

BOURBON ABSOLUTISM AND MARRIAGE REFORM IN LATE COLONIAL SPANISH AMERICA*

The study of marriageways in colonial Latin America has altered and deepened our understanding of the societies and cultures within the Spanish and Portuguese empires of the New World. During the last thirty or forty years a series of studies have explored the complex and varied patterns of marriage and family formation in colonial Latin America.¹ Inspired by the work of Peter Laslett, Lawrence Stone and Louis Flandrin among others, historians of the region have produced a rich historical literature on the demographic, social and cultural aspects of colonial marriageways. Most studies have focused on the late colonial period, and the years after 1778 when the *Pragmática sanción de matrimonios* (first issued in Spain in 1776) was extended to Spanish America. One effect of the new law was an astonishing outpouring of reports, questions, lawsuits and regulations concerning marriage, which in turn have been seized upon by historians to reconstruct important aspects of late colonial Latin American societies. Despite the frequent use of these sources, the legislation itself has received little serious attention, and several basic misunderstandings prevail regarding its background and meaning. As a consequence, the political implications of marriage have been poorly understood.

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¹ For studies done prior to 1990, consult Asunción Lavrín (ed.), *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989). Some of the more recent studies are reviewed in Robert McCaa, "Familias y género en México. Crítica metodológica y desafío investigativo para el fin del milenio" in Víctor Manuel Uribe and Luis Javier Ortiz Mesa (eds.), *Naciones, gentes y territorios* (Medellín: Universidad de Antioquia, 2000).

The purpose of this article is twofold. The first part offers an interpretation of why the new law on marriages was issued. The European, enlightened, patriarchal and absolutist character of the law is stressed. Contrary to what other historians have argued, the new marriage legislation was neither a reaction to social and political developments peculiar to Spanish America, an attempt to limit the power of the Church, a ban on inter-racial marriages nor a conservative and old-fashioned law in a period characterized by progressive reforms. The new marriage legislation of the late eighteenth century is in this article seen as an integral part of the so-called Bourbon reforms, which aimed to make the Spanish imperial state stronger and more efficient, to modernize the state and society and to strengthen the power and influence of the Crown. The reforms carried out in Spanish America were to a large extent modeled on reforms which had already been carried out elsewhere. The Pragmática sanción de matrimonios was no exception. When it was passed on to the overseas provinces, almost identical laws had been introduced in several other Catholic states in Europe. In this article the political character of the legislation is emphasized. Other historians have tended to see the marriage laws of the late eighteenth century as an intent to preserve or re-construct the social and racial structure of Spanish American societies. Here it will be argued that the most important object of the law was to strengthen paternal authority and filial obedience, *and* in this manner enhance the power of the King, who, according to the Bourbon absolutist rhetoric, was the father of all fathers. In other words, the law was meant to fortify the paternalist, hierarchical bonds on which the empire was thought to rest.

In Europe, it seems, the new marriage laws were passed without resistance. Royal authorities, however, encountered severe difficulties when the new legislation was introduced in Spanish America, and between 1778 and 1803 they were forced to modify the Pragmática sanción de matrimonios through a series of decrees. The second part of the article provides an overview of these decrees and the cases which forced them into being, and thus examines the nature of the difficulties facing royal authorities and the responses with which they were met. Twenty-five years after its promulgation in Spanish America, it was finally replaced by another Pragmática sanción which maintained filial obedience as a guiding principle while it became unnecessary for officials and clergy to pronounce on the justice of parental opposition. The development of marriage legislation in Spanish America between 1776 and 1803 not only indicates the limits of royal authority in the region even during the heyday of absolutist rhetoric and modernizing reforms, it also exemplifies the extent to which colonial government and politics in practice functioned as a series of negotiations between the Crown and its subjects overseas. But most importantly and fun-

damentally, it shows how different Spanish American societies were from Spain and other Catholic states in Europe by the late eighteenth century. The law ran counter to traditional marriage customs and honor codes in Spanish America. While the law was inspired by an enlightened and secular perspective on society as a patriarchal and hierarchical order where the absolute authority of the King was thought to rest on the principle of filial obedience, Spanish American societies were trapped in an older set of values where honor was paramount and marriage still regarded as a mystical union provided by God. And this more "medieval" notion of marriage and sexuality was incompatible with the new absolutist and enlightened view of monarchy propagated by the Bourbon state.

THE EUROPEAN BACKGROUND:
THE CATHOLIC ENLIGHTENMENT AND MARRIAGE REFORMS

The 1776 *Pragmática sanción* simply stated that parents had the right to oppose the marriages of their sons and daughters if the match was unequal. Those under 25 would need their parents approval in order to marry, and henceforth any marriages contracted without parental consent by minors would be invalid. Those above 25 were also required to ask for parental consent. In these cases, if the parents disapproved, the marriage would still be valid although the parents had the right to disinherit their disobedient son or daughter. If the couple thought that the parental dissent was unjustified, they could challenge it before a civil judge or court. If both parents were dead, the right to confer consent passed on to any living grandparents and older brothers.² The 1776 *Pragmática sanción de matrimonios* was first promulgated on the Iberian peninsula. Indeed, it was not extended to the Spanish American provinces until 1778, with some important modifications, and—hence—its origins are to be found in Europe.

The most immediate reason for the promulgation of the law in Spain in 1776, was the imminent marriage of Charles III's younger brother, the *Infante* Luis Antonio de Borbón (1727-1785), a marriage which threatened to disrupt the hereditary line of the Bourbon dynasty and diminish the honor and status of the royal family. According to an anonymous manuscript in Spain's Biblioteca Nacional:

. . . since the times of the Reyes Católicos the tradition has been in Spain that the princes do not marry, which although most useful to the monarchy has

² The 1776 *Pragmática Sanción* is found for instance in Richard Konetzke, *Colección de documentos para la Historia de la Formación Social de Hispanoamérica 1493-1810* (Madrid: Consejo Superior de Investigaciones Científicas, 1962), vol. 3, tomo 1, pp. 406-413.

been true slavery for the Their Highnesses . . . which has refrained them from using their liberty, even in those things which are common to all men . . . which both Nature and Youth require . . . the Prince Don Luis experiencing this situation and with desires to hang himself, as he is a man like all men of the world who desire their own propagation, he had to resort to some of his maids and assistants, and they also supplied him with some girls who managed to enter disguised as cadets or abbots and some were hidden in boxes as if they were stuff for the closet. These were for the most part prostitutes from the village. . . . As a result of all these entries and exits [*entrar y salir*] the Prince got ill and the King noticed. All the girls were expelled and likewise the *confidants* of whom one was sent to Puerto Rico. . . . At last it was decided that the Prince should marry, and María Theresa Vallabriga was given to him. Although she was the daughter of a captain from Aragón, the marriage was most unequal and undignified for a Prince of Castile, which resulted in the Pragmática on unequal marriages."³

Three weeks after the promulgation of the Pragmática, Luis Antonio formally requested from his older brother permission to marry unequally.⁴ The King replied that the permission would be granted, but with several conditions: the Prince and his wife would have to live in another city away from the Court, only the Prince would be allowed to visit the royal palace and—most importantly—the chapters eleven and twelve of the Pragmática would apply, which meant that neither the wife nor any descendants would have rights to the honors, heritages or properties of the Bourbon dynasty.⁵ In this manner, the new law on marriages provided a solution to a delicate dilemma: Luis Antonio was not fit for a life in celibacy, but his dubious reputation (and poor health) impeded a union with someone of royal blood. The new law made an unequal marriage possible without threatening the honor, status and heritage of the royal family.

Although the incident provides some insights into the problems confronted by families in the uppermost social spheres of late eighteenth-century Europe, the origins of the law must be seen in a wider context. The story of Luis Antonio de Borbón does not in itself explain why the law stressed

³ Anonymous and undated manuscript titled "Motivos que hubo para expedir la Pragmatica sobre prohibicion de matrimonios desiguales" in Biblioteca Nacional (Madrid), Manuscripts [hereafter BNM], Mss 11043 "Varios papeles," fol. 57-59.

⁴ Letter from Luis Antonio de Borbón to Charles III, 15 Apr. 1776 in BNM, Mss 10733, Papeles varios, fols. 247-251: "Copia de las Reales Ordenes de S. M. sobre la Licencia para el matrimonio del señor Ynfante Dn Luis."

⁵ See letter from Charles III to Luis Antonio de Borbón, 24 Apr. 1776 in BNM, Mss 10733, Papeles varios, fols. 247-251: "Copia de las Reales Ordenes de S. M. sobre la Licencia para el matrimonio del señor Ynfante Dn Luis."

that the duty to obtain parental consent included everyone “. . . from the highest classes of the State without any exceptions to the commonest of the people, because everyone has the indispensable and natural obligation to respect their parents and superiors. . . .”⁶ Nor does it explain why the Crown bothered to extend the law to the Spanish domains overseas in 1778. Clearly, if the only motive of the law had been to mitigate any unwanted consequences of Luis Antonio’s marriage, much more limited measures could have been taken.

Indeed, the law was not a hastened reaction to an immediate dynastic crisis and historians have generally taken two alternative views when explaining the new marriage legislation. Some, following Daisy Ripodáz Ardanáz who in 1977 published a significant study on the history of marriage in colonial Spanish America, have tended to see the 1776 Pragmática Sanción as part of the regalists’ struggle to wrest power and influence away from the Papacy and place the Catholic Church more firmly under royal control and jurisdiction.⁷ Others have observed that the new law was an instrument by which the Crown sought to uphold the hierarchical social structure of the empire, and—generalizing from a New World perspective—that it was a judicial means to maintain racial segregation.⁸ These explanations are not incompatible. But they are both unsatisfactory primarily because they overlook the absolutist, enlightened, pan-European and enlightened theory which served as a theoretical base for the new law.

The basic flaw with the regalist argument is that it exaggerates the anti-clerical aspect of the reform. Although there is no doubt that most of the royal advisors and members of the Council of Castile who prepared and promulgated the law belonged to the regalist camp, the law was not an attack on ecclesiastical influence and jurisdiction, it did not represent a radical break with Iberian and Catholic legal traditions and it provoked little negative reactions from the clergy. The regalists (so called because they defended the *regalías* or privileges of the Crown versus the Papacy) of late eighteenth century Spain were primarily a group of lawyers and bureaucrats who perceived the relative backwardness of the Spanish monarchy to be a conse-

⁶ Pragmática Sanción in Konetzke, *Colección de documentos*, pp. 407-408.

⁷ Daisy Ripodas Ardanáz, *El Matrimonio en Indias. Realidad social y regulación jurídica* (Buenos Aires: FECIC, 1977), pp. 259-315. See also Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 2000), pp. 308-309.

⁸ See for instance Susan Socolow, *The Women of Colonial Latin America* (Cambridge: Cambridge University Press, 2000), pp. 173-174 and Lavrín, “Introduction” in Lavrín (ed.), *Sexuality and Marriage*, p. 18.

ablanca), Grimaldi, Pedro Pablo Abarca de Bolea Jiménez de Urrea (Conde de Aranda), Manuel Ventura Figueroa and Pablo Olavide.¹⁰ Under the auspices of Ricardo Wall, secretary of *Estado y Guerra*, the Crown decreed in 1762 that no Papal bulls or encyclicals could be published in the Spanish monarchy without previous royal license. Simultaneously, the Crown prohibited the Spanish Inquisition from banning books before hearing the defense of the author and before obtaining royal authorization.¹¹ Perhaps the most spectacular feat of the regalists was the expulsions of the Jesuits from the Portuguese realms in 1759 and from the Spanish empire in 1767, and the subsequent dissolution of the order in 1773 by the Pope. But they also succeeded in reforming the universities and increasing Crown control over ecclesiastical revenues.¹²

The defenders of the regalist argument are correct in asserting that the new marriage laws were passed by a group of bureaucrats who were hostile to the independence and wealth of the Church. But the problem with their argument is that the 1776 Pragmática Sanción de matrimonios, was not another attack on the Church and it did not represent a radical break with Iberian or Catholic legal traditions. Both the Catholic Church and the Spanish Crown had frequently issued decrees and edicts which emphasized the obligation which sons and daughters owed to their parents or other superiors. As cited in the Pragmática Sanción itself, the Council of Trent (1563) declared that the Church had “. . . always detested and prohibited such marriages . . . [which were] against the intentions and pious spirit of the Church. . .” although such marriages were not explicitly invalid by Canon Law.¹³ And the Crown had issued several decrees which enabled parents with *mayorazgos* (entails) to disinherit sons who contracted unequal marriages.¹⁴ Since the sixteenth century, the Crown had also limited the possibilities of royal officials, military officers and soldiers to marry without royal

¹⁰ An excellent account of the one of the most significant of the enlightened reformers in late eighteenth century Spain and the context in which he worked is Concepción de Castro, *Campomanes: Estado y reformismo ilustrado* (Madrid: Alianza editorial, 1996).

¹¹ Castro, *Campomanes*, pp. 128-129.

¹² On the expulsion of the Jesuits from Spain, see for instance Castro, *Campomanes*, pp. 127-165 and on the reform of universities pp. 319-347. For the expulsion of the Jesuits from Spanish America, see Magnus Möerner (ed.), *The Expulsion of the Jesuits from Latin America* (New York: Alfred E. Knopf, 1967). On the partial confiscation of Church property, see Hans Jürgen Prien and Rosa María Martínez de Codes (eds.), *El proceso desvinculador y desamortizador de bienes eclesiásticos y comunales en la América española siglos XVIII y XIX* (AHILA, Cuadernos de historia latinoamericana no 7, 1999).

¹³ Konezke, *Colección de documentos*, vol. 3, tomo I, pp. 406-413. For the English translation of the Tridentine provisions on marriage see H.J. Schroeder, O.P., *Canons and Decrees of the Council of Trent* (St. Louis: B. Herder Book Co., 1941), pp. 180-189.

¹⁴ Ann Twinam, *Public Lives, Private Secrets*, p. 307.

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¹³ Konetzke, *Colección de documentos*, vol. 3, tomo 1, pp. 406-413. For the English translation of the Tridentine provisions on marriage see H.J. Schroeder, O.P., *Canons and Decrees of the Council of Trent* (St. Louis: B. Herder Book Co., 1941), pp. 180-189.

¹⁴ Ann Twinam, *Public Lives, Private Secrets*, p. 307.

license.¹⁵ Thus, marriage fell both under civil and ecclesiastical jurisdiction also before the promulgation of the Pragmática Sanción in 1776. According to the three fiscales who reviewed the law for the Consejo de Castile in February 1776 "...the said Pragmática contains no other novelty than that it establishes a method accommodated to the present times for the observance of the fundamental Laws of the Monarchy. . . ."¹⁶

However, this statement was a slight exaggeration for in two respects the law was legally a novelty, at least in some parts of the Spanish empire. Compared to France, England and the protestant states in Northern Europe, paternal authority was legally weak in the Spanish domains.¹⁷ And when Charles III issued the cédula of 24 October 1775 by which a Junta de ministros was summoned in order to look at how so-called unequal marriages could be avoided, the King explained to his ministers that "In *other catholic nations* . . . they distinguish and separate what belongs to the Sacrament and its spiritual effects, from that which corresponds to the [marriage] contract and its civil effects, not only with respect to the legitimacy of children, but also concerning inheritance and succession to the property of their parents and ascendants...whereas in these Kingdoms the opinion among the learned men and the law-givers have prevailed that all the temporal and civil effects depend necessarily on the legitimacy of the marriage and . . . this is determined by Canon law and papal bulls."¹⁸ In Spain therefore, a marriage—"even the most undignified, contracted with the lowliest and infamous person of the republic"—was legally valid, while in France, for instance, royal ordinances of 1579 and 1630 required paternal consent for men under the age of 30 and women younger than 28.¹⁹ The 1776 Pragmática Sanción

¹⁵ For a discussion of the laws concerning marriages of officers and the implication of these laws on marriage practices in late colonial Venezuela, see Gary M. Miller, "Bourban Social Engineering: Women and Conditions of Marriage in Eighteenth-Century Venezuela," *The Americas* 46 (July 1989-April 1990), pp. 261-290.

¹⁶ "... la Pragmatica indicada no contiene otra novedad que poner en un metodo acomodado al los tiempos presentes la observancia de las Leyes fundamentales de el Reyno en esta materia. . ." in "El Consejo pleno 29 de febrero de 1776. Consulta del Consejo hecha a S M en virtud de Real Orden en razon de evitar los matrimonios desiguales" in Archivo Histórico Nacional (Madrid) [hereafter AHN], Consejos, leg. 6003, nr. 17.

¹⁷ See Patricia Seed, *To Love, Honor and Obey in Colonial Mexico. Conflicts over Marriage Choice, 1574-1821* (Stanford: Stanford University Press, 1988) and Asunción Lavrín, "Introduction" in Lavrín (ed.), *Sexuality and Marriage*, p. 18.

¹⁸ Konetzke, *Colección de documentos*, pp. 401-402.

¹⁹ John McManners, *Church and Society in Eighteenth-Century France* (Oxford: Oxford University Press, 1998) vol. II, p. 22. In England The Marriage Act of 1753 required paternal consent for minors who wanted to marry, see Eva Tavor Bannet, "The Marriage Act of 1753: "A Most Cruel Law for the Fair Sex," *Eighteenth-Century Studies* 30:3 (1997), pp. 233-254 and Lawrence Stone, *Uncertain Unions. Marriage in England 1660-1753* (Oxford: Oxford University Press, 1992).

was then a very limited step in the direction of secularization of marriage as it insisted that the obligation of obtaining parental consent included everyone, and as it specified that any conflicts between families on the justice of dissents should be handled by civil rather than ecclesiastical courts.

But the law hardly provoked negative reactions from clergy. Indeed, it seemed only to put into writing what was already customary practices in some places and make these the norm for the entire empire. The archbishop of Ager in Catalonia reported to the Crown that in accordance with the catechism of Pius V (1502-1574) the practice in his archbishopric had always been to dismiss couples whose parents disapproved and forward any such cases to a civil judge.²⁰ Even in Spanish America, where the law was—as we shall see—considerably more problematic to enforce, ecclesiastical authorities had already warned parish priests not to wed couples against the will of their parents. According to the provincial council held in the archbishopric of Mexico in 1771, “. . . paternal authority is divine, natural and positive law, and thus filial obedience, respect and honor are due by all laws . . . it is a sin against piety whenever the sons and daughters intend to sadden their parents with an unequal marriage by which the family suffers dishonor, scandalous disturbances and fatal consequences. . . .”²¹ The Catholic Church itself was by the late eighteenth century heavily influenced by enlightenment thought, and this no doubt explains in part the largely positive reactions towards the new marriage law.

Not surprisingly the 1776 Pragmática sanción provoked little controversy in the Council of Castile, by then dominated by enlightened absolutist

²⁰ A summary of the report from the Arcipreste of Ager is found in the Real Cedula of 1 February 1785, BNM, VE/1261-55 and in AHN, Diversos, Reales cédulas 2821. The catechism, part two, chapter eight, article 32, titled “That paternal consent should be sought” stated that “. . . se ha de amonestar muy encarecidamente a los hijos de familias que honren a sus padres y a aquellos bajo cuya carga y potestad están, no contrayendo matrimonio sin darles noticia, y mucho menos contra su voluntad. . . .” See, *Catecismo del Santo Concilio de Trento para los parrocos ordenado por disposición de San Pio V* (Madrid: Compañía de Impresores y librerías, 1905), p. 366.

²¹ The text of the fourth Mexican provincial council is published in Luisa Zahino Peñafort (ed.), *El Cardenal Lorenzana y el IV Concilio Provincial Mexicano* (Mexico: UNAM, 1999). On marriage and betrothals see libro IV, títulos 1 and 2, pp. 253-259. The author thanks David Brading for pointing out the existence of this source. This emphasis on the duty of obedience to ones superiors were not common to all ecclesiastical provincial councils held in Spanish America in the 1770s. As late as 1773, the provincial synod of the archbishopric of La Plata instructed parish priests to ensure that no one were forced into unwanted marriages and that all persons who were about to be married should be interviewed separately and secretly by the priest to guarantee that they had not been forced or seduced into marriage against their own will in accordance with the regulations decreed by the Council of Trent. Parish priests should be particularly careful to insure that encomenderos or Spanish officials did not force Indians to marry against their will. See *Constituciones sinodales del arzobispado de la Plata 1773* (Cuernavaca: CIDOC, 1971) Fuentes para la historia de la iglesia de América Latina no. 5, pp. 488-490.

reformers. Of the 21 members of the Council who discussed the new legislation during the plenary session on 29 February 1776, only Rodrigo de la Torre Marín objected. He agreed with the rest of the members of the Council that unequal marriages contracted against the will of the parents were despicable, but in his view the law was too drastic.²² De la Torre Marín suggested therefore, that the King instead should issue a decree whereby prelates be urged to comply exactly with the tridentine provisions and the *Satis vobis* encyclical (issued by Pope Benedict XIV in 1741 to regulate so-called secret marriages²³), and in the event that this was not sufficient, de la Torre Marín thought that the law should be discussed by the most dignified theologians, jurists and canonists in the universities and colegios mayores before promulgation. This was evidently a strategy meant to annul the promulgation of the law altogether, or at least postpone it, but none of the other members of the Council supported de la Torres's suggestion, and the Pragmática Sanción was issued just a few weeks later.

It should be noted also that the legislators took great care in the wording of the law so that it would not offend clergy skeptical of enlightened legal inventions. In its preamble the law referred not only to the *Tametsi* decree of tridentine council, it also backed up its argument with references to the 1741 encyclical *Satis Vobis* of Benedict XIV, to Iberian medieval laws such as the Fuero-Juzgo and to the works of rather unknown and minor theologians Francesco Mazzei (1709-1788) and Giovanni Domenico Rinaldi (1628-1713). The law also referred to laws established in "other Catholic nations," probably a hint to the marriage laws passed in Naples in 1769, in Modena in 1771 and in Portugal in 1774. These earlier laws were so similar, even in their precise wording, that it seems improbable that they were not based on each other. In Naples, which was still a Kingdom within the Spanish monarchy, the Council of San Chiara (the highest government tribunal in the Kingdom) in 1769 first warned parish priests ". . . a non prendere le parole matrimoniali dei figli di famiglia senza la permissione dei lori padri. . . ." A few months later, the council decreed that secular courts should decide whether betrothals were valid, and not the ecclesiastical. Charles III's minister in Naples, Bernardo Tanucci, kept the King informed about these new laws. But the minister's brief mentions of the them do not suggest that these meas-

²² His objection can be found in: "El Consejo pleno 29 de febrero de 1776. Consulta del Consejo hecha a S M en virtud de Real Orden en razon de evitar los matrimonios desiguales" in AHN, Consejos, leg. 6003, nr. 17.

²³ The encyclical "Satis Vobis" was issued on 17 Nov. 1741. See Sanctissimi domini nostri Benedicti XIV, *Bullarium* (Venice: 1778) I vol., pp 40-42. The Spanish Crown swiftly reacted to the Encyclical by issuing a cédula where it was explained that secret marriages would not affect the civil legislation on inheritance. The cédula of 30 March 1742 is published in Konetzke, *Colección de documentos*, p. 401.

ures were especially controversial.²⁴ Two years later, in the small duchy of Modena during the government of the enlightened reformer Francesco III, a "constitution" was proclaimed where parish priests again were warned of the ". . . inconveniences and dissensions which were produced in the families by those marriages contracted by sons without the knowledge or consent of their fathers. . . ." and such marriages were henceforth declared invalid.²⁵ In Portugal a law was issued on 29 November 1775 whereby only betrothals certified by a notary and issued with the explicit consent of the parents were valid.²⁶ None of these laws spurred much controversy, and (that may be the reason why) no historians have bothered to look into the precise relationship between them. It is nevertheless beyond doubt that the Bourbon bureaucrats were aware of these laws when the 1776 Pragmática sanción was established. And with all these explicit legal precedents, the law could be launched as a natural and moderate piece of legislation, which did not run counter to Catholic dogma.²⁷

In turn, it is most probable that all these laws and the 1776 Pragmática Sanción used late roman law as a model. At least, there is a remarkable resemblance between the Pragmática sanción de matrimonios and the late Roman laws on marriages.²⁸ The Pragmática sanción established that

²⁴ Charles III was informed by his minister in Naples, Tanucci, about the promulgation of the law there in 1769. See letters from Tanucci to Charles III, dated 1. Aug., 24. Oct., 31. Oct., and 23 Nov. 1769 in *Lettere di Bernardo Tanucci a Carlo III di Borbone (1759-1776)* (Rome: Istituto per la storia del risorgimento italiano, 1969) Serie II: Fonti. Vol. LIX, pp. 542-563 and p. 854. Some of these letters are also found in AHN, Estado leg. 3712. On the reforms in Naples more generally, see Ambrasi, *Riformatori e ribelli* and for a good study of the role of Tanucci see Rosa Mincuzzi, *Bernardo Tanucci, ministro di Ferdinando di Borbone 1759-1776* (Bari: Dedalo libri, 1967).

²⁵ On the constitution of Francesco III of Modena and the provisions on paternal consent for marriages to be valid, see Paolo Ungari, *Il diritto di famiglia in Italia dalle Costituzioni "giacobine" al Codice civile del 1942* (Bologna: Il Mulino, 1970), p. 40.

²⁶ The Portuguese law is cited in Francisco Antonio de Elizondo y Alvarez, *Practica universal forense de los tribunales de España y de las Indias* (Madrid: 1796) vol. VII, pp. 376-391 and pp. 418-426.

²⁷ It is possible that indirectly the 1776 Pragmática Sanción was also inspired by the quite radical treatises on marriages written by jansenist theologians such as Zeger-Bernard van Espen, Nicolas de Hontheim (commonly known by his pseudonym Febronius), Robert J. Pothier and Pietro Tamburini. The works of these authors were known in Spain and read in the regalist circles. But these treatises were written in response to the situation in France and Holland particularly, where the governments needed theological and legal justifications for validating marriages contracted between protestants and Catholics, although these were invalid by Canon Law. In Spain there was no need in 1776 to introduce civil marriages, and the 1776 Pragmática Sanción was a much more moderate piece of legislation than those promoted by the jansenists. For a thorough discussion of the eighteenth-century theological disputes on civil and ecclesiastical jurisdiction over marriages, see Salvador Carrión Olmos, *Historia y futuro del matrimonio civil en España* (Madrid: Editorial revista de derecho privado, 1977), pp. 3-63.

²⁸ Why was the law called a Pragmática sanción and not simply a cédula or decreto? A Pragmática sanción was not an every-day occurrence in eighteenth century Spain, but the meaning of the term and

anyone under the age of 25 was required to obtain parental consent before they could marry.²⁹ This was identical to the Roman imperial regulations under Constantine in the fourth century.³⁰ Constantine's law and the Spanish law of 1776 both held that if the parents were dead, the grandparents should give their consent, and if they also were dead, any older siblings could provide it or else the guardians of the minors (*tutores* or *curadores*).³¹ The second chapter of the *Pragmática sanción* stated that all "from the highest classes of the State to the commonest of the people" were subject to this requirement in order to marry. Here the *Pragmática sanción* differed from Constantine's legislation in that under Roman law only citizens could marry, and therefore its coverage was considerably more limited. In chapters three to five, the King ruled that if anyone married without parental consent, they would lose the right to inherit. Loss of inheritance was also the classic punishment for unequal marriages, as can be seen in Emperor Augustus' *lex Julia de maritandis ordinibus* (18 BC) and repeated in Constantine's legislation, where descendants of *senatores* lost the right to inheritance if they married freedmen or their descendants.³²

The main difference between Roman imperial law on marriage and Charles III's *Pragmática sanción* was that under the latter a young man or woman who had not obtained parental consent could challenge the justice of the parental dissent before a civil judge. In imperial Rome, on the contrary, no one could set aside or challenge the absolute authority of the *paterfamilias* in these issues. No marriages could be contracted without his consent. Charles III admitted, however, that ". . . many times the parents or relatives for their own private interests may impede the just marriage their sons [and daughters] want to contract, because they want to marry them to someone repugnant, thinking regularly more about temporal convenience than the

its usage in the Spanish context is unclear. The pragmatic sanction derives from antiquity. They were used by the Romans for issues concerning jurisdiction especially when one prince succeeded another. In France, a *Pragmatique Sanction* was an 'édit d'un souverain, statuant définitivement en une matière fondamentale (succession, rapports de l'Église et de l'État); rescrit impérial' (Larousse). These were the kind of decrees French kings had used from the fifteenth to the seventeenth century to mark the French Church's autonomy from Rome. According to the *Diccionario de autoridades* of the Real Academia Española (published between 1726 and 1737), a *pragmática* is "la ley o estatuto que se promulga o publica para remediar algun exceso, abuso o daño que se experimenta en la república" Cf *Pragmática* of 26 November 1691, "contra el abuso de trajes y otros gastos superfluos." When the Jesuits were expelled from Spanish America, it was done with a *pragmática sanción*.

²⁹ Konetzke, *Colección de documentos*, pp. 406-413.

³⁰ For a discussion of the late Roman legislation on marriages see Judith Evan Grubbs: *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation* (Oxford, Oxford University Press, 1995).

³¹ This was stated in the first chapter of the *Pragmática sanción*.

³² See Evans Grubbs, *Law and Family*, p. 95 and 141.

high ends for which the Holy Sacrament of Marriage was instituted.”³³ Thus, the Pragmática sanción established that the young woman or man could complain to a civil judge if they felt that the dissent was unjust.

The Roman origin of the eighteenth-century marriage legislation and the pan-European character of the new laws is a testimony of the “enlightened” and materialist nature of the laws themselves. When the marriage legislation of imperial Rome was used as a model, with its postulate of the absolute authority of the paterfamilias within his *domus* and marriage as contract which secured property and inheritance, the 1776 Pragmática sanción and similar eighteenth-century laws on marriage can be seen as an attempt to revert to a materialist, rational and patriarchal order which had been weakened by the tridentine perspective on marriage as a sacrament, with its emphasis on the spiritual and moral aspects of the institution. Although these considerations may have played a part in the passing of the law, it was unnecessary for Charles III’s legislators to cite these potentially controversial sources when the 1776 Pragmática Sanción on marriages could be justified by using Iberian and ecclesiastical legal precedents.

The 1776 Pragmática Sanción was not, then, an attack on the influence and authority of the Church, but rather an expression of a more general, absolutist, enlightened and patriarchal perspective on how an orderly society should be structured. Was it then a piece of social engineering, meant to impede marriages between social and racial unequals, a way of upholding the “social system” as some historians have argued? There can be no doubt that this was an intended effect of the new law, but the principal concern of the legislators was the political consequences of filial disobedience. The Real cédula of 24 October 1775 by which a Junta de ministros was asked to look at the ways in which unequal marriages could be avoided, provides a pointed and summarized explanation for the new law.³⁴ According to this decree, the King had frequently “. . . considered the sad effects and very serious harm which are caused by the frequent marriages between persons of very unequal conditions and spheres.”³⁵ And, most importantly, unequal marriages “disturb [ed] the good order of the republic and threaten[ed] the State.” Unequal marriages were seen to disrupt the hierarchical order of the monarchy and diminish the respect which the people ought to show their social superiors. If the King was, as the defenders of absolutism so frequently had argued, the supreme father of the monarchy, a *paterfamilias*

³³ Pragmática sanción, Chapter VII in Konetzke, *Colección de documentos*, p. 409.

³⁴ The cédula of 24 Oct. 1775 is reproduced in Konetzke, *Colección de documentos*, pp. 401-404.

³⁵ Konetzke, *Colección de documentos*, p. 401.

sovereign in his domain and inserted by God, and the authority which he possessed over his subjects was parallel to that of a father towards his son, then the King's authority would be valueless if children did not obey their parents. Strengthening filial obedience was synonymous with improving the authority of the Crown.

The 1776 Pragmática sanción de matrimonios was an integral part of the Bourbon enlightened absolutism reform project, which sought to enhance the authority of the King, unify the state, rationalize legislation, modernize the state, and uphold the hierarchical order of society. Absolutism was justified by presenting the King as the natural father of his subjects, whose authority was absolute and supreme in his domains. This perspective on the divine providence of kingship echoed the teachings of Jacques-Bénigne Bossuet and Robert Filmer, who had argued that Kings derived their authority directly from God, not from the Church, from the Pope nor from the people, and that it was the duty of subjects to obey their King just like their fathers.³⁶ Although the political theory of absolutism was not a novel concept, it was extensively employed by the Spanish Crown in the late eighteenth century and during the first decades of the nineteenth century, partly in the various conflicts with the Papacy and the ultramontane side of the Church, but more importantly in the suppression of revolts both in Spain and America and to legitimize the introduction of new taxes and other economic and social reforms. As Anthony McFarlane has noted, the absolutist and patriarchal rhetoric employed in the aftermath of the 1766 Esquilache revolt in Madrid to restore social order and respect for the Crown, was the same which followed the Comuneros rebellion in New Granada, the Tupac Amaru uprising in Peru and which also was used extensively during the Spanish American Wars of Independence between 1810 and 1825.³⁷ After the New Granadan Comuneros rebellion, for instance, the viceroy (and archbishop of Santa Fe) claimed that ". . . the loyalty of the subjects should be inseparable from the children's kindness. . . . Christian charity which makes us love our neighbor as the image of Jesus Christ, obliges us also to love the King, not only as the image of God, but also as His minister. . . ." ³⁸ As noted by several historians, this absolutist and patriarchal rhetoric used to legitimize reforms and demand loyalty from the subjects of the Crown was not readily accepted in

³⁶ For the teachings of Bossuet, see Patrick Riley (ed.), *Bossuet. Politics drawn from the Very Words of Holy Scripture* (Cambridge: Cambridge University Press, 1990).

³⁷ Anthony McFarlane: "Representaciones políticas y políticas de representación en Hispanoamérica a finales del período colonial." Paper presented at the XII International Congress of the Asociación de historiadores europeos latinoamericanistas (AHILA), 1999.

³⁸ Cited by McFarlane: "Representaciones políticas," pp. 3-4.

Spanish America. And—as will be shown in the second part of this article—the implementation of the Pragmática Sanción on marriages in Spanish America was difficult for the same reason.³⁹

One might ask whether the absolutist rhetoric employed by late eighteenth-century Bourbon reformers was merely a convenient political rhetoric used to pacify the masses in times of social unrest, or whether it actually amounted to a cohesive political ideology which in itself provided the foundation for the reforms. Methodologically this is, no doubt, a tricky question, but there are nevertheless reasons to suspect that for some of the most influential enlightened advisors of the King, absolutism was more than just empty rhetoric. Campomanes, for instance, who was one of the *fiscales* who drafted the law in the first place, wrote in a letter to the Count of Lereda:

I venerate the maxims of my fatherland's government, and I resign to them all my operations . . . however, permit me for a short while to think like a true philosopher without the bonds which politics regularly place on understanding. . . . To conserve part of their private liberty [men] had to sacrifice some for the public order, the administration of which they conferred to one or more persons. . . . The Spanish . . . see that the root of authority in a family which is transmitted from father to son, is that which brings the least damage to society; and here we have the same eternal law that provides hereditary authority. . . . The King may aggravate me, enslave me or kill me without justice, and I do not have the right to resist, because it is less inconvenient for society that I perish and die, than that the least commotion or disorder occurs in society, and this is the doctrine of Jesus Christ and his Church, the obedience to the legitimate Lords, be they good or be they bad.⁴⁰

In other words filial obedience was a fundamental basis for political authority, and specifically for the authority of the King. Without obedience, society would descend into anarchy. And consequently, in periods of social unrest the insistence on paternal authority, filial obedience and the hierarchy of society as natural and of divine providence, became especially latent and visible. The 1776 Pragmática Sanción of marriages went far beyond the disputes over eccle-

³⁹ There are many studies on the opposition to Bourbon reforms in Spanish America. Various historians have seen the opposition as expression of an older Habsburgian "pactist" notion of monarchy. See for instance, John Phelan, *The People and the King. The Comunero Revolution in Colombia, 1781* (Madison: University of Wisconsin Press, 1976); Anthony McFarlane, "Rebellions in Late Colonial Spanish America: A Comparative Perspective," *Bulletin of Latin American Research* 14 (1995) and François-Xavier Guerra, *Modernidad e independencias. Ensayos sobre las revoluciones hispánicas* (Madrid: MAPFRE, 1992).

⁴⁰ "Carta tercera. De la libertad civil en cuanto es competible con la felicidad y quietud publica" in Antonio Rodríguez Vila (ed.): *Cartas político-económicas escritas por el Conde de Campomanes al Conde de Lerena* (Madrid: M. Murillo, 1878), pp. 113-146.

siastical versus civil jurisdiction and the issue of conserving the social hierarchy of the monarchy: more fundamentally it was as a political instrument by which the very glue that held the monarchy together was consolidated.

THE PRAGMÁTICA SANCIÓN IN SPANISH AMERICA

As we have seen, the new marriage legislation was uncontroversial in Spain and it met no resistance from ecclesiastical circles. In Spanish America, however, it provoked a series of queries, lawsuits and reports. Between 1778 and 1803, Spanish American marriage legislation had to be modified repeatedly. Why this difference between Spain and Spanish America? The following discussion intends to show that the new law proved unworkable because it did not take into account the very complex ideas of honor still prevalent in Spanish America, a concept which was not only closely linked to issues of race, lineage, social status and personal conduct, but which also served as a fundamental basis for courtship customs. The constant negotiations between Spanish American and peninsular institutions also reveal the limits of royal (and paternal) authority in Spanish America and show how entrenched the concept of honor still was in the Spanish American societies. In order to explore the nuances and possible meanings of this conflict of mentalities, let us first turn to the first modifications made by Bourbon officials when the law was introduced in Spanish America.

In 1778 the Pragmática Sanción was extended to Spanish America by a separate cédula elaborated by the Council of Indies, and some important modifications were made from the outset.⁴¹ The ministers of the Council of Indies were aware that marriage patterns in Spanish America deviated from that of Spain and the rest of Catholic Europe. They undoubtedly shared dominant prejudices against those of part African descent, who were thought to be the offspring begotten in illegitimate consensual unions and concubines. Fearing that the new law could make marriages even harder to attain for those of part African ancestry and believing that "Mulattos, Blacks, Coyotes and individuals publicly reputed to be of similar castes and races. . ." did not usually know the identity of their fathers, the ministers suggested, and the King decreed, that they should be exempted from the provisions of

⁴¹ These changes were probably suggested by the Council of Indies in their consulta of 7 Jan. 1778. The cédula also refer specifically to the aforementioned Fourth Provincial Council of Mexico. According to Seed, *To Love, Honor, and Obey*, pp. 194-200, the fourth Mexican council agreed on the requirement of parental consent in marriages. But its decrees were never sent to Rome for approval. See also Josep M. Barnadas, "The Catholic Church in Colonial Spanish America" in Leslie Bethell (ed.), *Cambridge History of Latin America* (Cambridge: Cambridge University Press, 1984) vol II, pp. 537-538.

the Pragmática Sanción.⁴² This was actually an alteration of one of the core principles of the original law. For the 1776 Pragmática Sanción emphasized that the obligation to obtain paternal consent included everyone "from the highest classes of the State, without any exceptions whatsoever, to the commonest of the people, because everyone by natural and divine law has the indispensable and natural obligation to respect their Fathers or those acting on their behalf." Although the 1778 cédula advised that those exempted should be made to understand their "natural obligation to honor and venerate their Fathers and superiors," the exclusion of those of part African descent testifies to the ministers' awareness of fundamental differences between Spain and Spanish America.

Still, the Council's exemption of the mixed-race groups was based on a very general and prejudiced view of Spanish American societies, and an enlightened and absolutist eagerness to create order. It was true that illegitimacy rates in Spanish America were several times higher than in Spain. Modern demographic research has revealed a marked difference between the peninsula and the Spanish domains overseas despite the significant regional variations within both the Iberian peninsula and Spanish America.⁴³ The highest illegitimacy rates in Spain in the eighteenth century were found in the largest cities; from 5 percent in Seville, to 12-17 percent in Madrid and 20 percent in Valladolid.⁴⁴ Although Spanish illegitimacy rates tended to rise in to the nineteenth century, the Spanish American rates were in comparison quite literally from another world. In the second half of the eighteenth century, illegitimacy rates among mestizos in the parish of the cathedral of Santa Fe de Bogotá fluctuated between 52 percent for the years 1755 to 1759 and 80.3 percent during the 1790-94 years, while illegitimacy rates for whites in the same parish declined from 32.8 percent in 1760-64 to 18.2 percent in 1790-94, and of all the Indians baptized in the same parish between 1750 and 1799, 48.9 percent were illegitimate. For slaves in the same parish the illegitimacy rates were even higher, oscillating between 66.7 percent in 1760-64

⁴² "Exemplar de la Pragmatica de Matrimonio del año de 1776 inserta en cédula declaratoria del de 78 que se cita" in Archivo General de Indias, Seville, (hereafter AGI), Audiencia de Santa Fe (hereafter Sta Fe), leg. 727, fol. 14

⁴³ For comparisons between Spain and Spanish America, see for instance Robert McCaa, "Marriageways in Mexico and Spain, 1500-1900" *Continuity and Change* 9:1 (1994), pp. 11-43 and Vicente Pérez Moreda, "Del mosaico al calidoscopio: componentes culturales en los sistemas de nupcialidad, fecundidad y familia de España y América hispana (ss. XVI-XIX)" in Robert Rowland and Isabel Mott Blanc (eds.), *La demografía y la historia de la familia* (Murcia: Universidad de Murcia, 1997).

⁴⁴ C. Larquié, "Amours légitimes, amours illégitimes en Madrid au XVII^e siècle (une approche quantitative)" in A. Redondo (ed.), *Amours légitimes, amours illégitimes en Espagne (XVI^e-XVII^e siècles)* (Paris: Sorbonne, 1985), p. 80 cited in McCaa, "Marriageways," p. 19.

and 88.6 percent in 1790-94.⁴⁵ Similar rates can be found from other parts of Spanish America: In Guadalajara in the illegitimacy rate for all children baptized between 1698 and 1702 was 48 percent, the group categorized as Spaniards having the lowest rate with 39 percent and those categorized as mulattos the highest with 60.5 percent.⁴⁶ Typically, Spanish American illegitimacy rates were higher in the cities than in the rural parishes, and higher among those classified as mixed race and slaves than among those listed as Spanish and Indians, and they tended to decline throughout the eighteenth century.⁴⁷ But even among the *españoles* baptized in small rural parishes such as Zacatelco in the archbishopric of Puebla, 24 per cent in the early eighteenth century and 13 percent towards its end were illegitimate.⁴⁸ Hence, when the Council of Indies exempted those of African or part-African descent on the grounds of illegitimacy, they may have been right in supposing that these groups had the highest illegitimacy rates, but they probably ignored the high illegitimacy rates found among other groups as well. Furthermore, the exemption was based on a simplistic association between race and status, which did not correspond with Spanish American realities.

The 1778 *cédula* also required the Audiencias to establish their own regulations including more specific rules regarding the observance of the new legislation. Interestingly, these regulations reveal a different view of the stratification of Spanish American societies: a more nuanced perspective on the relation between race and status, and a more overt concern for the question of honor.⁴⁹ In principle, the Audiencias agreed with the Council that Indians should be included. (The 1778 *cédula* explicitly included tributary Indians who could obtain consent from their parish priest if it was impossi-

⁴⁵ All these figures are from Dueñas Vargas, *Los hijos del pecado: Ilegitimidad y vida familias en la Santafé de Bogotá colonial* (Bogotá, Editorial Universidad Nacional, 1997), pp. 205-243.

⁴⁶ Thomas Calvo, "Concubinato y mestizaje en el medio urbano: el caso de Guadalajara en el siglo XVII" *Revista de Indias* 44:173 (1984), pp. 203-212.

⁴⁷ For more examples from New Spain see McCaa, "Marriageways," pp. 24-25; Cecilia Andrea Rabell, *La población novohispana a la luz* (Mexico: Instituto de Investigaciones Sociales, Universidad Nacional Autónoma de México, 1990); Juan Javier Pescador C., "La nupcialidad preindustrial y los límites del mestizaje: característica y evolución de los patrones de nupcialidad en la Ciudad de México, 1700-1850" *Estudios demográficos y urbanos* 7:1 (1992), pp. 137-168; Robert McCaa, "Gustos de los padres, inclinaciones de los novios y reglas de una feria nupcial colonial: Parral, 1770-1814" *Historia mexicana* 40:4 (1991), pp. 579-614.

⁴⁸ McCaa, "Marriageways," p. 24.

⁴⁹ Although all the Audiencias had been asked to make them, I have been able to find the reglamentos only from Chile, Peru, Mexico and Cuba. The Audiencia of Santa Fe explained in 1794 that they had not made one because the oidores were in doubt about how the Pragmática sanción should be understood and they had preferred to wait until they had some more experience in using it. See "La Audiencia de Santa Fe da cuenta a V M con testimonio de dos consultas que le hizo la curia eclesiastica de la ciudad de Cartagena sobre la Pragmatica de matrimonios" in AGI, Sta Fe 727.

ble to obtain it from their fathers, and stated that *Indios caciques*, because of their nobility, were considered to be distinguished Spaniards for all matters concerning the Pragmática sanción.⁵⁰ In Chile, the *Fiscal y Protector de Naturales* Ambrosio Cerdán y Pontero commented that it would not be a problem for the tributary Indians to obtain parental consent.⁵¹ And he felt that it would be unjust to exclude from the new law those Indians who did not reside permanently in towns. In his view, the *yanaconas* and the mestizos were not "of the same 'depreciable' class and caste as the Mulattos, Blacks and Coyotes" and that therefore the Audiencia should consider whether they needed parental consent before marriage.⁵² The Chilean Audiencia furthermore clarified that "mestizos, sons of Spanish men and Indian women, or vice versa, and those that are descendants of Spanish and mestizo, who are called castiza" were likewise included.⁵³ The Mexican Audiencia made a similar provision.⁵⁴ Regarding the caciques, or the noble Indians, the Audiencia of Santiago thought that those who "were poor, gross, with brute manners or addicted to the vice of drunkenness" should be exempted.⁵⁵ In practice this would mean the those who had dishonored themselves by their conduct could be exempted as they had no honor left to protect. But the Council of Indies reacted strongly against this principle, stating that it was not only harmful, but also contrary to both Spanish law and the laws of the Indies.⁵⁶ The Audiencias of Mexico and Lima did not alter the formulations regarding Indians found in the 1778 cédula, which advised all Indians to obtain parental consent, and which authorized the village priest to act as a father with respect to paternal consent for marriages. Thus, generally in Spanish America after 1778, Indians as well as Spaniards were obliged to obtain parental consent in order to marry.

Following a long established legal tradition in Spanish America, the Audiencias tended to differentiate between those of part Indian descent on one hand and those of partly African descent on the other, but they slightly altered the formulations of the 1778 cédula and thus adjusted the law to local

⁵⁰ *Ibid.*, fol. 15.

⁵¹ "Copia de los autos obrados en la Audiencia de Chile. . .," Santiago de Chile, 30 April 1779, fol. 18v in AGI, Sta Fe 727.

⁵² *Ibid.*, fol. 20r.

⁵³ "Copia de los autos obrados en la Audiencia de Chile. . .," Santiago de Chile, 30 April 1779, fol. 27r in AGI, Sta Fe 727.

⁵⁴ Konetzke, *Colección de documentos*, vol III, p. 476: ". . . atendiendo a que los Mestizos hijos de Españoles, e India, y por el contrario, y los Castizos merezen distinguirse de las otras razas, como lo hacen por varias consideraciones las Leyes, y la común estimación se declara que quedan igualmente sujetos a las formalidades, y penas, que prescribe la Real Pragmática. . ."

⁵⁵ *Ibid.* fol. 25r-25v.

⁵⁶ "Consulta del Consejo de Indias sobre el reglamento formado por la Audiencia de Chile para ejecutar la Real Pragmática de matrimonios" in AGI, Sta Fe 727.

circumstances.⁵⁷ The Chilean regulations reproduced the formulation of the 1778 *cédula* declaring that those of African ancestry were exempted, but added that any individual with property worth 12,000 pesos or more gained through legal commerce, agriculture or crafts, and thus "distinguished themselves from the rest of their class" would need parental consent in order to marry.⁵⁸ While the Chilean regulations thus made more people subject to the *Pragmática sanción*, the Peruvian regulations made the law more exclusive. Apart from "negros y mulatos," the Audiencia of Lima ruled that those "publicly reputed to be of infamous class" did not need parental consent in order to marry.⁵⁹ Nevertheless, both Audiencias adhered to the principle that those who did not have honor could be exempted, and both recognized that honor and race did not necessarily correspond.

Curiously, the 1776 *Pragmática Sanción*, the 1778 *cédula* and the subsequent regulations formed by the Audiencias have been misread by historians. Several studies on late colonial Spanish America claim, for instance, that the *Pragmática sanción* only affected the Spanish or white elites.⁶⁰ In fact, even the Council of Indies held that if there was any doubt as to whether a person needed parental consent to marry, the rule was that it was necessary.⁶¹ Another frequently repeated inaccuracy about the late Bourbon marriage legislation is that it implied a prohibition of inter-racial marriages.⁶² Neither the *Pragmática sanción* nor the 1778 *cédula* specified which unions were sufficiently unequal to merit parental dissent. The law did not even clarify whether inequality should be measured in terms of wealth, morality, social status, race, genealogy or other social indicators. It

⁵⁷ It is perhaps worth noting that the only regulations which did not modify the wording of the 1778 *cédula* about which groups were exempted, was the one written by the bishop of Cuba. See *Reglamento que el ilustrísimo señor Dr Dn Santiago Joseph de Hechavarría, obispo de Cuba, ha formado para los ministros de su curia, y párrocos de su diócesis con motivo de la Pragmática, Real cédula de S M e instrucción de la Real Audiencia del distrito sobre matrimonios* (Printed in the press of the Colegio Seminario de San Carlos in 1780) in AGI, Sta Fe 727.

⁵⁸ "Copia de los autos obrados en la Audiencia de Chile. . . ." Santiago de Chile, 30 April 1779, fol. 27v in AGI, Sta Fe 727.

⁵⁹ "Reglamento formado por la Real Audiencia de Lima a consecuencia de lo prevenido en el Artículo octavo de la Real Pragmatica. . ." 12 July 1784. Chapter 7 in AGI, Sta Fe 727.

⁶⁰ Susan Socolow: "Acceptable Partners: Marriage Choice in Colonial Argentina, 1778-1810" in Lavrín (ed.): *Sexuality and Marriage*, p. 210 claims that the law only applied to whites. So does Asunción Lavrín in "Introduction" in Lavrín (ed.): *Sexuality and Marriage*, p. 18. In her more recent *The Women*, p. 174, Socolow claims that the *Pragmática* was ". . . specifically targeted to protect elite Spaniards. . ."

⁶¹ Konetzke, *Colección de documentos*, vol III "Consulta del Consejo de Indias sobre el reglamento formado por la Audiencia de Chile para ejecutar la Real Pragmática de matrimonios."

⁶² See for instance Seed, *To Love, Honor and Obey*, pp. 205-225; McCaa, "Marriageways," p. 27; Gutiérrez, *When Jesus Came*, p. 315.

was left entirely to the American institutions to give more specific rules about anything they deemed necessary. But the Audiencias also generally abstained from specifying the grounds for inequality, and effectively it was left to the district judge in the first instance to judge whether parental opposition was justifiable. When the Audiencias did include more specific provisions on inequality, they merely highlighted some features of the new legislation. The Chilean Audiencia clarified that it was not a just reason for Spanish parents to oppose marriages with Indians who "could prove their purity of blood" regardless of whether the Spaniards were born in Europe or in America.⁶³ The Audiencia of Mexico urged the parish priests of Indian villages to explain to the Indians why it was harmful that they married ". . . mulattos, blacks and people of similar races. . ."⁶⁴ Perhaps the *oidores* felt that it was obvious what constituted social inequality. If so, they were clearly wrong, as testified by the considerable body of lawsuits concerning parental dissent from all over Spanish America. More likely, they felt that the question of inequality was so complex that it was impossible to make detailed provisions about it beforehand. It was thus left to the parents, the district judge and the Audiencia (if the case was appealed) to determine in each individual case whether the partners were of sufficiently unequal status to allow the parents to disinherit their son or daughter.

One could perhaps conjecture that the law still, in practice, worked as a prohibition of inter-racial marriages, if race was the only or prime determinant of an individual's status or honor. Obviously race did matter, but other factors such as virtue, wealth and occupation played an important role in determining the status of individuals, as most historians of colonial Latin America now recognize. Some studies exist on how the legislation was used in different parts of Spanish America, and these seem to suggest that racial difference was just one among many reasons used by parents to oppose the marriages of their offspring. Patricia Seed, who looked at the forty-six cases which were appealed to the Audiencia of Mexico between 1778 and 1817, found that only thirteen parents objected to marriages on the grounds of racial disparity.⁶⁵ In Chile, racial disparity was also one of the reasons used by parents who dissented to marriages along with dishonorable conduct, undistinguished genealogies, non-noble occupations and

⁶³ "Copia de los autos obrados en la Audiencia de Chile en Consequencia de la Real cédula dada el siete de abril de 1778, y Real Pragmática en ella inserta, sobre matrimonios" Santiago de Chile, 30 April 1779, fol. 24v in AGI, Santa Fe 727.

⁶⁴ Konetzke, *Colección de documentos*, vol. III, p. 477: "Consulta del Consejo de Indias sobre las reglas establecidas de la Audiencia de Mejico en cumplimiento de la Real Pragmática del año de 1778 referente a los matrimonios."

⁶⁵ Seed, *To Love, Honor and Obey*, p. 207.

illegitimate birth.⁶⁶ Similar conclusions have been reached in studies conducted on other areas of Spanish America.⁶⁷ More studies are needed if we are to attain a more complete picture of how the legislation was used locally, and to what extent race played a part when parents dissented to the marriage of their offspring. What is clear, however, is that the legislation was neither intended nor understood as being a prohibition of inter-racial marriages. Spanish American authorities were aware of the fact that race was not the sole criteria for judging social status, and they left perhaps the most complicated issue—of weighing factors such as race, wealth, occupation and reputation against each other—to the judges locally.

OBEDIENCE VS HONOR

Despite the adjustments made by the Audiencias the new marriage legislation continued to trouble the Council of Indies for nearly three decades. From the start a host of issues were raised when the law was put into use. A case from Michoacán, where a woman older than 25 married without having obtained her father's consent, precipitated the Royal *cédula* of 31 May 1783, declaring that "... the object of the Pragmática Sanción is only that sons and daughters recognize the obedience they owe their parents" and that those above the age limits who failed to seek parental advice and obtain consent could be disinherited.⁶⁸ The same year a new *cédula* had to be issued whereby mothers were forbidden to instate disobedient sons and daughters as inheritors when they had been disinherited by their father, following a case in Guanajuato where a daughter married despite her father's opposition, was disinherited, but found that her mother promised to compensate any loss by especially providing for her in her own will.⁶⁹ Further problems included

⁶⁶ Gonzalo Vial, "Aplicación en Chile de la Pragmatica sobre matrinio de los hijos de familia," *Revista chilena de historia del derecho* 6 (1970), pp. 335-362.

⁶⁷ Robert McCaa has analysed cases of parental consent and dissent to marriages in the parish of Parral in Northern Mexico in his "Gustos de los padres." For La Plata, see Nelly R. Porro, "Los juicios de disenso en al Río de la Plata: nuevos aportes sobre la aplicación de la pragmática de hijos de familia" *Anuario Histórico Jurídico Ecuatoriano* 5 (1980), pp. 193-228. Some cases of parental dissent from the province of Antioquia in New Granada are analysed in Pablo Rodríguez, "Elección matrimonial y conflicto inter-étnico en Antioquia" in Rodríguez, *Sedución, amancabamiento y abandono en la colonia* (Bogotá: Fundación Simón y Lola Guberek, 1991). In quantitative terms, perhaps the most comprehensive study of parental dissent is done by Juan Almecija, *La familia en la provincia de Venezuela* (Madrid: MAPFRE, 1992).

⁶⁸ Real *cédula* 31 May 1783 "Declarando que los hijos de familia mayores de veinte y cinco años, para contraer matrimonio, deben pedir, y obtener el consejo paterno..." in AGI, Sta Fe 727.

⁶⁹ Real *cédula* 26 May 1783 "Declarando que siempre que qualquiera hijo de familia intentase contraer matrimonio, y examinado en justicia, quedase executoriado ser justo, y racional el disenso del padre, viviendo este, y permaneciendo en su disenso, no pueda la madre instruir por heredero al hijo inobediente, ni hacerle donación alguna," in AGI, Sta Fe 727. This is also found in Koneztkze, *Colección de documentos*, pp. 527-529.

the limits of jurisdiction on marriage cases between ecclesiastical and civil authorities and between civil and military courts for marriages of soldiers.⁷⁰ But the two most basic and inexorable problems were the penalties prescribed for the disobedient and the clash with Spanish American courtship customs and popular honor codes.

The only sanction against disobedient sons and daughters was loss of inheritance. The threat of being disinherited was only effective when parents had substantial property. Many young couples did not seem very concerned by this threat. And most officials in Spanish America at first understood the Pragmática sanción to mean that if the couple voluntarily accepted being disinherited, there was nothing neither the parents nor the priests could do to prevent the marriage. The lieutenant governor of Caracas, Francisco Ignacio Cortines, informed the Council of Indies that in his experience there were numerous cases of unequal marriages still taking place, and he sent copies of a handful of letters from young men and women who wanted to marry despite parental dissent, and who accepted that they would lose the right to inherit from their parents.⁷¹ The case of Tadeo Padrón was typical. He had promised to marry Josefa Geralda Nabas, a free *parda* who was pregnant with his child, despite his father objection. Tadeo therefore asked for the lieutenant governor's permission to marry on the condition that he would renounce his right to inherit. In this, as in all the other cases, the lieutenant governor had ruled that they could marry. Obviously uncomfortable with the situation, the lieutenant governor asked His Majesty to "... modify, alter or declare more explicitly the intelligence and genuine meaning of the said article [of the Pragmática sanción]." In his opinion the threat of being disinherited was not sufficient to stop people from marrying unequally.

Similar petitions were made by several officials in Spanish America. The Cabildo of Merida in Yucatán complained to the Crown about the way young couples defied the authority of both Crown and parents and married despite notorious inequality and parental opposition.⁷² Commenting on the

⁷⁰ For the problems of ecclesiastical jurisdiction, see for instance the case over broken betrothals of a cadet from the Naples regiment stationed in Puerto Rico. Letter from Juan Dabán, governor of Puerto Rico, 4 Oct. 1786 and statement by the fiscal of the Council of Indies, 25 February 1787, both in AGI, Sta Fe 727. On the marriage of soldiers, see for instance royal cédula of 10 July 1783 in Konetzke, *Colección de documentos*, p. 529 and Miller, "Bourban Social Engineering."

⁷¹ "Carta del theniente governador y Auditor de Guerra de la Ciudad de Santiago de Leon de Caracas en que informa a V M las dificultades que se presentan a cerca de el articulo 3º de la Real Pragmática sanción de matrimonios, y pide la Real declaratoria" 31 March 1784 in AGI, Sta Fe 727. The letter included copies of 12 letters from men and women asking for the governor's permission to marry despite parental dissent.

⁷² "Expediente del Cavildo Secular de Merida de Yucatan, sobre los matrimonios que se executaban por los Menores sin el consejo Paterno" in AGI, Sta Fe 727.

Pragmática sanción of 1776 and the later cédula issued by the King, the Cabildo claimed that “. . . instead of containing the disorders of the youth, [the decrees] have precipitated them to commit worse insults and crimes than before, [because the young are] falsely convinced that the punishment does not apply to them, or that it is light when they do not expect to inherit anything from their destitute fathers, or when they consider that the inheritance is worth less than the satisfaction of their [sexual] appetite. . . .”⁷³ The Cabildo asked the Crown to declare other punishments for those who contracted unequal marriages despite parental dissent. The *Provisor* and *Vicario General* of the Archbishopric of Charcas in 1782 repeated the same question: “If the paternal dissent is found to be rational and just, should the ecclesiastical judges proceed to arrange for the offspring to marry provided that they submit themselves to the sanctions described in the Pragmática sanción, or what means can be used to persuade them not to marry when they in any case expect to inherit little?”⁷⁴ These questions and comments from local judges in Spanish America not only demonstrate a problem with the law itself, they also illustrate a general phenomenon in Spanish America at the time: the weakness of parental control and filial obedience. Clearly, most parents could not prevent their sons and daughters from marrying according to their own wishes and preferences, even if the parents had some property. One of the basic problems with the law was that—in order to function properly—it required filial obedience which was precisely what it was meant to bolster.

The Council of Indies did not answer these questions until 8 March 1787 when yet another cédula was issued to clarify the new legislation on marriages. Here, the King decreed that ecclesiastical judges should not allow young couples to marry when either of the parents objected, even if the children accepted being disinherited.⁷⁵ This decision was an attempt to clarify that civil and ecclesiastical judges alike should by all possible means prevent couples from marrying when the parents objected. The decree of 1787, although clear-cut, and in many ways a logical consequence of the Pragmática sanción itself, caused more confusion and doubt among many officials and priests in Spanish America.

The new legislation was simply seen as unjust in that it undermined the legal status of verbal promises of future marriages. The Bishop of Cartagena

⁷³ Ibid. No pagination.

⁷⁴ Cited in “Real cédula para que se observe lo determinado sobre unas dudas acerca de la pragmática sobre matrimonios de los hijos de familia” in Konezke, *Colección de documentos*, pp. 623-625.

⁷⁵ Ibid., pp. 624-625.

de Indias, Joseph Díaz de la Madrid, explained that in his experience the most serious problem regarding marriage was that young women abused the betrothals, and that the new law did not work because it ran counter to courtship customs.⁷⁶ In his dioceses a young woman, he claimed, would voluntarily give away her body if the man promised to marry her. It was commonly believed, according to the Bishop, that if betrothals had been exchanged and the man had deflowered the woman, the ecclesiastical judges would oblige him to restore her honor by marrying her:

The women . . . take advantage of the situation, not only by exhorting the men to promise marriage, but also by making them confirm their promise with a material symbol which they make sure many people know about. They then let the men be the owners of their virginity, co-operating themselves in their own dishonor, and thus they have most, if not all the guilt, of their own deflowering.⁷⁷

The man would, in the Bishop's experience, generally deny that he had ever promised to marry the woman.

. . . Frightened by the punishments they would receive if they confess, those who can, will run away, and those who cannot, will constantly deny the fact even though they are explained the seriousness of their oath. Therefore it is possible to see cases where both parties form a cross with their fingers—which I myself have witnessed—and one will swear that she has been deflowered, and the other that it is not true, and both will be so satisfied with their own answers, that although they have been asked about the same thing, one would think they had been asked about two totally different ones.

This custom lead to an infinity of inconveniences, according to the Bishop. The women would:

. . . insist that justice be done. They sue, which does not contribute to what they want to achieve. It merely irritates the men, and makes them more determined in their resistance. The men make infamous remarks about the customs of the women, believing the more they say against them, the more it will support their own defense. . . . Well-hidden defects and scandals are discovered, hatred is created, the number of false testimonies is increased. And the women, who

⁷⁶ "Carta del obispo de Cartagena de Indias, Dn Joseph Díaz de la Madrid, del 29 de octubre 1784" in AGI, Sta Fe 727.

⁷⁷ Ibid., ". . . aprovechan de la ocasión, no solo sacándoles la palabra de que han de ser sus esposos, sino tambien haciendo que la manifiesten con alguna señal exterior, que sea conocida bastantemente por uno y otro; y verificado; los hacen dueños de su virginidad, cooperando ellas mismas en su deshonor, y teniendo sino toda, la mayor culpa de su desfloro."

ought to be at home, walk about from one place to another looking for the Lawyer, the Notary or whoever might dispense some protection. . . .⁷⁸

What should one do in order to prevent all this disorder? The Bishop of Cartagena suggested that one should look more closely at the work written by the Bishop of Santa Agueda de los Godos to Pope Benedict XIV, where it was claimed that betrothals exchanged with the object of deflowering were invalid.⁷⁹ The Bishop of Cartagena concluded that adhering to this principle would be advantageous, especially since the Pope himself had authorized it in 1755.⁸⁰ If such betrothals were not admitted, then the ecclesiastical tribunals would only consider cases where the loss of virginity had occurred by force and without the consent of the woman. In those cases—which the Bishop thought were very few—the man would be obliged to marry the woman. The conclusion was that if the woman had been raped (i.e. lost her virginity violently), the man would be obliged to marry her. But if she had not resisted sufficiently, or if there were grounds for suspecting that she willingly had offered her body, then he was not obliged to marry her.

The problem presented by the Bishop of Cartagena was not new to the Council of Indies. It was a problem that had been addressed by Constantine in the fourth century (abduction was punished by death under late Roman Law), it figured in the medieval laws of Gratiano and Lombard, it had been contemplated by the Council of Trent in the sixteenth century, Benedict XIV had considered it, and in Spanish America the problem had already been presented by the Bishop of Cuba and the Audiencia of Chile after the issuing of the Pragmática sanción in 1776. Part of the problem (or perhaps *the* problem) was that there was a considerable difference between what the new law ruled and what people normally felt was just in these cases. According to the Bishop's description of courtship customs in Cartagena, women thought that if they had lost their virginity under a promise of marriage, it was the man's duty to fulfil his promise. He also argued that women were not reluctant in using the ecclesiastical tribunals in order to force the men to comply, although we should probably assume that the percentage of women who

⁷⁸ Ibid., "las infaman por parte de los costumbres, creyendo que quanto expongán contra ellas conduce a su defensa, faltan a las Leyes de la caridad, se descubren defectos bien ocultos, y escándalos, se exitan odios, se aumenta el numero de los Juramentos falsos; y las mugeres que debieran estar recogidas en sus casas, andan de una en otra en solicitud de Abogado, del Notario, o de quien las dispense su proteccion. . . ."

⁷⁹ According to the Bishop of Cartagena, this view was presented in *Theologia Moral. Libro 3. Tract. 5 cp. 2, Dub. 6 Art. 4 §Hic obiter adnotare juvat*, which was written by Alfonso María de Ligouri (1697-1787), bishop of Sancta Agatha de Goti in the archbishopric of Benevento in the Kingdom of Naples.

⁸⁰ The Bishop referred to "Letras Apostolicas expedidas en 15 de julio de 1755."

actually sued their seducers was small. The bishop put most of the blame on the women, but their strategy of offering sex in return for betrothals would not have been effective if people did not generally think that men were obliged to marry someone they had deflowered and promised to marry.

Some of the cases reported by the lieutenant governor of Caracas illustrate this popular view of betrothals, and indicate that it was not only women who adhered to this principle. Manuel Reyna, resident in Puerto Cabello in the Captaincy-General of Caracas, explained to the lieutenant governor that he had promised to marry Josefa Mendes. He had "made himself owner of her integrity" (*me hice dueño de su integridad*). This became publicly known and she became pregnant. Although his parents dissented to the marriage, in Manuel Reyna's opinion "the laws of honor oblige me to satisfy the damage, and restore the honor which I have robbed."⁸¹ This popular moral code, that it was the duty of men to restore the honor of the women they had deflowered, was problematic both for the Church and the State. As the Bishop of Cartagena explained, in theory and according to Canon Law, pre-marital sex was an impediment to marriage. But in practice priests often felt that it was better to wed a couple so that they would not continue to live in sin, rather than attempting to separating them by force. They might even have felt that it was their duty to protect the wounded honor of the females by forcing the men to accept their responsibility. The Council of Indies agreed with the Bishop that it was a serious problem he had presented. His solution was not adopted without discussion, however. One might say that the concerns of the Bishop and those of the Council were radically different, although they were both concerned with the question of honor. While the Bishop felt that the principal problem was the continued existence of an immoral custom which encouraged young people to have pre-marital sex, the Council of Indies seems to have been first and foremost concerned about how this custom could lead to unequal marriages which were thought to be so detrimental to the good order of society and the state. In other words, the differing views on betrothals were based on radically different perspectives on social norms. While the Council of Indies regarded filial obedience as a fundamental principle which should be preponderate over all other concerns, so that the rash actions of excited youth did not dishonor their own families, the inhabitants of Cartagena as described by the Bishop were more concerned with the individual's honor in the sense of female virginity and male trust.

⁸¹ "Copia de Carta de Don Manuel Reyna al gobernador y capitan general de Caracas" 15 December 1783 in AGI, Sta Fe 727.

The Council of Indies presented a report to the King on 29 August 1788 where the issue of betrothals was discussed. The Council had in fact already discussed this in 1783 when they received the regulations formed by the Bishop of Cuba. The Cuban Bishop, Santiago Joseph de Echeverría, had in his regulations of 1780 instructed the clergy to disregard betrothals contracted without parental consent, just like the Bishop of Cartagena suggested in his report.⁸² In 1783, the Council had accepted the bishop's regulations without modification. In effect, then, after 1783 betrothals contracted without parental consent were invalid in Cuba, but valid in the rest of Spanish America. The two Fiscales who had prepared the case in 1788 suggested that a new law should be issued declaring that these betrothals were invalid following the example set by the Bishop of Cuba and the suggestion made by the Bishop of Cartagena.⁸³ However, five members of the Council opposed the suggestion and claimed that such a law was unnecessary. Since a two-thirds majority vote was impossible, the Council merely informed the King that it had not been able to agree on a suggestion, and no new decree concerning betrothals in Spanish America was issued in 1788. However, betrothals exchanged without parental consent became invalid in Spain by a Real cédula issued on 18 September 1788.⁸⁴ Although the Council of Indies was divided on whether to pass the same laws overseas, the members did in 1790 agree that betrothals made by students were invalid, if the students had not obtained both parental consent and a license from either the prelate for the case of seminars or from the Viceroy or president of the Audiencia for the case of universities and other schools.⁸⁵ Presumably, one of the reasons why the councilors were reluctant in making "unauthorized" betrothals invalid in Spanish America, was because they knew that it would seem unjust to many people that women could no longer use the courts to repair damages caused by broken promises of marriage. Making betrothals invalid would certainly relieve both ecclesiastical and civil courts of cases which were often difficult and potentially scandalous, but it would probably not affect courtship custom, and it would put many women in a very difficult position.

⁸² *Reglamento que el ilustrísimo señor Dr Dn Santiago Joseph de Hechavarría, obispo de Cuba, ha formado para los ministros de su curia, y párrocos de su diócesis con motivo de la Pragmática, Real cédula de S M e instrucción de la Real Audiencia del distrito sobre matrimonios* (Printed in the press of the Colegio Seminario de San Carlos in 1780) in AGI, Sta Fe 727.

⁸³ "Consulta del Consejo de Indias del 29 de agosto 1788" in AGI, Sta Fe 727.

⁸⁴ "Consulta del Consejo de Indias del 29 de agosto 1788" in AGI, Sta Fe 727 and "Consulta del Consejo de Indias sobre las dificultades y dudas que se promueven en cumplir la Real Pragmática sobre matrimonios" in Konetzke, *Colección de documentos*, pp. 759-766.

⁸⁵ The Real cédula was issued on 11 June 1792 and is reproduced in Konetzke, *Colección de documentos*, pp. 706-707.

The Council of Indies was forced to review the entire marriage legislation and especially the problems of betrothals and popular morality once again in the 1790's following two cases presented to the Audiencia of Santa Fe.⁸⁶ Again, issues of honor were paramount. The first concerned José Vicente Berrio and Juana Josefa Gonzalez, who in 1785 had asked the *curia eclesiástica* of Cartagena for a license to marry having exchanged betrothals earlier. While the license was being arranged, Juana's twin sister, Rosalia Fernández, declared that she opposed the marriage because of the notorious inequality between Juana and José. The Governor of Cartagena subsequently declared that Rosalia's dissent was rational and just. Juana then approached the Vicario of the Cathedral, and claimed that if she was not allowed to marry José it would cause spiritual damage and trouble her conscience. She furthermore submitted herself to the sanctions established by the Pragmática sanción and thus—she thought—there was no impediment against her marriage to José. The ecclesiastical judge of Cartagena, obviously in doubt as to whether such moral concerns should play a role under the new legislation, chose to consult the Audiencia of Santa Fe. While the case was being reviewed in Santa Fe, the aforementioned Real cédula of 8 March 1787 was issued which declared that priests should not proceed with marriages that had been opposed by parents or other relatives, even if the young couples voluntarily accepted being disinherited. But the second point remained unsolved, according to the Audiencia of Santa Fe. When the disobedient child or minor claimed that severe damage of conscience would occur if the marriage was not fulfilled, what were rules that the Audiencia should follow? The Audiencia of Santa Fe had reached the conclusion that they did not have the authority to establish rules or regulations in these cases, and that it was up to the prelates to judge each case individually according to the articles 16 and 17 of the Pragmática sanción (on secret marriages/marriages of conscience) and Canon Law.

The second case that the Audiencia of Santa Fe referred to involved the marriage that Don José María de Sanchez de Movellan wanted to contract with Maria Ignacia Mier—" . . . de calidad y color quinterona. . ."⁸⁷ Maria Ignacia was the legitimate daughter of Ramon Josef de Mier and Eugenia de Ospino, and resident in Mompós in the dioceses of Cartagena. José María explained how some individuals in Mompós were spreading the rumor that Maria Ignacia had lost her virginity, and that he wanted to protect her and also was curious to know the truth. He therefore suggested that he could

⁸⁶ "Carta de la Real Audiencia de Santa Fe a V M del 19 de abril de 1794" in AGI, Santa Fe 727.

⁸⁷ "Copia de autos relativo a la petición de licencia para contraer matrimonio entre Jose María Sanchez y de Movellan y Maria Ignacia Mier" in AGI, Sta Fe 727.

have sex with her under the promise that if she indeed was a virgin as she claimed, he would marry her and thus restore her honor. In a letter to the parish priest, he explained:

Although . . . I am a distinguished person, gracias a Dios, . . . and Maria Ignacia is not my equal, in order to save my conscience I want to fulfil that promise which I made. Because I know—Señor Vicario—that I am the one who deflowered this girl; I and not any one of those they have been saying in this place, and therefore I want to be the one to honor her, like I have promised. And at the same time I know that if I do not keep my word, my soul will not be saved, because when I came to her, I knew that she was not my equal . . . I do not desire anything else than to return for my Soul, so that it can be saved, and I do not want my conscience to be burdened because of my distinctions and thus perish and fall into hell, which I can remedy if you give me the license to marry. . . .⁸⁸

These two cases forced the Council of Indies to review the entire legislation on marriages once again.⁸⁹ The *fiscal* argued that reasons of conscience should not be an excuse to contract unequal marriages. In his view, anyone could claim reasons of conscience, when “. . . it could be nothing else than what is caused by the illicit behavior of the parties. . . .”⁹⁰ Having considered the suggestion made by the *fiscal*, the Council on 30 October 1794 decided to answer the Audiencia of Santa Fe that no new rules were necessary and that the cases they had sent should be treated using the existing legislation. However, the Council wanted to discuss the matter more thoroughly and ordered all the antecedents to be brought to the attention of the *fiscales* so that they could prepare a new discussion on the legislation on marriages. The two *fiscales*, after having reviewed all the legislation issued since 1776 and the reports and questions from Spanish America, concluded that they had not changed their minds regarding marriage of conscience. In their opinion, if such reasons were accepted as valid for contracting marriages despite parental consent, then soon everyone would claim reasons of conscience and the law would be ineffectual.

The Council of Indies discussed the entire legislation again and reported in a *consulta* of 17 February 1798 their suggestions to the King.⁹¹ The Coun-

⁸⁸ *Ibid.*

⁸⁹ “Consejo de tres salas. Expediente sobre varias dudas que ocurren a la Real Audiencia de Santa Fe acerca de si por caso de conciencia y evitar perjuicio espiritual podra conceder licencia para casarse a aquellos entre quienes se halle executoriado por desigual el Matrimonio en contravención de lo prevenido en la Real Pragmática del año de 1776, y posterior declaración del año de 1787” in AGI, Sta Fe 727.

⁹⁰ *Ibid.*

⁹¹ The Consulta of 17 February 1798 is reproduced in Konetzke, *Colección de documentos*, pp. 759-766.

cil found that ever since the promulgation of the Pragmática sanción in 1778, there had been a constant flow of questions and reports from Spanish America, “. . . molesting the attention of the sovereign.” In the opinion of the ministers it was not a good alternative to revoke the Pragmática sanción altogether, nor to limit its restrictions to certain classes of the State, because it could “. . . lead people to think that the Crown was opening the doors for unequal marriages, that the youngsters could do whatever they liked, and that all the content of the Pragmática had been a novelty that sooner or later had to be corrected. . . .”⁹² The Council of Indies, nevertheless, agreed that something had to be done to strengthen the legislation in order to avoid unequal marriages and ensure that children obeyed their parents.

As expected, the ministers focused on the question of *esponsales* or betrothals, and whether it was wise to invalidate betrothals contracted without parental consent, as it had been in Spain in 1788 and in Cuba in 1783. The Council suggested that this was unnecessary, since the betrothals were merely a promise made by the *esposos* that they would marry in the future. When the couple eventually was to marry, the parish priests would have to ensure that there were no impediments to the union, and at the same time the question of parental consent would be relevant according to the Council. If any of the parents objected, the mere promise made by the couple could not overrule the impediments or the just opposition from parents or guardians. The principal difficulty occurred according to the Council, when in addition to the betrothals, the young couple had pre-marital sex, the woman was pregnant or the couple agreed to submit to the sanctions specified in the Pragmática sanción. They might even proclaim reasons of conscience, in order to pressure the ecclesiastic authorities into letting them marry despite parental dissent. The Council presented the view of the two Fiscales who had argued that reasons of conscience could not be a valid reason to be exempted from the rule of parental consent, because it would be a convenient loophole for all those that had had illicit pre-marital relationships. The Council, however, took a different view. The best solution was not to give a firm rule, but to leave it to the ecclesiastics to judge in each individual case whether it was preferable to proceed with the marriage despite parental dissent. The Council furthermore suggested that in order to limit the possibilities of using the reason of conscience as a loophole, the Crown could declare that only the prelates personally should give permissions in these cases.

⁹² “Consulta del Consejo de Indias sobre las dificultades y dudas que se promueven en cumplir la Real Pragmática sobre matrimonios,” 17 February 1798 in Konetzke, *Colección de documentos*, pp. 759-766.

THE NEW LAW OF 1803

The process of negotiation and partial modification of the marriage legislation was abandoned suddenly in 1803. A Real cédula of 1 June 1803 replaced the Pragmática sanción of 1776, and this new law was much more drastic than the suggestions made by the Council of Indies in its consulta of 1798. The 1803 cédula established that all males under 25 and all females under 23—of any class and color—both in Spain and overseas, needed their fathers' consent in order to marry.⁹³ Furthermore, it declared that if a father objected to the marriage of a son or a daughter under the age limits, he was not required to explain to anyone the reasons for his opposition. The cédula of 1803 thus eliminated the system which had been established by the Pragmática sanción of 1776 whereby couples could complain to a civil judge if they thought their parents' dissent was unjust. But the cédula also declared that men above 25 and women above 23 did not even need to consult their parents before marrying. If the father was dead, then the mother should give the license to any minors who wanted to marry, but then the age limit was reduced by one year for both men and women. Similarly, if both parents were dead, then the paternal grandfather—or if he also was dead, the maternal grandfather,—could give the license, but then the age limits were reduced to 23 for men and 21 for women. If both grandfathers were dead, the authority laid with a *tutor* (guardian), but only for men younger than 22 and women under 20. In order to ensure that neither priests nor minors attempted to circumvent the new rules, the law established that those who attempted to arrange a marriage for minors without paternal consent would face exile and loss of all property.

This decree was meant to eliminate all lawsuits on betrothals and dissent in both ecclesiastical and civil courts. After 1803, only betrothals made by adults and confirmed by a notary were legally binding. A woman who had lost her virginity could not pursue her case in court, except if it had been taken by force (i.e. rape or abduction) or if the betrothals had been notarized and exchanged with the consent of the parents. Also, no one had the right to question the motives of the father who opposed a marriage of a son under 25 or daughter under 23. There would therefore be no more cases before the courts on the justice of parental dissent. The law of 1803 was thus a major simplification of the legislation on marriage. It eliminated the discussion on the exclusion of certain racial and social groups, and it ended the practice of courts judging whether parental dissent to marriage was just. The civil

⁹³ The Real cédula of 1803 is reproduced in Konetzke, *Colección de documentos*, 794-796.

courts would after 1803 only be involved in granting licenses to soldiers, students and royal officials. The new law thus implied both a strengthening and weakening of paternal control over marriages with respect to the 1776 Pragmática sanción. For those under age, paternal control was now absolute. They could not marry without the consent of their fathers or those acting in his place, and there were no ways of appealing if they thought his dissent was unjust. But for those above the age limit, the law gave them unrestricted freedom in choosing a partner, and they did not have to ask even for parental counsel before marrying.

Why this sudden and complete reworking of the marriage legislation? Unfortunately, the legal documentation on which the 1803 law was based was removed from the old archive of the Council of Castile in 1835.⁹⁴ The resulting documentary vacuum makes it difficult to draw conclusions on the motives behind the new law. But again, comparisons with marriage legislation in other European states suggest that the 1803 cédula, as the 1776 Pragmática Sanción, was modeled on other European laws and legal compilations. The 1803 cédula does not reflect the modifications requested by Spanish American officials after 1778, and although the problems with the 1776 Pragmática sanción in Spanish America may have prepared the ground for a new law, the legal background of the 1803 law is definitely European. Between 1776 and 1803 dramatic developments in marriage law had taken place in other European states, which were reflected in the 1803 cédula. The attempts of assembling logical and rational legal compilations in the forms of civil and criminal codes had attracted widespread attention in a series of European states. One of the first attempts was the so-called Constitution of Francesco III of Modena of 1771 which had probably been used as a model

⁹⁴ In 1835 the Sección de Gracia y Justicia of the Consejo Real de España e Indias was preparing a new law on marriages and asked for all the old documents on unequal marriages from the archive of the extinguished Consejo de Castilla. A total of 87 expedientes from 1775 to 1803 were compiled from various legajos in the old archive and sent to aforementioned agency. But Consejo Real de España e Indias only existed for two years, and its archives were dispersed. A list of the expedientes sent from the old archive can be found in AHN, Consejos, leg. 2425, exp. 4 "Matrimonios. Inventario de los expedientes sobre Matrimonios desiguales que a virtud de oficio de las seccion de Gracia y Justicia del Consejo Real de España e Indias su fecha 10 de Marzo de 1835 se remitieron a la misma con oficio de 27 del propio mes y año." Part of the archive of the Consejo de España e Indias (1834-1836) is located in the Archivo General de Simancas, but according to the index and information provided by an archivist there, the expedientes on marriages are not present. See Angel de la Plaza Boreas, *Archivo General de Simancas. Guía del investigador* 4, ed. (Madrid: Ministerio de Cultura, 1992), pp. 335-340. More information on the Consejo Real de España e Indias and the documents Simancas is provided by Fernando Arvizu y Galarraaga, "El Consejo Real de España e Indias (1834-1836)" *Actas III Symposium de la Administración* (Madrid: 1974), pp. 385-406. If the 87 expedientes on marriages still exist, they will no doubt be of great use for the historian who is able to locate them.

for the 1776 Spanish law.⁹⁵ More important for the 1803 Pragmática were the Civil and Criminal Codes developed by emperor Joseph II of the Habsburg dynasty in 1787, of which there actually exist full contemporary translations in the old archives of the Council of Castile.⁹⁶ The provisions of the 1803 Pragmática sanción and the 1787 Civil Code are so similar that it seems likely that the first is either based on the second, or that they had some common origin. Both finally invalidated betrothals and marriages contracted by minors. And both allowed parents to disinherit disobedient sons and daughters above the age limits. Identical provisions are found in the Napoleonic Code Civil of 1804, where men under 25 and women under 21 could not contract legally binding marriages without parental consent. And, again, parents had the right to disinherit sons and daughters above the age limits who did not obtain the counsels of their parents.⁹⁷ In general, then, laws on marriage in the different European states were not elaborated independently. And more specifically, the 1803 cédula did not come as a result of any particular views on Spanish American social issues. Rather, it was the result of a pan-European, enlightened and patriarchal political ideology.

Although the subsequent legal developments in Spanish America fall outside the periodical scope of this article, it is worth noting that only two years later, a new cédula modified the 1803 law in order to adapt it to what was perceived to be Spanish American social realities. On 15 October 1805, the Council of Indies issued a cédula which—for the first time—explicitly prohibited marriages between “. . . persons of known nobility and members of the castes of negroes and mulattos,” although viceroys and audiencias were given the authority to grant dispensations.⁹⁸ Unsurprisingly, this legislation also provoked a series of queries, lawsuits and questions which, in turn, forced the Council of Indies to explain and eventually modify it.

The most interesting aspect of the marriage reforms of late colonial Spanish America is not whether the Bourbon state succeeded in reducing the number of unequal marriages. Rather, as this article has tried to show, the problems the Bourbon state faced in making the new laws workable in Span-

⁹⁵ See Paolo Ungari, *Il diritto di famiglia*, p. 40.

⁹⁶ The Spanish translations of the Austrian codes may be found in AHN, Estado, leg. 3027.

⁹⁷ For a discussion of marriage in the French Code Civil and its influence on Spanish legislation, see for instance José María Laina Gallego, “Libertad y consentimiento paterno para el matrimonio en la legislación española (de la pragmática de Carlos III al proyecto de Código Civil de 1851)” (Unpublished doctoral dissertation, Universidad Complutense de Madrid, 1991), pp. 179-194.

⁹⁸ See Verena Martínez-Alier, *Marriage, Class and Colour in Nineteenth-Century Cuba. A study of Racial Attitudes and Sexual Values in a Slave Society* 2. ed. (Ann Arbor: University of Michigan Press, 1989), pp. 11-12.

ish America indicate both the extent to which legislative reforms were subject to constant negotiation between peninsular and American institutions even during the golden age of Bourbon absolutism and how entrenched popular value systems based on honor and virtue were in Spanish America. The difficulties with the 1776 law in Spanish America also show how complex the social stratification of Latin American societies had become by the late eighteenth century. The cases of parental dissent against unequal marriages reveal that Spanish America was not simply a "pigmentocracy," if it ever had been. Parents, local judges, priests, bishops, oidores and even peninsular ministers understood that it was impossible to use only race as criteria for determining social standing.

This article has been an attempt to see the late colonial marriage legislation as part of an enlightened, absolutist project carried out by the Bourbon reformers with the intent of making the Spanish monarchy more rational, efficient, obedient and ordered. It has been argued that the intention of the reformers was neither to outlaw inter-racial marriages nor to cripple the Church. Nor should the marriage reforms be understood to enhance *either* parental authority *or* royal power alone. In this article it has been argued that the Bourbons understood paternal and royal authority as two sides of the same coin. In line with absolutist philosophers such as Bossuet and Filmer, the Bourbons saw the king as the ultimate father, where the monarchy was constituted by a patriarchal hierarchy and where the duty of all subjects was to obey their King like their fathers. The marriage reform of the eighteenth century was hence not merely an attempt to change social custom. The new marriage legislation was imbedded with political meaning. On this basis, one could be tempted to argue that the patriarchal and absolutist rhetoric employed by the Spanish monarchy during the wars of independence failed because it did not strike a familiar chord in Spanish American societies, where other values were seen as more important than filial obedience.

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