

Felipa's Braid: Women, Culture, and the Law in Eighteenth-Century Oaxaca

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Abstract. This article reassesses the notions of culture that are tied up with our understandings of gender and ethnicity in colonial Oaxaca. It examines the law-suits indigenous women leveled against husbands and lovers in the eighteenth century to revisit some canonical scholarly claims about gender culture among the region's inhabitants. Traditional scholarship has approached such cases as evidence of women's assertion of agency in their relationships with husbands and lovers or as the ethnic defense of community against the Spanish colonial state. Such approaches sidestep the law itself as a subject of analysis. When compared to the legal activities of inhabitants elsewhere in the empire, we find women's engagement with Spanish justice in Oaxaca was reluctant at best and, at times, at odds with judges' notion of the law as beyond the control of the participants. But women's instrumental engagement with law was not wholly unique to the region. It followed patterns observable in other communities, including Spain. Thus, rather than look at these documents through an ethnic or gendered lens alone, one can also read them as evidence of Oaxacan women's dynamic participation in the creation of a broader imperial legal culture that pitted local peace against legal process.

The ribbons were proof that Juana Sánchez's husband was having an affair. In 1793, Juana took the *tlacollales*, brightly colored fabric ornaments that Mixtec women typically twist into their hair, from a local widow named Felipa Hernández when she caught the lovers together.¹ Yet even though Juana had saved her rival's ribbons as evidence—perhaps a local practice of collecting clothing artifacts from amorous adversaries—she did nothing with them for a long time.² Finally, leaving her Oaxacan pueblo of Justlahuaca to complain to the district judge in a Spanish court, she explicitly testified that she knew all along that she had the ability to seek legal retribution

against her husband. "I, who have desired peace, quiet and calm," her statement reads, "... could have criminally complained for his punishment." Yet until that point, she had "only availed myself on various occasions of parish priests and their vicars specifically so that they would remind him of his obligations . . . and I have done the same in this court."³

There are several analytical lessons tied up in Felipa's braids, and this article aims to let them loose. Like much scholarship on gender in Oaxaca during the Spanish colonial period, it examines eighteenth-century domestic disputes contained in the court records of the majority-Indian districts of Villa Alta and Teposcolula in an effort to better understand culture, specifically gendered culture. But its goal is to pull our notion of culture apart, to separate Oaxacan women's concepts of the law from our own assumptions about ethnicity and colonialism.

Our historiographical habit has been to read suits like the one Juana Sánchez eventually leveled against her husband in 1793 as proof of the ongoing confrontation between indigenous communities and a colonial regime or as evidence of the position of women within locally bound gender ideologies. Yet, when we pull dusty old lawsuits out of their boxes, we might tug at some of the assumptions about culture that lay tucked deep inside our own conceptualizations of the gendered histories of places like Oaxaca. Juana's lawsuit is more than an artifact of indigenous women's relative agency within ethnic culture. The lawsuit was itself an event that transpired between Juana and the judge, an event partially recorded (and recorded partially) in an archive.⁴ Looking at Juana's suit as a legal event provides us a different way of seeing indigenous cases of gender-based conflict: as strands within a broader imperial legal culture.

In this examination, legal culture emerges as a specific, empirically observable set of repeated actions surrounding the use, or failure to use, Spanish courts.⁵ Derived from an interpretative rather than purely inductive method, the article twists through various modes of analysis. It first surveys what we know about gender and the law in indigenous Oaxaca by reviewing its rich, even classic, ethnohistorical literature on gender, violence, and community understandings of justice. The quality of the judicial archives for the region, together with the existence of a comprehensive inventory of cases in one of its districts, make it possible to set against this formidable historiography a concrete quantitative examination of women's judicial activity in the eighteenth century. This is accomplished through an analysis of the incidence of all female-initiated lawsuits—over all types of matters but also, specifically, over gendered issues such as alimony, abandonment, adultery, and abuse—in the districts of Teposcolula and Villa Alta. The article then goes on to compare these to cases in other regions of the

Spanish empire. Finally, the analysis settles on domestic abuse cases and on the narratives they contain, searching out how women in the region used the law and conceived of justice.

The methodological movement from numbers to narratives reveals women's lawsuits to be not culture's showcase but rather one of its workshops.⁶ Instead of mechanisms of defense against men or as repositories of the struggle to protect local culture from Spanish imperial culture, indigenous women's lawsuits in eighteenth-century Teposcolula and Villa Alta emerge as the actual sites of production of a broader legal culture in the empire, a production that occurred simultaneously within local idioms as well as within a range of possibilities across the broader empire of law.⁷ To adopt Clifford Geertz's phrasing, such an analysis draws our attention away from "what happened" between Indian women and men and toward "what happened that the law sees."⁸ Indeed, Spanish district magistrates, called *alcaldes mayores*, only saw part of what happened in the regions of Teposcolula and Villa Alta, which were populated by relatively independent and diverse groups, including but not limited to Mixtecs and Zapotecs. The interaction between what these ethnically diverse women presented to judges and how judges viewed their cases comprised the core dynamics of what can be called a "gendered legal culture" in the region, a culture defined as much by the suits women filed as by the suits they abandoned, as much by what they said in court as what they remained silent about.

In fact, a key finding of this article is *how relatively few* indigenous women in eighteenth-century Oaxaca engaged secular legal authorities against the men in their lives and *how reticently* they did so. Women like Juana Sánchez, who desired "peace, quiet and calm," often used the courts not to assert rights or set the wheels of law in motion. Rather, they entered the courts instrumentally, in order to achieve domestic and community harmony. At the same time, women's practices, and the legal culture that underwrote them, were not always consonant with the notions of justice Spanish officials held. This inconsonance was not, however, strictly a feature of colonial law or the vacillations between identifiably "Spanish" and "Indian" concepts of justice; instead, it was also a common feature in other areas of the empire, including in rural Spain. Unraveling the narratives in women's abuse cases in Oaxaca alongside those of women elsewhere in the empire challenges us to rethink the categories of ethnicity, gender, and culture that we employ when writing the history of Indian women. This challenge is, in a sense, a final, plot-twisting piece of evidence tumbling out of Felipa's undone braid.

Historiography and Harmony

The Zapotec pueblo of San Juan de Talea is, for at least two reasons, a good place to begin to think about how scholars have approached culture, gender, and colonial law. The first is because of what happened there in 1707, after one of its residents, Francisco de los Reyes, stabbed his wife María Yllescas so violently that “all her guts had spilled.”⁹ María and her father, Juan, went to the court of the *alcalde mayor* in Villa Alta, the capital of the Spanish colonial district by the same name, to submit a petition related to the incident. But the petition they submitted did not seek justice in a form we might recognize. Rather than seeking retribution for Francisco’s crime, their petition came two years after the incident as a bid for peace and an effort to withdraw from the Spanish criminal justice system.

What Juan and his daughter María Yllescas wanted from the court was to drop criminal charges against María’s husband. Two years earlier, during the weekly markets (*tianguis*) held in the indigenous head town of San Juan Yae, officials of the Indian town council heard that María had barely survived Francisco’s knifing. Two community officials reported the crime, via interpreter, to the *alcalde mayor* of Villa Alta. The native officials were required by law to pass the case to Spanish authorities, since so much blood had been shed.¹⁰ While Spanish court officials collected the testimony of seventeen witnesses, María’s husband was thrown in jail. There he would rot for two years until finally, one day, Juan and María together petitioned for his release to “live quiet- and peacefully, making a married life with” his wife. The lieutenant of the *alcalde mayor* let him out of jail the following day.¹¹

Thus, San Juan de Talea in 1707 is in the first place a good place to think about scholarship on gender, culture, and the courts in Oaxaca as much because of what did happen there as what initially did not: a suit brought by his stabbed wife. The official nature of the charges against Francisco, the father’s tutelage of his daughter in the legal process, the bid for peace and harmony, and the reticence to use Spanish justice—all of these features of the case echo in other lawsuits against abusive men in indigenous Oaxaca.

The discursive emphasis on community peace amid gendered violence is, in fact, the second reason that San Juan de Talea is a good place to think about scholarship on gender, culture, and the law. We know a lot about the legal attitudes of twentieth-century Talean Zapotecs, the descendants of people like Francisco and María. Their engagement with justice and the law inspired anthropologist Laura Nader to formulate her highly influential concept of “harmony ideology.”¹² Communities in which such a legal culture prevails tend to value conciliation, and they view conflict and con-

trovsky within the local community, particularly of the kind that would invite state intervention, as dysfunctional.¹³ Yet Talean Zapotecs' penchant for compromise does not deter them from marching to the judge's bench. In fact, Nader says, today they envision themselves as legal subjects endowed with rights—especially women who, she tells us, sue in numbers equal to or greater than men.¹⁴

Nader traces harmony ideology back to two discrete origins. She has ascribed social values favoring compromise to Spanish Christian mores imparted during the colonial period by missionizing priests; but she also has attributed them to long-standing Zapotec ideologies of *erj goonz*, or making balance.¹⁵ Though she has consistently pointed out that many different types of societies around the world hold such balance ideologies, in Oaxaca it is, she ventured, a particularly postcolonial phenomenon.¹⁶

The origin of harmony ideology has attracted the attention of other scholars. For example, pondering when and where harmony ideology was generated, anthropologist Peter Just directs us to history as a domain of “empirical information” rather than to anthropology, a domain of “theory.” Or, perhaps, the origin of harmony ideology is best located where history and anthropology cross. Indeed, it is easy to imagine that ethnohistory—an approach that from its inception promised to merge the study of the historical (textual) record with ethnologists' fascination with local traditions, particularly in colonial and postcolonial cultures—would provide a clear path back to the roots of harmony ideology.¹⁷ Yet despite the crossing of disciplinary boundaries in the last three decades, ethnohistorical work tends toward theoretical positions that can strain in opposite directions. Variants of social historical approaches, such as women's history, privilege the individual as the motor of historical change and highlight “agency,” whereas works implicitly influenced by the Geertzian tradition make culture rather than the individual the object of study.¹⁸

Historical analyses of gender in colonial Oaxaca manifest the opposing pull of these two theoretical approaches. The region boasts a number of important works on gender, violence, and Spanish colonial law, particularly for the eighteenth century, when the documentary record thickens and the administration of justice throughout the empire underwent procedural and philosophical changes.¹⁹ One current of the uniquely rich historical literature highlights female activity in the Spanish court system, viewing it as an extension of the culture of indigenous gender complementarity, or the “evenly matched cultural terrain” of men and women in the region.²⁰ Thus harmony—and its gendered corollary, complementarity—was conducive to women's realization of individual and collective agency. Another current of historiography emphasizes the closed nature of Oaxaca's communities

within the wider imperial system. It suggests that women in the region suffered violence more but resorted to Spanish justice less than their counterparts elsewhere in Mexico and portrays women as sacrificial lambs offered up for community peace.²¹ In this view, then, harmony was an obstruction to women's agency.

It also must be pointed out that two works falling on either side of this culture/agency divide—the now-classic studies of violence and gender in colonial Oaxaca by William B. Taylor and Steve J. Stern, respectively—both utilized social historical methods based on regional comparison in order to reach their conclusions. The design of their works explicitly sets up Oaxaca as a site of ethnic difference, as the “Indian” Mexico to be contrasted with the more “mestizo” central Mexico or “Hispanic” capital city, Mexico City. Their focus, then, was not the judicial acts of the women involved in the disputes but rather the variable ethnic cultures of violence against women in Mexico.²²

More recent investigations based on native-language legal documents from colonial Oaxaca have begun to combine attention to local culture *modo grosso* with more specific attention to concepts of law itself. Following in a tradition of scholarship pioneered by Susan Kellogg's 1995 work on women and law among the colonial Mexica, these studies have begun to probe how indigenous concepts of disorder, passion, and amorous jealousy contained in legal testimony clashed or fused with Spanish concepts of crime and sin as well as hierarchies of rule.²³ Such local knowledge, produced by what have been dubbed the “new philologists,” can only be enhanced when the documents that reveal it are situated within a comparative history of legal culture.²⁴

But it is not only historiographical timeliness that makes locating women's lawsuits in Oaxaca in the wider imperial universe of legal culture worthwhile; theoretical imperatives too require us to revisit accepted paradigms of culture. The very exercise of untangling the concept by utilizing both quantitative and qualitative methods tells us that what the archive best preserves is, above all, legal culture. Such an observation helps dissolve many of the conceptual binaries that ultimately limit our inquiries into native women in the past: the separation of anthropological “theory” or historical “empiricism”; gendered agency or domination; the “indigenous” or the “Western.” This article can only begin to gesture toward the theoretical possibilities that this kind of methodological combination can produce, but before putting the strands back together, they must first be undone.

Numbers

Indigenous women in eighteenth-century Oaxaca were relatively light litigators and reluctant initiators of formal legal disputes in legal actions of all types. Women in the predominantly Mixtec region of Teposcolula, particularly widows and single women, do appear to have been more active in property disputes heard in Spanish courts than were women in Villa Alta, despite the fact that both regions were predominantly indigenous. While this alerts us to the fact that the propensity to sue could differ slightly among women in indigenous cultures within Oaxaca, even women in Teposcolula comprised only a small proportion of the litigants and defendants who stood before that district's *alcalde mayor* in the eighteenth century.²⁵

To call indigenous women in Oaxaca reluctant litigants is, to be sure, a bold assertion. But it is an assertion that accords with my review of hundreds of cases in the archives on two scales. Surveying the first scale—the variance in regional patterns of women's lawsuits in the indigenous communities of Oaxaca—involves digging down into all civil cases on file in the civil archive of district judges in Villa Alta and Teposcolula with an eye for the archive and its numbers.²⁶ The second scalar level is broadly imperial and involves lateral moves across the globe, assessing women's appearance in the courts as civil litigators and victims of crimes in multiple regions under Spanish dominion.

Compiling statistics from documents produced before meticulous recordkeeping became a state fetish might seem to be a dubious endeavor. Yet an inventory undertaken in 1793 of all civil and criminal disputes in the district of Teposcolula during the period 1725–93 can help alleviate some of our skepticism. It lists more than six hundred cases that had been filed in a span of time capturing most of the eighteenth century.²⁷ This inventory permits us to assess how much of the legal activity in the Spanish courts in the region is actually captured in the district's contemporary archives. It reveals that the archive, at least in Teposcolula, is reasonably reliable.²⁸

Comparing information contained within the inventory first to population numbers and then to similar information from throughout the empire, we can see just how much more frequently inhabitants of other regions appeared before Spanish magistrates than did the rural indigenous people of Oaxaca. While it might seem intuitive that city dwellers sued more than rural folk, in fact historians find that a number of factors aside from sheer population density affect litigation rates and that rural people can sometimes be more litigious than urban inhabitants.²⁹ Thus it is worth noting that, in 1790, the viceregal capital city of Lima, Peru, had roughly the same population as did Teposcolula in 1742 (about fifty thousand), but Lima's

inhabitants put lawsuits on the bench of their city's first-instance court five times more often (fifty per year versus ten per year).³⁰

If the use of the Spanish courts by all of Teposcolula's residents can be described, comparatively speaking, as judicious, women's legal engagement in the region was even more cautious. From 1725 to 1793, women were litigants and defendants in only 13 and 14 percent, respectively, of all civil cases aired before the *alcalde mayor* of Teposcolula.³¹ Of the small group who did engage in civil litigation, women who bore the honorific "doña" made up a sizeable proportion of those who sued (44 percent) and were sued (29 percent). Unfortunately, the 1793 inventory does not permit us to know if these women were widowed or single, but the fact that so many were doñas in this poor, indigenous region underscores how self-selecting the process of entering Spanish courts could be.³²

If the inhabitants of Teposcolula were far less litigious than were their counterparts in the bustling capital of Lima, they were even less litigious than the residents more like them from other rural regions. Take, for example, the civil courts of Trujillo in coastal Peru, a district with haciendas and rural pueblos flanking a large provincial city. Before the first-instance court (*justicia ordinaria*) in the city of Trujillo, female litigants comprised almost a third of all civil plaintiffs (140 of 448) from 1700 to 1799.³³ In the *corregimiento* of Trujillo—a heavily Indian district that comprised an expansive area of surrounding coastal countryside and the foothills of the Andes—the percentage of female litigants was even higher, at 41 percent.³⁴

Native Oaxacan women thus were generally less active as litigators in royal courts than were women in capital cities, provincial cities, and rural districts in Peru. They infrequently appeared over the general kinds of civil cases that cluttered magistrates' desks such as inheritance, property, and land disputes. And, critically, their appearance in the civil courts specifically against husbands and lovers was downright spectral. My review of the titles of more than one thousand civil cases in the districts of Villa Alta and Teposcolula turned up only a couple of instances of women who initiated a written civil suit in matters we might consider gender-based, such as divorce, adultery, alimony, court costs, or female "deposit." Here again, the cases that do survive tend to involve elite women. Of the two civil cases against husbands identified in the records from Teposcolula, one was filed by a woman named doña Gertrudis de Herrera of Tlaxiaco who was suing her husband from her second marriage. Doña Gertrudis was an *española*—this in a district where the Spanish population never topped 5 percent.³⁵

All of this raises the question of whether there are cultural explanations for the comparative absence of Oaxaca's indigenous women from the Spanish civil courts, not only over all types of civil disputes but over gender-

based civil conflict in particular. Was it the ethnicity—or, put differently, the indigeneity—of the women in Oaxaca that kept them from appealing to Spanish officials? In order to assess this question, it is worth considering what ethnicity would look like if it were a causal factor keeping women from Spanish courts.

The existence a parallel system of Indian justice in the pueblos might obviate the need to take a case to a Spanish official in the provincial head town of the *alcaldía mayor*, or, especially, to take it to an official like the intendant, who, after 1784, presided over a large administrative district including both Teposcolula and Villa Alta from the capital city of Antequera, almost a hundred rough miles away.³⁶ And indeed, there are some earlier seventeenth-century cases in which native officials heard a case and imposed punishment on individuals without the intervention of a Spanish court. In fact, the greater legal autonomy elected native authorities in Mexico exercised compared to Peru correlates to the patterns in litigation. Peru's native inhabitants were technically required to use Spanish courts and assigned representatives for their cases, whereas, in Mexico, native authorities held jurisdiction over land disputes and minor crimes.³⁷ In addition, the distances between pueblos in places like Oaxaca's Sierra Zapoteca made it difficult for Spanish officials, even if commissioned with jurisdiction, to actually administer justice.³⁸ Finally, indigenous mono-lingualism surely operated together with local jurisdiction to dissuade Oaxacan women from filing claims in Spanish courts, where their words would be interpreted and the rulings rendered in a language they did not understand.³⁹ Both Teposcolula and Villa Alta had lively native writing cultures, and community records included legal reports written in Mixtec and Zapotec languages.⁴⁰

But the formal jurisdictional differences between native communities in Peru and Mexico should not be overdrawn. Native officials in Peru, too, handled local legal matters, particularly over domestic disputes, with a certain frequency and with the tacit approval of Spanish officials.⁴¹ Indeed, Indian women in Peru sometimes complained of native officials' lock on local justice and tried to circumvent their authority by appealing to Spanish magistrates in cases against their husbands.⁴²

What is more, it is often difficult to draw a stark line between strictly "Indian" and "Spanish" modes of law based on language alone. Legal writing in indigenous languages did not always refer to native justice: a piece of writing in Zapotec could be produced in a more "Spanish" context, such as inquests into crimes, while documents recorded in Spanish could refer to practices steeped in local tradition, such as elections. The same can be said for justice that took place verbally as well as in writing. And it is important to note that native language documents were never numerous in the

eighteenth-century legal archive that I have identified. The relatively small number of criminal cases captured in languages like Zapotec and Mixtec trickle away at the beginning of the eighteenth century, leaving mostly stray wills or other contractual matters used in the courts as evidence.

Furthermore, comparative analysis of nearby communities tells us that, however vibrant local justice and language was within Oaxaca's indigenous communities, the shadowy presence of the women from Teposcolula and Villa Alta in the Spanish court system cannot be attributed only to the existence of native legal institutions and language barriers. The *Alcaldía Mayor de Oaxaca*, a provincial district surrounding the colonial capital city of Antequera, where about 90 percent of the inhabitants were Indian, had the same Indian-Spanish jurisdictional structure but possessed significantly higher litigation rates than Teposcolula and Villa Alta. In the 1760s, rates of litigation there were at least twice as high as in the more rural district of Teposcolula.⁴³ Thus it was not necessarily the existence of native jurisdiction that absorbed most conflict in the pueblos, keeping it away from Spanish justice. Instead, it seems likely that what encouraged litigation was geographic proximity to the Spanish tribunals in a large colonial city, not ethnic "Indianness" as either an abstract attribute or an institutional form of justice.

Geographic isolation from Spanish courts should not be presumed to be the same as isolation from Spanish or colonial legal culture. Leaving Spanish America altogether and viewing civil litigation rates from the vantage point of the larger empire tells us that women's tentative engagement in formal legal processes were patterned by far more than just ethnicity.

Like women in Villa Alta and Teposcolula, women in the rugged, isolated region of the Montes de Toledo, located in the heart of Castile-La Mancha, only infrequently filed civil cases in formal courts. It was especially rare for a married woman of the Montes to initiate a civil case without her husband listed as primary litigant.⁴⁴ Such gendered judicial inconspicuousness was not confined to married women in rural Spain. I reviewed more than two hundred formal civil cases (*pleitos* and *causas civiles*) and legal injunctions (*ejecutorías*) handed down by a regional magistrate known as the Fiel del Juzgado, who held court in the city of Toledo about twenty miles away from the region's mountainous pueblos. I found fewer than a dozen instances in which women of any status were registered as the sole plaintiffs in the Montes de Toledo. Those women who did sue or were sued alone overwhelmingly were widows, and they generally sought to settle inheritance matters.⁴⁵ What is more, like the women of Oaxaca, it was nearly unheard-of for a married woman in the Montes to sue her husband in civil court. I found only one case in which a woman in the Montes de Toledo

brought her husband before the civil court of the Fiel del Juzgado. Significantly, she was among the small elite of her community (a *vecina*) and, like the unusual española doña Gertrudis de Herrera of Tlaxiaco in Teposcolula, she was suing a husband from a second marriage.⁴⁶

Figures on female civil litigants are based, of course, on their being *registered* as plaintiffs; by no means do the figures prove that indigenous women in Oaxaca were absent from the Spanish imperial judicial system. In fact, in contrast to women's relatively light presence in civil cases against husbands and lovers, women in rural Oaxaca turn up frequently in another kind of lawsuit: criminal proceedings. And within criminal suits, they appear mostly as victims. Tellingly, the majority of the women captured in the 1793 inventory of cases from Teposcolula were victims of violent crime committed by husbands.⁴⁷

Still, statistical generalizations on the issue of crime prove somewhat tricky to make, since the cases themselves are often misleadingly titled or classified. As we will see in a moment, historians must approach criminal cases attentive to juridical subjectivity, sensitive to the precise role women assumed, on one hand, in the incidences of violence and, on the other, in the filing of a case before a Spanish judge. Sometimes official Spanish registries cast women in the role of accusers when they were, in fact, victims who had no interest in pressing charges; the narrative structure of the law also occasionally elided the role of women who acted as instigators of conflicts even though they were not, technically, accusers.

Despite the methodological difficulties of classifying plaintiffs and victims from criminal case registries alone, a comparative analysis of women and crime in various regions of the Spanish empire yields clues that lead us even further away from easy ethnic explanations about what the law reveals about gendered culture. The presence of women in criminal cases in indigenous Oaxaca runs parallel, again, to patterns in the Spanish Montes de Toledo. In both regions, women appeared as victims in perhaps up to one-quarter or one-third of all cases of violent crime in the seventeenth century. As in civil cases, these patterns suggest that there was something about being rural and somewhat distant from legal authority figures who were socially exogenous to the community—such as the *alcalde mayor* in a Oaxacan district capital like Teposcolula or the Spanish Fiel del Juzgado in Toledo—that made women less likely to go to court and/or more likely to suffer violence.⁴⁸ But since only the most serious and violent cases would be brought to outside officials' attention, we should presume that the documentary base in rural regions highlights violence.⁴⁹

Indeed, in this respect, the judicial archive of Oaxaca and the Montes de Toledo both encapsulate the tense interaction between village and

expanding state typical of the early modern “Western” world. Studies of early modern community justice in Europe have described interactions between local and state legal systems as ones of cautious interpenetration. Rural people in eighteenth-century Cantabria, for example, only hesitantly invited the legal intervention of officials from beyond the community into local, often domestic, disputes, preferring instead to resolve issues by relying on social codes of public esteem and relatively rigid gendered normative prescriptions.⁵⁰ The phenomenon stretches wide, from Paris to Neapolitan villages. What scholar Tommaso Astarita said of Italian villagers in the eighteenth century—that they “avoided bringing external forces to bear on their fellow villagers’ actions unless unforeseen events threatened the well-being and stability of their community”—is equally true of the residents of the Montes pueblo of Navalpino or the pueblo of Yanhuitlan in Teposcolula.⁵¹

Within these local legal cultures, discursive emphasis was placed on community peace, even when inhabitants’ tendency to use state courts varied in practice.⁵² This indicates that “harmony ideology” might be preserved as a useful concept if we think of it less as a cultural discourse exclusive to colonial or indigenous settings and more as a practice in which people—including inhabitants in the *alcaldías mayores* of Teposcolula and Villa Alta in Oaxaca, as well as in the district of the Montes de Toledo in Spain—located legitimate adjudication of conflict in the community rather than (only or principally) in the court.

This applied particularly to legal practices related to domestic disputes. In rural Spain and Oaxaca, women were unlikely to bring their husbands and lovers to civil court or to go to criminal court to accuse them of nonviolent gender-based conflict such as adultery or scandal. Instead, for the most part, these women wound up in the formal court system as victims when their husbands or lovers were violent toward them, likely because an impulse to settle matters locally made an appeal to state magistrates necessary in only the most extreme cases. Thus, our use of lawsuits must take into account the manner in which their very production had regional contours, shaped not so much by the ethnicity of the population per se but rather by factors that affected its legal culture, including geographic (and perhaps jurisdictional) proximity to formal institutions and cities.

Despite their scant numbers, the stories and actions of those indigenous women from Oaxaca who literally defied the odds by entering the Spanish courts of the empire, traveling over long distances to larger villages to appear before a magistrate or bending his ear when he made rounds through their smaller pueblos, are, of course, significant in their own right. We only need to recall the story of Juana Sánchez and her rival’s *tlacollales* to be reminded that stories in the cases—their narratives and their narrative

silences—are as meaningful as their numbers for understanding legal culture in Oaxaca. It is in the narratives of abuse suits that we learn that even those women who leveled charges against their husbands and lovers used Spanish courts strategically, enacting a vision of justice that could diverge from the expectations of procedure and law held by the judges before whom they stood.

Narratives

When women in Oaxaca took the initiative to formally submit petitions to Spanish justices in cases involving domestic violence, it was often only one act in a long series of attempts to restore domestic peace and community harmony. Their opening petitions frequently trace a long and indirect path to the Spanish official's bench. Here I focus on the twenty-seven cases I identified in eighteenth-century Teposcolula and Villa Alta in which the principal charge was domestic abuse (*malos tratos*) against women. Many look a lot like the cases of Juana and her rival's ribbons and Juana and her spilling guts in that they are discursively marked by an overriding concern with keeping the peace despite the fact that their cases were founded on violence.⁵³

In the cases of Juana and María, both women presented themselves as reluctant formal legal subjects at best, more concerned with “peace and quiet” than truth or righteousness. And although Juana eventually appeared as the sole accuser in court, her case displayed the involvement of several men in the community prior to the moment that she filed a criminal petition before Spanish criminal authorities. In an even more literal sense, the healed María Yllescas did not appear in court alone. She was accompanied by her father.⁵⁴ Her juridical subjectivity in the case against her husband was mediated by several layers of men: the native officials in the head town of San Juan de Talea; the interpreter; the petition writer; the *alcalde* himself. Although women were the primary aggrieved parties in *malos tratos* cases involving husbands and lovers, they were often merely one legal player among many active in the criminal complaint.

Unlike a civil suit, which always involved a plaintiff, there were several ways a criminal suit could be filed. A third party might denounce someone in court (*denuncia*), or individuals or groups might bring a case (*demanda de persona*). Finally, representatives of the royal state could file criminal cases labeled as *de oficio*, or brought by authorities.⁵⁵ It turns out that these distinctions could be misleading in the case of women's suits. A woman might be registered as a litigant without actually litigating. Even when Oaxaca's native women were listed as accusers, members of a larger community, concerned with repairing fractious conjugal relationships, frequently had

para que se sirva mandar que se nos deje quieto
libremente las milpas y recoja sus frutos y que
se nos venda la casa, pues estoy pronto a pagar
dentro del año que falta de la espesa lo que a el Sr.
calde Mayor se le derriete.
A. S. N. suplico asi lo provea y mande Juno en
forma y lo necesario S. B. a

Gabriel San Pablo padre de la viuda
Viuda a su nombre

Julio 3 E

Figure 1. “Gabriel San Pablo, padre de la biuda, a su nombre” (Gabriel San Pablo, father of the widow, in her name). An indigenous father from the Teposcolula district “signs” a petition written in the first person for his adult daughter, a widow, in a civil dispute over a debt brought before the intendand of Oaxaca. It is unclear if he actually signed or if the petition writer penned his name for him. *Instancia de Clara Maria, natural de San Pedro Mártir, en el partido de Teposcolula, para que el alcalde mayor no la moleste por el dinero de repartimiento que tomó su difunto marido, Intendencia, Teposcolula, caja 1, doc. 3, 1787, f. 1v.*

intervened earlier and had a direct hand in initiating the criminal suit.⁵⁶ As such, women’s criminal suits against abusive partners defied a strict separation between individual juridical subjectivity, collective suits for justice, and cases brought de oficio.

When women do appear as the sole legal agents in cases that are captured in writing, they often were not initiating but rather dropping cases. This is not to say that these very women failed to consult with Spanish judicial authorities about wayward or abusive husbands. Recall Juana Sánchez, whose story began this article, and her claim that, although she had kept the tlacollales of her romantic rival, she had refrained from going to court “even though I could have criminally complained for his punishment.” Juana immediately followed this with the statement that she “only had availed myself on various occasions of parish priests and their vicars,” and, she elliptically continued, “I have done the same in this court.” She meant that she had approached the alcalde mayor’s court earlier, verbally seeking

redress in a realm of law that contemporaries called “*lo extrajudicial*” without opening a formal case. In fact, prior to filing written complaints, many women who were victims of violence verbally enlisted the help of several “legal” authority figures, including even the judge before whom they would eventually stand as accusers.

Reading these less formal, verbal attempts to achieve peace and harmony, it is clear that women did not envision the *alcalde mayor* to be the representative of an abstract kind of justice or see the secular state to be a special purveyor of law. Rather, the judge was an authority figure not unlike a father, a native community leader or priest—an important public figure before whom words mattered rather than an agent of order who would be bound to ensure that justice be administered in a procedural sense. Indeed, in other rural areas of Mexico, women appealed to their local ecclesiastical judges in much the same manner.

We can only use secular cases to guess at how women in Teposcolula and Villa Alta used church courts, since the ecclesiastical archive of the diocese is (curiously) completely bereft of marital disputes. Still, evidence in the secular archive corroborates what historian Jessica Delgado found as a key difference between Toluca and Mexico City in women’s use of church courts. She notes that, compared to the capital, where women initiated protracted, formal divorce cases, Toluca’s “women more often sought intimate and immediate mediation from local judges.”⁵⁷ Elsewhere, I similarly argue that, in the eighteenth-century Spanish empire, urban women were more likely to demand that their cases against men follow the formal procedures of law and follow through to sentence.⁵⁸ On the other hand, in both Oaxaca and the Montes de Toledo, women often informally turned first to a parish priest who, in the words of Perig Pitrou, “functioned at two levels, the temporal and the spiritual.”⁵⁹

Indeed, it is notable in Oaxaca how often native women’s opening petitions before secular authorities simply narrated the troubles they had experienced with their husbands but did not specifically request any particular legal course of action from the judge. For example, Josefa Dolores of Chilapa recounted in a petition in 1797 that her husband had taken her before indigenous community authorities to have her whipped with twelve lashes for insubordination, causing her to miscarry. She closed her petition, which she did not sign, by simply asking that the judge “carry out what you find fitting” (*execute lo que hallara conveniente*). The judge, in this case the subdelegate of the district, decided that the case merited the initiation of formal charges. But he first ordered the court notary to certify that the petition was hers. She responded that it was, but hastened to clarify that “her intention” in filing the case “was to ensure that her husband did not return

to offend her with his adultery or mistreat her, and giving guarantees, asks that he [be permitted to] leave prison.”⁶⁰

María Olaya Pérez, from Yanhuitlan in Teposcolula, also pursued a case for reasons that can only be described as extralegal if not extrajudicial. By this I mean that she invoked a concept of justice, but she did not necessarily envision Spanish law as formal process. María had sent a petition to the subdelegate to complain of the mistreatment her husband gave her whenever he got drunk (which was, by all accounts, frequently). As a result of her petition, the husband was imprisoned. But soon thereafter, she issued another petition dropping the case. In it, she indicated that she had originally complained only to teach her husband a lesson (*escarmiento*). Indeed, her initial petition did not emphasize a desire for punishment as much as request that her husband appear before the judge to state for the record that she was a good wife.⁶¹ The case continued anyway.

That María’s case was not immediately dropped is significant. It reveals a gap between her own understanding of justice and that held by Spanish officials. Mónica Pérez from the Zapotec village of San Cristóbal Lachirioag in Villa Alta also faced a judge who held a concept of the law that was different from hers.⁶² It seems that she too had appeared before Spanish authorities with a verbal complaint instead of a formal suit when her husband injured her hand during an argument. She had formal charges drawn up only after her husband, fearful of arrest and punishment, fled his community. When Mónica decided that his three-month absence had become too materially onerous, she formally “appeared” before the *alcalde*—in writing this time—asking him to officially drop charges.

Mónica’s case exemplifies how indigenous women in Oaxaca could formally enter the halls of Spanish justice only, in effect, in an attempt to exit them. Yet what is important here is that this was not the only notion of law that presided in colonial Oaxaca. Their instrumental understanding of justice as contingent moral intervention could dissolve into judges’ more abstract sense of law as a fixed process. When Mónica attempted to drop charges against her hiding husband, she reported in the statement, which she could not read or sign, “I am missing my husband, [and] so that he maintains me and provides what is necessary, I beg Your piousness to pardon him of any punishment . . . he has already seen me and asked [my] pardon, promising that on subsequent [occasions] he will not mistreat [me] again.”⁶³

But her request came too late. Strictly speaking, this had ceased to be her own case against her husband. As with María Olaya’s attempt to get her husband to proclaim her as a good wife before judicial officials, the judge did not immediately heed the woman’s request to drop charges. In Mónica’s suit, the subdelegate overseeing the case decided not to suspend

punishment but to remit it to indigenous authorities in his pueblo, who were to administer the wife-beater twenty-five lashes. The subdelegate also warned Mónica's husband that were he to appear again under the arch of his tribunal for similar offense, he would consider Mónica's petition to drop charges as the opening of a formal criminal suit (*auto de cabeza*), apparently regardless of what she herself would wish to see happen.

While the interdependency of native and Spanish justice is notable in this case, what is even more striking is that a judge would threaten to twist a woman's request to drop charges against her husband into the initiation of a criminal complaint against him. But this is not completely unique to the region. Of the 3 cases of malos tratos that I identified in a sample of 211 criminal cases in the Montes de Toledo, 1 was dropped.⁶⁴ None were filed by the victimized women: two were brought de oficio, and the third, which combined charges of spousal abuse and infidelity, was actually brought by a father against his son-in-law.⁶⁵ Critically, shortly after filing his case, the father made a pact with his son-in-law: if the son-in-law were to come back to his wife and treat her with the "love proper to a man and wife," the father and his daughter would formally drop the case with a document called an *apartamento*. His son-in-law agreed, but the Fiel del Juzgado did not. The magistrate ruled that the case should proceed anyway, and in the end upheld a sentence of a four-year banishment against the philandering, abusive man, despite his in-laws' desire to see him return to the hearth. Presumably, the man would take his wife and children with him so he could, as he promised, live "in conjugal peace and union."⁶⁶

Therefore, several patterns emerge from criminal suits against husbands and lovers in Oaxaca, guiding us to a clearer understanding of the region's gendered legal culture. Cases were frequently dropped, and women's "voices" in prosecuting men in these suits were often crowded out by the interests of various male authorities, including Spanish officials who sometimes continued to pursue cases without the women's active participation and at times perhaps even against their wishes. When we separate women's own legal moves from those of their spokesmen or from the actions of judges, we often find that their pursuit of "justice" did not necessarily involve adherence to the steps laid out in Spanish law concerning crime and punishment. Rather, women's interactions with the law operated, in a sense, internally, making magistrates' jurisdiction over a marriage or morality similar to that which any other paternal figure might administer. Finally, although women in Oaxaca displayed distinctive practices and attitudes toward justice—notably visions of peace that were at times at odds with official understandings of the law—these were not, in the end, features of legal culture wholly unique to the Indian regions of Oaxaca.

Conclusion

Surveyed from the perspective of the empire, eighteenth-century Oaxacan women indeed appear to have entered the Spanish court system preponderantly as victims of male assault rather than as assertive legal agents hauling men into court. Whereas women elsewhere in Spanish American cities appeared with more frequency in civil suits overall, and specifically in cases against their husbands and lovers, in Oaxaca women tended to enter the formal Spanish justice system reluctantly and mostly in cases when violence had been directed at them. Despite our scholarly impulse to use legal cases as windows onto women's agency or gendered culture as it was lived beyond the courtroom, it is critical that we be aware of the comparatively reticent manner in which women in Villa Alta and Teposcolula engaged the Spanish court system against the men in their lives.

Yet this does not make these women, even those beaten by their husbands, passive victims. The comparative knowledge that native women in these regions were reticent litigators forces us to distinguish "what the law saw" from what women saw in the law. What at first appear to be women's suits against men for malos tratos were often in fact complex maneuvers in which women sought community harmony and domestic peace. While discourses of peace and harmony might have been features of the larger imperial legal system, in Oaxaca they translated into women's observable, repeated attempts to untangle themselves and their male abusers from the Spanish legal system. Thus the agency indigenous women displayed in these cases was directed as much at enacting their own vision of justice within the framework of Spanish imperial law as at claiming gendered rights within their relationships with the men in their lives.

For many women, the enlistment of judicial authorities was to be a temporary solution to enforce moral order. The space the court provided for women to assert their own moral rectitude might just as well have been provided by the church or community. For Juana Sánchez, justice was the moral authority of possessing evidence in the form of tlacollales that she could shop around as proof of her husband's indiscretion; María Pérez saw the court as a public forum in which her husband could announce her status as a good wife. In the gendered legal culture these women produced, Spanish colonial justice assumed a place on par with, and notably not necessarily above, community or religious authority. If today women in Oaxaca frequently march to the bench of the modern Mexican state in numbers equal to men in order to restore harmony in their domestic or community relationships, this was not true in the colonial period, when their engagement with state law was cautious at best.

We have also learned that native women sometimes envisioned the *alcalde mayor's* judicial intervention differently from how he saw himself. For magistrates, law could be an abstract and discrete formal process that operated beyond the control of the parties involved. We should pause, however, before reflexively attributing the disjuncture between judges' and women's concepts of justice to ethnic difference and before chalking up native women's reticence to enter Spanish courts to colonial defiance. Participants did not easily line up along the contours of the two types of justice described here, with indigenous litigants promoting peace and Spanish judges promoting formal processes. Judges could as easily support harmony as insist on formal trials. What is more, many features of gendered legal culture in Oaxaca bear a strong resemblance to women's interaction with the law in peasant communities in early modern Spain and Europe more broadly. In the end, these findings prompt reflection on how we position the region of Oaxaca—indeed, all indigenous colonial regions—within geographies of culture.

Reducing of indigenous legal practice to legacies of timeless, autochthonous local gender traditions that can be contrasted with the dynamic and universal nature of European law plays, of course, directly into a Western politics of difference.⁶⁷ Perhaps unexpectedly, it is by extending outward toward a critical, comparative examination of Spanish legal archives—rather than only pulling inward into a deeper understanding of native sources—that we gain a new perspective on the legal culture native women enacted. The comparative method, although a hallmark of prior histories of gender and violence in the region, runs the risk of framing indigenous regions as sites of “difference” by its very design.⁶⁸ But this article has attempted to show that the comparative method still has something to offer our understanding of culture in Latin America, indigenous culture included.⁶⁹ Rather than relying on national comparisons that presume ethnic difference, working across the Atlantic can prompt us to rethink our inherited impulse to invoke “ethnicity” or “colonialism” as an explanation in history. As Frederick Cooper has pointed out, the problem with “reducing non-Western history to the lack of what the West had” is that such a formulation assumes “that the West actually had itself.”⁷⁰ If we consider colonial law not as a single system imported whole cloth from Europe but rather as a cultural process of local and state interaction, Spanish imperial legal culture reveals itself as a more multidimensional process. And rather than its victims or objects, indigenous women emerge as it cocreators.

Of course, it would be unwise to overlook the mutual misunderstandings or the lack of cultural mastery that could divide Spanish colonial judges' notions of law from native women's notions of justice in Oaxaca.

The gulf between local and official concepts of justice was real, even if it did not isolate female legal subjects in Oaxaca or make their experiences with Spanish law radically different from those of their nonindigenous imperial counterparts. In the end, it might be this—the way in which judicial authorities insisted on exercising power beyond the initiative of many of the rural women whom they registered as “plaintiffs”—that made women’s interactions with the law distinctive in the Spanish empire. In other words, the unique strands in Felipa’s braid might not have been the tlacollales, after all.

Notes

The author wishes to thank the anonymous *Ethnohistory* reviewers, Silvia M. Arrom, and, especially, Yanna Yannakakis for their very helpful comments on this article.

- 1 Juana testified that she “quité” (took off) the fabric rather than finding it. Juana Sánchez, mujer legítima de Felipe Bazán [por sevicia], Archivo del Poder Judicial de Oaxaca (hereafter APJO), Teposcolula, Criminal, leg. 42, exp. 8, 1793, f. 2.
- 2 See the case of a Mixtec wife killer who stole a cape from her lover, in Kevin Terraciano, “Crime and Culture in Colonial Mexico: The Case of the Mixtec Murder Note,” *Ethnohistory* 45, no. 4 (1998): 709–45.
- 3 Juana Sánchez, mujer legítima de Felipe Bazán [por sevicia], APJO, Teposcolula, Criminal, leg. 42, exp. 8, 1793, f. 2.
- 4 On reading imperial archives themselves as texts, see Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ, 2010). On texts as events not only for historical subjects but also for historians, see J. G. A. Pocock, “Texts as Events,” in *Political Thought and History: Essays on Theory and Method* (New York, 2009), esp. 209.
- 5 This definition of legal culture owes something to Lauren Benton’s description of law as a “global institution” produced from cultural interactions, although in my definition, culture is produced by practice at the site of the institution (the law). See Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (New York, 2002), 4.
- 6 June Starr and Jane F. Collier, Introduction to *History and Power in the Study of Law*, ed. June Starr and Jane F. Collier (Ithaca, NY, 1989), 11–13; Laura Nader, Introduction to *Law in Culture and Society*, ed. Laura Nader (1969; Berkeley, CA, 1997), 8–9.
- 7 Brian Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford, CA, 2008).
- 8 Clifford Geertz, “Local Knowledge: Fact and Law in Comparative Perspective,” in *Local Knowledge: Further Essays in Interpretative Anthropology* (1983; New York, 2000), 173.
- 9 Maria de Yllescas, india, natural del pueblo de San Miguel Talea, vecina de San Juan Yae, contra Francisco de los Reyes, su marido, por haberla golpeado en la cabeza con la piedra del metate,” APJO, Villa Alta, Criminal, leg. 9, exp. 2, 1707–9, f. 1.
- 10 The Spanish court was to hear cases of “homicides, serious cases of aggravated

- assault, and seditious acts.” William B. Taylor, *Drinking, Homicide, and Rebellion in Colonial Mexican Villages* (Stanford, CA, 1979), 74. Of course, what constituted “serious” or “aggravated” assault could be left up to local authorities. See Terraciano, “Crime and Culture,” 716.
- 11 María Yllescas, india . . . , APJO, Villa Alta, Criminal, leg. 9, exp. 2, 1707–9, f. 19.
 - 12 Laura Nader, *Harmony Ideology: Justice and Control in a Zapotec Mountain Village* (Stanford, CA, 1990). See the forum honoring Nader’s work, particularly Jan Hoffman French, “Personal Encounters with the Work of Laura Nader,” *Law and Society* 39, no. 5 (2005): 957–63; and Mark Goodale, “A Life in the Law; Laura Nader and the Future of Legal Anthropology,” *Law and Society* 39, no. 5 (2005): 945–55.
 - 13 Nader, *Harmony Ideology*.
 - 14 *Ibid.*, 216, 389, 391.
 - 15 Laura Nader, “The Crown, The Colonists, and Zapotec Village Law,” in Starr and Collier, *History and Power in the Study of the Law*, 330–44; Laura Nader, “Styles of Court Procedure: To Make the Balance,” 69–91, in Nader, *Law in Culture and Society*, esp. 73. Students of her work have gone further, wondering to what extent this legal culture contains elements of an “autochthonous,” pre-Columbian culture of dispute settlement. See Peter Just, “History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law,” *Law and Society Review* 26, no. 2 (1992): 373–412, esp. 392.
 - 16 See Just’s reflections on Nader’s notion in Just, “History, Power.”
 - 17 The division between history (empirical, positivistic, historicist) and anthropology (“theoretical, generalizable, nomothetic and value-free”) has been challenged for decades. Shepard Krech III, “The State of Ethnohistory,” *Annual Review of Anthropology* 20 (1991): 350. Still, Just’s comments point to the tenacity of this view, and its trajectory can be gleaned from the state-of-the-field essays in this journal at different points in time, such as John C. Ewers, “Symposium on the Concept of Ethnohistory—Comment,” *Ethnohistory* 8, no. 3 (1961): 262–70; James Axtell, “Ethnohistory: An Historian’s Viewpoint,” *Ethnohistory* 26, no. 1 (1979): 1–13; and Bruce J. Trigger, “Ethnohistory: An Unfinished Edifice,” *Ethnohistory* 33, no. 3 (1986): 253–67. Also see Michael E. Harkin, “Ethnohistory’s Ethnohistory: Creating a Discipline from the Ground Up,” *Social Science History* 34, no. 2 (2010): 113–28.
 - 18 See Webb Kean, “Self-interpretation, Agency, and the Objects of Anthropology: Reflections on a Genealogy,” *Comparative Studies in Society and History* 45, no. 2 (2003): 222–48.
 - 19 For more on change over time, particularly the interaction of Bourbon royal legal reform and women’s lawsuits, see Bianca Premo, “Before the Law: Women’s Petitions in the Eighteenth-Century Spanish Empire,” *Comparative Studies in Society and History* 53, no. 2 (2011): 261–89.
 - 20 Lisa Mary Sousa, “Women and Crime in Colonial Oaxaca: Evidence of Complementary Gender Roles in Mixtec and Zapotec Societies,” in *Indian Women of Early Mexico*, ed. Susan Schroeder, Stephanie Wood, and Robert Haskett (Norman, OK, 1997), 199–221. Sousa notes that “many” Zapotec and Mixtec women from Oaxaca “frequently” used the courts as plaintiffs, witnesses, and defendants (200). Terraciano notes overall interactions with the courts as “staggering” and “heavy” (Terraciano, “Crime and Culture,” 717). On “institutional”

- support for the assertion of mutually “contingent” gender rights and responsibilities in the region, see Steve J. Stern, *The Secret History of Gender: Women, Men, and Power in Colonial Mexico* (Chapel Hill, NC, 1995), 231–32.
- 21 William B. Taylor, *Drinking, Homicide, and Rebellion in Colonial Mexican Villages* (Stanford, CA, 1979), 153. Also note Taylor’s comparative arguments about litigiousness among peasants closer to Mexico City (74). Peter Guardino agrees, but without the emphasis on the closed nature of Indian communities. Peter Guardino, *The Time of Liberty: Popular Political Culture in Oaxaca, 1750–1850* (Durham, NC, 2005), 63.
 - 22 Stern, *Secret History of Gender*; Taylor, *Drinking, Homicide*.
 - 23 Susan Kellogg, *Law and the Transformation of Aztec Culture, 1500–1700* (Norman, OK, 1995). Oaxaca works include Lisa Mary Sousa, “The Devil and Deviance in Native Criminal Narratives from Early Mexico,” *The Americas* 59, no. 2 (2002): 161–79; Terraciano, “Crime and Culture”; Yanna Yannakakis, “Making Spanish Law Zapotec: Local Legal Culture and Jurisdiction in Colonial Oaxaca” (paper presented at the 30th Congress of the Latin American Studies Association, San Francisco, May 25, 2012).
 - 24 On the advent of the use of native language sources for Mexico and a temperate call to marry the New Philology with semiotics, see Matthew Restall, “A History of the New Philology and the New Philology in History,” *Latin American Research Review* 38, no. 1 (2003): 113–34.
 - 25 This contrast corresponds to Lisa Mary Sousa’s observation that Zapotec women served less frequently as witnesses in criminal trials than did Mixtec women. Sousa, “Women and Crime,” 208. Also see Yanna Yannakakis, *The Art of Being In-Between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca* (Durham, NC, 2008), 26–27. The contrast also might be traced to a longer and deeper general tradition of engagement with Spanish justice in Teposcolula (as opposed to armed resistance in Villa Alta). See Ronald Spores, “Differential Response to Colonial Control among the Mixtecs and Zapotecs of Colonial Oaxaca,” in *Native Resistance and the Pax Colonial in New Spain*, ed. Susan Schroeder (Lincoln, NE, 1998), 30–46, esp. 37–38.
 - 26 This is based on my review of all civil cases from the district of Teposcolula in the APJO, using an older, hand-written catalog and a physical count of files as well as a newer computer database. In that archive, I also undertook an arbitrary (or nonrandom) sample of Villa Alta’s civil cases in ten-year periods as well as searches of criminal cases for both districts. I also reviewed all cases in the Alcaldía Mayor Oaxaca section and Real Intendencia, Teposcolula, and Villa Alta series of the Archivo General del Poder Ejecutivo del Estado de Oaxaca (hereafter AGPEO).
 - 27 Ymbentario de todas la actuaciones Civiles y Criminales que existen en este Archivo y sus Protocolos deducido desde el tiempo que Gobernó esta Jurisdicción dn Francisco [sic. Josef] Rodríguez Franco hasta el presente, APJO, Civil, leg. 49, exp. 15, n.d. [1793]. The records are undated other than the reference to alcaldes, but they seem to begin around 1725.
 - 28 In fact, there are not *fewer* but *more* cases on file in the subsequent archive than were registered in the inventory from the period. From 1740 to 1793 there are on file in the Alcalde Mayor section of the APJO 793 civil cases, compared to 661 cases counted in the 1793 inventory. The inventory ends with reference to aggregate “legajos,” or dossiers, of various other, top-down kinds of documents such

- as “superior decrees and *bandos*, and papers and letters from scribes.” Some of these items undoubtedly found their way into the case file today, accounting for the higher numbers of cases.
- 29 See, for example, Dirk Heirbaut, “The Geographical, Jurisdiction, and Jurisprudential Boundaries of English Litigation in the Early Modern Seventeenth Century,” in *Boundaries of the Law: Geography, Gender, and Jurisdiction in Medieval and Early Modern Europe*, ed. Anthony Musson (Burlington, VT, 2005), 130–48, esp. 139.
 - 30 Population numbers are derived from “Plan demostrativo de la población comprendida en el recinto de la Ciudad de Lima,” *Mercurio Peruano* no. 9, 30 January 1791; Shelburne Cook and Woodrow Borah, *The Population of the Mixteca Alta* (Berkeley, CA, 1968), 54. Litigation rates derive from my own analysis of the Archivo General de la Nación–Peru (hereafter AGN-P), Cabildo, Civil series.
 - 31 Women were litigants in 45 of the 661 civil disputes, and they were sued in 44 cases. Ymbentario de todas la actuaciones Civiles y Criminales, APJO, Teposcolula, Civil, leg. 49, exp. 15, n.d. [1793].
 - 32 The Ñudzahui (Mixtecs) more liberally used “don” and “doña” by the eighteenth century than in earlier times, but the employment of this honorific title was still limited to “a few men and women.” Kevin Terraciano, *The Mixtecas of Colonial Oaxaca: Ñudzahui History, Sixteenth through Eighteenth Centuries* (Stanford, CA, 2001), 156.
 - 33 Archivo de la Region de La Libertad (hereafter ARL), Cabildo, Civiles. It should be noted that in the city of Trujillo and other cities, elite women and the unmarried also predominated as female litigants. Only 15 of the 140 female litigants were listed as married, and a staggering 85 percent (119 out of 140) were listed as “doñas.” Indigenous peoples comprised 56 percent of the bishopric of Trujillo in the late 1700s, according to an episcopal visit 1782–85. “Estado que demuestra el número de habitantes del Obpdo de Truxillo del Perú con distinción de castas formado pr su actual Obpo,” en *Trujillo del Perú*, vol. 2 (Madrid, 1985–91).
 - 34 Women made up 132 of 549 litigants in the civil courts series of the ARL records of the Trujillo Corregimiento, which heard cases from 1700 to 1784. Seventy-four percent of these women (n=95) were doñas; 31 percent (n=42) were widowed.
 - 35 Gertrudis Herrera, española, pide que su marido se haga cargo de ella, de su manutención, y le deje en la casa de su habitación, APJO, leg. 43, exp. 9, 1778; leg. 21, exp. 21, 1781. For population, see Terraciano, *The Mixtecas*, 4–5.
 - 36 Though connected by road, the seats of the alcaldías mayores in Teposcolula and Villa Alta were several days’ journey from the large capital of Antequera. However, most pueblos were situated within a couple of days’ journey (though, for some places, an uncomfortable and dangerous journey) of their respective alcaldes’ offices (and the indigenous authorities resided in the pueblo of Yanhuitlan in Teposcolula). Alcaldes mayores would occasionally visit on a kind of “circuit” to the pueblos to conduct business. See Brian Hamnett, *Politics and Trade in Southern Mexico, 1750–1821* (Cambridge, UK, 1971), 4; John K. Chance, *Conquest of the Sierra: Spaniards and Indians in Colonial Oaxaca* (Norman, OK, 1989), 22. The importance of distance to cases mattered in Spain as well as in Mexico, especially among women for whom travel was considered indecorous. See Autos eclesiásticos hecho en esta Chanza, Ledezma, año 1781,

- de Da. Antonia Godínez de Paz . . . con su marido, Real Chancellería de Valladolid, Pleitos civiles Pérez Alonso (olvidados), 1215.3, 1781, f. 1.
- 37 On the independence of native jurisdiction in Mexico, see Arturo Gúmez Pinedo, "El poder de los cabildo mahoas y la venta de propiedades privadas a través del tribunal de indios, Yucatán," *Historia Mexicana* 54, no. 5 (2004): 697–759.
- 38 Yannakakis, *Art of Being In-Between*, 23.
- 39 For the "language ideology" at play within Spanish courts, see *ibid.*, 111–12.
- 40 Terraciano, "Crime and Culture," 715–16. Also see Ronald Spores, *Mixtecs in Ancient and Colonial Times* (Norman, OK, 1984), 170, chap. 8.
- 41 See, for example, San Pablo, Caxamarca. Autos que sigue Francisca Ramos, mujer legítima de Antonio Coro, indio originario de la Doctrina de San Pablo de Chalaques, contra la persona de Don Benito Chuquitas, Alcalde Ordinario de Naturales, por maltratos y azotes, ARL, Intend. C. Crim, leg. 353, C. 1344, 1788. On the flourishing of legal writing despite Toledan restrictions, see Kathryn Burns, "Making Indigenous Archives: The Quilcaycamayoc of Colonial Cuzco," *Hispanic American Historical Review* 91, no. 4 (2011): 655–89.
- 42 Sobre lo representado por el Subdelegado del Partido del Cercado de Lima acerca del despojo de jurisdicción que le ha hecho el Fiscal Protector de Yndios, avocándose el conocimiento de la causa que se seguía en su Juzgado para la unión del Matrimonio de Joaquín Jordan y su Muger María Tomasa Maldonado, Archivo General de las Indias, Gobierno, Lima, 967, 1798.
- 43 Short descriptive entries in an inventory of civil proceedings in this region put the total at 233 over a period spanning from 2 May 1761 to November 25, 1765 (or 4.5 years), (Cuaderno donde se asienta los autos que se ventilaron entre 1761–66) AGPEO, Alcaldías Mayores, Oaxaca (district), leg. 31, exp. 7, 1761–66. This was a rate of about 52 per year, or 4.3 per month. It should be noted that the population of the Valley of Oaxaca in 1790 was about 110,000, the vast majority of whom were indigenous. William B. Taylor, *Landlord and Peasant in Colonial Oaxaca* (Stanford, CA, 1792), 34.
- 44 Lacking seigniorial courts, the Fiel del Juzgado series, housed in the Archivo Municipal de Toledo (hereafter AMT) is an appropriate series to compare to Oaxaca. In a sample of seventy-four suits before the Fiel (*civiles* and *ejecutorías*) from the 1700s, only two were filed by married women, and one was a case brought by a remarried widow against her second husband for dissipating the property she brought into the marriage. See Jazinta de Paz, muger de Antonio García Fernández, alias el Pabo, sobre se le [h]abilite por la administración de sus bienes, AMT, Civiles, Caja 1881, Arroba, 1771.
- 45 This had changed little from centuries before, when one-fifth of Montes civil cases involved widows. Richard Kagan, *Lawsuits and Litigants in Early Modern Spain* (Chapel Hill, NC, 1981), 86.
- 46 Ximénez contra Suárez sobre dote, AMT, Fiel del Juzgado, Majarliza, Caja 1150, 1722. On the rarity of marital abuse cases in Spain, see Ramon Sánchez, *Sexo y violencia en los Montes de Toledo* (Toledo, 2006), 82.
- 47 Of the seventeen criminal cases specifically described as involving women in the inventory, ten were violent crimes against women, and eight were explicitly listed as having been perpetrated by the woman's husband. Ymbentario de todas la actuaciones Civiles y Criminales que existen . . . APJO, Civil, leg. 49, exp. 15, n.d. [1793]. For the overrepresentation of Indians in cases of wife

- killing in Mexico, see Victor Uribe-Urán, “Innocent Infants or Abusive Patriarchs? Spousal Homicides, the Punishment of Indians, and the Law in Colonial Mexico, 1740s–1820,” *Journal of Latin American Studies* 38 (2006): 793–828, esp. 808. Also see Rosaura Andazabal, *Criminalística peruana en el siglo XVIII (Ensayo de interpretación estadística en torno a la causal de homicidio)* (Lima, Peru, 2007), 64–71.
- 48 While I do not intend to circle back to the comparative analysis of violence as a social phenomenon but rather assess why the legal *records* highlight violence against women in communities far from Spanish tribunals, it is worth noting that in both Oaxaca and rural Spain, women were more frequently listed as victims of male violence than in Peru. Of more than three hundred cases of violent crimes prosecuted in the sixteenth- and seventeenth-century Montes de Toledo pueblo of Yébenes and examined by Scott Taylor, women accounted for about 34 percent of the victims. Scott Taylor, *Honor and Violence in Golden Age Spain* (New Haven, CT, 2008), 164. Stern finds that in Villa Alta, 29.5 percent of victims and 7.4 percent of assailants were women (Stern, *Secret History of Gender*, 371); and Taylor finds in the Mixteca Alta that 42 percent of cases of assault and battery were directed at wives, female lovers, and “rivals” (Taylor, *Drinking, Homicide*, 86). For Lima in the criminal court of first instance, the proportion of cases is significantly lower: about 15 percent of all 300 cases in the Cabildo criminal section, AGN-P.
- 49 For example, 38 percent of all of the crimes listed in the 1793 inventory of cases from Teposcolula were violent in nature, and of this group half were homicides or death investigations. What is more, the criminal record there shows a significant trend toward cases brought by authorities (*de oficio*). Only 30 of 267 criminal cases were listed as brought forward by individuals through instruments such as *pedimientos* (requests) and *querellas* (legal complaints). Ymbentario de todas las actuaciones Civiles y Criminales, APJO, Civil, leg. 49, exp. 15, n.d. [1793].
- 50 Tomás Antonio Mantecón Movellán, *Conflictividad y disciplinamiento social en la Cantabria rural del antiguo régimen* (Santander, Spain, 1997); and Tomás Antonio Mantecón Movellán, “El peso de la infrajusticialidad en el control del crimen durante la Edad Moderna,” *Estudis* 28 (2002): 43–75. The term *infrajustice*, with origins in criminal history of early modern France, has been employed in various ways. See Benoît Garnot, “Justice, infrajustice, parajustice, et extra justice dans la France d’Ancien Régime,” *Crime, Histoire, et Sociétés* 4, no. 1 (2000): 103–40. For the tendency to enforce moral transgressions involving sex without recourse to the Fiel specifically in the Montes, see Michael R. Weisser, *The Peasants of the Montes: The Roots of Rural Rebellion in Spain* (Chicago, 1972), 78–80.
- 51 See, for example, Tommaso Astarita, *Village Justice: Community, Family, and Popular Culture in early modern Italy* (Baltimore, MD, 1999).
- 52 “Peace” as a discourse and approbation of litigious or fractious neighbors can be found from Coyoacán to Cantabria to Calabria, though the terminology used to express it could be “peace,” “order,” or “friendship.” Owensby, *Empire of Law*, 236–38; Mantecón, *Conflictividad*, 124–26; Astarita, *Village Justice*, 133–36.
- 53 In Oaxaca, I identified 17 malos tratos cases out of 773 for the eighteenth century in Teposcolula and 10 for Villa Alta. Note that women’s tendency to drop or abandon suits against husbands continued into the early nineteenth century, according to Guardino, *Time of Liberty*, 63.

- 54 See, for example, Luis Miguel, natural del pueblo de Santo Domingo Tonaltepec [sobre sevicias practicadas en su hija, Maria Dorotea, por Martin Santiago], APJO, Tepos, Crim., leg. 42, exp. 38, 1796; and Don Antonio de la Cruz, cacique y principal de San Francisco Yovego, contra Sebastián Contreras, indio, natural de Yovego, por golpear a María Antonia de la Cruz, su mujer, APJO, Villa Alta, Crim., leg. 22, exp. 6, 1797.
- 55 See, for example, the distinction in this anonymous 1764 Mexican legal manual: Charles Cutter, trans., *Libro de los principales rudimentos tocante a todos juicios, civil, criminal, y ejecutivo: Año de 1764* (Mexico City, 1994).
- 56 Consider how San Pedro Ayulta's native officials staged repeated attempts to contain a reputed thief by enlisting family members and finally through wife-beating accusations; see Nicolás Bernal con María Manuela Velasco, de Santiago Yagallo del partido de San Juan Yacee, contra Juan Antonio de los Angeles, indio . . . porque continuamente aporrea a Bárbara Bernal, su hija, APJO, Villa Alta, Penal, leg. 21, exp. 8, 1796.
- 57 Jessica Delgado, "Sin temor de Dios: Women and Ecclesiastical Justice In Eighteenth-Century Toluca," *Colonial Latin American Review* 18, no. 1 (2009): 102. Delgado's comparison draws from Javier Pescador, "Entre la espada y el olvido: Pleitos matrimoniales en el provisor eclesiástico de México," in *La familia en el mundo iberoamericano*, ed. Pilar Gonzalbo Aizpurú (Mexico City, 1994), 193–226. My investigation in the Archivo Histórico Diocesano of Oaxaca yielded no marital disputes, despite the help of Daniela Traffano.
- 58 Premo, "Before the Law."
- 59 Perig Pitrou, "L'usage du fouet par le clergé local des communautés indiennes du diocèse de Oaxaca (Nouvelle-Espagne) à la fin du XVIIIe siècle," *Mélanges de la Casa de Velázquez*, n.s., 40, no. 2 (2010): 185. For women's preference for confessional over court in Spain, see Margarita Ortega López, "Protestas de las mujeres castellanas contra el orden patriarcal privado durante el siglo XVIII," *Cuadernos de Historia Moderna* 19 (1997): 65–89, esp. 79.
- 60 Josefa Dolores, contra Bartolomé López, vecinos del pueblo de Chilapa, por golpearla y vivir amancebado con Maria del Rosario, APJO, Tepos, Criminal, leg. 43, exp. 4, 1797, f. 4.
- 61 María Olaya Pérez natural y vecina de Yanhuitlan . . . dice que Juan Montesinos, su marido, a dado en embriagarse, resultando de esto que la maltrata, AGPEO, Teposcolula, Criminal, leg. 42, exp. 43, 1797 f. 5–5v. Also see Yllescas, APJO, Villa Alta, Criminal, leg. 2, exp. 9, 1707–9.
- 62 Mónica Pérez, natural y vecina del pueblo de San Cristobal Lachirioag, . . . dice que habiéndole empujado su marido Juan Jerónimo Manzano, le lastimó una mano, haciéndole querrela para su castigo, se ausentó . . . (19–8.12–3), APJO, Villa Alta, Crim., leg. 19, exp. 8, 1802.
- 63 *Ibid.*, f. 1.
- 64 On the tendency to drop cases, see Taylor, *Honor and Violence*, 81–83. Note that an *apartamiento* in the Montes entailed exonerating the accused of corporal punishment. In Spanish America, a more common expression was a less formal request to *bajar*, or lower, the charges or to *desistir* (desist) from the case, without a formal contract. See, for example, Sobre la reunión al matrimonio de Anastacio Baraoas y Maria Trinidad Delgado, Archivo General de la Nación–México, Tribunal Superior de Justicia, Corregidor-Criminal, vol. 17, exp. 58,

- 1801, f. 2. On the importance of “peace” and the dropping of cases among Indians elsewhere in Mexico, see Owensby, *Empire of Law*, 201–3.
- 65 Causa por amancebamiento iniciada por Jose y Manuel Sánchez, de Ventas, contra Gregorio Gil de Molina, AMT, Criminal, Navalucillos, leg. 6340, exp. 4203, 1758.
- 66 *Ibid.*, 33v.
- 67 Gonzalo Lamana, *Dominance without Domination: Inca-Spanish Encounters in Early Colonial Peru* (Durham, NC, 2009), esp. 5.
- 68 Micol Siegel, “Beyond Compare: Comparative Method after the Transnational Turn,” *Radical History Review* 91 (2005): 62–90; Bianca Premo, “On Currents and Comparisons: Gender and the Atlantic ‘Turn’ in Spanish America,” *History Compass* 8, no. 3 (2010): 223–37.
- 69 My phrasing gestures toward classics in postmodern scholarship, including Alberto Moreiras’s *The Exhaustion of Difference: The Politics of Latin American Cultural Studies* (Durham, NC, 2001). Also note that, in a sense, this article shares the critical spirit if not the complete surrender to academic self-reflection of John Beverley, *Subalternity and Representation: Arguments in Cultural Theory* (Durham, NC, 1999). Here Beverley argues that rather than reconstruct “subalterns” as sociohistorical subjects, we might more profitably study the disciplinary difficulties we encounter in representing them (1).
- 70 Frederick Cooper, “Postcolonial Studies and the Study of History,” in *Postcolonial Studies and Beyond*, ed. Ania Loomba, Suvir Kaul, et al. (Durham, NC, 2005), 403. Also see Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley, CA, 2005), 15.