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## **On Homicide, Forensic Practice, and Forensic Discourse in Madrid**

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### **Introduction**

The creation of the Chairs of Legal Medicine and Toxicology at the Universities of Madrid and Barcelona in the mid-nineteenth century was a very important milestone in the history and development of forensic science in Spain. Its founder was the medical doctor and politician Pedro Mata y Fontanet, who became the first professor of legal medicine at the Central University of Madrid in 1843. He had previously worked in Paris with the Spanish scientist Mateo José Buenaventura Orfila, considered the father of forensic toxicology. Mata y Fontanet was also responsible for the organization and institutionalization of forensic medicine in Spain, promoting the creation in 1862 of the Corps of Forensic Doctors [*Cuerpo de Médicos Forenses*]. This corps of career civil servants was established with the aim of “assisting the administration of justice in all cases and proceedings in which the intervention and services of their profession may be necessary or useful.”<sup>1</sup> This is the same role that forensic medical doctors play in Spain today, where they continue to assist courts and tribunals in their areas of expertise, incorporating the latest scientific, technical, and legal advances into their work.<sup>2</sup>

Pedro Mata y Fontanet was also a prolific writer. In the fourth edition of his influential *Tratado de Medicina y Cirugía Legal* (*Treatise on Legal Medicine and Surgery*), published in 1866, Mata y Fontanet emphasized the “heterogeneous” and “encyclopedic” nature of legal medicine. According to this author, legal medicine borrowed “facts, knowledge and principles” from other sciences “to solve certain problems proposed by the administration of justice in order to improve the accuracy of its verdicts.”<sup>3</sup> This group of sciences belonged to the natural, medical, social, and

human sciences and included “physics, chemistry, natural history, anatomy, physiology, hygiene, medicine, pathology, obstetrics, ethics, art history, psychology, philosophy and law.” In the words of Mata y Fontanet, legal medicine was defined as “a body of scientific knowledge, mainly medical and physical, the purpose of which is to give due value and significance to certain legal facts and to contribute to the formation of certain laws.”<sup>4</sup>

The development of forensic science in nineteenth-century Spain owed much to the scientific advances and judicial work of the previous two centuries. In this respect, the judicial and legal records of early modern Spain are a valuable source of information on forensic practices prior to the emergence of modern forensic science in the nineteenth century. Using, among other archival materials, the records of the Sala de Alcaldes de Casa y Corte, Madrid’s highest tribunal during the early modern period, this study will look at violent crime cases in order to explore and shed light on the investigative process and the forensic activities carried out by justice officials, physicians and surgeons in the search for criminal evidence. It will also examine written testimonies in the form of *memoriales* and “forensic discourses” left by the judges and prosecutors of the Sala, with the aim of highlighting the importance of the forensic function in the resolution of criminal cases, not only as a means of “knowing the truth” but also as an essential component of the administration of justice. Particular attention is paid to cases of spousal homicide. Women were more likely to be the victims of such violence. However, they could also be the perpetrators. These violent crimes were very serious offenses, punishable by the most severe penalties. It is not surprising, therefore, that these cases are frequently mentioned by judges and prosecutors in their writings. These crimes were often difficult to solve. For example, the use of poison to commit these murders meant that the resolution of these cases often depended on the testimony

of witnesses and indirect evidence, in the absence of modern forensic toxicology techniques.<sup>5</sup> By covering a period of two centuries, the primary sources used in this study also reveal the main trends in forensic practice applied to the investigation and resolution of these crimes over time.

### **The Sala de Alcaldes de Casa y Corte and the Regulation of Forensic Practice in the Early Modern Period**

In July 1862, just two months after the passing of the royal decree creating the corps of *médicos forenses*, Pedro Mata y Fontanet wrote an article published in the journal *Revista española* in which he identified the shortcomings and criticized the lack of ambition of the measures contained in the law to institutionalize forensic medicine in Spain. For Mata y Fontanet, this was a missed opportunity that would have placed the country at the forefront of the field.<sup>6</sup> In this article, however, Mata y Fontanet offered interesting comments and reflections on the need to organize the discipline and activity of forensic doctors in an attempt to adapt the administration of justice to new social demands and to overcome past deficiencies in forensic practice. Following Mata y Fontanet, the creation of forensic doctors in Spain was intended to provide “courts, plaintiffs and defendants” with all the necessary “guarantees” expected from the administration of justice, whose main function was to protect the “great interests” of society. The experience of previous centuries had already shown the value of these professionals and their expert assistance in the proper resolution of legal matters, hence the importance of organizing their activity.<sup>7</sup> Mata y Fontanet also praised the efforts made by the Spanish government in this direction, by giving forensic doctors a certain official status and introducing rules to regulate aspects of their profession, such as their appointment or their salaries and fees, which could put an end to the “disorder” and

“anarchy” that, in his opinion, had characterized the “forensic medical service” in Spain.<sup>8</sup>

Medical and forensic practice in early modern Spain was strongly influenced by the legal and scientific advances taking place in Europe, some of the earliest examples being the promulgation of the *Constitutio Criminalis Carolina* in 1532 and the publication of the first scientific treatise on legal medicine on the continent by the French royal surgeon Ambroise Paré in 1575. The importance of medicine in providing expert assistance to judges in Spain in the sixteenth century is also demonstrated by the work of the Spanish surgeon and physician Juan Fragoso. Decades before Paolo Zacchia published his influential book *Quaestiones medico-legales* (1621–51), the Spanish royal surgeon and physician Juan Fragoso had already written his book *Cirugía Universal* (*Universal Surgery*), first published in Madrid in 1581 and later republished in both Spanish and Italian in several editions throughout the sixteenth and seventeenth centuries. This book contains a detailed and precise guide for the instruction of surgeons and physicians in assisting judges and magistrates in cases of death, illness, and injury.<sup>9</sup> More than a century later, in 1783, the Spanish surgeon Domingo Vidal published his *Cirugía forense, o Arte de hacer relaciones quirúrgico-legales* (*Forensic Surgery or the Art of Making Surgical-Legal Reports*), which provided guidelines for surgeons, physicians, and other experts on how to write legal reports and carry out their forensic work.<sup>10</sup> Vidal’s manual once again highlights the important role of forensic expertise in the investigation of legal cases in early modern Spain, while also revealing the existence of a foundation for the future professionalization of legal medicine.

In early modern Madrid, the activities of surgeons and physicians, including their assistance in the administration of justice, were regulated by the *Sala de Alcaldes de Casa y Corte* (the Hall of Judges of the Royal House and Court). The Sala was a

political and judicial institution dependent on the Council of Castile with criminal and civil jurisdiction over the Spanish court and capital and its surrounding area of five leagues, known as the *rastro*. In addition to these judicial prerogatives, the Sala was also in charge of the government and administration of the city of Madrid, supervising economic and commercial affairs and regulating prices and other aspects of daily life, including public health and sanitation and leisure activities. The officers who served in the Sala included the *alcaldes*, or judges, the prosecutor of the royal prison, the bailiffs, the scribes, the gatekeepers, a lawyer and a solicitor of the poor, the warden of the court prison and the gatekeepers, a steward for the poor, an accountant and a treasurer, the court prison doctor and surgeon, and a prison chaplain.<sup>11</sup> The court prison surgeon and doctor were in charge of the prison infirmary. They assisted prisoners, prescribed and administered medications, and carried out other duties. For example, in the seventeenth century, when female prostitution was a legal activity in Madrid, the court prison doctor regularly visited registered prostitutes to examine them medically and effectively monitor the presence of venereal disease in the Spanish capital. The prison surgeon was also responsible for visiting injured victims of assault in Madrid's hospitals to assess their wounds and draw up a legal report or declaration.<sup>12</sup>

All other doctors and surgeons working in Madrid were also subject to the rules and regulations of the Sala. They had to report to the *alcaldes* or the city's judicial authorities immediately after treating a wounded person. However, doctors and surgeons in Madrid do not seem to have strictly adhered to this norm, given the numerous orders and decrees issued by the Sala during the seventeenth and eighteenth centuries, reminding them of this obligation and urging them to comply with it.<sup>13</sup> Similarly, the archives of the Sala reveal another of the concerns expressed by Pedro Mata y Fontanet in his writings in the nineteenth century, that of the salaries or fees received by these

professionals for their expert work in the administration of justice. Difficulties and delays in the payment of fees were a constant problem for prison doctors and surgeons, as well as other medical professionals who offered their judicial services at the request of the Sala.<sup>14</sup> In fact, this is one of the reasons why doctors and surgeons refused to provide the Sala with the legal reports on the state of the injuries suffered by victims of physical violence when they were treated in Madrid's hospitals.<sup>15</sup> As a result, this task had to be carried out by the prison court surgeon, as mentioned earlier. This was not without difficulty, as he regularly encountered resistance and opposition from the medical professionals working in these hospitals. The Sala denounced this situation in May 1667 and ordered these hospitals to grant access to the prison court surgeon so that he could make the declarations and reports accompanied by surgeons or nurse practitioners from these institutions.<sup>16</sup>

Although relations were strained at times, the information provided by these sources, as well as the records of the Sala, show the extent to which the administration of justice, as elsewhere in continental Europe, relied on the expertise of these professionals to solve crimes and legal problems.<sup>17</sup> The eighteenth-century Spanish surgeon Domingo Vidal was very clear about this when, in the prologue to his book on forensic surgery, he stated that this collaboration or "relationship" was "established by the law in order to thoroughly investigate the truth behind the facts."<sup>18</sup> According to Vidal, judges do not have a universal knowledge of all the scientific disciplines, or arts (*artes*), which leads them to seek the opinion of experts (*peritos*) in order to decide on legal matters, and thus benefit society.<sup>19</sup> Vidal's words and writings in the eighteenth century undoubtedly express a conception of forensic activity and justice in line with Paolo Zacchia's assumptions about the importance of medicine and on the new ideals of Enlightenment thought.<sup>20</sup> There is, however, one theme that seems to be common to

the thinking of the previous century, and that is the desire to know “the truth behind the facts,” the true goal to be pursued by justice and judges, as the *alcalde* of the Sala Juan de Quiñones expressed in a memorial he wrote to the king in the 1640s.

### **Facts, Evidence and Truth**

In 1643, Don Juan de Quiñones y Daza, *alcalde* and judge of the Sala de Alcaldes de Casa y Corte, wrote a memorial to King Philip IV in which he listed the most important accomplishments of his long career, as well as his literary work, with the aim of receiving from the monarch the reward he deserved for his services. The account of his professional achievements as a judge covers a period of almost 30 years in the service of the Spanish monarchy, 21 of which he had spent in Madrid. He had been *teniente de corregidor* [lieutenant of the *corregidor*, or chief magistrate of the city] between 1622 and 1625, and then *alcalde* of the Sala from 1625 on. (He would die in 1646.) Quiñones devoted around 30 pages of this work, almost half of the memorial, to recounting the most famous cases in which he acted as judge. His account of the most emblematic criminal trials of his entire career is of great interest. They represent a selection of the relevant cases in which his role as judge would have been particularly appreciated and valued by the monarch.

Throughout his memorial, Quiñones also gives us glimpses of his understanding of criminal procedure and forensic practice. In the opening pages of his memorial, for example, Quiñones shows that he was no stranger to debates about the appropriateness of an aristocratic background for public office when he emphasizes his noble status as both a quality and a prerequisite for being a judge.<sup>21</sup> Drawing on the work of the Spanish jurist Pere Belluga, Quiñones argues that loyalty is essential for judges and that “nobles are more likely to observe it.”<sup>22</sup> However, when Quiñones discusses the



criminal cases in which he has been involved as a judge, he points to other qualities that a judge should possess in order to do his job well. He also reflects on the role and importance of the use of forensic evidence in criminal investigations, particularly in homicide cases. And while Quiñones' account of his forensic work tends to focus on his personal achievements and actions, it also reveals the crucial contribution that forensic experts made to solving criminal cases.

An example of the latter was a murder committed in the city of Madrid, which Quiñones investigated and wrote about in his memorial.<sup>23</sup> Although Quiñones does not specify the year in which the homicide was perpetrated, it seems to have occurred during his time as *alcalde* of the Sala de Alcaldes de Casa y Corte. Quiñones recounts that it was shortly after midnight when he received the news that the body of a man had been found near the convent of Nuestra Señora de Atocha in Madrid. He immediately rushed to the crime scene, where he saw that the victim's face had been mutilated so that he could not be identified. In order to establish the victim's identity, Quiñones ordered that the man's dead body, along with the disfigured remains of his face, be taken to Madrid's General Hospital, where surgeons were able to reconstruct his face with more than 60 stitches. The body was then taken to the Santa Cruz square, where the Sala and the court prison were located, for public viewing so that the victim could be identified. The deceased's wife, a shopkeeper who lived in front of the court prison, recognized him. On the basis of the information provided by the widow and subsequent investigations, the *alcalde* Quiñones concluded that the perpetrator of this brutal murder was a Portuguese resident of Vallecas, a small village on the outskirts of Madrid, who had collected the sum of 4,000 *reales* with a false bill of exchange, a fact known to the victim. This was the motive that led the Portuguese criminal to end the man's life and

tear up his face for fear of being denounced. The murderer wanted to get away with his crime, which he did by fleeing Vallecas before the judicial authorities could arrest him.

In the eyes of the criminal law, the cases listed by Quiñones in his memorial were particularly serious crimes that required severe punishment. An analysis of these cases shows that the crimes he was most interested in were mainly those against property and homicide. In fact, of the 29 cases that Quiñones mentions in his memorial, 13 were property crimes and nine were violent deaths. It is also worth noting that the cases that opened and closed his list are homicides. Perhaps these were the crimes that concerned Quiñones most throughout his judicial career. The first case mentioned in the memorial relates to the prosecution and subsequent execution of a dangerous murderer whom Quiñones had arrested when he was mayor of the village of El Escorial, north of Madrid.<sup>24</sup> The last case cited was again a homicide, a double murder committed in 1635 in the town of Parla, located south of Madrid, which Quiñones was ordered to investigate by the Council of Castile when he was already *alcalde* of the Sala.<sup>25</sup> The victims of this last crime, a priest and his sister, were found dead in their home. The cause of death was severe blows to the head, made with stone slabs found next to the bodies. It also appears that the murderers inflicted these fatal wounds in order to rob the victims. This fact and the brutality of the attack alone justified the seriousness of the crime and its inclusion in the memorial. This last case, however, has a peculiarity that distinguishes it from the others mentioned by Quiñones. This may be the reason why he chose this case to conclude his account of his professional achievements. Quiñones presents himself first and foremost as a fair judge in search of the truth, and this is the main axis that articulates his narrative of the case.

Following this line of argument, Juan de Quiñones describes how, after investigating the priest's and sister's deaths and finding no conclusive evidence or clues,

he arrested a homeless man to subject him to torture. The man, more afraid of torture than of the gallows, quickly confessed to the crime, leaving Quiñones with certain doubts about the veracity of his testimony. Quiñones' suspicions were confirmed when the prison guard told him that he had heard the prisoner say in his cell that he had not committed the crime and that he had confessed out of fear of torture. According to the beggar, he had spent the night of the crime in the hospital of Torrejón de Velasco, his hometown, one league from Parla. For these reasons, Quiñones went to Torrejón de Velasco to conduct a secret investigation into the case. At the town's hospice, he was able to corroborate that the poor man had been there on the night of the double murder, in a room with other beggars, thanks to the information provided by witnesses, including the hospital's steward (*mayordomo*), the hospitaller (*hospitalero*), and the doctor (*médico*). Twenty-four hours after his confession, the homeless man ratified his previous declaration and was taken from Parla to Madrid's court prison. It was then that Quiñones presented the Council of Castile with a report on the secret investigation carried out in Torrejón de Velasco, with the aim of freeing the prisoner, as was eventually done. Quiñones ends his account of this event by saying that the Council "thanked him for his diligence in seeking the truth with Christian zeal" and defending the legal principle of "when in doubt, rule for the accused" [*in dubio pro reo*].<sup>26</sup>

The nine cases of homicide and attempted homicide cited by Quiñones in his memorial reflected extremely serious criminal behavior because of the way in which the crimes were committed (with malice and treachery, either by poison or by assassination), the relationship between the perpetrator and his victim (spousal homicide), and their instrumental component, as in the case of robbery with homicide. These were also murders that were very difficult to investigate and trace, which would

explain Quiñones' eagerness to highlight his achievements in solving these particular cases.

One homicide case stands out in Quiñones' account, as it contains many of the aggravating factors mentioned earlier. It was a premeditated homicide triggered by marital infidelity. The victim was a clothier (*ropero*) whose wife was having an extramarital affair with one of his craftsmen. After a first failed attempt to end the clothier's life by giving him a poisoned drink, and with the help of another craftsman, the lovers decided to hire two soldiers to carry out the murder. These hitmen, or assassins, achieved their goal of killing the clothier. The investigation carried out by Quiñones led to the arrest of all those involved in the crime, except for the "adulterous" craftsman, who managed to escape. The clothier's wife, the craftsman who supplied the poison, and the two soldiers were hanged for manslaughter. However, Quiñones does not elaborate on the poisoning attempt, depriving us of valuable information about the complexities and difficulties of investigating and solving these crimes in the early modern period.

The same complexity over poisoning is well illustrated by a criminal case, which was not in Quiñones' memorial but which was brought before the mayor's court of the town of Barajas, near Madrid, in 1666. Here, Bernabé Ruiz del Castillo, a falcon and prey retriever (*catarribera*) of the Royal Hunt of Falconry (*Real Caza de la Volateria*), was accused of having an affair with María Herla and of attempting to poison her husband, Francisco López Sanz.<sup>27</sup> The summary of the proceedings of this trial stated that Doña María Herla was a cousin of Bernabé Ruiz del Castillo's wife and that the poisoning of her husband was due to the affair María was having with Bernabé. Witnesses confirmed that the relationship between the accused couple was well known in the town of Barajas, and that María's husband himself had even had a conversation

with Bernabé in which he warned him not to enter his house again. According to the same sources, on January 19, 1666, or January 20, 1666, Francisco López Sanz, María's husband, ingested the poison in a laxative prepared by the defendants. After taking the laxative, the man began to suffer from nausea and anxiety (*ansias* and *bascas*). The doctor who treated him, Doctor Juan de Cabañas, testified that these symptoms were not the result of the poison itself, but that "they could have been caused either by the malignity of some medicine or by the quality of his humors, which mixed with the purgative to produce these effects" on his health. Doctor Francisco de Ordeñano, a doctor in the town of Torrejón de Ardoz, stated on January 30 that, based on the information provided by Doctor Cabañas, he could not confirm that Francisco López Sanz's state of health was due to poisoning. The same doctor added that if this had been the case, and if the poison had been administered through the laxative, the lethal effects would have been immediate and would have been detected in less than 24 hours, and not in the ten or 12 days that had passed since the purgative had been taken.

Francisco López Sanz's health continued to deteriorate, and he died on February 1, 1666, almost two weeks after he was allegedly poisoned. At the request of the mayor of Barajas, Francisco's body was examined by two doctors, the aforementioned Juan de Cabañas and Diego Rodríguez de Castro, and a surgeon, Juan Sánchez, who concluded that there were signs of poison ("hot poison") in the victim's body, which could have been the cause of death. The dead man's wife, María Herla, sought an additional expert opinion from Doctor Francisco de Vivar, a professor at the University of Alcalá de Henares, who testified that he had found no evidence of poison in the victim's body and that he had died as a result of "a malignant and pestilential fever." However, when Barajas' judicial authorities confiscated María's belongings, they found some papers containing powder and water in a pair of boots. According to the doctors and

pharmacists who examined them, this white powder was made from hyacinth mixed with poisonous ingredients. María Herla told the authorities that these white powders were only facial waters (*aguas de rostro*) and other substances used to clean her teeth.

Witnesses for the dead victim testified that it had been publicly known that Francisco's health had worsened after he had taken the purgative and that he had died from the poison that Bernabé Ruiz del Castillo had given him. According to the same witnesses, Bernabé Ruiz del Castillo had gone to a local chemist's shop (*botica*) to buy the poison and stated that he had asked the chemist not to give him the exact amount prescribed by the doctor but to leave out half of a compound called *gémis*, made of basic lead carbonate and wax.<sup>28</sup> After hearing Bernabé's testimony, the mayor's court of Barajas sentenced him to pay the sum of 300 ducats and to be imprisoned in the North African garrison fort of Larache for six years, after which he was not allowed to return to the town of Barajas or within 20 leagues of its outskirts. María Herla, however, was acquitted. There is no information as to whether the sentence was actually carried out since the Marquis of Fresno, the Master of the Hunt (*Cazador Mayor*) of the *Real Caza de la Volatería*, who had the prerogative of hearing the civil and criminal cases against its members, ordered that the case be referred to him for investigation. Perhaps it was this confrontation between the two jurisdictions that led the judicial authorities in Barajas to accept the medical opinion of Juan de Cabañas and Diego Rodríguez de Castro and to impose an exemplary sentence on Bernabé Ruiz.<sup>29</sup> In this respect, this example shows the differences of opinion in solving poisoning crimes and how sentences in these may have been motivated by factors other than the search for the truth.

In other criminal cases of marital homicide, where poison was not used in the commission of the crime and where it was easier to gather conclusive evidence, there

could be fewer discrepancies in the resolution of the case. This is exemplified by another case of marital homicide to which the *alcalde* Juan de Quiñones refers in his memorial.<sup>30</sup> The murder took place in the city of Madrid, although Quiñones does not specify the date or year. The victim was the wife of a liquor dealer, who died after being brutally beaten on the head with a club by her husband. Quiñones explains that after committing the crime, the murderer placed his wife's body in a trunk, which he later took to a friend's house, telling him that it contained only clothes. The judicial authorities soon discovered that the liquor dealer was selling his belongings with the intention of leaving Madrid and that his wife was missing. This led Quiñones to order his arrest in order to question him about his wife's whereabouts. The suspect's ambiguous answers did not convince Quiñones, who immediately sent him to the court prison. The killer's friend, knowing that the liquor dealer was in jail, informed the Sala that he had the trunk in his possession. Quiñones ordered the trunk to be opened, where he found the victim's body. After burying the victim, Quiñones discovered a large club covered in blood in the couple's house. He therefore asked for the victim's body to be exhumed with the intention of examining the wound on her head, which appeared to have been caused by the club found in their home. This discovery prompted Quiñones to ask the suspect if he knew where the club had come from. The interrogation caused the suspect great anxiety and led him to confess that he had killed his wife by beating her with the club.

In his account of the murder, Juan de Quiñones once again sought to reinforce his image as a diligent judge and *alcalde*, always searching for the truth in the interests of the monarchy and society. As in the other cases mentioned in his memorial, Quiñones emphasizes his role as *alcalde* by highlighting his forensic skills in investigating and solving this murder. In this sense, his account focuses on finding and

obtaining solid evidence in order to force the main suspect to confess to the crime and, finally, to solve the case and impose an exemplary punishment. Quiñones sentenced the parricide to be dragged in public and executed by garrote by the river. His body was then placed in a barrel and thrown into the river. This was the form of punishment that Castilian criminal law reserved for the most serious cases of parricide. It had its roots in the *culleus* punishment of ancient Rome.<sup>31</sup> As Quiñones stated in the first pages of his memorial, punishment should be used to “correct the wicked and put an end to them,” pointing out the need to always apply justice to maintain social order.<sup>32</sup> With some variations, his vision of punishment would remain largely unchanged for the next century.

### **Crime, Criminals and Victims**

At the end of the eighteenth century, enlightened jurist, poet, and politician Juan Meléndez Valdés pursued his first criminal case as prosecutor of the Sala de Alcaldes de Casa y Corte and proposed a concept of punishment and forensics similar to those of Quiñones. The case was a very famous parricide that had occurred in Madrid in December 1797. The victim of the crime was Francisco del Castillo, a well-known canvas dealer with close ties to the artistic and cultural elite of the Spanish capital, including Meléndez Valdés himself, with whom he was friends. Francisco del Castillo was stabbed to death in his own home by his wife’s lover, with her help and connivance; his death caused a great stir in Madrid and across the country. The formal accusation was published posthumously in 1821 in a work entitled *Discursos fiscales* (*Forensic Discourses*), along with other accusations, opinions, and essays written by Meléndez Valdés.<sup>33</sup>



Meléndez Valdés claimed that in this type of murder, “justice should allow the sanctity of the law to triumph virtuously” and “set a healthy example to evil and immorality, which now seem to know no limits or restraints to their impudence.”<sup>34</sup> Meléndez Valdés also demanded that, once such a crime had been discovered, the facts established, and the accused admitted the deed, it should be punished with “the most severe penalties” in order to guarantee security and peace. He framed Castillo’s murder as an attack on public virtue and morality as well as the institution of marriage and therefore called for “the avenging sword of justice to fall on the perpetrators.”<sup>35</sup> For Meléndez Valdés, magistrates should always seek “to rebuke and persecute vice, to defend and celebrate virtue, to persuade and move to loathe the one and to love and practice the other.”<sup>36</sup>

On these premises, Meléndez Valdés used his significant oratorical skills to build his case against the accused, confronting the figure of Francisco del Castillo, the murdered husband, with that of María Vicenta de Mendieta, the adulterous and parricidal wife. Instead of focusing solely on the crime itself, as Quiñones did in his memorial, Meléndez Valdés also placed the emphasis on both the criminals and the victims and on their moral behavior and character. In doing so, Meléndez Valdés offered an interesting insight into the roles of men and women in marriage according to the ideals of the Enlightenment.<sup>37</sup>

Before going into the details of the crime and the evidence in the case, Meléndez Valdés drew a very positive profile of Francisco del Castillo. On the basis of the testimony of “truthful and impeccable domestic witnesses,” he presented Castillo as a “good man” and an exemplary husband, imbued with an enlightened spirit, in contrast to his “unfaithful and clumsy partner,” who, according to the prosecutor, was characterized by a spiteful, daring character and “bloody rage.”<sup>38</sup> In this way, Meléndez

Valdés undermined the arguments that María Vicente had used in her testimony before the judge. In her defense, she had claimed that she had been “oppressed by a cruel husband, constantly insulted, run over and punished by his arrogant temper”; she therefore had “found no other way to protect herself than to resort to violence.”<sup>39</sup>

Although Juan Meléndez Valdés focused his accusation on the moral aspect of the case, he also devoted several pages to defending the validity of the evidence that led to the discovery and arrest of the culprits and their subsequent confession to the crime.<sup>40</sup> This evidence was a letter written by María Vicenta to her lover, Santiago de San Juan, after the crime had been committed. On December 9, 1797, with the intention of putting an end to her husband’s life, María Vicenta let her lover into the couple’s home and hid him so that no one in the household would see him. When Santiago stabbed Francisco del Castillo in his bed, María Vicenta pretended to faint, causing a commotion and allowing the murderer to escape. After the crime, her lover remained hidden in the Madrid court. To keep him informed of the progress of the investigation, María Vicente wrote him a letter, addressed to a certain Don Tadeo Santisa, which she gave to one of her servants, Don Domingo García, to post. Domingo García, suspicious of the letter, brought it to the attention of Don Antonio Castillo, one of the victim’s best friends, and they decided to take it to the judicial authorities. According to Meléndez Valdés, when María Vicenta was confronted with this “fatal letter, this merciless paper,” she immediately “shuddered” and confessed to the crime, leading to her imprisonment along with her lover.<sup>41</sup> After Santiago’s arrest, the bloody clothes he wore on the day of the crime were found in one of his belongings, a chest, which Meléndez Valdés considered to be “irrefutable evidence against its unfortunate owner.”<sup>42</sup>

In his accusation, Meléndez Valdés refuted, one by one, the arguments put forward by the defense to invalidate the evidence contained in the letter. First, he

pointed out that the letter was clearly incriminating because it suggested to the addressee that he should be very careful not to be discovered. The defense countered that it was illegal to open and read the letter; therefore, such evidence should be considered null and void. In response, Meléndez Valdés defended the validity of the evidence on the grounds that the letter was written by a “person accused of such a heinous crime” and was in the custody of the court. Furthermore, he questioned the fact that María Vicente would have written a letter to a person unknown to her entourage and that she would have intended to send it by post since the recipient lived in Madrid. He also praised the diligence of the servant in turning the letter over to the court, considering it a just and honorable action. Meléndez Valdés concluded by pointing out that María Vicenta did not deliver the letter to the “public trust of the post office, always inviolable, sacred to all,” but entrusted it instead to one of her servants, who thankfully disobeyed the order of an “imprudent mistress.” For Meléndez Valdés, the servant’s disloyalty to María Vicenta was no obstacle to using this evidence against her and her lover Santiago since it had already been unsealed by the time it was presented in court.

Given the seriousness of the crime, Juan Meléndez Valdés requested the death penalty as punishment. He based his request on the case’s many aggravating circumstances, including the existence of an adulterous relationship and the fact that the crime had been committed in Madrid, involved the perpetrator hiding in the Spanish Court, and occurred not only “in the conjugal bed” but was carried out by two of the closest and most intimate people to the victim. Meléndez Valdés therefore considered it as an attack on the “conjugal knot,” friendship, morality, and the nation—in short, a crime that “outrage[d] and degrade[d] humanity.”<sup>43</sup> In April 1798, María Vicenta de Mendieta and her lover Santiago de San Juan were finally executed in Madrid’s Plaza Mayor for the murder of Francisco del Castillo.

A month after the sentencing of Maria and her lover, Meléndez Valdés had to issue another accusation for another case of spousal homicide, this time a wife-murder.<sup>44</sup> The murderer, Marcelo J., had killed his wife, María G., in September 1797: she had left the couple's home but had been forced to reunite with her husband after an ecclesiastical court order. As noted by the prosecutor, the murder was not premeditated but committed in a state of rage and intoxication. In his examination of the case, Meléndez Valdés once again focused on the characters of the perpetrator and the victim, contrasting here the "tolerance, peace, constant kindness, and good behavior" of Marcelo with the "hard and stubborn temperament" of María, which, according to the prosecutor, finally led her husband to become enraged and kill her during a drunken argument.<sup>45</sup>

It is possible that the prosecutor and Meléndez Valdés' negative opinion of María was originally grounded on the fact that she had left Marcelo and their domicile. On the basis of the circumstances and Marcelo's repentance and immediate surrender to justice after committing the crime, Meléndez Valdés took a much more lenient approach to the case than he did in his first as prosecutor of the Sala. While he started out by calling for the application of the "terrible punishment" prescribed by law for crimes of parricide, he concluded his accusation with an endorsement of leniency and compassion toward the murderous husband.<sup>46</sup>

These reports on the two cases of spousal homicide can be interpreted in the light of Enlightenment ideas about criminal justice and punishment, in particular Cesare Beccaria's principle of proportionality, which also takes into account the background and circumstances of the offender. In his *Forensic Discourses*, Meléndez Valdés not only revealed his legal knowledge but also sought to voice his enlightenment ideology, as the editor's note in the prologue to this work.<sup>47</sup> Perhaps for this reason, Meléndez

Valdés was less concerned with the analysis of criminal evidence than Juan de Quiñones was in his memorial.

In this regard, it is worth noting that, in contrast to these two formal accusations by Meléndez Valdés, the deliberations of the Sala in the 1780s and 1790s on death sentences in cases of marital homicide demonstrated the importance of examining physical evidence in solving crimes as well as how crucial the expert opinion of medical professionals in deciding on the correct punishment under the law. These reports reproduced the testimony of doctors and surgeons who, following the guidelines of Domingo Vidal's *Forensic Surgery*, gave a precise and detailed account of the fatal injuries sustained by the victims.<sup>48</sup>

### ***Conclusion***

Historians of crime and the law, as well as scholars of the history of medicine in the early modern period, have outlined the important role played by medical professionals and other experts in the resolution of legal problems and criminal cases, particularly violent and sexual crimes. In early modern Spain, the books and treatises on forensic surgery, by both foreign and Spanish authors, offered surgeons useful guidelines for assisting the administration of justice in the examination of wounds, deaths by hanging and suicide, poisoning, sexually related matters such as virginity, impotence, and sterility, and sexual crimes such as sodomy. Medical expertise also played an important role in the writing of legal reports or declarations for the courts. The increasing sophistication of these manuals reflected the relevance and value of their skills and work to the legal system and paved the way for the professionalization of forensic medicine in the nineteenth century. Judicial documentation from the Sala de Alcaldes de

Casa y Corte reveals the interdependence between judges and physicians and provides information on how their forensic work was regulated in the city of Madrid.

Although their relationship with the Sala was not always harmonious, the fact remains that the expertise of surgeons and physicians was essential in resolving difficult cases. Though conceived and written for different purposes, both Quiñones' memorial and Meléndez Valdés' *Forensic Discourses* reflect their own views of the judicial function and of punishment, implicitly recognizing the need for cooperation between judges and medical professionals in the search for the truth. This is most evident in the case of Quiñones, whose account of some of his greatest achievements as *alcalde* served to highlight his forensic skills in collecting and analyzing evidence and in investigating and solving crimes. These tasks were aimed at assessing the seriousness of the crime in order to determine and impose an exemplary and appropriate punishment, as Quiñones and Meléndez Valdés noted when referring to cases of spousal homicide. Here, too, the role of surgeons and experts was important, as shown by the records of the Sala and the treatises on forensic surgery of the seventeenth and eighteenth centuries.

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## **Notes**

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<sup>1</sup> Royal Decree Law, 13 May 1862, published in the *Gazeta de Madrid*, no. 137 (17 May 1862), 1, available at <https://www.boe.es/gazeta/dias/1862/05/17/pdfs/GMD-1862-137.pdf>.

<sup>2</sup> See Ángel Carracedo and Luis Concheiro, “Forensic science practice in Spain,” in *The Global Practice of Forensic Science*, ed. Douglas H. Ubelaker (Wiley-Blackwell, 2015), 262–64.

<sup>3</sup> Pedro Mata y Fontanet, *Tratado de Medicina y Cirugía Legal teórica y práctica seguido de un compendio de Toxicología*, 4th ed., vol. I (Carlos Bailly-Baillière, 1866), 15.

<sup>4</sup> Mata y Fontanet, *Tratado de Medicina*, 25.

<sup>5</sup> See Silvia De Renzi, “Medical Expertise, Bodies, and the Law in Early Modern Courts,” *Isis* 98, no. 2 (2007): 320–21 and Katherine D. Watson, *Forensic Medicine in Western society: A History* (Routledge, 2011), 63–69.

<sup>6</sup> Pedro Mata y Fontanet. “Del servicio médico-forense en España,” *Revista española política, científica, y de artes, viajes, comercio, etc.* 2, no. 8 (1862): 81–90.

<sup>7</sup> Mata y Fontanet, “Del servicio médico-forense,” 82–83.

<sup>8</sup> Mata y Fontanet, “Del servicio médico-forense,” 84.

<sup>9</sup> *Tratado de las declaraciones que han de hacer los cirujanos acerca de muchas enfermedades y muchas maneras de muertes que suceden* (*Treatise on the declarations to be made by surgeons about many diseases and many ways of deaths that occur*). Juan Fragoso, *Cirugía Universal, ahora nuevamente enmendada, y añadida en esta quinta impresión. Por el Licenciado Juan Fragoso Médico y Cirujano del Rey nuestro Señor y de sus Altezas* (Juan Gracián, 1592), 286v–305v.

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<sup>10</sup> Domingo Vidal, *Cirugía forense, o Arte de hacer las relaciones quirúrgico-legales. Obra útil a los médicos, cirujanos y jurisperitos, así seculares como eclesiásticos. Por el Licenciado Don Domingo Vidal, Profesor y Bibliotecario del Real Colegio de Cirugía de Barcelona* (Carlos Gibert y Tutó, 1783). This manual was the Spanish translation and adaptation of the 1745 edition of Jean Devaux's *L'Art de faire les rapports en chirurgie* (*The art of making surgical reports*), first published in 1703. It soon became the reference work for surgeons who had to report to the courts in both Spain and Spanish America. See Irina Podgorny, "Los médicos de muertos y la paleontología en el Plata. Medicina Legal, Cirugía Militar y Observación de Campo en la Obra de Francisco X. Muñiz, 1830–1850," *Anuario IEHS: Instituto de Estudios históricos sociales* 25 (2010): 313.

<sup>11</sup> José Luis de Pablo Gafas, *La Sala de Alcaldes de Casa y Corte (1583-1834). Justicia, gobierno y policía en la Corte de Madrid* (Libros del Taller de Historia, 2017), 305–25.

<sup>12</sup> Archivo Histórico Nacional (AHN), Consejos, Book 1252, ff. 77r–77v, 79r–79v.

<sup>13</sup> See, for example, AHN, Consejos, Book 1200, f. 497r; Book 1223, f. 164r; Book 1257, ff. 280r–281v; Book 1267, f. 49r; Book 1286, f. 158r; Book 1292, f. 308r; and Book 1354, ff. 328r–329v.

<sup>14</sup> AHN, Consejos, Book 1214, ff. 62r–62v, 132r–132v, 276r–276v; Book 1294, ff. 70r–71v; Book 1304, ff. 118r–118v; Book 1307, ff. 86r–86v, 243r–245v; Book 1313, f. 374r–374v; Book 1317, ff. 260r–268v; and Book 1322, ff. 236r–238v, 256r–257v.

<sup>15</sup> AHN, Consejos, Book 1252, f. 77r.

<sup>16</sup> AHN, Consejos, Book 1252, ff. 77r–77v, 79r–79v.

<sup>17</sup> For the case of seventeenth-century France and Italy, see Silvia De Renzi, "Witnesses of the body: medico-legal cases in seventeenth-century Rome," *Studies in History and Philosophy of Science* 33 (2002): 219–42 and Katherine Dauge-Roth, "Bodies of

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Evidence: Judges and Surgeons at the Crime Scene in Early Modern France,” *Journal of Medieval and Early Modern Studies* 54, no. 1 (2024): 137–63.

<sup>18</sup> Vidal, *Cirugía forense*, prologue.

<sup>19</sup> Vidal, *Cirugía forense*, prologue.

<sup>20</sup> De Renzi, “Witnesses of the body,” 223.

<sup>21</sup> Juan de Quiñones, *Memorial de los servicios que hizo al Rey Don Felipe III nuestro Señor; que santa gloria aya, y que ha hecho a V. Magestad, que Dios guarde, el Doctor Don Juan de Quiñones Alcalde de Casa y Corte, más antiguo, en diferentes jornadas, causas graves que ha averiguado contra delinquentes, y castigos que se les dieron. Y de otras ocupaciones que ha tenido, tocando al servicio de V. Magestad, y en beneficio del bien público* (n.p., 1643), 11–15.

<sup>22</sup> Quiñones, *Memorial de los servicios*, 12.

<sup>23</sup> Quiñones, *Memorial de los servicios*, 70–71.

<sup>24</sup> Quiñones, *Memorial de los servicios*, 43–45.

<sup>25</sup> Quiñones, *Memorial de los servicios*, 71–75.

<sup>26</sup> Quiñones, *Memorial de los servicios*, 74–75.

<sup>27</sup> AHN., Consejos, Legajo 7124, no. 4.

<sup>28</sup> For a definition of the term *géminis*, see *Diccionario de Autoridades*, vol. IV (1734), 38.

<sup>29</sup> See Rosa Isabel Sánchez Gómez, *Delincuencia y Seguridad en el Madrid de Carlos II* (Secretaría General Técnica del Ministerio del Interior, 1994), 117.

<sup>30</sup> Quiñones, *Memorial de los servicios*, 49–51.

<sup>31</sup> The *poena cullei* involved sewing a convict into a sack with wild animals; the sack was then thrown into water with the expectation that the animals would claw the convicted killer to death in their attempt to escape drowning. It may have reflected more

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of a belief by ancient Romans about customary punishments that their ancestors had used, rather than serving as a real punishment that was ever used.

<sup>32</sup> Quiñones, *Memorial de los servicios*, 41.

<sup>33</sup> The Archivo Histórico Nacional in Madrid holds a manuscript copy of this report (AHN, Diversos-Colecciones, 1, no.50).

<sup>34</sup> Juan Meléndez Valdés, *Discursos forenses de D. Juan Meléndez Valdés, fiscal que fue de la Sala de Alcaldes de Casa y Corte é individuo de las Academia Española y de San Fernando, y de la de San Carlos de Valencia* (Imprenta Nacional, 1821), 1. In October 1797, after serving in various positions in the judiciary, Juan Meléndez Valdés had been appointed prosecutor of the Sala de Alcaldes de Casa y Corte. He held this post for a short time before being dismissed in August 1798 following the fall of Melchor Gaspar de Jovellanos as Minister of Grace and Justice.

<sup>35</sup> Meléndez Valdés, *Discursos forenses*, 2.

<sup>36</sup> Meléndez Valdés, *Discursos forenses*, 3.

<sup>37</sup> Fernando Durán López, “Humanidad y justicia: el ensayismo en los *Discursos Forenses*,” in *Juan Meléndez Valdés y su tiempo (1754-1817)*, eds. Jesús Cañas Murillo, Miguel Ángel Lama and José Roso Díaz (Editora Regional de Extremadura, 2005), 317–28; and Mónica Bolufer Peruga, “De violentar las pasiones a educar el sentimiento: el matrimonio y la civilidad dieciochesca,” in *Conflictividad y violencia en la Edad Moderna*, eds. Antonio Jiménez Estrella and Julián J. Lozano Navarro, vol.2 (Universidad de Granada, 2012), 349–60.

<sup>38</sup> Meléndez Valdés, *Discursos forenses*, 4–7.

<sup>39</sup> Meléndez Valdés, *Discursos forenses*, 29–30.

<sup>40</sup> Meléndez Valdés, *Discursos forenses*, 17–28.

<sup>41</sup> Meléndez Valdés, *Discursos forenses*, 17–18.

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<sup>42</sup> Meléndez Valdés, *Discursos forenses*, 20.

<sup>43</sup> Meléndez Valdés, *Discursos forenses*, 29.

<sup>44</sup> Meléndez Valdés, *Discursos forenses*, 45–70.

<sup>45</sup> Meléndez Valdés, *Discursos forenses*, 48.

<sup>46</sup> Meléndez Valdés, *Discursos forenses*, 69–70.

<sup>47</sup> Meléndez Valdés, *Discursos forenses*, iv.

<sup>48</sup> See, for example, the deliberation on the death sentence imposed by the Sala on Tomás Pérez in March 1794 for the murder of his wife, Anastasia Bernabé, in September 1793: “As for the body of the crime, it appears in the unanimous testimony of two surgeons and in the anatomical dissection they subsequently made of the body according to the rules of the art. They found that the wound had been made with a cutting instrument, that it was two fingers long and more than eight in depth, that it crossed the lower cartilage of the first true rib and was directed toward the mediastinum, and that part of the main vessels of the heart and the nerves of the intercostal branch had penetrated and injured the pericardium. For these and other reasons that they discovered, they declared that it was necessarily fatal. After comparing the knife used, whose identity was recognized by three witnesses and by the perpetrator himself in his confession, with the cavity of the wounds, the surgeons had no doubt as to the instrument used.” AHN, Consejos, Book 1384, ff. 546r–546v.