

“To Hell or Restitution”: Catholic Commercial Justice in New Spain, 1600-1770

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Abstract

This dissertation argues that, throughout the mid-colonial period and well into the eighteenth century, indigenous, Spanish, and *casta* people in Mexico City and central New Spain negotiated economic justice and made economic decisions through the cultural framework of Catholicism, not only in the spiritual domain, but in ostensibly secular spaces as well. By examining the records of a handful of secular, domestic commercial sites and viceregal institutions—trade in the Plaza Mayor, regional public markets, the *asiento*, the artisan guilds, the *Mesa de Propios*, the *Juzgado de Indios*, and the repartimiento—this work uncovers the everyday discourses on economic justice that were circulating in these institutional spaces and how they impacted commercial arrangements in New Spain.

This study advances the argument of economic sociologists and anthropologists that economic decision making is not only motivated by utilitarian, material need, but by culturally and temporally situated beliefs about how the world ought to be, as well as by the relational context in which exchange takes place. In New Spain, Catholicism's prescriptions on need, usury, lending, contract law, and just price gave content to the expectations and beliefs that people brought to exchange. Catholic commercial theology required that commerce be oriented by virtue, namely justice, and toward an end, namely happiness in God. This belief shaped the commercial and judicial institutions in which actors negotiated commercial justice, which in turn elicited and coerced certain behaviors from economic actors.

While early modern commercial actors certainly considered personal profit, when they came before judicial bodies to argue for or against an economic practice, they could not argue in terms of personal profit, or even economic development. Instead, litigants argued in terms of how an economic practice would harm or benefit the people to whom they were obligated. Catholic commercial theology gave content and form to how economic actors defined their obligations, but these obligations also accrued definition through daily concrete and symbolic interactions between people. Whether the parties to an exchange considered it to be just was not only a material matter, but a matter of relationship and culture as well.

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Introduction

In 1680, the town council of Malinalco, a municipality about a day's ride to the southwest of Mexico City, opened up bidding on an *abasto de las carnicerías*, a contract for the public provision of beef.¹ To elicit the best bid for the public, Don Diego de Iguala Caño Moctezuma, Malinalco's viceregal magistrate, ordered that the call be issued publicly by an indigenous Spanish speaker on market day when "many indios and some Spaniards" would be present. After nine calls, Mateo Millán, the owner of a large hacienda who already supplied the nearby town of Tenantzingo, stepped forward with an offer to sell his steer meat at a price of nine *libras per real*.²

Before offering the contract, Don Diego asked Tenantzingo's leadership, including its viceregal officers and *caciques* (indigenous hereditary leaders), to testify that a contract with Millán would benefit the people of Malinalco not only in material ways, but in spiritual and relational ways as well. Almost none of their testimony dealt with the price that Millán had offered, which was the going rate in the area. Rather, the witnesses offered symbolic markers proving that Millán was a just merchant. Millán kept his cows "fat and well-treated" on fertile pastures, which produced plentiful and healthy meat, very unlike the "bad meat that was known to sicken many indios." Additionally, he gave alms in the form of a quarter of the meat to the poor of the town, and he helped fund local public works. Finally, Millán's reputation as a "very charitable man" preceded him. The witnesses testified that they had heard of and personally

¹ This was an *asiento*, a contract which granted a monopoly. Archivo General de la Nación (AGN), Abastos y panaderías, vol. 1, exp. 10, fs. 133-144.

² The libra was a Roman unit of weight measurement equivalent to about 12 oz. In 1680, the *real* was worth 1/8th of a peso. The average annual salary in Mexico City was about 625 reales. Leticia Arroyo Abad, Elwyn A.R. Davies, and Jan Luiten van Zanden, "Between Conquest and Independence, Real Wages and Demographic Change in Spanish America, 1530-1820." *Explorations in Economic History*, 49, Issue 2 (2012).

experienced the “love and affection with which he esteems us,” citing specifically the fact that he sold them meat on credit when they could not pay. He simply accepted their word that they would pay when they could. They were so sure of Millán’s charity and virtue that they offered to testify before the Archbishop of Mexico or the viceroy, the king’s representative in New Spain. Don Diego agreed to give the contract to Millán, citing as his only justification the fact that Millán “is very charitable toward the poor and allows the indios to pay later when they do not have money immediately.”

Millán’s success in securing this public contract hinged on the question of justice. When Malinalco sought to determine whether Millán would be a good business partner, they asked whether he was a just merchant who fulfilled his obligations to his community. His obligations were defined, in large part, by the tenets of Catholic commercial theology. The moral theologians of the Catholic Church considered a loan extended without any expectation beyond simple repayment to be an act of beneficence that facilitated close relationships. Millán not only fulfilled the requirements of just commerce, but by his actions, transformed quotidian exchange into an act of friendship and charity. Millán’s indigenous customers also understood his loans as charitable. Their regular interactions with the meat merchant had shown him to be a just merchant. As the owner of a large hacienda and the son of a well-known local family, his probable wealth and status allowed him the flexibility to act as a generous patron should, and his dependents rewarded him with a lucrative contract.³

The case above allows historians to glimpse the ways in which “connected people incorporate available culture and interpersonal relations into their daily negotiation of economic

³ AGN, Abastos y panaderías, vol. 3, exp. 2, fs. 12-18v. An contract from 1650 cites Diego Millán as supplying beef to both of the pueblos. Diego was likely a relative of Mateo’s.

activity.”⁴ In this case, the available culture was defined by Catholic theological concepts, values, and institutions. This dissertation explores the theological and moral dimensions of commercial activity in viceregal New Spain by uncovering the quotidian, on-the-ground negotiations about commercial justice. How did religious values, categories, and obligations influence the economic and commercial decisions made by Spanish, *casta*, and indigenous laity in their roles as officials, traders, producers, and consumers?⁵ According to Catholic commercial justice, what was owed in an exchange, and to whom? What did a laborer owe to his guild? What did an indigenous wholesaler owe to her family? To the Spanish empire and the *república cristiana*? To the spiritual economy of Mexico City and to God?

Catholic commercial theology required that commerce be oriented by virtue, namely justice, and toward an end, namely happiness in God. This belief shaped the commercial and judicial institutions in which actors negotiated commercial justice, which in turn elicited and coerced certain behaviors from economic actors.⁶ While early modern commercial actors certainly considered personal profit, institutional constraints meant that they could not do so without considering their spiritual and corporate obligations. When economic actors came before municipal boards to argue for or against an economic practice, they could not argue in terms of

⁴ Viviana A. Zelizer, *Economic Lives: How Culture Shapes the Economy*, (Princeton, N.J.: Princeton University Press, 2011), 11.

⁵ The word “casta” refers to mestizo and African-descended people who occupied an ambiguous legal space between the clearly demarcated *república de españolas* and *república de indios*. After the mid-17th century, the population of castas expanded greatly, which historians have pointed to as the cause of social anxiety among Spanish vecinos in that century. Magali Carrera, *Imagining Identity in New Spain: Race, Lineage, and the Colonial Body in Portraiture and Casta Paintings*, (Austin, TX: University of Texas Press, 2003), especially chapter 2.

⁶ By institutions, I refer to formal institutions, such as various judicial courts and the Catholic Church, as well as more informal institutions, such as the *repartimiento* and urban markets. Scholars have also identified social institutions, such as marriage and market exchange, around which certain rules, norms, and metaphors coalesce. In New Spain, for example, patronage was an important social institution. All of these types of institutions promote certain logics, impart certain ways of thinking to individuals, and set the “rules of the game,” as Douglass North argues. They are coercive, but they are also our only means of thinking. Mary Douglas, *How Institutions Think*, (Syracuse, NY: Syracuse Univ. Press. 1986). Douglass C. North, William Summerhill, and Barry R. Weingast, “Order, Disorder, and Economic Change: Latin America versus North America,” in B. Bueno de Mesquita and H. L. Root, eds., *Governing for Prosperity* (New Haven, Conn., 2000), pp. 17-19.

personal profit, or even economic development. Instead, litigants argued in terms of how an economic practice would harm or benefit the people with whom they were in relationships, and judges investigated whether an economic practice would inhibit the practitioners from fulfilling their obligations. Catholic commercial theology gave content and form to how economic actors defined their obligations, but these obligations also accrued definition and meaning through daily concrete and symbolic interactions and exchanges between people.⁷

This is a history of the grey areas of commercial justice, of moralities that were not settled. For this reason, contraband and piracy fall outside of the scope of this project.⁸ Rather, I am interested in the commercial actors who sought public legitimacy: the prominent merchants, the caciques and cacicas, the guild masters, and the indigenous women lending at interest. As historian John Tutino writes, morals of economy existed even among "profit-seekers."⁹ Individuals seek legitimacy for many reasons. They desire the respect, admiration, and support of their subordinates and the benefits of working with authority. They also desire to feel moral and right with their God. Catholic commercial justice was, therefore, highly contested during the viceregal period, as both the powerful and the vulnerable put forward their understandings of just commerce.

⁷ I use the term "commercial theology" when discussing the set of principles that judges relied upon to decide cases of commercial justice. Usefully, this term accounts for the fact that Scholastic economic thought was not just ethical or "scientific." While rigorously logical, it was fundamentally based on theological assumptions as well. I use "commercial" rather than "economic" to reflect contemporary terms.

⁸ Though even pirates had their defenders in the early modern period. While Marcus Rediker described pirates as operating under a social code that was separate from mainstream society, more recent work has shown that local port economies often relied on pirate activity, and local elites and commoners supported pirates in turn. Marcus Rediker, *Between the Devil and the Deep Blue Sea: Merchant Seamen, Pirates, and the Anglo-American Maritime World, 1700-1750*, (Cambridge: Cambridge University Press, 1993). For more recent scholarship, see Mark G. Hanna, *Pirate Nests and the Rise of the British Empire, 1570-1740*, (Chapel Hill: University of North Carolina Press, 2015).

⁹ John Tutino, *Making a New World: Founding Capitalism in the Bajío and Spanish North America*, (Durham: Duke University Press, 2011), 46.

Like theologians and ecclesiastics, lay people acknowledged the tensions between profit and piety and expressed deep anxieties about their own personal salvation and the salvation of others. Spanish merchants spoke with their confessors about just commerce and defended themselves in court.¹⁰ Indigenous petitioners blamed greedy Spanish tax collectors for leaving them poor and unable to give alms. Both groups denounced missionaries' commercial activities. In all these cases, the pursuit of wealth and self-interest rested uneasily against the eschatological imperatives of Catholicism. In court cases, contracts, and petitions, economic actors in Mexico City constantly redrew the line between unjust and just commerce. Catholic theology, enshrined in the justice system and in relational obligations, provided answers to central debates, and, in doing so, shaped the commercial landscape of central New Spain.

Trade in Central New Spain

This is a history of discourse and negotiations around commercial justice in the context of domestic and local subsistence trade in central New Spain in the 17th and 18th centuries. As such, it is helpful to understand the general contours of economic growth and contractions during these centuries. The 17th century has been described as a depression century, but historians now argue that New Spain experienced growth until 1630, followed by a contraction driven by declines in the production of silver, New Spain's most important export, in Zacatecas, Guanajuato, and San Luis Potosí.¹¹ Around the same time, the population of New Spain's indigenous people reached its nadir as a result of European diseases sweeping through the Americas, and some historians

¹⁰ There are tantalizing bits of evidence of such confessional conversations in the archive, even up through the late 18th century. For example, Diego Joseph García, a Frenchman seeking to be naturalized as a Spanish *vecino* (citizen), has his priest write a letter on his behalf stating that "he has met with Don Diego about his doubts in several matters...of conscience and commerce." The priests certified that García has "acted in commerce with a delicacy of conscience." AGN, Civil, vol. 1881, exp. 15. 1786.

¹¹ Louisa Schell Hoberman, *Mexico's Merchant Elite, 1590-1660: Silver, State, and Society*, (Durham: Duke University Press, 1991), 17. Dana Velasco Murillo, *Urban Indians in a Silver City: Zacatecas, Mexico, 1546-1810* (Stanford, CA: Stanford University Press, 2015), 43.

have tentatively attributed the mid-17th century downturn to the commercial disintegration that followed this devastating loss of life.¹² Not until the 1670's would the viceroyalty's indigenous economy begin to recover. The last three chapters of this project cover the years from 1680 to 1770, a period of general economic growth, punctuated every decade or so by years of scarcity that shook the wheat and maize trade.

While the importance of mining to New Spain's economy should not be understated, New Spain's highly diverse domestic trade was, in fact, larger than its export market and able to sustain the viceroyalty without recourse to imports.¹³ As the center of domestic and international trade from both the Pacific and the Atlantic, Mexico City dwarfed every other city in central New Spain in terms of trade.¹⁴ Every day, producers and wholesalers brought maize, wheat, sugar, beef, poultry, textiles, and maguey into the city's many bustling, colorful markets on canoes and mules from surrounding haciendas and indigenous communal lands.¹⁵ Outside of the highlands, indigenous producers further afield shipped cotton, cane sugar, livestock, leather goods, tobacco, rice, and cacao for domestic trade. On Mexico City's production side, indigenous, casta, and Spanish guild artisans supplied the city's inhabitants with tools, furniture, leather goods, and clothing.

Though Mexico City acted as a center of gravity, smaller scale regional markets in central New Spain like Puebla, Tlaxcala, and the Huasteca also exerted their own integrating forces, producing their own particular commercial patterns. Therefore, when sources do come

¹² Richard Salvucci, "Mexico: Economic History" *EH.Net Encyclopedia*, (2018).

¹³ David A. Brading, *Miners and Merchants in Bourbon Mexico, 1763-1810*, (Cambridge [Eng.] University Press, 1971), 19. Brading points out that New Spain's domestic market was larger than its export market to disprove the notion that the colony existed to serve Spain. He adds that mining was still an important way of accumulating large-scale investment capital.

¹⁴ The total collected *alcabala* (sales tax) in 1632 for Mexico City was 180,000. The next closest was Puebla at 50,000, then Veracruz with 22,500 pesos. *Ibid.*, 22.

¹⁵ Richard J. Salvucci, *Textiles and Capitalism in Mexico: An Economic History of the Obrajes, 1539-1840*, (Princeton, NJ: Princeton University Press, 2014), 86. Hoberman, *Mexico's Merchant Elite*, 22.

from farther afield, I am attentive to the material, political, and cultural particularities of that region or pueblo. Still, the fact that these cases ended in courts in Mexico City gives the sources a sense of coherence, no matter where they came from. This is the flattening effect of the justice system's processes and procedures. Court cases are not a window into the past, though they do offer glimpses of what domestic trade patterns looked like in central New Spain.

This inquiry is organized around sites of domestic commercial activity within this region, namely marketplace trade in and around Mexico City and central, guild labor and trade, and the *repartimiento de mercancías*, a system of advance sale and credit extended by merchants to mostly indigenous agricultural producers. Focusing on domestic commerce rather than transatlantic and transpacific commerce decenters Mexico City's powerful Spanish merchants, who mostly dealt in American bulk and European finished goods. Instead, indigenous producers, consumers, wholesalers, artisans, and traders take center stage. Focusing on domestic trade also has the added effect of bringing women's commercial activity into relief. While few women took part in transatlantic trade, at least not in ways that are readily visible in the archive, indigenous women participated in domestic trade not only as market-women, but as business-owners, wholesalers, and financiers.

Continuity and Change

This project examines the period after viceregal policies and systems had settled and before Enlightenment ideas about commerce began to circulate widely in New Spain.¹⁶ I assumed that to exclude the Bourbon reform era would exclude the mid-18th century, but there

¹⁶ I leaned on Douglas Cope for my initial time period justification. Cope focused on the period between 1660-1720 because it is after the colonial system is totally formed and "before its dissolution." My project expands beyond a bit, in part because I do not find that the Bourbon Reforms had concrete consequences for the justice system until at least the 1770s. R. Douglas Cope, *The Limits of Racial Domination: Plebeian Society in Colonial Mexico, 1660-1720*, (Madison: University of Wisconsin Press, 1994), 14.

was a marked continuity in discourse and judicial methods, even into the 1770s. Under this discursive, judicial continuity, however, political and economic conflict simmered at the local, regional, and imperial levels, forcing people to turn to the justice system and articulate their convictions about commercial justice. Economic events included years of scarcity, which acted as catalysts for change and engagement with the justice system. An extortionist who was tolerable during years of abundance necessitated action in times of famine. During the 18th century, the repartimiento system of credit also began to spread to regions it had not touched previously. Still, litigants and entrepreneurs who came before the courts to defend new financial tools and practices in the mid-18th century continued to pull from traditional, 16th century justifications rather than from Enlightenment discourses that were circulating in Spain. The Crown's comprehensive set of 1786 reforms marked an important shift in the kinds of arguments that were being made about how best to order economic behavior. Even then, it would take more than a change in laws and political power to shift centuries-old, fundamental beliefs about commercial justice. Viceregal officials and bishops still considered questions of theology and distributive justice when debating the merits of the repartimiento, for example, but the door had been opened to thinking about commercial decision making as a question of rational utility maximization rather than justice.

Historiography

The field of economic history in Spanish America has been deeply concerned with the explaining the origins of 20th century underdevelopment and inequality. In the 19th and first half of the 20th century, historians and observers located the cause of Spanish and Latin American underdevelopment in the economic character of its people. They described Catholic Spain as a society of nobles who clung to their honor and a feudal past, eschewing profit and innovation

and sinking their excess value into ostentatious displays of piety, a narrative that was reified by Max Weber in *The Protestant Ethic and the Spirit of Capitalism*.¹⁷ Many observers and politicians also argued that Latin Americans inherited not only Spain's economic deficiencies, but also those of the many Africans and indigenous people who were believed to be lazy, uneducated, or too mired in traditional, superstitious ways to be proper, rational capitalists.¹⁸ As late as the 2000s, an updated version of this argument argued that Latin America's underdevelopment relative to the United States and the North Atlantic was rooted in its colonial past, characterized by rigid, anti-democratic absolutist political and religious institutions.¹⁹

With the post-colonial turn, later historians made a concerted effort to correct these narratives of North Atlantic exceptionalism by pointing out the many instances in which colonial Spaniards, Africans, and indigenous people acted as much like innovators, capitalists, and profit seekers as any Protestant Bostonian.²⁰ These historians have done important work in revising

¹⁷ Weber famously argued that the moral economies of Protestant and Catholic countries were fundamentally different and, therefore, produced different economies. Most controversially, Weber argued that Protestantism offered more fertile ground for capitalism to take hold. *The Protestant Ethic and the Spirit of Capitalism*, (Los Angeles, Cal.: Roxbury Pub. Co., 2001).

¹⁸ One of the most famous examples of the 19th century version of this argument is Domingo Faustino Sarmiento's *Facundo*, published in 1845. Domingo Faustino Sarmiento, *Facundo: O, Civilización y Barbarie*, ed. Nora Dottori and Silvia Zanetti, (Caracas: Biblioteca Ayacucho, 1985). For a history of U.S. justifications for economic intervention in Latin America, see Jules R. Benjamin, *The United States and the Origins of the Cuban Revolution: An Empire of Liberty in an Age of National Liberation*, (Princeton, N.J.: Princeton University Press, 1990).

¹⁹ Such an explanation can have the effect of absolving 19th and 20th century North Atlantic power brokers of culpability for the underdevelopment of peripheral economies by assuming that the cause of Latin America's underdevelopment must be in its own flawed culture. Such an argument also locates the causes of underdevelopment in some distant past, ignoring the ways in which North Atlantic economies continue to make choices that perpetuate underdevelopment. Finally, drawing a straight line from colonial to modern ignores the hugely destabilizing effect of the wars for independence, which in some regions devolved into decades-long civil war and caused widespread political and economic disintegration. For the updated argument, see Douglass C. North, William Summerhill, and Barry R. Weingast, "Order, Disorder, and Economic Change: Latin America versus North America," in B. Bueno de Mesquita and H. L. Root, eds., *Governing for Prosperity* (New Haven, Conn., 2000). Also see Stanley Stein and Barbara Stein, *The Colonial Heritage of Latin America: Essays on Economic Dependence in Perspective*, (New York, NY: Oxford University Press, 1970). The Steins posit an abstract list of factors that encourage development, modeled on North American economies, and see colonial Latin America as deficient as a consequence. They do acknowledge the role of North Atlantic economies, arguing that it was Spain's weakness that allowed incursions.

²⁰ Tutino's *Making a New World* is a good example of this rehabilitation. Also see Marta V. Vicente, *Clothing the Spanish Empire: Families in the Calico Trade in the Early Modern Atlantic World*, (New York: Palgrave Macmillan, 2006) and Eric Van Young's important revisionist history of New Spain's so-called feudal hacienda, *Hacienda and Market in Eighteenth-Century Mexico: The Rural Economy of the Guadalajara Region, 1675-1820*,

earlier arguments that assumed North American exceptionalism, but too often they have done so by suggesting that Catholicism had little to no impact on Spanish America's economic character. Such arguments both relegate spiritual and ethical institutions and beliefs to the status of mere rhetoric, and continue to hold up modern, North Atlantic economic attitudes as a gold standard. I argue, in contrast, that Catholicism's theological commitments did impact New Spain's commercial culture. This is not to argue that Catholic people in New Spain did not seek profit or material wealth. The question is, in what ways did Catholic morality and theology channel material need and desire in culturally and temporally specific ways?

Since the 1950s, intellectual historians and historians of religion have made great strides in uncovering early modern Spanish economic thought, especially as expressed by the Scholastics. Historians such as Joseph Schumpeter, Raymond de Roover, and Marjorie Grice-Hutchinson argued the first clear case for the sophistication and central contributions of Spanish economic thinkers such as Francisco de Vitoria, Martín de Azpilcueta, and Luis de Molina, to the development of Western economic thought. Generally, however, these historians have limited their exploration of normative, theological concepts like just price and usury to the theoretical plane, rarely grounding their research in archival sources to understand how these concepts played out on the ground.²¹ Those historians of religion who do draw on archival sources to understand the role of religion in commerce have focused almost exclusively on the ways in

(New York: Rowman and Littlefield, 1981). Regina Grafe cautions against such a strategy for Spain, arguing that Spanish development was objectively slower by European standards, but she avoids placing a value judgement on such an observation. *Distant Tyranny: Markets, Power, and Backwardness in Spain, 1650-1800*, (Princeton, NJ: Princeton University Press, 2012), xi.

²¹ Joseph Schumpeter, *History of Economic Analysis*, (New York: Oxford University Press, 1954). Raymond De Roover, *Business, Banking, and Economic Thought in Late Medieval and Early Modern Europe*, (Chicago, IL: University of Chicago Press, 1974). Raymond De Roover, *Business, Banking, and Economic Thought in Late Medieval and Early Modern Europe*, (Chicago: University of Chicago Press, 1974). Marjorie Grice-Hutchinson, *Early Economic Thought in Spain 1177-1740*, (George Allen & Unwin: London, 1978). Michael Thomas D'Emic, *Justice in the Marketplace In Early Modern Spain: Saravia, Villalón and the Religious Origins of Economic Analysis*, (Lanham: Lexington Books, 2014).

which clergy and religious institutions participated in commerce. In an effort to disprove the dead-hand thesis, historians have uncovered the ways in which religious institutions like *cofradías* (religious brotherhoods), convents, and monastic orders served as crucial sources of credit for lay people.²² However, few cultural historians have examined how religious concerns influenced the economic choices that lay people made in ostensibly secular institutions like markets, guilds, *obrajes* (small scale factories), and the repartimiento system. This historiographical absence suggests that historians tend to assume that pragmatic, material motivations reigned in so-called secular or civil spaces.

The economic historians who do study these commercial spaces have often ignored their subjects' theological commitments when studying economic practices.²³ Even economic historians who accept that their subjects did not always act out of profit motive or material interests alone often fail to build this observation into their models and analysis.²⁴ For example, in her important study of 17th century Mexico City merchant families, Louisa Schell Hoberman

²² The "dead-hand" thesis argued that Spanish America's religious institutions hoarded property and capital that could have been invested back into the economy. This thesis enjoyed great popularity throughout the Enlightenment period and into the 20th century. For *cofradías*, see *Cofradías, Capellanías, y Obras Pías en la América Colonial*, ed. María del Pilar Martínez López-Cano, Gisela von Wobeser, Juan Guillermo Muñoz, (México: Universidad Nacional Autónoma de México), 1998; *Las voces de la fe: las cofradías en México (siglos XVII-XIX)*. Ed. Eduardo Carrera, (México, D.F.: Universidad Autónoma Metropolitana: CIESAS, 2011); Alicia Bazarte Martínez, *Las cofradías de españoles en la ciudad de México (1526-1860)*, (México, D.F.: Universidad Autónoma Metropolitana, División de Ciencias Sociales y Humanidades, 1989). For monastic orders see Dauril Alden, *The Making of an Enterprise: The Society of Jesus in Portugal, Its Empire, and Beyond 1540-1750*, (Stanford University Press, 1996), Kathryn Burns, *Colonial Habits: Convents and the Spiritual Economy of Cuzco, Peru*, (Durham, N.C.: Duke University Press, 1999).

²³ Daviken Studnicki-Gizbert, for example, argues that merchants in Portugal and Spain thought very little about the morality of their activities because he finds merchants to be entirely absent from writings about commerce in the 16th century. This absence is partly due to the fact that he mostly examines high politics rather than the daily politics of the judicial system where lawyers and merchants frequently considered issues of commercial justice. *A Nation Upon the Ocean Sea: Portugal's Atlantic Diaspora and the Crisis of the Spanish Empire, 1492-1640*, (Oxford University Press, 2007), 34. Also see Ch. 5, fn. 1.

²⁴ Ruth McKay's work on attitudes about labor in 18th century Spain is a good example of a historians who agrees that religion was important but does not attend to it in her analysis. She argues that early modern people did not understand commerce and religion to be incompatible, but theology and religion appear very infrequently in her otherwise excellent study. *Lazy Improvident People: Myth and Reality in the Writing of Spanish History*, (Ithaca, N.Y.: Cornell University Press, 2006), 151.

suggests that the Old Christian identity might have been more central to conducting trade than historians have previously believed or been interested in understanding, though she herself does not pursue that vein.²⁵ Other economic historians —reacting to previous assertions about the backwardness of Catholic commercial culture— have made a concerted effort to dismiss Catholicism as a causal factor in economic trends. Regina Grafe, for example, argues persuasively that the consumption of bacalao in early modern Spain, which contributed to trade deficits, cannot be explained by the Lenten practice of abstaining from meat.²⁶ Neither does she find it persuasive that the prevalence of feast days can explain fluctuations in labor patterns in Spain.²⁷ But while Grafe finds that religious observances alone cannot explain these particular economic patterns, she leaves the door open for the role of religious identity and institutions in providing “trust or enforcement” in exchange relationships, a phenomenon which Daviken Studnick-Gizbert has proven to be true for the Jewish or *converso* Portuguese Nation in the 17th century.²⁸

The lack of engagement with religion by economic scholars —and with commercial spaces by historians of religion— can be attributed in part to the modern tendency to treat morality and economics as separate, incompatible spheres. There are exceptions, however.²⁹

²⁵ Hoberman notes that something like 90 percent of the merchant families she studied sent children into Church life. She speculates that perhaps they felt they needed to express special piety since their profession was frowned upon by the Church. Given the other ways they supported the Church, and the fact that their profession was understood to be necessary by most theologians, it seems more likely a matter of political authority and piety to send a child into the Church. In viceregal New Spain, spiritual, moral authority legitimated one's political authority. Hoberman, *Mexico's Merchant Elite*, 21 and 103.

²⁶ Grafe, *Distant Tyranny*, 73.

²⁷ *Ibid.*, 192-193.

²⁸ *Ibid.*, 4. Daviken Studnick-Gizbert, *A Nation Upon the Ocean Sea: Portugal's Atlantic Diaspora and the Crisis of the Spanish Empire, 1492-1640*, (Oxford University Press, 2007). The term “converso” refers to Jewish converts to Christianity, many of whom were forced to convert or be driven from their homes. Centuries later, their Jewish heritage continued to block them from filling certain roles in the Church and empire.

²⁹ Brian Hamnett's foundational book, *Politics and Trade in Southern Mexico, 1750-1821*, stands out for its sensitivity to the moral dimensions of repartimiento reform in the 1750s. He calls the 1751 cedula that allowed the repartimiento a “code of morality” that “[relieved] the justices' consciences of the great burden of guilt involved in breaking the law.” (Cambridge, Eng.: Cambridge University Press, 1971), 21. Matthew O'Hara's chapter on credit

John Tutino's study of the development of capitalism in the Bajío takes seriously the role of Catholicism in lay people's understanding of commerce in New Spain. Tutino uncovers entrepreneurial elites' "rational" Catholicism. In court cases, elites articulated a belief that life demanded "sacramental morality and rewarded human effort."³⁰ Pushing back against the "dead hand" thesis, Tutino argues that Catholicism did not impede their entrepreneurial spirit, but rather "offered a spacious domain of...difference and debate, for some sanctifying power and precedence, for most opening ways to adapt, endure, and sometimes challenge."³¹ Though Tutino picks up the question of how lay people understood their economic activity in light of their Catholicism, his focus is overwhelmingly on the way their moral claims "aim to justify material power of production and politics."³² He understands morality as, first and foremost, a justification for material realities rather than as constitutive of such realities. Such a "vested-interest" analyses would mean that Catholic commercial theology had little impact on its practitioners except as an ex-post justification for the exercise of power and, sometimes, agency.

This dissertation argues, instead, that the domain of Catholic commercial theology was spacious, perhaps, but a domain nonetheless. It allowed for flexibility, but it was not so flexible as to be meaninglessness or mere rhetoric. Catholic commercial theology did two things. First, it gave shape to the institutions of commerce and justice with which economic actors engaged. Second, it gave content to people's expectations about how they ought to be treated in economic relationships. Early moderns were not more moral than moderns, but their institutions and

and usury also attends to how lay people understood morality and financialization. *The History of the Future in Colonial Mexico*, (New Haven, CT: Yale University Press 2018), Ch. 4, especially 110-115.

³⁰ Tutino, *Making a New World*, 419.

³¹ *Ibid.*, 7.

³² *Ibid.*, 47-49. He does briefly note that culture does more than legitimize power, but reflects that "all these aspects of culture are tied to and integrated by debates about legitimacy."

networks of obligation and relationship forced them to take virtues and justice into account to a greater degree.

Moral Economy in New Spain

Morality is a term fraught with semantic baggage, especially when considering economic decision-making, so it is important to define the way in which morality is used in this dissertation. Enlightenment philosophers tended to associate the concept of morality with subjectivism and emotional decision-making, whereas they associated economic decision-making with rational thought. Early modern moral theology, however, defies such categorization. While based on a clearly defined set of normative assumptions and principles, the Scholastics' "moral" theology was also rigorously logical and reasoned. While the Scholastics recognized the role of emotion in decision-making, moral decision-making was not based on emotion, but on reason oriented by virtue. In the modern lexicon, morality is also often associated with "goodness" and altruism as opposed to narrow self-interest or materialism. People make a moral, virtuous decision when they wish to do something good for others. In fact, the presence of any benefit to the self can seem to invalidate the morality of the act. In contrast, the Scholastics believed that an economic decision was moral if it brought the actor closer to happiness in God, regardless of whether it also benefited them on earth. Morality as used throughout this dissertation, therefore, is not synonymous with altruism or "goodness."

Moral decision-making is instead synonymous with what anthropologist James Carrier identifies as the "transcendent" dimension of economic activity.³³ People make economic decisions out of material need. This is what Carrier calls the utilitarian dimension of economic activity. But people also make economic decisions based on how they believe the world ought to

³³ James G. Carrier, "Moral Economy: What's in a Name," *Anthropological Theory*, Vol. 18, No. 1, 2018, 22.

be. Carrier points out the distinction between utilitarian and transcendent dimensions of economic activity in E.P. Thompson's famous study of moral economy.³⁴ Thompson's peasants rioted not simply because they were hungry, but because they felt that their vision of the world as it ought to be had been violated. Under this definition, the values that motivate people are neither "good" or "bad," but simply transcend material considerations.

Carrier also suggests a third dimension, that of relational obligations. Considering the role of obligation in economic decision making should help historians of New Spain understand the role of morality in economy in a way that does not rely on functionalist explanations. Historians often argue that Spanish elites paid for the erection of churches and shrines in order to solidify their social position, to justify their misdeeds, or to buy political favors. They frequently either ignore or cast doubt on the spiritual motivations behind those economic decisions. But even historians who take spiritual motivations seriously sometimes describe the spiritual economy as a sort of rational, tit for tat exchange wherein human beings give to get eternal life.³⁵ Historians have produced this type of analysis because economics and sentiment do not easily occupy the same sphere in modern economic theory. The economic sociologist Viviana Zelizer uses the term "hostile worlds" to describe the modern assumption that the world of sentiment and the world of economic exchange are not only separate, but innately hostile.³⁶ Because of this assumption, when a historical subject pays for an indulgence, the modern historian feels that the

³⁴ E.P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past & Present*, no. 50, 1971.

³⁵ See for example, *Manipulating the Saints*, ed. by Albert Meyers and Diane Elizabeth Hopkins, (Hamburg, Germany; Wayasbah Publications), 1988. In contrast, Brianna Leavitt-Alcántara argues that lay people did not always seek to maximize their spiritual benefit. If they had, they would have always tied their money to the most powerful image around to gain maximum spiritual benefit, but instead they often chose local, humbler images. She sees intimacy, proximity, and emotion as other motivating factors. "Intimate Indulgences: Salvation and Local Religion in Eighteenth-Century Santiago de Guatemala." *Colonial Latin American Review* 23, no. 2 (2014),

³⁶ She cites common narratives that capitalism invaded pristine, traditional communities and dissolved the solidarity that had always been in place through sentimental bonds of trust and kinship. Zelizer, *Economic Lives*, 5, 174, 358-359.

potential reward casts doubt on the sincerity of the sentiment behind the action. In other words, there must be some kind of vested-interest explanation.

But considering the relationships in which transactions happen opens up another dimension for analysis. Following Clifford Geertz, Zelizer argues that economic transactions often create and strengthen social bonds of reciprocity, obligation, and sentiment. While this way of thinking about moral economies or economies in general is still gaining traction in modern economic thought, it was common sense to early moderns. The *Siete Partidas* —the 13th century Spanish law code that became the basis for viceregal law— noted that loans freely given increased affection between the two parties, just as “[a man’s] affection for [a child] increases more by reason of the nurture for which he affords it,” whether it is “his own, or that of stranger.”³⁷ Dependencies and obligations created positive relationships, not just inspiring the dependent’s gratitude for the patron, but increasing the patron’s care and affection for the dependent as well. Indulgences, therefore, can also be understood as one way in which mortals created and reinforced not only their financial connection with the divine and with one another, but their emotional, sentimental connection as well. These transactions are not quite “moral” in that they were not motivated only by an altruistic desire to do good, or even in that they promoted a transcendent “ought,” but neither were they motivated by simple material self-interest. People conducting exchanges within relationships made decisions motivated by the particulars of that relationships.

In relationships characterized by sentiment, these decisions were more likely to be just in that they were more likely to conform to a desire to continue the positive association by meeting

³⁷ *The Siete Partidas*, translated by Samuel Parsons Scott; edited by Robert I. Burns, (Philadelphia, PA: University of Pennsylvania Press, 2001), 1008 and 972.

personal and culturally derived expectations for that relationship.³⁸ Carrier writes that the relationships in which economic exchanges take place develop in two ways. First, these relationships acquire specific form out of the particular, habitual experience of the exchange, out of “the history of the transaction.” Secondly, culture injects “expectations” into relationships.³⁹ Early modern commercial theologians made these expectations explicit, cataloguing obligations between father and son, between two equals, and between the powerful and vulnerable, to name a few.

Theological and spiritual beliefs gave form to relationships just as they gave form to institutions of justice and commerce. Carrier goes on to argue that “the broader social and economic context makes moral economic activity more or less likely,” not because a society might have more virtuous or explicit morals than another, but because its social and economic context promotes thick networks of relationships and obligations.⁴⁰ In New Spain, the economic context meant that many exchanges happened face-to-face and between people tied together through kin and fictive-kin networks. But the emphasis on obligations in New Spain went beyond these face-to-face exchanges. Court cases contained unrelenting reminders that, in every exchange, economic actors had not just an obligation to the other person in the transaction, but to imagined or intangible communities like the body politic, to the communion of the dead, and to God. The social context of exchange in New Spain was Catholic commercial theology, which

³⁸ A desire to continue a positive association is not reducible to functionalist self-interest. As Adam Smith observed, “How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it.” *Theory of Moral Sentiments*, (Oxford: Clarendon Press, 1979), 9.

³⁹ Carrier, “Moral Economy,” 25.

⁴⁰ Carrier argues that an essential difference between early modern and modern understandings of moral economy is that early moderns believed fraud to be wrong because it caused people to fail in their obligations to one another, whereas moderns believe fraud to be “wrong” because it creates inefficiencies in the market, retarding market growth and harming overall well-being. Though beyond the scope of this project to assess the accuracy of such a statement for the modern period, his characterization of the early modern period reflects my own findings. *Ibid.*, 29.

rested on the concept of justice and obligation, providing content to the expectations that individuals brought to transactions and to the institutions through which individuals negotiated commercial justice. In turn, institutions and a thick network of relationships enforced these expectations. Early modern commercial activity in New Spain was moral in the fact that economic actors had to take both transcendent and relational factors into great account when making decisions.

Economics, Power, and Patronage in Viceregal New Spain

This project contributes to those studies that have demonstrated that indigenous and casta people played a central role in commerce in New Spain, especially in domestic markets. It also contributes to the growing number of histories that have demonstrated that indigenous people participated actively in shaping law through a relatively accessible colonial justice system.⁴¹ Through their participation in these colonial institutions, indigenous people participated in shaping commercial justice in colonial Mexico. Long before taking to the streets like E.P Thompson's peasants, indigenous people went to the courts, and for many of the same reasons that would eventually lead them to resort to rioting. Namely, they believed that they were upholding "traditional rights and customs." Often, their belief was "endorsed by some measure of license afforded by the authorities," and authorities cooperated.⁴² Other times, authorities responded with violence or ambivalence. I focus on those moments of resistance that occur in the archive, but I also take care also to highlight moments of acquiesce and cooperation, moments

⁴¹ For indigenous participation in trade, see James Lockhart, *The Nahuas After the Conquest: The Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries*, (Stanford, CA: Stanford University Press, 1992). Jane Mangan, *Trading Roles: Gender, Ethnicity, and the Urban Economy in Colonial Potosí*, (Durham, N.C.: Duke University Press, 2005).

Susan Kellog, *Weaving the Past: A History of Latin America's Indigenous Women from the Prehispanic Period to the Present*, (New York: Oxford University Press, 2005). For a definitive account of indigenous participation in New Spain's justice system, see Brian Owensby, *Empire of Law and Indian Justice in Colonial Mexico*, (Stanford, CA: Stanford University Press, 2009).

⁴² Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century." p. 78.

when indigenous people helped to uphold and enforce commercial law. To be sure, the archive contains ample evidence of coercive commercial relationships, as does this dissertation.

Acquiescence does not imply an absence of systemic coercion, only that within the limitations set by culture and power, indigenous people sometimes chose cooperation and relationship over resistance and isolation.

Paying attention to acquiescence and cooperation has consequences for my analysis of the relationships of patronage so central in the colonial period. One cannot understand relationships of patronage and power without noting the ways in which an economic transaction between unequal people could produce a relationship of trust and reciprocity over time. An economic transaction that took place within a relationship of reciprocity took on a fundamentally different meaning than one transacted outside of that relationship. Zelizer explains this phenomenon using the example of exchange within a marriage in the United States of the 1950's.⁴³ Husbands gave their wives pin money, while wives gave their domestic labor. Outside of the marriage relationship, such an exchange would be purely financial, but inside the institution of marriage, with its accumulated symbolic, social, and cultural meanings, such an exchange takes on profoundly different meanings. An economic transaction could be differently defined according to both the relationship of power and of sentiment between the participants in the exchange.

Throughout this project, indigenous people ascribe different meanings to the same transaction depending on the relationship in which the transaction occurs. This is to say, one cannot fully understand whether historical subjects understood the repartimiento to be just or

⁴³ Zelizer, *Economic Lives*, 199.

unjust without analyzing the relationships in which those exchanges take place.⁴⁴ This is true whether a scholar tends to see viceregal economic relationships as more just or more unjust. For example, Jeremy Baskes argues that the repartimiento system of credit in 18th century Oaxaca was not coercive because merchant creditors were charging a reasonably high implicit interest rate to cover probable losses from defaulted loans, an analysis rooted in modern risk analysis.⁴⁵ He also argues that the repartimiento was not unjust because the creditors did not force indigenous producers into debt-peonage; indigenous people chose to accept an unequal exchange relationship because doing so maximized their utility. This argument, however, rests on a modern definition of profit, coercion, and free-will that would have been foreign to early modern jurists. The continuous contemporary opposition to the repartimiento cannot be understood without acknowledging early modern definitions of justice between unequal people.

On the other end of the spectrum, historian Cynthia Milton understands early modern theologies of poverty to have been not much more than an ex post justification for the domination of the powerful over the weak.⁴⁶ Milton assumes that the powerful act always to maximize their own utility, an assumption that leads her to miss some of the concrete ways in which the Spanish American justice system privileged the economic poor on the belief that the poor are owed protection.⁴⁷ Though Milton and Baskes come to opposite conclusions about the

⁴⁴ For an overview of the historiographical treatment of debt-peonage, see Alan Knight, "Debt Bondage in Latin America," in *Slavery and Other Forms of Unfree Labour*, ed., Léonie J. Archer, (New York: Routledge, 1988) and Arnold J. Bauer, "Rural Workers in Spanish America: Problems of Peonage and Oppression," *The Hispanic American Historical Review*, Vol. 59, No. 1 (Feb., 1979), pp. 34-63. These authors compare particular instances of indigenous indebtedness to an abstract, theoretical list of factors that qualify and arrangement as free or unfree.

⁴⁵ Jeremy Baskes, *Indians, Merchants, and Markets: A Reinterpretation of the Repartimiento and Spanish-Indian Economic Relations in Colonial Oaxaca, 1750-1821*, (Stanford, CA: Stanford University Press, 2000). Other historians have also leveled this critique. See Cynthia Radding, review of *Indians, Merchants, and Markets: A Reinterpretation of the Repartimiento and Spanish-Indian Economic Relations in Colonial Oaxaca, 1750-1821*, by Jeremy Baskes, *The Business History Review*, Vol. 76, No. 1 (Spring, 2002), pp. 181-184.

⁴⁶ Cynthia E. Milton, *The Many Meanings of Poverty: Colonialism, Social Compacts, and Assistance in Eighteenth-Century Ecuador*, (Stanford, California: Stanford University Press, 2007).

⁴⁷ Milton argues that the justice system privileged the "social poor" by waiving court fees through the *pobreza de solemnidad*, which the courts did not extend to the economically poor. But Bianca Premo points out that justices

extent of coercion in early modern economic practices, they operate in a similar analytical framework that emphasizes a narrow definition of utility maximization and excludes the possibility of a transcendent dimension of economic decision making.⁴⁸ A vested-interest, utility-driven analysis also ignores the context of relationships in which exchange took place. The context of a relationship could transform an exchange, injecting it with meanings beyond coercion and resistance that are not immediately apparent.

Chapter Abstracts

Reflecting the ubiquity of both exchange relationships and theological concerns in the colonial period, this dissertation draws on sources from many types of commercial and legal institutions. Legal records are notoriously opaque. After the cultural turn, historians turned to legal records as windows into the past, reading through them to access information about cultural and social practices. More recently, legal historians have cautioned that scholars should not ignore the judicial framework within which these documents were constructed. Legal processes, categories, and even materialities —some historians urge us to consider the notary’s tired hand, for example— fundamentally distort the clarity of these records as “windows.”⁴⁹ What we see is a highly constructed and mediated reality meant for a judge’s consumption. These historians

summarily assigned pro bono lawyers to paupers, Indians and slaves rather than having them submit the *pobreza de solemnidad*, though she attributes this oversight to Milton’s somewhat myopic source material rather than to the functionalist methodology she employs. Bianca Premo, review of *The Many Meanings of Poverty*, by Cynthia Milton, *Eighteenth-Century Studies*, Vol. 43, No. 1 (Fall 2009), pp. 144-146.

⁴⁸ Though Milton is a cultural historian and comes from an entirely different angle, her analysis is in line with how many economists think about commercial theology. Historian Fabio Monsalve cites a number of economic historians who emphasize a “the vested-interest dimension” of moral theology. He argues that these historians emphasize the concept of “homo-oeconomicus” rationality (utility maximization) over justice and moral concerns...[and] shrink the moral dimension of scholastic economy, which would appear as an ex post attempt to legitimize the particular doctrinal position of the Roman Catholic Church on this matter without seeing much merit in its logical reasoning.” Fabio Monsalve, “Late Spanish Doctors on Usury, and the Evolving Scholastics Tradition,” *Journal of the History of Economic Thought*, Vol. 36, (June 2014), pp 216.

⁴⁹ Citing Ann Stoler, Burns encourages historians to ask questions about “the conditions of possibility that shaped what could be written...what competencies were rewarded in archival writing, what stories could be told, and what could not be said.” Burns, *Into the Archive*, 18, 93, 195. Ann Laura Stoler, “Colonial Archives and the Arts of Governance,” *Archival Science* 2: 87–109, 2002.

argue that the framework itself is worthy of study as it has much to say about Spanish cultural categories and structures of power. Chapter 1 of this dissertation, therefore, offers an analysis of the theological, legal, and institutional frameworks through which people negotiated economic justice as context for understanding case studies in the subsequent chapters. The chapter includes a brief history of Scholastic commercial theology and an overview of how this theology built a political economy in Spanish America that was based on customary privileges and obligations, which historians have called “municipal mercantilism.” The chapter ends with an overview of the judicial system’s institutions and methods of reasoning, as well as a sketch of the Scholastics’ definitions of commutative and distributive justice.

As noted, a focus on domestic commerce places indigenous people at the heart of this study. Indigenous people shaped New Spain’s economy not only as producers and consumers, but as participants in negotiations over just commercial relationships. As such, after first providing a brief history of the construction by Spanish jurists of indigenous peoples’ economic character and role, Chapter 2 offers an analysis of indigenous litigants’ strategies for securing commercial justice in court under a variety of circumstances. The judicial system’s attention to just outcomes over narrow legality made the borders of municipal mercantilism flexible and porous under the right circumstances, empowering indigenous communities to access privileges beyond their colonial status. At the same time, however, indigenous people used the judicial system to shore up the mercantilist order, defend the circumscribed, customary commercial privileges already granted to them, which were threatened on all sides by Spanish, *casta*, and sometimes other indigenous commercial actors. I argue that this flexibility was a feature, not a bug, of Spanish municipal mercantilism, as well as of the judicial system that undergirded it.

Chapter 3 is a history of Mexico City's markets in the Plaza Mayor between 1680 and 1750s and considers the physical, political, and spiritual spatial requirements of Catholic commercial justice. Years of scarcity in the 1690s, culminating in the 1692 corn riots, surfaced competing definitions of a just distribution of resources within the empire. During this period of scarcity, the empire's contested internal borders came into relief as the Crown articulated a different geographical and political "commons" than did elites in Mexico City or maize farmers in the city's hinterlands. In the aftermath of the riots, Mexico City's municipal court, the *Ayuntamiento*, delegated its administration of this public space to a private individual through a monopoly contract. The contents of the contract, however, also ensured that the space would remain a public resource organized by the logic of Catholic commercial justice. Finally, this chapter explores the tensions produced by the Plaza Mayor's role as a spiritual place and as a commercial space. In New Spain, the spiritual was meant to be both sacred and mundane, the end of every human activity, even commerce. Perhaps nowhere was this more apparent than in the Plaza Mayor.

Chapter 4 explores commercial justice in the context of Mexico City's guilds. Written in consultation with city officials, guild ordinances were meant to do more than protect artisans against competition. Ordinances were written to ensure just exchanges for consumers and to promote Mexico City's spiritual wellbeing. This last goal was not merely rhetorical. A case study from the 1750s provides insight into how a guild's financial obligations to Mexico City's spiritual community could restructure the landscape of labor by drawing informal labor communities into formal relationships of exchange and obligation. This case study also offers a rare glimpse into how formal incorporation into the guild system affected relationships within a

labor community, formalizing hierarchies and curtailing the role of women in those communities.

Chapter 5 examines 18th century cases of usury, especially those that occurred in the context of the repartimiento system of credit. Two case studies, one from Tampamolón in the jurisdiction of San Luís Potosí and another from Puebla, provide the clearest insight into how indigenous producers and Spanish merchants defined commercial justice. This was not a contest between idealistic morality and pragmatic materialism, but rather a contest between multiple different definitions of just commercial relationships. Merchants offering credit understood the interest they charged as just payment for their risk and effort, citing the Scholastics in their defense. Local ecclesiastics disagreed that the price the merchants charged for their risk and effort was just. Meanwhile, indigenous debtors articulated a third argument that was based on an understanding of the customary, subtle rituals around relationships of patronage that made lending not only acceptable but virtuous, even with an interest charge. Depending on the relational context in which the loan happened, economic actors understood the exchange to take on new meanings. The uptake of new financial tools within communities in central New Spain depended on social networks already in place for acceptance.

Chapter 1: The Scholastic Foundations of Commercial Theology

I begin this study of how religion shaped lay peoples' economic activity with an overview of legal and theological codes because these prescriptive codes often served as the framework for the negotiations recorded in archival materials. Though people might not have consciously lived their daily lives by the teachings of the Scholastics, those teachings deeply informed the legal, religious, state, and corporate institutions that people interacted with on a daily basis. Through this intermediary institutional step, theological teachings did shape the economic decisions made by individuals. They comprised the "submerged but quite specific script" that early modern people used to make decisions both in and outside of the courts.¹ Besides informing sermons and confessors, theologically-rooted expectations about economic behavior and obligations influenced the way in which judges decided cases and the ways in which petitioners, lawyers, and defendants behaved in court, often reinforcing expectations. In other words, ideas shaped material realities. In turn, individuals reshaped institutions through their behavior and lived experiences, molding institutional imperatives to fit their own needs.

This chapter accomplishes three things. First, it demonstrates that theological and civil concerns occupied the same arena and cannot be treated separately. A Catholic worldview framed New Spain's political economy, giving content to the question, how should material resources and economic relationships be arranged? As such, this chapter begins with an outline of the Scholastic vision of how relationships ought to be arranged in society, a question fundamentally political in nature, and rooted in centuries-old theological beliefs. Part two provides context for how early modern people negotiated and decided justice generally in order

¹ Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru*, (Durham, N.C.: Duke University Press, 2010), 24.

to understand judicial decision-making pertaining to economic justice in particular. This section also demonstrates that the theological was inextricable from the civil, not just in theory, but in judicial practice as well. Finally, this chapter turns to the Scholastic definition of a just exchange and just economic distribution, tracing the general principles that guided the economic actors and judicial officials who appear in following chapters.

The foundations of early modern Scholastic thought developed during the 13th century medieval renaissance. In the Franciscan and Dominican orders, Albertus Magnus, Thomas Aquinas, John Duns Scotus, and St. Bonaventure incorporated classical Greek and Islamic philosophy into Christian theological and moral teachings. Among the most important 13th century works was Aquinas' comprehensive *Summa Theologica*, which became a foundational text for 16th century Dominican and Jesuit Scholastics through the Jesuit theologian Francisco de Vitoria (1492-1546).² During this same period, Alfonso X of Castilla completed the *Siete Partidas*, combining both canon and Roman law into a comprehensive legal code that served as the foundational text for future iterations of Spanish codes such as the *Nueva Recopilación* of 1567 and the *Novísima Recopilación* of 1805.³

Scholars consider the 16th century to be the apogee of the Scholastic period. The students and colleagues of Vitoria formed what scholars now call the School of Salamanca, producing a moral theology that synthesized Thomist, Roman, and Greek traditions. While scholars had already recognized the significance of these theologians' work to the fields of law, theology, and government, it was not until the mid-20th century that economic historians began to also

² Thomas Aquinas, *Summa Theologica*, 1265–1274, eds. Thomas, and Kevin Knight, (Denver, CO: New Advent, 2006)

³ *The Siete Partidas*, 1256-1265, translated by Samuel Parsons Scott; ed. by Robert I. Burns, (Philadelphia, PA: University of Pennsylvania Press, 2001).

understand the Scholastics as “critically important to understanding the development of economic reasoning.”⁴ 20th century economist Joseph Schumpeter went so far as to define the Scholastics as the “founders of scientific economics.”⁵ This group included theologians such as the Mexican born Tomás de Mercado (1525–1575), Domingo de Soto (1494-1560), and Martín de Azpilcueta (1491-1586), among others.⁶ Historian Fabio Monsalve also identifies a slightly later scholastic period in the 17th century, defined by figures like Luis de Molina (1535-1600), Francisco Suárez (1548-1617), Juan de Mariana (1535-1624), Leonardus Lessius (1554-1623), and Juan de Lugo (1588-1660).⁷

Just as Aquinas integrated Aristotle into 13th century Christianity, the 16th century Scholastics worked to reconcile Aquinas with the realities of an expanding mercantile economy that now included the Americas. Many historians have noted that the Scholastics' experience of American trade—including rapid inflation in the wake of the influx of silver into the Spanish and European economy—directly influenced their development of monetary, value, and price theories.⁸ The disruption that the encounter brought to commercial practices is also particularly clear in Mercado's 1569 work *Suma de tratos y contratos*, which he claimed to have written at

⁴ Grabill, *Sourcebook*, xxv. Before that time, economists criticized the normative commitments of the Scholastics, in part because to do so helped modern economics claim the same observation-based empiricism that the natural sciences claim. 20th century post-modern scholars have shown the limits of empiricism even in the natural sciences.

⁵ Joseph Schumpeter, *History of Economic Analysis*, (New York: Oxford University Press, 1954), xxv.

⁶ For a more comprehensive list, see Grabill, *Sourcebook*, xxv.

⁷ Fabio Monsalve, “Late Spanish Doctors on Usury, and the Evolving Scholastics Tradition,” *Journal of the History of Economic Thought*, Vol. 36, June 2014, pp 215-235, 219.

⁸ Beginning with Azpilcueta, the Scholastics recognized the impact of an over-supply of coin, which created a “price revolution” and redistributed wealth both domestically and across Europe by raising prices of all goods. Spanish goods become less competitive, and Europeans settled into Spain, trading with the West Indies as middle men shipping cheap goods from Northern Europe to Seville and then out, bleeding Spain of silver in the process. Diego Alonso-Lasheras, *Luis de Molina's De iustitia et iure: Justice as Virtue in an Economic Context*, (Leiden, NLD: Brill Academic Publishers, 2011), 16-18. For more on Atlantic trade and foreign agents in Spain, see Daviken Studnick-Gizbert, *A Nation Upon the Ocean Sea: Portugal's Atlantic Diaspora and the Crisis of the Spanish Empire, 1492-1640*, (Oxford University Press, 2007); and Richard T Rapp, “The Unmaking of the Mediterranean Trade Hegemony: International Trade Rivalry and the Commercial Revolution.” *Journal of Economic History*, 35.3 (1975): 499–525.

the behest of Sevilla's merchants.⁹ Mercado understood the "West Indies" trade to be mutually beneficial for the king's subjects on both sides of the Atlantic. He wrote that while the land there was "rich in precious metals," it was "lacking in...fine clothes, silks canvas, wine, oil, without which people do not pass or cannot pass well, especially Spanish people, raised in such an abundance of everything." Merchants "drain the land of these treasures" and also "supply it with others," benefiting both lands.¹⁰ However, Mercado also recognized that injustice lurked in this relationship. In the dedication, Mercado related that it was Angelo Brunego, a merchant with Sevilla's merchant *consulado* (guild) who had asked Mercado to "put together everything known about the decisions that merchants have to make in diverse places and times, for the merchants in New Spain and in this University" so that they might practice their trade justly.¹¹

Somewhat overshadowed by the Scholastics, a last group of Spanish economic thinkers also helped to shape 17th century economic thought in Spanish America, a group known historically and by scholars today as the *arbitristas*.¹² This group included mostly bureaucrats and intellectuals invested in reforming Spain's economy, which they understood to be falling behind those of England and France. Spanish American economic thinkers such as the famous *criollo* intellectual Carlos de Sigüenza y Góngora and Juan de Matienzo, a magistrate in Chuquisaca in the viceroyalty of Peru, fit most comfortably into this category.¹³ While the

⁹ Tomás de Mercado, *Suma de tratos y contratos*, 1571, ed. by Nicolás Sánchez-Albornoz, (Madrid, Instituto de Estudios Fiscales, Ministerio de Economía y Hacienda, 1977).

¹⁰ Mercado, *Suma*, Book 2, prologue.

¹¹ Ibid., Prologue.

¹² For more on the arbitristas, see Marc Eagle, "Restoring Spanish Hispaniola, the First of the Indies: Local Advocacy and Transatlantic Arbitrismo in the Late Seventeenth Century," *Colonial Latin American Review*, 2014 Vol. 23, No. 3, 384–412; and Anne Dubet, *Hacienda, arbitrismo y negociación política: El proyecto de los erarios públicos y montes de piedad en los siglos XVI y XVII*, (Valladolid: Universidad de Valladolid, 2003).

¹³ The term "criollo" refers to a person of Spanish heritage born in the Americas. Oreste Popescu's 1997 account is among the first studies of intellectual history of colonial, criollo economic thought. *Studies in the History of Latin American Economic Thought*, (Taylor and Francis, 1997). Additionally, ethnohistorians have worked to excavate Mesoamerican indigenous understandings of property, trade, exchange, and value. For indigenous understandings of property ownership, see James Lockhart, *The Nahuas After the Conquest: The Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries*, (Stanford University Press, 1992), Ch. 5.

arbitristas were deeply informed by the Scholastics, they tended to consider questions of justice and morality only indirectly, instead offering suggestions to the king and his advisors on how to improve Spain's material security. Still, besides these differences in audience and purpose, no strict line can be drawn between the two traditions. Like the arbitristas, the Scholastics also acted as advisors to kings and merchants, and a number of the arbitristas were priests. Both groups utilized the same foundational texts; both believed that a well-provisioned society promoted peace and religious virtue; and both assumed that justice must undergird the commercial system.

The Scholastic Vision of the Universe

In order to understand Scholastic economic thought, it is first necessary to understand the early modern Christian vision of the universe. Of the Scholastics, Thomas Aquinas's *Summa* most thoroughly excavated the theological foundations that shaped the particular cases and topics examined by other *moralistas*.¹⁴ Following Aristotle, Aquinas believed that human beings are purposeful, rational actors aligned to a single, ultimate end. Unlike Aristotle, however, Aquinas defined the ultimate end as only achievable in eternal life, when man would achieve "supreme perfection" and happiness, and his "mind will be united to God"¹⁵ The biblical fall sundered man from this perfect happiness, and life on earth was characterized by rational creatures' struggle to "attain their last end by knowing and loving God."¹⁶ Aquinas, therefore, measured the virtue of every human action, including economic exchange, by whether it promoted man's achievement of eternal life and perfect knowledge of God.

¹⁴ Jean-Pierre Torrell compares the *Summa* to moral manuals, which he describes as disjointed and theologically shallow. *Aquinas's Summa: Background, Structure, and Reception* (Catholic University of America Press, 2005), 10.

¹⁵ Aquinas, *Summa Theologica*, II-I, 3, ii and iv. The School of Salamanca is a modern designation. In contemporary archival materials they are most often identified as the moralistas or Church doctors in the case of the 13th century theologians. *Sourcebook in Late-Scholastic Monetary Theory: The Contributions of Martín De Azpilcueta, Luis De Molina, S.J., and Juan De Mariana, S.J.*, ed. Stephan Grabill (Lanham, MD: Lexington Books, 2007), xxiv.

¹⁶ *Ibid.*, II-I, 1, viii, co.

Virtue, furthermore, could be possible only because human beings were rational actors endowed with free will. Aquinas considered “moral acts [to be] the same as human acts” in that every human action is either the consequence of their own will or the will of another in the case of coercion.¹⁷ As such, no human activity fell outside the consideration of moral theologians, including economic exchange. Francisco Gómez Camacho has pointed out that, for the Scholastics, there was always an agent responsible for an action, whether divine or human. As a consequence, they understood economic actors to be “price makers” rather than “price takers” whose choices were dictated to them by a diffuse and amoral market system.¹⁸

Reason and free will, directed by the cardinal virtue of prudence and the theological virtue of charity, allowed human beings to achieve their ultimate end. Early modern theologians defined charity as the will to act toward a good end out of love of and communion with God.¹⁹ Without this will, a good deed could be good in the natural sense, but not in the moral sense. Without charity, one could not attain God.²⁰ Prudence was also necessary to achieve man’s ultimate end. Aquinas quoted Aristotle’s observation that “prudence is right reason applied to action.” Without prudence, one would not have the knowledge of how to pursue the good end, even if one had the will.²¹ The remaining virtues, including justice, were oriented by prudence, the knowledge to do right, and charity, the will to do right.

¹⁷ Aquinas, *Summa Theologica*, II-I, 1, iii, co.

¹⁸ Francisco Gómez Camacho, *Sourcebook in Late-Scholastic Monetary Theory*, 115. Citing John Hicks, *Causality in Economics*, (Oxford: Basil Blackwell, 1979), 11. Enlightenment philosophy ushered in the “depersonalization” of the market idea in which the market is an agentless system that can be studied scientifically like an organism.

¹⁹ In modern biblical translations, love is usually substituted for charity because charity means to give alms in modern parlance. The New International Version of the Bible translates 1 Corinthians 13:13 as “faith, hope, and love, but the greatest of these is love” whereas Aquinas quotes “the greatest of these is charity.” *The Holy Bible, New International Version*, (Grand Rapids: Zondervan House, 2011).

²⁰ Aquinas, *Summa Theologica*, II-II, 23, vi.

²¹ *Ibid.*, II-II, 42, ii. In article 3 of this question, Aquinas furthermore observed that Aristotle believed prudence to be necessary for moral judgement of particulars.

The Scholastic Vision of Society

Following Aristotle, the Scholastics believed that “man by nature is a social animal,” and it was therefore inevitable and natural that human beings should form collectives complete with governments, religious institutions, laws, and markets for exchange.²² Juan de Mariana described man’s post-lapsarian state of nature as a kind of helplessness and isolation, explaining that from “the need of many things, from fear and the realization of frailty, the consideration for each other (which distinguish us as men) and civil society, from which we live well and happily, were born.” He suggested that divine Providence purposefully created human beings to be weak so that they would “require the assistance of others.” This reliance on each other led to mutual trust, respect, and love between men.²³ This was the natural order, divinely created.

To fulfill their needs, men and women formed collectives, beginning with the family and ending with the state, which would meet those needs that the family could not. When united and ruled in service to the common good, the Scholastics believed that these collectives could facilitate virtue, fulfill individuals' needs, and help them achieve eternal life. Early modern theologians utilized the metaphor of the body to describe society’s unified composition. Every harm experienced by one member of the whole affected the other members, just as damage to one organ affected the others. Together, these parts created "a unity of order" so that there could be no action of a part that "does not belong to the whole."²⁴ Spanish theologians imagined a

²² Aquinas writes that "Man is by nature a social animal, needing many things to live which he cannot get for himself alone, he naturally is a part of a group that furnishes him help to live well." *Commentary on the Nicomachean Ethics*, translated by C. I. Litzinger, O.P., (Chicago, IL: Henry Regnery Company, 1964), Book 1, Lecture 1. This is echoed by 16th century theologians like Juan de Mariana. *The King and the Education of the King [De Rege et Regis Institutione]*, tr. George Albert Moore from the Latin 1st ed., 1599, (Washington: Country Dollar Press, 1948), Book 1, Ch. 1. Compare to the later Hobbesian view of human life in the state of nature as “nasty, brutish and short.”

²³ Mariana, *The King and the Education of the King*, 113-114.

²⁴ Aquinas, *Commentary*, Book I, Lecture I.

“mystical” body politic with both temporal and spiritual dimensions, united by a shared Catholic faith as a Christian Commonwealth.²⁵

This mystical body politic was further defined by diversity and hierarchy. Early modern moralistas imagined God and all of his creatures to be bound together in a hierarchical order, extending classical understanding of the “Great Chain of Being” to include God and other celestial beings at the top, followed by kings, nobles, ecclesiastics, and the peasantry. This order was divinely inspired, a product of God’s generative love and a reflection of God’s infinite likeness. Aquinas reasoned that “the perfection of the universe therefore requires not only a multitude of individuals, but also diverse kinds and therefore diverse grades of things.” Early modern moralistas believed that people of different grades developed and required different virtues. To achieve the perfect likeness of God on earth, each kind of thing and creature needed to pursue perfect virtue according to their grade.²⁶

Monarchy and Political Power

Though natural and right, a harmonious order would not arise naturally without the effort of its subjects. Crucially, such an order required “a principal political director,” a “head” to direct the whole toward the common good.²⁷ Political power, therefore, had a deeply moral dimension in that the exercise of power was necessary for society to achieve its natural order, just as the virtues of reason and prudence were necessary for an individual to adhere to natural law. The king directed in the mystical body politic, but this was not a vision of absolute or divine kingship. Rather, kings had an obligation to their subjects to desire the prosperity of their

²⁵ In his introduction, Moore names Bellarmine and Molina as two staunch proponents of the Christian commonwealth. *The King and the Education of the King*, 54-57.

²⁶ Arthur O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea*, (Cambridge, Mass., Harvard University Press, 1936) 75-76.

²⁷ Victor M Salas, *A Companion to Francisco Suárez* (Leiden, Boston: Brill, 2014), 50.

countries rather than of themselves. According to the *Siete Partidas*, the king's subjects had a right to overthrow a king who became a tyrant, defined as one who "[prefers] to act for their own advantage, although it may result in injury to the country, rather than for the common benefit of all."²⁸ Beyond this general rule, the *Siete Partidas* specified that the king owed his subjects affection, justice through good laws, and security. The law code also particularly singled out the king's obligation to the vulnerable, that he should restrain the higher ranks' arrogance and violence towards their "inferiors." A king who fulfilled his obligations deserved his subjects' obedience, reverence (though not "servile fear"), and best efforts to promote the common good of the realm.

Though Spanish kings were not divine, they were required to act as protector of the Catholic faith and "vicar of God in the empire, in order to dispense justice in temporal matters, just as the Pope does in those which are spiritual."²⁹ If a king failed in this duty, threatening the spiritual well-being of the republic, many Scholastics believed that the pope could dethrone him.³⁰ This dual constitution of power defined the Spanish empire not just in theory but in practice as well. Alejandro Cañeque notes that historians have overstated the absolutist power of the Spanish monarchy in describing the king as head of church, with the church constituting nothing more than a prop of empire. Instead, Cañeque describes an early modern society in which the Church and the Crown formed two more or less equal pillars of political power. Furthermore, because these distinct powers were also set in a society where the spiritual was

²⁸ *Las Siete Partidas, Volume 2: Medieval Government: The World of Kings and Warriors*, Partida II, Title I, Law X. In *De rege*, of course, Mariana goes further to argue that regicide is a legitimate response to a king who has become a tyrant.

²⁹ *Ibid.*, 269.

³⁰ Moore in preface to *The King and the Education of the King*, 42.

always temporal, jurisdictions blurred in practice, and Church and Crown frequently checked the others' power.³¹

Corporatism

The monarch's right to issue laws was further checked by the Spanish political tradition of the *fuero*, or customary corporate "freedoms." In Spain, corporate bodies such as guilds, *cofradías*, mendicant orders, municipalities, and territories claimed jurisdiction over such public functions as courts, taxes, economic regulations, and social organization. As a result, "the location of power was decentralized across corporate entities," rather than centralized in a monarchy.³² In fact, up until the late 18th century, the legitimacy of the Spanish monarchy hinged on the support of these various Church and territorial corporate bodies. Even Alfonso X's *Siete Partidas* only overcame regional opposition once it recognized that the king might make laws only as far as they did not conflict with customary *fueros*.³³ In stark contrast to the absolutist character often attributed to Spain's monarchy, corporatism granted Spain's political system a composite, competitive, and constitutional character.

The fractured, corporatist nature of Spain's political system had implications for its economy as well. Past historians have blamed Spain's relatively poor productivity (and Latin America's subsequent underdevelopment) on what they believed to be a centralized political structure in which individuals lacked the freedom to seek out profit opportunities.³⁴ But

³¹ Alejandro Cañeque, *The King's Living Image: The Culture and Politics of Viceregal Power in Colonial Mexico*, (New York, NY: Routledge, 2004), especially Ch. 3.

³² Regina Grafe, *Distant Tyranny: Markets, Power, and Backwardness in Spain, 1650-1800*, (Princeton, NJ: Princeton University Press, 2012), 119.

³³ *Las Siete Partidas, Volume 1: The Medieval Church: The World of Clerics and Laymen (Partida I)*, xxxix.

³⁴ The characterization of Spain's political economy as centralized has faced criticism in the last few decades, but still holds sway, especially among scholars in the New Institutional Economics school. For example, in *Governing the Commons*, Elinor Ostrom suggests that Castile's absolutist political economy was transported wholesale to Latin America, contributing to its underdevelopment. *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge, New York: Cambridge University Press, 1990), 81. Other examples include Douglass C. North, William Summerhill, and Barry R. Weingast, "Order, Disorder, and Economic Change: Latin America

according to economic historian Regina Grafe, it was the composite, constitutional, and diffuse nature of Spain's political economy that inhibited market integration. That is, rather than too little freedom, regional Spaniards had too much freedom to create barriers to internal trade, a system that historian David Vassberg has called municipal mercantilism.³⁵ The central monarchy had insufficient power to force integration, in part because its very power rested on its recognition that corporate bodies had the right to decide regional taxes and mints.³⁶

Grafe posits that this political fragmentation endured for as long as it did because it served the interests of the corporate bodies to maintain it. But the Crown also recognized this system as common sense. This acquiescence is evidenced by the way in which the Crown arranged power in the viceroyalties. First, viceregal courts frequently devolved power to corporate groups and private individuals when administrators recognized that they did not have the resources or knowledge to manage a public function. In this way, the powerful merchant consulado in Mexico City also came to collect royal taxes on imports. The creation of the *república de indios*, with its own set of courts and administration, was also a product of the logic of corporatism. Spanish law incorporated indigenous people into the Spanish political economy by constructing an indigenous corporate identity, granting villages their own *fueros* and recognizing customary economic privileges while also enforcing obligations such as tribute.

versus North America,” in B. Bueno de Mesquita and H. L. Root, eds., *Governing for Prosperity*, (New Haven, Conn., 2000), pp. 17–58, and Stanley J. Stein and Barbara H. Stein, *Silver, Trade, and War: Spain and America In the Making of Early Modern Europe*, (Baltimore: Johns Hopkins University Press, 2000), 266. The Steins are careful not to overstate the absolutist nature of the state, but they also blame the government's overbearing tax system or the lack of dispersed capital.

³⁵ David Vassberg, *The Village and the Outside World in Golden Age Castile: Mobility and Migration in Everyday Rural Life*, (Cambridge, UK: Cambridge University Press, 1996), 21. See chapter 2.

³⁶ Grafe, *Distant Tyranny*, xv. Grafe still recognizes that Spain's economy was underdeveloped relative to other European economies, and she still locates that underdevelopment in the nature of Spain's political institutions. But she decouples protean “democracy” from development.

In a political economy so fragmented, universal Catholicism and the symbol of monarchy functioned as important sources of shared culture. Through the courts, it was the Crown's responsibility to mediate conflict between corporate bodies in order to produce peace and the common good. The courts, therefore, were the main site of political negotiation and competition where various corporate groups came together to negotiate for what they considered to be a more just order. Historians have argued that compromise ruled in these judicial proceedings. Because harm to one part was thought to harm the whole, it was not desirable that one party should "win" at the other's expense. Rather, justices looked for a compromise that would restore peace and cause the least harm to all concerned.³⁷

Systems of Justice

Corporatism in the Spanish empire also resulted in a justice system composed of a patchwork of courts and jurisdictions. Many corporate bodies fell under their own jurisdiction and were protected from prosecution in others. Indigenous subjects fell under the jurisdiction of *Juzgado de Indios* and were mostly protected from the inquisition in New Spain.³⁸ Ecclesiastics, guildsmen, and the merchant guild also all had their own courts for deciding internal conflicts. The boundaries between jurisdictions often blurred, however, and plaintiffs and defendants often took advantage of this ambiguity to "shop" for a court that might be friendlier to their case. In part because of competition between these jurisdictions, legal historians now argue that the courts were not simply a mechanism for domination, but sites of political and moral negotiation

³⁷ Tamar Herzog, *Upholding Justice: Society, State, and the Penal System in Quito (1650-1750)*, (Ann Arbor, MI: University of Michigan Press, 2004), 225.

³⁸ While the formal Inquisitorial court was prohibited from trying indigenous people, Richard Greenleaf points out that no such prohibition existed before 1571, and after that time, the Archdiocese' provisorato continued to investigate indigenous heresy. "Historiography of the Mexican Inquisition," in *Cultural Encounters: The Impact of the Inquisition in Spain and the New World*, eds. Mary Elizabeth Perry and Anne J. Cruz, (Berkeley: University of California Press, 1991), 261-264.

where people and groups held power to account and promoted their own understandings of theology, law, and commerce.³⁹

Importantly, in the viceroyalties this conversation included indigenous subjects. In order for the king to fulfil his obligation to protect the vulnerable from the powerful, the Spanish Crown took institutional measures so that *personas miserables*, a legal category designating vulnerable people, could access the justice system. In Spain, this category included the poor, widows, children, and other “fatherless” subjects, and in the viceroyalties it came to include indigenous people. Such a designation formalized the place of indigenous people as the “feet” of the body, but it also gave them access to justice. The court assigned these subjects legal agents and attorneys who worked for free or moderate prices.⁴⁰ In the Americas, the Crown designated a separate court, called the Juzgado de Indios, to hear cases pertaining to indigenous subjects. Indigenous people took full advantage of their access to the king’s ear, gaining a reputation for litigiousness.⁴¹

Legal historian Tamar Herzog goes further to argue that the administration of justice within these courts was a communal effort run for and by local subjects. Not only did ordinary people participate in the justice system as plaintiffs and petitioners, but as judges, notaries, and officials as well.⁴² The “lettered city,” therefore, extended much further than historians have

³⁹ Brian Owensby, *Empire of Law and Indian Justice in Colonial Mexico*, (Stanford, CA: Stanford University Press 2009), 3-5, 212.

⁴⁰ Bianca Premo explores the patriarchal nature of justice in the viceroyalties in *Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima*, (Chapel Hill, N.C.: The University of North Carolina Press, 2005).

⁴¹ A common interpretation of the Crown’s choice to make the legal system accessible to indigenous and other subaltern subjects was that it helped to legitimize and reinforce the Crown’s power. The justice system prevented uprisings by providing an escape valve for subaltern resentments. See for example, Laura Lewis *Hall of Mirrors: Power, Witchcraft, and Caste in Colonial Mexico*, 2003, 6-7. While this was certainly one of the effects of the judicial system, there is little evidence to suggest that the colonial power was aware of this effect or motivated by it. An endogenous explanation, in contrast, is attentive to early modern political theory that made the king responsible for securing justice for his subjects. On the benefits of endogenous cultural analysis see Jason Kaufman “Endogenous Explanation in the Sociology of Culture.” *Annual Review of Sociology*, Vol. 30, 2004, pp. 335 - 357.

⁴² Tamar Herzog, *Upholding Justice*, 47-53.

understood.⁴³ Jurisdictions defined by corporatism also led to more popular participation. As an example, while conflicts between guilds fell under the jurisdiction of the city's *Mesa de Propios*, a municipal judicial body which oversaw public works and domestic trade, conflicts within guilds were first judged by officials elected by guild members from their own ranks. One set of guild ordinances decreed that any master considered to be honorable, virtuous, and of good *calidad*—a term which encompassed good judgement, lineage, religious purity, wealth, work, legitimacy, and race—by his own colleagues was considered fit to administer justice.⁴⁴ Only after these efforts toward justice failed did the case move up to the *Mesa de Propios*.

Ecclesiastical and Civil Law

As stated, one of the purposes of this dissertation is to demonstrate how deeply theological concerns mattered in early modern economics. A fair historicization of any set of early modern practices typically labeled “civil” cannot isolate those practices from theological, eschatological concerns, because early modern actors would not have recognized such a division. The practices of New Spain’s judicial system illuminate this entanglement. Though courts were labeled civil or ecclesiastical based on where they gained their authority, both ecclesiastical and civil courts drew from the same collection of precedent and written sources. As noted, the *Siete Partidas*, from which were derived the *Nueva Recopilación* of 1567 the *Novísima Recopilación*

⁴³ Burns, *Into the Archive*, 126. In *La ciudad letrada*, Ángel Rama famously characterizes Spanish America as a society built on the primacy and power of letters, excluding indigenous participation because indigenous people generally practiced oral and pictorial communication. *The Lettered City [La ciudad letrada.]*, Trans. John Chasteen (Durham: Duke UP, 1996). Alcira Dueñas’ study of indigenous and mestizo intellectuals in the Andes further questions the “Lettered City” concept of intellectual scholarship being the exclusive purview of elite Spaniards. Alcira Dueñas, *Indians and Mestizos in the “Lettered City”: Reshaping Justice, Social Hierarchy, and Political Culture in Colonial Peru*. (Boulder, Colo.: University Press of Colorado, 2010).

⁴⁴ Magali Carrera argues that whether someone was publicly known to be Spanish, indigenous, or *casta* depended on “18th century techniques and practices of corporeal differentiations.” The colonial body was categorized in terms of *calidad*, defined by intersectional markers such as Christian lineage, nobility, natal legitimacy, Spanish customs and manners, and *raza*, or the physiognomic markers of *calidad*. Like most historians, Carrera argues that idealized portraits or laws that suggest a rigid caste system based on the notion of *calidad* does not reflect the more flexible reality. *Imagining Identity in New Spain: Race, Lineage, and the Colonial Body in Portraiture and Casta Paintings*, (Austin, TX: University of Texas Press, 2003), xvi.

(1805), was itself based on canon law. Canon law, in turn, drew upon Roman law through the 12th century legal textbook, *Decretum Gratiani* and upon Greek Aristotelian natural law thanks to 13th century scholars Albertus Magnus and Thomas Aquinas. Finally, both ecclesiastical and civil jurists in New Spain cited the Bible as precedent.

In addition to this shared corpus, Brian Madigan argues in his comprehensive comparative study of ecclesiastical and civil legal procedures that there was also very little difference between procedures or reasoning styles of the civil and ecclesiastical courts, even well into the 18th century and during the Bourbon reforms.⁴⁵ Furthermore, Herzog notes that jurists believed that a theological degree qualified one to judge civil cases because the point in civil cases was to distinguish right from wrong, for which a degree in theology was excellent preparation. An apprenticeship period might be necessary to ensure that the new judge-theologian upheld proper procedure, but he was already to prepared to make a just judgement.⁴⁶

A Method for Moral Reasoning

The Scholastics received a training in theology that promoted a kind of moral reasoning called *recta ratio*. Francisco Gómez Camacho first argued that the Scholastics considered *recta ratio* to be “a reason that is fallible, practical, situated, controversial, and paradigmatic.”⁴⁷ It was fallible in that the application of natural law in particular situations depended greatly on the reason and virtue of fallible and sinful human beings with only approximate knowledge. And it was situated in that theologians had to account for the particular circumstances of a given situation in order to make a just judgement. In the preface to his *Summa*, Aquinas laid out his

⁴⁵ Brian Madigan, “Law, Society, and Justice in Colonial Mexico City, Civil and Ecclesiastical Courts Compared, 1730-1800,” Ph.D. dissertation, (University of California, Berkeley, 2013). For more on ecclesiastical courts during the 18th century, see William B. Taylor, *Magistrates of the Sacred: Priests and Parishioners in Eighteenth-Century Mexico* (Stanford, CA: Stanford University Press, 1996), pp. 27-45.

⁴⁶ Herzog, *Upholding Justice*, 23.

⁴⁷ Alonso-Lasheras, *Luis de Molina's De iustitia et iure*, 39. Citing Francisco Gómez Camacho, *Economía y filosofía moral: la formación del pensamiento económico europeo en la escolástica española*, (Madrid: Síntesis, 1998).

method for moral reasoning along similar lines, explaining that "in morality, in fact, generalities are not very helpful, given that actions are comprised of particularities."⁴⁸ Judges in every court in New Spain practiced this case-based method of reasoning, generally known as casuistry. They deduced the morality or justice of an act by considering "the end pursued by the acting subject and...the circumstances surrounding the act."⁴⁹ Intention mattered deeply, but so did the circumstances, especially when the circumstances might limit the ability of the actor to act freely.

The situatedness of *recta ratio* allowed for a certain flexibility in the face of change. As circumstances changed over time, theologians and lawmakers had to reconsider how natural law might be carried out in the new situation. Theologians might come to understand certain human laws to be unjust or imprudent, especially in the wake of a great change in conditions. As such, casuistry was particularly useful in the Americas because the Spanish encountered much that was new to them. Victor Tau Anzoátegui argues that, for this reason, casuistry enjoyed a stronger and more diversified tradition in the viceroyalties, which accounts for a great deal of the differences between viceregal and peninsular law.⁵⁰

Casuistry allowed for the evolution of positive, human law, especially in regard to rapidly changing commercial realities. In economic matters, the Scholastics understood their work to be a guide for the virtuous judgements of prudent men more knowledgeable of the facts on the ground. Often, their logical analysis ended with the statement that it must be left to "prudent

⁴⁸ Following this logic, the *Summa* proceeds from the most fundamental, general, and universal laws to the particulars.

⁴⁹ Aquinas, *Summa Theologica*, II-II, Preface. He writes "we will first deal with what pertains to persons regardless of their situation; second with what concerns particular situations."

⁵⁰ He argues this in contrast to those scholars he argues have described those differences as evidence of viceregal lawlessness. Victor Tau Anzoátegui, *Casuismo y sistema: indagación histórica sobre el espíritu del derecho indiano*, (Instituto de Investigaciones de Historia del Derecho, Buenos Aires, 1992), 135-136.

men,” in conversation with their knowledgeable confessor, to judge the moderate or just price.⁵¹ They were not the final word on just economic practices. The Scholastics also recognized that a commercial practice might appear unjust in principle even though it hurt no one and perhaps even promoted the public good. Instead of condemning the practitioners, the Scholastics saw these contradictions as opportunities to uncover natural law and extend human knowledge. For example, in 1556, Martín de Azpilcueta defended bills of exchange as "a good way to transfer," in part because banning them would be detrimental to "students, pilgrims, and many other dealers."⁵² He privileged outcome over legality, reasoning that "it seems absurd to condemn so many good merchants who carry out [bills of exchange], and by condemning them hurt everyone.” He followed up this statement with a legalistic argument that bills of exchange should be considered licit. Similarly, Luis de Molina encouraged the Scholastics to abide by the judgement of merchants who are more familiar with the estimation of goods, especially when "applied to the dealings they carry out with one another in which none of them complain or object."⁵³ In cases where no one objected, some as of yet uncovered principle of natural law was likely at work.

The casuistic method held sway up through the late-18th century when Enlightened late 18th and 19th century critics of casuistry began to argue that it was arbitrary and cruel, a judgment which historians largely echoed until recently. Many historians now argue that the casuistry method was not arbitrary, but rather based in precedent and in careful methods of reasoning.⁵⁴

⁵¹ The prudent man is a common trope. See for example, Aquinas, *Summa Theologica* II-II, 31, iii, ad. 1; Molina, *Sourcebook*, 148. Additionally, the Scholastics encouraged the participation of a confessor knowledgeable in matters of commercial justice, Mercado, *Suma*, Book 2, Ch. 5.

⁵² Molina, *Sourcebook*, 53.

⁵³ Molina, *Sourcebook*, 203. On the other hand, Mercado warned against allowing merchants to judge the just price “for each [merchant] is the friend of their interest,” Book 2, Ch. 6.

⁵⁴ As recently as two decades ago, Dauril Alden wrote in his study of the Jesuit order that "the Iberians were rigidly legalistic and intolerant of deviations from perceived norms, especially norms sanctified by law." Dauril Alden, *The*

The Scholastic tradition was an “effort to build a moral code on rational grounds ... in which no moral command, save some concerning the sacraments, stands only on the basis of a divine fiat or divine revelation.”⁵⁵ And rather than encourage cruelty, the flexibility inherent in casuistic reasoning could temper the prescription of the law. For example, Madigan finds that judges in Mexico City typically prescribed less harsh punishments than the actual law called for because they could consider extenuating circumstances.⁵⁶ Judges understood such decisions to be an opportunity to exercise mercy.

Historians understand the Bourbon reforms to have ushered in a greater emphasis on certainty and uniformity in law, eventually leading to the positivist turn in the 19th century.⁵⁷ The most comprehensive set of viceregal reforms, the 1786 *Ordenanzas de Intendentes*, described the reforms as an attempt to “unify” and encourage “equality” across the governments of New Spain while also “permitting the differences” between them.⁵⁸ Yet, in court cases well into the 18th century, the casuistic method seems to have held sway, even allowing reformers to make their case on the grounds that conditions had changed. Madigan also argues that casuistry continued to be the reasoning method of choice in Mexico City’s courts well into the 18th century.⁵⁹ The conclusion to Chapter 5 supports his finding: as late as the 1770s, justices, lawyers, and petitioners argued over whether an exchange was just using the method of case-based *recta ratio*.

Making of an Enterprise: The Society of Jesus in Portugal, Its Empire, and Beyond, 1540-1750, (Stanford, CA: Stanford University Press, 1996), 294.

⁵⁵ Most legal historians follow Noonan’s analysis. John T. Noonan Jr., *The Scholastic Analysis of Usury* (Cambridge: Harvard University Press, 1957), 3-4. These include Tau, *Casuismo y sistema*, and Owensby, *Empire of Law*, 45.

⁵⁶ Madigan, “Law, Society, and Justice in Colonial Mexico City,” 180.

⁵⁷ *Real Ordenanza para el establecimiento é instrucción de intendentes de ejército y provincia en el Reino de la Nueva España, de orden de Su Magestad*, Madrid, 1786, <https://www.colmich.edu.mx/rersab/files/biblioteca/ordenanzas1786.pdf>

⁵⁸ *Ibid.*, 7 and 9. For more on 18th century liberals and their critiques of early modern law, see Michael C. Scardaville, “(Hapsburg) Law and (Bourbon) Order: State Authority, Popular Unrest, and the Criminal Justice System in Bourbon Mexico City,” *The Americas*, Vol. 50, No. 4. (April, 1994), pp. 501- 525.

⁵⁹ Madigan, “Law, Society, and Justice in Colonial Mexico City,” 14.

Just Exchange

The 16th century Scholastics, like Aquinas and Aristotle before them, saw material need as a driving force in the lives of human beings. Mariana observed that humans were born “naked and frail” and in need of assistance, and only out of that need did man develop commerce.⁶⁰ Whereas Adam Smith would later treat human beings’ “propensity to truck, barter, and exchange” as natural and inherent, Scholastics believed that human need, and the commerce that came with it, was a consequence of the Biblical fall of man and the creation of sin. The sin of self-interest, or the desire to fulfill one’s own needs, also arose as a consequence of the fall. According to Mercado, people “love what belongs to them now” and “stop wanting good for others when [they] understand that it will be alienated from us and granted to another.” Rather than rail against the sin of self-interest, however, Mercado argued that, “having lost that first charity,” self-interest might be directed through the institution of private ownership in order to provide for society. If not “universal love, at least particular interest would move people to take care of themselves so that the share of goods, divided and distributed, would grow.”⁶¹

The *Siete Partidas* also recognized the important role that merchants and trade played in promoting the common good, prefacing its treatment of commercial law with the observation that “countries and districts frequented by merchants with their merchandise are...more wealthy, better provided for, and more populous, and for this reason all persons ought to be pleased with them.”⁶² Mercado noted that a merchant labored as did any other man, and so deserved a profit in

⁶⁰ In *Wealth of Nations*, published in 1776, Smith treats man’s propensity to exchange as inherent and natural. Mariana, *The King and the Education of the King*, 113-114.

⁶¹ Mercado, *Suma*, Book 2, Ch. 2, paragraph 6.

⁶² *The Siete Partidas*, Vol. 4, *Family, Commerce, and the Sea: The Worlds of Women and Merchants*, Partida V, Title VII, Law IV. This sentiment contradicts an older historiography that argued that Spanish culture despised labor and commerce. It is true that laws forbid nobles from taking part in commerce, but such laws can be explained by the Catholic vision of a diverse and unified universe where everyone fulfills the role granted to them, and not necessarily by the idea that commerce was inherently ignoble. Ruth McKay outlines this older historiography in the

payment for his labor. Man's "industry, ingenuity, ability, risk to life and disease," all were worth "an appreciable amount in money."⁶³ As an added benefit, merchants could then direct this profit toward a virtuous end, like the well-being of one's country or assistance of the needy. Under the right circumstances, the Scholastics considered trade a common good and personal profit a just payment for merchants' labors. But commerce also created many opportunities for fraud and sin. Moralistas worried that merchants were easily distracted by worldly things and likely to forget God. These distractions allowed for an easy slide toward the twin sins of greed and usury. Merchants could participate in the salvation of society as much as men of any other profession, however, if governed by the cardinal virtue of justice

The Scholastics understood the virtue of justice to be fundamentally relational. Unlike the theological virtues, which oriented a person's relationship to God, the cardinal virtue of justice oriented human beings' relationship to other human beings. Aquinas considered justice to be the base line of how human beings ought to treat one another. He argued that "when a man does what he ought, he brings no gain to the person to whom he does what he ought, but only abstains from doing him a harm."⁶⁴ In order to achieve perfect happiness in God, it was necessary, though not sufficient, to follow the precepts of justice. Beneficence and liberality were also required in order to achieve perfect happiness in God, but one did not owe beneficence to another human being.⁶⁵ The stakes were high, therefore, in matters of justice. Not only could one endanger one's soul but one might also bring harm to another. When the Scholastics imagined a society built on just economic relationships, they broke down those relationships into two categories. First, they

introduction to *Lazy Improvident People: Myth and Reality in the Writing of Spanish History*, (Cornell University Press: Ithaca, NY, 2006).

⁶³ Mercado, *Suma*, Book 2, Ch. 9.

⁶⁴ Aquinas, *Summa Theologica*, II-II, 58, iii, ad. 1.

⁶⁵ Aquinas, *Summa Theologica*, II-II, 117, V, ad. 3.

considered commutative justice, or just exchange between two individuals. This category included commercial exchange, loan making, and pricing. The second category they considered was a matter of distributive justice: How should resources be managed, owned, and distributed in society?

Commutative Justice

Commutative justice "[rendered] to each their right" in relation to the other. A just relationship between two people required that each receive their due from the other. The definition of an individual's due could be decided either through a contract (a tool of positive law) or through the nature of the relationship.⁶⁶ If one party was dependent upon another, the type of justice between them naturally assumed asymmetrical characteristics. For example, Aquinas believed that children did not exist entirely separate from their fathers in the sense that their interests and possessions were too closely tied to one another. A father and son could no more owe each other a debt than they could owe themselves a debt. Nor could a child ever be expected to repay their father in full, and it would be a miscarriage of justice to require them to do so. In the exchange between father and child, only asymmetrical, "imperfect" paternal justice could exist. If, however, the two parties to an exchange were not subject to one another in any way, their "right" could be "compared," and "simple," symmetrical justice existed between them.⁶⁷ Between two individuals whose relationship was governed by simple justice, a just exchange advantaged both equally according to their own estimation. Mercado put this foundational precept in the following words: "To be just, a contract must be equal, not in the

⁶⁶ Ibid., 57, ii.

⁶⁷ In the same place, Aquinas compared paternal justice to the kind of justice that exists between God and humans, which is "imperfect" or asymmetrical. Human beings could never perfectly repay God for the gifts that he had given them. This inability of one party to repay in full was a defining feature of the kind of justice that existed between God and human beings, and the persistence of inequity in this case was not unjust.

people that contract, for these can be and usually are very different, but in the things that are contracted, and these not in nature, but only in value and esteem."⁶⁸

No contractual exchange that subverted these natural laws governing commutative justice could be just, even if both parties agreed to it voluntarily. God had preordained natural law and the correct order of things before human will. Therefore, though “the will of the parties was a necessary condition for the establishment of a contractual relationship...it was not sufficient, nor did it determine the content of the juridical relationship.”⁶⁹ That an exchange should be equitable was a principle dictated by natural law. One’s willingness to agree to an inequitable exchange could not make it just.⁷⁰

Moreover, because the Scholastics were skeptical that a person would ever agree to a contract that disadvantaged them, an unequal contract suggested that the disadvantaged party had agreed to the terms of the contract under less than free circumstances. In contrast to much of modern economic theory, which tends to ignore factors such as market power and treats economic actors as identity-less, early modern economic thinkers believed that wealth, caste, gender, and age played a part in determining economic behavior. Coercive forces such as great need and poverty interfered with free will. In 1611, the dictionary author Francisco del Rosal defined need as a “force that compels and obliges, from which we cannot escape.” “Poverty,” he

⁶⁸ Mercado, *Suma*, Book 2, Ch. 2.

⁶⁹ António Manuel Hespanha, “Las categorías del político y de lo jurídico en la época moderna”, *Ius fugit: Revista interdisciplinar de estudios histórico-jurídicos*, Volume 4, (1995), 75.

⁷⁰ This is in contrast to modern contract law which generally privileges voluntary consent. A contract is only voidable if a party entered into it under false pretenses or under duress, or if they were not capable of consenting due to mental incapacity or minority. The content of the contract mostly does not matter, although a contract is considered void if the agreement is to carry out an illegal act. Randy E. Barnett, “A Consent Theory of Contract”, *Columbia Law Review*, 86 (1986): 269–321, especially 293 for discussion of how content might factor into the legality of a contract. Similarly, an early modern contract could not be made to carry out an unjust act. Hespanha, “Las categorías,” 75.

wrote, “forces man to do what he would otherwise not.”⁷¹ The *Siete Partidas* also explored the consequences of emotions and force in exchanges, decreeing that “where a man, influenced by fear or force, buys or sells property, the transaction will not be valid, but we decree that the purchase must be set aside if it can be proved that the force or fear was of such a character that the party was compelled to make such a purchase, in spite of himself.”⁷² Circumstantial need or fear might create a situation in which one would choose to accept a disadvantageous contract that he or she would not choose under normal circumstances. Unjust contracts, therefore, were void both because they were inherently unjust and because one party did not enter into such contracts of their own free will.

Cheating, Stealing, and the Just Price

While much attention has been given to the Scholastic theology on usury, less has been written on the category of “cheating.” An exchange could be unjust in a number of ways without qualifying as usury. Before turning to usury, Aquinas considered this broader category of unjust commerce, including price gouging and the importance of transparency in ascertaining the value of a thing. These were both fundamentally problems of just price, and in the words of Fray Juan de Montalbán, an 18th century moralista whose pamphlets circulated in New Spain, “just price is the foundation of justice in buying and selling.”⁷³ Price was the mechanism and outward sign by which an exchange could be judged to be equitable. The difficulty, of course, was in ascertaining the just price in practice. As Mercado noted, “natural law dictates that things be sold at their fair price, but does not teach the just price of every kind of clothing.”⁷⁴

⁷¹ Francisco Del Rosal, *Origen y etimología de todos los vocablos originales de la Lengua Castellana*, Biblioteca Nacional de Madrid, manuscrito Ms. 6929, 1601-1611.

⁷² *Siete Partidas*, Vol. 4, *Family, Commerce, and the Sea: The Worlds of Women and Merchants*, Partida V, Title V, Law LVI.

⁷³ BNAH, Libro No. 32. Fray Juan de Montalbán, “Cartas pastorales de usura, simonía, y penitencia,” 1729, 11.

⁷⁴ Mercado believed that price and value were consequences of the fall, arguing that “nature does not rate or mark [goods]. She raised and produced [the goods], but she did not appreciate them, because...she did not raise them so

Economic moralistas considered a number of methods for discovering the just price. The Scholastics believed the just price to be the “natural or accidental [price], which use introduces and which is now set in the plazas or stores.”⁷⁵ This price was subjective and flexible, shifting with variations in demand and supply, though the moralistas also recognized the objective qualities of value. Montalbán argued, for example, that in addition to the natural price, just price could be arrived at through the “well-founded opinion of those who buy and sell...one should understand the good's utility, its abundance or lack, the cost and labor involved in order to create it, and other pertinent circumstances.”⁷⁶ The Scholastics also agreed that the natural price might be unjust under certain circumstances, such as a time of bad harvest or in the case of “force or deception.”⁷⁷ Francisco de Vitoria, for example, argued that the market’s price might not be just if the good was essential to life, an external condition which limited the ability of the buyer to act freely. It is because of this observation that he advocated for a fixed, legal price on certain necessities.⁷⁸ Even then, the Scholastics also recognized that the legal price might also be unjust, just as any other human law could be unjust.

Later moralistas explicitly justified the king’s right to fix prices on the basis that consumers deserved the king’s protection against generally rapacious merchants, while early Scholastics imagined a more equal footing between buyer and seller. Aquinas, for example, believed that both the buyer and seller were obligated to seek the just price in any exchange. In contrast, Mercado imagined a merchant-consumer relationship in which the merchant most often had the upper hand in terms of knowledge, skill, and power. He believed that “one can take less

that they sold and alienated, but so they may serve everyone...our malice made them private and our needs venal. Ingenuity was human buying and selling, and invention of men set the price of gold and silver.” *Suma*, Book 2, Ch. 6.

⁷⁵ A belief otherwise known as utility value theory. Mercado, *Suma*, Book 2, Ch. 6.

⁷⁶ Montalbán, “Cartas pastorales de usura, simonía, y penitencia,” 1729.

⁷⁷ Mercado, *Suma*, Book 2, Ch. 8.

⁷⁸ Marjorie Grice-Hutchinson, *Early Economic Thought in Spain*, 94.

than the legal price as long as the merchant gives it to you, because the Republic is interested in protecting the buyer, impeding the greed of the seller, not the luck of the buyer.” He further wrote that the king’s desire “is to sell as cheap as possible, because [his] only job is to promote all the utility and benefit to the members of the republic. This is distinct from the desire of merchants, which is to buy cheap and sell expensive.”⁷⁹ On the other hand, if the merchant found himself in the position of buyer, they must offer a just price in the case that the “rustic” seller is unaware of the true value of the item.

Importantly, the just price was not based on the individual estimation of the parties, but rather on the market, or collective, estimation of value. Aquinas noted that in cases of the buyer’s great need, “one might think that the seller may sell at a high rate to balance out the advantage accruing to the buyer.” Drugs that save the buyer’s life, for example, are to his very great advantage, an advantage which far outweighs that of the seller. But in this case, Aquinas argued, the advantage was “not due to the seller, but to a circumstance affecting the buyer.” While the buyer would be willing to pay dearly for the drugs, the excess value generated by his great need did not belong to the seller; it was not a product of the seller’s labor nor a reasonable payment for his commercial skill, but a product of circumstances. The seller, therefore, did not have a “right” to that value, and it would be akin to stealing if he chose to sell value that did not belong to him.⁸⁰

The 16th century Scholastics wrote during a period in which European merchants consolidated market power on an unprecedented scale, so it follows that they would tend to imagine buyers to be more vulnerable than merchants. Mercado may have had his experiences in the viceroyalties in mind, where scarcity and starvation were a constant fear. It was considered

⁷⁹ Mercado, *Suma*, Book 2, Ch. 6.

⁸⁰ Aquinas, *Summa Theologica*, II-II, 77, i, Co.

common sense at all levels of society that the public authority had a responsibility to stave off scarcity. Mercado, for example, justified the legal price on the basis that public officials could use it to ensure merchants a profit so as to "bait their interest and taste, so that they provision the city."⁸¹ Peruvian born Juan de Matienzo also linked public price setting to scarcity, but worried instead that duties and imports would scare off merchants.⁸² In Spain, and eventually in its viceroyalties, local public authorities set up grain storage sites called *alhóndigas* as a safeguard against scarcity and the price gauging that accompanied it.⁸³ Likely because of the specter of scarcity, early modern people considered price gouging, collusion, stockpiling, and other monopolist practices to be particularly heinous sins. The 18th century archbishop Dr. Alonso Núñez de Haro y Peralta, for instance, spoke of monopolists in the harshest of terms, decrying "those who hide wheat and maize to sell again at a higher price" as "imps of cruel avarice, inventions of malice and trickery, and detestable, loathsome beasts."⁸⁴

But even in the absence of cheating, authorities in New Spain believed that the chaos of a market made up of self-interested individuals might lead to scarcity. They placed more trust in some disinterested authority's ability to judge dispassionately and order the forces of supply and demand with price fixing.⁸⁵ In 1579, for example, the Audiencia declared that indios should be able to sell chickens at "whatever price they can," or market price, in their own communities. However, in Mexico City, they could not sell at more than three reales per chicken. City dwellers and indigenous suppliers' "neglectful" underproduction had created high demand that indios

⁸¹ Mercado, *Suma*, Book 2, Ch. 7.

⁸² Oreste Popescu, *Studies in the History of Latin American Economic Thought*, (Taylor and Francis, 1997), 40.

⁸³ For more on alhóndigas in New Spain, see Raymond L. Lee, "Grain Legislation in Colonial Mexico, 1575-1585." *The Hispanic American Historical Review*, Vol. 27, no. 4 (1947): 647-60.

⁸⁴ Dr. D. Alonso Núñez de Haro y Peralta, "Nueve ejemplares de la carta pastoral del arzobispo a los cura propios sobre el abominable vicio de la usura." Nov. 12, 1785. Archivo del Arzobispado de México, Caja 195, Exp. 46.

⁸⁵ Mariana writes that with only one ruler, "there is less evil passionate desire for possessions...with less greed there will be a greater sphere for justice, a larger place for liberty...the common property is looked after better by one than by many." Juan de Mariana, *The King and the Education of the King*, 116-117.

“took advantage of” by selling at “excessive prices.”⁸⁶ In order to remedy the situation, the Audiencia not only attempted to fix prices, but also sought to regulate supply. They decreed that each indigenous person would be obligated to raise twelve Castilian chickens and six native chickens, numbers that perhaps reflected the predominately Spanish city dwellers' preferences. The justices feared that the indios' personal interest would not adequately supply chickens to Mexico City. Only the disinterested justices with their bird's eye view could secure proper provisions for the public. A later document also sheds light on the justification behind supply regulation. According to the justices writing their opinion, a healthy herd of cattle clearly benefited the public as a whole in the long term. The justices worried that, left to their own judgement, individual ranchers would follow their “personal interest” and slaughter the greater part of their herd when prices were high, jeopardizing procreation. Even neutral, natural self-interest could lead to negative outcomes.⁸⁷

For all their emphasis on the just price, the Scholastics did not preclude the possibility of a just profit on a sale. Aquinas realized that the just price was “not fixed with mathematical precision, but depends on a kind of estimate, so that a slight addition or subtraction would not seem to destroy the equality of justice,” even under divine law.⁸⁸ Furthermore, while a seller might not “own” the buyer's need, they did own other intangible inputs, such as their labor. A seller might transform the good itself by improving the good through their own labor. Because they owned their own labor, they were free to sell it for a just price. The early Scholastics further recognized that merchants could make a profit by buying and selling unaltered goods because

⁸⁶ AGN, Ordenanzas, vol. 1. exp. 21, fs. 30v. Labeled exp. 3 in the volume.

⁸⁷ Though one must tread carefully when using later documents to illuminate past world-views (known in anthropology as backstreaming), Bourbon era documents can help elucidate early modern economic thought because what had been considered common sense under the Hapsburg became highly contested under the Bourbons. More traditional economic thinkers suddenly found it necessary to articulate their position.

⁸⁸ Aquinas, *Summa Theologica*, II-II, 77, i, ad. 1.

while the intrinsic nature of the good did not change, its value might change due to a change in time or place and the forces of supply and demand. The cost to transport goods from one place to another could also justify an increase in the value of the good, especially if the merchant risked their own life or livelihood in the process. Goods transported by dangerous seas were bound to be more expensive in consideration of the risk and cost to the seller. A merchant's labor included his "industry, ingenuity, ability, [and] risk to life and disease," which were skills worth "an appreciable amount in money."⁸⁹ When scholars accuse the Scholastics of eschewing profit, they are thinking of their prohibition against profiting off of a loan, otherwise known as usury.

Usury

Usury was also a problem of just price, but it is usually defined more narrowly as demanding interest on a loan.⁹⁰ Loans or credit extensions themselves were unproblematic. In fact, the Scholastics believed that extending a loan with no expectations beyond simple repayment was not a matter of obligation, but did constitute a virtuous act of beneficence and charity. The *Siete Partidas* similarly distinguished between contracts that were entered into as a matter of "favor or affection" and those that were entered into for the advantage of both parties.⁹¹ The first were considered "more noble and more honorable" as when a loan was made to a person in need without any expectation of a return advantage. Early modern people believed this type of contract to be generally "beneficial," in part because they "[increase] affection" between the two parties. They understood that economic transactions often carried with them emotional

⁸⁹ Mercado, *Suma*, Book 2, Ch. 9.

⁹⁰ Noonan disagrees that usury theory has much to do with just price theory because while just price deals in the uncertainty of fluctuating market values, usury deals with exact amounts. Because intention matters in determining usury, a lender must lend with the intention that they will be returned exactly what they lent. There is no uncertainty. While this might be true theoretically, Ch. 5 will show that just price became wrapped up in determining usury in cases of advance sale of goods. Furthermore, a jurist attempting to ascertain whether usury had occurred also needed to know how to determine the just price of extrinsic titles like *lucrum cessans*. *The Scholastic Analysis of Usury*, 90.

⁹¹ *Siete Partidas*, Vol. 4, *Family, Commerce, and the Sea: The Worlds of Women and Merchants*, Partida V, introduction.

resonances, both positive and negative. Some economic relationships could strengthen personal relationships. Just as “[a man’s] affection for [a child] increases more by reason of the nurture for which he affords it,” whether it is “his own, or that of stranger,” so too could other kinds of dependency create good will between patron and dependent.⁹² In this way, natural hierarchies linked by dependencies and obligations created a society cemented together through an “organic network of sympathies.”⁹³ In contrast to a loan made out of affection, a loan contract entered into for the mutual benefit of both parties carried no positive moral force, but neither did it carry any negative force. Any hint that the lender charged interest, however, and the business of loans became the business of usury.

While the strict definition of usury (to charge interest on a loan) remained consistent, the Scholastics recognized a diverse array of exchanges as loans. Domingo de Soto argued that property insurance, whereby the owner transfers the risks of the property to another, counted as a loan based on the principle that true ownership belongs to the person who risks the loss of it. Like a loan, an insurance contract temporarily transferred ownership. Therefore, it was subject to the same prohibitions against profiting off of such an exchange.⁹⁴ The Scholastics also considered bills of exchange to have the characteristics of a loan. While the purpose of a deposit or bill of exchange may not have been to grant a loan, Molina recognized that “whoever signs...an exchange contract does virtually grant the banker a loan.”⁹⁵ Additionally, the Scholastics understood the advance sale of goods in exchange for credit to fall under usury

⁹² Ibid., Partida V, Title XIX, Law I.

⁹³ Hespanha, “Las categorías del político y de lo jurídico en la época moderna, 66.

⁹⁴ Noonan, *The Scholastic Analysis of Usury*, 218. That particular exchanges were loans was not self-evident, and moralists clashed over definitions. Azpilcueta, for example, refuted de Soto’s definition of the triple contract as a loan. Also see Francisco Gómez Camacho, “Crédito y usura en el pensamiento de los doctores escolásticos (siglos xvi y xvii),” *Iglesia, estado y economía, siglos XVI a XIX*. ed. María del Pilar Martínez López-Cano, (Mexico City: UNAM, 1995), 63-79.

⁹⁵ Molina, *Sourcebook*, 183.

theory.⁹⁶ The exchange consisted of both a sale and a loan, and while the sale price might simply be unjust, the loan could be usurious. These types of exchanges were especially suspect because their usurious nature was “hidden” and harder to detect.

The early Scholastics considered usury to be unjust for a number of reasons which have been catalogued extensively by historians and which I will only briefly list here. According to Fabio Monsalve, Canon law considered usury to be illicit for the following reasons:

Usurer sells time, which is God’s own (time argument); usurer takes something which does not belong to him; this could be referred to “man’s work” (industry argument) or to the specific case of the contract of *mutuum* (legal argument); money is naturally supposed to be a means of exchange (teleological argument); money is technically fruitless and useless (sterility argument); and money does not deteriorate in use.⁹⁷

Aquinas also developed a “free will” argument against usury. He argued that the borrower who pays interest does not do so voluntarily because the usurious lender would not issue him the loan otherwise. The borrower freely agrees to the loan but does not voluntarily accept the usury because the loan is conditional on the usury.⁹⁸ The early modern test of whether an action might be considered involuntary in the abstract rested upon whether a reasonable person would make that same choice under neutral conditions. Aquinas assumed that a reasonable person would not choose to pay interest on a loan were it not for the coercive conditions set by an outside force.

⁹⁶ Lasheras, *Luis de Molina's De iustitia et iure*, 160-161.

⁹⁷ Monsalve, “Usury and the Evolving Scholastic Tradition,” 220. He takes his taxonomy from the *Palea Eiciens*, the 5th century commentary on Matthew 21 in which Jesus throws the money changers from the temple.

⁹⁸ The logic behind Aquinas’ conclusion here is fleshed out in his commentary on Aristotle’s *Nicomachean Ethics*. Aristotle defined two types of involuntary action: the physical and the abstract. He put forward the case of sailors who throw goods overboard in a storm in order to forestall a shipwreck. The action of destroying goods is voluntary to the extent that the source of the physical actions is within the men themselves, but “the actions may be called involuntary in the abstract, for no one would choose to do such a thing in itself.” As such, the sailors could not be held accountable for the destruction of the goods as they did not make the choice freely but under coercive circumstances. Aquinas, *Commentary*, Book III: Lectures I – VI, 123.

According to this logic, the disadvantaged party never entered into a usurious contract of their own free will, further delegitimizing usury.⁹⁹

Yet, even early understandings of usury did not preclude some payment beyond the principle in certain cases. Scholars catalogued a limited number of intangible inputs, or “extrinsic titles,” that might be calculated such that one party might receive more in real terms. Two early, common titles included *poena conventionalis*, a previously agreed-to remittance in penalty for late repayment, and *damnum emergens*, or a loss arising to the lender because of the loan. These titles recognized that borrowers could be unscrupulous and helped to alleviate some of the risk that lenders ran in parting with their money. As Noonan points out, intention mattered deeply in these cases. A lender was meant to levee the penalty in the hope that it would motivate the debtor to pay on time, rather than in the hope of default.¹⁰⁰

Usury theory did not remain static throughout the early modern period, and over time the Scholastics expanded their catalogue of extrinsic titles. Importantly, while Aquinas did not see money as capital, but rather as something to consume, 16th century Scholastics like Molina recognized that merchants used money to produce value. When extending a loan, a merchant was not only renting his tools but also ceasing to do his own trade. Because of the loan, the lender gave up possible opportunities for invest his money (*lucrum cessans*), and Molina believed the merchant could be compensated, again, in what might appear to be an interest payment. As long as a merchant continued his trade and continued to use his money productively, rather than becoming a money changer, the scholastics agreed that one could consider the time that the

⁹⁹ Monsalve observes that the will argument, saying it fell out of some favor, though Molina and Lugo both touched upon it, “Usury and the Evolving Scholastic Tradition,” 221. Monsalve cites Lugo in particular who argued that “all injustice of usury arises from the involuntariness, hence if there is involuntariness there will be usury”, Juan de Lugo, *De Iustitia et Iure*, 1642, in L. Vivés, ed., *Disputationes Scholasticae et Morales*, (Lyon : Vivés, 1848).

¹⁰⁰ Noonan, *The Scholastic Analysis of Usury*, 107.

merchant's money had been occupied when ascertaining the just price.¹⁰¹ During Molina's time, moralistas did not agree on whether *lucrum cessans* was "as justified" as other extrinsic titles, leaving room for negotiation in the courts.¹⁰²

As Chapter 5 will demonstrate, the extension of extrinsic titles gave merchants room to argue in court cases that the extra payment they charged was not interest but rather just payment for one of the extrinsic titles listed above. The Scholastics themselves frequently noted the difficulty of ascertaining the intentions of the merchant lender, which can give the appearance that their logic was neither rigorous nor realistic. It was not idealism, however, that led the scholastics to leave final judgement up to confessors and judges. Rather, their belief that justice could not be decided without knowledge of the facts of the case left them no other choice but to trust the judgement of those on the ground, virtuous or not. As Monsalve puts it, "this challenge to good faith (*bona fide*) did not lead [the] scholastics to preach indiscriminately against these titles and to condemn them in all situations...in good faith, these titles are worth a price, which should be admitted in principle."¹⁰³ Their one hedge against bad faith seems to have been to prescribe moderation in extrinsic title payments. Molina was clear on this point: for transporting bills of exchange, for example, merchants were to charge only a moderate payment, since "these commercial dealings demand little work, scarce effort, and no risk."¹⁰⁴

Distributive Justice

The Scholastics also addressed how material resources ought to be distributed in society. While they defended private ownership, they also understood private ownership to be limited

¹⁰¹ Azpilcueta, *Sourcebook*, 58.

¹⁰² Monsalve, "Usury and the Evolving Scholastic Tradition," 231. This observation is supported by Bishop Montalbán's statement in 1729 that *lucrum cessans* is "not as justified" as other titles. Mercado also cautions that *lucrum cessans* is a "very rare condition in human affairs," as "everything in the future is so uncertain." *Suma*, Book 2, Ch. 10.

¹⁰³ *Ibid.*, 232.

¹⁰⁴ Molina, *Sourcebook*, 188.

rather than absolute: it was useful only insofar as it promoted public utility. Aquinas, for example, wrote that while “the temporal goods which God grants us, are ours as to the ownership...as to the use of them, they belong not to us alone but also to such others as we are able to succor out of what we have over and above our needs.”¹⁰⁵ An individual’s private resources, granted to them by God, were only truly theirs up to a certain point. After that point, the public could make a claim to them based in justice and in service of the common good. The question then became, how should that excess value be distributed?

Because the Scholastics imagined society to be a closed, organic system, they also imagined the resources of that system to be finite.¹⁰⁶ In Juan de Mariana’s scathing critique of the Crown’s habit of devaluing money, he frequently employed the body as a metaphor for describing this zero-sum game. According to Mariana, the Crown’s profit derived directly from “the blood of the poor, from the very marrow of litigants and office-seekers,” and “when blood is let by whatever device or strategy, the body will certainly be debilitated and wasted. In the same way, a prince cannot profit without the suffering and groans of his subjects.”¹⁰⁷ In a closed system such as this, “one man’s profit was another’s loss.”¹⁰⁸

Some scholars have taken this phrase to mean that Mariana believed all profit to be illicit, but as we have seen, the Scholastics not only recognized that trade could be mutually beneficial, but considered it to be crucial for society to flourish.¹⁰⁹ They were interested in equilibrium, but equilibrium did not have to be strictly monetary. That is to say, a person might make a legitimate

¹⁰⁵ Aquinas, *Summa Theologica*, II-II, 32, v.

¹⁰⁶ The idea that resources were finite was also rooted in medieval understandings of money as sterile and tied to finite stores of intrinsically valued precious metals, an idea which began to change with 16th century European price revolution. Matt O’Hara, *The History of the Future in Colonial Mexico*, (New Haven, CT: Yale University Press, 2018), 84 and 91.

¹⁰⁷ The arbitristas tended to “prescribe” different “cures” for the Spanish empire’s commercial woes.

¹⁰⁸ Mariana, *Sourcebook*, 260.

¹⁰⁹ Lionel Rothkrug is an example of one such scholar. *Opposition to Louis XIV: The Political and Social Origins of French Enlightenment*, (Princeton, N.J., Princeton University Press, 1965), 321.

monetary profit if they took on risk, traveled far to deliver the goods, or invested skillfully. In that case, they took a monetary profit, but the other party received an equal advantage in terms of resources, access, or security. This kind of exchange could lead to a legitimate accumulation of capital. Unjust exchanges, however, resulted in disproportionate, unequal gains. Repeated over time, these exchanges threw off the correct balance and distribution of resources in society. As such, a contextualized translation of Mariana's axiom might be "one man's unjust profit is another's loss."

Early modern moralistas considered almsgiving out of one's abundance to be an obligation and a matter of justice, not an act of beneficence. A wealthy man who withheld goods he had in abundance took too much from the system, effectively stealing a hungry man's bread. To give alms out of one's abundance was to give back to the poor man his due, to restitute what was already rightfully the poor man's part of the whole. Aquinas went so far as to argue that there "would seem to be no sin in taking another's property" if the thief was a person in need, because "in cases of need all things are common property."¹¹⁰ That is to say, a materially needy person who stole only took what society owed them, restoring right equilibrium.

Economic equilibrium (equity) did not imply equality, however. Each received their part of the whole not only in relation to the other but based on their place in the order of things (proportionate distribution rather than symmetrical distribution).¹¹¹ This inequality of resources based on differences in grade had eschatological consequences, allowing men to pursue the "perfect likeness of God."¹¹² Aquinas, quoting Basil, asked, "is [God] unjust because He

¹¹⁰ Aquinas, *Summa Theologica*, II-II, 66, vii, ad. 2, quoting Ambrose in the *Decretals*: "It is the hungry man's bread that you withhold, the naked man's cloak that you have stored away...the money of the needy that you have buried underground."

¹¹¹ Hespanha, "Las categorías del político y de lo jurídico en la época moderna," *Ius fugit: Revista interdisciplinar de estudios histórico-jurídicos*, Volume 4, (1995), 84.

¹¹² Cynthia Milton recognizes that the act of giving alms to a beggar ties the pauper and patron together, but she overstates in arguing that the theory behind the exchange is more focused on the patron who receives his salvation

apportions [His goods] unequally? Why are you rich while another is poor, unless it be that you have the merit of a good stewardship, and he the reward of patience?"¹¹³ An impoverished person required the virtue of patience, which would eventually be rewarded with alms. A wealthy person required the virtue of good stewardship, redistributing the wealth of his estate to the needy. If both the poor and the wealthy person conducted themselves as virtuously as possible according to their different roles, then they approached perfect happiness on earth.¹¹⁴

Under this notion of distributive justice, both unlimited consumption and social mobility were not only unlooked for, but could potentially jeopardize the salvation of souls. Almsgiving was not meant to redistribute wealth to such an extent that honorable men suffered downward mobility. Nor was it meant to raise the lowly up to an equal plane. One could not be expected to give out of one's own need or the needs of one's family unless it served the common good, and the definition of one's "abundance" or "need" was pinned to one's station. Aquinas argued that one should define need as whatever allowed one to continue to "live in keeping with his social station."¹¹⁵ In absolute terms, a poor man needed less than a rich man to maintain his social status. It was not just for a poor man to have less than he needed, but neither was it just for him to have more than he needed. Out of this understanding of need there emerged two definitions of need in court cases in Spanish America: one material and one social.¹¹⁶ Historian Cynthia Milton has argued that social poverty applied to those whose lived experience did not match the

from the act. She writes that "at its core, to give was an expression of power." According to this quote from Aquinas, both the poor and the rich need to act virtuously in their own way, and the ultimate goal is the salvation of the whole, not just a part. Cynthia E. Milton, *The Many Meanings of Poverty: Colonialism, Social Compacts, and Assistance in Eighteenth-Century Ecuador*, (Stanford, California: Stanford University Press, 2007), 40 and 2.

¹¹³ Aquinas, *Summa Theologica*, II-II, 32, v, ad. 2.

¹¹⁴ Aquinas, *Summa Theologica*, II-II, 117, i. As other historians have noted, this understanding of poverty precluded the possibility of blaming the poor person's impoverished condition on their lack of virtue or God's ill favor.

¹¹⁵ Ibid., II-II, 32, vi, co.

¹¹⁶ Milton, *The Many Meanings of Poverty: Colonialism, Social Compacts, and Assistance in Eighteenth-Century Ecuador*, (Stanford, California: Stanford University Press, 2007), 6-8.

theoretical privileges of their status. This definition is evident in the 16th century constitution of Mexico City's Archicofradía del Santísimo Sacramento. Noting with concern the frequency with which the children and grandchildren of the wealthy fell into poverty, the archicofradía funded convent dowries and public offices for individuals in such circumstances so that they might reclaim some of their rightful social status.¹¹⁷ This practice does suggest a belief that one who was once wealthy and of high *calidad* and becomes poor is more in need of aid than one who has always been poor and of low *calidad*. This understanding of distributive justice explained and legitimated social stratification and caste distinctions even as it curbed its possible excesses and limited social upheaval.¹¹⁸ More importantly for the Scholastics, to achieve distributive justice in society was to approach perfect happiness and achieve society's eternal salvation.

This chapter provides only a sketch of what the Scholastics considered to be a political economy aligned with the virtues of justice and prudence. There are hard limits to what the prescriptive theology can tell us about the lived experience of commercial justice in New Spain, not least in part because the Scholastics themselves understood that they were describing what just economic relations *ought* to be rather than what they actually were. Furthermore, because of their casuistic method, they wrote with the knowledge that final judgement would be up to the practitioners of commercial justice to decide on a case-by-case basis. They accepted that they could not know in advance the just decision for every situation, and as such, left much of their

¹¹⁷ AGN, Cofradías y Archicofradías, vol. 10, exp. 1, f. 26. 1538.

¹¹⁸ Some historians, such as Milton, underemphasize the moral and theological dimensions of the early modern theory of poverty, while some, such as Alejandro Chafuen, overlook the functionalist, or "consequentialist," dimensions. Alejandro Chafuen, *Sourcebook*, 244. The Scholastics themselves were concerned with both. Mariana, for example, talks extensively about the consequences of a severely inequitable distribution of resources in society, namely violence and political instability. But he also considers unjust commerce to be a mortal sin in and of itself. Mariana, *Sourcebook*, 283-286. Similarly, Aquinas disagreed with Aristotle that whatever harms other men is evil, arguing instead that evil is whatever is repugnant to reason *Summa Theologica*, II-II, 18, 6.

theorizing open-ended. Finally, the majority of Scholastic commercial theology was written with the 16th century Iberian Peninsula in mind. Only a handful of the moralistas speak to the ways in which the presence of indigenous peoples and their customary commercial culture might alter Catholic commercial justice. As such, while an understanding of prescribed commercial theology provides important context, the case studies that follow are crucial to understanding how such principles of commercial justice were carried out in the context of the Americas and in the context of specific conditions on the ground.

Ch. 2: Indigenous Litigants and Commercial Justice, 1600-1750

In the last days of June, 1648, a group of indigenous vendors from Toluca sent a petition to the *Juzgado de Indios* asking the judges to intervene in local commercial competition on their behalf.¹ Like their “ancestors,” these vendors had always sold their wares in the public market, or *tianguis*, of Toluca’s main plaza. Now, however, their new Spanish viceregal administrator, Pedro de Carmona, had directed the African women and men who he had enslaved to sell his own goods in the plaza, infringing on trade that belonged, by custom, to indigenous *toluqueños*. Carmona had also opened up the plaza’s stalls to Spaniards, including Francisco de Vargas, a deceitful “enemy of the indios” and a long-time vassal of Mexico City, not Toluca. The petitioners noted that, according to ordinances already in place, Spaniards were not even allowed to live in indigenous villages, let alone trade. But the heart of the petition revolved not around legalities, but around effects. Petitioners argued that the Carmona’s incursion impeded their ability to “sustain themselves and their children,” to pay royal tribute, and, perhaps most damningly, to support their local parish. They dwelt on their spiritual responsibilities at length, explaining that “with their trade, they support the church with alms, for masses and for the souls of the dead, and the Easter Sunday processions, with wax [for candles] and offerings for the rest of the festivals of the year...and the alms to the poor, and the votive offerings, and altarpieces of wood for the church.”

Through their lawyer, the *toluqueños* calibrated their appeal to resonate with almost every tenet of early modern Catholic commercial justice. Judges considered the justness of a commercial practice based upon its effect on the spiritual and temporal well-being of the *república*, and petitioners learned to appeal to that standard accordingly. Litigants argued that if

¹ Archivo General de la Nación, (AGN), Indios, vol. 15, exp. 74, f. 53.

the courts did not safeguard indigenous commercial spaces, indigenous people would not be able to fulfill their obligations as Catholic vassals of the king, and the república would suffer as a result. After a century of Spanish rule, indigenous people had learned that the viceregal municipal mercantilist order, and the theology of Catholic commercial justice underpinning it, could be used to protect their material well-being, their autonomy, and their souls.

This chapter examines the strategies that indigenous people used to delegitimize or enforce contracts and other economic practices during the 17th and 18th centuries. Some of those strategies were not specific to indigenous litigants, while others were developed specifically by indigenous people and their lawyers. This chapter begins by examining the place of indigenous people in the economic whole of the Spanish empire. Soon after encounter, Spanish theologians and jurists began to construct a role for indigenous people in Latin America's municipal mercantilist order, a system of domestic regulations that defined economic privileges and obligations and which endured through Hapsburg rule and deep into the 18th century. What did the Spanish believe about indigenous people's economic character? What did they believe to be their role in producing goods and tribute? What did they believe to be the economic domain of indigenous people? Indigenous people, in turn, utilized the courts to enforce and protect their privileges against other corporate groups and to ease their obligations.

Until recently, economic historians accepted that a self-interested Spanish Crown maintained the transatlantic mercantilist order through naked coercion.² In the last decade, however, revisionist scholars have argued that emphasizing coercion overlooks acquiescence, or the ways in which social ideologies and material benefits legitimated the mercantilist regime for

² Douglass C. North, William Summerhill, and Barry R. Weingast, "Order, Disorder, and Economic Change: Latin America versus North America," in B. Bueno de Mesquita and H. L. Root, eds., *Governing for prosperity* (New Haven, Conn., 2000), pp. 17–58; Stanley Stein and Barbara Stein, *The Colonial Heritage of Latin America: Essays on Economic Dependence in Perspective*, (New York, NY: Oxford University Press, 1970).

Spanish commercial elites (criollos) established in New Spain. Regina Grafe and Alejandra Irigoin, for example, have argued that criollos saw themselves as stakeholders in empire because Spanish peninsular officials allowed them to reinvest most of their revenue back into their local economies.³ Rather than stockpile revenues, the Crown redistributed its fruits across its empire. In their focus on transatlantic mercantilism, however, Irigoin and Grafe do not address the coercive nature of the municipal mercantilist order, especially in regard to indigenous producers, consumers, and traders. The Crown may not have been directly extractive, but Spanish subjects certainly extracted labor and goods from indigenous producers, often through state functions. Yet, as this chapter argues, the municipal mercantilist order also became a resource for indigenous economic actors. Because the Spanish political economy was rooted in a particular theological and social worldview, it afforded economic actors the ability to make claims about economics that were based in justice, not just financial loss or narrow legalities. By engaging strategically with the justice system to shore up their own commercial domain, indigenous producers and traders also acted as stakeholders in New Spain's political economy. Through the courts, indigenous producers, traders, and consumers enforced the boundaries of the municipal mercantilist order in Mexico. But a judicial system based in justice rather than narrow legalities also allowed indigenous traders and producers to permeate those boundaries when they could show that, under certain conditions, in their case, the law did not promote Catholic commercial justice.

³ Regina Grafe and Alejandra Irigoin, "A Stakeholder Empire: The Political Economy of Spanish Imperial Rule in America," *Economic History Review*, 65, 2 (2012), pp. 609-651. Grafe and Irigoin borrow the stakeholder concept from J. H. Elliott, *Empires of the Atlantic World: Britain and Spain in America, 1492-1830*, (New Haven, CT: Yale University Press, 2006).

Constructing Indigenous Economic Identity

To draw boundaries around the economic activity of a certain group was entirely consistent with the kind of municipal mercantilism that already existed in Spain, which was based on the custom of the *fuero*. In Spain, municipal mercantilism granted customary commercial and economic privileges called *privilegios* to mostly geographically defined communities through sets of regulations “designed to protect both local producers and local consumers from outside competition.”⁴ Commonly recognized regulations included price fixing and commercial barriers on imports and exports, especially during years of scarcity.⁵ Municipal mercantilism also granted commercial privileges to groups that were defined by markers of identity that went beyond geography, such as guilds and religious orders. Guildsmen, for example, were protected from competition from uninitiated upstarts or third-party sellers, and religious orders were exempt from certain taxes.

These groups maintained their privileges in New Spain, as well, but viceregal and Crown authorities also undertook to weave communities defined by indigeneity and *calidad* into this patchwork of local mercantilism. To draw those internal boundaries and ascertain indigenous privileges and obligations, Spaniards had to make indigenous identity “knowable.”⁶ Immediately upon encounter, Spaniards began to construct an economic identity for Amerindians. Because Christopher Columbus’ original mission was to establish trade, his first letters contain critical early impressions and wishful projections of what kind of trade partner Amerindians might be.⁷

⁴ David Vassbørg, *The Village and the Outside World in Golden Age Castile: Mobility and Migration in Everyday Rural Life*, (Cambridge, UK: Cambridge University Press, 1996), 23.

⁵ Jonathan D. Amith, *The Mobius Strip: A Spatial History of Colonial Society in Guerrero, Mexico*, (Stanford, CA: Stanford University Press, 2005), 471. Amith is interested in space and geography, and it is for this reason that he does not explore the caste dimensions of municipal mercantilism in New Spain.

⁶ Margarita Zamora, *Reading Columbus*, (Berkeley, CA: University of California Press, 1993), introduction. Argues that the act of writing about the discovery was as momentous and necessary as the actual discovery. It made discovery “knowable,” turning it into a field of meaning.

⁷ *Ibid.*, 60.

Columbus describes Taíno people giving over their goods without protest and at unequal exchange rates, too naïve to protect themselves from the unscrupulous economic behavior of Spaniards. While he assures his reader that he "defended" the Taíno against such unjust exchanges, Columbus' depiction of the Taíno as malleable, innocent, and generous was calculated to prove his campaign's worth to the Crown. The inhabitants of this new world were everything that the Crown might wish for in a trading partner.⁸ This and other narratives of encounter and indigenous degradation at the hands of Spaniards—especially Bartolomé de las Casas' powerful condemnation of Spanish rapaciousness in Hispaniola—circulated in Spain, reinforcing the image of the Taíno as poor, unable to reasonably judge the just price, and, therefore, particularly prone to economic victimization.⁹

Legal minority

Based on these sources, the leading moral theologian and jurist of his day Francisco de Vitoria, compared the rationality of indigenous people to that of children.¹⁰ On the one hand, he

⁸ Zamora sees this as an example of victim blaming, arguing that Columbus paints the natives as the instigators of the exchange in the public version of his letter. By early modern understandings of economic justice, however, the Spaniards who accepted the unfair exchange rate would still be held culpable, whether they offered the rate or not. As such, I believe Columbus was merely trying to protect himself from accusations of unjust trade, not place blame on the indigenous people. *Reading Columbus*, 14.

⁹ Bartolomé Las Casas, *Memorial de Los Remedios*, 1516. For more on Las Casas, see D. A. Brading, *The First America: The Spanish Monarchy, Creole Patriots, and the Liberal State 1492-1867*, (New York, NY: Cambridge University Press, 1991), 58-62. Mercado also repeats an encounter narrative of the 1554 Spanish galleon shipwreck carrying two million pesos (43 million pesos in 2016) off the coast of what is now Padre Island, Texas. The survivors made their way by foot and sea to New Spain, leaving behind their gold and supplies. Viceroy Luis de Velasco sent Captain Villafana back to salvage what he could of the silver and was shocked to discover that while the Amerindians had taken all the supplies, they had not touched the precious metals. Mercado saw this story as "evident proof that things do not have a natural worth among men, but that it is our will and necessity which gives their value." But it also further reinforced the "otherness" of indios in economic terms. Tomás de Mercado, *Suma de tratos y contratos*, Book 2, Ch. 6.

¹⁰ Francisco de Vitoria, *Political Writings*, eds. Anthony Pagden and Jeremy Lawrance (Cambridge, England, New York: Cambridge University Press, 1991). Vitoria was in direct contact with Las Casas, and likely heard other accounts. Henry Raup Wagner and Helen Rand Parish, *The Life and Writings of Bartolomé de Las Casas*, University of New Mexico Press, (1967), 103. In *De Indis*, Vitoria doubts that justice is being carried out in the Americas because he has heard of "bloody massacres and innocent individuals pillaged of their possessions and dominion," *Political Writings*, 238. Vitoria, who had never been to the Americas himself, relies on the accounts of others and finds the "barbarians" to have characteristics of rational beings, but also to be "cowardly, foolish, and ignorant," *Political Writings*, 250 and 282, respectively.

argued that Amerindians were rational beings made in the image of God who had true dominion, or possession and mastery, over their bodies and property. However, their limited intellect made them like children and other classes of people who, as Aristotle had observed, naturally needed authority figures to guide them. Vitoria was careful to note that Aristotle “did not mean by this that such men [of superior intellect] had a legal right to arrogate power to themselves over others...but merely that they are fitted by nature to be princes and guides.”¹¹ Vitoria posited, therefore, that the Spanish could introduce their own administration to the Americas, complete with governors and institutions, in order to act as guides for the indigenous populations. Like children who retained mastery over their property even as their guardian managed that property, indigenous people could retain possession but not management of their lands.

Vitoria further warned that this management could only be legitimate if it was done “for the benefit and good of the barbarians, and not merely for the profit of the Spaniards.”¹² Fathers had the right to manage their children’s assets and a right to the usufruct of their property. But fathers also had an obligation and incentive to protect his child from unscrupulous behavior. If the Crown deemed that the father was either grossly negligent or not present, it stepped in to take on the privileges and obligations of the patriarch.¹³ Out of these general principles, Spanish legal minds developed a juridical persona for indigenous people, modeled on that of the children’s status as an *hijo de familia*. Indigenous people were considered to be *hijos de república*, and the Crown had a natural right to exercise authority over them as well as an obligation to protect them from harm. In return, indigenous people owed obedience and tribute to the Crown, just as a child

¹¹ Ibid., 249-251.

¹² Ibid., 291.

¹³ Bianca Premo, *Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima* (Chapel Hill, NC: The University of North Carolina Press, 2005), 27.

owed their father obedience. In this way, the colonial state incorporated Amerindians into a reciprocal economic relationship with the Crown defined in both directions by obligation.

Bianca Premo has noted that, in the Americas, the concept of *hijos de república* broadened the definition of minority to include “the weak, the poor, and the inferior of caste.”¹⁴ This broadening impacted judicial practices in concrete, structural ways throughout the viceregal period. Beginning in the 16th century, the court assigned pro bono attorneys to indigenous litigants in recognition of their poverty and Crown established the office of the *protector general de los indios* in order to protect weak indigenous people from the more powerful. In cases pertaining to indios, legal scholars in the 17th century exhorted judges to “conclude [judgements] summarily, and with paternal love,” taking into account the “fragility” and “gullibility” of indigenous people.¹⁵ And in response, indigenous people seeking protection or leniency learned to claim minority status in court, often signaled through the use of the term *pobres* (poor) or the legal term “personas miserables,” which applied to all vulnerable people who lacked paternal protection, no matter their material well-being. As late as 1782, Premo finds that mestizo defendants claimed their indigeneity and corresponding minority status in order to escape harsher punishment.¹⁶

While historians have explored the legal status of indigenous people in Spanish America, with the exception of land sales, few have examined the implications of such a status on trade practices.¹⁷ Spanish law codes regarding minority economic activity rested on the belief that a

¹⁴ Premo explores how the Spanish concept of legal minority operated in Spanish America where it was extended to include indigenous people, but she only briefly touches upon the implications of such a concept on indigenous trade and economic justice. *Children of the Father King*, 34.

¹⁵ Juan de Solórzano Pereira, *Política indiana*, 1647, 166. Cited by Premo, *Children of the Father King*, 34.

¹⁶ Premo, *Children of the Father King*, 19.

¹⁷ For example, see Brian Owensby, *Empire of Law and Indian Justice in Colonial Mexico*, (Stanford, CA: Stanford University Press, 2009), especially chapter 3; Jonathan D. Amith, *The Mobius Strip: A Spatial History of Colonial Society in Guerrero, Mexico*, (Stanford, CA: Stanford University Press, 2005); William B. Taylor, *Landlord and*

contract between parties with unequal powers of reason was predisposed to be unjust. The *Siete Partidas* prohibited those under 14 from forming business partnerships, citing precedent that "a contract of reciprocity is not lawful between a slave and a freeman or between an infant and an adult because equality does not exist in those instances."¹⁸ No just contract between deeply unequal parties could exist, whether that inequality was created by human law, as in the case of slaves, or by nature, as in the case of minors. A minor, imagined to be a male, was also limited in the kind of debt that he could take on, having "no authority to make a contract to his own injury."¹⁹ The law allowed minors between 14 and 25 to dissolve legally binding contracts as long as the contract did not benefit them, regardless of whether they had entered into the contract on their own or whether their guardian had done so on their behalf. The code stipulated that "where the loan is made to... a minor under twenty-five years of age, the party who lent it cannot claim it and is not entitled to it, except where [the lender] is able to prove that the loan was to the advantage of [the minor]."²⁰ This clause from the *Siete Partidas* shifts the responsibility for making a just loan onto the adult party. Not only must the loan be advantageous to the minor, but the adult party had to do the work to prove that it was so. A minor could not be expected to have the reasoning capacity to recognize a disadvantageous contract or defend themselves in court, and since ignorance made free choice impossible, they could not be held culpable for their choices.

Peasant in Colonial Oaxaca, (Stanford University Press, 1972); Lesley Byrd Simpson, *The Encomienda in New Spain: The Beginning of Spanish Mexico*, (University of California Press, 1966).

¹⁸ A footnote citing al-Hidayah, a 12th century Hanafi legal manual, provides insight into the reasoning behind this law. Al-Hidayah law stated that "a contract of reciprocity is not lawful between a slave and a freeman or between an infant and an adult because equality does not exist in those instances." The citation speaks to the influence of Islamic law on early modern European legal codes. *The Siete Partidas*, Vol. 4, translated by Samuel Parsons Scott; edited by Robert I. Burns, (Philadelphia, PA: University of Pennsylvania Press, 2001), Partida V, Title X, Law I, fn. 1.

¹⁹ Ibid., Partida V, Title XIV, Law XVIII.

²⁰ Ibid., Partida V, Title I, Law III.

There were two reasons to constrain youth in their ability to make contracts. First, as we have seen, youth had a limited legal identity apart from their status as dependents. Their dependency on their fathers meant that anything they owned belonged in some part to their fathers. Aquinas referred to this legal dependency when arguing that children should not give alms out of their own wealth without asking for their father's permission, for example.²¹ Second, many provisions within the *Siete Partidas* suggest a belief that minors, being inexperienced and under the age of reason, are easily taken advantage of. A minor wishing to make a contract needed the oversight of a parent or other governing body to protect him or her from predation. Early modern beliefs about age and economic prudence are clear, too, in a provision of the constitution of the Archicofradía del Santísimo Sacramento in 1538.²² Besides declaring that the cofradía's leadership should be men of good calidad and either nobles or "men of commerce," the constitution writers declared that leaders should also always be married, "as experience is the Mother of all things." The constitution writers went on to argue that demanding that their leadership be married "is a saintly custom that had always produced predecessors with prudence, maturity, and religious zeal."²³ Men in colonial New Spain tended to marry after the age of 25, so such a provision ensured that the leadership would be at least that age. The institution of marriage was also thought to instill men with some seriousness, given that they now had

²¹ Aquinas writes "what belongs to the children belongs also to the father: wherefore the child cannot give alms, except in such small quantity that one may presume the father to be willing." *Summa Theologica*, II-II, 32, viii, ad. 3.

²² AGN, Cofradías y Archicofradías, vol. 10, exp. 1, f. 23. First composed in 1538, but this copy was likely made in the 1700s based on the script. Alicia Bazarte Martínez includes a copy in *Las cofradías de españoles en la ciudad de México (1526-1860)*, (1a ed. México, D.F: Universidad Autónoma Metropolitana, División de Ciencias Sociales y Humanidades, 1989), appendix.

²³ But why not simply demand that the leadership be over 25? Why tie leadership to the institution of marriage? It is possible that the special conditions of the very early colonial period in New Spain contributed to this provision. As Kathryn Burns has noted, many early cofradía members expressed anxiety that the Spanish would not perpetuate themselves, their culture, and their religion in the Americas without Spanish wives. To tie leadership roles to the institution of marriage gave men an added incentive to settle down, *Colonial Habits: Convents and the Spiritual Economy of Cuzco, Peru*, (Durham, N.C.: Duke University Press, 1999), 15-30.

dependents to care for. Married leaders were both more likely to have experienced more of the world and its dangers and to have developed a maturity in the course of caring for their dependents. These men could be trusted with the spiritual and material well-being of the *cofradía*.

Constructing Mercantilist Borders: Protections and Privileges

These assumptions about minors' economic personality gained new expression in the Americas. Children needed certain protections and limitations in economic exchanges; being childlike, how could indigenous people possibly participate in just commercial relationships? During the 17th and far into the 18th century, officials answered this question by writing laws and decisions that protected indigenous economic activity, using minority law as a template. One main tenet of minority commercial law, that minors could not enter into a contract that was to their disadvantage, was transferred to indigenous commercial law. Both in theory and practice, economic actors in Spanish America frequently had to demonstrate that sale, loan, or labor contract would not disadvantage the indigenous party. Secondly, judges ascribed responsibility for an unjust contract onto the Spanish or *casta* party.

Judicial oversight was required for indigenous land sales, especially as these sales picked up in the 17th century. Spanish buyers and indigenous sellers had to prove before the court that the sale would advantage indigenous communities. A late 17th century case from Zitacuaro, a pueblo about 100 miles to the west of Mexico City, offers insight into how the law was enacted. In this case, the indigenous community was the buyer, and the community's lawyer explained that while the law required them to seek a license from the state only when alienating their own property, they wished to have the sale acknowledged by the court. Indigenous communities fully recognized the protection that such documented judicial oversight might offer them in the future.

The lawyer argued that, even though they maintained enough lands of their own already — "enough" presumably meaning enough to satisfy their subsistence needs— the purchase was still necessary to the indigenous community of Zitacuaro. He explained that the "convenience for the indios consisted in avoiding a third Spaniard or someone of another calidad buying the hacienda, which would cause harm to the land and cattle of the indios and would occasion many legal actions as a result of its being so close to their pueblo."²⁴ Even the future prospect that a nearby sale might harm the indigenous community was enough to convince the judge to permit the transaction, and nothing was said of the advantage to the other party to the sale, a group of nuns in Valladolid.²⁵

In a 1716 case about a sale of goods rather than land, a judge granted a nine-year monopoly over the mining and sale of salt to the indigenous communities of San José Miahuatlán and Zapotitlán in the jurisdiction of Puebla, a resource that the pueblos had customarily controlled. The judge granted the monopoly, provided that the communities both paid a licensing fee to the Crown, and under conditions that were meant to limit the kind of sales contracts that the communities could make. Neither caciques nor indios *macehaules* (commoners) "could sell or rent their salt mines to Spaniards, mestizos, or mulatos, nor were they permitted sell salt to traveling merchants (*regatones*)" for resale. Both contracts would bring harm to the indigenous sellers who would not be able to offer competitive prices on par with the infrastructure and resources of Spanish merchants. "Consequently," the judge added, "the indios would not be able to pay their licensing fee"

²⁴ AGN, Indios, vol. 33, exp. 10, fs. 4v-5r. 1695. And Indios, vol. 33, exp. 38, f. 20r.

²⁵ The land was described as being "possessed" by a Spaniard, Pedro Cenitez, but "of" the nuns, suggesting that the arrangement had either been that of a censo where Cenitez has the usufruct but not dominion, or potentially that he was their agent.

Labor contracts also came under judicial oversight. The viceregal government passed ordinances to explicitly discourage certain labor contracts, like debt peonage. Some historians have reasoned that since labor was scarce, Spanish *hacendados* and *obrajeros* were forced to offer wages in advance to attract and keep workers, but whatever the initial motive behind the advance, it had the effect of indebting indigenous laborers.²⁶ In order to combat the practice, ordinances required that the length of the contract be capped at no more than four months and that only a third of the laborer's salary could be paid in advance.²⁷ They also required that a justice represent the indigenous laborers during contract negotiations in order to ensure that the terms of the contract were "convenient for the defense and utility of the Indio." They reasoned that "the indios are easily taken advantage of when offered money," referencing the belief that indigenous people were vulnerable by nature, or that their situational poverty made them susceptible to exploitation. Judicial oversight was meant to ensure that indigenous laborers would not agree to a labor contract that trapped them into cycles of debt. The labor repartimiento—distinct from the repartimiento de mercancías—which replaced the encomienda after the 16th century, faced similar criticism.

In cases where judicial oversight had failed and indigenous people had become deeply indebted to Spaniard or casta merchants, judges frequently ascribed responsibility for the debt onto the lenders. In 1617, for example, indigenous petitioners from the village of Tlatlauquitepec in the jurisdiction of Puebla complained that traveling merchants were selling goods on credit to the indios of the pueblos in the region and turning them into "impoverished debtors," unable to

²⁶ Why else would they suffer such a high upfront cost? David Brading, "Estructura de la producción agrícola en el Bajío, 1700- 1850," in Enrique Florescano, ed., *Haciendas, latifundios y plantaciones en América Latina* (Mexico, 1975), 112.

²⁷ AGN, Ordinances, vol. 4. exp. 89.

fulfill their obligations to God and king.²⁸ In response, the judge, Don Diego de Córdoba, ordered that merchants could not sell to indigenous people on credit. Furthermore, he ordered that outside merchants could only stay in any one pueblo for three days at most, ostensibly in order to discourage these permanent creditor-debtor relationships. If any officials allowed, or more likely facilitated, the exchange on credit, then they would receive a fine and suspension.

Rather than blame the indigenous debtors for choosing to buy from the merchants, Córdoba blamed merchants and officials for choosing to sell on credit and or allowing the transaction, respectively. Placing blame on the seller is also consistent with more general principles of early modern economic justice. Sellers, not buyers, committed fraud by accepting an excessive interest rate. For a buyer to accept such unfavorable terms, it was assumed that some need or fear compelled him. The buyer was assumed to have had limited choice in setting the conditions of sale, and therefore limited responsibility for the iniquitous exchange. This assumption carried even more weight when the buyer was indigenous, a condition which limited the buyer's power to influence price.

These assumptions about indigenous peoples' limited responsibility persisted throughout 18th century. When discussing a contract between indigenous producers and Spanish buyers, for example, one ecclesiastical prosecutor in 1758 worried that "indios are not capable of licitly making this contract because the interest is so iniquitous that the usurer could never have a right to it even if the loan had been accepted voluntarily, especially when it is palliated and made to *gente ignorante*," or people without full reason. The prosecutor denied the legitimacy of the contract on three grounds. He first argued that the high interest rate made the contract unjust, no matter the identity of the parties to the loan or however freely the borrower entered into the

²⁸ A practice that sounds like the repartimiento de mercancías, though the language is not used. AGN, Indios, vol. 9, exp. 41.

agreement. Secondly, the usury in this case was “palliated,” hidden in an advance sale contract. A buyer could not freely agree to a contract in which the seller had actively hidden information about the product or sale.²⁹ But in addition, he called into question an indigenous person’s capacity to make a just contract. Even if they had agreed to the contract voluntarily, he believed indigenous people to be “gente ignorante,” people whose less than full capacity to reason limited their ability to enter into a contract voluntarily.³⁰

Typically, as we will see, indigenous litigants accepted and utilized such paternalistic characterizations for strategic purpose. A counter-narrative emerged, however, among those who desired less regulation of their commercial dealings with indigenous producers. One mid-18th century defendant, an indigenous cacique and intermediary between his community and Spanish merchants, argued that the sales contract that he had brokered with Spanish merchants had been just for two reasons. He insisted that the indigenous producers had indeed benefited from the deal, argument which satisfied the traditional precept that minors had to benefit from economic contracts. Simultaneously, however, the cacique also challenged the notion that indigenous people needed special protection. Instead, he argued that the indios were less honest than they appeared, sometimes making “mistakes favorable to themselves.” He suggested that it was the merchants for whom they worked that needed to be protected from the risks of doing business with indigenous people.³¹ The cacique advanced a prominent counter-narrative about the

²⁹ *Summa Theologica*, II-II, 77, i.

³⁰ Most early modern Spanish dictionaries define *ignorante* simply as a lack of knowledge rather than a lack of reason. Dictionary author Esteban De Terreros y Pando makes a connection between ignorance and a lack of experience or worldliness. In 1767, he defined *ignorancia* as a “lack of experience,” as in the case of “youths, who do not know about the world.” In the archive, *gente ignorante* appears often in contrast to *gente de razón*, suggesting that early modern people understood *gente ignorante* to lack not only knowledge (*conocimiento*) but understanding (*entendimiento*). “Diccionario castellano con las voces de ciencias y artes y sus correspondientes en las tres lenguas francesa, latina e italiana [...]. Madrid, Viuda de Ibarra, 1787.

³¹ This case is further explored in chapter 5. AGN, Criminal, vol. 622, exp. 11, fs. 241-370, 243V and 249. 1757-1758.

indigenous economic personality, namely that indigenous people tended to be lazy and untrustworthy.³² Supporters of the repartimiento also frequently articulated this counter-narrative, arguing that “if [the indios] are not forced...to take advanced pensions,” they would choose not to work “as they are naturally inclined toward laziness, drunkenness, and other vices.”³³ Indigenous people were, therefore, caught between two limiting narratives about their economic character, the one infantilizing but which could be utilized for protection in court, and another which acknowledged their full capabilities for both sin and cunning but legitimated inequitable commercial relationships. Unsurprisingly, in court cases, indigenous litigants typically promoted the former.

Constructing Mercantilist Borders: Limits and Obligations

As vassals of the Spanish king, indigenous people had an obligation to pay tribute in labor, specie, or goods like maize and legumes if they lacked specie. As others have noted, indigenous tribute extended from two precedents: the extensive tribute system already in place under the Aztecs and the *pecho*, tribute that Spanish peasants owed the Crown in return for good governance.³⁴ Similarly, Vitoria’s justification of Spanish administration in the Americas also justified indigenous tribute as payment for the alleged benefits of Spanish governance.³⁵ All subjects in Spanish America were required to pay taxes, though in different amounts and forms

³² Baskes, *Indians, Merchants, and Markets*, 43.

³³ AGN, Subdelgados, Vol. 34. 1751.

³⁴ For more on tribute policy in Spanish America, see Cynthia Milton and Ben Vinson. "Counting Heads: Race and Non-Native Tribute Policy in Colonial Spanish America." *Journal of Colonialism & Colonial History*, Vol. 3, no. 3, 2002.

³⁵ Milton and Vinson suggest that the justification for tribute is fundamentally different from the justification for taxation in Spain. But in all cases, the root justification is that the government offers some service that needs to be repaid. It is the service cited that changes from group to group. Consider the justification the Crown gives for expecting tribute from their black subjects: “Many slaves, blacks, and mulatos have gone to the Indies. Others who were born and live there have acquired their freedom and have [purchased] farms and haciendas. For living in our dominions in peace and justice, for having acquired their freedom, and for being accustomed to paying great amounts [of tribute] in their lands of origin, it is just for us to charge them [tribute] as well...” Again, payment in return for a “service,” however trumped up the service might be. *Recopilación de leyes*, 1574, 285–86.

depending on their membership in a group. The tax system, as such, was yet another way of defining economic borders between groups of subjects, complementing the municipal mercantilist order in that the amount and form of tribute that the Spanish Crown expected from a group depended on the economic privileges of that group. Spanish subjects consumed and traded in Spanish goods, and therefore had to pay the *alcabala*, or sales tax, on those goods.³⁶ In contrast, tribute payments exempted indigenous people from having to pay the *alcabala* on goods they bought or sold, as long as those goods were made by indigenous labor.³⁷

Spanish officials also envisioned indigenous people as producers of food stuffs. The viceregal government in Mexico City depended heavily on indigenous and lower-caste producers for its food supply. Indigenous producers and traders were essential to supplying Mexico City, an arrangement which was true across Spanish and Portuguese America and, as Richard Graham has noted, left elites and city dwellers in precarious positions.³⁸ The municipal government of Mexico City created a slew of ordinances and licensing requirements meant to ease some of the risk to urban dwellers and to make sure that resources were distributed properly according to Catholic distributive justice. These ordinances attempted to order everything from who sold what, to where, and when it was sold. Many sharply limited indigenous people to producing and trading in goods “*de la tierra*,” or customary indigenous goods, denying them access to more lucrative trade in favor of Spanish merchants.³⁹ Other ordinances dealing with indigenous trade were meant both to protect indigenous producers and to shield important food

³⁶ Initially at a rate of 2 percent, went up to as high as 5 percent, but never higher than in Spain. Ibid., 139.

³⁷ AGN, Tribunal de Cuentas, vol. 18, exp. 10.

³⁸ Richard Graham, *Feeding the City: From Street Market to Liberal Reform in Salvador, Brazil, 1780-1860*, (University of Texas Press, 2010).

³⁹ AGN, Indios, vol. 16, exp. 123, fs. 113v.-114. 1651.

supply chains. For example, Spaniards and castas were not to buy directly from indigenous vendors unless in a public tianguis, under the watchful eye of market officials.⁴⁰

Licensing requirements brought economic actors under the viceregal authority's oversight as well. Many licenses, including the license to sell in a public market, carried a fee, but indigenous people were exempted from many of those fees, at least formally. A decision handed down in 1572 by Mexico City's high court, the *Real Audiencia*, explains the reasoning behind the fee exemption. If the judge found that the goods were the indio's to sell, and that to sell them would "do no harm," a judge would give his consent to the license. However, the judge noted that because indios were not dealing in large sums of money, the cost of the license would likely exceed the profit of their sales. Therefore, only indios selling more than 30 pesos needed a license, whereas all castas and Spaniards were subject to the ordinance. The license discouraged theft and reselling, while the fee exemption reflected both the realities of many indigenous traders and Spanish beliefs about indigenous vulnerability.⁴¹

Historians have questioned the extent to which this formal exception was actually upheld. On the one hand, the number of indigenous people petitioning the court to protect them from local officials who sought to extort fees speaks to the extent to which local officials used licensing requirements to their own ends. On the other hand, some have noted that petitioners also saw the licensing system as evidence of the privileges granted to them by the viceroy's courts.⁴² Sometimes, indigenous people preemptively asked for a license that was not strictly required of them as a way to protect their resources from Spaniards or to discourage others from

⁴⁰ AGN, Ordenanzas, vol. 1, exp. 10; Civil, vol. 142, exp. 9.

⁴¹ AGN, Ordenanzas, vol.1 exp. 2.

⁴² Jorge Olvera Ramos argues that fee exemptions were only formal and cites indigenous people who cite their license to sell. Not all licenses carried a fee, so this is not necessarily evidence that they had paid a fee. *Los Mercados de la Plaza Mayor de la Ciudad de México*, (México: Ediciones Cal y Arena, 2007),

hassling them. Notoriously litigious, indigenous people utilized every tool that the justice system had to offer them, including the paper-trail.

Finally, indios who flouted commercial justice and the borders of municipal mercantilism were expected to pay restitution commensurate with their status as hijos de república and with the crime. Fines for indigenous people were often lower than those for a Spanish or casta person who had broken the same law.⁴³ This difference reflected the prevailing 16th and 17th century notion that indios were spiritual neophytes and could not necessarily be expected to know right from wrong in every case. It also reflected the early modern idea that the poor could not be held to the same standards as wealthy people as they were faced with greater temptations to steal or cheat for their daily bread.⁴⁴ Fines also reflected the nature of the crime. Restitution could be made for monetary crimes. For example, an indigenous person who refused to produce the required number of eggs would be expected to pay the value of the eggs that they did not raise for market. This fine might go to the judicial system as a sort of processing fee, or they might be forced to donate their chickens to the poor.⁴⁵ This kind of redistribution reflected the notion that, in denying the community of resources, a monetary crime hurt the whole community, especially the most vulnerable. Through the fine, the lawbreaker made restitution to the community.

Depending on the circumstances of the case, however, an indigenous person caught breaking a law might be able to argue their way out of a fine or jail time. As Tamar Herzog has observed, in the Spanish justice system, “judges did not focus on the observance of certain rules but only on the fitness of the solution.”⁴⁶ Case-based reasoning meant that judges often

⁴³ AGN, Ordenanzas, vol. 1, exp. 21; Ordenanzas, vol. 2, exp. 4.

⁴⁴ AGN, Cofradías y Archicofradías, vol. 2, exp. 1, fs. 4.

⁴⁵ AGN, Ordenanzas, Vol. 1, Exp. 21; Ordenanzas, vol. 44, exp. 21.

⁴⁶ Tamar Herzog, *Upholding Justice*, 10.

proscribed less harsh punishments than the law called for, as in the following 1749 case.⁴⁷ In Xochimilco, then just a small pueblo to the southeast of Mexico City, Nicolás de Rentería and his adult daughter, Manuela, sold their wares about 30 paces from the door of their own home, which happened to be opposite the door of Xochimilco's public jail.⁴⁸ Nicolás was licensed by the city to sell maize, but the operation was small, employing only himself and his family.⁴⁹ Some of the Renterías' most frequent customers were the guards stationed outside of the jail's other door, and sometime in early September of 1749, one of the guards, a man named Manuel de Rivera, walked around to the Renterías' home to purchase some maize from Manuela. Upon purchase, however, Rivera thought he noticed something strange about the amount of product that his money had purchased. Returning to his companions, he held up the bag, claiming that "it was a heresy, this miserly amount of maize," his turn of phrase hinting at the sinful dimensions of the fraudulent sale. The witnesses agreed that it seemed "irregular" and "certainly very little compared to what she should have given."⁵⁰ Rivera was angry enough to go to the *Oficio de la Real Justicia* and denounce Rentería —technically the license holder— as a cheat.

Rivera's anger might have been particularly sharp because 1749 was turning out to be a difficult year, with maize prices rising sharply from the year before.⁵¹ These circumstances might also explain why Manuela and Nicolás decided to adjust their business practices in order to make ends meet. Unfortunately for the Renterías, justices in New Spain took the accusation of cheating

⁴⁷ AGN, Criminal, caja 31A, exp. 34, f. 8.

⁴⁸ The trial records do not mention the Nicolás' calidad. This is not typical, but this was a highly localized trial, and the record notes that no notary was present, so perhaps it did not seem necessary. Guild trial records, where all parties know one another, also frequently failed to note calidad.

⁴⁹ Some witnesses referred to the house as Nicolás' home, while others said it was the home of Manuela, his adult daughter. But most witnesses say it was Manuela who sold the maize, and only one says it was Nicolás.

⁵⁰ Underline emphasis appears in the original document.

⁵¹ According to Enrique Florescano, among others, the price of corn across New Spain rose by at least 50 percent in 1749, worsening in 1750. *Precios del Maíz y Crisis Agrícolas en México (1708–1810): Ensayo Sobre el Movimiento de los Precios y sus Consecuencias Económicas y Sociales*, (D.F., México: Centro de Estudios Históricos. Colegio de México, 1969), 128, 151.

seriously, especially in the case of maize, the crop that stood between subsistence and starvation for much of the population. To cheat contravened the tenets of commutative justice, but to cheat on maize sales also threatened the order and security of the republic. Xochimilco's second-in-command and judge on the case, *teniente general* Don Carlos Osorio, mused that Rentería surely knew that what he was doing was wrong because the viceroy had mandated the price of maize be fixed and proclaimed publicly, likely in the very same plaza where the sale had taken place, precisely so that "no one could claim ignorance."

The *teniente* questioned the guards who stood outside the door of the prison: Christóbal Velarde, Joaquín de Vera, Joseph Guerrero, and Manuel de Rivera, himself. After these testimonies, the judge sent Rentería to the jail across from his own home. His daughter, Manuela, defended him, swearing that she had used the correct, full measurement, "as ordered by Nicolás Rentería, who is her father." Osorio reported that the father argued that his grain was slightly more expensive because he spent much of his own time in procuring grain from Chalco, even at risk to his life and business. Maize in Chalco cost six pesos and one real per load, and to make up for his labor, he charged an additional two reales. In sum, he confessed to the charges against him, but reinterpreted them. His business did indeed sell above the fixed, legal price. His defense was that his profit, though technically illegal, was not really profit, but just payment for his labor and risk.

On September 9th of 1749, Osorio made the decision to release Rentería from jail and from "calumny," but not because Rentería was innocent or even on the basis of Rentería's argument that his profit was just.⁵² Instead, he reasoned that the damage that Rentería had done to the public was very small, and the good that he did in supplying the public with maize

⁵² Osorio noted that he was acting as judge receptor in the absence of a notary. Xochimilco was, at that time, a small outpost and notaries were apparently hard to come by.

generally outweighed this small harm, especially the region was facing "great scarcity." In essence, though Rentería had broken the law, with all of its moral, social, and theological dimensions, the good of the public outweighed the harm done to his customers. Rentería was a cheat, but it would not have been just to hold him in jail and deprive the public of provisions. Osorio's moral reasoning typifies the justice-making process of judges throughout New Spain, and it was to this style of reasoning that indigenous people calibrated their petitions.

Indigenous Arguments in the Courts

Indigenous commercial actors petitioned both for enforcement of and exemption from trade regulations based on their particular commercial need. This interaction with the justice system allowed indigenous commercial actors to negotiate a better economic position for themselves and their communities. It also served the Crown's interests, though most likely in ways that the Crown did not anticipate. First, in lieu of a standing police force, the viceregal authorities relied on petitioners to enforce order. Secondly, indigenous petitioners also alerted the viceregal authorities to ordinances and systems that were not working in the best interest of the republic. Frequently, the Crown's mercantilist policies had consequences for indigenous trade and the spiritual republic that the Crown had not intended. A decree that was meant to protect indigenous people, for example, might also decrease indigenous trade. Indigenous traders alerted the Crown to these places of friction, and the Crown made minor adjustments that maintained the overall integrity of the system while also allowing for increased commercial flexibility.

In order to make their petitions effective, indigenous litigants and their legal aids appealed to the set of political, judicial, social, and spiritual ideologies that legitimized the economic system. Political economists have demonstrated the importance of understanding the

institutional, cultural, and judicial constraints that shape economic activity.⁵³ In Spanish America, these factors generated a justice system that did not acknowledge individual profit loss as a legitimate grievance. Judges consistently prioritized the survival of collectivities and institutions over the costs and benefits to an individual. The justice system was in place to ensure order, not to protect individuals' profits, especially if those profits somehow threatened that order. As such, if plaintiffs and their lawyers hoped to protect their economic interests, they had to point out the ways in which the commercial practice in question benefited or hurt the communities of which they were members, whether familial, spiritual, or civil.

Petitioners made arguments calculated to appeal to the court, but, as this chapter proves, these arguments were not simply rhetorical. For an indigenous person to go to the trouble of finding a *procurador* (legal aid) or lawyer to help them navigate the judicial system, preliminary strategies such as face-to-face negotiations or appeals to local authorities had to have failed. The costs to indigenous litigants in time, travel, and legal aid were substantially high that to petition the court was a calculated risk.⁵⁴ This high cost, however, also suggests that indigenous litigants believed that their risk was more likely than not to be rewarded. Archival records do show that the courts sent out investigators to find proof that commercial practice did or did not cause the harm the petitioners claimed, and the finding that a party acted "*por su propio interes*" (for their own interest) or "*particulares fines*" (private ends) without regard for the communities in which

⁵³ Though interested in institutions for the sake of optimizing them, Douglass North is a pioneer in the school of New Institutional Economics (NIE). Douglass C. North, *Institutions, Institutional Change, and Economic Performance*, (Cambridge, New York: Cambridge University Press, 1990). NIE supposes that economic development is shaped by 1) informal customs 2) formal rules (such as property rights, contract law etc.), 3) governmental institutions that decide the formal rules (the so-called "rules of the game"), and 4) the level of the firm or individual who responds to price signals. Oliver E. Williamson, "The New Institutional Economics: Taking Stock, Looking Ahead," *Journal of Economic Literature*, Vol. 38, No. 3. (Sep., 2000), pp. 595-613.

⁵⁴ Owensby writes that "access to the [political] center was crucial to [indigenous litigants] ability to defend local claims and concerns." Travel times to the center were certainly an issue. On the other hand, justices sometimes summarily granted free legal aid to vulnerable litigants, which lessened financial barriers. Owensby, *Empires of Law*, 51.

they lived could turn the tide of a case one way or another. Unfortunately, there are also many cases where the outcome is unclear, many others after which litigants once again had to petition the courts for protection. Enforcement was difficult, even if the court sided with indigenous litigants, and the further from Mexico City litigants lived the more difficult enforcement became. But that these legal arguments remained fairly consistent for over two centuries strongly suggests that litigants found these strategies to be persuasive to judges.⁵⁵ While people of all castes utilized these arguments, they took on specific valences when deployed by indigenous people. Petitioners made claims to justice based on five specific criteria: material need; the patriarch's obligations to his dependents; the needs of the temporal republic; the needs of the spiritual republic; and customary commercial order.

Need

While judges did not protect individual profits when they impeded the common good, they did attend to individual need.⁵⁶ The *Siete Partidas* never explicitly declared it the king's responsibility to provision the republic, but the law code did charge the king with maintaining the security and order of the republic and with protecting the vulnerable from predation. In part because famine often devolved into riots in the early modern period and in part because Catholic theology included the poor among the vulnerable, common sense dictated that the public authority had a responsibility to safeguard against starvation. To that end, as Chapter 1 briefly

⁵⁵ AGN, Indios, vol. 7, exp. 36, fs. 17. Date unknown, but likely early 17th century based on the dates of the surrounding documents.

⁵⁶ As Cynthia Milton as noted, another definition of need functioned in the early modern courts, which she terms "social poverty," which applied to those whose lived experience did not match the theoretical privileges of their status. Cynthia E. Milton, *The Many Meanings of Poverty: Colonialism, Social Compacts, and Assistance in Eighteenth-Century Ecuador*, (Stanford, California: Stanford University Press, 2007). This definition is evident in the *cofradía* constitution that notes with concern the frequency with which the children and grandchildren of the wealthy fall into poverty. To avoid such downward mobility, the *cofradía* funded dowries and official positions for these children so that they might reclaim some of their social status. This practice does suggest a belief that one who was once wealthy and becomes poor is more in need of aid than one who has always been poor. AGN, *Cofradías y Archicofradías*, vol. 10, exp. 1, f. 26, 1538.

touched upon, municipal authorities from Madrid to Mexico City maintained grain storage sites and adjusted ordinances to encourage production, privileging community provisioning over individual profit.

By their actions, public authorities acknowledged that basic sustenance was one of the privileges accorded to those who lived within the republic. As such, petitioners often went to the courts claiming material need. Indigenous people frequently argued that the regulation for which they were seeking exemption or enforcement “impoverished them” and impeded their ability to “sustain themselves.” Indigenous litigants brought multiple cases against monopolists who took advantage of times of greater need. For example, 1695 was a particularly bad year for indigenous people in the pueblo of San Bartolomé Capulhuac in the jurisdiction of Metepec. A drought had produced a sterile corn crop, and yet another pestilence had swept through the town, killing many indigenous inhabitants. Adding to the misery, the local *teniente* and other unnamed Spaniards were “violently compelling” indios to sell what little corn they had at just one peso per load instead of at the usual eight under the pretext that the indios were indebted to the *teniente*. The Spanish official then resold the grain at much higher prices than was customary due to unusually high demand.⁵⁷ The petitioners reported that indigenous *vecinos* (citizens of the town) were fleeing because feared the *teniente*’s violence and because they could not afford to feed themselves. They also shrewdly noted that because of the *teniente*’s violence, the indios “could not bring the maize to the *alhóndiga de México*.” The *teniente* caused the king’s subjects to be in need not only in Metepec but in Mexico City as well, a location closer to the Audiencia’s heart. The petitioners called upon the king, “in his power and Christianity,” to issue an *amparo*, or legal stay that would give the court time to hear more from both sides.⁵⁸ The Audiencia’s real

⁵⁷ AGN, Indios, vol. 33, exp. 67.

⁵⁸ Owensby, *Empire of Law*, 51.

fiscal took the accusation of monopoly seriously, sending out a *receptor*, a court official with the authority to temporarily suspend and investigate allegedly unjust activities. Subsequently, judge Don Diego de Vergara Galvía ordered Spanish officials in Metepec to cease the forced sales and allow the indios to bring their harvest to Mexico City's alhóndiga, or else to face a thousand-peso penalty.

The legal term "personas miserables" functioned in a similar way. This term was meant to remind the king and his viceregal representatives that he had a responsibility to protect his most vulnerable subjects from the powerful. The legal claim had very little to do with actual economic need; even caciques could claim to be "personas miserable." The wholesale translation of the minority juridical persona onto indigenous people was complicated by the presence of indigenous *principales*. Titled Don and Doña, granted authority in their own communities, released from tribute obligations, and recognized as nobles by the first generations of Spanish colonists, these intermediaries did not easily fit the *hijo de familia* persona.⁵⁹ The flexible juridical persona of intermediaries is clear in the following case. In 1695, Don Francisco Peñalosa and Don Lorenzo de Santa Ana from the pueblo of Mexicalcingo in the jurisdiction of Toluca asked the Juzgado de Indios to grant them an extension on a debt repayment. A Spaniard from Toluca, Joseph Aguado, had lent a certain quantity of pesos to the indios of Mexicalcingo with the understanding that they would repay Aguado with the maize harvest. Don Francisco and Don Lorenza had acted as *fiadores*, or guarantors, so when the harvest yielded much less than they had hoped, they could only paid half of the debt as they were "poor miserables" and did not have enough to sustain themselves, let alone repay the remainder of the debt. They asked the

⁵⁹ The role of indigenous principales in brokering contracts between their communities and repartidores in Oaxaca has been examined by Yanna Yannakakis, but she stopped short of examining how their role complicated the application of minority law to indigenous communities. *The Art of Being In-Between: Native Intermediaries, Indian Identity, and Local Rule in Colonial Oaxaca*, (Durham, NC: Duke University Press, 2008), 61.

judge to order Aguado to leave them in peace until the next year's harvest to collect. As fiadores on the loan, the Dons found themselves in an interesting position. By acting as guarantors, they had taken on the legal responsibility to repay the debt, yet as indigenous people and “miserables,” they could also seek special accommodations from the court.⁶⁰

Patriarchy

Indigenous male petitioners frequently noted that their dependents —their wives, children, and in some cases, their servants— were also in need.⁶¹ They argued that the regulation had, in some way, impeded them from fulfilling their role as provider and patriarch, a distortion of society’s proper order. The father’s obligation to his children reflected the king’s obligation to his subjects, which in turn reflected God the father’s care for his earthly children. Without a father’s protection, dependents fell outside of society, making them simultaneously vulnerable and a threat to the order of things

Though men utilized this strategy most often, women also appealed to notions of patriarchy to make their case. Other historians have noted the ubiquitous presence of indigenous women in market trade in the Americas.⁶² We know of their activities because women were also present in court cases concerning commercial justice. While Spanish women tended to have their husbands represent them in legal matters, indigenous women, whether married or single, frequently represented themselves in court, and court officials did not mark their presence as

⁶⁰ AGN, Indios, vol. 33, exp. 28, fs. 12r-12v. Indios, vol. 33, exp. 166, fs. 114r-114v. 1697. Indios, vol. 33, exp. 198, fs. 143r-143v. 1697. Indios, vol. 37, exp. 129, fs. 129-129v. 1709.

⁶¹ AGN, Indios, vol. 13, exp. 110, fs. 90v. 1640. The indigenous inhabitants of Santa Catalina Cuitlahuac noted that they had to be able to support their “criados” and “cabalgaduras.”

⁶² For an analysis of market women’s roles in urban spaces, see Dana Velasco Murillo, *Urban Indians In a Silver City: Zacatecas, Mexico, 1546-1810*, (Stanford, California: Stanford University Press, 2016) and Jane Mangan, *Trading Roles: Gender, Ethnicity, and the Urban Economy in Colonial Potosí*, (Durham, N.C.: Duke University Press, 2005), 9.

surprising in any way.⁶³ Did indigenous women utilize different strategies than men? The answer seems to be no, not generally, with the exception of appeals to patriarchy. Very few women cited their own responsibility to their dependents, especially when compared to men, but women sometimes cited their husbands' obligations in an attempt to secure their own economic well-being, especially if their husbands were of a different caste and could not petition the Juzgado de Indios themselves.⁶⁴ In a case from 1703, an indigenous woman named Petronila María managed to secure economic justice on the basis that she depended on her husband to support her and her children. She told the court that her husband Nicolás de la Cruz, a free mulato, had been cheated out of his salary by Antonio de Escobar, a Spaniard for whom de la Cruz had done some blacksmithing work. As a mulato, de la Cruz could not appeal to the Juzgado de Indios himself, but his indigenous wife could do so on the grounds that Escobar's treachery kept de la Cruz from being able to "feed [his wife] and their children."⁶⁵ Resources that rightfully belonged to de la Cruz also rightfully belonged to his indigenous wife under the tenets of paternal justice. The judge agreed with Petronila that her husband deserved his wages and ordered Escobar to pay.

In contrast, indigenous market women argued that they needed to be able to sustain themselves. Many of these women almost certainly supported dependents, including their husbands, but on only one occasion that I know of did an indigenous woman make a legal claim on the grounds that she was not able to support her husband. In 1676, Juana de la Cruz of

⁶³ For example, see AGN, Indios, vol. 13, exp. 21, fs. 23. Though married, the indigenous wife represents herself. Mangan explores the different options open to married vs. single women in San Luís Potosí, pointing out that while Spanish women did engage in trade, typically in stores rather than in the markets, they did not represent themselves in court, *Trading Roles*, 138.

⁶⁴ For other cases, see AGN, Indios, vol. 6, exp. 208, fs. 46v. 1591. AGN, Indios, vol. 7, exp. 108, fs. 54. 1616; In this case, an india principal petitions on behalf of herself and her Spanish husband. These cases differ from those where women use the courts to force their husbands to fulfil their paternal responsibilities. Steve Stern, *The Secret History of Gender: Women, Men, and Power in Late Colonial Mexico*, (Chapel Hill, NC: University of North Carolina Press, 1992), especially chapter 15 and 87.

⁶⁵ AGN, Indios, vol. 36, exp. 41, fs. 39-40. 1703.

Quantitlan, through her lawyer, related that she “owned a quantity of land and maguey that had passed down to her from her parents, grandparents, and ancestors, the proceeds of which support herself, her husband, and five children.”⁶⁶ She had already paid for her license, but the Spanish holder of the pulque monopoly was extorting from her an extra 12 reales per load. She asked the court to issue a stay, which it did, in 1666 and again in 1676. This case is exceptional, but it is also likely reflective of reality in many indigenous families and communities. In pre-Hispanic Mesoamerica, indigenous women held positions of authority and prestige in economic spaces. Even after marriage, women retained the rights to property they inherited from their “parents, grandparents, and ancestors,” as Juana de la Cruz put it.⁶⁷ In colonial New Spain, indigenous women continued to wield significant power in community trade. As late as 1676, many more married indigenous women probably maintained authority over their economic activity than is reflected in the legal record, compiled as it was for the consumption of Spanish justices who were not primed to recognize women’s roles as providers for their families.⁶⁸

República

Petitioners almost always argued that the commercial practice in question threatened the temporal republic in some way. Though litigants of all castes argued over whether practices hurt or benefited the república, indigenous people in particular could claim that certain regulations or people impeded them from producing tribute. Any practice that threatened tribute collection was vulnerable to criticism, both at the individual level and on a collective level. An economic practice might threaten an individual’s ability to pay tribute, or an entire community’s ability.

⁶⁶ AGN, Indios, vol. 24, exp. 88, fs. 50r. 1666. AGN, Indios, vol. 25, exp. 189, fs. 145v-146r. 1676.

⁶⁷ Susan Kellog, *Weaving the Past: A History of Latin America’s Indigenous Women from the Prehispanic Period to the Present* (New York: Oxford University Press, 2005), 25-27.

⁶⁸ Premo notes that even a mother’s authority over her children was contingent on approval of a patriarch, either her husband or a judge, *Children of the Father King*, 29.

Beyond threats to tribute, indigenous petitioners cited other internal and external threats to the municipal mercantilist order, even as they asked for exceptions to that order for themselves. Petitioners argued that to grant them such an exception would thwart a worse outcome for the república, positioning themselves as participants in the process of imperial order making.⁶⁹ A common exception sought by indigenous men was to be allowed to “dress as a Spaniard and wear a sword” in order to travel safely from market to market, selling their wares as they had since “time immemorial.”⁷⁰ With the establishment of the viceregal government, officials had issued ordinances that prohibited indigenous people from carrying weapons, wearing clothing, or riding a horse, all markers of Spanish identity. Meant to shore up caste distinctions, these ordinances had the unintended consequence of making it more difficult for indigenous producers to provision Mexico City. Without proper weapons, indigenous traders argued that they were at risk from “*gente de mal vivir*,” or bandits.⁷¹ These exception-seekers tended to be indigenous elites, principales who already enjoyed certain privileges and therefore were more likely to be granted markers of high status. Such men positioned themselves firmly on the side of societal order. For example, indio principal Pablo Cortés asked to carry a sword as he had “to go through an area that is the hands of mulatos and criminal men.”⁷² Even while asking for an exception to the rules governing *calidad*, Cortés subtly reinforced the fears that

⁶⁹ AGN, Indios vol. 19, exp. 17.

⁷⁰ For example, AGN, Indios, vol. 13, exp. 437; vol. 33, exp. 152; vol. 6, exp. 52-54; Indios, vol. 33, exp. 65, fs. 35r-35v. 1695. For an analysis of the right to bear arms in Spanish America, see Robert C. Schwaller, “For Honor and Defense: Race and the Right to Bear Arms in Early Colonial Mexico.” *Colonial Latin American Review*, vol. 21, no. 2, 2012, 257 especially. Mentioning the Chichimeca—a catchall term that encompassed all indigenous tribes not under Spanish rule—was a common strategy. Schwaller does not mention how such regulations affected indigenous trade.

⁷¹ AGN, Indios, vol. 33, exp. 152 and vol. 16, exp. 25. Owensby, *Empire of Law*, 220.

⁷² Archival evidence of the presence and impact of maroon communities in New Spain, a generally understudied topic in Spanish American historiography. An exception is Sherwin K. Bryant, Rachel Sarah O’Toole, Ben Vinson III, *Africans to Spanish America: Expanding the Diaspora*, (Urbana, IL: University of Illinois Press, 2012), especially Charles Beatty-Medina’s chapter, “Between the Cross and the Sword Religious Conquest and Maroon Legitimacy in Colonial Esmeraldas.”

undergirded those rules. In order to protect the natural order from the disordered and dangerous maroon community, Cortés had to be exempted from it. In another case, Diego Hernández, an indigenous rancher in the north, asked to be able to carry a sword and ride a horse. He argued that he needed these tools in order to be a rancher, explaining that there were no other jobs beyond this in the north given that the land was “rough and remote” and “on the border of Chichimeca territory.” By invoking the threat of the Chichimec, widely understood to be barbarous Indians, Hernández positioned himself on the side of order and the Spanish empire. Hernández effectively overcame his low birth by appealing to the viceroy’s desire that more acculturated indios might settle at the edges of empire, securing for himself some social mobility.

Law based on case-based reasoning rather than legality made municipal mercantilist borders porous under the right circumstances, but it also allowed indigenous people to reinforce borders when the mercantilist order served their material, spiritual, or political interests. Indigenous traders defended their own commercial territory against threats in all directions, whether from outsider mestizos, Spaniards, mulatos, or other indigenous people foreign to their pueblo. Their concerns dovetailed with the concerns expressed by Spanish officials about scarcity, just price, and African-descended people in urban spaces. At the turn of the 17th century, Pedro Díaz Veaguera, the *procurador general* (public prosecutor) for the Juzgado de Indios, noted that a group of indigenous vegetable growers from Tlaxcala, San Anton, and San Juan y Terrosas, just outside of Mexico City, were angry because when they sent their wives into the city to sell in the public tianguis, “barefooted *negras regatones*” or African-descended resellers, “would come along and undercut the price below what things are worth.”⁷³ The

⁷³ AGN, Civil, vol. 75, exp. 9. 1599. For another less detailed example of indigenous litigants seeking protection from African-descended petty traders, see Indios, vol. 33, exp. 107, fs. 63v-64r. 1696. The *procurador general de los indios* was the public prosecutor charged with the well-being of the indigenous population. The term *procurador* also referred to a legal aid who had experience in the judicial system but was not a full lawyer.

procurador noted with concern that the resellers' self-interest had already begun to impact prices more widely: indios in the neighborhood of San Pablo had also begun depressing the price of goods to compete. The pesos that the resellers made reselling fruits and vegetables grown by the indios "should have gone to the indios," in part because they were owed payment for their labor, but more explicitly because this was their customary trade, as acknowledged "in their favor by the lord viceroys." The procurador called the indigenous producers "favored subjects" who were granted protection from certain types of competition that affected their ability to pay tribute and sustain themselves. Accordingly, the Juzgado issued an ordinance stating that no vendor, including other indios and the African-descended women who sold barefoot in the streets, should undercut the prices at which the licensed indigenous vendors sold their goods. In a similar case from 1657, the judge ordered a 50 peso fine paid to Mexico City's *Hospital de Indios*, reflecting a notion that restitution had to be made to the injured group in order to rebalance distribution throughout the empire.⁷⁴

Critics of the repartimiento de mercancías pointed out the myriad ways in which the practice harmed the república. Under the direction of the Crown's district magistrates, called *corregidores* or *alcaldes mayores*, the repartimiento incorporated willing and unwilling indigenous producers into export markets for products like cane sugar, cotton, and the red dye *grana cochinilla*.⁷⁵ The *alcaldes* distributed advances of goods and credit to indigenous people, which financed the purchase of supplies and supported producers through the growing season. But the repartimiento also frequently caused producers to become indebted. Clerics and justices

⁷⁴ AGN, Indios, vol. 21, exp. 147, fs. 137. 1657. Indigenous petitioners also refer to themselves as "favoricidos" in Indios, vol. 15, exp. 74, fs. 53.

⁷⁵ Robert Patch finds in the Yucatán that indigenous people largely chose to participate in regional markets, but in others the repartimiento and tribute requirements coerced indigenous people into the market. *Maya and Spaniard in Yucatan, 1648-1812*, (Stanford, CA: Stanford University Press, 1993), 81. Most historians recognized a spectrum of forced and unforced decision-making.

frequently admonished *alcaldes mayores* for extending these contracts, as well as for the violent ways in which *alcaldes* collected on debts.

This critique of the repartimiento was especially persuasive in contested imperial spaces and in the latter half of the 17th and 18th centuries as the British and French made deeper incursions into the Spanish circum-Caribbean. In 1704, Father Joseph Antonio de Espinoza Ocampo wrote to the Crown in response to a royal *cédula* asking for more information about a complaint sent by the *indios* of Cunduacán in the jurisdiction of Tabasco in Yucatán.⁷⁶ Before beginning his report, Espinoza congratulated Philip V, newly on the throne, relating that the province had celebrated Philip's ascension with fiesta, "putting all of their lives and estates in the service of the treasuries of your majesty."⁷⁷ Espinoza and the indigenous people of the province were well aware that this was an important opportunity to inform the new king that the repartimiento was a threat to the empire that he had just inherited.

In order to "make what would be this first report to his majesty about the activities of the *alcaldes mayores*," elite *indios* from all over the province had come together in Cunduacán, "with as much silence as possible so that the *alcaldes mayores* and the notaries of the province would not become aware." Under Don Juan Andres Machado y Aveda, one of the "most noble" *indios* in the province, an account was made of the "works and needs of the *indios* and the destruction of the province." Machado testified that the "Spanish *alcaldes mayores*...*gran señor*, they sustain themselves with the blood of our veins." The *alcaldes* forced the *indios* to make and sell indigenous textiles, as well as salt, iron and wood works, at whatever price the *alcaldes* set,

⁷⁶ AGN, *Indios*, vol. 37, exp. 24, fs. 19v-23. This document seems to have been in response to the real *cedula* of December 12, 1703. AGN, *Reales Cédulas Originales*, vol. 31, exp. 165, f. 7.

⁷⁷ Little scholarship has been done on the early reception of the Bourbons in the viceroyalties. Linda Curcio Nagy has investigated the fiestas held in Mexico City in honor of Philip V ascension and Frances Ramos is currently conducting research on the hagiographic representations of Philip V in New Spain. "Panegyric Sermons, Exegesis, and the Representation of Philip V during the War of the Spanish Succession in New Spain," presentation at RMCLAS, April 6, 2018.

in return for goods. In bad years, Machado testified, the indios fell into debt because of the five percent interest the merchants levied.⁷⁸ The *alcaldes* then used violence and imprisonment to collect debts. Blaming the situation on the fact that the *alcaldes mayores* were Spaniards, they asked that government positions be filled with local *caciques* “known by other indios as the head who will keep the peace.”⁷⁹

The petition was written from the position of the indios themselves, using the pronoun “we” throughout, though Espinoza’s hand is clear in translating their testimony into legal and moral claims recognizable to the Crown. While he could have cited the ways in which the *repartimiento* contravened theologies of economic justice, Espinoza did not make a legalistic argument. Instead, he focused on the concrete ways in which the *repartimiento* hurt the republic as a whole. Machado testified that the excesses of the *repartimiento* had left the indios with such a great need that “our women go nude and our children perish.” For the Spanish, indigenous nudity symbolized barbarism. This was an argument that the *repartimiento* threatened the process of incorporating the indios into Spanish Christian culture.⁸⁰ As *ministro de doctrina* for the parish, it was Espinoza’s role to instruct the indigenous people in his parish in Catholic doctrine, and the threat of backsliding would have been continuously on his mind.

The petitioners argued that the *repartimiento* was further wearing on the already frayed edges of empire by noting that the people of a nearby village had risen up and “the women and children had fled to a lake populated by the English about forty leagues from this province” and

⁷⁸ 5 percent interest was acceptable by both the standards of Church and Crown.

⁷⁹ This is a heavily mediated text, and it is unclear when Espinoza is speaking for Machado, but there are moments where indigenous voices come through. For example, it is unlikely that Espinoza would have greeted the king as the “great Spanish señor.” The fact that the solution the petitioners desire is more indigenous autonomy also speaks to the fact that the indigenous litigants were intimately involved in crafting this document.

⁸⁰ In the 18th century *casta* paintings, for example, the indios bárbaros are always depicted unclothed to symbolize their primitive nature. María Carrera, *Imagining Identity in New Spain: Race, Lineage, and the Colonial Body in Portraiture and Casta Paintings*, (Austin, TX: University of Texas Press, 2003), 66 and 119.

others had fled to live among the “indios bravos who are called lacandones who, as people who still practice their own customs, are our greatest enemies.”⁸¹ Espinoza bemoaned the loss of the souls of “those who die among the infidels,” presumably referring to the Protestant English as much as the Lacandon Maya. He also bemoaned the loss of royal tribute and tithes to the church. After calling the petitioning community “naturales” and “pobres” throughout his remarks the priest switched terms, now relating that “many *tributaries* have fled because not only do they not have any maize to sell, they have nothing to eat.” Such word choice was shorthand for the argument that tribute could not be collected from absent tributaries.

Espinoza positioned the repartimiento as a threat to tribute collection and to the progress of the twin imperial goals of evangelization and enculturation. Like the indigenous ranchers who cited the threat of the barbarous Chichimec in order to secure extended privileges, Espinoza cited the threat of the English and the Lacandon Maya as a foil to Machado’s indigenous community. When empowered with leadership roles, Machado’s caciques would bring order and stability to the region and stave off imperial threats. Machado’s concerns, on the other hand, were more local. The indigenous leader hoped to secure more autonomy for his community, but like personal profit, this was not argument to which the viceregal government would likely respond. Instead, Machado needed to show that his community’s autonomy would promote the common good of the república as a whole.

⁸¹ The text calls the Lacandon Maya “prácticos de la tierra,” which I take to mean that they still practice their indigenous culture, the culture of the land. The Lacandon Ch’ol never did submit to the Spanish and constituted a thorn in the side of ecclesiastics and viceregal officials alike. Indios from the missions and haciendas had been escaping to the Lacandon jungle for at least 150 years when this document was written. Gudrun Lenkersdorf, “La resistencia a la conquista española en Los Altos de Chiapas”. In Juan Pedro Viqueira and Mario Humberto Ruz (eds.). *Chiapas: los rumbos de otra historia*, (Mexico City: Centro de Investigaciones Filológicas with Centro de Investigaciones y Estudios Superiores en Antropología Social), 83.

Piety

Indigenous petitioners made arguments about the way in which the viceregal government should order and distribute resources between temporal groups with the república, and they also opined about how the viceregal government should distribute resources between the república's spiritual and temporal dimensions. Sometimes this meant asking the temporal authority to protect them from exploitative clergy, citing their responsibility to pay tribute.⁸² More commonly, indigenous petitioners cited their responsibilities to the body spiritual, hoping that the court might prioritize their material obligations to God and the Church over their obligations to a debtor or to the temporal needs of the república. Though the Spanish Crown did not require indigenous people to tithe to the church as subjects of other castes were required to do, indigenous people still cited their responsibility to augment the Church's devotion. A regulation that hampered their ability to support their local parish hindered them from fulfilling their spiritual and communal responsibilities and, ultimately, jeopardized their soul. Petitioners argued that they needed to be able to make enough of a living to build and provide proper ornamentation for their churches and to provide candles, food, and musicians for the annual festival and procession of their patron saint. And they needed to be able to contribute alms for the poor and support to their parish priest, as Cristóbal Antonio of Coyotepec explained when he asked permission to travel about his jurisdiction by mule.⁸³ He worked in the tianguis as a petty trader selling chilies, beans, corn, and other foodstuffs in order to sustain himself. He argued that the ability to travel more widely would enable him to pay his tribute and to serve God through personal service to the church.

⁸² Indios, vol. 33, exp. 268, fs. 206r-207r. 1698.

⁸³ Indios, vol. 37, exp. 144, fs. 143v-144. 1709.

Such a strategy may have been a strictly calculated ploy to gain exemptions from unwieldy tribute obligations, but not every petitioner cited their obligation to the Church and to God, suggesting that more particular or personal circumstance led petitioners to choose this strategy among others. Piety, obviously, motivated many to cite their religious obligations. Perhaps most importantly, Catholic churches and the devotional cults attached to them contributed greatly to indigenous communal identity and sense of autonomy. Some historians have even argued that local religious identity, physically expressed through the parish Church, was the primary way in which indigenous people expressed their political commitments.⁸⁴ The petitioner's claims show that not only did indigenous people "use practices and discourses of Catholicism to assert control and ownership over religious resources," but they also used the discourse of Catholicism to assert control over their own personal material resources and even over the distribution of tribute.⁸⁵

When asking that imperial resources stay in their communities, indigenous people made claims about the way in which the Crown ought to distribute its resources. Eschatological imperatives often rested uneasily against temporal needs, and petitioners called attention to these points of friction, advising the Crown on how to redistribute resources to better fulfil its obligations to support the Catholic Church's mission in the viceroyalties. For example, petitioners sometimes cited their desire to build or repair their church in order to beg out of paying tribute. In 1695 in Oaxaca, indigenous petitioners asked to be exempt from tribute because they wished to rebuild their church at their own cost. Their church, they explained, had fallen into "indecent" shape, and it was too far away from the pueblo for the sick, the old, and the

⁸⁴ Matthew D. O'Hara, *A Flock Divided: Race, Religion, and Politics in Mexico, 1749-1857*, (Durham, NC: Duke University Press, 2010).

⁸⁵ *Ibid.*, 135.

women to attend mass and other important feast days. In pointing to the vulnerable in their pueblo, the petitioners positioned themselves as patriarchs attentive to both the temporal and spiritual needs of their dependents, just as the king was responsible, in part, for developing the spirituality of his subjects. They did not suggest that tribute itself was harmful, only that under those present circumstances, officials would certainly do harm to the spiritual well-being of the pueblo's most vulnerable in extracting tribute. Finally, in support of the petitioners, the local priest added that it would be "a pious and true work...of great service to both majesties," God and king.⁸⁶ Rhetorically, the priest collapsed the spiritual and temporal into one, suggesting that, while it appeared that suspending tribute payments might hurt the king's coffers, in fact, what was good for the church was good for the república as a whole.

Custom and Trade in the Americas

Finally, Indigenous litigants and their lawyers also invoked the weight of custom, a foundational concept in Spanish legal thought. According to Aquinas, the passage of time was constitutive of law because "repeated acts are one form in which interior will and reason manifests."⁸⁷ Customary habit, as long as it did not directly contradict divine or natural law, constituted the will of the people, perfected and reinforced over time. The *Siete Partidas* also enshrined the preeminence of regional custom, stating that the king owed his subjects "laws that did not impinge upon custom."⁸⁸ Indigenous people, as the oldest inhabitants of New Spain, could make claims to customary commercial law in ways that were inaccessible to Spanish newcomers.⁸⁹ For example, in 1592, indigenous traders in Mexico City complained that

⁸⁶ AGN, Indios, vol. 33, exp. 12. Indios, vol. 33, exp. 128, fs. 80v-81v. 1696.

⁸⁷ Aquinas, *Summa Theologica*, II-II, 93, iii.

⁸⁸ *The Siete Partidas*, Vol. 2, translated by Samuel Parsons Scott; edited by Robert I. Burns, (Philadelphia, PA: University of Pennsylvania Press, 2001), 84.

⁸⁹ Owensby, *Empires of Law*, 163, and 216-219 for more on custom in Spanish law,

Spaniards were encroaching on spaces that were customarily indigenous by setting up their tables in the local tianguis. The indios petitioned the local *corregidor*, asking the district administrator to “signal” the primarily indigenous area in the tianguis, as they noted was done in other indigenous markets in the city. The petitioners cited two common legal idioms to make their case. First, they argued that they had been selling in their places in the tianguis since “time immemorial,” suggesting that their claim had the force of customary law behind it. Second, they argued that the Spanish disturbed the peace and order, or the status quo, that had always existed in the market. Indigenous litigants asked the Spanish judge to reinforce their rights to a particular commercial space because to do so would be to uphold the legal legitimacy of both order and customary law.⁹⁰ Within a legal system that championed the weight of custom, indios could argue for protection based on the long-standing nature of their trade relationships and practices.

Though rare, indigenous petitioners sometimes used custom against internal enemies when petitioning the Juzgado de Indios.⁹¹ In one late 17th century case, an india principal named Doña Francisca Mónica of Santiago Tlatelolco used custom to limit competition from another indigenous woman, albeit unsuccessfully. She testified that she, her daughters, her granddaughters, and her daughters-in-law had “practiced their trade in eggs, legumes, and other things in the plaza mayor [of Mexico City]...supporting themselves this way since the *primitiva*.”⁹² The women asked the court “to impede other indios of the barrio, namely Juana and her daughters” from selling in the area.⁹³ Although Doña Francisca cited her family’s need to

⁹⁰ AGN, Indios, vol. 6, exp. 173.

⁹¹ Such internal conflict would have come before the *cabildo de indios*, which typically heard cases orally and left few records. As such, there exists a dearth of scholarship about internal hierarchies and conflict. Bianca Premo, “Before the Law: Women’s Petitions in the Eighteenth-Century Spanish Empire.” *Comparative Studies in Society and History* 53, no. 2 (2011), 274.

⁹² At least some of these women must have had husbands, but selling in the plaza was a woman’s role. Also, the usage of the word “primitiva” here to mean the earliest time is uncommon. “Time immemorial” is much more common.

⁹³ The record ends with a terse “no vale,” or “voided.” AGN, Indios, vol. 33, exp. 222, fs. 159v-160v. 1697.

contribute to the Church and to the república, the court decided that the personal bad blood between the women did not merit further attention. In other cases, caciques attempted to utilize the Spanish justice system's respect for custom to defend long-standing internal hierarchies.⁹⁴ The indios of the pueblo of San Francisco Tepeaca accused their own cacica, Doña Josepha de Vilba Gómez, and her husband, Don Luis de Gúzman, of "comporting themselves with such lordliness and imperiousness that the indios became like their slaves."⁹⁵ The caciques forced the indios to give them foodstuffs like chickens and chilis, and also made the women work as *molenderas*, grinding maize for sale. The caciques justified their acts by "saying that these contributions have been customary for everyone who has been [cacique] of this pueblo."

In response to the problem of being newcomers under a system of law that privileged custom, Spaniards in the Americas held a very loose definition of "time immemorial," often treating encounter as year zero. In turn, those indigenous people from city states that had allied themselves with the Spanish early also took up that definition. For example, Beatriz de Haro of Texcoco, submitted a petition on March 9, 1641, asking the judge to ensure that no local official impede her trade in the local tianguis. Her petition leaned heavily on her credentials as a loyal subject of the king. Beatriz declared herself to be a cacica, the "niece and grandniece of the lords of [Texcoco]," reminding the justices that "her ancestors had served his majesty along with the pueblos of the province of Texcoco," alluding to Texcoco's alliance with Hernán Cortés against Tenochtitlan. Despite this glorious history, Beatriz explained that she "had been left in such need and poverty that she publicly sold wool of different colors to sustain herself." Any yarn she could not sell publicly she took home to make into traditionally indigenous clothing such as

⁹⁴ AGN, Indios, vol. 36, exp. 78, fs. 79-79v. 1703.

⁹⁵ They accused them acting with "soberanía y imperio," stopping just short of calling them tyrants, but the suggestion is there.

sayales, naguas, and huipiles. This was a practice that "was allowed to all of the indios," she argued.⁹⁶ Beatriz called upon the king to honor their historical, customary bonds of loyalty and patronage and protect her material well-being.

Of course, Spanish officials did frequently interrupt older patterns of regional and local indigenous trade through *concentración*.⁹⁷ As part of a larger Spanish effort to divide viceregal New Spain into two legally and spatially distinct republics, the Spanish crown attempted to concentrate indigenous people into more accessible, easily governed spaces. In Isabel I's first royal decree on the matter, she asserted that concentration would facilitate the collection of tribute in the form of goods and labor, and it would allow mendicant religious orders to facilitate the conversion of masses of indigenous people.⁹⁸ Concentración also disrupted long-standing patterns of trade as Spanish officials moved entire villages, along with their tianguis, to new locations, even changing the day on which the tianguis was held.⁹⁹ And in order to keep tributaries and neophytes in one place, the viceregal government also placed restrictions on indigenous traders' travel. Along with staggering demographic losses, these changes to long-standing patterns of trade led to weakened economic integration across regions of New Spain. As

⁹⁶ AGN, Indios vol. 13, exp. 193.

⁹⁷ Daniel Nemser's analysis of concentración in colonial Mexico argues that the practice emerged out of Renaissance conceptions of social order as intimately connected to spatial order, and how it contributed to increased biological racialization, see Daniel Nemser, *Infrastructures of Race: Concentration and Biopolitics In Colonial Mexico* (Austin: University of Texas Press, 2017). Also see Heidi Scott's analysis of reducción in the Andes. Heidi V. Scott, *Contested Territory: Mapping Peru In the Sixteenth and Seventeenth Centuries*, (Notre Dame, Ind: University of Notre Dame Press, 2009). As has been well documented, reducción disrupted all aspects of indigenous life and caused countless deaths.

⁹⁸ Lesley Byrd Simpson, *The Encomienda in New Spain: The Beginning of Spanish Mexico*, (University of California Press, 1966), 13.

⁹⁹ Examples of indigenous people petitioning for a change in the proscribed day, time, and place of the tianguis include AGN, Indios, vol. 2, exp. 59; Indios, vol. 24, exp. 295, fs. 191v. 1669; Indios, vol. 7, exp. 36, fs. 17, circa 1616.

a consequence, some of the most frequent complaints from indigenous traders and producers revolved around these restrictions on movement of people and goods.¹⁰⁰

In petitioning for exceptions from disruptive regulations, indigenous commercial actors displayed their intimate knowledge of regional trade, calling on Spanish officials to adjust their regulations to facilitate rather than disrupt these long-standing trade patterns. In 1649 in Tlaxcala, a group of three indigenous women, Doña María Salome Caterine, Ana María Petronila, and Ana Isabel María Salome, petitioned to be able to sell their goods without impediment in the local tianguis. Their tone reflected that they considered themselves to be privileged subjects, first as “indias principales” titled with the honorary “Doña,” and second as Tlaxcalans, honored for their ancestors’ alliance with Cortés a century earlier. They explained that they had always sold their salt and other goods in the tianguis of the public plaza, just as their ancestors had done since time immemorial. This they did for their livelihood and to pay tribute and service in acknowledgment of His Majesty. They further explain that “many indios from the city of Puebla, Cholula, and Quejocingo know, and are content in the knowledge, that they can buy their salt and other goods here on Saturday, which are the usual tianguis days in this city. They then resell the salt in their own parts.”¹⁰¹ These women acted as central wholesalers in the region, and to interrupt this long-standing pattern of economic integration, in practice in place since “time immemorial and accepted by all,” would result in great harm to the regional trade.

Though the archive does not say how officials responded to the Tlaxcalan’s case beyond issuing an amparo, in other cases it is clear that Spanish officials listened to petitioners and took

¹⁰⁰ For more examples of indigenous people explaining trade routes and petitioning for their protection, see AGN, Indios, vol. 37, exp. 31, fs. 28v-30, 1708.

¹⁰¹ AGN, Indios, vol. 15, exp. 111, fs. 184v.

their advice into account. In most cases, judges sent investigators to pueblos to solicit more information, and then sent receptores to hand down their decisions. In 1582, for example, the indigenous vecinos of the village of Ocotlán in the jurisdiction of Jalisco petitioned to move the tianguis closer to their homes, specifically next to their church. In order to better facilitate the local trade, the judge sent an investigator to talk to the indios most involved in the local commerce to make sure the move would benefit everyone.¹⁰² Scholars have observed that, after encounter, Spanish officials sought out, incorporated, and appropriated indigenous knowledge to better order imperial projects.¹⁰³ This appropriation happened in questions of trade as well, and to an extent, allowed indigenous traders to perpetuate customary patterns of trade.

Indigenous petitioners made visible indigenous production and supply lines that Spanish officials did not and could not have accounted for when setting the rules of municipal mercantilism. For example, the prohibition against indigenous people selling out of their homes caused problems for Francisca de la Cruz, a vecina of Mexico City who served as a crucial link between rural producers and the city's markets. Through an interpreter, De la Cruz explained that her "relatives and other people" in the valley of Cuernavaca brought their loads of fruit into the city and warehoused them in her home. For this and to put their pack mules in her corral, they paid her a few reales. From there, "regatones" sold the fruit legally in the city's public markets. De la Cruz complained that the plaza's constable and two other men, Francisco Maldonado and Marcos Pérez, were extorting her and impeding her business for their "particulares fines" by taking a cut out of each load, even though she declared that she followed all ordinances. She

¹⁰² AGN, Indios, vol. 2, exp. 172; AGN, Congregaciones, vol. 1, exp. 13.

¹⁰³ For example, King Phillip II commissioned the *Relaciones geográficas*, a set of geographic and political maps of his colonial holdings, in order to better rule over those holdings. Viceregal officials then commissioned indigenous cartographers as they were "people knowledgeable about the land." Barbara E. Mundy, *The Mapping of New Spain: Indigenous Cartography and the Maps of the Relaciones Geográficas*, (Chicago, London: University of Chicago Press, 1996).

asked for “a license and permission for [her relatives] to freely send their fruits and legumes” and for her to be allowed “to sell the fruit brought to her house freely” without any impediments from any official.¹⁰⁴ Her request was approved. While the judge did not explain his reasoning, it is likely that he recognized the importance of de la Cruz’ role in supplying the city. Technically, it could be argued, as Maldonado and Pérez had, that she sold goods out of her home. Generally, city officials had a deep antipathy for resellers, who tended to evade surveillance by selling in the streets and out of their homes. But the judge must have seen that de la Cruz acted more as a merchant and wholesaler, connecting producers to distributors and providing a service for which she deserved payment. Most importantly, the goods she warehoused were sold to consumers legally and in the appropriate place, benefiting the city as a whole.

This chapter has examined the role of indigenous people not only as economic actors, but as participants in negotiations over just commercial relationships in New Spain. In the 16th century, Spanish jurists and theologians constructed a commercial and legal personality for indigenous people, an exercise of power that both allowed indigenous people to enter into negotiations over commercial justice and also severely limited the arguments that they could make. This legal and commercial personality was defined by indigenous people’s relationship to the Crown as *hijos de familia*, and by their prescribed place in the municipal mercantilist order. Throughout the 17th century and much of the 18th, indigenous people used a catalogue of strategies based on their legal and commercial personality and the tenets of Catholic commercial justice to delegitimize contracts, to seek exceptions from the municipal mercantilist order, and to protect their customary privileges against other corporate groups. These strategies were shaped

¹⁰⁴ AGN, Indios, Vol. 13, exp. 226, fs. 200. May 8, 1641. Indios, vol. 13, exp. 227, fs. 201v. 1641. May 11, 1641.

not only by social systems of caste and gender, but by the theologically based commitments of the Spanish justice system. While individuals may have sought personal profit, the justice system did not acknowledge profit loss as a legitimate complaint. Instead, indigenous people found that it was a more useful strategy to detail the ways in which an economic practice harmed corporate groups, the república, or the church. Indigenous economic actors' participation in the viceregal justice system's efforts to order commercial relationships allowed Spanish officials to appropriate and incorporate indigenous knowledge of local production and longstanding commercial relationships into the municipal mercantilist order. But their participation also allowed for some indigenous people to perpetuate customary trade patterns and hierarchies, both within their own communities, and in response to pressure from casta and Spanish economic actors.

Ch. 3: Commercial Justice and Commercial Conflict in the Plaza Mayor

The legal dramas and negotiations that played out in the tianguis' of Tlaxcala and Texcoco during the 17th century were magnified in the markets of Mexico City's Plaza Mayor, which by the late 17th century had become not only the center of the city's religious celebration and viceregal governance, but its center of commerce as well.¹ Today, the Plaza Mayor is still framed on one side by the Metropolitan Cathedral and on the other by the former seats of the viceregal government, now the Presidential Palace, and the city's government, the Ayuntamiento. But the Plaza's commercial past is mostly hidden, the market stalls cleared from the tourist zone to reappear at the entrances of the city's metro stops and bus stations. During the late Hapsburg era, however, not one but three distinct markets sprawled across its expanse. Mexico City was the center of New Spain's commercial networks, and the Plaza Mayor was the center of commercial life in Mexico City.

As Barbara Mundy has shown, both the Mexica and Spanish architects of México-Tenochtitlan constructed and ordered its spaces and causeways to express their political and spiritual worldviews. The *Templo Mayor*, dismantled by the Spanish under Cortés in order to raise the Plaza Mayor in its place, replicated the hill and water motif that the Mexica associated with urbanity. In turn, the Plaza Mayor's ordered lines, Cathedral, and viceregal palaces reflected Spanish Renaissance understandings of an ordered society. Mundy further argues that scholars should attend not only to the significance of these built spaces, but to how the movement of

¹ Other markets served a more important role in provisioning, but only the Plaza Mayor's markets both provisioned the city and served as a symbol of the Spanish empire's global reach and commercial power. The Tianguis of México was actually about 15 percent larger than the Plaza Mayor and served as Mexico City's center of commerce in the 16th century and probably most of the 17th. The Plaza Mayor did not become a tianguis, or a provisioning market, until the 17th century when indigenous food sellers moved there to avoid flooding. Barbara E. Mundy, *The Death of Aztec Tenochtitlan, the Life of Mexico City*, (Austin: University of Texas Press, 2015), 86.

people through that built environment gave symbolic meaning to those spaces.² Because the Plaza Mayor served as the central symbol of New Spain's political, spiritual, and commercial power, it was also one of the viceregal era's most contentious sites of negotiation over just commerce. The Ayuntamiento's attempts to order the internal spatial arrangement of the market stalls and the movement of people within the Plaza Mayor according to the tenets of Catholic commercial justice far outpaced their attempts to control any other market in the city, especially in the wake of the 1692 corn riots. Indigenous and casta traders also harnessed the symbolic power of space in the Plaza Mayor to contest such top-down definitions of just commercial space, especially during periods of scarcity.

This chapter follows the Plaza Mayor through its different phases between the 1680s and 1750s, with the 1692 riot serving as a fulcrum. Part one details the years of scarcity leading up to the riot. Perhaps surprisingly, government officials first deployed a strategy of non-action, hoping that the interplay of buyers and sellers and their private interests would sort out scarcity. It was only under political pressure and the threat of total famine that government officials attempted to control supply and demand by drawing or erasing politico-economic borders, economic tools that were deeply unpopular to those who felt that they had fallen on the wrong side of those borders.

Part two deals with the aftermath of the riot. Rather than further centralize their authority over the Plaza Mayor, as might be expected, the Ayuntamiento devolved oversight to a private individual, granting the public monopoly as a traditional strategy for dealing with uncertainty. The Ayuntamiento hoped that the familiar forces of patronage would lead to more secure commercial relationships, which was largely true over the course of the 50-year contract. They

² Ibid., 57-58, 61, and 73. Mundy further argues that the Plaza Mayor, and Mexico City in general, continued to be shaped by its indigenous inhabitants and architects.

also included provisions in the contract that echoed the tenets of Catholic commercial justice as a strategy for limiting the monopolist's power to enact his personal interest over that of the public. Catholic commercial justice demanded a certain spatial arrangement in order to surveil the boundaries of the municipal mercantilist order, ensure the proper provisioning of the city, and also to promote Mexico City's spiritual well-being. This third requirement is the subject of part three, which analyzes negotiations over the entangled nature of the Plaza Mayor's spiritual and commercial spaces. In the aftermath of the riot, long-standing anxieties over the tensions between profane commerce and sacred space became explicit. While the city's Ayuntamiento expressed a desire for more delineated spaces and times, ecclesiastics and the laity largely defended the natural comingling of commerce and spirituality.

The Plaza Mayor's early 18thth century market actually comprised multiple markets, which municipal authorities arranged both by types of trade and by the identity of the trader. In the same way that the Crown enacted imperial mercantilism to protect merchants and producers within the empire from external competition, local and viceregal ordinances also protected and limited commercial actors from domestic competition through a system of licensing.³ The Plaza Mayor's markets comprised the *Alcaicería*, or the market for imported goods where professional merchants sold their wares out of sturdy wooden edifices called *cajones*; the artisan market, where local artisans sold their products; and the provisions market, known as the *puestos de indios*, where indigenous tradesmen and women sold foodstuffs (figure 1).⁴ This market was a crucial resource for provisioning the city. Finally, in the center of artisan market, called the *Baratillo*, one could also find a thriving, legitimate second-hand market, as well as a not-so-legitimate black market.

³ AHCDMX, *Rastros y mercados*, vol. 3728, exp. 1.

⁴ The *Alcaicería* became known as *el Parián* later in the 18th century.



Figure 1. Cristóbal de Villalpando, *Vista de la Plaza Mayor de la Ciudad de México*, 1695. Private collection of James Methuen Campbell, Corsham Court, Bath. In this view of the Plaza Mayor, the rebuilt stone edifice of the Alcaicería can be seen at the bottom of the painting, while the puestos de indios and the Baratillo at the center can be seen above it. Along the top of the painting is the Palacio Real, the destruction from the 1692 riot still visible in the upper right corner. Along the left side is the Metropolitan Cathedral, and along the right is a set of canals used to bring foodstuffs to market.

City officials believed the Baratillo to serve an important public good in the city in that it provided a place for poor indigenous people to sell their own small, hand-made items and other goods of questionable or second-hand quality in order to “remedy their misery.”⁵ At the same time, this spatial arrangement ensured that “no buyer could mistake the quality of the wares” as being better than they were, as might happen if the indios sold their goods out of a cajón or outside of the market. In this way, the poor could make a small living without distorting the just price. While early modern notions about caste and patriarchy certainly dictated who could sell what and where, officials also believed formalizing the spatial organization of the market promoted commercial justice. Like trademarks, the spatial organization of the market helped to mitigate information costs and fraud in the market.

Despite these safeguards, over the course of the 17th century, the Baratillo became known to viceregal officials as a place of vice and ill-gotten gains where degenerate castas sold whatever they liked, whenever they liked, including on Sundays and other holy days, for “their own interest.”⁶ The Audiencia blamed unscrupulous merchants in the Baratillo for an uptick in theft as well because they happily bought stolen goods without any suspicion and resold those goods well below their true value, undercutting the artisans who the Audiencia believed to be honest.⁷ The Real Audiencia issued two ordinances during the 17th century in the hopes of curbing those excesses, one in 1635 and another in 1644, but neither had lasting effects. Officials lamented that not even the ecclesiastical judges had made any dent in the unjust activities happening in the Baratillo, evidence again of the church’s keen interest in economic justice. In 1689, the court of Charles II wrote to Viceroy Gaspar de la Cerda, 8th Conde de Galve, asking

⁵ AHCDMX, Rastros y mercados, vol 3728, exp 2, f. 4. 1688.

⁶ Ibid., Fol. 9, 1693.

⁷ AGI, México, 59, R.2, N.5 Carta de Virrey Conde de Galve, 1689

him to launch an investigation into what would happen if the Baratillo were to be extirpated entirely.⁸ Who would be inconvenienced and who would benefit?⁹ The viceroy found himself in a difficult position. He could not deprive the indigenous people, who “had their recourse in this public place,” of their livelihood. The fiscal seconded this opinion, writing that “the indigenous people in the Baratillo did not tend to commit fraud and robbery like the mestizos, mulatos, and Spanish,” echoing a common narrative that indigenous people were spiritual neophytes, untainted by the blood of African-descended people who had been introduced to Christianity and denied it.¹⁰ Still, the Baratillo could not go on as it had. That year, the *Consejo de Indias* in Madrid and the Audiencia decided to extirpate the Baratillo but grant indigenous men and women licenses to continue to sell their handmade goods in some other suitable plaza.¹¹

In the midst of the investigation, Mexico City experienced one of the greatest upheavals of the 17th century: the 1692 corn riot. Already on the minds of officials, the Baratillo question gained new dimensions in the wake of the riot, which ended with the burning of much of the Plaza Mayor’s markets, part of the Ayuntamiento buildings, and the Palacio Real. After the riot, the viceregal government began to take a different tone with indigenous tradesmen and women. Much of the paternalistic, protectionist language that they had used just three or four years before vanished after 1692. The Ayuntamiento also became as much or more concerned with security as with unjust commerce. While peace and quietude had always been thought to be a marker of

⁸ Correspondence was only meant to appear to come from Charles II. The last Hapsburg king suffered from limited mental capacities, but as a conciliar system of government had long characterized the Spanish monarchy, decrees continued to flow easily between Madrid and its viceroyalties. Christopher Storrs, *The Resilience of the Spanish Monarchy, 1665-1700*. (Oxford: Oxford University Press, 2006), especially chapter 4.

⁹ The phrasing “inconvenientes y convenientes” is typical throughout legal sources as the primary question driving investigations. Judges wanted to understand net impacts.

¹⁰ One of the justifications for limiting African and converso immigration to the Americas was to limit indigenous exposure to “tainted” blood. María Elena Martínez, *Genealogical Fictions: Limpieza De Sangre, Religion, and Gender in Colonial Mexico*, (Stanford, Calif.: Stanford University Press, 2008), especially Chapter 5.

¹¹ The Consejo de Indias was the king’s council on his overseas viceroyalties.

good governance, Spanish officials prioritized security with renewed focus.¹² Finally, the riot is also important to this chapter because, as a consequence of the damages, the city turned over the administration of Mexico City's most important market to the highest bidder, seeking to offload the risks and obligations that came with managing the center of commerce while also still ensuring commercial justice. The new arrangement persisted throughout most of the 18th century, ending only in 1762 when Bourbon reformers began to alter the commercial landscape of Mexico City.

Commercial Justice in Times of Crisis

Scholars have long been fascinated by riots in Mexico City, in part because most historians characterize colonial Spanish rule in 17th century central New Spain as relatively calm.¹³ The 1692 corn riot represents a deviation from the everyday, and as such, historical subjects often articulate norms and expectations that might otherwise be invisible in the archive. Douglas Cope's important history of the riot focuses on the broken social and political norms that caused the riot, not excluding economic forces, but downplaying them, "since maize shortages played a curiously ambiguous role in contemporary explanations for the riot."¹⁴ By "ambiguous" he means that, based on calculations of annual wages, demand, and the prices set in

¹² For example, see Francisco Vitoria, *On Civil Power*, 1-8, 20, "the purpose of every common wealth and power is the sociable intercourse and companionship of its members. These are most preserved by peace and mutual love; and nobody can be unaware how much more effective monarchy is when it comes to the preservation of peace." That monarchy was the best system of governance was not necessarily taken for granted. The early modern argument for it was that it was the most effective way to maintain peace.

¹³ Regina Grafe and Alejandra Irigoin, "A Stakeholder Empire: The Political Economy of Spanish Imperial Rule in America," *Economic History Review*, 65, 2 (2012), p. 613. Historians tend to study riots because they generate archival material as government officials scramble to understand the origins of the riot and to put offenders on trial. Casta and indigenous perspectives come from these trial documents, which include witness testimonies.

¹⁴ R. Douglas Cope, *The Limits of Racial Domination: Plebeian Society in Colonial Mexico, 1660-1720*, (Madison: University of Wisconsin Press, 1994), 126. His reasoning echoes E.P. Thompson's argument that riots cannot be predicted based on mere economic shortage. The English crowds did not riot because they were hungry, but because their hunger was a sign that the authorities had breached a political compact. Economic factors might be necessary but they are insufficient explanation without understanding "custom, culture, and reason." Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century." *Past & Present*, no. 50, 1971, p. 78.

the alhóndiga, most people at the time of the riot were probably not starving as a consequence of the grain shortage. He suggests, therefore, that economic conditions alone did not lead to the riot, and he focuses instead on political breaches of norms —the archbishop’s refusal to dialogue with the rioters and the alleged death of an indigenous woman by the hand of a city official— as the immediate causes.¹⁵ But because he is less interested in the economic forces at play, his account sidesteps the definitions of economic justice articulated by indigenous consumers and producers, viceregal officials, and elite observers.

While treatise writers typically modeled commercial justice in times of equilibrium, contemporary narratives about the riot allow insight into how crisis conditions might alter or intensify certain strains of early modern discourse about commercial justice. Mexico City’s inhabitants agreed that the king’s government was obligated to ensure basic provisions, but in what way? What was the range of possible strategies and tools available to the viceroy and his advisors as they attempted to solve scarcity? What norms and values did they violate in the course of those attempts? As might be expected, economic inequality and official definitions of the just distribution of resources came under greater scrutiny as a result of widespread scarcity. Proportionate economic inequality was considered natural and justified as long as it happened within moderation and according to the principles of distributive justice. Some within the republic naturally needed more than others, but not to the extent that their wealth threatened the spiritual health and basic survival of those with very little. During the crisis, multiple groups

¹⁵ On the one hand, prices were certainly high enough to provoke unrest. But prices had risen near those heights before, fluctuating wildly throughout the 17th century. A decade before they had risen to 17 reales/fanega, and just a few years later in 1696 the average price of maize rose even higher to 40 reales/fanega (wages also rose by 100 reales annually after 1692). Yet, we do not have records of major riots in those years. For wages, see Leticia Arroya Abad, Elwyn A. R. Davies, and Jan Luiten van Zanden, “Prices and wages in Argentina, Bolivia, Chile, Colombia, Mexico and Peru,” International Institute for Social History, <http://www.iisg.nl/hpw/prices-wages-argentina-bolivia.pdf>. For grain prices, see Woodrow Wilson Borah, *Price Trends of Some Basic Commodities In Central Mexico, 1531-1570*, (Berkeley, CA: University of California Press, 1958).

accused the powerful of perpetuating immoderate economic inequality. If some within the body politic were experiencing an acute lack, it was because others within the body politic had too much.

These concerns scaled up and down the body politic. Jonathan Amith has argued that scarcity could produce political geographies as local authorities draw mercantilist boundaries (controlling imports and exports) to combat scarcity. Different groups contest where those boundaries are drawn, including boundaries they might have even accepted in times of abundance.¹⁶ In the years leading up to the riot, plebeians argued that they had too little because Spaniards received too much; rural farmers argued that they suffered in order to provision urbanites; and elite observers in Mexico City imagined that the provisioning of far flung presidios in New Spain came at the expense of Mexico City's well-being and security. To kings and viceroys, the scale of the commons included an entire empire. To Mexico City's elite, it was much harder to accept redistributionist policies that strengthened the imperial commons but weakened themselves or their immediate community.

The official, elite narrative of the riot itself has been well documented by other historians but deserves a quick recap. According to the criollo intellectual Carlos de Sigüenza y Góngora, after months of scarcity, the public granary ran out of corn on June 7th, 1692, and the tension that had building finally exploded. Sigüenza y Góngora recounted that indigenous women crowded the granary, causing a general disturbance. When the granary master whipped one of the indigenous women, allegedly causing her to miscarry her child, the crowd went first to the Archbishop to demand justice and protection. When he refused to see them, they went on to the

¹⁶ Jonathan D. Amith, *The Mobius Strip: A Spatial History of Colonial Society in Guerrero, Mexico*, (Stanford, CA: Stanford University Press, 2005), 462.

Baratillo, already a symbolic site of economic conflict between the Ayuntamiento and castas. From the Baratillo, the crowd became destructive, burning and looting the Plaza's market stalls. In Sigüenza y Góngora's version of the story, while the disturbance began with indigenous women, it was the castas of the Baratillo whom he truly blamed for the eventual destruction and looting.¹⁷ This sequence of events likely fit better with contemporary paternalistic attitude toward indigenous people who were generally thought to be without the intelligence or guile to start something like a riot on their own.¹⁸

When the riot died down, the three markets of the Plaza Mayor lay in smoldering ruins, along with the Palacio Real, the city's Ayuntamiento buildings, and at least seven of the surrounding stores. Some 200 people had been killed, and riots had materialized in other nearby towns, further adding to the death toll.¹⁹ The viceroy ordered an investigation into what had caused the events. The official narrative of the riot became that indigenous people, angry and ungrateful for all that the viceroy had done for them, had gotten drunk on pulque, which fueled their violence. The courts made examples of the rioters, executing 15 and ordering public lashings for another 30, the vast majority indigenous.²⁰

But another account disputed the viceroy's narrative. After the riot, two anonymous, "loyal vassals of the king" wrote a letter to the king defending the indigenous rioters and

¹⁷ This sequence of events fit better with contemporary paternalistic attitude toward indigenous people who were generally thought to be without the intelligence or guile to start something like this on their own. Sigüenza y Góngora depicts indigenous people as easily taken advantage of, as emotional and easily swayed.

¹⁸ The crowds shouted "Hurrah for the Holy Sacrament! The Virgin del Rosario! Hurrah for the King! Hurrah for Pulque," followed by "Down with the Viceroy! Death to the Spaniards! Down with bad government!" This kind of bifurcation of imperial power into the good king and the evil viceroy allowed imperial subjects to register their displeasure in a way that did not directly threaten the sovereignty of the king. The king stayed "above the fray of the intense corporatist competition that comprised Spanish governance." The polycentric nature of power in New Spain, split between the viceroy, the king in Spain, and the archbishop also allowed indigenous people to pit one center of power against another. Bianca Premo, *Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima*, (The University of North Carolina Press, Chapel Hill, 2005), 11.

¹⁹ Reports that some 200 people had been killed or injured come from AGI Patronato, 226, N.1, R.25.

²⁰ Cope, *Limits of Racial Domination*, 157.

accusing the viceroy and his ministers of causing the riot through their “tyrannies.”²¹ They argued that the indigenous people had always drunk pulque, yet had not rioted in over 200 years.²² Citing a string of recent uprisings in New Spain, they pinned the cause of this widespread unrest squarely on the immoderate redistributionist policies of the viceroy.²³ In the authors’ telling, the viceroy had recently begun to send castas and indigenous people away to work in presidios on charges that they were vagabonds, without any regard to whether they were married, “breaking their families’ hearts.” The viceroy had also recently raised the duties on overland imports, charging half a real for each mule and a real from each horse, which the authors alleged had brought in 1500 pesos for the viceroy and his ministers. To raise taxes on imports during a time of widespread price increases and famine struck the letter writers as particularly avaricious. The letter writers also accused the viceroy and his fawning “creatures” of defrauding corn producers in Celaya and in Tlaxcala, and defrauding corn buyers in Mexico City, all places that experienced indigenous-led uprisings.²⁴ The viceroy used the fruits of this fraud, the letter writers alleged, to send more funds to his presidios and to enter into transatlantic and transpacific colonial trade where a great deal of money could be made by those with capital.²⁵

²¹ AGI, Patronato, leg. 226, no. 1, r.25, carta 1, image 5. Leonor C. Taiano explores history of written correspondence between the King and his colonial subjects in “Críticas, acusaciones, encomios y justificaciones: escritos en contra y a favor del Conde de Galve,” *Virreñatos II*, (México: Grupo Editorial Destiempos, 2013), 600–633.

²² Clearly an overstatement, though uprising of this magnitude or in the heart of New Spain were almost non-existent.

²³ The fact that multiple contemporaneous riots took place in central New Spain slightly complicates Cope’s argument that Mexico City’s politics are mostly to blame for the riots.

²⁴ The letter writers believe the excesses of the repartimiento in Tlaxcala to be particularly insupportable. They reflect that the Tlaxcalans are known to historically be the most loyal indigenous vassals of the king. They suggest that their uprising is evidence of truly unjust government.

²⁵ Cope does not see evidence for the kind of corrupt price fixing that the letter writers describe, but he also reasons that “it is unlikely that anyone versed in the intricacies of bureaucratic infighting would manufacture such a charge.” But the truth is beside the point if people thought it to be true. He lists evidence that these rumors had become widespread, *Limits of Racial Domination*, 133.

The letter writers' specific accusations were grounded in widespread contemporary concerns about imperial redistributions of resources, including labor. The Conde de Galve had been in the midst of a crackdown on the casta "vagabonds" in the Baratillo, as we have seen, and Sigüenza y Góngora spent a good part of his own letter detailing the Conde's efforts to send funds and human capital to the empire's embattled borders. This pattern would have been part of the larger viceregal system of *situados*, or "internal, interdependent transfers of revenue between colonial provinces," which until recently has been most ignored.²⁶ While historians now have a better understanding of the system itself, little is known about how people on the ground felt about the practice. Though more research is necessary, it seems that *situados* engendered some resentment about the redistribution of Mexico City's tax revenue to far flung parts of the viceroyalty and empire in the interest of promoting an imperial common good.²⁷ The letter writers represented those who identified with a more immediate politico-economic imaginary and resisted the imposition of a definition of the commons that included presidios in the Philippines.

The anonymous letter-writers were not alone in their criticism of the viceroy's handling of local resources in the years preceding the riot. His government's strategies for dealing with scarcity faced criticism from producers in Mexico City's hinterlands and beyond who resented the viceroy's redistribution of goods away from their communities and to Mexico City. According to Sigüenza y Góngora, a year of heavy rains, flooding, and blight destroyed the

²⁶ For a thorough analysis of *situados*, see Regina Grafe and Alejandra Irigoin, "A Stakeholder Empire: The Political Economy of Spanish Imperial Rule in America," *Economic History Review*, 65, 2 (2012), pp. 609-651.

²⁷ AGI Mexico, 64, R.2, N.21 "Archbishop Virrey Juan de Ortega y Montañes carta sobre Baratillo," 1696. And the letter writers were not the only elite vecinos to complain. In September, 1696, the newly installed archbishop viceroy also questioned why the king did not maintain garrisons in protection of Mexico City when the Islands of Barvento and in the Philippines had so many. He believed the garrisons were necessary in order to protect the elite from the indigenous and casta rabble.

wheat crop around Mexico City that sustained wealthier, mostly criollo urbanites.²⁸ Because of scarcity, wheat that in the summer had been selling at three pesos (24 reales) per fanega rose in September to 8 or 9 pesos (64 reales), the highest price of that century.²⁹ People began to spread the rumor that the farmers were “exaggerating their misfortune,” artificially raising prices, and profiting off of the misfortune of others for their own personal gain. If true, the farmers would have been guilty of collusion, so in order to “restrict them to just conduct,” the viceroy sent investigators out into the countryside. The investigators found that the problem was indeed caused by wide-spread crop failure and not by a plot to defraud consumers. They reported that “scarcity,” not the farmers, “had set the price.”³⁰

The finding absolved the farmers, but it did not release the viceroy from his obligation to restore distributive justice and protect the republic’s poor. Mexico City’s vecinos continued to demand that something be done to alleviate their suffering, so the Conde de Galve called for a junta to judge proposals. On the junta sat everyone from the Corregidor of Mexico City to the

²⁸ Sigüenza y Góngora began by situating the viceroy’s actions leading up to the corn riot within the context of his administration’s overall record. 170 years after conquest, Spain’s imperial drive had not waned. The Crown still expected its viceroys to spread Catholicism throughout the Americas and to secure Spanish interests, now mostly under threat at the margins of empire. Sigüenza y Góngora listed a few of the gravest external foes: in the Gulf of Mexico, English corsairs drained imperial coffers, in Louisiana the French had secured a foothold, and in the northern reaches of New Spain, “barbarian” indigenous tribes like the “Chichimeca, the Tejas, and the Tarahumara” continued to rebel. The viceroy had responded to all of these threats by supporting missionaries and reinforcing both maritime and inland presidios, or garrisons. Sigüenza y Góngora offered up this record as evidence of the Viceroy’s good governance, absolving him of any blame for the riot. But this framing device also had the effect of painting the riotous indios and castas of Mexico City as the “other.” Like the Tarahumara and the English, the indios and castas within the very heart of New Spain also posed a threat to the Spanish Catholic project. Carlos de Sigüenza y Góngora, *Relaciones históricas*, ed. José Porrúa Turanzas (México, UNAM, 1987), p. 99-174.

²⁹ Cope, *Limits of Racial Domination*, 127. According to Cope, the exchange rate was 8 reales/1 peso, 130. The average annual salary in Mexico City was about 625 reales, so, a fanega of wheat approached a tenth of one’s yearly salary. In comparison, Sigüenza y Góngora says he could purchase a fanega of corn for 28 reales which would make approximately 1400 tortilla. In another place, city officials required that obraje owners give full grown male workers 18 tortillas per day, plus beans and meat on alternating days, so a worker required at the very least about 5 fanegas of corn a year, AGN, Ordenanzas, vol. 1, exp. 9, 1579. Assuming that consumption habits did not change radically, a single person would have spent about 22 percent of their annual wages on corn for just themselves in 1692.

³⁰ This pronouncement complicates somewhat the idea that early moderns considered people to be price makers, not price takers. Nature could cause prices. Perhaps it was not such a jump to consider prices to be a “natural” phenomenon that could be studied. Francisco Gómez Camacho, *Sourcebook in Late-Scholastic Monetary Theory*, 115. Citing John Hicks, *Causality in Economics*, (Oxford: Basil Blackwell, 1979), 11.

Bishop of the Church to leaders of religious orders, a reminder once again that the Church routinely concerned itself with distributive justice. Two proposals were presented. The first came from the fiscal, who urged the viceroy to intervene heavily, suggesting he fix prices, require producers to plant more maize, and compel rich citizens to pay for the long-distance transport of maize.³¹

A lawyer, Licenciado Don Alonso de Arriaga Agüero, presented a counterproposal suggesting that the viceroy allow "liberty of commerce." High prices would prevent scarcity by incentivizing consumers to be more disciplined consumers. In Sigüenza y Góngora's retelling, the viceroy agreed to this plan, "since there is no more suitable way to make plentiful what is scarce in a republic than the high price which the scarcity of the commodity puts upon it because the article is eagerly sought for everywhere." As such, "it [was] advisable to overlook a little the price that was being asked for the wheat in this present time." If wheat prices were kept artificially low, Arriaga worried that it "might discourage those who live in these valleys from sending to Mexico City what they still had in their barns from the previous crop."

Arriaga's argument was based in a cause and effect methodology that recognized patterns of human decision making when presented with certain incentives. His approach might strike some historians as surprisingly modern, so it is worth taking a moment to understand who Arriaga was and from where he might have drawn his ideas.³² A lawyer for the Real Audiencia, Arriaga received his bachelor's degree in *Cánones y Leyes* (Canon law) at the University of Valladolid in 1666 and began prosecuting cases of commercial fraud on behalf of the viceroy.³³

³¹ AGI, Patronato, leg. 226, no. 1, r. 18, fol. 8v.

³² Cope, for example, describes Arriaga as sounding like a "hispanic Adam Smith." The English philosopher would not articulate such ideas for another one hundred years, *Limits of Racial Domination*, 127-130.

³³ It is recorded that he became a lawyer in 1669 and prosecuted "comerciantes" (merchants). AGI, Indiferente, 130, N.62 from 1684. He was assigned to be a lawyer for the Real Audiencia looking into business. He also dealt with fraud in the pulque asiento and in at least one case prosecuted a merchant who had traded with *malas palabras*, or dishonorable words. AGI, Indiferente, 124, N.51, 8 and 10. For a short history of the University of Valladolid's law

By 1692, his knowledge of commercial law would have been both academic and practical, having prosecuted fraud for almost 30 years. It would be a mistake to think of Arriaga as an outlier—or celebrate him as a prescient visionary—as he most likely encountered his ideas about scarcity in the work of the arbitristas, the loosely defined group of peninsular reformers who encouraged tighter controls on imports and exports and expressed concern over falling populations in Spain, both problems of supply and demand.³⁴ In the 17th century, Tomás Mercado also encouraged officials to set legal prices at higher rates during times of scarcity in order to attract merchants to provision the city.³⁵ It is also important to note that Arriaga was not the first viceregal official to recognize the danger of price fixing during times of scarcity. A century before, in 1580, Juan de Matienzo a criollo magistrate in Peru, ruminated on price fixing in the mining boom town of Potosí, where prices could rise precipitously. Matienzo argued that these high prices were, in part, a function of the abundant supply of specie in the city, which led to inflation. The scarcity of food stuffs added to price inflation in Potosí, which produced little for itself other than silver. Surely, there were some who encouraged him to fix prices on food staple, but Matienzo refused, writing that price fixing “by the public sector, no matter how fair it might be, could provoke a sharp decline in imports, which could result in a reduction in people's

school, see Félix Martínez Llorente, “La facultad de derecho y los estudios jurídicos en la universidad vallisoletana: Una historia centenaria (h. 1180 – 2015),” 2015, <http://www.der.uva.es/files/Historia-FDERECHO.pdf>

³⁴ The arbitristas encouraged a wide array of reforms, from a return to morals to increased consumption, and although they faced much criticism, they were not outliers. Instead, they frequently had the ear of the king. On the peninsular arbitristas, see J. H. Elliott, *Spain and Its World, 1500-1700: Selected Essays*, (New Haven, Conn: Yale University Press, 1989), 243-258 in particular. For more on how arbitristismo played out in the Americas, see Marc Eagle, “Restoring Spanish Hispaniola, the First of the Indies: Local Advocacy and Transatlantic Arbitristismo In the Late Seventeenth Century.” *Colonial Latin American Review*, vol. 23, no. 3, 2014, pp. 384 - 412. Arrigo Amadori, “Remedios para un cuerpo político que declina: el arbitristismo de Manuel Gaytán de Torres y el estrechamiento de los vínculos transatlánticos de la monarquía hispánica (siglo XVII).” *Anuario de Estudios Americanos*, vol. 71, no. 1, 2014, pp. 107–43. Arrigo Amadori, “Que se de diferente modo al gobierno de las Indias, que se van perdiendo muy a prisa. Arbitristismo y administración a principios del siglo XVII.” *Anuario de Estudios Americanos*, vol. 66, no. 2, December, 2009, pp. 147–79.

³⁵ Mercado, *Suma de tratos y contratos*, Book 2, Ch. 7.

welfare.”³⁶ Matienzo recognized that it would be legal to fix prices, but it would not necessarily be prudent. The outcome would not be just, though the action might be. He put his theory into practice and never even allowed a duty on imports to Potosí.

Arriaga’s ideas had the support of history, but they also had the support of his government, which sided with his proposal over the fiscal’s. While they would not have used the term, the first instinct of the most important policy minds in New Spain and Peru was to let the interplay of private interests work it out. In New Spain, high prices would incentivize buyers to consume less wheat, allowing current stocks to stretch further. At the same time, high prices would incentivize farmers to overcome normally prohibitive transportation costs in order to bring their grain to the city. The viceroy hoped that predictable financial incentives would kick in to bring prices back down to pre-crisis levels.

While scholars have recognized that early moderns embraced loosely regulated markets for certain goods, most have accepted that early modern economic policy makers turned immediately to price fixing during times of economic crises, especially for necessities.³⁷ Here, however, we have evidence that even in an imperfectly competitive environment in which producers could set prices as high as they wanted on necessities, policy makers thought it just to allow market prices to adjust themselves.³⁸ In part, this can be explained by the fact that officials

³⁶ Oreste Popescu, *Studies in the History of Latin American Economic Thought*, 40. Popescu cites Matienzo, 1580: Title 25, Law 1 Gl. 17, No. 2.

³⁷ Francisco Vitoria allowed that market price could be the just price even for necessities, but only as long as markets were perfectly competitive. Marjorie Grice-Hutchinson, *Early Economic Thought in Spain 1177-1740*, (George Allen & Unwin: London, 1978), 51.

³⁸ Perfect competition can be said to exist when “all firms sell an identical product, all firms are price takers and cannot control the market price of their product, all firms have small market shares, buyers have complete information about product being sold, industry is characterized by freedom of entry and exit.” In the case of the corn market in 1692, the producers were price makers because they are selling an inelastic product. That is, consumers were not likely to respond to a price hike by buying substantially less because the good was considered a necessity. Perfect competition does not exist in this case. George J. Stigler, “Perfect Competition, Historically Contemplated.” *Journal of Political Economy* 65, no. 1 (1957): 1-17.

might not have considered wheat to be a true necessity. While Spaniards and *casta* plebeians tended to prefer wheat, maize was still available as a suitable substitute, although even the cost of maize had begun to rise as former wheat consumers turned to maize. As neither famine nor unrest seemed likely, and the shortage seemed temporary, a strategy of non-action seemed viable. Early modern economic policy makers fully comprehended the possible negative outcomes of price fixing. When they chose to fix prices anyway, as we will see, it was not out of ignorance, but because conditions existed that impeded normal market patterns and violated the norms of Catholic commercial justice.

Even after allowing “absolute liberty of commerce,” wheat and corn prices continued to rise. When the corn crop failed also due to blight, famine and unrest in the city became a real possibility. At this point, the viceroy decided that it was time for the government to intervene. He sent word to Mexico City’s bread basket region, including Chalco (24 miles from Mexico City), Toluca (40 miles), Ixtlahuaca (14 miles), and to the Metepec Valley (35 miles) to send grain, whether they wished to sell or not. Even this was not sufficient to fill the need, so he sent for corn from Celaya, a mountainous city in what is today the state of Guanajuato, almost 160 miles to the northwest of Mexico City. At that distance, economic incentives failed. The poor farmers in Celaya had no pack mules, and they had no real incentive to invest in transportation costs for such a temporally limited opportunity. Neither did they believe that Mexico City had money to pay for the grain as “there was not much in the common treasury for such an undertaking.” Both transportation costs and a lack of capital impeded the success of the previous market strategy. The viceroy solved the capital problem by essentially writing a blank check, backed by the city and a donation of 100,000 pesos from the city’s silver merchants, instructing his agent in Celaya

to buy up all the corn he could.³⁹ The city would also shoulder transportation costs. Corn flowed back into the public granary, which capped sales by price and amount.

Sigüenza y Góngora felt it necessary to justify the viceroy's intervention in far-flung markets for the benefit of Mexico City, arguing that "the resale of the grain could only be assured by coming to the public granary on the city's account."⁴⁰ At first, this assumption seems to contradict his earlier position. While he had previously argued that high prices would incentivize producers and merchants not to hoard but to sell, here, he insinuated that private individuals would likely hoard the grain if they brought it to the city, waiting to sell until prices were at their highest. Perhaps this inconsistency was due to the fact that conditions had worsened. Now famine was a true possibility and even corn prices had reached exorbitant levels. Even if enough willing private individuals could be found to invest the capital for this kind of operation, they would surely sell at high prices to cover their labor, transportation costs, and to ensure a profit. In contrast, the viceroy intended to sell at cost. Scarcity also ceased to be as deep a concern since the public granary would limit the amount that individuals could buy.

The viceroy's plans angered the towns and haciendas, many of which either lacked corn entirely after having sold their last stores to Mexico City or were forced to sell corn for prices higher than those in Mexico City. They argued that the forced sale of grain, even at the prevailing high prices, was "neither in accord with Christian piety nor political justice."⁴¹ Local

³⁹ Cope, *Limits of Racial Domination*, 128.

⁴⁰ That Sigüenza y Góngora had to justify this strategy seems unnecessary as price fixing and public provisioning had always been acceptable strategies for dealing with famine, but rumors had spread claiming that the Viceroy was making a profit at the granary. Sigüenza y Góngora set out to prove that the Viceroy did it out of obligation to the people rather than out of personal interest.

⁴¹ They argue: "no cabía en la piedad cristiana ni en razón política." Sigüenza y Góngora, *Relaciones históricas*, 113. Razón in this case best translates best to "right judgement." In 1679, Baltasar Henríquez translates "no tiene razón" to "contra ius," or "it is against justice." *Thesaurus utriusque linguae hispanae et latinae*, (Matriti, Ioannis Garcia Infançon, 1679). Like Cope, historian Jorge Olvera Ramos also only briefly sketches the lead-up to the 1692 riot. Throughout his work, Olvera Ramos mainly highlights facts that emphasize state domination. For example, he highlights the fact that the Conde de Galve forced local pueblos to sell their grain but fails to note that Sigüenza y

governments frequently employed forced sale and consumption as a redistribution strategy in New Spain, but concrete theological arguments against immoderate redistribution did exist. In the 16th century, Luis de Molina had opposed a legally fixed price for wheat, for example, because “a legally fixed price imposed the burden of helping the poor on the owners of wheat, a burden that should be organically shared in the commonwealth and not arbitrarily imposed upon the owners of wheat.”⁴² Political justice, in this context, denoted distributive justice, or equity within the body politic. According to distributive justice, equity was discovered by “geometric,” proportional means, “according as [whomever] holds a more prominent position in the community.”⁴³ That is, equity was achieved with the organic composition of society as a hierarchical whole in mind. But justice demanded that moderation be observed in enacting distributive justice. When the surrounding towns argued that provisioning Mexico City should be a burden shouldered equitably, they argued that too much had been asked of them according to their station, and too much had been given to others.

Government and church officials decided at another junta on the 29th of April that no one should be compelled to sell their grain, perhaps in part because of pressure from the hinterland. But they also had word that another wheat crop was almost ready, and they assumed, once again on the basis of incentive structures, that farmers would bring almost all of it to Mexico City because wheat’s “natural” market price had gone up to 26 pesos. They assumed that with wheat available once again, the consumption of corn would drop and prices would fall. Unfortunately, Chalco stopped sending its corn at about this time, and the city’s stocks continued to fall. The

Góngora admits that such an action is contrary to Christian piety and political justice. He also does not discuss the junta’s decision to revoke the forced sale almost immediately after receiving complaints. Such a strategy was not without even its elite detractors. Jorge Olvera Ramos, *Los Mercados de la Plaza Mayor de la Ciudad de México*, (México: Ediciones Cal y Arena, 2007), 87

⁴² Lasheras, *Luis de Molina's De iustitia et iure*, 127.

⁴³ Aquinas, *Summa Theologica*, II-II, 61, i. One’s prominence in an aristocratic community is gauged according to virtue. The authority of aristocrats is legitimated by their virtue.

viceroys' redistributionist strategies were said to have failed. In the weeks leading up to the riot, there were reports of priests speaking out against the viceroy during public sermon, and during the riot itself, Sigüenza y Góngora reported that the rioters chanted "down with the Viceroy" and "death to bad government" as the Ayuntamiento and the Palacio Real burned.

The Asiento Years

About a month after the riot, the members of the Mesa de Propios came together to deal with the destruction done to the center of commercial life in New Spain. In addition to the damage to the infrastructure of the Plaza Mayor and surrounding buildings, the city also stood to lose approximately 1500 pesos per year in rents from the market. This income had typically gone toward the city's many public works, which included maintaining and extending the city's aqueduct, celebrating religious festivals (which cost approximately 4000 pesos each year), and supporting the priest of the church of Nuestra Señora de los Remedios. The loss of the rents from the cajones meant that they could not make their annual payments, so they needed to rebuild. The Mesa de Propios speculated that, although they would need a loan up front, they would be able to pay off the loan in two or three years after raising rents.

As with most construction projects, their speculations were off, and in 1695, they wrote to Madrid, explaining that the costs had been higher than they had imagined. They also related that some of the first loan had paid for public provisioning of grain, still a problem three years later.⁴⁴ They promised that, this time, the funds would go to the construction of the Alcaicería's cajones first because its rents were higher, and none of the funds would go to any other project or city expenditures. The king's court agreed to help, comparing this infusion of Crown funding to

⁴⁴ In fact, according to Leticia Arroyo Abad, Elwyn A.R. Davies, and Jan Luiten van Zanden, the welfare ratio in 1695 and 1696 was significantly lower than it had been in 1692. "Between Conquest and Independence, Real Wages and Demographic Change in Spanish America, 1530-1820," Leticia Arroyo Abad, Elwyn Davies, Jan Luiten van Zanden, *Explorations in Economic History*, Volume 49, Issue 2, (2012), Pages 149-166.

those centuries earlier that had built the great cities of the Indies, proof that sometimes money flowed back to Mexico City. They asked only that the viceroy prioritize security.

The Conde de Galve saw the destruction of the Plaza Mayor as an opportunity to alleviate some of the city and viceregal government's longstanding concern over the quality of the markets. Where economic justice had traditionally been their primary concern, the city's physical security now took precedence. In part, Madrid blamed the riot on the layout of the market and the bad sort of people it attracted. The king wrote, saying that the Consejo de Indias at court had advised him that:

To build [the cajones] again of wood would not avoid the risk of fire or the contingencies of riots, and seeing as there are vagabonds in the [market's] center, in the Baratillo, this also augments the risk. Build again, but this time of stone. If [the cajones] are of higher quality, the rent can be raised on stores that are more beautiful, on a convenient street, or on a corner because the shop owner will be able to sell more out of them. This way, we will be able to attract moderate families, and this will lower the risk of fire. The greater concentration of merchants will be able to restrain the excesses of the lowlives of the Baratillo.⁴⁵

The Audiencia concurred that the layout of the market needed an update. While upright merchants and petty traders sold around the edges of the market, the baratilleros preferred to hide in the center of the market, far from the surveillance of officials. The Audiencia planned to turn the heart of the market into an open plaza surrounded by organized, wide "streets" so that the justices could more easily watch for crime. They encouraged a clearer boundary between the puestos de indios and the cajones and tiendas as well. This change disrupted the customary symbiotic relationship between puesteros and the merchant owners of cajones and tiendas who

⁴⁵ AHCDMX, *Rastros y mercados*, vol. 3728, exp. 2, f. 11. "Zaramullos" would translate roughly to someone with low customs, someone of low calidad. Moderate in this context means virtuous. Virtuous habits often fall between two extremes, thus the emphasis on moderation.

sublet out the space around and outside their tiendas.⁴⁶ The merchants pushed back on the changes, likely in part because they stood to lose the subletting rents. Their private losses, however, would not have been a persuasive or legitimate argument given that they themselves let property from the Ayuntamiento, which administered it on behalf of the king and republic. Instead, they focused their argument exclusively on the way in which the customary spatial arrangement promoted commercial justice. The merchants preferred that puesteros remain close to the cajones so that they could ensure that they were not selling anything other than foodstuffs and hand-made items.⁴⁷ Justices could only surveil so much; the merchants argued they themselves provided their own enforcement and security.

The Ayuntamiento's desire for security might have engendered any kind of reform, including the kind of centralizing drive that would characterize the Bourbon reforms. But they instead decided on the traditional way of dealing with uncertainty and the trouble of enforcing revenue collection.⁴⁸ They created an *asiento*, handing over the rents and administration of the plaza to another corporate body or individual in exchange for a discounted annual, fixed payment. The *asiento* system of contractual agreements between corporate bodies acted like glue within the sprawling Spanish empire. Much of the way in which public institutions higher up in the imperial hierarchy devolved powers to those down the line happened through *asiento*

⁴⁶ Cope has also argued that employers in patron-client relationships bore the brunt of social control, though he does not cite this particular petition. The Ayuntamiento's intervention into that client-patron relationship might have been more destabilizing than they had intended. *The Limits of Racial Domination*, Ch. 5, "Patrons and Plebeians: Labor as a System of Social Control."

⁴⁷ AHCDMX, Hacienda, Propios y Arbitrios, vol. 2230, exp. 7, fs. 3-3v.

⁴⁸ Jorge Olvera Ramos frames this city planning drive as an example of the urbanism that came with the Enlightenment, but continuity has more explanatory force here given the time period. The Hapsburgs continued to rule in the last decade of the 17th century, first of all, and have not typically been accused of having Enlightened views. Furthermore, as we have seen, the Ayuntamiento and Viceroy had been concerned with the Baratio for a century at least and had always understood the Plaza Mayor to be a symbol of the power, wealth, and moral character of the city and viceroyalty itself. Their desire for a secure and impressive city center was not particularly new. *Los Mercados de la Plaza Mayor*, 111.

contracts, such as in the case of sales tax on imports. In 1602, for example, the Crown contracted with Mexico City's Ayuntamiento to administer the royal sales tax of its district.⁴⁹ The city then subcontracted with Mexico City's merchant guild, the Consulado, to collect and enforce tariffs on imports and exports. Spanish public officials noted that decentralization allowed for better enforcement, which could be "frequently more burdensome and detrimental than the tax itself" depending on the bureaucratic and physical distance between taxed-payer and collector.⁵⁰ The *asiento* also relieved the government of the risks inherent in managing tax revenue. In the wake of the corn riot, the management of the Plaza Mayor's markets now seemed terribly risky.

The government drew up *asiento* contracts "between the Spanish government and private individuals" for any commercial activity that promoted "public utility."⁵¹ As we have seen, early modern understandings of society as organic and interconnected created an expansive understanding of what constituted a public good. Early moderns thought of markets as a common resource accessed by everyone, and the Plaza Mayor's markets in particular played a vital role in provisioning of the city. It was the responsibility of the Ayuntamiento and the viceroy under the king to manage those common resources.⁵² As such, though they delegated public functions to private individuals, the contracts that they negotiated held private individuals to the same public standards that legitimated all public authority: namely that by their virtuous nature, authorities promoted the spiritual and temporal common good. Some have described this process of delegating to private individuals as "the privatization of state functions," but the content of

⁴⁹ Robert Sidney Smith, "Sales Taxes in New Spain, 1575-1770." *The Hispanic American Historical Review* 28, no. 1 (1948): 2-37.

⁵⁰ 1 Actas de cabildo, XIV, 169-170; AHH, 635/5, folios 6-7, cited from Robert Sidney Smith, "Sales Taxes in New Spain, 1575-1770." *The Hispanic American Historical Review* 28, no. 1 (1948): 2-37. doi:10.2307/2508188.

⁵¹ Johannes Postma, *The Dutch in the Atlantic Slave Trade, 1600-1815* (Cambridge University Press, 1990), 29.

⁵² Besides that, the city government had bought and licensed the public space from the Crown and retained the rights to it. Olvera Ramos, *Los mercados de la Plaza Mayor en la Ciudad de México*, 16.

asiento contracts suggests instead that a more accurate description would be that private individuals became public agents.⁵³

An analysis of asiento contract negotiations over provisioning markets allows historians to understand the ways in which public institutions attempted to negotiate just contracts with the private individuals to whom they delegated the administration of public resources. The justness of the asiento system hinged on the Ayuntamiento's obligation to choose an *asentista* and negotiate a contract that most benefited the republic, here imagined as consumers to be provisioned through physical and commodities markets. The Ayuntamiento negotiated for the just price, but their charge on behalf of the public went far beyond securing the lowest cost. From the means by which bids were collected, to the content of the contract, to the quality of the *asentista*'s character, public, corporate concerns dictated the so-called privatization process.⁵⁴

The public institution, typically the Ayuntamiento, began from a position of strength in that it had the authority to set the rules of the negotiating game. The laws and procedures put into place increased the likelihood that the parties would agree on a just contract that benefited the public and the ensured the Ayuntamiento's income. When contracting with private individuals, it served the interests of the public and the Ayuntamiento that prospective *asentistas* go through a bid process so that competition would drive up the asiento's value. Justice demanded that the auction take place in a public space, preferably on a market day when a great many people would be present, in part so that no one could claim ignorance once the contract had been settled. The public venue also gave the proceedings the appearance of being above board so that no official

⁵³ Regina Grafe and Alejandra Irigoin, "A Stakeholder Empire," 2.

⁵⁴ For context, I have compared the contract negotiations for the Plaza Mayor asiento with those of more rural markets, such as the meat market in Malinalco, a small town about 50 miles to the southwest of Mexico City. Where useful, I have also brought in analysis of the Consulado's tax asiento as well. *Abastos y panaderías*, vol. 1, exp. 10, fs. 133-144. 1680. AHCDMX, Plaza mayor, vol 3618, exp. 1-1.9.

could be accused of playing favorites to the detriment of the republic. In certain cases, a judge might void an *asiento* contract if it could be proven that an *alcalde mayor* had chosen the *asentista* based on personal connections. In 1640, for instance, two indigenous men, Melchor Fernando de Gaspar and Agustín Francisco, accused their *alcalde mayor* of forcing them to buy meat from a particular butcher “all because he was an intimate friend,” ignoring the fact that his prices did not serve the public. In light of this fraud, they asked to be able to purchase meat at a “free price” and from whomever they wished.⁵⁵ The Real Audiencia’s judge, Doctor Don Luis de las Infantas, decided for the town’s indigenous litigants. A public official could not order a market to serve his private interests over those of the common good.

A just contract balanced exchange so that each party benefited more or less equally. If one party took on greater risk, then the contract should also ensure that they received commensurate compensation for that risk. In order to attract *asentistas*, the *Ayuntamiento* accepted a lower fixed, annual payment than what they would otherwise have taken in themselves, preferring to take a small loss than run the *asiento* with all its associated risks and costs. The *asentista*’s profit came from the difference between the value of the *asiento* and the cost of running the *asiento*, including the payment he made to the *Ayuntamiento*. The prospective *asentista* generally wished to maximize the value of the *asiento* by charging the public high prices, rents, or taxes, and wished to minimize the costs and the risks associated with running the *asiento*. The *Ayuntamiento*, on the other hand, desired high annual payments and negotiated on behalf of the public for a just, fixed price on rents and goods.

The affected members of the public could insert themselves into the conversation as well, and the *Ayuntamiento* seems to have taken their position into account, both before and after the

⁵⁵ AGN, Indios, vol. 13, exp. 32, fs. 34v. 1640.

riot. By 1703, the Plaza Mayor's rebuild had concluded, increasing the value of the asiento dramatically. As a result, new bidders came out of the woodwork, the final bid coming in at 1400 pesos, almost double what it had been three years before. This alarmed the puesteros themselves. About ten men, claiming to represent their fellow puesteros, wrote to the Mesa de Propios expressing their concern that the new asentista would have to raise the rents on the puestos to pay for such high bids.⁵⁶ They "asked for justice," warning that higher rents would harm the republic "whose utility and public good this noble city serves" because the puesteros would have to raise their prices in order to recoup the higher rent on top of the alcabala, or tax on goods.⁵⁷ They asked that the Mesa refuse any bid that would alter the current rent. The legitimacy of the asiento system rested on its perceived ability to provision consumers. To claim that the asiento hurt consumers was a claim based in justice. The procurador general of the Mesa de Propios agreed, stipulating that whoever won the bid would do so on the condition that they would not raise rents.⁵⁸

The Ayuntamiento also typically demanded that asentistas make some or all of the annual payment in advance, shifting the risk of a bad year onto the asentista. This stipulation meant that asientos went to men with access to monetary and social capital. In 1697, after a bidding war that began at 600 pesos, the Plaza Mayor's asiento went to Francisco Cameros for 1050 pesos each year for two years.⁵⁹ His final bid only improved on that of Nicolás López de Torres' bid by 50 pesos, but he also stipulated that he would make the entirety of the payment in advance the first

⁵⁶ AHCDMX, Plaza Mayor, vol 3618, exp. 1.5. They put the rents at one and a half reales per week on average, while the rents at less desirable sites might be one or one half real.

⁵⁷ Officially, indigenous puesteros did not have to pay the alcabala (sales tax between 5-10 percent depending on the period), which suggests that these puesteros are castas.

⁵⁸ Olvera Ramos argues that this document is evidence that Cameros had raised rents, *Los mercados de la Plaza Mayor*, 137.

⁵⁹ In a later expediente, his heir says that Cameros held the asiento since 1692, but the earliest contract I found is from 1697.

year and in thirds the second year. The cash-strapped Ayuntamiento, still in the process of rebuilding its own structures, accepted his offer. Though little is known of Cameros's origins, his guarantor was listed as Don Philipe de Salazar, a member of Mexico City's merchant Consulado, suggesting that Cameros had powerful connections. He also held on to the asiento for 44 years, making him a young man when he first won the bid. His ability to command capital at such a young age further suggests that he was likely well-connected.

Additionally, the two parties negotiated over how long the contract would be in effect. With riskier markets, it might serve the prospective asentista to renegotiate more frequently in order to avoid paying a fixed sum that did not reflect falling demand or a diminishing tax base. The tables turned, however, when the parties expected the tax base or market to expand. In those cases, the Ayuntamiento preferred short contracts, assuming that future bids would have to reflect the greater value of the asiento. The Ayuntamiento also typically negotiated for shorter contracts at first, then accepted lengthier contracts as they built trust with a particular bidder; continuing contracts with particular asentistas reduced transition and information costs. At that point, contract renegotiations also became private affair, reflecting the benefit of diminishing risks for the city and for consumers. Cameros renegotiated his contract eight times over the course of 44 years, with his first contract expiring in two years, and his last in nine. By 1709, it appears that Cameros no longer had to contend with other bidders, and by 1722, he felt he had built up sufficient trust and social capital with the Mesa de Propios and with the puesteros to negotiate for a new contract on his terms.

The Ayuntamiento also negotiated contracts which ensured that asentistas would promote the spiritual and temporal public good through concrete acts. These additional benefits changed depending on the type of market, but might include stipulations about the safety and quality of

the commodity, public works funding, or alms for the poor.⁶⁰ When the Consulado renewed its alcabala asiento in the 1738, for example, their contract stipulated that those in charge of collection “must have the power to relieve as much as possible the poor and widowed from having to pay the alcabala on things that they make for their sustenance”⁶¹ Since the civil government existed in part to promote the spiritual well-being of the public, many of the works they promoted directly benefited the Church. For example, Cameros cited his donation “for the perfection of the sumptuous temple of San Hipólito Mártir” as part of his bid offer. Cameros also proved his good stewardship over the plaza was by paying workers to keep the areas around the Metropolitan Cathedral and the cemetery clean and in good order. Sometimes he incurred costs because he had to rearrange the market’s pathways and streets to accommodate the “diverse uses” of the plaza. He took requests on this not only from the Ayuntamiento but from the Cathedral as well, as the Cathedral also claimed the use the Plaza Mayor for religious processions. In all things, the vecinos of Mexico City served two majesties, God and king. As such, the way in which both the Ayuntamiento and the Church defined the public good had direct consequences for the content and form of asiento contracts.

Finally, the virtuous and charitable character of the perspective asentista himself also made the difference. The Ayuntamiento in Mexico City expected asentista of their Plaza Mayor to exhibit a virtuous and charitable character. In the 1730s, Cameros began to ask the Ayuntamiento to allow him to raise the rents, in part because he had been in the midst of making improvements to the Plaza’s infrastructure when an epidemic swept through Mexico City, killing many of the puesteros who had paid rent. In his petition, he took great pains to highlight his own “disinterest.” In real terms, Cameros certainly profited from the asiento, but to claim disinterest

⁶⁰ AGN, Abastos y Panaderías, vol. 3, exp. 23, fs. 270-278. 1686.

⁶¹ AGN, Tribunal de Cuentas, vol. 18, exp. 10, f 266. 1738.

was not to claim that one received no private gain, only that one considered the public good before one's own private good. Under Spanish and Catholic law, it "more important to increase those things that are held in common and touch the community than to promote the particular."⁶² For a contract between a private individual and the public to be just, the individual could certainly benefit, but not unless the public also clearly benefitted.

As proof of his disinterest, Cameros described his relationship with the indigenous puesteros as benevolent, using the paternalistic language that suffused the discourse around indigenous trade, though with a new emphasis on the indios' unruly nature. He claimed that his "sociable" and "moderate" character was an essential reason why the indigenous puesteros had maintained peace and quiet in the market. Whereas the fiscal in 1689 had described the indios in the market as generally peaceable miserables, Cameros described them as prone to unrest, "naturally bellicose, friends of disturbance, and encouragers of discord."⁶³ He reminded the Mesa de Propios that he did not demand "contributions," or rents, from the indios and indias in the market. As further proof of his good governance, he pointed out that no one had ever registered a complaint against him during his time as asentista, despite the fact that at "any sign that a contribution, however small, is to be asked of them, [the indios] become agitated and take legal action." This statement was not entirely accurate; the archive records a handful of complaints about Cameros, mostly about fines.⁶⁴ But it is true that no large-scale disturbance occurred on his watch, which carried a great deal of weight with the Ayuntamiento. As in the case of Millán's asiento, it mattered to the Ayuntamiento whether or not those affected by the

⁶² Alejandro Antonio Chafuen has argued that the Scholastics believed that self-interest was natural, but Mercado clearly believed that self-interest and private property exist as a consequence of the fall and are not God's will, which is expressed through natural law. Alejandro Antonio Chafuen, *Faith and Liberty: The Economic Thought of the Late Scholastics* (Lanham, MD: Lexington Books, 2003). Aquinas also said "the common good of many is more Godlike than the good of the individual."

⁶³ AHCDMX, Plaza mayor, vol 3618, exp. 1.8.

⁶⁴ AHCDMX, Rastros y Mercados, vol. 3728, exp. 6, ff. 1 and 2, 1729.

asiento felt the y benefited from the arrangement, both as a matter of security and as a matter of justice.

To suggest that it was his character and personal relationships with the puesteros that maintained the peace was a strategic move calculated to make the asentista seem indispensable. However, there was also likely some truth to his argument. He probably engaged with many of the puesteros face to face, both in business situations, but also potentially through the market's *cofradía*. Those personal relationships likely had the effect of easing the resolution of conflict before it came to violence, supporting an argument made by Douglas Cope that the patronage system was a form of social control.⁶⁵ But social control is too rigid a term to explain what early modern Spaniards believed to be the outcome of patronage relationships. Patronage was not just a system of surveillance, but rather engendered a sense of obligation, loyalty, and even affection between those of different statuses. Social control, or peaceful order, required that each individual, including patrons, maintain moderate and virtuous behavior according to their place in society. It was Cameros' virtuous treatment of the puesteros, not his iron hand, that maintained peace and brought order to the Plaza Mayor.

Asiento contracts acted as connective tissue that bound together the decentralized and composite Spanish bureaucracy, bending commercial activity toward the public good. These both legitimated the power of the paternal asentistas and established limits to that power in the name of stability, economic justice, and the spiritual health of the city. By the mid-century, however, the city's officials came to believe that the asiento contract no longer served as the mechanism for ensuring the common good. Cameros died on March 16, 1741, with a little less than four years left on the contract. As was typical, his heir, Don Joan Sali continued to be bound

⁶⁵ Cope, *The Limits of Racial Domination*, Ch. 5, "Patrons and Plebeians: Labor as a System of Social Control."

by the contract. When the contract was up, however, the Ayuntamiento —now freed from the relationships and obligations that had secured Cameros' position for more than four decades— began to experiment with a new system for governing the Plaza's markets.⁶⁶ For about a decade, the Ayuntamiento elected a *regidor* every two years to administrate the Plaza's rents and puestos. But the regidores never managed as effectively as Cameros had, and in 1762, the Real Audiencia stepped in and returned the administration of the Plaza back to Mexico City's Mesa de Propios. The judge supervising public works in the city told the Audiencia's that he had seen the plaza for himself, and observed the "the confusion, the shameful chaos, in which every part of the plaza was filled, all depending on the will of each individual." He believed that centralized government oversight would re-establish order in the Plaza Mayor, organizing and orienting personal interests toward a common goal.

The Plaza Mayor as a Spiritual Space

Besides the reorganization of the administrative structure of the Plaza Mayor, the 1692 riot and smaller "aftershock" disturbances forced a conversation about the Plaza's function as a sacred and a commercial space. Throughout the 17th century, the Plaza Mayor's spiritual and commercial activities coexisted more or less neutrally, even complementing one other during holy days when puesteros sold goods specific to the festival. However, city officials did occasionally attempt to define a clearer spatial and temporal distinction between the Plaza's two roles, drawing upon moral theologian's centuries-old concern about the dangers that commerce might introduce to one's spiritual life. At these times, however, they found that their impulse to protect sacred time and space from the profane was at odds with the lived experience of the inhabitants of the Plaza Mayor as well as with the Catholic imperative to see the divine in the

⁶⁶ AHCDMX, Plaza mayor, vol. 3618, exp. 1.10-1.12.

everyday. Early modern people actively integrated their spirituality into their working lives, which many ecclesiastics encourage, and any attempt to separate the two met with humor or resistance.

Sacred time has not received as much attention as sacred space, but even those spaces that were strictly commercial were periodically transformed into spiritual spaces by the ritualized movement of people through those spaces. In light of this transformative power, early modern people also sometimes tried to protect spiritual time from the distractions of commercial time. Tomás Mercado argued that merchants, laborers, and tradesmen opened themselves up to sin in the course of their work, not necessarily because of the type of work that they did, but because they might be distracted by worldly things and forget God, which would lead them toward sin. Accordingly, so-called secular institutions attempted to protect the spiritual time of their members. A number of guild constitutions and labor contracts, for example, stated that guildsmen should not have to work on Sundays or festival days.⁶⁷ However, it is clear that many people not only worked on festival days but received official dispensation to do so, especially those who sold goods related to the religious rituals celebrated during festivals. Throughout the 17th century, for example, indigenous women frequently petitioned for and were granted licenses to sell chocolate and tamales on festival days in their local tianguis.⁶⁸ Along with the Baratillo, this practice came under increasing scrutiny in the 18th century when officials began to complain that baratilleros labored on Sundays and festival days when they should be attending masses. In 1735, interim viceroy and archbishop Juan Antonio de Vizarrón y Eguiarreta received a petition

⁶⁷ AGN, Ordenanzas vol. 134, exp. 9; AGN, Indiferente Virreinal, caja-exp.: 2092-007. Bienes Nacionales. Año: 1555, fs. 7.; Artesanos, gremios, 381, exp 1-5

⁶⁸ AGN, Indios, Vol. 25, exp. 129, fs. 108r., 1676 Indios, Vol. 25, exp. 147, fs. 119rv. AHCDMX, Artesanos y gremios, Vol. 381, Exp 6.1, 1752.

to prohibit commerce after the bells had rung for vespers on two unspecified nights.⁶⁹ On these nights, the petition read, people all over the city put up puestos not only in the plazas, but also in doorways and on street corners, selling fruit and *ofrendas* (ritual offerings). In times “when they should be dedicating themselves to prayer and intersessions for the blessed souls in purgatory,” these puesteros instead engaged in a multitude of sins, offending “both majesties, the republic, and its vecinos.”⁷⁰ Unlike later Bourbon reformers, which sought to more generally limit the popular festivities and material practices associated with holy days, the petitioners did not seem to find the sale of merchandise related to a holy festival problematic.⁷¹ Such material goods were understood to be an integral part of the celebration of feast days. They expressed concern only that commercial activity encroached on a time of contemplation and prayer.

There are also a few cases in the 17th and early 18th century in which petitioners attempted to enforce a strict separation between commercial and sacred spaces, though many

⁶⁹ An interim archbishop viceroy brought a different set of moral baggage to the position of viceroy, which inevitably impacted the way in which his secular successor could govern. Often, when the viceregal government expressed concern over the encroachment of commercial spaces on spiritual spaces, the archbishop happened to be governing as interim viceroy. The archbishop made some rules while he was in power that the new viceroy basically had to walk back but justify doing so in the moral terms that the archbishop had brought to it. Alejandro Cañeque, *The King's Living Image: The Culture and Politics of Viceregal Power in Colonial Mexico*, (New York, NY: Routledge, 2004), Ch. 3, “In the Service of Two Majesties.”

⁷⁰ AHCDMX, Rastros y mercados, vol 3728, exp. 7. The two nights in question were probably All Saints and All Souls. The petitioners say the people should be praying specifically for the souls in purgatory, and they also mention fruit and *ofrendas*, which are particular to Día de Muertos. The two majesties trope has been discussed by Alejandro Cañeque. The phrase was one of the metaphors early moderns used to symbolize the dual jurisdictional power of the state and the crown. To invoke the phrase in this context was to suggest that the puesteros offenses fell within the jurisdictional power of both the temporal and spiritual authorities. Cañeque, *The King's Living Image*, Ch. 3.

⁷¹ There is evidence that ecclesiastics had qualms about the elaborate nature of festivals before the 1750s. In 1717, Archbishop José de Lanciego y Eguilaz first began his *visitas* to local pueblos, cataloguing their religious communities' resources. The point was to shore up the archdiocese' jurisdiction against the mendicant orders' intrusions, but at one point, he warns an indigenous *cofradía* about funding food and drink and profane games and bullfighting during fiestas, and encourages them to hand over their records to their priest. AHAM, “Libro de visita,” Caja 20CL, Libro 3, 7V-8. But many scholars see the institutional Church becoming much more invested in limiting expenditures on public displays of Baroque piety after the 1750s. See Brian Larkin, *The Very Nature of God: Baroque Catholicism and Religious Reform in Bourbon Mexico City*, (Albuquerque: University of New Mexico Press, 2010); William B. Taylor, *Magistrates of the Sacred: Priests and Parishioners in Eighteenth-Century Mexico*, (Stanford, Calif: Stanford University Press, 1996); Matthew D. O'Hara, *A Flock Divided: Race, Religion, and Politics in Mexico, 1749-1857*, (Durham, NC: Duke University Press, 2010).

more petitioners asked that their markets be moved closer to or be allowed to remain near to their town's church, as was customary.⁷² The few petitioners who did ask for enforcement often had ulterior motives.⁷³ For example, in the mid-18th century, the Tobacconist's Guild and the Brothers of the Accompaniment of the Sacrament of the Tabernacle of the Metropolitan Cathedral together presented a petition to the archbishop protesting the presence of a tobacco stand in the chapel where the Brothers met before taking the eucharist to the ill.⁷⁴ To the petitioners' very profound distress, because of its location, the tobacco shop had become known publicly by some as the "Tobacco Shop of the Most Sacred Sacrament," and by others as "the Tobacco Shop of the Indulgences," a likely double entendre. The petitioners found this deeply troubling, decrying the notion that "this place, destined for the cult of the divine, has been turned into a tobacco house, and ecclesiastical goods turned into profane commerce." Despite their strange alliance with the tobacconist guild, the Brothers argued that "the majority of people who work in tobacco shops are occupied in insolent conversations and worse customs," which did not provide an appropriate atmosphere for prayer. They urged the archbishop to force the curate in charge of the chapel, Don Joseph Pereda, to separate the tobacco shop from the chapel without a moment's delay.

But while anxiety over the sanctity and dignity of spiritual spaces played a role, at least for the Brothers, the tobacconists seem to have been motivated in large part by unjust competition. The tobacconists claimed that the shop's "undignified names" and the word of

⁷² Examples of people explicitly asking to keep market near their church: AGN, Indios, vol. 7, exp. 36, f. 17. Indios, vol. 2, exp. 172, f. 44, 1582.

⁷³ AGN, Aguardiente de Caña, vol. 12, exp. 12, fs. 404-416. 1799-1801. This case occurred after the period in question, but it is a good example of how one might make claims about sacred space to limit commerce. A priest argued that the proximity of a workshop producing *aguardiente*, an alcoholic beverage, to his church was not only a bad influence on his parishioners, but also produced smoke and noise that profaned the sacred space of the church. His argument did bring a fiscal out for a visit to examine the space himself, suggesting that such arguments were still persuasive into the 19th century, but the fiscal ultimately decided that the priest had ulterior motives.

⁷⁴ AGN, Indiferente Virreinal, caja-exp: 3826-002. Cofradías y Archicofradías. 1766.

mouth it generated caused everyone to buy their tobacco there, leaving the other tobaccoists “without sales” and “unable to fulfill their obligations.” The guildsmen suggested that the location of the shop “might” even be against their constitution, though they made no specific arguments pursuant to the document. Unfortunately, the archive does not record the archbishop’s response, but the humor with which the public reacted to the setup does suggest that it was an unusual breach of the proper separation between secular commerce and spiritual space, more so because the commercial good in question had somewhat sordid associations.⁷⁵ But the fact that the public embraced such a breach by patronizing the location points to a popular understanding of how the spiritual and profane intertwined in the most natural ways.

The 1692 riot, and a smaller riot just four years later in 1696, reignited long-simmering anxieties over the proper separation of the spiritual and profane.⁷⁶ The 1696 riot in particular sparked a conversation between different ecclesiastical institutions about how they ought to interact with the lay people and commercial spaces of the Plaza Mayor. The witness testimonies provide excellent evidence of the entangled nature of the different functions of the Plaza Mayor, which caused the interim viceroy, archbishop Juan de Ortega Cano Montáñez y Patiño, great anxiety. On the 26th of March of that year, just before nightfall, Don Manuel Suárez, a minister of the criminal court was escorting a prisoner to another location when a confluence of events caused him to lose control of the captive. The crush of people in the market forced Suárez and his prisoner off to the side just as the Holy Sacrament was passing by in procession. In his witness testimony, Suárez said he had stepped out of his coach in order to adore the sacrament. He testified that a crowd of boisterous and violent students demanded that the prisoner, who also

⁷⁵ For the history of tobacco’s association with indigenous idolatry, see Marcy Norton, *Sacred Gifts, Profane Pleasures: A History of Tobacco and Chocolate in the Atlantic World*, (Ithaca: Cornell University Press, 2008).

⁷⁶ AHCDMX, Rastros y mercados, vol. 3728, exp. 4. Also recorded in the dictionary article: “Movimiento estudiantil de 1696,” *Diccionario Porrúa de Historia, Biografía y Geografía de México*, 1964.

appeared to be a student, be released. The ecclesiastics nearby echoed this demand, not stopping to ascertain whether the prisoner was, in fact, a student. The prisoner released, the crowd moved on, rioting and setting fires as they went. The people, “who hate justice,” even went so far as to attempt to set fire to the pillory with palm leaves.⁷⁷ The Audiencia’s report concluded by making a direct comparison to the events of the 1692 riot, suggesting that the consequences could have been “no less grave.”

On behalf of the archbishop viceroy, the Audiencia moved against the Baratillo, describing the market as a place of disorder and chaos where virtue might be tested and endangered and hierarchies became blurred. Officials agreed that it was important to shape the market space and the people in the space in such a way as to encourage virtue, in part because early moderns believed that human beings learned by mimeses, by mimicking the behavior of the people around them, good and bad alike. The classical notion of mimesis took on new meaning in the Christian traditions. Devotionals like the contemplation of saint’s lives and the public display of Christian tableaux such as the Passion of Christ were meant to provide the laity with models of virtue to imitate, and spiritual and temporal public authorities were obligated to be virtuous role models for the more impressionable, including women and indigenous.⁷⁸ Officials feared spaces such as the Baratillo where hierarchies blurred and even virtuous authorities lost

⁷⁷ For more about the carnivalesque, subversive nature of early modern riots, see Natalie Zemon Davis, *Society and Culture in Early Modern France; Eight Essays*, (Stanford: Stanford University Press, 1975), 97-123.

⁷⁸ For more on the early modern concept of mimesis, see *Lexikon of the Hispanic Baroque: Transatlantic Exchange and Transformation*, edited by Evonne Levy, Kenneth Mills, (University of Texas Press: Austin, 2014), 6. Also see Barbara Fuchs, *Mimesis and Empire: The New World, Islam, and European Identities*, (Cambridge, UK: Cambridge University Press, 2001), especially 15-16.

their way when surrounded by poor examples.⁷⁹ The Audiencia set out to reinforce those hierarches and to remind those of a higher calidad of their proper role.⁸⁰

The Audiencia first made moves to enforce the distinction between student and baratilleros. Students from the Real y Pontificia Universidad de México, located just off the Plaza Mayor across from the Metropolitan Cathedral, did spend their free time in the Baratillo, so it would have been possible to mistake the prisoner for a student, especially if students were encouraging chaos. Unfortunately for the Audiencia, they could not punish the students directly for their actions. According to the privileges granted to universities in the early modern period, the misbehavior of students and faculty fell under the jurisdiction of the University.⁸¹ The Audiencia, therefore, could only strongly suggest reforms, not require them. Intent on avoiding future confusion, the archbishop viceroy himself wrote to the rector of the university, Diego de Velleguina, complaining that the students had freed a prisoner, taking advantage of the official's distraction "while he was adoring the Santísima Sacramento." Adding to the offense, then, the students impeded secular justice when they should have been serving "their majesties" both politically and spiritually. Furthermore, the actions of these students were particularly nefarious because, "the inferior will imitate their behavior." The lower castes were highly imitative, having a less developed ability to reason for themselves. As such, those of better calidad had an obligation to be role models of moderation and virtue.

⁷⁹ The officials were deeply concerned that the ecclesiastics had become "like the plebeians," shouting "in immoderate voices."

⁸⁰ AGI, México, 64, R.2, N.21. Documents regarding the extirpation of the Baratillo that went to Spain are in the AGI. Letters heading to New Spain's various institutions are housed in the AGN or the AHCDMX.

⁸¹ Rafael Sánchez Vásquez, "Síntesis sobre la Real y Pontificia Universidad de México," *Anuario Mexicano de Historia del Derecho*, Vol. XIV, 2002. Students and faculty in medieval European universities had the privilege of being judged only by the authority of the university, 274. At its founding, the University de México received all the privileges and immunities that the Universidad de Salamanca maintained, including jurisdiction over its students and faculty, 296.

The archbishop demanded changes be made to the students' dress so that they would be more visibly distinct from the plebeians in public places. He also attempted to exercise control over the internal composition of the university, demanding that the university no longer accept indigenous and casta students "so that their bad *raza* (race) does not pervert those of a better nature." The lower castes might have been more susceptible to bad influences, but students, most of them young, could also be led astray. Velleguina agreed to change the students' uniforms and to deny entry to African-descended students, likely a policy already in place, but he categorically refused to deny entry to indigenous students on the grounds that they were "free vassals of the king."⁸² The university had been founded to instruct the "indios and the children of the Spanish" in Catholic doctrine and other subjects, and it would continue to do so.⁸³ Velleguina's refusal to grant the interim viceroy his every demand was a reminder that while the viceregal authority could arrange the public plazas how it liked, the university maintained its autonomy under the crown's authority.

The Audiencia also wrote to the Father Provincial of the ecclesiastics who had been involved, suggesting the community instate internal reforms which presaged the Bourbons' desire to limit the public nature of the spiritual.⁸⁴ To see the ecclesiastics "out in public a thousand times among the stalls and shops in the square" diminished the "respect owed to the religious state and holy habit." Just their presence in commercial spaces diminished priests and the church to the level of the temporal and mundane. The Audiencia desired a more defined distinction between the sacred and the mundane in order to preserve the image of the Church as

⁸² Suggesting that African-descended subjects are not "free vassals of the king."

⁸³ Rafael Sánchez Vásquez, "Síntesis sobre la Real y Pontificia Universidad de México," *Anuario Mexicano de Historia del Derecho*, Vol. XIV, 2002, 296. Citing a 1551 cedula real.

⁸⁴ Bourbon reformers focused on limiting public displays of devotions, privileging interiority and relegating religious observance to private spaces. That these tensions existed much earlier points to continuities in the colonial era. These tensions had always existed, but they did so more or less in equilibrium until the 1760s. Larkin, *The Very Nature of God*, 10.

above temporal concerns. As such, they demanded that only those religious men tasked with procuring supplies and begging for alms should mix in the market places.

The Father Provincial responded angrily, incensed that the Audiencia would “insinuate” that his “religious community had in some manner fomented the riot.” He then questioned the Audiencia’s desire to limit the Church’s presence in the temporal. The Church, with the support and financing of the viceregal government, constantly perpetuated the entanglement of the spiritual and temporal as part of its mission to inject the mundane with doses of the spiritual. Small religious processions, such as the one the brothers had been leading on the 26th of March, were meant to interrupt daily, commercial routines and prompt people to take a moment to contemplate God, as Don Manuel Suárez had done that day. The commercial space could not sully the religious habit or the image because a sacred object carried their sacredness with it always, no matter its location.⁸⁵ The Father Provincial reminded the archbishop that his community’s presence in the Plaza Mayor during the corn riot four years earlier had been a crucial moral force. As the Real Palacio, the cajones, and the Ayuntamiento burned, his religious community, demonstrating their “Catholic zeal, ardent charity, and good vassalage of his majesty...presented themselves as a community with the image of our Santísima Señora in the plaza...in order to restrain the fury of the plebe and to extinguish the fire.” They endangered themselves in order to “hamper the further looting” of the commercial heart of the city.⁸⁶ This story was meant to remind the Audiencia that ecclesiastics needed to be visible and involved in the day-to-day workings of the city in order to reinforce the good moral character of the city’s

⁸⁵ Mercado believed that stealing a sacred object is worse than stealing a temporal object, no matter where it is, in a private space or church space. Stealing a profane object from a church is also worse. *Suma*, Book 6, Ch. 8, on the restitution of temporal goods.

⁸⁶ The two loyal and anonymous vassals also noted that a group of religious men went out into the Plaza. AGI Patronato, 226, N.1, R.25.

laboring laity.⁸⁷ According to Catholic theology, there could and should be no clear separation between the spiritual and the mundane when the end of all human activity was happiness with God.

The tenets of early modern economic justice required certain spatial arrangements, boundaries, and imaginaries, both physical and political. These arrangements were subject to constant negotiation and contestation on scales as large as the empire itself and as small as a shop corner in the Plaza Mayor. During times of scarcity, Mexico City's place in the empire's supply chains came under intense scrutiny as various groups contested the definition of the commons articulated from Madrid through the Conde de Galve. When the Crown defined the common good, the political geography of the commons covered presidios in Peru, the Philippines, and the northern reaches of New Spain. Economic justice required that he redistribute provisions from wealthy Mexico City to needier parts of the empire, a spatial logic of empire that Mexico City's vecinos contested. Ironically, the vecinos of surrounding towns articulated a very similar complaint when they were forced to send their own goods to provisions the markets of Mexico City. Officials, merchants, and petty traders understood the markets of the Plaza Mayor to be a public good crucial to the provisioning of city. Even when delegating the administration of the Plaza's markets to a private citizen, officials enshrined the public nature of the space into law, ensuring that the asentista would arrange the market in such a way as to promote the spiritual and temporal good of the republic. Both Spanish merchants and indigenous and casta petty traders enforced that contract through petitions and litigation. Church authorities and ecclesiastics also enforced the dictates of that contract, sometimes by inserting themselves

⁸⁷ As one last angry note, the Father Provincial stated that he would be "CCing" the king.

into Mexico City's commercial spaces as physical reminders that the end of economic justice was to promote Catholic virtue. Just as exchange was ultimately a question of Catholic virtue, commercial spaces were ultimately spiritual spaces as well.

Ch. 4: Commercial Justice and the Urban Landscape of Labor, 1700-1756

On the 26th of September, 1753, a group of twelve *gamuceros* (sheep skin tanners) came together in the name of 100 of their colleagues to formalize their guild's constitution, declaring that the ordinances put down were "best for all those who work in this trade and for the public good."¹ Like all formal guild contracts in the early modern Iberian world, the *gamuceros* situated their labor within a Catholic framework, attributing their incorporation into a formal guild "primarily to God, the all-powerful, who moved us to act for the public good." In many cases, historians might consider such an attribution simply symbolic, formulaic, or possibly a testament to the piety of the parties in question. But in the case of these tanners, God had indeed brought them to this point. Or at least, their religious obligations to God and to their greater community had put in motion the events that led them to this moment. A year and a half before, another guild, the *zurradores* (cow skin tanners), had attempted to forcefully incorporate the informally organized *gamuceros* into their guild in order to fund the procession of their saint's image in Mexico City's feast day celebrations. Angry missives flew between the *gamuceros*, the *zurradores*, and city officials, but eventually it was decided that, for the spiritual good of the city, the *gamuceros* would incorporate into a formal guild with all the accompanying privileges and religious obligations. To read the *gamuceros*' expression of piety without understanding the events of the last year and a half would be to miss the truth of their statement. Religious concerns had brought the tanner's guild into being and restructured the landscape of Mexico City's labor community.

Since Manuel Carrera Stampa's seminal social history in 1954, surprisingly little has been written about Mexico City's guilds, perhaps because Carrera Stampa's work has stood up

¹ Archivo Histórico de la Ciudad de México (AHCDMX), Artesanos y gremios, vol. 381, exp 6.1, f. 14v.

so well against changing historiographical tides.² Unlike his work, this chapter is not meant to be an exhaustive account of the workings of urban guilds. Rather, it is meant to elucidate how working men and women, mostly masters but also plebeians, understood, enacted, and negotiated commercial justice within the framework of municipal politics and religious obligation. What did early modern economic justice demand of laborers, not only in terms of their obligations to consumers and to one another, but to God as well? Many historians, including Carrera Stampa, have treated Catholicism as a subset of the lives of guildsmen and women, something they attended to mostly in *cofradías*, on festival days, and in theory.³ However, this chapter will show that the Catholic commercial theology fundamentally shaped the institutional landscape of Mexico City's guilds and deeply impacted the laboring lives of plebian men and women. Expectations about the religious obligations of laborers was one of just two justifications guilds used to bring about the incorporation of informal labor communities into the formal economy, drawing them into established networks of spiritual-economic reciprocity. When guilds and city officials decided to alter the institutional landscape of labor in Mexico City, they considered not only the material, commercial benefits to the public but the spiritual benefits as well.

Two types of documents provide evidence for this discussion of commercial justice within labor communities. First, this chapter draws on the official ordinances of five artisan trade guilds, the milliners, the chandlers, the sheep skin tanners, the cow skin tanners, and the coach builders. While some of the ordinances date back to the 16th century, all were still in effect, with some additions, in the first half of the 18th century. Ordinances are not evidence of effective

² Manuel Carrera Stampa, *Los Gremios Mexicanos: La Organización Gremial En Nueva España, 1521-1861* (Mexico: Edición y Distribución Ibero Americana de Publicaciones, 1954).

³ Examples of labor history where religion is of secondary concern include Lyman L. Johnson, *Workshop of Revolution: Plebeian Buenos Aires and the Atlantic World, 1776-1810* (Durham N.C.: Duke University Press, 2011); Ruth McKay, *Lazy Improvident People: Myth and Reality in the Writing of Spanish History*, (Cornell University Press: Ithaca, NY, 2006); and on Mexico's merchant consulado Louisa Schell Hoberman *Mexico's Merchant Elite, 1590-1660: Silver, State, and Society* (Durham: Duke University Press, 1991).

social control, but neither should they be thought of as nothing more than words on a page.⁴

While generally prescriptive, reactionary, and representative of an ideal, ordinances are also an excellent resource for understanding how the outlines of agreed-upon ethical norms changed over time. In their time, these were not defunct documents stashed away to molder in archives. Rather, they provided a common legal vocabulary for the ongoing conversation between guildsmen and viceregal authorities about the way in which commercial relationships ought to be arranged. Moreover, by reading into them, it is possible to glimpse the underlying issues that prompted the formal statements in the first place. The second body of documents is the judicial record of the Mesa de Propios, mostly from the first half of the 18th century. These records show that guildsmen regularly flouted and reinterpreted the ordinances, but they did so by using ordinance language and norms as a "starting point for negotiation" about the meaning and practice of commercial justice.⁵

Ordinances reveal an understanding of commercial justice grounded in the obligations that laborers owed to one another, to their larger spiritual and commercial communities, and to God. Justice "[rendered] to each one his right," "[depending] on commensuration with another person."⁶ In other words, justice comprised a set of reciprocal obligations, defined by the quality

⁴ Carrera Stampa used ordinances as evidence that Spain's guildsmen in the early modern period lived under "estrecha subordinación" and under the "constant control" of the *veedores*. *Los Gremios Mexicanos*, 15. More recent scholarship has emphasized the agency of subaltern actors vis a vis the state. Other scholarship has called attention to the open-ended and casuistic nature of colonial law that allowed for interpretation and negotiation around established law. For more on how castas and African-descended people negotiated Spanish law, see Kristen Block, *Ordinary Lives in the Early Caribbean: Religion, Colonial Competition, and the Politics of Profit*, (University of Georgia Press, 2012), especially chapter 1.

⁵ Ruth McKay also utilizes guild ordinances in her work, and she argues that, rather than focusing on whether ordinances were normative or descriptive, scholars should recognize them as "embodiments of discursive relationships." She argues that one should imagine ordinances as "starting points for negotiation, threads to pick up," and "the outlines of agreed upon social norms," *Lazy Improvident People: Myth and Reality in the Writing of Spanish History*, (Cornell University Press: Ithaca, NY, 2006), 45-46.

⁶ Aquinas, *Summa Theologica*, II-II, II, iii.

of the relationship between two people.⁷ Within the guild, there existed both horizontal relationships and intensely vertical relationships defined by colonial notions of paternalism and *calidad*.⁸ At the top of the hierarchy were masters, usually Spanish, who owned official workshops after having passed their guild's exam. From their own ranks, the guild's masters elected by vote two *veedores* to serve for one year. *Veedores* administered and judged exams, collected and managed dues, and inspected workshops in an effort to enforce ordinances concerning quality control.⁹ In many cases, they also organized the guild's religious procession. Apprentices and *oficiales*, or skilled salaried laborers, worked in shops under masters. *Oficiales* tended to be *castas* who had passed beyond the apprenticeship stage but had not taken the exam, either by choice or because they lacked other qualifications.¹⁰ Archival documents also hint at the people at the edges of the guild's formal hierarchy, such as enslaved African descended people, who formed part of the guild's larger labor community. Guild communities were also thick with family ties, and the wives and daughters of guildsmen joined the guilds' *cofradías* in numbers higher than or equal to men.¹¹ These same women helped their husbands in shops, ran food stalls called *figones* out of their homes, and, in some labor communities, tanned skins alongside their husbands and sons. Guilds sometimes gave widows of guildsmen the right to

⁷ Aquinas also considered whether justice could exist between God and man, arguing that, since man could never "offer God an equal return" on all that he was granted, there could not exist a just relationship between them, though justice would "tend to make man repay God as much as he can."

⁸ Ruth Hill, *Hierarchy, Commerce and Fraud in Bourbon Spanish America: A Postal Inspector's Exposé*, (Nashville: Vanderbilt University Press, 2005), 20.

⁹ Manuel Carrera Stampa, *Los Gremios Mexicanos: La Organización Gremial En Nueva España, 1521-1861* (México: Edición y Distribución Ibero Americana de Publicaciones, 1954), 10.

¹⁰ Douglas Cope has proven that there were many exceptions to the rule. Poor Spaniards also worked as *oficiales* and a number of free blacks achieved the role of master. R. Douglas Cope, *The Limits of Racial Domination: Plebeian Society in Colonial Mexico, 1660-1720* (Madison: University of Wisconsin Press, 1994).

¹¹ AGI, Indiferente Virreinal, 5378-043. *Cofradías y Archicofradías*.

manage their departed husband's workshops for a set amount of time, and records indicate that a few women took on the religious obligations of their deceased husbands.¹²

The organization of this chapter around the types of relationships that constituted the colonial institution of the guild emerges out of the idea of the colonial definition of justice as relational.¹³ As such, this chapter begins by examining how guild members negotiated and defined just relationships between God and laborers. To what religious obligations did the guild hold its members? This chapter then turns to an analysis of the obligations and privileges due to guild members depending on their place in the hierarchy before scaling out to consider obligations due to the consumers buying and selling in the greater marketplace. This chapter ends with a case study of the incorporation of the gamuceros into a formal guild, a study which demonstrates how the thick network of obligations based on Catholic notions of justice could reorder the landscape of viceregal Mexico City's labor economy, restructuring relationships within guilds, between guilds, and between producers and consumers.

Religious Obligations

Historians have long recognized that guild-based *cofradías* in Mexico City financed elaborate religious processions, charitable aid funds, and built and maintained chapels in churches throughout the city.¹⁴ Typically, historians treat the religious activities of guild members in *cofradías* as separate from their economic activities, but institutionally, the line

¹² AHCDMX, Artesanos, Gremios, Volume 381, Exp. 2.25.

¹³ Justice was also clearly defined in its religious sense. Diego Alonso-Lasheras notes that Luis Molina defined justice as "every act of virtue that directed human action towards God's will." *Luis de Molina's De iustitia et iure: Justice as Virtue in an Economic Context*, (Leiden, NLD: Brill Academic Publishers, 2011), 189.

¹⁴ For more on *cofradías* in New Spain, see Nicole Von Germeten, *Black Blood Brothers: Confraternities and Social Mobility for Afro-Mexicans*, (Gainesville: University Press of Florida, 2006). Alicia Bazarte Martínez, *Las cofradías de españoles en la ciudad de México (1526-1860)*, (México, D.F.: Universidad Autónoma Metropolitana, División de Ciencias Sociales y Humanidades, 1989); *Las voces de la fe: las cofradías en México (siglos XVII-XIX)*, Ed. Eduardo Carrera, (México, D.F.: Universidad Autónoma Metropolitana: CIESAS, 2011); *Cofradías, Capellanías, y Obras Pías en la América Colonial*, ed. María Pilar Martínez López-Cano, Gisela von Wobeser, Juan Guillermo Muñoz, (Mexico: Universidad Nacional Autónoma de México), 1998.

between *cofradía* and guild blurred. For example, the *mayordomos* (leaders) of the guild's *cofradía* sometimes oversaw examinations in their official capacity as *mayordomos*.¹⁵ More frequently, important religious activities and obligations fell directly under the purview of the elected leader of the guild. On top of participation in the *cofradía*, each guild had a separate obligation to carry an image of their patron saint in the Ayuntamiento's processions on a number of annual feast days. The distinction is further clarified by the fact that while ecclesiastical authorities oversaw and approved *cofradías*, the Mesa de Propios oversaw the guilds' participation in the Ayuntamiento's procession. In order to support these obligations, guildsmen were expected to give as much as 50 pesos to their guild each year in addition to whatever weekly sum a guildsman was obligated to give to his *cofradía*.¹⁶ With costs this high, why did laborers choose to finance these spiritual activities? In some cases, they might have felt they had no other choice, given levels of state, church, and social pressure. More recently, however, historians have moved away from explaining *cofradía* participation as a matter of coercion to argue that public religious observances had concrete social benefits for guild members, such as allowing them to reify their social status, ensure mutual aid during times of crisis, and develop and maintain a sense of shared identity.¹⁷ While guilds no doubt offered such benefits, guildsmen themselves did not talk about their participation in this functionalist manner.¹⁸ Instead,

¹⁵ AGN, Casa de Moneda, vol. 1, exp. 91, 1741, fs. 94-94v.

¹⁶ AHCDMX, Artesanos, gremios, 381, 2.20. In 1747, the *veedor* of the dyer's guild said that "desde inmemorial tiempo tienen echa obligación de dar anualmente cincuenta pesos en cuya calidad se conformó a sacar nuestro gremio dicho Santo Ángel." Time immemorial, however, is a notoriously slippery concept in terms of concrete temporal meaning, so it is difficult to say whether 50 pesos was a long-standing norm. Linda Curcio-Nagy puts the average closer to 30 pesos per guildsman, *The Great Festivals of Colonial Mexico City: Performing Rower and Identity*, (Albuquerque: University of New Mexico Press, 2004), 103.

¹⁷ *Ibid.*, 15.

¹⁸ Brianna Leavitt-Alcántara argues that beyond material functionalist arguments, scholars cannot even assume that people are rational spiritual economic actors. That is, we cannot assume that people tithed out of the belief that if they paid some amount that they would receive the maximum spiritual benefit back. For example, people acted out of emotional need as well, to feel themselves moral, to reinforce relationships, etc. "Intimate Indulgences: Salvation and Local Religion in Eighteenth-Century Santiago de Guatemala," *Colonial Latin American Review* 23, no. 2 (2014), 265.

guildsmen spoke about their participation in religious rituals and charitable activities as a matter of personal morality and as a matter of justice, an obligation to their community and to God.

They spoke of their labor as a means to the ultimate end, which was happiness in God.

Guild members wove spiritual significance into their labor by reflecting on the ways in which their laboring patron saints also imbued their work with spirituality. Patron saint devotion formed the center of a guild's identity, both as a religious community and as a laboring community. In Catholic tradition, the saints served two purposes: to intercede with God on behalf of praying Catholics and to serve as an example of how to live a Christian life. As such, most guilds chose their saints specifically to be a role model to the guild members. Though not all guilds chose a saint who practiced their trade—for example, Mexico City's candlemakers chose Saint Blaise, a bishop whose blessing involved two crossed candles—most did, following a Catholic tradition reaching back to the early Christians.¹⁹ A number of similarities run through these laboring saints' stories. First, laboring saints began or lived out their life as laborers, but their primary virtue was in living a prayerful, Catholic life. Still, their labor never precluded them from spiritual elevation. In fact, their stories point to a Catholic and premodern narrative about the dignity of work and the blessedness of the humble. One could indeed live a deeply spiritual life as an ordinary working person.

As such, lessons on how to balance one's spiritual and temporal needs are also characteristic of most laboring saint stories. Because laborers concerned themselves with the making of money, laboring saint stories almost always highlighted charity as key to living a

¹⁹ In Mexico City, the cobbler's guild named Saint Crispin, Saint Aniano, and Saint Crispinian, all former cobblers, as its patron saints; the carpenters chose Jesus the Nazarene, a carpenter; the confectioners chose Saint Philip of Jesus, a Mexico City merchant turned martyr; and the cigarmakers chose Saint Isidro the Labrador, a 12th century Spanish farmer. For an extended list of Mexico City's guilds' patron saints see Carrera Stampa, *Los Gremios Mexicanos*, 90-91.

moral life. Many saints either shared much of their profit with the poor or accepted no payment in the first place, only gifts of alms.²⁰ The latter group were to be admired if not quite emulated, but the former taught laborers to recognize the fine line between need and excess in their own lives. Giving alms out of one's abundance was an important requirement for economic justice, but the concepts of need and abundance rarely received clear definition in treatises, in part because theologians believed need to be different for different people. One was expected to discuss one's personal obligation in confession, but saint's stories also served as examples of how to justly manage one's personal finances. One could make money to support oneself, but any profits should go to the poor.

Finally, a number of laboring saint devotions began as bottom-up, local veneration that the church hierarchy eventually recognized.²¹ For example, the stories surrounding Saint Isidro the Laborer began in central Spain sometime in the 13th century as oral tradition, a format which Matilde Fernández Montes writes could be "adjusted to fit the interests of the narrator and the expectations of the listeners." A farmer born in Madrid in 1070, Isidro's life had to have been familiar to the local field hands who venerated him. Isidro had a wife and child, worked for a master, and spent his days plowing and tending to his fields. Still, the *Códice de Juan Diácono*, the earliest written record of Isidro's life, tells that Isidro always "put the spiritual before the temporal," and God rewarded him by sending angels to do his work so that he could pray. Isidro and his wife, María Torribia, who is also venerated as a saint, are also known for feeding the

²⁰ This second group—which included the patron saint of Mexico City's medical community, the physicians Saint Cosmas and Damian—are sometimes called the "unmercenaries," or "anárgiro" in Spanish, which is derived from the Latin for "those who do not accept silver." Richard Rutt, "Saints Cosmas and Damian: Patron Saints of Medicine. A Story from Prayers and Pictures," *Clinical Orthopaedics & Related Research* 474, no. 8, (2016).

²¹ Matilde Fernández Montes, "Isidro, el varón de Dios, como modelo de sincretismo religioso en la Edad Media" *Revista de Dialectología y Tradiciones Populares*, Tomo LIV, Cuaderno primero, Madrid, 1999, 13. Also see William Christian for a history of how local veneration was incorporated into official church doctrine in Early Modern Spain. *Local Religion in Sixteenth-Century Spain*, (Princeton, N.J: Princeton University Press, 1981).

poor and hungry. Their labor allowed them to be charitable and generous, and their generosity seemed all the more notable and blessed given that they themselves had very little. These stories of humble spirituality likely appealed to the laboring classes more than the stories of formerly wealthy saints abdicating their riches to lead lives as monks and nuns. While the latter emphasized a total disavowal of profit and wealth, the former allowed for simple laborers to meet their basic needs while living holy lives.

Guilds actively promoted their patron saints' stories as guides for their members by commissioning artwork and sermons, some of which compared the life of the saint to the purpose of the guild. For example, in May of 1718, the heirs of the widow of Francisco Rodríguez Lupércio, a Mexico City merchant, commissioned a sermon on the occasion of the dedication of an altarpiece in the church of the Convent of Nuestra Señora Regina.²² The altarpiece itself had been a donation by the merchants of the *cofradía* of Santo Ecce Homo, of which Rodríguez Lupércio had likely been a member. Father Bartolome Felipe de Ita y Parra wrote and delivered his sermon with this audience clearly in mind. His sermon developed the idea that human beings, and in particular the merchants in question, entered into a type of commerce with God and with the saints in making material donations. The merchants gave the altarpiece, and in return asked that the saint would guard their shops and intercede with God on their behalf, "that God might secure and defend their storehouses and their property." Ita y Parra preached that the donation reflected and reenacted the first divine exchange, that of Christ on the altar, giving his life so that human beings could live. The bread and wine were but an external sign of the internal "alliance and commerce between God and men," God's "visible sign of his invisible grace." Similarly, the altarpiece was the external and public sign of the exchange of alms for protection between Saint

²² BNAH, Libro no. 4196. Bartolomé Felipe de Yta y Parra. "El público signo, y los frutos del comercio," 1718.

Ecce Homo and the merchants. Ita y Parra further compared this public sign to the signatures of merchants on a contract. He noted other biblical moments when God made a public sign of his commerce with humanity: the rainbow that signified God's promise or contract or covenant with Noah that he would never again bring about a great flood, and God's pact with Moses that he would liberate his people, made public through the sign of the ten plagues. In these cases, Ita y Parra noted, as it was God who made the pact, it was God who made the sign. Similarly, as it was the merchants who solicited the trade with Saint Ecce Homo, it was they who owed the sign. They also owed the altarpiece in gratitude for the saint's protection up to this point. The altar was, therefore, a sign both of past obligations fulfilled and of a contract for the future.

Ita y Parra ended his sermon by carefully noting that, unlike human contracts, the merchants' contract with the saint was not exactly equal, just as humanity's exchange with God was not equal, grace and eternal life being impossible to return in full. As Thomas Aquinas had written, there could exist no relationship of justice between God and human beings, though they should try their best to fulfill the debt. Still, no matter how many altarpieces the merchants dedicated, they would always be the "interested party," the ones who gained the advantage. This was the "universal interest that all attained in God's sacred commerce."

The sermon was a success. Inquisition officials signed off on the sermon beforehand, stating that the sermon conformed to the dictates of the church. Local church elite weighed in with a preamble, each praising various parts of the sermon. For example, Doctor Carlos Bermudez, who gained his salary from the Metropolitan Cathedral, noted that Saint John the Evangelist also called the Eucharist a type of sacred commerce. The provincial of the Carmelite order compared Ita y Parra to Ariadna, leading his listeners out of the labyrinth of potential sin just as Ariadna led Theseus out of the Labyrinth with her ball of twine. Comparing the Eucharist,

the central metaphor of the Catholic Church, to an act of commercial exchange clearly did not offend early 18th century ears. Ita y Parra chose to draw exclusively on the long-standing theological threads that allowed him to tell his wealthy patrons what they desired to hear: that their daily activity was spiritually beneficial and significant. This underlying understanding of the Eucharist as an exchange between God and human beings helps to explain the logic behind the early modern spiritual economy. Alms-giving, like the celebration of mass, was a reenactment of humanity's initial exchange with God. Rather than cheapening the spiritual bonds between humanity and the divine, the reenactment of that exchange simply strengthened those bonds. Ita y Parra also meant his sermon's message to elevate the act of human commercial exchange as well, given his audience of influential Mexico City merchants.

Obligations Within the Guild

Beyond the guildsman's relationship to God, ordinances also sought to balance the relationships within guilds. To join the guild was to make a contract, and the ordinances sought to balance both sides of the contract with privileges and obligations. Labor historians have tended to emphasize the unequal power relations between mostly Spanish masters and their mostly casta and indigenous workers, suggesting that those who held positions of power with guilds wielded it coercively. Certainly, Spanish masters enjoyed systematic access to economic stability and autonomy that their laborers did not.²³ As long as a guild master continued to fulfill his obligations to the guild, he had a right to "voice, vote, and assistance" within the guild. In 1753, a tanning master, Don Cristobal Jose de Veliz, submitted a petition to the Mesa de Propios, suing his guild "for the restitution of his possession of voice, vote, and assistance," which one

²³ AHCDMX, Artesanos, gremios, vol 381, exp. 6.3. Court documents show that they also frequently abused their privilege, though perhaps not at the rates assumed given that they and their apprentices were embedded in social networks that likely held them to certain standards of behavior. AGN, Indios, vol. 36, exp. 4, fs. 3v-4, 1703.

Benito Araiyo had stripped him of. Veliz's petition is analytically useful in that he articulated a sense of what personal qualities and responsibilities were required of a guild master to remain in good standing. Veliz never argued that he automatically deserved voice, vote, and assistance. Equality among masters within the guild was not an absolute right. Rather, he argued that he had fulfilled his obligations to the guild such that he should be considered the equal to any other guild master. He submitted that he was a "quiet, sociable, well-customed man" who had voted in the guild elections for more than ten years, except for when a legitimate impediment kept him away. Furthermore, he had always paid his annual and monthly fees on time, in addition to chipping in for any irregular or extraordinary expenditures. Because of all this, Veliz stated, "neither Araiyo nor any other guildsman has more *derecho* (right) that I to be matriculated in this guild by reason of office and trade." Even Araiyo himself, at one time, had approved Veliz' introduction into the guild. It was only Araiyo's malice and "inflamed will" that created a problem now and threatened Veliz' "honor and dignity." Veliz' financial contributions, which would have included contributions to the guild's religious observances, his honorable behavior, and his constant attendance at the guild's elections gave him access to the "derechos" of a guildsman: a voice and a vote, that is, the right to choose his representation within the guild, and assistance, whether financial or knowledge based. In fulfilling his obligations, he claimed a right to the privileges of master as well.

Oficiales and apprentices sought out the position of master in order to gain access to the right to own a workshop, the right to vote, and the right to material assistance. But the position of master and patron also came with real and enforceable financial obligations. This section shows that skilled laborers sometimes chose to forego the privileges of master as a strategy to avoid the concomitant financial obligations, many of them religious. This pattern became such a problem

for guild leadership that between 1740 and 1760, multiple guilds petitioned the municipal courts to force skilled laborers to take their examination and begin paying into the guild's procession collection. Just as those in today's informal economies might choose to forego the protections of the formal economy as a strategy to avoid paying taxes, viceregal plebeians sometimes made a purposeful, strategic choice to avoid a higher status within their guild.

Masters voted for their leadership in an annual election, and while any master could technically be elected, there existed a number of prerequisites in terms of status and character, some of which were explicitly outlined in ordinances and others more implicitly suggested in judicial documents. Some ordinances required that leadership be of sufficient *calidad*, while others simply named desired character traits, specifying that the *veedor* should be "zealous," well-respected, and of good conscience and ability.²⁴ Ordinances did not specify gender, but contemporary notions of patriarchy dictated that women could not hold the position, even in guilds in which women worked in high numbers.²⁵ In terms of soft skills, guildsmen expected their *veedores* to be "sociable" and encourage harmony between guildsmen. Guildsmen elected their *veedores* not only on their ability to manage finances, but on their ability to create and sustain relationships within the guild.²⁶ Finally, members expected *veedores*, as arbiters of economic justice and authority, to act without self-interest, thinking only of the common good of the guild and of the greater labor community of Mexico City.

One *veedor*, Joseph de Medina, found himself embroiled in an argument with his fellow guildsmen and the Mesa de Propios over how exactly a *veedor* should act towards his community. This case is useful because it highlights a number of "soft" obligations for *veedores*

²⁴ AHCDMX, Artesanos, gremios, vol. 381, exp. 1. AHCDMX, Artesanos y gremios, vol. 381, exp 6.1, 14V and exp. 2.15.

²⁵ AHCDMX, Artesanos, gremios, vol. 381, exp. 2.29.

²⁶ AHCDMX, Artesanos, gremios, vol. 381, exp. 5.7.

that are never specified in ordinances. Additionally, it also provides a window into what the Mesa de Propios expected from guild leadership, and leadership in generally. In 1751, Medina, and his fellow veedor of the blacksmiths and locksmiths' guild, Joseph de Gallego, assembled in Gallego's home to examine one Joseph Beltrán. For some reason not recorded by the court, Beltrán had neglected to tell Medina that he was to be examined until the last minute. Given that Medina proved to be a difficult examiner, perhaps Beltrán hoped that he would not be available on such short notice. Arriving just in time, Medina asked Beltrán to forge a perfect key and lock using materials that Medina himself had provided. Beltrán proved incapable of forging either the key or lock with skill, so Medina denied him the status of master.

Here, the stories diverge. Medina wrote to the Mesa de Propios to submit his resignation, alleging that Beltrán had subsequently "conspired with the whole guild against him, mistreating him in word and deed for not complying with [Beltrán's] every whim." He complained about the pressure he faced from Gallego and other masters to pass Beltrán, reminding the court that "the veedores have the vote, so even if seven thousand masters agitated to approve the examinee, if the veedores, or in this case, one veedor, found that the examinee was inept, then there could be no approval." Beltrán and Gallego, in contrast, argued that Medina issued Beltrán an unnecessary task in asking him to forge the lock in addition to the key. They alleged that Medina had set the task out of personal interest, hoping to capitalize on Beltrán's labor and sell the lock and key as his own work. This he did out of malice, being an "unsociable, brooding, and provocative" man. Medina responded that he had asked Beltrán to make the lock with no other motivation than fealty to the oath that he swore upon becoming veedor, which he saw as a matter of honor and morality. He angrily reminded the court that, "according to the law of our sacred religion and

Christian doctrine, to swear [an oath] without certainty is a mortal sin.”²⁷ To question his behavior on this matter was akin to accusing him of sinning mortally. His honor and piety thus besmirched and questioned, he asked to be allowed to resign so that Gallego and Beltrán could have what they wanted and Medina “[could have] the glory of not having to give false testimony.”

According to Gallego and Beltrán, while Medina had not necessarily broken any law or ordinance, he had broken a number of expectations. It is likely that Beltrán had made friends within the labor community during his four to six years as an apprentice, given that he was able to turn the “whole guild” against Medina.²⁸ He seems to have also been under the special patronage of Gallego, who, the court decided, had shown “favorable passion” toward the examinee, lacking the proper “neutrality.”²⁹ Perhaps the guildsmen expected Medina to relax the standards for the well-connected and well-liked official, or at least not stand so decidedly in the way by deviating from the standard exam. What Medina saw as a duty and well within his privileges as a *veedor*, Beltrán and Gallego saw as overreach. Medina may have followed the letter of the law, but he had violated social expectations. The justices of the Mesa de Propios, Joseph Francisco de Cuevas and Alejandro Espinosa, however, and found that Medina had acted within his rights as *veedor* to ask the examinee to produce the lock, which fell within the definition of “an object of the trade.”

²⁷ Catholic theology held that one could not swear that something was true if they knew it to be false or if they did not know with certainty that it was true. Stephanie Tutino, *Shadows of Doubt: Language and Truth in Post-Reformation Catholic Culture*, (New York: Oxford University Press, 2014), 154. Tutino explores the consequences of this emphasis on certainty for the Jesuit methodology of probabilism.

²⁸ Carrera Stampa, *Los gremios mexicanos*, 30. In some guilds, the time could be as short as two or as long as eight. Master’s sons could also have their apprenticeship shortened, ostensibly because the boy would have worked in his father’s shop before his apprenticeship and picked up the necessary knowledge.

²⁹ This patronage might have been informal or formal. It is possible that Gallego was Beltrán’s godfather, or *compadre*, a ritually marked, fictive kin relationship.

The justices then shifted their attention to the general procedural questions that this case brought forward. A veedor had asked to resign, which was an uncommon if not unheard occurrence. As such, at issue were three questions: Should the justices allow Medina to recuse himself from the exam? How ought Beltrán to be re-examined when he made his second attempt? And lastly, could the position of veedor be renounced? At this point, both Medina and Gallego proved incapable of judging Beltrán without prejudice, so the judges agreed that both should be recused. Instead, the Mesa de Propios would invite the two most senior former veedores to act as examiners, the underlying assumption being that seniority brought wisdom, moderation, and experience.³⁰

Additionally, the Mesa would send its own representative to oversee the proceedings on the assumption that an outsider would be likely to act as a disinterested, neutral party. Francisco de Cuevas and Espinosa questioned the ability of both Gallego and Medina to judge Beltrán dispassionately, which as judges themselves, veedores should be able to do “for the public good.” In contrast, the justices of the Mesa de Propios portrayed themselves as neutral and disinterested, able to “reduce the case down to its substance” and rise above the litigants’ “accidents of ardor” to come to a just decision. Language surrounding ardor and dispassionate reason appeared regularly in colonial legal documents. The justice system’s legitimacy (and the legitimacy of colonial Mexico City’s political system) relied on the shared societal belief in the impartiality of its justices and hierarchical leaders. A just society and economy hinged upon the moral character and disinterested nature of veedores, justices, mayordomos, asentistas, viceroys, and kings. This belief existed not only in theory, but in the day-to-day workings of the justice

³⁰ In at least one other place, a *cofradía* specifies that their leadership be married, again suggesting that age and responsibility adds maturity and good judgement. AGN, *Cofradías y Archicofradías*, vol. 10, exp. 1, fs. 23. 1538.

system, even as the cases that came before the courts belied the impartiality and disinterested nature of institutional leaders like Gallegos and Medina.

Finally, Francisco de Cuevos and Espinosa turned to their final query. Could a veedor renounce his position? The justices decided against the idea, saying that a veedor could only leave due to a “legitimate impediment,” such as illness or a financial downturn. They did not explain their reasoning, but their decision speaks to the nature of the role. As much as veedores enjoyed power and the obedience of their fellow guildsmen, to act as veedor also constituted an obligation.³¹ As such, it could not be renounced unless something serious kept the veedor from fulfilling that obligation. Given that the justices emphasized the importance of independent veedores, it is also possible that they wished to avoid signaling to disgruntled guildsmen that a veedor might easily be pressured out of the position.

Medina was hardly the only guildsmen who sought to escape the rigors of guild leadership or the status of master. Guild masters took on financial obligations that oficiales and apprentices did not. According to apprentice contracts, masters were expected to feed, clothe, and house their workers, in addition to paying for any necessary medical care. Masters also paid into the collection for the procession of their guild’s “angel” or saint statuette. In the act of tithing, laborers followed the religious script embedded in the lives of their laboring patron saint, thereby building spiritual significance into their daily labor and reinforcing relationships with their fellow laborers. But not every master complied with their personal obligation to support the guild’s religious commitments. It was up to the veedores to collect tithes and make sure the guild had enough funds to fulfil its religious obligations, and guild leaders frequently complained that their fellow guildsmen had failed to contribute their alms. If none were forthcoming, they were

³¹ AHCDMX, Artesanos, gremios, vol. 381, exp. 6.

forced to find additional income to subsidize their needs. In other cases, guilds could make up for a lack of alms in fines. Masters could expect fines for missing an election, or for failing to attend festivals.³² In 1739, for example, the cobbler's guild charged five masters four pesos each, designating the money for the adornment of the altar of Saint Crispin, Saint Aniano, and Saint Crispinian, the patron saints of cobblers, which the guild maintained in their chapel in the royal convent of Santo Domingo.³³

Occasionally, *veedores* found it necessary to round out the guild's funds with donations from their own personal coffers.³⁴ Miguel Carrera Stampa considered it "incredible" that a *veedor* might pay for festival expenses out of his own pocket, ostensibly because such an action would surely hurt his personal bottom line.³⁵ Such an action makes little financial sense by modern standards, yet, within the economic framework of patronage, reciprocity, and charity the *veedor* did no more than fulfil his obligation to his guild. In a system where people paid into and took out resources from the corporate body according to their need, the boundary between private ownership of goods or information and common ownership blurred. As members of a corporate body, guild members could make claims on the resources of wealthier members similar to the way a recipient of patronage had a claim, however indirect, highly ritualized, and contingent, on the wealth of his patron. In 1752, the *zurradores*, hoping to avoid paying higher dues, disputed the claim that their guild was rich because a few of its masters had "excessive resources (*facultades*)."³⁶

³² Carrera Stampa, *Los gremios mexicanos*, 94,

³³ AHCDMX Artesanos, gremios, vol. 381, exp 2.4.

³⁴ AHCDMX, Artesanos, gremios, vol. 381, exp. 5.6, f. 19. And vol. 381, exp. 5.6, f. 19.

³⁵ Carrera Stampa, *Los gremios mexicanos*, 108. AHCDMX, Real Audiencia, Fiel Ejecutoria, *Veedores Gremios*, vol. 3833, leg 3, exp 81.

³⁶ AHCDMX, Artesanos, gremios, vol. 381, exp. 2.17.

That such a claim was made in the first place suggests again that guilds did, in fact, count their communal wealth in terms of their individual members' wealth, as if the guild had access to that wealth. The zurradores argued that not a single "law, ordinance, pragmatic, or custom" demanded that "one or two rich guild members should contribute at a higher rate than any other."³⁷ While true that no guild specified in ordinances that rich masters should contribute more, based on documentary evidence, the practice seems to have been, if not obligatory, at least customary up to that point.³⁸ Guildsmen expected their wealthier masters to act as financial patrons for the benefit of the labor community. This was so much the case that in 1747 a dye master named Don Francisco Friego asked the Mesa de Propios to exempt him from being elected as a veedor. He felt that to hold office would be "morally impossible for various reasons," principally that, due to the scarcity of textiles and other materials his shop had fallen on difficult times. As such, he felt that he was "totally unable to take on any function that I am offered due to my faculties being utterly exhausted."³⁹ He felt he could not bear the obligations to the wider community of dyers expected of someone in the position to which he had been elected.

If none of their tactics generated funds, veedores would petition the Mesa de Propios to exempt their guild from the procession entirely, to help them financially, to pay back the veedores who had contributed from their own funds, or to compel masters to contribute. In 1743, Francisco Xavier López and Juan Antonio, both veedores of Mexico City's baker's guild, explained to the Mesa de Propios that they had not been able to process their angel because their guild did not have enough masters to pay the contribution. Of the sixteen bakeries in their guild,

³⁷ AHCDMX, Artesanos y gremios, vol. 381, exp. 6.1.

³⁸ It may be that their resistance was not simply a willful misremembering of the past but part of a larger cultural shift from earlier periods. Patricia Seed in particular has argued that people became more protective of their private wealth around the mid-18th century, *To Love Honor and Obey*, introduction.

³⁹ AHCDMX, Artesanos, gremios, vol. 381, exp. 2.17.

many were run by widows who, as women, could not become masters and be obligated to contribute. The others were run by oficiales “who can be masters...for they are in Good possession of houses of trade, but they demonstrate resistance and not wishing to be examined, they offer excuses.”⁴⁰ López stated that he had been in the role of veedor for two years since there was no one else to take on the responsibility, and he begged the Mesa de Propios to compel the oficiales to take the exam.

Another group of veedores complained that, since “antiquity,” it had been customary that masters in their guild contributed three pesos annually to support the cost of their patron saint’s procession. The veedores noted that even though their costs were moderate, three pesos did not stretch as far as it once had since prices had risen generally. Moreover, some masters either simply refused to pay or paid whatever they liked. The veedores asked for a *ministro de vara*, or a court enforcer, to help them collect the tithes. But not even the court enforcer could always coerce contributions. Antonio López, veedor of the baker’s guild, demanded that the *figoneros*, proprietors of informal food stands and restaurants, pay the annual contribution of four pesos for the procession of their angel on Easter Sunday. The *figoneros* had rebelled and refused to pay, and as such, the bakers had collected no more than a third of the usual collection. Clearly, this was an ongoing problem, as the Mesa de Propios had already executed an auto to enforce the collection earlier that year. So, this time the veedores had brought a minister of vara with them, but the *figoneros* had simply closed up shop upon the veedores’ approach. López noted in parentheses that the shops “had now been reopened.”⁴¹ López then also asked the Mesa for funds to subsidize his “meager resources” so that he can fulfill his obligation to the angel.

⁴⁰ AHCDMX, Artesanos, Gremios, vol. 381, exp. 2.10.

⁴¹ AHCDMX, Artesanos, gremios, Vol 381, Exp. 6.33. “Dejando me expuesto a un trabajo de verme en presión por el cumplimiento de mi obligación por lo que me fue preciso valerme de algunos sujetos para que me suplieron unos reales con los que di cumplimiento y saque el expresado paso.”

Why did so many guildsmen and women seek to escape tithing? On the one hand, the pattern seems to call into question the depth of their religious commitment. Certainly, Stuart Schwartz has shown that many people in New Spain rejected the Church's monopoly on religious truth.⁴² But those who refused to tithe usually blamed their poverty rather than expressing a lack of religious fervor, though perhaps only because they wished to avoid Inquisition charges. In one case, cited by Carrera Stampa, a seed grain vendor named Jose Argumendo chafed against the whole idea that tithing within guilds could be an obligation. He argued that he should not have to process the angel during Santo Entierro if he did not want to because the procession should be "an act of devotion and not an obligation."⁴³ For Argumendo, spiritual acts could not be obligated by mortal men or their institutions, only by individual and collective will, an argument that some Catholic theologians might have been able to support, given the importance they placed on free will.⁴⁴ While the Mesa de Propios and the veedores saw these evasions as a violation of the guildsman's obligation to both his temporal communities and to God, Argumendo argued that his only obligation was to God. He could just as easily fulfill that obligation outside of the guild space in whatever way he wished.

Tithing was not just a matter of religious feeling, but an issue of reciprocal justice as well. Guildsmen and women rejected the loss of autonomy over where their money went, especially if they felt that they were not in a voluntary and reciprocal relationship with the managers of the communal funds. For example, sometime around 1754, two masters of the "art of cookery," Joseph de Escotia and Igancio de León, complained that many of the women who

⁴² Stuart Schwartz, *All Can Be Saved: Religious Tolerance and Salvation in the Iberian Atlantic World*, (New Haven, CT: Yale University Press, 2008).

⁴³ Carrera Stampa, *Los gremios mexicanos*, 108.

⁴⁴ Sabine MacCormack discusses the importance that Las Casas and other early missionaries placed on free will in indigenous conversion, though eventually others would start to question the necessity of free will given that indigenous people continued to practice idolatry. *Religion in the Andes: Vision and Imagination in Early Colonial Peru*, (Princeton, NJ: Princeton University Press, 1991), 10, 187.

ran kitchens in the city and “should give alms,” had found a way to evade their guild’s collections.⁴⁵ These women concealed their business by working out of taverns owned by men as if they were employees rather than business owners subject to collection. This was not the first time that the Mesa de Propios, the female *figoneras*, and their *veedores* had struggled over how to calculate the privileges and obligations of guildswomen. Four years earlier when the *figoneros* were reduced to a guild, the petitioner insisted that women should be examined and subjected to the rules and ordinances of the guild, including collection. The petitioner clarified that they would be “admitted to the office,” but “because of their sex they could not be *veedora*.” However, when the Mesa accepted the *figoneros*’ ordinances, they excluded the ordinance that women should be examined “because it would be improper.”⁴⁶

Because of the Mesa’s decision, confusion over the obligations and privileges of guildswomen remained four years later. Although Escotia and León believed that women were subject to the collection as if they were masters, they also noted that their guild ordinances “exempted” women from being examined. Unfortunately, there is no record of how the guildswomen in question responded or of what motivated their evasion, but by their actions it would seem that they understood their obligations and privileges differently. If only one or two guildswomen were avoiding collection, then perhaps it could be assumed that they found tithing economically untenable or that they lacked spiritual fervor. But the fact that many guildswomen were involved suggests a more collective and systemic motivation. The special arrangement that Escotia and León described would have been in violation of the reciprocal nature of the role of master. Though the role of master came with obligations such as tithing, it came with its privileges as well, such as the vote, a certain status within the guild, and the chance at a

⁴⁵ AHCDMX, *Artesanos, gremios*, vol. 381, exp. 6.27 and 6.28.

⁴⁶ AHCDMX, *Artesanos, gremios*, vol. 381, exp. 2.29.

leadership role, which women were not allowed to hold. Perhaps the guildswomen thought it unjust that they were expected to fulfil the obligation side of the role without receiving the benefits. In that case, they might have found it more suitable to give alms when and to whom it pleased them, rather than on the guild's timetable and under obligation.

Ordering the Marketplace

Guild ordinances also attempted to balance exchange relationships within the greater marketplace. The guild system did not come about as a way to enforce monopolies and protect a few producers, and in fact, many guilds created measures to lower the barrier to entry for new masters.⁴⁷ Early modern economic moralistas believed that the guild system produced commercial justice for whole community, consumers and merchants alike. All had the similar experience of coming before Mexico City's municipal government to hammer out just relationships that protected consumers and "legitimate" producers from fraud and unjust commerce. By early modern definitions of economic justice, the goal of any exchange should be to balance the costs and benefits so that each party "participated in equal expenses and loss as well as profits."⁴⁸ Guild ordinances thus attempted to balance the competing interests of masters and consumers in order to create equitable exchanges. Third-party sellers, fairly new and controversial actors on the economic stage, rarely appear in ordinances as anything other than a threat to the equitable balance of the marketplace. This should not be taken as evidence that guilds did not understand the utility of third-party sellers in practice, only that the place of third-party sellers within the formal framework of commercial justice was still evolving.

⁴⁷ When an official wished to be examined but did not have the necessary reales, he could petition to be allowed to work at the level of master and put off the exam until he could afford the cost of the exam. AHCDMX, Artesanos, gremios, vol. 381, especially exp. 2.3, 4.

⁴⁸ BNAH, Libro No. 32. Fray Juan de Montalbán, "Cartas pastorales de usura, simonía, y penitencia," This principle was also based on classical economic thought. Plato and Aristotle believed that exchange between buyer and seller should be equal and based on utility to the buyer and seller. 1729.

In her analysis of the problem of value in early modern Spanish economic thought, Marjorie Grice-Hutchinson argues that all early modern thinkers agreed that labor *could* be included in estimations of the value. Where they diverged was on the question of whether it *should* be included.⁴⁹ That is, labor value was a question of ethics. Multiple Scholastics followed Aristotle in arguing that human need was the basis of price. One in particular, Saravia de la Calle argued that to tie value to risk and the cost of production would ensure that “no merchant would ever suffer loss” or shoulder any market risk because they could set the price at whatever they wished and according to their costs. Saravia worried that in such a situation the merchants would have ample opportunity to defraud the common man, whom he saw as consumers first rather than producers themselves.⁵⁰ Pedro de Valencia took the opposite view. Instead of imagining the producer to be a wealthy merchant, he imagined producers to be the poor laborers in the field, and he believed that their sufficient need should also be accounted for. Differences in the way in which moralistas thought about labor and value stemmed in part from who they believed to be the most vulnerable in exchange. Was it the consumer who might have to trade in goods about which he or she was uninformed? Or, was it the master, with workers and a needy family to support, all at the mercy of fluctuating supply and demand? Both producer and consumer took on some risk in an exchange. The question early economic moralistas grappled with was how to set up a system that protected both consumer and producer. What was the combination of ordinances that would balance the scales?

Guild ordinances generally followed a pattern established by custom and approved by municipal courts, though most contained a few unique details. As such, ordinances represented a both guild concerns and the concerns of the courts. If the guildsmen themselves were not

⁴⁹ Grice-Hutchinson, *Early Economic Thought in Spain*, Ch. 2.

⁵⁰ Grice-Hutchinson, *Early Economic Thought in Spain*, 104-107.

necessarily concerned with consumers and the public good, the municipal courts who signed off on the ordinances certainly were. However, most guilds seem to have understood that a reputation for producing items of poor quality hurt their trade. Beyond that, a few guilds also clearly articulated an ethics of consumers' rights using the language of the "public good." For instance, the milliner's acknowledged "that many Spaniards make hats outside of the city and then send them into the city to be sold. These hats are made falsely and are of no substance, but are sold as if they are of good quality. And the Republic suffers for buying badly made hats." The milliners further remarked that oficiales should avoid using dirty water when making their hats, "lest the Republic suffer damages."⁵¹

Another way in which guilds protected consumers was by making information about products public.⁵² Early modern commercial theorists understood knowledge as key to combatting fraud and trickery. In 1729, Father Montalbán wrote a pastoral letter on usury that eventually made its way to convent libraries in Mexico City. His wide-ranging work touched upon just price theory and the role of knowledge in producing equitable exchange. He wrote that:

Just price is the foundation of justice in buying and selling. It can be set by government measure, by the law, by common law, or by the well-founded opinion of those who buy and sell. And to have a well-founded opinion, one should understand the good's utility, its abundance or scarcity, the cost and labor involved in order to create it, and other pertinent circumstances. That will be its legitimate and natural price.⁵³

A just exchange required a well-founded opinion, and well-founded opinion required that both the buyer and seller have sufficient information in hand. Simply supplying such information to consumers could help to create the conditions for equitable

⁵¹ AHCDMX, Artesanos, gremios, vol. 381, ex. 1.

⁵² Market model tend to assume perfect knowledge, but in reality, and especially in a time before modern information technology, institutions (private or public) had to evolve to ease the transaction costs of imperfect knowledge.

⁵³ BNAH, Libro No. 32. Fray Juan de Montalbán, "Cartas pastorales de usura, simonía, y penitencia," 1729.

exchange and a just price. Guild ordinances suggest that the role of knowledge in producing an equitable market was not just a theoretical concept, but something that officials and tradesmen also understood to be important. For example, to protect consumers, guilds assigned a mark to each master so that his work would be known by his sign, and by that sign buyers could "know whether the work that he does is good or bad."⁵⁴ The maker's mark ensured that a master would develop a poor reputation if he produced shoddy work. Furthermore, those who sold second hand were required to clearly mark their goods as used. Finally, Ruth McKay also notes that official *pregoneros*, or town criers, read guild ordinances publicly, so consumers knew the general standards to which they could hold tradesmen.⁵⁵

While some sets of ordinances considered consumer protections, all guilds included ordinances about protecting tradesmen in the greater marketplace. Only examined guild masters subject to carefully defined standards of quality were considered legitimate producers. Any tradesman from outside the city, whether examined or not, was required to appear before the *veedor* and be reexamined "rigorously."⁵⁶ The emergence of third-party sellers, especially the street peddlers called *regatones*, also threatened to undermine the prices set by the formal guild.⁵⁷ No ordinances sought to acknowledge or address the needs of third-party sellers into the economic system. Instead, guild ordinances either eyed non-producers as threats or sought to incorporate them into a formal guild structure.

⁵⁴ AHCDMX, Artesano, gremios, vol. 381, exp 6.1, f. 14v.

⁵⁵ McKay, *Lazy, Improvident People*, 40. Diego Alonso-Lasheras writes that while Luis de Molina thought of information sharing in commerce as a matter of justice. While he did not believe that one had to share private business knowledge, he argued that "knowledge about the law should be public knowledge, and to make profit out of privileged information that should be common knowledge was unjust." Of course, what was considered public knowledge was a question to be considered in context of the case. *Luis de Molina's De iustitia et iure*, 127.

⁵⁶ AHCDMX, Artesanos, gremios, vol. 381, exp. 6.1, f. 14V.

⁵⁷ AGN, Civil, vol. 75, exp. 9. 1599.

A guild could be brought into being if petitioners could argue the benefit to consumer's well-being and legitimate producers. In 1750, the Mesa de Propios received yet another petition from the masters of baking who had recently been agitating for the figoneros to be "reduced" to a guild.⁵⁸ At that time, the masters had asked that the figoneros be made to contribute alms for the good of the republic. The Mesa had ordered that the figoneros allow the baker's guild to collect alms from them, but this was apparently no longer sufficient. Now the masters argued that the figoneros be reduced to a guild in order to protect consumers and producers. Marcos Joseph Luzero claimed that a "high number [of figoneros] have opened their figón without the knowledge of cooking...this being against the public as they are inexperienced, woman or man, and grave illnesses have originated from their figones." To ensure that consumers "could avoid fraud when buying what they need." Luzero made a distinction between those who had "public shops" and those who sold in the plazas and streets or out of their private kitchens. These people, mostly women, sold mole, tortillas with cooked chili, tamales, and other items to the poor, "indios, oficiales, and other defenseless people." Setting up a guild would allow veeedores to enforce standards, protecting producers from competition and ensuring standards. The guild structure would also moderate prices for the consumer so that they did not change at the whim of the producer. Incorporating the figoneros into the formal guild structure meant incorporating them into just commercial relationships within the larger body of the republic.

Spiritual Obligations and Indigenous Autonomy

Trade guildsmen also frequently used expectations about laborers' religious obligations to force informal labor communities to incorporate and join the formal labor economy's wider network of spiritual-economic reciprocity. A study of the formation of the gamuceros guild

⁵⁸ Ibid., exp. 2.29.

during the early 1750s details this process of guild formation within the context of inter-guild and municipal politics. This case study also describes a labor community before and after its transition into a formal guild, a rare occurrence in the archive, providing a unique window into how the intertwined religious and material expectations that came with formal guild status shaped the internal workings of a labor community as well.

In February of 1752, the zurradores of Mexico City sent a petition to the city's Mesa de Propios asking that it approve a merger between themselves and the gamuceros who were not yet part of an official guild. The zurradores explained that their guild had shrunk down to only four masters, and as such, they could no longer afford to uphold one of their most important obligations, to prepare an image of their patron saint, in this case either Saint Michael or Gabriel the Archangel, for procession during Holy Week, only two months away. At the moment, all they had to adorn their angel was a breastplate, and if they did not combine with the gamuceros and generate more alms, the angel would go forth "entirely bare."⁵⁹

At no point did the zurradores think it important to mention whether or not the gamuceros were interested in the merger, which were they decidedly not. The representatives of the gamuceros wrote immediately to state that they had no wish to become a guild, nor did they wish to be combined under the umbrella of another guild, an arrangement that was not uncommon in viceregal Mexico City.⁶⁰ The gamuceros wrote that they had no desire to see the angel retired from service, but the zurradores had misrepresented their own situation. There were other members of the zurradores guild that could become masters and contribute more but chose not to, likely for some of the reasons that we have already seen. They suggested that it must be short-

⁵⁹ Ibid., exp. 6.1.

⁶⁰ For example, the veedor of the bakers also received money from the tavern keepers for the procession of their angel. AHCDMX, Artesanos, gremios, vol. 381, exp. 6.3.

sightedness that led to the lack of funds as there were some "who had property in their possession, like Don Joseph de Velis, and until now they have always been able to comport themselves with decency."⁶¹ That is to say, the zurradores had always been able to pay for the angel to process fully clothed. This merger, they argued, was nothing more than a ploy to use the gamuceros to "free themselves" from the high costs of supporting a guild.

The gamuceros then argued that the nature of their trade —both in terms of the skill set needed and the type of person who exercised the trade— made them a poor match for the zurradores. To make their point, the gamuceros drew on ideas about caste and gender to argue that the gamucero trade was not a good fit for the formal guild structure. They argued that tanning sheep skin was not a true trade but more of a skill that “even a woman could learn upon seeing it done just once.” Guilds operated, in part, to maintain quality control and pass down the trade through apprenticeships, but if tanning sheep skins was so easily learned, a guild structure seemed unnecessary. More importantly, the gamuceros noted that only a limited number of the gamuceros were Spaniards, mestizos, or mulattos. Most were indios, and as such "could not be obligated to contribute” financially.⁶² As explored in chapter two, the Crown exempted indigenous subjects from a number of taxes and certain public rents, in part because it wished to ensure that indigenous resources would go to royal tribute payments, but also because Spanish law considered indios to be a protected class due to their childlike and vulnerable natures. Reasons aside, the gamuceros’ argument suggests that the Crown's policy might have had unexpected consequences. Anyone who belonged to a guild could rely on mutual aid, extended

⁶¹ AHCDMX, Artesanos, gremios, vol 381, exp. 6.1, f. 3. “Decencia,” or decency, often refers to the appropriate veneration of a saint.

⁶² Ibid., f. 1v. According to the text, “tiene otra circunstancia más qual es, ser contados los españoles, mestizos, o mulatos que tienen el empleo de gamuceros, porque todos los mas son indios, que no pueden obligarse a contribuciones.”

under the expectation that they would fulfill their financial obligations to the guild. An individual or group who could not enter into this reciprocal financial relationship, a defining feature of every guild, could not expect to participate fully.

The zurradores responded with their own set of arguments about the nature and categorization of labor. In their view, it was the materials of the trade itself that mattered, not the gains that could be made from it, nor the calidad of the people who practiced it. The gamuceros had pointed out that their trade made them very little money, usually a half real per skin every two days, and certainly not more than one real per skin. The zurradores dismissed this argument, writing that it was not earnings that defined a trade, but the materials of the trade itself. The zurradores also rejected the argument that indigenous laborers were exempted from paying guild dues, noting that “there are many indio masters in the carpenter’s guild, and are they exonerated [from making contributions] because they are indios? Or are they segregated from the carpenter’s guild? In no way.” In all cases, the “[labor] congregation follows from the trade, and not from the person.”⁶³ Both the gamuceros and zurradores worked with animal skins, and as such, should be classified together, no matter the differences in the laborers’ caste or earning potential. In rejecting the gamuceros’ caste argument, the zurradores also implicitly questioned certain features of the caste system. Instead of pulling from discursive arguments, they pulled from their own experience of an incomplete, fractured, and flexible caste system in colonial Mexico City.⁶⁴

This exchange suggests that, at least in some cases, caste divisions in labor communities was a structural biproduct of the Crown's policy that indios could not be drawn into certain types

⁶³ AHCDMX, Artesanos, gremios, vol 381, exp. 6.1, f. 4-5.

⁶⁴ For more on Mexico City’s flexible caste system, see Ben Vinson, III, *Before Mestizaje: The Frontiers of Race and Caste in Colonial Mexico*, (Cambridge University Press, 2018).

of financial arrangements. That the gamuceros made such an argument at all suggests that there was precedence for it. However, while caste clearly mattered in the Crown's initial policy, the zurradores privileged labor identities over caste; they wanted the gamuceros in their guild for economic, religious, and status reasons, regardless of their caste status. This is not to say that material, economic concerns always overrode caste ideology, or vice versa. Rather, each side legitimately drew on different sets of cultural norms to make an argument that also supported their material or political interests. The gamuceros asserted their caste identity and their difference in order to avoid incorporation into the zurradores' guild and protect their autonomy. At the same time, the zurradores could cite religious based financial obligations in order to maintain their status, financial gain, and stability. It was up to the judicial body to decide which set of cultural norms took precedence in this particular situation.

On the 26th of February, the procurador general of the Mesa de Propios, having read arguments from both sides, ordered the gamuceros to pay an annual sum to the zurradores. He saw this arrangement as a type of compromise. It solved the zurradores' lack of funds and ensured that the proper religious protocol would be followed, but the gamuceros could go on as before, without being "reduced" into a formal guild structure. This arrangement would be a win for both the greater community of Mexico City laborers and Christians in general.

But Juan Antonio de Arevedo and Francisco Xavier Francisco, acting on behalf of the gamuceros, disagreed. In early March, they petitioned the viceroy for an amparo arguing that to order the gamuceros to pay alms to the zurradores was "contrary to liberty." They wrote that they would prefer to join with a guild other than the zurradores "not because of some passionate aversion or ill will, but because [the gamuceros] are poor and the zurradores are powerful, and if

they were to unite then they would harass and subjugate [the gamuceros] like slaves."⁶⁵ Two sets of legal arguments underwrote this argument. First, the gamuceros used the language of self-interest to position themselves as dispassionate while simultaneously highlighting the zurradores' rampant and immoderate greed. Second, the indigenous gamuceros described themselves as "poor" and portrayed the zurradores as "powerful" in order to suggest that they were owed protection from the powerful, a legal claim which became popular in colonial New Spain sometime in the mid-17th century. "The powerful," wrote legal theorist Juan Solórzano y Pereira in 1647, "whenever they decline to evil and allow themselves to be carried away by unbridled greed...improve their own situation with the power they gain."⁶⁶ Lawyers began using the term "*mano poderosa*," or powerful hand, as a metaphor when describing the tyrannical behavior of the powerful toward vulnerable populations. To allow the zurradores to take control over the gamuceros' resources would be to subvert a fundamental premise of justice—that the poor deserved protection from the powerful. The zurradores defended themselves against what they correctly perceived as a charge of "tyranny," defined in the *Siete Partidas* as a ruler who "[prefers] to act for their own advantage, although it may result in injury to the country, rather than for the benefit of all."⁶⁷ They maintained that it was the gamuceros who were acting in their own self-interest, who allowed themselves to be "governed by passion." They argued that the gamuceros had enough funds and no angel to support since they were not a formal guild, so it could only be to the benefit to the common good for them to contribute.

⁶⁵ Ibid., f. 7.

⁶⁶ Juan Solórzano y Pereira, *Política Indiana*, (Madrid: imp. Diego Diaz de la Carrera, 1647), cited by Brian Owensby, who argues that this legal claim became popular in colonial New Spain sometime in the mid-17th century. For a description of the legal metaphor of the powerful hand. *Empire of Law*, 63-64, and on tyranny, 77.

⁶⁷ *Siete Partidas*, Partida II, Title I, Law X.

In the end, the procurador general agreed with the zurradores that the "resistance of the gamuceros is caprice and ardor."⁶⁸ That is, the procurador general agreed that the gamuceros had not put forward a convincing argument that to maintain their autonomy furthered the interests of the common good. Given how little time remained before Holy Week, he still believed it best, at least for now, that the gamuceros contribute to the procession of the zurradores' angel. They could revisit the issue in time. Perhaps expecting resistance, he ordered that a ministro de vara should accompany the zurrador official during the collection. A year later, in January of 1753, the gamuceros once again submitted a petition to the court, this time asking that they be allowed to form their own guild, separate from and not "subjects" of the guild of the zurradores. Thus, this dispute, which turned on the religious obligations of two labor communities, led directly to the formation of a new labor guild.

But why had the gamuceros not formed a guild before? They seem to have been coherent and cohesive enough to have representatives who could speak for the community. So why not take the next step and incorporate? First, given their coherence, the gamuceros likely already enjoyed an informal community structure whereby they offered one another assistance, trade knowledge, and a sense of spiritual belonging. To formalize that structure did not offer any additional benefits and actively imposed new restrictions. We have already seen that to be part of a guild, and especially to be a master in a guild, came with financial and ethical obligations. While being a formal guild came with various privileges, such as protection against fraud, the service and monetary obligations could also hobble a master financially. Formal guilds also had to fulfill obligations to the greater labor and religious community. For a labor community mostly made up of indios, and one that clearly valued its autonomy, the gamuceros preferred to be

⁶⁸ AHCDMX, Artesanos, gremios, vol 381, exp. 6.1, f. 13.

unencumbered by the formal labor hierarchy. When the procurador general forced the issue, however, the gamuceros decided that if they were going to have to pay into the formal labor community, they preferred to manage collection and distributions themselves. Forming a guild now seemed the best way to secure the economic and religious autonomy of the gamuceros community.

The officials of the Mesa de Propios acquiesced in March.⁶⁹ On September 26, 1753, they presented the official auto, which Viceroy Francisco de Güemes y Horcasitas had mandated back in February of that year. After doing due diligence and meeting with the zurradores, the Mesa de Propios could declare that "it conforms to the integrity of the Viceroy to declare the gamuceros to be a guild, distinct from the zurradores and to approve their ordinances." They listed its reasons for declaring the gamuceros a guild. First, the officials noted that many indigenous people took part in the profession, creating the suede leather that was used in parchment paper, gloves, and leather of lower quality, an art that was quite distinct from the products made by the zurradores. We might take this as an affirmation both of the materiality of caste and of the zurradores' position that the trade's materials mattered in terms of its categorization. The Mesa reaffirmed that the materials of the trade, the quality of the trade, and the caste of the people who practiced it all contributed to distinguishing the trades.

Secondly, the Mesa noted that the creation of another guild was to the benefit of the public, since it added to the "greater authority and luster" of the city. Another formal guild would extend the city's Good Friday procession, adding to it more of the flags and angels that each guild was required to supply. This display, in turn, would augment the devotion of all the

⁶⁹ Ibid., f. 19. The ordinances suggest that the zurradores had been right to accuse the gamuceros of underestimating their ability to contribute. The representatives claimed to speak for more than one hundred of their fellow laborers, each of whom would pay half a real each week, or 26 reales annually.

citizens. Even in the 1750s, viceregal officials continued to justify public displays of spiritual devotion in terms of the Baroque understanding of their effect. A public display provoked a self-reflective, emotional response from the viewers that could change hearts and encourage repentance. Consistent with their earlier decision to have the gamuceros pay a sum to the zurradores, the Mesa de Propios based their decision to recognize the gamuceros guild on the spiritual good of the city at large. The length of the guild procession was both a marker of the spiritual health of the city as well as a marker of its temporal importance and productive power. The two ends, one spiritual and one temporal, could not be separated, but instead informed one another. The length and opulence of the city's guild procession proved the spiritual health of the city, and the majesty of the city's spiritual processions proved its temporal importance. Lastly, the Mesa de Propios stressed the benefit to the consumer, noting that everyone used this type of leather good, from the "plebes" to the "*gente decente*," or those of high calidad. As such, the public would benefit from a trade that took a "little more care" in terms of quality.⁷⁰ To recognize the gamuceros' guild would create more just relationships between the labor community and God, between the various guilds, and between the labor community and the consumers within the republic.

According to proposed guild ordinances submitted in September, 1753, the formalization of the gamuceros also greatly changed the quality of the relationship between the members of that labor community, creating a formal hierarchy. Because the Mesa de Propios had to sign off on guild ordinances, which typically followed fairly a standard form, the ordinances were an expression of both the gamuceros' particular customs and the city officials' expectations. The majority of the ordinances dictated who could sell the guild's products. The ordinances

⁷⁰ Ibid., f. 19.

associated anyone outside the guild with fraud, suggesting that outsiders sold “goat skins as deer, the ram for goat, and by their deceit they ruin the trade because buyers will presume that they are treated deceptively and are being sold cat for hare.” A formal guild would protect both consumers and the reputation of the guildsmen themselves. The ordinances further stipulated that only masters had the right to make and sell dyed leather goods like vests or pants using red ochre and *cascalote*, a plant native to New Spain which could be processed to produce tannins.⁷¹ Oficiales, on the other hand, could sell only undyed, tanned skins. Perhaps most striking, the gamuceros' ordinances included a clause denying women the right to publicly sell tanned skins in the plazas at all, not even under the pretext of being married to a master, suggesting that the practice was common at that time. Given this clause, which does not appear in other ordinances, and coupled with the gamuceros' earlier statement that the trade was so easy to learn that “even a woman” could do it, it is more than likely that women had engaged in the trade up to that point. In the case of the gamuceros, elevating their trade from its informal and marginalized status to formal guild status changed the status of women within that community. Simply categorizing this type of work as worthy of guild status forced women from the trade.⁷² That the ordinances overwhelmingly favored established men might also help to explain why key members of the labor community decided to formalize the guild; they might have found it more palatable to give up some of their autonomy in exchange for protection from unjust female competition.

⁷¹ One ordinance also stipulated that if anyone discovered a better tanning method, they had to share it with the guild and become subject to the ordinances as well, “because it is we who have brought this guild to the public, costing a great deal of work.” AHCDMX, Artesanos y gremios, vol. 381, exp 6.1, f. 14v.

⁷² This suggests that women typically found more opportunities in informal labor communities. This also explains why women laborers infrequently appear in the archives, which typically only collect municipal court records dealing with formal guilds.

The gamuceros also outlined plans for fulfilling their guild's religious obligations, perhaps making formal whatever religious traditions had already existed in their labor. The second ordinances detailed the guild's private religious observances, placing these under the charge of an elected mayordomo and two deputies rather than under the leadership of the guild's elected veedor.⁷³ The guild would celebrate their patron saint's festival day by taking the day off of work and funding a sung mass and sermon at the convent de San Pablo. After the mass, they would process with candles to the cemetery to pray for the souls of the master and oficiales who had died, extending their labor community into the afterlife. The gamuceros also assured the Mesa de Propios that they would be making all the necessary contributions and preparations in order to bring out their own Angel in the Good Friday procession.⁷⁴ To pay for these spiritual expenditures, both masters and oficiales were expected to contribute weekly alms of a half real, or 2.6 pesos annually, to the collection.⁷⁵ The half real was the standard weekly collection in many *cofradías*, which suggests that the gamuceros' earlier disinclination to contribute to the *zurradores* collection did not come out of either an unwillingness or inability to support religious observances.⁷⁶ Poverty was not the issue; rather, the gamuceros objected to the loss of autonomy over their own finances and spiritual expression.

⁷³ Another example of how the line between *cofradía* and guild blurred. They never use the word *cofradía*, and there is no record of a distinct set of *cofradial* ordinances.

⁷⁴ AHCDMX, *Artesanos y gremios*, Vol. 381, Exp. 6.9.

⁷⁵ Also of note, as this chapter has explored, oficiales seem to have been exempted from paying into the collection for the *paso del angel*. However, in *cofradías*, there was no difference between masters and oficiales. Everyone paid the same amount of alms except in cases where the mayordomo had to contribute from his personal funds to balance the budget. Carrerra Stampa, *Los gremios mexicanos*, 81.

⁷⁶ It may be more accurate to say that poverty was not entirely the issue. When arguing against incorporation into the *zurradores'* trade, the gamuceros had explained that they usually made just a half real per skin every two days, and certainly not more than one real per skin. Taking into account that they might have understated their wages a bit, they likely made around 3 pesos per week. While a half real per week is still a substantial percentage of their weekly wage, it does not compare to the 30 pesos, or ten weeks' worth of wages, that the *zurradores* might have expected from each gamucero master for processing the Angel (though they never stated their expectations). To give some context, the standard 18th century annual wage for a *capellán*, or sponsored priest, was 100 pesos (by 1728, ten reales were equal to one peso). Bazarte Martínez, *Las cofradías de españoles*, 76,

Finally, the ordinances gave the labor community and the municipal courts an opportunity to formalize preferences in the way that communal funds were spent. The gamuceros' ordinances stated that collection funds should only be spent on strictly spiritual goods, like masses, rather than on "disordered" festivity expenditures like food and drink. They declared that anyone hoping to be a master and hold "public office" should be informed of and accept their budgetary rule or he would not be examined.⁷⁷ In contrast, the bakers' veedor had listed wine and sweets among his guild's many expenditures only a year before, as did a number of other guilds and guild-based *cofradías*.⁷⁸ Given that the gamuceros' guild was mostly composed of indigenous members, this ordinance suggests that there was pressure, perhaps internally but more likely from the municipal court, to curb the perceived excesses of indigenous piety.⁷⁹ Whereas the informal labor community and their religious observances might have escaped the notice of the reform-minded mid-18th century officials, the incorporation of the indigenous labor community into the formal guild system also brought them to the attention of those who had begun to articulate a new piety that was internal, intellectual, and individual.⁸⁰

Historians have recognized that religion played a central role in the economic lives of early modern people, but they have typically only explored economics in the context of explicitly religious institutions like *cofradías*, convents, and the church. This chapter shows that Catholic

⁷⁷ AHCDMX, *Artesanos y gremios*, vol. 381, exp 6.1, 14V.

⁷⁸ AHCDMX, Vol. 381, Exp. 6.3, "Relación de los gastos...del nuevo gremio de figoneros...para el paso del angel," 1752.

⁷⁹ For more on how crown and church authorities became invested in de-Indianizing parishes during the 1750s, see Matthew D. O'Hara, *A Flock Divided: Race, Religion, and Politics in Mexico, 1749-1857*, (Durham, NC: Duke University Press, 2010), Ch. 3. That being said, new piety reforms reached their peak in the 1770s. Linda Curcio-Nagy, *The Great Festivals*, 109.

⁸⁰ See Pamela Voekel on "new piety" in *Alone Before God: The Religious Origins of modernity in Mexico* (Durham: Duke University Press, 2002). Also see Brian Larkin, *The Very Nature of God: Baroque Catholicism and Religious Reform in Bourbon Mexico City* (Albuquerque: University of New Mexico Press, 2010).

commercial theology shaped not only the social and religious lives of laborers, but the very structure of their labor community as well. Whatever their initial motivations, the zurradores harnessed universally accepted expectations about religious obligations to draw the gamuceros into relationships of spiritual-economic reciprocity. The gamuceros recognized their religious-based concerns as legitimate, but they also desired the autonomy to make their own decisions about where and how they expressed their piety as laborers. The Mesa de Propios did not prioritize the wishes of one group over the other, but instead looked to the common good to make their judgement. It fell to the authorities to balance the competing interests of various groups in order to promote the public good. Accordingly, the Mesa decided that the laborers' obligations to the public's spiritual and temporal good overrode both the zurradores' desire for status and funding and the gamuceros' desire for unencumbered autonomy. Officials and vecinos of Mexico City believed that laborers best fulfilled their obligations to consumers, their fellow laborers, and especially to God when they incorporated into formal guilds. It was by these standards of justice that the Mesa de Propios first and foremost decided the conflict between the gamuceros and the zurradores, not by standards of economic growth or progress

Chapter 5: Usury, Credit, and Finding the Just Price in New Spain, 1770-1775

Of all the early modern economic practices treated by moral theologians, usury easily drew the greatest consideration and consternation. All agreed that usury represented a dire threat to the soul of the lender, being a practice that would “drive him to hell or restitution.”¹ Yet, despite such blunt pronouncements, the Scholastics also understood that merchants and commercial actors in early modern Europe needed access to credit. Accordingly, Spanish moralistas produced reams on the topic in order to provide practitioners with safe moral passage through the issue. While many historians have studied the arguments within these published treatises, there have been no sustained study of how economic actors on the ground received these theological pronouncements, or how peninsular notions of usury gained new meanings and effects in the context of Spanish America.² At the same time, economic historians studying the ultimate usurious contract, the repartimiento de mercancías, have not fully explored contemporary perspectives on lending at interest, instead utilizing present-day standards of economic efficiency and justice to understand the repartimiento.³ This chapter explores definitions and understandings of just contracts as articulated by indigenous and casta people, ecclesiastics, viceregal officials, and Spanish merchants. It examines the theological, legal, and discursive arguments that these economic actors employed to defend or delegitimize allegedly

¹ Azpilcueta, *Sourcebook*, 61.

² For example, John T. Noonan Jr., *The Scholastic Analysis of Usury* (Cambridge: Harvard University Press, 1957). Raymond De Roover, *Business, Banking, and Economic Thought in Late Medieval and Early Modern Europe*, (Chicago, IL: University of Chicago Press, 1974). Marjorie Grice-Hutchinson, *Early Economic Thought in Spain 1177-1740*, (George Allen & Unwin: London, 1978). Michael Thomas D'Emic, *Justice in the Marketplace in Early Modern Spain: Saravia, Villalón and the Religious Origins of Economic Analysis*, (Lanham: Lexington Books, 2014).

³ For example, Jeremy Baskes, *Indians, Merchants, and Markets: A Reinterpretation of the Repartimiento and Spanish-Indian Economic Relations in Colonial Oaxaca, 1750-1821*, (Stanford, CA: Stanford University Press, 2000); Brian Hamnett, *Politics and Trade in Southern Mexico, 1750-1821*, (Cambridge, Eng.: Cambridge University Press, 1971); Robert Patch, *Maya and Spaniard in Yucatan, 1648-1812*, (Stanford, CA: Stanford University Press, 1993).

usurious contracts between 1700 and 1775 in central New Spain. Who deployed these arguments, when, and for what ends? Under what circumstances were these arguments successful? How did these arguments and definitions of usury change over the course of the century?

Cases where plaintiffs specifically claimed usury are rare in every century of the viceregal period and across every jurisdiction, whether civil, ecclesiastical, or inquisitorial, a curious absence given that charging more than 5 percent interest on a loan was prohibited.⁴ Many historians take this as evidence that the merchants and courts generally privileged pragmatism over justice and morality throughout the viceregal period. Victoria Cummins, Matthew O'Hara, and Katheryn Burns, for example, all note the emergence of acceptable work-arounds to restrictions on interest, such as the mortgage-like *censo al quitar* or the shorter-term *depósito*, and Cummins points to the lack of usury cases tried in civil and ecclesiastical courts as "evidence that even attempts to enforce regulations were intermittent and inconsistent, perhaps in recognition of the practical need to transact business."⁵ Historians of the 18th century argue that usury was rare during that century because the values of the Church lost out to the logic of capitalism as virtue began to matter less in economics. Patricia Seed, for example, argued that the Royal Marriage Pragmatic of 1778 is evidence that by the late 18th century there was "greater priority given to considerations of social class than to moral responsibility" as New Spain transformed into a capitalist society.⁶ Similarly, Gisela von Wobeser considers the 1745 papal

⁴ 5 percent was set by the church. Baskes, *Indians, Merchants, and Markets*, 110.

⁵ They make this argument in part to refute earlier historians who argued that legal and theological restrictions on usury hampered commerce in Spanish America. Katheryn Burns, *Colonial Habits: Convents and the Spiritual Economy of Cuzco, Peru* (Duke University Press, 1999) Ch. 1; Matthew D. O'Hara, *The History of the Future in Colonial Mexico*, (New Haven, CT: Yale University Press 2018), 106; Victoria Hennessey Cummins, "The Church and Business Practices in Late Sixteenth Century Mexico," *The Americas*, 44, no. 4 (1988): 440.

⁶ Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico, Conflicts Over Marriage Choice 1574-1821*, (Stanford, Calif: Stanford University Press, 1988), 240.

encyclical *Vix pervenit* to be a turning point that “signified the Church’s movement toward accepting common business practices.” She argues that, after this point, “the Church had to recognize that it was impossible to reconcile the theory of usury with the modern world.”⁷

Given that usury cases were rare even before the 18th century, however, their apparent absence in the 18th century is not a sufficient indicator of an increasing capitalist mentality. Nor is the absence of usury from court cases before the 18th century sufficient evidence to suggest early modern judges consistently prioritized profits over morality. To isolate strict lending at interest from the litany of other unjust commercial practices ignores contemporary categories in use at the time. In treatises, including in Aquinas’ *Summa Theologica*, usury usually formed only part of a larger conversation about equitable exchange.⁸ The 18th century moralista, Montalbán considered any inequitable exchange to be usurious, including buying below or selling above the just price.⁹ In practice, judges frequently punished practices such as holding back goods to force prices to rise, collusion, monopoly, and buying below or selling well above the just price, many of which occurred in the context of the repartimiento de mercancías. Litigants claiming unjust gains frequently came before the Juzgado de Indios, the Alcalde de Crimen, and the Archdiocese’ courts throughout the 17th and 18th centuries.¹⁰ These courts contain ample evidence that officials, indigenous people, and ecclesiastics did attempt to enforce regulations against unjust prices. They simply did not always employ the specific, legal charge of usury as a strategy.

⁷ Gisela von Wobeser, “La postura de la iglesia católica frente a la usura,” *Memorias de la Academia Mexicana de la Historia*, Vol. 36, (1993): 20.

⁸ Aquinas lists usury after cheating in buying and selling, both of which fall under the vices of voluntary commutations. *Summa Theologica*, II-II, 78.

⁹ Fray Juan de Montalbán, *Cartas pastorales de usura, simonía, y penitencia*, 1729, Biblioteca Nacional de Antropología e Historia, Libro no. 32.

¹⁰ Brian Madigan notes that, with the exception of the Inquisition, historians have largely underutilized ecclesiastical court records in studies of colonial legal practices. “Law, Society, and Justice in Colonial Mexico City, Civil and Ecclesiastical Courts Compared, 1730-1800,” (Ph.D. dissertation, University of California, Berkeley, 2013), 2.

This chapter also makes a historiographical argument for utilizing an expanded, contemporary definition of usury that included the widely practiced *repartimiento de mercancías*.¹¹ Ecclesiastics argued that the repartimiento system included a contract to lend at interest, and under this definition, usury did face opposition in the courts throughout the viceregal period. An analysis of usury and commercial justice in the 18th century that includes cases that dealt with the repartimiento de mercancías alongside cases that did specifically claim usury somewhat complicates historians' assumptions about the progress of secularization and economic liberalization during the Bourbon era. This chapter will show that the process of untangling virtue from economics was neither so linear nor so certain. Usury continued to be a topic of theological debate throughout the 18th century. Surprisingly, given a historiography that would suggest the opposite, court cases dealing explicitly with usury became slightly more common, though still rare, during the 18th century in New Spain.¹²

An analysis of these documents shows that the 18th century debate about lending at interest was not a contest between materialistic pragmatism and idealistic morality but rather a contest between competing understandings of economic theology, equity, and virtue. Both ordinary people and Bourbon reformers continued to think of exchange in terms of Catholic virtue and draw on 16th century moral theologians to support their claims. Even at the height of

¹¹ Historians have defined usury in many different ways. Burns and Cummins define usury most narrowly as lending at interest. Von Wobeser notes that definitions of usury changed over time, but she argues that "in the broadest sense, it was used to describe unjust gains...traditionally [charges of] usury can be found in operations such as: money lent with interest attached, raising prices on commercial goods, and the transportation of money from one place to another." Among a list of usurious contracts, Marjorie Grice-Hutchinson includes investments where the investor shared in the profits but not losses. The concept of usury was slippery even in the early modern period, and the way in which the historian defines usury impacts whether they find evidence in the archive that civil and ecclesiastical officials prosecuted usury or mostly looked the other way. Von Wobeser, "La postura," 3. Marjorie Grice-Hutchinson, *Early Economic Thought in Spain, 1177-1740*, (George Allen & Unwin: London, 1978); Cummins, "Church and Business Practices," 429.

¹² O'Hara agrees with von Wobeser that the Church began to back down from regulating usury by the mid-18th century. *The History of the Future in Colonial Mexico*, 116.

the reform era, just price and usury formed part of the Crown's justification for rooting out entrenched economic interests and institutions like the repartimiento. But there was a change in the understanding of justice expressed by both by Crown reformers and New Spain's Bishop. They articulated a belief that usury was unjust because it limited the productive capabilities of the empire, not because of its inherent inequity and the damage it could do to the just distribution of resources within the empire.

This chapter first turns to the question of why usury appears only infrequently in legal cases during the viceregal period, arguing that its absence was not simply a result of material pragmatism winning out over the requirements of justice. It then turns to two case studies that chart the shifts and continuities in understandings of just commerce and just contracts in the mid-18th century. The first case study examines the arguments that merchants, indigenous people, and officials made about contractual equity in the 1758 conflict over the *piloncillo* (unrefined whole cane sugar) repartimiento in Tampamolón in the jurisdiction of San Luis Potosí. The second study examines how indigenous people and poor castas understood the repartimiento in Puebla and Tlaxcala beginning in 1769. Both cases took place after the Crown legalized the repartimiento in 1751 and before Bourbon reformers abolished it again in 1786. I end with a brief overview of the way in which Bourbon reformers retooled the charge of usury both to liberalize and to rectify contractual relationships between indigenous producers and merchant creditors.

Usury in the Archive

The bulk of treatises dealing with usury were published in the 16th century at the height of the Scholastic period, but theological debates about usury continued during the 18th century in New Spain. Like the 16th century, the 18th century saw great economic change through Europe

and the Americas as merchants and political reformers broke with traditional economic patterns. A number of sermons and encyclicals published throughout the Catholic world during the 18th century addressed how priests should handle the changing economic atmosphere. One of the works most frequently cited was a 1716 pastoral letter on usury written by Bishop Juan Montalbán Gómez of Guadix, Spain, which also circulated in New Spain.¹³ Montalbán undertook a more serious consideration of the ways in which ecclesiastics could enforce prohibitions on usury. Like other writers of confession manuals, Montalbán noted the difficulty of judging loans since the morality of a loan hinged on the intention of the lender, and intentions were difficult to discern. He encouraged priests to use confession to draw out economic actors' interior motivations. Where confession was not adequate, however, Montalbán specifically encouraged the use of excommunication as a tool for bringing recalcitrant creditors and debtors to justice. The "pain, shame, and infamy" of excommunication would soften their hearts. Montalbán was also unique in warning the confessor not to absolve the penitent until restitution had been made. He explicitly weaponized both the confession box and excommunication in order to address what appeared to him to be a crisis in economic morality.

Pope Benedict XIV's 1745 papal encyclical *Vix pervenit* also served as a touch-stone in the 18th century. The encyclical called for theological moderation, allowing that one could licitly take a return on investment or take out insurance on a loan contract. He charted a path between those "who judge these matters with such severity that they hold any profit derived from money to be illegal and usurious" and those who are "so indulgent and so remiss that they hold any gain whatsoever to be free of usury."¹⁴ Gisela von Wobeser sees this moderate position as evidence

¹³ Fray Juan de Montalbán, *Cartas pastorales de usura, simonía, y penitencia*. The BNAH's copy was recovered from the Convento de San Agustín in Mexico City.

¹⁴ Pope Benedict XIV, *Vix Pervenit: On Usury and Other Dishonest Profits*, 1745.

that the Church began to bow to economic pressure in the 18th century, but Benedict's reasoning was not so far from that of 17th century Scholastic theologians like Luis de Molina who held that interest could be licit in certain cases.¹⁵ Nor did contemporaries see the pope's encyclical as permissive. In the late 18th century, New Spain's Archbishop Alonso Núñez de Haro y Peralta referenced the encyclical in his own 1785 pastoral letter in which he railed against the abuses of usury, monopolists, and unjust price. He cited *Vix pervenit* when instructing confessors to refrain from absolving a usurer or monopolist until after they had made restitution, "not trusting in the promises they made, because those who wish to be rich, as the Apostle says, fall into temptation."¹⁶

But what about on the ground in the 18th century? Did ecclesiastics and viceregal officials give up on the idea of just contracts in the face of changing business practices? Did indigenous producers understand lending at interest to be acceptable? That judges and officials looked the other way in many cases of lending at interest is undeniably true. But the repartimiento de mercancías continued to face opposition throughout the 18th century, as did many other forms of unjust commerce. These patterns suggest that there might be other explanations as to why the specific charge of usury does not often appear in the archive other than that the theological output on usury was at best idealistic and at worst self-serving.¹⁷ As explored in Chapter 2, in the Spanish judicial system, the ways in which a practice helped or hurt the republic's spiritual and

¹⁵ Fabio Monsalve, "Late Spanish Doctors on Usury, and the Evolving Scholastics Tradition," *Journal of the History of Economic Thought*, 36, (June 2014): 231.

¹⁶ Dr. D. Alonso Núñez de Haro y Peralta, "Nueve ejemplares de la carta pastoral del arzobispo a los cura propios sobre el abominable vicio de la usura," November 12, 1985, Asignación 195.46, Archivo Histórico del Arzobispado de México, Mexico City. It is a strange reference, however, as the encyclical itself does not address this innovation. It is much more explicit in Montalbán's manual.

¹⁷ Fabio Monsalve cites a "recent strand of literature on usury [that] seems to concede less relevance to ethics in favor of an evolutionary approach in which the institutional environment, as well as the individual and organizational incentives, became the key elements to explain the regulations of usury in the medieval and modern periods in western Europe." "Late Spanish Doctors on Usury, and the Evolving Scholastics Tradition," *Journal of the History of Economic Thought*, 36, (June 2014), 216.

temporal well-being often mattered more than that the specific letter of the law had been followed. As Tamar Herzog has argued, “justice (not legality) dominated the judicial sphere.”¹⁸ Lawyers and their plaintiffs understood that the judge would be more interested in whether an economic practice ensured justice than whether the practice qualified as usury. In many cases, a usurious practice would likely qualify as a violation of justice and the common good, but at that point, it was enough to prove the violation of justice.

Yet, one should not underestimate the importance of civil and canon law in shaping the testimony and arguments that came before judges. In civil and ecclesiastical cases in which plaintiffs specifically alleged usury, legality did matter. Plaintiffs referenced past legal codes, ecclesiastics dredged up encyclicals, and defendants made arguments about just price by citing the great 16th century moralistas. Justice might have dominated, but legality still had its place as one mode of argument (the other being procedural). The few cases where the legality of usury did come into question are particularly useful for exploring of how people on the ground understood and interpreted the theological prescriptions around lending at interest.

Usury almost never appears in case records of the Holy Office. This was chiefly because of jurisdictional battles fought in Spain during the first half of the 16th century between ecclesiastic and secular courts. Officially, the Inquisition’s role was to promote the purity of the faith and combat heresy, not immorality. Secular voices argued that because usurers sinned out of greed rather than unbelief, cases of usury belonged in secular courts. They did allow that if a person expressed explicit belief that usury was not a sin, they could be called before the Inquisition for heresy. Inquisitors, in contrast, argued that a person committing the sin of usury

¹⁸ Herzog further argues that “judges did not focus on the observance of certain rules but only on the fitness of the solution” and, therefore, “appeals were never technical and never attacked the legal foundation of the decision.” Tamar Herzog, *Upholding Justice*, 10.

did, in fact, commit heresy. The usurer's action belied a belief that usury was not a sin. After much back and forth, the Council of the Supreme and General Inquisition (the Suprema) declared in 1554 that a usurer could not be tried before the Inquisition.¹⁹

The Inquisition could, however, continue to prosecute those who expressed belief that usury was not a sin, though New Spain's Inquisition heard just two such cases. In 1698, inquisitors targeted a manuscript recently written by Jesuit priest Antonio de Echavarrieta concerning commercial contracts.²⁰ The inquisitors condemned Echavarrieta's work for its opposition to Pope Sixtus V's bula, *Detestabilis Avaritia* (1586), which condemned the triple business contract.²¹ *Destestabilis* was not accepted by most theologians in Germany, England, Flanders, or Sicily, and Pope Sixtus himself downplayed its significance.²² These theologians argued that since the triple contract constituted a business partnership, not a loan, it could not properly be described as usury. However, the Spanish Church held a more expansive definition of usury and continued to condemn triple business contract because of the inequitable risk-sharing between partners, one of the underlying reasons why the Scholastics found usury to be sinful and unjust in the first place. As such, the Inquisition could prosecute Echavarrieta for heresy.

The above case fits a much-researched pattern of inquisitional censorship of heretical published material, but the second case is more useful for understanding everyday understandings of usury because it involved a denunciation of Spanish businessmen and

¹⁹ Diego de Simancas, 1552, cited by Henry Charles Lea, *A History of the Inquisition of Spain, Vol. IV*, (New York and London: The Macmillan Company, 1907), 157.

²⁰ AGN, Inquisición, Vol. 536, exp. 75, fs. 6, 1698. The manuscript is lost, but it is further evidence that New Spain's ecclesiastics were also engaged in questions about economic justice.

²¹ An increasingly common practice in the late 16th century, triple contracts consisted of two equal partners drawing up 1) an investment contract, 2) an insurance contract on the amount of the investment, paid for by the investor out of his investment profits, and 3) an insurance contract on a specified return on the investment.

²² John T. Noonan Jr., *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching*, (Notre Dame, Ind: University of Notre Dame Press, 2005), 139-140.

officials.²³ In 1770, Veracruz resident Don Pablo Félix Cabrera reported a document that formed part of a property dispute case filed by Don Manuel Arroyo against Don Bernard Rodríguez del Toro. In the civil case, Arroyo had attempted to delegitimize the property contract by arguing that it was usurious.²⁴ The document in question, signed by Don Manuel de la Rosa y Castillo, an Audiencia Procurador, and Don Francisco Vizadias, a friend of Del Toro, included the claim that “usury is customary in [Veracruz], and as custom has the force of law, usury is licit and not sinful.” It is telling that by 1770, an Audiencia Procurador felt it both safe and legally effective to argue that usury was not only licit by law but morally and theologically acceptable as well. But Cabrera saw an opportunity and denounced Vizadias and Castillo to the Inquisition. The possibility that one might also be dragged before the Inquisition likely encouraged defendants and their lawyers to avoid arguments about the strict legality of usury, which would have opened them up to prosecution in jurisdictions less lenient toward usurers.

But why did plaintiffs avoid invoking the charge of usury? In civil cases, it seems that whatever the personal beliefs of the justices, the burden of proof was often too high to prove the defendants’ intention to commit usury. In 1749, Don Manuel de Villasenor, a Spaniard, argued before the Alcalde de Crimen that he should be released from a debt he owed to Don Juan de Barrieta, the owner of the *pulperia* (corner store) near the Puerta de Coliseo.²⁵ Due to an emergency, Villaseñor recalled, he had found it necessary to pawn off a number of valuable

²³ Richard Greenleaf finds that the Inquisition in the 18th century focused overwhelmingly on censoring works of political philosophy, which likely included references to the new economic thought emerging from Europe. “Historiography of the Mexican Inquisition,” in *Cultural Encounters: The Impact of the Inquisition in Spain and the New World*, eds. Mary Elizabeth Perry and Anne J. Cruz, (Berkeley: University of California Press, 1991), 257. For more on censorship in New Spain, see Martin A. Nesvig, *Ideology and Inquisition: The World of the Censors in Early Mexico*, (New Haven, Conn.: Yale University Press, 2009). He argues generally that the Inquisition’s efforts to censor reading material were not as effective as has been assumed.

²⁴ AGN, Inquisición, vol. 1155, exp. 10, fs. 516-531, 1770. The civil case is lost, but we can infer that there had been charges of usury.

²⁵ AGN, Alcalde del Crimen, Civil, caja 24A, exp. 9, 8 fs. 1749.

items, including pearl earrings, a cooking pot, a gold ring, and clothing totaling 234 pesos in value. Barrieta, in turn, extended a loan of 21 pesos and 4 reales at an “unequal and excessive interest” of 25 percent, which was well above the 5 percent deemed acceptable by law.²⁶

Villaseñor asked the court to release him from his obligation to repay the principle, and to command Barrieta to pay the cost of the court case, to return the pawned items, and to pay forward any income he had made off of the sale of the pawned items no longer in his shop.

Barrieta did not directly dispute the charge of usury or suggest that usury itself was acceptable, perhaps to avoid a possible inquisitorial denunciation. Instead, he and his lawyer made a procedural argument. “Usury,” he stated, “is not very easy to prove in the narrow terms of the *via executiva*,” a proceeding that required written proof.²⁷ But Villaseñor was able to produce a *memoria* as proof of the usurious agreement.²⁸ The judge on the case, Don Joseph Osorio, ordered Barrieta to repay the principle plus interest (49 pesos) and embargoed his person and goods as “punishment for his crime.” The judge also speculated that Barrieta had known all along and “with certainty that Villaseñor would never be able to satisfy the debt,” and therefore Barrieta’s ill-gotten gains consisted of not only the interest but the sale of the items as well. But Barrieta’s intentions could not be proven, and the charge of usury was not enough to void the entire contract as Villaseñor had requested, so Villaseñor attempted to follow up on the return of his sold items in another jurisdiction. Barrieta once again chose to pursue a procedural strategy,

²⁶ Jane Mangan describes pawn shops as an important source of liquidity and micro-financing in Spanish America. *Trading Roles: Gender, Ethnicity, and the Urban Economy in Colonial Potosí*, (Durham, N.C.: Duke University Press, 2005), 111 and Ch. 4 on urban sources of credit.

²⁷ The *via executiva* required that “every fact be patent upon the face of paper” and that “nothing be left to conjecture.” “Kreiherr vs. Theisman Estate,” *The Southern Reporter*, Vol. 51, 657. From Black’s Law dictionary, a *via executiva* is an “Executory process whereby the debtor’s property is seized, without previous citation, for some reason specified by law, usu. because of an act or title amounting to a confession of judgment.” Henry Campbell Black and Bryan A. Garner. *Black’s Law Dictionary*, Tenth ed. (St. Paul, MN: Thomson Reuters, 2014).

²⁸ The *memoria* includes the actual value of each item, a description of the item, whether the item had already been sold and to whom, the amount that would be paid to Villaseñor, and the amount that he would have to pay to get the item back, which in each case, is indeed 25 percent of the amount paid to Villaseñor.

submitting evidence that the case had already been decided and carefully noting that the judge had already “reproached me at that time for the supposedly iniquitous interest and the sold valuables.”²⁹ As such, he argued, the case really should not take up any more of the courts’ time in “digression and constant litigation.” His procedural tactic seems to have worked, as the record ended there.

What can we take away from this case about usury in civil courts? First, given the expense of trial and the high burden of proof, it is no wonder that stand-alone usury cases are so rare, especially if interest rates were agreed upon verbally or hidden within other forms of contract.³⁰ Even if a case came before a judge and there was clear, written proof of usury, the judge would strike down the usurious parts of the contract, but leave intact the remainder of the contract. As for the usurer, they seemed unlikely to suffer punishment or loss beyond restitution of the interest and possibly the principle. This is in keeping with theologically-based prescriptions for punishing harm that could be repaired. Aquinas, for example, believed that theft did not deserve death, not because it is not a mortal sin, but because the punishment was medicinal. One could repair the harm done simply by returning the thing.³¹ Even justices like Osorio who did regard usury to be a crime were limited in how they could respond. In the end, Barrieta escaped with not much more than a slap on the wrist, having made a net profit off the sale of the pawned items. Plaintiffs like Villaseñor who hoped to be released from the entirety of their debt were unlikely to succeed by alleging usury.

²⁹ He claimed *litispendencia*, or collateral estoppel, which prevents re-litigation. Barrieta gestured toward the rationale behind the concept, that re-litigation sapped judicial resources.

³⁰ It seems surprising that Barrieta would have consented to a written contract that so clearly proved usury. Perhaps he thought it unlikely he would be caught or prosecuted. In that case, he might have felt it riskier to proceed without a written contract to protect his loan. Or perhaps competition from other pawn brokers gave Villaseñor the power to set more favorable terms, though given the interest rate that seems unlikely.

³¹ Aquinas, *Summa Theologica*, II-II, 66, vi, ad. 2. Luis de Molina also argued that the thief or usurer had no responsibility to pay back the profit they made off of money they stole. They were only required to retribute what they stole. *Sourcebook*, 178.

Usury and the Repartimiento

The Scholastics recognized the advanced sale of goods as potentially usurious because the exchange comprised both a sale, which might simply be unjust, and a loan, which could carry a usurious rate of interest.³² Critics of the repartimiento also argued that it amounted to the theft of another person's industry, one of the oldest critiques of usury.³³ They alleged that laborers worked hard only to fall into debt, while creditors received more for their loan than was justified by their effort or risk. Finally, while the language of usury did not always appear in every or even most cases regarding the repartimiento, the mid-18th century cases that follow make explicit the connection between usury and repartimiento loans that is only subtext in other cases. Under this contemporary, expanded definition of usury, the archive is full of cases in which everyone from indigenous debtors to clerics to judges criticized the practice of lending at interest.³⁴

As various historians have noted, the Hapsburg Crown failed to systematically enforce the long-standing prohibition against the repartimiento.³⁵ Throughout the 17th century, indigenous people and ecclesiastics frequently reported *alcaldes mayores* for their abusive and fraudulent activities, and the Crown responded by enacting and reenacting prohibitions against the repartimiento. But as the very officials tasked with enforcement were also the practitioners of the repartimiento, "there was no one to execute the provisions of the Reales Cédulas."³⁶ During the first 30 years of the Bourbon reign, the Crown continued to receive and solicit reports from

³² Lasheras, *Luis de Molina's De Iustitia Et Iure*, 160-161.

³³ Monsalve, "Usury," 220.

³⁴ Some examples of criticism include: AGN, Indios, vol. 9, exp. 337, fs. 168. 1621. Vol. 9, exp. 331, f. 165. 1621. Vol. 15, exp. 16, f. 13v. 1648. Vol. 33, Exp. 63, fs. 31r-34v, 1695. Vol. 36, exp. 55, fs. 58-59v. 1703. Vol. 36, exp. 55, fs. 58-59v. 1703. Vol. 37, exp. 24, fs. 19v-23. 1708.

³⁵ Baskes attributes this failure to a lack of royal will because the Crown benefited from the repartimiento in certain ways, *Indians, Merchants, and Markets*, 39-40. Hamnett, however, lists the many 17th century laws passed by the Crown to curb the repartimiento and argues that the failure was more a lack of ability than will, *Politics and Trade*, 11-20. The Hapsburg Crown favored a more piecemeal enforcement strategy in all arenas of policy, so it is not clear that this hands-off approach says much about their attitude toward the repartimiento.

³⁶ Hamnett, paraphrasing Bishop Juan de Palafox y Mendoza, *Politics and Trade*, 12.

New Spain about the excesses of the repartimiento and its effect on the Real Hacienda, but still mostly in a piecemeal way. In the 1730s, however, several regional governments legalized the repartimiento, including in Puebla and Yucatán. Officials in both places issued a new set of regulations that were more permissive of the repartimiento de mercancías, but still sought to curtail its worst excesses.³⁷ Officials made it clear that the extension of loans at a reasonable interest rate was allowable, even managing to gather the support of clerics in some cases

It was not until May of 1751 that the Crown decided to legalize the repartimiento across the viceroyalties, providing better oversight in order to curb the excesses of the *alcaldes mayores*, mainly violence, fraud, and soaring interest rates. While the *cedula* argued that these excesses would lead to “the total ruin of these dominions,” the *cedula* also recognized the usefulness of the repartimiento system of credit itself, noting that “if [the *indios*] are not forced...to take advanced pensions,” they would choose not to work “as they are naturally inclined toward laziness, drunkenness, and other vices.”³⁸ The *cedula* declared that “if these benefits that the *corregidores* and *alcaldes mayores* facilitate were to cease, it would ruin [these dominions].” The Crown believed that legalization paired with renewed oversight would control the *alcaldes mayores*, and the *alcaldes mayores* would control indigenous labor.³⁹

The two cases that follow suggest that usury, fraud, and violence continued as always in the wake of legalization. In this way, these cases are largely representative of the manner in which indigenous producers experienced the repartimiento, but they also offer unique insights into how people on the ground in central New Spain understood just price, interest, and lending.

³⁷ The Spanish government authorized Yucatán governors to practice the repartimiento in 1731. Patch, *Maya and Spaniard in Yucatan*, 91. The Tlaxcalan government did so in 1735. AGN, Civil, Vol. 1663, exp. 9, pg. 129.

³⁸ AGN, Subdelgados, vol. 34.

³⁹ The *cedula* called on *alcaldes mayores* and parish priests to explain how each repartimiento worked. Baskes, *Indians, Merchants, and Markets*, 43, cites responses in AGN, Subdelgados, vol. 34 and 45.

Both cases demonstrate the ways in which the repartimiento expanded along already-existing social networks and relationships, the nature of which could transform the meaning of the repartimiento transaction for the involved parties. Without understanding the rich relational context in which the repartimiento existed, historians cannot understand the ways in which the repartimiento was received and understood by the indigenous, casta, and Spanish people who participated in it.

Tampamolón

Just five years after legalization, an ecclesiastical judge from the rural jurisdiction of Tampamolón in the Huasteca region brought a case of usury before the archdiocese' attorney, the *promotor fiscal*.⁴⁰ Brother Don Joseph Miguel Pereli accused an alcalde mayor, an indio cacique, and other unnamed “men of commerce” of drawing the indios of the jurisdiction into a “usurious” contractual relationship, which in no way “served good governance” but instead contravened all “divine, natural, and human laws.” The alcaldes mayores stood accused of buying cheap and selling dear, as well as of “buying time” by lending a quantity of reales in exchange for an anticipated harvest of piloncillo, an important cash crop in the Huasteca.⁴¹

According to witnesses on both sides of the dispute, every August for the past twenty years, the repartidores paid indigenous producers 3 pesos per load of piloncillo to be delivered by

⁴⁰ AGN, Criminal, vol. 622, exp. 11, fs. 241-370. Though this case appears in the AGN under Criminal, it was prosecuted mainly in a regional ecclesiastical court with input from Mexico City's Audiencia. Its location is due to the fact that many ecclesiastical court documents were confiscated as part of the 1850's anti-clerical reforms. Madigan, “Law, society, and justice in Colonial Mexico City,” 7.

⁴¹ Matt O'Hara references this case in his recent published study of how early modern Spanish Americans thought about time and the future. *The History of the Future in Colonial Mexico*, 110-115. For regional context, see Antonio Escobar Ohmstede, *De la costa a la sierra: Las huastecas, 1750-1900*, (Mexico City: Centro de Investigaciones Superiores en Antropología Social, 1998); and Escobar Ohmstede and Ricardo A. Fagoaga Hernández, “Indígenas y comercio en las Huastecas.” *Historia Mexicana*, 55 no. 2 (2005): 333-417.

the next harvest, which took place from January through May.⁴² The repartidores extended this credit expecting to sell the piloncillo at a rate of 8 pesos in the spring or even higher. The previous year, for example, scarcity had driven harvest prices to nearly three times the amount that the repartidores had paid in anticipation, meaning that the repartidores received interest on their investment at a rate of nearly 300 percent, astronomically higher than the acceptable 4-12 percent.⁴³

Multiple witness mentioned that the practice first began with an alcalde mayor named Don Joseph de Reñalva, who first “invented” a way to create investment capital by exploiting his official position as tribute collector.⁴⁴ Most years, the indios could not pay all their tribute in reales, so their only option was to hand over tribute in the form of pilón. Both legally and in terms of negotiating power, the alcalde mayor could value the pilón at whatever price he wished, setting the price at 3 pesos per load.⁴⁵ In 1757, one witness explained, the indios of the pueblo of Huehuetlán still owed the royal treasury 1450 pesos.⁴⁶ Valued at 3 pesos, 1450 pesos worth of pilón came to 483 loads of pilón. The alcalde mayor then turned around and sold those 483 loads

⁴² A load was equal to 300 pounds according to Alfredo Delgado Calderón in *Native Peoples of the Gulf Coast of Mexico*, eds. Alan R. Sandstrom and Hugo García Valencia, (Tucson, AZ: University of Arizona Press, 2005), 287. Check on this, Patch defines a load as 84-97 pounds, *Maya and Spaniard*, 77.

⁴³ *The Siete Partidas*, translated by Samuel Parsons Scott; edited by Robert I. Burns, (Philadelphia, PA: University of Pennsylvania Press, 2001), Vol. IV, xl.

⁴⁴ AGN, Criminal, vol. 622, exp. 11, 2. Reñalva was not the first public servant to use tax farms as liquidity in order to make investments and generate profit. This practice was, in fact, common and accepted. Historians Regina Grafe and Alejandra Irigoin describe how merchants generated a capital base by undertaking the transfer of situados, or fiscal funds transferred from wealthy viceroalties to struggling ones. Merchants would use the funds to buy up goods in places like Mexico City and then sell them at a profit in places like Cuba, where prices were high due to scarcity, thereby expanding the empire’s fiscal base and “[channeling] capital into the fastest growing regions and sectors.” But alcaldes mayores who brought in tribute in goods had not only the authority to collect tribute but the de facto authority to set the true tax rate far above the legal tax rate. Merchants transporting situados did not have a similar ability to set the tax rate.

⁴⁵ Baskes argues that alcaldes could set prices so low because they had no competition. It is very likely that competition was highly limited, but in Puebla and Tampamolón, it is also clear that the alcaldes are not the only repartidores, so why did August prices remain static? Given the very limited number of local merchants “competing” for pilon, it would not have been difficult to collude to keep prices low. In fact, a static August valuation might amount to proof of collusion. *Indians, Merchants, and Markets*, 102.

⁴⁶ AGN, Criminal, vol. 622, exp. 11, 112.

of pilón at 9 pesos, the harvest time market price, for a total of 4,347 pesos. But as only 1450 pesos were owed to the royal treasury, a cool 2,898 pesos disappeared into the alcalde's personal coffers without denying the king a penny of his tribute, at least on paper. Those indigenous people who had not raised pilón that year, or not raised sufficient pilón, became indebted to the alcalde.⁴⁷

Some of the later Scholastics considered it licit for officials to use tax revenue "float" to invest in their own ventures. Luis de Molina argued that the official "may certainly keep the extra charge as the fruits of his ingenuity, even if for obtaining it he may have taken someone else's money as an instrument to do so." He reasoned that the official's situation differed from one who takes fruit off of a tree that belongs to someone else because the official's margin was a consequence of his ingenuity, not of the money itself.⁴⁸ The injustice was not in Reñalva's use of the tribute revenue, but in the fact that he deliberately undervalued the pilón. Pereli argued that these practices amounted to usury because, "as Bishop Montalbán wrote in his pastoral letters...it is manifest usury to buy things at a lower price than their just price."⁴⁹ Reñalva's "ingenuity" caused the indios to pay twice the amount of tribute that they would have if the

⁴⁷ Baskes argues that the repartimiento was not coercive, but he underestimates the extent of the connections between tribute payment and the repartimiento. He argues that alcaldes mayores were actually incentivized to reduce tribute payments since that freed up the indios to repay their repartimiento debts. Yet, the alcaldes had access to what amounted to an interest-free loan between the time they collected tribute and when they had to deposit it, which would incentivize them to keep tributes high. Finally, he cites evidence that alcaldes in Oaxaca strongly preferred indios to pay tribute in goods rather than coin but does not explain why. The coercive practice of profiteering in Tampamolón explains this preference perfectly. *Indians, Merchants, and Markets*, 37. For an analysis of the repartimiento and the role of the alcalde mayor in that practice, see Danièle Dehouve, "El crédito de repartimiento por los alcaldes mayores: Entre la teoría y la práctica," in *El crédito de la Nueva España*, ed. María del Pilar Martínez López-Cano y Guillermina del Valle Pavón, (Mexico City: Instituto Mora, El Colegio de Michoacán, and Instituto de Investigaciones Históricas-UNAM, 1998), 151-175.

⁴⁸ Molina, *Scholastic Handbook*, 179. Mariana was less convinced. He found it troubling that treasurers used revenues to invest in commerce and held off on meeting royal debts for a year or two, *Scholastic Handbook*, 302.

⁴⁹ AGN, Criminal, vol. 622, exp. 11, 3.

alcalde had valued the pilón at 6 pesos, what the local witnesses believed to be the “just price,” and four times the amount had they been able to sell at harvest-time prices.⁵⁰

The archdiocese’ Promotor Fiscal agreed, further arguing that “the money that [the repartidores] give out is meant determinedly for this end and cannot produce for [the repartidores] any other utility.” Therefore, they could not charge interest on the basis of *lucro cessante*, or loss of profit, which the Scholastics considered to be a licit reason to charge interest. In October of 1757, he ordered the priests in all the jurisdiction to hang an edict on their parish’s doors excommunicating any person who was found giving reales to indios, “even under the pretense of help.”⁵¹ In response, Don Gregorio Mendoza, a cacique from Tancanhuitz in the jurisdiction of Tampamolón, submitted a defense of his repartimiento, arguing that the interest price he charged for the use of his credit was just. That a cacique was involved suggests that elite indigenous intermediaries played a central role in the spread of financialization along embedded social networks. One imagines that his built-in access to these social networks may have even given him more successful than an outsider might have enjoyed.

Presented with Mendoza’s defense, the Promotor Fiscal decided to solicit witness testimonies as part of the “substantiation” process, seeking “perfect knowledge of the material” in order to ascertain the “damages and benefits of the business.”⁵² As was standard, Pereli testified to the many ways in these commercial practices contravened justice and harmed the spiritual and temporal republic, especially the república de indios. However, as the investigation unfolded there also emerged a debate about the legality of the repartimiento and the nature of a

⁵⁰ Patch speculates that “it is possible that at times, tribute became merely a branch of the repartimiento,” citing an encomendero who “used his [tax] revenues immediately to carry out repartimientos” and that the “Treasurer of the Tribunal de Indios both arranged for their business on the very days when the Indians had to pay their tax.” He also finds evidence of colonial officials fixing prices that undervalued future goods. *Maya and Spaniard*, 85-88.

⁵¹ AGN, Criminal, vol. 622, exp. 11, 6.

⁵² *Ibid.*, 27-28.

just contract. Did the repartidores take more than was their due? What did the indios deserve for their labor? How could the just price be discovered? Most early modern economic moralistas believed the just price to be the “natural or accidental [price], which use introduces and which is now set in the plazas or stores.”⁵³ Yet, moralistas also agreed that the natural price might be unjust under certain circumstances. Francisco de Vitoria, for example, had argued that the natural price might not be just if the good was essential to life, an external condition which limited the ability of the buyer to consent freely to the price. It is because of this observation that he advocated for a fixed, legal price on certain necessities.⁵⁴ In practice, however, a problem arose in how to identify whether the natural price was the just price or a distortion and therefore unjust. Through an analysis of the testimonies and arguments produced during this case, it is possible to reconstruct how early modern people —most of them unschooled in the principles of price theory— established just price.

There were two prices in question in Tampamolón. Pereli was most concerned about the undervalued August prices, but other witnesses also claimed that the harvest prices were too high, arguing that this inflation kept traveling merchants away. Most of Pereli’s witnesses believed that in the absence of the repartimiento the natural price would be around 5 to 6 pesos per load. One way in which witnesses sought to prove that the natural price was a market distortion was to look at prices in nearby towns where the repartimiento had not taken hold. For example, Pereli pointed out that “indios in Tampacán” who were not yet under the repartimiento “sell at 6 pesos and 4 reales, which they use to pay their tribute, and they have money left over.”⁵⁵ Another witness, himself a repartidor, pilloried others who inflated the price of goods in

⁵³ Mercado, *Suma*, Book 2, Ch. 6.

⁵⁴ Grice-Hutchinson, *Early Economic Thought in Spain 1177-1740*, 94.

⁵⁵ AGN, Criminal, vol. 622, exp. 11, 121.

the jurisdiction, explaining that a merchant would sell “a hat that cost 4 reales in Puebla for 3 pesos in piloncillo [in Tampamolón], which is 12 silver reales...when an indio with these 3 pesos in reales can bring from that city or from Puebla six hats.”⁵⁶

Another strategy used by witnesses was to draw on their experience of prices in the past. Pereli purposefully collected testimony from people who had lived in the region for at least 20 years, long enough to remember a time before the repartimiento allegedly altered the commercial landscape.⁵⁷ These witnesses included people who had an intimate knowledge of trade and agricultural conditions in the area: priests from nearby missions, at least three Spanish ranch owners, and two teachers, including Don Joseph Thadeo Pérez de Avilés, who stated that he had paid particular attention to the commerce in the area because his honorarium came out of what the region produced. These witnesses also put the price of piloncillo before the repartimiento at around 5 or 6 pesos.

Witnesses also constructed a narrative about the jurisdiction’s pre-repartimiento economy in order to explain what they saw as an economic downturn, which they attributed both to unjust August and harvest prices. As was common, Pereli asked his witnesses a flagrantly leading question: “was the annual feria better and more abundant before the introduction of the repartimiento, or now that the regatones are involved and harm follows to the indios.” Witnesses, all over the age of 50, conjured up memories of a pre-repartimiento economy that benefited everyone. A Spanish ranchero, Don Cristóbal Álver, remembered that before the repartimiento,

⁵⁶ Ibid., 68. While this witness does not take into account supply and demand, the Scholastics understood that differences in supply and demand caused prices to vary from place to place. According to Mercado, things “are not valued for anything more than they serve, and they do not serve all men in all places the same because in some places they have a surplus of the [thing] and in other places they have a lack,” *Suma*, Book 2, chapter 6.

⁵⁷ Both sides worked under the assumption that in order to be a good judge of commercial justice, one had to be embedded in the local community and have a long memory. When a witness sought to discredit Pereli, he reminded the Audiencia that Pereli had not been a priest in the region for very many years. The witness suggested that they instead speak to two other priests, one of whom had worked in the region for 78 years and spoke both “Huasteco and Mexicano.”

the indigenous people had “traded their piloncillo, resulting in such earnings that they were known as wealthy indios.” The prospect of wealth, Pereli hypothesized, had in turn spurred the indios to produce more, leading to great abundance.⁵⁸ Soldier-turned-rancher Don Juan Francisco de Barberena estimated that the region had formerly produced up to 100 mil pesos de piloncillo a season before the repartimiento. This abundance, in turn, produced lower prices at harvest time, which brought in merchants from outside the jurisdiction to supply the feria with a great variety of goods. This benefited everyone, one witness remembered, not only indios but “poor Spaniards of middling means” as well. He remembered this period before the repartimiento as a time when “everyone went around with happiness and without these anxieties, whereas now the only people who enjoy the fruit of this land are the repartidores.”⁵⁹

The sentiment that the repartidores had unjustly funneled the wealth of the region into their own coffers and away from the laboring poor was echoed by multiple witnesses. Unprompted, many witnesses described it as deeply unjust that the indios did not receive the fruit of their labor as a consequence of the repartimiento contract. A local Franciscan priest wrote that while the repartimiento endangered the souls of the merchants, “it is much graver for the indios who are the ones who work and gain the least from their work,” a claim that privileged the body of the poor over the souls of the wealthy.⁶⁰ Other witnesses labeled the repartidores “regatones,” a derogatory word typically associated with *casta* petty traders. Regatones were known to live off of the “labor and sweat” of others, drawing from the community a disproportionate amount of wealth relative to what they put into it.⁶¹ Like regatones, the repartidores sucked the vigor out of

⁵⁸ Pereli’s is the precise argument that Bourbon reformers would echo when they ended the repartimiento two decades later.

⁵⁹ AGN, Criminal, vol. 622, exp. 11, 47.

⁶⁰ *Ibid.*, 54.

⁶¹ *Ibid.*, 55.

what witness remembered to have been a commercially thriving region. The repartimiento amounted to a theft of the industry of others, one of the foundational arguments against usury.⁶²

This narrative must have felt especially true and powerful in 1758, just one year after a great hurricane had swept through the region and destroyed much of the corn and pilón crop, leading to even greater scarcity, starvation, and debt. But the recent year's hurricane did not come up in the narratives of Pereli's witnesses. Instead, cacique Don Mendoza and his lawyer, Joseph Antonio Santander used the recent hurricane as evidence that the just price must take hidden risks into account. His lawyer, seemingly well-versed in theories of just price, argued that Mendoza's long experience of the local climate and patterns of illness helped him predict risks particular to Tampamolón and locate a just price that took that risk into account, a kind of compensable ingenuity.⁶³

Santander articulated two interrelated defenses, one procedural and the other based in the principles of economic justice. First, he felt that Mendoza had been unfairly treated and his trade compromised without due process. Alluding to the well-known importance and difficulty of ascertaining motive in cases of usury, his lawyer wrote that "only God could know what was in men's hearts." Judges, on the other hand, needed to do the legwork of compiling witness testimonies from both sides before they could "declare a contract usurious." As we will see, this reference to intention lay the groundwork for a later defense against the charge of usury.

Santander then turned to the argument that the repartimiento contract should be considered just based on the risks involved, a concept already accepted by economic

⁶² Fabio Monsalve, "Late Spanish Doctors on Usury, and the Evolving Scholastics Tradition," *Journal of the History of Economic Thought*, 36, June 2014, 220.

⁶³ While the document is in first person from Mendoza's point of view, it is fairly certain, given the technical nature of the arguments, that Mendoza's lawyer is responsible for the majority of the opinions stated within.

moralistas.⁶⁴ While Santander conceded that the contract did indeed involve the anticipation of price, he argued that it was still a fundamentally equitable contract when one took into account the risk that the repartidores shouldered. As a long-time member of the community, Mendoza could recount the price of pilón in every year since 1750, including its fluctuations throughout the harvest period. He shared that during the first two years, prices had hovered around 7 pesos, but in the next four years it had stayed around four pesos. Taking the average of those six years, the pilón had fetched around 5 pesos and 4 reales, much lower than what Pereli's witnesses reported. The difference in the price he offered in August and the harvest price accounted for the fact that every year, he shouldered the risk that prices might fall due to oversupply, a great risk that not even the producers' "hard work and industry could liberate them from." Mendoza remembered, for instance, that in 1754, pilón had fetched as little as 2 pesos and 4 reales, resulting in a net loss to the repartidores while the indigenous producers shouldered none of the loss that year. Moreover, Mendoza recalled that in some years, earthquakes rocked the province or a flood could wipe out the entire crop, leaving the indios unable to pay their debt. The merchants then had to wait for another year to see their principal, and sometimes as many as "eight or nine years...experiencing many losses upon the death of the debtor."⁶⁵

Finally, like many other repartidores, Santander and Mendoza also considered it an added risk to be working with indigenous producers. He related that sometimes the indios did not turn in the amount of sugar cane that they had agreed to. At other times, they passed off deteriorated pilón as quality pilón by covering everything with the same corn husks. Indigenous producers

⁶⁴ As noted, sixteenth-century Scholastics considered it licit to charge a fee if one party took on certain additional risks in an exchange. These included *poena conventionalis* (in case the borrower does not repay by the agreed date), *damnum emergens* (a loss to the lender because of the loan), *lucrum cessans* (opportunity costs), and *periculum sortis* (the risk of not getting the principal paid back). Monsalve, "Late Spanish Doctors on Usury, and the Evolving Scholastics Tradition," 231.

⁶⁵ AGN, Criminal, vol. 622, exp. 11, 254.

were not victims of unfair trade, he argued, but the duplicitous victimizers. Because of the alleged risks associated with working with indigenous producers, Mendoza related that “in years of abundance, if one ordered 100 loads, at least 20 were left to be paid. And in years of scarcity, one would have great fortune to get back even a half or a third of the repartido.” Thus, even if scarcity drove prices high as in 1757, a repartidor might still not see their full principal return to them, forcing them to spend their time and labor to track down those debts.

His argument, if we were to accept his assessment of the risks involved, was one that the late Scholastic would likely have considered acceptable. They did consider it licit to charge interest under the title *periculum sortis*, or the risk of not having the principal paid back. The interest covered the lender in the event that it became “necessary to incur expenses and inconveniencies to get the money back.” One could even take the trustworthiness of the borrower into account when establishing a price for *periculum sortis*, though given this title, historians should be skeptical of lenders alleging that indigenous people were untrustworthy, as to do so would be a useful strategy for justifying interest on the grounds of *periculum sortis*.⁶⁶ On their telling, a full accounting of the risks that the repartidores shouldered would seem to justify the discrepancy between August prices and the typical range of harvest prices. Yet, even Santander recognized that *periculum sortis* could not justify the huge discrepancy between August prices and the extravagant 1757 harvest price of 9 pesos.

To justify the 1757 price, Santander had one more argument to make, this time on the basis of intention. He conceded that prices had soared to 9 pesos per load in 1757, just as Pereli had said, but the lawyer explained that this was due to scarcity. On the 20th of September, a

⁶⁶ Monsalve, citing Lugo, 1848, 25:76, 1642. Extrapolating from one alcalde mayor’s accounting book, Baskes generally accepts the word of repartidores that indigenous people continuously defaulted on their loans, which he argues legitimates high interest rates, *Indians, Merchants, and Markets*, 120-122.

great hurricane had hit the region at two pm and lasted for twenty-four hours and damaged all of their corn fields, though the sugarcane crop had been saved as it was still in the ground in September. As a result, the indios of the region were forced to sustain themselves on only pilón for “breakfast, lunch, and dinner.” This left little sugarcane to be processed into pilón, so that when the harvest came, the pilón fetched upwards of 7 pesos, going as high as 8 and then 9 pesos towards the end of the season. Santander’s explanation points to a submerged debate over where prices came from. Santander argued that these high prices were due not to the repartidores’ “fraud and depraved intention,” as had been charged, but to the impersonal forces of a volatile climate and supply and demand.

This argument was an innovative challenge to early modern economic moralistas’ understanding of economic actors as “price makers” rather than “price takers” whose choices were dictated to them by a diffuse and amoral market system.⁶⁷ For the Scholastics, there was always an agent responsible for an action, whether divine or human. As a consequence, theorists imagined economic actors to be morally responsible for the prices at which they bought and sold. Historian Fabio Monsalve points out, however, that in some cases, an economic actor might be unaware that an inequality existed in the contract; in such cases, no usurious will existed, and therefore, the contract would not be considered usurious, but only unjust.⁶⁸ The intention of the lender mattered, as Santander well knew. Mendoza could not be accused of usury because he had not intended the interest payment to be immoderate. By attributing the soaring price of pilón in 1757 to the unexpected consequence of natural, external forces rather than to the will of the repartidores, Santander sought to shift responsibility and culpability off of the repartidores,

⁶⁷ Francisco Gómez Camacho, *Sourcebook*, 115. Citing John Hicks, *Causality in Economics*, (Oxford: Basil Blackwell, 1979), 11.

⁶⁸ Fabio Monsalve cites Lugo and Molina on the topic of usurious intention, “Late Spanish Doctors on Usury, and the Evolving Scholastics Tradition,” 219.

redefining them as price takers subject to impersonal forces. If natural events like a hurricane could affect prices, perhaps it was not so strange to consider prices to be generally a result of natural, impersonal forces. The Scholastics would have likely countered that the price that the repartidores offered could still be considered unjust, even if the contract itself was not usurious. Both the Scholastics and officials in Mexico City recognized that natural events caused fluctuations in price, but in the end, it was the seller who chose to set his or her price and profit off of the situation. Santander's innovation was in eliding this moment of intention at the time of the sale.

As a final argument, Mendoza and Santander noted that the repartimiento was the custom of the land, and therefore, to single out any one group amounted to an injustice. This last argument hints at how widespread such financial practices and moral innovations had become.. Even Pereli himself came under scrutiny when the priest of Coxcatlán, Brother Don Manuel de Escobar y Zalida, accused him of engaging in his own form of repartimiento. Escobar y Zalida explained that a poor indio would come to Pereli, asking him to perform the burial or marriage sacrament. Pereli would exchange the sacraments for an undervalued load of pilón and then buy up goods like hats or salt and sell it to the indios for a profit.⁶⁹ “The priest,” Escobar y Zalida quipped, “says that this is usury, but not for him.” In light of this information, Pereli seemed to be abusing his power as an ecclesiastical judge in order to put his competition out of business. While it does not follow that Pereli's narrative or witnesses must have been false because he had a personal stake in the case, it does open up the possibility that his opinion was not representative of the indigenous people whom he purported to protect.

⁶⁹ AGN, Criminal, vol. 622, exp. 11, 68. The secular clergy in Yucatan engaged in similar trade of spiritual goods for future temporal goods. Patch, *Maya and Spaniard*, 82.

Mendoza's arguments made no headway with the ecclesiastical courts, and on October 6, 1758, a judge for the archdiocese of Mexico upheld the ban on the repartimiento on pain of excommunication.⁷⁰ The threat of excommunication, once again, seems to have been terrible enough to have seriously disrupted the repartimiento. Three years later, in 1761, a lawyer named Manuel de Loria submitted a number of appeals "on behalf of the community and of the pueblos of Coxcatlán, Axtla y Tamazunchale" asking that the ban be overturned.⁷¹ Offering further evidence that indigenous borrowers in the repartimiento system did not hold Pereli's opinion, a great number of indigenous leaders were declared to be present for the drafting of the petition, including two who had been present for the archdiocese's decision in 1758.⁷²

The petitioners advanced arguments based in justice rather than the legal arguments which had already failed Mendoza. The ban, they explained, had been the cause of "great harm in the total lack of commerce in region...and inability of the indios to harvest the only product of that region." Loria explained that the indigenous caciques knew that the harm that had come to them could not have been the intention of the ecclesiastical judge, "who had been moved only by his fervent zeal." The case ended when Pereda, the original procurador fiscal, dismissed the petitioners' appeal on the grounds that the indigenous person's "lights are too dim to know what is harmful to him" so he is "unhappily obliged to defend his own harm."⁷³ His response echoed arguments that indigenous people should be defended from exploitation on the grounds that they did not have sufficient reason or agency to make a just contract. To Pereda's early modern mindset, indigenous agency and their exploitation were mutually exclusive.⁷⁴

⁷⁰ AGN, Criminal, vol. 622, exp. 11, 194-196.

⁷¹ *Ibid.*, 209-212.

⁷² *Ibid.*, 197-207.

⁷³ *Ibid.*, 241.

⁷⁴ Matt O'Hara argues that the "agency (of credit-seeking peasants) and [their] vicious exploitation (by traders and middlemen) were not mutually exclusive," neatly incorporating Baskes' argument that indigenous people chose to enter the market with his own observation that they had no choice but to accept credit at exploitative rates of

Puebla

The case in Tampamolón mostly illuminates the positions of ecclesiastics and Spanish stake-holders, Mendoza being the exception. In Puebla, however, it was mestizo, indigenous, and Spanish debtors who appealed to the ecclesiastical courts to take up their case against a prominent businessman, Don Tomás Díaz Varela.⁷⁵ As such, this case allows scholars to access the way in which ordinary people understood the morality of loan-making and usury. Even so, the voices of ordinary people are difficult to hear through the filter of legal formulae. As was common, lawyers elicited certain responses with leading questions that speak more to the concerns of the law than to witness' realities. In Puebla, the procurador asked witnesses what Varela had loaned them, what interest rate he had set, whether he had required insurance, and what the "means of collection" was like, including whether or not Varela had mistreated the witness. These were points of interest that the procurador believed would help him to determine to what degree Varela's repartimiento was just. However, in many cases, the witnesses added information or details for which the procurador had not asked. These were facts that witnesses themselves considered important for determining whether Varela's repartimiento was just. Their concerns point to a popular understanding of commercial justice.

Every witness who testified against Varela in 1769 did state that he charged them three reales for every peso, an interest rate of 37.5 percent, higher than was officially acceptable either by the Church or by 1735 codes governing repartimientos in Tlaxcala, which three priests from the Tlaxcala diocese had signed off on. The witnesses expressed a sense of powerlessness around the

interest. In other words, they were coerced by need to accept such rates. Still, neither he nor Baskes acknowledge the way in which the original alcalde mayor coerced indigenous tributaries into the market through tribute debt and by undervaluing bulk goods. *The History of the Future*, 117.

⁷⁵ AGN, Civil, vol. 1663, exp. 8-9. "Autos criminales seguidos contra D. Thomas Diaz Barela sobre usuras" and "Autos remitidos por el eclesiástico de la ciudad de la Puebla." In both Tampamolón and Puebla, the plaintiff is technically the church. I assume that they claim the church is suffering damage so that the ecclesiastical courts can claim jurisdiction. If the indigenous people were the plaintiff, the case would go to the Juzgado de Indios.

interest payment. One witness stated that he paid the three reales “because only this way would Varela loan the money,” while another said that they paid the interest “because this was what Varela advertised.”⁷⁶ Varela set the rates and they accepted because they had no other choice if they wanted a loan. Despite this sense of powerlessness, it was not the interest rate that drove the first plaintiff to make her accusation, but the conditions of the loan. Witness after witness accused Varela of disregarding the rituals surrounding loan-making that would have mitigated the immorality of high interest rates. They expressed a belief that a loan, even one with a hefty interest rate, might be an act of charity if the lender considered reasonable requests for extensions and if the lender did not require a guarantor or other type of insurance. These conditions were markers of trust and friendship between the lender and the borrower and elevated even a usurious loan to a more moral plane. Varela, on the other hand, mistreated those who could not pay on time with violence and insults. Clearly, he did not extend loans out of kindness and friendship, but out of greed and self-interest.

A peninsular, Varela had come into his fortune by marrying into an already prominent provincial family. In addition to the woolen textiles obraje in Chiautempan that he had acquired through his wife—which became one of the largest in New Spain—his assets included two haciendas, two rental properties, an hacienda, and a *tienda mestiza*.⁷⁷ According to Richard Salvucci, when Varela married in 1772 he had a net worth of 25,000 pesos, which he had increased to 57,000 pesos by 1783.⁷⁸ The archdiocese’ case shows that he also served as an

⁷⁶ AGN, Civil, vol. 1663, exp. 8, 26 and 29.

⁷⁷ A tienda “mestiza” might refer to an establishment run by a ladino, Spanish-speaking indigenous person but owned by a Spaniard. Norma Angélica Castillo Palma, *Cholula, sociedad mestiza en ciudad india: un análisis de las consecuencias demográficas, económicas y sociales del mestizaje en una ciudad novohispana (1649-1796)*, (Mexico: Universidad Autónoma Metropolitana Unidad Iztapalapa, 2001), 251.

⁷⁸ Richard J. Salvucci mentions Varela briefly as an example of entrepreneurship in the area. His obraje had 90 looms. In the 16th and into the 17th century, Puebla and Tlaxcala had been important centers of obraje production, but by the 18th century, textile production had shifted to Querétaro and the Bajío. *Textiles and Capitalism in Mexico: An Economic History of the Obrajes, 1539-1840*, (Princeton, NJ: Princeton University Press, 2014), 86-89.

important source of credit in the province, and at least a portion of his net worth came from charging interest on loans.

On June 13, 1769, María Gertrudis Zenteno filed a claim with the archdiocese of Puebla and related the following events: a few months earlier, Varela had extended her a loan of 100 pesos. She was to pay down the debt at a rate of 6 pesos and 2 reales each week and at an interest rate of 37.5 percent. One week, soon after paying off a little more than 70 pesos, Zenteno found herself short on funds and could only pay 3 pesos and 1 real. The next week, she again was short on funds, so she went to Varela and asked him to alter the conditions of the loan. She would still pay off the entire loan, but at half the previous amount per week.⁷⁹ According to Zenteno, Varela became incensed “and without consideration for the respect due to my estado, he used extremely indecorous words against me.”⁸⁰ Zenteno did not seek to escape payment of the debt or interest, nor did she label the exchange usurious. She simply asked the court to order Varela to accept the new payment plan.

On July 17th Varela first responded to the charge of usury, which the ecclesiastical court charged him with explicitly. He testified that he had done nothing other than levy “the typical commission that was permitted across the province of Tlaxcala, according to custom and the conditions favored by the repartidores, and which is known to the justices.”⁸¹ He also denied that he had insulted Zenteno. In fact, it was she who had become furious with him. However, on July 20th, just three days later, Varela changed his story in an addendum. Perhaps Varela had talked to a lawyer between the two testimonies, because he now calibrated his addendum to comply with

⁷⁹ At that rate, it would have taken her another five and a half months. It is possible that her income stream had changed somehow.

⁸⁰ She was likely a Spaniard. Both her last name and the last name of her husband Miguel Zambrano are of Basque origin and no specific mention is made of her caste (Spanish tends to be the default). *Indios principales* and *caciques* also sometimes elude to their status as well, however.

⁸¹ AGN, Civil, vol. 1663, exp. 9, 4.

the set of civil and social codes governing repartimientos in Tlaxcala.⁸² He testified that he had lent goods, not money; that he had transacted the loan with Zenteno's husband, Miguel Zambrano, not Zenteno herself; and that he had charged an interest rate of 2.5 reales per peso, the legal rate for non-residents that was set by the governors of the province and "allowed by license."⁸³

Unfortunately for Varela, Zenteno and her husband were not the only witnesses that the archdiocese' investigator, Licenciado Juan de Torres Esquivel, found to testify against the merchant. By the end of the investigation, Esquivel had spoken directly to thirteen Spaniards, nine indigenous people, including six who frequently served as fiadores, and three castas. The indigenous inhabitants of Santa María Magdalena Tlatelolco also complained of Varela's "excesses," including claims that he metaphorically "dragged them by the hair" if they did not pay every week, forcing them to run away from their homes.⁸⁴ One Spaniard, three indigenous people, and one mestizo had directly experienced physical violence, and two Spaniards had experienced "malas palabras," or words that dishonored them. But all the witnesses had heard stories and rumors that he mistreated those who did not pay on time, "the indios with the most rigor," though two Spaniards also testified that Varela had beaten another Spaniard to the point of death.⁸⁵

From these testimonies, it is clear that many of the people indebted to Varela resented the way in which he collected the loan rather than the fact of the usury itself. 16th century moralist

⁸² Ibid., 6.

⁸³ When making a loan to someone within the city, the rate was 2 reales per peso. This policy might have been justified as a local protectionist policy to bring more money into the city and privilege the city's merchants, but it might also have been in recognition of the higher risk that merchants took on when doing business with outsiders. An outsider from another jurisdiction would be more difficult to bring to justice and might not have been plugged into local networks of trust, reciprocity, and honor. Ibid., 129.

⁸⁴ This may be a turn of phrase. Burns cites a treatise writer who says witnesses sometimes must be metaphorically "dragged by the beard" if the notary wants to anything out of them. *Into the Archive*, 33.

⁸⁵ AGN, Civil, vol. 1663, exp. 9, 9.

Tomás de Mercado would have also disapproved. Mercado recognized that a lender had a right to repayment and even to charge a penalty if the debtor did not repay the loan after a certain amount of time, though Mercado gave an example of “two or three months,” not the immediate turn-around that Varela expected. Even then, one should apply the penalty with “integrity and sincerity, moderation and simplicity.”⁸⁶

Varela did not often honor these customary, subtle rituals around extending and collecting a loan that made lending not only acceptable but virtuous, even with an interest charge. This understanding is particularly clear in the first testimony of the town’s teacher, Matheo Aguilar. Aguilar also owed Varela a decent amount of money, but he described his experience as wildly different from that of the indios or Zenteno. Varela had extended Aguilar a loan of 18 pesos at the 37.5 percent interest rate, which the poor teacher had used to purchase humble clothes for himself and his wife, María Anna López.⁸⁷ Varela had also never required any kind of insurance or pledge, such as requiring a guarantor to sign for the loan. As to the mode of collection, Aguilar stated that Varela allowed him to pay back the debt at whatever rate was “comfortable” and would not “indispose” him. On weeks when Aguilar could pay nothing, Varela would sometimes even freely give him a half real. Aguilar did allow that he did “not know whether [Varela] would give or collect a loan this same way for everyone, or if this is a special charity that Varela has for him, attending to his poverty.”⁸⁸ Even though Varela had charged a hefty interest rate, Aguilar considered the loan to be an act of charity because of the conditions of the loan. The exchange was transformed by the social rituals surrounding it.

⁸⁶ Mercado, *Suma*, Book 5, Ch. 10.

⁸⁷ He noted carefully that his coat was cheap and his wife’s clothes were indigenous-made rather than expensive imported goods.

⁸⁸ AGN, Civil, vol. 1663, exp. 9, 14. Aguilar testifies again a year later. While the facts of his personal experience do not change, he does then admit directly that he has heard that Varela is violent toward other debtors, rather than simply insinuating that others might have had a different experience. Perhaps once the damage had already been done to Varela’s reputation, Aguilar felt freer to be honest. AGN, Civil, vol. 1663, exp. 8, 10.

Another Spanish debtor, Don Juan de Iglesia, also reported that he had never been mistreated, though he had heard that Varela had mistreated others “because they have not completely satisfied that which they should give.” He seemed to suggest that it was the debtors who took advantage of Varela’s kindness and drove him to violence. Iglesia also understood Varela’s loans to be virtuous, stating that he “did not know if Varela has asked for insurance on the *caridades* (charities) that he gives to people.”⁸⁹ Like Aguilar, Iglesia understood the loan, despite its usurious interest rate, to be an act of charity. In contrast, an indio from Santa María Magdalena Tlatelolco, Juan de la Cruz, also maintained that he had never been treated poorly, but he did not consider it a result of Varela’s charity. Rather, Cruz explained that he “always tried to have all of his payment when he went to Varela’s house” because “he knows, and it is public knowledge throughout the repartimiento, that [Varela] has mistreated several people with works and words, so that people already fear him, because he permits neither excuses nor pleas to wait just one week [for payment].”⁹⁰ Once again, Varela had engendered public ill will not for his interest rates but because he exhibited no flexibility of the kind that might exist between friends.

Like Mendoza in Tampamolón, Varela defended himself not from a position of pragmatism, but on the basis of existing economic theology about calculating risks and transportation costs the calculation of a just contract. He referenced the many recent negotiations in the courts over whether to keep or end the repartimiento, “popularly called *macehualpa*.”⁹¹ It was decided in the course of these negotiations that, taking into account the distributor’s labor

⁸⁹ AGN, Civil, vol. 1663, exp. 9, 13.

⁹⁰ Ibid., 27.

⁹¹ *Macehualpa* is from *macehualli* (or commoner) with the suffix -pa, which means times, as in “there were three times as many.” So “commoner times many,” which is a sensible translation for repartimiento. This translation does not come up in the University of Oregon’s Nahuatl dictionary or in Alonso de Molina’s dictionary and might have only been in use in this province.

and the risks inherent in the transportation of goods, repartidores might charge an interest rate of 2 pesos in reales for those inside the city, and 2.5 for those outside of it. Of course, this justification broke down if a creditor dealt in money only. No transportation was required to loan money, so to charge interest on such a loan put Varela into dangerous territory. Though Varela swore that he had abided by the “customs of this land,” dealing only in goods at the legal interest rate, he also explained that even the “moralistas” had taken into account factors such as the “danger to capital,” the “work of collecting the loan, and of writing and contracting it,” and the cost to the capitalist of “reserving the money.”⁹²

Curiously, Varela failed to acknowledge that not all of the debtors were indigenous. In fact, Zenteno, the very first plaintiff, was Spanish. To do so would have complicated Varela’s narrative as he tapped into deeply held beliefs about the economic behavior of the poor and vulnerable, two adjectives frequently ascribed to indigenous people. He reiterated the common line that indigenous people, “because of their misery, dejectedness, and their need, some will be very worthwhile, while others will be badly influenced...to inconvenience their masters whom they serve, or their benefactors, and creditors.”⁹³ As 16th and 17th century treatise writers had explained, “poverty forces man to do what he would otherwise not.”⁹⁴ This suggests that early modern people understood indigenous peoples’ perceived economic untrustworthiness and naiveté to be conditional traits rooted in economic poverty. Yet, at the same time, early modern

⁹² AGN, Civil, vol. 1663, exp. 9, 41. This is true, in part. Mercado agreed that interest might be charged for the “time [investors] have occupied their money in [a venture] until it is taken out,” *Suma*, Book 2, Ch. 7. He also agrees in cases where the lender loses out on time-dependent profit, or for *lucro cessante*, with the caveat that one would have to prove that they would otherwise be able to make a “lawful and possible gain.” If you were about to put that money into some other business “that was not also a loan” and you were probably going to make money, then you can ask for interest, but up front, not emergent during the loan. And it should be a moderate rate not extreme. He also says that *lucro cessante* is a “very rare condition in human affairs,” as “everything in the future is so uncertain.” It is generally better to be safe and not charge interest, *Suma*, Book 2, Ch. 10.

⁹³ AGN, Civil, vol. 1663, exp. 9, 34.

⁹⁴ Francisco Del Rosal, *Origen y etimología de todos los vocablos originales de la Lengua Castellana*, Biblioteca Nacional de Madrid, manuscrito Ms. 6929, 1601-1611.

people considered social mobility to be dangerous, meaning that indigenous peoples' economic conditions could not, and should not, be changed.

The ecclesiastical tribunal did not find these arguments persuasive and issued an excommunication order for Varela. They also relieved the debtors of their obligations. And again, like Mendoza in Tampamolón, Varela's most effective strategy was procedural. In late October, his lawyer petitioned the Audiencia in Mexico City to force the Ecclesiastical Tribunal to remit the case to the Real Audiencia, arguing that "the violence that the ecclesiastical judge inflicts in inhibiting the royal judge [from prosecuting the collection of debts] is notorious."⁹⁵ An Audiencia judge agreed that the case —described by Varela's lawyer as solely a matter of debt collection —was *mere profana*, or purely secular, and he sent for the files.

A year later, however, the audiencia's judge had issued no resolution, and upon interviewing a new set of witnesses, the *vicario general* of the ecclesiastical court found that Varela persisted in committing usury. The court discovered two new facts: first, Varela clearly knew that his repartimiento de reales was against the law, evidenced by the fact that he wrote "*ropa*," or clothing, on his contracts in order to disguise the real nature of the exchange. Many of the witnesses could not read, and it was only when they produced their *papel*, or contract, that they learned what was written there. In creating a contract, Varela found himself in the same position as Barrieta, the pawn shop owner. He needed a written record of his loan in order to ensure his legal claim to collect, but he also needed plausible deniability given the illegal nature of his business. Varela solved his dilemma by lying on his contracts, an act facilitated by the fact that so many of his debtors could not read.

⁹⁵ Ibid., 115.

The second pattern the judges uncovered was a network of lending in which indigenous fiadores and indigenous leaders played an intermediary role, similar to what Jeremy Baskes finds in Oaxaca. Typically, a fiador took no part in the loan unless the debtor later became unable to repay their debts. In Puebla, however, indigenous men and women acted not just as fiadores, but as intermediaries between Varela and their friends and neighbors. The most active fiadora seems to have been an indigenous woman, also called María Gertrudis.⁹⁶ She took out a loan directly from Varela on behalf of at least five other people in addition to herself, sometimes even retaining the physical contract. Each week, she collected and delivered the payment to Varela herself, never once missing even a part of the amount.

It is unclear why such an arrangement came about. Unfortunately, the procurador was decidedly uninterested in the intermediary fiadores and asked no further questions about the practice, a silence suggesting that such an arrangement was common.⁹⁷ There is no evidence that any of the fiadores received any monetary compensation for their efforts, but these would not be the first indigenous intermediaries to gain some benefit out of their community's exploitation, and given the identity of the interrogator, it surely did not benefit the fiadores to be forthcoming about their own questionable lending practices. On the other hand, one intermediary fiador described those he obtained loans for as his "friends," suggesting that he acted as fiador as a matter of "favor and affection."⁹⁸ Perhaps the debtors found Varela too volatile to approach themselves, given his notorious reputation for violence. In that case, Varela needed Gertrudis' connections to reach a larger pool of borrowers. It is also possible that Varela had deemed the

⁹⁶ She is distinguished from the first María Gertrudis by her husband's name.

⁹⁷ Baskes does not mention any women fiadores, nor does he mention evidence of intermediaries operating on these smaller scales. He also finds no clear rationale behind the practice on the part of the indigenous community, though he notes that it benefited merchants to deal with one principal debtor rather than many. The indigenous principal could also be counted on to help enforce debt collection. *Indians, Merchants, and Markets*, 24.

⁹⁸ AGN, Civil, vol. 1663, exp. 8, 27. *Siete Partidas, Vol. 4, Family, Commerce, and the Sea: The Worlds of Women and Merchants*, Partida V, introduction.

women and men to whom the fiadores lent to be too risky to receive a direct loan. In that case, Gertrudis and the other fiadores mobilized their own social capital and credit-worthiness to overcome risk or trust barriers to secure lines of credit for their community. Such an act, despite the high rate of interest involved, would certainly have been considered charitable. Her relationships with Varela and their own community transformed a potentially risky and dangerous exchange into a tenable arrangement.⁹⁹

Under investigation once again, Varela reached out to the Audiencia Real to complain about the excommunication order. In a deeply spiritual society, to die while cut off from the sacraments of communion and last rites not only jeopardized one's soul but also had tangible social consequences. To be excommunicated prohibited one from acting as a godparent in baptisms and from participating in *cofradías* and guilds. Excommunication therefore cut people off not only from the spiritual community but from rituals that reinforced social and financial networks as well. Finally, excommunication sullied one's honor in a society where performing one's religiosity publicly was paramount.

In addition to any spiritual repercussions, the damage done to Varela's public honor and reputation was high. Public opinion turned against him. Whereas witnesses had described the interest as a commission (*premio*) a neutral if not positive term, now some of these same witnesses began to call it a "*usura*." A number of local Spaniards, including some who had worked with and for him, denounced him for his "usurious business dealings."¹⁰⁰ During the course of the trial, other local men were also denounced as usurers, and Varela probably faced

⁹⁹ This is an example of how "capitalism operates through [society's] imbrication." Pushing back on Karl Polanyi, Konings argues that financialization progresses by becoming embedded in social relationships. Martijn Konings, *The Emotional Logic of Capitalism: What Progressives Have Missed*, (Stanford, CA: Stanford University Press, 2015). Karl Polanyi, *The Great Transformation: The Political and Economic Origin of Our Time*, (New York: Farrar & Rinehart, 1944).

¹⁰⁰ AGN, Civil, vol. 1663, exp. 8, 15.

their ire as well for bringing increased attention to the region's questionable commercial practices. At one point the vicario general even noted that Varela had been expelled from his guild, writing that the process of "separating the usurer from his Guild...was sufficiently expedited by the efforts of the ecclesiastical jurisdiction."¹⁰¹

The fiscal of the Audiencia Real again agreed that the case belonged in his court, and he commanded the ecclesiastical judge to remit all files. He also asked that the bishop to lift Varela's excommunication for 60 days while the Audiencia sorted out their resolution, more evidence that the excommunication had caused Varela anguish. Throughout the back and forth of the proceedings, both the teniente of Tlaxcala who wrote to the Audiencia on behalf of Varela and the Audiencia studiously avoided any judgment of Varela's actual business dealings. They kept their discussion of the case to matters of jurisdictional overreach. But when they won the jurisdictional issue, they sat on the case, despite agreeing to continue the investigation. Given the overwhelming and convincing evidence that the ecclesiastical procurador had collected, it is likely that the Audiencia and the teniente were fully aware of Varela's crimes and simply did not care to prosecute further.

The vicario general responded again by agreeing to remit the files to the Audiencia, but he had one final rebuke to offer. He stated that the ecclesiastical court had investigated,

not in order to judge the quality of the contract, nor for any other intention which would belong more appropriately to the royal jurisdiction, but only in response to the naked excess that naturally separates one from the communion of the faithful and of the altar, which no one may take part in who only wishes to enrich themselves with what belongs to their neighbors.¹⁰²

¹⁰¹ Ibid., 65.

¹⁰² AGN, Civil, vol. 1663, exp. 8, 63.

His distinction between matters of contract and of communion was strikingly at odds with the content of the investigation. As we have seen, the ecclesiastical procurador had indeed been interested in the quality of the contracts as he went about questioning witnesses; it was the excessive quality of Varela's contracts that had the effect of separating him from God. Even as the vicario general argued that he had not overstepped jurisdictional boundaries, he reinforced the idea that the quality of contracts had spiritual dimensions.

The End of the Repartimiento

The experiment to legalize the repartimiento ended in 1786 when the Crown issued the *Real Ordenanza de Intendentes*, establishing more direct control over New Spain's provinces through the position of the *intendente*. In a bid to disrupt powerful local interests, intendentes tended to be born in Spain, and they were charged with managing the treasury of several provinces and overseeing the *alcaldes mayores*. Article 12 of the *Ordenanza* also took direct aim at traditional economic systems and practices, explicitly prohibited the repartimiento with the understanding "that the Indians and my other vassals of my dominions are free to trade wherever and with whomever it suits them, in order to provide themselves with everything they may need."¹⁰³ The Bourbon reformers continued to believe that the one of the most important roles of the Crown was public provisioning, with the necessary implication that *need* was prior to some general notion of simple demand. But the architects of the 1786 ordinances reasoned that needs would be better fulfilled if "public provisions be auctioned off for their just value, and second, that they are had for the most convenient price." For this reason, they considered it

¹⁰³ *Real Ordenanza para el establecimiento é instrucción de intendentes de ejército y provincia en el Reino de la Nueva España*, de orden de Su Magestad, Madrid, año de 1786, Article 12.

“indispensable to avoid the leagues and monopolies that typically exist inside and outside of ayuntamientos,” chiefly the repartimiento.¹⁰⁴

The Crown argued that a more just and productive trade would be secured by new methods to incentivize indigenous labor and promote competition. The Crown ordered Intendentes to distribute land to indigenous and casta families who, along with their descendants, would have the right of usufruct as long as they cultivated the land. They could sell their produce to whomever they pleased, either to buyers in New Spain or in Spain, under the expectation that competition among buyers would raise sale prices for indigenous producers and incentivize them to produce more. Additionally, the Crown ordered the Intendentes to submit a report to the viceroy every four months detailing the current prices and scarcity or abundance of commodities. With this knowledge, producers would know to send their surpluses to places of scarcity, which would aid those provinces in need, but would also encourage producers to maintain current levels of production. In contrast to the forced sales of the past, the sales of these surplus fruits “must always be free.” Given more perfect information, producers would make the rational choice without the need for force.

The language of Catholic commercial theology did not fade entirely from the Ordenanzas. The Crown was still concerned with just price and the common good. But Bourbon reformers shifted from thinking about how people ought to behave in economic relationships to thinking about how reformers ought to order systems and incentives to produce the best outcome, now mostly defined as the satisfaction of material need. Once properly incentivized, Spain’s subjects would act in predictable, rational ways to power the economic machine of the empire. Under this new framework, the will and intention of economic actors mattered very

¹⁰⁴ *Ordenanza*, 45-46.

little. Individual choices were not a question of justice but a question of rational utility maximization. Economics had begun its shift from a moral science to a natural science as Bourbon reformers began to ask questions more like economists and scientists than theologians. In the decades after the introduction of the intendentes, ayuntamientos from Mexico City to Querétaro began to judge the quality of commercial practices with reference to reason, experimentation, and free choice alongside piety and justice.¹⁰⁵ By the late 18th century, Catholic commercial theology's hold on New Spain's institutions was weakening.

Where did such a shift leave the Church? Recently, historians of the Bourbon reform era have been careful to note the ways in which the Church embraced some of the centralizing tendencies of the Bourbon reforms.¹⁰⁶ The dissolution of the repartimiento was yet another place where state and Church interests aligned. As we have seen, Church officials had long understood the repartimiento to be a destabilizing, usurious practice. When Bourbon reformers repurposed the charge of usury to dismantle traditional economic systems, and they did so with the support of prominent Church officials. The Archbishop of Mexico, Alonso Núñez de Haro y Peralta — the same archbishop who supported the Marriage Pragmatic in 1778 and would consolidate the role of the intendentes during his time as interim viceroy— wrote this scathing critique of usurers and monopolists in 1785:

We commit to combat the fevers of greed, which is the mother of usury and monopoly, so that all will detest it. We order that from the pulpit, the confessional, and in conversation, priests observe all and persuade and instruct

¹⁰⁵ AGN, Abastos y panaderías, vol. 4, exp. 1, fs. 1-157v. 1792-1793. Abastos y panaderías, vol. 2, exp. 3, fs. 81-242v. 1794-1796. Abastos y panaderías, vol. 2, exp. 2, fs. 48-80. 1794-1797. Abastos y panaderías, vol. 2, exp. 4, fs. 243-259v. 1797. Abastos y panaderías, vol. 8, exp. 11, fs. 198-209. 1811.

¹⁰⁶ Historians previously had emphasized the state's repression of the Church's rather than their sometimes-willing alignment. But taking a note from the Bourbons, the late 18th century Church in New Spain attempted to exercise more direct oversight over Church resources through provincial visitas, prohibitions on Baroque expressions of piety and cofradías, and through a renewed commitment to collecting tithes on industrial products. Voekel, *Alone Before God*; Brian Larkin, *The Very Nature of God: Baroque Catholicism and Religious Reform in Bourbon Mexico City*, (Albuquerque, NM: University of New Mexico Press, 2010). Hamnett, *Politics and Trade*, 57-58.

about the ills and sins that cause usury and monopoly, especially in regard to the trade of foodstuffs of first necessity.¹⁰⁷

It is no wonder, then, that Haro and Peralta happily supported the introduction of the intendentes, whose express purpose was to root out the usurious and monopolistic repartimiento. Much of Haro y Peralta's critique would have been familiar to moralistas a century before, but Haro y Peralta also incorporated a new statist ethic into his pastoral letter. He emphasized the harm that the repartimiento might do to the general productiveness and growth of the empire, exhorting all "Christians and good Patriots" to oppose usury in order to be among "all the nations y repúblicas that are well-governed." He wondered that there were still "people who would continue to drink iniquity like water," who would "make continual war against society." And, perhaps somewhat prophetically, he warned that "usurers and avarice have been the reason for the downfall of empires."¹⁰⁸

¹⁰⁷ Patricia Seed argued that the Marriage Pragmatic was evidence of an increasingly capitalistic, acquisitive (i.e. greedy) Spanish society that rejected traditional Catholic virtues like moderation and selflessness. She described the Church as unable to resist this shift. If this is the case, it is surprising that the same archbishop who supported the Marriage Pragmatic—a document which, according to Seed, legitimated parents' self-interest—also continued to preach against usury, the quintessential expression of self-interest and greed. *To Love, Honor, and Obey in Colonial Mexico, Conflicts Over Marriage Choice 1574-1821*, (Stanford, Calif: Stanford University Press, 1988), especially Ch. 7.

¹⁰⁸ Dr. D. Alonso Núñez de Haro y Peralta, "Nueve ejemplares de la carta pastoral del arzobispo a los cura propios sobre el abominable vicio de la usura," November 12, 1985, Asignación 195.46, Archivo Histórico del Arzobispado de México, Mexico City. This letter also points to the context in which the archbishop was writing: a series of frosts during the previous August had led to widespread famine and need in Tierra Caliente, la Huasteca, and la Sierra.

Conclusion

As Juan de Mariana pointed out, human beings share the common burden of being born “naked and frail,” awash in material needs.¹ How societies respond to this condition, however, is culturally and temporally specific.² This project has asked: what values and institutions motivated and shaped the economic decisions of indigenous, casta, and Spanish people in early modern New Spain? How was economic decision-making impacted by the fact that institutions in early modern New Spain were organized around the idea that the end of economic activity is the satisfaction of need, a just order, and the attainment of eternal life? By what standards and according to what commitments did early modern economic actors judge an economic practice to be just?

During the 17th century and most of the 18th century, ecclesiastical, viceregal, and municipal courts in New Spain decided the fate of any economic practice based on whether it satisfied needs and whether it allowed litigants and defendants to fulfill their obligations to one another, to corporate groups like one’s guild or the república, and to God. Both the definition of need and the nature of obligations was defined in great part by the precepts of Catholic commercial justice, and an understanding of prescriptive, theological norms can help scholars

¹ Mariana, *The King and the Education of the King*, 113-114.

² Economists tend to build models based on the assumption people will react in mostly predictable (self-interested and rational) ways, regardless of differences in culture, values, or beliefs. While economists agree almost unanimously that human beings have a “bounded rationality,” they also recognized that it is difficult to model and do not all agree that it is even *important* to do so. See Oliver E. Williamson, “The New Institutional Economics: Taking Stock, Looking Ahead,” *Journal of Economic Literature*, Vol. 38, No. 3. (Sep., 2000), pp. 601. Gary Morson and Morton Shapiro note that the assumption that culture is unimportant, or that economic actors act basically the same everywhere, accounts for the failure of many a recent foreign aid program. Though they also see some change, noting that the 2017 Presidential speech to the American Association of Economists was about “Narrative Economics,” a subfield which advances the claim that narratives have causal power in economics. Robert Schiller argued that economists should not ignore the stories that people tell. In other words, they should not ignore culture and the transcendental dimensions of economic decision-making. Gary Saul Morson and Morton Owen Schapiro. *Cents and Sensibility: What Economics Can Learn from the Humanities*, (Princeton, New Jersey: Princeton University Press, 2017), xx.

identify strategic legal arguments from lived realities. Theological treatises also offer insight into what was common sense knowledge about how economic actors behave and about how they ought to behave. Both the Scholastics and viceregal officials understood such mechanisms as supply, demand, and self-interest, but whether virtue and justice demanded that they utilize those mechanisms was a moral, political, and theological question.

The institutional commitments of the judicial system in New Spain allowed indigenous communities to access the courts to argue against commercial practices that threatened their autonomy or subsistence capacity when local authorities and interpersonal strategies failed them. The Juzgado de Indios frequently privileged indigenous peoples' obligations to the república (tribute) and to the Church over their contractual obligations to creditors and over the financial profit of individual Spaniards, for instance. Through the courts, indigenous men and women were able to protect long-standing patterns of indigenous trade, including women's roles as land owners and wholesalers. On the other hand, in the case of the gamuceros guild, there was little the indigenous labor community of gamuceros could do once the Mesa de Propios decided that it was in the interest of the greater spiritual community of Mexico City to incorporate the gamuceros into the official guild structure. The compromise that the Mesa de Propios and the gamuceros finally came to did not satisfy either the gamuceros' personal desire for autonomy nor the zurradores financial desires, but instead privileged the city's ability to perform spiritual power. In this case, spiritual obligations directly restructured the labor landscape of Mexico City. In both cases, though individuals may have acted in order to maximize their personal utility, they were constrained by a judicial system ordered by the precepts of Catholic commercial justice.

This project has argued that the reach of Catholic commercial justice also extended beyond institutions. Individuals' sense of commercial justice was shaped by their experience and

engagement with the colonial justice system, labor communities, public ceremonies, and the Church. Catholic commercial theology colored the expectations that individuals carried with them about how they ought to be treated in an economic exchange and what they were owed in their role within the mystical and political body. Individuals acted not only out of material considerations, but out of “transcendent” sense of how commercial relationships ought to be ordered and conducted. These considerations meant that in order to successfully win a public contract, an *asentista* like Mateo Millán or Francisco Cameros had to do more than offer a good, or even fair, price for his product. *Asentistas* also had to demonstrate that they were men of virtuous and charitable character, worthy of the authority and material reward that the public granted them. In the case of Millán, his liberality with interest-free loans was the best evidence for his virtuous and charitable nature.

Finally, individuals’ sense of commercial justice was defined not only by the tenets of Catholic commercial justice but also by the historical particulars of relationships characterized by both sentiment and exchange. Without an understanding of the relationships in which exchange happened, it is difficult to understand whether the participants in that exchange understood it to be just. This is particularly clear in the analysis of the repartimiento in mid-18th century Puebla. Borrowers broke with Church prescription in that they cared less about whether they had been charged interest than that they had been treated with affection and honor. Still, the borrower’s expectations about how they ought to be treated in an exchange are also visible in the writings of the Scholastics. Like the indigenous borrowers in Puebla, Tomás de Mercado acknowledged that demanding a *fiador* or a specific timeline for repayment were signs of distrust that brought the loan out of the realm of charity and into the realm of usury, regardless of the interest rate. For their part, lenders charging interest found enough flexibility in Catholic

commercial theology to argue that their practices were not unjust. They did not argue that profit, progress, or productivity demanded they charge interest; they simply emphasized different strands of the theology regarding the morality of usury. Not until the 1780, and the introduction of peninsular Spaniards steeped in new economic theories would new, more scientific arguments about how best to promote the productivity of the empire begin to emerge in Mexico City. The period leading up to that moment was characterized by a very different set of concerns.

In the 21st century, much of the Western world has inherited classical economists' whiggish interpretation of economic history. Those economists argued that if entire societies in the past made different economic decisions in a systematic way, it is because they lacked rational, scientific rigor and faced technological and political barriers that modern progress has eliminated. The notion that they may have been acting toward ends other than material progress and growth is dismissed as an impossibility. My hope is that this project contributes to the denaturalization of modern assumptions about how economic choice functions and how economic relationships ought to be arranged. It is not a natural conclusion, as free market economists might suggest, that material progress is more desirable than equilibrium. Nor is it self-evident that unequal economic relationships are inherently unjust, or that the presence of choice, no matter how limited and circumscribed, is enough to deem an economic relationship just and acceptable. These were certainly not the beliefs of judges and litigants in 17th and 18th century central New Spain. Any conclusions about how material goods should be distributed and economic decisions should be made must be contested, negotiated over, and defended, such as they were in the courts, markets, and confessionals of viceregal New Spain.

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Dissertations

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