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# The Future of Aztec Law

Jerome A. Offner  
*Houston Museum of Natural Science, joffner@hmns.org*

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*Copyeditor*

Shannon Cunningham

*Editorial Assistant*

Kelli McQueen

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# THE FUTURE OF AZTEC LAW

JEROME A. OFFNER

THE YEAR 2019 will mark half a millennium from the Spanish intrusion into central Mexico. Throughout this region and beyond, the Spaniards encountered a great world civilization, enormously complex and ancient, some small portions of which a few members of their society managed to record, motivated by conventional religious, economic, political, and legal concerns, although often as well by fascination with what they encountered.<sup>1</sup> As the postcontact society and economy changed, more rapidly in some areas than others, asserting and ascertaining the content of precontact Aztec law became a vital concern of Spanish missionaries,<sup>2</sup> colonists, colonial administrators, surviving indigenous elites, and indigenous communities.<sup>3</sup> Although the fate of indigenous law under the new Spanish hegemony is a compelling topic in itself,<sup>4</sup> this article is concerned with recovering the substance and nature of a legal tradition developed in the Americas in isolation from the rest of the world and now forever lost in time. What we can know of this unique tradition, nevertheless, remains of interest to millions of contemporary Nahuatl speakers in Mexico as well as to Mesoamerican researchers and all scholars interested in comparative legal systems.

In the 1980s, I published a monograph and a series of articles on Aztec law, concentrating on the city and small empire of Texcoco, where documentation on precontact law was most plentiful. Although I was careful to communicate the dynamism, factional disputes, and change in the Texcocan system in these works,

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**1** Townsend, *The Aztecs*; Coe and Koontz, *Mexico*; and Smith, *The Aztecs*, provide broad and detailed descriptions of the civilization encountered, although there is no consensus view on many of its aspects.

**2** The term “Aztec” has increasingly been replaced by the name of the hegemonic ethnic group, the Nahuatl (see below), in spite of the fact that there were many ethnic groups in the region (e.g., Otomi, Totonac, Tepehua, etc.), often successfully living together, although generally (but not always) under Nahuatl rule. The Nahuatls were not themselves a unitary group; subgroups exhibited significant cultural and linguistic differences that often, in conjunction with differing economic interests, led to armed conflict. In this article, “Aztec” will generally be employed to emphasize the political and legal administration of this multi-ethnic situation.

**3** Gibson, *The Aztecs under Spanish Rule*, remains the classic study in this respect, along with later work by García Martínez, *Los pueblos de la Sierra*.

**4** E.g., Cline, *Colonial Culhuacan*; Kellogg, *Law and the Transformation of Aztec Culture*; Megged, “Between History, Memory, and Law.”

I reemphasized these aspects in an article in 1993 on inter-state and intra-familial killing as vigorously pursued by the elite in Aztec societies.<sup>5</sup> Although Mesoamerican studies have continued to develop in the past two decades, no other investigator primarily interested in precontact Aztec law has emerged, with the exception of Carlos Brokmann Haro.<sup>6</sup> In almost all other instances, Aztec law continues to be mentioned only in decontextualized fragments. Meanwhile, some investigators (such as Frederic Hicks and Pedro Carrasco) have persisted in declaring what the content of Aztec law must have been as determined by their own Marxist and Polanyist ideologies, especially with regard to land tenure and political structure. Other investigators have taken an empirical approach to the available data, revealing the nuances and complexities found in reality.<sup>7</sup> In one of Hicks's last articles, for example, we see him working to reconcile the richness of detail regarding land tenure, as reported in sources from Tlaxcala (just outside the Basin of Mexico), with the strictures of his ideology.<sup>8</sup>

Perhaps the major current tendency, however, has been to mistake reports of Aztec laws,<sup>9</sup> whether in pictorial or alphabetic form, for the entirety of the Texcocan legal system,<sup>10</sup> with little consideration given to the evident but poorly understood intricacies of Aztec jurisprudence and how it varied from town to town across the empire.<sup>11</sup> It is, in fact, in the richness of reports of precontact indigenous behavior

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**5** See comments below on limitations on the power of Aztec rulers.

**6** Haro, *La estera y la silla*. This short monograph is essentially an extended review of published work, rather than the product of original source research. Nevertheless, it follows and presents both legal and anthropological issues well while deftly contextualizing the Aztec legal system with special attention paid to the interests of Mexican readers. Some areas of agreement and a few areas of disagreement with this valuable study are mentioned below.

**7** E.g., Harvey and Prem, *Explorations in Ethnohistory*; and Cline, *Colonial Culhuacan*.

**8** Hicks, "Land and Succession in the Indigenous Noble Houses of Sixteenth-Century Tlaxcala."

**9** Or, more specifically, what may or may not be legal rules: see below.

**10** Lee, "Reexamining Nezahualcōyotl's Texcoco" and *Allure of Nezahualcoyotl*. See also Mohar Betancourt, *Códice Mapa Quinatzin*.

**11** Haro understands the importance of appreciating and analyzing the Aztec legal system as more than just a list of legal rules. Nevertheless, he unaccountably believes that adherence to legal rules in precontact Mexico was so strong that "true jurisprudence" (*jurisprudencia verdadera*) could not develop: *La estera y la silla*, 13–14, 94. (The use of "true" when coupled with a modern Western understanding of a concept usually signals a lapse into ethnocentricity by a modern Western writer insisting that the cultural concepts of "the Other" should be the same as or very similar to modern Western concepts.) On the contrary, numerous reports regarding the creation and application of law in rapidly changing

that we can begin to appreciate the interplay between legal rules,<sup>12</sup> jurisprudential principles, and everyday conduct among the Aztecs, as well as the actual behavior within and attitude towards the legal system. At the same time, we can gain hints regarding how the various legal systems regarded plaintiffs and defendants and how legal process actually functioned. Such sources also record social discord and dysfunction, as well as cohesion; and the intersection of indigenous conceptions of law and morality.<sup>13</sup> Chief among these are the works of Fray Bernardino de Sahagún, a Franciscan friar who worked with indigenous informants in the sixteenth century to produce an encyclopedic account of Aztec culture.<sup>14</sup>

This necessarily brief article is written for specialists in Old World medieval studies and is intended to: introduce the nature of and the challenges involved in interpreting the surviving materials; highlight some interesting aspects of Aztec law and society; and suggest fresh approaches to Aztec law, given new tools available for research on Mesoamerica. The relative paucity of information compared to other vanished legal systems, especially in the areas of case law, legal process, and jurisprudence, presents many problems for students of comparative law; but perhaps specialists can also find here new avenues of research into this distinctive legal tradition, a last representative of precontact jurisprudential thought and

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Aztec society, a few of which are cited below, make it clear that jurisprudential thought was both sophisticated and highly valued among the Aztecs. The reputation of Nezahualcoyotl, the ruler of Texcoco (1431–72), rested in considerable part on his success in redesigning and managing the legal system of Texcoco during tumultuous and divisive times. Specific instances of legal reasoning, where legal rules did not fit the facts of a precontact case, can sometimes be found carefully recorded across the contact boundary decades after the case occurred. In addition, there were many regular meetings of legal personnel in which difficult cases could have been discussed and decided both among themselves and in consultation with the rulers, e.g. Offner 1983: 56.

**12** E.g. Offner, *Law and Politics in Aztec Texcoco*, p. 56. “Legal rules” (*leyes*) were *nahuatilli* in Nahuatl, a noun derived from the verb *nahuatiā*, “to give orders to someone” (Karttunen, *Analytical Dictionary of Nahuatl*, 157). It is worth noting that the verb *nāhuati*, “to speak clearly,” and the noun *nāhuatl*, “something that makes an agreeable sound,” are distinguished from the first pair of words by a long initial vowel *ā* instead of a short *a*.

**13** See Burkhart, *Slippery Earth*, for the best description of Aztec mores and morality.

**14** Sahagún’s account of Aztec culture includes extensive parallel passages in Nahuatl and Spanish. His efforts were directed at eliminating Aztec religious practices by better understanding them, but the enthusiasm of his informants was clearly contagious, and all manner of data was incidentally collected along with the targeted information the informants chose to share. See Klor de Alva, Nicholson, and Keber, *The Work of Bernardino de Sahagún*; and León Portilla, *Bernardino de Sahagún*. Calnek, “The Sahagún Texts,” presents an early and still very useful series of observations on indigenous and Spanish biases and perspectives in Sahagún’s work.

practice in what came to be called the New World. They may also find that the problems and methods surveyed here are applicable to sources produced in other areas of the medieval globe.

### **The Nature of the Sources on Aztec Law and Two Introductory Examples**

The remnant sources of precontact Aztec law are found principally in:<sup>15</sup> a few dozen Spanish alphabetic texts produced by Spanish colonists and Nahuas;<sup>16</sup> perhaps two dozen published alphabetic texts of the Nahuas, produced in their language, Nahuatl; and several dozen published documents produced by Nahuas employing a sophisticated graphic communication system (GCS) that was far more complicated in its messaging than linear text.<sup>17</sup> In addition, some alphabetic

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**15** This article does not provide a catalogue of such sources, both because of their number and the deep contextualization of law in many sources. The numbers provided above are rough approximations made more imprecise by the difficulty in separating reports of precontact Aztec law from indigenous law as it developed in the colonial period. The major sources of Aztec law are mentioned in this article, its bibliography, and in Offner, *Law and Politics in Aztec Texcoco*. However, there are occasional mentions of indigenous law in the 161 reports from towns where Nahuatl was spoken, compiled in the *Relaciones Geográficas* series (see Cline, “The Relaciones Geográficas”; Harvey, “The Relaciones Geográficas”). *The Handbook of Middle American Indians* (vols. 12–15) and *Supplement to the Handbook* (vols. 3–5) remain the definitive guide for sorting through the many hundreds of available published sources to identify candidates possibly containing information on precontact Aztec law. In addition, colonial archival and community-owned materials, including pictorial manuscripts, are continually being brought to light with many finding their way to publication.

**16** As noted above (n. 2), the Nahuas were and are a diverse group of speakers of Nahuatl, a member of the Uto-Aztecan language family. Representatives of this group are found in the North American West (e.g., Shosoni, Comanche, Hopi) and Mexico (e.g., Yaqui, Cora, Mayo, Huichol). Exactly when Nahuas arrived in Mesoamerica remains controversial: see Dakin and Wichmann, “Cacao and Chocolate.” They did not enter in a single wave and the last surge of migration, after ca. 1100 CE, was very likely motivated by extended drought conditions and the perception of richer societies and more comfortable living conditions further to the south—reasons sometimes mentioned in the indigenous sources. Among the members of this last wave of migrants were the Mexica who founded Tenochtitlan and eventually its empire. The Nahuas were not the only immigrant group in the region. Texcoco was founded by groups of unknown linguistic affiliation whose later ruler, Techotlaltzin (ca. 1377–1409) was credited with declaring Nahuatl the official state language. See Offner, *Law and Politics in Aztec Texcoco*, 37.

**17** Appreciation of the complexity of this graphic communication system has been enhanced recently by the groundbreaking work of Katarzyna Mikulska (“Secret Language”

sources were based on Nahua documents that had been originally produced using their GCS. The distinctive nature of this evidence shapes the modes of argumentation as well as what can be said or hypothesized about the Nahua legal tradition.

To illustrate the complexities of these historical materials and the methods developed to deal with them, we will consider two examples from the available sources: an early Spanish source based on indigenous pictorial manuscripts and accompanying oral performances, and a slightly later indigenous pictorial source rendered in the Nahua GCS, although with a degree of Spanish influence. This pair of examples will begin to illustrate the range of both difficulties presented and possibilities offered by the data.

The first example comes from the last pages of the *Historia de los Mexicanos por sus pinturas* (History of the Mexicans through Their Paintings).<sup>18</sup> This document can be dated to about 1535,<sup>19</sup> or within a generation of the Spanish intrusion. And, as its title implies, it is written in Spanish and based on documents prepared in the Nahua graphic communication system. The author of the document, perhaps the early and celebrated Franciscan missionary Fray Andrés de Olmos, tells us that he compiled the report from various *libros y figuras* (books and images) presented and explained to him by *viejos* (old people) who had held indigenous religious and political positions and who had therefore been present when texts and images had been used in performance.<sup>20</sup> Such coordination between indigenous written and oral performances was vital to the Nahua GCS, and the complexity and volume

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and *Tejiendo destinos*), with some aspects of it being applied to non-religious documents by Offner ("Ixtilxochitl's Ethnographic Encounter"). Although glyphs are found in considerable numbers in such important historical documents as the *Mapa Quinatzin* or *Codex Xolotl* (*Códice Xolotl*, ed. Dibble), they provide only a portion of the meaning communicated. Most of the messaging is accomplished by richly generative sets of standardized images arranged in similarly richly generative standardized methods on pages or in sculptural compositions. These compositions have usually been casually swept into the Western conception and classification of iconography. Although writing is usually taken to involve sets of signs of similar size in some form of alineation, the Nahua GCS challenges this definition. Further, these documents were only a part of an overall communication system that coordinated them with oral presentation and performance, with the ultimate meaning tailored to the composition of the audience. The deliberate multivalence of this system also facilitated geopolitical analysis, diplomacy, warfare and other forms of statecraft, as well as negotiation for rights to land, labor and tribute in both the precontact and postcontact eras. See Offner, "Exploring"; "Improving Western Historiography"; and "Ixtilxochitl's Ethnographic Encounter."

**18** *Historia de los Mexicanos por sus pinturas* (ed. García Icazbalceta), specifically 258–62.

**19** Gibson and Glass, "A Census," 345.

**20** *Historia de los Mexicanos por sus pinturas*, 228.



of information that could be communicated in this way was more similar to the multimedia environment of a play or a movie than to the experience of reading a linear alphabetic text, which had little hope of capturing more than a small portion of either the intended or available meanings.

The effort of understanding this alien communication system is rewarded by far greater insight into Aztec and Nahua cultures, which require a departure from persistent Western text-centric notions of the (largely illusory) advantages ascribed to linear text, such as the supposed lack of ambiguity in such texts or beliefs that such texts enjoy fixed meanings across time. For example, the Spanish descriptor *libros* (books) used to describe the objects presented to the author of the *Historia* is misleading, since common forms of written documentation in the precontact era were screenfolds, or individual pages of indigenous paper or animal skin. To confuse matters further, any Mesoamerican document, precontact or postcontact, with even a minimal amount of illustration has come to be known as a *códice* (or codex), although only a very few postcontact works actually take the form of a codex.<sup>21</sup> Most, if not all, indigenous written compositions were not designed to be read from end to end, but served instead as reference or source books. Furthermore, indigenous documents were not the statement or source of a fixed and set text but were instead bases for explication, explanation, justification, and elaboration of themes both visible on the page and known in the culture. The Nahua graphic communication system thus allowed both specific and non-specific messages to be conveyed, depending on the associated oral presentation of the experts communicating the content of a document. Certainly, the document's content limited the range of possible presentations, and glyphs might name particular places and people and dates might be specified, further limiting possible interpretation and presentation, but it is unlikely that any one presentation of an indigenous document was identical to another.<sup>22</sup>

In the context of Nahua studies, the *Historia de los Mexicanos por sus pinturas* is therefore a very early and valuable source based on, but containing only a small portion of, what was available in the (now lost or dead) indigenous sources and people from which it was derived. Yet its legal content has been little studied. It is also of particular interest because it is the recording of an ethnographic encounter between a Spanish priest and a group of indigenous experts that serves as a striking memorial of the gulf that persisted between the Spaniards and the Aztecs more than a decade after first contact. Most of the insights into Aztec culture must be obtained from inference and through indirection.

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21 See Boone, "Aztec Pictorial History."

22 See Mikulska, "Secret Language."



**Map 1. Cities in the Basin of Mexico.** The inset shows the scribe named Coatl (“Serpent”), who arrived in Texcoco with his people, the Tlailotlaque, during the reign of Quinatzin (which ended ca. 1377) and who was carefully depicted in the *Codex Xolotl* more than a century later, by a successor and perhaps direct descendant (*Paris, Bibliothèque nationale de France, MSS mexicain 1.1*). Contour lines and city locations have been adapted with permission from Jeffrey R. Parsons, *Prehispanic Settlement Patterns in the Texcoco Region, Mexico* (*Ann Arbor: University of Michigan Museum of Anthropology, 1971*), 4.

The legal materials included in this source begin with the ruling dynasty of Tenochtitlan (now part of Mexico City; see **Map 1**), which came to be the most important Aztec city well before 1519. In this section, a ruler is named, along with length of rule; for example, Acamapichtli (ca. 1376–ca. 1396)<sup>23</sup> is considered the founder of the Mexica ruling line in Tenochtitlan, so his reign of twenty years is noted along with what can be described as legal decisions, as well as jurisprudential considerations and their supporting rationales, as elicited from the Nahuatl witnesses by the Spanish author.

The first legal decision mentioned involves two women who had sex with each other. Some legal process is detailed: they were stoned at a certain place near the most powerful city of the time, Azcapotzalco, after the ruler of that city had informed and gotten agreement first from the ruler of Coatlinchan and from Acamapichtli of Tenochtitlan, which was probably the least important town of the three at that time. A second decision arose from the death of the brother of the ruler of Azcapotzalco, the powerful Tezozomoc (ca. 1371–ca. 1426). He married his brother's widow, but she went to the nearby town of Xochimilco and had sex with a man, and the same three rulers as before had ordered them to be stoned. The Spanish author then states—*dicen* (they say), referring to his informants—that it was *costumbre* (the custom) that a widow should only marry her husband's brother, thus making a distinction between law and custom. Left implied is exactly why the two were stoned—the commission of a *maldad* (wicked act/perversity) is the only offense mentioned—but since it occurred after the ruler Tezozomoc had taken her as his wife, the offense was presumably adultery, for which the penalty was often stoning. We next learn that if a woman married someone other than her husband's brother, any lands and what they contained would be taken from her. This is not conveyed so much as a legal decision but as a standard administrative procedure, clearly to preserve resources among consanguineal kin. We know that land could be attached to offices, to entities, or owned by individuals, including women, with bundles of rights and duties attached to each situation, but we are not told what types of land were involved in this case.<sup>24</sup> Thus, we can already see legal process and decision-making, along with administrative procedure, in operation at this time and in relation to prevailing custom, all within a multi-ethnic, if small, imperial structure centered on the city of Azcapotzalco. It is worth noting

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**23** The regnal dates of the first three rulers of Tenochtitlan are not precise but fall within a fairly narrow margin of error when available sources are collated and compared: see Boone, "Aztec Pictorial History," 38, 152–53. Here, I reference the indigenous dates painted in the *Codex Mendoza*.

**24** Offner, *Law and Politics in Aztec Texcoco*, 93, 114, 124–39, 143–44, 146–47, 151, 167, 170–71, 205–06, 214, 217, 219, 222–23, 245, 279.

that these cases are reported as historical occurrences and not as hypothetical examples for jurisprudential contemplation, although perhaps the informants sought to engage the Spanish author in such an exercise by providing such striking examples. The friars' persistent interest in and puzzlement with regard to indigenous sexual behavior and mores must have been obvious to the Aztecs by the time of this interview.

As mentioned above, the *Historia de los Mexicanos por sus pinturas* was the product of a new and daunting ethnographic interface, involving translation not merely of Nahuatl to Spanish, hardly ten years after first contact, but also the translation and comprehension of complex pictorial documents and oral performances. It is unlikely that the indigenous experts were allowed to develop their full oral performances on particular topics,<sup>25</sup> and the lack of shared knowledge evidenced by the Spanish priest as he failed to engage with them productively in expected ways must have been deeply disturbing and dismaying to the experts as evidence of his appalling ignorance and lack of proper education. In addition, little evidence of systematic questioning guided by Western legal training can be detected in the testimony of the Spanish author.<sup>26</sup> The linked mentions of administrative procedure and custom in response to the case involving the ruler of Azcapotzalco's brother's widow illustrate the complexity of information generated by this ethnographic encounter, yet the author could only capture a fraction of this information in his alphabetic script. The incomplete descriptions of the legal cases and supporting jurisprudential thought, therefore, whether in this or in other documents, were a product of inadequate ethnographic investigation and recording rather than defects or lack of sophistication in the indigenous legal system. Further, the Spanish author had his own deeply inculcated sexual mores and, as noted above, was trying to understand those of the Nahuas. What we are seeing in this document, therefore, are notes on those aspects of the interview that proved most striking and interesting to the interviewer; they were not intended to be an adequate description of Nahua jurisprudential thought or legal practice. I would suggest that what we see here is a typical "zeroing in," by

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**25** We do not know how such oral performances were conducted; however, they involved specialized language and gestures including song at times. Nevertheless, the entire process would have been stunted by the lack of acculturation of the Spanish friar.

**26** Alonso de Zorita (1512–88), a Spanish jurist with varied New World experience, was in Mexico from 1556 to 1566: Warren, "Introductory Survey," 73–74. This source provides the best Western-derived analytical insights into Aztec law. Although by Zorita's time legal content and procedures had changed considerably, he brings out the complexity of indigenous jurisprudential thought to a greater extent than other Spanish sources: Zorita, *Breve y sumaria relación*.

Spaniards, on legal rules as something easy to extract (that is, to decontextualize) and “understand,” however flawed that resulting understanding might have been. When the *History* later turns to the cataloguing of legal rules, interpretive problems caused by the resulting simplification and decontextualization of information become even more acute. The lost performative content of Aztec law continues to be a key problem in its interpretation by the modern Western scholarly tradition of legal study.

In contrast to this initial interest in sexual behavior, the document also details three crimes involving maize, an important and sacred food crop for the Nahuas.<sup>27</sup> Two boys stole maize seeds that had already been planted. They were sold as slaves,<sup>28</sup> and the price of five *mantas* (pieces of woven cotton cloth, a medium of exchange or *tilmatli*) was given for each.<sup>29</sup> A more complicated case involved a woman who was observed stealing maize from a granary by a man who demanded sex from her in exchange for silence. She submitted to his demand, but he revealed her theft anyway. She then reported the whole story, and the man was given as a slave to the owner of the stolen maize while the woman went free. We are left to guess at the details of the jurisprudential reasoning in this fascinating case. In the third case, two boys each stole five ears of corn while they were forming kernels or grains. They were ordered to be garroted because stealing maize in this condition was considered worse than stealing maize that had not yet formed any kernels.

During the reign of Huitzilihuitl (ca. 1397–ca. 1417), the *History* again returns to sexual behavior, and we are told that a man from Texcoco discovered his wife with a priest in the temple only three days after she had given birth. The three rulers condemned the woman to death, but no punishment for the priest is mentioned. In another case, a man killed his wife’s lover but not the wife herself, and then reconciled with her, for which both he (as murderer and usurper of the state’s authority) and she (as an adulteress) were executed.<sup>30</sup> In the following reign of Chimalpopoca (ca. 1418–ca. 1427), we are told that a woman encountered a drunken man of whom she took sexual advantage; she was stoned, but the man was not punished. In a final return to crimes of theft, we learn that a man put another man to sleep with a spell and stole all the grain in his granary, with the help of his (the perpetrator’s) wife. That couple was then executed for the crime.

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**27** Nicholson, “Religion in Pre-Hispanic Central Mexico,” 401, 416–19.

**28** There is still no thoroughgoing study of Aztec slavery as an economic and legal institution, leaving a significant investigational avenue open for future scholarship.

**29** See Anawalt, “Costume and Control.”

**30** For an analysis of Aztec adultery law, see Offner, *Law and Politics in Aztec Texcoco*, 257–66.

We are next provided with a closing pair of what may be legal rules or jurisprudential principles that caught the author's fancy: a man could be enslaved for stealing a turkey but not a dog,<sup>31</sup> because it was said the dog had teeth to defend itself.<sup>32</sup>

After brief military, genealogical, and political interludes, the *Historia* offers a list of what are specifically said to be *leyes* (legal rules). Five involve conduct in war and military legal process. The author records that one of five captains (who were also acting as judges) "investigated the offenses and painted them" (se informaba de los delitos y los pintaba) and then shared the images with the other four captains and the ruler.<sup>33</sup> Here we see the capacity of the Nahuatl GCS to be highly specific when required and also its reliability as evidence produced in court. If all agreed that an offense had been committed, five other officials carried out capital punishment. Eighteen legal rules then deal with commercial offenses, including theft, illegal sale of property, failure to repay a loan, and dealing with and in slaves. Three (or four) legal rules involving drunkenness follow, and the list concludes with two legal rules regarding incest, two more dealing with sexual offenses, and a jurisprudential observation that the only sufficient proof for adultery was finding the guilty parties together, at which point they would be stoned publicly.

Closely related portions of this report appear in another document, *Estas son leyes que tenían los indios de la Nueva España, Anáhuac o México* (These are Laws that the Indians of New Spain, Anahuac or Mexico Had). This document can be securely dated to 1543 and attributed to a priest in Valladolid (Spain).<sup>34</sup> It mentions that some of the same legal rules we have just surveyed were not authentic, because they were derived from a non-authentic indigenous *libro*.<sup>35</sup> It then reports additional sets of legal rules that probably have a Texcocan origin.<sup>36</sup> Texcoco was

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**31** In indigenous testimonies, the term *gallina* (hen) refers to a turkey hen; chickens were a Spanish import.

**32** Here, one can detect the possibility that the informant was deceiving the Spanish author in some of the interviews on which he drew to compose this section, perhaps facilitated by the author's interest in the more striking scenes in the pictorial source, especially those involving sex.

**33** *Historia de los Mexicanos por sus pinturas*, ed. García Icazbalceta, 260.

**34** *Estas son leyes*, ed. García Icazbalceta, 315.

**35** *Ibid.*, 310.

**36** The fourfold division of the legal rules in this text matches, to some degree, the legal jurisdiction of the four Texcocan councils: Offner, "Distribution of Jurisdiction." The description of a war declaration procedure for rebellious subject rulers and towns also matches the war declaration scene in the *Mapa Quinatzin*, leaf 3 (fig. 1, col. 2, row 2) more closely than any other description except for Ixtlilxochitl's report: Offner, "Aztec Legal

the second most important Aztec city at the time of contact and was renowned for its legal expertise, beginning with the ruler Nezahualcoyotl (1431–72) and continuing under his son Nezahualpilli (1472–1515). The claim of inauthenticity, then, may have to do with comments made by the informants of the author of *Estas son leyes*, arising from rivalries between the elites of Texcoco and the more powerful Tenochtitlan, which carried over from precontact times into the Spanish colonial political and legal systems.<sup>37</sup> It is certain that Nahua towns could have different legal hierarchies, legal processes, legal rules, and jurisprudential thinking.<sup>38</sup>

At this point, it is instructive to consider the second example of an indigenous source, the *Mapa Quinatzin* (**Figure 1**) from Texcoco.<sup>39</sup> This document was composed in the Nahua GCS but with some Spanish influence in its composition.<sup>40</sup> We do not know why it was prepared. Possible purposes and uses range from indigenous court recordkeeping and legal instruction to a presentation piece intended for a Spanish audience. Further, we cannot determine how closely its presentation of legal rules and precedents followed precontact indigenous practice. We do know, however, that Toribio de Benavente Motolinía (1482–1568), an early Franciscan missionary and perhaps the most acute ethnographer of the immediate postcontact period, was able to apprehend a great many legal rules from Texcoco by consulting indigenous documents prepared with the Nahua GCS. It would, he said, take a few explanations to understand them, and these were sometimes supplemented by additional consultations with *un buen maestro* (a good master).<sup>41</sup> Another outstanding self-trained ethnographer from a half-century later, Fernando de Alva Cortés Ixtlilxochitl (d. 1648), tells us that Nezahualcoyotl promul-

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Process.” At least three other legal rules are closely related to the legal vignettes in the *Mapa Quinatzin*, leaf 3 and leaf 2 (the flight of a slave into the palace to obtain freedom).

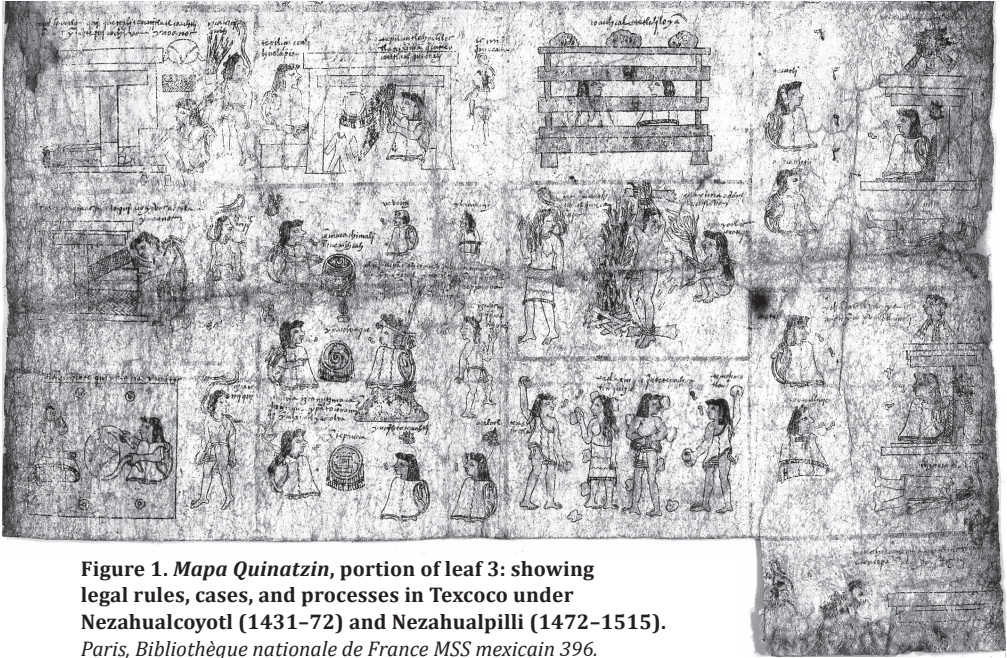
**37** Offner, “Dueling Rulers.”

**38** Here, I take issue with Jongsoo Lee, who attempts to argue that the legal system was the same in all towns: “Reexamining Nezahualcōyotl’s Texcoco.” This is part of a larger revisionist agenda that attempts to strip Nezahualcoyotl of any individual authorial agency, whether in jurisprudence or poetry/song: an argument founded on faulty pictorial document readings and lack of sound ethnographic and historiographic methodology.

**39** The *Mapa Quinatzin* consists of three extant paper leaves, all now kept in the Bibliothèque nationale de France. The first depicts early Texcocan history; the second portrays some aspects of Texcocan political and legal structure and administration. The third (Paris, Bibliothèque nationale de France, MS Mexicain 396) describes the legal content discussed here. A high-resolution digital image can be found online at <<http://gallica.bnf.fr/ark:/12148/btv1b10303825m>> [accessed September 4, 2015].

**40** See Lesbre, “Manumission d’esclaves”; “Mapa Quinatzin”; and “Los fuegos del Palacio Real.”

**41** Motolinía, *Memoriales*, 359.



**Figure 1. *Mapa Quinatzin*, portion of leaf 3: showing legal rules, cases, and processes in Texcoco under Nezahualcoyotl (1431–72) and Nezahualpilli (1472–1515). Paris, Bibliothèque nationale de France MSS mexicain 396.**

gated eighty laws and that jurisdiction over these laws was divided among four councils in Texcoco.<sup>42</sup>

The appearance of the legal vignettes in the *Mapa Quinatzin* (see **Figures 1 and 2**), then, may or may not be similar to what Motolinía, or the author of *Estas son leyes*, used to write their compilations of legal rules. They begin after a strip at the top of the leaf, filled with historical information, including town conquests and

<sup>42</sup> Ixtlilxochitl, *Obras historicas*, 2:101. The author was a *castizo* (three quarters European, one quarter indigenous American) and descendant of Nezahualcoyotl of Texcoco, although his family was from nearby Teotihuacan (not to be confused with the great Classic Period site of the same name). He became fascinated by the history of Texcoco by his twenties and, working closely with a variety of native informants and well as Spaniards, produced the best known explication of an indigenous pictorial document, the *Codex Xolotl*, itself the greatest surviving example of Nahuatl historiography. For complementary examinations of his at times astonishing linguistic, cultural, and ethnographic expertise and accomplishments, see Whittaker, "The Identities of Fernando de Alva Ixtlilxochitl"; Offner, "Ixtlilxochitl's Ethnographic Encounter." The Nahuas employed a vigesimal counting system, so twenty or "one count" of legal rules for each council would make a pleasing symmetry, although the evidence for such distribution of jurisdiction can only be partially assembled. See Offner, "Distribution of Jurisdiction."





**Figure 2.** *Mapa Quinatzin*, leaf 3, column 3: showing legal rules and penalties for adultery in Texcoco under Nezahualcoyotl (1431–72) and Nezahualpilli (1472–1515). Paris, Bibliothèque nationale de France MSS mexicain 396.

a conversation (to the right) between the rulers of Texcoco and Tenochtitlan. This narrative appears to be a continuation of a prior page (perhaps leaf 2 of the map, or an entirely lost folio). Underneath this strip are four columns containing legal information. The grid organization is like no other part of the *Mapa Quinatzin* and has its closest analogues in the types of documents priests used to generate prognostications of individual lives, based on dates of birth, or the marriage prognostication pages in the *Codex Borgia*.<sup>43</sup> The items within each column are similar, but it is initially unclear whether the columns are to be read from top to bottom or vice versa; or from right to left, or left to right; or whether they are to be read in any set order at all.<sup>44</sup> Probably, as is the case with

the more complicated Nahuatl documents, such as the Texcocan *Codex Xolotl*, or the screenfolds used for prognostication, they were to be contemplated all at once as an organized extracted fragment of an interlocking system of thought—jurisprudential in this case, from which examples could be drawn for various instructional purposes.

<sup>43</sup> *Codex Borgia*, 58–60. A digital edition of the exquisite *Codex Borgia* (Rome, Biblioteca Apostolica Vaticana, Borg. Mess. 1) is available at <[http://digital.vatlib.it/en/view/MSS\\_Borg.mess.1](http://digital.vatlib.it/en/view/MSS_Borg.mess.1)> [accessed September 5, 2015].

<sup>44</sup> The marriage prognostication pages in the *Codex Borgia*, for example, are ordered by a sequence of numbers used for prognostication, from two to twenty-six. Twenty-five vignettes related to each of these numbers are arranged across the three pages in boustrophedon fashion, beginning with two on the lower right of page 58 and ending on the upper left of page 60. (The pages themselves are read from right to left in the screenfold). Further, the favorability of each number shown in the vignettes is generated by an underlying but not depicted indigenous divination procedure: a sort of algorithm. See Offner, “Starting from Zero.”

The progression of jurisprudential instruction or analysis may be contained in the visual ordering of the page: the commonality of offenses by column has frequently been noted. The other folios of the *Mapa Quinatzin* have a general (but not thoroughgoing) top-to-bottom organization, so perhaps the top of each column is a good place to start. This approach certainly works for the third column, where adulterers are shown temporarily confined in a prison before punishments are administered. And the fourth column contains cases involving legal corruption, with a case from the reign of Nezahualcoyotl shown on top. Legal rules against theft occupy the leftmost column, and the second column lists offenses against the state. Returning to the third column, where a man and a woman are depicted in a wooden cage with stones weighing down the top to prevent their escape, we see two sets of punishments for two types of adultery just below this image. The more serious offense, where a woman's husband has been killed by her partner, is punished more severely: the adulterous man suffers a horrific death by burning as salt water is repeatedly splashed on him. The woman's punishment is a comparatively mild strangulation. The more common punishment for adultery is then depicted below: stoning for both offenders. Here the folio has unfortunately been trimmed, so we cannot see the additional scenes in this column.

What we are missing, as we attempt to understand this document, is Motolinía's "buen maestro" to tell us why the columns are arranged in this order and the rationale underlying the progression of cases in each column. But whether pre- or postcontact, this is clearly a snapshot of Texcocan jurisprudential thinking. The flexibility of the Nahua GCS ranges from the general, as in the punishment for common adultery, to the specific: the name of a corrupt judge killed during the reign of Nezahualpilli (1472–1515) is notable (col. 4, row 2). We see an emphasis on widely applicable legal rules, but, at the same time, we see specific cases that were quite possibly cited later as legal precedents.<sup>45</sup>

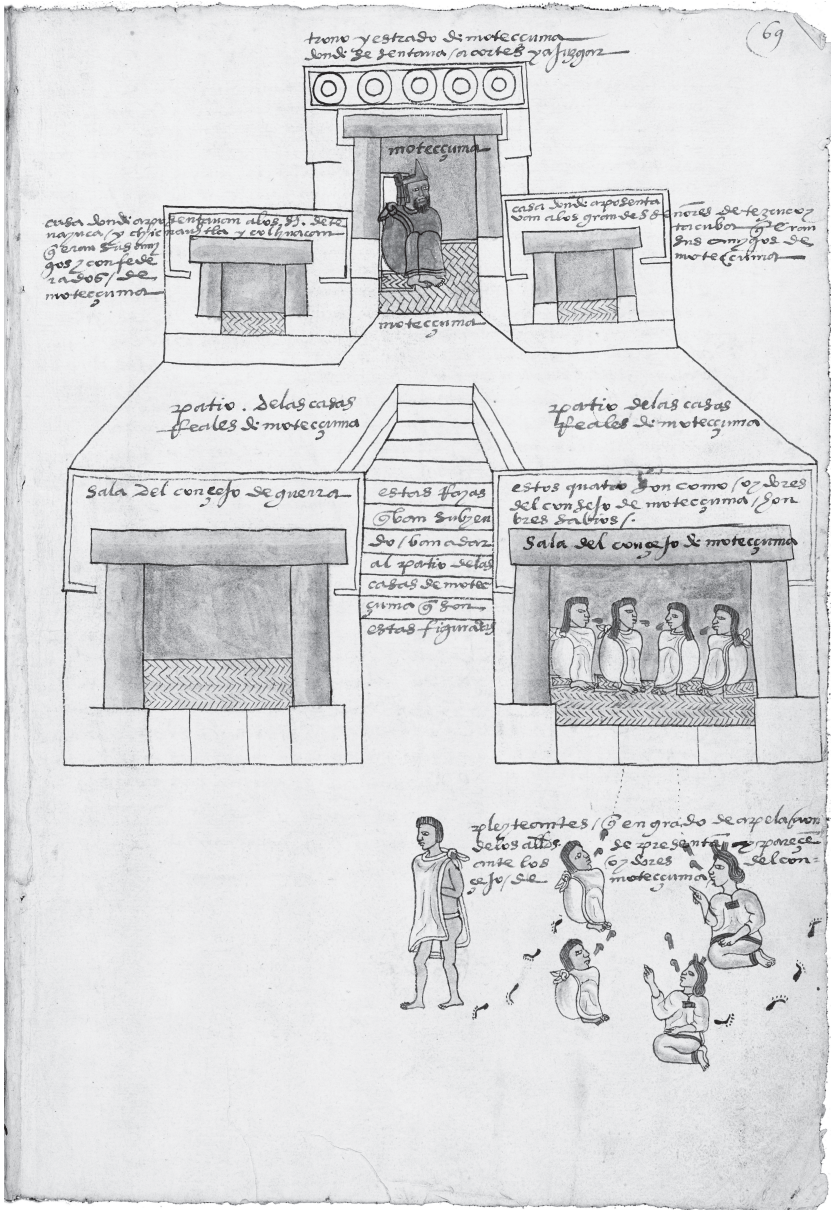
In an interesting contrast, the *Codex Mendoza* from Tenochtitlan places no emphasis on codified law or legal precedent but instead shows the scene of a judicial hearing of uncertain substance and outcome (**Figure 3**).<sup>46</sup> On the following page, we see the court of appeals in the ruler's palace, with the (bearded) ruler

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<sup>45</sup> See Brokmann Haro (*La estera y la silla*, 93–95) for a brief but useful discussion of the roles of precedent and custom in the Aztec legal system. Accurate assessment of the emphasis placed on each in Aztec jurisprudence requires much greater contextualization through intensive source study. See below.

<sup>46</sup> Most of the non-alphabetic content of this manuscript (Oxford, Bodleian Library, MS. Arch. Selden. A. 1) can be found online: <[http://bodley30.bodley.ox.ac.uk:8180/luna/servlet/view/all/what/MS.+Arch.+Selden.+A.+1?sort=Shelfmark%2cFolio\\_Page%2cRoll\\_%23%2cFrame\\_%23](http://bodley30.bodley.ox.ac.uk:8180/luna/servlet/view/all/what/MS.+Arch.+Selden.+A.+1?sort=Shelfmark%2cFolio_Page%2cRoll_%23%2cFrame_%23)> [accessed September 5, 2015].





**Figure 4. Litigants (at lower right) appeal decisions at the Council of Moteuczoma: decisions of the four judges could be appealed to Moteuczoma Xocoyotzin (shown seated, with beard, at the top of this drawing of his palace).**

*Codex Mendoza, fol. 1 69r: Oxford, Bodleian Library MS. Arch. Selden. A.*

*Reproduced courtesy of the Bodleian Library, University of Oxford.*

## Aztec Legal Rules and Legalism at Texcoco

An important matter to consider at this point is the nature of Nahua legal rules and their role in Aztec jurisprudence. As mentioned above, “legal rules” were *nahuatilli* in Nahuatl and shared a semantic field with “orders.” But were these legal rules, jurisprudential principles, or ethnographic summary observations by the Spanish? The evidence tends strongly toward the first option, and in an interesting way. I have already traced the considerable evidence for “legalism,” or strict adherence to legal rules in adjudication, in the city of Texcoco.<sup>47</sup> After a difficult “warring states period” in the Basin of Mexico and surrounding regions that culminated in the fall of Azcapotzalco in 1428, Texcoco emerged with Tenochtitlan as leader of a new Aztec world order.<sup>48</sup> Nezahualcoyotl was faced with uncertain allies and subordinate rulers, as well as disloyal relatives, multiple ethnic groups in conflict, and rapidly developing imperial and economic systems that further fomented social disruption. Nezahualcoyotl and his court responded to this period of extreme divisiveness and chaos by promulgating a legal code to standardize the legal systems of diverse ethnic groups in different places. He also standardized legal administration and processes in order to limit corruption by reducing the discretionary power of judges. These measures increased the efficiency of the courts while the severe sanctions and public and participatory punishments in the code enhanced social control.<sup>49</sup>

The legal content of the *Mapa Quinatzin* discussed above supports the emphasis on strict application of legal rules to cases. Not only does it catalogue these rules, but it shows at least two unpleasant futures for errant judges. And in the *Historia de los Mexicanos por sus pinturas*, we see an abrupt change after the reign of Chimalpopoca, in 1427, from anecdotes of legal decisions to the formalization of legal rules, indicating that Tenochtitlan may have institutionalized a similar system.<sup>50</sup> Unfortunately, however, we have no certain evidence that this was the case, and judges in Tenochtitlan may have used precedent, legal rules, and jurisprudential reasoning to varying degrees as cases came before them. Of course, to some extent, the same must have been true of Texcoco, in that codified law can never encompass all that can happen among human beings. When the legal rules were insufficient to settle a case, the judges could resort to jurisprudential principles,

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**47** Offner, “Aztec Legal Process” and *Law and Politics*, 66–69, 71–85.

**48** The Aztecs traditionally conceived of political authority as coming from three cities. Thus, Tlacopan, with ethnic and cultural similarities to the fallen Azcapotzalco, became the least important member of a ruling Aztec triple alliance along with Tenochtitlan and Texcoco.

**49** Offner, *Law and Politics*, 82.

**50** Haro, *La estera y la silla*, 108.

such as the principle of a reasonable man,<sup>51</sup> or they could rely on precedent. And so it is not surprising when we see, in *Estas son leyes*, how cases with facts not specified in the code might be handled: “For other offenses they [the judges] also made [the perpetrators] slaves, but [these decisions] were discretionary; but the above said were legal rules with which no judge could dispense, except for killing the one who committed them, so as not to make him a slave.”<sup>52</sup>

In summary, however, it must be acknowledged that while we do have strong evidence for legalism in Texcoco, we cannot assume that this approach was used in other Aztec polities. Indeed, Texcoco’s reputation for expertise in the legal process may well have arisen from its emphasis on legalism and accompanying rigor in supervising the legal process and punishing errant judges. (As we have noted, two such instances are highlighted in the *Mapa Quinatzin*). That is, its reputation was forged by the close, disciplined, and reliable relationship it maintained between legal rules and/or jurisprudential principles and their application to facts during the legal process, rather than by promulgating well-regarded legal rules. To my mind, these facts accord with an overall Nahua epistemology. Working from the totality of a system of jurisprudence instilled through careful training, supported by pictorial transmission of both legal principles and specific cases, Nahua jurists could proceed from the general to the specific, applying pertinent legal rules to cases but also judging wisely in the cases that did not fit a specific rule. We see this range of responses in the surviving indigenous pictorial materials. In the alphabetic texts, except when they report directly on pictorial sources, we see, in contrast, a sort of failed fieldwork—a narrow focus on decontextualization of individual rules, without sufficient regard to the structure and wisdom of the indigenous schools of jurisprudence that produced and wielded them. It should be remembered, then, that the reported legal rules are dismembered fragments of sophisticated schools of Nahua jurisprudence.

### Other Methods for Contextualizing Aztec Law

One of the neglected tasks in the study of Aztec law is the cataloguing of all reported Aztec, Nahua, and Otomi legal rules,<sup>53</sup> jurisprudential principles, and related

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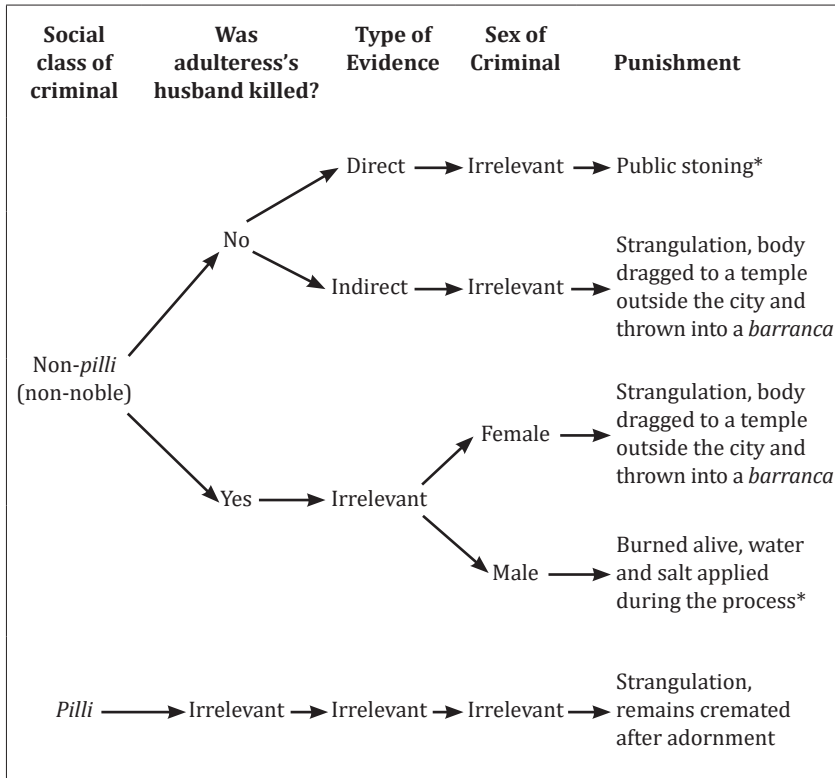
51 Offner “Aztec Legal Process” and *Law and Politics*, 69–1.

52 *Estas son leyes*, ed. García Icazbalceta, 315: “Por otras cosas también hacían esclavos, mas eran arbitrarias; mas estas sobredichas eran leyes que ningún juez podía dispensar en ellas, si no era matando al que las cometía, por no hacerlo esclavo” This mention of judicial discretion is, in my opinion, further evidence of jurisprudential thought among the Nahuas.

53 The Otomi were the second most prominent ethnic group after the Nahuas, who appear to have arrived later. They spoke a tonal language from an entirely different language group.

ethnographic observations or summaries available in the sources. A related task would be to link these items to particular political systems in particular towns, begin their systematic analysis, and thus to gain additional insight into indigenous forms of jurisprudence.

Table 1. Formal Analysis of adultery rules in Texcoco under Nezahualcoyotl (after Offner 1983: 262).



\* The body was probably also dragged to a temple outside the city, where it was thrown into a *barranca*. Both of these legal rules are depicted on *Mapa Quinatzin*, leaf 3, column three, rows 2 and 3. Row 1 of Column 3 shows accused or guilty parties imprisoned in an open-sided jail with stones on top to prevent escape through the top. Cf. Lee 2008 who mistakes the first row as a device for crushing adulterers with a heavy stone and omits from his drawing of this scene the gloss for Row 1: "coauhcalco tetlaliloya(n)" or "cuauhcalco" "in the wooden house" "tētālīoyān" "the place where people are made to sit." This leads him to an erroneous analysis of Texcocan legal rules on adultery.

In the documentary examples provided above, we saw how the *Historia de los Mexicanos por sus pinturas* contains frames of reference composed of an ethnographic encounter and rich ethnographic details. These frames of reference are summarily stripped away, in a manner that should be instructive to us today, in the later Spanish document *Estas son leyes*. The visual impact and richness of detail of the *Mapa Quinatzin*, even without its accompanying oral presentations, has proven more resistant to Spanish or modern decontextualization. Additionally, Sahagún's works and other sources contain a myriad of references, often indirect, to precontact beliefs, customs, and actual behavior that have a clear potential to enhance understanding of the legal system and jurisprudence of Tenochtitlan.

Treating these rich data as an integrated whole, therefore—with proper allowances for political and temporal localization—will help reduce the distortion that they have suffered through their inadequate reporting in modern European texts. In 1983, I made such an effort in a study involving the legal rules against adultery, drunkenness, and theft as observed in Texcoco and surrounding towns, using a method of componential analysis.<sup>54</sup> Table 1 presents a summary of legal rules under Nezahualcoyotl, although it is clear from the available sources that there were different schools of jurisprudential thought regarding adultery, even within the small Texcocan empire.<sup>55</sup>

Legal rules, a few cases or legal decisions and jurisprudential principles, are useful first steps along the way to understanding Aztec legal systems, but they also need to be considered within their cultural and societal contexts. Some additional insight can be gained by a study of the Nahuatl language and specific terms and expressions having to do with legal matters. For example, *tēuctlatoā* meant “to hold court” and is a compound of *tēuctli*, “lord,” and *tlatoā*, “speaks.” The verb for judging or sentencing was *tzontequi*, composed of *tzontli*, “head of hair,” and *tequi*, “to cut.” Nahuatl terminology delineated four steps in the judicial process: accusation, investigation, decision and sentencing, and execution of punishment.<sup>56</sup> Witnesses were expected to tell the truth and “swore” on the earth goddess in a deeply embedded traditional gesture called *tlalqualiztli*, literally “earth-eating” or “the eating of earth.”<sup>57</sup> Nevertheless, there was also a word for bribing or corrupting a judge: *tēmpachoa*, from *tēntli*, “lips/mouth,” and *pachoa*, “to cover,” as well as two more expressions for a judge abusing his authority by putting something under his *petlatl*, “mat,” and *icpalli*, “seat” (*petlatitlan*, *icpaltitlan tlaaquiā*, or

<sup>54</sup> Offner, *Law and Politics*, 255–79.

<sup>55</sup> *Ibid.*, 257–66.

<sup>56</sup> Reparation was sometimes considered along with punishment: *Ibid.*, 245–50.

<sup>57</sup> See Olko, “Body Language in the Preconquest.”



*tlapachoā*).<sup>58</sup> At present, these expressions are only dictionary entries, so another productive avenue into the future of Nahuatl law is to study the texts and contexts in which such words appear. For example, we know from the inquiries of Fray Bernardino de Sahagún, who relied on informants mostly from Tenochtitlan, that the law could be described as a snare: “This saying was said of one who accused one before the ruler. He was told: “Take care, for the snare, the trap lie quivering before authority, that is, in the presence of the ruler.””<sup>59</sup> Recent archival work is also turning up previously unknown legal terms deeply contextualized in Nahuatl texts. For example, *tlatecpāntzin*, a word for a decision and decree in a civil case, was recently discovered by Benjamin Johnson in a sixteenth-century manuscript.<sup>60</sup> The reverential suffix *-tzin* attached to the noun form, coming more than a century after the reign of Nezahualcoyotl, who reportedly issued the decree, shows that the decisions he made at that time were still held in the highest regard.

At the same time, paying attention to the social and political context of these systems is, of course, essential but extremely difficult. And the nature of these contexts has, in fact, been the subject of somewhat feckless disputation due to the intrusion of nineteenth- and twentieth-century political ideologies from Europe into Mesoamerican studies. It is one of the great ironies of Mesoamerican studies and their influence on contemporary Mexico that the concept of *lo indigeno*—what is “the indigenous”—has largely been shaped by this renewed European conquest. Indeed, a key characteristic of this middle and later twentieth-century work on the Aztecs was its reliance and insistence on intrusive Western ideologies, de-contextualization, and advocacy. In many senses, this was not a historiographic exercise at all but instead amounted to recruitment of fragments of indigenous data to fit predefined stages of Marxist or Polanyist economic formation. As a result, modern students approaching this literature must become diligent textual archaeologists, sorting through layers of odd and often distorted semantic penumbræ surrounding and obscuring such terms as *communal land tenure*, *corporate landholding*, *usufruct rights only*, and so forth.<sup>61</sup>

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**58** Petlatl, *icpalli* was in fact a Nahuatl expression meaning “authority.” Brockmann Haro (*La estera y la silla*, 9) titled his book after this diphrasism in Nahuatl, which was intimately related with political and legal authority. (He misspells *petlatl* as *petatl*, however.)

**59** Sahagún, *Florentine Codex*, bk. 6, 243: “Injn tlatolli, ilvilioia: in aqujn ixpan moteilviaia tlatoanj, anoço in aqujn itlan nemj tlatoanj: ilvilioia. Ximjmati: ca vncan neujujxtoc in tzoñoaztli, in tlaxapuchtli in jxpan petlatl, icpalli: qujtoznequj: in jxpan tlatoanj.”

**60** Johnson, “Nezahualcoyotl and a *tlaxilacalli*,” referencing Texcoco, 1581, Biblioteca nacional de antropología e historia, 3a Série de Papeles Sueltos, leg. 7, exp. 218, fol. 10r.

**61** Offner, “Improving Western Historiography.”

More than thirty years ago, I presented an alternative interpretation to this “first principles” approach to characterizing this civilization as a form of despotism directing an economy integrated solely by redistribution.<sup>62</sup> The Aztecs are more accurately characterized as a collection of serially warring and allying city states with economies integrated by market forces as well as redistribution. While centralization of power in Tenochtitlan seems to have accelerated sharply during the reign of Moteuczoma Xocoyotzin (1502–20), this process was interrupted by the Spanish intrusion. An earlier attempt at centralization of power by Tezozomoc and his successor son Maxtla of Azcapotzalco ended in the later 1420s with a successful revolution by Tenochtitlan and Texcoco, supported by powerful allies inside and outside the Basin of Mexico, and we can by no means exclude the same fate befalling Tenochtitlan absent the Spanish intrusion.

Among the data mined from sources to support and present the authoritarian view of Aztec society were sumptuary laws, particularly those that are attributed to Moteuczoma Ilhuicamina (r. 1440–69).<sup>63</sup> In 1980, Patricia Anawalt evaluated the evidence for sumptuary laws and concluded that “the recorded laws reflect a creed more than a reality.”<sup>64</sup> As the leading expert on Aztec textiles, this was no casual conclusion on her part. She carefully summarized the evidence for allegedly strict control of the circulation of *tilmatli* (cloaks) in sources such as those found in Sahagún’s writings and in Diego de Duran’s *Historia de las Indias de Nueva España*,<sup>65</sup> and contrasted them with incidental reports of behavior from those same sources to show that “tilmatli circulated in Aztec society through means other than those recognized by the official sumptuary laws.”<sup>66</sup> *Tilmatli* were also sold in the marketplace and were awarded as prizes, and could be sold by the recipient. Anawalt concludes by saying:<sup>67</sup>

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**62** Offner, “On the Inapplicability of ‘Oriental Despotism’” and “On Carrasco’s Use of Theoretical ‘First Principles.’”

**63** Peperstraete (*La “Chronique X,”* 143) suggests that certain conquests and perhaps the legal reforms of this ruler may instead belong to the later ruler of the same initial name, Moteuczoma Xocoyotzin. She argues that the indigenous structuring of the narrative required the rise of the empire towards its zenith under the first Moteuczoma (Ilhuicamina) and its later fall under the second Moteuczoma. Reports of reforms under the second Moteuczoma would not accord with this preferred narrative pattern.

**64** Anawalt, “Costume and Control,” 43.

**65** Peperstraete (*La “Chronique X,”* 13–23) provides an excellent short study of Fray Diego Durán (ca. 1537–88), born in Sevilla, who spent some childhood years in Texcoco (1543–50) and entered the Dominican order in 1556.

**66** Anawalt “Costume and Control,” 41.

**67** *Ibid.*, 43.

A detailed study of the chronicles makes it apparent that Aztec society was becoming increasingly dependent on luxury goods. In so doing, it abandoned the frugality of earlier days, an echo of which survived in the official severity of the sumptuary laws. No doubt the descriptions of these regulations, which come to us from the contemporary Indian informants, represent an idealized image of the military and political order in pre-Conquest Tenochtitlan.

Anawalt's insights into law as reported in the written and pictorial sources were both early and profound, but they have not been sufficiently appreciated, and her methodology has not been applied to other important areas of Aztec life. For example, these same sources could be explored for references to other items supposedly strictly regulated, such as *pulque* (an alcoholic drink derived from the *maguey* [*agave*] plant). With regard to consumption of alcohol in Aztec society, we find that its use was not in fact restricted to those over fifty-two years of age (one full count of the Aztec calendar round). For example, in a legal case cited above, wherein a woman took sexual advantage of a drunken man, the man was not punished. Anawalt's insights, however, go beyond observing the variance between legal rules, idealized conceptions, and actual behavior. Her work demonstrates how the mere presence of legal rules in the sources creates a false impression of strict social control in the eyes of modern investigators. She also exposes how the acceptance and promotion of the reported sumptuary laws by ideological proponents have created a false image of an authoritarian society.<sup>68</sup>

In the same way, excessive and uncritical reliance upon reports of land tenure, most often bequeathed to us by or on behalf of societies' elites, has long been a convenience of those seeking to classify civilizations according to the antique grand developmental theories originating in the nineteenth century. In 1981, I presented some of the considerable evidence for individual landholding and a market in land among the Aztecs.<sup>69</sup> But such landholding practices were not supposed to exist, according to various Marxist and Polanyist theoretical formulations, and so the evidence has been for the most part either ignored or subject to attempts to explain it away. Nevertheless, persistent known as well as continuously discovered data are eroding and contradicting the theoretical strictures of the past, leading to emerging ambiguity even in the works of archaeologists. In the third edition of his introductory work *The Aztecs*, Michael Smith presents the conventional view

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<sup>68</sup> For an evaluation of recent scholarship on sumptuary laws in a European context, see the article by Laurel Wilson, "Common Threads," in this issue.

<sup>69</sup> Offner, "On the Inapplicability of 'Oriental Despotism,'" 46–48, and "On Carrasco's Use of Theoretical 'First Principles.'"

regarding land tenure: “the *tlatoani* [ruler] owned or controlled the land within his city-state.”<sup>70</sup> A few pages earlier, however, when describing *calpolli* land held by commoners rather than nobles and usually seen as the least likely to involve individual ownership, Smith cites a passage from the work of James Lockhart and states that “rights for use of an individual plot could be sold, but the land remained under the general jurisdiction of the *calpolli* and *altepetl* (city-state).”<sup>71</sup> Lockhart, for his part, writes:

A land sale, then, was openly brought before the authorities, and a feast-like ritual accompanied the transfer like any other. Indeed one way of looking at a transaction of this type is that the seller for a consideration relinquished his allocation from the *altepetl/calpolli* and permitted the authorities to reallocate it in the usual way to the buyer.<sup>72</sup>

Such circumlocutions reveal a struggle to negotiate equivalences and differences among modern Western conceptions of land ownership and Aztec and Nahuatl conceptions. They stand in contrast to an important source on land tenure which is straightforward in reporting that a commoner in need of funds to maintain his important ritual status as a “receiver” of Huitzilopochtli (the most important god of the Nahuatl of Tenochtitlan) “sold his land” (*quinamaca itlal*) or “somewhere he arranged a loan” on it (“*canah netlacujlli quichioa*”).<sup>73</sup> He did this with various types of land, including *calpolli* land (“*quichioa in calpollali*”). The passage says nothing about permissions and feasts, only that he might lose a certain type of land on which he owed labor service *tequitl* (“*ximilli ie in ipan tequjtia*”), if he did not produce that service (*tequitl*)<sup>74</sup> for the land. And the text names several other types of land this commoner might sell or on which he might get loans: “the enclosed land, the marshy land, the dusty land” (in *chinamitl*, in *chiauhtlalli*, in *teuhtlalli*). This brief passage, offered as an aside by one of Sahagún’s informants, is full of evidence of the sophistication of precontact land tenure and the Aztec economy. It should also be noted that these “receivers” of Huitzilopochtli indulged in a little drunkenness, with no comment made about illegality, at the end of their period of expenditure, fasting, and service.

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<sup>70</sup> Smith, *The Aztecs*, 155 and 134.

<sup>71</sup> *Ibid.*, 135.

<sup>72</sup> Lockhart, *Nahuas after the Conquest*, 154.

<sup>73</sup> Sahagún, *Florentine Codex*, bk. 3, 9.

<sup>74</sup> *Tequitl*, at least as described in many colonial documents, could also involve the provision of tribute in kind, although almost always related to products for domestic consumption: maize, turkeys, eggs, and so forth.

As I proposed in 1981, what is going to be required for the future of Aztec law is a more careful and exacting study of the bundle of rights and duties involving land (or involving other people, entities, and property) that existed in Aztec and Nahua societies, and evaluation of the extent to which these rights and duties were accepted, influenced actual behavior, and were enforced.<sup>75</sup> The anachronistic notions of “private property” or “communal land” employed in the developmental/comparative schemes of the last century and a half lead to little more than a rediscovery of the original Western discriminations built into such formulations. Meanwhile, excessive claims of state control of the economy (made by followers of Marx and Polanyi) have, in retrospect, not only stunted investigations into Aztec slavery and its implications for the role of labor in the Aztec economy, but also inhibited inquiry into Aztec commercial law. Nahuatl terminology reveals a rich set of terms for buying, selling, charging, paying, loaning, lending, and borrowing—and also the price, cost, wholesale, and retail—that originated in a complex precontact economy. Sahagún’s work is full of incidental mentions of economic and commercial behavior, including the existence of canoe-borne fresh water sellers, whose very existence in an allegedly authoritarian society with a redistributive economy seems more than a bit curious. And while Western-language dictionaries of Nahuatl have existed since the sixteenth century, terse translations of indigenous words do not capture sufficient context for their emic content to be apparent, since modern dictionary users have generally operated from their culturally specific etic perspectives. This again points back to the need to study law, in context, in Nahuatl documents. Finally, the popular image of Aztec rulers as unrestrained autocrats, especially as mapped onto contemporary Mexican politics, needs changing. I have already delineated some of the power blocs and competing interests with which even powerful rulers such as Nezahualcoyotl and Moteuczoma Ilhuicamina had to struggle to maintain their power.<sup>76</sup>

## Conclusion

In summary: whether we are discussing sumptuary laws regulating the consumption of clothing and drink, legal rules of land tenure, or Aztec labor law and commercial law, the detailed consideration of ethnographic information, adequately reported and analyzed, can render more accurate and meaningful comparison of medieval civilizations that emerge as rather more complicated than those sug-

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**75** Offner, “On the Inapplicability of ‘Oriental Despotism,’” 46–48.

**76** Offner, “Distribution of Jurisdiction and Political Power” and “Dueling Rulers and Strange Attractors.”

gested by narrow, modern paradigms. And it is along this path that much of the future of Aztec Law lies. The richest source of ethnographic data for the Aztecs and Nahuas remains the work of Fray Bernardino de Sahagún. Descriptions of precontact behavior by his indigenous informants should be investigated in order to throw light on a number of basic issues: the variance among legal rules, jurisprudential principles, and everyday conduct; the actual behavior within and attitude towards the legal system among ordinary people, and vice versa; the need for additional information on legal process; reports of social discord and dysfunction, as well as cohesion; and the intersection of indigenous conceptions of law and morality.

Through this source, and a few others, we can begin to see the participants in Aztec society going about their daily lives. We need not, therefore, rely exclusively on top-down reports by relative cultural outsiders regarding the legal system. To some degree we are fortunate that the most prominent Aztec legal system, that of Texcoco, was legalistic and did give priority to the strict application of the facts of a case to the exigencies of applicable legal rules, but we can also see that these legal rules and jurisprudential principles existed because the actual behavior of people frequently conflicted with them. And as we see from Anawalt's inquiry into Aztec sumptuary laws, the appearance and prominence of legal rules in the sources create the illusion of far greater social control among the Aztecs than actually existed. What survive in the sources as legal rules are therefore important but decontextualized fragments of sophisticated systems of jurisprudential thought based on indigenous observation and contemplation of human behavior. Recovering these systems of thought will require understanding and evaluating both old and new evidence in novel ways. In other words, the future of Aztec law will more resemble ethnography than the old method of *a priori* imposition of Victorian era social evolutionary schemes, carried over into Mexico by Europeans in the twentieth century, and which declared Aztec society to be authoritarian, despotic, and limited in its humanity and range of expression. And, happily, the field of Nahuatl ethnography is already changing, through the contributions of contemporary Nahuatl speakers who are now exploring their own cultural history. I look forward to the future of Aztec law.

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**Jerome A. Offner** (joffner@hmns.org) is Associate Curator of Northern Mesoamerica at the Houston Museum of Natural Science and an expert on the Aztecs, their history, culture, law, and politics. His groundbreaking study, *Law and Politics in Aztec Texcoco* (1983) was the winner of the 1985 Howard F. Cline Prize in Latin American history. More recently, he has turned his attention to the Aztecs' graphic communication system and the study of native pictorial documents from before and after the conquest of 1519 CE. Along with a team of scholars from five European countries and Mexico, he is currently investigating the greatest of the Aztec pictorial histories, the Codex Xolotl, which reports on the remarkable life of the most famous Aztec jurist, Nezahualcoyotl (r. 1431–72 CE).

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**Abstract** This article models a methodology for recovering the substance and nature of the Aztec legal tradition by interrogating reports of precontact indigenous behavior in the works of early colonial ethnographers, as well as in pictorial manuscripts and their accompanying oral performances. It calls for a new, richly recontextualized approach to the study of a medieval civilization whose sophisticated legal and jurisprudential practices have been fundamentally obscured by a long process of decontextualization and the anachronistic applications of modern Western paradigms.

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**Keywords** Aztec, Nahuatl, Mesoamerica, Mexico, Texcoco, Tenochtitlan, Tlacopan, law, jurisprudence, legal procedure, Fray Bernardino de Sahagún, Fernando Alva de Ixtlilxochitl.