was to harm other humans through supernatural means, normally of demonic origin. In this respect, theologians and ecclesiastical authorities maintained the idea that this form of witchcraft was mainly a crime against the human community, and many theologians did not believe that they had a real effect.[685] However, in the twelfth and thirteenth centuries, clerical authorities took magic, and especially the practice of harmful sorcery (that would form an important basis for the idea of witchcraft), much more seriously. Saint Thomas Aquinas posed that magic involved reliance on demons through sacrifices and idolatrous pacts; while the inquisitors established in their manuals that the interpretation that ceremonial magic was tantamount to heresy, and that necromancers were effectively subjecting themselves to demons.[686]

John Bossy argues that these new ideas on sorcery and idolatry were supported by a new emphasis on the Decalogue. During most of the Middle Ages, the moral system was based on the seven deadly or capital sins, which were a negative exposition of Jesus twofold commandment to

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[684] Arno Borst, *Medieval Worlds: Barbarians, Heretics, and Artists in the Middle Ages* (University of Chicago Press, 1991), 117.
[685] Gabor Klaniczay, "Miraculum y maleficium: algunas reflexiones sobre las mujeres santas de la Edad Media en Europa Central," *Medievalia*, number 11, (1994): 42.
[686] Marrone, Steven, *A History of Science, Magic, and Belief from Medieval to Early Modern Europe (*New York: Palgrave MacMillan, 2015), 162.

love God and one's neighbor. Although system was useful in providing seven different categories that the faithful could identify to correct his passions, the seven deadly sins had no scriptural authority and made little of obligations to God.[687] The new spirituality of the thirteenth-century replaced the seven deadly sins for the Decalogue of the Old Testament, which considered idolatry to violate the First Commandment.[688] Thanks to this change, Bossy contends, the Devil that inspired witchcraft and superstition was seen as a more powerful being than before. Similarly, witchcraft and sorcery (maleficium) was no longer considered being a threat to the human community, but primarily an offense against God.

Fernando Cervantes poses that the emphasis on the Decalogue, along with the influence of the Franciscan nominalist school, which reacted against Thomism, are the basis of modern demonology. In this respect, Cervantes notes that Aquinas defended the idea that humanity could obtain a natural knowledge of God and show his existence through reason alone. In this system, the natural and the supernatural are not irremediably separated, but organically joined by the being of God. Aquinas interpreted that the Decalogue was a combination of natural law and divine law.[689] The controversial assertion of the Thomist's theological and philosophical system was that nature has an intrinsic goodness independent of the effects of the divine grace. In Fernando Cervantes' words, "any action of the Devil over nature would be strictly limited and circumscribed."[690] In the Thomist system, human desire for the supernatural, and more particularly for God, was rooted in nature and was universal to all men. For Aquinas, idolatry and superstition were disorder of this desire, and mainly the result of ignorance and the weakness of

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[687] John Bossy, "Moral Arithmetic: Seven Sins into Ten Commandments," in Edmund Leites, ed., *Conscience and Casuistry in Early Modern Europe* (Cambridge, 1988), 215-30, Cited by Cervantes, The Devil in the New World, 20.
[688] Exodus 20:2-4.
[689] Cervantes, *The Devil in the New World*, 22.
[690] Cervantes, *The Devil in the New World*, 21.

human nature than a diabolical inspiration.[691] The problem, according to Cervantes, is that this philosophical system was replaced by the Franciscan nominalist school, represented by Duns Scotus (1266-1308) and William of Ockham (1285-1347), which saw God as a free agent and that separated nature and grace, "making the real of 'the supernatural' much less accessible to reason, thereby enhancing the attributes of both the divine and the demonic in relation to the individual."[692] Therefore, when facing the problem of idolatry, nominalists abandoned possible natural reason to explain it, and emphasized diabolical intervention.

As I will explain in the next section, in the New World theologians were neither completely Thomist nor only nominalist in explaining indigenous idolatry, but utilized references to both systems as they deemed it appropriate. However, a new understanding of witchcraft, the substitution of the moral system of Seven Deadly Sins in favor of the Decalogue and the dominance of the Franciscan nominalist school explain the emergence of the European diabolism that would be exported to the Americas after the Spanish conquest.

3-. The Idolaters of the New World: Devotions and Sorcery in Pre-Colonial Mexico

3.1 The Nahua Religion of Pre-Colonial Mexico

Before the Spanish conquest of 1521, the people of Mesoamerica developed a sophisticated polytheistic religious system that permeated their daily lives. A great variety of spirits and deities which were worshipped through special rituals, animated forests, rivers, rocks, and the stars. Sacrifices nourished the living beings of the cosmos, thereby bringing about change

[691] Aquinas, *Summa Theologiae*, II-II, q. 94, article 4: "The dispositive cause of idolatry was, on the part of man, a defect of nature, either through ignorance in his intellect, or disorder in his affections, as stated above; and this pertains to guilt."
[692] Cervantes, *The Devil in the New World*, 24-25.

and controlling transformations.[693] Among the sacrifices and offerings to the deities, ritual bloodletting was the most common and widespread practice. Small quantities of blood were offered frequently, from the ceremonies of newborns to private rituals in the people's households. However, during the high ceremonies promoted by the Nahua rulers of pre-colonial Mexico, dozens (and even hundreds) of human beings were sacrificed to inaugurate a temple or at a ceremony in honor to different gods. According to the accounts of the Spanish friar Bernardino de Sahagún, the Aztecs believed that dozens of young children had to be sacrificed to Tlatloc, the god of thunder and rains, to obtain the desired waters that irrigated their crops.[694] Although human sacrifice was extensively used, indigenous peoples also resorted for their quotidian ceremonies to small animals like birds, snakes, fishes, and food.[695]

For the Nahua peoples of central Mexico, the origin of human sacrifice was rooted in mythology. According to the ancient Aztec myths, the god Quetzalcoatl (the feathered serpent) and his rival Tezcatlipoca (the smoking mirror) created the world together; first by creating the fire, then the sun, and finally the first couple of humans being. However, what is really important in this myth is that the gods sacrificed themselves to set the sun and the creation in motion. Although this account may vary depending on the local tradition, the idea that prevailed for the inhabitants of pre-colonial Mexico remained the same: the gods sacrificed themselves so humans and the world could exist, and they had to pay them in return. This kind of religious obligation is known as *tlamacehua*, which in Náhuatl means "to do penance," and "to deserve or be worthy of something." Tlamacehua denotes the primary relation human beings have with their gods through

[693] Kay Almere Read and Jason González, *Handbook of Mesoamerican Mythology* (ABC-CLIO, 2000), 29.
[694] Bernardino de Sahagún, *Historia general de las cosas de la Nueva España* (Editorial Patria, México 1989), Book 1, chapterIV; and Book II, chapter I.
[695] Kay Almere Read and Jason González, *Handbook of Mesoamerican Mythology*, 30.

sacrifice, which they had to feed (with their own blood) to repay them for their primary sacrifice, and to get gifts from them.[696]

3. 2 Nahualism

In the Mesoamerican context, there were different terms that applied to a wide range of magical practices that an individual could use. Despite the differences, the general term that describes a person with magical knowledge was that of *nahual* (meaning hidden, or disguise in Náhuatl). One of the main attributions of these nahuales was their capacity to shapeshift into the specific animal that they were assigned to at birth.[697] However, the nahuales used other types of magic that distinguished them. For example, they were considered *tícitil* (healer) if they specialized in healing practices by utilizing medicinal herbs along with magic procedures. A nahual could become a *tlacatecolotl* (owl man in Náhuatl), if they used their magical powers against their neighbors. For instance, these evil nahuales could summon hails to destroy the crops, or to inflict illnesses through spells, enchantments, potions, ointments, and so forth.[698] The reason for the name "owl man" has to do with the negative concept that the Nahua people had of the owl, which was the emissary of the *Mictlan* (the Underworld), and as a creature of the night; the moment of the day in which the worst kind of sorcery occurred. The Dominican friar Bartolomé de las Casas depicted the tlacatecolotl in one of his writings as: "a nocturnal man, the one who walks out at night whining and frightening [those who encounter him], as he is a terrible and dreadful foe."[699]

[696] Gary H. Gossen and Miguel León Portilla, *South and Meso-American Native Spirituality: From the Cult of the Feathered Serpent to the Theology of Liberation* (Crossroads, 1993), 43.
[697] Roberto Martínez González, "Sobre el origen y significado del término 'nahualli'," *Estudios de cultura Náhuatl*, Number 37, (2006): 95.
[698] Alfredo López Austin, "Cuarenta clases de magos del mundo náhuatl," *Estudios de Cultura Náhuatl* 7 (1967): 87.
[699] Bartolomé de las Casas, *Los indios de México y Nueva España, Antología [de la Apologética Historia Sumaria] (*Editorial Porrúa, 1966), 79.

In relation to the question of how these nahuales learned their magical arts, there were different ways. The main idea that permeated the Nahua religious thought is that the nahuales obtained their powers at birth, reading spell books, or by being by a supernatural being or by another nahual.[700] Although the term nahualism refers to the general set of practices that indigenous magicians developed, they could be distinguished by their approach to magic. A nahual could be a tícitil if they used their powers to heal and cure diseases; or they could become a tlacatecolotl if they caused harm to other people.

3.3. The Sixteenth Century Clash

After the Spanish conquest of Mexico in 1521, various mendicant orders arrived in the Americas to evangelize the indigenous peoples. These friars, following the opinion of Hernán Cortés that the Indians were idolatrous as the result of ignorance, and that they would become Christians if carefully corrected, embraced an optimistic approach towards evangelization. In the first half of the sixteenth century, the flocks of indigenous peoples who voluntarily baptized themselves and became Christians impressed the regulars.[701] However, this optimism soon turned into pessimism, when the friars discovered that although the Nahuas adopted Christianity, they did not abandon their former pagan gods that they worshipped.[702] By 1550 there wasn't a clear resistance against Christianity, but many Nahuas didn't seem interested in its dogmas. The reason for this indifference is that the Indians still relied on their old gods and rituals to receive physical and metaphysical goods. Therefore, they developed some strategies to maintain the worship of

[700] Bernardino de Sahagún, *Historia general de las cosas de la Nueva España*, Book IV, Chapter XXIX.
[701] One of the most common arguments in the historiography to explain this mass conversion is that natives agreed to convert because they traditionally adopted the gods of those peoples who defeated them militarily, believing that the new deities would grant them power and protection. See Cervantes, *The Devil in the New World*, 11-13.
[702] Ibidem, 13.

their old gods alive by burying idols beneath a Christian altar, or by attending pagan ceremonies in caves and secluded areas. [703]

Despite this reaction from the Indians, the Spaniards made a whole different interpretation. From the beginning of the conquest of Mexico, many Spanish *conquistadores* and priests envisioned the Nahua religion as evil. They recognized that such a maleficent religion, marked by human sacrifice, the widespread presence of sorcerers, and bloody gods, was inevitably the work of Satan.[704] As explained in a previous section, this understanding was possible thanks to the emergence of Franciscan nominalism and a new emphasis on the Decalogue, which saw the Devil as the author of idolatry. Bernardino de Sahagún wrote in one of his colloquia: "It is true that all of those that you [referring to the Indians] have had as gods, none of them was the [true] God, since none of them are the life giver, but demons."[705] By equating the deities of the Nahuas with demons, Sahagún reproduced the classical argument of Saint Augustine, which considered the deities of the Greeks and the Roman to be demons.[706] Spanish theologians envisioned the Nahua religion as a set of superstitions invented by the Devil to subject the indigenous peoples to his will.[707] Although some early Franciscan friars such as Motolinía had initially seen these parallels as an initiative by God to prepare the Indians for the reception of the gospel, the growing conviction that satanic intervention was at the core of indigenous culture crushed this optimism.[708]

[703] Jorge Klor de Alva, "Aztec Spirituality and Nahuatized Christianity," in Hossen, *South and Meso-American Native Spirituality,* 179.
[704] Roberto Martínez González, "Los enredos del Diablo o de cómo los nahuales se hicieron brujos," *Relaciones: Estudios de historia y sociedad*, Vol. 28, number 111, (2007): 197.
[705] Bernardino de Sahagún, *Coloquios y doctrina cristiana (*UNAM-Fundación de Investigaciones Sociales AC, 1986), 175.
[706] Agustín de Hipona, *La Ciudad de Dios* (CreateSpace Independent Publishing Platform, 2016), Book IV, Chapter I.
[707] José Acosta, *Historia Natural y Moral de las Indias*, Book V, Chapter I.
[708] Cervantes, *The Devil in the New World*, 26.

4. Spanish Views of Indigenous Magic

When the Spaniards learned about the pre-Colombian religion of the Nahua peoples, they were scandalized. Human sacrifice, idolatry, and witches were widespread. But did they think that any of it was real, or just a tremendous delusion cause by their own ignorance or by Satan? In this section I argue that most Spanish theologians considered the magical practices of the Nahua Indians, particularly nahualism, to be authentic, and with the power of causing actual effects. This belief is important since it backed the ideological justification of ecclesiastical courts at extirpating indigenous superstition and idolatrous practices.

4.1. Theological Precedents

The Old Testament not only affirms the reality of idolatry and the existence of the fallen sons of God, who are associated with demons and pagan gods, but also endorses the authenticity of certain forms of magic. One of the most cited examples in the Torah is the passage in which Aaron, Moses' elder brother, worked a miracle by converting his staff into a snake, with the purpose of impressing the Pharaoh with Yahweh's power. However, the Egyptian king called the magicians of his court, who performed the same wonder "by their secret arts."[709] Although the text never explicitly says that the Egyptian sorcerers worked those wonders thanks to their of power of their pagan gods, the Book of Exodus portrays the Ten Plagues as God's judgment against the Egyptian deities: "On that same night I will pass through Egypt and strike down every firstborn of both people and animals, and I will bring judgment on all the gods of Egypt. I am the Lord."[710] Another famous passage endorses the actual effects of necromancy, when the king Saul, desperate at not receiving any answer from God through dreams or prophets, resorts to the service

[709] Exodus 7:8-11.
[710] Exodus 12:12.

of a witch. According to the text, the medium successfully summons the soul of the Prophet Samuel, who tells king Saul that he will be defeated by the Philistines.[711]

Spanish American theologians and extirpators of indigenous idolatry drew on the above-mentioned biblical examples and the theology of Saint Augustine of Hippo to explain why demonic sorcery, especially Nahualism, could have an apparent effect in reality. Augustine wrote in his *City of God* that the sorcerers and witches of the Bible, such in the case of Simon Magus, worked their wonders through false illusions created by the Devil in the minds or eyes of the beholders.[712] For Augustine, these transformations were not real, but only apparent in the fantasy or mind of the people deceived by the sorcerers.[713] Authors such as José de Acosta, Jacinto de la Serna and Hernando Ruiz de Alarcón, that utilized the idea of apparent sorcery to explain some prodigies caused by Indian sorcerers, widely cited this doctrine.

4.2. Jacinto de la Serna

One of the most important Spanish friars who wrote about indigenous witchcraft was Jacinto de la Serna. In 1656, De la Serna wrote a book, the *Tratado de las supersticiones*, during a campaign of extirpation of idolatries in central Mexico and the Toluca Valley. In his work, the friar hammers the idea that indigenous sorcery and superstition is mostly a form of either ignorance, deceit, or superstition. He considered that indigenous peoples were attracted to sorcery by tradition, in the sense that they were taught by their parents, or because they had a bad

[711] 1 Samuel 28:3-25.

[712] Agustine, *Ciudad de Dios*, libro XVIII, capítulo XVIII: “Pues aún nosotros, estando en Italia, hemos oído algunas cosas como éstas de una provincia de aquellas regiones, donde decían que las mesoneras, instruidas en tales artes malas, solían dar en el queso a los viajeros que querían o podían cierta virtud con que inmediatamente se convertían en asnos.”

[713] Ibid, libro XVIII, capítulo XVIII: “Así que por ningún pretexto creerá que los demonios puedan convertir realmente con ningún arte ni potestad, no sólo el alma, pero ni aun el cuerpo humano en miembros o formas de bestias, sino que la fantasía humana, que varía también, imaginando o soñando innumerables diferencias de objetos y, aunque no es cuerpo, con admirable presteza imagina formas semejantes a los cuerpos, estando adormecidos u oprimidos los sentidos corpóreos del hombre puede hacerse que llegue por un modo inefable y que se represente en figura corpórea el sentido de los otros, estando los cuerpos de los hombres, aunque vivos, predispuestos mucho más gravemente y con más eficacia que si tuvieran los sentidos cargados y oprimidos de sueño.”

inclination towards these nefarious arts. Therefore, when Indians embraced the belief in magic, they became victims of sorcerers and healers, who persuaded them through lies to believe in their superstitious powers, sometimes by mixing it with the truths of the Christian faith to make it even more credible.[714] Although this notion seems to include Thomist ideas on idolatry as the result of ignorance and deceit, De la Serna thought that it was primarily the Devil who instilled these superstitions in indigenous minds to prevent them from achieving salvation.[715] According to this author, the real danger of the indigenous sorcerers did not rest on their alleged wonderful powers, but on the bad example that they set for the rest of the Indian society.

Although De la Serna deemed this form of indirect Diabolism, in which the Devil seduces men through subtle ways, as the most common form of demonic intervention in worldly affairs, he recognized that on some occasions the Devil took a more direct approach in dealing with humans. For example, he noted that some effects caused by the Devil, such as producing rain when sorcerers invoked it or some healings, were real. De la Serna wrote that demons, as fallen angels, still had a deeper knowledge of natural science, that permitted them to manipulate the natural qualities of certain elements, such as clouds, to make rain.[716] This form of knowledge was termed as "*activa pasivis,*" did not involve any form of supernatural effect, but that still required God's permission to have an actual effect.[717] In addition, De la Serna wrote that God sometimes

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[714] Jacinto de la Serna, *Tratado de las supersticiones, idolatrías, hechicerías, ritos, y otras costumbres gentílicas de las razas aborígenes de México* (Biblioteca Virtual Universal, 2003), prólogo: "Y como todo esto lo hazen [los indios]á vezes porque los llama su mala inclinacion, y la tradicion, que observan de sus antepassados; á vezes por lo que les enseñan sus Medicos falsos, y embusteros, á quien dan tanto credito, los quales les enseñan cosas tan varias, y tantas, que á penas tienen acciones, que no se las enlasen con sus mentiras, y procuren mesclarlas con las verdades de nuestra Sancta Feé."

[715] Ibid, Capítulo III, título II: "…se conoscerá la astucia de nuestro enemigo el Demonio: pues para hazer preuaricar almas, se vale de la inuencion de vn indio bruto, para sacar el fructo que sacaba de toda aquella miserable gente."

[716] Other authors of manuals such as Hernando Ruiz de Alarcón had a similar idea in this respect, who wrote that the Devil could reveal certain knowledge to Indian sorcerers based on the science he knew. See for example, Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado 1, capítulo 1, párrafo 9.

[717] De la Serna, *Manual de ministros*, capítulo V, párrafo 150.

allowed the false and superstitious sorcery of the Indians to have a real effect as a punishment for their sins, thus permitting the Devil to have a closer control of the Indians, who instead of resorting to God for help, would consult their healers and deceiving sorcerers.[718] Another reason why God permitted that even the false superstitions could have an actual effect was to warn incredulous ecclesiastical ministers, who thought that indigenous sorcery was just ignorance, that idolatry and sorcery still existed and that they must not be negligent in combating it.[719] Regarding Nahualism, De la Serna was convinced that it was real, and to prove it, he registered the following story:

> "A man of the region of Acapulco called Simon Gomes, was walking with his two sons (already of age) when they arrived to some rivers close to the port [of Acapulco], where there was a rock in the middle of the rivers that formed a little isle. One of his sons went swimming to this rock and climbed over it when a cayman surrounded him. At noticing that the cayman wanted to kill him, the son cried for help and his father shot [the animal] with an arquebus from the shore, and killed it. At the same time this [event] happened, in the house of the above-mentioned Simon Gomes, an old Indian woman, who was with the wife of the said man, [suddenly] fell dead saying: Simon Gomes has killed me."[720]

This part of the text exemplifies the pre-colonial indigenous notion of the nahual's connection to a particular animal at birth through the tonalli. In another paragraph, De la Serna explored how this kind of connection was possible and concluded that: "while finding out how by killing the cayman the old Indian woman had died too, [the authorities that investigated this case] resolved that the Indian had turned into a cayman with a pact with the Devil."

4.3. Hernando Ruiz de Alarcón

Hernando Ruiz de Alarcón shared a similar theological background as De la Serna, and condemned most indigenous magic as ignorance, lies, or superstition[721]. However, he also

[718] Ibid, capítulo V, párrafo 149.
[719] Ibid, capítulo V, párrafo 150.
[720] Ibid, Capítulo III, párrafo 34.
[721] Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado I, capítulo IX, párrafo 147: “De lo referido se informan los ministros de doctrina para disuadir a los indios tan grandes engaños y enseñarlos con paciencia, desengañandolos como no ay transformaciones, y como los animales obran naturalmente y no con actos libres, y los demonios no pueden exceder de lo que Dios Ntro. Señor les permite.”

acknowledged that some sorcery had a real effect. In order to convince his readers of the existence of Nahualism, Ruiz de Alarcón used the testimony of the most reliable people ("*sin tacha*") of his time, such as priests, monks, and learned Spaniards.[722] Through the different testimonies he gathered, he concluded that nahuales could do wonderful things thanks to an explicit or implicit pact with the Devil, who linked a specific animal with the witch, or nahual.[723] In his manual, Hernando Ruiz de Alarcón wrote:

> "I infer that when a child is born, the Devil, by the expressed or implied pact which the parents make with him, dedicated or subjected him to the animal that the said child has to consider as nahual [...] In virtue of this pact, the child remains subject to all dangers and travails which the animal suffers, until death. In return, the Devil brings it about that the animal always obeys the command of the child, or rather the Devil himself carries it out, using the animal as his instrument."[724]

Finally, the friars demonized even the positive type of nahuales, the ticitl. Ruiz de Alarcón wrote: "Ticitl means 'doctor' in our language (Castillian/Spanish), but on going further into it, [one finds that] it is accepted among the natives with the meaning 'wise man'. It is established among the Indians that one of those called ticitl suffices for the remedy of any neccesity [ilness] or trouble whatsoever."[725]

The friar then writes that the ticitl obtained hidden knowledge by drinking peyote or ololiuhqui, which were holy plants (made beverages) during the pre-colonial period. According to Ruiz de Alarcón, when the nahuales consumed these potions: "[It is] implicit in all of it the pact with the Devil, who often appears to them by these drinks and speaks to them, leading them to

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[722] Ibid, Tratoado I, capítulo I, Párrafo 11: "Anme referido personas fidedignas…"; párrafo 13: "Pero quando estos dos casos no nos hagan mucha fuerça, por no ser las personas que los refirieron mayores de toda excepcion, contare otros con testigos que no padecen tacha…"; and párrafo 18: "Antonio Marques, español digno de credito, y que sabe bien la lengua mexicana."

[723] Ruiz de Alarcón, Tratado I, capítulo I, Párrafo 30.

[724] Michael D. Coe and Gordon Whittaker, *Aztec Sorcerers in Seventeenth Century Mexico: The Treatise on superstitions by Hernando Ruiz de Alarcón* (University of New York at Albany, 1982), 66.

[725] Michael D. Coe and Gordon Whittaker, *Aztec Sorcerers in Seventeenth Century Mexico,* 219.

believe that the one who speaks to them is the ololiuhqui or the peyote."[726] In Ruiz de Alarcon's theory, the nahual himself does not transform himself to an animal, as witch and animal are two real independent entities. However, thanks to the linkage created by the Devil between them, when an animal died or was injured, his witch suffered the same effect. Unlike De la Serna, Ruiz de Alarcón considered that the deaths of the animals and the Indians were real, and therefore, not apparent in the mind.[727]

4.4. Testimonies of Spaniards in the Toluca Valley

The records produced by the ecclesiastical courts of the Toluca Valley show that lay Spaniards also believed that the indigenous magic was real and effective. There is evidence of Spanish people accusing indigenous peoples of having bewitched them or their families through enchantments or a pact with the Devil.[728] Spaniards also hired indigenous sorcerers to heal their affections,[729] or to have a personal enemy killed through Indian sorcery. In addition, many Spanish women purchased love potions from indigenous witches to make their male friends fall in love with them, while some Spanish men bought "magical dusts" from Indians to win at card games.[730] The records of the ecclesiastical courts also show that surgeons and physicians endorsed the reality of indigenous sorcery through medical examinations,[731] while some ecclesiastical judges

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[726] Ibidem, 219-220.
[727] Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado I, capítulo I, párrafo 32 "Esto infiero de muchos casos deste genero, como dixe arriba en que amenazando alguno destos indios, tenido por *nahualli* a otro indio o español, ha suscedido el tal indio ó español amenazado tener despues reyerta en el rio con algun caiman, o en el campo con algun otro animal, y saliendo della el animal herido, o lastimado, han hallado despues al indio, que hizo la amenaza, con las mismas heridas que el caiman o animal saco de la reyerta, estando el tal indio ausente al tiempo della y ocupado en otros exercicios."
[728] See for example AHAM, Juzgado Eclesiástico de Toluca, 1726, Caja 37, Expediente 12, foja 5 anverso.
[729] AHAM, Juzgado Eclesiástico de Toluca, 1764, Caja 90, Expediente 14, foja 2 anverso.
[730] All these examples can be found in a "confesión," a document produced by the Inquisition, in which Spaniards deliberately confessed their superstitions and crimes against the faith to avoid prosecution. The documents is found at the Archivo Histórico de la Parroquia de San José El Sagrario, Confesiones ante el Santo Oficio, 1714-1725.
[731] AHAM, Juzgado Eclesiástico de Toluca, 1767, Caja 97, Expediente 27, foja 1 anverso y reverso.

conceded that Indians accused of sorcery could have caused a particular wonder under God's permission.[732]

Therefore, in the first half of the eighteenth century, the belief that indigenous sorcery was possible and real thanks to an explicit or implicit with the Devil (and with God's permission) was prevalent in the colonial period as our records of the ecclesiastical court of San José de Toluca unequivocally show. These records are an excellent complement to the treatises written by experts such as De la Serna and Ruiz Alarcón, since they give us the vision of peoples from different social conditions and ethnicities that engaged with or experienced indigenous sorcery.

5. Indigenous Magic and Belief in the Eighteenth-century Toluca Valley

If Spaniards considered that at least some of the indigenous magic could be both real and powerful, the Indians were even more convinced about the effectivity of their spells. As Ruiz de Alarcón remarks: "it is firmly rooted among this miserable people, that the words of their conjures and spells that the Devil taught their ancestors have an infallible effect, which may be possible if God Our Lord so permits it."[733] Indigenous peoples continued practicing a traditional magic, as described by De la Serna and Ruiz de Alarcón well into the eighteenth century. Although the Indians of the Toluca Valley were nominally Catholic, wrote testaments following Christian protocols, took part in religious brotherhoods, kept images of saints, the Virgin Mary and Christ, they also maintained their own religious tradition, at least in a syncretized way. The documents of the ecclesiastical courts of the Toluca Valley tell us exactly what practices indigenous people engaged with, what type of ingredients they used in their rituals, where they worshipped, and even

[732] AHAM, Juzgado Eclesiástico de Toluca, Caja 38, Expediente 5, foja 1 reverso: "…el espantar granizo no podía ser menos que por pacto implícito con el demonio, y más cuando ejecutaba sacar tabaco y echarle a volar."
[733] Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado II, capítulo I, párrafo 167.

the appearance of their dolls. In the eighteenth century, indigenous peoples prosecuted by the ecclesiastical courts of the Toluca Valley under charges of superstition or idolatry had committed a superstitious form of healing, hail conjuring, or maleficio (sorcery) through an alleged pact with the Devil, or idolatrous worship.

5. 1. Healers, Ceremonies, and Ingredients

Before the Spanish conquest, the indigenous peoples of Mesoamerica used a wide arrangement of herbs, plants, mushrooms, and seeds in their rituals. Many of these ingredients, like the *peyote* or the *ololiuhqui* had hallucinogen properties and were extensively utilized in ceremonies or religious worship. The purpose of consuming these substances was to enter a trance to commune with the forces of nature or the gods. Indigenous shamans and priests contacted those spirits with the purpose of acquiring knowledge about the plants, diagnose diseases or ensure a good harvest.[734] Other substances such as *copal*, a tree resin often employed medicine or an incense by indigenous peoples in pre-Columbian ceremonies, was still used in the Toluca Valley in the eighteenth century for many purposes, both religious and medicinal.[735]

For example, in 1745 the Spanish couple Esteban Cayetano and his wife Manuela, advised by their confessor, went to the ecclesiastical court of San José de Toluca, and accused an Indian healer named Juana Polonia of having healed in a superstitious way a three-year-old child. The declarants said that Juana Polonia put the child over a clean white linen sheet ("*lienzo*"), used copal and *estafiate* to rub and smoke his body, and extracted from his body a bunch of sand, feathers, and other things. In this passage we can see a continuation between the pre-Columbian

[734] See Carod-Artal F. "Síndromes neurológicos asociados con el consumo de plantas y hongos con componente tóxico (II). hongos y plantas alucinógenos, micotoxinas y hierbas medicinales," Rev Neurol. 36, (2003): 951-960.
[735] Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado VI, capítulos IV, V, VI, VII, VIII, XVII, XXV, and XXVI. Jacinto de la Serna also indicates that almorranas could be healed with copal in paragraph 78 of his manual.

past and their colonial present. Jacinto de la Serna registered in his manual to extirpate idolatries that Indians offered copal to their deities during worship, but also when performing healing rituals, so their gods could help them expel the evil spirit causing the illness.[736] In the estafiate's case, Bernardino de Sahagún wrote in his manual that this herb was used in pre-Columbian ceremonies for medicinal purposes or for the worship of native deities.[737]

When the ritual concluded, the healer Juana Polonia mentioned that the illnesses of the boy was caused by an *eccame*, (which in the pre-Columbian tradition alluded by Ruiz de Alarcón was a spirit or bad air that could provoke an illness), and that the expulsion of filthy things revealed the cure was effective.[738] However, Esteban and Manuela were not convinced by the healer's explanation. The presence of traditional herbs and substances, and particularly the expulsion of filthy things, was a matter of concern for Spaniards and ecclesiastical judges, as they considered it was evidence of diabolical intervention, as we will see more deeply in the next chapter.

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[736] De la Serna, *Tratado de las supersticiones*, capítulo XVIII, título 5, párrafo 550: "Y encomiendan muy de veras al enfermo á estos Dioses, y echando el copal en el fuego sahuman el paciente, y le bañan con el agua preparada para esto, y luego le passan á el lienço limpio, que se tiene sobre la estera, para dar á entender, que ya va limpio, ó en mejor disposicion, que de antes: y mientras estas acciones se hacen va el medico prosiguiendo en sus conjuros." See also párrafo 552: "… quitan, y echan fuera los malos aires, que le dañan, y quitan la salud, y le comunican los buenos y saludables."

[737] Bernardino Sahagún inform in his *Manual de ministros* that Indians carried this flower when participatin in their pre-Hispanic religious ceremonies. See Capítulo XI, paragraph 271.

[738] AHAM, Juzgado Eclesiástico de Toluca, 1745, Caja 62, Expediente 2, foja 2 reverso: "Dicha Juana Polonia mandó a tender sobre un lienzo blanco a un muchacho llamado Andrés que tendría de dos a tres años poco más o menos, hijo del referido Manjareal supersticiosamente, con ruda o copal, con lo cual va refregando el cuerpo, con cuya ceremonia dice que sacan del cuerpo, popotes, plumas, arenas y otras cosa, afirmando que es cosa de los *ecames* cuyo término quiere decir, a lo que entiende este denunciante, espíritus malignos o aires malos."

In other cases, indigenous peoples used a *jícara* (a woody container like a bowl) with the water of a *cempazuchitl* flower[739] to discern whether people were under an evil spell.[740] That the healing involved the utilization of the cempazuchitl flower was troubling, since it was an ingredient widely employed by the indigenous peoples in pre-Hispanic times in their religious ceremonies. The naturalist and physician Francisco Hernández (1514-1587) wrote about this flower and noted that Indians used it for medicinal purposes. Among others, indigenous peoples applied the juice of the flower or its leaves to reduce fever, as a muscle relaxant, and to cure stomachache, headache, and eye-related diseases such as suppurations and styes.[741]Another pre-Columbian way of healing required the performance of certain dances, that accompanied the employment of some herbs and practices above-mentioned described.[742].

Besides dances,[743] blowing or rubbing off the body part affected by illness,[744] and smoking the sick person with copal or estafiate, another popular form of healing involved the consumption of potions and beverages. In most cases the Indian healer never shows what are the exact components of the beverages, but we can infer from the declarations of the people who drank them that they had a hallucinogen and alcoholic effect. For example, Petrona, an indigenous woman resident of Tenango del Valle consumed a potion concocted by an indigenous healer,

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739 In the colonial records the terms "cempoalxuchil" or "zimpuasuchit" refer to a marigold flower found in Mexico.
740 AHAM, Juzgado Eclesiástico de Toluca, 1728, Caja 40, Expediente 10, fojas 1 reverso and 2 anverso: "Era curandera, con la notoria superstición de hecha en una jícara de agua Zimpuasuchit, diciendo a los enfermos que estaban maleficiados."
741 Adriana Elena Castro Ramírez, "Origen, naturaleza y usos del cempoalxóchitl"; in *Revista de Geografía Agrícola,* December (1994): 187-188.
742 AHAM, Juzgado Eclesiástico de Toluca, 1745, Caja 62, Expediente 2, foja 2 anverso: "[El sanador] comenzó a hacer ciertos círculos el dicho don Marcos Diego, parando una vara que traía en la mano en el suelo y teniéndose de ella comenzó a rodearla gritando y chiflando al modo como cuando los indios vuelan en el volador."
743 AHAM, Juzgado Eclesiástico de Toluca, 1745, Caja 62, Expediente 2, foja 2 anverso: "[El sanador] comenzó a hacer ciertos círculos el dicho don Marcos Diego, parando una vara que traía en la mano en el suelo y teniéndose de ella comenzó a rodearla gritando y chiflando al modo como cuando los indios vuelan en el volador."
744 Ibid, 1747, Caja 63, Expediente 33, foja 1 anverso: "Le empezó a restregar una pierna con la mano, y luego se alivió; tal que le dijo que saliera a dar una vuelta a la milpa de dicho Marcos Diego, y salió bueno."

named María Magdalena, to heal an illness that affected his body, covering from her belly up to the chest ("*un accidente grave que padece, que del vientre le sube para el pecho*"). According to Petrona, the potion "left her crazy and unconscious, as if she were drunk," but that ultimately did not heal her.[745] This effect matches the description of people who consumed ololiuhqui, a hallucinogen seed described by Hernando Ruiz de Alarcón, and that indigenous peoples considered sacred and that consumed to communicate with their deities.[746] Drug analysis also reveals that consumption of this seed provokes a psychic void, which is accompanied by vasovagal response and vertigo.[747] Although Petrona recovered after drinking the potion, the healer told her that the purpose of the beverage was to kill her, because she had been bewitched by another Indian sorcerer, and the only way to lift the spell was by killing her first with the beverage, and then resurrecting her. After hearing such remedies, Petrona expelled the healer María Magdalena and reported the happenings to the ecclesiastical court.[748]

Other potions had the alleged power of making somebody fell in love with the client of the Indian sorcerer,[749] and others could even transport somebody to places of healing. For example, the Spanish woman doña Juana Ortíz, who suddenly fell ill after a confrontation with an Indian woman from San José de Toluca, was given certain beverage that worked as a "great medicine," by an indigenous healer named Sebastiana Francisca. According to the healer, the potion had the effect of transporting doña Juana to the Sierra Nevada, a trip after which she would

[745] Ibid, 1747, Caja 63, Expediente 33, foja 2 anverso.
[746] Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado I, capítulo II, párrafo 39: "Las sobredichas cosas tienen y adoran por dios, y el *ololuhqui* es vn genero de semilla como lantejas, que la produce vn genero de yedra desta tierra, y veuida esta semilla priua del juicio, porque es muy vehemente."
[747] F.J. Carod-Artal, "Hallucinogenic drugs in pre-Columbian Mesoamerican cultures," *Neurología* (English Edition) Volume 30, Issue 1, January–February (2015): 47
[748] AHAM, Juzgado Eclesiástico de Toluca, 1747, Caja 63, Expediente 33, foja 2 anverso: "Y que con tal bebida que le había dado porque se la había dado para que muriera con ella, y resucitarla después, porque tal hechizo no había de sanar menos que muriendo y volviendo a resucitar, y que si se hubiera muerto ella la hubiera vuelto a resucitar, y que así que vio esto la declarante la echó que se fuera."
[749] El toloche.

return completely healed.[750] The fact that the sorcerer mentioned the Sierra Nevada of Calimaya is not accidental. According to Jacinto de la Serna, this place was an important center of idolatry in the seventeenth century. Indians from the Toluca Valley went there to worship their idols and to engage in ceremonies around a lake, where they extracted water to heal the sick.[751] This tradition continued in the eighteenth century, as the Sierra Nevada was still imagined by indigenous idolaters as a sacred place for healing.

5. 2. Sorcerers and Spells

Unlike healing rituals, the documents of the ecclesiastical courts of Tenango del Valle do not tell exactly how indigenous sorcerers bewitched their enemies. In most cases, the victim informs the ecclesiastical judge that they had fell suddenly ill right after a confrontation with a neighbor who is known for being a sorcerer. According to the victims, the spells caused them all types of physical pain, such as headache, stomachache,[752] or the paralysis of a body part, such as a leg.[753] There is only one document in which a witness claimed to have seen how a spell to cause headache was performed. The witness, a mulatto slave named Bernabé, informed the ecclesiastical

[750] AHAM, Juzgado Eclesiástico de Toluca, 1726, Caja 37, Expediente 12, foja 4 anverso: "Y poniendo por dichos mi familiares el que dicha india pusiese en cura a la dicha mi madre, acariciándola con buenas palabras determinó el hacerlo, y puso por ejecución el darle una bebida, y al tiempo que la trajo se le preguntó por dicha mi madre qué bebida era, a lo que le respondió que era medicamento grande en su idioma, pero que no hubiese susto, porque con ella había de ir a la Sierra Nevada, y que volvería dando a entender con sanidad."

[751] De la Serna, *Tratado de las supersticiones*, capítulo II, título 6, párrafo 68: "Allí, dixo, y declaró uno de los reos desta complicidad, que auia subido vno de aquellos años cercanos al de seiscientos, y dies (1610); que Domingo de Ramos de aquel año auia subido á la sierra nevada de Calimaya, y que auia visto mucha cantidad de indios de los de Toluca, y sus contornos, y otros de otros pueblos, y que estos todos con trompetas, y chirimias iban con muchos cantaros á traer agua de la laguna, y le dixeron, que era aquella agua para bendecirla, y darla á los enfermos, y que assimismo vido llevar tres redes de pescar, con que sacaban copale entrando en la laguna, y que el auia lleuado vna andela, y con vn poquiete, que llevó encendido, la encendió, y puso a vna cruz de las que alli auia, y segun tengo noticia de personas que àn subido á esta sierra, se hallan al rededor, y contorno de la laguna señales de candelas, braseros, y cantidad de copale, que ofrescen á la deidad, que piensan, tiene aquella laguna, segun sus ritos, antiguos."; and see also capítulo 1, título 4, párrafo 20: "(20) Tambien veneraban la Sierra nevada, ó Bolcan de Toluca, donde iban muy de ordinario á sacrificar, y á los demas montes altos, donde tenían sus Cues antiguos, sanos y bien tratados: tambien hazian sacrificios en los principales manantiales de aguas, Rios, y lagunas, porque tambien veneraban á el agua, y la invocan, quando hazen sus sementeras, ó las cogen."

[752] AHAM, Juzgado Eclesiástico de Toluca, 1747, Caja 63, Expediente 33, foja 2 anverso.

[753] Ibid, foja 1 anverso.

judge of San José de Toluca that he learned that an Indian woman named Sebastiana Francisca was a sorceress after she stayed at his house for one night. Bernabé stated that while he was sleeping in a room with his wife and his *suegra* (mother-in-law), the Indian woman Sebastiana woke up and touched her mother-in-law's head. When the suegra felt the sorceress's touch, she screamed in pain, shouting that she was suffering from a terrible headache. In order to help his mother-in-law, the slave and his wife got out of bed and beat the sorceress. However, Sebastiana told them that she would heal Bernabé's suegra as long as he did not tell his owner what had happened. The slave agreed and then Sebastiana touched the bewitched woman and blew in one of her eyes, alleviating her pain. On the next morning, Sebastiana repeated the same ritual, and completely healed the woman.[754] This form of healing mirrors the ritual described by Hernando Ruiz de Alarcón in his *Tratado*, by which Indians used to heal headaches by pressing the head of the ill person.[755] From this passage we can infer that some of the spells utilized to harm people could be reversed to heal them, and vice versa. Therefore, it is possible that sorcerers privately recited a form of reversed healing spells to harm their opponents and enemies.

[754] AHAM, Juzgado Eclesiástico de Toluca, 1726, Caja 37, Expediente 12, Foja 6 reverso 7 anverso: "Dijo que conoce a Sebastiana Francisca, que sabe que es hechicera, porque estando en una ocasión dicha Sebastiana en casa de este testigo, y él acostado con su mujer y su suegra en una misma pieza, así que apagaron la luz se levantó dicha india y le tentó la cabeza a la referida suegra, quien luego comenzó a dar de gritos, llamando a sus hijos y pidiendo luz porque le dolía muchísimo la cabeza, y que se levantó el que declara y su mujer, y encendieron luz y le dieron muchos golpes a dicha india y que les dijo que como la dejaran y no se lo contaran a su amo don Antonio, ella curaría aquel dolor y que luego se volvió a tentar la cabeza [de la suegra], y a soplarle el ojo y con esto quedó media buena, que otro día por la mañana hizo la misma diligencia, y quedó del todo buena, con que de un tiro le puso dolor en la cabeza y nube en un ojo, y de otro tiro le quitó las dos cosas."

[755] Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado VI, capítulo IV, párrafo 395: "Pues aduertiendo lo que tengo ya dicho en otras partes del nombre de *tiçitl*, que es sospechoso, los tales so capa de que saben curar, vsan de sus modos de superstiçion, y muchas veçes passa a echiceria y pacto con el demonio: llamados para el dolor de cabeza, lo que hazen es apretar con las manos la cabeza doliente, y esto hazen a todo genero de dolor, y apretandola diçen este conjuro: Ea ya, acudid los de los cinco hados (los dedos), que todos mirais haçia vn lado, y vosotras diosas *quato*, y *caxoch*. Quien es el poderoso y digno de veneraçion que ya destruye a nuestro bassallo? Yo soi el que hablo, el sacerdote, el prinçipe de encantos, por tanto hemos de dar con el (o con ello) en la orilla del mar y hemos de arrojallo en ella."

In Ruiz Alarcón's treatise, most maleficios or spells included the oral recitation of some verses in which the sorcerer impersonated or invoked the help of pre-Columbian gods. For example, in order to heal a broken bone, Ruiz de Alarcón notes that sorcerers played the role of priests of the god Quetzalcoatl, referring to the myth in which the deity went to the Underworld, the *Mictlan*, to recover the bones of previous races of men destroyed by flood and fire, and which he used to create the current human generation.[756] In the same way as Quetzalcoatl renovated the bones, indigenous sorcerers sought to regenerate the bones of their patients.

According to manuals of extirpation of idolatries and the records of ecclesiastical courts, indigenous peoples claimed that they learned the spells in two different ways: they inherited their knowledge from family members,[757] or were instructed by supernatural beings, sometimes identified by the sorcerer as an angel[758] or the Virgin Mary.[759] The supernatural instruction in these cases seems to have occurred when the Indians were in an altered state of consciousness, either after consuming hallucinogens or when they lost their senses in an accident. In those moments, the divine beings taught spells different for different uses: from hail conjuring to healing injuries. As seen in previous pages, this type of supernatural instruction was part of the religious tradition of indigenous peoples, as pre-Columbian priests and shamans consumed hallucinogens

[756] Ibid, Tratado VI, capítulo XXII, párrafo 467: "Que es esto que ha hecho mi hermana, los ocho en orden, la muger como huacamaya: cogido han y detenido al hijo de los dioses. Pero yo soi el sacerdote, el dios *quetzalcoatl* que se bajan al infierno, y subi a la superior y hasta los nueue infiernos; de alli sacaré el hueso infernal. Mal han hecho los espiritados, los muchos pajaros quebrantado han quebrado. Pero agora lo pegaremos y lo sanaremos."
[757] Ibid, Tratado I, capítulo I, chapter XX, and tratado I, capítulo VII.
[758] AHAM, Juzgado Eclesiástico de Toluca, Caja 38, Expediente 5 and Ruiz de Alarcón, Tratado 1, capítulo 7, 133.
[759] AHAM, Juzgado Eclesiástico de Toluca, Caja 92, Expediente 9, and Jacinto de la Serna, *Tratado de las supesticiones*, capítulo III, título 1, párrafo 107: "…y en la otra vida les auian dado la gracia de curar, y les auian dado, los instrumentos de sus Curas: á vnos las ventosas, á otros la lanzeta, á otros las yerbas, y medicinas, que auian de aplicar el Peyote, el ololiuhqui, el Estaphiate, y otras yerbas; y vno de ellos en particular declaró, que la Virgen Sanctissima de los Remedios personalmente le auia mostrado las yerbas de sus curas, para que en ello tuviesse sus grangerias, y se sustentasse con la que los enfermos le pagasse."

to contact with the gods, who revealed them through visions and apparitions, certain occult knowledge.[760]

The ecclesiastical court of San José de Toluca prosecuted an indigenous man named Bartolomé Martín, who was accused of being a hail conjurer (*conjurador de granizo*) by a local Spaniard. Bartolomé claimed that an angel had taught him a hail-conjuring spell in a vision he had when he was unconscious after being struck by a thunder. In this state of unconsciousness, the sorcerer manifested that three angels, each one sent by each person of the Holy Trinity, gave him the gift of hail conjuring, and they told him that they way of performing this spell was by casting it in the name of the Holy Trinity.[761] This form of syncretism could be a strategy utilized by indigenous sorcerers to make their magical powers more acceptable to their counterparts and their clients. However, ecclesiastical judges and learned theologians were not convinced by these declarations. In the case of Bartolomé Martín, the judges of the ecclesiastical court of San José de Toluca and the Provisorato considered that the lifestyle of Bernabé and his ignorance made him unworthy to receive through miraculous means such knowledge (hail conjuring), and they considered he could only do such a thing through demonic intervention.[762] In the same way,

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[760] F.J. Carod-Artal, "Hallucinogenic drugs in pre-Columbian Mesoamerican cultures," 43.

[761] AHAM, Juzgado Eclesiástico de Toluca, 1728, Caja 38, Expediente 5, Foja 1 anverso: "aunque conjuraba granizo era gracia que le había dado las tres personas: padre, hijo y espíritu santo. Y que estando guardando unos bueyes, sobrevino un aguacero y le había caído un rayo que le había herido desde el cuadril hasta el pie en el lado izquierdo, quedándole una señal de quemadura, y atarantado y vuelto en sí, se le apareció tres ángeles que le fortalecieron y dijeron que eran enviados de la santísima trinidad, y que le traían la gracia de conjurar granizo, volviéndose a subir al cielo, y que le habían dicho que el modo de conjurar hubiera de ser en nombre de dichas tres personas, y que así que conjuraba se apartaban las nubes, y lo hacía asimismo en nombre del santo cristo de Chalma y nuestra señora de Guadalupe de los remedios y San Antonio, para defender su pueblo nombrado San Sebastián, u otro cualquiera refregando tabaco en las manos."

[762] We should clarify that the skepticism of the judges is not based on the theological impossibility of those teachings, since there is an example in the Old Testament in which the angel Raphael instructed Tobit (6:4-9) how to use the gall gladder, liver, and heart of a fish to heal blindness and to chase away a demon or evil spirits tormenting someone.

Hernando Ruiz de Alarcón thought that the Devil could adopt those appearances to deceive the Indians to instruct them on secret arts.[763]

5. 3. Idolatrous Worship

Colonial authorities forbid idolatry in the Spanish America, and indigenous peoples were very well aware that any form of superstitious or idolatrous worship was punished. As such, some Indians opted to perform their religious ceremonies either in private houses, or in remote places such as caves.

From 1737 to 1745, the ecclesiastical court of Tenango del Valle investigated a case of idolatry that took place at the hill of Xuxutepec, where there was a cave that the Indians of the area used to commit idolatry, offering candles, food, incense, and fruit to the idols. According to the testimony of a Spaniard named don José de Origuela, who visited the place with an old Indian man when he was ten years old, the Indians visited that cave to wear a mask made of flint ("*perdernal"*). Don José informed the ecclesiastical judge that indigenous peoples believed that whoever wore the mask "could see the whole word, and each part of the world that the person wanted to see."[764] In 1737, the ecclesiastical judge of Tenango, don Juan de Inostrosa, sent some Spaniards to go to the cave, where they recovered candle waxes, a candlestick, a censer, and wooden figurines in the form of men.[765] The document does not indicate whether the ecclesiastical authorities found the idolaters, but it provides sufficient information to show that clandestine idolatrous worship was still practiced in the Toluca Valley in the eighteenth century. Some authors

[763] Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado I, capítulo VII, párrafo 133.
[764] AHAM, Juzgado Eclesiástico de Toluca, 1745, Caja 62, Expediente 7, foja 3 anverso: "Que ahí había una máscara de pedernal, la cual poniéndosela causaba un efecto, y era que desde dicho cerro puesta la dicha máscara podía divisar el mundo entero y cuantas partes del mundo quería ver, tantas veía con la dicha máscara."
[765] These idols are described as figurines in the form of men, of about "tres cuartas de alto." That is three quarters of a "vara," a measure of unit in Castille and the Spanish Empire, equivalent to 83,59 cms. As such, these idols had an approximate size of 62 cms or 24 inches of height.

have noted that these hills and caves are linked to ancient beliefs. For example, David Tavárez writes that in the north of Toluca, caves such as that of Tolochi "had been inhabited since Postclassic times by Matlatzinca settlers, and it was the likely location of a temple dedicated to their tutelary deity, Tolotzin," god of fire.[766] Hernando Ruiz de Alarcón also wrote in his Tratado that he found on the top of hills a pile of stones that the Indian called "*Teolocholli,*" where he extracted copal, candles, bouquets ("*ramilletes*") that signaled worship, similar to the way the indigenous peoples used to worship their gods before the Spanish conquest.[767]

Other religious ceremonies did not take place in isolated areas, but in the haciendas owned by wealthy Spanish men, who surprised their workers engaging in idolatrous acts. This is the case of don Alberto González, owner of the hacienda Nuestra Señora de Guadalupe Tlachaloya, who presented a complaint at the ecclesiastical court of San José de Toluca on September 30th, 1754. Don Alberto declared that don Joaquín de la Cruz Manjarrez, owner of the hacienda of Buenavista, had told him that his son, don Andrés José de la Cruz, had surprised various Indian workers of the hacienda of Tlachaloya engaging in idolatrous practices.[768] After receiving this denounce, the ecclesiastical judge of Toluca summoned don Andrés de la Cruz, the sixteen-year-old Spaniard who witnessed the ceremony. Don Andrés manifested that one of the indigenous workers of his house, named Diego de la Cruz, informed him that some Indians were committing forbidden practices in the hacienda of Tlachaloya. Don Andrés, in the company of a group of men, went to the place where the ceremony was taking place, where they found a group of indigenous

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[766] David Tavárez, *The Invisible War*, 245.

[767] Ruiz de Alarcón, *Tratado de las supersticiones*, Tratado I, capítulo II, párrafo 44: "Porque assi los indios desta tierra como los del Piru ocultan esto diligentissimamente, a mi entender advertidos del demonio por lo que interesa. Aquí adviertan los ministros que los tales montones de piedra que los indios llaman Teolocholli, son sospechosos, porque de muchos dellos he sacado copal, candelas. ramilletes y otras cosas que ofrecen en dias señalados como queda dicho."

[768] The sum of all the Indians found engaging in idolatry, workers and wives combined, is a total of eight persons.

individuals singing and offering food to idols in form of dolls ("*muñecos*").[769] When don Andrés entered the room, the Indians ran away and left their sacred objects behind. The young Spaniard and his assistants collected all the idolatrous objects and left the building. When they were on the way back home, some indigenous women who had taken part in the ceremony approached don Andrés, and offered him money in exchange for the idols he had collected. Although the young Spaniards refused the offer, the indigenous women explained him that the reason they had organized the ritual was to heal a sick person at the request of a certain woman.[770]

After hearing don Andrés' testimony, the ecclesiastical judge of San José de Toluca, along with the notary of the court, listed all the objects found at the idolatrous gathering, which is as follows:

[769] AHAM, Juzgado Eclesiástico de Toluca, 1754, Caja 73, Expediente 20, foja 2 reverso: "apenas alabaron al santísimo sacramento se alborotaron, apagaron las velas y huyeron, dejándose todo como estaba."
[770] Ibid, foja 2 reverso: "Habiéndole salido al camino las mujeres son súplicas ofreciéndole le pagarían porque no llevase los muñecos. Y que antes habían declarado ellas y ellos que estaban haciendo aquello por un enfermito que tenían por mandado de una mujer que lo estaba curando."

Table 6. **Inventary of Idolatrous Objects at Tlachaloya**

Dolls	Figurines	Plants and Herbs	Foods	Objects:
- A set of dolls in pairs: four male dolls and four female dolls, all of them covered in cotton. - Two individual dolls ("*dos muñecos sueltos*"): One of them with a trumpet in his mouth, and the other one with his hands on his head. - Five individual dolls: One with hands and feet made of iron ("de goznes"), other with a guitar, another one in a posture as if it was grinding, another one with a black face, and a final one holding something unclear on his hands ("*no se le percibe lo que tiene a dos manos*"). - A wooden doll with hands and feet covered in iron.	- Figurines of three angels and a friar with a custody painted on his chest. - A series of animal figurines: two rabbits, one deer, three toads, two snakes, one scorpion, one pig, one eagle, one horse and one dove.	- Pipilpichintles. - Chomite. - Cotton.	- Two fishes on black plates. - A maguey. - Chocolate. - Three coffees ("tres cafetitos"), - Pieces of bread - Tortillas. - Elotes - Tamales (two tamales were shaped in the form of a doll). - Bananas. - Apples. - Corn canes.	- A censer. - A bucket. - A skein of wool. - A jingle bell. - Two small casseroles with handles. - Glasses of Moctezuma. Probably obsidian. - Objects with the form of a rainbow, and a fire or a swirl (sic) ("*un arcoiris, una llama o remolino*"). - Cigarettes. - Flints. - Candles.

Source: Own elaboration. Another scholar, Jorge Cazad, has a similar classification of this inventory in his master's thesis, "La religión popular en el Valle de Toluca, siglos XVII al XVIII: A través del *Manual de Ministros* de Jacinto de la Serna y los documentos del Juzgado Eclesiástico de Toluca," 141.

Although the document does not include an interpretation of the meaning of these objects, I can reconstruct it to some extent. Regarding the dolls, it is possible that they were representations

of pre-Columbian gods. In particular, the doll with a black face seems to resemble a pagan priest or a deity. This coloration of the doll's face has to do with the t*eotlaqualli*, or "divine food" in Nahuatl, which refers to a dark-colored unguent or paste which Aztec priests anointed their skin. Teotlaqualli was made from extracts of ololiuhqui, and the ashes of poisonous animals such as spiders, scorpions, and snakes. Therefore, this ointment had the purpose to help priests to enter an altered state of consciousness to commune with their gods. Researchers believe that this substance explains the dark coloration of some Aztec gods such as Tezcatlipoca or Huitzilopochtli as they are shown in codices.[771] As described in the documents, the Indians of the ritual offered these dolls tamales, apples, bananas, corn canes, flints and some black glasses, known "glasses of Moctezuma," (probably obsidian) while others played the harp and the guitar.[772] This setting seems to indicate religious worship, as the offering of food music matches pre-Columbian rites. The presence of the glasses of Moctezuma, probably obsidian, refers to a material used to fabricate religious objects before the Spanish conquest. For example, the god Tezcatlipoca is represented with a mirror made of obsidian, which he uses to know the future and hidden things.[773] Besides the offerings and the idols, the document notes that there were figurines of animals, including rabbits, dears, eagles, doves, snakes, toads, and lizards. Again, it is possible that these animals represented some of the days of the Aztec calendar, or *tonalpohualli*, as animals and objects were

[771] Carod-Artal, "Hallucinogenic drugs in pre-Columbian Mesoamerican cultures," 48. See also Elferink JG. Teotlaqualli: the psychoactive food of the Aztec gods," *J Psychoactive Drugs* 31, (1999): 435-440.
[772] AHAM, Juzgado Eclesiástico de Toluca, 1754, Caja 73, Expediente 20, Foja 1 anverso y reverso: "Dentro del oratorio de la casa de este, como a las once horas de la noche del día sábado veinte y ocho del corriente con dos luces o velas encendidas: una de cebo puesta en el altar de los santos, y otra de cera en el suelo delante de varios muñecos de barro; a quienes estaban ofreciendo tamales, manzanas, plátanos, cañas, unos pedernales y vidrios negros que llaman de Moctezuma, con música de arpa y guitarra. Hallándose entre dichos muñecos varias figuras de animales, como son culebras, sapos y lagartos, cubiertos los más muñecos de algodón, formado un arco de este sobre una hebra de lana que nombran chomite, pendiente de la pared, a la esquina del altar del dicho oratorio, en cuyo trámite estaban las expresadas figuras y fruta, con un manojo de hierba verde de *pipilchichintl*e con flores. "
[773] See *Códice Florentino,* facsimile edition by the Archivo General de la Nación (Mexico, 1979) II, fol.1. and Gisele Díaz and Alan Rodgers, *The Codex Borgia: A Full-Color Restoration of the Ancient Mexican Manuscript* (Dover Publications Inc., 1993), 61.

used to symbolize different days. Jacinto de la Serna and Ruiz de Alarcón observe that indigenous peoples still utilized their pre-Columbian calendar when performing idolatry or magical ceremonies.[774] Finally, along with the dolls, food, and figurines, there was *pipilchichintl*e. The presence of the pipilchinchintle was alarming, as it is a hallucinogens plant, like the ololiuhqui, and was used both in the pre-Columbian and colonial periods during religious ceremonies. [775]

However, I should stress that in this case the ritual was not entirely pre-Columbian, as practitioners included some Christian elements, such as figurines that have the form of an angel and a friar. In addition, the young Spaniard who found the idolaters shows in the document that the idolaters were praising the Blessed Sacrament. Therefore, the Indians were mixing both pagan and Catholic tradition. There is an abundant historiography that further elaborates in the type of syncretism found in the sixteenth and seventeenth centuries, when Indians combined Christian and traditional practices (including animal sacrifice at churches), especially in remote areas or caves.[776] Despite the appearance of idolatrous rituals in the eighteenth century, these practices should not be interpreted, at least in most cases, as an open opposition to Christianity, but as a strategy to maintain indigenous identity and solidarity. For example, the purpose of the ritual of hacienda of Tlachaloya was to heal a sick person. This form of syncretism is more an example of religious flexibility and adaptability on part of the Indians, rather than a deliberate challenge to colonial authorities. However, Indians themselves knew they were not supposed to do such things, as they took part in these meetings clandestinely. That is the reason the idolaters of Tlachaloya

[774] De la Serna, Manual, capítulo VI; and Ruiz de Alarcón, Tratado 1, capítulo 1, 7: "Este nombre tomarian de vnos Calendarios, que he hallada en los deste genero que tienen repartidos en los dias los nombres de animales, como son: *Ocelotl,* Tigre; *Quauhtli,* Aguila; *Cuetzpalli.* Caiman; *Coatl,* Culebra; y de otras cosas inanimadas como, *atl, calli:* Agua, Casa."

[775] This plant was hallucinogens, like the ololiuhqui, and was used both in the Pre-Columbian and colonial periods during religious ceremonies. See Mercedes de la Garza, *Sueño y alucinación en el mundo náhuatl y maya* (Universindad Nacional Autónoma de México), 80-81.

[776] See for example, Fernando Cervantes, *The Devil in the New World*, 45-50; and Nancy Farris, *Maya Society*, 341.

fled when they were surprised by the young man don Andrés. These idolatrous ceremonies continued even in the second half of the eighteenth century, despite the effort of ecclesiastical authorities in suppressing them. The last information provided by this document is that the Indians that participated in this ceremony were imprisoned, but as is common in these types of cases, we do not know how the case concluded.

6. Conclusion

Biblical, patristic, and medieval belief in magic, witchcraft and demons determined how Spaniards conceptualized how indigenous spirituality. Although this set of beliefs continued across several time periods, from the first century to the eighteen centuries, Christian theologians and philosophers used different interpretations to explain the reality of diabolism and magic in the world and its causes. The traditional triumphalist vision of the New Testament and late antiquity, that saw the forces of evil crushed by the power of Christ and the sacraments, changed in the late Middle Ages. Authors have posed that a renovate emphasis on the Decalogue, the emergence of nominalism, and the appearance of heretical sets changed the traditional perspective on diabolism. In the fifteenth and sixteenth centuries, the period in which Spaniards started the conquest and evangelization of the Americas, the Devil was seen as more powerful than before, and was considered the author of sects and heresies that had plagued Christendom in the late Middle Ages. When Spaniards found the pre-Columbian indigenous devotions, they reacted differently. While some of them, less nominalist, thought that the similarities between the sacraments and some indigenous rituals signaled that Indians were being prepared for their Christianization, other theologians thought those similarities were just diabolical parodies. Regardless of the reason, the vision that Satan was behind idolatry, either as inspirator or principal

author, ultimately prevailed. Catholic theologians understood that the eradication of idolatry entailed a holy war against Satan and his worshippers.

To become victorious in this war, extirpators of idolatries such as Jacinto de la Serna and Hernando Ruiz de Alarcón wrote manuals that captured indigenous devotions and religious practices to teach parish priests and ecclesiastical authorities how to identify them and how to eradicate them. A remarkable point is that these authors did not deny that indigenous magic could have an actual effect in reality. To explain how those magical phenomena were possible, they resorted to both traditional and modern explanations on the reality of Diabolism. Following Augustinian and Thomist theories, they thought that Nahualism was not real in the physical world, but that the Devil infused thoughts and illusions in the minds of the Nahuales, who in their ignorance, thought that they really transformed into animals. Lay Spaniards also shared the belief in the reality of indigenous sorcery, as there are cases of Spaniards hiring indigenous peoples to provide them with magical services, or accused them at an ecclesiastical court of having bewitched them.

Finally, this chapter has shown that indigenous peoples in the eighteenth century kept many of their original pre-Columbian practices in performing idolatrous rites and healing ceremonies. In addition, our data also corroborates that the devotions registered by extirpators of idolatries such as Ruiz de Alarcón and De la Serna in the seventeenth century they were still practiced at the end of the colonial period with remarkable similarities. The widespread belief in the reality of indigenous magic and its frequent practice by the Indians of the Toluca Valley also permit us to explain why there was a great number of cases of idolatry and superstition prosecuted by ecclesiastical courts in the eighteenth century, as we will see in the next chapter.

Chapter 8. Superstition, Idolatry and Ecclesiastical Courts in the Toluca Valley

1. Introduction

Superstition and idolatry cases prosecuted by the ecclesiastical courts of the Toluca Valley have received much more attention from scholars than any other type of documents produced by this tribunal. Jorge Traslosheros, Gerardo Lara Cisneros, and David Tavárez are some authors who have utilized the repositories of the ecclesiastical court of San José de Toluca in their works.[777] While these scholars explain how the *Provisorato de Naturales y Chinos* dealt with these cases in different historical periods, their focus is mostly on the phenomenon of superstition, not only in the Toluca Valley but also in the archbishopric of Mexico and other regions such as Oaxaca. There is only a *tesis de licenciatura* written in Spanish by Jorge Cazad Reyes, that has exclusively focused on idolatry in the Toluca Valley based on the documents of Toluca's ecclesiastical court.

This chapter complements the work of the authors mentioned. I study cases of superstition and idolatry prosecuted not only by the ecclesiastical court of San José de Toluca, but also by neighboring courts such as that of Tenango del Valle, in the Toluca Valley. In this respect, I explore the legal foundations of crimes against the faith in New Spain by analyzing the canons of the Mexican Councils and episcopal decrees, and I present the juridical procedure utilized by the ecclesiastical authorities to prosecute indigenous idolaters and sorcerers. This chapter also surveys the reasons and motivations that led people in the Toluca Valley to accuse their neighbors of superstition, and I make a comparison between indigenous sorcery and demonic possession cases.

[777] For Tavárez's analysis of idolatry in Toluca see *The Invisible War*, 239-254.

2. Superstition, Idolatry and Ecclesiastical Courts

In chapter 7, I covered theological, cultural, and intellectual aspects that clarify Spanish beliefs in diabolism and indigenous magic in the Toluca Valley. Now I explain what was the institutional and judicial mechanism that the Spaniards utilized to solve what they termed "indigenous superstition."

2.1. The Third Mexican Provincial Council and the Crime of Superstition

The Third Mexican Provincial Council (1585), following the canons of the Council of Trent, imposed numerous measures to combat the spread of superstition in the New American Church.[778] This synod also took the existing threat of indigenous idolatry seriously, and criticized previous approaches to extirpate superstition of the Indians of New Spain. The Third Mexican Council noted that the "paternal piety" of the bishops, who preferred to convert the Indians through flattery ("*halagos*") rather than through severity, had been useless.[779] Indians, until that point, had taken advantage of this merciful policy to continue with their superstitions since they were not afraid of punishments. To solve this situation, the council mandated all bishops to inquire and collect information on the indigenous idolaters of their dioceses, while paying particular attention to the *dogmatizadore*s, or indigenous religious leaders, who continued teaching and practicing their pagan native religion. This new approach stipulated that bishops had to admonish idolaters and punish them with severe and exemplary punishments, so they and other Indians abandon their superstitions. Since many natives were poor and could not afford to pay monetary penalties, bishops were instructed to use corporal punishment as the most appropriate form to

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[778] Concilio III Provincial Mexicano, 1585, libro III, título XV, ley X: "No se mezcle superstición alguna en la celebración de las misas; libro III, Tít. XVIII, ley I. Destiérrese enteramente toda superstición de las cosas sagradas. No se permitan danzas, bailes o cantos profanos en la iglesia." See also libro III, título XVIII, ley VII.
[779] Ibid, libro III, título IV, ley I.

curtail indigenous idolaters.[780] This council took on yet other measures to eradicate idolatry, such as destroying indigenous temples, enforcing the teaching of the catechism, prohibiting Indians from singing traditional songs that mentioned their previous religion, performing dances that could have idolatrous meanings, and keeping idols.[781] In addition, the synod mandated that Indians were to live congregated in cities and towns, and not scattered around. This law had the purpose of facilitating religious instruction, eradicating non-Christian customs, and fostering indigenous adaptation to Spanish life, customs, and religious beliefs.[782]

2.2. Extirpation of Idolatries in the Seventeenth Century

Throughout the second half of the sixteenth century and most of the seventeenth century, until the establishment of local ecclesiastical courts, controlling and eradicating indigenous ways was a complicated endeavor. Gerardo Lara Cisneros argues that the density of indigenous towns in places such as the Toluca Valley and the Huasteca, and the absence of a capable clergy trained in indigenous languages was a big obstacle.[783] Another problem was that parishes covered large indigenous territories and were equipped with few priests that could go to the dispersed indigenous towns to attend their parishioners. All these issues put together explain the weak, if at all, religious instructions that indigenous peoples received in the seventeenth century which allowed for the propagation of idolatrous beliefs.[784] However, this is the century in which

[780] Ibid, libro III, Tít. IV, ley I: "Y si después de amonestados y corregidos perseveraren no obstante en sus errores, procedan contra ellos con aspereza, aplicando las penas que juzgaren más convenientes y eficaces, tanto para su enmienda, como para escarmiento de los otros. El sínodo encarga a la providencia paternal de los obispos el arbitrio de la calidad de las penas; amonestándoles que no las impongan pecuniarias, porque ni corresponden a la gravedad del delito, ni a la pobreza de los indios; sino que los corrijan con penas corporales,231 que parecen las más conducentes para mirar por su salvación."
[781] Ibid, libro I, título I: "Deben quitarse a los indios las cosas que sirven de impedimento a la salud de sus almas."
[782] Ibid, libro I, título I, ley III: "Sujétese a los indios a la vida civil y social, y a este fin congrégueseles en pueblos."
[783] Lara Cisneros, "Superstición e idolatría," 133.
[784] Ibid, 133.

Hernando Ruiz de Alarcón and Jacinto de la Serna wrote their manuals on indigenous superstition and recommended several measures to eradicate idolatry in local indigenous towns.

In this respect, campaigns of extirpation of idolatries in New Spain differed from those of the viceroyalty of Peru, where the archbishopric of Lima institutionalized the eradication of indigenous heterodoxy in the seventeenth century under a figure named extirpator of idolatries.[785] Although people such as Ruiz de Alarcón and Jacinto de la Serna extirpated idolatries in New Spain, they did not carry out this function under a particular institutional title, but as parish priests. In the archdiocese of Mexico most prelates dealt with superstition in Indian towns through canonical visitations until they established ecclesiastical courts in the seventeenth century, when local ecclesiastical judges prosecuted indigenous heterodoxy along with many other crimes, as explained in the second and fourth chapters of this dissertation. However, since the canons of the Third Mexican Council permitted the bishops of New Spain to freely appoint their *provisores generales* and regional judges, assigning each of them certain judicial capacity, the character, and the goals of the ecclesiastical courts in New Spain depended on the prelate.[786] This variation explains that the episcopal jurisdiction had a different approach in every diocese in dealing with issues such as indigenous idolatry. For example, according to Ana de Zaballa, in Chiapas and Oaxaca there were peaceful periods in which Indians were left to their own whims, to times in which bishops promoted campaigns to extirpate native idolatries.[787]

[785] For an example see Pierre Duviols, *Procesos y visitas de idolatrías. Cajatambo, siglo XVII* (Perú: Pontificia Universidad Católica del Perú, Fondo Editorial 2003/Instituto Francés de Estudios Andinos, 2003). See also
[786] Traslosheros, *Iglesia, Justicia y Sociedad en la Nueva España*, 131.
[787] Ana de Zaballa, "Del Viejo al Nuevo Mundo," 21-22. See also by this author "La hechicería en Michoacán en la primera mitad del siglo XVII.," El Reino de Granada y El Nuevo Mundo. V Congreso Internacional de Historia de América (Granada: Diputación Provincial de Granada, 1994).

In this respect, New Spain bishops could adopt similar measures as their Peruvian counterparts to enforce religious orthodoxy in the indigenous population, but their campaigns did not achieve the same degree of institutionalization as those of the viceroyalty of Peru. According to David Tavárez, ecclesiastical judges working in Toluca "cited specific licenses against native idolaters granted them by their bishop or archbishop, or commissions from the provisor de indios."[788]

2.3. Persecution of Idolatries and the Ecclesiastical Court of San José de Toluca

In the eighteenth century, superstition cases skyrocketed in the archdiocese of Mexico. The area most affected by crimes of superstition was that of the Toluca Valley, where authors such as Jacinto de la Serna and Hernando Ruiz de Alarcón had written about the existence of numerous indigenous idolaters in the seventeenth century.[789] If these authors are correct and the Toluca Valley was flooded with superstition, why were there more recorded superstition cases in the eighteenth than in the seventeenth century? An important difference is that in the eighteenth century, most local ecclesiastical courts had been established and were actively involved. In addition, these new ecclesiastical judges now initiated native idolatry proceedings without specific licenses or commissions, but they were required to request further instructions from the Provisorato.[790] The fact that ecclesiastical judges could utilize their own archives, personnel, and carry out investigations in their area of jurisdiction permitted the investigation and classification of these crimes against the faith. In addition, for complainants, having local tribunals where they could denounce superstition could also explain why there were more documented cases in the

[788] Tavárez, The Invisible War, 239.

[789] De la Serna, *Tratado de las supersticiones*, párrafo 62: "No faltó en esta complicidad la noticia, que se tuvo de las idolatrias, y sacrificios, y supersticiones, que todos los indios de toda aquella comarca, y Valle de Toluca hazian con la sierra nevada de Calimaya." For other passages in which the author mentions the "great" idolatries of the Indians of the Toluca Valley check paragraphs: 20, 43, 68, and 426.

[790] Ibid, 239.

eighteenth century than in previous periods. Additionally, Gerardo Lara Cisneros argues that one possible reason that explains the abundance of cases in this region has to do with the archive of the ecclesiastical court of the city of San José de Toluca, which has preserved more documentation than the repositories of other tribunals.[791] David Tavárez argues that another explanation may be related to demographic growth in indigenous population. Tavárez notes that "the first half of the seventeenth century, when Central Mexican communities reached their demographic nadir, is characterized by a paradoxical increase in secular extirpation campaigns, which derived their urgency from the ideological climate established by Counter-Reformation policies in New Spain. Nonetheless, it is possible that the various periods of heightened activity between the 1700s and the 1750s correlate with a gradual recovery in Central Mexican population growth in the eighteenth century."[792]

2.4. Verifying Demonic Activity: Foul Things and Medical Examination

Other reasons that explain the rise of cases of superstition has to do with a new approach the Mexican Church, and the Provisorato took. In the second half of the eighteenth century, archbishops of Mexico issued a series of edicts to regulate judicial procedure in cases of superstition. One of the most important was the one published by the archbishop don Manuel Joseph Rubio y Salinas, in 1754.

In his edict, the prelate reflected on the many number of sorcery accusations brought to ecclesiastical courts against indigenous peoples, and recognized that there had been a series of misdirected judicial procedures by which Indians had been unfairly punished with imprisonment. The archbishop emphasized that in those procedures, crimes had been proven through a series of rumors and popular accusations against certain miserable Indians, who—as a result—were then

[791] Lara Cisneros, "Superstición e idolatría," 159.
[792] Tavárez, *The Invisible War*, 23-24.

accused of being sorcerers.[793] This mismanagement was so serious that the *promotor fiscal* of the Provisorato was forced to release the individuals imprisoned for superstition.[794] To avoid the same mistakes and abuses, the archbishop mandated that no one should be arrested after having been accused of *maleficio* by just one individual, and without evidence. In a scenario where a complainant denounced a transgression at an ecclesiastical court, the judge was to request a medical examination of the bewitched person by a surgeon or physician. The purpose of this exam was to reduce the denouncement of superstition/idolatry brought to ecclesiastical courts and to combat the misconceptions of people who wrongly identified illness as evidence of witchcraft and sorcery. In this way, the opinion of an expert, in this case a physician, would help control misunderstandings to diminish the number of accusations. In this respect, the analysis of the physician had to be thorough and extensive. The physician had to explain the symptoms experienced by the bewitched and the medicine "patients" were taking when they were under medical care.[795] In the case no physicians were available, ecclesiastical judges were called upon to conduct the medical examination, asking family members of the bewitched about the medicines they were taking. When the medical examination found hints of sorcery ("*indicios de maleficio*"), ecclesiastical judges were instructed to follow up, inviting witnesses to find out whether neighbors or residents of the town recognized the sorcerer.[796] Once the investigation concluded and the

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[793] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 30, expediente 73, Foja 1 anverso: "Ya por el defecto del orden judicial o porque no conste el cuerpo del delito fundándose las acusaciones sobre amenazas y rumor público, en que suele operar la malicia sus efectos, por lo que los miserables indios llegan a sufrir notables vejaciones por el delito de hechicería que la vulgar despreciable opinión les atribuye."

[794] Ibid, Foja 1 anverso y reverso.

[795] Ibid, Foja 1 reverso: "en cuya conformidad por el presente ordenamos que por ningún caso se proceda a captura por sola queja del que se dice maleficiado, que luego que se presente la denuncia si ocurran verbalmente a quejarse de algún indio o india sea la primera diligencia a proveer auto para que reconozcan al doliente médicos (si los hubiere en el lugar), cirujanos o barberos cuyas declaraciones se asienten por extenso, preguntándoles con individualidad no sólo el juicio que formaren del accidente, sino también sus indicantes. Y si hubiere antes asistido al enfermo diga lo que en él ha observado y las medicinas que les aplicaron."

[796] Ibid, foja 2 anverso: "Que resultando por una u otra vía indicios de maleficio, procedan a recibir sumaria con los testigos que se les presentaren examinándolos con la prolijidad y circunspección que pide la materia, haciéndoles

ecclesiastical judge was convinced that there was a genuine case of maleficio, he had to write to the Provisorato and ask for permission to arrest the sorcerer. The archbishop further mandated that the whole procedure had to remain secret, not permitting the bewitched or the witnesses to talk about it, under the penalty of proceeding against them if necessary.

The ecclesiastical court of San José de Toluca produced a few documents which show that decades before the publication of this edict some accusers already included medical examinations, or the testimony of physicians, to demonstrate that they or somebody else had been bewitched. Although only few cases include medical examinations before the publication of the edict, they show that the opinion of a physician did not threaten or discredit the belief in sorcery. Rather, the contrary was true.[797] Sometimes, physicians—both before and after the publication of the edict—, used the scientific knowledge of their times to show that a sorcery case was real. Therefore, these medical analyzes, when favorable, gave even more credibility to the denunciations and endorsed, through scientific means, the "reality" of sorcery. When assessing cases, physicians borrowed their language from current theological concepts, such as "suspected pacts with the Devil."

This was the case of physician Miguel José de Garfias y Villanueva who, in 1767, was asked by the ecclesiastical court of San José de Toluca to examine an Indian woman named Juana María, from the town of San Pedro Totoltepec, who allegedly was under a spell. The physician, describing her symptoms[798] declared that, without a doubt, a sorcerer had bewitched Juana María.

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dar razón de sus dichos y deponiendo de fama, averigüen de ellos los autores o sujetos a quienes lo oyeron o vieron o si es la voz general de todo el pueblo o vecindario."

[797] See for example AHAM, Juzgado Eclesiástico de Toluca, 1726, caja 37, expediente 12, foja 4 reverso.

[798] AHAM, Juzgado Eclesiástico de Toluca, 1767, caja 97, expediente 27, foja 1 anverso y reverso: "Declaro en cuanto alcanzo que así por su temperie pituitosa, edad algo más que media, género de vida poco laboriosa, alimentos a su calidad propios, correspondiente orden verbal, es improbable la propensión a la preternatural afección que padece, pues siendo esta de genio o aspecto hemotoico, ya por el material atrabiliario fétido, o cruento que en la vomisión arroja, sin algún alimenticio signo incocto o digerido, ya por las vehementes dolorosas concusiones de que en el ventrículo esófago diafragma y demás adyacentes a la natural y torácica región se le observan, ya por la ninguna sed, debiendo este síntoma ser consiguiente, escasa apetencia, atrófica constitución, aparato accesionalmente febril, con pestífero insoportable aliento y transpiración de que le resulta continuo

According to the physician, the sorcerer probably had applied the spell directly in the food or beverages consumed by Juana María, or by throwing some powders ("*polvos*") into the hair or dress of the patient, thus triggering the evil effect of the spell through an implicit or explicit pact with the Devil.[799] Similarly, foul smells and excretions coming from the bewitched (like vomit and urine) were utilized by physicians, accusers, witnesses, and judges as evidence of the existence of sorcery.

In the seventeenth century, Jacinto de la Serna, in his treatise, recounted a personal experience he had when dealing with a case of sorcery. He wrote that one day he was called to receive the confession of a dying Indian woman named Agustina, who was suffering from a sudden illness. Although her neighbors had tried to heal her, no one had found a cure. Jacinto de la Serna then put a piece of the bone of the Venerable Gregorio López on a spoon, mixed it with water, and made Agustina drink it so she could be healed. Jacinto de la Serna reported that after drinking the potion, Agustina vomited a bloodied piece of wool. Inside of the wool, Jacinto found hairs, coal, and burned eggshells. The discovery of these foul elements helped the priest to confirm that Agustina was under a spell caused by another Indian woman with whom Agustina had had a confrontation.[800]

In our documents, some people tried to give rational explanations as to the appearance of foul matters. For example, idolatry extirpators, accusers, witnesses, and complainants sometimes theorized that some healers already carried in their mouths the alleged objects that they later

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tormento y evidentísimo peligro, exacerbándose el paroxismo por la noche, privándole cuasi *in totum* la quietud del sueño. Y todo derivánse efectivamente no de especial procatartica interna o externa causa, sino de la que se acusa en el desabrimiento que motivó al dicho (hechicero) a proferir su venganza en la presente ignorante del tiempo de dos años a esta parte."

[799] Ibid, foja 2 reverso: "Tengo por inconcuso estar constante probado y manifiesto el maleficio. Pues según las más calificadas opiniones moralistas, consiste en la posición o aplicación de tal o tal cosa, [tales como] comida o bebida, polvos al aire o vestido inspersos, inició el sujeto paciente, mediante el pacto implícito o explícito del fascinante."

[800] De la Serna, *Tratado de supersticiones*, capítulo III, párrafos 101-103.

removed from the bodies of their patients.[801] In 1767, an indigenous woman named María de la Encarnación witnessed a healing performed by an Indian sorceress when she was at the house of a friend whose son was sick. María declared that the healer utilized hot water made of *estafiate*[802] (an herb for medicinal widely used by indigenous healers) and then she sucked the neck of the child until she extracted with her mouth a small stick ("*palizo*"). María de la Encarnación emphasized in her declaration that she was not sure whether the healer actually had removed the *palizo* or if she had brought it in her mouth before starting the ritual.[803] In a different case, the Provisorato punished a man with twenty-five whippings for being a liar (*embustero*), and pretending that he had healed his patients by extracting foul things from their body.[804] Although these explanations do not answer all scenarios in which the alleged bewitched person vomited, or expelled through the urine different alien objects, it worked for those cases in which healers used their mouths to suck out and remove an object that was causing the *maleficio*.

The "extraction" of alien objects was considered being demonic because it was also a common feature in demonic possessions. In cases of possession, priests and exorcists considered that the vomit of foul things that could include nails, bones, sands, and hairs could mark the

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[801] Ibid, capítulo III, título 4, párrafo 119: "Consultando pues el Medico á la primera vissita, á la segunda trae piedresillas en la voca, ó cauellos, ó huessos, ó otros instrumentos, que parescan de hechizo, y le dize á el enfermo: la verdad es, que estás hechizado, y que fulano con quien reñiste, te hizo mal; y le chupan el estomago, ó pecho, y le refriegan piernas, ó braços, ó cabeza, fingiendo, que sacan de aquellas partes las cosas, que traen escondidas, para assentar mas bien su bellaqueria, y confirmar el odio entre estos miserables, y mas quando la enfermedad, que Dios les embia, es mortal, que para dissuadirlos de semejante apprehension, no poco trabajan, y deben trabajar los Ministros quando llegan á saberlo para reducirlos á estado de amistad, y que no mueran en peccado."
[802] The estafiate was an herb used for medicinal purposes.
[803] AHAM, Juzgado Eclesiástico de Toluca, 1765, caja 92, expediente 31, foja 2 reverso: "Y esta denunciante dijo que lo que le vio hacer a la referida [la hechicera Manuela] fue que pidió estafiate y agua caliente del mismo estafiate. Y comenzó a chupar el pescuezo y le sacó de dicha operación un palizo que no sabe de qué madera era, aunque la que declara no supo si le sacó el palo, o lo traía en la boca."
[804] AHAM, Juzgado Eclesiástico de Toluca, 1729, caja 41, expediente 12, foja 1 anverso y reverso: "Su señoría dijo que en su conformidad y atención a que del contexto del proceso, no resulta justificado haber cometido ni ser formal supersticioso el mencionado Pascual de los Reyes, sino únicamente embustero, fingiendo que en las curas que ha hecho ha sacado huesos, vidrios y otras cosas por ponderarlas, y que se las pagasen, pues aún los mismos que han sido curados de él (por él), no se atreven a afirmarlo, y dicen que les parece."

expulsion of demons.[805] However, an important point to make is that in most cases of sorcery neither plaintiffs nor ecclesiastical judges made direct connections between *maleficio* and demonic possession. In the records of the ecclesiastical court of San José de Toluca there are only two documents in which there is an explicit mention of an illness caused by a "bad spirit" or by something hidden that was alive inside the body of the bewitched. As explained in the previous chapter, in one of these documents, the term bad spirit is not related to the Christian idea of demons, but to the indigenous' notion of "bad air" ("*malos aires*"), or *ecames*, which were believed to cause illnesses, and that had to be expelled through "blowings" ("*soplidos*") to heal the patient.[806] The other case is a medical examination in which the physician wrote that when he conjured (the Spanish term is "*conjurar*") a certain lump that existed inside the right thigh of his patient, a Spanish woman named doña Juana Ortiz, a "living thing" moved with frenzy inside her. The physician noted that his patient had also expelled foul objects through the urine, such as hairs, little stones, frog bones, and straws. For all these reasons, the doctor concluded that doña Juana was truly bewitched.[807]

In the records of the Mexican Inquisition at the Archivo General de la Nación there is an illustrative document in which there is a clear connection between maleficio and demonic possession. In 1748, the vicar-general and provisor don Francisco Javier Gómez de Cervantes reported a case in which a mestiza named Josefa de Saldaña had been allegedly bewitched by her

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[805] Levack, *The Devil Within*, 6-15.

[806]AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 11, foja 1 reverso: "…y que a soplidos untándole por todo el cuerpo una hierba que llaman estafiate, dicen que les van sacando del cuerpo a refregones y soplidos los eccames, cuyo términos ecames [o eccames], significa espíritus, y así que entiende este testigo, que lo que dicen dichos limpiadores es que con dicha limpiadura sacan los espíritus malignos que se les meten a los enfermos en los cuerpos, y que así tiene estas limpiaduras por hechicería de los indios."

[807] AHAM, Juzgado Eclesiástico de Toluca, 1726, caja 37, expediente 12, foja 5 anverso "…y que así mismo ha visto y palpado [el cirujano] que en el muslo diestro tiene dicha señora cosa viva, la cual se excita y mueve con extremo cuando la conjuran de que infiere este testigo ser algún espíritu extraño que siendo como es el que declara maestro de cirugía no ha visto ni leído ni alcanza que un accidente o morbo natural produzca tales efectos, por cuyas razones tiene por cierto dicho maleficio."

ex-lover, Juan de la Cadena, so Josefa was now possessed by the devil.[808] Here, when a chaplain exorcized Josefa, she expelled many foul things, such as mice, snakes, frogs, and scorpions. However, unlike the case of doña Juana Ortiz, Josefa had uttered blasphemies during the exorcism.[809]

[808] This case has been studied by Cervantes, *The Devil in the New World*, 138-141.
[809] Ibid, 139.

Table 7. **A Comparison of the Symptomatology of the Bewitched and Demoniacs**

Symptoms of the bewitched	**Symptoms of demoniacs**
Illness appears immediately after a quarrel with an alleged sorcerer. Different forms of physical pain. Severe headache[810] or stomachache[811]. Rigidity of the limbs[812] and or/ swelling or inflammation of body parts.[813] Lumps in the stomach or other body parts.[814] Stinking breath and lack of thirst.[815] Filthy things and alien objects expelled from the body through urine[816] or vomit[817], including bones, chicken feathers, cloth, nails, eggs, plants, herbs, sand, hairs.	Physical pain and irritations. Swelling and/or rigidity of the limbs. Convulsions, muscular flexibility, contortions, and loss of bodily function. Change in the demoniac's voice. Immoral gestures and actions such as blasphemies against God. Alleged preternatural/mystical effects: levitation, strength, speaking in languages, trance experiences and visions, clairvoyance, and extreme fasting. Vomiting alien objects: pins and needles as the most common materials, but also nails, glass, blood, pottery, feathers, coal, stones, coins, cinders, sand, dung, meat, cloth, thread, and hair.

Source: This list is based on Levack's description of demoniac's symptomatology. To see the whole analysis, see Brian Levack's, *The Devil Within*, chapter 1, 6-15.

[810] AHAM, Juzgado Eclesiástico de Toluca, 1726, caja 37, expediente 12, fojas 6 reverso 7 anverso: "… se levantó dicha india y le tentó la cabeza a la referida suegra, quien luego comenzó a dar de gritos, llamando a sus hijos y pidiendo luz porque le dolía muchísimo la cabeza…"

[811] AHAM, Juzgado Eclesiástico de Toluca, 1760, caja 83, expediente 34, foja 2 anverso y reverso: "La dicha Cecilia me amenazara diciendo que me acordaría de ella como lo estoy experimentando, pues desde este tiempo hasta ahora me atormenta un dolor de estómago que me ha privado de trabajar…"

[812] AHAM, Juzgado Eclesiástico de Toluca, 1761, caja 85, expediente 28, foja 1 anverso: "Que asimismo padece de las piernas y los brazos, que se le duermen. Que hay veces que no puede menearse y otras veces principalmente a la madrugada que en ocasiones se haya como impedido así de brazos como de piernas, de tal suerte que ni aún para hacer cualquiera operación."

[813] AHAM, Juzgado Eclesiástico de Toluca, 1764, caja 90, expediente 36, foja 7 anverso: "El declarante con la referida Agustina, y que al cabo de pocas horas de pasada dicha riña comenzó a tener aquella noche mucho ardor dentro, digo mucho frío y frialdad rigurosa de dentro del estómago, y que luego se le comenzó a hinchar el vientre, y que a la mañana inmediata viéndose tan malo y lleno de dolor que se le sobrevinieron en todo el cuerpo, manos, pies y cabeza."

[814] AHAM, Juzgado Eclesiástico de Toluca, 1764, caja 90, expediente 18, foja 1 anverso: "No ha tenido hora de gusto luego comenzó a enfermar con el dolor de estómago con una bola que tenía en la boca del estómago hasta que murió."

[815] AHAM, Juzgado Eclesiástico de Toluca, 1767, caja 97, expediente 27, foja 1 anverso y reverso: "…ya por la ninguna sed, debiendo este síntoma ser consiguiente, escasa apetencia, atrófica constitución, aparato accesionalmente febril, con pestífero insoportable aliento."

[816] AHAM, Juzgado Eclesiástico de Toluca, 1726, caja 37, expediente 12, foja 5 reverso: "[la paciente ha echado] por la vía de la orina muchas inmundicias como son un magueyito y un cañón de pluma de gallina, huevo, pelos, y otras cosas."

[817] AHAM, Juzgado Eclesiástico de Toluca, 1771, caja 108, expediente 32, foja 2 anverso: "[Después de beber una bebida, la paciente dijo]: expelí por la boca unas uñas de cerda y otras inmundicias."

This table shows that sorcery and idolatry cases do not share most of the characteristics of demonic possession. The most spectacular symptoms associated with demoniacs such as contortions, levitation, clairvoyance, immoral actions, and blasphemies against God are notoriously absent in indigenous sorcery cases at the ecclesiastical court of San José de Toluca. Although patients of demonic possession and witchcraft share similar corporal affections such as physical pain, rigidity of limbs and swellings, the most noticeable similarity is the expulsion of alien objects. In both cases, accusers and judges used the expulsion of filthy things ("*inmundicias*") as evidence of demonic presence. This diabolical activity in most cases of maleficio was considered the result of an explicit or implicit pact with the Devil through the material ingredients of Indian sorcery. Still, there are a few cases in which accusers, witnesses, and judges did not discard this connection, as I have shown above.

2.5. The Edict of 1769 and the New Judicial Procedure in Cases of Superstition

Besides the necessity of medical examination to prove indigenous sorcery, the provisor don Manuel Joaquín Barrientos adopted additional measures to extirpate indigenous superstition. Through an edict published in 1769, the provisor reminded all the inhabitants of the archbishopric that superstition and idolatry were serious crimes against the Christian faith. The provisor cited in the text a royal decree issued by King Charles III, on May 13th, 1765, by which the monarch mandated that indigenous idolatry had to be destroyed.[818] Echoing this royal order, the provisor noted that the Provisorato had taken measures to achieve this purpose, such as prohibiting indigenous dances, representations, and games. However, the provisor recognized that many people in the archbishopric did not dare to denounce idolaters, as they were scared to be accused

[818] Francisco Antonio de Lorenzana y Buitrón, *Cartas pastorales y edictos del Illmo. Señor D. Francisco Antonio Lorenzana y Buitrón, Arzobispo de México, México, en la imprenta del Sup. Gobierno del Br. D. Joseph Antonio de Hogal*, 1770, cited by Traslosheros, "Superstición e idolatría," 335-339.

back by those denounced.[819] The provisor listed a series of crimes often committed by Indians of the archbishopric, which included: polygamy, blasphemies against God, the Virgin Mary or the saints; the celebration of the holy mass and hearing confessions without being priests; the performance of superstitious healings using herbs like peyote and the performance to conjure hail ("*espantar/conjurar granizo*") offering candles and food to idols in caves or hills, and the worship of animals and other creatures, among others.[820] According to the text, the best medicine to combat these superstitions and excesses was religious instruction and mercy. However, the edict preserved the right of ecclesiastical judges to utilize other forms of punishment when necessary. For example, the provisor warned that people guilty of the crime of superstition would be excommunicated if they were non-indigenous or would receive twenty-five whippings and one month of imprisonment if they were Indians.

Gerardo Lara Cisneros notes that the new approach of the Provisorato reveals the influence of the Rationalism of the Enlightenment and the modern theologians of those times, such as Benito Feijóo. The Spanish scholar and Benedictine monk Benito Jerónimo Feijóo (1676-1764) in his *Teatro crítico*, wrote that most apparent supernatural phenomena (including miracles) had a natural explanation, and that superstition resulted from ignorance and lack of education in the sciences and the Christian religion.[821] However, Feijóo considered that in very rare situations could sorcery produce real preternatural effects if God permitted it. Moreover, he endorsed the ecclesiastical ban on the study and practice of magic, as it could entail demonic worship.[822] As

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[819] Ibid: "muchas personas se hallan en el error de no estar en obligación de denunciar los delitos de los indios, por calificar de propia autoridad, ser unos ignorantes o por temor de que serán descubiertos con los reos, y que éstos les perjudicarán en el futuro."
[820]Ibid.
[821] Arturo Morgardo García, *Demonios, magos, y brujas en la España moderna*, 81.
[822] Benito Jerónimo Feijóo, *Teatro Crítico Universal*, BAE, vol 56, 356. "Lo que se cuestiona no es eso, sino si con las artes que llaman mágicas logran los admirables efectos que con su práctica se prometen. Eso decimos que rarísima vez sucede. Pero doy que nunca sucediese. Con todo eso, la Iglesia justísima y prudentísimamente podría y debería prohibir la práctica y estudio de esas artes, porque la práctica por sí misma y prescindiendo el suceso que

such, Feijóo did not entirely break with traditional understandings of magic and diabolical intervention, but his theory questioned the number of actual cases of sorcery. In this way, the Benedictine monk paved the way for a more mechanistic understanding of the universe, which favored natural explanations for apparently supernatural phenomena.

Despite the emergence of a more materialistic philosophy and modern theology in Europe, we must not overestimate its influence in New Spain during the eighteenth century. Fernando Cervantes argues that the skepticism of ecclesiastical tribunals on cases of Diabolism, especially the Mexican Inquisition, is not the result of the influence of mechanical philosophy. The materialism of authors such as Hobbes, Newton, Descartes, and Locke supported the idea that physical laws, and not spiritual forces, as the old Aristotelian notion theorized, ruled heavenly bodies. Inquisitors in New Spain disapproved not only of this novel approach, but rejected it as heretical and erroneous.[823] Cervantes wrote that "any attempt to divorce science from religious and philosophical speculation about the nature of matter and the universe would cause great unease, since it was more or less generally accepted that approved scientific theory should precede scientific practice."[824] In this respect, even Feijóo, who never advocated for the separation of theology and natural science, was criticized by important scholars such as don Juan José de Eguiara y Eguren, the rector of the University of Mexico. Don Juan José wrote that Feijóo, though never heretical, was to blame for the encouragement of modern mechanical philosophy at the expense of scholastic theology.[825] Although he was criticized, Gerardo Lara Cisneros argues that the Feijóos' theology influenced the judicial praxis of the Provisorato de Naturales y Chinos in

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haya de tener, es lícita, supersticiosa y torpe en alto grado, sobre que es verosímil que, si no en todos, en los más de sus ritos envuelve algún sacrílego culto el demonio." Cited by Morgado García, *Demonios, magos y brujas en la España moderna*, 81.

[823] Cervantes, *The Devil in the New World*, 128.

[824] Ibid, 128.

[825] Ibid, 146.

the eighteenth century, as we can see through the edict of 1754, that included the possibility of medical explanations for sorcery cases rather than exclusively demonic activity.[826]

2.6. Fourth Provincial Mexican Council, 1771

The Fourth Mexican Council criticized the evangelization of indigenous peoples carried out by the regular and the secular clergy in the sixteenth and seventeenth centuries. The bishops noted that the belief in the intellectual inferiority of the indigenous people had prevented parish priests from taking effective measures to eradicate indigenous superstition.[827] The Council proposed a new policy, in line with the Bourbon Reforms, that promoted the education and hispanization of indigenous peoples, so Indians could fully become Christians and productive subjects of the monarchy.[828] The new synod reaffirmed some measures taken by the Third Provincial Mexican Council, such as prohibiting Indians from engaging in dances and games that could conceal idolatrous acts, destroying idols and private shrines, and congregating indigenous peoples in cities.[829] Similarly, the council criticized once again the passive attitude of many bishops, who through tolerance or negligence had permitted Indians to retain their superstitions until then. Considering the poverty and rusticality ("*rusticidad*") of the Indians, the canons mandated bishops to admonish them. However, when Indians abused compassionate treatment, bishops could punish indigenous idolaters through their ecclesiastical tribunals.[830] In addition, the

[826] Lara Cisneros, "Superstición e idolatría," 294-295.
[827] Ibid, 291.
[828] Ibid, 291.
[829] Cuarto Concilio Mexicano, libro I, título I, ley I: "Todo lo que recuerda el gentilismo, se debe borrar de la memoria enteramente y disiparlo de raíz, conforme a lo cual se manda que los indios no usen en sus danzas, mitotes y juegos, ni en el vestido den señales algunas de su idolatría, o que causen sospecha de ella. Que no usen de sus antiguas canciones, en que se refieren sus historias y antiguas impiedades, y sólo cantarán lo que fuere aprobado por sus párrocos"; ley II: "En la unión de los dos brazos, eclesiástico y secular, consiste la paz, el acierto y seguridad de la Iglesia y del estado, por esto los jueces reales destruirán los cués o públicos adoratorios y los ídolos que estuvieren colocados en las casas u otros lugares, para que no vuelvan los indios a la idolatría, siempre que se implore su auxilio por los párrocos con la debida atención"; and ley XVI: "que en cuanto sea posible se han de reducir [los indios] a población y no vivan retirados en las soledades, rudos y expuestos a idolatrías y supersticiones."
[830] Ibid, libro IV, título IV, ley I.

synod ordered parish priests to examine whether their indigenous parishioners committed idolatry; and in case of proving such a crime, the priests had to redress the criminals in a "benign" and "loving" way. In the event criminals did not amend their errors, parish priests were to secretly denounce the idolaters so the bishop's tribunal could deal with them, but they could not apply corporal punishment themselves to correct their parishioners.[831]

Despite the similarity of these laws with those of the Third Mexican Council, the Fourth Mexican Council embraced a new emphasis on religious education. Parish priests were instructed to never baptize an indigenous adult if the indigenous catechumen did not prove enough knowledge of the Christian doctrine and had not completely abandoned his or her superstitions.[832] Since ignorance was also a problem of many ecclesiastics, who mismanaged the sacraments and were laxed in correcting the moral and spiritual errors of their parishioners, the council mandated that parish priests attend conferences on moral subject-matters in order to get an ecclesiastical endorsement to teach the doctrine to their congregations.[833] Another difference is that the council echoed the most recent royal laws that promoted the hispanization of Indians, and to include indigenous men as part of the clergy.[834] Following this trend, the canons instructed parish priests to teach the Christian doctrine in the Spanish language to their indigenous parishioners. According to the council, one reason why Indians were still idolatrous was because the mysteries of the faith could not be properly explained in indigenous languages, thus confusing Indians who did not understand what they were taught.[835] Finally, the Council devoted a chapter to magical practices

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[831] Ibid, libro III, título II ley XIV.
[832] Ibid, libro III, título III, ley XXX.
[833] Ibid, libro III, título I, ley VIII, and libro III, título II, ley I.
[834] For this topic, see Matthew O'Hara, A Flock Divided, chapter 2.
[835] Cuarto Concilio Mexicano, libro III, título I, ley X: "…hay muchos ministros que rehúsan enseñarles la doctrina en castellano y el que la aprehendan en las escuelas, lo que es causa de mantener muchos errores y supersticiones en los naturales porque en sus idiomas no se pueden explicar tan propiamente los misterios de la fe, por lo que los obispos con el mayor celo cuidarán de que se extienda y haga universal la lengua castellana, pues así tomarán los indios más inclinación a nuestra religión de nuestro soberano y a los mismos párrocos y superiores"; and Libro IV,

("*sortilegios*"), in which crimes of sorcery were associated with ignorance, rather than diabolism. In fact, the canons do not mention the Devil, and they state that men cannot know the future through divination or other means, thus discrediting sorcerers, who were called liars.[836] The Fourth Mexican Council represented the combination of modern theological developments that changed the traditional vision of diabolism and idolatry, and the new royal policy that promoted hispanization and education to eradicate ignorance and indigenous superstition.

3. Judicial Procedure

The judicial procedure on cases of idolatry, superstition and sorcery resembled those on ecclesiastical immunity and those against ecclesiastics.

1) A denunciation was presented at the closest ecclesiastical court. Residents of Tenango del Valle and Metepec had three options. They could start litigation at their local courts, at the district's head ecclesiastical court in San José de Toluca or at the Provisorato headquarters in Mexico City.[837] In most cases, either the bewitched themselves or their family members were the ones who complained at the tribunal, accusing an indigenous person. In cases of idolatry, it was frequent for a Spaniard to press charges against one or more Indians at the same time. When plaintiffs directly filed their complaints at the Provisorato, sometimes provisores commissioned an investigation to one of the local courts, such as that of Toluca. Once the ecclesiastical judge

título XII, ley 4: "La variedad de los idiomas de naturales que hay en este arzobispado y provincia es causa de desorden y aun muchos errores en la explicación de los misterios de la fe."

[836] Ibid, libro V, título VI, ley 3: "Suelen andar por los pueblos unos embusteros que llaman saludadores, ensalmadores y santiguadores y conjuradores de granizo, diciendo que curan enfermedades con ciertas palabras, bendiciones u otras oraciones y esto se prohíbe enteramente 37 en este concilio, y se manda a los obispos que les castiguen implorando si fuese necesario el brazo secular.

[837] See as an example AHAM, Juzgado Eclesiástico de Toluca, caja 38, expediente 5, 5 fojas.

concluded his investigation, he reported back to the provisor so he could judge the case in question.

2) After receiving and admitting the denunciation, the ecclesiastical judge had to determine whether the accused was indigenous. This process was especially important in crimes related to superstition and idolatry, as only diocesan courts, and not the Inquisition, could prosecute Indians. When the local ecclesiastical judge did not have the evidence to determine the race of the accused, he consulted with the Provisorato, which made a final determination. This process sometimes was facilitated when the ecclesiastical judge of Toluca was at the same time a judicial commissioner of the Holy Office (*juez comisionario del Santo Oficio de la Inquisición*). Lara Cisneros notes that this shared function of ecclesiastical judges effectively sped up the judicial process as it reduced the number of juristic conflicts between the Provisorato and the Inquisition.[838] During this part of the procedure, it was frequent that the ecclesiastical judge had already ordered the arrest and imprisonment of the alleged sorcerer in the city jail if he was male. Since Toluca did not have a public jail for women during certain decades, females were sent to a convent or to the private home of a trustworthy resident, usually Spanish.

3) Investigations, if commissioned by the Provisorato, were conducted through the interrogation and compilation of the testimony of witnesses (*sumaria información*) and the collection of material evidence such as dolls, food or alien objects expelled by the bewitched to verify that idolatry or sorcery had been practiced. When material objects were brought as proof to the court, ecclesiastical judges instructed their notaries to create an inventory.[839] After the edict

[838] Lara Cisneros, "Superstición e idolatría," 160-161 and 175.
[839] AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 7.

of 1754, that required medical confirmation in cases of sorcery, ecclesiastical courts incorporated medical examination conducted by a qualified physician as part of the judicial procedure.

4) After the sumaria was collected, the provisor reviewed it and then returned it to the ecclesiastical judge so that he could *recibir la causa a prueba*, or collect the defendant's testimony and enter any other defense motions into the record. There was a time limit of at least one month, but extensions were granted. During this stage, the defendant secured a defense attorney and testified, and the testimony of all *sumaria* witnesses was ratified.[840]

5) Then, the trial reached its *estado de sentencia* and was sent to the provisor for final review and ruling. The civil justice performed the actual arrests, corporal punishments, or public auctions of the defendant's labor, for such actions could not be carried out by the clergy. In theory, trial records were archived by the provisorato, and parochial archives kept copies.[841]

The punishments applied by the Provisorato varied. For petty crimes of superstition, a usual punishment was to receive religious instruction from the local parish priest.[842] As an example, we have the case of an Indian healer named Francisca Quiteria, from the town of San Felipe, Metepec, who was prosecuted and punished by the ecclesiastical court of San José de Toluca in 1736 for performing "superstitious healing." The ecclesiastical authorities decreed that Francisca Quiteria, as a penance, had to be taken to her parish church on a holy day, standing on her feet and with her arms extended like the penitents. Then, she had to hear mass until the reading of the first gospel, after which she was absolved. Right after the absolution (and still during the mass), the parish priest was to inform Francisca Quiteria that she was prohibited from ever acting

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[840] Tavárez, *The Invisible War*, 240.
[841] Ibid, 240.
[842] AHAM, Juzgado Eclesiástico de Toluca, 1736, caja 51, expediente 24, foja 1 reverso.

as a healer again. The mass then resumed, while Francisca continued standing on her feet. At the beginning of the *Sanctus,* the penitent had to kneel, remaining in that position until communion.[843] The purpose of this public punishment was to serve as an example for the rest of the Indians, who would be there to witness Francisca's penance.

However, her punishment did not end there. The provisor obliged Francisca Quiteria to attend every mass in the same parish church for two months, during which she would receive religious instruction. In particular, Francisca had to learn the "pater noster, the credo, the commandments of the law of God and the Church, the mystery of the Holy Trinity, the Incarnation and His passion and death for the salvation of humankind, and the eternal reward for the good and the eternal punishment for the wicked."[844] She also had to learn the mystery of the Eucharist, so that after being properly educated in the Christian doctrine she would never engage in superstition again. After the completion of her religious education, Francisca had to confess her sins and take communion. The parish priest of San Felipe was to guide Francisca throughout the entire process and report back to the ecclesiastical judge of San José de Toluca, confirming that the penitent had attended masses and had completed her religious instruction as directed by the provisor.

[843] AHAM, Juzgado Eclesiástico de Toluca, 1736, caja 51, expediente 24, foja 1 anverso y reverso: "Sea llevada la mencionada Francisca Quiteria a la iglesia parroquial de la expresada ciudad (San Felipe, Metepec), y puesta en pie, cruzados los brazos en forma de penitente, después del primer evangelio de la misa de cuenta sea absuelta: ad cautelam de la censura sinodal, reservada impuesta a los supersticiosos, para lo cual daba y dio comisión la que de derecho se requiere al reverendo padre cura ministro de esta doctrina, haciéndole saber se le prohíbe el ejercicio de curandera que se asienta haber tenido […] y dada así la reprehensión que sea notoria al concurso prosiga oyendo la misa en pie, sin arrodillarse más que desde los sanctus, hasta la consumpción del santísimo sacramento, para que con esta pública Penitencia y prisión que ha padecido que de ella castigada, y ejemplificado el común."
[844] Ibid, foja 1 reverso: "Se le explique alternativamente el pater noster, credo, mandamiento de la ley de Dios y de la Iglesia, el misterio de la Santísima Trinidad, el de la encarnación del Divino Verbo, su pasión y muerte por salvar el género humano, premio eterno para los buenos, e igual castigo para los malos, y también el misterio de la Sacrosanta Eucaristía, de suerte que perfectamente instruida en lo que así debe saber y entender, para creer y obrar con arreglamiento a las obligaciones de cristiana, no incurra en superstición alguna."

In more serious crimes of superstition, the accused was sentenced to receive corporal punishment, including a specific number of whippings, which could range from twenty-five up to two hundred. *Autos de fe* were a common form of punishment, but their spectacular nature and intensity varied depending on the penalty. Some convicts had to hear mass and remain standing holding candles during the whole ceremony, while the parish priest admonished him or her in front of the rest of the Indian town dwellers. In other cases, autos de fe incorporated this form of public admonition along with a spectacular procession, in which the convict was whipped and paraded throughout the stress wearing a *coroza* (a pointy hat), naked from the waist up, and in the company of a *pregonero* (town crier) who announced the sorcerer's crimes and punishment. Finally, ecclesiastical judges sentenced criminals to work for a salary at a hacienda or workshop for a specific number of months or years.[845] All or part of the salary earned was earmarked to pay for the lawsuit's expenses. Depending on the case, criminals could be punished with one, several, or all the above sentences.

5) Regarding false accusations, ecclesiastical judges punished slanderers the same as in cases of calumny. In these cases, working at a workshop, imprisonment, or compulsory payment of the lawsuit fees were common sentences. The Indian Juan Nicolás Mancilla falsely accused other indigenous people of his town, San Lorenzo, of being sorcerers. Since the plaintiff could not provide any evidence to support his accusations, the ecclesiastical judge of San José de Toluca sentenced Juan Nicolás with imprisonment at the royal public jail of the city of Toluca, where he had to remain until he paid all the expenses of the suit he initiated against his neighbors.[846]

[845] AHAM, Juzgado Eclesiástico de Toluca, caja 38, expediente 5, 5 fojas.
[846] AHAM, Juzgado Eclesiástico de Toluca, 1775, Caja114, Expediente 56, foja 4 reverso.

4. On the Accusers and Their Reasons

Most of the accusers in cases of idolatry at the ecclesiastical court of Toluca were Indians or Spaniards. However, all the defendants, without exception, were Indians. This fact should not be surprising, since the ecclesiastical court of San José de Toluca only had jurisdiction on cases of superstition committed by indigenous peoples. If Spaniards were accused of a crime against the faith, especially if it involved heresy, the Holy Office of the Inquisition prosecuted them, and not the tribunals of the Provisorato.

Both indigenous men and women participated in various forms of magical practices, such as healing, hail conjuring ("*conjuración de granizo*"), or sorcery at a similar ratio. In this respect, out of the 47 superstition and idolatry cases kept by the archive of the ecclesiastical court of San José de Toluca, there are 19 accused men and 24 women. We should keep in mind that this number is approximate, since there are denunciations of idolatrous gatherings in which colonial sources never indicate the exact number of participants or their gender. Although some early Spanish missionaries such as fray Andrés de Olmos asserted that women are more likely to engage in sorcery,[847] with the indigenous peoples of Toluca Valley, this distinction is not so clear. Extirpators of idolatry of the seventeenth century, such as Ruiz de Alarcón and Jacinto de la Serna, never mentioned indigenous women being more likely than men to engage in superstitious practices. They refer to many cases in their treatises as men and women taking part in similar ways when exercising their pre-Columbian devotions. This corroborates the data found at the ecclesiastical court of San José de Toluca. For example, De la Serna writes that Indians, following

[847] See Michael D. Bailey, "The Feminization of Magic," 122; and for the Spanish case check Fray Andrés de Olmos, *Tratado de Hechicerías y Sortilegios,* X-XI.

their pre-Columbian religious calendar, believed that individuals, regardless of their gender, who were born on a certain day were blessed with a tonal, or divine fate, that permitted them to become sorcerers.[848]

In cases of superstition and idolatry, denunciations follow a similar pattern, with some distinctions depending on the case. In most cases, an indigenous person (and sometimes a Spaniard or other ethnicities) complaining before the ecclesiastical judge that another Indian, normally from his town or a neighboring settlement, had bewitched him or her after a confrontation. Although many documents do not include what caused the quarrel, when they mention it, it revolves around economic, romantic, political, or any other personal reason. For instance, one Indian woman was allegedly bewitched by her neighbor after having a dispute over the theft of some chickens.[849] In other scenarios, illicit friendship or a love disappointment ("*desengaño amoroso*"), caused the quarrel, and the reason why some individuals retaliated, through magical means, against their lovers or their spouses.[850] Conflicts over local politics in indigenous towns were another reason some individuals believed that they had been bewitched by their personal enemies. Some witnesses declared at ecclesiastical courts that they knew certain sorcerers who had bewitched the Indian *gobernador* or other official for their "bad government," or for problems caused over the collection of the Indian head tax.[851] For example, in 1764, an Indian woman named Rita Cristina, widow of the late governor of the town of San Pablo, José Valeriano, testified against Agustina María. Through an interpreter in the Otomi language, Rita

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[848] De la Serna, Manual, capítulo IX, párrafo 2.
[849] AHAM, Juzgado Eclesiástico de Toluca, 1760, Caja 83, Expediente 34, foja 2 anverso.
[850] AHAM, Juzgado Eclesiástico de Toluca, 1747, caja 63, expediente 33, foja 2 anverso: "Que quien la maleficiaba era Marcos Diego y su hija María Cruz, y que la causa era porque antes de casarse [la maleficiada con] Antonio López Tello, su marido, había tenido ilícita amistad con dicha María Cruz, en quien había tenido hijos, y que como desde que se casó con la declarante, no había vuelto con la otra, que por eso la hechizó."
[851] AHAM, Juzgado Eclesiástico de Toluca, 1764, caja 90, expediente 36, foja 3 reverso.

declared that her deceased husband had a quarrel with Agustina María over the collection of the tribute ("*sobre la cobranza del tributo*"), after which José Valeriano became suddenly ill and died. To support her testimony, Rita presented a paper written by her husband before he died, in which he accused Agustina María of having bewitched him with the terrible illness that was killing him.[852] The ecclesiastical court of San José de Toluca received two more declarations from indigenous neighbors of San Pablo, who also accused Agustina María of sorcery. One of them, named Felipe Tomás, manifested that one day he had a quarrel with Agustina María, who threatened him by saying: "in the same way I killed Valeriano for his bad government, the same thing I will do to you."[853]

In the accusation, the complainants often note that they started suffering from some symptoms such as headache or stomachache right after the quarrel, which they attributed to a spell cast by their personal enemies.[854] This connection between health issues and sorcery was even stronger when the alleged witches already had a reputation in their town for being a healer or a sorcerer, or usually both. When the sick convalesced, it was very frequent that they called the same sorcerer that had allegedly cast a spell on them, so they could give them a cure. This practice again reflects the pre-Columbian ideal that *ticitl* or healers could both inflict harm and heal. When the healer agreed to heal the bewitched, they performed a private ritual, normally at the house of the sick person, that included traditional medicinal and religious herbs, such as copal.[855] In addition, the healers sometimes used dolls, prayers to Christian saints or to the Holy Trinity.[856] Sometimes, the complainants recognized in their declarations that the healings immediately

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[852] Ibid, foja 1 anverso.
[853] Ibid, foja 3 reverso: "lo mismo que hice con Valeriano por su mal gobierno, así contigo."
[854] See for example AHAM, Juzgado Eclesiástico de Toluca, 1747, caja 63, expediente 33.
[855] AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 2, foja 2 reverso.
[856] AHAM, Juzgado Eclesiástico de Toluca, 1765, caja 92, expediente 14, 2 fojas.

healed them or alleviated them. However, they still denounced their neighbors if the illness returned or if they found the remedy to be against the Christian faith or idolatrous.[857] We should be aware that the fact that the bewitched decided to resort to their local ecclesiastical court instead of retaliating (perhaps in a violent way) against their enemies, probably helped to reduce conflicts at a local level.

Another ethnic group that played an important role in accusations against Indian sorcerers was Spaniards. Although denunciations of Spanish persons sometimes were like those of Indians, in the sense that after falling sick they immediately attributed their illnesses to certain indigenous sorcerers, many accusations were different. One difference between denunciations of Indians and Spaniards is that the latter group was more likely to accuse indigenous peoples to defend religious orthodoxy and not for personal reasons. When Spaniards learned that their indigenous neighbors were known for practicing sorcery or committing idolatry, they were more inclined than indigenous peoples to denounce these cases at an ecclesiastical court.

There are many reasons that explain this tendency. First, Spaniards did not suffer the social repercussions of accusing somebody of idolatry as Indians did. When a Spanish person revealed to an ecclesiastical court that some Indians were taking part in an idolatrous ritual, they did not attack an essential element of their identity or endangered the bonds of solidarity and reciprocity with their communities. Therefore, they were not targets of retaliation and violence, as happened to indigenous officials such as *fiscales* when they revealed a crime committed by their community to ecclesiastical or secular authorities.[858]

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[857] AHAM, Juzgado Eclesiástico de Toluca, 1747, caja 63, expediente 33, foja 2 anverso.
[858] In chapter six we saw that when indigenous town officials such as fiscales betrayed their communities by revealing idolatrous rituals they became targets of violent acts by their communities, seeing them as whistleblowers and traitors. Yannakakis, *The Art of Being in Between*, 14.

A second reason is that Spaniards were more likely to denounce indigenous idolatry and sorcery when their confessors instructed them to do so, a fact that some of them explicitly mentioned in their accusations.[859] A third reason is that Spaniards sometimes were employed by local ecclesiastical courts to act as informants, which implied the obligation to report any case of idolatry or sorcery that they discovered or heard about. Although the usual procedure was to send an *alguacil* or a person commissioned by the Provisorato to carry out investigations, some tribunals used trustworthy Spaniards to do so when they lacked personnel. For example, in the year 1745, the Spaniard don Diego de Abirisquieta was tasked by the ecclesiastical judge of Tenango del Valle and Calimaya, don Jerónimo Francisco Carranza, with the duty of supervising the local Indians to find out if they were committing any public and scandalous crimes ("*algunas culpas públicas y escandalosas*") in the area. The reason why don Diego was appointed as informant was because at that moment there was no *alguacil mayor fiscal* at the court, showing that ecclesiastical judges could commission local individuals to carry investigations in their name when necessary.[860]A fourth and final reason is that some Spaniards who owned haciendas surprised their indigenous workers engaging in idolatry or superstitious rituals that they immediately reported to an ecclesiastical court.[861]

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[859] AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 2, foja 1 anverso: "Esteban Cayetano Pérez, español, vecino de este pueblo [de Calimaya], diciendo que enviado de su confesor venía a hacer cierta denuncia que toca recibirla a este juzgado, y por ser acerca de unos indios que han cometido crimen en que se hacen sospechosos contra nuestra santa fe católica." See also AHAM, Juzgado Eclesiástico de Toluca, 1765, Caja 92, Expediente 9, foja 1 anverso: "Desiderio Joséh Gutiérrez, español vecino de esta jurisdicción. Como mejor proceda en derecho digo: que por mandado de mi confesor…"

[860] AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 7, foja 1 anverso: "Ante el señor bachiller don Jerónimo Francisco Carranza, cura beneficiado por su majestad, vicario in capite y juez eclesiástico en dicho partido y el de Calimaya, compareció Diego de Abirisquieta. A quien dicho señor cura tiene encargado cele y vele en los pueblos en los pueblos de este partido si hay principalmente entre los indios algunas culpas públicas y escandalosas, que necesiten de remedio para que con los escándalos no se infecte el rebaño de su feligresía, por falta de alguacil mayor fiscal, que no lo hay en este juzgado: y en virtud de dicho encargo, y para descargo de su conciencia dijo: que celoso de la honra de Dios Nuestro Señor y del celo y pureza de nuestra santa fe católica, declara…"

[861] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 20.

The fact that Spaniards were more likely than indigenous peoples to denounce idolatry with the sole or explicit purpose of defending the Christian faith does not mean that Indians never did it. In fact, in the reports of many Spaniards, the informants highlight that they had learned about the existence of idolatrous ceremonies thanks to the information of an Indian who had told them about it.[862] Other ethnicities such as blacks, mestizos or mulattos do not appear as much as Indians or Spaniards. In a few documents, black and mulatto slaves cooperated with their Spanish masters, acting as whistleblowers or witnesses against indigenous idolaters.[863] In short, personal conflicts and the defense of religious orthodoxy are some of the most recurrent reasons why indigenous peoples were accused of superstition (including in this category idolatry and sorcery) at the ecclesiastical courts of the Toluca Valley.

5. Conclusion

The previous chapter demonstrated that indigenous peoples had preserved some of their pre-Columbian beliefs and practices well into the eighteenth century. In this chapter, we have seen how exactly the ecclesiastical court of San José de Toluca sought to put an end to indigenous heterodoxy to maintain the purity of faith in colonial society.

One of the most important findings is that in the eighteenth century there is a big increase in superstition and idolatry cases because of the institutionalization of the ecclesiastical courts in the archdiocese of Mexico, which permitted the colonial population to accuse their neighbors of idolatry and superstition more easily at a local religious tribunal. In addition, the new Bourbon Reforms and a series of episcopal decrees emphasized the necessity of religious instruction and the hispanization of Indians as the best way to teach indigenous people the Spanish lifestyle and

[862] AHAM, Juzgado Eclesiástico de Toluca, 1745, caja 62, expediente 7, foja 3 anverso.
[863] See AHAM, Juzgado Eclesiástico de Toluca, 1726, caja 37, expediente 12, and AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 20.

the Christian religion. This effort required major control and supervision from colonial authorities over their subject population and for ecclesiastical judges to persecute indigenous heterodoxy more effectively than in previous centuries when there were not enough secular priests available or ecclesiastical courts.

The Church adopted new measures to combat idolatry, now requiring a medical examination to verify whether a person had been truly bewitched or not. However, I should stress that incorporating doctors in the evaluation of sorcery was not entirely unknown. Before the episcopal decree, a few doctors (a minority) were utilized or served as witnesses to prove a crime of idolatry. I have highlighted that the symptomatology of the bewitched, as described in the judicial records by colonial doctors, substantially differed from that of the demoniacs, except for the expulsion of alien objects, either through vomit or urine. In this respect, colonial doctors combined in their analysis the scientific knowledge of their times with theological concepts to determine if an individual had been bewitched. When doctors were called in, either before or after the episcopal decree that mandated medical examination, their conclusions on some occasions supported the existence of demonic activity.

Another point that should be stressed is that the way in which ethnicities denounced idolatry and superstition differed. Although there are examples of Spaniards and indigenous people accusing an Indian sorcerer or healer of heterodoxy, it was mostly Spaniards who accused indigenous peoples of idolatry at the request of their confessors, when employed as informants by local ecclesiastical courts, or when they discovered an idolatrous ceremony in a particular place, such as a cave, house, or hacienda. In this respect, indigenous people were less likely to reveal the location of ceremonies or file denunciations to maintain the purity of the faith, but they resorted to the ecclesiastical courts when they considered that they had been bewitched by a local

sorcerer. I have argued that the main reason for his difference is because idolatrous ceremonies were part of local indigenous identity. For example, healing ceremonies required the participation of a group of Indians not only to worship pre-Columbian gods but also to heal members of the community. As such, idolatry also functioned to reinforce bonds of solidarity and reciprocity, an element that is missing in Spanish communities.

Despite the differences between Spaniards and Indians, I contend that the colonial population resorted to ecclesiastical courts in superstition cases to seek redress for their grievances, especially if they thought that they had been bewitched. Victims of sorcery denounced their enmities at the tribunals of the Church instead of resorting to personal retaliation or violence to settle their disputes, thus allowing ecclesiastical judges to halt conflicts at the local level.

After having analyzed superstition and idolatry to show how the Church supervised and inculcated religious beliefs and practices, the last chapter will explore how ecclesiastical courts controlled colonial morality and sexuality through the prosecution of marital causes.

Chapter 9. Marital Causes, Claims, and the Moral Domains

1. Introduction

In the past twenty years there has been an increase in the study of sexuality and crimes related to marriage in colonial Spanish America. Authors such as Antonio Fuentes-Barragán[864], Ann Twiman[865], Peter Wade,[866] Sarah C. Chambers,[867] Frédérique Langue[868], José Luis Moreno[869], Emma Mannarelli[870], and Marcela Aspell,[871] have paid attention to cases of adultery, concubinage, fornication, dishonor, and domestic violence. For the archdiocese of Mexico, Jorge Traslosheros[872], and a compilation including authors: Lourdes Villafuerte, García, Teresa Lozano Armendares, Sergio Ortega Noriega and Rocío Ortega Soto, who have utilized judicial documents produced by the Provisorato of Mexico City to study the judicial procedures of *causas matrimoniales* (marital cases) in the late colonial period.[873] Regarding the Toluca Valley, María

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[864] Antonio Fuentes-Barragán, "Quebrantos de la moral conyugal: amistades ilícitas en el Buenos Aires tardocolonial," *Naveg@mérica, Revista electrónica editada por la Asociación Española de Americanistas*, número 15 (2015): 1-23.
[865] Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Ilegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 1999).
[866] Peter Wade, S*ex and Race in Colonial Latin America* (London: Pluto Press, 2009).
[867] Sarah C. Chambers, "Los ritos de la resistencia: estrategias de las peruanas para defenderse de la violencia doméstica, 1780-1850," in *Género y cultura en América Latina*, edited by Luzelena Gutiérrez de Velasco (México: Colegio de México, 2003).
[868] Frédérique Langue, "Las ansias del vivir y las normas del querer: Amores y "mala vida" en Venezuela colonial," in Quimeras de amor, honor y pecado en el siglo XVIII venezolano, edited by Elías Pino Iturrieta (Caracas: Editorial Planeta, 1994), 35-65.
[869]José Luis Moreno, "Sexo, matrimonio y familia: la ilegitimidad en la frontera pampeana del Río de la Plata, 1780-1850," *Boletín del Instituto de Historia Argentina y Americana Dr. Emilio Ravignani,* 16-17, Tercera serie, Buenos Aires (1998): 61-84.
[870] Emma Mannarelli, *Pecados públicos: la ilegitimidad en Lima, siglo XVII* (Flora Tristán, 2004).
[871] Marcella Aspell, "Amistades ilícitas, abandono y violencia en los contextos familiares indianos del último cuarto del siglo XVIII en Córdoba del Tucumán," *CONICET Digital (CONICET). Consejo Nacional de Investigaciones Científicas y Técnicas*, (2014): 675-710.
[872] Traslosheros, *Iglesia, Justicia y Sociedad en la Nueva España*, chapter 7.
[873] Villafuerte García, Lozano Armendares, Ortega Noriega, Ortega Soto, "La sevicia y el adulterio," 87-161.

Ángeles Gálvez Ruiz has published a survey on marital criminal categories that the ecclesiastical court of Toluca prosecuted,[874] and conflicts related to marriage waivers.[875]

Mostly, criminal records are the sources used by the researchers, as these are the ones that best captured marital conflicts in Spanish America's colonial society. In addition, a cultural, social, and institutional reading of the records has been used to explain how Christian ideas permeated notions of honor, gender, morality, sexuality, and marriage. Marital causes offer a window into the emotional, social, sexual, and religious issues that people in Spanish colonies lived through. The cases prosecuted by ecclesiastical courts show daily struggles of lovers, spouses, and relatives who faced marital issues such as domestic violence, illicit friendships, or infidelity. These documents allow us to understand how the Catholic Church, in collaboration with royal authorities, regulated "good customs" and modeled society and sexual relations to meet the expectations set by the Mosaic Law, Christ, and the apostles.

Following the current historiographic trend, this chapter examines marital causes, especially those classified as illicit friendship (*amistad ilícita*), breach of promise (*incumplimiento de la palabra dada*), rape (*estupro*), and domestic violence (*sevicia*) by the ecclesiastical court of the city of San José de Toluca. The reason for focusing on these categories has to do with the frequency they occurred and were registered[876] in the Archivo Histórico del Arzobispado de Mexico, and for their ambiguous nature. Although illicit friendship refers to any type of extramarital and illegal sexual relationship, these cases could also engulf rape, adultery, and

[874] María Ángeles Gálvez Ruiz, "Conflictos familiares y de género en el Valle de Toluca en el siglo XVIII," in El Mediterráneo y América: Actas del XI Congreso de la AEA", vol 1. (2006): 357-369.
[875] María Ángeles Gálvez Ruiz, "Dispensas, disensos y otros impedimentos a la formación matrimonial en el juzgado eclesiástico de Toluca", *Temas americanistas,* Nº 40, (2018): 188-212.
[876] The archivo of the Arzobispado de México includes 63 cases of amistad ilícita, and 44 cases of sevicia. See chapter 4 of this dissertation for a more concrete report.

fornication. Therefore, this chapter also explains the different terms and categories utilized by jurists and canon law to classify the numerous sexual crimes against marriage found in colonial society.

1.1. Christian Marriage: From Scripture to the Canons of the Mexican Councils

The maintenance of good Christian customs in colonial society of eighteenth-century New Spain demanded the strict control of the "passions of the flesh" and their proper orientation towards marriage. Since in Catholicism sex is an exclusive privilege between married spouses, many sexual relations that occurred between two or more non-wedded individuals was considered not only sinful but also criminal. Sins such as fornication and adultery were serious threats that endangered spouses' marital life, set a bad example for the rest of society, and offended God. For the Catholic Church, Christian marriage was not simply a social contract, but a sacrament which could not be dissolved. In this respect, ecclesiastical justice in the late colonial period sought to extirpate unlawful sexual relations in society, and the resumption of marital life between quarrelling spouses to defend the holy sacrament of marriage.

Christian ideas about marriage and sexual relationships are rooted in the Bible. In the gospel of Matthew 19:3-9, and Mark 10:2-12 Jesus is confronted by the Pharisees, who ask him whether it is lawful or not for a man to divorce his wife. The Pharisees, referencing Deuteronomy 24:1-4 argue that according to the Law of Moses, men could repudiate their wives with a certificate of divorce and send her away.[877] In Mark 10:1-12, Jesus, citing Genesis 1:27 and Genesis 2:24 replied that divorced men who married another woman committed adultery. This

[877] NIV Deuteronomy 24:1-4: "If a man marries a woman who becomes displeasing to him because he finds something indecent about her, and he writes her a certificate of divorce, gives it to her and sends her from his house, [2] and if after she leaves his house she becomes the wife of another man, [3] and her second husband dislikes her and writes her a certificate of divorce, gives it to her and sends her from his house, or if he dies, [4] then her first husband, who divorced her, is not allowed to marry her again after she has been defiled. That would be detestable in the eyes of the LORD. Do not bring sin upon the land the LORD your God is giving you as an inheritance."

passage was fundamental for the Church to determine that marriage was indissoluble, since a man who remarried was committing adultery. Adultery in the Old Testament was considered being the sexual relationship between a man and a woman who was not his wife and was punished with the death of the adulterers.[878] The reason why this transgression was so harshly punished is because it was considered one commandment given by God to Moses.[879] In the gospels, Jesus confirms the commandments in Mark 10:19: "You know the commandments: 'You shall not murder, you shall not commit adultery, you shall not steal, you shall not give false testimony, you shall not defraud, honor your father and mother." Thanks to this verse, Christians reinforced the already old Jewish notion that adultery was a serious sin, and that marriage as defined by Christ, could not be broken because it was not a simple human contract, but a divine union. The Apostle Paul in Ephesians 5:21-33 later expanded this understanding of marriage. In his epistle, Paul used the union between the Church and Christ as a symbol to represent the matrimonial bond, in "one flesh," between husband and wife.[880] Paul proclaimed that adulterers would not inherit the kingdom of God, thus reinforcing the commandment.[881]

In the late antiquity, doctors of the Church such as Augustine of Hippo followed Pauline teachings of marriage, defining what was the primary purpose of marriage in infidels and Christians. In his treatise on marriage, *De Bono coniugali*, chapter XXIV, Augustine defined that for the pagans, the benefits of marriage were the procreation of offspring and the fidelity of married couples. However, for the Christians, aside from procreation and fidelity, the benefit of

[878] NIV Deuteronomy 22:22: "[22] If a man is found sleeping with another man's wife, both the man who slept with her and the woman must die. You must purge the evil from Israel"; and NIV Leviticus 20:10: "[10] "'If a man commits adultery with another man's wife—with the wife of his neighbor—both the adulterer and the adulteress are to be put to death."
[879] Exodus 20:14: "[14] "You shall not commit adultery"; and Deuteronomy 5:18: "[18] "You shall not commit adultery."
[880] NIV Ephesians 5: 25-33.
[881] Paul 1 Corinthians 6:9-10.

marriage consists in the "holiness of the sacrament, by reason of which it is forbidden, even after a separation has taken place, to marry another as long as the first partner lives."[882] This understanding of marriage continued throughout the Middle Ages, with theologians such as Thomas Aquinas. In his *Summa Contra Gentiles*, Thomas endorsed Agustinian ideas of marriage by stating: "Thus, then, there are three goods of matrimony as a sacrament of the Church: namely, offspring to be accepted and educated for the worship of God; fidelity by which one man is bound to one wife; and the sacrament—and, in accord with this—there is indivisibility in the marriage union, in so far as it is a sacrament of the union of Christ and the Church."[883] The sacramental character of marriage was later confirmed by different councils such as the Council of Basel, in its session 7 on September 4th, 1439;[884] and most importantly by the Council of Trent, in its 24 session, which reviewed traditional ideas of Christian marriage and underpinned some of its tenets. For this latter council, marriage was a sacrament, monogamous, and indissoluble.[885] The canons consolidated the Church's authority to establish impediments dissolving marriage, and the degrees of consanguinity and affinity that were to hinder matrimony.[886] The Church asserted that for many causes, physical separation between husband and wife was acceptable and not an error.[887] It should be noted that a separation of a married couple did not constitute a divorce in our

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[882] Augustine of Hippo, *De Bono Coniuugali*, chapter XXIV, cited by Lehmkuhl, A. (1910). Sacrament of Marriage. In the Catholic Encyclopedia. New York: Robert Appleton Company. Retrieved July 7, 2020 from New Advent: http://www.newadvent.org/cathen/09707a.html

[883] Aquinas, *Summa Contra Gentiles*, Book IV, chapter 78, 6.

[884] Council of Basel, 1439, session 7: "The seventh is the sacrament of matrimony, which is a sign of the union of Christ and the church according to the words of the apostle: This sacrament is a great one, but I speak in Christ and in the church. The efficient cause of matrimony is usually mutual consent expressed in words about the present. A threefold good is attributed to matrimony. The first is the procreation and bringing up of children for the worship of God. The second is the mutual faithfulness of the spouses towards each other. The third is the indissolubility of marriage, since it signifies the indivisible union of Christ and the church. Although separation of bed is lawful on account of fornication, it is not lawful to contract another marriage since the bond of a legitimately contracted marriage is perpetual."

[885] Council of Trent, session 24, canons 1, 2 and 7.

[886] Ibid, session 24, canons 3, 4, and 5.

[887] Ibid, session 24, canon 8.

current understanding; the marital bond between spouses continued and could not be broken. In addition, the Council proclaimed that matrimonial issues (*causas matrimoniales*) were to be dealt with by ecclesiastical judges.[888] However, in the Spanish Americas this jurisdiction was shared with secular judges when specific crimes were dealt with.

According to canon and royal law, when marital causes were related to the sacrament of matrimony, the dissolution of the marriage bond was the exclusive domain of ecclesiastical judges. However, secular judges could intervene when it came to extrinsic factors. For example, secular judges such as the corregidores could punish individuals who had engaged in a clandestine matrimony, or were adulterers, and they could force separated spouses to live together again.[889] In some cases, some secular judges could intervene to arrest the husband or separate both spouses when the life of one of them was endangered.[890] Nevertheless, a formal separation required the consent and approval of an ecclesiastical judge. It was necessary to follow the judicial procedure through an ecclesiastical court when a complainant sought a perpetual separation.[891]

The Third Mexican Council applied the canons of Trent and provided more specific measures to protect the institution of marriage in the viceroyalty of New Spain. Besides enforcing the prohibition of divorce[892], the Church combatted some threats to marriage that existed in the Americas, such as the indigenous practice of polygamy and cohabitation[893], and the presence of

[888] Ibid, session 24, canon 12: "If any one saith, that matrimonial causes do not belong to ecclesiastical judges; let him be anathema."
[889] Murillo Velarde, *Curso de derecho canónico e hispano*, libro II, título 1, capítulo 8:
[890] Besides this case, see also AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 26.
[891] Concilio III Provincial Mexicano, 1585, libro II, título 1, ley XIII.
[892] Ibid, libro IV, título 1, leyes XIV: "No pueden ni deben separarse los que Dios unió con el vínculo del matrimonio. Por lo cual está totalmente reprobado que el marido y mujer se separen mutuamente, dando libelo de repudio delante de los jueces y notarios, y creyendo que en virtud de esto se hallan libres y sueltos del vínculo del matrimonio."
[893] Ibid, libro IV, título 1, ley X.

married Spanish immigrants who were married in Spain and married another woman in the New World. It was considered bigamy.[894] Other issues that affected the Church, according to the Third Mexican Council, were clandestine marriages performed without valid ecclesiastical sanction[895], and the separation of spouses without the approval of an ecclesiastical judge.[896] In the eighteenth century, with the authority and jurisdiction of ecclesiastical courts firmly entrenched in the archdiocese of Mexico, the Fourth Mexican Council renewed the punishments observed by the Council of Trent and the Third Mexican Council against those who violated the sacrament of marriage through adultery, concubinage, or incontinence.[897] In this respect, I detect a continuation and a revitalization of the many measures taken in the sixteenth century to defend the institution of marriage.[898] It also meant a heightened control over the lives of Spaniards, Indians, and Mestizos.[899]

I need to underline the connection between good customs, marital life, and what were considered public sins. As seen in a previous chapter, the Third Mexican Council emphasized that one of the most important duties of episcopal justice was to eradicate public sins to avoid God's ire.[900] In the fifth chapter of the book of the prophet Jeremiah, God punished the kingdom of Judah for having committed idolatry, fornication, injustice to orphans, greed, idolatry, and for not having

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[894] Ibid, libro II, título 1, ley XIV, and libro IV, título 1, ley XII.
[895] Ibid, libro II, título 1, ley XVII, and libro IV, título 1, ley III.
[896] Ibid, libro II, título 1, ley XIII.
[897] Cuarto Concilio Mexicano, libro IV, título X, ley 1: "Grave es el pecado de la incontinencia con una mujer soltera pero es más grave y detestable el adulterio faltando a la fidelidad debida al santo matrimonio, por lo que este concilio renueva las penas impuestas por el santo concilio tridentino contra los concubinarios solteros o casados, y manda a los obispos y jueces eclesiásticos que inquieran si viven algunos en amancebamientos públicos y se les castigue invocando si fuere necesario el brazo secular."
[898] Ibid, See for example punishments against clandestine marriages in libro II, título XV, ley 1; and libro IV, título 1: "De los esponsales y matrimonios."
[899] See this law against indigenous concubinage, Cuarto Concilio Mexicano, libro IV, título 1, ley XII; and another against the double matrimony of Spanish immigrants arriving from Spain to the Americas, libro IV, título 1, ley XIV.
[900] Concilio III Provincial Mexicano, 1585, libro III, título II, ley I.

defended the poor and the needy. These were, according to the prophet, a series of communal, or public sins that merited God's corrective punishment. In the same way as God permitted the destruction of Jerusalem by the Babylonians, ecclesiastical authorities feared that something similar could happen to the Spanish Empire if they tolerated these kinds of sins. The toleration of vices, as stated by the Third Mexican Council, produced more sins that could provoke the damnation of souls and increase God's punishment.[901] Therefore, public sins related to good customs and marital life, such as adultery and fornication, threatened the sacrament of marriage. For example, permitting adulterers to live in an "illicit relationship" discouraged the formalization of those relations through marriage. Others watching could come to see marriage is an unnecessary step for their salvation, and as something socially acceptable.[902] In addition, the tolerance of vices could make marital life more difficult because spouses would be exposed to a society filled with unrestrained sinners who could disrupt their marriage through their bad example and bad customs.[903] As such, ecclesiastical courts needed to intervene to make sure that none of these evils happened.

1.2. Marital Domains and Social Tolerance

Despite the strict religious rules that regulated marriage and sexual relationships in New Spain, many individuals deviated from the norms and challenged the learned opinion of theologians and jurists on sexual and marital issues. Authors such as Toribio Medino argue that the Inquisition prosecuted various Spaniards for claiming that fornication was not a sin.[904] María Emma Mannarelli also notes that in the Lima of the seventeenth century, extramarital relationship

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[901] Ibid, libro III, título I, ley III.
[902] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 40.
[903] The canons of the Third Mexican Council also advised the bishops to prevent their presbyters to set a bad example to society, so their attitude was not imitated by the faithful. See for instance Concilio III Provincial Mexicano, 1585, libro III, título XIII, ley XX.
[904] cita a José Toribío Medino, *Historia del Tribunal de la Inquisición de Lima (1569-1820)* (Santiago: Editorial Nascimiento, 1956), 36. Cited by Marinally, *Pecados públicos*, 103.

had high acceptance in the colonial society since judicial records show that witnesses declare to know certain couples who had maintained illicit friendships for years or even decades.[905] As we will see in the following pages, the records of the court of San José de Toluca show similar trends. Marital cases show that many individuals in San José de Toluca maintained unsanctioned relationships for a good number of years until they were denounced by their neighbors or surprised by their parish priests. For example, two residents of the city of Toluca married after maintaining a seven-year long illicit friendship.[906]

In another case, a Spanish woman named María Albina Rendón was accused of having and adulterous relationship with a man for three years, and with whom shed had had a child with.[907] Although María Albina was arrested by the ecclesiastical authorities, the ecclesiastical punished her softly by scolding her and giving her "healthy advice" (*saludables consejos*). After this reprimand, María Albina promised that she would reconcile with her husband, who forgave her. The most surprising aspect of this document is the soft and "tolerant" attitude of the ecclesiastical judge, who did not punish María Albina for having a natural child out of wedlock. As explained in previous chapters, ecclesiastical judges did not apply hard punishments in order to facilitate reconciliation and forgiveness between confronted parties, and this rule especially applied to marital cases in which married individuals were expected to resume their marital life after the conclusion of the lawsuit.

Although tolerance towards unsanctioned relationships existed in the eighteenth century, this does not mean that people did not denounce them. The establishment of ecclesiastical courts

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[905] Maranelli, *Pecados públicos*, 105.
[906] AHAM, Juzgado Eclesiástico de Toluca, 1751, caja 70, expediente 17, 2 fojas: "Juan Antonio Sánchez solicita que se le den los auxilios eficaces para poder contraer matrimonio con Francisca Mejía, con quien ha vivido durante 7 años en amistad ilícita."
[907] AHAM, Juzgado Eclesiástico de Toluca, 1771, caja 107, Expediente 2, Foja 1 anverso

in the second half of the seventeenth century permitted the laity to submit accusations against their neighbors and the Church to prosecute them. The Archivo Histórico del Arzobispado de México keeps 236 documents concerning crimes against marriage, accounting 63 for illicit friendship, 22 for rape, 44 for domestic violence, and 84 breach of marriage promise, only for the eighteenth century. This quantity shows that these cases appear much more frequently in the colonial records than religious issues related to idolatry and superstition, for which we have a modest number of 46 records.[908] It should be noted that society did not tolerate all crimes in the same way. Domestic violence and abuse were grave matters and ecclesiastical courts took them seriously. However, there are a high number of denunciations of less severe cases related to extramarital relationships, fornication, and illicit friendship. Third parties submitted complaints against their neighbors when a relationship was particularly scandalous or as a way to retaliate against personal enemies. For example, there is evidence of Indian pueblo officials being anonymously accused by their neighbors of maintaining illegal relationships with local women.[909] In this scenario, it lies near at hand to suspect that the denounced indigenous officials were the target of a political retaliation framed by their local enemies.

As happened with idolatry and superstition cases, that partially skyrocketed due to the establishment of new ecclesiastical courts in the seventeenth and eighteenth century, we can also infer that these tribunals exerted an unprecedented pressure on unsanctioned relationships during

[908] For a complete catalog see Watson Marrón, *Guía de documentos del Archivo Histórico del Arzobispado de Mexico.*

[909] AHAM, Juzgado Eclesiástico de Toluca, 1753 caja 72, expediente 20, foja 2 anverso: "Nobilísimo señor, suplicamos a vuestra merced por Dios nuestro señor y su Santa Madre de Loreto, que sea llamado a dicho alcalde [del pueblo de San Miguel de Totoquitlapilco]y a dicha Tomasa que no se puede aguantar las picardías que están haciendo del pueblo donde tiene posada en casa de Francisco Basilio."

this period, as both the laity and the clergy could use them to denounce individuals, retaliate against personal enemies and enforce morality.

2. Illicit Friendship

2.1. Definition and Judicial Procedure

"Amistad ilícita" is a term that refers to any illegal, mostly sexual, relationship between two individuals. As such, illicit friendship could refer to fornication, cohabitation, or even adultery. Because of the flexibility of its meaning, the judicial procedure adapted to the circumstances in each case. However, most of the procedures shared a similar pattern:

1) The case starts after a person denounces at the ecclesiastical court that they had learned that certain individuals have an illicit friendship. The plaintiff could be either a cleric who had surprised his parishioners engaging in unsanctioned sexual relations or somebody who had found his/her partner with another person. For instance, the presbyter and ecclesiastical judge of Calimaya, don Andrés Moreno Balas, found that a free mulatto from San José de Toluca named Jerónimo Martínez had lived for four years in "*amistad ilícita*" with a mestiza named Gertrudis María García. When don Andrés encountered this illegal relationship, he arrested and imprisoned the lovers. The convicts agreed to marry in order to be released from prison, erase their sin, and reconcile themselves with God.[910] In other cases, lovers appeared before an ecclesiastical judge after their parish priests had forced them to do so in order to formalize their relationship.[911] When

[910] AHAM, Juzgado Eclesiástico de Toluca, 1727, caja 38, expediente 71, foja 1 anverso.

[911] See for example AHAM, Juzgado Eclesiástico de Toluca, 1759, caja 82, expediente 21, foja 1: "[…] Parezco ante vuestra merced, y digo que ha tiempo de un mes que el reverendo padre fray Juan Ladrón de Guevara, coadjutor de dicha ayuda de parroquia [de Tecaxique], me envió a este juzgado por la ocasión de haberme cogido en incontinencia con un mozo nombrado José Antonio, de oficio velero, cuyo origen y vecindad ignoro, pues como mujer frágil consentí en su amistad…"

an ecclesiastical judge found that some non-married individuals lived in the same house or had sexual encounters out of wedlock, they took measures to imprison the lovers.[912]

Regarding gender, most complaints of "amistad ilícita" were filed by women against men, while only a few cases involved men accusing their wives of adultery. Scholars such as Pitt Rivers and Teresa Lorenzo Armendares argue that one reason why there are few cases presented by men by men has to do with notions of honor and reputation.[913] In the Spanish society, a man's honor not only depended on their personal virtue but also on the sexual modesty of his wife. When a man denounced his wife, he could admit that he was a cuck (*cornudo*), or that his spouse was behaving indecently. Since judicial procedures in this type of cases required witnesses to prove or disprove the content of the accusation, it was likely that the word would spread to the shame of the husband.

2) Once the accusation was filed and was admitted by the tribunal, the ecclesiastical judge initiated an investigation, or outrightly summoned all the individuals accused of having an illicit friendship in the courtroom. In this latter scenario, the accused were interrogated about the content of the original accusation. After the first interrogation, the ecclesiastical judges used to arrest and "*poner en depósito*" both lovers, so they could not continue offending God and setting a bad example to the rest of the colonial society. In general, men were imprisoned at the royal jail of the city of San José de Toluca, while women could be put in the house of a trustworthy person or their family members.[914] This measure was later confirmed in the canons of the Fourth Mexican

[912] Ibid.
[913] Julian Pitt-Rivers, *Antropología del honor o política de los sexos: ensayos de antropología mediterránea* (Crítica, 1979), cited by Armendares, "Si no por amor…," 46.
[914] AHAM, Juzgado Eclesiástico de Toluca, 1761, caja 85, expediente 27, 2 fojas.

Council regarding separation, divorce, adultery, incontinence, and other issues.[915] There were some exemptions in which the accused could leave without arrest when they had to fulfill special functions such as collecting the tribute if they were alcaldes or local indigenous officials.[916] Depending on the severity of the case, ecclesiastical judges adopted different measures, showing some flexibility in the process.

3) After their imprisonment, accused individuals who denied having had any illicit friendship resorted to their families to defend them. Fathers, mothers, or any other relatives appeared before the ecclesiastical judge of San José de Toluca to protest that their son or daughter had been falsely accused.[917] If this was the case, protesters declared any information they had, while offering witnesses or any other pieces of evidence to support their claim. After evaluating the evidence, ecclesiastical judges interrogated the accused again, sometimes organizing a confrontation with their accusers. At this point it was possible that either the defendant confessed to the crimes, or that the plaintiffs, seeing that they could not prove their accusation, filed a withdrawal.

4) When the individuals accused of illicit friendship confessed their crimes, either at the beginning of the case or later, what happened next varies depending on the case. If the individuals who had committed "amistad ilícita" were single and not married, the normal procedure was to arrest the lovers and to encourage them to marry each other in order to be released from prison

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[915] Concilio Mexicano Cuarto, libro IV, título I, ley XVII: "Algunos casados intentan en los tribunales pleitos de divorcio y después no los prosiguen sólo con el fin depravado de continuar en sus vicios y amancebamientos, por lo que manda este concilio que cuando se intentase pleito de divorcio, luego se ponga la mujer en depósito honrado y si el que intenta el divorcio no prosigue la causa, el fiscal tome la voz para que cohabiten. Cuando se pronunciase sentencia de divorcio, la mujer se ponga en casa honrada, donde no quede expuesta a ofensas de Dios y los fiscales cuiden de que esto se observe."
[916] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 20, foja 4 anverso.
[917] AHAM, Juzgado Eclesiástico de Toluca, 1750, caja 68, expediente 12, foja 1 anverso.

and formalize their relationship.[918] In the scenario in which the lovers agreed to marry, the ecclesiastical judge investigated their lives to certify whether there were any impediments to marriage, such as consanguinity, bigamy, impotence.[919] In addition, the marriage between the lovers was announced to the parishioners of their parish church so they could inform the parish priest or the ecclesiastical judge if they knew of any impediments that prevented the candidates from receiving the sacrament of marriage.[920] Once no impediments were found, partners were released from prison and allowed to marry.[921]

5) When one of the married parties had committed an illicit relationship because of the intervention of a third party, such as a male or female seducer, the ecclesiastical courts banished those individuals from the city, or imprisoned them if they disobeyed the court's order. When two lovers were single, but one of them did not want to marry, it was possible that the "amistad ilícita" developed into a case of rape or "*incumplimiento de la palabra dada*," or breach of promise, in which normally the woman now accused the man of having taken her virginity under the promise of marriage. This scenario shows how intricate and interconnected classifications of crimes in local ecclesiastical courts could be. Finally, if one of the lovers was a married individual, then the case of illicit friendship developed into a case of adultery.

6) As happened in other cases prosecuted by the ecclesiastical court of Toluca, individuals who had falsely accused somebody could be charged with the crime of "*calumnia*," or false

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[918] AHAM, Juzgado Eclesiástico de Toluca, 1727, caja 38, expediente 71, foja 1 anverso.
[919] Ibid, foja 1 reverso.
[920] Concilio III Provincial Mexicano, 1585, libro IV, título I, ley IV: "Con arreglo al decreto del concilio tridentino, dispone y manda este sínodo que antes de contraer el matrimonio se hagan por el propio párroco tres proclamas públicas en la parroquia o parroquias de los contrayentes en la misa mayor, tres días de fiesta sucesivos, expresando quiénes van a contraer matrimonio, y también advertirá el mismo párroco a los feligreses que si ha llegado a su noticia algún impedimento legítimo entre los contrayentes, lo declaren."
[921] See for example AHAM, Juzgado Eclesiástico de Toluca, 1727, caja 38, expediente 71, foja 1.

accusation. However, as our documents and some canon law manuals indicate, the crime of slander was punished by the ecclesiastical judge according to the circumstances and gravity of the crime, normally with the payment of the fees and expenses of the judicial procedure, or with other punishments.[922] In some circumstances, ecclesiastical judges did not punish family members if they had been the slanderers who had accused their son-in-law or daughter-in-law of illicit friendship, with the purpose of promoting reconciliation and forgiveness between the spouses and their families.[923]

3.2. The Case of Don Santiago Quirós

The judicial procedure of "amistad ilícita" is well demonstrated in the case of don Santiago Quirós, resident of the city of San José de Toluca, who accused his wife, doña María Isabel Guinea, of having an illicit friendship with don José Moreno. Don Santiago informed the judge that in the past he had learned that his wife had maintained an adulterous relationship with her lover for two years, but that at that moment he forgave his wife and gave her another chance. However, soon after forgiving her, he discovered that doña María Isabel had had sexual relationships ("*carnal comercio*") with her lover again.[924] For all these reasons, don Santiago Quirós petitioned the ecclesiastical court of San José de Toluca to banish don José Moreno from the city. Don Santiago manifested that if the lover was not punished in this way, he had the intention to separate from his wife.[925] Following the petition of the plaintiff, the ecclesiastical

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[922] According to the constitution of the pope Pius V, "cum primum" of March 27th, 1566 false slanderers could be punished with the *lex talionis* (eye for an eye), which entails that the punishment prepared for the crime of the accused could be used to punish the false accuser. For more information on this crime see Murillo Velarde, *Curso de derecho canónico*, libro V, título 2.

[923] AHAM, Juzgado Eclesiástico de Toluca, 1750, caja 68, expediente 12, foja 4 reverso.

[924] AHAM, Juzgado Eclesiástico de Toluca, 1773, caja 111, expediente 14, foja 1 reverso: "Esto no obstante estoy instruido que en el día seis [de Mayo] se insiste en el ilícito carnal comercio, y que de mi propia casa se le ministra el desayuno al amasio ["al amante"], la comida y demás necesarios."

[925] Ibid, foja 2 anverso: "Se ha de servir la justificación de vmd en mandar con el sigilo correspondiente que el nominado Moreno como soltero que es, salga de la tierra a paraje donde no tenga facilidad para venir a este, a reincidir en su delito. Y si no se consigue y verifica este fin, desde luego no seguiré con mi esposa en la maridable

judge of Toluca, don Alejo Antonio Betancourt, summoned don José Moreno to his court and asked him about the accusation that had been filed against him. The lover admitted that everything in don Santiago's denounce was true, and that he had engaged in an illicit friendship with doña María Isabel Guinea. After hearing the confession of the seducer, the ecclesiastical judge mandated that in five days don José Moreno had to leave the city of San José de Toluca, staying away at least twelve miles from the perimeter of the city, and without the possibility of returning under the penalty of proceeding against him if he dared to disobey.[926] One of the reasons why the ecclesiastical judge banished the lover of doña María was because he was single and he could start a new life in a different place.

Days later, the ecclesiastical judge of Toluca learned that don José Moreno had disobeyed his order and that he remained in an illicit friendship with doña María Isabel Guinea. Considering such manifest disobedience, don Alejo Betancourt sent the alguacil of his ecclesiastical court, don José Navarrate, and imprisoned the rebellious lover with the aid of the secular arm. According to this document, both the local ecclesiastical court of Toluca and the Provisorato of Mexico City tried to arrest don José Moreno, but he was never captured. For this reason, don Santiago Quirós came back to the ecclesiastical court of Toluca on June 20th, 1765, to petition the ecclesiastical judge to imprison his wife in a house of his approval so she could do penance for her sinful crimes. Moreover, he asked the judge to have his daughter delivered to him, as she was living with her

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unión que nos corresponde, en servicio de Dios, y bien en nuestras almas. Pues solo quitado de en medio este tan arraigado comercio podré sosegar mi conciencia con las reglas y precauciones que ya prescribiré a dicha mi esposa para nuestro gobierno."

[926] Ibid, foja 3 anverso: "La ciudad de Toluca, en el mismo día, el señor juez en vista de la declaración que antecede dada por don José Moreno, su merced mandó se le notifique que dentro de cinco días contados desde hoy, salga de esta ciudad, doce leguas en contorno de ella, sin volver con ningún pretexto, causa ni motivo, bajo del apercibimiento que lo contrario haciendo se procederá contra él por todo rigor de justicia, y por este auto así lo proveyó, mandó y firmó ante mí, que doy fe."

mother and learning from her bad example.[927] This last sentence tells us an important factor that don Santiago had omitted in his original claim: his wife was already living in a separate house, probably in the house of her mother, with her daughter. Once more, the ecclesiastical judge agreed to don Santiago's request, and he ordered the arrest of doña Isabel and mandated that the daughter live with her father.

3. Breach of Promise and Rape

3.1. Definition, Types of Rape and Judicial Procedure

"Incumplimiento de la palabra dada," or breach of promise, could be denounced as such at the beginning of a case, or they could result from a previous case related to amistad ilícita. When ecclesiastical judges prosecuted this type of crime, they investigated whether there was any form of rape ("*estupro*"), or fornication or not. In this context, "estupro" is the illegal sexual relationship by which a man takes the virginity of a woman.

According to Pedro Murillo Velarde, there are three types of rape: completely violent, relatively violent, and voluntary. The violent one is when a man forces a virgin woman. This is by far the worst type, because this form of rape is an aggression against the body of women who by living in a chaste and Christian way are serving God, but also goes against the honor of the family of the victim.[928] In the Law of Moses of the Old Testament, a man who raped a young

[927] Ibid, foja 4 anverso y reverso: "Se ha de servir vmd asimismo mandar que luego in continenti se saque mi hija del poder de su madre, y se me entregue para tenerla yo con el arreglo que corresponde a su estado y edad, sin que al lado de su madre esté tomando más mal ejemplo, el que hasta el día le ha dado. Pues es de justicia así se haga, respecto a que según derecho tiene edad para seguir al padre y no a la madre, y a esta [la madre] atendiendo no sólo a su culpa, sino a su incorregibilidad que en lo más se ha de servir vmd mandar se ponga en depósito en casa de mi satisfacción por ser así conforme a derecho, para que mantenida en él por tiempo competente, si no se verifcare su penitencia pueda yo tomar la providencia que me convenga, interponiendo el respectivo recurso ante el juez superior, por tanto y demás favorable que decir me convenga, negando lo perjudicial."

[928] López, *Las Siete Partidas*, partida 7, título 20, ley 1: "Forrar, o robar muger virgen, o casada, o religiosa, o hiuda que bina honestamente en su casa, es yerro, e maldad muv grande, por dos razones. La primera, porque la fueres es fecha sobre personas que hiuen honestamente, e a seruicio de Dios, e a buena estanca del mundo. La segunda es,

woman pledged to be married was put to death.[929] However, if a man raped a woman who was not pledged to be married, it was enough for him to pay the bride-price or marry her.[930] Inspired in the Mosaic law, canon and royal law echoed this type of punishments. For example, in the *Siete Partidas*, violent rapists were put to death and all their goods or property were transferred to the raped woman.[931] Pedro Murillo Velarde notes for the eighteenth century that this type of rape could be punished with death by the civil law (ecclesiastical judges could not give death sentences), but he emphasizes that generally the rapists had the choice to marry the victim if she consented to do so, or to pay her the dowry. In addition, some forms of "incomplete rape," when the rapists did not fully force the victim, were punished with whippings or banishment.[932]

Although violent rape was not a common offense prosecuted by the ecclesiastical court of San José de Toluca, this tribunal also heard them. In some files we only have the original denunciation, in which a relative, normally a father,[933] but also other family members such as a grandmother, went to the ecclesiastical court to denounce that their relatives had been raped by a specific person. For example, in the year 1739, the above-mentioned tribunal prosecuted a case of "estupro" against a mestizo named Felipe Dionisio, who had violently raped an eight-year-old child named Patricia Flores. Patricia's father, Diego Flores de Origuela, denounced this crime to the ecclesiastical judge of San José de Toluca, who forwarded this case to the Provisorato in

que fazen muy gran desonrra (2)• a los parientes de la muger forrada, e muy gran atreuimiento contra el Señor, forcandoia en desprecio del Señor de la tierra do es fecho."

929 NIV, Deuretonomy 22:25: "[25] But if out in the country a man happens to meet a young woman pledged to be married and rapes her, only the man who has done this shall die. [26] Do nothing to the woman; she has committed no sin deserving death. This case is like that of someone who attacks and murders a neighbor, [27] for the man found the young woman out in the country, and though the betrothed woman screamed, there was no one to rescue her."

930 Deuteronomy 22:28-29; and Exodus 22:16.

931 Partida 7, título 20, ley 3.

932 Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro V, título XVI.

933 See for example, AHAM, Juzgado Eclesiástico de Toluca, 1739, caja 56, expediente 39, foja 1: "Bernabé de Torres, español del pueblo de Tecajic, contra Manuel Flores, por estupro a su hija Juana Josefa Torres."

Mexico City. On July 4th, 1739, the provisor don Francisco Gómez de la Serna sentenced Felipe Dionisio with two years of imprisonment and servitude at the hospital of San Juan de Dios, in the city of Toluca, and punished him with a penalty of fifty pesos to be paid as compensation to Patricia for the damages caused to her.[934] In addition, Felipe Dioniso was forced to pay the 64 pesos and 2 reales to cover the expenses of the judicial procedure.[935] In the case Felipe Dionisio did not have the goods or the money to satisfy the payment, he was sentenced to work at a workshop in San José de Toluca, so he could earn a salary to pay his debt.

The second category described by Pedro Murillo Velarde in cases of rape are those when a man steals the virginity of a woman through fear or deceit. This is the type of rape in which we are likely to find cases of "*incumplimiento de la palabra dada*." If a man had taken the virginity of a woman under a formal promise of marriage, he could be forced by the ecclesiastical judge to marry her as long as the victim gave her consent. Murillo Velarde writes that if the promise was feigned, and not formal, then the man would repay the damaged cause to the woman by paying her dowry or other monetary penalty.[936] When the ecclesiastical court of San José de Toluca prosecuted a case of breach of promise de la palabra dada and the seducer confessed in an interrogatory that he actually promised to marry the woman, then he was obliged to fulfill his promise.[937] However, the woman could at any moment release her partner from marrying her if she considered that he could not provide her with material goods, or any other reason, including

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[934] Ibid, foja 2 reverso.
[935] Ibid, foja 3 anverso.
[936] Murillo Velarde, *Curso de derecho canónico hispano e indiano,* libro V, título XVI, párrafo 187: "Cuando la muchacha consiente en su violación bajo la promesa formal que le hizo el estuprador de tomarla por mujer, está obligado definitivamente aquel a casarse con ella y no hay lugar a alternativa. Pero, si la promesa es fingida, satisfará, a lo menos en el foro de la conciencia, si repara con dinero o con dote el daño causado con estupro. Si el estuprador no puede casarse con la estuprada porque está ligado con orden sagrada o con otro matrimonio, entonces, definitivamente, está obligado a dotarla, cuando la muchacha por justa causa no quiere casarse con el estuprador, o sus padres no se la quieren dar."
[937] See an exmple in AHAM, Juzgado Eclesiástico de Toluca, 1751, caja 70, expediente 24, 7 fojas.

private settlements.[938] In general terms, when a man was sentenced with paying the bride-price to the woman he had raped (through violence or false promises), a *fiador* (guarantor) was appointed to certify that the criminal did not repeat the same crime again, and that he completed the payment to his victim. A fiador was usually a trusted local person who knew the convict and who offered to volunteer for collaborating with the ecclesiastical court. Fiadores could also employ the criminals, and the salary obtained was directly paid to the raped woman.[939] In order to compel guarantors to do their job with honesty and authenticity, fiadores had to subject themselves to the jurisdiction of ecclesiastical judges. That is to say, that if the fiadores failed to fulfill their role, they could be punished with serious penalties, such as losing their material goods, domicile, and neighborship.[940] Although most victims of these crimes of "incumplimiento" were women, in very few cases men accused females of having breached their marriage promises. That was the case of don José Gameros, who denounced his lover María Luisa Rodríguez, for not having fulfilled her promise to marry him. In this case the man did not ask for any economic compensation, as he was a man, but he required María Luisa to fulfill her promise in order to abandon their illicit friendship.[941]

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[938] AHAM, Juzgado Eclesiástico de Toluca, 1751, caja 70, expediente 24, foja 6 anverso.
[939] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente, 20, Foja 8 anverso.
[940] AHAM, Juzgado Eclesiástico de Toluca, 1750, caja 68, expediente 12, Foja 4 anverso: "[Feliciano Francisco]ofrece por sus fiadores a don Matías Francisco y Pedro de San Juan, indios y alcaldes pasados del pueblo de Santa María Ocotitlán, doctrina de Metepec. Quienes estado presentes mediante dicho intérprete de este juzgado don José Escalona, dijeron que fiaban y fiaron a dicho Feliciano Francisco, en tal manera que el susodicho hará buenos tratamientos a Feliciana Leonor, su mujer, y le pondrá casa para que vivan como marido y mujer, solos y sin intervención de los suegros de esta otra parte. Y cuando no lo haga los otorgantes con sus fiadores darán cuenta a este juzgado, y traerán a presencia del señor juez eclesiástico al dicho Feliciano para que lo castigue. A cuya firmeza y cumplimiento cada uno por lo que les toca, obligaron sus personas y bienes presentes y futuros, dan poder a los jueces eclesiásticos para que a lo dicho los compelan y apremien, como por sentencia pasada en cosa juzgada, renunciaron el suyo propio domicilio y vecindad."
[941] AHAM, Juzgado Eclesiástico de Toluca, 1778, caja 117, expediente 4, 2 fojas: "Don José Gameros, quien ha mantenido amistad ilícita con María Luisa Rodríguez, pide se cumpla la promesa matrimonial que ella le tiene dada."

Finally, the third type of rape is when a man has sexual relationships with a virgin woman with her full consent. In this last case, the sexual relationship is still considered illegal if the partners are not married; canon law considers this similar to fornication.[942] However, in the stricter sense, fornication is the casual extramarital encounter between a man and a non-virgin woman. When fornication continued for a longer time, then it was considered concubinage.[943] Canon law punished casual fornication arbitrarily, at the discretion of the ecclesiastical judge, while long-term concubinage could result in excommunication or other serious punishments.[944]

3.2. The Case of Don Baltasar

To exemplify a good case that combines "amistad ilícita" and "estupro," I will analyze the love affairs of the Indian alcalde of San Miguel Totocultlapico, Metepec, who was anonymously denounced by his neighbors at the ecclesiastical court of Toluca in 1753 for having an amistad ilícita with an Indian woman named Tomasa Agustina. Although the ecclesiastical judge of Toluca, don Juan del Villar, suspected that the anonymous character of the accusation could imply a form of personal vengeance, he carried out an investigation by checking the archives of his tribunal. After doing some research, the judge discovered that don Baltasar had been punished in the past by don Nicolás de Villegas and don Diego Carlos de Orozco, former ecclesiastical judges of Toluca, for having an illicit friendship with another Indian woman named Francisca Mauricia. Considering this background, don Juan del Villar sent the interpreter of the court, don José

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[942] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro V, título XVI, párrafo 187.

[943] Ibid, libro V, título XVI, párrafo 190: "La fornicación en sentido estrictísimo es la relación extramarital de dos personas, de un hombre con una mujer desflorada. Si sólo ocurre una o pocas veces es fornicación, si la relación prosigue es concubinato."

[944] Ibid: "En el derecho civil no había ninguna pena establecida para la fornicación, ni para el concubinato. Sin embargo, en el derecho canónico, no sólo se castiga el concubinato, que por su larga duración de tiempo, aumenta el pecado, sino también la simple fornicación, cuyo castigo, no sólo contra los clérigos, sino también contra los laicos, se encomienda al ordinario eclesiástico, porque es un delito de fuero mixto en el Tridentino, sesión 24, de reforma matrimonial capítulo 8, y actualmente la pena en ambos fueros es casi arbitraria. En España la pena del concubinato, también cuando las concubinas son de los clérigos o de los regulares, alguna vez es pecuniaria, alguna vez es de destierro y, alguna vez de azotes, conforme a la variedad, gravedad y duración del delito."

Escalona, to the town of San Miguel Tototlanpilco in order to summon don Baltasar to his court and receive his declaration.

The interpreter did as he was asked and on the following day, on July 14th, 1753, don Baltasar Asensio was brought to the ecclesiastical court of San José de Toluca. Don Baltasar declared that he was an Indian man, married to Úrsula Pascuala, and that he was currently serving as alcalde in the town of San Miguel Totocultlapilco. When he was asked about the illicit friendships he had been accused of, don Baltasar recognized that in the past he had had an amistad ilícita with Francisca Mauricia, an indigenous woman with whom he had had five children. However, he clarified that they were no longer together. Regarding Tomasa Agustina, don Baltasar declared that he knew her since she was a child, but that they did not have any type of illegal relationship.[945]After hearing this declaration, the ecclesiastical judge, noting that don Baltasar was an alcalde and thus was tasked with collecting the tribute of His Majesty, allowed him to go back to his town, so he could carry out his obligations.[946] The release of the alcalde was a privilege enjoyed almost exclusively by town officials that were key in matters of governance. Since don Baltasar had already been admonished in the past by two former ecclesiastical judges due to the "amistad ilícita" he had with Francisca Mauricia, the current judge of Toluca could not punish him again for the same crime, and he needed further evidence to prove whether the alcalde had engaged again in a new illicit friendship.

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[945] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 20, foja 3 reverso.

[946] Ibid, foja 4 anverso: "…el señor vicario y juez eclesiástico vista la declaración que antecede dada por Baltasar Asensio sobre los cargos de incontinencia que se le hacen con Francisca y Tomasa, indias del pueblo de Totocuitlapilco de su vecindad, en su atención y la de considerar su merced que hallándose el susodicho alcalde actual del expresado pueblo, y a su cargo de los tributos de Su Majestad puede ocasionarse con su ausencia la pérdida de su cobro, dijo: Que mandaba y mandó quede libre para que atienda a dicho cargo…"

After releasing the alcalde, the ecclesiastical judge sent out his interpreter once again to bring in the two indigenous women who allegedly had had illicit relationships with don Baltasar. On July 16th, 1753, the interpreter brought Tomasa Agustina and Francisca Mauricia to the court. Tomasa Agustina, the first one who declared, said that she never had an illicit friendship with don Baltasar, who she knew since she was a child.[947] Francisca Mauricia manifested that she had had an illicit friendship with don Baltasar, but that at that moment they were separated. Francisca Mauricia declared that she and don Baltasar had met during the epidemic of the Matlazáhuatl (1737-1739), and that they had five children together. Francisca also presented a writ in which she accused don Baltasar of having stolen her virginity through rape, and of having sabotaged two potential marriages that were never celebrated because he threatened to kill her suitors. When Francisca and Baltasar separated and broke their amistad, she kept their children, whom she maintained with her own work, as Baltasar neglected them. Finally, Francisca said that don Baltasar had in present times an illicit friendship with her niece, who was Tomasa Agustina.[948]

After receiving these declarations, the ecclesiastical judge organized a confrontation for the next day. In said confrontation, Francisca repeated her accusation against don Baltasar, saying that he owned her bride-price and that he was having an affair with Tomasa. When don Baltasar was asked about these accusations, he recognized that he had attempted to have an illicit friendship with Tomasa, but that she had rejected him. However, the alcalde emphasized that at that current moment he did not have any illegal relationship with anybody.[949]

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[947] Ibid, foja 4 anverso.
[948] Ibid, 20, fojas 4-5.
[949] Ibid, foja 6 anverso y reverso.

When the ecclesiastical judge don Juan del Villar finished receiving all these declarations, he gave a final judgment. Don Baltasar was punished with a monetary penalty of 12 pesos, that he had to pay to Francisca Mauricia for having taken her virginity. The alcalde was instructed to live like an exemplary Christian, and he was told that if he dared to have any other affair again, he would be punished with great severity. In the case of Tomasa Agustina, given she was single and was living alone, the ecclesiastical judge determined that she had to be put under the custody of a family member that could maintain her.[950] As we learn at the end of the document, a Spanish woman named María Gertrudis, aunt of Tomasa Agustina, took her into her custody.

In order to guarantee his exemplary behavior and the payment of the debt, Baltasar Asensio appointed Francisco Jiménez, a Spanish resident in the city of Toluca, as his fiador. Francisco Jiménez said that he would pay twelve pesos to Francisca Mauricia in the name of don Baltasar and manifested that he will watch the alcalde to make sure he will live like a good Christian. Francisco Jiménez submitted himself to the authority of the ecclesiastical judge, renouncing to his goods, domicile and neighborship if he failed to fulfill his role as fiador.[951] A remarkable aspect of this sentence is that don Baltasar was only punished with the payment of the bride-price for having taken the virginity of Francisca Mauricia almost twenty years ago. Surprisingly, the document does not mention anything regarding don Baltasar's neglect of his illegitimate children, which—according to Francisca—she had supported all along.

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[950] Ibid, foja 7 anverso: "…entregándose esta [Tomasa] como mujer suelta y sola a un pariente que cuide de su operación y alimento."

[951] Ibid, foja 8 anverso: "…y en cuanto a cuales quiera delinquimiento que ejecute el referido Baltasar, dar aviso y presentar su persona al señor juez eclesiástico, para lo cual se constituye su celador, y a todo obliga su persona y bienes presentes y futuros, y los somete al juro y jurisdicción de los jueces eclesiásticos, renuncia el suyo domicilio y vecindad, con las leyes de su favor, para que a su cumplimiento le compelan y apremien como por sentencia dada…"

4. Domestic Violence

4.1. Definition

The Spanish term "sevicia" translates into English as "excessive cruelty" and in ecclesiastical jurisprudence it is equated to domestic violence.[952] According to Sarah C. Chambers, domestic violence in the colonial period originated in the disputes between spouses regarding their mutual marital obligations. Men were obliged to provide clothing, food, a house, material goods and physical protection to their wives. In the same way, women were expected to obey their husbands, fulfill domestic duties, and be loyal.[953] As explained in the previous pages, these expectations are rooted in the epistle to the Ephesians by Paul the Apostle, who instructed wives to submit to their husbands in everything.[954] However, I need to stress that this submission is not unconditional, and that it is subjected to Christian ideas of mutual love and reciprocity. Teresa Lozano Armendares notes that ecclesiastical writings on marriage from the sixteenth century saw husbands as representing the authority of God on Earth, only bound by their obligation to love and protect their offspring and spouses. Fray Vicente Mexía, for example, in his first treatise on marriage, posed that husbands should consider their wives as companions, not as slaves.[955]

Notwithstanding such recommended behavior, some men thought that they had the right to correct their wives by beating them.[956] As seen in chapter six, priests also resorted to violence

[952] Real Academia de la Lengua Española. "Diccionario de Autoridades - Tomo IV (1734)." https://webfrl.rae.es/DA.html: "SEVICIA. s. f. Crueldad excessiva. Es voz puramente Latina *Sævitia, æ*. M. AGRED. tom. 3. num. 403. Pareciendoles que en la *sevicia* del iniquo Rey tenian puesto instrumento de su venganza."
[953] Chambers, "Los ritos de la resistencia," 219.
[954] NIV Ephesians 5:22-24: "[22] Wives, submit yourselves to your own husbands as you do to the Lord. [23] For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Savior. [24] Now as the church submits to Christ, so also wives should submit to their husbands in everything."
[955] Armendares: "Si no por amor…," 39.
[956] Chambers, "Los ritos de la resistencia," 219.

to correct their parishioners, until the use of violence was regulated and put in the hands of ecclesiastical judges. That is to say, that some form of soft beating was seen as acceptable by colonial society. Many women tolerated such physical abuse when they, following the cultural ideas of their time, identified that there was a good reason for it, and the aggression was punctual and did not threaten their lives.[957] Moreover, it is also possible that these women did not denounce their husbands as long as they were fulfilling their other obligations, such as providing them with material goods. However, when the violence became excessive and the husband also displayed a misdemeanor such as drunkenness, wives identified beatings as being illegitimate and, as a result, resorted to the ecclesiastical courts. Many women emphasized that their husbands had beaten them with cruelty and without a reason.[958]

4.2 Judicial Procedure

1) In the records, the victim, normally a woman and only in a few cases a man, reported cases of abuse to the ecclesiastical judge themselves;[959] while on other occasions a relative from the abused party filed the accusation. From what I observe in the analyzed documents, husbands are often accused of violently beating their wives,[960] drunkenness, or neglecting them

[957] Ibid," 224.
[958] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 9, foja 1: "Que ha muchos años que contraje matrimonio con el susodicho, y en ellos de cuatro a esta parte que ha que dicho mi marido se ha dado a la embriaguez, me da tan mala vida, como la que se hace considerable en no darme lo necesario tenerme sujeta a mi personal trabajo, y para mantenerme y vestirme. Y cada vez que se embriague me aporrea de manera que en tres hijos no he tenido la felicidad de parirlos buenos, pues no la han conseguido, respecto a los golpes que me los ha hecho abortar. En cuyo respecto y el de que el día del señor San Pedro que fuimos a dar unos días, porque le dije que nos fuéramos a nuestra casa, me aporreó en ella, y en la calle; sin otro motivo."
[959] For an example in which a man accuses his wife of sevicia see AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 26, 7 fojas.
[960] AHAM, Juzgado Eclesiástico de Toluca, 1758, Caja 80, Expediente 7, foja 1 anverso: "Andrea Salvadora de Albarrán, vecina desta jurisdicción en la hacienda de las Majadas, mujer legítima de Osorio Martín García, en la más bastante forma que en derecho lugar haya y al mío convenga, parezco ante vmd y digo que ha tiempo de cinco meses que ando apartada de la compañía de dicho mi marido por el motivo de la mala vida que con él he pasado. Pues llegó el caso de colgarme de una viga y azotarme cruelísimamente, y porque dos hijos que tengo clamaban viendo tal crueldad ejecutó lo propio con ellos, y temerosa de perder la vida pues por instantes lo esperaba, hube de salirme de su lado."

economically. Women could also include religious reasons to justify their claims, especially when their husbands did not allow them to go to mass or to participate in the sacraments. However, these complaints seldomly occurred. In most cases, women just emphasized *"malos tratamientos"* (mistreatment) in general.[961] As happened in cases of illicit friendship, some women could accuse their husbands of two crimes, such as sevicia and adultery, concubinage when their partners were having an illicit relationship at the same time.[962] In their petitions, women or their relatives asked ecclesiastical judges to have their husbands punished and force them to supply with material goods they needed (mainly, food and clothing).[963] Some women asked for help to reconciliate their marriage, so they could live in peace and resume their marital life ("*vida maridable*"). When men denounced their wives, they highlighted the bad temperament of their wives, their unfaithfulness, or blamed the parents of their wives for disrupting the marriage.[964]

2) After the accusation had been put down, the ecclesiastical judge immediately summoned the alleged abuser to his court or ordered his arrest and imprisonment at the royal jail of Toluca with the aid of the secular arm.[965] Although the husband's guilt had not yet been proven, ecclesiastical judges took this measure to prevent the accused from inflicting further violence on their spouses or from retaliation. In this respect, jurists recognized that men were more likely to

[961] See for example AHAM, Juzgado Eclesiástico de Toluca, 1755, caja 74, expediente 8, 2 fojas: "Mónica de la Cruz, mestiza, acusa a su esposo por no permitirle cumplir con los preceptos de confesión, comunión y misa doctrinal."
[962] AHAM, Juzgado Eclesiástico de Toluca, 1769, caja 102, expediente 20, foja 1 anverso: "Bárbara Alvano, india, contra José Antonio, por malos tratos y por vivir amancebados."
[963] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 40, foja 2 anverso.
[964] AHAM, Juzgado Eclesiástico de Toluca, 1771, caja 107, expediente 2.
[965] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 9, foja 1 reverso y 2 anverso: "Que por mí vista la hube por presentada y por admitida la querella que esta parte hace, y mandaba y mando que por don Domingo Joaquín de Valencia, alguacil ejecutor de este juzgado se solicite la persona de Manuel Téllez, la que se ponga en la cárcel pública, y para ello imparta el real auxilio en nombre de nuestra santa madre iglesia."

engage in domestic abuse than women, and that physical separation was a valid solution when approved by an ecclesiastical judge.[966] In cases of "sevicia," it was likely that before submitting a letter to the ecclesiastical judge, mistreated women had already taken measures to protect their lives, like moving to their parents' home or to friends. Ecclesiastical judges permitted abused wives to remain with their parents, or put them in a safe location, such as a convent or the house of a trustworthy person when they had no place to stay or lacked resources.[967] On some special occasions, family members could resort to the secular justice such as the corregidor to allow for an immediate physical separation before submitting a complaint to the ecclesiastical court.[968]

3) After the abuser was arrested and imprisoned, ecclesiastical judges interrogated them. In these sessions, they were informed about the accusation and their declaration was heard and his declaration written down. Most times, husbands openly admitted to having beaten their wives or having neglected them. Regardless of whether the alleged abuser denied or admitted the accusation, ecclesiastical judges promptly organized a meeting with the spouses to hear both sides. Once the confrontation concluded, then the ecclesiastical judge provided a judgment.

4) When the ecclesiastical judge ruled that the "sevicia" had been demonstrated, his immediate purpose was to reconcile the spouses. Throughout the whole procedure, the primary intention of the ecclesiastical justice was to reunite the couple, not to separate it. To make sure

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[966] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro IV, título XIX, párrafo 184. Murillo Velarde cites Gregory IX, Decretals, liber II, chapter 8 and 13, De Restitutione Spoliatorum.

[967] Gregory IX, *Decretals*, liber II, titulum XIII: De Restitutione Spoliatorum, Chapter VIII: "Si autem capitali odio ita mulierem vir persequitur, quod merito de piso diffidat, et eum habeat suspectum, alicui probae et honestae mulieri usque ad causae decisione custodienda studiosius committatur in loco, ubi vir vel parentes eius mulieri nullam possint violentiam inferre." See also AHAM, Juzgado Eclesiástico de Toluca, 1758, caja 80, expediente 7, foja 1 reverso: "… que por su merced vista la hubo por presentada y en atención a lo que representa dijo que debía de manar y mandó que en el interim se de la providencia conveniente por el alguacil mayor fiscal de este juzgado, y se ponga la persona de la suplicante [Andrea Salvadora de Albarrán] en depósito en parte de toda seguridad, y en tanto que se ponen los medios prudentes para la restitución a su marido."

[968] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 22, 2 anverso.

that the former abuser no longer mistreated his spouse, ecclesiastical judges appointed one or more individuals as fiadores, charged with supervising the couple so the good treatment could be certified. For example, in the case in which a sentenced abuser reoffended his partner, the fiador had to report the "sevicia" to the ecclesiastical court, so the offender could be punished. In the same way, when good treatment was certified and the former abuser abandoned his old ways, the fiador was also tasked with reporting his findings to the ecclesiastical court. The fiador was normally presented by the abuser or by the abused, and they could be family members, trustworthy persons from the town, or any other.[969] As in cases of illicit friendship, fiadores were under the jurisdiction of ecclesiastical judges, and promised to fulfill their duty under the penalty of losing their material goods, domicile, and neighborship if they failed to do so. In most scenarios of reconciliation, husbands promised in front of ecclesiastical judges to treat their wives well, provide them with material goods, and to live in a separate house if their spouses did not want to live with problematic parents-in-law in the same household.[970]

5) When reconciliation proved to impossible, either because the wife did not want to reunite again with her spouse, or because the husband was too dangerous, a perpetual separation was eventually conceded by ecclesiastical judges. However, I have to clarify that according to canon law, mistreatment was never a reason to dissolve a valid Christian marriage, that was

[969] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 40, foja 5 reverso.
[970] AHAM, Juzgado Eclesiástico de Toluca, 1750, caja 68, expediente 12, foja 4 anverso: "[Feliciano Francisco]ofrece por sus fiadores a don Matías Francisco y Pedro de San Juan, indios y alcaldes pasados del pueblo de Santa María Ocotitlán, doctrina de Metepec. Quienes estado presentes mediante dicho intérprete de este juzgado don José Escalona, dijeron que fiaban y fiaron a dicho Feliciano Francisco, en tal manera que el susodicho hará buenos tratamientos a Feliciana Leonor, su mujer, y le pondrá casa para que vivan como marido y mujer, solos y sin intervención de los suegros de esta otra parte. Y cuando no lo haga los otorgantes con sus fiadores darán cuenta a este juzgado, y traerán a presencia del señor juez eclesiástico al dicho Feliciano para que lo castigue. A cuya firmeza y cumplimiento cada uno por lo que les toca, obligaron sus personas y bienes presentes y futuros, dan poder a los jueces eclesiásticos para que a lo dicho los compelan y apremien, como por sentencia pasada en cosa juzgada, renunciaron el suyo propio domicilio y vecindad."

indissoluble. As such, even in cases of complete separation, spouses could never marry again, and they were expected to live chaste lives. In addition, the innocent party also had the option to enter religious life, even when their partner opposed such a route. [971]

6) In cases of domestic violence, it was also likely that at some point of the procedure, one of the parties, normally the abused wife, filed an "apartamiento" after privately reconciling with her husband. However, even when one party withdrew, ecclesiastical judges still appointed fiadores to guarantee that the abused received good treatment from their spouses.[972] This was the case of the Indian woman María Gertrudis, from the town of San Miguel Aticpac, who was abused by her husband, Marcos Tadeo. When Marcos recognized in front of the ecclesiastical judge of Toluca to have mistreated his wife, María Gertrudis forgave him, since he promised her that he would give her good treatment from that moment onwards. However, in order to control Marcos Tadeo, the ecclesiastical judge forced him to appoint a fiador so he could supervise the couple and guarantee that they had a better marital life.[973]

7) On some occasions, husbands who had been condemned for domestic violence mistreated their wives again despite being under the supervision of a fiador. In those circumstances, abusers could be arrested and imprisoned, forced to pay alimony to their wives,

[971] Murillo Velarde, *Curso de derecho canónico hispano e indiano*, libro IV, título XIX, párrafo 184: "Si después de hecho lo anterior la mujer todavía no se siente segura, que se vaya con los parientes o que quede depositada en algún otro lugar seguro hasta que la causa se decida. Si es tan grande la maldad del cónyuge que no da ninguna esperanza de enmienda y el juez pronuncia sentencia de divorcio perpetuo, el inocente puede recibir las órdenes sagradas o profesar en una religión aún contra la voluntad del otro, pero no si el divorcio es sólo temporal. Cuando el cónyuge cae en una demencia, pero de tal manera que el sano puede cohabitar con él sin peligro, no deben separarse; pero sí pueden si hay peligro. Más aún, si a juicio del médico no hay esperanzas de que se extinga la locura, puede hacerse el divorcio perpetuo, y el sano podría recibir las órdenes sagradas en una religión. En caso de que el enfermo regrese a sus cabales, contra lo que se esperaba, llamará de nuevo a su cónyuge a la habitación. También una molesta cohabitación a causa de frecuentes pelitos y altercados que suele haber entre cónyuges, ya que infunden un grave miedo y pueden hacer peligrar al cuerpo y al alma, dan causa de divorcio."

[972] AHAM, Juzgado Eclesiástico de Toluca, 1753, caja 72, expediente 40, foja 5 reverso.

[973] Ibid, foja 5 reverso.

and charged with the costs of the litigation. Women were more likely to petition a separation and manifest their intention to join a convent when the first reconciliation did not work. This was the case of Antonia de Vilches, who was reconciled with her husband, Dionisio de Santa María by the ecclesiastical judge of San José de Toluca in 1751, after she had accused him of domestic violence, a crime to which he confessed. However, a couple of months later, Antonia returned to the ecclesiastical court to accuse her husband again of domestic violence. This time, Antonia petitioned the judge to put her in a convent or any other place, where she should receive proper clothing and food.[974] Since she was a poor woman, Antonia asked the judge to charge her husband with all the fees and costs of the litigation. The ecclesiastical judge accepted Antonia's terms and ordered the arrest and imprisonment of the abuser Dionisio de Santa María.[975]

4.3. The Case of Luciana Máxima

The judicial procedure is well illustrated in the case of Juan Antonio García, an Indian from the town of Santiago de Metepec, who in 1754 presented a writ at the ecclesiastical court of San José de Toluca. Juan Antonio accused his son-in-law, a mestizo named Isidro Antonio of mistreating and beating his wife, Luciana Máxima, the complainant's daughter. In his complaint, the plaintiff declared that Isidro had neglected his wife for one year and a half, not providing for her needs. The accuser informed the ecclesiastical judge that Isidro had also severely beaten Luciana, leaving a scar on her forehead. Juan Antonio said that when he learned about the cruelty

[974] AHAM, Juzgado Eclesiástico de Toluca, 1751, caja 69, expediente 17 foja 2 anverso: "…se ha de servir vm de mandar que con sumaria información que de lo expresado de y con la declaración de don José Zárate, tío de dicho mi marido, quien fue el fiador de los buenos tratamientos que no me ha dado, haga me ponga en un convento o a otra parte, a satisfacción de vmd, donde me acuda con mis alimentos y vestuario como es de su obligación."
[975] Ibid, 4 reverso.

of his son-in-law, he resorted to the royal justice of the corregidor, who intervened and separated Luciana from her husband, and delivered her to her father.[976]

As explained in previous pages, secular judges could intervene in these cases to arrest the husband or separate both spouses when live was endangered.[977] Nevertheless, Juan García resorted to the ecclesiastical court of Toluca because he sought the perpetual separation of her daughter from her husband Isidro ("*no siga en union maridable con Isidro*"),[978] something only an ecclesiastical judge could approve. In his petition, Juan García emphasized that his daughter did not want to go back to her husband. The ecclesiastical judge of Toluca, don Juan del Villar, instructed the complainant to justify his request within three days (with witnesses to support his accusation), and commanded the *alguacil* of the court, don Domingo Joaquín de Valencia, to arrest ("*asegura*r") Isidro. As the document shows, Isidro was arrested ("*puesto en depósito"*) at a room in the parish the same day.[979] Juan Antonio García then presented three witnesses, all of them indigenous men from Santiago de Metepec. All these witnesses declared that Isidro Antonio left his house five times, leaving his wife alone and without providing for her. In addition, all declarations converged in reporting that on one occasion Isidro beat his wife so hard that he almost killed her. The witnesses emphasized that Luciana Máxima lived honestly, without provoking any scandals, and that her parents had to take care of her, because her husband did not.[980]

After hearing the witnesses' declarations, the ecclesiastical judge summoned Isidro Antonio to court. Here, he recognized that despite having been married for three years; they had

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[976] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 22, 2 anverso.
[977] Besides this case, see also AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 26.
[978] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 22, foja 2 reverso.
[979] Ibid, foja 3 anverso: "…púsose depositado en el cuarto de esta doctrina de la parroquia a Isidro Antonio, y encargó su cuidado al reverendo padre cura ministro de doctrina de ella."
[980] The declarations can be found in AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 22, fojas 3 reverso to 4 reverso.

only lived together for one year and a half. Isidro mentioned he had left his house because he had a fight with her. Moreover, he admitted to not having given her any support because he had no work and no income. Regarding the severe beating that left Luciana with a scare on her forehead, Isidro said that he did so after his wife accused him of having slept with another woman, when he left the house to collect some money in the town of San Pablo. Apparently, the couple had an argument, and Luciana slapped Isidro, who in return grabbed a stone and hit his wife with it.

After listening to Isidro's declaration, the ecclesiastical judge organized a "*careo*," bringing the spouses into one room. In this confrontation, both parties reaffirmed what they had said before, with Luciana accusing Isidro of having beaten her, and the husband admitting that he so did.[981] On February 7th, the ecclesiastical judge of Toluca released Isidro from prison. The husband was ordered to reunite with his wife and forced to provide her with a proper subsistence. To guarantee for this to happen, Isidro was instructed to appoint a fiador with the approval of his wife, Luciana.

The judge had given a sentence, but the document does not end here. When Isidro was imprisoned in the parish of Toluca, his father, a Spaniard named Juan de la Cruz, went to Mexico City and presented a writ at the Provisorato, in which he accused the parents of Luciana Máxima of influencing their daughter, for her not to continue on Isidro's side. Juan de la Cruz petitioned the provisor to instruct the ecclesiastical judge of Toluca not to meddle in this matter, and to permit Luciana and Isidro to reconcile and live together alone. In order to guarantee the good relations between the spouses, Juan de la Cruz proposed as fiador, a Spaniard named don Tomás de Aramburu, owner of a hacienda in Santiago de Metepec, who was also Isidro's employer. This

[981] Ibid, foja 6 anverso.

part of the file highlights the importance of relatives in these cases. Family members often appear as the original accusers or as initiating their own judicial procedures to defend their sons and daughters. In this respect, a common tactic was to blame the parents of the spouse as the instigators of the separation of a couple. Finally, this document also shows that relatives had a good juridical knowledge, as when—in this case—they resorted to the Provisorato to nullify any decision taken by a lesser ecclesiastical court, as that of Toluca.[982]

Considering the petition of Isidro's father, the provisor don Francisco Gómez de Cervantes instructed the ecclesiastical judge of Toluca to reconcile Isidro and Luciana. What the provisor did not know is that on the same day, in the city of Toluca, the reconciliation was already taking place. When the decree of the provisor reached the ecclesiastical judge of Toluca, three days later, Isidro Antonio had already appointed Juan Antonio García, father of Luciana Máxima, as his fiador. Juan Antonio not only swore that he would supervise the couple, who would live in a separate house, but also that he would pay nine pesos to cover the expenses of the litigation. As in other documents, Juan Antonio subjected himself to the authority of the ecclesiastical justice at the expense of his domicile and personal goods so he could be compelled to fulfill his function as fiador.[983]

5. Conclusion

In the late colonial period, the defense of the sacrament of marriage required the elimination of unsanctioned sexual relationships and bad customs in society. Fornication, rape, cohabitation, adultery, and domestic violence were some threats that endangered spouses, couples, and individuals. Although marriage united two individuals in an indissoluble bond, a third party

[982] Ibid, foja 7 anverso.
[983] AHAM, Juzgado Eclesiástico de Toluca, 1754, caja 73, expediente 22, foja 9 anverso.

could exist. Not only lovers but also relatives and even neighbors played an important role in the maintenance and disruption of marriages. In this respect, marriage was not only a private sacrament but also a public and social institution. Therefore, crimes against marriage such as fornication had the potency to become social threats, as those who committed them set a bad example to the rest of society. Although creating and expanding bad customs was a matter of concern for late colonial society, the outright challenge and contempt for the laws of God was a much more serious issue. Since God punished the nations of wrongdoers that ignored His laws and engaged in depravation, ecclesiastical courts had the duty to maintain the faith and good customs, both in the laity and the clergy. In the sixth chapter we saw how the Church corrected the members of the clergy so they could set a good example to the rest of society, a necessary requisite to make the gospel believable. In chapters seven and eight we saw how the extirpation of idolatries and the maintenance of orthodoxy accounted for the purification of the spiritual required to avoid God's ire. Finally, the intention of this chapter was to show how particularly the ecclesiastical authorities monitored and controlled lay society through resolving marital issues and unsanctioned sexual relationships.

In this chapter, I have explained and analyzed cases related to illicit friendship, breach of promise, rape, and domestic violence, categories that virtually comprised most types of sexual crimes prosecuted by ecclesiastical courts. One argument made in this chapter is that the above-mentioned categories are often difficult to interpret and categorize due to their plasticity. Therefore, claims could contain, at the same time, an accusation of domestic violence and illicit friendship, or even rape. In this chapter we have observed that marital issues show that a part of the colonial population was tolerant towards unsanctioned relationships. However, I have also

noted that the establishment of ecclesiastical courts allowed the Church to prosecute these crimes and monitor the sexuality of the local society.

For the colonial population, these tribunals permitted them to denounce unsanctioned relationships more easily at their local court. Neighbors, relatives, and particularly priests denounced illicit friendships when they found it, either to preserve religious morality or as personal or political retaliation. For example, husbands who were denounced by their wives could accuse them back of having an adulterous friendship with another man, and indigenous neighbors could accuse their pueblo official of illicit friendship to discredit them. Regardless of the reason, when the crime was proven, the procedure and the sentence adapted to local circumstances. On the contrary, crimes related to rape (especially violent rape) and domestic violence had simpler judicial procedures.

An important point to make is that ecclesiastical judges took these types of denounces seriously, and after receiving and admitting the accusation, they immediately ordered the arrest of rapists and abusive husbands, and put victims, normally women, in safe locations to avoid a retaliation, even if the crime had not yet been proven. This procedure shows that the ecclesiastical justice could be a rapid remedy to mistreated women who sought protection from male abusers. Although the Christian doctrine pushed ecclesiastical authorities to seek reconciliation between spouses, even after a demonstrated case of domestic violence, women always had the option to decide whether they wanted to reunite with their husbands or not. They also had the option to join a monastery to force a perpetual separation from their husbands, even if their spouses opposed it.

Final Remarks

1. Argument and Historiographical Contribution

This dissertation primarily contributes to the study of ecclesiastical courts in colonial Mexico by focusing on the legal and institutional development of the ecclesiastical court of San José de Toluca, and its judicial operation on four different aspects: the defense of the ecclesiastical immunity, cases against ecclesiastics, the extirpation of idolatry and superstition, and the prosecution of offenses against the sacrament of marriage (marital cases). Following the critique of Ana de Zaballa and Jorge Traslosheros, who note that an excessive focus on indigenous unorthodoxy has limited our understanding of ecclesiastical courts, I have expanded my investigation on the interaction between ecclesiastical courts and various sectors of the colonial society. In this dissertation I also address another important critique, in this case made by Charles Donahue and Gerardo Lara Cisneros, who emphasize that scholars working on ecclesiastical courts have focused too much on the theoretical aspects of canon law while not examining how these tribunals worked in practice. Instead of relying on cultural or legal explanations exclusively, I use a combined cultural and institutional history approach to examine internal functioning of the ecclesiastical court of San José Toluca, its jurisdictional foundations and limitations, its conflicts with the royal justice, and its ability to monitor local society. Although my study devotes various chapters to explain the institutional development of the Church's justice in the Americas, it also shows how ecclesiastical judges and royal and canon law worked in practice. In addition, the first and seventh chapters of this dissertation explore the development of medieval ecclesiastical courts and Catholic theology in Europe to understand how the medieval precedents informed the operation of religious tribunals in the archdiocese of Mexico. This holistic study is my major historiographical contribution.

This dissertation has made the argument that ecclesiastical courts in the eighteenth century were key pieces in the administrative apparatus of the Spanish Empire and the Catholic Church in the Americas. As discussed in chapters one and two, the religious tribunals implanted by the Spaniards in the New World originated in Medieval Europe and preserved many of its original functions, such as the capacity of hearing marital cases, denunciations against members of the clergy, and supervising morality and good customs. Despite ecclesiastical courts in New Spain and in Medieval Europe worked in similar ways, I have also noted two important differences in this dissertation. First, ecclesiastical courts in the Americas prosecuted cases of orthodoxy when the defendant was an indigenous person, and not the Holy Office of the Inquisition. Second, the Spanish Crown dominated religious tribunals in the Americas through the Patronato Regio and the donations bulls granted by the popes Alexander VI and Julius II. Unlike any secular authority in Medieval Europe, the Spanish monarchs held an unprecedented power in regulating and stipulating how ecclesiastical justice worked in the New World. As a result, ecclesiastical courts in the Americas supported the authority of the Crown by reinforcing the Patronato Regio, exerting ideological and moral control over the population, and administering justice in co-operation with royal officials. This collaboration does not mean that the Church did not defend its jurisdiction and privileges. In fact, the defense of the ecclesiastical immunity and the right of asylum reveals how the justice of the Church protected its judicial system and how they collaborated with royal officials. However, when a jurisdictional or legal obstacle impeded social order, such as the right of asylum, both royal and ecclesiastical authorities negotiated to restrict or eliminate those privileges.

In this respect, the development of the ecclesiastical court of San José de Toluca was not independent since its judges repeatedly consulted and collaborated with royal officials and higher

ecclesiastical authorities in the Provisorato. That is to say, local ecclesiastical tribunals were part of an institutional network that connected lower and higher organizations that comprised the colonial apparatus in New Spain. Accusations against members of the clergy or indigenous idolatry cases informed the policy of the Church in the Americas, that issued laws to regulate society according to what their local ecclesiastical courts reported. For example, the decree of the archbishop don Manuel Joseph Rubio y Salinas, who in 1754 mandated medical examinations in cases of indigenous sorcery, was produced after many local ecclesiastical courts, including that of San José de Toluca, prosecuted a high number of these cases in the first half of the eighteenth century. In this way, by studying the functions of a local tribunal, we can also understand how the Provisorato and the colonial judicial system worked.

In this dissertation I have explained that the institutionalization of ecclesiastical courts in the archdiocese of Mexico was a slow and difficult process. Authors such as Jorge Traslosheros and Rodolfo Aguirre Salvador note that ecclesiastical judges helped to cement the authority of the secular clergy and the Spanish Crown against the privileges of the regular orders in the seventeenth century. Although this dissertation shows the problems encountered by ecclesiastical judges throughout the early colonial period, I also explain the impact of ecclesiastical courts on indigenous towns, colonial culture, local society, and morality and sexuality in the eighteenth century.

Since its establishment in 1675, the ecclesiastical court of San José de Toluca worked as an extension of the episcopal and papal justice in the curato of Toluca and its surrounding areas. My argument is not only that ecclesiastical courts were useful to subdue the mendicant orders and reinforce the Patronato Regio, but that they were crucial in promoting governance in the Spanish Empire at the local level. Because of its jurisdictional functions, these religious tribunals could

penetrate and resolve disputes against parish priests in indigenous communities, hoping to promote social and political harmony. In doing so, ecclesiastical judges resolved disputes in indigenous towns. Sometimes they approved or negotiated changes to local customs (*costumbre*) of a specific indigenous community. Since the costumbre of an indigenous town not only captured the political, economic, and social organization of that community but also its obligations towards the Church such as offering a certain number of men per year to work for the priest, ecclesiastical courts created new sociopolitical realities.

Ecclesiastical courts also exerted an enormous cultural and ideological influence by prosecuting indigenous idolatry. These tribunals disrupted, impeded, or forced changes in the practice of native devotions by destroying idols, punishing indigenous sorcerers, and promoting Christianity as the dominant religion. In the same way, the defense of the sacrament of marriage permitted the judges of the Church to influence moral and sexual relationships and to control colonial families, who either worked to reconcile quarreling married couples and/or punish offenders. From a Catholic perspective, ecclesiastical courts appeased God's anger and served as a mechanism of public hygiene by punishing criminal and sinful elements of society, such as adulterers, domestic abusers, bad priests, fornicators, idolaters, and rapists. In sum, the establishments of ecclesiastical courts in the second half of the seventeenth century worked as a weapon of the colonial powers to control the population, facilitate political governance, maintain social peace, and secure spiritual protection in the Spanish Empire.

I would like to end my contribution by stating my stance on an important debate on whether canon law and royal law protected indigenous peoples or not. In this particular issue, I align myself with the research of Jorge Traslosheros, Ana de Zaballa, Woodroh Borah, Brian Owensby, Susan Kellog, and others, who stress that indigenous peoples actively utilized the

colonial legal system to seek redress for their grievances. The records of the ecclesiastical court of San José de Toluca unequivocally show that hundreds of indigenous persons resorted to the religious tribunals of the Church to settle disputes with parish priests, denounce their neighbors, and write down their last wills. The reason Indians trusted these religious tribunals is that most times ecclesiastical judges ruled in favor of indigenous communities against an abusive parish priest (*cura* in Spanish), or were attentive to indigenous demands. That ecclesiastical courts acted in this way favored the resolution of potential conflicts in a peaceful manner, avoiding any military or civil uprising. We should note that indigenous communities were not passive agents, but that they were familiar with the operation of ecclesiastical courts and utilized them to advance their interests. As other authors have emphasized before me, the Spanish legal system was not a mere formalism, but a living, practiced mechanism. As such, the ecclesiastical court of San José Toluca systematically applied royal and canon law, along with more concrete legal provisions issued by the archbishops of Mexico, adapted to local circumstances. Although irregularities and abuses existed, most ecclesiastical judges in San José de Toluca followed the Spanish legal procedure in the administration of justice, and acted within their jurisdiction in collaboration with secular authorities such as corregidores. Therefore, the Spanish legal system not only represented, but could change existing realities in both indigenous communities and the lives of the faithful that they prosecuted and punished.

2. Summary of Findings

In the sixteenth century, the Catholic Church entrusted the project of evangelization of the Indies to the Spanish Crown. The Spanish kings, through the Patronato Regio, were recognized by the papacy as the lords of the New World, and were granted the right to nominate bishops, and extract tribute from the faithful of the Americas. In exchange, the Spanish Crown was obliged to

help enforce the evangelization project in the new continent, building and equipping new temples, and organizing the bishoprics. However, the monarchs of Spain were not alone in this project. The orders (Dominicans, Augustinians, Franciscans, and Jesuits) embarked to the Spanish Indies to evangelize the Indians and to fight the snares of the Devil. In order to achieve this holy purpose, the papacy endowed the regulars with a myriad of privileges that permitted them to manage new indigenous towns, called doctrinas, where they could preach, build convents, and administer the sacraments without episcopal supervision. These privileges, approved by several royal decrees in the sixteenth century, reinforced the authority of the friars and weakened the power of the bishops in the Americas, who, over decades, were unable to subject the Mendicant Orders to their central jurisdiction.

This situation started to change after the 1574 Council of Trent and the Third Mexican Council of 1585, that proclaimed the authority of the bishops over the mendicant orders and, which permitted all prelates to conduct a canonical visitation in the doctrinas controlled by the friars. Bolstered by the measures adopted by these councils, the secular clergy tried to remove the mendicant orders from their doctrinas, to hand them over to secular priests, controlled by the bishops. The friars, witnessing that these measures threatened their papal privileges protested to the Spanish kings. Subsequently, the mendicant orders were tolerated by the Crown due to the scarcity of secular priests able to manage the doctrinas in this early colonial setting. That is to say, for some time at least, the mendicant orders had proved to be useful agents serving the interests of the Spanish kings. However, in the second half of the seventeenth century, the Crown received multiple protests not only from the secular clergy, but also from royal officials. Both groups pointed out that the mendicant orders were using their papal privileges to disobey the Patronato Regio and to avoid royal supervision. In addition, bishops highlighted that the privileges of the

friars were temporal and, given the increase of secular priests, they were no longer necessary to administer indigenous doctrinas. Listening to these reports, the Crown turned to supporting the secularization of the doctrinas, and reinforced the authority of the bishops, who would now be allowed to extend their jurisdiction in their dioceses, implanting ecclesiastical courts.

Therefore, one of the purposes of ecclesiastical courts, as noted by authors such as Jorge Traslosheros and Rodolfo Aguirre Salvador, was the expansion of episcopal power over the mendicant orders to reinforce the Patronato Regio and the power of the Spanish monarchs. As such, ecclesiastical courts did not entail any challenge to the Spanish Crown, as they were institutions staffed by the very secular priests that the Spanish monarchs appointed as ministers. Furthermore, ecclesiastical courts were regulated not only by canon law, but also by the laws of the Indies. This is one of the biggest differences between the ecclesiastical courts in Europe and those of the Americas. In their European counterpart, there is no lay agent who had such a massive control and influence over the operation of ecclesiastical courts as the kings of Spain had in the Indies. For this reason, the Patronato Regio not only dominated the regulars, but also the secular clergy.

The ecclesiastical court of the city of San José de Toluca, established in 1675 under the tenure of archbishop Payo Enríquez de Rivera (1668-1680), was part of this program. The purpose of this tribunal was to defend the ecclesiastical jurisdiction, extirpate indigenous unorthodoxy, enforce good customs, prosecute accusations against members of the clergy, punish the faithful in criminal matters under jurisdiction of the Church, such as disputes over marital causes, testaments, chaplaincies, and cofradías. From a spiritual Catholic perspective, ecclesiastical courts played the key role of appeasing God's anger by eradicating public sins and enforcing divine

legislation. In this way, they avoided God's punishment that could befell over New Spain, the Spanish Crown, or the Church as a whole.

As the head ecclesiastical court of the Toluca Valley, this tribunal served as the intermediary between the parishioners of this region and the archbishop's court, the Provisorato, in Mexico City. In short, local diocesan courts were a key piece in facilitating governance over colonial subjects and in strengthening the centralization of power. Ecclesiastical judges acted as colonial agents and representatives of diocesan justice, that settled local administrative, religious, and social issues. The mobility of these judges, that could move from their headquarters in the city of San José Toluca to any town within their jurisdiction and, the interaction between ecclesiastical courts permitted the Provisorato to construct an effective network that made ecclesiastical justice available to the faithful. In addition, ecclesiastical courts were essential mechanisms that gathered information, controlled the local population, and regularized it according to Catholic legal and moral principles. Without ecclesiastical courts, colonial authorities could not have penetrated and influenced local communities the way they did, and could not have promoted and inculcated ideas of social harmony, obedience, reconciliation, and collaboration in the laity, all of which were necessary for the perpetuation of Spanish colonial rule.

Over the past chapters, we came to know how ecclesiastical courts acted in practice through the different types of crimes they prosecuted. Cases related to the defense of ecclesiastical jurisdiction permit us to understand how secular and ecclesiastical judges collaborated with each other and, how canon law receded and was subdued to the will of the Spanish monarchs, imposed, and enforced through royal decrees. Although the collaboration and harmony between the temporal and the spiritual arms was the norm, that did not mean that conflicts were absent. One

of the jurisdictional battlegrounds between secular and ecclesiastical judges was the immunity of churches and the right of asylum. From the early Middle Ages, the Catholic Church, drawing from a series of laws found in the Mosaic Law, permitted criminals who had committed common crimes to take shelter in churches. This privilege, approved by the Partidas and the *Recopilación de las Leyes de Indias*, was adapted to local circumstances in the New World. However, in the seventeenth and eighteenth centuries, royal authorities protested because many criminals were using the right of asylum to escape punishment from secular judges, like the payment of debts. Considering that this law endangered public safety, the Spanish crown issued several royal decrees throughout the colonial period that limited the number of churches that could shelter criminals and the types of crimes these criminals had committed. The fact that the Crown, in negotiation with the Holy See, was able to restrict the right of asylum shows that the role of the Spanish kings as patrons of the Church in the Americas was effective and that any jurisdictional challenges from canon law that hindered governance could be dismantled if the Crown so decided. This factor also explains why ecclesiastical courts did not entail a threat to royal sovereignty, as they became subordinate institutions that facilitated justice and good government.

Despite its subordination, the Catholic Church took the duty to defend its jurisdiction seriously. Ecclesiastical judges were instructed not to tolerate jurisdictional trespasses from secular judges, such as corregidores and alcaldes mayores. One of the main tools utilized by ecclesiastical judges to impose their authority was the threat of excommunication. Although royal and canon law exhorted ecclesiastics to utilize excommunication with moderation, there is ample evidence that laypeople were threatened with this punishment when they disobeyed the ecclesiastical judge's commands or when they dared to violate the jurisdiction of the Church. For example, corregidores who entered churches to arrest criminals without the authorization of the

local ecclesiastical judge could be admonished and excommunicated. When royal officials were punished with excommunication, they had the option to submit a complaint to the archbishop's tribunal or a *recurso de fuerza* to the royal audiencia, so the ecclesiastical judges were forced by the Crown or their superiors to remove the excommunication. These tribunals were sensitive to these petitions, as they were aware of the nefarious consequences of having a royal official as a publicly excommunicated person, that could be discredited before the eyes of the laity and have his reputation severely damaged. As such, when royal officials protested, the Provisorato or the justice of the king satisfied their petition and worked together so the excommunication could be removed, and the two arms could resume a harmonious collaboration. There is also evidence that when ecclesiastical judges were too docile and did not defend the immunity of the Church, the provisores in Mexico City scolded them and instructed them to fulfill their jurisdictional duties. However, we should not interpret this type of zeal as a form of resistance against the Patronato Regio. Provisores and ecclesiastical judges acted within the limits of existing canon and royal codes of law of that moment, while acknowledging the Crown's supreme role as arbiter and patron of the Church in the Americas.

Besides protecting the jurisdiction of the Church, ecclesiastical courts also had to discipline members of the clergy and punish their abuses. Having a diligent, honest, and respectable priesthood was key to make the message of the gospel believable for those who heard it. Early Christian doctors of the Church such as St. John Chrysostom and writers of colonial manuals for parish priests such as Alfonso de la Peña Montenegro emphasized the idea that there were no better miracles to attract the gentiles than a good Christian life, following the example of Christ, the prophets, and the apostles. Since good behavior was a direct testimony of the true faith, the Church, through numerous councils, sought to eradicate vices commonly found in the clergy,

namely: drunkenness, playing games of chance, concubinage, participating in hunting activities, and so forth. The control on the clergy's behavior was a way to reform society as a whole, by setting a good example that would be imitated by parishioners Therefore, by disciplining the clergy, ecclesiastical courts were also enforcing good behavior in all of society. In the Toluca Valley of the eighteenth-century, denunciations against members of the clergy were given careful attention, as conflicts between parish priests and indigenous parishioners had the potential to disrupt local town relations and endanger the evangelization project.

Since indigenous peoples were the demographic majority in the Toluca Valley, it is not surprising that most accusations against parish priests were submitted by an indigenous person or by the representatives of a community or town. In this study I have found that the parishioners of the Toluca Valley mostly accused their priests of verbal and physical mistreatment, of not considering established aranceles, and of transgressions of local customs. In the eighteenth century, legal changes restricted the use of physical punishment exercised by ecclesiastical judges, as theologians and colonial authorities found it to be detrimental to the preaching of the Gospel. Therefore, the canons of the Fourth Mexican Council exhorted parish priests to live exemplarily and to treat their parishioners with love and a soft hand, so they could be better persuaded to embrace the faith. As a result, parishioners began considering that physical punishments at the hands of their parish priests were wrong and, as a consequence, they became more likely to denounce trespasses at ecclesiastical courts. This awareness also shows that political representatives of indigenous communities knew about the legal developments in the viceroyalty, and that they engaged with them to argue their complaints.

The overarching approach of ecclesiastical justice to these type of cases was one of reconciliation and understanding. Although parish priests were sometimes scolded, or even

removed from their position, the Provisorato and local ecclesiastical judges sought to reconcile the parties with benevolence. For example, if a parish priest introduced a new way of doing things (such as demanding a cook for his personal service) which indigenous peoples did not agree to, ecclesiastical judges proposed a set of negotiations between both sides, so that at the end, the Indian community could eventually accept those changes with some modifications. Ultimately, such a lenient approach enhanced the credibility of religious institutions among the indigenous population, as they became to rely on the justice of the Church when seeking redress for their grievances. Cases against ecclesiastics help us understand how the Church disciplined its ministers and they also offer us a window into local politics. In this scenario, indigenous fiscales, as town officials and the assistants of the parish priests, found themselves in a somewhat risky situation, trapped between their community and the priest they were expected to obey. When fiscales sided with their community, parish priests litigated or protested in the Provisorato to have them replaced. Contrarily, if the fiscal sided with the priest against his community, he could face dire consequences, from physical aggressions to social isolation.

Superstition and idolatry cases are key to explore how the justice of the Church eradicated indigenous unorthodoxy in order to spread the gospel. Unlike the viceroyalty of Peru, where bishops orchestrated campaigns to extirpate indigenous idolatry, there was not an equivalent in the archdiocese of Mexico and the Toluca Valley. Instead, Mexican prelates decided on their own volition how to deal with superstition and idolatry. Before local ecclesiastical courts were established in the second half of the seventeenth century, prelates resorted to canonical visitations and/or appointed specific individuals to investigate and eradicate idolatry. When diocesan tribunals had been established, scholars such as Lara Cisneros detected an astonishing rise in idolatry cases, probably due to the fact that now those crimes could be easily reported by locals

at their closest religious tribunal, a possibility that they did not have before. In addition, the Bourbon Reforms of the late eighteenth century, that reinforced the centralization of power, also consolidated ecclesiastical courts, which in turn promoted the "hispanization" of indigenous peoples and facilitated judicial inquiries into indigenous lives. However, this change does not mean that idolatry had not existed in the seventeenth century. In fact, parish priests such as Hernando Ruiz de Alarcón and Jacinto de la Serna, who wrote manuals on the extirpation of idolatries, reported that the persistence of indigenous superstition was widespread in indigenous towns and, especially, in those towns located in remote areas and close to the mountains, lakes, and forests, as was the case of the Toluca Valley.

In the eighteenth century, ecclesiastical courts punished superstition and idolatry depending on the condition of the offender and the gravity of the crime. Although sentences varied case by case, religious instruction and whippings were common punishments applied to idolaters. In some extreme cases, when a person had committed a flagrant crime of idolatry, ecclesiastical judges organized *autos de fe* and had offenders paraded through the streets of the town, so all the neighbors could learn how bad their example had been. An important part in these kinds of judicial procedures was the change introduced by the archbishop don Manuel José Rubio y Salinas, who in 1754 issued a decree by which medical examinations became a requirement to prove cases of idolatry and superstition. As I have argued in chapter eight, there is evidence that in a very few cases doctors were called in to show that sorcery had actually been involved. However, after the edict, medical examinations became the norm. Here, I have to emphasize that the evaluation of a physician included both their scientific knowledge along with theological notions on diabolism, which on some occasions endorsed the existence of the reality of diabolism and demonic sorcery. Furthermore, I have concluded that superstition and demonic possessions cases present several

differences. The bewitched normally lacked the most frequent symptoms of the demoniacs, such as blasphemy, aversion to "holy things," and preternatural effects such as levitation, clairvoyance, and speaking in tongues. The only similarity between the two phenomena were the expulsion of alien objects through vomit and urine, and some physical pains.

Regarding accusations of sorcery and idolatry, I have found that they can divided according to the crime committed and ethnicity. Indigenous peoples often accused each other of superstition and sorcery after a personal quarrel. Plaintiffs highlighted that indigenous people often started to suffer from physical pains immediately after a dispute related to economic, political, romantic, or other personal reasons with the alleged sorcerer who had bewitched them. On the other hand, Spaniards were more likely to accuse indigenous peoples of idolatry, after having discovered caves, houses, or had information about idolatrous gatherings. I have noted that this difference in accusations has to do with the role that idolatry played in cementing identity and reinforcing bonds of solidarity in indigenous communities, a factor absent among the Spanish population. For example, some idolatrous ceremonies organized by Indians had the purpose to heal a sick indigenous person. For this reason, when an Indian from the community revealed the existence of clandestine rituals to Spaniards, they were considered traitors, and they could suffer nefarious consequences, as happened to fiscales who took sides against their communities in cases against ecclesiastics.

Finally, the study of marital cases helps us understand the role of ecclesiastical courts in molding colonial society following Catholic moral standards. The protection of the sacrament of marriage entailed the eradication of public vices and the enforcement of "good customs," as it was necessary to orient the faithful toward a successful marital life. The Church considered that if adultery, fornication, concubinage were permitted, the tolerance of these sins could disrupt

social order, and would threaten marital life. If that danger was not enough, sexual crimes, along with injustice, and disregard for the needy and the poor, were considered to be "public sins," that ignited God's anger.

In this research I have found that sexual crimes, prosecuted by the ecclesiastical courts, did not always follow a clear classification and judicial procedures. The most common crime found in this research is that of "*amistad ilícita*," which encompassed different types of unsanctioned carnal relations such as adultery, fornication, and concubinage. I have observed that documents concerning illicit friendship could encompass, at the same time, different crimes that determined the judicial procedure and its resolution. For example, lawsuits on amistad ilícita could develop into cases of adultery if one of the parties was married, or an incumplimiento de la palabra dada was involved, particularly when one of the lovers (mostly the man) had broken a marriage promise. In general, these complaints were filed by either parish priests who exercised their duty of maintaining good customs, offended women who had been dishonored, or even neighbors who protested (perhaps as a form of retaliation) the scandalous relationship of certain individuals in their town. I have noted that some unsanctioned relationships, that implied a certain form of concubinage had lasted for many years and were only registered by the courts once a denunciation occurred. This fact could suggest a certain social tolerance to this type of relations as long as they were discreet and not a part of zealous religious surveillance and/or a local community dispute. Amidst it all, ecclesiastical judges took several measures to eradicate these "sinful crimes." Unmarried lovers were forced to marry in cases of incumplimiento, punished with a monetary fee, and could even be banished when one of the parties had committed adultery.

Regarding sevicia cases, I examined the marital life of spouses in the colonial period, and the relationships between families. Herein, I have found that relatives played key roles in

accusations of domestic violence. Although mistreated women could denounce their husbands at the ecclesiastical court of Toluca, it was quite frequent that their parents or family members filed the complaint on their behalf. Similarly, the relatives of an accused husband were also likely to retaliate, accusing their son's wife of having committed adultery or having an amistad ilícita with another man. In most cases, complaints reflected social expectations and "marital duties." Men were expected to provide women with material goods and protection; and women were supposed to provide domestic services to their husbands and obedience. When abused women filed complaints, they emphasized that they had been neglected by their husbands, since they had not received food, care, housing, or clothing. When this scenario happened, it was common that the wife's parents intervened to protect or save their daughter's wellbeing. Moreover, abused wives also protested when their spouses had beaten them repeatedly and "without a cause." Ecclesiastical judges took preliminary measures to protect women from their husbands even at the beginning of the process. In many cases, right after a complaint was filed, ecclesiastical judges put abused women "*en depósito*" (in a safe place like the home of a trustworthy resident) while they ordered the immediate arrest of the husband. This measure was especially taken when the victim of domestic abuse showed visible marks of mistreatment or when the husband was considered especially violent as witnessed by neighbors and family.

Although complaints submitted by men are the less numerous, they emphasized that their wives had not fulfilled their marital duties, and that they were disobedient, temperamental, adulterous, or all of them together. The general policy of ecclesiastical judges, following Catholic theology and jurisprudence on marriage, always sought to reconcile the spouses and encourage them to resume their marital life. In some cases, the parties privately settled their conflicts in front of ecclesiastical judges who at the end of the reconciliation sessions provided a final judgement,

and plaintiffs decided to withdraw. Regardless of the way reconciliation was achieved, ecclesiastical judges appointed one or more fiadores, or supervisors, as proposed by the parties, to guarantee that the abusive husbands no longer mistreated their wives. Only in a few exceptional scenarios did ecclesiastical judges grant perpetual separation (which did not constitute divorce) when the life of one of the spouses was in obvious and verifiable danger.

In sum, these findings demonstrate that the ecclesiastical court of San José de Toluca had broad judicial functions that allowed it to control, monitor, and prosecute the faithful in the archdiocese of Mexico. Local ecclesiastical courts intervened both in the public sphere when punishing indigenous idolaters and abusive parish priests, and in the private sphere when they resolved marital disputes and punished behaviors that violated Catholic morality. This judicial action in both the public and private domains permitted the Catholic Church to mold the customs and religious beliefs of the colonial population according to its doctrinal and moral principles. However, the diocesan courts did not have unlimited power. The fact that ecclesiastical judges were obliged to collaborate closely with their secular counterparts prevented the Church courts from enjoying a legal independence that would challenge the sovereignty of the Spanish crown in the Americas. The Spanish kings, as patrons of the Church in the Indies, maintained close control over the ecclesiastical courts throughout the colonial period, to the point of diminishing ecclesiastical privileges such as the right of asylum through numerous royal decrees. Likewise, the close collaboration between secular and ecclesiastical judges, and the judicial capacity of ecclesiastical courts to resolve through peaceful means disputes that could have caused violent conflicts, facilitated the Spanish monarchs the governance of their immense overseas domains in Americas.

3. Potential Lines of Research

Future research on ecclesiastical courts should incorporate institutional, social, cultural, and intellectual approaches to understand the judicial procedures carried out by ecclesiastical judges and the ways in which colonial society interacted with these tribunals. Additionally, this line of research should not underestimate the theological and philosophical foundations of canon and royal law, as they were heavily influenced by Catholic theology and legal principles found in the Mosaic Law of the Old Testament. A clear belief in God's wrath, demonic activity, or in the indissolubility of marriage explains the kind of accusations and the expectations on both sides, the victims and the actions and thoughts of the victims and the ecclesiastical courts. However, it is not enough to consider that these ideas and beliefs existed, but it is also necessary to explain how they developed throughout time, and how they were locally understood and, with what kind of consequences. Therefore, works on ecclesiastical courts should not be limited to an institutional analysis, or to an exclusive assessment on how these tribunals operated in practice, but they should include a combination of all these factors with a serious intellectual approach that considers the theology and philosophy that permeated colonial society.

From a methodological perspective, we researchers, must include in our analysis some of the different types of cases heard by ecclesiastical courts. In this research, I have explained above how the diverse nature of the judicial records requires a flexible and adaptable methodology. For this reason, future studies should not produce an analysis exclusively based on just one crime but should contemplate the assessment of as many criminal categories as possible. Of course, a single study could not encompass the vastness of sources and crimes that these courts prosecuted in depth, and that is the reason why this dissertation has just focused on four categories. Future

research should elaborate on how these tribunals dealt with economic, cultural, and religious issues found in colonial society.

In terms of sources, researchers should include documents that shed light on the intellectual and cultural backgrounds of Spaniards and indigenous peoples. For the case of colonial Mexico, most of the sources were produced by Spaniards or other Europeans so there is a lack of balance in terms of documental production. This factor explains that even works that captured indigenous culture or beliefs such as manuals on the extirpation of idolatries were written by Spaniards, who interpreted indigenous tradition through their own cultural lens. Moreover, the voices of indigenous peoples that resorted to ecclesiastical courts had to follow regularized channels of communication with colonial authorities through a formal judicial process, that required a particular language and a particular way of doing things. However, judicial records are still a window into indigenous beliefs, local politics, social organization, cultural transformation, and the way in which Spaniards and Indians utilized these courts to meet their expectations and seek redress for their personal problems.

Concerning the historiography, future studies should compare the operation of local ecclesiastical courts and the manner in which they dealt with various types of crimes. Variables like the climate, geography, demography, the organization of the diocese, the proximity to centers of political and religious power, and the time period has a huge impact on the type of cases a researcher can find in the archives of these courts. In the case of the eighteenth-century Toluca Valley, the numerous indigenous populations explain the fact that most of the accusers and the accused were Indians. In addition, the abundance of certain crimes such as idolatry were favored by both a dominant indigenous demography and the presence of geographical features such as lakes and caves, that hindered Spanish supervision and that served as centers of traditional

ceremonies. The great legal, social, ethnic, and cultural diversity of the Spanish Empire in the Indies determined the practical operation of ecclesiastical courts and poses an inescapable challenge that the researcher must deal with.

Moreover, the historiography should also clarify the relationship between ecclesiastical courts and other colonial tribunals. Although authors such as Traslosheros have examined the similarities and differences between diocesan courts and the Inquisition, studies which exhaustively compare the foundations, procedures, and punishments of these two institutions will be most welcomed. Similarly, further comparisons between secular and ecclesiastical courts will be crucial to understand the way in which colonial courts handled mixtifori cases such as adultery, bigamy, or non-heretical sorcery. We need to know more about the collaboration of the spiritual and temporal arms, but also learn about the divergences resulting from the application of distinct judicial procedures and punishments. For example: Did secular tribunals punish mixtifori crimes more harshly than ecclesiastical courts? Were individuals more likely to denounce a certain offense before a diocesan tribunal given the Church's emphasis on soft punishments and reconciliation? How did the Spanish legal system solve conflicts between secular and ecclesiastical tribunals?

These are some of the questions that need to be answered if we want to understand how the Spanish judicial system worked in practice, and how colonial society interacted with it.

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