Contesting Husbands and Masters: Law, Society, and the Marital Household in Colonial Lima

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Dedication

For Norah and Lauren with all my love.

Abstract

This dissertation examines marital relations, and specifically marital conflicts, in early colonial Lima in order to analyze gender and power in the Spanish Empire. Through my reading of cases held before the ecclesiastical tribunal, I show how wives and their supporters resisted and questioned husbands' authority primarily through reifying of patriarchal norms, in the form of the ideals of manhood. Rather than challenges based on the perceived rights of women, the citing of failures of marital masculinity dominated the discourse of these trials. This marital masculinity encompassed the nature, characteristics, and actions expected of a married man. This manhood was rooted in broader early modern Catholic ideals and comprised expectations of provision, protection, and fidelity. In addition to following Church prescriptions on appropriate behavior for men, the patriarchal expectations found in these cases involved upholding the racial hierarchy of colonial society. Wives and witnesses highlighted instances such as the use of racial epithets and infidelity that crossed racial lines as further failures to live up to the masculine ideal.

This dissertation approaches the dynamics of gender domination from a number of perspectives. In chapter 1, I examine the petitions by women seeking a divorcio (ecclesiastical divorce which dictated the separation of bed and board) and analyze how they criticize their husbands for falling to fulfill their marital masculinity. Chapter 2 shows how mothers and brothers intervened in marital conflicts and reveals their investment in gendered authority. Looking beyond parents and siblings, chapter 3 highlights how community members, and especially neighbors and enslaved Africans,

helped to police the duties of husbands through their testimonies to the court. Chapter 4 analyzes the conflicts between married slaves and their masters over relocation that would separate the couple to further demonstrate the link between race and manhood, one in which white masculinity trumped black masculinity. Throughout these trials, arguments based on marital masculinity proved to limit the power of patriarchs, namely husbands, but, as I demonstrate, did little to mitigate the extent of gender domination ingrained in the patriarchal structures of Lima and the broader Spanish Empire, as the patriarchal authority shifted from husbands to Church officials.

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Introduction: Gender, Authority, and the Law in the Spanish Empire

Musicians: A man and wife may disagree
But decent folk, of course,
Know reconcilement, eve the worst,
Is better than the best divorce.
-Miguel Cervantes, *El juez de divorcio* [1]

Marriage and Its Discontents

The opening to this refrain in the short interlude by Miguel de Cervantes states what was patently obvious in early modern Spain: husband and wife often quarreled. Marriage was not a utopian union. Certainly there were many couples who lived out happy lives together. Yet we also know that marriages throughout the empire ruptured, at times in chaotic and harmful ways. This dissertation takes a look at these "disagreements" in colonial Lima, from 1569-1630. In particular, I examine how these couples (or at least one party) exhausted their other options and sought the help of the Church courts to separate through an ecclesiastical *divorcio* (divorce) or to restore a marriage.[2] Analyzing the moments of the rupturing of the

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[1] Miguel de Cervantes, *El juez de los divorcios: Ocho Comedias y Ocho Entremeses Nuevos Nunca Representados Compuestas por Miguel De Cervantes Saavedra* (Madrid: Viuda de Alonso Martín, 1615). Cervantes' interludes have been translated many times into English, see for example Cervantes, *Eight Interludes*, trans. and ed. Dawn Smith (London: Orion, 1996), 19.

[2] This dissertation builds on work about the sacrament of marriage and marital conflict in colonial Latin America and early modern Spain, especially Nancy E. van Deusen, *Between the Sacred and the Worldly: The Institutional and Cultural Practice of Recogimiento in Colonial Lima* (Stanford: Stanford University Press, 2001); Charlene Villaseñor Black, "Love and Marriage in the Spanish Empire: Depictions of Holy Matrimony and Gender Discourses in the Seventeenth Century," *The Sixteenth Century Journal* 32, no. 3 (2001); Bernard Lavalle, *Amor y opresión en los andes coloniales.* (Lima: Instituto Estudios Peruanos, 1999); Pilar Gonzalbo Aizpuru, "Las cargas del matrimonio. Dotes y vida familiar en la Nueva España," in *Familia y vida privada en la historia de Iberoamerica*, ed. Pilar Gonzalbo y Cecilia Rabell (Mexico: El Colegio de Mexico, 1996), 207-226; Alberto Flores Galindo and Magdalena Chocano, "Las cargas del sacramento," *Revista andina* 3, no. 2 (1984): 402-434; Sarah Chambers, "'To the Company of a Man like My Husband, No Law Can Compel Me': The Limits of Sanctions against Wife Beating in Arequipa, Peru, 1780-1850," *Journal of Women's History* 11, no. 1 (1999): 31-52; Noble David Cook and Alexandra Parma Cook, *Good Faith and Truthful Ignorance: A Case of Transatlantic Bigamy* (Durham: Duke University Press, 1991); Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New Mexico Press, 1995); Patricia Seed, *To Love, Honor and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821* (Stanford University Press, 1988); Allyson Poska, "When Love Goes Wrong: Getting Out of Marriage in Seventeenth-Century Spain." *Journal of Social History* 29, no. 4 (1996): 871-882; Edward Behrend-Martínez, "An Early Modern Spanish 'Divorce Court,' and the Rhetoric of Matrimony (1654-1715)" in *Disciplines on the*

sacrament will allow me to explore the broader relationship between marriage, gender, and power in colonial Lima. For a thorough investigation of these social relations, I have chosen to retain a wide scope throughout this study. In addition to husbands and wives, the following pages illuminate the roles of the ecclesiastical court, its personnel, extended family, neighbors, colleagues, and masters.

The majority of complaints and legal petitions came from wives, many of them claiming horrific abuse and neglect. The many stories of domestic violence present a picture of colonial life in which women suffered under the thumbs of powerful, controlling husbands. Yet, the legal proceedings themselves provided potential redress for wives, and perhaps institutional accountability for these husbands. The apparent abuse of power by husbands and the potential avenues for accountability has given rise to debate among historians. To what extent did social and political institutions privilege all things male and masculine? Can the relationship and power dynamic between husbands and wives be characterized as patriarchal? To what extent did members of the local community and church officials intervene in marriages in the Spanish Empire? Do these trials provide examples of justice or equity for women of seventeenth-century Lima? The answers to these questions, which strike at the heart of gender relations during this period, are not clear-cut or simple. Variations abound from case study to case study, and examples of the extent of male domination as well as successful female resistance can be held up as illustrations for either side of the argument. As has been argued for indigenous and African populations within

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Line: Feminist Research on Spanish, Latin American, and US Latina Women, ed. Anne Cruz, Rosalie Hernandez-Pecoraro, and Joyce Toliver (New York: Juan de la Cuesta Press, 2003), 145-166; Silvia Arrom, *The Women of Mexico City, 1790-1857* (Stanford: Stanford University Press, 1985).

Spanish America, colonial institutions were simultaneously modes of domination *and* resistance for women.[3]

In the following pages, I argue that patriarchal norms, in the form of ideals of manhood, served as a tactic for resistance against patriarchs. I start, as many of the cases themselves do, by pointing to the modes of recourse for women, especially those who suffered—or at the very least, claimed to suffer—abuse and neglect at the hands of their husbands. The legal systems of the Spanish Empire, as has been noted by numerous historians, provided a space for women to air grievances, a rare institutional provision in the early modern world (roughly sixteenth century through the eighteenth century).[4] But pushing past the simple fact that women could and did use the courts, this study dissects their broad motivations for doing so and the tactics they employed before ecclesiastical judges. In particular, I take an uncommon approach to the role of "honor" in the proceedings.[5] While previous studies have highlighted the importance of feminine honor, my research reveals that

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[3] See for example Steve Stern, *Peru's Indian Peoples and Challenge of Spanish Conquest: Huamanga to 1640* (Madison: University of Wisconsin Press, 1993); Susan Kellogg, "Hegemony Out of Conquest: The First Two Centuries of Spanish Rule in Central Mexico," *Radical History Review* 53 (1992): 27-56; Kellogg, *Law and the Transformation of Aztec Culture, 1500-1700* (Norman: University of Oklahoma Press, 1995); and Brian Owensby, *The Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008). Herman Bennett, *Africans in Colonial Mexico: Absolutism, Christianity, and Afro-Creole Consciousness, 1570-1640* (Bloomington: Indiana University Press, 2005).

[4] See Edward Behrend-Martínez, "An Early Modern Spanish 'Divorce Court,' and the Rhetoric of Matrimony (1654-1715)"; Behrend-Martínez, *Unfit for Marriage: Impotent Spouses on Trial in the Basque Region of Spain, 1650-1750* (Reno, Nevada: University of Nevada Press, 2007); Kimberly Gauderman, *Women's Lives in Colonial Quito: Gender, Law, and Economy in Spanish America* (Albuquerque: University of New Mexico Press, 2003).

[5] There is an extensive body of work on honor in the Spanish Empire. Lyman Johnson and Sonya Lipsett-Rivera, *Faces of Honor: Sex, Shame, and Violence in Colonial Latin America* (Albuquerque: University of New Mexico Press, 1998), includes a good overview of the historiography as well as in-depth case studies. I follow Scott Taylor's critique that honor has, to some extent, been overstated in early modern Spanish societies, especially its role in provoking violence. He notes that an overreliance on Golden Age literature as instructive for the practice of honor in everyday life has distorted interpretations of honor in the daily lives of early modern Spaniards. Taylor, *Honor and Violence in Golden Age Spain* (New Haven: Yale University Press, 2008).

these cases are overwhelmingly concerned with "marital masculinity"—by which I mean the performance of being a good husband. This masculinity is both practical and prescriptive (or perhaps normative); it is the intersection of what men think, say, and do and what they are expected to think, say, and do.[6] As extensive research on masculinity and critical men's studies has shown, there was not a single ideal manhood. Expectations of men in the Spanish Empire could vary based on social identities (e.g., priest, soldier, tailor, etc.). Certain roles, responsibilities, and expectations, moreover, were placed on husbands because they were husbands. How they functioned as male heads of household mattered to ecclesiastical authorities as well as members of colonial society, and these ideals received extensive attention within the ecclesiastical court.[7] While this archetype overlapped in a number of ways with what was expected in other regions of the Catholic world, I also highlight how the context of the colonial society added a new layer to marital masculinity in early modern Lima.

Ultimately, I argue that petitions by women, and the responses to those petitions by husbands, judges, and witnesses, were not primarily tied to the rights of women. While the honor of women does make its appearance within these trials, feminine rights and actions fall to the background. Instead, the character, actions, and corresponding rights and

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[6] Here I draw on Matthew Gutmann's discussion of the various conceptual approaches to masculinity in Matthew Gutmann, "Introduction: Discarding Manly Dichotomies in Latin America," in *Changing Men and Masculinities in Latin America*, ed. Matthew Gutmann (Durham: Duke University Press, 2003). The discussions of masculinity here also build on many of the important theoretical conclusions of scholarship outside of Latin America, especially Raewyn Connell's work on hegemonic masculinities in *Masculinities* 2nd ed. (Berkley: UC Press, 2005); Derek Neal, *The Masculine Self in Late Medieval England* (Chicago: University of Chicago Press, 2008); Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago Press, 1996).

[7] This marital masculinity is similar to what Ruth Karras would refer to as an alternative masculine subculture. *From Boys to Men: Formations of Masculinity in Late Medieval Europe* (Philadelphia: University of Pennsylvania Press, 2003), 1.

responsibilities of men occupy the central space within these transcripts.[8] These *divorciadas* (a term used to identify women engaged in divorce proceedings) and their allies build their legal arguments around husbandly failures. Any recourse within the courts (or in society) hinged upon proving a husband's failure to live up to the ideals of marital masculinity, prescriptions driven at once by religious and social expectations. This discourse demonstrates the primacy of male authority. Being a husband meant being endowed with authority. The challenges to husbands were derived not from the rights of women, but instead took aim at the failure of husbands to be (good) men as understood by members of society and authorities within colonial institutions. Such shortcomings left unfulfilled the prerequisites for the authority of husbands. While highlighting failures of masculine attributes could undermine individual patriarchs, patriarchy and male domination remained a constant in colonial society. Although petitioning wives might win divorce or separation, they did not secure autonomy. Instead, I argue that by appealing for divorce women replaced unfit husbands with judges, lawyers, and priests as authority figures. While patriarchs (husbands) could be challenged, patriarchy itself (manifested through institutions such as the Church) could not.

What exactly was marital masculinity in colonial Peru? What were the expectations of husbands and who policed these norms? First and foremost, we must concede that the Church played a vital role in determining what it meant to be a married man. After all, the Church had maintained sole control over marriages in the Catholic world for centuries and this dominion was further outlined at the Council of Trent (1545-63), which declared the

[8] Edward Behrend-Martínez, "Taming Don Juan: Limiting Masculine Sexuality in Counter Reformation Spain," *Gender & History* 24, no. 2 (2012): 339.

orthodox views on marriage as a response to the growth of Protestantism and increasing local practices that deviated from religious prescription.[9] As the arbiters of creating, dissolving, and mediating marriage, Catholic leaders played a central role in monitoring and judging the conduct of married men, not unlike the ways they influenced conduct and morality in the larger population. The Church's influence on the expectations of masculinity are readily apparent in the documents and will provide few surprises for those familiar with early modern Catholicism. An expectation of monogamous sexual fidelity is perhaps the most obvious derivation from Catholic theology. The Church's obsession with sexuality can hardly be overstated. Even those instances when a couple, and its immediate community, took no issue with extramarital promiscuity, it elicited the attention of *visitadores* (imperial officials conducting investigations) and the Inquisition.

Despite such influence, the Church alone did not create or define "husbandry," to borrow from Derek Neal's study of masculinity in late medieval and early modern England.[10] The social realities of Lima likewise influenced the elaboration of manhood within the confines of marriage (as well as other interactions of masculinity). As but one example, we see this manifested in Limeño litigants' and witnesses' expectations of husbands to be providers and protectors of their wives and families. These norms derived from both spiritual prescriptions and social pressures for communal stability.

The parameters of marital masculinity, for the most part, fit within broader early modern expectations of husbands, and this should not be surprising. The Church remained as influential in Peru as it did in Spain, and its proclamations on marriage had a significant

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[9] For more information on the Council of Trent, see the discussion in Chapter 1.

[10] Neal, *The Masculine Self in Late Medieval England*.

impact on the expectations of husbands in Lima, as seen in the documents. And the majority of officials that sought to police the actions of colonial residents, including husbands, were themselves Iberians by birth.[11] Yet the broader population of Lima was distinctly colonial, and this demography created a social order vastly different from Spain. This meant that social ordering took on new meaning. Within the new urban center of Lima lived a racially diverse population. This population functioned amidst an elaborate racial hierarchy, both through the laws that governed them and the social practices that guided daily life. As the following analysis of cases will demonstrate, upholding this hierarchy became an essential component of marital masculinity. Tamar Herzog has argued that the legal system in Quito during the seventeenth and eighteenth century "was open to influence through social networks, rumor, and systems of reputation" and "was not autonomous from other [extralegal] types of knowledge."[12] We see such influences evidenced clearly in the functions of racial hierarchies within ecclesiastical marriage cases. For example, women would seek to shame husbands by noting that their infidelity occurred with *negras*. Litigants and their witnesses also deplored the verbal abuse of husbands who hurled racial slurs at their wives. Though the theology of the sacrament of marriage gave no attention to racial politics, this social hierarchy infiltrated Limeño marital masculinity within the ecclesiastical court. In short, gender was clearly not the only power structure at work in colonial society. Indeed, scholars have shown that modes of power seldom work independently; instead, institutions of

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[11] Though this certainly changed later in the colonial period with more and more American-born Peruvians serving in the Church administration.

[12] Tamar Herzog, *Upholding Justice: Society, State, and the Penal System in Quito (1650-1750)* (Ann Arbor, Mich.: University of Michigan Press, 2004), 8. See also Bianca Premo's discussion of infrajustice, "Before the Law: Women's Petitions in the Eighteenth-Century Spanish Empire," *Comparative Studies in Society and History* 53, no. 2 (2011): 263.

domination are most often intertwined and interdependent. And in Lima, where *negras, indias*, and *españolas* lived together as Limeños, matters of race influenced masculinity.[13]

The following pages will outline a prominent and persistent discourse of marital masculinity found within the records of the ecclesiastical tribunal. Through this discussion, my intervention into the literature on masculinity is twofold. First, I hope to bring greater attention to what I have termed marital masculinity. As the notes throughout this dissertation illustrate, studies of masculinity have tended to focus on the bedroom and the battlefield, even as scholars acknowledge the numerous iterations of what it means to be a man based on cultural values, race/class status, occupation, and relationships, among other variables. Still very few studies have attempted any meaningful research into the masculine expectations of husbands in the Spanish Empire.[14] Here I have shown that there was substantial consensus in these expectations and the failures to live up to these ideals could bear tangible, effective consequences.

Secondly, this research shows the complexity of marital masculinity, one in which the racial politics of colonial Lima played a significant role. The religious precepts associated with the sacrament play a large role in discussions of marital masculinity in these cases. Canon law's prescription of fidelity, provision, and just treatment figure in many of the

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[13] Throughout this dissertation, I use Limeño as a shorthand for peoples and institutions of the Archbishopric. As a city with a constantly evolving population, I do not suggest that the residents of the city fixed their identity to their current locale. However, in these cases they are functioning as parishioners of the archbishopric and are participating within this colonial society.

[14] Steve J. Stern, *The Secret History of Gender: Women, Men, and Power in Late Colonial Mexico* (Chapel Hill: University of North Carolina Press, 1996); Grace Coolidge, "Contested Masculinity: Noblemen and Their Mistresses in Early Modern Spain," in *Contested Spaces of Nobility in Early Modern Europe*, ed. Mathew P. Ramaniello and Charles Lipp (Ashgate, 2011); and Behrend-Martínez, "Taming Don Juan." Beyond the Spanish Empire, see Susan Mosher Stuard, "Burdens of Matrimony: Husbanding and Gender in Medieval Italy" in *Medieval Masculinities: Regarding Men in the Middle Ages*, ed. Clare Lees (Minneapolis: University of Minnesota Press, 1994).

criticisms of bad husbands. But also important is the extent to which the racial hierarchies of Lima influenced perceptions of manhood in these trials. In chapter 1 we will see how wives singled out infidelity that crossed racial lines and highlighted racial slurs used by their husbands as a way to discredit their claim to patriarchal authority. Witnesses cited in chapter 3 substantiated many of those claims as well. Furthermore, that slaves testified to these deplorable actions proved especially harmful for the culprit's manhood. The impact of a female African slave demonstrating a stronger moral compass than a Spanish-born husband was surely not lost on the litigants, lawyers, judges, and broader community. Chapter 4 shows how slaves could use their claims as good Christians, seeking to "make the married life" to protest relocation. Yet, as those cases proceed, we find that courts unsurprisingly privileged "white" marriages over black ones. Theological precepts clearly still held great importance for marital masculinity, but social structures and prejudices of colonial society likewise proved potent, even within the religio-legal realm of the ecclesiastical tribunal.

Gender and Power in the Spanish Empire: Patriarchy Revisited

Colonial preoccupation with male authority and marital masculinity pushes us to further refine our interpretation of gender relations and power dynamics within the early modern Spanish Empire. Spain and its colonies seem contradictory and confusing when viewed through the lens of gender. At once, it was the world of don Juan, articulated most clearly in Golden Age dramas exemplifying a sexualized masculinity, but also played out in everyday forms of gendered violence.[15] At the same time, women in the early modern Spanish world

[15] On Golden Age literature, see Taylor, *Honor and Violence in Golden Age Spain;* Gabriela Carrión, *Staging Marriage in Early Modern Spain: Conjugal Doctrine in Lope, Cervantes, and Calderón* (Bucknell University Press, 2011); Also on this archetype in early modern Spain, see Behrend-Martínez, "Taming Don Juan."

possessed greater legal rights than their counterparts in many other pre-modern empires, and the Church increasingly sought to police the sexuality of men, particularly after the Council of Trent.[16] So on one side we have the man who is oversexed, engages in gender violence, and is the head of all social and political structures;[17] and on the other, institutions such as the Church placing limits on male sexuality and ecclesiastical courts enforcing those limits, giving a venue for women to challenge and criticize men. The picture becomes further complicated when considering the frequent economic activity of women, their ability to own land, and their governing of households in the absence of men.[18]

The scholarship on gender in Spanish America has continually grappled with this dichotomy. Early research sought first and foremost to bring women into the historiographical conversation.[19] Through these works we received biographical knowledge of women and their roles within society, as scholars emphasized their subordination within

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[16] We see this trend in cases from early modern Spain. Edward Behrend-Martínez noted that in *amacebamiento* (concubinage) cases, men were overwhelmingly charged with the crime, even though both the man and woman involved had broken canon law. The courts went so far as to omit the name of the women from the transcript, in a sense exonerating them from guilt and possible social consequences. Behrend-Martínez, "Taming Don Juan," 336-340.

[17] With Queen Isabella being the notable exception.

[18] On the economy, see Chad Black, *Limits of Gender Domination: Women, the Law, and Political Crisis in Quito, 1765-1830* (Albuquerque: University of New Mexico Press, 2011); David Norton, "Women in the City: Women as Economic and Legal Actors in Valladolid, Spain, 1580-1620" (Ph.D. diss., University of Minnesota, 2005); Gauderman, *Women's Lives in Colonial Quito.* This complexity is amplified in the reconquista and colonial contexts in which migration changed the demographics of cities, making women even more active (even powerful) within communities. Heath Dillard, *Daughters of the Reconquest: Women in Castilian Town Society, 1100-1300* (Cambridge: Cambridge University Press, 1984); On women as heads of household, see Stephanie Fink De Backer, *Widowhood in Early Modern Spain: Protectors, Proprietors, and Patrons* (Leiden: Brill, 2010); Bianca Premo, "From the Pockets of Women The Gendering of the Mita, Migration and Tribute in Colonial Chucuito, Peru" *The Americas* 5, no. 1 (2000): 63-94."

[19] The edited volumes by Asunción Lavrín stand at the forefront of the field, *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989) and *Latin American Women: Historical Perspectives* (London: Greenwood Press, 1978). See also, Arrom, *The Women of Mexico City.*

society.[20] Yet, accompanying those studies were works highlighting the modes of resistance used by women, mirroring to an extent the literature on other marginalized populations. Despite these avenues for recourse, scholars emphasized the pervasiveness of patriarchy and the institutional structures that maintained gender domination.[21]

More recent studies, however, have begun to challenge this narrative claiming that patriarchy was less a colonial product and more a result of imperial centralization, the rise of the nation-state, and growth of capitalism.[22] One clear point of disagreement within this debate is exactly what we mean when we invoke patriarchy. Chad Black, drawing on the work of Lisa Mary Sousa, uses patriarchy to refer to absolute and uninhibited male power.[23] He argues that such an all-encompassing patriarchy was for the most part absent in colonial Quito, in large part as a result of the decentralized nature of Spanish institutions.[24] This early modern legal culture that emphasized overlapping jurisdictions, negotiation, and flexibility prohibited the full manifestations of patriarchy, according to Black. Furthermore, male domination actually grew more potent in the eighteenth century under the Bourbon

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[20] For the primary example of the biographical approach, see Luis Martin, *Daughters of the Conquistadores: Women of the Viceroyalty of Peru* (Albuquerque: University of New Mexico Press, 1984).

[21] For the colonial period, in addition to literature cited in note 14, see Irene Silverblatt, *Moon, Sun and Witches*: *Gender Ideologies and Class in Inca and Early Modern Peru* (Princeton: Princeton University Press, 1987); Karen Graubart, *With our Labor and Sweat: Indigenous Women and the Formation of Colonial Society in Peru, 1550-1700* (Stanford: Stanford University Press, 2007), esp. Ch. 3; Boyer, *Lives of the Bigamists*; Sarah Chambers, *From Subjects to Citizens: Honor, Gender and Politics in Arequipa, 1780-1854* (University Park: Penn State University Press, 1996); Karen Viera Powers, *Women in the Crucible of the Conquest: The Gendered Genesis of Spanish American Society, 1500-1600* (Albuquerque: University of New Mexico Press, 2005); Frank Salomon, "Indian Women of Early Colonial Quito as Seen Through Their Testaments," *The Americas* 44, no. 3 (1988): 325-341; Steve Stern, *The Secret History of Gender*.

[22] Seed, *To Love, Honor, and Obey*; Gauderman, *Women's Lives*; Black, *The Limits of Gender Domination*.

[23] Black, *The Limits of Gender Domination*, 9-11.

[24] Though some have argued that such absolute male domination is similarly absent in the period (1790-1810) where Black identifies patriarchal norms. See Erin O'Connor, "Review of *The Limits of Gender Domination*," *American Historical Review* 117, no. 1 (2012): 258.

monarchs, who sought to further centralize imperial control, and continued into the national period. The work of Black and others are important for two reasons. First, they undermine the progressive narrative that proposes that modernity and the nation-state helped to usher in more enlightened, equitable forms of gender relations. Second, Black rightly notes that patriarchy is often invoked with little contextualization, as if all patriarchy looked and acted the same. As historian Judith Bennett previously argued, "Patriarchy might be everywhere, but it is not everywhere the same, and therefore patriarchy, in all its immense variety, is something we need to understand, analyze and explain."[25] As myriad studies for both Latin America and beyond have demonstrated, male domination varied in time and space, and more to the point, was fluid and malleable even within a given community.

Judith Bennett's *History Matters* has provided a thorough analysis of various meanings of patriarchy in scholarship, which can be divided into three main uses: 1) ecclesiastical power, 2) power and authority of husbands and fathers over their households, 3) broad ordering of gendered power. This third classification is the iteration with which this dissertation is concerned, though certainly the religious and familial models of early modern Spanish and Spanish American societies fell within this broader system. Adrienne Rich has argued that patriarchy "is a familial-social, ideological, political system" that subjects women to male authority through force and more subtle means.[26] For Allan Johnson, a society that is patriarchal is "male dominated, male identified, and male centered."[27] Building on these

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[25] Judith Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia: University of Pennsylvania Press, 2005), 54. The discussion of Rich and Johnson below were drawn from Bennett's exploration of the uses of patriarchy.

[26] Adrienne Rich, *Of Woman Born* (New York: Norton Press, 1976), 57.

[27] Allan Johnson, *The Gender Knot: Unraveling our Patriarchal Legacy,* revised edition (Philadelphia: Temple University Press, 2005), 5.

understandings of the term, I invoke patriarchy in this dissertation to label a systematic and structural limitation on women's autonomy; the term identifies structures and institutions of power that were predisposed to empowering men and oppressing and/or marginalizing women. Patriarchy is both institutional and practiced. It functions only when a society's laws and/or customs privilege male power, and exists only where men take advantage of these institutional features. When using the word I make specific reference to the ways in which this systemic gender domination manifested itself in colonial Lima. It is true that men were not all-powerful or above the law, nor were women left without rights or access to recourse and claims to justice. As these cases show, challenges to patriarchs arose only out of broader conceptualizations of manhood and authority in the Spanish Empire. In essence, the early modern ideals of patriarchy provided limits on individual patriarchs, a step that allowed for a form of gender domination that pervaded the household and the courtroom alike.

Assessing Gender Domination in Lima

As I show, wives in Lima sought to police the patriarchal authority of their husbands by homing in on marital masculinity, but so too did the rest of the community, as seen through witness testimony. By appealing to this gender performance, wives and their legal allies held husbands accountable for their actions and brought into question their rights and authority: their right (and duty) to cohabitate with their wives, benefit from their labor, have sex, etc.; and their authority over their households, namely their wives.

Indeed, at the initiation of these trials, women were released from the marital home and placed in *recogimientos* or *casas de divorcios* (religious institutions similar to convents which could house women engaged in divorce disputes) that placed their bodies outside the

control of their husbands.[28] It is important to note that this was an immediate action in nearly every divorcio proceeding. By simply filing suit, a woman brought serious consequences on her husband, both in everyday life and in the public's perception of his manhood. By pursuing litigation within the Church courts, women challenged the most intimate form of male domination. On the basis of their husbands' shortcomings (and therefore, failure to be good men), wives contended they no longer deserved to be husbands, or receive the rights/privileges corresponding to that position. Witnesses likewise called into question husbands' authority by criticizing their marital masculinity. Importantly, these criticisms of men were at least partially effective. At least in the interim, courts removed many of the rights of husbandry from them.

But what of the implications for a *divorciada* (a woman filing for divorce)? Does this initial legal victory signal a triumph of gender equity? Do such rulings invalidate common interpretations of male domination and female inferiority within Spanish American society? Such broad strokes cannot be made based on these limited gains. There is no disputing that the courts gave women a voice, but we should be careful in assessing the potency of this voice in colonial society. As a more thorough examination of the cases demonstrates, the consequences of these trials are more losses for husbands than they are victories for women.

It is important to emphasize the physical bodies of women, and the control exercised over them by their husbands. Women identified offenses against their bodies—in the form of domestic violence, failure to provide, and sexual infidelity (which was also a failure to fulfill the conjugal debt)—as major sources of their grievances. The initial movement of a divorciada outside the marital home removed her body from husbandly control. The fruits of

[28] The essential reading on recogimientos is van Deeusen, *Between the Sacred and the Worldly.*

her body's labor, too, were then withheld from her husband. This severing of authority, I contend, was a central goal for these women.

Yet, we must be clear that separations from husbands did not give women complete control over their own bodies. Instead, ecclesiastical officials claimed control. A move to a recogimiento was essentially forced by the Church. These institutions were not places of solace; women often lamented their time within these shelters. To make matters worse, they relied on their husbands for financial support while residing in the casa de divorcio, and unsurprisingly these men on trial often neglected to send necessary goods and funds. Many of the women instead requested placement in a *casa honrada*, the home of a respected family in the city. Such concessions were not common and came only after numerous petitions. So, in practice, women did not gain control over their bodies through these proceedings; instead authority over them moved from husbands to ecclesiastical authorities. To fully understand the legal agency of women, we must account for the limits of the legal process and, more broadly, the social and institutional limits that defined the Spanish Empire.

Thus for married women, gender domination was real, lived, and pervasive, even if not unlimited. The decentralization of Spain's institutions allowed for individual patriarchs, in this case husbands, to be challenged, constrained, and punished. Their sex endowed them with power; it did not impart omnipotence or immunity. Likewise, decentralization did not produce autonomous women, and it did not eliminate gendered authority. Instead, the Church, as a powerful global patriarchal institution, took control, asserting itself at the top of the hierarchy of colonial society.

The City of Kings

My research centers on Lima from 1569-1630. Lima, as a colonial urban center, is an ideal site for a study of gender, family, and authority in Latin America due in large part to its demography, especially the racial diversity within the city. Rather than following the model of New Spain (Mexico) in which Spaniards co-opted the indigenous capital, Spanish conquistadores set out to establish the South American capital on the relatively sparsely populated Pacific Coast, not the inland Inca capital of Cuzco, following the conquest of the Inca Empire in 1532-33. The Valley of Lima was populated by distinct communities, though there was certainly overlap in language and many cultural markers. Paul Charney has estimated an indigenous population of 204,000 in 1525; due to warfare, disease, and migration (both forced and elected), that number fell to 2,037 by 1600.[29] A decrease in the indigenous population, however, coincided with an influx of new peoples. From 1540-1570, Europeans, indigenous peoples from the mountainous regions, and African slaves flooded the new colonial center. The population rose to 13,000 by 1593 and to over 24,000 in 1615. After soaring to 40,000 by 1640, growth then slowed, peaking in the colonial period around 60,000 in 1746.[30]

The urban center was among the most diverse in all of the New World. Spanish, indigenous peoples from throughout the Americas, Africans, mestizos, mulattos, and other mixed-race categories were represented in the colonial capital.[31] This diversity allows me to

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[29] Paul Charney, *Indian Society in the Valley of Lima* (Lanham, MD: University Press of America, 2001), Table 1.1, see also appendix 5. The first figure is explicated from the "household" count of 25,500, using multipliers of 6-10.

[30] Adam Warren, *Medicine and Politics of Colonial Peru: Population Growth and the Bourbon Reforms* (Pittsburgh: University of Pittsburgh Press, 2010), 8; Kenneth Mills, et. al. *Colonial Latin America: A Documentary History* (Lanham: SR Books, 2002), 186.

[31] As Nancy van Deusen rightly noted, "it was the blood, bones, and breath of thousands of indigenous and African diasporic and local peoples who made Lima the *urbs* of grandeur that it would become. And this came

look at racial politics at play in disputes over gender and power. One of the earliest detailed censuses from Lima, taken in 1619, records the population of the urban center at 25,167 (see table 1). Nearly half of this population was classified as "black" (*negro*), with another 5% denoted as mulatto.[32] Especially considering the low number of indigenous peoples in the city (around 5%), the demography of Lima stood out from other colonial locales. Lima's high African slave population was particularly unique for an urban center in the midst of a largely indigenous hinterland. By contrast, in the late sixteenth century Mexico City had a majority indigenous population with a much smaller African population.[33]

Table 1. Lima Population by Race, 1619.[34]

RACIAL CATEGORY[35]	**Spanish/Mestizo**		**Black (*negro*)**		**Mulatto**		**Indian**	
GENDER	Male	Female	Male	Female	Male	Female	Male	Female
POPULATION	5,728	3,978	6,135	5,862	510	656	755	651

at quite a price." "Diasporas, Bondage, and Intimacy in Lima, 1535 to 1555," *Colonial Latin American Review* 19, no. 2 (2010): 267.

[32] The census was commissioned by Monteclaros in 1614, Bowser, *The African Slave in Colonial Peru*, 340. While the census simply labeled these African immigrants as *negros*, there was a linguistic and cultural diversity to those of African descent, who hailed from various regions on the continent. See Kris Lane, "Captivity and Redemption: Aspects of Slave Life in Early Colonial Quito and Popayán," *The Americas* 57, no. 2 (2000): 229 and Alexander L. Wisnoski III, "'It is Unjust for the Law of Marriage to be broken by the Law of Slavery': Married Slaves and their Masters in Early Colonial Peru," *Slavery & Abolition: A Journal of Slave and Post-Slave Studies* 34, no. 2 (2014): 237-238.

[33] Gonzalo Aguirre Beltrán, *La población negra de Mexico: estudio etnohistórico*, segunda edición (Mexico City: Fondo de Cultura Económica, 1972), 210.

[34] Fredrick P. Bowser, *The African Slave in Colonial Peru, 1524-1650*, (Stanford: Stanford University Press, 1974), Appendix A, 340. The mulatto population of the San Sebastian parish was not divided by gender. Bowser took the average male/female ratio of the other parishes, 44 percent male and 56 percent female, to give an approximation for the parish. The census provides a similar population breakdown to two earlier censuses. In each survey, more than 40% of the population was of African descent.

[35] The Spanish/Mestizo category likely includes some people of direct indigenous descent who were "passing" as mestizo or Spanish. Yet, because they were able to "pass" for the census, this new identity likely represents the identity they held in most social circumstances. For this reason, the descent of a person, especially for this study, is not as important as the identity they claimed for themselves and that was accepted by their contemporaries. See note 47.

These demographic shifts brought about a change in the residential layout of the city, changes that held tangible effects for the populations of Lima. The creation of a European-style city combined with the urbanization at the turn of the century brought the populations of the capital into close quarters, both figuratively and literally. Outside the city center, reserved for the most elite in Peruvian society, segregation based on race and class proved impossible leaving Spaniards, Africans, Indians and the ever-growing mixed race population living side by side.[36] Cramped living spaces in Lima similarly limited the racial and social segregation of society. Large multi-residential structures housed the majority of the population, which placed residents of all classes right beside and on top of one another thereby limiting the privacy of domestic life. Further defying the goals of colonization, the high population of African slaves and the domestic work in which they participated meant the daily, private lives of residents became public knowledge to other Limeños, regardless of status.

The institutional development of Lima, which occurred alongside the rapid urbanization, likewise make it an ideal case study for this project. Lima was a coastal city and go-between for New and Old World goods and people. The city was the official capital of the Viceroyalty of Peru (essentially all of Spanish South America in this time period), and the viceroyalty's highest bureaucratic officials and courts resided in Lima. The Crown placed

[36] Not unlike what has been shown for Mexico later in the century. See, R. Douglas Cope, *The Limits of Racial Domination: Plebian Society in Colonial Mexico City, 1660-1720* (Madison: University of Wisconsin Press, 1994).

a branch of the Inquisition in the capital.[37] Lima was also the seat of the Archbishop of Lima, and served as the Church's South American headquarters. The presence of secular and ecclesiastical courts and more importantly the surveillance provided by numerous colonial officials, made it a key battleground for enforcing imperial and religious expectations.

As a center of the South American Spanish Empire, Lima shared many cultural attributes of the metropole, which will be evident in this dissertation. Yet, the nature of the colonial enterprise ensured that the city was not simply the southern hemisphere's version of Seville or Valladolid. In particular, the racial dynamics in Lima were unlike those in Spain and in many of its colonies as well. Lima had a higher percentage of African-descended residents than other urban areas in Latin America or Iberia during this period. Through this dissertation, my goal is to highlight the norms and practices of colonial Lima; when these characteristics ring dissonant with what the scholarship has established for Spain, I will seek to make that clear.

Sources and their Problems

This dissertation covers cases from 1569 to 1630, starting with the earliest extant ecclesiastical trial records from Lima, and thus provides a window into how Spanish legal practice was transferred across the Atlantic.[38] This period is critical because it followed the

[37] Lyman Johnson and Susan Socolow, "Colonial Centers, Colonial Peripheries and the Economic Agency of the Spanish State" in *Negotiating Empires: Centers and Peripheries in the Americas 1500-1820*, ed. Christine Daniels and Michael V. Kennedy (New York: Routledge Press, 2002), 61-62.

[38] I am most inclined to presume that litigation began earlier than 1569 but that inconsistencies in early archiving, earthquakes, and various conflicts in and around Lima caused the loss of these earlier transcripts. By legal practice, I mean to draw attention to the point of friction between law codes as written and how the law was put to work within the ecclesiastical courts. When referring to legal practice, I am identifying what litigants, lawyers, and judges portrayed as right, just, and in keeping with the law.

Council of Trent (1545-1563), when the Church began to push for increased doctrinal uniformity throughout the Catholic world. This increased focus on orthodoxy took hold in Lima with the second Council of Lima (1568-69), which also marks the earliest existing divorcio transcript. By continuing to 1630, I have more than a half-century of cases to probe the continued evolution of marital doctrine and the increasing activity of ecclesiastical courts pertaining to marital matters. This time also marks a change in colonial periodization, transitioning away from the early foundational era. While Mark Burkholder has used 1640 as the beginning of the "mid-colonial period,"[39] I have chosen 1630 as the point of transition to a more developed colony. This shift is reflected foremost in the activity of ecclesiastical institutions, including the frequency of divorcio petitions. Though the number of cases rose steadily through the first thirty years of the century, the 1630s witnessed a 60% increase over the previous decade. This periodization also coincides with the changing of the archbishop and just before Lima's next population boom.[40] This era has also been one of the most understudied in colonial Latin American History despite its role as the formative years of many of the imperial institutions.

I conducted the research for this project at the Archivo Arzobispal de Lima, which houses the majority of ecclesiastical records from the archbishopric. I focused on the Archbishop's archive and the Church's records because at this point the ecclesiastical

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[39] Mark Burkholder, *Idolatry and Its Enemies: Colonial Andean Religion and Extirpation, 1640-1750* (Princeton: Princeton University Press, 1997), 4-5

[40] Though Lima witnessed a boom in the first years of the seventeenth-century, there was a leveling off sometime in the 1610s. Bowser, *The African Slave in Colonial Peru*, 337-341. Also, Fernando Arias de Ugarte took over as Archbishop in 1630.

tribunal had jurisdiction over all marital issues.[41] The secular, imperial were courts were active and present in Lima, but disputes involving spouses that fell short of murder were heard before religious officials. After a survey of their holdings through reading archival guides and surveying sample cases from relevant collections, I focused on a body of more than 200 cases that most revealed the dynamics of married life and conflict in the capital.[42] Four collections make up the foundation of this study: Divorcios, Causas Criminales de Matrimonio (CCM), Causas Litigios Matrimoniales (CLM), and Causas de Negros (CN).[43] Divorcios are exactly as the title suggests, proceedings for divorcio, in which one spouse sought a permanent separation from the other, though without the right to remarry.[44] These cases varied in both duration of the trial and number of folios; they could be as short as a single day and folio, or go on for several years and more than 400 folios. Cases found in the CCM and CLM collections are similar to each other. They center on one or both spouses violating orthodox marriage practice (e.g. lack of cohabitation). The goal of each case was to evaluate the possible offense and, when necessary, rebuke the offending party (or parties) to

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[41] Later in the colonial period, financial matters related to marriage and divorce were handled through state courts, Arrom, *Women of Mexico City*, 225.

[42] In addition to the cases that received significant attention, I also surveyed the Esponsales, Bigamias, Causas de Amancebamientos, Causas Criminales, and Nulidades collections held at the AAL.

[43] Noticeably absent from this source base is Bigamias (bigamy cases). While on the surface these documents might seem useful, the content of those cases rarely touch on the relationship and married lives of husbands and wives. More often they are disputes about whether a first marriage was indeed a valid marriage. The breakdown of cases consulted for this dissertation is as follows: D- 141, CCM-11, CCM-15, CN-42.

[44] For the Divorcios cases, which range from a single folio to more than 200, I opted to conduct a close reading of a random sample (every fifth case). In addition to this close reading, I also surveyed all other diorrcio cases and conducted a close reading of those cases which seemed particularly rich in addressing the questions at the center of this research. For more on the parameters of divorcio in the early modern Spanish Empire, see Chapter 1. For some earlier analyses of this source base, see van Deusen, *Between the Sacred and the Worldly*; and Bernard Lavalle, "*Divorcio* y nulidad de matrimonio en Lima (1650-1700): La desavenencia conyugal como indicador social," *Revista Andina* 4, no. 2 (1986). This research is also reprinted in his *Amor y opresión en los Andes colonial* (Lima: IEP, 1999).

restore appropriate observance of the sacrament. Many of these cases were initiated *ex officio*, at times tipped off by a community informant or by an aggrieved spouse. These cases have been consulted far less by historians than the better known divorcio cases. By bringing these related but disparate legal proceedings into conversation, my dissertation is able to comment on the array of responses to marital conflict, especially by showing the extralegal responses of wives to domestic violence. Through petitions and witness testimonies, Limeños reveal the goings on outside the court, at times showing wives fleeing their husbands as a means to escape troubled or dangerous married lives. The Causas de Negros collection includes all cases involving a slave as litigant, as well as cases regarding the treatment and sale of slaves. For this collection, I have focused on the cases involving married slaves whose conjugal cohabitation was jeopardized by their owners. The conclusions of this study are built mostly on the qualitative analysis of over 200 cases from these collections. Through a close reading of the words attributed to litigants, judges, and witnesses, I attempt to uncover their understandings of gender, authority, and the law in colonial society. In a few instances, my analysis has relied more on quantitative methods. For each quantitative analysis, I provide a detailed outline of my data samples, and how they were chosen and compiled.

Despite the inherent difficulties that come with using legal sources—the ambiguities of authorship, the privileging of deviance over normative behaviors, the difficulties of parsing exaggeration and embellishments—they are an invaluable resource.[45] Throughout the Spanish empire legal sources abound and address aspects of life not highlighted by any other

[45] On the problem of legal sources revealing deviancy over common practice, see William B. Taylor, *Drinking, Homicide and Rebellion in Colonial Mexican Villages* (Stanford: Stanford University Press, 1979). For more on the complexity of legal sources and authorship, as well as prompts on how to best deal with these issues see, Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1990); Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham, NC: Duke University Press, 2010); Premo, "Before the Law."

extant source base. Indeed for this project, there is no other documentation from colonial Peru that provides the insight into a range of domestic issues found in ecclesiastical court records. While their value is undeniable, the complications encountered when examining these documents deserves attention from the start.

1. Whose voices do we hear? In this dissertation, I will often make reference to the legal arguments of the litigants. In doing so, I am not asserting that the affidavits submitted to the courts are their unfiltered words. Of course, nearly all litigants had the aid of lawyers (*procuradores*), who also contributed to the process. Nevertheless, these arguments belong to the legal personae of litigants. According to the courts, these were their words. Certainly the arguments and claims that appear on these pages derive from a collaborative effort. They no doubt reflect (if to varying degrees) the experiences of those who signed their names asserting their truthfulness. But the lawyers and notaries, whose hands put these experiences and arguments to paper, and therefore into the historical record, likewise played a crucial role in the construction of this discourse.

While we have limited information on the collaboration that went on between lawyers and litigants, it is widely assumed that the legal professionals educated the laity on the common processes of litigation. Lawyers also aided their clients in crafting petitions and arguments according to the legal logic of the era. While certain legal statutes were well-known, it is unsurprising that the everyday resident of Lima was not well-versed in the Leyes de Toro, New Laws, Siete Partidas, and the local councils, to name just a small part of the legal labyrinth. For that reason, legal professionals were essential in guiding their clients' cases toward their legal strengths. When possible I have tried to acknowledge the role of lawyers, especially when they have submitted materials in the first-person, clearly

delineating their role in the process. At other times when the lawyers' role is more obscured, we are left with informed speculation.

The reader will also note the prominent presence of women's voices in the following pages. This is reflective of the cases themselves. Because many instances of marital conflict before the courts were brought by women (especially in divorcio cases), the burden of proof was on them. As such, their petitions were more frequent, lengthy, and detailed. They also called the overwhelming number of witnesses, leaving even the voices of husbands' allies rather muted. Even still, judgments did not come quickly or easily—as the next section makes clear—and husbands knew this. Some men avoided the courts for periods of time, likely trying to work out some form of compromise outside the legal setting. When the husbands' voices are obscured, I have tried to read through silences whenever possible.[46]

2. How did it end? Approaching these sources for the first time, I was obsessed with finding out the verdicts to each case. For example in divorce cases, after reading some of the impassioned pleas that will be seen in chapter 1, a legal separation seemed all but assured from this naive modern author's vantage. Yet, decisions in the court came in piecemeal fashion and "final verdicts," declaring whether or not a divorce was merited, seldom appear. Even in these rare occurrences, judges did not often elaborate on their decisions. In the case of Ysabel Ruiz and Pedro Sanchez, the provisor only commented that he had not seen sufficient evidence to grant a divorce.[47] Although a frustrating aspect of the sources, this void also tells us a great deal about marital conflict within the courts. As Tamar Herzog has

[46] It is worth acknowledging that this preponderance of women's voices, at the expense of men's perspective, stands in stark contrast to the vast majority of the historical record in colonial Latin America.

[47] AAL, D 2.3, unmarked (penultimate folio).

convincingly demonstrated, early modern Spanish courts (both secular and ecclesiastical) served as keepers of the social peace, not as dissectors of legal precedence.[48] Keeping parties content and finding compromise often guided proceedings as much as strictly following law codes. Given the makeup of these sources, the following analysis will rarely mention final decisions of judges. While this certainly limits what questions can be asked of ecclesiastical proceedings (especially as they relate to judicial opinion), it does not prevent us from probing marital relations and gendered authority as it was represented, disputed, and negotiated by litigants, lawyers, witnesses, and the infrequent interjections of judges.

3. Identity and Classification. In my first research trip to the archives in Lima, my hope was to compare how women of various racial and social classes challenged oppressive husbands. The records, however, did not always provide the relevant details to identify the litigants, an especially surprising omission given the colonial obsession with racial classification. This is not to say that those composing these records were not at all concerned with race, but that the labeling of *calidad*, which combined skin color, parentage, occupation, wealth, and other social traits, was selectively employed.[49] The courts were most focused on labeling those whose race they deemed problematic. As far I can tell, those of African descent were always noted as such in their first appearance within the transcript. *Indias/indios* were also frequently labeled by the courts, though not always, as at times litigants or witnesses with indigenous names received no racial classification in the documents. Many litigants,

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[48] Herzog, *Upholding Justice*.

[49] For more on race and calidad see, John Chance, *Race and Class in Colonial Oaxaca* (Stanford: Stanford University Press, 1978); Robert McCaa, Stuart B. Schwartz, and Arturo Grubessich. "Race and Class in Colonial Latin America: A Critique," *Comparative Studies in Society and History* 21, no. 3 (1979); Richard Boyer, "Negotiating *Calidad*: The Everyday Struggle for Status in Mexico" *Historical Archeology* 31, no. 1 (1997).

however, were assigned no racial designation. While it is impossible to know for sure, it is likely that all of the unclassified persons were considered to be from the dominant social group, "regular" residents not of "inferior" race. They comprised *peninsulares* (those born in Iberia who migrated to the colonies) as well as those of Spanish blood born in the Americas (*criollos*).[50] The absence of references to *mestizos* (descendants of Spanish-Indian parentage), considered alongside the volume of racial mixing that existed during that time, suggests that they too did not necessitate categorization before the court. Also a contributing factor was that distinguishing mestizos from Spaniards could be a tricky game, especially considering that *calidad* did not rely exclusively on phenotype/genotype, but also wealth, language, honor, and other social traits. Indeed, "passing" as another race was far from uncommon at this point.[51]

The perception of identity and its impact on the reputation of residents in Lima as well as the inherent difficulties in race-making served to limit how the courts could identify those who came before it. In order to present the ambiguity of legal personhoods, I will identify the litigants and witnesses using the identifiers that appear in the record. When the documents supply this information, I will likewise provide it for the reader, whether in the form of mulata, don, libre (free), etc. I will avoid in-text speculation when no such elaboration is found. In this way, I seek to represent how notaries, judges, and other legal

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[50] These colonial-born residents could be labeled *criollos* though this term also applied to Africans born in the Americas (a strange linguistic overlap).

[51] For more on the evolution of mestizo in the colonial period, see Johanne Rappaport, *The Disappearing Mestizo: Configuring Difference in the Colonial New Kingdom of Granada* (Durham: Duke University Press, 2014). For a critical appraisal of Rappaport's arguments, see Adrian Masters, "The Disappearing Mestizo, by Joanne Rappaport (2014)" *Not Even Past* (Feb. 9, 2015), accessed at https://notevenpast.org/the-disappearing-mestizo-by-joanne-rappaport-2014/.

personnel perceived these historical actors, either simply as residents of Lima or as colonial inhabitants whose classification merited inclusion in the record.

Chapter Outline

Chapter 1 begins with a discussion of divorcio in colonial Lima and examines the contents of petitions for marital separation, giving special attention to the ways these petitions articulated a "marital masculinity." I outline the common accusations by wives of their husbands and describe how these accusations could be perceived within colonial society. These petitions begin to show how, in addition to religious expectations, upholding the social hierarchies of Lima mattered to marital masculinity.

Chapter 2 looks to the role of the broader family in marital conflicts. While there is much scholarly work on familial influence on betrothal, far fewer studies, especially focused on colonial Latin America, have probed the continued role of parents and siblings in marital relationships. Through examples of the involvement of parents, especially mothers, and siblings within marital conflicts, this chapter illustrates the legal/extra-legal parameters that guided family intervention into the matters of husbands and wives.

Chapter 3 broadens the scope of opinion on marital conflict, bringing the community of the couple into focus. Through an analysis of witness testimony, I demonstrate how the community shared similar views on marital masculinity. I argue that while challenges to husbands outside the court were rare, community members from all sectors of society readily testified to perceived abuses of power and authority by husbands.

In the fourth chapter, I look to enslaved married couples as a way to broaden the investigation of marital authority, patriarchy, and power in colonial Lima. In this chapter I

examine cases in which married slaves sued masters who attempted to prevent them from cohabitating (literally, making the married life, *hacer vida maridable*). As enslaved husbands sought to fulfill their manly duties by residing with their wives, their subjugation to their masters meant conflicting obligations. While slaves experienced some successes, masters were still able to disrupt slave marriages, often by invoking their own marital obligations. Such cases demonstrate the hierarchies at work in patriarchy and the intricate relationship between race and gender within the empire.

Chapter One: Divorcio and the Articulation of Marital Masculinity

> *In well-governed kingdoms and republics, marriages should have a time limit, and every three years they should either be dissolved or confirmed anew, like a rent contract.*[52]
>
> –Mariana to the ecclesiastical judge

Introduction

Despite the wishes of Mariana in Miguel Cervantes' *The Judge of the Divorce Court*, a marriage in the Spanish empire was *not* like a rent contract. Once the couple had exchanged wedding vows before a priest and consummated their union, there were few ways to escape one another. For those living in Peru and throughout the Spanish world in the seventeenth century, marriage was an indissoluble covenant. Yet, more than a few spouses found the state of marriage too much to bear. For a number of reasons, husbands and wives in colonial Lima sought to escape their spouses and the marital household, many of them choosing to take official legal action in the ecclesiastical court. This chapter investigates these ruptures for what they can tell us about how familial authority was structured in colonial Lima. Through these proceedings, I probe how Limeños of various backgrounds and experiences conceived of husbandly duties, and how failure to fulfill those duties inhibited claims to authority.

In the following pages I look at divorce cases, giving special attention to the overwhelming majority of cases that were brought by women. I focus on the accusations made by aggrieved wives, especially how they characterized their husbands in comparison to an early modern marital masculinity that was intimately tied to Church prescriptions on marriage. This marital masculinity defined what it meant to be a married man in the colonial

[52] Miguel de Cervantes, "The Divorce Court Judge" in *The Interludes of Cervantes*, trans. and ed. S. Griswald Morley (Princeton: Princeton University Press, 1948), 4-5.

Catholic world, and articulated the duties and characteristics expected of husbands. The focus on religious precepts such as sexual fidelity fit with the expectations of husbands cited in other parts of the Catholic world, as scholarship on the Basque regions of Castile and Venice has shown.[53] The colonial context of Lima added yet another dimension to what it meant to be a man. Within these criticisms of masculinity, we see that upholding the racial hierarchies of Lima mattered a great deal to marital masculinity. Armed with these expectations, wives in Lima brought the Church, by way of the ecclesiastical court, into their marriages, thus disrupting the monopoly of power previously held by husbands. The Church replaced the husband as a source of authority in these marriages. Ecclesiastical judges had the power to order temporary (and permanent) separations, levy fines, jail culprits who most diverged from accepted conduct, and pass judgment in the matters of person and property, not to mention the possibility of excommunication.

By appealing for divorce, these wives dethroned their husbands from the head of the marriage, giving way to the power and influence of Church officials and to religious power structures more broadly. Even as a woman was released from obligations to the marital home, the ecclesiastical judges placed her in Church institutions, such as the *recogimiento*, to maintain a watchful eye over her. These cases provide examples of how gendered authority did not begin and end with husbands, but instead, extended to the ecclesiastical system. Women enlisted the ideals of manhood, rooted in Catholic expectations and racial politics, to challenge their husbands, and many achieved partial victories that limited the authority of

[53] See Behrend-Martínez, "Don Juan" and Joanne M. Ferraro, *Marriage Wars in Late Renaissance Venice* (Oxford and New York: Oxford University Press, 2001).

particular men. In appealing to the courts, however, women remained subjected to patriarchal power.

Marriage, Church, & Trent

The period under study falls in the immediate aftermath of the Council of Trent. Indeed the earliest extant divorce trial from Lima occurred six years after the close of the conference. The Council brought with it renewed interest in the sacrament of marriage, and this shift was felt throughout the Catholic world. Not only did ecclesiastical authorities hold their parishioners to the standards of Trent, but the litigants themselves, along with their lawyers, would cite the conclusions of the Council when it suited their arguments.[54] To understand the religious landscape of colonial Lima, especially as it concerns marriage, we must take into account the proceedings at Trent.

The result, or the epitome, of the Counter Reformation, Trent was a vital point in the religious upheaval of sixteenth-century Europe. As Martin Luther's followers spread out from Wittenberg and Calvinism emerged and flourished in France and the rest of Europe, the Catholic Church's survival appeared to its leaders to be in jeopardy. New theology, which evolved from reformation leaders such as Luther, Calvin, Huss, and others, threatened the Catholic hierarchy and rejected the sovereignty of the Pope. Perceiving his Church to be under siege, Pope Paul III called the first council in more than thirty years.[55]

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[54] For examples of cases that invoked the Council of Trent, see AAL, D 6.1, D 7.5, CLM 1.24, CCM 1.11, CN 1.9a, CN 3.16 and CN 4.15.

[55] Martin D.W. Jones, *The Counter-reformation: Religion and Society in Early Modern Europe* (Cambridge: University of Cambridge Press, 1995), 65-66.

According to the papal bull *Laetare Jerusalem*, the Pope sought the meeting to address "the uprooting of heresy, the restoring of peace and unity, and the reformation of ecclesiastical discipline and morals."[56] The Council was intended to unify the Catholic Church and publicly declare the unquestionable beliefs of the Church on many theological issues including marriage.[57] The declaration of the twenty-fourth session, in which marriage was the first of two topics, articulates why the Church included the topic among the other theological issues.[58] The introduction to the session noted that "impious men" had introduced "a carnal liberty" and asserted "many things alien from the sentiment of the Catholic Church."[59] The session was intended to call out these heresies and clearly define the tenets and limits of Catholic marriage.

The outcome of the Council of Trent, as seen through the twelve canons and ten-chapter decree from this session, provided guidelines on marriage. The first canon affirmed that marriage was indeed a holy sacrament. The Church leaders also stressed the enduring aspects of a marriage; the Council declared that marriage was "perpetual and indissoluble."[60] To express further the relationship between the husband and wife, the declaration derived from Genesis 2:24 and Ephesians 5:31 and states, "Wherefore a man shall leave father and

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[56] Papal bull of Pope Paul III, 13 December 1545, as cited in Jones, *The Counter-reformation,* 68. For a good synthesis on Trent, see also, R. Po-Chia Hsia, *The World of Catholic Renewal*, 1540-1770 (Cambridge: Cambridge University Press, 2005), 23-25.

[57] For its aims to demarcate the borders of Catholicism, Jones has referred to Trent as the "theological Berlin Wall." Jones, *The Counter Reformation*, 68.

[58] The other topic being the "Doctrine of Reformation" which generally addressed the conduct and practices associated with Bishops.

[59] *The Canons and Decrees of the Sacred and Oecumenical Council of Trent*, trans. and ed. J. Waterworth (London: Dolman, 1848), 193-194 (available online at https://history.hanover.edu/texts/trent.html. Accessed 1/5/2015)

[60] Ibid., 193.

mother, and shall cleave to his wife, and they shall be two in one flesh."[61] This uniting analogy was invoked again, "therefore now they are not two, but one flesh; and straightaway confirmed the firmness of that tie."[62] This firm tie, once made, could not be undone.

The last canon issued on marriage at the Council of Trent reaffirmed that matrimonial matters "belonged" to ecclesiastical judges. This was not a break from past prescription, but followed the larger goal of Trent to systematically bring religious matters further into the institutions of the Church.[63] Following this canon, Lima's ecclesiastical judges, and not its secular officials, always presided over divorce cases.[64] Their adjudication of the trials examined herein is rooted in the declarations of the Council of Trent.

Half of the official canons that resulted from Trent's discussion on marriage addressed ending or altering the marital union.[65] Of the twelve canons at the Council, five addressed what conditions could or could not alter a marriage, with four specifically dealing with grounds for annulment. Canon VIII, the only one to address divorce, validated the Church's authority to grant separations to married couples: "If any one saith, that the Church errs, in that she declares that, *for many causes*, a separation may take place between husband and wife, in regard of bed, or in regard of cohabitation, for a determinate or for *an*

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[61] Ibid.

[62] Ibid.

[63] Most studies note that prior to Trent the making of marriages and mediating marital conflicts in Iberia was rooted more in local practice and popular opinion than based on canon law. See, for example, Alison Poska, "When Love Goes Wrong: Getting Out of Marriage in Seventeenth-Century Spain," *Journal of Social History* 29, no. 4 (1996): 871-82.

[64] The secular court system in the Spanish Empire normally only involved itself if marital disputes resulted in the death of a spouse.

[65] Canons 4, 5, 6, 7, 8.

indeterminate period; let him be anathema."[66] As seen in this passage, the finer details regarding divorce were not clearly defined or enforced.[67] Historians of Spain have argued that medieval secular practices including clandestine marriage, bigamy, and non-marital cohabitation endured through the seventeenth century.[68] Whereas Trent articulated its position on clandestine marriage and bigamy clearly and in detail, likely due in part because of its widespread practice, the subject of divorce was given short shrift. While the Church intended to define its stance on marriage, and therefore divorce, the final conclusions still allowed clergy and laity flexibility with regards to troubled marital unions; Canon VIII is by far the most ambiguous statement on marriage. Whereas the previous canons placed clear reasons for why annulments could not be granted—for example, for adultery or "irksome cohabitation"—reasons for separation and even the length of time of the separation were not specified. The remaining outcomes of Trent regarding marriage likewise make no other specifications or limitations on the granting of separations.

No Limeños were present at the conference, but the Spanish did have a strong contingent, though their influence manifested itself most clearly in the third session.[69] As a Catholic power, the monarchs of Spain had a vested interest in disseminating the "truths" of Trent to their subjects throughout the global empire. The results of the Council were spread

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[66] *The Canons and Decrees*, 195 (my emphasis).

[67] For example, Hubert Jedin, "Catholic Reformation or Counter Reformation?" in *The Counter-Reformation: The Essential Readings* (Oxford: Blackwell Publishing, 1999), 38-40.

[68] See, for example, Poska, "When Love Goes Wrong"; Poska, *Regulating the People: The Catholic Reformation in Seventeenth-Century Spain* (Leiden: Brill, 2008); Henry Kamen, *The Phoenix and the Flame* (New Haven: Yale University Press, 1993); Renato Baharona, *Sex Crimes, Honour, and the Law in Early Modern Spain: Vizcaya, 1528-1735* (Toronto: University of Toronto Press, 2003).

[69] Timothy Shmitz, "The Spanish Hieronymites and the Reformed Texts of the Council of Trent," *Sixteenth Century Journal* 37, no. 2 (2006): 375, though he cites Sara Nalle, *God in La Mancha: Religious Reform and the People of Cuenca* (Baltimore: Johns Hopkins Press, 1992) and Henry Kamen, *The Phoenix and the Flame.*

throughout the Catholic world in religious texts published by the Hieronymite monastic order.[70] Though surely not all Spanish American inhabitants could recite Trent's declarations, many of its sentiments were widely known.[71] In addition to the well-trained clergy, the residents of Lima themselves demonstrated their knowledge (or at the very least, their lawyers' knowledge) by referencing it in their trials. However, as we will see, local conditions and popular conceptions of appropriate behavior also came to pervade appeals for divorce.[72]

Divorce, Legal Negotiation and Power

As noted previously, the overwhelming number of troubled marriages appear in the archives in the form of divorcio proceedings, and the vast majority of these cases were initiated by women.[73] From the very outset, such legal proceedings lead us to question assumptions of male control and female subjugation.[74] A permanent, legal divorce (divorcio) relieved spouses of any obligation to each other.[75] The requirement of cohabitation was removed.

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[70] Shmitz, "The Spanish Hieronymites" studies the unique behind-the-scenes negotiations between Phillip II, Pope Gregory XI, and the order on publishing the texts.

[71] On the impact of Trent on local culture and practice, see Nalle, *God in La Mancha*.

[72] Ibid., 194-204.

[73] There have been few systematic studies of divorce in colonial Peru. In her discussion of recogimiento, Nancy van Deusen provides an extensive study of Lima's divorce proceedings, *Between the Sacred and the Worldly*. Bernard Lavalle provides a summative analysis of divorcio cases from Lima in "*Divorcio* y nulidad de matrimonio en Lima. For Spain, see Behrend-Martínez, "Early Modern Divorce Court Judge." For Italy, see Joanne Ferraro, "The Power to Decide: Battered Wives in Early Modern Venice" *Renaissance Quarterly* 48, no. 3 (1995) and her *Marriage Wars in Late Renaissance Venice* (Oxford: Oxford University Press, 2001).

[74] To be clear, divorcio*s* were not criminal trials, and even when acts that contradicted secular and canon law were addressed, rarely did criminal filings follow. While the goal of the case was to make an argument for a divorcio, more often than not this took the form of highlighting the failures and misdeeds of a husband.

[75] The cases occasionally will blend the Spanish and Latin references to the separation referring to a divorcio "quoad thorum et mutua cohabitationem." See for example AAL, D 7.3. For a discussion of divorce in the Catholic world, see for example Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society*

Their money and possessions were split according to the law; the wife received half of the possessions and money that the two had acquired since their union.[76] Additionally, the court returned to the wife the dowry, as well as any other possessions she had brought into the marriage, although husbands and wives certainly sought ways to gain larger shares than they were owed.[77] This separation of body and possessions effectively severed a husband's control over his wife. Yet, even before such final judgments, the initiation of a divorce had tangible consequences for the authority of husbands.

To enter a discussion of divorce in the early modern Spanish Empire, we must acknowledge the extensive legal system and the litigiousness of these societies. In his seminal *Lawsuits and Litigants*, Richard Kagan argued that Castile experienced a "legal revolution" beginning around 1500, a sharp change that was part of a broader evolution of conceptions of "law" and "rights."[78] In no small part enhanced by the increase in professions related to the law, civil litigation rose dramatically. This change proved contagious throughout the empire. The legal system in many parts of the Spanish colonies was well-

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(Cambridge: Cambridge University Press, 1988); Behrend-Martínez, *Unfit for Marriage*, esp. 2-4; Silvia Arrom, *Women in Mexico City*, *1790-1857* (Stanford: Stanford University Press, 1985), Chapter 5.

[76] Canon law was rather ambiguous about alimony payments at this time, and the cases from Lima provide little clarification on how often husbands were required to continue supporting their families. According to Brundage, local practice tended to guide judges' decisions in most late-medieval European courts. For poorer women, judges were far more likely to compel husbands to continue with some measure of support. Child support, however, seems to have enjoyed broader support. James Brundage, *Law, Sex, & Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 479-480. The *Siete Partidas* did not place child support solely on the husband, but instead on the party at fault for the separation and the spouse with the greatest means. *Siete Partidas*, Part. IV, Tit. XIX, Law III.

[77] Brundage, *Law, Sex, & Christian Society*, 480. Here Brundage relies on canonists Bartholomew of Brescia and Pierre de la Palude in addition to French jurist Beaumanoir.

[78] Kagan, *Lawsuits and Litigants*.

developed and well-staffed. Certainly the urban centers housed the most elaborate legal apparatus, but even in more rural, less-populated regions, the courts were visible and active.[79]

To speak of a legal system, in the singular form, is perhaps to undersell the complexity of the legal sphere during this period. The "law" had many layers in Spain and Latin America. In the broadest sense, secular and ecclesiastical systems coexisted, overlapping at several points. This allowed litigants the option of "jurisdictional shopping" or "forum shopping" to locate the court most likely to turn out a favorable decision.[80] This forum shopping was, however, rather limited for conflicts between spouses. The Church's monopoly on marital matters, which continued through the first half of the colonial period, meant that ecclesiastical courts would adjudicate appeals for divorce as well as other complaints regarding the sacrament. In Lima there was an elaborate system in which to resolve conflicts and a society acquainted with, and well-versed in, legal matters.[81] It is within this context that women sought to free themselves of their husbands' power.

Presenting a Cause for Separation

To initiate a divorce proceeding, a woman submitted to the court a *demanda* (the initial affidavit requesting the separation), often composed with the help of a lawyer. The petition generally opened by naming the spouses, and at times included the length of the marriage,

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[79] Take for example, Trujillo, which housed an active judicial system. Rachel Sarah O'Toole, *Bound Lives: Africans, Indians, and the Making of Race in Colonial Peru*, Pitt Latin American Studies Series (Pittsburgh: University of Pittsburgh Press, 2012).

[80] For one example of this legal tactic in colonial Latin America, see McKinley, "Fractional Freedoms"; For its manifestations throughout the early modern world, see Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002).

[81] For more on the litigiousness of Latin American societies see, Herzog, *Upholding Justice*.

whether the couple had children, and location of their residence. The bulk of the affidavit, however, focused on the various misdeeds of husbands. Upon receiving the written petition, the judge would confirm receipt and ask for additional information, and at times, request a reply from the offending party. From there the cases could take a number of directions. Often, the plaintiff would follow with additional briefs that further outlined the offenses of the spouse. The court would acknowledge the receipt of each additional deposition. If the defendant had still not replied to the charges, the judge would issue what amounted to a summons, often threating excommunication if the party did not answer the accusations. In addition to eventual rebuttals, submission of witness testimony, and further accusations, litigants might make intermediate requests regarding person and property during the trial. For example, wives might ask to reside in a *casa honrada* (the home of a respected citizen of the city) instead of being housed in the *recogimiento*.[82] This process could vary in time, from a day or two to several years. As noted in the introduction, it is the rare case that concludes with a clear indication of whether the judge allowed the divorce. Here I focus most intently on the demandas and analyze these petitions, not for what they tell us about these individual men and their various shortcomings, but rather to expose the ideals of manhood through their transgression. Through these cases we will see that marital masculinity necessitated upholding the racial hierarchy of colonial society in addition to following long-held Church prescriptions of fidelity and just treatment. Women then utilized this rhetoric of masculinity to challenge the authority of their husbands. To begin this discussion, I present two petitions for divorce that provide exemplars of how litigants invoked marital masculinity before

[82] See for example, AAL D 5.3 and AAL D 7.7.

moving into a more thorough analysis of the intricacies of these trials and what they tell us about masculinity and patriarchy.

In 1601, Francisca de Los Reyes, through her lawyer, formally requested a divorce from her husband, Juan de Lava. The couple had been married for about twelve years and had two legitimate children, daughters aged nine and four. According to Francisca's account, the decade-long marriage had not lived up to the ideals of marital harmony. Instead, her testimony depicts a life of pain and despair. Her petition for divorce includes descriptions of the most extreme physical violence:

> [F]rom the point that I entered into the power of my said husband until the present, he has inflicted upon me such cruelty and mistreated me like no slave ever experienced... because he frequently gives me blows, kicks and punches and he drags me by the hair and he has tried to kill me more than fifty times with a drawn sword in the deserted countryside or on farms where he has taken me.[83]

These charges, however, were not the end of her criticism of her husband. She followed up stories of physical violence with examples of verbal abuse. In particular, Juan had insulted her calling her "a mulata whore." Furthermore, Francisca stated in her petition that "he [Juan] was not content with [these] offenses."[84] She told the court that "for some time now he has had an affair with an Indian [woman]."[85] On the basis of these deviations from the expectations of a husband, Francisca asked for justice in the form of a separation.

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[83] Archivo Arzobispal de Lima (hereafter, AAL), Divorcios (hereafter D) 1.12, fol. 1. (In citing the archival manuscripts, I list the *legajo* number first, followed by the *expediente* number, separated by a period.) "y desde el punto de entre en poder de suso dicho hasta el presente me ha hecho tan cruel y maltratamiento que ninguna esclava expiara...Por que de ordinario me da palos, cozeos, y bofetadas, y me arrastra de los cabellos y hay querido matarme mas de cinquenta veces con una espada desnuda en campo despobleado y en estancias por donde me â traido."

[84] AAL, D 1.12, fol. 1. "no contento con tantos offensas." AAL, Divorcios, 1601, Francisca de los Reyes contra Juan de Lava, fol. 1.

[85] AAL, D 1.12, fol. 1. "a mucho tiempo que está amancebado con una india."

Juana Chumbi, one of the few indigenous women to appeal for a divorcio in Lima, filed her petition in 1622.[86] She was represented at the trial by a "protector," a legal representative sponsored by the crown, Cortez de Mena, who submitted her complaints to the court.[87] While we have little information on the process at work when protectors and indigenous litigants worked together, it is likely that Cortez listened to Juana's recounting of her marital troubles and then distilled those details into an official petition. Unlike other notaries and lawyers, Cortez wrote in his own voice, describing the events of Juana's life in the third-person.

According to the demanda, Juana's pursuit of a divorce was due to the "frequent mistreatment" and the "*mala vida*" that she suffered at the hands of her husband Lorenzo de Heredia.[88] The abuse was so extreme that Cortez noted, "She was at the point of death two times." Her husband also regularly threatened to kill her, and Juana believed he would one day make good on his threats. In explaining the precariousness of her situation, her lawyer claimed that because of Lorenzo's actions, "her life is in grave danger."[89] Like the demanda of Francisca, however, Juana's petition did not end with charges of violence. In this case, it continued in its criticisms of Lorenzo, taking aim at his duties as the provider of the household. She said that he did not provide, sustain, or give what was needed for her to

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[86] The surname of Chumbi makes it very likely she was of indigenous descent.

[87] The Crown viewed indigenous peoples as minors, and therefore, ensured that legal representatives would aid them in litigation. Jeremy Ravi Mumford, "Litigation as Ethnography in Sixteenth-Century Peru: Polo de Ondegardo and the Mitimaes," *Hispanic American Historical Review* 88, no. 1 (2008): 11 and note 18, which provides an extensive bibliography on the practice.

[88] Boyer, "Women, La Mala Vida," provides a study of this phrase's use in colonial Mexico.

[89] AAL, D 9.12, fol. 1. "por lo que corre su vida mucho riesgo y no tiene seguiridad con su compañía."

survive.[90] The attention then turned to Lorenzo's associations. First, the demanda pointed out that he would sometimes leave the house with "*negros* and *mulatos*" and get drunk. But his drunkenness was only the beginning of the problem. Lorenzo's infidelity was also brought to the court's attention. In the filing, Cortez stated that "it is common that he has affairs with black and mulatto women."[91] Concluding the petition, restating that remaining with Lorenzo placed her at risk, Juana asked and pleaded for a divorce.

These women crafted testimonies that reflected their experiences and invoked official and unofficial expectations about marriage. In essence, these petitions argued that these men failed as husbands, which is to say, they failed to perform marital masculinity. This marital masculinity was shaped by political, religious, and social expectations about appropriate treatment, fidelity, and providing for one's family in addition to holding up other colonial ideals.[92] By appealing to this rhetoric of masculinity, women challenged the patriarchal authority of their husbands.

From Marital to Martial

The concept of appropriate treatment is broad, and the criticisms surrounding inappropriate treatment were diverse, ranging from verbal insults to attempted homicide. More divorciadas cited physical abuse than any other transgression. Furthermore, the petitions frequently spent more time describing these misdeeds than other wrongdoings. While the Council of Trent

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[90] AAL, D 9.12, fol. 1. "no la alimenta ni sustenta ni da lo que menester antes lo que ella tabaza para su sustento se lo quita como esta dicho a."

[91] AAL, D 9.12, fol. 1. "esta de ordinario amancebado con negras y mulattas."

[92] Stern deduced similar expectations of men in his study of gender and power in Mexico. Stern, *Secret History of Gender*.

had left open the door to what constituted grounds for a separation, the Church would not tolerate the threat to a wife's life. While other offenses had moral and, in the Church's eyes, eternal consequences, the corporeal risks at work in domestic violence demanded attention.

The reason for emphasizing the excessive nature of the abuse was intimately tied to the power relationship between husband and wife, and canon law was the ultimate guide for these relationships.[93] It seems clear that in many locales, domestic violence aimed at "correcting" wives' behavior was part of everyday life, but its legitimacy before the law is not nearly as clear. In one of the most thorough treatments of domestic relationships in canon law, James Brundage traces the characterizations of power and rulership in Gratian's *Decretum* (ca. 1140). Brundage has shown the gender imbalance related by ancient and medieval canonists and the husband's power over his wife. This power is seen quite clearly in the *Decretum* as Gratian cites the Venerable Bede: "Even the poor man [has the right] to rule his house, the rich man to control his household, the husband to exercise authority over his wife, the father to govern his child, the judge to rule his province, the king to govern his people."[94] Brundage acknowledges that the canonist gave husbands "charge" over their wives and, within a society in which the acceptability of force/violence accompanied authority in nearly every power relationship, interprets this passage as an assertion for the legality of physical correction by husbands.[95] However, there is perhaps more nuance in the original version of *Decretum* than Brundage originally asserts. In a passage that Brundage cites,

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[93] The following discussion of canon law leans heavily on Brundage, "Domestic Violence in Classical Canon Law" in *Violence in Medieval Society*, ed. Richard Kaeuper (Rochester, NY: Boydell Press, 2000) and Henry Ansgar Kelly, "Rule of Thumb and the Folklaw of the Husband's Stick," *Journal for Legal Education* 44, no. 3 (1994): 341-365. For consistency, I have used their translations from the original Latin.

[94] Gratian C. 23 q. 4 c. 35. Cited in Brundage, "Domestic Violence."

[95] Brundage, "Domestic Violence," 186.

Gratian building on the second Council of Toledo notes, "If the wives of any clerics (priests) have transgressed, their husbands may use non-deadly force in order to deprive them of any license to misbehave further. The husband may exercise the power to confine them, to place them under constraints within the house, to impose appropriate limits on their diet." (Clerical marriage was still permitted at the time of Gratian's composition.)[96] This passage strays far from a full endorsement of spousal violence. Though some physical force is permitted, the directive allows for force to prevent further wrongdoing. Importantly, it does not give husbands permission to punish transgressions through force or violence, though Brundage labeled these "disciplinary powers." Gratian's first attempt at creating consensus on husbandly powers fell short of complete endorsement of physical punishment as an endowed right of husbands.

Later versions of the *Decretum*, added to by other Church Fathers, explored the issue in greater detail, though not without inherent contradictions. Referencing clerical husbands Laurence Hispanum (d. 12??) stated that "For even if he [the husband] beat her badly, except for the reasons expressed in the law, he would be punished with a monetary fine."[97] Here Laurence both discourages excessive violence while indicating that there exist reasons in the law for beatings, though he was speaking only about clerical husbands.[98] He went on, however, to deny that laymen held the same right. It seems for Laurence, and likely other

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[96] Gratian, C. 33q. 2c. 10, cited in Brundage, "Domestic Violence," 185.

[97] Though here Laurence is citing Blackstone's novel, *Si qui autem* and Code 5.17.11., *Corpus juris civiles*, cited in Kelly, "A Rule of Thumb," 358.

[98] Clerical celibacy was introduced and gradually enforced during the eleventh and twelfth centuries. Jo Ann McNamara, "The *Herrenfrage*: The Restructuring of the Gender System, 1050-1150" in *Medieval Masculinities: Regarding Men in the Middle Ages*, ed. Claire Lee, Thelma Fencer, and Jo Ann McNamara (Minneapolis: University of Minnesota Press, 1994), 3-31.

Church Fathers, the wisdom and self-discipline needed to instruct and punish one's wife exceeded the capacity of those outside the priesthood. He goes on to say that a husband "is not to strike her with rod, or by blows since blows are alien to free-born people." Yet in the same passage, he acknowledges that a wife can be "corrected and beaten for minor misdeeds" but that all serious offenses should be heard before a court and overseen by a judge.[99] The seeming conflicting admonitions, combined with a failure to expound on more detailed descriptions of how blows and beatings differed left much ambiguity in the law, one that the fathers themselves seemed to acknowledge.

Teutonicus' entry in *Dectrum* (ca. 1211-1215) ultimately brings the issue to it firmest ground, seeking to reconcile the contradictory dictums related by other canonists.[100] He concludes that "A husband can judge his wife by correcting her, but not by beating her, because beatings are alien to free-born persons, as it is stated there in the law. But he can chastise her temperately because she is part of his family."[101] Ultimately, beating was not permitted by canon law, though fathers deemed chastising within the realm of husbandly authority. The hierarchal structure of marriage clearly placed men at the top; they were given charge of their wives. But the Church placed limits, however unclear, on the ways husbands could enforce their authority. The cases in Lima suggest that many men disregarded such admonitions.

Accusations of violence in divorcio proceedings share several common aspects that further highlighted the shortcomings of husbands: 1) excessive force, namely the use of

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[99] Laurence Hispanum, Glossa Palatina to Gratian, cited in Kelly, "Rule of Thumb," 358.

[100] For more on the shift by Teutonicus, see Hannah Skoda, *Medieval Violence: Physical Brutality in Northern France, 1270-1330* (Oxford: Oxford University Press, 2013), 201.

[101] Ordinary Gloss to Gratian 2.7.1.39, 836, as cited in Kelly, "Rule of Thumb," 359.

weapons; 2) repeated actions; and 3) the intention of death or the result in near-death. In the descriptions in divorcio cases, wives sought to place their experiences clearly beyond the pale of physical instruction and correction. In her first affidavit, Francisca recounted receiving "blows, kicks, and punches" and being dragged by the hair, all endured at the hands of her husband, Juan. The punch was likely the least important to the judge in this case. Although Juan could have inflicted great damage with his fists, beating his wife with his hands could have been explained away as corrective measures. Even if she had received major injuries, he could have claimed his intentions had been noble, but that he had accidentally been too harsh.

The pulling of the hair was a more egregious act. In her study of violence and insults in late colonial Mexico, Sonya Lipsett-Rivera has shown the symbolic importance of the head and the hair for Hispanic societies.[102] In particular the pulling of the hair mimicked the intentional public shaming initiated by local officials when punishing criminals. This precursor to the actual punishment/abuse served as a parade of communal scorn for the accused. The hair in colonial Spanish American societies also served as a symbol of chasteness and a means to represent one's racial identity (and therefore, their social status). Andean chronicler Felipe Guaman Poma de Ayala, in his 1615 *Nueva corónica*, represented the excessive physical abuse by colonial and religious officials through depictions of hair-grabbing and hair-pulling (see figures 1 and 2). The pulling of the hair was also a more violent, and yet less extreme, method of hair modification; hair cutting was reserved as the most humiliating physical insult a woman could experience. This hair-pulling by Juan

[102] Sonya Lipsett-Rivera, "*De obra y palabra*: Patterns of Insult in Mexico, 1750-1856" *The Americas* 54, no. 4 (1998): 515-518.

crossed two important boundaries. First, though he was meant to the protector of his wife's honor, his actions served to shame and humiliate her. Second, his acts diverted from instruction and functioned as state justice, far outside the bounds of his prerogative.

Figure 1. The forced marriage of native parishioners by a parish priest. Guaman Poma, *Nueva Corónica,* 573 [587].[103]

[103] The figure titles and page numbers are drawn from the The Guaman Poma Project hosted by Det Kongelige Bibliotek and found at http://www.kb.dk/permalink/2006/poma/info/en/frontpage.htm (accessed on 2/25/2015).

Figure 2. The royal administrator orders an African slave to flog an Indian magistrate for collecting a tribute that falls two eggs short. Guaman Poma, *Nueva Corónica,* 499 [503].

Figure 3. "Bad confession": a priest abuses his pregnant parishioner during confession, Guaman Poma, *Nueva Corónica,* 576 [590].

The two other methods of violence, the kick and blow, were the most troubling accusations. The kicks would appear extreme, as this would imply that she was already on the ground, and thus particularly vulnerable. Guaman Poma invoked the brutality of kicking a woman as part of his scathing critique of abusive priests in the viceroyalty. In emphasizing the brutality of these deviant fathers, one of his drawings depicts a priest kicking a woman on her knees (see figure 3, above). The most appalling abuse, however, involved weapons. Such an instance is first referenced in the blows Francisca received. In the transcript, the Spanish word used is *palos*, referencing a strike with a weapon or other object. The severity of Juan's abusive treatment is made clearer as Francisca described the abuse she experienced outside the city. By fleeing to the countryside, Juan sought secrecy, in part a concession that his actions would not meet the approval of his fellow Limeños.

Her most damning accusation is that Juan tried to stab her with his sword.[104] The sword was a symbol of military conquest, both from the Reconquista of Iberia and the conquest of the Americas. Medieval and early modern canonists compared husbands' roles and scope of correction to that of judges and bishops. The appearance of these military weapons belied the kind of man, the kind of governor, he was intended to be. Furthermore, *La Destreza*, the Spanish school of fencing, made the sword a mediator between men.[105] Turning the sword on his wife violated the cultural meanings behind the weapon and perpetrated a wholly unconscionable act. This use of weaponry was a common critique by divorciadas, and swords, daggers, and knives appear repeatedly in the demandas of these

[104] AAL, D 1.12, fol. 1.

[105] Hugh Long, "At a Sword's Length: Theatrical Dueling in Early Modern Spanish Drama," (Ph.D. dissertation, Tufts University, 2010).

women. These weapons were either used to harm or as threats to a woman's life. What made threats so intimidating was the way the weapons allegedly were wielded. In their statements, wives often noted, like Francisca, that the weapons were unsheathed (*desnuda*; literally, "naked"). Doña María Cino told the court about numerous abuses she suffered at the hands of her husband. In particular, she recounted that her husband, Alonso Perez de Guzman, would take the sword he kept under his bed, remove it from its sheath, and place it on her chest threatening to kill her. She also claimed that he raised his dagger to her chest as well.[106] While instances of actual stabbings are far more seldom in these transcripts, the mere brandishing of such weapons constituted a transgression for its potential to cause harm and its representation of military, rather than domestic, acts.[107]

In terms of her second charge of repeated abuse, Francisca noted that such violent actions were not rare. Instead she informed the court that *fifty* times her husband had drawn his sword on her. At nearly ten altercations per year, Francisca established that Juan's actions represented a frequent pattern of abuse. That pattern made it harder for Juan to explain and justify his treatment of his wife. She did not recount the details of all fifty instances and perhaps the number was simply meant to represent the regularity with which she suffered. But in the end, the actual number is/was beside the point. Francisca established that such actions were the norm. This was the way Juan performed as a husband, not with care, but with rage and violence.

[106] AAL, D 8.2, fol. 1. That he placed the sword and the dagger to her chest likely serve to reinforce the danger of the situation and the fear experienced by María.

[107] For all its ambiguities, canon law was clear on the use of weapons. See notes 47 and 48.

Juana Chumbi, the indigenous wife whose case was presented by her lawyer, similarly noted frequent abuse and regular threats. She claimed that she was near death not once but twice. The consistency of abuse could also be displayed in the length of time over which it occurred. For example, Andrea Rodríguez Villaboss [sic] told the court that from the first day she had married her husband, Eugenio de la Fuente, eight months earlier, he had abused her, "punching me many times."[108] Husbands who resorted repeatedly to violence displayed consistent lack of self-control. A single bout of rage or the occasional lapse in judgment could be explained away; one offense in itself did not define the character of a man. In these testimonies, however, wives painted their husbands as men predisposed to violence. Anger and abuse was innate, a deeply ingrained part of their character. Abusers they were, loving husbands they were not.

Finally, Francisca touched on a vital part of Juan's actions, the credible threat of death. On those fifty occasions, when Juan threatened her with his sword, Francisca stated that he had wanted to kill her. She wanted to make clear to the judge that Juan's abuse not only threatened the quality of her life, but her very existence. Citing abuse from their husbands along with the fear of death was common in the divorciadas' demandas in Lima. Juana de Chumbi's petition claimed that "she has been at the point of death two times" and that "her life was in grave danger."[109] This most extreme assault, second only to murder, made evident the violent behavior of Lorenzo and the true danger that Juana had endured every day. In 1614, Elena Garcia also presented her case to the court citing domestic

[108] AAL, D 7.4, fol. 2. "dando me muchos golpes."

[109] AAL, D 9.12, fol. 1. "havien estado a dos veces a punto de muerte" and "por lo que [illegible word] su vida mucho riesgo."

violence. Like Francisca she provided details of abuse at the hands of her husband, Martín. "He dragged me by the hair and beat me and kicked [and] hit me with a stick."[110] But even that was not the worst abuse that Elena recounted. She also stated that Martín drew his sword on her, and she was "many times at the point of death."[111] In 1622 another woman, Gerónima de San Francisco, petitioned for divorce from her husband, Diego Hernandez. She stated similarly "he wanted to kill me."[112] And it seems that he may have tried, because the abuse that he inflicted on her one day resulted in her hospitalization.

Accusations of attempted murder were the most persuasive argument and a vital component of divorce rhetoric. As Behrend-Martínez noted in his study of early modern Spain, the threat to life was the most compelling reason for divorce and resulted in greater success rates.[113] To overlook such offenses was often too great a risk for the court. For judges, attempted murder was irreconcilable with the expectations of husbands. Appropriate treatment of one's wife served as a vital aspect of marital masculinity. Self-control was an essential characteristic for managing a household, a trait that these husbands lacked according to their alleged violent conduct. Domestic violence served as a centerpiece for divorce cases because it illustrated a failure of marital masculinity. First and foremost, a husband in colonial Peru was meant to be the protector of his family. Many histories have focused on the burden of protecting the honor of one's wife, children, and family that fell

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[110] AAL, D 7.3, fol. 1. "arrastrandome de los cabellos y porreandome y dandome de cozes, palos."

[111]AAL, D 7.3, fol. 1. "a muchas veces a punto de muerte."

[112] AAL, D 9.SE (sin expediente), Geronima de San Francisco contra Diego Gernandez, fol. 1. "queriendo me matar."

[113] Behrend-Martínez, "An Early Modern Divorce Court."

first to husbands.[114] Physical protection, too, was an important manly duty, perhaps his ultimate charge. These men had transformed from protectors to perpetrators.

Second, appropriate physical treatment mattered to the social hierarchies of colonial society. The abuses certainly offended official expectations of husbands as outlined in Catholic treatises.[115] And these expectations were broadly accepted throughout the Spanish Empire, and in the wider Catholic world. Limeño litigants, however, took their petitions a step further, placing these actions into a distinctly colonial context taking into account the local concerns. Francisca de los Reyes tried to make clear that her husband's actions, especially his abuses, were not noble or instructive, but simply cruel and unjustified. In order to sway the judge, she replaced the husband/wife paradigm with a master/slave relationship: "[F]rom the point that I entered into the power of my said husband until the present, he has inflicted upon me such cruelty and mistreated me like no slave ever experienced." [116] Even with the decidedly inferior position of women in colonial society, treating a wife like a slave was unacceptable. The canonists even used references to slavery to outline the boundaries of appropriate spousal treatment.[117] While a husband had the right and duty to instruct and (in certain circumstances) correct his wife, he was equally obligated by the Church to treat his

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[114] See van Deusen, *Between the Sacred and the Worldly;* Stern, *Secret History of Gender*.

[115] For example, the sections of *Decretum* cited above.

[116] AAL, D 1.12, fol. 1. "y desde el punto de entre en poder de suso dicho hasta el presente me ha hecho tan cruel y maltratamiento que ninguna esclava expiana."

[117] See especially Lurentius and Teutonius in Gratian's *Decretum*. It is worth pointing out that the institution of slavery had been transformed between the twelfth century and the seventeenth century. Despite changes, relational differences between slavery and marriage remained, and likely grew further apart with the growth of Atlantic slavery. For a long history of the institution of slavery see Phillips, *Slavery from Roman Times to the Early Transatlantic Trade* (Manchester: Manchester University Press, 1985).

wife with love and compassion. By failing to do so, he was falling short of his responsibilities as a husband.

References to slaves were even more charged in the colonial context, where they were both marked off as others from Africa and made up a substantial portion of the population with whom Limeños would have interacted on a daily basis. The invocation of a slave comparison helped Francisca show the judge that her husband's treatment was not meant to teach or correct her, but rather, it was an unjust fit of rage that no one of any status, including a slave, should have to endure. Francisca was not the only one who invoked the master/slave comparison. Geronima de San Francisco's case in 1622 also reveals a slave analogy. After detailing her abuses, Geronima stated "and much worse, he treats me not like a wife but like a slave."[118] One of the aforementioned divorciadas, Elena Garcia, invoked this slave rhetoric as well. She said, "Since we married, he has subjected me to the life of a slave."[119] After that comparison, Elena proceeded to disclose the numerous abuses she suffered at the hands of her husband, Martin. The judge, then, interpreted these experiences with the predetermined comparison to slave life. In choosing to act in the cruel manner, Martin took on the role of master and abdicated his position as husband.

Invocation of treatment corresponding to enslavement became all the more egregious when the victim held a notable status within colonial society. The slave treatment rhetoric was used in a 1615 case brought by doña Claudia de Mera y Querea against her husband, Nicholas de Neira. The couple had been married for thirteen years, but, according to Claudia,

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[118] AAL, D 9.SE, 1622, Geronima de San Francisca contra Diego Gernandez, fol. 1. "y mucho peor tratandome no como a muger sino como a esclava."

[119] AAL, D 7.3, 1614, fol. 1. "desde que nos casamos meodad [me ha dado] vida de esclava."

"For all of this time… I was enduring these terrible conditions and mistreatments."[120] She, too, claimed her husband had abused her and that she feared for her life. Included within these general claims of abuse (Claudia does not provide specific examples of any incidences), she invoked the slave comparison to depict her mistreatment claiming that Nicholas "saw me as if I were his slave."[121] And this claim would have held added weight because Claudia was a member of Lima's elite, as evidenced by her use of the honorific "doña." The title afforded Claudia privileges and respect not attainable for many colonial women, which made Nicholas' treatment all the more deplorable.[122]

The social hierarchy in Lima was divided along gender, racial, and class lines.[123] An emphasis on treatment appropriate to one's status was necessary to perpetuate the colonial hierarchy. By treating their wives like slaves, the men cited in these cases not only violated general marital prescriptions but also undermined the colonial social system. Society did not consider wives equal to their husbands, but they were also not the equals of slaves. So while these men were sinning against the laws of God, they were also violating the laws of

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[120] AAL, Divorcio, 1615, Doña Claudia de Mera y Querea contra Nicholas de Neira, fol. 1. "en todo este tiempo…llevandome mala condición y los malos tratamientos."

[121] Ibid., fol. 1-2.

[122] In at least one instance a free woman of mixed African and mestizo descent, Cuarita Castilla, used the phrase in condemning the acts of her husband, Jose Barrenas, who himself was of partial African descent (cuarterón natural de Estremadura). This case from AAL, Leg. 2, 1569 is cited in McKinley, "Fractional Freedoms," 786.

[123] This dynamic intersects with what Albert Hurtado has referred to as the "intimate frontiers," that place where racial ideologies helped to define the structures of colonialism and the modes of governance more broadly. Albert Hurtado, *Intimate Frontiers: Sex, Gender, and Culture in Old California* (Albuquerque: University of New Mexico Press, 1999). See also, Laura Ann Stoler's discussion in "Tense and Tender Ties: The Politics of Comparison in North American History and (Post) Colonial Studies)" *The Journal of American History* 88, no. 3 (2005).

society.[124] Although the latter transgression did not weigh as heavily as the former for ecclesiastical jurists, the slave comparison worked only against the abusive husbands. A good husband reinforced the hierarchies of society. The actions by these husbands inverted the social structures of colonial Lima.

Verbal Abuse

The threat of death surely necessitated consideration for divorce. Yet, more subtle offenses also figure prominently in the petitions for separation in the ecclesiastical court. In particular, verbal abuse was listed nearly as often as physical abuse in affidavits. These accusations fit squarely into a colonial setting in which speech and speech acts mattered to residents and the courts. As Cheryl English Martin has noted for Mexico, cases of slander, defamation, and verbal abuse could be litigated if such offenses were considered "a threat to social or political stability."[125] Litigants were willing to spend countless time and money to right wrongs of slander, often because of the tangible effects of such slander. Similarly, the courts were willing to hear such cases because the appropriate classification of people was key to maintaining social order. These transgressions often centered on matters of race, status, sexuality, and legitimacy, characteristics that were all interrelated. Challenging one's racial designation was tantamount to refuting his or her identity, honor, and social capital, no matter how limited. The verbal abuse found in the divorcio petitions centered on either calidad or sexual reputation, and often both.

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[124] Treatment that violated status was seen in other cases as well. Doña María Vino accused her husband, don Alonso Perez Guzman, of treating her as a "public woman," or prostitute. AAL, D 8.2. "crueldad como a muger soltera publicamente."

[125] Cheryl English Martin, "Popular Speech and Social Order in Northern Mexico, 1650-1830," *The Americas* 54, no. 4 (1994): 305-324.

Francisca testified to the verbal abuse shortly after detailing the physical abuse she suffered. According to her demanda, her husband called her "a mulata whore" and demanded she earn her own money rather than benefit from his earnings.[126] In addition to the sexualized insult, there was a racial dimension to the verbal abuse, as he referred to her as a mulatta while the court treats her as a Spaniard. In the divorcio case between Ana Colon and Antonio de Arratia, the latter was accused of calling his wife "*una puta perra negra*," though she not a negra.[127] Indeed many divorciadas attributed other derogatory words to their husbands. Doña María Cino recalled her husband saying she was "a dirty villainous dike, and other words of gravest offense."[128] Doña Leonarda de las Casas likewise included her husband's verbal offenses in her statements to the judge. While the divorce was initially sought by her husband, Juan de Arrenillas, Leonarda used her affidavits submitted to the court to highlight *his* shortcomings. Among her other accusations, she stated that her husband publicly shamed her regularly, specifically calling her "a proven whore."[129] The words themselves insulted Leonarda, and implication that this was public knowledge ("proven") damaged her honor and therefore compromised the social hierarchy.

Many women neglected to provide specific examples—either due to not wanting to fill official documents with such foul terms or simply because no specific term could be representative of the overall language—instead drawing attention more broadly to "verbal

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[126] AAL, D 1.12, fol. 1. "y cuando se lo he pedido me a respondido que lo gane yo como pudiere que soy una puta mulata porque su plata no es para mi."

[127] AAL, D 3.12, fol. 13.

[128] AAL, D 8.2, fol. 1. "una bujarra vellaca sucia y otras palabras mas raves de ofensa contra su persona."

[129] AAL, D Leonarda de las Casas contra don Juan de Arenillas, 1604. "diciendo publicamente y avoses que soy una puta probada bujarrana." This case is cited differently because it was read and photographed before the reorganization of the archive.

mistreatment" or "bad words."[130] Many cases draw a firm association between action and words. Such language can be found in numerous cases including that of free mulatta Johana de Xeres's petition for divorce from her husband Felipe, a slave of African descent. She claimed that her husband "treated me cruelly (mal) in deed and word." As part of the legal lexicon, *maltrato de obra y palabra* succinctly laid out the poor conduct of the husbands on multiple fronts.[131] The phrase was used by divorciadas and their witnesses to paint a husband's conduct in broad strokes. Though some provided the most egregious terms, others let the judge imagine what this language might sound like.

Regarding specific references, whore was the preferred insult used by husbands, or at least the term wives and their lawyers thought would offend the sensibilities of the court most. The Church and its courts recognized these women as wives, and by calling them whores, husbands showed a failure or refusal to recognize the distinction. Conflating these unique—and contradictory—social positions betrayed the clear dividing within the Catholic society. The use of such sexualized language for "honorable women," as the wives described themselves, was quite the contradiction. Coinciding with the sexualized obscenity, racial denigrations (calling one by a lower racial status) furthered the insults. Conflating their wives' racial status with negras upended the social structures on which ordered society depended.[132]

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[130] Martin, in her study of cases from Mexico, found litigants who told the courts they did not feel appropriate repeating the foul language, claiming it would "scandalize the chaste ears" of those present. Martin, "Popular Speech and Social Order," 310.

[131] For a discussion of the ways that violence and verbal offenses worked in tandem, see Sonya Lipsett-Rivera, "*De obra y palabra*."

[132] On misidentifying racial status as insult in colonial Spanish America, see Aaron Althouse, "Contested Mestizos, Alleged Mulattos: Racial Identity and Caste Hierarchy in Eighteenth-Century Pátzcuaro, Mexico," *The Americas* 62, no. 2 (2005): 151-175.

Infidelity

While abuse was one of the primary complaints of women seeking divorce in Lima during the early seventeenth century, it was never the only one. Divorciadas often coupled abuse with various transgressions or other ways in which their spouses failed to fulfill their duties and obligations as husbands. One of the more frequent vices that appears in the records is infidelity. A husband's affair constituted a moral transgression and violation of his marital contract, and hence weakened his reputation in the eyes of the judge. The Church was clear that adultery by either party violated the marital contract. Though the Church and Spanish society had an obsession with female sexuality, the post-Trent climate brought increasing scrutiny to the sexual lives of men.[133] In this setting, the divorciadas of Lima presented their husbands' infidelity as further cause for separation, and even provided additional context to worsen the sexual offense.

The conjugal contract between a husband and wife ensured that the sexual "needs" (as perceived by the Church) of each party would be met. Like many other colonial codes, this contract was not equal but did entail reciprocity: the Church required that spouses have sexual relations with each other. If a wife asked her husband for sex, he was required to oblige her. The Salamancan *Libro sinodal* described it this way: "the husband does not have power over his body, nor the wife over her body... Moreover the one to the other pays his debt."[134] Even one of the three appropriate reasons cited for sex was to prevent one's wife

[133] Behrend-Martínez, "Taming Don Juan," 333-352.

[134] Gonzalo de Alba, "Libro sinodal," Salamanca, April 6, 1410, *Synodicon Hispanum*, ed. García, 2:160, as cited in Behrend-Martínez, *Unfit for Marriage*, 37.

from seeking sexual pleasure elsewhere.[135] Through infidelity the husband not only committed a moral transgression, but tempted his wife to seek sexual pleasure elsewhere; a husband could not fulfill the conjugal debt while spending the night with another woman.

Many of the wives appealing for divorce claimed that their husbands were being unfaithful. Not only were these men having sex with other women, but they were also staying overnight with these women. This action was an insult to the wife as well as a mark on her honor, as neighbors would be well aware that a husband did not come home for a night. This meant women had to endure the feelings from personal betrayal, but also the stares, sneers, and judgment from the community. Furthermore, "acting married," such as eating and drinking with a woman who was not a man's wife, was particularly scandalous in colonial society. Eating and drinking at the same table was a central part of the married life. One of the standard questions asked of witnesses in divorcio proceedings was "how do you know the two parties are married?" In answering this question in a case in 1606, a *mulato* named Juan Martin said that he knew the couple was married because "I know they live together in a house and eat together at one/a table."[136] María Emma Mannarelli, in writing about adulterous affairs in Lima, notes how witnesses comment on the eating and drinking together of unmarried people. In one case of ecclesiastical prosecution, a local shopkeeper claimed he had seen two lovers "together in bed many times, as well as eating at the same table...which he thought was wrong."[137] Mannarelli, drawing from her research on concubinage, concludes that for many colonial residents and ecclesiastical officials, such domestic activities between

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[135] Ibid. The other appropriate reasons were for reproduction and to fulfill the conjugal debt.

[136] AAL, D 2.8, fol. 56.

[137] María Mannarelli, *Public Sins, Private Passions*. And this focus on domestic acts continued into the late colonial period, Chambers, *From Subjects to Citizens*, 106-110.

unmarried people had to be called out and punished. When Juan and other husbands ate and drank with their mistresses, they imitated the marital home. In doing so, they mocked the family model and further upended the social structures that held strict expectations of the roles of its residents.

After detailing the abuse she suffered, Francisca cited Juan's extramarital relations. Claiming that "he [Juan] was not content with such offensive behavior," [138] referring to the verbal and physical abuse that he inflicted, she proceeded to tell the court that there were "many days that he was *having an affair* with an Indian woman."[139] Much like with the physical abuse, the accusation referred to a larger pattern of infidelity. Juana de Chumbi also criticized her husband's infidelity within her demanda. Her petition noted that "it is common that he spends the night with black and mulatto women."[140] This single sentence makes two important designations. First, Lorenzo's infidelity was habitual. Societal consensus could overlook a man's moment of weakness in giving in to his sexual desires, but consistent adultery disrespected his wife and violated canon law that required fidelity. The adultery was not merely a mistake made by Lorenzo, but rather, a sinful lifestyle. And to make matters worse for Lorenzo, it was not only one woman. A mistress, though not technically acceptable in colonial Peru, was at times tolerated. The likely reason for this acceptance was that it did not completely upset the social order. A mistress could be viewed as an illicit and flawed

[138] AAL, D 1.12, fol. 1. "no contento con tantos offensas."

[139] AAL, D 1.12, fol. 1. "a mucho tiempo que está amancebado con una india."

[140] AAL, D 9.12, fol. 1. "esta de ordinario amancebado con negras y mulattos."

facsimile of the marital unit. But as the infidelity increased through multiple partners, the more deviant the behavior became.[141]

These accusations of infidelity showed husbands as unable to control their sexual desires, ironically a concern the Church and colonial society had of women. Yet, there was another dimension to the infidelity that further complicated the sexual acts. Identifying mistresses from the lower racial order made the infidelity even more contemptible.[142] As we see in the petitions of Juana and Francisca, they classified these "other women" as inferior via their racial designation. This elevated a wife, while also portraying the husband as a violator of social status, a man without respect for colonial hierarchies. Juana's argument is particularly fascinating because as a woman of indigenous descent, she was far from the most honored women in colonial society. Yet, she still invoked the racial hierarchies of seventeenth-century Lima to discredit her husband and further raise the fears of colonial authorities about racial mixing. Claiming his indiscretions occurred with *negras* and *mulatas* put even her limited social capital to work against her husband's actions. The inability to control their lustful desires, or at least direct them towards "appropriate" women cast another blow to the marital masculinity of these husbands. Such accusations portrayed husbands as inverters of the social and institutional structures that were meant to guide life in Lima.

Provision and Vices

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[141] Ruth Mazo Karras, *Sexuality in Medieval Europe: Doing unto Others* (New York: Routledge, 2005), 120-128.

[142] Grace Coolidge has noted that many Spanish men took mistresses from the lower social order. She goes on to assert that participating in unofficial polygamy could potentially help and harm masculinity. Grace Coolidge, "Contested Masculinity."

Paternal provision was a foundational concept in Spanish America, even rooted in the expectations of the crown.[143] Governance included providing for those under one's control; correspondingly, providing for one's family formed a central obligation of husbands in Peru and throughout the Spanish Empire. Wives appearing before the court made claims of poverty, hunger and general lack of sustenance from their husbands. Steve Stern has contended that the head of household in colonial Latin American societies combined three roles: provider, protector, and authority figure.[144] A husband who abused his wife had clearly abdicated his role as protector. The men who then also neglected their role as provider lost still more standing in their claim to authority.

Catalina Diaz, whose case is covered in greater detail in chapter 3, appealed for divorce from her husband Antonio de Torreo. Her demanda cited his mistreatment "in word and deed" and went on cite his violent behavior, which included trying to kill her with his sword. Beyond the physical violence, she also noted that Antonio failed in his role as provider stating that "he does not feed, clothe, or provide for my needs."[145] Isabel Belvis, in the proceedings from her attempted divorce, had similar complaints about her husband's ability or willingness to provide. She claimed that "He does not provide for me nor does he give what is necessary for me and my daughters."[146] This lack of provision was intensified due to the presence of children. Diego had failed as both a husband and a father, neglecting

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[143] See Premo, *Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima* (Chapel Hill: University of North Carolina Press, 2005; Sarah Chambers, "The Paternal Obligation to Provide: Political Familialism in Early-Nineteenth-Century Chile," *American Historical Review* (2012): 1123-1148.

[144] Stern, *The Secret History of Gender*, 14.

[145] AAL, D 8.9, fol. 4. "no me sustentado alimentado ni vestido ni a querido."

[146] AAL, D 9.SE. "no me sustento ni meda lo necesario para ni y amis hijas."

his duties as *pater familias*. Juana Chumbi also put her husband's role as provider on trial before the ecclesiastical court. In a rhetorical turn, her lawyer equated safety and provision, further emphasizing the importance of the husbandly duties. Following her abuse reference the petitioned claimed that "She does not feel secure in his presence, he who does not provide food or other necessities for her."[147]

While many wives sought to emphasize only their husbands' lack of provision and their dire state, others offered comments that criticized other behavior that directly or indirectly caused the family to lack the most basic of necessities. Juana's lawyer twice mentioned Diego's drunkenness.[148] Isabel Franca also cited the ill-effects of alcohol including the poverty it caused in her petition against her husband Sebastian de Telabe.[149] Others including Doña María de la Paz, cited gambling. She petitioned the court for a separation from her husband Juan Hurtado. Though she noted his abuse and claimed that her life was in danger, her demanda spent significant time on economic matters. Most importantly, she claimed that he was gambler, and had lost part of her dowry in the course of one of his games. In addition to the separation, she made clear that she expected the court to require Juan to repay what were essentially debts to his wife. His actions, first and foremost, showed a deviant nature, one that preferred the thrill of games of chance over the more responsible manly inclination to work hard for financial gain. Secondly, Juan became the opposite of a provider. Instead of securing a stable life for his wife, he needed his wife's funds to finance his vice. In this sense, María served as the familial provider, though clearly

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[147] AAL, D 9.12. "no tiene seguridad con su compania el qual no la alimenta ni sustenta ni da lo que menester antes lo que lla tabaza pa su sustento se lo quita como esta dho a y."

[148] AAL, D 9.12, fol. 1.

[149] AAL, D 8.1.

against her will.[150] Ynes de la Serna also lamented the lack of provision from her husband, Miguel de Lira, among her many other complaints. According to Ynes, Miguel carried on a public affair with a woman named Mariana, and it was this relationship that kept him from "sustaining or providing" for his wife.[151] No matter the reason, failure to sustain one's family indicated a failure of manhood. Neglecting the role of provider further compromised a husband's claim as ruler and authority over his home.

Patriarchs and their Responses

What did husbands have to say about marital masculinity in the context of these trials? At times, they chose not to reply to the court at all. This occurred most often in shorter cases, which hint that some extralegal agreement was reached without extensive litigation or any obvious actions by the court. When they did respond, some husbands refused to engage on the subject of their shortcomings. Don Sancho Bravo de Laguna chose this route when his wife doña Elvira Nino Guzman petitioned the court for divorce. Rather than deign to counteract her characterization of his conduct, Sancho, through his lawyer, moved directly to stating his preference regarding his wife's deposit and the future of his children. The lack of any semblance of defense can be read as an implicit acceptance of the terms of marital masculinity, without admitting to violating these terms. While he did not contend the facts, Sancho sought to continue his influence and authority despite his alleged shortcomings.

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[150] AAL, D 9.SE (1623), fol. 1; 109. And in the final decision, though the judge did not grant the divorce, he required Juan to pay back 1000 pesos and 8 reales. Given the focus on the economic matters, this may have been María's goal all along.

[151] AAL, D 7.1, fol. 1R. "sustentado ni alimentada,"

Juan Tejado likewise refused to engage in a debate over his fitness as a husband. His wife, Geronima de San Miguel, had petitioned for divorce listing verbal and physical abuse, infidelity, and failure to provide for his family among his many offenses. She spent the most time detailing how Juan nearly killed her during a beating, one which she says was public and well-known in the community. Juan did not address this instance or the numerous other bouts of abuse cited by Geronima. Instead, Juan's defense began not by addressing his own behavior, but addressing his wife's conduct. Perhaps as a way to justify his own infidelity, Juan claimed that his wife had been having an affair and even went so far as to state that her lover had threatened to kill him.[152] Even after calling Geronima's conduct into question, Juan did not attempt to use this as justification for the abuses of which he had been accused.

Though they might attempt to dispute whether episodes of violence or infidelity occurred, husbands did not dispute that such actions violated the ideals of manhood for married men. Most often husbands turned the attention on their wives. Like Juan Tejado, they might make accusations of infidelity. In other cases, husbands condemned wives for being "absent" from the home, which at the least displayed an abandonment of household duties and at most cast doubts about sexual fidelity.[153] Men tried to lay claim to being "good men" but rarely tried to elaborate on what this meant. Their wives, to the contrary, were willing to articulate what it meant to be a good man and state specifically how their husbands had fallen short of those ideals.

Before and Beyond Petitions

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[152] AAL, D 1.5.

[153] See for example, CLM 1.21 and CCM 1.23.

While this chapter began its analysis at the initiation of suits, the troubled marriages and attempts to remedy the issues often began long before a visit to a lawyer or judge.[154] While evidence for such extralegal negotiations rarely endure for the historian's analysis, several litigants and witnesses do recount cases in which wives reached out to parish priests or friends to help bring some peace and stability to these marriages. Yet, as the historical record documented with great frequency, personal and communal attempts did not succeed for all troubled couples.

Because of their actions and inactions, endowing these husbands with authority no longer followed colonial logic; moreover, the power of husbands was harmful, to both their wives and to society as a whole. To address this threat, women reached outside the confines of the household. As the patriarchal power of husbands proved problematic, divorciadas (women appealing for divorce) began to pursue justice through the avenues available, which for marriage meant the ecclesiastic courts. In appealing to the Church, wives sought out the intervention and protection of the ultimate authority over their marriage. Recall that at Trent the Church (re)declared itself the gatekeeper and governor of marital matters.

Simply by engaging the courts, women brought public scrutiny on their husbands. Such litigation was not a closely held secret, especially as the court and lawyers began rounding up witnesses. Furthermore, acts of violence and infidelity from months and years past became renewed fodder for public gossip as a result of the litigation, further damaging a husband's reputation. Husbands on occasion would express to the court their worry that their wives were discussing their shortcomings. One husband embroiled in a divorce suit,

[154] Cases from chapters 2 and 3 expose some of these earlier attempts. Bianca Premo has also documented tactics for conflict resolution before resorting to litigation. Premo, "Before the Law," 268-280.

Geronimo Hernandez, begged the court to move his wife to a recogimiento because at the *casa honrada* where she was residing she was able to "speak with many people."[155] Apparently what she had to say worried Geronimo very much. The ability to manage one's household was an essential aspect of husbandry.[156] That Francisca and other wives felt forced to reach outside of the marriage for redress demonstrated the clear failure to govern the home successfully.

These petitions for divorce developed elaborate, wide-reaching critiques of husbands that simultaneously contributed to solidifying exactly what it meant to be a married man in the Spanish Empire. Along with their lawyers, these women crafted statements that sought to discredit their husbands. These failures would in turn, erode the rights of those husbands to govern their wives. In essence, the standards of manhood in colonial society served as a means to limit patriarchal authority. These limits, at least at the level of individual marriages, came swiftly. In every divorcio case consulted during this research, judges agreed to hear the case brought before them, demonstrating the legal rights women possessed in the ecclesiastical jurisdiction.[157] Judges also made important initial judgments in their first statements, the most significant of which privileged the safety of the petitioning wives. The initial court response, which had little to say about the details of the case, ordered that the wife be "deposited" in a *recogimiento* or *casa del divorcio*.[158] These Church-run institutions,

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[155] AAL, D 7.6, sf (3 folios from the end). "hablando con todas las personas."

[156] Again, a good discussion can be found in Neal, *The Masculine Self*.

[157] While the secular courts provided more barriers for women, their legal activity still trumped those of most other early modern locales. See, Gauderman, *Women's Lives*.

[158] For the full treatment on the complexity of concept of "recogimiento" in the early modern world, see van Deusen, *Between the Sacred and the Worldly*.

akin to convents, were staffed by nuns and housed and protected these women as the cases proceeded.

The reason for this decision was two-fold. First, the new accommodations offered physical protection from suspected violent husbands. The cohabitation normally promoted, even forced, by the Church proved too dangerous. The *recogimiento* provided a haven from the violence and from any retribution for bringing the suit. The second purpose of the *recogimiento* was to protect the honor of these women.[159] The extent of surveillance of women in the Spanish Empire is well known.[160] Though removing wives from abusive husbands prevented physical abuse, moral danger remained, especially to her sexual reputation. Within the recogimiento, the Church—in the form of nuns and priests—would watch over her. With the initial judgment, the wife was given safety and security, or at least that was the intention.

Conclusion

With the opening of the case and the deposit into a recogimiento, the path to marital separation began. The ecclesiastical legal system and the Church's dominion over marriage gave disillusioned wives a venue in which to seek justice. Their stated goal was divorce. For some, this was likely their central focus; for others, perhaps the involvement of the Church could help tame unruly husbands and bring about a much sought after reconciliation.[161] No

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[159] For additional commentary on the colonial officials' hopes for the recogimiento, see Arrom, *Women of Mexico City*, 212-217

[160] See van Deusen, *Between the Sacred and the Worldly*, for the most thorough discussion.

[161] Bianca Premo has urged historians to look deeper into motivations, especially of actions taken within the courts. While it is difficult to ascertain motivations from these proceedings, my goal here is to highlight the range of possibilities in the aims of divorciadas. Premo, "Before the Law."

matter their ultimate goals, these women used similar tactics. They placed their husbands' manhood on trial by outlining the specific ways that these men failed to live up to the standards of marital masculinity grounded in both canon law and the social norms that governed colonial society. Correspondingly, the failure to fulfill the duties and responsibilities of a husband raised serious doubts about the validity of one's husbandly authority, giving way to the governance of the Church. In the following chapters, we will see how this trend continued throughout the court case, as others weighed in on these marital conflicts. The cases will also demonstrate, however, that such resistance to patriarchal authority did not always result in truly liberating victories for divorciadas.

Chapter Two: Overlapping Families and the Marital Household

Introduction

Patricia Seed's study of marriage choice in colonial Mexico published in 1988 provoked debate among Latin American scholars about the power of parents and the autonomy of children, as well as more theoretical arguments over patriarchy, love, sentiment, honor, capitalism, and modernity. Seed argued that parents of early colonial Mexico held little sway over their children's marriage choices allowing for matrimonial bonds based on personal choice and, in some cases, love. But because of Bourbon legal reforms and burgeoning capitalist ideals, according to Seed, parental control was strengthened and marital choice all but eliminated.[162] This narrative has its detractors and proponents, but more importantly it opened (or reopened) scholarly discussions of the role of the natal family in the creation of new households.[163] The story of family activity/intervention, however, rarely pushes past the exchanging of vows. While there has been extensive work on the complicated negotiations over betrothals between elite families, little has been written in Latin American historiography to probe the role of parents and siblings after betrothal. This chapter seeks to extend our conversation by probing the ways that the natal family, and its corresponding authoritative structures, functioned outside or alongside new family units.

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[162] Seed, *To Love, Honor and Obey in Colonial Mexico.*

[163] For a critical assessment of Seed, Eileen Findlay, "Gender, Generation, and Honor in Colonial Mexican History," *Radical History Review* 53 (1992): 81-89. Many works on marriage have addressed varying sides of this discussion including, Robert McCaa, "Marriageways in Mexico and Spain, 1500-1900," *Continuity and Change* 9, no. 1 (1994): 11-43; Steinar Saether, "Bourbon Absolutism and Marriage Reform in Late Colonial Spanish America" *The Americas* 59, no. 4 (2003): 475-509. Much of this research tended to focus on the Bourbon and early national periods. See, for example, Kathryn Sloan, "Disobedient Daughters and the Liberal State: Generational Conflicts Over Marriage Choice in Working Class Families in Nineteenth-Century Oaxaca, Mexico" *The Americas* 63, no. 4 (2007): 615-648.

The frequency of intervention by relatives into the lives of married couples in Lima is impossible to quantify, and this study will not make such a vain attempt. The historian is reliant on the archival documents to expose these interlopers, but certainly not all couples found their way to the pens of notaries or to the courts of the Church or state. Similarly, the full story of a couple is never contained within the extant transcripts, leaving possible conflicts out of the historian's purview. Instead, this chapter will undertake a qualitative analysis of court cases that feature some form of familial intervention. Of more than 200 ecclesiastical court cases of marital conflict consulted, close to 10% include some form of parental involvement.[164] Rather than trying to build arguments upon or assess the frequency of such interventions (many of which likely were not recorded by the courts), I will analyze how all parties—husbands, wives, mothers, fathers, and judges—conceived of such intervention through their testimonies and judgments.

The previous chapter featured petitions to break the marital household. In those cases wives argued that husbands failed to live up to an ideal manhood to the extent that a divorce was permitted; because of their failures, they no longer "deserved" to govern their households, which included their wives. This chapter turns its attention to those marital households that were already fractured, to those couples who were no longer cohabitating. These cases expose spouses that did not request the permission from the Church before ceasing to maintain the vida maridable, a scenario in which husbands were no longer governing their families. In some cases, they simply abandoned the post. In others, they were the ones seeking a reunion (even if their culpability in the original separation remained

[164] See the Introduction for a discussion of the scope of cases.

suspect). In either scenario, the husband had failed in his duty as governor over the household.

From these cases we begin to see the role that the natal family could and did play in the lives of married couples. The natal bonds of the family could remain strong and influential even after new families were created through marriage, showing that the kin were willing to work within and outside of the legal system. At times family members were the ones seeking to restore a marital household, to reunite the couple. At other junctures, they were party to the conflict, implicitly or explicitly aiding the separation. These cases will demonstrate that the Church's perception of the natal family often depended on their perceived goal. Attempts to keep a couple together were welcomed, while abetting a separation, regardless of the reasoning drew condemnation. This chapter also highlights how this familial intervention served to challenge husbands and analyzes its effect on their marital masculinity.

The Natal Family and the Church

There is a voluminous literature on the influence of parents on marriage choice for their children and its impact on the family unit, patriarchy, and the orthodox practice of the sacrament of matrimony in early Latin America, specifically, and in the early modern Catholic world, more broadly.[165] Yet, the extent to which families retained or relinquished

[165] This literature first gained momentum in the field of Early Modern Europe. See Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (New York: Harper & Row, 1977); Jean-Louis Flandrin, *Families in Former Times* (Cambridge: CUP, 1979); Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, PA: Pennsylvania State University Press, 1998); Phillipe Ariès, *Centuries of Childhood: A Social History of Family Life* (New York: Vintage Press, 1965); Jeffrey Watt, *The Making of Modern Marriage: Matrimonial Control and the Rise of Sentiment in Neuchâtel, 1550-1800* (Cornell University Press, 1992). For Latin America and Iberia, see Seed, *To Love, Honor and Obey*; Socolow, "Acceptable Partners: Marriage Choice in Colonial Argentina, 1778-1810," in *Sexuality and Marriage in Colonial Latin America,* ed. Asunción Lavrin (Lincoln: University of

influence in marriages after they became official has received cursory attention.[166] Certainly, historians, literary critics, and other scholars are well aware of the principles set to guide families after their offspring partook of the sacrament, and a few works have specifically noted these prescriptions.[167] The Church and state both saw marriage as the beginning of a new household and in many respects a new family.[168] For the state, marriage provided a new site to reproduce the imperial hierarchy.[169] For the Church, the theological foundations of the sacrament shaped their policy.

The Council of Trent, as noted earlier, addressed the parameters of marriage, making clear its position on the sacrament. The opening to the section on marriage looked to Scripture to outline orthodox marital practice and also indirectly addressed what might be termed as the "end of parenting":

> The first parent of the human race, under the influence of the divine Spirit, pronounced the bond of matrimony perpetual and indissoluble, when he said; This now is bone of my bones, and flesh of my flesh. Wherefore a man shall leave father

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Nebraska Press, 1990)"; Rebecca Earle, "Letters and Love in Colonial Spanish America," *The Americas* 62, no. 1 (2005): 17-46.

[166] The research that does address these questions uses approaches from earlier generations of family history that privileged demographics and residency patterns. For example, Alison Poska touches on natal families and matrilocal residence in her study of gender and authority in Galicia, *Women and Authority in Early Modern Spain: The Peasants of Galicia* (Oxford: Oxford University Press, 2006); see also McCaa, "Marriageways."

[167] See, for example, Louise Mirrer, "The 'Unfaithful Wife' in Medieval Spanish Literature and Law" in *Medieval Crime and Social Control*, ed. Barbara Hannawalt and David Wallace (Minneapolis: University of Minnesota Press, 1999), 146.

[168] This is especially true in "frontier" regions of the empire. Heath Dillard, regarding Reconquest Iberia during the eleventh through fourteenth centuries, uses "frontier" to describe the growing, unstable communal environments being established further and further south as Castile incrementally overtook Muslim control. Military differences aside, many parallels can be drawn alongside the establishment of societies in Latin America, at least until 1600 in Peru, and even later in the regions outside the urban centers of Spanish and Portuguese colonies. Dillard, *Daughters of the Reconquest*.

[169] This line of research was first studied in the early modern French historiography. See for example, Jeffrey Merrick, "Fathers and Kings: Patriarchalism and Absolutism in 18th Century French Politics," *Studies on Voltaire and the Eighteenth Century* 308 (1993): 281-303; for Latin America, see Premo, *Children of the Father King.*

> and mother, and shall cleave to his wife, and they shall be two in one flesh. But, that by this bond two only are united and joined together, our Lord taught more plainly, when rehearsing those last words as having been uttered by God, He said, therefore now they are not two, but one flesh; and straightway confirmed the firmness of that tie, proclaimed so long before by Adam, by these words; What therefore God hath joined together, let no man put asunder.[170]

The proceedings of Trent begin with Moses and his retelling of the Creation story. He first cites Adam, who upon seeing Eve, stated "This now is bone of my bones, and flesh of my flesh; she shall be called woman, because she was taken out of man."[171] Moses then departs from the story to provide commentary and directives; "Wherefore a man shall leave father and mother, and shall cleave to his wife: and they shall be two in one flesh."[172] The reference returned in the Gospel of Mark when Jesus found Moses' words useful in discussing the morality of divorce. The Pharisees made reference to Moses' endorsement of divorce (or of "putting away" one's wife), yet Jesus rejected their interpretation of the Old Testament teachings. Instead he replied, "But from the beginning of the creation, God made them male and female. For this cause a man shall leave his father and mother; and shall cleave to his wife. And they two shall be in one flesh. Therefore now they are not two, but one flesh. What therefore God hath joined together, let not man put asunder."[173] Drawing from the Old and New Testaments, Trent presented a long line of orthodox teaching on marriage.[174] The

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[170] *The canons and decrees of the sacred and oecumenical Council of Trent*, ed. and trans. J. Waterworth (London: Dolman, 1848), 193.

[171] Genesis 2:23.

[172] Genesis 2:24.

[173] Mark 10:6-9.

[174] Similarly, in *Proverbs* King Solomon urged parents to "Train up a child in the way that he should go; and when he is old, he will not depart from it," implying that when a child is old, the training should be completed.

joining of the couple at the moment of the sacrament represented a change. Marriage meant the departure from parents and the creation of a new union.[175]

Theologians from the early Church into the early modern era found guiding principles within these same scriptures. The *Leyes de Toro*, one of the most important law codes governing the family in the early modern Spanish world, marked a clear end of parental authority asserting that "The son or daughter, being married (and) joined, has been emancipated in all things forever."[176] This emancipation, in theory, relieved them from the power of their parents. Law codes were not the only place where this idea was articulated. Juan Anunciación, a priest in Mexico, addressed the issue in his *Doctrina cristiana muy cumplida*, proclaiming "We advise fathers and mothers that once they have married their children, not to be concerned with them and therefore stop meddling with them or talking to them about each other because they may break the marriage with hatred and ill-will."[177] While some earlier law codes made some concessions in terms of the continuation of parental

[175] Though it is worth noting that the two becoming one was not an equal process in practice. As Neal's work on medieval masculinity has argued, "in law and in custom" the joining of the couple "mostly happens by absorption: the wife becomes part of the husband, not the other way around." Neal, *The Masculine Self*, 69.

[176] *Leyes de Toro,* Ley XLVII.

[177] Juan de la Anunciación, *Doctrina christiana muy complida…,* as cited in Serge Gruzinski, "Individualization and Acculturation: Confession among the Nahuas of Mexico from the Sixteenth to the Eighteenth Century," in *Sexuality and Marriage in Colonial Latin America,* ed. Asunción Lavrín (Lincoln: University of Nebraska Press, 1989), 101-102.

intervention,[178] the Council of Trent declared parenting ended at the time of the new marriage.[179]

Given early modern consensus on marriage, the Church's position seemed well established. However, this dogma did not go unchallenged by the parishioners in the Archbishopric in Lima. Cases from Peru's capital include examples of deviation from orthodox practice on the issue of natal family involvement in a new marriage unit. My analysis of these cases does not try to paint in-laws in colonial Latin America as particularly inclined to interventions. As stated above, any attempt at a quantitative assessment would be mere guesswork. I also lay out reasons why the modern reader should be skeptical of the characterization of intervention presented herein. However, the accusations by husbands and declarations by judges indicate early modern assumptions about how children (specifically daughters) might continue obeying their parents (and especially mothers) even after marriage and illustrate more broadly the endurance of the bonds of the natal family. I also examine the accusations by husbands against their in-laws, and consider both their validity and motivation

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[178] We do find legal precedent for a continuation of some form of parenting after a child had married. Looking far back into the classical foundations of the early modern Spanish legal corpus, Justinian's Code made some exceptions for a father's role after his daughter married. Most importantly, the *Corpus Iuris Civilis* allowed for the father to kill his daughter, were she found guilty of adultery. Contributing to the Code, Papinianus posited that "Hence the father, and not the husband, has the right to kill the woman and every adulterer; for the reason that, in general, paternal affection is solicitous for the interests of the children, but the heat and impetuosity of the husband, who decides too quickly, should be restrained" (http://classes.maxwell.syr.edu/his381/MarriageDigestCode.htm). The logic of Papinianus reflects an assumed wisdom within the father and a youthful passion of the husband, an emotion that could lead to poor judgment. The 654 *Fuero Juzgo* likewise upheld the punishment of death for women guilty of adultery. However, the seventh-century law code empowered both husband and father to carry out the penalty (Fuero Juzgo, lib. 2, tit. 4, ley 9. This law is briefly discussed in Mirrer, "The 'Unfaithful Wife' in Medieval Spanish Literature and Law," 146.) Following this legal precedent, medieval and early modern Spanish literature often represented fathers involved in the punishment of their married daughters who committed adultery (Louise Mirrer, "The 'Unfaithful Wife,'" 145; Teresa Catarella, "Feminine Historicizing in the *romancero novelsco*," *Bulletin of Hispanic Studies* 67 (1990): 331-43.)

[179] Furthermore, in fifteenth-century Spain a number of "pardons" for adultery show what seems to be an increasing willingness to forgive adultery and absolve adulteresses. Mirrer, "The 'Unfaithful Wife,'" 148.

for making such critiques. Though sermons and canon law were clear in their prescriptions on parenting post-marriage—essentially that the constitution of a new nuclear family ipso facto precluded members of the natal family from exercising any kind of official or legal influence on it—we see quite a different dynamic manifested in practice in colonial society.

Assuming Authority

Let us first look at the case of Alexandre de Almeida and his wife Isabel Galindo. The trial began in June of 1629 as Alexandre went before the ecclesiastical court, lamenting his wife's absence from their home appealing for a restoration of the married life. In more than a dozen folios, very little is said about the couples' past—how long they had been married, whether they had children, and what issues, if any, may have plagued the couple. Alexandre did note that this was not the first time he had sought the Church's help with the absence of his wife. He recalled that other Church officials, "*los senores dean y cabildo desta santa madre yglesia*," had presented letters of censure for anyone who was found to be hiding Isabel. Apparently, this separation was not a new development, and Alexandre's attempts at restoring the marital household had been an ongoing project.[180]

The issue was brought back to the Church's attention after an encounter at a local festival. According to the initial demanda presented by Alexandre—and prepared by his lawyer, Alonso Cabrera—Isabel's mother, Beatriz, had attended the religious festival in Lima.[181] During this festival, Beatriz had allegedly shown up at the church and brought her

[180] AAL, CCM 1.23, fol. 1.

[181] The participants in the case differ on what the festival was celebrating. Alexandre stated that it was the celebration of the canonization of San Pedro Bautista while another witness said it was the celebration of two saints, San Martínez [sic] and another saint whose name he could not remember. AAL, CCM 1.23, fol. 1 and fol. 3.

daughter along. Alexandre had been unaware of his wife's whereabouts prior to the festival, though he may have suspected that his mother-in-law had something to do with the couple's separation. At some point during the celebration, word spread to Alexandre that his wife was in attendance, and he set out to locate her amidst the crowds. When he reached the location where witnesses had seen Isabel, she had already disappeared again. Coming so close yet still falling short of finding his wife led Alexandre back to the Church to enlist its help in achieving reunification.[182]

Alexandre called six witnesses to substantiate his claims and affix blame to his mother-in-law. Each witness attested to the fact that Isabel was living with her mother, though it is worth noting that not all of them had firsthand knowledge of this. Their testimonies contained no startling revelations about how the living situation came to be but did add to Alexandre's argument that Isabel was living with her mother. Furthering his case, he also submitted the original censure decision from his first court visit in April of 1629. In this first decision, the court noted that according to the Council of Trent, the couple could not live apart without first a divorce hearing before the ecclesiastical tribunal. Isabel could either return to her husband or be placed in a recogimiento to await a divorce hearing. The censure also threatened "major excommunication" against anyone found to be hiding Isabel or even those who knew but failed to report her whereabouts. Months passed, however, and Isabel remained living apart from her husband even after the presentation of witnesses and the resubmission of the censure documents.

[182] AAL, CCM 1.23, fol. 1.

In October, Alexandre returned to continue "the proceedings against Beatriz María as the mother of Isabel Galindo, my wife."[183] After more than six months of legal fighting, not including the time spent attempting to remedy the situation privately without litigation (a period of time which is never disclosed), Alexandre continued his accusations against his mother-in-law. He did not ask his wife to return to him, at least not within his statements before the courts. The attention remained on Beatriz. By framing the conflict in this way, Alexandre could present the appearance of domestic tranquility interrupted by outside forces.

While the stated objective of Alexandre's litigation was restoring the couple's married life, this was in fact a criminal case. Yet, despite her absence from the marital home, Isabel was not the fugitive. Instead, Alexandre was adamant about the culpability of his mother-in-law. In bringing the criminal charges, he claimed that his mother-in-law had been housing his wife, preventing the couple from living out their married life. Her actions represented a violation against the laws of marriage. These same actions also disrupted the Alexandre's marital authority. With Isabel outside the house, his power as a husband was greatly diminished.

Interestingly, Isabel remained free of blame throughout the entire proceeding. It is certainly surprising that a wife could avoid the Church's condemnation for living outside the marital home. The reason for this apparent innocence seems contradictory to the Church's expectations of wives. Indeed, in numerous cases from Lima's ecclesiastical courts, judges chastised wives for failing to fulfill the duties of a wife and/or refusing to cohabitate with their husbands.[184] But Isabel's case diverges from these others most obviously in the site of

[183] AAL, CCM 1.23, fol. 11. "los autos con Beatriz Maria como madre de Ysabel Galindo mi muger."

[184] See chapter 1.

her relocation. Rather than a friend's home or in an unknown location, the *provisor* was aware of her residing with her mother. Given the living situation, the judge identifies her first and foremost as a daughter. And in that scenario, her mother is the party at fault. In the earliest substantive reply from the court, judge Feliciano de Vega declared that "Beatriz Maria, mother of Isabel be made known of the *censuras generales,*" referring to the demands to return her daughter on threat of excommunication."[185] The court did not at any point entertain the idea that Isabel could be living with her mother of her own volition: Alexandre and the judge each presented arguments and rulings under the assumption that Beatriz was the primary guilty party—that Beatriz was refusing and preventing justice. In this way, they acknowledged a continuation of her parental power, even if such influence was illicit.

Ultimately, Beatriz responded to the accusations, but her testimony only tangentially addressed the focus of the case. Instead, she simply took aim at the handful of witnesses that Alexandre had called. Beatriz claimed that the witnesses, and their families, were enemies of hers and therefore, their testimonies should be disregarded. She never acknowledged the location of her daughter, instead focusing on calling into question Alexandre's legal tactics.

The judge's orders in the case reaffirmed the approved roles of parents in the lives of their married children, but this conflict also provides anecdotal evidence on the potential for parental influence, and even control, over married children. It seemed not only plausible, but probable to the judge and to Alexandre that Beatriz led Isabel astray and out of the marital house. This perception of parents and their children was built on the idea of "reverential fear." Though originally conceived by the Church as that fearful respect instilled in children by and for their fathers, the practices of child-rearing in Lima increasingly transferred this

[185] AAL, CCM 1.23, 10r.

relationship to mothers and their children. In her study of Limeño litigants who claimed they were forced into taking vows of the priesthood or marriage, Bianca Premo found the majority cited their reverential fear of mothers or other female guardians.[186] Through this perceived reverential fear, Beatriz retained influence over her married daughter. In this way, Isabel remained like a child. She was subject to the commands of her mother and continued in her obedience. Correspondingly, Beatriz retained her parental influence, even if this power was illicit in the eyes of the Church. Such a case, as well as the ones below, speak to the durability of the bonds of the natal family which could limit the control a husband had over his wife. The ecclesiastical court condemned such influence when it was used against the principles of the Church, in this case separating a married couple.

Even in cases in which the wife received some blame for a lack of cohabitation, the role of the parent was greatly emphasized by both the husband and the court, as seen in the case of Cosme and Luisa. Cosme de Uria, a migrant laborer in the viceroyalty, and his wife, Luisa, lived around the port of Callao. The couple had been struggling financially, because Cosme had had trouble finding consistent work. In late 1625 he found a job in the Valley of Sucre, some 1,300 miles from their home in Callao, that offered the prospect of long-term employment. When Cosme first departed for his new job in Sucre, Luisa stayed behind. While it was not terribly uncommon for migrant workers to live separate from their wives,

[186] Premo, *Children of the Father King,* 61-62.

this was not the future envisioned by Cosme.[187] He had tried in vain to persuade his wife to move with him, but instead, she insisted on remaining in Callao.[188]

After nine months of arguing, persuading, and even notifying Church officials, Cosme filed an official petition before the ecclesiastical tribunal in July of 1626. Recounting the last year of their lives, he laid out his case for a reunification with his wife. After giving the timeline of events, this distraught husband provided his argument on what kept the couple apart. According to Cosme, his wife was living with her mother Isabel Ortiz. He reminded the court that such a living situation "does not conform to the mandate of the Holy Roman Church."[189] As a result of this unorthodox living accommodation, Cosme requested that the court "send notice to my aforementioned wife, Luisa de Vega, that she live the married life with me where I will be working, and that she give me the sustenance necessary for a person and what is necessary to outfit [me]."[190] In resorting to litigation, Cosme admitted to a vulnerability and an inability to resolve this family conflict.

The court, swayed by Cosme's original petition, ordered Luisa to move from Callao to Sucre and resume a proper married life of cohabitation with her husband. Judge Garcia Muñoz Cavecas also decided to take an additional step to remedy this quarrel in the hope of preventing any future conflict. In labeling her "the aforementioned impediment to the

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[187] For scholarship on the intersection of labor migration and gender in colonial Latin America, see Premo, "From the Pockets of Women: The Gendering of the Mita, Migration and Tribute in Colonial Chucuito, Peru" *The Americas* 5, no. 1 (2000): 63-94; For broader work on gender and labor see Jane Mangan, *Trading Roles: Gender, Ethnicity, and the Urban Economy, Potosí, 1545-1700* (Durham: Duke University Press, 2005); and Karen Graubart, *With Our Labor and Sweat: Indigenous Women and the Formation of Colonial Society, 1550-1700* (Stanford: Stanford University Press, 2007).

[188] AAL, CCM 1.18, fol. 1.

[189] Ibid.

[190] Ibid. "se le notifique a la dicha Luisa de Vega para que aga vida maridable conmigo a donde you [sic] estuviere travajando y le de el sustento necessario a su persona y lo de mas necessario para su atavio [sic]."

married life," he declared that a notification be sent to Luisa's mother ordering her to "stop impeding [the marriage] in any way." [191] Naming Isabel as an impediment was an intentional use of liturgical lexicon. The Church used impediments in its declarations on the sacrament of matrimony, most notably at the Council of Trent, to identify those things that prevented an orthodox marriage. Whereas the decrees of the Council listed a previous marriage or levels of consanguinity as impediments, the judge in this case used the same language to label the actions taken by Luisa's mother.

While the judge addressed Luisa directly in the hopes of resolving this conflict, as with other cases throughout this period, he also cited her mother as culpable. While Isabel was no doubt aiding the violation of Church doctrine, the way in which the ecclesiastical judge addresses her guilt, not unlike other judges, diminishes the agency of Luisa. Though Luisa was not shielded from complete guilt, her mother was still seen as the primary culprit. In this family quarrel, we again see the continuation of influence by the natal family, and this intervention's impact on the husband's role as the sole authority over his wife under the law. Clearly, the laws instituted by the Church could not fully sever the familial bond between parents and their children.

Luisa and her mother apparently were in no hurry to abide by the judge's initial ruling that she follow her husband to Sucre. In September, two months after Cosme's initial petition and approaching a year without his wife, Judge Muños Cabecos issued another *auto* citing a "failure to comply" with his order by Luisa and Isabel. Neither woman responded to the court; they simply disregarded the order. In his auto, the judge again ordered that Luisa and

[191] AAL, CCM 1.18, fol. 1R. "la dio impedimente a hazer vida con el dicho su marido...no se la impida en manera alguno."

Isabel be notified of his decision and that they comply or risk the threat of excommunication, the harshest punishment available. This is the last page of the trial, and whether this second command was more effective than the first, we simply do not know. It seems even the threat of excommunication was not always enough to break the bonds of the natal family.

We should rightly consider the duration of time couples were married and the age of the spouses when investigating parental intervention. However, this detail that seems most important to modern readers has been omitted in many marital cases. The two cases discussed above provide very little information to even help aid a guess. In the case of Alexandre and Isabel, the transcript hints that the issue had troubled the couple for more than just a few weeks, as seen by Alexandre's reference to a previous solicitation of the Church's help. We know that Cosme and Luisa had been quarreling for some nine months. While claims to "resume" a married life in both cases suggest the couples were not newlyweds, we cannot be wholly certain

In some instances we know that the couple was only recently married, which was the case for Miguel de Campos and María Llacan. This indigenous couple had both grown up in the small pueblo of Surquillo in the Valley of Surco and had been married only four months before their marital conflict entered the court of the Archbishop. While we do not know the exact ages of the couple, it would be rare for newlyweds to be much older than twenty-five.[192] Furthermore, witnesses for cases were normally drawn from the inner circle of the

[192] Though we do not have concrete numbers for this period, Robert McCaa has shown that by the end of the seventeenth century mean ages for marriage in Mexico varied from 15-25 for women and 17-27 for men, depending on region. Robert McCaa, "Marriageways in Mexico and Spain, 1500-1900" *Continuity and Change* 9, no. 1 (1994).

litigants, and the two witnesses in this case (discussed further below) were between the ages of twenty and twenty-three.

In his initial petition, Miguel made clear to the judge that they were not simply living together according to local customs but were "married according to the order of the Holy Mother Church."[193] Such a claim helped to assert his orthodoxy and reaffirm the Church's interest in the conflict.[194] Miguel lamented that despite his attempts to live out the married life with his wife, she was "*ausento*" (absent) from him "as ordered by her mother Isabel Yacan."[195] The assumption at the heart of Miguel's statement is that his wife could, in fact, still be ordered around by her mother, and that she was beholden to obey her mother's wishes. Such an assumption becomes all the more significant when the command is a relocation outside the marital home, which would put her in violation of the expectations of cohabitation. In this instance, it seems perhaps less surprising that the husband would place fault on the mother. After all, the marriage had taken place only four months prior. Moreover, given that conflicts rarely went directly to Church officials, the issue had likely been stewing even longer.

As was seen in previous cases, references to the will of the married daughter is noticeably absent. Maria's intentions to leave her husband, or to stay with him, are not documented by the court. Instead, we find only the conflicting wishes of her husband and mother. The statements by Miguel and the judge suggest that María gave in to the will of her mother. To further validate his argument, Miguel called two witnesses. Both men were

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[193] AAL, CCM 1.19, fol. 1. "yo me casse segun horden de la santa madre yglesia."

[194] We see similar claims among the slaves in Lima hoping to assert their faith before the Catholic judges, as addressed in Chapter 4.

[195] AAL, CCM 1.19, fol. 1. "aussento por horden de su madre Ysable Yalcan."

"*indios*," locals from Surco. Likewise, both were "*ladinos en la lengua castellana*" (essentially, indigenous peoples who spoke Spanish and had acculturated to Spanish customs), a clarification that assured the court that their statements would not be compromised by language barriers. This description also would have made them more trustworthy in the eyes of the court, because of their acculturation.[196] The first witness, whose name is indistinguishable in the transcript, was a "*penador* (perhaps jailer?)" while the second attester was a "*labrador"* (farmer). Both parties told the court that about two weeks prior, they witnessed María leaving "the house of her husband" and going to "the house of her mother."[197] In each testimony, neither party suggests that María was accompanied by anyone. These retellings demonstrate that she was not physically forced back to her mother's. This solo journey from her house to her mother's home would suggest some semblance of voluntary action. This indication of Maria's independence in the matter is never directly addressed elsewhere in the case, which abruptly ends after acknowledging receipt of these testimonies.

The cases show that parents were not always swayed by the Church's insistence that they "stop meddling," but rather, under certain circumstances, would interject themselves, at times going so far as to allow (or force) their daughters to return to their home. In such cases, husbands, lawyers, and judges placed blame squarely on the offending parent, leaving unconsidered or unexamined the intentions or motivations of the daughter. The legal conflict

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[196] On the various uses and meanings of "ladino" see Rolena Adorno, "Images of Indios Ladinos in Early Colonial Peru" in *Transatlantic Encounters: Europeans and Andeans in the Sixteenth Century*, ed. Kenneth J. Andrien and Rolena Adorno (Berkeley: University of California Press, 1991); John Charles, "'More Ladino than Necessary': Indigenous Litigants and the Language Policy Debate in Mid-Colonial Peru," *Colonial Latin American Review* 16, no. 1 (2007): 23-47.

[197] AAL, CCM 1.19.

pit the wishes of the husband against the wishes of his in-laws. And though the law was clear about the hollowness of parental authority at that point, this did not inhibit the perceived influence of parents. In fact, even after husbands enlisted the intervention of the courts, parents helped wives remain separated from their husbands.

By "losing" his wife, a husband essentially lost control of his household, meaning he had failed as a man. This shortcoming came as a result of the challenge by his in-laws. Often these struggles for gendered power fall within the frame of "pluralizing patriarchs," which Steve Stern has put forth as a mode of resistance to gender domination in colonial Mexico.[198] But in these cases, it was the mother of the wife, and not the father, accused of unlawful intervention, an important deviation from the male-centered power structures of colonial society. Bianca Premo has noted the strong presence of mothers, and absence of fathers, in cases involving forced marriages in colonial Lima. To explain this disparity, she notes that "(s)ome fathers attempted to disengage from conflicts over marriage altogether."[199] If fathers were less likely to take an active role in choosing marriage partners, a passive role after children married would certainly seem reasonable. In each of the cases examined here, it is not known if fathers were simply disengaged or deceased, leaving the mother as the only parental voice. Nevertheless, the cases feature both a strong matriarch, a figure that has been much overlooked, and a weak husband. Rather than a battle between patriarchs, husbands sought to play on the "meddling" mother-in-law trope, seen in Juan de Anunciacion's writing, among others. And the judges, for the most part, fell in line with this characterization. While this focusing of blame perhaps deflected some of the negativity from

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[198] Steve Stern, *The Secret History of Gender*.

[199] Premo, *Children of the Father King*, 62.

the marital disunion, being embroiled in a competition with one's mother-in-law, and needing the ecclesiastical court for support, did no favors for his masculinity. Indeed, the persistence of these mothers forced husbands to pursue higher modes of authority (i.e. The Church) in order to restore their marriage, a further admission of their weaknesses and need for assistance in managing their households. In doing so, they became reliant on the judges to intervene and save their marriages (and masculinity).

In each of these suits, the motivations and actions of these daughter-wives were noticeably absent. This omission illustrates the propensity by husbands and judges to assume an influence of mothers over their daughters even after their daughters had married. While none of the parties argued for the acceptability of this continuation of parental authority, husbands and ecclesiastical judges recognized the hold of parents over children and, in turn, the possible challenges this presented to husbands.

Rethinking Divided Homes

The cases presented above have privileged the voices of the judges and husbands. While there was one mother, Beatriz, able to present her perspective to the court, she was the exception. What stands out in these examples is the lack of testimony by mothers and their daughters. The one-sidedness of the stories leaves too many questions unanswered, and provides little evidence with which to challenge the point of view given by the husband. The archives of Lima do provide at least one exception to this trend, which allows for some further analysis of the narrative presented thus far.

In early September in 1608, Miguel de Villa Rubio visited the office of Alonso Gomez de Montana, a lawyer in the city of Lima. Whether this was his first contact with his

lawyer we cannot be sure, but we know that at this point Miguel decided that he would take action. With the help of Alonso, he crafted his initial petition and submitted it to the ecclesiastical court. While Miguel appears to have penned his demanda in his own hand and signed it himself, the form and notarial language make nearly certain that he received significant help from his lawyer. Indeed, Alonso himself later wrote to the court on behalf of Miguel.[200]

Miguel identified himself and his wife, Beatriz, to the court before stating his intention to restore the married life "as ordered by the Church of Saint Mary in Rome."[201] He then claimed that "by order of her parents (*padres*), against my will, they took her from my company and they held her in their house."[202] There could be a number of reasons that husbands and wives might live apart for short periods of time, mobility for work being chief among them.[203] But this non-cohabitation would need to be agreed upon by the couple, otherwise, such a living arrangement violated the proper married life.

Miguel also noted that the order came from her parents. Rather than a revolt from his wife, his in-laws had invaded the marriage. Miguel, in coming to the court, had found himself in a difficult social predicament. His claim to authority was rooted in his status as the husband of Beatriz. Society and the Church viewed him as the protector and provider of his family. He had failed in his duty as a husband to maintain and govern the household. Having

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[200] AAL, CLM 1.6, fol. 1.

[201] Ibid.

[202] AAL, CLM 1.6, fol. 1. "segun orden de la santa Maria iglesia de Roma); (por orden de sus padres contra mi voluntad mela sacaron de mi compania y los de los[sic] sus padres la tienen en su casa."

[203] Migration to the mines of Potosi provides the greatest example of this separation of household. Premo, "From the Pockets of Women."

to appeal to the ecclesiastical courts to remedy a marital dispute demonstrated a husband's lack of control over his household. To partially deflect this social stigma, Miguel placed himself in conflict with his parents-in-law, who occupied a liminal position as the parents of a married woman, relieved of their parental authority. In the scenario laid out by Miguel, Beatriz's parents challenged his patriarchal authority, through their housing of their daughter. By providing shelter, they coopted the husband's role. Although any failure of a man to "maintain" his household reflected poorly on him, the fact that this challenge did not come from his wife tempered the extent of the insubordination.[204]

If we proceed past Miguel's account of the separation, Beatriz's response further damages the manhood of her husband. Like her husband, she also enlisted the help of a lawyer to help her navigate the ecclesiastical legal system.[205] Though she personally signed her petition to the court, an examination of the handwriting makes clear that Ricardo del Cate, her lawyer, penned the affidavit. Within three weeks their rebuttal had been submitted to the court. In an era when many avoided court requests for response, either to seek extralegal solutions, avoid attorney costs, or to put off certain guilt as long as possible, three weeks was a relatively rapid response. This quick reply suggests that she was eager to tell her side of the story and reject the assertions made by her husband.

In her response to the court, and to Miguel's characterization of the situation, Beatriz provided a different account of her exodus from their house. First, she acknowledged that she

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[204] It is also interesting that, given the prominence of mothers in the other cases, Miguel does not single out one parent or the other. Throughout the case Beatriz's parents never submitted a statement to the court. In fact, their names are never even given. Their absence from the case further attenuates the validity of Miguel's assertion of their interference.

[205] For more on the use of legal professionals in marital conflicts, see Behrend-Martínez, "An Early Modern Spanish 'Divorce Court.'"

was aware of Miguel's initiation of the court proceeding. "I say that I was served a certain request from my husband that requests that I make the married life with him or go the *recogimiento* of Santa Clara."[206] In responding to Miguel's demanda that she received, Beatriz went on to blame Miguel's behavior for their current situation. "I send word by affidavit, and give an explanation regarding the making (of) the married life with my husband. I have no guilt whatsoever and it is he who has it, my husband, because of his rough and terrible temper and his mistreatments."[207]

Beatriz criticized Miguel's role as protector by highlighting what she believed to be the cause of the lack of *vida maridable*, Miguel's mistreatment. Beatriz told the court of the cruelty of her husband, but because of the limits of the case, she never expanded on these conditions. As shown in the divorce cases discussed in Chapter 1, *malos tratamientos* and its variations became synonymous with domestic violence. By invoking *malos tratamientos*, Beatriz showed Miguel to be a cruel husband, the antithesis of the idyllic familial protector. He not only failed to protect her, he was the source of her harm.

In addition to challenging her husband's role as protector, Beatriz also disputed his ability to provide for her. Closing her petition, Beatriz asks the court to force Miguel to provide for her while in the recogimiento. In the final section of her statement to the court, which was usually used to summarize one's ultimate request of the judge, Beatriz says nothing specifically about her wants in regards to the married life. She treats her stay in the

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[206] AAL, CLM 1.6, fol. 2. "digo que a mi se me dio traslado de cierta petición de la dicho mi marido pide haga vida maridable con el o me vaía de recojimiento de Santa Clara."

[207] Ibid. "lo mando asi por su auto, o diese razon y es asi que en quanto al hacer vida maridable con el dicho mi marido que no tengo culpa alguna y el que la tiene sus el dicho mi marido por que por su áspera y terible condicion y malos tratamientos."

convent as a given. Instead, she used this section to request "necessary sustenance."[208] By placing emphasis on her needs while in the recogimiento, Beatriz moved the focus of the trial onto Miguel's role as provider. Beatriz pointed to her need for a servant and for food and Miguel's duty to provide these: "Your Majesty I ask and plead … that you command my husband to provide me with a black servant and the necessary sustenance that I need for support in the aforementioned recogimiento."[209] She implied that without her servant and sustenance she will not be provided for, again a poor reflection on her husband who is responsible for her provisions.

Miguel initiated the case on the basis of restoring the married life, but Beatriz avoided that subject all together. She did not state that she wanted to return to the married life nor did she suggest a preference for a divorce. Legally these were her only two options, yet she moved the emphasis from the married life to Miguel's manhood. By challenging his masculinity, Beatriz changed the focus of the court proceedings. While Miguel hoped to make it about outside meddling into a happy marriage, Beatriz demonstrated how Miguel's actions violated the married life. She continued to impugn his manhood by requesting that the court force him to provide for her needs in the recogimiento, demonstrating her awareness of the expectations of Miguel and further emphasizing his failure to do so. This new perspective also depicts her parents as loving and willing to fill the familial void left by Miguel's injustices, and not at all the nosy, intrusive in-laws he labeled them.

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[208] AAL, CLM 1.6, fol. 2.

[209] Ibid. "A V.m. pido y supplico… y mande al dicho mi marido mide una negra y los alimentos necesarios y con esto estoy presta estar en el dicho recogimiento."

This last case showed an explicit challenge to manhood. In the midst of the trial, each side homed in on the strategy that provided the best possibility for a positive outcome, but also provided the least social vulnerability. For Miguel, this meant defending his manhood by providing the appearance of a cohesive family under attack from the outside. This outside intervention helped to present a façade of control within the marriage: Miguel was doing his job as a husband, and the problems sprung from an intrusion, rather than an internal rift. His argument also presented Beatriz as a helpless pawn in this power struggle. In his accounts, she remains an object—taken by her parents, to be returned by the court.

Yet, just as Miguel attempted to retain his masculinity, and the corresponding claims to authority, Beatriz was intent on consistently challenging it. Simply through her response to a case that was, by most accounts, brought against her parents, Beatriz became the central player. Her voice echoes in sharp contrast to Miguel's representation of her passivity. She defied the authority of her husband by not appearing with him. Her statements to the court demonstrated her refusal to submit to her husband, based on his inability to be a good husband. And it was this failure that brought about the need for the (possible) parental intervention.

Recent studies have demonstrated how women involved in marital conflicts had to prove their virtue and honor when appearing before the ecclesiastical courts.[210] The present case, however, suggests that though woman's reputation mattered during these conflicts, a husband's manhood was also at stake. Miguel's masculinity became the center of attention during his endeavor for the restoration of the *vida maridable*. The actions and testimony of

[210] van Deusen, *Between the Sacred and the Worldly,* 81-91; Behrend-Martínez, "An Early Modern Spanish Divorce Court."

Beatriz and even the purported role that her parents played highlight the shortcomings of Miguel. However, the full extent of his failure as a husband is unknown. The case ends with Beatriz in the recogimiento. Whether the two reconciled or divorced was not recorded. Regardless of the outcome, significant damage to Miguel's marital masculinity had already been done.

Brotherly Love/Brotherly Litigation

In September of 1618, Tomás Efan, *indio*, presented a petition to the ecclesiastical tribunal in Lima protesting the lack of the married life. But unlike the number of other cases presenting similar arguments, Tomás was not critiquing the actions of his spouse. Instead, his demanda contended that his brother-in-law, Diego Emoran, *indio ladino*, had illicitly abandoned Isabel Ynural, Diego's wife and Tomás' sister. Tomás took on the position of litigator—though without an official power-of-attorney on record, a form commonly found within ecclesiastical transcripts—on behalf of his sister to protest the fact that Diego and Isabel were no longer cohabitating.[211] By living apart from his wife, the petition stated, Diego was failing to provide for her and also bringing her honor into question within the community. In doing so, Tomás brought into question Diego's marital masculinity by neglecting the expectations of a husband in colonial Limeño society. That Tomás took on the role of litigator, and without official documentation of the transfer of power of attorney, is intriguing in light of the abundant evidence of wives who litigated on their own behalf, as discussed in Chapter

[211] It is entirely possible that such official transference of legal representation existed, yet is not included with this case due to record keeping issues. AAL, CCM 1.12.

1.[212] Furthermore, Isabel does not appear before the court herself for reasons never revealed. One possibility is that Tomás was better equipped to make the journey to Lima, as Isabel and Diego lived in the pueblo of Santiago in the northern coastal region of Peru near Trujillo. Perhaps Tomás had other reasons to go to Lima or the siblings agreed that Isabel was risking safety and honor by traveling alone to the capital. Regardless of the reasoning, Tomás took up the cause of his sister's marriage.[213]

In addition to the initial demanda, Tomás continued to litigate for Isabel calling witnesses to attest to Diego's abandonment of the marital home. Apparently, these testimonies, coupled with the arguments presented by Tomás, proved at least somewhat effective because, after several weeks of testimony, the judge ordered Diego incarcerated in the ecclesiastical jail. This was not a final sentence, however, but rather a temporary arrangement while the court collected more information. Tomás was likely happy to see his brother-in-law punished for his abandonment of Isabel, but he continued to push for a more definitive resolution. In his subsequent petition, he asked the judge to "punish the aforementioned Diego Enmoran with total rigor."[214] The persistence of Tomás displays his dedication to avenge the wrongdoing done to his sister. He was not simply a messenger of the abandonment, but through his legal action, he served as an active participant in the conflict. The court record ends abruptly after a witness testimony and provides no clear conclusion. It is possible that Diego finally agreed to return to his wife and his husbandly

[212] Chapter 1 presents a number of wives who petitioned the court to protest abusive and neglectful husbands as well as those who abandoned their spouses.

[213] AAL, CCM 1.12.

[214] AAL, CCM 1.12, fol. 7. "a Vmd. Pido y supplico mande castigar al dicho Diego Enmoran con todo rigor."

duties, however, we can only speculate. But the brief transcript clearly reveals Tomás' dedication to litigating on his sister's behalf and the court's acceptance of his right to do so.

Taking on a similar legal-familial persona was don Diego Ordonez e Villa Quiran**.** On 6 February 1630, Diego presented himself to the court in the name of his brother don Andres Ordonez de Villa Quiran, an *alcalde ordinario*. According to don Diego's initial petitions, Andres had moved out of Lima, apparently relocating to take a new post (likely a promotion) in Nicaragua. Evidently, he had to leave his wife, Maria, behind at the time of his initial departure. After nearly five months he was still in Nicaragua, but his wife remained in Lima. According to Diego, María refused to follow her husband to live the married life.[215]

We find Diego's signature at the end of the affidavit, a sign of his literacy and therefore his elite status. Neither when he first identified himself nor when he signed did he establish any legal title for himself. He held no legal experience (that we can tell) to represent his brother, but yet, his family ties along with the consent of his brother, by way of a power-of-attorney submitted to the court several days later, entitled him to appear in the ecclesiastical court. Diego continued to act as the attorney-in-fact,[216] to use the modern legal term, for the entire length of this enduring trial over a year and more than 100 folios. From the beginning, the court acknowledged his position and ability to serve as the de facto attorney. Judge Feliciano de Vega not only admitted Diego's demanda into the record but also accepted his account in the initial decision. Judge de Vega ordered that María be placed

[215] AAL, CLM 1.20, fol. 1.

[216] I use the term in its modern legal context to identify the party appearing before the court with the power of attorney.

in the "*recogimiento del divorcio*" to await further testimony and prevent her from fleeing the area or hiding if the judge decided she must move to Nicaragua.[217]

But María was not willing to simply concede to the wishes of her husband and his brother, so she enlisted the help of her own lawyer to argue against her relocation. And as the case continued to be contested after three months of litigation, the Ordonez brothers hired a lawyer to improve their chances of legal victory. In doing so, we see further evidence of the brother's place in the trial. Their trial lawyer, Alonso de Castro, appeared "in the name of Don Diego Ordonez de Villa Quiran in the case of doña María de Arroyo, legitimate wife of don Andrez Ordonez, his brother."[218] Even after the lawyer became the official representative in the case, Diego remained a player in this marital dispute. The legal identity of Diego at this point was somewhat ambiguous. In the beginning of the case, Diego served as the legal representative based on the power-of-attorney. However, at the appointment of a lawyer, this role would seem to have been nullified. Yet Diego's presence continued through the end of the case.

Andres' absence from Lima provided barriers to his litigation against his wife, but Diego's assistance helped to mitigate this obstacle. The latter's selection as the attorney-in-fact speaks both to his bond with his brother and the belief that he would represent his brother's interests. Diego was engaged in this marital conflict for months. This particular case was one of the longest, in both time and pages. And in the end, the brothers appear to have proved successful because the final folio addressed some of the logistical aspects of

[217] AAL, CLM 1.20, fol. 3.

[218] AAL, CLM 1.20, fol. 59.

moving María to Nicaragua. Though we cannot be certain, María was either headed to Nicaragua or for more battles in court.

Though this sort of brotherly representation and intervention occurred only twice in the cases under review, their appearance in the court raised no concerns; this familial representation was fully accepted by ecclesiastical judges. At least in terms of getting the courts to hear their cases, these brothers were successful, even if we cannot tell if they achieved their ultimate victory in reuniting the couples. To an extent, however, that is beside the point. The acceptance of this legal action demonstrates how the courts conceived of familial intervention as it concerned reunification of couples and the upholding of marriages. Activity within the court could be tolerated or even approved of by ecclesiastical judges (and perhaps society more broadly) if seeking to uphold Church prescription. Likewise, the court's acceptance of this brotherly litigation concedes the validity of involvement of natal families, at least involvement within the legal structures.

The Ordonez case provides us one more glimpse into the role of families in disputes between husbands and wives. In defending her refusal to follow her husband to Nicaragua, María rooted her position in her natal family and heritage rather than her new marital family. She was adamant that her husband's decision to move to Nicaragua did not necessitate her own relocation. She claimed to base her reasoning in "the law" though no legal corpus was specifically cited.[219] María argued that she could not be compelled to leave the place she was born, the place she had always lived, and the place where her parents lived. Such a

[219] The actual word she used was "ley" rather than the more ambiguous "derecho." Such vague references to the law was not uncommon. Even if a litigant did go so far as to name a law code, they rarely made clear which precept they were citing. Instead, these invocations seem more about social conceptions about what is "legal" or, more accurately, what is "just."

compulsion would, as she put it, contradict the law, although it is unclear what legal statute might have been the object of her argument, for no such law is known to this author. More than likely, María was referring to a social, even moral or natural, law. To leave her parents and her home would be to upset the order of family, personal history, and homeland. This argument essentially placed Maria's natal family and its role in her life above her husband's wishes.

In each of these two cases, the natal family played an active and accepted role. Each of these brothers set out to help restore the married life for their kin. The court permitted this intervention without prejudice, displaying that the natal familial ties remained strong despite the creation of the new marital family. But where the intervention by these siblings sought to privilege the married life, Maria's justification for refusing to move touches on the other side of the coin. For her, the natal family, her home, and her past are things to which her husband should adapt. While these siblings acted within the legal institutions of Lima, ecclesiastical litigation also includes examples in which the natal family engaged in extralegal activity on behalf of their kin. Whereas these interventions sought to reunite couples, the family could also help come between husband and wife.

Conclusion

In probing the nature of the masculine self in late medieval England, Derek Neal examined a dimension of masculinity that he termed "husbandry." For Neal, husbandry proved useful in understanding social expectations of husbands as men and men as husbands. In particular, Neal centers on husbandry for its evocations of the manager "who both orders and sustains," noting that "[t]he prudent and honorable management of property and household dependents

was central to husbandry."[220] These cases mark a distinct breakdown in the "governance" of the household.[221] These marriages were not simply troubled. They had fractured in a very real way. The spouses were no longer cohabitating. This fissure of the marital household alone reflected poorly on husbands. Their fundamental role as managers of the home had been compromised. Whereas the previous chapter showed how marital masculinity could be challenged through petitions, the half empty beds proved fatal to the manhood of husbands in Lima.

At times the wives had joined (or rather rejoined) another household, that of their natal family. Whether pushing their daughters to flee abusive husbands or simply accepting a tearful daughter at their door, the actions of these parents served to undermine the marital masculinity of their sons-in-law. Such housing arrangements placed parents as competitors for authority. Likewise, these wives also played considerable roles in challenging their husbands, even if their role was mostly overlooked in the cases. As we will see in the next chapter, this direct intervention gave way to challenges within, rather than outside, the courtroom.

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[220] Neal, *The Masculine Self,* 58.

[221] Neal notes that governance has "modern" baggage. Despite this baggage, I think the term is useful for understanding husbandry and masculinity in the colonial period.

Chapter Three: Witnessing Marital Masculinity in Colonial Lima

Introduction

El juez de los divorcios provides one of the few glimpses of ecclesiastical divorce proceedings within early modern literature.

[222] Despite its relatively low standing within the pantheon of Cervantes, this short farcical story brings the trouble of marriage to its official end point before the ecclesiastical judges. Within this setting, the humorous interlude brings attention to the breakdown of marriage and the role of the ecclesiastical courts in the negotiation of such conflicts.[223] Rather than a fantastical story of violence, honor, betrayal, and the like, Cervantes brings to life the stories of four couples and their disappointment with their spouses and unending marital fate. Exaggeration abounds, but the frustrations vented by each character resonate on various levels with those of the litigants found in trials from early modern Spain and Spanish America. The script opens in the courtroom as the judge, attorney, and notary enter followed shortly by the first couple seeking divorce. Despite the couple reaching consensus of the need for separation and appealing to the court for a divorce, the judge finds no reason to grant the request. The second couple is likewise rebuffed, as is the third. Last, a husband comes to the court without his wife, who happens to be a prostitute, and he too was denied a separation. Accusations of bad breath, old age, and just being downright annoying were not persuasive to

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[222] Miguel de Cervantes, *El juez de divorcios* [1615]. Cervantes' interludes have been translated many times into English, see for example *The Interludes of Cervantes*, trans. and ed. S. Griswald Morley (Princeton: Princeton University Press, 1948); *Eight Interludes*, trans. and ed. Dawn Smith (London: Orion, 1996).

[223] For recent scholarship on *El juez de los divorcios*, see Carrión, *Staging Marriage in Early Modern Spain: Conjugal Doctrine in Lope, Cervantes, and Calderón* (Lewisburg: Bucknell University Press, 2011), 55-70.

the judge. Even one litigant's attempt to list her husband's 400 faults could not convince the court of a divorce.

The brief production brings us four divorce cases, featuring seven litigants and the court officials, all of whom we have seen involved in the trials from early colonial Lima. The cast of characters in early modern divorcio cases, however, was much larger. While *El juez de los divorcios* relies solely on the back-and-forth of the disgruntled spouses and court officials, divorce proceedings in the Spanish Empire frequently included witness testimony, broadening and (perhaps) clarifying stories of these troubled marriages and permitting the voicing of public opinion on appropriate marital conduct. And though Cervantes left out such voices, this chapter places these historical actors center stage.

In the following pages, I take a closer look at who these witnesses were and what role they played in these cases and in the negotiation of marital norms and conduct. Through their testimonies, we find that marital conflict was not kept within the confines of the home. The community members that appear as witnesses knew about many of the troubles plaguing these marriages. From infidelity to domestic violence, from drunkenness to gambling habits, flaws that caused friction in the home were often well-known to at least a portion of the community.

This logically leads us to question the extent of "private life" in colonial Latin America. The public-private dichotomy has received abundant attention from historians, philosophers, and anthropologists, though in recent years more scholars have urged a critical approach to the extent and pervasiveness of such divisions.[224] In joining this conversation, I

[224] For scholarship on Lima, see for example, María Emma Mannirelli, *Pecados Publicos*; For broader perspectives see Leonor Davidoff, *Worlds Between: Historical Perspectives on Gender and Class* (New York: Routledge, 1995), and Jurgen Habermas, *The Structural Transformation of the Public Sphere: An inquiry into a Category of Bourgeois Society,* trans. by Thomas Burger (Cambridge, MA: MIT Press, 1992). Twinam, *Public*

move away from conceptualizations of "public" that focus exclusively on its political and institutional manifestations. In particular, the gendered division of this divide—public men, private women—has shown to have numerous exceptions, especially within the Hispanic world. Instead, I define this divide as that which is intimate and insulated versus the communal and social. The domestic realm, for many scholars, was the private realm. In her study of late colonial and early republican Mexico, Deborah Kanter argues that "Mexicans idealized the house…as a protected space where patriarchs ruled, thus limiting relationships that went beyond their door, especially for women."[225] The walls themselves served as the *a priori* dividing line of what was public and private. Whereas Kanter looks to the architectural character of the colonial world for this distinction, Ann Twinam approaches the private-public spectrum from a relational perspective. She argues that "Although the Hispanic version of private and public included components of gender and geography, it was sociology—family, kinship, friendship—that set the decisive parameters." Furthermore she contends that "colonial elites divided their private and public worlds by degrees of intimacy," with family, kin, and intimate friends constituting the private world, and everyone else making up the public realm.[226] Both interpretations speak to inclinations of the colonial Spanish Empire's private-public divide but do not fully reflect the realities of sixteenth- and seventeenth-century Lima.

Lives, Private Secrets: *Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 1999), 26-32, provides a preliminary discussion of the utility of these more general studies for colonial Latin American history. See also, Merry E. Weisner-Hanks, *Women and Gender in Early Modern Europe* 2nd ed. (Cambridge: Cambridge University Press, 2000), 290-292.

[225] Kanter, Deoborah. *Hijos del Pueblo: Gender, Family, and Community in Rural Mexico, 1730-1850* (Austin: University of Texas Press, 2009), 52.

[226] Twinam, *Public Lives, Private Secrets*, 28.

In the first case, the home as a truly private space did not exist for many in Lima. Residential structures were small and crammed together. In these buildings, simple mud or stone walls could not serve as barriers to shouting voices, even if they marked the borders of authority and power. Similarly, the comings and goings of neighbors, even at night, rarely went unnoticed. Secondly, lines of privacy could not be drawn around one's kin (fictive or not) due to the living accommodations related above. A neighbor knew about a woman's abusive husband as the abuse happened, and thus before the non-resident family members, if those relatives were told at all. My point here is not to disprove Kanter and Twinam's contentions that intimacy and relationships were affected by the walls of the home and/or kin relations, respectively; these factors certainly affected daily life in the capital. But the private-public divide was even more complicated. Lima's geographic and demographic character limited the impact of these characteristics and created a more communal "private life" than is often acknowledged.

To be clear, this knowledge wielded by the community appeared most potent within the legal system. Within the testimonies recounted here, there is hardly a mention of witnesses taking extralegal action. Many of them admit to observing the most gruesome and severe forms of domestic violence without intervening physically to stop or lessen the harm. These witnesses saw husbands cavorting with mistresses, but efforts to stop such liaisons go unmentioned, if they existed at all. It seems that in the houses, *tiendas*, streets, and churches, the power of a husband often went unchallenged, even as he abused and manipulated this power. But within the courts, witnesses wielded this information with great force. Neighbors called out inappropriate action and condemned husbands according to their standards of loving and acceptable treatment. The testimonies of all witnesses normally focused on two

separate but related themes: the relating of events and the judging of the character and actions of the parties. In doing so, witnesses helped to solidify exactly what treatment was and was not acceptable. In the following pages, I will present a few of the testimonies themselves, which gives a sampling of how these witnesses conceived of "marital masculinity." I will also demonstrate the extent to which the community was involved in policing marital matters and expand on how this influenced the courts. When witnesses testified, they demonstrated their knowledge of illicit activity of spouses. Making such actions "*público y notorio*," the phrase used within the documents themselves, pushed the court into action, bound by its own commitment to "*justicia*" based on social peace.[227] Transgressions committed in private were bad enough, but when such transgressions were public, they threatened social stability more broadly.

This chapter draws on a new methodology for legal sources put forth by Bianca Premo. In her comparative study on women in early modern Spanish courts, she seeks "to focus on the literal *context*—or praxis accompanying the text—of the initiation of a suit, rather than only on the legitimating narrative that the suit contains."[228] Within this novel approach, she concentrates "less on what women's opening petitions *said*, and more on what they *did*."[229] But just as Premo has noted historians' inclination to use women's legal petitions as windows into the everyday life, so too have scholars found witness testimonies to be most useful for what they say about life outside the court, well before their experiences (or memories, or stories) were put to paper. This is an understandable approach, as the accounts

[227] For a discussion of justicia in the Spanish Empire, see Herzog, *Upholding Justice*.

[228] Premo, "Before the Law," 263

[229] Premo, "Before the Law," 288.

from witnesses often bring to life, in great detail, a past world. These events and the commentaries about them hardly can be found anywhere else in the archive. Such approaches have led to important revelations about colonial society.[230] This chapter will give ample space to what witnesses *said*—mainly for what their statements have to say about their knowledge of matrimonial matters—but I place an emphasis on what these testimonies *did*. Witnesses' appearance before the judge provided a check on husbands; these community members served in some ways as the overseers of marriage by policing marital conduct. When brought before the court, they recounted their observations and added their own assessments and judgments of this conduct; in a sense they were both communal and legal representatives.

This chapter also gives new attention to the identities of witnesses. As the witness logs will illustrate, there existed no social or racial limitations on who could testify. And indeed, testimonies by Limeños from the highest and lowest ends of the city's hierarchy, those of African descent including slaves and elite dons serving in colonial administrative roles, appear side by side. This diversity is important for how it demonstrates the ability for subaltern groups to gain a voice in ecclesiastical justice and negotiations of marital masculinity. Despite their lack of social capital, these figures served integral roles in the policing of patriarchal authority and marital norms.

Here I argue that by the very act of giving testimonies in the ecclesiastical courts witnesses challenged the manhood of husbands. This chapter shows how peoples of varying degrees of social and racial status helped to define marital masculinity and judged husbands

[230] See, for example, the contributions in Johnson and Lypsett-Rivera, *Faces of Honor*.

based on these criteria. Within the colonial systems, namely the ecclesiastical court, the community played an important role in mediating masculinity and marital norms.

Witnessing in Spanish Courts

Though witnesses were not a necessary component of the legal process, many litigants found them helpful in strengthening their cases. There were occasionally cases that followed Cervantes' model in which only spouses themselves (and their lawyers) presented cases to the court, but nearly all litigation that lasted longer than a few days included at least one or two witnesses.[231] Standard protocol dictated that the litigant request permission from the court to call witnesses in order to "present other information."[232] This request seems to have been but a formality, because not once in the cases under study did the *provisor* refuse to hear witnesses. After the request, litigants often (but not always) drew up a set of questions (*interrogatorio)* to ask of each witness, which might also be accompanied by an affidavit to the court naming the *testigos* they planned to call. In many cases this list of inquiries has survived in the record. These questions were then submitted to the court, where they could be copied and supplied to the opposing party.[233]

The first questions would normally establish that the witness knew the couple, knew they were married, and were aware of the court proceedings in progress. The answer to these initial questions almost always addressed the length of time the *testigo* knew the couple and,

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[231] Examples of these shorter witness-less cases can be seen in AAL D 4.1 and D 4.1-A.

[232] However, this request is not always included in the record.

[233] For the most thorough discussion of the intricacies of legal practice in the Spanish world, see Premo, *Enlightenment on Trial: Colonialism and Ordinary Litigants in the Spanish Empire* (forthcoming), used with the author's permission.

less often, how they knew the couple. The subsequent questions—that could range from a couple to more than ten—would inquire about the witnesses' knowledge of specific events, as well their general impression of the character of one or both of the spouses. The elaborate list of questions, however, only served as a guide for those testifying. It was not uncommon for witnesses to answer only those questions which seemed most important to them or which they could answer with great certainty. Take for example, María Balbe, a free mulatta, who testified at the divorce hearing between Miguel de Sereseda and doña Graviela Hordoñez. The record of her testimony included responses only to questions 1, 6, and 9 from the interrogatorio. She noted in her answers the question to which she was responding, "to the first question I say..." with no acknowledgement as to why she disregarded the others.[234]

What might be referred to in modern courts as the "leading" of witnesses was quite common within the interrogatorio. Questions were posed in such a way that witnesses had to accept the premise presented by the litigant. Let us take as an example the questions found in the divorcio case of Ana de Barrio Nuevo and her husband Alonso Ruiz in the summer of 1616. As the initiator of this case, Ana had leveled charges of extreme physical and verbal abuse at Alonso and had also accused him of *amancebamiento* (concubinage). Several weeks into the case, Ana called witnesses to help affirm these accusations against her husband. Her first question, as was standard, asked of their "knowledge of the parties and the notice of this case."[235] In her second question, she set out to assert the violent image of her husband that she had attempted to establish in her initial demanda: "If they know that the aforementioned

[234] AAL, D 3.10, fols. 96v-97v.

[235] AAL, D 7.7, 1616.

Alonso Ruiz is man of *bad condition* and one that mistreats his aforementioned wife."[236] Additionally, in this rambling question (a single "question" could continue for more than half a page), she explained in detail an incident in which her husband attempted to kill her with his knife, asking the witness to also verify this horrendous episode. The argument and details were laid out in the question. The witness, rather than present information, was merely called to confirm Ana's version of events. Her next question took the extramarital affair of her husband as the subject. She asked the witnesses "If it is true that he, the aforementioned, is in a state of public concubinage with Catalina de Caceres in this city, eating and drinking at the same table, sleeping in the same bed, and doing all other acts of public concubinage."[237] With her penultimate question, Ana turned the attention to herself, setting up a distinct contrast between the couple. In establishing her own honor, witnesses were asked "If they know that the aforementioned Ana de Barrio Nueva is a virtuous woman of good life and habits that remained faithful to her aforementioned husband."[238]

Ana's questions to the witnesses, like many others found in the ecclesiastical transcripts, present information that she expected the witnesses to affirm. These inquiries seem less about what was true, and more about the witnesses' knowledge of these truths, as already put forward by the litigants. As stated above, litigants could call an array of

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[236] AAL, D 7.7, 1616, "si saben q el dho Alonso Ruis es hombre mala condicionado y que trata mala dha su muger"

[237] Ibid. "si es verdad q el suso dho esta amancebado publicamente con Catalina de Caceres en esta ciudad comiendo y bebiendo en una mesa dormiendo en una cama y haciendo todos lo demas actos de publico amancebado." The elaboration of the infidelity to "eating at the same table" served two purposes. First, this mimicking the married life mocked the familial structures foundational to society. Secondly, these non-intimate actions pointed to the public nature of the affair. As stated at the beginning of this chapter, the public act made the offense all the more illicit and condemned by the court.

[238] Ibid. "si saven q la dha Ana de Barrio Nuevo es muger virtuosa de buena vida y costumbres que guarda llaltad al dho su marido."

witnesses. From these records, it seems quite clear, and not at all shocking, that litigants chose those who could most persuasively sway the judge in their favor. Likewise, their line of questioning sought to elicit a very distinct version of the truth that coincided with their previous statements to the courts. We should not be surprised that the witnesses almost always affirmed the assumptions put forth in the questioning, at the very least, and at times elaborated with additional information that likely made for an even more persuasive argument. Such patterns also speak to why witnesses were such a vital part of litigation.

When an interrogatorio was not used, witnesses normally gave similar information. Following standard legal procedure, they would identify themselves, and usually their connection/relationship to the couple. Their testimonies would describe various episodes they deemed relevant to the proceedings; these most often included accounts of verbal and physical fights, lack of provision, or knowledge of an extramarital affair. They also commented on the character of the two parties. Referring to a husband as a "bad man" was not uncommon, nor was referring to women as "virtuous" or "honest." With or without the list of questions, witnesses spoke their truths to the court. The contents of these testimonies begin to illuminate the extent to which husbands, as patriarchs, were challenged by colonial society.

A Diversity of *Testigos*

Choosing witnesses was an important step in the legal proceeding. At times the witness testimony accounted for more of the trial record than the combined affidavits submitted by the litigants, giving the observers of these conflicts a louder (or at least more frequent) voice than the parties themselves. The full spectrum of colonial society can be found in the witness

logs: from Spanish dons to enslaved *negras*. Shop owners and poor migrant workers might both serve as character witnesses. This diversity is important as it illustrates the communal aspect of law and justice in the Spanish Empire and the "public" nature of marriage and marital conflict.

In essence, two themes dominate the testimonies of witnesses: recounting events and judging actions. And who better than the clergy to pass judgment on matters of marriage and morality? After all it was these religious men who posted banns, joined couples in the sacrament of marriage, and at times brought *ex officio* cases of bigamy and other marital crimes.[239] Within the ecclesiastical court, we find several church officials, the supposed moral arbiters and most trustworthy men in society, being called to testify in divorcio trials. Their testimonies touch on the intermediate position of priests along a legal continuum. Bianca Premo has described the way that parish priests served as an early point of accountability as women would denounce men to the local clergy in hopes of some sort of intervention. Such attempts at involving the Church fathers, she contends, fall short of what might be considered "official" or "legal" action. Premo argues, however, that reaching out to priests was part of the range of options available to and used by women, alongside written demandas for divorce.[240] In her discussion, she builds on the concept of *infrajusticialidad* of Tomás Mantecón, who noted that community accountability in early modern Cantabria did not fit neatly into the legal/extralegal binary.[241] Premo too found instances of women

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[239] Boyer, *Lives of the Bigamists.*

[240] Premo, "Before the Law."

[241] Tomás Antonio Mantecón Movellán, *Conflictividad y disciplinamiento social en la Cantabria rural del antiguo régimen* (Santander: Universidad de Cantabria, Fundación Marcelino Botín, 1997); and "El peso de la infrajusticialidad en el control del crimen durante la Edad Moderna," *Estudis* 28 (2002): 43–75.

reaching out to local priests for redress as part of an attempt to resolve issues in communal ways. In this way, keeping local clergy apprised of marital conflict served as potential immediate accountability as well as part of a larger process that could lead to lawsuits. And indeed, the informal role of priests does appear at times in the marital trials of Lima. However, priests also occasionally engaged in the formal process through their testimonies.

We find various clergy testifying in these cases. In the divorce proceeding brought by doña Isabel de Montoya against her husband Pedro Alonso de Barios, a *bachiller presbítero* (university-educated priest) was called to testify about the troubled marriage.[242] In 1623 a *clérigo presbítero* (diocesan priest) served as a key witness in the divorce case between doña Isabel Belvis[?] and Diego de Medina.[243] An ecclesiastical judge, obviously not the one adjudicating the case, testified in the trial initiated by Elena Garcia discussed in greater depth later in this chapter. In 1609 Padre Amon de Rivera, a *presbítero* (priest) and *cura* (curate) in the mission school of Cheta, testified in the divorce proceeding between María de Esquivel and Alonso Ortiz de la Puente. Within his statement, he testified that he had witnessed Alonso physically and verbally abusing his wife. What is interesting is that the father provides no account that he intervened to stop it.[244] As a member of the clergy, he certainly had the moral standing to judge the actions of Alonso as unjust, and act on that conclusion.

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[242] AAL, D 8.3. In this and several other instances, I will use the concise English definition of colonial titles and terms found in Ophelia Marquez and Lillian Ramos Navarro Wold, eds., *Compilation of Colonial Spanish Terms and Document Related Phrases* (Midway City, CA: SHHAR, 1998). When necessary, I will provide a more thorough discussion and explanation of linguistic equivalents (or the lack thereof).

[243] AAL, D 9.SE, 1611-23.

[244] AAL, D 4.2, fol. 13r-14v.

Yet, he chose to hold his opinions for the courtroom.[245] Despite his position of authority, the ecclesiastical court, not the home or the street, was the venue for his judgment.

While it seems that those church leaders would be the most authoritative of witnesses—their testimonies being trustworthy and their implied or spoken moral judgments presumably unimpeachable—these religious figures did not monopolize the witness lists in marital cases. Instead, "ordinary" community members filled folio after folio answering questions for the ecclesiastical judges. Business partners, co-workers, and even perfect strangers were called to testify. In the divorce case brought by Isabel Franca against her husband, Sebastian de Talabe in 1618, a stranger with apparently no connection to the couple testified about a fight between the two that he witnessed at the festival of Our Lady of Santa Ana.[246] Though several other witnesses with closer connections to the couple were also presented, this "outsider" opinion also mattered.

Given the importance of kinship in the early modern Spanish Empire, we might expect family members to be the most informed about the goings on of a couple. And it is entirely possible that kin did possess extensive knowledge about matrimonial conflicts. However, these close ties presented a problem for colonial jurists. Though the testimonies already discussed might strike the modern reader as lacking any semblance of objectivity, weeding out biases was of great concern in the legal systems of the Spanish Empire, both secular and religious. The familial relationship gave opposing litigants reason to question the

[245] For other examples of clerical testimony, see AAL, D 3.7, 3.10, 5.2, 7.11, 7.3, 9.SE (Dona Ysabel Belvis y Diego de Medina).

[246] AAL, D 8.1.

reliability of the witness and their subsequent testimony. Likely for this reason, parents, siblings, cousins, and others appear with infrequency before the colonial court.

Despite inherent limitations of familial testimony, occasionally family members would be called to testify. In 1617 while appealing for divorce, doña Florencia [last name illegible] called her cousin as the only witness in the case.[247] In the divorce proceedings between doña Ana María de Guzman and her husband Capitan don Juan de Barrios, Ana María's sister was called as a witness. But rather than appearing as part of the gathering of information, her testimony related largely to the fact that her residence served as the *casa honrada* to house Ana María early in the case.[248] There was also the case between Isabel Muñoz and Juan Gonzalez in 1616. Here Juan actually called Isabel's father to testify. Because the family member was called by the opposition, the judge permitted the testimony to be admitted. But again, these family testimonies were the exception, not the rule.[249]

As we know from the last chapter, family members could make their presence felt in marital conflicts in other ways. Mothers at times provided shelter for their married daughters fleeing from domestic abuse. We also see how brothers could, at times, represent litigants within marital litigation. But this representation was rare, even more so than the appearance of family members as witnesses. This reinforces some of the theological tenets of marriage that envisioned the creation of a new family, and some semblance of the severing of ties with the old family. Obviously, in practice, such relationships did not end; in some cases they perhaps grew stronger. But within the process of ecclesiastical litigation, these familial

[247] AAL, D 7.10.

[248] AAL, D 7.12.

[249] This does not mean that the family had little impact on these conflicts, as chapter 2 makes clear.

voices were subdued or silenced altogether. This silence, in turn, provided an opening for other voices to be heard.

Though kin-networks brought people of the city together, so too did daily economic transactions. Indeed, the role of business in creating a community is clear in witness representation and testimony from these cases. Take for example, the case in which Mariana de Zerralba appealed for a divorce from her husband, Juan Gomez Escudero. At one point, the trial centered on Juan's abuse of his wife during a trip to the local pharmacy. Luis de Rivera, *natural de Quito* (native of Quito), was called to testify about the event. In responding to the interrogatorio's first question—how do you know the involved parties—he answered, "I know them because I was at the pharmacy of Justo Chavez where the aforementioned Juan Gomez was."[250] Luis had no intimate details about the parties, and it is entirely possible he did not even know their names before the trial. But his trip to the pharmacy made him a bystander and witness to the marital conflict. Though he could not speak to the character of the spouses or their relationship, he could and did bear witness to the scene at the pharmacy.

Those engaged in business together also created a community that litigants could draw on for assistance in these marital trials. In June of 1610, Juana Faxardo requested a divorce from her husband, Joseph Vernal. Of the seven witnesses called, four worked in some branch of the silversmith industry. Francisco Frasquin was a tin-plate maker, Pedro de Godoy, Pedro Garnica, and Francisco de Aguilar were all silversmiths. In this case, the silver industry created a community that would police marital matters. This case also turns our

[250] AAL, D 4.6, fol. 50. "los conoce porque estuvo en la botica de Justo Chavez donde está el dicho Juan Gomez."

attention to another important social dynamic in the colonial world, the *penninsular-criollo* divide. For the sixteenth-century, Lockhart has argued that Castilian communities more or less transplanted themselves unexpurgated within the colonies, creating mini-communes of Sevillanos or Cuencanos.[251] Though by 1600 the walls around these exclusive communities began to fall, community formation based on ties to Iberia—or at least claims to connection to the motherland—remained. With the exception of one witness, all the others in this case claimed to be European immigrants to the colonies. One witness was from Milan, with the others hailing from cities in Spain,[252] including Toledo, Seville, Cija, and Madrid. This case, though admittedly only one anecdotal representation, illustrates a broadening of the immigrant communities described by Lockhart. Even if Spanish regional identification ceased to be a driving factor in community formation in the colonies, Spanish birthplace remained a means to establish networks. And indeed from later studies, we know that among the elite political culture, peninsular identity remained an important, divisive marker. Only one of the witnesses in this case, doña María de la Torre, claimed to be a *criolla* (and even this claim itself nods back to Europe). As mentioned in the introduction, those whose appearance and performance of honor made them respectable before the courts, without the defects of Indian or African blood (even if they were indeed of partial indigenous decent), often neglected to identify their heritage or birthplace. Because they were tainted with moral hindrances of the lower racial order, they need not classify themselves. Doña María appears to be trying to invoke her Spanish heritage. These communities built on sameness obviously

[251] James Lockhart, *Spanish Peru, 1532-1560: A Social History*, 2nd ed. (Madison: University of Wisconsin Press, 1994).

[252] By this point, litigants were referring to the "kingdom of España."

played a role in court cases, but as we will see, Lima's social and geographical landscape brought a more comprehensive choir of voices into marital litigation.

Neighbors/Housemates

Proximity of residence proved to be an important factor when choosing witnesses. Those that lived near or with the litigants were the overwhelming majority of witnesses. Sometimes these were folks that lived in the same neighborhood, on the same street, "in the same house," or were actually part of the household of the litigants (i.e., slaves and servants). Whereas scholars have pointed to the *mercado* (market) and *plaza mayor* (central square) as primary sites of community news and gossip, the *casa* (which at this time often signified a multi-family structure, and not necessarily the single family home) proved to be the point of contact in Limeño marital news.[253] In most cases, it is what happened within the home that was important to the court. And in the crammed metropolis of Lima, the home lacked intimacy and privacy. Instead the matters of the couple became the information of many.

As mentioned in the introduction, Lima was a colonial urban environment. After his arrival, Francisco Pizarro set out to construct a European- (even Baroque) style city. Orderly streets at perpendicular intersections gave the city its shape. His plans focused, not surprisingly, around the cathedral and the royal buildings in the center of the city, in addition to spaces for the *cabildo* (municipal government office) and the jail. Alejandra Osorio has explained that the city center, by way of colonial processions, served as "a historical

[253] On the role of the plaza in the early modern Spanish empire see Tom Cummins and Joanne Rappaport, "The Reconfiguration of Sacred and Civic Space: Architecture, Image, and Writing in the Colonial Northern Andes" *Latin American Literary Review* 26, no. 52 (1998): esp. 176. For works on the market as a social hub, see Mangan, *Trading Roles* and "A Market of Identities: Women, Trade and Ethnic Identities in Colonial Potosí" in *Imperial Subjects: Race and Identity in Colonial Latin America*, ed. Andrew Fisher and Matthew O'Hara (Durham: Duke University Press, 2009).

genealogy of colonial rule embroidered into a narrative of power."[254] Indeed, the very layout of the city privileged and pointed to manifestations of colonial power. Yet, moving outward from the plaza, these architectural modes of power began to lose their potency. Beyond the city center lay the living spaces for the rapidly expanding and diverse Limeño population. The bulk of the residences were *callejones*, which can be described as corridors with single-room living spaces surrounding a common patio.[255] Each room housed an entire family making living quarters cramped and neighborhood communities spatially close together. Beyond the single-family residential room, were rooms inhabited by other families. These structures could house more than a dozen families, meaning anywhere from 50 to 100 people would be living in close quarters.[256] This spatial element is key when seeking out the intricacies of intimacy and domestic matters in colonial Lima. This urban living meant the community had intimate knowledge of one another's coming and going. In marital trials, this knowledge was often invoked to challenge husbands through testimonies about their abuse and other failures to live up to marital masculinity. The transcripts from Lima demonstrate ways in which the home could be a protected space, but these cases also illustrate that relationships could not be bound by doors or walls, especially for women. Furthermore, these relationships could ultimately serve to challenge the authority of patriarchs (i.e., husbands) whose wives initiated court proceedings. The design of the city resulted in extremely compact living spaces around the *callejones* and in other multi-room buildings. As noted above, this spatial organization blurred traditional borders of public and private space.

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[254] Alejandra Osorio, "The King in Lima," *Hispanic American Historical Review* 84, no. 3 (2004): 453.

[255] Osorio, "The King in Lima," 456.

[256] Ibid.

Witnesses living in these multi-family structures testified that they "lived in the same house," but putting a name to this relationship has proved difficult. I have opted to refer to these figures as either neighbors and housemates, though neither term fully depicts the intricacies of the living situation and the social ties. These figures maintained their own living space to some degree, but they likewise acknowledged the communal aspect of their housing. Their frequent appearance in these documents should not be altogether shocking. After all, in addition to shopping at the same *tiendas* (shops) and *mercados* (markets), they shared walls and slept mere feet from one another. The patios were also shared spaces where residents interacted on a daily basis. Their constant contact meant that they possessed personal, sometimes intimate, knowledge of one another's problems and issues, sometimes matters as private as impotency.[257] As the frontline of the community, these people were called to share these private and often damning revelations before the ecclesiastical tribunal. As Alejandra Osorio has noted, such residential areas "turn[ed] private lives into public knowledge."[258]

Within the courts, this public knowledge became legal evidence, as evidenced in the divorce proceeding between Catalina Diaz and Antonio de Torrero. Catalina, like the wives mentioned in chapter 1**,** criticized Antonio on two separate, but related, fronts: his domestic violence and his failure as the family provider. She began by addressing his mistreatments, stating that he "had treated me badly, both in deed and in word."[259] Recounting these abuses

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[257] For more on the transmission of communal knowledge of impotency in Spain, see Behrend-Martínez, *Unfit for Marriage*.

[258] Osorio, "The King in Lima," 456.

[259] AAL, D 8.9, 1619, fol. 1-1R: "me atratado mal a le obra y de palabra."

she noted that she had given him no reason or cause.[260] Further expanding on Antonio's violent acts, Catalina described occasions when "he laid his hands on me" and other times when he resorted to weapons, namely his sword.[261] The worst, according to her, were the times when he drew his sword with the sole intention of killing her. Given his actions and his uncontrollable temper, Catalina insisted that there was "a great risk to my life." All told, Catalina spent nearly half of her demanda criticizing Antonio's treatment of her.

In addition to the physical abuses, Catalina also criticized Antonio's other husbandly failures. "Since the beginning of the marriage," she told the court, "he has not supported me, clothed me, or fed me."[262] Her language here highlights the clear expectations of a husband to provide clothing, food and other sustenance for his wife. In this instance, Antonio had failed on all counts. Such a situation left Catalina to fend for herself. This all had taken place over the four years the couple had been married. Filling in the blanks, this meant that Catalina had served as her own provider for this time. Her patience, toleration, and endurance of Antonio's failures had finally been exhausted, leading her to the courts. But Catalina was not left to plead her case alone, nor was she the only one to focus on Antonio's husbandly failures. She called witnesses to present testimonies to the court on her behalf, while Antonio left his fate in the hands of the judge. The first three testigos in the court records were all soldiers residing in Lima and all of them corroborated the characterization of Antonio found in Catalina's demanda, even in the absence of an interrogatorio to guide their testimony.

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[260] AAL, D 8.9, 1619, fol. 1-1R.

[261] AAL, D 8.9, 1619, fol. 1-1R: "me a puesto las manos."

[262] AAL, D 8.9, fol. 1R. "desde que se le otorgo el dicho matrimonio no me sustentado alimentado ni vestido"

Submitting his testimony first was Juan de Valdes, simply identified as a *soldado* (soldier). He said that he interacted and spoke regularly with the couple, due in large part to the fact that he lived in a chamber of the "casa" where the couple resided. Twice in his testimony Juan contended that Antonio mistreated Catalina "in deed and in word."[263] In detailing the mistreatments, Juan told the court about Antonio's use of a sword against his wife. He ultimately concluded that "Antonio is a man of poor judgment and has no appreciation for matters of importance."[264]

Continuing in his critical testimony, Juan proceeded to attack Antonio's role as the provider of his family. He testified that Catalina never received the proper necessities for survival from her husband, and instead "she was left in poverty."[265] Through his testimony, Juan undercut Antonio's masculinity on two fronts. First, the physical and verbal abuses were inappropriate and showed "poor judgment." The abuses presented Antonio as a man without restraint, and a husband who could not or would not treat his wife *as* a wife. Second, he failed as the familial provider. As the "overseer" of the family, he was charged with being the protector and provider; whether because of laziness, a spendthrift nature, or other mitigating factors, he was failing in this essential act.

Two other soldiers also testified and corroborated much of what Juan had noted, but provided further detail. Juan Ruiz, an *artillero del galeón* (naval artilleryman), recounted a story exemplifying Antonio's violent uncontrollable temper. One day Juan Ruiz heard Antonio screaming and yelling at Catalina. He was in such a rage that the words of his

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[263] AAL, D 8.9, fol. 5. "de obras de palabra."

[264] AAL, D 8.9. "Antonio un hombre de poco juizio y que no tiene aprecio de las cosas de ynportancia."

[265] AAL, D 8.9. "lleva la probreza."

outburst were incomprehensible to those around. Antonio's feelings boiled over as he reached for his sword and pulled it from its sheath. The soldiers and other neighbors came rushing when they heard the commotion, which suggests just how loud and out of control Antonio had been. By the time that they had arrived to see the disturbance, Antonio stopped his attempted assault but left his wife hurt and distressed. Juan Ruiz claimed vehemently that Antonio's "deeds and actions appeared to go beyond what is just."[266] He also believed Antonio would likely pursue his cruel intentions again. The other soldiers echoed similar notions emphasizing that Antonio's actions were cruel and unjust.

Other witnesses repeated the same accusations as the soldiers. A *vecino* (citizen) of Lima who had known the couple for three years corroborated the story of the attack. He also criticized Antonio's failure to provide for his wife. Isabel, a former housemate, was also brought before the court. She affirmed much of what had already been presented. She said that not once did Antonio bring home food, clothing, or anything of sustenance for Catalina. In doing so, she highlighted the wholesale failure of the family provider. In addition to his cruelty in "word and deed," Isabel specifically singled out a time when Antonio went after Catalina with a sword.[267]

This case presents quite possibly the most striking example of the approach of community members to domestic violence and other marital issues. Throughout the case we find no evidence or suggestion that any of the witnesses to the brutality made attempts to stop the violence against Catalina, even though their testimonies make certain that they did not condone the treatment. In fact, they provided quite damning assessments of his actions and

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[266] AAL, D 8.9, 6-7. "obras y acciones parecia estar fuera de su juicio."

[267] AAL, D 8.9, 7-8.

his character. Yet, this did not spring them into action. Even the soldiers, the supposedly fearless defenders of the empire, chose not to intervene physically, though surely the three of them could have made their presence felt by Antonio. Instead, they all appear to hold their actions for the courts. Their rush to the scene could very well have been intentional, as a way to demonstrate their surveillance and judgment with plans to share their observations at a later court date.[268] And this trend is pervasive in the litigation from colonial Lima. Priests, soldiers, and shop owners, to name a few, witnessed (or at the very least, claimed to witness) brutal assaults bordering at times on murder among other illicit behaviors but apparently made no attempt to act to stop such deeds. This trend, I argue, speaks to the endurance of the patriarchal model. Within the confines of his marriage, which started at his home and extended throughout the city, the husband was in many ways protected from intervention. Before the ecclesiastical court, or the Church itself, the husband lost the shield that prevented assaults on his manhood and an interruption to his authority.

With the judge's ear, the witnesses all recounted the treacherous behavior of Antonio and likewise commented on the unmanly nature of his actions. They focused on two of the most prominent shortcomings of marital masculinity already noted in chapter 1: failure of family provision and physical and verbal abuse. These housemates had heard the verbal abuse and seen the physical violence meted out by Antonio. These witnesses also noted the lack of provisions brought home by Antonio. In their testimonies, he had failed miserably as the provider of the family.

Within the close living quarters these housemates provided a picture of the couple's troubled marriage. But rather than let the judge draw conclusions about what they witnessed,

[268] It is also possible they hoped their presence alone might intimidate Antonio into stopping his abuse.

these witnesses included their assessment of the appropriateness of Antonio's actions. For these housemates, the abusive husband was a man of poor judgment, his actions went beyond what was *just*, and he did not appreciate important things. Time and again he was noted as cruel and unjust. These condemnations show a clear picture of what a husband should be and document Antonio's shortcomings. Though they did not intervene during the abuse, their views on an appropriate married life come through in their testimonies. These statements reveal their consensus on marital masculinity, and their willingness to criticize those that fall short of the expectation.

Servants and Slaves[269]

"Neighbors" in colonial society comprised a cosmopolitan group, much like the rest of the city. The utopian segregation idealized by early colonists and the crown failed to materialize throughout much of Spanish America. In his seminal *The Limits of Racial Domination*, Douglas Cope depicts a Mexico City devoid of racial segregation in terms of residence. Instead, Africans, Indians, and Spaniards lived quite literally on top of one another, with rich Spaniards occupying *casas altas* above the rooms of African, and Indian residents, providing one of many examples of the failure of an all-encompassing casta system.[270] Imperial attempts in Lima to keep Spaniards separate from the rest of colonial society likewise failed. Ecclesiastical court records provide numerous examples of the intermingled living of the

[269] My sincere thanks go to E. Gabriel Bustamante Tupayachi who provided much needed assistance in compiling portions of the data for this section.

[270] R. Douglas Cope, *Limits of Racial Domination*, 30-32.

city's diverse population. Slaves, free blacks, indigenous, and mixed-race people resided alongside, and therefore interacted with, Lima's Spanish and Spanish-descent population.[271]

Urban slaves were far more likely to have lived with their masters, rather than in slave quarters, which would have been the norm in the haciendas of rural Latin America or the *engenhos* of Brazil.[272] Even those that did not reside with their masters were likely to live in the city, unsegregated from free Limeños. In addition to housing, the very nature of work by urban slaves placed them in more consistent, close contact with the free population. Many women acted as domestic servants, cooking and taking care of the children of their masters. Male slaves could be artisans or day laborers who contracted work throughout the city for their owner's profit, and sometimes their own. This same work was common to the free population of *negros*, *mulatos*, and others of African descent. They interacted daily in the social and cultural world of Lima. This interaction, in some instances, revealed to them the goings on of the vida maridable of the Spanish populations, who constitute the overwhelming majority of divorcio cases.

To be clear, the Black population (enslaved or free) suffered numerous restraints on their freedom. But these restraints did not extend completely into the legal system. Slaves had, in theory, unfettered access to the ecclesiastical legal system. Slaves could and did bring legal suits against their masters and other slaves, with varying degrees of success.[273] Though

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[271] The Spanish population I refer to here also includes a number of mestizos who "passed" as, or were considered to be, Spaniards.

[272] Phillips, *Slavery from Roman Times to the Early Transatlantic Trade*, 198.

[273] Wisnoski, "'It is unjust for the law of marriage to be broken by the law of slavery'"; Bennett, *Africans in Colonial Mexico*.

free Africans and *mulatos* did not incur all of the same prohibitions, they too faced legal restrictions because of their race. However they also initiated court proceedings. Beyond acting as litigants, all people of African descent were also permitted to testify in the ecclesiastical courts, and we find them in droves in the marital cases examined for this study.

The sheer number of people of African descent that appear in the transcripts depicts the diversity of cosmopolitan Lima.[274] In a sample of 37 cases from 1594-1618, I found 171 witnesses who submitted testimony to the court.[275] *Negros*, *mulatos*, and other testigos of African descent accounted for 24% (41) of the total witnesses. Of those 41, 25 (15% of the total witnesses) were enslaved. This included slaves testifying against their masters or against other couples with whom they had interactions.[276] *Peninsulares* accounted for 9%, *indios* 4% and self-identified mestizos 1%. The remaining 63% did not identify their racial/ethnic status. What is even more fascinating is that women of the lower racial classifications, mainly those of African descent, account for approximately two-thirds of all non-Spanish witnesses.

While the appearance of African and indigenous witnesses was lower than their representation among the population, such legal activity demonstrates the vast knowledge these slaves and free people of color had about the marriages of the Spaniards in Lima and their importance within the legal process. The importance, or lack thereof, of the status of

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[274] Worth remembering that the black population hovered around 40 to 50% during the first two decades of the seventeenth century. Bowser, *The African Slave*.

[275] The current sample includes all cases in legajos 3-5, when complete records are more consistent and the transcripts more easily deciphered. For the earlier period, I have included 8 other cases (without prejudice for content) to broaden the scope of the sample. The latest case included in the sample is from AAL D 7.1. This unscientific sample is meant to provide a glimpse of the spectrum of witnesses.

[276] Testifying against one's master happened with less frequency. In one case, however, four of the eight witnesses called were slaves of the couple. AAL, D 5.5.

witnesses in Lima differs from what has been argued for Castile during the same period. In his discussion of the chancellería of Valladolid, Kagan notes how "false witnesses" could be used, wherein "drunks and poor beggars" would be brought before the court and paraded as nobles. In such cases, the assertion of high status and reputation was necessary, even if it had to be fabricated.[277] Status in Lima appears to have been less emphasized, at least within marital trials in the ecclesiastical court.

The *calidad* of witnesses, influenced by their race, wealth, and standing in the community to name a few factors, no doubt factored into how their testimony might be received. However, it would be unwise to assume that testimony from the least privileged in colonial society was simply discounted, or even highly suspect. Though judges rarely provide commentary on witnesses that would allow us to evaluate their role in the court, the frequency of testimony by Africans and afro-descendants signals how the court perceived them. By the time witnesses were called in cases, *procuradores* (legal professionals) had been involved and actively assisting their clients. These were lawyers who made their decisions based on years of legal experience and what they had found to be most successful. That lawyers frequently and consistently called persons at the lower ends of the racial order strongly suggests that they served as useful and dependable witnesses. Furthermore, I have yet to find an instance of a judge or litigant protesting the trustworthiness or dependability of witnesses based on race, though such objections were made based on prejudicial relationships.[278] Without existing commentaries on the perception of these witnesses, and in

[277] Kagan, *Lawsuit and Litigants*, 42, where he cites AGS: E, leg. 26, fol. 103. The document is dated 1533 See also AGS: CC, leg. 2725, "Memorial de averiguaciones contra Lic. Diego de Ameçega fiscal de Granada."

[278] See for example, AAL, CCM 1.23.

the absence of judge's responses to their testimonies, we are left to speculate on this apparent shift away from pervasive prejudice based on status at the center of colonial society. It is quite possible that because of the domestic nature of work of the black and indigenous populations, judges overlooked their perceived moral shortcomings giving more weight to the intimate perspectives they were thought to have. I will present a few of the testimonies themselves, which give a sampling of how these witnesses addressed "marital masculinity." Through their words, we can see how free and enslaved Africans not only provided accounts of domestic disputes, but also how they passed judgment on these men before the court.

Let us begin with the case of Elvira de Toro and her husband Francisco Hernandez. Elvira had accused him of frequent and near-fatal physical abuse, and sought a permanent separation to protect her life. To corroborate her characterizations of Francisco, Elvira called eleven witnesses, including three slaves and two free mulattos.[279] One of the witnesses, Esperanza Jalofa, was a ladino slave of a local *licenciado*. She did most of [her and] her master's grocery shopping at the *pulpería* of Elvira de Toro. She had been shopping at the store for two years, when early one April morning in 1607 she was confronted with a violent outburst by Francisco. Esperanza noted that upon arriving she saw him brutally assaulting Elvira. Amid the violent episode, she also recalled Francisco shouting at his wife calling her "*puta*" and other inappropriate words. Appalled by what she saw and likely fearing for her life, Esperanza fled the scene.[280] But before leaving, she grabbed a sword from beside the bed, most likely an attempt to prevent Francisco from using it on his wife. This is one of the

[279] AAL, D 3.4, fol. 1.

[280] AAL, D 3.4, fol. 4-5: "esta testigo le solto fue corriendo y tomo su espada que estava junto a la cama de los suso dichos."

boldest acts by witnesses of domestic violence recounted in the pages of divorce transcripts. Though not confronting this abusive husband directly, she went to great lengths to limit his brutality.

She also testified that she "heard it said" that such beatings occurred frequently at the couple's house. This hearsay signified the public scandal caused by his conduct, which, according to both Spanish legal practice and canon law, made the offenses all the more egregious. She concluded from her discussions with the neighbors, combined with what she had witnessed over the years, that Francisco was a "vagabond" and gambler who left his wife often and never provided for the family. Instead, Elvira provided for herself and their four children through her pulpería.[281]

The other witnesses recounted much of what Esperanza presented to the court. Antonio Olivares, *moreno* (free, Peruvian-born African), was across the street when the abuse happened. He testified that he heard screaming and what sounded like a person being beaten. The sounds had his attention and as he looked on to assess the situation, he saw Francisco run out of the house. Antonio described him as out of breath like someone who had just finished a fight, whereas his wife appeared beaten and crying. Similar to Esperanza he noted that rumor had it that Francisco was an "aimless bum" who would leave the city for days at a time and return only to mistreat his wife.[282] According to the testimony, he never

[281] Ibid.

[282] AAL, D 3.4, fol. 4. "anda vagamundo y se va y viene fuera desta ciudad y quando vuelve le da mala vida y haze malos tratamientos a la dicha su muger."

worked and provided nothing for the family. According to Esperanza, Antonio, and the other witnesses, Francisco failed as a husband on multiple fronts.[283]

Let us now turn to another case and the testimony of one María de Villegas, a *mulata libre*, who went into great detail describing the relationship between Ana Colon and Antonio de Arratia. She had known the couple for at least four months, during which time she had lived in the same house. She opened her testimony with some scathing condemnations of Antonio. María focused initially on Antonio's foul language, noting that he "ordinarily" verbally abused Ana calling her "*una puta perra negra*" (a black whore bitch).[284] As the testimony continues, variations on this insult were hurled at Ana during various spats and beatings. These insults stood in stark contrast to María's depiction of Ana, who she claimed was "very virtuous and honest, who loved and cared deeply for her husband."[285]

After establishing the upright character of Ana, María described a beating of Ana at the hands of her husband that left her bedridden and initially unable to speak or feel portions of her body. María and other witnesses even thought that the battered woman might be dead. And that was but one of the incidents recounted. At least three times during a four-month span Antonio had attacked his wife using a number of weapons, including a butcher's knife, and stated on several occasions that he would have to kill Ana. He was never successful, but María's testimony of his brutality depicted a violent man. In closing the testimony, María

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[283] This case ends with Elvira choosing to return to the marriage at the urging of doña Isabel Porras y Marmolejo, an abbess at the Recogimiento de Divorciadas. For more on this relationship and the influence of Isabel de Porras, see van Deusen, 87.

[284] This could have been a compound insult or just the words that he might choose from when verbally abusing his wife.

[285] AAL, D 3.12, fol. 13. "muy virtuossa y onestamente queriendo y amando mucho al dicho su marido."

reiterated her ultimate conclusion: "If they [the couple] remain together... I am certain he will kill his wife out of great hatred and hostility."[286]

The testimony also touched on the provider side of marital masculinity. She argued that Antonio did not provide for his wife, claiming he brought home no food, forcing Ana to go hungry for days at a time. In the final lines of the testimony, María made explicit her own judgment of Antonio. "Antonio de Arratia is a lazy man with a very bad and brutal nature."[287] Through her stories and judgments of Antonio, María systematically criticized his shortcomings as a husband. A similar path was taken by another person of color who presented a testimony on behalf of Ana. Francisca de Villegas, a free *mulata*, also described numerous abuses perpetrated by Antonio which often left María near death. Likewise, she told the court of his verbal abuse and foul language, as well as his inability to provide for his household. Following these stories, Francisca passed judgment on Antonio using similar language to the previous testimony: "Antonio de Arratia has a very bad and brutal nature without cause or prompting."[288] According to witnesses called by his wife, Antonio was a bad man, and more specifically a bad husband.

The judgments leveled here by Esperanza, María, and Francisca criticized the actions and character of these elite men. Specifically these testimonies articulated their shortcomings as husbands. In colonial society, rights and responsibilities went hand in hand. The authority of these husbands was intimately tied to their fulfillment of the expectations of marital masculinity. The failures then resulted in the relinquishing of their patriarchal authority,

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[286] AAL, D 3.12, fol. 13.

[287] Ibid.

[288] Ibid.

against their will. These challenges came from outside normal channels (i.e. from socially marginalized women), but were still possible only within the patriarchal structures of the ecclesiastical authorities.

While the initiating party called the overwhelming majority of witnesses, husbands too drew on community support for their defense. And like the litigants listed above, they did not choose testigos only from the political and social elite. In the case of María Perez and don Diego de Castilla, María called 11 witnesses, seven of whom were Indian or mulatto and one simply identified as a "resident in this city."[289] Diego responded with only one witness of his own, despite the case going on for more than a year and totaling more than 87 folios. The sole witness called by Diego was a free *negro* simply known as Damian in the record. Interestingly, this was no smoking gun witness. While Damian had known Diego for six years, he admitted in the record that he did not know Maria. Damian did provide some limited testimony on the lack of frequent cohabitation by the couple; due to an accusation of impotence this was more a concern for the court than normal. Yet, he provided little else other than to say that he knew Diego to be a "*buen indio*" (good Indian).[290] While certainly complimentary of Diego, the testimony lacked specificity or an assertion of fulfillment of husbandly roles, adding little to Diego's case.

Considering these cases together, we see that neither race, class, nor gender provided a barrier to witness testimony. All sectors of Lima's population helped to voice the public opinion of marital conduct, a vital part of colonial *justicia*. Similarly, non-Spaniards

[289] This case began as a divorcio proceeding, but the court also considered arguments for an annulment based on an impotence accusation against Diego. AAL, D 2.8.

[290] AAL, D 2.8, fol. 62. The testimony responded to an interrogatorio, written presumably only for this witness.

appearing as witnesses felt no need to cower to social superiors, but instead leveled harsh, scathing criticisms. They specifically homed in on matters of marital masculinity, namely avoiding physical violence and verbal insults, providing for the family, and living the married life at home. These men and women lacking in social capital held an effectual place in ecclesiastical litigation. And while recounting some of the intimate details of these married couples, those less esteemed in society were also more than willing to provide their own moral assessments in their testimony. We find that slaves also agreed on matters of marital masculinity and willingly criticized husbands for falling short of these social expectations. Despite their place in the social hierarchy, they were able to help hold husbands accountable for deviant actions.

Conclusion

As cases of marital conflict came before the ecclesiastical tribunals of Lima, the reputation of each side came under scrutiny. Throughout the transcripts each party fought to portray themselves as "good" spouses. Likewise, they often cast aspersions on their spouses citing their vices or inclination to immorality. In addition to the character of the litigants, the events that served as the key points of friction in these conflicts often had two sides. The "remembering" of a drunken night after a festival or a weekend outside the home varied widely.

The hundreds of testimonies contained within the divorcio proceedings are diverse and cover a wide range of topics. Some litigants were merely character witnesses, while others served as eyewitnesses to particular events germane to the dispute, and still others were called to confirm a single fact or two, like the marital status of the couple. Amidst the

diversity of witnesses presented above, one might expect to encounter a number of contrasting views on marital norms, roots of conflicts, appropriate treatment, as well as the other topics that took the attention of the court. However, through the cacophony of voices, we can also hear a recurring melody projecting a marital masculinity at the core of marriage in colonial Peruvian society, even as some men refused to live up to these central tenets.

Testigos, especially those called by the wife, homed in on a core of values expected of husbands. Though reifying the importance of the character of husbands, attributes that placed men in power and made women subjective and dependent, witnesses criticized these deviant husbands for the various shortcomings in the patriarchal arena. These witnesses served to surveil and police matrimonial matters. They represent a clear bridge between public and private life. They constitute yet another set of voices taking husbands to task. To be clear, their challenges to patriarchal authority were made possible only through the legal system, which lent them a platform to air their observations and opinions. In residences and in the street, challenges to husbands were rarely noted in court proceedings, and we have no evidence to believe that they occurred with any frequency. If stepping between a marital quarrel was acceptable, or even admirable, witnesses would have eagerly trumpeted their own noble deeds. If such interventions occurred but were frowned upon or even condemned by the courts, husbands would have found a way to point out such interferences to the judge to cast aspersions on witness testimonies. Yet, these slaves, neighbors, and priests held their actions and words for the court. In short, the authority of the husband could be challenged, but only within the institution of the court.

But within this forum, the sharp critiques of witnesses produced real consequences, even if they did not always result in complete legal victories. These testigos, whose gender,

race, and social status run the gamut of colonial society, questioned the very manhood of these patriarchs. Witnesses criticized not only their failure to control their emotions by lashing out at "honorable" women, but also their inability to provide for their households, a stinging accusation. Witnesses also attested to their various vices, from gambling to drinking, from uncontrollable libido to laziness. Likewise, even when they did not end up securing a divorce for the petitioning wife, these testimonies helped to prolong the institutionalized separations that ran concurrent with divorce proceedings. In the end, all of these figures had a say in what constituted "*la vida maridable*" (the married life) and marital masculinity.

Furthermore, witness testimonies speak to the public nature of marriage in colonial Lima. The church had sought to make marriage its own domain. And while they were successful in keeping marital matters out of the secular courts (for the most part), marital norms remained dependent on community surveillance and reporting. While ex officio cases were possible, they were infrequent.[291] The majority of cases, instead, were brought by dissatisfied spouses. But unsurprisingly, they could not make their cases on their own. Instead, they relied on witnesses to help bolster their position. These witnesses took part in intrusive, if not deliberate, surveillance that observed spousal treatment. The process, however, did not end at observation. Instead, these neighbors, acquaintances, and other community members made clear their expectations of spouses, especially husbands, and lobbed potent criticisms as they deemed fit. Their testimonies served a two-fold purpose: to recount events and to judge actions. In doing so, their surveillance turned to policing of the married life; in these cases, they specifically set out to address marital masculinity.

[291] However, ex officio cases related to bigamy—and held in inquisitorial courts—were far more common. See Boyer, *Lives of the Bigamists*.

The socio-ethnic make-up of these witnesses provides important context for understanding communal influence in adjudicating marital matters. The extensive representation of slaves and free people of color in court contradicts simple dichotomies of the colonial hierarchy. To put it another way, the appearance of these witnesses show the extent to which all of colonial society helped to assess marital masculinity, thereby policing patriarchal authority. Such policing was certainly reliant on the ecclesiastical judicial system. However, within this system, the biases of colonial society, such as race and class, were less pervasive. In the court of law, even enslaved women of color had a voice in what it meant to be a good man and a good husband. Within the colonial structures of ecclesiastical courts, patriarchal power was subject to limitations based not only on the judges instilled with overt authority, but also on the testimonies of the larger population, despite gender, race, or other qualifiers. However, as the next chapter will show, married slaves encountered mixed results in the court when their own matrimonial matters were the focus.

Chapter Four: Suing for the Married Life: Marital Masculinity and Slavery in the Colony

From Married in Mexico to the Courts of Lima

In April of 1600 Juan Villegas, a *moreno* slave, completed the long journey from Mexico City to Lima, Peru.[292] While the voyage would have been about half the distance, in many ways it mirrored a Middle Passage journey from Africa. Against his will, Juan was uprooted from the place he had come to call home. Without notice, he was torn away from his wife, children, friends, and community. Taken to one of New Spain's ports, most likely Panama, he was boarded on the ship of Captain Juan de Semancas and taken to the South American port city in order to be sold in the Viceroyalty of Peru. Perhaps most troubling, his future home and life remained entirely uncertain.[293] The marital home that Juan Villegas had created in Mexico City had been violated because of his status as a slave.

Once in Lima, Juan sought out the ecclesiastical court in an attempt to prevent his proposed sale and secure his return to his family. Appearing before the court, Villegas told the judge of his forced migration from Mexico and stated that his current owner, Alonso

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* A previous version of this chapter was published in English as "'It is Unjust for the Law of Marriage to be broken by the Law of Slavery': Married Slaves and their Masters in Early Colonial Peru" *Slavery & Abolition: A Journal of Slave and Post-Slave Studies* 34, no. 2. This research has also been published in Spanish as "'No es justo que la ley de matrimonio se quebrante por la ley de servidumbre': Esclavos casados y sus amos en Lima, siglos XVI-XVII," trans. Daniel Guzman Salinas, *Historia y Cultura: Revista del Museo Nacional Arqueología, Antropología e Historia del Perú* 27 (2014).

[292] Though in later periods *moreno* signified a free person of African descent, in early colonial Peru, the term was used to describe acculturated slaves or those who were born in the Americas.

[293] While the reason for such a sudden continental migration is not made explicit, we can speculate based on the testimony of one of the witnesses. The first slave brought to testify regarding Juan's sale, Domingo Hernández, told the court that Juan was the slave of now-deceased don Pedro de Villegas, *alguacil mayor* in Mexico City. It is possible that after don Pedro passed away, his beneficiaries wanted the money made from selling Juan rather than his services. AAL, CN 1.4, fol. 1.

Rodriguez de Bado, instructed Captain Semancas to find a buyer for the slave in "these parts of Peru."[294] Villegas argued that such a sale was "against all reason and justice, for I am married and joined, according to the order of the Holy Mother Church of Rome, to Catalina Sanchez *morena*."[295] And indeed, selling or moving a married slave away from his or her spouse violated the Church's protection of marriage. Medieval and early modern law codes prohibited masters from preventing their slaves from marrying. Gratian's *Decretum* (twelfth century) addressed slave marriage by citing Pope Hadrian's response to a query from the Archbishop of Salzburg on slavery and matrimony: "a slave can contract marriage against his lord's will" because "according to the word of the Apostle [Gal. 3:28], in Christ Jesus there is neither free nor slave who can be barred from the Church's sacraments. So *also* marriages can by no means be prohibited to slaves. Even if contracted contrary to the master's objection and will, this is no reason for dissolving them *by ecclesiastical judgment*."[296] Despite the social and legal pressures placed on them, we now know that slaves married in relatively high numbers. Either for love, religious conviction, or to assert one of their limited rights in the oppressive world in which they lived, more than 2,200 enslaved couples married between 1632-1648 in Lima's parishes. And though data for earlier years is incomplete, the numbers

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[294] AAL, CN 1.4, fol. 1. Juan, like other slave litigants, appears to have had the assistance of ecclesiastical *procuradores*. The role of these clerks has been understudied, especially their interactions with Africans within the court, and the function of the legal aid in this particular case is not entirely known. For one foray into *procuradores* and their interactions with the African populations in Lima, see José Ramón Jouve-Martín, *Esclavos de la ciudad letrada: esclavitud, escritura y colonialismo en Lima (1650-1700)* (Lima: Instituto de Estudios Peruanos, 2005)

[295] AAL, CN 1.4, fol. 1.

[296] Gratian, *Marriage Canons from the* Decretum, trans. John T. Noonan (Berkley: Boalt School of Law, 1963), brackets are Noonan's. For an even earlier take on slavery and marriage in canon law, see Adam Serfass, "Slavery and Pope Gregory the Great," *Journal of Early Christian Studies* 14, no. 1 (2006): 77-103.

seem to be only slightly lower.[297] In addition to reiterating slaves' right to marry, the thirteenth-century *Siete Partidas* also emphasized the importance of married slaves living together. As the code noted, any transaction that would prevent slaves from living together was prohibited. In certain situations this could require a master to sell a slave "in order that the husband and wife not be separated."[298] The validity and importance of slave marriage was reiterated at the third Council of Lima, which echoed the same protections of the sacrament. In listing the prohibitions against masters, the 1582 synod cautioned more broadly that "nor...should the law of natural marriage be negated by the law of human slavery."[299] With cohabitation and fulfillment of the conjugal debt essential to Christian marriage in the early modern period, moving a married slave was unacceptable.[300] While acknowledging his subjection as a slave, Juan pointed out that the logic and laws governing the institutions of marriage and slavery overlapped. In essence, the law required Juan to be at two places at once: with his master and with his wife. Showing a deft knowledge of the law and how this contradiction should be interpreted, Juan posited: "it is unjust for the law of marriage to be broken by the law of slavery."[301]

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[297] Michelle McKinley has undertaken extensive research of marriage registers in Lima. See her forthcoming monograph, *Fractional Freedoms: Slavery, Intimacy and Legal Mobilization in Colonial Lima, 1600-1699*, (used with author permission).

[298] *Las Siete Partidas*, Vol. 4, trans. Samuel Parsons Scott, ed. Robert I. Burns, S.J. (University of Pennsylvania Press; Philadelphia, 2001) IV, Title V, Laws I and II.

[299] Rubén Vargas Ugarte, S.J., *Concilios Limenses (1551-1772)*, Tomo 1 (Lima: Arzobispo de Lima, 1951), Tercer Concilio, Actio Segunda, Cap. 36. My sincere gratitude goes to Tiffany D. Vann Sprecher for help with the translation from Latin.

[300] Gratian, *Marriage Canons,* also cited Pope Julius as declaring "If, however, all are under one law, then neither a free man nor a slave can be sent away, once he is joined in marriage." However, it is not completely clear if this refers to the moving of a person or them being "sent away" from the marriage.

[301] AAL, CN 1.4, fol. 1. And yet, while Juan argued that the institution of slavery should not hinder his marriage, he implicitly acknowledged, to some extent, the validity of the "law of slavery." For views on the relationship between resistance and conceptions of slavery and liberty in the colonial period, see Frank Proctor

None of the slaves who appeared in Lima's ecclesiastical court articulated the legal principle as clearly as Juan Villegas, yet their willingness to initiate legal proceedings as well as the content of their arguments demonstrate the broad exposure of this position. The acknowledgement of this legal contradiction is part of a tradition within Hispanic philosophy on the problem of slavery that can be traced back at least to the *Siete Partidas*, which comments on the evil and troubles caused by the institution while permitting its continuation.[302] Juan's assertion on how to resolve this legal conundrum was not a controversial position. Quite the contrary, he simply distilled what the Church had already decided, which unsurprisingly prioritized the maintenance of the sacrament over the secular rights of slave owners. Through his petition, Juan was placing his duties as a husband above his subjugation as a slave. By seeking cohabitation, he made clear his intentions to reside with his wife and secure his conjugal rights. This chapter will examine attempts to maintain slave marriages in the face of opposition from masters. I will argue that Juan and other slave husbands built their petitions within a framework of marital masculinity. They opposed masters on the grounds that they needed to be good husbands by living out the married life, mainly in terms of cohabitation. This chapter establishes that these married slaves clearly understood their options for legal recourse and engaged the courts, and by doing so they

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III, *Damned Notions of Liberty: Slavery, Culture, and Power in Colonial Mexico* (Albuquerque: University of New Mexico Press, 2010); and Sherwin Bryant, "Enslaved Rebels, Fugitives, and Litigants: The Resistance Continuum in Colonial Quito," *Colonial Latin American Review* 13, no. 1 (2004): 7-46.

[302] For more on slavery and the *Siete Partidas,* see Robin Blackburn, *Making of New World Slavery: From Baroque to the Modern, 1492-1800* (London and New York: Verso, 1997), 50-52; McKinley, "Fractional Freedoms: Slavery, Legal Activism, and Ecclesiastical Courts in Colonial Lima, 1593-1689," *Law and History Review* 28, no. 3 (2010): 749-790.

made these theoretical rights a social reality.[303] By asserting their rights they successfully challenged and limited masters' authority. However, as some of the cases will demonstrate, there was a hierarchy of marital masculinity—one that privileged Spanish marriages over that of slaves (and married Spaniards over enslaved husbands). Asserting marital rights still functioned within certain parameters of the slave-master hegemonic paradigm.

Slavery in Colonial Lima

The bulk of research on slavery in Latin America has maintained a focus on the periods and regions that saw the highest imports: Brazil and the Caribbean, especially in the eighteenth and nineteenth centuries. Studies also have centered overwhelmingly on the rural slaves laboring on large plantations. The reasons for these emphases are obvious and understandable. As Fredrick Bowser has noted, in the eighteenth and nineteenth centuries "African slavery both reached its apogee and met its end in those areas."[304] Scholars have attempted to broaden our view with more recent studies on areas such as Mexico, Peru, and Central America; however, these remain the minority.[305] Building on these latest contributions, this chapter brings the urban slave of Peru to the scholarly discussion.

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[303] Here I follow Alejandro de la Fuente's interpretation of slave litigation, especially that it "gave concrete social meaning to the abstract rights regulated in the positive laws." "Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited," *Law and History Review* 22, no. 2 (2004): 342.

[304] Frederick Bowser, *The African Slave in Colonial Peru, 1524-1650* (Stanford: Stanford University Press, 1974), vii.

[305] On Mexico, see Bennett, *Africans in Colonial Mexico;* Frank Proctor III, *Damned Notions of Liberty*; and Brian Owensby "How Juan and Leonor Won Their Freedom: Litigation and Liberty in Seventeenth-Century Mexico," *Hispanic American Historical Review* 85, no. 1 (2005): 39-79; for Peru, see Jouve-Martín, *Esclavos de la ciudad letrada*; McKinley, "Till Death Do Us Part: Testamentary Manumission in Seventeenth-Century Lima, Peru," *Slavery & Abolition: A Journal of Slave and Post-Slave Studies* (2012); Lolita Gutiérrez Brockington, "The African Diaspora in the Eastern Andes: Adaptation, Agency, and Fugitive Action, 1573-1677," *The Americas* 57, no. 2 (2000): 207-244; Rachel S. O'Toole, "From the Rivers of Guinea to the Valleys of Peru: Becoming a Bran Diaspora within Spanish Slavery," *Social Text* 25, no. 3 (2007): 19-36; for other South American regions, Sherwin K. Bryant, "Finding Gold, Forming Slavery: The Creation of a Classic Slave

The inclusion of slave marriage is essential to this study of marriage, authority, and masculinity. As noted throughout the previous chapters, slaves made up a significant portion of the population in early colonial Lima, and their relationships affected how the sacrament was understood in society. The question of marital masculinity is also deepened when we include enslaved husbands. Expectations of men varied based on race, and the dynamics of manhood for married slaves were far more complicated than their free counterparts.

Living the married life in Lima proved far more difficult for the enslaved residents than their free counterparts. Foremost, their bondage to their masters created logistical difficulties in cohabitation. Their limitations in mobility, as well as numerous other restrictions, left them constrained. Furthermore, while other colonial residents had to deal with the watchful eye of neighbors, or the occasional interloping in-law, slaves had to contend with the intervention of masters. This became especially cumbersome as masters tried to overstep their authority by selling or moving a slave away from his or her spouse, an act strictly prohibited by canon and secular law. When masters attempted such acts, slaves sprang into action going before the ecclesiastical court. They claimed that this relocation would prevent them from "making the married life." Through these cases, I examine how social conceptions of gender and race ran contrary to the law and assess the impact of these conceptions on the married lives of slaves. These cases become far more complicated than previous marital conflict cases, as we must take into account an extra layer of authority—the master. As we follow these petitions, we will see how the gender and racial hierarchies of

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Society, Popayan, 1600-1700," *The Americas* 63, no. 1 (2006): 81-112; Lyman L. Johnson, "'A Lack of Legitimate Obedience and Respect': Slaves and Their Masters in the Courts of Late Colonial Buenos Aires" *Hispanic American Historical Review* 87, no. 4 (2007): 631-657; for Central America, see Robinson A. Herrera, "'Por Que No Sabemos Firmar': Black Slaves in Early Guatemala," *The Americas* 57, no. 2 (2000): 247-267; Paul Lokken, "Marriage as Slave Emancipation in 17th-Century Guatemala," *The Americas* 58, no. 2 (2001): 175-200.

colonial society significantly limited redress in the ecclesiastical court, even as the laws provided a room for the institutional agency of slaves.

As noted throughout this dissertation, the established bureaucracy of Lima allowed for a level of litigiousness not possible in the far reaches of the Spanish Empire, or even in some of the larger settlements of Spanish America such as Trujillo.[306] Moreover, people from all walks of life passed through these courts—men, women, poor, rich, Spaniards, native Andeans, Africans, mulattos, etc.[307] Making use of the legal system, the enslaved African population and their mixed race offspring, who accounted for close to half of Lima's nearly 25,000 residents, appeared as plaintiffs, defendants, and witnesses.[308] The very existence of slaves in the judicial record—and what is more, their success within the courtroom—demonstrates that the legal institutions invented and crafted as hegemonic technologies of colonialism also served as methods of recourse for the oppressed classes in colonial society. While prevented from carrying firearms and even knives, *negros* in the early modern Spanish Empire possessed the potent weapon of the law.[309] And as will be shown throughout this chapter, they wielded this weapon with skill and, to some measure, success.

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[306] For legal activity within the Spanish Empire, see first and foremost Richard Kagan, *Lawsuits and Litigants in Castile, 1500-1700* (Chapel Hill: University of North Carolina Press, 1981); for Quito, Tamar Herzog, *Upholding Justice*; for Trujillo, O'Toole, *Bound Lives*, 1-13, 122-156.

[307] Many scholars, however, argue that the wealthy did litigate with the most frequency. Though I am aware of no such quantitative studies, I am inclined to side with this position considering the bulk of disputes over property and inheritance.

[308] Bowser, *The African Slave in Colonial Peru*, Appendix A, 340. I use the term "plaintiff" here to mean the party who initiated the trial and who raised accusations. I use "defendant" to mean the accused. Litigants use no such language to identify themselves or their opponents, opting instead to use full introductions and names or the popular "*suso dicho* (aforementioned)," or less frequently "*mi parte* (my party)" and "*parte contraria* (opposing party)." For clarity, I have opted to use the modern legal referents.

[309] Much more has been written about how the indigenous populations utilized the colonial courts. Many of these works have shaped how I understand litigation by Africans, especially the seminal works of Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (London: Cumberlege and University of Pennsylvania Press, 1949); Woodrow Borah, "The Spanish and Indian Law: New Spain" in *The Inca and Aztec States 1400-1800: Anthropology and History*, edited by George Collier, Renato I. Rosaldo, and John D. Wirth.

A host of litigation by and about slaves in colonial Lima, especially those cases related to family and religious matters, is catalogued as *Causas de Negros* in the Archbishop's archive. These transcripts cover a wide range of issues including the search for runaway slaves, accusations of hiding an illness when selling a slave (which essentially constituted fraud), failure of payment for a purchased slave, selling another owner's slave, and even marital disputes over the failure to disclose one's status as a slave.[310] These records begin in 1593, towards the end of Lima's coming of age in the latter years of the sixteenth century. Whether or not cases preceded these records, we cannot be sure. None of the cases read for this research referenced previous litigation by the parties that might give some indication of earlier legal activity. Yet, that absence alone does not negate the possibility. This study focuses on the cases that arbitrate conflicts between married slaves and their masters, which often involved slaves protesting a move or sale of themselves or their spouses that would separate the couple and prevent them from living a proper married life. Of the 143 *Causas de Negros* cases from 1593-1630, 40 center on master-slave conflicts over marriage and cohabitation.[311]

(New York: Academic Press, 1982); Steve Stern, *Peru's Indian Peoples and Challenge of Spanish Conquest: Huamanga to 1640* (Madison: University of Wisconsin Press, 1993); Susan Kellogg, "Hegemony Out of Conquest: The First Two Centuries of Spanish Rule in Central Mexico," *Radical History Review* 53 (1992): 27-56; Kellogg, *Law and the Transformation of Aztec Culture, 1500-1700* (Norman: University of Oklahoma Press, 1995); and Brian Owensby, *The Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008).

[310] This last point is discussed in depth by Michelle McKinley in "'Such Unsightly Unions Could Never Result in Holy Matrimony'": Mixed-Status Marriages in Seventeenth-Century Colonial Lima," *Yale Journal of Law and Humanities* 22, no. 2 (2010): 217-55.

[311] These forty years, which begin with the earliest extant case, account for the period when slaves made up a significant portion of the Limeño population. By the middle of the century, rising Iberian immigration, a rebounding indigenous population, and decline in the reliance on slaves in the capital drastically changed the makeup of Lima's urban society. After surveying all Causas de Negros for this period, I have isolated and analyzed all cases regarding slave marriages. This sample also includes two cases that are misfiled in Causas Litigios Matrimoniales as AAL, CLM 1.22 and 1.23.

The proceedings followed a fairly rigid order and structure. Litigation began when a slave (and in a few instances, an advocate of a slave) presented the initial charge, demanda, to the court.[312] The demanda would open with the slave stating his/her name to the court, as well as noting their racial categorization and at times geographic origin. The slaves of Lima included both African-born and *criollo* (born in the Spanish Empire) men and women. Similar to the diversity of slave litigants in Quito found by Kris Lane, the slaves of Lima's ecclesiastical court were identified as Bran, Congo, Biafara, and Terra Nova, denoting regions of the Guinea coast.[313] *Criollos* born in Lima, Panama, and Mexico City as well as "Old World" slaves born in Spain are also found within the transcripts. Following their racial status, plaintiffs would state their legal status as slaves and identify their masters by name, title, and, less often, occupation.

Only after these identifying characteristics would slaves proceed to proclaim marital status, naming their spouses and corresponding masters. Non-enslaved couples almost never included additional identifying information before claiming their marital status and naming their spouses. This order of information presented by slaves, though repeated consistently, is somewhat puzzling considering the venue and content of the cases. The Church envisioned married slaves, first and foremost, as spouses taking part in the holy sacrament of matrimony. Their responsibility to their spouses, as is argued throughout by slaves, superseded their

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[312] In two cases I have found, a master of one slave intervened to prevent a move while also offering to purchase the spouse as a possible solution. In these cases, it is entirely possible that making a beneficial financial transaction was guiding their action more than noble defense of marriage and slave rights. AAL, CN 1.14 and CN 1.22.

[313] Kris Lane, "Captivity and Redemption: Aspects of Slave Life in Early Colonial Quito and Popayán," *The Americas* 57, no. 2 (2000): 229.

commitment to their masters. This subtle legal procedure provides yet another example of the internal contradiction of the Church's position on slavery and marriage.

After introducing the major parties involved, the plaintiff might give a brief background of the "normal" living conditions of the couple (e.g., where they lived, for how long) before accusing the master of attempting to sell or move the spouse, occasionally noting the potential destination and other times simply noting it was "out of these parts" or "out of this city." This geographic designation is important because masters were allowed to move or sell a married slave within the same community.[314] Such sales were prohibited only when the resulting distance would place undue burden on the relationship. The slave would continue by briefly arguing that such a move would be unjust because it violated or prevented the "married life." After presenting the improprieties sought by the master and the corresponding contradiction to Catholic orthodoxy with regards to the sacrament of marriage, the demanda would request that the judge prevent the master from selling or moving the slave outside the city. Whether the initial fear was moving or selling, the litigants often sought to eliminate both possibilities. The petition closed with a powerful and sweeping request, "Your mercy...I ask for justice."[315]

The demanda was always followed by a response given by the ecclesiastical *provisor* through his notary. In his response, the judge would hand down an initial ruling, specifically request certain information omitted from the demanda, or call for witnesses to affirm or contradict the plaintiff's argument. Whereas in divorce cases judges regularly ordered

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[314] *Las Siete Partidas*, Vol. 4, IV, Title V, Laws I and II.

[315] Though *pido justicia* was the most popular phrasing, there were several other variants on the theme. This was a common refrain to end many types of judicial petitions in both the ecclesiastical and secular courts, including petitions for divorce. For recent work on concepts of justice in colonial courts see Bianca Premo, "Before the Law"; and Herzog, *Upholding Justice.*

women into the recogimiento by default, the *provisor* in slave marriage cases frequently barred the move or sale of a slave, at least until further information could be gathered. Here is where the cases start to diverge, some ending abruptly while others continue with further accusations, witness testimony, or rebuttals from the defense. Most noteworthy about the form of these cases, similar to all ecclesiastical litigation of this period including the divorcio cases discussed in previous chapters, is that definitive, final judgments rarely exist. A judge would rule on the case throughout, altering the previous decision as new information necessitated. However, it was not uncommon for a case to end with an appeal to modify his order. While loss of pages after 400 years is possible, it is more likely that the judge rejected these final arguments or the parties reached a settlement outside the court. Cases ending with unaddressed arguments or appeals were not uncommon in Latin American ecclesiastical courts. Herman Bennett's research on African slaves in Mexico City cited numerous cases that ended without a clear conclusion.[316] This lack of definitive results, however, does not prevent us from probing these conflicts between slaves and their masters.

Fighting for the Married Life

Though a firm timeline from Juan Villegas's arrival in Lima to his appearance before the ecclesiastical court is not given, the subsequent testimonies suggest that he was not in Lima long before appearing before the court. Far away from the surroundings he knew best, Juan remained mindful of the method of redress available to him. Though he could have been familiar with the location and practices of the ecclesiastical courts in Mexico City, he had no firsthand knowledge of the Limeño courts. Even still, he was quick to locate the *provisor's*

[316] Bennett, *Africans in Colonial Mexico City*, see especially Chapter 5.

office and file his petition. This quick action speaks to the broader transcontinental legal culture and the widespread legal knowledge that cut across the colonial Spanish American population.[317]

After gaining the judge's ear, Juan articulated his grievance with clarity and force. Normally, the risk of a slave being sold away from a spouse would be enough for the judge to issue an initial ruling preventing any forced interruption to the married life. However, in this case, Judge Miguel Salinas failed to hand down such a decision. Instead, he responded with another typical ruling to pursue more facts related to the case. The likely reason for such a verdict was that Lima was not the community of the parties involved, meaning slave and master were unknown to court officials and, to a certain extent, to the broader society. Additionally, the normal "do not sell" ruling would serve little purpose, because the couple was already separated. Without more testimony, Judge Salinas appeared hesitant to require the captain to return Juan to Mexico. So he decided to pursue witnesses that might be able to speak to the marital situation of Juan and, therefore, the legality of selling the slave in the South American capital.

Quite surprisingly to the modern reader, there were several witnesses in Lima who could speak to the marital status of Juan and Gerónima back in Mexico. The first witness called was Domingo Hernández, a "*negro ladino...criollo*," who not only knew Juan's previous master, but also knew of his wife and their marriage. Though Domingo affirmed the marital status of Juan Villegas to Catalina in Mexico, and its compliance with Church

[317] A Panamanian slave, Sebastian Congo, was also brought to Lima to be sold, and like Juan, made use of Lima's court. AAL, CN 5.3. It is possible that these slaves appealed to courts in Panama and Mexico before their departure. It is also possible that their wives were pursuing litigation in their home jurisdictions after the husbands were moved.

doctrine, maybe what is most interesting about his testimony is what happened to his words after they were taken into the court record. Throughout the entire case we find only two lines underlined: "And [I know] that he is married, according to the order of the Holy Mother Church, to Catalina Sanchez *morena criolla* of Mexico, the slave of don Alonso de Arellano."[318] The judge's or notary's highlighting of this passage illustrates its importance. The firm identification by Domingo of Juan's wife as well as her master gave credence to Domingo's testimony. Furthermore, establishing that Catalina Sanchez was a slave was essential to Juan's case; if she had been a free woman, the law placed responsibility on her to move with her spouse to maintain cohabitation.[319]

A second slave's testimony, "*negro* Juan de la Cruz *criollo*," was also submitted into the court records. Originally from Mexico City, de la Cruz was able to add credibility to Domingo's testimony. He too affirmed the marriage, though he confessed to the court he could not recall the name of Juan Villegas's wife. De la Cruz also submitted a powerful statement; not only were the two married but he had seen them get married and witnessed them living together.[320] Because neither witness mentioned how long Juan Villegas and Catalina Sanchez had been married, Juan de la Cruz's declaration about their living conditions in Mexico was vital information. Additionally, joining the moral and legal debate, he expressed his belief that forcing Juan Villegas to live in Peru apart from his wife was unjust because it prevented the married life.

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[318] AAL, CN 1.4, fol. 2.

[319] It is also possible the court was considering contacting his wife's master to negotiate a sale, which was not uncommon.

[320] Though he also could not recall the name of the church.

The third and final testimony also came from a slave formerly of Mexico. Sharing his full name with the first witness, Domingo Hernández had lived in Mexico eight years ago and knew the slave couple, because he was owned by the same master as Catalina.[321] Domingo declared his knowledge of their marriage but also informed the court that Juan had been forced to leave behind two children. This abandonment of his wife and children makes the forced migration of Juan all the more appalling. Domingo argued that Juan's absence had left Catalina and their children in "a bad state."[322] These testimonies from other slaves about their lives in Mexico demonstrate a transcontinental community among slaves, a community that proved vital to litigation by the unfree population.[323] Without these witnesses, Juan's appeal could have failed to persuade the judge. Instead, the network of slaves came to his aid, attesting to the validity of his claims.

After hearing the testimony of the witnesses, Judge Salinas ordered that Juan be sent back to Mexico under the control of don Alonso de Arellano, the master of Juan's wife, Catalina. Though Juan had a long journey ahead, he would soon be reunited with his wife. This resounding victory for Juan provides but one example of the success slaves achieved in the ecclesiastical court. Juan knew the court afforded a means of recourse and sought out this help in his new surroundings. With the help of his network of fellow slaves, he verified his

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[321] Domingo was a common first name and Hernández a common family name making this coincidence neither surprising nor problematic.

[322] This "*mal estado*" should be read in the same vein as the *mala vida*, which abandoned and abused wives also invoked when bringing accusations against their husbands in courts in the early modern Spanish Empire. See Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico*, abr. (Albuquerque: University of New Mexico Press, 1995), 122-127 and 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), 252-286.

[323] For more on slaves as witnesses in legal cases, see Bennett, *Africans in Colonial Mexico*.

marital status, the key component of the case. By ruling in favor of Juan, the Church once again reinforced the clear emphasis on upholding slave marriages, even at the expense—of authority and finances—of their owners. The court agreed with Juan that "it is unjust for the law of marriage to be broken by the law of slavery." He fought for the right to uphold his marital masculinity and was victorious.

The Christian Life and the Married Life

In 1603, Gracia Conga, a *negra esclava* of don Pedro Grillo, appeared before the court to fight for the right to carry on her marriage with her husband, Francisco Congo *negro esclavo*, without the obstruction from his master. Gracia accused don Francisco Ramos Baltasar, the *dueño* (master) of her husband, of sending him to work at a bakery somewhere outside of Lima, though she does not identify the city or region. Her single page demanda, the average length for an initial accusatorial affidavit, ends requesting that the court prevent any move or sale of her husband by his master. Gracia, in the last line of her complaint, explained that preventing such a move was necessary in order to ensure that Francisco "live the married life (*hacer vida maridable*) with me."[324]

As was customary, the court responded first by acknowledging receipt of Gracia's petition and confirming that the *provisor* had reviewed her accusation. In this case, as in many others, the court made a swift initial judgment, though not completely ending the litigation. Ecclesiastical courts functioned on a system of rulings and appeals. Any ruling could be appealed, though an appeal did not always warrant a new response from the judge, and each party could, and often would, present affidavits *ad nauseam* seeking the

[324] AAL, CN 1.13, fol. 1.

"appropriate" ruling. "*El señor doctor* don Julio de Soto *canónigo* of the Holy Church and *provisor* and vicar of the Archbishopric"—the long title illustrative of his position and importance—sent notification to Ramos Baltasar that ordered "[You] will not take nor sell [your slave] outside of this city."[325] The judge provided clear reasoning for his judgment: "so that Juan can live the married life with his wife Gracia Congo."[326]

"To live the married life" was the issue at hand. It is important to note that this language is not unique to slave marriage cases but occurs in a variety of marital suits in the Spanish Empire. "The married life" served as the legal-religious terminology for all cases addressing marital norms including divorcio, annulment, and bigamy, among others. The intricacies of this early modern phrase was never fully defined or explained by contemporary jurists or apologists. Though the full cultural significance is hard to know, it certainly involved cohabitation, fulfilling the conjugal debt, and performing expected gender roles within the home.[327]

There was rarely an elaboration by the court about the hardship that such distance might cause, or the ways it might inhibit the married life. This lack of explanation suggests, quite strongly I would argue, that judges and litigants shared a mutual understanding of this tenet, even if the nuances are hidden from the modern reader.[328] Furthermore, that the judge

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[325] AAL, CN 1.13, fol. 1R.

[326] AAL, CN 1.13, fol. 1R.

[327] For more on the *vida maridable* see, Allyson Poska, "When Love Goes Wrong: Getting out of Marriage in Seventeenth-Century Spain," *Journal of Social History* 29, no. 2 (1996): 871-82; Sara Vicuña Guengerich, "Marriage Fictions: Inca Women and Marriage in Early Colonial Peru," *Colonial Latin American Review,* forthcoming (2014).

[328] We need more research to help uncover the complete social realities of this term and the extent to which the meanings of the married life for slaves might diverge from the free population.

simply followed Gracia's justification in his ruling demonstrates her understanding the legal, religious, and social expectations and rights of married couples. And as we will see in the other cases, Gracia was not exceptional in this regard but rather served as one example of the ways in which slaves understood the legal precepts regarding marriage, as well as how to employ them.

Returning for a moment back to her demanda, Gracia specified that she was married "according to the order of the Holy Mother Church."[329] This specific articulation of their marital status presented the couple as good Catholics following the Church's push for Africans to wed. As Gracia built her argument against her husband's master, her language solidified the position of herself and her husband firmly within the Christian realm. Portraying oneself before the court was particularly important for the enslaved populations of Latin America. In his research on the legal maneuvering of slaves in colonial Quito, Sherwin Bryant has shown that slave litigants entered into a legal discourse that included enslaved rebels and fugitives, those who chose more unlawful and often violent means of redress. And within this setting, Bryant argues, "[s]lave litigants, then, held the challenge of presenting and representing themselves as 'insiders,' subjects of the king, who deserved royal mercy instead of the harsh punishments prescribed for their more radical brethren." And this tactic had tangible benefits because "[b]y claiming their rights under the law, when they might have functioned as rebels and fugitives, litigants forced the system to work as well as it did."[330] In the same way, slaves appearing before the ecclesiastical court presented themselves as insiders vis-a-vis their faithfulness to the sacrament.

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[329] AAL, CN 1.13, fol. 1R.

[330] Bryant, "Enslaved Rebels," 11.

This formal matrimonial language was consistently used throughout slave trials in colonial Lima, as well as the courts in other parts of Spanish America.[331] Juan Villegas, whose story opened this chapter, presented his marriage in the most Catholic terms, as did the witnesses that testified to his valid marriage. So too did Domingo de Montoya as well as Gerónima Biafara, whom we will discuss below. In every single case consulted, the petitioning party asserted that their marriage took place "according to the Holy Mother Church" or some close variation on the phrase.[332] This language was not altogether absent in cases concerning marriage among the non-African populations, but it was far from the standardized rhetoric we see in the slave marriage cases examined. Spanish and mestizo women in Lima's court at times used far less formal descriptions of their relationships. For example Ines de Serna acknowledged her marital status by simply calling Miguel de Lira her "*marido* (husband)."[333] Isabel Franca noted her matrimonial state only by saying she was "the wife of Sebastian Telabe."[334] Likewise, Elena Garcia used only "wife of Martin Garcia" to describe her marriage to the court.[335] The frequency of the full articulation of marital status in slave trials shows the importance of asserting this orthodoxy.[336] And by claiming this orthodoxy, these enslaved Christians also laid claim to the rights that accompanied the sacrament. In presenting the marriage as a proper Christian union, the litigants made clear the

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[331] Proctor, *Damned Notions of Liberty*, Chapter 2.

[332] For example, some specified the Holy Church *of Rome*.

[333] AAL, Divorcio 1614, Ines de Serna contra Miguel de Lira, fol. 1.

[334] AAL, Divorcio 1608, Ysabel Franca contra Sebastian Telabe, fol. 1.

[335] AAL, Divorcio 1614, Elena Garcia contra Martin Garcia, fol. 1.

[336] Notaries and *procuradores* likely played a role in the uniformity of the language presented. For more on their role, see Jouve Martín, *Esclavos de la ciudad letrada*.

issue deserved the ecclesiastical court's attention. Though this language certainly came to be a near-boilerplate necessity for litigants, its use remained important for establishing the rights to cohabitation as good, married Catholics.

Further invoking Catholic values within this case, Gracia claimed that her husband's master was acting "without fear of God and impeding the justice of Holy Matrimony."[337] Here, Gracia takes her religious rhetoric to another level, challenging the faithfulness of her master. This was indeed the problem that the Church anticipated from the "necessary evil" of slavery: masters acting for personal gain with disregard for the faith. Just as the *Siete Partidas* had outlined the rights of slaves, they had also charged the Church with the enforcement of these rights, especially in instances requiring a challenge to masters' power. By creating a religious divide with herself on the side of the Church and her master against God and the sacrament, Gracia elicited the intervention of the ecclesiastical judge.

This short case was handled quickly, though not without some interesting twists. Don Francisco Ramos was apparently the *new* owner of Francisco Congo and bought him with the intention of moving. It appears that Ramos had little interest in separating the couple and violating the sacrament. Instead, he responded to the court requesting that he be given a license to return the slave to his previous owner, Captain Marcos Gonzales. The court found this to be a reasonable solution and notified both parties that Francisco Congo should be returned to Captain Gonzales. Barring any delinquency from either master, Gracia would be seeing her husband soon.

Cross-prosecution

[337] AAL, CN 1.13, fol. 1.

In 1606, Domingo de Montoya appealed to the ecclesiastic legal system to save his marriage to his wife María "*criolla* de Caboverde."[338] A slave of Limeño merchant (*mercader*) Juan de Montoya, Domingo followed his slave identity with his marital status, "married and joined in the order of the Holy Mother Church with María de la Caboverde, slave of doña Clara [del Corro], a widow."[339] According to Domingo, María's master was attempting to sell her away to a new owner who lived outside Lima. And, apparently, del Corro was willing to go to great lengths to sell María. Domingo testified that María's *dueña* had jailed her in anticipation of the sale and move. In this case, the qualm was not only the potential separation of the couple but also a present prevention of the married life. The court could not let such a sale occur, he argued, because with María gone, "we could not live out the married life."[340] Domingo requested the court not only prevent the sale of his wife by del Corro, but also that María not be "sent out of the city." Many of the slave litigants protested both the selling and shipping away of their spouses, even when most stated that their main concern was a permanent sale requiring relocation. The wide parameters of restrictions requested, and often granted, at least initially prevented masters from circumventing the letter of the judge's ruling by moving a slave but still claiming ownership.

After reviewing the demanda, Judge Salinas found Domingo's accusation sufficiently persuasive to immediately order doña del Corro "do not take nor sell your aforementioned slave out this city by sea nor by land nor by any other way."[341] In the ecclesiastic court

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[338] María's racial identification vacillates between *morena* and *criolla*.

[339] AAL, CN 1.15, fol. 1.

[340] AAL, CN 1.15, fol. 1.

[341] AAL, CN 1.15, fol. 1R. The use here of *manera alguna* was likely meant to stress the broad restriction of the ruling.

system, as Michelle McKinley has noted, "the defendant's guilt was presumed and could only be overcome with countervailing evidence."[342] This presumption of guilt extended to masters even when the accusations came from slaves. Enslaved litigants' petitions were taken seriously, and their masters forced to defend themselves before the court. The power of an accusation, then, was not considerably weakened regardless of the race, gender, or free/enslaved status of the litigants. Though participants in these courts were not completely "equal before the law," the legal system provided a more level playing field in the social and cultural landscape of colonial Peru.

To ensure that Domingo and María could "cohabitate and live out the married life," Judge Salinas let it be known that failure to abide by his ruling would result in excommunication, arguably the most harsh punishment handed down by the ecclesiastical court.[343] This punishment revealed how serious the Church treated attempts to impede the sacrament of matrimony. Just as the ecclesiastical and Inquisitorial courts held spouses accountable in bigamy, annulment, and divorcio cases, slave masters too were confronted with the gravity of their actions. Interfering with a marriage was not so much a crime against the slave, but a sin against God. Such offenses had tangible and spiritual consequences.

After the court's initial ruling, Domingo returned to the court.[344] His second petition is strikingly similar to his first, though he did request some further restrictions on his wife's master. He urged *provisor* Salinas to also demand that del Corro "not mistreat [María] nor

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[342] McKinley, "Fractional Freedoms," 772.

[343] AAL, CN 1.15, fol. 1R.

[344] Though his testimony is not dated, the decisions by the judge responding to each affidavit were given on 8 February and 9 February, respectively.

impede her marriage."[345] Additionally, Domingo asked that the court reach out to the overseer of the jail where María was being held, in hopes that he would help remedy the situation that her master failed to address. Responding to the accusations by Domingo, *licenciado* (lawyer) Francisco Quixada appeared before the court "in the name of Pedro Guerra de Contras," the son-in-law of Clara del Corro.[346] Until the last folio, these two men served as the voice of del Corro. The lawyer presented six consecutive *folios* of argument contesting the judge's initial decision. The seemingly overzealous submissions of affidavits served as a tactic for the wealthy to perpetuate litigation until those with less money and time could not or would not continue. Notaries often charged by the page, and the del Corro family showed a willingness to pay these fees. Their use of extensive flourishes, such as a royal seal next to their elegant, ornate signatures, was likely an additional effort to impress the judge.

Pedro wanted to return to the village of Santa. To help make this trip a possibility, Quixada co-opted the married life to argue for his client's right to take the slave, claiming that he needed to travel with his wife to Santa.[347] So while placing the marriage of Domingo and María in jeopardy, Pedro sought to protect his own marital masculinity by fulfilling his obligation to cohabitation. In the end, their tactics proved effective. Pedro was permitted to take María with him on his journey, but required to return María to Lima to live the married life after eight months. To ensure María's safe and timely return, *provisor* Salinas demanded a deposit of 200 *pesos*, slightly more than one-third the cost of a slave in Lima at this time,

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[345] AAL, CN 1.15, fol. 2.

[346] AAL, CN 1.15, fol. 3.

[347] I have not been able to locate this colonial town and cannot speak to the distance this would place between the married slaves.

that would be forfeited were Pedro to exceed the agreed upon timeline.[348] So ultimately, the marriage of Pedro was more important than Domingo's; the marital household of Domingo was disbanded, if only temporarily, to bring together Pedro and his wife.

The case of Domingo and María, just like proceedings initiated by Gracia, follows a prosecutorial trend apparent throughout these early seventeenth-century cases: slaves litigating against their spouses' owners. In only three of the forty cases do we find slaves litigating directly against their own masters. The continuity of this pattern cannot be easily discounted. Its consistency, regardless of the gender of the initiating slave, demonstrates the extent of the slave-master authoritarian relationship. Slaves could *legally* litigate against their masters, but this was not the norm. Instead cross-prosecution, the litigation by slaves against their spouse's owner, served as the primary manner in which slave marriages were protected. While the laws permitted slaves to litigate against their masters, certain social restraints apparently prevented or discouraged the practice. And even in one of the only cases in which a slave takes legal action against her/his own master, we do not see a direct challenge to masters' power. Returning to the case that opened this chapter, Juan Villegas—as the slave in limbo—initiated the case against his master. But as we read past the demanda, we find that the identity of Juan's master was not clear. Furthermore, he was under the care of Captain Semancas, who had no claim to ownership over Juan, nor was his master even on the same continent. In this instance, while Juan petitioned on his own behalf, he was not directly challenging his master. He was not currently under his master's control, making difficult any

[348] AAL, CN 1.3, fol. 2. Bowser noted the average market price of slaves purchased in 1600 as 579 and 542 pesos for men and women, respectively. Linda Newson and Susie Minchin saw prices closer to 600 by 1630. Bowser, *The African in Colonial Peru, 345*; Newson and Minchin, "Diets, Food Supply, and the African Slave Trade in Early Seventeenth-Century Spanish America," *The Americas* 63, no. 4 (2007): 532.

retribution for the perceived act of insubordination. As this case and the numerous cases of cross-prosecution show, masters would have their authority challenged, but rarely directly from their own slaves. This meant that the responsibility to hold masters accountable to Church doctrine on marriage often fell to the spouses of the offended party.

Gender Imbalance

Just as we rarely see slaves litigating against their own masters, we also seldom find wives initiating court proceedings. Though they do occur, as in the case of Gracia Conga recounted above, they account for just over 15% (6 of 38) of the total prosecuting parties during the period under study. What accounts for this imbalance and what motivated the few women who did make their way to court? The most apparent answer to the first question is that patriarchal and paternal notions and norms limited African women's legal activity.[349] Scholars of Spanish and Spanish American legal history have long noted the high instance of female litigation during the early modern period, with some scholars tracing their legal activism into the twelfth century.[350] The legal parameters that allowed for female agency in the court systems gave women of Spanish territories more autonomy than their British and German counterparts, but still left them disadvantaged relative to the male population.[351] And while litigation by female slaves was certainly permitted by law, its infrequency suggests that

[349] This includes philosophies about a woman's role in the marriage as well as the customs that dictated female labor during this period. On the latter point, the domestic nature of women's work could have prevented or limited their access to the courts. Likewise, women may have been more likely than men to be taken out of the city to accompany the master's household.

[350] Heath Dillard, *Daughters of the Reconquest: Women in Castilian Town Society, 1100-1300* (Cambridge: Cambridge University Press, 1984).

[351] For some overview on these differences, see Gauderman, *Women's Lives in Colonial Quito*.

prosecution was preferably a man's, or more specifically a husband's, role at this time in Lima. It is possible that defending the marriage in this way factored into marital masculinity. Just as a husband was meant to protect the individual members of his family, he was also expected to protect the marriage itself.

But what, then, do we make of Gracia Conga and the other women who went against the social grain? Let us look back to the earliest extant case between married slaves and their masters to see another woman who defied the gendered trend of litigation. In the summer of 1593, Gerónima Biafara appealed to the court to protect the marriage between her and her husband, Diego de Leon.[352] Gerónima's qualm was not with her own master, but rather, her husband's master, Sebastian de Leon.[353] She worried that Diego would be sent or sold away by Sebastian, and requested that the court prevent any move that would impede their married life. Without requesting any further evidence or testimony, the court so ordered that "Diego de Leon, slave and husband of Gerónima Biafara not be sent nor shipped out of this city."[354]

Gerónima's fears are quickly revealed as prescient. Sebastian de Leon, the supposed owner of Diego, responded to the court the same day the *provisor* ordered him not to move Diego from Lima. Sebastian lamented to the court that he could not be bound by such a ruling, because he had already sold Diego. He disclosed the sale he made to one Hernando de Pozo. His story is soon confirmed as de Pozo submitted his affidavit to the court "as the

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[352] AAL, CN 1.3, fol. 1. While she presented herself in the demanda as "Gerónima de tierra Biafara," she signed (or more likely, someone signed for her) Gerónima Biafara and is referred to as such throughout the case. It also is worth mentioning that Biafara was one of the most common slave *apellidos* found the first decades of the court records denoting their region of origin in Africa.

[353] Gerónima originally named Diego's master Juan de Leon, the barber. Either Sebastian de Leon, the barber, was kin to Juan or Gerónima simply got the first name wrong. The latter would not be surprising as it is not what her or her husband would have called him.

[354] AAL, CN 1.3, fol. 1.

master of Diego Biafara."[355] It is then possible that Gerónima, and not her husband, appealed to the court, because the latter was already experiencing the forced migration, which could have inhibited his ability to pursue litigation. Though he was still in Lima, he apparently had already been moved to his new master's home. His absence likely motivated Gerónima to go to the court before their situation became more dire. Knowing that waiting for her husband to find his way to the court might be too late, Gerónima petitioned for protection of the marriage herself. As noted earlier Gracia Conga found herself in a similar position, as her husband had already been moved away. With her partner outside of Lima, and therefore without access to the ecclesiastical judicial system, Gracia's initiation of litigation was one of the few, if not only, options available to the couple. Not only were there no cases in Lima of women litigating directly against their masters—exemplifying the trend in cross-prosecution discussed above—but their actions before the court generally came as a last resort. The marriage had already been disrupted, and the husband's mobility severely limited. Though Gracia received the outcome she sought in the court, as we will see, Gerónima and Diego were not as fortunate.

The Price of Slave Marriage

Hernando de Pozo stated his awareness of the court's order that Diego should not be moved away from his wife and the importance of not impeding the making of the married life. Yet he petitioned the court for a brief stay in the judge's ruling. Additionally, he asked the judge to "give me a license for a limited time so that I might take [Diego] with me to the provinces

[355] AAL, CN 1.3, fol. 1.

of Chile."[356] A request to travel to the "kingdom of Chile" might at first glance seem like an outrageous request, however, such mobility, especially within the Americas, was quite common among slaves at this time. Surveying the *Causas de Negros* cases from 1593-1633 reveals numerous slaves who arrived in Lima from Panama, Mexico, Nicaragua, and even Spain. Though traveling with one's slave would normally be acceptable, Hernando de Pozo was keenly aware that the marriage of Diego served as a substantial barrier to such a migration.

De Pozo's request for a license shows a certain respect for the court's initial ruling and slave marriage implicitly, yet he did seek to find some relief or flexibility in the judgment. In doing so, he tried to downplay the time away from Lima, and therefore the strain upon the marriage of Diego and Gerónima. Conceding that the married couple should not be apart forever, he promised to "return [to Lima] with great urgency."[357] Furthermore, de Pozo enlisted the moral assumptions at the center of the case: the importance of cohabitation and the married life. Rather than stress some sort of fiscal deadline or important business that might cause undue financial stress, de Pozo utilized a tactic we have seen in the case of Pedro Guerra de Contras. De Pozo framed his argument in terms of the laws of marriage—referring not to Diego's matrimonial rights but to his own. He told the court that his wife, children, and family were back in Chile and that he needed to return to them. The judge was forced to choose between the marriage of the master and the marriage of the slave, allowing only one party to uphold his marital masculinity and fullfill the expectation of cohabitation. In this instance, Judge Miguel de Salinas sided, at least in part, with the master.

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[356] AAL, CN 1.3, fol. 2R.

[357] AAL, CN 1.3, fol. 2.

Judge Salinas permitted de Pozo to take Diego for six months. To ensure his return, de Pozo was required to post a bond of 200 pesos.

Hernando de Pozo and Pedro Guerra de Contras were not the only masters to provide concerns about their married life as a rebuttal to the prevention of moving a slave. In July of 1633, Juan Mendez sought to take his slave Lucia Bran out of Lima. Because Lucia was married to Antonio Bran, slave of one Captain Antonio de Quieros, the court had seized custody of Lucia to prevent the proposed move. The extant transcript begins with Juan's appeal of this judicial sanction. Juan argued that he should be able to return to Pisco, a colonial agricultural town about 150 miles south of Lima, where "I have my home, my wife, and my children."[358] He also offered to pay a bond to the court to ensure he would return with Lucia. *Provisor* Feliciano de Vega found Juan's reasoning to be persuasive and provided him with a license to take Lucia to Pisco after receiving a bond of 200 pesos, the same price paid by the masters discussed above.[359]

In these rulings the court upheld the importance of slave marriage, or at least the façade of its importance, by ensuring a reunification of the couple through bond payment. But these decisions consented to the separation of married couples against their will for extended periods of time, essentially severing the married life. There is also reason to doubt the adherence to stipulated timelines. Once in a remote part of the viceroyalty, such as Chile, a master could more readily evade the attention of the Archbishop, keeping the couple apart indefinitely.[360] The successes of Juan Mendez, Hernando de Pozo, and Pedro Guerra de

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[358] AAL, CLM 1.3. This case (along with CLM 1.22) is misfiled in the Causas de Litigios Matrimoniales collection.

[359] AAL, CN 1.3, fol. 2.

[360] We know too little about this bond system to speak authoritatively on its practice. Evidence at the Archivo General de la Nación (Peru), however, suggests that *fiadores* could post these bonds on behalf of owners. In

Contreras demonstrate that slave marriages could be impeded. While slaves often found redress in the ecclesiastical courts, masters could build their own arguments around the married life to secure legal victory. Apparently the importance of the marriages of the wealthy, free population trumped African matrimonial concerns.

Conclusion

In the cases examined for this chapter we find a flurry of competitions over control of the married life. We consistently see judges, husbands, and masters asserting their patriarchal rights and arguing over where their authority began and ended. Simultaneously, these debates circled around orthodoxy and power. The Church's staunch position on the importance of the sacrament of marriage and its extension to all colonial residents despite race or slave/free status carved out an intermediary space in which the jurisdiction of judges, masters, and enslaved husbands overlapped. Slaves—with the help of Catholic doctrine—gained valuable control over their bodies. According to the law, they could marry, maintain marital cohabitation, and prevent sales and forced migrations.[361] These freedoms should not be understated or quickly discounted. The equitability of matrimonial rights, regardless of race and legal status, was markedly different from other aspects of slave life.

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these instances, the *fiadores* would have been quite diligent in ensuring masters met their deadlines for return. Personal correspondence, Michelle McKinley, 20 December 2012.

[361] Any discussion of rights and/or treatment of slaves invokes the iconic Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas* (New York: Vintage Books, 1946). For varying opinions on the utility of the Tannenbaum thesis for current scholarship, see the articles in the special issue *Law and History Review* 22, no. 2 (2004), Alejandro de la Fuente, "Slave Law and Claims-Making in Cuba" and "Slavery and the Law: A Reply"; María Elena Díaz, "Beyond Tannebaum"; and Christopher Schmidt-Nowara, "Still Continents (and an Island) with Two Histories."

In these cases, the clear limitation on masters' authority and rights was rooted in the power of the Church. And because of this, slave owner rights were most severely constrained in the centers of Spanish control. As Herman Bennett has argued for Mexico City, "Though life in cities offered the enslaved a specific challenge—constant supervision—it also afforded them opportunities to circumvent their masters' authority," and in these urban settings "patricians confronted the full manifestations of absolutism."[362] This Christian absolutism created ideological and tangible limits on slave owner authority. As these cases have shown, the sacrament of marriage served as one vital sphere in which masters possessed little control, in theory. Due to the legal activism of slaves in Lima, this limitation was put into practice, drastically altering the slave-master relationship.

Nevertheless, these freedoms and the means to achieve them were structured in the patriarchal paradigm of early modern society. What we find here is the border at which colonial domination and hegemony meet. Even as codified institutional standards permitted and encouraged slave autonomy and agency in regards to marriage, social forces and legal practice constrained those avenues for justice and freedom, and prevented enslaved women and men from living out the married life uninterrupted. The marital household of slaves lost importance in the eyes of the Church when set against the vida maridable of masters. Being prevented from cohabitation meant enslaved men could not uphold the expectations of marital masculinity, despite their best efforts. The trends in litigants show a clear gender gap, as women were far less likely to appeal for their marital rights. Additionally, owners were rarely challenged directly by their own slaves, suggesting a reification of masters' authority even in the ecclesiastical court. Quite clearly, prescription and practice diverged.

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[362] Bennett, *Africans in Colonial Mexico*, 32 and 193.

From the outset we see how patriarchal norms eroded legal rights, a constant theme throughout the marital records in Lima's ecclesiastical courts. As noted before, the majority of these petitions came from male slaves. Though women had legal standing and occasionally brought suits, slave wives appear infrequently. Instead their fates are often left to their husbands. These men's petitions sought to restore or protect the married life. In their arguments to the judge, they insisted that cohabitation was essential to being married, and therefore essential to being a good husband. Just as slaves clearly articulated the orthodoxy of their marital unions, enslaved husbands articulated the importance of cohabitation and their yearning to fulfill this duty. For these litigants, being a good husband meant living with their wives. They sought to fulfill the expectations of marital masculinity, but as we have seen previously, these arguments were not guaranteed to be successful. Slave petitions could be and were rebuffed by masters seeking to assert their "property" rights and their own aspirations to be good husbands. Once again, petitions surrounding marriages hinged on men being good men. In the case of masters and slaves, however, being a free husband trumped being a slave husband.

Conclusion: Unending Marriages

Musicians: A man and wife may disagree
But decent folk, of course,
Know reconcilement, eve the worst,
Is better than the best divorce.[363]

So we have seen that husbands were not above reproach. Wives could and did challenge and criticize them. But the venue and content of their petitions gives us an important part of the story. Outside of the tribunal, men faced few repercussions when they failed to live up to the ideals of marital masculinity. Surely there were consequences that go unnoted in the historical documentation: wives intentionally burning meals, friends hurling criticisms at the neighborhood chichería (pub), or business partners or local shops severing economic ties. Nevertheless, all extant evidence points to the community giving discretion to husbands, not because the norms for husbandly conduct were particularly ambiguous, but because overt intervention was not the norm. We know from witness testimony that neighbors, colleagues, and others had intimate knowledge of the goings on of the couple, not the least of which included abuse and neglect on the part of husbands. Yet, they chose not to cross into a husband's domain. The few instances we do have of husbands' rights being significantly altered comes from other sources of patriarchal authority. In chapter 1 we see that judges were the most influential in these cases, and their protective orders the most common punishment against husbands (though worth noting this result was not always a clearly positive one for wives). Chapter 2 showed how parental intervention could challenge husband's authority. The witnesses discussed in chapter 3 did not intervene directly in the marriages, but instead submitted their observations and personal judgments of character to

[363] Cervantes, "The Divorce Court Judge," 19.

the court, essentially deferring to the Church's conclusion. In the cases from chapter 4, slave husbands' marital rights could be impeded by their masters, whose patriarchal and paternal power trumped Catholic doctrine. In short, the correcting of patriarchs came only through hierarchies of patriarchal authority.

This evidence points further to the utility of the court in colonial Latin America: a site that was at once a locus for resistance and a haven for hegemony. In many ways the Church had managed to bring domestic disputes and communal policing into the colonial courtrooms. It became a place where both wives and husbands sought to air grievances of marriages gone wrong. Community members, likewise, saw the witness stand, perhaps more so than the street, as the place to call out neglectful husbands. As the site for the resolution, to whatever extent these conflicts were truly resolved, the ecclesiastical tribunal functioned to fortify structures of colonial control, reinforcing patriarchy even as it placed patriarchs on trial.

As Cervantes suggests, and cases from Lima confirm, the Church had a decided interest in keeping couples together. Nevertheless they permitted petitions from abused and neglected wives and acted on these petitions. The initial decision to remove a *divorciada* from her home and place her in a recogimiento was an important step. The act provided safety from further violence and upset a husband's governance of his household. And with his wife absent from the home, a husband had lost power over her. The household had been ruptured. He had failed as the manager of his domain. Furthermore, he could no longer demonstrate his marital masculinity in a number of other ways. He could not protect his wife, for she was outside the home. He could not assert appropriate sexual virility. Likewise, a

husband was left to his own devices, no longer the beneficiary of the domestic and economic contributions of his wife.

On the surface, this initial legal decision can be read as evidence rejecting patriarchal norms in colonial society. A deeper reading of the cases, however, reveals that women remained "subjects," under the supervision of the Church. In the recogimiento, many of them lacked food, clothing, and other necessities that their husbands were meant to provide. (Curiously, the Church found it logical to ask husbands accused of not caring for their wives to provide for them in the recogimiento). Initiating divorcio cases provided slight relief for wives, and likely leverage in negotiating treatment and living conditions with their husbands—men whose reputations suffered as a result of the proceedings. The court then was not in the business of limiting gender domination. Its decisions even reified important beliefs regarding men, women, and power in the empire. First, women needed to be watched over. The recogimiento served to confine them and allow the Church to "protect" their honor, in the absence of a husband. Second, a "bad" husband was better than no husband at all. The courts were hesitant to grant divorcios. Perhaps Cervantes was not far off when he opined that the court believed that the worst reconciliation was preferred over the best divorce. Husbands that demonstrated abject failure in nearly all aspects of marital masculinity could still have their familial authority restored. Courts went through the legal motions, but its impact on violence and neglect committed by husbands remained limited.

These cases from Lima prove instructive for future research at the intersection of gender, family, law, and colonialism. The Church, through the ecclesiastical court, went far beyond policing the religious landscape of colonial Lima. The courts were also a place where the gender and racial hierarchies were refined and reinforced. Delineating these power

structures was integral to the stability of the newly formed societies in Spanish America, and the cases of the ecclesiastical tribunal reveal how the Church was active in this colonial project, even though such issues were not outlined in canon law, and in some instances stood outside the bounds of the Church's declared role. The ecclesiastical court, then, was not bound by the written law, but instead took part in a back and forth conversation with parishioners, a discussion that brought social norms into the legal realm. Indeed, the courts of Lima reveal how legal practice can reify gender and racial hierarchies even when these hierarchies are not strictly codified in the law.

The Church's role in crafting what the family should be, in the centers of Catholicism and in its American colonies, has been self-evident. From the extensive attention paid to orthodox marriage in canon law to instructional literature like Fray Luis de León's *La Perfecta Casada (The Perfect Wife)*, domestic issues clearly received the attention of priests and religious leaders. These cases make clear, however, that the role of religious institutions in the imperial project went further. Not unlike the way it functioned in Spain, the ecclesiastical tribunal reified gender domination. Even as women were given potential recourse through their access to legal institutions, the path to litigation and the processes of protesting husbands served mainly to fortify patriarchy. Women could challenge men, but only on the basis of their manhood. In a sense, the argument these women constructed (along with their allies) trumpeted patriarchy. Their criticisms called out men who were weakening the patriarchal system by failing to live up to the expectations of marital masculinity. As the foundational unit of society, the family was the cornerstone of stability in colonial Lima.

This research also challenges us to rethink our treatments of masculinities, and specifically conceptions of manhood for married men. Even as new research seeks to

highlight the multiplicities of manhood, the tropes of don Juan and machismo remain pervasive in the literature. There is no doubt evidence of men who privileged sexual conquest over marital fidelity, and the cases presented herein bear that out. Yet, we must take more seriously the possibility that honor in the form of faithfulness to one's wife and family proved important in early modern societies. We must also begin to consider how the imperial project influenced domestic life and, in particular, masculinity. Within the colonial context, what it meant to be a married man took on added meaning. Upholding the racial hierarchies became integral to being a husband in Lima. Violations to the social structure, such as using racial epithets or illicit sexual encounters that crossed racial lines, showed men to be unable or unwilling to maintain communal standards. These factors stand outside of traditional understandings of "domestic life" that guided ideals for married couples. This should, in turn, encourage us to think more broadly about the expectations of husbands and wives, to think beyond those acts that directly impacted the home. Perhaps our understanding of domestic and private life remains too narrow and compartmentalized.

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