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The Power to Pardon in Medieval and Early Modern Christian Europe

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Uses of Grace and Justice

Female Agency in Ancien Régime Spain¹

Between the 16th and 19th centuries, the intersection of grace and justice in Hispanic societies rested on notions of power that conferred on the owner of supreme jurisdiction (*princeps*) absolute power to arbitrate, dole out punishment through the court system, and, should conditions require it, grant pardons or overturn court rulings for the sake of public peace and the ‘commonwealth’. Monarchs, advised by their councils, could and did request information about ongoing judicial cases anywhere within the territories of the monarchy. This not only applied to the Iberian Peninsula but also to the king’s overseas possessions, which were legally bound to the Crown of Castile.

Based on their historical experience, all societies create norms to facilitate social peace and maximise the likelihood of intergenerational survival. Beginning in the 16th century, Hispanic political theory and legal doctrine emphasised the key role played by justice in the political edifice on which the power of the Crown rested. The Crown, for its part, possessed absolute authority to resolve conflicts, placing the king above the parts and the whole of the society over which he ruled.

These principles consolidated the categorical superiority of the monarch and underlined the need for a governance model that guaranteed stability and quashed internal tension. Many treatises in the Hispanic and continental traditions emphasise this point while arguing for a gradual scale of punishments that considers both the severity and circumstances of a crime and the damage inflicted on victims and the *res publica*. This encouraged collective reflection on extenuating, aggravating, and exculpatory circumstances, as well as the idea that punishment and pardon were tools to achieve the same goal, the ‘commonwealth’; excessive leniency towards perpetrators was explicitly argued to be an act of cruelty against those who actively worked to keep the *res publica* together.

The texts written by the founding fathers of criminal law are full of this sort of argument. Partially inspired by Tiberio Deciani, professor at Padova, these pioneers

1 This research is part of project PID2021-124823NB-C22 with financial support from MCIN/AEI/10.13039/501100011033/and FEDER-A way of building Europe (*La ciudad en acción: resistencias, (re)significaciones del orden y cultura política en la Monarquía Hispánica*). I thank Quentin Verreycken and Ulrike Ludwig for their constructive and enriching comments on this chapter. I’m also in debt with Maria Tabuer for her kind and precise help to improve the final result.

included Covarrubias y Leyva,² André Tiraqueau,³ and, later, leading jurists of the Enlightenment like the Spanish-Mexican Manuel Lardizábal y Uribe⁴ and the brilliant Valencia-born lawyer and activist against torture, Juan Pablo Forner.⁵ These texts built on the essential foundations laid down by such authors as the prestigious Mancha-born jurist Jerónimo Castillo Bovadilla⁶ and the Murcia-born lawyer and diplomat Diego Saavedra Fajardo,⁷ whose works were cited in countless judicial proceedings and rulings, both in the Iberian Peninsula and Spanish America.

During this long period, the Spanish language adopted many of the concepts developed by legal theorists. The idea of clemency, for instance, retained its consideration as a necessary princely humanistic value, to prevent the monarch from being driven by feelings of favour or revenge. This was a virtue to be extended to private citizens, but always with justice as defined by the *res publica* as a guiding principle; anything less would risk undermining order, “leading to grievances, disobedience, and the ruin of the State”. However, with wisdom and prudence, clemency could be “the throne’s most beautiful prerogative” and “have wonderful effects” without getting mixed up with weakness and impotence, as argued by the lawyer of the Enlightenment Manuel Lardizábal y Uribe in 1782.⁸

A clement monarch could pardon crimes (*per donum*, that is, a *gift* as an action of grace) and remit fines. Importantly, pardons, whether as a grace or a privilege, were by definition conferred by superiors upon inferiors. The word amnesty, however, is absent from juridical texts and etymological dictionaries written before or during the Age of Enlightenment, even though it is rooted in the Greek word for “forgetting”. This is how it is understood in modern legal doctrine and in everyday language: “pardon for certain kinds of offences, which lifts responsibility off perpetrators”.⁹ An amnesty is a *sui generis* form of pardon, as it imposes forgetting or, in other words, declares the punishable acts not to have occurred at all.

Some 18th-century diplomatic documents already feature the word “amnesty” in the modern sense, for instance, chapter nine in the Peace of Vienna of 1725. However, in the context of the end of the War of the Spanish Succession, amnesty

2 COVARRUBIAS Y LEIVA, Summa.

3 This innovation already featured in his *De legibus connubialibus* (1513), which included a deep reflection on the legal punitive system and which continued to have a lasting influence/impact.

4 LARDIZÁBAL Y URIBE, Discurso sobre las penas.

5 FORNER, Discurso sobre la tortura. The first draft was written in 1795 and quickly gained popularity in intellectual circles, but it was not published until 1843.

6 CASTILLO BOVADILLA, Política.

7 SAAVEDRA FAJARDO, Empresas Políticas.

8 This was written in the enlightened *Diccionario de Autoridades* published during the first decades of the 18th century. However, these arguments were based on those previously given by Ivan Eusebio Nierenberg (*Obras y días*) and Saavedra Fajardo (*Empresas Políticas*) in the 16th and 17th centuries.

9 Art. “amnistia”.

meant much more than forgetting. It was a means to create stability inside the monarchy, fostering conditions for reconciliation and the return of exiles, and outside, through the Austrian Habsburgs' recognition of the Bourbons' claim to the throne and the normalisation of diplomatic relations between Madrid and Vienna.

In real life, these mechanisms put in place to organise the administration of justice and grace were a major source of inequality. Privilege, personal honour, faith, blood, and ethnic group, and their intersection in the notion of "race," as well as gender, acted as variables in the unequal and fragmented implementation of subjective rights and the consuetudinary, social, administrative, and institutional resources mobilised to recognise and enforce them.

Women from all walks of life lacked the legal power to appear for themselves before a tribunal; they needed judicial licences, powers of attorney, an *ad litem* curator, or a male representative. Lone women, servant girls, wage-labourers, girls from poor families, and orphans were especially vulnerable. In an attempt to compensate for this, the Castilian legislation imposed special protections on women, but these were insufficient to offset the harsh social environment in which they lived. *Casos de corte* were issues dealt with by special royal tribunals owing to their peculiar nature, including forced women (*mujeres forzadas*), a special form of admission by the Crown of the need to curtail all forms of male sexual violence against women. However, judicial records indicate that these issues were not always given the attention they required, and the dark figure of gendered violence in court was vast.¹⁰ Sexual violence encompassed rape and many other offences; some of these, in fact, were often believed by the contemporaries to be as serious as rape, as they could be just as traumatic.¹¹

However, specific judicial records in which women voiced their complaints, expressed their experiences and aspirations, and appealed for the king's clemency and grace allow us to analyse the agency available to them. In all cases, however, this was an uphill battle, as they faced constant hurdles in carving out a space for themselves in which to make free choices about their own lives.

This article analyses this *female agency*, focusing especially on low social class women. It examines their behaviour, how they negotiated crises and vital transitions, and their relational social environments, which had to meet the balanced conditions of *public peace* demanded by their specific social life experiences contexts. The experience of women of low social status is thus brought to the forefront: women who underwent particularly cruel forms of abuse at the hands of men who not only were in objective positions of power, owing to their status or trade, but also other

10 MANTECÓN, *Mujeres forzadas*.

11 This has already been proven for many other traumatic experiences of women who were later involved in diverse judicial cases analysed in this chapter. This same pattern has also been observed in the European context, as shown by CLARK, *Women's Silence*, pp. 59–75.

who also self-empowered themselves illicitly in their local contexts by making use of effective tools of social intimidation and domination. This violence was rarely brought before the courts, only when it became unbearable, as seen in the episodes analysed here.

1. Infrajustice and Grace Outbursts

The tension between (ordinary) justice and (extraordinary) grace left the king in an absolute position of power. This went beyond the natural flexibility that governs the application of the law, which lay between the rigour of the written word, unwritten rules, and judicial practice. This included the capacity of *arbitrio*, or discretionary authority, enjoyed by judges to adapt the law in consideration of behaviour and facts. The king's judicial and grace powers went even beyond the degree of tolerance that society provides (*infrajusticia* or infrajustice). This last, in the 16th, 17th, and 18th centuries, was still fairly accepting with regard to violent behaviours; informal agreements that allowed the parties to rebalance conflicts and mitigate their impact to avoid escalation were far from rare.¹²

Para-judicial (simultaneous and complementary to judicial processes) and *extra-judicial* (independent from judicial processes) approaches to administer justice have been used in the Iberian Peninsula and other European and overseas territories. Sometimes, this involved the participation of 'good men' (district mayors, local clerics, advocates of indigenous groups, and even charismatic residents) or corporate agents (religious brotherhoods, guilds, and even kinship groups and families).¹³

These different scales of action, including a wide array of expressions of *infra-justicia*, generally regarded as the social body's take on the law, allowed for some flexibility outside the strict application of legislative texts. These approaches, alongside court rulings and administrative sanctions imposed by public officials for breaking local ordinances, created the setting for a more efficient system to restore the broken public peace and resolve conflicts in civil cases and even in severe criminal offences.

12 I have already verified this both in local analyses and within the peninsular and Spanish-American Ancien Regime. See MANTECÓN, Meaning and Social Context of Crime; ID., El mal uso de la justicia; ID., El peso de la infrajudicialidad; ID., Social Control from Below; ID., Usos de la justicia; ID., La acción de justicia; ID., Justice.

13 The differences between these three complementary levels of judicial, extrajudicial and parajudicial intervention was clearly explained in GARNOT, Justice. An overview on the state of the art at the end of the twentieth century in GARNOT, L'infrajudiciaire. On mediation agents in the Old and New World see UNDURRAGA, 'Valentones'; BARRIERA, La organización; HIDALGO, Alcaldes.

Then, there was the extraordinary recourse to pardons, that is, the remission of the charges and sometimes even the punishment pointed in the sentence and still without a real execution. Pardons could be a private matter recorded by a notary in public or expressed before witnesses; other pardons were granted by a social superior to their inferior, by the ruler to the ruled. Pardons were an extraordinary, but also a frequent, expression of royal grace, demonstrating the clemency of the monarch. This act of grace, however, did not overshadow the nature of the committed crime. Royal pardons had to be preceded by a pardon from the victim, expressed either in writing or before witnesses. However, in exceptional circumstances, royal grace was also granted when it was essential to resolve conflicts – often decades-long – that affected the social peace or the monarchy's diplomatic relations. In some of the latter cases, female agency is also evident in the handling of documents to obtain pardons or even amnesty, strengthening the arguments in their appeals.

A year before the Peace of Vienna of 1725, which brought an end to the war fought between the death of Charles II in 1700 and the Peace of Utrecht, a pardon was proclaimed to get royal clemency to all sort of criminals. Within the petitioners of the king's grace there were rebels who had supported the Habsburg succession to the Spanish Crown, and some of them still were the exiles that had sought shelter in Austria. The appeals made to the king in 1724 anticipated some of the characteristics of the special and exceptional expressions of grace that emerged from the negotiations leading to the Peace of Vienna a year later. From the end of the war in 1715 up to the Peace of Vienna (1725), between 25,000 and 30,000 people had fled into exile, from which they gradually returned, some as late as 1725. The 1724 pardon benefitted many high-profile figures in the kingdom and some leading military commanders.

The pardon that preceded the Peace of Vienna aimed to encourage the return of dissident Habsburg supporters who had held military positions for the emperor in Austria, Hungary, and Italy, and also included the widows and families who were still in exile in Vienna, Milan, Naples, Palermo, and Budapest – a total of 300 people. The pardon was the prelude to the amnesty attached to the peace treaty of 1725, which finally sealed the safe return of the exiles who had remained in the court of Vienna in the service of the Habsburg emperor.

Chapter nine of the Peace of Vienna declared “reciprocal amnesty” and pardoned all Spaniards that had taken part in the conflict, decreeing the reinstatement of their property and positions and mutual respect for the honours bestowed by both Philip of Anjou and Archduke Charles up to the signing of the treaty. It was not only a matter of attracting back the last exiles -men and women- and their families ten years after the end of the war, what actually could help the social peace building, but also of harmonising the relations between Bourbon Spain and the Austrian

Empire.¹⁴ Actually, this pardon also helped the overcoming of these men and women personal traumas, with their different gender impacts.

For this reason, the peace established “perpetual forgetting, amnesty, and abolition of all the things done, openly or otherwise, since the beginning of the war”; the amnesty was to apply “to all and every one of the subjects of both monarchs, whatever their station in life, dignity, honours, condition, and sex”. All assets, rights, privileges, honours, dignities, and exemptions were to be honoured, and rulings pronounced against any person were to be regarded as “void and invalid”.¹⁵

The pardon of the Peace of Vienna was an exceptional expedient brought forth to allow two dynasties forced to understand one another in the European diplomatic arena to recognise the rights of their erstwhile opponents. More often, pardons were an extraordinary measure that was frequently employed in the context of anniversaries, happy events for the royal family (births, weddings, recovery from illness), and diplomatic or military success. These occasions were celebrated with general and extraordinary pardons in response to the need for royal grace to be expressed publicly and politically. More regularly, each Easter, the Crown commemorated the passion of Christ with the Good Friday Pardon.

Appeals rejected for consideration on Good Friday were often relaunched by justice officials at the request of the applicants or their families, and even people whose judicial process was still ongoing could request a pardon. People with the right social support launched constant appeals, and in some instances, following endless private negotiations, they managed to see their sentences rescinded through the expedient of royal grace. These were the so-called *perdones al sacar*, which were generally managed and resolved by the royal councils.

Like in previous iterations of this pardon resource (*perdones al sacar*), the king's pardon had to be preceded by pardons from the victims of the committed offence, and this generally followed long negotiations between the parties, many times helped by further people from each party's social environment. Often, the process lasted years, and often, judicial officials of varying ranks and councils could only be kept interested in the case at great expense for the supplicant.

2. Structural Male Domination and Violence

Asymmetric power relations were implied by gender in all spheres of life and interpersonal interactions. The social vulnerability of women could be aggravated

14 Among the beneficiaries of exiles in Vienna with imperial pensions, about ten percent were women (mainly widows) and descendants of exiled Austracists.

15 STIFFONI, Un documento inédito; LEÓN, El exilio austracista valenciano; MANTECÓN, La gracia regia.

by specific circumstances, such as loneliness and social isolation or dependence and, naturally, poverty. People who had to earn a living were categorically more vulnerable than those who did not. This is reflected in the sources not only qualitatively but also quantitatively: most criminal cases for statutory rape, cohabitation, adultery, and rape concerned poor women.¹⁶

The justice system was only utilised to arbitrate cases of sexual violence when the parties failed to reach an agreement; for instance, when the perpetrator's offer of compensation to avoid the issue being elevated to a tribunal to decide upon the damage caused and the proper indemnity to be given was rejected. In any case, when the courts were involved, women were put under constant pressure to release their claims, sometimes successfully. Nevertheless, as in other European regions, the court's knowledge of the specific context of each case gave women, even maids in very weak positions against their masters, a chance of obtaining some form of economic compensation through the judge's intervention. Personal and environmental factors varied from case to case, resulting in different judicial steps and proceedings. These were also influenced by the social context of the crime, whether or not the tribunal explicitly endorsed that influence.

One of the most effective gauges to measure the resources to be able to deal with the worst economic circumstances and make easy or, on the contrary, very difficult to go to court to solve civil and criminal conflicts. The increasing or decreasing involvement of local courts in the resolution of financial disputes itself is an indicator of when the economic circumstances were worst. Court-cases in the first judicial instance related with this reflect domestic bankruptcies, which obviously were more frequent during hard times and disproportionately affected those closest to the breadline the most; when debts piled up to saturation point the courts were called in to inventory the possessions of debtors, order creditors hierarchically, and organise the auction of the inventoried assets.

Statistically, the *lineal correlation* between debt-related cases and criminal cases for sexual offences (statutory rape, shacking up, adultery, rape) in a continuous series of nearly 500 cases from three Cantabrian valleys (Northern Spain) in the 17th and 18th centuries was 0.43.¹⁷ This indicates a positive correlation between the *dependent variable*, i. e., sexual crimes (appeals in cases of breach of promise of marriage, adultery or rape and violent rape), and the *independent variable*, i. e., debt-related lawsuits (informal or formalised personal loans, mortgage credit,

16 I have already given details from different viewpoints in publications such as MANTECÓN, *Conflictividad*; ID., *Aux marges de la société*; ID., *Estigmas de la pobreza*; ID., *Urban Outcasts*.

17 The legal documents refer to the Cantabrian valleys of Alfoz de Lloredo, Cayón, and Reocín. This collection of documents makes a complete series kept in the Regional Historical Archive of Cantabria. Archivo Histórico Regional de Cantabria (AHRC), sections: Alfoz de Lloredo, files 1–27, 28–37, 42–77, 78–94; Cayón, files 51–85; Reocín, files 119–132, 136–209.

insolvency proceedings, etc.). This suggests that sexual crimes were strongly affected by economic factors, and over 40% of sexual crimes contained economic variables. This is significant but not sufficient to explain the social fragility of women regarding these forms of violence and criminality.

In other words, this figure indicates that in about two-fifths of cases, economic factors were the main trigger behind lawsuits filed by women against men for illicit advances or other forms of sexual abuse. Honour culture played a role, as such offences risked the public reputation and social esteem of women and their families. This pattern occurred in all social groups but particularly within the lower classes and in women who needed to keep a good reputation locally because they depended on external help. Furthermore, there were legal dispositions to protect women from male violence. Naturally, these nearly 500 cases do not represent the entire phenomenon in this particular context, as many cases never reached the authorities and never entered the written records. The cases that we know about are those in which women managed to make their situation visible, getting the courts to open a criminal cause.

Supporting arguments with data is extremely important to establish the scale of the phenomenon while emphasising the vulnerability component that compounded the inferior status of women. Powerful men were in a position of privilege to abuse the vulnerability of women of all ages and social statuses but especially young servant girls and lonely wage labourers, who feature in censuses and other registers as “beggar” (*pobre de solemnidad*), “young day-labouring widow” (*viuda jornalera*), “day-labourer” (*jornalera* or *girl who lives by his work and the sweat of his face*), “poor widow” (*viuda pobre*), “poor orphan” (*huérfana pobre*), “poor blind girl” (*pobre ciega*), “daughter of unknown parents” (*hija de padres desconocidos*), “poor foreigner” (*residenta* or *forastera pobre*), or “who lives for herself” (*que vive de sí misma*) or “freely” (*a sus libertades*), or “who has to earn a living” (*que tiene que ganarse la vida por sí*)¹⁸.

All these conditions made these women, especially – but not only – young girls and teenagers, particularly vulnerable. According to the census records for the 18th century, at least one-fifth of all women were in positions that put them at greater risk of being victimised. That this was a chronic problem is confirmed by the censuses carried out for the collection of the tax of the *moneda forera*, the detailed Cadastre of Ensenada, the censuses ordered by Floridablanca and Godoy, and the *Cuadernos*

18 All phrases come from initial proceedings of criminal cases in different courts of early modern Spain and were also used to define women's economic and social situation in fiscal reports consisting of lists of neighbourhoods and neighbours, which were used up to the second half of the eighteenth century.

de Riqueza, which was compiled with similar aims (fiscal proposals) early in the 19th century.¹⁹

Overall, there seem to be no major differences between urban and rural areas, although these conditions of vulnerability were perhaps a little more acute in cities. The available evidence also indicates that there were no significant regional differences either, as this situation was found all over the Iberian Peninsula, including the Cantabrian coast, Aragon, interior Castile, and Andalusia, although in the latter two regions and Galicia, the problem may have been somewhat more severe.²⁰

In cases of breach of engagement or betrothal seen by the ecclesiastical tribunal of Zamora during the 17th century, 10% of claimants were servant girls with an average age of 23. The proportions in other regions were roughly the same.²¹ Young women inserted in any domestic environment were in a difficult position, especially if they were not related to the paterfamilias. Yet, relation was no guarantee against the incontinence and lust of males, even their own fathers, who sometimes could not be restrained even by the moral barrier posed by incest.²²

It must also be taken into account that any misfortune or accident, love affairs, or an extramarital pregnancy – situations that were anything but rare and that, not infrequently, ended in banishment – only further increased the vulnerability of these women. In these settings, the statements of their new neighbours speak of their extremely exposed position: “she is suspected of living badly” (*sospechosa de mala vida*), “she does not serve anyone” (*no sirve a nadie*), “she lives in the suburbs” (*vive fuera del vecindario*), “she lives in vice and freedom” (*vive en vicio y libertad*), “she lives badly” (*vive malamente*) or was taken as “a public whore” (*es una puta pública*) or a woman who was “bad to her body” (*mala de su cuerpo*)²³. Even worse invectives were “*frailuna*” (a friar’s lover), “kept by the Church” (*mantenida de la iglesia*) “dweller of the brothel” (*moradora de burdel*) and “pertinacious prostitute” (*puta probada*). Women who were seen like this in their social environment were extremely vulnerable and nearly powerless to defend themselves from male abuse.

19 On the case of Cantabria in global terms, see MANTECÓN, *Conflictividad*, pp. 365–376.

20 See data provided by the Cadastre of Ensenada in MANTECÓN, *España*, pp. 200–202.

21 BÉNAVIDÈS, *Les femmes délinquantes*, p. 76, 78, 80; BARAHONA, *Mujeres vascas*, p. 81; MANTECÓN, *Conflictividad*, pp. 249–251; PINAR, *Amores inciertos*, p. 37 and following pages.

22 In 1794, a sexagenarian cobbler of the Southern Cantabria village of Nestares was abusively and violently soliciting sexual favours from his two daughters, which led to several dramatic episodes of marital violence following his wife’s attempts to stop him. In this case, the intervention of the high court of Valladolid does not seem to have been very effective, as it opted for a counterclaim and issued a stern warning, threatening severe consequences if the lascivious cobbler did not restrain himself and control his impulses. MANTECÓN, *Conflictividad*, p. 68.

23 All phrases were taken from judicial documents, pointing out women in unfavourable situations.

3. Brutal Men, Vulnerable Women

When several of these factors converged, women were completely exposed to abuse, which often began during childhood. In the Cantabrian valley of Reocín, in the mid-18th century (1756), a young girl called Inés Salas, from the nearby district of Trasmiera, was brutally raped by her master, Antonio García, an intimidating young armourer with a good position in the valley. Ostensibly, García had brought Inés to the valley to attend to his domestic needs. His attack was so violent that she was left badly injured and unable to walk. The attack left Inés “bleeding abundantly from her body,” which the neighbours noticed when they saw her coming out of the shed where her master had used her so brutally. He had also threatened to “stab her to death” if she told anybody, because “he would lose his good name”.

Although the matter reached the first-instance court and a cause was opened against Antonio García, the ruling did not undermine his position of authority in the district. He was banished to an African enclave for four years, and his property was used to provide food and healthcare for the girl, but six years later, Antonio was back, soon to be judged again for intimidating his neighbours. In July 1763, when he was 31 years of age, the armourer was sent to the prison of the *corregimiento* in the town Laredo, before being released before the end of the year with only a warning from the tribunal.²⁴

Antonio García was perfectly aware of the space and framework of impunity that his violent temperament had earned him in the valley. He was empowered by his violent nature and perhaps even by the court rulings pronounced against him, and this inhibited those who lived near him and the local institutions from being able to stop him. His neighbours knew him well, and Inés Salas and other vulnerable young girls in the area suffered from his very presence.

Inés Salas was not an isolated example. At the age of nine, Ana Rodríguez suffered a similar attack in a desert area in Zamora in 1697, and a girl of Galician origin called María Nocela had known the same fate in the same place 24 years earlier.²⁵ These abusive patterns of behaviour continued unabated throughout the *Ancien Régime*. Even by the late 18th century, in a rural area of Cantabria, an empowered, well-off peasant called Antonio Bajuelo was known to be “care-free with girls” (*alegre con las mozas*), because he often abused them in the neighbourhood, without anyone, even the judges, being able to stop him. He selected his victims among young maidservants without relatives in the vicinity. Despite having committed several sexual crimes, he was never prosecuted or punished for them.

24 Further details about Inés Salas in MANTECÓN, *Mujeres forzadas*, pp. 157–185.

25 On these two examples from Zamora, see PINAR, *Amores inciertos*, pp. 80–82.

One of his victims was called María de la Maza, a home maid in the same village, who told of her rape in the forest, where “forcefully, he dragged her from her path and covering her mouth he got his wish”. She resisted as much as she could, but Antonio “showed her his jack-knife [near her face] and told her he would kill her if she didn’t give him her body, because even though he had lost his soul he had to satisfy his desires”.²⁶

After this, María became pregnant and lost her job as a maidservant because her master dismissed her. She had to leave the valley and judicial district and had her child in the nearby valley of Cabuérniga, also in northern Spain, Cantabria. Afterwards, the rapist came to her to ask for the child and, later, he left it on the footsteps of the parish church in another valley. María did not say anything about this at the time but finally came forward with her story when several years later the rapist was involved in other cases. She thought that Bajuelo was going to be sentenced and told the judge her story. Despite her testimony and the other crimes committed by Bajuelo, the aggressor was never prosecuted, and nothing more of his story appears in the records. This silence reveals a deeper reality: the ability of a local chieftain to exercise violence with complete impunity both before the judge was aware of it and even after it had been brought to his attention.

These situations were not suffered by all women with the same degree of intensity, although they invariably affected their lives in equal measure. Women in early modern Spain suffered from the above-mentioned risks daily. Many rapes like the one recounted by María left no trace at all in the records, even if every instance was as tragic as the next. The personal vulnerability factors in each case made them dramatic, traumatic, and unique.

A quarter century before the incident involving María Nocela, on a spring day in 1649, the body of a 20-year-old girl called Lorenza Lozana was found hanging in a shed in her home in Mangesos, León, in the north of the Crown of Castile. It is impossible to know what abuses she had suffered at the hands of her uncle, a middle-aged local official of the Inquisition, called Gabriel Temprano.

It was never clarified if the young woman had taken her own life because she could not endure the constant abuse any longer or whether the jealous wife of the local potentate had played a hand in her death. The perpetrator enjoyed judicial privileges (*fuero de inquisición*), which probably contributed to the case being dismissed as suicide. In addition to her everyday home-torment and losing her life, Lorenza was not even buried in sacred ground, and, to this day, her bones remain

26 AHRC, Alfoz de Lloredo, file 92, document 1, f. 705–709.

in an inaccessible, depopulated area.²⁷ In this instance, the perpetrator was also allowed to walk away scot-free.²⁸

These cases cannot be used to illustrate the situation of all women, but they do emphasise the risk at which all of them were in their daily lives. Many of them fit some of the conditions described in this work: vulnerability, dependence, loneliness or weak social ties, minorities, poverty, and lack of family or institutional protection.

When abuse happened so early in life, it increased the risk of new episodes of victimisation and, often, of low self-esteem in addition to the social ostracism suffered by victims: many women working in domestic service ended up on the streets and from there fell into the most abject misery. It must, however, be emphasised that many men did not even spare married women or widows in their violent impulses.

Very frequently, when men acknowledged the murder of another man, women (widows) were left to care for their children and the sustainability of the household and domestic economy of the victim's family. Likewise, their aspirations, requests and demands were widely represented in petitions for pardon, even those coming from the aggressors or murderers of their husbands. Considered by themselves and by the possible minors under their charge, who were also considered victims of the committed crime, their private pardon had an essential value for the convicts to be able to obtain the sovereign's pardon.

The private pardon was needed to obtain the final royal pardon. This offered women a very important negotiation space, which enabled them to reorganise their lives and those of their families. However, all kinds of pressures on these women's wills also played an essential role in negotiating forgiveness on the victim's side. Once again, violence in its most varied forms could be exercised on these women (by the aggressor kin or social clients) to obtain their support for the criminals' pleas for pardon.

27 MANTECÓN, *Mujeres forzadas*, pp. 157–185.

28 As a member of the Holy Spanish Inquisition (*familiar*), Temprano had some judicial privileges and immunity when dealing with ordinary courts. This provided him with an effective tool in peripheral territories. Cases like this can still be found in the 18th century. See TORRES ARCE, *De comisarios*. In earlier times, the effectiveness of this tool was demonstrated through actions that enabled a form of violence difficult to control for judges and local rulers in 17th-century Cantabria. See my book MANTECÓN, *Conflictividad*, pp. 260–271. Also in other Castilian territories, *id.*, *Parentelas y pependencias*.

4. Women and the Pardon Economy

The fact that many women represented the victim's side (other times they were the victim's parents or even guardians of their minor successors) in cases in which the death of their husbands had been confirmed gave these women very important agency in the case resolution process. The records used to analyse the conversations between the different parties and the judicial officials in the courts are very heterogeneous. This is why it is so difficult to draw a comprehensive picture, but a few complete sets of files from each lawsuit suffice to outline common patterns.

During the 17th century, the Chamber of Castile analysed most of these petitions, referring to almost all types of persons of very diverse status and social stratum. The series of pardon appeals *al sacar* (to be considered separately from the Holy Friday pardons or the exceptional royal pardons on the occasion of a particular event) presented before the Chamber of Castile in the seventeenth century offers a rich source of information. Other full collections were processed by other royal councils. In order to obtain a diachronic perspective, the *al sacar* appeals analysed by the Chamber of Castile are here considered in comparison and contrast with data obtained from later homogeneous documentary series, such as those administered by the Department of Grace and Justice between 1760 and 1788.

The array of offences perpetrated by women was dominated by honour-related issues, generally to do with sexual abuse, adultery, concubinage, and prostitution, followed by offences against private property (damages, theft) and contraband. They were also often accused of breaching banishment orders and other sentences. This is not to say that they were never involved in assaults and (accidental or deliberate) homicides, but as far as this type of crime is concerned, their participation was much less common than that of men. Women featured as defendants in pardon appeals five times less often than men in the 17th century and half of that in the 18th century, when they appeared predominantly in cases involving bodily harm, so-called immoral behaviour, property damage, and, exceptionally, homicide in any of its typologies.

An example of what these appeals could mean for the lives of 17th- and 18th-century women can be found in the itinerary of a woman named Francisca Concejo. In 1769, she was barely 28 years old, but she already knew exile from her valley of birth in Cantabria, scrapping a living as a maidservant or perhaps working in inns or taverns in the city of Valladolid in interior Castile.

Table 1 Offences and Crimes Behind Pardon Appeals Castile, 17th–18th Centuries (%)

Crime/Offence	1625	1665	1760–1788
Manslaughter	49.40	45.16	82.47 (accidental homicide) 11.55 (deliberate homicide)
Actual bodily harm	13.20	26.87	-
Concubinage	6.60	-	-
Pimping	3.20	-	-
Sexual harassment	1.00	-	-
Adultery	4.30	-	-
Prostitution	4.30	-	-
Forgery	9.80	8.60	-
Robbery	3.20	-	-
Usury	1.00	-	-
Contraband	1.00	-	-
Contempt	1.00	18.27	-
Breach of exile	1.00	-	-
Escape	1.00	1.10	-
Other offences	-	-	5.98
Total	100.00	100.00	100.00

Sources: General Archive of Simancas (hereafter AGS), Castile Chambre (CC), files 1742–1748, 1908–1912, 1955–1957; also, AGS, Grace and Justice (GJ), sig. 874. Number of pardon appeals taken into account: 91 in 1625, 93 in 1665 and 311 in 1760–1788.

There is no record of her criminal history even in her pardon appeal, handled by the Department of Grace and Justice in 1769, but it is known that she had spent some time in the prison of La Galera in Valladolid after breaching a banishment order imposed when she was found guilty of sexual offences, notably prostitution. Her accusers also referred to her alleged involvement in abortions and infanticide.

It is also unclear how Francisca Concejo, born to a peasant family, had reached Valladolid, hundreds of miles away, where she entered a downward spiral that ended in prostitution by the time she was barely twenty years of age. It is not difficult to imagine Francisca, like many other young women who migrated to interior Castile to earn a living as maidservants, day-labourers, or retailers, suffering some traumatic experience like those described earlier in this article.

Social ostracism could easily be a trigger to take on whoring, which was punished with a fine (a silver mark) and a banishment order, pushing these women one notch deeper into their process of personal degradation. Banished women that arrived at a new destination were naturally presumed to be prostitutes, and this is reflected in

the language used to refer to them and to project many other social prejudices onto so-called dishonourable women.

In many criminal court cases involving women, slanderous words were used against them because of their so-called “bad behaviour” (*mala vida* or *malas costumbres*). This was often due to their lack of social integration, which led to a presumption of misconduct. They were further referred to as “exiled” or “banished” (*desterrada*), “loose” (*perdida*), or, in this specific context, *residenta*. Normally, *residenta* referred to a person who had recently arrived and was not yet fully integrated into the community, unlike a long-term resident (*residente*), but in this context, it applied to women in general. This was a real verbal offence, implying all the negative attributes associated with unknown origins, lack of social references, and social isolation²⁹.

By the time Francisca submitted her pardon appeal, which the king granted in 1769, she had breached her banishment order from Valladolid and was no longer in the jail of *La Galera*. She had also spent time in the women’s prison in Madrid, where she went when the banishment order became effective and she was, it seems, earning a living as well as she could; she was arrested again and freed by the mutineers that rose against the Marquis of Esquilache in the spring of 1766. She took an active part in the riot, joining the mutineers in the streets of Madrid.

It seems plausible to think that all of these circumstances – her young age, her relapses to her “bad habits”, her time in jail, and her participation in the emblematic urban mutiny, which shock Madrid and resonated across the whole of Spain, affecting urban supply and governance – made her case sufficiently important to be addressed (and granted): it was one of the few pardon appeals dealt with by the Department of Grace and Justice that did not involve homicide (barely 6% of the total of 311).³⁰ The pardon she received can be understood in light of her personal circumstances, which portrayed her as a relatively passive figure in shaping her own future and making choices in her best interest. What happened to her and what helped to facilitate the final outcome of her case was not primarily the result of her own will.

Many more women were included in the pardon appeals, but not because they were directly affected or because they were the protagonists in the commission of a crime. This case was unusual. They were much more present on the side of the victims. This was also because they were the victims or because they represented the interests of their deceased husbands or the voices of their mothers and daughters in the defence of their interests damaged by the loss of a male and direct relative responsible for the house or holder of rights that should be judicially protected.

29 On the uses of language against women, see MANTECÓN, *Conflictividad*, pp. 69–83, 245–260.

30 AGS, GJ, sig. 874.

These women played a key role in granting pardons to some of the criminals who had already been convicted or those who were still awaiting sentencing and feared a guilty verdict. This gave these women great influence in overcoming the conflict situation created by the committed crime. This influence was visible both inside and outside the judicial procedure. Once compensation was agreed upon for them and for their minors under guardianship, derived from the damage caused by the crime, they granted their private pardon and that of their represented parties with a notarial act. This was a necessary step before the king's pardon could be awarded.

Therefore, these negotiations were essential to the restoration of peace. Women, despite all the legal and social restrictions they had to overcome, negotiated to grant a private pardon and joined the petition process for the pardon of their husbands' or fathers' aggressors (often guilty of homicide or the greater crimes against persons or property). These negotiations were essential to obtain the king's pardon and often strained the offenders' economic and social resources. In the end, they had to deal with all the compensations they had to pay to the victims' parties while facing the expenses of judicial procedures caused by the whole process of obtaining the pardon.

This use of the justice system by women illustrates the mechanisms in place that allowed for a flexible application of the law, which could lead to acceptable results, that is, it helped with maintaining the social peace and ensuring that the victims were compensated. However, the compensation rarely fully covered the damage caused, even if pardons were considered absolute. The social context of victims and perpetrators either facilitated or undermined negotiations, and it is of great interest to analyse this process of negotiation that involved the parties involved and the justice system in detail.

5. Uses of Justice and Grace

In the previously explained social contexts, people experienced the strict application of the law, although first-instance civil and criminal courts adapted the rulings and sentences to varying social needs, and it was also known that over three-quarters of cases ended without a firm ruling.³¹ In a few cases, the parties explicitly gave

31 On Spain and Latin America, see CASELLI, *Justicias*. On rural and urban patterns in Spain within the European contexts, MANTECÓN, *Conflictividad*, pp. 453–463, also ID., *Patterns of Violence*; Popular culture and the arbitration of disputes: ID., *Northern Spain* and KINGSTON, *Criminal Justice* showed how flexible French courts were at the lower stages beneath the *parlements* level. For European societies, see DINGES, *Uses of Justice*; FRIEDEBURG, *Making of Popular Cultures*; HOFFMANN, *Social Control*; INGRAM, *Charivari*; MANTECÓN, *Social Control from Below*; SCHWERHOFF, *Social Control*; SPIERENBURG, *Social Control*. There is a wide range of research with a local and regional perspective

up their rights, and in other instances, the file was closed by a note from the judge stating that the parties had reached a private agreement.

Most of these agreements were not even recorded. Many were verbal and informal, although they were obtained with the mediators' help. These, frequently close neighbours with good social reputation. Some of the agreements have left notarial acts, private contracts and documents filed by the social institutions that acted as intermediaries, even if the issue at hand involved major crimes – sexual crimes, crimes against honour, slander, theft, and damages – or civil disputes. The longevity of the approaches used by society to overcome conflict speaks volumes about their historical vitality.

The *usos de la justicia*³² is the Spanish term for this array of practices that used the law, the court system, and social status to affect judicial cases and achieve negotiated outcomes. These practices included the communication and negotiation between victims and perpetrators, dialogues that took place both in the court and outside of it, as well as the mediation of justice officials, which were another variable in the operationalisation of the notion of judicial tolerance. The result of each case produced *actions of justice* in which every factor affected the establishment of a new, balanced social coexistence (what was called *peace*).

People's social positions were derived from their social group of origin, bloodline, ethnic group, class, and gender, which all took part in these practices. Other factors further affected the social status of the individual – their position within a household or domestic community, lineage, a faction or a patronage group, a neighbourhood, a professional group, an age group, or a generational or gender-based cultural group – but these were heavily determined by the above-mentioned structural factors.

The uses of justice and its results affected judicial resolutions. This was because if parties withdrew their claims in the first-instance ruling, in the appeals to a higher tribunal, or because of a private agreement between the parties, perhaps with the encouragement of the court, it meant that no firm ruling was given, only the judge's endorsement of the terms of the pact. This shows/reflects a degree of

building on GARNOT, La petite delinquance. Anglo-Saxon and even urban traditions also show flexibilities, as shown, e. g., by Sharpe and Shoemaker, in referential publications. SHARPE, Crime, pp. 21–72; SHOEMAKER, Prosecution. More recently, some of these patterns have been stressed by ANTICHI, Giustizia consuetudinaria; BROGGIO, Pace; CARROLL, Peace-Making; EDIGATI, La pace; MANTECÓN, La acción de justicia. See also MATIKAINEN, LIDMAN, Morality (particularly Lidman's contribution on early modern Bavaria, pp. 85–106).

32 I explained this in MANTECÓN, Meaning and Social Context of Crime, pp. 49–73 (particularly in the fifth paragraph: The uses of justice and social discipline, pp. 24–37). My considerations on *actions of justice* in ID., La acción de justicia. For further developments, see VERMEESCH, HEIJDEN, ZUIJDERDUIN, Uses of Justice.

judicial tolerance, as private pacts did not lead to the closure of cases, only to their suspension in perpetuity.

These private peace agreements (*paces*) were indeed an unorthodox expression of the king's grace, but one that was encouraged by both high and first-instance tribunals. The Crown had full faith in the operation of the justice system, with its combination of an ordinary justice administration complemented by extraordinary grace mechanisms, including ample tolerance for extrajudicial agreements and the occasional social recourse to private clemency and amnesties.

However, we still need to gauge to what extent the common or plebeian people, who were often the protagonists of conflicts that reached the desks of specialised high tribunals, were aware of their role in achieving social peace in their own social contexts. This would involve being cognisant of their social place in terms of gender, family identity, corporation, and community, as well as the deployment of the best strategies to achieve the most harmonious outcomes possible. The strategies used in complex negotiations illustrate the way women involved in difficult lawsuits, and often living in dramatic circumstances, manoeuvred the justice system to achieve the most advantageous outcome for themselves.

Since the acquiescence of the victim was a prerequisite for royal pardons, victims or their representatives used all possible resources to obtain the biggest possible compensation in exchange. However, the records indicate that some pardons were given unconditionally (*apartamiento llano*), while others involved an economic compensation or a social or family agreement of some sort, which often did not fully repair the damage caused. Sometimes, the conditions imposed on perpetrators or their social environments caused additional humiliation to the victims, but also prevented further escalations. This is referred to in the lawsuits as *apartamientos condicionados*. In some instances, the victims even explicitly joined the pardon appeals filed by the aggressors.

Apertamientos llanos typically reveal the will of the parties to restore social peace or feelings of altruism, often encouraged by charismatic neighbours (good men or *hombres buenos*) or religious and political mediators (parish priests, brotherhood officials, local councillors, and procurators). It was not rare for this outcome to be facilitated by the extreme poverty of the aggressors, whose predicament could push their families into utter destitution, or by fear of a disproportionately harsh sentence.

Sometimes, good relations between the families of the victim and the aggressor also facilitated an agreement to avoid the families of perpetrators becoming collateral damage and thus prevent "a greater evil". In almost all cases, however, measures were imposed to keep the aggressors and victims and their families sepa-

rate, sometimes involving formal banishment orders that could only be rescinded by those who represented the voice of the victims.³³

Unconditional pardons were frequent in cases of theft, with or without home invasions, especially when the defendants were slaves or domestic servants. In theory, these offences were punished with forced and unpaid labour in the king's galleys. But the poverty of defendants and the collateral damage that punishments could cause for their families often encouraged the victims to grant their pardon, perhaps following the restitution of the value of the stolen property.

The circumstances in which the offence had been committed could also affect unconditional pardons: gambling, drunkenness, naivety, the bad influence of third parties, or any other factor which could be argued to have obscured the perpetrator's judgement and inspired a degree of indulgence in some victims.

Generally, unconditional pardons were inspired by these sorts of feelings as well as a degree of reciprocal empathy between the parties and shared notions of the commonwealth. However, the same outcome could be achieved by totally different means when victims were intimidated into agreeing with the pardon appeal, but these instances of renewed victimisation left the least trace in the records. In such agreements, social pressure mechanisms as well as a party's capacity for coercion and intimidation over the other to agree to a pact were a real tool to avoid even the worst – and sometimes fatal – results. In any case, conditional private pardons (*apartamientos condicionados*) were the most common type of pardons, emphasising negotiation according to the practices examined above and giving full meaning to the idea of *acts of justice* when the outcome was accepted at both social and institutional levels.

6. Women's Pardons

In early August 1623, María García, a young woman from the town of Huete in Cuenca, accepted 2,100 *reales* from her neighbour and brother-in-law, Gabriel Beltrán, who had killed María's husband in a brawl four months earlier. Gabriel was awarded his official pardon a little later, in the spring of 1625.³⁴ In this case, the family relations between the parties certainly facilitated an agreement. The monetary compensation was considered a new dowry for María to marry again if she so wished. This is one instance in which the documents recording the clauses of the agreement, often comprising monetary reparations and other conditions, non-

33 In addition to this see MANTECÓN, *Las mujeres*; PREMO, *Before the Law*.

34 AGS, CC, sig. 1743, doc. 13.

aggression pacts to avoid future vendettas, etc., have survived. Generally, more complicated circumstances led to more difficult negotiations between the parties.

A young Galician woman called Catalina de Mazcarelle, from Coto da Pena, Lugo (Galicia), expressed many of her concerns in the document that she filed in favour of her father and brothers-in-law, who had publicly killed her husband during a religious festival (*romería*). Catalina granted her private pardon in exchange for an unspecified amount of money and certain promises from the aggressors. She also did it because “lawsuits have uncertain endings” and are a source of “nuisance and ill feelings”. She wanted to secure the future of her family and children. She said her pardon was given “because they are all uncles and cousins to one another; so that the friendship that always existed may continue”. She pardoned the perpetrators “at the behest of principal and good people that interceded”. She believed she was helping to restore public peace.³⁵ It is likely she was afraid of being isolated in her community because of her in-laws’ violent history in the same neighbourhood in which she lived with children.

In the end, José da Pena, Catalina’s father-in-law and the person responsible for the death of his own son, who had demanded him to pay a debt as administrator of a local brotherhood, gave her child support for his grandchildren and a house with a stable and a cart and paid a number of debts incurred by Catalina in the years before the incident. Catalina then withdrew her claims and joined the pardon appeal filed by the aggressors, absolving them of blame. In the appeal, she even wrote that her husband’s death had been “her husband’s fault and not theirs” and that the witnesses who spoke against them in the criminal proceedings “were their sworn enemies, among other flaws”.³⁶ These expressions were a product of the adversaries’ ability to produce an extremely effective environmental social pressure on this girl.

Far from Galicia, in the heart of urban Madrid, the wife of a man named Pedro Lozano likely experienced social pressure very different from Catalina Mazcarelle. In 1629, she granted a pardon in her name and that of her minor son to Hernando López de Arroyo, a silk weaver who had killed her husband, Pedro, during a drunken tavern brawl. She pardoned the murderer because “it is better for me and my son”, because “by order of said Hernando López Arroyo, my son is being taught to read and his trade”, “and he is succouring me in my need”. Ostensibly, the pardon was granted unconditionally, but in reality, the killer had become the protector of the victim’s family, who were in dire need after Pedro Lozano’s death.

These kinds of situations, rooted in poverty, often left women with little ability to negotiate with violent men whose actions led to tragic outcomes. Maidservants,

35 AGS, CC, sig. 1776, doc. 29, f. 39–48.

36 Ibid., f. 42–48.

day labourers, or the wives of peasants or small craftsmen with children were particularly vulnerable and frequently became easy targets for private arrangements that seldom served their interests. For instance, this can be seen in the unconditional pardon granted by a young girl from the town of Trujillo, Extremadura. Ana González had been serving in the house of the miller Antón Sánchez for a month. She worked in the mill, overlooking the grinding of grain and also handled domestic tasks in the house. From the day she arrived, the miller's son tried to persuade her to leave, suspicious that their father had a special interest in her.

After a few weeks, she decided to heed their advice, but when she left, they followed her. After they had caught up with her, they pulled her away from the path and beat her up badly. Despite her pleas "not to be marked", one of the two brothers, Pedro Sanchez, took out a knife and cut her face, accusing her of having seduced their father. The mark aimed not only to deform her but also to do so in a way that made her alleged moral laxity obvious to everyone, just as if she had been marked and banished for prostitution. His aim was for her to carry that prejudice wherever she went thereafter.³⁷

After this, she was so terrified that she refused to file any reports against them, granting an unconditional pardon that spared the main aggressor, Pedro Sánchez, the eight-year forced military service in the fort of Mamora (Mehdya) in northern Morocco, to which he had been sentenced by the first-instance court. This sentence was commuted to a four-year term by the higher court of the Chancillería of Granada, although he was ultimately fully cleared with the pardon granted in 1635.

Some arrangements revealed a much closer relationship between victims and aggressors, which could lead to the latter offering support to the former thereafter, or, conversely, to deepened enmity. A woman from Ciudad Rodrigo, mother of the university graduate Pedro Álvarez, killed in a duel in 1621, pardoned his murderer on the sole condition that he marry the victim's sister.³⁸ Such intimate ties become particularly poignant in cases of uxoricide, where familial obligations, along with the circumstances and context of the crime, could either facilitate or entirely prevent the granting of a pardon.

In the Castilian town of Pobladora, near Benavente in interior Castile, the wife of the local peasant Bartolomé López was having an affair with one of the town's three priests. In 1630, the couple lived in poverty and had three young children. One day, as they sat at the table arguing over food, the tensions in their marriage finally came to a head. She stood up, and when she turned around, he stabbed her in the buttocks. She bled to death despite the best efforts of the surgeon called by her husband. Even before a ruling was issued, Bartolomé López had been pardoned

37 AGS, CC, sig. 1812, doc. 15.

38 AGS, CC, sig. 1747, doc. 9.

by the legal representatives (*curadores*) of his three children.³⁹ In this case, what proved decisive in securing both the victim's pardon and, ultimately, the king's pardon was the vulnerable position the children would have been left in if their father had been condemned to death and executed.

He was granted a royal pardon upon payment of a 100-ducat fine to the Chamber of Castile, which was more or less the equivalent of a good dowry for a peasant girl at the time and a very modest sum for securing grace in a homicide case. His decision to call a surgeon may have been interpreted as evidence that the death was accidental, without minimising the seriousness of his actions. Her infidelity could also have been considered an extenuating circumstance, since Castilian law granted husbands the right to punish wives caught in the act of adultery (*in flagrante delicto*).

Another poor Castilian husband, Pedro de Botija, was pardoned in the same year, based on the application of the same argument. On 22 August 1623, he found his wife, María Torres, and her lover, Miguel Palacios, from the same town of Paredes, "one on top of another". He entered the house unnoticed by the lovers and killed them on the spot. The father of Miguel Palacios and the wife's closest relatives, her aunt Catalina Torres and her uncles Vicente and Juan Rojo, pardoned Pedro unconditionally based on his limited means to pay any potential compensation for the tragic deaths.⁴⁰ The argument for the final pardon rested on the notion of 'hot blood', in cases where a man directly witnessed the adulterous act between his wife and her lover.

The circumstances surrounding this crime of passion were addressed in the Laws of Toro of 1505, which were rooted in the Roman Law tradition as conveyed by Alphonse X's *Partidas*. These laws recognised the legitimate right of a husband to act as Pedro had done, and this must have played a part in the ease with which his pardon was granted. Such examples highlight the numerous factors that could influence the negotiation of private pacts that must precede royal pardons, which ultimately aimed to compensate the victims and restore social order and peace.

7. Conclusion: Actions of Justice & Women's Agency

A good understanding of the internal logic and the implementation of mechanisms of grace and justice in the Hispanic monarchy requires the joint analysis of juridical doctrines, political treatises, positive law, and the social practices surrounding justice and grace. This includes a wide array of practices employed by subjects,

39 AGS, CC, sig. 1776, doc. 18, ff. 3–3 vº and 64.

40 AGS, CC, sig. 1778, doc. 1, ff. 6, 62–64.

shaped by their gender and social status, within various social contexts. These factors are essential variables for any rigorous study of the participation of all social classes, especially the common people, in conflict resolution and the restoration of social peace in a traditional society.

Despite the limitations imposed by entrenched power relations and deep gender-based inequality, which offered women only a narrow path for personal development, they were often forced, like men, to navigate every step of the judicial process. They confronted their counterparts in negotiations, both within the court system and outside of it, seeking extra-judicial agreements to resolve conflicts through arbitration or by invoking royal grace.

The restoration of social equilibrium to overcome a criminal conflict, through whatever combination of means necessary, reflected a shared aspiration of both the justice system and society in general: to restore peace. This was the only way to fulfil all the *actions of justice*, each with its own complexity.

The information used in this work is primarily judicial in nature: criminal cases, lawsuits, and pardon appeals. The study of these sources sheds light on the behaviour of these women and various forms of *female awareness*, expressed through their *agency* in intervening in the process of restoring public peace, despite the structural limitations they faced. Their actions often overcame the explicit rigour of convention and the rigidity of a legal framework that treated all women as minors under male guardianship (fathers, husbands, legal representatives), stripping them of the right to represent themselves in court, although tribunals held a degree of discretion in this regard.

The fact that royal pardons needed the acquiescence of the victims gave them a very important tool to protect themselves. For the Crown, it was a key mechanism to prevent conflicts from escalating into blood feuds, revenge, and *vendettas*. Each negotiation undertaken to secure a pardon reflected the tension but also the complementarity, between public/royal and private justice, expressed in a wide variety of practices.

This turned every criminal action into a *case* in which mothers, widows, and lone women had significant leverage to defend their own interests and rights, which, in other contexts, were undermined by their limited support networks and scarce means. In some instances, intimidation and social pressure could be extremely harsh and lead to tragic outcomes. Negotiations to achieve *actions of justice* frequently involved the social/support network of victims (family, lineage, faction, charismatic local figures). The need for the victim's endorsement gave women and their social environment an important role in the construction of justice.

Depending on the circumstances and the utilised tools, victims could be offered compensation or be presented with various alternatives to pursue their interests. This was essential for women who were left alone, without assets and in charge of

minors or elderly or disabled relatives. The deeper these women's roots were in their social contexts, the more actively they could participate in restoring social peace. In contrast, women who had experienced personal degradation had fewer social levers to pull, and this often affected their health and determination.

The *action of justice*, in short, was often less satisfactory for female victims than it could have been through a rigorous judicial resolution, even if the goal of restoring social peace was ultimately achieved. However, the strict adherence to the law could also result in a less stable outcome if it lacked the social consent necessary to keep the parties calm and cooperative.

Women's pursuit of justice combined different *ad hoc* strategies, shaped by the specific circumstances and settings of each conflict. Their behaviour and their judicial and extra-judicial strategies reveal both a self-awareness and a culturally informed sense of fairness. These women demonstrated a good understanding of their capabilities and limitations (*legal conscientiousness*) that allowed them to find meaningful margins of freedom in a society where their ability to make decisions was severely curtailed, both socially and legally. To fully grasp the production and complexity of justice in traditional societies such as *Ancien Régime* Europe, it is essential to consider both gender-based restrictions women faced and the forms of empowerment they exercised in everyday life.

Behaviour expresses values and, insofar as those values are shared and transmitted, also reflects forms of culture, in this case, ideas about what was intolerable and what could be tolerated, the strength or fragility of social bonds, prevailing prejudices and conventions, recognised or illicit power, and the methods available to repair abuses, aggressions, offences, and crimes. This culture, shaped through the uses of justice and the pursuit of peace in *Ancien Régime* Hispanic societies, was a socially participatory one, encompassing all levels of society. Within it, the *agency* exercised by women from all walks of life was key to the formation of protective structures capable of addressing and repairing the harm they suffered.

The counterpart to this agency was their resilience in the face of tense situations and, sometimes, long negotiations between parties, a toll paid in exchange for the empowerment that granted them some space to assert themselves. This was never easy. The cases described in this study were often dramatic, and many victims never fully achieved their goals. Still, the first step in securing their rights was to defend them wherever possible, whether in formal courts of justice or extra-judicial arenas – both key vehicles through which justice operated and through which their rights were gradually formed.

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