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## Beyond Honor: Historicizing Sexual Coercion in Late Colonial Lima, 1750-1821

Morgan C. Gray  
mogray@fiu.edu

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FLORIDA INTERNATIONAL UNIVERSITY

Miami, Florida

BEYOND HONOR: HISTORICIZING SEXUAL COERCION IN LATE COLONIAL LIMA,

1750-1821

A dissertation submitted in partial fulfillment of

the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

HISTORY

by

Morgan Gray

2022

To: Dean John F. Stack, Jr.  
Green School of International and Public Affairs

This dissertation, written by Morgan Gray, and entitled *Beyond Honor: Historicizing Sexual Coercion in Late Colonial Lima, 1750-1821*, having been approved in respect to style and intellectual content, is referred to you for judgment.

We have read this dissertation and recommend that it be approved.

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Victor Uribe

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Elizabeth Terry-Roisin

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Andrea Fanta

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Bianca Premo , Major Professor

Date of Defense: June 23, 2022

The dissertation of Morgan Gray is approved.

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Dean John F. Stack, Jr.  
Green School of International and Public Affairs

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Andrés G. Gil  
Vice President for Research and Economic Development  
and Dean of the University Graduate School

Florida International University, 2022

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ABSTRACT OF THE DISSERTATION

BEYOND HONOR: HISTORICIZING SEXUAL COERCION IN LATE COLONIAL

LIMA, 1750-1820

by

Morgan Gray

Florida International University, 2022

Miami, Florida

Professor Bianca Premo, Major Professor

Sexual assault and sexual coercion are intensely emotional crimes that have been the focus of many recent public discussions around the world, including protests and reforms in Latin America. As such, the history of these crimes in countries like Peru provides vital context for reformers and scholars alike. This research aims to incorporate women's emotional experiences of sexual coercion into the legal and cultural context of Peru's capital city between 1750 and 1821, and thus to illustrate that social and political changes also affected individual women's pursuit of justice. Using dozens of court cases from the ecclesiastical and royal secular courts, along with legal codes, nuns' writings, and published newspaper editorials, I connect cultural perceptions of gender to legal decisions and thence to the ways in which women and their families articulated their coercion experiences.

In late colonial Lima, gender biases and stereotypes reflected both traditional religious and modern Enlightenment interpretations of gender, embedding expectations of female inferiority into Lima's culture. These expectations were further reflected in the fact that many coercion cases came to the courts when women's guardians objected to

runaway marriages. Nonetheless, some women—including enslaved women—advocated for themselves within a contractual definition of consensual sex, using their verbal agreements and marriage promises as leverage to gain legal protection within Lima’s patriarchal system. The courts themselves upheld many of the racial and socioeconomic divisions on which colonial Peruvian society operated, typically supporting litigants who were racially or socially superior to their antagonists. In the early nineteenth century, however, it became increasingly challenging for women and their guardians to obtain convictions for sexual coercion, as changes in administrative structures and priorities restricted the range of acceptable arguments. These structural changes in turn affected the emotions that women could express, indicating a homogenization of emotional expression in sexual coercion cases and thus of the experiences themselves. Together, the emotional, legal, and cultural dynamics of late colonial sexual coercion cases demonstrate that gendered power changed in subtle ways throughout the late colonial period, and thus affected the ways in which women and their guardians defined and sought justice.

TABLE OF CONTENTS

CHAPTER	PAGE
Introduction .....	1
Chapter One: Sexual Behavior from the Outside In: Reconstructing the Gendered and Sexual Norms of Late Colonial Lima .....	20
Chapter Two: Reciprocal Contracts: Reconstructing Sexual Consent in Late Colonial Lima .....	57
Chapter Three: In View of the Merits of the Case: Jurisdictional Priorities and Consolidation in Sexual Coercion Cases .....	83
Chapter Four: An Inherently Emotional Crime: Emotional Communities, Emotional Regimes, and the Individual Experiences of Sexual Coercion .....	119
Conclusion .....	166
Bibliography .....	177
VITA.....	187

## Introduction

When Doña Ana Rivera sued Sebastian Espíndola in the Real Audiencia (royal superior court) for violating and impregnating her ward María in 1775, she was one of many women to appear in court records during that year. The litigiousness of Spanish American colonial society is well documented, and women participated actively in this litigation.<sup>1</sup> Nonetheless, Doña Rivera's was one of the thirty rape cases filed in Lima's *cabildo* and *Real Audiencia* courts between 1750 and 1821, and one of the relatively few in which a woman initiated a complaint against a man for sexual misconduct. Records indicate that, between 1750 and 1813, Lima's *cabildos* heard hundreds of criminal cases overall.<sup>2</sup> The *sala criminal* (criminal chamber) of the Real Audiencia heard a similar number.<sup>3</sup> Of these cases, then, rape, seduction, or abduction/elopement cases accounted for a small percentage of total cases heard. Less than a third of these cases were brought by women.

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<sup>1</sup> There is a robust literature on women's agency in the Spanish American legal system, to which I owe the foundations of this work. See: Chad T. Black, *The Limits of Gender Domination : Women, the Law, and Political Crisis in Quito, 1765-1830* (Albuquerque: University of New Mexico Press, 2010); Sueann Caulfield, Sarah C. Chambers, and Lara Putnam, *Honor, Status, and Law in Modern Latin America* (Durham: Duke University Press, 2005); Arlene J. Diaz, *Female Citizens, Patriarchs, and the Law in Venezuela, 1786-1904* (Lincoln, NE: University of Nebraska Press, 2004); Kimberly Gauderman, *Women's Lives in Colonial Quito : Gender, Law, and Economy in Spanish America*, 1st ed. (Austin: University of Texas Press, 2003); Bianca Premo, "Before the Law: Women's Petitions in the Eighteenth-Century Spanish Empire," *Comparative Studies in Society and History* 53, no. 2 (April 2011); Victor Uribe Urán, *Fatal Love : Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic* (Stanford, California: Stanford University Press, 2016).

<sup>2</sup> I am indebted to Bianca Premo for her notes and spreadsheets on the *cabildo* criminal cases of the eighteenth century.

<sup>3</sup> This number is based on my own notes from archival visits conducted in the fall of 2019.

The low numbers of sexual violence cases present in the colonial archives of Lima perhaps accounts for the tendency in the field to avoid using court proceedings where coercive sex is present. Studies on other violent crimes—robbery, homicide, and domestic violence—have made valuable contributions to historians’ understanding of the criminal justice system in colonial Spanish America.<sup>4</sup> Meanwhile, literature on honor has illuminated the ways in which women and men defended their public reputations, both within the legal system and outside it.<sup>5</sup> Most of these studies recognize the presence of sexual violence in court records, and studies of enslaved women have thoroughly documented the sexual abuses inflicted by the enslaving elite; however, such cases

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<sup>4</sup> In understanding the procedural and ideological workings of the Spanish American court system, many recent works have contributed to this dissertation. See Laura Benton, *Law and Colonial Cultures: Legal Regimes in World History* (New York, NY: Cambridge University Press, 2002); Lauren A. Benton and Richard Jeffrey Ross, *Legal Pluralism and Empires, 1500-1850* (New York: New York University Press, 2013); Kathryn Burns, *Into the Archive : Writing and Power in Colonial Peru* (Durham NC: Duke University Press, 2010); Bianca Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire* (New York, NY: Oxford University Press, 2017); Ricardo Salvatore and Carlos Aguirre, *Crime and Punishment in Latin America: Law and Society Since Late Colonial Times* (Durham, NC: Duke University Press, 2001); Jeffery Shumway, *The Case of the Ugly Suitor and Other Histories of Love, Gender, and Nation in Buenos Aires, 1776-1870* (Lincoln, NE: University of Nebraska Press, 2005). Donlan and Heirbaut, "'A Patchwork of Accommodations': European Legal Hybridity and Jurisdictional Complexities— An Introduction", in *The Law's Many Bodies: Studies in Legal Hybridity and Jurisdictional Complexity c1600-1900*, ed. Donlan and Heirbaut (Berlin: Duncker and Humboldt, 2015).

<sup>5</sup> Honor has been the primary lens through which sexuality and marriage in Latin America have been analyzed since the late 1980s. See: Sueann Caulfield, *In Defense of Honor : Sexual Morality, Modernity, and Nation in Early Twentieth-Century Brazil* (Durham: Duke University Press, 2000); Caulfield, Chambers, and Putnam, *Honor, Status, and Law in Modern Latin America*; Sarah C. Chambers, *From Subjects to Citizens: Honor, Gender, and Politics in Arequipa, Peru, 1780-1854* (University Park, PA: Pennsylvania State University Press, 1999); Tanja Christiansen, *Disobedience, Slander, Seduction, and Assault: Women and Men in Cajamarca, Peru 1862-1900* (Austin, TX: University of Texas Press, 2004); Ramón Gutierrez, "Honor Ideology, Marriage Negotiation, and Class-Gender Domination in New Mexico, 1690-1846," *Latin American Perspectives* 44, 12, no. 1 (Winter 1985); Lyman Johnson and Sonya Lipsett-Rivera, ed., *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America* (Albuquerque, NM: University of New Mexico Press, 1998); Osvaldo F. Pardo, *Honor and Personhood in Early Modern Mexico* (Ann Arbor, MI: University of Michigan Press, 2015); Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts Over Marriage Choice, 1574-1821* (Palo Alto, CA: Stanford University Press, 1989); Kathryn Sloan, *Runaway Daughters: Seduction, Elopement, and Honor in Nineteenth-Century Mexico* (Albuquerque, NM: University of New Mexico Press, 2008); Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Palo Alto, CA: Stanford University Press, 1999); Nicole Von Germeten, *Violent Delights, Violent Ends: Sex, Race, and Honor in Colonial Cartagena de Indias* (Albuquerque, NM: University of New Mexico Press, 2013).

account for such a small percentage of criminal trials that any research that relies on random sampling cannot make good use of them. As such, the broader field of gender and sexuality in Latin America has yet to perform a comprehensive study on the dynamics of sexual coercion in late colonial Peru.

This dissertation sits at the nexus of law, gender, and emotions to interrogate the place of sexual coercion in late-colonial Lima's society, and to cast light on the ways in which women experienced and navigated the coercive sex that happened to and around them. It finds that the relationship between women and the patriarchal society in which they lived was complex, sometimes allowing for small exercises of autonomy and self-advocacy, and other times completely silencing their voices. The court system, I argue, is not only an avenue through which historians view sexual coercion, but also a site of public emotional processing, allowing women and families to craft narratives about traumatic events and thus affecting emotional outcomes as well as legal ones. Through declarations, testimonies in court records, expressions of outrage, shame, defiance, and fear (among others) come to the forefront as central to the legal proceedings as well as to the experiences of the individuals who articulate them.

This research focuses on colonial Lima between 1750 and 1821—that is, from the start of the Bourbon Reforms until the eve of independence. During this period, colonial social and legal structures simultaneously consolidated and weakened as King Charles III of Spain sought to concentrate power in the Crown rather than in the viceregal centers as had been customary, and modified economic, religious, social, and political structures accordingly. Many of these efforts, though of course fueled by pragmatic concerns about revenue and authority, were part of a broader global effort at Enlightened Reform—

creating modern empires based on the rational, scientific (Eurocentric) ideals promoted during the Enlightenment.<sup>6</sup>

For Lima, the late colonial period is often seen as one of decadence, as the silver trade that had previously traveled through the nearby port of Callao was routed south to Buenos Aires in the new viceroyalty of Río de la Plata, starting in 1776. Nonetheless, the colonial apparatus remained relatively stable in Lima during this time, its elite conservative and largely loyal to the Crown despite increasing creole dissatisfaction with imported peninsular officials. This makes it an excellent place to study the ways in which Crown policies were implemented, as well as the ways in which local culture remained stubbornly immune to attempts at Enlightened Reform. In Peru, as elsewhere in Spanish America, attempts at social reform were often unevenly and partially implemented. Sarah Chambers, for example, relates a series of unpopular reforms in Arequipa in the late 1790s, whereby Bishop Pedro José Chaves de la Rosa sought to eliminate concubinage and other “immoral” behavior. These efforts, like fines for living with a partner outside of marriage, met so much backlash from the poor that he discontinued many such measures.<sup>7</sup> However, although efforts to institute patriarchal control over children’s

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<sup>6</sup> The Enlightenment in Latin America has received increasingly more attention in the last fifteen years. See: Rebecca Haidt, *Embodying the Enlightenment: Knowing the Body in Eighteenth-Century Spanish Literature and Culture* (New York, NY: St. Martin’s Press, 1998); Mariselle Meléndez, *Deviant and Useful Citizens: The Cultural Production of the Female Body in Eighteenth-Century Peru* (Nashville, TN: Vanderbilt University Press, 2011); Gabriel Paquette, ed., *Enlightened Reform in Southern Europe and Its Colonies c 1750-1830* (Burlington, VT: Ashgate, 2009); Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire*; Adam Sharman, *Deconstructing the Enlightenment in Spanish America: Margins of Modernity* (New York, NY: Palgrave MacMillan, 2020); Nancy Tuana, *The Less Noble Sex: Scientific, Religious, and Philosophical Conception of Woman’s Nature* (Bloomington, IN: Indiana University Press, 1993); Juan Pedro Viquiera Albán, *Propriety and Permissiveness in Bourbon Mexico* (Wilmington: DE: Scholarly Resources, Inc, 1999).

<sup>7</sup> Chambers, *From Subjects to Citizens*, 131-135.

marriages were more successful than many moral reforms, their scope and practical applications had to be negotiated through the legal system, as Jeffrey Shumway and Bianca Premo reveal.<sup>8</sup> Similarly, sexual violence cases illustrate the cultural negotiations happening through the legal system, as well as the effect that these negotiations had on women.

Throughout this dissertation, I use a series of related terms to refer to specific types of illicit sexual interactions. First, I use “sexual coercion” to refer to any sex in which pressure was a key element of the relationship’s dynamic, including situations in which a young woman was pressured into acquiescing to a relationship with an older man, and in which masters had sexual relations with their slaves. “Sexual violence” and “rape” are also terms I will use as appropriate to refer to forced sexual acts, but it is important to also recognize that pressure to engage sexually takes a variety of forms, many of which do not require physical force to compel compliance.

The Spanish legal system itself used a variety of terms to refer to sexual crimes, *estupro* and *rpto* being the most important and the most clearly defined. The *Siete Partidas*, a thirteenth-century legal compendium that remained a critical component of law in Spain and Spanish America well into the nineteenth century, categorized *estupro* as the crime of forcing a nun, a maiden, or a widow of honorable reputation.<sup>9</sup> *Rpto*, on the other hand, was a term that could mean either “abduction” or “elopement”, and referred to removing a woman from her father’s house regardless of one’s own

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<sup>8</sup> Bianca Premo, *Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima* (Chapel Hill, NC: University of North Carolina Press, 2005); Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire*; Shumway, *The Case of the Ugly Suitor and Other Histories of Love, Gender, and Nation in Buenos Aires, 1776-1870*

<sup>9</sup> Burns, *Siete Partidas*.

relationship with her.<sup>10</sup> Both these terms appear in the court records alongside *violación* (rape or violation) and *seducción* (seduction), whose legal meanings were flexible and usually subsumed under one or the other of the previous categories. It is important to note that *estupro*, *rapto*, and their related categories were all considered crimes exclusively against women. Any sex between men, whether consensual or otherwise, was defined as “sodomy”, which was as much a religious crime as a state one and therefore tried most often before the Inquisition.<sup>11</sup> Therefore, although we now recognize that sexual coercion and violence can happen to and be perpetrated by people of any gender, this research must work within the frameworks of its own time and place.

### *Historiography*

The Enlightenment in Spanish America has been the object of thorough study, covering everything from bodies, to sexual liberation, to Enlightened Reform, and the actions of ordinary people in court. Scholars like Rebecca Haidt and Mariselle Meléndez have demonstrated that women’s bodies became the object of increased fear and scrutiny by male authorities, intellectuals, and medical professionals during this period, even as sexual standards became more flexible in some places.<sup>12</sup> Other scholars emphasize the extent to which the Enlightenment was not only influential throughout Spanish America,

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<sup>10</sup> Burns, *Siete Partidas*, Book 4.

<sup>11</sup> Sodomy in Latin America has received a considerable amount of scholarly attention. This dissertation does not deal directly with sodomy, but those interested in the subject should consult Zeb Tortorici’s 2016 book, among others. Zeb Tortorici, *Sexuality and the Unnatural in Colonial Latin America* (Oakland, CA: University of California Press, 2016).

<sup>12</sup> Haidt, *Embodying the Enlightenment*; Meléndez, *Deviant and Useful Citizens*; Premo, *The Enlightenment on Trial*

but also the extent to which ordinary people participated in its creation through the legal system.<sup>13</sup> This work collectively demonstrates the importance of the Enlightenment in considering the cultural attitudes in Lima during the late eighteenth century, especially among the elite but even among the lower classes.

Latin American history in general has been the locus of detailed scholarship on women and agency in the legal system. Thanks to scholars like Chad Black, Kimberley Gauderman, and Bianca Premo (among others), we know that women did in fact exercise a great deal of autonomy in the courtroom—acting independently without official license from a male relative, owning their own property, instituting lawsuits and being sued themselves.<sup>14</sup> Some women, usually privileged by race, class, or both, were able to determine whether or not to marry, or to divorce husbands who abused them.<sup>15</sup> Colonial society was still patriarchal, but women had more legal rights under the Iberian systems than in many other contemporaneous European countries and empires.

In a similar vein, marriage, family, and illegitimacy have also been the subject of considerable research.<sup>16</sup> Among the most influential in this field are a number of detailed

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<sup>13</sup> Premo, *The Enlightenment on Trial*.

<sup>14</sup> Black, *The Limits of Gender Domination*; Gauderman, *Women's Lives in Colonial Quito*; Premo, *The Enlightenment on Trial*.

<sup>15</sup> Gauderman, *Women's Lives in Colonial Quito*, 7-11.

<sup>16</sup> Noteworthy scholarship on marriage includes: Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque, NM: University of New Mexico Press, 1995); Albrecht Classen, *Discourses on Love, Marriage, and Transgression in Medieval and Early Modern Literature* (Tempe, AZ: Arizona Center for Medieval and Renaissance Studies, 2004); Gutierrez, "Honor Ideology, Marriage Negotiation, and Class-Gender Domination in New Mexico, 1690-1846."; Christine Hunefeldt, *Paying the Price of Freedom: Family and Labor Among Lima's Slaves, 1800-1854* (Berkeley, CA: University of California Press, 1994); Christine Hunefeldt, *Liberalism in the Bedroom: Quarreling Spouses in Nineteenth-Century Lima* (University Park, Penn.: Pennsylvania State University Press, 2000); Ishita Pande, *Sex, Law, and the Politics of Age: Child Marriage in India, 1891-1937* (New York, NY: Cambridge University Press, 2020); Nicholas A. Robins, *Of Love and Loathing: Marital Life, Strife, and Intimacy in the Colonial Andes, 1750-1825* (Lincoln, NE: University of Nebraska Press, 2015); Sloan, *Runaway Daughters: Seduction, Elopement, and Honor in Nineteenth-Century Mexico*.

works in the 1980s and 1990s, including a well-known edited volume by Asunción Lavrín, Patricia Seed's *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821*, and Ann Twinam's work on honor and legitimacy. These works reveal the complex dynamics that governed marriage and family in colonial Latin America, including political changes that changed balances of social power. For example, in *To Love, Honor, and Obey in Colonial Mexico*, Patricia Seed shows that changing political and economic pressures in the eighteenth century resulted in less Church support for couples seeking marriage against their parents' wishes, and consequently frequent upholding of parental dissents.<sup>17</sup> Meanwhile, Lavrín's essay in her own edited volume, published one year after Seed's books, lays out many of the marriage dynamics that have influenced the scholarly community since: the challenges of enforcing Christian marriage values on a diverse population; the binding nature of verbal marriage promises, and the moral superiority of elites who linked virginity, virtue, and piety.<sup>18</sup> If, as Lavrín herself acknowledged in a later forward, much of this focus on marriage was due to pressures in the field at the time, it has certainly created a wealth of knowledge on sexuality and marriage in the intervening thirty years.<sup>19</sup> Twinam's book also underscores marital potential in legitimating offspring, something of vital interest to the colonial elite as the eighteenth century progressed.<sup>20</sup> Regarding Peru specifically, María Mannarelli

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<sup>17</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico*.

<sup>18</sup> Asunción Lavrín, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln, NE: University of Nebraska Press, 1989).

<sup>19</sup> Asunción Lavrín, "Foreward" in Tortorici, *Sexuality and the Unnatural in Colonial Latin America* (Berkeley: University of California Press, 2016), ix-xii.

<sup>20</sup> Twinam, *Public Lives, Private Secrets*.

demonstrates the prevalence of and tolerance for illegitimacy in seventeenth-century Lima, especially among the nonelite. According to her research, more than fifty percent of children were illegitimate in Lima during this time, and many of them were born into long-term consensual unions.<sup>21</sup> This information is especially valuable in establishing the prevalence of sex without marriage, as well as the relative importance of legitimacy for the elite compared with other social categories.

Research on honor and sexuality, of course, has been especially influential in Latin America. In addition to Ann Twinam's work, cited above, the 1998 edited volume by Sonya Lipsett-Rivera and Lyman Johnson has made significant contributions to the field, as have works by Sueann Caulfield and Tanja Christensen.<sup>22</sup> Collectively, this work demonstrates that honor was important socially, especially for the elite, and could have an enormous impact on one's standing in the community. Ordinary people, while technically not supposed to have honor according to the birth-oriented standards of the Spanish aristocracy, nonetheless claimed it and, especially by the nineteenth century, went to great lengths to uphold their public reputation.

Despite the rich historiography on gender and sexuality in Latin America, however, there is comparatively little that addresses coercive sex specifically, and none that considers sexual violence in terms of jurisdiction and emotion. Similarly, while there is considerable research worldwide on the intersections between sexual violence and colonialism, as well as on rape as an instrument of war, this work tends to emphasize

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<sup>21</sup> María Mannarelli, *Private Passions and Public Sins: Men and Women in Seventeenth-Century Lima*, trans. Evans and Dodge (Albuquerque, NM: University of New Mexico Press, 2007).

<sup>22</sup> Caulfield, *In Defense of Honor*; Caulfield, Chambers, and Putnam, *Honor, Status and Law in Modern Latin America*; Christiansen, *Disobedience, Slander, Seduction, and Assault*; Johnson and Lipsett-Rivera, *The Faces of Honor*.

sexual coercion from the perspective of physical force. Such works tell us that rape is a way of exerting power over a civilian population, making it advantageous for invading or occupying armies.<sup>23</sup> However, focusing on sexual coercion completely outside of a wartime context, and considering it within its intellectual and legal context allows us to examine complex interactions that are otherwise easy to dismiss as aberrations of wartime.

### *Research Questions and Methodology*

While under-reporting and extra-judicial solutions make it impossible to know exactly how many relationships were coercive during this period, I argue that sexual coercion was an integral part of late colonial law and culture, influencing the ways in which women and men interacted romantically and sexually, and reflecting both traditional religious and modern Enlightenment interpretations of gender. The legal system, composed of overlapping jurisdictions, was a place through which elite and common ideas of gendered and sexual norms were negotiated, and through which women and their families could express (and thus create) emotions as they processed these traumatic events. Because the ecclesiastical and secular jurisdictions had distinct priorities, the narratives and emotions expressed in *estupro*, *rapto*, and marriage litigation varied between jurisdictions well into the 1790s, representing separate emotional communities that constricted in the early nineteenth century to form a singular emotional regime centered around the secular court.

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<sup>23</sup> For example: Elizabeth Heineman, ed., *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human rights* (Philadelphia: University of Pennsylvania Press, 2011).

This research addresses several key questions: Did gendered expectations and dynamics encourage and normalize sexual coercion in late colonial Lima, and did the legal system reflect and influence these dynamics? What was the working definition for consensual sex, and how did women assert themselves when these boundaries were crossed? Did the ecclesiastical and secular courts represent distinct emotional communities? Did these distinctions change over time, and how did these differences affect the experiences of women? The court cases themselves, together with legal codes and manuals, catechisms, newspapers, and the writings of religious women, show that patriarchal control was not absolute, especially in terms of sexual consent. Meanwhile, the ecclesiastical court's prioritization of marriage and thus of consent differentiated it from the secular court and created a distinct emotional community that was gradually eclipsed in the early nineteenth century.

My focus on this time period is supported by scholarly interpretations that position the late eighteenth and early nineteenth centuries as periods of transition, especially regarding gender. Elizabeth Dore identifies a "long nineteenth century" in which state policies tended to increase gender inequalities, beginning in the late eighteenth century and continuing to the early twentieth century.<sup>24</sup> In the same volume, Rebecca Earle posits that rhetoric during Colombia's revolution used imagery of sexual violence against women, especially in churches, to generate outrage and "innocent

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<sup>24</sup> Elizabeth Dore, "One Step Forward, Two Steps Back: Gender and the State in the Long Nineteenth Century," in Dore and Molyneaux, *Hidden Histories of Gender and the State in Latin America* (Durham, NC: Duke University Press, 2000), 3-32.

victims.”<sup>25</sup> Thus, the connections between gender and state, especially in this period leading up to and encompassing revolution, will be essential to this dissertation.

My work aligns with recent works on sexual violence, on courtship and emotions, and new methodological approaches to the broader field of history of emotions. First, my approach is influenced by that of Jelke Boesten, whose pioneering research focuses on rapes perpetrated by state forces in Peru between 1980 and 2000 during the campaigns against the *Sendero Luminoso* (Shining Path) terrorist group. Boesten argues that it is impossible to understand the sexual violence carried out in war without first considering the peacetime racial and gendered dynamics and assumptions that make it possible.<sup>26</sup> In my own research, I aim to illuminate the day-to-day dynamics that created the conditions under which sexual coercion could happen. Although the late colonial period is two hundred years before Boesten’s area of research, this grounding of violence in the quotidian is just as valuable for understanding colonial society as it is in the modern period. The use of courtroom declarations to extract victim experiences is one that I also emulate.

Julie Hardwick’s consideration of emotions as they appear in paternity and courtship-related disputes in eighteenth-century Lyons, France, on the other hand, demonstrates that emotions are not only present in sex-oriented conflict, but also that community norms played a role in the resolution of these cases.<sup>27</sup> It further demonstrates

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<sup>25</sup> Rebecca Earle, “Rape and the Anxious Republic” Revolutionary Colombia, 1810-1830,” in Dore and Molyneaux, *Hidden Histories of Gender and the State in Latin America* (Durham, NC: Duke University Press, 2000), 127-146.

<sup>26</sup> Jelke Boesten, *Sexual Violence During War and Peace: Gender, Power, and Post-Conflict Justices in Peru* (New York, NY: Palgrave MacMillan, 2014).

<sup>27</sup> Julie Hardwick, *Sex in an Old Regime City*, 6-7.

the messy presence of a variety of emotions, including love, fear, and anger, in cases involving sex and marriage. My work also identifies conflicting emotions, and considers the involvement of an individual's community wherever possible.

Finally, my analysis of emotions as they were reflected and refracted through the law is based on historian William Reddy's concept of "emotives", in which the act of expressing emotions creates them; and "emotional regimes," in which a single (elite) set of norms dictated which emotions were and were not appropriate to express.<sup>28</sup> In this dissertation, I use the concept of emotives to frame the expressions of emotions in court as evidence of the generative power of the legal archive to create emotions, not just to capture their performance in writing. Emotional regimes, on the other hand, reflect the elite and increasingly secular norms that became prioritized throughout the late colonial period, especially after 1800.

Barbara Rosenwein's concept of emotional communities is helpful in interpreting the distinctions between emotional expressions in the ecclesiastical and secular courts.<sup>29</sup> Within the emotional community framework, these jurisdictions were part of the same emotional regime, but their priorities differed to such an extent that litigants in sexual coercion cases expressed, and thus experienced, emotions differently. Therefore, prior to 1800, they constitute related, but distinct emotional communities that homogenized over time. Finally, Ute Frevert's work on gender and emotions provides the basis for my

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<sup>28</sup> William M. Reddy, *The Navigation of Feeling : a Framework for the History of Emotions* (Cambridge, U.K. ; New York: Cambridge University Press, 2001).

<sup>29</sup> Barbara H. Rosenwein, *Emotional Community in the Early Middle Ages* (Ithaca, NY: Cornell University Press, 2006).

assumption that emotions, like other aspects of society, are often gendered.<sup>30</sup> Therefore, acceptable emotions for women differ from those allowed of men, allowing further consideration of societal gender divisions.

The main body of primary sources used in this research are court cases from the ecclesiastical and secular courts in Lima, accessed from the Archivo Arzobispal de Lima (AAL) and the Archivo General de la Nación in Lima (AGN), respectively. These cases include *estupro* and *rapto* cases from both jurisdictions, as well as marital litigation from the ecclesiastical courts and cases in which enslaved women sued their masters for moral and sexual abuse (*sevicia moral y sexual*). They allow us to see how women (or their guardians) defined coercive sex, as well as the emotions expressed in declarations and the progression of narratives through the course of the trials. To ground these cases more fully in the gendered culture around them, I employ articles from the *Mercurio Peruano*, Peru's first independent newspaper, which ran from 1791-1795; the spiritual autobiographies of nuns; and select popular literature; all available digitally or as published volumes. I also utilize legal codes and religious tracts to contextualize the workings and attitudes of the secular and religious authorities. In so doing, I hope to demonstrate that both sexual coercion itself and the legal processes set to address it were part of the same patriarchal culture.

Not surprisingly, capturing the feelings and expressions of women in colonial Lima, many of whom were not literate or privileged, is a tricky endeavor. First, the main difficulty is that the main voices available are white, male, and intellectual—that is to

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<sup>30</sup> Ute Frevert, "Gendering Emotions," in *Emotions in History: Lost and Found* (Central European University Press, 2011).

say, elite. During the late eighteenth century, “white” encompassed peninsular Spaniards (that is, those born in Spain); creoles (American-born Spaniards); and light-skinned people of mixed ancestry who behaved like Spaniards.<sup>31</sup> Most, if not all, positions in the colonial apparatus were held by whites (many of them creoles), despite the fact that they accounted for only a fraction of the population. Additionally, tensions among these groups, especially between creoles and peninsular Spaniards, increased at the end of the colonial period as creoles came to identify as Peruvian and thus more entitled to high office than the peninsular Spaniards sent to fill the viceroy’s seat and other top positions.<sup>32</sup> Consequently, most of the voices of judges and intellectuals between 1750 and 1821 represented a small, increasingly dissatisfied portion of Lima’s population that nonetheless remained largely loyal to the crown until 1821. The nuns’ writings provide a female, non-legal counterweight to the pro-creole men writing for the *Mercurio Peruano*, but they also tended to be well-to-do, educated, and white.

The women and families with the motivation and resources to take instances of sexual coercion to court were also those with a certain amount of privilege. Not only was lengthy litigation often expensive, but the social and emotional toll of an accusation meant that few were willing to risk it unless there was something concrete to be gained. Spanish and *mestiza* women are thus proportionately overrepresented in these cases, especially in secular court. Furthermore, many of the sexual coercion suits from this period were instigated by a male guardian—a father, a patron, or a brother—who

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<sup>31</sup> Hunefeldt, *Liberalism in the Bedroom*, 18.

<sup>32</sup> The creole- peninsular divide has been examined at length by many scholars across the field of Latin American history. For one explanation of this phenomenon, see Twinam, *Public Lives, Private Secrets*.

represented his young female relation and delivered most of the testimony of her behalf. In some of these cases, the young woman testified as well, but the depth of these declarations varies, sometimes serving only to corroborate that of her guardian, and other times providing lengthy independent detail of her experience. Nonetheless, it is still possible to see that sexual coercion was socially and emotionally difficult for women as well as for their families.

A secondary challenge is that, in only focusing on the secular and ecclesiastical courts, I cannot discuss the sexual crimes committed by soldiers, especially during and immediately after the War of Independence (1821-1825). Future inclusion of this archive's holdings will doubtless deepen my analysis of the links between jurisdictions and emotional communities in the future, but for the time being are outside the scope of this dissertation. Meanwhile, Inquisition records are not a part of this analysis because *estupro* and *rapto* cases were not tried by the Inquisition. Unlike bigamy and sodomy, both of which fell under the purview of the Inquisition, sexual coercion did not undermine a specific doctrine or pose an existential threat to the integrity of the Church institution. It was, however, frequently connected to marriage disputes or dissents, which were decided by the archbishop's tribunal. Therefore, while Inquisition trials in general are excellent sources of information about some types of crimes and accusations, they are not relevant to this consideration of sexual coercion.

Additionally, there is the question of the small number of cases themselves—approximately forty cases total over an eighty-year period. These cases were only those that petitioned the court in writing *and* whose petitions were accepted for further consideration; it cannot consider those women and families whose extrajudicial

arrangements were successful because such resolutions rarely left traces in the official record. However, these forty cases constitute all of the coercion cases that I could identify in the *Real Audiencia Criminal and Civil*; some surviving suits heard by the Lima *cabildos*; two series of matrimonial litigation (the *Causas Criminales de Matrimonio* and *Causas Litigios Matrimoniales*) from the archbishop tribunal; and a small number of the surviving cases from a series of slave cases in the ecclesiastical jurisdiction. To my knowledge, therefore, they represent the total universe of late colonial sexual coercion cases brought forward during the period in these jurisdictions, making a qualitative analysis sound and even permitting some tentative quantitative observations about who went to court in Lima over sexual assault, and how frequently such cases occurred.

As such, this research offers the opportunity for scholars and activists to consider how the law and its use contributes to the emotional processing of coercive sex. In considering sexual coercion and violence—as well as narration in court— as inherently emotional, it places lived experiences at the center of analysis and allows us to see, not only victims’ traumas, but also how struggles for justice shaped and, perhaps, contributed to these traumas. In changing how we discuss those who experience sexual coercion, it also necessarily adjusts how we consider the role of the legal system in addressing crimes of a sexual nature. It also allows us to see a complicated and complicit ecosystem of gender-based violence, which deepens our understanding of how sexual coercion functions in our own times and places. As such, this approach might find applications across disciplines and has the potential to contribute to an array of research into sex and sex crimes looks like in the coming years.

This dissertation also has potential to contribute to discussions outside of academia, as activists work to increase accountability for rapists and improve outcomes for survivors of sexual violence. In both environments, cultural assumptions and legal technicalities conflict with one another and with the complex and conflicting emotional needs of survivors. By considering culture, law, and emotions as interconnected, therefore, this research contributes to the process of creating a more equitable and compassionate system of accountability in our own time, and can be applied to a variety of cultural contexts. These applications will be considered at more length in the conclusion.

### *Chapter Overview*

This dissertation is divided into four chapters. The first chapter highlights perceptions of gender and sex and illustrate the ways in which Lima's society emphasized and valued female pain, which set the stage for normalization of coerced sex. Chapter Two shows that this normalization was not absolute, and considers the limits within which sexual consent operated, especially the standards that governed extramarital sex. Chapter Three examines how the broader cultural foundations of sex and violence entered the judicial system, analyzing legal cases for the ways in which women did and did not adhere to cultured stereotypes and how the cultural and legal filters through which court officials viewed proceedings affected the course of trials. Chapter Four combines all these legal and cultural threads to outline the contours of Lima's religious and secular emotional communities, and to illustrate the complex array of emotions that women, their guardians, and, occasionally, their male partners felt and textually performed in their

testimony. Together, these chapters will indicate that cultural and legal conditions had a direct effect on how sexual coercion shaped the emotional world of individual women and their families.

*Chapter One: Sexual Behavior from the Outside In  
Reconstructing the Gendered and Sexual Norms of Late Colonial Lima*

Towards the end of the third section of his 1791 satire, *Lima por dentro y fuera*, after complaining about the filth of the city, Esteban Terralla y Landa imagines a perfect society for Lima. This utopic vision included honest rewards for hardworking Spanish lads, care and respect for elderly parents, and also a happy future for young ladies: “The girls with their labor/living in an honest state/ Will find honorable men/ for illustrious marriages.”<sup>33</sup> With these four lines, Terralla implies that there were many young women who are *not* “living in an honest state,” and that, consequently, they were not able to enter into respectable marriages. Indeed, when he considered the problems that the City of Kings faced, Terralla frequently included women in his assessments. Throughout this work, though, he implies that women’s behavior and morality were essential both to their own lives and to the well-being of the city.

This causal link between women’s personal behavior and the outcomes of the city’s future permeated the gendered culture of late colonial Lima, creating a blurry

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<sup>33</sup> Esteban de Terralla y Landa, *Lima por dentro y fuera*, Lima: Centro de Estudios Literarios Antonio Cornejo Polar, Universidad Nacional Mayor de San Marcos (2011), 35-36; Black, *The Limits of Gender Domination : Women, the Law, and Political Crisis in Quito, 1765-1830*; Sueann Caulfield, "The History of Gender in the Historiography of Latin America," *Hispanic American Historical Review* no. 449-490 (Aug-Nov 2001); Francisco Cevallos Candau, *Coded Encounters: Writing, Gender, and Ethnicity in Colonial Latin America* (Amherst, MA: University of Massachusetts Press, 1994); Elizabeth Dore and Maxine Molyneux, *Hidden Histories of Gender and the State in Latin America* (Durham, NC: Duke University Press, 2000); Martha Few, *Women Who Live Evil Lives: Gender, Religion, and the Politics of Power in Colonial Guatemal* (Austin, TX: University of Texas Press, 2002); Gauderman, *Women's Lives in Colonial Quito : Gender, Law, and Economy in Spanish America*; Lavrin, *Sexuality and Marriage in Colonial Latin America*; Brianna Leavitt-Alcántara, *Alone at the Altar: Single Women and Devotions in Guatemala, 1670-1870* (Stanford, CA: Stanford University Press, 2018); Sonya Lipsett-Rivera, *Gender and the Negotiation of Daily Life in Mexico, 1750-1856* (Lincoln, NE: University of Nebraska Press, 2012); Shumway, *The Case of the Ugly Suitor and Other Histories of Love, Gender, and Nation in Buenos Aires, 1776-1870* ; Steve Stern, *The Secret History of Gender: Men, Women, and Power in Late Colonial Mexico* (Chapel Hill, NC: University of North Carolina Press, 1995); Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America*

divide between the docile, modest, hardworking woman and her duplicitous, promiscuous “evil twin.” Determining one from the other was a process that concerned many men (illustrious and otherwise), and was made all the more complicated by the supposedly changeable and sinful nature of women. This preoccupation indicates that men at this time perceived women, sex, and morality as inextricably intertwined, which in turn affected the sexual experiences of women. While considerable work has been done regarding gender norms and Enlightenment in eighteenth-century Latin America, as well as on community reputation and honor, combining these two areas of study will lay the groundwork for later discussions, revealing the patriarchal terms on which women and men encountered one another in daily life.

The sexual culture of Lima during the last seventy-five years of the colonial period was a fusion of traditional religious and Enlightenment scientific views, and one in which honor and community opinion were integral parts of sexual encounters. During this period, traditional Catholic religiosity continued to dominate gender relations despite growing opposition to the power of the clergy, even as Spanish and Peruvian Enlightenment thinkers developed their interest in science and rationality. This combination changed the framing, but not the essence, of many long-standing stereotypes and ideals, including the way in which Spanish imperial society perceived female pain and suffering. These intellectual changes happened against a backdrop of continuity, as the opinions and involvement of one’s community continued to be defining factors in the course of one’s courtships, especially when love went awry.

This argument builds on the existing scholarship on gender in late colonial Latin America, which highlights patriarchal systems and the importance of female virtue.<sup>34</sup> It also draws on the substantial honor subfield, which emphasizes the connection between female virtue and public reputation.<sup>35</sup> This research indicates that, for the white elite and middling classes, a woman's public reputation and honor were tied up in at least the appearance, if not the actuality, of being a virgin. It also highlights the extent to which a family's reputation relied on their daughters' seclusion and modest behavior.<sup>36</sup> However, as Richard Boyer and Tanja Christiansen reveal, these standards were not always the same for indigenous, enslaved, or lower-class women.<sup>37</sup> Although many of these women claimed personal virtue, they tended to claim it on the grounds of proper behavior rather than status—for example, acting as a wife to a man even if they had not been married in a church.<sup>38</sup> While later chapters will interrogate the extent to which honor and community reputation mattered in the specific context of sexual coercion cases, this chapter approaches these frameworks as part of the background culture that influenced women's perspectives and experiences.

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<sup>34</sup> Black, *The Limits of Gender Domination*; Caulfield, "The History of Gender in the Historiography of Latin America"; Cevallos Candau, *Coded Encounters*; Dore and Molyneaux, *Hidden Histories of Gender*; Few, *Women Who Live Evil Lives*; Gauderman, *Women's Lives in Colonial Quito*.

<sup>35</sup> Caulfield, Chambers and Putnam, *Honor, Status, and Law in Modern Latin America*; Chambers, *From Subjects to Citizens*; Christiansen, *Disobedience, Slander, Seduction, and Assault*; Gutiérrez, "Honor Ideology, Marriage Negotiation, and Class-Gender Domination in New Mexico"; Johnson and Lipsett Rivera, *The Faces of Honor*; Seed, *To Love, Honor, and Obey in Colonial Mexico*; Twinam, *Public Lives, Private Secrets*

<sup>36</sup> Twinam, *Public Lives, Private Secrets*; "Introduction," in Johnson and Lipsett-Rivera, *The Faces of Honor*; Scarlett O'Phelan Godoy, ed., *El Perú en el siglo XVIII: La era borbónica* (Lima: Pontificia Universidad Católica del Perú, 1999).

<sup>37</sup> Richard Boyer, "Honor Among Plebeians," in *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, Johnson and Lipsett-Rivera, eds (Albuquerque: University of New Mexico Press, 1998), 152-178.; Christiansen, *Disobedience, Slander, Seduction, and Assault*.

<sup>38</sup> Hunefeldt, *Liberalism in the Bedroom*, 75-77.

This argument also draws inspiration from Julie Hardwick's consideration of community-sanctioned courtship in eighteenth-century Lyon, France. In Lyon, Hardwick argues, young working-class couples were given a reasonable amount of latitude to experiment sexually in their courtships, but with a degree of community oversight to keep them within the bounds of accepted behavior or to deal with inconvenient pregnancies. Parents, for instance, might intervene to encourage a son to marry a pregnant girlfriend, while some proprietors of boarding houses primarily made their living from providing a discreet place for unmarried women to give birth. Because of this community intervention, cases in which abandoned women sought child support or sued on grounds of broken marriage promises were relatively rare in eighteenth-century Lyon.<sup>39</sup>

Hardwick's analysis is based on paternity suits, in which women sued for child support after partners reneged on marriage promises or on promises of financial support, rather than on sexual coercion; nonetheless, she demonstrates that sexual misconduct often involved the couple's collective social circles and support networks as well. In sexual coercion cases in late colonial Lima, the community was also an active part of sexual matters, usually with a good idea of who was in bed with or married to whom, and what the implications were for the couple. However, this chapter will argue that, despite the constant *chisme* (gossip), neighbors seem to have rarely intervened directly in instances of sexual coercion. Rather, they took diligent mental notes, shared news among themselves, and reported their knowledge to a parent or to the court when asked. On the rare occasions where parties outside the family did intervene directly, it was because

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<sup>39</sup> Julie Hardwick, *Sex in an Old Regime City* (2020), 79.

someone's behavior was so far beyond the pale that observers felt the matter was too urgent to wait.

This chapter also incorporates articles and editorials from Peru's first independent newspaper, the *Mercurio Peruano*. Between 1791 and 1795, the *Mercurio Peruano* published on a wide range of subjects, including science, religion, geography, mining, economy, and social concerns.<sup>40</sup> Among these articles and editorials were a number that discussed moral degeneracy and that advanced gendered stereotypes, especially focused on the dress and comportment of women. Some engaged in the scientific analysis of women's bodies, a subject covered quite well by other scholarship, while others were filled with complaints and discussions of the social ills that plagued Peruvian society.<sup>41</sup> The *Mercurio Peruano* also published poetry and translated segments of Greek and Roman classics, which themselves indicated gendered perceptions and perpetuated stereotypes. Because of the scope of its contents, this newspaper serves as the foundation of the following discussion of gender and the Enlightenment.

Of course, no discussion of gender and culture in colonial Latin America could be complete without incorporation of the mores of the Catholic Church, especially those promoted among and shared by religious and cloistered women. Accessing the original documents written by nuns was not possible for this project; however, a wealth of secondary materials have addressed this theme, and some scholars have published translations and excerpts of the materials themselves.<sup>42</sup> Therefore, this analysis will

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<sup>40</sup> Jean-Pierre Clément, *El Mercurio Peruano, 1790-1795* (Madrid: Iberoamericana, 1997).

<sup>41</sup> For more on female bodies as deviant, see Meléndez, *Deviant and Useful Citizens*.

<sup>42</sup> Asunción Lavrin, *Conventual Life in Colonial Mexico* (Stanford, CA: Stanford University Press, 2008); Kathleen Ann Myers, *Neither Saints Nor Sinners: Writing the Lives of Women in Spanish America* (New

briefly consider narratives about several important religious women in colonial Lima: Santa Rosa de Lima, Ursula de Jesús, and the founders of the *Nazarenas descalzas* and *Trinitarias descalzas* (the Descalced Nazarenes and the Descalced Trinitarians—two ascetic orders, founded in Lima in the eighteenth century). While some of these women—most notably Santa Rosa—lived almost a century prior to the time covered by this chapter, all were revered and held up as role models during the late eighteenth century. Therefore, the way in which society immortalized them is as important as what these holy women achieved during their own lives.

And finally, although the scholarship on honor has thoroughly reviewed the importance of reputation in one's community, I use excerpts and details from the testimonies within sexual coercion cases to consider the ways in which neighbors and other members of a couple's circle involved themselves in ongoing "unofficial" relationships. These cases originate primarily from the secular court, which had both the larger body of cases for this period and the clearest examples of community involvement, but some details from the ecclesiastical court will appear where relevant. These testimonies reveal a high degree of awareness among the adults of a community, an active gossip network, and clear notions of what constituted appropriate or inappropriate behavior. Because each of these cases will be examined in detail in later chapters, these discussions will confine themselves to an examination of the testimonies and, where possible, the specific interventions undertaken. This information will show the

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York, NY: Oxford University Press, 2003); Electa Arenal, Stacey Schlau, and Amanda Powell, *Untold Sisters: Hispanic Nuns in their Own Works* (Albuquerque: University of New Mexico Press, 2010).

importance of honor and community in the sexual coercion context, rather than in the general sense visible from Church and intellectual writings of the same period.

These primary materials will show Lima's culture from a more top-down perspective, providing an overview as the basis for later discussion. While this analysis will illuminate the overall norms of sexual encounters in late colonial Lima, it does not leave much room for nuanced discussion of the ways in which women and their families interacted with and contested these norms during sexual coercion trials. The *Mercurio Peruano* in particular, as the product of elite white men, shows the attitudes of a specific subset of Lima's population. Nonetheless, understanding these norms and values provides the means to understand the logic under which court officials, litigants, and defendants operated. It also illuminates the official, elite context that shaped the individual experiences of sexual coercion, even when individuals and nonelite communities did not hold the same beliefs as the authorities.

### *Catholicism, the Enlightenment, and Gender in Late Colonial Lima*

Peruvians' attitudes towards gender during the late colonial period, as expressed by Lima's intellectuals, had a great deal in common with those expressed by other proponents of the Enlightenment in Europe, and were rooted in older hierarchies from the ancient and Christian worlds. However, Spanish cultural influence and Peruvian racial and social diversity meant that gendered norms in Lima had their own unique flavor. In the late eighteenth century, Lima's Enlightened intellectuals did not reject either religion nor cultural convention, but simply reframed many traditional, religious perceptions of gender in scientific or, more often, "rational" terms. Therefore, the patriarchal system that

women confronted, both during sexual coercion cases and in their daily lives, was merely reinforced by new intellectual developments rather than challenged.

Because late colonial Lima was a Catholic city with a relatively substantial Spanish and Spanish-descended population, many of its gendered attitudes had roots in traditional Catholic and European ideas. In her 1993 intellectual history of gender bias in science, *The Less Noble Sex*, Nancy Tuana discusses the ancient Greek and Christian influences that shaped the way that Western science approached gender, tracking these themes through the Middle Ages, into the Enlightenment, and then through the explosion of scientific thought and research of the nineteenth century.<sup>43</sup> Tuana's consideration of key theologians like Augustine provides an entry point into the Catholic Church's traditional understandings of women's nature, which therefore give us a baseline through which to interpret the gendered norms of colonial Lima. In the fourth century A.D., Augustine wrote that women were fainter images of God than men, being made out of *man's* image rather than God's. Therefore, they could only be complete in conjunction with a man, whereas men could reflect the divine in themselves.<sup>44</sup>

Augustine's writings influenced theologians through the centuries, and remained relevant well into the modern period. His gender biases, though somewhat reinterpreted throughout the centuries, remained both relevant and frequently cited.<sup>45</sup> In early modern Spain and Spanish America, these gender biases influenced the role of women in the Church, as the experiences of many religious and cloistered women demonstrated. In

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<sup>43</sup> Tuana, *The Less Noble Sex*, 12-15.

<sup>44</sup> Tuana, *The Less Noble Sex*, 53.

<sup>45</sup> Tuana, *The Less Noble Sex*, 53-56.

*Untold Sisters*, an anthology and analysis of Spanish and Spanish American Reformed Carmelite nuns in the sixteenth, seventeenth, and eighteenth centuries, Electa Arenal and Stacey Schlau described the strict male oversight of these women-owned spaces, to make sure that women did not lead each other astray. Women may have owned and operated these convents, but the convent leadership was subject to the instructions of the archbishop, and individual nuns required to follow the instructions and guidance of their male confessors.<sup>46</sup> In *Embodying the Sacred*, her 2018 book on religious women in colonial Lima, Nancy Van Deusen describes the risks that some women ran of being denounced to the Inquisition. Indeed, two well-known religious women from the late seventeenth and early eighteenth centuries ran into trouble with Lima's religious authorities. Ángela de Carranza, a late seventeenth-century mystic, made so many powerful enemies in the Church with her outspoken theology, lack of deference to wealthy male patrons, and radical visions that she was tried by the Inquisition between 1688 and 1694, labeled a false mystic, and confined to a *beaterio* (a religious house for laywomen that often doubled as a place of imprisonment and correction for immoral women).<sup>47</sup> Less than a decade after Ángela de Carranza's confinement, her friend María Jacinta Montoya—also known as María Jacinta de la Santissima Trinidad (María Jacinta of the Mostly Holy Trinity)—found herself accused of mild unorthodoxy by the Inquisition in 1702, in part because of her outspoken advocacy on the behalf of her late husband Nicolás de Ayllón, whose own religious and holy life had rendered him a

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<sup>46</sup> Arenal, Schlau, and Powell, *Untold Sisters*, 3-5.

<sup>47</sup> Nancy Van Deusen, *Embodying the Sacred: Women Mystics in Seventeenth-Century Lima* (Durham, NC: Duke University Press, 2018), 71-75 .

candidate for beatification shortly after his death in 1677. Her own mystic visions had not helped her case.<sup>48</sup> Clearly, fears abounded among Inquisition and other Church leaders of what religious women might do to themselves and to the Church if left unsupervised.<sup>49</sup> In this, Augustine’s views about the importance of male guidance for women and on the perils of women’s susceptibility to sin is revealed in the practices of later church authorities.

The Enlightenment in Spanish America did not reject religiosity—much of Spain’s Enlightened reform efforts aimed to restrict the power of religious orders like the Jesuits, rather than religious expression in general—but it did simultaneously embrace rationality, self-control and -denial, and scientific language.<sup>50</sup> In his study on the *Mercurio Peruano*, Jean-Pierre Clément demonstrates that, for the *Sociedad de Amantes del País* (The Society of the Lovers of Country), who edited and published the *Mercurio*, religion and science were connected: “Contemplation of Creation and homage to the Creator are indivisible, and all human actions should have nearness to the Father as their principal end.”<sup>51</sup> As proponents of a *catolicismo ilustrado* (Enlightened Catholicism), these learned men supported “spiritual austerity” (as opposed to the opulence of the baroque era).<sup>52</sup> This *catolicismo ilustrado*, especially in Lima, also manifested in a

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<sup>48</sup> Van Deusen, *Embodying the Sacred*, 117-118.

<sup>49</sup> Arenal, Schlau, and Powell, *Untold Sisters*, 6.

<sup>50</sup> Víctor Peralta Ruíz, “Las razones de la fé: la Iglesia y la Ilustración en el Perú, 1750-1800,” in *Scarlett O’Phelan Godoy, ed., El Perú en el siglo XVIII: La era borbónica* (Lima: Pontificia Universidad Católica del Perú, 1999).; Elizabeth Franklin Lewis, Mónica Bolufer Peruga, and Catherine Jaffe, eds. *The Routledge Companion to the Hispanic Enlightenment* (New York: Routledge, 2020).

<sup>51</sup> Jean-Pierre Clément, *El Mercurio Peruano, 1791-1795*, 2 vols., vol. 1 (Madrid: Iberoamericana, 1997).

<sup>52</sup> Clément, *El Mercurio Peruano, 1791-1795*, 1.

distrust of the clergy. Although the *Sociedad de Amantes del País* clearly felt that “religion, corrupted as it is, is better than the absence of religion,” they were part of a group of Peruvian intellectuals who criticized the excesses of the clergy.<sup>53</sup> Indeed, the conflict between the viceregal government and the Church authorities in Lima was one of the defining traits of the Bourbon Reforms.<sup>54</sup> This religiosity, in combination with an increased interest in science, meant that science was part of understanding God’s Will, and that natural laws were divinely ordained.<sup>55</sup>

For the editors of the *Mercurio Peruano*, the “natural” inferiority of women was a common theme. Some framed it directly in scientific language, focusing on humors, natural inclinations, and irrationality. For instance, in a lengthy treatise on healthy pregnancies for women, an anonymous physician talked about the various humoral dispositions that women exhibited, and their effect on the pregnancy:

In the hysterical, weak, and in those of a soft, sedentary life, the nervous temperament becomes more sensitive and irritable, and in the arena of pregnancy this presents quite tragically, in that the calamities and suchlike become manifold.... Contrariwise, in the strong and robust that by means of moderate exercise and a precise repair of the ills of life have conserved their liquids and solids in such necessary balance respective to the use of our actions, regularly the symptoms of pregnancy are favorable.<sup>56</sup>

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<sup>53</sup> Clément, *El Mercurio Peruano, 1791-1795*, 1.

<sup>54</sup> Víctor Peralta Ruíz, “Las razones de la fé: la Iglesia y la Ilustración en el Perú, 1750-1800,” in *O’Phelan Godoy, El Perú en el siglo XVIII: La era borbónica*.193-194.

<sup>55</sup> Clément, *El Mercurio Peruano, 1791-1795*, 1.

<sup>56</sup> *Mercurio Peruano*, 5 de junio, 1791; “En las hystericas, débiles, y en las de una vida blanda y sendentaria, el genero nervioso se halla mas sensible e irritable, y la escena de la preñez se presenta tan trágica, que las calamidades y desdichas exceden entonces el numero de seiscientas... Al contrario, en las fuertes y robustas que por un exercicio moderado, y un arreglo exacto en el malo de vivir, han conservado sus solido y liquidos en aquel equilibrio necesario al uso de nuestras acciones, regularmente los síntomas de la preñez son favorables.”

The author then goes on to describe the necessary steps that women must take to avoid the aforementioned calamities; they might wish to act instinctively, for example, based on cravings or on the bad advice of midwives, but his scientific approach would guarantee a safe pregnancy and healthy baby.<sup>57</sup> This physician expressed the view, backed by the science of his day, that female nature had a direct impact on their pregnancies. Those of nervous temperament or an inactive life, whose “sensitivity” and “irritability” would multiply calamities, risked imperiling the pregnancy, while others lived “moderately” and thus improved the conditions for themselves and their fetuses. Nonetheless, both types of women might fall victim to their own natures or to the misguidance of other women; only male, scientific guidance would give them the tools and knowledge that they needed to care for themselves. This opinion indicates that many men considered themselves qualified to make decisions or recommendations about women’s lives and bodies, a fact that was especially relevant when fathers instigated *estupro* and *rapto* cases against their daughters’ suitors, and when judges ruled on whether a woman’s behavior had invited sexual attentions. Such narratives will be considered at length in subsequent chapters.

Whereas this specific learned gentleman was clearly most influenced by the language of science, other contributors to the *Mercurio Peruano* spoke as if their opinions of and interactions with women were simply facts of life that other readers would understand. One man, whose complaint about the disrespect of his children was published in January of 1791, wrote about his female relations in a very matter-of-fact way. Returning from a long journey to Cusco on business, “Eustachio Phylomathes” was utterly dismayed to discover that his children addressed his wife and himself with the

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<sup>57</sup> *Mercurio Peruano*, 5 de junio, 1791.

informal second person, *tu*, instead of the more formal *usted* as he had taught them to do. Confronting his wife as to the origins of this upsetting development, Phylomathes discovered that it had become the habit of certain women in their circle to raise their children in this permissive way: “My astonishment increased: I asked some of my friends if this was truly the custom in Lima, and had the disconsolation of being informed that the majority of the mothers, aunts, and grandmothers, not only suggest this low practice of addressing those around them as ‘tu,’ but also subscribe to it and sustain it. I have no words to express the astonishment, or to say it better, the indignation that this news caused me.”<sup>58</sup> He went on to describe the horror and anger he felt when his female in-laws, who were proponents of this manner of upbringing, came to visit and were besieged by his daughters begging for sweets.<sup>59</sup> All of this behavior he laid at the feet of the women in his life, who, in his absence ceased to discipline the children correctly, but he also blamed the women of Lima who espoused this form of education. This utter disrespect in the younger generation was the result of poor female decision-making that he, as the father and disciplinarian, must correct in his own children. Here, as in the previous example, the importance of male advice and guidance once again takes center stage. Phylomathes’ role in the family was as a disciplinarian. In his absence, the children fell victim to maternal (or, more generally, female) permissiveness and thus to poor behavior; only with his guidance could they begin to relearn correct behavior. In sexual coercion cases, paternal discipline and supervision were critical talking points for fathers

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<sup>58</sup> *Mercurio Peruano*, 16 de enero, 1791.

<sup>59</sup> *Mercurio Peruano*, 16 de enero, 1791.

and for jurists, indicating that such themes had a presence outside of the pages of the *Mercurio*.

A month after Phylomathes' letter was published, another contributor, writing under the pseudonym "P. Fixogámio," wrote to the editors at his wit's end with his wife's irresponsible behavior. His wife had many virtues, he was careful to tell his audience. She was well-born, with many talents, and a good disposition, and he loved her dearly; however, she simply could not seem to discipline herself or to behave responsibly. Fixogámio was, by his own admission, a hardworking man of sufficient but modest means, with some two thousand pesos a year to raise his family. His wife, on the other hand, was devoted to her own leisure more than to her household. She frequently went out to the bathhouse, then to the markets with her friends, buying delicacies from street vendors despite having plenty of basic foodstuffs at home. Moreover, her husband lamented, she had to have a box seat at every bullfight and theater event, a front-row seat at every festival, and had run up enormous debts with the local merchants because she would rarely wear an outfit twice and had to stay on top of the latest trends.<sup>60</sup> To top it all off, her diversions meant that she spent little time in the house raising her children or attending to the domestic affairs of the family.<sup>61</sup> All this combined to drive her husband to the point of desperation, pleading with the editors for advice on handling this problem.<sup>62</sup> Fixogámio's complaint echoes some of the same concerns that Phylomathes articulated, but expressed in terms of her personal conduct. Just as Phylomathes's

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<sup>60</sup> *Mercurio Peruano*, 10 de febrero, 1791.

<sup>61</sup> *Mercurio Peruano*, 10 de febrero, 1791.

<sup>62</sup> *Mercurio Peruano*, 10 de febrero, 1791.

children needed masculine discipline in order to be brought up properly, so too did Fixogámio's wife. Indeed, he portrayed her as a kind of child, devoted to pleasure and amusement rather than to the mature responsibilities of the domestic sphere. However, the discipline that she needed was from her husband, and he did not know how to handle her behavior.

This letter, while not phrased in terms of science or of nature, nonetheless expresses a stereotype—that of the childlike woman in need of discipline from her husband—that aligns with the other discussions of gender already examined. The wife of Fixogámio did not display a maturity that one might expect of a woman with a household and multiple children to tend. She had the frivolity of a child, a child's love of diversion and fun, and a child's lack of awareness of the value of money. She was also of a temperament that made it challenging for her husband to supply the discipline that she would need in order to perform her duties. Moreover, she was susceptible to the whimsies of fashion and the temptations of the merchants who showed her their latest styles. This portrayal taps into a common set of gender biases also expressed in other newspapers of the time, and was used to argue, as Claudia Rosas Lauro demonstrates, that women were in particular need of male instruction.<sup>63</sup> This trend of publishing on the misbehavior of women, then, was simultaneously a complaint with which male readers could identify and an attempt to generate a conforming female population.

In short, as the Enlightenment gathered momentum, men still considered women inferior, weak, and foolish in accordance with traditional Catholic teachings, but tended

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<sup>63</sup> Claudia Rosas Lauro, "Educando el bello sexo: la mujer en el discurso ilustrado" in *El Perú en el siglo XVIII*, Scarlett O'Phelan Godoy, ed., 205.

to articulate these views in terms of science or the effects their behavior had on their family or on society at large. Thus, the patriarchy that women navigated in the late eighteenth century was not different in substance from earlier in the colonial period. However, it was different in rhetoric, which, as later chapters will illustrate, did affect the experiences of those seeking redress for sexual coercion by presupposing female susceptibility to sexual or moral degeneracy.

*Female Pain: Religious Sanctification and Scientific Disregard*

While Chapter Four will address emotions in detail, the concept of pain warrants a separate treatment here, in part because it is an experience that defies classification. It is a sensation in the body, but also a “feeling”, such that categorizing it as a physicality or an emotion is of longstanding debate in the History of Emotions field.<sup>64</sup> Susan Sontag, in her analysis of war photography, describes pain as a spectacle that can objectify or humanize, and argues that depictions of pain can serve a variety of rhetorical purposes regardless of the author’s original intention.<sup>65</sup> She further argues that humans have a morbid fascination with pain, especially with the pain of women’s bodies.<sup>66</sup> Female pain occupied a complex role in Lima’s patriarchal society, as a method of male control, an object of male gaze, and something that many women—especially religious women—sought out for themselves. Thus, how Lima’s culture viewed women’s pain influenced women’s emotional and physical experiences of sexual coercion and violence. Both the

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<sup>64</sup> Rosenwein, Barbara and Riccardo Christiani. *What is the History of Emotions?* (Medford, MA: Polity Press, 2018).

<sup>65</sup> Sontag, *Regarding the Pain of Others*, 80.

<sup>66</sup> Sontag, *Regarding the Pain of Others*, 40-42.

Church and the Enlightenment normalized women's pain, but, whereas the Church tended to glorify it (as in the case of sainthood), Enlightened men tended to view it with a kind of scientific detachment.

Nuns, as we have already seen, were not exempted from patriarchal control. In colonial Peru, they were positioned delicately in their society, being more independent in many ways than ordinary women, but also highly dependent on the goodwill and beneficence of men for funding and for recognition.<sup>67</sup> Understanding convents' complicated position can be difficult. On the one hand, many women found the convent to be a refuge from patriarchal pressures and abuses, and there received an education and built a close female family with the other Sisters. On the other, though, male priests and authorities constantly scrutinized them for "heterodoxy" and thus many nuns found that they still needed to be careful about what they wrote or discussed, and how they communicated it.<sup>68</sup> Furthermore, Meléndez's analysis on the experiences of the holy women of the order of *Trinitarias Descalzas* indicates that the founding sisters in particular covered their more entrepreneurial tendencies, which enabled them to fundraise to found their convent and see it recognized, in language of holy submission to God, an experience shared by the founders of another *descalza* order in Lima, the *Religiosas Nazarenas* (The Nazarene Nuns).<sup>69</sup> If God had ordered them to found a community of holy women committed to frugal living in His name, then who were they to refuse? Seeking to do it on their own initiative would have been unbecoming, but to obey their

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<sup>67</sup> Van Deusen, *Embodying the Sacred*, 7; Meléndez, *Deviant and Useful Citizens*, 86-87.

<sup>68</sup> Van Deusen, *Embodying the Sacred*, 7-8; Arenal, Schlau, and Powell, *Untold Sisters*, 6.

<sup>69</sup> Meléndez, *Deviant and Useful Citizens*, 85.

Lord and Savior was very fitting indeed. Similar shows of submission also helped women who sued men for sexual coercion to couch their legal savvy and determination and appeal to male court authorities, as Chapters Three and Four will demonstrate more fully. For now, it suffices to say that many women who sought to carve out space in Lima's male-dominated society did so in ways that would appear properly modest and self-effacing to the men on whom they relied for support and legitimacy.

Similarly, Church authorities and society at large imposed some elements of pain, but religious women also embraced it on their own terms. Catholic doctrine valued pain as penance and as a mark of a saints' holiness, an approach that dated to the medieval period, if not earlier. Saints were holy and worthy of veneration/emulation because they had suffered like Christ and for Christ. One could atone for one's sins in prayer, but the particularly devoted could and did flagellate themselves, fast for extended periods, or wear hair shirts or screens inside their clothes to abrade their skins. These traditions were of long standing in the Church, but were not deemed appropriate for everyone—according to some accounts, Santa Rosa of Lima, born Isabel Flores de Oliva, the youngest daughter of a wealthy noble family in seventeenth-century Lima, was discouraged by her confessor from the deprivations and punishments she inflicted upon herself after her spiritual awakening.<sup>70</sup> Pain, then, while virtuous, was only accessible and appropriate within specific limits of caste and *calidad* (social status). These limits, in the context of sexual coercion and assault, meant that only a small subset of middling- and upper-class women were able to claim it in their narratives.

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<sup>70</sup> Myers, *Neither Saints nor Sinners*.

Other accounts of Santa Rosa's spirituality offer an alternate perspective on female pain. In fact, many of the biographies and testimonies from her own beatification hearings in the seventeenth century recount that she began self-deprivation and mortification practices as early as four years old, with some support from her confessor as she grew.<sup>71</sup> Indeed, the testimonies from these beatification hearings provide a minute, almost year-by-year chronicle of Santa Rosa's increasing commitment to pain as self-purging and as intercession for her fellow *limeños* (residents of Lima). In the accounts from her mother, from the servants and confessors who cared for her, and others who knew her in life, it is possible to see her go from extended hours of prayer and cutting her pretty blonde hair to avoid vanity as a child, to sleeping on a bed of sharp canes (only two hours of sleep per night) in her teens, to wearing a crown of thorns and whipping herself to atone for her sins and those of her city in her early twenties.<sup>72</sup> These practices were explicitly recognized as holy; Rosa's mother recounted wanting to take away the instruments that her daughter used to torment herself, but ultimately not doing so because she feared that God would punish her for it.<sup>73</sup> Because of her intense spirituality, visions of God, and commitment as a Dominican *beata* (a holy laywoman), she was recognized and admired as a mystic during her life.<sup>74</sup> Such was her reknown that, after her death in 1617, beatification proceedings—the process by which someone could become a saint—began within a year. The second round of proceedings, heard several decades later,

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<sup>71</sup>Emilio Ricardo Baez Rivera, *Las palabras del silencio de Santa Rosa de Lima, o la poesía visual del inefable* (Universidad de Navarra, 2012).

<sup>72</sup> Baez Rivera, *Las palabras del silencio de Santa Rosa de Lima*.

<sup>73</sup> Baez Rivera, *Las palabras del silencio de Santa Rosa de Lima*.

<sup>74</sup> Baez Rivera, *Las palabras del silencio de Santa Rosa de Lima*; Van Deusen, *Embodying the Sacred*,

ultimately resulted in her canonization as the patron saint of Peru, of Spanish America, and the Philippines, the first person so elevated in the Americas.<sup>75</sup>

Santa Rosa's pain and mortification was something she chose for herself, but it also became a spectacle and a model for other women, both in her own life and afterwards. After her death, especially following her canonization, her self-martyrdom and recognized commitment to God made her someone that other generations venerated. Indeed, she became a didactic model in the eighteenth century, someone that young women should aspire to emulate.<sup>76</sup> Her pain, in short, had elevated her from mere woman to saint. This sanctification of pain in a religious context affected the expectations of officials and the narratives of women in sexual coercion. Some women, especially mothers, deliberately emphasized the pain (*dolor*) that their daughters' plights caused them. Leaving aside the question of whether these expressions were "genuine," the fact that they referred to pain so readily in an official petition demonstrates its centrality to virtuous womanhood. In this framework, respectable women felt pain when their daughters were hurt.

Like Santa Rosa, Ursula de Jesús's physical suffering set her apart from her contemporaries in the convent of Santa Clara. Although she was not as widely recognized as Santa Rosa, nor venerated for generations, she served as an example to her fellow religious women, and was known as an important mystic and intercessor, especially for women of color, during her life.<sup>77</sup> A slave for approximately forty of her sixty years of

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<sup>75</sup> "Introduction", in Baez Rivera, *Las palabras del silencio de Santa Rosa de Lima*.

<sup>76</sup> Van Deusen, *Embodying the Sacred*; Myers, *Neither Saints Nor Sinners*.

<sup>77</sup> Nancy Van Deusen, *The Souls of Purgatory: The Spiritual Diary of a Seventeenth-Century Afro-Peruvian Mystic, Ursula de Jesús* (Albuquerque: University of New Mexico Press, 2004).

life, Afro-Peruvian Ursula entered the convent at thirteen in 1617 when her sixteen-year-old mistress Inés de Pulgar became a novice, and had a reputation for gossip and vanity until a near-death experience in 1642 caused her to devote herself to the Virgen del Carmen. Thereafter, she became intensely spiritual, devoting all her free time to prayer. As her devotion grew, she became known for her visions, especially of purgatory and afflicted souls begging for intercession.<sup>78</sup> These visions and her acknowledged spirituality ultimately earned her freedom in 1645, and she served as a *donada* (religious servant, a lower class of nun who was usually of African or indigenous ancestry) until her death in 1666.<sup>79</sup> For Ursula, pain and self-deprivation were important markers of spirituality, and she obeyed her “voices” (spirit guides) when they told her to fast or to wear hair shirts; however, continued servitude and hard labor were also part of her mortification, since they were markers of her long life of being answerable to others through hard work.<sup>80</sup> On some occasions, she merely resented being forced to work hard rather than being allowed to spend time alone with God.<sup>81</sup> On others, she tried to avoid performing such labors, only to be corrected by her voices:

Thursday, a nun sent some meat for me to roast for her. I refused because I knew that if I did it for her this one time, she would always want me to do it... Later that day, [the voices] asked, *Why had I not roasted that meat the nun requested? Was that not about being nice to your neighbor? Do you not say, Oh Lord, bring crosses, place heavy crosses on these shoulders, and then when it starts to get*

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<sup>78</sup> Van Deusen, *The Souls of Purgatory*.

<sup>79</sup> Van Deusen, *The Souls of Purgatory*.

<sup>80</sup> Van Deusen, *The Souls of Purgatory*.

<sup>81</sup> Van Deusen, *The Souls of Purgatory*.

*heavy, I take them off. He did not turn away from hard work. What did it mean to love, if not to endure hardship for him?*<sup>82</sup>

Ursula's endurance of servitude as a *donada*, despite wanting time for spiritual contemplation was part of her service to God; indeed, she only continued to bear this burden because her spiritual voices told her that it was God's Will. In this, her experience was different from that of white holy women, who often had the luxury to humble themselves through service precisely because they had servants to attend to their daily needs.<sup>83</sup> Her continued resolve to be humble, despite the importance of her spiritual leadership and the sense of debasement it gave her, was therefore a type of pain and mortification by which she could be recognized as holy. Ursula's experience offers a perspective in which the work of daily life expected of enslaved and lower-class women was pain enough in itself, whereas elite holy women like Santa Rosa followed specific rituals to humble and thus sanctify themselves. The sanctification, in this non-elite context, was in continued subjugation and proper submission, despite internal conflict. As moral *sevicia* suits (moral and sexual abuse cases, executed by enslaved women against the men who owned them) will demonstrate in later chapters, these themes and the violation and coercion that they imply were central to sexual violence as enslaved women experienced it.

Although both Santa Rosa and Ursula de Jesús were especially emblematic of seventeenth-century, rather than eighteenth-century, Peruvian mysticism, the importance that pain conferred to women was enduring. Several decades after the death of Ursula de

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<sup>82</sup> Ursula's Diary, translated in Van Deusen, *The Souls of Purgatory*, 98.

<sup>83</sup> Van Deusen, *The Souls of Purgatory*, 52-53.

Jesus, Madre Antonia Lucía del Espíritu Santo, founder of the *nazarenas descalzas* in Lima, rarely ever ate, especially during Lent, because God should be her sustenance. She also visited corporal punishments upon herself, sometimes causing herself to bleed, and slept on a hard bed on top of a wooden cross.<sup>84</sup> These deeds, recorded by her disciple Josefa de la Providencia in the 1750s and published in the official chronicle of the convent in the 1790s, were spoken of as especially holy—it seemed to observers that God did indeed sustain her.<sup>85</sup> Similarly, the founders of the *trinitarias descalzas*, also immortalized in their convents' chronicles in the eighteenth century, all suffered from severe physical afflictions, some intentionally inflicted and some seen as tests from God.<sup>86</sup> The severe illnesses and disabilities that many of them suffered (perhaps, as Meléndez argues, from malnutrition caused by excessive fasting), were no less signs of holiness than their self-scourging. Throughout all these written descriptions, other nuns and laypeople (men and women alike) expressed admiration for the way that these women endured their suffering, as well as a sense that, as they watched them endure, that the suffering women seemed more at peace with their lives and closer to the Lord.<sup>87</sup> Pain, then, was, not just an admirable thing, but also something that made one a purer, more holy example for future generations. Consequently, religious society to some extent glorified and sanctified female pain and suffering. Some religious women embraced it

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<sup>84</sup> Arenal, Schlau, and Powell, *Untold Sisters*, 317.

<sup>85</sup> Arenal, Schlau, and Power, *Untold Sisters*.

<sup>86</sup> Meléndez, *Deviant and Useful Citizens*.

<sup>87</sup> Myers, *Neither Saints Nor Sinners*; Meléndez, *Deviant and Useful Citizens*; Arenal, Schlau, and Powell, *Untold Sisters*.

themselves, even exceeding their confessors' notions of acceptable mortification of the flesh, but the inherent *value* of their pain was imbedded in their society and their faith.

The Enlightenment in general did not encourage female pain the way that the Church did; however, it did naturalize it and disregard it through scientific inquiry. For example, throughout its five-year run, the *Mercurio Peruano* published numerous pieces on women's bodies and the "monstrosities" that they created. Inherent in these articles is a detached approach to the women's suffering—female discomfort or pain did not figure in the medical analysis.<sup>88</sup> Even regarding normal births, the pain of women was not a deep concern. The author of the piece on healthy pregnancies, for instance, cited pain and discomfort as potential symptoms of pregnancy trouble that women should avoid, but not for themselves so much as for the success of their pregnancies and thus their contribution to modern society.<sup>89</sup> He also did not spend any time contemplating the agony of childbirth, which is, of course, the natural culmination of a successful pregnancy.<sup>90</sup> The pain of women was at a distance for these authors, certainly secondary to their scientific observation of monstrous births and female bodies. In this framework, then, pain was neither sanctified nor of concern, simply a part of the female condition. These bodies were a vessel, for babies or for monsters, and so their capacity to sustain pain was not relevant to the men who studied them. Meléndez argues that such men saw women's bodies as "a machine in need of maintenance, repair, and proper order... Within this context shaped by the philosophies of the Enlightenment, the female body functioned as

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<sup>88</sup> Meléndez, *Deviant and Useful Citizens*.

<sup>89</sup> *Mercurio Peruano*, 5 de junio, 1791.

<sup>90</sup> *Mercurio Peruano*, 5 de junio, 1791.

an object to be scrutinized, and prescribed specific actions.”<sup>91</sup> In short, because they were machines, women’s bodies were not valued as human. Their pain was not part of the consideration of Enlightened medicine.

Put together, this combined glorification of and disregard for women’s pain that underpinned Lima’s late colonial gender norms indicates an important way in which patriarchy influenced the culture around sexual violence in Lima during this period. This belief systems primed men to disregard women’s pain (or at least not to think about it), but it also encouraged women to endure, embrace, or dismiss their own suffering. Throughout the remaining chapters of this dissertation, it will become clear that women did indeed suffer physical and emotional pain, though they and their advocates only underscored it in the context of religious devotion or maternal care for a daughter. The men who hurt them and who heard their cases in court were less concerned with their pain than with self-exculpation and disparities of caste and *calidad*, respectively. Indeed, the women themselves often endured a situation that caused them pain or discomfort, hoping to at least secure a future. Thus, the normalization and glorification of pain had a profound impact on the culture of sexual violence in late colonial Lima.

### *Honor, Community, and Sexual Encounters*

The importance of community opinion and public behavior in determining one’s sexual reputation has been well-documented by the existing literature. Although later sections of this dissertation will question its universal relevance, honor was an aspect of the sexual culture of Lima in the late colonial period that served a public marker of

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<sup>91</sup> Meléndez, *Deviant and Useful Citizens*.

respectability. While honor made female virginity all-important and required men to fight and defend their families, it could also be more complicated.<sup>92</sup> It also owed much to public perceptions and maintaining appearances, as opposed to strict realities. For instance, Ann Twinam demonstrates that, for much of the colonial period, well-born women who had children out of wedlock were not damaged by these births, provided that they could still maintain the public image of being virginal.<sup>93</sup> Similarly, the edited volume by Lyman Johnson and Sonya Lipsett-Rivera examines the various ways that individuals and communities behaved to protect honor or to restore it once lost. However, virginity-as-honor was also a paradigm that made it challenging for women to adhere to society's expectations, which became even more restrictive in the nineteenth century.<sup>94</sup> Thus the balance between behavior and public reputation was one that affected all of the women who will appear in the cases examined in this dissertation.

Although honor could be highly restrictive, one side effect of conducting research on sexual misconduct in a culture that values public behavior is that the community knowledge of the events and crimes is substantial. As Julie Hardwick's research into courtship in eighteenth-century France revealed, community members often were well aware of the progress of courtships, and provided intervention and resources to couples who exceeded their boundaries of what was appropriate.<sup>95</sup> Similarly, Christine

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<sup>92</sup> Caulfield, Chambers, and Putnam, *Honor, Status, and Law in Modern Latin America*; Chambers, *From Subjects to Citizens*; Johnson and Lipsett-Rivera, *The Faces of Honor*; Seed, *To Love, Honor, and Obey in Colonial Mexico*; Sloan, *Runaway Daughters*; Twinam, *Public Lives, Private Secrets*; Von Germeten, *Violent Delights, Violent Ends*.

<sup>93</sup> Twinam, *Public Lives, Private Secrets*.

<sup>94</sup> Caulfield, Chambers, and Putnam, *Honor, Status, and Law in Modern Latin America*, 6-7.

<sup>95</sup> Hardwick, *Sex in an Old Regime City*, 8.

Hunefeldt's research on quarrelling spouses in nineteenth century Lima indicate that the *barrio* (neighborhood) typically knew a great deal about people's personal lives and quarrels, especially since much of daily life was lived in proximity to one's neighbors.<sup>96</sup> Excerpts from court cases indicate that these observations also apply to sexual coercion cases in the late colonial period, where the local gossip networks seemed remarkably well informed about who had slept with whom and when. Nosy neighbors may be a huge annoyance to those who would like to keep their personal lives private, but they are a boon to court investigators and historians alike.

On numerous occasions in the late eighteenth and early nineteenth centuries, married men seduced impressionable young women by concealing their marital status and securing marriage licenses that they never turned in. Some men also promised marriage in writing and orally before witnesses, but then never fulfilled their promises. In each of these cases, the community's knowledge and awareness of the situations were central to the unfolding events as well as to the court proceedings. Indeed, while only a few young women testified directly during this period, each and every trial contained accounts from members of the girls' communities. These witnesses formed part of the local social network, and thus were an essential part of informally monitoring the sexual encounters of unattached young people. These cases will appear in more detail later in this dissertation, but for now, the extent to which girls' communities did and did not interfere in their sexual coercion will indicate the extent of public interest and awareness.

In 1752, a *mulato* man named Francisco de las Llagas ran away with a "*niña blanca*" (white girl) named Doña Ana de la Torre, the teenaged daughter of a cavalry

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<sup>96</sup> Hunefeldt, *Liberalism in the Bedroom*, 63-71.

officer, from her family's country house outside Lima. Her father Don Manuel de la Torre y Castaño ultimately found her hidden on a ranch named La Venturosa, returned home with her, and sued de las Llagas for *rapto* and *estupro*.<sup>97</sup> In the *sumaria* (initial summary) proceedings, a local laborer, a respectable housewife, and two cavalrymen who served with Don Manuel all related their knowledge and awareness of Doña Ana's abduction and their search for her. The laborer only knew what he had heard on the street—that de las Llagas had taken her and kept her captive at La Venturosa—but the housewife had witnessed the couple's flight while working in her garden, and spoke to Don Manuel when he began his search. Though it is not fully clear how he learned that his daughter was being held at La Venturosa, the two cavalrymen, along with Doña Ana's brother Mateo, accompanied him on his search, and recounted the events leading up to her recovery, including that she had hidden from the search party in a room that was full of Francisco de las Llagas's clothes.<sup>98</sup> Altogether, these testimonies indicate that social networking was powerful enough to locate someone from several estates away. The housewife had been working in her garden and seen them flee together; others had surely noticed a girl of obvious Spanish descent with a poor man of color as they traveled to La Venturosa, given that Don Manuel could trace their whereabouts so precisely in a relatively short span of time. Clearly, people were well informed about who lived in their neighborhood and what might be expected from them.

This level of scrutiny and informal supervision was also relevant in 1757, when Isidro Pérez accused Francisco de los Ríos of *estupro* and *rapto* of his daughter María

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<sup>97</sup> AGN, RA-CR3, 15. 191 (1752).

<sup>98</sup> AGN, RA-CR3, 15. 191 (1752).

Josefa, claiming, among other things, that Ríos had dealt in bad faith because he was already known to be married to a woman named Juana.<sup>99</sup> However, when Juana herself and other people in Ríos's network testified in the *sumaria*, it became clear that, not only did *she* not consider herself married (and had no marriage certificate to produce), but that he was not universally acknowledged as a married man in the community. Some of the local women had assumed he was married, but several other people had been aware that it was an informal arrangement. Moreover, Ríos's own social circles offered conflicting accounts of his intentions. One female friend and her mother reported that he had indicated that he was only intending to seduce María Josefa, not to marry her; whereas an older man recalled that Ríos had told him that he fully intended to marry María Josefa prior to having sex with her, and to do so against her parents' wishes as he knew they did not approve of him. This man counselled him not to act without asking first the permission of María Josefa's father, and Ríos became angry over this advice.<sup>100</sup> In this case, the casual but close observation of people around the couple is once again apparent, as is the fact that neighbors had clear ideas of what behaviors indicated probable marital status. Indeed, the women in the community were the ones who had believed he was married to Juana, presumably because they had been living together and, by Juana's own acknowledgement, because she had been providing for his domestic needs. They also knew enough to comment on his intentions, either because he had told them explicitly or because they knew his history.

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<sup>99</sup> AGN, RA-CR3, 19. 217 (1757).

<sup>100</sup> AGN, RA-CR3, 19. 217 (1757).

It might seem surprising that no one appeared to blame María Josefa, who had taken her aunt with her to Ríos's house to give her consent to marriage before a notary; everyone's discussion was around Ríos's intention. To help us understand, we might consider Shumway's interpretation of family and marriage disputes in early nineteenth-century Buenos Aires, which indicates that "it was quite common to fault the man in these situations and to argue that the woman was somehow blinded and deceived."<sup>101</sup> By community consensus, then, the girl's initiative could not have catalyzed events, even though community members did not seem to agree on the man's designs in pursuing this courtship. How active María Josefa's participation may have been is completely obscured by these assumptions, as she herself did not testify. María Josefa's sidelining reflects the same discounting of female voices that the *Mercurio Peruano* contributors exhibited—the men in her life, who were responsible for guiding her correctly, were of more importance than what she may have chosen.

The community was also essential in the successful prosecution of the 1775 *estupro* and *raptó* case against Bernardo Chabarrí, a married man who eloped with Francisca Javiera Carrera, the foster daughter of Ignacio Martínez, a well-respected and reasonably well-off man in the town of Bella Vista. From the neighbors' testimonies, the only person in town who had *not* known that Chabarrí was married was Francisca Javiera herself. His wife, a woman named Micaela, lived in the village of Chiclayo with their two daughters while he worked at a bakery in Bella Vista. Not only did two residents of Chiclayo confirm it and produce documentation, but Chabarrí's bakery coworkers and the owner of the *pulperia* (liquor store) had seen letters that Micaela had written to him that

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<sup>101</sup> Shumway, *The Case of the Ugly Suitor*, 90.

included best wishes from the daughters. Other neighbors had heard him refer to himself as a married man on several occasions.<sup>102</sup> This evidence indicated that Ignacio Martínez's fury at the deception of his daughter was well-justified; there was not a single member of Chabarrí's circle who did not know about Micaela and their daughters. The primary scandal to the community, based on Ignacio Martínez's testimony and that of other witnesses, was that Chabarrí had disgraced his own wife and children by attempting to abandon them, as well as the dishonor he had committed against Francisca Javiera by forcing her into bigamy without her knowledge. Clearly, they were well informed and had strong opinions on the matter. Their testimony was also a key part of Chabarrí's conviction, indicating that it mattered a great deal to the court officials.

What is curious about all three of these examples is that, in each case, the community had clear knowledge that something inappropriate had taken place, but rarely intervened directly. The housewife who saw Francisco de las Llagas leave with Doña Ana de Torres did not attempt to stop them or to call attention to it in the moment, but she was more than willing to talk to the court scribe who collected testimonies. Francisco de los Ríos's friends and confidantes all knew that he intended to do something about his relationship with María Josefa, but none interfered beyond giving him some seasoned advice. When Bernardo Chabarrí deceived Francisca Javiera, the community had a clear opinion that they used to sway the court's decisions, but took no other clear action to actively mediate or prevent the situation. These testimonies do not reveal the motivations for this behavior; whether it was bystander apathy or a sensibility that what happened in a man's household was his responsibility remains unclear. What is clear is that the actions

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<sup>102</sup> AGN, RA-CR3, 35. 419 (1775).

of these men met community standards for disreputability (dishonor), but not for intervention.

Some behaviors, however, did trigger an immediate response from bystanders. In 1776, Doña Hipólita Pérez claimed that she looked out her window into the alley below in time to see two men who lived across the way seize her eleven-year-old slave girl Tomasa and drag her into their lodgings. She took note of these men taking turns inside with the girl, while the other stood guard. When they locked Tomasa inside and left, Hipólita snuck over, borrowed a key from a neighbor, and went to release Tomasa from the room. The men returned and caught her at it, stabbing Hipólita in the arm with a pair of scissors, but she and Tomasa were ultimately able to escape.<sup>103</sup> This case is the only one identified in which someone sustained physical harm in an attempt to rescue a victim of sexual assault. Although Hipólita's intervention was after the assault, she took immediate personal steps to release Tomasa, rather than calling for help—perhaps because Tomasa, as a member of her household, was under her protection.<sup>104</sup> Regardless, it is clear from this testimony that Hipólita found the treatment of Tomasa unacceptable and acted to save her from worse harm.

The community's version of events was slightly contradictory when asked for their testimony in the *sumaria*, and again reveals a curious blend of awareness and disengagement. According to Rosa Josefa Galeano, she had been standing in her neighbor Gregoria's doorway talking with her at about seven in the evening on the day in question, when Gregoria articulated that she was keeping an eye out for a slave girl named Tomasa.

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<sup>103</sup> AGN, RA-CR3 37. 441 (1776).

<sup>104</sup> "Introduction," Johnson and Lipsett-Rivera, *The Faces of Honor*.

Rosa Josefa decided to keep watch too, but the girl disappeared in the company of the accused men, who later blew out a candle in their room to keep the events from being witnessed on the street.<sup>105</sup> Miguel Montiel, a merchant on the same street, recalled that Doña Hipólita and her husband Josef Guerre had stopped in his doorway to chat that evening. Hipólita had drifted back home, while Josef continued the conversation. After a time, Hipólita came back to tell her husband that she could not find Tomasa, at which point she began to go around calling the girl by name.<sup>106</sup> Miguel Montiel and Rosa Galeano concurred that she knew which rooms Tomasa was in because neighbors had seen the girl enter with the accused men, and only had access to a key because someone lent it to her.<sup>107</sup> Tomasa was clearly well-known in the neighborhood, to the point where Rosa Galeano and her neighbor Gregoria could identify her by sight on the street enough to “aguardarla” (wait for her—either they were supervising her movements on the street, or they had sent her on an errand; the testimony is not clear on this point). Other neighbors had seen where she went, and knew something was untoward about the situation, to the point that someone had lent Hipólita a key to break into the apartment where Tomasa was being held. And yet no one had tried to prevent Tomasa from being taken to that room in the first place; they left it up to her owner Doña Hipólita to identify the threat and then release her. The knowledge was there, and readily shared, but they clearly did not consider the girl’s well-being their responsibility. Perhaps this relates to the notions of honor and responsibility cited earlier. As Tomasa’s owner, Doña Hipólita

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<sup>105</sup> AGN, RA-CR3 37. 441 (1776).

<sup>106</sup> AGN, RA-CR3 37. 441 (1776).

<sup>107</sup> AGN, RA-CR3 37. 441 (1776).

was responsible for her welfare and thus had a duty to defend her. The neighbors were under no such obligations, and perhaps measured Hipólita's worth by her own response.

The second example comes from an 1815 case involving a teenager's elopement. After some persuasion, Manuel Caballero induced Carmen Venegas to run off with him. The two lodged at his sister Paula's house, during which time Caballero became increasingly violent, to the point where Paula kept him from dragging Carmen into the street, and then later helped the girl to escape the house. Three women who lived next door to Paula sheltered Carmen, despite not knowing her previously, until her father arrived two days later.<sup>108</sup> This high level of solidarity among the women of the Caballero network is a strong indicator that, in specific circumstances, communities did indeed take action to prevent further violence. Indeed, research into domestic violence by Hunefeldt, Stern, Uribe, and others indicates that such interventions were not at all uncommon when abuse escalated past what neighbors thought appropriate. For instance, Hunefeldt relates several cases from the mid-nineteenth century in Lima where neighbors broke down doors to pull an enraged husband off his female partner when they heard screams and sounds of violence from inside a locked house, even if the couple were not formally married.<sup>109</sup> Stern's analysis of gendered violence in Mexico indicates that such intervention often broke down along gendered lines, with women protecting younger or more vulnerable relatives when their spousal rights were violated.<sup>110</sup> In a similar vein, Uribe's comparative analysis of spousal killings in Spain and Latin America shows

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<sup>108</sup> AGN, RA-CR4, 130. 1586 (1815).

<sup>109</sup> Hunefeldt, *Liberalism in the Bedroom*, 69.

<sup>110</sup> "Introduction," in Stern, *The Secret History of Gender*.

family members in Mexico, Spain, and Colombia intervening when violence escalated, sometimes sustaining severe injuries themselves.<sup>111</sup>

Carmen's experience fits within this mold. Despite the fact that she was a newcomer to the Caballero household—and an informal one at that—Paula still considered her enough of a member of the household to prevent her brother from killing her and to help her escape him. Furthermore, the women next door, whom Carmen admits were perfect strangers to her, were willing to hide her and give her house room until her own family collected her a couple days later. This indicates a strong sense of community responsibility in cases of excessive violence, even when young women were only informally connected to such networks.

These cases and those in which neighbors witnessed rather than intervened indicate that sexual encounters and personal relationships were a community affair in many ways. People generally had a good idea of who was sleeping with whom, about which couples were married (or not married); and about what behaviors could be overlooked, which constituted disgraces, and which required intervention. When asked in the context of a court investigation, these observations and opinions appear to have been readily shared with the scribes who collected testimonies. And, as future chapters will indicate, *fear* of the community's judgement was just as powerful a force as the actual judgement itself. Therefore, any consideration of sexual coercion in late colonial Lima must take into account the involvement and attitudes of the community.

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<sup>111</sup> Uribe Urán, *Fatal Love*.

## *Conclusion*

In late colonial Lima, sexual and gendered norms were rooted in long-standing Catholic interpretations of female nature, themselves originating in the Bible and in the ancient world. The Enlightenment, instead of contradicting or changing these ideas, reframed narratives about sin and corruptibility with capacity for reason and natural abilities. This meant that, while men *expressed* patriarchy differently, its core traits remained unaltered. Similarly, although the Enlightenment replaced Catholicism's glorification of pain with a kind of scientific detachment, Lima's patriarchal society still viewed women's pain as something not worthy of concern. And finally, honor and the importance of community reputation remained an essential part of culture and thus of women's experiences. Community members often had considerable knowledge of and opinions regarding the personal lives of those around them and, though they rarely intervened directly, their accounts became a key part of court procedures.

Patriarchy, pain, and community are the elements of Lima's culture in the late colonial period that form the basis of the analysis in the upcoming chapters: consent, judicial and litigant priorities, and the emotional experiences of individual women. Understanding the gender biases inherent in Lima's society makes it possible, not just to comprehend the logic behind court decisions, but also to see the decisions that women made to advocate for themselves (or not) within this system. Pain, for its part, was part of the emotional landscape as well as a subtle part of patriarchal control over female bodies. It also complicates the notion of a male-imposed system, as some religious women felt that inflicting pain on themselves brought them closer to God. The community, in turn, influenced people's hopes, fears, and access to resources, which affected how individuals

and families experiences and dealt with sexual coercion. Together, Enlightenment, pain, and community involvement represent the major social constraints and networks that victims of sexual assault navigated when their suits appeared in court, as well as the cultural influence behind judicial priorities and decisions. These decisions and priorities will be examined more closely in Chapter Three.

*Chapter Two: Reciprocal Contracts*  
*Reconstructing Sexual Consent in Late Colonial Lima*

Many of the cases examined in this dissertation have elements that might make modern readers especially uncomfortable. Most of the violated women were teenagers seduced by older men, sometimes with the help of other adults. Some were lured into leaving their families, and then subjected to mistreatment. However, in some ways, the progression of these relationships fit many *limeños*' assumptions about courtship. During the late colonial period in Lima, as in much of the rest of the Spanish Empire, it was expected that men would be sexually aggressive and women would be passive and receptive.<sup>112</sup> Therefore, a certain amount of coercion was expected in courtships—a woman must resist for her good name, but a persistent man might overcome this maidenly shyness. In many of these situations, what was really of concern to authorities in this case was the existence of a marriage promise, which many couples in such cases entered into without parental approval. The issue, therefore, was not whether a woman had been coerced into having sex with a man against her will, but rather whether her father's ability to consent for her had been violated. For well-to-do girls, who were not allowed to marry without parental approval, their parents' right to consent was central to their marriages and thus to their sexual encounters.

Consent remains one of the most challenging elements of sexual coercion to historicize, especially in Latin American history. The field's traditional focus has been on

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<sup>112</sup> Johnson and Lipsett-Rivera, *The Faces of Honor*; Catherine Jaffe, "Contesting the Grounds for Feminism in the Hispanic Eighteenth Century: The Enlightenment and Its Legacy" in *Routledge Companion to the Hispanic Enlightenment*, Jaffe, Lewis Franklin, and Bolufer, eds (2020).

marriage choice, on families and children, or on honor as a prism refracting gendered sexual dynamics. While this existing scholarship has demonstrated that many women had choices in their partners and advocated for their own well-being in court, it has yet to consider sexual consent as separate from marital consent, or to look beyond honor as a social framework in interrogating notions of free will in sex.<sup>113</sup> Nonetheless, sexual consent was part of Lima's culture in the late eighteenth and early nineteenth centuries, though not in the ways that twenty-first-century readers might expect. In late-colonial Lima, authorities and civilians defined consent flexibly in terms of contracts and agreements, and raised objections when their personal definitions of consent were not met.

This work owes much to prior research on marriage and sexual coercion in Latin America. Indeed, much of the field's awareness of women's autonomy in relationships comes from substantial research on marriage choice.<sup>114</sup> However, marriage choice does not account for several factors that themselves are essential to my framework. First, as María Emma Mannarelli and Christine Hunefeldt demonstrate, the majority of *limeños* lived with long-term partners rather than be married in a church. These unions produced offspring and, in the eyes of the community if not the state, carried social legitimacy roughly equal to marriage.<sup>115</sup> Additionally, many married men had affairs and fathered

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<sup>113</sup>Gauderman, *Women's Lives in Colonial Quito*; Black, *The Limits of Gender Domination*; Seed, *To Love, Honor, and Obey in Colonial Mexico*; Johnson and Lipsett-Rivera, *The Faces of Honor*; Uribe Urán, *Fatal Love*; Lavrín, *Sexuality and Marriage in Colonial Latin America*.

<sup>114</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico*; Shumway, *The Case of the Ugly Suitor*.

<sup>115</sup> María Emma Mannarelli, *Private Passions and Public Sins: Men and Women in Seventeenth-Century Lima*. Sidney Evans, trans. (Albuquerque: University of New Mexico Press, 2007). Hunefeldt, *Liberalism in the Bedroom*.

children with their mistresses, and, as Ann Twinam points out, these relationships were often long-standing and publicly acknowledged; fathers frequently legally recognized these “illegitimate” children and incorporated them into their households.<sup>116</sup> Taking these factors into account, I consider voluntary sexual encounters as separate from, but overlapping with, marriage. *Limeños* clearly had sex out of wedlock at least as often as they did within it, and as such any argument about consent needs to account for extramarital as well as intramarital sex.

In addressing these concerns, this chapter makes two significant interventions in Peruvian gender history and in legal history. First, by approaching sex separately from marriage, it reveals that colonial *limeños* did indeed view valid sex as requiring agreements between parties. These agreements could be based on pragmatic concerns, like marriage promises, and women of multiple social classes initiated lawsuits when they felt these agreements had been violated. Considering the contractual, sacramental background of marriage promises broadens our modern understanding of what constitutes legal sexual consent in a historical sense, and thus allows us to avoid presentistic assumptions about sex in the past. Additionally, circumventing the traditional honor paradigm and instead following the language of choice and contract, brings into clearer view the sexual choices that women did and did not have the ability to make, and the ways in which they set the terms of sexual encounters for their own protection. It also reveals how they presented those choices in a world that defined ideal female respectability in terms of virginity, thereby complicating our awareness of female sexual agency within patriarchy. Women could and did use promises of marriage and promises

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<sup>116</sup> Ann Twinam, *Public Lives, Private Secrets*.

of manumission as evidence of verbal contracts they felt protected them. Many, though not all, of these arguments were successful, indicating that *limeños* did indeed see sex as only valid with agreement.

In addition to sexual coercion cases, I rely on a number of contemporary published sources to provide social context. Ecclesiastical judges relied on Church doctrine, canon law, and judicial license to make decisions. Thus, in addition to the Council of Trent (1545-1563), which set the doctrinal standards for the entire Catholic world after the Protestant Reformation, this analysis incorporates a catechism published in Rome in 1761 and then republished in Spain in 1803. Together, these sources constitute official Church stances on marital consent, stances that the archbishopric's tribunal supported in various ways when presented with seduction cases. A further volume, *El perfecto confesor*, was first published in Spain by a bishop from Ecuador in the late 1640s, and set out standards and responsibilities for Spanish Catholic priests in the New World. Taken together with legal codes and manuals, these materials provide the legalistic backdrop against which litigants entered their pleas in ecclesiastical court and canon judges made decisions.

Similarly, the context for the secular court comes from law codes—especially the *Siete Partidas* and *Novísima Recopilación*—and from the practical manuals published to aid jurists. While it can be challenging to know exactly how judges decided cases, these sources are representative of the body of materials available to legal professionals. Because of the pluralism of the Spanish legal system, with its overlapping and conflicting jurisdictions, not only did *limeños* had a choice of which court to appeal to, but judges and lawyers had many different but equally important codes on which to base arguments.

The *Siete Partidas*, sponsored in the thirteenth century by King Alfonso X of Spain, remained a highly influential piece of legislature well into the nineteenth century and included codes on marriage and sexual coercion, along with brief essays explaining the logic of these laws. The *Novísima Recopilación*, on the other hand, was a collection of laws updated in 1805 and based on the 1680s *Recopilación de Indias* published to help govern Spain's new empire. These laws did not supersede the *Siete Partidas*, nor were they necessarily new; they were simply a compilation of individual rulings that had been issued for the New World and compiled in an order that the Crown wished jurists to emphasize. Other royal decrees, like the 1776 Royal Pragmatic on Marriage, provide further insight into the secular court's official prescribed stances.

Again, these findings derive from a close reading of around forty cases extant for the period—a treasure trove of material, even if not particularly voluminous. Even beyond finding documentation that gives us glimpses into ordinary *limeños'* experiences with sexual assault and narrating it before the law, another challenge is finding a way to ethically discuss past violence in a way that honors the victims, while not superimposing modern values on times and places with different value systems. Sexual coercion and the violence that often accompanies has been a major traumatic force in many women's lives for centuries. This work does not seek to downplay this historic, inherited trauma, but rather to understand the cultural and legal limits within which women advocated for their sexual choices and within which families sought to control their children's sexual conduct. The goal is not to show that rape was rare in colonial Lima—indeed, everything that we know about the underreporting of sexual assault indicates that the forty cases in this paper are almost certainly the tip of an enormous iceberg—but rather to show that

women with the ability to sue their antagonists in court advanced a contract-based concept of consent in their narratives, attempting to redress a broader world of vulnerability and sexual disadvantage with legal advantage.

*The Power of Mutual Contract: Consent in the Ecclesiastical Court*

The most obvious place to begin any discussion of consent in colonial Lima is with the Church, which long served as the ultimate arbiter of marriage and sin, and thus, by extension, sexual practices. While its political authority diminished during the eighteenth century, much of its cultural and religious authority remained, and thus its definitions of consent informed, interactively, those held by society at large. Although sex and marriage were indeed separate concerns, as evidenced by high rates of concubinage and illegitimacy throughout the colonial period, the Church saw these two behaviors as inextricably connected. Therefore, doctrinal definitions of consent revolved exclusively around marriage, and sex came as a necessary byproduct of a marital union.

While the main document referenced by clerics and theologians during the eighteenth century was the Council of Trent (1545-1563), the best place to encounter the full contemporary doctrine on marriage is either in a catechism or in a confessor's manual, for the simple reason that Catholic doctrine is the cumulative result of centuries of councils and treatises. Whereas the Church's stance on marriage developed over time, these didactic texts condensed centuries of documents into one set of policies for the convenience of parishioners and those ministering to them. Indeed, the Church's desire to maintain the sanctity of marriage as a sacrament meant that each text meticulously stipulated correct procedure, even if the details were not uniform between texts.

The 1761 edition of the *Catecismo del Santo Concilio de Trento* (Catechism of the Holy Council of Trent) was especially direct in its definition of marriage. According to this document, “marriage is consent of the man and woman’... because obligation and connection cannot be born without consent and agreement.” Additionally, “consent must be expressed with words that signal the present tense because Matrimony is not a simple gift but a reciprocal contract. In this way, consent of only one person cannot be sufficient to constitute Matrimony, because it is necessary that it be mutual between both [people].”<sup>117</sup> This explicit prioritization of consent in official Church doctrine reflected doctrinal logic—if marriage was an indissoluble union by nature, then it was essential that all marriages happen legitimately and free from coercion to prevent one (or both) partners from being, in effect, imprisoned. It also reflected the Church’s definition of marriage as a mutual contract—if both people did not consent to a contract, then a contract could not be valid.

It is worth taking a moment here to discuss the word “contract.” In this document, the words that I have translated as “contract” appear in Spanish as verbs: *contraer matrimonio*, to contract marriage; and as nouns: *un pacto recíproco*, literally translated as a reciprocal pact. However, while a pact (in modern English) is a nonbinding verbal agreement, this catechism makes it clear that this *pacto recíproco* is also *un lazo indissoluble*, an indissoluble link.<sup>118</sup> Thus, the word “contract” is more accurate than

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<sup>117</sup> *Catecismo del Santo Concilio de Trento*. First edition: Rome (1761). Reprinted: Madrid (1803). See also *El perfecto confesor*.

<sup>118</sup> *Catecismo del Santo Concilio de Trento*. First edition: Rome (1761). Reprinted: Madrid (1803).

“pact”, despite the verbal nature of the promise, because it carried the full force of canon law and could not be dissolved except in extreme circumstances.

Because Church authorities defined marriage as a reciprocal contract, some litigants in marriage complaints framed their arguments in contractual terms as well. For instance, in 1783, Juan Aguilar sued a twenty-five-year-old indigenous man named Gregorio Bernal for *estupro* and seduction of María Carrasco, Aguilar’s ward. When questioned in prison, Bernal said that he had slept with Carrasco under promise of marriage, but that it was impossible for him to have “corrupted her virginity” because she was not actually a virgin.<sup>119</sup> After his questioner pressed him to recant this “false” story, Bernal doubled down. The notary recorded his answer in the third person: “Although he gave her his promise of marriage, it was under the condition that she be a maiden and this not being so, the confessant is free of the crime imputed to him.”<sup>120</sup> Ultimately, this argument was successful; the judge ruled that there was not enough evidence to resolve the discrepancy between Aguilar’s accusations and Bernal’s statements and refused to convict.<sup>121</sup> Bernal’s argument was explicitly based on contractual language—his understanding with María Carrasco was based on a set of conditions, and their union depended on those conditions being met. According to this interpretation, Bernal was not at fault for not complying with his promise because Carrasco had not upheld her end of the bargain. As such, their mutual contract was null and the marriage need not take place.

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<sup>119</sup> AAL, *Causas Criminales de Matrimonio* VII: 18 (1783).

<sup>120</sup> AAL, *Causas Criminales de Matrimonio* VII: 18 (1783).

<sup>121</sup> AAL, *Causas Criminales de Matrimonio* VII: 18 (1783).

The fact that the ecclesiastical judge found this argument compelling further underscores the importance of mutual marriage contract to the Church.

Contractual obligation in marriage is also at the heart of several cases in which women sought injunctions from the ecclesiastical court against long-time partners who sought to marry other women. In such cases, the women typically petitioned the court to prohibit their partners from taking out a license to marry a new lover. Each of these women claimed that their partners were bound by marriage promises to them, and as such could not marry someone else.<sup>122</sup> These arguments rest on a Church technicality regarding marriage promises. Marriage promises—*esponsales*—were, under the right circumstances, just as binding as marriages. Indeed, the criteria for valid *esponsales* were similar to those for a real marriage: the couple had to enter into this promise before witnesses and had to have consented verbally.<sup>123</sup> In *disensos*, many couples tried to use the existence of an *esponsal* as leverage against their parents. Patricia Seed and Jeffrey Shumway each recount cases in Mexico and in Argentina in which couples presented letters or provided verbal testimony as to their intentions or promises.<sup>124</sup> While some of these promises were considered sufficient proof of attachment, others were not, especially if there were no witnesses.<sup>125</sup> In many sexual coercion cases, it is not clear whether the marriage promises in question met these technicalities; however, in some cases, such promises were of some years' standing and carried enough weight that

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<sup>122</sup> See, for example: AAL, Causas criminales de matrimonio VI: 1 (1703/1704).

<sup>123</sup> Francisco Antonio de Elizondo, *Práctica universal forense de los tribunals superiores de España y de las Indias* (Madrid, 1779); see also: Council of Trent (1545-1563), Twenty-Fourth Session; and *Las Siete Partidas*, Partida 4 Title 1.

<sup>124</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico*; Shumway, *The Case of the Ugly Suitor*.

<sup>125</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico*; Shumway, *The Case of the Ugly Suitor*.

couples could live together and start a family. It is also clear that some women viewed, not only the promise, but also the subsequent sexual encounters as contracts that must be honored. In this sense, a man's initial consent to a union could be as irrevocable as marital consent because he and his partner had lived under it for years and had produced children together.

The Church's emphasis on marital consent created two key terms: *voluntad* (free will) and *consentimiento* (consent). *Voluntad* is a term with spiritual origins, referring to the notion that God gave humans free will to make their own decisions. In marital terms, it was essential for each party to exercise their free will in agreeing to the union because not doing so violated the sanctity of the sacrament of marriage. *Consentimiento*, on the other hand, constituted a legal definition of sorts within the marriage ceremony; indeed, establishing consent was a critical part of the priest's role in performing a marriage. For such a union to be binding, both parties had to verbally (or with unmistakable signs) agree in the present-tense—"I do" being the modern example.<sup>126</sup> As such, both of these terms appear on multiple occasions in marriage litigation, and were frequently used in conjunction with one another.

One example of the alternate use of these terms in marriage litigation is the 1776 case against Josef Falcón, brought by Doña Josefa Muchotrigo on behalf of her fourteen-year-old daughter Isabel. Josefa stated her complaint, that Josef Falcón (a *chino*, or mixed-race, silversmith) seduced and violated her daughter, asking that he be imprisoned and his goods confiscated. Josef responded with his own version of events (in which

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<sup>126</sup> *Catecismo del Santo Concilio de Trento*. First edition: Rome (1761). Reprinted: Madrid (1803). See also: Council of Trent (1545-1563), Twenty-Fourth Session; and *El perfecto confesor*.

Isabel had been a willing partner) and claimed innocence.<sup>127</sup> The court record of Isabel's words explicitly invoked free will:

[The declarant says that] they gave each other promise of marriage on the eve of [the feast day of] San Antonio the previous year, that for this reason the referred-to Josef Falcon gave her various items; and after this action said Josef Falcon enjoyed her with her own pleasure and free will [*voluntad*], as well as on other hidden occasions, as she had, has, and will have him as her legitimate husband... as the [marriage] license was taken out with consent [*consentimiento*] given before a notary, she turned her person over to the referred-to Josef to enjoy her, as her legitimate husband...<sup>128</sup>

From a doctrinal perspective, Isabel's claims met all the criteria of a valid reciprocal contract—verbal consent before an authority, the giving of tokens (though it is not fully clear what these tokens were), and the physical consummation of the marriage. By virtue of this declaration alone, their union should have been legally binding.

However, subsequent declarations in this trial reveal a different framing of *consentimiento* and *voluntad*. Upon hearing her daughter's rather bold assertion, Doña Josefa Muchotrigo forced Isabel to retract her initial statement claiming Josef Falcon as her husband. In this retraction, Isabel said that she had been afraid of her mother and thus had not wanted to admit to her seduction. Regarding her initial assertion of *voluntad*:

[Isabel Muchotrigo stated that]...he corrupted her virginity without giving her a chance to defend herself and that this came to pass on the eve of [the feast day of] San Antonio the previous year. It is true that he gave her various items without her mother's knowledge, and that later he did [such acts] with the declarant's free will [*voluntad*]. [And] although she lent her consent [*consentimiento*] to marry the aforementioned Falcon, this she executed poorly advised...<sup>129</sup>

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<sup>127</sup> AAL, Causas Criminales de Matrimonio VII: 14 (1776).

<sup>128</sup> AAL, Causas Criminales de Matrimonio VII: 14 (1776); "se dieron palabra de casamiento bajo de la qual la víspera de San Antonio del año pasado, disfrutó de su persona del referido Josef Falcon, quien por esta Razón le dio varias cosas; y después de este acto en que el dho Josef la goso con su gusto y voluntad, también hizo oculta en diferente veces cono que lo tenia, tiene y tendrá por su legítimo marido..."

<sup>129</sup> AAL, Causas Criminales de Matrimonio VII: 14 (1776). "le corrompió su virginidad sin que le valiese a la declarante el haberse defendido lo que acaesio la víspera de San Antonio del año pasado. Que es cierto le

The legal dance that Isabel executed in this second declaration reveals additional facets of *consentimiento* and *voluntad*. First, she never fully contradicted her original testimony but rather framed it so that one key element—consummation—happened in a coercive way prior to her consent to the marriage. This one small detail changed several critical legal points without requiring her to completely recant her initial story. Because, in this narrative, their first sexual encounter happened outside of marriage and without her acquiescence, her later *voluntad* and the respectability of her lover were both called into question. Additionally, the Church defined sex prior to marriage as “simple fornication”, which meant that Isabel could argue that her illicit union with Falcon had not been consummated and thus was invalid.<sup>130</sup> Indeed, in her second declaration, Isabel was careful to emphasize the initial corruption of her virginity rather than their later encounters. Her assertion that her consent was “poorly advised” further underscored her lack of responsibility.

The apparent conflict between Isabel and her mother Doña Josefa is indicative of a broader change that began earlier in the eighteenth century but became codified in 1776, the same year that Doña Josefa filed suit. For the first two centuries of Spain’s American empire, the Spanish Catholic Church as an institution had tended to privilege the wishes of couples seeking marriage over those of their parents. The eighteenth century, however, saw the increasing capitulation of ecclesiastical courts in favor of dissenting parents, although no legislation was passed to that effect until the second half

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dio varias cosas sin que su madre supiese, Que posteriormente hizo de la declarante con su voluntad. Que aunque prestó su consentimiento para casarse con el mencionado Falcon esto lo executo mal aconsejada...”

<sup>130</sup> *Catecismo del Santo Concilio de Trento*. First edition: Rome (1761). Reprinted: Madrid (1803).

of the century.<sup>131</sup> Ultimately, in 1776, King Carlos III of Spain issued the *Pragmática Real*, the Royal Pragmatic on Marriage, stating that *parental* consent was a legal requirement of marriage for anyone under the age of twenty-five.<sup>132</sup> This decree extended to Spanish America in 1778, giving complaints and tactics of parents like Josefa the force of law behind them. As the next section will demonstrate, parental rights became the focus of sexual coercion cases throughout the late eighteenth century, and thus the consent of the individuals in question became almost completely irrelevant in many cases.

#### *Consent in Seduction: The Rights of Parents*

As scholarship on marriage and on legal minority reveals, parental consent in marriage had become a major judicial priority by the late eighteenth century. Patricia Seed indicates that parental involvement in marriage petitions became increasingly vocal throughout the eighteenth century, to the point where the Church courts in Mexico began supporting parents' wishes over those of the couple seeking marriage.<sup>133</sup> This change was, in part, because of the decreasing power of the Church throughout the Bourbon period, but also because of increasing power of heads-of-household. This emphasis on the will of (male) family heads served to underscore the power of the king as the Patriarch of the empire, and thus increased state reach.<sup>134</sup> This combination of patriarchy and secular

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<sup>131</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico*, 3-10.

<sup>132</sup> Royal Pragmatic on Marriage, cited in Seed, *To Love, Honor, and Obey in Colonial Mexico*; Shumway, *The Case of the Ugly Suitor*; and Premo, *Children of the Father King*.

<sup>133</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico*, 5.

<sup>134</sup> Bianca Premo, *Children of the Father King*, 9-12.

power is the key to understanding many of the seduction cases presented before Lima's secular courts during the late colonial period. The young women at the heart of these cases almost never sued on their own behalf; the head of their household typically brought the case on their behalf. The issue at hand, as the subsequent cases will show, was seldom what the girl herself had intended but rather what her guardian had known and approved of.

The *Pragmática Real* codified the centrality of parental consent for marriage for the first time, but it also reflects existing contemporary attitudes that viewed children (daughters in particular) as familial assets or possessions. By the time the *Pragmática* was promulgated in the 1770s, many parents already felt that their “rational” thought and care for their children’s future outweighed any passion that young people might feel.<sup>135</sup> As the Bourbon state expanded the legal influence of patriarchs (albeit with the legal stipulation that children could contest parental opposition in court), objections to “unequal” or “inappropriate” matches became part of generational conflicts around love and marriage.<sup>136</sup> This attitude is particularly evident in a case brought by Melchor Navajas in 1775 on behalf of his daughter, Margarita. Although Navajas accused a *mulato* man named Joseph Perales of *rapto* and seduction, his lawyer defined the crime as “thinking to, with a marriage license, remove the daughter of the supplicant from his side,” rather than as any particular violation of Margarita as an individual.<sup>137</sup> The crime was not, according to this definition, in violating the will of the daughter—indeed,

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<sup>135</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico*, 3; Shumway, *The Case of the Ugly Suitor*, 94-95.

<sup>136</sup> Shumway, *The Case of the Ugly Suitor*, 68-71.

<sup>137</sup> Archivo General de la Nación (AGN), *Real Audiencia Causas Criminales* XVIII 34.410 (1775).

because the word *rapto* is rather ambiguous, the court proceedings never made it clear whether she eloped willingly or was abducted—but in taking her from her father’s house without *his* consent. This emphasis aligns with both Navajas’s self-identified race and class—a white Spaniard with enough means to afford a professional scribe—but also with the Crown’s increasing emphasis on parents’ ultimate authority over their children’s relationships (this case was filed the year before the *Pragmática Real* was proclaimed in Spain). In this case, by giving fathers like Navajas the ultimate right of consent, the courts simultaneously reinforced masculine and royal authority, and maintained racial and social status quos.

In addition to local attitudes that privileged parental consent, Melchor Navajas also had traditional Spanish laws on his side. The *Siete Partidas* explicitly discussed *rapto*, and made it a crime to remove any woman, even one’s fiancée, from her household without her father’s consent.<sup>138</sup> This law was initially a reaction to the practice, common in the medieval period, of ritually kidnapping one’s fiancée from her father’s house and running off with her.<sup>139</sup> The ambiguity of the term *rapto*—which can mean either kidnapping or elopement—is a relic of this tradition and renders discernment of a woman’s participation challenging. In this case, however, both new and traditional laws supported Melchor Navajas’s anger at the departure of his daughter, and the courts were willing to hear his petition to uphold his patriarchal rights.

Because the Navajas family claimed to be white Spaniards, Margarita’s plight illustrates race- and class-based aspects of sexual consent in colonial Lima. Consensual

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<sup>138</sup> *Siete Partidas*, Partida 7, titles 17-20.

<sup>139</sup> Burns, *The Siete Partidas*, vol 4, xxii.

unions were in fact more common than actual marriages throughout most of Lima's colonial period, especially among the lower and working classes (which were predominately people of color). As a result, most children were technically illegitimate, but many were acknowledged by both parents and raised in a two-parent household.<sup>140</sup> The elites, most of them white or *mestizo*, used their own ostentatious sexual purity as a moral justification for continued rule.<sup>141</sup> Because elites like the Navajas family conflated sex and marriage, and claimed the right to decide marriage for their daughters, that meant that they effectively controlled (or attempted to) their daughters' sexual autonomy as well. Thus, elite girls did not have the legal or cultural ability to consent to sexual encounters or to marriage, and any such acts that took place without their father's permission could be prosecuted in a court of law

When the head of house was a woman, the emphasis on parental consent was somewhat different. When Sebastiana Lazo accused schoolteacher Manuel Espinoza of violating her adolescent daughter María González in 1779, her own behavior came under close scrutiny. According to her initial declaration, Lazo had sent María out to Espinoza's school for lessons, during which he had sexually violated her. As in the Navajas case, the emphasis was on the mother's complaint, rather than on the young woman's testimony. However, in this case, because Lazo had sent María out of the home unsupervised to a school largely populated by boys, the concern was less that someone had violated the head-of-house's control over the household, but rather that this mother's supervision of her daughter had not been sufficient. Indeed, this lack of maternal protection was a key

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<sup>140</sup> Mannarelli, *Private Passions and Public Sins*.

<sup>141</sup> Mannarelli, *Private Passions and Public Sins*.

part of Espinoza's defense. He claimed that he had offered to tutor María at home to protect her honor from his male students, but that, when Lazo insisted on sending her out to the school, he had issued strict instructions that she was not to arrive before three in the afternoon (at which point the boys would have left). María had, Espinoza said, arrived rather earlier than that time on several occasions, so if she had been violated, it was probably the fault of one of his students.<sup>142</sup> Moreover, such a lapse was not his fault, because the mother had insisted on sending her young daughter out of the house and had not taken care to ensure her timely arrival at the school. If something bad had happened to María, then it was her mother's fault for exposing her to boys without proper safeguards, and the girl's own fault for not obeying instructions.<sup>143</sup> This defense was ultimately successful; the judge concluded that, as Espinoza was an honorable man with daughters of his own, he was not responsible for María González's violation; Sebastiana Lazo should have kept better watch over her household if she wanted to be able to control who had access to her daughter.

Implicit in both the Navajas and Lazo cases is a gendered division of space, and this division of space emphasizes the varying roles of parental consent. By the late eighteenth century, the street was considered a masculine space, the home as a feminine one. Streets were loud and dirty places, where men and lower-class women of color performed physical labor and conducted business. The home was a quiet, domestic space protected by the male head-of-house from this dangerous world, and (white) women's

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<sup>142</sup> AGN, *Cabildo Causas Criminales* CA-JO 2 196/180 (1779).

<sup>143</sup> AGN, *Cabildo Causas Criminales* CA-JO 2 196/180 (1779).

safety depended on the privacy of the home.<sup>144</sup> Thus, Melchor Navajas had the right and the duty to prevent men's access to his daughter, Joseph Perales had violated that right by seducing Margarita, and Navajas had every right to sue him for raptó and estupro.

Sebastiana Lazo, as head of her own household, had the same duties of protection to her daughter, but had not upheld her obligation. In a literal sense, by willfully sending María out of the protected home into the street without supervision, she had consented to her daughter becoming a kind of public property. If men treated María as such, then it was her mother's fault for sending her onto the streets in the first place. Parental protection, then, was a key part of their ability to consent on their daughters' behalf.

Between 1750 and 1820, only one woman directly sued a man in royal court for sexually coercing her, but many ways, this case is similar to the *estupro*, *raptó* and cases heard in the ecclesiastical court during the same period, as well as to several contemporary secular *estupro* cases from northern Spain.<sup>145</sup> This case indicates that *limeños* had an active concept of, not just individual consent, but also reciprocal contracts in the secular sphere. In 1785, a woman named Manuela Pando sued Don Lorenzo Descalzo on the grounds that she had had a sexual relationship with him under promise of marriage and become pregnant, but that he had abandoned her. She requested that the court force him to make good on his promise, or to pay substantial damages for her

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<sup>144</sup> Sonya Lipsett-Rivera, *Gender and the Negotiation of Daily Life in Mexico, 1750-1856* (Lincoln: University of Nebraska Press, 2012).

<sup>145</sup> AGN, RA-CR3 56. 651 (1785). These Spanish cases, comprise three cases from Zaragoza between 1740 and 1790 in which women independently sued their antagonists for *estupro*. There may be other eighteenth-century cases in the Spanish archives, but these cases were the only ones available digitally at the time of my initial search.

medical expenses and the support of their child.<sup>146</sup> Pando clearly saw her sexual relationship with Descalzo as a mutual contract—he agreed to marry her, so she was willing to have sex with him. Her agreement, which approximates consent, was based on those terms. When he violated those terms, he violated her agreement, and she felt entitled to legal recompense. This situation indicates that, as seen in the previously-discussed ecclesiastical cases, some women did indeed consent to their sexual unions, perhaps even on terms that they themselves dictated. It is neither possible nor appropriate to apply modern definitions of consent to Pando’s case; the declaration does not indicate whether she was coerced in any way, nor does it seem to matter culturally whether he pressured her. However, she clearly agreed to sexual encounters with a certain outcome or exchange in mind, and his failure to follow through constituted, in her view, a violation of her consent.

As different as each circumstance was, the cases involving Manuela Pando, María González, and Margarita Navajas had one thing in common: the need to justify their good reputation and thus the impossibility that they could have agreed to participate in casual premarital sex. This set of arguments is part of every single sexual coercion case presented in Lima during this period, and was legally founded on the *Siete Partidas*, the mid-thirteenth-century code of Spanish law that remained essential in Spanish America throughout the colonial period. Indeed, the *Siete Partidas* codes on *estupro* and *rapto* remained completely unaltered until the 1805 *Novísima Recopilación*, which merely added onto the original *Siete Partidas* statutes.<sup>147</sup> The *Siete Partidas* defines the crime of

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<sup>146</sup> AGN, *Real Audiencia Causas Criminales* XVIII 56/651 (1785).

<sup>147</sup> *Novísima Recopilación* (1805).

*estupro* as forcing oneself upon a nun, a widow, or a “virgin of good reputation.”<sup>148</sup>

These categories are essential, because they represent women who were thought to be respectable and thus unlikely to have invited sexual advances. Central to *estupro* cases, then, was the burden of proving, as the prosecuting party, that the victim fit within one of these protected categories and thus deserved the justice of the courts. The defense, on the other hand, often sought to cast doubts on the respectability of the woman in question; if she were not of unambiguously good reputation, then the judge might refuse to convict because there would be no way of knowing that this specific man had been responsible for “corrupting” her. In the eighteenth-century cases discussed here, this tactic was particularly effective for María González’s antagonist, Manuel Espinoza, whose argument rested on her willful exposure to young men and thus an immodest lack of regard for her personal safety. Ironically, in this case and that of Margarita Navajas, the girls’ potential for *acquiescence* was important, even though they were legally unable to *consent*. They could not contract a marriage independently, but they could still be considered immodest enough to invite sexual advances.

### *Contract in Coercion*

The ability to discuss consent in contractual terms becomes increasingly complicated when faced with cases involving enslaved women and their masters. Slaves in the Spanish Empire had the legal right to sue their masters for abuse and to request to be freed or sold to a new master.<sup>149</sup> Among the slaves who did so were several women

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<sup>148</sup> *Las Siete Partidas*, Partida 7, title 17-20.

<sup>149</sup> Hunefeldt, *Paying the Price of Freedom*; Michelle McKinley, *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600-1700*. (New York: Cambridge University Press, 2016).

who accused their masters (most of them priests) of sexual abuse. Because of the power dynamics inherent in master-slave relations, the sex in each of these cases is by definition coercive. However, the grounds under which each woman felt entitled to sue and the recompense that each sought illustrate the social and cultural importance of contracts in sexual encounters, even those under which no marriage was possible. In this case, however, the contracts were less formal than those created by marriage, and thus less binding. So, while I will use the words “agreement” and “contract” interchangeably for ease of expression, these pacts between slaves and masters did not carry the same legal force that marital consent did.

One such case involved a slave woman named Natividad, who sued her master, priest Don Juan de la Reinaga, in ecclesiastical court in 1792 for abuse and concubinage.<sup>150</sup> Natividad states in her opening declaration that Reinaga had promised to free her in exchange for a sexual relationship, but when she had demanded that he make good on his promise he refused. After this refusal, Natividad tried to run away, but Reinaga caught her and sent her to a *panadería*. Thus, Natividad petitioned the ecclesiastical court to either grant her freedom, or to sell her to another master.<sup>151</sup> Natividad’s argument was not ultimately successful, but her declarations tell us a great deal about how she viewed her own sexual agency. For one thing, although their relationship was coercive in nature, Natividad clearly saw it as part of a reciprocal contract of sorts—she agreed to sleep with Reinaga, under the condition that he free her.

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<sup>150</sup> Concubinage (*concubinato*) meant living with a partner for an extended period of time without being married. As priests took vows of chastity and celibacy, concubinage with a slave woman was in direct violation of their oaths. See *Siete Partidas*, Partida 4.

<sup>151</sup> AAL, *Causas de Negros*, XXXIII3 (1792).

Sex was, in effect, the currency to purchase her freedom. When he reneged, Natividad felt justified in escaping his house altogether, thereby taking her freedom for herself. After Reinaga punished her cruelly for this attempt, she felt entitled to sue him in ecclesiastical court, effectively calling him out for his misconduct before his superiors in the Church. This progression demonstrates that Natividad had a very clear picture of her sexual rights, and that this picture was based on reciprocity. As a slave, she did not have the right to refuse her master, but she did have the right to make a pact for her freedom with concubinage as the price of manumission. Research on slavery in colonial Lima and Lima in the first years of the republic reveals that enslaved people in general had a strong sense of their rights and were frequently litigious when those rights were violated.<sup>152</sup> For instance, many slaves were quick to assert their conjugal rights before the ecclesiastical court when owners tried to prevent them from marrying or attempted to sell or relocate an enslaved partner out of the city.<sup>153</sup> Enslaved women were also recorded in the civil courts throughout the early nineteenth century making suits against masters who had used promises of freedom to extract sexual compliance.<sup>154</sup> Natividad's escape attempt and subsequent lawsuits are part of this tradition of suing for violated rights, and indicate that she felt entitled to her freedom based on her agreement with Reinaga, regardless of his decision. Thus, in Natividad's case, her acquiescence was based on a clear sexual contract, and violation thereof was justification enough to initiate a suit in self-defense.

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<sup>152</sup> Premo, *The Enlightenment on Trial: McKinley, Fractional Freedoms*; Hunefeldt, *Paying the Price of Freedom*.

<sup>153</sup> McKinley, *Fractional Freedoms*, 75-76.

<sup>154</sup> Hunefeldt, *Paying the Price of Freedom*, 130-133.

In a similar 1792 ecclesiastical case, Mercedes Olavide sued priest Don Pablo Barrón y Pérez, also for abuse and concubinage. Her declaration follows a similar pattern to Natividad's, but gives us an even clearer idea of the progression of Barrón's advances. She says that she had been a slave in the house of another man, Don Joaquin Davalos, when Barrón came to visit. He already knew her from the house in which she had been born, and, at the end of the visit, asked if Olavide would agree to be sold to his household and work for him instead and Olavide "answered with consent." Upon arriving in Barrón's house, she became subject to increasingly persistent sexual advances, which she refused until he promised to free her in exchange. At this point, partially from fear and partially with the promise of freedom in mind, Olavide acquiesced to the concubinage. Later, when Barrón refused to free her, she sued him in ecclesiastical court for his abuses.<sup>155</sup> This case reveals that Mercedes Olavide both decided the terms of her concubinage and resisted her own master's sexual advances until they were verbally met. It also indicates that her explicit consent had more place in deciding her sale than in her sexual autonomy. In this, Olavide's sale reflects the same social norms as Natividad's. Courts did not consistently reprimand a master for forcing himself upon slave women; not only were they his property, but it was cheaper to support a slave concubine than a wife (priests were not supposed to have sex at all, let alone enter a concubinage arrangement, but given that neither Natividad's nor Mercedes Olavide's cases were concluded in their favor, that seems not to have mattered consistently). However, there was also nothing wrong with a slave woman using such coercion to set the terms for her

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<sup>155</sup> AAL, *Causas de negros*, XXXIII9 (1792).

freedom, which was a protected right under Spanish law.<sup>156</sup> Indeed, Mercedes Olavide and Natividad's insistence that their acquiescence to sex be the price of their freedom mirrors those free women who set marriage (at least officially) as the condition of sexual encounters. Thus, the narrative of the persistent man and the submissive slave or reluctant woman could occasionally be turned to benefit the women themselves, even when no marriage was possible.

### *Conclusion*

Despite a culture of normalized male aggression, a legal concept of sexual consent did exist in late colonial Lima, both in marriages and in extramarital sexual partnerships. Through lawsuits presented to the ecclesiastical and secular courts, *limeños* contested varying definitions and limitations of consent, and thus illustrated and reinforced the boundaries of patriarchal control.

In both ecclesiastical and secular court, a girl's head-of-household carried a true right of consent, especially for middle- and upper-class families. In many cases, this right was chiefly conferred upon the father, although widowed women were still customarily heads-of-house. Daughters in these domestic hierarchies could only contract marriages with their parents' explicit approval; any other sexual liaisons or contracts constituted a violation of the *parents'* consent and thus warranted legal action. In these situations, which account for more than half of seduction and *estupro* litigation, the girls' free will was never a point of discussion and their agency often remains ambiguous. Because they could not legally consent to a marriage independently from their families, their family's

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<sup>156</sup> This right is discussed in McKinley, *Fractional Freedoms*, as well as in the *Siete Partidas*.

violation constituted their own. However, their respectability still determined the likelihood that they encouraged sexual attention, which meant that the question of whether a young woman knowingly invited advances often coexisted alongside her lack of legal consent. For women such as Manuela Pando, who had the age and means to sue on their own behalf, her own agreement constituted a contract, and she had the right to sue when it was not met.

Although family approval was paramount, marriage remained the most supported form of individual sexual consent, as the Church explicitly valued the verbal and thus spiritual agreement of both partners in the sacrament of marriage. Consequently, phrases like “consent” and “free will” appeared frequently both in Church texts and in marital litigation. Women and their families appealed to these concepts in ecclesiastical court throughout the late eighteenth century, as did some of the men accused of misconduct. To the ecclesiastical court, according to laws governing annulment and consummation, marriage and sex legitimated each other, so the marital contract constituted a sexual one as well. This contractual language proved instrumental when a couple slept together under promise of marriage and then failed to marry—if the terms under which someone agreed to such an arrangement proved invalid, then the entire contract could be considered void.

However, even when marriages were not possible, as in cases where priests sexually abused their slaves, sexual agreements represented a small amount of agency in an abusive situation. Some slaves, like Mercedes Olavide and Natividad, when faced with sexual advances that they lacked the power to refuse, used contractual language both to set their sexual acquiescence as the price of their freedom and to advocate for themselves

when these terms were not met. This framing fell within their rights as slaves—to set the price of their freedom with their masters and to seek freedom from the courts if their masters abused them—but places sex at the center of the narrative. This, combined with the litigation of free women, indicates that the language of reciprocal contracts applied to sex *and* to marriage. If someone agreed to sex under certain terms, then violation of those terms constituted a violation of the agreement itself. Those whose agreement was thus invalidated were thus justified in seeking legal redress.

Together, these aspects illustrate that women did view themselves as having sexual rights in late colonial Lima. These rights were limited by patriarchal legal norms, which defaulted the power of consent to fathers before all others and dictated whose consent was legitimate and why, but women had some ability to advocate for themselves within these boundaries. This consent, framed in terms of contracts and agreements, does not negate the coercion that these women experienced—indeed, it typically existed alongside it—but it did delineate the boundaries within which the law would protect female sexual autonomy. Women may not have universally had the freedom to refuse men’s sexual advances, but, by framing sex as part of other socially acceptable contracts like marriage or manumission in court, they made those contracts (rather than their sexual choices) the focus of litigation. Consequently, by basing their arguments on rights that society already accepted—like the right to marry or the right to set a price for their freedom—they could make statements about their sexual autonomy as well.

*Chapter Three: “In View of the Merits of the Case”  
Jurisdictional Priorities and Consolidation in Sexual Coercion Cases*

In 1775, when Melchor Navajas sued José Perales for *estupro* and *raptó* on behalf of his daughter Margarita, the *fiscal* for the royal court (a high-ranking official who assisted the judge in his decisions) recommended against conviction on the grounds that Margarita had appeared to be a willing participant in her elopement.<sup>157</sup> Later that same year, however, Ignacio Martínez’s suit against Bernardo Chabarrí for the *estupro* of Francisca Javiera Carrera resulted in a conviction “in view of the merits of the case.”<sup>158</sup> Similarly, two cases heard in the 1780s in the ecclesiastical court saw one woman declared free to marry someone else because her mother objected to her runaway marriage, while refusing to convict another man for a broken marriage promise because there was not enough evidence to resolve their disparate accounts of the encounter.<sup>159</sup> All of these cases shared very similar demographic elements—a teenaged girl of Spanish descent, allegedly assaulted by a man of color, and represented in court by her guardian—and were heard within a few years of each other. But their different results indicate that social divisions, while relevant to many cases, did not by themselves dictate the outcomes of sexual coercion cases in the second half of the eighteenth century. Both royal and ecclesiastical jurisdictions had additional priorities.

The late colonial judiciary operated in a climate of increasing political and social change. The Bourbon Reforms began the process of consolidation throughout the

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<sup>157</sup> AGN, RA-CR3 34-410 (1775).

<sup>158</sup> AGN, RA-CR3 34-419 (1775).

<sup>159</sup> AAL, CCM VII 14 (1776); AAL, CLM VII 28 (1783)

eighteenth century, gradually increasing the footprint of secular institutions and decreasing the influence of the Church.<sup>160</sup> At the same time, the Enlightenment also created an interest in science, reason, and modernity among the elite that lasted far into the nineteenth century.<sup>161</sup> In this dual context of secularization and modernization, gender roles became more prescriptive, social hierarchies became less flexible, and the Church's authority over private matters altered, although did not disappear entirely.<sup>162</sup> The judicial system, positioned as both an agent of change and as a place in which those changes were negotiated, was at the center of these processes.

In this chapter, I argue that, while both jurisdictions sought to maintain caste hierarchies in their decisions on sexual coercion complaints, they did so according to their own unique values, and the ways in which they did so became more restrictive throughout the late colonial period. In sexual coercion cases during the second half of the eighteenth century, the secular and ecclesiastical courts both prioritized the caste and *calidad* (social status) of both parties in their decisions. In most cases, racial and social asymmetries existed between the litigants and the defendants, and the decision passed by the judges almost always favored the more privileged. However, the ecclesiastical courts valued the sanctity of marriage equally with the social order and tended to make

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<sup>160</sup> The Bourbon Reforms are a well-documented period of change throughout Spanish America. See, among others: Black, *The Limits of Gender Domination*; O'Phelan Godoy, *El Perú en el siglo XVIII*; Fabrício Prado, *Edge of Empire: Atlantic Networks and Revolution in Bourbon Río de la Plata* (Oakland, CA: University of California Press, 2015); Premo, *Children of the Father King*; Viquiera Albán, *Propriety and Permissiveness in Bourbon Mexico*.

<sup>161</sup> Clément, *El Mercurio Peruano*, 1; Haidt, *Embodying the Enlightenment*; Meléndez, *Deviant and Useful Citizens*; Anthony Page, "Rational Dissent, Enlightenment, and the Abolition of the British Slave Trade," *The Historical Journal* 54, no. 3 (September 2011); Paquette, *Enlightened Reform in Southern Europe and Its Colonies*; Premo, *The Enlightenment on Trial*; Sharman, *Deconstructing the Enlightenment in Spanish America*.

<sup>162</sup> Hunefeldt, *Liberalism in the Bedroom*; Chambers, *From Subjects to Citizens*.

decisions that balanced both concerns (in line, of course, with royal edicts like the *Pragmática Real*). Between 1800 and 1821, however, the secular court increasingly heard marriage and coercion litigation that had previously been prosecuted exclusively in the ecclesiastical court. Marriage sanctity effectively vanished from sexual coercion narratives in Lima at the same that social hierarchies and gender norms solidified, and modernization impulses began to pick up steam. Thus, modernization and secularization, which affected gender and society in Peru overall, had a profound impact on the results of sexual coercion cases as well.

The scholarship on the gender and social change of this period is substantial. Through the work of Sarah Chambers, Sueann Caulfield, Chad Black, Kimberley Gauderman, and Elizabeth Dore, we know that the flexibility and relative independence that many women experienced during the colonial period gave way to more entrenched gender norms and a more established patriarchy in the nineteenth century.<sup>163</sup> What Dore calls a “regression” has been interpreted through the lens of honor and women’s autonomy, yet its impact on sexual coercion trials and judicial priorities has yet to be measured. Indeed, no comprehensive look at the mechanics of sexual coercion cases exists for late colonial Lima, meaning that our awareness of gender, power, and female agency remains incomplete. This chapter seeks to fill both gaps.

In addressing the legal workings and priorities of the secular and jurisdictional courts, this chapter draws on these prior studies to consider courts as a site of social and

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<sup>163</sup> Gauderman, *Women’s Lives in Colonial Quito*; Chambers, *From Subjects to Citizens*; Black, *The Limits of Gender Domination*; Shumway, *The Case of the Ugly Suitor*; Premo, “Before the Law”; Elizabeth Dore, “One Step Forward, Two Steps Back: Gender and the State in the Long Nineteenth Century,” in Dore and Molyneux, *Hidden Histories of Gender and the State in Latin America*.

political negotiation, where popular conceptions of gender and family, expressed by ordinary litigants intersected with the interests of state power.<sup>164</sup> Throughout the late colonial period, common folk presented their cases in court with clear ideas of what constituted justice for their situation, often in ways that competed with or complicated official legal prescriptions. Thus, the back and forth between litigants and defendants, as well as between petitioners and judges, was central to negotiating how written law played out in a practical context.<sup>165</sup> Laws governing things like marriage, for instance, were thus frequently the site of generational conflicts, as well as loci of cultural debates about who should marry whom and whether love was a good reason to marry someone.<sup>166</sup> In the case of intimate crimes, like marriage or sexual coercion, women often advocated for themselves strongly in ways not technically permitted by the law, and, through their legal savvy contested the limits of patriarchal control.<sup>167</sup> These dynamics, as this chapter will demonstrate, were no less essential in sexual coercion cases as they did in marriage; indeed, many sexual coercion cases were at their core a dispute over marriage validity. Thus, narratives and decisions in sexual coercion cases reveal the ways in which legal priorities and cultural sensibilities interact with one another to create uneasy consensuses about partnership, violation, and parental rights.

This chapter will also examine legal contestation and social change in cases heard in the ecclesiastical court. Recent research on the norms and institutions of the

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<sup>164</sup> Gauderman, *Women's Lives in Colonial Quito*; Premo, *The Enlightenment on Trial*; Black, *The Limits of Gender Domination*; Shumway, *The Case of the Ugly Suitor*.

<sup>165</sup> Premo, *The Enlightenment on Trial*, 10-11.

<sup>166</sup> Shumway, *The Case of the Ugly Suitor*, 69-70.

<sup>167</sup> Gauderman, *Women's Lives in Colonial Quito*; Black, *The Limits of Gender Domination*.

Catholic Church in both viceroyalties shows that the Church apparatus in Spanish America was complicated, and its influence varied by locality. In New Spain, for instance, it becomes clear that Church influence was stronger in major urban centers like Mexico City and Puebla, and people of African descent had complicated relationships with the Church apparatus.<sup>168</sup> In Peru, the influence of archbishops' power was key. Each Archbishop of Lima, for example, had his own plans and agendas, his own conflicts with the viceroy (which tended to become more acrimonious in the eighteenth century), and thus his own effect on the religious and political environment of the viceroyalty in general and Lima in particular.<sup>169</sup> This chapter joins several other scholars in identifying the Church as an area in which women, especially in issues relating to domestic violence and home life, often had more flexible options available to them.<sup>170</sup> The importance of the Church and its officials in negotiating legal understandings of sexual coercion was especially important in Lima during the late eighteenth century, although it diminished in this particular area after 1800. Therefore, its values as an institution can reveal much about the priorities of those who sought and apportioned justice in its courts.

Research on marriage choice in New Spain is an especially key part of this analysis, as it tracks the changes that the Bourbon Reforms wrought upon the Church's approach to parental objections to their children's marriages.<sup>171</sup> Other scholars consider

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<sup>168</sup> Albani, Danwerth, and Duve, eds., *Normatividades e instituciones eclesiásticas en la Nueva España, siglos XVI-XIX* (Frankfurt: Max Planck Institute for European Legal History, 2018).

<sup>169</sup> Albani, Danwerth, and Duve, eds., *Normatividades e instituciones eclesiásticas en el virreinato del Perú, siglos XVI-XIX* (Max Planck Institute, 2019).

<sup>170</sup> Gauderman, *Women's Lives in Colonial Quito*; Stern, *The Secret History of Gender*.

<sup>171</sup> Seed, *To Love, Honor, and Obey in Colonial Mexico*.

what these changes looked like from the perspective of couples and parents negotiating these relationship tensions in early nineteenth century Buenos Aires.<sup>172</sup> This research indicates that both jurists and participants had clear (if often disparate) ideas of what they considered appropriate behavior, and that the Bourbon Reforms (and, later, independence) gave secular courts more political authority to decide such disputes. This chapter builds on this research to argue that, even if, as Christine Hunefeldt's work indicates, marriage and domestic disputes remained part of the ecclesiastical court into the nineteenth century, people stopped choosing that jurisdiction to decide their sexual coercion suits.<sup>173</sup> The justice that people sought—and perhaps their perspectives on sexual coercion—aligned with the penalties and judgements that the state could apportion.

Of course, political and social power are reproduced through the archives as well as reflected in the texts of the cases, especially in a colonial context. The ways in which documents were produced reveals much about the blind spots of these power structures, making archival silences just as significant as the visible contents.<sup>174</sup> In these trials, we can only access the views of the people who take active roles in the trials, which makes parental voices (especially those of fathers) and voices of accused men more visible than those of violated young women. This blind spot creates challenges for historians wishing to access the experiences of the victims, but provides opportunities to consider the power structures that surround coercion cases. In this chapter, the construction of court cases,

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<sup>172</sup> Shumway, *The Case of the Ugly Suitor*.

<sup>173</sup> Hunefeldt, *Liberalism in the Bedroom*, 79-83.

<sup>174</sup> Among the many authors who generated the archival turn, the work of Kathryn Burns and Zeb Tortorici is most relevant to this project. See Burns, *Into the Archive* and Zeb Tortorici, "Sexual Violence, Predatory Masculinity, and Medical Testimony in New Spain," *Osiris* (January 2015).

especially the process of collecting evidence and testimonies, as well as who is or is not represented within the cases, becomes an important window into the gendered and sexual power dynamics of late colonial Peru. In late colonial sexual coercion cases, especially in the secular jurisdiction, white families of the middle and upper-middle classed are overrepresented compared to their poorer and nonwhite counterparts. Parents' voices are also represented far more than those of their violated daughters, and more of those parental voices are male, especially in the nineteenth century. Furthermore, most of the victims who do testify made declarations during the early stages of evidence gathering, rather than in an official interrogation. This combination of factors indicates that social and legal privilege played a significant role in what transpired in court proceedings, and that young women in particular were not always able to articulate their views without intermediaries.

And, of course, no discussion of gender and sexuality in Latin America would be complete without the scholarship on honor. However, as in the rest of this project, I break from these traditional interpretations. Recent research on honor identifies the ways in which honor narratives shifted, and the changes in women's status and autonomy that happened as a result of the shift from colony into republic. Sarah Chambers details the transition from explicit honor to productive citizenship, founded on the same ideals but framed in a way that was not associated with the Spanish past.<sup>175</sup> The O'Phelan Godoy and Zegarra volume, in turn, expands these considerations into the nonwhite

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<sup>175</sup> Caulfield, Chambers, and Putnam, *Honor, Status, and Law in Modern Latin America*.

population.<sup>176</sup> This information is vital to this chapter, as it provides one framework through which to understand gendered change and modernization, and has been especially influential in the development of the field of Latin American gender and sexuality as a whole. In the course of the trials, as we shall see, honor was one among many litigant priorities, but judges did not always prioritize it in obvious ways, nor did many victims refer to it directly. By considering it as only one of many possible reasons for the ways in which violated women and their families handled sexual coercion, I seek to reveal a more diverse range of personal motivations and conceptions of justice through court documents.

These cases provide the declarations, testimonies, and justifications that together illuminate the priorities of each group of authorities. Contrary to expectations, sexual coercion cases during this period frequently ended with a concrete judicial decision—between sixty and eighty percent— which means that it is possible to map out the narratives, factors, and values that led to successful convictions, and to track changes over time. While I contextualize these cases with materials from the *Mercurio Peruano*, as well as legal codes and royal decrees, I am primarily interested in the decisions and narratives themselves and what they reveal about the values and agendas of both jurists and participants.

The cases reveal an evolution of jurisdictional priorities in sexual coercion over time. In the first period (1750-1799), both the ecclesiastical and secular jurisdictions participated actively in adjudicating sexual coercion cases. The *Pragmática Real* caused a

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<sup>176</sup> O’Phelan, Scarlett, ed. *Mujeres, familia y Sociedad en la historia de América Latina, siglos XVIII-XXI* (Lima, PE: Instituto Riva Agüero, 2006).

small shift midway through this period in 1778 when it was expanded to cover the Americas, but overall the cases in this period remained fairly consistent in the way that they approached sexual coercion. During the second period (1800-1821), however, judges and litigants approached sexual coercion in a way that can be considered “proto-modern.” Although the colonial administration followed a similar agenda as it had in the eighteenth century, the range of what constituted a clear conviction for sexual coercion restricted and began to focus even more on reputation and even, by 1821, on medical forensic evidence—traits that characterize sexual cases of the modern period.<sup>177</sup> This period also saw the utter disappearance of the ecclesiastical court from sexual coercion litigation. The first marriage dissent appeared in secular court in 1800, and the last marriage litigation appeared in the ecclesiastical record in 1807. Therefore, although Peru did not become an independent republic until 1825, the modernization impetus becomes clear from 1800 onward, at least in the context of sexual coercion.

The main limitation of this work is the small number of cases available—forty total across a seventy-five-year period—a problem exacerbated by incomplete digital access during the pandemic. However, because, as discussed in previous chapters, they are representative of the universe of sexual coercion litigation, they reveal the evolution of narratives and changes in decision-making that took place over time. Despite the small number of sources available, this chapter provides the first thorough overview of judicial priorities in Lima’s sexual coercion cases. It also lays the groundwork for our

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<sup>177</sup>Laura Shelton, *For Tranquility and Order: Family and Community on Mexico’s Northern Frontier, 1800-1850* (Tucson, AZ: University of Arizona Press, 2010); Caulfield, Chambers, and Putnam, *Honor, Status, and Law in Modern Latin America*; Christiansen, *Disobedience, Slander, Seduction, and Assault: Women and Men in Cajamarca, Peru 1862-1900*.

understanding of emotional communities to be addressed in the next chapter as well as for future research on sexual coercion, both in Lima and elsewhere.

*A Plethora of Priorities: Sexual Coercion in the Late Eighteenth Century*

In the second half of the eighteenth century, both the secular and ecclesiastical courts were involved in adjudicating sexual coercion cases. The officials in both jurisdictions came from wealthy, Spanish backgrounds, and so shared many common priorities regarding the proper order of society. The result was that decisions made in both jurisdictions did not often upset established gendered and racial hierarchies in the city. In that regard, many outcomes were reasonably predictable. However, while the secular courts were mainly concerned with maintaining social hierarchies and expanding royal authority, the ecclesiastical courts saw the social order as central to maintaining the sanctity of marriage as a sacrament. This difference of emphasis, if not radical difference of opinion, gave the two jurisdictions distinct characters. It also indicates that families and individuals who sought justice in cases of sexual coercion had more than one idea of what “justice” should look like and appealed to a specific court depending on the resolution they sought.

In both jurisdictions, social asymmetries were central considerations of sexual coercion cases. Indeed, in all the secular sexual coercion cases heard between 1750 and 1799, the litigant was the one of superior rank. For example, Doña Ana Rivera, a female head-of-house with enough means to employ multiple servants, sued Sebastián Espíndola, a free mulato who worked in her gardens, for assaulting María Dolores

Palencia, a girl of indigenous descent who was raised in the household.<sup>178</sup> Although the case ended in a conviction, the sentence merely stated that his penalty was to six months of hard labor on royal projects in Callao.<sup>179</sup> Nonetheless, the rest of the case indicates that, because of his rocky employment history in the Rivera household—he had been let go shortly after Dolores gave birth to their child, ostensibly for disruptive and rude behavior—Espíndola was starting the case at a disadvantage. In addition to Doña Ana and María Dolores’s respective declarations, two other members of the household verified that that he had been disruptive and had been fired from his job as gardener.<sup>180</sup> As his former employer and a property owner, Doña Ana wielded a great deal more social power than he did, and the court made a conscious decision to side with her version of events.

Ignacio Martínez’s 1775 suit against Bernardo Chabarrí on behalf of his twenty-year-old foster daughter Francisca Javiera Carrera, examined briefly in Chapter One, reflects similar priorities. Ignacio Martínez’s caste and *calidad* are not clear from the court records, but his business took him away from home for long enough periods that Bernardo Chabarrí “took advantage of his absence” to abscond with Javiera, and he was educated enough to sign his own name.<sup>181</sup> Chabarrí, on the other hand, was a man who worked in a *panadería*, went straight off to the *pulpería* after work to drink, and did not sign any of his court documents, indicating a lower level of education. *Panaderías*, as

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<sup>178</sup> AGN, RA-CR3 34. 408.

<sup>179</sup> AGN, RA-CR3 34. 408.

<sup>180</sup> AGN, RA-CR3 34. 408.

<sup>181</sup> AGN, RA-CR3 35. 419 (1775).

bakery-prison-workhouses, were closely associated with criminality and enslavement, as was regular *pulpería* drinking. The clear message in Martínez's declaration was that he, Javiera's surrogate father, was a hardworking man who raised and protected his ward, while the man who ran off with her was lower class if not an outright criminal.

Chabarrí's disreputability came into further play as his marital status came under scrutiny as well. According to Ignacio Martínez, Bernardo Chabarrí was already married to a woman named Micaela in the village of Chiclayo, but had taken out a license with the ecclesiastical magistrate (*promotor fiscal*) to marry Javiera. He and Javiera had been married by a priest in the parish of San Marcelo under that license, but Chabarrí did not turn the license back into the ecclesiastical office to validate the marriage. Thus, Martínez says, he pretended to be single when he was in fact married, to lure Javiera into a false marriage.<sup>182</sup> Chabarrí's alleged wife, did not testify directly in the course of the trial, but a family friend presented a document as proof of her marriage to Chabarrí, and another member of her community testified under oath that he had been present at the church when they married. Other witnesses attested to his marital status, occupation, and pursuit of Javiera, while still others verified the quality of Martínez's parenting.<sup>183</sup> For his part, Chabarrí's defense rested upon portraying Martínez as an abusive father and Javiera as a woman who had given herself to him prior to marriage.<sup>184</sup> However, the social disparities between himself and Martínez, as well as the implications of his lower-class and criminal behaviors, proved a more effective narrative; Chabarrí was sentenced to one year of exile

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<sup>182</sup> AGN, RA-CR3 35. 419 (1775).

<sup>183</sup> AGN, RA-CR3 35. 419 (1775).

<sup>184</sup> AGN, RA-CR3 35. 419 (1775).

from Lima for his crimes.<sup>185</sup> The progression of this trial indicates the way that cultural associations and community gossip came together to create a framework that the judge recognized as “guilty” or “not guilty.” The associations that judges had with the drunken disorder around *pulperías*, the prison-workhouse components of *panaderías*, and men who did not support their wives, all contributed to the idea that this was a man who had it in him to seduce a naïve young woman into a false marriage. Indeed, Uribe’s research on domestic violence indicates that alcohol and poverty were strongly correlated to spousal violence throughout Spanish America, a stereotype that Stern confirms was commonly held by the elite.<sup>186</sup> Even if such stereotypes do not, as Stern demonstrates, always reflect actual crime statistics from the period, what matters most is that the judges themselves saw reflections of their assumptions in Chabarrí’s behavior.<sup>187</sup> To them, Chabarrí was an irresponsible man associated with drinking and thus with violence, and therefore capable of the crime of which he stood accused.

Ignacio Martínez’s suit is also one of the few in which a parent cited a specific law in their complaint, and, as this reference illustrates, this law reflected, not only his own values, but, given the ultimate conviction, something of the Real Audiencia’s priorities as well. In his initial declaration, Martínez pointed out that “Royal Castilian Law applies penalties to the violators of homes,” referring to a law in the *Siete Partidas*, which made it illegal to break into a man’s house to make off with his daughter, regardless of betrothal status or the consent of the woman.<sup>188</sup> In its own time, this referred

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<sup>185</sup> AGN, RA-CR3 35. 419 (1775).

<sup>186</sup> Uribe Urán, *Fatal Love*, 82; Stern, *The Secret History of Gender*, 50.

<sup>187</sup> Stern, *The Secret History of Gender*, 49-51.

<sup>188</sup> AGN, RA-CR3 35. 419 (1775); *Siete Partidas*, Vol 4 Title 1.

to the folk custom of fake marriage abductions, which Alfonso X and many of his royal contemporaries saw as an affront to a man's right to protect his household.<sup>189</sup> In the eighteenth century, this law solidified a father's control over the marriages in his household and justified his objection to a child's elopement. While few fathers cited this law as directly as Ignacio Martínez and his legal team, the implication that the accused abductor violated a family as much as the body of the woman in question was a common theme in late eighteenth century *rapto* and *estupro* cases pursued by male guardians in a secular court.

The unusual case brought by Hipólita Pérez in 1776 shows social privilege in a different light. In many ways, this case is an outlier. To return this this case, Hipólita was not herself sexually coerced by the three men that she accused, but rather intervened to save a slave girl named Tomasa from a gang rape instigated by Tomás Calderón and an accomplice in an alley near her home, sustaining injuries as a result.<sup>190</sup> Her petition also carries the name of her husband, Joseph Guerre, although this man did not testify or issue an independent account. This case highlights the competing priorities that judges balanced as they considered what "social order" meant. The demographics of this case are similar to those in Doña Ana Rivera's case the year before—a woman of some means, suing men of mixed race for sexual violence against a non-Spanish girl under her protection— and, compounded with the physical assault that she herself sustained,

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<sup>189</sup> Scott, Samuel Parsons, Robert Burns, ed. *Las Siete Partidas, Volume 5: Underworlds, the Dead, the Criminal, and the Marginalized (Partidas VI and VII)*, (Philadelphia, University of Pennsylvania Press, 2000).

<sup>190</sup> AGN, RA-CR3 37. 441 (1776)

attested to by a doctor, and the violent nature of Tomasa's rape, one might expect this to be an easy decision.

However, in the sentence, the judge determined that, while these men were liable for the physical assault to Hipólita, it was not clear that any crime had been committed against Tomasa.<sup>191</sup> This ruling was perhaps based on the conflicting testimony of Tomás Calderon, the only one of the two accused man to testify, who implicated another man and denied any culpability for Tomasa's violation.<sup>192</sup> The witnesses who testified in the *sumaria*—including two neighbor woman and a local shopkeeper who had been talking to Doña Hipólita's husband when she discovered Tomasa missing—could only say that they saw Tomasa enter the house with the men in question, and that someone turned out the light in that room to keep people on the street from seeing what went on. They reported on Doña Hipolita's actions with much more accuracy, concurring that she had been calling for the girl and, having discovered from her neighbors where the girl was, borrowed a key and went to release her.<sup>193</sup> By Tomasa's own admission, she did not scream, although she did put up a struggle, so it is quite possible that no one on the street was fully aware of what transpired in that room.<sup>194</sup> It is likely, therefore, that Calderón's conflicting testimony and the lack of concrete corroboration from external parties informed the judge's decision in this case, despite the social disparities at play here. With

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<sup>191</sup> AGN, RA-CR3 37. 441 (1776).

<sup>192</sup> AGN, RA-CR3 37.441 (1776).

<sup>193</sup> AGN, RA-CR3 37.441 (1776).

<sup>194</sup> AGN, RA-CR3 37. 441 (1776).

no one aside from her mistress to support her claims, Tomasa's own account did not seem to count for much.

This partial decision shows us the multiplicity of factors at play, as well as how authorities prioritized different kinds of violence. In objective terms, there is nothing that distinguishes Tomasa's testimony from that of María Dolores Palencia. Both girls recounted having been walking alone on errands for their households, grabbed by men that they knew from their household or community, and then sexually assaulted. Both girls were young and of a marginalized race or status, represented at court by a woman of superior caste and class.<sup>195</sup> Indeed, Tomasa's story is more violent and dramatic than María Dolores's—set upon by two grown men in an alley, physically rescued by Hipólita—and yet her rape was taken less seriously. One factor may have been her enslaved status, and the fact that, as a *china* (mixed race) girl out on the street after dark, she may have been presumed to be acting as a prostitute. Hipólita's injuries, which by her own account and a doctor's corroboration caused her tremendous pain, were of far more interest to the authorities, despite the fact that she brought the suit as primarily a rape case with her own injuries secondary. Thus, it appears that, while physical violence against a freewoman and property owner by working men was easily supported, it was ultimately the word of a slave girl against that of a free male laborer, despite the support of a more privileged woman.

Although the convictions agreed upon by the court are important, the acquittals reveal even more about how the secular court approached the conflicting narratives

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<sup>195</sup> Hipólita Pérez related that Tomasa was eleven years old, and a slave (presumably of African descent). María Dolores's age was never formally stated, but she was identified as "a girl under the authority" of Doña Ana and as an "innocent" or "maiden girl" of some indigenous ancestry.

placed before them. For example, in 1777, the Real Audiencia refused to convict Joseph Perales after Melchor Navajas accused him of *rapto* and *estupro* in his 1775 complaint. Racial and social characteristics were central components of both the litigant and defense narratives, with the support of community opinion, much as in the Martínez case filed the same year, but with several key differences. In his initial declaration, Navajas claimed to be a Spaniard, married to a Spanish woman, meaning that his children were also of pure Spanish ancestry and thus at the top of the colonial caste ladder. He refers to Perales as a *mulato*, a half-African man, who would not be considered eligible to marry a Spanish girl.<sup>196</sup> Taking Navajas at his word, the discrepancy between a *mulato* and an *española* is one that we would expect the judiciary to decide easily in favor of the Spanish family.

However, Joseph Perales' own testimony indicates that perhaps we should not take Melchor Navajas' claims at face value. When asked for his own identifying information, Perales stated that he was a *quarterón*—literally “quarter-blood,” meaning someone two generations removed from African ancestry—rather than a *mulato*, and then proceeded to contradict Navajas' own racial narrative. Navajas himself was a *quarterón*, Perales claimed, and his wife Magdalena was a *mestiza*, with mixed indigenous and Spanish heritage. One other close relation of the Navajas family was a *mulato*. Therefore, the racial purity that Navajas claimed was moot.<sup>197</sup> Perales further explained that Margarita had been an active part of planning the elopement, insisting on the union and then enlisting her godfather, a Dominican friar, to ratify the marriage vows said before a

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<sup>196</sup> AGN, RA-CR3 34. 410 (1775).

<sup>197</sup> AGN, RA-CR3 34. 410 (1775).

notary. Furthermore, Perales claimed that Melchor Navajas was a drunkard and his wife prone to entertaining herself in public, leaving Margarita at home unsupervised. If she had become something that they did not approve of, that was their own fault.<sup>198</sup> No further witnesses were called after Perales' interrogation, so it is impossible to gauge exactly how much was corroborated by the community at large, but the detailed awareness of family lineage, coupled with accusations of loose living, were vital points, given that Perales and Margarita had already eloped. If they were not socially unequal, then Navajas' primary objection would not hold up.

Thanks to an unusually detailed note by the *fiscal*, or crown's attorney, it is possible to determine on exactly what merits the court decided not to convict Perales. In 1777, nearly two years after the initial complaint, the *fiscal* stated, "that this crime has not been proven in enough substance. The accused in his confession supposes that the complicity of Margarita had been voluntary, and that he would find to contract marriage with her, under which circumstances the *fiscal* does not consider it his part to pursue this case."<sup>199</sup> This statement, in addition to tacitly validating Perales' testimony, is a clear jurisdictional line in the sand. If Margarita *had* been raped or abducted by a man who was her social inferior, then the Real Audiencia would have had a stake in the discussion; the fact that they agreed to entertain Navajas' complaint in 1775 is proof of that concept. However, with the validity of that accusation thoroughly called into question by Perales' cutting counternarrative, the *fiscal* felt that the situation was not one of *raptó* and *estupro* but rather one that related to the validity of a marriage. In 1777, the *Pragmática Real* had

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<sup>198</sup> AGN, RA-CR3 34. 410 (1775).

<sup>199</sup> AGN, RA-CR3 34. 410 (1775).

yet to be promulgated in the Americas, which meant that the dividing lines between secular and ecclesiastical authority in terms of marriage were especially clear: if the crime was matrimonial in nature, rather than criminal, then Melchor Navajas needed to pursue that issue before the ecclesiastical court. There is no record that he did so. As far as the surviving documents indicate, the union of Margarita Navajas and Joseph Perales remained unchallenged after 1777.

The ecclesiastical courts, like the secular courts, tended to prioritize many societal norms and divisions; however, the Church authorities were concerned with marriage in a way that changed their relationship to sexual coercion. The value of marriage to the Church lay primarily in its position as one of the Seven Sacraments. In basic terms, sacraments were the holiest rituals in the Catholic religion and marked important life milestones. Marriage, as a divinely-ordained and Church-blessed covenant between two people, reinforced a couple's connection to God and the Church at the same time as it marked a socially significant moment. As such, the Church had a vested interest in maintaining the integrity of this sacrament, much as they protected other sacraments, like confession. What it meant to preserve the sanctity of marriage was influenced by social norms and by decrees like the *Pragmática Real*, but was also rooted in a religious context.

In the ecclesiastical court, many of the adjudications in *rapto* and *estupro* cases revolved around whether a valid marriage had occurred, as opposed to imprisoning and exiling people for their criminal offenses. In theory, *rapto* and *estupro* were mortal sins, because they were forced actions (although the Church did recognize the ambiguity of

*rapto*), regardless of whether a woman was a virgin prior to the occurrence.<sup>200</sup> However, in practice, the differences among *esponsales*, *estupro*, and *rapto* complaints were blurry, and many were handled in a similar way, with focus on annulment or legitimation of unions.<sup>201</sup> Because of the importance of social disparity, decisions often took social class into account.

In addition to the 1776 Muchotrigo case, in which racial disparities were part of the court's decision that no valid marriage had taken place between Doña Isabel Muchotrigo and silversmith Josef Falcón, the 1783 case of Domingo Bolívar against Martín Lloví is especially illustrative. Bolívar, legitimate father of Silvia Bolívar y Sánchez, sued American-born slave Lloví for seducing, violating, and eloping with Silvia. In his petition, he emphasized the racial discrepancies between his daughter and her intended husband—she was a *mestiza*, while he was a slave—and argued that these constituted an impediment to their marriage.<sup>202</sup> Moreover, Bolívar pointed out that his daughter was only fourteen and had not consented properly to either the sex or the marriage because of her tender age.<sup>203</sup> The court concurred with Bolívar's assessment. Upon locating Lloví and his new wife, the ecclesiastical court nullified their union and absolved them of impediments to future marriages.<sup>204</sup> Although this case was related to the *Pragmática Real* and thus could have been heard by the royal courts, Bolívar likely

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<sup>200</sup> Lavrin, *Sexuality and Marriage in Colonial Latin America*.

<sup>201</sup> Bernard Lavalley, *Amor y oppression en los andes colonials* (Lima, PE: IFEA, Universidad Ricardo Palma; 1999).

<sup>202</sup> AAL, CLM VII 28 (1783).

<sup>203</sup> The Council of Trent stated that girls as young as twelve were able to give consent, but Bolívar claimed that Silvia's age, at fourteen, was too young to have consented as was required for a valid marriage. See Chapter 2 of this dissertation.

<sup>204</sup> AAL, CLM VII 28 (1783)

sought the Church's help because a marriage had already occurred. He was not acting to prevent a future marriage that he saw as inappropriate, but rather to invalidate a marriage that had already occurred. As such, the only institution that could handle his dispute was the Church, who alone had the power to annul a marriage. It is important to note here that, as in many other cases that involved teenaged girls, the girl's agency was ambiguous. Bolívar sued for *estupro* and seduction on Silvia's behalf, but his consent appears to have been the true priority in this case rather than hers.

This argument and resolution rested on two distinct priorities. First, social disparity was an explicit factor in Bolívar's complaint and, given the subsequent nullification, in the Church's decision-making process. A *mestiza* marrying a man of African descent was too great a social distance to be easily bridged, especially given that Lloví was also enslaved. Second, this case took place several years after the *Pragmática Real*'s promulgation, meaning that parental objection carried a great deal of weight in this type of suit. Thus, the ecclesiastical judge could easily consider such a marriage invalid on the grounds of missing parental consent, as well as on social disparity. In this case, although the judge did not explain his sentence, it was likely to be both.

Unlike the secular court, the ecclesiastical court was the site of several suits during this period in which women sued a social superior for sexual misconduct—the moral *sevicia* cases that involved priests and enslaved women.<sup>205</sup> From a consent standpoint, as we have already seen, these women advocated for themselves on the basis

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<sup>205</sup> As we will see later, moral *sevicia* cases do appear in secular court as well, but not until after 1800.

of contractual obligations and their legal right to negotiate the price of their freedom. However, these cases also had the potential to upset social hierarchies.

No matter their rights, Black female slaves were considered far inferior to the white male priests who owned them, and subject to assumptions made about their sexual willingness and availability.<sup>206</sup> Of the three cases available for this project, none were resolved in favor of the women, despite the vows of celibacy that their masters had violated in propositioning them. Other research indicates that there were occasions in which such cases were resolved in favor of enslaved women. Frank Proctor mentions the 1790 civil suit of María del Rosario Vega from Lima, who accused her master of *sevicia* after he coerced her into a sexual relationship, imprisoned her in the house, and beat her horribly in a jealous rage. The court ultimately ordered her sale, with the stipulation from her (now former) master that she drop her allegations against him, a pattern that matches with overall trends that show that slaves were often successful in receiving sale papers.<sup>207</sup> However, Proctor also describes a high threshold for court intervention in *sevicia*.<sup>208</sup> McKinley and Hunefeldt, writing about the seventeenth and nineteenth centuries respectively, underscores the durability of this threshold, showing that enslaved female concubines had relatively little legal support in moral *sevicia* suits because they were considered a social necessity—they cost less money to support financially and were

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<sup>206</sup> Hunefeldt, *Paying the Price of Freedom*; McKinley, *Fractional Freedoms*, 135.

<sup>207</sup> Frank Trey Proctor III, "An 'Imponderable Servitude': Slave versus Master Litigation for Cruelty (Maltratamiento or *Sevicia*) in Late Eighteenth-Century Lima, Peru," *Journal of Social History* 48, no. 3 (Spring 2015).

<sup>208</sup> Proctor, "An 'Imponderable Servitude,'" 672.

thought to be less sexually inhibited than Spanish Catholic wives.<sup>209</sup> Based on these cases, then, it appears that enslaved women's bodily violation was of less interest to the judiciary than the social and sexual roles those bodies played in Peruvian society.

The ecclesiastical court, while reflecting many of the same cultural biases that the secular courts did, also demonstrated several unique patterns that differentiated it from the secular jurisdiction. For one thing, because they primarily ruled on the validity of a marriage or a marriage promise, most of the declarations and testimonies revolve around the technicalities of marriage or betrothals, rather than sexual assault or criminal activity. Additionally, while the ecclesiastical courts clearly had the authority to order imprisonments and other penalties, the sentences passed most frequently in sexual coercion cases relate to the marital status or obligations of the accused rather than to criminal penalties.<sup>210</sup> The tensions between Church and state that characterized the Bourbon Reforms made many of these divisions more noticeable, as state officials sought to reduce the footprint of Church officials.<sup>211</sup>

Because marriage was so central to the ecclesiastical court's deliberations, the narratives presented as defense differed as well. It was not at all uncommon for defendants in secular court to shift the blame onto the women they were accused of violating, but in the ecclesiastical court this blame often explicitly reflected assumptions

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<sup>209</sup> Hunefeldt, *Paying the Price of Freedom*, 130-135.

<sup>210</sup> Similarly to the secular procedures, the men accused of *rapto* and *estupro* in the ecclesiastical court were imprisoned until such time as their confession could be recorded and sentence passed. In the ten cases available for this project, none of these men received further imprisonment or exile from the city as a punishment (the usual penalty for convicted rapists in secular court).

<sup>211</sup> Albani, Danwerth, and Duve, *Normatividades e instituciones eclesiásticas en el virreinato del Perú, siglos XVI-XIX*.

about sin or ideas about the contractual nature of marriage. These references are similar to the accusations of sexual promiscuity that appeared in secular court, but differ in that they focus on a woman's personal character rather than her public behavior—that is to say, who she was before God rather than before the public. One prime example of this is from 1783, in which Gregorio Bernal's defense against an accusation of *estupro* against María Carrasco that he had made a marriage promise in good faith and had been deceived by her lack of virginity:

I confess that it was true that I gave my promise of marriage to Águilar's daughter [María Carrasco] with the condition that she be a maiden, but given this salient point was to the contrary, seeing as she was in this act proven to be entirely corrupt, this promise could not take effect, and thus it was she who wanted to deceive me and cannot be attributed to me that she has been deceived.<sup>212</sup>

Shifting the blame onto a woman's lack of virginity or promiscuous behavior was not uncommon—many men in both jurisdictions resorted to this tactic—but Bernal's precise manner of doing so is specific to ecclesiastical expectations. Whereas men in secular court typically claimed to have been invited into a woman's room (a behavioral lack of decorum that indicated a lack of modesty), Bernal emphasized the cheating and deceit of a woman who claimed virginity in order to secure a marriage.

As we saw in Chapter One, Church attitudes towards gender were heavily influenced by the notion of the Sin of Eve in the Old Testament, in which she deceived and tempted Adam into eating the Forbidden Fruit. All women, as descendants of Eve, were to have inherited this predisposition to deceiving men.<sup>213</sup> Thus, Bernal's narrative

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<sup>212</sup> AAL, CCM VII 18 (1783); “aunque confieso haber sido cierto le di a la hija de Aguilar palabra de casamiento due con la condición de hallarla Doncella, pero como esto saliente al contrario, por a ver reconocido en aquel acto estar enteramente corrupta, no pudo tener efecto aquella palabra, y assi ella fue la que quiso engañarse, y no impurarme a mi el haverla engañado.”

<sup>213</sup> Tuana, *The Less Noble Sex*, 56.

portrayed Carrasco as a deceitful woman in character, sinful because of her gender, in a way that aligned with Church teachings about women's nature, as opposed to someone known to behave badly in public. Indeed, there is no reference at all in this trial to how Carrasco was known in the community; it was her personal, private conduct that was subject to scrutiny.

Although colonial law allowed for a case to be filed in two jurisdictions concurrently, there is no record of duplicate cases between 1750 and 1821.<sup>214</sup> This lack of duplication suggests that people with sexual coercion grievances consciously choose one arena or the other to plead their case. Litigants' decision-making patterns indicate that, in the latter half of the eighteenth century, Lima's residents had diverse ideas of what constituted justice for sexual coercion, and these ideas aligned with the expanded opportunities provided by multiple jurisdictions. The decisions available at the secular courts came in the form of exile, imprisonment, or financial damages; those dispensed by the ecclesiastical court were largely marital and involved forcing a man to marry or dower a violated woman. Parents or individuals, then, appealed to the secular court when their idea of what constituted justice in their case included the legal penalties that the *Real Audiencia* or *cabildos* could apportion, or when they did not see marriage as a viable option. Those individuals who petitioned the ecclesiastical court saw marriage as a potential solution they wished to see enacted. One such case was Doña Dominga Castañeda, whose soldier lover had abandoned her while she was pregnant with his child.

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<sup>214</sup> Where duplicate complaints existed, they were often mentioned in the documentary trail of ratifications that pepper the proceedings. None of the cases examined for this project had evidence of these parallel proceedings.

Victims and their patrons also sought out the Church courts when they thought a marriage or betrothal had taken place and wished to have it declared invalid, as in the Muchotrigo and Bolívar cases. What this shows, therefore, is that, in the second half of the eighteenth century, people had a clear awareness of what justice meant to them in the case of sexual coercion. They chose the court to petition based on their own awareness of that jurisdiction's priorities, matching their priorities to those of their court of choice. Justice in general was flexible and far-from-partial, so this type of selectiveness on the part of litigants is in keeping with the broader legal system.<sup>215</sup> Thus, jurisdictional plurality also shows a societal plurality regarding the appropriate responses to sexual coercion.

In both jurisdictions, honor did feature as a priority, especially for parents representing their daughters in court. Honor was most explicitly expressed in situations where people wished to emphasize their daughters' victimhood and elevate their own social class (as in Melchor Navajas's testimony) or to underscore their own lack of culpability based on their caste standing and honor, as when Manuel Espinoza denied responsibility for María González's assault at his school.<sup>216</sup> It also appeared as a subtext, especially as defendants sought to cast doubts upon the opposing narratives. For example, Sebastián Espíndola's primary defense when accused of assaulting María Dolores Palencia was to say that she had called to him from her window—a clear allusion to the behavior of prostitutes.<sup>217</sup> Every case in which the defense was able to call witnesses saw

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<sup>215</sup> Tamar Herzog, *Upholding Justice: Society, State, and the Penal System in Quito (1650-1750)* (Ann Arbor: University of Michigan Press, 2004).

<sup>216</sup> AGN, RA-CR3 34. 410 (1775); AGN, CA-JO 2 196. 180 (1779).

<sup>217</sup> AGN, RA-CR3 34, 408 (1775).

the attorney for the defense draft questions for their witnesses revolving around the sexual conduct of their accusers. These strategies have their basis in the language of *estupro* laws, which protected only specific types of women.<sup>218</sup> If a man could prove, for instance, that a woman was known publicly to have not been a virgin prior to the incident, or that she had behaved indiscreetly when she invited him into the most personal areas of her home, then she might not be entitled to recompense on grounds that she had asked for the attention she received.

However, despite its frequent citation by guardians and defendants, few young women interviewed cited honor as a primary motivation for their own actions. Additionally, court officials did not reference it in their sentences, even when they offered details about their decisions. They also did not consistently make decisions aligned with the preservation of family honor. In the ecclesiastical courts, María Carrasco's case is evidence of at least one such discrepancy. Her antagonist, Gregorio Bernal, was an indigenous man, her own racial status was at least part white, and she and her guardian both used the honorifics *don* and *doña* while Bernal did not. By these basic markers, their honor should have been considered more abundant and more valuable than his, and yet his defense that she had deceived him resulted in a refusal to convict.<sup>219</sup> Similarly, in the secular court, Melchor Navajas's main attack consisted of the honor of his family—or rather, the dishonor that Margarita had brought, and her lack of consideration for how her actions impacted her own honor and thus her future. Nonetheless, the judge determined that no crime had taken place, leaving the supposed

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<sup>218</sup> *Siete Partidas*, Vol 7.

<sup>219</sup> AAL, CCM VII 18 (1783).

dishonor of her runaway marriage intact.<sup>220</sup> These cases, along with the general scarcity of explicit honor narratives, indicate that, while it was a consideration for all parties, it was not the only one.

### *Jurisdictional Consolidation and Sexual Coercion in the Nineteenth Century*

Despite the revolutions that separated New Spain, New Granada, Río de la Plata, and Venezuela from Spain between 1815 and 1820, Peru remained politically stable until 1821, when the War of Independence reached the heart of the viceroyalty. Yet, despite the delay of independence, modernization trends had begun long before moves for republican governments in Spanish America. Throughout the territory, the ecclesiastical court's presence on the legal scene changed in the early nineteenth century, as the state increasingly overtook areas that had previously been dominated by the Church.<sup>221</sup> Modernity, too, became a priority, as, inspired and fueled by the Enlightenment, Spain and (eventually) many of the new Spanish American republics sought to align their values and actions with rationality.<sup>222</sup> Although modernization and secularization would not become linked with state formation until after independence in 1825, the last two decades of the colonial period saw a societal reorientation, especially among the elites, towards the kind of progress that many hoped would help give Peru its place on the world stage.<sup>223</sup>

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<sup>220</sup> AGN, RA-CR3 34, 410 (1775).

<sup>221</sup> Chambers, *From Subjects to Citizens*; Hunefeldt, *Liberalism in the Bedroom*.

<sup>222</sup> Paquette, *Enlightened Reform in Southern Europe and its Colonies*; Hunefeldt, *Liberalism in the Bedroom*.

<sup>223</sup> O'Phelan Godoy, *El Perú en el siglo XVIII*.

This combination of secularization and modernization simultaneously restricted legal options and flexibility of gender norms, creating a new environment for those experiencing sexual coercion to navigate. First, secularization consolidated sexual coercion cases into the secular courts, meaning that official justice for coercion was limited to the criminal penalties that secular officials doled out. Cases that had formerly been addressed by the ecclesiastical courts, including some marriage dissents, became part of the secular court's sphere of influence, extending their power further into personal matters. Second, modernization solidified patriarchal boundaries and perceptions of gender, changing the outcomes of cases. As scholars of the post-independence period have pointed out, standards for female morality actually increased after independence and became associated with citizenship rather than honor.<sup>224</sup> While my own study takes place immediately prior to independence, the beginnings of this restriction are still visible. The standards for acceptable "proof" of sexual coercion narrowed, for example, and fewer cases ended in convictions for the men accused. And finally, by 1821, the courts began to institute physical examinations of rape victims as forensic evidence of crimes committed. This scientific emphasis did not remove witness testimony utterly from the cases, but it does indicate that narratives alone were no longer central to procedures, setting the stage for further modernization of the legal system throughout the nineteenth century.

By 1800, the secular court's reach had expanded to the point where it adjudicated a marital dispute. That year, Don Pablo Nuñez sued Severino de los Santos for *estupro* of Manuela Nuñez, his eighteen-year-old daughter. However, within the first few pages of the case, it became apparent that the couple had simply eloped, and that no real crime had

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<sup>224</sup>Caulfield, Chambers, and Putnam, *Honor, Status, and Law in Modern Latin America.*, 16-17.

occurred, at which point the documents begin referring to the case as a *disenso* (a marriage objection) rather than an *estupro*. The presiding official decided to resolve the case extrajudicially, but still recorded the steps taken and petitions filed by Pablo Nuñez. At length, the court ordered that the couple should marry, and, when Pablo Nuñez still resisted, the judge gave Manuela the necessary consent to marry, in lieu of the consent her father would need to provide.<sup>225</sup> This decision is a clear expansion of the secular court's authority. A decade or two earlier, as evidenced by the outcome of Melchor Navajas' 1775 suit, the secular court had sidestepped questions of marriage validity, leaving that question to their ecclesiastical counterparts. In 1800, however, they not only pursued justice in a marriage dissent, but stood in as a paternal figure to guarantee that the marriage was able to take place against objections by a biological parent.<sup>226227</sup> Additionally, the fact that Nuñez, whose complaint bears some similarity to the Muchotrigo and Bolívar ecclesiastical cases of the 1770s and 80s, specifically chose to present this case in the secular court indicates that he saw this jurisdiction as more of an authority in the matter at hand than the ecclesiastical.

Modernization, like secularization, manifested in sexual coercion cases, this time in terms of the results obtained and the lengths of the petitions required to obtain convictions. José Venegas, who sued Manuel Caballeros for *rapto* and *estupro* of his daughter Carmen in 1815, was told that he was not allowed to make his complaint based

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<sup>225</sup> AGN, RA-CR4 91. 1127 (1800).

<sup>226</sup> This action is a continuation of an eighteenth-century project to establish the king as the Patriarch of the empire. See Premo, *The Enlightenment on Trial*.

<sup>227</sup> This case has a great deal in common with mid-nineteenth-century *disensos* heard in civil court in post-independence Argentina. See Shumway, *The Case of the Ugly Suitor*.

on an interpretation of the *Pragmática Real*, since no marriage had taken place, and that if he wanted to sue for *rapto* he needed to do so in the correct form. The case ended forty pages later when Caballeros refused to answer future petitions.<sup>228</sup> The accusation of Bernardo Liendo by Tiburcia Cotilla regarding the violation of her minor daughter Rosa Sánchez also ended in an acquittal, despite a lengthy trial and ample witness testimony on Rosa’s behalf.<sup>229</sup> Indeed, only one sexual coercion case between 1800 and 1821 resulted in a conviction in the secular court—in 1809, Doña María Arnao succeeded in obtaining financial damages in the amount of 1,500 pesos on behalf of her daughter Escolástica Saenz after more than two hundred pages of petitions and appeals.<sup>230</sup> In contrast, most of the convictions from the late eighteenth century were obtained in fewer than one hundred pages, with several concluded in fewer than fifty. These results demonstrate a higher threshold for intervention, indicating that what judges felt constituted a conviction had become narrower even though the legal criteria for instituting a case had not changed.

Modernization also took the form of increased focus on “objective” proof and “natural” gender roles, which evolved out of the Enlightenment emphasis on rationality and scientific inquiry, as well as changes in the role of medicine in determining gender characteristics. The impulse to categorize and understand the human and natural world, along with increasing emphasis on *lo natural* (that which is natural), contributed to the value of scientific objectivity in nineteenth-century Lima.<sup>231</sup> A similar valuation of

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<sup>228</sup> AGN, RA-CR4 130. 1586 (1815).

<sup>229</sup> AGN, RA-CR4 116. 1405 (1809).

<sup>230</sup> AGN, RA-CR4 116. 1401 (1809).

<sup>231</sup> Meléndez, *Deviant and Useful Citizens*.

science is noted by María Elena Martínez in her study of queer bodies in the archive, which, she argues, contributed to an increased medical-legal interest in correct sexual and racial categorization.<sup>232</sup> A particularly detailed case of such medical categorization of gender is the subject of Martha Few's article, "That Monster of Nature." In Guatemala City in 1803, a doctor named Narciso Esparragosa examined a "suspected hermaphrodite" named Juana Aguilar, making detailed notes about the precise form and dimensions of her genitalia in an attempt to classify her for the court. This detailed categorization, according to Few, became a public spectacle of both women's bodies and racialized assumptions about sexuality.<sup>233</sup> Furthermore, the medical profession in general underwent significant reform during this period, accompanied by its own displays of enlightened racial and gendered knowledge.<sup>234</sup> This emphasis on the authority of medical professionals, exemplified in a *Mercurio Peruano* editorial on the importance of modern (male) medical advice for successful pregnancies, would become just as important to sexual coercion cases on the eve of Peruvian independence.

By 1821, the last year of the colonial period, modernization impulses had changed the actual proceedings of sexual coercion cases in the Real Audiencia. In that year, Gregorio Villa, father of seven-year-old María Vicenta Villa and resident of the city of Ica, brought his *estupro* case against Felipe Ramos to the *Real Audiencia* in Lima on advice of the officials in Ica. This case is the first sexual coercion case that appeared in

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<sup>232</sup> ,María Elena Martínez, "Archives, Bodies, and Imagination: The Case of Juana Aguilar and Queer Approaches to History, Sexuality, and Politics," *Radical History Review* (2014)., 166.

<sup>233</sup> Martha Few, "'That Monster of Nature': Gender, Sexuality, and the Medicalization of a 'Hermaphrodite' in Late Colonial Guatemala," *54*, no. 1 (2007).,159-161.

<sup>234</sup> Adam Warren, *Medicine and Politics in Colonial Peru* (Pittsburgh: University of Pittsburgh Press, 2010)., 49-52.

the Real Audiencia since the Venegas case was resolved in 1816, and features a hitherto-uncommon element: a medical examination of the young girl's body by a team of (male) court-appointed doctors to determine the extent of her injuries and if a rape had taken place.<sup>235</sup> The doctors attested to her "debilitated" and bedbound condition, the tearing and lesions around her genitals "from the taking of her virginity," and concurred that scarring from this incident would likely lead to very difficult childbirth when she was of an age to bear children.<sup>236</sup> Ultimately, these results became even more important, because María Vicenta died (likely of an infection) during the trial. Her father Gregorio continued the case, asking for increased penalties because of Vicenta's death, and the same team of doctors once again examined her body. While they were united in their belief that she had been raped, they felt that they could not prove that the infection that killed her was the direct result of her injuries, and the case was dropped.<sup>237</sup> The examination of a cadaver was not unusual—such had been the case in homicide cases in Lima for much of the late eighteenth century—but the comparison of this cadaver with the rape examination was not something visible in other cases during this period. Medical and Enlightened reforms, which had overall increased the legitimacy of male medical professionals in the late eighteenth- and early nineteenth centuries, may have led to the Gregorio's insistence that a team of doctor's examine Vicenta.<sup>238</sup> It almost certainly contributed to the judge's reliance on both sets of medical testimony for his sentence. Regardless, "objective"

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<sup>235</sup> AGN, RA-CR4 142. 1782 (1821).

<sup>236</sup> AGN, RA-CR4 142. 1782 (1821).

<sup>237</sup> AGN, RA-CR4 142. 1782 (1821).

<sup>238</sup> Warren, *Medicine and Politics in Colonial Peru*.; Meléndez, *Deviant and Useful Citizens*.

measures of violence had begun to appear in sexual coercion cases by the end of the colonial period, a precursor of the modern approach to verifying that a sexual assault had occurred.

In the first two decades of the nineteenth century, only one sexual coercion suit was recorded in the ecclesiastical court, while ten were heard in the secular courts. This difference in recorded cases suggest that litigants' priorities had shifted alongside the secularization trends discussed earlier. That is to say, the shift from ecclesiastical to secular courts was not only a top-down project, but also one in which people metaphorically voted with their feet. This shift means that, while marriage may still have been considered a solution for sexual coercion under some cases, those who sought it no longer chose the ecclesiastical court as an official channel through which to achieve it. Secular justice, which offered tangible punishments for the *crime* of violating one's house and daughter, appears to have represented the resolutions that most people sought during this era.

Although honor remained a subtext rather than an explicit line of inquiry in these nineteenth century cases, the prioritization of visible penalties, alongside the narrowing definitions of "acceptable proof" indicate that honor became more central to these cases in the nineteenth century than they had previously. These factors align with historians' traditional assessment that people primarily chose to sue for *estupro* when the honor of their families was at stake.<sup>239</sup> Thus, it was clearly an increasing priority, although still by no means the only one.

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<sup>239</sup> Caulfield, Chambers, and Putnam, *Honor, Status, and Law in Modern Latin America*; Johnson and Lipsett-Rivera, *The Faces of Honor*.

### *Conclusion*

In the last seventy-five years of the colonial period in Lima, both the secular and ecclesiastical jurisdictions sought to maintain caste and class hierarchies in their decisions on sexual coercion complaints. In most cases in the late eighteenth century, racial and social asymmetries existed between the litigants and the defendants, and the decision passed by the judges almost always favored the more privileged. In the secular court, it left men of color accused of coercing women of Spanish ancestry more vulnerable to conviction, as in the cases against Sebastián Espíndola and Bernardo Chabarrí; in the ecclesiastical, elopements with unequal partnerships were frequently annulled by the court, as in the Muchotrigo and Bolívar suits. And, even where a slave or servant girl was supported by a woman of higher standing, her own status relative to her antagonist's meant that convictions were not guaranteed, as in the case of Hipólita Pérez's slave girl, Tomasa.

The ecclesiastical courts differed from the secular courts primarily in the way they valued social order and the sanctity of marriage, and thus tended to make decisions that balanced both concerns. Thus, the debates revolved around whether a marriage or betrothal had occurred, and whether it could or should be annulled, rather than whether a crime had occurred. This led to cases like the Muchotrigo and Bolívar suits against Josef Falcón and Martín Lloví, where runaway marriages were annulled, and like the Aguilar suit against Gregorio Bernal, in which the court decided there was not enough evidence to force him to marry María Carrasco.

Between 1800 and 1821, however, the secular court became the dominant jurisdiction. Marriage sanctity ceased to become a priority in Lima's legal landscape at the same time that conviction rates for sexual coercion in the secular court plummeted. Modernization and secularization thus happened at the same time, meaning that only a lucky few saw convictions in this period. Ultimately, these trends culminated in the incorporation of forensic evidence as a cornerstone of sexual coercion cases, just as Peru's struggle for independence began. On the eve of its independence, Lima's court system had already taken enormous steps to modernize its approach to sex crimes.

Altogether, the evolution of these cases also shows changes in the priorities of Lima's populace as well as of judges. In the latter half of the eighteenth century, litigants seem to have had a variety of forms of justice in mind, from marriage to hard labor to financial damages. Indeed, all these resolutions were enacted or supported formally by one jurisdiction or another at least one time between 1750 and 1799. However, after 1800, people sought visible solutions and criminal penalties as a result of their sexual coercion complaints, and the only conviction during this period resulted in substantial financial damages. This indicates that, not only did the influence of the jurisdictions change over the course of this seventy-five-year period, but that people's conceptions of appropriate justice in these cases did as well. Plural jurisdictions and the choices people made about where to present their case, then, are central to our understanding of experiences of sexual coercion within the Peruvian legal system.

*Chapter Four: An Inherently Emotional Crime*  
*Emotional Communities, Emotional Regimes, and the Individual Experiences of Sexual Coercion*

The previous chapter considered the influence of jurisdiction, judges' tendencies, and litigants choices of venue on the outcomes of sexual coercion proceedings. With this final chapter, we now turn our attention to the experiences that individual women had within Lima's late colonial courts. Sexual coercion, as has been noted from the outset of this project, is an emotional experience. Not only do the instigators of these acts play upon women's emotions at the outset, using fear or passion or affection as leverage, but the aftermath itself is full of emotions that survivors must process. The history of emotions, then, provides a powerful window into the emotions of both the coercive acts and the ongoing process of coming to terms with them.

The theoretical underpinnings of emotions as a historical method are substantial and well-respected, generating substantial research in a wide range of historical subfields, including colonial Latin America.<sup>240</sup> Scholars like Jelke Boesten have also addressed sexual violence and collective trauma in the context of modern Peru, arguing that the sexual violence of wartime is not an aberration so much as a continuation of pre-existing gendered and racial power structures.<sup>241</sup> Similarly, scholarship on honor in Latin America

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<sup>240</sup> Yasmin Annabel Haskell, *Changing Hearts: Performing Jesuit Emotions Between Europe, Asia, and the Americas* (Boston: Brill, 2019); Morna MacLeod, *Resisting Violence: Emotional Communities in Latin America* (Palgrave Macmillian, 2018); Cecilia Macón, *Affect, Gender, and Sexuality in Latin America* (Palgrave Macmillian, 2021); Mabel Moraña, *El lenguaje de las emociones: afecto y cultura en America Latina* (Madrid: Iberoamericana, 2012); Ana Peluffo, *En clave emocional: cultura y afecto en America Latina* (Buenos Aires: Promoteo Libros, 2016); Nicholas A. Robins, *Of Love and Loathing: Marital Life, Strife, and Intimacy in the Colonial Andes, 175-1825* (Lincoln: University of Nebraska Press, 2011).

<sup>241</sup> Boesten, *Sexual Violence During War and Peace*; Anna-Britt Coe and Annette Schnabel, "Emotions Matter After All: How Reproductive Rights Advocates Orchestrate Emotions to Influence Politics in Peru," *Sociological Perspectives* 54, no 4 (2011).

has considered the importance of emotions like masculine anger and feminine shame, as well as the importance of community opinion in daily life.<sup>242</sup> However, in so doing they have obscured other emotions—including fear, desperation, defiance, and outrage—that contribute to the complex internal experiences of those who experience sexual coercion. Shame and anger, I argue, are only part of the sexual coercion emotional landscape. Women’s experiences of sexual coercion were far more diverse than restrictive emotional regimes accounted for.

The history of emotions scholarship has generated several key theories that merit discussion at the outset. Among these are the concepts of emotional regimes, and emotional communities. William Reddy coined the term *emotional regimes* to describe phenomena he observed in his research on the French Revolution. He defines an emotional regime as a system of learned norms for emotional expressions, making the emotions that people expressed culturally positioned, often from the top down. Within his framework, the French royal court was an emotional regime, and the steps that people took to find more freedom for their expressions in new spaces (e.g. cafés) ultimately led to the creation of new emotional regimes as power balances shifted.<sup>243</sup> An *emotional community*, however, is a more flexible arrangement of emotional norms. According to this theory, developed for early medieval France, the emotional norms of different groups form concentric circles within a society—many of them overlapping and intersecting, but

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<sup>242</sup> The edited volume by Lyman Johnson and Sonya Lipsett-Rivera is particularly detailed in its discussion of anger and shame relative to honor (see Johnson and Lipsett-Rivera, *The Faces of Honor*); see also Christiansen, *Disobedience, Slander, Seduction, and Assault*.

<sup>243</sup> Reddy, *The Navigation of Feeling*.

none of them identical.<sup>244</sup> This chapter will unify these theories to consider the ways in which the language of emotions around sexual coercion varied among groups, and posits that jurisdictional changes over time structured women's experiences with sexual violence.

To explain how emotional regimes work, Reddy advances the concept of emotives (that is, emotional expressions), in which internal feelings and thus acts of articulating or naming these feelings were “instruments for directly changing, building, hiding, intensifying emotions.”<sup>245</sup> More specifically, emotion—fear for instance—is not just a reflection of a state of mind but rather a space where a feeling is expressed, both internally and socially, and thus contributes to a shared understanding. In the context of sexual coercion, thinking with emotives helps denaturalize and historicize our own thinking about emotions, making it possible to measure the historical constructions of feelings through a textual medium. As such, declarations in court petitions take on a significance beyond the construction of an individual; they are evidence of the language victims used to organize their internal experiences and feelings into narratives that, in turn, were shaped by and shaped their dynamic social communities.

Between 1750 and 1799, jurisdictional differences created and reflected distinct emotional communities within the broader emotional regime. This variation meant that women expressed a relatively wide range of emotions during this period and thus demonstrate a diverse range of experiences compared to the early nineteenth century. Between 1800 and 1820, however, the overarching emotional regime absorbed these

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<sup>244</sup> Rosenwein, *Emotional Community in the Early Middle Ages*.

<sup>245</sup> Reddy, *The Navigation of Feeling*, 105.

communities and narrowed the range of emotional experiences that could be expressed. These emotions remained complex and occasionally conflicted with one another, but over time they increasingly came to align with a single interpretation of what it meant to experience sexual coercion—one focused on shame and regret, with little space for anger or outrage.

The history of emotions in colonial Latin America is still a relatively young field, with most of its significant works having been published within the last ten years.<sup>246</sup> This literature has, among other things, established the Church as a distinct emotional community within colonial society and considered the role of emotions in people's daily lives. It has also examined the complexities of fear relative to power, and love and anger in the context of domestic violence, marriage, and courtship.<sup>247</sup> This chapter builds on this groundwork, especially that which considers the Church's role as an emotional community, to bring the history of emotions into Lima and the crime of sexual coercion. A more comprehensive awareness of individual sexual coercion experiences supports historians' interpretations that gendered power dynamics restricted women's options in the nineteenth century while also highlighting the personal nature of such crimes. Even as societal norms for emotional expressions eliminated active expressions of anger, violated women still evidenced individual experiences of their assaults.

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<sup>246</sup> Haskell, *Changing Hearts*; MacLeod, *Resisting Violence*; Moraña, *El lenguaje de las emociones*; Peluffo, *En clave emocional*; Robins, *Of Love and Loathing*.

<sup>247</sup> Javier Villa-Flores and Sonya Lipsett-Rivera, *Emotions and Daily life in Colonial Mexico* (Albuquerque: University of New Mexico Press, 2014); Rosas Lauro, ed., *El miedo en el Perú: siglos XVI al XX* (Lima: Fondo Editorial de PUCP, 2005).

Sexual violence in Latin America is also a small field. Many notable works address sexual violence in Mexico, especially in the nineteenth century.<sup>248</sup> For example, Kathryn Sloan's 2008 book on *rapto* cases reveals that young women were often active parts of their elopements, and that such escapades often served as leverage to force a marriage.<sup>249</sup> This analysis indicates that women were capable of using restrictive systems for their own benefit, and that such plans could be risky if parents or lovers failed to act as anticipated. Other scholars emphasize sexual coercion cases from a perspective of repairing one's damaged honor (or that of the family or patriarch), or as an instrument of war that reflects peacetime attitudes towards gender and power.<sup>250</sup> In this framework, the importance of sexual coercion as a potentially catastrophic component of women's lives is apparent. Similarly, a 2011 article on reproductive rights advocacy in Peru focused on the ways in which two reproductive rights coalitions used emotions rhetorically in their advocacy, as well as on how they managed their own emotions.<sup>251</sup> This modern work demonstrates that gender and power are indeed highly visible through sexual coercion cases, and that the emotions of survivors and advocates become essential components of processing and experiencing the crimes.

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<sup>248</sup> Catherine Komisaruk, "Rape Narratives, Rape Silences, Sexual Violence and Judicial Testimony in Colonial Guatemala," *University of Hawai'i Press* (2008); Johnson and Lipsett-Rivera, *The Faces of Honor*; Victoria Rodriguez Ortiz, *Mujeres forzadas: el delito de violación en el derecho castellano (siglos XVI-XVIII)* (Almería: Universidad de Almería, Servicio de Publicaciones, 2003); Ward Allen Stavid, *Amor y violencia sexual: valores indígenas en la Sociedad colonial* (Lima: Instituto de Estudios Peruanos, 1995); Tortorici, "Sexual Violence, Predatory Masculinity, and Medical Testimony in New Spain"; Sloan, *Runaway Daughters*.

<sup>249</sup> Sloan, *Runaway Daughters*.

<sup>250</sup> Komisaruk, "Rape Narratives"; Johnson and Lipsett-Rivera, *The Faces of Honor*; Boesten, *Sexual Violence in War and Peace*.

<sup>251</sup> Coe and Schnabel, "Emotions Matter After All."

To understand the emotive expressions of women and their families within colonial culture are the subject of this chapter, my analysis will focus on the declarations and testimonies of the women violated (where available) and of the guardians who almost universally represented them in court in ecclesiastical and royal lawsuits and criminal proceedings. These written petitions will be supported by editorials in the *limeño* newspaper *Mercurio Peruano*, writings from the Church, and other cultural materials to contextualize legal statements within broader social expectations. Together, these sources reveal that women and their families experienced and expressed fear, outrage, defiance, regret, and pain in addition to shame as they articulated sexual coercion before judges.

These sources, while highly informative, do present some challenges. Most notably, people did not write their petitions themselves. When asking the courts to accept their complaints, litigants engaged a scribe to write up the document for them in the correct formula. They often had a great deal of control over the content of this petition; indeed, many of such documents are written in first person, and some even have noticeable style shifts between the formulaic elements and the narrative that describes the merit of the case.<sup>252</sup> Nonetheless, they are not the “unfiltered” words of the wronged party. Similarly, when called upon to give testimony, witnesses did not typically submit independent petitions, but rather were interviewed by the court notary and had their answers transcribed according to the correct legal formulas.<sup>253</sup> Thus, there is a clear notarial filter between women’s spoken words and the written record that survives in the archives.

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<sup>252</sup> Premo, *Children of the Father King*.

<sup>253</sup> Premo, *Children of the Father King*; Burns, *Into the Archive*.

Nonetheless, there are still moments where a woman's "voice" is discernable through the notarial filter, and the language used still communicates emotions. For example, six-year-old María Vicenta Villa's testimony regarding her sexual assault was primarily composed of short, simple sentences, the notary's formula broken up and disorganized slightly as if the scribe had needed to ask her additional questions; the voice of a small, frightened child is distinctly "audible" through the document. The narratives that guardians and women produce in the record also indicate the way that they interacted emotionally with the violations committed against them. The notarial filter does make the norms of the emotional regime more clear, but does not completely obscure the thoughts and feelings of the litigants.

It is also worth mentioning that, while the declarations and testimonies of women were the "gold standard" that I sought, they were often buried in the middle of the witness accounts. In many cases, the girls themselves never offered an independent account of their violation. However, in nearly every case, a parent or guardian offered an account of the events, expressing their own feelings and making assumptions about those of their daughters. Therefore, the emotions of the parents also merit discussion in this chapter. Given the importance of family in the lives of many colonial women, considering the ways in which sexual coercion affected and involved families adds another dimension to this analysis.

## PART ONE: COMMUNITIES WITHIN THE REGIME, 1750-1799

### *Establishing the Late Colonial Emotional Regime*

In the late eighteenth century in Lima, the emotional landscape of sexual coercion

was comprised of at least two emotional communities within the overarching emotional regime established by the legal and cultural attitudes of the residents. This regime was deeply related to the questions of gender and *lo natural* examined in detail in Chapter One—patriarchy, in a word—but manifested in the gendering of emotional expressions. Some emotions, like anger, were considered masculine in nature—they were hot, aggressive, forceful, and expressed outwardly.<sup>254</sup> Therefore, women were not supposed to express them; a woman who expressed anger in too heated a way was disparaged as “unnatural,” or dismissed as fickle, much like a child throwing a temper tantrum.<sup>255</sup> Female emotions, on the other hand, were more internalized and less aggressive—“cooler”, to use the elemental associations of the time.<sup>256</sup> As Chapter One also demonstrated, the Enlightenment and the modernization narratives that emerged in its aftermath positioned these concepts in scientific observations about “female nature” and assumptions that women, because they were overly emotional, could not be trusted to make sound decisions for themselves.

In the context of sexual coercion, this emotional regime dictated that a father whose daughter had been violated should express anger or outrage—strong emotions that indicated his drive to protect his family—and that the mothers who represented their children should express pain or helplessness at their children’s plight, perhaps pleading

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<sup>254</sup> Frevert, "Gendering Emotions."; Villa-Flores and Lipsett-Rivera, *Emotions and Daily life in Colonial Mexico*.

<sup>255</sup> Villa-Flores and Lipsett-Rivera, *Emotions and Daily life in Colonial Mexico*.

<sup>256</sup> Frevert, "Gendering Emotions."

for the assistance of the male judges to right the wrongs to their family. The victims/accusers, in turn, were expected to express shame for the loss of their virginity or for their forward behavior, perhaps desperation at their condition, and even penitence or regret.<sup>257</sup> As we shall see, guardians and women alike did in fact express these emotions in abundance; however, in the late eighteenth century, their expressions could be far more diverse than this somewhat limited range of “allowed” emotions takes into account.

Parents expressed emotions in court in a way that tended to conform to this culturally-prescribed emotional regime. This conformity was especially true of male guardians and fathers, who had the most power in late colonial society. In nearly every case where a male head-of-house sued on behalf of a girl in his charge, he expressed anger and outrage at the crime. Sometimes, this anger arose from a sense of personal violation, as was the case for Melchor Navajas, who seemed much more annoyed that a man would dare to remove his daughter Margarita from the house without his permission than he was at the thought of his daughter being hurt.<sup>258</sup> On other occasions, though, fathers expressed outrage on behalf of their daughters. In 1752, Don Manuel de la Torre y Castaño, in addition to being upset at the “grave injury and curse that has wounded all of my family,” also worried about the “disquieting and perturbing” effect that Francisco de las Llagas had on his teenage daughter Ana, which caused her disobedient behavior.<sup>259</sup>

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<sup>257</sup> This range of emotions comes primarily from those I observed in the cases themselves, but also from descriptions of appropriate prescribed reactions in scholarship on honor and on emotions. See Johnson and Lipsett-Rivera, *The Faces of Honor*; Villa-Flores and Lipsett-Rivera, *Emotions and Daily Life in Colonial Mexico*.

<sup>258</sup> AGN, RA-CR3 34. 408 (1775).

<sup>259</sup> AGN, RA-CR3, 15. 161 (1752).

Similarly, most of Francisco de los Rios's initial declaration in 1757 was preoccupied with the damage done to his daughter, rather than to himself or the family; his primary concern was her condition: in addition to "violating and corrupting" María Josefa, Ríos had "kept her in a room without feeding her" and in running off had damaged her future prospects.<sup>260</sup> These men expressed their concern for their daughters in terms of outrage or anger at their treatment, rather than affection, befitting a patriarch charged with their protection, but nonetheless, it is apparent that their daughter's wellbeing was still a priority for them.

Interestingly, while some female heads-of-household demonstrated deference and modesty before the judges, many stated their claims with just as much force as the men. The primary gendered difference was in the way that these women expressed their sense of violation. For one thing, while all expressed some kind of outrage, they did not express anger the way that patriarchs did. For example, Pascuala Guaman, resident of a village so small that her *alcalde* (roughly analogous to a mayor) had to write up her complaint himself for the lack of a notary, was not at all amused to find that Nicolás de Arias, "a suspicious lad of reproachable conduct," had presumed to rob her of her daughter in 1781. He had climbed the walls of the garden to abscond with her, Guaman said, and had clearly intended to initiate this "estrangement".<sup>261</sup> Except for her own name, which is obviously feminine, the only clear distinction between her declaration and similar ones by men is her insistence on recounting conversations with the retainers and neighbors who had been charged with her daughter's care while Guaman went into Lima on the

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<sup>260</sup> AGN, RA-CR3, 19. 217 (1757).

<sup>261</sup> AGN, RA-CR3 48. 552 (1781).

business of her estate.<sup>262</sup> Doña María Mercedes de Aguilar also asserted her opinions forcefully, expressing outrage and indignation that Cristobal Carrasco, a dyer who had recently set up his operation in their neighborhood, had dared to climb the walls around their house in order to have secret assignations with her sixteen-year-old daughter Petronila Luza.<sup>263</sup> These two women did not express outrage aggressively, but they did still express it in ways that were comparable to male heads-of-household. Neither woman disclosed a marital status, nor did a husband appear in the proceedings, but both claimed to be the legitimate parent of their daughter and acted as if they had sole guardianship. Therefore, although they were clearly either single or widowed, it is impossible to draw further conclusions about their family dynamics from the available information.

Based on cultural perceptions of women, virginity, and fragility, the appropriate reaction for a “deflowered” young woman (according to Lima’s emotional regime) included shame for their dishonor, fear of God and parents, and perhaps regret or penitence for their weakness in being led astray.<sup>264</sup> Women frequently expressed these emotions during this period, especially in the secular court, but other emotions formed part of their experience as well. The emotional communities formed by these variations in emotional response overlapped, but their distinctions ultimately shaped the experiences of the women affected.

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<sup>262</sup> Men rarely, if ever, recounted detailed conversations in their declarations; but many women, especially single mothers, relayed entire dialogues that transpired as they searched for their daughters or sought to prevent matches with unsuitable men.

<sup>263</sup> AGN, RA-CR3 57. 665 (1785).

<sup>264</sup> Lavrín, *Sexuality and Marriage in Colonial Latin America*; Twinam, *Public Lives, Private Secrets*; Johnson and Lipsett-Rivera, *The Faces of Honor*.

### *The Shape of Shame in the Secular Courts*

Because scholars concur that colonial Spanish America was an honor-based society, the appearance of shame in sexual coercion cases is certainly to be expected. However, very few women expressed shame in secular court during this period; the shame seemed to originate from the parents. As the previous chapter demonstrated, honor was indeed important to litigants, and many parents (especially fathers) cited personal and family honor in their petitions. This was especially true in circumstances where a marriage was not possible, especially those in which men lied about their marital status. In his initial declaration in 1789 regarding the *rapto* and *estupro* of his teenage daughter Juana, Lorenzo Cervera dedicated much of his testimony to establishing the “contempt” and “malice” that surgeon and physician Melchor de Zuñiga committed against the household by seducing Juana. In addition to abusing his frequent professional visits to this large household, he was already married to a woman named Manuela and therefore had forced Juana into “infamy”.<sup>265</sup> Cervera cited the disgrace to the household, the dishonor to his daughter, and the disrespect to his own wife, who had made several attempts to prevent the romance.<sup>266</sup> His daughter’s welfare was part of this equation, but the shame overall was to the household and thus to him as a patriarch.

For many women who testified, shame seems not to have been a primary concern. Of the twelve *estupro* and *rapto* cases in the *Real Audiencia* between 1750 and 1799, women testified or issued declarations in five of them, and only one expressed feeling

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<sup>265</sup> AGN, RA-CR3 64. 758 (1789).

<sup>266</sup> AGN, RA-CR3 64. 758 (1789).

ashamed in explicit terms.<sup>267</sup> That does not mean that shame was utterly absent—indeed, despite pleas from her antagonist’s lawyer, Francisca Javiera Carrera refused to issue an independent declaration. Her guardian, Don Ignacio Martínez, spoke at length about the dishonor to her personally as well as to the family, so some measure of personal shame and regret may have been a factor in her silence, although later sections will highlight other possible interpretations.

There are also young women who might have been expected to articulate shame, but who did not. For example, Juana Cervera, the only girl seduced by a married man who testified, was only interrogated as to whether a letter entered into the file was written by her own hand (it was), and readily admitted to having arranged her elopement with Zuñiga with some help from her older teenage brother who delivered the letters (without mentioning if she was aware of his marital status).<sup>268</sup> She did not offer an independent version of events, nor did she deny her own agency in what transpired. Given that bigamy was a crime that could implicate her as well as Zuñiga, her candor and apparent lack of shame and regret are interesting and perplexing. Perhaps, to her as to her parents, the real shame was to the family rather than to her as an individual.

### *Desperation, Shame, and Determination: The Story of Manuela Pando*

In Chapters Two and Three, we considered the unique case of Doña Manuela Pando, the only woman to sue a man for *estupro* on her own behalf in secular court

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<sup>267</sup> Young women tended not to appear in their own *estupro* and *raptos* trials. See Chapter Two of this dissertation. The rate at which shame appeared in the ecclesiastical courts was comparable: one out of four available testimonies talked about her “dishonor in the community.” See, for example, AAL, CLM V:55-A (1792).

<sup>268</sup> AGN, RA-CR3 64. 758 (1789).

during this period, the importance of consent in her circumstances, and her efforts to solve the problem extrajudicially. Having agreed to a sexual relationship with Don Lorenzo Descalzo under a written promise of marriage, she turned to the court when he reneged on the marriage following her pregnancy and after her confessor failed to persuade him to fulfill his obligations. This case is instructive to reconsider here, because Manuela's story is both well-articulated and highly emotional. Some of this clarity is due to her convent education, but she also had strong feelings about her condition and came to the court in some distress. Her lengthy testimony is a unique window into the complex internal experiences of sexual coercion victims.

For Manuela, shame and honor mattered a great deal. She declared (in the formal third person that indicates that it was written for her by a court official) that she did not know “how to care for her person, nor sustain her child, nor to avoid the infamy of her dishonor; for if she declares [her situation] to her aunt, [Manuela] will feel the effects of indignity and abandonment, which up till the present she has avoided under the pretext of convalescing [from her previous illness]; and if she presents herself for justice she makes public the injury that until now has remained hidden”.<sup>269</sup> Concerns over revealing one's dishonor publicly were typical parts of such concerns; many who had suffered private disgraces were reluctant to make their dishonor public (or portrayed themselves as such).<sup>270</sup> Manuela fits into this set of social expectations. She clearly agonized over her position— asking her confessor of twelve years to intercede on her behalf, speaking to

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<sup>269</sup> AGN, RA-CR3 56. 665 (1785).

<sup>270</sup> Johnson and Lipsett-Rivera, *The Faces of Honor*; Mannarelli, *Private Passions and Public Sins*; Twinam, *Public Lives, Private Secrets*.

convent benefactors to get some money for her “convalescence” – and only turned to the court when all her other options had been exhausted. It is apparent from this declaration that her good standing in the community was so important to her, as was the opinion of her aunt, that she went to great lengths and suffered a great deal in order to hide her condition from her network.

Manuela’s shame, however, was complicated by her obvious care for her son. Though she did not use a clear emotional word in speaking of her son, she does refer several times to her desire to provide well for him. She did not want to raise him herself—she requested that Lorenzo pay a sufficient amount for her to find a good family to foster him, so that she could return to the convent—but she did not leave him at the orphanage as Lorenzo pressured her to do:

Don Lorenzo knew that she did not want to turn her son over to exhibit him at the Orphanage, and not regarding the instances and efforts that she made to this end he made to suspend, as he in fact suspended, the ridiculously small contribution of the six *reales*, leaving her abandoned and helpless with the child at her breast without the resources to nurse him, nor to give him to another person to raise... Of Your Excellency, I ask and supplicate that... [Don Lorenzo] contribute immediately a dowry in the quantity of four thousand pesos or that that which Your Excellency deems just, that I may with this support enter into a convent and similarly that he supply a sufficient allowance for the feeding and raising of his child.<sup>271</sup>

While having a child out of wedlock was a source of shame that she tried to conceal to protect herself, she still wanted to provide well for her son and be recognized as a good

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<sup>271</sup> AGN, RA-CR3 56. 665 (1785); “Don Lorenzo conoció que no se le quería entregar el hijo para exponerlo a los Huerfanos, no obstante las instancias y esfuerzos que hizo a este fin hubo de suspender como de echo suspendió, la corta ridícula contribución de los seis reales dejándola abandonada y desamparada con el hijo a los pechos sin tener fuerzas para lactarlo, ni para darlo a criar a otra persona...A VS pide y suplica se sirva... la dote contribuyendo inmediatamente la cantidad de cuatro mil pesos o la que fuere del justificado advitrio de VExa para que pueda con este auxilio recogerse a un Monasterio y que asimismo le ministre una competente mesada para la alimentación y crianza de su hijo.”

mother. That she sought to arrange a foster situation for him indicated that perhaps she wanted to still be a part of his life—many women who sought to hide illegitimate children deposited them at orphanages and then disappeared, although many also chose the same path as Manuela.<sup>272</sup> Shame, then, seems to have been an emotion relative to her own status, and not a reflection on her son.

Manuela also used shame as a double-edged sword. *She* was ashamed of her condition, but she also made it clear that Lorenzo also had cause to be ashamed. Despite her efforts and those of her confessor, Don Lorenzo only provided support for the birth, and what he provided was so embarrassingly meager that Manuela listed it out in her declaration: “during this entire period, Don Lorenzo provided four cloths, five diapers, and six *reales* for food that only continued for as long as the supplicant was in bed.”<sup>273</sup> Given the amount of cloth and diapers that babies need, as well as the costs of medical care and assistance for daily tasks while recovering, the amount that Lorenzo provided was a pittance, and Manuela’s matter-of-fact listing (tinged with outrage) was designed to shame him. Part of being recognized as a man in good standing was one’s ability to provide for one’s family, including any children one had fathered.<sup>274</sup> Lorenzo’s refusal to do so was a violation of his own honor according to that code, and thus Manuela shamed him publicly for it.

The isolation that she endured as a result of her shame and Lorenzo’s miserliness generated another emotion for Manuela: desperation. Indeed, her initial statement

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<sup>272</sup> Premo, *Children of the Father King*; Hardwick, *Sex in an Old Regime City*.

<sup>273</sup> AGN, RA-CR3 56. 665 (1785).

<sup>274</sup> Twinam, *Public Lives, Private Secrets*; Hunefeldt, *Liberalism in the Bedroom*.

indicated that she would not be petitioning the court if she felt she had any other options. Without any financial or material support from Lorenzo, with a baby to feed, she was forced to rely on the goodwill of several male convent donors, under the guise of still recuperating from the illness that forced her to temporarily leave. She could not return to the convent and her aunt with the baby, but she lacked the resources to foster him with a good family and did not want to leave him at the orphanage.<sup>275</sup> Her deference towards the judge and pleas for assistance—much more extreme than other litigants—are further evidence of her desperation. Sometimes, as Cynthia Milton’s research reveals, such declarations were merely discursive strategies. Not all litigants who claimed poverty were in fact financially destitute; many simply found themselves in conditions that were less than their station in life should merit.<sup>276</sup> However, even if Manuela chose to emphasize poverty for rhetorical purposes, she was still in diminished circumstances without much in the way of support. Regardless of whether she truly had no money (her interactions with convent donors and ability to initiate a lawsuit render that detail rather ambiguous), she was almost completely isolated from her own social networks at the convent and thus had no real options to redress her circumstance independently. With no other recourse available, she decided to swallow her pride and air her condition publicly, in the hopes that the court could force Lorenzo to provide for their child.

Despite her shame and desperation, Manuela displayed another emotion that is also worth mentioning: determination. Her case is the longest sexual coercion case extant

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<sup>275</sup> AGN, RA-CR3 56. 665 (1785).

<sup>276</sup> Cynthia E. Milton, *The Many Meanings of Poverty: Colonialism, Social Compacts, and Assistance in Eighteenth-Century Ecuador* (Stanford: Stanford University Press, 2007).

in the Real Audiencia—nearly 250 pages—and resulted in Lorenzo being convicted of *estupro* and required to pay her for the upkeep of the child.<sup>277</sup> Manuela did not say explicitly that she was determined to seek justice. Nonetheless, her persistence, first in asking her confessor to mediate and then in pursuing a lengthy and invasive legal dispute, indicates that she was. It would have been easier to quietly deposit her child at the orphanage, as many women did in similar circumstances, and then return to the convent.<sup>278</sup> And yet, she continued to pour effort into the legal solution that would allow her to provide for her child correctly and would make it clear that she had only agreed to sex on the condition of marriage (a critical point for her public reputation). Indeed, her show of reluctance at the beginning could, as Milton’s research indicated, have been a script to justify her dogged pursuit of the case. Such determination makes her story all the more human and all the more compelling. She was destitute, ashamed of herself and her standing in the community, lonely and isolated away from the convent and from the aunt who raised her... and yet she pursued the justice that she felt she was owed, at significant personal cost.

#### *Desperation and Outrage in the Ecclesiastical Court*

In the ecclesiastical court, desperation seemed to accompany pregnancies, or losing a long-time partner. In 1792, Doña Dominga Castañeda begged the court to force her lover, José Falcón Ancheró, to complete their marriage, as she was six months pregnant with their child. He had promised to contract marriage with her, she said, and

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<sup>277</sup> AGN, RA-CR3 56. 665 (1785).

<sup>278</sup> Premo, *Children of the Father King*, 97-99.

had even taken out the license, but had refused to give his vows at the last second, for no discernable reason. Her plea at the end, written by a court official, reads: “therefore, as a result of [Dominga] considering the grave damage that he inflicted, she implores Your Excellency that it might serve you to compel and press with all the rigor of the law the aforementioned José Falcón towards the fulfillment of his promise.”<sup>279</sup> She was also indignant that he would leave her at the altar despite being six months pregnant with his child. This combination of desperation—that is, of fearing for the future and having no other option but to petition the court—and of indignation bordering on outrage that he would abandon her and their unborn child is peculiar to the ecclesiastical court, as the Church alone had the ability to rule on or block marriages at that time.

The enslaved women who sued priests for moral *sevicia* also experienced desperation and outrage to varying degrees. Natividad agreed to sex with her owner Juan de la Reinaga in exchange for her freedom, then tried to escape when he reneged and was consequently imprisoned in a *panadería*. Her testimony, like Manuela Pando’s in the secular court, indicates that a lawsuit was her last resort after her escape attempts failed—a kind of desperation.<sup>280</sup> However, outrage appears to have been the stronger emotion for Natividad. The fact that Reinaga did not uphold his end of the bargain also seemed to spark a sense of violation in her; it was Natividad’s right to set a price for her freedom, and, having complied with the sex that he demanded, she felt entitled to her liberty.<sup>281</sup> That he would lie, punish her, and refuse to agree clearly offended her. Mercedes

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<sup>279</sup> AAL CLM, V: 55-A (1792).

<sup>280</sup> AAL CN, XXXIII 3 (1792).

<sup>281</sup> AAL CN, XXXIII 3 (1792).

Olavide, suing Pablo Barrón y Pérez on similar grounds a year later, articulated similar emotions.<sup>282</sup>

It is important to note here that Natividad and Mercedes also experienced a feeling of having been defiled—allied to shame, but not identical to it. By the standards of their time, shame came from honor, and enslaved women, being non-white, non-male, and not free, were said to lack honor and thus shame.<sup>283</sup> However, in these declarations where honor was not a viable narrative, we can see a self-worth separate from social reputation. A consequent sense of violation was especially apparent in Mercedes Olavide’s case. Having asked her if she would be amenable to coming to his household and receiving her agreement,

It turned out that he aspired to a graceless relationship with me, trying many times with the force of his dominion and other methods to the point of securing me with golden words; that he had bought me for this purpose: that his resolution was that I should be free and that he would put that [freedom] into effect if I should comply with his ideas. My reverential fear, the constant instances and long conflicts into which he put me, made it so that I at last capitulated, having resisted many times; he enjoyed of my person... and [everyone] recognized the constant illicit communication by these demonstrations and the many nights I slept there... but it turned out that he, with little to no observance of his word, absented himself.<sup>284</sup>

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<sup>282</sup> AAL CN, XXXIII 9 (1792).

<sup>283</sup> Twinam, *Public Lives, Private Secrets*; Caulfield, Chambers, and Putnam, *Honor, Status, and law in Modern Latin America*.

<sup>284</sup> AAL CN, XXXIII 9 (1792). “hizo que él aspirara a un trato torpe conmigo, valiéndose mas veces de la fuerza del dominio y otras de los orometimientos hasta llegar al externo de afianzarme con la palabre de oros; que el me había comprado para aquel destino: que su resolución era, que yo fuese libre, y que realmente lo podría en efecto si comenia con sus ideas.

El miedo reverencial, las instancias continuas y los estrechos conflictos en que muchas veces me puso, hicieron que yo [...] a un fin, tantas veces resistido; disfrutó de mi persona, y en este manejo estuvo mucho tiempo a vista, y paciencia del vecino así que advertía la frecuencia, y [...] que con descaso se [...] conmigo en aquel [...] y conocían por estas demostraciones y las de dormir allí muchas noches, que la comunicación ilícita constate, hizo que él, poco y nada observante de su palabra, se ha ausentado”

Because this testimony arises in her initial declaration, it is not necessarily fair to assume that these words are the “unfiltered” reactions of a violated woman. However, they are written in the first-person, which indicate that they were penned with the help of an *agente* rather than a court official and thus (arguably) closer to her own words than a document written by a court official would have been.<sup>285</sup> I am choosing, therefore, to treat them as words that she selected to represent her experience and win support, and thus worthy of note. Because society did not credit her as having honor, she could not express her repeated rapes and subsequent feeling of being violated in terms of “dishonor”, as her free counterparts could and did. However, she obviously still felt that her assault had diminished her. In this declaration, her capitulation reads as an admission of defeat, that despite her best efforts she was overcome by someone with more power than her. The idea that their “affair” was an open awareness in the household if not the community seems to have compounded her sense of violation; not only had she failed, but everyone knew it.

More research into the *Causas de Negros* in the Archivo Arzobispal de Lima may reveal overall patterns that distinguish enslaved women’s sexual coercion experiences even further from those of women who were not enslaved, perhaps even to the point of constituting a separate emotional community. Certainly the scholarship on sexual violence and enslaved women indicates that their experiences were uniquely coercive because of their bondage.<sup>286</sup> For the purposes of this discussion however, it is important

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<sup>285</sup> Slaves and other poor litigants frequently used *agentes* to write their initial complaints, and often had a great deal of input into. See Premo, *The Enlightenment on Trial*

<sup>286</sup> Hunefeldt, *Paying the Price of Freedom*; Van Deusen, “The Intimacies of Bondage”; Daina Ramey Berry and Leslie M. Harris, eds., *Sexuality and Slavery: Reclaiming Intimate Histories in the Americas* (Athens, GA: University of Georgia Press, 2018); Marisa J. Fuentes, *Dispossessed Lives: Enslaved Women,*

to note that they themselves articulated a sense of violation as they were forced to capitulate, and that this violation existed separately from socially-sanctioned shame and dishonor.

*Defiance, Miedo Reverencial, and Repentance: The Story of Isabel Muchotrigo*

Young women who experienced sexual coercion were just as unlikely to testify at length in ecclesiastical proceedings as they were in secular ones, making detailed expressions of personal experiences hard to come by. The most descriptive and expressive case that survives in this jurisdiction is that of Isabel Muchotrigo, whose mother's suit against Josef Falcón has already been discussed at length in Chapter Two. I return to it now because Isabel expressed a series of emotions that complicate our understanding of sexual coercion and which are not visible in any other trial.

While it can be difficult to determine agency through the filters of the legal system, Isabel's initial testimony indicates that this relationship was in fact one that she had engaged in willingly, despite the significant difference between her age at thirteen years and Josef Falcón's, who was in his twenties; and that she considered herself old enough to make this momentous decision for herself.<sup>287</sup> Indeed, the tone of this declaration, where she adamantly opposed her mother and stated baldly that she "has, does, and will have him for her legitimate husband," and that "she gave her person over to the referred-to Josef to enjoy her as her legitimate husband" is nothing short of

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*Violence, and the Archive* (Philadelphia: University of Pennsylvania Press, 2016); Rachel Feinstein, *When Rape Was Legal: The Untold Story of Sexual Violence During Slavery* (New York, NY: Routledge, 2018).  
<sup>287</sup> AAL CCM, VII 14 (1776).

defiant.<sup>288</sup> This public defiance is unique among the surviving documents for *estupro* and *rapto* cases in both jurisdictions; if teenaged daughters in other cases had similar feelings or objections against their parents, they seem to have expressed them in ways that did not enter into the written records.

Defiance as an emotion is an assertion of independence and willfulness. Isabel's defiance, then, indicates that she felt that her mother was unfairly interfering with her life, and saw this marriage that she had contracted for herself as an assertion of adult independence. While the judge and Isabel's mother clearly agreed that thirteen was too young to make such a permanent decision, it is important to note that Isabel, at least at the outset of the proceedings, did not feel the same way. In her own mind, she was a married woman, not a rebellious child.

The secondary declarations of Isabel Muchotriggo and her mother Josefa reveal another dimension to this teenage defiance— *miedo reverencial*, or reverential fear. This emotion has been studied by scholars interested in children's relationships with their parents in colonial Peru, and often excused a rescinded promise to enter a monastic order as well as to achieve marital annulments.<sup>289</sup> In this case, *miedo* of one's parents, associated with broken vows elsewhere in the Church's sphere of influence, bears special legal significance as an excuse for perjury. While neither woman used the full term *miedo reverencial*, they did seem to use *miedo* and *temor* differently. Upon hearing her daughter's bold declaration, Josefa Muchotriggo stated: "It has come to my attention that my daughter... said that it was her free will to marry said Josef Falcón, but having

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<sup>288</sup> AAL CCM, VII 14 (1776).

<sup>289</sup> Lauro, *El miedo en el Perú*.

questioned her... as to why she made such a disparate declaration, she responded that it was for no other reason than that of the fear (*temor*) that she had... that I would punish her for what she had done... but having now dissuaded her from the fear (*miedo*) in which she had been... it now behooves her to return to make a second declaration. ”

Similarly, Isabel stated in third person, “although all that is contained and explained in her previous declaration is true, she executed this [statement] in *miedo* and *temor* that she had of her mother so that she might not be punished.”<sup>290</sup> While Doña Josefa’s usage of *miedo* and *temor* might be excused as instinctive avoidance of repetition on the part of the notary, Isabel’s combination of those words in the same sentence indicate that they are, in fact, slightly different. Because *miedo* seems to have been associated with reverence for one’s parents in the ecclesiastical court, and because *temor*, elsewhere in the court records, was associated most directly with fear of punishment or violence, we can infer that Isabel seems to have felt both a fear of punishment *and* a fear of her mother’s authority. Regardless of whether she had lied initially, Isabel’s *miedo* and *temor* outweighed any defiance or self-assertion she wished to maintain. She may or may not have felt *miedo* when she claimed Falcón as her husband, but she certainly felt it after a lengthy conversation with her mother.

Isabel’s second declaration also exhibited repentance, or penitence. This emotion appeared more rarely than related emotions like regret, and was less connected to shame. When Isabel admitted to her supposed dishonesty, she also confessed that “while she lent her consent to marry the aforementioned Falcón this she executed poorly advised.”<sup>291</sup> The

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<sup>290</sup> AAL CCM, VII 14 (1776).

<sup>291</sup> AAL CCM, VII 14 (1776).

important distinction here, especially in light of her early defiance, is that Isabel did not apologize for having eloped or slept with Falcón; nor did she express regret or self-disgust for allowing herself to be used, the way that other young women did in the secular court. In contrast, Manuela Pando described herself as being “overcome,” “without resources to resist,” and “giving in to his clumsy desires,” indicating that she did not remember the event fondly.<sup>292</sup> Isabel Muchotrigo, however, merely expressed penitence for her dishonesty and for acting recklessly. She regretted her actions and her opposition to her mother, but did not regret sleeping with him, nor feel ashamed by it.

*Fear: Different Interpretations of the Same Emotion*

While Isabel Muchotrigo is the only non-enslaved girl in the available cases to express *miedo reverencial* in the explicit manner that she did, fear was a common emotion across both jurisdictions. However, it took different forms in secular court than it did in ecclesiastical, which, based on Reddy’s emotives, indicates that the women themselves experienced their coercions differently. Consequently, these different experiences constituted emotional communities centered around legal jurisdictions, even when the emotions themselves were similar. For instance, fear of their attackers was almost exclusive to secular cases, and reverential fear existed mainly in ecclesiastical court. These distinctions further illustrate the ways in which the two emotional communities simultaneously overlapped and diverged.

In the secular court, of the five cases in which young women testified between 1750 and 1799, two expressed explicit fear of their attackers: María Dolores Palencia in

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<sup>292</sup> AGN, RA-CR3 56. 651 (1785).

1775, and the young slave girl Tomasa in 1776. These assaults bear notable similarities, as discussed in Chapter Two, but most importantly for this discussion is the violence of their encounters. Dolores was grabbed by Sebastián Espíndola, thrown on the ground, and threatened with a knife. She did not fight him or tell anyone, she said, because she was afraid that he would kill her.<sup>293</sup> Tomasa, a girl of eleven faced with two adult men, resisted her attackers to an extent, but stopped because she feared them. She allowed them to hold her prisoner, hoping to save her own life by being compliant.<sup>294</sup> Not only do these two girls explicitly use the word *temor* in their testimonies, but their stories are so vivid that their fear becomes evident on its own. This kind of fear, so intense that it could almost be termed “terror,” was particular to criminal cases as opposed to broken marriage promises and thus is a unique experience of the women whose cases were heard in the secular courts. These declarations appeared in the *sumaria*, and are more comparable to a declaration than to an interrogation. However, they were, according to the formulas, asked what they could relate about the affair mentioned in the initial complaint, so their accounts were likely related orally before an official and transcribed onto the page after the fact. Therefore, while these are not “unmediated” dialogues, they are still reasonable facsimiles of the emotions that these girls articulated and thus experienced.

Fear of one’s parents, however, was common in women’s accusations and recounting of sexual coercion regardless of jurisdiction. As we saw in the case of Isabel Muchotrigo, *miedo reverencial* could provide a cover for perjury (or simply explain desisting from a case) and cause a girl to amend her testimony. In secular court, fear of

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<sup>293</sup> AGN, RA-CR3 34. 408 (1775).

<sup>294</sup> AGN, RA-CR3 37. 441 (1776).

parents caused women to cover up their complicity or willingness in sexual encounters, to ask for marriage promises or licenses before eloping, or to resist (or claim to resist) pressure for sex. Dolores Palencia, for example, told the court that she remained silent about her violation so “that it would not come to the ears of her mother,” Doña Ana. Doña Ana had the power to remove Espíndola from the house for interfering with Dolores, but because Dolores was afraid of her mother finding out, she did not advocate for herself. Indeed, according to this same declaration, Dolores did not tell Doña Ana about Espíndola’s actions until she became pregnant from his second attack and could no longer conceal her condition. While we do not know what attitudes Doña Ana expressed in private, we do know that she threw Sebastián Espíndola out of the house upon learning about her ward’s plight, and instigated the lawsuit a year later when he bragged about his “conquest” to the neighborhood.<sup>295</sup> At least some of Dolores’s fears about her mother’s response appear to have been unfounded.

Sixteen-year-old Rosa Espinoza, whose would-be lover Luís Rubin induced her to run away with him in 1762, also expressed fear of her father; however, she used that same fear as a ruse to allow her to seek lodging on her way to join Rubín.<sup>296</sup> In her testimony, she asserted that she “did not want to leave [the house] due to fear of her father.”<sup>297</sup> Several lines later, though, Rosa admitted to telling the proprietors of an inn or a lodging house that she had run away from an abusive father and was travelling to enter

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<sup>295</sup> AGN, RA-CR3 34. 408 (1775).

<sup>296</sup> AGN, RA-CR3 24. 272 (1762).

<sup>297</sup> AGN, RA-CR3 24. 272 (1762).

a convent so that they would allow her to stay there unaccompanied.<sup>298</sup> This, she readily confessed, was a lie that Rubín had instructed her to tell, but it does indicate that that level of fear or mistreatment was, to some level, not uncommon. Otherwise, the tale might have been too sensational to be believed, and Rosa would not have been allowed to stay. Even if Rosa herself was not afraid of abuse, it appears that many other girls were.

*He Loves Me, He Loves Me Not: Love and Betrayal in Sexual Coercion*

Many sexual coercion cases were complicated by feelings of attachment that the victims felt towards their antagonists. Although this can seem contradictory, dismissing it as inconsistent leaves out a critical aspect of sexual coercion. Because many of these “illicit friendships” came about as the result of or in connection with a marriage promise, love (or attraction) and betrayal are an integral part of many women’s experiences in both jurisdictions. Take, for instance, the 1797 *rapto* and *estupro* of Juana Solano, formally protested by her mother Isabel Solano. Isabel described José Rivera’s pursuit of her daughter Juana, running off with her on several occasions, and going about with her publicly as if they were a married couple. When Isabel confronted him about his “scandalous” behavior, José promised to marry Juana, but that he would allow her to live with her mother in the meantime.<sup>299</sup> The couple had a daughter together, who died shortly after birth, and José covered the funeral expenses. Ultimately, though, he refused to marry Juana and in fact married another woman, despite pleas from his own father and from Isabel, at which point Isabel chose to petition the Real Audiencia to force him to

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<sup>298</sup> AGN, RA-CR3 24. 272 (1762).

<sup>299</sup>AGN, RA-CR3 85. 1051 (1792).

support her daughter.<sup>300</sup> Juana's own statement revealed her complicated feelings on the matter. She recounted the various occasions where they had run away, only to be found and taken to task by Isabel, as well as the fact that she had been so free with him because of his absolute marriage promise. His betrayal hit her hard: "All that was said in [her mother's] declaration about his deception happened as she had said, because said Rivera married another woman, without attending to the obligations that bound him to the declarant and the [bond] of having a daughter with [Juana] who died." While Juana was sparing in her explicit emotions, her love for Rivera was clear in her actions. She ran away with him frequently, went out with him publicly unescorted, and even had and lost a child with him. The fact that he would marry another woman regardless of all that they had done together was a profound betrayal of her trust, and she seems to have viewed it as such.

Several other young women had similar experiences, but their emotions must be extrapolated through the lens of their parents' stories, as they themselves did not testify. Twenty-year-old Francisca Javiera Carrera's relationship with Bernardo Chabarrí was founded on deception, though she did not know it at the time. Chabarrí, according to Javiera's guardian Ignacio Martínez, had promised to marry Javiera, and indeed took out a license from the ecclesiastical magistrate and took her to a priest in the parish of San Marcelo, who performed the ceremony. However, Chabarrí never filed this completed license with the ecclesiastical court, because he had a known wife named Micaela, who lived in the town of Chiclayo. Nonetheless, he and Javiera lived in San Marcelo "as if

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<sup>300</sup> AGN, RA-CR3 85. 1051 (1792).

they were really married,” until Ignacio Martínez located them and brought Javiera home.<sup>301</sup>

Ignacio Martínez was, understandably, vocal in his outrage that his daughter was subjected to such deception by a man who was not free to do the right thing by her. Javiera’s feelings are much less accessible; indeed, she resisted a request by Chabarrí’s attorney that she offer an account of what had transpired.<sup>302</sup> Her testimony is missing, it seems, because she wanted it to be. Nonetheless, the sequence of events, corroborated by other statements, offers insights into her emotional state. Although we know nothing for sure about the initial courtship, we do know that Chabarrí presented her with an authentic license from the ecclesiastical court, took her to a priest, and had him perform the marriage in a church. They then set up house in that parish and lived as husband and wife—meaning that they openly lived together as a couple, slept together, and shared household duties. Since she was clearly ignorant about his first marriage, she likely thought of this as the start of her married life, and certainly had some feelings for or attraction to Chabarrí in order to have eloped with him. While we do not know for sure, it is not hard to imagine that his deception regarding his marital status would have wounded her deeply. Indeed, one could take her refusal to testify as a mixture of hurt feelings and shame about being deceived. Of course, the evidence against him, which included a copy of his first marriage license, provided by a friend of the family, was damning enough on its own (Chabarrí was ultimately convicted for *estupro* and sentenced to exile from

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<sup>301</sup> AGN, RA-CR3 35. 419 (1775).

<sup>302</sup> AGN, RA-CR3 35. 419 (1775).

Lima), but Javiera's refusal to speak despite official pleas is evidence of some emotional distress.

In the ecclesiastical court, betrayal followed similar patterns, as María Carrasco's and Dominga Castañeda's experiences bear out. Dominga Castañeda had stood before the priest, six months pregnant and marriage license in hand, only to have José Falcón refuse his vows at the last second.<sup>303</sup> María Carrasco openly went to her lover's house and had sex with him under a marriage promise, only to have him claim that she was not a virgin, and so their marriage promise was null.<sup>304</sup> Neither women explicitly said that they loved these men, nor did they use the word "betrayal", but both seem stunned at their lovers' behavior, as if it was something that they had not anticipated. And, obviously, both of them were upset enough to either petition the ecclesiastical court directly, or to have a guardian do so on their behalf.

Women who survived sexual coercion in Lima in the late eighteenth century expressed and experienced a wide range of emotions. While some emotions—love, betrayal, desperation—were fairly universal experiences, others were particular to specific communities, reflected by the jurisdictions in which the cases were heard. Women in secular court expressed shame, regret, fear of parents and of their attackers, affection for their antagonists and betrayal at their desertion. Women in ecclesiastical court expressed affection, betrayal, and regret as well, but did not fear the men who refused to marry them. Some feared punishment from their parents, or at least pretended

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<sup>303</sup> AAL CLM, V: 55-A (1792).

<sup>304</sup> AAL CCM, VII: 18 (1783).

to in order for annulments to proceed, but often respected their parents' authority. And the ecclesiastical court was an arena in which slave women, unable to appeal directly to honor, expressed a sense of personal violation at their sexual abuse at the hands of their masters. These community variations indicate that there was no clear consensus on sexual coercion, no "one right way" to experience it or to express that experience. The existence of multiple emotional communities, then, both created and reflected a multiplicity of sexual coercion experiences.

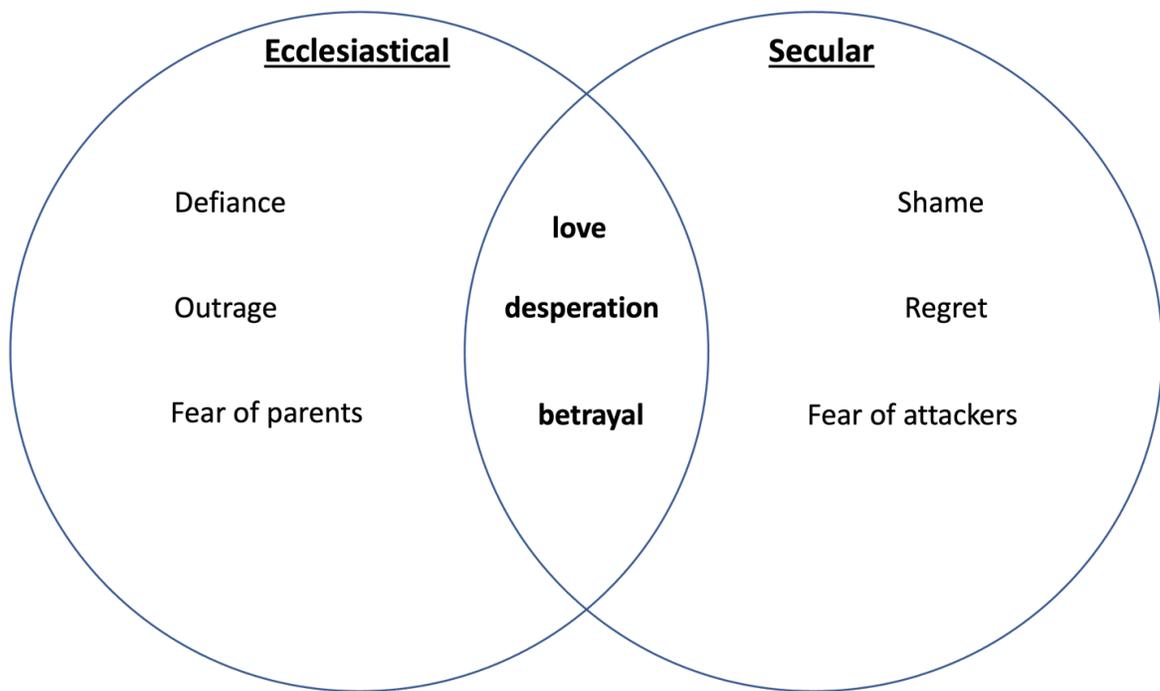


Figure 1: Emotional Communities in Lima, 1750-1800

## PART TWO: ONE REGIME, 1800-1821

Between 1800 and 1821, the distinct emotional communities visible in the preceding fifty years merged into one emotional regime. This emotional regime shares

the overarching cultural and emotional frameworks described at the beginning of the previous section but became more hegemonic and less variable than had been true previously. This difference mattered a great deal to the women seeking justice and resulted in a homogenization of expressions about their sexual coercion experience, which, following Reddy, we can presume structured their feelings about these encounters. Whereas before, women had expressed (and thus experienced) outrage, women during the last twenty years of Peru's colonial period primarily described their experiences in terms of shame, fear, and a new emotion: regret. Therefore, there was less room for women to be angry about their violations, and more pressure to be ashamed of having been taken advantage of.

*Regrettable Errors and Shame in the Public Eye: Parents and Children in the Early Nineteenth Century*

As in the late eighteenth century, parents' emotions and attitudes were much clearer in the early nineteenth century than those of their daughters. These expressions varied very little between the two periods. Fathers still expressed anger or outrage at these men's temerity or daring (*atrevimiento*), sometimes with concern over their daughters' futures and others with more worry about the family reputation. This continuity indicates that what it meant to be a father with a violated daughter did not change substantively during this period.

Fewer female heads of household appeared in sexual coercion cases during the early nineteenth century, but those who did were still just as outraged and active in their pursuit of justice for their daughters as their late-eighteenth-century counterparts. One

notable example is Doña Manuela Arnao, in 1802, who pursued a multi-year, 200-page legal case on behalf of her legitimate daughter Escolástica Saenz to make Don Pedro Celestino López pay a 3000-peso dowry after he seduced her under promise of marriage.<sup>305</sup> This case begins, unusually, with a letter of obligation detailing the situation, the steps they had already taken to resolve the case, and a written promise by López to pay this dowry as compensation for having “corrupted” Escolástica. Manuela Arnao had already made a verbal complaint before the court several months prior to this letter, and persisted in filing criminal and civil petitions when Lopez neglected to fulfill his obligations.<sup>306</sup> Throughout her initial testimony, in addition to proving herself legally savvy and connected to her community, she referred constantly to Lopez’s dishonesty and his work to deceive both her and Escolástica, clearly outraged and indignant that this man would corrupt her daughter and then run out on her. López’s attempts to deny his responsibilities and financial obligations were met with strident calls for judicial action. Ultimately, though the dowry was decreased from three thousand pesos to one thousand five hundred, Doña Manuela’s outrage did result in monthly payments of a hundred pesos to Escolástica. In this, she proved just as vocal an advocate for her daughter as any father, and had better results.

It is difficult to discern victims’ voices in many declarations in this period, because fewer of them gave declarations in the trials that concerned them (only four out of the nine criminal cases heard saw testimony by violated women), and few of these declarations did more than merely corroborate what happened. For some of these women,

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<sup>305</sup> AGN, RA-CR4 116. 1401 (1802).

<sup>306</sup> AGN, RA-CR4 116. 1401 (1802).

shame was an explicit motivating factor in their behavior. When Fernando Durán lured eighteen-year-old Petronila Torre into his house, she told the court that “she did not want to scream, so as not to cause a scandal.”<sup>307</sup> Other women may have expressed their own shame, and that of their families, by not appearing to give testimony—despite lengthy cases and much legal wrangling, neither Escolástica Saenz nor María Dolores Torres testified. Regardless, women’s feelings on this subject are more opaque than they had been previously, with shame discussed more at the family level than the individual level.

One aspect of shame and regret that appeared more clearly during this period is explicit regret for having caused pain to one’s parents. Eighteen-year-old Doña Manuela Nuñez expressed this type of regret especially clearly in 1800: “The declarant verifies that she was not aware of her error, and the fragility in which it was incurred was the effect of her few years, and without the blame of her parents; of this she is very repentant and earnestly asks that they forgive her.”<sup>308</sup> Her regret for upsetting her father was not unfounded. In the course of the case, it came out that her intended husband was, in fact, her cousin, which the two of them had not known because their branches of the family were somewhat estranged. However, the secular court decided that Manuela’s father’s objection was “irrational” and ultimately granted the couple permission to marry despite his objections. In the context of marriage dissents, “rational” and “irrational” were words that described the validity of a parents’ objections. A “rational” dissent was one that had merit based on the complaint; an “irrational” one had no basis in the facts presented.<sup>309</sup>

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<sup>307</sup> AGN, RA-CR4 102. 1244 (1804).

<sup>308</sup> AGN, RA-CR4 116. 1401 (1802).

<sup>309</sup> Shumway, *The Case of the Ugly Suitor*, 76.

Regardless of the situation, this level of explicit regret and shame for having offended or distressed one's parents was not visible in any of the eighteenth-century cases, even when younger teenagers had behaved rashly and been caught. However, because Manuela was the only woman to express this sentiment so clearly in the available cases, it is hard to say if she was representative of a broader shift in culture. At the very least, however, the cultural shifts already identified in previous chapters created a space where her regret could be expressed in this form.

*Terror, Pain, and Desperation: The Sad, Short Life of Maria Vicenta Villa*

The 1821 case that Gregorio Villa pursued against Felipe Ramos was unusual. For one thing, it was the only one identified in which medical testimony proved central, a harbinger of modern court proceedings. For another, it was one of only three cases in either jurisdiction that involved a child of seven years or younger. And, tragically, it is the only case in either jurisdiction in which a rape victim died midway through the trial. And yet, it is also an astonishingly clear account that provides unprecedented insight into María Vicenta's emotional and physical experience, as well that of her parents. Through their vivid retelling of the events, we can see the ways that sexual violence affected families as well as victims, as well as the intense recollections that even small children could be left with.

On September 21, 1821, in the city of Ica, María Concepción Cama sent her six-year-old daughter, María Vicenta Villa, up the road to buy cigars. This was a normal errand, one that neither mother nor daughter would think twice about. By her own testimony in the *sumaria*, Vicenta met Felipe Ramos along the road, a man that she

recognized from the neighborhood. After a strange, brief conversation about her relationship experience (none; she was only six and did not fully understand his questions), Ramos grabbed her and put a knife to her throat to gain her compliance. He proceeded with his vile agenda, leaving her bleeding and unable to walk.

By this point, Vicenta's mother, having become concerned that her daughter had not returned from her errand, went out into the streets, calling for her and asking the neighbors if they had seen her. All the neighbors could tell her was that Vicenta had been walking with Ramos. Having heard that María Concepción was worried and looking for her daughter, when a community member named Polo Gutiérrez saw Vicenta on the ground, he told her that he would get her mother, because she had been looking everywhere for her and only had been told that Vicenta was in the company of Ramos. At this point, still unable to walk but afraid that her mother would punish her for being alone with a man, Vicenta crawled the distance to her godmother's house, where her godmother and the other women of that household sent for her parents.

This narrative is harrowing and emotional from both María Vicenta's perspective and from that of her parents. On Vicenta's side, to be menaced with a knife and abused horribly clearly caused her unspeakable terror, visible even through the notarial filter: "Grabbing her, he wrapped her head with a poncho, threatening that if she screamed he would kill her with the pruning shears that he carried in his hands... from fear (*temor*) that he would kill her, and not having any help she shut up (*calló la boca*); conducting her to the foot of a guava tree, he acted on her with such force that having finished the deed, Felipe remained in that place."<sup>310</sup> On another, even more heartbreaking note, even

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<sup>310</sup> AGN, RA-CR4 142. 1782 (1821).

as terribly injured as she was, she was scared that she would get in trouble with her mother for what had happened. Her physical effort in crawling to her godmother's house, which she obviously saw as a safe haven, underscores this further: "Having walked, that is, crawled, from not being able to walk even a short distance, she passed one Polo Gutiérrez, who having seen her from his garden, remembered that he had been notified by her mother, having been asked by her if he had seen her daughter nearby with a part-Indian named Felipe: he explained this to [Vicenta] as best he could, and because of fear (*temor*) that her mother might punish her, she went to where her godmother [lived]."<sup>311</sup> Like many small children who experience abuse, María Vicenta thought that *she* had done something bad and so tried to hide from her mother. For her own part, María Vicenta's mother expressed the visceral fear of a parent with a missing child. Even through the slightly elevated verbiage of the legal formulas, we can follow her to the store, then through the streets as she asks everyone she knows if they have seen her daughter. Discovering her daughter at the godmother's house was, likely, both a relief and a return of the dread and terror—her daughter was alive, but far from well. In many ways, what Vicenta experienced was every parent's worst nightmare.

Pain is a challenging experience to discuss, because in some ways it is a physical sensation rather than a strict emotion. Susan Sontag describes it as a rhetorical spectacle, while others, like Charles Darwin, identified it as a feeling so instinctive that humans and animals have it in common.<sup>312</sup> Regardless of its precise categorization, it is a part of

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<sup>311</sup> AGN, RA-CR4 142. 1782 (1821).

<sup>312</sup> Susan Sontag, *Regarding the Pain of Others* (New York, NY: Picador, 2003).; Charles Darwin, *The Expression of Emotions in Man and Animals* (1872).

María Vicenta's story, both in a physical sense as she suffered through her injuries, and in an emotional sense as her parents struggled to come to terms, first with what happened to their child, and later with her death. By the time that Gregorio Villa's case was recommended from Ica to the Real Audiencia in Lima, María Vicenta was terribly ill. The doctors who examined her on the court's behalf noted that she was bedridden and severely debilitated by her injuries. They also observed the scarring around her genitals which, they noted, would likely cause her a great deal of difficulty in bearing children when she became an adult.<sup>313</sup> After Vicenta died a few weeks later, the same doctors noted advanced sepsis throughout her entire reproductive system during the autopsy, but declined to draw conclusions on whether Ramos had actively caused her death.<sup>314</sup>

For Gregorio Villa and María Concepción Cama, the emotional pain that they suffered as the result of their daughter's abuse cannot be understated. Gregorio did not express fear or concern—it was not a masculine emotion—but he did express a violent fury towards Ramos, saying that he had taken a saber to Ramos when he learned of Vicenta's assault: “[I attacked him] with the help of a saber that I wielded, being a miracle of Providence that he yet lives.”<sup>315</sup> His subsequent declarations carried a tone of helplessness; when he begged the court to send appropriate medical professionals to examine his daughter, he acknowledged the precariousness of her condition, as well as the fact that she was not recovering as he hoped she would. Later, when she died, his grief and anger are evident in his revised homicide suit. María Concepción did not offer

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<sup>313</sup> AGN, RA-CR4 142. 1782 (1821).

<sup>314</sup> AGN, RA-CR4 142. 1782 (1821).

<sup>315</sup> AGN, RA-CR4 142. 1782 (1821).

an independent declaration, but it is not difficult to imagine, given her frantic searching for her daughter when she went missing, that María Vicenta's death caused her a great deal of emotional pain. Thus, it is clear that, certainly in cases where small children were abused, the crime was emotional for families as well as for the victims.

*Fear and Betrayal: Carmen Venegas's Elopement*

In 1815, Carmen Venegas was a teenager with several younger siblings, a mother who was ill and exhausted from a recent birth, and a strict father with (apparently) little patience for his wife's infirmity. Under these circumstances, perhaps it is not surprising that her assignations with Manuel Caballero, arranged by a neighbor woman of questionable standing in the community, culminated in an elopement. What no one expected, least of all Carmen, was that this elopement would end in a rather dramatic escape from her lover and a return to her father's xhouse, aided by her would-be sister-in-law and some sympathetic strangers.

Like the other cases that I have chosen to highlight in this chapter, Carmen Venegas's story, while unusual in some ways, is rich in detail and one in which her own voice is readily discernible. It is challenging, in places, to discern the "truth" of her narrative—she almost excessively absolves herself of agency, sounding very much like a teenager covering up rebellious misdeeds—but her emotions and reactions are articulated in such a way that she seems almost to be speaking directly from the page, despite the notarial filter. Her declaration is also valuable in that it is one of the few in which a violated woman was formally interrogated with a series of questions, to which she responded orally for the notary to record. Looking at her case in detail, then, indicates the

complicated nexus of attraction, betrayal, and fear that arose in sexual coercion cases where an agreed-upon sexual contract was violated.

It is not fully clear from her testimony whether Carmen Venegas was in love with Manuel Caballero, but she does appear to have been attracted to him on some level. She recounted a courtship that she did not initiate, and one in which she continually rebuffed his amorous advances. These statements of modesty and submission to her parents' will continued until he swore that he would marry her.<sup>316</sup> There are some aspects of this tale that sound far-fetched. For instance, the frequency with which her neighbor Manuela seemed to call her into the house while Caballero was there makes Carmen's alleged surprise each time at encountering him there sound a little implausible. Additionally, she and her father both recount a time where she returned to her own home intoxicated after sharing *aguardiente* (a strong, unrefined liquor) with Caballero in her neighbor's home, and receiving a beating in punishment. While her father's anger at her loose behavior was obvious, Carmen evidenced no misgivings and described no coercion in her relation of that scene.<sup>317</sup> That he pressured her to have sex with him is obvious from the escalation of his advances; however, once they had run away together, she seems to have viewed herself as his wife despite not having been formally married, and spoke of her "deflowering" in a matter-of-fact tone, rather than with distaste or emotional pain.<sup>318</sup>

This combination of factors indicates that Carmen did indeed feel some affection or attraction to Manuel Caballero, and perhaps was not averse to sleeping with him under

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<sup>316</sup> AGN, RA-CR4 130. 1586 (1815).

<sup>317</sup> AGN, RA-CR4 130. 1586 (1815)

<sup>318</sup> AGN, RA-CR4 130. 1586 (1815) see also Chapter Two of this dissertation.

the correct circumstances. At the very least, he did not have to abduct her from her father's house, nor did he force her sexually once they arrived at their shared lodgings. In a culture in which male "conquest" was a common narrative, and in which women used contractual agreements to secure their futures in the face of sexual pressure, it is quite possible that Carmen saw nothing wrong with this arrangement. Given that her father was, by his own admission, a strict disciplinarian, she may have even thought that her runaway marriage, while improper in some ways, had secured her more freedom. "Love" as an all-consuming passion seems have been absent, but attraction and willingness could be enough to build a future.

While her affection for Manuel Caballero is somewhat ambiguous, Carmen's betrayal and hurt when he became abusive are not. The couple lodged with Caballero's sister, Paula, in a part of Lima far from Carmen's home. At first Caballero gave Carmen four *reales* a day for her personal upkeep, and she stayed at home to keep house.<sup>319</sup> This kind of arrangement does not seem unusual; Carmen noted it in her declaration as an indicator that they were living as husband and wife, and a reason that she was not initially concerned about the immediacy of their marriage. However, this changed when Carmen did not make the bed properly one day. He verbally abused her, and then the next day left her two *reales* instead of four.<sup>320</sup> When Carmen, who clearly saw herself as his wife and thus entitled to housekeeping money, asked him for the missing two *reales*, Caballero shouted that he did not have to give her anything and hit her: "After this on the following

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<sup>319</sup> AGN, RA-CR4 130. 1586 (1815).

<sup>320</sup> AGN, RA-CR4 130. 1586 (1815).

day, he only gave her two *reales* and having asked him why he gave her this ridiculous amount he answered her in the following manner: ‘I don’t have to give you anything; go whoring to support me.’”<sup>321</sup> Tiny provocations like these were often the catalyst for verbal abuse, and there was no clear consensus about which sorts of offenses warranted correction.<sup>322</sup> However, this sequence of events seems to have been Carmen’s first clue that perhaps she had put more stock in Caballero’s marriage promise and vows of everlasting love than he had himself. However, because this verbal attack was followed almost immediately by a physical one, Carmen did not dwell for long on his harsh words.

Following his sudden outburst and withholding of housekeeping money, Manuel Caballero became even more abusive, and Carmen’s betrayal and bemusement quickly turned into fear: “After this, he wanted to take her under the bridge by force, having already excused his abuse of her, but he did not achieve this because his own sister defended her, in such a manner that for this defense he also hit [Paula].”<sup>323</sup> At this, Carmen hid from him under the bed, and then when he had left, escaped to a neighboring house with Paula’s help, where three women—complete strangers—hid her from Caballero and sheltered her until her father arrived a day or two later.<sup>324</sup> At this point, it seems that Carmen’s fear of her partner far exceeded any misgivings she might have had about returning home to her father—her relief at having been helped to safety was obvious in her testimony.

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<sup>321</sup> AGN, RA-CR4 130. 1586 (1815).

<sup>322</sup> Uribe Urán, *Fatal Love : Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic*; Stern, *The Secret History of Gender: Men, Women, and Power in Late Colonial Mexico* .

<sup>323</sup> AGN, RA-CR4 130. 1586 (1815).

<sup>324</sup> AGN, RA-CR4 130. 1586 (1815).

Carmen’s story reveals a progression similar to many abusive relationships—whirlwind courtship, isolation from social networks, steadily escalating behavior, and finally abuse so excessive that it drew attention and intervention. Her emotions, from attraction, to betrayal, to fear, show that, not only were emotions complicated in cases of sexual coercion—her ambiguous attraction and response to pressure, as a case in point—but that they could evolve throughout the relationship. She did not start out afraid or suspicious of him, although she may have been uncomfortable with his sexual pressure; her sense of betrayal with his first outburst would not have been as sharp if she had suspected him of ill intent all along. She certainly had cause to fear him by the time of her escape, but she did not testify to coercion or lack of consent in her elopement. Ultimately, her initial attraction and willingness did not outweigh the abuse she sustained and the real danger she found herself in.

In considering the main takeaways from the first two decades of the nineteenth century, what is *missing* is just as important as what is present. Many of the same emotions—fear, shame, regret, affection, betrayal—were present across this entire period with small adjustments. However, outrage on the part of victims, previously experienced in the emotional community encompassed by the ecclesiastical court, was utterly absent. Defiance, too, vanished completely as the ecclesiastical court lost its legal footprint. Even in cases where women disagreed with their parents and wanted a marriage to proceed—as in Manuela Nuñez’s case in 1800—it was less a battle of parent against child and more a confrontation between a father and a would-be-husband; Manuela’s one declaration included a meek apology for her “reckless” behavior, rather than an assertion of agency

like the much-younger Isabel Muchotrigo in ecclesiastical court twenty-five years earlier. Indeed, she was never called upon to relate the circumstances of her courtship, or whether she had contracted marriage with Severino de los Santos (which was standard procedure in the preceding decades), merely to corroborate facts of her parentage and agree to someone else's version of events.

Apart from restriction in women's potential opportunities for justice, examined in Chapter Three, these changes indicate that the allowed expressions and thus the acceptable experiences of sexual coercion were more homogenous than they had been previously. Thus, the same restrictions observed both culturally and legally had a profound effect on the experiences of individuals as well as on systems. Nonetheless, individual experiences continued to be complex and diverse, and to affect parents as well as children.

### *Conclusion*

The ways in which women in Lima and their families experienced sexual coercion changed throughout the course of the late colonial period. Between 1750 and 1799, there were two distinct emotional communities, rooted in the same culture but with important differences in emotive options that women had in their sexual coercion experiences. Women in ecclesiastical courts, for instance, were more likely to articulate outrage or even, on rare occasions, defiance against parents than women in secular court. In turn, women in the secular courts were more likely to refer to shame or regret, even weaponizing shame upon occasion to call out the men who abandoned them. Even the emotions that women in both communities articulated, like fear and desperation, often

took different forms based on a woman's experience as a part of that community. Women in ecclesiastical courts, who had mostly been deceived with false marriage promises or betrayed by intimate partners, did not express fear of their antagonists but rather of parental figures. In contrast, fear in the secular courts encompassed fear of their attackers as well as fear of parents or of community judgement. In both communities, love and betrayal were common emotions as well, although women in ecclesiastical jurisdiction tended to focus on marriage and its obligations more than did women in secular courts. This emotional variation indicates that women in late eighteenth-century Lima expressed sexual coercion in diverse ways, and had forums to express a wider range of the emotions they felt. Again, following Reddy, this wider range of emotives surely structured their experiences and perhaps motivated or justified legal action.

By the start of the wars of independence in 1821, however, women articulated a narrower range of emotions, and in more limited ways. Shame, fear, and regret defined their experiences more than did outrage or defiance, with many women relating their feelings of violation to their loss of honor, or to their regret for disappointing their parents. Experiences remained highly individual, as the stories of María Vicenta Villa and Carmen Venegas demonstrated, but the range of expected and accepted emotional articulations constricted substantially, reducing the diversity of emotional expression. Thus, what had once been a variety of emotional communities became a single emotional regime, with comparatively little flexibility.

For their part, parents found that their ability to articulate their own responses changed very little between 1750 and 1821. Fathers in the early nineteenth century tended to articulate less concern for their daughters as individuals and more concern for their

own reputations, but they still expressed anger and outrage to varying degrees throughout the entire period. Female heads-of-household still evidenced the same mixture of restrained outrage and careful cataloguing of detail in 1810 as they did in 1785, although fewer of them appeared in sexual coercion cases by the end of the late colonial period than in the mid- to late eighteenth century. If anything, the lack of open defiance on the part of children by the early nineteenth century solidified parents' authority and made it easier for their priorities to dominate the narratives.

Overall, the same cultural and judicial changes that took place elsewhere in Lima's society had an effect at the level of individual experiences, as well. Women's stories remained distinct from one another; wherever detailed accounts from violated women appear, a unique emotional experience emerges. Nonetheless, having only one formal arena in which to address their sexual coercion meant that women's emotional expressions, and thus experiences, of their violation and deception necessarily conformed to the expressions allowed by that arena. Thus, what it meant to experience sexual coercion became much uniform, and more aligned with elite secular norms, as Peru made its transition from colony to republic.

## *Conclusion*

In late colonial Lima, gender biases and stereotypes reflected both traditional religious and modern Enlightenment interpretations of gender. The Church had long viewed women as sinful or inferior because of Eve's sin in the Garden of Eden, and fixated on their potential to lead men astray and thus corrupt the world. To avoid such a horrible fate, women needed to be carefully guided and supervised. This attitude affected women at all levels of colonial Spanish society, but is particularly visible for religious women in Spain and in Peru, who left their own writings behind. Although technically more independent than their lay counterparts, religious women were still scrutinized for any signs of heterodoxy and some were indeed prosecuted by the Inquisition and imprisoned for false mysticism. The Enlightenment, which in Peru was anticlerical rather than anti-religion, left many of these existing biases in place, but interpreted as part of the natural order (in its own way a manifestation of God's Will) rather than through the lens of the Bible. Women's weak nature was represented as a scientific truth by some Enlightened scholars, while others simply referred to events or habits from their cultural milieu that their peers would recognize as signs of female folly—weak discipline in the household, for instance, or spendthrift habits. Thus, women's inferiority and lack of trustworthiness was an embedded component of Lima's culture.

Female pain, was also an integral part of Lima's cultural landscape, one that proved especially complex as religious women embraced it on their own terms but became spectacles to encourage pious behavior. Religious women like Santa Rosa of Lima in the early seventeenth century and the founders of the Nazarene and Trinitarian

convents in the eighteenth century fully embraced religious practices like intentional whipping, starvation, and sleep deprivation that harmed their flesh to bring their spirits closer to God. Ursula de Jesús, a revered Afro-Peruvian mystic of the mid-seventeenth century, was less known for her mortification practices than for her continuance of humbling work and service as a sign of her devotion to God. Nonetheless, her visions and pain were what elevated her from a convent slave to a free *donada*. During their lives and upon their deaths, these holy women became examples, their pain removed from its personal spiritual context and used to inspire the good and spiritual behavior of future generations. Their pain, in short, elevated them from mere women, or slave women, into spiritual icons and intercessors.

For non-professed women, community opinion and honor were essential components of their daily lives. The public image of maidenly behavior was important to many women, just as physical aggression in defense of their houses mattered to many men. Maintaining such an image was a high bar for women to clear, one that became increasingly higher as the nineteenth century progressed, and community gossip was ever-present. However, this extensive community knowledge meant that court investigators seeking testimony for sexual coercion cases often had a plethora of witnesses, all with clear ideas of what had transpired and whether it was appropriate. Sometimes this gossip cast aspersions upon the character of the accused men, as when Bernardo Chabarrí faked a marriage to Francisca Javiera Carrera despite already being married in his home village. On other occasions, it was ambiguous, offering conflicting accounts of a man's intentions and paving the way for a legal stalemate, as in the case of Isidro Pérez's suit against Francisco de los Ríos. And yet, it could also be used to help

trace missing dependents, and was a key part of locating both the slave girl Tomasa and the young Doña Ana de la Torre. Neighbors did not always feel a need to intervene, except in cases of clear domestic abuse, but they seem to have been constantly observing what went on around them, indicating that personal relationships were seldom private. They were in many regards a community affair.

It is tempting to dismiss these cultural elements as “patriarchy,” but this assumption is made more complex by both the level of female participation in many of the above elements, but also by the legal exercise of consent that women across the social spectrum invoked. Marital consent was an important component of sex in Lima, one that many parents and individuals referred to in their arguments. The Church prioritized consent as essential to marriage, and a number of *raptó* and *estupro* cases heard in the ecclesiastical court explicitly included debates over free will and consent, including by teenaged girls who had eloped. In the secular courts, as parents gained more rights to oversee their children’s marriages with the *Real Pragmática* on marriage in the late 1770s, many debates revolved around whether their rights as parents to oppose unequal partnerships had in fact been violated. For the daughters of these households, their consent was not their own to give.

A working idea of sexual contract underpinned many of such interactions, rooted in but separate from marriage. This dynamic was especially clear in enslaved women’s suits of their masters for moral and sexual *sevicia*, in which no marriage was possible but in which the women had been promised their freedom in exchange for acquiescence. For women like Mercedes Olavide and Natividad, their agreements to have sex with the priests who owned and coerced them had been equivalent to their legal right to set a price

for their freedom. Having agreed to exchange sex for freedom, their acquiescence was based on the receipt of that freedom. When their masters reneged, they felt that their (sexual) contract had been violated and thus took these men to court in pursuit of their freedom. Neither of these women was themselves successful, but other scholarship indicates that there were indeed success stories to be had in this type of litigation. Similarly, free women like Manuela Pando who entered into sexual relationships on condition of marriage also based their suits on loose ideas of contracts—that the sex that they had engaged in was only valid insofar as their partner’s promises were kept. Those promises being broken and not redeemable by informal means, a lawsuit was a way of rectifying the issue.

The legal system that heard these lawsuits was itself a complicated mix of overlapping jurisdictions, each with their own distinct priorities. Both the ecclesiastical and secular royal courts prioritized caste, *calidad*, and social disparity in determining who had coerced or deceived whom when sexual encounters were violent, unwanted, or regretted in the late eighteenth century; but they did so for different reasons and through different means. The ecclesiastical court, for instance, placed a high value on the sanctity of marriage as a sacrament, which meant that when it opposed or annulled unequal or secret marriages, it tended to do so with the good of the institution in mind. The secular courts in turn were quite concerned with maintaining the social hierarchies through which they derived their power, as well with upholding the laws like the *Pragmática* that increasingly gave them jurisdiction over matters like marriage that had previously been the exclusive domain of the Church. Similarly, while each jurisdiction could claim a stake in sexual coercion litigation, the justice that each sought to apportion was different.

Ecclesiastical courts, having jurisdiction over marriage, frequently chose to rule on whether a valid marriage or *esponsal* had taken place and then ordered marriage, dowries, or annulments as required. The secular courts treated sexual coercion as a criminal offense and sentenced men convicted of such offenses to imprisonment, exile, or to pay substantial damages.

For their part, litigants chose a jurisdiction in which to present their cases based on the kinds of justice that they themselves sought. Those who sought the ecclesiastical court saw marriage as a potential solution for their situation, or thought that a marriage may have already taken place. Those who approached the Real Audiencia or the *cabildos* either saw the offense committed as deserving of criminal penalties or did not see marriage as a solution. Litigants also had priorities separate from those of the legal officials. For instance, while many who filed sexual coercion complaints in the secular court (especially fathers of violated daughters) cited their own honor or that of their dependents as a motivating factor for the suit, the courts' decisions did not always uphold honor pleas. Litigants preferences also contributed to an increasing asymmetry between the secular and ecclesiastical jurisdictions, reflecting secularization and modernization trends that ultimately consolidated the legal options available. The ecclesiastical court still presided over marriage disputes, as scholars of the nineteenth century indicate, but people stopped presenting their sexual coercion complaints in that jurisdiction. This change indicates that litigants' ideas of justice for such crimes became more closely aligned with the secular courts' priorities by the time that Peru transitioned into an independent republic.

Because the ecclesiastical and secular jurisdictions had distinct priorities in the late colonial period, the narratives and emotions expressed in *estupro*, *rapto*, and marriage litigation varied between jurisdictions well into the 1790s, representing separate emotional communities that constricted in the early nineteenth century to form a single emotional regime centered around the secular court. Emotions like betrayal and desperation appeared similarly in both jurisdictions, while shame was particular to the secular court and defiance and outrage to the ecclesiastical. Fear, while expressed by people in both jurisdictions, took different forms. The only instances of reverential fear (of one's parents), for example, appeared in ecclesiastical lawsuits, while fear of one's assailant was particular to the secular court because of its domain over violent offenses. After 1800, when evidence of consolidation became apparent in the records, shame became a more prevalent emotional expression, and regret and physical pain appeared for the first time. At the same time, defiance and outrage disappeared from the emotional landscapes of sexual coercion cases. This change over time indicates a homogenization of emotional expression in sexual coercion cases, which in turn indicates that the experiences themselves were becoming homogenized to align with the secular—that is, criminal—interpretation of what constituted sexual coercion.

Together, the emotional, legal, and cultural dynamics of late colonial sexual coercion cases demonstrate that gendered power changed in subtle ways throughout the late colonial period, and that it did not always do so from the top down. The basic parameters of gendered power, represented by intellectuals' religious and scientific views, did not themselves undergo much essential change, nor did the kinds of contractual demands that women asserted in their own defense (although these types of

demands decreased in frequency). In that sense, what we might loosely define as “the patriarchy” remained largely unaltered in its basic components. What did change, however, was the balance of power between the jurisdictions, partially as the result of the Bourbon Reforms but also through the petitions of litigants who increasingly chose to take their sexual coercion petitions to the secular court. The effect of this consolidation on victims’ individual experiences, as seen in the emotions that they expressed, was subtle, but in many ways reduced the “allowable” range of reactions to sexual coercion. Thus, the changes that took place in sexual coercion disputes in Lima over the last seventy-five years of the colonial period reflected other social and gendered dynamics that would influence gender, power, and society in the early years of Peru’s independence.

### *Afterword*

This project has its origins in a particularly noisy and emotional moment in sexual coercion discussions in the United States. In 2018, as I sat in my first-ever history of emotions seminar, with the idea for a project on sexual violence already simmering on my mental burners, Brett Kavanaugh’s nomination to the Supreme Court became both a scandal and a catalyst for intense discussion. What constituted coercion, people wanted to know, and should an event that happened decades earlier be held against a man from a decent family and with a good public reputation? Watching Dr. Christine Blasey Ford’s testimony and Brett Kavanaugh’s response, I was struck by the disparities between their presentations. Dr. Blasey Ford articulated herself clearly and mostly composedly, with declarations of emotions (eg “I am afraid”) rather than emotional demonstrations.

Kavanaugh, on the other hand, raised his voice, pounded on his desk, and shed loud indignant tears that *he* could be accused of such misdeeds. That hearing made it brutally obvious that, while coercive sex elicited strong emotions from everyone involved, the right to express those emotions was asymmetrical, and the power to be angry seemed to rest wholly with the man accused.

The last six years have seen the resurgence of advocacy against sexual coercion worldwide, with viral internet movements like #MeToo, *El violador eres tu* (“You are the rapist,” an internet anthem performed and posted in videos all over Latin America in 2017), *Ni una menos* in Argentina, and many others. Each of these moments sparked outpourings of pent-up emotions, including hurt, rage, humiliation, and abandonment, as women who had experienced sexual coercion in all its big and little indignities came forward in largely anonymous ways to share their stories and to support one another. For so many women around the world, coercive sex is not simply an academic abstraction; it is a common occurrence.

Peru specifically has been grappling with the ubiquity of sexual violence within its territories since the atrocities committed by the *Sendero Luminoso* (Shining Path) terrorist group and by the Peruvian Armed Forces combating them in a twenty-year-long war that ended in 2000. The sexual violence that accompanied this war is well documented. In the early 2000s, the Peruvian Truth and Reconciliation Committee heard dozens of accounts of sexual violence perpetrated against (mainly indigenous) women by soldiers in both groups, and scholars and human rights advocates alike have noted the impunity with which many of these aggressors have escaped punishment, even as Peru

has been generally successful in its postwar reconciliation.<sup>325</sup> This lack of overall justice created an environment in which many women who experienced this type of violence struggled to survive even when “peace” returned to their region. The fact that this violence disproportionately affected poor indigenous women in the rural Andes further underscores the racial, gendered, and class-based divisions that existed in Peru prior to *Sendero Luminoso*, and which still exist today.<sup>326</sup>

Some signs indicate that Peru’s struggles to confront this violent legacy are beginning to bear fruit. According to Peruvian government statistics, violence against women, including sexual violence, while still high, has still decreased overall. According to a 2020 report, in 2009, almost 77% of women surveyed had experienced some type of domestic abuse, compared with approximately 55% in 2020. Of that overall percentage, the number of women who reported sexual abuse decreased from 8.8% to 6% in that span of time.<sup>327</sup> Of course, as other research indicates, sexual violence is dramatically underreported in Peru (some estimates from the early 2010s indicate that only 16% of rapes were reported and that only 10% of these led to a conviction).<sup>328</sup> The 2020 report did not include numbers alongside its percentages, making it hard to compare exact figures, but other independent statistics suggest that annual incidents of sexual violence have decreased by approximately 1000 cases since 2014—a modest decrease that

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<sup>325</sup> Boesten, *Sexual Violence During War and Peace*, 7-15.

<sup>326</sup> Boesten, *Sexual Violence During War and Peace*, 2-18.

<sup>327</sup> “Violencia contra las mujeres, niñas y niños,” ENDES 2020, Capítulo 11.

<sup>328</sup> Boesten, *Sexual Violence During War and Peace*, 6.

approximates the government's data.<sup>329</sup> Additionally, in 2018, Peru's government unanimously passed a significant amendment to the national penal code regarding sexual assault. This amendment makes more specific age-based recommendations, including increased penalties for sexual crimes against adolescents, and expanded definitions of what constitutes both sexual consent and violation of that consent.<sup>330</sup> The letter of the law, at least on paper, seems to be trending in favor of *la mujer peruana*. More time, and more research, is needed to determine the effect that these changes have had and are currently having on ordinary Peruvian women.

This dissertation, concerned as it is with emotional expression and processing in the courtroom, demonstrates above everything a method that, allied with the human rights and violence research by Boesten and others, has the potential to change the ways in which we discuss coercive sex. By approaching sexual coercion as an emotional crime throughout its history; by considering the ways in which legal options and priorities constrain (or permit) emotional expression; in viewing the courtroom as a place where competing interpretations of culture and law play out and emotional reactions to coercive sex are shaped as well as expressed; we can move beyond a simple examination of patriarchy and female resistance and analyze the ways in which culture, law, and emotional expression come together to create a diverse range of individual experiences.

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<sup>329</sup> In *Sexual Violence in War and Peace*, Jelke Boesten quotes statistics that place the average annual number of reported rapes at the time of publication (2014) at approximately 6,881 cases per year. In 2021, the *Revista Peruana de Ginecología y Obstétrica* reported that 5,985 cases were recorded in 2020. The government reports a decrease of 1.9% (7.9% to 6.0%) for that same six-year period. See Boesten, *Sexual Violence During War and Peace*, 6; Miguel Gutierrez-Ramos, "La violencia sexual en el Perú," *Revista Peruana de Ginecología y Obstetricia* 67 (2021)., and "Violencia contra las mujeres, niñas y niños," ENDES 2020, Capítulo 11.

<sup>330</sup> Código Penal, Artículos 170-175.

These experiences combine to relate information about gendered, racial, and class-based power, but also hold value in themselves as insight into the lived experiences of women.

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     Casos Criminales de Matrimonio (CCM)  
     Causas de Negros (CN)

Case ID	Year	Description
AAL CCM VII: 14	1776	Doña Josefa Muchotrigo against silversmith Josef Falcón for <i>estupro</i> and <i>rpto</i> of her teenage daughter Doña Isabel Muchotrigo
AAL CCM VII: 18	1783	Juan Aguilar against Gregorio Bernal for <i>estupro</i> of his ward María Carrasco
AAL CLM V: 28	1783	Don Domingo Bolívar against Martín Lloví for <i>estupro</i> and <i>rpto</i> of his teenage daughter, Silvia Bolívar
AAL CN XXXIII: 3	1792	Natividad against priest Don Juan de la Reinaga, for moral and sexual <i>sevicia</i>
AAL CN XXXIII: 9	1792	Mercedes Olavide against priest Don Pablo Barrón y Pérez, for moral and sexual <i>sevicia</i>
AAL CLM V: 55-A	1792	Doña Dominga Castañeda against Jose Falcón Anchero for <i>estupro</i>
AAL CCM IX: 15-A	1858	Felipe Samudio against José Santamaría for <i>estupro</i> of his daughter, Gertrudis Samudio

Archivo General de la Nación  
     Real Audiencia, Causas Criminales (RA CR-3 and RA CR-4)  
     Real Audiencia, Causas Civiles (RA CI)  
     Cabildos (CA-JO)

Case ID	Year	Description
AGN RA CR-3 15. 161	1752	Don Manuel de la Torre y Castaño against Francisco de las Llagas for <i>rpto</i> of his teenage daughter Ana de la Torre

AGN RA CR-3 19. 217	1757	Francisco de los Ríos against Isidro Pérez for <i>estupro</i> of his daughter María Josefa
AGN RA CR-3 24. 272	1762	Fernando Espinoza against Luís Rubín for <i>rapto</i> and <i>violación</i> of his daughter Rosa Espinoza
AGN RA CR-3 34. 408	1775	Doña Ana Rivera against Sebastián Espíndola for <i>estupro</i> of her ward María Dolores Palencia
AGN RA CR-3 34. 410	1775	Don Melchor Navajas against José Alvarado Perales for <i>violación</i> of his teenage daughter Margarita Navajas
AGN RA CR-3 35. 419	1775	Don Ignacio Martínez against Bernardo Chabarrí for <i>estupro</i> of his ward Francisca Javiera Carrera
AGN RA CR-3 37. 441	1776	Hipólita Pérez against Tomás Calderon and his accomplice in the <i>estupro</i> of Hipólita's eleven-year-old slave girl Tomasa
AGN CA-JO 2 196. 180	1779	Sebastiana Lazo against Manuel Espinoza for <i>estupro</i> of her teenage daughter María Gonzalez
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AGN RA CR-3 56.651	1785	Doña Manuela Pando against Don Lorenzo Descalzo for <i>estupro</i>
AGN RA CR-3 57. 665	1785	Doña María Mercedes de Aguilar against Cristóbal Carrasco for <i>rapto</i> of her daughter Petronila Luza
AGN RA CR-3 64. 758	1789	Don Lorenzo Cervera

		against Don Melchor de Zuñiga for <i>estupro</i> of his daughter Juana Cervera
AGN RA CR-3 85-1051	1797	Isabel Solano against José Rivera for <i>rapto</i> and <i>estupro</i> of her daughter Juana Solano
AGN RA CR-3 91. 1127	1800	Don Pablo Núñez y Ansures against Severino de los Santos for <i>estupro</i> of his daughter Manuela Núñez
AGN RA CR-4 102. 1244	1804	José Mariano Toro against Fernando Durán for <i>rapto</i> and <i>violación</i> of his two teenage daughters.
AGN RA CI 103. 1093	1811	María Isabel Rioja against her owner Don Lorenzo Rioja regarding her freedom
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AGN RA CR-4 116. 1401	1809	Doña María Arnao against Pedro Celestino López for <i>estupro</i> of her daughter Escolástica Saenz
AGN RA CR-4 130. 1586	1815	Don José Venegas against Manuel Caballero for <i>rapto</i> and <i>violación</i> of his teenage daughter Carmen Venegas
AGN RA-CR-4 142. 1782	1821	Don Gregorio Villa against Felipe Ramos for <i>violación</i> and <i>estupro</i> of his six-year-old daughter María Vicenta Villa

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VITA  
MORGAN GRAY

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Ph.D., History  
Florida International University  
Miami, Florida