Introduction

Millions have marched in the past years to protest corruption scandals in Latin America. Popular discontent and politicians have forced out the presidents of Brazil and Guatemala. The Mexican president also plunged deeply in the polls when sordid scandals became public. Amidst the backlash, new allegations of malfeasance hit the headlines of newspapers almost every day. At least in Mexico, many citizens have resigned themselves to thinking that corruption has pervaded their country since the Spanish conquest (1519–1521). These Mexicans are right in believing that there has always been some form of corruption in their country, just as in most other regions of the world. Yet the idea of corruption in the past differed markedly from today and has largely been forgotten.¹

Corruption in Mexico’s colonial period meant violating the proper finding of justice. Judges who accepted bribes to alter judicial verdicts committed this crime, for example, and early modern people roundly condemned the injustice.² At the same time, the concept of corruption changed slowly and grew beyond the judiciary in the period 1650–1755. The concept evolved to include several forms of self-advantage in the bureaucracy. Scholars of Latin America have overlooked this conceptual expansion from judicial to administrative corruption, as they have tended to ignore the subject in the past years. This book sets out to explore the

¹ The Mexican jurist Alejandro Mayagoitia, “Notas sobre las Reglas ciertas y precisamente necessarias para jueces y ministros […] de Fray Jerónimo Moreno, O. P.,” Anuario Mexicano de Historia del Derecho 8 (1996): 334, for instance, underlines “the general corruption in which our forebears lived,” indicating that this abuse has always existed in some shade in Mexico.
² See, for example, Print por Don Miguel Truxillo, AGI, México 670 A, fol. 4; see also Gabriel Berart y Gassol, Speculum visitationis secularis omnium magistratum […] (Barcinone [Barcelona]: Ex Typographia Sebastiani Mathenat, 1627), chap. 17, para. 5.
enigma of historical corruption by studying fresh sources in Spanish and other, less consulted, languages.

Rumors about wayward judges and officials in Mexico City reached Madrid in the early eighteenth century. The crown ordered the inquisitor Francisco Garzarón to conduct a *visita general* (comprehensive investigation) from 1716 to 1727 to get to the root of the allegations. Garzarón called on residents to report what they had experienced. Three indigenous noblemen from Santiago Tecali (Puebla) stepped forward in early 1724. They complained about the “great extortions that they suffered for a year and a half since the *alcalde mayor* (district judge) took office ... arresting us and confiscating property and sending us to the public jail in Puebla without ever raising any formal charges.” In their view, the *alcalde mayor* also connived with a notary to sell mules and oxen in the district at 300 percent profit. As a result, the *alcalde mayor* “today owns 30,000 pesos from his *baraterías* (corruption) in administering justice,” the Natives lamented. What is worse, the notary had raped a “*mulata* [a person of mixed African descent] from Tepeaca ... whom he had maliciously hired as a cook under false pretenses, and he forced her so that it was necessary to give her the last rites at midnight.”

According to the noblemen, the *alcalde mayor* had traded with and extorted his subjects, and he had also tolerated that others physically harmed his subjects. Colonial Mexicans considered these offenses as corrupt. In addition, many literati rejected candidates for office because of their alleged racial and social insufficiencies. One jurist averred in 1673 that commoners of unworthy ethnic or social descent were “corrupted by ambition and avarice and shamed by their blood.” These people lacked the proper bloodline and therefore the qualities to resist the manifold temptations of judicial office. They most certainly issued wrongful verdicts. Moreover, the term corruption frequently referred to those inappropriate customs that displaced the just laws. This aspect even included the clergy. For this reason, a friar in Quito

3 Pedro, Bartolomé, and Antonio Tellez of Santiago Tecali (Tecali de Herrera, Puebla) to Garzarón, Mexico City, 9 Feb. 1724, Archivo General de la Nación, Mexico City (hereinafter cited as AGN), Historia 102, expediente (exp.) 20, fols. 491–492. The other petitioners included an inmate awaiting his execution, a nun of the Saint Jerome convent seeking to sell her black slave, and a jailed merchant; see Sebastian Garzón to Garzarón, Mexico City, 11 Jan. 1724, AGN, Historia 102, exp. 20, fols. 494–503; Francisco Ruiz de Fonseca to Garzarón, Mexico City, 11 Jan. 1724, AGN, Historia 102, exp. 20, fol. 504–504v, 508–509v; Catarina del Sacramento to Garzarón; decree of Garzarón, Mexico City, 4 Nov. 1721, AGN, Historia 102, exp. 20, fol. 509v–510v.


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(Ecuador) excoriated his colleagues who demanded excessive contributions from Natives in 1684. He ended his sermon with the words: “God help me! What gives birth to all this soulless corruption?” The friar used the term corruption to attack the malicious and pervasive practice that replaced the just rules governing Natives and priests. Finally, the idea of corrupt customs and judges sometimes overlapped. The trade of the alcalde mayor with the Native subjects in Santiago Tecali, for instance, was corrupt in both senses. The judges skewed justice by favoring their interests, and commerce with the Natives was so ingrained in New Spain (colonial Mexico) that it displaced all legal prohibitions against it.

Yet in the period 1650–1755, the laws defining corruption and other crimes were not as precise and clear-cut as today. The crown was not the only authority producing rules, and printed texts and unwritten norms of different origins coexisted with one other. Legal pluralism reigned and practitioners discussed in the courts and in treatises which laws best applied to specific offenses. In addition, justice was usually casuistic; in other words, it was decided on a case-by-case basis. This was true for corruption cases too. Many suspects maintained, for example, that they had only ever exchanged legitimate gifts with family and litigants and denied that they had committed corruption. Their defense could well be successful, depending on the cases, especially as politics often shaped verdicts. Powerful friends helped suspects and shielded them from prosecution. Impunity was widespread and judges frequently faced few consequences for their actions.

Nonetheless, most novohispanos (those living in New Spain) and peninsular Spaniards saw corruption as an actionable crime under certain circumstances. As a result, Francisco Garzarón suspended thirteen judges from the audiencia (high court) of Mexico City. He proved, according to the standards of the time, that the ministers had accepted gifts with the malicious intent to rule in favor of the givers. They had also tortured prisoners to obtain their cash and delayed rulings because litigants refused to pay. The Council of the Indies (the highest court for American affairs)

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in Madrid agreed in 1721, and permanently removed the thirteen judges from the bench for corruption.

In addition, Garzarón suspended 156 subaltern officials, including jailers and notaries, for committing fraud or theft, overcharging their clients, and keeping careless records. Yet these offenses were usually not seen as corruption. One notary explained, in 1719, that his “office was . . . bare of any administration of justice.” He and other officials merely executed orders and rarely contributed to flawed verdicts, and for this reason he could not have acted corruptly. The Council of the Indies largely agreed with this point. Yet the Council removed him and ten other officials for offenses such as forging papers, stealing property, and other illegalities. The Council also sentenced several officials to pay meaningful fines or extended painful suspensions without salary. At the same time, those who had merely levied excessive fees or improperly filed records received relatively lenient punishments and returned to their positions.

Not all violations of justice therefore equaled corruption. Murder or robbery were serious crimes and punishable, yet these one-time breaches of justice did not bend judicial rulings. The following example also shows a slave’s sense of injury about his bondage in a religious institution, but this was not corruption in the colonial sense and did not concern Garzarón. Juan Esteban Madrigal deplored, in 1724, that the friars of the Saint Augustine monastery in Mexico City held him as a cook. Madrigal sent Garzarón “his mother’s letter of liberty, which she received in 1700 . . . and I was born in 1702, and Your Lordship will decide whether I am a slave when I was born two years after my mother was released.” Madrigal implored Garzarón to confirm his status as a free man. Yet Garzarón suggested seeking justice elsewhere, because he did not venture into misconduct within the Church and mostly prosecuted judges and officials at the audiencia. This book follows Garzarón’s path in this regard. Although ecclesiastical malfeasance is an enticing subject, as Madrigal’s story shows, such an approach would require significant additional research on canon law and colonial religion. Nor is it my aim to sleuth out the true culprits of the past and sentence them posthumously. This would be a difficult task anyway, because the sources are often incomplete and the standards for crimes and investigations have shifted substantially. Instead, studying the

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7 Pedro Robledo to Garzarón, Mexico City, 15 Apr. 1719, AGI, Escribanía 280 C, Quaderno (Q. no) 12, fol. 453v–454; defense of Pedro Robledo, AGI, México 670 B, Relación, fol. 352v.
8 Juan Esteban Madrigal to Garzarón, Mexico City, 9 Feb. 1724, AGN, Historia 102, exp. 20, fol. 493; auto of Garzarón, n. d., AGN, Historia 102, exp. 20, fol. 493v.
combined discourses about wayward ministers from various angles opens a wide panorama on past ideas of fairness. The purpose of scrutinizing the strategies of the suspects is cultural, seeking to illuminate how novohispano and peninsular Spaniards thought, felt, and communicated about justice. To this end, I have combined the analysis of the day-to-day practices on the ground, the law and its learned interpretations, and politics. In this vein, Eric Van Young perceptively pointed out some twenty years ago that assessing politics also reveals cultural notions. Yet rather than to “elbow aside” the “metanarratives” of power, as he suggested then, we can join them today with the view from below to understand what early modern people “believed about the world around them.”

Examining the defenses of culprits and accusations of victims, the political scheming, and the

MAP 1 The Viceroyalty of New Spain in 1700

claims to authority show how novohispanos imagined themselves. They also clarify notions of equity, as the speech about corruption did “take place within a network of socially constructed meanings.”

Historians have discussed historical corruption with great controversy. Stuart Schwartz, Colin MacLachlan, and Horst Pietschmann forged a consensus starting in the 1970s, that corruption was a matter of excess, because community standards frequently refrained from censuring bribery or contraband trade. Breaching the laws for self-interest, therefore, provided a flexible balance between local and crown interests. Tamar Herzog and others have pushed this view even further. She argues in her excellent study, that it is “impossible to speak about corruption in the early modern period,” because judges in Quito (Ecuador) before 1750 oscillated between their own interests and social harmony instead of observing the royal laws.

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Introduction

While these scholars have provided many insights, their views cannot fully explain corruption as colonial Mexicans understood the idea. It is true that both the legal norms and many practices were malleable and multi-faceted, and they also hinged in many ways on political interests. Nonetheless, the term corruption existed as a meaningful doctrine, and even commoners understood and opposed the offense in some fashion. The Indians of Santiago Tecali accused their own *alcáde mayor* of *baratería* for this reason. They, and most commoners, had relatively easy access to the courts. They hired procurators and attorneys to sue their *alcaldes mayores* for breaching justice, which met the early modern definition of corruption. The judges who heard the cases against the *alcaldes mayores* often awarded redress to the Natives, demonstrating that the doctrine had significance.13 This is one reason why historians are walking away from the view that corruption did not exist in the early modern period. Scholars instead emphasize the power of the discourse against political opponents, especially in the judicial arena.14


The chief aim of this book is tracing the concept of corruption between 1650 and 1755. By doing so, I do not explore all forms of government malfeasance, because that would require spilling a lot more ink on this subject. Instead, I have proceeded in the following way: I lay out the nature of the colonial justice system in the first chapter. Latin Americanists know much about social practices, customs, and networks, but they are less aware of the rich judicial underpinnings. Meanwhile, legal scholars have cast light on the interpretations of canon and Roman law that circulated among the empires. These concepts mattered in colonial Mexico, Spain, the Holy Roman Empire and beyond. I have drawn on published and archival sources to show that judges in Mexico City, for example, weighed these sources against local practices, royal mandates, and natural law to arrive at just verdicts. Sketching the legal pluralism of the time casts the foundation for understanding the crime of corruption. The second chapter analyzes the meaning of early modern or judicial corruption, which scholars have mostly ignored. By exploring manifold discourses, I propose that the concept of judicial corruption segued into the broader idea of administrative corruption in the eighteenth century. The third chapter then provides a view from below, reinterpreting the Native trade with their alcaldes mayores. While historians have amply discussed this subject, I argue that Natives used early modern legal concepts to challenge the unfair exchanges. These concepts have changed or lost their meaning in subsequent centuries,
and they are largely ignored except by scholars of the law. Deciphering these
concepts throws light on Native strategies and the larger backdrop to the
conflict over the trade. Natives sued their *alcaldes mayores* to halt declining
agricultural prices, and they often succeeded in convincing the courts.

The fourth chapter reassesses the sale of office appointments, a classical
topic for historians. The traditional elites of Spain attacked the purchasers
of appointments as corrupt because of their flawed social origins, which
differed starkly from our modern idea of abusive activities on the job. Yet
the social origins in this sense had little bearing on the performance at
work. This insight explains why the sale of appointments did not undercut
the judiciary or hamper the empire as a whole, as most scholars have
claimed. Instead, the sale, if anything, strengthened the monarchy.
The fifth chapter illuminates Garzarón’s methods in uncovering bribery
and extortion, giving voice once again to Native lords, women, and
commoners. Many colonial commoners knew the key ideas of corruption
and sought redress for their injuries. Their collaboration explains
Garzarón’s success to a large degree. The sixth chapter explores the
legal foundations of verdicts handed down by Garzarón and the Council
of the Indies. The judges distinguished serious offenses such as corruption,
fraud, and theft, from lesser ones such as charging excessive fees and
sloppy record keeping. The ministers assessed corruption by drawing on
sophisticated legal doctrines that circulated in the Atlantic world and
beyond. These ministers also took into account the malicious intent and
negligence of the suspects when punishing them. Finally, the last chapter
explores the social and political background of Garzarón’s *visita*.
Historians have made great strides in unearthing the impact of social
networks on judicial process. While politics played an important role, its
impact should not be exaggerated for Garzarón’s *visita*. Garzarón also
followed established judicial guidelines to convict each offender according
to their individual culpability, and not only according to political
expediency.

This book begins in the middle of the seventeenth century. Historians
have traditionally neglected this period, although they are currently mending
this deficit, and they have overlooked important changes in the intellectual
and imperial framework. These transformations had a bearing on
the concept of corruption too. In the 1650s, many Spaniards debated the
sale of appointments in the royal treasury that originated in 1633.
In 1675, the crown began offering appointments of the *alcaldes mayores*
in the Americas, unleashing yet another round of attacks. This period also
witnessed a growing number of legal complaints against the trade with
Natives. The book then straddles the transition from Habsburg to Bourbon rule in 1700 and includes Garzarón’s remarkable *visita*, which recorded plenty of conversations over corruption and other offenses. In addition, the crown phased out the sale of judicial appointments in 1750, while ministers, priests, and *alcaldes mayores* once again discussed reforming the trade of the *alcaldes mayores* with the Natives. A new government appeared in Madrid and a new viceroy arrived in Mexico City in 1754 and 1755. They were more interested in preserving rather than reforming the status quo, offering a good point to end the analysis.\(^{15}\)

Few days pass in the Mexican news cycle without discussing a corruption scandal. Next to these revelations, the European economic crisis also triggered an uproar over opaque politics. Corruption cases abound in the USA too. Transparency International, a global watchdog, defines these breaches as “the abuse of entrusted power for private gain,” adding that “it can cost people their freedom, health, money – and sometimes their lives.”\(^{16}\) This view is useful for understanding the magnitude of our present problems, but it cannot be transferred back to the period 1650–1755. The aim of this book is to understand how colonial Mexicans understood corruption in their period.
