

## PROMISES AND DECEITS” *Marriage among Indians in New Spain in the Seventeenth and Eighteenth Centuries*

Even a brief look into the historiography on Indian marriage in New Spain will reveal how infrequently scholars have devoted themselves to this topic. On the one hand, there are texts written from the perspective of canon law, such as those by Federico Aznar Gil, Paulino Castañeda, Daisy Rípodas Ardanaz, and Guillermo Floris Margadant, but these authors address canonical development in Spain as well as Spanish America and use mainly references from councils and synods, especially pastoral sources.<sup>1</sup> On the other hand, there are anthropological studies, such as those of David Robichaux, Danièle Dehouve, Pierre Ragon, and Serge Gruzinski that compare pre-Hispanic marriage to Christian marriage.<sup>2</sup>

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1. Federico R. Aznar Gil, “La institución matrimonial en los autores franciscanos americanos,” in *Archivo Ibero-Americano* 46 (1986), pp. 781–808; Aznar Gil, “El impedimento matrimonial de parentesco por consanguinidad en los concilios y sínodos indios (S. XVI),” in *Evangelización y teología en América (Siglo XVI). X Simposio Internacional de Teología de la Universidad de Navarra*, Vol. 1, Josep-Ignasi Saranyana, Primitivo Tineo, Antón M. Pazos, Miguel Lluç-Baixaullí y María Pilar Ferrer, eds. (Pamplona: EUNSA, 1990), pp. 451–486; Aznar Gil, “La libertad de los indígenas para contraer matrimonio en las Indias (ss. XVI-XVII),” *Ius Canonicum* 64 (1992), pp. 439–462; Aznar Gil, “La celebración del sacramento del matrimonio en Indias,” in *La primera evangelización de América: contexto y claves de interpretación*, Dionisio Borobio, ed. (Salamanca; Centro de Estudios Orientales y Ecuménicos Juan XXIII de la Universidad Pontificia de Salamanca, Bibliotheca Oecumenica Salmanticensis, 1992), pp. 189–220. Paulino Castañeda Delgado, “El matrimonio legítimo de los indios y su canonización,” *Anuario de Estudios Americanos* 31 (1976), pp. 157–188; Castañeda Delgado, “El matrimonio de los indios: problemas y privilegios,” in *Homenaje a Don Agustín Millares Carlo* (Las Palmas de Gran Canaria: Confederación Española de Cajas de Ahorros, 1975), pp. 659–698. Daisy Rípodas Ardanaz, *El matrimonio en Indias. Realidad social y regulación jurídica* (Buenos Aires: Fundación para la educación, la ciencia y la cultura, 1977). Guillermo F. Margadant, “Del matrimonio prehispánico al matrimonio cristiano. Problemas que en la Nueva España circundaron la cristianización de las uniones indígenas prehispánicas,” *Anuario Histórico Jurídico Ecuatoriano* 6 (1980), pp. 515–528.

2. David Robichaux, comp., *El matrimonio en Mesoamérica ayer y hoy: unas miradas antropológicas* (Mexico: Universidad Iberoamericana, 2003). Danièle Dehouve, “El matrimonio indio frente al matrimonio español (siglo XVI al XVIII),” in Robichaux, *El matrimonio*, pp. 75–94. Pierre Ragon, “Teología de matrimonio, derecho canónico y prácticas misioneras en el México del siglo XVI,” in Robichaux, *El matrimonio*, pp. 55–73. Serge Gruzinski,

Using confessionaries for Indians as reference, these authors handle this topic from the perspective of the history of mentalities without regard for the legal context in which such documents were produced. They may also undertake lineage studies supported by the same kinds of sources.<sup>3</sup> However, at least for the viceroyalty of New Spain, there is a lack of research on indigenous marriage that systematically uses and analyzes ecclesiastical sources, particularly pastoral tools.<sup>4</sup> Thus, I do not consider in this paper the beginning of evangelization and its specific issues. Instead, I focus on the assimilation of Indian marriage into the establishment of the Catholic Church in Mexico as documented in parish records and the instructions provided to parish priests.

As is widely known, the 1570s are considered the point of departure between the first evangelization stage, or foundational evangelization, and the establishment of the diocesan Church. Prior to the 1570s, evangelization was exclusively in the hands of mendicant orders. In the 1570s, the first secular-clergy bishop in Mexico, Moya de Contreras, was appointed, the Inquisition was established, and the *real cédula* governing patronage was issued. Thus, it can be said that the consolidation period of the Catholic Church in New Spain started in this decade.<sup>5</sup> A review of the way in which the marriage sacrament was handled in pastoral writings makes it clear that during the first half of the sixteenth century, evangelizers, canon lawyers, and ecclesiastical authorities were mainly concerned with problems related to the adaptation of pre-Hispanic marriage habits, mixed marriages, and how to implement the Pauline privilege (governing marriages involving unbaptized parties). Therefore, what appear most strongly in these writings are issues particularly related to Indians.<sup>6</sup>

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“Confesión, alianza y sexualidad entre los indios de Nueva España (introducción al estudio de los confesionarios en lenguas indígenas),” in *El placer de pecar y el afán de normar. Seminario de Historia de las Mentalidades* (Mexico: Joaquín Mortiz, Instituto Nacional de Antropología e Historia, 1987), pp. 169–215.

3. Pedro Carrasco, “Parentesco y regulación del matrimonio entre los indios del antiguo Michoacán, Mexico,” *Revista Española de Antropología Americana* 4 (1969), pp. 219–222; Carrasco, “Matrimonios hispano-indios en el primer siglo de la Colonia,” in *Familia y poder en Nueva España. Memoria del Tercer Simposio de Historia de las Mentalidades* (Mexico: DEH-INAH, 1991), pp. 11–21.

4. Works dealing with marriage in colonial America are numerous. From the perspective of legal history, but incorporating the interdisciplinary approach prevailing in these studies, there is an interesting article by Viviana Kluger, “La historia de la familia colonial iberoamericana como tema de investigación interdisciplinario. Algunos aportes de las últimas décadas,” *Revista de Historia del Derecho* 32 (2004), pp. 473–494. For the viceroyalty of Peru, see Pilar Latasa’s work on marriage ritual based on conciliar and synodical dispositions: “La celebración del matrimonio en el virreinato peruano: disposiciones en las archidiócesis de Charcas y Lima (1570–1613),” in *El matrimonio en Europa y el mundo hispánico: siglos XVI y XVII*, Jesús M. Usunáriz and Ignacio Arellano, coords. (Madrid: Visor, 2005), pp. 237–256.

5. Alberto Carrillo Cazares, *Manuscritos del Concilio Tercero Provincial Mexicano (1585)*, 4 vols. (Mexico: El Colegio de Michoacán, Facultad de Derecho, UNAM, 2007). Actually, the period could be expanded to cover from 1572 to 1585, when the Third Council of Mexico took place. Carrillo quotes Andrés Lira and Luis Muro from “El siglo de la integración,” in *Historia General de México* (Mexico: El Colegio de México, 1981), pp. 375–377.

6. See Juan Focher, *Itinerario del misionero en América*, Latin-Spanish edition, with introduction and notes by Antonio Eguluz (Madrid: Librería General Victoriano Suárez, 1960); Fray Alonso de la Veracruz, *Speculum Coniugiorum. Espejo de matrimonios. Matrimonio y familia*, with introduction, transcription, translation, and notes

Meanwhile, the later part of the period of foundation evangelization was linked to the disappointment of missionaries, whose providential dreams had led them to believe they could create a new and reformed Christianity in New Spain, similar to that of the very first Christians. Problems emerging among new converts, including those related to marriage, forced clergymen to develop more realistic plans.<sup>7</sup>

It is for this reason that my analysis focuses on pastoral tools from the seventeenth and eighteenth centuries, by which time Christian marriage had already been assimilated among Indians. The sources studied here are the documents printed throughout these centuries that recorded the pastoral experience of secular and regular clergymen from different religious orders. Thus, the article will provide a broad and varied vision based on the testimonies of agents belonging to diverse spiritualities and using different evangelization methods. Among these are Franciscans, Dominicans, Jesuits, and secular clergy, who carried out their ministries among both Indians living in important cities of the viceroyalty and Indians living in remote regions.

This study is also based on analysis of 28 pastoral tools, in particular those addressed to the parish priests of New Spain's Indians from 1572 to 1789. Their authors, all of them experienced in pastoral activities, carried out their ministry within the ecclesiastic province of Mexico.<sup>8</sup> The province included Guadalajara, Puebla, the Valley of Mexico (including the towns surrounding Mexico City), Oaxaca, Michoacán, and Chiapas.<sup>9</sup> These documents portray life at the parishes or *doctrinas*, describing Indians' marriage habits and the most frequently occurring problems associated with them, as well as the unique and complex cases a priest of Indians could face. In addition, they present solutions to those problems—solutions that go beyond the canonical regulations and the answers that evangelizers and experienced pastors usually considered most

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by Luciano Barp (Mexico: Universidad de La Salle, UNAM, 2009); and Juan Goñi Ordeñana, "El 'Speculum coniugiorum' de Alonso de Veracruz y la inculturación del matrimonio canónico en México," *Ius Canonicum* 39, addition 1 (1999), pp. 619–632. Veracruz published his work for the first time in 1556, then reviewed it and added some post-Trent remarks in a second edition. One of the best-known editions is the one printed in Milan in 1599.

7. For Providencialism and utopian visions during the first years of evangelization in New Spain, see Josep-Ignasi Saranyana and Ana de Zaballa, *Joaquín de Fiore y América* (Pamplona: Eunote, 1997); and Zaballa, "La discusión conceptual sobre el milenarismo y mesianismo en Latinoamérica," *Anuario de Historia de la Iglesia* 10 (2001), pp. 353–362.

8. As accurately stated by Jorge Traslosheros, *Historia judicial eclesiástica de la Nueva España. Materia, método y razones* (Mexico: UNAM, Editorial Porrúa México, Instituto de Investigaciones Históricas, 2014), p. 4: "It is correct to refer to the Ecclesiastic Province of Mexico, which grouped several bishoprics headed by the archbishopric of Mexico City. It must also be clarified that the Province's jurisdiction was not always in line with the geography of the viceroyalty."

9. Consistent with the purpose of instructing natives, these tools were frequently bilingual, or if written in Spanish, included some dialogues or words in indigenous languages. Nahuatl, or the "Mexican language," as it is called in the tools, appears most frequently; some tools use Nahuatl dialects. For instance, the tool might state: "The Mexican language as it is used in Guadalajara."

suitable for such cases. That is, these documents provide not only a record of parish life but also a means to penetrate into these priests' perspectives on marriage issues.

### INDIAN MARRIAGE: ORIGINAL OR ASSIMILATED?

In undertaking research on an Indian population, in this case research devoted to Indian marriage, it seems natural for scholars to center on the original and unique aspects of that population, which descended from a culture with marriage habits extremely different from those of Christian practice. Nonetheless, from the early sixteenth century, and of course throughout the following two centuries, there seemed to be more similarities than differences. For instance, an analysis of the transgressions and difficulties faced by Indians at every marital stage shows clearly that most of them could also be found among Spaniards living in America or Europe. Therefore, similarities as well as distinctive aspects should be taken into account, for they illustrate how the Indian population assimilated Christian marriage and its byproducts as they arrived from Spain: transgressions, corruption, ritual forms, and so forth.

It is true that regulations on marriage were common to Spaniards, Indians, and all of the emerging populations of mixed race. However, it is also known that at the beginning of the evangelization stage the Holy See granted Indians some specific privileges related to this sacrament.<sup>10</sup> For example, for Indians the consanguinity requirements for marriage were less stringent, and the possibility of getting married during banned periods was somewhat greater. The reasons for these privileges related to the Indians' recent adoption of the Christian religion and the difficulties of making them practice monogamous marriage and abandon endogamous habits. It is a surprising fact that by as late as the seventeenth and eighteenth centuries, when there were hardly any neophytes, those privileges were still in force.

According to some authors, the reason for these variations was "Indian reluctance" to accept imposed customs, or an incapacity to adjust to the rigorous Christian marriage values.<sup>11</sup> However, based on pastoral writings from

10. The brief *Etsi sedes* by Pius IV, dated August 12, 1562, granted Indians the possibility of "receiving the marriage blessing at any time of the year, given that no loud noise or parties occur." This privilege was granted for 25 years, until 1587. Although there is no evidence of its renewal, the privilege became part of Indian common law as applied to marriage. Castañeda Delgado, "El matrimonio de los indios," p. 684. Castañeda mentions that Montúfar and Torquemada were in favor of it.

11. See for example Ana M. Presta, "'Por el mucho amor que os tengo.' Matrimonio indígena, poliginia y vida conyugal en Charcas. Siglos XVI y XVII," in *Familias iberoamericanas ayer y hoy. Una mirada interdisciplinaria*, Mónica Ghirardi, coord. (Río de Janeiro: Asociación Latinoamericana de Población, 2008), pp. 45–62; Estrella

the seventeenth century, it seems that some parish priests for Indians did not perceive these variances as accommodations to reluctance or incapacity, but precisely as privileges, and they did not universally believe that those prerogatives and rights should be set aside. Some clergymen argued that the time they had been in force supported their continuity—“[concession] *became custom and custom became right*.”<sup>12</sup> Others took the opposite view, claiming that the Indians could no longer be considered recent believers, and that these Roman prerogatives were no longer in effect. Sometimes the various opinions were linked to the religious order the soul shepherd belonged to. Dominicans, adhering tightly to a rigid administration of sacraments, rejected privileges for Indians.<sup>13</sup> Jesuits, as M. Elena Imolesi mentions, defended the “rights” acquired by natives, and also advocated for the prerogative received by the Company to exempt, in the context of conscience, consanguinity degrees not banned by divine right at those places lacking bishops or where bishops were not nearby.<sup>14</sup> As Miguel Venegas states, Jesuits applied this prerogative in quite a liberal way, for they considered as “neophytes” all mulattoes, mestizos, or children of converted Indians.<sup>15</sup>

In addition to the Jesuits, a good number of indigenous parish priests who were themselves authors of manuals for priests adhered to these privileges, since they eased the accomplishment of their tasks with the natives. In addition to the opinions of regular clergymen, there are also some by secular ones. Showing no doubt whatsoever, Pedro Contreras Gallardo records in his 1638 sacraments manual that, on account of the concession and privilege granted by Paul III, Indians had to observe “the [consanguinity] impediment only to the second degree inclusive.” However, by the late seventeenth century, Juan Martínez Araujo warned that Indians might disregard such a privilege and that priests would suffer from dilemmas of conscience if they neglected those impediments:

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Figueras, “Matrimonio nahua-mexica y matrimonio cristiano,” in *Formas familiares, procesos históricos y cambio social en América Latina*, Ricardo Cicerchia, ed. (Quito: Abya-Yala, 1998), pp. 83–95; and Mónica P. Martini, *El indio y los sacramentos en Hispanoamérica colonial. Circunstancias adversas y malas interpretaciones* (Buenos Aires: PRHISCO-CONICET, 1993).

12. Francisco de Lorra Baquío, *Manual mexicano, de la administración de los santos sacramentos, conforme al Manual Toledano. Compuesto en lengua mexicana, por el bachiller Francisco de Lorra Baquío presbytero* (Mexico: Diego Gutierrez, 1634) pp. 104–105. Francisco de Lorra was a secular priest and late in life entered the Dominican order. He died in 1669. See José Simón Díaz, *Bibliografía de la literatura hispánica*, Vol. 13 (Madrid: CSIC, 1984), p. 533, my italics.

13. See Martín de León, *Manual breve, y forma de administrar los santos sacramentos à los Indios. Recopilado por el P. Fr. Martín de León, de la orden de Predicadores, Y agora nuevamente corregido, y añadidas algunas cosas. Por el Convento de N.P.S. Domingo de Mexico* (Mexico: Francisco Robledo, 1640 [1614]), my italics.

14. M. Elena Imolesi, “Mejor casarse que abrasarse”: Jesuitas, matrimonio indígena y dispensas en Hispanoamérica colonial,” in *Seminario Internacional de Población y Sociedad en América Latina*, Mario Boleda, ed. (Salta: SEPOSAL, 2005), pp. 393–412.

15. See Miguel de Venegas, *Manual de parrocos, para administrar los santos sacramentos: y exercer otras funciones eclesiasticas conforme al Ritual Romano . . .* (Mexico: Joseph Bernardo de Hogal, 1731), pp. 399–400. Hogal was the minister and printer of the Royal and Apostolic Holy Crusade Tribunal for the whole of New Spain.

And also show them that, although all manuals state it, Indians are unaware and do not practice it: that consanguinity in third and fourth degrees and affinity between them are removed and revoked. And this should not be put into question: but to marry them, and tell them it is their privilege, granted by the Pontiff Paul III, as stated by Friar Martin de Leon Torquemada and Mr. Mont. Affinity *per copulam illicitam* passes not to the third degree, according to the Council of Trent: permit the rest of marriages, and create no altercations concerning these truths, for it will be harmful to marriage.<sup>16</sup>

Obviously, the concept of marriage applied to Indians consisted of Spanish custom and ritual tradition, including the stages leading up to marriage. Local habits from the different regions of New Spain were also admitted into marriage rituals and occurrence, but essentially the celebration, rules, and conditions of marriage were those of Spain, as the indigenous parish priests were constantly reminded. The Indians themselves did not particularly press for respect for local habits, but, as is widely known, the notion of doing so was rather a Tridentine doctrine supported by Mexican councils and reiterated in guides to the sacraments.<sup>17</sup>

Before going into more concrete matters, I want to point out that some Indian marriage habits, when analyzed without contrasting them to those of Spain or Europe in general, may appear to have distorted characteristics. For instance, in the catechisms, manuals, and confessionaries analyzed in this study, one requirement mentioned for marriage among Indians was to make sure they had been instructed in the doctrine: they were asked questions to confirm whether they were familiar with the most important prayers and the basic truths of the faith. The conclusion could be drawn—as it has been frequently—that such an insistence on demonstrating knowledge corresponded to concern over the Indians' newness in the Catholic faith, to poor doctrinal instruction, or to the low esteem in which parish priests and instructors held their charges. Nevertheless, when looking at admission to sacraments in sixteenth-century Spain, we find out that parish priests in the peninsula also showed this concern toward most of their flock. Ever since the Toledo synod in 1536, clergymen had been told “not to give marriage blessings nor keep vigil to any person without

16. Juan Martínez Araujo, *Manual de los santos sacramentos en el idioma de Michuacan. El bachiller Juan Martínez de Araujo, primer colegial de el Colegio de S. Ramon Nonnato . . .* (Mexico: Doña Maria de Benavides, viuda de Juan de Ribera, at the Empedradillo, 1690), p. 17.

17. Decretos de reforma sobre el matrimonio, Council of Trent, Session XXIV. Repeatedly, when mentioning rites or words, the following observation is included: “or use other words, *according to the habit* accepted in each province. . . . If some provinces use in this point different customs and laudable ceremonies, besides those already mentioned, this Holy Council wishes [in contrast] *to maintain them as a whole*,” italics mine.

verifying they know the Christian doctrine.” This was reiterated at other synods, such as Astorga and Oviedo in 1553.<sup>18</sup>

From among the various issues raised in Indian marriages, I have chosen to study two that had to be resolved prior to the celebration of a marriage: false or broken promises and the various artifices used by Indians to overcome certain marriage obstacles.

## PROMISES AND EVASIONS

As is widely known, the Council of Trent, in an attempt to end the practice of secret marriages, made it clear that a promise to marry did not obligate one to marriage. The conviction prevailed that the binding power of such a promise was so strong that, when followed by intercourse, it meant the couple was really married.<sup>19</sup> Nonetheless, as the Third Mexican Council Directory stated, and the Roman catechism pointed out, it also had to be taken into account that this promise constituted a binding of conscience.<sup>20</sup> By the last third of the sixteenth century, the future promise was fully installed as the first marriage stage among Indians. Just as happened in Europe, Indian men frequently used a marriage promise for the sole purpose of having intercourse with a maiden, and then abandoned her.<sup>21</sup>

That this issue became a pastoral concern in the centuries under consideration here is supported by its appearance in the pastoral tools written for different regions by authors from diverse pastoral approaches. Questions related to promises are abundant in texts throughout the whole of the colonial period,

18. José Sánchez Herrero, “La legislación conciliar y sinodal hispana desde los siglos XIII a mediados del XVI y su influencia en la enseñanza de la doctrina cristiana. Los tratados de doctrina cristiana,” in *Proceedings of the Seventh International Congress of Medieval Canon Law. Cambridge, 23-27 July 1984*, Peter Linehan, ed. (Vatican City: Bibliotheca Apostolica Vaticana, 1988), pp. 349–372, esp. p. 371.

19. M. Luisa Candau Chacón, “El amor conyugal, el buen amor. Joan Estevan y sus ‘Avisos de casados,’” *Studia Historica. Historia Moderna* 25 (2003), pp. 311–349; Jesús M. Usunáriz, “El matrimonio y su reforma en el mundo hispánico durante el Siglo de Oro: la promesa matrimonial,” in *Temas del barroco hispánico, Ignacio Arellano and Eduardo Godoy, coords.* (Madrid, Frankfurt: Iberoamericana/Vervuert, 2004), pp. 293–312; Juncal Campo Guinea, “Los procesos por causa matrimonial ante el tribunal eclesiástico de Pamplona en los siglos XVI y XVII,” *Príncipe de Viana* 55 (1994), pp. 377–390, esp. p. 380.

20. See *Manuscritos del concilio tercero provincial mexicano (1585). Directorio de confesores*, Alberto Carrillo Cazares, ed. (Zamora, Mexico: El Colegio de Michoacán, El Colegio de México, 2011), part 2, chapt. 8, p. 42; and *Catecismo romano promulgado por el concilio de Trento*, comments and notes by Rev. Fr. Alfonso M. Gubianas, O.S.B. (Barcelona: Editorial Litúrgica Española, 1926), p. 6.

21. Carmen Castañeda, “Noviazgo, esponsales y matrimonio,” in *Comunidades domésticas en la sociedad novohispana: formas de unión y transmisión cultural. Memoria del IV Simposio de Historia de las Mentalidades* (Mexico: Instituto Nacional de Antropología e Historia, 1994), pp. 117–126. Candau Chacón, in “El amor conyugal, el buen amor” (p. 316), explains that in rural areas comparable to those with an Indian population in the Americas consummation after promise or betrothal was considered natural marriage, without waiting for the wedding ceremony. Included in the article is a review of the book *Avisos de casados* from the late 1500s, which was brought to America and offers interesting elements for comparison to the pastoral tools for Indians.

starting with the sixteenth-century *Confessionario mayor* by Alonso de Molina.<sup>22</sup> The seventeenth century saw promise issues treated in the works of Francisco Lorra Baquío, Ángel Serra, Francisco de Pareja, and Bartolomé de Alva.<sup>23</sup> Even as late as the eighteenth century the subject appeared in the instructive writings of Manuel Pérez, Jerónimo Cortés y Zedeño, and Andrés Pérez de Velasco.<sup>24</sup> These writers repeatedly reminded readers of the value of betrothal, for parish priests and tribunals frequently received complaints of abandonment from women who had given away their virginity after such a promise.<sup>25</sup> Pastoral tools from these centuries insisted on the significance of betrothal, and discussed the circumstances that might prevent its fulfillment and how to compensate for willful breaches. They also warned of the need to ask future spouses whether they had made a marriage promise to someone else, since that would have the value of an impediment.

Writings addressed to priests for Indians presented the doctrinal discussions that sought to solve this problem and the debates on the moral and legal force of the promise. Then, in the late eighteenth century, Pedro Murillo Velarde included these discussions in his course on canon law.<sup>26</sup> Nonetheless, as the sources analyzed for this article confirm, the priests continued to face practical problems in their pastoral work, and their writings reveal conflicts absent in the archives of the episcopal court. This is due to the fact that, as the priests often stated, they were following what had always been an ordinary

22. Alonso de Molina, *Confessionario mayor, en la lengua [sic] mexicana y castellana. Compuesto por el muy Reverendo padre Fray Alonso de Molina, de la orden del Seraphico sant Francisco* (Mexico: Pedro Balli, 1578), p. 48.

23. Francisco de Lorra Baquío, *Manual mexicano*, pp. 103–104; Angel Serra, *Manual de administrar los santos sacramentos a los Españoles, y naturales de esta provincia de los gloriosos apóstoles S. Pedro, y S. Pablo de Michuacan, conforme à la reforma de Paulo y Urbano VIII. Compuesto por el M.R.P. Fr. Angel Serra, predicador, ex-custodio de dicha santa provincia . . . y arzobispado de Mexico* (Mexico: printed by Joseph Bernardo de Hogal, 1731 [reprinted from the licensed original, printed in Mexico, 1697]), pp. 54 and ff.; Francisco de Pareja, *Confessionario en lengua castellana, y timuquana con algunos consejos para animar al penitente . . . Ordenado par el padre Fr. Francisco Pareja, padre de la custodia de Santa Elena de la Florida. Religioso de la orden de nuestro seraphico padre San Francisco* (Printed with license in Mexico, la viuda de Diego Lopez Danalos, 1613), p. 166; Bartolomé de Alva, *Confessionario mayor, y menor en lengua mexicana. Y platicas contra las supresticiones [sic] de idolatria, que el dia de oy an quedado a los naturales desta Nueva Espana, è instruccion de los santos sacramentos &c . . . Nuevamente compuesto por el bachiller don Bartholome de Alva, beneficiado del partido de Chiapa de Mota.* (Pedro de Quiñones for Francisco Salbago, printer at the Holy Secret Office, 1634), pp. 146–148.

24. Manuel Pérez, *Faol indiano, y guía de curas de Indios . . . Por el P. Fr. Manuel Perez, del Orden de N.P.S. Augustin* (Mexico: Francisco de Rivera Calderón 1713), pp. 158–162; Jerónimo Tomás de Aquino Cortés y Zedeño, *Arte, vocabulario y confessionario en el idioma mexicano: como se usa en el Obispado de Guadalajara, compuestos por el Br. D. Geronimo Thomas de Aquino, Cortes y Zedeño, clerigo presbytero, y domiciliario de el Obispado de Guadalajara* (Puebla: Colegio Real de San Ignacio de la Puebla de los Angeles, 1765), p. 163.

25. See for example Cortés y Zedeño, *Arte, vocabulario y confessionario*, p. 163: “Perhaps you have deceived a maiden and have had pleasure with her, or maybe a widow, because you have given her your word that you would marry her, but you did not marry either one or the other, and because you harmed them they could not marry any other man?”

26. Pedro Murillo Velarde, *Curso de derecho canónico hispano e indiano*, Vol. 3 (Zamora, Mexico: El Colegio de Michoacán, UNAM, 2005), Book 4, p. 476, art. 1, item 7. The binding nature of a betrothal is here defined as “an obligation to justice, and certainly a grave one, since this matter is grave, for betrothal is a contract.”



practice for the Church: attempting to solve problems before they reached the bishopric tribunal. Solutions were to be found first through the sacrament of penance or pastoral conversation. Only when these failed, or the parties were still unsatisfied, would priests and their charges resort to the diocesan court.

In 1600, Juan Bautista Viseo narrated his experiences at the confessional.<sup>27</sup> He recommended putting canon law into effect by forcing a man who had abused a woman to marry her.<sup>28</sup> However, he felt it necessary to recognize the difficulties posed by this practice among Indians:

It is ordinary among these natives to give female Indians their word to marry them just because they want to have them, by saying *Ipaltzinco in Dios canimitznonamigiz*, which means “I swear to God I will marry thee.” And then, for no reason, to go away after they have abused these women, and when kneeling before their confessor, *nothing can persuade them of their obligation*. Were this the case, one must not absolve he who has come if he fails to fulfill the promise, *when there is no other cause* for undoing the wedding. Because *secret weddings* are valid.<sup>29</sup>

By “secret weddings” he refers to marriage promises made without parental consent, or simply with no witnesses, which were rather common. It is a known that the Spanish courts, through a request presented to Phillip II, had tried to make the Pope declare clandestine marriage null, first in the peninsula and afterward also in the Americas. Clearly, they were unsuccessful, since promises or weddings without witnesses continued to be accepted as valid and to cause quarrels and problems.<sup>30</sup>

Based on their knowledge of Indians, some parish priests considered that a promise did not bind them as it did Spaniards. More specifically, Francisco de Pareja considered that it was not necessary for an Indian man to compensate a maiden whom he had forced because, according to him, virginity was scarcely valued.<sup>31</sup> This view must be considered in context: Pareja carried out his pastoral activities in Florida, where Indian culture was less developed, but he

27. Juan Bautista Viseo, *Aduertencias. Para los confesores de los Naturales. Compuestas por el padre fray Ioan Baptista, de la Orden del seraphico padre Sanct Francisco* (Mexico: Pedro Ocharte at Santiago de Tlateloco Convent, 1600), final table, “marriage” term, no page number.

28. Murillo Velarde, *Curso de derecho canónico hispano e indiano*, Book 4, art. 1, item 7.

29. “It is ordinary among these natives to give female Indians their word to marry them just because they want to have them, by saying *Ipaltzinco in Dios canimitznonamigiz*, which means ‘I swear to God I will marry thee,’ and then, for no reason, to go away after they have abused these women, and when kneeling before their confessor, *nothing can persuade them of their obligation*. Were this the case, one must not absolve he who has come if he fails to fulfill the promise, *when there is no other cause* for undoing the wedding. Because *secret weddings* are valid,” my italics. Viseo, *Aduertencias*, final table. The remark clarifying the validity of secret marriages is quite interesting, for such marriages were a matter of debate at the time, as the Third Mexican Council guide proves (*Directorio de confesores*, p. 42). It was established as ordinary doctrine in the eighteenth century, when Murillo Velarde wrote in his course on canon law, that “since secret weddings are not prohibited by any law, they are valid and licit.” Book 4, art. 1, item 6.

30. See Rípodas Ardanaz, *El matrimonio en Indias*, pp. 63–64.

31. Pareja, *Confesionario*, p. 166.

presents it as a general fact pertaining to natives in general.<sup>32</sup> Nonetheless, almost all manuals included a question to be asked of males in the effort to reveal impediments: whether the man had had previous illicit intercourse or made a “promise for marriage” to any female relative of his own or of the bride-to-be. The fact that this question is put forth so frequently means that most authors considered that such promise for the future or betrothal established a real commitment among Indians and that a promise made to a relative would constitute an affinity impediment.<sup>33</sup>

It may be that some of the contemptuous opinions concerning Indians’ promiscuity resulted from the first evangelizers’ illusion of creating a Church like the one established by the first Christians, and their transferring their aspirations to the moral life of neophytes even after being confronted with the difficulties and problems related to such a vision. Why, if not, was Indians’ behavior so negatively assessed when the rest of the population, in both Spain and the Spanish Americas, acted similarly? As is known, the same problems and conduct existed among the population of *criollos*. Thus, it was said in eighteenth-century Guadalajara that repairing a woman’s honor “was one of the most frequent causes mentioned by young men for marrying, since only marriage could avoid public dishonor for a woman and her family.”<sup>34</sup> This reason was given just as frequently in Spain and the rest of Europe.

In the face of males’ behavior, it became common among both Spanish and Indian women to present a lawsuit for non-compliance with a promise or for statutory rape when the groom-to-be refused to get married after taking their virginity. Experienced confessors were aware of this practice. Therefore, those in charge of Indian weddings would affirm that when the female had agreed to have intercourse, even if she was a minor, no reason would justify compensating her:

“It is to be understood when the maiden agrees to intercourse, [a situation in] which, as serious doctors say, there is no obligation to compensate her, not even

32. Cortés y Zedeño, *Arte, vocabulario y confesionario*, p. 180: “Have you given any other man your word about marrying him before giving it to this man you want to marry now? (Among Indians this question is not that necessary).”

33. *Ibid.*, p. 181.

34. See for instance Carmen Castañeda, “La formación de la pareja y el matrimonio,” in *Familias novohispanas, siglos XVI al XX. Seminario de historia de la familia*, Pilar Gonzalbo Aizpuru, ed. (Mexico: Centro de Estudios Históricos, El Colegio de México, 1991), pp. 73–90. She has studied this topic in Nueva Galicia during the eighteenth century; she analyzes the repercussions for women’s honor and family. Her sources are formal complaints for rape and statutory rape, desertion processes, and consanguinity dispensation files. Castañeda reports cases that are quite similar to those found among Indians from the Ecclesiastical Province of Mexico.

among Spaniards, much less among Indians, who do not appreciate this jewel, nor the loss of it, as her conduct manifests and makes clear.”<sup>35</sup>

Because of complaints like these, according to Murillo Velarde’s collection of canon law for the Spanish colonies, three different kinds of statutory rape were defined, each involving a degree of consent, or the lack of it.<sup>36</sup> To recover her honor and reputation, whatever her social rank and condition, a woman had to prove that the loss of her virginity was due to seduction or abuse; this conviction was common to all believers. These distinctions do not appear in pastoral tools, but they are included in cases from the Ecclesiastical Court.<sup>37</sup>

## BREAKING THE PROMISE, CAUSES AND RESTITUTION

Pastoral digests detailed the circumstances that could cancel or reduce the commitment derived from betrothal, seeking to solve practical problems. An analysis of these writings suggests that the clearest reason for freeing either the two parties from fulfilling a promise was danger of death.

## IN DANGER OF DEATH

Manuel Pérez, in his manual addressed to priests in the early eighteenth century, discussed the validity of a promise in cases where the promisor faced danger of death. This text is particularly interesting as a source because, in a departure from the ecclesiastical texts, the author recorded in detail the incidents that occurred in his own parish church in Mexico City. Pérez’s evident experience made of his book a text widely quoted throughout the eighteenth century, a valuable reference for pastoral activities among indigenous populations.

35. Viseo, *Aduertencias*, fol. 16r. The same is mentioned by Pérez, *Farol indiano*, p. 151, who is quoting Tomás Sánchez: “But Authors usually agree with Thom. Sánch. Mendo, *Statera opinionum* disert. 5, quote 8, no. 71, that a maiden who yields her virginity without suffering violence receives no insult from the felon, that it is but intercourse or deflowering as claims the cited chapter 7 *de regulis iuris. Scienti, & consentienti nulla sit iniuria.*” Concerning this point, the *Confessors’ Guide* from the Third Mexican Council sets forth a question to be considered in regard to both Spaniards and Indians, along with its answer: “*Q*: What should a confessor tell a man who has raped a virgin, forcing her, frightening her, or deceiving her, saying he would marry her? *A*: I say he should be ordered to marry her, and if there were important impediments to it, he has to be forced to compensate her according to her quality, but if she easily accepted when being begged, he has no obligation to compensate her in any way, otherwise it would be *sub cura parentum*, or if begging was annoying then he must do *ad arbitrium boni viri.*”

36. Murillo Velarde, *Curso de derecho canónico*, Vol. 4, Book 5, p. 145, title 16, item 187. The degrees were: absolutely violent, voluntary, and relatively violent.

37. For more information on lawsuits for statutory rape or failure to fulfill the marriage promise, and how such lawsuits were used throughout the Modern Age in Spain to save women’s honor, see Abigail Dyer, “Seduction by Promise of Marriage: Law, Sex, and Culture in Seventeenth-Century Spain,” *Sixteenth Century Journal* 34:2 (2003), pp. 439–455; and Georgia Arrivo, *Seduzioni, promesse, matrimoni: il processo per stupro nella Toscana del Settecento* (Rome: Edizione di Storia e Letteratura, 2006).

Nonetheless, it should be remembered that his examples and conclusions can be used to shed light only on the possible attitudes and behaviors of urban Indians. As Pérez himself stated, Indians from the capital of New Spain “lacked only to study Theology,” by which he meant they were really clever in manipulating rules and bringing lawsuits in order to meet their objectives. It is next to impossible that a priest serving Indians in the mountains would face some of the cases presented by Pérez.

To discuss the validity of a promise in danger of death, he described this possible situation: “A male Indian goes to the church claiming he intends to get married. Then he gets so ill he is in danger of dying, and they call the parish priest to celebrate the marriage with the Indian lying in his bed: This is quite common, and it might be considered from various perspectives, whose resolutions we will write down in this chapter.”<sup>38</sup> The first aspect to highlight in Pérez’s example is that the groom-to-be had “gone to the church,” that is, the parish priest had already opened a marriage file.<sup>39</sup> Therefore, the promise was not a simple one, or to use Bautista Viseo’s words, something “clandestine,” but was rather an official request to commence procedures and information sessions, plus subsequent discussions in the presence of witnesses.<sup>40</sup>

According to Pérez, marriages in which one party was in danger of death were relatively frequent. Consequently, he proposed several ways to resolve issues related to this event, depending on the circumstances. Those circumstances range from the case of a female demanding restoration of her honor from a male about to die, to the case of a person free of an honor obligation but wanting a wedding solely because he or she had been betrothed.<sup>41</sup> Pérez regarded as extreme cases those in which there was not enough time for the couple to go to a judge or bishop—as many authors recommended they do—when death was imminent. His solution follows the ordinary doctrine among canon lawyers and moralists, outlining no differences between Spaniards and Indians. Sticking to classical moralists such as Tomás Sánchez, the canonical perspective of the

38. Pérez, *Farol indiano*, p. 151. Among probable circumstances, Pérez presents the following: “The first case: When he has already deflowered his woman-to-be, and she demands, or even if she demands not, he wants to restore her honor by marrying her. The second one: When she is still a maiden but they think they must get married before he dies. The third one, and this is rather common: When he has not announced nor presented himself in the church, but has taken away a woman’s honor and is now ill, and he refuses to die having that burden. The fourth one: When the priest comes to know this in confession. I will answer according to the experience I have, speaking also with the words of the Authors, because it seems this chapter is easy but it is extremely hard.”

39. Tralosheros calls it a “trial.” It was to be presented before a provisor (diocesan judge) or his delegate, most often the local parish priest. See Jorge Tralosheros, *Iglesia, justicia y sociedad en la Nueva España. La Audiencia del Arzobispado de México 1528–1668* (Mexico: Porrúa, Universidad Iberoamericana, 2004), p. 134.

40. Viseo, *Aduertencias*, final table.

41. Pérez, *Farol indiano*, p. 151, quotes Enrique de Villalobos, comp., *Suma de la theologia moral, y canonica*, ca. 1637, doc.12, issue 12, no.1.

time established that “a man who deflowers a virgin under a deceitful marriage promise, is definitely bound to marry her... and the harm he has done cannot be repaired in any other way.”<sup>42</sup> This is why Manuel Pérez concluded that “if he had taken her virginity away, he must offer the restitution he is capable of giving, and that is marrying her.” This conclusion, along with the issue of insufficient time, enabled Rípodas Ardanaz to assert that in Spanish America “faked danger of death” was used as an excuse to avoid the impediment posed by a previous promise.<sup>43</sup>

Nonetheless, other extreme circumstances might arise. The most amazing one consisted in the healthy party refusing to get married, which seems to have happened quite often. The common pastoral opinion in this regard was that the parish priest “without compelling this party, must persuade it” to get married. In contrast, Pérez suggested to priests serving Indians that, when facing such a situation, they observe regulations. These established that “If either bride or groom goes through... a remarkable change or circumstance after betrothal... the commitment can be dissolved by the party who has not suffered any change.”<sup>44</sup> He then went on to add that there was no change “more remarkable than to be about to die.”<sup>45</sup> The one exception to this resolution would occur when a deflowered bride-to-be was the ill one. In this case, the wedding had to take place, not because of the betrothal but because of the grievance against her, “which leaves no room for dissolving the betrothal.” Consequently, according to the perspective of this experienced Augustine priest, who had long lived among urban Indians, female honor was indeed important to natives, so much so that a healthy party had to be forced to get married when death was imminent. It might seem that the importance of Indian women’s honor increased in the cities due to an assimilation of the criollo society’s habits and values.

## THE BEST IS THE ENEMY OF THE GOOD

According to the ecclesiastical law of the time, someone who had promised marriage and then refused to go through with it was to receive a canonical punishment, which could reach the level of censure, excommunication, or even imprisonment.<sup>46</sup> Nonetheless, Tomás Sánchez and Diego de Covarrubias, the most renowned marriage canon lawyers, suggested taking into account the

42. Murillo Velarde, *Curso de derecho canónico*, Vol. 3, Book 4, p. 474, title 1, item 3.

43. Rípodas Ardanaz, *El matrimonio en Indias*, p. 65.

44. Murillo Velarde, *Curso de derecho canónico*, Vol. 3, Book 4, p. 479, tit. 1, item 12.

45. Pérez, *Farol indiano*, p. 153.

46. Murillo Velarde, *Curso de derecho canónico*, Vol. 3, Book 4, p. 476, tit. 1. item 7.

welfare of believers.<sup>47</sup> It must not be forgotten that canon law was supposed to serve the pastoral task. Therefore, they advised judges to refrain from harsh sentencing when they could foresee that “censure [could turn out to be] more harmful than beneficial, or that marriage *might* have an unhappy outcome.”<sup>48</sup> It is important to note, in the context of this rule, that the solution should seek not to take away freedom from the party who refused to fulfill a promise, but to promote the welfare of the rejected one. Freedom would not be threatened by compelling the compliance of someone who had been free to make a promise. The resolution would depend on whether failing to fulfill the commitment would entail loss of honor for the deceived party.

The testimony of Juan Bautista Viseo in the sixteenth century offers the opinions and actions of someone in a parochial context who found similar cases among Indians in another part of New Spain. He was a unique pastor, for he carried out his ministry at both Mexico City and several centers nearby, and kept close relationships with Indians linked to the famous Real Colegio de Santa Cruz in Tlatelolco. He worked along with the Indian elite, and many of his writings were developed with their collaboration.<sup>49</sup> On the one hand, this might be seen as evidence of his open and positive attitude toward the natives’ capabilities, since he collaborated with those who had been carefully educated. On the other hand, it might be argued that the Indians he worked with were quite distant from the ordinary Indian population. An analysis of Viseo’s works—a confessional text, a book of sermons, the advice of *nahua* elders, and so on—shows that many of them are addressed to refined souls.<sup>50</sup> Nevertheless, his written advice to indigenous parish priests reflect that he also dealt with ordinary Indians in Mexico City, Texcoco, and Tacuba.

His text on giving advice taught, as does the popular saying, that the “best is the enemy of the good”: sometimes overlooking a requirement in the short run was better than being responsible for future calamities. This is why he suggested to priests who served Indians to advise women, in certain circumstances, not to demand marriage from a man reluctant to fulfill a promise he had previously made:

47. Tomás Sánchez, *Disputationum de Sancto Matrimonii Sacramento* (Antwerp: Martini Nutii & Ioannem Meursium, 1617); Diego de Covarrubias, *Decretalium epitome de sponsalibus et matrimonio* (Salamanca, 1554 and 1556). Sánchez was one of the new-wave moralists from the Council of Trent, the first to devote an in-depth work to marriage specifically. See Celestino Carrodegua Nieto, *La sacramentalidad del matrimonio: doctrina de Tomás Sánchez, S.J.* (Madrid: Universidad Pontificia de Comillas, 2003), p. 80.

48. Murillo Velarde, *Curso de derecho canónico*, Vol. 3, Book 4, p. 476, title 1, item 7, italics mine.

49. See David Tavárez, “Letras clandestinas, textos tolerados, colaboraciones lícitas: la producción textual de los intelectuales nahuas y zapotecos en el siglo XVII,” in *Elites intelectuales y modelos colectivos: el mundo Ibérico (siglos XVI–XIX)*, Mónica Quijada and Jesús Bustamante, eds. (Madrid: CSIC, 2003), pp. 60–82. Pages 66–68 are devoted to Viseo’s collaborations.

50. *Ibid.*, pp. 66–67.

The confessor, to soothe his penitent, must get to know to whom he has given his word, and allow the penitent to make a deal with her, asking whether he or she has promised marriage, and why the wedding should not occur and the marriage result. And when she says this is happening because the man does not want it, the confessor must convince her that she should not want it either, for he values her little, and perhaps because of this he will give her a bad life.<sup>51</sup>

Obviously, this problem did not exist exclusively in the Spanish America. Thus, the same law had to be considered and adapted to circumstances different from those just mentioned. In European regulations and practices, when the loss of virginity followed betrothal, and notwithstanding consent or lack of it, the party refusing to get married was forced to submit a dowry. In the colonial Spanish territories, Murillo Velarde wrote: “The lay person who has committed statutory rape, according to canon law, is bound to marry the raped woman or to give her a dowry, or both.”<sup>52</sup> Originally, the punishment for breaking the promise was marriage and a dowry, but as of the eighteenth century “custom has established that it must not be both but either.” This practice was relatively common in suits in Spain. When a woman agreed not to marry, she demanded a financial compensation.<sup>53</sup> Such a choice is not included in manuals for priests serving Indians, but in future studies documents of the bishopric tribunal documents will be explored for similar occurrences.

Issues concerning marriage impediments among Indians were extremely complex due to the dispensations granted by the Holy See and the prerogatives that had been held by religious orders since the beginning of evangelization.<sup>54</sup> It might have been this, along with the natives’ difficulty in assimilating to some of the impediments, that led authors who conveyed their experiences in their writings to parish priests to emphasize that priests, as well as Indians, had to learn and understand the situations and actions, whatever their relative severity, that would prevent the celebration of a wedding. Pastoral tools show an overall concern with Indians’ ignorance about impediments and priests’ lack of familiarity with the words in the different native languages that referred to

51. Visco, *Aduertencias*, final table.

52. Murillo Velarde, *Curso de derecho canónico*, Vol. 3, Book 5, p. 146, title 16, item 187.

53. See Jesús M. Usunáriz, “Los tribunales diocesanos y el matrimonio en la Edad Moderna,” in *Homenaje de la Universidad a D. José Melgares Raya* (Jaen: Servicio de Publicaciones de la Universidad de Jaén, 2008), pp. 349–376, 370.

54. Federico R. Aznar Gil, “El impedimento matrimonial del parentesco espiritual en Indias (ss. XVI–XVII),” *Revista Española de Derecho Canónico* 49:133 (1992), pp. 513–532; Aznar Gil, “El impedimento matrimonial de parentesco por consanguinidad en los concilios y sínodos indios (s. XVI),” in *Evangelización y teología en América (siglo XVI). X Simposio Internacional de Teología de la Universidad de Navarra*, Josep-Ignasi Saranyana, Primitivo Tineo, et al., eds. (Pamplona: Servicio de Publicaciones de la Universidad de Navarra, 1990), pp. 451–486; Imolesi, “Mejor casarse que abrasarse,” pp. 393–412; Paulino Castañeda Delgado, “El matrimonio cristiano de los indios: problemas y privilegios,” in *Homenaje a Don Agustín Millares Carlo*, Vol. 2 (Las Palmas: Caja Insular de Ahorros de Gran Canaria, 1975), pp. 659–698.

the various types of kinship or affinity. Therefore, these authors included in their texts guidance as to the ways in which Indians should be asked about those matters. They also urged that the list of potential impediments be read before the priests recorded the names of the future spouses in the marriage books and announced the banns.<sup>55</sup> The authors of the pastoral tools thought that “the parish priest should know and thus be capable of explaining to the future spouses and their witnesses, public and secret or canonical impediments to marriage among both Indians and Spaniards, and these should be read aloud so as to check whether an impediment is present.”<sup>56</sup>

## FALSE WITNESS

Once a couple decided to get married, the male was expected to present himself to the priest in order to commence *las informaciones* (questions required before marriage), bringing his witnesses with him. The *informaciones* constituted the first step toward marriage, and, together with the banns, they were essential to rule out the existence of impediments. Andrés Sáenz de la Peña instructed priests for Indians “that concerning *informaciones*, banns, and the verification of consent, the same observations as with Spaniards will be followed.”<sup>57</sup> His handbooks described how to question witnesses efficiently and effectively. For instance, they advised priests to use simple words and avoid technical terms, so as to adapt to the witnesses’ level of instruction and capabilities. Witnesses had to fully understand what they were asked and identify any existing impediment.<sup>58</sup>

In spite of this effort, priests faced many problems, since they frequently saw witnesses who were not appropriately qualified. Witnesses were asked: “Have you ever lied to a Father or the marriage prosecutor... and refrained from telling the circumstances of the case or the inconveniences that you knew there were and concealed them?” For reasons of friendship, bribery, or other reasons, they

55. For example, Visco, *Advertencias*, pp. 80–85, includes impediments in both languages and also the words for each type of kinship.

56. Pedro Contreras Gallardo, *Manual de administrar los santos sacramentos a los españoles, y naturales desta Nueva España conforme à la reforma de Paulo V. Pont. Max. / Ordenado por el padre fray Pedro de Contreras Gallardo, predicador, y guardian del Conuento de la Concepcion de N[uest]ra Señora de Theocan, hijo desta sancta Prouincia del Sancto Euangelio de Mexico* (Mexico: Ioan Ruyz, 1638), pp. 65–66.

57. Andrés Sáenz de la Peña, *Manual de los santos sacramentos conforme al ritual de Paulo V: formado por mandado del ilustrissimo, y excelentissimo señor D. Juan de Palafox, y Mendoza, obispo de la Puebla de los Angeles, electo arzobispo de Mexico . . .* (Mexico: Francisco Robledo, printer at the Holy Secret Office, 1642 [also for the 1691 edition]), p. 66.

58. The same was found in an instruction for marriage written by Rubio y Salinas, bishop of Mexico, in the mid eighteenth century. He describes in detail which words had to be used or avoided, warning readers that most of the time witnesses did not know what the words referred to.



would lie about the future spouses' circumstances.<sup>59</sup> The warnings written by Juan Martínez Araujo provide good examples of this. His experiences in 30 years as parish priest in Michoacán led him to advise his colleagues to be suspicious of the first testimony Indians offered, since he had found it was frequently false. According to him, Indians could easily determine when cheating the priest was possible: "I have seen it and I state it, they give false oaths, they laugh and leave making fun of it.... priests are aware of this, and suffer so much more."<sup>60</sup> He suggested asking for the help of a member of the parish—an Indian, it is assumed—to carry out the inquiries. His caution had prevented him from blessing unions that would have been null in fact. Manuel Pérez expressed the same sentiment, explaining in detail how members of his flock set about framing false oaths, through which they hoped to avoid the punishment that a testimony leading to nullity would bring.

The common tricks that surprised Manuel Pérez in his Mexican parish included changing one's name—an effortless task since Indians used saints' last names that could be modified easily. They also offered bribes, or produced witnesses who had been fooled after getting them drunk.<sup>61</sup> His long experience made him mention that special attention had to be paid when celebrating a marriage *in articulo mortis*, since witnesses tended to give false oaths out of sympathy so that someone about to die might be granted his or her wish. Or, witnesses might wish to restore a maiden's honor, even if that meant they had to conceal an impediment.<sup>62</sup> Since Pérez was familiar with the Indian habit of drinking alcohol at parties and certain rituals, he suggested that drunken witnesses should not be admitted to the *informaciones*. Frequently, the drunkenness was not aimed at cheating or misleading, but was the result of a party at the future spouses' house. The party would occur in the period between the *informaciones* and the wedding, and there would be lots of *pulque* so that everybody was drunk when arriving at the church. This was a pre-Hispanic habit: in those times, an abundance of *pulque* was related to parties, socialization, and the closing of agreements. All of these elements were present at weddings, and alcohol thus flowed profusely for several days.<sup>63</sup>

While the artifices recorded by Pérez and other authors are indeed remarkable, he gives another frequently used reason for bringing false witnesses in such

59. Sáenz de la Peña, *Manual de los santos sacramentos*, p. 92; Alva, *Confessionario mayor*, p. 16; León, *Camino del cielo*, p. 113: "Have you ever lied to a Father or the marriage prosecutor [ . . . ] and refrained from telling the circumstances of the case or the inconveniences that you knew there were and concealed them?"

60. Martínez Araujo, *Manual de los santos sacramentos*, p. 17.

61. Pérez, *Farol indiano*, p. 133.

62. *Ibid.*, p. 154.

63. William B. Taylor, *Embriaguez, homicidio y rebelión en las poblaciones coloniales mexicanas* (Mexico: FCE, 1987), pp. 49–115.

cases, namely the absence of parental consent: “Most of the time, their ability (to bring false witnesses) is not malicious, they are not seeking nullity; but they cannot find witnesses among those supposed to be good ones, because [the marriage] is often disliked by their parents, and none of their acquaintances dares to be a witness, because it would be a sensitive grievance for the father and the mother.”<sup>64</sup> Pérez also affirmed that qualified witnesses dared not testify for fear of offending the parents who opposed the wedding. Future spouses, experiencing no such dilemma of conscience, looked for someone to testify in their favor, even if they were not acquainted.

Among the Spanish population, the absence of parental permission led to the so-called “marriage by surprise.”<sup>65</sup> In spite of the fact that they entailed canonical punishments, these were considered actual marriages. Manuals for serving Indians refer to the likelihood of nullity for reasons of witnesses’ incapability, but they contain no data on possible marriage by surprise. Despite the many recent works on Indian marriage alliances in the colonial period, there is still a shortage of studies that deal with paternal opposition among the Indian nobility.<sup>66</sup>

## CHANGE OF PARISH

In addition to the pastoral issues they presented, the sources also evidenced concern about determining the normative and legal scope of the topics they dealt with. Thus, to align with the law, these authors sought to clarify the parish priests’ jurisdiction and powers. They emphasized that priests should be considered incompetent when, in the course of marriage informaciones, they would find that one of the future spouses did not belong to the priest’s parish. The authors specified the parish priest’s jurisdiction in each case and described how he was to act, especially when the parties came from a different bishopric and, of course, when they faced itinerants or foreigners. The authors

64. Pérez, *Farol indiano*, p. 133.

65. It is worth recalling that authorities tried to prevent unequal marriages from occurring. The desire to secure the existence of paternal consent was already present in Spain in the sixteenth century, as shown in the requests from the Courts of Toro in 1505, of Valladolid in 1555, and of Toledo in 1559. See Usunáriz, “El matrimonio y su reforma,” pp. 305–306.

66. See for instance José Luis de Rojas, *Cambiar para que yo no cambie. La nobleza indígena en la Nueva España* (Buenos Aires: Editorial SB, 2010); Ronald Spores, “Mixteca Cacicas: Status, Wealth, and the Political Accommodation of Native Elite Women in Early Colonial Oaxaca,” in *Indian Women of Early Mexico*, Susan Schroeder, ed., (Norman: University of Oklahoma Press, 1997), pp. 185–197; Patricia Cruz Pazos, *La nobleza indígena de Tepexi de la Seda durante el siglo XVIII. La cabecera y sus sujetos 1700–1786* (Madrid: Fundación Universitaria Española, 2008), pp. 70–102; Margarita Menegus and Rodolfo Aguirre, coords. *El cacicazgo en Nueva España y Filipinas* (Mexico: Centro de Estudios sobre la Universidad, UNAM, Plaza y Valdés, 2005); and Fernando Horcasitas, “Los descendientes de Nezahualpilli: documentos del cacicazgo de Tetzcoaco (1545–1855),” *Estudios de Historia Novohispana* 6 (1978), pp. 145–188.

explained their concern: change of parish was yet another trick or argument used by Indians so as to conceal impediments.

Although traditional historiography insists on a theoretical division between Spaniards and Indians, and the very limited social mobility of the latter, it is an acknowledged fact that interaction between the two groups could not be prevented. Natives' mobility stemmed from their trades, the need to improve their life conditions, and other reasons that lead population groups to change their residence. In this context, priests had to determine the original parishes of the future spouses before proceeding with the banns.<sup>67</sup> Books reminded priests they had to determine whether Indians belonged to an alien curacy and whether banns had been announced there previously. Juan Bautista Viseo recorded in detail the circumstances allowing a parish priest to marry Indians from an alien parish, the period of time Indians had to live in a new town before they could be considered part of the local priest's parish, and so on.<sup>68</sup> Meanwhile, Sáenz de la Peña warned about the behaviors he perceived as the most common source for worry among healers of the soul: a man's moving to another parish and trying to get married for the second time while the first wife was still alive, even stealing another woman he wanted to make his wife, and, having her in his possession, trying to get married once more.<sup>69</sup>

As mentioned above, the sources confirm what was expected: there were great differences between a rural doctrina and a parish of Indians in a highly populated city. At urban parishes, proximity eased the priest's acquaintance with members, though there were still some difficulties. Hence, Manuel Pérez wrote that he believed it was every priest's obligation to be well acquainted with his flock so as to prevent many of the deceits described above. Serving at an urban church, his worries focused not so much on Indians who had recently arrived in his jurisdiction, but on those who had been living in that community a few years and therefore found it easier to cheat the priest. In consequence, he advised his colleagues that even if an adult Indian had lived for several years in a parish the priest was to request information from the Indian's original parish when he wanted to get married. This request was not to authorize the wedding, since the Indian was already a member of the new parish, but rather a means to make sure there were no impediments accumulated prior to his arrival. The same step was taken when a member of the parish had been away for some years and asked to be married upon his return. Manuel Pérez in his instructions addressed

67. For example, Diego Ossorio, *Manual para administrar los santos sacramentos, arreglado al Ritual romano . . . Dispuesto el R. P. Fr. Diego Ossorio, ex-lector de theologia moral*, (Mexico: Press of the Newly Prayed, Maria de Ribera at the Empedradillo, 1748), pp. 94–101.

68. Viseo, *Advertencias*, 4, pp. 80 through 85, lists marriage impediments.

69. Sáenz de la Peña, *Manual de los santos sacramentos*, p. 92.

Indians' belief that, having been baptized in a determined church, there was no need to present themselves for the informaciones in their new residence... "and they thus think they can elude what they did when away."<sup>70</sup>

Martínez Araujo also faced this situation. An Indian who had lived for six years in his parish asked to be married. When information was received from his original parish, it turned out he was already married. The warnings, then, were meant to transmit the idea that an experienced priest should not content himself with considering the six or ten years an Indian had lived in his parish if he had been born elsewhere. Priests were also reminded of the penalties they themselves would face if they failed to follow regulations on future spouses from an alien parish.<sup>71</sup>

Researchers of Indian nobility have found that Indian elites changed, depending on their own advantage, from Indian to Spaniard. Different members of a single family might appear as Spaniards or Indians, some using a Castilian last name and the others an Indian one, according to which category was more useful in a given circumstance.<sup>72</sup> The documents consulted for the present study show that common Indians living in highly populated cities also resorted to these changes. Manuel Pérez made a graphic description of this change of quality, analyzing its effect on the legal issue of the capacity to enter into a marriage. Reading his testimony proves worthwhile:

They wear long hair and a cape and then go to a Spanish church to be registered there: and the greatest inconvenience out of all the following concerns this sacrament.... And this happens frequently, so the news is spread: a lot of Indians go to a Spanish parish, and since they are forced to resort to the [parish] ordinary when they want to get married, for it is there where they get their information, they pay their taxes there, in the Spanish church where they will get married; hence, in order to save [avoid a tax], they usually come to the Indian parish, which they should have always recognized [as their own], claiming they are Indians. Only then do they remember and confess they are so.<sup>73</sup>

70. Pérez, *Farol indiano*, pp. 137–138.

71. Martínez Araujo, *Manual de los santos sacramentos*, pp. 17–18. "It happened to me, with an Indian who had lived in this town of Tlatzatzalca for six years: I found out he came from S. Miguel el Grande, where he had married previously. He eloped and I haven't seen him ever again: Another one, in Tierra Caliente, had been married in S. J. Huetamu, close to Punhuarehuato. And they ask these Indians and they swear that they know him, that he comes free from their own town, but they completely lie."

72. Rojas, *Cambiar para que yo no cambie*, pp. 315–316, cites interesting material concerning this topic. See also José Luis de Rojas, "El papel de las élites indígenas en el establecimiento del sistema colonial en Nueva España y Perú," in *Mesoamérica y los Andes*, Cervantes Mayan, ed. (Mexico: CIESAS, 1996), pp. 507–532.

73. Pérez, *Farol indiano*, p. 136. Likewise, when he refers to Indians who fail to attend the doctrine, he mentions those who, "wearing long hair and cape," go to a Spanish parish, p. 49.

In fact, an Indian who was registered in a Spanish parish would go to an Indian parish to get married, so as to avoid paying the taxes Spaniards would demand.<sup>74</sup> The fact that Indians faced no problems in registering themselves as Spaniards is quite interesting: it depended only on their word and the clothes they wore as a distinctive sign. This is another reason for the frail reliability of registers in providing documentation of race or ethnicity during the colonial centuries. As is widely known, parochial books contained no items for “race” or “ethnicity.” At the most, they referred to qualities, and more precisely to social appreciations. An “appreciation” could change according to many circumstances, including the historical period and the location. There were times when Indians, in their own interest, reaffirmed their ethnic status: when being “Indian” entailed certain legal privileges or, as in this case, exemption from certain taxes. Clearly, Spanish priests were also concerned about the future spouses’ origins, as these manuals also show.<sup>75</sup>

## IRREGULAR PRESENTATIONS OF THE BANNS

The Church established another means to avoid the celebration of marriages that afterward could be deemed null or illicit. It was made mandatory to conduct the marriage banns during mass, on three different festival days. That way, a larger presence of parishioners was guaranteed, increasing the likelihood that information that might constitute impediments for the future marriage would be brought forward. Because the banns announced publicly the couple’s intention to marry, priests were advised to attend carefully to the prerequisite informaciones and avoid disclosing serious impediments that could harm the honor of one of the parties. However, it is known that bishops could grant an exemption to the banns obligation in difficult or oppositional cases, including those involving pressure from relatives or other persons. In such circumstances, the priest had to undertake the investigation personally to make sure there were no impediments.

Pastoral tools included cautionary examples of the corrupt practices that had become part of the announcement of the banns. Bearing in mind that a single priest might have to serve different Indian towns and could visit any one of them only when the demands of the others permitted, it is easy to understand that exhaustion, lack of time, or stress might lead him to act carelessly in this

74. The presence of Indians at Spanish parishes has been studied for a long time, in relation not only to baptisms but also, though to a lesser extent, to marriages. See the bibliographical references included by the author. This case is distinct: these were Indians registered as Spaniards.

75. Agustín de Vetancurt, *Arte manual de administrar los santos sacramentos conforme á la reforma de Paulo V y Urbano VIII* (Mexico: Herederos de la Viuda de Miguel de Ribera, 1682), p. 139.

respect. As references show, it could happen that he found several couples in need of banns the moment he arrived at a certain town. This, along with the scarce time he had for celebrating the different sacraments, could make him decide to announce the banns for many couples at one time. He could also choose expediency, for example, delivering all of the banns at the end of a single mass for all of them, informing the public in a general way that “all of those” wanted to get married.

To avoid the adulteration of the banns reported in some parishes of Puebla, the bishop used Saénz de la Peña’s manual to support his order that each couple was to stand up separately to insure that the banns were carried out for each individually. This allowed everyone present to recognize those wanting to get married and to manifest possible inconveniences.<sup>76</sup> In conducting investigations of the practices at some parishes within the Puebla bishopric, it was discovered that lack of information on marriage procedures led many parishioners to think that only those who had been witnesses at previous actions were supposed to respond to the banns.<sup>77</sup> To raise Indians’ awareness, priests were asked to read the list of impediments before announcing the banns, mentioning not only the future spouses’ names, but also that of their parents and the neighborhood they lived in. Further, priests should explain clearly, using simple words, that everyone present was bound to mention impediments when they knew about them, even if they had not acted as witnesses in the informaciones. To further assist the priests, and to extend his text, Manuel Pérez wrote down the wording for some banns, for a hypothetical audience. This addition constitutes an example of the means implemented to correct deviations by both parish priests and parishioners in safeguarding the integrity of marriage.

Concerns about possible corrupt acts linked to banns led to an innovative practice in parochial records, in regard to marriage data and the way it should be written down.<sup>78</sup> The writings frequently mention that complete data must be recorded in registering the informaciones, including all witnesses’ statements. They also stress the importance of this record; and—this is the innovation—the need to indicate that the banns had indeed been carried out, including the dates.<sup>79</sup> In Europe, banns were not recorded in parochial books. Nonetheless, in many instances in Spanish America comprehensive records of the banns were ordered, especially when one of the future spouses belonged to a different

76. Saénz de la Peña, *Manual de los santos sacramentos*, p. 92.

77. Pérez, *Farol indiano*, p. 144.

78. Serra, *Manual de administrar los santos sacramentos*, p. 100.

79. Saénz de la Peña, *Manual de los santos sacramentos*, pp. 115–116.

parish. The zeal of these priests and bishops resulted in marriage books that are rich research sources.

## CONCLUSION

This study supports the statement that in all matters concerning marriage, from the last 30 years of the sixteenth century and through the seventeenth and eighteenth centuries, the similarities between the treatment of Spaniards and Indians exceeded the differences. It is worth recalling that priests for Indians were told time and again that they were to follow an identical ritual for natives and the rest of the population, observing exactly the same canonical regulations. Some texts may seem to suggest that the marriage promise was less powerful or less binding among Indians than among Spaniards or Europeans in general. This paper has offered evidence that marriage problems among Indians were similar to those among Spaniards and the rest of the population in the Spanish America. Further, it includes an analysis of the manuals providing instruction to priests of Indian parishes, which show that careful and consistent attention was paid to explaining and discussing factors weighing in favor or against obligation, so as to clarify the circumstances that might lead to an exemption of compliance.

In addition, this study reveals that marriage regulations were understood by Indians, as evidenced by the resourcefulness they employed to find fitting witnesses, elude impediments due to affinity, change their legal status from Indian to Spaniard as it was convenient for their marriage interests, or even resort to a statutory rape claim so as to have their honor restored or achieve the celebration of marriage.

The books directed to priests who dealt with marriage constitute the theoretical and, to a great extent, the practical background for study of marriage issues, for they include not only the moral doctrine and canonical regulations, but also descriptions of the ways in which their authors applied them in the real cases they faced. Their writers also incorporated value judgments and verdicts regarding the marriage issues in the doctrinas. These source texts allow us to trace the history of marriage regulations and their application, as well as the transgressions against them, throughout two centuries. They also provide a basis for analysis of legal and social considerations and the legal and judicial problems these matters entailed.

A remarkable aspect of these sources is the fact that they sought to solve conflicts in the pastoral context, which was more flexible than the ecclesiastical court but also presented more immediate demands. Thus, this material yields a portrayal

of marriage issues among Indians that cannot be found in other kinds of texts: the possible use of false witnesses, artifices employed to trick priests, priests' lack of knowledge of the Indian languages, the exact content of impediments, and, obviously, priests' inexperience when serving a parish for natives for the first time. These sources contain enlightening information on social habits, the preservation of some pre-Hispanic customs even to the mid-eighteenth century, the celebration of weddings, and Indians' mobility from one region to the other.

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