

For Better or Worse: Divorce and Annulment Lawsuits in Colonial Mexico (1544-1799)

by

Jonathan Bird

Department of History  
Duke University

Date: \_\_\_\_\_

Approved:

\_\_\_\_\_  
Pete Sigal, Supervisor

\_\_\_\_\_  
John D. French

\_\_\_\_\_  
David Barry Gaspar

\_\_\_\_\_  
Edward J. Balleisen

\_\_\_\_\_  
Julia Rudolph

Dissertation submitted in partial fulfillment of  
the requirements for the degree of Doctor  
of Philosophy in the Department of  
History in the Graduate School  
of Duke University

2013

ABSTRACT

For Better or Worse: Divorce and Annulment Lawsuits in Colonial Mexico (1544-1799)

by

Jonathan Bird

Department of History  
Duke University

Date: \_\_\_\_\_

Approved:

\_\_\_\_\_  
Pete Sigal, Supervisor

\_\_\_\_\_  
John D. French

\_\_\_\_\_  
David Barry Gaspar

\_\_\_\_\_  
Edward J. Balleisen

\_\_\_\_\_  
Julia Rudolph

An abstract of a dissertation submitted in partial  
fulfillment of the requirements for the degree  
of Doctor of Philosophy in the Department of  
History in the Graduate School of  
Duke University

2013

Copyright by  
Jonathan Bird  
2013

## **Abstract**

“For Better or For Worse: Divorce and Annulment Lawsuits in Colonial Mexico (1544-1799)” uses petitions for divorce and annulment to explore how husbands and wives defined and contested their marital roles and manipulated legal procedure. Marital conflict provides an intimate window into the daily lives of colonial Mexicans, and the discourses developed in the course of divorce and annulment litigation show us what lawyers, litigants and judges understood to be appropriate behavior for husbands and wives. This dissertation maintains that wives often sued for divorce or annulment not as an end in itself, but rather as a means to quickly escape domestic violence by getting the authorities to place them in enclosure, away from abusive husbands. Many wives used a divorce or annulment lawsuit just to get placed in enclosure, without making a good faith effort to take the litigation to its final conclusion. “For Better or For Worse” also argues concepts of masculinity, rather than notions of honor, played a strong role in the ways that husbands negotiated their presence in divorce and annulment suits. This work thus suggests a new way to interpret the problem of marital conflict in Mexico, showing how wives ably manipulated procedural law to escape abuse and how men attempted to defend their masculine identities and their gendered roles as husbands in the course of divorce and annulment lawsuits.

## **Dedication**

To Rosalba and Barry

## Contents

Abstract.....	iv
List of Tables .....	x
List of Figures.....	xi
Acknowledgements.....	xii
Chapter One. Introduction .....	1
Divorce and Annulment in New Spain .....	6
Historiography .....	12
Divorce.....	12
Honor .....	15
Patriarchy .....	19
Masculinity .....	25
Methods and Sources .....	28
Legal Context of New Spain.....	34
Marriage after the Council of Trent .....	35
Third Mexican Provincial Council.....	39
Chapters .....	49
Chapter Two. Marriages that Never Existed: Annulments in Colonial Mexico .....	57
Historiography on Marital Nullity .....	60
Annulments After Trent.....	62
Paperwork and Patience .....	74
Impediments.....	77

Impediment of Age .....	79
Bigamy .....	84
Nonconsent .....	86
Condition and Deception .....	92
Impotence.....	98
Third Party Impositions .....	113
Collusive Annulments.....	119
Conclusion .....	124
Chapter Three. Bending the Law:	
The Procedural Law of Divorce in Colonial Mexico.....	127
Ecclesiastical Divorce.....	132
Physical Abuse and Bodily Evidence .....	135
Officials involved in Matrimonial Causes .....	141
Overview of Procedural Law of Divorce.....	151
Analysis of the case of doña María de Villar.....	157
First Steps.....	159
Introduction ( <i>Primera Instancia</i> ) .....	160
Preliminary Evidence Phase ( <i>Probança or Ynformación</i> ).....	168
Motion To Close Preliminary Evidence Phase .....	172
Protective Custody .....	174
Second Power Of Attorney .....	177
Request For Alimony Or Maintenance .....	178
First Response By Defendant.....	183

Plaintiff's Response .....	185
Main Instructive (Evidence Gathering) Phase .....	185
Prueba, Sumaria Información (Defense).....	185
Ratification.....	186
Interrogations .....	188
Discussion Phase.....	194
Decision-Making Phase ( <i>sentencia</i> ) .....	196
Appeals Process .....	199
Reconciliation and the Indissolubility of Marriage .....	201
Conclusion .....	205
Chapter Four. Defending their Masculinity:	
Husbands as Litigants in Marital Lawsuits.....	206
Masculinity and the Defense of Manhood.....	215
The "Honor" Thesis .....	209
Gentle Patriarchs: Husbandly Authority and the Church .....	219
Economic Support of Husbands: Providers or Scoundrels.....	225
Violence and "Corrections" .....	238
Husbands as Plaintiffs.....	243
Husbands as Defendants .....	253
Conflicting Patriarchs .....	258
Conclusion .....	262
Chapter Five. Escaping <i>la mala vida</i> :	
Wives and Divorce in Colonial Mexico.....	265

Why Women Divorced .....	268
Divorce: A Risky Strategy .....	271
Enclosure: A Key Benefit .....	273
Violence .....	287
Abusive Wives .....	304
Other Causes of Marital Strife .....	309
Financial Considerations: the Dowry and Alimony.....	317
Conclusion .....	330
Chapter Six. Conclusion.....	333
Seeking Enclosure.....	336
Honor and Masculinity .....	339
References.....	343
Primary Sources .....	343
Bibliography .....	344
Biography.....	355

## List of Tables

Table 1: Sample Annulment Cases in New Spain (1544-1695) .....	65
Table 2: Annulment Cases by Decade .....	67
Table 3: 17th Century Annulments Authorized.....	69
Table 4: Grounds for Annulment.....	78
Table 5: Final Outcomes in Annulment Lawsuits .....	124
Table 6: Divorce Verdicts (1548-1699).....	132
Table 7: Cause of Divorce (1548-1699) .....	134
Table 8: Judges by Years Active .....	143
Table 9: Most Prolific Notaries.....	145
Table 10: Professions of Husbands in Divorce Lawsuits .....	224
Table 11: Professions of Husbands in Annulment Lawsuits .....	225
Table 12: Kinds of Enclosure in 16th and 17th centuries.....	274
Table 13: Institutions of Enclosure .....	277
Table 14: Percentage of Wives with Endowment at Time of Marriage (1548-1699) ...	317
Table 15: Table 5: Dowry Value (17th century).....	319
Table 16: Sample Alimony Awards (17th Century).....	329

## List of Figures

Figure 1: Divorce Cases by Ecclesiastical Judges (1548-1699).....	140
Figure 2: Divorce Cases by Ecclesiastical Judge (1598-1621).....	142
Figure 3: Frequency of Grounds for Divorce (1544-1799) .....	243
Figure 4: Grounds for Annulment (Husbands).....	247

## Acknowledgements

Completing a dissertation is an undertaking that always takes longer than you think it will, and my case was no exception. Along the way mentors, colleagues, friends and family all gave me essential support without which I would never have finished this project.

My studies at Duke were made possible by three grants: the James B. Duke Scholarship, Duke Endowment Fellowship and the University Scholarship Program. In addition to its financial support, the University Scholarship program, led by Victoria Lodewick and financed by a generous grant from Melinda French Gates, provided me with a key space for multidisciplinary thinking and for presenting sections of my dissertation to a fair but critical audience. A Tinker Field Research Grant for Latin American and Iberianist Graduate Students and a Ford Pre-dissertation Research Grant provided further research support during the summers of 2005 and 2006. A Foreign Language and Area Studies Scholarship in Yucatec Maya from the U.S. Department of Education in 2005 and 2006 and a Consortium of Latin American and Caribbean Studies Dissertation Research Travel Grant in 2009 made additional research possible.

My path to studying colonial Mexico began at Washington University in St. Louis, where Mark Pegg and Christine Johnson both encouraged me to consider graduate school in history for the first time. After matriculating at Duke, Peter H. Wood served as a key outside advisor and mentor.

My friends and colleagues in the Ph.D. program in history made my time at Duke the most intellectually productive period of my life. Kristin Wintersteen and Reena Goldthree challenged me to think about Latin American and Caribbean history in new ways. In addition to their friendship, I am grateful to Heidi Giusto and Kelly Kennington for giving key feedback on an earlier version of this project. Tim Schultz, JP Clark, Sebastian Lukasik and Mitch Fraas could always be counted on for a great conversation over a cup of coffee or a beer.

In Mexico City, two friends and fellow historians Adriana Rodríguez Delgado and Evy Pérez de León, provided invaluable assistance with the final stages of this project, suggesting innumerable improvements without which this would have been a much poorer study. I am enormously grateful for their help. Thanks also to Zeb Tortorici for pointing me to several fascinating divorce cases. The staff at the *Archivo General de la Nación* was universally courteous and efficient, making my job much easier. Thanks to Pilar Gonzalbo Aizpuru for serving as my tutor during my time as a visiting researcher at the *Colegio de México* in Mexico City during 2008, the period when I conducted most of the primary source research that led to this dissertation.

My committee members have been universally supportive of this project while at the same time pushing me towards increased intellectual rigor and professionalism as a historian. John French was a critical interlocutor who challenged me to be more innovative and think above and beyond the historiographical trends of the last twenty

years. Ed Balleisen and Julia Rudolph pushed me towards greater precision as a legal historian. Barry Gaspar trained me to always consider the transnational aspects of my research. Above all, I am greatly indebted to my advisor, Pete Sigal, for his steadfast support and patience during this long project. Pete's brilliant graduate seminars ended up providing a key theoretical framework and background for my research, and his nuanced and astute comments during each stage of the dissertation pushed me to produce a much better dissertation than I would have without his guidance. Pete is one of the few historians who is as good a writer as he is a researcher, making his suggestions for revisions particularly invaluable.

Finally, I would like to thank my family. My mother Charlotte was my first teacher and critic and has always pushed me to become a better writer. My grandmother Elizabeth proved generous financial support for several extended research trips. My brothers David and Scott encouraged me to keep going and finish what I had started. My in-laws Guadalupe and Manuel made it possible for my writing to stay on schedule.

My father Barry has supported this project emotionally and financially at every stage. He proofread and gave perceptive comments on every page of the complete manuscript and checked the footnotes for accuracy. My wife Rosalba accompanied this project practically from its inception and was placed in the awkward position of planning a wedding with someone who was researching divorce and marital conflict. At every stage she supported this dissertation, from taking hundreds of pictures at the archive to finding rare books that I needed at the libraries in several countries. I will always be in

her debt for her extraordinary support and sacrifice as I completed this dissertation.

Finally, our daughter Nichim Sophie was born during the final stages of writing and served as a muse helping me to finish the last chapters.

# Chapter One

## Introduction

Doña Beatriz Micaela Melián's claimed to have suffered a pattern of beatings, humiliations and neglect at the hands of her husband, but she stated that until one morning in February of 1677, he had never tried to kill her.<sup>1</sup> Her statement to the court described how her husband don Nicolás Rubio flew into a rage when his wife refused to get out of bed and serve him a hot cup of chocolate one morning. The master dyer Don Nicolás had first requested that the couple's nursemaid ("chichigua"), a Chichimecan *india* named María de Almodóbar serve him his chocolate, but the "worthless" servant had refused for some unknown reason. Don Nicolás next demanded that his wife serve him. Doña Beatriz's statement emphasized that she was a fragile woman of delicate constitution who was still in convalescence almost eight months after the birth of her first child. So precarious was doña Beatriz's health that before she got married the elderly nun who served as the orphan's surrogate mother had told don Nicolás that Beatriz was a "sick" person and would not be able to serve him after the wedding. Don Nicolás had supposedly agreed, stating that he was not looking for a servant to do his chores but rather a woman who would "care" for him as a wife. Still, when doña Beatriz refused to get out of bed to serve his chocolate, he tried to punish her insubordination by attacking her with his sword. He was prevented from slashing her by the intervention of the

---

<sup>1</sup> Doña Beatriz Michaela Melián vs. don Nicolás de Rubio. AGN. Indiferente Virreinal, Caja 1705, exp. 2, 1677.

stubborn nursemaid who had refused to serve him the hot beverage in the first place. This attempted murder was only the last and most dramatic in a long line of conflicts, insults, abuse and neglect during the eighteen months of the short marriage.

This dissertation examines cases like that of don Nicolás and Beatriz, a case that ended in a “divorce” suit. Throughout the early modern Catholic world, ecclesiastical courts emphasized the sacramental nature of marriage and the permanence of valid marriages. This left couples like don Nicolás and doña Beatriz with two options: request an annulment and prove that their marriage was invalid, or file for an ecclesiastical divorce, a permanent or temporary legal separation that suspended the obligation of marital cohabitation without dissolving the marriage bond. Given the large amounts of paperwork, possible appeals, and bureaucracy of colonial courts, it was difficult and time-consuming to bring a divorce or annulment case to its final resolution. Why then, did litigants sue for divorce or annulment? This dissertation argues that most female litigants sued for divorce or annulment in order to be taken out of their husband’s custody and placed in the safety of a court-ordered enclosure. Being placed in enclosure (“*recogimiento*”) was the principal benefit of pursuing marital litigation and it could be achieved quickly, without needing to take the lawsuit to its final consequences. This meant that despite the lethargy and excessive bureaucracy of the colonial justice system, ecclesiastical courts did provide some possibility of relief from marital violence for the minority of colonial wives who possessed both the legal knowledge to sue their husbands and the courage to actually do so.

Returning to the case of don Nicolás and Beatriz, early conflicts had been less violent but no less dramatic. After an argument, don Nicolás had locked his wife in the dirty stables behind their home, forcing his wife to spend the night sleeping next to livestock. A much more serious conflict took place while doña Beatriz was pregnant. After an argument, don Nicolás held her down and savagely whipped her back. Despite this violence and her delicate condition, she did not miscarry and carried her son to term. Doña Beatriz also criticized the way that her husband spent money, claiming that he had “wasted” (“disipado”) the six hundred pesos of her dowry buying six fancy shirts and other clothes for two of his sons from a previous marriage and his young mulatto slave.<sup>2</sup> The same day that doña Beatriz filed her power of attorney and submitted her divorce petition, the ecclesiastical judge Juan Dies de la Barrera responded to her claim, opening the discovery process and authorizing the Public Notary Francisco de Villena to take witness depositions. After presenting her petition for divorce and the testimony of seven sympathetic witnesses, the judge ordered her to be taken into the court’s protective custody “wherever she might be” and “deposited” in the house of Marcos Hernandez in order “to remain in the company of his wife.” The judge issued this order twenty days after the initial petition and more than two weeks after doña Beatriz’s witnesses began to give their depositions. Although it is not stated, one imagines that doña Beatriz must have informally left her husband and stayed outside of her house to avoid reprisals from the violent don Nicolás.

---

<sup>2</sup> Don Nicolás’s appears to have treated his two sons and the mulatto slave equally, thereby making plausible the inference that the young boy was also don Nicolás’s son.

In his response to the young wife's lawsuit, don Nicolás's lawyer Domingo de Córdoba did not deny the substance of doña Beatriz's claims but rather questioned the seriousness of her allegations. He verified that don Nicolás had threatened his wife with a sword for not bringing him chocolate but stated that he had never actually intended to kill her. The lawyer claimed:

*what happened was it was just a threat with his sheathed sword, nothing more, because she didn't want to get out of bed to serve a bit of hot chocolate to my client, who later had to go to work with an empty stomach<sup>3</sup>*

Months later, don Nicolás changed his story, justifying his behavior by claiming that rather than threatening to kill his wife, he had meant to threaten to kill the lazy nursemaid.<sup>4</sup>

Don Nicolás also challenged his wife's allegations that he did not spend money on her, emphasizing that her constant illnesses had cost him a lot of money in "doctors, surgeons and medicine."<sup>5</sup> He dared her to prove that he had spent the money from her dowry on her stepsons and the mulatto slave. Don Nicolás also challenged his wife's claims to being a good mother, arguing that, "she has never wanted to nurse" her own child, instead preferring to hire wet-nurses.<sup>6</sup> He claimed that during the pregnancy she

---

<sup>3</sup> Doña Beatriz Michaela Melián vs. Don Nicolás de Rubio. AGN. Indiferente Virreinal, Caja 1705, exp. 2, 1677, 20.

<sup>4</sup> Doña Beatriz Michaela Melián vs. Don Nicolás de Rubio. AGN. Indiferente Virreinal, Caja 1705, exp. 2, 1677, 35v.

<sup>5</sup> Doña Beatriz Michaela Melián vs. Don Nicolás de Rubio. AGN. Indiferente Virreinal, Caja 1705, exp. 2, 1677, 19v.

<sup>6</sup> Doña Beatriz Michaela Melián vs. Don Nicolás de Rubio. AGN. Indiferente Virreinal, Caja 1705, exp. 2, 1677, 35v.

had committed violence against her unborn child by beating her womb to try to force a miscarriage and refusing to “announce her cravings” which colonial folk wisdom held was a denial to the fetus of the particular nutrients it needed.<sup>7</sup>

To don Nicolás, it seemed normal and justified to have threatened to kill his wife for not preparing him his breakfast of hot chocolate. The ecclesiastical judge seems not to have agreed. After three months of depositions and litigation, the ecclesiastical judge in the charge of the case, Juan Dies de la Barrera, ordered don Nicolás to return the couple’s child to doña Beatriz. This seems to indicate that he would have found in favor of doña Beatriz even though we cannot be certain since the second half of the case-file was lost or destroyed.

The case of doña Beatriz and don Nicolás suggests the key question of this dissertation: How did litigants in colonial divorce and annulment lawsuits mobilize notions of appropriate Catholic marriage in order to achieve favorable outcomes in colonial ecclesiastical courts? Wives emphasized the violence, neglect, or verbal abuse of their husbands in order to convince ecclesiastical judges to remove them from their husband’s custody and place them in court-approved enclosure. At the same time, husbands mobilized particular discourses of masculinity in order to lay claim to their marital rights and justify the way that they treated their wives. Ecclesiastical judges and other officials also participated by asserting their superior authority over laypersons involved in litigation.

---

<sup>7</sup> Doña Beatriz Michaela Melián vs. Don Nicolás de Rubio. AGN. Indiferente Virreinal, Caja 1705, exp. 2, 1677, 35v.

The few studies of divorce in colonial Latin America have argued that wives sought divorce for the economic and practical benefits a judicial order of divorce could provide.<sup>8</sup> This dissertation challenges this straightforward interpretation, suggesting that most wives manipulated legal procedure by suing their husbands for divorce in order to be placed in enclosure or legal seclusion (*recogimiento*) away from their husbands as an automatic part of the process. In the case of doña Beatriz, being placed in enclosure was a key, quick benefit of divorce proceedings that would have dramatically improved her quality of life. Colonial regulations required ecclesiastical judges to place women who sued for divorce and annulment in protective enclosure, meaning that the benefit of court-custody was universal for all women participating in marital litigation. In contrast, husbands frequently engaged in spirited defenses of their behavior and treatment of their wives in colonial courts, using the courts to reaffirm their masculinity, justify the acts of violence that they had perpetuated against their wives and to dispute claims that they were “bad” or irresponsible husbands.

### ***Divorce and Annulment in New Spain***

Divorce and annulment were quite uncommon in New Spain. While marriage was far from universal, the vast majority of couples that married remained together until

---

<sup>8</sup> Dora Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800* (México, D.F.: El Colegio de México, 2005); Silvia Marina Arrom, *La Mujer Mexicana Ante El Divorcio Eclesiástico (1800-1857)* (Secretaría de Educación Pública, Dirección General de Divulgación, 1976).

the death of one of the spouses.<sup>9</sup> Colonial society placed a significant amount of pressure on married couples to stay together. Clerics throughout the Catholic world attempted to instill moral values of loyalty and obedience and promoted a notion of marriage as a sanctified, solemn contract.<sup>10</sup> However, the church's strict doctrine of marital permanence was not incompatible with certain legal remedies for couples with invalid or troubled marriages. In certain circumstances, the church authorized annulments or legal separations (frequently called ecclesiastical divorce). An annulment was a formal decree of nullity issued by the ordinary court of the Archdiocese that declared a marriage to have been, from its start, null and void. Annulment did not end a marriage or dissolve any marital bonds but rather decreed that some serious defect at the time of the marriage had prevented the sacrament of marriage from coming into being. There were numerous grounds for annulment, but the most common were forced consent, impotence, and spiritual or blood ties. Following the issuance of a decree of annulment, the marital property would be divided and the couple could resume their lives as if they had never married, choosing to get married to another person or taking religious vows according to their desires. The other mechanism, ecclesiastical divorce, provided a much less definitive solution. Rather than a true divorce as we know it today, this was a temporary or permanent separation that suspended the obligation of the married couple to

---

<sup>9</sup> *Indios* were the group most likely to marry; since indigenous people paid taxes (tribute) per married household and not per individual, there was an economic incentive to promote early and consistent marriage.

<sup>10</sup> Lawrence Stone, *Road to Divorce : England, 1530-1987* (Oxford [England] ; New York: Oxford University Press, 1995), 2.

cohabitate. Ecclesiastical courts authorized divorces when there was strong evidence of a pattern of behavior that made marital cohabitation unsafe or unsupportable for one of the spouses. Physical and verbal abuse, adultery, neglect and abandonment were the principal motives for divorce. If a judge granted an ecclesiastical divorce, it did not mean that the couple would be able to remarry. While they gained the right to live separately, to settle their estates, and to manage their affairs independently, divorced couples retained all the other incidents of marriage, including the responsibility of the husband to economically support his wife and the requirement of sexual chastity.

The reformist Catholic vision of marriage promoted by ecclesiastical judges in colonial marital disputes was that marriage is both a worldly contract with rights and obligations as well as a holy sacrament designed to mimic the relationship between Christ and his church. Catholic marriage was supposed to be characterized by harmony, love, and obedience. Ecclesiastical judges made frequent reference to the “holy obedience” (“santa obediencia”) that wives should render their husbands. Lawyers frequently repeated these discourses of ideal Catholic marriage throughout their lawsuits. In his defense of doña María Francisca Menchaca in her divorce lawsuit against her husband, the lawyer don Rafael Ponze Borrego cited the “divine law” that “commands that husbands love their wives as Christ has loved the church.”<sup>11</sup> Wives tempered the emphasis on female obedience by advocating a discourse of companionship. For instance, in the case of doña María Francisca Menchaca, from 1798, her lawyer referred

---

<sup>11</sup> Doña María Francisca Menchaca v. Don José Antonio de Treviño. AGN. Bienes Nacionales, leg. 109, exp. 3, 1793, 29.

repeatedly to idea that doña María Francisca was her husband's "companion" rather than his "slave" fit to be treated as he wished.<sup>12</sup> In this case, as in other eighteenth-century cases there was an emphasis on the notion of companionship and marital consent.

The sort of complaints found in colonial divorce and annulment lawsuits reflect the requirements of canon law and legal expediency, but also seem to indicate the principal grievances wives and husbands experienced in married life. A husband in early modern New Spain could keep himself out of divorce court by meeting his wife's minimum expectations of fair treatment. First of all, wives expected not to be victims of irrational violence and mistreatment. A wife was more likely to accept her husband's "correction" of her behavior if her own insubordination or disobedience was what had provoked a violent response. Wives were also less willing to tolerate violence that they saw as disproportionate or excessive. In the example of doña Beatriz, threatening to murder his wife because she did not serve him chocolate placed her husband firmly in the category of disparate violence. Severe attacks, attempted strangling, sexual violence, attempted murder and slashes with daggers and swords were also unacceptable. A husband who beat his wife either without cause or too severely could soon find himself the subject of external intervention, whether by family members, neighbors, or public officials. Violent husbands could end up in jail or become victims of corrective violence themselves.

---

<sup>12</sup> Doña María Francisca Menchaca v. Don José Antonio de Treviño. AGN. Bienes Nacionales, leg. 109, exp. 3, 1793, 29v.

Second, wives expected their husbands to maintain them. Husbands who did not provide their wives with food, clothing and money adequate to their wife's station in life could find themselves in legal conflict, especially if they had foolishly spent the dowry entrusted to them at the start of the marriage. Despite the fact that ecclesiastical judges almost never granted divorces on the grounds of neglect, most lawsuits reference at least some grievance over money. This suggests that many wives mentioned this grievance despite its relative uselessness in divorce court, suggesting that it was a genuine concern that motivated marital conflict rather than just a legal strategy in the courtroom. In the case of doña Beatriz, she resented her husband's use of her dowry to provide benefits to his children from a previous relationship.

Finally, wives expected their husbands not to engage in open or public adultery that could ruin their reputations and cause scandals. Wives seem to particularly resent when husbands humiliated them by taking mistresses or lovers out in public or forcing them to share the same dinner table or living space with mistresses and their husband's "illegitimate" children. Adultery could also exacerbate grievances about financial neglect, as husbands spent money on mistresses instead of on their wives and legitimate families. In contrast to divorce petitions, which tended to revolve around cases of abuse and mistreatment, wives tended to sue for annulments when there was a large age difference combined with impotence, or when there had been some deception at the start of the marriage (such as a slave who married on the pretext of being a freeman). In doña Beatriz's case there was no direct evidence of adultery, although the favoritism shown

towards the young mulatto boy indicates that don Nicolás may have previously engaged in an inappropriate relationship with one of his female slaves.

What expectations did husbands have of their wives? The greater mobility, authority and financial independence of men made divorce a relatively less attractive option for husbands than it was for wives. Still, divorce and annulment lawsuits can teach us about husbands' expectations of appropriate behavior by their wives. Husbands expected their wives to be *recogida*, a concept of reserved, feminine dignity that included sexual fidelity, modesty, and respectful words.<sup>13</sup> Wives who rejected this virtue by going out without their husband's permission or after dark could inspire a violent response. Husbands also expected their wives to maintain the household by cooking, cleaning and caring for children, or in the case of elite women, by undertaking the supervision of the servants who undertook these tasks. Don Nicolás accused his wife of being a "lazy careless woman" because of her neglect of her household duties, ostensibly because of her convalescence.<sup>14</sup>

Few husbands requested divorce, and almost all divorce petitions initiated by husbands claimed neglect or abandonment by the part of the wife. Husbands weakened by sickness or age sometimes had no other option but to pursue legal action against disobedient or sexually promiscuous wives. Whereas colonial wives frequently tolerated moderately high levels of violence from their husbands as long as they were good

---

<sup>13</sup> Nancy van Deusen, *Between the Sacred and the Worldly: The Institutional and Cultural Practice of Recogimiento in Colonial Lima* (Stanford University Press, 2002), 270.

<sup>14</sup> Doña Beatriz Michaela Melián vs. Don Nicolás de Rubio. AGN. Indiferente Virreinal, Caja 1705, exp. 2, 1677, 10.

providers, the economic and social independence of husbands made them less tolerant of bad behavior by their wives. Still, violent correction in the privacy of their homes was a more direct solution for husbands unsatisfied with their wives' behavior, as legal intervention placed them at the mercy of the ecclesiastical judge's standards and criteria.

## **HISTORIOGRAPHY**

### **Divorce**

This dissertation seeks to address a lacuna in the historiography of marriage and divorce in New Spain. While several works have addressed ecclesiastical divorce, all have dealt with the eighteenth century or later. This research project is the first work to explore divorce in the sixteenth and seventeenth centuries, and also the first project to deal with annulment lawsuits in a detailed manner.<sup>15</sup>

Historians have devoted very little research to questions of marital dissolution and divorce in colonial Mexico. Silvia Arrom's short but excellent study of early nineteenth-century ecclesiastical divorce approaches divorce from the wives' perspective, providing

---

<sup>15</sup>There are a number of key studies about divorce throughout the world in the Early Modern era. For colonial Brazil, see: Maria Nizza da Silva, *Sistema De Casamento No Brasil Colonial* (Sao Paulo: Universidade de Sao Paulo, 1985). Outstanding works about divorce in the nineteenth-century Americas are: Hendrik Hartog, *Man and Wife in America: A History* (Harvard University Press, 2000). Hartog explores a unique feature of the common law system, coverture and how it affected the development of family and divorce law in the United States. Similarly, Hunefeldt uses divorce petitions to explore changing gender relations and the development of liberal, individualistic politics. Christine Hunefeldt, *Liberalism in the Bedroom : Quarreling Spouses in Nineteenth-century Lima* (University Park, Pa.: Pennsylvania State University Press, 2000). Ana Lidia García Peña provides a similar point of view in nineteenth-century Mexico, showing evidence of individualist notions in divorce petitions. Ana Lidia García Peña, *El Fracaso Del Amor : Género e Individualismo En El Siglo XIX Mexicano* (México, D.F.: El Colegio de México ;, 2006). For an overview of divorce in Europe: Roderick Phillips, *Putting Asunder : a History of Divorce in Western Society* (Cambridge [England] ; New York: Cambridge University Press, 1988). For a reactionary viewpoint on divorce in England see: Stone, *Road to Divorce : England, 1530-1987*.

an analysis of women's lives during marital conflict. Published in 1976, this work fit into the first wave of feminist historical scholarship on New Spain and used archival documents that scholars had previously ignored. Arrom shows that the extremely high levels of violence reported in the depositions of the few nineteenth-century women who sued for divorce suggests that the average Mexican woman tolerated high levels of abuse before seeking outside intervention in her marriage. In the era covered by Arrom's study, 1800-1857, divorce cases still corresponded to ecclesiastical jurisdiction although civil magistrates decided alimony payments and distributed property after a positive verdict in the church courts.<sup>16</sup> The study ends with the complete secularization of marriage in 1857, as church marriages lost legal standing and authorities required couples to request marriages licenses from the civil registry. Arrom's work evolved from a broader demographic project that analyzed women's marriage patterns in Mexico in the late colonial and Republican era, and which would eventually include an article appropriately titled "Marriage Patterns in Mexico City, 1811" and her groundbreaking monograph "The Women of Mexico City, 1790-1857."<sup>17</sup>

Rather than sustain a long argument, Arrom uses the bulk of this monograph to examine and comment on nine separate divorce cases. In this work, Arrom elaborates a linear view of patriarchy in which ecclesiastical judges supplanted the patriarchal authority of husbands. Arrom sees women as highly constrained by the masculine

---

<sup>16</sup> Arrom, *La Mujer Mexicana Ante El Divorcio Eclesiástico (1800-1857)*, 110.

<sup>17</sup> Silvia Marina Arrom, *The Women of Mexico City, 1790-1857* (Stanford University Press, 1985); Silvia M. Arrom, "Marriage Patterns in Mexico City, 1811," *Journal of Family History* 3, no. 4 (December 1, 1978): 376-391.

authority of husbands and judges and seems to suggest that this limited the usefulness of ecclesiastical divorce as a tool for women's agency. Despite the limits of ecclesiastical divorce as a defensive tool, Arrom's statistics (92% of the petitions were filed by women) suggests that divorce must have had some positive impact for women suffering abusive relationships.<sup>18</sup> My dissertation suggests that patriarchy was real but more limited than the patriarchy suggested by Arrom, as competition between multiple levels of masculine authority allowed women to improve their living conditions without challenging the framework of masculine domination of *Novohispano* society.

Dora Dávila Mendoza's recent monograph, *Hasta la muerte nos separe: el divorcio eclesiástico en el arzobispado de Mexico, 1702-1800* contains a detailed investigation of the role of ecclesiastical divorce in the *Novohispano* society of the eighteenth century. Dávila Mendoza uses the institution of ecclesiastical divorce not only to understand gender relations, but also the process of secularization that she argues began in the mid-eighteenth century and accelerated by the end of the century. Dávila Mendoza sees in eighteenth century divorce cases a movement towards increased legitimacy of state institutions and a marked reduction in the church's authority. Carlos III's royal order, which prohibited ecclesiastical courts from deciding on dowry and financial questions, significantly reduced the church's influence and increased the power of royal officials. Dávila Mendoza also argues that the fact that eighteenth-century husbands sued for divorce on the grounds of abuse as much as wives suggests certain

---

<sup>18</sup> Arrom, *La Mujer Mexicana Ante El Divorcio Eclesiástico (1800-1857)*, 29.

“flexibility” in gender roles in colonial Mexican society. This “gender fragility” which until now had only been “attributed to women” suggests that both men and women rejected the abusive behavior of their spouses.<sup>19</sup> This scholar also has a fascinating discussion of truth in historical research, in which she makes the unoriginal but essential insight that the sort of “truth” presented in colonial archival documents, which she calls “juridical truth” is a special kind of “truth” that was manipulated by multiple actors for the specific purpose of influencing legal decisions.

## **Honor**

One of the key debates in the historiography of colonial Mexico has been about the role and importance of honor. The monographs and articles that have dealt with the issue of honor have in general emphasized its critical importance as a key piece of the social logic of life in early modern Spain and the colonial Americas. Patricia Seed’s monograph *To Love, Honor and Obey in Colonial Mexico*, exemplifies this perspective. She argues that the church in sixteenth and seventeenth century Mexico defended the right of young couples to marry against the objections of their parents. In the wake of the Trent reforms, the church emphasized the rights of young men and women to freely choose their spouses without parental pressure. The church also denied the prerogative of parents to veto their child’s marriage choice, a right that was defended by Protestant patriarchs such as Jean Calvin and Martin Luther. Seed makes the concept of honor

---

<sup>19</sup> Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*, 55.

central to her argument. Seed calls honor, “perhaps the most distinctive of all Spanish cultural traits” and argues that honor “was a transparent concept” in seventeenth-century Mexico and only needs explanation to a modern audience.<sup>20</sup> She claims that in the sixteenth and seventeenth centuries honor had two facets: “honor=precedence (status, rank, superior birth)” and “honor=virtue (moral integrity).” However, a key weakness in her argument is that her principal evidence that honor was key to early modern Spanish society derives not from the archival records of lives actually lived (at least as set out by notaries), but from the plays of Lope de Vega, the literature of Miguel de Cervantes and other Siglo de Oro poets and playwrights.<sup>21</sup>

Another key work on honor in colonial Latin America is the essay collection, *The Faces of Honor: Sex, Shame and Violence in Colonial Latin America*.<sup>22</sup> In it, in his article “Honor Among Plebeians: Mala Sangre and Social Reputation” Richard Boyer challenges the evidentiary basis of Seed’s claims. Boyer suggests it is misleading to rely on literature to understand how everyday early modern Spaniards understood honor. Dramas that emphasize honor “must exaggerate rather than imitate life in order to place emphasis on their folly.”<sup>23</sup> They are of little use to the historian. He argues that “our view of the honor complex draws too much from the playhouse and too little from the public house, too much from *comedias* staged to entertain and too little from everyday

---

<sup>20</sup> Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821* (Stanford, Calif.: Stanford University Press, 1988), 61.

<sup>21</sup> *Ibid.*, 62–63.

<sup>22</sup> Lyman L. Johnson and Sonya Lipsett-Rivera, *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America* (Albuquerque, N.M.: University of New Mexico Press, 1998).

<sup>23</sup> Boyer, “Honor Among Plebeians: Mala Sangre and Social Reputation,” 153.

commerce.”<sup>24</sup> While Boyer offers a cogent rebuttal of the use of literature and theater to explain how people really acted, he still assumes that historians should use honor as a key concept. He argues that not just elites, but also plebeians and even slaves mobilized notions of honor. He argues that everyday life rather than dramatic works should provide the basis that historians use to understand honor.<sup>25</sup> In the same collection, Ann Twinam’s article “The Negotiation of Honor: Elites, Sexuality, and Illegitimacy in Eighteenth-Century Spanish America” contests Seed’s division of honor into two facets. Describing Patricia Seed’s work, Twinam writes:

*Patricia Seed’s more recent (1988) analysis of honor in colonial Mexico relied on generalizations derived from sixteenth-century Spanish playwrights such as Lope de Vega and Calderón de la Barca to forward a concept of honor as “virtue” which was presumably characteristic of seventeenth-century Mexico.*<sup>26</sup>

Ann Twinam uses official requests for legitimation of illegitimate children, (called *gracias al sacar* petitions) from the eighteenth century to show how elites used the notion of honor as a barrier of entry to political posts. Twinam cites the case of don Mariano de las Casas, who in 1786 was denied a position as attorney general of the Havana city council because of the illegitimate birth of his mother, despite having won the election. Don Mariano successfully petitioned the *Cámara de las Indias*, the

---

<sup>24</sup> Ibid.

<sup>25</sup> Richard E. Boyer, “Honor Among Plebeians: Mala Sangre and Social Reputation,” in *The Faces of Honor : Sex, Shame, and Violence in Colonial Latin America*, by ed. Lyman Johnson and Sonya Lipsett-Rivera (Albuquerque: New Mexico University Press, 1998), 153.

<sup>26</sup> Ann Twinam, “The Negotiation of Honor: Elites, Sexuality, and Illegitimacy in Eighteenth-Century Spanish America,” in *The Faces of Honor : Sex, Shame, and Violence in Colonial Latin America*, by ed. Lyman Johnson and Sonya Lipsett-Rivera (Albuquerque: New Mexico University Press, 1998), 71.

regulatory body which heard petitions for legitimation.<sup>27</sup> The *Cámara* accepted his request to recognize his mother as legitimate and restore her honor. However, the scandal around his origins was devastating enough to still prevent him from holding any public office. According to Twinam, honor was “a condition inherited from both parents.”<sup>28</sup> However, unlike eye or skin color, the inheritance of honor was malleable with certain legal actions, such as the acceptance of a *gracias al sacar* petition by royal authorities. Twinam not only questions Seed’s use of Golden Age drama, but also her application of anthropological research on honor in the twentieth-century Mediterranean to seventeenth-century Mexico. However, rather than rejecting honor as an essential concept, she defines honor as the key concept that “rationalized hierarchy” of colonial Spanish American society.<sup>29</sup>

In addition to her criticism of Patricia Seed, Twinam’s argument is distinct from Sonya Lipsett-Rivera’s conception of how honor worked in colonial Latin America. Lipsett-Rivera sees honor as having “two faces” of “status and virtue” and being both relative and relational. For this reason “in a small Mexican village, those belonging to the local elite felt as imbued with honor as did the nobility of Mexico City; yet when the village gentry traveled to Mexico City, their honor would be overshadowed by the

---

<sup>27</sup> *Ibid.*, 69.

<sup>28</sup> *Ibid.*, 70.

<sup>29</sup> Twinam, *Public Lives, Private Secrets : Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America*, 32.

aristocracy of the capital.”<sup>30</sup> For Lipsett-Rivera, honor was a sort of a social claim to superiority. She sees honor in late colonial New Spain as having been virtually universal, rather than confined to the elite. While aristocrats could make the strongest claims to having honor, even “the mulatto wife of an artisan” could have some claim to honor, as she might feel better in some sense to many of her neighbors.<sup>31</sup>

Lyman Johnson argues that plebeians passionately defended their own distinctive notion of honor. Plebeian men occasionally resorted to violence to defend their reputations of honesty, courage, and sexual potency.<sup>32</sup> While they may differ in their definitions, each of these scholars gives honor a central place in their analyses of colonial society.

## **Patriarchy**

Another key debate that directly influences this project is about the role and extent of patriarchy in the colonial Spanish empire. Over the last few decades there has been a vigorous debate about the nature of patriarchy in colonial Latin America.<sup>33</sup>

---

<sup>30</sup> Sonya Lipsett-Rivera, “A Slap in the Face of Honor: Social Transgression and Women in Late-Colonial Mexico,” in *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, by ed. Lyman Johnson and Sonya Lipsett-Rivera (Albuquerque: New Mexico University Press, 1998), 180.

<sup>31</sup> Ibid.

<sup>32</sup> Burkholder, “Honor and Honors in Colonial Latin America,” 138.

<sup>33</sup> Both Mexican and US based historians of colonial Latin America use notions of patriarchy in their studies. See Kimberly Gauderman, *Women’s Lives in Colonial Quito: Gender, Law, and Economy in Spanish America* (Austin: University of Texas Press, 2003); Pilar Gonzalbo and Cecilia Andrea Rabell, *La Familia En El Mundo Iberoamericano* ([Mexico City, Mexico]: Instituto de Investigaciones Sociales, UNAM, 1994); Pilar Gonzalbo and Cecilia Andrea Rabell, *Familia y Vida Privada En La Historia De Iberoamérica: Seminario De Historia De La Familia* (México, D.F.: El Colegio de México, 1996); Pilar Gonzalbo Aizpuru, *Las Mujeres En La Nueva España: Educación y Vida Cotidiana* (México: El Colegio

Research on patriarchy has its origin in the international women's history movement that began in the 1970s. Scholars of New Spain such as Pilar Gonzalbo Aizpuru and Asunción Lavrin conducted innovative research that began to uncover the history of colonial women, contributing to what would later become an impressive literature on women's lives in colonial Mexico.<sup>34</sup> The first generation of feminist historians of colonial Latin America described patriarchy as a social system that sanctioned male dominance of the political, social, religious and economic realms of human action. Patriarchal discourses permeated society and made men's dominance over women a defining characteristic of the colonial world. They emphasized how social institutions of male power marginalized and oppressed women. A more recent generation of scholars has begun to redefine the nature of patriarchy in colonial Latin America. Richard Boyer's *Lives of the Bigamists* offers an apology for a strong system of patriarchy in New Spain. Boyer emphasizes that women's agency was severely limited by a legal and social system that perpetually treated women as minors. At the time of marriage, "a woman shifted

---

de México, 1985); Pilar Gonzalbo Aizpuru, *Familia y Orden Colonial* (México: El Colegio de México, 1998); Susan Migden Socolow, *The Women of Colonial Latin America* (Cambridge, UK New York, NY, USA: Cambridge University Press, 2000); Steve J. Stern, *The Secret History of Gender : Women, Men, and Power in Late Colonial Mexico* (Chapel Hill: University of North Carolina Press, 1995); Richard E. Boyer, *Lives of the Bigamists : Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New Mexico Press, 1995); Victor Uribe-Uran, *Honorable Lives : Lawyers, Family, and Politics in Colombia, 1780-1850* (Pittsburgh: University of Pittsburgh Press, 2000); Ramón A. Gutiérrez, *When Jesus Came, the Corn Mothers Went Away* (Stanford University Press, 1991). Josefina Muriel, *Los Recogimientos De Mujeres : Respuesta a Una Problemática Social Novohispana* (México: Universidad Nacional Autónoma de México, Instituto de Investigaciones Históricas, 1974).

<sup>34</sup>A few key examples of this literature are the following: Socolow, *The Women of Colonial Latin America*. Arrom, *The Women of Mexico City, 1790-1857*. Gonzalbo Aizpuru, *Las Mujeres En La Nueva España: Educación y Vida Cotidiana*.

from the custody of her parents to that of her husband, thus in law and custom her condition hardly changed.”<sup>35</sup> Taking a pessimistic view of the more “egalitarian” principles of gender relations set forth in canon law, Boyer argues that in practice husbands had an extraordinary amount of authority and control over their wives. Husbands held a “patriarchal mantle” that gave them almost unlimited “jurisdiction” and authority over their wives.<sup>36</sup> Boyer finds a more direct domination of women by men in colonial Mexico. Boyer uses the social and legal acceptance of wife beating in colonial society as evidence for the strong domination of women by men. Describing wife beating, Boyer argues “the ethos of patriarchy allowed it, encouraged it, and failed to set limits to it.”<sup>37</sup>

In contrast to Boyer’s absolutist vision of patriarchy, Steve Stern emphasizes the contingency of patriarchal authority. Stern’s notion of a “patriarchal pact” suggests that women accepted a “contingent or conditional model of gender right and power;” that is a “pact” of limited patriarchy.<sup>38</sup> In *The Secret History of Gender* Stern argues that much violence was the result of subaltern and elite men’s attempts to defend their own sense of masculine honor. Elite men affirmed their masculinity by taking and exploiting subaltern women, while subaltern men defended their masculinity by dominating and demanding

---

<sup>35</sup> Boyer, *Lives of the Bigamists : Marriage, Family, and Community in Colonial Mexico*, 61.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid., 136.

<sup>38</sup> Ibid.

the obedience of “their” women and children. For Stern, colonial Mexican women became a sort of property, a “gender holding” to be fought over by men.

In her provocative monograph, *Women’s Lives in Colonial Quito*, Kimberly Gauderman shakes up the debate on patriarchy by challenging the existence of patriarchy as a pervasive system of male dominance. In her study on colonial Peru, Gauderman suggests that rather than being a timeless fact of human society, a rigid patriarchal system of colonial relations did not come into existence until the nineteenth century. Questioning the history of feminist progress over time, Gauderman suggests that women in sixteenth and seventeenth century colonial Quito enjoyed privileges and rights unknown to their twentieth-century counterparts. Kimberly Gauderman’s monograph challenges both Stern and Boyer’s notions of patriarchy. She argues that colonial authorities saw unchecked patriarchy as a threat to their own power. Patriarchy would be “disruptive” to a society based on limiting “all forms of central control.”<sup>39</sup> Colonial Spanish American society was not a traditional patriarchy like early modern Germany but instead a world in which male authority over women was limited by statute and practice. Whereas Boyer sees a man’s ability to physically discipline his wife as basically unchecked, Gauderman argues that the criminal justice system vigorously prosecuted abusive husbands.<sup>40</sup>

---

<sup>39</sup> Gauderman, *Women’s Lives in Colonial Quito : Gender, Law, and Economy in Spanish America*, 126.

<sup>40</sup> *Ibid.*, 128.

The research of María Beatriz Nizza da Silva also challenges Boyer's idea of wifely submission to violence. In Brazil, Nizza da Silva finds that throughout the colonial period wives increasingly deny the right of their husbands to physically "correct" them. Women made recourse to ecclesiastical judges as their protectors, rejecting their "previous passivity to mistreatment."<sup>41</sup> My research supports Nizza da Silva's argument. I have found that wives frequently reacted to severe physical abuse by leaving their husbands, and seeking the protection of male relatives.

Gauderman seems to be stating a more radical version of Patricia Seed's argument about the limitations of patriarchy. Seed's research into pre-nuptial conflicts in New Spain suggests that a father's patriarchal control over his child's choice of spouse was far more limited in the sixteenth century than in the late seventeenth and eighteenth centuries. She argues, "Patriarchalism was a powerful and persuasive ideology in society at large, but it was not monolithic."<sup>42</sup> By the eighteenth century, changes in cultural notions about freedom to choose a spouse and the weakening status of the Catholic Church combined to create a more robust patriarchy. The two scholars emphasize the historical contingency of patriarchy. Patriarchy is not inevitable, but rather a product of a particular historical and cultural evolution. Or as Gauderman writes, patriarchy's "emergence and resilience require specific forms of social organization."<sup>43</sup>

---

<sup>41</sup> María Beatriz Nizza da Silva, "Divorce in Colonial Brazil: The Case of Sao Paulo," in *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989), 336.

<sup>42</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821*, 7.

<sup>43</sup> Gauderman, *Women's Lives in Colonial Quito: Gender, Law, and Economy in Spanish America*, 177.

Another scholar finds that a well-developed and oppressive patriarchy had developed by the sixteenth century in New Spain. Ramón Gutiérrez explicitly disputes Gauderman and Seed's narrative in his monograph *When Jesus Came, the Corn Mothers Went Away*. He presents a much starker view of male-female relations, arguing that Spanish secular officials and clerics worked to replace the gender mutuality of the Pueblo Indians in the northern limits of New Spain with an ideology of male dominance.<sup>44</sup>

My own research calls for a modification of the notion of patriarchy currently present in the literature. I reviewed the 252 divorce and annulment lawsuits in the *Archivo General de la Nación* from the sixteenth and seventeenth centuries, and sampled 32 of the longest of the 300 eighteenth century cases covered in an earlier study. Based on this research, I argue that men in New Spain acted within a sphere of patriarchal privilege that gave them advantages but also placed limits on their behavior. In contrast to the arguments of Gauderman, Boyer, and Gutiérrez, I argue that clerics and royal authorities expanded their patriarchal authority by intervening in dysfunctional households and strongly curtailing the patriarchal authority of misbehaving husbands. Additionally, while supporting Steve Stern's insistence on the contingent nature of masculine authority, I argue that it is important to highlight the institutional framework that was key in the development and general acceptance of a new paternalist ethic;

---

<sup>44</sup> Pete Sigal and Irene Silverblatt show that something resembling gender mutuality or parallelism was practiced in both Mesoamerica and the Colonial Andes Gutiérrez, *When Jesus Came, the Corn Mothers Went Away*; Peter Herman Sigal, *From Moon Goddesses to Virgins : the Colonization of Yucatecan Maya Sexual Desire* (Austin: University of Texas Press, 2000); Irene Marsha Silverblatt, *Moon, Sun, and Witches : Gender Ideologies and Class in Inca and Colonial Peru* (Princeton, N.J.: Princeton University Press, 1987). Gutiérrez, *When Jesus Came, the Corn Mothers Went Away*, 13.

namely, the Catholic church. In the sixteenth and seventeenth centuries, church officials attempted to regain control over colonial elites by proposing a softer ideology of patriarchalism that linked paternal authority to good husbandry, fatherly love and responsibility. This new paternalistic ethic was effective in taming the conquistadors and subordinating them in a colonial hierarchy in which church officials claimed the highest amount of patriarchal authority. Patriarchy was a changing reality throughout the colonial period, and divorce and annulment records are one of the best ways to understand how this worldview was developed and propagated across time.

## **Masculinity**

Recent scholarship on masculinity in colonial Latin America, exemplified by the work of Steve Stern, has analyzed masculinity in terms of a “hegemonic” model of manliness that was alternately accepted and rejected by subaltern men. Stern argues that plebeian men elaborated their own “counter-hegemonic” notion of masculinity that emphasized courage in the face of adversity. As he writes:

To stand up courageously by refusing to manifest visible fear, by refusing to concede a superior’s right to abuse, or by refusing to concede even one’s own right to anger upon provocation did not do away with intimidation, abuse or provocation backed by power. But such stances did build self-legitimizing counterpoints to masculine humiliation.<sup>45</sup>

---

<sup>45</sup> Stern, *The Secret History of Gender : Women, Men, and Power in Late Colonial Mexico*, 169.

However, this “counter-hegemonic” model was in its essence a response to the dominant notion of masculinity that had been defined by elites. In contrast, Asunción Lavrin has challenged this notion, suggesting that rather than a “hegemonic masculinity” or a single notion of manliness, men in New Spain were in fact subject to a multiplicity of masculine role-models; from priests and friar to plantation owners and conquistadors. Lavrin argues that masculinity was not unitary but rather plural, and that colonial historians must consider not the role of masculinity in colonial gender relations, but rather of “masculinities.”

This dissertation uses Lavrin’s formulation of masculinity and femininity, as “the forms of social behavior expected from a man and a woman respectively as well as the psychological and moral qualifications that were assumed appropriate for each sex.”<sup>46</sup> It is difficult to speak of “hegemonic masculinity” or one unitary model of masculinity.<sup>1</sup> Men in New Spain were subject to a multiplicity of masculine role models that undermined the creation of a hegemonic masculinity, but rather led to the formation of many masculinities.

A significant body of the literature of colonial Mexico has dealt with issues of masculinity. Federico Garza Carvajal’s monograph *Butterflies Will Burn: Prosecuting Sodomites in Early Modern Spain and Mexico* describes changes over time in perceptions

---

<sup>46</sup> Asunción Lavrin, “Masculine and Feminine: The Construction of Gender Roles in the Regular Orders in Early Modern Mexico” (presented at the South-Central Renaissance Conference, San Antonio, Texas, March 10, 2007), 4.

of manliness and effeminacy, what he calls “evolving perceptions of manliness.”<sup>47</sup> Garza Carvajal connects these perceptions to a “politics of empire” to show how sodomites and sodomy were juxtaposed with “the ideal of the perfect early modern Spanish Vir (or Man).”<sup>48</sup> Garza Carvajal shows how these ideal types or “discursive motifs” were used to justify empire.<sup>49</sup> This monograph fits into a growing trend in postcolonial studies to show how different colonial empires feminized native men as a broader campaign of social control.

Other scholars have used a close reading of nontraditional archival documents to show how dynamics of masculinity and gender developed throughout the colonial era. Zeb Tortorici’s dissertation on deviant sexuality in colonial Mexico shows how notions of “natural” and “unnatural” sexuality were used in an inconsistent manner by church and state to repress nonprocreative forms of sexual behavior.<sup>50</sup> Pete Sigal shows how there was a plurality of notions of sexuality, masculinity and femininity in New Spain. In *The Flower and the Scorpion: Sexuality and Ritual in Early Nahua Culture*, Sigal shows how postconquest Nahuas identified “masculine excess as potentially destructive.”<sup>51</sup> He also shows how masculinity and femininity fit into a Nahua worldview that was

---

<sup>47</sup> Federico Garza Carvajal, *Butterflies Will Burn: Prosecuting Sodomites in Early Modern Spain and Mexico* (University of Texas Press, 2003), 30.

<sup>48</sup> *Ibid.*, 4.

<sup>49</sup> Garza Carvajal is not the only scholar to explore how notions of masculinity could be used to justify or extend colonial empires. See Mrinalini Sinha, *Colonial Masculinity: The “Manly Englishman” and The ‘Effeminate Bengali’ in the Late Nineteenth Century* (Manchester University Press, 1995).

<sup>50</sup> Zeb Joseph Tortorici, “Contra Natura: Sin, Crime, and ‘Unnatural’ Sexuality in Colonial Mexico, 1530--1821” (Ph.D., University of California, Los Angeles, 2010).

<sup>51</sup> Pete Sigal, *The Flower and the Scorpion: Sexuality and Ritual in Early Nahua Culture* (Duke University Press, 2011), 306.

organized around the notion of excess and moderation rather than a Spanish Catholic worldview built around ideas of holiness and sin. Sigal argues that even Nahua gods show this fundamental cultural concept, as deities such as the warrior god/goddess Tezcatlipoca combined aspects of male and female into one whole. Since Nahua gods did not follow the rules of quotidian life, they could invert the “strict gendered divisions” that characterized Nahua society.<sup>52</sup>

## **METHODS AND SOURCES**

This dissertation rests almost entirely on the interpretation of a set of limited but very rich archival documents. The main collection of primary sources for this dissertation was the body of sixteenth- and seventeenth-century divorce and annulment lawsuits from the Archdiocese of Mexico and a sampling of other divorce and annulment cases from the eighteenth century. This study was almost entirely conducted in the *Archivo General de la Nación (AGN)* in Mexico City, Mexico. Other archives consulted included the Archivo Arzobispal in Mexico City and the Archivo General de las Indias in Seville, Spain (AGI). The federal government nationalized many of the files contained in the old Archive of the Arzobispado de México, during the Liberal Reform movement in the mid-nineteenth century. This expropriation included three centuries of matrimonial records and many divorce and annulment lawsuits. In the AGN, both divorce and annulment lawsuits are principally found in the Matrimonios, Bienes Nacionales, and (occasionally)

---

<sup>52</sup> Ibid., 104.

Inquisition branches. There were also a significant number of cases in the partially classified branch (Indiferente Virreinal).

The Archivo General de la Nación (AGN) contains 110 ecclesiastical divorce cases from the sixteenth and seventeenth centuries. While new case-files are continually discovered, these 110 cases represent the full collection of ecclesiastical divorce cases currently available in the AGN. The divorce cases from the eighteenth century represent a sampling of the thirty-two longest cases. Since Dora Dávila Mendoza has already completed an excellent study of divorce in the eighteenth century, I have made no attempt to replicate her meticulous labor; instead I have used eighteenth century cases primarily in order to understand what changed (if anything) over the *longue durée* of the colonial divorce regime.

In addition to ecclesiastical divorce cases, this dissertation represents one of the few studies to make use of annulment lawsuits. All of the extant annulment case-files were considered, numbering sixty-four cases in the sixteenth and seventeenth centuries, of which fifty case-files were in service and available to read. This study also took into account the fifteen annulment cases from the eighteenth century.

While marital lawsuits provide fascinating details about the daily life of couples throughout the colonial era, they must be interrogated as sources and interpreted with caution. After the conquest of Mexico, the conquistadores and missionaries who would form the judicial and administrative apparatus of empire in the New World attempted to replicate the distinctive legal traditions of Iberia in the Americas. Unlike English common law, which was an oral tradition of traveling judges, circuit courts and juries, the

Spanish tradition was a written system in which justice depended more on the notary's pen than the advocate's voice. Instead of juries, the Spanish tradition relied on a multiplicity of overlapping jurisdictions and judges and depended on the right of the subject to repeatedly appeal an unsatisfactory decision to another authority. The King of Castile himself served as the preeminent judge, whose authority to rule depended on his reputation to be able to administer justice throughout the kingdom. Since lawsuits were written down, judges could always have their work scrutinized and interpreted by other authorities. The notaries who wrote and compiled the lawsuits and took depositions were key to the whole process. Kathryn Burns has shown how the notaries in colonial Peru mediated truth, interpreting witness testimony as they saw fit and placing facts into a notarial structure that was ruled by key phrases and templates. Burns argues that the "truth" of notarial documents was a peculiar sort of veracity that she calls "notarial truth" in which the "facts" are not directly knowable but rather subject to the instantaneous evaluation of the notary as witness and mediator.<sup>53</sup> Similarly, Michael Scardaville explains how notaries in Bourbon Mexico City were the critical, ubiquitous officials of the colonial justice system whose ability to certify or "give faith" to events, facts and testimonies made the court system seem fair rather than arbitrary.<sup>54</sup> Divorce and annulment lawsuits were legal actions in which the truth was constantly interpreted, reinterpreted and subject to the conflicting testimony of plaintiff, defendant and

---

<sup>53</sup> Burns also wrestles with the subject of notarial truth in extended form in her recent monograph. Kathryn Burns, "Notaries, Truth, and Consequences," *The American Historical Review* 110, no. 2 (2005): 352.

<sup>54</sup> Michael C. Scardaville, "Justice by Paperwork: A Day in the Life of a Court Scribe in Bourbon Mexico City," *Journal of Social History* 36, no. 4 (Summer 2003): 979–1007.

witnesses, all within this framework of “notarial truth” that impedes our direct access to the facts of the case.<sup>55</sup> Also complicating the matter, in colonial lawsuits many of the litigants or witnesses spoke Spanish as a second language or not at all. The courts made available authorized interpreters in numerous indigenous languages, a practical necessity in the multi-lingual, fragmented linguistic environment of colonial Mexico. However, the presence of the interpreter added another level of mediation and potential for confusion and misinterpretation. An indigenous person’s testimony would have been translated by an interpreter of varying skill and accuracy and then written into the record by a notary using his own style and criteria.<sup>56</sup> This double-mediation of indigenous testimony and single-mediation of a native Spanish speaker means that when read colonial testimony we are hearing some of the witnesses’ words, but in the notary’s voice.<sup>57</sup> Mediation by notaries and other court-officials means that divorce documents contain accounts of conflicts and events which wives, witnesses and husbands would have been unlikely to have believed or recognized as objective, accurate truth.

This process of mediation means that the colonial divorce and annulment petitions contained in archives do not give us direct access to “truth” and “facts” about events that

---

<sup>55</sup> Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Duke University Press, 2010), 36.

<sup>56</sup> Walter Mignolo has highlighted some of the challenges posed by the translation between languages and systems of representation. Of the interpretation of codices, he notes that “the interpretation changed when the interpreter changed, and mainly when the ruler for whom the interpreter worked changed.” Walter Mignolo, *The Darker Side of the Renaissance : Literacy, Territoriality, and Colonization* (Ann Arbor: University of Michigan Press, 2003), 133. Similarly, Serge Gruzinski has cited the “approximations” of colonial interpreters. Serge Gruzinski, *Man-gods in the Mexican Highlands : Indian Power and Colonial Society, 1520-1800* (Stanford, Calif.: Stanford University Press, 1989), 79.

<sup>57</sup> Gayatri Spivak has highlighted the inaccessibility of the subaltern voice. Gayatri Chakravorty Spivak, “Can the Subaltern Speak?,” in *Marxism and the Interpretation of Culture* (Urbana: University of Illinois Press, 1988).

actually occurred, but rather contain narratives that were written by lawyers to persuade. The narrative aspect of divorce lawsuits becomes particularly evident as one reads several petitions for different plaintiffs presented by the same lawyer. Lawyers, notaries and even judges show patterns and use certain stock phrases in their writings. Frequently, lawyers would layer multiple grounds for divorce into the same petition; petitioners alleged adultery combined with severe physical abuse, or a husband's perpetual drunkenness combined with a failure to feed his children and pay for the maintenance of the household. By exaggerating the severity of abuse and multiplying the grounds for divorce, lawyers tried to persuade ecclesiastical judges to take action immediately. If certain grounds for divorce were more effective than others, the job of the conscientious attorney was to massage the facts of the case into a narrative that the ecclesiastical judge would find convincing. The key was to select both arguments and facts that allowed one to generate a narrative that cohered with witness testimony. The "truth" conveyed in these petitions was a particular kind of truth that had one objective: to persuade. This "truth" consisted of the manipulation of facts and the development of a self-interested narrative in order to persuade a judge to take a particular action.

As historians have integrated Joan Scott's notion of gender as a category into their methodology, gender studies has evolved from being synonymous with women's studies to include research about men and masculinities.<sup>58</sup> The interrogation of hegemonic notions of sexuality and gender by queer studies has been an important part of

---

<sup>58</sup> Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review* 91, no. 5 (December 1986): 1053.

this change.<sup>59</sup> Historians of modern Latin America have been quicker to integrate notions of masculinity into their analysis than scholars of colonial Latin America.<sup>60</sup> This study uses masculinity as a window into men's motivations and anxieties. This dissertation uses Pierre Bourdieu's notion that "the opposition between masculinity and femininity" makes up a "fundamental principle of the division of the social and symbolic world."<sup>61</sup> If we understand masculinity as a sort of socially-imposed performance, as Judith Butler would argue, then we can understand how the patriarchal order of New Spain placed men under a great deal of stress to defend both their masculine identity and their place in the hierarchy of *machos*.<sup>62</sup> As we will see, husbands frequently used violence to stop transgressions of the gender order and to reinforce particular notions and performances of appropriate behavior in the marital home and in public.

---

<sup>59</sup> Federico Garza Carvajal explores the early modern Spanish notion of the ideal man and form of masculinity in his monograph. Carvajal, *Butterflies Will Burn*. Other studies that engage with gendered notions of masculinity and queer studies include: Sigal, *The Flower and the Scorpion*. Peter Herman Sigal, *Infamous Desire: Male Homosexuality in Colonial Latin America* (Chicago: University of Chicago Press, 2003). Richard C. Trexler, *Sex and Conquest: Gender Construction and Political Order During the European Conquest of the Americas* (Cornell University Press, 1999).

<sup>60</sup> Recent works in modern Latin America that incorporate the perspective of masculinity include Martha Santos, *Cleansing Honor with Blood: Masculinity, Violence, and Power in the Backlands of Northeast Brazil, 1845–1889* (Stanford University Press, 2012). A recent essay collection integrating masculinity as a category is: Matthew C. Gutmann, *Changing Men and Masculinities in Latin America* (Duke University Press, 2002).

<sup>61</sup> Pierre Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge University Press, 1977), 93. "It is not hard to imagine the weight that must be brought to bear on the construction of self-image and world-image by the opposition between masculinity and femininity when it constitutes the fundamental principle of division of the social and symbolic world."

<sup>62</sup> Judith Butler, "Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory," *Theatre Journal* 40, no. 4 (December 1, 1988): 523.

See also Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1990).

## **LEGAL CONTEXT OF NEW SPAIN**

From the earliest moments of the colony, Spaniards worked to create a society in New Spain that resembled the peninsula: a society that was hierarchical, bureaucratic, legalistic, and above all Catholic. This study considers cases from the Archdiocese of Mexico, a large jurisdiction spanning from the Atlantic Ocean to the Pacific Ocean, encompassing Mexico City and the entire Valley of Mexico.<sup>63</sup> It was the heart of New Spain and by consequence, the political, religious and commercial center of the Spanish Empire in the Americas.<sup>64</sup> Catholic missionaries chose to base their institutions in the former geographical center of Mexica power, old Tenochtitlán and the future Mexico City. Thus, the Catholic church's administrative core (called the *Provisorato*) was centered in Mexico City in the newly founded Archdiocese of Mexico. Given the size of the Americas and its many inhabitants, the church established other jurisdictions with their own Archbishops but the Archbishop of Mexico would always remain preeminent among them. Mexico City would be like the Rome of America: the most important religious jurisdiction among many with the most authoritative Archbishop.<sup>65</sup>

The crown gave the principle of the preeminence of the Archbishop of Mexico legal standing by founding the first church courts in the Archdiocese of Mexico and giving them authority as the final courts of appeal for all questions of ecclesiastical

---

<sup>63</sup> For more on the limits of the archdiocese of Mexico see: Catalina Romero, *Relaciones Geográficas Del Arzobispado de México, 1743* (CSIC, 1988).

<sup>64</sup> Susan Schroeder and Stafford Poole, *Religion in New Spain* (UNM Press, 2007), 264.

<sup>65</sup> The only other American archdiocese of comparable authority and size was the Archdiocese of Lima, which dominated South America.

justice. This was probably a wise decision given the limited possibilities of communication with Europe; even simple disputes could have passed years in appeal if the possibility of making recourse to Spain had existed.

### **Marriage after the Council of Trent**

Because of the sacramental character of marriage, marital disputes fell under the jurisdiction of ecclesiastical courts. Ecclesiastical judges in the sixteenth and seventeenth century were profoundly influenced by the Council of Trent (1545-1563). The doctrine of marriage developed at Trent was a response to two challenges: the perceived crisis in Europe over so called “clandestine” marriages, and to the free-ranging debates over Christian marriage initiated by Protestant reformers.<sup>66</sup> A clandestine marriage was a marriage conducted in private, usually because the parents of one or both parties opposed the marriage. Increasingly common in the late-middle ages, clandestine marriages severely circumscribed the ability of parents to choose their children’s spouses. As a radical statement of individual choice, clandestine marriages challenged the hierarchical logic of late-medieval society, seeming to hint at the possibility of another social order based on consent and flatter relationships. In medieval canon law, a man and women eligible for marriage married themselves through a combination of mutual consent followed by sexual consummation. According to this notion of marriage, the couple

---

<sup>66</sup> Clandestine marriages were frequently called “private marriages” and were a concern for church authorities in most European countries. In England they were sometimes called “Fleet marriages.” R. B. Outhwaite, *Clandestine Marriage in England, 1500-1850* (Continuum International Publishing Group, 1995), 31.

themselves acted as ministers in their own wedding; a priest was not strictly necessary for a valid marriage, and should he be involved, served as a witness to the couple's act of consent rather than a minister performing a ritual that created marital ties. According to this understanding of how marriages were formed, clandestine or public marriages could be equally valid; what mattered was the free consent of the bride and groom to take each other as spouse. The simplicity and radical independence of the medieval marriage led to many so-called "clandestine marriages" as couples married themselves without the approval of parents and the recognition of public authorities. Clandestine marriage could lead to abuses. Seducers made private marriage promises in exchange for sex; without witnesses, it was difficult to prove that any vows were exchanged and force the seducer to follow through with his promise.<sup>67</sup> Parents and public officials alike feared the potential of clandestine marriages to result in "unequal" marriages based on affection or mutual attraction and not on the parent's social or economic interests.

Before the Council of Trent, Catholic marital doctrine was still in a nascent state, ill defined and subject to interpretation. The key debate in medieval canon law was about how the marriage bond was formed: was marriage formed by the full consent of the couple, or by the act of sexual consummation? In the twelfth century, a group of French canonists (known as the Paris School) argued that the consent and desire to marry,

---

<sup>67</sup> This problem persisted until at least the nineteenth-century. Will Fowler, "All the President's Women: The Wives of General Antonio Lopez De Santa Anna in 19th Century Mexico," *Feminist Review* 79, no. 1 (2005): 52–68.

signaled by verbal wedding vows, was the act that created a marriage.<sup>68</sup> As Georges Duby has shown, this notion of marital consent centered on two marriage promises: an engagement or binding agreement to marry in the future (*consensus de futuro*) and a marriage vow (*consensus de presenti*).<sup>69</sup> For Peter Lombard and other Paris School canonists, it was this spoken promise (*obligatio verborum*) that created a valid marriage. In contrast, a group of canonists centered around Bologna (the Bologna School) argued that words and consent only could not create a marriage if there was not the physical expression of sexual intercourse; the act of consummation was what created a marriage.<sup>70</sup> Following the logic of Gratian, who had distinguished between *matrimonio initiatum* (marriage by consent, but unconsummated) and *matrimonium ratum* (consummated marriage), the Bologna School argued that sexual intercourse (*copula carnalis*) was needed in addition to any verbal vows to create a permanent and indissoluble bond.<sup>71</sup>

The issue of clandestine marriages persisted throughout the Middle Ages and into the early modern world. The Fourth Lateran Council (1215) took the step of requiring a public mass for marriage as well as banns before the wedding ceremony. However, the

---

<sup>68</sup> Georges Duby, *Love and Marriage in the Middle Ages* (University of Chicago Press, 1996), 17.

<sup>69</sup> These vows differ only in timing. An example of the *consensus de futuro* would be “I shall take you as my husband,” whereas the *consensus de presenti* would be phrased as “I do take you as my husband.” “I shall take you” created a binding engagement, whereas “I do take thee” created a marriage, according to the perspective of the Paris School. Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Göran Lind, *Common Law Marriage: A Legal Institution for Cohabitation* (Oxford University Press, 2008), 117.

church never took the radical step of invalidating all clandestine marriages, preferring to implement punitive measures of limited effectiveness against couples that entered into clandestine marriages and the occasional priests who participated.<sup>72</sup>

With the famous *Tametsi* declaration on marriage at Trent, the church settled a number of key controversies. Proclaimed on November 11, 1563, the canon law of marriage was one of the final issues decided at the Council of Trent.<sup>73</sup> *Tametsi* answered questions about the nature of legitimate marriage, whether marriages were sacraments, the duration of the marital bond and set new requirements to prevent clandestine marriages. Despite the strong opposition of the French monarch, *Tametsi* set forth a standard, universal format for contracting marriage that superseded any local customs.<sup>74</sup> The council declared complete and sole ecclesiastical jurisdiction over matrimonial affairs, denying the attempts of some reformers to secularize marriage. *Tametsi* declared a valid marriage to be one of the seven sacraments, indissoluble and permanent. It also invalidated all marriages that did not comply with this new set of requirements. Building on the Fourth Lateran Council, *Tametsi* required banns for three consecutive feast days in the home parishes of the couple to be married. This decree invalidated Gratian's notion that a valid marriage only needed consent and copulation. Following *Trent*, all valid

---

<sup>72</sup> Ibid., 119.

<sup>73</sup> Luigi Bressan's work offers the best account of how Trent changed the canon law of marriage. Luigi Bressan, *Il Canone tridentino sul divorzio per adulterio e l'interpretazione degli autori* (Gregorian Biblical BookShop, 1973).

<sup>74</sup> Reformed theologians such as Jean Calvin denied the church's right to establish one particular form for marriage.

John Witte and Robert McCune Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Courtship, Engagement, and Marriage* (Wm. B. Eerdmans Publishing, 2005), 10.

marriages required public wedding ceremonies with at least two witnesses (preferably three) and a priest. The ceremony required a public vow of consent by both parties, witnessed by all. *Tametsi* also ordered all parishes to maintain a church register of weddings and to inscribe all newlyweds in the register.<sup>75</sup>

The *Tametsi* decree also clarified the Roman Catholic Church's stance on the permanence of marriage. Trent declared that a valid marriage was both permanent and indissoluble. The permanence of marriage thus became part of its definition. *Tametsi* settled most of the medieval debates about what should be the church's position on marriage. Thus, when the canonist Agustín Zorita released his 1761 Tridentine catechism, he could give a definitive statement of what marriage was. Touching on the main elements on Tridentine dogma, Zorita defined marriage as "a coming-together of man and woman between legitimate people, that retain an inseparable, life-long companionship."<sup>76</sup>

### **Third Mexican Provincial Council**

The new requirements spelled-out by the *Tametsi* decree complicated the marriage process. The Spanish empire slowly came into full compliance with the requirements of *Trent* after the convocation of a series of provincial councils. In New

---

<sup>75</sup> This measure allowed churches to prevent bigamous marriages through a mandatory records search before any wedding. It also made an analysis of potential impediments easier and more thorough.

<sup>76</sup> "Es el Matrimonio una junta maridable del hombre y la muger entre personas legitimas, que retiene una compañía inseparable de vida." Agustín Zorita, *Catecismo del Santo Concilio de Trento para los párrocos: Ordenado por disposicion de San Pio V* (en la Imprenta Real, 1785).

Spain, the Third Mexican Provincial Council in 1585 took charge of the implementation of the new Tridentine requirements throughout North America. Perhaps the clearest descriptions of the marriage process after the Trent reforms comes in the eighteenth-century Jesuit canonist Pedro Murillo Velarde's *Course on Hispanic and Indian Canon Law (Cursus Iuris Canonici Hispani et Indici)* Modeled on the *Decretals* of Gregory IX, Murillo Velarde's course provides an excellent introduction to all aspects of canon law in the Tridentine era, and serves as a guide to understand how 16<sup>th</sup> and 17<sup>th</sup> century jurists in New Spain understood the canon law of marriage.<sup>77</sup> His course was used to train jurists throughout the Spanish empire in the eighteenth and early nineteenth centuries.<sup>78</sup>

In colonial Mexico, a valid marriage normally began with the engagement of the couple, a process known as *esponsales*. According to Pedro Murillo Velarde, the engagement did not formally include the exchange of gifts from groom to bride (called *arras*) or the dowry (*bienes dotales*) given to the groom by the bride's family. Rather, the engagement was an exchange of vows and a promise of future marriage, popularly called *esponsales de prometer* ("marriage promise").<sup>2</sup> Murillo Velarde called the engagement process a "promise of future marriage" (*promissione futuri matrimonii*) while the actual marriage ceremony was called a "present marriage" (*sponsalia de praesenti appellatur*). This terminology highlights the key importance of the marriage

---

<sup>77</sup> Pedro Murillo Velarde and Alberto Carrillo Cázares, *Curso De Derecho Canónico Hispano e Indiano* (El Colegio de Michoacán A.C., 2005), 1.

<sup>78</sup> *Ibid.*, 5.

promise in the engagement and the giving of consent in the marriage ceremony.<sup>79</sup> To comply with canon law, an engagement (or marriage) could only take place between two parties eligible to marry, meaning a man and a woman (not children), free of other engagements and vows.

Marriage was one of the key institutions of colonial Mexican society. Although marriage was far from universal, church and royal authorities saw Catholic marriage as an institution that was beneficial for the maintenance of public and private order. Despite the insistence of Catholic dogma that celibacy was a more perfect Christian lifestyle than marriage, the church still insisted that the sacrament of marriage favored the personal and familial development of the individual and was the recommended lifestyle for the majority of believers. Throughout the colonial period, public authorities worked vigorously to preserve marriage, which they saw as a key institution in a well-regulated society. As Father Agustín Zorita's Tridentine catechism from 1761 states, "marriage provides many great and divine gifts, for this reason it is counted truly among the sacraments of the Catholic Church."<sup>80</sup> Marriages consolidated relationships between families and facilitated the control of property across generations. Believing stable marriages and well-governed families were the foundation of social order, colonial authorities worked to reduce marital discord and to promote harmonious, hierarchal relationships. This emphasis on stability meant that the colonial Catholic Church would provide ecclesiastical divorces as a temporary measure designed to promote eventual

---

<sup>79</sup> Ibid., 1.

<sup>80</sup> Zorita, *Catecismo del Santo Concilio de Trento para los párrocos*, 306.

reconciliation, and would offer the annulment only as a means to defend legitimate marriages against corruption and abuses.

The Council of Trent resolved centuries of debates about the nature and characteristics of Catholic marriage and repudiated the Protestant critique of Catholic marriage. Popularly known as *Tametsi* for first word of the statement, this decree defined marriage as an indissoluble sacrament that united a man and a woman into one flesh before God. While reinforcing the importance of free consent in marriage, the most radical change was a new requirement that marriage vows must be said in front of the couple's parish priest and two witnesses to be valid. Previous "clandestine" marriages were valid, but any future marriage must follow the new guidelines to be valid. A practical move to reduce so-called "clandestine" marriages, the new requirement nevertheless went against the cogent principles of Canon law of marriage as elaborated by Gratian, Peter Lombard and others centuries before. *Tametsi* stipulated new administrative requirements such as the publication of banns and required priests to maintain complete marriage records. While claiming to have been a confirmation of what had always been the teaching of the church, *Tametsi* was in fact a considerable innovation. By requiring the publication of banns and the presence of a priest, *Tametsi* ended the radical notion that a valid Catholic marriage could be created by the free consent of an eligible woman and an eligible man, by themselves, without the

intervention of a church bureaucracy. Tametsi became the definitive characterization of Catholic marriage, and was slowly implemented around the world.<sup>81</sup>

The Council of Trent had affirmed and emphasized a distinctive doctrine of Catholic marriage; for theologians, a sacramental marriage contracted legally and then consummated (“matrimonio rato y consumado”) was dissoluble only by death.<sup>82</sup> Once a man and a woman (who were free of impediments to marriage) had consummated their union, they were linked together for life by the bounds of the marriage and had a moral responsibility to live together as husband and wife (“hacer vida maridable”). As Pilar Gonzalbo has described, when bishops made their ecclesiastical visits they frequently reminded married parishioners that by having married they had “acquired” the responsibility to live under the same roof and to be faithful to each other.<sup>83</sup> Fulfilling these marital obligations went beyond just the minimum of sharing a house. Clerics demanded that couples in every way live a shared life, sleeping in the same bed, and eating at the same table, engaging in sexual intercourse and raising a family.

Energized by Trent, and continuing in the spirit of reform that had characterized Spain since the fifteenth century, church officials attempted to impose Tridentine marriage on the diverse population of New Spain, where indigenous, African, and popular Spanish conceptions of sexuality and marriage clashed with the ideals of the

---

<sup>81</sup> The Third Mexican Provincial Council applied the recommendations of Trent to New Spain in 1585, including its strict definition of marriage.

<sup>82</sup> Alejandro González-Varas Ibáñez, "El Matrimonio Canónico," ed. Miguel Ángel Jusado Ruiz-Capillas (Madrid: Colex, 2007), 63.

<sup>83</sup> Pilar Gonzalbo Aizpuru, "Afectos E Intereses En Los Matrimonios En La Ciudad De México a Fines De La Colonia," *Historia Mexicana* 56, no. 4 (2007): 1124.

Catholic church. Marital reforms begun at Trent had a strong impact on clergy in New Spain in the late sixteenth and seventeenth centuries. A generation earlier, the first missionaries (primarily Franciscan friars) had attempted to impose an Iberian-Catholic notion of marriage on Indian communities that did not understand priestly celibacy nor desire to accept the friars' more rigid notions of marriage.<sup>84</sup> The friars' clumsy initial attempts to end polygamous practices among indigenous elites in central Mexico led to a number of martyrdoms. Colonial bishops had occasionally convened provincial councils in order to discuss pressing issues related to Catholic dogma and church discipline. Predictably, the closing of the Council of Trent inspired a wave of new provincial councils. At the Third Mexican Provincial Council (1585), the most influential bishops called for the quick implementation of the decrees of *Trent*, while innovating very little on its central themes.<sup>85</sup> This council ordered the imposition of Tridentine marital regulations in New Spain, a complicated task given the complex, heterogeneous nature of *Novohispano* society.

The major project of the Council of Trent and the local Provincial councils in Mexico was to protect the security of Christian orthodoxy and the regeneration and regulation of customs and morals.<sup>86</sup> Inspired by the spirit of Catholic reform, church

---

<sup>84</sup> Pedro Borges, *Historia De La Iglesia En Hispanoamérica Y Filipinas (Siglos Xv-Xix)*, Biblioteca De Autores Cristianos. Maior 37, 42 (Madrid: Biblioteca de Autores Cristianos, 1992), 214.

<sup>85</sup> Josep-Ignasi Saranyana and Carmen José Alejos-Grau, *Historia De La Teología Latinoamericana : Primera Parte, Siglos Xvi Yxvii* (Pamplona: EUNATE, 1996), 385.

<sup>86</sup> Saranyana and Alejos-Grau, 357.

leaders in New Spain divided this mandate between several institutions.<sup>87</sup> The Holy Office of the Inquisition, created in 1571, took the lead in the defense of the faith and the regulation of orthodoxy by the Spanish, Mestizo, and populations of African descent in Mexico. The archbishop's ordinary tribunals (audiencias) handled legal matters related to the institution of the church, the ordination of priests, administration of church properties, and the suppression of indigenous religious practices and punishment of heresy committed by Indians. While in principle bishops were the judges of church tribunals, they rarely exercised this authority. A bishop who chose to deal with all of the legal conflicts of his parishioners would not have time to fulfill his other responsibilities. Consequently, bishops appointed officials to help them with the administration of justice. The bishop's principal deputy was the vicar general and judge provisor (vicario general y juez provisor). Frequently a licentiate or doctorate in canon law, this priest exercised the bishop's authority as a judge.

The archbishop's courts also exercised jurisdiction over all matters of family law and the regulation of marriage. Ecclesiastical courts had exclusive jurisdiction over matrimonial causes, cases involving the nullification of marital promises, annulments, and permanent or temporary divorces.<sup>88</sup> Examining the regulation of marriage by

---

<sup>87</sup> Jorge E. Traslosheros and Universidad Iberoamericana, *Iglesia, Justicia Y Sociedad En La Nueva España : La Audiencia Del Arzobispado De México, 1528-1668*, 1 ed ed. (México: Universidad Iberoamericana, 2004), 43.

<sup>88</sup> Broken esponsales or marital promises could also become subjects of litigation. See Daniel Tirapu Martínez, Blanca Calabré, and Joaquín Mantecón Sancho, *Derecho Matrimonial Canónico : Aspectos Sustantivos Y Procesales : Teoría, Legislación Y Formularios*, Biblioteca Comares De Ciencia Jurídica. Formularios (Granada: Comares, 1993), 27. This study does not consider the nullification of marital promises, a subject meticulously investigated by Patricia Seed. See Patricia Seed, *To Love, Honor, and*

ecclesiastical officials offers a window into the ambitious project of the Post-Trent church to bring the morals and customs of the faithful into harmony with catholic doctrine.

The period that immediately followed the Council of Trent until the commencement of Philip V's reign was the apex of ecclesiastical authority in New Spain.<sup>89</sup> This was the era in which ecclesiastical courts enjoyed most authority and autonomy. Consequently, in Spanish America during the sixteenth and seventeenth centuries, all lawsuits involving divorce, separation, annulment, or other marital conflict came under the exclusive jurisdiction of the church courts.<sup>90</sup> By the middle of the eighteenth century, the Bourbon reforms would begin to challenge ecclesiastical authority and restrict the jurisdiction of church courts. Scholars writing on the history of marriage in Mexico often emphasize the gradual shift from ecclesiastical to secular justice during the late colonial and Republican periods. According to this point of view, espoused most notably by Dora Dávila Mendoza and Silvia Arrom, the secularization of the divorce process began in the middle of the eighteenth century with the Bourbon Reforms. During the sixteenth and seventeenth centuries, all lawsuits involving divorce, separation, annulment, or other marital conflict came under the exclusive jurisdiction of the church

---

*Obey in Colonial Mexico : Conflicts over Marriage Choice, 1574-1821* (Stanford, Calif.: Stanford University Press, 1988).

<sup>89</sup> Philip V (reigned 1700-1746) of Spain was the first ruler of Spain who belonged to the house of Bourbon.

<sup>90</sup> While the church claimed jurisdiction over all affairs involving the family, criminal lawsuits for spousal abuse, adultery and other crimes remained within the purview of secular criminal tribunals.

courts. A process of secularization beginning with the Bourbon reforms meant that civil and religious courts would later share jurisdiction over marital disputes. In 1787, by Royal Decree Carlos III took a big step towards secularization by prohibiting ecclesiastical judges from ruling on the *litis expensas* of couples involved in marital disputes, instead assigning this to a secular judge.<sup>91</sup> The king's royal *cédula* meant that all financial matters (such as litis expenses and dowries) would be adjudicated in secular courts, while all other aspects would still be dealt with in ecclesiastical courts. Another decree from 1811 required litigants to present the first demand of divorce (*primera instancia*) before a civil magistrate (*alcalde de barrio*) before proceeding to the full divorce proceedings in front of an ecclesiastical judge. Finally, in 1857, a reformist republican government would impose something close to complete secularization by taking marital disputes and family law out of the jurisdiction of the church. The partial secularization imposed by General Juan Álvarez's administration made the process of divorce more straightforward and agile. Still, the Mexican government did not authorize a full divorce that permitted remarriage until after the fall of Porfirio Díaz in 1911.

However, this linear narrative of a progressive march towards secularization obfuscates the complexity and messiness of the process. In the patchwork legal system of New Spain there was a lot of bleeding over and between jurisdictions. The legal culture

---

<sup>91</sup> *Litis expensas* were the costs associated with a divorce or annulment lawsuit. Following the Spanish principle of universal access to justice, judges would normally award monetary judgments to the economically disadvantaged party in the dispute against the wealthier party in order to pay for the lawsuit. After the determination of the verdict, the guilty party would often be responsible for the *litis expensas* of the vindicated side, although according to judicial discretion this was not always the case. See Dora Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*, 1. ed.(México, D.F.: El Colegio de México, 2005), 15.

of New Spain inherited many characteristics from the feudal society of medieval Iberia. Medieval Spanish society was an interlocking system of corporations that each enjoyed its own set of privileges and responsibilities. In exchange for acknowledging the authority of the crown, these powerful corporations enjoyed a certain amount of autonomy and a specific set of privileges known as a *fuero*.<sup>92</sup> The monarchs of Castile based their claims to preeminence on their ability to provide justice and arbitrate disputes between the diverse corporations that made up medieval society. The legal structure of colonial Mexican society was heavily influenced by the *fuero* system, resulting in a justice system characterized by overlapping jurisdictions that made it relatively easy for litigants to forum-shop in order to find a favorable jurisdiction for their case.

Divorce lawsuits were quite uncommon in New Spain; very few couples sought divorces and fewer received them. To get divorced, one must be married, and church marriage was far from universal. One's likelihood of marrying depended heavily on one's social caste, gender and circumstances. Those most likely to marry were elite Spaniards and those identified as Indian (belonging to an indigenous community). For the members of the Pueblo de los Indios, marriage was inevitable, as village priests procured to marry off their parishioners quickly since the tributary unit in indigenous villages was the married couple rather than the individual adult.

---

<sup>92</sup> The corporations that had the best-defined *fueros* were the church and military, which both enjoyed a considerable degree of autonomy. The unique privileges and responsibilities of indigenous peoples after the Spanish conquest resembles a *fuero*. Indians were exempt from prosecution by the Holy Office of the Inquisition and were allowed local autonomy but were also required to pay a head tax to the crown.

If we were to choose two divorce cases at random, one from present-day Mexico City and another from Mexico City during the colonial period, we would be likely to note the particular intensity and extreme violence of the evidence presented in the colonial lawsuits. Because divorce was seen as an absolute last resort, the couples who arrived at this stage had extremely troubled and often violent relationships. Colonial divorces are filled with husbands that make death threats, brandish sharp blades, and attempt to strangle their wives with their bare hands, ropes, clothes or other convenient objects. A typical example of this was the case of doña María de Espinosa, who in 1675 claimed that her husband had threatened to kill her and slammed a sharp dagger into the headboard above the bed where she was resting because she had refused to have sex with him.<sup>93</sup> Additionally, the lack of no-fault divorces required lawyers to embellish incidents of violence and encourage collusive claims by the couple in order to persuade the ecclesiastical judge to take immediate action.

## **CHAPTERS**

The next chapter examines each of the main causes for annulment from the sixteenth to the eighteenth centuries in New Spain. Ecclesiastical judges approved annulments in 24% of the cases heard before the archbishop's ordinary tribunal. By the eighteenth century this had dropped to a negligible percentage, with ecclesiastical courts issuing only one decree of annulment during the whole century. Plaintiffs, both male and

---

<sup>93</sup> Doña María de Espinosa v. Joseph de Blancos. AGN, Bienes Nacionales, Leg. 79, exp 3, 1675, 2v.

female, frequently used their bodies as evidence in the course of annulment lawsuits. This was particularly common with impotence claims. In 1690, doña María del Castillo was not able to consummate her marriage with her husband Nicholas de Martín due to an exceptionally thick hymen, which supposedly constituted a natural impediment of impotence. However, the timing of doña María's annulment claim coincided with the death of her grandmother, which left her heir to a sizable inheritance. By annulling her marriage, doña María could maintain control of her dowry, which otherwise would have passed to her husband's administration. Annulment cases could also hide power struggles within families and disputes over money. Annulment lawsuits could also show evidence of collusion, in which litigants conspired to find impediments to their marriage in order to achieve the issuance of a decree of nullity. The ecclesiastical judge who heard the case of doña María Josefa Borda and don Mariano Arcinas accused the couple of having conspired to win a decree of nullity on the invented grounds of a supposed sexual relationship years before between don Mariano and his wife's older half-sister. This would have created prohibitive ties of affinity between don Mariano and his future wife, but the only evidence was the witness testimony of don Mariano's in-laws. Couples could fall prey to the temptation to put together collusive lawsuits because in colonial Latin America, the annulment was the only legal process that offered a clean break to an unsatisfactory marriage.

The third chapter, "Bending the Law: The Procedural Law of Divorce in Colonial Mexico" shows how litigants could push the limits of procedural law in order to promote or dispute an ecclesiastical divorce. This chapter focuses on ecclesiastical divorce, called

“divortium quo ad thorum et mutuam cohabitationem”: literally a divorce of bed and board. Litigants “bent the law” by manipulating knowledge about legal procedure and evidence in order to pursue a particular objective. In colonial divorce lawsuits, the plaintiff’s body could become evidence, bearing witness to the violence inflicted and the veracity of the plaintiff’s claims. The marks and bruises on a woman’s face became a legal truth; evidence remarked by witnesses and certified by notaries. Ysabel de Guzmán was able to get taken out of her husband’s custody quickly because of the visible evidence of abuse on her body—evidence that motivated the judge to take action. In contrast, plaintiffs who could not cite bodily evidence to support their claims might have a more difficult time persuading a judge to take action on their behalf. However, not only what was seen but what was heard could also become a form of evidence that created legal truth. Witnesses reported verbal abuse and arguments. Ecclesiastical judges paid particular attention to reports of blasphemy, which seems to have merited more interest than even credible death threats.

Through a close analysis of the divorce of doña María de Villar and her husband, the baker Clemente Flores, we see how the structure of canon procedural law worked against those who wished a quick resolution for a divorce lawsuit. Canon law served the Tridentine-era emphasis on marital permanence and harmony by placing procedural barriers in front of those who desired a permanent separation from his or her spouse. In the case of doña María de Villar, she first sued her husband for divorce as an adolescent, and when the ecclesiastical tribunal finally approved her divorce nineteen years later she was a mature woman. The process of ecclesiastical divorce was difficult and time-

consuming, but a plaintiff with enough determination might have been able to bend the law to her will.

The fourth chapter, “Defending their Masculinity: Husbands as Litigants in Marital Lawsuits,” explores the economic and social characteristics of husbands involved in annulment and divorce lawsuits. The chapter shows how men, wives and others understood the contractual obligations of husbands in New Spain and what was and was not considered appropriate behavior for husbands. I also challenge the excessive emphasis of the historiography on honor, suggesting instead that colonial men were motivated more by a defense of their masculinity than by a defense of honor. Scholars such as Patricia Seed, Steve Stern, and Richard Boyer have asserted what I call “the honor thesis”: that honor was one of the defining characteristics of colonial Mexican society.<sup>94</sup> For instance, Seed calls honor one of the “major cultural traditions of Hispanic society.”<sup>95</sup> In this chapter, I use the case of don Pedro Ximenez, a poor *mestizo* who in 1799 attacked his wife’s male boarder after returning from a trip. I show that the notion that don Pedro’s acts were motivated by a defense of his masculinity fits better with the facts of the case than the idea that he was motivated by a desire to protect his honor. If the “honor thesis” were correct, one would expect strong discourses of honor in colonial marital litigation. I suggest that the limited archival evidence for the deployment of notions of honor in divorce and annulment lawsuits questions the honor thesis.

---

<sup>94</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico : Conflicts over Marriage Choice, 1574-1821*; Boyer, *Lives of the Bigamists : Marriage, Family, and Community in Colonial Mexico*; Stern, *The Secret History of Gender : Women, Men, and Power in Late Colonial Mexico*.

<sup>95</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico : Conflicts over Marriage Choice, 1574-1821*, 60.

Additionally, the archival evidence provided by dozens of divorce and annulment petitions suggests that historians have overstated the influence of honor on daily life in colonial Mexico.

Husbands and wives frequently engaged in conflicts over money. Throughout the entire colonial period, husbands vigorously defended what they saw as their right to determine the nature and form of the economic support that they gave to their wives. In the course of lawsuits, husbands consistently claimed that the amount of food, clothing, and cash given to their wives was more than adequate. This dispute over resources affected all social classes, although plebeian wives were more likely to report being left in extreme poverty by their husband's negligence. Some husbands openly rejected their responsibility to maintain their wives and families. The picaresque Salvador Ponce claimed that instead of working to maintain his wife, she should go to work to maintain him. Some elite husbands embraced this same discourse. In 1711, Don José Pérez de Moral humiliated his wife by telling her to her face that he had married her for her money.

Violence figured heavily in divorce petitions, and husbands frequently justified their violence on the grounds of a supposed general right of husbands to correct, educate, and discipline their wives. Responding to his wife's divorce petition which had alleged physical and verbal abuse, Juan de Ochoa argued that the couple had only had minor disagreements and that each time he had beaten her, it had been domestic correction "as is permitted by law" and to encourage her to avoid certain bad influences and

“company.”<sup>96</sup> Wives frequently challenged the violence perpetuated against them by their husbands. The most common grounds for divorce were physical and verbal abuse. Instead of challenging the principle of wife beating, wives argued that the sort of violence that they suffered at the hands of their husbands was disproportionate and placed their lives in danger.

The patriarchal structure of society in New Spain placed men in conflict with each other about the relative position of each in the hierarchy. Ecclesiastical judges subordinated husbands involved in marital litigation by forcing them to recognize their superior authority and show proper deference. Even elite patriarchs such as the wealthy mine-owner don José Salmón, who in 1785 found his wife in bed with a teenaged mulatto servant, could suffer the consequences of church officials’ attempts to maintain themselves on top of the hierarchy of men. The ecclesiastical judge who heard don José’s lawsuit dismissed the case on the grounds of insufficient evidence and forced the irascible mine-owner to take back his wife.

The fifth chapter explores the role of wives as both plaintiffs and defendants in colonial divorce and annulment lawsuits. Female litigants in colonial divorce and annulment lawsuits risked potential violent retaliation from their husbands and also the negative social repercussions of pursuing divisive legal action. However, the rewards were tangible and potential quickly realizable. Should she put together a sufficiently compelling initial argument, a wife could almost always get the ecclesiastical court to

---

<sup>96</sup> Juan de Ochoa v. Andrea de Leon. AGN, Indiferente Virreinal, Caja 1502, exp. 4, 1615, 7.

pursue the case; this meant that the court would take her into its custody and place her in a private house or institution and out of the control of her husband for the duration of the legal process. This form of enclosure was the most important benefit of seeking marital litigation, as it benefitted all women. Other women had nothing to lose as some other institution of justice had already authorized a de facto separation. One night in 1617, don Francisco de Aguilar tied his wife doña María de Sepúlveda to a bedpost and whipped her so savagely that her cries inspired doña María's sister to request the immediate assistance of Royal Justice (*real justicia*). The constables arrived to the home and rescued the young woman from her violent husband, taking her out of her home and placing her in a safe house. Doña María thus filed her divorce petition from the safety of her enclosure and with the supportive witness testimony of the constables and the surgeon who had treated her the night of her rescue.

The other main benefit of marital litigation was the restoration of the dowry and the establishment of alimony. This process benefitted the minority of well-off women who had been lucky enough to enter marriage with a sizable dowry. For these women, divorce and annulment constituted a battle over not just appropriate behavior and gendered roles within the household, but also about the control of economic resources. Dowries ranged in size from a few dozen to more than 100,000 pesos. While stated as an equivalent value in common gold pesos, dowries usually consisted primarily of jewels, furniture, clothes and other movable goods. Although the dowry passed to the husband's administration during the marriage, the contents of the dowry never ceased being the wife's property, and in the event of a divorce or annulment he would have to restore the

full value of the dowry to his wife. After the authorization of a divorce settlement or a decree of nullity, a husband would have 30 days to restore the full value of her dowry to his estranged wife. The alacrity of this requirement could drive husbands who had invested or spent their wives' dowries into bankruptcy, as occurred in the case of Captain Sebastian Vaz. Captain Vaz had to liquidate all his assets quickly in order to pay back the 18,000 pesos of his wife's dowry, driving himself and his business partner (his brother) into bankruptcy.

## Chapter Two

### Marriages that Never Existed: Annulments in Colonial Mexico

In September of 1569 Francisca Lopez set into motion a chain of events that would lead to her being accused of bigamy and taken from her home. The 30 year-old *mulata* from Mexico City had formally accused her husband Juan Pérez, a *mestizo*, of physical and verbal abuse, suing for ecclesiastical divorce in the Tribunal of the Archdiocese of Mexico.<sup>1</sup> As the lead prosecutor (*promotor fiscal*) Pedro Diaz de Agüero described, Francisca was a bigamist who had successively and shamelessly married two different men who shared the name of Juan Pérez.<sup>2</sup> She had first married a Nahuatl (*naguatatu*) named Juan Pérez but had later abandoned him without any legal authorization.<sup>3</sup> After leaving the first Juan Pérez, she had allegedly gotten involved with a second man with the same name, a *mestizo* who abused her terribly, beating her and cutting her with his sword.<sup>3</sup> The prosecutor called for the immediate dismissal of the divorce lawsuit; since Francisca was married legitimately to another man, a divorce from her second husband was not necessary. Francisca's second marriage required no divorce because it was intrinsically fraudulent due to her prior marriage. Rather than a verdict of divorce, argued the prosecutor, what Francisca needed was a decree of nullity for her

---

<sup>1</sup> Promotor Fiscal v. Francisca López, AGN, Inquisición, Vol. 29, exp. 1, 1569, 1.

<sup>2</sup> Promotor Fiscal v. Francisca López, AGN, Inquisición, Vol. 29, exp. 1, 1569, 27v.

<sup>3</sup> Promotor Fiscal v. Francisca López, AGN, Inquisición, Vol. 29, exp. 1, 1569, 1v.

second marriage and a legal order requiring her to return to her first husband, the *indio* Juan Pérez.<sup>4</sup> He also argued that after Francisca resumed marital cohabitation with her first husband, she should be punished “for the felony that she has committed.”<sup>5</sup> Francisca seems to have escaped serious punishment, probably because the Holy Office of the Inquisition would not be formed in New Spain until two years after her accusation of bigamy.<sup>6</sup> In this case, Francisca had contact with regular officials from the archdiocese who implemented more forgiving standards of justice than the Inquisition would later impose on bigamists. Instead of corporal punishment, hard labor or exile, in an ironic turn Francisca suffered no punishments and ended up achieving her goal of permanently leaving her abusive second husband.

As the case of Francisca López shows, missionaries, parish priests and ecclesiastical judges spent a great deal of time and effort thinking about and defining what was and was not a valid marriage. The decree of marital nullity that Francisca López received was a practical result of centuries of canon law, theological debates and institutional impositions. Having reached a series of energetically debated conclusions about marriage at the final session of the Council of Trent (1545-1563), by the last two decades of the sixteenth-century, ecclesiastical judges began to impose stricter notions of marriage upon the population of New Spain.<sup>7</sup> According to Trent and the local Second

---

<sup>4</sup> Promotor Fiscal v. Francisca López, AGN, Inquisición, Vol. 29, exp. 1, 1569, 27v.

<sup>5</sup> Promotor Fiscal v. Francisca López, AGN, Inquisición, Vol. 29, exp. 1, 1569, 27v.

<sup>6</sup> Noé Esquivel Estrada, *Pensamiento novohispano* 7 (UAEM, n.d.), 169.

<sup>7</sup> Asunción Lavrin, *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989), 48.

and Third Provincial Mexican Councils, legitimate marriage, meaning a marriage entered into with the free consent of a man and women eligible to marry each other, was permanent and indissoluble, terminated only by death.

Despite the indissolubility of a legitimately constructed marriage, there were nonetheless two possible ways out of failed marriages. The first way out was *divortium quoad mensam et thorum*, literally “divorce as to board and bed” an ecclesiastical divorce that authorized the couple to live apart and to separate their property without eliminating the marital bond.<sup>8</sup> Ecclesiastical judges authorized this temporary or permanent judicial separation when they determined that the obligation of living together was threatening the spiritual life or physical integrity of one of the spouses. Adultery could justify a permanent separation; however, even in this case the offended partner was encouraged to forgive his or her partner and resume a common marital life. All other causes, including extreme physical aggression or verbal abuse, only justified temporary separations. Once church officials determined that the offensive behavior had ended, the couple was supposed to resume marital cohabitation.

The second way out of a failed marriage was *divortium quo ad vinculum*; literally “divorce as to the bond” a decree of annulment that represented a complete dissolution of any religious and legal ties that bound husband and wife. The annulment required a legal representative with an in-depth understanding of the convoluted canon law of marriage and a lot of patience by all involved. However, the main condition required for a

---

<sup>8</sup> Charles Donahue Jr, *Law, Marriage, and Society in the Later Middle Ages: Arguments About Marriage in Five Courts* (Cambridge University Press, 2008), 35.

legitimate marriage, that there be free consent between eligible individuals, meant that some marriages were or could be interpreted to be of dubious legitimacy. One unintended consequence of the Trent reforms was that it initially made it easier for couples to get annulments. An annulment was not a legal procedure to dissolve a valid marriage, but rather an official recognition that a marriage had never existed, and was in fact null from its start due to some critical factor that impeded marriage for one or both parties. The main impediments were forced consent (due to fear or family pressure), age, mistaken identity (condition), consanguinity or affinity, bigamy, and impotence. Annulments required strong evidence of impediments in addition to the personal statements of the plaintiff.

The marriage tie, once valid, could never be rescinded, meaning that no degree of physical, sexual or verbal violence or personal incompatibility could destroy this bond. The cliché “Til death do us part” summarized the colonial church’s position on the permanence of marriage; death was the only way out of a valid marriage. However, if a husband or wife could provide strong evidence to suggest that the marital tie was invalid, an annulment offered a chance to remake their lives.

### ***Historiography on Marital Nullity***

The absence of scholarship on marital nullity in New Spain is striking, especially since annulment lawsuits are rich sources of information about the personal and family lives of colonial Mexicans of disparate ethnicities, genders, and social positions. There have been a few studies on annulment in other parts of colonial Latin America, especially

South America. As part of her larger research project on marriage in colonial Brazil, Maria Beatriz Nizza da Silva did pioneering research on marital nullity in Brazilian ecclesiastical courts.<sup>9</sup> She found that throughout the colonial period, wives increasingly deny the right of their husbands to physically “correct” them.<sup>10</sup> Women made recourse to ecclesiastical judges as their protectors, rejecting their “previous passivity to mistreatment.”<sup>11</sup> Nizza da Silva also argues that there was often a substantial divergence between the primary, cited grounds for divorce and the “actual” reason a spouse desired separation from his or her mate. Describing divorce in colonial Brazil, Nizza Da Silva emphasizes that we must distinguish the “formal motives” accepted by ecclesiastical judges, such as mistreatment, from the “real motivations;” often “abandonment, lack of sustenance and clothing, squander of movable goods, vagrancy, and sickness.”<sup>12</sup> Of course, by dealing with questions of stated and “real” reasons, Nizza da Silva is attempting to recover subjectivities that may be impossible to extract from archival documents. Nizza Da Silva notes how female plaintiffs frequently used adultery as a secondary, contributing argument for divorce, understanding that ecclesiastical judges were unlikely to concede a divorce for adultery alone.<sup>13</sup> Nizza Da Silva also suggests that elite women were more interested in the possibility of recuperating their dowry with an annulment than in the possibility of remarriage.

---

<sup>9</sup> Nizza da Silva, *Sistema De Casamento No Brasil Colonial*.

<sup>10</sup> Lavrin, *Sexuality and Marriage in Colonial Latin America*, 326.

<sup>11</sup> *Ibid.*, 326.

<sup>12</sup> *Ibid.*, 324.

<sup>13</sup> *Ibid.*, 326.

Perhaps the most complete study of marital nullity in colonial Latin America is Bernard Lavallé's article on divorce and marital nullity in colonial Lima. Examining the last fifty years of the seventeenth century, Lavallé found almost as many annulment cases as he found divorce lawsuits.<sup>14</sup> As I have found in colonial Mexico, Lavallé sees the seventeenth-century as a sort of golden era for annulment cases; the increasing strictness of judges in the eighteenth century contributed to a dramatic decline of the number of annulments filed.

Lavallé finds striking references to violence in almost all cases; the only significant difference between divorce and annulment cases was that in divorce cases violence and *sevicia* were used as the main arguments for separation, while in annulment cases litigants argued that they had never consented. This present study of New Spain finds a very similar pattern; plaintiffs and lawyers seem not to have fully internalized the differences between annulment and divorce lawsuits and make similar arguments in both types of cases. However, as we will see, prosecutors and ecclesiastical judges were very clear about the differences between annulment suits and divorce petitions.

### ***Annulments After Trent***

One of the surprising consequences of the Mexican church's strong defense of the sacrament of holy matrimony in the wake of the implementation of Trent reforms was an

---

<sup>14</sup> Lavallé found close to seven hundred divorce cases and over nine-hundred annulment cases from 1650-1700; he notes that a century later from 1760-1769 there were just 14 divorce and annulment cases, showing a remarkable decline. Bernard Lavallé, "Divorcio y Nulidad De Matrimonio En Lima (1650-1700). La Desavenencia Como Indicador Social," *Revista Andina* 4, no. 2 (1986): 427-464.

increase in the number of annulment lawsuits. The key to this increase was a renewed emphasis on *legitimacy*. If a legitimate marriage was indissoluble and sacred, then spurious and illegitimate marriages threatened the sanctity of the institution and warranted action by church officials. The archbishop's regular courts (*audiencias*) heard almost all cases related to marriage, and the church's prosecutor (*promotor fiscal*) aggressively pursued cases of spurious marriages.<sup>15</sup> A specially trained canon lawyer known as "the Defender of the Bond" (*defensor de matrimonios*) often weighed in on cases, providing expert opinions on the validity of a particular marital bond. However, it was the vicar general or archbishop himself who always determined the outcome of the lawsuit. In the context of Catholic Reform and the post-Tridentine church's struggle to reshape the morals and customs of New Spain's heterogeneous population, the legal institution of annulment had a didactic purpose; it showed society what a valid marriage was by highlighting what was *not* a legitimate marital bond. As we will see, the relative ease of filing annulment lawsuits after *Trent* led to a wave of spurious suits that had no real chance of getting authorized by competent authorities.

A search of the AGN's database revealed sixty-four annulment cases during the sixteenth and seventeenth centuries. Of the sixty-four total cases, fourteen were missing or out-of-service, leaving fifty cases for consideration in this study. These case-files varied in the completeness of the file and the legibility and condition of the documents. In general, the best case-files were from the *Matrimonios* and *Bienes Nacionales* sections.

---

<sup>15</sup> The only exception to this were bigamy cases, which were pursued by the Holy Office of the Inquisition.

Annulment suits presented in these sections ranged from two to 94 pages and often contained the entire evolution of the case, from the first motion, through efforts to reconcile the couple by the ecclesiastical judge, to the final verdict. In contrast, many of the cases contained in *Indiferente Virreinal* were significantly incomplete and lacked final conclusions or sentences. They often consisted of just two to ten pages of notarized witness depositions, motions by the plaintiff or defendants' attorney, or requests from the ecclesiastical judge. This study considers cases from the Archdiocese of Mexico, a large jurisdiction encompassing Mexico City and the Valley of Mexico.<sup>16</sup> It was the heart of New Spain and by consequence, the political, religious and commercial center of the Spanish Empire in the Americas.<sup>17</sup>

---

<sup>16</sup> For more on the limits of the archdiocese of Mexico see: Catalina Romero, *Relaciones Geográficas Del Arzobispado de México, 1743* (CSIC, 1988).

<sup>17</sup> Susan Schroeder and Stafford Poole, *Religion in New Spain* (UNM Press, 2007), 264.

**Table 1: Sample Annulment Cases in New Spain (1544-1695)**

<b>Year</b>	<b>Grounds</b>	<b>Plaintiff</b>	<b>Defendant</b>
1544	Parentage	Francisco de Oyon	Maríana Nuñez
1569	Bigamy	Francisca López	Juan Pérez
1575	unknown, denied	Magdalena de Nájera Clavijo	Juan de la Cruz Figueroa
1585	Deception	Doña Catalina de Zarate	Don Luis de Cordova
1609	Impotence	Antonia de Arias y Francisca Rojilla	Francisca Rojilla y Antonio de Arias
1618	Age and disgust	Doña María Vazquez de San Miguel	Simón Briseño
1623	Abandonment	Francisco Hernandez	Maríana de Caicedo
1635	Age, Forced consent	Doña Catalina de Vargas Machuca	Alonso Romero
1649	Bigamy	Agustina de Godoy Aguilar	Juan de Arevalo Nieto
1653	Impotence	Doña Isabel Portocallero de Monroy	Don Nicolas del Peral
1695	Rapto	Aldonza de Vargas	Juan de Baena

The data suggests that the history of annulments in Mexico was a story of abrupt changes over time. As the preceding table shows, there were relatively few annulments in the sixteenth century, amounting to a total of just four cases in the entire century. The all-time high point in annulment cases was in the second decade of the seventeenth century (1610-1619) with a total of nine cases. For the rest of the seventeenth century, the number of cases ranged from one to eight. Given the long list of diriment or invalidating impediments to marriage after the Council of Trent, this is an infinitesimal number of cases for the population of married couples. The vast majority of couples with irregular marriages managed to stay out of court and to avoid clerical oversight. However, Tridentine reforms were also effective in preventing couples with diriment impediments from getting married in the first place. Improvements in the keeping of parish records and the requirement to post banns also probably prevented many couples from even attempting to get married in the church.

Table 2: Annulment Cases by Decade

<b>Years</b>	<b>Number</b>	<b>Lost or out-of-service</b>
<i>16th Century</i>		
1540-49	1	0
1550-59	0	0
1560-69	1	0
1570-79	1	0
1580-89	1	0
1590-99	0	2
<b>Total</b>	<b>4</b>	<b>2</b>
		0
<i>17th Century</i>		0
1600-09	5	0
1610-19	9	5
1620-29	5	0
1630-39	4	0
1640-49	6	2
1650-59	7	1
1660-69	4	2
1670-79	1	2
1680-89	2	0
1690-99	3	0
<b>Total</b>	<b>46</b>	<b>12</b>

The most striking aspect of the data was the sharp decline in petitions for marital nullity in the eighteenth century. In the eighteenth century there were more than 300 divorce petitions, marking a significant increase from the seventeenth century.<sup>18</sup> This marks more than a 200% increase over the 110 divorce petitions of the sixteenth and seventeenth century. However, there were just sixteen annulment cases in the eighteenth century. Even more surprising, of the sixteen total annulment cases, only one was authorized, resulting in a plaintiff success rate of just 6.3%. In contrast, ecclesiastical judges were more likely to approve annulments in the seventeenth century, with a plaintiff success rate of 24% (11 out of 46 active cases). By the eighteenth century, the probability of a plaintiff achieving an annulment dropped significantly. The only case of approved nullity in the eighteenth century was the impotence case of don Pedro Antonio Marroquín, which authorized marital nullity on the grounds of impotence in 1701.<sup>19</sup>

---

<sup>18</sup> Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*, 279–284.

<sup>19</sup> Not only did this case represent the earliest part of the eighteenth century, it was also overturned on appeal after the death of the wife, thereby entitling don Pedro to a partial inheritance. See AGN, Clero, 46, exp. 1, 1701.

**Table 3: 17th Century Annulments Authorized**

Type	Number	Percentage
Authorized	11	23.91%
Not Authorized	7	15.22%
Unresolved	28	60.87%
<b>Total</b>	<b>46</b>	<b>100%</b>

What explains such drastic change over time in the issuance of writs of annulment by ecclesiastical judges? One possibility is that there were many more annulment cases in the eighteenth century, but that the files have been lost. However, this explanation is unconvincing because annulment cases were processed by the exact same legal team (judges, notaries, and attorneys) as ecclesiastical divorce cases.<sup>20</sup> Annulment cases would have appeared in the exact same legal tomes and compendiums available in the archives that contain the hundreds of extant ecclesiastical divorce cases. A more convincing explanation for the dramatic shift away from annulment and towards divorce lies in the increased regulation of the annulment process beginning in the final decades of the seventeenth century. During the first half of the sixteenth century, it was relatively easy to get an annulment for a plaintiff with sufficient proof that there was a serious impediment at the time of the marriage. Impediments such as youth (younger than the age of consent at the time of marriage) and sexual impotence frequently led to decrees of

---

<sup>20</sup> Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*, 275. Dávila-Mendoza just found seven cases of annulment in the eighteenth century.

nullity. As part of the post-Trent drive to eliminate so-called “clandestine” marriages, marriages that had not complied with requirements to post banns (*amonestaciones*) or have a church wedding with witnesses and a priest were also easily annulled. Having largely won the battle against clandestine marriage by the middle of the seventeenth century, the church began to adopt a much more restrictive stance on annulments.

In particular, the church began to move against collusive annulment suits in which both plaintiff and defendant engaged in a conspiracy to have the marriage declared void. New regulations required a church official known as the Defender of the Marriage Bond (*Defensor de Matrimonios, or Defensor Matrimonii* in Latin) to post a vigorous defense of any claims for marital nullity, arguing for the defendant in case the defendant’s lawyer was uninspired to argue against the plaintiff’s motion. This requirement was formalized by Pope Benedict XIV in his Bull “*Dei Miseratione*” in 1741 but seems to have been implemented in New Spain at least a century before.<sup>21</sup> During the early seventeenth century, the presiding judge of the court of original jurisdiction (first instance) issued verdicts authorizing or denying annulments. Plaintiffs or defendants who did not agree with this verdict had to file a new petition at their own expense before the appeals court. By the later part of the seventeenth century this process had changed. The Defender of the Bond began to immediately appeal all verdicts authorizing marital nullity, sending the complete case file to the ecclesiastical appeal court (court of second instance) in the city of Puebla de los Ángeles (modern-day Puebla). This extended the process by up to a year

---

<sup>21</sup> Luisa Zahino Peñafort, *El Cardenal Lorenzana y el IV Concilio Provincial Mexicano* (Univ de Castilla La Mancha, 1999), 257.

and delayed bringing the matter to a close. By making the process slower and more bureaucratic, the costs of bringing an annulment suit increased, making it a relatively less attractive option. By the last decades of the seventeenth century, the church had adopted a much more restrictive stance on annulment cases—so restrictive that I only found one decree of nullity issued in the eight cases filed between 1670-1700. In contrast, in the same time period ecclesiastical judges authorized at least nine ecclesiastical divorces.

Over this thirty-year period, there was not a single case of a plaintiff commencing and winning an annulment. In fact, the only case where a decree of marital nullity was issued was initiated by a third-party who questioned the validity of the marriage; this annulment was clearly against the will of the couple.<sup>9</sup> In 1699, Father Juan Pérez accused a poor mestizo couple living on a hacienda in the Valley of Themascaltepec<sup>10</sup> of living in a fraudulent marriage. Francisco Guillén and Maria Caballero had attracted the ire of Father Pérez, the Jesuit missionary who had married them, for having failed to disclose that they had gotten married despite having clear impediments to their union. Maria had engaged in a brief sexual relationship with Francisco's brother on multiple occasions some years before her marriage to Francisco, thereby creating carnal ties that placed both of them within a prohibited degree of affinity (an impediment of consanguinity in the first degree), thereby invalidating the couples' future marriage. Shortly following the irate Jesuit's denunciation, the vicar general issued a warrant for the arrest of Francisco and the detention of his wife. The sheriff (*alguacil mayor*) apprehended Francisco, placing him in the Archbishop's jail in Mexico City. Maria went on the run, fleeing ecclesiastical justice by leaving her community and disappearing.

Given the difficulty of hearing witness testimony with the disappearance of Maria Calderon, Francisco Guillen spent over two years in the church's prison before finally being released after the decree of nullity was issued. In addition to his prison time, Francisco was exiled from his *pueblo* and warned never to return or he would be excommunicated.

The town of Temascaltepec (or Themascaltepec) had a small but productive silver mine that at the start of the nineteenth century was still producing "260,000 marks" of silver yearly, according to the English traveler William Bullock in 1825.<sup>22</sup> According to David Navarrete Gómez, the presence of the silver mine probably accounted for the very diverse population of the parish of Sultepec-Temascaltepec as compared to the surrounding plantations, which were almost entirely populated by indigenous peoples.<sup>23</sup> As William Taylor has noted the decentralization of this parish resulting from an unusually large number of principal towns (*cabeceras*) and subordinate districts (*sujetos*) led to a significant amount of political conflict.<sup>24</sup> In fact, Temascaltepec was the site of more than eight cases of *cabecera-sujeto* conflict during the eighteenth century. The decentralization and diversity of the population would have complicated clerical oversight for the Jesuit missionaries tasked with the responsibility to reform the morals

---

<sup>22</sup> William Bullock, *Six Months' Residence and Travels in Mexico: Containing Remarks on the Present State of New Spain ...* (Murray, 1825), 162.

<sup>23</sup> As David Navarrete and América Molina note, in 1754 the parish had a population of "7,750 Spaniards, 660 mulattoes and 4,040 Indians" América Molina del Villar and David Navarrete Gómez, *El padrón de comulgantes del arzobispo Francisco Antonio Lorenzana, 1768-1769* (CIESAS, 2007), 43.

<sup>24</sup> William Taylor, *Magistrates of the Sacred: Priests and Parishioners in Eighteenth-Century Mexico* (Stanford University Press, 1996), 371.

and religious sensibilities of a large rural population. Given the very limited supervision and control of the clergy, Francisco Guillen's harsh punishment was probably exemplary; designed to impress on his neighbors the importance of respecting priestly authority and of following the church's complicated rules on consanguinity and sexual morality. In addition to passing several years in jail, Francisco was given the harsh penalty of exile—a punishment that virtually provoked his social death. Given the practical limitations on priestly vigilance in rural New Spain, most couples in a situation similar to that of Francisco Guillen and María Caballero could probably expect to evade detection and punishment of their transgressions. However, after hearing about a case such as that of Francisco Guillen, colonial couples living in irregular situations would have to choose between coming clean and seeking the pardon of the church or living with the constant threat of being discovered.

The exceptional nature of the case of Francisco Guillen suggests that there was a dramatic shift in the second half of the seventeenth century away from annulment cases and toward ecclesiastical divorce. Reforms in the way that church courts handled marital nullity cases resulted in increased paperwork, mandatory appeals and a reduced likelihood of success for the canon lawyer filing these lawsuits. Since the same lawyers (*procuradores*) filed motions for divorce and for annulments, lawyers probably began to counsel their clients to stop filing annulment lawsuits and to start filing for an ecclesiastical divorce.

## ***Paperwork and Patience***

The theological and legal requirements for marriage were not exactly the same. Getting married required a fair amount of paperwork and patience. Marriage required a formal petition made to the archdiocese's court or sometimes to the groom's local parish. In this initial petition, the groom states his full name, age, ethnicity, and profession and sets forth his clear intention to marry his fiancée, repeating her full name, age, and ethnicity. The groom mentions his own marital status (bachelor or widower) and that of his fiancée (bachelorette, virgin or widow). Colonial marital causes were often very precise about the marital status and sexual history of the bride, distinguishing virgins (*doncellas*) from unmarried women of unknown sexual history (*solteras*). The annulment case of María Hernández and Nicolás de Rosas shows this distinction. During interrogation, the judge asked Nicolás if he knew his wife to be "soltera" or "doncella" at the time of their marriage and he answered that the first time that they had sex he realized that she was a *soltera* but he never asked her who had "violated" her virginity.<sup>25</sup> While Nicolás was identified as a *mestizo*, all the other participants in this case were described as *indios* and participated in the trial through the court's Otomí interpreter. Nevertheless, Nicolás' rather nonchalant attitude about his wife's virginity seems to suggest a Mesoamerican rather than Spanish Catholic notion of virginity and female sexuality. As Pete Sigal has shown about the postconquest Nahuas, postconquest Mesoamerican

---

<sup>25</sup> ANG, Criminales, Vol. 705, exp. 30, 1737.

indigenous peoples did not have a notion of sexual sin, seeing sexual activity as threatening only when it was unbalanced, excessive and disordered.<sup>26</sup> Nahuatl lacked a native word for “virgin” leading Dominican missionaries to use the Spanish word to explain the concept.<sup>27</sup> While the Nahua seemed to have understood the notion of virginity, Nahuatl in itself lacked a specific word for this concept. However, Sigal also notes that some “quite suspect” sources suggest “when a new bride was found not to be a virgin, the food at the wedding banquet was served on broken plates, symbolizing the bride’s broken hymen.” However, Sigal suggests that if such a practice existed, it was restricted to the elite. A marginal commoner such as Nicolás de las Rosas was unlikely to make any such pretensions.<sup>28</sup>

The petitioner next claimed that he and his fiancée were eligible for marriage, being free from any and all impediments to contracting nuptials. The next section of the case-file consisted of witness testimony on behalf of the bride and groom; witnesses attested to the lack of impediments to marriage such as blood or spiritual ties and to the good character of the petitioners. Bride and groom presented several notarized witness testimonies, frequently calling neighbors or friends as witnesses to their commitment. The penultimate section of the case-file contained personal statements by bride and groom of their clear desire to marry, emphasizing that this was their own free choice and

---

<sup>26</sup> However, Sigal argues that the efforts of Christian missionaries to instruct their indigenous parishioners in Roman Catholic notions of sexual sin later produced a “hybrid” system of sexual morality. Sigal, *The Flower and the Scorpion*, 13.

<sup>27</sup> *Ibid.*, 97.

<sup>28</sup> *Ibid.*, 289.

that no one was compelling them to marry. If the course of the investigation found no evidence of impediments, the last section of the case file contained the authorization of the vicar General or other appropriate authority of the license to marry.

Finding an impediment to marriage in the course of this investigation did not necessarily mean that all hope was lost for the couple. The church's highly restrictive policy about blood and spiritual ties made off-limits a significant percentage of the potential partners of young residents of colonial Mexican towns, ranches, and villages.<sup>29</sup> The church's convoluted rules on blood and spiritual ties meant that a substantial proportion of young marrying couples would require one sort of dispensation or another in order to proceed with their marriages. In certain cases, ecclesiastical judges could be quite liberal about granting dispensations. For instance, in 1721 the vicar general Dr. Joseph de Soría quickly granted a marriage license to the widow María de Concepción Rojas and the widower don Phelipe Guerrero. Don Phelipe was a gravely ill ("in urgent danger of death") middle-aged man and seems to have decided to marry the impoverished 20-year old in order to leave her an inheritance.<sup>30</sup> In this case, the vicar general was sensitive to the couple's plight and quickly granted a dispensation of their prior marriages on the grounds that the spouses were both deceased.

---

<sup>29</sup> Dana Velasco Murillo, *Urban Indians in a Silver City, Zacatecas, Mexico, 1546--1806* (ProQuest, 2009), 181. Murillo finds very high rates of endogamy in Zacatecas and nearby Indian pueblos, and surprisingly little mobility.

<sup>30</sup> María de la Concepción Rojas. Marriage License. AGN. Matrimonios, 127, exp. 41, 1721, 44.

## ***Impediments***

According to medieval (and later Post-Trent) canon law, a legitimately constituted marriage could only be terminated by death. Nevertheless, there was a long list of conditions that could necessarily or potentially invalidate a marriage. The medieval church divided these conditions into two categories, diriment impediments and prohibitive impediments. *Diriment* impediments (in Latin, *impedimenta dirimentia*) were conditions that made a legitimate marriage between a couple impossible.<sup>31</sup> A diriment impediment was so serious that it necessarily prevented the formation of a legitimate martial bond. Proof of a diriment impediment at the time of marriage was sufficient grounds for an annulment. Age, blood ties (such as marriage between siblings), prior marriage, and permanent impotence were diriment impediments. In contrast, prohibitive impediments (in Latin, *impedimenta prohibitiva*) possibly but not necessarily invalidated a marriage.<sup>32</sup> Prohibitive impediments required a dispensation or exception from a legitimate ecclesiastical authority such as a bishop or another priest authorized by the bishop to grant dispensations.

---

<sup>31</sup> John Witte, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (Westminster John Knox Press, 1997), 33.

<sup>32</sup> *Ibid.*

**Table 4: Grounds for Annulment**

<b>Grounds</b>	<b>Number</b>	<b>Percentage</b>
Age	2	3%
Bigamy	3	5%
Forced consent	14	22%
Deception/condition/identity	4	6%
Impotence	4	6%
Consanguinity/Incest	1	2%
Spiritual Kinship	2	3%
Other Grounds (Insanity, Heresy, etc.)	6	9%
Unknown	14	22%
Out of Service or Missing	14	22%
<b>Total</b>	<b>64</b>	<b>100%</b>

The most frequently cited ground for marital nullity was forced consent. As we can see in Table 4, fourteen individuals alleged that they had been coerced, threatened or had otherwise not fully consented to their marriage. This basis for annulment justified 22% of the total cases. The next most common ground for annulment was impotence. Both husbands and wives alleged that their spouses were unable to consummate the marriage due to a physical defect of impotence. This ground for annulment represented 6% of the cases. The ground of servile condition or deceit also represented 6% of the cases. Finally, less common causes included age, spiritual kinship and consanguinity. A significant number (14) of cases did not contain specific information alleging the grounds for annulment; often these were fragmentary or partially destroyed case-files that contained very little information. Several of the annulment cases considered in this study

also contained concurrent divorce petitions; a case file could combine an annulment petition on the grounds of nonconsent and a simultaneous divorce lawsuit on the grounds of cruelty and severe physical and verbal abuse. María de San Juan used this technique when she both filed for divorce and sued her husband for an annulment simultaneously in 1649. María argued that she had never consented to the marriage, but rather had been forced to marry Leandro del Campo by her overbearing father who on one occasion held a dagger to her chest and threatened to kill her if she refused to get married.<sup>33</sup> María argued that the force used by her father invalidated her marital consent, thereby justifying an annulment. However, in her simultaneous divorce case, she argued that Leandro's severe physical and verbal abuse placed her life in danger and justified an immediate ecclesiastical divorce, even if the ecclesiastical judge were to reject her argument for annulment. María had such an intense desire to separate from her husband that she was not willing to wait for one lawsuit to end before filing another one; she "hedged her bets" by initiating all her legal actions at the same time.

### **Impediment of Age**

Canon law established a minimum age for marriage of twelve years for maidens ("doncellas") and fourteen for young men ("jovenes").<sup>34</sup> María Calderón was one of the beneficiaries of the church's renewed emphasis on free consent in marriage. Supposedly

---

<sup>33</sup> María de San Juan v. Leandro del Campo. AGN, Matrimonios, Vol. 172, exp. 180, 1649, 2.

<sup>34</sup> Ysabel de los Angeles v. Francisco de Ribera. AGN, Indiferente Virreinal, vol. 1502, exp. 3, 52-53, 1617.

forced into an unwanted marriage by her father before she had turned twelve, María appears in the archive as plaintiff in an annulment suit in 1664.<sup>35</sup> Her husband, a 23-year-old baker named Francisco Catalán, probably considered the marriage to be mutually beneficial. Although she was very poor, court records identify María as Spanish (*española*) and Francisco as Indian (*indio*).<sup>36</sup> As the owner of a successful small bakery in Mexico City, he was able to adequately feed and clothe María, and he might expect a slight improvement in his social status by having married a Spaniard. María's destitute father arranged the early marriage of his daughter, possibly as a way of reducing the number of mouths he had to feed, or perhaps in order to obtain some financial reward. María appears to have had no say in the matter. She evaded all of Francisco's efforts to consummate the marriage and within two years had left her husband and returned to her father's household.<sup>37</sup> Francisco repeatedly begged her to return to him, but she ignored his pleas. Five years later, María decided to marry someone else and sued her husband for an annulment. Yet again, her father intervened in her choice of marriage partner, now supporting her petition of marital nullity after having gotten María into the problem in the first place.

In her petition, María claimed that Francisco Catalán had tricked her, getting her to leave her father's house one night and go with him to Mexico City. One he got her to the city, he threatened to kill her if she would not marry him, and she being eleven years

---

<sup>35</sup> Doña María Calderón v. Francisco Catalán. AGN, Matrimonios, vol. 135, exp. 41, 1664.

<sup>36</sup> Doña María Calderón v. Francisco Catalán. AGN, Matrimonios, vol. 135, exp. 41, 1664, 8.

<sup>37</sup> Doña María Calderón v. Francisco Catalán. AGN, Matrimonios, vol. 135, exp. 41, 1664,8v.

old and isolated from all contact with her relatives, married him.<sup>38</sup> Later her father found her and she returned home with him. María's lawyer argued that her baptismal record and the "marriage book" proved that she was eleven years old at the time of her marriage, one year under the legal age of marriage according to canon law.<sup>39</sup> The judge, the licentiate don Manuel Braus approved the annulment with little fanfare, supporting the argument that María's marriage had been null from the beginning because she had never given her free consent to marry. Without consent, marriage could never exist. The judge went so far as to threaten the baker with excommunication should he continue harassing his former wife.<sup>40</sup>

Almost a century and half later, Doña Juana María de Bergaña sought an annulment from her husband on the grounds she had been forced into the marriage by her father before she was twelve years old.<sup>41</sup> She requested that the court grant her an annulment or let her enter the religious life. Her husband, don Manuel López Cotilla, was the captain of an infantry battalion in Guadalajara. Doña María claimed that just before she turned twelve years old, her father had forced her into an unwanted marriage that she had resisted.<sup>42</sup> She never had wanted to marry, preferring instead the religious life. Captain Manuel claimed that his wife's claims of force by her father were

---

<sup>38</sup> Doña María Calderón v. Francisco Catalán. AGN, Matrimonios, vol. 135, exp. 41, 1664, 8v.

<sup>39</sup> Doña María Calderón v. Francisco Catalán. AGN, Matrimonios, vol. 135, exp. 41, 1664, 8v.

<sup>40</sup> Doña María Calderón v. Francisco Catalán. AGN, Matrimonios, vol. 135, exp. 41, 1664, 10v.

<sup>41</sup> Doña Juana María Bergaña v. don Manuel López Cotilla. AGN, Bienes Nacionales, vol. 706, exp 4, 1798.

<sup>42</sup> Doña Juana María Bergaña v. don Manuel López Cotilla. AGN, Bienes Nacionales, vol. 706, exp 4, 1798, 4.

unexplainable (“inexplicable”) as her father “loved her with excessive tenderness”.<sup>43</sup> The only possible sort of fear that doña María may have had towards her father was the “filial fear” of “displeasing” him.<sup>44</sup> The Captain claimed that despite doña María’s rejections of his “insinuations” toward consummating the marriage, he had never treated her with anything but tenderness (“ternura”).<sup>45</sup> Doña María was placed in *recogimiento* and maintained her claim that her marriage was invalid because of her age and that she desired to enter the religious life. Finally, her husband formally accepted her desire to enter a convent, potentially opening himself up to a charge of collusion (although he was never accused). After several months the case reached a surprising conclusion; doña María de Bergaña decided to return to her husband’s house and resume marital cohabitation, renouncing her desire to enter the religious life.<sup>46</sup> The final page of the case contains a letter written jointly expressing her desire to close the lawsuit.

Did doña María’s father or husband find some leverage to push her to return to her husband’s house? Or did she genuinely give up her desire to enter a convent? Another possibility is that life at the *recogimiento* was less pleasant than she had

---

<sup>43</sup> “...amandola con ternura excesiva”

Doña Juana María Bergaña v. don Manuel López Cotilla. AGN, Bienes Nacionales, vol. 706, exp 4, 1798, 3v.

<sup>44</sup> “dar un desgusto”

Doña Juana María Bergaña v. don Manuel López Cotilla. AGN, Bienes Nacionales, vol. 706, exp 4, 1798, 3v.

<sup>45</sup> Doña Juana María Bergaña v. don Manuel López Cotilla. AGN, Bienes Nacionales, vol. 706, exp 4, 1798, 4.

<sup>46</sup> Doña Juana María Bergaña v. don Manuel López Cotilla. AGN, Bienes Nacionales, vol. 706, exp 4, 1798, 4v.

anticipated, thereby leading doña María to reconsider the attractiveness of a religious life. Whatever the cause, doña María appears to have chosen married life over the religious life, and abandoned her lawsuit.

The cases of María Calderón and doña Juana María de Bergaña reflected a quotidian reality of life in New Spain; women and girls sometimes got married very young, and parents could play a dominant role in the marriage choices of their daughters.<sup>47</sup> However, girls and young women were far from helpless. Before the wedding a young bride could manifest her opposition to the marriage to the notary who formalized the engagement or to other officials. Marriages were never instantaneous, as the requirement for banns to be published publicly in at least three consecutive festival days slowed down the process considerably.<sup>48</sup> After the wedding, the young bride's only recourse was to resist the consummation of the marriage, and to refuse to sleep in the same bed as the groom. As we have seen in the two preceding cases, ecclesiastical judges were quite open to annulling marriages in the case of non-consummation. Because María Calderón never consummated her marriage with Francisco Catalán, it was fairly easy and quick for her to achieve the annulment. Age was also a diriment impediment that ecclesiastical judges took seriously. Since canon law established that girls younger than twelve year-old could not consent to marriage, proving that a bride was younger than twelve (by using marriage and baptismal records) at the time of her

---

<sup>47</sup> For more on parents' involvement in marital choice, see: Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821*.

<sup>48</sup> J. Waterworth, *Canons and Decrees of the Sacred and Ecumenical Council of Trent* (Kessinger Publishing, 2003), 197.

marriage provided simple, irrefutable proof of a diriment impediment. However, while many young adolescents married, the archives contain little more than a handful of cases that mention brides who were 11 years or younger, making age a very uncommon ground for annulment.

## **Bigamy**

When Francisca López was accused of having married two different men named Juan Pérez, the only punishment she suffered was a reprimand and a legal order to separate herself from her bigamous husband; a violent, coarse man that she had grown to hate. When Francisca filed her case in 1569, the Holy Office of the Inquisition had yet to be established and the resolutions of the Council of Trent were brand new. In 1569 prosecuting bigamists was not a priority as the church was still focused on missionary work and building new churches and cathedrals in New Spain. By the middle of the seventeenth century, the church combined a greater bureaucratic and legal sophistication with a stricter policy toward moral crimes. A bigamist named Juan de Arévalo would suffer serious punishment because of the church's changed policy.

Less than twenty years after Juan de Arévalo Nieto abandoned his young wife and family in Córdoba, his past would finally catch up with him. Juan de Arévalo had married a maiden (“doncella”) named Francisca de Yrena y Portillo Saenz in 1627 and lived with her as her husband for more than three years, during which time they had a daughter. By 1630 he emigrated to New Spain and by 1646 he had contracted a second, bigamous

marriage with another young maiden named Agustina de Godoy Aguila.<sup>49</sup> Arévalo's case file does not indicate how the authorities figured out that he had been married twice, but he was judged and later participated in an *auto-da-fé* in the patio of the convent of Santo Domingo.<sup>50</sup> Agustina's father, Francisco de Godoy asked for permission from the Holy Office of the Inquisition to begun annulment proceedings against Arevalo, which was quickly granted. In addition to the auto-da-fé, Arevalo's sentence consisted of 200 lashes and four years hard labor in the galleys of His Majesty, without pay.<sup>51</sup>

Bigamy was not common, but authorities took it very seriously and meted out harsh punishments to offenders. A person who got married twice not only committed a mortal sin; he risked detention and investigation by the Inquisition.<sup>52</sup> Given the relative administrative disorganization of the Spanish empire and the limited, difficult lines of communication, bigamy may have seemed an attractive option for some immigrants to New Spain from the Iberian peninsula. The Holy Office of the Inquisition made up for the relative difficulty of keeping track of potential bigamists by severely punishing the bigamists that they did catch. Having already been married legitimately was a diriment impediment that immediately invalidated the second marriage, regardless of the consequences to the new family. Richard Boyer, in his classic study of bigamy, found

---

<sup>49</sup> Francisco de Gody v. Juan de Arevalo Nieto, AGN, Inquisición, vol. 503, exp. 64, 1649, 1.

<sup>50</sup> Francisco de Gody v. Juan de Arevalo Nieto, AGN, Inquisición, vol. 503, exp. 64, 1649, 1.

<sup>51</sup> Francisco de Gody v. Juan de Arevalo Nieto, AGN, Inquisición, vol. 503, exp. 64, 1649, 6v.

<sup>52</sup> Boyer, *Lives of the Bigamists : Marriage, Family, and Community in Colonial Mexico*, 26.

that the individuals most likely to face trial for bigamy were Spanish men.<sup>53</sup> The mobility of these largely peninsular Spaniards who often married in Iberia before migrating to the Americas explains their greater proclivity towards bigamy. In contrast, Indians were both less mobile, frequently living in the same community in which they were born, and under more direct vigilance by priests.<sup>54</sup>

## Nonconsent

Judging by seventeenth century annulment petitions, *Novohispano* mothers sometimes compelled their daughters to marry men that the young ladies considered far from optimal. Such was the case of doña Ana Calderón, who submitted a claim in October of 1656 asking for an annulment from Pedro Matheos on the grounds that her mother had forced her to marry him against her own will.<sup>55</sup> Doña Ana's petition stated that she wanted to marry someone else, but her mother "compelled" her to marry Pedro Matheos and Pedro, sensing her reluctance to the marriage, began to threaten her and physically abuse her in order to ensure her compliance. Her petition alleged that the patterns of abuse began before the marriage continued afterward, with Pedro Matheos frittering away her dowry, having affairs ("malas amistades"), beating her and insulting her.<sup>56</sup> Doña Ana's lawyer accused Pedro of having brought his mistress Ana María

---

<sup>53</sup> Ibid., 7. According to Boyer, men represented more than 84% of the defendants in bigamy trials, and Spaniards 57% of the defendants. The second largest racial group was mulattoes at 25% of the total.

<sup>54</sup> Taylor, *Magistrates of the Sacred*, 158.

<sup>55</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 1.

<sup>56</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 1.

(“amanceba”), a woman identified as of mixed Spanish, indigenous, and African descent (“mulata loba”) to live in their home and even forced his wife to eat at the same table with his mistress.<sup>57</sup> But Ana María was not his only lover; doña Ana’s petition formally accused Pedro of having courted another woman named doña Ysavel. Doña Ana accused her husband of giving all the money that he earned to this woman and of even forcing her to work night and day in order to pay for doña Ysavel’s whims.<sup>58</sup>

Doña Ana’s advocate, Nicolas de Rosas put together a well-written, even gripping petition that was nevertheless a very poor argument for annulment based on forced consent. The bulk of the declaration focused on Pedro’s spendthrift ways and his affairs, poor behavior, certainly, but neither were diriment impediments to marriage. Perhaps sensing the case was not going her way, in the last weeks of the process doña Ana switched counsel, taking on Diego Ruiz de Esquibel as her attorney.<sup>59</sup> Diego Ruiz changed tactics, arguing that if there was not enough evidence to warrant an annulment, the court should at least authorize a permanent divorce given the excessive cruelty of doña Ana’s husband.<sup>60</sup> He also argued that an annulment was warranted, given his client’s manifest disgust and aversion to the defendant; said revulsion proved that she had not consented to the marriage and truly accepted Pedro as her husband.

---

<sup>57</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 1.

<sup>58</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 1.

<sup>59</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 64.

<sup>60</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 64.

The new lawyer's efforts were unsuccessful. The prosecutor (*promotor fiscal*) wrote a harsh critique of the plaintiff's claim that disputed her argument point by point.<sup>61</sup> *Bachiller* Joseph de Cabrera argued:

The grounds (for annulment) are not of substance, nor have they been verified. The principal argument that we are to believe is that there was not perfect consent, which is doubtful because of the act of having cohabited so much time with her husband, and having had children with him. Even if at the time of marriage there was no full consent, the consent that existed afterward and during so many years was enough for the marriage to be ratified.<sup>62</sup>

According to Cabrera, the proof of doña Ana's consent to the marriage was her repeated cohabitation with Pedro Matheos subsequent to the wedding. The years of living together and children that they had together suggests that their marriage was real and that she was an active participant in the marital union. Early modern canon law presumed that sexual consummation showed the consent of husband and wife to the sacrament of marriage. In both early modern Europe and colonial Mexico, the consummation of a marriage vow was an important act made known to family and members of the household. Consummation was a physical sign that marked the acceptance of bride and husband of their conjugal ties. As early as the twelfth century, Pope Innocent III had established in his papal decretal "Per tuas" that sexual intercourse

---

<sup>61</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 67.

<sup>62</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 67.

following an exchange of vows made marriage inviolable.<sup>63</sup> With the exception of rape, early modern Catholic scholars could not conceive of sexual intercourse occurring without consent; this meant that doña Ana's claim was implausible that she had never consented to her marriage after several children and numerous acts of intercourse with her husband.

On the question of divorce, the prosecutor argued:

*[The causes] that are proposed are insufficient. And it is needed that each case of cruelty and physical and verbal abuse be verified individually and that they be exorbitant, continuous and intolerable. Therefore the proof that has been given is of no effect. It is known that the witnesses gave their depositions impassioned and out of affection (for the plaintiff); these aren't reliable...*<sup>64</sup>

Following the prosecutor's recommendations, the Vicar General rejected doña Ana's claims and denied both her petition for an annulment and her divorce lawsuit.<sup>65</sup> As was typical, the vicar general did not elaborate his reasons for denying the claim, but we can assume that to have a compelling argument for an annulment, doña Ana would have had to prove some impediment to consent at the time of marriage, rather than just set forth a list of difficult-to-prove complaints about her spendthrift husband.

María de León was another victim of a mother who was bad at playing matchmaker. In 1663 she sued Salvador Ponce for marital nullity on the grounds of forced consent. She stated that one day about a month before her divorce claim, her

---

<sup>63</sup> James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (University of Chicago Press, 1990), 338.

<sup>64</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 67.

<sup>65</sup> Ana Calderón v. Pedro Matheos. Indiferente Virreinal, Caja 1205, exp. 10, 1656, 67.

future husband “who was very fond of me” came to ask for her hand in marriage.<sup>66</sup> When asking her mother for María’s hand in marriage, Salvador claimed to be “a hard-working man who had all his deals up to date and an orchard of more than three thousand cacao trees in the town of Sacatula (Zacatula) and a female slave held by his creditors as security.”<sup>67</sup> Salvador claimed that the issue of his slave had caused problems with other marriage proposals and so he would insist that his creditors had to turn over the slave promptly.<sup>68</sup> María says that her mother was deceived by Salvador’s claims that he would improve their economic situation, and ignored that Salvador was a “deformed, poor and disgusting” man.<sup>69</sup> The same day that he asked for María’s hand, Salvador constantly entered and left the house, attempting to pressure María’s mother into giving a response. Noting María’s reticence, the plaintiff’s mother stated that she “should kill me by giving me mercury.”<sup>70</sup> María was so afraid of her mother that when the notary came to certify the engagement it was not possible for her to say anything.<sup>71</sup> After announcing the engagement the banns were read at the three subsequent Sundays and the wedding preceded “against her will.” Immediately after marrying her, he refused to give her adequate sustenance, instead suggesting that she go to work to maintain him, that she

---

<sup>66</sup> María de León v. Salvador Ponce. Bienes Nacionales, Vol. 139, exp. 39, 1.

<sup>67</sup> María de León v. Salvador Ponce. Vol. 139, exp. 39, 1v.

<sup>68</sup> María de León v. Salvador Ponce. Vol. 139, exp. 39, 1.

<sup>69</sup> María de León v. Salvador Ponce. Vol. 139, exp. 39, 1.

<sup>70</sup> “crudo” María de León v. Salvador Ponce. Vol. 139, exp. 39, 1.

<sup>71</sup> María de León v. Salvador Ponce. Vol. 139, exp. 39, 1.

should “find a way to support him and pay for the house; other women do it and maintain their husbands.”<sup>72</sup>

Salbador’s inversion of the masculine responsibility of the husband to maintain his wife and family seems to have particularly caused her consternation. If she did not agree with that, Salbador suggested that the “ultimate remedy” would be to kill her and flee to far away lands.<sup>73</sup> Salbador had slapped her around and tried to strangle her. One night he pushed her out of the marital bed, forcing her to share a *petate* with her maid.

While there was no conclusion to María’s annulment claim, it would have been very difficult for her to prove that she was forced into the marriage. Her claims that Salbador had hit her and pushed her out of the marital bed suggest that she willingly cohabited and slept with him. María’s willingness to sleep with Salbador greatly weakens her argument that she had never consented to the marriage. Still, the allegations of abuse were sufficient for the vicar general to order María taken from the custody of her husband and placed in deposit at the house of a man named Antonio Romero, who is identified as doorman (“*portero*”) of the *Tribunal Mayor*. After the certification of the deposit of her person, we lose track of the case.

Nonconsent was a diriment impediment to marriage that was nevertheless very difficult to prove. Consent was revealed by external signs such as the verbal acceptance

---

<sup>72</sup> María de León v. Salbador Ponse. Vol. 139, exp. 39, 1v-2.

<sup>73</sup> María de León v. Salbador Ponse. AGN, Bienes Nacionales, Vol. 139, exp. 39, 1v-2.

of a marriage promise, the exchange of gifts, and the willingness of the couple to touch each other and sleep together. However, consent was also an internal state; a feeling or thought that could change, be forgotten or denied. The idea that it was the mutual consent of bride and groom and mutual consent alone that created marriage was one of the most radical concepts of the Catholic religion. This concept also led to friction between parents and children over marital choices and problems of seduction and clandestine marriages. Tridentine reforms sought to reduce these sorts of conflicts by externalizing consent as much as possible; the requirement to post banns and require the presence of the parish priest made marital consent a public affair involving the community. However, meddling parents could sometimes still threaten their children into taking unwanted marriage partners, as the cases of doña Ana and María de León suggest. However, non-consent was so difficult to prove after the implementation of the Trent reforms that plaintiffs like doña Ana and María de León were very unlikely to receive the annulments that they desired.

### **Condition and Deception**

Josepha de la Cruz's petition stated that she would have tolerated her husband's abusive behavior if he had been a free man.<sup>74</sup> The Indian woman from the neighborhood of San Cosme in Mexico City sued her husband for an annulment in 1690, on the grounds

---

<sup>74</sup> This section deals with two cases that feature two litigants who had almost the same name: Josepha de la Cruz, an Indian woman who sued for an annulment in 1690, and Joseph de la Cruz, an enslaved mulatto who was sued in 1666.

of servile condition.<sup>75</sup> Through an interpreter, she claimed that her husband, a slave named Nicolás Ramírez, had tricked her by claiming that he was a freeman and not a slave.<sup>76</sup> After four years of marriage, spent living with him in her parent's house while he worked as a shepherd on the hacienda of Santa Lucia, Josepha claimed that she only realized that her husband had lied when his master sold him to another owner. Nicolás had to move, and Josepha refused to follow him. After her parents died, she moved to Mexico City to work as a servant in various households. It was at this point that the *Alcalde Ordinario*, Captain Don Francisco de la Peña, found out that she was a married woman who was not living with her husband. He ordered her to go live with her husband, and she told him that she had not married a slave, but a freeman, and so this slave Nicolás Ramírez was consequently not her husband. When she was asked if her husband had abused her, she responded that she would have tolerated the abuse of a free man and would have lived with him, but she was not willing to tolerate a slave's abuse.<sup>77</sup> Josepha seemed to accept some level of physical and verbal abuse as normal; what she resented was that the person who mistreated her was a slave, a status that she perceived as being much lower than that of her own. Captain Francisco insisted that she go live with her husband, who currently was serving a new master in the *barrio* of San Juan. In order to avoid this fate, she sued her husband for an annulment.

---

<sup>75</sup>Josepha de la Cruz v. Nicolás Ramírez, Indiferente Virreinal, Caja 1752, exp. 6, 1690.

<sup>76</sup> Josepha de la Cruz v. Nicolás Ramírez, Indiferente Virreinal, Caja 1752, exp. 6,1690, 14.

<sup>77</sup> Josepha de la Cruz v. Nicolás Ramírez, Indiferente Virreinal, Caja 1752, exp. 6, 1690, 14.

How was Nicolás able to deceive his wife for more than four years? One possibility has to do with his profession. Nicolás was a shepherd, a career noted for its relative autonomy and freedom.<sup>4</sup> While don Andrés Ramírez was his master, he would not have had the sort of day-to-day contact with his owner or with a rigid hierarchy that a slave working in domestic service or intense agricultural labor on a plantation would have had. Given the limited contact Nicolás might have had with his master (if he did his job well and responsibly), it might have been possible for him to hide his slave-status from his wife. Additionally, Nicolás's mixed heritage as a mulatto *lobo* (mixed race indigenous and mulatto) may have meant that he shared a culture and language with his indigenous wife and could pass for a free indigenous person rather than an enslaved black.<sup>5</sup>

Another possibility is that Josepha de la Cruz was using the claim that she had never known that her husband was enslaved as a pretext to get out of a marriage that she found unsatisfactory. She had remade her life as a domestic servant and an unmarried woman in the city after her parent's death and was only in court because the *alcalde* don Francisco was attempting to force her to return to a man whom she no longer recognized as her husband.

There was no conclusion to this lawsuit, but it seems unlikely that Josepha de la Cruz would have won her case, due to the length of their cohabitation as husband and wife which made Josepha's allegations less plausible. While the impediment of servile condition ("impedimento de condición servile") was a diriment impediment to marriage, in this case the length of the cohabitation (four years, and three more separated) makes

Josepha's claims rather implausible. The couple had consummated the marriage, and while it was unclear if there were children, this was a factor that would have made achieving an annulment less likely. Josepha's story of innocence and deception seems rather hard to believe. This lawsuit is a good example of one of the most convoluted diriment impediments to marriage: the impediment of servile condition or deception. This impediment occurred when someone misrepresented himself as being someone or something that he was not.<sup>78</sup> In theory a man or woman could commit this sort of deceit, but in practice it was a fraud that men committed against women.

In 1666, Brigida de Arteaga, a free *mulata* who was a servant for one of the most powerful men in Nicaragua, the *Corregidor* don Antonio Colima sued for an annulment on the grounds that her husband had deceived her. She claimed that a mulatto named Joseph de la Cruz had proposed marriage to her, claiming that he was free and the child of free mulattoes. Supposedly Joseph's father and several of his friends swore (*jurado como testigos*) this to be true. Soon after marrying him, Brigida discovered that he was in fact a slave of Doctor Bernardo de Quessada, the Bishop of Nicaragua. Because she was not interested in marrying a slave, but someone free like herself (*no trato de hacer vida con persona esclava, sino libre como yo lo soy*), her lawyer argued that the marriage was

---

<sup>78</sup>While there were a few cases of annulments based on the impediment of condition in New Spain, in colonial Peru this situation was more common. In Peru, dozens of annulment petitions used this motive and ecclesiastical judges frequently authorized annulments on this basis. New Spain's church authorities were much more reluctant to authorize annulments for this reason. See:

Lavallé, "Divorcio y Nulidad De Matrimonio En Lima (1650-1700). La Desavenencia Como Indicador Social."

null and void from its beginning.<sup>79</sup> In this case, the name of the lawyer is not mentioned in the petitions and response that Brigida sends out, making it appear that she is writing her own arguments and signing her own name. The unnamed official who wrote her petitions wrote everything in first person, thereby obscuring his mediation of her arguments.

In his response, Joseph de la Cruz's lawyer, Juan de la Ribera, argued that the fact that Joseph lied about his condition of servility was not sufficient to annul the marriage. He argued that the bride had a responsibility to verify that her husband was free and not a slave, because it was common knowledge that Joseph was a slave. Additionally, the lawyer argued that Brigida's decision to live with Joseph after it was obvious that he was a slave (he had been sold to a new master) showed her consent to the arrangement. If she had really been revolted by the prospect of living with a slave, she should have left him immediately after she found out.

Yet again in this case sex proved consent. By waiting eight months before she decided she was unsatisfied with the marriage, Brigida had accepted the new, enslaved Joseph as her husband, thereby creating marital consent and sacramental ties. Since she had consented to the marriage and consummated it yet again, the marital bond became inviolable. The Vicar General reproduced these same arguments in denying Brigida's petition. She appealed to the judge provisor and vicar general in Mexico City, which is how these documents from Nicaragua came to be in the AGN. The Vicar General upheld

---

<sup>79</sup> Brigida de Ariega v. Joseph de la Cruz. AGN. Matrimonios, vol. 135, exp. 46, 2v, 1666.

the earlier sentence and ordered her to return to her husband. In this case as in others, sexual consent was found to be more important than questions about social status and deception.

Impediments of servile condition tested the limits of one of the most radical aspects of catholic sacramental marriage: the idea that mutual consent could create a permanent indestructible bond between a man and a woman regardless of questions of social status and practicality. If Brigida, Josepha or any other woman had consented to marital cohabitation after learning of the true identity of their slave husbands, they reaffirmed their marital relationship in these new circumstances and thus created a permanent marital bond that could not be destroyed if they changed their mind later or found their husbands' slave-status to be inconvenient. For this reason, ecclesiastical judges in New Spain very infrequently authorized annulments on the basis of condition because there was almost always evidence of cohabitation after the victim learned of her husband's true identity.

Since annulment cases involving errors of condition almost always involved very poor litigants, plaintiffs were rarely in a position to suspend marital cohabitation the instant that they learned of their spouse's true identity. Ecclesiastical judges held that this continuing cohabitation was evidence of the wife's consent to marriage with a slave husband, when in fact it may have been motivated by extreme poverty and necessity. In Brigada's case, eight months of marital cohabitation transpired between her learning of her husband's true identity and her lawsuit. However, given her evident poverty it might have taken Brigida eight months to put together adequate circumstances to be able to file

for annulment and leave her spouse behind. Another factor that made ecclesiastical judges find the impediment of condition less convincing was the length of cohabitation. Having lived many years with the defendant such as in the case of Josepha de Cruz, who had been married for seven years to her husband made it harder to believe that it took Josepha so long to realize that her husband was a slave.

The most common case of an impediment of condition was of a slave who claimed falsely to be free, but it could also apply to a groom who deceived his bride by claiming to be someone else. For instance, in October of 1585 doña Cathalina de Zarate accused her husband of being an impostor. She had married her husband because he claimed to be don Luis de Cordova, a wealthy and powerful plantation-owner. A few months after the marriage doña Cathalina became convinced that her husband was another, less important don Luis and not the don Luis that she believed that she had married.<sup>80</sup> Doña Cathalina sued her husband for an annulment on the grounds of deception but her petition was rejected because she had no way of proving her claims.

## **Impotence**

Impotence was perhaps the most straightforward and evidence-based ground for annulment. One instructive example of this was the case of Francisco de Ribera, who lived in Mexico City in the early seventeenth century. After he was unable to consummate their marriage during dozens of attempts over several years, in 1617 Ysabel

---

<sup>80</sup> Doña Cathalina de Zarate v. don Luis de Cordova. AGN, Indiferente Virreinal, exp. 17, 1585.

de los Ángeles filed a demand for annulment against her husband, Francisco de Ribera. Subsequent to his review of the results of an examination of the young woman by four midwives who found her hymen intact, the judge annulled the marriage on the grounds of impotence. Additionally, he restricted Ribera's future marriage prospects, ordering him never again to marry a maiden (*doncella*). He would be permitted to marry a widow, or other sexually experienced, "corrupt" woman.<sup>81</sup>

The case of Doña María del Castillo was in many ways the inverse of Ysabel de los Angeles. Doña María claimed an annulment on the grounds that she was incapable of consummating her marriage because her vagina was extremely closed (*summamente cerrada*).<sup>82</sup> During the nine months in the year 1690 that she had spent in marital cohabitation with her husband, Nicolás de Martín, doña María was not able to have a single act of sexual intercourse with her husband due to the abnormal thickness of her hymen. The couple's inability to consummate the marriage had placed significant stress on their relationship, leading doña María to claim that her husband had physically and verbally abused her ("malos tratamientos de palabra y obra"). However, one doubts the severity of Nicolás's abuse, given that one of her complaints was that her husband had taken her from her grandparents house to live with him in his house; by all accounts, this was normal behavior after marriage.<sup>83</sup> Nichola's lawyer claimed that the couple had

---

<sup>81</sup> "si el dicho Francisco de Ribera se quisiere casar lo pueda haber con muger corrupta y no con doncella..." Ysabel de los Angeles v. Francisco de Ribera. AGN. Indiferente Virreinal, vol. 1502, exp. 3, 52-53, 1617.

<sup>82</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 17.

<sup>83</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 11v.

lived as husband and wife, with much “peace and tranquility” for more than forty days after they were married.<sup>84</sup> They slept in the same bed ,“in view of the domestic servants” and doña María never showed repugnance to her husband.<sup>85</sup> The lawyer claimed that doña María had returned to her grandmother’s home on a temporary basis to keep her company while her grandfather Juan de Castillo was away on a trip. Doña María’s grandmother doña María de Real had begged (“a ruego y persuasión”) him to allow her daughter to stay with her because she was living alone.<sup>86</sup> Then, following the subsequent death of her grandmother, doña María kept living in the house to take care of her grandfather. This was the reason that doña María left Nicolás’s home and not because he could not consummate the marriage. The lawyer Gabriel de Aguilera also argued that Nicolás had never abused his wife; he never gave her “nightmares,” much less laid his hands on her (“ni le pusiera las manos”).<sup>87</sup>

The vicar general, Salvador Gonsales, ordered the notary to conduct an investigation. Four midwives testified that her hymen was so thick that it could not be broken without putting her life in danger.<sup>88</sup> One midwife (“*comadre de parir*”), a *mulata* named Juana Ramos, testified with the sign of the cross, under pain of excommunication for lying, that Doña María’s grandfather had taken Doña María to her house three months

---

<sup>84</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 11v.

<sup>85</sup> “a vista de la gente doméstica de la dicha casa” doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 11v.

<sup>86</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 11v.

<sup>87</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 11v.

<sup>88</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 11v.

before for a physical examination. Ramos had lifted up Doña María's skirts and had both visually examined her and touched her, finding that her "interior" was extremely closed. She concluded that she was incapable ("*incapaz*") of cohabitating with "any male" ("*baron alguno*").<sup>89</sup> The only way for her to have intercourse would be to break open the hymen with great force, placing doña María's life at risk ("*riesgo de vida*"). Ramos did not sign her deposition because she was illiterate.<sup>90</sup> The next midwife, a *mestiza* named Magdalena Gonzales, about 60 years old, after having "seen and touched" the litigant, also certified that Doña María was incapable of having sexual intercourse because of the extreme tightness of her "part." Gonzales also testified that Doña María had been damaged and scratched by her husband's recent, failed attempt to break her hymen with "the force of his hand" ("*a fuerza de manos*") because it was not possible to break it "naturally" in an act of intercourse. The third midwife was an indigenous woman about sixty years old who gave her testimony in Nahuatl ("*lengua mexicana*") despite being fluent in Castilian Spanish ("*ladina en castellano*").<sup>91</sup> Her interpreter was Juan de Gomes, the official court interpreter. Agustina de Paras also claimed to have physically examined doña María, having touched and "palpated the part" that impeded the consummation of her marriage. Agustina Flores said that based on what she had seen and touched, it would be impossible for Doña María to consummate the marriage with her husband without putting her life in danger.<sup>15</sup>

---

<sup>89</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 18v.

<sup>90</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 18v.

<sup>91</sup> doña María del Castillo v. Nicolás Martín. AGN, Matrimonios, Vol. 173,exp. 6, 18v.

What seems to be on the surface a straightforward case about impotence hides a struggle over money. The death of doña María's grandmother, doña María de Real, seven months before she placed her annulment lawsuit meant that the young woman could lay claim to a significant inheritance. Since she was married, this inheritance would have passed to the administration of her husband, a situation that doña María resisted. In this case doña María's grandfather also maneuvered behind the scenes, attempting to get his granddaughter's marriage annulled so that she could return to his home, with her inheritance intact. After she was placed in deposit with doña María Coronel, don Juan filed a motion asking to Dr. Don Pedro Barrientos Lomelin, vicar general of the Archdiocese of Mexico, asking to switch jurisdiction of the lawsuit from the ecclesiastical court of Queretaro to the *Audiencia* of Mexico. This new jurisdiction was more favorable to their case, and doña María's lawyer was later able to get both her marriage annulled and herself placed in deposit with her grandfather. In this case, forum shopping and the use of expert witness testimony led to a favorable outcome for the plaintiff. In this case, the plaintiff used the evidence of her body and manipulated the church's discourses about marriage and family in order to win a financial struggle that she had with her husband. While it is unknown whether church officials were moved by corruption or sympathy to accept the "truth" of doña María's body as a pretext for annulment, the young plaintiff nevertheless made the ecclesiastical court a co-conspirator in a plot against her husband that was much more about money than about sex.

As we have seen in the case of doña María del Castillo, the expert testimony of midwives was key in cases related to impotence. In 1701, don Pedro Antonio Marroquin,

accused of impotence by his wife, offered to have “three conjugal acts” in the same hour with his wife, in the presence of three aged midwives of “honest character.”<sup>92</sup> Don Pedro also presented a surgeon’s testimony that declared him to be of “proportional parts, sufficient erection, and free of all defects in his external and internal parts.”<sup>93</sup> Disputing claims of impotence, the surgeon argued that to the contrary don Pedro was possessed of a “very warm element” (“intemperie calidísima”) which led him to desire a constant repetition of “marital acts” (actos conjugales).<sup>94</sup> He was inclined toward an excessively frequent, even “disordered” sexuality rather than impotence.<sup>95</sup> Despite don Pedro’s insistence, the vicar general granted an annulment to his wife, cutting all ties between the couple. Shortly afterward, don Pedro’s former wife died, cutting him out of any potential inheritance. Don Pedro also presented a declaration from a midwife that proved that he had consummated the marriage; his wife had been pregnant but later miscarried on two occasions.

The case of don Pedro Antonio shows how claims to medical knowledge could be disputed in colonial courts, and how the male body and virility could be asserted as a claim to truth. During the first trial when his wife was still alive, in addition to offering to prove his virility by having sex three times in one hour with his wife, don Pedro submitted testimony from several doctors and surgeons from Puebla that found him to not

---

<sup>92</sup> Don Pedro Antonio Marroquín de Monte Hermoso v. doña Thomasa de Garate y Francia, Appeal. AGN. Clero 46, exp. 1, 1701.

<sup>93</sup> “declararon hallarme con partes proporcionadas, ereccion suficiente, y no tener defecto alguno en la parte externa, ni en las internas” Clero 46, exp. 1, 1701, 583.

<sup>94</sup> Clero 46, exp. 1, 1701, 583.

<sup>95</sup> Clero 46, exp. 1, 1701, 583.

be impotent. Don Pedro had asked that the Vicar General remit these medical reports to the *Real Protomedicato*, the tribunal responsible for the certification of surgeons in New Spain, so that the medical judges (“jueces protomédicos”) could issue an opinion on the case. The judges found the testimony of the doctors from Puebla to be sound; don Pedro was not impotent, and his medical defect of being too warm “intemperie calidísima” was not a cause of incurable impotence.<sup>96</sup> According to these medical judges, “cold” (“frío”) rather than heat was the cause of impotence. In both early modern Europe and colonial Latin America, the medical consensus was that a person’s character and health was affected by his or her particular temperament. This temperament (or complexion) consisted of an individual mixture of the four humors: phlegm, black bile, blood, and yellow bile. As Mary Lindeman describes, “Humors themselves had qualities: phlegm was cold and wet; black bile, cold and dry; blood, hot and wet; and yellow bile, hot and dry.”<sup>97</sup> Each of the humors corresponded to one of the four natural elements.<sup>98</sup> Don Pedro’s excess of heat and choleric temperament meant that by nature he could not be impotent. Given the response by the Tribunal del Real Protomedicato, doña María del Castillo asked for a second medical examination.<sup>99</sup> Don Pedro refused because he was currently staying in Oaxaca (where there were only “two doctors”) and asked permission

---

<sup>96</sup> Clero 46, exp. 1, 1701, 583v.

<sup>97</sup> Mary Lindemann, *Medicine and Society in Early Modern Europe* (Cambridge University Press, 2010), 17.

<sup>98</sup> Yellow bile corresponded to fire, blood to air, phlegm to water and black bile to earth.

Zirka Zaremba Filipczak, *Hot Dry Men, Cold Wet Women: The Theory of Humors in Western European Art, 1575-1700* (The American Federation of Arts, 1997), 17.

<sup>99</sup> John Tate Lanning and John Jay TePaske, *The Royal Protomedicato: The Regulation of the Medical Professions in the Spanish Empire* (Duke University Press, 1985), 33.

to have the exam when he returned to Mexico where there were “eminent authorities in the two faculties of Medicine and Surgery, the Protomedicato, and a university.”<sup>100</sup> Most of the medical resources of New Spain were concentrated in Mexico City, leaving few resources for provincial areas such as Oaxaca.<sup>101</sup> In this case, don Pedro’s careful use of expert medical testimony led to a reversal of the first verdict of annulment based on impotence. This meant that at the time of her death, doña María del Castillo was a married woman and her husband don Pedro had a right to his share of the inheritance. Don Pedro used this expert medical opinion to subsequently challenge the validity of the previously granted annulment, winning on appeal and taking his share of the inheritance. Whether don Pedro actually suffered from impotence or not was irrelevant; the court judged him to be sound and virile, a determination that in this case resulted in financial benefits.

Ecclesiastical judges took claims of impotence seriously because impotence challenged the teleology of marriage. According to the Tridentine catechism, there were three benefits of marriage: “succession, faith and the sacrament.”<sup>102</sup> Faith refers to the love that should exist between husband and wife, a love such as “Christ had for the church.”<sup>103</sup> Sacrament refers to the permanence and security of the marital union. Succession refers to the ability of a marriage to produce legitimate heirs. The procreation

---

<sup>100</sup> Clero 46, exp. 1, 1701, 583v. (“eminentes peritos en las dos facultades de Medicina, y cirugía, un Protomedicato, y una universidad”)

<sup>101</sup> Clero 46, exp. 1, 1701, 583v.

<sup>102</sup> Zorita, *Catecismo del Santo Concilio de Trento para los párrocos*, 203.

<sup>103</sup> *Ibid.*

of children was considered to be the principal benefit of marriage, and its fundamental characteristic. The catechism of the council of Trent notes: “The first benefit is succession, that is, children had in a just and legitimate wife.”<sup>104</sup> The church permitted marital annulment on the ground of impotence because the impotence of one or both parties at the time of the marital union threatened the essential procreative nature of marriage; thus ecclesiastical judges were relatively open to annulling marriages based on credible evidence of impotence by one or both parties. However, in the case of impotence, credible evidence normally meant medical evidence in one form or another, with surgeons providing medical evaluations and testimony for husbands and experienced midwives providing witness testimony for wives. However, the case of don Pedro Antonio shows how disputes over sexuality and impotence could disguise other conflicts. In this case, sexuality was used as a thinly veiled canard and a legal fiction to attempt to write don Pedro out of a sizeable inheritance. Similarly, don Pedro’s vigorous defense of his virility seems to have been as much about protecting his net-worth as it was about protecting his masculine honor.

### **Consanguinity**

According to the Roman Catholic Church’s complex rules on consanguinity, any marriage between partners who were cousins up the fourth degree required dispensation. A marriage between immediate family members, such as brothers and sisters, a parent

---

<sup>104</sup> Ibid., 204.

and child, or grandparent and grandchild was a diriment impediment that immediately invalidated any such marriage. As Father Agustín Zorita writes in his Tridentine catechism, any marriage between “relatives up to the fourth degree” was invalid.<sup>105</sup> However, the Council of Trent also established that couples could receive dispensations for marriages already contracted between cousins to the third and fourth degrees. Only “great princes” could receive dispensations for marriages between cousins in the second degree, and only in the case of “public necessity” (“inter magnos Principes, et ob publicam causam”).<sup>106</sup> However, any sexual relationship or marriage between relatives without a dispensation could be considered incest, a crime severely punished by the Holy Office of the Inquisition.

In theory, the church strictly prohibited marriages between individuals of up to four degrees of relation. This created potential problems for individuals living in villages and small towns, where a large proportion of the local residents had at least some distant kinship ties. Despite the prohibition, marriages between relatives with more distant blood ties (such as cousins) could be authorized according to the discretion of the Vicar General or other church authority. Ecclesiastical judges frequently gave dispensations to third and fourth cousins who were seeking marriage licenses and more infrequently granted dispensations for marriages between second cousins. However, permission for first cousins to marry was usually granted only to very elite or noble families. As a specialized

---

<sup>105</sup> Ibid., 307.

<sup>106</sup> *El sacramento y ecuménico Concilio de Trento: Agrégase el texto latino corregido según la edición auténtica de Roma, publicada en 1564* (Imprenta Real, 1787), 307.

canon lawyer (the Defender of the Bond) stated in one annulment lawsuit from 1789, “this [degree of impediment] never is granted dispensation with the exception of between Great Princes.”<sup>107</sup> In medieval canon law the pope reserved the right to authorize marriages between relatives, but in practice the Archbishop (or more probably his lieutenant, the vicar general) granted these dispensations in New Spain.

Spiritual ties (e.g.-people related through godparents) invalidated an additional group of potential marriage partners. This requirement affected groups of individuals that would have otherwise been prime candidates for marriage.<sup>108</sup> The recently remarried widow María Ignacia Caballos made ingenious use of the concept of spiritual ties in order to attempt to annul her marriage to don José Cortés. She argued that because her husband had baptized her daughter before they were married, the spiritual ties (“parentesco espiritual”) that they had acquired invalidated their subsequent marriage. She also claimed that she had gotten married without the intention of getting married; an argument that she had no way of proving. Based on her testimony the vicar general threw don José in jail where he suffered terribly; because of the awful food and difficult living conditions he contracted severe dysentery and eventually had to be put in quarantine. After suffering more than 17 months time in jail, don José’s lawyer challenged the basis of his wife’s claim by arguing that while don José had sprinkled

---

<sup>107</sup> “jamás se dispensa sólo entre grandes Principes” Indiferente Virreinal, Caja 5304, Exp. 44, 1789, 8v.

<sup>108</sup> Robert Haskett, in his study of colonial Cuernavaca, found that most *compadrazgos* were between individuals of relatively similar social level, meaning that often *compadrazgo* would have prevented some likely marriages. Robert Stephen Haskett, *Indigenous Rulers : an Ethnohistory of Town Government in Colonial Cuernavaca* (Albuquerque: University of New Mexico Press, 1991), 43.

water on his wife's daughter's head, it was without the intention of baptizing her, and without stating the correct words of the form of baptism ("sin proferir todas las palabras de la forma").<sup>5</sup> This meant that the baptism was invalid and thus don José had never acquired spiritual ties with his future wife, meaning that his marriage was valid and his wife's claim baseless. The baby girl seems to not have been his own daughter as the baby was always referred to as doña María's baby.

Doña María claimed that don José Cortes had baptized her daughter in an emergency ("in caso de necesidad") and that he had followed the correct forms for it to be a valid baptism. Her lawyer Sixto Joseph Crox disputed don José's claim that he had sprinkled water on the baby's head without intending to baptize her. The lawyer argued, "It is unbelievable that a Christian would let a creature die without baptism."<sup>109</sup> Additionally, he argued that one of Cortés's daughters from a previous marriage, who had given a complete deposition earlier, had heard her father pronounce the correct words needed for baptism.<sup>6</sup> Don José's lawyer responded that even if it were true that he had committed the crime of having spiritual ties with his wife before marrying her, this was not so serious a crime as to require seventeen months of jail with horrible living conditions resulting in his contraction of a life threatening disease, a dysentery so serious that he was taken from jail and placed in quarantine in the General Hospital. His doctor also certified that since the previous Sunday he was unable to get out of bed.<sup>110</sup> This case

---

<sup>109</sup> ("Ni es creible een un Christiano que dejara a una criatura morir sin el bautismo.") AGN, Clero 138, exp. 1, 1785, 30.

<sup>110</sup> AGN, Clero 138, exp. 1, 1785, 30.

has no conclusion, and the documents leave us with no clues as to the fate of don José and his wife. What may have been a brilliant and innovative ground for an annulment resulted in a great deal of suffering for don José, as he was punished by the church for committing an error inspired by a sense of Christian charity that the church was supposedly attempting to inculcate in all believers.

Some couples could also find their choice of marriage partners restricted by the sexual choices of their brothers and sisters. According to canon law, a woman and man who had sex created a “carnal ties,” that linked them together permanently.<sup>111</sup> This meant that a young woman who had extramarital intercourse with an adolescent in her youth (even if were only one occasion) would be barred for marrying any of the youth’s brothers in the future.

In 1737, Alexo de Rosas, a 28-year-old mestizo from the Indian town of Atotonilco (in the modern-day state of Hidalgo), signed a petition written by his local priest claiming that the marriage of his brother Nicolás to an Indian woman named María Fernandez was fraudulent. Alexo claimed to have had a sexual relationship (*torpe comunicación*) with María years before; under Catholic canon law, this established a relationship of blood between all of Alexo and María’s siblings, making the future marriage of Nicolás and María incestuous. The judge ordered the couple split up and María placed in a home for women (*recogimiento*) while the investigation continued. For months María and Nicolás argued that Alexo was lying. In this case Nicolás submitted to

---

<sup>111</sup> Canon law does not address the issue of whether homosexual intercourse or other types of sex created carnal ties.

direct questioning by the parish priest, Br. don Juan de Otero. The priest asked him if at the time of his marriage he had known María Ernandes to be an unmarried woman (“soltera”) or a maiden (“doncella”).<sup>112</sup> Nicolás stated that, when he found work serving María’s father and living in her father’s house, he began an illicit relationship (“torpe comunicación”) with María that lasted two years and produced two children.<sup>113</sup> The first time he had sex with her he realized that she was not a virgin, but he never asked her who had taken her virginity (“violado su virginidad”) and afterwards he had never heard anything said about who seduced her.<sup>114</sup> In the second round of questioning various people participated, including Alexo de Rosas and María Ernandes. Father don Juan de Otero reminded María that she was “a Christian, looking at God and the salvation of her soul”, and then began to question Alexo de Rosas. Alexo claimed that an Indian woman named Theresa had helped organize María Ernandes’s sexual liaisons with him. One night she got permission for María Ernandes to leave her father’s home to go bathe, but it was a trick: in fact, during this time María Ernandes went with Alexo de Rosas to sleep with him.<sup>115</sup> Father don Juan de Otero again asked María Ernandes in Otomí if she had ever had illicit contact or “twisted communication” (“torpe comunicación”) with Alexo de Rosas. She denied any such contact, stating, “how could I do that if he was my

---

<sup>112</sup> Br. Juan de Otero v. María Ernandes y Nicolás de Rosas. Criminales 705, exp. 30, 1737, 333.

<sup>113</sup> Br. Juan de Otero v. María Ernandes y Nicolás de Rosas. Criminales 705, exp. 30, 1737,333

<sup>114</sup> Br. Juan de Otero v. María Ernandes y Nicolás de Rosas. Criminales 705, exp. 30, 1737,333

<sup>115</sup> Br. Juan de Otero v. María Ernandes y Nicolás de Rosas. Criminales 705, exp. 30, 1737,333

brother-in-law?”<sup>116</sup> This was a somewhat irrational response since the alleged affair with Alexo was before she had even met her future husband Nicolás. Alexo responded:

*why do you deny the truth? Tell me, is it not true that when I was living in your house you wanted to marry me and you went around telling everybody, and then we had sex? And when my sister who lives in Mexico City came to visit you told her that you were about to marry me, how can you as a Christian not tell the truth and deny it?”*

The priest then asked her again, reminding her that how she answered affected the very salvation of her soul. Under this pressure, María changed her story, stating: “What that Spaniard said is true” and that she had in fact had sex with Alexo on three separate occasions before she married his younger brother.<sup>117</sup>

After acknowledging the transgression, the judge ordered each of the parties to make penance, and then put in the paperwork for a dispensation, allowing the couple to get married officially. This case shows how parish priests sometimes had the moral authority to impose their particular narrative of “the truth” on reluctant witnesses. Here the parish priest of this rural town acted as ecclesiastical judge and overlooked theological requirements in order to promote social harmony and preserve marriages. By forcing María Ernandes to confess and establishing the “true” nature of the relationship between the young woman and the two brothers, the priest was able to reaffirm the church’s authority as the arbiter of acceptable and unacceptable personal relationships without causing a permanent disruption to the litigants’ marriage.

---

<sup>116</sup> Br. Juan de Otero v. María Ernandes y Nicolás de Rosas. Criminales 705, exp. 30, 1737,333

<sup>117</sup> Br. Juan de Otero v. María Ernandes y Nicolás de Rosas. Criminales 705, exp. 30, 1737,334v. It is interesting that María identified Alexo as a Spaniard; the interrogation of both Alexo and María was conducted in Otomí and the priest identified María as an Indian and the Rosas brothers as being mestizos.

### ***Third Party Impositions***

The case of María Ernandes and Alexo de Rosas was not the only case where an annulment petition was thrust upon an unwilling couple by a third party. Another reluctant participant to an annulment suit was Antonio Sisneros, a middle-aged mulatto laborer who sought to contract nuptials with a 25-year-old indigenous woman.<sup>118</sup> Sisneros spent most of the year of 1740 in conflict with a local friar named Joseph Mezeno Yustí who offered to get a dispensation for supposed impediments to their marriage in exchange for a stiff fee. On each occasion that the Dominican friar had offered his expensive services, Sisneros had rebuffed him. Years before, Sisneros had allegedly carried on a public and notorious affair with the woman's first cousin; these previous acts of sexual intercourse meant that the church would declare any future relationship between Sisneros and one of his lover's first cousins to be incestuous. Friar Joseph offered to obtain a dispensation for Sisneros for the neat sum of 30 pesos, which was the equivalent of about four-days of wages for the laborer. Sisneros refused, and the following Easter he and his fiancée, Petrona María, moved to the nearby parish of San José, marrying and living there for a few months. That August, the couple returned to their hometown of San Jacintho Iztapaloran<sup>2</sup> an act that enraged Friar Joseph and led him to forcibly separate the couple, depositing Petrona María in a house of his "satisfaction," and demanding the fee from Sisneros to repair the situation. The new bride quickly escaped, using a lasso to climb over the walls in the middle of the night. After an

---

<sup>118</sup> Petrona María v. Antonio Sisneros. AGN, Criminales, Vol. 705, exp. 32, 1740.

exhaustive search, the obsessed friar tracked her down in the town of Ayotlán, where the couple had taken refuge with Sisneros' brother-in-law, Juan Joseph. Friar Joseph attempted to separate the couple once again, but his plan was foiled by the town's *fiscal*, who filed a notification stating that Sisneros and Petrona María were husband and wife and the priest had no authority to separate them.

Enraged, the friar denounced the couple's irregular marriage to the vicar general in Mexico City. Friar Joseph's letter of denunciation argued that Sisneros's marriage was invalid on several grounds. First, Sisneros had identified himself as an Indian from the parish of San José, when Friar Joseph argued that he had only lived there for a few months, not meeting the one-year residency requirement in order to change parish.<sup>119</sup> Additionally, Friar Joseph claimed that Sisneros was attempting to pass as an Indian, when he was in fact a *mulato libre*. The notary and several other witnesses described Sisneros as a *lobo*.<sup>120</sup> But most troubling to Friar Joseph, was that the "illicit coupling" (*copula ilícita*) years before between Sisneros and his future-bride's now-deceased-first cousin Petrona de los Sanctos meant that Sisneros was linked to her in a second degree of affinity, which required a church dispensation before the marriage could be put into effect.

The vicar general dispatched a notary named Antonio de Meraz to investigate. Several witnesses claimed to have known about Sisneros' romantic affairs with the two cousins, and all identified him as a *lobo*, the legitimate child of a free mulatto father and

---

<sup>119</sup> Petrona María v. Antonio Sisneros. AGN, Criminales, Vol. 705, exp. 32, 1740, 360.

<sup>120</sup> Petrona María v. Antonio Sisneros. AGN, Criminales, Vol. 705, exp. 32, 1740, 362.

an Indian mother. Meraz questioned Sisneros, and Sisneros stated that he had fallen into illicit friendship with Petrona María, and he had proposed marriage out of a desire to no longer be in “incontinence” (*Ycontenencia*) with her. He did not know that Petrona María and Petrona de los Sanctos were cousins until after he had gotten married and the priest came around informing him that his marriage was invalid. He also claimed that Friar Joseph had offered to resolve his difficulties for 30 pesos, but being “poor” he had stated that he would be unable to pay so much money.

The notary having concluded his investigation, the vicar general ordered that Antonio Sisneros be placed in the municipal prison and his wife in a house of seclusion for women. Almost a year later, the vicar general approved a dispensation for the impediment and ordered the release of the couple from detainment, allowing them to resume their married lives together.

In this case, Antonio Sisneros played a game of brinksmanship with theological loopholes with Friar Joseph Mezeno. Friar Joseph ends up imposing his will on Antonio and his bride, though he comes off to us as a petty and abusive priest who took advantage of convoluted aspects of canon law to generate bribes. Colonial priests generally lived off of the fees (“aranceles”) that they could generate from parishioners. Describing the official fee schedule of the eighteenth century, William Taylor notes that for a Spaniard a simple marriage cost four pesos.<sup>121</sup> Indians and castas were generally expected to pay less. Antonio Sisneros was by all accounts a simple laborer, so this means that Friar

---

<sup>121</sup> Taylor, *Magistrates of the Sacred*, 135.

Joseph was asking almost eight times the fee for a wedding in order to resolve his impediment. When Antonio resisted his attempt at extortion, the friar used his knowledge of canon law as a weapon to punish his disobedient parishioners.

The complicated, ambiguous nature of the canon law of marriage meant that annulment lawsuits were not just begun by angry wives or unhappy husbands. Given some evidence of one of the many marital impediments, a third party could use the annulment process against a couple that had no interest in dissolving their marriage. In this case, Friar Joseph used the annulment process as a way of securing additional income, even if that meant potentially breaking up a happy couple. The harshness of Antonio Sisneros' punishment would likely have given pause to anyone who was contemplating a similar scheme. Had the couple accepted the friar's extortion, they would have paid the equivalent of four days wages. Instead, Antonio lost a year of his life (and wages) enduring the harsh conditions and humiliation of jail. This was a rather extreme penalty that Friar Joseph's other parishioners would have understood, and would have deterred them from attempting anything similar.

This case also shows how the Catholic Church's complicated canon law of marriage could have profound effects even on a poor, marginal, mixed-race couple living in the countryside. After hundreds of years of theological debates and developments, the canon law of marriage had developed into a complicated hodgepodge of ideas about gender, relationships, sexuality, and humanity's relationship with God. Some of these rules seemed nonsensical and impractical to the mixed race, indigenous, Afro-descended and Spanish commoners that made up the bulk of New Spain's population. Indeed,

Antonio had gotten himself in trouble because of the expansive definition of incest as described by the church. Canon law held that a couple that engaged in sexual intercourse created permanent blood ties between themselves that could make future sexual contacts between related parties incestuous. According to this principle, Antonio's carnal contact with Petrona María's cousin had in fact made them relatives, and any relationship between them incestuous. Were the church to take this concept to its logical conclusion, half of the residents of most rural villages in New Spain would have been unable to marry each other without incurring the stain of incest.<sup>122</sup> It would have been unworkable to enforce this ethic, so in practice the church liberally offered dispensations for this sort of problem. Antonio had gotten himself in trouble because he had tried to outsmart the system and avoid paying a hefty fee to an ambitious rural friar. The church punished, but it also forgave; after serving his jail time, the vicar general granted a dispensation and allowed Antonio Sisneros to go home with his wife.

The Catholic Church was a spiritual institution dedicated to saving souls, but it also was an enterprise that sought to maintain a healthy balance sheet. Marriage and the associated fees brought a significant amount of income to the church, but also created a conflict between the spiritual mission of the church and its more mundane economic interests.

There is no question that the church's economic interests affected how, when, and if colonial Mexicans married. There was a strong economic incentive to force Indians to

---

<sup>122</sup> William B. Taylor, *Drinking, Homicide & Rebellion in Colonial Mexican Villages* (Stanford: Stanford University Press, 1979), 23.

marry, since the tributary unit that was charged taxes was the married couple, not the individual. Consequently, indigenous towns had the highest marriage rates. Beginning with the First Mexican Provincial Council, and confirmed sixty years later in the Third Provincial Council, all parishes were required to maintain detailed registers of births, marriages, confirmations and deaths.<sup>123</sup> Separate registers were required for indigenous and non-indigenous parishioners. Elite men and women also married (if they chose not to take holy orders) for social reasons; for wealthy individuals, marriage fees probably did not influence their decision to marry or not to marry. Despite the stated intention of the crown to promote slave marriage, the practical circumstances of slave life with changes of domicile and workplace restricted slaves' ability to have a normal married life.<sup>124</sup> The lowest marriage rates were among poor Spaniards and individuals of mixed ethnicity. Poor Spaniards, mestizos, *pardos* and other *castas* lived closer to the margins of society and were given less vigilance by priests.<sup>125</sup>

---

<sup>123</sup> Thomas Calvo and Gustavo López Castro, *Movimientos de población en el occidente de México: Mesa Redonda, 21 y 22 de julio de 1986 en México, organizada por El Colegio de Michoacán y el Centre d'études mexicaines et centraméricaines; Thomas Calvo y Gustavo López, coord* (El Colegio de Michoacán A.C., 1988), 176.

<sup>124</sup> María Elisa Velázquez Gutiérrez, *Mujeres de Origen Africano en la Capital Novohispana, Siglos XVII y XVIII* (UNAM, 2006), 252.

<sup>125</sup> R. Douglas Cope, *The Limits of Racial Domination : Plebeian Society in Colonial Mexico City, 1660-1720* (Madison, Wis.: University of Wisconsin Press, 1994), 14.

## ***Collusive Annulments***

Certain types of impediments were more useful for couples interested in manipulating the system in order to get out from an unwanted marriage. The concept of a “no fault” annulment would be incoherent, since decrees of marital nullity granted on the basis of a particular impediment existing at the time of the marriage which prevented marital consent and the formation of a conjugal bond. This meant that couples had to craft a narrative that proved the existence of this critical impediment. In this sort of legal action, the system was quite vulnerable to the attempts of unhappy couples to write collusive petitions and engage in other forms of deception. British historian Lawrence Stone has found definitive evidence of this practice in seventeenth-century England, which had a system quite similar to the Spanish mold. By examining the correspondence of husbands and wives undergoing divorce lawsuits, he has found it “possible to observe the client and his or her lawyer deciding on strategy and tactics, and the two spouses negotiating with each other behind the scenes, either for an out-of-court settlement or a collusive suit.”<sup>126</sup>

Colonial Mexicans also put together collusive lawsuits. Attempting to resolve marital discord in an adversarial format often required a stretching of the truth, or in some cases outright lying. The abandonment of a large number of cases suggests that some of these may have been collusive, and petitioners never intended to carry them through to the end. For instance, in the annulment case of the bigamist Francisca López, her second

---

<sup>126</sup> Stone, *Road to Divorce : England, 1530-1987*.

husband never responded to any of her claims, leading the Archdiocese's prosecutor to take on the role of the defendant and argue the case that Juan Pérez was not interested in arguing. So how would an unhappy couple that wished to break up write the sort of annulment petition that would obtain a legal decree of nullity?

One strategy was to use the complicated rules on consanguinity and spiritual ties to prove the existence of a diriment impediment to the relationship that was unknown to the couples at the time of marriage. In one case from Mexico City in 1790, for instance, the Vicar General Don Juan Cienfuegos chastised a couple that argued their marriage was invalid.<sup>127</sup> Before marrying Doña María Josefa Borda, Don Mariano Arcinas claimed to have had sex on six separate occasions with his bride's older half-sister, making the subsequent marriage doctrinally incestuous. As Doña María's lawyer argued, the illicit sex between her husband and half-sister before the marriage created carnal ties and meant that she and Don Mariano had been linked by an affinity of relatives of the first and second grade, making her subsequent marriage null.

José Mariano Díaz, the official court notary, interviewed Doña María's half-sister who certified that she had had sexual intercourse on six instances with Don Mariano and on four occasions with his brother Agustín. The notary then went and interviewed Don Mariano, who certified that he had "mixed carnally" with his wife's half-sister nine-years before, but also claimed that he had just recently remembered this fact and so had not thought that he had any impediments at the time he contracted marriage with her.

---

<sup>127</sup> Doña María Josefa Borda vs. Don Mariano Arcinas. AGN. Indiferente Virreinal, vol. 5304, exp. 44, 1790, 10-10V.

Additional sworn testimony from other family members affirmed the illicit sexual encounters between María Ignacia and the two brothers.

Before ruling on the case, the judge asked for the opinion of a special expert on canon law, a priest known as the Defender of the Bond. In his opinion, the Defender of the Bond Doctor Lazzagorti affirmed Catholic notions of affinity while at the same time arguing that the case should be thrown out and the couple ordered to *hacer vida maridable* (live as husband and wife). Don Juan Cienfuegos said that there was no way to prove that the sister was telling the truth and that if he allowed the annulment to go through it would open the door for innumerable frauds (*innumerables fraudes*) as anyone who wanted to get their marriage annulled could do so on these unverifiable grounds. This meant that any husband or wife that got annoyed with his spouse (*fastidiaron*) could “persuade” (*seducir*) a sibling to act as a guilty party, providing a convenient impediment to the marriage. Throughout his response both the judge and the lawyers use the word “seduce” for persuade, which seems to have a double meaning, given that the charges had to do with illicit sexuality.

Doña Josefa Borda’s attorney responded somewhat indignantly to the judge’s suggestion of fraud and collusion, arguing that both parties had been ignorant to the fact that their prior sexual contact invalidated any future marriages with their lover’s siblings. Because of this ignorance, doña Josefa had initially filed for ecclesiastical divorce and not for annulment, because she had believed her marriage to be valid, although to an

abusive husband.<sup>128</sup> In his response, Juan José Alfaro alleged the innocence of his client, arguing that a collusive conspiracy to break up a legitimately married couple would result in four serious crimes: “perjury, the dissolution of valid marriage, the separation of two legitimate spouses, and the invalid marriages that the two parties would contract with others.”<sup>129</sup> The lawyer also challenged the judge’s assertion by saying “it is difficult to confess a felony of this size” and questioned why they would they invent something terrible that that they had done, when “many times Judges work to infinity to discover the truly guilty, because criminals naturally resist admitting their guilt.”<sup>130</sup> Juan José Alfaro argued that his client, as a woman of good character and reputation, would never perpetuate such serious crimes. Additionally, Alfaro claimed that his client had only learned of the relationship between her older half-sister María Ignacia Enríquez and her husband because he had yelled that both he and his brother Agustín had fornicated with her years before. Doña María Josefa said that she was initially resigned to keep his secret, but, when her mother found out she convinced her daughter to denounce don Mariano because he was sexually abusing her, “adulterating” the institution of holy matrimony by

---

<sup>128</sup> Doña María Josefa Borda vs. Don Mariano Arcinas. AGN. Indiferente Virreinal, vol. 5304, exp. 44, 1790, 2. “a los principios la acción que intentó fue de divorcio”

<sup>129</sup> “confesaron un delito de esse tamaño, y que al mismo tiempo se les instigase a que cometieren otros de tanta magnitud y reato quales serian (si la confesion fuese falza) el perjuero, disolucion de un matrimonio verdadero, separasion de dos legitimos consortes, y los matrimonios nulos que estos podrian contraer con otras personas.”

AGN. Annulment petition of Doña María Josepha Borda against Don Mariano Arcinas. Bienes nacionales. Legajo 292, exp. 18a, 1790, 2.

<sup>130</sup> Si muchas vezes trabajan infinito los Juezes para descubrir las culpas verdaderas, por que los delinquentes naturalmente resisten confesarlas quanto mas debemos crer que recistiranlas que no han cometido. AGN. Annulment petition of Doña María Josepha Borda against Don Mariano Arcinas. Bienes nacionales. Legajo 292, exp. 18a, 1790, 2.

forcing her to have sex with him in “undignified” postures. Doña María Josepha claimed that because she resisted her husband’s sexual violence, he had beaten her to the point of crippling her left leg. She noted that he had kicked her so many times in her left leg that she now found it extremely difficult to “walk with liberty.”<sup>131</sup> Don Juan Cienfuegos didn’t believe the testimony of Doña María and Don Mariano; rather, he was convinced the couple was conspiring to get out of an uncomfortable marriage. He denied the petition and forced the couple to resume marital cohabitation, although he declined to punish the siblings for perjury, which would have been a logical consequence of his conclusion that their statements were fraudulent. Perhaps the judge was lenient because he had some doubts about his sentence; he may have ruled against doña Josefa Borda because he was wary to set a precedent that would provide a simple path to collusive annulment petitions based on largely unprovable grounds. Without witnesses, sex acts were impossible to prove and relied on the personal testimony of participants; this made allegations of sexual contact between siblings of a spouse and his brother or sister-in-law a potentially ideal pretext for collusive annulment lawsuits. Because of the judge’s reticence to improve this rather ingenious argument, doña Josefa joined the long line of eighteenth-century annulment petitioners who had their claims denied.

---

<sup>131</sup> AGN. Annulment petition of Doña María Josepha Borda against Don Mariano Arcinas. Bienes nacionales. Legajo 292, exp. 18a, 1790, 17.

**Table 5: Final Outcomes in Annulment Lawsuits**

<b>Type</b>	<b>Number</b>	<b>Percentage</b>
Authorized	13	24%
Not Authorized	8	15%
Unresolved	28	61%
Unknown	15	23%
<b>Total</b>	<b>64</b>	<b>100%</b>

### ***Conclusion***

The annulment was the only process of the colonial marital regime that offered a definitive solution to the problem of marital conflict. In theory, annulments offered a chance to turn back the clock and regain a premarital status. However, a relatively small percentage (24%) of the individuals that filed for annulments actually received them. In order to win decrees of nullity, plaintiffs sought to prove that critical (diriment) impediments existed at the time of their marriage that prevented the establishment of a permanent marital bond. After the Council of Trent, the participation of the “Defender of the Bond,” a specialized canon lawyer who defended the institution of marriage in all annulment lawsuits meant that plaintiffs had to present very strong evidence in order to have any chance of receiving a decree of marital nullity. This evidence took the form of witness testimony that corroborated the existence of diriment impediments of consanguinity, spiritual and carnal ties. Other plaintiffs used the

evidence of their bodies to prove impotence, frigidity and the impossibility of sexual cohabitation. Defendants also used witness testimony and the evidence of their bodies as evidence of the validity of conjugal ties. As we have seen, a defendant named don Pedro Antonio Marroquín used his knowledge of contemporary medical theory and offered concrete proofs of his own virility as evidence against the his wife's claim to nullity on the ground of impotence. Despite many attempts, the only two grounds for divorce that achieved decrees of nullity were forced consent and impotence. The other grounds were ineffective for achieving annulment authorizations.

This does not necessarily mean that the annulment was an ineffective remedy for marital conflict. The first step after the initial petition was to place the wife in deposit in an honorable home or institution; for a battered wife, this would normally be an immediate improvement to her personal security and lifestyle. Given the complexity of canon law and sheer patience needed to reach the conclusion of an annulment lawsuit, many cases did not get much farther than this stage, which would have resulted in the quickest improvement for the least amount of effort. However, as the bigamist Francisca López learned, the legal institution of annulment was concrete proof of the meticulous implementation of Tridentine marital norms attempted by ecclesiastical judges in New Spain. Ecclesiastical judges claimed the prerogative to decide not only what a good husband or wife was, but also to decide *who* could be a spouse. Through the process of annulment, the Catholic Church reinforced its power by affirming its sole authority to decide the truth about marriage by determining what was and was not a valid marriage. However, the church's power, though great, was limited by its own discourse as the

canon law of marriage and the guidelines of *Trent* provided an inescapable framework that an astute plaintiff could attempt to manipulate in order to escape an unwanted marriage.

## Chapter Three

### Bending the Law: The Procedural Law of Divorce in Colonial Mexico

Ysabel de Guzmán's body provided a more convincing argument for divorce than the words of the most eloquent attorney.<sup>1</sup> As proof of the violent abuses of her husband, Ysabel de Gúzman asked the notary Francisco de Villena to “give faith to the marks that I have on my face” (“*de fe de las señales que tengo en rostro*”).<sup>2</sup> The notary stated that he was in the residence of the Vicar General Dr. Juan Cano Sandobal one Tuesday at three in the afternoon when a woman who “seemed Spanish” entered and identified herself as Ysabel de Guzmán.<sup>3</sup> She said that she was the legitimate wife of Diego de la Vazquilla and she had come before the Vicar General to file for divorce on the grounds of the many repeated acts of abuse (“*malos tratamientos*”) that her husband had committed against her. The abuse had culminated with a vicious physical attack the night before in which he had attempted to strangle her with his bare hands (“*la avia querido matar y hougar con las manos*”).<sup>4</sup> The notary Francisco Villena officially attested to the many blows that Ysabel had received, “giving faith” to the bruises on her neck and face. If a woman's

---

<sup>1</sup> Ysavel de Gusman v. Diego de la Vasquilla. AGN, Matrimonios, Vol. 192, exp. 90, 1678.

<sup>2</sup> Ysavel de Gusman v. Diego de la Vasquilla. AGN, Matrimonios, Vol. 192, exp. 90, 1678, 2.

<sup>3</sup> Ysavel de Gusman v. Diego de la Vasquilla. AGN, Matrimonios, Vol. 192, exp. 90, 1678, 2.

<sup>4</sup> Ysavel de Gusman v. Diego de la Vasquilla. AGN, Matrimonios, Vol. 192, exp. 90, 1678, 7.

words could not be fully trusted, at least her body could not lie. So convinced was the notary Francisco Villena of an immediate threat that he took the extra step of requesting that the vicar general place Ysabel de Guzmán in immediate protective custody because her life was in danger, a request to which the judge readily acquiesced.<sup>5</sup> The judge placed Ysabel in custody (*depósito*) in the house of her choice, in this case that of Melchor Aragón, a *vecino* of Mexico City.<sup>6</sup>

Ysabel readily acknowledged herself as the “legitimate” wife of Diego de Vazquilla, meaning she was not considering filing for an annulment.<sup>7</sup> What she sought was an ecclesiastical divorce; a permanent or temporary separation of “bed and board” that authorized husband and wife to live and conduct their affairs as individuals while maintaining the marital bond intact.<sup>8</sup> Ecclesiastical divorce, called *divortium quo ad thorum et mutuam cohabitationem*, was the only legal remedy for seriously dysfunctional (but canonically valid) marriages.<sup>9</sup> Ysabel sued her husband for divorce because Diego de la Vazquilla’s violent beating and the resulting bruises that marked her body had finally given her concrete, physical evidence of what was a long history of abuse. Ysabel’s body bore witness to the impossibility of continuing marital cohabitation with her husband, and of the necessity of external intervention.

---

<sup>5</sup> Ysabel de Gusman v. Diego de la Vasquilla. AGN, Matrimonios, Vol. 192, exp. 90, 1678, 6v.

<sup>6</sup> Ysabel de Gusman v. Diego de la Vasquilla. AGN, Matrimonios, Vol. 192, exp. 90, 1678, 7.

<sup>7</sup> Ysabel de Gusman v. Diego de la Vasquilla. AGN, Matrimonios, Vol. 192, exp. 90, 1678, 2.

<sup>8</sup> As Father Agustín Zorita noted in his eighteenth-century Tridentine catechism, “through divorce no one can untie the bond of marriage.” Zorita, *Catecismo del Santo Concilio de Trento para los párrocos*, 202.

<sup>9</sup> Arrom, *The Women of Mexico City, 1790-1857*, 208.

In Ysabel de Guzmán's case the legal system worked; the ecclesiastical courts provided justice and protection for a battered wife.<sup>10</sup> However, many cases were not so straightforward. This chapter is about how lawyers, judges and other officials involved in the complicated drama of the colonial courtroom bent the law. By "bending the law" I refer to the use and manipulation of particular knowledge about legal procedure and evidence in order to achieve a particular end.<sup>11</sup> Each participant in the legal drama had a different role and different objectives.<sup>12</sup> The plaintiff's attorney (*procurador*) sought to negotiate a legal separation with the best possible terms for his client. The defendant's attorney sought normally to bring a quick end to the case, force the quarrelling spouse to return home, and avoid any financial penalties for the defendant. He would be able to achieve this goal only by casting doubt on quality of the evidence provided by the plaintiff, and using legal procedure to make the case difficult to continue. The ecclesiastical judge sought to defend the sacrament of marriage by achieving the reconciliation of the couple and a harmonious return to the conjugal abode.<sup>13</sup> The judge had the most abstract purpose of all parties involved in the divorce case. By encouraging

---

<sup>10</sup>Kimberly Gauderman provides an optimistic view of ecclesiastical and secular justice for women in colonial Perú. Gauderman, *Women's Lives in Colonial Quito: Gender, Law, and Economy in Spanish America*. For a nineteenth century view see Christine Hunefeldt's monograph Hunefeldt, *Liberalism in the Bedroom: Quarreling Spouses in Nineteenth-century Lima*.

<sup>11</sup>Hartog's monograph contains an insightful analysis of how coverture was used in legal manipulations in the nineteenth century US. Hartog, *Man and Wife in America*.

<sup>12</sup> The metaphor of the courtroom as stage is a bit tired but still useful.

Luke Wilson, *Theaters of Intention: Drama and the Law in Early Modern England* (Stanford University Press, 2000).

<sup>13</sup> Jorge E. Traslosheros and Universidad Iberoamericana, *Iglesia, Justicia y Sociedad En La Nueva España: La Audiencia Del Arzobispado De México, 1528-1668* (México: Universidad Iberoamericana, 2004).

couples to reconcile and only authorizing divorces in the case of very strong evidence, the judge promoted a key doctrine of the Catholic Reform church; the doctrine of the indissolubility of the marriage sacrament.<sup>14</sup>

In cases where one party's choices had made marital cohabitation impossible, the judge sought to determine if there was compelling evidence to support the authorization of a temporal or permanent divorce of bed and board. In this chapter we will see how lawyers attempted to "bend the law" in divorce lawsuits through a detailed analysis of the case of doña María de Villar, who at twelve years of age was married to a baker named Clemente Flores and spent most of the following nineteen years trying to divorce him. The meticulous application of legal procedure and evidence by her legal team led to doña María's victory after almost two decades of legal wrangling, showing the high level of patience needed by the plaintiff starting a divorce case to see the process through to its end. In addition to a detailed analysis of the case of doña María de Villar, we will use supporting evidence from dozens of other ecclesiastical divorce cases from the sixteenth, seventeenth and eighteenth centuries in order to explore how plaintiffs "bent the law" in order to achieve legal separations and how defendants either resisted or colluded with them.

This chapter also argues that the procedural law of divorce in New Spain was structured in such a way as to make achieving a legal separation a particularly onerous

---

<sup>14</sup> Allyson M. Poska, *Regulating the People: The Catholic Reformation in Seventeenth-century Spain* (BRILL, 1998), 122.

and difficult process.<sup>15</sup> I argue that the difficulty of achieving an ecclesiastical divorce is a consequence of the logic of the church's defense of the sacramentality of marriage in *The Council of Trent*.<sup>16</sup> Procedural law thus served the ends of the catholic ideology of matrimonial indissolubility and permanence, but also had the inadvertent consequence of making the colonial divorce regime insufficient to meet the needs of feuding couples in New Spain.<sup>17</sup> Understanding the procedural law of divorce will also help us to understand the administration of ecclesiastical justice by judges in colonial Mexico. The case that we explore at length in this chapter dates from the second half of the seventeenth century, a time in which harmony and cooperation characterized church/state relations. If we had chosen an example from 1763 instead of 1663, increased competition between the ordinary courts of the Archbishop and the Real Audiencia (the secular courts) might have given the plaintiff additional options to engage in "forum shopping" and to use competition between legal jurisdictions to advance her cause.<sup>18</sup> Exploring the legal process of divorce will help us to understand how the post-Trent project of marital

---

<sup>15</sup> Dora Dávila was not able to find verdicts to the eighteenth century divorce cases that she studied, suggesting that late colonial courts were even more conservative than sixteenth and seventeenth century courts. However her study was limited by the availability of documents from Indiferente Virreinal; I was able to find eighteenth century divorce verdicts when I consulted the AGN in Mexico City in 2008-2010.

Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*.

<sup>16</sup> Diarmaid MacCulloch, *The Reformation* (Paw Prints, 2008), 612.

<sup>17</sup> Molina's guide is the key work on procedural canon law. Antonio Molina Meliá, *Derecho Matrimonial Canónico: Sustantivo Y Procesal*, 5a. ed (Madrid: Civitas, 1992).

<sup>18</sup> "Forum-shopping" is changing legal jurisdictions or authorities to achieve a more favorable result. See Kate O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law* (Routledge, 2009), 26.

reform came into conflict with the desire of many ordinary married couples to put an end to their conjugal conflicts.

**Table 6: Divorce Verdicts (1548-1699)**

<b>Verdict</b>	<b>Number</b>	<b>Percentage</b>
Authorized	15	13.60%
Not Authorized	12	10.90%
Unresolved	83	75.50%
<b>Total</b>	110	100.00%

### ***Ecclesiastical Divorce***

This dissertation consists of a detailed analysis of the 110 ecclesiastical divorce cases from the Archdiocese of Mexico in the sixteenth and seventeenth centuries and 32 divorce cases from the eighteenth century. The 110 divorce cases represent the complete collection of sixteenth and seventeenth century divorce cases currently available for consultation in the Archivo General de la Nación in Mexico City. Additionally, a selection of 32 divorce cases from the eighteenth century was read and analyzed to see how the dynamics and patterns revealed in the sixteenth and seventeenth centuries changed in the eighteenth century. In this chapter, we will use these 142 ecclesiastical divorce cases as supporting evidence to illustrate some of the patterns found in the case of doña María del Villar. As the table above shows, divorce cases infrequently reached a definitive solution. More than 75% of the cases were left unresolved. It is possible that a

few of the cases were resolved and the corresponding documents lost, but misfiled or lost documents cannot explain the enormous disparity between unresolved and resolved cases. Many of the divorces have long, detailed case files and no conclusion. One possible explanation of the low rate of resolution is that the plaintiff achieved the main benefit of the divorce, namely the authorization to live apart from her husband, very early in the process. After the court made a determination about the wife's separate living arrangements and ordered a monthly or weekly alimony payment, the only benefit of a formal divorce verdict was the possibility of getting a court order forcing her husband to pay back her dowry. Since few women had very large dowries, this would have been a limited benefit for the majority of abused wives.

**Table 7: Cause of Divorce (1548-1699)**

<b>Cause</b>	<b>Number</b>	<b>Percentage</b>
Abandonment	1	1%
Adultery	2	2%
Physical and Verbal Abuse	101	92%
Lied about his origins	1	1%
Lack of financial support	1	1%
Failure to have sexual relations	1	1%
Other	3	3%
<b>Total</b>	<b>110</b>	<b>100%</b>

About 25% of the cases did reach a final conclusion. Ecclesiastical courts authorized fifteen divorces versus twelve that were not authorized. Fourteen of the cases were for physical and verbal abuse (*malos tratamientos*) and one for adultery, though the adultery case had strong elements of physical and verbal abuse as well.<sup>19</sup> Courts rejected or ignored more exotic causes for divorce such as illness, lying, and failure to provide sustenance. Effective divorce petitions needed strong evidence of physical or verbal

---

<sup>19</sup> The adultery case that was authorized was the case of the Captain Sebastián Baz, chapter three contains a detailed analysis of the case.

violence to have any hope of being successful. Lawyers learned this and alleged abuse in almost all of their divorce petitions. This made physical and verbal abuse (“*malos tratamientos de obra y palabra*”) the key cause for divorce for almost all divorce cases during the colonial period. A literal translation of this divorce cause would be “mistreatment of act and word”. This fault contained all forms of physical abuse including beatings, corporal punishment, strangling and even rape and sexual violence, and verbal abuse, including insults, screaming, belittling, blasphemy and even death threats. All cases made reference to physical and verbal abuse in some form, and as the above table shows 92% claimed physical and verbal abuse as the primary divorce motive. Unlike annulments, which sometimes required a complicated analysis of canon law, petitions for divorce could be based on evidence of abuse sometimes visible in the body of the plaintiff. Plaintiffs, witnesses and defendants developed a discourse of the body that converted representations of physical abuse in the forms of bruises and lacerations into a form of legal truth.

### ***Physical Abuse and Bodily Evidence***

Ysabel de Guzmán used the evidence of her body to craft a powerful and convincing case for the court to take action. The bruises and cuts on her face and neck provided compelling physical evidence for her argument that her husband was physically abusive and that her life was in danger. Evidence led to results, motivating the notary and ecclesiastical judge to take quick action, placing Ysabel in protective custody (“*depósito*”) at the residence of her choice. Physical abuse usually resulted in direct

evidence in the form of corporal changes to the victim, often making it easy to prove, at least in extreme cases.

In the case of Ysabel, a notary was able to testify to her husband's abuse because she was able to show him the marks on her body. When a plaintiff could not show off her body, she frequently used detailed descriptions in order to catalogue her husband's physical abuse. For instance, in 1685 Juana de la Paz described the allegedly "excessive cruelty" (*sevicia*) of her husband who her lawyer claimed savagely beat her, "threatening her life" ("con peligro notorio de la vida").<sup>20</sup> Her statement also claimed that he brutally punished her with a skeleton key leaving her body "black and blue." Similarly, in 1674 doña María de Valdés recounted how her husband don Pedro Franco de Ochoa "gave her crude and vicious blows, without more cause than his hatred and rancor." Doña María Castrejón alleged even more vicious assaults on her body. When she was pregnant her husband, don Miguel Machuca supposedly "whipped her cruelly, giving her so many blows that she miscarried."<sup>21</sup> On another occasion doña María's lawsuit asserted that he tried to strangle her, throttling her so aggressively that blood bubbled out of her mouth and she almost died.<sup>22</sup> Similarly, almost a hundred years later doña Nicholasa Theresa Martínez also accused her husband of having beaten her to the point of causing a miscarriage.<sup>23</sup> Husbands could also suffer bodily harm at the hands of their wives. In

---

<sup>20</sup> Juana de la Paz v. Diego de Lacnuz y Aguilar. AGN. Matrimonios, Vol. 152, exp. 11, 1685

<sup>21</sup> Doña María Castrexon v. Don Miguel Machuca. AGN. Matrimonios, vol. 19, exp. 6, 1678, 1.

<sup>22</sup> Doña María Castrexon v. Don Miguel Machuca. AGN. Matrimonios, vol. 19, exp. 6, 1678, 1.

<sup>23</sup> Doña Theresa Nicholasa Martínez v. Don José Joaquín Echeverría. AGN, Bienes Nacionales, vol. 870, exp. 3, 1775, 248v.

1776 don Agustín de Mesa claimed that his wife had beaten him, wounding him in the head. He complained that his wife had failed to take care for him during his long illness and convalescence. Instead of nursing him back to health, she abused and ridiculed him. In the course of filing for divorce, he asked for the vicar general's protection against his violent wife who he claimed longed for "his total destruction."<sup>24</sup>

Verbal abuse was much more difficult to prove than physical abuse. As words left no marks, allegations of verbal abuse depended on the testimony of credible third parties. Despite the difficulty of proving verbal abuse, almost all divorce cases made some claim to insults, threats and other verbal abuse by one or both spouses. The case of Roberto Antonio del Angel shows how ecclesiastical judges took very seriously not only what defendants did, but also what they said. In this case the verbal abuse was considered to be strong evidence because it was committed in the presence of credible witnesses; several missionary priests and neighbors. In addition to his physical abuse and death threats, María Gallarda de los Dolores Caro accused her husband of blasphemy. In 1781, Roberto Antonio's foul mouth and lack of discretion landed him both in divorce court and before the Holy Office of the Inquisition.<sup>25</sup> Soon after María Gallarda sued him for divorce, Roberto called on his son's nursemaid to testify on his behalf. When she conveniently forgot to testify, he arrived home and slapped her on the neck ("un pescozón") as she was putting bread in the oven with one hand and carrying his son with

---

<sup>24</sup> Don Agustín de Mesa v. doña Manuela de Villavicio. AGN. Bienes Nacionales, vol. 1090, exp. 14, 1776, 3v.

<sup>25</sup> AGN, Inquisición, Vol. 1240, exp 17, 1781.

the other.<sup>26</sup> All of this took place in front of several missionary priests who had visited their home. Then he said that he was fed up (“enfadado”) with having to live with his wife.<sup>27</sup> María responded: “This is a good opportunity, if you are fed up of living with me; there are the missionary priests”.<sup>28</sup>

Roberto Antonio responded “If you think about threatening me with the missionaries, I don’t care, I shit on you, and I shit on the missionaries.”<sup>29</sup> Angrily, he grabbed some clothes and his two children, supposedly to leave his home. Soon after, a woman named Melchora de Reyes came to visit them and picked up the couple’s oldest son, Jose Ventura. Roberto Antonio suggested that Melchora de Reyes take their children. He said, “Take my children, and if you don’t want them, just throw them to the ground and the blow should kill them.”<sup>30</sup> He then picked up José Ventura, throttling him by the neck and screaming at his wife in front of Melchora and the visiting priests, “Damn you and damn the whore mother that gave birth to you, damn your Race.”<sup>31</sup> His wife answered, “Man, why are you cursing, you should consider that here are the

---

<sup>26</sup> AGN, Inquisición, Vol. 1240, exp 17, 1781, 371.

<sup>27</sup> AGN, Inquisición, Vol. 1240, exp 17, 1781, 371.

<sup>28</sup> “mira aora es buena ocasion: si estás enfadado de vivir conmigo, ahí están los Padres Misioneros, y entonces dixo el Marido; si piensas amenzarme con los Misioneros: a mi no me da cuidado; me cago en ti, y en los Missioneros.” AGN, Inquisición, Vol. 1240, exp 17, 1781, 371V.

<sup>29</sup> “si piensas amenzarme con los Missioneros; a mi no me da cuidado; me cago en ti, y en los Missioneros” AGN, Inquisición, Vol. 1240, exp 17, 1781, 371V.

<sup>30</sup> “A mis hijos llebeselos, y si vm no los quiere, con echarles, y darles un golpe a cada uno de ellos se acabo todo.” AGN, Inquisición, Vol. 1240, exp 17, 1781, 371v.

<sup>31</sup> y prosiguió, maldeciendo a la querellante, con estas palabras: maldita tu seas Maldita sea la puta, que te pario, maldita sea tu Raza. AGN, Inquisición, Vol. 1240, exp 17, 1781, 371v.

missionary priests.”<sup>32</sup> Roberto growled, repeating three times, “I don’t give a damn about the missionaries, or about God.”<sup>33</sup> His shocked wife answered, “Roberto, don’t say these things, for the love of God,” to which he responded “Yes, aunt, now you will see how I will hunt you with my blade” and he went into the next room to look for a knife, inspiring his wife to flee for her life.<sup>34</sup> The two missionary priests who had witnessed the blasphemies, Friars Antonio Fernandez Cabrera y Pasqual Lucas Fernandez testified against Roberto. Roberto was immediately placed in the inquisition’s jail, although they did release him with a stern warning after a month.<sup>35</sup> While it landed him in trouble with the Inquisition, Roberto’s scatological insults and blasphemies allowed him to establish a sort-of anti-social superiority as he attacked three sacred institutions: marriage, religion and even parenthood. More a man of words than actions, it is striking that all the physical attacks Roberto commits are more insulting than really dangerous and are directed against those less powerful than him, such as his domestic servant and his baby son. When he threatens María Gallarda with a knife, he says that he is going to get the knife before actually brandishing the blade, giving his wife time to both feel indignant and to leave safely. Consequently, the inquisition treated him more like a drunken hothead who liked to show off than as a real heretic. The Holy Office threw Roberto in

---

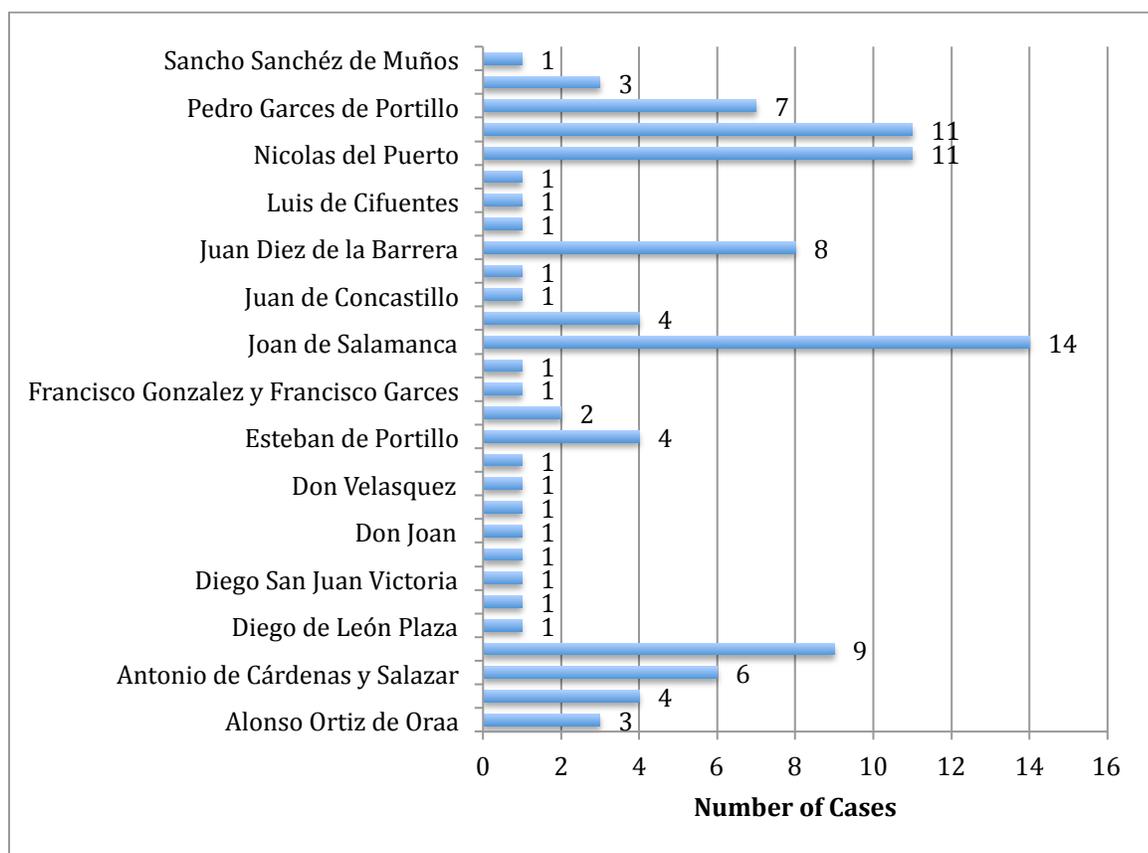
<sup>32</sup> A que ella Dixo; hombre, por que son essas maldiciones, y escandalos, havias de refrexar, que están ai los Padres Misioneros; AGN, Inquisición, Vol. 1240, exp 17, 1781, 371v.

<sup>33</sup> “a que respondió que el no se daba a los Misioneros, ni al mismo Dios y lo repitio por tres ocasiones” AGN, Inquisición, Vol. 1240, exp 17, 1781, 371v.

<sup>34</sup> “diciendole Roberto no digas essas cosas por el amor de Dios; a que el Dixo: si tia, aora veerá VM. como la casa a puñaladas; y se entró para dentro a sacar el cuchillo.” AGN, Inquisición, Vol. 1240, exp 17, 1781, 371v.

<sup>35</sup> AGN, Inquisición, Vol. 1240, exp 17, 1781, 374v.

jail for about a month but declined to seek further punishment.<sup>36</sup> Roberto's bravado seems to have been largely performative; his harsh insults and scatological blasphemies scandalized those around him without leading to any transcendent consequences. Marginalized in his own household and ignored by a wife who preferred the company of missionaries and priests to that of her own husband, Roberto chose to make himself relevant by making himself hated.



**Figure 1: Divorce Cases by Ecclesiastical Judges (1548-1699)**

<sup>36</sup> AGN, Inquisición, Vol. 1240, exp 17, 1781, 375v.

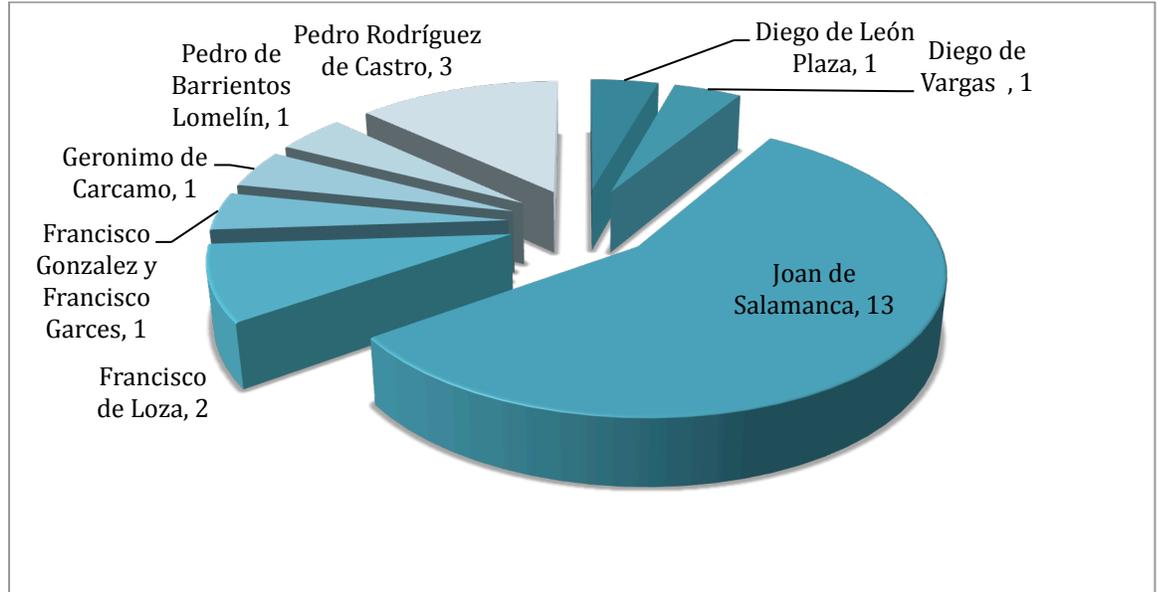
## ***Officials involved in Matrimonial Causes***

There were a number of ecclesiastical officials that were required by law to be involved in matrimonial causes. While in principle the archbishop was the judge of the ecclesiastical tribunal in his archdiocese, he rarely exercised this authority. Dealing with the innumerable legal conflicts of the faithful was a fulltime job and so the archbishop normally appointed a priest to serve as an ecclesiastical judge, adjudicating cases and administering justice.<sup>37</sup> Appointed to the office of Judge Provisor and Vicar General (“Juez Provisor y Vicario General”), this priest served as the bishop’s principal ecclesiastical judge and usually heard all of the matrimonial causes, requests for nuptials, and adjudicated all proceedings related to the clerical *fuero* in the archdiocese.<sup>38</sup> He was always well educated, a licentiate or doctorate in canon law or theology well equipped to tackle obscure questions of canon law. The vicar general handled a very demanding caseload given that his signature was required on every motion for each of the dozens of cases he might be handling at a particular time.

---

<sup>37</sup> This was true from the first decades of the sixteenth century.

<sup>38</sup> Juez Provisor and Vicario General. The offices of the Judge Provisor and that of the Vicar General were technically separate positions, but they were almost always conflated and delegated to the same person. Edward Behrend calls the Vicar General “the most important official in the ecclesiastical tribunal.” Edward J. Behrend-Martinez, *Unfit For Marriage: Impotent Spouses On Trial In The Basque Region Of Spain, 1650-1750* (University of Nevada Press, 2007), 49.



**Figure 2: Divorce Cases by Ecclesiastical Judge (1598-1621)**

A very small number of professional ecclesiastical judges heard divorce cases through the entire colonial period. Just six judges heard 59% of all the divorce cases over the course of almost two centuries.<sup>39</sup> As Figure 2 shows, Juan de Salamanca was the most prolific judge of the sixteenth and seventeenth century, hearing 13 of the 23 cases presented in a twenty-three year period from 1598-1621. This discrepancy is because Juan de Salamanca was the Vicar General of the Archdiocese of Mexico during this time-period and the other judges would have heard cases only when Juan de Salamanca was occupied with other business, ill or traveling.<sup>40</sup> While serving as Judge Provisor and

<sup>39</sup> The six judges were Diego de la Sierra, Joan (Juan) de Salamanca, Juan Diez de la Barrera, Nicolas del Puerto, Pedro de Barrientos Lomelín, Pedro Garces de Portillo.

<sup>40</sup> Edward Behrend-Martinez finds that other canon lawyers filled in for the Vicar Generals of early modern Ourense when he became indisposed. My research found the same pattern in New Spain. Behrend-Martinez, *Unfit For Marriage*, 49.

Vicar General, a particular ecclesiastical judge would hear all the divorces cases that corresponded to his jurisdiction. Thus a few judges held a monopolistic jurisdiction over divorce cases, but a key limit on the authority of a particular judge was the ability of the plaintiff or defendant to request a review from the court of appeal, which for the archdiocese of Mexico was the ordinary tribunal of Puebla.<sup>41</sup>

**Table 8: Judges by Years Active**

<b>Judge</b>	<b>Time Period</b>	<b>Years Active</b>
Pedro Garces de Portillo	1584-1625	41 años
Pedro de Barrientos Lomelín	1609-1656	47 años
Nicolas del Puerto	1656-1674	18 años
Juan Diez de la Barrera	1670-1678	8 años
Joan de Salamanca	1585-1613	28 años
Diego de la Sierra	1677-1690	13 años

Ecclesiastical judges could serve as judges for long periods of time. As we see in the above chart, the six most prolific ecclesiastical judges were active for an average of 25.8 years, with one judge (Pedro Garces de Portillo) hearing cases during more than 47

---

<sup>41</sup> For instance, on 3 December 1712 the Lic. Don Phelipe Gomes de Ángulo, Vicar General of the bishopric of Puebla de los Ángeles was sent on appeal the divorce case of doña Ángela Ramiro de Vargas after the initial lawsuit was denied. See doña Ángela Ramiro de Vargas v. don Joseph Pérez del Moral. AGN, Civil, Vol. 249, exp. 2, 1712, 349.

years.<sup>42</sup> However, the active period for an ecclesiastical judge would normally be longer than his time serving as vicar general; judges normally began to fill in as surrogates before receiving the formal appointment.

Notaries were the second most important officials involved in matrimonial causes. The most ubiquitous official, the notary was required to attest to each stage of the legal process, giving faith (*dar fe*) to the accuracy of the proceedings.<sup>43</sup> As Tamar Herzog notes, “notaries were needed to record and give form to past events.”<sup>44</sup> As essential to the Spanish legal process as pen and paper, without the certification of a notary, a document was not legally valid, and the process would be unable to continue.<sup>45</sup> The Notary Public (*Notario Público*) from the Archdiocese of Mexico certified each act that the vicar general signed. Divorce lawsuits also featured the occasional participation of other notaries such as the Royal Scribe (*Escribano Real*) and Notary Receptor (*Notario Receptor*).<sup>46</sup>

---

<sup>42</sup> Being an ecclesiastical judge in New Spain seems to have increased the probability of an above average lifespan.

<sup>43</sup> As Michael Scardaville writes, “Spanish law dating back to the thirteenth-century Siete Partidas required scribes to be involved in every step of the judicial process, from arrest through sentencing, since all actions and activities had to be witnessed and recorded by the escribano in order to have legal validity.” Scardaville, “Justice by Paperwork,” 981.

<sup>44</sup> “...los escribanos eran requeridos para recorder y dar forma a los hechos pasados” Tamar Herzog, *Mediación, archivos y ejercicio* (Vittorio Klostermann, 1996), 16.

<sup>45</sup> Burns, “Notaries, Truth, and Consequences,” 3.

<sup>46</sup> The Notary Receptor normally accompanied the wife to the home of her seclusion, and certified that she had been placed in custody.

**Table 9: Most Prolific Notaries**

<b>Public Notaries (Notarios Públicos)</b>	<b>Years</b>
Alonso de Carvajal	1617-1635
Bernabe de Uscarrez	1674-1678
Bernardo de Amezaga	1677-1690
Francisco de Bermeo	1609-1656
Francisco de Villena	1667-1681
Gerónimo de Aguilar	1617-1623
Juan Cárdenas	1602-1613
Juan de Anaya	1656-1659
Juan de Martos Biedma	1608-1609
Lope de Arias	1567-1585
Luis de Persa	1656-1667
Luis Nuñez Moreno	1621-1623
Pedro Pedro Ruiz de Salvatierra	1626-1657
Simon Baez Bueno	1663-1674

Notaries were frequently active for long periods of time, but their longevity did not equal that of the ecclesiastical judges. The pattern of names in *Table 4* seems to suggest there was a nontrivial amount of nepotism in the notary profession, with fathers handing down their positions to sons or other close relatives. Certain combinations of names suggest a family relationship, like Alonso de Carvajal (1617-1635) and Juan de Carvajal (1649), or Alonso de Alvarez (1649) and Bernabe de Alvarez (1678).<sup>47</sup>

Notaries played key roles in each stage of the lawsuit. They were the eyes and ears of the judge, interviewing witnesses and certifying that each party had been informed

---

<sup>47</sup> Or it could just be a coincidence.

about each stage of the proceedings. Notaries sometimes served as makeshift marriage counselors, hearing each side's story and attempting to find a resolution to the conflict. With the judge's orders, they conducted face-to-face meetings (*careos*) between husbands and wives to try to mediate the conflict.<sup>48</sup> We see this process in a divorce complaint filed by a Mexico City merchant in 1776.<sup>49</sup> After a lengthy illness, don Agustín de Mesa put forward a demand for divorce on the grounds of abandonment. Instead of taking care of him while he was sick, don Agustín argued that his wife had ignored and neglected him. He accused his wife of "ingratitude" and demanded that the ecclesiastical judge throw her into the church jail.<sup>50</sup> He decried her libertinism, claiming that "many times she acts more like the man of the house than a woman," going out at all times of the day and night without asking for permission or even saying a word to her husband.<sup>51</sup> Ashamed by her behavior, he challenged his wife's honor (*honra casada*) and "virtue."<sup>52</sup> Interpreting don Agustín's claim as having been submitted out of frustration at his disobedient wife rather than because of a genuine desire for divorce, the judge ordered the notary and constable to try to reconcile the marriage. The notary organized a face-to-face meeting (*careo*) with the couple and exhorted them to maintain "the peace

---

<sup>48</sup> See don Agustín de Mesa vs. María Manuela de Villavicencio, AGN, Bienes nacionales, vol. 1090, exp. 14<sup>a</sup>, 1776.

<sup>49</sup> don Agustín de Mesa vs. María Manuela de Villavicencio, AGN, Bienes nacionales, vol. 1090, exp. 14<sup>a</sup>, 1776.

<sup>50</sup> don Agustín de Mesa vs. María Manuela de Villavicencio, AGN, Bienes nacionales, vol. 1090, exp. 14<sup>a</sup>, 1776, 1.

<sup>51</sup> don Agustín de Mesa vs. María Manuela de Villavicencio, AGN, Bienes nacionales, vol. 1090, exp. 14<sup>a</sup>, 1776, 3v.

<sup>52</sup> don Agustín de Mesa vs. María Manuela de Villavicencio, AGN, Bienes nacionales, vol. 1090, exp. 14<sup>a</sup>, 1776, 3v.

and unity that is appropriate to their state” and to live with “uprightness and honesty.”<sup>53</sup>

After the meeting, don Agustín rescinded his demand and the couple reunited. The letter argued that they had reunited because of the “inseparable union that obligates us to Holy matrimony” and the desire to return to “that innocent state that we enjoyed when we were first married.”<sup>54</sup>

The face-to-face meeting with the notary was a critical juncture in the legal process that revealed many of the issues that troubled the marriage. If the notary was able to persuade the couple to reunite, frequently he demanded that each party state the specific actions he or she would take to improve the marriage. In the case of don Agustín and doña Manuela, the wife agreed to a long list of new terms. She stated that from that day forward, she would treat her husband with “kindness, . . . never separating herself from his prudent will.” She agreed to not leave the house without advising her husband, and only to leave home in order to attend to the “affairs of her family.” She also agreed to have nothing to do with one Bachelor don Josef Quintana, since seeing him would go against the desires of her husband. Most of these concerns were not cited in the original divorce petition, but were clearly issues that had led to the conflict. By mediating the dispute in a face-to-face meeting, the notary was able to persuade an irate husband to withdraw his demand, thereby fulfilling the stated goal of the judge to avoid formal legal remedies.

---

<sup>53</sup> don Agustín de Mesa vs. María Manuela de Villavicencio, AGN, Bienes nacionales, vol. 1090, exp. 14<sup>a</sup>, 1776, 6.

<sup>54</sup> don Agustín de Mesa vs. María Manuela de Villavicencio, AGN, Bienes nacionales, vol. 1090, exp. 14<sup>a</sup>, 1776, 6.

While the petition is structured as if this request was the idea of the notary alone, it is quite possible that the notary was fulfilling a request of the vicar general. As Francisco de Villena states, Doña Isabel had just met in person with the vicar general before she met with him, in order to file her formal demand of divorce. It is clear that the vicar general was sympathetic to her plight because he orders her to be placed in deposit immediately, without any further wait. In colonial Mexico, the notary was the most active court official, frequently venturing out into society to conduct investigations, take depositions, and even to mediate conflict. The work of Kathryn Burns and Michael Scardaville has shown how notaries could affect the application of justice by controlling access to the information that other judicial officials received. Writing on seventeenth-century Peru, Kathryn Burns has shown recently how notaries could use the privileged information that they had access to in order to turn themselves into “information brokers.”<sup>55</sup> The significant administrative duties of a vicar general meant that he would rarely have time to live his residence or other administrative offices of the church, meaning that he relied on the notary to be his eyes and ears in the community and to conduct a significant amount of unsupervised mediations and witness interviews. This meant that an ecclesiastical judges’ access to information was in practice severely restricted to that which the notary chose to tell him. As Michael Scardaville has noted, notaries worked with a great deal of independence and personal initiative; they not only

---

<sup>55</sup> Burns, *Into the Archive*, 112.

Burns also questioned the use of notarial documents to approximate “truth” in an earlier essay. Burns, “Notaries, Truth, and Consequences.”

recorded the information requested by judges, but “on their own” decided if any additional investigation was needed to “get at the facts.”<sup>56</sup>

The particular dynamic between notary and judge meant that rather than acting on his own initiative, the role of the vicar general was to respond to written requests and supplications. It was important for the ecclesiastical tribunal and for the judge in particular to preserve an image of objectivity and impartiality. Thus, judges such as Dr. Juan Cano were unlikely to act without the perception that some party had asked them to intervene, and that there was strong evidence justifying this intervention. In the case of doña Isabel, during the first day of the testimony the judge had received the testimony of three witnesses that doña Isabel’s abuse by her husband was both unwarranted and excessive. He had doña Isabel’s petition to be taken out of her husband’s home because she had credible fears of further damage to her person. Finally, the judge had the notary public testify ritualistically to the extent of doña Isabel’s wounds, thereby verifying and solemnizing evidence that would have been obvious to the judge who had just met with doña Isabel in person. The close working relationship that the notary was likely to develop with the vicar general mitigated some of the structural rigidity of procedural law.

Other officials provided specialized counsel to the judge. The *Promotor Fiscal* served as a prosecuting attorney and “Promoter of Justice.” His role was to represent the interests of the public by prosecuting fraudulent marriages, married couples that were not fulfilling their obligations, etc. Another similar official was known as “The Defender of

---

<sup>56</sup> Scardaville, “Justice by Paperwork,” 986.

Marriage” (*Defensor de Matrimonios*). He was a canon lawyer with detailed knowledge of marital regulations, and frequently weighed in on complex questions related to marital impediments. He represented the institution of marriage, even if this worked against the desires of a particular married couple.<sup>57</sup> Much like the Promoter of the Faith, another canon lawyer who argued against candidates for sainthood during the canonization process, the Defender of Marriage sought to find flaws and holes in the arguments offered by those who would seek an annulment.<sup>58</sup> The participation of the Defender and Marriage and the Promoter of Justice was not obligatory in divorce disputes, since they were conceived of as private affairs.<sup>59</sup> Both of these officials were required to participate in annulment cases, since church officials believed that allowing an invalid marriage to continue threatened the institution of marriage and the social order.<sup>60</sup> Since ecclesiastical judges never explained the legal reasoning for their verdicts, often the only way to get a sense of the arguments that persuaded the judge is by analyzing the final statements of the prosecution.

The *Alguacil Mayor* served as a bailiff, executing the orders of the vicar general. Most notably, he was in charge of executing the custody arrangements of the wife during

---

<sup>57</sup> The Defender of Marriage was also known as the “Defender of the Bond” (*Defensor del Vinculo*) in this case referring to the bond of marriage.

<sup>58</sup> Until the position was disbanded by Pope John Paul II, the Promoter of the Faith was popularly known as the Devil’s advocate.

<sup>59</sup> Carlos M. Morán Bustos and Carmen Peña García, *Nulidad De Matrimonio y Proceso Canónico* (Dykinson, S.L., 2007), 131.

<sup>60</sup> *Ibid.*

a divorce lawsuit. He escorted her from her former residence to the new residence or *recogimiento* where she would live in seclusion during the course of the lawsuit.

## **Overview of Procedural Law of Divorce**

Civil lawsuits in colonial Mexico functioned much like a conversation between the judge and each other party involved in the lawsuit. Each legal document was structured as a letter addressed to the judge or relevant authority. After an introduction that detailed general information about the case, the lawyer developed the substance of his argument, providing information or refuting the claims of the other side. The document always closed with a specific request to the judge to take action or demand some requirement from the other side. This request highlighted the authority of the court and the honor of the particular judge through its deferential language.<sup>61</sup> There was one case file (*expediente*) that contained the proceedings and documents for the whole case, and this file had to be passed back and forth between the defendant, plaintiff and judge. Procedural rules for a *juicio plenario* required that each party to the dispute receive and reply to the arguments and allegations of the contrary party.<sup>62</sup> The Notary Public was responsible for delivering this file to each party and certifying that it had been received.

---

<sup>61</sup> Requests always referred to the judge in third person, using the following language, “To Your Mercy I request and supplicate he is served to order...” (A Vuestra Merced pido y suplico que se sirva de mandar...and then the specific request). Indeed, this is the origin of the Vsted form in Spanish, which is a shortened version of Vuestra Merced (Your Mercy).

<sup>62</sup> Charles R. Cutter, *The Legal Culture of Northern New Spain* (UNM Press, 2001), 130.

After the party was finished, they were supposed to turn the file back over to the vicar general.

Matrimonial proceedings were supposed to be conducted in secret. Pope Innocent III established the principle that matrimonial proceedings should be conducted privately, since they dealt with spiritual matters rather than the public concerns of civil lawsuits.<sup>63</sup> Due to the salacious subject matter and the numerous witnesses required by both the plaintiff and the defendant, matrimonial causes rarely maintained the secrecy demanded by doctrine. Indeed, the first question routinely asked to witnesses during the evidence-gathering phase of the proceedings was whether they had heard about the lawsuit; obviously, they always answered in affirmative.<sup>64</sup>

Building on the foundation of Roman law, by the thirteenth century Alfonso “the wise” had defined the basic substantive law of marriage and the procedural norms for divorce and annulment lawsuits.<sup>65</sup> The Council of Trent and the Third Mexican Provincial Council clarified these norms. Procedural norms for lawsuits litigated in church courts were first developed in the twelfth century and well established by the late sixteenth century.<sup>66</sup> This meant that by the years shortly following *Trent* the procedural

---

<sup>63</sup> Molina Meliá, *Derecho Matrimonial Canónico*, 323.

<sup>64</sup> See section on witness testimony, below.

<sup>65</sup> Alfonso X of Castile clarified these aspects in his *siete partidas*. Esteban Martínez Marcos, *Las Causas Matrimoniales En Las Partidas De Alfonso El Sabio* (Salamanca: CSIC, 1966), 57. Albert Gauthier has shown that many of the basic procedural principles of canon law have their origins in Roman legal traditions. Albert Gauthier, *Roman Law and Its Contribution to the Development of Canon Law* (Ottawa: Faculty of Canon Law, Saint Paul University, 1996), 8.

<sup>66</sup> James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (University of Chicago Press, 2008), 155.

law of divorce had been relatively well developed and divorce cases followed the same basic practice. However, matrimonial causes (such as divorce and annulment complaints) did retain considerable procedural flexibility until the mid-eighteenth century when Bourbon reforms began to challenge the exclusive jurisdictional competency of the church in some aspects of ecclesiastical lawsuits.<sup>67</sup>

Divorce lawsuits involved four basic phases: the introduction, the instructive or evidence gathering phase, the discussion phase, and the decision-making phase (sentencing).<sup>68</sup> Rather than an oral trial requiring the physical presence of the litigants before a judge, the process of divorce litigation was conducted in written form; a series of documents had to be certified by a notary and presented to the other side for contestation.<sup>69</sup>

During the introduction phase, one spouse sued the other for divorce *quoad thorum et mutuam habitationem*, presenting the complaint to the Vicar General or another ecclesiastical judge. This first complaint was almost always written on an informal basis with the assistance of a lawyer associated with the court. Often the judge would not accept this first complaint, instead demanding the abusive party to improve his behavior

---

<sup>67</sup> Ann Jefferson and Paul Lokken, *Daily Life in Colonial Latin America* (ABC-CLIO, 2011), 11.

<sup>68</sup> I am using modern translations of the Spanish legal terminology (fase introductoria, período instrutorio o probatorio, fase discusoria o la sentencia) See John P. Beal, James A. Coriden, and Thomas J. Green, *New Commentary on the Code of Canon Law* (Paulist Press, 2002), 1706. Beal, Coriden, and Green, *New commentary on the Code of Canon Law*, 1706. Lourdes Fuentes Garcia et al divide these phases into the incoación, la prosecución and la conclusión. See Lourdes Villafuerte García et al., “La Sevicia y El Adulterio En Las Causas Matrimoniales En El Provisorato De México a Fines De La Era Colonial. Un Estudio De La Técnica Procesal Jurídica,” *Estudios De Historia Novohispana* 38, no. 38 (January 2008): 91.

<sup>69</sup> This is typical of litigation in the civil law system of continental Europe and Latin America.

under pain of excommunication or some other penalty. Alternatively, if the would-be-plaintiff arrived with bruises or some other evidence of physical abuse, the judge would almost always immediately accept the divorce complaint and order that the woman be placed in protective custody in a convent or honorable house, escorted by the bailiff and several other agents of the church and crown. In any case, the judge's first act after accepting the complaint would be to place the woman in protective custody for the duration of the lawsuit.

If the judge accepted the complaint, the plaintiff then officially hired [*dar poder*] an attorney to represent her before the tribunal. The judge would now have the notary send the initial divorce complaint to the defendant and demand his response, having the notary certify that he had informed the defendant of the complaint against him. Should the defendant refuse to respond, he could be accused of rebellion [*rebeldía*] and excommunicated. At this point, the defendant normally hired a lawyer and responded to the arguments of the first complaint. The defendant would also have the opportunity to counter-demand the plaintiff for divorce, but this was infrequent until the eighteenth century, and a technique normally used even then only by elite litigants.

This phase was very flexible and the plaintiff would often present a few witnesses to offer depositions during the first days of the lawsuit. This was especially common if the complaint was inspired by some act of violence or other outrage and the witnesses accompanied the plaintiff to the tribunal.

The introductory phase would normally conclude with a few rounds of accusations, counter-accusations and explanations with the judge doing little more than

ordering each side to respond to the claims of the other and sending the notary back and forth to certify that each side had received the proceedings.<sup>70</sup> Before proceeding to the next phase, the judge often required the couple to appear before him face-to-face (*careo*). He would try to mediate the couple's problems and persuade them to resume conjugal life. This latch-ditch effort at reconciliation usually failed, since when someone had taken the extreme measure of filing for divorce it meant that there were usually deep problems that could not be solved in one or two meetings with the vicar general.<sup>71</sup> Eventually one of the litigants would ask the judge to proceed to the evidence-gathering phase, which he would approve.

During the evidence-gathering phase (*probatorio*, or *sumario información*) each side presented witnesses and had them respond to a series of questions during a fixed term of 30 days.<sup>72</sup> The lawyer for each side published a series of questions that developed the narrative they were trying to support and then asked them to present several friendly witnesses.<sup>73</sup> After the witnesses gave sworn testimony, the notary would read back their depositions and give them a chance to affirm that it was correct. With this

---

<sup>70</sup> José María Iglesias Altuna, *Procesos Matrimoniales Canónicos* (Madrid: Servicio de Publicaciones de la Facultad de Derecho, Universidad Complutense, 1991), 229.

<sup>71</sup> In her research on divorce in nineteenth-century Mexico, Ana Lidia García Peña has found that the mediation and reconciliation phase was fairly unstructured and could happen during any part of the proceedings. My research has found it to be even more unstructured in the sixteenth and seventeenth centuries than in that later era. Ana Lidia García, *El Fracaso Del Amor* (UAEM, 2006), 72.

<sup>72</sup> Judges were lax in enforcing this fixed term for interrogating witnesses and were quick to approve extensions for an additional 20 days at a time. See AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 34, 1664.

<sup>73</sup> If needed, notaries or judges could organize a *careo* or a face-to-face meeting between several individuals to clarify contradictory assertions. This *careo* functioned similar to the cross-examination in the common law tradition.

certification, each side would publish an official list of witnesses and allow the other side to see the testimony.

In the discussion or instructive phase, the lawyers evaluated their opponents' arguments and attempted to discredit the other side's witnesses.<sup>74</sup> After several rounds of back and forth, each certified by the notary, the lawyers presented concluding arguments summarizing their cases and move for the judge to determine the sentence.<sup>75</sup>

The final, decision-making phase allowed the judge to arrive at his sentence. He could decide to authorize a temporal (temporary) divorce or a perpetual divorce.<sup>76</sup> A temporal divorce could authorize separation for a specific fixed term such as one or two years, or an indefinite time period as long as the defendant's offensive behavior continued.<sup>77</sup> A perpetual divorce was only granted in the case of proven adultery and authorized the plaintiff to continue the separation as long as she desired. Given that plaintiffs rarely cited adultery as the primary fault, perpetual divorces were very unlikely to be authorized.

Given an unfavorable verdict, the plaintiff usually decided to place herself in non-conformity with the sentence and to begin the appeals process. This process consisted of a review of the case by another ecclesiastical judge in a nearby archdiocese previously

---

<sup>74</sup> Félix López Zarzuelo, *Práctica Procesal Canónica De Las Causas Matrimoniales*, Práctica Jurídica (Editorial Tecnos) (Madrid: Tecnos, 2002), 212.

<sup>75</sup> This concluding argument is also called an "alegato de bien probado."

<sup>76</sup> Only adultery justified a perpetual divorce. Dolores García Hervás, *Manual De Derecho Matrimonial Canónico* (Madrid: COLEX, 2001), 280..

<sup>77</sup> Alberto Bernárdez Cantón, *Curso De Derecho Matrimonial Canónico*, 3a. ed., 5a. reimp, Biblioteca Universitaria De Editorial Tecnos (Madrid: Tecnos, 1971), 376.

designated by law. In the case of the Archdiocese of Mexico, the appeals court was in Puebla. If the appeals court decided against the plaintiff, she would in theory be required to return to her husband's house and resume her marital duties of cohabitation, obedience and sexual intercourse. However, once the courts had allowed a woman to establish a separate residence, it was relatively difficult to force her to return to her husband. A woman whose appeal was denied could always start a new lawsuit in a different jurisdiction in order to extend her time living apart from her husband. Once she had exhausted all her legal recourses (which could take years), her last option would be to run away. If the appeals court decided for her, she would gain the right to make her own residence and settle her own affairs, although both sides remained bound in matrimony and unable to contract future nuptials.

### ***Analysis of the case of doña María de Villar***

Analyzing a specific case in detail will help us see how an ecclesiastical judge attempted to mediate marital conflict and attempted to impose his ideal of marital indissolubility on a couple enduring a dysfunctional relationship, and how plaintiff's and defendant's attorneys used legal procedure and evidence to attempt to bend the law toward a favorable outcome for their clients.<sup>78</sup> Exploring the details of a particular divorce lawsuit should also reveal how the procedural law itself supported the Tridentine-

---

<sup>78</sup> Since divorce lawsuits normally involved seriously troubled couples with a history of violence, the formal claim for divorce was often just one of a series of legal actions aimed at ameliorating a deteriorating situation.

era policy of marital indissolubility by making achieving a legal separation an onerous process. In order to understand the complex web that was a typical divorce case, we will examine in detail the divorce case of doña María de Villar a young woman acknowledged to be of better-than-average class (*mujer principal*) and her husband, a *bon vivant* baker named Clemente Flores.

The case of doña María and Clemente Flores is instructive because of its completeness and the exhaustiveness with which judge, attorneys and other officials conducted the litigation. Doña María's case is both exceptional and prototypical. It is exceptional because of the extraordinary patience and perseverance of the plaintiff. Doña María used every resource at her disposal to attempt to win her case. She eventually won her case because she was able to "bend the law" to her advantage using a variety of strategies. Doña María engaged in "forum shopping" placing lawsuits in many different legal jurisdictions to attempt to find one favorable to her case. Her lawyer used a keen knowledge of procedural law to extend the trial and make the process more expensive and difficult for the defendant. The plaintiff also carefully manipulated witness testimony to support a unified narrative that reinforced her claims. Doña María achieves the divorce after having her first complaint denied and her appeal rejected. Remanded to the custody of her husband, she lived with him as his wife for an additional eight years before filing another complaint, which after several years of additional legal wrangling

was finally approved by the vicar general.<sup>79</sup> The total documentation of the case spans 177 folios (two sided pages), making it one of the longer divorce cases contained in the archives. It is prototypical in that the protagonists were rather ordinary people of the middling class of Spaniards that lived in Mexico City in the seventeenth century. Doña María's assertions of upper-class status seem to be more wishful than based in reality; her widowed mother was not even able to fulfill her promise to offer a complete dowry to her son-in-law, delivering only 600 of the 1,600 pesos that he had promised her.<sup>80</sup> The defendant, Clemente Flores, is a picaresque baker who by all accounts did not even own a pair of shoes or a good suit of clothes. His main hobby seemed to be drinking wine with a series of bakers and unemployed characters that claimed honorific titles such as (Captain or Alférez).

## **First Steps**

Suing for divorce was a last resort, usually only contemplated after all other recourses had been exhausted. Individuals who would later become plaintiffs to divorce lawsuits often filed criminal lawsuits for mistreatment and cruelty or adultery before proceeding to file a divorce complaint in the ecclesiastical courts. Having filed earlier cases in other jurisdiction helped the plaintiff to establish a pattern of abuse. Doña María was no different, having started at least three legal actions against her husband before

---

<sup>79</sup> The duration from the start of the first complaint to the end of the final lawsuit was 17 years, from 1663-1680. It encompassed the majority of the plaintiff's youth- she filed her first complaint at the tender age of 12 and finished the lawsuit at 29-30 years old.

<sup>80</sup> Clemente had to restore these 600 pesos to his wife 17 years later when they divorced.

empowering an attorney and starting the formal process for divorce in October of 1663. Her first step was to empower an attorney to represent her (*procurador*). Doña María hired Juan de Rivera, a well-known lawyer experienced in litigation before the ecclesiastical tribunal of Mexico.<sup>81</sup> He claimed that doña María had hired him, “stating that she gave all of her power to comply with that which the Law requires and is necessary, to Juan de Rivera attorney of proceedings of this ecclesiastical tribunal to represent in her name presenting his person before the Illustrious Lord Bishop.”<sup>82</sup> Now with adequate representation, doña María proceeded to formally file for divorce.

### **Introduction (*Primera Instancia*)**

The first complaint for divorce was always filed in the plaintiff’s name, and specified the plaintiff’s origin (if they were citizens (*vecinos*) of a particular place), gender and racial caste.<sup>83</sup> It also contained the following statement “I place a demand of divorce and separation of Matrimony *quoad thorum et mutuum coabitationem*” (divorce of bed and board) to *defendant’s name*.” The petition also cites basic information about the defendant, such as his name, place of birth or current residency, and his relationship

---

<sup>81</sup> María de Villar vs. Clemente Flores. AGN. Indiferente Virreinal, c. 5244, exp. 19, 1663, 2.

<sup>82</sup> “ortogo que da todo su poder Cumple el que derecho se requiere y es necessesario a Juan de Rivera procurador de causas de la audienssia arzobispal deste arzobispado para que en su nombre presentando su mesma persona paresca ante el Yllmo señor obispo de la puebla de los angeles ele arzobispo y Governador deste dho arzobispado misso y ante el señor provisor y vicario general y ante qualesquiera juezes eclesiasticos de este dho arzobispado”

María de Villar v. Clemente Flores. AGN. Indiferente Virreinal, c. 5244, exp.19, 1663, 2.

<sup>83</sup> If the plaintiff was of recognized African descent (negro, mulato or castiza) the petition also specified his status as free or slave.

to the plaintiff (husband or wife). Unlike petitions for annulment, divorce complaints usually made reference to the subject having contracted marriage legitimately, in present tense (*palabras de presente*) and according to the order of the “Holy Mother Church.”<sup>84</sup> The petition was usually written in the plaintiffs name and signed only by the plaintiff, then submitted directly to the vicar general rather than written before a notary.

In her petition, written by her newly empowered attorney, Juan de Rivera, doña María stated that she has been married for two years to Clemente Flores, a native of the Kingdoms of Castile.<sup>85</sup> This made her about fourteen years old at the time of the divorce complaint, above the legal age of consent for women but still quite young.<sup>86</sup> She notes that at the time of marriage, her mother doña Luzia de Servantes delivered clothes and jewels with a value of about 600 pesos to Clemente Flores for doña María’s dowry, and he in turn gave her an unspecified amount of money in *arras*.<sup>87</sup> Doña Luzia never gave her son-in-law the remaining 1,000 pesos that she had promised him for the dowry.

Instead of maintaining this dowry in reserve, “as required by law” doña María accused

---

<sup>84</sup> For a marriage to be legitimately contracted, the bride and groom must contract marriage with words in the present tense, such as “I do take thee to be my husband/wife.” In contrast, a marriage promise or engagement consisted of an promise to marry in the future “I will marry you.” Under catholic doctrine, the bride and the groom are the ministers who administer the marriage sacrament, with the priest serving as a qualified witness. A clandestine marriage was undertaken when a couple took each other as husband and wife, using the present tense, with or without witnesses, but without having posted wedding bans and seeking the prior permission of the church. For more on “clandestine” marriage see Henry Kamen, *The Phoenix and the Flame: Catalonia and the Counter Reformation* (Yale University Press, 1993), 277.

<sup>85</sup> The petition is written without any signature or citation from Juan de Rivera, but the vicar general later makes reference to the petition having been submitted by doña María’s attorney.

<sup>86</sup> According to the guidelines set forth at *Trent*, girls could marry after having turned twelve years old.

<sup>87</sup> In contrast to the dowry, which was a gift given by the bride’s family to the groom, and constituted a means of nest aid for the bride in the event of her husband’s death, the *arras* were gifts given directly to the bride by the groom, normally consisting of gold coins. AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 6, 1663.

Clemente Flores of having “dissipated it” wasting the money on wine.<sup>88</sup> And instead of treating her as “an honored and important (*mui honrada y principal*) woman, he had continuously abused her, given her many nightmares (*pesadumbres*) and displeasures. When they had just married, in March of 1662, without “cause or occasion” he pushed her out the door of his house, saying that he was “expelling her from his company” causing her great distress, as she was not a native of Mexico City. Enraged, doña María went before the Judge Provisor and Vicar General Dr. don Alonso Ortis de Oraa, complaining that her husband had kicked her out of the house and alleging that she had been “forced and threatened” into the marriage by her older brother. She attempted to file for divorce, but don Alonso refused to let her proceed with a divorce complaint, attempting to mediate between the feuding pair. He had his notary send an official notification to Clemente Flores, stating that he should treat her “with complete love” as she was his legitimate wife, under penalty of excommunication and three years exile in the Philippines should he not comply.<sup>89</sup> Juan de Anaya, the notary public made an official notification to Clemente Flores of the exigencies of judge Don Alonso and returned doña María to his custody. From the earliest stages of the lawsuit, doña María attempted to win the court’s sympathy by establish that her husband was a blasphemer and a rascal with no respect for the institutions of church and state. She claimed that on the same day of her return, Clemente Flores had shown his contempt for the judge’s

---

<sup>88</sup> Marie Kelleher has shown how dotal goods were essential for women’s economic security and subsistence in medieval Iberia. This was equally true in New Spain. See Marie Kelleher, *The Measure of Woman: Law and Female Identity in the Crown of Aragon* (University of Pennsylvania Press, 2010), 60. In

<sup>89</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 6V, 1663.

orders by “laying his hands on her” saying that he was doing it “just to get excommunicated.” That was only the beginning of their conflict. Two or three days later, while she was at mass, doña María claimed Clemente hid the clothes and jewels that made up her dowry, entrusting them to a swordsmith named Antonio that lived in the “street of the *Mesones*.”<sup>90</sup> He claimed in public, and “in prejudice to her reputation and good name (*buena fama*)” that she had taken the clothes away from him and hidden them.<sup>91</sup>

Doña María next tried to show that Clemente not only had contempt for church and state, but for community standards of acceptable behavior. That night when she was asleep in her bed, Clemente grabbed her arms and tied her to the bedpost, supposedly in order to intimidate her into revealing the location of her dowry. Feeling defenseless, doña María began to scream, the volume of her cries attracting the attention of the other members of the household and of those who worked in the bakery located next door to the couples’ room. A crowd gathered in front of the bedroom door, and the manager from the bakery next door began to knock on the door, demanding that Clemente open the door to let them see what was happening. When Clemente yelled back that he would not open the door, the manager replied that he better open the door or they would “knock it down.”<sup>92</sup> Finally, Clemente opened the door and the crowd rushed in, and seeing doña María in a deplorable state and “moved by compassion” they untied her immediately.

---

<sup>90</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 6V, 1663.

<sup>91</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 6V, 1663.

<sup>92</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 6V, 1663.

Clemente tried to explain that he had tied her up because she had hidden her dowry from him. Doña María replied as if she were a martyr, saying, “He can do with me what he likes, because I am innocent and I have no idea where the clothes are.”<sup>93</sup> The neighbors who intervened in this conflict were not strangers; they would have gotten to know both doña María and Clemente from a going about their usual affairs in a society which had relatively little privacy. Although it is not clear, the bakers who intervened may have been Clemente’s co-workers (the case never mentions the location of his bakery). In any case, doña María established herself in this narrative as the person identified by her neighbors as an innocent victim, and Clemente was identified as the victimizer.

Word soon reached doña María’s mother, doña Luzia, and she immediately attempted to intervene on behalf of her young daughter. She demanded the master swordsmith Antonio return the clothes and other dotal goods to Clemente. The craftsman returned many of Clemente’s possessions, but nothing that belonged to doña María’s dowry. Doña María attempted to make Clemente seem vindictive and petty by stating that he did this intentionally in order to “make a fool out of her” (*burlarse de ella*). Additionally, she argued that his actions besmirched her honor (*quitaba la honra*) and were not worthy of a “noble woman” (*muger principal*) as she claimed to be.

Clemente would soon find out that Doña Luzia was not afraid to use the legal resources available against him. A few days after the conflict with his wife and mother-in-law, Clemente abandoned their residence to live with some other servants in a house

---

<sup>93</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 6V, 1663.

near the Amaya bridge. When asked why he had convened such a large group he said it was because they were planning on killing doña María's mother and her brother, who was a Franciscan monk. During the days of Clemente's absence, the group had spent several days walking around doña Luzia's house in a menacing fashion. As soon as doña Luzia heard the rumor that they were planning to murder her, she immediately appeared before the secular Criminal Magistrate (*Alcalde de Crimen*) don Alvaro, who after hearing her account, issued a warrant for Clemente's arrest (*mandamiento de prisión*), leading to his immediate incarceration. Various of Clemente's friends posted his bail and one of them, a bakery owner named Juan de Campo agreed to insure doña María's security and welfare. The judge let Clemente out on the condition that he and doña María would live in Juan de Campo's house and under his supervision. Don Alvaro warned Clemente and threatened to send him to the Philippines, this time for four instead of three years. Clemente and his wife spent a month in Juan de Campo's house, in peace. Then one day the baker borrowed a horse from his mother-in-law, supposedly so that doña María could ride to see her mother despite the heavy rains. After picking up the horse, Clemente disappeared, leaving town without further explanation and without leaving money or food for his wife. Doña María appeared again before don Alvaro asking to leave Juan de Campo's house and to be turned over to the custody of her mother. Don Alvaro agreed, ordering that she be turned over to her mother for the duration of her husband's absence. Returning after an absence of more than seven months, Clemente appeared before don Alvaro to request the return of his wife to his custody. He agreed, provided that Clemente suggest another guarantor who was willing to pay a deposit and

guarantee the proper treatment of doña Maria. This is how Clemente and doña María came to spend two disagreeable months in the company of Juan Gómez de la Milla, the owner of another bakery.

During this time, the couple entered into a protracted series of fights and violent disagreements that led Juan Gómez to appear again before the vicar general, begging that he “remove that man (Clemente) from my house” and to turn doña Maria over to her mother, because Clemente is “not a man with whom it is possible to cohabitate.”<sup>94</sup> Juan Gómez emphasized that living with Clemente put doña María’s life at “manifest risk” and that on one occasion Clemente had gone so far as to attempt to strangle her. Don Alvaro agreed to turn doña María over to the custody of her mother immediately, for her safety.

Plaintiffs in divorce proceedings frequently accused their husbands of posing an immediate threat to their lives, requiring immediate action by the court. Doña María was no different. While she had given evidence of the many and repeated acts of “cruelty” (*sevicia*), doña María argued that the fact that her life was threatened by living with her husband should be “sufficient” reason to authorize the separation. The petition also cited Clemente’s repeated “lack of respect and obedience” towards ecclesiastical and secular judges as another of his abuses. Doña María’s petition closed by emphasizing how the “continuous” abuse that her husband had given her, his abandonment and failure to

---

<sup>94</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 7, 1663.

provide her with sustenance for months at a time had given occasion to “stain one’s faith of the great sacrament of marriage.”<sup>95</sup>

The petition of first instance terminates with the following statement:

*“To Your Mercy I beg and supplicate that having presented said letters is served to admit this complaint to order the marital separation and divorce of bed and board (quo ad thorum et mutuam coabitacionem) and to condemn civilly Clemente Flores to reconstitute and return the dowry to me. I beg justice and to be received to evidence and I swear to God and to the cross that this request and petition is not malicious and that the aforementioned is notified to empower an attorney for all of the instances and sentences of this lawsuit... in form, costs, etc.”<sup>96</sup>*

The judge, Dr. don Nicolás del Puerto, accepted the complaint immediately and asked for evidence of her husband’s mistreatment. Each legal order (*auto*) issued by the judge was preceded by an elaborate introduction (abbreviated *PRESSON*) written by the notary that followed a template listing the complete title of the judge, the date, and name of the lawsuit being considered. The vicar general’s first order was to show the divorce complaint to Clemente Flores, so that “within the term” required by law he could respond

---

<sup>95</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 7, 1663.

<sup>96</sup> “A VMD pido y supplico que aviendo por presentados dho recaudos se sirva admitir esta demanda y mandar se haga separación y divorcio de matrimonio quo ad thorum et mutuam coabitacionem y condenar civilmente al dho Clemente Flores a que me veubla entregue y re... la dote pido justicia y ser recevido a prueba y juro a Dios y a la curz pedimiento y demando no es de malicia y que el susodho se le notifique poder para todos los autos instancias y sentencias de esta cuasa ... nalanto de estrados enforma costas etta--

Otro si digo que el dho mi marido me hecho los malos tratamientos que ban expera.. or la mala voluntad que me tiene y ser obra de terrible y aspera condicion quales an de crecer teniendo noticia de esta demanda con que no tengo voluntad alguna para cuio remedio a VMD Pido y supplico se sirva de mandar se me reciva información que incontinenti ofresco y quales examinem por el tenor deste escrito y que sean cumpelidos con ser .. digan susodhos y atento a lo que constare de dha información y de .. se sirva de continuarme en el deposito en que estoy en poder del dho mi Madre por orden de dho Señor D. Albaro...”

AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 7, 1663.

to its allegations. After the notary verified that Clemente had been notified, the judge opened the evidence-gathering phase of the proceedings.

### **Preliminary Evidence Phase (*Probança or Ynformación*)**

By giving testimony, witnesses verified or disputed the narratives presented by plaintiff and defendant. Credible witnesses placed the weight of their reputations behind the truth claims made by litigants, making their discourses seem more compelling. Good lawyers placed the witnesses in a particular order designed to support a coherent narrative. In the *probança* phase, the plaintiff called witnesses to give testimony on her behalf, “in order to verify the content of the complaint presented in this matrimonial cause.”<sup>97</sup> These depositions made reference to the nature of the dispute, in this case “a divorce dispute (*pleito*)” that doña María de Villar, “legitimate wife of Clemente Flores” had undertaken with her husband. The first paragraph always cited general data (*las generales*) about the witness and the legal dispute to which he is referring. This information included the location of the testimony, the date, the name of the lawyer representing the litigant, the name of the witness, his marital status and occupation, sometimes race or caste, and on whose behalf he was testifying. The notary public of the Archdiocese recorded this testimony, meaning that much of the text was formulaic. Before beginning the witness testimony, the Notary always required that the witness “made a sworn oath in the name of the Lord our God and the sign of the cross according

---

<sup>97</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 9, 1663.

to the law, according to which he promised to tell the truth being asked about the divorce petition.”<sup>98</sup> The witness then indicated how long he has known the plaintiff and the defendant, and occasionally how long he has known the lawyers involved in the case as well.

Then the notary’s formula was replaced by the witness’s narrative as he recounted his experiences that were relevant to the matter at hand. This was the most free-flowing part of the evidence phase, though it was usually obvious that the lawyer coached the witness because the evidence provided usually reinforced and repeated themes mentioned by the lawyer in the preceding petition. The concluding section returned to the notary’s formula; the witness finished by affirming the veracity of his previous narrative “this that he has said is what he knows and the sworn truth” and then stated his age. The notary would have read his complete testimony back to the witness and then asked him to sign the deposition. If the witness was unable to sign his name, the notary noted that the witness was unable to sign “because he did not know how.”

Doña María’s first witness was Juan Gómez de la Milla, a fifty-year-old Spaniard who had recently served as guarantor for doña María’s safety and by order of the judge Don Alvaro Saez de Valdes had hosted the couple in his house and under his supervision for a period of two and a half months. During this time, Clemente Flores worked as manager (*mayordomo*) in his bakery. Juan Gómez gave his testimony on October 25,

---

<sup>98</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 7, 1663.

1663, before Simón Vaez Bueno, Notary Public of the archdiocese and less than two weeks after the initial petition by doña María's lawyer.

The witness owned a bakery in the center of Mexico City on Saint Theresa Street and claimed to have known the couple for about five months. In his testimony, he claimed that after befriending the couple he was shocked by how severely Clemente mistreated his wife "by word and deed" without her having given him any cause for such abuse. He gave her "*mui mala vida*" threatening to kill her, calling her "a known [or proven] whore" (*puta provada*) and "base, vile and hateful" (*Ruim vil y basa*).<sup>99</sup> He used the same insults to describe his mother-in-law, doña Luzia de Cervantes. Juan Gómez claimed that Clemente treated his wife violently, beating her without provocation and dragging her about by her hair. As an example of Clemente's brutality, Juan Gómez cited an example from the morning of the festival of St. James (Santiago) that same year, when Clemente attempted to strangle his wife, and would have killed her, had it not been for the intervention of the witness, his wife, and other members of the household. Additionally, many days and nights Clemente drank so much alcohol (*envisio tanto en beber*) that he lost his senses. Juan Gómez claimed that Clemente was so out of control that he feared "something terrible" (*alguna disgracia*) would happen in his house and that he was incapable of preventing it. Frustrated, Juan Gómez went before the judge don Alvaro and asked him to remove Clemente from his house and to place doña María in deposit with her mother. Don Alvaro agreed, placing her in temporary deposit away from

---

<sup>99</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 9v, 1663.

her husband. Juan Gómez closed his testimony by asking the vicar general, Dr. Nicolás de Puerto, to authorize the permanent separation and divorce of doña María and Clemente Flores because their cohabitation would put doña María in danger of losing her life (*peligro de perder la vida*).<sup>100</sup>

Doña María's lawyer deposed several other witnesses that told similar stories. Diego Lopez de la Cruz, 30-year-old baker claimed that Clemente gave his wife "many causes for displeasure" and drank heavily, acting like "a person with few responsibilities and a man who gives his word and then never follows through." Diego Lopez also noted that before skipping town for seven months Clemente had stolen the dishes from the bakery where he used to work and sold them to finance his trip. Returning, Clemente attempted to remove his wife from his mother-in-law's house with violence, arriving at her house with seven friends and threatening doña Luzia with several unsheathed swords (*espadas desnudas*). Yet again, it was only the intervention of several outsiders that prevented a tragedy. Diego Lopez claimed that he and several others, "moved by charity", frustrated Clemente's nefarious plan.

Juana de la Cruz, a forty-year-old Spanish woman and the wife of Juan Gómez, also testified. She emphasized that Clemente gave his wife many "nightmares." (*pesadillas*)

---

<sup>100</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 10v, 1663.

Sergeant Joseph Dias del Porte, a neighbor (*vecino*) of the neighborhood of San Juan and a baker, certified that Clemente was a hopeless drunkard. He also stated that on several occasions, Clemente had been incarcerated in the Royal Prison.

#### **MOTION TO CLOSE PRELIMINARY EVIDENCE PHASE**

The following step required the plaintiff's attorney to request the judge to bring the preliminary evidence phase to a close, to remove the plaintiff from her house and to place her in deposit in some other secure location. At this point or before, the plaintiff's attorney usually asks the judge to order the defendant to hire and empower an attorney for the duration of the cause. Ecclesiastical judges almost always authorized requests such as these and asked for the assistance of royal officials and other secular authorities to help them with the execution of their orders. In the New Spain of the baroque era, secular-church relations were much more likely to be characterized by harmony and a spirit of mutual assistance than one of competition.<sup>101</sup>

After the four witnesses had testified, doña María's lawyer Juan de Rivera motioned to close formally the period of testimonies, which she had given "sufficiently" (*bastantemente*).<sup>102</sup> He also requested the vicar general to remove her from her current residence "for the security of his client" and with the assistance of Royal Justice, and that the judge notify Clemente Flores "not to disturb or perturb his wife wherever she is."

---

<sup>101</sup>A century later Karl Schmitt, "Church and State in Mexico: A Corporatist Relationship," *The Americas* 40, no. 3 (January 1, 1984): 350.

<sup>102</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 18, 1663.

The judge Dr. Nicolás del Puerto granted each one of Juan de Rivera's requests. He ordered the bailiff (*alguacil mayor*) of the archdiocese to remove doña María from her house and place her in the *recogimiento* of Santa Maria Magdalena "turning her over to the Rector" and she should not leave this residence "without express order and mandate" of a competent judge. Anyone impeding this order by hiding doña María would be subject to a fine of 100 Reales. He also "exhorts and begs" the assistance of "any of the gentlemen from the Royal Criminal Court and other of His Majesty's judges" in order to comply with this order. The following day (November 14), the Criminal Magistrate Don Alvaro de Saes Valdes, the secular judge who had handled doña María's first complaints against her husband approved don Nicolás's request. He ordered "any bailiff or other official" to give the assistance of the Royal Justice in order to execute the order commanded by don Nicolás.

Don Nicolás then issued another order requiring Clemente Flores to hire a "known" attorney within the amount of time required by law (generally six days) in order to continue the lawsuit. The judge warned him that should he fail to comply he would be accused of rebellion (*rebeldía*) and declared *estrados* in the court of the Archdiocese.<sup>103</sup> This punishment for rebellion entailed that the judge would no longer send a notary to notify the party in rebellion about each stage of the lawsuit and each order, determination or sentence taken by the judge. Instead, the notary would post all of this information on a wall or chalkboard in a public place. This measure had two goals. First, it was designed

---

<sup>103</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 19, 1663.

to shame noncompliant or unwilling participants in a lawsuit into compliance by making their “rebellion” public knowledge. In a society where questions of public reputation and honor were critical to social survival, this was a nontrivial threat. Second, it was meant to inconvenience the person being punished. Instead of waiting for the notary public or royal scribe to come to looking for him, the litigant found to be in rebellion would have to make a potentially lengthy journey every few days to check if any new orders or information about his case had been posted on the wall.

### **Protective Custody**

For abused wives, one of the main benefits of suing for divorce was receiving the judicial authorization to live apart from her husband. During the course of divorce proceedings, whether they were participating as petitioners or as the petitioned, women were always placed under a particular kind of custody known as the *depósito*.<sup>104</sup> Female litigants would be remanded to the custody of either an institution, such as a convent, or that of a particular individual with a good reputation living in a house of repute (*casa de honra*). The arrangement was designed to safeguard the physical security of the wife, and the honorable reputation of her husband. In the seventeenth century, one of the highest compliments for a woman would be to be described as *recogida*, implying an

---

<sup>104</sup> See Deusen, *Between the Sacred and the Worldly*.

Muriel, *Los Recogimientos De Mujeres : Respuesta a Una Problemática Social Novohispana*.

Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*, 37..

honorable reputation and a sense of dignified reserve.<sup>105</sup> In theory, women of honor were supposed to distance themselves as much as possible from the vulgarities of public life and daily affairs in the street. They were supposed to show respect for their husbands by staying at home as much as possible, and in particular by avoiding going out after dark or without an escort. Consequently, institutions that were designed to safeguard women and their reputations were often called *casas de recogimiento*. If assigned to a particular house, a woman would be remanded to the custody of a man with the understanding that she would remain in the company of his wife. The host took on a role that combined aspects of hotelier, confidante and jailer. Judges threatened and occasionally excommunicated depositors that they declared to be insufficiently rigorous in executing the duties of their charge.

Women subject to matrimonial causes attempted to reconstitute their households as much as possible within the limited constraints of their confinement. Deposited wives brought their children with them or arranged for their education in other parts. The slaves and servants of elite women frequently accompanied them to attend to their needs. In some of the larger institutions, such as the *casa de recogimiento* de Santa María Magdalena, dozens of women could be in deposit at a time, meaning the possibility of a social life, however limited.

---

<sup>105</sup> Writing about colonial New Mexico, Ramón Gutiérrez suggests that Spanish families even on the northern frontier worked to keep their daughters secluded as much as possible, as a way of guarding their honorable reputations. He notes, “Women were the things honorable men guarded most intensely in their households.” Gutiérrez, *When Jesus Came, the Corn Mothers Went Away*, 235.

The notary's protocol for a certification of the deposit of a woman required him to attest that a small group of officials had picked up the woman and then turned her over to another competent authority, usually the rector of a house of *recogimiento* or to a particular individual of good repute. The authorities followed their protocols to the letter when they placed doña María de Villar in deposit at the house of *recogimiento* of Santa María Magdalena on November 15, 1663. Rejecting her earlier request to be placed in the custody of her mother, Dr. Nicholas del Puerto decided for unspecified reasons to put her in the *recogimiento* of Santa María Magdalena, then the most important *recogimiento* in Mexico City.<sup>106</sup> Juan Bueno, the ecclesiastical bailiff (*aguacil mayor fiscal del arzobispado*) led the expedition, accompanied by several other officials including Diego Maruso, Royal sheriff (*aguacil de la Real Justicia*), the archdiocese's prosecutor (*promotor fiscal*) and the notary receptor who by signing the document at the end verified and gave legal standing to the certification. The group picked up doña María from her former residence and escorted her to the house of Santa María Magdalena. The certification emphasized that the officials had "placed the person" of doña María de Villar in the *recogimiento*, turning her over to the rector doña María Garses de Mendoza. The receiving party certified that as Rector, she would maintain doña María "in her power" and without turning her over to anyone else "without express order given by the

---

<sup>106</sup> Judges were reluctant to put women in deposit with close family members fearing they would be too indulgent to their charges and less likely to require the deposited spouse live up to standards of seclusion that would protect her husband's name.

lord Judge Provisor and Vicar General of this Archbishop, or other judge associated with this cause.”<sup>107</sup>

## **SECOND POWER OF ATTORNEY**

Responding to don Nicolás’s requirement and perhaps hoping to avoid the unpleasant circumstance of being declared in “rebellion” by the court, Clemente Flores Sarmiento hired an attorney. His defense attorney Christoval (or Cristobal) de Galbes was a *procurador* dedicated to ecclesiastical causes and highly prolific. The collection of the *Archivo General de la Nación* retains records of dozens of cases that he litigated over the course of two decades, suggesting that he participated in many more. The Galvez family was highly involved with the business of the Archdiocese during the seventeenth and early eighteenth centuries and several family members participate in court affairs as lawyers, officials and priests.<sup>108</sup> Christobal de Galvez’s certification of the power of attorney is almost identical to the one declared by Juan de Rivera with the exception that Christoval suggest that the initial divorce complaint was moved not by the thirteen-year old doña María, but by her mother.<sup>109</sup>

---

<sup>107</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 19-19v, 1663.

<sup>108</sup> Cristobal de Galvez’s close relative Juan Felix de Galvez (I’m not sure if it is his son or brother) would later defend doña María in her divorce complaint of second instance, filed eight years after this initial lawsuit. He would help her to win this later lawsuit.

<sup>109</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 21, 1663.

## REQUEST FOR ALIMONY OR MAINTENANCE

Financial questions were as critical to litigants in colonial divorce disputes as they are to participants in contemporary divorce litigation. During a matrimonial cause the wife and her small children were always placed in deposit in an institution or in a particular house. This frequently placed her in a position of severe economic difficulty since the husband maintained control of his wife's dowry until the judge had authorized a temporal or perpetual divorce and signed an act of dowry restitution.<sup>110</sup> In theory, during the course of a matrimonial cause the wife remained a dependent of her husband and had the right to demand financial support from him. Until the lawsuit was finished and the judge had proclaimed the sentence, a wife had an unequivocal right to demand that her husband provide her with sustenance and meet her necessities and those of her children.<sup>111</sup> A wife had an equal claims to financial support regardless of her status as plaintiff or defendant in the case.

Judges invariably authorized specific requests for maintenance made by wives or their lawyers. In particular, husbands were expected to pay the room and board (*el pupila, or pupilaje*) at *casas de recogimiento* and other institutions.<sup>112</sup> If their wives were deposited in the houses of particular *vecinos* they were responsible to arrange timely deliver of food or pay a fee to the head of household to provide for their wives' victuals.

---

<sup>110</sup> Judges occasionally ordered an accounting of the remaining contents of the dowry before authorizing the separation, but the dowry technically remained under the control of the husband until the end of the lawsuit.

<sup>111</sup> Hünefeldt, *Liberalism in the bedroom*, 224.

<sup>112</sup> The *pupila* was a fee charged for room and board over a specific term. Normally it was charged to parents paying for the education of their children in residential schools or convents. See RAE dictionary.

Husbands were also responsible for other necessities such as medical care and adequate clothing. While judges were willing to order husbands to support their wives, the enforcement mechanisms were rather limited, and judges were often reluctant to punish husbands who defied orders. Ecclesiastical judges could punish husbands who refused to support their wives by excommunicating them, or by declaring them “in rebellion” to the court. They resorted to these measures infrequently, preferring instead to issue endless ineffectual warnings. While some husbands were willing to pay for their wives’ maintenance, others were adept at dodging that particular responsibility.

The case of Clemente Flores illustrates the inability of ecclesiastical judges to compel or persuade husbands to maintain their wives during divorce proceedings. Doña María’s *procurador* issued his first request for maintenance on November 6, 1663 noting that Clemente had failed to turn doña María’s wardrobe and personal possessions over to her.<sup>113</sup> Additionally, his client “was a poor person who didn’t have anything with which to pay her room and board.”<sup>114</sup> Don Nicolás immediately approved the request, ordering that within three days Clemente Flores give his wife her wardrobe and pay his wife’s room and board to the rector of the house of *recogimiento*. He issued the vague warning that should he not comply he would “order what is advisable,” a threat unlikely to intimidate anyone.<sup>115</sup>

---

<sup>113</sup> The notary public did not notify Clemente Flores of this decree until ten days later, on November 16.

<sup>114</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 22, 1663.

<sup>115</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 22v, 1663

For plebian husbands the most effective tactic to avoid paying maintenance was to claim to be insolvent. The defendant's attorney took advantage of the sluggishness of the court on financial matters to avoid any and all payments to the plaintiff. Christobal de Galvez refused consecutive orders by the Vicar General to pay for his wife's maintenance on the grounds that his client was penniless. In his first response to the complaint placed by doña María, Galvez wrote an addendum disputing his client's ability to pay doña María's *pupila*. If doña María wanted to eat, argued the lawyer, she should end her lawsuit and return home. Clemente Flores earnings from his bakery were very "short": adequate to provide for his wife if they shared a home but inadequate to maintain two separate residences. The separation meant that Clemente would no longer have enough to provide for his wife's sustenance. In the words of his attorney, Clemente was "a poor man" and did not have enough to support his wife if they lived separately, because he just barely made enough to support them living together.<sup>116</sup> Thus, doña María's hunger was her own fault for refusing to live with her husband. The plaintiff's attorney responded that this was a lie, since with his job at the bakery Clemente was earning "fifteen pesos monthly, not counting the food, bread and other leftovers that result from the bread that he sells."<sup>117</sup> Additionally, Rivera argued that even if Clemente were penniless, and doña María had not brought a 600-peso dowry with her to the marriage, that would still not excuse him from his responsibility to provide sustenance for her. His duty as husband meant that, "he is always obligated to feed her." Instead,

---

<sup>116</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 30, 1664

<sup>117</sup> AGN. Indiferente Virreinal, c. 5244, exp. 26, f. 22v, 1663

Clemente cynically claimed not to have the means to provide his wife with food and clothing while he was dissipating her dowry. Juan de Rivera argued that his neglectful failure to adequately support his wife constituted another grounds for divorce.<sup>118</sup>

The attorneys also bickered over the status of doña María's wardrobe. Her attorney claimed that Clemente had hidden the clothes in the house of his friend, a master swordsmith named Alfonso. Clemente's attorney denied this and said that her mother had hidden doña María's clothes in her house. As an example of the irresponsible manner that he was administering doña María's dowry, Rivera cited the specific example of how Clemente had pawned one of his wife's dresses and rings to a man known as Captain Pedro for 80 pesos. The captain had soon departed for Spain, leaving the goods in trust with Juan Xuarez "with the order that he would give the goods back once he returned said pesos."<sup>119</sup> The attorney asked the judge to compel Clemente to pay his debt and return the dress and ring.

There were various articulations of this dispute over food and clothing, without resolution during the entire ten months of the first divorce complaint. The Vicar General agreed in principal with the plaintiff, ordering Clemente to provide for his wife's food and clothing. However, when Clemente refused to comply, the judge failed to impose any serious sanctions. The judge's threats were not very intimidating; in the case of Clemente not paying his wife's bill at the *recogimiento*, don Nicolás threatened to put her in deposit in a particular house instead of an institutional house such as her current house

---

<sup>118</sup> On the grounds of neglect.

<sup>119</sup> AGN. Indiferente Virreinal, c. 5244, exp. 26, f. 22v, 1663

of *recogimiento*.<sup>120</sup> On three separate days, December 31, 1673, January 2, 1673, and January 8, 1674, the Vicar General don Nicolás published legal orders requiring Clemente to pay the room and board (*pupilaje*) of his wife.<sup>121</sup> Clemente's lawyer responded each time by stating that his client was too impoverished to afford the bill. And in each occasion, the judge failed to act. There was no further action on the issue for months. Finally, in March of 1664 Juan de Rivera attempted to bring up the issue again, noting that doña María remained in the *recogimiento*, penniless and owing more than 30 pesos to the rector. He asked for Clemente to pay his wife's *pupilaje* or move her to the house of her choice; the residence of a medical doctor named Bachelor Joseph de Suniga. Dr. Nicolás del Puerto approved half of the request, ordering Clemente to pay the 30 pesos to the rector of the *casa de recogimiento* of Santa María Magdalena. The judge denied her request to be moved to the house of Br. Joseph de Suniga, preferring to keep her in residence and under supervision in the *recogimiento*. The judge's determination gave Clemente three days to pay the rector, threatening him with excommunication for his noncompliance. This forced doña María into the precarious situation of living on credit at the *recogimiento* of Santa María Magdalena for a few months, and then switching to a less expensive house. Despite multiple requests from Juan de Rivera and several judicial orders from don Nicolás, Clemente succeeded in not paying for his wife's

---

<sup>120</sup> AGN. Indiferente Virreinal, c. 5244, exp. 29, f. 22v, 1663

<sup>121</sup> AGN. Indiferente Virreinal, c. 5244, exp. 30, f. 22v, 1663

housing for the entire duration of the lawsuit.<sup>122</sup> Judicial laxity and the limited coercion available to ecclesiastical judges meant it was easy for husbands to avoid paying their wives' bills during divorce litigation.

## **FIRST RESPONSE BY DEFENDANT**

In the initial divorce complaint, it was essential for the plaintiff's attorney to establish that the claim was based on legitimate grievances and not out of "malice." In his response to this first petition, the defendant's attorney attempted to invert and nullify this argument by showing that claim was not based on valid grounds but rather inspired by the plaintiff's malice towards the defendant. The defense attorney always moved that the complaint be rejected and that the plaintiff return to the defendant's house in order to resume "marital life (*hacer vida maridable*)."

Closing the response, the attorney asked the judge to condemn the other side to pay his client's legal costs, and moves to open the evidentiary phase for his client.

Clemente's lawyer Cristobal de Galves followed this traditional pattern of argumentation in his first response to doña María's complaint, published on November 24, 1663 about five weeks after the initial claim. First, he requested that the judge repeal the complaint issued by doña María, and that his client be "set free (*dado por libre*)" from the lawsuit, and that the vicar general determine that "there is no place (*no hay*

---

<sup>122</sup> It was not until December 20, 1664, months after the judge had decided the sentence in his favor that Clemente's guarantor (Juan Gutiérrez Coronel) finally paid the bill of 40 pesos for doña María's pupilaje at Santa María Magdalena.

*lugar*)” or insufficient reason to authorize the separation pretended by the plaintiff. Completely rejecting the claim, which lacked “any relationship with the truth,” Christobal de Galvez supplicated the judge to condemn doña María to “cohabitare and live as husband and wife” with his client because the couple “married, according to the order of the holy mother church.”<sup>123</sup> Galvez argued that the claims of doña María were lies because his client had never mistreated his wife, rather “treating her with complete love and kindness as his legitimate wife, and giving her all the food and clothing that she needs.” He then attempted to show that the claim was malicious because it was not based on any real abuse of doña María by his client, but rather a result of the wicked machinations of Clemente’s mother-in-law, doña Lucía de Cervantes. Doña María had sued for divorce because “of the persuasion and advice” of her mother, doña Lucia, who did not approve of Clemente and was leading a sinister campaign against their marriage. While there had been disagreements between husband and wife, they were very slight and the couple had always reunited after their disputes. Galvez asserted that the witnesses had given false testimony about the disputes between Clemente and his wife and had outright lied that Clemente was a drunkard, since he client never had this “habit.”<sup>124</sup> Thus the claim was not grounded in truth, but rather the result of a meddling mother-in-law who thought that her daughter was too good for the man that she had married. The defense argued that this whole dispute was inspired by the malice, “bad will and hatred” of doña Luzia, who was doing her best to persuade her daughter to continue an unlawful

---

<sup>123</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 23, 1663

<sup>124</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 23v, 1663

divorce suit against her legitimate husband. Since the case was based on malice, Cristobal de Galvez argued that the judge should dismiss it and force doña María to cohabit and live in holy marriage with her husband.

## **PLAINTIFF'S RESPONSE**

The judge would then order the notary to take the case file over to the plaintiff's attorney, so that he could respond to the allegations of the defense. Every time the Notary Public moved the documents, he certified who had received the file.

Doña María's lawyer had a simple response to the allegations of Christobal Galvez: he denied it in its entirety. Galvez's response was "sinister" because Clemente did not treat his wife with love, but rather "with severity, contempt and parsimony (*rigor, desprecio y mendigues*)."

## **Main Instructive (Evidence Gathering) Phase**

### **PRUEBA, SUMARIA INFORMACIÓN (DEFENSE)**

After the plaintiff had responded adequately to the allegations of the defense, the defense moved to open the evidentiary phase for his client. The defense attorney always requested the assistance of the notary public, to "examine" the witnesses according to the tenor of the lawsuit and to ratify and summarize the statements provided.<sup>125</sup> This phase usually involved the defense putting together a series of witnesses on behalf of his client

---

<sup>125</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 31, 1664

and arranging them to come before the notary and give their testimonies. Alternatively, it could involve a significant amount of legwork for the notary as he traveled to track down the defense's witnesses and record their statements. This request was a formality, almost always authorized by the Vicar General. The judge responded by "ordering any witness to present himself for the summary information (*sumaria información*) of this cause."<sup>126</sup> Once opened by the judge, the evidence phase usually lasted for the "term of law" which was usually 30 days. If the defense requested more time, the judge would usually grant another 20 days.

Cristobal de Galvez moved to open the evidence-gathering phase only after successfully sidestepping the issue of doña María's sustenance. After the judge granted his request, the defense did not present its witnesses within the term required by law. More than a month later, the plaintiff's attorney Juan de Rivera demanded that the defense present its witnesses, and the Vicar general agreed, granting him an additional 20 days to present witnesses. The defense cited as its witnesses several friends and former employers of Clemente Flores.

## **RATIFICATION**

Before passing to the evidence phase for the defendant, the judge called for the ratification of earlier testimony by the plaintiff's witness. In this phase of the judicial proceeding, the notary would read the prior statements that each witness had given,

---

<sup>126</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 31v, 1664

giving them the opportunity to make changes or corrections as necessary.<sup>127</sup> This would allow for the witnesses to verify the accuracy of their statements, which in a divorce lawsuit they may have made months before. The notary closed with the following formula:

He said that everything that is in this statement, is in its content what this witness said, stated and declared, and in this he affirms and ratifies and being necessary he will say it again in this *plenario juicio* for as it is the truth under sworn oath....

Juan de Rivera requested the ratification of the testimony given by doña María's witnesses in November and December of the preceding year (1663). These witnesses included the Sergeant Joseph Diaz, Juan Gomez de la Milla and his wife Juana de la Cruz, and the bakery owner Diego de la Cruz. Each of the witnesses ratified their testimony without making any changes.

The actual implementation of procedural rules in a *plenario juicio* could be flexible or even sloppy. While the plaintiff ratified her witnesses as required by procedure, it seems that the defendant never got around to it. Despite acknowledging an official request from the judge to ratify the testimony of his witnesses, Cristobal de Galvez never executes it. The other parties to the lawsuit seem to forget about this and the case proceeded to sentencing without any further mention of this procedural error. While their testimony is never ratified, Galvez Juan de Campo, the Alférez Juan Gutiérrez Coronel, Francisco Franco de Montejo, Antonio de Avila, Captain don Juan de

---

<sup>127</sup> Cutter, *The Legal Culture of Northern New Spain*, 126.

Olibar, Alferez Nicolás Bautista de Alarcen gathered to provide testimony for their friend Clemente.

## INTERROGATIONS

A key part of the evidence-gathering phase of the investigation allowed the plaintiff or defendant's attorney to develop their argument by asking a series of leading questions to the witnesses that they had identified and ratified before the notary. The first question to the witness was always if he knew the people involved in the lawsuit, and if so for how long? The rest of the questions have to do with the facts of the case from the perspective of either the plaintiff or defendant. While stated in the form of questions, the queries are really lengthy narratives meant to encourage witnesses to provide corroborating evidence for the particular narrative that the attorney was trying to construct. As we have seen, plaintiffs frequently presented corporal evidence in the course of a lawsuit, using their bruised or broken bodies to bear witness to the defendant's pattern of abuse. However, corporal evidence was not the only form of evidence that plaintiffs presented during the course of lawsuits. The testimony of credible witnesses was key to verifying the plaintiff's narrative. Defendants also relied on witnesses to voice for their good character and dispute the plaintiff's claims. Both sides coached witnesses to reinforce a particular narrative that was most likely to help them "bend the law" to their advantage.

Doña María's witnesses were asked eight questions. First, they were asked if they knew the litigants, and for how long. This established the witness's credibility to speak

about doña María and Clemente's characters and lifestyles. The second question was a long, leading question that contained a short summary of events from doña María's perspective. The witnesses were asked if they had knowledge of the mistreatment (*pesadumbres*) Clemente had given to his wife shortly after they had been married, "dissipating her dowry" and forcing her to place a divorce complaint before the Vicar General Dr. Alonzo Hortiz de Oraa. The judge dismissed this complaint with a warning to Clemente to treat his wife better, under pain of excommunication. The next question continued with a leading narrative of events from doña María's perspective. It asked if they knew that immediately after returning home, Clemente had beaten doña María, laughing that he was doing it just so that the Vicar general would excommunicate him. Two days later he stole her clothes while she was at mass and gave them to his friend, a swordsmith named Antonio. The question then recounted how Clemente had tied her to their bedpost to intimidate her into telling the location of the clothes, and then fled when neighbors had intervened. The fourth question claimed that Clemente and some other servants (*mozos*) had threatened to murder doña Lucia and one of doña María's brothers, leading Clemente's mother in law to appear before the judge *alcalde* don Alvaro and get Clemente thrown in prison briefly. It also made reference to how Clemente left the city for more than seven months after this without leaving food for his wife. The fifth question argued that Clemente had abruptly returned to the city and demanded that his wife leave his mother-in-law's house to live with him. They were placed in the house of Juan Gomez de la Milla, who certified to keep Clemente from abusing his wife. After Clemente abused his wife physically and verbally for more than two months, Juan Gómez

appeared again before the *alcalde*, demanding him to “take that man out of my house.” Gomez claimed that Clemente was “impossible to cohabit with” and that doña María’s life was in danger by being with him. The sixth question accused Clemente of being a habitual drunkard; it stated that Clemente spent his free time drinking wine all the time until he “lost his senses.” His drunkenness caused him to neglect his marital duties, as he never provided his wife with the food and clothes that she needed. The seventh question asserted that Clemente had pawned one of doña María’s dresses and a jeweled ring to a merchant named Captain Pedro García for 80 pesos. The final question asserted that the preceding information was all “public and notorious.” Rather than being real questions, each of the preceding “questions” was really a narrative in disguise that presented a summary of events from doña María’s perspective. Doña María “bent the law” here by shaping witness testimony to reinforce a narrative of events that showed her as an innocent victim of her irresponsible, violent husband.

Juan de Rivera did not ask these questions to his witnesses who had given previously ratified testimony, instead asking two new witnesses. Paula de Vargas, an unmarried, 21-year-old woman who said she was Spanish, testified that she had witnessed a vicious attack by Clemente on his wife on the feast day of St. James (July 25). Paula had been visiting her friend doña Juana de la Cruz, in whose house Clemente had been ordered to live by the judge don Alvaro. Around nine in the morning, she heard a loud noise and shouting. Clemente was beating his wife and threatening to take her life away. He started to strangle her. The people in the house intervened, pulling the couple apart. When they finally separated them, doña María had contusions all over her face and

neck. Paula said that she was convinced that if they had not acted, Clemente would have murdered his wife.

The next witness was another baker named Juan Diaz del Pozo, a 55-year old Spaniard. He alleged that because he lived near the house of Juan Gómez, on two separate occasions he had to calm down (*apasiguase*) Clemente and stop him from beating and slapping his wife. In both cases, Clemente had the appearance “and odor” of someone who was drunk. On many other occasions he had seen Clemente drink himself until “he had lost his senses” (*privado de los sentidos*) in local taverns, falling down drunken from the quantity of wine that he had imbibed.

Having finished his interrogations, the defense had its turn to state its questions and question witnesses. Cristobal de Galvez’s questions were shorter and set forth a simple narrative. The second question alleged that Clemente had treated his wife “with complete love and kindness” (*con todo amor y cariño*) and lived in harmony with his wife until her mother doña Lucia arrived to live with them.<sup>128</sup> The hatred and “bad will” (*voluntad*) of his mother-in-law occasioned many fights and conflicts, leading doña María to follow her mother’s advice to file for divorce. Consequently, doña Lucia is the cause of the marital strife. The next question asked the witnesses to affirm that Clemente was not a drunkard and always behaved “well” and like “an honorable man” (*hombre honrado*).

---

<sup>128</sup> The first question asked if the witness knew the defendant and knew of the litigation in process.

Clemente was not able to find any “neutral” witnesses to testify on his behalf. Each of the men that he presented as a witness identified himself as a friend of Clemente; this personal relationship that each of these men shared with Clemente would have limited their effectiveness as witnesses. The first witness was Juan de Campo, the 50 year-old baker that Clemente had once worked for in his bakery. He stated that for the first year of their marriage that Clemente and his wife lived with “much friendship, loving each other and desiring each other like husband and wife.” Juan de Campo even had seen him bring hot chocolate to his wife in bed. When doña Lucia arrived from the village of Tlayacapa to live with the couple, the problems started.<sup>129</sup> After the *alcalde de crimen* don Albaro Faes placed Clemente’s wife in deposit with Juan Gómez, the judge had warned Gómez not to allow any of doña María’s relatives come to see her. One day when doña Lucia tried to visit her daughter, Clemente convinced Juan Gomez to let her enter the house since he wanted “to make peace” with his mother-in-law. Juan Gómez relented, letting her in to chat with her child. Clemente’s generosity backfired, because doña Lucia said something to her daughter that caused her to stop sleeping with Clemente and refuse to talk to him. One night, Clemente asked everyone in the house, “Ladies and Gentlemen, I want to ask you all what cause I have given to my wife that she should no longer love me like she did before when I hold her in esteem as my companion, complying with what God orders me to do.” Doña María replied her husband was poor and did not have 1,000 pesos and for that reason she loathed him. Clemente said that he

---

<sup>129</sup> Doña María’s hometown was a nahua town today in the state of Morelos, to the south of Mexico City.

would leave the city to find his relief and to work wherever God would give him success and return later with his earnings to satisfy what he should do. He instructed her to stay with Juan Gómez, saying that he would pay her debts when he returned. Then he left the house crying and sobbing. Juan Gómez also claimed that when doña María heard that Clemente was returning months later, she got excited and put bows in her hair, dressed up and sat by the window to watch for him.

Gómez claimed that Clemente did not have a drinking problem, and that when he had hired him to run his bakery, he had always behaved responsibly and given him a good profit. The next witness, the Alferez Juan Gutierrez Coronel, was a 25-year-old bakery owner who claimed to be of Spanish descent. He agreed with the question suggesting that doña Lucia was the problem and claimed that she had said that Clemente “was a drunken scoundrel (*pícaro*) not dignified of meriting her daughter.”<sup>130</sup> He claimed that Clemente had no vices, never gets drunk, and that when Clemente worked for him he did an excellent job.

Clemente’s other witnesses belonged to the majority of plebeians and marginal Spaniards that one would recognize from the picaresque works of José Joaquín Fernández de Lizardí. They concurred with the broad outlines of the defense’s narrative, that Clemente and doña María were victims of a mother-in-law determined to destroy her daughter’s marriage.

---

<sup>130</sup> AGN. Indiferente Virreinal, c. 5244, exp. 55v, f. 31, 1664

## Discussion Phase

Having offered adequate proof in the form of witness testimony, the counselors offered their closing arguments and then asked the judge for a determination and sentence for the case. In their closing statements, lawyers emphasized the value and quality of the witnesses that they had presented during the evidence phase.

Juan Rivera began by summarizing the evidence provided by doña María's witnesses. The testimony offered by reliable (*fidedigno*) witnesses of legal age (*maiores*) proved that Clemente had dissipated his wife's dowry, refused to feed and clothe her, and abused her physically and verbally (*de obra como de palabra*).<sup>131</sup> He had also beaten and slapped her repeatedly, going so far as to attempt to murder her by strangling on the feast day of St. James the previous year. Clemente's murderous inclinations presented such a threat to his wife's safety, that the only remedy was divorce and separation.

Rivera also emphasized that each of Clemente's witnesses identified himself as a close friend, making their testimony "suspicious, and not worthy of any particular credit." The personal ties between Clemente and his witnesses nullified their testimony. Concluding that his opponent had no reliable evidence, Rivera asked the judge to move to sentencing and to find in favor of doña María's position.

In his concluding arguments, Cristobal de Galvez acknowledged that the couple had suffered minor disputes in the past, but nothing approaching the level of violence and disorder suggested by doña María's witnesses. These witnesses told exactly the same,

---

<sup>131</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 66, 1664

false story and were not able to prove (*dar raçon*) their claims.<sup>132</sup> Clemente had always treated his wife with “love and good will” attempting to give her what she wanted and needed. He claimed to desire nothing more than to cohabit and live as husband and wife (*hacer vida maridable*) with doña María. The source of their marital conflict was Clemente’s mother-in-law, who had tricked her daughter into filing for divorce and set doña María against her legitimate husband. Additionally, he affirmed the veracity and reliability of Clemente’s witnesses, noting that they were “without defect.”<sup>133</sup> The defense attorney also claimed that Clemente had received no dowry from doña María because there was no written record of its contents. Clemente could not have dissipated a dowry that they cannot prove exists.

After the concluding statements were submitted, a few days later there was a further brief exchange between the lawyers clarifying the preceding points. Juan de Rivera pointed to the pawned dress and ring as evidence of the existence of the dowry, and called on the judge to demand that the pawnbroker Juan Ximenez testify on this matter. The judge approved a subpoena for Juan Ximenez but the notary was not able to find him. Having exhausted their arguments, both advocates called for the vicar general to decree his sentence. The motion to determine the sentence meant that the evidentiary phase of the lawsuit was over, and no further witnesses would be called to testify. The judge accepted the motion, and notified them that if they had to argue something else

---

<sup>132</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 68, 1664

<sup>133</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 68, 1664

related to the lawsuit, they should submit it to him within three days, because after this time he would proceed to the definitive determination.

### **Decision-Making Phase (*sentencia*)**

Judges in both civil and criminal cases used similar principles to determine the sentence. The principle of judicial discretion (*arbitrio judicial*) meant that judges did not have to expound upon their reasoning for a legal decision.<sup>134</sup> This aspect of the Spanish legal tradition allowed judges to make decisions based on legal principles, community standards and common sense. Spanish notions of justice and *equidad* required that each person be given what he deserved.<sup>135</sup> However, ecclesiastical justices were as committed to promoting the heavenly mandate of the church as they were to fulfilling the more mundane demands of secular justice. This meant that sentences in colonial lawsuits were terse declarations that never provided indications as to how the judge had arrived at his decision; consequently we have no way of knowing which legal arguments and witness testimonies the judge found most convincing.

There were several factors that set apart the sentence and made it seem exceptional and authoritative. Sentences were written in first person plural indicating that the determination had the approval of the whole tribunal and not just that of a single judge. The first paragraph indicated the parties involved, the names of their attorneys and the nature of the lawsuit. It also summarized the main arguments of each litigant. The

---

<sup>134</sup> Cutter, *The Legal Culture of Northern New Spain*, 131.

<sup>135</sup> López Alarcón, *Curso De Derecho Matrimonial Canónico Y Concordado*, 423.

second paragraph always contained the determination. To set apart the determination, which always began with the word *Hallamos* (We find) the notary always indented this paragraph about an inch from the left margin. Since sentences were always written on a blank page (*folio*) these two factors meant that sentences stood out from the other documents contained in the case file. This second paragraph indicated in clear terms which side had proven their arguments satisfactorily, and what conclusions the judge had decreed.

After months of deliberation, witness testimony and multiple changes of living arrangements, on July 12, 1664 Dr. Nicolás del Puerto arrived at his definitive sentence about the divorce suit of Clemente Flores and doña Maria del Villar. He decided against the plaintiff, declaring that doña María had not proved her case (*damos la por no probada*) and that Clemente proved his case well (*damoslo por bien probado*).

Consequently, the judge declared:

In consequence of which we should declare and we do declare there is no cause (no have lugar) for the divorce attempted by doña María del Villar and we condemn her, within the nine days following the Notification of this sentence, to cohabit and live in marital life with the said her husband as is her obligation and to respect and obey him in that which is just and convenient, and to be at his service and commands as he is her spouse and husband and comply with this in virtue of holy obedience and under pain of excommunication with warning that not doing it and complying we will proceed to declare said censure and everything else that is allowed by law= and we admonish and command that Clemente Flores receive his wife and received treat her with complete love

and charity without vexing her or abusing her physically or verbally (“*maltratarla de obra o palabra*”) because of this lawsuit...<sup>136</sup>

The Spanish legal tradition emphasized restoring harmony to relationships and promoting justice rather than on punishing the culpable. While finding in Clemente’s favor, it is clear that don Nicolás believed him to have been guilty of mistreating his wife. For this reason the judge warned him to treat her “with complete love” and not abuse her verbally or physically. After the preceding statement, the vicar general also declared that he would not release doña María to Clemente’s custody until he had found another person to pay a deposit to the court and serve as guarantor for her safety.<sup>137</sup> Tellingly, the judge ordered Clemente to pay all of the costs associated with the lawsuit (including his wife’s legal fees). He also held him responsible for doña María’s housing in the *recogimiento* of Santa María Magdalena.

---

<sup>136</sup> The full text reads: Hallamos atento los Autos y meritos del processo a que nos referimos que la dha doña Maria de Villar no probo como debia la dha su demanda (damos la por no probabada) y que el dho Clemente Flores probó bien cumplidamente lo que probar le convino damoslo por bien probado= En consecuencia de lo qual debemos declarar y declaramos no haver lugar el dibocio yntentado pro la dha doña Maria de Villar y la condenamos a que dentro de nueve dias primeros siguientes corran y se quenten desde el de la Notifficaon desta nra sentencia coabite y haga vida maridable con el dho su marido como tiene obligación y le respecte y obedesca en lo dho aquello que fuere justo y conveniente y este a sus ordenes y mandatos como su esposo y marido y lo cumpla en virtud desta obediencia y pena de excomunion mayor con apersebimiento que no lo haciendo y cumpliendo procederemos a declaración de la dha censura y a lo demas que hubiere lugar en dro= y amonestamos y mandamos al dho clemente flores reciva a la dha su muger y recivida la trate con todo amor y caridad sin vexarla ni maltratarla de obra ni de Palabra por Razon de la dha demanda dando primero y ante todas cosas el susodho fianza seguar y abonada de que no la vexara ni molestara en manera alguna y por de effecto de no tratala bien pagar a dho fiador todo aquello en que re condenado= y condenamos en las costas de esta caussa justamente de dhas y en lo que se debiere de pupilaxe del tiempo que hubiera estado la dha doña Maria del Villar en el Recoximiento de santa Maria Magdalena a dho Clemente Flores y por estan re sentencia definitivamente juzgando assi lo probeyo pronunciamos y mandamos...

See AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 74-74v, 1664

<sup>137</sup> AGN. Indiferente Virreinal, c. 5244, exp. 19, f. 74v, 1664

Ecclesiastical judges were more interested in promoting the institution of holy matrimony than they were in protecting the temporal happiness of litigants. Don Nicolás used particularly stern language commanding doña María to obey and serve her husband, in “virtue of holy obedience.” As the judge understood it, a legitimately contracted marriage was indissoluble and the spouses had the obligation to “*hacer vida maridable*” living together, loving each other, engaging in sexual intercourse and raising a family. After sacrament was ratified and consummated, other questions such as the compatibility of the couple were irrelevant. An undesired but valid marriage could thus become a sort of martyrdom, pitting the spouses’ Catholic faith and obedience to the sacrament of marriage against their worldly desires for connubial bliss.

## **APPEALS PROCESS**

Doña María was not interested in martyrdom, but rather in using all of the mechanisms of the law in order to attempt to escape from her husband. The next month her attorney appealed don Nicolás’s decision before the court of appeal for the Archdiocese of Mexico, which was the ecclesiastical tribunal of Puebla de los Angeles.<sup>138</sup> Don Nicolás quickly approved the appeal and instructed his notary to send the case file to Dr. don Miguel de Ibarra Razo, the delegate (*señor delegado*) appointed by the Archbishop of Puebla.

---

<sup>138</sup> In reverse, the Audiencia of Mexico (Mexico City) served as the court of appeals for ecclesiastical lawsuits initiated in Puebla.

By appealing to a different court, doña Maria had in effect begun the second instance (*segunda instancia*) of her divorce suit.<sup>139</sup> The appeals process did not involve any additional proof, but was rather an opportunity for another judicial authority to review the case-file and determine if the sentence should be revoked. Appeals were rarely successful, but that did not seem to stop desperate litigants from attempting them. Juan Rivera filed the appeal on August 21, 1664, and Dr. Miguel de Ibarra began his review three weeks later. On December 13, 1664, the appeals judge arrived at his decision. Like his colleague in Mexico City, don Miguel found against doña María and for Clemente Flores. He repeated don Nicolás's decision almost word-for-word, again instructing doña Maria to obey and serve her husband by virtue of "holy obedience."<sup>140</sup> Doña María had no further legal recourse; this decision was definitive since by virtue of the *patronato* Catholics in Spanish America could not appeal to the Pope. After Clemente's friend Juan Gutiérrez Coronel paid a deposit and swore to be his guarantor, the bailiff, notary public and other officials turned doña María over to his custody. Having lost the case, doña María resigned herself to return to the house of the husband she had spent over a year struggling to divorce.<sup>141</sup>

---

<sup>139</sup> Counting doña María's first, aborted attempt at a divorce petition this could be counted as the third instance.

<sup>140</sup> AGN. Indiferente Virreinal, c. 5244, exp. 93v, f. 68, 1664

<sup>141</sup> This was not the end of the story. Eight years later, doña María placed a completely new demand for divorce before the new vicar general, Dr. don Juan Días de la Barrera. This time Juan Felix de Galvez was representing her, a close relative of Cristobal de Galvez, the attorney who had represented her husband Clemente in the previous iteration of the lawsuit. After presenting a very similar story of abuse and violent attacks by her husband, the judge approved a temporal separation, and ordered the restoration of her dowry and that her husband provide her with a maintenance stipend. What changed? In this new round of accusations, Clemente seemed far less interested in defending himself, to the point that the promotor fiscal

## ***Reconciliation and the Indissolubility of Marriage***

Influenced by the doctrines of *Trent*, ecclesiastical judges took the indissolubility and sacramentality of marriage very seriously. Consequently, they worked hard to promote marital reunion and reconciliation for even very dysfunctional and violent couples. At each phase, ecclesiastical judges worked to persuade, cajole, and even pressure couples into reconciling their problems and resuming conjugal life. They urged couples to try to work out their difficulties in even the most trying circumstances. This secondary role as mediator and marriage counselor of last resort meant that judges were highly reticent to grant perpetual divorces and annulments. Judges sought to force unhappy couples to conform to a Catholic ideal of marital harmony (*vida maridable*) that for many bickering spouses seemed far out of reach. Reconciliation was such an important end of the church's divorce regime that sentences granting legal separations never became final judgments (*res iudicata*).<sup>142</sup> Separation judgments and agreements could always be removed should the couple decide to resume conjugal life.

---

suggested collusion between the unhappy couple. On April 28, 1679, the promotor fiscal Br. Miguel de Perea noted that the lackluster attempt of Clemente to defend himself was unacceptable. He demanded that Clemente mount an adequate defense, for his own good and for the sake of "holy matrimony." In the eight years that lapsed between the first rounds of lawsuits and this new divorce complaint, it seems that Clemente had lost interest in holding onto a wife that was so desperate to leave him. See AGN. Indiferente Virreinal, c. 5244, exp. 93v, f. 158, 1679.

<sup>142</sup> Or cosa juzgada in Spanish. The roman legal principle of *res iudicata* established that certain legal sentences were final and could never be revoked or modified. See Molina Meliá, *Derecho Matrimonial Canónico*, 324.

Ecclesiastical judges stressed reconciliation throughout the entire process, and worked to make reunion the least painful option for feuding couples, principally by making the divorce process as uncomfortable as possible. The procedure for a divorce was intentionally laborious and unpleasant to give couples ample motivations to abandon it and seek reconciliation. In contrast, reconciliation was procedurally simple. The couple had only to submit a short petition signed (if possible) by both parties before a notary indicating their desire to reunite and the plaintiff's decision to withdraw the divorce complaint. With this document, the judge would immediately approve the turnover of the wife from the custody of her place of deposit (such as a *recogimiento*) to her husband.<sup>143</sup>

The reality of the procedural law of divorce assisted judges with this objective. Aggressive defense lawyers “bent the law” by manipulating the time-frames of their responses and making frivolous requests for information that delayed the process. Each phase of the lawsuit was time consuming, due to the fact that each party had to respond to every allegation of the other party, submitting their documents to the judge after a notary had certified it. Lawyers made a loophole out of this aspect of procedural law by delaying responses and extending lawsuits in an attempt to wear out their opponents. Because of the meticulousness of plenary actions, divorce lawsuits were an exercise in endurance, usually took 8-12 months from start to finish.<sup>144</sup> There was a natural lapse of 3-6 days between each response, and judges were very lenient with missed deadlines, almost

---

<sup>143</sup>Find example from expediente where the wife explains why she is withdrawing her divorce petition.

<sup>144</sup> The petitions found in the AGN took between 1 month to 17 years to arrive at a final verdict.

always granting extensions. There was just one case-file containing the documents related to the lawsuit and often the defendant's lawyer would hold onto this file for an excessively long period of time without responding to the prior allegations of the plaintiff's lawyer, thereby delaying the case. This simple tactic would then force the plaintiff to have to send in a formal complaint to the judge demanding that the other turn in the case-file. Judges were quite patient, usually giving several warnings to the tardy lawyers

The penalties for delaying the case were hypothetical at best, with the judge usually giving two or three warnings over the course of several weeks before applying any sanctions. As ecclesiastical judges usually had a busy docket and limited time, getting a simple reply from a judge on a procedural question could often take days or weeks. Should a judge choose to take action, the only remedy for failing to turn the documents in on time would be to excommunicate the lawyer, but magistrates were usually reluctant to impose this penalty, preferring patience to outright confrontation. The delays could be interminable and the overall process so time-consuming that the majority of the cases never arrived to the decision-making phase, the plaintiff having decided to abandon the case before arriving to its conclusion. The most successful tactic for the defendant's lawyer was often to drag the case out for such a long period of time that the plaintiff gave up and consented to reunion or an informal separation behind closed doors.

Judges also pursued their own agenda in the divorce courtroom. In theory, ecclesiastical judges attempted to balance the practical interests of the plaintiff and the defendant, as well as the more theoretical concerns of the institution of matrimony in

reaching a just and equitable sentence. In practice, the interests of marriage as an institution came first. Colonial ecclesiastical judges were committed to the unity and permanence of the marital union, and relatively indifferent to the temporal happiness of the couples that brought lawsuits. Judges contributed to a legal regime in which divorce was a rarity by emphasizing mediation and reunion instead of permanent or temporary separations. By tolerating the defendant's innumerable delays and permitting abuses of procedural law, judges could make it very difficult for a plaintiff to actually bring the case to a conclusion, practically forcing the couple into reconciliation. Because of their desire to promote the indissolubility of marriage, judges always gave the benefit of the doubt to the defendant. For a plaintiff to achieve a divorce, she would require strong, consistent evidence of abuse and need to exercise the patience to see the divorce to its conclusion despite the interminable delays that were endemic to the process. By making the divorce process as uncomfortable and time-consuming as possible, judges and ecclesiastical authorities made reconciliation a comparatively attractive option. The defendant's attorney also had time on his side. By using the vagaries of procedural law to delay the case as much as possible, the defendant's attorney made the process much more onerous than it needed to be. The attorney Christobal de Galvez bent the law by taking advantage of the few practical sanctions that existed for husbands who refused to pay the living expenses of their wives to exert direct financial pressure on the plaintiff. Colonial divorce litigation often became a battle of wits and endurance in which the "truth" of the narrative mattered less than how convincingly it was told.

## ***Conclusion***

Ecclesiastical divorce was a costly remedy to marital conflict that required serious determination and commitment by the plaintiff to have a reasonable chance of success. However, able plaintiffs such as Ysabel de Gúzman and doña María de Villar could “bend the law” by manipulating particular types of evidence and procedural law to their favor. Ysabel de Gúzman used the evidence of her body to bend the law in her favor, proving her husband’s abuse by the visible lacerations on her body. Doña María de Villar did not use her body as evidence, but was nonetheless able to achieve her objective—divorcing her husband after nineteen years and countless hours of legal wrangling. She assembled a compelling “body of evidence” using extensive witness testimony, manipulating procedural law, and engaging in “forum-shopping” in order to earn a hard-won victory in her favor. By moving her case through several legal jurisdictions and endless appeals, doña María proved more adept at bending the law to her will than her husband, who seems to have grown tired of fighting to hold onto a wife whom had nothing but contempt for him.

## Chapter Four

### Defending Their Masculinity: Husbands as Litigants in Marital Lawsuits

Don Pedro Ximenes's spontaneous act of violence condemned him to spend much of 1799 in a grimy cell in the public jail of Mexico City. A poor *mestizo* with wanderlust, don Pedro loved to travel and frequently took lengthy pilgrimages to various devotional sites throughout New Spain. The frequent pilgrim was by no means a perfect Christian; he was a hothead with a reputation for violence, and even his wife called him a “cruel” man. Returning from a six-month trip, he found that his wife doña Ana María Cantillán had taken in a soldier as a boarder during his absence. The sight of another man in his house drove don Pedro into an instantaneous and implacable rage. He pulled out a knife and attacked the soldier, slashing his face and neck twice.<sup>145</sup> Having made his point, don Pedro stopped the attack. He had attacked the soldier to wound, not to kill him and although he had to be hospitalized for several days in the *Hospital General*, the man survived. The authorities quickly apprehended don Pedro and threw him in jail; he did not resist arrest.

As soon as don Pedro was behind bars, his wife attempted to end her tumultuous relationship with her husband.<sup>146</sup> Doña Ana María sought out the advice of an attorney

---

<sup>145</sup> Don Pedro Ximenes v. doña Ana María Cantillán. AGN. Judicial, Vol. 32, exp. 31, fs. 109v, 1799.

<sup>146</sup> Doña Ana María notes his “crueldad” in the petition. Don Pedro Ximenes v. doña Ana María Cantillán. AGN. Judicial, Vol. 32, exp. 31, 1799, 2v.

and together they put together a petition requesting an ecclesiastical divorce.<sup>147</sup> Her petition described in lurid detail the erratic and violent behavior of her husband. Doña Ana María claimed that the brutal attack on the soldier was just one more example of her husband's violent nature. Fearful of his wrath, she had on several instances hidden from him by submerging herself in the nearby lagoon of *Zumpango*.<sup>148</sup> On other occasions she concealed herself on the roof of her house. Her husband had threatened to kill her and treated her with extreme cruelty (*sevicia*).<sup>149</sup>

Beginning with don Pedro's case, this chapter contains an analysis of husbands as litigants in colonial divorce and annulment lawsuits. We will use archival documents to explore what was considered appropriate behavior for husbands during the colonial period and what were the explicit and implicit contractual obligations of husbands in New Spain. We will also examine the economic and social characteristics of husbands involved in marital litigation. Finally, we will consider the roles of husbands as both defendants and plaintiffs in colonial ecclesiastical tribunals.

What inspired don Pedro's spontaneous attack on his wife's boarder? One might interpret the attack as a desperate attempt by don Pedro to preserve his own honor, which had been threatened by the presumption of his wife's adultery. Certainly, if Lope de Vega had written a play about don Pedro and doña Ana María, an obsession about honor would have motivated the husband's violent rage. Given the prominence of the concept of

---

<sup>147</sup> Doña Ana María hired an experienced attorney, the *Licenciado* Pedro Galindo. See *ibid.*

<sup>148</sup> Don Pedro Ximenes v. doña Ana María Cantillán. AGN. Judicial, Vol. 32, exp. 31, fs. 109v, 1799, 3.

<sup>149</sup> *Sevicia* signifies extraordinary cruelty to a servant or subordinate.

honor in the recent historiography of colonial Latin America, one would assume that this concept was fundamental to how colonial Mexicans understood their world.<sup>150</sup> As we have seen, the “honor thesis” of Patricia Seed, Steve Stern, and Richard Boyer suggests that the notion of honor should be key to our understanding of colonial marital relations.<sup>151</sup> Nevertheless, the honor thesis is neither the only nor the best explanation of don Pedro’s behavior. Neither doña Ana María in her divorce petition nor her husband in his response use the principle of honor to explain or justify their behavior. This chapter will consider an alternative thesis; that don Pedro’s actions were motivated by a defense of masculinity rather than of honor. Husbands for the most part do not mention honor in marital litigation until the second half of the eighteenth century. In contrast, there is strong evidence of husbands defending their manhood and masculine identities throughout the colonial period; indeed a defense of masculinity seems to have motivated much of the behavior described in colonial divorce tribunals.

---

<sup>150</sup> Mark A. Burkholder, “Honor and Honors in Colonial Latin America,” in *The Faces of Honor : Sex, Shame, and Violence in Colonial Latin America* (Albuquerque, NM: University of New Mexico Press, 1998), x, 240 p.

Seed, *To Love, Honor, and Obey in Colonial Mexico : Conflicts over Marriage Choice, 1574-1821*.

Ann Twinam, *Public Lives, Private Secrets : Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford, Calif.: Stanford University Press, 1999).

Uribe-Uran, *Honorable Lives : Lawyers, Family, and Politics in Colombia, 1780-1850*.

<sup>151</sup> For more on the historiography of honor, see the introduction pages 15-19.

## ***The “Honor” Thesis***

If the honor thesis is correct then one should expect strong archival evidence of honor’s centrality throughout the colonial era. One would expect that divorce and annulment petitions would be excellent primary sources to study honor, since they deal directly with conflicts between husbands and wives motivated by physical abuse, insults, and abandonment by one or both parties. One would thus expect marital conflict to provide an excellent space for the shaping and contestation of the discourses of honor of colonial men and women. Yet surprisingly, honor is infrequently mentioned in these primary sources. Until the second half of the eighteenth century, honor seems to be almost like an afterthought, only occasionally mentioned in the discourses of colonial marital litigation. Finally, at the end of the eighteenth century, there was a significant spike in the number of litigants who mention their honor. Even so, in the majority of cases, even in late colonial Mexico, honor goes unmentioned. My research suggests that, at least in the discourse related to divorce, honor was of negligible importance until the later part of the eighteenth century, and even in the late eighteenth century never rose to critical importance. By overemphasizing honor, historians are understating other more critical factors, such as notions of masculine and feminine identity, which did affect the daily lives of *novohispanos*.

A keyword analysis using the text of the 110 petitions for divorce and annulment from the seventeenth century and 32 divorce petitions from the eighteenth century found

surprising patterns.<sup>152</sup> Looking for the terms “honor” or “onor” (an alternative spelling) produced 9 results from the eighteenth century. The results were clustered around the last two decades of the eighteenth century, with the earliest case occurring in 1760. There were no eighteenth century cases before 1760. Seventeenth century cases were even more rare. The only direct reference to honor in a seventeenth century case was the case of María de Santillán, who in 1643 accused her husband Francisco López de Arica of having called her “a vile, ill-birtherd woman” (*muger vil rium mal nacida*).<sup>153</sup> María claimed that these insults “damaged her honor” (*haciendola injurias en su onor*).<sup>154</sup>

A key word search for other terms associated with the concept of honor also turned up relatively few results. The word “honrado” just turned up in the case of Clemente Flores and Doña María de Villar from 1663.<sup>155</sup> “Honrada” a term normally used to describe an honorable woman turned up one more result from the seventeenth century in the case of María de San Juan in 1649. María claimed to be “an honorable, married person” on several occasions throughout the case.<sup>156</sup>

Some men made a rather cynical use of the language of honor in order to avoid punishment or dispute the claims against them by their wives. For instance, when the drunken baker Clemente Flores was taken before the municipal magistrate (*alcalde de*

---

<sup>152</sup> The database consisted of the complete text of initial divorce petitions for more than 110 divorce petitions in the sixteenth and seventeenth centuries and 32 from the eighteenth century, as well as 64 annulment petitions from the sixteenth and seventeenth centuries.

<sup>153</sup> María de Santillán v. Francisco de López Arica. AGN, Indiferente Virreinal, Caja 1502, exp. 8, 1643, 2.

<sup>154</sup> María de Santillán v. Francisco de López Arica. AGN, Indiferente Virreinal, Caja 1502, exp. 8, 1643, 2.

<sup>155</sup> Doña María de Villar v. Clemente Flores. AGN, Indiferente Virreinal, Caja 5244, exp. 19, 1663, 51.

<sup>156</sup> María de San Juan v. Leandro del Campo, AGN, Matrimonios, Vol. 172, exp. 180, 1649, 2.

*barrio*) he claimed to be an “honorable man, of obligations” (*hombre honrado de obligaciones*).<sup>157</sup> He also claimed to be an “honorable man, virtuous, and hardworking” (*hombre honrado, virtuoso amigo de su trabajo*). But if honor existed as a coherent category, Clemente Flores did not have it. He was a dissolute picaresque character who associated with thieves and pimps and spent his meager wages on wine and gambling. In this case it seems more likely that Clemente made claims that he was honorable and respectable in order to escape punishment. It worked, as the magistrate only gave him a warning to stop abusing his wife and then sent him on his way.

Elite litigants from the late eighteenth century presented the most elaborate discourses of honor. After being accused by her husband of having an adulterous affair with a friar, doña Nicholasa Teresa Martínez’s lawyer challenged the accusations by arguing that his client was “honorable” (*honrada*).<sup>158</sup> Doña Nicholas was an “honest lady, of virtue and reserve” (*señora honesta de virtud y recojimiento*) who had her honor attacked without justification by her husband, don José Joaquín Echeverría.<sup>159</sup> The advocate then placed don José Joaquín in a rhetorical trap, arguing that “men of honor” isolate and seclude their wives whenever they have doubts about a particular “friendship.”<sup>160</sup> Honorable husbands thus provide a “remedy” to remove their wives’

---

<sup>157</sup> Doña María de Villar v. Clemente Flores. AGN, Indiferente Virreinal, caja 5244, exp. 19, 1663, 53v.

<sup>158</sup> Don José de Echeverría v. Doña Nicholasa. AGN, Bienes Nacionales, Vol. 870, exp. 3, 1775, 248.

<sup>159</sup> Don José de Echeverría v. Doña Nicholasa. AGN, Bienes Nacionales, Vol. 870, exp. 3, 1775, 250.

<sup>160</sup> Don José de Echeverría v. Doña Nicholasa. AGN, Bienes Nacionales, Vol. 870, exp. 3, 1775, 246v. “Los hombres **dehonor** por poco que tengan, lo que hacen en semejantes lances es que en observando algun mal indicio tratan antes de que pase adelante la sospecha removerlas ocaziones, poniendo los remedios posibles para evitar la realisar de sus temores. Debió Echeverría si hubiera prosediso con zelo de su **honrra** ya que en su herrado concepto estaba preocupado de la mala amistad, retirarse a los primeros

occasion for misbehavior, thereby preventing the “realization of their fears.” Since don José had made no attempt to seclude his wife from what he believed to be the “bad friendship” of Friar Diego de San Alberto, then either his jealous insults were baseless, or he was a man without honor. Don José’s insults were a threat to the priest’s reputation and thus required a public apology to “restore” the friar’s honor.<sup>161</sup>

The case of doña María Martínez is one of the few divorce or annulment cases in which the notion of honor takes center stage. Most cases that mention honor mention it only in passing; honor seems to have been far from a central concern of litigants. For instance, in describing the daily arguments between doña Juana Gutiérrez and don Fernando Noval y Bolde, a family friend named Barbara Montesinos argued that their “disputes damaged the honor of one to the other.”<sup>162</sup> Later, doña Juana stated that by committing adultery her husband had “aggravated” her honor.<sup>163</sup> Similarly in 1796, Matilde Gertrudis also accused her husband of having committed “defamation” of her honor because of his infidelity.<sup>164</sup>

The infrequent use of discourses of honor in marital litigation suggests that the current historiography overemphasizes the importance of honor as a principle for daily

---

lances de la Hazienda evitando dar una campanada con sus escandalos, y atropellar la honrrades de su esposa, y de su Casa”

<sup>161</sup> Don José de Echeverría v. Doña Nicholasa. AGN, Bienes Nacionales, Vol. 870, exp. 3, 1775, 251v.

<sup>162</sup> Doña Juana Gutiérrez v. Don Fernando Noval y Bolde, AGN, Matrimonios, Vol. 67, exp. 27, 1786, 149v.

<sup>163</sup> Doña Juana Gutiérrez v. Don Fernando Noval y Bolde, AGN, Matrimonios, Vol. 67, exp. 27, 1786, 149v, 150.

<sup>164</sup> Matilde Gertrudis Romero v. Manuel Fernandez, AGN, Civil, Exp. 5, 1796, 148.

life. Until the middle of the eighteenth century, there is little mention of honor in divorce and annulment petitions. Honor made its first significant appearance in the marital lawsuits in the 1760s, and was increasingly used by petitioners of all social classes two decades later. I argue that this significant change in the deployment of discourses of honor has to do with other changes in colonial Mexican society. In the early eighteenth-century, the new Bourbon dynasty began the implementation of a series of legal, economic, and social reforms that had profound effects and were collectively known as the Bourbon Reforms.<sup>165</sup> The Bourbon movement towards secularization, increased bureaucratic control, and reduced corruption probably also led many of His Majesty's subjects in New Spain to reconsider their position in society. The paradox of increased social mobility and a strong influx of foreign appointees to political positions threatened the traditional hierarchical social relationships. The Bourbon reforms, by upsetting the balance that had previously existed in *Novohispano* society, made possible a significant change to how some Novohispano men saw themselves. This change was most pronounced in the large cities of New Spain, especially in the metropolis of Mexico City. This change in perspective was also much more likely to affect men of the "middling

---

<sup>165</sup> Dora Dávila Mendoza's work on eighteenth century divorce uses ecclesiastical divorce to show a movement towards secularization in the context of the Bourbon reforms. Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*.

For more on the Bourbon Reforms, see:

D. A. Brading, *The First America : the Spanish Monarchy, Creole Patriots, and the Liberal State, 1492-1867* (Cambridge [England] ; New York: Cambridge University Press, 1991); D. A. Brading, *Church and State in Bourbon Mexico : the Diocese of Michoacán, 1749-1810* (Cambridge ; New York: Cambridge University Press, 1994); Brian R. Hamnett, *The Mexican Bureaucracy Before the Bourbon Reforms, 1700-1770 : a Study in the Limitations of Absolutism* (Glasgow: Institute of Latin American Studies, University of Glasgow, 1979); Pamela Voekel, *Alone Before God : the Religious Origins of Modernity in Mexico* (Durham: Duke University Press, 2002).

sorts”—small merchants, low level bureaucrats, artisans and highly-skilled laborers who now viewed themselves as subjects of a new, reform-minded crown. Consequently, some individuals began to feel comfortable with claiming the social privileges of the former elite, such as the idea of honor. Still, despite the romantic presence of honor in early modern dramatic works and in a few high profile legal cases, the concept of honor did not shape colonial men’s lives to the same extent as the constant, never-ending requirement to internalize, externalize and perform a certain type of masculinity. Men’s defense of their own masculine identity was a larger issue that subsumed and overshadowed questions of honor throughout the colonial era. Honor was a value system or code of principles that seems to have affected more how people talked than how they lived. There was little verisimilitude between the sort of rigid application of honor that existed in *Siglo de Oro* drama and how colonial men and women experienced the notion of honor on a daily basis. In contrast, the notion of masculinity and a desire to defend one’s manhood to an extent structured the day-to-day lives of colonial men. The defense of manhood could motivate men to beat their wives or work hard to support them; it could motivate acts of bravery or inspire acts of cruelty. Notions of masculinity are thus key to understanding men’s behavior in colonial marital disputes.

## ***Masculinity and the Defense of Manhood***

Most Latin American historians who deal with gender recognize the importance of Joan Scott's representation of gender as a useful category of analysis.<sup>166</sup> If historians are to take Joan Scott's notion seriously, then the idea of masculinity becomes as relevant a category of analysis as femininity, and the study of men as men should be as key to the history of colonial America as the study of women as women. Yet, few colonial Latin American historians have dealt with masculinity as a key category of analysis.<sup>167</sup> While colonial archival documents contain clear evidence of discourses of masculinity, this topic has attracted far less interest by researchers than the concept of honor. Marital conflict provides an excellent site to explore notions of men's identity and masculinity because the threat of divorce or annulment challenged husbands to justify their actions in the context of Catholic notions of how husbands were supposed to behave.

Men in New Spain had to act in a particular manner in order to justify their claims to manhood. In this sense, their masculine identity depended on a performance of a particular set of behaviors in public and private.<sup>168</sup> The anthropologist Mathew Gutmann argues that there are four key concepts of masculinity:

---

<sup>166</sup> Scott, "Gender."

<sup>167</sup> For some notable exceptions, in addition to the literature discussed below, see Clendinnen, *The Aztecs*; Premo, *Children of the Father King*. Others who have dealt with masculinity have made this category of analysis subservient to the category of honor.

<sup>168</sup> Thus, men can be said to be "performing" their masculinity. As Judith Butler argues, "gender proves to be performative—that is, constituting the identity it is purported to be. In this sense, gender is always a doing, though not a doing by a subject who might be said to preexist the deed." Butler, *Gender Trouble*, 25.

*The first concept of masculinity holds that it is, by definition, anything that men think and do. The second is that masculinity is anything men think and do to be men. The third is that some men are inherently or by ascription considered "more manly" than other men. The final manner of approaching masculinity emphasizes the general and central importance of male-female relations, so that masculinity is considered anything that women are not.*<sup>169</sup>

Patricia Seed claims that the seventeenth- and eighteenth-century Spanish empire was "dominated by hyper-masculinity and displays of strength."<sup>170</sup> Other scholars have analyzed discourses of masculinity in the context of power. Pete Sigal argues that the colonial Maya maintained power "through a masculinized discourse which asserted the political, social, and cultural control of noblemen over all others."<sup>171</sup> Similarly, Sigal argues that notions of masculinity defined what it meant to be a "successful" man in colonial society. The successful man's masculinity was proven "through valor in warfare, business, or some similar activity, and through social status."<sup>172</sup> Steve Stern argues that much violence was the result of subaltern and elite men's attempts to defend their own sense of manhood. Elite men affirmed their masculinity by taking and exploiting subaltern women, while subaltern men defended their masculinity by dominating and demanding the obedience of "their" women and children. For Stern, colonial Mexican women became a sort of property, a "gender holding" to be fought over by men.

---

<sup>169</sup> Matthew C. Gutmann, "TRAFFICKING IN MEN: The Anthropology of Masculinity," *Annual Review of Anthropology* 26, no. 1 (1997): 386.

<sup>170</sup> P. Seed, "Narratives of Don Juan: The Language of Seduction in Seventeenth-Century Hispanic Literature and Society," *Journal of Social History* 26, no. 4 (June 1, 1993): 755.

<sup>171</sup> Sigal, *Infamous Desire : Male Homosexuality in Colonial Latin America*, 14.

<sup>172</sup> *Ibid.*, 3.

We can thus interpret don Pedro Ximenes's seemingly irrational outburst of violence as a defense of his masculinity. Despite the honorific "don" which by the eighteenth century had lost its value as an identifier of elite status, don Pedro and his wife always lived on the edge of poverty, an economic situation that was likely not helped by his wanderlust and general lack of industry. Still, his wife's acceptance of a male boarder threatened his sense of manhood in two ways. First, by taking a boarder without his approval, doña Ana María was tacitly acknowledging the fact that her husband did not or could not provide her with adequate sustenance, one of his key responsibilities as a husband. Second, by letting another young man into their small house, she was opening herself up to accusations of adultery, and don Pedro of being a cuckold, not man enough to compel the sexual fidelity of his wife. And it was probably worse that the man that his wife took on was a soldier; a profession characterized by violence, valor and hierarchy. By attacking the soldier, don Pedro defended a gender hierarchy that had been upset by his wife's action. He used violence not to defend his personal honor or the honor of the family, but to reassert himself as both the leader of his household and a strong man who could dominate other men. However, when don Pedro attacked the boarder, he never lost control. His slashing attack appears to have been designed to wound rather than kill, and he stopped the attack once he had established his dominance over the victim. For the same reason, he did not flee after the attack, but rather waited calmly for the authorities to arrest him. By defeating the soldier in a rather one-sided combat, he proved his masculine dominance to his wife and anyone else who heard the story.

Don Pedro was not the only plebian husband to commit a seemingly “random” act of violence. Ignacio Lorenzo also used violence to reaffirm his masculine identity. Ignacio was an Indian from Tezontepec (in present-day Hidalgo) whose wife sued him in 1790 for divorce on the grounds of his perpetual drunkenness and physical abuse.<sup>173</sup> During his deposition in the course of the divorce lawsuit with his wife he presented the finger of his friend Andrés Antonio, who had lost that appendage and received a slash to the face in a recent fight. Ignacio claimed that while he was away traveling, his neighbor Joaquín Castillo seduced his wife. As soon as Ignacio returned, Joaquín’s wife Petra Antonia told him angrily about his wife’s adultery. Ignacio then went to Joaquín’s house to confront him. Once Joaquín found out that his wife had denounced him, he threatened her with a dagger and beat her savagely. Petra’s brother Andrés and Lorenzo rushed to the woman’s defense and fought with the aggressor, resulting in Andrés’s wound.

If the dispute between Ignacio and Andrés was about gender right, as Stern might claim, then the violent result was unsurprising. Stern emphasizes that disputes over gender right, such as male-claimed dominion over subordinate females, often spurred savage violence.<sup>174</sup> In this case, the dispute stemmed from a challenge to Ignacio’s claim to the sexual fidelity of his wife. Additionally, when threatened by her husband, Petra responded as Stern might have predicted, by relying on the protection of other men (in this case her brother and her neighbor). This tactic, which Stern calls the “pluralization

---

<sup>173</sup> Rita de Ávila v. Ignacio Lorenzo. AGN. Bienes nacionales, 292, 25, fol. 1-7V, 1790.

<sup>174</sup> Stern, *The Secret History of Gender : Women, Men, and Power in Late Colonial Mexico*, 299.

of patriarchs,” allowed Petra to put restrictions on her husband's authority.<sup>175</sup> However, perhaps the most surprising aspect of this case was that what started the most brutal violence was not the fact of adultery itself, but that Petra had betrayed her husband Joaquín by reporting his adulterous misbehavior to the victim of the adultery, Ignacio Lorenzo. This case seems to affirm the so-called “double-standard” of sexual fidelity characteristic of Latin American *machismo*. Writing about homicide in central Mexico, William Taylor writes that in the colonial era sometimes “no apparent underlying dispute beyond Machismo” led to violence.<sup>176</sup> *Machismo* allowed men to have affairs and be promiscuous while imposing strict standards of sexual fidelity on married women and virginity on unmarried women. Since the Catholic Church required sexual fidelity by both husband and wife, this is one example in which popular notions of masculinity clashed with Catholic ideology. According to the ethic of *machismo*, despite her husband’s adultery Petrona Antonia was not permitted to “tell on” her husband without showing disloyalty and insubordination. And disloyalty required a violent response.

### ***Gentle Patriarchs: Husbandly Authority and the Church***

Within the family, the role of men as husbands and fathers was critically important. The Spanish legal principle of *patria potestad*, or paternal custody meant that husbands’ authority over their families and the custody of their children was codified in

---

<sup>175</sup> Ibid., 300.

<sup>176</sup> William B. Taylor, *Drinking, Homicide & Rebellion in Colonial Mexican Villages* (Stanford: Stanford University Press, 1979), 110.

the law.<sup>177</sup> Despite the considerable authority that was placed in their hands, many husbands did not live up to their familial responsibilities. Husbands caused problems by excessively beating their wives, spending too much of their money on lovers, inadequately feeding and clothing their offspring, or abandoning their families for months or years at a time.<sup>178</sup> In order to compel their husbands to treat them better, wives frequently resorted to the masculine authority of other men, including their brothers, fathers, neighbors, and priests.<sup>179</sup> The two ultimate patriarchal institutions of the colonial world, the Catholic Church and the crown, strengthened their authority by supporting a refined discourse of patriarchy that tempered masculine authority with Christian love. To support this project at once idealistic and convenient to the interests of Spanish authorities, the church made ecclesiastical courts accessible by waiving most fees for legal processes related to the family and marriage and making legal representation available to the poor.<sup>180</sup> The church curtailed the patriarchal authority of husbands by interfering in the domestic government of their households. Ecclesiastical courts heard testimony from neighbors, servants, and children in addition to the married couple. Judges acted on the behalf of abused or abandoned wives, awarding them financial

---

<sup>177</sup> Silvia M. Arrom, "Changes in Mexican Family Law in the Nineteenth Century: The Civil Codes of 1870 and 1884," *Journal of Family History* 10, no. 3 (September 1, 1985): 307.

<sup>178</sup> Steve Stern argues that some misbehavior by husbands was tolerated as long as it was not excessive. Husbands could have mistresses and spend money on them as long as it was not public and did not threaten the family's standard of living. See Stern, *The Secret History of Gender: Women, Men, and Power in Late Colonial Mexico*, 82.

<sup>179</sup> Steve Stern calls this process the "battle of the patriarchs." See *Ibid.*

<sup>180</sup> The same *procuradores* that represented wealthy clients represented poor clients on a pro bono basis. However wealthy clients tended to have longer case files meaning that as paying clients they received more attention than the pro-bono clients.

damages and pensions, and imprisoning and even occasionally excommunicating misbehaving husbands.

The church was particularly interested in regulating the conduct of elite men. While the Church was chary about dissolving marriages or authorizing legal separations, church courts nonetheless circumscribed the patriarchal authority of powerful elite men by forcing them to acknowledge church-defined standards of proper conduct. By hearing and considering the testimony of women, servants, and others, ecclesiastical courts supported the rights of social subordinates to opine on the bad behavior of their masters. This process served to reinforce the Catholic Church as the arbiter of moral standards and appropriate conduct and to expand the patriarchal authority of church and crown at the expense of that of elite men.

For husbands who challenged their wives' divorce petitions, marital litigation could represent a threat not just to their lifestyles but also to their identities as men. Through their discourses about manhood, colonial husbands suggest an ideal masculinity. Husbands engaged in a concerted defense of their manhood whether they were litigants or defendants in divorce trials.

Husbands and wives in New Spain had very clear expectations of their spouses. Most marital discord seems to have resulted from a failure of one or both spouses to live up to the standards established by public discourses of marriage.<sup>181</sup> Asunción Lavrín

---

<sup>181</sup> Lavrín, *Sexuality and Marriage in Colonial Latin America*, 349.

suggests that there were four major expectations of a husband's behavior in marriage.<sup>182</sup>

First, he had to provide economic support (food, clothes, and housing) for his wife and family. Second, he had to "respect the wife's person" meaning no unjustified physical abuse. Some wives and the general community seem to have tolerated mild physical correction under certain circumstances. Next, "propriety in sexual relations"; this meant that he must not make excessive or perverted sexual demands on his wife. Finally, sexual fidelity to his wife; some wives and the community tolerated occasional, discrete affairs, but open and hence scandalous adultery was unacceptable as humiliating to the wife.<sup>183</sup>

The expectations of appropriate behavior by husbands and wives were gendered, hierarchical and clearly defined. When one or both spouses broke this implicit contract, a state of disharmony, often known as *la mala vida*, resulted.<sup>184</sup> For the wife, marital discord could result in frequent and severe beatings from her husband. For the husband, *la mala vida* could lead to his wife running off or neglecting the affairs of their household.<sup>185</sup> For instance, in 1688 Josepha de Sotomaior claimed in her divorce lawsuit that her informal separation from her husband had been because her husband had given her "mala vida." She had filed for divorce because "she had received notice" that the vicar general would impose sanctions on those married couples that lived separately

---

<sup>182</sup> Lavrin, "Review: Estructuras, personalidades y mentalidades populares: la nueva historiografía de la iglesia en México," 349.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid., 20.

<sup>185</sup> Richard Boyer suggests running away was often a wife's most potent weapon against her abusive husband. Boyer, *Lives of the Bigamists*, 134.

without a formal order.<sup>186</sup> Her husband committed adultery and had children by other women, but what had most inspired the “mala vida” was that although he had “promised” before there were married not to take her from her home in Mexico City, soon after they got married he had forced her to move to an Indian town (*pueblo de indios*).<sup>187</sup> In the *pueblo* she suffered from extreme loneliness and her husband’s abuse, factors that motivated her to leave him and return home to the city.

Because of their social preeminence and superior position in the gender hierarchy, husbands were in a position to make more stringent demands on their wives. These demands varied according to the economic power and social position of the couple. According to popular standards of gendered behavior, the ideal wife was *recogida*: reserved, quiet, and respectful in her behavior. To show this trait, she would go out in public as little as possible, and if she had to go out would be escorted by her husband or some other male family member. Wives showed deference and obedience to their husbands. They administered the home by directing servants or preparing food for their families, cleaning, and sewing. Good wives were unquestionably faithful and never flirted with strangers. However, a good wife always paid the marital debt of sexual intercourse (*el deber*) whenever her husband asked, provided he avoided excesses and

---

<sup>186</sup> a mi noticia a llegado como V. fue servido de mandar se fixasse censura para que todos los casados que no hacen vida maridable

<sup>187</sup> Josepha de Sotomaior v. Juan de Herrera. AGN, Matrimonios, Caja 4605, exp 4, 1688, 1.

perversions. They raised and cared for children, always taking care to provide a good example for the young ones.<sup>188</sup>

**Table 10: Professions of Husbands in Divorce Lawsuits**

<b>Name</b>	<b>Occupation</b>	<b>Year</b>
Francisco de Aguilar	Barber	1617
Don Antonio Sosa de Castro	Knight of the Order of Christ	1676
Pedro de Urrutia	Transportation	1674
Cristobal de Aguirre	Bakery owner	1693
Juan de Arenas	Slave	1667
Don Juan de Abendaño	Scribe of his majesty	1689
Juan Grassia	Governor	1661
Simón Pérez	Ironworker	1631
Diego de Avila Salazar	Laborer	1624
Diego Hortis	Master Tailor	1684
Joseph de Reinoso	Master Silversmith	1690
Sebastian Bas de Acevedo	Ship captain, merchant	1649
Clemente Flores Sarmiento	Bakery manager	1670
Juan de Aguilera	Merchant	1602
Francisco Rojo	Merchant	1681
Lorenzo Yañez	Miner	1656
Alonso López Nieto	Unemployed	1617
Gaspar Valdes	Regidor of Puebla	1604
Leandro de Parras	Sergeant	1693
Mathías Perez	Soldier	1696
Antonio Mendez	Spinner of golden fabric	1623
Juan Lopez de Montalvo	General store owner	1667
Christobal de Buendía	blanket maker	1659
Antonio de la Cruz	Shoemaker	1559-1594

---

<sup>188</sup> Lisa Vollendorf, *The Lives of Women: A New History of Inquisitional Spain* (Vanderbilt University Press, 2005), 172.

**Table 11: Professions of Husbands in Annulment Lawsuits**

<b>Name</b>	<b>Occupation</b>	<b>Year</b>
Marcial Enriques de Camillas	Ensign	1633
Don Cristobal de Bonilla	Knight of the Order of Santiago	1657
Francisco Magaña	Captain	1641
Joseph de Vergara	Accountant	1696
Nicolas de Vargas	Slave	1689-1690
Nicolas Ramirez	Slave	1690
Juan de la Cruz	Slave	1666
Balthasar Simon	Jacket-maker	1617
Domingo de Morales	Merchant	1665
Francisco Diego (Francisco Nicolas)	Baker	1664
Diego	Bacon-maker	1644

### ***Economic Support of Husbands: Providers or Scoundrels***

Good husbands provided for their families. The idea of husbands as providers appears repeatedly in the discourse of divorce and annulment lawsuits. Being a provider was a defining characteristic of colonial men's masculine identity. Husbands were supposed to support their wives and children, providing them with the food, clothing, and

housing needed for a dignified existence. In her divorce lawsuit against Joseph de Reinoso on the grounds of neglect, doña María de Xerez cited her husband's "principal obligation to feed and clothe her according to her social status."<sup>189</sup> Similarly, after denying María Josefa de Garza's divorce petition, the ecclesiastical judge Licentiate José Rivero reminded her husband of his essential obligations. He urged her husband to "treat well his wife, give her an honest life, and cohabit with her, and feed her, and give her what she needs."<sup>190</sup>

Husbands from a wide variety of economic backgrounds ended up in marital litigation. As tables 10 and 11 show, both elite and plebeian occupations show up in the list of professions of male litigants in divorce and annulment lawsuits. For instance, don Cristóbal de Bonilla, who was sued for annulment in 1657, was a Knight of Santiago (Caballero de Santiago), an elite organization that traced its origins to Asturias and early *Reconquista* Spain.<sup>191</sup> Knights of Santiago were supposed to all be of unblemished, old Christian heritage and wealthy enough to not have to work for money. Another elite litigant was don Antonio Sosa de Castro. He was a Knight of the Order of Christ (*Caballero del Orden de Cristo*). Gaspar Valdés (sued for divorce in 1604) was a *regidor* of Puebla, a town-councilman in the second-most important city of New Spain. Similarly, Juan Grassia was a governor, one of the highest-ranking officials of New Spain.

---

<sup>189</sup> Doña María de Xerez y Frias v. Joseph de Reinoso. AGN, Matrimonios, Vol. 193, exp 12, 2.

"principal obligación de sustentarla, vestirla conforme a la proporción de su estado y caudal"

<sup>190</sup> doña María Josefa de Garza v. don Bernardo Iturrieta. AGN, Bienes Nacionales, Vol. 655, exp. 1, 1794.

<sup>191</sup> Enrique Gallego Blanco, *The Rule of the Spanish Military Order of St. James* (Brill Archive, 1971), 4.

Other litigants were of the “middling sorts”: individuals of some property but no real influence. For instance, Cristóbal de Aguirre, who was sued for divorce in 1693, was a bakery owner. Juan López de Montalvo owned a general store in Mexico City. Sued for an annulment in 1696, Joseph de Vergara would have had little trouble explaining the monetary value of the contents of his wife’s dowry letter; he was an accountant.

Plebeians also made a strong showing as litigants in divorce and annulment cases. The fact that both Nicolás Ramirez and Juan de la Cruz were slaves bound to serve their masters did not keep their wives from suing them for annulments. Their Catholic marriages were as valid or invalid as the marriage of any free person, and they too had to make do with the complexity of the post-Trent canon law of marriage. The majority of divorce and annulment lawsuits (77%) fail to mention the precise profession of the male litigant, but this tells us more about the brevity and incompleteness of the case-file rather than about joblessness or any lack of concern about wealth and employment on the part of the magistrates. Many of the husbands stated their profession or where they worked at some point in the trial, such as during the initial petition or witness depositions. Alonso López Nieto was a marginal character who belonged to the sizable class of impoverished Spaniards in seventeenth-century New Spain; he was blessed with “purity of blood” (*pureza de sangre*), freedom and whiteness, but cursed with poverty, ignorance and unemployment. Social status and caste was no impediment to ending up in divorce court.

The amount of maintenance a wife was entitled to would vary depending on her social status. In 1780, Captain Agustín de Villanueva Altamirano referred to the “very

adequate” maintenance he was paying to his wife, “sufficient to maintain herself with honor in her father’s house.”<sup>192</sup> He had expelled his “incorrigible” wife from “his company” and sent her to live with her father because of her “vice of drunkenness” (*torpe vizio de la ebriedad*) He also criticized his wife as an irresponsible spendthrift, with a “big mouth to ask for more money.” Instead of taking care of her children, who were not “under her responsibility,” she spent all the money on herself. This meant that the Captain solely maintained their children, with “all of their expenses” accruing on his account, since they lived in his house.<sup>193</sup> He also paid his children’s tuition at school (*colegio*) to advance their educations and improve their knowledge of the liberal arts (*buenas letras*).<sup>194</sup> In his divorce petition, Captain Agustín mobilized a gendered notion of responsibility. Key to his masculine identity as “honorable” husband and father was the notion of being a good provider. He maintained his wife “with Honor” despite his obvious anger at her bad behavior. Additionally, as father he provided for their children’s basic needs and “directed” their educations, giving them everything that his “public persona” and the “notorious luster of his Lineage” necessitated.<sup>195</sup>

Captain Agustín was not the only husband to resent the ingratitude of his wife.

---

<sup>192</sup> “la puse en su Casa con la asignacion primero de treinta, y despues acesesi a quarenta por Mensuales asignación mui competente para poderse mantener con **Onor** a el lado de su Padre”

Captain don Agustín de Villanueva Altamirano y Barrientos v. doña Francisca García de Figueroa. AGN, Matrimonios, Vol. 67, exp. 19, 1780, 61.

<sup>193</sup> Captain don Agustín de Villanueva Altamirano y Barrientos v. doña Francisca García de Figueroa. AGN, Matrimonios, Vol. 67, exp. 19, 1780, 61.

<sup>194</sup> Captain don Agustín de Villanueva Altamirano y Barrientos v. doña Francisca García de Figueroa. AGN, Matrimonios, Vol. 67, exp. 19, 1780, 61.

<sup>195</sup> Captain don Agustín de Villanueva Altamirano y Barrientos v. doña Francisca García de Figueroa. AGN, Matrimonios, Vol. 67, exp. 19, 1780, 61.

Husbands contended that they were owed gratitude and good behavior for having adequately maintained their wives. José Grediaga argued that doña Ignacia Gil de Rosas's had filed for an annulment in order to lock him out of the "administration of her property." He argued that the annulment petition was a gambit by his wife to "make money" after having spent all of don José's property, which he had "sacrificed by gifting her his particular holdings."<sup>196</sup> Don José's accusations against doña Ignacia were very similar to the accusations leveled by Captain Agustín against his wife. Having sued her generous husband for annulment was the "confirmation or seal of her perverse heart and fierce ungratefulness."<sup>197</sup>

Other husbands willfully denied or even inverted this characteristic of masculine identity. Some husbands consciously embraced a picaresque identity; they were self-identified scoundrels who joyously rejected the obligations of manhood for hedonistic or selfish reasons. After having married María de León, Salvador Ponse refused to maintain her. During the engagement Salvador had claimed to be "a hard working man, with all his deals up to date" but after the wedding he changed his tune.<sup>198</sup> In her initial petition for divorce, María de León claimed Salvador had openly rejected his responsibility as a man to maintain his family. Salvador had suggested that María should go to work to

---

<sup>196</sup> "después de haver sacrificado en su obsequio todos mis peculiares intereses, que no eran pocos; después de haver ella disipado los suyos, adquiridos o cobrados a mis expensas y personales fatigas y actividad, en continuas embriagueces; y después"

doña Ignacia Gil de Rosas v. José Grediaga. AGN, Bienes Nacionales, Vol. 655, exp. 9, 1794.

<sup>197</sup> "Este es el ultimo pago o correspondencia que he debido a mi muger en confirmación o sello de su perverso corazón y fiera ingratitud"

doña Ignacia Gil de Rosas v. José Grediaga. AGN, Bienes Nacionales, Vol. 655, exp. 9, 1794.

<sup>198</sup> María de León v. Salvador Ponse. AGN, Vol. 139, exp. 39, 1.

maintain him, and that she should “find a way to support him and pay for the house; other women do it and maintain their husbands.”<sup>199</sup> Salvador’s inversion of the masculine duty of the husband to maintain his wife and family seems to have particularly caused María consternation. If she did not agree with his proposal, Salvador suggested that the “ultimate remedy” would be to kill her and flee to far away lands. Salvador seems to have embraced a complete reversal of the standard masculine identity of husband as provider.<sup>200</sup> Rather than working to support his wife, he expected his wife to support him. Even his threat to kill María shows this inversion, since he would refuse to take responsibility for having murdered his wife but rather “flee to far away lands.” There seems to have been a subgroup of husbands who took pleasure in shirking the obligations of responsible manhood. After having hidden the jewels and clothes that made up his wife’s dowry with a friend in order to avoid an accounting of her property, the barefoot, drunken, baker Clemente Flores was called a scoundrel (*pícaro*) by his mother-in-law, an insult that his lawyer vigorously disputed.<sup>201</sup>

There were also bad husbands and scoundrels among the elite and respectable castes as well. In 1711, doña Angela Ramiro de Vargas sued her husband don José Pérez de Moral for divorce on the grounds of abuse, neglect and for spending her dowry. She asserted that don José had married her in order to take advantage of her because she was a wealthy plantation-owner. Don José professed elite status, besides the title (don) he

---

<sup>199</sup> María de León v. Salvador Ponce. AGN, Vol. 139, exp. 39, 1.

<sup>200</sup> María de León v. Salvador Ponce. AGN, Vol. 139, exp. 39, 1.

<sup>201</sup> Clemente Flores is the protagonist of chapter 2.

claimed to be a knight (*caballero*) of the order of Santiago, although by the time of the lawsuit he seems to have been bankrupt. The knight's code of honor did not prevent him from taking all the "silver, jewels, and jewelry of value" from his wife's dowry and burying them.<sup>202</sup> He belittled his wife behind her back, saying, "he had married her money, not her."<sup>203</sup> Don José also "intimidated" doña Angela by saying that a gypsy had told him that he would marry three times, the first wife would die and leave him a plantation (*hacienda*), the second wife would die and leave him money, and with the third wife he would retire comfortably (*vivir con mucho descanso*).<sup>204</sup> Doña Angela feared the gypsy's prophecy because she was don José's first wife and owned a plantation. Don Pedro Franco de Ochoa was another husband who used his wife for her wealth. Doña María de Valdés argued that her husband don Pedro showed the "hatred and rancor" that he had towards her by selling the "considerable sum" of jewels and jewelry that her dowry contained, and when she put up resistance he threw her out of the house. He also sold his wife's female slaves (*esclabas*) and she claimed, "everything else that she had."<sup>205</sup>

Both secular and ecclesiastical judges could take stern measures against husbands that willfully failed to support their wives and children. Judges from the Royal Criminal Tribunal could throw offending husbands into jail. Ecclesiastical judges could

---

<sup>202</sup> Doña Angela Ramiro de Vargas v. don José Pérez de Moral. AGN, Civil, Vol. 249, exp. 1, 1711, 18v.

<sup>203</sup> "disiendole que con su dinero se havia cassado y no con ella"

Doña Angela Ramiro de Vargas v. don José Pérez de Moral. AGN, Civil, Vol. 249, exp. 1, 1711, 18v.

<sup>204</sup> Doña Angela Ramiro de Vargas v. don José Pérez de Moral. AGN, Civil, Vol. 249, exp. 1, 1711, 19.

<sup>205</sup> Doña María de Valdés v. don Pedro de Ochoa. AGN, Matrimonios, vol. 96, exp. 1, 1674.

excommunicate offenders from the Catholic Church, imprison them in the archbishopric's jail, or even exile them to the Philippines. For instance, in 1662, the vicar general Dr. Alonso Hortiz de Oraa admonished Clemente Flores to treat his wife doña María de Villar "with love, as she is your legitimate wife," threatening to excommunicate him and send him to the Philippines for three years should he fail to comply.<sup>206</sup> The most effective strategy for stingy husbands who wanted to neglect their families without legal consequences was to agree to all requests for support without actually following through with cash payments. In 1690, doña María de Xerez y Frías sued her husband for divorce on the grounds of neglecting her and their daughter. She claimed that he had failed to provide them with food and clothing, thereby causing severe hardship and obliging her to "absent" herself from her husband's presence.

After having left her husband without a judicial order, doña María spent some time living "honestly," supported by an unnamed priest who paid her living expenses for reasons not explained in her narrative.<sup>207</sup> In her initial divorce petition, she requested to be enclosed in a convent. The judge agreed and placed her in the convent of Santa Catalina de Sena where Mother Theresa de San Cristóbal, the head gatekeeper, received her. Doña María then petitioned for 400 pesos a week, a generous stipend that would be more than adequate for her needs. She also asked for an additional 25 pesos in order to pay room and board at the convent.<sup>208</sup> The vicar general concurred with the plaintiff's

---

<sup>206</sup> Doña María de Villar v. Clemente Flores. AGN, Indiferente Virreinal, vol. 5244, exp. 19, 1663, 4v.

<sup>207</sup> Doña María de Xerez y Frias v. Joseph de Reinoso. AGN, Matrimonios, Vol. 193, exp. 12, 1690, 2.

<sup>208</sup> Doña María de Xerez y Frias v. Joseph de Reinoso. AGN, Matrimonios, Vol. 193, exp. 12, 1690, 2.

demand, ordering Joseph to begin paying the 425 peso weekly allowance under pain of excommunication should he refuse. Doña María's attorney Mathias de Xisneros next filed another missive claiming that while Joseph had agreed to pay a weekly allowance, he refused to pay the 25 pesos for room and board at the convent because of "the limitations of his salary."<sup>209</sup>

Despite having reached a verbal agreement, several months after the commencement of the case Joseph still had yet to give doña María any money. The vicar general then issued a second warning ordering Joseph to comply with his obligation, or else he would be excommunicated. Two years then passed without further advances in the case. Joseph still had still not made a single payment to his wife. After doña María yet again asked Joseph to comply with the agreement, he argued that his previous custody agreement required his wife to live in the convent of Santa Catalina; after being enclosed there briefly Doña María and her daughter left without a judicial order for another convent, the Royal Convent of Jesús and María. Joseph claimed that doña María had tricked him by sending notification on two separate occasions from the Convent of Santa Catalina as if she were still living there. He also claimed that doña María's claim that he had agreed to a weekly payment of 400 pesos was false; he had agreed to 400 pesos on a *monthly*, not weekly basis. Joseph requested that the vicar general remove his wife and daughter from the convent where they were currently living against his will. Joseph next received a third court order to pay his wife maintenance. He responded indirectly yet

---

<sup>209</sup> Doña María de Xerez y Frias v. Joseph de Reinoso. AGN, Matrimonios, Vol. 193, exp. 12, 1690, 4.

again, suggesting that instead of the convent his wife and daughter should be placed in the *Recogimiento de Belén*, where he will pay 12 pesos a month in alimony. The case file ends after more than two years with doña María's lawyer calling for Joseph to be punished for rebellion. During the entire case, the vicar general never took judicial action against Joseph, despite his repeated delays.

Joseph's stalling tactics showed how husbands could take advantage of the sluggishness and inertia of colonial ecclesiastical courts in order to avoid paying their wives alimony. Joseph never paid his wife anything, yet he claimed to be in agreement with both plaintiff and the court's motions at every stage. The key to his strategy was that he never directly refused a court order, nor challenged the authority of the court. He accepted the essential right of his wife to receive maintenance, but repeatedly rejected the particular terms that she proposed. Each time it seemed Joseph had reached an agreement with his wife, he pulled out of the settlement and renegotiated for more favorable terms. After spending more than two years in litigation, doña María was still unable to get her husband to give a single peso in maintenance.

Doña María's case also illustrates an essential principle of husbandly authority: husbands claimed that they and they alone had the right to determine how much economic support they should give to their wives. In contrast, wives argued that they had a right to a certain minimum level of support from their husband and requested community or judicial intervention when that minimum was not met. Some husbands interpreted their wives repeated pleas for financial support as insubordination. After having abandoned his wife and young daughter in order to move to the booming mine-

town of Zacatecas in 1667, Juan López de Montalbo's wife angered him with her constant pleas for support. During the six years of their marriage, doña Luisa de Ordoñez claimed that her husband had never given her food or money for her sustenance. He had also refused marital cohabitation with his wife for the last four years, abandoning his young family and leaving them homeless. Doña Luisa had no choice but to seek the aid of her parents and live with her daughter "at their expense" due to her husband's neglect.<sup>210</sup> Meanwhile, Juan had moved to the city of Nuestra Señora de Zacatecas, where he had opened a general store (mercancía) and seemed to spend a great deal of his free time penning aggressive and threatening missives to his wife. He refused to pay any sort of child support for his daughter, despite his wife's repeated pleas. Juan's refusal to pay child support or alimony was a result of his intransigence rather than an inability to pay, as he was a small merchant and it is probable that he would have had sufficient resources to take care of his family. Juan clearly resented his wife telling him what to do, so much so that he was willing to engage in litigation before paying a reasonable maintenance. For Juan the key principle at stake was that he, and not his wife, would decide about the economic conditions of their divided household.

In another case, in 1677 doña Catalina de la Sierra, exasperated with her husband don Pedro de Villar's neglect, asked his permission to leave her husband's village and return to her father's house in Mexico City.<sup>211</sup> Doña Catalina's father sent

---

<sup>210</sup> doña Luisa de Ordoñez v. don Juan López de Montalbo. AGN, Indiferente Virreinal, Caja 6208, exp. 31, 1667.

<sup>211</sup> Catalina de la Sierra v. don Pedro del Villar. AGN, Indiferente Virreinal, Caja 2794, exp. 22, 1677, 1.

her cousin a priest by the name of Licentiate Joseph Gutiérrez, to pick her up. Don Pedro proceeded to humiliate him by forcing him to sleep in the mule stables.<sup>212</sup> Don Pedro allowed her to leave on the condition that if she left, he would no longer support her. He would give her neither money nor food; just loan her a few mounts (cabalgaduras) that he would charge her for if any of them died on the way back to Mexico City.<sup>213</sup> Even after they stopped living together, don Pedro and his wife had a continuous series of conflicts about money that eventually spilled over into violence. After the birth of their daughter Rosa María, don Pedro refused to pay for the baptism and other debts that resulted from the birth. When his wife called him a “scoundrel,” (pícaro) he slapped her repeatedly in the face, leaving bruises. The trigger of don Pedro’s violence was his wife’s suggestion that his failure to pay for the expenses of their family made him a rogue and a thief. In don Pedro’s response to doña Cathalina’s divorce petition, he claimed that doña Cathalina had been speaking with some women who desired to find a way to “remove the yoke of marriage.”<sup>214</sup> He also justified the beating on the right of every husband to “correct” (corregir) his wife.<sup>215</sup> By “correcting” his wife, don Pedro used violence to repress his wife’s complaints that he was not fulfilling his masculine responsibility to provide for his family.

---

<sup>212</sup> Cathalina de la Sierra v. don Pedro del Villar. AGN, Indiferente Virreinal, Caja 2794, exp. 22, 1677, 7.

<sup>213</sup> Cathalina de la Sierra v. don Pedro del Villar. AGN, Indiferente Virreinal, Caja 2794, exp. 22, 1677, 7.

<sup>214</sup> Cathalina de la Sierra v. don Pedro del Villar. AGN, Indiferente Virreinal, Caja 2794, exp. 22, 1677, 7.

<sup>215</sup> Cathalina de la Sierra v. don Pedro del Villar. AGN, Indiferente Virreinal, Caja 2794, exp. 22, 1677, 7.

Husbands claimed substantial economic rights over their wives. At the time of marriage, they were granted control of the administration of their wife's dowry. The dowry remained the wife's property and they could not dissipate it, but they were free to invest or spend using their wives' properties as collateral. A husband could act as his wife's economic ally (*apoderado*) exercising power of attorney and signing contracts in her name. As long as he was not a drunkard or spendthrift who was obviously dissipating her dowry, a husband's economic domination of his wife was nearly complete. Still, Spanish law recognized much more autonomy and independence for husbands and wives than in common law. Spanish law recognized the married couple as individual engaged in a unique sort of partnership. There was no concept of the wife losing her identity and becoming part of the husband as in the common-law principle of coverture.<sup>216</sup>

As we have seen, while most husbands accepted their responsibility as men to economically support their wives and children, they jealously guarded what they saw as their masculine prerogative to determine the kind and condition of this support. Husbands also defended their rights to “correct” their wives, using physical violence to teach their wives obedience and deference. Wives who complained, berated or threatened their husbands over money could find themselves subject to this sort of corporal punishment. The kind of economic disputes found in colonial divorce litigation suggests not disputes over honor, which was rarely mentioned, but rather broader conflicts about the rights of husbands over their wives.

---

<sup>216</sup> Samuel Parsons Scott and Alfonso X (King of Castile and Leon), *Las siete partidas* (University of Pennsylvania Press, 2001). xv

## ***Violence and "Corrections"***

The right to “correct” one’s wife with corporal punishment was another essential principle of a husband’s masculine authority. Husbands often justified their physical abuse on the grounds of a general “right” to domestic correction, while wives tended to not dispute the general principle of physical correction but rather how it had been applied in a particular situation. While ecclesiastical judges defended the right of husbands to physically correct their wives, they sometimes took action against husbands who were too aggressive in their “corrections.” The case of Juan de Ochoa illustrates this tendency. In 1615, the vicar general of the Archdiocese of Mexico threw Juan de Ochoa in jail for having used too severe physical violence to discipline his wife. After fifteen years of marriage, Juan’s wife, Andrea de León, sued him for divorce on the grounds of physical and verbal abuse. In her divorce petition she requested that her husband not speak, communicate, or have dealings with her for her “security.” In his response, Juan de Ochoa argued that his wife exaggerated the extent of their disputes. He said that in all their years of marriage he had treated her well and “had given her everything that she needed.” Their few disagreements had been “light” and had been because he had “corrected” her domestically “as is permitted by law” and in order to make her avoid certain “bad company” and “conversations that were not good for her honor and reputation.”<sup>217</sup> Andrea’s lawyer responded to the defendant’s claims by arguing that it was not true that she had had conversations that damaged her honor and that her husband

---

<sup>217</sup> Juan de Ochoa v. Andrea de Leon. AGN, Indiferente Virreinal, Caja 1502, exp. 4, 1615, 7.

beat her, not to “correct” her but rather excessively, to the point of threatening her life. By beating Andrea, Juan subordinated his wife and reinforced his masculine dominance over her. Based on Andrea’s testimony, the ecclesiastical judge threw Juan in jail for abusing his wife. A few weeks later the judge freed him when Juan’s lawyer proved sufficiently that Andrea’s claim was made “with malice.” His evidence was a combination of witness testimony that Juan had treated his wife well, being a “calm and composed man in word and deed” and the fact that it came to light that Andrea had filed numerous frivolous lawsuits against Juan in various courts including the Ordinary Court (Audiencia Ordinaria) and the Criminal Tribunal (Sala del Crimen). He also argued that witness testimony proved that Juan had always “reprimanded” his wife “with moderation.”<sup>218</sup> Andrea’s “forum-shopping” combined with the supportive depositions of Juan’s witnesses to cast doubt on whether the divorce petition that she had filed was actually justified.<sup>219</sup>

While courts attempted to impose limits on physical punishment of wives by husbands, many husbands preferred beating their wives over seeking outside mediation to their marital problems. Some husbands would discover that domestic violence was often an ineffective strategy for modifying their wives’ behavior. After his wife humiliated him by publicly alleging that she had cuckolded him, Francisco de Bribiesca attempted to

---

<sup>218</sup> Juan de Ochoa v. Andrea de Leon. AGN, Indiferente Virreinal, Caja 1502, exp. 4, 1615, 7.

<sup>219</sup> Juan de Ochoa v. Andrea de Leon. AGN, Indiferente Virreinal, Caja 1502, exp. 4, 1615, 7.

“correct” and “punish” her by “putting his hands on her.”<sup>220</sup> Francisco was likely motivated by anger and frustration as much as the desire to reform her behavior, since he stated that it was the “pain that I have had and have from similar injuries and insults” that inspired the beatings. Slapping around doña María was quite unproductive as the old man was unable to get any traction for his petition and was ordered to take back his wife. The lack of witnesses to corroborate don Francisco’s claims probably contributed to the failure of his divorce petition.

Husbands and wives were not the only victims of marital violence. After his wife doña María Quijarro sued him for divorce, the muleteer (carretero) Pedro de Yrrutia claimed that his wife had a pattern of physically abusing two young girls who had been placed in her custody.<sup>221</sup> Before leaving on a long trip with his mule-train, Pedro left his wife with two girls to keep her company. Agustina was one of the girls, a three-year-old toddler that Pedro had practically adopted “caring for and feeding her” because she had become an orphan. The other girl was a ten-year old named Josepha. While Pedro was gone during his months-long trip, doña María beat Josepha so severely that Josepha’s parents denounced her to the civil magistrate. During the judicial investigation, Agustina was found weakened by hunger and covered with bruises on her face and body. The magistrate (alcalde) took the girls away from doña María and detained her, placing her in

---

<sup>220</sup> el justo dolor que e tenido y tengo de semejantes ynurias y palabras se lo e procurado estorvar poniendole las manos corrigiendo la y castigandola no a sido posible enmendar la antes como mujer desbaratada, aspera y de terrible condición. Francisco de Bribiesca v. doña María de Bivar. AGN, Indiferente Virreinal, Caja 1611, exp. 26, 1588, 3v.

<sup>221</sup> Doña María Quijarro v. Pedro de Yrrutia. AGN. Matrimonios, vol. 152, exp. 11, 1685, 423.

the house and custody of don Joan Saens Moreno, a minister of His Majesty's Royal Council. After Pedro returned from his trip, he was given custody of both Agustina and doña María, under the agreement that he would never leave his wife alone with children. In her petition for divorce against her husband, doña María Quijarro sued Pedro Yrrutía for divorce on the grounds of neglect, arguing that he had failed to do his duty as husband to feed and clothe her. She argued that the neglect was occasioned by Pedro's long-term trips as a muleteer. On some occasions, Pedro traveled up to six months for one trip, leaving her alone. However, Pedro's catalogue of his wife's violent acts against children seems to have destroyed her credibility as a petitioner and she was ordered to "resume marital cohabitation" with her itinerant husband.

Regular payment of "the duty" (*el deber*) was often important for the smooth functioning of the marriage. Wives who resisted "the duty" could trigger a violent response from their husbands. Sexual intercourse was seen as exchange from husband to wife; economic support and good treatment for sex. A husband's sexual relationship with his wife could be fraught with danger. By being unable to control his wife, a man could lose face and social standing. A work of literature from medieval Burgos (*Esopete Hystoriado*) demonstrates the danger of a wife (or wives) to a man's physical and social integrity. "The Husband and His Two Wives" is a fable that tells the story of a middle-aged man, with half his hair turned gray, who one spring simultaneously marries both a young woman and an old woman. In a misguided attempt to make the husband more like her, the younger woman plucks out the man's gray hairs while he is sleeping. The older

wife follows suit with the man's brown hairs, and the husband becomes completely bald and farcical, the laughing stock of his town.<sup>222</sup>

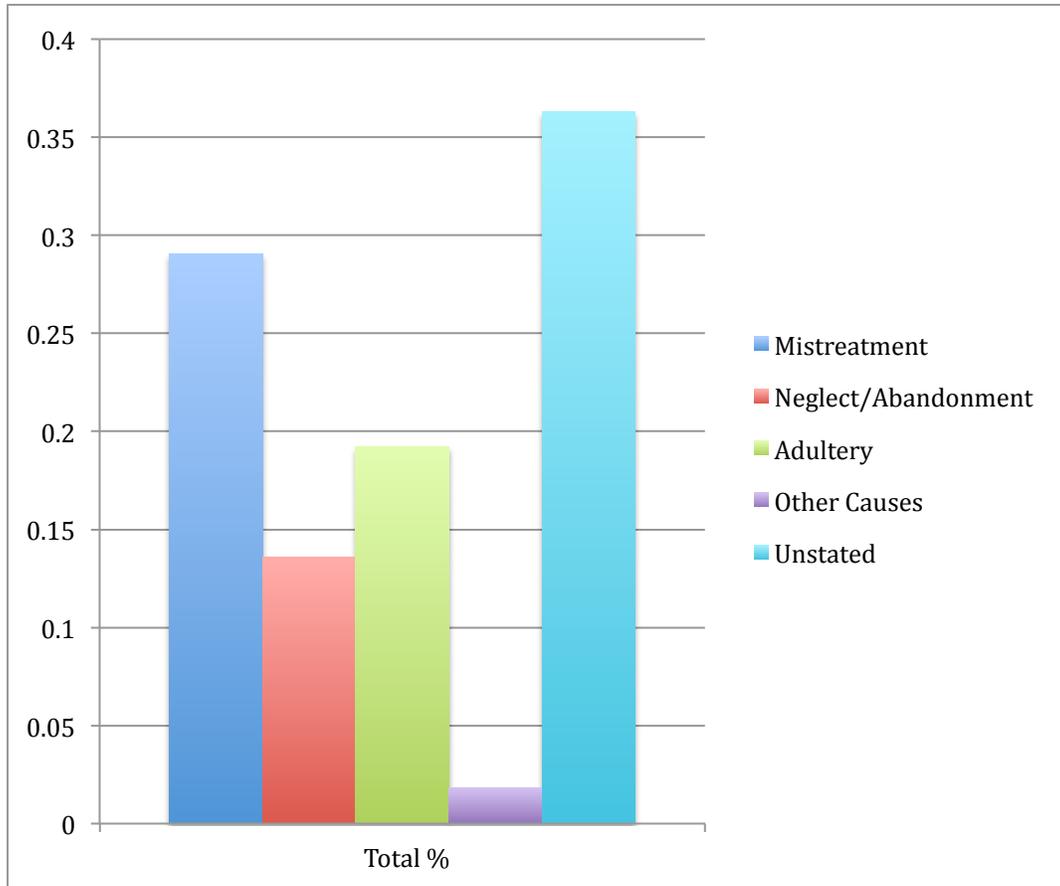
Sexual frustration could lead to violence. Impotent husbands sometimes abused their wives, leading to criminal or civil litigation. After numerous unsuccessful attempts to consummate his marriage to his seventeen-year old wife, Francisco de Rivera's frustration turned into violence.<sup>223</sup> He began to beat his wife doña Ysabel de los Angeles, threatening to kill her and hurling at her all manner of calumnies. She soon filed for divorce, soliciting the help of the prolific attorney Pedro de Peralta. In his petition to the Vicar General, Dr. Leon Placa, Peralta cited the nobility of his client's parents and lineage. According to Peralta, his client's husband was a vile man who wished her dead. In their year and a half of marriage, he had cruelly whipped her on numerous occasions. He once demanded that she confess to having “treated dishonestly” a married man who was her husband's friend. When she denied this, he placed a dagger to her throat and demanded that she tell the truth, and that he would forgive her if she admitted what she had done.

---

<sup>222</sup> For medieval Spaniards, losing one's hair was associated with sexual excess. So, this fable is not literally about two wives plucking hair from their husband, but rather about sexual excess and the dangers of too much contact with women. Michael Ray Solomon, *The Literature of Misogyny in Medieval Spain: The “Arcipreste De Talavera” and the “Spill”* (Cambridge University Press, 1997), 72.

<sup>223</sup> Francisco de Rivera v. doña Ysabel de los Angeles. AGN, Indiferente Virreinal, Caja 1502, exp 3, 1617, 1.

### ***Husbands as Plaintiffs***



**Figure 3: Frequency of Grounds for Divorce (1544-1799)**

Husbands rarely sued for divorce, a fact that should be unsurprising given that it was unlikely to serve their interests. In divorce cases, men had much to lose and virtually nothing to gain. However, this is not to suggest that men were never active participants and even plaintiffs in divorce cases. Husbands represented a very small percentage of the total petitions presented before church authorities. In the sixteenth century, husbands presented a minuscule 3% of the total petitions.<sup>224</sup> The seventeenth century presented similar statistics, with husbands representing only 5% of the total plaintiffs.<sup>225</sup> While husband-initiated divorce cases were quite rare, we can learn how colonial men defended and contested challenges to their masculinity caused by marital conflict by examining the few cases that are available in the archives as well as by thinking about the men who did not file for divorce; in this case, husbands' silence teaches us as much as their discourse.

As we have seen, divorce in New Spain consisted of a separation of person and property, rather than a genuine rupture of the marital bond tying the couple together. In practice, an approved divorce would result in significant damage to the finances of a husband who was lucky enough to belong to the property-owning class. The authorization of an ecclesiastical divorce meant that the husband would have to return his wife her complete dowry. He also forfeited the *arras* that he had given her at the time of marriage. If the wife were the offended party (such as in a divorce based on adultery) in theory the husband would maintain control of her property until her death, at which time

---

<sup>224</sup> Three men out of 34 total petitions presented.

<sup>225</sup> Eleven men out of a total 207(5.3%).

it would be distributed to her heirs.<sup>226</sup> The wayward wife would be scuttled off to a convent or deposited in a *casa de honra* in order to control her behavior.<sup>227</sup> In any case, judges were unwilling to leave even wayward women and their children in destitution and so ordered husbands to pay maintenance allowances for their estranged wives.

Husbands in early colonial Mexico only filed for divorce in the most grave and extreme circumstances. Two of the four cases in the AGN contain accusations of abandonment and serious insults that threatened the husband's masculinity. The pathetic but wealthy Francisco de Bribiesca filed for divorce after his wife left him. The elderly man claimed to have married his wife doña Juana de Bivar, two years earlier when he was gravely ill and at the point of death. Doña Juana was destitute and so she (and other individuals not named) attempted to persuade don Francisco to marry her. Out of "Christian zeal and charity" don Francisco married the poor woman, gifting her a dowry of two thousand gold pesos out of his own fortune. Don Francisco was supposed to die, leaving his young widow comfortably endowed for life. However, things did not go according to doña Juana's plan. In an unexpected turn, don Francisco soon recovered from his grave illness, and sought to commence conjugal life with his young bride. He claimed to have treated her magnanimously, giving her fine clothes, jewels, and female slaves (*negras*) to attend her. She resisted the elderly man's advances and soon began to mistreat and ridicule him, calling him a "black dog" and "cuckhold faggot" (*puto*

---

<sup>226</sup> Linda Lewin, *Surprise Heirs / Linda Lewin* (Stanford, Calif.: Stanford University Press, 2003).

<sup>227</sup> Muriel, *Los Recogimientos De Mujeres : Respuesta a Una Problemática Social Novohispana*.

cornudo).<sup>228</sup> Doña Juana's insults questioned her husband's manhood and showed a flagrant insubordination. Supposedly she promised "to leave (his) house and give her body to blacks and whites and to everyone that asked her, like she used to do before she got married."<sup>229</sup> Openly cuckolding her elderly husband was the ultimate challenge to his masculinity and threatened to make him a ridiculous figure, especially in the patriarchal society of late sixteenth-century New Spain. This pattern persisted into the eighteenth century. In her research on divorce in late colonial Mexico, Dora Dávila Mendoza found that a large percentage of men filing for divorce cited insults as the primary motive for the lawsuit.<sup>230</sup>

While they hardly ever sued for divorce, men were marginally more likely to seek an annulment.<sup>231</sup> The majority (60%) of marital causes initiated by men in the sixteenth and seventeenth centuries were for annulments rather than for ecclesiastical divorce. Like an ecclesiastical divorce, an annulment could spell financial disaster for a man, as he would be required to restore his former wife's dowry. However, by definitively cutting ties between the couple, he would not be responsible for his wife's future maintenance. While the economic results could be negative, annulments offered potential of significantly bettering a man's social life. Returned again to the state of

---

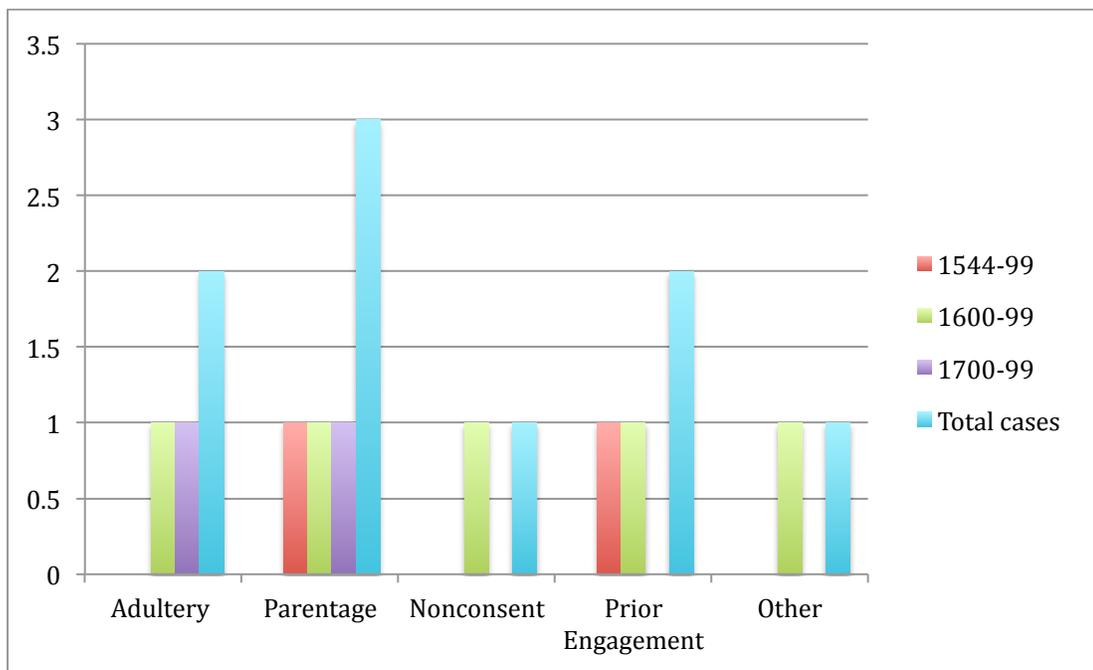
<sup>228</sup> Francisco de Bribiesca v. doña Juana de Bivar. AGN, Indiferente Virreinal, Caja 1611, exp. 26, 1588, 3.

<sup>229</sup> Prometiendo que se ha de salir de mi casa y dar su cuerpo a negros y a Blancos y a todos los que se lo pidieron como antes de que conmigo se casase lo hacía.

<sup>230</sup> Dávila-Mendoza, *Hasta Que La Muerte Nos Separe: El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*, 245.

<sup>231</sup> Nine out of 15 total cases.

bachelorhood, he would be free to get married to another woman or enter the religious life.



**Figure 4: Grounds for Annulment (Husbands)**

Other husbands accused their wives of being frigid and sued them for annulments on the grounds that they were incapable of having sexual intercourse. A husband’s lack of sexual satisfaction could be grounds for an annulment. A goldsmith named Antonio de Arias asked for an annulment of his marriage on the grounds that his wife was frigid, incapable of “knowing any male” (*conocer varon alguno*).<sup>232</sup> In his response to Arias’ petition, the *alguacil mayor* Alfonso Ximenez de Castilla argued that Arias was making a specious argument in order to continue his disordered lifestyle without the interference of

---

<sup>232</sup> Antonio Arias. AGN, Indiferente Virreinal, Caja 6208, exp. 28, 1609, 1.

his wife. According to the *alguacil*, Arias had lived “in adultery (*amancebado*) with women of bad character (*mal vivir*) with whom he had had children, giving his wife *mala vida*.<sup>233</sup> The vicar general of the Archdiocese of Mexico denied his petition and ordered him to take back his wife.

When husbands sued for divorce, they sometimes referred to their “honor” and the honor of their families in a formulaic manner that seems to serve the rhetorical purpose of strengthening their credibility as plaintiffs. When Captain don Agustín de Villanueva Altamirano y Barrientos sued his wife doña Francisca García de Figueroa for divorce in 1780 on grounds of her continual drunkenness, he argued that his wife’s behavior was incompatible with his own high social status. Captain Agustín referred to “the distinguished Honor” of his birth as his household was “one of the first... related to those of the best Hierarchy.”<sup>234</sup> Doña Francisca’s behavior “obliged him to not have her in his house, and Company.”<sup>235</sup> It is important to highlight that Captain Agustín filed his claim in 1780, right when the discourse of honor began on its dramatic surge.

Other husbands sued for divorce, not because they really desired a divorce, but rather in order to force their wives who had abandoned them to come back home. In 1688, Juan Francisco de Aguinogay sued his wife for divorce on the grounds of abandonment (*abandono de hogar*). After having been married for six years, Juan

---

<sup>233</sup> Ibid.

<sup>234</sup> Captain don Agustín de Villanueva Altamirano y Barrientos v. doña Francisca García de Figueroa. AGN, Matrimonios, Vol. 67, exp. 19, 1780, 62.

<sup>235</sup> Captain don Agustín de Villanueva Altamirano y Barrientos v. doña Francisca García de Figueroa. AGN, Matrimonios, Vol. 67, exp. 19, 1780, 62.

Francisco stated that his wife María Rodríguez “without cause left my company and went to her brothers’ house.”<sup>236</sup> María was “dividing and separating” the holy sacrament of marriage. Juan Francisco asked the judge to “return my wife to me in order to resume marital cohabitation” or for an ecclesiastical divorce. The vicar general Diego de la Sierra responded to Juan Francisco’s plea with a writ of subpoena requiring his wife María to appear before the ecclesiastical court. The subpoena might have been enough to resolve the issue as the case file ends with the subpoena, and there is no record of María actually appearing before the court.

Juan Francisco was not the only husband to take advantage of this tactic. The goldsmith Antonio de Arias was a womanizer and adulterer who scandalized his neighbors by counting loose women and prostitutes among his closest friends. He had had several children by these women “of bad reputation” (*mal vivir*) despite having been married for several years to Francisca Rosillo. Given his “dissolute” lifestyle, one would expect that Antonio’s wife would have been the one to initiate a lawsuit. Surprisingly, it was Antonio who filed an annulment petition against his wife. Antonio claimed that his marriage to his wife Francisca had never been consummated because Francisca was “incapable of having sexual intercourse” (*incapacidad de tener cópula*). The case quickly drew the attention of the Archbishop’s prosecuting attorney (alguacil mayor y fiscal) Alfonso Ximenez de Castillo. Don Alfonso argued that Antonio’s claim that Francisca was “incapable of knowing a man” (*incapaz de conocer varon*) was a spurious

---

<sup>236</sup> Francisco de Aniguinogay v. María Rodríguez, AGN, Matrimonios 45, exp. 58. 1688.

and “malicious” accusation resulting from his having lived and continuing to live in a “bad” and “dissolute” state. Don Alfonso also argued that Antonio was unable to prove that he had made any attempt to find a “remedy” for his wife’s supposed problem, during the years of their marriage. According to the prosecutor, the goldsmith was a terrible husband who abused his wife not only by his public adultery, but also by beating and insulting her. Don Alfonso suggested that instead of authorizing the annulment, the ecclesiastical judge should “punish and correct” Antonio and then force him to return to his wife.

The prosecutor also referred to a simultaneous annulment lawsuit that Francisca had filed on the exact same grounds. While this case-file has been lost to history, the prosecutor argued it was similar enough to Antonio’s claim to make him suspicious that it was a collusive lawsuit. After comparing the two cases, don Alfonso referred to the “malice, with which between the two of them they have attempted this lawsuit in concert on the grounds of impotence, so that their legitimately contracted marriage might be annulled.” The prosecutor argued that it was very unlikely that Francisca could have this defect given the court-ordered testimony of several midwives that had found her to be physically normal. Additionally, don Alfonso noted that the couple were not newlyweds but had been married for over twelve years without any mention of Francisca’s impotence. The fact that they had cohabited for such a long time and shared the same bed presumably meant that Francisca was capable of having sexual intercourse (*capaz de conocer varon*). Antonio de Arias was a womanizer who had had several children with different prostitutes during his marriage to Francisca. Presumably the plaintiff “was not

such a chaste person that he could not notice such a defect for twelve years,” don Alonso also noted wryly. Colonial prosecutors and judges called collusion “malice” since it was an attempt to corrupt an adversarial process that presupposed that there was a victim and victimizer in every marital cause. If a marriage failed, it was because either the husband or wife did something wrong that required some degree of punishment by the court.

The Catholic Church’s strict policy on incest provided some husbands a way out of unwanted marriages. In 1544, Francisco de Oyan brought suit against his wife Mariana Nuñez on the grounds that at the time of their marriage they had not realized that their mothers were first cousins. This meant that Mariana was Francisco’s second cousin, which was within a prohibited degree of consanguinity and called incestuous by Catholic canon law.

Husbands sometimes assumed the mantle of victimhood and supplicated the aid of more powerful patriarchs. Gregorio del Valle de Dios claimed to be a victim of his wife’s abuse. The traveling merchant sued his wife María de los Reyes after fourteen years of marriage for abuse and attempted murder. Gregorio argued that after having lived with María for four years, his wife became an “intolerable, sour person without feeling or any patience.”<sup>237</sup> To humiliate him, she threw his clothes through the window onto the dirty streets below. She refused to sleep with him and threw him “not only out of bed but out of the house” one night at midnight. Gregorio was forced to request the aid of his closest neighbor, who let him sleep in the stables. Gregorio claimed that,

---

<sup>237</sup> Gregorio del Valle v. María de los Reyes. AGN, Indiferente Virreinal, Caja 1705, exp. 1, 1687, 2.

motivated by “indiscrete jealousies,” his wife had brought bogus complaints against him before Royal Justice on three or four occasions. The merchant also claimed that María had attempted to kill him with poison, and would have succeeded had not her father realized her plans and intervened. His daughter’s attempted murder of her husband triggered an uncontrollable rage in her father that concluded with the elderly man beating her and attempting to throttle (aogar) his daughter; Gregorio’s interpretation was that his father-in-law’s violence was a result his having “recognized the works” and “guilt” of his daughter and the injustice of the “abuse without cause” that she had given Gregorio. In another interpretation, Gregorio’s father-in-law served as the superior patriarch who used violence to re-establish a hierarchy that had been destabilized by his daughter. The merchant also emphasized that even though he spent most of the year on business outside of the city, he was suing for divorce to “eliminate the risk” of living with his wife, since she was “unscrupulous.” His wife’s abuse was not justified because he had always “given her what she needed,” sending money with other people when he traveled. He argued that the main grounds for divorce were the “risk of losing his life” due to another one of his wife’s poisonous concoctions (*preparación dolosa*), as well as his wife’s abuse. Gregorio declared that she was “trying to and had tried to damage” his reputation through her legal proceedings. In her response to Gregorio’s petition, María sidestepped her husband’s accusations of attempted murder and abuse. Instead, she accused him of having run through her dowry of fourteen thousand pesos, and subsequently had not given her money for food and for the education of their son. Gregorio’s stinginess had left her “naked and dying of hunger” (*desnuda y muerta de hambre*). While there is no

record of the resolution, María was placed in deposit, which is consistent with the court finding in favor of Gregorio's petition, and so Gregorio no longer needed his father-in-law's protection.

### ***Husbands as Defendants***

In the fall of 1649, Captain Sebastián Vaz de Azevedo learned first-hand the dangers of being sued for divorce by a well-connected woman. Sebastián Vaz was a former captain in the Barlovento Navy (*Armada de Barlovento*) and a successful merchant.<sup>238</sup> A notorious adulterer, Captain Vaz found himself in the secret prisons of the Holy Office of the Inquisition, not for his infidelity but for his supposed involvement in a Jewish conspiracy (*la gran complicidad*) for the Spanish colonies to declare independence from the crown and to limit the authority of the church. Throughout the colonial period, Spanish officials took accusations that someone was secretly practicing Judaism very seriously.<sup>239</sup> In the 1630s and 1640s, the crusade against Jewish religious practices crossed over from mere paranoia into outright hysteria. Spurred by rumors, some royal officials throughout the Spanish colonies became convinced that *Crypto-Jews*

---

<sup>238</sup> The *Armada de Barlovento* protected Spanish shipping in the New World from pirates and privateers from the first half of the seventeenth century until the end of the colonial era. Manuel Alvarado Morales, Colegio de México Centro de Estudios Históricos, and University of Puerto Rico (Río Piedras Campus), *La ciudad de México ante la fundación de la Armada de Barlovento: historia de una encrucijada, 1635-1643* (Colegio de México, Centro de Estudios Históricos, 1983), 23.

<sup>239</sup> As Lee Penyak notes, while there was persecution of crypto-jews, it was not predominant. He notes, "Recent scholarship, however, suggests that Spain's Holy Office spent more time examining sexual practices, language and superstitions than it did hunting down Jews and Protestants." Manuel Alvarado Morales, Colegio de México Centro de Estudios Históricos, and University of Puerto Rico (Río Piedras Campus), *La ciudad de México ante la fundación de la Armada de Barlovento: historia de una encrucijada, 1635-1643* (Colegio de México, Centro de Estudios Históricos, 1983), 23.

were conspiring to expel crown and church from the Americas and declare an independent republic. The paranoia affected even the powerful: numerous merchants and other leading *converso* figures were prosecuted by the Holy Office of the Inquisition as a result of this popular crusade.<sup>240</sup>

The Inquisitors could not prove that Captain Vaz had anything to do with this alleged conspiracy, but they did believe him to be guilty of engaging in some Crypto-Jewish spiritual practices. Accused and found to be in “vehement” suspicion of heresy, the merchant captain was forced to make public penance (*auto de fe*) and wear a penitential suit with one long stripe running along the front and backside (*sanbenito de la media aspa*).<sup>241</sup> After he had been publicly humiliated, Captain Vaz’s wife, doña Lorença de Esquivel Castañeda filed for divorce almost immediately. Her lawyer, don Alonso de Alvarez, argued that the distinguished family background of his client and her long, unblemished “old Christian” lineage made it impossible for her to cohabit with a Crypto-Jew. Not only was Doña Lorença a descendant of “Old Christians,” her lineage counted with present and former ministers of the Holy Office of the Inquisition.<sup>242</sup> Don Alonso argued that the mere fact of having been declared suspicious of heresy by the Inquisition had automatically caused a perpetual divorce of bed and board (*diborcio perpetuo quoad thorum et mutuum cohabitationem*). Thus, he argued that his missive

---

<sup>240</sup> Juan Carlos Garavaglia and Juan Marchena Fernández, *América Latina De Los Orígenes a La Independencia* (Editorial Critica, 2005), 375.

<sup>241</sup> Doña Lorença de Esquivel v. Capitán Sebastián Vaz de Asevedo. AGN. Bienes Nacionales, Leg. 114, expediente 2, 1649, 3v.

<sup>242</sup> Captain Vaz’s lawyer also makes several references to the family connections of Doña Lorença, suggesting that she had something to do with his problems with the Inquisition.

was not properly a petition for divorce, but rather recognition of a change to the state of marriage between his client and Captain Vaz that had been automatically affected by his heresy. The church, argued don Alonso, had recognized the pernicious effects of forcing a loyal Christian to cohabit with a heretic. Don Alonso then mobilized a colonial discourse about the purity of blood in order to destroy Captain Vaz's credibility and highlight the urgency of the couple's divorce. He argued that by cohabitating with her spouse, doña Lorença's "noble and pure" blood could mix with Vaz's "ignoble and damaged" (*innoble y dañada*) blood, putting her at risk of becoming infected with the contagion (*contagio*) of heresy.<sup>243</sup> Thus, forcing doña Lorença to live with her husband could only lead to her "discredit, ignomy and infamy" (*descrédito, ygnominia, y infamia*). As historian María Elena Martínez has shown, in late medieval Spain "pure blood" meant the "absence of Jewish and heretical elements" and was used to marginalize converted Jews (*conversos*) and Muslims who converted to Christianity (*moriscos*) by preventing them from holding certain political and religious offices.<sup>244</sup> In this case, Sebastián Vaz's *converso* ancestry, combined with his unscrupulous behavior made him vulnerable to the claim that his lack of virtue and supposed heretical practices could be contagious.<sup>245</sup> By being a *converso* rather than an "old" Christian, Captain Sebastián possessed a sort of

---

<sup>243</sup> Doña Lorença de Esquivel v. Capitán Sebastián Vaz de Azevedo, Bienes Nacionales, Leg. 114, expediente 2, 1649, 33.

<sup>244</sup> Martínez argues that when this concept migrated to the Americas, it changed, forming the justification for the "sistema de castas" a hierarchal system of racial classification defined by the precise proportion of Spanish, indigenous and African blood in each person's lineage. Maria Elena Martinez, *Genealogical Fictions: Limpieza De Sangre, Religion, and Gender in Colonial Mexico* (Stanford University Press, 2008), 1.

<sup>245</sup> The metaphor of heresy as contagion was common throughout the Christian World from as early as the medieval era. See Haig A. Bosmajian, *The Freedom Not to Speak* (NYU Press, 1999), 21.

damaged masculinity that would make him more susceptible to other sins such as blasphemy, heresy, sodomy and bestiality.<sup>246</sup> Doña Lorença's attorney attempted to play to the ecclesiastical judge's likely prejudices against *conversos*, taking advantage of Captain Vaz's background as someone convicted of "vehement" suspicion of heresy in order to suggest that he was not worthy to be married to such an outstanding and prominent lady.

Responding to the petition, Captain Vaz's lawyer claimed that divorce lawsuits required the same "exact" standards of proof as criminal cases.<sup>247</sup> The conflict quickly intensified. Captain Vaz's very able attorney even managed to get doña Lorença's lawyer don Antonio Rodríguez Carballo thrown in jail briefly for a technicality; don Antonio had claimed to have given a letter of power of attorney authorizing him to represent doña Lorença in the appeals trial to the appeals judge in Puebla, but because the notary had not properly certified it, it was not entered into the record. This meant that he was filing motions on behalf of doña Lorença without proper authorization, prompting the defendant's attorney to file a motion calling for mistrial (*nulidad*) because of the lack of proper power of attorney from the beginning. The judge denied the motion, but then threw don Antonio in jail for his procedural error.<sup>248</sup> Despite a valiant effort on the part

---

<sup>246</sup> Norman Roth, *Conversos, Inquisition, and the Expulsion of the Jews from Spain* (Univ of Wisconsin Press, 2002), 69. Zeb Tortorici, "'Heran Todos Putos': Sodomitical Subcultures and Disordered Desire in Early Colonial Mexico," *Ethnohistory* 54, no. 1 (December 21, 2007): 35–67.

<sup>247</sup> Doña Lorença de Esquivel v. Capitán Sebastián Vaz, AGN. Bienes Nacionales, Leg. 114, expediente 4, 1649, 3v.

<sup>248</sup> Doña Lorença de Esquivel against Capitán Sebastián Vaz de Azevedo. AGN., Bienes Nacionales, Leg. 114, expediente 3, 1650, 30.

of Captain Vaz's lawyer, the merchant was no match for Doña Lorença, who was as angry as she was well-connected. Captain Vaz experienced first-hand each of the potential dangers of divorce court for husbands: jail time, public humiliation, and financial damage. These monetary damages were substantial. As was custom, the husband was required to make financial restitution to his wife in the event of a divorce. This consisted of the full value of her dowry, the *arras* he had given her at the time of the marriage, any court costs (*litis expensas*), and in some cases yearly alimony payments. Captain Vaz had leveraged his wife's dowry into a series of complicated long-distance investments. Having to restore the 25,151 pesos of Doña Lorença's dowry plus give her the full 10,000 pesos that he had pledged in *arras* ruined Vaz's credit and destroyed his businesses.<sup>249</sup> His business partner and younger brother ended up in so much debt that he had to flee to the Philippines. Captain Vaz emerged from his divorce a broken man; his wife had won her revenge for years of abuse.

There is a strong contrast between the case of doña Lorença Esquivel, and the case of doña María Xeres y Frías who was mentioned earlier in this chapter. While doña María was unable to get her husband to pay anything, doña Lorença got her husband Captain Sebastián Vaz to return every penny of her enormous dowry fewer than thirty days after receiving the court order approving their divorce. The difference was that doña Lorença belonged to New Spain's elite and was well connected in the Archdiocese

---

<sup>249</sup> “veynte y cinco mil ciento y sinquenta y un pesos de oro común en reales joyas, esclavos...” Doña Lorença de Esquivel v. Capitán Sebastián Vaz, AGN. Bienes Nacionales, Leg. 114, expediente 4, 1649, 8.

of Mexico. Doña Lorença's connections and wealth meant that she got the best attorneys that money could buy and undoubtedly received favorable attention from other elite authorities. In contrast, doña María belonged to the middling group of Spaniards that had some property but did not have powerful social connections or influence. Unlike doña Lorença, who had powerful allies, doña María had to throw herself upon the mercy of the court.

As we will see in cases presented in other chapters, the case of Captain Vaz is an extreme example of the risks husbands faced as defendants in divorce lawsuits. If a husband arrived in divorce court, it meant that he had entirely lost control of his home situation. In general, husbands avoided ecclesiastical divorce at almost all costs. In divorce proceedings, husbands lost many of the fundamental advantages accrued by living in a patriarchal society, placing their property and even freedom in the hands of the court in general and the judge in particular. Similarly, by suing for divorce or filing for an annulment, wives sought to subordinate their husband's authority to that of another masculine figure of superior authority, the ecclesiastical judge. Some husbands treated this request for external intervention as a betrayal and a threat to their masculinity.

### ***Conflicting Patriarchs***

If patriarchy is the application of a historically specific principle of hierarchy to gender, then it follows that there must exist a hierarchy among patriarchs. Power and authority in the patriarchal hierarchy was relatively fluid and changed based on the credibility of individual claims to power, social status, honor, and superior masculinity.

No institution was better at establishing and enforcing claims to paternal authority than the Catholic Church. Its ministers were known as “fathers” and its supreme leader claimed the status of father to all believers, “el Papa.” Even the wealthiest merchant and most powerful noble addressed a priest with the same title he would give to his own father. While (in theory) Catholic priests were celibate and did not have their own biological children, in a metaphorical sense priests claimed all laymen as their children. The church's customs and practices also established the superiority of the church hierarchy to the faithful. Bishops offered their rings to be kissed, an act of subordination that even the most powerful secular authorities consented to by custom.

Men frequently conflicted with each other over the question of their relative position in the pecking order of *machos*. Ecclesiastical judges were not above this same tendency. While in general showing an interest in helping conflicting couples to save marriages, ecclesiastical judges also consistently acted in a way that established their superior masculine power and higher status vis-a-vis the men they judged in colonial marriage courts. By forcing male litigants to show them respect, deference, and obedience, ecclesiastical judges reinforced their own masculine superiority and that of the priestly caste as a whole.

The case of don José Salmón provides a strong example of how the Catholic Church in New Spain used ecclesiastical courts and the institution of marriage to maintain a patriarchal order favorable to its own interests. One crisp morning in the spring of 1785, a prosperous mine-owner from Guadalajara was forced to come to terms

with his wife's infidelity.<sup>250</sup> Don José Salmón had grown tired of the off-color jokes directed at his spouse. Despite being afflicted by a near-crippling jealousy, the miner had no proof of his wife's infidelity. On that unfortunate morning, don José left his bedroom early, telling his half-asleep wife doña María de Leos that he was leaving to manage one of his mines on the outskirts of Guadalajara and would not return until dark. After riding for about twenty minutes, the mine-owner realized that he had forgotten both his hat and his lunch. Upon arriving home, he walked quickly back into his bedroom and noticed that the curtains were completely drawn around his bed and that he heard movement inside. His wife spoke to him, asking why he had returned so soon and encouraging him to leave quickly before the sun became too hot. Suspicious, don José pulled back the curtains and spotted an extra set of feet underneath the covers. Outraged, he pulled out his dagger and got off a glancing blow on the young man who was hidden under the cover, a teenaged mulatto servant named George Dávalos. Gasping, Dávalos pulled himself under the bed to avoid don José's blows. With great dexterity, he wiggled out from under the bed and dashed out of the room, managing to evade the enraged husband. As don José tried to return to the bedroom to punish his wife, several of his slaves managed to subdue him and take away his blade. What triggered don José's murderous rage was the suggestion that his wife had cuckolded him, thereby violating don José's right, as husband and *macho* to presume his wife's sexual fidelity. Additionally, the adultery was with not just one of don José subordinate servants, but rather with a mulatto

---

<sup>250</sup> AGN. Petition of divorce by Don José Salmón against Doña María de Leos. Bienes Nacionales, 820, 1, fol. 1-89, 1784.

servant, thereby representing a radical inversion of the hierarchy of race, gender, and economic power that placed don José on top both as boss and as a white man of Spanish descent married to a Spanish lady.

Regaining his composure, within the week don José Salmón had contacted a lawyer and put forth a divorce suit against his wife. Surprisingly, the ecclesiastical judge who heard the case refused to authorize the divorce, claiming the evidence was insufficient. Doña María's lawyer argued that Dávalos had come into the room to bring her breakfast, and knowing her husband's jealousy she had ordered the servant to hide under her sheets when she heard footsteps outside the door. They were not able to explain why George Dávalos had his shirt off when don José Salmón found him. Despite the clear evidence of infidelity and the cogency of his lawyer's arguments, don José lost the case. The ecclesiastical judge hearing the case ordered the humiliated mine-owner to take his wife back. The matter was closed; all of José's appeals fell on deaf ears. By ordering don José to take back his wife, the ecclesiastical judge had essentially “pulled rank” on the wealthy mine-owner, establishing the clear subordination of this powerful individual to the church hierarchy. Examining the witness testimony of this case reveals that don José was as unpopular as much as he was wealthy, a generally disagreeable person who had trouble finding credible witnesses willing to testify on his behalf to his good character. Without witnesses on his behalf, don José had no real case, just a series of allegations and angry ruminations. By humiliating this patriarch, the church likely increased its own credibility in the community as the ultimate arbiter of right and wrong.

Sometimes maintaining the patriarchal system required sacrificing or subordinating individual patriarchs like don José.

## **Conclusion**

In this chapter, I explored husband's roles as both plaintiffs and defendants in divorce and annulment lawsuits in the ecclesiastical courts of the Archdiocese of Mexico. In particular, I highlighted the conflict of masculinities that the colonial divorce drama could entail, particularly between husbands, ecclesiastical judges, and royal officials. The patriarchal ideology refined during the course of the colonial era required establishing a hierarchy among patriarchs, and consequently the subordination and even humiliation of some men by other men.<sup>251</sup> Rather than a straightforward story of male domination and power, I have found that masculine identity could be unstable, fragmented, and affected by a web of circumstances, luck, relationships, and a man's own choices.<sup>252</sup>

My analysis of colonial divorce and annulment petitions challenges Kimberly Gauderman's provocative argument that the decentralized nature of Spanish American society impeded the development of patriarchy in the sixteenth and seventeenth

---

<sup>251</sup> Steve Stern and Kimberly Gauderman have both argued persuasively for the fragmented nature of patriarchal identity. See Stern, *The Secret History of Gender: Women, Men, and Power in Late Colonial Mexico*, 107.

Gauderman, *Women's Lives in Colonial Quito: Gender, Law, and Economy in Spanish America*.

<sup>252</sup> Stern, *The Secret History of Gender: Women, Men, and Power in Late Colonial Mexico*.

centuries.<sup>253</sup> While it is true that seventeenth century New Spain was a decentralized society characterized by multiple, overlapping judicial and political jurisdictions, Gauderman goes too far in arguing that this prevented the development of a social logic of patriarchal domination. While there was no legal principle as radical as coverture, which in the English common law tradition subsumed the legal identity of wife to that of the husband, the Spanish rule of *patria potestad* meant that patriarchy was enshrined in law. In their daily relations with their wives, husbands mobilized a commonly accepted notion of gender hierarchy that both gave them authority and defined the limits of acceptable and unacceptable behavior. The commonly accepted right of a husband to physically correct his wife, and also his responsibility to provide her with food and sustenance were principles clearly resulting from a patriarchal system.

Rather than analyzing patriarchy as only a system of men's domination of women, this chapter also considered how masculine identity structured men's attempts to dominate other men. Concerned by the rude behavior and dangerous autonomy of the conquistadors and their creole descendants, officials in the sixteenth and seventeenth centuries attempted to redefine patriarchy in a way that would tame elite colonial subjects, inspiring them to acts of Christian charity, obedience, and hew to standards of acceptable conduct. Ecclesiastical officials were also adept at manipulating the discourse of patriarchy in order to subordinate secular elite men and commoners alike to their own superior patriarchal authority. Rather than a conspiracy between all men to dominate all

---

<sup>253</sup> Gauderman, *Women's Lives in Colonial Quito : Gender, Law, and Economy in Spanish America*, 2.

women, patriarchy was a complex system of masculine authority that alternatively subordinated and exalted individual men, establishing complex and unstable hierarchies that were frequently contested by both elite and subaltern men.

Still, honor was not the defining principle of colonial society as represented in the discourse of divorce petitions. *Siglo de Oro* dramas and much of the recent historiography would have us believe that honor was a real, tangible thing for many *Novohispano* men and women. From this perspective, honor was something worth fighting for, a rigid series of rules and postures that defined one's social worth and was more valuable than gold or slaves. In contrast, this study suggests that the recent historiography vastly overemphasizes the role of honor in daily relations. Honor was just one part of a complex multifaceted masculine identity that men defined and redefined on a daily basis. While honor was not a key preoccupation for most colonial men, men were willing to risk money, social ostracism, and even death in the defense of their masculinity. Men of all social classes and throughout the whole colonial period were consumed with the idea of what it meant to be a man, and sought to defend their place on the masculine hierarchy whether at home with their wives, at work, in the street or at the wineshop. This necessity to defend their sense of manhood, which was inseparable from their notion of self-worth, could lead to conflicts with both their wives and with other men. This chapter focused on one subset of men---husbands-- in order to understand how some men struggled to define their masculinity in the difficult context of marital conflict, divorce and separation.

## Chapter Five

### Escaping *la mala vida*: Wives and Divorce in Colonial Mexico

María Cañamero believed that she was a good wife. During the seven years that she was married to Cristóbal de Buendía, she had complied with every one of her wifely duties. With great dedication, she washed her husband's clothes, the clothing of his Indian employees that worked in the sugar mill and even washed his horse. She obediently cleaned their house and prepared her husband's food every day. For her loyalty and hard work, Cristóbal rewarded her with bruises, cuts and scrapes, and scars. On twenty occasions, he had pummeled her in the head: a few times with his sword, and other times with a club.<sup>1</sup> On another occasion, he tied her hands and feet to a post and beat her with a horsewhip. On the vespers of Corpus Christi of 1658, he bludgeoned her knees so severely that her only form of locomotion was dragging herself around on her hands and elbows like an infantry soldier crossing hostile territory. The following Lent he slashed two of her fingers with a sword and broke some of her ribs. On several occasions he cut her cheeks with his dagger and threatened that he "ought to kill her."<sup>2</sup> Cristóbal's most brutal attack happened on Christmas day of the year 1658. After beating her with his belt, he almost knocked her unconscious with the pummel of his dagger and

---

<sup>1</sup> María Cañamero v. Cristóbal de Buendía. AGN. Vol. 1709, exp. 20, 1659, 1.

<sup>2</sup> María Cañamero v. Cristóbal de Buendía. AGN. Vol. 1709, exp. 20, 1659, 1.

then stabbed her with a smoldering log. In addition to severe physical abuse, María Cañamero accused don Cristóbal of forcing her to serve his mistresses. He was having an affair (*amancebado*) with two unmarried women, an Indian named Magdalena and a *mestiza* named Ana. He forced María Camañera and his own daughter to cook for his mistress Ana and for her entire family.<sup>3</sup> In addition to abusing his wife, Cristóbal abused his children. On several occasions, he restrained and brutally whipped his daughter Francisca. María's first attempt to force her husband to treat her better by suing him for abuse ended in failure. The judge, the Licentiate Juan Diez, required Cristóbal to respond to his wife's lawsuit. Cristóbal acknowledged the abuse and promised to treat her better. After having made this empty promise, the judge promptly released María to Cristóbal's custody. After returning home, instead of improving his behavior, María's husband intensified his abuse, showing "hatred" toward his wife.<sup>4</sup> María next requested aid from the advocate (*síndico*) Juan Vera. Vera enjoined her husband to stop abusing her but did not take any concrete measures to punish Cristóbal for his misbehavior or to improve María's domestic environment. Cristóbal's violent abuse continued.

Now desperate, María sought out the aid of the municipal magistrate (*alcalde ordinario*). The magistrate Alonso de Alamos Piñelo received María and her children in his palace and gave them refuge. Cristóbal realized that his wife had left him, and followed her to the palace, bringing along the Friar Diego de Anaya for moral support. Cristóbal and the friar asked her to return home and yet again "promised that he would

---

<sup>3</sup> María Cañamero v. Cristóbal de Buendía. AGN. Vol. 1709, exp. 20, 1659, 1.

<sup>4</sup> María Cañamero v. Cristóbal de Buendía. AGN. Vol. 1709, exp. 20, 1659, 1.

behave well.”<sup>5</sup> However, this time María was not willing to believe Cristóbal’s promises; she filed for divorce in the ordinary tribunal of the archdiocese of Mexico.

María Cañamero’s case shows that attempting a legal solution for their husband’s abusive behavior could be a risky affair for wives. Cristóbal’s behavior worsened as María went through the first two stages of the process. First she sought mediation by placing an abuse claim in the ecclesiastical court, which only increased her suffering when she was returned to her husband’s custody. Then she asked for help from the advocate, who gave her husband another slap on the wrist but failed to stop the abusive behavior. The final and only effective step was taking their children and leaving Cristóbal, seeking asylum in the civil magistrate’s house. This preceded a divorce lawsuit, of which there is no record of the conclusion. As we see, the only strategy that improved María’s situation was leaving her husband. The story of María Cañamero reveals two patterns that are common to the majority of divorce lawsuits presented in the ecclesiastical courts of New Spain. First, Cañamero’s lawsuits accuse her husband of savage, extreme violence at great length and with vivid details. Cristóbal’s alleged attacks on his wife threatened her physical integrity and even her life. Cañamero’s attorney suggested that they also seemed designed to humiliate her, such as when he tied her to a post and beat her, a punishment that resembled the whipping post used on plantation slaves, or for public corporal punishment.<sup>6</sup> Another humiliating punishment was when Cristóbal had supposedly beaten her knees until she was temporarily crippled,

---

<sup>5</sup> María Cañamero v. Cristóbal de Buendía. AGN. Vol. 1709, exp. 20, 1659, 1.

<sup>6</sup> Alan Knight, *Mexico: Volume 2, The Colonial Era* (Cambridge University Press, 2002), 152.

forcing her to crawl in a subservient position. He also allegedly humiliated her by forcing her to serve his mistresses, and even making their daughter cook for his mistresses' family; an act which subordinated Cristóbal's legitimate family to the illegitimate one.

Still, while they could be victims of savage abuse, wives were not entirely helpless and had a variety of potential strategies to improve their living situations. One strategy was forum-shopping: María Cañamero took her case to local, royal and church authorities until she found a solution. Active resistance was another strategy. María tried to follow the rules, obeying court orders on two occasions that required her to live with her abusive and disrespectful husband. When she realized that following the rules was not going to improve her situation, she took matters into her own hands, leaving her husband and taking their children with her. In this instance, violence and resistance were the two faces of the same coin.

### ***Why Women Divorced***

Despite the diversity of their occupations, ethnicities, and social positions, the majority of women had one thing in common: they had been married at some point. While a significant number of *casta* and plebeian Spanish women never married, and quite a few entered a religious order, marriage at some point of their life was the experience of the vast majority of the female population. The results of the 1790 census of Mexico City showed 12,941 married women and 9,557 widows, versus 4,948 women

over the age of 25 who had never been married.<sup>7</sup> This means that in the late colonial era only 18% of the mature female population was single and never married at the time of the census. While there may have been slightly more unmarried women due to the prominence of convents in the seventeenth century, the general trend would have been the same. Most colonial Mexican women married at least once in their lifetimes.

This study shows that wives were far more likely to initiate petitions for divorce or annulment than their husbands. Throughout the colonial period, married women had far more to gain from a separation or annulment than married men. In the sixteenth and seventeenth centuries, women placed virtually all the complaints for divorce. More than 98% of divorce plaintiffs in the Archdiocese of Mexico during this time period were women. Until the middle of the eighteenth century, plaintiffs in divorce litigation in New Spain were almost invariably women.<sup>8</sup> Ecclesiastical divorce could benefit abused wives and almost always worked to the financial detriment of husbands. In early colonial Mexico, it was generally not in the interest of a disgruntled husband to attempt to divorce his wife. Even if a wife were to be found at fault and the divorce authorized, the husband still had the responsibility to pay her alimony and to provide for her maintenance.<sup>9</sup> Additionally, by moving a divorce complaint in the church tribunal a husband was subjecting himself to potential humiliation, as the intimate details of his wife's

---

<sup>7</sup> Arrom, 1985, 116

<sup>8</sup> Consequently, for this study I will refer to plaintiffs using the female gender and defendants using the masculine gender.

<sup>9</sup> Although if the wife were at fault he would not have to give her back her dowry; he could keep administering it, though he could not take actions to spend or diminish it.

disobedience and mistreatment of him became the source of rumors in his community. Since *Novohispano* husbands expected their wives to show public obedience, respect, and loyalty, a wife's lawsuit could be interpreted as both an insult and a challenge to her husband's masculine dominance.<sup>10</sup> At the same time, men of all ranks and classes enjoyed greater physical and social mobility than women in New Spain, and consequently there were numerous alternatives short of divorce for unsatisfied husbands that had fewer social costs. Colonial husbands could punish "bad" behavior by restricting their wives' food and visiting privileges, attempt to beat them into submission, or simply abandon them. However, by going through official channels and seeking a divorce, a man risked damaging both his social and financial integrity. In contrast, wives in colonial Mexico generally lacked such mobility to deal with their husbands' "bad" behavior, thereby making external mechanisms for the mediation of marital conflict such as legal action relatively more attractive.

The first two chapters of this dissertation examined both husbands and wives as plaintiffs and defendants, with the first chapter concentrating on annulment lawsuits and the second chapter focusing on the remedy of ecclesiastical divorce. The third chapter focused on husbands as a group, exploring how husbands constructed a defense of their masculinity in the course of marital litigation. Finally, this fourth chapter will consider

---

<sup>10</sup> Steve Stern argues that in late colonial Mexico, "The language of respect, like familial metaphor, facilitated transposition and occasional fusion between the familial and political domains of everyday life. ...One owed respectful deference to a family elder, a patriarch, or a community official or *viejo* even if the inner self questioned the rightness of specific acts, demands, or excesses of the superior."

Stern, *The Secret History of Gender: Women, Men, and Power in Late Colonial Mexico*, 212.

wives as both plaintiffs and defendants in annulment and divorce lawsuits. I will, show how wives used marital litigation to resist violence and assert economic independence, in effect using the principles of canon law to challenge patriarchal privilege.

### ***Divorce: A Risky Strategy***

While potentially an effective remedy for spousal conflict, pursuing legal action was far from a panacea for colonial wives. By suing her husband for divorce or pursuing an annulment, a wife risked subjecting herself to negative public scrutiny, gossip and dishonor. Should she lose her lawsuit, she also risked suffering a violent retaliation from her husband. These significant shortcomings meant that divorce was a potentially effective, though risky strategy for wives to deal with spousal abuse and to improve their living situations. In contrast to their husbands, wives enduring terrible relationships had much to gain from divorce. However, the most risky aspect of suing for divorce was that judges frequently denied divorce petitions. If the judge determined that divorce was not justified, she would have to resume cohabitation and conjugal life with her husband. A choice to go to the authorities could make a terrible situation worse: as we have seen in the case of María Cañamero whose living conditions deteriorated after she first requested the intervention of the legal system. Her husband who had mistreated her before she went to the authorities only intensified his abuse, beginning to treat her with “hatred” and increased cruelty. Thus, the main risk of suing for divorce or annulment was that a wife risked emboldening or enraging her abusive husband should the judge find in her husband’s favor. Additionally, since all divorce or annulment trials involved significant

witness testimony, the wife could be certain that her marital troubles would become public knowledge and likely inspire some unfavorable gossip and loss of prestige. News of divorce or annulment lawsuits seemed to travel quickly. One of the witnesses in the divorce lawsuit of doña Angela Ramiro de Vargas in 1711 remarked that “many people” had heard about her divorce.<sup>11</sup>

Some women in colonial Mexico accepted the risk because a verdict in favor of the plaintiff in an annulment or divorce case could significantly improve a woman’s living conditions. If the judge granted a decree of annulment to a woman, she could immediately leave the institution or private house where she had been enclosed and move to the residence of her choice (usually a parent’s or close relative’s house). The decree of annulment provided a free pass for a woman to completely remake her life, whether she desired to remarry, remain single or to enter the religious life. Her former husband would have to restore the complete value of her dowry to her in the thirty days subsequent to the decree, thereby restoring the woman’s economic independence. In contrast, an authorization of temporary or permanent ecclesiastical divorce granted the wife certain rights, but also imposed restrictions on her choice of living arrangements and her lifestyle. If a woman sued for divorce and the judge found in her favor, her husband would be obliged to restore her dowry intact to her, or if he had spent or invested it, to return the full equivalent value of the dowry to her in cash. The husband was also required to support her for the rest of her life with regular alimony payments. The size of

---

<sup>11</sup> Doña Angela Ramiro de Vargas v. Don Joseph Pérez. AGN. Matrimonios, Vol. 249, exp. 1, 1711, 18.

this alimony payment would depend on the social status the wife as well as the number of children that they had together. However, despite being the recognized victim of her husband's abuse, a divorced wife could not remarry, have sexual relationships or live independently. She would be a ward of the court for as long as her divorce continued, required to live in enclosure where the ecclesiastical judge decided.

### ***Enclosure: A Key Benefit***

As a first step in annulment or divorce proceedings, wives were always placed in enclosure (*recogimiento*) in an institution or private house. For many wives, the possibility of being taken out of their husband's custody and placed in enclosure was a key benefit that outweighed any possible financial benefits that could accrue from marital litigation. For this reason, a high percentage of divorce cases do not touch economic questions, being tabled or abandoned after the initial declarations of plaintiff and defendant and witness depositions. This suggests that for most wives, economic questions were not of primary importance, being secondary to the necessity to put physical space between themselves and their husbands by changing residences.. After determining that the wife had sufficient reason to sue for divorce based on her initial petition, the ecclesiastical judge always placed the petitioning wife in protective custody. Wives could be placed in a home, convent, or specialized house for women involved in litigation against their husbands called a *casa de recogimiento*.<sup>12</sup> Since divorce disputes

---

<sup>12</sup> Nancy E. Van Deusen, *Between the Sacred and the Worldly* (Stanford University Press, 2001), 62.

could extend for years at a time, this meant that a disgruntled wife could at a minimum escape from her husband's custody for the duration of the litigation. This alone could justify placing the complaint. The process of *recogimiento* offered a way for women to escape violent and abusive situations and regain independence from their husbands in a secure environment with adequate, simple living conditions. In exchange, women had to give up some of their freedom and accept the rules of the home or institution where they were placed.

**Table 12: Kinds of Enclosure in 16th and 17th centuries**

<b>Enclosure</b>	<b>Total</b>	<b>Percentage</b>
Convents	8	5%
Institutions of <i>Recogimiento</i>	25	17%
Boarding Schools	3	2%
Particular houses	3	2%
Relative's home	36	24%
Other	2	1%
Unknown or no information	71	48%
<b>Total</b>	<b>148</b>	<b>100%</b>

Enclosure or *recogimiento* served to protect the integrity of a woman's testimony by isolating her from the potential coercion of her husband or in-laws. After the Third Provincial Mexican Council of 1585, Mexican bishops decided that in order to preserve the integrity of the legal process and prevent abuse, all female litigants must be placed in

enclosure during a matrimonial cause. In one adultery case from 1790, don Francisco Pila referred to this requirement, stating:

*According to the proceedings of the Third Mexican Council, after moving for a petition for divorce, the woman should be deposited even if she is the plaintiff, and as in this case she is the defendant, there is no other residence to my satisfaction than the House of Mercy.<sup>13</sup>*

Judges and lawyers called the process of being placed in enclosure being put in “deposit” (*depósito*). By providing safe living arrangements, enclosure temporarily protected wives from the abuses alleged in their divorce petitions. Enclosure also maintained the honor and reputation of the husband by placing the wife under the supervision of a person or institution that could deter misbehavior and prevent allegations of misconduct. During the course of divorce proceedings, whether they were participating as petitioners or as the petitioned, women were almost always “deposited” in an honorable house or recognized institution of enclosure.

Female litigants would be remanded to the custody of either an institution, such as a convent, or that of a particular individual with a good reputation living in a house of repute (*casa de honra*). As Table 1 shows, the most common arrangement was for the petitioner to stay with relatives. More than 24% of wives were placed in deposit with relatives. For instance, although doña María de Villar was held in several different locations during her long divorce trial, she spent the majority of the trial in her mother’s house.<sup>14</sup> Being placed with relatives had advantages for both husband and wife. For the

---

<sup>13</sup> Francisco Pila v. doña María Ciriava García. AGN, Bienes Nacionales, Vol. 292, exp. 1, 1790.

<sup>14</sup> Doña María de Villar v. Clemente Flores, AGN, Indiferente Virreinal, 5244, exp. 19, 1663, 7v.

wife, living with relatives was the closest thing to having total freedom.<sup>15</sup> The advantage for the husband was cost; while the husband would have to pay for his wife's food, he did not have to pay rent (*pisaje*) as in the case of a formal institution.

Wives were also occasionally placed in the private houses of particular individuals of good reputation. This was not a very common option, representing just 2% of the wives in this study. Judges threatened and occasionally excommunicated depositors that they declared to be insufficiently rigorous in executing the duties of their charge. The majority of these individuals were minor court officials who opened their homes up to wives who were suing their husbands for divorce or abuse. The host took on a role that combined aspects of hotelier, confidante and occasionally jailer. Officials who were eligible for the role of depositor seem to have been married men whose own wives took the lead in caring for the women involved in divorce or annulment lawsuits. If assigned to a particular house, a woman would be remanded to the custody of a man with the understanding that she would remain in the company of his wife. In the lawsuit of doña Antonia Ferrer, the vicar general placed the plaintiff in the house of Captain don Juan Canalejo, so that Antonia might be “in the company” of the Captain's wife.<sup>16</sup>

---

<sup>15</sup> Of course some parents would have more restrictive house-rules than others.

<sup>16</sup> Antonia Ferrer. AGN, Matrimonios, Vol. 78, exp. 78, 1674, 441.

**Table 13: Institutions of Enclosure**

<b>Institution Type</b>	<b>Number of wives</b>
Recogimiento ( <i>Emparedamiento</i> ) of Santa Mónica	3
Recogimiento of María Magdalena	11
Emparedamiento of Santa Mónica	11
Convento Santa Catalina of Sena	3
Convento of Religiosas of Santa Inés	1
Colegio de Niñas	2
Colegio de Doncellas	1
Convento of Santa Mónica	1
Convento of San Juan of la Penitencia	1
Convento of Jesús María	1
Convento of Monjas of San Gerónimo	1
Unnamed convent	1
<b>Total</b>	<b>37</b>

Many of the wives involved in marital disputes ended up placed in institutions of *recogimiento*. These institutions were founded in colonial Mexico and Peru in the late sixteenth century as houses for wayward women and reformed prostitutes. The two largest *recogimientos* in Latin America, the *Recogimiento de Santa Mónica* and the *Casa de Divorciadas* in Lima opened in the same year, 1589.<sup>17</sup> Institutions such as the *Emparedamiento de Santa Mónica* and the *Recogimiento de María Magdalena* hosted 11 women each, making them the largest single institutions of enclosure considered in this

---

<sup>17</sup> Deusen, *Between the Sacred and the Worldly*, 66.

study. Including schools and convents, 25% of the wives lived in institutions during the duration of their lawsuits. All *recogimientos* took in women who were being abused by their husbands, as well as wives involved in divorce or annulment lawsuits. The *Recogimiento de María Magdalena* and other institutions also took in and attempted to reform prostitutes and women of bad reputation (*mala fama*). They also served as permanent residences for some women who had been granted permanent or temporal ecclesiastical divorces. Nancy Van Deusen notes that in addition to these functions, the *Emparedamiento de Santa Mónica* also served as a residence for women whose husbands were traveling.<sup>18</sup> While living in a convent-like setting, litigants for divorce and annulment lawsuits who lived in *recogimientos* did not have to follow the strict discipline of religious orders. They were generally permitted to bring their daughters, some servants or slaves, their clothing and their bed or other furniture.<sup>19</sup> Nevertheless, life in a *recogimiento* was much more regimented and austere than a woman's life in her own home, leading many wives to resist being deposited in an official *recogimiento*. For example, in 1608 Bernardina de Esquibel resisted bitterly her husband's attempt to take her out of her son's house and place her in the *Emparedamiento de Santa Mónica*. Bernardina and her husband were from the Port of Acapulco, and so Bernardina had filed for divorce before the ecclesiastical judge of Acapulco, the licentiate Fernán Gómez de Ortega. The judge pronounced sentence in favor of the plaintiff, authorizing her divorce and granting her the right to "live freely in her own houses or rent or live with her

---

<sup>18</sup> Ibid., 226.

<sup>19</sup> Ibid., 92.

children as she desired,” but in an unlikely twist he died before the sentence could be confirmed by a notary. Taking advantage of the loophole, her husband Francisco Gallardo appealed to the court of appeals in Mexico to overturn the verdict and relocate Bernardina to the Emparedamiento de Santa Mónica. Doña Bernardina’s attorney Diego de Campo vigorously resisted this move, stating that his client “is a mature woman” and should not be forced to switch unnecessarily from the “honorable house” where she was currently living to the harsher conditions of the *recogimiento*.<sup>20</sup>

While wives who were held in *recogimientos* did not have much liberty, plaintiffs and defendants perceived enclosure as being far preferable to jail. Husbands sometimes threatened to have their wives put in jail for misbehavior while they were living in enclosure. After receiving word that his wife had become pregnant while she was living in a *recogimiento*, don Joseph Cortés argued that the sheriff’s deputy (*teniente de agaucil mayor*) should have taken his wife from her enclosure and placed her in the public jail.<sup>21</sup> Don Joseph argued that the pregnancy was clear evidence that the court had been excessively permissive to his wife; by allowing her to leave her enclosure on the pretext of needing to go to the court or attend to her business with the result that she stayed out until very late, returning “sometimes the following day.”<sup>22</sup> For don Joseph, his wife’s unplanned pregnancy showed that she was a “libertine” who required close vigilance.<sup>23</sup>

---

<sup>20</sup> Bernardina de Esquivel v. Francisco Gallardo, AGN, Indiferente Virreinal, Caja 1502, exp. 2, 1608, 137v.

<sup>21</sup> Joseph Cortés v. Doña María Ignacia Ceballos. AGN, clero 138, exp. 1, 1785, 29v.

<sup>22</sup> Joseph Cortés v. Doña María Ignacia Ceballos. AGN, clero 138, exp. 1, 1785, 3v.

<sup>23</sup> Joseph Cortés v. Doña María Ignacia Ceballos. AGN, clero 138, exp. 1, 1785, 3v.

As her husband described her, doña María Ygnacia was a terrible wife because she stayed out late, was promiscuous and disobeyed her husband. To be a good wife, doña María should have done the opposite: stayed home, been chaste and obeyed her husband. In the seventeenth century, one of the highest compliments for a woman would be to be described as *recogida*, implying an honorable reputation and a sense of dignified reserve.<sup>24</sup> In 1618, doña Josepha de Ayala used the idea of being “*recogida*” to contrast her husband’s bad behavior to her dedicated service. She stated that she had “always tried to live honestly and *recogida*,” nevertheless, her husband treated her as if she were “a slave” and his “mortal enemy.”<sup>25</sup> Similarly, doña María de Santillán stated that her husband’s abuse was unjust because she was an “honorable and *recogida* woman.” For a woman to be *recogida* was to display a series of other virtues such as honesty, honor (*honra*) and good morals. In theory, *recogida* women were supposed to distance themselves as much as possible from the vulgarities of public life and daily affairs in the street. They were supposed to show respect for their husbands by staying at home as much as possible, and in particular by avoiding going out in public spaces without a chaperone.<sup>26</sup> Consequently, institutions that were designed to safeguard women and their reputations were often called *casas de recogimiento*.

---

<sup>24</sup> Nancy Van Deusen defines *recogida* as: “Virtuous, Self-Contained. Enclosed. Moral” based on her study of colonial *recogimientos*, above all in Lima. Deusen, *Between the Sacred and the Worldly*, 270.

<sup>25</sup> Doña Josepha de Ayala vs. Juan de Castañeda. AGN, Indiferente Virreinal, Caja 1513, exp. 2, 1618, 1.

<sup>26</sup> Magali Marie Carrera, *Imagining Identity in New Spain: Race, Lineage, and the Colonial Body in Portraiture and Casta Painting* (University of Texas Press, 2003), 35.

Originally a spiritual practice, *recogimiento* became associated with the houses where women practiced spiritual retreats, and became widespread in New Spain after an attempt of Franciscan monks to establish a *recogimiento* for Nahua girls in the first half of the sixteenth century.<sup>27</sup> The paradox of *recogimiento* was that depending on the circumstances, it could either reinforce the patriarchal authority of husbands or grant wives a greater degree of autonomy and freedom. A wife's life could change dramatically depending on the conditions and circumstances of her deposit. Francisca de Tovar spent much of the year of 1617 changing residences. She began the year in the custody of her husband, a rough, violent man by the name of Tomás de Godoy. After suffering a vicious attack by her husband that culminated in attempted murder, Francisca fled to her mother's house where she spent a few months living in safety. After suing for divorce, she again changed residence as she was placed in the *Emparedamiento de Santa Mónica*. Held in the custody of the *emparedamiento*, she lived a stricter, more institutionalized life for a few months until her husband's attorney requested that she be released from the *emparedamiento* and placed in custody of the relative of his wife's choice, due to Tomás's economic difficulties, which precluded him from paying her room and board at the *recogimiento*.

*Recogimiento* was frequently a temporary stop for women involved in marital causes, but it could also be for a specific or indefinite time-period. After accusing her husband of physical abuse and neglect, in 1716 doña María de Contreras received a

---

<sup>27</sup> Deusen, *Between the Sacred and the Worldly*, 17.

verdict authorizing a temporary separation of one year from her husband Joachim de Morales.<sup>28</sup> The vicar general don Carlos Bermudes de Castro also ordered don Joachim to make a weekly alimony payment of four pesos, as well as care for the couple's sons during the duration of the separation. Correspondingly, Doña María de Contreras received temporary custody of their daughters. During this time, she was given a choice of two *recogimientos*; she could choose to live in either the Convent of San Isabel or in the House of Mercy.<sup>29</sup> After the year was finished, the couple was to resume marital cohabitation.

Wives who resisted orders to resume marital cohabitation could find themselves in difficult situations. The case of doña María Camila Rodríguez shows the danger that wives faced if they did not comply with legal requirements. In 1789, doña María Camila received the news that she had been dreading; the vicar general ruled for her husband in the divorce lawsuit that she first submitted thirteen years earlier. In addition to physical abuse, doña María Camila accused her husband don Joseph Roxas of adultery and of having gonorrhea. In his verdict, the vicar general warned that if she did not return to the “company of her husband” she would be punished harshly (*castigado con rigor*).<sup>30</sup> He also ordered don Joseph to abstain from sexual relations whenever his wife found it “inconvenient” due to his disease, according to the principle of sexual moderation.<sup>31</sup>

---

<sup>28</sup> Doña María de Contreras v. Joachim Morales, AGN, Templos, vol. 152, exp. 36, 1716, 123.

<sup>29</sup> Doña María de Contreras v. Joachim Morales, AGN, Templos, vol. 152, exp. 36, 1716, 123.

<sup>30</sup> Doña María Camila v. don Joseph Roxas, AGN, Bienes Nacionales, Vol. 292, exp. 26, 1789, 24.

<sup>31</sup> Doña María Camila v. don Joseph Roxas, AGN, Bienes Nacionales, Vol. 292, exp. 26, 1789, 24.

The judge don Joseph Ruiz de Canejares also emphasized that doña María should obey her husband, instructing the bailiff to “give a stern warning” to doña Camila about the “peace and harmony” that should characterize a marriage, threatening that “her luck could change” should she be found lacking in the obligations of her “condition” as a wife. Instead of filing an appeal to the judge’s decision, as would be the legally correct thing to do, doña Camila decided to ignore the vicar general’s decision and refused to resume marital cohabitation with her husband. Because of her disobedience, she was quickly detained and punished by being placed in the tough conditions of the Archbishop’s regular jail, instead of in a *recogimiento* as was the custom. The vicar general punished her harshly because “she has not wanted to live subject to her husband” and on several occasions “had left him without any motive.” Doña Camila’s mistake was not refusing to live with her husband; it was not following the correct legal procedure in order to separate from him.

Other wives were much savvier than doña Camila. With sufficient motivation and a good lawyer, wives could exert their influence over where they were placed in deposit. In the most common scenario, the female litigant made a suggestion about where she was to be held in custody that was then accepted without further discussion by the judge. Occasionally, the wife had no preference and let the judge choose where she would live. In other cases, the location of the wife’s deposit was an issue that caused significant conflict between plaintiff and defendant. For example, in 1795 doña María Francisca Menchaca lost her petition for divorce from her husband don Josef Treviño after a long and bitter conflict. While the initial case took place in Monterrey, the entire

appeals process happened in the Archdiocese of Mexico, which was the appeals court for Monterrey. After receiving a verdict denying her petition for divorce, the first thing that doña Francisca's lawyer did was file a statement of his client's disagreement with the verdict and a request to begin the appeals process. Doña Francisca's lawyer, don Rafael Ponze Borrego, argued that doña Francisca was neither "slave nor Captive" to her husband but rather his "companion."<sup>32</sup> Therefore don Josef Treviño had no right to compel her to live with him against her will. Despite this impassioned argument, the first appeal was denied. The vicar general then ordered doña Francisca to return to her husband's custody and to resume marital cohabitation; under the penalty of excommunication should she refuse. She appealed this judicial order. The vicar general denied her appeal, and this time threatened to ask for the auxiliary of royal authorities (*el brazo secular*) should she refuse to return home to her husband. Doña Francisca's lawyer appealed yet again. Because of her perseverance the ecclesiastical judge compromised, allowing her to move to a *recogimiento* near her home on a temporary basis. By 1795 the *Casa de Recogimiento de Mujeres* was shut down so she had to go to the House of Mercy instead. Doña Francisca did not like this option and so she appealed to the judge to be deposited in a private household in her hometown of Saltillo. The judge authorized this, but at soon as she got there, her husband procured an order to send her to the Poor House (*Hospicio de Pobres*) in Monterrey. Finding the austere conditions of the Poor House to be intolerable, doña Francisca quickly obtained a doctor's note saying that she must

---

<sup>32</sup> Doña Francisca Menchaca v. don José Treviño. AGN, Bienes nacionales. Vol. 109, exp. 3, 1793, 29v.

immediately leave the Poor House for health reasons. After leaving the Poor House she went to her uncle's home, which was most likely her preferred residence from the beginning of the legal conflict. At this point both the authorities and her husband don Josef seemed to give up and the case-file ends. By engaging in an extraordinary feat of legal perseverance and showing much higher motivation than both defendant and even the judges, doña Francisca was able to achieve her desired outcome. Doña Francisca was the person who had most at stake in the question of her living arrangements, so it should not be surprising that she was the person who ended up imposing her will on everyone else.

A significant number of women involved in divorce or annulment lawsuits spent the months or years of the lawsuit secluded in a convent. More than 5% of the women involved in divorce and annulment lawsuits were placed in convents. However, the Council of Trent's guidelines requiring the separation of lay and religious at convents prevented the convent from becoming the most common place of enclosure for married women with marital problems. Van Deusen argues that according to the post-Trent regulations, women were not supposed to seek refuge in convents "unless their lives were in danger."<sup>33</sup> Wealthy wives sometimes used this exception to leave their husbands and enter a convent without a judicial order of deposit. Humiliated by her husband's public adultery, doña Lorenza de Esquibel probably used this pretext to enter the Convent of San Gerónimo in 1650. Doña Lorenza's own lawyer admitted that she was currently

---

<sup>33</sup> Deusen, *Between the Sacred and the Worldly*, 66.

staying in the convent “without an order” so that she could exercise her right to “testify without coercion, freely and spontaneously.”<sup>34</sup> Judges seemed more willing to authorize enclosure in a convent for very young wives and for wives that were seeking annulments rather than ecclesiastical divorces. In 1798, doña Juana María Bergaña asked for an annulment on the grounds that her husband had forced her to marry when she was eleven years old, one year before the Catholic Church’s minimum age of consent for marriage for girls. The youthful doña Juana claimed that her true desire was to enter a convent instead of getting married. After having spent several months in a convent, doña Juana seems to have voluntarily left her convent and resumed marital cohabitation. It seems reasonable to presume that doña Juana found religious life in a convent to be less agreeable than she had imagined.

Judges also sometimes placed women who had been granted divorces in convents. In 1716, the vicar general don Carlos Bermudes de Castro authorized a temporary separation of one year for doña María de Contreras and her husband Joachim de Morales. He gave doña María de Contreras the choice to life in the Convent of Santa Isabel or the House of Mercy.<sup>35</sup> The convent would have offered doña María a regimented lifestyle, but also better living conditions than in the House of Mercy.<sup>36</sup> Convents offered an alternative place to live during divorce proceedings for wives with

---

<sup>34</sup> Doña Lorença de Esquivel v. don Sebastián Vaz, AGN, Bienes Nacionales, Vol. 114, exp. 4, 1650, 21.

<sup>35</sup> Doña María de Contreras v. Joachim de Morales. AGN, Vol. 152, exp. 36, 1716, 123.

<sup>36</sup> It is unclear which choice doña María made, as the case-file ends after the verdict, but with no annotation as to which option doña María selected.

spiritual inclinations or the minority of wives who had no desire to live with relatives or in a large secular institution such as one of the *recogimientos*.

## **Violence**

Colonial divorce petitions were narratives of violence. Almost all of the petitions for divorce make reference to some form of physical or verbal violence. Even though violence was not a basis for annulment, many annulment petitions also mentioned the husband's violent abuse of his wife. One of the paradoxes of colonial society was that wives, husbands and church officials seemed to tolerate very high levels of marital violence while simultaneously decrying violence as unacceptable and illegitimate. While in theory there were several grounds for divorce, in practice ecclesiastical judges only authorized divorces if there was strong evidence of violence. While playing lip service to values of love and harmony, husbands often seemed to place rather low standards on their own behavior. In order to support his claim that he was a good husband to his wife doña Francisca de Heredia, Juan Leal de Ribera made reference the fact that "while perhaps he had caused her problems on a few occasions" in all their years of marriage, he had "never placed his hand on his sword or dagger to threaten her or to kill her."<sup>37</sup> Francisca de Heredia, who was alive and breathing at the time she filed for divorce, agreed that her husband had yet to murder her. However, he had cruelly beaten her on repeated occasions and taken his mistresses out in public. For these reasons, she sued for divorce

---

<sup>37</sup> Francisca de Heredia v. Juan Leal de Ribera. AGN, Indiferente Virreinal, Caja 5692, exp. 22, 1616, 80.

on the grounds of excessive cruelty (*sevicia*) and public adultery.<sup>38</sup> Juan Leal claimed to be a good husband despite these allegations. He stated that he was a good provider and had given doña Francisca “everything that she needed,” including “dresses, jewels and other objects of great value.”<sup>39</sup> Don Juan Leal believed himself to be very generous, as he gave gifts to his wife “in great abundance.” In his first response to doña Francisca’s divorce petition, he seems genuinely surprised that his wife had filed for divorce and accused him of being a “cruel” husband.

Plaintiff’s attorneys described the violent acts perpetrated against wives by their husbands in lurid detail in order to convince the court to take protective legal action. There was even a common phrase used for husbands and wives who lived in a violent state of extreme marital disharmony and abuse: *la mala vida*.<sup>40</sup> For instance, in 1775 doña Teresa Nicholasa Martínez recalled the “mala vida” that her husband had given her, including “beatings and humiliation” making the young wife “the object of everyone’s compassion.”<sup>41</sup> By filing for divorce, wives sought to escape the *mala vida* that their husbands gave them, either by putting physical distance between themselves and their husbands or by compelling a change in their husbands’ behavior.

Divorce lawsuits initiated by women were replete with examples of intense, savage violence. Juana de la Paz recounted how her husband “inspired by his natural

---

<sup>38</sup> Francisca de Heredia v. Juan Leal de Ribera. AGN, Indiferente Virreinal, Caja 5692, exp. 22, 1616, 1.

<sup>39</sup> Francisca de Heredia v. Juan Leal de Ribera. AGN, Indiferente Virreinal, Caja 5692, exp. 22, 1616, 80.

<sup>40</sup> Richard Boyer, “Women, La Mala Vida, and the Politics of Marriage,” in *Sexuality and Marriage in Colonial Latin America*, ed. Asunción Lavrin (Lincoln: University of Nebraska Press, 1989), 267.

<sup>41</sup> Doña Teresa Nicholasa Martínez v. Don Jose Joaquín Echeverría. AGN. Bienes Nacionales. Leg. 870, exp. 3, 1775, 249v.

evil” and without any provocation, beat her savagely with a skeleton key, leaving deep bruises. She was only able to escape his violent rage by seeking asylum in a local priest’s house.<sup>42</sup> In her divorce lawsuit with Francisco López de Arica, María de Santillán claimed that not only had he repeatedly slapped her and pulled her hair, but on one occasion pulled out his dagger, took it out of the sheath, and attempted to stab her.<sup>43</sup> Women suing for divorce or annulment seemed to frequently have found themselves threatened at blade-point by angry spouses. Just a few days after her marriage, Catalina de Monroy found herself inches away from a threatening dagger pulled out of its sheath. The man brandishing the weapon was no other than Nicolás Velásquez, her husband who also yelled that he “ought to kill her.”<sup>44</sup> Roque de Sancta María, a forty-year-old tailor of mixed African descent (*pardo*) “always carried prohibited arms because of his bad character and infernal vices.”<sup>45</sup> On repeated occasions, he had held a blade to her throat and threatened to “take away her life.”<sup>46</sup> Joseph de Blancos also had the habit of threatening his wife with the point of a dagger. Doña María Guadalupe de Naxera lived in constant fear during her marriage because her husband had the unsavory custom of sleeping with an unsheathed knife at an arms-length underneath his pillow (con el

---

<sup>42</sup> Juana de la Paz v. Sebastian Canallero. AGN, Matrimonios, vol. 152, exp. 11, 1685, 1.

<sup>43</sup> “En otra ocasión saco una daga y con ella fuera de la bayna yntento dar de puñaladas a mi parte” AGN, Indiferente Virreinal, Caja 1502, exp. 8, 1643, 2v.

<sup>44</sup> Catalina de Monroy v. Nicolás Velásquez. AGN, Indiferente Virreinal, 5333, exp. 16, 1655, 2.

<sup>45</sup> AGN, Matrimonios, Vol. 205, exp 29, 1711, 2v.

<sup>46</sup> AGN, Matrimonios, Vol. 205, exp 29, 1711, 1. “quitarle la vida”

cuchillo desnudo debajo de la Almoadá) and of making constant threats to kill her.<sup>47</sup> A free *mulata* woman named Juana Domínguez, who testified on behalf of doña María de Espinosa claimed that doña María's husband Joseph de Blancos had on one occasion threatened to kill her, pinning her down to a bed and thrusting the dagger into the headboard out of anger and sexual frustration when doña María continued to refuse to consummate their marriage. He found doña María's reticence to have sex with him particularly enraging because she was not a virgin (*de no ser doncella*), although Juana claimed that the almost-virgin doña María told her without a trace of irony that at the time of her marriage she had "never" been with a man "except for two white men" (*gueros*).<sup>48</sup>

Even animals and pets suffered the consequences of violent outbursts by enraged husbands. In her divorce petition against Francisco Gallardo, doña Bernardina recounted how her husband always walked around armed with a sword in his belt, even bringing it to the table to eat his meals.<sup>49</sup> In addition to his constant death threats, Francisco shocked her on one occasion by killing a cat that was sleeping on her bed with his sword because it was "too tame" (*muy manso*).<sup>50</sup> Similarly, doña Ana Calderón's lawsuit contains a vignette worthy of Cervantes. She accused her husband of attempting to kill the mule that he was riding on because he was not able to find anyone to unsaddle the hard-

---

<sup>47</sup> Doña María Guadalupe v. don Sebastián de Macasaga. Inquisición, vol. 1264, exp. 4, 1776, 233v.

<sup>48</sup> Doña María de Espinosa v. Joseph de Blancos. AGN, Bienes Nacionales, Leg. 79, exp 3, 1675, 2v.

<sup>49</sup> Berardina de Esquibel v. Francisco Gallardo, Caja 1502, exp. 2, 1608, 38.

<sup>50</sup> Berardina de Esquibel v. Francisco Gallardo, Caja 1502, exp. 2, 1608, 38.

working animal.<sup>51</sup> Pedro Matheos likely saw unsaddling his own mule as a threat to his modest status; it is worth noting that it was a mule and not a horse that suffered the rage of this would-be *hidalgo*.<sup>52</sup>

Marriages sometimes began with acts of sexual violence. After Josef Martín impregnated her cousin and raped her, in 1775 a 14-year-old Indian girl named Francisca María appeared before the ecclesiastical tribunal to declare that he had stolen her virginity and honor.<sup>53</sup> She claimed that Josef had ambushed her “by Canjay place” (*paraje de Canjay*) as she went about her way, pulled out a knife and said that if she cried for help or put up resistance he would have to kill her with his blade. Despite his threats she struggled against him until she was exhausted and defenseless, and then Josef threw her to the ground and had his way with her, leaving the plaintiff with no more refuge and comfort (*amparo ni consuelo*) than God.<sup>54</sup> After the girl gave her declaration, her cousin Juana María claimed that Josef had also raped her, but he had not taken her virginity as she was already an experienced single woman (*soltera*).<sup>55</sup> While the case of Francisca María was a straightforward case of rape, the line between rape and seduction was often blurry. In the same declaration in which Francisca María had described her rape by Josef

---

<sup>51</sup> Ana Calderón v. Pedro Matheos, Indiferente Virreinal, Caja 1205, exp 10, 1656, 2.

<sup>52</sup> Mules were the common companions of farmers and urban plebeians; a gentleman would have ridden a horse.

<sup>53</sup> Her declaration stated that she was 14 or 15 years old. AGN, Criminales, Vol. 105, 1775, 335v.

<sup>54</sup> The exact text reads: “...saco un chuchillo, y le dijo que si dava voces y no condescendía a lo que quería la havia de matar con aquel cuchillo, y sin embargo de estas amenazas estuvo forcejeando con la declarante, hasta que viéndose totalmente Yndefesa, y themorosa de que no la matase ya cansada y sin fuerzas, la tumbo en el suelo y entonces hizo quanto quizo de su cuerpo, quedando la declarante sin mas amparo ni consuelo que el de Dios...” AGN, Criminales, Vol. 105, 1775, 335v.

<sup>55</sup> Francisca María v. Josef Martín. AGN, Criminales, Vol. 105, 1775, 340.

Martín, the girl's mother Candaleria María gave her deposition in support of her daughter. After her daughter arrived home crying that she had been attacked, Candaleria María immediately took her daughter to confront Josef's mother María. Arriving at María's house, the first person that they encountered was Josef Martín. Francisca's mother began to yell at him "You son of a Demon, look what you have done with my daughter, you are no Christian."<sup>56</sup> She then picked up a stick from the ground and beat him three times, which inspired Josef to take flight, ducking under the fabric his mother was sewing and then fleeing through the other door of the ranch. Francisca's mother then yelled at Josef's mother, "Look what your son has done."<sup>57</sup> Josef's mother suggested that the only way to fix this situation was for Josef to marry Francisca María, a suggestion that Candalaría María rejected because Josef already had two children that he had to maintain with Francisca's cousin Juana María. Josef's complicated love life with the two cousins illustrates a paradox; seduction could turn into violent rape or lead to a lasting relationship.

Other husbands engaged in sexualized violence, directing their rage and rancor towards the female body. Don Miguel Machuca struck his pregnant wife's belly and womb so many times and so cruelly (*cruelissimamente*) that he made her miscarry one day in 1678. On another occasion he grabbed doña María Castrexon and throttled her

---

<sup>56</sup> "Hijo de un Demonio! Mira que has hecho con mi hija no eres Cristiano" Francisca María v. Josef Martín. AGN, Criminales, Vol. 105, 1775, 340.

<sup>57</sup> "mira lo que ha hecho tu hijo" Francisca María v. Josef Martín. AGN, Criminales, Vol. 105, 1775, 338v.

throat so savagely that blood bubbled out of her mouth and she almost died.<sup>58</sup> Don Gaspar focused his rage on his wife's breasts rather than her womb. After having pulled his wife doña Melchora de Ribera Cabeza de Vaca de Sotomayor out of their home one night at one in the morning he dragged her through the public streets slapping and kicking her, and ferociously beating her breasts with the hilt of his sword.<sup>59</sup> Don Gaspar did not stop his attack until four in the morning and left his wife with deep bruises in each of her breasts. Suspicions that their wives were cheating on them could send husbands into uncontrolled fits of rage; sexual jealousy frequently inspired cruel beatings. In 1617, Francisco de Aguilar became convinced that his wife was having an affair with his friend.<sup>60</sup> After never having previously abused his wife, Francisco's suspicions drove him into a fit of jealousy that inspired a series of brutal beatings and whippings over the course of twenty days. One day Francisco grabbed her and without explanation began to whip her savagely. He yelled that she should confess to having "treated dishonestly" his friend, a married man. Despite the pain she denied it. The second time that he whipped her he swore to God and to the icon of Saint Francis that was in their house that he would not kill her or lay his hands on her if she told the truth, that she had done "dishonest" things with the afore-mentioned man. He then put a dagger between her breasts to threaten her. She repeated again that she had not cheated on him. Francisco responded,

---

<sup>58</sup> "hechando borbotadas de sangre por la boca" AGN, Matrimonios, Vol. 19, exp. 6, 1678, 36.

<sup>59</sup> Melchora de Ribera Cabeza de Vaca de Sotomayor v. don Gaspar. AGN, Indiferente Virreinal, Caja 4834, exp. 1, 1677.

<sup>60</sup> Doña María de Sepúlveda vs. Francisco de Aguilar. AGN, Vol. 1502, exp. 3, 1617.

“Confess the truth and I will pardon you.”<sup>61</sup> Out of fear she said that it was true, she had cheated on him with his friend; this statement inspired a murderous rage from Francisco and he whipped her cruelly three times. The next Tuesday night, he tied her to the bedpost and beat her with a belt so severely that she thought that he was going to kill her. Doña María called out in pain and fear to her sister doña Juana Carrasco who came back quickly with help from Royal Justice (*real justicia*). The constables intervened, stopped Francisco and pulled María out of the house, placing her in deposit at a safe house. Doña María’s attorney Pedro de Peralta then submitted testimony from several surgeons who noted that she had deep contusions and bruises on her back, thighs and hip, which appeared to be the results of blows from a “strong and forceful person.” These contusions were dripping with blood and swollen, causing a life-threatening illness. The vicar general approved a restraining order against Francisco. This jealous husband was ordered “not to pass by the street where doña María was deposited, nor speak or attempt to communicate with her, under the pain of excommunication.”<sup>62</sup>

The case of doña Melchora de Ribera Cabeza de Vaca was another example of a husband’s irrational jealousy. What motivated don Gaspar’s savage and public attack on his wife’s breasts was the idea that she was cheating on him with the priests who lived across the street. A few days after they had gotten married, he motioned to the house

---

<sup>61</sup> Doña María de Sepúlveda vs. Francisco de Aguilar. AGN, Vol. 1502, exp. 3, 1617, 2.

<sup>62</sup> Doña María de Sepúlveda vs. Francisco de Aguilar. AGN, Vol. 1502, exp. 3, 1617.

where the priests lived and said, “One of them is your lover, because you are a whore!”<sup>63</sup> On St. Joseph’s feast day, after having confessed and taken communion, she came back home and was received by her husband with insults. He said that she “was a whore and had just gotten back from having committed adultery.”<sup>64</sup> On the feast day of Lazarus, don Gaspar gave doña Melchora permission to accompany her young sister-in-law (a maiden) to a public procession. When they had just arrived to Saint Teresa Street, don Gaspar arrived and grabbed her, pushing her around, kicking her and trying to strangle her with his bare hands. He bit her hands so forcefully that he damaged her fingers.<sup>65</sup>

After this embarrassing attack, doña Melchora took the first opportunity that presented itself to leave her husband and move back into her father’s home. In another case, a couple that had been married for more than twenty years ended up in divorce court because of jealousy and imagined affairs. Nicolás de Setina was driven mad with jealousy because he believed that his wife María de Toledo intentionally made all the “peanut seller and merchants” of the neighborhood fall in love with her.<sup>66</sup> Nicolás failed to explain how his coquettish wife managed to bewitch each and every one of the small merchants and vendors in their neighborhood. Out of jealousy he threw a jar aimed at her head that ended up hitting and wounding her arm. However, Nicolás was not the only

---

<sup>63</sup> Melchora de Ribera Cabeza de Vaca de Sotomayor v. don Gaspar. AGN, Indiferente Virreinal, Caja 4834, exp. 1, 1677, 1v.

<sup>64</sup> Melchora de Ribera Cabeza de Vaca de Sotomayor v. don Gaspar. AGN, Indiferente Virreinal, Caja 4834, exp. 1, 1677, 1v.

<sup>65</sup> Melchora de Ribera Cabeza de Vaca de Sotomayor v. don Gaspar. AGN, Indiferente Virreinal, Caja 4834, exp. 1, 1677, 2v.

<sup>66</sup> María de Toledo Sandoval v. Nicolás de Setina. AGN, Indiferente Virreinal, 3717, exp. 3, 1693, 3.

jealous one. Nicolás administered a vicious beating to his wife, almost “breaking her head” when she questioned his relationship with an unnamed indigenous (*india*) woman. This case is a good example of how jealousy could lead to violence.

Wives also reacted with intense jealousy at suggestions of their husband’s infidelity. Doña Juana Gutierrez, a hard-working fishmonger’s wife “of notorious virtue and rectitude” caused a violent conflict when she accused her husband don Fernando Noval of being an adulterer.<sup>67</sup> A dedicated housewife with a reputation for carefully washing her family’s clothing, doña Juana was struck by a jealous rage when she found blood in her husband’s white underwear (*calzones*). She took the stained underwear to a surgeon who affirmed that the stains in her husband’s underwear were not from hemorrhoids and thereby indicated some sexual activity. When she accused her spouse of having committed adultery, it caused such a scandal that don Fernando took out a knife and tried to stab her. He narrowly missed her because of the intervention of the couple’s daughter.

Husbands almost universally denied committing the abuse alleged by their wives and later confirmed by witnesses. For instance, don Gaspar claimed that he had never abused doña Melchora. He claimed that they had lived together “in much peace” and that he has always maintained her as was his obligation. What had caused their marital conflict was not his abuse but rather the meddling of his wife’s father and her siblings, who had always placed impediments to his marital cohabitation with doña Melchora.

---

<sup>67</sup> Doña Juana Gutierrez v. don Fernando Noval y Bolde. AGN, Matrimonios, Vol. 67, exp. 27, 1786, 149v.

Similarly, Christóbal de Buendía, who was accused of having almost knocked his wife unconscious on twenty occasions, seemed surprised that his wife was suing him for divorce. Despite embarrassing his wife by parading about in public with his two mistresses and having tried to kill her on several occasions, Christóbal claimed that he “had always given her what she needed” and supplicated that the vicar general order her to return to his custody and resume their marital cohabitation. Wives responded to these assertions of good behavior by arguing that their violent actions were incompatible with Christian love. In her suit against Francisco Gallardo, doña Bernadina de Esquibel argued that her husband’s violent treatment went against the precepts of love, “God ordered that husbands love and honor their wives as Jesus Christ our lord loved his church.”<sup>68</sup> Similarly, doña Francisca Menchaca’s lawyer demanded that his client’s husband treat her properly, as “Divine law commands that husbands live with their wives lovingly and with rectitude.”<sup>69</sup>

There are so many accounts of attempted murders that were frustrated by outsiders that one wonders if public attempted murder had a sort of ritualistic element to it. The rancor that developed between some husbands and wives occasionally spilled out into forms of public display that resembled ritual acts. The act of attempted murder shocked both participants and witnesses out of their quotidian realities and forced them to react to the rage of the aggressor. Neighbors and passers-by seemed to intervene

---

<sup>68</sup> “dios manda que los maridos amen y onren sus mujeres como jesusristo señor nuestro amo su yglesia Bernadina de Esquibel v. Francisco Gallardo. Indiferente Virreinal, Caja 1502, exp. 2, 1608, 38v.

<sup>69</sup> Doña Francisca Menchaca v. Don José Treviño. AGN, Bienes Nacionales, vol. 109, exp. 3, 1793, 29.

frequently to prevent murderous violence between spouses. In the case of doña María Castrexon, her husband had supposedly drawn both his sword and a dagger and was poised to strike her down and “would have done it” had it not been for a few people who were present and intervened.<sup>70</sup> Similarly, in 1656 doña Ana Calderón recalled that when she had gone with some female friends of hers to see a nativity scene her husband had run into her near San Pablo and had tried to kill her with his dagger, but was stopped by the people who were there.<sup>71</sup>

Another young wife named Francisca de Tovar recalled in 1617 how her husband Tomás de Godoy attempted to murder her in their eighth month of marriage. One night her husband tried to slay her with a knife in a fit of rage but was stopped by a “Christian man” who was there. While Francisca never gives an explanation of who this “Christian” man was and what he was doing in her house at night, nevertheless it was another narrative in which a third party’s intervention prevented spousal abuse from turning into spousal murder.<sup>72</sup> Similarly, when don José Joaquín Echevarría threatened to kill his wife doña Nicholasa, her relatives made a big show of coming over to her house to watch over her until the threat had passed.<sup>73</sup> Humans are by their nature fragile, making a murder fairly easy to commit by poison, blade, or with a blunt object. So why were all of

---

<sup>70</sup> A no aberse metido de permedio algunas personas que se hallaron presentes... Doña María Castrexon v. Don Miguel Machuca. Matrimonios, Vol. 19, exp. 6, 1678, 36.

<sup>71</sup> Doña Ana Calderón v. Pedro Matheos, Indiferent Virreinal, Bienes Nacionales, Caja 1205, exp. 10, 1656, 1V.

<sup>72</sup> Francisca de Tovar v. Tomás de Godoy. Matrimonios 142, exp. 1, 1617, 1.

<sup>73</sup> Doña Nicholasa v. don José Joaquín Echeverría. AGN, Bienes Nacionales. Legajo 870, exp. 3, 1775, 51v.

these attempted murders unsuccessful? A half-hearted attempt at murder was a way of showing an extreme deal of hatred toward another person without having to deal with the negative consequences of actually committing murder. The protagonists in these divorce narratives were doing something similar to a drunk who takes a wild swing at his adversary in a bar, only to be quickly restrained by his friends before he can throw a punch that actually connects. Colonial authorities were reluctant to punish defendants who threatened murder without actually laying a hand on the supposed victim. This meant that husbands who made a show of trying to murder their wives without actually carrying out the threat were engaging in a sort of macho posturing that did not have any permanent consequences.

Children were often the victims of violence, both as young brides and as the sons or daughters of parents with marital problems. In the context of marital violence, plaintiff's lawyers suggested that child abuse was evidence that the husband was out of control. In his defense of doña María Castrexon, the attorney Domingo de Córdoba remarked that her husband was so "audacious that he grabbed one of my client's little daughters and beat her a lot" ("tanto su atrebimiento que cogió a una niña hija de mi parte y la maltrató mucho").<sup>74</sup> Children also could also become focal points of conflict in disintegrating marriages.

Wives sometimes also abused children as a way of displacing the anger they felt towards their husbands. In 1674, doña María de Guijarro brought a criminal suit against

---

<sup>74</sup> Doña María Castrexon v. Don Miguel Machuca. Matrimonios, Vol. 19, exp. 6, 1678, 36.

Pedro de Urrutía in the Royal Criminal Court (*Real Sala de Crimen*) for physical and verbal abuse.<sup>75</sup> She alleged that her husband had hit her in the face, and threatened to kill her, and never fed or clothed her. The Royal Court found Pedro de Urrutía guilty and imprisoned him, though they released him shortly afterwards. Doña María then engaged in a bit of forum shopping, trying a new legal jurisdiction to see if she could receive a more lasting solution. She sued Pedro for divorce on the same grounds. Juan de Godoy testified that during the 28 days that Pedro and doña María rented a room in his house, he witnessed a serious fight in which Pedro beat and hit doña María; Juan and his wife separated them, and shortly afterward the angry couple locked their door and resumed quarreling. Surprisingly, the next day they opened the door and came out of the room as if nothing had happened. Pedro was a muleteer, and according to Pedro, the couple's marital problems had to do with his wife's rejection of his career.<sup>76</sup> He begged his wife to accompany him on his long-distance trips, but she refused, instead demanding that he leave sufficient money to support herself during his absence. During one long trip he left her 300 pesos and rented a house for her. For his last, much shorter trip, he left her 150 pesos, and later sent 50 pesos with some acquaintances and left an additional 30 pesos with the proprietress of the house where María was living. When he got back from his trip, doña María was nowhere to be found. María had been detained and taken before the civil magistrate and provincial judge, Juan Sáenz Moreno, for having hit and beaten a 10 year-old girl that Pedro had left her to keep her company during his absence. In her

---

<sup>75</sup> Doña María de Guijarro v. Pedro de Urrutía. AGN, Matrimonios Vol. 78, exp. 77, 1674.

<sup>76</sup> Doña María de Guijarro v. Pedro de Urrutía. AGN, Matrimonios Vol. 78, exp. 77, 1674, 2.

deposition, María recognized that she had also beaten Agustina, a three year-old orphan girl that Pedro was raising out of charity. The toddler was so beaten and bruised that the judge turned her over to doña Catalina de Villegas, the owner of the house where María lived, with strict orders that she never return the infant María's custody.<sup>77</sup> Pedro also complained that due to the lawsuit he had not been allowed to enter his house and collect his belongings; there was no question of returning his wife's dowry since she was "very poor" and had married him without one. Pedro claimed to have married his wife in order to "help her."<sup>78</sup> The vicar general accepted María's request to be placed in deposit in a private house and afterwards the case seems to have been abandoned. This was a case in which the victim became victimizer; María was abused by her husband Pedro, and then victimized the two small children that lived with her.

There were various legal measures that wives could use to resist violent abuse by their husbands. Restraining orders, "forum shopping" and judicial orders requiring husbands to pay alimony or relinquish control of their wives' dowries allowed wives to improve their living conditions and to halt their husbands' abusive behavior. In addition, some wives engaged in "forum-shopping," placing lawsuits in a variety of jurisdictions in an attempt to find a favorable court.

One of the most effective legal tools that wives could use against abusive husbands was the restraining order. The restraining order was a good example of the sort of collaboration between church and crown that was routine in the sixteenth and

---

<sup>77</sup> Doña María de Guijarro v. Pedro de Urrutía. AGN, Matrimonios Vol. 78, exp. 77, 1674, 423v.

<sup>78</sup> Doña María de Guijarro v. Pedro de Urrutía. AGN, Matrimonios Vol. 78, exp. 77, 1674, 423v.

seventeenth centuries and became rare in the eighteenth century after the so-called “Bourbon” reforms. After authorizing the permanent separation of doña María Guadalupe de Najera from her husband, the vicar general authorized the plaintiff’s request to require don Sebastián de Macaraga to stay away from his wife. The judge ordered him to “not bother, upset, visit, or perturb the place of residence of doña María Guadalupe de Najera, nor pass by the street where she lives.”<sup>79</sup> The judge threatened don Sebastián with “arrest” for violating this restraining order, and ordered that Royal Justice be notified that this restraining order had been issued.

Wives also engaged in “forum-shopping,” taking advantage of the overlapping jurisdictions between different legal authorities in order to achieve better outcomes. Colonial Mexico was a place with a complicated legal system consisting of multiple jurisdictions or *fueros*. The system of *fueros* was developed in medieval Iberia as a series of municipal charters authorized by the crown that outlined the rights and privileges of a particular place or group of people. By the early modern era, different corporate groups such as the church, secular government and the military had developed their own codes and judicial authorities. Given the complexity of the system of *fueros*, marital disputes could potentially fit into several different categories, including the religious fuero (*fuero eclesiástico*), the secular *fuero* (*fuero secular*) or a mixed *fuero* (*mixto fuero*).<sup>80</sup> Shrewd

---

<sup>79</sup> “no moleste, inquiete, vicite, ni perturbe la casa de la avitación de Doña Maria Guadalupe de Najera, ni pase por la calle donde está” Doña María Guadalupe v. don Sebastián de Macasaga.” Inquisición, vol. 1264, exp. 4, 1776, 236.

<sup>80</sup> Clifford Stevens Walton and Spain, *The Civil Law in Spain and Spanish-America: Including Cuba, Puerto Rico, and Philippine Islands, and the Spanish Civil Code in Force, Annotated and with References to the Civil Codes of Mexico, Central and South America, with a History of All the Spanish Codes, and*

wives could engage in a sort of “forum-shopping,” using various legal jurisdictions and court-systems in order to support their interests.<sup>81</sup> Before filing for divorce, wives frequently brought criminal suit against their husbands in the *Real Sala de Crimen*.<sup>82</sup> Secular judges were not shy about throwing abusive husbands in jail, at least for a short period of time.

One abusive husband would learn the hard way that even poor, indigenous wives could use the court system in self-defense. After having spent several years exploiting his Indian wife’s hard labor in order to carouse and parade about town with his mistresses, the Spaniard Juan de San Pedro found himself having to answer to the civil magistrate. Juan de San Pedro’s wife Francisca Magdalena resented that he not only refused to support her and their children, but also he obliged her to produce two *reales* a day.<sup>83</sup> Francisca was only able to provide for all of them “with much labor.”<sup>84</sup> Every time Francisca fell short of her quota of two *reales*, Juan beat her cruelly. Francisca grew

---

*Summary of Canonical Laws, of the Principal Fueros, Ordenamientos, Councils and Ordenanzas of Spain from the Earliest Times to the Twentieth Century, Including the Spanish, Mexican, Cuban and Puerto Rican Autonomical Constitutions, and a History of the Laws of the Indies--Recopilacion De Leyes De Los Reynos De Las Indias* (W. H. Lowdermilk & co., 1900), 67.

<sup>81</sup> Legal scholar Friedrich Juenger describes forum-shopping in the following manner: “As a rule, counsel, judges and academicians employ the term ‘forum shopping’ to reproach a litigant who, in their opinion, unfairly exploits jurisdictional or venue rules to affect the outcome of a lawsuit.”

Friedrich K. Juenger, “Forum Shopping, Domestic and International,” *Tulane Law Review* 63 (1989 1988): 553.

<sup>82</sup> Jaime Contreras found in case-files from the Sala del Crimen in Spain that physical abuse in the early modern era not infrequently led to the wife’s death. Jaime Contreras Contreras and Raquel Sánchez Ibáñez, *Familias, poderes, instituciones y conflictos* (EDITUM, 2011), 448.

<sup>83</sup> Francisca Magdalena v. Juan de San Pedro. AGN, Indiferente Virreinal, Caja 2218, exp. 23, 1678, 1.

<sup>84</sup> Francisca Magdalena v. Juan de San Pedro. AGN, Indiferente Virreinal, Caja 2218, exp. 23, 1678, 1.

tired of the beatings and of working her fingers to the bone in order to support her husband's vices. She sought the advice of a lawyer and took advantage of both the criminal and ecclesiastical court system. First, she denounced Juan before the civil magistrate (*alcalde de corte*). In this case, criminal justice was quick, and Juan was imprisoned and condemned to work two years in the public works. After having won her criminal case, she quickly filed for divorce in the Archbishop's ordinary tribunal. Francisca sued Juan de San Pedro for divorce in the ecclesiastical court in order to gain economic and social independence from a man who was already being punished by royal authorities.

### ***Abusive Wives***

While some wives passively suffered their husbands' abuse, other wives abused their husbands. Some wives saw the patience and forgiveness of their husbands as weakness and chose to punish their husbands accordingly. Don Francisco Pila's divorce petition presented a tale of his exploitation and humiliation by his wife doña María Ciriava. Don Francisco was a merchant who spent long hours in his wineshop (*vinatería*). In the fifth year of his marriage to doña María Ciriava, a certain married gentleman began visiting don Francisco's house; at first "he didn't make me suspicious," but all this changed the day of the bullfight at the plaza of San Pablo. After closing his wineshop at about nine at night, don Francisco headed home. Arriving at his house, he found that the afore-mentioned married man was playing cards with doña María and a few more people. He thought nothing of it. A few nights later he closed his store later

than normal and then headed home. Arriving at his house, he found it closed, and nobody responded to his insistent knocking on the front door. Don Francisco thought that his wife “must have gone to her mother’s house” despite the fact that she never went anywhere unaccompanied. Quickly, he went to his mother-in-law’s house but doña María was nowhere to be found. Leaving his mother-in-law’s as quickly as possible, he soon arrived back to his house, where from a distance he saw the door open, and an unnamed gentleman leave his house, closing the door behind him. He quickened his step, arriving at the doorstep and knocked loudly. He heard doña María cry out to her servant, “Don’t open the door.” It was too late; the servant had already opened the door and don Francisco dashed in, heading to his bedroom where he found doña María in her bed lying down. He confronted his wife, and she admitted that she had sex with the unnamed interloper three times that very night. Because of his wife’s adultery, don Francisco resolved to divorce her, but two individuals of good character persuaded him to take back his wife to avoid the public dishonor of a divorce trial. Don Francisco argued that his action “should have been a reason for gratitude” but instead it made his wife “lose respect” for him and to act “insolent.” She no longer “wanted to obey him.” Soon afterward, a certain regimental sergeant, “no particular friend” of don Francisco, began hanging out day and night at the couple’s house. After having closed his wineshop “very late” don Francisco would arrive home and find the sergeant still there. Given his wife’s history and because of the presence of the sergeant, don Francisco became “jealous and untrusting; always watching his wife’s actions.” On one occasion he caught her writing something on a paper that she refused to show him, despite his strenuous insistence.

Another time he forced his wife to give him some romantic couplets that she had hidden in her breasts. Don Francisco believed that the “prudence” that he had shown by forgiving her after the first episode of adultery only increased her “shamelessness.” Her shamelessness led him to sue for divorce, with the vicar general Juan Cienfuegos quickly placing her in deposit in the House of Mercy (*casa de misericordia*).

Doña María Ciriava had little respect for her weak, gullible husband. Soon after having placed his wife in the House of Mercy, don Francisco sent another petition to the vicar general asking that his wife be released temporarily in order to visit her sick and dying mother. Almost immediately after having been released, doña María visited a student in his room. She refused to explain what she was doing in the young man’s room, thereby triggering a series of interrogations of the student and several witnesses, as well as a quick end to her liberty from the House of Mercy. This case has no resolution, but María Ciriava’s persistent contact with a wide variety of men caused a great deal of trouble for her husband.

Doña María Ciriava was far from the only colonial wife to cause her husband great anxiety. Some wives completely ignored their husbands. D. José Lis accused his wife Doña María Mesaformo of rebellion (*rebeldía*) and sued her for divorce in 1777.<sup>85</sup> After marrying the mature widower, doña María immediately kicked his three legitimate children from his previous marriage out of the house, “on her own authority” (“*de propia*

---

<sup>85</sup> AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777.

autoridad”).<sup>86</sup> Don José claimed that she refused all domestic labors, saying that she hadn’t married to “mend, sew, or take care of her husband’s clothing.”<sup>87</sup> She alienated and mistreated the servants, leading them to quit.<sup>88</sup> Her disobedience and “lack of subordination” (“falta de subordinación”) meant that don José was never able to “tie her to a normal life” (“sugetarla a una vida regular”) by which he meant staying at home attending to her domestic “obligation”.<sup>89</sup> Indeed, she spent more time outside than in her own home. Don José claimed that his wife and her sisters ridiculed and abused him, calling him a “bastard, cuckold and thief” (“carbon, alcahuete, ladrón”) and that she yelled that she had “gotten knocked up by another man” (“avia buscado en la calle un hijo”).<sup>90</sup>

Based on the initial act by don José Lis’s lawyer Antonio Roque Rosillo, the Vicar General placed doña María in the House of Mercy “la casa de misericordia” ordering her husband to pay maintenance of two *reales* a day.<sup>91</sup> However, there were no legal consequences for doña María’s supposed disobedience and disrespect; instead of being placed in the custody of the “House of Mercy” for the rest of her days, as don José had requested, the pregnant woman was set free immediately after the vicar general received testimony of don José’s sudden death. Don José’s death seems suspicious in the

---

<sup>86</sup> AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777, p. 20v

<sup>87</sup> “remendar, coser, ni cuidar de la ropa de su Marido” AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777, p. 20v

<sup>88</sup> AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777, p. 21.

<sup>89</sup> AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777, p. 20v

<sup>90</sup> AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777, p. 21.

<sup>91</sup> AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777, p. 22.

light of his lawyer's claims that doña María said that she was attempting to "shorten her husband's life-expectancy with some actual poison." However, the archives contain no record of any subsequent murder investigation, nor was this issue raised in the court-order declaring doña María's release.<sup>92</sup>

Don José's narrative description of his wife's behavior was a typical but extreme example of a narrative that inverted the characteristics of a "good" wife in order to argue for a divorce. Inverting don José's complaints gives us an idea of his expectations of appropriate wifely behavior. A wife was expected to show initiative in maintaining her husband's household. She was to be respectful and obedient, and a homebody who preferred staying at home to going out. She recognized the superior authority of her husband. According to don José Lis, his wife doña María reflected none of these positive character traits. However, the death of her husband seems to have prevented her from suffering any negative consequences from being a bad wife.

In divorce narratives husbands sometimes accused their wives of selling or giving their souls to the devil. Don José Lis accused his wife of having supposedly made a statement in writing "delivering her soul to the Devil".<sup>93</sup> While suing her husband Francisco López for divorce in 1643, María de Santillán's lawyer reported that her husband claimed that she had "married the devil" ("el Diablo lo avia cassado con ella")

---

<sup>92</sup> AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777, p. 22.

<sup>93</sup> "entregar al Diablo, su Alma, y hacerle escritura de ella" AGN, Bienes Nacionales, Vol. 905, Exp. 24, 1777, p. 22.

and because of that he should kill her (“la havia de quitarle la vida”).<sup>94</sup> By claiming a relationship with or marriage to the Devil, these women displaced their own husbands and denied their legal husbands power and authority. Embracing the Devil was a powerful concept because it represented an inversion of the principles and institutions of colonial society; it postulated an alternative, imaginary society in which wives were the aggressors and husbands the aggrieved.<sup>95</sup>

### ***Other Causes of Marital Strife***

Husbands were expected to maintain their wives as best they could according to their personal resources and social status. Many did not even make an attempt to maintain their wives. When doña Juana de Rivera demanded that her husband feed and clothe her properly, he flew into a rage and called her a “worn-out whore” (“*puta provada*”) in public and slapped her face.<sup>96</sup> On another occasion when she asked for food, he said that “she ought to die of hunger” because she was “a whore.”<sup>97</sup> Leonor de Vera did not fare much better. When she sued her husband Ysidro de Mata in 1656, she presented herself before the vicar general in clothes that her neighbor had lent her. In the seven years of their marriage, her husband had denied her clothing, food and did not even give her a bed in which to sleep. Ysidro justified his neglect by saying that his wife did

---

<sup>94</sup> AGN, Indiferente Virreinal, Caja 1502, exp. 8, 1643, 2v.

<sup>95</sup> Laura A. Lewis, *Hall of Mirrors : Power, Witchcraft, and Caste in Colonial Mexico* (Durham: Duke University Press, 2003).

<sup>96</sup> Doña Juana de Rivera v. Lorenzo Yañez. AGN, Matrimonios, Vol. 213, exp. 1, 1625, 2.

<sup>97</sup> Doña Juana de Rivera v. Lorenzo Yañez. AGN, Matrimonios, Vol. 213, exp. 1, 1625.

not want to live with him because of the bad influence of her mother. He asked that she be placed in deposit so as not to bother him.<sup>98</sup>

The free *mulata* doña María de Espinosa also claimed to have the misfortune of being married to a man that did not support her. During the whole month of her brief marriage she alleged that she had to depend on friends and neighbors for food, since her husband did not “give her what was needed.”<sup>99</sup> In addition to his neglect, she argued that her husband had unsupportably foul-smelling feet, with a smell so powerful that “one was obliged to cover their nose.”<sup>100</sup>

Wives could also be guilty of neglecting their husbands. Husbands could make formal requests that their wives feed and support them in the case of injury or illness. For instance, during a bitter divorce dispute, Francisco Gallardo requested that his wife “give him food for his sustenance” given that he was “in the public jail, sick in bed, and dying.”<sup>101</sup> While it sounds like Francisco was making a dramatic illustration of the heartlessness of his wife, the doctor’s testimony suggests that he was in fact deathly ill and was not being properly fed.

The most common reason women requested a divorce was because of the *malos tratamientos de obra y palabra* of their husbands, that is to say, on the grounds of physical and verbal abuse. While physical abuse threatened the corporal integrity of

---

<sup>98</sup> Leonor de Vera v. Ysidro de Mata. AGN, Indiferente Virreinal, Caja 5035, exp. 11, 1656.

<sup>99</sup> Doña María de Espinosa v. Joseph de Blancas. AGN, Bienes Nacionales, vol. 79, exp. 3, 1675, 2v.

<sup>100</sup> In colonial Peru, odor was a much more common motive for divorce. Doña María de Espinosa v. Joseph de Blancas. AGN, Bienes Nacionales, vol. 79, exp. 3, 1675, 2v. Also see {Lavalle, }

<sup>101</sup> Francisco Gallardo v. doña Bernadina Esquivel, AGN, Indiferente Virreinal, vol. 1502, exp 2, 1608, 87.

wives, severe verbal abuse was a threat to their wives social, emotional, and spiritual well-being. Since verbal abuse was a threat to the spiritual partnership of Christian marriage, ecclesiastical courts took it quite seriously.

Husbands frequently insulted their wives by challenging their sexual purity and chastity. One example of this trend came in the case of Luisa de Hermosillo in 1623. After having repeatedly beaten her and threatened to kill her with his sword, the last straw for Luisa de Hermosillo was when her husband Antonio Méndez called her a whore. After having been married to Luisa more than 11 years he had become an insufferable husband. Her husband had at least two mistresses, one of whom was a *mulata* woman named “La chata” who he walked around with in public and took short trips with to nearby towns. Antonio had already spent Luisa’s dowry of 750 pesos, pawned her dresses, and then and put her to work as a seamstress so that he would have an uninterrupted flow of money to keep spending on his mistresses.<sup>102</sup> When she complained about her husband’s financial exploitation, he responded by yelling at her “Whore, give me money.” (*Putá, dadme dinero*). This insult caused such a commotion between the couple that Antonio’s mother was the only one who could calm him down. In this case Antonio’s behavior was particularly shameless because by parading about with his mistresses in public he threatened a public scandal. Based on Luisa’s testimony the vicar general immediately placed her in deposit at the Recogimiento de Santa Mónica. After hearing several witness depositions that confirmed Luisa’s allegations, the vicar

---

<sup>102</sup> Luisa de Hermosillo v. Antonio Méndez. Indiferente Virreinal Vol. 5881, exp. 3, 1623, 1.

general Pedro Garçes del Castillo ordered an inventory of the property that made up Luisa's dowry and then approved a permanent divorce. Antonio's harsh public insults threatened to create a public scandal and justified legal action.

Josef Treviño was another man slow to flatter but quick to insult. Don Josef's wife was the principal victim of his quick tongue and propensity towards insults. Doña María Francisca Menchaca accused her husband of publicly defaming ("difamar publicamente") her character, calling her a "thief and adulteress."<sup>103</sup> Don Josef's paranoia extended to the point where he accused his wife's friends and family of having been accomplices in her adultery. In this case it was the husband's constant insults, more than his physical abuse, which broke the couple's marital harmony and replaced it with enmity.

Direct physical abuse and verbal abuse were not the only tools in the toolbox of abusive husbands. Some husbands engaged in other forms of torture and manipulation. A few husbands were accused of scaring their wives by abandoning them on the highway. Long range travel was an uncertain, risky and potentially frightening endeavor; much more so for a solitary woman. María Santillán claimed that her husband had abandoned her intentionally on the road to Puebla and she was lost for hours alone in a gorge.<sup>104</sup> Doña María Guadalupe reported similar abandonment. When she filed for divorce in November of 1785, she claimed that her husband had abandoned her for over eight years, forcing her to seek safe haven in her father's house. At the time of her abandonment she

---

<sup>103</sup> Doña María Francisca Menchaca v. don Josef Treviño. AGN, Templos, Vol. 109, exp 3, 1793, 30v.

<sup>104</sup> AGN, Indiferente Virreinal, Caja 1502, exp. 8, 1643, 2v.

was sick with hemorrhages and would have perished had it not been for the intervention of her father.<sup>105</sup> Nine years before, her husband took her to a far-away village on the pretext that he was to serve as a schoolteacher. After they arrived her husband abandoned her without food in a small shack (“Xacal”) and abandoned his duties as a teacher to go on a drinking-binge with some local indigenous men (“manteniendose el perpetuamente hebrío entre los Indios”).<sup>106</sup> Due to the rough conditions, doña María Guadalupe got sick and left on a long, solitary journey to her father’s house in the *pueblo* of Teloloapam.<sup>107</sup> Had it not been for the charity of some neighbors who took her in and gave her medicine, she claimed that she never would have made it safely to her father’s house.

Intentional sexual violence was not the only potential cause of sexual conflict between wives and their husbands. For some wives, the voracious sexual appetite of their husbands could make life very difficult. Doña Angela Eugenia de Calzado y Ferreros sued her husband for divorce on the grounds that her husband’s excessive sex drive and enormous penis put her life in danger. She claimed that after don Benito had sex with her on their wedding night she felt so much pain the next day that she was not able to walk properly.<sup>108</sup> Don Benito’s “virile member” hurt her because of its excessive length and

---

<sup>105</sup> Doña María Guadalupe v. don Sebastián de Macasaga. Inquisición, vol. 1264, exp. 4, 1776, 234.

<sup>106</sup> Doña María Guadalupe v. don Sebastián de Macasaga. Inquisición, vol. 1264, exp. 4, 1776, 233v.

<sup>107</sup> Teloloapan is a town in what is now the state of Guerrero, Mexico.

<sup>108</sup> The text reads: “aviendose juntado conmigo aun desde la primera noche me sentí tan lastimada que luego perdí el modo de andar natural assi por el exceso de longitud del miembro Víril de dho Don Benito como por haver durado en el acto conyugal el dilatado tiempo tres quartos de hora, no solo en el tiempo que le permanecio la ereccion, sino mucho mas, oprimiendome con cargarseme sobre el Pecho, de manera que

because of what doña Ángela saw as the prolonged, immoderate duration of their sex act. Don Benito obliged her to have sex with him for more than forty-five minutes. During these extended sessions of sexual intercourse, don Benito pressed down on his wife's chest in such a way as she felt that she was unable to breathe. Doña Ángela accused her husband of spending an excessive amount of time in the sex act, noting that even "when he spent less time paying the conjugal debt it was still at least thirty minutes, and that's because I said that I was dying and wasn't able to catch my breath."<sup>109</sup> At the time of her marriage, doña Ángela was a widow and not a virgin, and she had assumed that all men were similar to her late husband in penis size and sexual appetite. On the third night after her marriage, doña Ángela told don Benito that "he wasn't a man like the man that she had known." Don Benito suggested that her reluctance to make love to him suggested that she might be impotent. After one month of daily sex with her husband, doña Ángela became afflicted with an illness that would cause her another level of suffering. On March 13, 1738 she felt very ill and was unable to urinate "to the point where I almost died."<sup>110</sup> According to her doctor, she suffered from "an inflammation of the womb" as well as from suffering alternatively from incontinence, and then of urinating drop by

---

ni aun respirar me dejara: y de esta mismo suerte continuo por el espacio de dho Mes, hasta el dia treze de Marzo, que me sentí muy mala de suppression de Orina en que llegue casi a terminos de perder la vida."

Doña Angela Eugenia de Calzado y Ferreros v. Don Benito Gonzales de Zevallos. AGN, Matrimonios, Vol. 26, exp. 1, 1738, 1.

<sup>109</sup> Doña Angela Eugenia de Calzado y Ferreros v. Don Benito Gonzales de Zevallos. AGN, Matrimonios, Vol. 26, exp. 1, 1738, 1.

<sup>110</sup> Doña Angela Eugenia de Calzado y Ferreros v. Don Benito Gonzales de Zevallos. AGN, Matrimonios, Vol. 26, exp. 1, 1738, 1.

drop, sometimes combined with a continuous pain in her hips. Her doctor, don Francisco Gonzales suggested that she sleep apart from her husband in order to protect her health. However, don Benito insisted on sleeping with her on two additional occasions; this interrupted her healing process and caused a relapse. Don Benito's voraciousness and lack of respect for his wife led Doña Ángela's doctor to claim that she was suffering from gonorrhea and needed an additional "very deep treatment" in order to recover. Citing her doctor, doña Ángela's lawyer argued that "the excessive length" of a husband's penis could provoke a variety of problems in a woman, including "inflammation of the womb, gonorrhea, and other various illnesses."<sup>111</sup> Given these circumstances, marital nullity or at least divorce was warranted, and doña Ángela should not be forced to cohabit with her husband as doing so put her life at risk.

Doña Ángela said that the only things she found disagreeable about her husband were his "penis and his manners," however, she felt betrayed (*engañada villiosamente*) by her husband because his physical defect led her to believe that he was unsuitable for marriage and sexual intercourse not just with her, but with any woman, even a "very robust indigenous woman" (*India de mucha robustés*).<sup>112</sup>

Doña Ángela, a Spaniard, makes reference to the supposed sexual voraciousness and robust constitution of indigenous women in order to highlight the extreme nature of her husband's problem. She seems to suggest that she was not the problem, but rather

---

<sup>111</sup> Doña Angela Eugenia de Calzado y Ferreros v. Don Benito Gonzales de Zevallos. AGN, Matrimonios, Vol. 26, exp. 1, 1738, 7.

<sup>112</sup> Doña Angela Eugenia de Calzado y Ferreros v. Don Benito Gonzales de Zevallos. AGN, Matrimonios, Vol. 26, exp. 1, 1738, 1v.

the culprit was her husband's enormous penis. However, there is a certain level of anxiety and uncertainty in her discourse. In the first two pages, doña Ángela suggests that she might possibly be impotent on three separate occasions. Despite her repeated claims to the contrary, doña Ángela persists with this uncertainty throughout the entire lawsuit; she was unable to resolve whether she was impotent or the problem was her husband's excessively large member. In any case, she shared irreconcilable sexual differences with her husband that made marital cohabitation physically impossible, thereby justifying a divorce.

Other husbands were unable to support their wives because of serious drinking problems. Roque de Sancta María, the forty-year old *pardo* tailor was accused by a Spanish carpenter named Antonio de Reyena of having "always abused" his wife due to his drunkenness.<sup>113</sup> He was only "half a tailor" because "everybody knows" that he spent his days going from *pulqueria* to *pulquería*. Not only did Roque not give her the food and clothing that she needed, he stole the fruits of his wife's labors and used it for "gambling and carousing."<sup>114</sup> Wives tended to complain about their husband's alcoholism in the context of other problems that drinking caused. María Marcela accused her alcoholic husband of having seduced her younger sister, "stealing her virginity" and causing a family feud between María and her two sisters. Nicolás Velásquez was another shiftless husband who was more committed to drinking and gambling than to his own wife. He regularly threatened his wife Catalina de Monroy to give him money "or things

---

<sup>113</sup> AGN, Matrimonios, Vol. 205, exp 29, 1711, 2v.

<sup>114</sup> AGN, Matrimonios, Vol. 205, exp 29, 1711, 2v.

to sell” so that he could continue what she called his “licentious way of living.” If she did not pay him, he threatened to stab her. Catalina argued that Nicolás had only married her in order to “spend her patrimony” and so that she would “feed and maintain him.”<sup>115</sup> He did not marry her in order “to live with her, nor to comply with the obligations and responsibilities of marriage.

### ***Financial Considerations: the Dowry and Alimony***

Type	Total	Percentage
Endowed	23	15.44%
Unendowed or unknown	126	84.56%
<b>Total</b>	149	100%

**Table 14: Percentage of Wives with Endowment at Time of Marriage (1544-1699)**

Challenging their husband’s control of the marital dowry was the most powerful legal weapon that some wives could use against their abusive husbands. This mechanism was much more effective in the case of rich and middle income women since they were more likely to have large dowries that their husbands could have used to finance business deals or to maintain a lavish lifestyle. Judges called for an accounting of the contents of

---

<sup>115</sup> Catalina de Monroy v. Nicolás Velásquez. AGN, Indiferent Virreinal, Vol. 5333, exp. 16, 1655, 2.

a dowry only in cases in which a temporal or permanent separation was likely. In this study, only about 15% (15.44%) of women in both divorce and annulment lawsuits mentioned the size of their dowry. However, this does not mean that only 15% of the wives mentioned in this study were given dowries at the time of their marriage. The actual percentage of endowed women was probably a bit higher, but since the divorce or annulment proceeding never got close to reaching a verdict, the dowry was irrelevant and never mentioned. While a dowry provided a basic level of security and sustenance to a new wife, the majority of women got married without the benefit of having a dowry. It is not possible to determine exactly how many women had dowries given the limited information presented in letters of marriage proposal and divorce and annulment case files.<sup>116</sup> Dowries were of critical importance for the minority of propertied *novohispanos*, but for the great majority, having a significant dowry was an aspiration more than a realistic possibility. However, for those husbands who had been granted a large dowry at the time of marriage, the question of who controlled their wives' dowry was of critical importance. Should his wife obtain a judicial order requiring the complete restoration of her dowry, even a wealthy husband could be ruined.

---

<sup>116</sup> The majority of women (84%) considered in this study either were not given dowries at the time of marriage or had dowries but did not mention them.

Table 15: Table 5: Dowry Value (17th century)

<b>Wives</b>	<b>Dowry Value</b>
<b>0-1000 pesos</b>	
Mariana Monzan	300 pesos plus jewelry
Luisa de León y Hermsillo	750 pesos
<b>1000-2000 pesos</b>	
María Gómez de Cantoral	1000 pesos
María de Vargas	1096 pesos plus 500 pesos in arras
<b>2000-4000 pesos</b>	
Doña Antonia de Cintas	2000 pesos
Joana de Bibar	2000 pesos
Doña Margarita de Peralta	2000 pesos in reales
Constanza Rodríguez	2664 pesos
Francisca Nieto	2962 pesos
Isabel de las Nieves Tinoco	2967 pesos
Josepha de Ayala	3000 pesos
María de Aguilera	3140 pesos
Isabel de la Cruz	3267 pesos plus 1000 in arras
Antonia de Espinoza y Aguilar	3800 pesos in reales y alhajas
<b>4000-6000 pesos</b>	
María de Santillan	4185 pesos
Joana de Madrigal	5000 pesos
<b>6000-8000 pesos</b>	
María del Villar	6000 y tantos pesos
Doña Juana Coronel de la Rea	6000 pesos in reales, plus silver jewelry
<b>More than 8000 pesos</b>	
Catalina Altamirano	8593 pesos y 5 tomines
María Gertrudis de Talavera	9345 pesos
Juana de Ribera	12500 pesos
María de los Reyes	14000 pesos
Doña Lorença de Esquivel y Castañeda	18000 pesos in reales in 18 talegas

Despite living in a patriarchal society, women in New Spain had significant economic resources.<sup>117</sup> Women sold in markets, ran stores, entered into commercial partnerships and purchased, leased and sold real estate. For women from families with at least some property, the dowry represented a guarantee of financial stability and some degree of protection against an impoverished old age. Dowries were collections of valuable goods turned over (but not permanently given) to the groom by the family of the bride at the time of their marriage. Ranging in value from a few dozen to thousands of pesos, dowries represented a way to store wealth in a time before consumer banking and dowries also constituted a safeguard against impoverishment for women made vulnerable by marriage. As Muriel Nazzari has noted, dowries represented the initial capital that a young couple could use to begin life as an independent economic unit.<sup>118</sup> As table 5 shows, the total values of dowries ranged widely from less than 100 pesos to more than 10,000 pesos. Plebeian women were generally not able to put together dowries of significant value. The chart above begins with the small dowries of middle-income women such as Mariana Monzan, who had a dowry of 300 pesos plus a small amount of jewelry, and Luisa de León, whose dowry consisted of 750 gold pesos. Wealthier women such as Isabel de la Cruz put together sizable dowries; Isabel was able to offer 3,267 pesos and her fiancé gave her 1,000 pesos in *arras* at the wedding. Unsurprisingly, elite

---

<sup>117</sup> Marie Eileen François, *A Culture of Everyday Credit: Housekeeping, Pawnbroking, And Governance in Mexico City, 1750-1920* (U of Nebraska Press, 2006), 11.

<sup>118</sup> Muriel Nazzari, *Disappearance of the Dowry: Women, Families, and Social Change in São Paulo, Brazil (1600-1900)* (Stanford, Calif.: Stanford University Press, 1991), 15.

women offered the largest dowries. The largest dowry reported in a divorce case in the seventeenth century was the dowry of doña Lorença de Esquivel who reported having 18,000 pesos in cash, in addition to slaves, jewels and other goods. Doña Lorença came from a well-known family of state and church officials and had several relatives that had positions in the Holy Office of the Inquisition.

In the eighteenth century the largest dowry included in this study was the dowry of doña Angela de Calzado y Ferreros, who offered 119,101 pesos of value in her dowry letter, including the value of a complete plantation, pearls, precious stones, slaves and other goods.<sup>119</sup> Asunción Lavrin and Edith Couturier note in their study of dowries and wills in colonial Guadalajara and Puebla that the most common items were “clothes, linen, jewels, furniture, and silverware,” making up between 25-75% of the value of a dowry in the majority of the dowries studied.<sup>120</sup> These movable goods constituted real liquid wealth as they were easy to sell or pawn.<sup>121</sup> Wealthier brides could also include slaves, real estate and cash in their dowries.<sup>122</sup> Since there were strict rules about inheritance in New Spain, the dowry constituted a significant portion of a woman’s inheritance in the event of the death of her husband.<sup>123</sup>

---

<sup>119</sup> Doña Angela Eugenia de Calzado y Ferreros v. don Benito Gonzales de Zevallos, AGN, Matrimonios, Vol. 26, exp 1, 1738, 5.

<sup>120</sup> Asuncion Lavrin and Edith Couturier, “Dowries and Wills: A View of Women’s Socioeconomic Role in Colonial Guadalajara and Puebla, 1640-1790,” *The Hispanic American Historical Review* 59, no. 2 (May 1979): 288.

<sup>121</sup> François, *A Culture of Everyday Credit*, 11.

<sup>122</sup> Lavrin and Couturier, “Dowries and Wills,” 288.

<sup>123</sup> By the sixteenth century, Iberian inheritance law had rejected English style primogeniture and the concentration of property solely in the hands of male heirs.

While dowries provided a bulwark for wives who brought the requisite wealth to marriage, wives were not entitled to the whole of their husbands' wealth. Widows never inherited the full value of their husband's estate; instead the husband's possessions were distributed in equal parts to his legitimate heirs after half of the marital property and the dowry had been distributed to the widow.<sup>124</sup>

In Spanish tradition, a marriage was more than just a sacramental union of a man and a woman and an alliance between families; it was also an exchange of property.<sup>125</sup> At the time of marriage, a bride brought more than just her physical body to the union, she also brought a dowry, a significant body of valuable property. In exchange, the groom granted her *arras*, a large cash payment, containing a sum of at least 10% of his net worth.<sup>126</sup> Don Benito González de Caballas, husband of the previously mentioned

---

<sup>124</sup> See Gonzalbo Aizpuru; Christine Hunefeldt, *Liberalism in the Bedroom : Quarreling Spouses in Nineteenth-Century Lima* (University Park, Pa.: Pennsylvania State University Press, 2000), 232.

<sup>125</sup> There is an extensive historiography of dowries in colonial Latin America and early modern Spain; much of it focuses on the role of dowries in elite families. See

E. A. Lehfeldt, "Convents as Litigants: Dowry and Inheritance Disputes in Early-Modern Spain," *Journal of Social History* 33, no. 3 (March 1, 2000): 645–664.

Korth and Flusche, "Dowry and Inheritance in Colonial Spanish America," 395.

M. Poska Allyson, "When Love Goes Wrong: Getting Out of Marriage in Seventeenth-Century Spain," *Journal of Social History* 29, no. 4 (1996): 871–882.

John E. Kicza, "The Great Families of Mexico: Elite Maintenance and Business Practices in Late Colonial Mexico City," *The Hispanic American Historical Review* 62, no. 3 (August 1982): 429.

Doris M. Ladd, *The Mexican Nobility at Independence, 1780-1826* (Institute of Latin American Studies, University of Texas, 1976).

Lavrin and Couturier, "Dowries and Wills."

<sup>126</sup> Francisco Velasco Hernández, "Lazo familiar, conexión económica e integración social: la burguesía cartagenera de origen extranjero en el siglo XVII," in *Familia, casa y trabajo: Congreso Internacional Historia de la Familia..., celebrado en Murcia, 14, 15 y 16 de Diciembre de 1994*, by Chacón Jiménez, Francisco (EDITUM, 1997), 230.

plantation owner doña Angela de Calzado, had given his wife 10,000 pesos in *arras* at the time of his wedding.

The *arras* was added to the dowry and set apart as the bride's only guarantee of economic solvency in the event of the death of her husband. Since husbands managed the dowry for the duration of the marriage, a large dowry made a woman a relatively more attractive marriage-partner and probably meant that she could marry a higher-status man. However, the dowry remained the wife's property and the husband was in theory not permitted to take reckless actions that would reduce the dowry's value. However, given the laws of marital property, any positive returns on the successful investment of the wife's dowry would be shared equally between husband and wife. After the husband's death or in the event of a divorce or annulment, the dowry would be restored to the wife's control. Should the wife die, the value of the dowry would be distributed to all of her heirs and not to the husband alone. If the wife died before having children, the widower would have to restore the value of the dowry to his in-laws.

While recently the dowry has been described as a retrograde tradition of patriarchal exploitation, this overlooks the significant benefits that the dowry system had for wives in New Spain. For those women fortunate enough to come from a propertied family, a dowry meant a degree of economic independence within the framework of marriage. A woman with a large dowry was self-sufficient enough to survive without a husband (as a widow) and had a greater choice of potential suitors. Wives with large dowries also had more legal tools to resist abusive husbands. Since any successful divorce or annulment required the husband to restore the full value of the dowry to his

former spouse, for a husband, an ecclesiastical divorce often meant financial ruin.<sup>127</sup> In contrast, for an unhappy wife, divorce or annulment could mean regaining her financial independence and having more control over her destiny. Having declared a sentence of divorce or annulment, ecclesiastical judges granted relatively little time to defendants to return the dowry to the control of its rightful owner. Judges normally granted husbands thirty days from the pronouncement of the verdict requiring restoration of the dowry to return the goods that were contained in the value, or to at least restore the full cash value of the dowry if he had already sold the movable goods. For example, when Ysabel de los Ángeles won her annulment from Francisco de Ribera on the grounds of her husband's impotence, the judge Doctor Leon Placa gave the defendant "thirty days immediately following the proclamation and notification" to "return and reconstitute" the dowry or its total value to the plaintiff.<sup>128</sup>

Since a dowry was key to her economic independence and possibly survival, propertied wives acted aggressively to protect their dowries from the machinations of spendthrift husbands. However, the only way that a wife could regain control of her dowry was to get a verdict authorizing a divorce or annulment. María de Santillán claimed that her husband had dissipated the majority of her dowry by gambling and having fun (*juegos y a divertirse*); this was evidence of his "hatred and mortal enmity of her" (*odio y enemistad mortal contra mi parte*).<sup>129</sup> Since the case seems to have been

---

<sup>127</sup> See the case of the Captain Sebastian Baz in chapter III.

<sup>128</sup> Ysbael de los Ángeles v. Francisco de Ribera. AGN, Caja 1502, exp. 5, 1617, 210.

<sup>129</sup> Indiferente Virreinal, Caja 1502, exp 8, 1643, 1.

abandoned shortly after doña María was placed in deposit, the historical record does not indicate whether she ended up finding a way to get back her dowry. In another case from 1678, the lawyer Domingo de Córdoba claimed that what inspired the murderous hatred of towards his client, doña María Castrexon, was her reticence to allowing him to spend through her dowry and the property of her minor children, beginning with their two slaves.<sup>130</sup>

Fathers were not the only ones to grant their daughters dowries. Independently wealthy women often gave their daughters the dowry that would make them attractive marriage partners and help to preserve their economic independence. For example, doña Lucía de Servantes gave her daughter Doña María de Villar a dowry of more than six-hundred pesos.

Dowries could be invested but not spent by the husband. The husband administered the dowry but he was not supposed to take any action that would diminish its value. Clemente Flores clearly did not follow this principle. After gaining control of his young wife's dowry, Clemente started to run through it by gambling and drinking, thereby ignoring a wife's right to have her dowry "complete, integral and reserved" ("derecho a tener integra ylessa y recervada").<sup>131</sup> Husbands sometimes engaged in subterfuge or gambits to maintain control over their wives' dowries. After realizing that his wife would try to regain control over her property, Clemente Flores took her dowry

---

<sup>130</sup> Doña María Castrexon v. Don Miguel Machuca. Vol. 19, exp. 6, 1678, 36.

<sup>131</sup> Doña María de Villar v. Clemente Flores. Indiferente Virreinal, Caja 5244, exp. 19, 1663, 6.

out of the house and placed it in the hands of his friend, a master swordsmith.<sup>132</sup> He then very cynically lied, claiming that his wife had lost all her property and that he had no idea what she had done with it. Another brazen husband, Luis Peres also hid his wife's property to escape a judicial restoration of her dowry. However, he was not clever enough to pull off this particular ploy. In 1613, the vicar general Dr. Juan de Salamanca authorized the permanent divorce of Leonor de Monterrey from don Luis Peres on the grounds of mistreatment and for dissipating her dowry. In his sentence, the judge wrote:

*The complete restitution and delivery to doña Leonor de Monterrey of all the pesos that said Luis had hidden in the hands of third parties and that comprised her dowry is ordered.*<sup>133</sup>

In no case was a divorce or annulment granted solely because of a husband's wasteful spending of his wife's dowry. The irresponsible spending of a dowry was rarely mentioned as a primary reason for a marital separation, although it occasionally figured as one of several examples of marital mistreatment. Judges occasionally cited the mismanagement of a dowry as a supporting cause for authorizing a divorce. After Luis refused to turn over the money, he was judged to be in contempt of court ("rebeldia") and was imprisoned in the archbishop's jail. The refusal or inability to reconstitute dowries was one of the things most likely to get a husband thrown in jail. The best way for a

---

<sup>132</sup> Doña María de Villar v. Clemente Flores. Indiferente Virreinal, Caja 5244, exp. 19, 1663, 6v.

<sup>133</sup> "Se le manden retribuir y entregar a la dicha Doña Leonor de Monterrey todos los pesos que monto la dote que el cuio a poder del dicho Luis peres tenia ocultados y escondidos todos sus bienes en poder de terceras personas..."

. Leonor de Monterrey v. Luis Peres, Indiferent Virreinal, Caja 4705, exp. 39, 1613.

husband involved in divorce proceedings to avoid jail in the sixteenth and seventeenth centuries was to be able to return his wife's dowry intact to her. After declaring a verdict of divorce in 1675, the vicar general Doctor Pedro Garçes de Portillo ordered Diego de Ávila Salazar to return the \$8,593 pesos that made up his wife's dowry; certainly a large amount of money. However, Diego had managed to spend the majority of it during their six years of marriage. Diego was lucky in the sense that he was not a drunk or gambler; he had enough personal property to restore the complete value of the dowry to his wife and avoid jail despite putting up token resistance to the bailiff that was sent with a written order from the archbishop to seize Diego's property.<sup>134</sup> Diego's case was unusual; only a minority of divorce cases reached a clear conclusion in which the ecclesiastical judge issued a verdict requiring a divorce or annulment and the restoration of the wife's dowry. The vast majority of divorce or annulment lawsuits were abandoned or tabled before reaching a verdict that could have permanent economic consequences.

Another financial benefit of divorce for women was alimony: *litas expensas y alimentos* (court costs and food). Since an ecclesiastical divorce did not end a marriage but merely suspended the requirement for the couple to live together, in the event of an authorized separation, the husband was required to support his wife and children through weekly alimony payments. The range of alimony payments varied widely. Husbands were expected to maintain their wives according to the standard to which they had become accustomed, a standard that depended heavily on social status. For instance, in

---

<sup>134</sup> Catalina Altamirano v. Diego de Ávila Salazar. AGN, Indiferente Virreinal, Caja 6704, exp. 10, 1624.

1696 the Vicar General Lic. Antonio Aunzibay Anaya ordered don Cristóbal de Aguirre to pay 200 pesos a week to his wife, doña Joana Coronel de la Rea, “a woman of quality and nobility” (*una mujer de calidad y nobleza*). This was roughly ten times what a common laborer would expect to earn for a full week’s work. In contrast, doña Gerónima Victoria de Valdés was given a one-time award of just 12 pesos for food from her husband Miguel de Arellano, a struggling baker.<sup>135</sup> The judge Aunzibay found this meager payment to be sufficient given her husband’s humble occupation. More than a century earlier, in 1565, the judge Doctor Barbossa ordered the plantation owner don Gonçalo Cano to pay his wife of 12 years Doña Ana de Prado more than 500 pesos in yearly maintenance.<sup>136</sup> If their wives were placed within an institution of *recogimiento*, a school or a convent, husbands would be liable for paying a tuition payment that included room and board. For instance, when his wife was placed in a convent for the duration of their divorce trial, Joseph de Reinoso was ordered to pay a four peso weekly allowance to his wife plus 25 pesos a week for room and board in the convent.<sup>137</sup>

---

<sup>135</sup> Miguel had refused to call for a doctor or purchase medicine when doña Gerónima was pregnant and with a very high fever. While she was still ill, he disappeared on a trip to the town of Chalco, leaving her alone for days. When she criticized his cruel treatment, he pointed a shotgun at her pregnant belly and threatened to kill her.

<sup>136</sup> AGN. Indiferente Virreinal Vol 2396, exp. 24 año 1567

<sup>137</sup> Doña María de Xerez y Frías v. Joseph de Reinoso. AGN,

Table 16: Sample Alimony Awards (17th Century)

Type of Lawsuit	Year	Plaintiff	Defendant	Award
Annulment	1602	María Mexía	Gonzalo Ramírez de Alarcón	200 gold pesos
Divorce	1690	María de Xerez y Frias	Joseph de Reinoso	4 pesos weekly and 25 pesos room board in convent
Divorce	1650	María Gertrudis de Talavera	Joseph Ramos de Vargas	300 pesos
Divorce	1606	María de Pliego	Diego Alvarez	200 gold pesos
Divorce	1677	Beatriz Michaela Melion	Nicolás Rubio	700 gold pesos
Divorce	1698	Geronima Victoria de Valdes	Miguel de Arellano	12 gold pesos
Divorce	1689	Antonia de Riojas y Berassa	Juan de Abendaño	12 gold pesos weekly
Divorce	1693	Juana Coronel de la Rea	Cristóbal de Aguirre	200 pesos monthly
Annulment	1617	Juana Escoto de Tobar	Balthasar Simon	50 pesos
Divorce	1687	Gregorio del Valle de Dios	María de los Reyes	2 pesos weekly
Divorce	1624	Catalina Altamirano	Diego de Avila Salazar	200 pesos
Divorce	1604	Ana Cueto de Mendoza	Juan de Olarte	500 pesos
Divorce	1596	María de la Paz	Juan Baptista Quixada	500 pesos
Annulment	1635	Catalina de Vargas	Alonso Romero	200 gold pesos
Divorce	1674	Antonia Fermer	Juan de Loayza	50 pesos for room and board in convent
Divorce	1567	Ana de Prado	Gonzalo Cano	500 pesos and 7 tomines

Both divorce and annulment were more favorable to the interests of the wife. If the wife had brought any property to the marriage in the form of a dowry, the newly divorced husband would have to reconstitute the complete value of the dowry and return it to his wife. The dowry was a safeguard designed to provide for a woman's subsistence in the event something happened to her husband. A husband in theory exercised unlimited power of administration over the dowry as long as he remained married. Once the marriage ended, either by his own death, by divorce or by annulment, his right to administer the dowry ended and the dowry once again became property of the wife. Unless he had been very frugal in his spending this would constitute a significant hardship and occasionally financial ruin. From an economic standpoint, a husband would have to be quite foolish to divorce his wife if she had any significant property.

## ***Conclusion***

For an abused wife, going to the courts to get help could take a lot of courage. The court system offered wives the possibility of justice, but at the cost of potential reprisals from their husbands. Most abusive husbands interpreted any request for external intervention made by their wives as a sort of betrayal. For instance, the young wife mentioned at the start of the chapter, María Cañamero, faced brutal reprisals from her husband for having sought help against her husband's abuse from municipal and ecclesiastical authorities. While quite a few wives had the courage to ask for help, many others feared the consequences of seeking external aid and chose rather to tolerate their husbands' abuse as best as they could. For most wives, the key benefit of seeking

judicial intervention was not financial but rather having judicial authorization to be placed in enclosure, living far away from their husbands. Enclosure protected a wife's person from abuse and also preserved her reputation by regulating the conditions in which a married woman could live apart from her husband. While enclosure signified isolation and retirement from public activity, it also signified a freedom from abuse and a greater deal of personal liberty than many married women enjoyed.

Wives who later engaged in marital litigation reported extraordinarily high levels of violence in their daily lives with their husbands. They accused their husbands of having committed brutal beating and attacks with hands, fists, knees and even blades. On numerous occasions, husbands threatened and attempted to murder their wives in a scandalous, public fashion that spurred the immediate intervention of family, friends, neighbors or even strangers. The pattern of attempted murder and the intervention of outsiders to protect the wife was a ritual that took all participants out of their daily lives and created a changed reality in which the public had to recognize and react to the couple's feelings of rage, frustration and hatred.

Wives were not just victims; they could also be physically and verbally abusive to their husbands. Some wives showed their hatred and contempt to their husbands by ridiculing them. Others claimed to have cheated on them and even to be carrying the child of another man. Others slapped their husbands, or abandoned them when they were sick and dying. However, wives tended to show a preference toward verbal, psychological or emotional violence rather than direct physical violence. Husbands seem to have been reticent to seek justice in the courts, since this was tantamount to an

admission that they were not able to control their home life and assert the dominance that their masculine identity required.

Finally, wives also used the courts to challenge their husbands' financial control of their dowries and estates. For middle and high status women, the dowry represented a significant amount of property that could grant them financial independence and cause serious financial hardship to any husband who had invested or spent it. After authorizing a decree of annulment or divorce, ecclesiastical courts forced husbands to reconstitute the full value of the dowry in the thirty days subsequent to the verdict. For some husbands, this requirement could force them into bankruptcy. In the case of a divorce that was determined to be the husband's fault, wives would expect to be maintained with alimony payments, though those payments were relatively more difficult to enforce than the restitution of a dowry since they required constant weekly, monthly, or yearly vigilance by the court to enforce them, and delays were very common. Although the institutions of justice were far from perfect, a determined wife in colonial Mexico could use the court system to make life very difficult for an abusive husband.

## Chapter Six

### Conclusion

In October of 1810, the vicar general of the Archdiocese of Mexico, Dr. José Félix Florez Altorre pronounced his verdict in the case of doña Gertrudis Guerrero and don José Andrade, a wealthy couple united only in the rancor each had for the other. Concurring with the prosecuting attorney (*promotor fiscal*) he argued that there was insufficient evidence to justify a permanent ecclesiastical divorce. Noting that the couple had lived separately since the beginning of the lawsuit exactly three years and three months before, Dr. José Félix argued that the time that the couple had spent apart was “more than sufficient” for the purpose of “healing.”<sup>1</sup> Consequently, the judge ordered the couple to “proceed immediately to their reunion” urging them to “comply with the office and duties of married Christians.” Repeating a Tridentine discourse that had grown old by the nineteenth century, the ecclesiastical judge promised the embittered couple that “the grace of this Sacrament will allow you all to overcome the difficulties and sorrows that married people suffer.”<sup>2</sup> The judge repeated the doctrine of marital permanence that had so distinguished the colonial church, remarking that there must be sufficient grounds to authorize a divorce, since “separation cannot be permitted by the mutual agreement or consent of the couple.”<sup>3</sup> Although doña Gertrudis was the plaintiff who sued her husband don José for divorce, the lawsuit was clearly collusive in the sense that don José made a very weak effort to defend himself against his wife’s arguments and to attempt the reconciliation of their marriage. After a final verdict that ordered the couple to resume

marital cohabitation and the rejection of several appeals, by law doña Gertrudis was obliged to return to her husband's custody. Except she did not. Both doña Gertrudis and don José ignored the court order to resume cohabitation, ignoring the potential consequences. As of the end of 1810, the couple continued to live separately without a judicial order and there is no evidence that they ever resumed cohabitation.

Surprisingly, the insubordinate couple suffered no negative consequences. The judge Dr. José Félix threatened to "make recourse to royal authorities (Real Auxilio)" but never followed through on his warning. By the early nineteenth century, ecclesiastical courts had lost much of the authority that they possessed in the sixteenth, seventeenth and early eighteenth centuries. If doña Gertrudis and don José had lived 200 years before, they might have suffered serious consequences for ignoring the will of the ecclesiastical judge. Doña Gertrudis would have been taken from her location and enclosure by a group of armed constables from the office of the *Alguacil Mayor* and would have been escorted to her husband's house, where a Public Notary would have certified her delivery to the custody of her husband. If her husband had refused to receive his wife, the judge would likely throw him in the archdiocese's jail or excommunicate him.

Before the process of secularization that initiated with the Bourbon reforms in the mid-eighteenth century, ecclesiastical judges exercised a considerable amount of authority. For instance, as part of her divorce lawsuit against her husband Clemente Flores, in 1663 an ecclesiastical judge ordered both church and royal officials to take custody of doña María de Villar and place her in the *Casa de Santa María Magdalena*. One of the archbishop's lieutenants, the *Aguacil Mayor* Juan Bueno and a royal official,

the *Aguacil de Real Justicia* Diego Maruso responded to the call, and the two officers took doña María de Villar to her place of enclosure accompanied by a band of other church and royal officials who served as witnesses.<sup>4</sup> Throughout the seventeenth century, ecclesiastical judges referred to royal officials as “the brazo secular,” and frequently made requests for support from the king’s officials. This once harmonious relationship changed in the last half of the eighteenth century.

With Carlos III’s royal order (cédula real) of 1787, the ecclesiastical courts lost the authority to decide the distribution of dowries, *arras* and alimony payments.<sup>1</sup> On January 27, 1857, President Ignacio Comonfort’s liberal government took the first step to the complete secularization of marriage with the establishment of the Civil Registry as part of the “Organic Law for a Civil Registry.”<sup>2</sup> This law eliminated the civil effects of the church’s marriage books by only recognizing as valid marriages that had been registered in the state’s civil register. Two years later, on July 23, 1859, President Benito Juárez passed the “Civil Marriage Law,” in which marriage was finally recognized as a secular contract.<sup>3</sup> Finally, on December 29, 1914, President Venustiano Carranza passed the “Divorce Law,” which allowed the complete rescission of the marriage bond with the possibility of remarriage.<sup>4</sup> This divorce law allowed for the possibility of “no-fault”

---

<sup>1</sup> Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*, 31.

<sup>2</sup> Osvaldo Archundia Becerril et al., *El Registro civil en México: antecedentes históricos-legislativos, aspectos jurídicos y doctrinarios* (Centro de Documentación y Publicaciones del Registro Civil, 1981), 24.

<sup>3</sup> García Peña, *El Fracaso Del Amor : Género e Individualismo En El Siglo XIX Mexicano*, 112.

<sup>4</sup> Sara Montero Duhalt, *Derecho de Familia* (Porrúa, 1984), 211.

divorces by authorizing divorces on the grounds of the mutual consent of the couple.

With the implementation of Carranza's law, Mexico had changed from a deeply Catholic nation in which the institution of divorce did not exist to a country with one of the world's most liberal divorce regimes.<sup>5</sup>

Thanks to the efforts of pioneers in women's history such as Pilar Gonzalbo Aizpuru, Asunción Lavrin and Silvia Arrom, marriage, family, and the daily lives of ordinary people in colonial Mexico have not only become recognized research areas, but have inspired some of the key debates currently taking place in colonial Latin American history about honor, gender roles, and patriarchy. This dissertation has used divorce and annulment lawsuits in order to intervene in several of these debates.

### ***Seeking Enclosure***

This dissertation addresses a paradox: although hundreds of women filed for divorce or annulment in New Spain during the colonial era, only a small minority actually received decrees of nullity or verdicts authorizing an ecclesiastical divorce. If it was relatively unlikely for a wife to achieve a verdict in her favor, then why did so many wives pursue legal action against their husbands? I suggest that the answer to this question has to do with the legal process that a divorce or annulment lawsuit entailed. As

---

<sup>5</sup> There is a vigorous debate about whether conditions improved for women during and after the Mexican Revolution. John French notes in his review of Jocelyn Olcott's *Revolutionary Women in Postrevolutionary Mexico* that scholars such as Anna Macias have questioned whether the Mexican Revolution actually liberated women. Olcott's monograph shows how postrevolutionary secular women's movements provided a space for the development of female leadership and flatter relationships between men and women. John D. French, "Women in Post-Revolutionary Mexico: Towards a New Feminist Political History," *Latin American Politics and Society* 50, no. 2 (Summer, 2008) (n.d.): 179.

soon as a plaintiff presented a credible divorce or annulment petition supported with witness testimony, the ecclesiastical judge would immediately place her into enclosure, a sort of court-ordered protective custody that was designed to protect the integrity of the divorce or annulment process by preventing husbands from threatening or otherwise intimidating their wives to desist the lawsuit. Judges placed women in institutions (such as convents or houses for wayward women) or in the private homes of upstanding married men. Once safely in enclosure, a wife would have a variety of legal mechanisms to extend her stay as long as possible and to call the attention of public authorities to her husband's bad behavior. Thus, an abused or otherwise unsatisfied wife could quickly improve her quality of life by suing for divorce or annulment and getting taken out of her husband's custody. Many wives abused the spirit of this legal principle by suing for divorce or annulment just to get placed in enclosure, without making a good faith effort to take the lawsuit to its final conclusion. The system of enclosure provided a real, although likely temporary, relief from violence for abused wives. Historians writing on divorce in colonial Mexico such as Dora Dávila Mendoza and Silvia Arrom have assumed that the goal of the divorce process was to achieve a formal sentence authorizing a permanent or temporary divorce. For instance, in her monograph on ecclesiastical divorce in the eighteenth century, Dávila Mendoza notes that she studied ecclesiastical divorce "as a process that has as its finality" the issuance of a divorce authorization.<sup>6</sup> This dissertation disrupts the historiography by suggesting that the most important aspect

---

<sup>6</sup> Dávila-Mendoza, *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800*, 276.

of the divorce process for wives was not the final verdict but rather the judicial authorization to be taken out of her husband's custody and placed in enclosure.

The effectiveness of divorce and annulment lawsuits for women changed over time. In the late sixteenth and early seventeenth centuries, church authorities in New Spain took to heart the Council of Trent's emphasis on marital legitimacy, which inspired prosecutions of fraudulent marriages and dozens of annulments in the seventeenth century. This resulted in a dramatic uptick in the number of annulments processed in the Archdiocese of Mexico in the seventeenth century. While I was only able to identify four annulment cases from the sixteenth century, in the seventeenth century there were more than 46 cases, not counting additional cases that are out of service or in restoration. During the seventeenth century, church courts invalidated a significant number of marriages and granted decrees of nullity. In the seventeenth century, ecclesiastical judges granted decrees of nullity in 24% of the total cases, whereas by the eighteenth century, the percentage of annulment cases authorized had dropped to a negligible 6.3%. Several factors may explain this apparent volatility. The number of collusive or fraudulent annulment lawsuits seems to have increased over the course of the seventeenth century; this may have been due to internal legal dynamics as lawyers became more adept at manipulating canon law and taking advantage of loopholes in order to serve their clients' interests. At the same time, this may have made ecclesiastical judges much more skeptical as to the motives of plaintiffs in annulment lawsuits by the later half of the seventeenth century.

As judges became more skeptical, ecclesiastical divorce became a comparatively

better option for plaintiffs, since physical abuse was easier to prove using the evidence of the plaintiff's own body than many of the more abstract impediments that were grounds for annulments. From the sixteenth and seventeenth centuries, I was only able to identify 110 ecclesiastical divorce cases. Yet by the eighteenth century, the number of ecclesiastical divorce cases had almost tripled to at least 300 petitions for divorce filed in the Archdiocese of Mexico. However, in the same time period there were only a handful of annulment cases as the memory of the Council of Trent faded and the crisis over clandestine and illegitimate marriages that had characterized the postconquest era passed into history. In divorce cases, litigants and lawyers "bent the law" by manipulating their knowledge of procedural law and particular types of evidence in order to pursue a particular agenda. Bending the law was necessary for plaintiffs to level the playing field, since the Tridentine-era canon law of marriages placed significant procedural barriers in front of those who sought ecclesiastical divorces, in the name of supporting the permanence and union of valid marriages.

### ***Honor and Masculinity***

Many historians of colonial Mexico, including Patricia Seed, Richard Boyer, and Ann Twinam have argued that a strong notion of honor was a key part of the social logic of New Spain.<sup>7</sup> Seed uses evidence from *Siglo de Oro* literature and drama to propose

---

<sup>7</sup> Boyer, "Honor Among Plebeians: Mala Sangre and Social Reputation"; Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821*; Twinam, "The Negotiation of Honor: Elites, Sexuality, and Illegitimacy in Eighteenth-Century Spanish America."

“the supremacy of honor as virtue in the Spanish value system.”<sup>8</sup> She suggests that early modern Spaniards and colonial Mexicans were obsessed with honor. While Boyer rejects Seed’s use of literature to make inferences about real life, he agrees that honor was a key part of how not just the elite but plebeians understood their world.<sup>9</sup> This dissertation rejects this trend in the historiography, suggesting instead that an understanding of gender roles and masculinity provides the key to understanding much of the sort of behavior that has been explained with a generalized notion of honor. The paucity of discourses of honor in the extensive documentation of colonial marital litigation puts the “honor thesis” of Seed and other historians in doubt. The recent emphasis on honor has to a large part been influenced by a projection to the past of trends and patterns described in modern anthropological literature on honor in Mediterranean cultures rather than on direct archival evidence.<sup>10</sup>

I also reject Steve Stern’s hegemonic model of masculinity, instead espousing something similar to Asunción Lavrin’s notion of masculinity as a pluralistic form of behavior that describes everything men were expected to do, say, and think as gendered subjects, that is, as men. Stern proposes a hegemonic, vertical model of masculinity in which elites affirmed their superior manhood by feminizing and subordinating subaltern men. Stern argues that subaltern men defended their masculinity from elite provocation

---

<sup>8</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821*, 71.

<sup>9</sup> Boyer, “Honor Among Plebeians: Mala Sangre and Social Reputation,” 153.

<sup>10</sup> For more on the honor-shame complex in Mediterranean world, see: J. Pitt-Rivers and J. G. Peristiany, “Honour and Shame: The Values of Mediterranean Society,” *Honour and Shame: The Values of Mediterranean Society* (1974); Jane Schneider, “Of Vigilance and Virgins: Honor, Shame and Access to Resources in Mediterranean Societies,” *Ethnology* 10, no. 1 (January 1971): 1.

by redefining “successful manhood” as “courage and competence amidst adversity.”<sup>11</sup> In contrast, Lavrin argues against any proposal to construct a universal model of masculinity. She argues that notions of masculinity are inherently unstable and plural, as “attempts to create models of masculinity and femininity are necessarily challenged by time and the continuous flux and reflux of social mores.”<sup>12</sup> Divorce and annulment lawsuits show the instability and flexibility of the masculine identity of colonial husbands. Some husbands acknowledge their roles as providers, while others constructed an alternative, picaresque masculinity in which they denied their responsibility to provide and demanded generous support from their wives. Colonial divorce and annulment lawsuits are replete with gender conflict and with couples attempting to negotiate their rights and responsibilities as husbands and wives and as men and as women; I argue that the dynamic of gender roles and the multiplicity of masculinities is far more important than honor in order to understand daily life in colonial Mexico.

My archival research also shows that the negotiation of gender roles within marriage could lead to violence. Husbands frequently justified their violent abuse of their wives as being necessary “corrections” forming part of their right and prerogative as husbands. Some wives in colonial Mexico suffered extreme levels of domestic abuse and intra-familial violence before seeking litigation. Divorce lawsuits are replete with accounts of brutal beatings, whippings, sexual violence and attempted murder. The violence was so extreme that some wives also used their own bodies as evidence,

---

<sup>11</sup> Stern, *The Secret History of Gender : Women, Men, and Power in Late Colonial Mexico*, 177.

<sup>12</sup> Lavrin, “Masculine and Feminine,” 4.

showing lacerations and bruises to prove a history of spousal abuse and to request the support of ecclesiastical justice. One of the common tropes of divorce narratives was that the violence by husbands against their wives was so extreme that it took the direct intervention of friends, families and neighbors to frustrate a potentially lethal attack.

The high levels of violence present in colonial Mexico suggests that historian Kimberly Gauderman's denial of the existence of a colonial patriarchal system goes too far.<sup>13</sup> However, she is correct to note that the institutions of colonial justice did make allowances for women. Enclosure not only protected the integrity of the legal process by preventing intimidation and threats to litigants, it also provided a critical escape route for wives living in violent marriages.

The secularization of marriage and the legalization of divorce undertaken by reformers such as Benito Juarez and Venustiano Carranza in the late nineteenth and early twentieth century were accompanied by a complete dismantling of the institutions of colonial justice and a relegation to irrelevancy of the ecclesiastical courts. While these changes meant significantly more liberty for men and elite women, it also entailed the end of a system of enclosure that had provided relief for some abused wives. As Mexican couples embraced modernity, wives would find the imperfect protections provided by church courts in the colonial era replaced by an equally problematic and limited social safety net in post-revolutionary Mexico.

---

<sup>13</sup> Gauderman, *Women's Lives in Colonial Quito: Gender, Law, and Economy in Spanish America*, 29.

## **References**

### *Primary Sources*

Archivo General de la Nación, Mexico City, Mexico (AGN)

Archivo General de las Indias, Seville, Spain (AGI)

Archivo Histórico del Arzobispado de México (AHAM)

Biblioteca de la Universidad Pontificia de Salamanca

## **Bibliography**

- Allyson, M. Poska. "When Love Goes Wrong: Getting Out of Marriage in Seventeenth-Century Spain." *Journal of Social History* 29, no. 4 (1996): 871–882.
- Arrom, Silvia M. "Changes in Mexican Family Law in the Nineteenth Century: The Civil Codes of 1870 and 1884." *Journal of Family History* 10, no. 3 (September 1, 1985): 305–317.
- . "Marriage Patterns in Mexico City, 1811." *Journal of Family History* 3, no. 4 (December 1, 1978): 376–391.
- Arrom, Silvia Marina. *La Mujer Mexicana Ante El Divorcio Eclesiástico (1800-1857)*. Secretaría de Educación Pública, Dirección General de Divulgación, 1976.
- . *The Women of Mexico City, 1790-1857*. Stanford University Press, 1985.
- Beal, John P., James A. Coriden, and Thomas J. Green. *New Commentary on the Code of Canon Law*. Paulist Press, 2002.
- Becerril, Osvaldo Archundia, Roberto Gómez Collado, Fernando Rivera Arteaga, and Mexico Centro de Documentación y Publicaciones de Registro Civil. *El Registro civil en México: antecedentes históricos-legislativos, aspectos jurídicos y doctrinarios*. Centro de Documentación y Publicaciones del Registro Civil, 1981.
- Behrend-Martinez, Edward J. *Unfit For Marriage: Impotent Spouses On Trial In The Basque Region Of Spain, 1650-1750*. University of Nevada Press, 2007.
- Bernárdez Cantón, Alberto. *Curso De Derecho Matrimonial Canónico*. 3a. ed., 5a. reimp. Biblioteca Universitaria De Editorial Tecnos. Madrid: Tecnos, 1971.
- Blanco, Enrique Gallego. *The Rule of the Spanish Military Order of St. James*. Brill Archive, 1971.
- Bosmajian, Haig A. *The Freedom Not to Speak*. NYU Press, 1999.
- Bourdieu, Pierre. *Outline of a Theory of Practice*. Translated by Richard Nice. Cambridge University Press, 1977.
- Boyer, Richard E. "Honor Among Plebeians: Mala Sangre and Social Reputation." In *The Faces of Honor : Sex, Shame, and Violence in Colonial Latin America*, by ed. Lyman Johnson and Sonya Lipsett-Rivera. Albuquerque: New Mexico University Press, 1998.

- . *Lives of the Bigamists : Marriage, Family, and Community in Colonial Mexico*. Albuquerque: University of New Mexico Press, 1995.
- . “Women, La Mala Vida, and the Politics of Marriage.” In *Sexuality and Marriage in Colonial Latin America*, edited by Asunción Lavrin. Lincoln: University of Nebraska Press, 1989.
- Brading, D. A. *Church and State in Bourbon Mexico : the Diocese of Michoacán, 1749-1810*. Cambridge ; New York: Cambridge University Press, 1994.
- . *The First America : the Spanish Monarchy, Creole Patriots, and the Liberal State, 1492-1867*. Cambridge [England] ; New York: Cambridge University Press, 1991.
- Bressan, Luigi. *Il Canone tridentino sul divorzio per adulterio e l'interpretazione degli autori*. Gregorian Biblical BookShop, 1973.
- Brundage, James A. *Law, Sex, and Christian Society in Medieval Europe*. University of Chicago Press, 1990.
- . *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts*. University of Chicago Press, 2008.
- Bullock, William. *Six Months' Residence and Travels in Mexico: Containing Remarks on the Present State of New Spain ...* Murray, 1825.
- Burkholder, Mark A. “Honor and Honors in Colonial Latin America.” In *The Faces of Honor : Sex, Shame, and Violence in Colonial Latin America*, x, 240 p. Albuquerque, NM: University of New Mexico Press, 1998.
- Burns, Kathryn. *Into the Archive: Writing and Power in Colonial Peru*. Duke University Press, 2010.
- . “Notaries, Truth, and Consequences.” *The American Historical Review* 110, no. 2 (2005).
- Bustos, Carlos M. Morán, and Carmen Peña García. *Nulidad De Matrimonio y Proceso Canónico*. Dykinson, S.L., 2007.
- Butler, Judith. *Gender Trouble: Feminism and the Subversion of Identity*. Routledge, 1990.

- . “Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory.” *Theatre Journal* 40, no. 4 (December 1, 1988): 519–531.
- Calvo, Thomas, and Gustavo López Castro. *Movimientos de población en el occidente de México: Mesa Redonda, 21 y 22 de julio de 1986 en México, organizada por El Colegio de Michoacán y el Centre d’études mexicaines et centraméricaines; Thomas Calvo y Gustavo López, coord.* El Colegio de Michoacán A.C., 1988.
- Carrera, Magali Marie. *Imagining Identity in New Spain: Race, Lineage, and the Colonial Body in Portraiture and Casta Painting.* University of Texas Press, 2003.
- Carvajal, Federico Garza. *Butterflies Will Burn: Prosecuting Sodomites in Early Modern Spain and Mexico.* University of Texas Press, 2003.
- Contreras, Jaime Contreras, and Raquel Sánchez Ibáñez. *Familias, poderes, instituciones y conflictos.* EDITUM, 2011.
- Cope, R. Douglas. *The Limits of Racial Domination : Plebeian Society in Colonial Mexico City, 1660-1720.* Madison, Wis.: University of Wisconsin Press, 1994.
- Cutter, Charles R. *The Legal Culture of Northern New Spain.* UNM Press, 2001.
- Dávila-Mendoza, Dora. *Hasta Que La Muerte Nos Separe : El Divorcio Eclesiástico En El Arzobispado De México, 1702-1800.* México, D.F.: El Colegio de México, 2005.
- Deusen, Nancy van. *Between the Sacred and the Worldly: The Institutional and Cultural Practice of Recogimiento in Colonial Lima.* Stanford University Press, 2002.
- Duby, Georges. *Love and Marriage in the Middle Ages.* University of Chicago Press, 1996.
- Duhalt, Sara Montero. *Derecho de Familia.* Porrúa, 1984.  
*El sacramento y ecuménico Concilio de Trento: Agrégase el texto latino corregido según la edición auténtica de Roma, publicada en 1564.* Imprenta Real, 1787.
- Esquivel Estrada, Noé. *Pensamiento novohispano* 7. UAEM, n.d.
- Filipeczak, Zirka Zaremba. *Hot Dry Men, Cold Wet Women: The Theory of Humors in Western European Art, 1575-1700.* The American Federation of Arts, 1997.
- Fowler, Will. “All the President’s Women: The Wives of General Antonio Lopez De Santa Anna in 19th Century Mexico.” *Feminist Review* 79, no. 1 (2005): 52–68.

- François, Marie Eileen. *A Culture of Everyday Credit: Housekeeping, Pawnbroking, And Governance in Mexico City, 1750-1920*. U of Nebraska Press, 2006.
- French, John D. "Women in Post-Revolutionary Mexico: Towards a New Feminist Political History." *Latin American Politics and Society* 50, no. 2 (Summer, 2008) (n.d.): 125–129.
- García, Ana Lidia. *El Fracaso Del Amor*. UAEM, 2006.
- García Hervás, Dolores. *Manual De Derecho Matrimonial Canónico*. Madrid: COLEX, 2001.
- García Peña, Ana Lidia. *El Fracaso Del Amor : Género e Individualismo En El Siglo XIX Mexicano*. México, D.F.: El Colegio de México ;, 2006.
- Gauderman, Kimberly. *Women's Lives in Colonial Quito : Gender, Law, and Economy in Spanish America*. Austin: University of Texas Press, 2003.
- Gauthier, Albert. *Roman Law and Its Contribution to the Development of Canon Law*. Ottawa: Faculty of Canon Law, Saint Paul University, 1996.
- Gonzalbo Aizpuru, Pilar. *Familia y Orden Colonial*. México: El Colegio de México, 1998.
- . *Las Mujeres En La Nueva España: Educación y Vida Cotidiana*. México: El Colegio de México, 1985.
- Gonzalbo, Pilar, and Cecilia Andrea Rabell. *Familia y Vida Privada En La Historia De Iberoamérica : Seminario De Historia De La Familia*. México, D.F.: El Colegio de México, 1996.
- . *La Familia En El Mundo Iberoamericano*. [Mexico City, Mexico]: Instituto de Investigaciones Sociales, UNAM, 1994.
- Gruzinski, Serge. *Man-gods in the Mexican Highlands : Indian Power and Colonial Society, 1520-1800*. Stanford, Calif.: Stanford University Press, 1989.
- Gutiérrez, María Elisa Velázquez. *Mujeres de Origen Africano en la Capital Novohispana, Siglos XVII y XVIII*. UNAM, 2006.
- Gutiérrez, Ramón A. *When Jesus Came, the Corn Mothers Went Away*. Stanford University Press, 1991.

- Gutmann, Matthew C. *Changing Men and Masculinities in Latin America*. Duke University Press, 2002.
- . “TRAFFICKING IN MEN: The Anthropology of Masculinity.” *Annual Review of Anthropology* 26, no. 1 (1997): 385–409.
- Hamnett, Brian R. *The Mexican Bureaucracy Before the Bourbon Reforms, 1700-1770 : a Study in the Limitations of Absolutism*. Glasgow: Institute of Latin American Studies, University of Glasgow, 1979.
- Hartog, Hendrik. *Man and Wife in America: A History*. Harvard University Press, 2000.
- Haskett, Robert Stephen. *Indigenous Rulers : an Ethnohistory of Town Government in Colonial Cuernavaca*. Albuquerque: University of New Mexico Press, 1991.
- Herzog, Tamar. *Mediación, archivos y ejercicio*. Vittorio Klostermann, 1996.
- Hunefeldt, Christine. *Liberalism in the Bedroom : Quarreling Spouses in Nineteenth-century Lima*. University Park, Pa.: Pennsylvania State University Press, 2000.
- Iglesias Altuna, José María. *Procesos Matrimoniales Canónicos*. Madrid: Servicio de Publicaciones de la Facultad de Derecho, Universidad Complutense, 1991.
- Jefferson, Ann, and Paul Lokken. *Daily Life in Colonial Latin America*. ABC-CLIO, 2011.
- Johnson, Lyman L., and Sonya Lipsett-Rivera. *The Faces of Honor : Sex, Shame, and Violence in Colonial Latin America*. Albuquerque, N.M.: University of New Mexico Press, 1998.
- Jr, Charles Donahue. *Law, Marriage, and Society in the Later Middle Ages: Arguments About Marriage in Five Courts*. Cambridge University Press, 2008.
- Juenger, Friedrich K. “Forum Shopping, Domestic and International.” *Tulane Law Review* 63 (1989 1988): 553.
- Kamen, Henry. *The Phoenix and the Flame: Catalonia and the Counter Reformation*. Yale University Press, 1993.
- Kelleher, Marie. *The Measure of Woman: Law and Female Identity in the Crown of Aragon*. University of Pennsylvania Press, 2010.

- Kicza, John E. "The Great Families of Mexico: Elite Maintenance and Business Practices in Late Colonial Mexico City." *The Hispanic American Historical Review* 62, no. 3 (August 1982): 429.
- Knight, Alan. *Mexico: Volume 2, The Colonial Era*. Cambridge University Press, 2002.
- Korth, Eugene H., and Della M. Flusche. "Dowry and Inheritance in Colonial Spanish America: Peninsular Law and Chilean Practice." *The Americas* 43, no. 4 (April 1987): 395.
- Ladd, Doris M. *The Mexican Nobility at Independence, 1780-1826*. Institute of Latin American Studies, University of Texas, 1976.
- Lanning, John Tate, and John Jay TePaske. *The Royal Protomedicato: The Regulation of the Medical Professions in the Spanish Empire*. Duke University Press, 1985.
- Lavallé, Bernard. "Divorcio y Nulidad De Matrimonio En Lima (1650-1700). La Desavenencia Como Indicador Social." *Revista Andina* 4, no. 2 (1986): 427–464.
- Lavrin, Asunción. "Masculine and Feminine: The Construction of Gender Roles in the Regular Orders in Early Modern Mexico." presented at the South-Central Renaissance Conference, San Antonio, Texas, March 10, 2007.
- . *Sexuality and Marriage in Colonial Latin America*. Lincoln: University of Nebraska Press, 1989.
- Lavrin, Asuncion, and Edith Couturier. "Dowries and Wills: A View of Women's Socioeconomic Role in Colonial Guadalajara and Puebla, 1640-1790." *The Hispanic American Historical Review* 59, no. 2 (May 1979): 280.
- Lehfeldt, E. A. "Convents as Litigants: Dowry and Inheritance Disputes in Early-Modern Spain." *Journal of Social History* 33, no. 3 (March 1, 2000): 645–664.
- Lewin, Linda. *Surprise Heirs / Linda Lewin*. Stanford, Calif.: Stanford University Press, 2003.
- Lewis, Laura A. *Hall of Mirrors : Power, Witchcraft, and Caste in Colonial Mexico*. Durham: Duke University Press, 2003.
- Lind, Göran. *Common Law Marriage: A Legal Institution for Cohabitation*. Oxford University Press, 2008.
- Lindemann, Mary. *Medicine and Society in Early Modern Europe*. Cambridge University Press, 2010.

- Lipsett-Rivera, Sonya. "A Slap in the Face of Honor: Social Transgression and Women in Late-Colonial Mexico." In *The Faces of Honor : Sex, Shame, and Violence in Colonial Latin America*, by ed. Lyman Johnson and Sonya Lipsett-Rivera. Albuquerque: New Mexico University Press, 1998.
- López Zarzuelo, Félix. *Práctica Procesal Canónica De Las Causas Matrimoniales*. Práctica Jurídica (Editorial Tecnos). Madrid: Tecnos, 2002.
- MacCulloch, Diarmaid. *The Reformation*. Paw Prints, 2008.
- Martínez Marcos, Esteban. *Las Causas Matrimoniales En Las Partidas De Alfonso El Sabio*. Salamanca: CSIC, 1966.
- Mignolo, Walter. *The Darker Side of the Renaissance : Literacy, Territoriality, and Colonization*. Ann Arbor: University of Michigan Press, 2003.
- Molina del Villar, América, and David Navarrete Gómez. *El padrón de comulgantes del arzobispo Francisco Antonio Lorenzana, 1768-1769*. CIESAS, 2007.
- Molina Meliá, Antonio. *Derecho Matrimonial Canónico: Sustantivo Y Procesal*. 5a. ed. Madrid: Civitas, 1992.
- Morales, Manuel Alvarado, Colegio de México Centro de Estudios Históricos, and University of Puerto Rico (Río Piedras Campus). *La ciudad de México ante la fundación de la Armada de Barlovento: historia de una encrucijada, 1635-1643*. Colegio de México, Centro de Estudios Históricos, 1983.
- Muriel, Josefina. *Los Recogimientos De Mujeres : Respuesta a Una Problemática Social Novohispana*. México: Universidad Nacional Autónoma de México, Instituto de Investigaciones Históricas, 1974.
- Murillo, Dana Velasco. *Urban Indians in a Silver City, Zacatecas, Mexico, 1546--1806*. ProQuest, 2009.
- Nazzari, Muriel. *Disappearance of the Dowry : Women, Families, and Social Change in São Paulo, Brazil (1600-1900)*. Stanford, Calif.: Stanford University Press, 1991.
- Nizza da Silva, María Beatriz. *Sistema De Casamento No Brasil Colonial*. Sao Paulo: Universidade de Sao Paulo, 1985.
- . "Divorce in Colonial Brazil: The Case of Sao Paulo." In *Sexuality and Marriage in Colonial Latin America*. Lincoln: University of Nebraska Press, 1989.

- O'Shaughnessy, Kate. *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law*. Routledge, 2009.
- Outhwaite, R. B. *Clandestine Marriage in England, 1500-1850*. Continuum International Publishing Group, 1995.
- Peñafort, Luisa Zahino. *El Cardenal Lorenzana y el IV Concilio Provincial Mexicano*. Univ de Castilla La Mancha, 1999.
- Penyak, Lee M. "Criminal Sexuality in Central Mexico, 1750-1850." University of Connecticut, 1993.
- Phillips, Roderick. *Putting Asunder : a History of Divorce in Western Society*. Cambridge [England] ; New York: Cambridge University Press, 1988.
- Pitt-Rivers, J., and J. G. Peristiany. "Honour and Shame: The Values of Mediterranean Society." *Honour and Shame: The Values of Mediterranean Society* (1974).
- Poska, Allyson M. *Regulating the People: The Catholic Reformation in Seventeenth-century Spain*. BRILL, 1998.
- Romero, Catalina. *Relaciones Geográficas Del Arzobispado de México, 1743*. CSIC, 1988.
- Roth, Norman. *Conversos, Inquisition, and the Expulsion of the Jews from Spain*. Univ of Wisconsin Press, 2002.
- Santos, Martha. *Cleansing Honor with Blood: Masculinity, Violence, and Power in the Backlands of Northeast Brazil, 1845-1889*. Stanford University Press, 2012.
- Scardaville, Michael C. "Justice by Paperwork: A Day in the Life of a Court Scribe in Bourbon Mexico City." *Journal of Social History* 36, no. 4 (Summer 2003): 979-1007.
- Schmitt, Karl. "Church and State in Mexico: A Corporatist Relationship." *The Americas* 40, no. 3 (January 1, 1984): 349-376.
- Schneider, Jane. "Of Vigilance and Virgins: Honor, Shame and Access to Resources in Mediterranean Societies." *Ethnology* 10, no. 1 (January 1971): 1.
- Schroeder, Susan, and Stafford Poole. *Religion in New Spain*. UNM Press, 2007.

- Scott, Joan W. "Gender: A Useful Category of Historical Analysis." *The American Historical Review* 91, no. 5 (December 1986): 1053.
- Seed, P. "Narratives of Don Juan: The Language of Seduction in Seventeenth-Century Hispanic Literature and Society." *Journal of Social History* 26, no. 4 (June 1, 1993): 745–768.
- . *To Love, Honor, and Obey in Colonial Mexico : Conflicts over Marriage Choice, 1574-1821*. Stanford, Calif.: Stanford University Press, 1988.
- Sigal, Peter Herman. *From Moon Goddesses to Virgins : the Colonization of Yucatecan Maya Sexual Desire*. Austin: University of Texas Press, 2000.
- . *Infamous Desire : Male Homosexuality in Colonial Latin America*. Chicago: University of Chicago Press, 2003.
- . *The Flower and the Scorpion: Sexuality and Ritual in Early Nahua Culture*. Duke University Press, 2011.
- Silverblatt, Irene Marsha. *Moon, Sun, and Witches : Gender Ideologies and Class in Inca and Colonial Peru*. Princeton, N.J.: Princeton University Press, 1987.
- Sinha, Mrinalini. *Colonial Masculinity: The "Manly Englishman" and The 'Effeminate Bengali' in the Late Nineteenth Century*. Manchester University Press, 1995.
- Socolow, Susan Migden. *The Women of Colonial Latin America*. Cambridge, UK New York, NY, USA: Cambridge University Press, 2000.
- Solomon, Michael Ray. *The Literature of Misogyny in Medieval Spain: The "Arcipreste De Talavera" and the "Spill"*. Cambridge University Press, 1997.
- Spivak, Gayatri Chakravorty. "Can the Subaltern Speak?" In *Marxism and the Interpretation of Culture*. Urbana: University of Illinois Press, 1988.
- Stern, Steve J. *The Secret History of Gender : Women, Men, and Power in Late Colonial Mexico*. Chapel Hill: University of North Carolina Press, 1995.
- Stone, Lawrence. *Road to Divorce : England, 1530-1987*. Oxford [England] ; New York: Oxford University Press, 1995.
- Taylor, William B. *Drinking, Homicide & Rebellion in Colonial Mexican Villages*. Stanford: Stanford University Press, 1979.

- . *Magistrates of the Sacred: Priests and Parishioners in Eighteenth-Century Mexico*. Stanford University Press, 1996.
- Tortorici, Zeb Joseph. “Contra Natura: Sin, Crime, and ‘Unnatural’ Sexuality in Colonial Mexico, 1530--1821.” Ph.D., University of California, Los Angeles, 2010.
- . “‘Heran Todos Putos’: Sodomitical Subcultures and Disordered Desire in Early Colonial Mexico.” *Ethnohistory* 54, no. 1 (December 21, 2007): 35–67.
- Traslosheros, Jorge E., and Universidad Iberoamericana. *Iglesia, Justicia y Sociedad En La Nueva España : La Audiencia Del Arzobispado De México, 1528-1668*. México: Universidad Iberoamericana, 2004.
- Trexler, Richard C. *Sex and Conquest: Gender Construction and Political Order During the European Conquest of the Americas*. Cornell University Press, 1999.
- Twinam, Ann. *Public Lives, Private Secrets : Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America*. Stanford, Calif.: Stanford University Press, 1999.
- . “The Negotiation of Honor: Elites, Sexuality, and Illegitimacy in Eighteenth-Century Spanish America.” In *The Faces of Honor : Sex, Shame, and Violence in Colonial Latin America*, by ed. Lyman Johnson and Sonya Lipsett-Rivera. Albuquerque: New Mexico University Press, 1998.
- Uribe-Uran, Victor. *Honorable Lives : Lawyers, Family, and Politics in Colombia, 1780-1850*. Pittsburgh: University of Pittsburgh Press, 2000.
- Velarde, Pedro Murillo, and Alberto Carrillo Cázares. *Curso De Derecho Canónico Hispano e Indiano*. El Colegio de Michoacán A.C., 2005.
- Velasco Hernández, Francisco. “Lazo familiar, conexión económica e integración social: la burguesía cartagenera de origen extranjero en el siglo XVII.” In *Familia, casa y trabajo: Congreso Internacional Historia de la Familia..., celebrado en Murcia, 14, 15 y 16 de Diciembre de 1994*, by Chacón Jiménez, Francisco. EDITUM, 1997.
- Villafuerte García, Lourdes, Teresa Lozano Armendares, Sergio Ortega Noriega, and Rocío Ortega Soto. “La Sevicia y El Adulterio En Las Causas Matrimoniales En El Provisorato De México a Fines De La Era Colonial. Un Estudio De La Técnica Procesal Jurídica.” *Estudios De Historia Novohispana* 38, no. 38 (January 2008): 87–161.

- Voekel, Pamela. *Alone Before God : the Religious Origins of Modernity in Mexico*. Durham: Duke University Press, 2002.
- Vollendorf, Lisa. *The Lives of Women: A New History of Inquisitional Spain*. Vanderbilt University Press, 2005.
- Walton, Clifford Stevens, and Spain. *The Civil Law in Spain and Spanish-America: Including Cuba, Puerto Rico, and Philippine Islands, and the Spanish Civil Code in Force, Annotated and with References to the Civil Codes of Mexico, Central and South America, with a History of All the Spanish Codes, and Summary of Canonical Laws, of the Principal Fueros, Ordenamientos, Councils and Ordenanzas of Spain from the Earliest Times to the Twentieth Century, Including the Spanish, Mexican, Cuban and Puerto Rican Autonomical Constitutions, and a History of the Laws of the Indies--Recopilacion De Leyes De Los Reynos De Las Indias*. W. H. Lowdermilk & co., 1900.
- Waterworth, J. *Canons and Decrees of the Sacred and Ecumenical Council of Trent*. Kessinger Publishing, 2003.
- Wilson, Luke. *Theaters of Intention: Drama and the Law in Early Modern England*. Stanford University Press, 2000.
- Witte, John. *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*. Westminster John Knox Press, 1997.
- Witte, John, and Robert McCune Kingdon. *Sex, Marriage, and Family in John Calvin's Geneva: Courtship, Engagement, and Marriage*. Wm. B. Eerdmans Publishing, 2005.
- Zorita, Agustín. *Catecismo del Santo Concilio de Trento para los párrocos: Ordenado por disposicion de San Pio V. en la Imprenta Real, 1785*.

## Biography

Jonathan Bird was born on July 7, 1981 in Washington, DC. He graduated *magna cum laude* from Washington University in St. Louis with a bachelor's degree in History in 2003. He began his doctoral studies at Duke in 2004, after being named a James B. Duke Fellow, a Duke Endowment Fellow and a University Scholar. In the summers of 2005 and 2006 he received a Foreign Language and Area Studies scholarship (FLAS) to study Yucatec Maya in Yucatán, Mexico. Bird received a M.A. in History in 2007 and was a visiting researcher at the Colegio de México in Mexico City in 2008.