

Marriage in San Agustín de la Florida, 1784-1803:
Practical Application of the *Real Pragmática de Casamientos*

by

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DEDICATION

To my husband, Keys – another for his entertainment, and in thanks for his love, patience, support, and excellent fiscal management during my absence from home. Without his help, encouragement, and outstanding management of our retirement income, this thesis and the coursework and research that are behind it would not have been possible. After completing post-baccalaureate degrees in history and Spanish, a double major, at the University of North Florida, I had been accepted to graduate school at UNF. I had hoped to study and write my thesis under the direction of J. Michael Francis, Ph.D., from whom I had taken several of my classes as a post-bacc. When Dr. Francis left the University of North Florida for the University of South Florida St. Petersburg, I was most disappointed. I told Keys. He said, “Go there,” to USFSP. He willingly and gladly accepted my absence for a year and a quarter, and also gladly financed the education so that I did not have to take out a loan. Then he delighted in telling people, with a laugh and a twinkle in his eye, that I had left him for a younger man!

To our daughters, Marti and Elizabeth – see what the old lady has been up to.

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ABSTRACT

In 1776, King Charles III of Spain issued his Pragmatic Sanction on marriage, extending its provisions to Spanish America in 1778. Young persons were to ask parental permission to marry, and faced punishments if they did not. Any parental objections had to be “just and rational,” and an applicant had recourse to the courts if a parent’s objections were not reasonable. In the colony of St. Augustine, Florida, parental dissent did not meet with a sympathetic hearing. This thesis examines how the Pragmatic Sanction, with subsequent decrees and orders, was observed or ignored in St. Augustine. Marriage, as a life milestone, bears implications for the wider society, and the study of marriage in St. Augustine illuminates personal lives in the colony, shedding light on how courtship and marriage were conducted in Spanish Florida. An examination of marriage license petitions filed between 1784 and 1803 brought out social, economic, and racial concerns in St. Augustine. A literature survey revealed relevant points in the history and development of the Pragmatic Sanction, permitting an examination of whether or not the decree was successful in achieving its goals of reducing unequal marriages – a term undefined in the documents – and of strengthening the authority of the patriarchy at both the family and Crown levels. This research shows that equality, quality (character), and honor were the primary considerations in St. Augustine, ahead of religious and racial purity. This paper’s conclusions regarding implementation of the *pragmática* in St. Augustine challenge current scholarship concerning its application in the rest of Spanish America. In St. Augustine, at least, the Pragmatic Sanction failed to achieve its goals.

CHAPTER ONE: INTRODUCTION

On 23 March 1776, King Charles III of Spain proclaimed his *real pragmática de casamientos*, the Royal Pragmatic, or Pragmatic Sanction, on marriage. It was part of the overall cast of Bourbon reforms in which the monarchy sought to strengthen itself vis-a-vis the Catholic Church. While recognizing the Church's important role in marriage, the Pragmatic Sanction expressed the King's desire that Spain should "avoid engagement and marriage contracts entered into by minors without the counsel of their parents, grandparents, or guardians, which result in grave offenses to God our Lord, discords in families, and scandals and other grave disruptions, moral and political."¹ The provisions of the Pragmatic Sanction applied only to Spain. In 1778, Charles III extended its provisions to Spain's overseas empire. Over the next several years, royal decrees and orders were issued to emphasize, modify, and strengthen the provisions of the 1776 *pragmática*.²

¹ Richard Konetzke, *Colección de Documentos para la Historia de la Formación Social de Hispanoamérica, 1494-1810*, Vol. III, Book 1 (Madrid: Consejo Superior de Investigaciones Científicas, 1962), 406. The wording is: "Por quanto con el fin de evitar los contratos de esponsales y matrimonios que se ejecutaban por los menores e hijos de familias sin consejo de sus padres, abuelos, deudos o tutores, de que resultaban graves ofensas a Dios, nuestro Señor, discordias en las familias, escándalos y otras gravísimas inconvenientes, en lo moral y político . . ." Translation mine. Unless otherwise noted, all translations in this thesis are mine.

² There were other decrees issued both before and after the 1776 *pragmática* and its 1778 extension pertaining to military marriages and marriages of government officials. These decrees will not be examined except for those directly and specifically referring to the *pragmática*, or relating directly to Section 15 of the 1776 decree, in which military members were held to the same requirements as civilians in regard to requesting permission from their parents or other qualified persons. Questions regarding the broader range of laws and regulations pertaining to marriage will have to be the subject of further investigation.

The key provision in the 1776 *pragmática* was that persons under the age of twenty-five years were required to receive parental permission before entering into a marriage contract. The document also required that individuals contemplating marriage be of equal social standing and be *limpia de sangre* (literally, clean of blood), that is to say, white Spanish Catholics with no Moorish or Jewish blood.

We will examine how these provisions, and the provisions of the decrees, royal orders, and other documents issued subsequent to the Pragmatic Sanction were applied in St. Augustine, Florida, during the second period of Spanish possession, specifically the years 1784 to 1803.³ These petitions are found in the East Florida Papers, a series of documents created by the governmental and military administration of St. Augustine from 1784 to 1821. If there were further petitions from 1804 into 1821, their location is not known. They could be in the archives in either Cuba or Spain, or for that matter, considering the vagaries of Florida's sometimes infamous weather, they could be at the bottom of the sea. Another possible explanation for the lack of these documents after 1803 may lie in sweeping changes to the provision covering parental consent and the age at which such consent was necessary. These changes, instituted by Charles IV in a royal decree of 10 April 1803, will be discussed in Chapter Eight.⁴

Why should these documents and the application of the *pragmática* be of concern?

Marriage is one of the three milestones of life along with birth and death. St. Augustine

³ The Second Spanish Period ended in 1821, when the United States took possession of Florida. However, the key documents studied in this paper, the marriage license petitions entered by townspeople who wished to marry, cover only the years 1784 to 1803.

⁴ The royal declarations issued after 1778 also present a problem of availability, notably ones of 26 August and 19 November 1788, to which other royal decrees referred. A search of the Spanish archives website did not yield the fugitive decrees, nor are they listed in the online index to the East Florida Papers maintained by the University of Florida. They were not listed in Roscoe R. Hill's *Descriptive Catalogue of the Documents Relating to the History of the United States in the Papeles Procedentes de Cuba Deposited in the Archivo General de Indias at Seville*, nor are they found in Richard Konetzke's *Colección de Documentos para la Historia de la Formación Social de Hispanoamérica*.

society during the period under study was in these basic facts of life no different from any other society: people were born, they married, and they died. The documentation of these events forms the basis of family studies, whether from a social, historical, or genealogical standpoint.

Using the tools of genealogy and history, we can ask important questions about the history of marriage in Second Spanish Period St. Augustine: Are there separations by race or class? How do these separations affect the formation and conduct of society?

Following this introduction, Chapter Two presents a historiography of the institution of marriage in Spanish society, on the Iberian Peninsula and in the New World. Little has been written on that subject relating to the city of St. Augustine. The historiography will examine what has been written about St. Augustine's marriages, as well as the broader view of marriage in Latin America and in Spain. The broadest coverage of the topic of marriage and society in Spanish America focuses on Mexico, an area investigated in depth. This historiography will also examine the conclusions of various scholars concerning the status of women, and concerning the *pragmática*.

Chapter Three is a description of the methodology used in this paper, and a comprehensive source note on the Pragmatic Sanction and its successor documents which modified, amplified, and reinforced it, and the marriage license petitions and a few other selected documents from the East Florida Papers regarding St. Augustine.

Chapter Four provides a discussion of the language in the sources. On the surface, word definitions change over time. More deeply, these shifts in definition signal shifts in thought. One phenomenon discovered in these sources is that some words used in St. Augustine's documents were used in ways that had not been used in Spain for

decades. The Crown thought of its empire as one body, while, in reality, Spain and its colonies became different societies indeed. Language can reveal these fundamental differences in mentalities. As historians have learned, language is also gendered, and this chapter will explore some of the gendered words and their contemporaneous meanings, which reveal differences in the status of women and men, as well as providing clues to male-female relationships.⁵

Chapter Five continues the examination of language, particularly one key concept: honor. Several different words were used to express this idea. An honorable person may have been described as *honrado*, *decente*, or as a *persona blanca*. One could be described as possessing *honradez*. Tracking both the dictionary definitions of these words at that time and their local usage in St. Augustine reveals clues to the social attitudes of its people. We may ask how important honor was to the residents of St. Augustine, and along which dimensions: racial, sexual, religious, or moral.

Chapter Six examines the history of the status of women in Spanish society on both sides of the Atlantic. The question of marriage in any age heavily involves the status of women. The subject of marriage is a study of power as much as of gender. Marriage in St. Augustine and in Spanish America reflected a balance of power often skewed against women. The power disadvantage experienced by women was often codified in law. Women in Spanish society were bound by rules and expectations

⁵ Authorities for the definitions and etymologies of words are found on the *Nuevo Tesoro Lexicográfico de la Lengua Española* (New Lexicographic Treasure of the Spanish Language, hereinafter NTLLE), online at <http://ntlle.rae.es/ntlle/SrvltGUILoginNtlle>. This resource holds the digitized and searchable contents of dictionaries from 1495 to the present day, as collected and presented by the Spanish Royal Academy. In most instances, I used the dictionary closest in time to the period of the document in which a particular word appears, to come as close as possible to the contemporaneous meaning. As indicated above, however, the most contemporaneous meaning in Spain may not necessarily have been the same meaning intended by the creators of documents in St. Augustine. One word, at least, in use in St. Augustine in the time period in question did not enter the dictionary until the twentieth century. Context often must play a part in determining the intended meaning, a task not always easy.

imposed by men. This chapter examines the various social levels occupied by women, whether elite, middle class, lower class, or the lowest. Elite women were placed on a pedestal, accompanied and observed everywhere – even in their homes. Lower-status women had more freedom of movement, and more risk of being accosted by men. We will look at the work done by women, and at the status of widows. Scholars found that in Mexico, widows had little chance of remarriage. However, in St. Augustine the pool of eligible potential mates was so small that widows of nearly any age did not remain alone for long.

Chapter Seven is a history of marriage laws, civil and ecclesiastical, under the Spanish regimes, beginning with the *Siete Partidas* (seven divisions) of Alfonso X, “*El Sabio*” (the Wise, or the Learned).⁶ There is brief mention of the Laws of Toro, the chief purpose of which was to codify the laws of inheritance and disinheritance.⁷ The Council of Trent, which met during the middle sixteenth century and set the Church’s policies on marriage, among other aspects of Catholic doctrine, will also be examined. These laws – Toro, the *Siete Partidas*, and the canon law of the Church established at Trent – all find echoes in the real pragmática de casamientos.

Chapter Eight examines the history of the real pragmática de casamientos, its 1778 modification, and successive documents, and the changes over time wrought by these later decrees. The pragmática spawned numerous lawsuits, requiring the king to

⁶ The *Siete Partidas* (seven divisions) were completed between 1256 and 1265. In 1272, the Cortés of Burgos reacted against the new code, fearing that it was being implemented to replace the *fueros*, laws specific to certain localities, and the customs of the nobility. Alfonso X affirmed the *fueros* and customs, along with the *Partidas*. Alfonso XI later, circa 1348, affirmed the *Partidas* as having the force of law. See Joseph F. O’Callaghan, “Alfonso X and the *Partidas*,” in Robert I. Burns, S. J., ed., and Samuel Parsons Scott, trans., *Las Siete Partidas, Volume I: The Medieval Church: the World of Clerics and Laymen* (Philadelphia: University of Pennsylvania Press, 2001), xxxix-xl.

⁷ The Laws of Toro were another codification, completed in 1505. They dealt mainly with inheritance, but a few of the laws, to be examined in Chapter Seven, dealt with marriage and with the power of the male over the female.

issue subsequent decrees clarifying, explaining, or enforcing the provisions of the original decree. The flood of litigation was stopped by the decree of 10 April 1803.

Chapter Nine examines how the provisions of the Pragmatic Sanction on marriage, and succeeding documents, were applied in St. Augustine. Did St. Augustine's residents follow established patterns from other areas of Spanish America? Case studies will illustrate how the decree was carried out in St. Augustine. How does the application of the Pragmatic Sanction in St. Augustine compare with the results obtained by scholars studying the broader scope of Latin American marriages? For one thing, in Mexico, the Pragmatic Sanction was seen as prohibiting interracial marriage. There is no specific language in the Pragmatic Sanction against interracial marriage. In St. Augustine, though there were few interracial marriages, there was no indication in the documents that the Pragmatic Sanction was interpreted as prohibiting them.

The central question is: How closely did the authorities in St. Augustine observe the provisions of the *pragmática* and of the succeeding decrees and royal orders intended to strengthen it during the Second Spanish Period? Subordinate or related questions to be examined are: What was the historical background of the *pragmática*? How did the *pragmática* change the administration of marriage and the conditions thereof? How did succeeding decrees and royal orders modify, augment, or change the provisions of the *pragmática*? What were the elements of the *pragmática* and its successor decrees, and how were they applied in St. Augustine? Were exceptions made in specific cases in St. Augustine, and what were they? Which elements of the *pragmática*, if any, received more emphasis in St. Augustine? Which, if any, appeared to be routinely ignored? Upon what criteria was the concept of inequality in marriage based, as applied in St. Augustine

– was it socio-economic class, race, or a combination of the two? How important was social status or class in late colonial St. Augustine? How did the concept of honor apply, particularly in marriage, in St. Augustine? Was the pragmática successful in achieving its stated goals, or was it a failure?

CHAPTER TWO: HISTORIOGRAPHY OF MARRIAGE IN SPAIN AND HER COLONIES

“Historical conclusions are not infallible, but when they are well evidenced and carefully argued they deserve to be taken as telling us something true about the world. We can question the truth claims of an historical narrative without going so far as to relegate it to merely one fiction among others. There are always multiple narratives of any historical moment, but that does not mean that as interpretations they cannot tell us something true.”

-- Matthew Restall⁸

St. Augustine

Little has been written about marriage in St. Augustine. Patricia Griffin briefly addresses the subject in *Mullet on the Beach: the Minorcans of Florida, 1768-1788*, discussing particular marriages only insofar as they united specific families. She also points out that in 1784, 1785, and 1786, marriages were performed only in the month of December.⁹ Daniel Schafer discusses the marriage of Zephaniah Kingsley to Ana Madgigine Jai, a marriage that had little to do with the real *pragmática de casamientos* since Ana was an African woman, and blacks were excluded from coverage under the

⁸ Matthew Restall, *Seven Myths of the Spanish Conquest* (New York: Oxford University Press, 2003), xvii.

⁹ Patricia C. Griffin, *Mullet on the Beach: the Minorcans of Florida, 1768-1788* (Jacksonville: University of North Florida Press, 1991), 171. Fathers Hassett and O'Reilly were faced with completely rebuilding the Catholic parish church in St. Augustine from the ground up. The building that housed the church was uninhabitable. Though they conducted baptisms and burials year-round, the necessity of building and equipping a church, and the attempts to reclaim church furnishings shipped to Cuba in 1763, compelled them to limit marriages. The priests conducted a correspondence with the bishop in Cuba in an attempt to reclaim church furnishings and fixtures. See letter requesting the return of church goods, Letters from the Captain-General, Reel 1, Bundle 1B, 1788-1789, East Florida Papers, folio 79R. Some of the goods were finally shipped to St. Augustine in 1795, but were hijacked by an unspecified “enemy” and carried to Charleston, South Carolina. See letter from Juan Francisco de Olide Ytriola to Governor Juan Nepomuceno de Quesada, With Bishop and Curate, Reel 38, Bundle 100I8, East Florida Papers (folios not numbered).

pragmática. However, of value is Schafer's statement that "Racial prejudice existed in Spanish East Florida, but it lacked the exclusionary rigidity found in nearby Georgia and South Carolina."¹⁰ Also, the existence of this marriage, and the practice of concubinage by other elite men, demonstrates that race was not as much an issue in terms of marriage as scholars have reported it to have been in Mexico.

In *Zéspedes in East Florida, 1784-1790*, Helen Hornbeck Tanner describes an embarrassing event when the younger daughter of Governor Vicente Manuel de Zéspedes y Velasco entered into a clandestine marriage.¹¹ The marriage was against the wishes of Governor Zéspedes, and created a crisis of honor in his family.¹² The story of this marriage illuminates the problem of clandestine marriage in St. Augustine, as well as the available punishments. Clandestine marriage remained a problem in St. Augustine and its vicinity, despite repeated decrees against it.

The social structure in St. Augustine in the Second Spanish Period allowed at least a measure of upward social mobility. Griffin describes some individual survivors of the fiasco of Andrew Turnbull's plantation. They came into St. Augustine as refugees, with nothing more than the shirts on their backs, and several of them ended up doing well indeed. By the late 1780s or early 1790s, a number of them, including the Corsican Pedro Cosifacio, the Italian Domenico Martinelli, Bernardo Seguí of Minorca, and the Minorcan matriarchs Inéz Victori (married name Cavedo) and Isabel Perpall, had become

¹⁰ Daniel L. Schafer, *Anna Madgigine Jai Kingsley: African Princess, Florida Slave, Plantation Slaveowner* (Gainesville: University Press of Florida, 2003), 37-38.

¹¹ A clandestine marriage is one for which the banns were not published. For the rationale behind prohibitions against clandestine marriages, see Chapter Seven, page 104.

¹² Helen Hornbeck Tanner, *Zéspedes in East Florida, 1784-1790* (Jacksonville: University of North Florida Press, 1989), 73-78.

relatively wealthy and earned the honorifics *don* and *doña*.¹³ Three members of the planter elite, the internationalist Zephaniah Kingsley, the Swiss Francis Philip Fatio (Francisco Felipe Fatio), and the St. Augustine-bred Francisco Xavier Sánchez, represent the successes and vicissitudes of their class.¹⁴

The most in-depth study of St. Augustine's white social structure is Susan Lois Pickman's doctoral thesis, *Life on the Spanish-American Colonial Frontier: a study in the Social and Economic History of Mid-Eighteenth Century St. Augustine, Florida*. Though Pickman's study concentrates on late First Spanish Period St. Augustine, roughly the years 1740 to 1763, it provides clues to the social structure of the town in the Second Spanish Period. Pickman describes a creole elite, the *floridanos*, who held power and wealth at the end of the First Spanish Period. They held their power through tight kinship bonds, land possession, and the influence these advantages conveyed.¹⁵ She identifies several influential floridano families at the end of the First Spanish Period who, though not as powerful, were still influential in the Second Spanish Period, many of them having remained in St. Augustine through the twenty years of British rule, 1763-1783. These

¹³ Domenico Martinelli was referred to in the Spanish documents as Domingo Martinoly or Martinely. However, he signed his name in the Italian fashion as Domenico Martinelli. Likewise, Pedro Cosifacio has been referred to as Pedro Cosifaci, but he signed his name as Cosifacio. He adopted this spelling over his native name of Cosifacci. Francisco Felipe Fatio, as he was known to the Spanish, signed his name as F. P. Fatio, for Francis Philip Fatio, the name I use for him herein. Spellings of people's names are as they signed them on documents. The problem is more difficult with the illiterate, some of whose names appear in several forms. In that, I have simply had to choose.

¹⁴ A floridano was a person born in Florida of Spanish parents. In Florida, it replaced the word *criollo*, one born in Spanish America of Spanish parents. See Chapter Four. Kingsley is featured in two books by Daniel Schafer: *Anna Madgigine Jai Kingsley: African Princess, Florida Slave, Plantation Slaveowner*, and *Zephaniah Kingsley, Jr., and the Atlantic World: Slave Trader, Plantation Owner, Emancipator*. Fatio and Sánchez each appear in essays in the anthology *Colonial Plantations and Economy in Florida*, edited by Jane G. Landers. Susan R. Parker studied Fatio's plantation operation "Success through Diversification: Francis Philip Fatio's New Switzerland Plantation." The Sánchez enterprise is the subject of "Francisco Xavier Sánchez, *Floridano* Planter and Merchant," by Jane G. Landers. In these books and articles, the idea of class is evident. Tanner, in her biography of Zéspedes, portrays the elite stratum of the Royal governor and other prominent officials and high-ranking military officers.

¹⁵ Susan Lois Pickman, *Life on the Spanish-American Colonial Frontier: a Study in the Social and Economic History of Mid-Eighteenth-Century St. Augustine, Florida* (Ph.D. dissertation, State University of New York, Stony Brook, 1981), 155. She does not definitely state the period covered in her dissertation.

include the Solana, Hita, Avero, and Arrivas families.¹⁶ This landed elite, in the Second Spanish Period, was not included in the government, which was a military as well as a civil government and consisted almost entirely of *peninsulares* – men from Spain – with a few Cubans, including the last Spanish period governor, José Coppinger.

Pickman points out that as this floridano landed elite grew wealthier, they closed ranks. No longer could a peninsular male marry into a floridano family. The floridano elite grew more endogamous, marrying among themselves.¹⁷ This trend was reversed in the Second Spanish Period, with floridano offspring intermarrying not only with peninsular Spaniards, but also with offspring of the Anglo elite of East Florida, an example of this being the marriage of Francisco Xavier Sánchez and María del Carmen Hill, daughter of Theresa and Theophilus Hill. Also at the end of the First Spanish Period there was a growing merchant middle class of entrepreneurs, traders, and businessmen who allied their interests with those of the floridanos and forged political ties with them. These middle-class men were ambitious and determined to break into the upper class. Just as Bourbon marriage reforms were greeted with resistance in other areas of Spanish America as threatening to close the upper class to the ambitions of the middle class, so they were in St. Augustine.¹⁸

Patricia Griffin explores the life of “Mary Evans, a Woman of Substance,” presenting an examination of one member of St. Augustine’s elite and the problems she had in maintaining her status despite the self-destructive activities of her wastrel third husband.¹⁹ Kathleen Deagan examines “*Mestizaje* in Colonial St. Augustine,” finding

¹⁶ Ibid., 188.

¹⁷ Ibid., 168.

¹⁸ Ibid., 179.

¹⁹ Patricia C. Griffin, “Mary Evans, a Woman of Substance,” *El Escribano* Vol. 14, 57-76.

that there was significantly less race-mixing there than in other areas of Spanish America. The low rate of Spanish-Indian marriage in St. Augustine resulted in a nearly complete lack of a *mestizo* population in East Florida, unlike the rest of Spanish America.²⁰ Deagan's work concentrates on the First Spanish Period (1565-1763), but sets the stage for one important way in which St. Augustine differed from the rest of colonial Spanish America in marriage practices and in social composition.²¹

Mexico

Mexico is the subject of the most thorough studies of marriage in Spanish America in the colonial period. Robert McCaa wrote two articles on his studies of the town of Parral, Mexico. In "*Calidad, Clase, and Marriage in Colonial Mexico: the Case of Parral, 1788-90*," he examined the use of the words *calidad* (quality) and *clase* (class) in Mexico at the end of the eighteenth century. In his estimation, the historical meanings he examined have been lost under layers of modern interpretation. In Mexico at the time of which he wrote, *calidad* and *clase* were ingredients in the formula for determining the equality of parties to a marriage, as required by the *pragmática*. He compared census data from before the marriages celebrated in 1788-1790 to the marriage records, looking for any "drift" in stated race. His question was whether the stated race of the groom, or more likely, the bride underwent any change. He found such change, in that after marriage, no matter what their stated race had been in the previous census, the racial

²⁰ Kathleen A. Deagan, "*Mestizaje* in Colonial St. Augustine," *Ethnohistory* Vol. 20, No. 1 (Winter, 1973), 55-65, 56.

²¹ Though this paper does not delve into the situation of the black population of St. Augustine, Jane Landers studied the status of blacks, mulattos, and quadroons, most of whom were in the lowest social stratum, and a few who attained higher social status. In *Black Society in Spanish Florida*, she illustrates the relationships existing outside of marriage between black and mulatto women and white Spanish and English men, a condition that some scholars maintain the *pragmática* was designed to end.²¹ These men effectively ignored the *pragmática* on this issue by ignoring marriage altogether.

affiliation of the marriage partners converged in the marriage records.²² Mention of race in the marriage license petitions filed in St. Augustine tended to be limited to a statement that a prospective bride or groom was “clean of all vile race of mulatto, Negro, Moor or Jew.”²³ In the five cases of interracial marriage (peninsular Spaniard and mulatto woman), the race of the bride was mentioned only once. Race is mentioned only once in the marriage records of St. Augustine’s parish church. That mention concerned the marriage of two Indians.²⁴ The fact that race was so seldom mentioned in the marriage records may indicate a more relaxed attitude toward race than that found in Mexico.

In another article based on his work in Parral, McCaa examined factors influencing choice of marriage partners. The factors of *calidad* and *clase* were important determinants in such choices.²⁵ In another article, McCaa discussed changes in marriage law from the Council of Trent to the Bourbon reforms, ending with the royal decree of 10 April 1803, which mandated the most drastic changes from the original 1776 *pragmática*, changes which worked to the disadvantage of women.²⁶

Woodrow Borah and Sherburne Cook, in “Marriage and Legitimacy in Mexican Culture: Mexico and California,” take the history of Spanish marriage law back to the Romans.²⁷ They discuss legal marriage and informal consensual unions in relation to

²² Rober McCaa, “*Calidad, Clase, and Marriage in Colonial Mexico: the Case of Parral, 1788-90*,” *The Hispanic American Historical Review* Vol. 64, No. 3 (August, 1984), 477-501.

²³ A statement may read, in Spanish, “*limpia de toda mala raza de mulato, negro, moro, o judío*.”

²⁴ Marriage of Juan de Dios, Indian, and María del Rosario de la Cruz, also Indian, 1 November 1789, *Ecclesiastical Records of the St. Augustine Diocese, Marriages 1784-1801*, 48-49, entry 65, Ecclesiastical and Secular Sources for Slave Societies, <http://vanderbilt.edu/esss/spanishflorida/index.php>, accessed 30 October 2014. See the discussion of the status of Indians in the royal decree of 1778, in Chapter Eight.

²⁵ Robert McCaa, “Gustos de los padres, inclinaciones de los novios, y reglas de una feria nupcial colonial: Parral, 1770-1814,” *Historia Mexicana* Vol. 40, No. 4 (April-June, 1991), 579-614.

²⁶ Robert McCaa, “Marriageways in Mexico and Spain, 1500-1900,” *Continuity and Change*, Vol. 9, No. 1 (May, 1994) 11-43.

²⁷ Woodrow Borah and Sherburne F. Cook, “Marriage and Legitimacy in Mexican Culture: Mexico and California,” *California Law Review* Vol. 54, No. 2 (1966), 956-1008 (online: <http://scholarship.law.berkeley.edu/californialawreview/vol54/iss2/24>, accessed 27 September 2013).

social class. Silvia Arrom examined marriage patterns in early nineteenth-century Mexico. By then, not much had changed in terms of the concepts of class and quality, which Arrom brings into her discussion, with findings similar to McCaa.²⁸ Sonia Lipsett-Rivera examined women's status and how women's rights and recourses diminished over a period of years. Her inquiry concerned the canons of the Council of Trent, and the idea promoted by theologians that force and violence were serious impediments to marriage.²⁹

Patricia Seed described an ongoing effort by the state to curb the power of the Church over marriage.³⁰ It was not a change in parental behavior in objecting to their offsprings' marriages that influenced the trend. Rather, the focus of social control changed, moving away from the Church to the state, a reflection of a general social move toward patriarchal control in the home as well as on the throne. Honor was the primary social virtue to the Spanish, linked to the female's sexual purity and the sacredness of a promise given.³¹ Seed also emphasized the importance of language, of understanding the words used in documents as they were understood at the time they were used. The definition of "inequality" she uncovered shows a shift in meaning during the seventeenth and eighteenth centuries, from social inequality to inequality of wealth. She attributed this to the rise of capitalism and the growth of the merchant class. In St. Augustine, parental concern over the economics of marriage focused more on the ability of the prospective groom to support a family.³²

²⁸ Silvia Arrom, "Marriage Patterns in Mexico City, 1811," *Journal of Family History* Vol. 3, No. 4 (Winter, 1978), 376-391.

²⁹ Sonia Lipsett-Rivera, "The Intersection of Rape and Marriage in Late Colonial and Early National Mexico," *Colonial Latin American Historical Review* Vol. 65, No. 3 (August, 1984), 477-501.

³⁰ Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1822* (Stanford: Stanford University Press, 1988).

³¹ *Ibid.* 62.

³² See, for example, Petition of Gaspar Candelario for permission to marry Angela Rosi, Matrimonial licenses, Reel 132, Bundle 298R9, No. 50, East Florida Papers.

María Elena Martínez examined the peninsular origins of the term *limpieza de sangre*, describing it in religious terms. It was the standard for purity and orthodoxy, excluding from the inner circle of the pure Catholic faithful anyone with a hint of Jewish or Moorish ancestry. The Spanish became “obsessed with genealogy” to prove a Christian lineage.³³ *Limpieza de sangre* was the ideology of Spain, and the component parts of that ideology were descent and religious faith. Conditions in the New World altered the ideology, influenced by the large numbers of slaves imported from Africa, a growing population of mixed-race people, waves of poor Spaniards who hoped to better themselves and improve their social status, and an economy based on race slavery. She complained that most studies of *limpieza* have been limited to the late colonial period. Her aim was to examine the early importation of the concept of *limpieza* and to explore how it developed in Spanish America, in light of religion, race, gender, and sexuality.

Martínez also discussed the meanings of words in their temporal context. In particular, she examined the etymology of the word *raza* (race), which in the sixteenth century had a meaning more akin to “lineage” than to what many people have viewed as a biological condition. In the seventeenth century, the word came to be more pejorative, and to include Jews, Moors, and Protestants. By the beginning of the eighteenth century, *limpieza de sangre* became attached to physical appearance, mainly skin color. By the late eighteenth century, the transformation of the meaning of “purity of blood” from the religious to the racial, aimed at individuals of African descent, was complete. Martínez described a legal and social construct which prescribed a distinction between private and public life, which resulted in a divergence between the theory of *limpieza de sangre* and

³³ María Elena Martínez, *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico* (Stanford: Stanford University Press, 2008), 1.

its actual practice in colonial Spanish America. Finally, Martínez saw the pragmática as part of the Crown's overall campaign to severely restrict the Catholic Church's authority and autonomy.

Another view of the obsession with genealogy among Mexican elites is found in Ilona Katzew's study, *Casta Painting: Images of Race in Eighteenth-Century Mexico*. Katzew quotes other scholars in pointing out that the elaborate nomenclature involved in casta painting was not used in daily life, and that the paintings represented the elite's obsession with their lineages in order to prove *limpieza de sangre* more than anything else. The genealogical preoccupation is also evident in Katzew's discussion of *calidad*, of which *limpieza de sangre* constituted only one element. Katzew demonstrates how race is socially constructed and why: physical appearance could be deceiving, but knowing a person's forebears and being able to classify that person would put – and keep – him in his place. In Katzew's view, the extension of the pragmática to the colonies in 1778 represented a drastic curtailment of freedom of choice in marriage.³⁴

In her book *Violación, estupro y sexualidad: Nueva Galicia, 1790-1821*, Carmen Castañeda García studied the sexual dimension of women's status relating to rape. She analyzed public records of rape and abduction cases to obtain the statements of the victims. She also studied the discourses on sexuality and sex crimes found in texts on canon law; civil legislation; the canons of the Council of Trent; and the guidebooks for priests, known as confessionals. Her goal was to examine the conflicts between men and women regarding sexual conduct which brought them under the jurisdiction of the

³⁴ Ilona Katzew, *Casta Painting: Images of Race in Eighteenth-Century Mexico* (New Haven: Yale University Press, 2004). A casta was a mixed-race person.

ecclesiastical and civil courts. She also explored the mechanisms of the colonial legal system which resulted in women's subordination and victimization.³⁵

Other Studies of Marriage in Spanish America

In her introduction to a book of essays she edited, Lavrín examined the history of the *palabra de casamiento*, the word or promise of marriage. Then she commented on the subject of free will in marriage choice, invoking the Council of Trent. It was not just marriage that was at issue, in her view, but also the family honor, expressed most emphatically in both sexual and socio-economic terms. Civil law emphasized and enforced inheritance and property rights, an emphasis aimed at strengthening the basic social unit: the family. Family honor as a social construct was designed to assure the legitimacy of the heirs of the family, to sustain its socio-economic position. Emphasis on female virginity at marriage was intended to assure a trusted line of inheritance. To Lavrín, the intent of the *pragmática* was to maintain the social elite.³⁶ In the opening essay in the collection, she described an increase in social control by the Church in the seventeenth century. She discussed the restrictions on sexuality and on marriage, and the two degrees of impediments to marriage and the elements of each.³⁷

Ann Twinam wrote about illegitimacy and its effect on status and opportunities for women. She described and defined who was "elite" in colonial Mexico, and the prerogatives they held, including being able to purchase legitimacy and have the stain of

³⁵ Carmen Castañeda-García, *Violación, Estupro y Sexualidad: Nueva Galicia 1790-1821* (Guadalajara: Editorial Hexágono, 1989).

³⁶ Asunción Lavrín, "Introduction: the Scenario, the Actors, and the Issues," in Asunción Lavrín, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: the University of Nebraska Press, 1989), 1-43.

³⁷ Asunción Lavrín, "Sexuality in Colonial Mexico: a Church Dilemma," in Asunción Lavrín, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: the University of Nebraska Press, 1989), 47-95.

illegitimacy removed from their lineage – even purchasing legitimacy for ancestors long dead.³⁸ Like McCaa, Seed, and Martínez, Twinam delved into the contemporaneous meanings of words as they were used to describe levels of illegitimacy, and the stigmata associated with each. Twinam examined honor, concluding that it was the rationale for the hierarchy in colonial Spanish America. The idea of honor was closely linked to the ideology of *limpieza de sangre*. In Twinam’s view, honor had racial, religious, genealogical, and sexual dimensions which served to control women, especially their sexuality. Elites created the ideology of *limpieza de sangre*, and with it an elaborate fiction of a sharp division between private and public life. Private reality could be manipulated to protect public reputation among members of the elite.³⁹

Susan Migden Socolow’s contribution to Lavrín’s anthology changed the scene from Mexico to Argentina. Socolow examined marriage as a legitimizing institution geared toward the preservation of family patrimony, usually taking place between social equals. Spanish society’s reaction to the marriage of two socially unequal people had a bearing on its attitude toward upward mobility, in Socolow’s view. She studied parental and familial opposition to marriages in the area of the Río de la Plata, examining how regulations and laws on marriage were applied. Suitability of marriage partners fell under the sole discretion of the Church until the 1778 extension of the 1776 *pragmática* changed the game, giving dominion over marriage choice to parents and the civil courts. Socolow found that “equality” in Argentina was defined by race, social status, moral reputation, and economic status, but that race, that is to say, the degree of black ancestry,

³⁸ Twinam clarifies this point later. It was only for parents and grandparents that these legitimacy petitions were filed. See Twinam, *Public Lives, Private Secrets*, 44.

³⁹ Ann Twinam, “Honor, Sexuality, and Illegitimacy in Colonial Spanish America,” in Asunción Lavrín, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: the University of Nebraska Press, 1989), 118-155.

was the major determinant. Like Twinam, Socolow found that the concept of honor worked primarily to control female sexuality as a means of ensuring the legitimacy of family lines. Socolow also found racial “drift,” but in a different sense from McCaa’s findings. McCaa found that a man’s racial identification could change if he married unequally, but that more often it was the woman’s identification that changed. Socolow found that a woman’s racial identification in public records depended on that of her husband. In Socolow’s sample, a Spanish woman married to a mulatto man became, to the census taker, the notary, and the public, a mulatto. Socolow concluded that the *pragmática* was not successful in preventing socially or racially unequal marriages.⁴⁰ In the marriage license petitions filed in St. Augustine, examined in Chapter Six and Chapter Nine, the Pragmatic Sanction failed to prevent at least four such marriages.⁴¹

In his chapter, “Women, *La Mala Vida*, and the Politics of Marriage.” Richard Boyer examined patriarchy historically and culturally. In the view of the Church, the father was the undisputed head of the family. This view was supported in the advice and instructions given to clergy. The power of the father – the *patria potestad* – was tempered by the requirement that he was responsible for the welfare of those under his control. This was the idea of the *padrón*, that the man in power – whether he be the head of a family, the head of the Church, or the head of state – was required to protect and treat with dignity those over whom he had control. Reality could be quite different.

⁴⁰ Susan M. Socolow, “Suitable Partners: Marriage Choice in Colonial Argentina, 1778-1810,” in Asunción Lavrín, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: the University of Nebraska Press, 1989), 209-251.

⁴¹ See the discussions of the marriages of Beatriz and Ana Sánchez to peninsular Spaniards in Chapter Six, and of the marriages of their sister Catarina Sánchez to a peninsular Spaniard, and the probably socially unequal marriage of doña Agueda Coll to Juan Bernardo Sánchez (no relation to the Sánchez sisters) in Chapter Nine.

Boyer showed that the treatment of a wife by her husband was not always benign. A man had the right to beat his wife for her correction or edification. The beatings were to be carried out with restraint, as it was viewed at that time, or else the reciprocity necessary to a marriage would be threatened. Women who suffered excessive cruelty at the hands of their husbands, whether the abuse was physical or psychological, were said to be subjected to *la mala vida* (the evil life). Boyer brought up one essential point: Marriage was best understood from the woman's viewpoint, as she had less power, little recourse in the event of abuse, and in the eyes of the Church, a stronger moral claim to just and loving treatment by her husband, whether she actually received it or not. However, marital politics being more about power than they are about gender, it was not unheard of for a woman to administer *la mala vida* to her husband, as happened on at least one documented occasion in St. Augustine.⁴²

Gender

In addition to the above writings, gender figures in other articles by Asunción Lavrín and Ann Twinam, joined in this topic by Mary Elizabeth Perry, Ramón A. Gutiérrez, and Edith Couturier (with Lavrín), and in books by Twinam and by Socolow. Gutiérrez discusses marriage along dimensions of class, power, and gender. In marriage, men had more power over women than women ever attained over men. The definition of honor was also gendered. The characteristics of an honorable man differed sharply from those of an honorable woman. Honor for men described their conduct on the battlefield, in business or profession, and as one man to another within the structure of the

⁴² Richard Boyer, "Women, *la Mala Vida*, and the Politics of Marriage," in Asunción Lavrín, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: the University of Nebraska Press, 1989), 252-286.

patriarchy. Honor for women was exclusively sexually defined. Gutiérrez appears to agree with Twinam that the elites defined honor, to separate themselves from commoners.⁴³

Mary Elizabeth Perry studied gender ideology in Seville and found that, early on, that ideology was driven by religion more than by any other factor. The ideology of *limpieza de sangre* depended directly on female chastity, which underpinned the legitimacy of a family line. Honor and power were gendered, with men having absolute power in the home. Men carried the banner for the family in the wider world; women stayed home. Even widows, though permitted to own and dispose of property and to run a business, had to depend on male help in some circumstances.⁴⁴

Lavrín points out that women were not always as severely sheltered as some scholars have suggested, nor was honor so rigid a concept. Gender, of course, did play a role both in the delineation of a woman's place in society and in the idea of honor.⁴⁵ Lavrín and Couturier collaborated on "Las Mujeres Tienen la Palabra" (women have the word). According to their analysis, women in Mexico had little influence politically or economically, as they focused primarily on their families. Even those who ran small businesses or shops did so to support themselves and their children, rather than as an independent career choice. Women suffered the disadvantage of a lack of networks, Lavrín and Couturier argue, which hampered their efforts at group action and gave them

⁴³ Ramon A. Gutiérrez, "Honor Ideology, Marriage Negotiation, and Class-Gender Domination in New Mexico, 1600-1846," 12:1 (Winter 1985), 81-104. (JSTOR stable URL: <http://www.jstor.org/stable/2633563>).

⁴⁴ Mary Elizabeth Perry, *Gender and Disorder in Early Modern Seville* (Princeton: Princeton University Press, 1990).

⁴⁵ Asunción Lavrín, "Lo Femenino: Women in Colonial Historical Sources," *Coded Encounters: Writing, Gender, and Ethnicity in Colonial Latin America* Vol. 1 (1994), 153-176; and Asunción Lavrín, "Spanish American Women, 1790-1850: the Challenge of Remembering," *Hispanic Research Journal* 7, No. 1 (March 2006), 71-84 (online: <http://www.maneyonline.com/doi/abs/10.1179/174582006X86049>, accessed 30 August 2013).

no political representation. One tool women had that gave them legal force before both ecclesiastical and civil courts was the *palabra de casamiento*, the promise of marriage.⁴⁶

Ann Twinam discusses forces that shaped elite gender attitudes. She presents a case study in “private pregnancy,” in which an infant was brought to a priest as an orphan, the result of a clandestine affair involving elite individuals, at least one of whom was probably married to someone else. Twinam delves into the assumptions about women behind this case.⁴⁷ This idea of “private pregnancy,” and the manipulation of birth records, acted to protect members of the elite.

One case in St. Augustine may be an example of such a pregnancy. A child named Inéz Ana Antonia, whose surname was not recorded, was born 17 November 1786 and baptized on the same day.⁴⁸ Godparents were Lorenzo Capó, the sacristan, and doña Inéz (Victori) Cavedo, who became the matriarch of an influential Minorcan family. Patricia Griffin suggests that doña Inéz may have served as a midwife.⁴⁹ That suggests that she may have known who the mother of the child was, and possibly who the father was, as well. Of the cases of illegitimacy recorded in the baptism records of St. Augustine between 1784 and 1799, this is the only one in which the father did not come forward and acknowledge the baby. If this was a “private pregnancy,” the child would have been brought immediately and secretly to Father Miguel O’Reilly, who officiated at

⁴⁶ Asunción Lavrín and Edith Couturier, “Las Mujeres Tienen la Palabra: Otras Voces en la Historia Colonial de México,” *Historia Mexicana* Vol. 31, No. 2 (October-December, 1981), 278-313. (JSTOR stable URL: <http://www.jstor.org/stable/25165775>).

⁴⁷ Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 1999).

⁴⁸ Ecclesiastical Records of the St. Augustine Diocese, Baptism of Inéz Ana Antonia, White Baptisms 1784-1792, page 45, entry 91, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://diglib.library.vanderbilt.edu/esss-viewimage.pl?SID=20150311968078613&code=esss&RC=248476&Row=1&return=esss> (accessed 11 March 2015).

⁴⁹ Griffin, *Mullet on the Beach*, 192.

the baptism. It may be that the parents' identities were concealed to prevent embarrassment to an elite family or families.

In *The Women of Colonial Latin America*, Socolow investigated marriage in greater depth, discussing how both Church and state viewed the institution. The most common pattern, according to Socolow, was for women to marry someone of the same race, occupational group, social stratum, and parish as their fathers. She characterized marriage as a process that began with the exchange of the *palabra de casamiento*. It was a process that offered both peril and opportunity, more to women than to men. Women often found advantages in marriage: protection, financial support, and honor. There were disadvantages at times, including *la mala vida*, a controlling or abusive husband, or the risks of childbirth. Socolow joins Martínez and Twinam in studying "private pregnancies" and their occasional sad consequences. Like Boyer, she discussed a husband's power over his wife, and *la mala vida*.

The Council of Trent

Four scholars treated the subject of the canons declared by the Council of Trent pertaining to marriage, promulgated during the twenty-fourth session, 11 November 1563. Susan Socolow examined matrimonial files (*expedientes matrimoniales*) filed in Montevideo, Uruguay, in 1786. Socolow views these documents not in light of the real *pragmática de casamientos* but in terms of the Council of Trent. These were files that a clergyman would open to determine if the marital pair was suited for marriage on the

basis of being single and other factors.⁵⁰ William Roberts examines the marriage canons of Trent as to what errors they were intended to correct, and the reforms Trent instituted in order to correct those errors.⁵¹

Allyson Poska discusses the Council of Trent, briefly describing conditions before Trent, then after. Broadly, the purpose of the Council was to “redefine the role of the parish and the sacraments,” including the sacrament of marriage. According to Poska, Spain had been moving toward religious homogeneity both as an impetus for and a result of the *reconquista*. Spanish victory resulted in the expulsion of the Moors and the Jews in 1492. By the canons on marriage, the Church took charge of regulating social and sexual relations, and took control of the marriage process. The Church banned premarital and extramarital sex, with the burden of responsibility and punishment for these offences being laid more heavily on women than on men. Thus gender again entered into the question of marriage-related behavior.⁵²

The Real Pragmática de Casamientos

As to the real pragmática de casamientos of 1776 and its extension to the colonies in 1778, Christian Buschges presents a case study, when “Don Manuel Valdivieso y Carrión Protests the Marriage of his Daughter to Don Teodoro Jaramillo, a Person of Lower Standing,” also in Boyer and Spurling’s *Colonial Lives*. Until the proclamation of

⁵⁰ Susan Migden Socolow, “Acceptable Partners: Marriage Choices in Colonial Argentina, 1778-1810” in Asunción Lavrín, ed. *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989), 209-251.

⁵¹ William P. Roberts, “Christian Marriage” in Raymond F. Bulman and Frederick J. Parella, eds. *From Trent to Vatican II: Historical and Theological Investigations* (Oxford Scholarship Online, <http://www.oxfordscholarship.com.ezproxy.lib.usf.edu/view/10.1093/0195178068.001.0001/acprof-9780195178067-chapter-12> (accessed 5 October 2013).

⁵² Allyson Marie Poska, *Regulating the People: The Catholic Reformation in Seventeenth Century Spain* (Ph.D. dissertation, University of Minnesota, 1992).

the pragmática, and its extension, the Church had regulated marriage, supporting freedom of choice of marriage partner and independence from parental control. That changed in 1776 in Spain and 1778 in the colonies. Buschges maintains that the pragmática and its extension were intended to prevent socially unequal marriages. After the promulgation of the decrees from the Crown, there followed a spate of lawsuits contesting and testing the new law. This suit, brought in Quito in 1784, charged that the daughter in question had been seduced by Jaramillo, who was allegedly of lower social status. The marriage would dishonor the Valdivieso family. Questions treated in the suit centered on Jaramillo's quality, his racial purity (he was white), that he was "honorable" (decente), and that his means of earning a living were not "ignoble, mean, nor plebeian."⁵³

Steinar A. Saether differs with other scholars on the background and meaning of the pragmática of 1776 and the 1778 decree, claiming that the others have misunderstood their history and purpose. In Saether's view, the decrees were not a reaction to socio-political events in the Americas nor were they attempts to limit Church power. They did not constitute a ban on interracial marriage. They were not conservative or old-fashioned in the face of progressive reforms. Rather, Saether argues that the Bourbon reforms worked to strengthen the power and influence of the Crown, to make the state more efficient, and to modernize it. But did not the Crown's effort to strengthen its own power and influence in any particular area thereby reduce those of the Church? The Bourbon reforms were modeled on those already carried out in other European countries, says Saether, though he does not identify which countries. The Bourbon view of government

⁵³ Christian Buschges, "Don Manuel Valdivieso y Carrión Protests the Marriage of his Daughter to Don Teodoro Jaramillo, a Person of Lower Social Standing," in Richard Boyer and Geoffrey Spurling, eds., *Colonial Lives: Documents on Latin American History, 1550-1850* (New York: Oxford University Press, 2000), 224-235.

was absolutist, based on patriarchy, hierarchy, and the absolute authority of the King. This model was acceptable in Spain, but encountered resistance in Spanish America. The Crown was not ready for this conflict in mentalities.⁵⁴

Rodrigo Andreucci Aguilera described a history of the *pragmática*, and found historical underpinnings for the Pragmatic Sanction in the prohibition in 1563 of clandestine marriage by Philip II. The King called for punishment for the couple contracting a clandestine marriage and for those having a hand in the union, whether witnesses or accomplices. Their goods could be confiscated, they could be exiled. If any person exiled for this reason returned to Spain, his life would be forfeit. The marital couple could also be disinherited by their parents. Aguilera makes no connection between King Philip's proclamation and the canon of the Council of Trent issued in that same year against clandestine marriage. He also fails to point out a connection between this proclamation and the provisions against clandestine marriage in the Laws of Toro.⁵⁵

María Luz Alonso argued a different origin for the Pragmatic Sanction.⁵⁶ She cites contemporary sources which maintained that the true origin and motivating factor for the issuance of the *pragmática* was Crown Prince Luis de Borbón's possible marriage to a woman of inferior status. One problem with this argument is that there was concern over unequal marriages more than twenty years before the promulgation of the decree of

⁵⁴ Steinar A. Saether, "Bourbon Absolutism and Marriage Reform in Late Colonial Spanish America," *The Americas* Vol. 59, No. 4, 475-509 (JSTOR stable URL: <http://www.jstor.org/stable/1008567>).

⁵⁵ Rodrigo Andreucci Aguilera, "La *pragmática* de Carlos III sobre el matrimonio de los hijos de familia y su pervivencia en el derecho chileno" (http://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0716-54552000002200010) (accessed 5 January 2014).

⁵⁶ María Luz Alonso, "El consentimiento para el matrimonio de los miembros de la familia real (sobre la vigencia de la *Pragmática* de Carlos III de 1776)," *Cuadernos de Historia del Derecho*, No. 4 (1997), 61-89. (<http://revistas.ucm.es/index.php/CUHD/article/viewFile/CUHD9797110061A/20433>) (Accessed 19 December 2010).

1776. In 1752, Spanish cleric José de Tenebra expressed the opinion that unequal marriages should be prevented.⁵⁷

In this framework, and using original documents and secondary sources, this paper will reconstruct how the pragmática and subsequent rulings were applied – or ignored – in St. Augustine.

⁵⁷ Martínez, *Genealogical Fictions*, 148. For more discussion of origins of the decree of 1776, see Chapter Eight.

CHAPTER THREE:

METHODOLOGY AND SOURCES

“Studies of any body of documentation can be used to support almost any hypothesis about past behavior, since our knowledge of past conduct is always incomplete and partial.”
-- Patricia Seed⁵⁸

Methodology

Three types of sources support the arguments presented herein. The secondary sources contain the results of research by scholars into questions of marriage in the Spanish Empire during the late eighteenth and early nineteenth centuries. The pragmática of 1776, the decree of 1778, and successor decrees are the original documents regarding the law of marriage at the time. The matrimonial licenses filed in St. Augustine from 1784 through 1803 are the original documentation of marriage promises and petitions for permission to marry in the Spanish Florida city.

Examination of the various laws reveals their provisions and tracks the changes wrought in the subsequent decrees. This serves to establish the pattern of the requirements of these laws. The studies described in the abovementioned secondary sources, compared with the laws themselves, provide a picture of the underpinnings of the changes in these laws, that is to say, how the law responded to social and political conditions.

⁵⁸ Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1822* (Stanford: Stanford University Press, 2000), 9.

The marriage license petitions were chosen for their role as the initial document filed in many cases of intended marriage. They were prompted by the first article of the 1776 *pragmática*, which required that those intending to be married obtain the counsel or consent of their parents in order to marry. These petitions also stemmed from Articles Eight and Nine, which mandated that parents must consent to a marriage unless they had “just and rational” reasons for denying permission, and that young people had recourse to the courts to contest their parents’ opposition. Also applicable here are Articles Four and Five of the 1778 decree, that individuals whose parents or other qualified persons lived too far away for timely response to a request for consent would instead petition local authorities for permission. The provisions of the *pragmática* will be discussed further in Chapter Eight.

These petitions were analyzed along several dimensions. Were the petitions in conformance with the provisions of the *pragmática* as extended to the colonies by the decree of 1778? How was language used to express the ideas of the equality of marriage partners, the quality of persons, purity of blood (*limpieza de sangre*), race, status, and honor as these were applied in St. Augustine? How frequent were parental objections to marriages? Upon what criteria were these objections based? Were these objections to particular marriages successful? What do these documents reveal about the status of women in St. Augustine at that time?

The Original Documents

The documentary sources used in this research come mostly from the East Florida Papers, a collection of official documents, letters, reports, and similar papers seized by

the United States in 1821 at St. Augustine. There are 146 marriage license petitions, spanning the years 1784 to 1803.⁵⁹ The majority of these documents are formulaic and without a great deal of information, consisting of the petition by the prospective groom or bride, or both, who request a license to be allowed to marry, supported by the testimony of witnesses, and the ruling of the tribunal made up of the governor, the city and military auditor, and the notary. The usual basis for these petitions was the absence of parents, grandparents, guardians, or others who were qualified, under the real pragmática de casamientos, to give permission for the marriage. This license, once granted, then allowed the parties to continue on to the local parish church for the expediente matrimonial, the file opened by the local parochial curate, who was also the ecclesiastical judge. The curate would question the groom and the bride to assess their fitness for marriage, that is to say, to be sure they were single, that they were not related within the fourth degree of kinship, that they had not promised marriage to another, and that they had not taken religious vows of chastity or entered a religious order.

Other documents in the East Florida Papers used as sources include letters between the governors in St. Augustine and the Captains-General in Havana, between the governors and other Royal and ecclesiastical officials, and between the governors and other officials in East Florida, on a variety of topics. A few letters discuss clandestine marriages, which had long been prohibited by the church, a view restated at the Council of Trent in the mid-sixteenth century. The state's prohibition of clandestine marriage appeared in the codification of the *Siete Partidas* in the thirteenth century. The East Florida Papers also contain the text of several of the proclamations made subsequent to the issuance of 1778 decree which applied the pragmática to the colonies.

⁵⁹ These documents are found on Reel 132, Bundle 298R9 of the microfilmed East Florida Papers.

Some demographic data, including information about women business owners in St. Augustine, come from the Municipal Accounts on Reel 148 of the East Florida Papers. These consist of records of quarterly taxes assessed on business premises. These documents record the date, the name of the person paying the tax, and the neighborhood in which the business was located.

Baptismal records figure in an illustrative case concerning marriage, illegitimacy, and the status of women in St. Augustine. In these records, we see many *hijos naturales* (natural children), whose parents were not married, to each other or to anyone else. Occasionally, there are marginal notes in the baptismal records indicating that a natural child was legitimized by the subsequent marriage of his or her parents. There were eighteen natural children listed in the baptismal records from 1784 to 1799. Information on these cases was taken from transcriptions of the baptismal records in the archives of the Diocese of St. Augustine.⁶⁰

Early in 2015, the marriage, burial, and baptismal records themselves, in digitized form, became available on the website of Vanderbilt University. Transcription and translation of the records from 1784 to the fall of 1788 is made more difficult by the fact that they are in Latin. In 1788, on a *visita*, or inspection tour, of the St. Augustine parish, Bishop Cirilo de Barcelona, Auxiliary Bishop of Cuba, decreed that henceforth the marriage, baptismal, and burial records would be kept in Spanish. He also prescribed formats for each, which appear in those records.⁶¹

⁶⁰ These transcriptions are held at the St. Augustine Historical Society.

⁶¹ Cirilo de Barcelona, Bishop of Tricaly and Auxiliary Bishop of Cuba, entry concerning format of baptism records, White Baptisms 1784-1792, 124-125, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://diglib.library.vanderbilt.edu/esss-viewimage.pl?SID=20150312279815673&code=esss&RC=248480&Row=204&return=esss> (accessed 12 March 2015).

Primary Documents in Derivative Sources

For the text of the real pragmática de casamientos of 1776, the decree of 1778 which extended the provisions of the pragmática to Spanish America, and many of the subsequent decrees, Richard Konetzke provided the most complete transcriptions.⁶² The original of the real pragmática de casamientos likely no longer exists. Patricia Seed, in her notes to her book *To Love, Honor, and Obey in Colonial Mexico*, cites Konetzke as her source for the text of the pragmática. A much earlier publication contains the text of the pragmática, closer to the time of its promulgation.⁶³ Comparison of Konetzke's transcription of the pragmática of 1776 and that of Santos Sánchez shows the Konetzke version to be more complete. Konetzke included one paragraph at the beginning and one at the end, both of which Sánchez omitted in his transcription. The wording in Sánchez is in the third person ("Siendo propio de la Real autoridad"), where Konetzke uses the first person ("Siendo propio de mi Real autoridad"). Also, in the quoted fragments here, the Sánchez version begins with "Siendo propio," etc., as the first paragraph, whereas in the Konetzke transcription, this is the second paragraph, and it begins "Don Carlos, por la gracia de Dios Rey de Castilla, etc., sabed que siendo propio," and so forth.⁶⁴

⁶² Konetzke, Richard, *Colección de Documentos para la Historia de la Formación Social de Hispanoamérica*, Volume III, first and second books (Madrid: Consejo Superior de Investigaciones Científicas, 1962). Many of the decrees from 1778 to 1803 also appear in the East Florida Papers in a more original form, though many of these were copies made for distribution throughout the Empire. These more original sources are less likely to have transcription errors, as they are second generation, whereas Konetzke's transcriptions are at least third generation, making them just that much more prone to errors.

⁶³ Santos Sánchez, comp., *Extracto Puntual de Todas las Pragmáticas, Cédulas, Provisiones, Circulares, y Autos Acordados, Publicados y Expedidos por Regla General en el Reynado del Señor Don Carlos III, Cuya Observancia Corresponde a los Tribunales y Justicias Ordinarias del Reyno, Tomo I, Comprehende desde el Año 1760 al de 1776 Inclusive* (Madrid: La Viuda e Hijo de Marín, 1792).

⁶⁴ Konetzke cites his source: *Cedulario de Ayala*, Tomo 51, fol. 254, num. 194 – Acad. Historia, Colección Mata Linares, tomo 103. Publicada en Beleña, Recopilación 2, págs. 163 sigs.

There exists a digitized copy of a document which purports to be the *pragmática*, or a copy of it.⁶⁵ The document appears to be a copy that was entered into a day book or other record on some local level. It is in a bound volume, and is not in a court hand, the precise, elegant, and error-free handwriting used in documents that originated in the royal court. The wording is slightly different from the Sánchez and Konetzke transcriptions, and it appears incomplete. In comparison to the Sánchez and Konetzke versions, it is missing the last five or six paragraphs, respectively. The blogger gives no information for this truncated version, nor does he give a source. An indication that this document is or at one time was in private hands is revealed in a stamp on the recto of the first folio with the name Arturo Padilla Fuentes, *abogado* (attorney), dated 10 January 1953. Konetzke's transcriptions are more complete and more reliable .

For the text and explication of the *Siete Partidas*, the Samuel Parsons Scott translation edited by Robert I. Burns, SJ, was selected. The *Siete Partidas* is the code of laws compiled by King Alfonso X, “*El Sabio*” in the thirteenth century. The Laws of Toro, codified in 1505, appear in *Compendio de los Comentarios Extendidos por el Maestro Antonio Gómez a las Ochenta y Tres Leyes de Toro*, compiled by Pedro Nolasco de Llano (1795). These laws dealt almost exclusively with inheritance, but one of the laws restates the Crown's position against clandestine marriage. Another of the Laws of Toro states that a man had the right to kill his wife and her paramour if he caught them in the act of having illicit sex.

The relevant canons of the Council of Trent, a middle sixteenth-century Catholic Church body whose long deliberations produced a revision and codification of canon law,

⁶⁵ “Bibliofilia novohispana” (<http://marcofabr.blogspot.com/2009/09/real-cedula-y-pragmatica-sancion-sobre.html>)

are drawn from the *Canons and Decrees of the Council of Trent with a Supplement Containing the Condemnation of the Early Reformers, and Other Matters Relating to the Council*, translated by Theodore Alois Buckley, published in 1851, and from J. Wentworth's *The Canons and Decrees of the Sacred and Oecumenical Council of Trent* published in 1848.⁶⁶

⁶⁶ When using transcriptions of original documents, it behooves the researcher to understand that there is always the possibility of transcription errors. Sometimes all we have to use in our research is a transcription, the original document having been lost. The further away the transcription is from the original, the greater the possibility of transcription error. As well, we are wise to heed the words of Patricia Seed, quoted at the beginning of this chapter.

CHAPTER FOUR:
LANGUAGE IN THE SOURCES:
INTERPRETING THE MENTALITIES

“There is no other way to define what we mean when we refer to a given language than to say *the language of Rome in the year x; the language of Annecy in the year y*. In other words, to take a single restricted locality and a single point in time.”

-- Ferdinand de Saussure⁶⁷

In interpreting the original documents we must depend on the words of those who created them. Language conveys ideas, but also represents the thought behind the ideas. Chapter 2 showed that there developed a discontinuity of mentalities between Spain and its colonies in the Americas. It becomes obvious that Charles III came to have the same problem George III of England had with his colonies which lay to the north of St. Augustine. Each monarch thought of his empire as being of one mind, while the Anglo-Americans and the Spanish colonists were developing their own culture, with separate and distinct ways of thinking and of viewing their world.

Patricia Seed refers to a set of broadly-shared cultural mores and beliefs represented by a word or a phrase.⁶⁸ When a word or phrase was used in the colonies with marked difference from the usage in the metropolis, we can infer a difference in thought as well. Between Spain and St. Augustine, the discontinuity in mentalities finds representation in the language each used in its documents. Creators of documents in St.

⁶⁷ Ferdinand de Saussure, *Writings in General Linguistics* (New York: Oxford University Press, 2008), 115.

⁶⁸ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 47.

Augustine used words in ways not used in Spain for decades, and St. Augustine used at least one word Spain did not – *floridano* (see page 67).

To Patricia Seed, the study of the language used by families in their objections to their children's marriages and by church officials in their responses established dominant sets of meanings. Language reflects “the history of change in socially constituted meanings as understood and expressed in a given historical period.”⁶⁹ The idea of the particular historical period is important when considering language, for meanings change over time. Boyer offers an explanation for the use of what in Spain would be archaic meanings by officials in St. Augustine: “. . . at the level of family and private life, beliefs and behavior showed little change during the three hundred years of Spanish rule in the Indies.”⁷⁰ The slow pace of change in social behavior was reflected in the use of language by officials to describe and attempt to control that behavior.

Calidad and Clase: the Social Basis of “Equality”

In Chapter Two, the words *calidad* (quality) and *clase* (class) were discussed as representing concepts important to the idea of marriage equality. The evolution of meaning in these two words is instructive. *Calidad* appeared in a 1495 Spanish dictionary, the earliest included on the NTLLE. In dictionaries ranging from that year to 1609, in English, French, Latin, and Italian, the definition was simply “quality.”⁷¹

Recognizing that dictionaries reflect language as it develops, and tend to lag behind its

⁶⁹ Ibid., 9-10.

⁷⁰ Boyer, *Lives of the Bigamists*, 6.

⁷¹ NTLLE, <http://ntlle.rae.es/ntlle/SrvltGUILoginNtlle>. 1495 Nebrija (Latin: *qualitas*), 37, column 1; 1516 Nebrija (Latin: *qualitas*), 29, column 2; 1570 Casas (Italian: *qualità*), 33, column 1; 1591 Percival (English: *qualitie*; an archaic spelling), 37, column 2; 1604 Palet (French: *qualité*), 63, column 1; 1607 Oudin (French: *qualité*), 105, column 2; 1609 Vittori (French: *qualité*; Italian: *qualiate*, *grado officio*, *dignitate*), 122, column 1.

everyday use, by 1611, *calidad* had come to be applied to persons, being defined as “a person of quality, a man of authority and of parts.”⁷² However, a simpler interpretation appeared between 1617 and 1729, with the definition again being merely “quality.”⁷³ In the 1620 and 1679 dictionaries, there was an added definition for the phrase “person of quality,” defining such a one as “a person of quality, authority, and command” (1620), and as “a man of principle, authority, and dignity” (1679).⁷⁴

In the 1729 definition in the Royal Academy’s dictionary, the first definition discussed the taxonomic qualities of species.⁷⁵ The second discussed the quality of trade goods, as in a product’s freshness or construction or other aspects to be judged as fit for sale.⁷⁶ It was in the third definition that referred to the qualities of a noble human being: the nobility and distinction of one’s blood (lineage), “and thus of the knight or *hidalgo* of old was said, he is a man of quality.”⁷⁷ This definition, with the statement about the knights and *hidalgos* of old, placed the definition back in time. Thus it demonstrated a relationship to history and lineage, and the relevance of the word *calidad* to, and perhaps in, the past. A fourth definition further spoke of the distinction in a person or thing,

⁷² NTLLE, 1611 Covarrubias, 349, column 2. The definition given is “persona de calidad, hombre de autoridad y de predas.”

⁷³ NTLLE, 1617 Minshieu (Latin: *qualitas*; English: *qualitie*), 49, column 1; 1620 Franciosini (Spanish: *persona de calidad*) 127, column 1; 1670 Mez de Braidembach (German: *Gestalt*), 48, column 1; 1679 Henriquez (Latin: *qualitas*), 73, column 1; 1705 Sobrino (French: *qualité*), 72, column 1; 1706 Stevens (English: *quality*; Latin: *qualitas*), 82, column 2; 1721 Bluteau (Portuguese: *calidade*), 27, column 2.

⁷⁴ NTLLE, 1630 Franciosini (Italian: *persona di qualità, vale d’autorità, e comando*), 127, column 1; 1679 Henriquez (Spanish (to show usage): *persona de calidad*; Latin (definition): *vir praecipuus, autoritatis, dignitatis*), 73, column 1.

⁷⁵ The definition begins “La propiedad del cuerpo natural, y naturalmente . . . inseparable de la substancia.” From there it mentions Aristotle and his classification of natural qualities. This dictionary was published six years before Carl Linnaeus published his *Systema Naturae*, in which he formally introduced his conception of taxonomic classification of species.

⁷⁶ “Significa tambien el ser y bondad de las cosas, el estado actual de ellas, assi en el género u especie de su constitución, como en otros requisitos y circunstancias que concurren para ser buenas, o no reputadas por tales. Usase con especialidad de esta voz en este sentido, hablando de las cosas vendibles . . .”

⁷⁷ “Se llama la nobleza y lustre de la sangre: y assi el Caballero o hidalgo antiguo se dice que es Hombre de calidad. . .”

increasing it in esteem, seeing it (or him) from inside as well as outside. That is to say, the moral and philosophical as well as physical qualities of a person or thing.⁷⁸ In the fifth definition, *calidad* referred to the gravity or importance of a thing.⁷⁹

Finally, the sixth definition described the condition and requirements of a contract or other writing, as being fit in its contents.⁸⁰ This could have referred to marriage contracts. The fitness of a marriage contract would be of concern to civil authorities, who were called upon to pass on that fitness, as well as to ecclesiastical authorities, whose processes, the *expediente matrimonial* and the marriage ceremony, would depend on the fitness of the civil contract. Under the practice of the Pragmatic Sanction in St. Augustine, these processes would not occur if the civil contract did not receive the approval of the governor. A typical order by a governor would read:

“The information produced by Antonio Alberty and Antonia Tudorina is sufficient, and at his superior validation and signature, His Lordship interposes his authority and his judicial decree as he is able, and has standing in law. And in consequence thereof, he has ordered that they be given certification of this order so that they may appear before the [ecclesiastical] judge of competent jurisdiction to perform the remaining actions which may be necessary for the marriage which the parties seek to contract.”⁸¹

⁷⁸ “Vale tambien prenda, parte, dote, y circunstancia que concurre en algun individuo o cosa, que la hace digna de aprecio y estimacion, assi por lo que mira a lo interior, como a lo exterior de ella.”

⁷⁹ “Se toma tambien por la importancia de una cosa o gravedad de ella.”

⁸⁰ NTLLE, 1729 *Academia Autoridades*, 67, columns 2-3. This sixth definition reads: “Se toma tambien por condicion, requisito particular o circunstancia que se pone en algun negocio, escritura, contrato, u otra cosa para su constitución y firmeza. . . .”

⁸¹ Petition of Antonio Alberty and Antonia Tudorina for permission to marry, Matrimonial Licenses 1784-1803, Reel 132, Bundle 298R9, No. 71, East Florida Papers. “Se ha por bastante la Ynformación producida por Antonio Alberty y Antonia Tudorina, y a su maior balidación, y firmeza interpone Su Señoría su autoridad,y Decreto Judicial en quanto puede, y ha lugar en Derecho. Y en su consecuencia

Thus in the years between 1617 and 1729, there had developed fine distinctions in the concept of “quality,” from a simple indication that something was good – had quality – to differentiation along the lines of taxonomy, commercial products, business negotiations and contracts, and of course to the quality that elevated one person over another. Reflected in the concept of quality as representing a “distinction of blood,” was the idea of a properly “clean” genealogy, the growth of the concept of *limpieza de sangre*.

In the 1780 and 1783 dictionaries of the Spanish Royal Academy (*diccionarios de la Real Academia Española*, hereinafter DRAE), aside from taxonomic and commercial definitions, *calidad* was defined as “nobility and distinction of blood” in the second definition and as “the importance or gravity of some thing” in the fourth.⁸² In that, there was not much change from 1729. In the 1786 dictionary written by a Jesuit, called the Terreros y Pando, *calidad* was defined as “the character of a person.” The 1791 DRAE used the definition found in 1780 and 1783 as “nobility and distinction of blood.” In the 1803 DRAE, the definition remained the same.⁸³

Iлона Katzew enumerates the elements of *calidad*, as the word was applied to the character and quality of persons in Mexico: economic status, social position, cultural factors, racial (that is to say, physical) features, reputation, occupation, wealth, *limpieza de sangre*, honor, integrity, and origin.⁸⁴ Many of these, at one time or another, are reflected in the marriage license petitions filed in St. Augustine.

mandó se les ministre Certificación de este Auto para que ocurran al Juzgado que compete a practicar las demás Diligencias que correspondan para el Matrimonio que solicitan contraer.”

⁸² NTLLE, 1780 DRAE, 176, column 3; 1783 DRAE, 190, column 3. The second definition: “*Nobleza y lustre de la sangre*.” The fourth: “Importancia o gravedad de alguna cosa.”

⁸³ NTLLE, 1786 Terreros y Pando, A-F, (“*Carácter de una persona*”), 315, column 2; 1791 DRAE, 173, column 3; 1803 DRAE (“*Nobleza y lustre de la sangre*”), 158, column 3.

⁸⁴ Iлона Katzew, *Casta Painting*, 45.

In an odd twist on the economic factor, José Coruña, father of Antonio Coruña, objected to his son's proposed marriage to Angela Rosi. José's objection was that the couple "has no means, nor even a bed in which to sleep, and has nothing on which to live besides ten pesos of salary . . ." ⁸⁵ In this case, the objection of a parent was based on his own child's lack of means. A parent's objection to the poverty of her child's intended spouse was the issue in the opposition of doña Luisa Pérez, a widow, to the marriage of her daughter, doña Felicitas Almanza, to don Juan Blas de Entralgo. Doña Luisa's objection "consisted of no other thing than that the intended groom is poor, without office or employment, nor any other means to support himself than that which he earns by his pen . . ." ⁸⁶ He had an honorable lineage, apparently, but subsisted poorly as a writer or scribe, or possibly a notary. If he was a notary, his name does not appear as the government notary, so he may have operated privately, or as a representative of another entity such as the church.

Probably St. Augustine's most famous instance of a parent's opposition on the basis of economic inequality did not make it into the marriage license petitions. Irish soldier John O'Donovan had asked Governor Zéspedes for permission to marry his daughter, Dominga. Zéspedes refused to give his consent. The couple disobeyed, arranging a clandestine marriage. Zéspedes wrote to don José, Count of Gálvez, saying he had told O'Donovan that "he needed sufficient means to support my daughter with the

⁸⁵ Petition of Antonio Coruña for permission to marry Angela Rosy/Rosi, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 107, East Florida Papers. Rosy was also rendered as Rosi, and these were the Spanish rendition of the Italian surname Rossi. The wording is: "ni una ni otro tienen haveras algunas, ni aun cama en que dormir y no van atender a otra cosa más que a los diez pesos de sueldo . . ."

⁸⁶ Petition of Don Juan Blas de Entralgo for permission to marry Doña Felicitas Almanza, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 114, East Florida Papers. Doña Luisa's words were: "no consistía en otra cosa más que ser el contrahiente pobre, sin oficio ni empleo, ni otro advitrio de que mantenerse mas que lo que ajenciava con la pluma . . ."

honor corresponding to her birth.”⁸⁷ These three cases support Patricia Seed’s assertion that economic disparity centered on the prospective groom having the financial means to support a family properly rather than on a general wealth-versus-poverty dichotomy.⁸⁸

Social status concerns were reflected in the many petitions in which an intended bride or intended groom was described as being from an honorable family, of good qualities and circumstances, and socially equal to his or her intended. An example of this is the testimony of witnesses Miguel Hernandez and Lorenzo Capó that Juan Pons and Juana Andreu were “both of equal quality.”⁸⁹ Antonio Mestre described don Dimas Cortés and doña Agueda Seguí as “persons of the first circumstances of that land, for their birth, esteem, and good conduct.”⁹⁰ Race and reputation figured in the case of Juan Antonio García and Caterina Brown, both of whom had African ancestry. Witness Antonio Hernandez testified that he knew García in Campeche, Mexico, and that García’s parents were “known publicly as people of color and of low esteem.” He also knew Caterina in St. Augustine, and says she was “a mulatto woman, for having been the daughter of a Negro woman and a white Englishman.”⁹¹

⁸⁷ Vicente Manuel de Zéspedes to the Count of Gálvez, 3 June 1785, Letters to the Count of Gálvez, 1784-1786, Reel 16, Bundle 41B4, East Florida papers, folios 78r-82r. Don Vicente wrote: “. . .devía hacer constar hallarse con medias suficientes para mantener a mi hija con la decencia correspondiente a su nacimiento . . .”

⁸⁸ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 144.

⁸⁹ Petition of Juan Pons for permission to marry Juana Andreu, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 14, East Florida Papers. The surname Andreu is also rendered as Andrea. Both witnesses used the phrase “ambos son iguales.”

⁹⁰ Petition of don Dimas Cortés for permission to marry doña Agueda Seguí, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 43, East Florida Papers. Antonio Mestre: “. . . son personas de las primeras circunstancias de aquella tierra, por su nacimiento, estimación, y buena conducta.”

⁹¹ Petition of Juan Antonio García for permission to marry María Caterina Brown, Reel 132, Bundle 298R9, No. 53, East Florida Papers. Juan’s surname is written as Gareja on the cover sheet, but in the document is rendered as García and as Garela. Brown is also seen as Broun in the documents. Hernandez: on García’s parents: “. . . que por público save que son gente de color y poco estimación . . .,” and on Caterina Broun: “. . . save por bos [voz] pública que también es de color mulata por haver cido [sido] hija de una Negra y un Inglés blanco . . .”

Concern with a man's occupation appeared in only one of the marriage petitions, that of don Nicolás Sánchez to marry doña Magdalena Joaneda. Testifying on behalf of both the intended groom and the bride, witness Tomás de Aguilar stated that "all are honorable persons, of good reputation, and neither employed in a disgraceful occupation."⁹² It is interesting that an individual characterized by the honorific "don" would encounter any question as to the social acceptability of his line of work.⁹³

The question of origin arose once, in the application of Louis Trunston, a French sailor seeking to become a citizen (*vecino*) of St. Augustine. His petition diverged from the usual motive of lack of parents or any other person qualified to grant permission to marry, though reference was also made to this condition. Trunston sought to have his good conduct as a stranger (one whose place of origin was not St. Augustine or other Spanish territory) verified so that he could marry Juana Gornes, a citizen of the town. Town citizens José Turdas and Pedro Trope testified to Trunston's good conduct and seven-year term of residence in St. Augustine.⁹⁴ Thus most of the high notes of Katzew's list of elements of *calidad* found expression at least once in the matrimonial license petitions of St. Augustine.

Calidad in these petitions was often used in the plural, *calidades*, as in "the many good qualities" of a petitioner or his or her intended. Sometimes the qualities were

⁹² Petition of Don Nicolas Sánchez for permission to marry Doña María Magdalena Joaneda, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 116, East Florida Papers. Joaneda also spelled Yuaneda in some documents. Aguilar: ". . . que todas son personas blancas, de buena reputación y fama, y ninguno empleado en ejercicio infame . . ."

⁹³ In St. Augustine at the time, there was still an economic and social distinction between those addressed by these honorifics and those who were not. Several individuals in the Minorcan community started out with nothing and no honorifics, and later became wealthy, prominent, and apparently deserving of the titles "don" and "doña," as described in Chapter Two. While wealthy planters Francisco Xavier Sánchez and F. P. Fatio, and wealthy merchants and businessmen such as Carlos Goberto de Ceta and Pedro Cosifacio, were addressed as "don," farmers, sailors, fishermen, carpenters, and other workers were not.

⁹⁴ Petition of Louis Trunston for permission to marry Juana Gornes, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 63, East Florida Papers.

enumerated: honesty, being of a good family, recognition in the town (*de pública voz y fama* – of public voice and fame) as honorable. These were indicators not just of social class but of individual comportment and upright character, no matter if the individual was of the elite or a commoner. Honor was important at all levels.

In these petitions, *calidad* was the second-most frequent concern of the tribunal, the petitioners, and the witnesses in their responses (See Chart 1). Typical responses to questions of *calidad* were: “being both parties of equal quality, as is public knowledge,”⁹⁵ “in view of there being no inequality in the qualities of both parties . . .,”⁹⁶ “being certain of the good qualities and circumstances of the intended bride.”⁹⁷ In his petition, Mariano Lasaga praises the “qualities of honor and purity of blood” of his intended, Ynés Generino.⁹⁸ Two witnesses in the petition of José Arnau to marry Magdalena Manucy recognized that “both are equal in quality and purity of blood (*limpieza de sangre*).”⁹⁹ *Calidad*, in St. Augustine during the period in question, seems to refer mainly to social qualities, including the factor of religious purity which made one socially acceptable in Spanish society, wherever it occurred.

⁹⁵ Petition of Juan Bautista Paredes for permission to marry Isabel Ridabete, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 3, East Florida Papers. Juan’s petition which states “. . .siendo amvos [ambos] contrayeites de igual calidad, como es público . . .”

⁹⁶ Petition of Antonio Berta for permission to marry Mariana Sans, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 8, East Florida Papers. Statement of Mariana’s sister Margarita Sans, giving her permission for Mariana to marry Antonio Berta. Margarita: “. . . que en atención a no haver desigualdad en las calidades de ambos . . .”

⁹⁷ Petition of Antonio Raspay for permission to marry Juana Seguí, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 36, East Florida Papers. Antonio’s petition states: “Estando cierto de las buenas caliades y circunstancias de la pretendiene . . .”

⁹⁸ Petition of Mariano Lasaga for permission to marry Ynes Generino, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 66, East Florida Papers. Mariano’s petition states: “. . . las qualidades de honradez y limpieza de sangre . . .”

⁹⁹ Petition of José Arnau for permission to marry Magdalena Manucy, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 60, East Florida Papers. Witnesses José Hernández and Diego Hernández stated the idea only slightly differently. José: “. . . ambos iguales en la calidad y limpieza de sangre . . .and Diego: “. . . la igualdad que en ambos contraientes asiste asi en la calidad como en la sangre.”

Clase and calidad became the basis upon which equality of marriage partners was determined. Both words became part of the ideology of limpieza de sangre. Clase was a more recent addition to the Spanish vocabulary, first seen in the 1611 dictionary characterized as Covarrubias, where it referred to classes of naval vessels. The word also applied to the divisions of an institution of higher learning, to classify students.¹⁰⁰ In another dictionary from 1611, the Rosal, clase was defined simply as *lonja*, defined primarily as the language of business negotiations. It also referred to places where soldiers lodged, and to rooms where many came together, as in classrooms.¹⁰¹ In the 1679 Henríquez dictionary, it was defined in Latin as *ordo* (order, as in taxonomy).¹⁰²

The 1729 *Academia Autoridades*, volume 2 spelled clase as classe. This dictionary presented detailed definitions. In the first, classe was defined as “Order chosen in any material in which there are different individuals: as, the class of the Angelic Spirits, the class of the Apostles, of the Saints, of the Martyrs. The word is taken from the Latin *classis*.”¹⁰³ The second definition signified “also a distinct order of persons that results in the division in the neighborhoods of any city, town, or population, for the government and knowledge of the individuals and citizens which comprise it.”¹⁰⁴ The third definition signified “also the grade or quality that corresponds to the sphere of

¹⁰⁰ NTLLE, 1611 Covarrubias, 429, column 2.

¹⁰¹ NTLLE, 1611 Rosal, 156 (clase); 396 (*lonja*).

¹⁰² NTLLE, 1679 Henríquez, 100, column 1.

¹⁰³ NTLLE, 1729 *Academia Autoridades*, 371, column 2. “Orden escogida en alguna matéria en que hai diferentes individuos: como la classe de los Espíritus Angélicos, la classe de los Apostoles, de los Santos, de los Martyres. Es tomado del Latino Classis.”

¹⁰⁴ “Vale tambien Orden distinto de personas, que resulta en la división que se hace en las vecindades de alguna Ciudad, Villa, o Población, para el gobierno y conocimiento e los individuos, y vecinos que la componen.”

any individuals: as, the class of Nobles, *Hijosdalgo*, Doctors, Masters, the learned, politicians, etc.”¹⁰⁵ The fourth definition spoke of the classification of students.

In the 1780 edition of the Royal Academy’s dictionary, *clase* was defined as “the order or number of persons of the same grade, quality, or office, as in the class of *grandees*, of titled nobility, etc.”¹⁰⁶ This may not necessarily have indicated social class as much as it referred to an estate. In any event, this definition described a status elevated above the commoners. The nobility was cited as an example. In St. Augustine, there were no nobles, *grandees*, or *hidalgos*. The elite in St. Augustine was based more on social position, such as government officials, priests, wealthy merchants, and wealthy ranchers and planters. The definition of *clase* was the same in 1783’s DRAE, but in the 1786 Terreros y Pando, it was defined as a “distinction of persons or things, in order to place them or examine them according to their value and nature.” This definition more strongly emphasized social class, with the idea that among individuals, some had more value than others.¹⁰⁷ In the 1791 and 1803 editions of the DRAE, the definition was the same as that of 1780 and 1783.¹⁰⁸ Whether appearing to emphasize social class or titled estate, these definitions reflected a hierarchal and structured society.

What conclusion may we draw from the fact that the word *calidad* appears in sixty-nine of the 146 marriage petitions of St. Augustine, but the word *clase* appears only once? It may be that a strict division of social class was not all that important in Second Spanish Period St. Augustine. It may be that the word *calidad* was seen as containing the

¹⁰⁵ “Vale asimismo el grado o calidad que corresponde a la esfera de algunos individuos: como la classe de los Nobles, Hijosdalgo, Doctores, Maestros, Sabios, Politicos, etc.”

¹⁰⁶ NTLLE, 1780 DRAE, 233, column 2; 1783 DRAE, 247, column 3.

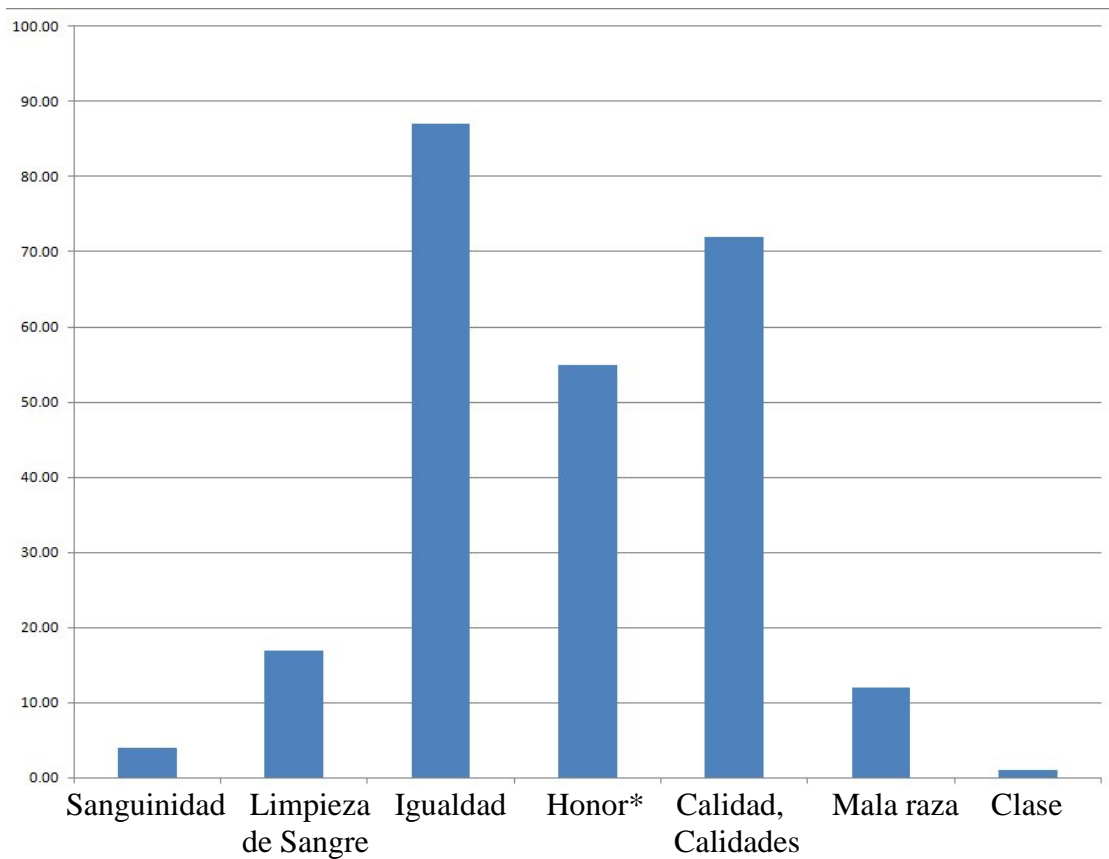
¹⁰⁷ NTLLE, 1786 Terreros Y Pando, A-F, 442, column 1; “distinción de personas, o cosas, para colocarlas, o mirarlas segun su valor, y naturaleza.”

¹⁰⁸ NTLLE, 1791 DRAE, 224, column 1; 1800 DRAE, 200, column 1.

concept of *clase* in reference to the “quality” or “qualities” of an individual. Another factor may lie in the social composition of St. Augustine. There was no aristocracy. There were no *grandees*, no *marquises*, no *counts*, no *hidalgos*. There were elites. The military and official elite based its status on political and military power, the power of the government. The planter elite was wealthy and better educated. Not all the wealthy

Chart 1

Words used in marriage license petitions of St. Augustine, Florida



*The word *honor* encompasses here the words *honrado/honrada*, *honradez*, and *blanco/blanca*. This chart represents the frequency of these words found in the 146 marriage license petitions filed between 1784 and 1803.

planters were of Spanish descent like Francisco Xavier Sánchez. Many were British, such as Zephaniah Kingsley, or other European, such as the Swiss Francis Philip Fatio. Just under the military and planter elites were the merchant and professional elites, many of them self-made. They were Spanish (including Cubans), Minorcans, English, Irish, and Americans. Such diversity, including a growing proportion of Americans infused with principles of individual liberty, and the vicissitudes of living on a frontier, may have loosened the sense of class and privilege. St. Augustine was a small frontier garrison town. It is likely that everyone knew everyone else, and the town's residents recognized their mutual dependence. The wise person takes care not to offend someone upon whom he must depend for employment, food, or protection.

This one use of the word *clase* may indeed have been simply a way to express the idea of equality of status, a concept also conveyed by the idea of equality of *calidades*, as found in two witness statements in the marriage license petition of José Fernández Pinerua to marry María Antonia Watson. Witness Diego Riollo stated that the two were “white (or honest: *blanca*) persons and of the same status (*estado*).” Witness Rafael Neto expressed the same sentiment by saying that José and his intended were “white (honest) and of the same class (*clase*).”¹⁰⁹

Raza, Casta, Castizo: the Racial Basis of Social Inequality

The meanings and uses of the words *raza*, *casta*, and *castizo* represented a complex world. To begin simply, the first appearance of *raza* in a dictionary included today in the NTLLE was in the Palet, a Spanish-French dictionary issued in 1604. The

¹⁰⁹ Petition of José Fernández Pinerua for permission to marry María Antonia Watson, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 134, East Florida Papers.

definition was simply “race.”¹¹⁰ María Elena Martínez maintains that this is also to be taken as “lineage,” and that one could be of good or bad lineage.¹¹¹ The first time the word was defined other than as “race” is in the 1611 Covarrubias edition: “Race in lineages is taken as vile, as in having any race of Moor or Jew.”¹¹² The word did not appear as other than “race” again until the 1737 *Academia Autoridades*: “Caste or quality of origin or lineage. Speaking of men, it is taken regularly as vile.”¹¹³ The 1783 and 1791 DRAE contained the same definition as this 1737 edition.¹¹⁴ Rather than an expression of race as it is viewed in the twenty-first century, this definition of race was a denunciation of any mixture as a deviation from purity. Thus, despite Martínez, to consider this denunciation of mixture was to consider something distasteful and beneath the dignity of a proper Spaniard. Race was not necessarily linked to color, but it was indicative of the “other,” the outsider, the nonconforming.

Raza became “linked to sin and heresy,” and to Jews, Muslims, and Protestants, who were “stained or defective” due to their heresies.¹¹⁵ The word had more of a religious connotation than does “race” in the twenty-first century. There were two features of raza related to *limpieza de sangre*. Old Christians wanted to exclude segments of society from high office and influence, to retain their own hold on these benefits. The Inquisition’s efforts to expose “hidden” Jews, those newly converted to Catholicism but suspected of continuing to practice Judaism, also figured into the

¹¹⁰ NTLLE, 1604 Palet, 251, column 1.

¹¹¹ Martínez, *Genealogical Fictions*, 53.

¹¹² NTLLE, 1611 Covarrubias, 1209, column 2.

¹¹³ NTLLE. 1737 *Academia Autoridades*, 500, column 1. “Casta o calidad del origen o linage. Hablando de los hombres, se toma mui regularmente en mala parte.”

¹¹⁴ NTLLE, 1783 *Academia Usual*, 792, column 2; 1791 DRAE, 708, column 1.

¹¹⁵ Martínez, *Genealogical Fictions*, 54.

ideology of *raza* and *limpieza de sangre*.¹¹⁶ *Raza* as a word to describe a denigrated segment of society was used in the sixteenth century more by the church than the state. It was used not to distinguish nobility from commoners, but to characterize lineages with Jewish or Moorish connections. The word became pejorative, to refer to Jews, Moors, and to a lesser extent, to Protestants.¹¹⁷ Color was not yet a consideration, at least not in Spain. The ideology behind this application of the word *raza* held that “[c]ertain communities were believed to derive from different biblical ancestors, and thus some were thought to have more privileged lineages than others.”¹¹⁸ In other words, all were equal in the sight of God, but some, as Old Catholics, were more equal than others.¹¹⁹

The definition and usage of *raza* may sound as if it approached the twenty-first century reference to color when Fray Juan de Pineda compared humanity to horse-breeding. Horses were all the same “race” (that is to say, all horses were horses), but some were of a better lineage. So, too, human beings “had particular origins and hence specific characteristics. And just as one tried to produce better horses by not breeding those of good lineage with lesser ones, so with humans.”¹²⁰ The origins referred to here were, again, those of Moor or Jew or even Protestant, and proper Catholic Spaniards would not want to mix with these, but would prefer to keep their lineage “pure.” The same dichotomies of purity and impurity, beauty and ugliness, and rationality versus sensuality that we see expressed in racism in the nineteenth, twentieth, and twenty-first

¹¹⁶ Ibid.

¹¹⁷ Ibid., 53.

¹¹⁸ Ibid.

¹¹⁹ The term applied to those whose purity of Catholic religion had been documented back several generations was *cristianos viejos* (old Christians). The term was designed to distinguish between the Old Christians and the *conversos*, the recently-converted, who were usually Moors or Jews. See Ibid., 27-28.

¹²⁰ Ibid., 53.

centuries also informed the struggle between newly converted Christians and those old Christians who viewed the newly-converted with suspicion and distaste.¹²¹

The most frequent usage of the word *raza* in the marriage petitions of St. Augustine appears in the phrase *mala raza*, or vile race. The phrase may or may not be extended, as in “limpia de toda mala raza de moro, Judío, mulato . . .” (clean (pure) of all vile race of Moor, Jew, mulatto). In some instances, the word *negro* is used, rather than *mulato*. Thus the word *raza*, in St. Augustine, encompassed both religion and race. Race and religion were also lumped together in an alternative expression of this sentiment, as in the statement of witness Domenico Martinelli to the petition of José Turdas to marry María Gabarda. “. . . that the intended bride María Gabarda is a person known as honest, pure of all vile race of Moors, mulattos, Jews, and of other vile sect.”¹²² (*secta*: error or false religion).¹²³ *Mala raza* did not receive frequent mention as an impediment to marriage in St. Augustine, as shown on Chart 1. How an individual was socially perceived carried more weight than physical appearance.¹²⁴ It was also true that black and white rarely intermarried in St. Augustine.

The words *casta* and *castizo*, which in Spain referred to good lineage, came to have different meanings in Spanish America. Though these words were not used in the marriage license petitions of St. Augustine, their absence can be as instructive as their presence. As with *raza*, the word *casta* first appeared in 1495 simply as a reference to lineage, but with the specification of good lineage.¹²⁵ In dictionaries issued in 1505 and

¹²¹ Ibid.

¹²² Petition of José Turdas for permission to marry María Gabarda, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 26, East Florida Papers. Gabarda may also be spelled Gavarda. The word interpreted here as “honest” is *blanca*, which may also mean “white.”

¹²³ NTLLE, 1783 DRAE, 844, column 2.

¹²⁴ Katzew, *Casta Painting*, 46.

¹²⁵ NTLLE, Nebrija 1495, 42, column 2.

1516, the same definition appeared.¹²⁶ The two words converged in 1570, wherein *casta* was defined as *raza*.¹²⁷ Such simplicity and merging of meaning continued in dictionaries issued between 1591 and 1609.¹²⁸ In 1611, the definition of *casta* was at last expanded, and included another word that was to become important in considerations of *calidad*: “It understands noble lineage and *castizo*, that which is of good line and descendance; . . . *castizos* we call that which is of good lineage and *casta*.”¹²⁹ Modern lexicographers might cringe at the circumlocution in that definition, but the emphasis is on a positive connotation. *Casta* gained another connotation in 1729, that of legitimacy: “Generation and lineage which comes from known parents.”¹³⁰

It was not until 1780 that any pejorative meaning was attached to the word *casta* in Spain, when the 1780 dictionary of the Spanish Royal Academy defined it as “Generation or lineage. Said also of those devoid of reason (*los irracionales*).”¹³¹ The same definition appeared in the 1783 edition.¹³² Those devoid of reason, of course, were those who deviated from the mainstream, who did not conform to the proper and pure Spanish Catholic model. In 1729 appeared a phrase in Spanish usage, *hacer casta*, “to procreate, and have children.” There was also mention of a joking reference in speaking of persons of reason (*los racionales*).¹³³ By 1780, the phrase had become pejorative, the opposite of its 1729 meaning: “to produce those devoid of reason (*irracionales*).” The

¹²⁶ NTLLE, Alcalá 1505, 96, column 2; Nebrija 1516, 33, column 2.

¹²⁷ NTLLE, 1570 Casas, 37, column 1.

¹²⁸ NTLLE, 1591 Percival, 41, column 2; 1604 Palet, 70, column 1; 1607 Oudin, 118, column 2; 1609 Vittori, 137, column 1.

¹²⁹ NTLLE, 1611 Covarrubias, 417, column 1. The definition is “vale linage noble, y castizo, el que es de buena linea y descendencia . . . Castizos llamamos a los que son de buen linage y casta.”

¹³⁰ NTLLE, 1729 *Academia Autoridades*, 219, column 2. The first definition of the word is: “Generación y linage que viene de Padres conocidos.”

¹³¹ NTLLE, 1780 DRAE, 205, column 2. “Generación o linage. Dicese tambien de los irracionales.”

¹³² NTLLE, 1783 DRAE, 219, column 2..

¹³³ NTLLE, 1729 *Academia Autoridades*, 220, column 1.

same meaning appeared in the 1783 edition of the DRAE.¹³⁴ Still, in Spain, there was no reference to color in the definition of *casta*.

Castizo was another word that began as referring simply to good lineage.¹³⁵ It evolved, being defined as “of noble blood” in 1609 and “of a good race or breed” in 1706.¹³⁶ The influence of Spanish America appeared in the second definition of *castizo* in the 1706 dictionary: “Son of a *mestizo* and a *mestiza*,” which does not conform to the usage in *casta* paintings of this period.¹³⁷ A *castizo* resulted from a *mestizo* or *mestiza* and a Spaniard, a definition reflected in the captions used by the *casta* painters in their art.¹³⁸ This second definition did not appear in any other Spanish dictionary through 1783. In 1729, *castizo* is defined as being of known origin and lineage, which resembled the definition of *casta* in the same dictionary, as being of known parents.¹³⁹ The emphasis on known origin or parentage indicated a concern with legitimacy, another consideration in determining the quality and the suitability of a person as a marriage partner. A man wanted to be sure his children were his, so the family legacy would be passed on to an intact and known line. In the marriage license petitions of St. Augustine, there were frequent references to the petitioner or the intended as being the legitimate son or daughter of his or her parents. The definition of *castizo* found in 1780 and 1783 reflected concern with legitimacy, “that which is of good origin and lineage.”¹⁴⁰ Good lineage was legitimate lineage.

¹³⁴ NTLLE, 1780 DRAE, 205, column 2; 1783 DRAE, 219, column 3.

¹³⁵ NTLLE, 1604 Palet, 70, column 1.

¹³⁶ NTLLE, 1609 Vittori, 137, column 2; 1706 Stevens, 98, column 1.

¹³⁷ NTLLE, 1706 Stevens, 98, column 1.

¹³⁸ Katzew, *Casta Painting*, 186.

¹³⁹ NTLLE, 1729 *Academia Autoridades*, 225, column 1.

¹⁴⁰ NTLLE, 1780 DRAE, 206, column 2; 1783 DRAE, 220, column 3.

María Elena Martínez states that in Spain, *castizo* indicated someone of good family and lineage, and *morisco* meant someone of Moorish heritage.¹⁴¹ In Mexico, a *castizo* was the product of a *mestizo* or *mestiza* and a Spaniard. A *morisco* in Mexico was the product of a *mulata* or *mulato* and a Spaniard – a different definition indeed and one which links the elements of *mala raza*: religion and race.¹⁴² Martínez also says that in Mexico *castizo* had no redeeming qualities.¹⁴³ But in what seems to be a contradiction, Martínez also calls it “no linguistic accident” that *castizo* became the label for the mixture of Spanish and Indian blood (a *mestizo* being the product of a Spaniard and an Indian). It indicated acknowledgement “of the aristocratic bloodlines of some such mixtures, products of Spanish conquistadors and Indian nobility.”¹⁴⁴ Indeed, Indian nobility was seen as the equivalent of being Spanish in Section 3 of the 1788 decree extending the real *pragmática de casamientos* to the colonies.¹⁴⁵ If there was racism reflected in the *pragmática* and the 1788 decree, according to Martínez, it was selective, referring exclusively to those of African descent, who were pointedly excluded by law.

The absence of *casta* and *castizo* in St. Augustine’s documents supports Deagan’s assertion that intermarriage between Spanish and Indians was rare. There was no need for words to describe a situation that did not exist. There were also few marriages between whites and *mulattos* or *negroes*. In the composition of the marriages of its white citizens, St. Augustine more closely resembled Spain than it did the rest of Spanish America.

¹⁴¹ Martínez, *Genealogical Fictions*, 165.

¹⁴² Katzew, *Casta Painting*, 192.

¹⁴³ Martínez, *Genealogical Fictions*, 165.

¹⁴⁴ *Ibid.*

¹⁴⁵ Konetzke, *Colección de Documentos*, Vol. III, Book 1, 440.

Sanguinidad: an Archaic Term

The word *sanguinidad* appeared first in the 1604 Palet dictionary, with the meaning of “parentage.” The meaning was the same in the 1607 Oudin, and in the 1609 Vittori, along with another definition as *consanguinidade* (Italian: consanguinity). That same definition appears in the 1617 Minshieu edition. The definition appears as “consanguinity” in the 1705 Sobrino and 1721 Bluteau editions.¹⁴⁶ After that, the word was not found in Spanish dictionaries. Thus in the marriage license petitions of St. Augustine, citizens and officials used a word that had not appeared in Spain’s dictionaries for at least sixty-three years. The word used in the 1780s and 1790s in Spain was *consanguinidad*, defined in the 1791 DRAE as the “union by natural parentage of various persons who descend from the same root or trunk.”¹⁴⁷ In those documents, its use denoted specified degrees of blood kinship, as in the Church’s prohibition of marriage within the fourth degree of consanguinity.

In the marriage license petitions of St. Augustine, the word *sanguinidad* was used in the sense of quality of lineage. In the petition that don Fernando de la Maza Arredondo filed for permission to marry doña Antonia Perdomo, Arredondo stated “that having investigated the possible familial relationships between them, they are verified in every part to be free of all obstacle.”¹⁴⁸ That would include the obstacle of close blood relationship. The same statement appeared in the petitions of Rafael González de

¹⁴⁶ NTLLE, 1604 Palet, 272, column 2; 1607 Oudin, 469, column 2; 1609 Vittori, 549, column 1; 1617 156, column 1; 1670 Mez de Braidenbach 248, column 2; 1705 Sobrino, 325, column 3; 1721 Bluteau 140, column 2.

¹⁴⁷ NTLLE, 1791 DRAE, 247, column 3. The definition in Spanish is “union por parentesco natural de varias personas que descienden de una misma raiz o tronco.”

¹⁴⁸ Petition of don Fernando de la Maza Arredondo for permission to marry doña Antonia Perdomo, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 1, East Florida Papers. In Spanish, the wording is: “que haviendo hecho una seria información de la sanguinidad de ambos, se berifica [verifica] en todas sus partes limpia de todo obstaculo en cuia atención.”

Saavedra to marry María González and of Manuel Fernández Bendicho to marry Rafaela Rodríguez.¹⁴⁹ The presence of this phrasing might indicate that there was some question about these proposed marriages.

The word did not appear again until a petition filed by don Vicente Mexía for permission to marry doña Juana Blanco in 1796, and then never appeared again in St. Augustine's marriage license petitions. In this 1796 petition, witness Rafael Saavedra de Espinosa stated that, "he [Espinosa] is aware by public voice and fame of the equality of both in order of their quality of lineage (sanguinidad)."¹⁵⁰

Igualdad: Racial or Socio-Economic?

Igualdad (equality) or its root word *igual* appeared in more of the marriage license documents of St. Augustine than any other words studied in this chapter, as shown in Chart 1. Statements such as these appeared throughout the documents: ". . . he is also aware of the equality in quality (calidad) of the bride and of him who presents [the witness]."¹⁵¹ In his testimony in favor of Louis John Schofield, witness James Carroll testified that "Margarita Heinsman, his intended bride, is the equal of Louis John Schofield, and between the two there is no legal impediment . . ."¹⁵² As this research showed equality to be the key concern in St. Augustine, Susan M. Socolow found the

¹⁴⁹ Petition of Rafael González de Saavedra for permission to marry María Gonzalez, No. 2, and of Manuel Fernández Bendicho to marry Rafaela Rodriguez, No. 5, Matrimonial Licenses, Reel 132, Bundle 298R9, East Florida Papers. Espinosa said in his testimony: "le consta de publica voz y fama la igualdad de ambos en orden a sanguinidad . . ."

¹⁵⁰ Petition of don Vicente Mexía for permission to marry doña Juana Blanco, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 98, East Florida Papers.

¹⁵¹ Petition of Samuel Eastlake for permission to marry Mary Bowden, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 61, East Florida Papers. Statement of witness Juan Gianopoly.

¹⁵² Petition of Louis John Schofield for permission to marry Margarita Heinsman, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 79, East Florida Papers.

same condition in Argentina. In Buenos Aires, judges considered economics over race, legitimacy, and breeding.¹⁵³

Of Sebastian Olivera and Catalina Usina, witness Pedro Fornell stated “that the intended bride is equal in blood to him who presents him [as a witness], not considered by this party the least obstacle to the marriage.” Witness Luis Soche said of the same couple, “. . . that both intended bride and groom are single and equal in quality . . .”¹⁵⁴ The phrase “equal in blood” most likely referred to *limpieza de sangre*, that both were good Catholics free of all “vile sect” or “vile race” of Moorish or Jewish ancestry. The chief concern in St. Augustine appeared to have been social equality. The requirement for “equality” in marriage stated in the real pragmática de casamientos offered no definition of “equality.” Either Charles III thought his meaning was obvious, or it was left up to the localities to determine what constituted “equality.” The low frequency of the term “mala raza” in these documents also indicated that, while race did figure into marriages in St. Augustine, it was not as important as equality, quality, and honor. Rather, socio-economic equality was the primary concern in St. Augustine (see Chart 1).

Blanco (Blanca): an Ambiguous Word

One factor making it difficult to determine if race was a consideration in the marriages of St. Augustine is the use of *blanco* (*blanca*) in the documents. While blanco or blanca means the color white, it has an alternative meaning having to do with honor. In the sense of “*hombre blanco, muger blanca*,” it is the same as an honorable person and

¹⁵³ Socolow, “Acceptable Partners,” 233.

¹⁵⁴ Petition of Sebastian Olivera for permission to marry Catalina Usina, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 87, East Florida Papers. The surname Usina is sometimes spelled as Alcina.

of public esteem.”¹⁵⁵ Blanco or blanca, the masculine form and feminine form, respectively, thus could also have meant “honorable.” The documents themselves did not always make clear which meaning was intended.

Statements such as these might lead one to think that blanca was intended to refer to race: “. . . the intended bride María Gavarda is a person known to be white, clean of all vile race of Moors, mulatos, Jews and of other vile sect . . .”¹⁵⁶ “He [the witness] knows that the intended bride, Juana Seguí, is a white person, free of all vile race . . .”¹⁵⁷ “. . . that he knows from public knowledge that [María] is a white person, of distinction, with the good circumstances which match those of” her intended groom.¹⁵⁸ These statements could just as easily read “he (or she) is an honorable person,” thus having no reference to race at all, but rather referring to their religious purity and good social conduct. In Table 1, blanco and blanca are included in the category of honor, which is discussed in the next chapter.

There may have been a hint of the meaning of blanca in St. Augustine in witness statements to the petition of Antonio Huertas to marry Caterina Aguilar. Antonio stated that his parents “are honorable (blanca) persons of esteem in the said realm [of Granada, in Spain], and free of all vile race . . .” Witness Antonio Gil echoed the sentiment in saying that Antonio Huertas’s family, whom he knew in Granada, were “old Christians, and persons well-known to be honorable in esteem . . .”¹⁵⁹ The use of the word “esteem” (*estimación*) suggests social approbation rather than race. The definition in 1783 of

¹⁵⁵ NTLLE, 1791 DRAE, 145, column 2.

¹⁵⁶ Petition of José Turdas for permission to marry María Gabarda. Witness: Domenico Martinelli

¹⁵⁷ Petition of Antonio Raspay for permission to marry Juana Seguí. Witness: don Pedro García.

¹⁵⁸ Petition of don Manuel Rengil and doña María Jones for permission to marry, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 49, East Florida Papers. Witness: don Dimas Cortés.

¹⁵⁹ Petition of Antonio Huertas for permission to marry Caterina Aguilar, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 22, East Florida Papers. Antonio Huertas stated “que todos son christianos [sic] viejos, y personas notoriamentes blancas y de estimación.”

estimación was “Esteem and respect that someone or something has by reason of his or its qualities, singular circumstances, and qualifications.”¹⁶⁰ Perhaps a stronger indication of the meaning of blanco or blanca in the marriage documents of St. Augustine lies in the statement of witness don Miguel Costa to the petition of Joseph Burrell and Elizabeth Hill. Costa said that Elizabeth’s parents were “both of good blood, honorable and without . . . mix of Negroes or mulattos.”¹⁶¹

However, the ambiguity of this term exists in such statements as don Pedro García’s testimony that María de Regla Coruña “comes from a good family, honored and white [or honorable].¹⁶² Likewise, Antonio Poncell is described by witness Luis Hernández with the same exact phrase.¹⁶³ Thus it is difficult to determine whether honor or race is being considered in these statements. Would the phrasing be so redundant, using “honored” and “honorable” in the same sentence? There is no reason that it would not be. The sentiment that a family was both honored in its town or city, and was honorable in the behavior of its members, is not inconceivable. However, it is also possible that the phrasing contains reference to race, as well.

Doncella o Soltera: The Value of Virginity

The value generally placed in Spanish society on a woman’s virginity was high. The Church provided the cult of Mary as a means of ensuring the value of a woman’s

¹⁶⁰ NTLLE, 1783 DRAE, 458, column 3. “Aprecia y estima que se hace de alguno, o de alguna cosa por sus calidades y signulares circunstancias y requisitos.”

¹⁶¹ Petition of Joseph Burrell for permission to marry Elizabeth Hill, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 105, East Florida Papers. Costa stated that Elizabeth’s parents were “ambos de buena sangre[,] Blancos y sin participación ni mescla de Negros o Mulatos . . .”

¹⁶² Petition of Plácido Sotelo for permission to marry María de Regla Coruña, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 113, East Florida Papers.

¹⁶³ Petition of Isabel Mangle for permission to marry Antonio Poncell, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 106, East Florida Papers.

virginity. The word *doncella* – “a woman who has not known a man” – referred to virginal women.¹⁶⁴ A woman who lost her virginity outside of marriage was *soltera*. This sense of the word *soltera* is found in the 1706 Stevens Spanish-English dictionary: “A single woman. Generally taken in no good sense.”¹⁶⁵ This may have reflected English bias rather than Spanish cultural mores. However, Sonia Lipsett-Rivera quotes Ana María Atondo Rodríguez that a *soltera* was “a woman who was not a virgin, and who had, or was susceptible to having, illicit relations.”¹⁶⁶

How important was this concept in St. Augustine? If we judge by the frequency with which the word *doncella* appeared in the marriage license petitions, the concept was apparently not important at all. The word appeared just once in the 146 petitions. The context in which the word was employed is vital to understanding why it was used. Francisco Pérez, a white peninsular Spaniard, petitioned to marry Beatriz Sánchez, the quadroon illegitimate daughter of wealthy rancher Francisco Xavier Sánchez. Readily conceding that Beatriz did have black heritage and was illegitimate, Pérez argued for her honor and upright life, and stated that it was a man’s duty, once a promise of marriage had been given to a maiden (*doncella*), to fulfill that promise and preserve her honor.¹⁶⁷ In this case, honor certainly trumped race.

The local perception in St. Augustine of this concept of virginity at marriage may also be inferred from the use of the word *soltera* in these petitions, a use supported by its definition in the 1783 DRAE: “The person who is without having taken an estate” (in this

¹⁶⁴ NTLLE, 1783 DRAE, 390, column 1.

¹⁶⁵ NTLLE, 1706 Stevens, 360, column 3.

¹⁶⁶ Lipsett-Rivera, “The Intersection of Rape and Marriage,” 575, note 6.

¹⁶⁷ Petition of Francisco Pérez for permission to marry Beatriz Sánchez, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 82, East Florida Papers.

case, the estate of matrimony).¹⁶⁸ There was no separate definition for soltera as a pejorative term in the 1783 DRAE. If there truly were a pejorative denotation of soltera, it was not in use in St. Augustine. Out of the 146 petitions studied, only ten described the status of the intended bride as soltera. Of these, two involved a bride and groom who were both English, and most likely intended the English meaning of the word “single,” meaning simply “unmarried.”

Four have wording that indicated the word “single” referred to the fulfillment of the ecclesiastical requirement that both parties to a marriage be unmarried. The Catholic Church at the time required that candidates for marriage demonstrate that they were single and therefore eligible to marry. In a *probanza de limpieza de sangre* (proof of purity of blood) filed in St. Augustine by Juana Salom, widow of Sebastian Etienne, there appeared this statement by a parish priest in a quoted marriage document: “10 September 1778, after conducting the formalities of proof of the estate of being single . . .”¹⁶⁹

In three of the abovementioned ten petitions, the prospective groom described his intended bride as soltera, a situation in which one would not expect pejorative meaning. These petitioners were saying that their intended brides were single, and therefore eligible for marriage. The tenth petition did not provide a context for the word, yet neither the prospective groom nor the witnesses had anything adverse to say about the intended bride.

In several St. Augustine marriages, the bride was obviously not a doncella, since the couple had already borne at least one child before marriage. Marginal notations in the

¹⁶⁸ NTLLE, 1783 DRAE, 865, column 1.

¹⁶⁹ Juana Salom, *Probanza de limpieza de sangre*, Files on various subjects, 1798-1802, Reel 113, Bundle 267, No. 39, East Florida Papers. Note that this is not the same person as the black slave of whom Jane Landers wrote.

baptism records of “natural” children – born out of wedlock to known parents who acknowledged the child – state that the child was subsequently legitimized by the marriage of the parents. An example is found in the baptism record of Juana María Concepción Payeres, born 23 June 1785 and baptized by Father Miguel O’Reilly on 25 June 1785, the illegitimate daughter of Juan Bautista Payeres and Isabel Ridabete.¹⁷⁰ Juan filed his marriage license petition on 31 August of the same year.¹⁷¹ He and Isabel were married 19 September 1785.¹⁷² A marginal note at this entry states that the infant “was legitimated by subsequent marriage of the parents. O’Reilly.”¹⁷³ There is no indication in the baptism records or the marriage petitions of any stigma attached to the illegitimate births in these cases.

This is not to say that virginity was not important. A fine distinction differentiated premarital sex after the exchange of the promise of marriage from that which took place without such a promise. The former was tolerated, and commonplace. The latter was a source of shame and dishonor for the woman.¹⁷⁴ The importance of the promise of marriage is reflected in the marriage license petitions. Specific mention of the promise of marriage (palabra de casamiento) occurs in nineteen of the 146 petitions. There were two other statements, however, which referred indirectly to the exchange of

¹⁷⁰ Ecclesiastical Records of the St. Augustine Diocese, Baptism of Juana María Concepción Payeres (Paredes), White Baptisms 1784-1792, page 12, entry 29, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://diglib.library.vanderbilt.edu/esss-viewimage.pl?SID=20150319501281738&code=esss&RC=248543&Row=17&return=esss> (accessed 1 March 2015). The father is listed in the baptism record as Juan Bautista Payeres. In the marriage license petition he filed, his surname is rendered as Paredes. Ridabete is also seen as Ridavete.

¹⁷¹ Petition of Juan Bautista Paredes for permission to marry Ysabel Ridabete, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 3, East Florida Papers.

¹⁷² Ecclesiastical Records of the St. Augustine Diocese, Marriage of Juan Bautista Payeres (Paredes) and Elizabeth (Isabel or Ysabel) Ridavete, White Marriages 1784-1801, page 4, entry 8, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://diglib.library.vanderbilt.edu/esss-viewimage.pl?SID=20150319323089599&code=esss&RC=249675&Row=15&return=esss> (accessed 11 July 2014).

¹⁷³ Ecclesiastical Records of the St. Augustine Diocese, Baptism of Juana María Concepción Payeres.

¹⁷⁴ Socolow, “Acceptable Partners,” 226.

such a promise. Forty of the 146 petitions have statements that the man and woman had “agreed to contract matrimony,” which implies a promise given and accepted. Beginning in 1794, the most common expression, and the most frequent by far with seventy-eight occurrences, was that the couple had agreed to or contracted betrothal (*esponsales*). Again, this implies an exchange of a promise. Thus, out of the 146 marriage license petitions filed between 1784 and 1803, 137 of them made either direct or indirect mention of a promise to marry.

Limpieza de Sangre: Race and Religion

Purity of blood (*limpieza de sangre*) was at first a religious ideology, fashioned to exclude those who had at first been welcomed into the Christian fold – those Moors and Jews who had converted to Christianity in order to fit into Spanish society and participate in the benefits thereof. The concept was devised by old Christian elites to deny recent converts access to institutions and offices by which those elites benefited and held their power.¹⁷⁵ In Spanish America it evolved into a system based on proportions of Spanish, Indian, and African ancestry – the *sistema de castas* (caste system).¹⁷⁶

In the fifteenth and sixteenth centuries, laws requiring pure Catholic ancestry were passed in Castile and in Aragon. The Inquisition had a mandate to discover and expose “secret” Jews and Muslims, those who had converted to Christianity but who were suspected of continuing to practice their heretical religions.¹⁷⁷ These early laws provided that after two or three generations, the stain of such heresy could be lifted and

¹⁷⁵ Martínez, *Genealogical Fictions*, 1.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

the descendants of such converts would be considered true Christians.¹⁷⁸ Laws became stricter and the stain became permanent as the category of purity of blood narrowed.¹⁷⁹ In sixteenth-century Seville, genetic purity was emphasized as a means of preserving family integrity. Those who aspired to hold office or to enjoy privileges offered by society needed to prove they were pure of blood. The proof depended on female chastity. Pure women were not just honorable and chaste, they had been kept so by the practice of enclosure to assure their chastity.¹⁸⁰ *Limpieza de sangre* was not just about religion. It was a means for controlling the sexuality and guarding the purity of women.¹⁸¹

Another side of *limpieza de sangre* was “a particularly virulent negative prejudice,” in Ann Twinam’s words.¹⁸² The concept of *limpieza* was developed to exclude anyone who was not pure Spanish. Yet another aspect was its mutability, as with other status indicators in Spanish society. The stain of impure blood could be lifted by royal decree, an example of which Ann Twinam cites.¹⁸³ As well, illegitimacy, in certain cases, could be erased by the purchase of a *gracias al sacar*, a declaration that an individual born out of wedlock be considered legitimate, therefore eligible to hold office and enjoy certain privileges. In the Americas, whiteness was also for sale to mulattos, altering their status and that of their descendants.¹⁸⁴ Prejudice in Spanish America had limits. Obviously one limit was the amount of money an individual had available to spend to obtain these indulgences. But another limit was the degree of impurity, becoming less an impediment to social acceptability as it became more attenuated. “If

¹⁷⁸ *Ibid.*, 50.

¹⁷⁹ *Ibid.*, 52.

¹⁸⁰ Perry, *Gender and Disorder in Early Modern Seville*, 6.

¹⁸¹ Martínez, *Genealogical Fictions*, 19.

¹⁸² Twinam, *Public Lives, Private Secrets*, 41.

¹⁸³ *Ibid.*, 42-43.

¹⁸⁴ *Ibid.*, 44

Table 1. Words used in marriage documents, by year

Year	Sanguinidad	Limpieza de sangre	igualdad	honor*	calidad, calidades	mala raza	clase
1784	0.00	0.00	0.00	1.00	0.00	0.00	0.00
1785	3.00	3.00	2.00	1.00	0.00	0.00	0.00
1786	0.00	2.00	4.00	4.00	5.00	0.00	0.00
1787	0.00	2.00	3.00	4.00	3.00	5.00	0.00
1788	0.00	1.00	1.00	3.00	1.00	1.00	0.00
1789	0.00	4.00	3.00	6.00	5.00	5.00	0.00
1790	0.00	0.00	2.00	2.00	2.00	0.00	0.00
1791	0.00	1.00	2.00	1.00	1.00	1.00	0.00
1792	0.00	1.00	4.00	0.00	4.00	0.00	0.00
1793	0.00	2.00	6.00	2.00	5.00	0.00	0.00
1794	0.00	0.00	10.00	0.00	3.00	0.00	0.00
1795	0.00	1.00	3.00	2.00	3.00	0.00	0.00
1796	1.00	0.00	8.00	2.00	6.00	0.00	0.00
1797	0.00	0.00	12.00	10.00	10.00	0.00	0.00
1798	0.00	0.00	4.00	5.00	4.00	0.00	0.00
1799	0.00	0.00	8.00	3.00	6.00	0.00	0.00
1800	0.00	0.00	4.00	0.00	4.00	0.00	0.00
1801	0.00	0.00	5.00	5.00	5.00	0.00	1.00
1802	0.00	0.00	3.00	2.00	2.00	0.00	0.00
1803	0.00	0.00	3.00	2.00	3.00	0.00	0.00
Totals	4.00	17.00	87.00	55.00	72.00	12.00	1.00

*The word *honor* here encompasses the words *honrado/honrada, honradez, and blanco/blanca*.

the percentage of mixed blood over time descended to less than one-eighth, the individual was technically white and met the requirements of *limpieza de sangre*.”¹⁸⁵

The concern with purity of lineage in Spanish America consisted in a concern with “Spanishness,” as Martínez calls it. It was a way to keep the Spaniards, the *peninsulares* and their descendants, at the top of the hierarchy.¹⁸⁶ The belief in the sixteenth and seventeenth centuries was that values, religious beliefs, and behaviors were instilled in children through the “blood.” Martínez identifies this idea as a metaphor for indoctrination.¹⁸⁷ There was a saying: *De casta se viene al galgo el ser rabilargo* (“the long-tailed species comes down to the greyhound through good breeding”). This saying metaphorically expressed the thought that children tended to perpetuate the customs of their parents.¹⁸⁸ In the seventeenth century, there was no clear line between what are popularly referred to as ‘nature’ and ‘nurture.’ “Rather, people tended to attribute the transmission of beliefs and behavior to both cultural and biological inheritance, and to conflate the two.”¹⁸⁹ To the people of that century, nature equaled nurture.

By 1702, black “blood” became associated with impurity. Black skin was evidence of an impure ancestry. Thus, *limpieza de sangre* attached to physical appearance, changing its meaning from being old Christian to being linked to white skin, a link that strengthened in the eighteenth century. On 8 January 1774, the Supreme Council of the Inquisition gave the Mexican Inquisition permission to add a question to their standard questionnaire for determining a subject’s purity of blood. The new

¹⁸⁵ *Ibid.* Compare this to the antebellum south, where a metaphorical single drop of black blood could condemn a person to second-class status.

¹⁸⁶ *Ibid.*, 2.

¹⁸⁷ *Ibid.*, 47.

¹⁸⁸ NTLLE, 1783 DRAE, 219, column 3 (at *casta*).

¹⁸⁹ Martínez, *Genealogical Fictions*, 47.

question regarded mulattos and other persons of mixed blood who were considered inferior. “After more than a century and a half of having a *de facto* purity policy against people of African ancestry, the Holy Office formally included blacks and mulattos as impure categories.”¹⁹⁰

Purity of blood was a concern in St. Augustine, but was mentioned far less frequently in the marriage license petitions than equality (*igualdad*), quality or qualities (*calidad, calidades*), and honor, as shown by Chart 1. But just what did *limpieza* mean in these documents? Was its intention religious or racial? In the petition of Vicente Laderol and Margarita Seguí, witness Santo Geraso described Vicente as “a person reputed as honorable, clean of all vile race of mulattos, Jews, Negroes, and other vile sect, and that both are held as Christian Catholics . . .”¹⁹¹ In the matter of Pedro de Cala and Ana Sigle, witness Joaquin Benitez stated that Pedro’s parents were “held and reputed as good Christian Catholics, free of all vile race of Moors, Jews, and other vile sect, nor of those recently converted to our holy faith.”¹⁹² With the reference to mulattos and blacks in Geraso’s statement, race was a consideration in these documents. But *limpieza* also clearly referred to religion as well, and in greater proportion. In St. Augustine, *limpieza de sangre* meant both being “old Christian” and, to a lesser degree, being white of skin. Concepts of race and religion, in St. Augustine as elsewhere in Spanish America, were aimed at preserving “Spanishness.”

¹⁹⁰ *Ibid.*, 247.

¹⁹¹ Petition of Vicente Laderol for permission to marry Margarita Seguí, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 19, East Florida Papers. The surname Laderol is sometimes seen as Lardilor. Geraso’s testimony: “. . . es persona reputada por blanca limpia de toda mala raza de mulatos[,] Judíos, negros[,] ni de otra mala secta, y que ambos son tenidos por Christianos C.A.R.” [C.A.R.: *católico apostólico romano*, apostolic Roman Catholic.]

¹⁹² Petition of Pedro de Cala for permission to marry Ana Sigle, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 25, East Florida Papers. Said Benitez, “. . . fueron tenidos y reputados por buenos Cristianos Catholicos [sic]romanos, libres de toda mala raza de moros[,] Judíos[,] y otra mala secta, ni de los nuevamente convertidos a Nuestra Santa fe . . .”

A Florida Coinage: Floridano

Finally, there was a word used in St. Augustine that was not used in Spain or elsewhere in Spanish America. In Mexico and other parts of Spanish America, the term *criollo* (creole) was applied to persons of Spanish parentage or ancestry born in the New World. In Mexico, the word *criollo* became a derogatory term, associated with illegitimacy and what modern racists call miscegenation.¹⁹³ In Florida, the word *criollo* was not used. The term for persons born in Florida of Spanish ancestry was *floridano*. It is the term used in the censuses, and was applied to such persons of distinction as don Francisco Xavier Sánchez and don Manuel Solana.¹⁹⁴ Did St. Augustine's officials and citizens figure a way out of the derogatory connotation of *criollo* by inventing their own term? It is interesting to note that the first dictionary entry for *floridano* appeared in 1914. The DRAE for that year defines *floridano* first as a native of Florida, and second as pertaining to the State [of Florida] in North America.¹⁹⁵

With these linguistic differences in mind, the next chapter turns to one concept which had a long history and tradition in Spanish society worldwide: honor.

¹⁹³ Martínez, *Genealogical Fictions*, 244.

¹⁹⁴ Censuses 1784-1814, Census of 1793, Bundle 323A, Book 2, Folio 2-102R, Library of Congress.

¹⁹⁵ NTLLE, 1914 DRAE, 481, column 3.

CHAPTER FIVE:

HONOR – THE KEY TO THE SPANISH CHARACTER

“My blood will not join with that of the Humanes family while I live!
His father was a farmer.”

– Federico García Lorca, *La Casa de Bernarda Alba*¹⁹⁶

In García Lorca’s play, steel-willed matriarch Bernarda Alba will not bend what she considers her family’s honor, even if it means driving one of her daughters to suicide. Adela, her youngest, has been having sex with her oldest sister’s fiancé. When Bernarda scares him off, Adela hangs herself. Bernarda orders her other daughters to cut Adela’s body down and to dress her as if she were a maiden (doncella). She insists that Adela’s public reputation be that of a virgin, to protect the family’s honor. Nor will she have that honor sullied by allowing another daughter to marry the son of a farmer, one of the “ignoble, mean, and plebeian” occupations denigrated by elite Spaniards. Yet the cruelty that occurs under the roof of Bernarda Alba’s house is of such magnitude that García Lorca forces us to consider what honor is, and to ask ourselves how far people will go to maintain the fiction of its presence.

Dimensions of Honor

To the Spanish, honor was the overriding virtue, holding greater importance than other virtues such as chastity, love, or fidelity, and was involved intimately in each of

¹⁹⁶ Federico García Lorca, *La Casa de Bernarda Alba*, 8th edition, María Francesca Vilches de Frutos, ed. (Madrid: Ediciones Cátedra, 2013), 229.

these, and more. Patricia Seed describes it as probably “the most distinctive of all Spanish cultural traits.”¹⁹⁷ Honor was a matter both of personal self-esteem and the esteem of the community. Therefore, it had a private as well as public face, though public opinion was the ultimate arbiter of a man’s or a woman’s honor. Reputation was a treasure to be defended. As Cervantes had it, “An ounce of good reputation is worth more than a pound of pearls.”¹⁹⁸

Honor had two dimensions, status and virtue. In terms of status, honor was “first and foremost a measure of social standing.” It was measured on a vertical continuum from those at the top, who had much honor, down to those with none. The dimension of virtue was measured along a horizontal continuum, as a rank ordering among social equals.¹⁹⁹ The elites defined honor, making it the rationale for the colonial hierarchy.²⁰⁰ Honor was of central concern to the elites, and to those who aspired to elite status.²⁰¹ Its purpose was to separate the elite and nobility from the common people. However, honor was also an important consideration to the commoners, both as a matter of self-esteem and a means of gaining social advancement.²⁰²

Honor, Gender, and Sex

In Spanish America, honor set the Spanish apart from the mixed-race populations. Protection of a woman’s honor meant protection of a Spanish woman’s honor.²⁰³

¹⁹⁷ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 61.

¹⁹⁸ *Ibid.*, 62.

¹⁹⁹ Gutiérrez, “Honor Ideology, Marriage Negotiation, and Class-Gender Domination in New Mexico, 1690-1846,” 86. See also Socolow, *The Women of Colonial Latin America*, 78, on the status and virtue aspects of honor.

²⁰⁰ Twinam, “Honor, Sexuality, and Illegitimacy in Colonial Spanish America,” 123.

²⁰¹ Socolow, *The Women of Colonial Latin America*, 78.

²⁰² Gutiérrez, “Honor Ideology,” 87.

²⁰³ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 97.

However, the honor of mixed-race women was protected in St. Augustine in at least one case, the aforementioned petition of the Spaniard Francisco Pérez to marry the quadroon Beatriz Sánchez, in which he cites her honor and his obligation to protect it by carrying out his promise of marriage (*palabra de casamiento*).²⁰⁴ On the other hand, it was this idea that honor pertained only to the Spanish that permitted Spanish men to engage in illicit sex with poor, non-Spanish women or to keep them as concubines or mistresses. As we will see in the next chapter, it also shielded men who raped certain women.

A gendered double standard applied in the concept of honor. Women were more often and more severely punished for breaches of honor, especially those involving sex.²⁰⁵ For men, honor meant behaving in a manly way, exercising authority over family and subordinates, providing for his family, and valuing honesty and loyalty. Whether a man was of the elite or of the common folk, the fact of being Spanish allowed him to conceive of himself as possessing honor. Any Spanish man considered himself “a member of a superior group,” thereby glossing over, to himself, the existence of social-class distinctions.²⁰⁶ In other words, the poorest Spanish man felt superior to the *castizo* or the black man, much as the poorest Southern white man considered himself superior to the Negro just because of the color of his skin, imbued with certain egregious misassumptions.²⁰⁷ Honor for men also included a willingness to fight. The coward quickly lost honor. “The man without honor is worse than dead,” wrote Cervantes of the importance of honor.²⁰⁸

²⁰⁴ Petition of Francisco Pérez for permission to marry Beatriz Sánchez.

²⁰⁵ Twinam, *Public Lives, Private Secrets*, 55.

²⁰⁶ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 23. Twinam, “Honor, Sexuality, and Illegitimacy in Colonial Spanish America,” 123.

²⁰⁷ W. Scott Poole, *Never Surrender: Confederate Memory and Conservatism in the South Carolina Upcountry* (Athens, GA: University of Georgia Press, 2004), 169-171.

²⁰⁸ Quoted in Seed, *To Love, Honor, and Obey in Colonial Mexico*, 62.

Honor for women was expressed in sexual terms. The honorable woman was chaste before marriage and faithful afterward. She was feminine and modest, mindful of her reputation, and circumspect around men. The behavior, especially the sexual conduct, of the women in a family reflected upon the male head of household.²⁰⁹

Governor Zéspedes recognized this last aspect of honor. He described the clandestine marriage of his daughter Dominga to Lieutenant John O'Donovan in his sorrowful letter to the Count of Gálvez: “. . . my first obligation was to look after the honor of my daughter . . .”²¹⁰ He proceeded to incarcerate O'Donovan in the Castillo de San Marcos and placed Dominga under what amounted to house arrest, lawful punishment for their clandestine marriage. Zéspedes expressed his humiliation to Gálvez, writing of “the different feelings that battle within my breast, as father of the disobedient ones, and as governor for His Majesty . . .”²¹¹

Zéspedes was not the only one whose honor was offended. Don Mariano de la Rocque was dismayed that his wife, doña Angela Huet, aided and abetted Lieutenant O'Donovan and Dominga Zéspedes in the clandestine marriage. Away from St. Augustine in connection with his duties as the garrison's engineer, he wrote an elegant apology to Zéspedes: “I have become sensible to what has occurred with my lady doña Dominga [de Zéspedes] and that my home has been the location, and I do not doubt that

²⁰⁹ Gutiérrez, “Honor Ideology, Marriage Negotiation, and Class-Gender Domination,” 86. See, *To Love, Honor, and Obey in Colonial Mexico*, 63.

²¹⁰ Zéspedes to Gálvez, folio 81r. Zéspedes wrote: “Que mi obligación, primera, era mirar por el honor de mi hija . . .”

²¹¹ *Ibid.*, folio 82r. “. . . los diferentes sentimientos que luchan en mi pecho, como padre de los delinquentes, y Gobernador por Su Magestad . . .” Note how Zéspedes says he is “father to the delinquents,” meaning both his daughter and O'Donovan, the latter in a metaphorical sense. Helen Hornbeck Tanner describes Zéspedes as feeling very keenly his role as padrón of St. Augustine.

Your Lordship will do justice . . . May it serve Your Lordship that I offer myself at the feet of my lady doña Concepción [the governor's wife] and the rest of your family."²¹²

The chief goal of family honor was to "guarantee the legitimacy of the children, essential to sustaining the socioeconomic position of the family."²¹³ Honor needed to be guarded closely, so that no public scandal should mar it. If a family member lost honor, the matter was not allowed to come to public attention, "since public embarrassment was worse than death" to the Spanish.²¹⁴ If the loss of honor involved a woman's sexuality, "Colonial society's principal response to the loss of sexual honor (virtue) was to cover up or to remedy the loss of virtue as quickly and as quietly as possible."²¹⁵ As it was for Bernarda Alba, the primary concern was with the preservation of the image of honor, however rotten the reality behind that image may have been.

Honor in St. Augustine

Concern with honor in St. Augustine, as revealed in the marriage license petitions, was high. In addition to the forty-three mentions of the word blanco or blanca as meaning "honorable," the words honor, honrado (also spelled honrrado, honorable) and honradez (honor, or the state of being honorable) also appear an aggregate total of twelve times, for a total of fifty-five mentions of the idea of honor as applied to candidates for marriage.

²¹² Mariano de la Rocque to Zéspedes, 9 June 1785, To and From the Engineering Department, 1785-1821, Reel 73, Bundle 170A14, 1784-1789, No. 254, East Florida Papers. De la Rocque wrote: "Me ha cido [sic] sencible [sic] lo que ha acontecido con mi señora Doña Dominga y que mi casa haya sido el depósito, y no dudo que Vuestra Señoría le hará la Justicia que corresponda: sirvase Vuestra Señoria ofreserme [sic] a los Pies de mi señora Doña Consepción a demas familia . . ."

²¹³ Lavrín, "Introduction: The Scenario, the Actors, and the Issues," 10.

²¹⁴ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 63.

²¹⁵ *Ibid.*

Examples of that concern were expressed not only in the marriage license petitions but also in documents such as a letter dated 10 November 1807 from Father Miguel O'Reilly to Governor Enrique White, in which the priest related the demand by town citizen don Sebastián Berazaluce that don José Genaro Chaple be compelled to keep his promise of marriage to Berazaluce's daughter Manuela. Should Chaple not honor his word, Berazaluce had told O'Reilly, the recalcitrant groom should be arrested and imprisoned in the Castillo de San Marcos. He was incarcerated in the Castillo for a brief time. Though not explicitly stated in O'Reilly's communication to White, Berazaluce was obviously concerned with the honor of his daughter and of his family.²¹⁶ The couple finally married on 3 December 1809.²¹⁷ The marriage may have been one of necessity, as Gabina Josefa Genaro Chaple was born to them on 19 February 1810.²¹⁸

In addition to petitioning on grounds of having no relatives in St. Augustine of whom to ask permission to marry, don Joaquin Sánchez Ceballos asked that witnesses be called to testify "that my parents, as myself, are of honorable birth."²¹⁹ The word used is *decente*, which is defined as "honest" and also as "dignified" in the 1783 DRAE.²²⁰ In his petition to marry doña Rafaela Rodríguez Piuma, don Manuel Fernández Bendicho refers to "the well-known honor of both" of them.²²¹ In the petition of don Dimas Cortés

²¹⁶ Father Miguel O'Reilly to White, 10 November 1807, With Bishop and Curate, Reel 38, Bundle 10018, East Florida Papers.

²¹⁷ Ecclesiastical Records of the St. Augustine Diocese, Marriage of don José Genaro Chaple and doña Manuela Berazaluce, 3 December 1809, Marriages 1802-1832, 111, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://vanderbilt.edu/esss/spanishflorida/index.php>, accessed 13 January 2015.

²¹⁸ Ecclesiastical Records of the St. Augustine Diocese, Baptism of Gabina Josefa Genaro Chaple, 19 February 1810, Baptisms 1800-1815, 322, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://vanderbilt.edu/esss/spanishflorida/index.php>, accessed 14 January 2015.

²¹⁹ Petition of Joaquin Sánchez Ceballos for permission to marry María Rita Bravo y Prados, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 21, East Florida Papers. Sánchez Ceballos asks that witnesses verify "que assi mis padres como yo somos de decente nacimiento."

²²⁰ NTLLE, 1783 DRAE, 325, column 2.

²²¹ Petition of don Manuel Fernández Bendicho for permission to marry doña Rafaela Rodríguez Piuma, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 5, East Florida Papers.

to marry doña Agueda Seguí, witness Antonio Mestre/Maestre did not use the word honor, but lists elements of honor: Agueda's parents "are people of the first circumstances of that land [Mahon, Minorca], for their birth and esteem, and good conduct . . ." ²²²

Honor concerned not only the elites of St. Augustine, the high governmental and military officials and the wealthy landed planters. In the marriage documents, honor and related words are mentioned by both elites and non-elites. Of the mentions of the words honor, honrado/honrada, honradez, and blanco/blanca, out of a total of fifty-five mentions, only fifteen were said by or about elite persons, those distinguished by the honorifics don and doña. The other forty were mentioned by or about common people. Honor was vital to all levels of St. Augustine society.

The lack of honor was also of concern. In a case filed 10 November 1801, don Juan Leonardy protested the intended marriage of his widowed mother, doña Agueda Coll, to Juan Bernardo Sánchez. His late father, don Rocque Leonardy, "in his life was known as an honorable man," wrote don Juan. He stated that his mother's intended groom was a stranger who, in 1794, had been brought to St. Augustine from Cuba as a prisoner, to serve a term of exile for "having robbed a married woman." ²²³ After completing his exile and being repatriated to Cuba, Sánchez returned to St. Augustine, where "it is also well known that he is a vagabond whose only occupation is to roam the countryside . . . with prohibited weapons," with one of which he wounded a respected

²²² Marriage license petition of don Dimas Cortés and doña Agueda Seguí.

²²³ The word "robbed" carried implications beyond simple highway theft. When applied to a female victim, it could mean the same as rape. DRAE 1783, 822, column 1: "sacar una muger violentamente o con engaño de la casa y potestad de sus padres o parientes." (To abduct a woman violently or through deceit from the home and control of her parents or relatives.)

citizen, don Sebastián Espinosa. Don Juan Leonardy obviously saw Juan Bernardo Sánchez as a man without honor.²²⁴

In the marriage license petition of Juan Antonio García to marry María Caterina Brown, two witnesses commented on the couple's low degree. Juan was reputed to be a mix of Indian and black, and María was a *mulata*, the female offspring of a black woman and a white Englishman, and therefore illegitimate. Witnesses Antonio Hernández and José María stated that Juan's parents were "people of color, and of low esteem."²²⁵ Thus both Juan and María might have had their honor questioned.²²⁶ Color did not always imply lack of honor, however. Spaniard José Manuel Fernández petitioned for permission to marry Ana Sánchez, another of the quadroon natural daughters of don Francisco Xavier Sánchez and María Beatriz Piedra, don Francisco's *mulata* consort. There is no mention whatsoever of race, and nothing to imply that either José or Ana was perceived as being without honor.²²⁷ Nor was there any such mention or perception when Francisco Sánchez of Granada petitioned to marry Catalina Sánchez, also a quadroon daughter of Francisco Xavier Sánchez.

These three marriages between peninsular Spaniards and Sánchez's quadroon daughters occurred four to ten years after the issuance of a *consulta* which prevented marriage between a white Spanish woman and a free mulatto.²²⁸ If this opinion was published in St. Augustine, it does not appear to have had much effect in preventing mixed marriages. However, considering the gendered definition of honor in Spanish

²²⁴ Petition of Juan Bernardo Sánchez for permission to marry Agueda Coll, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 136, East Florida Papers. This case is discussed further in the next chapter.

²²⁵ It is not known whether María was the man's surname, or whether his surname was omitted.

²²⁶ Petition of Juan García for permission to marry María Caterina Brown, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 53, East Florida Papers.

²²⁷ Petition of José Manuel Fernández for permission to marry Ana Sánchez, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 83, East Florida Papers.

²²⁸ Konetzke, *Colección de Documentos*, 695-697.

society, it is possible that it was acceptable for a Spanish man to marry a mixed-race woman, but not acceptable for a Spanish woman to marry a man with black ancestry.

Honor figures in the next topic for consideration: the place of women in Spanish society during the colonial period. The gendered nature of honor will be explored, along with the extent of women's opportunities, and lack thereof, in many aspects of Spanish law and custom.

CHAPTER SIX:
WOMEN'S PLACE IN SPANISH SOCIETY
TO THE NINETEENTH CENTURY

“Well-behaved women seldom make history.”
-- Laurel Thatcher Ulrich²²⁹

A study of marriage in St. Augustine must include mention of studies that have been done on the status of women in Spain and in Spanish America. As Richard Boyer wrote, “[T]he politics of marriage can best be understood from the standpoint of women.”²³⁰ Alfonso X, “the Wise,” stated in his *Siete Partidas*, that “matrimony” is the term for marriage, from the Latin root *matris* (mother). Alfonso said that the use of the term recognizes the hardships endured by women during pregnancy and childbirth, and in raising children with little to no help from their husbands.²³¹

Lavrín and Couturier describe the narrow world within which most women operated, which had caused their stories to be left out of traditional history. They do not say that women never took roles on the historical stage in Spain or in Spanish America. Rather, they see women as having been relegated unjustly to a subordinate role by traditional historians. New methodologies of social history, historical demography, and

²²⁹ Laurel Thatcher Ulrich, “Vertuous Women Found: New England Ministerial Literature, 1668-1735,” *American Quarterly* Vol. 28, No. 1 (Spring, 1976), 20.

²³⁰ Richard Boyer, “Women, *La Mala Vida*, and the Politics of Marriage,” in Asunción Lavrín, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989), 259.

²³¹ Robert I. Burns, SJ, ed., and Samuel Parsons Scott, trans., *Las Siete Partidas, Volume 4 – Family, Commerce, and the Sea: the Worlds of Women and Merchants* (Philadelphia: University of Pennsylvania Press, 2001), 886.

other approaches to the mentalities of people in general and women in particular have given historians tools with which to bring out women's stories.²³² How language can be gendered and can reveal mentalities has been demonstrated in Chapter Four. More research into the great quantity of original documents, such as the East Florida Papers, has yielded information about women in such documents as marriage license petitions. However, even when women were represented in documents, we find that such evidence is presented from the viewpoint of men, or at least filtered through it.²³³

Boyer also wrote that marriage is best understood through women because they possessed less power, both in marriage and in the wider society, and because they had scant claim to outside help if abused. Did women have such limited recourse in St. Augustine in the Second Spanish Period? Jane Landers concluded that justice was available, even to slaves. The case of Juana Salom, discussed below, shows that Spanish justice, harsh though it may have been at times, was available to all strata of society.

The Patriarchy

Women's subordination in Spanish society was reinforced by structures of Spanish patriarchy in which people existed within spheres of expectations that limited their actions.²³⁴ Women lived inside a fundamental inequality based on gender and age. Men were superior to women, fathers were superior to their children.²³⁵ This was the essential structure of the family. Not only did men have more power physically and

²³² Asunción Lavrín and Edith Couturier, "Las Mujeres Tienen la Palabra: Otras Voces en la Historia Colonial de México," *Historia Mexicana* 31, No. 2 (Oct-Dec 1981), 279-280. (JSTOR stable URL: <http://www.jstor.org/stable/2516775>), 280.

²³³ Perry, *Gender and Disorder in Early Modern Seville*, 10.

²³⁴ Lavrín and Couturier, "Las Mujeres Tienen la Palabra," 279.

²³⁵ Boyer, "Women, *La Mala Vida*, and the Politics of Marriage," 252.

culturally, but also legally. Men could force women into seclusion, controlling their movements and interactions.²³⁶ Even in the 1840s (after St. Augustine had passed to the United States), women in Latin America moved in “a world dominated by masculinist logic and masculine constructions of self, nation, and culture.”²³⁷ The doctrine of the patriarchy was formidable and not easily dismantled. Women in Spanish society were afforded few opportunities for self-expression and even fewer for political participation. Yet they also had, in Boyer’s words, “strong moral grounds to claim just and loving treatment.”²³⁸ The politics of any situation involves contention of superior and inferior forces. The superior force must, in principle, legitimate itself in terms other than those of raw power.²³⁹ Custom and law intervened, reining in the superior force’s propensity for the exercise of raw power. In Spain and in its colonies, the law and the concept of the *padrón* exercised this intervening function.

Marital politics in Spanish society was patriarchal, as well. Patriarchalism was based on “natural authority,” that is to say, it was natural for men to have authority and unnatural for women to possess it. The patriarchal king was viewed as the father of his child-like subjects. Authority may have at times been benevolent, but it always ran from the top down.²⁴⁰ From the early church to the early modern era, the husband was the master of the house and of all who dwelt within it. Those under the master’s roof submitted to his rule. This is the essence of patriarchalism.²⁴¹

²³⁶ Susan Migden Socolow, *The Women of Colonial Latin America* (New York: Cambridge University Press, 2000), 68.

²³⁷ Asunción Lavrín, “Spanish-American Women, 1790-1850: The Challenge of Remembering,” *Hispanic Research Journal* 7, No. 1 (March 2006), 71.

²³⁸ Boyer, “Women, *La Mala Vida*, and the Politics of Marriage,” 259.

²³⁹ *Ibid.*, 257.

²⁴⁰ *Ibid.*, 253.

²⁴¹ *Ibid.*, 252.

In the thirteenth century, the time of Alfonso X (1221-1284), the status of women was governed by the “received biology” of Aristotle and Galen, whose writings underscored the theory of “natural authority.” Women were considered physically inferior, possessing an inferior reproductive function and therefore were morally and intellectually subservient to men. Though Alfonso did not explicitly subscribe to the ancient wisdom, according to Robert I. Burns, SJ, the king stated that women who appeared in the public sphere “lost their modesty.”²⁴²

The patriarchy and hierarchy of the Church, as independent of the monarchy, saw itself as superior to the king. The king was required to obey canon law, and was monitored by Church officials. The people also – theoretically – had the right of rebellion if the king behaved capriciously. This “Christian patriarchalism” applied to the family as well as the state.²⁴³ But the patriarchy was not solid or fixed in those days, or later. Medieval Spain developed “a more informal and more fluid pattern of patriarchal relationships” influenced by the exigencies of war and the reconquista.²⁴⁴

Sexual Behavior, Gender, and Marriage

Patriarchy infused gender relationships. For many decisions, such as marriage or business matters, a woman was required to ask permission of a man – her father, her brother, another male family member, or a close male friend. The man was then required to give that permission. But could he not also withhold it? In litigation brought about under the real pragmática de casamientos, in St. Augustine as well as in the rest of the Spanish empire, fathers and others did withhold their permission. Even in the face of

²⁴² Burns, *Las Siete Partidas, Volume 4*, xii.

²⁴³ Boyer, “Women, *La Mala Vida*, and the Politics of Marriage,” 253.

²⁴⁴ *Ibid.*, 254.

such opposition, however, “women with a strong resolve could have their way.”²⁴⁵ In order to get their way, they moved in a sometimes perilous world, in which they were expected and required to preserve their sexual virtue, be obedient, and, if a member of an elite family, never to go outside of the home without being accompanied and observed.²⁴⁶

It was assumed that women needed the protection of confinement at home and close observation when out of the home because their will (self-control) and honor were weak.²⁴⁷ Enclosure, as the practice was called, served the purpose of protecting women from their own weakness and protecting society from their “disorder.”²⁴⁸ Enclosure applied almost exclusively to elite women. Keeping them under constant observation in the home and on the streets did not always prevent unwanted pregnancy; some elite women managed to have illicit sex under these conditions. Lower-status women did not find themselves enclosed by their families. They needed their freedom of movement in order to work and earn a living, or to carry out their duties as servants or slaves. Thus they were more vulnerable to male approaches.²⁴⁹ Though more vulnerable, they did not necessarily act inappropriately. To keep a good name, they needed to abide by the requirements of good breeding, and behave with circumspection around men.²⁵⁰

Another gendered social norm was the “cult of virginity,” with the Virgin Mary as the exemplar. Though using a religious figure as its role model, the cult was secular in origin. It recognized that mortal women are not saints, but emphasized sexual abstinence. Wait until marriage to have sex, the cult’s tenets told women, or, if a woman were not to

²⁴⁵ Lavrín, “Spanish American Women,” 77.

²⁴⁶ Martínez, *Genealogical Fictions*, 57.

²⁴⁷ Lavrín, *Sexuality and Marriage in Colonial Latin America*, 65.

²⁴⁸ Perry, *Gender and Disorder in Early Modern Seville*, 13.

²⁴⁹ Asunción Lavrín, “Lo Femenino: Women in Colonial Historical Sources,” *Coded Encounters: Writing, Gender, and Ethnicity in Colonial Latin America*, 1 (1994), 153-176, 159.

²⁵⁰ *Ibid.*

marry, she should refrain entirely from sex. Thus, society's norm left no middle ground for respectable women: an honorable woman was chaste, or she was not. Married women who had extramarital sex and single girls who got pregnant outside of a promise to marry were immoral and without honor if such misbehavior became public.²⁵¹ The concept of "private pregnancy" covered many such indiscretions.

One group of women remained in their "proper" feminine sphere and recognized that they were subject to a male hierarchy, yet had a notable degree of autonomy: nuns. Their autonomy was possible precisely because they were part of the Church, a position that allowed the nuns to surpass the limits imposed on lay women.²⁵² Thus there were women in various roles: those who remained quietly at home or in the convent carrying out society's expectations, and those in homes and in convents who were outspokenly questioning tradition.²⁵³

The Church's Teachings and Expectations

The Church's expectations regarding female sexual behavior were more rigid than those for men, as set forth in confessionals. These guidebooks were normative, not based in reality but in what the Church wanted to establish as the modes of behavior to which all were to aspire. The instructions in these guidebooks attempted to approximate the sorts of problems clergymen were likely to encounter by considering a wide range of

²⁵¹ Ann Twinam, "Honor, Sexuality, and Illegitimacy in Colonial Spanish America," in Asunción Lavrín, ed. *Sexuality and Marriage in Colonial Latin America*. Lincoln: University of Nebraska Press, 1989, 118-155, 120.

²⁵² Lavrín and Couturier, "Las Mujeres Tienen la Palabra," 279.

²⁵³ Lavrín, "Spanish American Women," 74.

situations and behaviors.²⁵⁴ Confessionals also provided instructions on family dynamics, placing the father at the head. But as master of the house, the husband and father had not only prerogatives but also responsibilities. He was the master, but he was also the *padrón*, responsible for the welfare of everyone under his roof.²⁵⁵

The first of these ecclesiastical expectations was that sex was to be engaged in only within marriage and the second was that its sole purpose was procreation. The Church condemned sex for pleasure, and those sex acts that did not produce children. Sex was a mutual obligation of both husband and wife, the “conjugal debt.” Finally, the Church considered it a sin for one to refuse to have sex with one’s spouse. Women did have the right to initiate sex, but they were also supposed to be modest about it. There were days when sex was prohibited, even between man and wife.²⁵⁶ There were other restrictions on sex, a fact that demonstrates the control the Church had – or attempted to have – over marriage. Of course, these prohibitions and prescriptions affected men as well as women. The theory, then, was that females were to have sex only in marriage. However, other factors existing in the real world had their effects. The sexual code, in reality, varied with social class. Elite women were closely supervised by their families outside the home. Elite women were even observed and protected inside the home, “for one never knew who could enter and what could happen.”²⁵⁷

A sexual double standard applied to intimate relations. Women were expected to remain pure. Men were permitted, and in some ways even expected, to be more

²⁵⁴ Asunción Lavrín, *Sexuality and Marriage in Colonial Latin America*, (Lincoln: University of Nebraska Press, 1989), 255.

²⁵⁵ Boyer, “Women, *La Mala Vida*, and the Politics of Marriage,” 256.

²⁵⁶ Socolow, *The Women of Colonial Latin America*, 65.

²⁵⁷ Susan M. Socolow, “Acceptable Partners: Marriage Choices in Colonial Argentina, 1778-1810,” in Asunción Lavrín, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989), 209-251, 227.

indiscriminate in their intimate relations.²⁵⁸ One group of women was not necessarily expected to be pure: poor women, with whom men of higher classes had illicit sexual relations. Concubinage was a generally-accepted social norm, says Socolow, though she gives no documentation or statistics to support this statement.²⁵⁹ These non-marital relationships could be short-term or long-term. In St. Augustine, there were several such relationships which were long-term. That of Francisco Xavier Sánchez and Beatriz Piedra has already been cited. Their relationship lasted some twenty-three years and produced five children. George J. F. Clarke, son of a well-to-do Anglo family of St. Augustine, had a long-term relationship with a mulata woman, Flora Leslie. George's brother, Charles, also had a mulata consort.²⁶⁰

Not only did the confessionals prescribe family dynamics and sexual behavior, they also dealt with the politics of marriage, and in this the authors of these guidebooks differed. They agreed on the concept of marriage as a contract. They disagreed on the relative power of the parties to the contract. Some confessionals described a fundamental inequality between men and women, with the man as the superior party. Others saw marriage as a contract between equals, bound to each other by mutual loyalty and love. Equal or unequal, marriage was based on a degree of reciprocity of justice, reason, and love. It was upon this reciprocity that the balance of power in a marriage depended; this was the fundamental political principle of marriage.²⁶¹

The Catholic Church did not recognize divorce, but provided a way out of a bad marriage in the separation of *cuerpo y bienes* (body and goods). The disagreeing couple

²⁵⁸ Socolow, *The Women of Colonial Latin America*, 66.

²⁵⁹ *Ibid.*, 71-72.

²⁶⁰ Landers, *Black Society in Spanish Florida*, 99.

²⁶¹ Boyer, "Women, *La Mala Vida*, and the Politics of Marriage," 257.

remained married, but lived separately. The woman's dowry and half of the property acquired during the marriage (the *gananciales*) were awarded to the woman. Neither spouse could remarry while the other lived. This situation was rare, and was almost always initiated at the wife's request. During the proceedings in which an ecclesiastical court decided on the possible separation of *cuerpo y bienes*, the wife was placed in *depósito* and closely monitored, while her husband remained completely at liberty. If the accusations made by a woman concerning the difficulties of the marriage were disproven, the woman would lose everything, including her dowry, resulting in a life of impoverishment. She might also find herself charged by her husband with adultery, and could become a social pariah, even if her accusations against her husband were proved to be true.²⁶²

Marital Politics, Illegitimacy, and Race

How these politics played out can be found in the original documents. In the details of private lives exposed to public scrutiny in the suits arising from broken marriage promises, Asunción Lavrín describes how men attempted to exculpate themselves, and succeeded, by casting doubt on a woman's purity. It was easy for a man to state that the woman he had jilted was a *mujer inquieta*, a woman of loose morals and several known lovers.²⁶³ Here again, the patriarchy was arrayed against women, and any reciprocity in this relationship was destroyed.

²⁶² Socolow, *The Woman of Colonial Latin America*, 68.

²⁶³ Asunción Lavrín, "Sexuality in Colonial Mexico: a Church Dilemma," in Asunción Lavrín, ed. *Sexuality and Marriage in Colonial Latin America*. (Lincoln: University of Nebraska Press, 1989), 47-95, 64..

Yet there was a high rate of illegitimacy in Spanish America, as a result of consensual unions. Twenty to forty per cent of all births were illegitimate. The rate was higher in urban areas than in the countryside.²⁶⁴ The father of an illegitimate child experienced no damage to his reputation; the mother could. Her status might be downgraded from doncella to soltera. This was a distinction “imposed by men who wished to ensure that their children were genetically theirs.”²⁶⁵ As explained in Chapter Four, this concept did not carry a great deal of weight in St. Augustine, and did not prevent marriages of couples who already had borne children, nor did any stigma seem to attach to these couples.

St. Augustine’s residents did not seem too concerned with race when the matter concerned a member of the elite, even though some scholars maintain that the purpose of the real pragmática de casamientos was to prevent interracial marriages. The case of Francisco Pérez’s petition to marry the quadroon Beatriz Sánchez, filed 28 January 1795, provides an example. Pérez, a white peninsular Spaniard, said that Beatriz was light-skinned and fair of face. “Her facial appearance is not so mixed that anyone will suspect” her origins, said Pérez. No one in St. Augustine needed to suspect. As the daughter of Francisco Xavier Sánchez, the wealthy floridano planter, Beatriz was well known. Pérez admitted that Beatriz was of mixed race, but cited her honorable behavior, honesty, and propriety. He argued that such an elite father as don Francisco Xavier Sánchez passed to even the least-born of his children the privileges of his lofty estate.²⁶⁶ The petition was routinely processed, and approval granted. Less than five months later, on 10 May 1795, the white Spaniard José Manuel Fernández, citizen of St. Augustine,

²⁶⁴ Socolow, *The Women of Colonial Latin America*, 74.

²⁶⁵ Lavrín, “Lo femenino,” 155.

²⁶⁶ Petition of Francisco Pérez for permission to marry Beatriz Sánchez.

petitioned to marry Ana Sánchez, another quadroon daughter of Francisco Xavier Sánchez. José's petition made no mention at all of Ana's racial background. He petitioned on the grounds of his parents being absent, and there being no other qualified relatives to grant permission. In the file is F. X. Sánchez's consent to the marriage. Probably nothing else was needed for the proposed match to be approved by acting governor Bartolomé Morales.²⁶⁷

Marital Reciprocity and the Dutiful Wife

A dutiful Spanish woman devoted herself to taking care of her husband, managing the household, bearing children and providing them with what little education they may acquire. She also helped guard the family wealth (if any), position, and reputation. But when the husband was off at war or away on business, his wife made decisions and ran the family in his absence.²⁶⁸ Spanish women, schooled for domestic functions as wives and mothers, operated within legal and physical limits which they overcame either by dint of personality or out of extraordinary circumstances.²⁶⁹ The general assumption was that a woman would marry, and dutifully and quietly take care of husband and home.

The essence of marriage for a Spanish woman was that "In return for the support, protection, and guidance her husband was legally required to provide, a wife owed him nearly total obedience." The emphasis was on the husband's "dominance and his obligations."²⁷⁰ To the extent that a man did not carry out his marital obligations, the logic of the requirement for his wife's obedience was undercut, thus Silvia Arrom's

²⁶⁷ Petition of José Manuel Fernandez for permission to marry Ana Sánchez, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 83, East Florida Papers.

²⁶⁸ Socolow, *The Women of Colonial Latin America*, 65.

²⁶⁹ Lavrín and Couturier, "Las Mujeres Tienen la Palabra," 279.

²⁷⁰ Silvia Arrom, quoted in Boyer, "Women, *La Mala Vida*, and the Politics of Marriage," 280.

statement that a wife owed her husband “nearly total obedience.” Various writings concerning the patriarchal idea of husbandly authority supported the right of a man to beat his wife. A man could, as the colloquialism has it, knock some sense into his wife if she did not live up to her domestic responsibilities. A beating, though, could not be too severe, however that may have been defined by society or by law.²⁷¹

Abuse and Mistreatment: La Mala Vida and Rape

Naturally, married life involved disagreements to be settled, preferably “by means other than force.”²⁷² Some squabbles escalated into serious matters, which threatened the necessary reciprocity of a marriage. Such a serious threat to a marriage was termed *la mala vida* (the evil life).²⁷³ *La mala vida* could include a husband’s failure to support his wife and children, beatings and mistreatment, abandonment, and bigamy. When abused, women either acted to escape the situation, or remained in a marriage compact that had been violated. The confessionals, instruction books for clergy, supported the man’s right to beat his wife to punish or correct her. If a man’s punishment of his wife got out of hand because he had been drinking or he was jealous or a sadist, the wife had no source of help from any legal or official entity.²⁷⁴

The only protection a woman had available was if the authorities placed her in *depósito*, where she would be lodged in the home of a reputable citizen, and protected from her husband. However, *depósito* was a temporary respite. Generally, the wife

²⁷¹ Boyer, “Women, *La Mala Vida*, and the Politics of Marriage,” 256-257.

²⁷² *Ibid.*, 258.

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*, 268.

would be returned to her husband.²⁷⁵ To be fair, la mala vida was not unilateral. A strong, domineering woman with a weak husband could subject him to la mala vida.

Jane Landers tells a peculiar tale of la mala vida in St. Augustine, though she does not dwell on that aspect of the story. Minorcan Juan Salom had a slave named Juana. Salom ordered her and her two children to sleep on the floor next to the bed he shared with his wife. When his wife was asleep, Salom would rape Juana. Against the requirements of church and law, Juan arranged to sell Juana, but not her children, to a new owner from Havana. He lied about the circumstances, and Juana, fearful for her children's fate if they remained in Salom's house without what measure of protection she could afford them, drowned them in Salom's well.

Once the story came out, and Salom's wife was forced to face the truth, she beat him, as Landers says, in "an inversion of the 'natural order' of Spanish gender conventions." Salom had been subjecting his wife to la mala vida by repeatedly raping his slave right next to their bed. A neighbor's slave described the loud noises resulting from the incidents, indicating that Señora Salom must have known what was going on. As the crisis came to a head, Señora Salom gave her husband a dose of la mala vida. For killing her children, Juana could have been executed, but the hearing brought out exigent circumstances leading Cuba's court of appeals to commute that sentence. Juana was brutally whipped and forced to wear an iron collar for six years.²⁷⁶

The most serious mistreatment a wife could receive was to be raped by her husband. The intersection of rape and marriage "pervaded society and crossed both

²⁷⁵ Ibid. 269.

²⁷⁶ Jane Landers, *Black Society in Spanish Florida* (Urbana: University of Illinois Press, 1999), 185-191.

ethnic and class lines.”²⁷⁷ In Medieval Spanish law, according to Lipsett-Rivera, only a doncella could be considered by law to be a victim of rape. Rape affected the honor both of the victim and her family. A victim’s marriage chances were reduced, and she was likely to suffer her husband’s disrespect if she did marry.²⁷⁸ This was the societal norm, even though, in reality, all ages, statuses, and conditions of women could find themselves victims of rape.²⁷⁹ As a married woman was no longer virginal, and as her husband had power over her, there could be no such crime as spousal rape. The *Siete Partidas* expanded the categories of women considered victims of rape under the law, beyond what Lipsett-Rivera states, above. Under Partida VII, Title XX, victims who could claim rape or forcible abduction would be a widow of good reputation, a virgin, a married woman (raped by a man other than her husband), or a nun.²⁸⁰ Women who were not virgins and who were not regarded as possessing honor, were less likely to report rape, and more likely to have their complaints dismissed if they did report it.²⁸¹

Lipsett-Rivera examined 108 cases of rape reported in Mexico in the late colonial and early national periods. In these cases, the victim, her family, the perpetrator, lawyers, and public officials expected the cases to be resolved either by the marriage of the rapist to his victim or by the perpetrator providing a dowry to permit the victim some measure of marriageability. Of these 108 cases, five resulted in the marriage of the victim to her rapist; thirteen of the rapists and ten of the victims were unable to marry, as either one or both were married; fifteen of the rapes were incestuous; and in three of the cases, the

²⁷⁷ Sonya Lipsett-Rivera, “The Intersection of Rape and Marriage in Late-Colonial and Early-National Mexico,” *Colonial Latin American Historical Review* Vol 6., No. 4 (1997), 559-590, 560.

²⁷⁸ *Ibid.*, 570.

²⁷⁹ *Ibid.*, 561.

²⁸⁰ Robert I. Burns, S.J., ed., and Samuel Parsons Scott, trans. *Las Siete Partidas, Volume 5 – Underworlds: the Dead, the Criminal, and the Marginalized* (Philadelphia: University of Pennsylvania Press, 2001), 1425.

²⁸¹ Lipsett-Rivera, “The Intersection of Rape and Marriage,” 569.

rapist was a priest.²⁸² In some instances, such as the rape of a female under twelve years old, the mandatory sentence was death. Of the 108 cases reviewed by Lipsett-Rivera, only twenty-five resulted in conviction and sentence, but none of these cases brought sentences of capital punishment.²⁸³

Referring to Carmen Castañeda García's *Violación, estupro y sexualidad*, Lipsett-Rivera states that the Laws of Toro provided that a prostitute could not be raped. Presumably, she means that a prostitute could not claim rape. She also states, again referring to Castañeda García, that, under Toro, a husband "could not force his wife into intercourse."²⁸⁴ Does she mean that it was unlawful for a man to force his wife to have sex with him, or was it the case that a married woman, owing her husband the "conjugal debt," could not claim to have been raped if her husband forcibly had relations with her? In the Laws of Toro, there is no direct statement concerning either prostitutes or wives in regard to rape or their legal standing to claim rape. However, it was not to the Laws of Toro themselves that Castañeda García was referring. Rather, it was to a compilation of the commentaries upon those laws by legal scholar Maestro Antonio Gómez..

Gómez's commentaries on the Laws of Toro, compiled and published in 1795 by Pedro Nolasco de Llano, provide background and elaboration on the Laws of Toro, referring to other laws relating to the same matter, or to precedent. Law 82 concerns the right of a husband to kill his wife and her paramour should he catch them in the act of illicit sex. Maestro Gómez's commentaries expand upon the definitions and penalties for incest, rape, and other sex crimes. Commentary number seventeen under Law 82 states that the laws governing rape and its punishments did not apply when the victim was a

²⁸² Ibid., 560.

²⁸³ Ibid., 569.

²⁸⁴ Ibid.

prostitute.²⁸⁵ As to the idea that a woman could not claim spousal rape, which is what Lipsett-Rivera seems to be saying, commentary fourteen to the same Law 82 denies the existence of spousal rape as a category, stating that there was no penalty for a man who had violent sex with his wife, to subordinate her to him and subject her to his will.²⁸⁶

Nor was this a new concept at the time of the codification of Toro. Medieval canon law provided that forcible sex between a husband and a wife was permissible. Canon law also stated that a prostitute could not complain of rape.²⁸⁷ This right of a husband to rape his wife if he felt it necessary to assert his dominance relates back to the discussion of the right of a husband to beat his wife in order to correct or punish her, and to the mention of the Church's holding that to refuse sex with one's spouse would be a sin. However, the Church opposed the idea of rape victims having to marry their rapists. Said eighteenth-century theologian Vicente Ferrer, the use of "force, violence, coercion, or terror" was an impediment of the most serious sort to any marriage.²⁸⁸

Punishments for rape varied throughout history, including the death penalty; forfeiture of all goods to the victim, or to the convent if the victim were a nun; public whipping; and exile.²⁸⁹ The tide turned against women in a frightening way when the decree of 30 October 1796 provided that "Those accused of rape should not be bothered with imprisonment or arrest, but continued on bail." Those who could not afford to post bail were confined to the limits of their city or town, which served as their prison.²⁹⁰ However, no steps were taken to protect the women of these cities and towns from the

²⁸⁵ Pedro Nolasco de Llano, *Compendio de los Comentarios Extendidos por el Maestro Antonio Gómez a las Ochenta y Tres Leyes de Toro* (Madrid: Imprenta Real, 1795), 338.

²⁸⁶ *Ibid.*, 337.

²⁸⁷ *Ibid.*, 37.

²⁸⁸ Lipsett-Rivera, "The Intersection of Rape and Marriage," 572.

²⁸⁹ Castañeda García, 45.

²⁹⁰ *Ibid.*, 47.

man raping again. This loose treatment of rape suspects was reiterated in another decree dated 19 July 1802.²⁹¹ Thus, women were placed in a vulnerable position, with again no recourse or protection from the possibility and fear of violent attack.

Even before these decrees, the punishment for rape could endanger the female population of a city. In 1794, as mentioned in Chapter Five, Juan Bernardo Sánchez was exiled to St. Augustine for having “robbed a married woman” in Cuba. The third definition of *robar* (to rob) in the 1783 DRAE is “to abduct a woman violently or through deceit, and remove her from her home.”²⁹² Punishment for simple robbery was reimbursement of the victim to three times the value of the goods stolen.²⁹³ Punishment for habitual robbers – highwaymen and pirates – was death.²⁹⁴ Exile was a punishment for rape. The marital status and sex of the victim would be irrelevant to a charge of robbery, but it would be quite relevant to a charge of rape. So it is possible that the crime of which Juan Bernardo Sánchez was convicted and exiled was rape. Exile may have removed him from the population of Cuba, and from his victim, but it may well have placed the female population of St. Augustine in peril.

Women in Commerce: Agency within Limits

Women did suffer repression. They also had opportunities to act. Richard Boyer found that women in Spanish America enjoyed agency in their own lives.²⁹⁵ In St. Augustine, women filed petitions for permission to marry, and they filed suit to counter

²⁹¹ Ibid., 48.

²⁹² NTLLE, DRAE 1783, 822, column 1.

²⁹³ Burns, *Las Siete Partidas*, Volume 5, 1376.

²⁹⁴ Ibid., 1386.

²⁹⁵ Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New Mexico Press, 1995), 44.

parental objections to their proposed marriages.²⁹⁶ In St. Augustine, a total of nineteen women filed marriage petitions. Women were permitted to conduct business on some levels. Still, they relied on assistance and advice from sons, friends, male relatives, and even servants to represent them. The extent to which a woman could participate in her own business affairs was governed by class and gender expectations. Elite women who worked were expected to do so only in their own homes.²⁹⁷

In St. Augustine, two Minorcan women, survivors of Andrew Turnbull's ill-administered plantation, rose to elite status through business or business connections. Doña Inéz Victori, married name Cavedo, became the matriarch of a powerful merchant clan. Two of her daughters married self-made men of means, don Pedro Cosifacio and don Domenico Martinelli. Doña Inéz's son married doña Juana Seguí, daughter of another wealthy Minorcan, don Bernardo Seguí. Doña Inéz's third daughter married the tailor Sebastián Ortega. Inéz Cavedo's son and sons-in-law formed a mercantile clan which prospered in St. Augustine.²⁹⁸ The other wealthy Minorcan matriarch was the merchant doña Isabel Perpál, one of the twelve wealthiest people in St. Augustine.²⁹⁹ Women owning shops included María Oliver, Catalina Ortega, doña María Domínguez, Caterina Pons y Andreu, and the elusive *la viuda de chocolate* (the chocolate widow).³⁰⁰ Female occupations throughout Spanish America tended to be limited to sewing,

²⁹⁶ Dissent of María Wisten against Francisco Arnau for refusing to grant permission to his son Santiago Arnau for the marriage they have contracted, Matrimonial licenses, Reel 132, Bundle 298R9, number 120, East Florida Papers.

²⁹⁷ Perry, *Gender and Disorder in Early Modern Seville*, 16.

²⁹⁸ Patricia C. Griffin, *Mullet on the Beach: the Minorcans of Florida, 1768-1788* (Jacksonville: University of North Florida Press, 1991), 184-186.

²⁹⁹ *Ibid.*, 157.

³⁰⁰ Municipal Accounts, 1797-1820, Reel 148, Bundle 323, 1806-1820. East Florida Papers.

weaving, food sales, nursing and midwifery, goat-herding, dairy production, fruit and vegetable growing, baking, and shopkeeping.³⁰¹

Other restrictions dated back at least to the Laws of Toro. Law 55 stated that a woman could not enter into any contract or break any contract to which she was a party without her husband's permission, nor could she appear in court or defend herself in court without her husband's consent.³⁰² Law 56 modified Law 55 to an extent, saying that a husband could grant a general license to his wife to enter into contracts and conduct business as she may not otherwise do without his permission. If the husband granted such general license, and it is assumed that it had to be in writing, any business his wife conducted was valid.

Law 57 provided that if a husband refused to grant such permission, a judge could issue it.³⁰³ Law 58 provided that a husband could approve in arrears what business his wife had conducted without his permission.³⁰⁴ Further, Law 59 provided that when a woman's husband was absent and not anticipated to return soon, the court could intervene. The court could recognize a woman's need to conduct business as legitimate, necessary, or advantageous to the woman and could grant a license to the woman such as her husband may have granted, were he present. The license granted by the court had the same validity as if granted by the husband.³⁰⁵

Women also frequently acted as executors or administrators of their husbands' estates and as guardians of their children. As executors, they could sell or otherwise dispose of their husband's property, pay any debts owed by the estate, and carry out the

³⁰¹ Perry, *Gender and Disorder in Early Modern Seville*, 16.

³⁰² Nolasco de Llano, *Compendio de los comentarios extendidos*, 291.

³⁰³ *Ibid.*

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*, 292.

husband's last wishes. Such was the case in St. Augustine with the widow of the wealthy floridano rancher Francisco Xavier Sánchez, who died intestate. His widow, María del Carmen Hill, distributed his property among all his children – those whom he had by her and those whom he had by his mulata consort, Beatriz Piedra, before he married María.³⁰⁶ As guardians of their children, widows managed their children's inheritance until their majority.³⁰⁷ However, a widow who remarried lost her status as her children's guardian and conservator of their estates.³⁰⁸ That duty was assumed by her new husband, echoing the provisions of the Laws of Toro.

Education and Health

Generally in Spanish America, schooling was gendered. Schools were established, usually by the parochial curate, where boys would be taught reading, writing, arithmetic, and doctrine.³⁰⁹ In St. Augustine, Father Thomas Hassett established a free school in 1787, mainly for the male children of St. Augustine's Minorcan families. Boys were taught reading, writing, arithmetic, and geography.³¹⁰ Girls were taught at home, or in the home of a local woman, with a curriculum of basic reading, catechism, sewing, weaving, and embroidery, with a goodly dose of what Boyer calls "subordinate domesticity."³¹¹ Girls also learned cooking and music. Though most women, including elites, were illiterate, a few elite women received a serious education, beyond the basic

³⁰⁶ Landers, *Black Society in Spanish Florida*, 152.

³⁰⁷ Asunción Lavrín and Edith Couturier, "Dowries and Wills: A View of Women's Socio-economic role in Colonial Guadalajara and Puebla, 1640-1790," *The Hispanic-American Historical Review* 59:2 (May 1979), 280-304 (JSTOR stable URL: <http://www.jstor.org/stable/2514415>, accessed 30 August 2013), 287.

³⁰⁸ Edith Couturier, "Women and the Family in Eighteenth-Century Mexico: Law and Practice," *Journal of Family History* 10:13 (Fall 1985), 294-304, 298.

³⁰⁹ Boyer, *Lives of the Bigamists*, 42.

³¹⁰ Michael V. Gannon, *The Cross in the Sand: the Early Church in Florida, 1513-1870* (Gainesville: University Press of Florida, 1983), 93.

³¹¹ Boyer, *Lives of the Bigamists*, 42.

literacy most females were accorded. In St. Augustine, as elsewhere in the Spanish Empire, women tended to be illiterate. A few women could sign their names.³¹²

In Spanish America, a select group of elite young females was educated in very small groups, usually only two or three girls, by convent nuns. These girls would have been educated at a convent, living there while they were under instruction; or there may have been a small convent school, or the girls may have been educated in their homes by local nuns. The prevailing male opinion was that teaching girls to read benefited them in that they could then read and meditate upon scripture.³¹³ Indeed, access to reading materials for women was generally restricted to devotional literature.³¹⁴ Writing, on the other hand, was not considered beneficial for women, and in fact, some men thought teaching women to write was dangerous.³¹⁵ Nuns had the highest rate of literacy of any class of women in Spanish societies.³¹⁶

In the late eighteenth century, probably in the larger cities of Spain and Spanish America, there was a change in the general view of women's education. More formal education was provided for elite women, with the idea that women did, after all, have intellectual abilities. The notion was that a good education would make elite women better mothers and wives, and thereby improve society. Education would help women overcome their "flaws;" it would reduce their over-sensitivity and weakness of character, would curb their ungoverned emotions, and cure their fiscal extravagance and penchant

³¹² Socolow, *The Women of Colonial Latin America*, 167.

³¹³ *Ibid.*

³¹⁴ Perry, *Gender and Disorder in Early Modern Seville*, 57.

³¹⁵ Socolow, *The Women of Colonial Latin America*, 166.

³¹⁶ *Ibid.*, 102

for ostentation.³¹⁷ There seemed to be no agreement, however, as to what would constitute a good education for women.

Along with reforms in education came reforms in health in an increasing concern over the social order. Women's health in Spanish America certainly was in line for some improvement. Infant and maternal mortality were high from infection and from ignorance of ways to deal with difficult births. In Spanish America, the average age at death for women of childbearing age was thirty.³¹⁸ High infant mortality does not seem to have been the case in St. Augustine, however. In 1784, there were twenty-three births and only one infant death. There were nine infant deaths in 1785 and nine in 1786, to forty-eight and sixty-seven births, respectively. Even in 1789, when there may have been an epidemic with nineteen infant deaths, measured against sixty-three births, an infant mortality rate of 0.301, the highest of the years 1784-1790.³¹⁹ The relatively low infant mortality rate may in part be attributable to superior Spanish aseptic practice: doctors and other practitioners washed their hands before treating patients, and between patients.³²⁰ Lack of doctors in other areas of Spanish America where infant mortality was high might also help to explain that phenomenon. St. Augustine had doctors because it was a military garrison. The doctors at the Royal military hospital also served the town, and there was one Anglo-American doctor, Dr. Joseph Way, and two Irish physicians Thomas Travers and John Darcy, who also practiced in St. Augustine.

³¹⁷ *Ibid.*, 167

³¹⁸ *Ibid.*, 66.

³¹⁹ Statistics were taken from Transcription and Translation of Church Archives of Florida (series title) *Roman Catholic Records, St. Augustine Parish, White Baptisms, 1784-1792*, Prepared by the Historical Records Survey, Division of Community Services Programs, Work Projects Administration. State Library Board, Tallahassee, Florida, March 1941, and from Cathedral Parish Records, Infant Deaths (White), 1784-1822. Translated and Transcribed from Microfilm at the St. Augustine Historical Society by William T. Baker, Jr. Printed manuscript, June, 2003.

³²⁰ Dawn Masters, historical interpreter, lecture at the St. Augustine Military Hospital Museum, 7 April 2012.

Marriage Patterns in a Garrison Town

In Spanish America generally, widowed men chose to remarry in order to provide a mother for their children and a wife to manage the household, leaving them free to conduct worldly business. Elite men tended to choose women ten to fifteen years their junior. Non-elite men also tended to choose younger women. Women were more often widowed than men; men faced more peril to life than women. By the 17th century in most of Spanish America, only widows with money and status, or those who were conspicuously attractive sexually, managed to remarry. Different circumstances applied in areas such as Montevideo, a military town where there was a shortage of women.³²¹

Like Montevideo, St. Augustine was a garrison town where there were fewer marriageable women in relation to the number of men. Widows in St. Augustine of nearly any age had little difficulty remarrying. It did not always happen that men in St. Augustine chose younger women, though many did. Don Francisco Xavier Sánchez was at least forty-one years old when he married seventeen-year-old María del Carmen Hill.³²² Royal pharmacist don Ramón de Fuentes was around forty-two years old when he promised to marry doña María de la Concepción Perry, whose age was thirteen years and nine months.³²³ At the other end of the spectrum, John Hudson was twenty-eight when he married doña María Evans, becoming her third husband. She was in her late fifties upon that occasion. Marriages with such age disparity were not unusual. Of 109

³²¹ Socolow, *The Women of Colonial Latin America*, 69-70

³²² 1786 census of St. Augustine (Father Hassett's census), Censuses 1783-1814, Reel 148, Bundle 323A, East Florida Papers. Sánchez stated his age as 40 on the census; he and María married just over a year later. Her age is found in Ecclesiastical Records of the St. Augustine Diocese, Baptism of María de la Concepción Perry, White Baptisms 1784-1792, 66-67, entry number 131, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://diglib.library.vanderbilt.edu/esss-viewimage.pl?SID=20150319708709716&code=esss&RC=248655&Row=98&return=esss> (Accessed 5 September 2014).

³²³ Marriage license petition of doña María de la Concepción Perry for permission to marry don Ramón de Fuentes, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 18, East Florida Papers.

married couples listed in Father Thomas Hassett's 1786 census of St. Augustine, which to be sure did not enumerate everyone in the city, Patricia Griffin found that twenty-five of the wives were over forty years old, and eleven of them were married to men at least seven years younger than they were.³²⁴

Widowhood

Widowhood for women did not necessarily mean independence. Some were burdened by litigation over their husbands' estates, greedy in-laws, contentious children, and bad financial advice from men who either were not financially astute but trying to be helpful, or those who sought to swindle a widow out of her substance.³²⁵ However independent a widow could be, she never was accorded the *patria potestad*. The widow's special, though limited, position stemmed from her legal right to inherit, and from her dowry, additional property due to her, her right to half of the assets gathered during the marriage, and her position as guardian of her children. Notwithstanding the widow's access to power and her responsibilities, a question remains as to how prepared a Spanish American woman could be as a result of any training she may have received, her level of confidence, and the resources available to her to manage an estate or run a business.³²⁶

Women in Spanish America, including in St. Augustine, were bound by law and by society's expectations. How did marriage law describe the relationship between men and women? That is the subject of the next chapter.

³²⁴ Patricia C. Griffin and Eugenia B. Arana, "Mary Evans: a Woman of Substance," *El Escribano* Vol. 14 (1977), 57-76, 61.

³²⁵ Socolow, *The Women of Colonial Latin America*, 70.

³²⁶ Couturier, "Women and the Family in Eighteenth-Century Mexico," 298-299.

CHAPTER SEVEN:
A HISTORY OF SPANISH MARRIAGE LAW
BEFORE THE PRAGMÁTICA OF 1776

“[Marriage is] one of the noblest and most honorable of the seven sacraments . . . and for this reason it should be honored and observed, as being the first of them . . . [It] is the support of the world, and causes men to live a regular life and one free from sin, and without which the other six sacraments can neither be maintained nor observed. For this reason, we have placed it in the middle of the seven *Partidas* of this book, just as the heart is placed in the middle of the body . . .”

-- Alfonso X, “*El Sabio*” (the Wise)³²⁷

Marriage Before the *Siete Partidas* of Alfonso X

By the time Alfonso X (1221-84) published his *Siete Partidas*, marriage in Spain and in the rest of Europe had been undergoing fundamental changes. Though the Catholic Church had assumed control over the process of marriage, medieval canon law was still unsettled on the subject.³²⁸ Marriage encompassed two defining elements. It was either a voluntary exchange of vows in the moment, that is to say, the actual day of marriage (*matrimonio*); or it was betrothal (*esponsales*), a voluntary and solemn promise to marry at some time in the future. Under these two elements, the contract was sealed by the physical consummation of the relationship, which rendered it permanent and indissoluble, at least in theory.³²⁹

³²⁷ Burns, *Las Siete Partidas*, Volume 4, 877.

³²⁸ *Ibid.*, x.

³²⁹ *Ibid.*

The declaration to marry stated at the betrothal created the marriage, with or without sex. As indicated by the number of “natural children” later annotated in the baptism records of second Spanish period St. Augustine to be legitimated by their parents’ marriage, sex after betrothal but before marriage was not uncommon. Again, this situation may have been exacerbated during 1784-1786 by the decision of Fathers Hassett and O’Reilly to conduct marriages only in December during those years. The legal age for marriage was fourteen for males and twelve for females.³³⁰ The youngest female bride in the matrimonial licenses of St. Augustine between 1784 and 1803 was María de la Concepción Perry, at thirteen years, nine months.

Practice under the medieval baronial system saw marriage as a breakable contract. The new view coming into vogue near the end of the medieval period, encouraged by the Church, was that marriage could not be dissolved. Also in prior practice, parents and other elders had much control over a young person’s choice of marriage partner. Marriage involved more than just the joining of two people; it had vital implications for matters of property, dispersal of resources, relationships between the families being joined by the marriage, and each family’s status. In certain instances, mostly in royal marriages, it could also have grave implications for the security of the state. The new movement tended toward free will in the choice of a marriage partner. The changes being wrought in marriage practices became nothing less than a social revolution.³³¹

There were advantages for both sexes in marriage. For men, it provided an available sexual partner, the possibility of heirs to carry on the family name and honor, social respectability and acceptance, and opportunities for networking within a family

³³⁰ Ibid.

³³¹ Ibid.

web. For women, the advantages included the preservation of honor and status, discipline and supervision (though this at times could also be a disadvantage), economic support, and security from the possibility of falling into promiscuity or prostitution.³³²

Free choice of marriage partners became the essence of marriage. Consent of the intended couple was also a vital element to a marriage. Alfonso spoke in the Fourth Partida of “the justice which should be maintained and observed in marriage which joins persons together, by mutual consent.”³³³ Even though the concept of free choice invalidated arranged marriages and other pressures parents brought to bear on their children, custom saw them continued. Many people resented efforts to enforce free choice, considering marriage a family matter to be decided without outside interference from Church or state.³³⁴

Earlier marriage practices had not necessarily involved a priest. A couple could merely announce their marriage, making marriage indistinguishable from concubinage or a consensual union, expressing the baronial idea that marriage was not permanent. Under the new concept, the process of marriage in Spain began with the consent of the couple and the family. The next step was the betrothal, sealed with the exchange of the *palabra de casamiento*. The betrothal was also the occasion for the dowry, and bound the couple to each other. The banns would be read in the church, giving anyone who knew of impediments to the marriage the opportunity to come forward and state them. The culminating event was the church rite of matrimony, presided over by a priest, with the public exchange of specific vows.³³⁵

³³² Perry, *Gender and Disorder in Early Modern Seville*, 53.

³³³ *Ibid.*, 878.

³³⁴ *Ibid.*

³³⁵ *Ibid.*, xi.

Clandestine marriage became a significant problem. A clandestine marriage was one in which the banns were not published. The practice was prohibited by the Fourth Lateran Council of 1215; however, such marriages were still valid. While valid, they carried a legal penalty. Parties to a clandestine marriage could be required to do severe penance. They would also be required to participate in a public solemnization of their union.³³⁶ There were civil reasons against clandestine marriages. Such a marriage brought dishonor on the bride and her family. In medieval times, the family whose honor had been damaged would seek revenge through violence. Some men who clandestinely married did so in order to access the bride's money, spent it on themselves, then deserted the newly impoverished woman. Sometimes, women thus abandoned and impoverished had no recourse but to turn to prostitution to support themselves.³³⁷

The betrothal, or promise to marry, could be initiated by one or both parties. Ideally, it was rendered in writing, in front of witnesses. It could be rescinded, but there were penalties for its breach.³³⁸ This practice remained unchanged at least to the end of the eighteenth century. A man who broke a promise of betrothal could end up in prison, as José Genaro Chaple found out when he jilted Manuela Berazaluce. Whether the *palabra de casamiento* was uttered by one or both of the parties, both parties had to consent to it free of any duress or undue influence.³³⁹

Consanguinity – family relationship – was considered an impediment to marriage if it fell within the fourth degree.³⁴⁰ Prohibited degrees of family relationship in regard to marriage included great-grandparents, grandparents, parents, brothers and sisters, first

³³⁶ Ibid., xi, xvii.

³³⁷ Ibid., xvii..

³³⁸ Ibid., xv.

³³⁹ Ibid., xvi.

³⁴⁰ Ibid., xvii.

and second cousins, and aunts and uncles. Also prohibited were marriages between godparent and godchild and between adoptive parent and adopted child.³⁴¹ However, there also resulted an increasing number of dispensations allowing persons within the fourth degree to marry. In St. Augustine, don Juan José del Toro petitioned to marry doña Rafaela Escalona. In his petition, don Juan stated plainly that doña Rafaela “was joined to me in parentage in the second degree of affinity.”³⁴² The couple married 28 April 1790.³⁴³ In a letter to Governor Quesada in 1792, Father Thomas Hassett related a communication he received from Cuba to the effect that del Toro owed fifty pesos to the Diocese of Cuba for services in 1790 having to do with the marriage. This was likely the issuance of a dispensation for don Juan and doña Rafaela to marry.³⁴⁴

The ascendance of free choice, and the option of a clandestine marriage if one were willing to face the consequences, widened the scope of marriage from endogamy to exogamy.³⁴⁵ A great number of marriages in St. Augustine during the years under study were exogamous, cutting across ethnic lines. Spaniards, whether peninsular or floridano, married Minorcan, Irish, British, French, and American partners. The insularity of the floridanos that existed at the end of the First Spanish Period, as noted by Susan Pickman, broke open in the Second Period.

³⁴¹ *Ibid.*, xviii.

³⁴² Petition of Juan José del Toro for permission to marry Rafaela Escalona, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 44, East Florida Papers.

³⁴³ Ecclesiastical Records of the St. Augustine Diocese, Marriage of Juan José del Toro and Rafaela Escalona, 28 April 1790, White Marriages 1784-1801, 56-57, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://vanderbilt.edu/esss/spanishflorida/index.php>, accessed 30 October 2014.

³⁴⁴ Father Thomas Hassett to the governor, 7 August 1792, With Bishop and Curate, 1786-1721, Reel 38, Bundle 10018, East Florida Papers.

³⁴⁵ Burns, *Las Siete Partidas, Volume 4*, xviii.

Las Siete Partidas

The code of Alfonso X entered into law many of these practices, some of which had been covered by canon law but not by civil legislation. Betrothal was defined in the fourth Partida as “a promise persons make when they desire to marry.”³⁴⁶ A betrothal was not valid unless both parties consented to it. The parties had to be content with the arrangement, and to consent to it. In the case of children, though a seven-year-old could be betrothed, one of such tender age could not validly marry because they “have not sufficient understanding to give their consent.”³⁴⁷ If either should change his or her mind, they were prohibited from marrying any member of the other party’s family.³⁴⁸ In order to back out of a betrothal, one had to offer a lawful and valid excuse. If the reason offered for renegeing on a betrothal was found by competent jurisdiction not to be lawful and valid, the party could be forced “by the decree of the Holy Church” to go through with the marriage.³⁴⁹

There were a number of reasons for opposing or preventing an engagement, and, one would assume, for backing out. An engagement was invalid if either party entered a religious order. There could be no engagement if either party disappeared without a trace. An engagement would be voided if either party had incurred a serious physical disability, especially one preventing sexual intercourse. Another impediment occurred if one party had sex with a relative of the other party, or indeed if either party had sex with someone other than their intended. Both parties might mutually decide to disagree, dissolve the betrothal, and separate. An engagement would be invalid if either party had

³⁴⁶ Ibid., 879.

³⁴⁷ Ibid., 888.

³⁴⁸ Ibid., 881-882.

³⁴⁹ Ibid., 882.

become betrothed to one individual by words of future marriage, and then to another by words of present marriage (that is to say, marrying another while engaged to the first party). If another man abducted a woman who was party to a betrothal, and had sex with her, either forcibly or consensually, an engagement would be void. Finally, there could be no engagement if neither party had attained legal age.³⁵⁰

Under the Partidas, a daughter could not be betrothed *in absentia* by her father or anyone else when she had not given her consent. This provision outlawed forced marriages. In Peru in 1618, Ysabel Allay Suyo complained that she had been forced to marry Diego Andrés de Arenas by a priest, Fray Alonso Sarmiento, who was not of her parish, and who was Diego's employer. She filed suit, and while litigation was in progress, she was placed in depósito in the home of a reputable Spanish woman. Witnesses called on her behalf testified that she had refused to marry Diego. When Diego's attorney questioned the reliability of Ysabel's witnesses, others were brought in who also testified to her refusal to consent. One witness stated that he never saw or heard of banns being published, as required by the canons of the Council of Trent. The court's ruling in the case nullified the marriage, as it had been improperly conducted. Fray Sarmiento was found to have acted contrary to the will of the bride, forcing her into the marriage, and to have been outside his jurisdiction.³⁵¹ The ruling undergirds Patricia Seed's assertion on individual volition in marriage choice and opposition to forced

³⁵⁰ Ibid., 882-883.

³⁵¹ Nancy van Deusen, "'Wife of My Soul and Heart, and All My Solace': Annulment Suit between Diego Andrés de Arenas and Ysabel Allay Suyo (Huánaco, Peru, 1618)," in Richard Boyer and Geoffrey Spurling, eds., *Colonial Lives: Documents on Latin American History, 1550-1850* (New York: Oxford University Press, 2000), 130-131.

marriages in civil and canon law. These two concepts “were cultural norms shared broadly in Spanish colonial society” and were strongly supported by the Church.³⁵²

A valid marriage was made either by words relating to the present or by the sexual act under the shade of the *palabra de casamiento*.³⁵³ “Consent alone, with the desire to marry, constitutes matrimony between a man and a woman,” declared Alfonso.³⁵⁴ Parties to the marriage had to form the intent to live together for the rest of their lives, and to be faithful to each other.³⁵⁵ The Fourth Partida also prescribed who could and who could not marry. To be eligible to marry, one had to be sound of mind and capable of consent. A candidate for marriage had to have no physical impairment that would prevent having sex, because marriage was for procreation. Prohibited from marrying were people who were adjudged permanently insane or who were for some other reason unable to have children.³⁵⁶ This law provides precedent for the idea of the state stepping in to take control of deciding who could and could not marry, before the matter entered into the realm of the Church. That idea was not a new one when the *pragmática* was issued.

Alfonso’s law code reinforced the position taken by the Fourth Lateran Council in 1215 concerning the prohibited degrees of relationship. Godparents and godchildren could not marry under the Fourth Partida, a prohibition that enacted in civil law one that already applied in canon law. Neither could those who had served as godparents for a particular child. One question for further study might be if the godparents involved in baptisms in St. Augustine tended to be already married or related in some other way.

³⁵² Seed, *To Love, Honor, and Obey in Colonial Mexico*, 46.

³⁵³ *Ibid.*, 880.

³⁵⁴ *Ibid.*, 887.

³⁵⁵ *Ibid.*, 886.

³⁵⁶ *Ibid.*, 888.

This question arises in consideration of the small pool of eligible marriage partners in the town. Also as mentioned previously, adoptive parents and their adopted children were prohibited from marrying, and in addition, under the Fourth Partida, an adopted child and his or her adoptive siblings could not marry. Though they may not have been related by blood, they were considered spiritual siblings.³⁵⁷

Other impediments to marriage in the Fourth Partida included religious incompatibility; that is to say, if one party were Catholic and the other of a different faith. Christians (which meant Catholics; in Spain at that time, the words were synonymous) were not permitted to marry Jews, Moors, or anyone suspected of being a heretic. However, if the proscribed individual converted to the Catholic faith before the consummation of the marriage, then it would be allowed. Force – which included abduction, imprisonment or sequestration, and coercion – was prohibited. Likewise, fear induced by a show of arms, intimidation, or threats (including the threat of rape) was also prohibited.³⁵⁸ “A man of so cold a nature he cannot copulate with a woman” could not marry, a veiled reference to homosexuality. A marriage seen to be in violation of any provision of canon law could not be permitted, nor one in which the parties were related within the fourth degree. Dispensations for such relationships were available, for a price.³⁵⁹

Clandestine marriage, already proscribed by canon law, also was prohibited in Alfonso’s code. With no banns, no announcement of the impending marriage, there was no opportunity for anyone who knew of possible impediments to come forward and bring

³⁵⁷ Ibid., 891.

³⁵⁸ Ibid., 892.

³⁵⁹ Ibid., 893.

them to public and ecclesiastical notice.³⁶⁰ The reason given in the law code for prohibiting clandestine marriage was to forestall one party leaving the other. As the marriage had been done in secret, it could not be proven to have taken place at all, and the Church therefore could not compel the party who had broken the marriage by leaving to return to the marital home.³⁶¹ This also explains why the parties to a clandestine marriage, once discovered, would be forced to be united in a public wedding, so that the existence of a marriage bond could be proven with documentation.³⁶² Another concern with clandestine marriage was bigamy. A clandestinely-married man might leave his wife and marry another woman openly, living with her in sin, for who would know he had been married to someone else?

Alfonso also reinforced the process of the expediente matrimonial, the priestly counseling session at which the curate inquired into the parties' eligibility for marriage, including investigation into any possible impediments. The Fourth Partida covered many aspects of marriage, but these are the ones most relevant to the examination of marriage in St. Augustine under the real pragmática de casamientos.

The Laws of Toro

The Laws of Toro (*Leyes de Toro*) constituted a basic family law code, issued in the early 1500s. They addressed inheritance, transfer of property, and guardianship. There were four, however, which specifically applied to marriage. The first of these was Law 49, which stated that those who contracted clandestine marriage, and those who assisted in such marriage, “place in jeopardy all their goods.” These persons also were

³⁶⁰ Ibid., 895.

³⁶¹ Ibid.

³⁶² Ibid. 896.

subject to being exiled, and if any who were exiled for this offense returned to Spain, they would face the death penalty. The parents of the parties to a clandestine marriage had the option of disinheriting them.³⁶³

In his commentary on this particular law, Maestro Antonio Gómez defined clandestine marriage as one entered into without publication of banns, which provided no opportunity for anyone knowing of impediments to the marriage to come forward and present them. Maestro Gómez elaborated on the law prohibiting clandestine marriage, stating that those subject to it could include the groom, the bride, witnesses, and others who participated.³⁶⁴ This application of the law would have implicated doña Angela Huet in the clandestine marriage of Lieutenant John O'Donovan and doña Dominga de Zéspedes, for doña Angela provided the location and organized the subterfuge under which the marriage was conducted. Such behavior by the lady brought the threat of dishonor to her husband, don Mariano de la Rocque, eliciting his abject apology to Governor Zéspedes. Fortunately for doña Angela, the punitive aspects of the law had been moderated by the time she assisted the two young lovers.

Broadly, the Laws of Toro, according to Lavrín and Couturier, had effects that defined the legal position of Spanish women, especially Spanish colonial women, into the early nineteenth century. The code defined women's status within the family, their rights of inheritance, the administration of marital property, and the disposition of a deceased woman's goods. Thus these laws "reflected prevailing views on the proper position of women in the family and provided a measure of protection for women's rights."³⁶⁵ As

³⁶³ Nolasco de Llano, *Compendio de los Comentarios Extendidos*, 246-247.

³⁶⁴ *Ibid.*, 247.

³⁶⁵ Lavrín and Couturier, "Dowries and Wills," 282.

previously discussed, the Laws of Toro governed or influenced the conduct of business by women in Spanish America.

Law 80 briefly stated that in cases of adultery, the offended spouse was required to accuse both his (or her) spouse and the individual with whom he or she had committed adultery, or else neither one could be accused. It was all or nothing. Law 82 stated that a spouse was not permitted to accuse his or her spouse of adultery if the marriage was not valid by reason of the accusing spouse having an impediment such as being married to someone else, or having entered a vow of chastity, or some other listed impediment.³⁶⁶

Law 82, and Maestro Gómez's commentaries on it, reveals much about the status of women and the legal rights of husbands in the sixteenth century. A man finding his wife in the act of having sexual intercourse with another man had the right to kill both of them. Maestro Gómez added lengthy and numerous commentaries on law and precedent concerning incest, adultery, rape, and other sexual and marital offenses.³⁶⁷ These laws did indeed, as Lavrín and Couturier suggest, reveal much about the status of women and marriage, about who was and was not considered an honorable woman, the treatment of each being at times quite different under the law, as discussed in Chapter Six.

The Council of Trent

The Council of Trent, a high-level meeting of Catholic clergy aimed at instituting reforms and revamping canon law, sat from 1545 to 1563. It constituted a massive effort to clarify and codify canon law to “redefine the role of the parish and the sacraments.” The parish was considered “the most effective unit for the imposition of

³⁶⁶ Nolasco de Llano, *Compendio de Comentarios Extendidos*, 331.

³⁶⁷ *Ibid.*, 332.

doctrine and discipline on Catholics.³⁶⁸ Prior to Trent, Catholic Church practice was not uniform; the Church exercised no central control. Throughout Europe, couples lived together in consensual unions without the benefit of clergy.³⁶⁹ The Church abjured pre- and extra-marital sex. This concern was aimed more at women than at men, demonstrating the gendered nature of the rules of marriage. Women who were town residents and who violated the sexual rules could be chastised publicly and fined. A woman who was not a resident would be exiled.³⁷⁰

Basic to the work of the Council was the concept of the battle between the flesh and the spirit. It was up to the individual to control his or her body and desires to avoid damnation. The Canons of Trent defined the rules; it was up to the individual to follow them, or not. The “freedom to choose between good and bad was central to the definition of sin.”³⁷¹ Sin, then, was a voluntary matter, redeemable by confession and penitence. The individual was reconciled to God through absolution. It was therefore important to determine whether an individual’s actions were voluntary or involuntary, since sin was a voluntary violation of moral rules.³⁷²

One of the last aspects of religious life and ceremony considered by the Council was marriage. At its twenty-fourth session, on 11 November 1563, the Council promulgated twelve canons on marriage. According to one scholar, the intent was to condemn errors of faith and practice, and to anathematize those who committed these errors.³⁷³ Among the errors were claims that marriage was not a sacrament instituted by

³⁶⁸ Poska, *Regulating the People*, 2.

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*, 201.

³⁷¹ Lavrín, “Introduction,” *Sexuality and Marriage in Colonial Latin America*, 49-50.

³⁷² *Ibid.*, 50.

³⁷³ Roberts, “Christian Marriage,” 2.

Jesus Christ; that Christians can practice polygamy; and that the church cannot determine diriments, impediments so serious as to render a marriage invalid. Among these diriment impediments were being underage, being already married, and being within the fourth degree of kinship by blood relationship.³⁷⁴

The issue of free will of the couple versus the wishes of their parents had been debated since the Middle Ages, and the debate was far from over as Trent sat.³⁷⁵ Though declaring that marriages conducted without parental permission were valid, the Council reiterated the Church's opposition to them: "the . . . Church has for most just reasons, and at all times detested and prohibited such marriages."³⁷⁶ Charles III later borrowed this language for the real pragmática. This seeming contradiction can be explained by the Church's firm tendency to favor the marital couple over the objecting parents, in its belief that the free will of the marital couple was paramount. In cases where parents raised objections to their children's marriages, the Church tended to intervene on behalf of couples and to rule in their favor.³⁷⁷ The civil authorities in St. Augustine favored marital couples overwhelmingly, as Chapter Nine will show.

Reforms instituted by the Council included an attempt to end to clandestine marriages. The Council ruled that a valid marriage required a priest and two witnesses. Medieval practice in the Church had been that a valid marriage was based on the promise of marriage and upon its consummation with the act of sex.³⁷⁸ The promise of marriage,

³⁷⁴ Ibid.

³⁷⁵ Lavrín, "Introduction," *Sexuality and Marriage in Colonial Latin America*, 6.

³⁷⁶ Buckley, *The Canons and Decrees of the Council of Trent with a Supplement Containing the Condemnations of the Early Reformers, and Other Matters Relating to the Council* (London: George Routledge and Co., 1851), 179-180.

³⁷⁷ Lipsett-Rivera, "The Intersection of Rape and Marriage," 572.

³⁷⁸ Allyson Maria Poska, *Regulating the People*, 200-201.

and gifts to seal the bargain, would be exchanged in front of witnesses.³⁷⁹ After Trent, marriages conducted without a parish priest, or by a priest from another parish without the bishop's permission, and without the required two or three witnesses, were to be considered null and void.³⁸⁰ This provision probably was considered by the court in the case of Ysabel Allay Suyo's suit over her forced marriage to Diego Andrés de Arenas, discussed above. Any parish priest present without the required witnesses, and any other priest not of the parish present in like manner, were subject to severe punishment at the bishop's discretion. The marital couple and other participants were also subject to the bishop's punishment.³⁸¹

In the reforms promulgated by the Council of Trent, publication of the banns was made mandatory, with the announcement to come from the pulpit on three successive feast days. The banns were declared openly in the church before the marriage was contracted. The parish priest was to proclaim the impending marriage in the parish where the prospective bride and groom lived. He had to make public the names of the prospective bride and groom, and to admonish the congregation that the marriage would proceed if no lawful impediment were raised.³⁸² Entries reflecting this practice appear in the marriage records of the Diocese of St. Augustine. The marriage of Miguel Seguí and María Ponz on 15 September 1794 was recorded thus in the marriage book by Father Thomas Hassett: "Today . . . having read the three banns ordered by our Holy Mother Church on three feast days"³⁸³

³⁷⁹ Lipsett-Rivera, "The Intersection of Rape and Marriage," 571.

³⁸⁰ Theodore Alois Buckley, *The Canons and Decrees of the Council of Trent*, 180-181.

³⁸¹ *Ibid.*, 181.

³⁸² *Ibid.*, 180.

³⁸³ Ecclesiastical Records of the St. Augustine Diocese, Marriage of Miguel Seguí and María Ponz, 15 September 1794, White Marriages 1784-1801, 98-99, entry 116, *Ecclesiastical and Secular Sources for*

However, the Council also allowed banns to be dispensed with in certain cases.³⁸⁴ A bishop could dispense with the banns if he deemed it prudent, for example, to protect the couple from harsh action by their parents or other relatives.³⁸⁵ The Council provided that if the banns were omitted before marriage, they were to be announced after the ceremony but before consummation as *fait accompli*.³⁸⁶ Even criminal allegations or charges based on a couple's sexual misconduct before marriage could be nullified by such a secret marriage conducted with the Church's blessing. Such an action could not be rescinded by civil authority, including an court of appeals or the viceroy. This ability of the Church to defend couples even against the courts of appeals or the viceroy showed the Church's independence concerning marriage in the late sixteenth and early seventeenth centuries.³⁸⁷ The reading of the banns could not be omitted if witnesses did not support a couple's allegations of parental interference, or if there were present some condition that was sufficient to preclude marriage.³⁸⁸

The Council echoed the Fourth Partida of Alfonso X, prohibiting clandestine marriage. "Grievous sins" arose from such marriages, wherein a man who married clandestinely could leave that wife and openly marry another woman and live with that woman "in perpetual adultery."³⁸⁹ The Church wished to erase bigamy, and one way to do that was to prohibit clandestine marriage.³⁹⁰ However, a clandestine marriage was considered valid unless rendered invalid by the Church, as long as it was by mutual

Slave Societies (ESSSS), <http://vanderbilt.edu/esss/spanishflorida/index.php>, (accessed 11 November 2014).

³⁸⁴ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 76.

³⁸⁵ Buckley, *The Canons and Decrees of the Council of Trent*, 180.

³⁸⁶ *Ibid.*

³⁸⁷ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 77.

³⁸⁸ *Ibid.*, 76.

³⁸⁹ Buckley, *The Canons and Decrees of the Council of Trent*, 180.

³⁹⁰ Poska, *Regulating the People*, 218.

consent. The Council emphasized its ruling by declaring that anyone who said that clandestine marriages were invalid was anathema.³⁹¹

The Council wished to prohibit marriages between persons in spiritual relationship to each other (godparentage or adoption, as discussed previously) and those within a certain degree of affinity. The Council also proposed punishments for such offenses as abduction, concubinage, and interference by civil officials in a couple's right to marry of their own free will.³⁹² Thus the Council prohibited forced marriages, stating that no one was to be compelled into an unwanted marriage. The marital couple had to mutually consent to marriage.³⁹³

Another Tridentine reform involved the *expedientes matrimoniales*, the files opened by the parish priest for a pre-marital investigation to ascertain if a marital couple was free to marry.³⁹⁴ The Council prescribed specific procedures and formats. The interviews conducted by the priest used preset questions for both parties to determine that their mutual consent was genuine.³⁹⁵ The interviews also aimed to discover that both members of the potential marital couple were indeed single; that they were not related within the fourth degree of consanguinity; and that neither of them had taken a vow of chastity or joined a religious order.³⁹⁶ The prospective couple was also examined on Church doctrine, so that they would "understand completely the sanctity of the sacrament of marriage."³⁹⁷ Finally, the couple had to confess and take communion, to be in the

³⁹¹ Buckley, *The Canons and Decrees of the Council of Trent*, 179.

³⁹² Poska, *Regulating the People*, 3.

³⁹³ *Ibid.*, 213. See also Lavrín, "Introduction," *Sexuality and Marriage in Colonial Latin America*, 6.

³⁹⁴ Lipsett-Rivera, "The Intersection of Rape and Marriage," 571.

³⁹⁵ Buckley, *The Canons and Decrees of the Council of Trent*, 180.

³⁹⁶ Socolow, "Permission to Marry," 236.

³⁹⁷ Poska, *Regulating the People*, 220.

“spiritual state best prepared to undertake the solemn sacrament of marriage.”³⁹⁸ The Council of Trent thus played an important role in formalizing and institutionalizing marriage. The Church redefined marriage, and tightened its control of regulating social and sexual relations.³⁹⁹ That control would be challenged by the real pragmática de casamientos.

The Decree of 24 October 1775: Prelude to the Pragmática

In a decree dated 24 October 1775 and signed by don Manuel Roda on behalf of Charles III, there are clues to the impetus behind the 1776 pragmática. Saether argues that these clues show that the concern of the king was with the disruption of the social order and evidence of diminishing respect for superiors. These conditions were therefore a threat to the monarchy. If filial piety were strengthened, the monarchy’s authority would be preserved, for the king was seen in patriarchal theory as the father of all his subjects.⁴⁰⁰

The 24 October decree concerned itself with the topic of unequal marriages, framing the problem in three parts. First, it decried the deleterious effects such marriages had on “the splendor and lustre of the most noble families.” Further, the decree described the situation “that some subjects of illustrious birth . . . may cause their families and the glorious memory of their forebears” distress by marrying unequally or by, for various reasons, selecting concubinage “to the spiritual ruin of their souls.”⁴⁰¹ This concern for the status of elites appears in three different paragraphs, indicating that this was a primary

³⁹⁸ Ibid., 221.

³⁹⁹ Ibid., 200.

⁴⁰⁰ Saether, “Bourbon Absolutism and Marriage Reform,” 487-488.

⁴⁰¹ Konetzke, *Colección de Documentos*, Volume III, Book I, 401-405.

issue. This bolsters the argument that the intent of the *pragmática* was to preserve social order and protect the interests of royalty and the elites.

Second, the decree both chastised and supported the church, saying that the church had too often favored the “ill-intended liberty” of unregulated marriage without comprehending the possible circumstances and, at times, contravened parental authority. The decree sought to establish clear lines of responsibility for the civil state in the law of contracts and for the church in prescribing the forms for the ecclesiastical celebration of marriage as a sacrament. The civil power in regard to contracts was presented in the decree as being concerned with the legitimacy of children and with inheritance. This is another theme emphasized in the *pragmática*. The third aspect concerns filial obedience to parental authority. The stated goal of the *pragmática* was the enforcement of this concept of filial piety. However, the decree also aimed to preserve the social-status hierarchy.

One concern in the 24 October decree not finding direct emphasis in the *pragmática* was the phenomenon of “marriages of conscience.” This was a form of secret marriage carried out by the church to protect a young couple from retribution by parents or other relatives who had objected to the marriage. The couple would be examined in an *expediente matrimonial* to determine their eligibility for marriage. The marriage was recorded not in the general records of the parish but in a separate, classified record kept by the bishop. Of concern in these marriages was the appearance of “living in sin” or concubinage, since there was no public record of the marriage. For the same reason, children of such marriages had difficulties, said the decree, in gaining civil employment

or proving legitimacy.⁴⁰² In the 1776 *pragmática*, the concern is with clandestine marriage, which may or may not have been for reasons of conscience and personal security for the marital couple. In St. Augustine, clandestine marriage included those instances when the Anglo-American residents of East Florida would cross the border into Georgia to be married in a Protestant ceremony. In two such cases, those of John Forrester and an unnamed young woman, and William Tucker and “the widow Hull,” the perpetrators were considered to have contracted an illegal marriage, and were subject to the penalty of having their goods confiscated.⁴⁰³ The intention to limit and regulate such marriages was a direct challenge to the authority of the church in such matters.

Charles III wanted, outwardly at least, to maintain good relations with the church, and to this end, the decree “actively desired piety and justice in finding a remedy appropriate” to the king’s sovereignty, “with the least interference in the Holy Canons.”⁴⁰⁴ The decree sought a means of regulating marriage such that the perceived ills resulting from unequal marriages would be avoided, without disturbing ecclesiastical authority and the canons of the sacrament of marriage. The use of the phrase “sacrament of marriage” in this paragraph makes clear that the church’s authority is over the sacrament only, and not over any civil contract of marriage or designation of inheritance, both of them being the province of the state. The next chapter will describe and analyze the results – the 1776 *pragmática* and the 1778 decree and subsequent decrees intended to enforce them.

⁴⁰² Ibid.

⁴⁰³ Fr. Thomas Hasset to Governor White, With Bishop and Curate, 1786-1821, Reel 38, Bundle 10018, No. 84, and don Juan McQueen to Governor White, Correspondence between Governor and Subordinates on St. John’s and St. Mary’s Rivers, 1784-1820, Reel 57, Bundle 137G11, Jan-Jun 1802, No. 152. Also Fr. Miguel O’Reilly to Governor White, With Bishop and Curate, 1786-1821, Reel 38, Bundle 10018, No. 216, East Florida Papers.

⁴⁰⁴ Konetzke, *Colección de Documentos*, Volume III, Book 1, 401-405.

CHAPTER EIGHT:
FROM THE REAL PRAGMÁTICA OF 1776
TO THE DECREE OF 10 APRIL 1803

In 1752, the cleric José Tenebra, of Tlaxcala, Mexico, wrote that “in order to ensure the ‘public good,’ the state should discourage unequal marriages.” He defined these as “unions between honorable men and women who were not of the right condition because they lacked the three purities of social status, caste, and occupation.”⁴⁰⁵ The real pragmática de casamientos of 23 March 1776 did precisely what Tenebra had urged.

The Provisions of the Real Pragmática

The stated intent of the pragmática was to prevent marriages of minors and dependent children without paternal permission, and thereby prevent unequal marriages. In the text of the pragmática, a minor was a child under twenty-five, and a dependent child (*hijo de familia*) referred to any child, regardless of age, living under his or her father’s roof and therefore subject to his rules.⁴⁰⁶ Charles III saw unequal marriages as resulting in “grave offenses to God our Lord, discords in families, and scandals and other most grave embarrassments, both moral and political.” That young people married without parental counsel or consent (*consejo o consentimiento*) presented a threat to

⁴⁰⁵ Quoted in Martínez, *Genealogical Fictions*, 248. The word “caste” may have been rendered in the original as *casta*, defined at the time as “good lineage.” See Chapter Four.

⁴⁰⁶ NTLLE, DRAE 1780, 468, column 3. The definition given for the phrase *hijo de familia* is “El que está sin tomar estado, y se mantiene debaxo de la patria potestad” (He who has not taken an estate (i.e., that of matrimony), and who lives under the rule of his father).

social order. Initially, the law applied only within Spain itself.⁴⁰⁷ Marriages without parental permission ran “counter to the intention and merciful spirit of the Church, which . . . has always detested and prohibited them as opposed to the honor, respect, and obedience which children owe to their fathers”⁴⁰⁸ Here we see the king’s opportune and probably intentional use of the phrase he lifted from the Tridentine canon, in its expression of opposition to such marriages. It was good politics to give homage to the Church while working to reduce its power.

Charles III stated that the “disorder” caused by “unequal” marriages had continued to exist because “specifically declared civil penalties to be assessed against violators have not been available.”⁴⁰⁹ He called his council of ministers to consider the question “with the reflection and maturity which its importance requires” (a phrase he lifted from the 24 October 1775 decree) and to propose rules, while taking care not to offend ecclesiastical and canonical sensibilities.⁴¹⁰ The result was the *pragmática*, which Charles III found to be “appropriate, just, and pleasing to my Royal authority.”⁴¹¹ He issued the Pragmatic Sanction “with the force of law, and it is my will that it have the same vigor as if it were promulgated in the *Cortés*.”⁴¹²

The first article of the *pragmática* was the key, from which the succeeding articles derived. It provided that dependent children under the age of twenty-five years of age

⁴⁰⁷ Konetzke, *Colección de Documentos*, Vol. III, Book 1, 406. The Spanish: “graves ofensas a Dios, nuestro Señor, discordias en las familias, escándolos y otras gravísimas inconveniencias, en lo moral y político . . .”

⁴⁰⁸ Ibid. “contra la intención y piadoso espíritu de la Iglesia que . . . siempre los ha detestado y prohibido como opuestas al honor, respeto, y obediencia que deben los hijos prestar a sus padres . . .”

⁴⁰⁹ Ibid., 406-407. “Y no habiéndose podido evitar hasta ahora este frecuente desorden por no hallarse específicamente declarados las penas civiles en que incurran los contraventores . . .”

⁴¹⁰ Ibid., 407. “he mandado examinar esta materia con la reflexión y madurez que exige su importancia, en una Junta de Ministros . . .”

⁴¹¹ Ibid. “conveniente, justo, y conforme a mi autoridad Real . . .”

⁴¹² Ibid. “en fuerza de la ley, que quiero tenga el mismo vigor que si fuese promulgada en *Cortés*.”

must, before marrying, seek the “consent and counsel” of their fathers. If the father were not available, the mother would be consulted. The mother being unavailable brought the grandparents on either side forth as the ones to grant such permission. Lacking these, the marital hopefuls would need the permission of any relative over the age of twenty-five living nearby. If there were no available relatives, a guardian or caregiver would be the grantor of consent. Such permission, when granted, had to be approved by the nearest royal judge, who could not be an interested party. That is to say, he could not have a stake in the marriage or in its prevention. If the judge were an interested party, the ruling authority would pass to another judge or to the royal magistrate, whichever was nearest.

This last part of this article is not discussed in writings on the real pragmática, but the points raised in it are important. The royal judge, rather than the ecclesiastical judge, was made the court of original jurisdiction as to whether a couple was qualified to marry. Here was the first interposition of civil authority over ecclesiastical provided in the pragmática. Also, impartiality – or the semblance of it, at any rate – was strictly to be maintained in having a royal judge recuse himself if he had any personal interest in the proposed marriage. This related to instances where there might be undue pressure to force a marriage, as seen in the case of Ysabel Allay Suyo. A judge, as much as a priest, could be in a position to force such a marriage for his own reasons. The demand that a judge be impartial, or that he recuse himself if he did have a personal stake, was designed to prevent such marriages.

Article Two began with the admonition that the law applied to all classes of society, from the highest to the most lowly. Everyone regardless of station owed to their parents the “indispensable and natural obligation of respect for parents and elders who

are in their place by natural and divine law.”⁴¹³ Young people were not capable of making such a momentous decision in their lives without “paternal deliberation and consent,” so that the young could reflect on the consequences.⁴¹⁴ Such filial piety at the level of the family corresponded to the necessity, in the patriarchal model, of respect for the king as the symbolic father of his subjects, regardless of one’s position in the social hierarchy. The king, of course, occupied his position by “natural and divine law.”

The third article stated that, if the subject children should marry without parental consent, they would lose all civil benefits, including dowries and inheritances. Charles III felt that disinheritance of such disobedient heirs was just, based on their contravention of law and their ingratitude. Children disinherited on the basis of having married without permission were prevented from bringing suit to contest the provisions of a parent’s or grandparent’s will. Parents and grandparents were obligated only to provide basic subsistence to the disobedient children.⁴¹⁵ The punishment for disobeying the *pragmática* need not include starvation. In the Laws of Toro, Law 49, disinheritance of children who married without parental permission was an option, as stated in Chapter Seven. In the Pragmatic Sanction, disinheritance was mandatory.

Article Four provided that those who married without parental permission, and who either had inherited or stood to inherit, should be deprived of such inheritance or eligibility to inherit, and that their descendants also be barred from such inheritance. The disobedient one’s share would pass to the individual next in line – so long as he, too, had no legal obstacle to the inheritance. This disinheritance would hold “until the extinction

⁴¹³ Ibid, 408. The statement is “la indispensable y natural obligación del respeto a los padres y mayores que estén en su lugar por derecho natural y divino . . .”

⁴¹⁴ Ibid.

⁴¹⁵ Ibid.

of the lines of the descendants of the founder or the person who at the head of the family instituted these rights or privileges.”⁴¹⁶

Article Five expanded upon the provision of the preceding article in providing that if the disobedient child were the last of his direct line of descent, his share of the inheritance would pass to collateral lines (cousins, nephews and nieces, aunts, uncles). This proscription would hold until the last collateral relative in line of descent from the originator of the fortune in question died. Again, in no case was the disobedient one to be denied basic subsistence.

Article Six probably would have been difficult to enforce unless a parent lodged a specific complaint. This section provided that offspring over the age of twenty-five were required to request the counsel and advice of their fathers before marrying. It did not require parental permission, only advice. This requirement to seek such advice was not to be taken to such an extent that it delayed the marriage. However, those young people who failed altogether to seek parental counsel were subject to the same punishments as prescribed for those under twenty-five who married without parental consent.

Article Seven put limits on paternal authority, while at the same time stating that it was the king’s intent to “preserve to parents the due and ordered authority which by all right belongs to them in intervening in and consenting to their children’s marriages.”⁴¹⁷ “It is just,” said the king, “at the same time to prevent the abuse of this authority by parents in interfering arbitrarily and with malice in their children’s freedom of choice in

⁴¹⁶ Ibid., 408. “. . . hasta la extinción de las líneas de los descendientes del fundador o personas en cuya cabeza se instituyeron los vínculos o mayorazgos.”

⁴¹⁷ Ibid., 409. “. . . conservar a los padres de familias la debida y arreglada autoridad que por todos derechos les corresponde en la intervención y consentimiento de los matrimonios de sus hijos . . . ”

the estate to which their vocation calls them.”⁴¹⁸ This provision served to prohibit forced marriages, and also warned parents against forcing their children to marry when the child’s own choice of vocation did not include matrimony, for example, if a young man earnestly wished to enter the priesthood. Parents were also warned against imposing their own social or economic agenda on their children by forcing them “violently to marry someone repugnant to them, for base reasons rather than for those high ends for which the sacrament of matrimony was instituted.”⁴¹⁹

In Article Eight, the king ordered that parents and others in line to grant permission to marry were required to give their consent when they had no “just and rational” reason to withhold it. The acceptable rationale for parents to deny permission was that such marriage would “gravely offend the family’s honor or the serenity of the State.”⁴²⁰ The vagueness of this statement left the matter open to interpretation by parents and the courts. Indeed, in the period between the issuance of the Pragmatic Sanction in 1776 and the decree of 10 April 1803, there were numerous lawsuits, both in Spain and, after 1778, in Spanish America, over the causes and the quality of parental objections to their children’s marriages.⁴²¹ These lawsuits spawned a number of decrees and royal orders clarifying or attempting to clarify the issue.

If parents should interfere unjustly and maliciously in their children’s marital decision, says Article Nine, whether of minor children or those over twenty-five years of

⁴¹⁸ Ibid. “[E]s justo precaver al mismo tiempo el abuso y exceso en que pueden incurrir los padres y parientes en agravio y perjuicio del arbitrio y libertad que tienen los hijos para la elección del estado a que su vocación los llama . . .”

⁴¹⁹ Ibid. “. . . queriéndolos violentamente con persona a que tienen repugnancia, atendiendo regularmente más a los conveniencias temporales que a los altos fines para que fué instituido el santo sacramento del matrimonio.”

⁴²⁰ Ibid.

⁴²¹ See, for example, Brusches, “Don Manuel Valdivieso y Carrión Protests the Marriage of His Daughter,” 224-235.

age, the young people were to have “summary recourse to royal justice.”⁴²² This article provided precise deadlines within which suit was to be filed and a decision rendered. The decision of the tribunal, court of appeals, or Council to which the case was referred was final, so that a marriage might not be delayed by dragging the case out with appeals and countersuits from the children’s parents or others qualified to provide consent.

Article Ten provided that only the final ruling in a lawsuit could be publicly announced. All testimony or records of deliberations were to be sealed, in order to protect the parties to the suit, and their families, from any possibility of defamation. Hearings in these matters were to be conducted behind closed doors. Should a judge or a notary reveal any details or provide copies of the full proceedings to those wishing to use them in support of the dissenting parents, these officials stood to lose their jobs. The record of the proceedings, regardless of the jurisdiction in which the matter was decided, were to be kept in a secret, secure archive so that no one could access them. Historians are eternally grateful that these records were not ordered destroyed.⁴²³

In Article Sixteen, the king again nodded to the Church in recognizing that civil penalties alone were insufficient to deal with “offenses to God,” disorder, and youthful passion.⁴²⁴ He indicated plainly that he expected the clergy to be zealous in their observance of the canons. He urged bishops to enforce the encyclical of Benedict XIV,

⁴²² Konetzke, *Colección de Documentos*, Vol. III, Book 1, 409.

⁴²³ Articles Eleven through Fourteen dealt with royalty, nobility, and grandees, of which there were none in St. Augustine, and with the conduct of ministers, councilors, and magistrates. Article Fifteen instructed military members to observe those procedures laid down in royal orders regarding marriage. Soldiers and sailors were admonished that, should they not follow proper procedure and should they fail to receive paternal permission, they would be subject to the same penalties as civilians, as provided in the Pragmatic Sanction. There had been numerous royal orders pertaining to the rules of marriage for military members, both officer and enlisted, for many years prior to the issuance of the pragmática. The volume of these documents and the progression of changes in these rules could provide a separate study. These articles are thus not included here.

⁴²⁴ *Ibid.*, 411.

not indicating specifically which one, but presumably the one issued 17 November 1741 with the intent of reducing secret or clandestine marriages. “Far too many marriages have been performed and are celebrated so secretly that official notice of them is erased and lies buried eternally in darkness,” the pontiff declared. Benedict required that his bishops see to it that marital couples were asked if they were “of that quality, rank, and condition which they rightly claim,” and whether the father of either one had withheld consent to the marriage.⁴²⁵ “Do not give them cause or reason,” said Charles III of dependent children, “to fail in the obedience due to their parents,” as he urged his clergy to be careful and vigilant in handling betrothals lest they be entered into contrary to parental wishes.⁴²⁶ The king ordered that such betrothal contracts were to be in writing and signed.

Article Seventeen briefly stated that the clergy were to observe the canons of Trent on the subject of the announcement of the banns. The Council of Trent had emphasized that public reading of the banns was essential to the prevention of clandestine marriages. Charles ordered that clergy were to avoid omitting them without substantial reason for doing so.

For “the order and tranquility of families upon which the state depends,” the king, in the same article, ordered his archbishops, bishops and other prelates to ensure that all clergy under their command familiarized themselves with the provisions of the Pragmatic Sanction, so that they should both promote and concur in “its due observance and compliance.”⁴²⁷ Charles III’s message to the Church was clear: though sharing

⁴²⁵ Quoted in Seed, *To Love, Honor, and Obey in Colonial Mexico*, 192.

⁴²⁶ Konetzke, *Colección de Documentos*, Volume III, Book 1, 412. “. . . no darles causa, ni motivo para que falten a la obediencia debida de sus padres . . .”

⁴²⁷ *Ibid.*, 412.

jurisdiction in the matter of marriage, the share had become tilted in favor of the state, and the king expected obedience and compliance.

Article Nineteen stated that the clergy had in the pragmática and in whatever provisions bishops would make for its implementation a “competent recourse” to follow. The king referred in this section to a decree of the same date as the pragmática, but such a decree could not be found. The decree was directed to bishops and other Church officials.⁴²⁸ The content of this document, if it still exists, could shed light on the changing relationship between the Church and the Crown. As it was, Charles III had strengthened the state over the Church, all the while appearing deferential.

In the closing paragraph, Charles III admonished his council, presidents and judges of his courts of appeals and chancelleries, and all other judges and justices of Spain to see to it that their rulings should conform to the pragmática, “without permitting contravention in any way.”⁴²⁹ He also ordered that the Pragmatic Sanction be published in Madrid and in all cities, towns, and other locations in customary form.⁴³⁰

Interpretations of the Pragmatic Sanction

Several scholars have offered interpretations of the pragmática. Diana Marre sees its purpose as reserving to parents “their due and orderly authority that by all rights they should have” in deciding who their children should marry. She calls the Pragmatic Sanction “the chief expression of socio-political patriarchy of the Spanish crown.”⁴³¹ To

⁴²⁸ Ibid.

⁴²⁹ Ibid.

⁴³⁰ Ibid., 413.

⁴³¹ Diana Marre, “La aplicación de la pragmática sanción de Carlos III en América Latina, una revisión,” *Quaderns de l’Institut Català d’Antropologia*, Barcelona, No. 10 (winter 1997), 217-249 (online: <http://www.ub.edu/geocrit/sv-22.htm>, accessed 5 January 2014), 7.

María Elena Martínez, the pragmática was the key element in the Crown's desire to severely limit the autonomy of the Catholic Church in matters of marriage.⁴³²

Susan Socolow argues that Charles III wanted to control “disorder.” Unequal marriages were the cause of that disorder, by disturbing the “proper ordering of society.” This blurring of social lines produced “a dangerous confusion between social groups,” a confusion that the state felt it must control in order to survive.⁴³³ Socolow also says that “the state had always believed that, in order to protect a family's honor, marriage should be between social equals.”⁴³⁴ Yet there is no provision either in the *Siete Partidas* or in the Laws of Toro addressing the question of marital inequality, whether social, economic, or racial. The absence of such a provision tends to put the state in agreement with the Catholic Church on the question of free will in the choice of marriage partners, at least as far as the legal code was concerned, up to the issuance of the pragmática.

Ann Twinam sees the Bourbon reforms as exclusionary and preserving the hierarchy, though social mobility was possible.⁴³⁵ Rodrigo Andreucci Aguilera argues that in 1563, Philip II had prohibited clandestine marriages, calling for punishment for the offending couple and for witnesses or accomplices. Their goods could be confiscated, they could be exiled under penalty of death if they returned, and they could be disinherited by their parents.⁴³⁶ What Philip did, actually, was to reinforce the provisions of the Laws of Toro, Law 49.

⁴³² Martínez, *Genealogical Fictions*, 245.

⁴³³ Socolow, “Acceptable Patners,” 212.

⁴³⁴ Socolow, *The Women of Colonial Latin America*, 174.

⁴³⁵ Twinam, *Public Lives, Private Secrets*, 244.

⁴³⁶ Rodrigo Andreucci Aguilera, “La pragmática de Carlos III sobre el matrimonio de los hijos de familia y su pervivencia en el derecho chileno,” http://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0716-54552000002200010 (accessed 5 January 2014), 2.

According to Steinar A. Saether, the Pragmatic Sanction was not so much about curbing the Church's power or preserving social hierarchy, but "more fundamentally, it was as a political instrument by which the very glue that held the monarchy together was consolidated."⁴³⁷ As Saether sees it, the purpose of the Bourbon reforms in general was to enhance the king's authority, to unify and modernize Spain, to promote rational laws, and to preserve society's hierarchical order. That "glue" of the monarchy was the patriarchy. Saether calls the strengthening of paternal authority, and the requirement of obedience to that authority, the most important point of the *pragmática*. It existed primarily to "enhance the power of the king, who, according to Bourbon absolutist rhetoric, was the father of all fathers."⁴³⁸ Saether also argues that the Bourbon reforms did not have as their aim the reduction of the Church's power vis-a-vis the Crown. However, if the reforms, including the Pragmatic Sanction, existed to enhance royal power and to solidify the king's position as the "father of all fathers," the Church in fact stood to lose power. Power, indeed, does not exist in a vacuum. If the Crown increased its power, another institution somewhere was seeing its power diminished. The most powerful institution other than the Crown was the Church.

Saether refers to crown prince Luis de Bourbón's proposed marriage, discussed at length below. The idea of the crown prince marrying a woman of inferior status threatened to disrupt the Bourbon succession and the royal family's honor and status. According to Saether, Prince Luis notoriously smuggled women into the palace for his carnal amusement. María Luz Alonso says, below, that the result of Luis's behavior was

⁴³⁷ Saether, "Bourbon Absolutism and Marriage Reform," 489-490.

⁴³⁸ *Ibid.*, 476.

the Pragmatic Sanction.⁴³⁹ However, argues Saether, Luis's case does not explain the article in the *pragmática* applying its rules to all levels of society, nor does it explain the extension of the 1776 *pragmática* to the Indies in 1778. The law was not, therefore, a hasty reaction to a crisis within the royal family. It had a much broader purpose and deeper history than that. On this point, the evidence tends to support Saether's view.

María Luz Alonso's argument is that Luis's intended marriage was the only impetus for the *pragmática*. It was not mundane abstractions such as the power struggle between Church and State or between social classes or races, she says. Rather, it was what Charles III saw as ill-advised love on the part of his own brother: "There cannot be the least doubt that the cause which gave rise to the promulgation of this *Pragmática* was that of meeting and regulating the civil effects of the possible marriage of the prince don Luis de Borbón with an unequal person."⁴⁴⁰

Alonso cites contemporary sources who maintained that the true origin and motivating factor for issuance of the real *pragmática de casamientos* was Prince Luis's possible marriage to a woman considered to be his inferior. A history of the reign of Charles III, written in 1856 by Ferrer del Río, stated that the *pragmática* was rooted in the role don Luis was expected to play in the succession to the Crown of Spain.⁴⁴¹

Victorian de Villava, a crown attorney in the court of appeals in Charcas, Mexico, wrote a scathing critique of the *pragmática*, quoted by Alonso. It was not promulgated to resolve a problem of general character such as a perceived increase in unequal marriages,

⁴³⁹ *Ibid.*, 477-478.

⁴⁴⁰ Alonso, "El consentimiento para el matrimonio de los miembros de la Familia Real," 63. The article is in Spanish, and this passage reads: "No cabe la menor duda de que la causa que dio lugar a la promulgación de esta *Pragmática* fue la de atender y regular los efectos civiles del posible matrimonio del infante don Luis de Borbón con persona desigual."

⁴⁴¹ Alonso, "El consentimiento para el matrimonio de los miembros de la Familia Real," 63.

said Villava, but to prevent Don Luis's unequal marriage. The true purpose of the 1776 *pragmática* was not to exalt any abstract ideal, but merely "to exclude any possible descendants of the Crown Prince Luis, who would be born of a marriage to an unequal person, to succeed to the throne."⁴⁴² Scarcely one month after the issuance of the *pragmática*, don Luis petitioned his brother the King for a royal license to marry the woman of inferior status. The license was granted, but don Luis had to accede to the penalties listed in the *pragmática*.⁴⁴³ On 4 August 1799, a month after the death of don Luis, King Charles IV pardoned him posthumously, granting royal benefits to Luis's children and recognizing them as members of the royal family.⁴⁴⁴

From this point of view, the *pragmática* can be seen as an exercise in irony and futility. However, evidence shows that it grew more out of Bourbon intent to strengthen the position of the king and thereby curb the power of the Church, out of concern over unequal marriages, and out of the general trend in Spanish society toward strengthening the *patria potestad* as it did out of any fears Charles III may have had about the purity of the line of succession. As evidenced by José Tenebra's writings, Charles III was not the only one in Spain or the colonies who thought something should be done about the problem of unequal marriages. Based on what Tenebra wrote, and when he wrote it, those concerns arose long before don Luis cast his eye on the "inferior" woman. Not only that, but the fact that the Pragmatic Sanction echoed many provisions of the fourth of the *Siete Partidas*, the Laws of Toro, and the Tridentine canon on marriage demonstrated that concerns over unequal marriage, the role of parental consent, and the role of church and state in marriage long predated Prince Luis's escapades.

⁴⁴² Ibid., 63-64.

⁴⁴³ Ibid., 68.

⁴⁴⁴ Ibid., 71.

The Decree of 7 April 1778: Extending the Pragmática

Some two years after the issuance of the pragmática of 1776, Charles III extended its provisions to the Indies. Having become aware “that the same or worse prejudicial effects of this abuse” [unequal marriages] were found in the Indies as well as in Spain, the king felt it was appropriate that the Pragmatic Sanction should cover the overseas colonies as well as the mother country. Modifications were necessary to accommodate the diversity of classes and castes of the inhabitants of the Indies and “for other various circumstances which do not occur in Spain.”⁴⁴⁵ Charles referred to the Fourth Provincial Council of Mexico, a Church convocation that sat in 1771, and contemplated these difficulties attributed to unequal marriages. This Council’s deliberations resulted in recommendations to Charles of “salutary and appropriate rules” to prevent “the most grave disturbances which have resulted from the absolute and undisciplined liberty within which impassioned and inexperienced youth have become betrothed.”⁴⁴⁶

In reference to the Mexican convocation, Charles indicated parenthetically that the bishops recommended prohibiting unequal marriages contracted in opposition to parental wishes, and the omission of the announcement of banns. The Council also suggested that priests not remove potential brides from the parental household and place them in depósito against parental wishes without first clearing such action with the bishop. This advance notice was to allow the bishop to determine whether the father’s opposition to the marriage was rational, as demanded by the 1776 pragmática. Ecclesiastical judges were not to admit into their tribunals those betrothal contracts

⁴⁴⁵ Konetzke, Colección de Documentos, Vol. III, Book I, 438.

⁴⁴⁶ Ibid.

entered into by persons of “notorious inequality,” when such betrothals “would redound to the discredit of the parents.”⁴⁴⁷

These recommendations from the convocation in Mexico were submitted to the Council of the Indies. On 7 January 1778, the councilors forwarded their report to the king. Charles, pleased with the results, mandated that the 1776 Pragmatic Sanction, with the modifications specified in this decree of 7 April 1778, be published in customary form in the Indies, to the end that it and the modifications should be made known and complied with.⁴⁴⁸

Article One states that in light of difficulties encountered by certain classes of people in obtaining parental permission for marriage, these groups were excluded from compliance with the Pragmatic Sanction. The listed groups to be excluded were blacks, mulattos, *coyotes* [offspring of *mestizos* and Indians] and other mixed-race persons. Individuals of these classes who served in the militias were an exception to this rule. Because of their service to the king, their reputation, and their “good operations and services,” black and mixed-race militia members were included in coverage. “These [persons] must be counseled and made to understand their natural obligation to honor and venerate their parents and elders,” the king admonished.^{449,450}

⁴⁴⁷ Ibid., 439.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid. “. . .se aconsejará y hará entender a aquéllos la obligación natural que tienen de honrar y venerar a sus padres y mayores . . .”

⁴⁵⁰ Article Two acknowledged particular difficulties experienced by Indians in obtaining parental permission to marry. These difficulties probably had been reported by priests serving the Indians in missions in Mexico and other parts of Latin America. Charles III placed the mission priests in lieu of parents as grantors of permission to marry, as necessary. He cautioned that priests so serving were not to ask for compensation for this service. A diligent search had to be made, Charles ordered, to find the parents or other relatives and ask permission of them. As this provision applies more to mission Indians, and there were no missions in East Florida in the Second Spanish Period, it is of limited concern. Indians who wanted to marry in St. Augustine were considered autonomous individuals, as any other residents.

Article Three, in one sentence, stated that the Indian equivalent of royalty, the *caciques*, “for their nobility are considered to be in the class of distinguished Spaniards for the purposes of the real pragmática de casamientos.”⁴⁵¹ This did not necessarily mean that the decree encouraged intermarriage, but instead protected the prerogatives of an elite among Indians, just as its 1776 predecessor served to protect the elite among the Spanish. There was no language prohibiting marriage between Spanish and Indians.

The fourth article formed the underpinning for the filing of every marriage license petition in St. Augustine and elsewhere in Spanish America. It provided that European Spaniards (*peninsulares*) and transients from other nations, as long as they were there legally, had recourse to a justice or judge of the province in which they were living for permission to marry, if no one qualified to give consent was available. Legal presence was determined by the possession of a license to travel to the Indies. The judges or other officials to whom petitions were submitted were prohibited from asking for compensation “under the penalty of loss of employment.”⁴⁵²

The provisions of Article Four were extended in Article Five to those who were born in Spanish America but whose parents lived at such a distance or in terrain so rough and impassable as to prevent timely request and receipt of permission to marry. Both conditions prevailed in St. Augustine, with many individuals stating in their petitions that their parents were either dead, or lived in Spain, Minorca, or other overseas locations, or so far away within East Florida, or in the United States, as to preclude timely permission. In both the Pragmatic Sanction of 1776 and in this decree of 1778 we find reference to

⁴⁵¹ Ibid., 440.

⁴⁵² Ibid.

deadlines and to timely response, with the wish to avoid unnecessary delay of the celebration of a marriage.

Article Six made the courts of appeals the court of final jurisdiction. For St. Augustine, the court of such jurisdiction was the court of appeals in Cuba. In such cases as described in Articles Four and Five, it was not necessary for an individual wishing to marry to attempt to obtain permission from his parents. The courts of appeals were to name the officials in each district who were to receive and rule on petitions for license to marry. In St. Augustine, the tribunal that heard such cases was made up of the governor, the notary, and the city/military auditor.

Article Seven referred to Article Nine of the 1776 *pragmática* in the assignment of deadlines within which certain duties were to be performed. In the petitions filed in St. Augustine, we find these deadlines imposed in cases of parental dissent. A recalcitrant parent or other relative who did not grant permission would be told by the governor, through the notary, that he or she had from one to three days, depending on circumstances, in which to provide such permission or to submit a “just and rational” reason for withholding it. Such instances will be examined in the next chapter. Also in this article, once again there appeared an admonition for officials not to request or accept any emolument for their services. It was proper to charge a petitioner for the cost of paper and ink, but in no case was the imposition of such fees to prevent someone who could not afford them access to the official services needed to process his or her petition.

Article Eight provided for accommodation of special circumstances. Courts of Appeals could establish rules consonant with the 1776 and 1778 decrees which accounted for such things as customs, distance, and other circumstances which seemed appropriate

to the particular area or district. Such special rules were to be submitted to the Council of the Indies, which would forward them to the king for his approval. In order to avoid inconvenience, these local rules could be implemented on an interim basis until the ruling of the king was received.

In Article Nine, Charles III ordered that all archbishops and bishops see to it that their priests in the field not issue permission for young people to marry without the consent of their parents or other qualified persons as required, or until a court of competent jurisdiction issued a final ruling on parental resistance.

Charles picked his language in the last paragraph of the decree carefully: “In consequence of my Royal determination, I order my Viceroy, Presidents, courts of appeals, Governors and other judges and ministers of the Realm of the Indies to whom pertaining, and I urge and charge the Very Reverend Archbishops and Reverend Bishops . . . to observe, comply with, and execute . . .” the provisions of the decree.⁴⁵³ He was not going to “order” the Church to comply, but “urged and charged” it to be in compliance.

Aside from the above modifications, the *pragmática* of 1776 was to be observed and complied with in all of its other provisions, including the punishments for young people who married without their fathers’ permission.

Interpretations of the 1778 Decree

What do scholars claim was the effect of this decree on marriage in the Indies? Ilona Katzew sees the 1778 decree as a drastic curtailment of the freedom to marry. Her interpretation holds that the 1778 decree applied “only to those who were white or of pure Indian ancestry, enabling parents for the first time to have a legally sanctioned say in

⁴⁵³ *Ibid.*, 442.

their children's marriage choices." The 1778 decree provided that "the only valid reasons for opposing marriage were racial disparities when the other party was of black ancestry." The decree, says Katzew, was designed "to protect whiteness."⁴⁵⁴

María Elena Martínez also sees the 1778 decree as including a specific prohibition against Spanish and blacks marrying. "Marriages were 'unequal,'" says Martínez, "when they involved unions between blacks and non-blacks."⁴⁵⁵ With respect to Section Three of the 1778 decree regarding Indian nobility, Martínez states that marriage legislation "consecrated" the idea of the purity of Indian lineages.⁴⁵⁶

Ann Twinam joins the chorus of those who maintain the 1778 decree had the aim of preventing interracial marriage. It "gave both parents and royal officials the authority to prevent marriages that crossed natal and racial boundaries."⁴⁵⁷ In Spain in 1776, says Twinam, the specter that prompted the 1776 law was social inequality. In 1778, the specter was racial.

In a 1989 study, Susan Socolow commented on the effect of the 1778 decree on unequal marriages. In her study of six parishes in Buenos Aires, she found that the incidence of "unequal" marriages declined from 23.4% before the 1778 decree to 10.1% after its issuance. Socolow defined "inequality" for purposes of her study as interracial marriage or those between a legitimate child and an illegitimate one.⁴⁵⁸ The economic factor, important in St. Augustine, does not appear included in this definition. In a later publication, Socolow broadened her definition of "inequality" as being partly racial, but also as social, economic, and moral. She argues that the exclusion of blacks, mulattos,

⁴⁵⁴ Katzew, *Casta Painting*, 53.

⁴⁵⁵ Martínez, *Genealogical Fictions*, 258.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ Twinam, *Public Lives, Private Secrets*, 309.

⁴⁵⁸ Socolow, "Acceptable Partners," 235.

and mixed-race individuals from coverage under the 1778 decree existed specifically to protect the Spanish elite.⁴⁵⁹ The decree protected elite families from the possibility of their daughters making “socially inopportune marriages.”⁴⁶⁰ But again, social inappropriateness is not given a precise definition. It may be noteworthy that Socolow says “daughters,” but not sons. Here again, gender is a factor. Certainly in St. Augustine, officials were not worried about white men who married women with a family history of African origin.

In her 1989 study of marriage in Mexico, Edith Couturier concluded that it was not known if the state “upheld the rights of the parents to decide on their offspring’s matrimonial choices, or how often the courts ruled in favor of the children.”⁴⁶¹ In the first part, she seems to be asking the wrong question. The courts were bound by law to uphold the parents’ right to have a say in their children’s marriages. The courts were not bound to uphold parental oppositions that were not “just and rational.” The question to ask is the second one: how often did the courts support the young people and reject parental reasons for opposing these marriages?

Steinar Saether determined from his studies that the 1778 decree and by extension the real pragmática were not accepted with grace in Spanish America. Between 1778 and 1802, decrees and royal orders were issued to reaffirm and reinforce the provisions of the pragmática, in response to resistance, dissent, and a host of lawsuits. The number and frequency of these lawsuits suggests that the provisions of the 1776 and 1778 decrees were too vague, not well understood, or that there was considerable resistance to them.

⁴⁵⁹ Socolow, *The Women of Colonial Latin America*, 174.

⁴⁶⁰ *Ibid.*, 175.

⁴⁶¹ Couturier, “Women and the Family in Eighteenth-Century Mexico,” 302.

Saether raises the question: Why was there such a difference in the reactions to the changes wrought by these two documents? Between Spain and Spanish America, he argues, there was a difference in the application of concepts of honor. He perceives honor in Spanish America as linked to issues of race, lineage, social status, and personal conduct in ways they were not in Spain. There was “a conflict of mentalities” in that Spanish America did not pay the same homage to either royal or paternal authority as did Spain. There was “a dominant prejudice” against Africans among the Spanish in the New World. Blacks were often characterized as the offspring of concubines or as conceived in illicit consensual unions. The 1778 decree, Saether maintains, made legal marriage more difficult for blacks.⁴⁶² Perhaps it did in areas Saether studied, but it does not appear to have been the case in St. Augustine. Blacks there simply did not have to go through the civil petition process unless they were members of the militia. The Church encouraged marriage over consensual unions or concubinage. Marriage was encouraged for all citizens, white and black.

Jane Landers tells us that marriage rates were low for blacks in St. Augustine, attributing this statistic to the fact that most blacks, free and slave, were rural, and did not have ready access to the services of the church in St. Augustine. She also states that “concubinage and illegitimacy [resulting from consensual unions] did not carry the disadvantages in this frontier society that they may have elsewhere . . .”⁴⁶³ St. Augustine’s Catholic Church facilitated those black marriages that were celebrated in the church by not requiring the marital couple to pay for the marriage ceremony if they could

⁴⁶² Saether, “Bourbon Absolutism and Marriage Reform,” 490.

⁴⁶³ Landers, *Black Society in Spanish Florida*, 124.

not afford it.⁴⁶⁴ Though blacks in St. Augustine did not have to comply with the *pragmática*, the Church conducted the *expedientes matrimoniales* in the same way for them as it did for white marital couples. Whatever other social benefits a Catholic marriage had for blacks, one was of paramount importance. Slave families with parents who had been married in the church could not be broken up by being sold by their masters. Such a family had to be kept intact if sold.⁴⁶⁵

Blacks could and did get married in the Catholic parish of St. Augustine, without having to go through the process of parental consent prescribed in the *pragmática*. Slaves were required by other laws to obtain the consent of their masters. María de la Luz Blanco's master José de la Encarnación Espinosa gave permission for her to marry the free mulato José de Arrivas (Rivas).⁴⁶⁶ There were thirty-one entries in the book of black marriages between 1785 and 1803. No black marriages were recorded in 1784. Of this thirty-one, only two grooms filed petitions for permission to marry, based on possible or actual militia service, José de Arrivas and Juan García.

Decrees and Royal Orders, 1778-1802

Of the decrees, royal orders, and opinions of the Council of the Indies issued during this period, this discussion will consider those most relevant to how the *pragmática* was applied in St. Augustine. The first under consideration here was an opinion of the Council of the Indies issued on 27 February 1783, prompted by three lawsuits involving parental permission. The opinion was requested by the Bishop of

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid., 126.

⁴⁶⁶ Ecclesiastical Records of the St. Augustine Diocese, Marriage of José Rivas and María de la Luz Blanco, Black Marriages 1784-1882, 2, entry 2, , *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://vanderbilt.edu/esss/spanishflorida/index.php>, (accessed 4 January 2015).

Cuba, concerning rules he was formulating for his parishes for their conduct under the *pragmática*. St. Augustine's parish was under the jurisdiction of the Bishop of Cuba. The proposed rule stated that minors requesting to marry must obtain parental permission, or receive the decision of the duly constituted tribunal in their favor in case of parental disapproval. The proposed rule also directed clergy to exercise caution in approving betrothals or marriage requests presented without parental permission.⁴⁶⁷ The Council of the Indies approved the proposed rule, saying that it was just and fitting to observe the rule which prohibited requests not just for marriage, but also for engagement without parental permission for those young people under twenty-five.⁴⁶⁸

According to Socolow, two decrees issued in May of 1783 strengthened parental power and abrogated free choice of marriage partners.⁴⁶⁹ The first, issued 26 May 1783, involved the intended marriage of don Juan Antonio López and doña María Manuela de Aranda y Laris in Mexico. Doña María's father, don Ramón Luis de Aranda, objected to the marriage, an objection upheld by the tribunal. Don Juan, the intended groom, appealed to the pertinent court of appeals, which upheld the tribunal's ruling. The couple married anyway, and María was disinherited by her father. Her mother disagreed with that decision and attempted to provide for María, beyond the required basic subsistence. The matter went all the way to the king, who ruled that a mother may not provide for a disobedient son or daughter as an heir, nor could she provide any support whatsoever.

The second decree, issued 31 May 1783, tightened the requirement for parental permission for marriages of children twenty-five years of age or older.⁴⁷⁰ Those in that

⁴⁶⁷ Konetzke, *Colección de Documentos*, Volume III, Book II, 509-510.

⁴⁶⁸ *Ibid.*, 514.

⁴⁶⁹ Socolow, "Acceptable Partners," 211-212.

⁴⁷⁰ Saether, "Bourbon Absolutism and Marriage Reform," 496.

category who did not seek advice *and* consent for their marriage could be disinherited. The pragmática originally required only that those over twenty-five seek the counsel of their parents, if time permitted. The same punishments prescribed for those under twenty-five years of age who failed to secure parental permission were applied also to those over that age by this later decree. Such punishment had little effect on those families with little substance to pass to their children. Many youngsters were not worried by the prescribed punishment. Saether's interpretation is that young people adopted the attitude that if they were willing to accept disinheritance, nothing could be done in the civil or ecclesiastical realms to prevent their marriage.⁴⁷¹

Marriage license documents in St. Augustine do not reveal whether there were cases of such disregard for the possibility of disinheritance in the town, but other documents in the East Florida Papers indicate that the text of the pragmática and the 1778 decree had been publicly published, and citizens were expected to be aware of their provisions.⁴⁷² The assumption was that everyone in East Florida knew that parental permission for marriage was necessary, and that there were penalties for failure to obtain it or for marrying in the face of parental opposition.

On 10 July 1783, the king issued a clarification regarding the application of the pragmática's rules to military members. The king provided three rules. In the first, military members with parents or other qualified relatives in the Americas (presumably within a reasonable distance) were required to abide by the consent or dissent of their

⁴⁷¹ Ibid., 496-497.

⁴⁷² Governor White to don Juan McQueen, with decree to be posted "so that the inhabitants of the [St. Johns and St. Marys] Rivers who cross into the United States to get married cannot plead ignorance of the penalty they incur, in spite of their being Protestants." Correspondence between Governor and Subordinates on the St. John's and St. Mary's Rivers, 1784-1820, Reel 36, Bundle 13G11, Folio 781R, East Florida Papers.

parents. Superior officers were required to determine whether a soldier wishing to marry had parental permission. In the second rule, those officers in the Americas whose parents or other qualified persons resided in Europe were to ask permission from their parents. They were required to send all required documents to the Council of War via the Council of the Indies. The delicate concern in the *pragmática* that a planned marriage not be unnecessarily delayed certainly did not apply in these cases. The third rule applied to enlisted men, whether Spanish or foreigners, who wanted to marry and establish residence in the Americas. Enlisted personnel were not required to obtain royal permission. Instead, they were to supply witnesses who had knowledge of the subject soldier's parents' place of residence in Europe, or other difficulty in obtaining parental permission. The commander of the corps, battalion, or regiment to which the soldier belonged was empowered to give permission for the man to marry.⁴⁷³ Rules for the military concerning clandestine marriage were not based in the *pragmática*, but in royal orders issued in 1775 and 1781.⁴⁷⁴

Yet again, in a royal order dated 8 March 1787, the power of the father to prevent his child's marriage was strengthened. This decree stated that priests absolutely could not celebrate a marriage without parental or court approval. This decree also strengthened the role of the state in deciding who could and could not marry. If the state hurdle were not cleared, the church had no power to perform such a marriage, even if the parties to the marriage were willing to face disinheritance as a result.

On 18 September 1788, a decree was issued ordering that only the children involved in petitioning for marriage could request permission for either betrothal or

⁴⁷³ Konetzke, *Colección de Documentos*, 529-530.

⁴⁷⁴ Someruelos to White, concerning military clandestine marriages, Letters from the Captain-General, Reel 3, Bundle 6F1, folios 3015R, 3017R-3017V.

marriage. No other person would be allowed to file such petitions. The charge to archbishops, bishops, and their subordinates not to accept petitions for betrothal or marriage without parental permission was renewed in this decree.

Issues of race and legitimacy were treated in a *consulta* (advisory opinion to the king) of the Council of the Indies dated 12 August 1791. At issue was the wish of Ana Josefa Fernández, a white citizen of Puerto Principe, Santo Domingo (present-day Port-au-Prince, Haiti) to marry Pedro de Estrada, a free mulatto. Ana was a *sacrilega*, illegitimate daughter of a priest, and considered to be of the lowest status. Her sister, doña Juana Fernández, objected based on Pedro's race. Juana's dissent was ruled rational by the court. The case hinged on the fact that Ana, though the illegitimate issue of a scandalous act, was white and Pedro was mulatto. The statement in the ruling was that the color "of mulattos never fails to cause a notable disparity." The court further said that the stain of a mulatto relative "always infects a family."⁴⁷⁵ Here is an instance where the *pragmática*, though it lacks specific language prohibiting interracial marriage, had been interpreted to support the dissent of a family member based solely on such color disparity. It is also noteworthy to recognize a basic assumption: a white person, even one who was born of an illicit liaison between her mother and a priest, was superior to a person of color. The unfortunate result was that Ana's chance of marrying a white man was practically nonexistent.

On 27 February 1793, a decree was issued in response to a case in Lorca, Murcia, Spain, in which don Pedro Exea had married doña María de los Dolores Molina, fifteen years old, on 21 July 1780, without her father's permission. Don Pedro had appeared before Charles III, stating that his wife was not subject to the penalties under the real

⁴⁷⁵ *Ibid.*, 695-697.

pragmática. The *corregidor* (magistrate) of their home city had said that María had lost her right to inherit because of the marriage without parental permission. Her share had passed to her sister. The ruling was affirmed by the king's council, but Charles IV said that the order was "without effect." The pragmática and succeeding orders were not retroactive, said the king. This seems an odd statement, considering that the pragmática was issued in 1776 and the marriage took place in 1780. The document does not state when the promise of marriage may have been given, and that could be a factor in the seemingly odd dates. Also, the decree of 1793 mentions another, dated 26 August 1788. That decree could not be found, but it may be the basis for the king's statement about retroactivity. In any case, the king overturned the ruling, and also made it very clear in the 1793 decree that those who were to marry without proper consent or in the face of parental opposition were to be deprived of civil benefits and that parents "shall" disinherit them and their descendants.⁴⁷⁶ There is no way of knowing if don Pedro Exea had influence with Charles IV, or what may have transpired between them when don Pedro had his audience. This case demonstrates that even the king made exceptions to the pragmática.

On 16 December 1792, the Department of Grace and Justice, in Madrid, sent Governor Juan Nepomuceno de Quesada at St. Augustine a letter concerning clandestine marriage. The letter was in response to a report by Quesada concerning the instance in which John Forrester, an Anglo resident of East Florida, had eloped across the border into Georgia with a young Anglo woman, who was not named in the letter. The instruction forwarded with the letter was also in response to events in Florida and in Louisiana, and was aimed at bishops, priests, and other clergy. The letter cited the Forrester case, and

⁴⁷⁶ Ibid., 711-714.

emphasized the principle that, in Spanish territories, “there cannot be any other public religion than Catholic.” Moreover, the letter stated that “public concubinage cannot be tolerated,” referring to the public image attached to clandestine marriage.⁴⁷⁷

The instruction, dated 30 November 1792, was addressed to all “who exercise the care of souls in the provinces of Louisiana and East and West Florida.” Its subject was “the celebration of marriages of English, Anglo-American, and Foreign Protestants domiciled” in the Spanish provinces, and also was directed to the attention of governors and judges, as applicable. Referring both to the Council of Trent and civil law, including the *pragmática*, the instruction prohibited clandestine marriages. Specifically, it stated that such foreign Protestant colonists were required to marry in the Spanish colony in which they resided, in the Catholic church, whether their intended spouse was Catholic or Protestant.⁴⁷⁸ Those Protestant couples who had gone to another Catholic territory to marry were to have their marriage verified by their parish priest. The instruction also required that marriage ceremonies be performed in the presence of three witnesses, according to the canons of Trent. Marriages contracted clandestinely, whether within the Spanish colonies or on foreign soil, were declared null and void. The punishment for violation of the rule laid down in the instruction was confiscation of goods and permanent expulsion from Spanish dominions.⁴⁷⁹

In February of 1798, the Council of the Indies issued a report covering several cases which had arisen over several years challenging the 1778 decree. The Council, in surveying the flood of questions, problems, and cases arising from the 1778 decree,

⁴⁷⁷ Letter to Governor Quesada, 16 December 1792, Letters with the Department of Grace and Justice, Reel 15, Bundle 38I3, Folios 177R-178R, East Florida Papers.

⁴⁷⁸ In such instances, it is likely the marital couple would be instructed to take catechism and be baptized in the Catholic faith.

⁴⁷⁹ *Ibid.*, folios 179R-182R.

referred to the “difficulties and doubts encountered in meeting one’s obligations under the real pragmática.” The law needed reform, though the Council emphasized that they were not suggesting repeal. To repeal the pragmática would have been a signal to youngsters that they could do as they pleased regarding marriage. Some way had to be found, said the Council, to strengthen the basic principles of the pragmática: prohibition of unequal marriages and reinforcement of the concept of filial obedience. The Council recommended leaving the matter of whether a couple should be permitted to marry in the face of parental opposition to the ecclesiastical judges.⁴⁸⁰ Taking into consideration Charles III’s wording of the pragmática of 1776 and the decree of 1778, he would probably not have accepted this suggestion.

The Council reminded Charles IV that his father’s intention had been “directed only at remedying disorder caused by unequal marriages,” and setting out the civil penalties for those who disobeyed entered into such marriages without parental consent.⁴⁸¹ The only concern of the pragmática was to prevent unequal marriages, said the Council. Was the Council demonstrating a desire to renegotiate the balance of power between church and state? The Council spoke of the continued litigation over the interpretation of the Pragmatic Sanction, despite “repeated Royal declarations” concerning its intent and enforcement. Yet the tribunals of the Americas continued to “approach His Majesty, disturbing his sovereign attention” with more “inexcusable” lawsuits.⁴⁸²

Citing a case from 1783, the Council of the Indies upheld a decision by the Bishop of Cuba to allow a marriage of conscience, in spite of the civil tribunal’s decision

⁴⁸⁰ Saether, “Bourbon Absolutism and Marriage Reform, 505.

⁴⁸¹ Konetzke, *Colección de Documentos*, 759.

⁴⁸² *Ibid.*

that the opposition of the bride's father was "just and rational." The Council declared that ecclesiastical authorities had exclusive jurisdiction over marriages of conscience. The Council seems to be defending ecclesiastical authority against civil authority. The possibility that the Council may have been maneuvering vis-a-vis the king is a topic for further investigation. This interpretation may have been part of the reason for the issuance in 1803 of the most restrictive rules on marriage, a distinct move by the crown to solidify its position and strengthen the patriarchy. Such enforcement of patriarchal power benefitted the king, as a further implicit statement of the need for his subjects to respect his authority. If there was a struggle between king and council, this may have been a stern message from the king. At the same time, the Council stated that ecclesiastical courts were to deny requests for marriage when the betrothal of the marital parties was entered into without parental consent and if the opposition of the parents had been upheld by the civil court as just and rational.⁴⁸³

The Decree of 10 April 1803: the Final Stroke

The decree of 10 April 1803 announced significant changes to the provisions of the *pragmática*. The major change was that a parent who opposed the marriage of his or her child was no longer required to provide any reason at all. This represented further strengthening of the *patria potestad* and a further restriction on a young person's marriage choice, up to the age of twenty-five. Such restriction did not apply to sons over twenty-five and daughters over the age of twenty-three. These individuals, being of the age of maturity, were no longer required to ask for permission or for advice and counsel, but could marry whom they pleased without limitation.

⁴⁸³ *Ibid.*, 762.

The change in procedure for young people under age twenty-five was as significant as it was complicated. The ages at which permission was required became a function of who was available to provide it, on a sliding scale. Individuals over the stated age in each category were free to marry as they wished. If the father was living, his permission was required for the marriage of men up to age twenty-five, and women up to age twenty-three. If the father was dead or absent, the mother was the person qualified to provide or withhold permission. If the mother was the one consulted for permission, the age limit changed to twenty-four for men and twenty-two for women. If neither the father nor the mother was available, the paternal grandfather or, in his absence, the maternal grandfather were the ones to grant consent. If a grandfather was the one granting consent, the age requirement for males dropped to twenty-three years of age, and for females, twenty-one.

If the grandfathers were absent or dead, the authority to grant consent fell to a tutor and, if none, a local judge. Neither the grandfathers, the tutors, nor the judges were obligated to provide a cause for withholding consent to a marriage. And, again, the age limit dropped if a tutor or judge was the individual granting consent, to twenty-two for males and twenty for females. Thus, while the rules further restricted free will in choice of marriage partners by not requiring that a parent's objection be supported by just and rational reasons, there was some free will by age group. If nothing else, a couple could wait until they attained the ages at which they were not required to obtain parental permission to marry.

Provisions for those who were required to ask for royal permission to marry – such as government officials and military officers – remained unchanged. Clergy who

officiated at marriages contracted without parental permission or under the burden of parental opposition risked expatriation and loss of worldly benefits. Parties to such a marriage were also subject to confiscation of goods, loss of benefits, and expatriation.

Rules regarding betrothal were tightened. No secular or ecclesiastical tribunal could allow an engagement that was entered into without parental permission. Such engagements as were qualified to go forward had to be written and made public. Charges based on failure to follow this rule concerning betrothal would be heard as civil, not criminal, matters. This decree came to St. Augustine from the Marquis de Someruelos, Captain-General in Cuba, on 23 June 1803.⁴⁸⁴

Steinar A. Saether argues that the 1803 decree was the final reinforcement of “filial obedience as a guiding principle while it became unnecessary for officials and clergy to pronounce on the justice of parental opposition.” After 1803, he says, only written and notarized betrothals were legal.⁴⁸⁵ This 1803 decree supplanted the *pragmática* as the law of marriage in the Spanish empire. No more were certain racial groups excluded, and no more could a young person have recourse to civil or ecclesiastical justice if his or her father opposed the marriage.⁴⁸⁶ According to Saether, the aim of so drastic a change was to do away with the spate of lawsuits that had followed issuance of the *pragmática*. “There would therefore be no more cases before the courts on the justice of parental dissent.” Here is the explanation for the abrupt cessation of petitions for marriage licenses in St. Augustine. They were no longer necessary.

⁴⁸⁴ Royal order concerning the *pragmática*, Letters from the Captain-General, Reel 3, Bundle 6F1, 1800-1802, folios 3180R-3181V, East Florida Papers.

⁴⁸⁵ Saether, “Bourbon Absolutism and Marriage Reform,” 476.

⁴⁸⁶ *Ibid.*, 506.

Robert McCaa maintains that the 10 April 1803 decree tipped the scales in favor of men. He finds that judges had been unsympathetic to women's charges of seduction and rape. He attributes the issuance of the decree at least in part to a rise in illegitimacy in the Spanish colonies. The aim of the decree was to strengthen parental control. It also served to strengthen the male position in courtship. It removed the right of a woman to sue for breach of promise.⁴⁸⁷ As McCaa sees the 1803 decree shifting the balance toward men, Susan M. Socolow states that the changes wrought by that document corrected a "bias against women" with its sliding scale of ages at which young people were to seek permission to marry.⁴⁸⁸

Patricia Seed found that the Crown no longer maintained race "as the primary definition of social inequality." Parents had total power to prevent the marriage of a son under twenty-five or a daughter under twenty-three.⁴⁸⁹ A basic assumption of the *pragmática* had been that parents would be rational, responsible, dispassionate decision-makers regarding their children's marriages. Seed found this not to be the case in her study of Mexico. Greed, personal grudges, and "the whims of difficult personalities" were behind one-third of the total marriage objections lodged in the cases she examined.⁴⁹⁰ Personal motives also figured in cases in St. Augustine, as will be discussed in the next chapter.

⁴⁸⁷ McCaa, "Marriageways," 29.

⁴⁸⁸ Socolow, "Acceptable Partners," 213.

⁴⁸⁹ Seed, *To Love, Honor, and Obey in Colonial Mexico*, 223.

⁴⁹⁰ *Ibid.*, 224.

CHAPTER NINE:
APPLICATION OF THE REAL PRAGMÁTICA
IN ST. AUGUSTINE

How was the real pragmática de casamientos applied in St. Augustine? Which elements were complied with and which, if any, were ignored? These questions will be considered in this chapter. Note that, for the rest of this paper, the terms pragmática, real pragmática, and Pragmatic Sanction will be applied to the 1776 and 1778 documents taken together as a unified whole, as this was the way the terms were used in the marriage license petitions of St. Augustine.

Parental Consent

The first article of the pragmática prescribed that individuals below the age of twenty-five should request and receive permission from their fathers, mothers, other relatives, or their tutors or caregivers in order to marry. This basic premise was modified for the Indies to exclude blacks and mixed-race residents, except those who served in the various militias. Further modification provided that those in the New World who had no relatives or other qualified persons within reasonable distance could apply to a judge or tribunal for permission to marry. Of the 146 marriage license petitions filed in St. Augustine, 122 of them were filed seeking the tribunal's permission to marry due to the petitioners lacking parents or other relatives in East Florida. In a few of these petitions,

other reasons were also stated for filing, such as Louis Trunston's request for validation as a "stranger" (forastero), discussed in Chapter Four. When Pedro Fontanet filed to challenge his brother's opposition to his marriage to María Luisa Rodríguez, discussed below, María filed jointly with him on the grounds that she had no one in St. Augustine to ask for permission to marry.

Article One of the original 1776 order also specified that those who received parental permission were required to have the grant of permission approved by the chief judge in their locality. In St. Augustine, this approval came from the governor. Twelve of the 146 petitions were filed in order to receive the governor's approval of permission granted by a parent or other relative. Other grounds for filing petitions were to document the *limpieza* of the family of the petitioner, the status and behavior of the petitioner as a *forastero* who had not yet achieved the status of a citizen (*vecino*), and a request for approval of the marriage of a man and woman whose family relationship was within the fourth degree.

Race

Article Two of the 1776 decree declared the universality of application of the *pragmática* within Spain. In 1778, that universality was modified to exclude certain racial groups. Several scholars – Katzew, Martínez, and Twinam – argue that the *pragmática* prohibited marriage between white and black. The *pragmática* appears not to have been interpreted in St. Augustine as proscribing such marriages. In St. Augustine, interracial marriages were few, but those which did take place did not raise objections, nor did they seem to have been handled by the authorities as special cases. The

marriages in 1795 of two of the quadroon daughters of Francisco Xavier Sánchez have been previously discussed. Another daughter, Catalina, married a peninsular Spaniard in 1803, as her sisters Ana and Beatriz had done before her. The petition of Francisco Sánchez of Granada made no mention of his intended bride Catalina's racial makeup or her illegitimacy.⁴⁹¹ Nor did witnesses Antonio Vallejo, Gabriel González, and Manuel Alvarez, all of whom testified that Francisco Sánchez of Granada had no one in St. Augustine qualified to give permission for his marriage, and that Catalina was honest, honorable, and of good family. Governor White granted permission without any mention of Catalina's origins.⁴⁹²

In the marriage license petitions of St. Augustine are two cases in which mulatto or black petitioners filed petitions which were accepted and acted on in due judicial course. Some scholars maintain that the *pragmática* was totally exclusionary, that blacks and mixed-race people fell outside of its purview. This idea has been put forward in spite of the provision that those black, mulatto, and mixed-race individuals who served in the militia of their locality were included under the *pragmática* due to their distinguished service. However, in St. Augustine the Pragmatic Sanction was not considered exclusionary. José de Arrivas, a free mulatto also known as Rivas, filed 10 June 1786 for permission to marry the black slave María de la Luz Blanco. He was a shoemaker, with no documentation indicating he was a member of the militia, though it is possible that he was. He may have merely known about the requirement to file a petition in the absence of anyone he could ask for permission to marry, and decided that he should

⁴⁹¹ I have characterized this man as Francisco Sánchez of Granada to differentiate him from Francisco Xavier Sánchez and his son Francisco Román Sánchez.

⁴⁹² Petition of Francisco Sánchez of Granada for permission to marry Catalina Sánchez, Matrimonial licenses, Reel 132, Bundle 298R9, No. 142, East Florida Papers.

comply with it. His petition was accepted the same as any white person's. The notary followed through with the required notifications, and Governor Zéspedes issued the permit with the same attention as he did to all such petitions. María had the required permission of her master, who told notary Domingo Rodríguez de León he was "very pleased" over the marriage.⁴⁹³

The other non-white petitioner was Juan Antonio García, who was probably a mestizo, though he could also have been mulato. One witness called on his behalf said he was mulato, but another said one of his parents may have been an Indian. These witnesses did say that his family members were "people of color and of low esteem" in their home town of Campeche, Mexico. María Caterina Brown was a mulata, as noted earlier in this paper. Juan's petition was in line with the requirements of the 1788 decree, as one witness testified that Juan was "of the caste of mulattos, as he had served in the militia of this class."⁴⁹⁴ At the time he petitioned, he was among the crew of a royal launch stationed at St. Augustine. It would appear that, at least for the family of a member of the planter elite, the *pragmática* was not interpreted as preventing interracial marriage. Nor was it considered totally exclusive of blacks and mulattos.

Punishments

Articles Three through Six go into detail concerning punishments for individuals who married without parental permission. There was no indication of any such cases in the marriage license petitions filed in St. Augustine. The government in St. Augustine applied these articles of punishment in cases of clandestine marriage, especially when

⁴⁹³ Petition of José de Arrivas for permission to marry María de la Luz Blanco, Matrimonial Licenses, Reel 132, Bundle 298R9, No. 10, East Florida Papers.

⁴⁹⁴ Petition of Juan Antonio García for permission to marry María Caterina Brown.

Anglo-Americans crossed the border into Georgia to be married in Protestant ceremonies, rather than in the Catholic Church.

Parental Dissent

Articles Seven and Eight covered parental dissent. Parents were required to give approval unless they put forth “just and rational” reasons against a proposed marriage. In St. Augustine there were twelve oppositions filed to proposed marriages. Of these twelve, not a single parental objection was upheld. All the rulings in these cases were in favor of the marital couple.

A few of these opposition cases have been discussed in previous chapters. One of these is the objection of don Juan Leonardy to the marriage of his mother doña Agueda Coll to Juan Bernardo Sánchez, who had previously been exiled to Florida for a crime he committed in Cuba. Juan Leonardy objected, as described in Chapter Five, on the grounds that Sánchez was not a man of honor. In addition, Leonardy maintained that the marriage of his mother to Sánchez would be an unequal marriage, based on her elite status (as doña) and his allegation that Sánchez, originally from Mexico, had Indian blood. This was the one racially-based objection in the St. Augustine marriage petitions.

As was her right under the *pragmática*, doña Agueda petitioned that her son don Juan produce his reasons for objecting or be required to withdraw his objection and allow her to marry. Witnesses testified that Sánchez was indeed of Indian blood. In his ruling, Governor Enrique White stated that “as to the quality of Indian which Juan Bernardo Sánchez proved, it is not an impediment to the marriage”⁴⁹⁵ Apparently, Governor White did not interpret the *pragmática* as prohibiting mixed marriages. White pointedly

⁴⁹⁵ Petition of Juan Bernardo Sánchez for permission to marry doña Agueda Coll.

ruled in favor of doña Agueda, stating that she did not have parents “or other legitimate persons who could give license” for her to marry. Children were not among those enumerated in the pragmática as being qualified to grant permission to marry. Certainly this makes sense, if we view the pragmática as having as its intent to strengthen parental authority. Even in the face of the statement in Article One of the 1776 decree that granted permission rights to any relative over the age of twenty-five living nearby, children could not exercise the patria potestad over their parents.

Bartolomé Suárez filed for permission to marry Agueda Casalina, stating that her parents had given verbal permission but refused to provide their permission in writing. Saying that Agueda’s parents had no reason to oppose the marriage, he asked that Governor Zéspedes require a response. Notary Domingo Rodríguez de León reported having contacted the parents for their answer, and that they told him the only reason they had for objecting was their son’s tender age and “infantile capacity.” They would not grant the permission, though they realized the governor could do so. And he did, “the reasons given by Juan Suárez [Bartolomé’s father] not being sufficient to deny his son the permission he seeks.”⁴⁹⁶

In 1790, Gaspar Candelario petitioned for permission to marry Angela Rosi, stating that her father refused, and requesting that Governor Quesada compel José Rosi to provide reasons for his objection. Candelario’s cousin don Domingo Reyes, his only relative present in St. Augustine, also had refused. Governor Quesada issued an order on 18 August that Rosi and Reyes both provide reasons for withholding permission for the two to marry, setting a deadline of two days for their responses. The two men had not

⁴⁹⁶ Petition of Bartolomé Suárez for permission to marry Agueda Casalina, Matrimonial licenses, Reel 132, Bundle 298R9, No. 45, East Florida Papers.

responded by 21 August, when Candelario renewed his petition and asked that the governor enforce compliance with his order of the 18th. On that same day, Notary León reported having contacted Reyes. Reyes had said he had no objection, and granted his permission for his cousin to marry. Once again, on 23 August, Candelario petitioned the governor to compel José Rosi to comply, requesting that the governor charge him with *rebeldía*, refusal to comply with a judicial order.⁴⁹⁷ Rosi finally complied, granting his permission, and Governor Quesada approved Candelario's petition. Candelario's original petition contained a plea that Rosi be instructed that in the time between the petition and the governor's ruling he "not threaten or maltreat in any manner" his daughter. Rosi possibly had a violent temper.⁴⁹⁸

Gaspar Candelario apparently died before 1797, because in that year Antonio Coruña petitioned to marry Angela Rosi, widow. This time it was Coruña's father who withheld his permission, refusing to state his reasons. Angela's father José Rosi may have learned his lesson, as he raised no objection to the match. Governor Enrique White gave José Coruña three days in which to either provide his reasons for opposing the marriage or grant his permission. The prospective groom's father complied with the order to respond, stating that he "opposed and opposes the marriage" on the grounds that neither Antonio nor Angela had any resources, "not even a bed to sleep in," and that his son's salary was inadequate to support Angela and her two children from her prior marriage. The elder Coruña's refusal continued emphatically for several more lines. The governor found the reasons for the objection inadequate, and granted the license.⁴⁹⁹ As

⁴⁹⁷ NTLLE, Terreros y Pando, P-Z, 293, column 2.

⁴⁹⁸ Petition of Gaspar Candelario for permission to marry Angela Rosi, Matrimonial licenses, Reel 132, Bundle 298R9, No. 50, East Florida Papers.

⁴⁹⁹ Petition of Antonio Coruña for permission to marry Angela Rosi.

discussed in Chapter Four, this case is unusual in that the parent withholding permission objected to the qualities of his own child rather than to the qualities of his child's choice of marriage partner.

Also in Chapter Four appeared the case of doña Felicitas Almanza, whose mother objected to her marriage to don Juan Blas Entralgo, on the basis of the prospective groom's poverty and inability to support a family. Governor White found that the mother's objections in this case failed the "just and rational" test, and ruled in favor of doña Felicitas.⁵⁰⁰ The parents' concern in these two cases was based on the perceived inability of the prospective grooms to support their families.

María Wisten petitioned the governor to order Francisco Arnau, father of her intended Santiago Arnau, to grant permission for the marriage. Governor White so ordered, giving the elder Arnau two days in which to present his reasons for opposing the marriage. The deadline passed without a response from Arnau, and María petitioned again that Arnau be ordered to supply permission for his son to marry, or explain why he refused to do so. She asked the governor to declare Arnau in rebeldía. Arnau never did respond to the governor's orders. White issued the permission, citing the provision in Article Nine of the 1776 decree that a couple facing parental opposition had recourse to the courts, and that the decision of the tribunal to endorse or overturn the parental objection was final.⁵⁰¹ White did not address the question of rebeldía in his ruling.

Guillermo Holzendorf had promised marriage to Antonia Leonardy, but his father had not only refused permission, but had forbidden Guillermo to leave their plantation for any reason. Guillermo stated his obligation to keep his promise to Antonia, asking the

⁵⁰⁰ Petition of doña Felicitas Almanza for permission to marry don Juan Blas de Entralgo.

⁵⁰¹ María Wisten protests the refusal of Francisco Arnau to consent to his son's marriage to her, Matrimonial licenses, Reel 132, Bundle 298R9, No. 120, East Florida Papers.

governor to require the elder Holzendorf to grant permission or provide his reasons for refusing, and to free him from being the victim of his father's punishment. On 7 July 1801, Governor White gave Juan Holzendorf, the father, two days in which to respond. Promptly on 9 July, Guillermo filed another petition seeking his father's compliance with the governor's order. This time, Juan Holzendorf was given three days in which to reply. Again, the father did not respond.

The son filed another petition on 16 July, in which he asked that the governor grant the permission he needed in order to marry. The case was complicated by the presentation of a letter Guillermo wrote on 12 July to his mother, who appeared to have been living separately from her husband. A line in the letter, which was in English, expressed Guillermo's regret that "I ken it not in my power to drop this business for it is gone too far." Juan Holzendorf presented a petition with his interpretation of his son's remark as expressing regret over his promise to marry Antonia. However, in another line in the letter, Guillermo offered to live with his mother after he married, which indicated that he still held the intent to marry. Juan Holzendorf stated that the letter demonstrated his son's "imbecility and poor judgment, and that his intentions were the effect of his youth." He asked the governor to "absolve the said, my son, of the supposed contract and restore the patria potestad." Further, said Juan, "Neither now nor later will I give my paternal consent, for reasons that I reserve in my breast." Governor White found reasons concealed in one's breast inadequate to prevent the marriage. A parent's reasons had to be stated in order for civil officials to determine whether those reasons were indeed just and rational. White ruled that the letter was immaterial, as Guillermo had stated to the tribunal after the date of the letter that he did intend and desire to marry Antonia, and that

he renewed his petition to have his father's consent compelled. On 21 July, White granted the permission.⁵⁰²

The intention of don Joaquín Sánchez Ceballos and doña María Rita Bravo y Prados to marry was blocked by the objection of María's aunt, doña Rosalia Prados. Joaquín petitioned the governor for relief, and included also the fact that he had no one in St. Augustine to grant him permission. Governor Zéspedes gave doña Rosalia two days in which to respond. She replied through Notary León, stating that she refused to give consent and refused to provide her reasons for doing so. She also asked that the governor place her niece in depósito for her "provocative" behavior. Zéspedes found doña Rosalia's answer "neither sufficient nor legitimate." He gave doña Rosalia one day in which to either consent or provide reasons for her objection, or face a charge of rebeldía. She refused, and Zéspedes did charge doña Rosalia with rebeldía. Though other governors were urged by petitioners to do so, Zéspedes was the only one who followed through on pressing such charges. Joaquín and María were granted permission to marry.⁵⁰³ The cases of Guillermo Holzendorf and Joaquín Sánchez Ceballos show that governors in St. Augustine interpreted the demand that parents have "just and rational" reasons to include the presentation of those reasons to the tribunal. Simply having reasons but not expressing them to the court was not acceptable.

Vicente Valencia petitioned Governor Zéspedes to order "the relatives most near the said Francisca Galloso" to either provide permission for her to marry him or give their reasons for withholding the permission. The first page of the document, Valencia's

⁵⁰² Petition of Guillermo Holzendorf to compel his father's consent to his marriage to Antonia Leonardy, Matrimonial licenses, Reel 132, Bundle 298R9, No. 137, East Florida Papers.

⁵⁰³ Petition of Joaquín Sánchez Ceballos to compel doña Rosalia Prados's consent to his marriage to María Rita Bravo y Prados, Matrimonial licenses, Reel 132, Bundle 298R9, No. 21, East Florida Papers.

petition, has faded into unreadability. The only writing discernible on the page is Valencia's signature. The rest of the document, however, is readable, and it is possible to piece together Valencia's petition from the governor's order. Zéspedes gave the unnamed relative or relatives two days in which to respond to his order. Notary León reported that he contacted Francisca Galloso's older sister, Getrudis Galloso y Chapus, who stated she had no reason at all to object to the marriage, and gave her consent to it. For the consent granted by Getrudis, and for the reason that there was no inequality between Francisca and Vicente, Zéspedes granted permission for them to marry.⁵⁰⁴ The comment on inequality stems from Vicente's statement, later in the document, that he had lost his certificate of baptism. He asked that witnesses be called to testify to his practice as a Catholic. The idea of inequality in this case appears to have had a religious basis.

Doña María de la Concepción Perry petitioned for permission to marry don Ramón de Fuentes. Her mother objected on the grounds of María's age: she was thirteen years old. Fuentes was around forty-two years of age at the time. Governor Zéspedes ordered the mother, doña María Hassett, to respond with permission or with reasons to withhold it, under threat of a charge of rebeldía. Notary León informed the mother that she had one day in which to respond. She charged that her daughter had been induced to consent to the union, accusing chief engineer don Mariano de la Rocque and his wife of being complicit, as young doña María had been placed in depósito in their home. It appears that the mother was not Catholic, for she charged that her daughter had also been induced by others to convert to Catholicism.

⁵⁰⁴ Petition of Vicente Valencia for permission to marry Francisca Galloso, Matrimonial licenses, Reel 132, Bundle 298R9, No. 30, East Florida Papers.

Young doña María replied that she had not been induced or persuaded, but had on her own volition sent word to her mother by Father Miguel O'Reilly that she intended to marry don Ramón. The mother had told Father O'Reilly that she would send a response to her daughter in two or three days, but then on that same day sent her other daughter to fetch María and force her to return to her mother's house, against her will. María also stated that her mother had said she'd rather see María dead than converted to Catholicism. María's conversion would be a necessary step for her to marry don Ramón. When ordered again to provide consent or reasons for withholding it, the mother stated that by no means would she give consent, having no impediment to offer other than María's tender age. The governor granted the license for the marriage.⁵⁰⁵ As María was above the legal age of consent for marriage, which was twelve for females, her mother could not use María's age as grounds to object.

On 16 November 1786, Pedro Fontanet and María Luisa Rodríguez filed a joint petition. María filed on grounds that she had no one in St. Augustine of whom to ask permission to marry. Pedro filed to obtain an order from Governor Zéspedes that his older brother provide permission or state his reasons for denying it. Zéspedes gave the brother, José Fontanet, one day in which to respond. José's petition begins with the statement that he was "*forzado de las Reales Obras de esta Plaza*," at forced labor on the public works of the town. This document does not state what José's offense may have been. José's occupation was as the chief cook at the royal hospital; Pedro was his assistant, and at the time of filing this petition, Pedro was the interim chief cook. José's charges were that Pedro was "an undisciplined boy of juvenile behavior;" that María, the intended bride, was "old enough to be his [Pedro's] mother;" that María, an English

⁵⁰⁵ Petition of doña María de la Concepción Perry to marry don Ramón de Fuentes.

woman, had been sent from Pensacola to Havana to St. Augustine, and that no one knew whether she was married or not, nor whether she was indeed a widow, as she had two children; and that she did not have documentation of baptism in the Catholic faith, nor of her widowhood. José also charged that Pedro's "miserable salary of three reales" was not enough to support a family.⁵⁰⁶

Pedro replied on 18 November, within the one-day deadline Zéspedes had set for his response. All the points his brother raised, said Pedro, were strange. Pedro stated that his bosses at the hospital said he carried out his duties responsibly and maturely. As to the age difference between Pedro and María, he was twenty-five, and she twenty-seven, hardly old enough to be his mother. It becomes apparent that José was exaggerating, and his subsequent claims appear less credible. Further reducing José's credibility was his claim regarding Pedro's salary, which as assistant cook at the royal hospital was ten pesos per month.⁵⁰⁷ Whether, as acting chief cook in his brother's stead, Pedro was earning his brother's usual salary of eighteen pesos per month is not known. Ten pesos may not have been a large salary, but it was certainly more than three reales.⁵⁰⁸

Reasons for María's movements from Pensacola to Havana to St. Augustine did not necessarily mean there was any diriment impediment to the marriage, Pedro said. As for the children, they were legitimate, María's husband having died. He was an Englishman, therefore most likely Protestant. Pedro stated that María's purpose in leaving Pensacola "was caused by the great desire to leave Protestantism (*luteranismo*), and take instruction in the solid foundation of the Catholic religion." María had her

⁵⁰⁶ Petition of Pedro Fontanet and María Luisa Rodríguez, Matrimonial licenses, Rel 132, Bundle 298R9, No. 17, East Florida Papers.

⁵⁰⁷ Joseph Byrne Lockey, *East Florida, 1783-1785: A File of Documents Assembled and Many of Them Translated*, edited by John Walton Caughey (Berkeley: University of California Press, 1949), 199.

⁵⁰⁸ Eight reales made one peso.

baptismal certificate, a copy of which was appended to the file. She had been baptized in Havana on 9 August 1784.

Zéspedes granted permission for the marriage, and passed to the ecclesiastical judge, Father Hassett, the task of determining María's status as a widow and if there were any other diriment impediment to the marriage.⁵⁰⁹ Apparently there were no such serious impediments, as Pedro and María married on 9 January 1787.⁵¹⁰ José Fontanet may not have been released from "forced labor on the public works of the town" as early as he thought he might, for Governor Zéspedes entered against him a charge of rebeldía.⁵¹¹

Finally, there is the case of don Manuel de Almansa's opposition to the marriage of his nephew don Mariano to doña María Ramona de Miranda. Governor Zéspedes gave don Manuel two days in which to respond to don Mariano's charge that his uncle's refusal was not reasonable. The complication in this case is that not only was don Manuel the nearest relative who was qualified to give permission, and thereby had the power of the patria potestad to grant or withhold that permission, he also was don Mariano's boss. Don Manuel was the chief quartermaster of the castillo, and don Mariano was his assistant. Don Mariano was required to receive the permission of his superior in order to marry.

Don Manuel stated that his objection was not based on any inequality between the two, but that their engagement had been hasty and, in his opinion, entered into solely for the purpose of engaging in premarital sex (*si solo abrazarse con la lizencia mia o del tribunal*). He also charged that the couple had evaded asking their parents' permission.

⁵⁰⁹ Petition of Pedro Fontanet and María Luisa Rodríguez for permission to marry.

⁵¹⁰ Ecclesiastical Records of the St. Augustine Diocese, Marriage of Pedro Fontanet and María Luisa Rodríguez, 9 January 1797, Marriages 1784-1801, 14-15, entry 27, *Ecclesiastical and Secular Sources for Slave Societies* (ESSSS), <http://vanderbilt.edu/esss/spanishflorida/index.php> (accessed 30 October 2014).

⁵¹¹ Petition of Pedro Fontanet and María Luisa Rodríguez for permission to marry.

Don Mariano's parents, living in Spain, had appealed to don Manuel that their son did not have the means to support a family, and so don Manuel denied permission. This statement was not enough for the governor, and he ordered don Manuel once more to grant permission for the marriage. Don Manuel refused, stating that his initial statement would not change. Zéspedes found don Manuel's reasons insufficient to prevent the marriage, and issued permission for the couple to proceed to the ecclesiastical judge for the expediente matrimonial. He also charged don Manuel with rebeldía.⁵¹² In one order in this file, Zéspedes mentions letters in his possession relevant to the case. It is possible that he corresponded with don Mariano's parents, and found that don Manuel was not being completely truthful.

Governor Zéspedes, as the only governor between 1784 and 1803 to charge objecting parents or other relatives with rebeldía, took the harshest stand against parental objection to their children's marriages. In light of his own disobedient daughter's clandestine marriage to Lieutenant John O'Donovan, and the threat that such an occasion presented to Zéspedes's personal and family honor, this became an interesting stand for him. Yet the reasons for objections by parents or other relatives to these twelve marriages did not meet the test of being based in a concern for "grave offenses" to the honor of a family or of the state. Some of the reasons were frivolous, if not completely imaginary, such as José Fontanet's trumped-up reasons for denying permission to his brother Pedro, or don Manuel de Almansa's fear that his nephew may have had nothing more in mind than engaging in premarital sex with his intended. In St. Augustine, that would not have been of great concern, as it has been shown that many couples engaged in

⁵¹² Petition of don Mariano de Almansa for permission to marry doña María Ramona de Miranda, Matrimonial licenses, Reel 132, Bundle 298R9, No. 9, East Florida Papers.

premarital sex under the umbra of the *palabra de casamiento*, and even had children out of wedlock, some of whom were later legitimized by the parents' marriages. In addition, the notorious concubinage practiced by men such as Francisco Xavier Sánchez, George J. F. Clarke, and others seemed not even to have raised an eyebrow.

Clandestine Marriage

Clandestine marriage has been shown to have been a problem in St. Augustine, from the marriage of Lieutenant O'Donovan and Dominga de Zéspedes to Anglo-Americans who developed the habit of sneaking across the border into Georgia to be married in Protestant ceremonies. These prohibited marriages continued long after the issuance of the *pragmática*, and even after the decree of 1803, which drastically changed marriage law. In 1806, Judge Fernando de la Puente wrote to Governor Enrique White, reporting that Isaac Carter had eloped across the border with Clarissa Silcox. De la Puente felt it his duty to report the marriage to the governor, "as these clandestine marriages are scandalous, and with repetition they propagate a bad example in the rural areas of the province."⁵¹³

Effects of Changes to the *Pragmática*

A decree of 31 May 1783 tightened the requirements for parental consent. It required that those over the age of twenty-five must seek and receive parental consent. The original *pragmática* required only that those over twenty-five seek parental counsel and advice before marrying. Thus it is that the marriage license petitions of St.

⁵¹³ Fernando de la Puente to Governor White, On the St. John's and St. Mary's Rivers, 1806, Aug. – 1807, Container 219, Bundle 152I12, East Florida Papers (Library of Congress).

Augustine contain requests for permission to marry from people in their forties and fifties, including the absurd phenomenon of a twice-widowed woman of age 56, Mary Evans, petitioning for permission on the basis of having no parents or other relatives authorized to provide permission. Such absurdity would end with the decree of 10 April 1803, allowing men over twenty-five and women over twenty-three to marry without having to ask for parental permission.

There was apparently a widespread practice in Spanish America of people other than the two parties to a proposed marriage filing petitions on behalf of the marital couple. There were at least two such cases in St. Augustine, both occurring in 1786. Rafael Ximenez, uncle of Juana Ximenez, filed a petition on her behalf, providing permission for her to marry Juan Triay and requesting the governor to approve that permission and issue the license for the couple to proceed to the ecclesiastical judge.⁵¹⁴ Antonio Pons's older brother petitioned on Antonio's behalf, for permission for Antonio to marry Benita Alcina.⁵¹⁵ This practice was outlawed in a decree issued 18 September 1788, which stated that only the prospective groom or the prospective bride, or both jointly, could enter a petition requesting permission to marry.⁵¹⁶

However in 1791 in St. Augustine, F. P. Fatio filed a petition on behalf of his ward, orphan Juana Cross, that she be granted permission to marry Fatio's son Felipe. The petition was received by the governor and permission was granted. Here was another case of an exception being made for an elite individual.

⁵¹⁴ Petition filed by Rafael Ximenez, for permission for Juana Ximenez to marry Juan Triay, Matrimonial licenses, Reel 132, Bundle 298R9, No. 12, East Florida Papers.

⁵¹⁵ Petition filed by Juan Pons, for permission for Antonio Pons to marry Benita Alcina, Matrimonial licenses, Reel 132, Bundle 298R9, No. 27, East Florida Papers.

⁵¹⁶ Socolow, "Acceptable Partners," 240, note 23.

CHAPTER TEN:

CONCLUSIONS

The Pragmática in the Spanish World

Saether's contention, mentioned in Chapter Two, that the Bourbon reforms were not intended to curb the Church may describe his interpretation of intent. However, the effect was to interpose a civil layer over the Church's management of the sacrament of marriage. As seen in Chapter Seven in the discussion of the *Siete Partidas*, the idea of the state interposing its power to decide, among other aspects of marriage, the question of who was eligible to marry did not originate in the pragmática. The idea that unequal marriages were a problem was also not new with the pragmática. To judge by the comments of José Tenebra, twenty-four years before the Pragmatic Sanction, there had been concern over such marriages for some time.

The issuance of the pragmática resulted not from one cause but from many, and certainly not just from the problem of don Luis de Borbón's marriage choice. A general social movement in favor of patriarchy and the rights and authority of fathers, concern over unequal marriages, the aristocracy's need to assert itself and maintain the class structure, and the tension always existing between church and state all contributed to the conditions which brought about the Pragmatic Sanction on marriage. Don Luis's indiscretions and an unequal marriage choice that hit a bit too close to home for the

king's comfort may have been the last straw, but the foundation for the decree had been laid long before the crown prince was of dating age.

Unfortunately, neither the original *pragmática* nor its 1778 extension to the colonies defined “unequal” marriage. There is no statement in the decree that race was the only valid reason for a parental dissent, as Katzew, Martínez and Twinam claim, or that it was one at all. The 1776 *pragmática* vaguely stated that a valid reason was one which involved the possible dishonor of a family or disturbance of the good order of the state. That did leave room for interpretation, as some Spaniards might have seen an interracial marriage as threatening the “honor” of a family. Vague language, then, can lead to a variety of interpretations, influenced by local practice and individual prejudice. Such an interpretation may have been applied to or inferred from the king's opening statement that in the Indies there were “other various circumstances which do not occur in Spain,” a possible reference to the occurrence of mixed marriages in Spanish America.⁵¹⁷

Was there racism in Spanish America? Certainly there was. Boyer quotes Spanish jurist José Solórzano Pereira as saying “few Spaniards of honor . . . would marry an Indian or Negro woman.”⁵¹⁸ Daniel Schafer points out that racial prejudice existed in East Florida, but that it was of a different, less harsh character than that in the neighboring United States. The 1778 decree specifically states that mixed-race people and negroes were excluded because of difficulties in obtaining parental permission. That might have been an ostensible reason, a smoke-screen for another motive, possibly racist. However, members of black militias were included in the application of these marriage

⁵¹⁷ Konetzke, *Colección de Documentos*, Volume III, Book I, 438.

⁵¹⁸ Boyer, *Lives of the Bigamists*, 267-268, note 21.

rules due to their distinguished service; therefore, the provisions of the decree did not act to exclude all blacks. This may have been an exception that proved the rule; that is to say, blacks had to be extraordinary in some way in order to be included.

It is true that in supporting so strongly a father's right to pass judgment on a child's marriage choice, the documents of 1776 and 1778 provided the means for protesting an interracial marriage. It is possible that the documents these scholars studied in Mexico and other parts of Latin America revealed an application of the 1778 decree that was determinedly and specifically prohibitive of interracial marriage based on local attitudes. It is possible that the parents who expressed disapproval of their children's marriages, if race were involved, argued against interracial marriage, basing their arguments on what they saw, or wanted to see, in the decree. The language simply is not there to support the argument that the 1778 decree specifically prohibited interracial marriage. The assertions by Katzew, Martínez, and Twinam that the intent of the decree was overtly racist can be challenged. To maintain that the 1778 decree specifically prohibited interracial marriages is simply not correct.

In its incorporation of the provisions of the 1776 Pragmatic Sanction, and in its own language throughout, the 1778 decree was most concerned with the obligation on the part of children to honor the wishes of their parents and ask them for permission to marry. In this, these decrees overthrew centuries of support on the part of church and state for free will in marriage choice. What both of these decrees did more than anything else was to lend legal support to the patriarchy.

The Pragmática in St. Augustine

What conclusions may we draw from the application of the real pragmática de casamientos in St. Augustine? For one thing, if one studied only St. Augustine for clues concerning the intent and effect of the pragmática, one would not draw the conclusion that it was overtly racist, as did scholars who studied Mexico. The interracial marriages cited in the previous chapters occurred without objection by relatives or the authorities, and the couples were wed in the Church. Certainly such marriages were rare in St. Augustine, with five out of 146 being such mixed marriages. However, no one suggested that the racial disparity was a serious impediment to the marriages. The marriage license petitions of these parties were treated as any other, and only one of them mentioned the mixed race of the bride at all. That there were not more mixed marriages suggests, of course, that prejudice did exist, that whites and blacks in St. Augustine more often chose marriage partners of their own racial classification. But such separation may have been due much more to individual preference, even prejudice, in combination with social pressure than to the stated requirements of the real pragmática de casamientos.

Don Juan Leonardy raised several issues in his objection to the marriage of his mother doña Agueda Coll to Juan Bernardo Sánchez. Don Juan offered the only racially-based objection found in these records, and it turned on the prospective groom having Indian, not black, blood. Was there a gendered standard operating here? The five cases of white men marrying quadroon or mulata women brought no objection from family members. Perhaps it was all right for men to marry interracially, but at least to one family member it was unacceptable for a white woman to marry a racially-mixed man. Officialdom in St. Augustine, in the person of Governor White, did not seem to agree, as

he dismissed the issue of Juan Bernardo Sánchez's origins. Not only social and racial equality but also honor was a concern for don Juan in objecting to his mother's planned marriage. Don Juan's protest indicated he did not think of Sánchez as a man of honor.

Also at play in this case was the concept of who could and could not wield the *patria potestad*. According to Governor White, children could not exercise such power over their parents, and therefore don Juan Leonardy was not qualified either to grant permission or to object to his mother's planned marriage. The issue for Governor White was whether or not doña Agueda complied with the *pragmática* in showing that she had no qualified persons from whom to ask permission to marry. It was on that basis that he granted permission.

Honor played a large part in the clandestine marriage of Lieutenant John O'Donovan and Dominga Zéspedes, affecting not only the family of the governor but also the household of don Mariano de la Rocque. Honor was also uppermost in the request from don Sebastián Berazaluce that don José Genaro Chaple be arrested for failure to keep his promise of marriage to Manuela Berazaluce. As well, the many petitions which included witness testimony that the petitioner and his or her family were honorable indicates strong concern with honor.

The Spanish concept of *limpieza de sangre* had both racial and religious implications in St. Augustine. Race was referred to in regard to that phrase, as in "clean of all vile race of Negro, mulatto, Jew, or Moor." More often it was religion, and in St. Augustine there was only one church allowed, the Catholic Church. Thus there was a requirement that Protestants who wanted to marry Catholics had to convert to Catholicism. This requirement was part of the case of María de la Concepción Perry,

whose mother objected partly on the grounds of María's desire for such conversion in order to marry don Ramón de Fuentes. Doña María del Carmen Hill likewise converted to the Catholic faith in order to marry don Francisco Xavier Sánchez.⁵¹⁹

Success or Failure?

Did the real *pragmática de casamientos* succeed in its goals? If the goal was to enforce the *patria potestad*, it succeeded only partially. It took passage of the decree of 1803, absolving parents of the need to provide any reasons for their disapproval of a child's marriage, to solidify paternal authority regarding marriage. Such unconditional authority, however, could be circumvented simply by waiting until the age of consent specified in the 1803 decree. If the goal was to prevent interracial marriages, as Katzew, Martínez, and Twinam claim, it was a failure in St. Augustine, as there were at least five interracial marriages approved by governors Zéspedes and White, without the least suggestion of opposition by parents or other family members, and one approved by Governor White over a family member's objection. It also failed to prevent interracial concubinage, for there were several men in East Florida who kept black or mulatto consorts: Francisco Xavier Sánchez, George J. F. Clarke, Charles Clarke, Zephaniah Kingsley, John Leslie, Miguel Ysnardy, Thomas Tunno, and others.⁵²⁰ And if the *pragmática* had the intent of preventing clandestine marriages, it was a dismal failure in St. Augustine, for clandestine marriages persisted long after the *pragmática*, and long after the decree of 10 April 1803. The spate of lawsuits and the frequent modification of the *pragmática* by subsequent decrees and royal orders, and the passage of the 1803

⁵¹⁹ Petition of don Francisco Xavier Sánchez for permission to marry doña María del Carmen Hill, Matrimonial licenses, Reel 132, Bundle 298R9, No. 24, East Florida Papers.

⁵²⁰ Landers, *Black Society in Spanish Florida*, 150.

decree, also support the argument that, at least in St. Augustine, the pragmática was a failure.

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