

# Justice on the Mountain: Travel, Security, and Native Authority in Colonial Oaxaca, Mexico<sup>♣</sup>

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**Abstract. Objective/Context:** This article analyzes how long-distance travel and struggles over highway security shaped the relationship between Native communities and Spanish civil and ecclesiastical authorities in Oaxaca's Villa Alta district during the late seventeenth and eighteenth centuries. **Methodology:** I engage in a close reading of criminal cases of murder and theft on a treacherous stretch of the Camino Real to show how Native people took on significant risk to travel great distances in pursuit of their interests. I follow with an examination of eighteenth-century legal reforms aimed at curbing banditry and analyze civil and criminal records to show how colonial officials used the reforms to create Native patrols tasked with highway security. **Originality:** Long-distance travel and highway security represent aspects of Indigenous life in colonial Mexico underappreciated by historians, even though they were vital to the material and political concerns of Indigenous individuals, clans, and communities in mountain regions like Villa Alta. By reading legal records against the grain, I demonstrate how Indigenous people used legal and extra-legal means to control movement on mountainous stretches of imperial roads. My analysis reveals jurisdictional competition among native authorities, and Spanish civil and ecclesiastical officials as they sought to control imperial space. **Conclusions:** Long-distance travel and jurisdictional struggles between and among Spanish and Native authorities produced violence and competition over highway security. By incorporating Native communities into the colonial security apparatus through the creation of Native patrols, colonial officials more fully subordinated the authority of the region's Native governments to their own.

**Keywords:** Empire, Geography, Indigenous, Law, Mexico, Oaxaca.

## Justicia en la montaña: viajes, seguridad y autoridad indígena en la Oaxaca colonial, México

**Resumen. Objetivo/Contexto:** este artículo analiza cómo los viajes de larga distancia y las pugnas alrededor de la seguridad de los caminos moldearon la relación entre las comunidades nativas y las autoridades civiles y eclesiásticas españolas en el distrito de Villa Alta, en Oaxaca, a finales del siglo XVII y durante el siglo XVIII. **Metodología:** presento una lectura detallada de casos criminales de asesinato y robo en un tramo peligroso del Camino Real para mostrar cómo los nativos asumieron un riesgo considerable al viajar grandes distancias cuando buscaban velar por sus propios intereses. A continuación, examino las reformas legales del siglo XVIII destinadas a frenar el bandidaje y analizo los registros civiles y penales para mostrar cómo los funcionarios coloniales utilizaron las reformas para crear patrullas nativas encargadas de la seguridad en los caminos. **Originalidad:** los viajes de larga distancia y la seguridad en los caminos son aspectos de la vida indígena en el México colonial que han sido subestimados por los historiadores, a pesar de que fueron vitales

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para los intereses materiales y políticas de los individuos, los clanes y las comunidades indígenas en regiones montañosas como la de Villa Alta. Al leer los registros legales a contracorriente demuestro cómo los pueblos indígenas utilizaron medios legales y extralegales para controlar el movimiento en los tramos montañosos de los caminos imperiales. Mi análisis pone en evidencia la rivalidad jurisdiccional entre las autoridades nativas y los funcionarios civiles y eclesiásticos españoles mientras esos actores buscaban controlar el espacio imperial. **Conclusiones:** los viajes de larga distancia y las pugnas jurisdiccionales entre autoridades españolas y nativas produjeron violencia y rivalidad con relación a la seguridad de los caminos. Al incorporar las comunidades nativas al aparato de seguridad colonial mediante la creación de patrullas nativas, los funcionarios coloniales lograron subordinar con mayor contundencia la autoridad de los gobiernos nativos de la región a la suya.

**Palabras clave:** derecho, geografía, imperio, indígena, México, Oaxaca.

## Justiça na montanha: viagens, segurança e autoridade indígena na Oaxaca colonial, México

**Resumo. Objetivo/Contexto:** neste artigo, analiso como as viagens de longa distância e os conflitos ao redor da segurança das estradas moldaram a relação entre as comunidades nativas e as autoridades civis e eclesiásticas espanholas no distrito de Villa Alta, em Oaxaca, ao fim do século XVII e durante o século XVIII. **Metodologia:** apresento uma leitura detalhada de casos criminosos de assassinato e roubo em um trecho perigoso da Estrada Real para mostrar como os nativos assumiram um risco considerável ao viajar grandes distâncias quando procuravam zelar pelos próprios interesses. Em seguida, examino as reformas legais do século XVIII destinadas a frear o crime e analiso os registros civis e penais para mostrar como os funcionários coloniais utilizaram as reformas para criar patrulhas nativas encarregadas pela segurança nas estradas. **Originalidade:** as viagens de longa distância e a segurança nas estradas são aspectos da vida indígena no México colonial que vêm sendo subestimadas pelos historiadores, apesar de que foram vitais para os interesses materiais e políticos dos indivíduos, dos clãs e das comunidades indígenas em regiões montanhosas como a de Villa Alta. Ao ler os registros legais na contramão das leituras convencionais, demonstro como os povos indígenas utilizaram meios legais e extralegais para controlar o movimento nos trechos montanhosos das estradas imperiais. Minha análise evidencia a rivalidade jurisdiccional entre as autoridades nativas e os funcionários civis e eclesiásticos espanhóis enquanto esses atores procuravam controlar o espaço imperial. **Conclusões:** as viagens de longa distância e os conflitos jurisdiccionais entre autoridades espanholas e nativas produziram violência e rivalidade com relação à segurança das estradas. Ao incorporarem as comunidades nativas ao aparato de segurança colonial mediante a criação de patrulhas nativas, os funcionários coloniais conseguiram subordinar com maior contundência a autoridade dos governos nativos da região à sua.

**Palavras-chave:** direito, geografia, império, indígena, México, Oaxaca.

## Introduction

Around midnight on July 15, 1697, Pedro Flores, a cacique (Indigenous nobleman) from the Native town of San Francisco Cajonos, paused for a rest on his journey from Oaxaca's rugged Villa Alta district toward Antequera, the capital of the diocese. For Flores, Antequera was meant to serve as a stopping point in a much longer trek to Mexico City, where he planned to attend to legal matters pertaining to land that belonged to his home town.<sup>1</sup> Native legal agents like Flores often migrated to

1 "Averiguación sobre las heridas que se dió a Pedro Flores de San Francisco Cajonos unos ladrones asaltandole en el Monte de Tanga," Archivo Histórico Judicial de Oaxaca (AHJO), Villa Alta (VA) (Oaxaca, Mexico), Criminal, Leg. 5, Exp. 0015, 1697.

and from their home regions to the viceregal capital to serve as the “voices” of their communities, shepherding legal cases in the hallways of the Real Audiencia (Royal Court) or Juzgado de Indios (Royal Indian Court). Sometimes they stayed in Mexico City for weeks, and on other occasions for years, depending on the pace of justice. They traveled by foot, often with a mule, stopping at inns run by migrants from their regions who had settled in towns along the route.<sup>2</sup>

The journey was no small matter. To travel back and forth from Villa Alta to Mexico City via Antequera, one had to hazard the stretch of the Camino Real that passed through the folds of the Monte de Tanga, a huge massif perched between the northern sierra and the valley below. The landscape was inhabited by mountain lions and venomous snakes, punctured by canyons and ravines, and crosscut by tributaries of the Cajonos River across which Native villagers strung hammock bridges during the rainy season.<sup>3</sup> Caves and hillocks provided cover for highway bandits, a scourge in remote regions throughout Spanish America, whose frequent and violent assaults left travelers bereft of their goods, money, mules, clothes, official papers, and sometimes their lives.<sup>4</sup>

Travelers like Pedro Flores had no choice but to contend with the perils of the Monte de Tanga. Their risky journeys insured their families’ economic subsistence and addressed the legal needs of their communities, while also making the empire run. After all, short-term migration through New Spain’s vast territory facilitated commerce, Christianization, and the functioning of imperial law and justice all at once.<sup>5</sup> Often, Native legal agents like Flores were also long-distance merchants who bought, sold, and transported cloth, cacao, meat, salt, maize, and the coveted *grana de cochinilla*—dried insects that produced a brilliant red-purple dye—along a trade route of pre-Hispanic origins from Antequera through the sierra and Isthmus of Tehuantepec to Guatemala.<sup>6</sup> They traveled alongside Spanish, mestizo, and African-descent itinerant merchants from major

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2 Regarding the social-spatial relations produced by Native legal agents and letters of attorney, see my digital humanities website “Power of Attorney in Oaxaca, Mexico: Native People, Legal Culture, and Social Networks” (accessed 10 February 2021), <https://www.powerofattorneyNative.com/>. See also Yanna Yannakakis, “Digital Resources: Power of Attorney, A Digital Spatial History of Indigenous Legal Culture in Colonial Oaxaca, Mexico,” *Oxford Research Encyclopedias*. Online Publication Date: 24 May 2018, doi: <https://doi.org/10.1093/acrefore/9780199366439.013.392>

3 References to the geography of the Monte de Tanga appear in the “Relación de San Miguel Amatlán” and the “Relación de Teotitlán del Valle, Tlacolula,” in *Relaciones geográficas de Oaxaca, 1777-1778*, edited by Manuel Esparza (Mexico: CIESAS, 1994), 79-81 and 336-339. For more general geographical description of the Sierra Norte, see Francisco de Burgoa, *Geográfica descripción de la parte septentrional del polo ártico de la América y nueva Iglesia de las Indias Occidentales, y sitio astronómico de esta provincia de Predicadores de Antequera Valle de Oaxaca*, vol. 1. (Mexico: Editorial Porrúa, 1989; First edition. Mexico: Juan Ruiz, 1674), 82-125.

4 The historiography on Latin American banditry, which tends to focus on the Independence era and nineteenth century, is ample. For an overview, see Gilbert M. Joseph, “On the Trail of Latin American Bandits: A Reexamination of Peasant Resistance,” *Latin American Research Review* 25, n.º 3 (1990): 7-53.

5 Foundational works on roads, mobility, and trade in colonial Mexico include Chantal Cramaussel, ed. *Rutas de la Nueva España* (Zamora: El Colegio de Michoacán, 2006); Sylvia Sellers-García, *Distance and Documents at the Spanish Empire’s Periphery* (Stanford: Stanford University Press, 2013); Ross Hassig, *Trade, Tribute, and Transportation: The Sixteenth-Century Political Economy of the Valley of Mexico* (Norman: University of Oklahoma Press, 1985).

6 On Indigenous trade in Oaxaca, see Carlos Sánchez Silva, “El comercio indígena en Oaxaca entre colonia y república,” *América Latina en la Historia Económica* 6, n.º 12 (1999): 71-84. On the pre-Hispanic origins of the trade route through the Sierra Norte that contoured the Monte de Tanga, see “Relación de Itztepexic,” in René Acuña, ed., *Relaciones geográficas del siglo XVI: Antequera*, vol. 1 (Mexico: UNAM, 1984), 345-382. The contemporary spelling of the community is Ixtepeji.

urban centers and market towns, sharing gossip, information, and legal knowledge. Along the way, they passed muleteers and mailmen, who paused to deliver important messages or notarized documents from distant authorities to the municipal halls of the district seat or larger Native towns. They encountered priests and their entourages of servants and assistants who traveled between communities to hear confession or say mass, accompanied on occasion by musicians who played in church services. Like Flores, these churchmen sometimes tucked legal documents and notarized rulings enfolded in cloth or a woven straw mat into their travel bundles alongside their catechisms and tortillas. The routes that diverse travelers carved with paper and goods in tow give the lie to the idea that the Sierra's communities were isolated by their rugged geography.<sup>7</sup> Mobility meant survival, and it was a way of life.

This article analyzes Native mobility and Native efforts to control movement through the perilous corridor of the Monte de Tanga during the last decade of the seventeenth century and the entirety of the eighteenth century, when colonial authorities sought to tighten their hold on imperial roads and the governance of Indigenous communities. By zeroing in on mobility and its control, my analysis contributes new perspectives to Latin America's spatial turn, Mesoamerican ethnohistory, and comparative histories of the intersections of law, geography, and sovereignty. In many fields of history, place-based analysis has given way to histories of movement, migration, and mobility at a variety of scales, reflecting contemporary preoccupation with a globalized world.<sup>8</sup> Latin Americanist social history scholarship reflects these trends, extending beyond bounded geographical and socio-political units of analysis, whether haciendas, indigenous communities, cities, or districts, toward a spatial connectivity that facilitated flows of people, goods, and ideas. Ethnohistorians of colonial Latin America increasingly do their research and situate their narratives around ocean basins, along riverine routes, and across vast networks of roads. Recent studies of colonial Amazonia, Río de la Plata, Central America, Nueva Granada, and the Andes consider the role of migration and mobility in producing ethnic identity.<sup>9</sup> The ethnohistory of colonial Mexico, however, remains overwhelmingly rooted in place due in part to reliance on a wealth of Native language archival evidence that underscores the centrality of ancestry, territory, and ethnic polity

7 My description of human transit through the Monte de Tanga in this paragraph relies on a cluster of cases of highway robbery and other cases that involved travel or policing on the mountain. These case records can be found in the AHJO and the Archivo Histórico Municipal de la Ciudad de Oaxaca (AHMCO) (Oaxaca, Mexico). I cite the cases of highway robbery in note 12 and the cases about policing and highway security throughout the body of the article.

8 Barney Warf and Santa Arias, eds., *The Spatial Turn: Interdisciplinary Perspectives* (New York: Routledge, 2008); Charles W. J. Withers, "Place and the 'Spatial Turn' in Geography and in History," *Journal of the History of Ideas* 70, n.º 4 (2009): 637-658.

9 Recent selected works include: Laura E. Matthew, *Memories of Conquest: Becoming Mexicano in Colonial Guatemala* (Chapel Hill: University of North Carolina Press, 2012); Heather Roller, *Amazonian Routes: Indigenous Mobility and Colonial Communities in Northern Brazil* (Stanford: Stanford University Press, 2014); José Carlos de la Puente Luna, *Andean Cosmopolitans: Seeking Justice and Reward at the Spanish Royal Court* (Austin: University of Texas Press, 2018); Santiago Muñoz Arbeláez, "The New Kingdom of Granada: The Making and Unmaking of Spain's Atlantic Empire, 1530-1620" (PhD Dissertation, Yale University, 2018); Jeffrey Alan Erbig Jr., *Where Caciques and Mapmakers Met: Border Making in Eighteenth-Century South America* (Chapel Hill: The University of North Carolina Press, 2020).

to Indigenous notions of sovereignty and collective identity.<sup>10</sup> My intervention here is to push Mesoamerican ethnohistorical analysis beyond place-centered history to highlight the participation of Native people in flows of knowledge through imperial space. I do so by asking how and why Native residents of a remote mountain region took on the risks associated with long-distance travel, while at the same time examining Native authorities' varied motives and strategies for attempting to control a liminal transit zone through which people, ideas, and goods passed.

Law provides an important lens through which the relationship among indigenous mobility, territorial control, and imperial sovereignty can be reconstructed and told.<sup>11</sup> The geography of the Monte de Tanga and the jurisdiction of the semi-autonomous Indigenous villages that populated its flanks presented a problem for imperial sovereignty. The mountain pass connected trade and transportation routes in Oaxaca's central valleys and beyond to the mountainous Sierra Norte and points south. Yet to the consternation of colonial authorities, for much of the sixteenth and seventeenth centuries, Sierra communities operated both within and beyond the norms of *policía* ("civilized" customs) and imperial law. A corpus of sixteen criminal records from the judicial archive of Villa Alta and the municipal archive of Oaxaca show how Native authorities of the Cajonos Zapotec (*bene xhon*) villages that flanked the mountain pass used the jurisdiction afforded to them by the laws of the Indies—and often exceeded their jurisdiction—to arrest, jail, and punish highway bandits.<sup>12</sup> They also used their authority to arrest, jail, punish, and even assassinate travelers to Antequera and Mexico City who were pursuing legal business on behalf of rival authorities or towns. In many instances, Native authorities failed to inform colonial officials of their capture of alleged bandits or to remand them to the Spanish magistrate as mandated by law. Criminal records also reveal how competition between Native officials and Spanish magistrates over the mountain pass was compounded by ongoing efforts by colonial authorities to stamp out Native ritual practice for which the Cajonos pueblos were well known. The stakes of these legal and extra-legal struggles over travel through the Sierra were high: Native access to courts in Oaxaca City and Mexico City was central to the material welfare of Sierra communities and political legitimacy of Native authorities.

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10 For an overview of the literature, see Matthew Restall and Rebekah Martin, "The New Conquest History and the New Philology in Colonial Mesoamerica," *Oxford Bibliographies, Latin American Studies* (accessed 28 May 2013). <http://www.oxfordbibliographies.com/view/document/obo-9780199766581/obo-9780199766581-0113.xml?rskey=XoL6yT&result=77>

11 Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2009).

12 AHJO VA, Criminal, Leg. 5, Exp. 0015, 1697; AHJO VA, Criminal, Leg. 6, Exp. 0003, 1698; Archivo del Poder Judicial de Oaxaca (APJO), Archivo del Juzgado de Villa Alta (AJVA) (Oaxaca, Mexico), Criminal Leg. 2, Exp. 107A, 1701; AHJO VA, Criminal, Leg. 7, Exp. 0001, 1701; AHJO VA, Civil, Leg. 7, Exp. 0009, 1707; APJO AJVA, Criminal, Leg. 3, Exp. 150, 1708; AHJO VA, Criminal, Leg. 9, Exp. 0016, 1709; APJO AJVA, Criminal, Leg. 3, Exp. 176, 1715; AHJO VA, Criminal, Leg. 11, Exp. 19.01, 1723; APJO AJVA, Criminal, Leg. 4, Exp. 199Bis, 1725; AHJO VA, Criminal, Leg. 12, Exp. 25, 1731; AHJO VA, Civil, Leg. 11, Exp. 8.01, 1741; "Criminal de oficio de la Real justicia contra Juan Matheo, Joseph Domingo indios, Maria La Lunareja, su sobrina, Maria Joseph Espinosa y Beatris Catharina yndia," AHMCO, Fondo: Justicia, Serie: Alcalde 1er y 2o voto, Caja 3, 1742; "Contra Fernando Antonio Garcia y Salvador Nicolas yndios de San Andres Solaga de la Villa Alta sobre robo de bestias y petates," AHMCO, Fondo: Justicia, Serie: Alcalde de 2o voto, Caja 5, 1770; AHJO VA, Criminal, Leg. 18, Exp. 17, 1787; AHJO VA, Criminal, Leg. 21, Exp. 12, 1797.

The story that follows begins by focusing on two criminal cases from the last decade of the seventeenth century and first decades of the eighteenth century that are illustrative of larger patterns of jurisdictional competition over security on the Monte de Tanga. The first completes the story of don Pedro Flores's journey, and the second dives into a struggle among Native, ecclesiastical, and Spanish civil jurisdictions over the criminalization of Native ritual and its practitioners. The narrative then turns to colony-wide legal reforms during the first quarter of the eighteenth century aimed at curbing banditry. I go on to trace how colonial officials in Villa Alta used the reforms to create Native patrols tasked with securing the passage of travelers and their loads through the Monte de Tanga. By making the Native patrols—and by extension the Native communities from which they hailed—directly accountable to the Spanish magistrate and liable for lost lives and property, colonial officials tightened their control over trade and travel, and more fully subordinated the authority of the region's Native governments to their own.

## 1. Highway Robbery or a Land Dispute?

Don Pedro Flores, the cacique and legal agent of San Francisco Cajonos who appeared briefly in the opening of this article, never made it to Mexico City. Around midnight on July 15, 1697, he and four traveling companions left the Camino Real to take shelter in a stand of pine trees on the Monte de Tanga. Wearied by the long trip, some had begun to doze. Capitalizing on the darkness and the travelers' repose, a gang of bandits descended upon the group in a frenzy of blows and violence. Flores took the brunt of it while his companions managed to escape relatively unscathed. The bandits beat him badly, sliced his ear, took a pouch filled with eight pesos that he had brought to pay for the expenses of his journey, and left him unconscious under the trees. His companions fled to the Indian town of San Francisco Cajonos to alert the Native authorities about the robbery and the need to retrieve the severely injured Flores.<sup>13</sup>

Three months after these dramatic events, Flores filed a criminal complaint against five men who he claimed perpetrated the crime, all from San Pedro Yaechi, a neighboring town.<sup>14</sup> Two of them were already in jail in Villa Alta when Flores filed the complaint, having been arrested earlier by the Native officials of San Francisco Cajonos and handed over to the Spanish magistrate. The third, Francisco de Vargas, was a Native official—the constable (*alguacil mayor*)—of San Pedro Yaechi. Shortly before Flores appeared in court, Vargas was arrested for having harbored Alonso de Bargas and Francisco Morales, two of the suspects, as fugitives from justice. Alonso de Bargas remained at large, and Francisco Morales was taken into custody and hauled off to jail along with constable Francisco de Vargas.<sup>15</sup>

The defense lawyer for the accused thieves argued that it was no coincidence that his clients were implicated in the crime. Don Pedro Flores had failed to mention in his petition that the legal business that he planned to attend to in Mexico City actually pertained to a land dispute

13 AHJO VA, Criminal, Leg. 5, Exp. 0015, 1697.

14 My spelling of Villa Alta's Native towns is based on that of John K. Chance in his foundational work on the region. John K. Chance, *Conquest of the Sierra: Spaniards and Indians in Colonial Oaxaca* (Norman and London: University of Oklahoma Press, 1989).

15 AHJO VA, Criminal, Leg. 5, Exp. 0015, 1697, Pedro Flores' petition to the *alcalde mayor* of Villa Alta, ff. 11-12v; Flores' lawyer, Lorenzo de Bargas' formal criminal complaint, ff. 13-18v.

between his community of San Francisco Cajonos and the neighboring town of San Pedro Yaechi, home of the accused bandits. The dispute had entered its ninth year. Furthermore, according to witnesses, Francisco Morales could not have participated in the robbery because he was busy at his house until almost midnight preparing his mules for his own short-term migration to Mexico City. It turned out that his travel itinerary was meant to put him on the same route as Flores, but about half a day behind. As Flores did for his community, Morales served as San Pedro Yaechi's legal agent and representative in the ongoing land dispute. The defense lawyer claimed that the enmity between the Natives of San Francisco Cajonos and San Pedro Yaechi served as the motive for the attack against Flores, making it a crime of passion rather than a malicious premeditated robbery.<sup>16</sup>

For their part, the Native officials of San Francisco Cajonos engaged in their own forms of extrajudicial violence, including unwarranted arrests, imprisonment, and excessive summary punishment. According to testimony and the defense attorney's writ, two of the suspected bandits, Gerónimo Bautista and Sebastián Morales, had under duress wrongfully implicated Francisco de Bargas and Francisco Morales, the constable and legal agent of San Pedro Yaechi, in the robbery of Flores. While Bautista and Sebastián Morales were imprisoned in San Francisco Cajonos awaiting transfer to the jail in Villa Alta, the Native officials had whipped them at the pillory mercilessly three times, doling out close to one hundred lashes on each occasion, a punitive measure that far outnumbered the six to twelve lashes that Indian authorities could apply according to the colonial laws that defined their limited judicial authority.<sup>17</sup> To make matters worse, the officials of San Francisco handed the men over to the officials of the neighboring town of Yate, home to Flores' traveling companions, for more whipping. After this ordeal, the Native officials of San Francisco took their statements.<sup>18</sup> According to the law, this too was a miscarriage of justice; statements had to be taken at the initiation of criminal proceedings, and a sentence, which required a criminal trial and a ruling, had to be carried out at the very end.<sup>19</sup> Out of fear of further lashings and under pressure from their jailers, the lawyer argued, the two men ratted out Francisco Morales, who the officials of San Francisco sought to punish for his role as legal agent in the land dispute.<sup>20</sup>

Despite these mitigating circumstances, in his statement to the court, Flores cast the assault as highway robbery, pure and simple. He demanded that the men from Yaechi be punished rigorously as laid out in the Laws of the Santa Hermandad, a legal body of medieval Spanish origin, invested with the authority to police rural roads and judge severe crimes such as highway robbery, theft,

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16 AHJO VA, Criminal, Leg. 5, Exp. 0015, 1697, Manuel Calero, the defense lawyer's writ, ff. 19-20v.

17 *Recopilación de leyes de los reynos de las Indias* (Madrid: Por Julián de Paredes, 1681. Facsimile of the first edition. Madrid: Ediciones de Cultura Hispánica, 1973), Tomo II, Libro VI, Título III, "De las Reducciones, y Pueblos de Indios," Ley xvj, "Que los Alcaldes de las Reducciones tengan la jurisdicción, que se declara." On Indian criminal jurisdiction more broadly, see Bianca Premo and Yanna Yannakakis, "A Court of Sticks and Branches: Indian Jurisdiction in Colonial Mexico and Beyond," *The American Historical Review* 124, n.º 1 (2019): 28-55, doi: <https://doi.org/10.1093/ahr/rhy574>

18 AHJO VA, Criminal, Leg. 5, Exp. 0015, 1697, the defense lawyer's writ, ff. 19-20v.

19 Gabriel de Monterroso y Alvarado, *Pratica civil y criminal e instruction de scriuanos, diuidido en nueue tratados* (Valladolid: Francisco Fernández de Córdova Impresor de la SRM, 1563), Tratado IV. De las causas criminales en la vía ordinaria, 34v-57v.

20 AHJO VA, Criminal, Leg. 5, Exp. 0015, 1697, the defense lawyer's writ, ff. 19-20v.

and rape.<sup>21</sup> In Spanish America, the implantation of the Santa Hermandad proceeded haltingly, but by 1631, King Felipe IV had instituted the salaried office of the Provincial de la Hermandad, which carried authority equal to that of the office of the *alcalde mayor*. In the absence of a Provincial or *alcalde de la Hermandad* in understaffed and remote localities like Villa Alta, the *alcalde mayor* stood in as surrogate authority.<sup>22</sup> Highway assault and robbery fell within the Hermandad's jurisdiction, but according to the Laws of the Indies, Indians did not, unless they had stolen livestock.<sup>23</sup>

Since the Laws of the Hermandad did not apply to Flores' case—there was no mention of mule or livestock theft—, the purpose of invoking them may have been more rhetorical than legal. Hermandad cases carried severe sanctions: capital punishment or, if the accused were lucky, two hundred lashes and branding, and sale of their persons to an *obraje* (workhouse). Once convicted of banditry and branded for it, in the eyes of Spanish justice, one was a bandit for life. Flores' court-appointed lawyer doubled down on the accusation of banditry, alleging that the accused had committed many other highway robberies and assaults, and called again for harsh punishment in keeping with the laws of the Santa Hermandad.<sup>24</sup>

The assault against Flores, then, was no run-of-the-mill case of highway robbery, but rather an episode in a broader struggle among the Native communities of the region over land, criminal jurisdiction, and the flow of people and paper to Mexico City. As bearers of valuable legal documents and “voices of their communities,” Flores and Morales became the avatars of an inter-community land dispute. A combination of legal and extra-legal strategies provided the means with which to intervene in this long-running conflict.

## 2. Jurisdictional Competition and the War on Idolatry

Efforts to control the movement of people and paper through the Monte de Tanga extended to matters concerning the ecclesiastical jurisdiction, especially the so-called war on idolatry. Despite creative attempts by Dominican friars and parish priests to deliver the Christian message in a locally meaningful framework and convert their Indigenous parishioners to the faith, Native communities in the Villa Alta district continued to perform rituals and revere their ancestors in ways that were antithetical to Christian doctrine. During the late seventeenth and early eighteenth centuries, Dominican friars, ecclesiastical officials, and Spanish magistrates waged a spiritual and administrative war against idolatry in Villa Alta. They had engaged in extirpative efforts before, but this cycle of persecution was particularly intense and it inflamed deep tensions in Native

21 AHJO VA, Criminal, Leg. 5, Exp. 0015, 1697, Pedro Flores' petition to the *alcalde mayor* of Villa Alta, f. 12. Enrique Martínez Ruiz y Miguel Fernando Gómez Vozmediano, “La jurisdicción de la Hermandad,” in *Instituciones de la España Moderna. Las jurisdicciones*, coordinated by Enrique Martínez Ruiz and Magdalena de Pazzis Pi Corrales (Madrid: Editorial Actas, 1996), 229-262; *Cuaderno de las leyes nuevas de la Hermandad, hechas en la Junta General de Torrelaguna y dadas por los reyes Fernando V e Isabel I de Castilla. Córdoba, 7 julio 1486* (Sevilla: Meinardo Ungut y Estanislao Polono, ca. 1491).

22 *Recopilación de las leyes de los Reynos de las Indias*, Libro v, Título III, Ley XVIII: Que los *alcaldes ordinarios* conozcan de casos de Hermandad, en defecto de *alcaldes* de ella; Libro v, Título IV: De los Provinciales, y *alcaldes* de Hermandad.

23 *Recopilación de las leyes de los Reynos de las Indias*, Libro v, Título IV, Ley IV: Que los Ministros de la Hermandad procedan con los indios, conforme a esta ley.

24 AHJO VA, Criminal, Leg. 5, Exp. 0015, 1697, f. 12.

communities, which pitted rival Native clans against one another in shifting alliances with priests and Spanish officials.<sup>25</sup>

Criminal justice played an especially important role in the bitter conflicts of the period. After 1571, when the Crown exempted Native people from the Inquisition in reaction to the inquisitors' overzealous persecution of Native leaders, idolatry was categorized as a crime, under both civil and ecclesiastical jurisdictions.<sup>26</sup> In the centuries that followed, criminal complaints and denunciations served as tools for the enforcement of Christian order in Native communities and, at the same time, as vehicles for the expression of Native political conflicts.<sup>27</sup>

The Bishops of Oaxaca developed measures to punish the crime of idolatry that sometimes complemented and at other times competed with the civil jurisdiction of the *alcaldes mayores*. In 1688, Bishop Isidro Sariñana y Medina Cuenca established a special prison in Antequera for Native ritual specialists and teachers, known as the Perpetua Prison. The logic behind the institution was to isolate Native ritual leaders from their communities by enclosing them behind prison walls where they would labor and learn the mysteries of the faith in perpetuity. Zealous parish priests and ecclesiastical officials forcibly removed dozens of Native men from the Sierra Norte to the dreaded Perpetua, far from their communities of origin and networks of kin and support.<sup>28</sup> Often the forced migration of prisoners followed the Camino Real through the Monte de Tanga.

During the first decades of the eighteenth century, Bishop Ángel de Maldonado continued to remand Native men to the Perpetua. His efforts to do so were bolstered by the rebellion in 1700 of the Cajonos pueblos of the Sierra Norte in response to a violent disruption of a communal ritual by Spanish officials and Native priest's assistants. In the two decades that followed the rebellion, the Bishop implemented punitive policies aimed at asserting control over the Native communities of the Villa Alta district, and especially those of the Cajonos region, which even in the decades prior to the rebellion had developed a reputation for an intractable attachment to the "old laws of the ancestors."<sup>29</sup> The Cajonos pueblos, which dotted the Monte de Tanga, were also the most proximate to the pass on the Camino Real that linked the Sierra to Antequera. The Native men destined for the Perpetua had to pass under their watchful eyes as they were spirited away by colonial authorities.

The Cajonos pueblos were ideally situated to participate in or disrupt communication and cooperation between civil and ecclesiastical authorities, and the transport of prisoners and information between Villa Alta and Antequera. The 1709 murder of Joseph Arellano, the mestizo

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25 José Alcina Franch, *Calendario y religión entre los zapotecos* (Mexico: UNAM, 1993); David Tavárez, *The Invisible War: Indigenous Devotions, Discipline, and Dissent in Colonial Mexico* (Stanford: Stanford University Press, 2011); Nancy Farriss, *Tongues of Fire: Language and Evangelization in Colonial Mexico* (New York: Oxford University Press, 2018).

26 Richard E. Greenleaf, *Zumárraga and the Mexican Inquisition, 1536-1543* (Washington: Academy of American Franciscan History, 1961).

27 Yanna Yannakakis, *The Art of Being In-Between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham/London: Duke University Press, 2008); Thomas Calvo, *Vencer la derrota. Vivir en la sierra zapoteca de México (1674-1707)* (Mexico: El Colegio de Michoacán/CIESAS, 2010); Rosalba Piazza, *La conciencia oscura de los naturales. Procesos de idolatría en la diócesis de Oaxaca (Nueva España), siglos XVI-XVIII* (Mexico: UNAM, 2013).

28 Tavárez, *The Invisible War*, 183-189

29 Yanna Yannakakis and Martina Schrader-Kniffki, "Between the 'Old Law' and the New: Christian Translation, Indian Jurisdiction, and Criminal Justice in Colonial Oaxaca," *Hispanic American Historical Review* 96, n.º 3 (2016): 517-548, doi: <https://doi.org/10.1215/00182168-3601670>

servant of a parish priest, provides an example of a repertoire of disruptive tactics developed to challenge ecclesiastical and civil repression of Native ritual leaders. According to case testimony, on December 4<sup>th</sup>, Joseph Arellano spent the night in a simple shelter for travelers constructed along the Camino Real on the Monte de Tanga. He was on his way to Antequera with a train of three mules. He departed early the next morning in the company of six Indigenous traveling companions from the nearby Cajonos pueblos, who had also slept in the shelter. He carried with him a *petate* (reed mat) in which he had folded important legal papers produced by the parish priest, addressed to the ecclesiastical court in Antequera. The papers pertained to a case of idolatry against a group of Natives from Yahuio, the same town from which four of his traveling companions hailed. As it happened, at the time, a cacique from Yahuio named don Juan de Vargas was jailed in the Perpetua Prison in Oaxaca City. It also happened that two of the men from Yahuio who accompanied Arellano were Joseph and Felipe de Vargas, sons of the jailed cacique.<sup>30</sup>

Don Juan de Vargas was one of many Native leaders and ritual specialists caught in a dragnet coordinated by ecclesiastical and civil officials aimed at rooting out Native ritual specialists in the district of Villa Alta following the Cajonos rebellion nine years earlier. Rumor had it that in an act of popular justice, Native leaders from San Francisco had taken the Native priest's assistants deep into the wilds of the Monte de Tanga where they killed them, though their bodies were never found.<sup>31</sup>

Arellano and his traveling companions were ambushed by a gang of about fifteen armed bandits who mortally wounded him, while the other men scampered to safety in the surrounding hills.<sup>32</sup> The Spanish magistrate heard nothing about the incident until eleven days later when Ambrosio de los Reyes, a Native of the town of Santa María Suchitepec and one of Arellano's traveling companions, sent him an urgent petition from the jail of the town of Yatzachi, another pueblo of the Cajonos region. Reyes complained that after helping to carry Arellano on a makeshift stretcher to the community of Santiago Laxopa, he had been wrongly imprisoned by Yatzachi's authorities for mule theft. He claimed that the Native judges had committed an injustice by punishing him for the crime without allowing him to make a statement in a Spanish court.<sup>33</sup>

Ambrosio de los Reyes' complaint, combined with the long eleven days between the crime and notification of the Spanish judge, demonstrates that the Native officials of Yatzachi, Laxopa, and Yahuio, who had knowledge of Arellano's murder and Reyes' imprisonment, exercised their legal authority more broadly than they should have, usurping the authority of the Spanish judge. They had taken matters into their own hands and were proceeding with the criminal case on their own, ignoring the law's mandate to bring serious crimes to the immediate attention of the Spanish magistrate and turn over suspected criminals for prosecution by the Spanish court.

Reyes' petition alerted the Spanish magistrate to the fact that the Cajonos pueblos had subverted his authority. He demanded that the officials of Yatzachi transfer Reyes to the jail in Villa Alta and that the Native officials of Laxopa and Yahuio appear before him to provide

30 "Contra Don José Pacheco y consortes del pueblo de Yahuio por la muerte de Don José Arellano hecha en el monte de Tanga," AHJO VA, Criminal, Leg. 9, Exp. 0016, 1709.

31 "Contra los naturales de San Francisco Cajonos por sedición, sublevación e idolatría," AHJO VA, Criminal, Leg. 6, Exp. 0018, 1701; Eulogio Gregorio Gillow, *Apuntes históricos. Sobre la idolatría y la introducción del cristianismo en la diócesis de Oaxaca* (Mexico: Impr. del Sagrado Corazón de Jesús, 1889).

32 AHJO VA, Criminal, Leg. 9, Exp. 0016, 1709, testimony on ff. 2-16v.

33 AHJO VA, Criminal, Leg. 9, Exp. 0016, 1709, petition of Ambrosio de los Reyes, f. 1.

testimony in the matter of Arellano's death. Among the witnesses, the testimonies of Joseph Pacheco and don Nicolás Martín, alcalde and governor of Yahuio, framed events most clearly. Pacheco pleaded ignorance about Arellano's murder, and claimed that since the day that he, as alcalde of Yahuio, had received the order from the ecclesiastical judge to arrest don Juan de Vargas and hand him over to be put away for life in the Perpetua Prison, the leaders of his community, including the *principales* (town notables), governor, and current and former authorities, wanted nothing to do with him. He claimed that they excluded him from the meetings that they held regularly in the house of governor don Nicolás Martín, which were dedicated to plotting the escape of don Juan de Vargas.<sup>34</sup> The purportedly tense relationship between Pacheco, on one hand, and Martín and other village notables, on the other, was emblematic of the internal factionalism of the Sierra's communities.<sup>35</sup>

For his part, Martín conceded that he knew that on the day Arellano was murdered he was carrying sensitive legal papers, yet he insisted that he did not know or had not heard who committed the crime.<sup>36</sup> Once the testimony was complete, the Spanish magistrate ordered the imprisonment of Joseph Pacheco, don Nicolás Martín, and don Juan de Vargas' sons on suspicion of robbery and murder. One day later, the alcalde mayor reported that Martín and Vargas's sons had died in the Villa Alta jail, though he did not specify under what circumstances.<sup>37</sup> Their mysterious deaths raise questions: were they tortured to death or extrajudicially murdered? Had they been gravely ill? The documentation is silent on the matter.

After the deaths of three of the primary suspects in Arellano's murder, the prosecuting attorney focused his energies on the surviving suspects who continued to languish in jail. He argued that Arellano's murder was a targeted assassination plotted out in secret meetings in the home of don Nicolás Martín, aimed at disrupting the ecclesiastical court's case against don Juan de Vargas and other Natives from Yahuio. He argued further that all of the men who accompanied Arellano were implicated in the conspiracy, because "the entire Cajonos nation is of one kind in all of their actions, as seen in other similar transgressions."<sup>38</sup> The framing served to link the history of the storied vigilante murder of the priests' assistants during the 1700 Cajonos rebellion with the alleged murder of Arellano, also a priest's assistant, who like his Native predecessors sacrificed his life for the cause of Spanish ecclesiastical and civil justice. It also served to express Spanish fears of the Cajonos pueblos as a united entity. Five long years after the case began, an auxiliary judge found Pacheco and the three other original suspects, including Ambrosio de los Reyes, innocent, and they were released on February 9, 1715, leaving the men who were rounded up by the posse as the primary suspects in the crime.<sup>39</sup>

As was true for the 1697 case concerning the violent robbery of Pedro Flores, the case of Arellano's murder reveals the stakes of controlling the movement of people and paper on the

34 "Declaración de Joseph de Pacheco," AHJO VA, Criminal, Leg. 9, Exp. 0016, 1709, ff. 14v.-15v.

35 Chance, *Conquest of the Sierra*; Yannakakis, *The Art of Being Inbetween*; Calvo, *Vencer la derrota*; Piazza, *La conciencia oscura*.

36 "Auto de prisión, Certificación de los que han fallecido," AHJO VA, Criminal, Leg. 9, Exp. 0016, 1709, f. 22v.

37 AHJO VA, Criminal, Leg. 9, Exp. 0016, 1709, f. 22v.

38 AHJO VA, Criminal, Leg. 9, Exp. 0016, 1709, f. 47.

39 "Contra José Pacheco y Juan Francisco de Yaguio por homicidio de José Arellano," AHJO VA, Criminal, Leg. 10, Exp. 22, 1715.

paths and roads that cut through the rugged landscape of the Monte de Tanga. Ongoing persecution of idolatry by civil and ecclesiastical officials gave voice to divisions within communities and intensified tensions and factionalism between Native leaders like Joseph Pacheco and don Nicolás Martín. Whether or not Arellano's murder was a plot hatched by the Natives of Yahuio, as the case unfolded it became clear that Spanish authorities viewed Martín and his faction as threatening to local order. Threatening in a different way was the overreach of Native jurisdiction by the authorities of Yatzachi when they arrested and punished Ambrosio de los Reyes for mule theft and failed to inform the Spanish magistrate of Arellano's death. The murder case reveals how the flow of people and paper through the Monte de Tanga pass could prove a matter of life and death on the mountain itself and in the context of criminal justice.

### 3. Criminal Justice Reform and the Formation of Native Highway Patrols

Over the course of the eighteenth century, colony-wide reform of criminal justice recast competition to control the stretch of the Camino Real that ran through the Monte de Tanga. During the final decade of the seventeenth century and first decades of the eighteenth, official concerns about banditry, vagabonds, and generalized criminality in New Spain's vast rural regions and on its network of highways rose to a fevered pitch.<sup>40</sup> In response, the Crown expanded the jurisdiction of the Santa Hermandad such that its judges (alcaldes) would now also serve as judges of the Real Tribunal de la Acordada, a special body dedicated to criminal justice more broadly. From 1719 forward, the power of the united Santa Hermandad and Real Acordada extended not only to rural regions, but also to population centers.<sup>41</sup> In 1722, the Crown approved the founding of the Guarda Mayor de Caminos, which created patrols of local residents to police the highways of the viceroyalty. This new centralized body replaced the jurisdiction of earlier highway patrols, which were notorious for abuses of authority.<sup>42</sup> The jurisdiction of this body was also folded into that of the Santa Hermandad, Real Acordada, and the Juzgado de Bebidas Prohibidas (tribunal of forbidden beverages), such that the same person served as judge for all of them, exercising broad power in wide swaths of territory.<sup>43</sup> Additionally, the Viceroy commissioned local authorities to organize as needed armed highway patrols in especially dangerous regions.<sup>44</sup>

By the 1730's, a highway patrol, staffed and run by Native authorities of Indian towns in Villa Alta, was operating in the Monte de Tanga. Its functions strengthened the hand of the Spanish magistrate and curbed the independence of Native authorities in the administration of criminal

40 Norman F. Martin, "Pobres, mendigos y vagabundos en la Nueva España, 1702-1766: antecedentes y soluciones presentadas," *Estudios de Historia Novohispana* 8, n.º 008 (1985): 99-126.

41 Alicia Bazán Alarcón, "El Real Tribunal de la Acordada y la delincuencia en la Nueva España," *Historia Mexicana* XII, n.º 3 (1964): 317-345.

42 El rey a Valero sobre la Guarda Mayor de Caminos, 2 de mayo contenido en la del 23 de noviembre de 1721, cited in Martin, "Pobres, mendigos y vagabundos," 120.

43 Colin M. MacLachlan, *Criminal Justice in Eighteenth-Century Mexico: A Study of the Tribunal of the Acordada* (Berkeley and Los Angeles: University of California Press, 1974), 69.

44 "Valero a Herrera," 9 de diciembre de 1716, Archivo General de la Nación (AGN) (Mexico City, Mexico), General de Parte, t. 224, ff. 95v-96, en Martin, "Pobres, mendigos y vagabundos," 120. For an overview of rural policing for most of the colonial period, see Patricio Hidalgo Nuchera, *Antes de la Acordada. La represión de la criminalidad rural en el México colonial (1550-1750)* (Sevilla: Universidad de Sevilla, 2013).

justice. For example, in April of 1731, don Antonio Blanco de Sandoval, alcalde mayor of Villa Alta sent an order to don Francisco de los Ángeles, cacique of the Native town of San Francisco Cajonos and captain of the Monte de Tanga patrol. Sandoval had received a criminal complaint from some officials and residents of the barrio of Santa Cruz in the town of San Bartolomé Zoogocho against officials and residents of the barrio of San Juan from the same town. According to the complaint, a group of the latter had, under cover of night, taken two men from the barrio of Santa Cruz—one, dragged from his home, and the other, from the village jail—bound and hitched them to the rigging on a pair of mules, and marched them to the dreaded Perpetua Prison. One of the unlucky men was alleged to be a leader of the barrio of Santa Cruz, someone who held moral authority, commanded a following, and had a reputation for “disrupting” the peace in the community by inciting social disturbances and protests against the community’s current authorities. The other was being held in the village jail for unspecified reasons related to a land dispute. The officials claimed that they had spirited the men away on the orders of the Bishop of Oaxaca, to be processed for unspecified crimes against the ecclesiastical jurisdiction.<sup>45</sup>

Alcalde mayor Sandoval was outraged by how the officials of the barrio of San Juan had made an end run around his jurisdiction by taking matters of justice into their own hands. In his eyes, they were hiding behind the ecclesiastical jurisdiction in order to act upon longstanding disputes between groups rooted in the two barrios. He wanted don Francisco de los Ángeles, in his capacity as captain of the Monte de Tanga guard, to intercept the men on their return trip from Antequera and bring them to Villa Alta to answer for their actions. Ángeles complied and brought the men to face the Spanish magistrate’s justice.<sup>46</sup>

Native judicial authorities exploited the strategic position they occupied in the competition between the Spanish magistrates of Villa Alta and ecclesiastical officials to influence criminal justice in the district. That position was defined in terms of alliances with one or the other, and in the case of the Cajonos pueblos who served as gatekeepers of the mountain pass between the district and ecclesiastical courts, in terms of geography. During the first half of the eighteenth century, when ecclesiastical reforms spearheaded by the Bishops of Oaxaca were at their zenith, the Spanish magistrates found themselves increasingly frustrated by some Native authorities who undermined civil jurisdiction by cooperating with church officials. In September of 1743, don Francisco de la Puerta, alcalde mayor of Villa Alta, brought a criminal case against a Native alcalde of the barrio of Analco who without his permission transferred an Indian prisoner from the district jail of Villa Alta to the custody of the ecclesiastical Provincial. In the opening brief against the Native alcalde, Puerta lamented what he saw as a disturbing trend of Native authorities privileging the ecclesiastical jurisdiction over the civil.<sup>47</sup>

The Native highway patrol had a role to play in this jurisdictional competition. Some patrol members and captains, like don Francisco de los Ángeles, fulfilled their intended function to act as eyes, ears, and extension of Spanish justice, and answer directly to Spanish authorities. But there were others who exercised their own judicial authority, against the laws of the realm, threatening

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45 “Contra el alcalde de San Juan, barrio de San Bartolomé de Zoogocho por abuso de autoridad,” AHJO VA, Criminal, Leg. 12, Exp. 25, 1731.

46 AHJO VA, Criminal, Leg. 12, Exp. 25, 1731.

47 “Contra Juan Antonio Cano alcalde del barrio de Analco por haber entregado a un reo al gobierno eclesiástico,” APJO AJVA, Criminal, Leg. 4, Exp. 234, 1743, f. 1.

the Spanish magistrate's jurisdiction. In August of 1741, *alcalde mayor* don Juan Francisco de la Puerta brought a criminal case against Juan Pablo, a Native of San Miguel Cajonos and captain of the Monte de Tanga patrol. Juan Pablo had arrested and confiscated the goods in possession of Manuel Salvador, a Native man from San Pablo Cajonos. Suspecting that the mule and goods might have been stolen, Juan Pablo dragged Manuel Salvador to the village jail and brought the goods to his own house for safe keeping.<sup>48</sup>

The Spanish magistrate learned of the case and brought a criminal investigation against Juan Pablo for failing to report the robbery. Rather than calling the village notary and authorities in order to execute the confiscation of goods and take Salvador's statement as he should have according to legal protocol, Juan Pablo and one of the guards under his command jailed Salvador in San Mateo Cajonos, and threatened that they would whip and punish him severely the following day. The Spanish magistrate admonished Juan Pablo for failing to follow proper procedure in the arrest of Salvador and the confiscation of the goods.<sup>49</sup>

As Juan Pablo's case makes clear, serving as captain of the Monte de Tanga patrol entailed broad authority over the movement of goods and people on the Camino Real. At the same time, one was held responsible for any irregularity in judicial procedure, especially if it resulted in missing goods or persons. Perhaps in response to the stubborn insistence of Juan Pablo and other Native officials and leaders of the Cajonos pueblos regarding their role in maintaining security on the Monte de Tanga pass, don Joseph de Azevedo, *alcalde mayor* of Villa Alta, developed a new strategy to assert civil authority over the strategic zone. He conscripted Native authorities from a different district to patrol the region. In June of 1744, through a genre of contract known as a *carta de convenio*, Azevedo shifted official responsibility for highway security on the Monte de Tanga from the Cajonos pueblos to the pueblos of Santa Catalina Lachatao and San Miguel Amatlán in the neighboring district of Itepeji, who he likely hoped would be more cooperative with Spanish authorities.<sup>50</sup>

The terms of the contract were stringent, and clearly pointed at challenging the Cajonos pueblos' influence on movement through the mountain pass. The contract stated that the two communities were obliged to guard and patrol the mountain and the section of the Camino Real that extended along it, and search all possible points of ambush. They had to build sturdy, well-roofed shelters that could house both the guards on duty and travelers passing through, and clear and repair the road. The guards were responsible for accompanying people passing from the Sierra to Antequera for the huge Friday market (*tianguis*), and upon their return to the Sierra on Mondays. Although they could make use of the temporary shelters on lands that abutted the highway, they had to take special care not to take the wood or livestock of the Natives of San Francisco Cajonos, to whom the lands belonged, and who used to patrol the highway. Nor should they disturb them in any way. They should not charge travelers any fee for their protective services, whose costs were covered by Royal Tribute, but they should charge one *real* per mount with or without a rider, half a *real* for a beast of burden, and half a *real* for each human porter. This money would serve as their stipend.<sup>51</sup>

48 "Denuncia de Manuel Salvador sobre que el cabo de los guarda Monte de Tanga le embargó varias prendas," AHJO VA, Civil, Leg. 11, Exp. 08.01, 1741.

49 AHJO VA, Civil, Leg. 11, Exp. 08.01, 1741, ff. 7-8.

50 "Carta de Convenio," AHJO VA, Civil, Leg. 11, Exp. 26.03, 1744.

51 AHJO VA, Civil, Leg. 11, Exp. 26.03, 1744.

The last clauses of the contract drove directly toward the question of the relationship between Native and Spanish authority over highway crime. The guards were obliged to inform the Spanish magistrate of anything irregular that happened on the mountain or highway. If they were to capture highway robbers, they should bring them immediately to the district seat, with all of the goods and weapons that they carried, without fail. If they took criminal matters that pertained to the *alcalde mayor's* jurisdiction to another Spanish authority, they would be punished and banned from entering the mountain. They were responsible for repaying the value of any robbery that occurred on their watch. Finally and crucially, the Native officials bound their persons and property, and those of the people of their communities to the terms of the contract, renounced their own jurisdiction and any protections they enjoyed as Indians and minors, and submitted themselves to the jurisdiction of the Spanish magistrate of Villa Alta.<sup>52</sup>

This contractual agreement ushered in a new regime of justice and relations between the Native communities of the Monte de Tanga and the Spanish magistrate of Villa Alta. By appropriating the labor of the Natives of Amatlán and Lachatao, the Spanish magistrate challenged the influence of the Cajonos pueblos over traffic through the Monte de Tanga. Furthermore, the contract imposed a regime of security based on the logic of debt, in which the bodies and property of the guards guaranteed the extension of royal justice into the mountain.

A 1762 case involving the highway patrol makes clear the seriousness of abrogating the contract. In late September, seven men from San Miguel Amatlán—including the governor, an *alcalde*, *regidor*, and constable—wrote a petition to the lieutenant of the Spanish magistrate of Villa Alta, pleading for their liberty. The Spanish magistrate of Villa Alta had arrested and jailed them for their alleged responsibility for a series of highway robberies.<sup>53</sup> In the eyes of royal justice, the question of whether they had actually committed the crimes or failed to stop them was beside the point. As the authorities of communities contracted to serve as highway patrol, they were responsible via their persons and possessions for the value of any robberies committed under their watch.

For their part, the Native prisoners of Amatlán argued that the fault resided with the community of Lachatao, the other signatory to the contract. They hoped that if they could prove this, they might be released, and the question of who would have to compensate for the robberies might be settled separately. In their petition, they lamented that since they were jailed in a town far from their own pueblos, in a foreign district, they had no one to care for them while in jail, nor consult with or advocate for them regarding the progress of their case. They proposed that four of them should go free to attend to the legal business at hand. The lieutenant magistrate of Villa Alta agreed to let the four men go, but the other three prisoners would remain behind, as a kind of human surety bond.<sup>54</sup>

Upon their release, the Native officials of Amatlán appear to have pleaded their case to don Joseph Loaeza, the Spanish judge of Ixtepeji, their home district, igniting a conflict with the Spanish authorities of Villa Alta. Loaeza argued that the imprisonment of the Natives of Amatlán was scandalous due to their innocence and the suffering that it caused them. In the meantime, the authorities of Amatlán submitted a petition to Buenaventura arguing that the Natives of Lachatao had been on guard duty during the time of the robbery, and that they could permit robberies to

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52 AHJO VA, Civil, Leg. 11, Exp. 26.03, 1744.

53 “Sobre formación de guardias y petición de libertad,” AHJO VA, Criminal, Leg. 15, Exp. 10, 1762.

54 AHJO VA, Criminal, Leg. 15, Exp. 10, 1762, ff. 1-2v.

occur because they had either been bribed or were beneficiaries of the robberies.<sup>55</sup> None of this mattered to Buenaventura, though. He responded that the written agreement stipulated that the Natives of Amatlán and Lachatao were responsible for any robberies and had to repay the value of the stolen goods. He refused to release the men until they paid their half.<sup>56</sup>

The practice of contracting Native guards for security purposes extended to other regions of the Sierra. In October of 1766, the Native authorities of the Mixe towns of Tonagua and Tepitongo, which sat at the southeastern entrance to the Sierra signed a contract in which they agreed to provide guards for the mountain pass that cut along their towns. The terms of the contract were similar to those of the contract signed by the communities of Lachatao and Amatlán in connection with the guardianship of the Monte de Tanga. With their signatures, the Mixe authorities bound themselves and their property to the authority of the Spanish magistrate.<sup>57</sup>

#### 4. Travel and Security at End of the Eighteenth Century

The harnessing of Native patrols to the security apparatus of the Spanish Crown during the mid-eighteenth century constrained the ability of Native communities around the Monte de Tanga and other strategic transit zones in the Sierra to intervene in the flow of people, paper, and goods along the royal highway and to the major cities of the colony. These constraints were part of a larger process of royal encroachment on the semi-autonomy of the region's Native communities. In response to the Cajonos Rebellion, from 1705-1707 Bishop of Oaxaca Angel Maldonado replaced the regions' six Dominican doctrinas with eighteen secular parishes, amounting to a second conquest of the Sierra. By mid-century, there were twenty secular parishes.<sup>58</sup> Bourbon policies directed at managing Native corporate holdings (*cajas de comunidad*), controlling the political and economic administration of Indian regions through a new system of Intendancies, and the placement of Spanish schoolmasters in Native towns in order to facilitate cultural assimilation also undercut Native authority.<sup>59</sup> Abolition of the *repartimiento de cochinilla* and expansion of the market in textiles transformed the regional economy and intensified production and trade linkages between lowland and highland regions.<sup>60</sup> At the same time, the parcelization of cultivable communal lands in Villa Alta diminished the capacity of Indigenous families to produce for subsistence and generate communal wealth.<sup>61</sup>

55 AHJO VA, Criminal, Leg. 15, Exp. 10, 1762, ff. 3-4v.

56 AHJO VA, Criminal, Leg. 15, Exp. 10, 1762, ff. 5-10.

57 "Carta de Convenio," AHJO VA, Civil, Leg. 19, Exp. 13.01, 1766.

58 Chance, *Conquest of the Sierra*, 156

59 Dorothy Tanck de Estrada, *Pueblos de indios y educación en el México colonial: 1750-1821* (Mexico: El Colegio de México, 1999); Margarita Menegus Bornemann, "Mercados y tierras: el impacto de las reformas borbónicas en las comunidades indígenas," en *Mercados indígenas en México, Chile y Argentina, Siglos XVIII-XIX*, coordinated by Jorge Silva-Riquer and Antonio Escobar-Ohmstede (Mexico: Instituto de Investigaciones Dr. José María Luis Mora, 2000), 17-50.

60 Brian R. Hamnett, *Politics and Trade in Southern Mexico, 1750-1821* (Cambridge: Cambridge University Press, 1971); Carlos Sánchez Silva, *Indios, comerciantes y burocracia en la Oaxaca poscolonial, 1786-1860* (Oaxaca: IOC-UABJO, 1998).

61 Luis Alberto Arrijoa Díaz Viruell, *Pueblos de indios y tierras comunales. Villa Alta, Oaxaca: 1742-1856* (Zamora: El Colegio de Michoacán, 2011).

This multipronged assault on Native political authority, land, and household economies resulted in an explosion of litigation designed to defend communal resources and semi-autonomy. From 1742-1800, Villa Alta's Native town councils increasingly granted power of attorney to Native legal agents to represent them in courts in Oaxaca City and Mexico City. Travel to and from the Sierra in order to pursue lawsuits occurred with greater frequency and increasing urgency, as did travel for purposes of labor and trade.<sup>62</sup> This made highway security ever more pressing as the eighteenth century drew to a close.

But the geography of the Sierra and the persistent if reduced semi-autonomy of the region's communities made fulsome colonial control over travel through the region an ongoing challenge. This stubborn fact was brought into relief by a major health crisis at the end of the eighteenth century. In 1796, an outbreak of smallpox that had originated in Peru migrated north to the Pacific coast of Guatemala, and then overland through Chiapas, and the Isthmus of Tehuantepec. In September, it arrived in the Zapotec town of Teotitlán in the Valley of Oaxaca. The epidemic followed on the heels of another one earlier in the decade that had ravaged Veracruz and central Mexico. The Crown and Church implemented preventative measures, including sanitation, quarantines, the establishment of special hospitals—and the closing of roads—to slow the spread of the disease. Such measures had never before been taken in New Spain.<sup>63</sup>

The epidemic continued to spread to Oaxaca City and beyond, prompting the Viceroy to shut down the roads and authorize local authorities to establish special units of highway guards under their jurisdiction to halt the movement of people and the virus.<sup>64</sup> In Villa Alta, the Subdelegate Bernardo Ruiz de Conejares closed down three strategic points that connected Antequera and the central valleys to the Sierra Norte: the Albarradas (the gateway to and from Teotitlán), Ixtlán, and the Monte de Tanga.<sup>65</sup>

Despite the efforts to halt movement in and out of the Sierra, officials complained of leaks in highway security, and identified as causes the region's geography and the imperatives for travel faced by Native residents. According to Paul Ramírez' study of the Bourbon state's response to the epidemic, Subdelegate Conejares "recognized that people moved with greater ease than the guards appointed to patrol the roads."<sup>66</sup> The subdelegate also acknowledged the problems the terrain posed for visibility, and noted that Native residents moved through and beyond the Sierra on footpaths, which they used to circumvent patrolled areas. For the most part, he lamented, the Native patrols were primarily in the business of stopping "Spaniards and mule trains."<sup>67</sup> At the same time, Conejares and other authorities acknowledged the impracticalities and undue burden that quarantine placed upon Indigenous people who relied on mobility to distant fields, far-flung

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62 The data culled from the full corpus of letters of attorney in the Villa Alta judicial archive reveal eight powers of attorney granted to Indigenous legal agents from 1700 to 1740; 44 from 1740 to 1780; and 15 from 1780 to 1800. Yannakakis, "Maps and Visualizations," in "Power of Attorney," <https://www.powerofattorneynative.com/maps-and-visualizations/>. See also Yannakakis, "Digital Resources: Power of Attorney."

63 Paul Ramírez, *Enlightened Immunity: Mexico's Experiments with Disease Prevention in the Age of Reason* (Stanford: Stanford University Press, 2018).

64 Ramírez, *Enlightened Immunity*, 102-105.

65 "Sobre viruelas y el modo de evitar su propagación," AHJO VA, Civil, Leg. 32, Exp. 04, 1797.

66 Ramírez, *Enlightened Immunity*, 107.

67 Ramírez, *Enlightened Immunity*, 107.

markets, and administrative centers for their survival.<sup>68</sup> In the Sierra Norte, mobility insured the economic solvency of families and communities, the viability of individual and communal legal claims, and the strength of alliances with church and civil authorities. If some routes were closed off to them, the Native travelers' intimate knowledge of the geography of the region provided other throughways.

## Conclusion

Long-distance travel—a central feature of pre-Hispanic Mesoamerican economy, warfare, and diplomacy—represents an aspect of Indigenous life in colonial Mexico that has been underappreciated by historians. Colonial policies of *reducción* (population nucleation and settlement), the formation of Spanish-style towns and municipal councils, and the provision and titling of the community land base have yielded a documentary record that has trained historians' eyes on the territorially rooted Indigenous town and its local concerns. Criminal records clustered around geographically liminal, yet strategic transit zones provide a different perspective on Indigenous history, revealing rich detail about the motives, experiences, and risks of long-distance travel during the colonial period. For the case of the Sierra Norte of Oaxaca, these records make clear that short-term migration to colonial urban centers was vital to the material and political concerns of the region's Indigenous individuals, clans, and communities.

Rugged highland geography conditioned the relationship between community and empire by affording Native authorities distance and cover from the watchful eyes of colonial officials, and allowing them to exercise legal and extralegal forms of authority. These included the Native cabildo's limited jurisdiction in criminal affairs, the occasional usurpation of the criminal jurisdiction of the Spanish magistrate, extrajudicial violence toward Native rivals, and the practice of Native ritual life. At the same time, a network of footpaths and colonial roads allowed Native travelers to bridge the distance with Spanish officials, institutions, and markets. Short-term migration to distant courts to claim land or petition for the release of imprisoned community members strengthened territorial bases and social bonds, while facilitating long-distance trade. Movement through and control of strategic spaces like the Monte de Tanga pass were therefore central concerns for Native authorities and colonial officials alike. The district of Villa Alta was certainly not unique in this regard. Short and long-term migrations were vital to community survival and the interdependence of locality and empire in other mountainous regions of Spanish America like Huarochirí, Charcas, and Nueva Granada. The risks and opportunities presented by travel through these purportedly peripheral spaces made the question of who moved through them and who controlled them central to imperial politics. For these reasons, late colonial fixation on security and the creation of Native highway patrols dealt a blow to Indigenous semi-autonomy, bolstering imperial sovereignty at the same time that economic and legal imperatives for travel and short-term migration intensified.

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68 Ramírez, *Enlightened Immunity*, 108, 123-124.

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