

**Disorderly Love: Illicit Friendships, Violence, and Law
in a Slave Society at War, Popayán-Colombia, 1809-1830**

by

Ángela Pérez-Villa

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Doctoral Committee:

Professor Sueann Caulfield, Chair

Professor Rosario Ceballo

Lecturer IV Raymond McDaniel

Assistant Professor, Edgardo Pérez Morales, University of Southern California

Professor Rebecca J. Scott

Ángela Pérez-Villa
pangela@umich.edu

ORCID iD: 0000-0003-1799-7997

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DEDICATION

To my grandmother, Rosa Arabia

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While the completion of this dissertation represents the beginning of a new chapter in my professional career, it is also the culmination of my long journey as an immigrant student in the United States. I entered the American public education system in NYC as an undocumented, English-learner teenage immigrant from Colombia. My family gained legal permanent status through an employment-based sponsorship program soon after I graduated from The International High School at LaGuardia Community College in Queens. As a high school student, I was able to take college credits through CUNY's Early College Program, graduating both with a high school diploma and an Associate's Degree. A green card holder, I transferred to The City College of New York (CCNY), where the Mellon Mays Undergraduate Fellowship Program (MMUF) helped prepare me for graduate school. I became a naturalized citizen of this country a year before I successfully advanced to candidacy in the joint Ph.D. program in History and Women's Studies at the University of Michigan. Becoming a citizen allowed me, in part, to leave the U.S. for an extended period of time to conduct the research that sustains this dissertation.

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LIST OF ABBREVIATIONS

ACC	Archivo Central del Cauca – Popayán, Colombia
AGI	Archivo General de Indias – Seville, Spain
AGN	Archivo General de la Nación – Bogotá, Colombia
AHCR	Archivo Histórico Cirpiano Rodríguez Santa María – Bogotá, Colombia
BLAA	Biblioteca Luis Ángel Arango – Bogotá, Colombia
WSCL	Louis R. Wilson Special Collections Library – Chapel Hill, North Carolina, U.S.

ABSTRACT

Disorderly Love: Illicit Friendships, Violence, and Law
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by

Ángela Pérez-Villa

Chair: Dr. Sueann Caulfield

This dissertation studies the Province of Popayán –a major slave-trading center in the northern Andes– as colonial Colombia became an independent state between 1809 and 1830. During this period, Popayán became a crucial war site in which political and military factions competed over power, legitimacy, and wealth. By shifting the focus from the battlefields to the private and judicial spheres, *Disorderly Love* demonstrates that political power and legal practice in Popayán were disputed and reconfigured locally on the terrains of family, sexuality, and gender. An analysis of fragmented stories about family dynamics and conflicts contained in Popayán’s rich judicial records about honor-based violence against women and what colonial authorities called “illicit friendships” (concubinage, adultery, and incestuous relations) suggests that the moral policing of poor and mixed-race men and women across the province was central to the strategies of political elite factions to establish legitimacy and legal authorities to enforce the law. Along these lines, *Disorderly Love* shows how political transformations brought about by independence modified authorities’ understandings of the public and private realms as well as the role of the Catholic Church in legal matters. Although these changes deepened ideological differences among political elites, it was poor people, particularly women, who were severely

impacted by legal decisions that reinforced colonial patriarchal values and unequal power relations.

Beyond centering poor people's life experiences in the narratives about Independence, this dissertation also contributes to the field of legal history by showing how Colombia's legal system was built from case law. Paying attention to the ways that authorities at different hierarchical levels carried out legal procedures in criminal cases helps to shed light on the confusion and tensions surrounding the adequate use of the law in matters involving family, sexuality, and violence during a revolutionary period. Common men and women were at the center of these tensions as they interacted with legal officials as witnesses and litigants. In spite of uneven social relations, these men and women fought within the legal system to defend their interests, their family members, and/or their own personal honor. By analyzing this gamesmanship of the judicial space, *Disorderly Love* reveals how the intersection of identities and the contrasting elite and popular visions about morality and truth shaped Colombia's lawmaking process, a process that was simultaneously developed from the ground up and altered by large-scale decisions and events.

CHAPTER 1

INTRODUCTION

On January 19, 1823, the newspaper *The Matchstick (El Fósforo)* made its first appearance in the city of Popayán in southwestern Colombia. It had been four years since the official end of the wars of independence and the newspaper targeted a select group of local readers who could pay weekly subscriptions to access political news from the region, opinions, and advertisements. In the newspaper's first issue, the editors celebrated the return of peace, which came accompanied by independence from Spain. In the editor's view, this newly acquired freedom meant that Popayán could "raise itself up again from the debris to which it had been reduced" during the war.

This image of a Popayán in ruins slowly getting back on its feet does not merely reflect a common view among cultured elites of the time period, who conjured images of destruction and glorious resilience in personal letters, newspaper articles, and historical accounts. These images also speak to the newspaper's silence on questions that have been central in my approach to the history of this period. For example, what are other images that we can enlarge in order to deepen our understanding of a society in the midst of transformative political change? Because I am particularly interested in images that focus less on the heroes of independence and more on the lives of poor people, what might the judicial archive tell us about the kinds of activities and/or conflicts that shaped the daily life interactions of poor women and men who lived through the war? What was the relationship of these social groups both with acquaintances and with authorities during and after the war?

To address these questions, I turn to the judicial archive. During the war, the judicial system remained active in Popayán, but criminal trials did not take place in a courtroom. Throughout the colonial period and during the wars of independence, a notary (*escribano*) moved from offices to prison cells gathering evidence, taking statements, delivering updates, and announcing sentences to judges, lawyers, and litigants. *Escribanos* then compiled all the information they gathered into single case files that today enable us to access the rich intricacies of legal practice during the period under examination. In reconstructing the pieces of what I call imagined courtrooms, I pay attention to poor, mixed-race litigants and their detailed descriptions of everyday life episodes that marked their existence and brought them into contact with the legal system.

I argue that this approach opens a window into social and cultural life during and after the war that reveals the socialization practices of common people both in the public and private spheres. However, this approach introduces larger questions about the challenges of writing history from below at a time when group categories and legal statuses were both unstable and uncertain. First, litigants' color and caste (*calidad y condición*) were not always explicitly revealed by the legal authorities engaged in the transcription of documents. This means that although most of the legal documents examined in this dissertation contain formulaic language, the descriptive details of litigants is not always consistent. There are cases in which litigants are identified, for instance, as freed or enslaved black people from the start. There are other cases, however, in which authorities only make reference to litigants' places of origin and the threats that they could potentially pose both to the independence and republican projects. This normally suggested that authorities looked with suspicion at litigants who came from areas known for displaying strong royalist sympathies. In the Province of Popayán, those areas were

predominantly populated by indigenous and afro-descendant communities. For these reasons, paying attention to other details such as what authorities say about litigants' confiscation of assets, their working environments, and even the diction in witness testimony becomes crucial to get a sense of litigants' material worlds.

Disorderly Love demonstrates how during the wars of independence, political power in southwestern Colombia was disputed and reconfigured locally on the terrains of family and gender. By shifting the focus from the battlefields to the private and judicial spheres, this dissertation demonstrates that asserting moral authority over poor mixed-race families (many of them black and mulatto) was central to the efforts of competing elite factions to establish political legitimacy and control. It also sheds light on the ways that members of these families responded to competing political and moral agendas, whether by resisting elite control or maneuvering to use the system to their own purposes. Overall, my analysis illuminates the subtle (and not-so-subtle) ways gender and patriarchy continued to shape social relations of power at a critical historical turning point from Spanish colony to independent state. In this way, this dissertation shows how patriarchy helped to guarantee the survival of social hierarchy and power although reconfigured in important ways.

Historiography and Conceptual Approach

In 1995, social historian Pablo Rodríguez bemoaned the “occasional, anecdotal, or decorative” appearance of women in the history of colonial Colombia.¹ He exhorted historians to move past the brief and general descriptions of women by critically examining their roles within colonial socio-economic structures. Shortly after Rodríguez's observations, several scholars

¹ Pablo Rodríguez, “El mundo colonial y las mujeres” in *Las mujeres en la historia de Colombia*. Vol. 2, edited by Magdala Velásquez Toro, 72-102 (Bogotá: Editorial Norma, 1995), 73.

published work both in Spanish and English that explored themes like marriage, illegitimacy, female-headed households, and sexual violence, all contributing to our understanding of urban family life during the colonial period.² In the last ten years, this body of scholarship has experienced a surge in publications in the context of the bicentennial of Colombia's independence, which inspired work on elite colonial women's participation in the wars of independence, women's sexual and legal agency, domestic violence, and family formation practices.³

The recent work of emerging scholars stands out among the studies that have contributed significantly to the field. That recent work shows, for example, a commitment to methodological practices that expand the analytical scope. Ana Serrano Galvis, for example, pushes for creative

² For example: Guiomar Dueñas, *Los hijos del pecado* (Bogotá: Universidad Nacional, 1997); Rebecca Earl, "Rape and the Anxious Republic. Revolutionary Colombia, 1810-1830" in *Hidden Histories of Gender and the State in Latin America*, edited by Elizabeth Dore and Maxine Molyneux, 127-46 (Durham: Duke University Press, 2000); María Teresa Pérez, "Las mujeres caucanas, de la Colonia a la República" in *Territorios Posibles: historia, geografía y cultura del Cauca*, edited by Guido Barona Becerra, 219-235, (Popayán: Universidad del Cauca, 2001), "Prácticas y representaciones en torno a la familia, el género y la raza. Popayán en 1807" *Convergencia* 37 (2005): 217-245.

³ For example, Mabel Paola López Jerez, *Las conyugicidas de la Nueva Granada. Transgresión de un viejo ideal de la mujer, 1780-1830* (Bogotá: Pontificia Universidad Javeriana, 2012); Catalina Villegas del Castillo, *Del hogar a los juzgados: Reclamos familiares en los juzgados superiores en el tránsito de la colonia a la república, 1800-1850* (Bogotá: Universidad de los Andes, 2006); Martha Lux, *Mujeres patriotas y realistas entre dos órdenes. Discursos, estrategias y tácticas en la guerra, la política y el comercio. Nueva Granada, 1790-1830* (Bogotá: Universidad de los Andes, 2014), "Las mujeres de la Independencia en la Nueva Granada: Acciones y contribuciones" in *Historia que no cesa. La Independencia de Colombia, 1780-1830*, edited by Pablo Rodríguez, 163-176 (Bogotá: Universidad del Rosario, 2010); Pablo Rodríguez, "Las mujeres en la independencia de Colombia" *Revista Credencial Historia* 247 (2010); Judith González, "Representaciones de las mujeres en la Independencia desde la historiografía colombiana" *Historiela* 3, no. 5 (2011): 169-90; Ana Serrano Galvis, "El mito de la escasez de fuentes y el retorno a los archivos. Retos y posibilidades de las fuentes de archivo para el estudio de las Mujeres en la Independencia de la Nueva Granada, Colombia" in *Primer Congreso Internacional Las mujeres en los procesos de Independencia de América Latina*, edited by Sara Beatriz Guardia, 89-100, (Lima: CEMHAL, 2014).

approaches in the search for women in the Colombian archives and promotes the critical reading of sources where women and gender dynamics might seem initially absent. Judith González, for her part, stresses the importance of reconstructing a history of women during Independence that engages critically with questions of race, class, state power, and law.

My work shares that commitment in its motivation to find and study poor, mixed-race men and women who lived through the wars in early nineteenth-century Popayán. Recuperating their stories from the archive is critical both for the growing body of literature on women's history in Colombia and for a more comprehensive understanding of the social and cultural dimensions of Independence. The examination of their stories, together with other sources, can demonstrate how daily life events that were gendered and racialized had a fundamental impact on elite and popular understandings of family, morality, and freedom during the transition from colony to independent state in Popayán.

My dissertation is, thus, in conversation with social historians of the Colombian southwest whose examination of slave inventories, wills, and war reports have shed light on the family structures and labor practices of the enslaved and freed populations.⁴ It builds on these themes by delving into criminal disputes involving poor, mixed-race men and women. An analysis of such disputes reveals how expectations regarding social hierarchy were contested and remade both by litigants and legal authorities. In doing so, this dissertation interrogates the subtle (and not so subtle) ways that gender emerges from such legal transactions and shapes social relations of power.

⁴ Mario Diego Romero, *Poblamiento y sociedad en el pacífico colombiano. Siglos XVI al XVIII* (Cali: Universidad del Valle, 1995); Óscar Almario, "Los negros en la independencia de la Nueva Granada" in *Indios, negros y mestizos en la Independencia*, edited by Heraclio Bonilla, 20-47 (Bogotá: Editorial Planeta, 2010); Germán Colmenares, *Historia Económica y Social de Colombia. Popayán, una sociedad esclavista, 1680-1800* (Bogotá: Tercer Mundo, 1997).

My approach has been largely informed by the extensive literature on women and gender in Latin America produced in the U.S., Cuba, Brazil, and Peru. In particular, the literature on family that moved from demographic analysis to qualitative interpretation of seemingly disparate historical records provides excellent interpretative models and methodologies to reconstruct the social worlds of enslaved and freed people of African descent.⁵ In this body of scholarship, we find rich portraits of men and women navigating the intricate sociopolitical structures that defined their time. Through record linkage, scholars have been able to pay attention to the intersection of socially constructed categories and its implications for poor people's aspirations and relationship with the state. Similarly, works on gender in Latin America's national period have also provided models to understand the changing meanings of moral values such as honor and virtue.⁶ These studies have highlighted, through their close readings of court records, how discourses about morality as well as about masculinity and femininity were at the center of

⁵ Sandra Lauderdale Graham, *Caetana Says No. Women's Stories from A Brazilian Slave Society* (New York: Cambridge University Press, 2002); Christine Hünefeldt, *Paying the Price of Freedom: Family and Labor among Lima's Slaves 1800-1854* (Berkeley: University of California Press, 1994); Robert W. Slenes, *Na senzala, uma flor: Esperanças e recordações na formação da família escrava - Brasil sudeste, século XIX* (Rio de Janeiro: Editora Nova Fronteira, 1999); Aisnara Perera Díaz and María de los Ángeles Meriño Fuentes, *Esclavitud, familia y parroquia en Cuba: Otra mirada desde la microhistoria* (Santiago de Cuba: Oriental Ediciones, 2008); Camillia Cowling, *Conceiving Freedom. Women of Color, Gender, and the Abolition of Slavery in Havana and Rio de Janeiro* (Chapel Hill: University of North Carolina Press, 2013); Hebe Mattos, *Das cores do silêncio: os significados da liberdade no Sudeste escravista, Brasil século XIX* (Rio de Janeiro: Nova Fronteira, 1998).

⁶ Sueann Caulfield, *In Defense of Honor: Morality, Modernity, and Nation in Early-Twentieth Century Brazil* (Durham: Duke University Press, 2000); Sarah C. Chambers, *From Subjects to Citizens: Honor, Gender, and Politics in Arequipa, Peru, 1780-1854* (University Park: Pennsylvania State University Press, 1999); Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University, 1999); Arlene Díaz, *Female Citizens, Patriarch, and the Law in Caracas, Venezuela, 1786-1904* (Lincoln: The University of Nebraska Press, 2004).

national projects. My work draws on this literature to make sense of the legal changes that came with Independence and their impact on elite and popular understandings of law and social order.

Popayán, “the White City of Colombia”

Today, the city of Popayán is known as “the white city of Colombia” (*la ciudad blanca de Colombia*.) The city’s inhabitants explain that the nickname makes reference to Popayán’s colonial architectural style. Most houses in the city’s historic center, particularly those around the main plaza or *Parque Caldas*, all have white façades. The plaza was named after Francisco José de Caldas, a member of the educated elite from Popayán who held various leadership positions during the wars of independence. Among his many talents, Caldas was a self-taught naturalist. When the Prussian naturalist Alexander von Humboldt visited modern-day Colombia at the beginning of the nineteenth century, Caldas accompanied him on several scientific expeditions. The two men cultivated a relationship and exchanged correspondence for years. Caldas often shared with his friends some details about his correspondence with Humboldt. In March 1802, for instance, Caldas wrote to one of his closest friends (and key historical actor in this dissertation) Don Santiago Arroyo. Don Santiago belonged to a wealthy family from Popayán and had built a career as a prominent lawyer and public servant. With pride, Caldas transcribed what Humboldt had supposedly written about Popayán and about Don Santiago’s distinguished family:

He told me in honor of the beautiful Popayán that [the city] has the most enchanting sky, that its fields are gardens, that nowhere in America had he found people who were so well educated or wished to become so [...] *How*

*kind is the Arroyo family! Every member [he] met, both in Santa Fe and Popayán, was kind.*⁷

During the colonial period, the Province of Popayán was a vast region in the Colombian southwest encompassing the Pacific lowlands, the Andean highlands, and part of the Amazon plains and jungles.⁸ The city of Popayán, built between the western and central Andean mountain ranges, was the province's administrative capital as well as the second major slave-trading center in colonial Colombia after the port city of Cartagena. Groups of African slaves arrived from current-day Panama and Cartagena to the Popayán slave market, often through contraband transactions, to be sold to the mining districts in the Pacific coast and in the markets in present-day Ecuador.⁹

The slave market largely defined the social and political characteristics of both the city and the province of Popayán. From the late seventeenth to the late eighteenth century, the city was an important meeting point for elite miners and merchants who conducted business, engaged in

⁷ Francisco José de Caldas, "Amadísimo Santiago, March 21, 1802," in *El repertorio Colombiano*, ed. Carlos Martínez Silva, Vol. 17 (Bogotá: Imprenta de la Luz, 1898), 277. "Solo me dijo en honor de Popayán, que es la más bella situación, que su cielo es encantador, que sus campos son unos jardines, que en ninguna parte de América había hallado más número de gentes instruidas y que deseasen instruirse [...] ¡Qué amable es la familia de Arroyos! Todos, así los que conocí en Santafé como en Popayán, están formados bajo un mismo modelo, amables todos." His emphasis.

⁸ For a study of the complex geography and natural landscape in colonial Colombia, see Edgardo Pérez Morales, *La obra de Dios y el trabajo del hombre. Percepción y transformación de la naturaleza en el virreinato del Nuevo Reino de Granada* (Medellín: Centro de Publicaciones – Universidad Nacional de Colombia Sede Medellín, 2011).

⁹ By the 1730s, the Colombian Pacific corridor, which stretched from current-day southern Panama to northern Ecuador, had been fully integrated into the world economy through intensive gold mining and the massive importation of African slaves. Interestingly, however, unlike the major mining zones in Peru, Mexico, and Brazil, the mining districts of Colombia remained underdeveloped and largely unpopulated because of their "inhospitable" location. Travelers and investors of the period often described the Pacific lowlands as a hot and humid forest area where only the black population could survive its hostility.

political matters, and invested in the Pacific gold mining industry.¹⁰ As absentee mine owners and/or *encomenderos*, elites lived comfortable lifestyles in the city of Popayán often by hiring poor Spanish immigrants to oversee their mines in the Pacific, relying on the work of domestic slaves, and demanding food as tribute from Indians.¹¹ Strategic marriage alliances between well off Spaniards and Creoles in the city of Popayán formed the basis for a vibrant elite society that was educated, Catholic, and deeply committed to the preservation of the institution of slavery.¹² Both Caldas and Don Santiago belonged to these type of families.

In the late eighteenth century, however, the economic structures that supported this elite society began to crumble with the severe decline in gold production. The depletion and growing abandonment of gold mines in the Pacific lowlands not only resulted in losses for the miners, but also in the gradual collapse of *hacienda* production, which provided food supplies to the mines.¹³ Scholars have linked the dramatically low levels of gold mine and *hacienda* production to high slave manumission rates from the 1750s to the 1820s, particularly of enslaved women,

¹⁰ See Germán Colmenares, *Historia económica y social de Colombia II - Popayán: una sociedad esclavista, 1680-1800* (Bogotá: Tercer Mundo Editores, 1997); Sherwin Bryant, "Finding Gold, Forming Slavery: The Creation of a Classic Slave Society, Popayán, 1600-1700," *The Americas* 63 (2006): 81-112; Robert C. West, *Colonial Placer Mining in Colombia* (Baton Rouge: Louisiana State University Press, 1952); Ann Twinam, *Miners, Merchants, and Farmers in Colonial Colombia* (Austin: University of Texas Press, 1982).

¹¹ See Germán Colmenares. *La Independencia. Ensayos de historia social* (Bogotá: Instituto Colombiano de Cultura, 1986).

¹² See Colmenares, *Historia económica y social*, chaps. 10 and 14.

¹³ Scholars have explained the co-dependency between the mines and the *haciendas* through the flows of investment capital, food and tools, and gold mining and how they complemented each other. In this way, the distinctive aspects of the urban and the rural worked together to sustain the institution of slavery in the region and, along with it, the defining racial and class hierarchies that people of the time conceived and assigned to spatial boundaries.

throughout the province.¹⁴ Throughout the war years (1810-1819), this socioeconomic situation deepened with the recruitment of slaves into militias. Troops' demands for soldiers, food, and ammunition severely impacted slaveholding family's properties, savings, and budgets. The economic crisis during and after the war was so serious that one man writing in 1822 explained, "it is evident that everyone is in a [difficult economic] situation. Anyone who has access to money keeps it away even from the sun."¹⁵ It is in this context of war and ruin that this dissertation is situated.

In addition to the city of Popayán, a number of other cities and towns within the province appear in my case analyses throughout this dissertation. The city of Pasto and the Patía in the southern part of the province became critical grounds for royalist mobilization during the wars and, as such, figure prominently in the documentation. In the northern part of the province, the towns of Caloto, Quilichao, Cartago, and Buga were part of a confederation that supported the autonomist projects that eventually led to independence from Spain. Located at the center of the province, the city of Popayán was surrounded by towns that included El Tambo, El Timbio and

¹⁴ See Colmenares, *Historia económica y social*; William F. Sharp, *Slavery on the Spanish Frontier: The Colombian Chocó, 1680-1810* (Norman: University of Oklahoma Press, 1976); David L. Chandler, "Family Bonds and the Bondsman: The Slave Family in Colonial Colombia" *Latin American Research Review* 16:2 (1981): 107-131. Sergio Mosquera, "Los procesos de manumisión en las provincias del Chocó" in *Afrodescendientes en las Américas: trayectorias sociales e identitarias – 150 años de la abolición de la esclavitud en Colombia*, ed. Claudia Mosquera (Bogotá: Universidad Nacional de Colombia, 2002): 99-119; Orián Jiménez Meneses, "El Chocó: libertad y poblamiento 1750-1850" in *Afrodescendientes en las Américas: trayectorias sociales e identitarias – 150 años de la abolición de la esclavitud en Colombia*, ed. Claudia Mosquera (Bogotá: Universidad Nacional de Colombia, 2002): 121-141; Mario Diego Romero, *Poblamiento y sociedad en el pacífico colombiano. Siglos XVI al XVIII* (Cali: Universidad del Valle, 1995).

¹⁵ "Carta a Marcelino Hurtado, June 19, 1822," The Louis Round Wilson Special Collections Library at The University of North Carolina at Chapel Hill (hereafter WSCL), Popayán Papers Collection (No.:11500), Box 13, Folder 142, doc. without page numbers. "Es evidente la situación en que están todos, y si alguno tiene dinero lo procura guardar sin que lo vea el sol."

Almaguer (see Figure 1). I make reference to these cities and towns when describing relevant political events and when legal authorities from each of those localities forwarded criminal cases to the province's capital for review and approval.

Sources and Methods

I have conducted dissertation research at national and regional historical archives in Colombia and Spain, and at the Wilson Library at UNC-Chapel Hill. At these archives, I gathered primary sources that covered the period between 1800 and 1830. Sources include personal and official correspondence, wills and testaments, newspaper articles, cabildo records, and court cases all from notarial, government, judicial, and family record collections. My dissertation draws heavily on the judicial archive because, as historian Arlette Farge says, it “shines a light on the people of the city and their many faces.”¹⁶

In Popayán, the judicial archive preserves vibrant, painful, and revealing fragments of life of mixed-race women and men that deserve critical attention. My dissertation follows their traces in order to recognize patterns that shaped their lives and interactions with neighbors and/or authorities. That said, my dissertation is a qualitative study that identifies and presents analytical possibilities and unconsidered trajectories that can help in the reconstruction of the history of women and gender during Independence.

As an interdisciplinary project, this dissertation draws on the methodological models from the disciplines of history and women's studies. In history, I draw on the work of scholars of slavery and freedom who have used a microhistorical approach, which focuses on identifying

¹⁶ Arlette Farge, *The Allure of the Archive* (New Haven: Yale University, 2013), 26.

specific historical subjects and events and tracing them over time.¹⁷ I use this historical method in the selection of source material as well as in the process of reconstructing historical narratives for it allows me to weave micro stories into macro accounts about larger structures and ideologies.

On this last point, my dissertation seeks to establish a much-needed dialogue between the micro and the macro in order to add complexity to narratives that have long obscured the past of many citizens. For example, attending to the ways in which poor people created spaces for socialization and gave meaning to their relations across space can unsettle our understanding of war as a fundamentally political. From this basis, we can ask how poor people's social and cultural practices challenged or shaped late colonial and republican ideas of social control in the war and state-building context.

In this dissertation, I identify and apply elements of my Women's Studies training by drawing on scholarship that places gender analysis at the center.¹⁸ This scholarship has been fundamental in showing models that creatively utilize the skill of reading and writing about

¹⁷ Lara Putnam, "To Study the Fragments/Whole: Microhistory and the Atlantic World" *Journal of Social History* 39:3 (Spring 2006); Rebecca J. Scott, "Reclaiming Gregoria's Mule: The Meanings of Freedom in the Arimao and Caunao Valleys, Cienfuegos, Cuba, 1880-1899," *Past and Present* 170 (2001):181-216; *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge: Harvard University Press, 2012); Edgardo Pérez Morales, "Itineraries of Freedom. Revolutionary Travels and Slave Emancipation in Colombia and the Greater Caribbean, 1789-1830" (PhD diss., University of Michigan, 2013).

¹⁸ Kathryn Burns, *Colonial Habits: Convents and the Spiritual Economy of Cuzco, Peru* (Durham: Duke University Press, 1999); Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Post-emancipation South* (Chapel Hill: The University of North Carolina Press, 2009); Tiya Miles, *Ties that Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Berkeley: University of California Press, 2005); Sueann Caulfield, *In Defense of Honor: Morality, Modernity, and Nation in Early-Twentieth Century Brazil*; Sarah C. Chambers, *From Subjects to Citizens: Honor, Gender, and Politics in Arequipa, Peru, 1780-1854*; Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America*; Arlene Díaz, *Female Citizens, Patriarch, and the Law in Caracas, Venezuela, 1786-1904*.

sources where women or their families are often absent. Gender analysis provides a space to interrogate silences, but also provides the tools to question the contexts in which snippets of daily life, often mediated by third parties such as scribes and defense attorneys, were articulated. This process is challenging, but highly rewarding when the analysis shows the always intricate relations of women with questions of power and social control.

Another way in which gender analysis has been instrumental in developing my work is in the tools it provides to examine the construction of masculinity and femininity. These concepts are quite important in my research as they were linked by official and church authorities to questions of personal character, morality, and racial purity. Gender analysis allows for the interpretation of conflicting ideas about, for example, the nature of crime and the “degrees” of masculinity that appear in the exchanges between legal authorities prosecuting lower class and mixed-race families. Being able to establish the social constructions of these concepts allows scholars like me to examine and highlight competing political agendas and gender discourses that had real consequences for poor people.

Dissertation Structure

Disorderly Love is composed of six chapters, including an Introduction and a Conclusion. The chapters are divided into two parts that establish a narrative chronology. Part One focuses on the war period (1809-1819). Chapter two, “Illicit Friendships in the ‘Wretched’ Province of Popayán,” argues that royalists (supporters of the king) policed illicit friendship because the war threatened the relationship between Catholic moral norms and patronage, on the one hand, and political authority and social control on the other. The chapter shows that patriots were, like royalists, equally concerned with imposing moral norms and respect for the law as a means of

legitimizing their new political project. However, they were developing a new discourse that would compete with the personalistic patronage relationships and the personalization of the law that, to them, characterized the old regime. Judicial cases involving illicit extra-marital relationships shed light on the variety of responses by poor, predominantly Afro-descendant men to royalist and patriots' efforts to recruit them and to impose moral discipline during the war. Women are at the heart of these cases, but their voices are difficult to discern in the record. This helps to show how men's disputes with other men often involved silencing and controlling women, a basic tenant of patriarchy.

Women's responses to these war-time dynamics are explored in Chapter Three, "Injured and Publicly Disgraced: Poor Women's Legal Disputes for Honor in War-Torn Popayán." This chapter provides a close reading of cases in which poor women were survivors and witnesses. This chapter understands physical violence in the form of injury, beatings, and rape as defined by colonial authorities in the criminal records. By analyzing the dynamics engendered by these violent acts, the chapter examines the intricate ways representations of character and notions of honor and gender were performed, disputed, and negotiated during the war. The chapter argues that while poor women used these conflicts as opportunities to seek reparations and assert their own means of control particularly over their own bodies, authorities used them to protect and advance dominant ideas about masculinity and patriarchy. The active role of women in these cases not only provides a sharp contrast to Chapter Two, but also reveals a variety of modes of violence at play. These provide glimpses into symbolic woman-on-woman aggression, racial prejudice, and the methods authorities used to discipline poor men. The chapter also deepens a discussion about the imagined courtroom during the war while raising questions about the omission and fabrication of criminal evidence.

Part Two turns to the post-independence period (1821-1830). The fractured relationship between church and state that resulted from the proclamation of a liberal national constitution in 1821 frames Chapter Four, “‘*Echar mano:*’ Disciplining Poor Men in Post-War Popayán, 1820-1830.” The chapter shows, via a critical interpretation of illicit friendship records, newspapers, speeches, and correspondence, how the new legal separation of sin and crime – terms that were virtually synonymous during the colonial period – reconfigured hierarchical political relations in ways that directly impacted poor mixed-race families. Inspired by liberal ideas, high ranking authorities developed complicated and multi-layered legal procedures. These, in turn, provoked conflicts between them and local officials who lacked liberal legal training or refused to abandon the idea that religious morality played a fundamental role in defining crime.

Lastly, Chapter Five, “*Pleitos de voces y de golpes:*” Gender, Violence, and Truth in the Demise of the Republic of Colombia, 1825-1830,” this chapter examines criminal cases about assault and violence against women that were reviewed and sentenced by magistrates at the superior court of Cauca in the second half of the 1820s in Popayán. In doing so, the chapter establishes a dialogue with Chapter Three by focusing on cases where women were at the center of honor disputes. It also expands the analytical angle developed in the second half of Chapter Four, which examines cases of illicit friendship between 1825 and 1830 a time when changes in the judicial system modified legal procedures. One of the advantages of studying the same five-year period through a different type of criminal record is that it broadens our understanding of the increasing rigidity in the implementation of laws and the consequences this had for poor women and men. This chapter demonstrates that in cases involving assault, particularly against women, higher-level authorities show a persistent tendency towards validating the law as a means of legitimating the republican state. They justify the acquittal of men who battered women

(and in some occasions women as perpetrators of violence) by alluding to specific constitutional mandates about the proper ways to carry out legal proceedings against alleged criminals. There is a shift, then, from moral to purely legal justifications where women who experienced violence remained disempowered. By looking closely at these independence disputes, we can see how the higher judicial authorities reinforced patriarchy and the politics of family life.

One of the main implications of my work is that it shows how fighting within the law was a form of private and public resistance for the historical subjects who appear in this dissertation. My close reading and analysis of criminal cases reveal the mechanisms and the language that poor men and women (often through the representation of scribes and defense attorneys) used to describe conflictive situations that disrupted their daily lives. This testimony reveals details about their intimacies and negotiations with judicial authorities at different levels. Regardless of whether the law worked in their favor, what matters for our purposes is how these interactions display the ways that the legal system and litigants reinforced and disseminated gender and patriarchal values during a critical period of political transition. This can contribute to the development of a model that uncovers the intertwined histories of gender, race, and the law.

My hope is that this model can expand the frame through which we understand the social, legal, and gendered dimensions of war in early nineteenth-century Colombia and, perhaps, in the Latin American context as well. This dissertation, thus, begins to demystify the dominant ideas and the images of war by recuperating the voices of those who fought in their own homes, in the streets, and within the legal system, casting a light on the elements (conceptual, material, and physical) that characterized that experience.

PART I, PREFACE:
BRAWLERS IN THE MIDST OF INSURGENCY

New Granada and specifically the Province of Popayán entered the second decade of the nineteenth century in the midst of a growing political crisis with major social repercussions in the aftermath of Napoleon’s invasion of Spain. A case that stands out from the criminal archive and provides an excellent illustration of the ways ordinary people in Popayán reacted to the news is that of a duel between Agustín López, a mestizo saddler and Joaquín Torres alias “Pitingo,” a mulatto cobbler. On the night of December 5, 1810, López and Pitingo met in a part of town known as The Alley (*El Callejón*) and began fighting over a complicated matter that involved the killing of one of López’s cows, presumably as retaliation for his alleged affair with the wife of one of Pitingo’s friends.¹ In the middle of the fight, López injured Pitingo’s wife’s arm with a pocket knife, at which point onlookers erupted in frantic calls for help. Joaquín Cordero, a passerby who later served as a witness, testified that soon after the incident, the authorities arrested López in his home along with his wife and daughter. According to Cordero, López initially resisted arrest, hurling insults at the police and shouting “that there was no king, that Ferdinand VII did not exist.”² López even asked if his family was going to prison for being poor, which did not make any sense to him because with no king, “we [are] all one.”³ Asked during his

¹ “Causa criminal contra Agustín y Manuel López, 1810,” Archivo Central del Cauca (hereafter ACC) Independencia (Ind), Judicial-Criminal (J-Cr), I-6, sig. 5151.

² “Causa criminal contra Agustín y Manuel López, 1810,” ACC, Ind, J-Cr, I-6, sig. 5151, f. 3r.

interrogation to explain why he said such scandalous things in public, López simply replied that he heard the news from a reputable source and understood that in the king's absence, "there was no need for soldiers."⁴

King Ferdinand VII was indeed away from his throne as he had been imprisoned by Napoleon two years earlier. The king's imprisonment and the Napoleonic occupation of Spain unleashed a series of unprecedented political events. Localities across the Spanish Peninsula declared full fidelity to the king through the formation of councils or *Juntas*. This action allowed provincial governments to reclaim and protect sovereignty on the king's behalf, but it also engendered confusion when some localities began to claim authority over others. By late 1808, this confusion led to the creation of one *Junta* that called itself the Supreme and Central Governmental Junta of Spain and the Indies (Central Junta). A year later, Spanish members of the Central Junta published *Manifiesto a los Americanos* where they formally invited the viceroalties to show their allegiance as "subjects of the king" and send a delegate to participate in the *Cortes de Cadíz*, Spain's legislative body.⁵

Members of *cabildos* (municipal councils) across New Granada received the news with enthusiasm as each would have an opportunity to nominate a candidate who would compete with others to be New Granada's representative. In the Province of Popayán, *cabildo* members gathered in a special ceremony and declared their perpetual loyalty and gratitude to the king. They promised to strengthen at any cost "the sacred and inextricable ties that bind our domains

³ "Causa criminal contra Agustín y Manuel López, 1810," ACC, Ind, J-Cr, I-6, sig. 5151, f. 3r. "... ya todos éramos uno."

⁴ "Causa criminal contra Agustín y Manuel López, 1810," ACC, Ind, J-Cr, I-6, sig. 5151, f. 6r.

⁵ Ángel Almarza and Armando Martínez, Eds., *Instrucciones para los diputados del Nuevo Reino de Granada y Venezuela ante la Junta Central Gubernativa de España y las Indias* (Bucaramanga: Universidad Industrial de Santander, 2008), 17-18

with the metropolis.”⁶ Following this, they proceeded to select a candidate from their own social group, whose members were considered the most illustrious representatives of the province. These men were renowned lawyers, merchants, miners, and military officers whose parents were of Spanish descent (creoles) or who had emigrated from Spain to serve in official colonial posts (*peninsulares*). From the pool of provincial candidates, one delegate was chosen to represent New Granada at the *Cortes*, but he never traveled to Spain because the Central Junta dissolved itself on January 30, 1810. In spite of this, the process of electing delegates and drafting demands for the Central Junta in Spain had been a fruitful exercise for *cabildo* members across the territory as it contributed to the emergence of a new political language. *Cabildo* members drew on that language to create their own *juntas* in 1810, paving the way for a truly transformative political revolution.⁷

In key areas of New Granada, anxious creole intellectuals advocated clandestinely for greater political autonomy. In Santa Fe, New Granada’s capital, Don José Miguel Pey, Don Tadeo Lozano, and Don Francisco José de Caldas were among the fervent proponents of a governmental junta in which creoles rather than *peninsulares* would oversee the king’s sovereignty over the territory.⁸ These men and their followers successfully executed their political plan on July 20, 1810 by instigating a conflict between a peninsular and a creole over a

⁶ “Acta del Cabildo Extraordinario de Popayán para la elección de los representantes en la Junta Central, 1809,” Archivo Histórico Cipriano Rodríguez Santa María (hereafter AHCRS), Fondo Manuel María Mosquera, Caja 5, Carpeta 4, ff., 25-27.

⁷ Almarza and Martínez, *Instrucciones para los diputados*; Jaime E. Rodríguez, *The Independence of Spanish America* (London: University of Cambridge, 1998); Francois-Xavier Guerra, *Modernidad e independencia: ensayos sobre las revoluciones hispánicas* (México: Fondo de Cultura Económica, 2000); Jeremy Adelman, *Sovereignty and Revolution in the Iberian Atlantic* (Princeton: Princeton University Press, 2006).

⁸ In this context, creoles were the children of Spaniards born in the Americas. Peninsulares were those born on the Iberian Peninsula.

flower vase that ended in protests and the removal of peninsulares, including the viceroy, from their political positions. On the same day, creoles who led the conflict published an *Acta de Revolución* that legitimized the junta and invited all provinces in New Granada to send their delegates.⁹

Under the leadership of royalist Governor Miguel Tacón, peninsular and creole elites in the Province of Popayán chose not to send any delegates to Santa Fe. They created their own Security Junta (*Junta de Seguridad*) that would remain loyal to the deposed king, but quickly dissolved it when they learned that leaders from the northern cities of the Province supported the events in Santa Fe.¹⁰ For Tacón, it was critical to concentrate enough power to confront any potential defections within the Province. Although the majority of *cabildo* members voted in favor of keeping the Security Junta, the municipal council nonetheless dissolved it, for fear that it was revolutionary, anti-Catholic, and a threat to the monarchy.¹¹ The municipal council also

⁹ See “Acta de la Revolución del 20 de Julio de 1810” in Margarita Garrido, *Palabras que nos cambiaron: Lenguaje y poder en la Independencia - Documentos* (Bogotá: Banco de la República, 2010). Even though these events in Santa Fe would come to be known as Independence from Spain, historian Alfonso Múnera has persuasively argued in his book *El fracaso de la nación* that it was the revolution in Cartagena de Indias (November 11, 1811) that truly marked that moment and helped consolidate the autonomist projects that had emerged across the territory. See Alfonso Múnera, *El fracaso de la nación. Región, clase y raza en el Caribe Colombiano, 1717-1821* (Bogotá: Planeta, 2008); “Acta de Independencia de la Provincia de Cartagena en la Nueva Granada” in Garrido, *Palabras que nos cambiaron*. I thank Professor Pérez Morales for our conversations about the creation and meaning of these historical narratives.

¹⁰ Creole leaders from these cities known as the “Confederate Cities” worried that peninsulares in New Granada could betray the king and turn to Bonaparte’s military campaign. They believed creoles should take care of political matters while ensuring the preservation of the territory in the name of the king. Guillermo Suárez Moriones, *Ciudades confederadas del Valle del Rio Cauca* (Cali: Imprenta Departamental, 2010).

¹¹ Armando Martínez Garnica and Daniel Gutiérrez Ardila, *Quién es quién en 1810. Guía de forasteros del virreinato de Santa Fe* (Bogotá: Universidad del Rosario, 2010), 359. “era atentatoria del poder monárquico, revolucionaria y anticatólica.”

endorsed governor Tacón as the only authority who could rule over the Province. This questionable political move marked the beginning of a local struggle that divided political elites in Popayán.

Contrary to the assumption by the brawler Agustín López that there was “no need for soldiers,” imminent civil war called for the active recruitment of soldiers to prepare against a military attack by patriot leaders against the pro-monarchical government. Three months after López’s case opened, war began in Popayán between royalists and patriots from the northern part of the province. The fear of defeat led the royalist municipal council members and governor Tacón to announce a military recruitment campaign that specifically sought to incorporate enslaved men throughout the Province. This risky strategy would dramatically harm Tacón’s relations with those slaveholding creoles of Popayán who had stood by his side. Under these circumstances, López’s comments contradicted Tacón’s political convictions while threatening public order. For the prosecutor in the case, creole *cabildo* member Don Joaquín Rodríguez, López had committed the type of crime “people from his social class easily perpetrate” within their communities, but this time his behavior was aggravated by his “scandalous” proclamations in public.¹² In other words, it was common for lower-class people to engage in disorderly behavior, but highly unusual and potentially threatening for a plebeian to dismiss the authority of the king so fearlessly in public. The seriousness of López’s offense placed the case in the hands of Governor Tacón, who had the authority to act as judge in cases of major concern.¹³

¹² “Agustín y Manuel López,” f. 11r. “...los desordenes en que fácilmente incurren las gentes de la clase de los referidos”

¹³ During the second half of the eighteenth century, provincial governors played an increasing role as judges in criminal cases that were considered extremely serious for the potential threats they posed to crown authorities and social order. Governors who assumed this role under the Bourbon Reforms were concerned with imposing greater control over the population. See:

At this point, both López and Pitingo were being held in prison until the case was resolved. Tacón proceeded first by approving Pitingo's request for release, in which he had stated that he was innocent and expressed a desire to continue serving the king in the *Compañía de Pardos* (free-colored militia). Two days after this decision, on Christmas Eve, the scribe closed the case. He noted that by Tacón's order, which is missing from the file, López also left prison to join one of the militia units indefinitely. This case ended with López and Pitingo going to war, but remained silent about what happened to the women in the story—the wounded woman and López's wife, his daughter, and his alleged lover. This dynamic reappears often in the criminal accusations examined in the first chapter. In the majority of cases, men communicate and women are relegated to the sides, even though they were at the heart of these matters. López's case, thus, helps lay out the scenario for the years between 1810 and 1819, a period of tremendous political upheaval in which social disruption and disobedience at the ground level would alarm and divide both creole and peninsular elites.

Beatriz Patiño Millan, *Criminalidad, ley penal y estructura social en la Provincia de Antioquia, 1750-1820*, 2nd ed. (Bogotá: Universidad del Rosario, 2013).

CHAPTER 2

ILLCIT FRIENDSHIPS IN THE “WRETCHED” PROVINCE OF POPAYÁN, 1809-1819

Over the last twenty years, scholars have studied the categories of marriage and family to uncover the social history of colonial Colombia. Sacramental marriage, a fundamental tenet of the Catholic faith, was the foundation of orderly hierarchical structures that defined colonial life throughout the territory. Historians have demonstrated that members of elite families strengthened their social and commercial networks by marrying into equally powerful families. Studies of the lower classes have shown, in contrast, high rates of illegitimacy and non-traditional family structures such as female-headed households, and have portrayed these as largely a result of a gender imbalance and the constraints imposed by a slavery-based economic system.¹ In many instances, such circumstances gave way to what colonial authorities called *amistades ilícitas*, or “illicit friendships,” which consisted of sexual encounters or family unions outside marriage.

¹ On questions of marriage and family during the late colonial and early republican Colombia, see: Germán Colmenares, *Historia social y económica de Colombia, II: Popayán: una sociedad esclavista, 1680-1800* (Bogotá: Tercer Mundo Editores, 1997); Pablo Rodríguez Jiménez, *Sedución, amancebamiento y abandono en la Colonia* (Bogotá: Fundación Simón y Lola Guberek, 1991); *Sentimientos y vida familiar en el Nuevo Reino de Granada, siglo XVIII* (Bogotá: Editorial Ariel, 1997); Guiomar Dueñas, *Los hijos del pecado* (Bogotá: Universidad Nacional de Colombia, 1997); Virginia Gutiérrez de Pineda and Roberto Pineda Giraldo, *Miscegenación Y Cultura En La Colombia Colonial, 1750-1810*, (Bogotá: Ediciones Uniandes, 1999); María Teresa Pérez Hernández, “Prácticas y representaciones en torno a la familia, el género y la raza. Popayán en 1807,” *Convergencia* 37 (2005); María Teresa Pérez, “Las Mujeres Caucanas de La Colonial a La República,” in *Historia, Geografía Y Cultura Del Cauca. Territorios Posibles*. (Popayán: Editorial Universidad del Cauca, 2001), 219–35; María Teresa Pérez Hernández, “Hábitat, familia y comunidad en Popayán (Colombia), 1750-1850,” (PhD diss., Université de Montréal, 2009)

The study of such illicit friendships has revealed, in turn, the degree to which they persisted despite concerted efforts of the colonial state and the Church to control and punish them. Studies of the late eighteenth century have noted, for example, that authorities increased their criminalization of illicit friendship but struggled to impose severe punishments because it was such a widespread practice. Illicit friendships were common across all classes, even among elites themselves, though they usually managed to keep them out of sight in order to protect their public reputation and family honor. In light of authorities' efforts to assert absolute control over intimate behavior in the late colonial period, can we assume the same struggles and failures characterized the transition from colony to independent state? In other words, how did the intersection of law, religion, and illicit family matters play out in a period of war and revolution?

This chapter looks at accusations of illicit friendship between 1810 and 1819.² Several previous studies of illicit friendship in Colombia have addressed the eighteenth century, but generally cease around 1810.³ This focus may be explained by two factors: the limited documentation available for the war period, and a greater emphasis placed on the dramatic political events in scholarship on the periods known as Colombia's "First Republic" (1810-1815)

² Historian Germán Colmenares pondered a similar question in one of his unpublished pieces where he argued for a critical interpretation of the Independence period through the study of the law and social history. His call makes sense in a context where much of the research published on the period has primarily been about its political and economic history. This chapter responds to his calls for research on the relationship between social dynamics and the law during the Independence wars in Colombia. See Jaime Jaramillo Uribe, "Germán Colmenares y su obra," *Historia Crítica* 4 (1990): 5-45.

³ Lida Elena Tascón, "Sin temor de Dios ni de la real justicia: Amancebamiento concubinato y adulterio en la Gobernación de Popayán, 1760-1810" (Master's Thesis, Universidad del Valle, 2014); Guiomar Dueñas, "Adulterios, Amancebamientos, Divorcios Y Abandono: La Fluidez de La Vida Familiar Santaferreña, 1750-1810," *Anuario Colombiano de Historia Social Y de La Cultura*, No. 23 (1996): 33-48; Pablo Rodríguez, "Matrimonio incestuoso en el Medellín colonial, 1700-1810," *Revista de Extensión Cultural de la Universidad Nacional de Colombia*, No. 24 (1998)

and Spain's "Reconquista" or Restoration (1815-1819). The chapter seeks to expand our knowledge of these periods by focusing on the southwestern province of Popayán, a slave society that became an epicenter for royalists (supporters of the Spanish crown) during war years. It primarily analyzes judicial documents involving illicit friendships to show how family and extramarital relationships among people of color continued to be criminalized by authorities whose religious fervor fueled their political maneuvers to retain power in Popayán. The types of illicit friendships included in this category were concubinage, adultery and incestuous relations—all of which had been considered both immoral and illegal through the entire colonial period.

The judicial records at the Central Archive of Cauca in Popayán hold approximately six hundred criminal cases catalogued for the period of Independence (1810-1832). Among the most frequent crimes prosecuted across the period are theft, disrespect for authorities, verbal and physical violence, vagrancy, and illicit family relations. My search for accusations of illicit friendship among the available family-related records centered on cases in which illicit friendship was central, rather than incidental, peripheral, or accidentally discovered. This has enabled me to focus clearly on instances in which some aspect of the illicit friendship was the precipitating cause of the prosecution itself.

In this chapter, I discuss five records of illicit friendship accusations that open up different dynamics, contributing to our understanding of Popayán elite attitudes toward the practices of poor families of color in a decade of war. Although the available accusations cover the years 1810 through 1819, there are gaps in the documentation consistent with the major political events of the decade. I found no accusations during three of the decade's most critical moments of crisis: the outbreak of civil war (1810-1811), the first Southern Campaign led by Antonio Nariño against royalists in Popayán (late 1813-1814), and the arrival of Pablo Morillo from

Spain with the mission of reestablishing monarchical rule (1815-1816). This does not mean there are no other cases for these years. There might be similar sources in the hundreds of uncatalogued records at a closed section of the archive known as the “dead archive” (*archivo muerto*.)

With this in mind, this chapter discusses how royalist authorities’ strong adherence to the Catholic religion in turbulent times of war meant not just being loyal to the king and the crown, but also preserving a social order based on Catholic moral standards. Thus, it argues that royalist authorities of the period continued to police illicit friendship because the war had complicated the relationship between Catholic moral norms and patronage, on the one hand, and social control on the other. As royalists carried out actions to reinforce and increase their legitimacy to rule over war-torn Popayán, their opponents (patriots) were mobilizing to achieve independence. The chapter shows how in that process, patriots were equally concerned with imposing moral norms and respect for the law as a means of legitimating their new political project. However, they were developing a new discourse that would compete with the personalistic patronage relationships and personalization of law that, to them, characterized the old regime. This becomes particularly evident in the second half of the chapter when, in the context of an *indulto* or amnesty, members of the economic elite with patriot sympathies participate as prosecutors and legal advisors in criminal cases.

As this is developing, we see poor families from predominantly African-descended and indigenous populations in the Province of Popayán reacting, resisting, and/or demanding intervention in their specific cases. The cases offer valuable insights into the strategies of these men and women as they sought to protect their families and their dignity. Women are at the heart

of these matters, but with the exception of one case, their voices are difficult to discern in the record.⁴

2

After the king of Spain was sequestered by Napoleon, two political factions emerged across the territory of New Granada: royalists and patriots. While royalists supported the Spanish crown, patriots advocated for autonomy based on what two modern scholars have characterized as “the right of the people to govern themselves through a constitution, to gather in a federal system, and to establish that the king was still king but only if he were to come to New Granada and follow the norms of the written constitution.”⁵ This vision of autonomy was soon challenged by dissenting patriots who preferred the establishment of a centralist government in Santa Fe. This internal rivalry among patriots further exacerbated the conflict with royalists. This scenario of irreconcilable ideological visions created serious tensions around questions of power that turned into bloody civil wars. Royalists and patriots made sense of their particular challenges and goals through a common legal tradition regarding social order. This section, thus, discusses the different legal and social tactics used by these factions during war and connects them to a brief history of the legal foundations of social order in the Americas for context.

The weekly political newspaper *La Bagatela* appeared for the first time in Santa Fe a little over a year after creole elites in that city created a junta in 1810. The newspaper’s owner Antonio

⁴ Sandra Lauderdale-Graham, *Caetana Says No: Women’s Stories from a Brazilian Slave Society* (New York: Cambridge University Press, 2002); Ariela Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ: University of Georgia Press, 2006); Trevor R. Getz and Liz Clarke, *Abina and the Important Men: A Graphic History*, 2 ed. (New York: Oxford University Press, 2015).

⁵ Michael J. LaRosa and Germán R. Mejía, *Colombia: A Concise Contemporary History*. (Lanham, Maryland: Rowman & Littlefield, 2013): 8.

Nariño was a member of Santa Fe's creole elite and a patriot who supported the creation of a centralist state. For almost a year, Nariño used his newspaper to advance his centralist political agenda and disseminate news about the political and military situation in New Granada. He also published warnings (*amonestaciones*) through which he aimed to connect to his readers by philosophizing about the intimate relationship between government, law, and freedom. In August 1811, as elites in Santa Fe debated possible mechanisms to establish their political power, the sixth issue of *La Bagatela* included a section titled "Another fraternal warning to the public." In it, Nariño used the visual of a justice scale to explain to his readers how the law was the only instrument that could prevent the abuse of power on the part of the government or the people. The law could maintain social balance and guarantee freedom. Freedom, he emphasized, was "not regulated by one's whim, but by the social contract or the laws that were sanctioned by the general will."⁶

Nariño was referring to the idealized collective will of the people of New Granada, but in reality only cultured elites had an opportunity to express their will. The Santa Fe elites had already expressed their will when they drafted and proclaimed the first constitution in New Granada in early 1811, which they named after their province of Cundinamarca. The constitution established a precedent for other provinces in the territory and marked the beginning of Colombia's constitutional history. This early attempt to safeguard the freedom patriots in Santa Fe had claimed from Spain also aimed to establish their legitimacy as authorities with power to exert control over a population immersed, in their view, in chaos and disorder. Nariño's comments in this same newspaper section illustrate that view. He complained, for example, about

⁶ *La Bagatela* [Bogotá], No. 6, August 18, 1811: 23. "Otra fraternal advertencia al público." "No está la Libertad en hacer su voluntad conforme a su capricho, sino conforme al pacto o ley que se ha sancionado por la voluntad general."

how those “excited by the beauty of freedom blindly mistake it for debauchery or forget that to enjoy freedom one must follow the rules and laws that govern us, for which we have appointed judges to enforce them.”⁷ For Nariño, people’s dissolute lives and their disregard of the law were threats that could defy the authority of the new political elite and challenge these elite’s definition of freedom and legitimacy. But such threats were, in fact, widespread preoccupations even among authorities from royalist provinces such as Popayán. At the outbreak of war, Popayán elites also had to deal with recurrent episodes of social unrest and political rivalries.

Six months before Nariño circulated the first issue of *La Bagatela* in Santa Fe, the Spanish-born governor of Popayán, Miguel Tacón, had reached out to Mariano Pérez de Valencia y Arroyo, the diocese’s vicar general (*vicario capitular*), with a mission. After declaring his objective to make of Popayán the most “faithful” city and province of the kingdom of New Granada, Tacón ordered him to “exercise his religious and political obligations” by instructing the diocese’s priests to dissuade their parishioners from disobeying the legitimate royalist authorities.⁸ The vicar general agreed that the political circumstances called for renewed emphasis by priests “on the healthy principles of Christian morality” including loyalty to the king, currently detained in France, and living in accordance to religious standards.⁹ Although the vicar general angered the governor by failing to acknowledge the Regency Council (*Consejo de Regencia*), which claimed to rule in the king’s name, in his letter to the diocese’s priests, the two

⁷ *La Bagatela* (Bogotá), No. 6, August 18, 1811: 24. “[...] Otros exaltados con las bellezas de la libertad se ciegan y la confunden con el libertinage, o se olvidan de que es menester gozarla con reglas y leyes a que nos hemos sometido, y para que su ejecución hemos nombrado Magistrados que las hagan cumplir.”

⁸ “Oficios sobre injerencia del poder civil en el Gobierno eclesiástico, 1811” Archivo Histórico Cipriano Rodríguez Santa María (hereafter AHCRS), caja 21, carpeta 2, f. 45r.

⁹ “[...] Con este motivo mando a todos los curas y sacerdotes de este obispado que exhorten a los fieles a este fin instruyéndolos en los principios sanos de la moral cristiana.” F4

men still managed to agree on a strategy to police the plebeian population as they had always done, at least for the time being.¹⁰ Throughout the colonial period, both state and ecclesiastical authorities had acted as supreme bodies of power and law. They had worked together to punish transgressions of the social and moral order as dictated by rigid religious codes, especially following the mid-sixteenth century reforms of the Council of Trent.

Such reforms had a profound influence on colonial thinking concerning the morality of family and sexuality. For example, the reforms allowed for marriages without parental consent, made it nearly impossible to divorce, and declared concubinage –a longstanding custom that had often been tolerated in the middle ages– a sin.¹¹ The recognition of the will of prospective spouses aimed to respect freedom of choice and also privilege a theological view about the sacrament and the risks that parental opposition might lead young people to sin. The other two reforms sought to control women’s sexuality, encourage chastity, and promote legitimate procreation. Authorities in New Granada and other parts of the New World applied these ideas in contexts of growing cultural mixing that over time presented new social and legal challenges. By

¹⁰ As in the rest of the New World, the Church and the colonial legal system were intricately connected in colonial Colombia. Through its christianizing work, the Church promoted and enforced the acceptance of the Catholic faith with the purpose of building a social structure that would conform to its doctrine. By imparting rules that distinguished good from evil, the Church inarguably exerted a profound influence on the creation of a Roman-based legal system which ultimately reflected how the law served as an instrument to maintain the social order determined by God.

¹¹ On earlier practice see: Michelle A. McKinley, “Illicit Intimacies: Virtuous Concubinage in Colonial Lima,” *Journal of Family History* 39, no. 3 (2014): 204–21; José María Ots y Capdequí, *Historia del derecho español en América y del derecho indiano* (Madrid: Aguilar, 1969); Bartolomé Clavero, “Delito y pecado. Noción y escala de transgresiones,” in *Sexo barroco y otras transgresiones premodernas*, ed. Francisco Tomás y Valiente (Madrid: Alianza, 1990), 57–89; Susan Socolow, *The Women of Colonial Latin America*, 2nd ed (New York: Cambridge University Press, 2015); María Emma Mannarelli, *Pecados públicos: la ilegitimidad en Lima, siglo XVIII* (Lima: Ediciones Flora Tristán, 1994); Pablo Rodríguez, *Sentimientos y vida familiar en el Nuevo Reino de Granada XVII* (Bogotá: Editorial Ariel, 1997).

the late seventeenth century, it became necessary to compile old and new decrees and ordinances specifically designed to regulate the New World. The publication of the *Recopilación de Leyes de los Reinos de las Indias* marked the beginning of a new specific legal order in the colonies known as *Derecho Indiano* which became “the legal expression of a political regime based on the Spanish and Catholic superiority over the individual or collective will of colonial subjects in Spanish America.”¹² In this way, *Derecho Indiano* managed to “reconcile the Spanish legal codes with the needs and interests of the colonies” providing judges and other local authorities with specific legal tools that continued to favor the preservation of Spanish rule and ecclesiastical power.¹³

Among those authorities were the judges in New Granada who applied the legal frameworks provided by *Derecho Indiano* and *Las Siete Partidas*, a set of laws codified in Medieval Spain, to make sense of civil and criminal acts that took place in all socioeconomic spheres of society.¹⁴ In criminal cases, authorities incarcerated the accused and confiscated their belongings as a preventive measure. Then, authorities opened a formal criminal investigation that typically consisted of witness testimonies, the defendant’s confession, and arguments for and

¹² Mauricio García Villegas, “Apuntes sobre codificación y costumbre en la historia del derecho colombiano,” *Revista Precedente* (2003): 103.

¹³ Mauricio García, “Apuntes,” 104.

¹⁴ Alfonso X of Castile and his advisors compiled *Las Siete Partidas* or the Seven-Part Code between 1256 and 1265. The *Partidas* presented a new juridical system based on Roman law and the doctrine of the Catholic Church. The merger of those two entities resulted in a powerful legal code that beyond creating new laws, provided an important portrayal of social and economic life in thirteenth-century Spain. See Maria Virginia Gaviria, “Aproximaciones a la historia del derecho en Colombia,” *Historia y Sociedad* 22 (2012): 131–56; Andrés de Zubiría Samper, “La historia de la rama judicial en Colombia,” *Criterio Jurídico Garantista* 6 (2012): 153–87; Francisco Barbosa Delgado, *Justicia, rupturas y continuidades: el aparato judicial en el proceso de configuración del Estado-Nación en Colombia 1821-1853* (Bogotá: Pontificia Universidad Javeriana, 2007); Mauricio García Villegas, “Apuntes sobre codificación y costumbre en la historia del derecho colombiano,” *Revista Precedente* (2003): 97–124.

against a defendant. After gathering all the required evidence, the law allowed judges to determine the type of punishment based on the seriousness of the crime as well as on the lineage and gender of the accused. Before dictating a sentence, however, many judges requested legal advice from trained lawyers who helped categorize the severity of the crime and its corresponding punishment.¹⁵ Common punishments for people guilty of “illicit friendships” included fines, unpaid construction work, and banishment. The implementation of these punishments had generally been inconsistent during the colonial period because, as Susan Socolow explains, “even when the authorities periodically decried immorality, regardless of their rhetoric, they ended up tolerating what was essentially an endemic pattern. Indeed, concubinage continued to be so widespread as to be banal.”¹⁶

That seemed to have applied to New Granada until the end of the eighteenth century when authorities increased the criminalization of illicit friendships in order to comply with the Bourbon Reforms, a set of laws that, among other concerns, called for greater control of an expanding mixed-race population.¹⁷ Ann Twinam says this elite “defensive tightening of the social hierarchy” closed the decades of the century and, I would argue, it carried over into the

¹⁵ Armando Suescún, *Derecho y sociedad en la historia de Colombia*, Tomo II (Tunja: UPTC, 2001); Victor Uribe-Uran, *Honorable Lives: Lawyers, Family and Politics in Colombia, 1780-1850* (Pittsburgh: University of Pittsburgh Press, 2000); Victor Uribe-Uran, *Fatal Love: Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic* (Stanford: Stanford University Press, 2015).

¹⁶ Susan Socolow, *The Women of Colonial Latin America*, 79.

¹⁷ Beatriz Patiño Millan, *Criminalidad, ley penal y estructura social en la Provincia de Antioquia, 1750-1820*, 2nd ed. (Bogotá: Universidad del Rosario, 2013); María Victoria Montoya Gómez, “La jurisdicción de los jueces pedáneos en la administración de justicia a nivel local. La ciudad de Antioquia, 1750-1809” *Anuario Colombiano de Historia Social y Cultural* Vol. 39, No. 2 (2012); Ann Twinam, “Repensando las reformas sociales de los borbones en las colonias, siglo XVIII,” *El Taller de la Historia* Vol. 5, No. 5 (2013); Lida Elena Tascón, “Sin temor de Dios.”

war period.¹⁸ During the course of the post-1810 conflict, up to 1821, Popayán was occupied twenty-two times, principally by royalist forces.¹⁹ The criminal records I analyze in this chapter show that authorities seized opportunities to use accusations for illicit friendship to advance their political and military interests. My analysis shows that legal interpretation for punishment during this period in Popayán varied and could go in different directions: it could result in discreet proceedings with light or no punishments when the accused belonged to an influential family or held important positions of power, in decisions arbitrarily tainted by the feelings some judges or ecclesiastical authorities had towards members of the lower classes, or in sentences that forced accused men to serve in the royalist militias. In this way, authorities opposed and criminalized non-marital unions not simply to restore social control when they occupied the city. They also did so as a mechanism to advance their interests during a decisive time when power was up for grabs. In other words, this moral control was a strategy both of legitimation and of coercion.

In spite of the drastic differences between patriot and royalist political agendas in New Granada, both groups shared one thing in common that resonated with a long-standing colonial concern: the centrality of the law in controlling/constituting people's private and public behavior. Law was thus a source of continuity, binding possible post-colonial futures to their colonial heritage.²⁰

¹⁸ Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 1999): 209.

¹⁹ Arcesio Aragón, *Fastos Payaneses 1536-1936* (Bogotá: Imprenta Nacional, 1939): 88-89.

²⁰ I thank Andrés Pletch for his input on the ideas discussed in this section.

On November 10, 1811, a group of three literate men in the port city of Tumaco, southwest of Popayán, signed and sent to the authorities in Madrid a file with copies of official documents. The original documents were held by governor Miguel Tacón who had apparently made them available to be transcribed and sent to Spain. The purpose behind this plan was to inform the crown about the political events that had transformed the province of Popayán during that year. Most notably, the escalation of the conflict between royalists and patriot insurgents from the northern part of the province had resulted in governor Tacón's forced evacuation from the city of Popayán by late March. One of the documents in the file, which now rests in the archives of Seville, was the printed minutes of a municipal council meeting (*acta de cabildo*) held on March 10, 1811, narrating how the members of the municipal council of Popayán decided to officially recruit slaves for the war when they realized the growing size and threat of the northern patriot army. This radical decision suggested that slaves who volunteered to defend the city as soldiers would not be returned to servitude. Slave-owners could request compensation for releasing their slaves only when they proved continued loyalty to the king through their support of the royalist cause.²¹

Recently, scholars have shown how this decision to recruit slaves, accompanied by rumors about a freedom-granting "black queen," spread in the 1810s among slaves in the gold mines of

²¹ Municipal council resolution from March 10, 1811, Archivo General de Indias (hereafter AGI), Quito, 386 (in this legajo documents are missing pagination). In her recently published book, particularly in chapter five, Marcela Echeverri uses documents from this *fondo* to discuss the ways in which slaves in Popayán engaged in this recruitment campaign. She argues that contrary to what has been said in national narratives of the period, slaves sided with the royalists because they viewed it as an opportunity to obtain freedom. Once free, slaves would "take advantage of their liberty to provide either military or labor service to the king as a means of claiming rights and recognition as vassals." *Indian and Slave Royalists in the Age of Revolution: Reform, Revolution, and Royalism in the Northern Andes, 1780-1825* (New York: Cambridge University Press, 2016), 189.

Popayán.²² In several cases, slave gangs took advantage of the political situation to turn against their patriot owners and negotiate their freedom with governor Tacón. Taking up arms in exchange for freedom could be appealing to most slaves, but as the plan was taking off Governor Tacón was defeated and fled to the southern city of Pasto. Patriots took over the city of Popayán, created a new municipal council whose members were patriots, and immediately convened meetings. In the printed minutes of those meetings, patriot elites accused Tacón of illegally arming the slaves and offering them their freedom. They also expressed a preoccupation about potential slave uprisings. Finally, they demanded that the Church focus exclusively on preaching the holy gospel. On this particular point, they asked the vicar general, who had previously received contrary orders from Tacón, to convince the priests that the situation in Popayán had “nothing to do with religion or with the authority and legitimate sovereignty of the king” which, in their view, explained why the Church should not have interfered in “purely political matters.”²³

As this situation unfolded, Popayán patriot elites did not vacillate in expressing their sentiments: they did not want the Church to take political sides and they feared that because of Tacón, “thirty thousand beasts hallucinating with the thought of freedom” would rebel against their owners and destroy their capital.²⁴ In Pasto, Tacón and other royalists were aware of these

²² Marcela Echeverri, *Indian and Slave Royalists in the Age of Revolution*, 157-190, esp. 171-172; Edgardo Pérez Morales, “Itineraries of Freedom: Revolutionary Travels and Slave Emancipation in Colombia and the Greater Caribbean, 1789-1830” (PhD Diss., University of Michigan, 2013), 46-54.

²³ “Acta del intruso e ilegítimo cabildo de Popayán, Abril 15, 1811,” AGI, Quito, 386. “... que se pase también igual testimonio al señor provisor y vicario capitular para que se sirva mandar a los párrocos que prediquen la doctrina evangélica... y que les haga entender que las diferencias de la provincia en nada miran a la Religión, ni a la autoridad y legítima soberanía del rey pues únicamente se trata de objetos puramente políticos en que no han debido mezclarse los eclesiásticos.”

patriot accusations. In their defense, royalists drafted printed minutes in which they explained that many of the slaves who responded to their call showed up as volunteers because they had, in fact, run away from their patriot owners. They argued that it was the “criminal” political tendencies of patriot slave-owners that had motivated the slaves to support the royalist cause. That alone was a good enough reason to grant freedom to all the slaves who presented themselves.

The royalist authorities, however, did not follow through on their early promises of emancipation. Introducing a previously unstated pre-requisite, they alleged that none of the slaves who answered to the royalist call to fight had “excelled heroically in military action.” In other words, no enslaved soldiers had distinguished themselves in battle, and, therefore, none deserved freedom. In this printed minute, royalists proceeded to list all the slaveholding patriot families in Popayán whose slaves had turned royalists. The family of the vicar general, Don Mariano Pérez de Valencia y Arroyo, was one of them.²⁵ What these desperate exchanges reveal is that under such critical circumstances, patriots in Popayán were deeply concerned about losing

²⁴ “Acta del intruso e ilegítimo cabildo de Barbacoas, Abril 22, 1811,” AGI, Quito, 386. “...treinta mil fieras alucinadas con la libertad...”

²⁵ “Dictamen del señor asesor general interino del gobierno, Junio 7, 1811,” AGI, Quito, 386. “[...] Algunos de estos de presentaron al gobierno sin noticia de sus señores porque vieron que ellos no solo se manejaban con indolencia a vista de la aflicción de su propia patria, sino que obraban abiertamente contra ella, desamparándola unos para no coayudar a la defensa, como el maestro escuela dignidad de la Santa Iglesia Catedral don Andrés Marcelino Pérez de Valencia, sus hermanos don Mariano, provisor interino, don José Antonio, contador real de diezmos, don Santiago y don Manuel María con todos sus parientes, el cura rector de la misma catedral, don Francisco de Mosquera y su sobrino con el mismo nombre [...] denunciados por los esclavos del primero, y yéndose otros a las ciudades enemigas a militar bajo sus banderas, como el tesorero dignidad de la misma catedral don Manuel Santos de Escobar, don Antonio Gil de Texada [...] pero sin embargo de que esta conducta criminal los había hecho merecedores de la perdida de sus esclavos, a ninguno se concedió la libertad por no haberse distinguido con alguna acción heroica como José Joaquín Sánchez que fue uno de los que se presentó voluntariamente del colegio de San Camilo [...]”

control of the enslaved labor force that produced their wealth, while royalists understood the consequences that would fall upon them if the institution of slavery were to cease to exist and they were to be blamed. Under these circumstances, fearful patriot slave-owners resorted to a variety of actions to contain their slaves and oppose Tacón's "frenetic politics," while royalists denied their promises of freedom to slaves.²⁶

A criminal case from 1812 illustrates how family matters may have been introduced and used in this conflict. In August, 1811, an enslaved black man named Agustín de Belén was sent to jail by order of his owners, the priests of the Bethlehemite religious order. Since the mid-eighteenth century, the Bethlehemite order had run a convent in Popayán that also served as charity hospital for the sick and poor of the city. Like other religious orders from the period, the Bethlehemites held slaves. They assigned their slaves to work as day laborers (*trabajar a jornal*) outside of the convent or as cooks, janitors, tailors, and cobblers in the hospital. They also encouraged their slaves to get married and form families.²⁷

Agustín's life in the convent-hospital was described in a letter he sent to Popayán judge, Manuel de Cuebar, in February, 1812 denouncing what he considered an unjustified six-month imprisonment. Agustín was illiterate so the letter was written on his behalf, but phrased in the first person. It explained that he was married to an enslaved woman named Cecilia, with whom he lived and worked in the hospital, and that he had been thrown in jail because his owners

²⁶ "Acta del intruso e ilegítimo cabildo de Barbacoas, Abril 22, 1811," AGI Quito, 386.

²⁷ Carlos Alberto Mayo, *Los Betlemitas en Buenos Aires: Convento, economía y sociedad, 1748-1822* (Sevilla: Diputación Provincial de Sevilla, 1991); Arcesio Arangón, *Fastos Payaneses*, 46-49; Amanda Caicedo Osorio, *Construyendo la hegemonía religiosa: Los curas como agentes hegemónicos y mediadores socioculturales* (Diócesis de Popayán, Siglo XVIII) (Bogotá: Universidad de Los Andes, 2008).

wanted to “separate [him] from sacred matrimony.”²⁸ Apparently Agustín was going through a forced divorce proceeding and his owners had secluded him while the case was resolved. Agustín noted in his letter that he did not understand the reasons for the divorce, given that he had no negative observations to make about his wife’s behavior. If she, in contrast, had something to say against him, he urged her to speak up. Agustín ended the letter requesting his release from prison by presenting a man named Ignacio Sandoval as his bail bondsman (*fiador*). During this period, it was customary for prisoners to rely on bail bondsmen to stay out of prison while they resolved their situation and took care of personal matters. Agustín hoped to leave prison on bail in order to get back to work and provide his owners with the expected sum of his daily wages.

The judge considered the letter sufficient evidence to initiate legal proceedings. On February 5, 1812, a representative of the Bethlehemite order, priest Ramón de Monserrate, informed the judge that Agustín had been unfaithful to his legitimate wife Cecilia and deserved to remain in jail until the case was resolved. The judge then assigned Agustín a defense attorney who would focus exclusively on Agustín’s petition to be released from jail. The defense attorney argued that Agustín’s request for release seemed valid because he presented a bailsman who would be responsible for his value. He said, however, that he would need to know more about the status of the divorce case in order to carry out his defense. The judge proceeded by submitting a formal inquiry about Agustín’s divorce case to Ramón de Monserrate. In his reply, Monserrate explained the case was under review. Apparently, Agustín’s defense attorney in the divorce case was still examining the *escrito de bien probado* (legal brief) which had been

²⁸ “Causa criminal del Negro Agustín de Belén por infidelidad contra su mujer, 1812” ACC, Independencia (Ind), Judicial-Criminal (J-Cr), I-3, sig. 1771, 2r.

supposedly submitted by Cecilia as her formal request for divorce. The case file does not contain copies of the divorce files, which means Cecilia's testimony is unavailable.

During the colonial period, divorce cases were rare, but according to Susan Socolow, when they occurred "it was almost always the woman who requested it." Reasons for divorce that were considered admissible included mistreatment, abandonment, and "illicit friendships" such as adultery "since it was considered a violation of the agreement to preserve faith in the marriage."²⁹ This legal proceeding took place in ecclesiastical courts and could take time to be processed.

Scholars of the slave family in Colombia have demonstrated how the conditions of captivity in the Pacific lowlands and its surrounding areas shaped the ways enslaved and freed people socialized and created families.³⁰ People in these communities generally had multiple romantic partners from which extensive family networks emerged and gender-specific roles profoundly shaped the social and labor organization of its members. In light of this, how do we know whether Agustín and Cecilia's marriage fit this model? If it did, is it possible that the

²⁹ Susan Socolow, *The Women of Colonial Latin America*, 74.

³⁰ Mario Diego Romero, *Poblamiento y sociedad en el pacífico colombiano. Siglos XVI al XVIII* (Cali: Universidad del Valle, 1995); Francisco Zuluaga, "Cuadrillas mineras y familias de esclavos en las minas de Nóvita (Chocó, Colombia). Siglo XVIII" *América Negra* 10 (1995), 51-81; Rafael Díaz, "Entre la cohesión y la disolución: la familia esclava en el área urbano-regional de Santafé de Bogotá (1700-1750) in Germán Ferro, Ed., *Religión y etnicidad en América Latina*. Tomo III, pp 319-332. (Bogotá: Instituto Colombiano de Antropología, 1998); Rafael Díaz, "¿Es posible la libertad en la esclavitud? A propósito de la tensión entre la libertad y la esclavitud en la Nueva Granada," *Historia Crítica* 24 (2002), 67-77. For more on slave families, see Germán Colmenares, *Historia económica y social de Colombia II - Popayán: una sociedad esclavista, 1680-1800* (Bogotá: Tercer Mundo Editores, 1997); William F. Sharp, *Slavery on the Spanish Frontier: The Colombian Chocó, 1680-1810* (Norman: University of Oklahoma Press, 1976); David L. Chandler, "Family Bonds and the Bondsman: The Slave Family in Colonial Colombia," *Latin American Research Review* 16 No. 2 (1981), 107-31.

Bethlemite priests separated Agustín and Cecilia? Why would that have been a priority in war-torn Popayán?

The Bethlemite priest Monserrate rejected Agustín's bailsmen for unspecified reasons. At that point, the defense attorney assigned by the judge said only Monserrate could authorize Agustín's release from jail. He advised, however, that the release should happen promptly because Agustín was unproductive in jail and that worked to the detriment of the hospital. After authorities notified Agustín about Monserrate's decision, Agustín sent a second letter to the judge of Popayán. The judge read it, but sent Agustín a warning: he could only engage with the judicial system through his defense attorney. In the letter, Agustín expressed his disappointment regarding the rejection of his bailsmen because in his view, Sandoval "was an honorable man known throughout Popayán."³¹ He stated he had not committed a crime and asserted that if the reason his owners had "abandoned" him in jail was "that other woman, [he did not] even speak to her nor [did he] want to see her."³² In the absence of the divorce case files, Agustín's subtle reference to "that other woman" seems to suggest that an extramarital affair was the cause of his marital conflict. The judge forwarded the letter to Monserrate who insisted that without a trustworthy bailsmen, he could not authorize Agustín's release and welcome him back at the hospital because his wife Cecilia lived there and they had to remain separated until the divorce was finalized. In the end, the judge closed the case after he told Agustín he would remain in jail indefinitely until he found a bailsmen to the liking of his owners. We do not know what happened to Agustín after this.

³¹ "Causa criminal,1812" ACC, Ind, J-Cr, I-3, sig. 1771, 4r.

³² "Causa criminal,1812" ACC, Ind, J-Cr, I-3, sig. 1771, 4r.

Because of the sociopolitical circumstances in Popayán at the time, we might speculate that Agustín's owners were not simply punishing him for offending religious morals with his behavior. They could also have been preventing his recruitment or escape during the chaos of war. In this scenario, what we know for certain is that Agustín spoke up. He denounced the precariousness of his life in prison and advocated for himself even when authorities expected him to remain silent and rely on the role of the defense attorney because of his status as slave. His criminalization during wartime could reflect indeed his owners' efforts to impose a lifestyle controlled by Catholic moral standards as a way to continue legitimizing the relation between Church and state. But it was also possible that they feared losing the most precious source of their wealth: their slaves.

Meanwhile, beyond the walls of prison, the conflict between royalists and patriots in Popayán had widened into a full-fledged war. Royalists in Pasto had begun to mobilize large numbers of soldiers from Valle del Patía, a colonial-era enclave established by runaways from slavery (*cimarrones*) located in southern Popayán. During the war, this region became the site of the emergence of powerful guerrillas that supported the royalists. Scholars have shown how fugitive slaves and their descendants in the Patía negotiated their roles in the war with the royalists and pledged to fight against patriot forces in defense of the king. This strategy strengthened the royalist cause to the point that even the pro-patriot Antonio Nariño talked about the danger that alliance represented in one of the issues of *La Bagatela*. Under the title "Noticias muy gordas" or "Big news," Nariño said that Tacón had taken "the most energetic measures to raise money, cattle, and troops" which "weakened [patriot] forces while increasing the dangers to which they were exposed." He discussed other royalist threats in the territory and fervently called upon his readers to open their eyes and demand that their government in Santa Fe take

bold and effective actions against the royalist enemy. The passionate discourse contained in this article would eventually fuel the animosities among patriots in Santa Fe, leading to a major revolt that ended with Nariño as president of the state of Cundinamarca and the disappearance of *La Bagatela*.³³

The “dangers” Nariño pointed to in his article were not insignificant. Around the time Agustín de Belén was sent to jail, a group of sick patriot soldiers left an expedition to Pasto and began to make their way back to the city of Popayán when they were attacked by *salteadores* (robbers) from Patía. Three patriot soldiers were wounded during the attack, but they survived to testify from their hospital beds in Popayán that they had been ambushed by eight black and mulatto men armed with weapons, including spears. The soldiers pleaded for their lives saying they were sick and unarmed, but the *patianos* (people from Patía) pointed their arms toward the soldiers’ chests and asked who they were. One of the soldiers, Felipe Barahona, replied that they were originally from the city of Cali, to which the *patianos* responded:

Those [people] are the ones we are after because they do not want to follow governor [Tacón]. They [instead] prefer to follow Baraya and the second lieutenant from Cali; They say that the governor has been defeated [absconded], but he will return within a few days. We are the *armadillos* coming out of our burrows. Be grateful that we are going to leave you alive because our second lieutenant Joaquín de Paz is not here, and had he been here, all of you would have been hung, as those are our orders.³⁴

Patriot authorities made great efforts to identify the *patianos* involved in this case. They interrogated people and authorities from the area where the attack took place and later issued

³³ *La Bagatela* (Bogotá), No. 11, September 19, 1811: 41-42.

³⁴ “Causa criminal contra Manuel Peralta seguida por el Alcalde Ordinario, Ignacio Carvajal, 1811,” ACC, Ind, J-Cr, I-3, sig. 1772, f. 8r. “Esos son los que queremos pues no quieren creer en el Sr. Gobernador por estar creídos de Baraya y del Alférez Real de Cali; dicen que se ha perdido el Sr. Gobernador pero el aparecerá dentro de pocos días; nosotros somos los armadillos que ya vamos saliendo de la cueva; agradezcan que los dejamos con vida, por no estar aquí nuestro Alférez Joaquín de Paz, que si estuviera, a todos los ahorcaría por ser esta la orden que traemos.”

public edicts that listed the names of the fugitives. One man, Manuel Peralta, was captured in March 1812. Because of an armistice between royalists and patriots, Peralta was released two months later. Authorities warned him, however, to stay within city limits “until the Valle del Patía has been subdued.”³⁵ But that would not happen any time soon. The *armadillos* and their leader, Joaquín de Paz, would continue to increase their presence on the battlefields as well as on the most intimate terrain of family life.

4

By mid 1813, royalist brigadier Juan Sámano had successfully occupied Popayán again, forcing patriots to flee to the north.³⁶ As the governor of the province, one of Sámano’s many responsibilities was to read petitions from ordinary people regarding legal and civil matters. On October 1st of that year, Sámano read a letter by a young soldier who had recently returned from fighting the patriot forces in the northern city of Cali. In the letter, Ángel Salazar explained that before being recruited to the royalist militias, he had promised to marry Juana Reina, a woman from his hometown of El Tambo, a town in the southern part of the province.³⁷ Before marching to Cali, Ángel left Juana under her mother’s supervision, but found out upon his return that Juana was missing. He heard rumors that she had been hiding from the legal authorities who finally caught her for unruly behavior.³⁸ Although he assured the governor he had no knowledge of her

³⁵ “Causa criminal contra Manuel Peralta,” ACC, Ind, J-Cr, I-3, sig. 1772, f. 29v. “...hasta estar sosegado el Valle del Patía”

³⁶ José Manuel Restrepo, *Historia de la revolución de la república de Colombia en la América meridional*, vol. 1 (Medellín: Universidad de Antioquia, 2009), 237-242.

³⁷ The records say Juana and Ángel were both from El Tambo, but offer no indication about the *calidad*. The people from El Tambo were predominantly poor African and indigenous origins.

recent behavior, he revealed that Juana had become pregnant with his baby after he promised to marry her. In spite of that, Ángel said Juana was a virtuous woman, explaining that they had plans to form a family together, but the war had separated them. In light of this, Ángel petitioned for Juana's release so he could live up to his word and meet the obligations of a "good man."³⁹

Ángel's eagerness to keep his promise of marriage seemed especially driven by a desire to protect Juana's honor, which would consequently protect his own. This was in line with the customs of the period since women's unsupervised behavior could potentially wound the honor of her family members and invite rejection from others. Although this custom was observed more rigidly among the upper classes, it was also important for lower-class people whose reputations determined healthy relations with their neighbors and access to credit.⁴⁰

Shortly after reading the letter, Sámano ordered the judge to comment on the legal situation of Juana Reina. Judge Antonio Carvajal y Tenorio answered the next day with a detailed brief in which he accused Juana Reina of being the concubine of royalist second lieutenant, Joaquin de Paz. The judge did not specify how he had found out about their alleged illicit friendship, but the seriousness of the crime forced him to act with "all of the confidentiality" that this case required. By this he meant that he secretly gathered testimonies and evidence from four *alcaldes pedáneos* (local judges) in El Tambo who supposedly knew about Juana Reina's life.⁴¹

³⁸ "Comisión e instrucciones de Carvajal y Tenorio a Juan Luís Obando para que reciba una declaración al mulato Ramón 'de tal', 1813," ACC, Ind, J-Cr, I-3, sig. 1775, f. 4r.

³⁹ "Comisión e instrucciones, 1813," ACC, Ind, J-Cr, I-3, sig. 1775, f. 4r.

⁴⁰ Lyman L. Johnson and Sonya Lipsett-Rivera, *The Faces of Honor. Sex, Shame, and Violence in Colonial Latin America* (Albuquerque: University of New Mexico, 1999); Susan Socolow, *The Women of Colonial Latin America: New Approaches to the Americas* (New York: Cambridge University Press, 2015)

⁴¹ "Comisión e instrucciones, 1813," ACC, Ind, J-Cr, I-3, sig. 1775, f. 4v. "todo el sigilo"

Alcaldes pedáneos were distinguished members of their communities who were at the bottom of the justice system hierarchy and served as local judges in their assigned districts. Such districts typically included remote towns and villages under the ultimate jurisdiction of the capital city of their provinces. Because they represented the authority in their communities, these *alcaldes* were allowed to detain a person suspected of crime. In the process, they would gather witness testimony and other relevant evidence and send it to the *Alcalde Ordinario* (judge) in the provincial capital, along with the accused, for formal legal action. These local judges could also name *comisarios de barrio* (patrol officers) to help them supervise people's public behavior or even catch unmarried couples engaging in illicit sexual acts. In many instances, local judges exercised the duties of patrol officers themselves by patrolling the streets and inspecting houses with suspicious activity late at night. The responsibilities of both local judges and patrol officers were thus not just an extension of the Church's watchful eye, which penetrated the privacy of ordinary people; they were also an integral part of the legal system as their work contributed to the criminalization of those whose behavior threatened public order.

Although the post of *alcalde* existed across most of the colonial period, scholars have argued that their actions varied in frequency and effectiveness, especially in the eighteenth century. High population growth rates under Bourbon rule seemed to have increased local judges' actions as shown by studies about Antioquia and Popayán during that period. Interestingly, however, local judges' actions regarding illicit friendships in the late colonial period did not necessarily end well. Men who experienced arrest often accused local judges of abusing their power. Similarly, the practice of illicit friendship was so widespread that it was difficult or even irrelevant to control and punish it. What, then, motivated the prosecution of certain cases and not others? Why was this mechanism used during the war? In the specific case of Reina and Paz, what did the

alcaldes from El Tambo know about them? They apparently provided evidence that included an original copy of a letter Paz sent to Juana from Cali that, according to the judge, proved the illicit friendship between them. The judge invited the governor to read the contents of that letter and all the other testimonial evidence stored in the “secret archive.”⁴²

For the judge, this was a top secret case because second lieutenant Joaquín de Paz, who was alleged to have entered into concubinage with a woman pledged to another, was a married black man. Royalists would not tolerate his immoral behavior not only because it violated the sacramental union and the ideas at the core of their value system, but also because his military work was critical for the success of the royalist cause and the slightest distraction or mistake could be costly. This particular criminal record does not provide detailed information about Paz, but he is a well-known figure in Colombian regional history.⁴³ He was one of three prominent black guerrilla leaders to come out of the *Valle del Patía*, with its concentration of runaways from slavery. He had earned a privileged position of power as a result of his ability to mobilize hundreds of soldiers for the royalist cause. The judge recognized that those soldiers looked up to Paz, so he treated the case with absolute discretion, manipulating the law so he could end the illicit friendship without turning Paz and the *patianos* against him. He explained in his brief that he ordered a freed mulatto named Ramón Segura to escort Juana from the city of Popayán to the local courts of El Tambo. From there, local judges would take Juana to the town of La Cruz where she would live in exile.

⁴² “Comisión e instrucciones, 1813,” ACC, Ind, J-Cr, I-3, sig. 1775, f. 5r. These critical pieces of evidence were filed somewhere else. Thus, they were not included in the criminal record in which this analysis is based. In fact, aside from Ángel’s letter, Sámano’s notes, and the judge’s brief, there are only copies of files pertaining to Ramón’s interrogation. For this reason, this case shows up as the trial of Ramón Segura in the archive’s catalogue.

⁴³ Francisco Zuluaga, *Guerrilla y sociedad en el Patía* (Cali: Universidad del Valle, 1993)

The judge's plan seemed well calculated, but things did not go as smoothly as he had hoped. During the first week of September, the judge ordered the arrest of the escort Segura after he apparently let Juana Reina escape. Once Segura was in prison, the judge called on Juan Luis Obando, a creole strongman (*caudillo*) leader from a powerful royalist family in the Patía, to carry out Segura's interrogation on September 4. This arrangement was probably done to exert pressure over Segura and obtain his confession. Two days later Segura testified that he left Juana at his aunt Javiera's house while he searched for a horse to transport her, but she was no longer there when he returned. Obando later wrote that in spite of his questions, Segura insisted that he did not know Juana's whereabouts. At that point, the judge consulted with the prosecutor in Segura's case and followed his suggestion. He released Segura on September 10 under the condition that he would be responsible for Juana if he did not show up with her in three days. Perhaps fearing the legal troubles that could come his way, Segura confessed Juana's location in the city and reported she had given birth to her child. This means she probably gave birth within a week after running away. The judge apprehended Juana, though it is not clear under what circumstances. He confined her in an unspecified location and made no mention of her newborn baby in his brief to the governor.

All of this had occurred a month before governor Sámano received Ángel Salazar's letter about his errant fiancée. For the judge, this letter invalidated the reason Juana had been confined, so he agreed to release her on the condition that the governor determine a date for the wedding celebration. The judge worried that Ángel's proposal could be, in fact, a ruse "concocted by the passion" between Paz and Juana. Because of this suspicion, the judge mandated a timely celebration of the wedding in order to "prevent Paz's wife and [Juana's] suitor from learning

about what they most likely did not know and [avoid] the fatal outcome that would follow.”⁴⁴

Here, the judge was probably signaling to Sámano that in this circumstance, outcomes could include divorce as well as feelings of vengeance and hostility either between Paz and Ángel or between them and the royalists authorities. On October 4, 1813, Sámano closed the case and gave Juana and Ángel twelve days to marry.

This case nicely illustrates the strategy through which royalist authorities acted against what they considered immoral and threatening behavior, but in ways that would not attract public attention, hurt Paz’s marriage, or weaken their strategic relationship with Paz. The judge’s main objective was to place Juana under appropriate patriarchal authority so that her husband could supervise and keep her away from Paz and his family. Normally, women accused of illicit friendships were sent to work in local hospitals for women, but Juana was treated differently. The judge initially planned to banish her from the city of Popayán and ordered Ramón Segura to escort her away. When Segura failed to do this, the judge accused Juana of convincing him to let her escape. Later the judge agreed to release Juana and place her in Ángel’s control. He seemed convinced that was how he could separate Juana from Paz. This fits the logic of seclusion (*recogimiento*), and of marriage as remedy for preserving family honor or punishing sexual crimes. In this view, Juana had not just violated Catholic morals with her actions; she also possessed “dangerous” qualities that allowed her to captivate men.

In some ways, this was the same argument Ángel had used in his letter to Sámano. Although there is no indication of Juana’s age, Ángel argued that she was supposed to be supervised by her mother, who failed to do so adequately during his absence. But there he was, willing to marry her

⁴⁴ “Comisión e instrucciones, 1813,” ACC, Ind, J-Cr, I-3, sig. 1775, f. 5r. “Un pretexto fraguado por la pasión para quitar todo estorbo, dándose por depurada la providencia para prevenir el que la mujer de Paz y el pretendiente sepan lo que acaso ignoran y el fatal resultado que se seguiría.”

and take care of her so she would not cause more trouble. It is difficult to know based on these records whether Ángel was being pressured into marrying Juana, or if those were his true desires. In any case, even in the midst of war, royalists sought to act in accordance with the law by cracking down on illicit relations, saving marriages, and in the case of Juana and Ángel, welcoming a new blessed union. But this was not done just for the sake of royalist moral convictions. These actions had political and military implications that could influence the success or failure of the royalist cause.

The fact that Juan Luis Obando, the *caudillo* who was brought in to interrogate Segura, was involved in at least one part of this case suggests that winning the war meant creating, maintaining, and extending patronage relations. In discussing the life of Juan Luis Obando, Francisco Zuluaga and Mario Diego Romero have described elements of the patron-client relations he cultivated throughout his life. They listed, for example, several instances when Obando established fictive kinship ties with the people from Patía through marriage and *padrinazgo* (baptismal sponsorship) as a way of strengthening his political, economic, and social base in the region. They also highlighted Obando's influence in civil and criminal cases in which the people involved were *Patianos*. On this point, they briefly mentioned the case of Paz and Juana Reina and noted that Obando played a role in the case, which was about *un lío de faldas*, or “the troubles of a womanizer.” Dismissing the case in this way, however, diminishes the centrality that family matters—licit or illicit—played in times of war. Such characterization obscures the complexity behind the policing of illicit relations and the ways such relations were intricately connected to the political projects of royalists.⁴⁵

⁴⁵ Francisco Zuluaga and Mario Diego Romero, *Sociedad, cultura y Resistencia negra en Colombia y Ecuador* (Cali: Universidad del Valle, 2011): 145.

Despite Obando's political prominence, his interrogation of Ramón Segura was not as fruitful as the judge had expected it to be. Still, Obando's participation in the case may have reinforced, as both historians seem to suggest, the ways royalist families and authorities viewed and exercised their clientelistic relations with the people from Patía. This meant that patronage and moral control were interrelated. For royalists, political power and legitimacy would not only come from cultivating patronage relations with *Patianos* that could help defeat the patriot insurgents and reestablish colonial rule and order. Domination also fundamentally required the continuation of a colonial practice that combined Catholic morals and a specific use of the law to regulate the intimate lives of ordinary people.

Another issue that the case of Paz and Reina raises has to do with the construction and manipulation of the judicial archive. Because this was a confidential case, royalist authorities separated the records that contained critical information about the illicit friendship between Paz and Juana from the copies pertaining to Ramón Segura's interrogation. Thus, this case was originally put together in a way that suggested it was about a mulatto man who failed to accomplish the order to escort a criminal woman.⁴⁶

This criminal case leaves many questions unanswered about its protagonists. We know from other sources, though, that Joaquín de Paz continued fighting for the royalist cause until July 1815 when he was fatally shot in combat with the patriots and died on the banks of the Palo river.⁴⁷ A year before that, Paz or "the chief of the *patianos*," as he is constantly referred to in the

⁴⁶ This move on the part of the judge or the scribe was nonetheless dismantled by the archivists in Popayán who organized these files and read through entire case files as they catalogued the contents of the archive to aid the work of researchers. They elaborated concise descriptions that for this case included the keywords of Joaquín de Paz and Juan Luis Obando.

⁴⁷ Mariano Torrente, *Historia de la Revolución Hispano-Americana. Tomo II.* (Madrid: Imprenta de Moreno, 1830):156-157; Leonidas Scarpetta and Saturnino Vergara, *Diccionario biográfico de los campeones de la libertad de Nueva Granada, Venexuela, Ecuador y Perú* (Bogotá:

documentation, played a crucial role defending the city of Pasto from patriot forces.⁴⁸ Antonio Nariño, who led that failed expedition, would experience first-hand the “dangers” he had written about in his newspaper article titled “Big news” from the comfort of his office in Santa Fe three years earlier.

5

In 1814, Antonio Nariño left his role as president of Cundinamarca and embarked on a military project known as *Campaña del Sur*, or the first “Southern Campaign.”⁴⁹ As chief of the patriot army, he aimed to defeat the royalists in the southern part of New Granada, which included Popayán, Pasto, and Quito. In January, 1814, Nariño occupied the city of Popayán, forcing the royalist Sámano, who had been in control for seven months, to retreat to the southern city of Pasto. Nariño stayed in Popayán for some time, developing a plan to attack Pasto and helping to reconstruct a city he viewed in “a state of consternation and anarchy, without judges or public servants, and almost without food.”⁵⁰ Thus, he helped create the city’s first newspaper, *La Aurora*, and the electoral college (*Colegio Electoral y Constituyente*) whose members would elect and assign public administrative positions in Popayán.⁵¹ In May 1814, Nariño and his

Imprenta de Zalamea, 1879): 71; Santiago Arroyo, *Apuntamientos* (Popayán: Fundación Caucana de Patrimonio Intelectual, 2010): 186-190.

⁴⁸ Restrepo, *Historia de la revolución*, 277.

⁴⁹ Five years later, Simón Bolívar would lead a second – and this time successful – Southern Campaign, which would gradually result in the formal expulsion of all royalist forces from present-day Colombia, Ecuador, and Venezuela. This cleared the road for the creation of the Republic of Colombia in 1819.

⁵⁰ Simón B. O’Leary, *Memorias del general O’Leary*, Tomo XIII (Caracas: Imprenta de la Gaceta Oficial, 1881): 32.

⁵¹ Restrepo, *Historia de la revolución*, 269.

forces attacked Pasto, but the assault was a military fiasco. The royalists detained Nariño for thirteen months before dispatching him to Spain by way of Quito and Lima to serve a sentence of exile as prisoner of war. The patriot leaders and soldiers who survived the confrontation returned to the city of Popayán in that same month. In July, members of the electoral college drafted and published Popayán's first constitution. Three months later, those members along with local patriot authorities fled to Cali after the royalists reinvigorated their forces under colonel Aparicio Vidaurrazaga and took over Popayán.⁵²

With its 1814 constitution, Popayán joined five pro-independence provinces in New Granada that had published *cartas constitucionales* (provincial constitutions) to declare their political autonomy from the governing bodies in Spain.⁵³ Patriot leaders in Santa Fe had drafted and proclaimed the first constitution in the territory. This established a precedent for all the other provinces in the territory whose leaders considered themselves autonomous. Between 1811 and 1815, eight constitutions were drafted and three were amended. The drafting of these constitutions represented a development in political thought and legal studies that marked the beginning of Colombia's constitutional history. In this context, Popayán's first constitution was the product of an unprecedented political exercise that brought together patriot Popayán elites who renewed and fortified their commitment to independence. Its significance and effectiveness would remain largely symbolic, however, given the constant shifts in power on the ground as a result of the war.

⁵² "Apuntamientos sobre la Revolución de la Nueva Granada, especialmente con respecto a la Provincia de Popayán por Santiago Arroyo - Años 1810-1820" AHCRS, Fondo David Mejia Velilla, caja 1, carpeta 4, f. 50v.

⁵³ Cundinamarca (March, 1811); Pamplona (November, 1811); Tunja (December, 1811); Antioquia (March, 1812); Cartagena de Indias (June, 1812). After 1814: Mariquita (June, 1815) and Neiva (August, 1815).

Although these constitutions were drafted at different times and locations, they shared several features. Unconditional adherence to the Catholic religion, for example, was a fundamental premise that framed all of these constitutions. They all remained loyal to the Church and declared Catholicism the only religion. Popayán's constitution specifically recognized religion as "the first law of government" and called for such "strong and sacred bond" to be sustained and respected in society."⁵⁴ This meant religion continued to be inextricably linked to the law, just as it had been during the colonial period. Even at such critical juncture presented by war, it continued to define almost every aspect of people's lives. For example, in 1809, when municipal council members in Popayán voted to keep the Security Junta they had created as a response to patriot events in Santa Fe, those who opposed it publicly lamented that the Security Junta would obliterate the religion of their ancestors. A document titled as a memoir by a patriot soldier recounts how priests who supported governor Tacón would run door to door across town crying out loud that the Security Junta "was the greatest evil ever sent by heaven" and that it would turn things upside down because "married couples will divorce; our daughters will be raped; the *lecho nupcial* (marriage bed) will be stained; and the widows will turn into prostitutes."⁵⁵ For the patriot soldier who made these observations, this was the "language of

⁵⁴ Proyecto de constitución de la Provincia de Popayán, formado por el serenísimo colegio electoral y constituyente del presente año de 1814", *Boletín Histórico del Valle*, No. 49-53 (1938), "La religión debe mirarse como la primera ley del gobierno sosteniéndola y haciéndola respetar con su ejemplo y facultades, como el vínculo más fuerte y sagrado de la sociedad." Jorge Orlando Melo, "Documentos constitucionales colombianos, 1810-1815," Unpublished.

⁵⁵ "Memoria histórica de los acontecimientos militares que tuvieron lugar en las provincias del Cauca y Popayán desde el principio de la revolución de la Nueva Granada en 1809 por un oficial de las tropas republicanas," ACC, Fondo Mosquera, 1840, varios, N. 48 D11602. f. 4r. Other accounts in similar format are: José María Caballero, "En la Independencia" in *La patria boba* (Bogota: Imprenta Nacional, 1902): 75-274; "Reminiscencias de la Gran Revolución" in *Boletín de Historia y Antigüedades* No. 24 (1904):756-759.

malicious priests” whose “fanaticism caused rage among the people from Patía y Pasto.”⁵⁶

The soldier’s memoir illustrates, to some extent, the profound preoccupations that supporters of the king in Popayán had at the outbreak of war. They associated political change with the destruction of the Catholic religion and the only way of living they had known. Patriots, in contrast, viewed their efforts for political autonomy from Spain as intimately linked to the church’s doctrine. Their aim was to break with the “chains of servitude” as vassals and institute their own government following similar Catholic norms. Patriots demonstrated this position when leaders denounced Tacón’s campaign to recruit slaves for the war. They opposed it and ratified the Church’s role in society by exhorting the clergy to preach that independence would not affect religion in any way.

At the outset of war, the Catholic clergy stood by Tacón and the royalists, but became divided as the war progressed. Some of the same leaders who opposed Tacón would come together again to draft Popayán’s first constitution which put religion and God in its opening line: “In the name of the Holy Trinity, Father, Son, and Holy Spirit, God Almighty and absolute arbiter of the universe and society.” Religion framed both royalist and patriot views of law and social control during the war, serving as a vehicle through which these groups understood and legitimized their interests and actions. This would be altered in 1821 with Colombia’s formal independence and the creation of a new national constitution. Before we delve into this, however, what can criminal cases about illicit friendships tell us about the second half of the 1810s?

Between 1815 and 1816 royalist forces, revitalized by the army of Pablo Morillo, attacked and occupied the city again in 1816 as part of the Spanish monarchy’s effort to subdue

⁵⁶ ACC, Fondo Mosquera, 1840, varios, N. 48 D11602. f.4v. “el fanatismo hizo nacer las iras del Patía y Pasto.”

rebellion.⁵⁷ Three cases from 1817 to 1819, each reaching court when the city of Popayán was under royalist occupation, share important similarities: two of the couples involved were accused by royalist authorities of living in concubinage, were poor, and were from Valle del Patía, which suggests they were of African descent. Furthermore, the prosecutor assigned to two of these cases was Dr. Don Santiago Pérez de Valencia y Arroyo, a renowned lawyer and public official with a prestigious record in political life. His appointment as prosecutor in these criminal cases is striking given that he was among the local elites who supported the patriot cause in the city and was a member of the electoral college that drafted Popayán's first 1814 provincial constitution.

It is not clear why Don Santiago would play the role of prosecutor under royalist occupation given the rivalries and the mistrust that prevailed between the two groups. It is likely that in the context of what Spanish royalists saw as a *Reconquista*, patriot leaders subjected themselves to royalist power and to some extent cooperated with royalist interests. Don Santiago's participation in these criminal cases is critical for two reasons. First, it allows us to get a grasp of how authorities from opposing political groups interpreted and adjudicated perceived illicit friendships. Second, it offers a sort of prelude to the kinds of attitudes and dynamics that gradually began to emerge between local authorities and high ranking bureaucrats in the final years before Independence.

6

On the night of June 21, 1818, the local judge of the town San Miguel del Patía, Salvador Gómez, acted as patrol officer (*Alcalde de Barrio*) and made a stop at the house of Escolástica

⁵⁷ Rebecca Earle, *Spain and the Independence of Colombia 1810-1825* (Exeter: University of Exeter Press, 2000), esp. 57-74.

Majín, who was over 25 years of age.⁵⁸ Judge Gómez seemed particularly concerned with Majín given that she had been warned to end an illicit relationship with the 24-year-old single farmer Tomás Rodríguez, with whom she had two children. Using the light of a candle, judge Gómez and another man named Gaspar Palacio inspected the house and discovered Rodríguez hiding behind a door. Because this was allegedly the fourth time Rodríguez was caught in the company of Majín, the local judge decided to tie Rodríguez's hands and escort him to the town's jail along with the woman. Once at the town's jail, according to the judge, Rodríguez attempted to stab him with a knife, and they engaged in a brief fight. In response to this unexpected aggression, which could have fatally injured him, judge Gómez gathered five witnesses who could speak about Rodríguez's illicit affair and the violent reaction against the judge.

One of the witnesses was Escolástica Majín, who was only asked to answer whether or not it was true that Rodríguez had tried to stab the judge with a knife. Majín said it was false. Rodríguez did have a knife in his hand, but he gave it to her and she put it away.⁵⁹ The other four witnesses, all male farmers from the town, said they had heard about the incident and had seen the knife cut left in the local judge's *ruana* (an Andean cape). For these male witnesses, Rodríguez's alleged attack was not surprising, as he was apparently known for his unruly behavior. One of those witnesses included former local judge Juan de Dios Moreno who was a literate forty-year-old farmer.⁶⁰ In these remote rural areas, local judges were generally community members who stood out for their connections to high-ranking authorities and their ability to write. Moreno said that as judge, he too warned Rodríguez several times to end the

⁵⁸ "Sumario contra Tomás Rodriguez, de Patía, por amistad ilícita con Escolástica Majín, 1818" ACC, Ind, J-Cr, I-3, sig 1780.

⁵⁹ "Sumario contra Tomás Rodriguez, 1818" ACC, Ind, J-Cr, I-3, sig 1780, f. 6r.

⁶⁰ "Sumario contra Tomás Rodriguez, 1818" ACC, Ind, J-Cr, I-3, sig 1780, f. 15v.

relationship with Majín, but Rodríguez disobeyed and even “laughed” at his orders.⁶¹ One day after the arrest, judge Gómez sent Rodríguez along with the transcript of testimony and evidence to the city of Popayán, where the judge of first instance, royalist Carvajal y Tenorio, was to review it and determine the appropriate punishment.

In Popayán, Rodríguez spent a month in jail before royalist Governor José Solís commissioned a patrol officer to interrogate him on July 28. Rodríguez answered six questions about the resistance he had displayed during his arrest, his presumed disrespect for the authority and the law, and his relationship with Majín. In his answers, Rodríguez denied any attempts on his part to injure judge Gómez. He confessed to having a knife, but said he never planned to use it against the judge. He also admitted having a three-year-long romantic relationship with Majín, who was originally from the town of El Tambo, but lived in Patía. He argued that he had disobeyed the local judge’s orders to stop seeing Majín because he was making arrangements to marry her. More specifically, Rodríguez said he was in the process of requesting a dispensation to marry Majín after the local village priest told him they would need one.⁶² Dispensations were royal exemptions/permissions granted to people facing a canonical impediment to carry out an important milestone in their lives. One of the most common impediments was not being able to marry a partner because of consanguinity or social or economic inequality. Couples who wished to receive dispensation had to appeal to ecclesiastical authorities, a process that could be long, expensive, and uncertain, for decisions were based on the particularities of each case.⁶³ The

⁶¹ “Sumario contra Tomás Rodríguez, 1818” ACC, Ind, J-Cr, I-3, sig 1780, f. 3v.

⁶² “Sumario contra Tomás Rodríguez, 1818” ACC, Ind, J-Cr, I-3, sig 1780, f. 8rv.

⁶³ See: Asunción Lavrin, *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1992); Ann Twinam, *Purchasing Whiteness: Pardos, Mulattos, and the Quest for Social Mobility in the Spanish Indies* (Stanford, Calif.: Stanford University Press, 2015);

records do not state which specific impediment applied to Majín and Rodríguez, but in the social context of Patía, it was most likely consanguinity.⁶⁴

After Rodríguez's interrogation, governor Solís and judge of first instance Carvajal y Tenorio assigned the role of prosecutor to Santiago Pérez de Valencia y Arroyo. Two weeks later, Don Santiago read Rodríguez's interrogation and wrote a brief to the governor in which he did not focus on the alleged crimes of Tomás Rodríguez, but on the inconsistencies he observed in the way the local judge handled the situation. For Don Santiago, the judge had overstepped his legal boundaries and lost his decorum when he engaged in a physical fight with Rodríguez. He also said the judge should have, in his view, found a way to make them marry in order "to remedy without scandal" the illicit relationship they had sustained.⁶⁵ If Gómez could not get them married, he added, the judge should have refrained from violence and resorted to "the laws that delineate how to proceed against disobedient people."⁶⁶ Here, Don Santiago suggested a solution

Susan Socolow, *The Women of Colonial Latin America* (New York: Cambridge University Press, 2015); Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford, Calif.: Stanford University Press, 1999); Rodolfo Cortés, *El régimen de "Las Gracias al Sacar" en Venezuela durante el período hispánico* (Caracas: Academia Nacional de la Historia, 1978).

⁶⁴ Colombian scholars who have studied this specific region within Popayán (which was predominantly Afro-descendant) have argued that family formation practices occurred around the idea of "serial monogamy." This meant couples would stay together for an indefinite time, and then move into new relationships, giving them multiple partners throughout their lifetime, many of whom were close relatives. This family structure also centered the role of women in their units, making it a matrifocal and matrilineal model still preserved today in some of those communities. See: Luis Ervin Prado Arellano, "El jefe natural: poder y autoridad en el Valle del Patía, 1810-1850" in *Historia y Sociedad* No. 23 (2012): 243-265; Francisco Zuluaga, *Guerrilla y sociedad en el Patía*; Francisco Zuluaga, "Cuadrillas mineras y familias de esclavos en las minas de Nóvita (Chocó, Colombia). Siglo XVIII" *América Negra* 10 (1995), 51-81; Mario Diego Romero, *Poblamiento y sociedad*.

⁶⁵ "Sumario contra Tomás Rodríguez, 1818" ACC, Ind, J-Cr, I-3, sig 1780, f. 9v.

⁶⁶ "Sumario contra Tomás Rodríguez, 1818" ACC, Ind, J-Cr, I-3, sig 1780, f. 9v.

similar to that of the case of Juana Reina. Arranging marriage was, in the view of these authorities, a way to redress illicit sexual behavior without awakening public scandal. But, in some ways, an arranged marriage would also constitute a form of punishment for a couple given that under the blessing of the Church, they would be expected to live in accordance to the rules that oversaw sacramental unions or face spiritual and legal consequences.⁶⁷

Concerning Rodríguez's aggression against the judge, Don Santiago was not convinced it had happened. The local judge did not provide a medical confirmation of the wound (as was required in cases of alleged violence) nor were most of the witnesses present when the fight occurred. Don Santiago therefore urged governor Solís to request that judge Gómez provide more evidence that could prove his complaints. The new evidence would be examined thoroughly to determine the crime committed by Rodríguez and the adequate punishment he deserved. If Rodríguez had wounded the local judge then that constituted a serious crime. If he, however, had "simply tried to escape before staying in prison," there was no punishment for that behavior. He added that his reasoning could be corroborated on the "Código y Práctica Criminal" by Vicente Vizcaíno Pérez a renowned prosecutor from Galicia.⁶⁸ What Don Santiago promoted here was to find equal or proportional punishment to the crimes, an idea that would become a basic tenet of anti-absolutist liberals during this period. Interestingly, governor Solís followed Don Santiago's suggestion and demanded that judge Gómez send more evidence.

In the meantime, the defense attorney assigned to Rodríguez, Joseph Diago, sent out a brief to the governor in which he outlined the abusive measures of judge Gómez, who had confiscated

⁶⁷ Richard Boyer, *Lives of Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New Mexico Press, 1995)

⁶⁸ "Sumario contra Tomás Rodríguez, 1818" ACC, Ind, J-Cr, I-3, sig 1780, f. 10r.

all of Rodríguez's belongings as well as those of his mother and brother. Although no details about these people are provided on the records, Diago emphasized Rodríguez's family was poor and the local judge's "abuse" and "cruelty" against them had to be stopped by the government.⁶⁹ Like Juan Luis Obando in the case of Juana Reina, Joseph Diago belonged to a powerful family from the Patía that mobilized hundreds of "*patianos*" and organized them to protect the Patía and Pasto from patriot intrusion. As a royalist family, they had also established strong clientelistic relations with people from the area. In this sense, it made sense that someone like Diago was representing and advocating for Rodríguez and his family. What is surprising is that Diago would openly express his concerns about the increasing abuse of power on the part of local judges from the area such as Gómez. Don Santiago, who was not a royalist, shared this concern.

Upon learning about the confiscation, Don Santiago called for the release of all the assets and urged the governor to either demand impartiality from the judge or resolve the case himself. Eventually, judge Gómez followed the governor's orders to release Rodríguez's assets and those of his family. He insisted, however, on Rodríguez's criminality. To back up his initial complaint, he ratified the testimonies he had collected at the start of the case and obtained two additional testimonies from men who knew of Rodríguez's "unruly" behavior. Soon after he sent those files to Popayán, the scribe closed the case rather abruptly saying Rodríguez had left prison to join the royalist troops of captain Rupertino Delgado. Governor Solís seems indeed to have resolved the case as he pleased, and added Rodríguez to his military forces.

What stands out in this case is the position taken by the prosecutor and the defense attorney, two powerful men from opposing political sides. Their dissatisfaction with the way the local judge proceeded against Rodríguez focused on his disregard of the law as the most powerful

⁶⁹ "Sumario contra Tomás Rodríguez, 1818" ACC, Ind, J-Cr, I-3, sig 1780, f. 12r.

instrument to subjugate and punish those who violated the rules. For them, the failure to act within legal parameters diminished the relevance of the law in the adjudicating process. They seemed to be criticizing low-ranking officials' attempts to manipulate the law or surpass it when they needed to meet their own political interests. On the other hand, such failure also compromised the local judge's public honor and dignity as noted by Don Santiago. In a society characterized by rigid hierarchical social structures, maintaining one's demeanor in a context of rumor and conflict was crucial to demonstrate class and racial superiority.

In this way, for Don Santiago and Diago the personal involvement of the local judge in the matter placed him at the same level of a presumed criminal, blurring the lines of social distinction. They worried that a continuation of that behavior could have broader implications such as the gradual weakening and dismantling of the hierarchies that legitimized political power and social control. This raises questions about these local judges' class and racial categories and how threatening they could be. Local judges were named in remote areas so that the legitimate government could have a presence in those territories. As this case demonstrates, in places like Patía, local judges were farmers of mixed racial backgrounds who could express ideas on paper, albeit in shaky handwriting. The increasing commitment with which they performed their jobs seemed threatening for elite families in positions of power. For the Diago and Obando families the threat might have been greater given that they had developed a pretty successful patronage system, but were in the process of changing their political allegiance to the patriot cause. The concern about the public behavior of local judges, their impact on social relations, and the proper ways to handle legal proceedings was increasingly real, and it would grow to become a defining political issue in the post-independence period.

As they had been at the beginning of the century, “illicit friendships” continued to be criminalized during the war by both ecclesiastical and legal authorities who feared losing control over the population. For them, illicit friendship was damaging in every respect, for it violated canon law and could provoke divorce when one of the parties was married, to which the church was opposed in principle. Two cases that took place after the Reconquista period, initiated by two women from distinct socioeconomic positions, illustrate this situation. One of them was Doña Antonia Delgado, over thirty years of age, who insistently petitioned for her divorce from Juan de Velasco in 1817. She argued that her husband had caused her to lead *una mala vida* (a bad life) for twelve years. By *mala vida* she meant that her husband sustained concubinage relations with two other women and his repeated absences from home left her in the most miserable state. Doña Antonia presented her formal accusation to the judge of Popayán at the time, royalist Gregorio Angulo. Along with her accusation, Doña Antonia presented several love letters and notes that her husband had received from his concubines, which appear in the criminal record. Upon verifying the evidence, judge Angulo called a meeting with both Doña Antonia and her husband Velasco to discuss the matters and to attempt to dissuade them from seeking divorce.⁷⁰

The meeting, however, did not go well. At one point in the conversation Velasco banged his fist on the table and demanded divorce. He no longer wanted to live with Doña Antonia and

⁷⁰ Any woman regardless of her socioracial status could claim being subjected to *mala vida*, or bad/difficult life as North American historians have translated the term. This kind of life involved being mistreated, humiliated, and abandoned by their partners or owners. See. Richard Boyer, “Women, *La Mala Vida*, and the Politics of Marriage” in *Sexuality and Marriage in Colonial Latin America*, ed. Asunción Lavrin (Lincoln: University of Nebraska Press, 1989): 252-286. Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New Mexico Press, 1995); Susan M. Socolow, *The Women of Colonial Latin America* (New York: Cambridge University Press, 2015): 73-74.

reassured Angulo and other authorities present at the meeting that nothing could change his mind. Angulo expressed his own irritation by ending the meeting and calling Velasco “*un triste zambo*” or a miserable mixed-race man.⁷¹ During the colonial period, the word “zambo” made reference to a person of Indian and African heritage. Because colonial elites viewed this ethnic mix as one of the least desirable, the term acquired a negative connotation and it was frequently used pejoratively by the population. In this case, it is hard to determine if Velasco was, indeed, socially categorized by others as a “zambo.” He was an employee at Popayán’s *Reales Cajas* or treasury and was married to a woman designated *doña*, a title that signaled high social ranking. However, the women he exchanged letters with called him *zambito*.⁷² This type of ambiguity around racial markers raises critical questions about the process of socioracial categorization of people during this period. Terms and definitions were not entirely fixed and could be highlighted or hidden depending on the context. “Zambo” or not, Velasco was jailed, and then demanded his release. He admitted in one of his depositions that his wife’s complaints were based on his “repeated” trips to Patía and the city of Pasto, but he also highlighted that he had honorably looked after her financially for twelve years.⁷³

Doña Antonia’s petition was accepted not just by Angulo as a legal authority, but also by Popayán’s vicar Don Josep María Grueso. The bishopric’s scribe made note of having received the petition and sent a copy to the judge. This granted Doña Antonia the support she needed to demand a monthly stipend from her husband, arguing that she needed the money to feed herself.

⁷¹ “Juicio criminal seguido contra Juan de Velasco por amancebamiento, 1817,” ACC, Ind, J-Cr, I-3, sig. 1779, ff. 2r, 6r.

⁷² “Juicio criminal, 1817,” ACC, Ind, J-Cr, I-3, sig. 1779, ff. 7v; 8v; 10rv; 11v.

⁷³ “Juicio criminal, 1817,” ACC, Ind, J-Cr, I-3, sig. 1779, f. 6v.

She submitted her request before traveling to the city of Quilichao, north of Popayán, where she intended to rest and improve her health. It is not clear what exactly worked to her advantage: the persuading evidence she presented, her husband's reputation, her status, or all three. Typically, people of high social status would avoid divorce because of the social stigma that could stay forever attached to them or their families. In this case, however, doña Antonia was determined to end a relationship that tormented her and apparently caused more damage to her honor than being divorced. She complained, for example, that Velasco had "dishonored [her] conduct" by criticizing and humiliating her in the town taverns he frequented.⁷⁴ She also accused him of circulating a *pasquín* (pasquinade) that narrated a fictitious conversation between two men who candidly shared with each other details about their romantic interests. One of them proudly said that he was Doña Antonia's lover. Doña Antonia turned the pasquinade to the authorities as evidence of her husband's constant abuse. She said that it was clear the pasquinade contained her husband's language, which only aimed to damage her reputation.⁷⁵

An especially interesting aspect of Doña Antonia's case is that among her arguments for divorcing Juan de Velasco, she stated that on several occasions he treated her violently, threatening to kill her with a dagger.⁷⁶ Authorities in the case inquired about this further with her and with witnesses they called to testify. Velasco denied the accusation while the four witnesses declared they knew about his illicit friendships, but not about any specific episodes of violence against doña Antonia. Although this part of the accusation did not go anywhere, doña Antonia

⁷⁴ "Juicio criminal, 1817," ACC, Ind, J-Cr, I-3, sig. 1779, f. 17r

⁷⁵ "Juicio criminal, 1817," ACC, Ind, J-Cr, I-3, sig. 1779, f.17 "El autor no es otro que Juan Velasco según lo tengo experimentado, las palabras son las mismas con que en el espacio de doce años que contraí matrimonio con él, ha deshonrado mi conducta"

⁷⁶ "Juicio criminal, 1817," ACC, Ind, J-Cr, I-3, sig. 1779, f. 2v.

brought it up to strengthen her case and to remind the authorities that a man's violent act could not only cause irreparable damage to a woman, but it was also the expression of a "type" of masculinity colonial authorities wanted to avoid.⁷⁷

The case of Antonia Andrade, who came from a maroon town in Patía known as El Castigo, represents a quite different social setting.⁷⁸ In early 1819, Andrade apparently complained to the local judge of her town, Fermín Gómez, about her husband's adulterous relation with Gregoria Meléndez, his cousin. The files that contained evidence and testimonies are missing from the record. Thus, it is impossible to know the grounds that sustained Andrade's accusation. We do know, however, that Gómez acted as was to be expected from a local judge: he forwarded the complaint file, and sent both Matías and Gregoria, to the judge of first instance in the city of Popayán.

The judge of first instance at that time, Don Rafael Diago, initiated legal proceedings and assigned Don Santiago Pérez de Valencia y Arroyo to serve as prosecutor and to provide a suggestion for a final sentence. Diago communicated this to Gómez in a letter dated February 3, 1819 and included a copy of Don Santiago's interpretation of the case and sentence, which Diago later ratified without hesitation as the final ruling on the case. In his statement, Don Santiago explained that *Las Siete Partidas* prohibited a woman from suing her husband even when the crime was as severe as in this case. Thus, he dismissed Antonia Andrade's complaint, but presented formal charges himself against Matías and Gregoria, given how disgusted he was by

⁷⁷ Victor Uribe-Urán, *Fatal Love: Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic* (Stanford: Stanford University Press, 2015).

⁷⁸ "Causa por concubinato contra Matías Peralta y Gregoria Meléndez, 1819" ACC, Ind, J-Cr, I-3, sig. 2121.

“the adultery, incest, and scandals” of the couple. He labeled the case an “incestuous adultery” and delineated the punishment each of them should receive based on his legal expertise.

He advised the judge to exile Matías and to confine Gregoria in the woman’s hospital where she would be required to work. Both would also lose half of their *bienes* (belongings) to the king and the rest would be confiscated, unless they had legitimate children. According to him, these punishments aligned with the mandates of the *Partidas* and the *Recopilación*.⁷⁹ This precise use of the law is the practice that would characterize the liberal agenda of patriots during and after the war. Don Santiago stuck to the legal books in this case and in that of Tomás Rodríguez. His actions spoke to his opposition to arbitrary governance and his commitment to enforce the law at any cost. In this process, Don Santiago, a patriot, was like any royalist of his time: anxious about maintaining social control through the enforcement of Catholic morals. This becomes evident when his careful reading of the evidence against Gregoria shows that one of her daughters was also suspected of incestuous relations with a family member. Don Santiago called Gregoria a “bad woman” for not taking care of her family and urged the local judge to find out if her daughter had received dispensation to be in a relationship with her partner.⁸⁰

Next, we learn that upon receiving this news, the local judge attempted to confiscate Gregoria’s assets. The plan was unsuccessful because her oldest son argued that his mother had “nothing. All they owned belonged to his younger siblings.” Although the local judge insinuated that Gregoria’s son had lied to him, he did not insist on carrying out the confiscation because both Gregoria and Matías had legitimate children from their respective marriages. He also had difficulty finding witnesses who could speak about Gregoria’s daughter. Apparently, they were

⁷⁹ “Causa por concubinato, 1819” ACC, Ind, J-Cr, I-3, sig. 2121, ff. 1v, 2r.

⁸⁰ “Causa por concubinato, 1819” ACC, Ind, J-Cr, I-3, sig. 2121 f. 2v

all requesting payment for serving as witnesses and he had no money to dispense. He requested money from the authorities in Popayán, but the case is incomplete.

The two cases examined here originated when two women sought divorce from their husbands and requested intervention from legal authorities. Although we know more about Doña Antonia Delgado and less about Antonia Andrade, there are some general observations we can make. In the case of Delgado, her well-documented petition and status as *doña* may have influenced the support she obtained from both legal and ecclesiastical authorities. Both parties reviewed her case and agreed she might be better off away from Velasco. Two years later, Andrade's divorce petition was reviewed by patriots who determined that the law prohibited women from legally accusing their husbands, something that did not come up when Delgado accused her own husband. Although Andrade's case raises more questions than it answers, it begins to lay out the ways patriot authorities conceived and exercised their legal roles at the end of the war. To them, it was important to enforce canonical and criminal law in order to guarantee social control as they made the transition to independent state.

§

This chapter studies the period of the wars of independence (1810-1819). It particularly looks at accusations of illicit friendships and asks, what can these sources reveal about a period of war that has been primarily understood through the military confrontations and political transformations that defined it? In the records examined here illicit friendship was at the root of the problem. Adultery, concubinage, and incest all led to petitions for divorce or for forced/arranged marriages. Paying attention to this seems to have been important for authorities struggling to maintain legitimacy and social control.

Colonial authorities' concerns about regulating the private sphere, more specifically the practices around family formation and sexuality, continued to occupy a place in royalist agendas through the war period. Even in moments of brutal violence and tension, royalist authorities condemned and criminalized behavior that, in their view, deviated from Catholic moral standards. In such context, these actions took on a more valuable meaning for royalists. It seems that in keeping up with that colonial tradition, they attempted to legitimize their struggle to remain in power and sustain it for as long as possible by resuming legal business as usual every time they occupied the Province's capital. In other words, their success rested on their military victories as well as on their ability to reestablish public order immediately after periods of chaos. Similarly, patriots who mobilized to defeat royalists and replace the old regime were equally concerned with imposing Catholic morals to maintain social control. They despised the arbitrary governance and unjust privilege that had characterized royalist rule. Yet these patriots also created and enforced laws in ways that suited their own interests. This position would be contested after independence.

It was no coincidence that the majority of couples/families involved in these accusations were originally from Patía, home to runaway slaves and their descendants who at the dawn of the nineteenth century sided with the royalists at the outbreak of war and remained royalists all throughout. Why then would royalist authorities feel so compelled to regulate the intimate lives of those participating in favor of their cause? Undoubtedly, royalists needed the military strength and support of colored militias to fight for the Spanish crown and to reassert their power, but it seems their interests coexisted with a great fear about the growth of disorderly lives among the colored population. In other words, royalist interventions in the private lives of poor residents through the criminal legal system during the war may not have been motivated simply by a

general desire to reestablish their power and influence, but also by a need to tame and control the private lives of this people. The underlying racial component in these cases is, thus, important because it reflects the extent to which royalist authorities may have perceived the daily lives of mixed-race people as a threat that could get out of control.

Another set of actors who could get out of control were local judges in remote areas where the state could not have a direct presence. We see how royalists used their personalistic patronage relations to mediate in certain cases, but we also see how patriots begin to raise questions and concerns about the increasing abuse of power of these low-ranking authorities. These concerns would later unfold in different ways in the post-independence period.

The people involved in every case pushed back against the intrusion of authorities into their private lives. This included imprisoned slave, the pregnant woman who ran away, the couple from the Patía who insisted on keeping the lifestyle they had together in spite of the pressures to formalize their union, and the women who demanded intervention to divorce their respective partners, found ways to resist the arbitrariness of authorities who viewed their practices as immoral and punishable. They wrote letters, tried to escape from punishment, resisted arrest, confronted authorities, and reclaimed or hid material belongings, all to defend themselves and their choices. In spite of these actions, they were still forced to remain in prison awaiting their owners' decisions, comply with authority orders to marry, or serve as soldiers. Several of the men involved in these cases of illicit friendships were either serving or sentenced to serve as soldiers in the royalist militias, suggesting something of the private backdrop to the public engagement of men of color serving in militias during the war.

Each time they were able to resume power, royalists made use of criminal courts to prosecute people of color involved in/accused of illicit friendships. For the most part, authorities followed

the basic steps of legal proceedings in the criminal cases examined here, but they were ultimately settled outside the framework of formal recourse to the law. In one instance authorities followed the conventions established when it came to slaves accused of a crime: they let the Bethlehemite brothers who owned Agustín de Belen determine his release from prison. But in general they manipulated the law to satisfy their own interests, crafting improvised outcomes that diverged from their own initial formalism.

CHAPTER 3
“INJURED AND PUBLICLY DISGRACED:” POOR WOMEN’S COURT DISPUTES
FOR HONOR IN WAR-TORN POPAYÁN

The preface to Part I of this dissertation opens with a reference to a criminal case from 1811 in which a poor woman named Trinidad Lucano sustained a knife wound to her arm. Trinidad was wounded when she became involved in a fight between her husband, mulatto cobbler Joaquín Torres alias Pitingo, and Agustín López, a married mestizo saddler. The enmity between the two men apparently emerged over a complicated matter that involved the killing of one of López’s cows, presumably as retaliation for his alleged affair with the wife of one of Pitingo’s friends. Details about this entangled plot and the dramatic turn of events after the fight are all vividly described in the witness testimony collected by colonial authorities.¹ The testimonies of several men and women reveal fascinating snippets of everyday life interactions among ordinary people and colonial authorities, each reflective of the social and interpersonal relations in Popayán during Colombia’s wars of independence. While Agustín López’s presumed affair has provided an entry point into the theme of illicit friendship, this criminal case came to light in the first place because of an equally preoccupying feature of wartime Popayán: violence.

Studies about violence and crime in colonial Colombia began to appear in the early 1990s when historian Beatriz Patiño published her work on crime and the legal system in the late

¹ “Causa criminal contra Agustín y Manuel López.” Archivo Central del Cauca (hereafter ACC), Archivo Judicial Independencia, Sig. 5151 (Ind. J I-6 cr).

eighteenth-century province of Antioquia.² Patiño's use of the judicial archive provided a model for other Colombian scholars concerned with reconstructing stories that could illuminate the complexity of social and family relations during Colombia's transition from colony to independent state (1750-1830). Works by Pablo Rodríguez, Mabel López, Hermes Tovar, Catalina Villegas, and Victor Uribe-Urán have demonstrated that violence was a common feature in family life dynamics across colonial Colombia.³ Most of these scholars have examined cases about spousal murders to explain causes for domestic violence and the changing role of the church and the colonial state in these matters. The systematic analysis found in these studies has revealed, for instance, that poor people appeared more frequently in cases about domestic violence that reached the courts. They also emphasize the active role of women as perpetrators of violence against their husbands, especially when they had been victims of abuse or wished to run away with their lovers. The overarching analytical generalizations that come out of these studies have broadened our understandings of violence and family relations across time. They have also, in the case of Uribe-Urán's work, allowed for comparative interpretation with cases from Mexico and Spain. In this chapter, I seek to contribute to this scholarly conversation by providing a more

² Beatriz Patiño Millan, *Criminalidad, ley penal y estructura social en la Provincia de Antioquia, 1750-1820*, 2nd ed. (Bogotá: Universidad del Rosario, 2013).

³ Mabel Paola López Jérez, *Las conyugidas de la Nueva Granada. Transgresión de un viejo ideal de mujer (1780-1830)* (Bogotá: Editorial Universidad Javeriana, 2006); Hermes Tovar Pinzón, *La batalla de los sentidos. Infidelidad, adulterio y concubinato a fines de la colonia* (Bogotá: Universidad de los Andes, 2012); Beatriz Patiño Millán, "Las mujeres y el crimen en la época colonial. El caso de la ciudad de Antioquia" in *Las mujeres en la historia de Colombia*, ed. Pablo Rodríguez (Bogotá: Editorial Norma, 1995): 77-119; Catalina Villegas del Castillo, *Del hogar a los juzgados: Reclamos en el tránsito de la Colonia a la República, 1800-1850* (Bogotá: Universidad de los Andes, 2006); Victor Uribe-Urán, *Fatal Love. Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic* (Stanford, California: Stanford University Press, 2016).

detailed analysis of episodes of violence, the role of women, and the ways in which these episodes occurred in the context of war.

This chapter zooms into the wars of independence and uses a microhistorical approach to examine how violent conflicts involving poor women fit into the larger historical narrative of the war. It specifically asks: how did violent conflicts shape poor women's interactions with family members, acquaintances, and authorities in war-torn Popayán? And, what does an analysis of these conflicts reveal about women's lives on the home front? In answering these questions, this chapter engages with scholars whose work has looked at elements of what Hermes Tovar calls women's "suffering" as a way to "measure the impact of [war] on the daily life of those who waited far from the trenches."⁴ His analysis of married couples' personal correspondence during the war was an attempt to address the consequences of family separation and its impact on women's lives. In a similar vein, Rebecca Earl's analysis of letters and speeches revealed that before the war, male elites understood rape as a result of seduction practices in which women had a degree of complicity. When women's public mobilization increased during the war, that understanding changed from seduction to assault. The charge of rape, Earl concludes, became a rhetorical tool for male elites to accuse other men of assault, undermine female patriotism, and insist on women's roles as victims and subordinates who needed to stay protected in their homes.⁵

⁴ Tovar Pinzón, *La batalla de los sentidos*, p. 169. "Ningún historiador o sociólogo ha ingresado a los conventos de tales sufrimientos para medir la dimensión del conflicto en la vida cotidiana de quienes esperaban más acá de las trincheras."

⁵ Rebecca Earl, "Rape and the Anxious Republic: Revolutionary Colombia, 1810-1830," in *Hidden Histories of Gender and the State in Latin America*, eds. Elizabeth Dore and Maxine Molyneux (Durham: Duke University Press, 2000)

This chapter expands these analytical angles by focusing on poor and mixed-race women's experiences of violence during the war. It does so through a close reading of the testimonies of poor female survivors and witnesses found in criminal records about physical violence across the province of Popayán.⁶ Cases involving physical violence were classified as injury, superficial or deep cuts made with sharp objects; beatings, corporal punishment with hands or objects such as a whip; and rape, forceful sexual penetration. Drawing on a number of feminist approaches to the writing of history, my analysis gives attention to poor women's portrayals of themselves, their engagement with the legal system, and the complicated gender dynamics contained in each of the testimonies and legal arguments preserved in these criminal cases.⁷ By analyzing violent acts and women's reactions to them, the chapter sheds light on the intricate ways representations of character and notions of honor and gender were performed, disputed, and negotiated during the war. In this sense, the chapter shows that while poor women viewed their complaints about violent conflicts as opportunities to repair their honor and protect the physical integrity of their bodies, authorities expressed more concern with advancing dominant ideas about masculinity, patriarchy and race hierarchy.⁸

The active role of women in these cases not only provides a sharp contrast to Chapter two, where women's voices were difficult to discern from the records, but also reveals other modes of violence at play in addition to women's experiences of male violence. These include

⁶ This chapter analyzes a sample of six cases of fifteen. They were catalogued under the criminal of the judicial archive for the independence period (1800-1832) at the Central Archive of Cauca in Colombia.

⁷ In particular, Sueann Caulfield, *In Defense of Honor: Sexual Morality, Modernity, and Nation in Early Twentieth-Century Brazil* (Durham: Duke University Press, 2000) and Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in Postemancipation South* (Chapel Hill: The University of North Carolina Press, 2009).

⁸ My argument in this chapter is similar to what Sarah Chambers has argued for Arequipa, Peru.

symbolic woman-on-woman aggression, racial prejudice, and the methods authorities used to discipline poor men. As in the colonial period, criminal trials during the war years continued to be conducted by legal authorities and recorded by *escribanos*, who played a central role gathering relevant information and delivering news and updates to all the people involved in a case. By reconstructing the pieces of these imagined courtrooms, we learn how they constituted another battlefield in which authorities and poor individuals each struggled to advance their own interests. In doing so, the cases studied in this chapter also offer a unique glimpse into the texture and complexity of social life in war-torn Popayán.

Honor in Late Colonial Popayán

The case initiated by Trinidad Lucano's complaint of assault is a valuable historical resource for the rich content preserved in its witness testimony. We learn from several witnesses that on the night of the fight, Trinidad's attacker Agustín López was accompanied by two armed brothers, and the wife of one of them. The group intercepted Trinidad, her husband, and a female friend named María Trujillo near the city's hospital, where the altercation began. According to Trinidad's husband, he was walking with the two women when he suddenly felt a smack that threw him to the ground followed by the racial insult "stop right there *zambo*" (*para ahí, zambo*.)⁹ As this was happening, a witness said that López's sister-in-law approached María and called her a homewrecker (*una descasadora*). María returned the insult to the woman, at which point the woman's husband intervened by throwing his machete at her. María avoided the blow and quickly abandoned the scene.¹⁰ The fight ended with a wounded Trinidad, her husband, and their attacker incarcerated, and both men sentenced to serve as soldiers for the king.

⁹ "Causa criminal contra Agustín y Manuel López, 1810" ACC, Ind, J-CR, I-6, sig. 5151, f. 8r

The details of this altercation shed light on fundamental questions of honor. The insults exchanged among the two men and two women alluded to dominant ideas about racial and sexual purity that had a critical role in denoting a person's public honor. Throughout the colonial period, honor "was a mental construct expressed through a complex set of behavioral codes regulating personal and social conduct."¹¹ In a highly hierarchical colonial society, public acknowledgement of someone's honor not only legitimized that person's attributes, but also defined the respect with which others would treat him or her. In this sense, to call someone a "zambo" was to indicate that a person was of mixed indigenous and African ancestry. Because colonial elites viewed this ethnic mixing as one of the least desirable, the term had a negative connotation that underlined social and economic inferiority. Similarly, to be blamed for the destruction of another person's marriage suggested that a woman was sexually and morally corrupt. In a patriarchal society that deeply valued women's chastity, this kind of public insult disgraced the woman and, most importantly, her family name. Public insults such as these could profoundly alter a person's reputation in the public sphere, damaging his or her social ties. A person's honor was, in sum, "always subject to the court of public opinion."¹²

Women had played an important role in the definition of Iberian concepts of honor long before colonization of the Americas. In the Iberian moral codes, women were generally characterized as mentally inferior, overly emotional, and unable to control their carnal appetites.¹³ Men thus had the moral responsibility to protect women. In this scenario, women's

¹⁰ "Causa criminal contra Agustín y Manuel López, 1810" ACC, Ind, J-CR, I-6, sig. 5151, f. 4rv.

¹¹ Asunción Lavrin, *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989), 10.

¹² Lyman Johnson and Sonya Lipsett-Rivera, *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America* (Albuquerque: University of New Mexico Press, 1998), 2.

honor was defined by private chastity and public conduct while men's honor derived from their control of women in their families and public opinion of their performance. Although this was the ideal, scholars have shown that in practice concubinage and illegitimacy were commonly viewed as viable alternatives to marriage in fifteenth and sixteenth-century Spain.¹⁴ These ideas and practices transferred to the colonies during the colonization process, but the new demographic context created racially-based social hierarchies that complicated Iberian concepts of honor. In the Spanish colonies, the contact of white Spaniards with indigenous and African-descended peoples led to the development of a legal caste system based on ancestry (European, indigenous, or African), and eventually to the construction of the concept of race. In this process, ideas about honor were transformed, as race became a fundamental marker of one's "condition," or legally and socially-defined status. This meant that women's sexual behavior before or outside marriage could have grave social consequences for them and their families. Illicit relationships with men of undesired racial and lower-class backgrounds could stain the honor and reputation of a family for generations.¹⁵

Men and women of means who were the products of such relationships could restore their honor and respectability through *gracias al sacar*, a bureaucratic process of legitimation. This strategy, however, was available to a limited number of applicants and the process required

¹³ See Susan Socolow, *The Women of Colonial Latin America* (New York: Cambridge University Press, 2015).

¹⁴ Socolow, *The Women of Colonial Latin America*; María Emma Mannarelli, *Pecados publicos: la ilegitimidad en Lima, siglo XVIII* (Lima: Ediciones Flora Tristán, 1994); Pablo Rodríguez, *Sentimientos y vida familiar en el Nuevo Reino de Granada XVII* (Bogotá: Editorial Ariel, 1997); Johnson and Lipsett-Rivera, *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*.

¹⁵ See Asunción Lavrin, *Sexuality and Marriage in Colonial Latin America*; Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821* (Stanford: Stanford University Press, 1988).

patience and resources.¹⁶ Lack of resources posed challenges to illegitimate men and women from the lower class who stood no chance of reaching the end of such a process. To prevent illicit friendships, priests ordered both their upper and lower class parishioners to request dispensations, or royal permissions, if they wished to marry a partner who shared a degree of consanguinity or who possessed a different socioeconomic standing. Requesting dispensations from ecclesiastical authorities would, if granted, permit a marriage. The duration of the process varied depending on, among other things, the influence of any of the interested parties.

For example, a high-profile case resolved in a matter of months was that of forty year-old Francisco José de Caldas. A member of the educated elite class from Popayán, Caldas left the city at the start of the war to support the independence cause in Santa Fe. On February 27, 1810, Caldas penned a letter to the *provisor* in Santa Fe outlining his desires to marry a distant cousin (María Manuela Barahona), for which union he requested dispensation. He argued that he feared Manuela, who was twenty years younger, would be unable to find an “honest” suitor like himself in Popayán. He submitted documentation to prove he had always been single and within six months received approval to marry Manuela.¹⁷ In April, Caldas wrote a letter to his intimate friend Don Santiago Arroyo, the renowned lawyer from Popayán, announcing his marriage to Manuela. Although Caldas expressed his enthusiasm, he also revealed a slight concern about disappointing his close friends: “I do not think that this union will embarrass any of my friends and hope that you, who know well of it, will approve my choice.”¹⁸

¹⁶ Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 1999).

¹⁷ “Carta #139 (Santafé Febrero 27, 1810)” in Francisco José de Caldas, *Cartas de Caldas* (Bogotá: Academia Colombiana de Ciencias Exactas, Físicas y Naturales, 1978): 302-303.

While dispensations were common, sometimes they generated gossip, misunderstandings, and conflict. This was generally the case when members of the community made public their views about a couple they considered to be grotesquely related by blood or socially incompatible because of class or racial differences. José María de la Torre, for example, issued a civil and criminal complaint against the Fernández brothers for yelling “mulatto” at him in the street and insinuating that he had needed a dispensation to marry a respectable woman from Popayán. De la Torre argued that the offense had insulted his, his father’s, and his wife’s father’s honor. Ultimately, authorities asked the Fernández brothers to retract their words, apologize to de la Torre, and pay the legal fees of the case when it became clear that they had no evidence to prove their insults to de la Torre. The brothers appealed the judge’s decision unsuccessfully and de la Torre’s honor, and that of his family, apparently remained intact.¹⁹

Such criminal cases show that defending one’s honor could lead to physical and verbal violence that could, in turn, end in a legal dispute. These disputes, however, do not appear catalogued as honor-based disputes in the archive. They are piled together with sources about other kinds of crimes under the section of the judicial archive labeled “criminal.” Another element that makes these cases special is that poor women were at their center, engaging in actions that did not always fit within the patriarchal expectations of propriety. In conducting the analysis of women’s actions in these cases, the chapter establishes a dialogue with the extensive body of scholarship on honor in colonial Latin America and the Caribbean. It brings to light the

¹⁸ “Carta #144” in Francisco José de Caldas, *Cartas de Caldas*, pp. 307. “Creo que no avergonzará esta unión a ninguno de mis amigos, y que usted, que la conoce, aprobará mi elección.”

¹⁹ “Demanda de la Torre a los Fernández, 1801” ACC, Colonia, J-Cr, I-11, sig. 7983.

determined initiatives of poor men and women in war-torn Colombia to maintain or improve their positions on the home front.²⁰

Familial Honor: A Woman's Virginity

Criminal court records from the prewar period in Popayán demonstrate that authorities viewed women's loss-of-virginity suits as cases of seduction rather than rape. This is compatible with findings in other areas of late colonial Spanish America. Authorities reviewing these cases presupposed moral failing on the part of poor men and women alike: men were prone to fall into temptation (*caer en una fragilidad*); women were incapable of suppressing their sexual desires. In cases that involved little girls – who were exposed to attacks while running errands for their parents or selling food in the streets – lack of evidence and drunkenness could provide solid

²⁰ Sarah C. Chambers, *From Subjects to Citizens: Honor, Gender, and Politics in Arequipa, Peru, 1780-1854* (University Park: Pennsylvania State Univ. Press, 1999); Sonya Lipsett-Rivera, *Gender and the Negotiation of Daily Life, 1750-1856* (Lincoln: University of Nebraska, 2012). Other scholars of colonial Mexico such as Steve Stern and Richard Boyer have produced important studies of plebeian notions of marriage, gender, and honor. Stern's *The Secret History of Gender* offers a detailed and highly theoretical account of relationships among nuclear and extended families in a village community. Stern argues that women and men accepted culturally constructed roles and obligations in marriage, but disagreed over their specific content. Such disagreements opened spaces for family or village members to mediate. He uses the concept of "patriarchal pact" to understand this dynamic. Similarly, Richard Boyer's "Women, *La Mala Vida*, and the Politics of Marriage" in Asunción Lavrin, *Sexuality and Marriage*, looks at inquisition records that cover a 250-year period to norms and behavior around marriage in Spain and New Spain, both in rural and urban areas. Boyer concludes that marriage was defined by patriarchal authority with limits, or as he puts it, a "patriarchal contract." The limits point to the reciprocal dynamics of marriage in which each partner had a responsibility to the other. Ultimately, Boyer asserts that the contract was part of a larger monarchical culture heavily influenced by church teachings and ordinary people's perceptions of marriage obligations. Steve Stern, *The Secret History of Gender* (Chapel Hill: The University of North Carolina Press, 1997); Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New Mexico, 2001).

reasons to absolve accused men. The men in the majority of these cases were found not guilty, and authorities merely charged them with legal fees.²¹

These decisions reflected, as Rebecca Earl has pointed out, a lack of interest on the part of colonial authorities in prosecuting these types of cases. Yet Earl's argument that this changed with the outbreak of war, based on cases that she found for Santa Fe, is not supported by the Popayán documents.²² In contrast to Earl's findings for Santa Fe, the Popayán judicial archive does not register an increase of prosecuted cases charging "deflowering" during the war. This may have been a result of the intensity of warfare in Popayán, where the repeated occupations of the city by royalists and patriots may have shaped the judicial priorities of each group once in power.

This section provides a close reading and analysis of five, from a total of eight, criminal cases found from the war period in which virginity and physical violence against women are at the heart of the disputes. We see young women reclaiming the integrity of their beaten and assaulted bodies through their testimonies while their parents take legal action to defend their families' public honor. As these stories unfold, authorities' contempt for women's bodies becomes apparent; they only act if women suffered life-threatening moral or physical injuries. This logic is consistent with an important premise in Catholic patriarchal society: that it was a husband's duty and right to physically punish a wife for any wrongdoing.²³ Even though the

²¹ ACC, Colonia, J-Cr, I-8, sig. 7836 (Col. J I -8 cr), year 1787; ACC, Colonia, J-Cv, I-14, sig. 10220, year 1793; ACC, Colonia, J-Cr, I-11, sig. 7942, year 1798; ACC, Colonia, J-Cv, I-10, sig. 7973, year 1798; ACC, Colonia, J-Cr, I-11, sig. 7999, year 1800; ACC, Colonia, J-Cr, I-11, sig. 8000, year 1801. ACC, Colonia, J-Cv, III-8, sig. 11087, year 1807. For a case where the governor grants permission for a man to marry an orphan woman he had deflowered, see ACC, Colonia, J-Cr, II-14, sig. 10218, year 1790.

²² Rebecca Earl, "Rape and the Anxious Republic."

violent acts recorded in these cases happened between unwed people, it seems that authorities initially gave the men greater leniency until it was proven that their actions had been extreme. This happened because authorities did not consider the women in question to have had honor. In other words, authorities would take action only if a sexual assault threatened a woman's life, not just her honor or that of her family. Interestingly, also, authorities' treatment of the accused men changes when they discover that one of them was unfaithful to his wife and that the other one was a slave. In this sense, authorities made decisions based on the status of each party.

María Jerónima Idrobo

In the town of El Tambo in the outskirts of the city of Popayán, *alcalde partidario* José Orozco summoned nine-year-old María Jerónima Idrobo to testify after he learned from other sources that a thirty-year-old black man had been thrown in jail for attempting to rape her (*violarla*). Accompanied by her father, Jerónima appeared before the *alcalde* on the same day of the notice. She recounted to him and three men who acted as witnesses what she had painfully explained to her mother a day before: that on her daily routine to deliver a bottle of milk to her father's house, a young black man had intercepted her by the bridge, had forcefully taken her to the woods, and had ordered her to stop crying or he would hurt her with a rod. Her testimony, written in the third person, states that the man threw Jerónima on the ground and that she had felt him penetrating her body. After the man let go of her, Jerónima recalled him saying he would "pay" her the next time he saw her if she failed to remain silent about their encounter. Back at

²³ Richard Boyer, *Lives of the Bigamists* and "Women, *La Mala Vida*, and the Politics of Marriage" in *Sexuality and Marriage in Colonial Latin America*, ed. Asunción Lavrin, 252-286.

her home, however, Jerónima told everything to her mother, who “became upset and started to cry.”²⁴

The mother then shared the news with Jerónima’s father when he showed up at their house after work at a plantain field (*platanar*). Even though the records suggest Jerónima’s parents did not live in the same house and were not married, the father recognized and took responsibility for his daughter. Upon learning about the incident, Jerónima’s father pressed the girl to explain “what kind of black man” (*que laya de negro*) had attacked her. He rushed out of the house in search of the *alcalde* after Jerónima’s descriptions (not included in the records) suggested that the suspect could have been a slave. After not finding the *alcalde*, the father presented himself in a “horrible state of despair” before the local priest, who immediately began a search for the suspect.²⁵ The priest found an enslaved man with similar characteristics working as a crusher (*trapichero*) at a nearby sugar mill. Brought in to identify the suspect, Jerónima confirmed that he – Tomás – had been the offender, which led the priest to arrest him on violent rape (*violento estupro*) charges. In the absence of the *alcalde*, the priest placed Tomás in the wooden stocks (*cepo*) and deposited Jerónima in the church at the request of the girl’s father, or *taita* as she referred to him in her testimony.

Across Colombia, rural children have used the word *taita* to refer respectfully to an older male authority figure in their families. As a linguistic detail in Jerónima’s testimony, *taita* not only points to her bond with her father, but also hints at her family’s lower socioeconomic status because the word has been primarily used by communities of indigenous and black ancestry. The possibility that Jerónima’s family belonged to any of these lower-class groups increases when we

²⁴ “Causa criminal contra el negro Tomás, esclavo, 1820,” ACC, Ind, J-Cr, I-3, sig. 1786, f. 2r.

²⁵ “Causa criminal contra el negro Tomás, esclavo, 1820,” ACC, Ind, J-Cr, I-3, sig. 1786, 2v.

consider that her father worked at a banana plantation. The court proceedings are not explicit about her father's exact occupation, but we can infer from his outrage and demands for justice that, at the very least, he held a social position above that of slave. In a society with class and racial hierarchies, the distinctions between being a free laborer or a slave had real consequences for those who belonged to any of those categories. As a member of the lower-class, claiming superiority over a slave meant, for instance, being able to mobilize support from others in the pursuit of justice and defense of honor. Like the upper-classes, lower-class families cared deeply about protecting female honor since their reputations among friends and neighbors were similarly based on the purity and virtue of the family's female members.

Because in this type of cases women were responsible for the burden of proof, the *alcalde* ordered an old midwife to examine Jerónima in order to establish whether she had been, in fact, deflowered. The same day of the examination, the midwife reported that the girl had suffered no damage (“*no había daño alguno y que si lo hubiera la niña no podría caminar y hubiera echado mucha sangre.*”)²⁶ Jerónima had testified that she had not bled during the act, but highlighted that “it had been painful” (*que le había dolido*). Authorities accepted the midwife's conclusion that Jerónima had not been deflowered, but still proceeded to interrogate the suspect. Tomás was an enslaved man who had run away from his female owner. In his interrogation, he confessed to attempting to rape Jerónima even though he knew he was committing a crime. The *alcalde* decided to turn the case over to the governor, who presided over criminal matters that called for serious punishment. The governor requested depositions from the prosecutor and defense attorney.

²⁶ “Causa criminal contra el negro Tomás, esclavo, 1820,” ACC, Ind, J-Cr, I-3, sig. 1786, 3v

The prosecutor recommended that Tomás be turned over to his owner after receiving fifty lashes. Normally, the legal defender assigned to poor offenders such as Tomás would counter the prosecutor's position. In this case, however, the defender refused to represent Tomás, arguing that slaves were corrupted and behaving criminally (*“los esclavos están muy corrompidos, los vicios los dominan, y los crímenes los cometen ya con indiferencia. Así es que estamos en el caso de imponer sin excepción el rigor de las leyes a todo delincuente sin consideración ni respeto.”*)²⁷ On this basis, he believed that Tomás deserved *un novenario a mano de verdugo*, a corporal punishment consisting of nine lashes per day for a nine-day period. After this, the defender suggested selling Tomás to a different owner outside of the Province of Popayán or, better yet, outside of New Granada.

As the statements by the prosecutor and the defense attorney indicate, the attempted rape of Jerónima provoked the indignation and anger of the authorities when it was confirmed that the offender had been an enslaved man. Authorities focused their attention less on Jerónima and more on the dangers posed by enslaved men such as Tomás. Slaves' supposed lack of moral integrity exacerbated legal authorities' anxieties about the increase of vice and criminality. The fear of losing control over slaves' public conduct required, in their view, both enhanced vigilance and the execution of severe punishments. These actions were limited, however, by specific laws that outlined how slaves were to be punished in the event they committed a crime. It was always the owners' responsibility to educate and reprimand slaves for any wrongdoings. The judge in Jerónima's case ruled that Tomás should be admonished in the presence of his owner, who could then take over him and supervise his behavior. It is not clear if he received verbal or corporal punishment as admonishment.

²⁷ “Causa criminal contra el negro Tomás, esclavo, 1820,” ACC, Ind, J-Cr, I-3, sig. 1786, 8r.

Authorities' interest—or lack thereof—in justice for Jerónima was beside the point. Court proceedings show that authorities placed more emphasis on the threat the enslaved man posed to the social order and ignored the effect of his actions on Jerónima herself. Their priority—to harshly reinforce a slave's social position while protecting slave-owners' rights—suggests that the offender was more socially significant for authorities than Jerónima. Moreover, her father's determination to apprehend the offender also demonstrates that the social mandate for men to defend their family's honor (even when they did not live with their daughters) weighed as heavily or more heavily as the mandate to protect the girl herself.

A City of Women

It is interesting to think about the father-daughter dynamic as exposed by Jerónima's story in the urban context of Popayán, a city mostly populated by women. A study of a surviving census record from 1807 shows that women constituted sixty percent of the total population of the city of Popayán and the majority were of African descent, including mestizas and enslaved and free black women.²⁸ The high number of women during the late colonial period had persistently generated questions among Popayán authorities about the most viable ways to supervise them. For example, Francisco José de Caldas, in his role as *Padre General de Menores* in 1793, expressed concerns about the “idleness” (*ociosidad*) of young poor women in Popayán and the potential social consequences of leaving them unrestrained (*sin freno y sujeción*). In his view, one way to supervise them was by listing their names and assigning each of them to work

²⁸ Of Popayán City's 7,064 inhabitants of all ages in 1807, 2,787 were male (478 whites, 1,260 mestizos, 115 Indians, 473 free mulattos, 33 free blacks, 428 enslaved blacks and mulattos) and 4,277 were female (530 whites, 1,745 mestizas, 239 Indians, 745 free mulattas, 87 free blacks, 931 enslaved blacks and mulattas). María Teresa Pérez Hernández, “Prácticas y representaciones en torno a la familia, el género y la raza. Popayán en 1807,” *Convergencia* 37 (2005). Pérez Hernández, “Prácticas y representaciones,” 223.

as maids at the homes of distinguished upper-class women in town. Although Caldas admitted the limitations of his idea, he believed it could work at least while a hospice for women was being built.²⁹

In the plan he outlined for the governor, Caldas emphasized that only by marrying could young women leave their hostesses' homes. In other words, this model ensured their unbroken subjection within the patriarchal family. Caldas, however, was unable to carry out his plan as he was removed from office shortly after.³⁰ His fears that poor women would continue to “fall into misery” and have families outside marriage were not unfounded. The 1807 census revealed that out of 1094 registered heads of households, 51 percent were women and 49 percent were men. In spite of the slight difference, 31 percent of the male heads of households declared they had a partner while only 6 percent of the female heads of households did.³¹ Thus, in a context in which enslaved and freed women of African descent appeared largely as single mothers, how did they, in matters of honor, negotiate with others the respect they claimed they deserved?

Vicenta Polanco

Take the case of mulatto woman Vicenta Polanco. Vicenta was attacked violently right outside church by a former lover who could not accept her decision to end their four-month affair. Female witnesses who lived in close proximity to the church recalled that minutes after mass they had rushed to their doors to find out who was frantically shouting for help in the street. It was 18-year-old Vicenta, who was on the ground trying in vain to defend herself as 40-year-

²⁹ “Carta #2” in Francisco José de Caldas, *Cartas de Caldas*, pp. 13-20.

³⁰ “Carta #3” in Francisco José de Caldas, *Cartas de Caldas*, pp. 20-21.

³¹ María Teresa Pérez Hernández, “Prácticas y representaciones,” 223.

old Severino González sat on her chest attacking her with a knife. According to the witnesses and Vicenta herself, Severino grabbed her by the hips, smashed her against the cobblestone street, and stabbed her as she begged for mercy. As onlookers began to gather around the couple, Severino apparently urged Vicenta to seek medical attention before he fled the scene. The seriousness of the wounds Vicenta sustained on her head, forehead, behind her ear, and in one of her arms terrified her mother, Isidora Polanco, who accused Severino before the authorities of almost killing her daughter. Following Isidora's accusation, a patrol officer opened a criminal investigation against Severino by collecting a medical report along with the testimonies of the victim and three witnesses.³²

The collected evidence justified Severino's arrest and the confiscation of all of his assets, but he was nowhere to be found. Informed about the case, the governor of Popayán determined that the authorities should search for Severino only if a second medical report indicated Vicenta's wounds indeed posed a threat to her life. The governor's decision implied it was not worth chasing Severino if his actions had not caused serious injuries. Less than near-fatal physical assault on the body of a young woman of African descent and the repercussions they might have had on her daily life were deemed insignificant. The doctor who assisted Vicenta after the attack and would go on to supervise her recovery confirmed, however, that some of her wounds were, in fact, serious. Her injured arm, for example, would likely have to be amputated.³³ Upon receiving the doctor's report and the advice of a prosecutor, the governor authorized the posting of edicts that demanded that Severino appear before local authorities

³² "Causa criminal contra Severino González, 1811," ACC, Ind, J-Cr, I-3, sig. 1773

³³ "Causa criminal contra Severino González, 1811," ACC, Ind, J-Cr, I-3, sig. 1773, f. 2v

within nine days. He was formally accused of inflicting potentially fatal wounds upon the “*mulatica*” or young mulatto woman when she refused to continue their illicit friendship.

The way this case unfolded up until this point seemed to suggest that Isidora’s call for justice was being heard. Severino would be prosecuted and would likely be forced to pay the costs of Vicenta’s recovery per Isidora’s request. Isidora emphatically detailed all the financial debts she had incurred with her neighbors in order to pay for Vicenta’s medical treatment, the damages Severino caused on public exterior walls at the site of the attack, and the work days Vicenta missed during her recovery. Beyond these costs, Severino would also have to account for the illicit nature of his relationship with Vicenta because in the view of her mother and the authorities, he had seduced a young woman without any intention to marry her and did so against her mother’s approval. Isidora informed authorities that, for a long time, she had feared that Severino’s “lustful wishes” would lead him to “corrupt” his friendship with her daughter.³⁴ In other words, she feared he would “deflower” young unwed Vicenta, which would cause devastating consequences for Isidora’s family.

As the head of the household, it was Isidora’s responsibility to protect the reputation that Vicenta had earned in the community as a laborer (her occupation is not disclosed on the records) and as a frequent visitor to the confessional at the San Camilo church. To the witnesses, these actions spoke highly of Vicenta because they showed she respected Catholic moral values. However, this criminal case brought to light Vicenta’s secret four-month relationship with Severino. In her testimony, Vicenta admitted that she had been seduced by Severino, who had deflowered her and then threatened to “reveal everything to [her] mother.”³⁵ She knew that the

³⁴ “Causa criminal contra Severino González, 1811,” ACC, Ind, J-Cr, I-3, sig. 1773, ff. 2r, 11r. See Figure 2.

³⁵ “Causa criminal contra Severino González, 1811,” ACC, Ind, J-Cr, I-3, sig. 1773, f. 14v.

implications of her deflowering would go beyond losing her virginity and her potential to marry; it would stain her mother's reputation among neighbors and acquaintances. Isidora, however, confronted these setbacks with vigorous efforts to protect the dignity of her household, and she stayed by her daughter's side. In this story, physical and symbolic violence had real material consequences for Vicenta and Isidora, who relentlessly pursued both justice and monetary reparation.

This case helps to illustrate how in urban and poor female-headed households like Isidora's, women actively participated in the valuing of each other's honor. Women like Isidora experienced intense pressure to uphold the honor of their families in the absence of a paternal figure in the household. In the colonial context, single women were regarded as "ownerless property" that could be claimed sexually by men.³⁶ For such women, the deflowering of daughters not only could damage the mothers' reputations, but also could destroy their ability to secure and enjoy neighbors' acceptance and respect. When Severino turned himself into the authorities five months after the attack, Isidora submitted a petition to the authorities demanding immediate compensation.³⁷ Although Isidora failed to keep Severino away from her daughter, she persisted in seeking reparations, which would help ameliorate the loss of honor.

Severino was sentenced to six years of forced labor in Popayán followed by a five-year banishment. Although a triumph for Isidora in theory, in practice, her agency was undermined by authorities who sought less to vindicate wronged women than to stabilize or reinforce a caste system. The judge overseeing the case reduced the first part of Severino's sentence to one year.

³⁶ Socolow, *The Women of Colonial Latin America*, 162.

³⁷ "Causa criminal contra Severino González, 1811," ACC, Ind, J-Cr, I-3, sig. 1773, 11r

A similar dynamic reappears in the next section where the focus moves from familial honor to personal honor.

Personal Honor and Marriage

1818 is known as the year of the pro-independence campaigns (*campaña republicana*). Simón Bolívar revitalized and led the republican army to win important battles against the royalists as they made their way to Angostura, in modern-day Venezuela, where a year later he would summon the country's first congress. As royalist forces under the command of Pablo Morillo suffered tremendous losses against Bolívar, royalist authorities in major cities across Colombia were struggling to retain their power and legitimacy. In Santa Fe, Colombia's capital, Juan Sámano had formally been named viceroy of the territory by the king of Spain. Although this appointment would not last for long, it allowed Sámano to recruit soldiers and strengthen their military troops.³⁸ Many of the soldiers recruited to join the royalist forces throughout the war period came from the province of Popayán. The province was known to have deep royalist tendencies due, in part, to the clientelistic relations royalist *caudillos* developed with indigenous and black communities across the province. During that year, Fermin Solarte was among the men from El Tambo recruited to serve as soldiers for the king. He left with the troops to Santa Fe while his wife Manuela Acosta stayed behind.

The extensive recruitment of men for the war separated families and placed women in difficult situations that forced them into a variety of new roles to ensure survival. Several scholars studying Colombia's independence have shown that many women served as camp

³⁸ José Manuel Restrepo, *Historia de la revolución de la república de Colombia en la América meridional*, vol. 1 (Medellín: Universidad de Antioquia, 2009); Germán Colmenares, *Historia social y económica de Colombia, II: Popayán: una sociedad esclavista, 1680-1800* (Bogotá: Tercer Mundo Editores, 1997)

followers, providing services to the troops as laundresses, seamstresses, and cooks. Women who stayed behind engaged in similar activities in their own homes or for the troops based in their towns. Upper-class women concentrated most of their efforts in organizing *tertulias* where attendees shared the latest news about the war and discussed political strategies.³⁹ These examples of female mobilization during warfare in Colombia coincide with findings across Spanish America. Peter Blanchard, for instance, has identified similar dynamics in the southern cone. He has expanded the analysis, though, by showing how enslaved women used the courts to request personal freedom and demand compensation to cover their family needs after losing track of their owners and husbands or being geographically dislocated as a result of war.⁴⁰ If an analysis of court documents can reveal important details about petitions for freedom, what can they tell us about poor women's honor disputes during this period?

This section looks at a criminal case involving Fermin's wife Manuela Acosta, a poor woman whose skin color is not disclosed in the records but who lived in a community of people of indigenous and African descent. Through a close analysis of her case, we see how verbal and physical conflicts emerged out of quotidian life experiences in the home. We learn, in particular, that when Manuela made her conflict public by issuing a complaint against her aggressor, authorities scrutinized and condemned her behavior, making life worse for her. We quickly see,

³⁹ Evelyn Cherpak, "The Participation of Women in the Independence Movement in Gran Colombia, 1780-1830" in Lavrin, *Latin American Women*; Rebecca Earl, "Rape and the Anxious Republic"; Martha Lux Martelo, "Las mujeres de la independencia en la Nueva Granada: acciones y contribuciones" in *Historia que no cesa. La independencia de Colombia 1780-1830*, ed. Pablo Rodriguez (Bogotá: Universidad del Rosario, 2010); Enrique Santos Molano, *Mujeres libertadoras: las polícarpas de la independencia* (Bogotá: Planeta, 2010); Ana Serrano Galvis, "Las mujeres como sujetos políticos durante la Independencia de la Nueva Granada" in *Memoria y Sociedad* 40 (2016): 101-119.

⁴⁰ Peter Blanchard, *Under the Flags of Freedom. Slave Soldiers and the Wars of Independence in Spanish South America* (Pittsburgh: University of Pittsburgh Press, 2008).

then, that her initiative to seek reparations for her bodily wounds turned into a discursive fight to reclaim her public honor after it had been put into question by several authorities with special interests in the outcome of the case. This case ultimately offers an angle to view soldiers' wives like Manuela as combatants in their own homes and in the judicial system.

Manuela Acosta

In El Tambo, Manuela's days passed by uneventfully until an altercation with a male acquaintance in her own house left her right hand wounded.⁴¹ A couple of days after the attack, Manuela traveled approximately twenty miles to the city of Popayán where she had her wound checked by Dr. George Wallis. Wallis, who wrote his observations on a note addressed to the lower-level judge, determined that the wound was a superficial knife cut that would heal soon without posing any risks to Manuela's fingers.⁴² Days later, the doctor's note was part of the evidence Manuela presented when she appeared before the legal authorities in Popayán who had jurisdiction over her town. Judge Antonio García formally opened a criminal case after Manuela complained that Antonio Belalcazar of El Tambo had wounded her with a machete. Judge García ordered the scribe to add the doctor's note to the files and transcribe the testimonies of Manuela and the witness who accompanied her to the judge's office that afternoon.

In her testimony, Manuela recounted that on the day of the attack she had bought a cow in the town's market and had taken it back to her house to slaughter for food. After killing the cow, Manuela and her sister Trinidad were conversing and dressing the carcass out in the backyard when Antonio appeared in her house around lunch time, with a machete in his hand.

⁴¹ "Querrella de la Acosta contra Belalcazar, 1818" ACC, Ind, J-Cr, I-5, sig. 4379

⁴² "Querrella de la Acosta contra Belalcazar, 1818" ACC, Ind, J-Cr, I-5, sig. 4379, f. 3r

Antonio, an acquaintance of Manuela identified by authorities as a *pardo* (free mulatto), accused Manuela of talking about him behind his back. Specifically, he accused her of saying that he was “*un zambo pícaro que merecía estar en los llanos.*”⁴³ Although Manuela neither confirmed nor denied Antonio’s complaint in her testimony, she stated that she rushed back into the house after he made her feel threatened. As Manuela was reaching the door, Antonio apparently threw his machete toward her. The weapon hit the ground, but he picked it up and followed her into the living room where they engaged in a physical fight. Manuela said she defended herself with the knife she had been using to dress the carcass and made a small cut on one of Antonio’s fingers. An enraged Antonio responded by throwing his machete at her again, wounding her right hand. Manuela closed her testimony saying that a patrol officer who was passing by her house apprehended Antonio and placed him in the stocks (*cepo*) only to release him a few hours later.⁴⁴

Manuela’s testimony suggests that, like other women who appear in this chapter, she aimed to assert her control of the situation through legal means. To defend her own physical integrity, she initiated a legal dispute against the man who wounded her. Her version of the story coincided, for the most part, with that of the two male witnesses who came forward to explain what they saw the day of the fight. The records are unclear about Manuela’s relationship with the two witnesses, but she had apparently served them lunch before starting to dress the carcass with her sister. According to their accounts, Antonio arrived shortly after they had begun eating. He declined their invitation to join them and walked, instead, towards the backyard where Manuela

⁴³ “Querrela de la Acosta contra Belalcazar, 1818” ACC, Ind, J-Cr, I-5, sig. 4379, f. 2v. In this historical context, “llanos” could refer to the geographical area to the east of the province of Popayán or to a category of poverty. It is not clear, then, whether Manuela was saying that Antonio deserved to be in the lower classes or that he deserved to be fighting as a soldier in the “llanos” because of his mischievousness. I thank Professor Sebastián Gómez for his input.

⁴⁴ “Querrela de la Acosta contra Belalcazar, 1818” ACC, Ind, J-Cr, I-5, sig. 4379, f. 2r

was with her sister. Next, they saw Manuela rushing into the house and yelling to Antonio “don’t come in, *zambo*” (*zambo no te entres*) to which Antonio responded by throwing his machete at her.⁴⁵ As has been stated, the word *zambo* had a negative connotation and it was frequently used pejoratively. If the witness accounts were true, Manuela had clearly insulted Antonio.

The three versions of the story paint a picture of everyday life in a rural setting where poor men and women gathered around the consumption and preparation of food. This scenario was disrupted, however, when Antonio claimed to have been offended, ending in a bloody fight. After listening to these testimonies, the Popayán judge ordered the detention of Antonio while he resolved the case. Surprisingly, Antonio’s imprisonment sparked indignation among the local authorities of El Tambo. Upon learning about it, a man who introduced himself as Doctor Manuel María Rodríguez from El Tambo wrote a personal letter to the Popayán judge explaining that Antonio’s imprisonment was a mistake. He said he was aware of the fight between Antonio and Manuela, but reassured the judge that local authorities had intervened and resolved the case soon after it happened. Rodríguez added that Manuela had, in fact, deserved her wound as fair punishment “for her insolent, brash, and shameless behavior.”⁴⁶ He did not elaborate on that comment, but he certainly intended to discredit Manuela and cast a better light on Antonio. Rodríguez ended his letter by urging the judge to consider their friendship in his reevaluation of the decision to imprison Antonio. He stressed that Antonio was on the eve of getting married and Manuela deserved to be reprimanded for causing “unnecessary” trouble.⁴⁷

⁴⁵ “Querrella de la Acosta contra Belalcazar, 1818” ACC, Ind, J-Cr, I-5, sig. 4379, ff. 1v, 9r.

⁴⁶ “Querrella de la Acosta contra Belalcazar, 1818” ACC, Ind, J-Cr, I-5, sig. 4379, f. 4r. “[...] en justicia debía ser ella la presa y castigada, porque aún a mi mismo me ha dado que hacer esta mujer con su conducta insolente, atrevida y desvergonzada.”

⁴⁷ “Querrella de la Acosta contra Belalcazar, 1818” ACC, Ind, J-Cr, I-5, sig. 4379, ff. 4rv

Rodríguez's comments reinforce one of the points made earlier. Husbands had the right to reprimand their wives, but this logic went beyond the institution of marriage. Social relations at large also functioned within the same parameters: violence against women was justified when men perceived women's conduct to be threatening and immoral. But who was Rodríguez? What was the nature of his friendship with the Popayán judge? The criminal case file does not provide specific answers to these questions, but we can infer that he belonged to the political elite of El Tambo and had close relations and connections with the elites in the provincial capital. This also builds on the patronage relations highlighted at the beginning of this section and further explained in Chapter Two, where *caudillos* exerted their influence in legal disputes concerning important mixed-race allies from their social networks in the Patía region. Why was he advocating so strongly for Antonio's release?

Rodríguez's subsequent letters and actions shed light on his personal interests. Five days after the first letter, for example, Rodríguez sent Matías Muñoz, a patrol officer from El Tambo, to the city of Popayán with a threefold mission: deliver a second letter, offer three young men who could serve as soldiers for the king in Santa Fe, and negotiate the release of Antonio from prison. The offer of the three soldiers sounded like an exchange for Antonio's release, but it was not explicitly expressed in these terms. The letter, which began with "my dearest friend," emphasized to the Popayán judge that Antonio was getting married to a white woman "who would be entirely lost" (*que se perdería enteramente*) if the marriage were cancelled.⁴⁸

In all the primary cases analyzed for this chapter, this is the only one in which a local authority openly accepted and promoted the marriage between two people from different racial groups or *calidades*. Although we learn nothing about the white woman or her relationship with

⁴⁸ "Querrela de la Acosta contra Belalcazar, 1818" ACC, Ind, J-Cr, I-5, sig. 4379, f. 6r

Antonio from Rodríguez's letters, the urgency with which he was advocating for their marriage suggests the woman may have been pregnant. Rodríguez proposed that the Popayán judge accept a bailman (*fiador*) and release Antonio from prison. He also attached a copy of the statement written by Benefacio de Ledesma, the local judge who first apprehended Antonio after he had wounded Manuela.

This statement turned things upside down for Manuela and placed her in the most disadvantaged position. Judge Ledesma noted in his statement that he had released Antonio after making him promise that he would pay for Manuela's wound care and for the days she would miss work. In spite of this agreement, which was supposed to be beneficial for Manuela, Judge Ledesma stated that it was widely known that Manuela had been drinking "suspicious beverages" (*bebidas irritantes y enconosas*) with the intention to worsen the wound and harm Antonio's reputation.⁴⁹ Judge Ledesma ended his statement by characterizing Manuela as "among the worst of the women" who lived in the town and accusing her of being "an unruly drunk who disobeyed higher authorities" (*alborotista, buscadora de quimeras, bebedora e inobediente a los superiores.*)⁵⁰ Thus, the local judge's portrayal of Manuela made her seem dangerous and deserving of punishment. Behind this organized and desperate effort, though, authorities were protecting a mulatto man and a white woman. Marriage was the reason they insisted on Antonio's release from prison, but the intricate details of that arrangement will remain unknown.

As was usual in these cases, the Popayán judge gathered and sent all the case files to a legal adviser and requested his opinion on the matter.⁵¹ The adviser in this case, Don Joaquín

⁴⁹ "Querella de la Acosta contra Belalcazar, 1818" ACC, Ind, J-Cr, I-5, sig. 4379, f. 8r

⁵⁰ "Querella de la Acosta contra Belalcazar, 1818" ACC, Ind, J-Cr, I-5, sig. 4379, f. 8r

Rodríguez, responded three days after receiving the request. A close reading of his pronouncement shows that he endorsed the views expressed by the local authorities of El Tambo. His opinion on the matter, thus, favored the punishment originally proposed by the local judges: Antonio should be released and would pay the costs of treatment for Manuela's wound while Manuela should be sentenced to pay the legal fees generated by a proceeding she should not have initiated.

Manuela immediately sought ways to defend herself when she learned about the legal adviser's opinion and the judge's will to formalize it as the final sentence. She submitted a deposition in which she argued that not only was it unfair to be required to pay the legal fees of the case, but that her public image had been substantially damaged.⁵² In a social context in which public reputation mattered significantly, no one could afford to be perceived negatively by others, especially by those within their social circle. Manuela had gone from being the survivor of a physical attack and an active agent of her own welfare to an immoral woman with vices of all kinds who could not be trusted.

In her deposition, Manuela denied all the negative assertions made about her character. She clarified that her original complaint to the Popayán judge was meant to exert pressure over Antonio. That way, she explained, he would be forced to meet his responsibility to pay for wound care and compensation for the days she could not work. Manuela also argued that as a woman married to a royalist soldier, she could not “refrain from the defense of [her] good

⁵¹ This was a common procedure during this period as not all judges had formal training in law. Those judges without legal training relied on the advice of designated trained lawyers who received an honorarium for reading through the criminal files and providing their opinions on a recommended final sentence.

⁵² “Querrela de la Acosta contra Belalcazar, 1818” ACC, Ind, J-Cr, I-5, sig. 4379, f. 12r

reputation and fame.”⁵³ She demanded access to the criminal case file so she could submit an appeal (*recurso*) with hopes to get rid of the “ugly observations that stained” her public honor and that of her husband.⁵⁴

The legal adviser read Manuela’s deposition and advised the judge to deny her requests for two reasons. First, Manuela was undermining the words of a local authority. Second, there was apparently more evidence that spoke about her failing moral character. With that last point, the adviser was referencing a new piece of evidence. It was a statement from a different judge in El Tambo that narrated another instance where Manuela had supposedly behaved aggressively with a young woman, forcing the local priest to reprimand her. Ultimately, the Popayán judge, following the adviser’s suggestions, dismissed Manuela’s claims. Antonio was released from prison and Manuela was sentenced to pay the legal fees of her own case.

This case helps to illustrate the ways poor women used the legal system to complain about violent acts against their bodies and to request compensation for any physical harm they suffered. This mechanism, however, could backfire. It could be costly both financially and emotionally for a woman to sue an aggressor who had the support of a powerful patron. In this instance, there was a discrepancy in the patronage, hence honor, enjoyed by Manuela and Antonio. Antonio was well connected to a local patron who mediated on his behalf by belittling and destroying Manuela’s reputation. The repercussions of losing a legal battle could leave a permanent stain on a woman’s public honor and reputation as well as on her financial wellbeing.

Another interesting aspect of this case is the relationship between Antonio and local authorities in El Tambo. He had wounded and insulted Manuela, but that all seemed irrelevant

⁵³ “Querella de la Acosta contra Belalcazar, 1818” ACC, Ind, J-Cr, I-5, sig. 4379, f. 12r

⁵⁴ “Querella de la Acosta contra Belalcazar, 1818” ACC, Ind, J-Cr, I-5, sig. 4379, f. 12r

when the authorities' priority was to see him marry a possibly pregnant white woman. As mentioned before, the reasons and details of that arrangement are unknown, but we can see how royalist authorities insistently pushed for marriage and the formation of patriarchal families that reinforced the roles men were supposed to embody and perform. In some ways, that may have explained to them why Manuela was the "disturbing woman" that she apparently was. While her husband was fighting in the war, she was alone with no adequate male supervision.

Other cases in the archive show that even women living under the supervision of a man could not always escape verbal intimidation or physical violence from a third party. One example is that of a patrol officer who ordered a mother and her young daughter to strip naked, tied them to a ladder, and whipped them more than forty times shortly after the woman's husband had stepped out of the house. In his complaint about the incident, the husband/father declared in his statement that the officer had acted so violently against the beaten women solely to please his concubine, who disliked the family. The royalist legal advisor reviewing the case told the judge that he should divide the complaint into two different cases. One would investigate the local officer's concubinage. In his view, that investigation deserved to be carried out in secret because the officer's wife supposedly knew nothing about his infidelity. That would allow authorities to reprimand the officer in private while making sure they preserved the marriage. The other case would require the husband/father of the beaten women to initiate a new criminal suit that would exclusively focus on the grievances that the officer caused to him and to "the others."⁵⁵

In this case, authorities focused on the fact that the married officer had a concubine and not necessarily on the violent beating that he gave to the two women. In fact, the language used

⁵⁵ "Causa contra Antonio Pérez, 1817," ACC, Ind, J-Cr, I-3, sig. 2119

by the advisor shows that the beaten women came to occupy an almost irrelevant position. He referred to them as “the others” and emphasized that the matter was between the officer and the husband. In this instance, we see the degrees of physical and textual violence that could be exerted over poor women’s bodies. But such violence seemed insignificant for authorities, who constantly prioritized the formalization of marriages or the punishment of the desecration of faith and conjugal duties, over women’s pursuit of justice. Additionally, we can infer that the husband/father’s social rank must have been low or else authorities would have been much more concerned about the violation of his authority. In short, the cases in this section show that the social rank of each individual involved was weighed against the criminal act committed. What mattered most for authorities was to maintain the social order, which was held in place by differential degrees of honor.

Symbolic Women-on-Women Violence

In the previous sections, we examined poor men and women’s behavior and fate in criminal cases involving honor, violence, gender, and patronage. The impetus for litigants in these cases was to demand reparations and reclaim the public honor they had lost as a result of a violent act perpetrated against their bodily and moral integrity. Although women exercised agency, their attempts to achieve justice often reinforced the very conditions they opposed. In other words, because honor derives from a patriarchal system, we see that any conflict that ensues as a result of women’s honor – and that of their families – reinforces patriarchal norms. Historian Sonya Lipsett-Rivera has observed a similar trend in her work about women as defenders of honor in late-colonial Mexico. She found that women “tried to maintain a public face that smoothed over the stains on their personal and family honor, and they censured those

who were their inferiors in order to maintain the status that honor conferred.”⁵⁶ The following section shows how a similar dynamic persists in war-torn Popayán especially when we analyze interactions between women involved in these honor-based disputes. Poor women frequently confronted each other in these conflicts, which are always described by the documents on men’s terms.

María Delgado

“... I have to say that [Vicenta Polanco] should have been arrested since she has been my husband’s concubine for a year or so. She should have known that he was a married man and should have stayed away from trouble. Had she behaved modestly and not like a prostitute, she would have never experienced the attack she suffered. I am the one who should have complained against them, but I have suffered in silence so as not to harm my husband... He is a poor man who works to feed me and our four children... I graciously beg you to release my husband from prison so he can go back to work and support me and our four children.”⁵⁷

With these words, María Delgado advocated on behalf of her unfaithful husband Severino González, the mulatto artisan who had deflowered and later stabbed the young Vicenta Polanco when she sought to end their relationship. We return to this case to examine María’s deposition, a valuable historical document that helps to expand the angle through which we understand woman-to-woman relations in this type of cases. The deposition, addressed to the lower-level

⁵⁶ *The Faces of Honor*, 180.

⁵⁷ “Causa criminal contra Severino González, 1811,” ACC, Ind, J-Cr, I-3, sig. 1773, f. 12r. “Me veo precisada a decir que [Vicenta Polanco] era la que debía estar en el arresto de la prisión porque esta ha mantenido concubinato con mi dicho marido por el espacio de un año poco más o menos pues debía haber reparado en que este era un hombre casado, para no haber cometido tales excesos, y juntamente que no le hubiera sucedido lo que le sucedió pues si ella se hubiera portado con recato y no hubiera andado de prostituta nunca hubiera experimentado lo que experimentó, y en esta parte yo era la que debía sentirme agraviada contra ambos pero he callado y sufrido por no perjudicar a mi marido... este es un hombre pobre que no tiene más agencia que su trabajo para mantenerme a mi y a cuatro hijos”

judge of Popayán and submitted prior to her husband's interrogation, was likely drafted by a scribe at María's request. María's main objective in the deposition is to explain why keeping her husband out of prison was critical for her family's survival. In Severino's defense, María highlights Severino's role as a responsible laborer and the family's breadwinner. Thus, she vindicates her unfaithful husband in the eyes of legal authorities and places the blame on Vicenta for knowingly courting a married man. In doing this, it becomes clear that María's priorities to look over her family's welfare and honor justified denigrating Vicenta for her immoral transgressions. In this logic, María portrays herself as Vicenta's victim (*agraviada*).

María's deposition is noteworthy for the way she stresses her family's economic dependence on Severino. The financial support he had consistently provided to the family validates María's defense of him. As an artisan who made chairs, Severino had supposedly always met his family obligations. That explained, according to María, why she had never had "a reason to complain" (*motivo de queja*) about his conduct. This suggests that María was willing to put up with her husband's infidelity, which she suggests she knew about, as long as he continued to care for the family uninterrupted. When his imprisonment threatened the family's wellbeing, María felt forced to intervene on behalf of her family. Although María's emphasis on financial dependence is a plausible argument for a poor mulatto mother of four to make, it raises a number of questions given the specific demographic context in which she lived. In what ways does María's argument reflect a reality for mixed-race, married women in Popayán? How much of it was influenced by the defense attorney of María's husband as a strategy to count in Severino's favor?

An "army of women," lived in Popayán during this period, as observed by María Teresa Pérez in her study of the 1807 census. Women of all socioeconomic groups played a critical role

in the city's labor and social practices as shopkeepers, moneylenders, and seamstresses.⁵⁸ In this context, we can infer that it would have been highly likely for María to join the informal workforce as a single mother in the event that Severino's imprisonment left her solely responsible to support her children. It is also possible that she was already doing that, but did not bring it up in her statement so as not to detract from her main argument. In any case, María could have found work to make ends meet, but the prospects of finding a new partner would have been slim given the gender imbalance in Popayán at the time. This demographic reality, coupled with the effects of active military recruitment for the war, could have also influenced María's willingness to forgive and advocate for her husband. In her despair, María begged for her husband's release from prison and called instead for Vicenta's incarceration and banishment from the province of Popayán.

Effective intercession for Severino required María to portray Vicenta as the one to be blamed for the moral weaknesses of her husband and the misfortunes of her family. By suggesting that Vicenta had acted like a prostitute, María discredited Vicenta, stripping her and her family of any honor, and, thus, committing symbolic women-on-women violence. María believed that only banishment as punishment would keep Vicenta away from Severino and prevent "the dissolution of [her] marriage [and] the destruction of [her] poor family."⁵⁹ While this statement might have revealed some of María's actual fears, its language would inevitably have pleased the Catholic authorities evaluating Severino's case. Such language was exactly

⁵⁸ Orián Jiménez Meneses's most recent book offers a selection of transcribed testaments from the independence period in Popayán. His preliminary study of those documents reveals that many of them belonged to poor women who worked as shopkeepers and seamstresses. See Orián Jiménez Meneses, *El mundo de la vida en la revolución neogranadina – Testamentos de la época de la independencia* (Bucaramanga: Universidad Industrial de Santander, 2012).

⁵⁹ "Causa criminal contra Severino González, 1811," ACC, Ind, J-Cr, I-3, sig. 1773, f. 12r.

what needed to be argued in a society where legal and ecclesiastical authorities prioritized the formalization of marriages and despised illicit friendships.

Unsurprisingly, María advocated for the honor of her family at the cost of Vicenta's honor. Whether strategic or not, what matters is that the framework through which María presented her claims reinforced colonial patriarchal notions about evil and vulnerable women, who required to be either disciplined or supported by men. This, in turn, reaffirmed the importance of male presence and supervision in nuclear families that had been promoted by the Catholic church and the state throughout the entire colonial period. Nevertheless, María's arguments only magnified her husband's moral infractions in the eyes of the law, which considered infidelity a major violation of religious doctrine. The *real cédula* (royal decree) of 22 February 1815 issued by the king of Spain to be implemented in his American possessions during the *Reconquista* ordered authorities to continue punishing spouses accused of leading "licentious" lives and desecrating the institution of marriage.⁶⁰ The king's mandates even in the chaos of war may well reflect the concerns that high rates of concubinage and illegitimacy generated among authorities in Colombia and across Spanish America.⁶¹ This may also explain why María's portrayal of Vicenta did little to persuade the authorities, who ultimately sentenced her husband to a five-year banishment for having an extramarital relationship and violating marriage legislation.

Scholars in Colombia have shown that extramarital relations were widely common among the lower classes. Diego Romero and Nina de Friedmann have shown, in particular, how

⁶⁰ "Real orden sobre castigos a escándalos y delitos públicos ocurridos por separaciones de matrimonios" AHCRS, Fondo Manuel María Mosquera, Reales Cédulas, caja 9, carpeta 2, f. 1-2.

⁶¹ Scholars have found that illegitimacy rates, nuclear vs. extended patriarchal families, and female-headed households were among the most prevalent characteristics of family life in late colonial Colombia. See for example, Pablo Rodríguez Jiménez, *Sentimientos y vida familiar en el Nuevo Reino de Granada, siglo XVIII* (Bogotá: Editorial Ariel, 1997); Guiomar Dueñas, *Los hijos del pecado* (Bogotá: Universidad Nacional de Colombia, 1997).

enslaved and free people of African descent lived in informal unions because conditions of bondage made formal marriage expensive and difficult. Such relationships often resulted in complex and lasting family structures based on blood and fictive kinship ties, collective land ownership, and shared labor arrangements.⁶² While evidence suggests that these relationships facilitated the formation of families for people of African descent, it does not mean that they were always harmonious. Couples engaged in conflict and when conflict exceeded limits, it could put a person's life in danger and draw the attention of the authorities. These situations could also lead to death, as the next case shows.

Manuela Vega

On August 17, 1815, Don Matías Fajardo, judge of first instance in the city of Popayán, received from the governor's office a copy of a deposition that had been submitted by widow Manuela Vega. In her deposition, Vega complained to the governor about a delay in a criminal case against Lucas Ballesteros (mestizo), who was accused of killing her husband Joaquín Tenorio (black). She explained that the case, under judge Fajardo, had been delayed because a number of witnesses still needed to testify. Manuela also expressed concerns about the conduct of Lucas's concubine, alias Ratona, who had been present at her husband's crime scene and detained along with Lucas. According to Manuela, however, Ratona had been released from prison shortly after her detention. Manuela complained that after Ratona recuperated her freedom, she had been "roaming the streets, insulting and provoking" Manuela every time they

⁶² According to Diego Romero, the offspring of extramarital relations lived in matrifocal and matrilineal families. Mario Diego Romero, *Poblamiento y sociedad*, 70; Nina S. De Friedemann. "'Troncos' Among Black Miners in Colombia" in *Miners and Mining in the Americas*, eds. Thomas Greaves and William Culver (Manchester: Manchester University Press, 1989). See also, Francisco Zuluaga, "Cuadrillas mineras y familias de esclavos."

ran into each other.⁶³ Manuela closed her statement calling for justice for her husband's death and urging the governor to throw Ratona back in prison at least until the criminal case was resolved. Under what circumstances did Manuela's husband die? Was Ratona involved in the crime? What explained the conflict between the two women?

The quick answers to these questions are that a drunk Lucas stabbed Joaquín in a duel after a night of celebration. Ratona was involved because she encouraged Lucas to flee the crime scene. As a result, Manuela accused Ratona of being an accomplice. Naturally, Ratona resented Manuela for reporting her to the authorities and a conflict ensued between the two. These answers, however, only provide a partial version of the story. They leave out important details about the events of that night contained in the case files that would not only add a unique texture to our understanding of daily life during war, but also reveal the gender and racial dynamics that shaped the ways lower-class people socialized and interacted with one another.

Two weeks prior to submitting her deposition, Manuela had testified before judge Fajardo about the events leading up to her husband's death. We learn that in late July, Manuela bought a load of *guarapo*, or fermented sugarcane juice, from Domingo Mambuscay, an indigenous man who traveled once a week from his small town of Cajibío to the city of Popayán to sell plantains and *guarapo* at the city market. Manuela ordered two more loads from Domingo and agreed to pick them up at his place by the end of the week. On Friday evening, Manuela and her husband Joaquín arrived at Domingo's house, but he was still grinding the loads of sugarcane in his mill. They waited for Domingo along with three other people who wanted to buy *guarapo*: Lucas, Ratona, and a young enslaved man she called "*mulatico* Isidro." Upon arriving, Domingo invited

⁶³ "Criminal contra Lucas Ballesteros como autor de la muerte de Joaquín Tenorio, 1815," ACC, Ind, J-Cr, I-3, sig. 5193, f. 9r

his guests to stay over for dinner. This invitation soon turned into an improvised celebration after Domingo's *comadre* Lorenza kindly served *guarapo* to everyone as a courtesy. To liven up the celebration, Domingo began to play the guitar, Joaquín the *alfandoque* (hollow cane or reed),⁶⁴ and Isidro the *zumbo* (cowbell)⁶⁵ while Lucas and Ratona danced to the sounds of these musical instruments and the singing of Joaquín until late at night.

After Lucas and Ratona retired for the evening, the rest of the group gathered in the kitchen to chat. Isidro and Manuela struck up a conversation and he inquired about the whereabouts of a mulatto woman named Josefa Zúñiga. This simple question unleashed the tragic events that ended the night with Manuela wounded and her husband Joaquín dead. Although not much information is provided about Josefa Zúñiga, the evidence suggests that she might have been Joaquín's concubine. All the testimonies recount that when Manuela answered that Josefa no

⁶⁴ The *alfandoque* "resembles the modern rain stick and is made from a tube of cane [...] into which are placed seeds, stones, or shot pellets. The *alfandoque* is used in instrumental ensembles of the black culture in Esmeraldas Province, coastal Ecuador, and in Andean regions of Colombia [...] In parts of western Colombia an instrument called an *alfandoki* was known in the early 19th century and perhaps as early as 1789." John M. Schechter and J. Richard Haefer. "Alfandoque." *Grove Music Online. Oxford Music Online*. Oxford University Press. <<http://www.oxfordmusiconline.com.proxy.lib.umich.edu/subscriber/article/grove/music/L2261235>>. 19th-century traveler Friedrich Hassaurek talked about the *alfandoque* in his travel accounts that recount his explorations of the sugar-growing region of the province of Imbabura in northern Ecuador. His accounts provide a detailed description of his visit to a sugar hacienda in the valley of Chota where the owner invited him to see "the spectacle of a negro dance." He saw how entire black families danced to the rhythms of musical instruments such as the *alfandoque* and the *bomba*. He determined that "in musical talent and taste, these negroes are infinitely superior to the Indians. Their melodies are neither so monotonous nor so lifeless as those of the aborigines. On the contrary, they are varied and fiery, and full of exciting vigor." Friedrich Hassaurek, *Four Years among Spanish Americans* (New York: Hurd and Houghton, 1868), 344-346.

⁶⁵ Cowbells, also known as *cencerros*, are "clapper bells suspended from the necks of cows and other herd animals. Those in orchestral usage are similar in shape and sound but are often clapperless, in which case they are struck with a drumstick. They are classified as idiophones: percussion vessels." James Blades and James Holland. "Cowbells." *Grove Music Online. Oxford Music Online*. Oxford University Press, <http://www.oxfordmusiconline.com.proxy.lib.umich.edu/subscriber/article/grove/music/06741>.

longer lived in Popayán, her husband Joaquín contradicted her immediately and hit her with a brick until he cracked her skull.⁶⁶ Manuela acknowledged all of this in her testimony, but omitted something others had emphasized in their statements: that her presumed jealousy over Josefa had infuriated her husband. According to Manuela and others, Joaquín seemed remorseful after beating her and attempted to comfort her. But the situation took an unexpected turn when Ratona showed up in the kitchen after waking up to Manuela's weeping. Ratona commented on how Joaquín's blackness predisposed him to such scandalous behavior which, in her view, he felt free to exhibit because he was in the house of a poor Indian.⁶⁷

The details of this case not only allow us to reconstruct how poor people in Popayán created and enjoyed spaces for socialization during times of war, they also allow us to understand why Manuela and her husband began to argue. A possible illicit friendship figures as the main cause of the argument and a series of offenses heighten the argument, including Ratona's belittling of Joaquín. Her offensive remarks give us a taste of the existing racial prejudices of the time and how they worked in conjunction with class in granting degrees of honor and respectability to people from the lower-classes. Ratona clearly saw a racial and class hierarchy in which she placed Joaquín at a level below Domingo, who was already near the bottom for being both Indian and poor. The fact that she felt entitled to make such remarks also suggests that she viewed herself as occupying a higher social position. She exploited that entitlement to complain to Lucas after Joaquín demanded that she refrain from insulting him and

⁶⁶ "Criminal contra Lucas Ballesteros como autor de la muerte de Joaquín Tenorio, 1815," ACC, Ind, J-Cr, I-3, sig. 5193, f. 5v.

⁶⁷ "Criminal contra Lucas Ballesteros como autor de la muerte de Joaquín Tenorio, 1815," ACC, Ind, J-Cr, I-3, sig. 5193, f. 6r. "que bastaba ser negro para hacer escandalo y que como estaba en la casa de un indio no reparaba"

kicked her leg. A drunk and half asleep Lucas confronted Joaquín and they began to fight. Lucas attacked Joaquín with a knife, at which point Joaquín ran away and disappeared into the darkness. Domingo found him the next day in the woods dead with two stab wounds on his chest.

Authorities convicted Lucas to serve time in prison for killing Joaquín, but dismissed Manuela's allegations against Ratona. Ratona was called to ratify her original statement twice, but did not face any charges in spite of admitting that she had urged Lucas to flee the crime scene. In this case, Manuela's deposition helped expedite the criminal process against Lucas for killing her husband; it did not, however, draw any attention to the supposed provocations of Ratona and the tensions between them. Nevertheless, close analysis of these two cases helps reveal the role women played in the reproduction of Popayán's hierarchical sociopolitical order during a time of crisis. We see how both María and Manuela mobilized ideas about racial ordering and patriarchy to defend themselves and attack other women.

Honor and the construction of gender in Popayán

Returning to the case of Vicenta Polanco, this section focuses on the legal deliberations in the trial of her attacker to analyze how authorities deployed ideas about masculinity to determine culpability and punishment. Of particular interest is a letter by Francisco José de Caldas that illustrates how the upper classes understood ideal male behavior. By juxtaposing this with other sources, we can see how masculinity and femininity were constructed within religious parameters that promoted male dominance and honor as well as female passivity and submission.

In his confession, Severino stated that he considered himself "a fragile man" because "jealousy and anger" (*celos y colera*) had blinded him to the point where he had forgotten about

the consequences of his acts.⁶⁸ The prosecutor of the case and Severino's defense attorney coincided in asserting that Severino was an "ignorant" man who had acted irrationally when he attacked Vicenta Polanco. He had been motivated by "misguided desires" that only a man of his type could do. The two officials differed, however, on how he should be punished. Severino's legal defender strongly opposed the prosecutor's insistence on punishing Severino for multiple crimes. Because of this, authorities in the case engaged in legal exchanges that focused less on the violence Severino perpetrated on Vicenta's body and more on how his illicit friendship desecrated the institution of marriage. The debates this topic generated among authorities revolved around the definitions of ideal and deplorable masculine conduct. These exchanges thus displaced women's reported abuse to a secondary level and privileged the reprimanding and reshaping of men's immoral behavior.

In this society, an ideal man was one who enjoyed personal and family honor and whose example and service helped to solidify the institutions that served as pillars of society. This meant that it was upper-class men who publicly represented that ideal type. Francisco José de Caldas exemplifies, for instance, the model of a man with good character and morals. His conviction to public service and his devotion to his wife and family are reflected in his extensive epistolary production during the late colonial period. Away from his native Popayán in the service of the independence cause, Caldas penned several letters to his wife Manuela professing his enduring love, describing episodes of his life away from home, and giving her instructions to take care of personal and family business. In a letter marked confidential on March 31, 1816, however, a highly concerned Caldas reproached his wife for her public indiscretions. Specifically, he expressed concerns over his wife's interactions with male acquaintances who had

⁶⁸ "Causa criminal contra Severino González, 1811," ACC, Ind, J-Cr, I-3, sig. 1773, f. 14v.

yet “to prove” their respectability and good intentions. In other words, Caldas worried that in his absence, his wife’s lack of judgement around unknown men could have negatively impacted his public image and that of his family.

For these reasons, Caldas wrote to Manuela with a sense of urgency and perturbation. He not only described the importance of fidelity in a Catholic marriage, but also reminded Manuela about his impeccable loyalty as her husband: “I have been scrupulously faithful to you, and from the moment I received you as my wife, I have been indifferent to all other women.”⁶⁹ Once he reaffirmed his faithfulness, he expressed his disappointment and deteriorating trust of Manuela by urging her to move to her aunt’s house where she would be supervised by an older member of the extended family. He then instructed Manuela to: “fear God, follow the holy law; take care of your children; pray regularly; love the purity of consciousness; fear seductive young men; fear even death less than the commission of a terrible adultery, which would leave you with only cruel remorse and terrible bitterness; love God, give him your heart and be sure it is pure and sinless.”⁷⁰ With these words, Caldas performed an essential part of his role as a man, husband and father; he claimed honor and policed Manuela’s sexual conduct and family obligations by tying them to religious morals and expectations. A special call for Manuela to distance herself

⁶⁹ “Carta #191” in Francisco José de Caldas, *Cartas de Caldas*, 350. “la fidelidad conyugal es la primera virtud de los esposos [...] te he sido escrupulosamente fiel, y desde el momento que te recibí por esposa, todas las mujeres me han sido indiferentes. No solo he procurado ser fiel a mi mujer, sino también quitarle todo motivo de la más ligera inquietud, o de la sospecha más ligera” 350

⁷⁰ “Carta #191” in Francisco José de Caldas, *Cartas de Caldas*, 351 “Teme a Dios, guarda su ley santa; cuida tus hijitos; ora con asiduidad; sed cristiana; ama la pureza de conciencia; Tiembla de los mozos seductores; teme menos morir que cometer un adulterio horrible, que no te dejará sino crueles remordimientos y amarguras espantosas; ama Dios, entrégale tu corazón, y cuida de entregarlo puro y sin pecado”

from the temptations of adultery was at the heart of Caldas's message because his honor depended heavily on the behavior that she, and his daughter, displayed in public.

Caldas's letter illustrates, at least on paper, how the church expected ideal men to uphold their reputations and that of their families. These expectations were enforced by authorities involved in resolving criminal cases. Caldas's background and conduct contrasted sharply with the representations of poor male behavior in the criminal cases examined here. Yet authorities still wanted the latter to emulate values such as respecting the sacrament of marriage and leading families by example. This is why Severino's conviction, like that of the other convicted poor men who appear in this chapter, reflects a priority of legal authorities in Popayán: to curb Severino's immorality. Severino's extramarital affair violated Catholic morals and the institution of marriage while his uncontrollable desires and violent actions made him a "naturally weak" man. In the authorities' view, this inherent weakness required severe punishment to establish a strong precedent that would warn others of the consequences of displaying similar criminal behavior. Thus, punishment also communicated there was a lesson to be learned, the lesson being not necessarily to respect women, but to show reverence to religious principles, which would strengthen men to control their emotions and their families.

The debates that took place during the criminal trials of poor men together with Caldas's letter offer critical angles to understand how male honor was constructed vis-a-vis the subjugation of women. Women appear in these disputes exercising varying degrees of agency through demanding legal justice. Their agency, however, did not translate into authorities' recognition of the value of their bodies and the honor of the families they headed. On the contrary, authorities regarded women's agency as indication of unacceptable male passivity that threatened basic elements of masculinity and coexistence under a religious framework.

Unsurprisingly, trapped in the logic of patriarchy, female litigants who sought to advance their claims typically invoked a legitimate gender discourse that reinforced their social vulnerability. Thus, while poor women attempted to claim dignity in the face of dishonor, their actions perpetuated the entrenched colonial gender and racial systems. Even if women challenged men's unethical or criminal behavior, they could not formally question, much less undermine, the underlying gender ideology that provided an important sense of stability and order in wartime Popayán.

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The cases analyzed in this chapter reveal that poor people of all racial categories struggled to maintain honor: that honor mattered deeply to people in Popayán despite (or perhaps because of) wartime disruptions of quotidian life. As women engaged in mundane daily activities like delivering milk, going to church, dressing an animal's carcass for consumption, and celebrating with acquaintances, they interacted with neighbors and strangers in public and private spaces. Such interactions sometimes ended badly for them and their relatives. When authorities dismissed women's claims of affronts to their honor in violent crimes, acting only if the crime had threatened the victims' lives, they tacitly affirmed that these women's virtue was not worth much; women did not have much honor to lose. Only when the man who perpetrated the act was even less honorable would authorities punish him. Although the legal system did not support women on their own terms, it provided an outlet for them to voice their concerns and to vindicate honor. But again, they did so in ways that perpetuated colonial discourses about gender and race.

The cases also reveal a pattern in which authorities acted to defend the person who was able to assert a higher degree of honor, regardless of the circumstances of the conflict. This

meant punishment for enslaved men or men who failed to fulfill the requirements of masculine honor by respecting their marriage vows. Living in accordance with the Catholic church's doctrine regarding marriage and family life was critical and any deviation would be costly. However, authorities were less likely to punish men who had patronage relationships with higher-status men. This further supports one of the arguments in chapter two: that patronage and moral control were interrelated during this period. Overall, these cases reveal that colonial-era concepts of honor, developed in a corporatist/caste society, continued to structure social relationships on the home front during the war.

PART II, PREFACE:
THE BIRTH OF A NEW INDEPENDENT REPUBLIC: COLOMBIA 1819-1821

Catholic morals had continued to occupy an important role in the adjudication of criminal cases involving lower-class and mixed-race people across the province of Popayán during the war years. This relationship between religion and law would be altered, however, after the political events that occurred between 1819 and 1821 and that resulted in the creation of a constitutional republic, the Republic of Colombia. This preface is divided into three short sections that discuss some of the most relevant political alliances and legal changes that took place during this period for the case of Popayán. These changes are critical to understand the ways in which family and gender dynamics appeared in criminal cases for the years following the war of independence. I provide in-depth analysis of those cases in the last two chapters.

Political Alliances in Popayán

The year 1819 was critical for Simón Bolívar, leader of the independence movement in Colombia. He defeated Spanish captain Pablo Morillo and his forces after a three-year military campaign in which the Spanish aimed to reconquer the Colombian territory and its people. Bolívar used his decimation of the Spanish forces as a strategy to negotiate with creole slaveholding elites in the Province of Popayán, who had fervently supported the monarchy. During the early years of the war, a group of creole slaveholding elites in the city of Popayán had leaned ideologically towards preserving Spanish colonial authority, resisting emerging autonomist projects. By the end of 1819, however, a group of pro-independence slaveholding

families held power in the city and formally declared their support to the movement led by Bolívar. For Bolívar, the support of this group of elites was of critical importance for two reasons. One, they could provide valuable aid in the battles against royalist forces that had retreated to the city of Pasto, south of the city of Popayán, where they had continued to mobilize indigenous and black communities against the republican project. And two, they had tremendous economic power and influence in the region. This power stemmed primarily from their investments in the institution of slavery.¹

Before joining Bolívar, this group of elites demanded the preservation of slavery under the new state not only because their wealth depended on it, but also because the institution provided a hierarchical social structure that had been somewhat shaken by the effects of war. Throughout the war period, royalist elites in the city of Popayán had recruited indigenous and enslaved men into local militias to fight against patriot forces and defend “the law of God, the authority of the king, and the city.”² Beyond defending the interests of the Spanish crown and creole elites in the region, however, historian Marcela Echeverri has argued that “militia service became an avenue toward social mobility” for enslaved soldiers.³ In other words, enslaved men across Popayán had

¹ Óscar Almario García, “Reflexiones sobre la independencia de Colombia en el suroccidente de Colombia,” in *El Nuevo Reino de Granada y sus provincias: Crisis de independencia y experiencias republicanas*, ed. Aristides Ramos et al (Bogotá: Editorial Universidad del Rosario, 2009): 107-108; Jairo Gutierrez Ramos, “Las guerras de independencia en Pasto,” in *El Nuevo Reino de Granada y sus provincias: Crisis de independencia y experiencias republicanas*, ed. Aristides Ramos et al (Bogotá: Editorial Universidad del Rosario, 2009): 81-87; Jairo Gutiérrez Ramos, *Los indios de Pasto contra la República (1809-1824): Las rebeliones antirrepublicanas de los indios de Pasto durante la guerra de Independencia* (Bogotá: Instituto Colombiano de Antropología e Historia, 2012).

² Marcela Echeverri, “Popular Royalists, Empire, and Politics in Southwestern New Granada, 1809-1819,” *Hispanic American Historical Review* 91:2 (2011), 250.

³ Echeverri, “Popular Royalists,” 241. Marcela Echeverri has expanded these ideas on her recently published book, *Indian and Slave Royalists in the Age of Revolution: Reform,*

sided with the royalists because they aspired to be free. The recruitment of “popular royalists,” as she calls slave recruits, ultimately generated unwanted consequences for pro-independence slaveholding elites in the city of Popayán that threatened the sustainability of slavery and its hierarchical structure under new republican rule.⁴

It was under these conditions that Bolívar and his allies began working together with pro-independence slaveholding elites from the city of Popayán on a multi-faceted state-building project that gradually consolidated and created a new independent republic. Part Two of this dissertation will focus primarily on the changes in the political and legal spheres and how they impacted social relations on the ground. I am particularly interested in examining how lower-class men and women who came into contact with the judicial authorities navigated and/or contested the legal system during the first postwar years. As we will see, this focus sheds light on the ways in which questions about gender, family, and religion figured in the political and legal agendas of independence leaders in the republic and more specifically in Popayán.

The new role of the Catholic Church

The Republic of Colombia was born in 1821 when delegates from provinces across the territory (modern-day Panama, Colombia, Venezuela, and Ecuador) convened to formalize the

Revolution, and Royalism in the Northern Andes, 1780-1825 (New York: Cambridge University Press, 2016).

⁴ Chapter 2 discusses royalists’ written claims to have refused freedom to most slaves who responded to their calls to fight for the Spanish crown. According to royalists, they only granted freedom to a selected few who, in their view, had excelled in their military roles. What complicated things for both royalists and patriots was that many slaves declared themselves free after their service as soldiers. In the next chapter, for example, one of the accused men considered himself a former slave after having served the crown as a soldier. His ambiguous status caused several problems both to local and higher authorities involved in discussing his criminal case.

union of their provinces and to draft and ratify the first national constitution. This constitution separated the power of government into three branches (legislative, executive, and judicial) and intentionally left out any references to the Catholic religion as a premise of social and political order.⁵ These important changes reflected a move towards the construction of a modern state as conceived by liberal ideology and inspired by events in Europe, particularly in France.⁶ Initially this desire coexisted with the vestiges of the colonial legal past. For example, in light of the premature state of the legislative body, the constitution continued to recognize the validity of colonial legislation (Castilian-Indian law), unless it was superseded by new laws passed by Congress.

The framers of the 1821 constitution explicitly attempted to separate church and state on paper, but on the ground their relationship was quite blurred. The Catholic Church would cease to influence the legal sphere, but it would continue to contribute to society by casting a positive light on independence from Spain. It would also promote allegiance among the masses, which indirectly meant establishing social order.⁷ One way in which the Catholic Church carried out its new role was by educating children and youth in convent spaces. In July 1821, for instance,

⁵ Gilberto Loaiza Cano, “Las primeras constituciones de Colombia,” *Revista Historia y Espacio* 39 (2012), 146.

⁶ See Gilberto Loaiza Cano, “Las primeras constituciones de Colombia”; Andrés Botero, “Constitucionalismo Gatidino y de la Nueva Granada,” *Revista Historia Constitucional* 15 (2014): 311-389.

⁷ Ivonne Vera Prada, *Religión, imaginarios nacionales y ritualización como forma de legitimación del orden público postindependentista en Colombia, 1821-1826* (PhD Diss, Universidad de los Andes, 2003); Margarita Garrido, “Los sermones patrióticos y el nuevo orden en Colombia, 1819-1820,” *Boletín de Historia y Antigüedades* 91:826 (2004) 461-484; Viviana Arce Escobar, “El púlpito entre el temor y la esperanza: ideas de castigo divino y Misericordia de Dios en la oratoria sagrada neogranadina, 1808-1820,” *Anuario de Historia Regional Y de Las Fronteras* 17:1 (2012): 77–107; Luis Ervin Prado Arellano, “Clérigos y control social. La cimentación del orden republicano, Popayán 1810-1830,” *Reflexión Política* 13:25 (2011): 153–63.

Congress enacted a law that ordered the establishment of schools for girls and the youth in city convents. As published in *Gaceta de Colombia*, Congress expected “the most active cooperation” from bishops and priests across the territory “for the benefit of public morality and religion.”⁸ In this sense, it was critical for the state to maintain a good relationship with the Church so it could be an active agent in the moral education of the youth.

Furthermore, in the postwar years, a majority of Catholic priests across the republic of Colombia preached on the importance of supporting the new independent republic. A look at the collection of sermons at Colombia’s national archive in Bogotá in the *Fondo de Curas y Obispos* shows that for priests, to support the republican project was portrayed as in accordance to God’s mandates. In several sermons in this collection, priests address other clergy members and instruct them to persuade “parishioners to flee from the *seducción* of the wicked, who are against independence from Spain. They just want to confuse and instill fear among ordinary people and make them victims of robberies, violence, and other terrible actions.”⁹ Other sermons focus on the urgency of breaking the chains of servitude that Spain had imposed on Colombians for three hundred years. This idea made reference exclusively to the “oppression” that Colombians endured as colonial subjects as well as the political and economic disadvantages of an unequal relationship with Spain.

These sermons all attempted to portray Spain and royalists in a negative light. It was a

⁸ “Congreso, July 28, 1821,” *Gaceta de Colombia* (Bogotá), No. 5 (September 20, 1821). “De quienes se espera la más activa cooperación en beneficio de la moral publica y la religión.”

⁹ “Sermon, 1820” Archivo General de la Nación (hereafter AGN), República, Curas y Obispos, Tomo 24, f. 863.

rhetorical strategy to highlight the importance of cutting ties with an oppressive force.¹⁰ It also represents a change in allegiance for some of these priests, most notably the bishop of Popayán, who had been an ardent royalist supporter. After the Southern Campaign, the bishop of Popayán was determined to return to Spain, but Bolívar convinced him to accept the victory of independence leaders and invited him to remain in the territory as leader of the Catholic Church.¹¹ The bishop accepted and returned to Popayán where he then defended the new republican project.¹² In one sermon from 1830, the bishop addressed other members of the clergy and invited them to “persuade their parishioners when preaching and in all private conversations [...] to obey and respect the constituted authorities or otherwise everything would be chaos, confusion, and our total ruin.”¹³ In his address, the bishop spoke on behalf of the Catholic

¹⁰ This was not the first time that sermons were used to advocate or discredit a particular political or religious position. Renán Silva has shown, for example, that in seventeenth-century Colombia, several religious orders engaged in theological disputes around the dogma of the immaculate conception and used sermons to communicate their positions and influence the general public. See Renán Silva, “El sermón como forma de comunicación y como estrategia de movilización Nuevo Reino de Granada a principios del siglo XVII,” *Revista Sociedad y Economía* 1 (2001): 103-130.

¹¹ José Manuel Restrepo, *Historia de la revolución de la república de Colombia en la América meridional*, vol. 3 (Medellín: Universidad de Antioquia, 2009), 222; Rebecca Earle, *Spain and the Independence of Colombia 1810-1825* (Exeter: University of Exeter Press, 2000), esp. 163-165.

¹² See for example: “Obispo de Popayán acusa recibo de unos ejemplares de la constitución, 1832,” AGN, República, Curas y Obispos, Tomo 15, ff.194-196; “Obispo de Popayán - Correspondencia con comandante del ejército del sur, 1821,” AGN, República, Curas y Obispos, Tomo 8, ff. 413-416; “Obispo de Popayán - Acuso de recibo de leyes,” AGN, República, Curas y Obispos, Tomo 26, ff. 459-491; “Obispo de Popayán - Carta a clero y fieles, 1827,” AGN, República, Curas y Obispos, Tomo 27, ff. 649-652. “Obispo de Popayán - Comunicaciones a gobierno, AGN, República, Curas y Obispos, Tomo 24, ff. 890-892.

¹³ “Pastoral del Señor Obispo de Popayán, Dr. Salvador Jiménez, 1830,” AGN, República, Curas y Obispos, Tomo 2, f. 169rv. “[...] Y la que encargamos a todos nuestros curas, que la persuadan a sus feligreses cuando prediquen y en todas las conversaciones privadas, haciéndoles comprender que es imposible seamos felices, si no prestamos nuestra sumisión, obediencia y

Church, which had voted to support and subject itself to the new independent republic. He also gave his address at the request of vice-president of the republic, Francisco de Paula Santander.

One of Santander's main objectives as vice-president was to use the Catholic Church as a vehicle to legitimate the independence campaign.¹⁴ Along with the bishop of Popayán, Santander had requested other bishops and priests to do the same in their respective provinces. In a sermon from 1819, for example, a priest told his parishioners that Santander had reassured everyone through a decree that independence from Spain was not against the Catholic doctrine.¹⁵ On the contrary, said the priest, they were completely compatible. For that reason, they had to unite forces and not let Spain take over the republic again. He urged everyone to defend the republic "not only with our property, but also with our own lives."¹⁶ To do this was to be patriotic and courageous. Such was the enthusiasm among the people who supported independence that Santander's office would even receive letters from concerned citizens requesting the presence of priests in their cities who could instill both religious and liberal ideas to the masses.¹⁷

The judicial system in the new republic

respeto a las autoridades constituidas y de lo contrario todo será trastorno, confusión, desorden, y su termino fatal nuestra total ruina."

¹⁴ David Bushnell, *The Santander Regime in Gran Colombia* (Newark: University of Delaware Press, 1954); Alfonso Zawadzky, *Clero insurgente y clero realista; informes secretos del obispo de Popayán al Rey* (Cali: Impresora Bolivariana, 1948).

¹⁵ "Al pueblo de Turmequé, 1819," AGN, Fondo Enrique Ortega Ricaurte, Oratoria Sagrada, ff. 51-57.

¹⁶ "Al pueblo de Turmequé, 1819," AGN, Fondo Enrique Ortega Ricaurte, Oratoria Sagrada, f. 52v.

¹⁷ "Representación sobre la necesidad de nombrar un cura, 1820," AGN, República, Curas y Obispos, Tomo 24, ff. 159-160

The 1821 constitution created the judicial system that a group of patriot elites had initially conceived in 1815, but were unable to carry out because of the Spanish *reconquista*.¹⁸ This judicial system consisted of a superior court of justice in Santa Fe that presided over the superior courts in each of the provincial capitals. In 1817, after the *reconquista*, Bolívar declared that provincial *intendentes* and governors would continue performing their roles as the highest authorities in judicial cases.¹⁹ The 1821 constitution allowed provincial governors to oversee civil and criminal cases too. This shows how the executive and judicial branches of government remained inextricably connected at least during the first postwar years. Authorities worked under a system that combined both old and new structures. Governors reviewed civil and criminal matters that took place within their jurisdictions, delegated them to their subordinates, and later approved and confirmed sentences. This changed the middle of the decade when Congress enacted the *Ley Orgánica del Poder Judicial* and *Ley Orgánica de Tribunales* and assigned judicial powers to magistrates and local judges.

During the ten-year republic, there were proposals in Congress to write a criminal code that would replace all other criminal laws by members of the judicial branch. But Congress had other priorities when it came to producing legislation. The executive would remain a part of the judicial system until 1825 and Colombia's first penal code would appear only in 1837. Until then, authorities were expected to draw on colonial legislation as well as on the constitution. They were also required to keep abreast of the scattered laws Congress was passing during this

¹⁸ Armando Martínez Garnica, "Confederación de las Provincias Unidas de la Nueva Granada" *Revista Credencial Historia* 244 (2010).

¹⁹ Juan Carlos Vélez Rendón, "El establecimiento local de la administración de justicia en Antioquia, 1821-1853. El difícil cumplimiento de una promesa republicana," *Anuario Colombiano de Historia Social y de la Cultura* 40:1 (2013): 113–43.

period. Laws that governed family and sexuality during the period under examination remained unchanged from the colonial times. What changed, however, were the legal procedures through which crime was to be punished. In the next two chapters, I will analyze cases of illicit friendship and violence in order to explore the ways in which law, religion, and power worked together during this period.

CHAPTER 4

“*ECHAR MANO:*” DISCIPLINING POOR MEN IN POST-WAR POPAYÁN, 1820-1830”

This chapter examines the ten-year period (1820-1830) after the civil wars that culminated in Colombia’s independence from Spain. During this early period of state formation, pro-independence leaders formalized the creation of the Republic of Colombia through the ratification of a national constitution in 1821. This chapter studies the early stages of that state-building process through a critical interpretation of criminal records and other historical sources from the period. Unlike the records I analyzed in Chapter Two –where illicit friendship was the central and only crime for which men had been arrested and convicted– the records I study in this chapter involve illicit friendship as one of several accusations made against lower-class men from predominantly rural mining areas. In other words, all records I read for this period show men who faced multiple counts for displaying high degrees of autonomy and insubordination *both* in their romantic and public lives. Lower-level authorities (local judges and patrol officers) deemed such behavior criminal because, in their view, it disturbed public tranquility and order. Thus, they took legal actions against it to protect long-standing Catholic morals and values that would guarantee social order. In taking legal actions, though, these authorities ran into trouble with higher-level authorities (lawmakers and court magistrates), who stressed the importance of following the law in criminal procedures. This created obstacles that unveiled confusion regarding the adequate legal procedures to follow in the new republic.¹

¹ In this chapter, I use the term high-level authorities to make reference to lawmakers, high-ranking public officials, and/or court magistrates from the period. After 1825, when superior

With this in mind, this chapter studies the first postwar years through the creation and implementation of a legal structure by higher-level authorities. It demonstrates that the complicated and multi-layered nature of that legal structure exacerbated tensions and misunderstandings between court magistrates and lower-level judicial authorities over the presumed immoral (and criminal) behavior of lower-class men and women. In Chapter Two, we saw that a common cause for tension among legal authorities, at least toward the end of the war, was the absence or poor interpretation of laws and regulations in the prosecution of alleged criminals at the local levels. This was usually a result of plain ignorance or, at times, arbitrariness on the part of local authorities. This tension deepened during the postwar years when lower-level judges lacked the knowledge or the willingness to abide by the legal frameworks established by the national constitution.

A big source of that tension was, for instance, the legal separation of church and state. As was true during the war period, legal authorities in post-independence Popayán continued to rely on the work of lower-level judges in towns and villages to supervise and report any perceived delinquent behavior to their superiors. Higher-level authorities expected that lower-level judges would follow legal procedures as they exercised their duties. Under the constitution, crime was to be regulated by a set of laws and procedures in place, not by arbitrary actions that could resemble the colonial rule. In this sense, the chapter also shows how debates about the definition of moral crimes and the types of punishment they deserved also exposed conflicting notions

courts were fully established across the territory, my use of the term strictly refers to superior court magistrates based in the city of Popayán. Similarly, I use the term lower-level authorities to make reference to local judges, justice officers, and/or patrol officers whose duty was to supervise the population in their towns and villages and to report crime to their superiors. As becomes evident in my analysis, lower-level authorities were constantly accused by higher-level authorities of operating with no regard for new constitutional laws in their treatment of criminal matters. In a new state seeking legitimation, this was unacceptable.

about the difference between crime and immorality. These debates happened among legal authorities in court cases and in spheres that reached out to the general public such as the press.²

A focus on illicit friendship and law thus opens a window onto the ways that lower-level authorities undermined the new constitution, in some cases, out of confusion and in others because they believed it was not conservative and religious enough for their purposes. Records from the second half of the decade show how higher-level authorities created superior courts of justice and new criminal legal codes to counteract increasing arbitrariness on the part of local judges. Magistrates at superior courts of justice reviewed and, most of the time, modified the lower-level sentences that failed to adhere to new legal procedures. Because of the importance of

² Several scholars have written about the importance of the printed press in late colonial Colombia and during the wars of independence. For some examples, see David Bushnell, “The Development of the Press in Great Colombia,” *The Hispanic American Historical Review* 30:4 (1950): 432–52; Rebecca Earle, “Information and Disinformation in Late Colonial New Granada,” *The Americas* 54:2 (1997): 167–84; Renán Silva, *Prensa Y Revolución a Finales Del Siglo XVIII: Contribución a un análisis de la formación de la ideología de Independencia Nacional* (Medellín: La Carreta Editores, 2010). The low numbers of newspapers available during the period concerned the editors of *Gaceta de Colombia* (1821-1831) who in 1823 published a note in which they highlighted the excellent work of newspapers in Chile, Buenos Aires, and Lima. In that context, they urged their “illustrated compatriots” to contribute to the prosperity of Colombia by writing about the republic’s wealth and political institutions. See “Imprenta libre” *Gaceta de Colombia* (Bogotá) No. 68, February 2, 1823. In spite of newspapers’ low distribution and small weekly subscriptions, their content was often transmitted by readers who wrote letters to family members and friends living in other cities or remote areas across the republic. For instance, the letters that Doroteo Armero wrote to his friend Don Marcelino Hurtado in 1824 all included brief paragraphs in which Armero summarized the most important pieces of news he gathered from the local newspapers. See “Al Sr. Marcelino Hurtado, 1824,” The Louis Round Wilson Special Collections Library at The University of North Carolina at Chapel Hill (hereafter WSCL), Popayán Papers Collection (No.:11500), Box 13, Folder 146, doc. without page numbers. Similarly, the letter exchanges between Domingo Pérez de Valencia y Arroyo and his brother José Antonio show how the former enjoyed receiving news and copies of newspapers by mail. Domingo often reminded his brother that in the isolation of the gold mines where he lived (Yurumanguí), the only pleasant distraction he had was to keep up with the news. See “Cartas de Domingo a José Antonio, 1828,” WSCL, Popayán Papers Collection, Box 14, Folder 160, doc. without page numbers.

these changes in the adjudication of cases, this chapter is divided into two chronological parts. The first part follows four lower-class men accused of illicit friendship during the 1821-1825 period in which republican forces continued to fight royalist rebels south of Popayán. The second part covers the 1825-1830 period, primarily through an analysis of cases where enslaved men were at the center.

1821-1825

Post-Independence Popayán: The First Four Years

The second part of Chapter Two briefly introduced readers to Don Santiago Pérez de Valencia y Arroyo (1773-1845), or Don Santiago Arroyo, a renowned lawyer who exercised important roles in the judicial system at the end of the war in Popayán. Don Santiago had a prestigious record in political life due to his legal training and the connections of his well-off family in Popayán. However, his public service became especially significant after independence. This section reintroduces him, and follows him and those in his social circle in the early post-independence years. This will lay the ground to contextualize the case analyses I provide later in the chapter.

Don Santiago Arroyo's paternal family traced its origins back to an aristocratic clan in Spain whose members held royal posts in Santo Domingo and Panama before establishing residence in Colombia.³ This lineage granted his parents, siblings, and their descendants the high degree of nobility and prestige they enjoyed once they settled in Popayán in the eighteenth century. As such, his family members had distinguished careers as slaveholding miners, priests, merchants, lawyers, and public officials who intermarried with families with similar aristocratic

³ David Mejía Velilla, "Evocación de Don Santiago Arroyo" *Boletín de Historia y Antigüedades* Vol. 83 No. 792 (1996): 12; Gustavo Arboleda *Diccionario biográfico y genealógico del antiguo Departamento del Cauca*. (Bogotá: Librería Horizontes, 1962).

backgrounds such as the Hurtado, Arboleda, and Mosquera family clans. These families preserved their lineage and expanded their wealth through endogamous unions.⁴ In 1807, for example, Don Santiago married María Teresa Mosquera y Hurtado who died three years later in childbirth along with the baby. Four years after this, Don Santiago chose to remarry his deceased wife's aunt, Juana Francisca Hurtado de Arboleda, with whom he had six children.⁵ For Don Santiago, marrying into the Hurtado family meant establishing “new and tight bonds” with some of its most powerful members. In a letter, Don Santiago shared that perspective with Don Marcelino Hurtado, his first wife's uncle and second wife's brother.⁶

Don Marcelino was a respected medical doctor who, like Don Santiago, had been an active member of Popayán's patriot municipal council at the outbreak of war. Both Don Santiago and Don Marcelino supported independence from the start through their public service in Popayán. In this sense, these men and their families were among the Popayán slaveholding elite who supported the republican project. In 1820, Don Santiago was named representative of the Province of Popayán in the Congress of Cúcuta, the constituent assembly where the Republic of

⁴ A number of works have studied the structures of these family clans and their roles in political life: Gustavo Arboleda, *Diccionario biográfico y genealógico del antiguo Departamento del Cauca* (Cali: Centro de Estudio Históricos y Sociales, 1996); William Lee Lofstrom, *La vida íntima de Tomás Cipriano de Mosquera, 1798-1830* (Bogotá: Banco de la república: el Áncora ed., 1996); Luis Ervin Prado Arellano and David Fernando Prado Valencia, “La Familia Mosquera y Arboleda y el proyecto Bolivariano (1821-1830),” *Memoria y Sociedad* 14:29 (2010): 55–69; Carlos Arnulfo Rojas Salazar, “Amos del oro, siervos del rey, ciudadanos del reino: la élite de Popayán y los procesos de independencia hispanoamericanos, 1808-1820” (PhD Diss. Universidad de Salamanca – España, 2015).

⁵ “Testamento de Santiago Arroyo, 1842,” Archivo Histórico Cipriano Rodríguez Santa María (hereafter AHCR), Fondo David Mejía Velilla, Caja 2, Carpeta 2, f. 164-165.

⁶ “Carta enviada por Santiago Arroyo a Marcelino Hurtado, 1807,” AHCR, Fondo David Mejía Velilla, caja 2, carpeta 3, f. 11.

Colombia (modern-day Colombia, Venezuela, Panamá and Ecuador) was created.⁷ A year later, Don Marcelino was appointed representative of the Province of Chocó in Colombia's bicameral Congress. By that time, lawmakers had restructured the republic's geopolitical landscape and both of these provinces constituted the new Department of Cauca.⁸

Marcelino's appointment generated lots of enthusiasm among relatives and friends who expressed their congratulations and loyalty by writing him letters. Among the letters he received, one dated October 7, 1821 came from his uncle Don Antonio Arboleda. Don Antonio celebrated Don Marcelino's departure from the Chocó to the republic's capital, Bogotá (previously known as Santa Fe) and advised him to be a "prudent and reserved" congressman.⁹ Don Antonio encouraged Don Marcelino to work dedicatedly to establish a truly republican government because in his view, "the same despotism of the goths (*godos*)" continued to permeate political life. *Godos* was the term with which pro-independence (patriots) leaders and authorities referred to anyone who exhibited royalist tendencies during and after the wars of independence in Spanish America.¹⁰ In his letter, Don Antonio also mentioned that he had heard that a new constitution had been ratified. He expressed his hopes that, if observed, the constitution "would remedy all [social] ills."¹¹

⁷ "Instrucción de los miembros de la Asamblea Electoral de la Provincia del Cauca, 1820" AHCR, Fondo David Mejia Velilla, caja 11, carpeta 3, f. 1-22.

⁸ Armando Martínez Garnica, *La agenda de Colombia: 1819 - 1831*. T. 2 (Bucaramanga: Dirección Cultural Univ. Industrial de Santander, 2008).

⁹ "Al Sr. Marcelino Hurtado. Octubre 7, 1821," WSCL, Popayán Papers Collection (No.:11500), Box 13, Folder 140, doc. without page numbers.

¹⁰ In Colombia, the word *godo* became widely used after the mid-nineteenth century to refer to the supporters of the Conservative Party, which was formally created by former president Mariano Ospina Rodríguez in 1849.

Indeed, members of the Congress of Cúcuta had ratified the new national constitution in August 1821 and by mid-October had elected the military leader of the revolution, Simón Bolívar, as president. Bolívar accepted the presidency and proclaimed the constitution as a body of laws that would bring “union, equality, and freedom” to the people of the Republic of Colombia.¹² After this, congressional members began reaching out to the municipal councils in their provinces to spread the news. In April 1822, for example, the municipal council of Nóvita, in the Province of Chocó, acknowledged receipt of the proclamation and a copy of the constitution that had been sent by Don Santiago and Don Marcelino respectively. In his acknowledgements, the scribe recounted the public celebrations that followed the proclamation in the main plaza of Nóvita, which included the ringing of bells, a public mass, and a private dance for local elites and their families that ended late at night.¹³ The scribe also referred to the constitution as their “sacred code of freedom,” which local authorities promised to obey and implement.¹⁴ Around the same time, Don Santiago’s brother Manuel María reported on a short note he sent to Don Marcelino that God had finally rewarded the city of Popayán with the peace they had desperately prayed for during all the years of war.¹⁵

¹¹ “Al Sr. Marcelino Hurtado. Octubre 7, 1821,” WSCL, Popayán Papers Collection, box 13, folder 140, doc. without page numbers.

¹² José Manuel Restrepo, *Historia de la revolución de la República de Colombia en la América meridional*, vol. 3 (Bogotá: Imprenta de José Jacquin, 1858): 154.

¹³ “Josef Yndalecio Solano y Rojas, escribano público, 1822” WSCL, Popayán Papers Collection, box 13, folder 141, doc. without page numbers.

¹⁴ “Al Sr. Marcelino Hurtado. Abril 26, 1822,” WSCL, Popayán Papers Collection, box 13, folder 142, doc. without page numbers.

¹⁵ “Al Sr. Marcelino Hurtado. Julio 20, 1822,” WSCL, Popayán Papers Collection, box 13, folder 142, doc. without page numbers.

That “perfect tranquility” highlighted by Manuel María in his short letter had arrived after months of intense fighting between patriots and royalists particularly in and around the cities of Pasto and Quito (the capital of modern-day Ecuador), south of the city of Popayán. Royalist forces in the south continued organizing uprisings as members of the Congress of Cúcuta deliberated on the laws and political structures that would lay the ground for the nascent republic.¹⁶ Because this situation threatened the consolidation of the Republic of Colombia, President Simón Bolívar organized a military incursion to the south soon after taking office. Unlike several failed attempts on the part of previous military leaders such as Antonio Nariño in 1813, Bolívar’s campaign to defeat the southern royalists was a total success. A skilled strategist and negotiator, Bolívar weakened the royalist forces in Pasto and convinced their leader, Basilio García, to surrender by signing a capitulation agreement (*Capitulación de Berruécos*).¹⁷ The capitulation formally ended the war between patriots and royalists on Colombian soil and established conditions to facilitate the reintegration of royalist supporters into civil, republican life.¹⁸ Some of those conditions included allowing royalists who pledged allegiance to the republican constitution to keep their jobs and their property as well as providing passports to those who wished to return to the Iberian peninsula. Among royalists making that transition was Popayán’s bishop, Salvador Jiménez who became a defender of republican ideas through his influential position in the Catholic Church. On June 8, 1822, Bolívar entered the city of Pasto

¹⁶ Jairo Gutiérrez Ramos, *Los indios de Pasto contra la República (1809-1824): Las rebeliones antirrepublicanas de los indios de Pasto durante la guerra de Independencia* (Bogotá: Instituto Colombiano de Antropología e Historia, 2012).

¹⁷ “Contestación de Basilio García,” *Gaceta de Colombia* (Bogotá), No. 35, June 16, 1822.

¹⁸ “Capitulación de Pasto,” *Gaceta de Colombia* (Bogotá), No. 35, June 16, 1822.

triumphantly and declared Colombia a free republic after the victory of his military officers further south in Quito.¹⁹

This was the moment patriots had fought for during the war. Spain was finally defeated and Colombia was a legitimate republic “starting to walk towards its own prosperity.”²⁰ This process advanced Bolívar’s republican ideals, but it did not completely extinguish Popayán local elites’ anxieties over the potential actions of royalist detractors who remained in and around the city of Pasto. This lingering concern was best captured by one of Don Santiago’s colleagues in Congress, Don José María Cuero. In a letter dated November 29, 1822, Cuero wrote that after Bolívar’s successful “Southern Campaign,” sporadic royalist agitations in and around the city of Pasto would not pose any critical threats to the republic. He advised, however, that no matter how small such royalist threats were they could not be fully ignored by authorities because “one single spark could start a fire.”²¹ It was important for Don Santiago to be informed as much as he could about these events given that his role in the judicial system brought him into contact with men accused of participating in royalist agitations.

Before we examine that, though, what did these agitations look like? Who were the presumed agitators? The historical literature on the royalist resistance in the city of Pasto has principally highlighted the ways in which indigenous and black communities, led by strongmen from the region, mobilized against republican troops through diverse popular forms of resistance

¹⁹ “Proclama. Simón Bolívar,” *Gaceta de Colombia* (Bogotá), No. 35, June 16, 1822.

²⁰ “Bogotá,” *Gaceta de Colombia* (Bogotá), No. 43, August 11, 1822.

²¹ “Al Sr. Santiago Pérez. Noviembre 29, 1822,” WSCL, Popayán Papers Collection, box 13, folder 141, 1822, doc. without page numbers. “*Una chispa sola, si no se apaga pronto, produce un incendio.*”

that included social banditry.²² Among the things these organized popular groups did to resist republican incursion into their territories was to hover over the Pasto mountains where they “ambushed republican soldiers and committed acts of banditry.”²³ The broad characterizations of these groups have helped to understand their origins, their actions, and their place in the national narratives of the period. The following section of this chapter, however, moves into the more singular and fragmented depictions of a presumed rebel that are available in a criminal case from the period. A close look at this case brings forward details that help expand and complicate our understanding of this context of political fragility, state building, and elite anxieties by paying attention to the interactions between the accused and the legal authorities at multiple levels. As we will see, such interactions reveal important details about family dynamics and moral policing tactics that were used and reinforced by men involved in this case.

Antonio Astudillo, the “troublemaker”

On January 11, 1823, the intendant of the Department of Cauca (previously known as the Province of Popayán), Colonel José Concha, wrote a short note on the margin of a letter he received from Antonio Astudillo, a married 27-year-old incarcerated man.²⁴ In the letter,

²² With the term *bandolerismo social*, Jairo Gutiérrez Ramos invokes the work of British historian Eric Hobsbawm. “Las guerras de independencia en Pasto” in *El Nuevo Reino de Granada y sus provincias: Crisis de independencia y experiencias republicanas*, ed. Aristides Ramos et al (Bogotá: Editorial Universidad del Rosario, 2009): 85

²³ Ibid., 85. Also see Rebecca Earl, “Regional Revolt and Local Politics in the Province of Pasto, Colombia, 1780-1850,” (M.A. Thesis, University of Warwick, 1989); Brian Hamnett, “Popular Insurrection and Royalist Reaction: Colombian Regions, 1810-1823” in *Reform and Insurrection in Bourbon New Granada and Peru*, ed. J. Fisher et al (Baton Rouge: Louisiana State University, 1990): 292-326; Luis Ervin Prado Arellano, “Redes, movilización y bases de autoridad en el Valle Del Patía, 1820-1851,” *Historia Caribe* 8:22 (2013) 75-103.

²⁴ *Intendente* or intendant was an administrative position introduced in Spanish America during the Bourbon reforms in the late eighteenth century. Intendants or provincial governors “sought to

Astudillo explained that he was unaware of the reasons for his imprisonment and requested his release on the grounds of being an innocent man and a “true Colombian.”²⁵ With this last point, Astudillo was emphasizing that he fully supported the new republic and considered himself a part of it. The governor’s note, addressed to a scribe, requested more information about Astudillo’s case. In his reply, the scribe explained that the former Chief of Staff of the Army (*jefe de Estado Mayor*) of the new republic had ordered Astudillo’s arrest after receiving letters from Captain Bruno Espinoza from the town of El Tambo. In the letters, Espinoza had informed the Chief about soldier desertions from the republican troops under his command and had also asked for the arrest of one of the most rebellious royalists in town, Antonio Astudillo. According to Captain Espinoza, both the priest and the justice officer of El Tambo knew that Astudillo was visiting the city of Popayán for the Three Kings’ Day celebrations. The priest had advised Captain Espinoza to alert the authorities in Popayán to grab him (*echarle mano*) over the religious holiday before he could request a passport, escape to a Spanish port, and leave the republic.²⁶

Indeed, authorities arrested Astudillo over the religious holiday and sent him to prison in the city of Popayán while Governor Concha reviewed the case. Concha assigned the case to Popayán’s lower-court judge Manuel José Carvajal, who kept Astudillo in prison and ordered the

relieve the overburdened viceroys of many of their duties, especially in financial matters.” This position remained Benjamin Keen and Keith Hayes, *A History of Latin America, Vol. 1* (Boston: Cengage Learning, 2012): 152; George Reid Andrews, “Spanish American Independence: A Structural Analysis,” *Latin American Perspectives* 12:1 (1985): 110; John R. Fisher, *Government and Society in Colonial Peru: the Intendant System 1784-1814* (London: University of London, Athlone, 1970).

²⁵ “Expediente contra Antonio Astudillo acusado de revoltoso y vago, 1823,” Archivo Central del Cauca (hereafter ACC), Ind, J-Cr, I-5, sig. 4264, f. 3r.

²⁶ Here, the priest was referring to one of the *Berruecos* capitulation conditions that allowed former royalists to request their passports if they wished to leave the Republic of Colombia.

justice officer of El Tambo to assemble a summary report (*sumaria*) containing witness testimony against Astudillo. In a matter of days, the justice officer and three witnesses testified against Astudillo and sent the *sumaria* to judge Carvajal in Popayán. Their testimonies coincided in denouncing Astudillo's royalist guerrilla recruiting practices during the war and his illicit friendship with a woman named Petrona Medina. The records do not provide specific information about Petrona's race/color or class, but it would be reasonable to assume that she was mixed-race or indigenous given her place of origin. El Tambo was a town west of Popayán largely inhabited by people of mixed-race backgrounds. According to the witnesses, Astudillo had ignored the justice officer's multiple public warnings to stop seeing Petrona Medina and visiting her house. Furthermore, the justice officer included in his statement that he feared for his life because on one occasion, Astudillo threatened to take him to the city of Pasto where he would be killed if his warnings persisted. This comment suggested that Astudillo, a presumed royalist, would take a pro-independence justice officer to the royalist city of Pasto to be killed for his political affinities. This was consistent with the testimony of one of the witnesses who recalled that Astudillo "projected authority as if he were the justice officer of the town."²⁷

After examining the *sumaria*, Judge Carvajal visited Astudillo in prison to carry out his interrogation on February 5. Astudillo admitted that he had recruited people to join the royalist guerrillas in the Patía, but emphasized that he had been following orders of Obando (the royalist guerrilla commander turned republican *caudillo*). He also denied any involvement in the royalist agitations in and around the city of Pasto, arguing that he had become a busy farmworker (*labrador*) in *Los Anaya*.²⁸ Asked about Petrona Medina, Astudillo denied having any

²⁷ "Expediente contra Antonio Astudillo acusado de revoltoso y vago, 1823," Archivo Central del Cauca (hereafter ACC), Ind, J-Cr, I-5, sig. 4264, f. 7r

relationship with her and asserted that he had never visited her house in “daylight or nighttime.”²⁹ He said it was true that he had confronted his town’s justice officer, but claimed that he did so because of a false illicit friendship accusation. A day after Astudillo’s interrogation, prosecutor Mariano Alvarez Ramirez formally charged him of disrespecting local authorities in El Tambo; of having connections to the guerrillas in the Patía, which had continued conspiring against the republican government together with the royalists from Pasto after the 1822 *Berruéc* capitulation agreement; and of being romantically involved with Petrona Medina even though he was a married man.

Under new constitutional laws, Astudillo was able to name three witnesses who, as expected, spoke favorably about his behavior and moral character. After these additional accounts were included in the case files, it was the turn of a trained lawyer or legal advisor (*asesor letrado*) to evaluate all the evidence and provide an opinion to judge Carvajal regarding the most adequate sentence.³⁰ The advisor, Don Joaquín Rodríguez, concluded the evidence was

²⁸ “Expediente contra Antonio Astudillo acusado de revoltoso y vago, 1823,” ACC, Ind, J-Cr, I-5, sig. 4264, f. 9r. “Los Anaya” was a village close to the town of El Tambo. My search about this reference also led me to a secondary source that briefly refers to *Los Anaya* as one of the family clans that participated actively in the royalist guerrilla movements in the Patía region during the war. This secondary source shows ways republican leaders had to negotiate their role in the Patía region with indigenous and black family clans. I have no certainty of the ethnic roots of *Los Anaya* though. Astudillo was himself from El Tambo but apparently worked as a farmer or owned a farm on land that belonged to the *Anaya* family. This raises questions about his actual ethnic background as no ethnic/racial categorization was made explicit in the files. See Luis Ervin Prado, “Clérigos y control social. La cimentación del orden republicano, Popayán 1810-1830,” *Reflexión Política* 25 (2011): 158.

²⁹ “Expediente contra Antonio Astudillo acusado de revoltoso y vago, 1823,” ACC, Ind, J-Cr, I-5, sig. 4264, f. 10r. “*Ni de día ni de noche.*”

³⁰ This was a normal step of the judicial process. Since most lower-court judges (*alcaldes ordinarios*) had no formal legal training, they had to request advice from a legal advisor in order to rule a final sentence. This measure was common given the lack of trained and licensed lawyers available at the time. See: Victor Uribe-Urán, “The Lawyers and New Granada’s Late Colonial State,” *Journal of Latin American Studies* 27:3 (1995): 517–49; *Honorable Lives:*

not convincing enough to declare Astudillo guilty of any of the charges. In his view, the testimonies against Astudillo were questionable because in several instances the witnesses' statements narrated events that had either happened before the capitulation agreement or that were rumors.

The advisor's suggestion to judge Carvajal was to drop the charges for conspiracy and disrespect of authorities. As for the infidelity charge, the advisor acknowledged that all witnesses agreed Astudillo's illicit friendship with Medina was "public and notorious." He pointed out, however, that no witness accused Astudillo "of abandoning his legitimate wife or treating her poorly as would be expected of someone involved in such a scandalous relationship." On this basis, he determined the evidence for this accusation was unjustified and advised the judge to drop it, demanding Astudillo to end any communication with the woman in order to stop the rumors.³¹

The legal advisor's opinion highlighted that nothing about Astudillo's conduct could be perceived as a threat to the republican government. His comment on Astudillo's infidelity, though, alluded to a changing notion around the distinction between sin and crime - terms that had been used interchangeably throughout the colonial period. Having a concubine, he suggested, was not in itself a crime. For him, an illicit friendship turned into a crime when it had demonstrable negative consequences for the victim (in this case the legitimate wife) and the family. This type of commentary/assessment began to appear more frequently in similar cases during this period. This reasoning generated animosities among legal authorities who confronted

Lawyers, Family, and Politics in Colombia, 1780–1850 (Pittsburgh; Chicago: University of Pittsburgh Press, 2000).

³¹ "Expediente contra Antonio Astudillo acusado de revoltoso y vago, 1823," ACC, Ind, J-Cr, I-5, sig. 4264, f. 23r.

one another over their religious faith and changing ideological positions. In Astudillo's case, however, the judge accepted the advice in its entirety. He then passed the sentence to governor Concha who was required by law to review final decisions in cases that concerned the government.

By this time, Don Santiago Arroyo was serving as interim provincial governor.³² After Don Santiago's review of the case, he requested only that judge Carvajal explain why Astudillo's threat to forcibly take the justice officer to the city of Pasto to be executed by royalists had not been taken seriously during the investigation. Judge Carvajal forwarded the question to the legal advisor who explained that after his careful review of Astudillo's interrogation and the justice officer's testimony, he determined the supposed threat had been made in jest (*dicho burlesco*) on the part of Astudillo. Astudillo's joke at a street party came after the justice officer had given him a \$25 pesos fine for his continued illicit friendship with Petrona Medina. He also insinuated that if the justice officer had felt seriously threatened by Astudillo, he should have immediately opened a case against Astudillo. Don Santiago was satisfied with this answer and confirmed the lower-court sentence which absolved Astudillo of all charges. On July 11, 1823, the scribe assisting judge Carvajal stopped by the city's prison to inform Astudillo about the final sentence. Upon his arrival, however, the scribe learned that Astudillo had been transferred to a precinct from where he had escaped.

A week before the scribe learned about Astudillo's escape from prison, the newspaper *El Fósforo* (The Matchstick) reported that the royalist agitations in Pasto had awakened a feeling of "patriotism" among the most distinguished men in Popayán. For example, the vicar general from Caloto, a small district north of the city of Popayán, volunteered himself and all of his

³² "Cartas y copias de decretos, 1822," ACC, Ind, C-g, I-2, sig. 6839

parishioners to help in any actions that could help protect the new republic.³³ This willingness to defend the republican project against any conspiracies was also reflected in elites' personal correspondence. Among the letters received by Don Marcelino Hurtado (Don Santiago Arroyo's brother-in-law) in 1823, there is one from a friend who writes that any attempts to pacify the royalist rebels in Pasto and the Patía were useless unless they were subjugated with lance and bayonet.³⁴ In light of this, the legal process against Antonio Astudillo may have been seen by some members of this elite community as a missed opportunity. Astudillo was found not guilty of conspiracy and the added accusation of illicit friendship only raised more tensions between authorities, especially around the differences between sin and crime.

At the heart of these tensions was a woman coming in and out of the records through the witness accounts of men who connected her to Astudillo. She was never called to testify, but she was present in every intervention in which witnesses and authorities sought to prove Astudillo's danger to the republic and immoral character. She came alive in the justice officer's repeated invocations of her name as he attempted to keep Astudillo out of her house and prevent scandalous behavior as had been previously defined by the Catholic Church. In spite of the warnings, we see an image of Petrona waiting in her house for Astudillo, who according to one witness spent more time there than at home with his wife.³⁵

³³ *El Fósforo* (Popayán), No. 23, July 3, 1823: 174-176.

³⁴ "Sr. Dr. Marcelino Hurtado. Noviembre 9, 1823," WSCL, Popayán Papers Collection, box 13, folder 143, 1823. "[...] todo lo que no sea reducir a los pastusos y patianos con la bayoneta y lanza me parecen pasos perdidos." In the same box, see letters from October 9, 29, and November 19, 1823.

³⁵ "Expediente contra Antonio Astudillo acusado de revoltoso y vago, 1823," ACC, Ind, J-Cr, I-5, sig. 4264, f. 7v.

For the justice officer, this disrespect of his authority translated into a failure to reproduce a patriarchal order in the territory he supervised. Witnesses also saw Petrona traveling several times with Astudillo to places like Mojibio and Popayán, attesting to their physical mobility and choice to spend time together. Finally, Petrona also appeared in the deliberations of the legal advisor who believed the presumed illicit friendship was simply a “rumor” that failed to highlight the damages it might have caused to the legitimate wife. In this way, Petrona and Astudillo's wife, for whom we have no name, stood voiceless at the center of struggles for male authority at the local level and within the changing political hierarchies.

Pedro and Justo Zúñiga: Two “Adulterer” Brothers

As authorities in Popayán dealt with the case of Antonio Astudillo and Petrona Medina, interim provincial governor Don Santiago Arroyo received a letter dated April 22, 1823 from José Joaquín Guzmán. Guzmán was the local judge of Almaguer, a village south of the city of Popayán. In his letter, Guzmán complained that the brothers Pedro and Justo Zúñiga had abandoned their legitimate wives and children to engage in illicit friendships with two women named Custodia de Hoyos and Margarita Gómez. Guzmán called explicitly for the arrest of both women, who had run away from Almaguer with their respective Zúñiga lovers, presumably when they learned Guzmán was going to arrest them (*iba a echar mano para separarlos*). According to Guzmán, Custodia (married) and Margarita (single) were “vagabond” women who deserved punishment for transgressing the boundaries of proper Catholic moral behavior. Guzmán also reported in his letter that Justo and Custodia were living in the city of Popayán while Pedro and

Margarita had settled nearby in the parish of Timbío. For Guzmán this proximity had allowed the brothers to visit each other frequently.³⁶

Don Santiago followed the usual two-part procedure in this type of cases. He forwarded the complaint to Popayán's lower-court judge, who then ordered local justice officers in Timbío and patrol officers in Popayán to search for and arrest the accused women and the Zúñiga brothers on adultery charges. A month after Guzmán's complaint, authorities in Popayán arrested the brothers. During their interrogation, the brothers answered explicit questions about their marital status, their *calidad*, their occupation, and their age. Although these were standard questions in any interrogation procedure, they were not always asked or recorded by authorities. In Antonio Astudillo's case, for example, the *calidad* of the defendant and the witnesses was never recorded on any of the files. In the case of the Zúñiga brothers, however, Pedro described himself as a 28 year-old married mestizo hatter and Justo as a 35 year-old married *montañes* tailor.³⁷ Both men denied the adultery charges and insisted they did not know the accused women's whereabouts. In spite of that, they were still required to answer questions about their alleged extramarital affairs with Custodia and Margarita, who were not found during the two months the case was under investigation. Also, at least one of them had to answer questions about their relationships with their legitimate wives, who had remained in Almaguer with their children.

³⁶ "Solicitud de Guzmán, vecino de Almaguer, al Intendente Gobernador del Departamento del Cauca, 1823," ACC, Ind, J-Cr, I-3, sig. 1792.

³⁷ "Solicitud de Guzmán, vecino de Almaguer, al Intendente Gobernador del Departamento del Cauca, 1823," ACC, Ind, J-Cr, I-3, sig. 1792 f. 2v; 3v. According to Martha Herrera, the term *montañes* made reference to poor whites (*blancos pobres*) who worked cultivating the land of others. See Martha Herrera Ángela, *Popayán: La unidad de lo diverso. Territorio, población y poblamiento en la Provincia de Popayán, siglo XVIII* (Bogotá: Universidad de los Andes, 2009), 91.

As in the case of Antonio Astudillo, women were at the center of this case but we only learn details about them through the recorded statements of the Zúñiga brothers. In his interrogation, Pedro explained that Margarita was a distant cousin (*cuarto o quinto grado de consanguinidad*) of his wife Antonia Gómez. Apparently, Antonia began to resent her cousin when she suspected they were having an affair. Because of this tension, Pedro said he helped Margarita leave Almaguer to the parish of Timbío. Pedro denied any relationship with Margarita prior to their time together in Timbío, where he admitted they were intimate for the first time. Pedro claimed, however, that they chose to part ways after that. Margarita had left for another parish named Rio Blanquito and he was getting ready to return to Almaguer when he was arrested. Pedro's revelations urged the authorities to ask him if he had ever condemned his wife to *mala vida*, or a "bad life" as a result of his illicit friendship with Margarita.³⁸ Again, similar to the case of Doña Antonia Delgado in Chapter Two, authorities were interested in knowing if the husband had been abusive to his wife. In this case, Pedro answered negatively, emphasizing that he had always cared for his wife Antonia and their children.³⁹

Justo's interrogation was brief in comparison to that of his brother. Justo explained to the authorities that he had traveled to Popayán with the purpose of delivering a set of sealed documents (*pliegos*) to the city's priest. According to Justo, Almaguer judge José Joaquín Guzmán (the complainant), had entrusted him with that task. Interestingly, authorities did not

³⁸ I discuss *mala vida* in chapter two. See: Richard Boyer, "Women, *La Mala Vida*, and the Politics of Marriage" in *Sexuality and Marriage in Colonial Latin America*, ed. Asunción Lavrin (Lincoln: University of Nebraska Press, 1989): 252-286. Richard Boyer, *Lives of Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New Mexico Press, 1995); Susan M. Socolow, *The Women of Colonial Latin America* (New York: Cambridge University Press, 2015): 73-74.

³⁹ "Solicitud de Guzmán, vecino de Almaguer, al Intendente Gobernador del Departamento del Cauca, 1823," ACC, Ind, J-Cr, I-3, sig. 1792, f. 2v.

delve further into the potential contradictions raised by this statement. If it was true, why did Guzmán's letter to Don Santiago make no mention of Justo's task? When and how did Guzmán learn about Justo's extramarital affairs? What motivated Guzmán to make the adultery allegations? Unlike Pedro, Justo did not admit to having any relationship with Custodia de Hoyos and insisted it was all a false accusation. Based on these files, there is no way to know whether or not Justo was saying the truth, but it is worth remembering that Custodia was a married woman who had presumably abandoned her husband to be with Justo. This placed Justo in a drastically different position from that of his brother Pedro: Custodia's husband could press charges against Justo citing damage to his public honor. Curiously, that did not happen nor did authorities interrogating Justo ask anything about his relationship with his own wife Josefa and their children.

The different approaches taken by the authorities in the interrogation of the Zúñiga brothers raises questions. For example, why did Justo receive more leniency from the same interrogating officers? Was it because he denied the illegal friendship accusations against him from the start? Or was there undisclosed/unrecorded information that could have granted him privileges? According to historian Luis Ervin Prado, the Zúñiga family clan in Almaguer was among the few families that supported independence from Spain in the predominantly royalist southern city of Pasto and its surrounding areas. Among the members of this clan was a man named Justo Zúñiga who apparently organized and led patriot militias across the Almaguer region during the war.⁴⁰ The Justo Zúñiga in this criminal case described himself as a tailor. A tailor could be a militia leader so there is reason to speculate about a possible connection between the two or at least

⁴⁰ Luis Ervin Prado Arellano, "Clérigos y control social. La cimentación del orden republicano, Popayán 1810-1830," *Reflexión Política* 13:25 (2011): 156.

between Justo and the larger Zúñiga family clan. Such kin connection could have influenced the outcome for Justo and his brother, who left prison on bail two days after their interrogations.

Pedro and Justo Zúñiga requested their release on bail arguing that they lacked the most basic human necessities in prison because they were not originally from the city of Popayán. Popayán's lower-court judge approved the brothers' release on bail without any hesitation or further questioning. Justo spent a total of three days in prison while Pedro spent ten. On the release note for Justo, for example, the judge simply stated that Justo could regain his freedom because the investigation had not resulted in any criminal charges against him.⁴¹ It should be noted, however, that on the same day the two brothers sent their requests for release, the judge had reordered the local judges in the parishes of Timbío and Rio Blanquito to continue the search for Custodia and Margarita. He had urged the local judges to find and arrest the women so the case against the Zúñiga brothers could proceed.⁴² It seems, then, that the judge had made up his mind by the time he received the brothers' release requests. There would be no grounds for a criminal investigation if the accused women remained on the run. This may also explain why the judge failed to request from the complainant a *sumaria* containing witness testimonies, the necessary evidence to initiate a legal proceeding. Its absence in this case suggests that there were inconsistencies in the investigation and that standard procedures were not carried through by the judge. If Justo Zúñiga was the republican militia leader, as I believe he was, then the outcome of this case reinforces the continued importance of status and loyalty in this society. Sharing political affinities – in this case republican/patriot affinities – could benefit a man facing trouble

⁴¹ “Solicitud de Guzmán, vecino de Almaguer, al Intendente Gobernador del Departamento del Cauca, 1823,” ACC, Ind, J-Cr, I-3, sig. 1792 f. 4r.

⁴² “Solicitud de Guzmán, vecino de Almaguer, al Intendente Gobernador del Departamento del Cauca, 1823,” ACC, Ind, J-Cr, I-3, sig. 1792), f. 3v.

in the legal system. We could think, for example, about the case in Chapter Two that concerned Juana Reina and her lover Joaquín de Paz. Royalists protected Paz because he was an important leader for their cause. In other words, the trust and support that characterized political alliances were supposed to extend to other more intimate aspects of life, especially when they were being scrutinized by legal authorities.

Guzmán had hoped that by initiating legal actions against the accused they would all be arrested and punished for their “abominable offenses.”⁴³ The logic here is that punishment would, in turn, restore the ideal morally-defined social order of his town while strengthening one of its most salient characteristics: patriarchy. He based his accusations on a binary construct that profiled dangerous female transgressors (Custodia and Margarita) against helpless female victims (Josefa and Antonia). In his eyes, both types of women required the immediate intervention of a patriarchal authority who could regulate their behavior in daily life. This is significant because it shows how authorities viewed women's behavior inside and outside the home as a potential threat to patriarchal rule. The lower court judge continued the search for Custodia and Margarita, but authorized the Zúñiga brothers’ release on bail expecting they would return to Almaguer to fulfill their patriarchal duties as husbands. This outcome constituted a victory, albeit partial, for the complainant. The accused women were not found, but the arrested men would return to their respective households. This meant that the abandoned wives would, once again, be placed under the supervision of their husbands. This shows how new republican principles of equality (among men) supported older Catholic morals based on patriarchy.

Next, we will see a different side of patriarchal control. The case analysis in the following section takes us from Almaguer to the district of Caloto, located in the northern part of the

⁴³ “Solicitud de Guzmán, vecino de Almaguer, al Intendente Gobernador del Departamento del Cauca, 1823,” ACC, Ind, J-Cr, I-3, sig. 1792 f. 1r.

extensive Department of Cauca. This section will particularly show how ideas about illicit friendship and family resulted in difficult deliberations on the meanings of sin and crime in a criminal case where the accused criminal was a black man with a dubious past. Apart from creating confusion about legal jurisdiction and about definitions of crime, the case also sheds light on the ways that republican authorities exerted patriarchal control over enslaved and freed people of African descent.

Pedro Rivera: a free man or a fugitive slave?

In February 1825, a local slave overseer named Manuel Paredes apprehended Pedro Rivera, a black man who declared himself a former slave and deserter from the royalist army. Paredes sent Rivera to the authorities in Caloto along with a letter that explained Rivera had been allegedly trespassing the Cerrogoro gold mine owned by the Carmelite nuns since 1822. Paredes narrated how he had first apprehended Rivera in 1823 and had turned him over to the local judge of the parish for the “scandalous” illicit friendships he had with three enslaved women who worked in the mine. One of the women was Trinidad del Carmen, supposedly Rivera's niece. Paredes explained that he had hoped the local judge would punish Rivera for his behavior by sending him away from Caloto. But to Paredes’s surprise, the local judge had assigned Rivera to work in the judge’s house. This punishment, in Paredes’s view, gave Rivera enough freedom of movement to continue trespassing the mine in spite of the overseer’s constant warnings.⁴⁴ In other words, Rivera was free to go wherever he wanted to go, as long as he worked at and returned to the judge’s house.

⁴⁴ “Causa criminal contra Pedro José Rivera, 1825,” ACC, Ind, J-Cr, I-5, sig 4324, f. 3r

Two years had passed after Paredes's first complaint to the local judge and the ongoing situation exasperated him. In the letter to the Caloto authorities, Paredes requested action to "prevent the corruption and bad example" that Rivera had been displaying in the mine.⁴⁵ He ended the letter saying that Rivera's background and constant trespassing made him fear for his own life. This revelation generated a sense of urgency in Félix Tello, the lower-court judge of Caloto. Tello drafted a letter to the governor explaining that he was sending Rivera as prisoner to the city of Popayán because his immoral behavior and prior affiliations to the royalist forces represented a threat to the community. For these reasons, Tello asked the governor of Popayán to decide on the matter.

The governor, Martín Rafael Clavijo, ordered the imprisonment of Rivera in the city's jail and forwarded the case to the lower-court judge of the city of Popayán, Rafael Diago. Similar to the previous two cases, this case emerged out of a highly bureaucratic process that involved authorities from different hierarchical positions and branches of government. Unlike the case of the Zúñiga brothers, however, the lower-court judge of Popayán requested a *sumaria* from the complainant in order to initiate legal proceedings. Tello forwarded the *sumaria* a month after the formal request. It consisted of Paredes's deposition and the testimonies of four slaves who lived and worked in the Cerrogorido gold mine. All witnesses declared that Rivera had three concubines in the mine with whom he also had children. Three said they had heard he was a former slave who had served as a soldier for the royalist militias until he deserted and considered himself a free man for his years of service. After receiving the witnesses' testimony, the governor ordered judge Diago to interrogate Rivera.

⁴⁵ "Causa criminal contra Pedro José Rivera, 1825," ACC, Ind, J-Cr, I-5, sig 4324, f. 3v.

In his interrogation, Rivera identified himself as a black Christian farmer who was over thirty years old and originally from the northern city of Buga. Curiously, the scribe added in between lines that Rivera was a slave belonging to the estate (*testamentaria*) of a man named Antonio Rivera. When the judge asked Rivera to explain the reasons for his imprisonment, Rivera alluded to his illicit friendships with Narcisa, María Cruz, and his niece Trinidad, all enslaved women at Cerrogorido. Judge Diago then asked Rivera if his trespassing of the mine was solely motivated by his desire to see the concubines and Rivera answered affirmatively. Asked if he had ever wanted to kill the slave overseer, Rivera answered he had never had such intention. Judge Diago ended the interrogation asking Rivera if he knew the type of punishment that awaited him for his crimes. Rivera answered he did not know.⁴⁶

After Rivera's interrogation, the next step for judge Diago was to assign a prosecutor, a defense attorney, and a legal advisor to the case. The task for each man was to read the collected evidence and provide arguments that would help judge Diago determine the appropriate sentence for Rivera. In his statement, prosecutor Don José Antonio Sánchez concluded that Rivera was a fugitive slave whose disorderly and criminal behavior had threatened the overseer's life. He advised judge Diago to charge Rivera with vagrancy and concubinage. According to him, the laws of the *Novísima recopilación de leyes de España*, published in 1805, stipulated that these crimes were to be punished with forced military service outside of the offender's place of origin.⁴⁷

On his part, Rivera's defense attorney, Don Juan Antonio Ibarra, argued that nothing about Rivera's actions deserved punishment because concubinage with three single enslaved women

⁴⁶ "Causa criminal contra Pedro José Rivera, 1825," ACC, Ind, J-Cr, I-5, sig 4324, ff. 7v-8r

⁴⁷ "Causa criminal contra Pedro José Rivera, 1825," ACC, Ind, J-Cr, I-5, sig 4324, f. 8v.

“was not a crime.” Instead of providing support for his argument, Ibarra moved to highlight that the lower-court judge of Caloto had enough authority to resolve Rivera’s case himself and should have never sent it to the Popayán authorities. He considered that Rivera had already been sufficiently punished with the three months he had spent in jail in Popayán. Thus, he suggested the judge notify Rivera’s owners about the investigation so they could reclaim him and prevent him from “engaging in acts of that nature” again.⁴⁸ In other words, the defense attorney not only considered that this case belonged with the authorities of Caloto, but he also thought Rivera should be returned to his owner.

The legal advisor, Don Francisco Javier Carvajal y Tenorio, studied the case files after the prosecutor and defense attorney had submitted their positions. He wrote an articulate response to judge Diago in which he began by supporting the defense attorney’s view that this case should have been resolved in Caloto, which had been named a judicial district by new laws. He did not agree, however, with the defense attorney’s claim that Rivera committed no crime. The advisor emphasized that concubinage and incest were classified as “serious crimes” in the works of Montesquieu and in several Spanish laws because they represented a violation of public and private coexistence (*convivencia*).⁴⁹ Furthermore, he added that authorities “should not narrow the distance that nature, reason, religion, and decency have created between virtue and vice.”⁵⁰ For these reasons, he considered that the defense attorney’s argument on crime deserved to be contested.

⁴⁸ “Causa criminal contra Pedro José Rivera, 1825,” ACC, Ind, J-Cr, I-5, sig. 4324, f. 9v

⁴⁹ “Causa criminal contra Pedro José Rivera, 1825,” ACC, Ind, J-Cr, I-5, sig. 4324, f. 10v “[...] La violación de la convivencia pública y particular [...]”

⁵⁰ “Causa criminal contra Pedro José Rivera, 1825,” ACC, Ind, J-Cr, I-5, sig. 4324, f. 10v “[...] Conviene no allanar la distancia que la naturaleza, la razón, la religión, y la decencia han puesto entre la virtud y el vicio.”

These three opinions informed the decision of judge Diago, who ultimately decided to return the unresolved case to the authorities in Caloto. Before this happened, though, the defense attorney made sure to add a note on the record to clarify that his earlier opinion, criticized by the legal advisor, meant to suggest that Rivera had committed the type of crime that did not deserve “*una pena grave*” or a severe punishment. It is not clear whether the defense attorney added this comment so as not to create tension with the legal advisor or because he truly believed that re-enslavement was not a serious punishment. A week later, on May 26, 1825, the governor also added a final note to the files in which he ratified that the legal advisor’s opinion would prevail in Rivera’s case. Rivera would be sent back to Caloto where local authorities could prosecute him. For the record, however, he highlighted that he had initially assigned the case to judge Diago in conformity with the law given that Rivera was a prisoner in the city of Popayán and, as such, it was the responsibility of the city’s lower-court judge to know about his case.

This case shows the complexity that framed Rivera's life and the moral and legal uncertainties it posed to the authorities in Caloto and in the city of Popayán. Authorities made efforts to adhere to the legal procedures in place during the first few years of the republic. But those efforts reveal how highly bureaucratic and hierarchical the procedures actually were. Official authorities exercised their duties within a system that was in absolute disarray. In that context, their actions around lower-class morals increased tensions and uncertainty especially when those trained in liberal philosophy raised questions about the principle of freedom and the debates about sin vs crime. In Rivera’s case, authorities had a hard time agreeing on the definition of his crimes and the degree of punishment he deserved. This opened up a space for debate that exposed changing and conflicting elite notions about the difference between sin and crime. They did concur, however, on the fact that Rivera was a fugitive slave and it was his

owner's responsibility to watch over him. In other words, like the women in the prior cases, Rivera too required supervision from his master. This point suggests that in postwar Popayán, as Sarah Chambers argued for Arequipa, slaves and former slaves [other dependents] “shared with all women the legal subjection to patriarchal control.”⁵¹

1825-1830:

Changes to the Judicial System and the End of the Republic

While Pedro Rivera's case kept legal authorities busy in the city of Popayán, members of congress in Bogotá were creating new laws that aimed to organize Colombia's political and economic institutions. For instance, a law from March 11, 1825 prohibited provincial governors from interfering in any judicial matters and stipulated specific parameters for local officials to act in civil and criminal cases.⁵² These laws intended to draw a sharper division between the executive and judicial branches of government. Making this distinction was crucial for the republican state because it would delineate clear responsibilities for official authorities and prevent them from enforcing the law in arbitrary ways. As highlighted in Chapter Two, this liberal principle was invoked by patriots who served as judicial officials towards the end of the war such as Don Santiago Arroyo. Don Santiago opposed arbitrary rule in the adjudication of criminal cases because inconsistent adherence to the rule of law signaled a continuation of the despotism that had characterized Spanish rule, particularly during the Bourbon reforms.⁵³

⁵¹ Sarah C. Chambers, *From Subjects to Citizens: Honor, Gender, and Politics in Arequipa, Peru, 1780-1854* (University Park: Pennsylvania State University Press, 1999): 214.

⁵² “Ley de 11 de marzo de 1825,” *Codificación nacional de todas las leyes de Colombia desde el año de 1821*, Vol. II (Bogotá: Imprenta Nacional, 1924): 22.

This idea became only stronger during the first years of the republic. In the cases examined so far, we see that authorities from different levels in the city of Popayán criticized local justice officers for their incompetence and lack of credibility. Because this issue of legal competency and arbitrariness seemed to have been of widespread concern, congress passed a new body of laws (*Ley Orgánica del Poder Judicial*) on May 11, 1825 that completely restructured the judicial system. These laws not only delineated the responsibilities of higher-level and lower-level judicial authorities. They also formalized the creation of an *Alta Corte de Justicia* in Bogotá and *Cortes Superiores de Justicia* in provincial capitals across the territory including the city of Popayán. The former would mainly focus on civil and criminal complaints involving members of the executive branch while the latter would hear appeals from the lower courts in their provinces and monitor the performance of local judicial officials. For congress, the creation of more courts and judicial districts would result in a more efficient administration of the judicial system. That, in turn, promised to guarantee that the constitutional rights of every Colombian citizen would not remain elusive ideas.⁵⁴

But protecting those rights seemed to be an extraordinarily complex endeavor when a group of citizens did not believe in the efficacy of some of the laws outlined in the constitution. On March 9, 1826, in a letter to the governor of Cauca, Don Cristobal Vergara, lower-level judge José Antonio Varona from Caloto expressed his concerns over what he considered to be public attacks on religion and the institution of marriage. He complained that, as a result of Article 169,

⁵³ George Reid Andrews, “Spanish American Independence,” 121; Ann Twinam, “Repensando las reformas sociales de los borbones en las colonias, siglo XVIII,” *El Taller de la Historia* 5:5 (2013): 5-32

⁵⁴ “Ley de 11 de mayo de 1825,” *Codificación nacional de todas las leyes de Colombia desde el año de 1821*, Vol. II (Bogotá: Imprenta Nacional, 1924): 121-151. “Que sin una recta y pronta administración de justicia siempre serán ilusorios los derechos que garantiza la constitución a cada uno de los colombianos [...]”

Title 8 of the 1821 constitution, “many people [men] from all classes and statuses feel free to live with their concubines” (*se creen muchas personas de toda clase y condición en absoluta libertad para cohabitar con las mancebas*) without the slightest respect for “the divine precepts of the holy gospel,” which only recognized unions blessed by the Catholic Church.⁵⁵ In Varona’s view, that constitutional law, which stipulated that no Colombian household could be raided except in the cases determined by the law, and under the responsibility of the judge issuing the order (*nunca podrá ser allanada la casa de ningún colombiano, sino en los casos determinados por la ley, y bajo la responsabilidad del juez que expida la orden*) prevented justice officers from carrying out nocturnal inspections of private houses where they suspected unmarried couples were engaging in illicit romantic and sexual acts.⁵⁶ As shown in Chapter Two, conducting nocturnal inspections was a colonial custom used by local authorities to prevent crime. For Varona, the new constitutional measures limited authorities’ freedom to catch criminals *in flagrante*.

An alarmed Varona requested that the governor provide alternatives to circumvent that law in order “to preserve a good social order, the purity of religion, and the utmost respect that the divine creator deserves.”⁵⁷ Nine days later, governor Vergara replied that lower-level judges were responsible for preventing immoral crime in their jurisdictions without opposing new constitutional laws. He suggested, however, that in the event they lacked a search warrant, they

⁵⁵ “Al Señor Don Cristobal Vergara Intendente del Departamento del Cauca,” ACC, Ind, J-Cr, II-3, sig. 6697, f. 1v

⁵⁶ *Constituciones de Colombia*, Vol 3 (Bogotá: Fondo de Promoción de la Cultura del Banco Popular, 1986), 99.

⁵⁷ “Al Señor Don Cristobal Vergara Intendente del Departamento del Cauca,” ACC, Ind, J-Cr, II-3, sig. 6697, ff. 1rv “[...] para que movido por la conservación del buen orden, de la pureza de la religión, y del sumo respeto que es debido a su divino autor [...]”

could “privately reprimand and correct” (*amonestar y corregir en secreto*) the behavior of the offenders.⁵⁸ The governor’s suggestion basically endorsed a continuation of colonial public surveillance that should be performed discreetly via private warnings. If offenders ignored these “alternative” measures of control and continued to lead immoral lives, the governor said judges were then obliged to follow formal legal action so criminals could be punished in accordance to the law. This exchange between the governor and the lower-level judge is significant because it encompasses all the different frustrations expressed by authorities throughout this chapter. In particular, the inability to regulate people’s intimacy as a result of changes in the law had, for authorities like judge Varona, a direct impact on the legitimacy of the Catholic doctrine.

The rupture between church and state and its potential devastation of Catholic morals was a contentious topic in the public sphere. Two days before judge Varona penned his letter, the new president of the “Patriotic Society of Caloto” gave his first public speech in which he warned his audience that without “moral education” there was “no liberty, no prosperity, no representative government.”⁵⁹ A year before his speech, the same man had published a short play in which the terms patriotism, justice, and religion assumed the main roles. At some point in the story, “religion” acknowledges that “patriotism” and “justice” must reign in order to protect Colombia from any new or old-world tyrants. “Religion” warns, however, that such mission has to be carried out “without ever desecrating [its] *augusto templo*.”⁶⁰ Others published letters in which

⁵⁸ “Al Señor Don Cristobal Vergara Intendente del Departamento del Cauca,” ACC, Ind, J-Cr, II-3, sig. 6697, f. 2r

⁵⁹ “Discurso gratulatorio a la Sociedad Patriótica del Cantón de Caloto, 1825” AHCR, Fondo Manuel María Mosquera, Colección Mariano del Campo y Larraondo, caja 38, carpeta 4, f. 278v.

⁶⁰ “Ensayo de un drama colombiano relativo a la transformación política del estado en 1810,” AHCR, Fondo Manuel María Mosquera, Colección Mariano del Campo y Larraondo, caja 38, carpeta 4, f. 265r. “Si queréis que Colombia imperturbable se mantenga a despecho de los

they criticized higher-level judges' decisions. In one case from Bogotá, a man named Antonio Alvarado defended a priest who had been accused of criticizing a book by English philosopher Jeremy Bentham, known for advocating the separation of church and state. For Alvarado, the priest had every right to condemn Bentham's work because it "shoots perfidious and malicious bullets against our holy religion" (*dispara pérfidos y maliciosos tiros contra nuestra Santa Religión*).⁶¹

These concerns about the role of religion in legal and public life were only part of a larger political and economic crisis taking place in the Republic of Colombia. In 1826, political leaders in what is now Venezuela mobilized to demand that congress revise the constitution and consider a federal government arrangement. The vice-president and other leaders in Bogotá opposed the idea and pledged to protect the central government model and the 1821 constitution.⁶² President Simón Bolívar, who had been away in Peru for five years, began his return to the capital when he heard Venezuela had threatened to secede. It was in this context of profound political instability that Congress selected Don Santiago Arroyo as president of the superior court of Cauca (*Corte Superior de Justicia*).⁶³

tiempos y haga temblar a todos los tiranos, así del nuevo mundo, como viejo; que reinen la justicia y patriotismo, sin profanar jamás mi agosto templo."

⁶¹ "Cartas críticas de un patriota retirado, en que se manifiesta el verdadero fanatismo, Carta segunda, 1826," AHCR, Fondo David Mejía Velilla, Colección Fernando Caicedo y Flórez, caja 36, carpeta 3, f. 61r.

⁶² Restrepo, *Historia de la revolución*, vol. 3, chapter 11.

⁶³ "Alta Corte de Justicia," *Gaceta de Colombia* (Bogotá), No. 231, March 19, 1826. Five months after this controversy occurred, *Gaceta de Colombia* published a transcription of the final sentence issued by the superior court of Cundinamarca. It was that court that dealt with the criminal case against the priest. The court magistrates warned the priest about choosing his words carefully in future conversations and sermons in public. The magistrates also sentenced him to spend ten days in a religious convent. Additionally, the magistrates also directed their words to vice-president Santander and asked him to schedule a meeting with theologians and

Along with three other magistrates and two prosecutors, Don Santiago's new role was to review and evaluate the decisions of lower-level sentencing judges and determine how well they followed legal procedures and guidelines as dictated by the laws. These responsibilities were heavily supervised and criticized by the public. Newspapers like *Gaceta de Colombia* often denounced delays in the adjudication of cases and highlighted the lack of effectiveness of the courts.⁶⁴ A search through the *Gaceta* records for these years shows that only high-level cases received attention from the editors. In other words, they published about cases that involved important members of society. Even then, the limited space that *Gaceta* had to publish news twice a week concerning government, congress, internal matters, and foreign relations sometimes did not allow for a broad coverage of selected criminal cases. In this context, what follows is an analysis of criminal cases involving poor men accused of illicit friendship (including slaves) that were reviewed by Popayán's superior court in the second half of the 1820s. The unfolding of these reviews illuminates the ways in which authorities criminalized, deliberated, and ruled under a judicial system undergoing change.

Adultery and vagrancy: an autonomy question

In 1827, a lower-level judge sentenced a military deserter known as Chávez to six years of prison in the city of Cartagena for allegedly stealing two horses and having an illicit friendship

canonists so they could examine together the works of Bentham and determine which parts of it should be censored in schools. "Sr. vice-presidente suplicándole se sirva determinar de una reunión de una junta de teólogos y canonistas para el examen de dicha obra y dar las providencias competentes para que se suprima del todo en los colegios o se testen las proposiciones que no sean arregladas a la moral y dogmas cristianos." "Administración de Justicia, June 26, 1826," *Gaceta de Colombia* (Bogotá) No. 253 (August 20, 1826).

⁶⁴ See, for example, *Gaceta de Colombia* (Bogotá), No. 217, December 11, 1825 and *Gaceta de Colombia* (Bogotá), No. 219, December 25, 1825.

with a married woman. The magistrates at the superior court of Cauca overturned that decision after determining that the *sumaria* contained no convincing evidence of a crime. According to them, not only was there no solid proof that Chávez had stolen the two horses, but also the husband of Chávez's alleged lover had not formally complained about an illicit friendship.⁶⁵ The lack of evidence weakened the case because in the new republican era evidence was, as one magistrate said, “the most fundamental basis for any criminal lawsuit.” Based on this principle, the lower-court sentence against Chávez was unfounded. The magistrate observed, however, that Chávez could be prosecuted on vagrancy charges given that all witnesses in the case had unanimously called him a vagrant.⁶⁶ The magistrate, thus, instructed the lower-level judge to use the evidence that he had to charge Chávez under the new vagrancy laws of 1826, which considered vagrants anyone who had no formal occupation, property, or any form of regular income. For those who belonged in any of these categories and were criminalized, their punishment was to serve in the navy for two to six years.⁶⁷ The judge was further advised to make “the most exact observance of the laws” or he would be fined.⁶⁸

The magistrates who reviewed Chávez’s sentence referred to a law passed by Congress on

⁶⁵ “Causa de hurto y adulterio contra Pedro Chávez, 1827,” ACC, Ind, J-Cr, I-15, sig. 6065, f. 2v. The magistrates specifically referred to “ley 2da, tit. 19, libro 8” of the *Recopilación Castellana* that stated that only the adulterous woman’s husband could formally present a complaint against her and her lover.

⁶⁶ “Causa de hurto y adulterio contra Pedro Chávez, 1827,” ACC, Ind, J-Cr, I-15, sig. 6065, f. 3r.

⁶⁷ Ley de 3 de mayo de 1826,” *Codificación nacional de todas las leyes de Colombia desde el año de 1821*, Vol. II (Bogotá: Imprenta Nacional, 1924).

⁶⁸ “Causa de hurto y adulterio contra Pedro Chávez, 1827,” ACC, Ind, J-Cr, I-15, sig. 6065, f. 7r. “En vista de todo esto se previene a los Alcaldes y escribano la más exacta observancia de las leyes y que en lo sucesivo eviten los defectos mencionados, pues que en caso de omisión se hará efectiva su responsabilidad.”

May 3, 1826, which delineated how to prosecute thieves and vagrants. Under this law, a thief could also be considered a vagrant, but a vagrant was not always a thief. In other words, the legal definition of vagrant was broad and could include anyone who was found wandering the streets and failed to demonstrate that he or she had a family and/or a useful occupation.⁶⁹ Vagrancy had been a preoccupation for colonial authorities throughout the eighteenth century, but it became an issue of greater concern during the postwar years.⁷⁰ Political instability, deteriorating economic conditions, military desertion, uprooted communities, the separation of church and state, and manumission laws all produced a new and highly complicated social scenario. In such context, it seems that republican authorities conceived the vagrancy laws as a legal mechanism to expand the definitions of crime and exert greater social control. As a result, people perceived to be enjoying a high degree of autonomy would be criminalized and put away. Based on the cases studied thus far, autonomy represented, more than ever, a threat of insubordination and immorality that could deeply disrupt the social hierarchies that authorities aimed to protect.

With this in mind, it is not surprising that the term vagrant shows up in the records reviewed by the superior court of Cauca in the second half of the decade. If evidence to prove illicit friendship or insubordination was insufficient, dubious, or simply the result of arbitrary action on the part of lower-level authorities, then the vagrancy charge would take priority. For instance, two years after the superior court ruled in the case of Pedro Chavéz, the magistrates

⁶⁹ Ley de 3 de mayo de 1826,” *Codificación nacional de todas las leyes de Colombia desde el año de 1821*, Vol. II (Bogotá: Imprenta Nacional, 1924).

⁷⁰ See: Natalia Botero Jaramillo, “El problema de los excluidos. Las leyes contra la vagancia en Colombia durante las décadas de 1820 a 1840,” *Anuario Colombiano de Historia Social y de la Cultura* 39:2 (2012): 41–68; Juan Carlos Jurado, *Vagos, pobres y mendigos: Contribución a la historia social colombiana, 1750-1850* (Medellín: Carreta, 2004); Hermes Tovar Pinzón, “La lenta ruptura con el pasado colonial (1810-1850),” in *Historia Económica de Colombia*, ed. José Antonio Ocampo (Bogotá: Presidencia de la República, 1997).

received a second criminal case against him for review. Chavéz was not being charged with theft and adultery as he had been the first time. He was, instead, accused of theft *and* vagrancy.⁷¹ A close reading of the transcriptions of the legal deliberations for this second criminal proceeding shows that even though adultery had been replaced with vagrancy as the criminal act that justified CháveZ's arrest, adultery still came up several times as an important reason to incarcerate him. The superior court magistrates reiterated for the second time that the adultery accusations could not be made, for the same reasons they had highlighted in the first case against CháveZ. They considered, however, the vagrancy charge valid and called for CháveZ's defense attorney to make a statement. The defense attorney argued strongly against such criminal charge because witnesses who had identified his client as a vagrant were unaware of his reasons for living "erratically." The defense attorney explained:

The horror of being recruited [into the military] for a second time forced [CháveZ] to seek shelter in the woods. Can we call vagrant a citizen who is not part of the military and has no property? No sir, in order to be able to farm the land or perform any other occupation he needed to have a permanent residence, which would have made him interact with others and that, in turn, would have exposed him to the same risks [of being recruited] that he has been trying to avoid by living an errant life in the woods.⁷²

In spite of these arguments, the court magistrates confirmed the lower-court rule which sentenced CháveZ to two years in prison in the city of Cartago where he would be under the

⁷¹ "Causa de hurto y vagancia contra Pedro CháveZ, 1829," ACC, Ind, J-Cr, II-3, sig. 6156.

⁷² "Causa de hurto y vagancia contra Pedro CháveZ, 1829," ACC, Ind, J-Cr, II-3, sig. 6156, f. 3r "El horror que le inspiraba verse segunda vez en tanto mal, le puso en la dura necesidad de retirarse a los montes para evitar el ser aprendido nuevamente como era justo temerlo. ¿Y un ciudadano que por no ser militar huye de los demás se podrá llamar vago porque no tenga propiedades? No señor, para dedicarse a cultivar la tierra o a cualquiera otro oficio necesitaba tener un domicilio fijo, contratar con los demás y exponerse a los mismos riesgos que ha querido evitar, sufriendo una vida penosa como lo es la errante y de los bosques [...]"

express responsibility of the *juez político*, who would assign him to help in various public works.⁷³

More records show that the idea of charging allegedly unemployed men with vagrancy could be applied universally, but situations that explicitly involved the enslaved populations posed a different set of challenges. Enslaved men could, indeed, be viewed as vagrants, but their legal status demanded a different treatment of their alleged crimes. Guilty or not, it was critical for lower-level authorities to be in contact with slave-owners as it was they, according to the law, who would have to be in charge of supervising the slaves' behavior and their productivity.

For example, the superior court absolved several enslaved men of the charges of illicit friendship, insubordination, and vagrancy after finding inconsistencies in the legal procedures against them. Such inconsistencies included missing information in the *sumarias*, the formulation of suggestive questions in the men's interrogations, and the persistent misuse of the law. This last point specifically referred to the lower-level judges' disregard for the men's status as slaves, which required a different treatment by law. According to the magistrates, slave-owners had to be actively involved in the criminal cases against their slaves, but evidence showed they had not even been informed of the arrests.

In discussing the case of Bartolomé Holguín, for example, the magistrates concluded that the lower-level judge's failure to summon Bartolomé's owners constituted an infringement of several old and new laws.⁷⁴ Thus, they found the case against Bartolomé to be *insubsistente*, or unsubstantiated. This invalidated the sentence that would have forced Bartolomé to enlist for five years in the army. The magistrates reached a similar decision in the case of enslaved man, Félix

⁷³ "Causa de hurto y vagancia contra Pedro Chávez, 1829," ACC, Ind, J-Cr, II-3, sig. 6156, f. 7r.

⁷⁴ "Causa contra Bartolomé Holguín, esclavo, 1827," ACC, Ind, J-Cr, I-5, sig. 4318.

Arango, accused of being a vagrant, a thief, and of having an illicit friendship. In both cases, the magistrates asked for both men to be placed under their owners' supervision. Under their owners' watchful eye, enslaved men were expected to employ their time in "useful tasks."⁷⁵ This expectation made sense in a context of what some authorities of the period saw as growing social chaos.

In 1826, a year before the prior cases reached the superior court of Cauca, judge Fernando Antonio Carvajal from Caloto complained to governor Vergara about the increasing levels of vagrancy in his jurisdiction. In his letter, Carvajal explained that there was a "considerable number of vagabond women of all classes, but mainly free black women (*negras libres*)."⁷⁶ He noted that these women frequently gathered with fugitive black enslaved men and went around stealing and causing trouble. Carvajal wanted instructions from the governor on what to do with this kind of women (*esta clase de mujeres*.) A frustrated Carvajal requested the governor's advice on what to do with them: should he send the women to the *casa de hospicio* or to the Gorgona Island prison out in the Pacific ocean?⁷⁷

⁷⁵ "Causa criminal seguida contra Félix Arango, esclavo, 1827" ACC, Ind. J-Cr, I -5, sig 4326.

⁷⁶ "Al señor Don Cristobal Vergara, Intendete del Departamento del Cauca, 1826," ACC, Ind, J-Cr, II-3, sig. 6697, ff. 3rv

⁷⁷ On May 18, 1827, vice-president Santander addressed the senate and requested them to create laws that would improve the justice system. He complained about local officers who did not adhere to constitutional legal procedures and often released prisoners who had been sentenced to spend time in jail. With this context, he urged Congress to consider investing in improving the infrastructure available in small islands across the Caribbean and the Pacific coasts of Colombia. In the Pacific Coast, the Gorgona Island had been used during the colonial period as a prison. Santander believed that it was a priority for the republic to organize those prisons and send criminals who would be isolated from the rest of society and who could, with their own work, improve the conditions of the island and earn their own *sustento*. Santander made sure to contextualize his proposal by highlighting how Great Britain had already taken over the "Bahía Botánica" to send their prisoners there. He also pointed out that authorities in France were contemplating the same idea because their *casas de corrección* were expensive for the state. Santander argued that just as the French wanted to get rid of their vicious population (*población*

It was clear from his letter that judge Carvajal disliked the growing presence of freed and enslaved people of African descent in urban areas. He seemed, however, especially concerned with taking the women off of the streets, even before addressing the problem of male troublemakers. In his reply, the governor said the women had to be placed in the *casa de hospicio* first where they would ideally be assigned to work in exchange for living expenses. If that measure was ineffective, the women should be sent to the properties of ranchers and miners from the area who could “employ them, watch over them, and either pay them wages or provide for their sustenance.”⁷⁸ The governor finished his response by highlighting that these measures could only be enforced *after* initiating legal proceedings against the women and successfully proving their crimes.

Here governor Vergara explained what could be done in such particular circumstances within the limits of the law. Lower-class women continued to exist within a morally-inflected universe attached to colonial patriarchal beliefs requiring lower-class men to behave as moral citizens even if they were officially excluded from the category of citizen. Beyond this, what is most telling about this exchange is how well it connects to authorities’ increasing concerns about maintaining control over the population. Those concerns seemed to magnify when blackness and slavery entered the picture. Black enslaved or freed people posed a different/larger threat to authorities, who took action by criminalizing them (at the lower/local levels), returning them to slavery, or placing them under the surveillance of “employers.” This form of containment was not simply an effort to fulfill elite aspirations of social control. It also was an attempt to keep

viciosa), the republic of Colombia should, too, aspire to do the same. “Comunicación del poder ejecutivo a la camara del senado, May 18, 1827,” *Gaceta de Colombia* (Bogotá) No. 297 (June 24, 1827)

⁷⁸ “Al señor Don Cristobal Vergara, Intendente del Departamento del Cauca, 1826,” ACC, Ind, J-Cr, II-3, sig. 6697, f. 3r.

slavery afloat and prevent any potential insurrections that could further disrupt an institution that had been severely debilitated by war.

Legal changes affecting slavery were nonetheless already under way. The ratification of the Colombian liberal constitution, a gradual emancipation or “free womb” law, was enacted in 1821. It stipulated that children born to enslaved women across the territory would be free from birth after the enactment of the law. The children would remain under the supervision of their mothers’ masters, who would provide food and shelter, until they reached the age of eighteen. After that, the children would be free to leave. The law also created manumission boards or *juntas de manumisión* that would collect funds to pay the slave-owners for the manumission of their adult slaves.⁷⁹

For the slaveholding families of Popayán, this law was a tremendous inconvenience. Many of these families opposed the law and even proposed changes to it that would, in their view, better protect their properties and investments. The stress that this law created among slaveholding families becomes particularly salient in a letter that Don Marcelino Hurtado (Don Santiago’s brother-in-law) received from one of his distant cousins, Manuela Lourido, dated March 9, 1826. In the letter, Manuela desperately asked Don Marcelino to help her and her

⁷⁹ In his doctoral dissertation, Edgardo Pérez Morales shows how revolutionary leaders Juan del Corral (Antioquia) and Félix José Restrepo (Popayán) together worked on the first “free womb” laws for the Province of Antioquia as early as 1814. The two men, driven by liberal and humanitarian principles inspired from their careful readings of European thinkers, believed in denouncing the “evil of slavery” and provided a number of alternative measures to bring slavery to an end, including gradual emancipation. This early legal attempt to end slavery would later serve as inspiration for the manumission law of 1821, which was also drafted by Restrepo. Edgardo Pérez Morales, “Itineraries of Freedom. Revolutionary Travels and Slave Emancipation in Colombia and the Greater Caribbean. 1789-1830” (PhD Diss., University of Michigan, 2013), 178-186; 199. Also see Yesenia Barragan’s dissertation where she delves into the theme of slavery and emancipation in Colombia’s Pacific Coast. Yesenia Barragan, “To The Mine I Will Not Go: Freedom and Emancipation on the Colombian Pacific, 1821-1852” (PhD Diss., Columbia University, 2016).

family in a judicial matter. Her family had to pay a large sum of money to a chaplaincy fund (*capellanía*), but she claimed that the family did not have the sufficient resources to meet the obligation. Their goldmines, she claimed, were ruined and did not even produce enough to pay for the expenses they generated. She was afraid that her family would be reduced to misery if they could not reach a deal with the man in charge of the *capellanía*, Manuel Aragon. Manuela shared that her fears grew deeper when she thought about the fact that her family's slaves would "disappear within twenty years as a consequence of the manumission law" of 1821.⁸⁰

Manuela's letter suggests that slaveholding families in Popayán were deeply concerned not just about potential slave uprisings or their financial responsibility to care for the free newborn populations across their mines and *haciendas*. They were also concerned about losing their property in persons and being unable to meet their financial obligations to others. It was difficult for slaveholding families to envision a prosperous future without slaves and their labor. This helps explain, in part, why authorities carefully reviewed cases that involved slaves. When slaves allegedly committed "petty" crimes, authorities returned them to their owners. But when the crimes were considered to be serious, slaves deserved to die. The following case analysis delves into the last point.

Manuel Moreno: an enslaved man to the gallows

A case that illustrates fears among slaveholding families and authorities is that of enslaved man Manuel Agustín Moreno, sentenced to death in 1826. Eight years earlier, he had been accused of killing one man and wounding four others with a machete after a mob of men armed with sticks had followed him to the house of his owner. Although the *sumaria* in Manuel's case

⁸⁰ "Al Dr. Marcelino Hurtado, Cali, March 9, 1826," WSCL, Popayán Papers Collection, Box 14, Folder 151, doc. without page numbers.

did not specify the reasons for the mob attack, it highlighted that Manuel had confessed to an illicit friendship (*concubinato adulterino*) with Rosa, the legitimate wife of a man named Lucas. All three were slaves of the same owner, María Josefa Moreno. Manuel, who had escaped from prison at some point, was apprehended under unknown circumstances. It was at this moment that the lower-level judge sent the final death sentence to the superior court for review.⁸¹

The superior court's prosecutor, Dr. Fortunato Manuel de Gamba, evaluated the *sumaria* and determined that Manuel had acted with malice. He explained to the magistrates that Manuel's crimes, arrogance, unruliness and fearlessness made him a dangerous threat to society.”⁸² He even affirmed that Manuel deserved to be isolated in order to preserve the well-being of all citizens and prevent him from “infecting” society with his “corrupted” behavior. In other words, Gamba advised the magistrates to confirm the death sentence. Given the seriousness of this case, the magistrates assigned Manuel a defense attorney who could represent him as the court reviewed the case.

The defense attorney, Ramón Estrella, argued that on the day of the incident, Manuel had been scared and had acted solely to defend his own life. Additionally, Estrella commented that his client Manuel had suffered from the “tyrannical prison of handcuffs, chains, and shackles” while being imprisoned for this crime. This suffering explained why Manuel had escaped from

⁸¹ “Criminal contra Manuel Agustín Moreno, 1827,” ACC, Ind, J-Cr, I-6, sig. 5739.

⁸² “Criminal contra Manuel Agustín Moreno, 1827,” ACC, Ind, J-Cr, I-6, sig. 5739, f. 2r. “Esta multitud de delitos, su genio altanero, díscolo y audaz le constituyen un hombre peligroso en medio de la sociedad. La justicia, la seguridad y conservación de los demás ciudadanos exigen imperiosamente que como miembro corrompido se le separe del cuerpo político para que no lo infecte.”

prison while the case was still open and unresolved.⁸³ After this, the magistrates considered each of these legal interventions and concluded that all the charges against Manuel were fully justified. They confirmed the death sentence, which complied with the stipulations of the *Recopilación Castellana* for people who killed intentionally (*de manera alevosa*.)⁸⁴ They demanded, however, that the lower-level judge hold the execution until they gave Manuel a chance to deliver his last words.

A report issued by local authorities two months after the superior court had ruled in Manuel's case revealed, however, that the local judge dismissed the magistrate's order. The local judge ordered Manuel's execution without giving him a last chance to explain himself. Based on the report, Manuel apparently walked the streets of his town accompanied by the lower-level judge, a priest, a group of soldiers, and a town crier who chanted the phrase "*quien tal hace, que tal pague*," which basically indicated that any person (in this case slaves) who committed a serious crime deserved an equally serious punishment.⁸⁵ Manuel's serious crime had been to kill an apparently powerful man and to have wounded four others.⁸⁶ Manuel was executed by a firing squad at the town's central square where the priest later claimed the body and gave it Christian

⁸³ "Criminal contra Manuel Agustín Moreno, 1827," ACC, Ind, J-Cr, I-6, sig. 5739, f. 4v. "sufriendo este desgraciado la tiránica prisión de esposas, cadenas y grillos, por lo que más feliz le habría sido la muerte"

⁸⁴ "Criminal contra Manuel Agustín Moreno, 1827," ACC, Ind, J-Cr, I-6, sig. 5739, f. 17r.

⁸⁵ "Criminal contra Manuel Agustín Moreno, 1827," ACC, Ind, J-Cr, I-6, sig. 5739, f. 23r. This phrase corresponds to the English saying "an eye for an eye."

⁸⁶ Newspapers often published short stories that recounted criminal episodes involving important members of the economic and intellectual elite. However, a search for a story about Manuel Moreno's crime in two newspapers from the period yielded no results.

burial. Upon learning about the execution, the superior court condemned the lower-level judge to pay several fines for his arbitrariness, but failed to remove him from his post.⁸⁷

In many ways, Manuel's case encompasses all that seemed threatening to republican authorities at higher and lower levels. As in previous cases, higher authorities trying to institutionalize liberal political thought and an efficient judicial system kept bumping up against irregularities in the legal proceedings initiated by local authorities. In spite of the tensions generated by legal confusion or plain arbitrariness, authorities coincided on one thing: men like Manuel, enslaved and fearless of the law, deserved severe punishment. Manuel's behavior had the potential to be infectious and extremely undesirable in a new society that was invested in constructing the new republican citizen while maintaining rigid class and racial hierarchies. In the eyes of authorities, such punishment seemed necessary to establish a strong precedent among the masses, and simultaneously to calm elite anxieties around the threats that enslaved fugitive men were imagined to pose to society.

A different criminal case in which an enslaved man – Ramón Daza – was also sentenced to death during this period provides an important contrast regarding authorities' justifications to carry out a death sentence. Daza was apprehended by local authorities after killing Juana, a pregnant enslaved woman whose mother had been Daza's concubine. This case contains brutally descriptive images of the heinous acts that Daza committed, supposedly under the influence of alcohol, on a night in which Juana's mother refused to sleep with him. Daza unleashed his rage against Juana and killed her. In contrast to Manuel Moreno's story, higher-level authorities in this case lowered Daza's sentence and punished him to serve in the military for having killed the

⁸⁷ "Criminal contra Manuel Agustín Moreno, 1827," ACC, Ind, J-Cr, I-6, sig. 5739, ff. 27r, 28v

property of his owner. The magistrates arrived to this conclusion after the defense attorney persuasively argued that:

The capital punishment requested by the prosecutor [in the criminal case] is opposed to the principles of humanity that lie at the base of a truly republican and liberal government such as that of Colombia. It must have no effect unless it is used in serious conspiracy crimes and in other cases where a man's continued criminal behavior has a damaging effect on society.⁸⁸

We see the clear influence of liberal philosophy in the defense attorney's statement. In an independent republic, people were free to do as they pleased as long as their actions did not harm someone else or society as a whole. But there was a vast difference between killing a powerful man and killing a pregnant enslaved woman. The death sentence was appropriate when the slaves' assertiveness threatened the powerful and could become dangerous and out of control. It was not necessary when the victim was a woman whose death had been caused, as the defense attorney explained, by Daza's "disorderly love" and "drunkenness." For the defense attorney, those were "two passions that men could hardly get away from" (*dos pasiones que dificilmente puede el hombre refrenarlas*).⁸⁹ A man's violence toward women could be easily explained, and his punishment deflected to yield service to the state.

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⁸⁸ "Criminal contra Ramón, negro esclavo de Lucia Galindez por homicidio, 1823," ACC, Ind, J-Cr, I-5, sig. 5725, f. 25v. "La pena capital pedida por el Fiscal es opuesta a los principios de humanidad en que se apoya un gobierno Republicano y liberal como el de Colombia. Esta no debe tener efecto si no es en los graves crímenes de conspiración y otros en que se cree de absoluta necesidad por los sucesivos daños que de subsistir un hombre, se dicen en perjuicio de la sociedad."

⁸⁹ "Criminal contra Ramón, negro esclavo de Lucia Galindez por homicidio, 1823," ACC, Ind, J-Cr, I-5, sig. 5725, f. 29r.

Republican attempts to instill order and guarantee lasting peace during the ten years of the Republic of Colombia had created new conflicts between the capital and the cities and towns across the department of Cauca. Complicated and multi-layered legal procedures created and implemented by republican officials exacerbated tensions and misunderstandings between higher-level and lower-level judicial authorities over the alleged crimes of presumed royalist agitators, military deserters, and enslaved men. In addition to their concerns about violent crime, authorities showed concern about lower-class men's autonomy and assertiveness both in their romantic and their public lives. While certain forms of local arbitrariness were now deemed improper, sharp differences in punishment reflecting the class of the perpetrator and of the victim persisted.

CHAPTER 5
“PLEITOS DE VOCES Y DE GOLPES:” GENDER, VIOLENCE, AND TRUTH
IN THE DEMISE OF THE REPUBLIC OF COLOMBIA, 1825-1830

In 1827, a criminal case involving the abduction of a married lower-class woman named Juana Ortega reached the superior court of Cauca (*Corte Superior de Justicia del Cauca*), a court in the city of Popayán that reviewed first instance judicial rulings to approve, revoke, or modify them. Juana’s case had been forwarded by lower-level authorities from the town of Buga, seeking approval of the one-month prison sentence that they had given to Juana’s captor after his arrest and trial. Because the superior court returned original records to their original senders after magistrates reached final decisions, Juana’s case and most of the other case files available today only preserve the documents produced at the appellate stage of the legal process. In spite of this, we learn important details about the original cases through the transcriptions of legal exchanges and deliberations among the magistrates. For instance, in Juana’s case, one of the documents available is an “official opinion” that the court prosecutor (*ministro fiscal*), Dr. Rufino Cuervo, wrote to his fellow magistrates after reviewing the original case. Cuervo’s reading of the case highlighted that lower-level authorities in Buga had intercepted, charged, and sentenced Juana’s captor, mistakenly assuming that Juana herself was innocent.¹

In other words, Cuervo insinuated that Juana might have voluntarily accompanied her captor, noting that nothing in the case files indicated that she had attempted to leave his side. In the prosecutor’s view, this absence of evidence suggested that Juana chose to run away, because

¹ “Causa criminal contra Juan Hidalgo por rapto, 1827,” ACC, Ind, J-Cr, I-3, sig. 2496

all women possessed “the resources to defend themselves, to call for help, and even to escape at the first opportunity” in the unfortunate event of an abduction.² According to the prosecutor, his views were “a proven truth” (*una verdad demostrada*) humorously supported by the adventures of Governor Sancho Panza, one of the main characters in Part II of Miguel de Cervantes’s *Don Quijote*.³ We can see how Cuervo’s opinion combines a dose of skepticism about Juana’s true intentions with the assumption that women had, in fact, degrees of autonomy that they could exercise in a dangerous situation. Such acknowledgement stands out because it sharply contradicts how women were defined by the colonial Catholic Church, and viewed by men, as “the weaker sex.” Even more provocative, Cuervo endorses these claims based on the experiences of a seventeenth-century fictional character whom he considered to be *truthful*.

While Cuervo’s reference to *Don Quijote* may strike some readers as comical and trivializing of women’s complaints, several scholars have argued that fiction (or its narrative elements) played a fundamental role in the ways people imagined the world, crafted stories, and interacted with others. In her groundbreaking work about pardon requests in sixteenth-century France, for example, Natalie Zemon Davis draws from literary studies to analyze pardon tales’ narrative techniques, and traces the circulation of specific tale themes to canonical masterpieces such as *Romeo and Juliet*.⁴ Similarly, in her work about archives in colonial Peru, Kathryn Burns turns to early modern Spanish literature as a point of departure to explore the representation of

² “Causa criminal contra Juan Hidalgo por rapto, 1827,” ACC, Ind, J-Cr, I-3, sig. 2496, f. 3v.

³ “Causa criminal contra Juan Hidalgo por rapto, 1827,” ACC, Ind, J-Cr, I-3, sig. 2496, f. 3v; Miguel de Cervantes Saavedra, *Don Quijote de la Mancha, II* (Madrid: Cátedra, 2004).

⁴ Natalie Zemon Davis, *Fiction in the Archives. Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford, California: Stanford University Press, 1990).

the figure of the notary and his role in the construction of historical truth.⁵ Richard Boyer, for his part, has shown that analyzing fragmented stories from the judicial archives, instead of Golden-Age drama, casts a new light on the honor dynamics that shaped the ordinary life of plebeian people in colonial Mexico.⁶ The relationship between representations of truth and fiction is, then, a recurring tension in these works and one that surely manifests itself in the criminal case about Juana's abduction.

Juana's case illustrates some of the ways that literary fiction could influence the legal interpretation of events surrounding a crime and, more importantly, its legal outcome. As prosecutor, Cuervo astutely crafted his opinion to achieve a specific end: the court's admonishing of the lower-level authorities who had forwarded the case to the court. Cuervo's opinion highlighted inconsistencies in the legal process that had violated constitutional norms and demanded repercussions, not for Juana's captor, but for the authorities who had failed to follow legal procedures properly. In this sense, Cuervo's truth (in fiction) successfully persuaded his fellow magistrates to absolve the captor, since adhering to the law was central for the legitimization of the new liberal republic.

The present chapter broadly considers the issues outlined by Cuervo in order to inquire how higher court judicial rulings on criminal cases involving assault against women and domestic violence reflected the political priorities of republican leaders in the second half of the 1820s. While the 1825-1830 period was marked by effervescent growth of the lawmaking process, it was also characterized by internal strife that ended in the disintegration of the

⁵ Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham: Duke University Press, 2010).

⁶ Richard Boyer, "Honor Among Plebeians," in *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, ed. Lyman J. Johnson et al. (Albuquerque: University of New Mexico Press, 1998), 152-178.

Republic of Colombia. Within this context, did higher court judicial rulings on assault cases help to consolidate the new political and legal order? In what ways and to what extent were these legal procedures gendered? In what ways did the republic's imminent disintegration impact how these proceedings were carried out? In addressing these questions, this chapter expands the analytical angle developed in the second half of Chapter Four, which focuses on cases of illicit friendship in the same period and the tensions surrounding changing definitions of sin and crime. Here, I turn my attention to individual rights as discussed in assault cases.

Specifically, I argue that higher judicial authorities disciplined lower-level officials who administered justice in their own localities by distilling liberal principles concerning individual rights and legitimate criminal evidence. In their deliberations, higher judicial authorities often invoked the notion of individual rights to refer to the separation between public and private spheres and emphasize the state's lack of jurisdiction in matters that belonged exclusively to the private realm. In this process, higher judicial authorities also insisted that the law required lower-level officials to act as arbiters of truth and collect objective evidence in criminal matters.

This meant that judicial officials were expected to “find out the truth and punish” (*averiguar la verdad y castigar*) or “carry out a trial until the truth was distilled” (*que se haya apurado el juicio hasta depurar la verdad*) based on the statements of witnesses and medical doctors who could prove their trustworthiness through their knowledge, public honor, and social standing. This logic often invalidated women's statements, either as survivors or witnesses, because they were seen as tainted with emotion, which rendered women as irrational and questionable subjects.

This chapter also establishes a dialogue with Chapter Three, which argues that authorities – both legal and ecclesiastical – punished men involved in assault cases during the war of

independence, not for offending women's bodily and public honor, as women denounced, but for allegedly desecrating conjugal duties. There is a shift, then, in authorities' adjudication of assault cases. During the war they had continued to enforce religiously-based moral justifications. After independence (and with ecclesiastical officials out of the legal system), higher court judicial authorities looked critically at such justifications, and validated constitutional law as a means of legitimating the republican state. They did this, for example, by issuing citations and giving fines to local "negligent judges" (*jueces negligentes*) who failed to comply (*observar*) with constitutional mandates regarding legal procedures. We see, then, higher-level authorities' persistent adherence to constitutional principles of proper legal procedures to justify rulings that end up absolving men (and in some instances women) accused of physically abusing their partners. Close analysis of assault cases from the late 1820s shows that the new republican order accentuated the legal disempowerment of women who had experienced violence at the hands of those who might exercise patriarchal power over them.⁷

The narrative approach in this chapter weaves critical episodes of political history with a close reading of assault cases from the Republican period. Doing so sheds light on the connections between events happening both at the macro and micro levels. I use Colombia's first constitutional assembly in 1828 to divide the chapter in two parts that move in roughly chronological order. Part I looks at cases and events that took place as independence leaders debated about holding a constitutional assembly. Part II opens with important context about the failed assembly and its repercussions in Cauca, and then delves into relevant case analyses.

⁷ Sarah Chambers made a similar argument in her work about Arequipa, Peru. Liberalism led to increasing disregard for violence against women and stripped them of the resources they had held in the personalistic system of the colonial period. I engage in a conversation with parts of her work throughout this chapter.

Part I – Before Colombia’s First 1828 Constitutional Assembly

Francisco Fernández and Matea Tejada

The following case analysis shows how a husband’s abuse of his wife ended in his enlistment to the military as part of a broader military recruitment campaign organized during these years. On January 29, 1825, and in consultation with a legal advisor, a judge in the city of Popayán ordered the release of a man by the name of Francisco Fernández from jail. Accused of battering his wife Matea Tejada, Francisco had spent one month in jail. The judge had first heard about this case after receiving a petition that Francisco had sent directly from jail. Although written in the first person, the petition had most likely been penned by a public scribe given the clearly different handwriting that appear on all the documents that both Francisco and his wife submitted as evidence. In the petition, Francisco complained that a local patrol officer had wrongfully imprisoned him and at the same time forcibly enlisted him in the military as punishment for battering Matea. Additionally, Francisco complained that the officer had given “more weight to the words of a woman [his wife] . . . than to those of people [male acquaintances] with judgement” who had spoken on his behalf.⁸ Along with devaluing Matea’s complaints of abuse to the officer, Francisco also highlighted several constitutional laws that the same officer had supposedly overlooked at the time of his arrest. One of them, for example, was that the officer presented no legal notice that explained the reasons for his apprehension.

Francisco (or the scribe who may have helped him frame his appeal) explicitly condemned the officer’s lack of adherence to the political constitution and warned that such behavior was unacceptable because it belittled the legitimacy of a liberal government. Francisco based his argument of self-defense on the local officer’s alleged legal arbitrariness, but his repetitive references to his role as a good husband made it clear that his contempt originated elsewhere.

⁸ “Fernández contra el juez político, 1825,” ACC, Ind, J-Cr, I-3, sig. 2142, f. 2r.

Francisco resented the officer's willingness to listen to and act upon Matea's complaints, and he insinuated that privileging a woman's complaint over testimony by witnesses who could speak on his behalf created suspicions about the local officer's political affinities and inclination to respect the new laws.

In response to Francisco's allegations, the local officer confirmed that he had arrested Francisco for battering Matea. In the officer's view, Francisco's capacity to inflict violence should be used against "the enemies of independence and not against a woman [...] he has besieged." For this reason, the officer explained that, as punishment, he had enlisted Francisco in the republican army. The officer reasoned that these actions would provide justice for Matea while simultaneously fulfilling the orders he had received to recruit capable man for the army. He included a copy of the document that made reference to the government's decree and explained that his superiors had urged him to recruit men in order to meet the department's quota.

But why was the republican government in such urgent need of military recruits? Aware of Ferdinand VII's return to Spain in 1823 as absolute monarch, the Colombian Congress enacted a law that authorized the recruitment of fifty thousand soldiers in order to be prepared in the event of an attack.⁹ It was a considerable threat especially if president Simón Bolívar, whom Congress had released from his duties so that he could lead the Peruvian army, were to prove unable to defeat the royalist forces trying to take control of that republic.¹⁰ In other words, if royalists succeeded in Peru, their forces could invade southern Colombia. In this scenario, military recruitment became one of the main priorities on the political agenda of vice-president Francisco

⁹ "Congreso, May 6, 1824" *Gaceta de Colombia* (Bogotá), No. 135 (May 16, 1824).

¹⁰ "Decreto del Congreso, June 4, 1823," *Gaceta de Colombia* (Bogotá), No. 103 (October 5, 1823).

de Paula Santander. Congress determined that it was the obligation of the executive to administer military recruitment and send the necessary troops and ammunition to back up the efforts of Bolívar in Peru.

A month after the decree, the newspaper *Gaceta de Colombia* published an editorial in which the editors expressed their support of the “costly, but necessary” recruitment efforts. Based on the calculations of the *secretaría del interior*, the editors outlined the contributions that each of the ten departments that constituted the Republic of Colombia would have to make in order to meet the fifty thousand mark. The department of Cauca, with approximately 193,000 people, was expected to contribute around 4,000 men.¹¹ Among the obstacles that the editors anticipated governors would run into was an 1821 decree by Congress that prohibited the recruitment of slaves into the military unless absolutely necessary. The editors hoped military desertion would remain low so authorities would not need to recruit slaves. What the editors did not consider, though, was that their own political constitution would pose obstacles to the recruitment process, as Francisco and Matea’s case shows.

Back in Popayán, the patrol officer who arrested Francisco continued his own defense. The officer claimed that Francisco referred lovingly to Matea in the letters and statements he provided to the judge, but only because he sought to avoid military service:

While Fernández did not suspect that he could be enlisted to serve in the army, his wife was anathema to him. Now, she is the object of his desires. When he was not in jail, he used the nighttime to stalk her and now he spends his nights remembering her. He could have lived with her and worked to maintain her. Instead, he abandoned her to her fate, to the feeble resources she could use, and to his deception. Now that he is apart from her he wants her and wishes for the

¹¹ “Aumento del Ejercito” *Gaceta de Colombia* (Bogotá), No. 136, May 23, 1824.

moment when they will be reunited. Is this credible?¹²

Why did the local officer question Francisco's change in attitude and newly professed love for his wife by contrasting it to the poor life that Matea had supposedly lived by his side? Despite the local officer's advocacy for Matea's wellbeing, he seems to have used Matea's complaints to carry out and justify his assigned task to enlist new military recruits. In some ways, this action is reminiscent of the practices described in Chapter Two where authorities used men's immoral behavior as justification to punish them through enlistment in the royalist militias. This, combined with the local officer's disregard for several constitutional mandates, helps explain why the republican judge who viewed the case decided against him. We see, then, how the men involved in this case used Matea's complaints of abuse as an instrument to advance their own personal and political objectives.

On the same day that Francisco was released from prison, Matea submitted a deposition to the judge expressing her disagreement with his decision. She explained that her husband's violent behavior against her was usually motivated by gossip from people who ignored the damages that their words caused to her and her marriage.¹³ It is not clear from the court records what "gossip" Matea objected to, but she attached to her deposition evidence to back up her claim: two short letters she had received from her husband during his imprisonment. In these

¹² "Fernández contra el juez político, 1825," ACC, Ind, J-Cr, I-3, sig. 2142, f. 7v. "Mientras que Fernández no sospechó que podía ser destinado a la milicia, su mujer era el objeto de sus anatemas. Ahora es el de sus deseos. Mientras no estaba en la cárcel, empleaba las noches en acecharla y ahora las dedica a su memoria. Mientras pudo vivir con ella y trabajar para mantenerla, la abandonó a su suerte, a los débiles recursos de que podía ella usar, y a sus insidias. Ahora que se haya separado, la quiere, desea estar unido y suspira por ese momento, ¿será creíble?"

¹³ "Fernández contra el juez político, 1825," ACC, Ind, J-Cr, I-3, sig. 2142, f. 12r-v. See Figure 3.

letters, Francisco admits that gossip had influenced his violent behavior toward her and expresses regret for having believed “the gossip he had heard about her” (*los cuentos que me metieron contra vos*) and for causing her pain and sorrow.¹⁴ He pleads for her forgiveness and promises to be a better husband. In Matea’s view, the short letters were the most indisputable evidence of her husband’s ill treatment of her (*las esquelitas [...] son los testigos más irrefragables de su mala conducta y de los amargos ratos que padezco*) and the threat that his release from prison posed to her life. She stated forcefully: “if the court does not provide me protection, I will certainly become a victim” (*si en este caso no encuentro la protección del juzgado, desde luego seré victima.*)¹⁵

The judge accepted and added Matea’s deposition and evidence to the case file, but he did not change his decision to release Francisco from prison. The judge simply ordered that upon his release, Francisco be warned that he would be arrested should Matea complain about him again.¹⁶ Thus, the judge observed the law at the cost of Matea’s second plea for protection. As for the officer, he was expected to do his job without overstepping the constitution or the 1821 decree that protected “good citizens and good husbands” from being enlisted.¹⁷ The judge closed the case with this ruling. The ruling not only disadvantaged Matea, it also complicated the local officer’s attempts to fulfill his duties.

Although the local officer’s next actions are unknown to us, other examples from the period show that failing to meet a military recruitment mark sometimes had severe consequences

¹⁴ “Fernández contra el juez político, 1825,” ACC, Ind, J-Cr, I-3, sig. 2142, f. 9r. See Figure 4.

¹⁵ “Fernández contra el juez político, 1825,” ACC, Ind, J-Cr, I-3, sig. 2142, f. 12r.

¹⁶ “Fernández contra el juez político, 1825,” ACC, Ind, J-Cr, I-3, sig. 2142, f. 12v.

¹⁷ “Fernández contra el juez político, 1825,” ACC, Ind, J-Cr, I-3, sig. 2142, f. 8v.

for provincial authorities. One example was José Antonio Páez, General Commander of the Provinces of Venezuela (*Comandante General del Departamento de Venezuela*), who delayed recruitment for a year because—like other leaders in Venezuela—he despised the centralization of power in Bogotá. He tried to evade the mandate by expressing concerns about civil resistance. But pressed by authorities in Bogotá to comply, Páez carried out two aggressive recruitment campaigns in 1826. Both campaigns failed, and bloody riots broke out across Venezuela.

A group of detractors claimed that the campaigns failed because Páez had exceeded his orders. In response to these events, the Colombian Congress dismissed Páez from office and requested his presence in Bogotá for trial. When he refused to travel to the capital, vice-president Santander declared Páez to be in open rebellion against the central government. Historians agree that these events (also known as *La Cosiata*) unleashed a serious political crisis that marked the beginning of the end of the republic.¹⁸ In August 1826, Santander issued a proclamation in which he reminded all citizens of Colombia that to allow disrespect for the pillars (mainly the constitution and political institutions) that sustained the republic was to destroy all they had built in the sixteen years following the declaration of independence.¹⁹ In this statement, Santander was most likely referring to Páez and implying that his acts must be punished to guarantee the legitimacy of the state. To Santander's surprise, however, Bolívar traveled from Peru to Venezuela, declared amnesty for Páez, and appointed him Supreme Civil and Military Commander of Venezuela. This deepened the ideological differences between Bolívar and Santander, which would turn unmanageable by 1827.

¹⁸ Carole Leal Curiel and Fernando Falcón Veloz, “Las tres independencias de Venezuela: entre la lealtad y la libertad (1808-1830)” in *Las independencias hispanoamericanas. Interpretaciones 200 años después*, ed. Marco Palacios (Bogotá: Editorial Norma): 61-92.

¹⁹ “Proclama. El vice-presidente de la República de Colombia encargado del poder ejecutivo, July 6, 1826,” *Gaceta de Colombia* (Bogotá), No. 253 (August 10, 1826).

Battles of Truth and Representation

The tense political situation in 1826 and the possibility of a civil war created anxieties among Colombians. To dissipate the tensions and to shape political discussions, the editors of *Gaceta de Colombia* published several editorials to present readers with their understanding of the republic's state of affairs in 1826. It was their obligation, they said, to counteract false statements circulating about (among other things) the supposed stagnated economy and weak political relations that portrayed the republic in a negative light. The editors believed that if such false claims were not neutralized, they could lead to devastating political consequences. The editors did not make explicit references to the people allegedly disseminating inaccurate information, but given their position, the editors were speaking to anyone who opposed vice-president Santander. To them, Bolívar and Santander maintained a cordial relationship that deserved respect and credibility.

A close reading of the editorials shows the writers' manipulation of language and events to depict the bright side of a stumbling republic. In one editorial, for instance, the editors claimed that their truth was *the truth* because it emanated from their own examination of history, which was grounded in facts. In their view, this method distinguished them from malicious people who misled others with ill-informed judgements.²⁰ To paint a positive image of a political system in disarray required the characterization of others as lacking truth and good faith. Such debates over factual truth and trustworthy analysis played out in cultural and political spheres interconnected with the judicial system.

The editors of *Gaceta de Colombia* also frequently devoted pages to discuss the republic's wealth. They highlighted foreign investment as one of the most critical sources of capital that

²⁰ "Situación del Gobierno en 1826," *Gaceta de Colombia* (Bogotá), No. 252, August 13, 1826

had supposedly energized mining production across the territory, vastly improving the economy. Accurate or not, the editors' ideas implied that the republic was heavily relying on foreign diplomatic relations and investment to leave its colonial past behind.²¹ The editors' portrayal of the republic seems to have sought to influence local readers' perspective, while reassuring foreigners of the importance of their investments for the republic's progress.

Many of the foreigners who lived in Colombia during this period also wrote and published their own observations of the republic's social and political life in the form of travel accounts. After the war of independence, for instance, the French chemist and mining engineer Jean-Baptise Boussingault spent considerable time in the republic working for an English mining company that had been contracted by Simón Bolívar. In his multivolume account, Boussingault wrote about several experiences that included administering gold mines, working with enslaved and freed people, and dealing with the judicial system. On this last point, for example, Boussingault recounted how a case of theft in one of his gold mines revealed to him the different approaches of local and higher judicial authorities in Cauca: the former wanted to whip the thief as punishment while the latter interceded and sentenced the thief to a few months in jail.²²

Boussingault's travel accounts also suggest an entry point into spousal conflicts that turned brutally violent. By this time, the superior court of Cauca was already in place, so it is through the magistrates' deliberations on the spousal conflict case that we are transported into a different sphere of social life during these tumultuous years. It is a dimension of life that failed to appear in the editors' pages or in the foreigner's memoir but was, nonetheless, a space where similar questions about truth, power, and law were disputed.

²¹ "Estado de la riqueza pública en Colombia," *Gaceta de Colombia* (Bogotá), No. 245, June 25, 1826. Also see No. 248, July 16, 1826; No. 253, August 20, 1826.

²² Jean-Baptise Boussingault, *Memorias, IV* (Bogotá: Banco de la República, 1985), 105-106

Alejandro, María and Feliciano

In his travel accounts, Boussingault registered his experience traveling from Santa Fe to Popayán in 1825, a journey that involved descending the backbone of the Colombian Andes mountain range: The Cordillera Central. Boussingault described the descent as having been as painful as the climb, with incessant rain, muddy roads, and unexpected encounters. In such difficult travel conditions, Boussingault recounted how he had run into two soldiers escorting a handcuffed black man recently convicted of homicide in the town of Buga. Boussingault noted that the black man was stumbling at every step while carrying a large stem of plantains on his head. The black man's misery made Boussingault feel deeply disheartened. He felt urged to give the black man a coin, but was unable to do so because he said he had nothing more than his muddy clothes. Somewhat self-righteously, Boussingault closed his anecdote exclaiming: "who would have thought that I would feel compelled to alleviate misery in the solitude" of the *Cordillera*.²³

Beyond portraying the harsh conditions that shaped travel during this period as well as Boussingault's supposed benevolent attitudes, this story allows us to imagine the transit that many alleged criminals had to endure on their way to/from trial. Although unexpected for Boussingault, it was quite common for alleged criminals to be escorted to the closest city with jurisdiction over the towns or parishes where the crime had been committed. While some alleged criminals like the one who appears in Boussingault's story seemed resigned to their fate, others found ways to escape. Such was the case of Alejandro Jiménez, a lower-class man accused by his wife María Melendez of physically abusing her. The local judge who arrested and interrogated Alejandro quickly dispatched him to the municipal court in the city of Cartago after learning about the details of his crimes. In his interrogation, Alejandro stated that he had beaten María on

²³ Boussingault, *Memorias, IV*, 79.

three occasions and, before marrying, he had also cut her near the eye with a machete.

Furthermore, Alejandro revealed that his concubine, Feliciana Ayala, had died six days after he had brutally beaten her. Alejandro was scheduled to face trial for these violent crimes in Cartago, but he managed to escape while in transit.²⁴

In his absence, lower-level authorities in Cartago reviewed the *sumaria* that had been compiled against Alejandro in his hometown and proceeded to sentence him to death. This death sentence was then forwarded to the superior court in Popayán for review. If approved, lower-level authorities would enforce the ruling once Alejandro turned himself in or was captured. Magistrates at the superior court, however, revoked the death sentence and imposed a new ruling: six years of imprisonment for Alejandro in the northern port of Cartagena. The logic behind the magistrates' new ruling was based on a careful reading of a specific law in the *Siete Partidas* that established a legal difference between serious (life-threatening) and minor injuries.

The law specifically described four scenarios in which a wound could be considered life-threatening, which included any injury caused with a sharp object in the eye or anywhere else on the face or head.²⁵ On the surface, Alejandro's violent attacks against María and Feliciana fit within the legal definition of this type of aggression. Both the defense attorney and the *ministro fiscal* who were assigned by the superior court opined in their briefs that this type of aggression deserved severe punishment. They disagreed, however, on the credibility of the evidence against Alejandro. For the defense attorney, the *sumaria* was an insignificant bundle of papers that "said and proved nothing." For the *fiscal*, the evidence showed that Alejandro had acted deliberately in a horrendous and cruel way.

²⁴ "Contra Alejandro Jiménez por heridas, 1826," ACC, Ind, J-Cr, I-3, sig. 1804.

²⁵ Alfonso. *Las siete partidas*. Santa Fe, Argentina: El Cid, 2004: 306-307. *eBook Collection (EBSCOhost)*, EBSCOhost (Accessed April 1, 2018).

What was the evidence in the *sumaria*? Although the criminal record does not preserve the original evidence, we know from the opinion briefs that it consisted of Alejandro's interrogation and four witness testimonies. The witnesses were three men and María, who explained that she had complained several times to her town's authorities about her husband's constant physical abuse. The other witnesses allegedly corroborated this by providing examples of the abuse they had witnessed at different times. One, for example, said that Alejandro frequently took María to the woods to punish her (*que la llevaba al monte a castigarla.*)²⁶ The defense attorney argued that the witnesses referred only to things that they had heard about because "how could they know a family's business?" (*de donde sabe o puede saber las circunstancias de una familia.*) He asked the magistrates to reject María's statement because, in his view, she had testified while being "angry, irritated, and with a thirst for revenge against her husband."²⁷

Additionally, the defense attorney argued that nothing about the evidence suggested that Feliciano, the concubine, had died as a result of Alejandro's beating. The defense attorney dismissed his own client's confession. Alejandro had confessed to stabbing Feliciano and sprinkling ground chili pepper on her eyes and wounds after the attack. The defense attorney attempted to persuade the magistrates to consider a different cause of death. He suggested that this emotionally fragile woman might have died of heartache (*despecho*) because Alejandro had supposedly refused to continue their illicit relationship. The defense attorney also urged the magistrates to avoid sentencing Alejandro because beating women was, in his view, a "common offense;" his actions should be considered entirely normal. He concluded that nothing proved

²⁶ "Contra Alejandro Jiménez por heridas, 1826," f. 4v

²⁷ "Contra Alejandro Jiménez por heridas, 1826," ACC, Ind, J-Cr, I-3, sig. 1804, f. 4v

Feliciana's death to be a consequence of Alejandro's beating, and besides, "a man's life [was] worth a lot" (*la vida de un hombre vale mucho*).²⁸

Although it was the defense attorney's job to put forward an argument that would challenge the accusations against his client, it is interesting that his tactics focused exclusively on questioning the credibility of the women involved in the case. In spite of Alejandro's voluntary confession, the defense attorney argued that María's complaints and Feliciana's death were the direct result of their supposed emotional imbalances. In other words, the truth could not spring from women's emotional responses; it had to be based on proven, certified, and objective evidence. And "objective evidence" that Feliciana's death was associated with Alejandro's beating could only have been established by a trained doctor called to certify the severity of the physical injuries as she lay dying.

Even though María stated that she had shown the local judge the beating marks on her body as evidence of her husband's abuse, the defense attorney dismissed it as "implausible" (*inverosímil*) because it was offensive to think that a woman would expose her body to an authority (*porque ofende al pudor el que una mujer haya expuesto su cuerpo a un alcalde*).²⁹ These manipulations of evidence suggest that legal authorities routinely subjected women to harsh questioning and judgement. Even when women delivered compelling testimonies, as the prosecutor and the magistrates in this case noted, bureaucratic/technical considerations and moral judgements overshadowed and eclipsed women's versions of the truth.

For instance, while the *ministro fiscal* recognized that María had been abused by her husband, he also alerted the magistrates that the local judge who requested her testimony had

²⁸ "Contra Alejandro Jiménez por heridas, 1826," ACC, Ind, J-Cr, I-3, sig. 1804, ff. 5v-6r

²⁹ "Contra Alejandro Jiménez por heridas, 1826," ACC, Ind, J-Cr, I-3, sig. 1804, f. 4v

violated the national constitution.³⁰ Specifically, he had supposedly overlooked Article 167, which explicitly stated that relatives (*hasta el cuarto grado civil*) could not testify against one another in a criminal case.³¹ Curiously, the magistrates briefly stated that Alejandro had treated his wife “inhumanely” (*inhumanamente*). They also ignored the prosecutor’s observation regarding the inadmissibility of her statement. Instead, they paid more attention to Feliciana’s death. They understood that Alejandro had clearly incriminated himself through his confession, but they concluded that because other possibilities for the cause of death could not be ruled out, he could not be held liable.

While the magistrates ruled out the defense attorney’s heartache hypothesis, they came up with more “objective” reasons to achieve the same end. Feliciana could have died, they said, for failing to take her medicine or for suffering a preexisting health condition that worsened after the attack.³² These possibilities could no longer be proven, but they could not be ignored either. This inconclusiveness led the magistrates to determine that a death sentence was excessive, but Alejandro deserved punishment according to his *calidad* and his circumstances.³³ They modified the original ruling and sentenced Alejandro to six years in prison in Cartagena for his cruelty—cruelty against Feliciana, not his surviving wife.

The magistrates’ focus on Feliciana indicates that they were more concerned with punishing cruelty that may have contributed to a fatal end. This is supported by another element in the magistrates’ ruling; they issued a financial penalty, not on the local judge who took

³⁰ “Contra Alejandro Jiménez por heridas, 1826,” ACC, Ind, J-Cr, I-3, sig. 1804, f. 8r

³¹ *Constitución de la República de Colombia, 1821* (Cúcuta: Bruno Espinoza Impresor del Gobierno, 1821): 98. (Article 167)

³² “Contra Alejandro Jiménez por heridas, 1826,” ACC, Ind, J-Cr, I-3, sig. 1804, f. 10r

³³ The magistrates cited Law 20, Title 9, Part 7 of the Recopilación Castellana.

María's testimony, but on the one who first learned about the attack against Feliciano and failed to take action. That local judge's job demanded, at the least, that he compile a *sumaria* clearly recording the events and adding all objective evidence available. Having failed to follow legal procedures, the magistrates advised the local judge and his subordinates to observe the laws in the future (*se previene que [...] se arreglen en lo sucesivo a las leyes.*)³⁴ This move indicates that the magistrates' priority was to reprimand a potential murderer (not a frustrated husband) as well as lower-level authorities who ignored proper procedure.

Both María and Feliciano experienced abuse at the hands of Alejandro, but the wife survived what the defense attorney deemed a "common offense" between spouses, or behavior accepted as normal and recurring in marriages. By rendering crimes of domestic violence against women non-punishable, criminal law enforced an artificial division between public and private, leaving family matters to be resolved in the home (by men). The following section elaborates this theme.

Public vs Private

Recent historiography has conclusively demonstrated that public and private were closely intertwined throughout Spanish America in the late colonial period.³⁵ In his latest work, Victor Uribe-Uran argues that violent spousal conflicts in late colonial Mexico and Colombia

³⁴ "Contra Alejandro Jiménez por heridas, 1826," ACC, Ind, J-Cr, I-3, sig. 1804, f. 10r

³⁵ See Asunción Lavrin, *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989); Lyman Johnson and Sonya Lipsett-Rivera, *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America* (Albuquerque: University of New Mexico Press, 1998); Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 1999); Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574-1821* (Stanford: Stanford University Press, 1988).

demonstrate the myth of a separation between the public and the private. He shows, for instance, how women's day-to-day interactions in public establishments such as markets and *chicherías* often led to misunderstandings and fights between spouses that had fatal consequences.³⁶

Chapter Three of this dissertation has analyzed lower-class women's honor disputes during the independence wars in Colombia. Chapter Three broadly shows how the public and the private often meshed together based on my readings of quotidian events described primarily by female survivors and witnesses of physical violence. Although the cases analyzed in this chapter register similar incidents of violence in which the public and the private tightly intersected, political transformations brought about by independence modified authorities' understandings of "private."

In other words, whereas during the war legal and ecclesiastical authorities condemned and punished private family matters that violated Catholic morals, legal authorities later sought to draw thicker lines between public and private matters. As they did so, they instructed lower-level officials to focus on a particular understanding of the truth, one which was purportedly rational and objective. The road to independence may not have changed people's interpersonal relations, but it did alter legal attitudes around the definitions of what should and should not be considered of public concern.

Miguel Cano and Barbara Calero

Retired corporal (*cabo*) Miguel María Cano's case illustrates this transformation. In 1827, a lower-level judge charged Miguel (probably a *mestizo*, given his military rank) with battering his wife Barbara Calero. The legal advisor who reviewed the case determined that the most

³⁶ Victor Uribe-Urán, *Fatal Love: Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic* (California: Stanford University Press, 2015)

appropriate action was to absolve Miguel because the lower-level judge had violated several legal procedures in the process.³⁷ For this reason, the case was forwarded to the superior court for review. The *ministro fiscal* assigned by the court to review the case supported the legal advisor's decision to absolve Miguel of all charges. The *fiscal* explained that no local judge had the power to prosecute a "citizen" accused of committing "a private offense" (*un delito privado*).³⁸ Furthermore, he contended that local authorities had ignored a body of laws issued by Congress on May 13, 1825 that outlined civil procedures for courts and tribunals. He cited Chapter 2/Article 3, which explicitly indicated that civil disputes could not be initiated before the interested parties had gone through a conciliation process overseen by local judges.³⁹ This sidelined ecclesiastical authorities from participating in mediation, as had been the custom during colonial times.

While the *fiscal* recognized that a conciliation had taken place before Miguel's arrest, he pointed out that a local priest had facilitated the process. This, argued the *fiscal*, invalidated the process because in the strictest sense of the law, the priest had usurped/violated civil jurisdiction. His observation signals the growing divide between church and state, at least in the legal realm, after independence. My analysis of illicit friendship cases touched on this rupture by showing how lower-level authorities across Popayán questioned the absence of religious norms in new legal texts and engaged with their superiors in heated debates about the separation between sin and crime. Here, the criminal case against Miguel shows another angle: how higher-level

³⁷ "Contra Miguel María Cano por vago, mal entretenido y sevicia contra su mujer, 1827," ACC, Ind, J-Cr, I-3, sig. 1800

³⁸ "Contra Miguel María Cano por vago, mal entretenido y sevicia contra su mujer, 1827," ACC, Ind, J-Cr, I-3, sig. 1800, f. 2v.

³⁹ "Contra Miguel María Cano por vago, mal entretenido y sevicia contra su mujer, 1827," ACC, Ind, J-Cr, I-3, sig. 1800, f. 2v.

authorities were also actively displacing the church from handling sensitive situations in domestic life. Only the state enjoyed the legal right to intervene in the private sphere, only to handle a life-threatening situation, *and* only when legal procedures had been followed and respected at each step of the judicial process. This helps explain why the *fiscal* in Miguel's case also denounced the local judge's failure to adhere to five constitutional articles outlining arrest procedures when he had imprisoned Miguel. The local judge had ignored the law and violated the individual rights (*garantías individuales*) afforded to citizens under the constitution.⁴⁰

In many ways, the claim that Miguel's rights were violated resemble claims made by Francisco Fernández earlier in this chapter. In both cases, the superior court found compelling the argument that local authorities had disregarded constitutional laws that protected potential citizens. The court's position is not surprising within the changing political regime that required legitimation for its survival. For higher-level authorities, making sure that constitutional norms were enforced at every level of the judicial hierarchy meant validating the legitimacy of their newly independent and secular state. At the same time, however, these actions granted men more leeway to continue exercising their patriarchal authority at home. With the state increasingly hesitant to intervene in the private realm—especially when evidence suggested that men were meeting their roles as economic providers of their families—Miguel's case became typical. The *fiscal* opined that Miguel's alleged talent to make Cuban hats made him an industrious man who could decently support his family financially, or, in short, a man of good conduct. On this grounds, the *fiscal* endorsed Miguel's justification for quarreling with his wife: Miguel had the

⁴⁰ “Contra Miguel María Cano por vago, mal entretenido y sevicia contra su mujer, 1827,” ACC, Ind, J-Cr, I-3, sig. 1800, f. 5r.

right to react violently if provoked by his “wayward” wife (*ella misma las ha provocado con su genio díscolo*) and the unexplained “hatred” that his neighbors apparently felt for him.⁴¹

In Miguel’s case, the republican magistrates who found the *fiscal’s* argument convincing glossed over Miguel’s violent conduct at home in favor of his labor considered to be fruitful both for his family and for the nascent republic. In other words, violence against women within the domestic realm took a back seat for authorities who valorized men’s work and role as head of household as means to build citizenship. Historian Sarah Chambers, in her analysis of republican Arequipa, Peru, summed up this trend which applies equally to postwar Popayán: “citizens [men] were expected to be economic providers, but not necessarily kind husbands.”⁴² To prioritize the productivity of the male citizen was to acknowledge his importance in the consolidation of the patriarchal political project that was underway in Popayán. In yet another example, the superior court absolved Ignacio Daza for battering his wife. Magistrates agreed that the quarrel had been “purely domestic” and, besides, the wife had apparently recovered successfully.⁴³ Repentant or not, men who battered their wives enjoyed privileges granted by a constitutional state that refused to extend its reach into the private realm short of life and death situations.

Higher-level authorities’ attempts to adhere to relevant old laws and new civil and constitutional codes differentiated them from the arbitrariness that characterized colonial rule. In the process, legal deliberations in cases about violence against women centered on what was acceptable or detrimental in the public sphere, rather than on men’s private conduct in their

⁴¹ “Contra Miguel María Cano por vago, mal entretenido y sevicia contra su mujer, 1827,” ACC, Ind, J-Cr, I-3, sig. 1800, f. 4r

⁴² Chambers, *From Subjects to Citizens*, 213.

⁴³ “Causa criminal por heridas seguida en el Juzgado Municipal Iro de Popayán contra Ignacio Daza, 1829,” ACC, Ind, J-Cr, I-3, sig. 4171, f. 4r.

homes. This limited the state's intervention in marital conflicts at the expense of women's wellbeing, and women thus lost power to contest husbands' abuses of power. Any insults or aggressions they suffered within the household could be attributed to their own indiscretions or negative attitudes. In other words, women got what they deserved. This is clear in Miguel's case where his wife's "wayward" behavior justified his violent attitude toward her.

This logic is driven by a vision of truth at the base of patriarchal authority, a truth that defines men's conduct as rational in contrast to women's irrationality, thereby subordinating women as dependents unqualified for citizenship. For Sarah Chambers, "the justification of women's inherent dependence upon patriarchal authority was a political fiction, given the large numbers of self-supporting women from various classes. But that fiction was compelling enough, in legal deliberations, to render insignificant apparent contradictions."⁴⁴ Likewise in Popayán, where the "army of women" described in Chapter Three constituted a significant force in the local postwar economy, women's alleged dependence was a "political fiction." It reflected not "objective truth" but men's anxieties about women's autonomy.

Plans for the first Constitutional Assembly

In January 1827, months before the superior court of Cauca absolved Miguel Cano for battering his wife Bárbara, congressional delegates from all Colombian departments met in the cities of Tunja and Bogotá to plan a constitutional assembly to be held in April, 1828.⁴⁵

Delegates hoped that the assembly, also known as the Convention of Ocaña, would help dissipate mounting tensions dividing political leaders and threatening to dissolve the republic. Those

⁴⁴ Chambers, *From Subjects to Citizens*, 199.

⁴⁵ "Gaceta Extraordinaria," *Gaceta de Colombia* (Bogotá), No. 289, May 5, 1827; "Continuación de las sesiones del Congreso en Bogotá," *Gaceta de Colombia* (Bogotá), No. 292, May 20, 1827.

tensions revolved primarily around the need to change the constitution so it would, among other things, be less restrictive of the executive power. The political leaders at the center of these tensions were vice-president Santander and commander José Antonio Páez, whose ideological disagreements began during the 1826 events of *La Cosiata* described earlier.

Bolívar showed willingness to make amendments to the constitution, but vice-president Santander initially expressed hesitation. When the constitution was ratified in 1821, lawmakers agreed that it could only be amended after ten years. Santander opposed convening a constitutional assembly in 1828, which would break that rule. Historians such as Jorge Orlando Melo have described Santander's "obsessive insistence" on enforcing the law and obeying superior authorities as a characteristic that distinguished him as a leader.⁴⁶ However, on this particular matter, Santander ultimately chose to obey Congress. Congress convened a constitutional assembly because the tensions surrounding the constitution were pressing issues that could lead to civil war if not addressed promptly.⁴⁷

These details are important because they highlight how, at the national political level, republican authorities manipulated the same laws they had created in order to secure and maintain power. Indeed, their contradictory actions reveal power games in the wider political landscape. At the same time, higher judicial authorities at the micro (departmental) level reviewed final sentences and judged the performance of lower-ranking officials (*jueces inferiores*) based on the rigid implementation of constitutional laws. In other words, higher

⁴⁶ Jorge Orlando Melo, foreword to *Escritos Políticos*, by Francisco de Paula Santander (Bogotá: El Álcara Editores/ Panamericana Editorial, 2003). For Melo, the moment in which Santander made this decision is a clear example of a weak political culture in which the interests of a few prevailed over respecting the law.

⁴⁷ "Gran Convención," *Suplemento a la Gaceta de Colombia* (Bogotá), No. 303, August 5, 1827.

republican authorities readily changed the law to work to their advantage, but they simultaneously punished their subordinates who failed to adhere to it.

Don Santiago Arroyo, the president of the superior court of Cauca, was well aware of these dynamics because of his important role in the court and also because his brother Don José Antonio Arroyo was a congressman. Being among the senators representing the province of Cauca at the 1827 legislative session, Don José Antonio wrote to Don Santiago upon arriving in Bogotá to recount how his enthusiasm to participate in the legislative sessions was soon met with unpleasant news; growing opposition in Venezuela to a centralist model of government threatened the interests of his and other slaveholding families in Popayán. The threat of a civil war breaking out at any moment led Don José Antonio to conclude that the legislative session's delay was perhaps a necessary evil.⁴⁸ If the political and military situation worsened, he opined, Congress would have to come to the rescue and Colombians would finally understand the critical role that the legislative body played in the republic. Without Congress, warned Don José Antonio, "everything would turn into arbitrariness and despotism."⁴⁹

María Lucas Domínguez

While Don José Antonio worried about despotism at the macro level, his brother Don Santiago and fellow magistrates at the superior court reviewed cases precisely to counteract legal arbitrariness at the micro level. For example, that same year in September, the court received a

⁴⁸ The legislative session was supposed to begin in January, 1827, but a lack of quorum delayed the start of the sessions. After a four-month delay, quorum was finally reached and delegates spent five months deliberating changes to the constitution and analyzing the role of the executive branch. This would later be known as the last legislative session that took place under the Republic of Colombia, which officially disintegrated in 1830.

⁴⁹ "Correspondencia enviada por José Antonio Arroyo a su hermano Santiago, 1827," AHCR, Fondo David Mejía Velilla, caja 4, carpeta 2, f. 1rv.

criminal case for review that was full of legal inconsistencies (*cúmulo de informalidades*.) The case arrived from the town of Barbacoas, south of Popayán, where a female slave had accused her master of rape. After the pertinent deliberations, judicial officials found serious legal inconsistencies in the local judge's proceedings against the slave-owner. Their final ruling absolved the accused. How did the authorities arrive at this decision?

After reading the case files, the *ministro fiscal* determined that the litigant, María Lucas Domínguez, had made baseless and unworthy rape (*estupro*) allegations against her owner José Castillo y Erazo. He explained to the magistrates that a slave's statement was not only worthless (*indigna de crédito por ser esclava*) but also inconsistent/unreliable.⁵⁰ The *fiscal* pointed out that during the ratification of testimonies, María Lucas modified her statement. She apparently added that she had confessed to her master that someone else had taken her virginity before he beat and raped her. Based on this information, the higher judicial authorities denounced María Lucas for her "immorality."⁵¹ María Lucas's prior illicit friendship with an unknown man explained, according to the magistrates, why her master had punished her. In their view, the rape, or more appropriately, her deflowering had been done by a third party, not by her master.⁵²

The *fiscal* also discounted as ineligible the testimonies of María Lucas's mother and godmother, who had apparently assisted María Lucas after she had been raped. The *fiscal* argued

⁵⁰ The *fiscal* made reference to a clause in the Siete Partidas that stated slaves were not allowed to accuse their masters to the authorities. See Partida VII, título 1, ley 2, in *Las Siete Partidas*, Vol. 3 (Madrid: Imprenta Real, 1807), 521.

⁵¹ "Causa criminal contra José Castillo por sevicia y amancebamiento con su esclava María Lucas, 1827," ACC, Ind, J-Cr, I-3, sig. 2494, f. 11r

⁵² The Siete Partidas stipulated that a slave who reported to crown authorities the abduction or rape of a virgin by another man could be granted freedom. Partida IV, título 22, ley 3 in *Las Siete Partidas*, 3: 123.

that because these women were not “honest and intelligent” they were not credible witnesses.⁵³ Interestingly, the *fiscal* and the defense attorney agreed. The latter’s brief (*escrito de expresión de agravios*) to the court listed the titles of several legal manuals (*Practica universal, Crímenes controvertidos, and Cirugía forense y medicina legal*) to back up this claim: María Lucas’s relatives were ineligible to act as witnesses in a trial because they were not “honest, wise, and honorable” (*honestas, prudentes y de conocida probidad que diesen razón de todo.*)⁵⁴

Three other testimonies by slaves were also dismissed. The defense attorney cited the *Siete Partidas* to explain that the law prohibited slaves from testifying against their masters.⁵⁵ The sole recognition of these facts, argued the defense attorney, should have stopped the local judge from starting legal proceedings against the accused. Yet—remarkably—the local judge, aided by a local prosecutor who was supposedly his own son or stepson, ordered the slave-owner to grant María Lucas a bill of sale, compensate her with a dowry that would restore her honor, and pay all legal fees incurred in the proceedings. The “absurdity” (*lo absurdo*) of this sentence enraged the slave-owner who appealed to the superior court and demanded to be declared innocent.

Aside from focusing on the veracity and eligibility of witness testimony, authorities also highlighted a long list of legal irregularities and abuses of authority by the local judge and his scribe. In fact, these irregularities and abuses seem to have been of the greatest significance given that both the *fiscal* and the slave-owner’s defense attorney described them in exhaustive detail. In the end, the defense attorney requested the magistrates to denounce the legal action

⁵³ “Causa criminal contra José Castillo por sevicia y amancebamiento con su esclava María Lucas, 1827,” ACC, Ind, J-Cr, I-3, sig. 2494, f. 8v.

⁵⁴ “Causa criminal contra José Castillo por sevicia y amancebamiento con su esclava María Lucas, 1827,” ACC, Ind, J-Cr, I-3, sig. 2494, f. 4v.

⁵⁵ The defense attorney makes reference to Partida III, título 16, ley 13 and Partida III, título 16, ley 22.

taken against his client as “abusive, injurious, unjust, and unlawful” (*abusivos, irritos, injustos, y atentatorio*). He also asked the magistrates to condemn the local judge and the scribe and further, to require them to pay the legal fees.⁵⁶

The *fiscal* reinforced the defense attorney’s petition by instructing the magistrates to force the local officials also pay for damages caused to the slave-owner (*condenando en las costas del proceso y en los daños y perjuicios irrogados a Castillo*.)⁵⁷ The court declared the slave-owner innocent and, as requested by the *fiscal*, penalized the local authorities on the grounds that there had been no merit to start a criminal case against the slave-owner (*por no haber habido mérito para el procedimiento*.)⁵⁸ In short, higher authorities’ pronouncements and rulings on this case “swarming with [legal] excesses” (*hervidero de excesos*) sent a strong warning to nonconforming local magistrates.⁵⁹

In other criminal cases involving enslaved women who had been raped and/or battered, the superior court ruled in similar ways: absolving the accused men. As in the case of María Lucas, the common argument was that slaves could not be considered witnesses, that their statements were unworthy, and that the law did not prohibit slave-owners from punishing slaves within domestic quarters.⁶⁰

⁵⁶ “Causa criminal contra José Castillo por sevicia y amancebamiento con su esclava María Lucas, 1827,” ACC, Ind, J-Cr, I-3, sig. 2494, 7v

⁵⁷ “Causa criminal contra José Castillo por sevicia y amancebamiento con su esclava María Lucas, 1827,” ACC, Ind, J-Cr, I-3, sig. 2494, 9r

⁵⁸ “Causa criminal contra José Castillo por sevicia y amancebamiento con su esclava María Lucas, 1827,” ACC, Ind, J-Cr, I-3, sig. 2494, 11r

⁵⁹ “Causa criminal contra José Castillo por sevicia y amancebamiento con su esclava María Lucas, 1827,” ACC, Ind, J-Cr, I-3, sig. 2494, f. 6v.

⁶⁰ See, for example, “Causa Criminal contra Antonio Reina por sevicia, 1829,” ACC, Ind, J-Cr. I-5, sig. 4307 and “Causa criminal seguida por el Juzgado Municipal 2do del cantón de Barbacoas contra la esclava Juana Delgado, 1827,” ACC, Ind, J-Cr, I-5, sig. 327.

In one of these rulings a slave-owner was absolved of accusations of whipping an enslaved woman after she stole food from the kitchen. The master had apparently whipped the woman twenty times and then sprinkled her wounds with urine and chili pepper. When the magistrates issued their ruling, they even ordered the local judge to reach out to other slaves belonging to the same master and inform them about their master's acquittal. Among these "other slaves" who concerned the magistrates were some who had taken advantage of the trial to seek protection from the local judge, adducing that they too had been abused by their master. In the magistrates' view, these slaves should know that their master had been absolved "in order to reconcile the principles of religion, humanity, and the good faith of the state with those of slavery and public order."⁶¹ More than a reconciliation of principles, this seemed like a threat to slaves: no matter the slave-owner's behavior, they continued to be his dependents and the law was on his side.

Part II

The Failure of the Convention of Ocaña and its Repercussions in Cauca

In 1828, Colombia's first constitutional assembly took place. The outcomes of this convention marked the disintegration of the republic and created a realignment of power along liberal and conservative lines. These power struggles had a powerful impact both at the macro and micro levels, and help explain the interruption of criminal trials during this period in Cauca.

In early 1828, Colombia's first constitutional assembly met in Ocaña. On the Convention's success depended the unity of the republic. Weekly issues of *Gaceta de Colombia* kept the public informed during the months of the convention by publishing session minutes,

⁶¹ "Causa Criminal contra Antonio Reina, 1829," f. 5r. "Para conciliar los principios de religion, humanidad y bien del estado, con los de la esclavitud y tranquilidad publica, haga entender a los esclavos de Reina [...] el resultado de esta causa, con la prudencia que exige la materia."

transcriptions of proposed constitutional reforms, proclamations, and letters from delegates and authorities not present at the convention. In May, *Gaceta de Colombia* published a letter dated April 4, 1828 that had been signed by Don Santiago Arroyo and the rest of the magistrates at the superior court. In the letter, the magistrates expressed their support for the Convention and made explicit their shared political opposition to a federalist system promoted by vice-president Santander because it “would take us back into our past misfortunes and the evils of anarchy” (*la disociación federal nos sumergiría hoy en nuestras pasadas desgracias y en los males de la anarquía.*)⁶² In other words, the magistrates declared themselves supporters of a centralized government led by Bolívar that drew its legitimation from the 1821 constitution.⁶³

The Convention of Ocaña, however, turned out to be a complete disaster. Representatives failed to overcome their ideological differences and abruptly ended the convention.⁶⁴ Bolívar reacted by proclaiming himself the highest head of government with sole and ultimate power to enact laws. Bolívar justified what others saw as “dictatorial” actions, acquiescing to his supporters’ demands to prevent the outbreak of civil war. A reading of original proceedings published in *Gaceta de Colombia* further clarifies that the possibility of another war was seen as

⁶² “Gran Convención. Representación que le ha dirigido la corte superior del Cauca, April 4, 1828,” *Gaceta de Colombia* (Bogotá), No. 344 (May 8, 1828).

⁶³ This political position was confirmed and supported by Tomás Cipriano de Mosquera, Cauca’s *intendente*, in a note he sent to Bolívar’s secretary in Bogotá. The note appeared on *Gaceta de Colombia*. “Comunicación: Del intendente del Cauca al secretario general de S.E. el Libertador, April 6, 1828,” *Gaceta de Colombia* (Bogotá) No.349 (June 1, 1828).

⁶⁴ “Gran Convención,” *Gaceta de Colombia* (Bogotá), No. 353, June 22, 1828; “Gran Convención,” *Gaceta de Colombia* (Bogotá), No. 361, July 20, 1828; “Gran Convención,” *Gaceta de Colombia* (Bogotá), No. 362, July 24, 1828. All delegates present at the Convention shared an interest in revising the constitution, but they all differed on the ideal type of government for the republic. As expected, delegates split into two dominant groups: those who supported Bolívar and a centralist form of government with him as president and those who, along with Santander, advocated for federalism. Profound differences and disagreements between these groups led many delegates to walk out of sessions and return to their provinces. As a result, a lack of quorum forced the end of the convention.

costly. It would result in the disintegration of the republic, and foreign enemies might take advantage of that vulnerability and chaos to invade and occupy the territory.⁶⁵ Bolívar was backed up by powerful groups of supporters from every major province in the republic, including Cauca's *Intendente y Comandante General*, Tomas Cipriano de Mosquera. Mosquera announced to the citizens of Cauca that Bolívar was their *caudillo*. He then vested Bolívar, on behalf of all citizens of Cauca, with full powers to defend the republic in the event that Peru or Spain attacked.⁶⁶ What Mosquera did not anticipate was that not all the citizens of Cauca supported his decision to side with Bolívar.

In November 1828, colonel José María Obando, a supporter of the liberal ideas of Santander, and his friend colonel José Hilario López mobilized a group of insurgents from the Patia Valley – a region predominantly populated by indigenous and afro-descendant groups many of whom had been associated in earlier decades with royalism. They mounted an attack against Mosquera, defeating him and taking over the city of Popayán.⁶⁷ This revolt staged by José María Obando and López claimed to have defeated the “dictatorship” of Bolívar in Cauca

⁶⁵ During this time, the foreign enemies of Colombia were Peru and Spain. “Proclama Pedro Alcantara Herrán, intendente en comisión del departamento de Cundinamarca, June 13, 1828,” *Gaceta de Colombia* (Bogotá) No. 351 (June 15, 1828); “Acta de la Ciudad de Bogotá,” *Suplemento a la Gaceta de Colombia* (Bogotá) No. 351 (June 15, 1828).

⁶⁶ “Tomás Cipriano de Mosquera intendente y comandante general del departamento del Cauca, June 27, 1828,” *Gaceta de Colombia* (Bogotá), No. 360 (July 17, 1828).

⁶⁷ José María Obando was the adopted son of Juan Luis Obando, the *caudillo* who appears intervening in a case involving illicit friendship in Chapter Two. Here, I refer to him by his first name so as not to create confusion with his father. Like his father, José María sided with the royalists during the war until he turned republican and fought for independence along Bolívar. In some ways, José María's role as a *caudillo* illustrates the survival of forms of patronage relations of power in Cauca and how they were used to mobilize people around political objectives and agendas.

and reinstated the legitimate constitutional regime.⁶⁸ This claim helps to show how opposing groups used similar rhetorical practices around constitutionalism to legitimize their ideas and actions. These power disputes were motivated, at their very core, by visions of truth that aligned with specific political ideologies (centralist/federalist; godo/liberal). These political ideologies reconfigured regional power allegiances in Cauca and impacted, among other things, the administration of justice in the department.

José María Obando's insurrection led the superior court of Cauca to shut down temporarily.⁶⁹ Don Santiago and his fellow magistrates explained their unanimous decision in a letter. They ceased all activities at the court because they were unable to comply with the legitimate constitution under José María. The court's decision reveals how all these different political players were using the same rhetorical device – that of constitutionalism – to justify their own agendas. Those agendas were clearly influenced by political ideologies that were gaining meaning and traction as these events unfolded.

This last point can be illustrated by the responses of the press. The editors at *Gaceta de Colombia*, for instance, published accounts of the insurrection in Cauca both from the perspectives of those who supported Bolívar and from the insurgents whose letters had been intercepted. The newspaper repudiated the insurgents' actions and labeled them as “thieves” because they had supposedly demanded a substantial amount of money from the Mosquera, Hurtado, Arboleda, and Arroyo families (all supporters of Bolívar) upon their entry in the city of

⁶⁸ “Valle del Cauca,” *Gaceta de Colombia* (Bogotá) No. 392, December 21, 1828.

⁶⁹ “Corte de Justicia del Cauca, November 19, 1828,” *Gaceta de Colombia* (Bogotá) No. 398 (February 1, 1829).

Popayán. For the editors, José María's actions had stained the word liberal. To be a liberal was to be a thief.⁷⁰

The most relevant point here for our concerns is that during this period judicial practice in Cauca was highly dependent on the configuration of power at the macro level. Higher judicial authorities in Cauca could not legitimately exercise power over their subordinates without one of their leaders in command of the state. In other words, the disciplining of lower-level officials was not possible if men like José María took their power away. Magistrates in Cauca supported Bolívar for practical reasons. Under his leadership, their preferred model of governance and political affiliation justified their work at the superior court and helped them maintain power.

In less than a year, Bolívar negotiated with José María Obando and regained power over Cauca. The court reopened in January 1829 and Don Santiago, along with the same group of magistrates, resumed his work on cases that had been pending. More civil and criminal cases continued to arrive as the magistrates caught up with work.⁷¹ When we zoom into the magistrates' work at the superior court we can see how their pledge to stand by the constitution was reflected through their deliberations and rulings. Next, we return to analysis of the cases of a restored court and focus on how magistrates enacted their rhetorical principles and commitment to enforce the law.

⁷⁰ "Popayán: Conspiración del 25 de septiembre," *Gaceta de Colombia* (Bogotá) No. 388, December 4, 1828; "División de operaciones contra los facciosos de Popayán," *Gaceta Extraordinaria - Gaceta de Colombia* (Bogotá) March 13, 1829.

⁷¹ "Extracto del diario de la corte de apelaciones de Cauca en enero de este año," *Gaceta de Colombia* (Bogotá) No. 405 (March 22, 1829).

Female perpetrators of violence

Two new cases involving women accused of perpetrating violence arrived at the court shortly after it reopened. In one of them, a woman was accused of killing another woman. The court found the accused not guilty because the body of the deceased showed no open wounds when she died two weeks after the fight. To the magistrates, this meant the wounds had healed and something else had been the cause of death. The accused was released after ten months of incarceration.⁷² In the other case, a woman was accused of slitting her husband's throat with a knife in a domestic quarrel. Because there were no reliable witnesses in the case, the court revoked the three-year sentence ruled at the lower-court and condemned the woman to two and a half years in prison. She was ultimately released because she had already spent three years in prison awaiting trial.⁷³ In these cases, the magistrates continued to prioritize the principle of legitimate criminal evidence as a fundamental requirement for the proper administration of justice. The women involved in these cases spent more than six months in prison awaiting sentence. While suggestive, this was not necessarily unique to the post-convention years as the following case helps illustrate.

Andrea Casas

Months before the insurrections in Cauca in late 1828, magistrates had focused on a spousal killing case from the town of Cartago. The accused, Andrea Casas, had been arrested in June 1827, presumably for causing the death of her husband after hitting him on the head with a

⁷² “Causa criminal contra Joaquina Sarria por heridas que dio a Joaquina Guevara de Cali, Juzgado Municipal Segundo, 1829,” ACC, Ind, J-Cr, I-3, sig. 4177

⁷³ “Causa criminal contra Mercenaria Lozano por heridas dadas a su marido Pedro García de Cartago, 1829,” ACC, Ind, J-Cr, I-5, sig. 4308.

stone. This case took almost a year to resolve because the interim local judge who arrested Casas failed to follow proper legal procedure. Uninformed, the interim local judge compiled the *sumaria* and forwarded it straight to the superior court magistrates for them “to decide what they deemed appropriate” (*resolver lo que estimen conveniente*).⁷⁴ A month later, the court’s prosecutor returned the *sumaria* to the local judge with a note that stated “this superior court can only issue second-instance rulings and it never counsels lower courts” (*este Superior Tribunal solo puede conocer en segunda instancia y nunca es consejero de los juzgados inferiores.*)⁷⁵ The prosecutor also briefly outlined the process: the local judge had to consult with a trained lawyer first, who would review the *sumaria* and issue a recommendation for a final sentence. The local judge would confirm or reject the sentence and, only at that point, could the local judge forward the case to the superior court.⁷⁶

These details show the ways in which higher judicial authorities distilled legal procedures to local officials. In this particular case, it is somewhat odd that a basic step of the legal process (requesting advice from a trained lawyer) was skipped by the local official. Seven months later, the court accepted the same case for review, now including a final sentence that absolved Casas of all charges. The legal advisor in Cartago determined that the accusation against Casas was unfounded. He argued that nothing could prove that her husband’s death, which happened several hours after the fight, happened as a direct consequence of the injury. Apparently, Casas’s husband had washed the wound with water and that reckless action (*su propia imprudencia*), said the legal advisor, could have caused a spasm that killed him.⁷⁷

⁷⁴ “Causa criminal contra Andrea Casas, 1827,” ACC, Ind, J-Cr, I-3, sig. 1811, f. 2r.

⁷⁵ “Causa criminal contra Andrea Casas, 1827,” ACC, Ind, J-Cr, I-3, sig. 1811, f. 3r.

⁷⁶ On this point, the prosecutor cited Article 106 from *Ley Orgánica de Tribunales*.

Upon reading the case files, the superior court's prosecutor argued that Casas deserved a two-year sentence employed in public works because there was sufficient evidence to prove that Casas committed an offense (*hubo una injuria.*)⁷⁸ Casas's defense attorney, on his part, claimed that the wound on the husband's head was the result of a "domestic fight between spouses" (*una disensión domestica entre marido y mujer*) and that Casas had "defended herself *cum moderamine inculpate tutele* as allowed by [Roman] law."⁷⁹

After considering these two positions, the magistrates sided with the defense attorney. A spousal conflict translated into a domestic fight and, as described earlier, the republican state's position in domestic matters was to intervene as little as possible short of the infliction of life-threatening wounds to the victim. In Casas's case, her husband's certification of death (*reconocimiento del cadaver*) described merely superficial head injury that had not hurt his skull. Thus, the cause of death could not be determined. Furthermore, in strictly legal terms, the defense attorney was right: Casas could claim self-defense if her husband had attacked her first and he apparently did based on the magistrates' reading of Casas's confession.⁸⁰ Following this logic, the court ordered the immediate release of Casas and closed the case.

Interestingly, under Don Santiago's leadership, the superior court of Cauca displayed a commitment to law enforcement even in a case where the perpetrator of violence was a woman. First, the evidence against Casas was unconvincing. As may be clear by now, under a liberal

⁷⁷ "Causa criminal contra Andrea Casas, 1827," ACC, Ind, J-Cr, I-3, sig. 1811, f. 10r.

⁷⁸ "Causa criminal contra Andrea Casas, 1827," ACC, Ind, J-Cr, I-3, sig. 1811, f. 6v. On this point, the prosecutor referenced Partida 7, título 9, ley 20.

⁷⁹ "Causa criminal contra Andrea Casas, 1827," ACC, Ind, J-Cr, I-3, sig. 1811, f. 8r.

⁸⁰ J. Heineccius, *Elementos de Derecho Romano* (E. Aguado, 1836): pg. 282. "[...] no está obligado por esta ley el que usando de su derecho dañe a otro, como el que en defensa propia (*cum moderamine inculpate tutele*), mata al agresor o al ladrón."

republic, officials working on criminal investigations were expected to gather objective evidence that could prove a crime (*comprobación del delito*). Similarly, arguments for and against in a criminal trial had to align with specific laws, not general moral concerns. Like the male aggressors in the first part of this chapter, Casas was absolved of all charges. Rather than undermining my earlier analysis, this acquittal actually helps demonstrate that the magistrates' priority to adhere and enforce the rule of law happened across the board. This increased legal standardization ultimately favored Casas.

Second, the magistrates declared that the sole witness in the case was ineligible because he was the 14-year-old brother of the deceased and was unreliable due to his youth.⁸¹ This meant that no charges could be pressed against Casas over “the testimony of an ineligible witness” (*sobre el testimonio de un testigo inhábil*).⁸² Before the war, crime was conceived as a deviation from Catholic moral standards, a moral failing. In contrast, the postwar legal system, regarded confession to a criminal act as only one of several pieces that judicial officials were expected to examine. While a confession could illustrate the confessant's truth, officials had to consider more objective truths, which carried more weight, in order to determine whether or not an alleged criminal act deserved punishment.

This case shows, at least in the beginning, how higher judicial authorities educated lower-level officials to follow proper legal procedures. On the matter of objective evidence, it also provides subtle, but powerful reminder of the ways in which church and state relations changed in the legal sphere. The truth became narrowly defined by legal statutes and codes and a codified constitution obliged judicial officials to observe the law when determining what was legally

⁸¹ “Causa criminal contra Andrea Casas, 1827,” ACC, Ind, J-Cr, I-3, sig. 1811, f. 6r, 9v, 10r.

⁸² “Causa criminal contra Andrea Casas, 1827,” ACC, Ind, J-Cr, I-3, sig. 1811, f. 10r. On this point, the defense attorney made reference to Partida 3, título 13, ley, 2.

admissible as evidence in a criminal case. Even if Casas had incriminated herself by confessing, her statements were inadmissible in a judicial system that sought the objective execution of law.

Gregoria Gómez and the “political fiction” of women’s dependency

The objective execution of the law required legitimate evidence and trustworthy witnesses. How did this principle (which is based on the prevalence of a truth) coexist with the “political fiction,” as Sarah Chambers calls it, of women’s dependency on men? According to Chambers, this fiction was useful for judges in Arequipa, helping to reify patriarchal norms. In this final section of the chapter, I explore this issue through the close reading of a criminal case that shows how women like Gregoria Gómez were disciplined for being autonomous.

In the afternoon of February 11, 1829, a public scribe delivered a fifteen-page criminal case file to the magistrates at the superior court of Popayán. The case concerned Marcelino Rojas, a shepherd accused of attacking his wife with a machete and causing her life-threatening wounds.⁸³ Marcelino’s wife, Gregoria Gómez, suffered a deep cut to her head and several cuts to one of her arms. After the bloody and terrifying attack, one of Gregoria’s fingers was left hanging and had to be amputated by a surgeon, who later testified before the local judge that Gregoria’s life had been in danger. Soon after the attack, the local judge imprisoned Marcelino and a three-month trial ended in an acquittal. After much deliberation, the legal advisor who reviewed the case for a final verdict at the first-instance level determined that Marcelino’s defense attorney was right; Marcelino had purged “an offense of little importance” with the three months he had spent in prison during the trial.⁸⁴ On this basis, the legal advisor recommended to

⁸³ “Contra Marcelino Rojas por heridas que dio a su mujer Gregoria Gómez, 1830,” ACC, Ind, J-Cr, I-6, sig. 4514.

⁸⁴ “Contra Marcelino Rojas, 1830,” ACC, Ind, J-Cr, I-6, sig. 4514, f. 10v.

absolve Marcelino. The superior court was persuaded by this argument and confirmed the first-instance ruling not without warning Marcelino that if he repeated the offense, the court would go against him with “greater severity.”⁸⁵

On the surface, this case unfolds at the legal level in unsurprisingly similar ways to the cases we have learned about thus far. An abusive partner is absolved by authorities both at the first-instance and by superior courts. What is unique about this case, however, is that it preserves a copy of the original criminal record that the magistrates at the superior court reviewed. A close reading of its content provides important details through which we can penetrate the story and illustrate with more concrete examples how patriarchal authority played out on the ground. More importantly, perhaps, is how a close reading approach allows us to analyze how Gregoria and the five women who testified as witnesses of the attack (or the events leading up to it) recounted their own versions of what had happened. One of the most persuasive outcomes of this reading is, then, that Gregoria’s story contradicts what prosecutor Cuervo claimed, in the introduction to this chapter, about women’s supposed autonomy based on his reading of *Don Quijote*.

Gregoria’s story is a testament to the serious consequences women like her faced when they attempted to act autonomously in situations that posed threats to their physical and psychological wellbeing.

The criminal record against Marcelino opens with statements by the surgeon and by Gregoria taken by local judge Juan Fernández and his scribe at the city’s hospital a day after the attack. In her statement, Gregoria, an illiterate woman, recounted that on Thursday, her husband Marcelino had become irritated after she requested his help to pick up a load of cassava (*yucas*) on the city’s outskirts. She had agreed to go with her friend Mikaela Serna, who had to cancel at

⁸⁵ “Contra Marcelino Rojas, 1830,” ACC, Ind, J-Cr, I-6, sig. 4514, f. 17r.

the last minute because she became sick. Loudly, Marcelino told Gregoria that there was no cassava available at the place where she wanted to go. When Gregoria asked him to calm down so their neighbors would not think they were arguing, Marcelino humiliated her by giving the food she had prepared for him to a dog. He then proceeded to beat her with the wide blade of his machete (*le dio de planazos con un machete*) as he screamed that he did not want to see her ever again. Gregoria said she escaped as she could and sought refuge at one of her friend's house.⁸⁶

We learn from the testimony of Simona Mosquera, also illiterate, that a saddened Gregoria appeared on her doorstep on that Thursday afternoon. Simona listened to Gregoria explain that her husband had beaten her and thrown her out of the house. After this, Gregoria left to the local judge's office to report the incident, but he simply advised her to return the following day. On Friday morning, instead of seeing the local judge, Gregoria went to the city's outskirts in search of her cassava thanks to a small loan she took from Simona. Through these statements, we see a saddened but determined and resourceful Gregoria who by Saturday morning was reselling the cassava at the local farmer's market. Up until this point, Gregoria had demonstrated that she could act autonomously from her husband thanks to the support of her community of female friends and neighbors as well as to gainful work that sustained her (*trabajar para sostenerse*). But that Saturday Marcelino appeared at the farmer's market and kindly asked Gregoria to come home. Simona advised Gregoria to return home considering that spousal conflicts were common and spouses were obligated to tolerate one another (*que eran pleitos de casados que no faltaban y que estaban obligados a sufrirse unos a otros*).⁸⁷

Indeed, Gregoria returned home that evening, only to be brutally attacked by her husband. Three female neighbors entered Gregoria's house and tried to defend her from

⁸⁶ "Contra Marcelino Rojas, 1830," ACC, Ind, J-Cr, I-6, sig. 4514, ff. 1v-2r.

⁸⁷ "Contra Marcelino Rojas, 1830," ACC, Ind, J-Cr, I-6, sig. 4514, f. 3r. See Figure 5.

Marcelino, but he threatened to hurt them as well so they retreated.⁸⁸ In his confession, Marcelino explained that he hurt Gregoria because she had traveled to the city's outskirts without his consent. He also admitted that he had been intoxicated after a day of drinking alcoholic beverages (*chicha* and *aguardiente*), which explained his lack of proper judgement when he hurt her.⁸⁹ Marcelino's defense attorney successfully argued that Gregoria had given Marcelino enough reasons to feel offended (*le dio motivo para disgustarse*) and that his "sad and deplorable" drunkenness had deprived him of all judgement.⁹⁰ Although the prosecutor at the first-instance level initially refused to accept drunkenness as an excuse, in the end all authorities involved in the case accepted it as a mitigating circumstance. This was not unusual. Roman and canon law observed "that individuals who committed a crime while drunk could be considered to have acted with lesser criminal intent than others."⁹¹

What is revealing, at least in the context of this chapter, is that men punished women who either tried or did not try to exercise their autonomy. In the opening of this chapter, a prosecutor blamed Juana Ortega for not acting autonomously when she was abducted by a man. Here, Gregoria was violently reprimanded by her husband for running errands away from home without his consent. Gregoria's autonomy in her decisions and actions caused serious consequences to her health. As has been stated, the law urged authorities to intervene in the domestic realm in life-threatening situations, but we see that in Gregoria's case, the state's intervention was brief and moderate. It would be easy to imagine that five testimonies that

⁸⁸ "Contra Marcelino Rojas, 1830," ACC, Ind, J-Cr, I-6, sig. 4514, ff. 2v-3r, 4v.

⁸⁹ "Contra Marcelino Rojas, 1830," ACC, Ind, J-Cr, I-6, sig. 4514, f. 5v-6r.

⁹⁰ "Contra Marcelino Rojas, 1830," ACC, Ind, J-Cr, I-6, sig. 4514, f. 13r.

⁹¹ Uribe-Uran, *Fatal Love*, 90. See his much detailed discussion about drunkenness and the law in 89-92 and 318-319.

coincided in recounting Gregoria's experience would amount to an undeniable truth about the brutal physical and psychological violence that deserved harsh punishment. Yet we see that it was far more important for authorities to privilege the "political fiction" of a private sphere largely unregulated by law that subjected women to patriarchal control with few constraints.

§

This chapter studied the second half of the 1820s in Colombia. It focused on this period in order to analyze criminal cases about assault (particularly against women) as the republic of Colombia was disintegrating. In this political context, the chapter showed the ways in which magistrates at the superior court of Cauca engaged in disciplining lower-level officials who were in charge of initiating legal proceedings against alleged criminals in their respective localities. Paying attention to this process of dissemination of liberal political principles and constitutional norms sheds light on the hierarchical relations of power that survived in Popayán after independence. It also demonstrates the priorities of higher judicial authorities both to establish a distinction between public and private and to act as arbiters of truth. "Truth" then is a critical theme that appears in from multiple forms: the truth of the law, the press, independence leaders, court magistrates, and poor people who came into contact with the judicial system. The focus of this chapter also allows us to see how physical conflicts between real people were debated and ruled under liberal principles of justice. This had an impact on the lives of battered women in particular because the republic was founded on the basic relationship of men with the state. In other words, as illustrated by my cases, the patriarchal structure solidified during this time and manifested itself in several shapes and forms.

CONCLUSION
LAW AND CULTURE AT A CROSSROAD

In this dissertation, I have studied the period of the wars of independence in Colombia by focusing particularly on the Province of Popayán, a region in the Colombian southwest where the institution of slavery profoundly shaped its social and economic landscape. My interest in this historical period and region emerged from a need to understand the Independence wars from a different angle: Can we interpret the war outside of the images of battle and bloodshed? For example, what activities brought poor people together during this period? What kinds of conflicts marked their existence and brought them into contact with judicial authorities? I attempted to answer these questions by doing close readings of criminal cases where poor men and women were at the center of disputes. By paying close attention to the details contained in criminal records, I was able to reconstruct episodes of daily life practice that generated conflict and attempted to weave them to a larger narrative of social upheaval and political change. The disputes in these cases were around issues of illicit friendship and interpersonal violence, which allowed me to tap on bigger questions about the centrality of gender, sexual morals, and legal practice to the history of war and nation-building in Colombia.

This dissertation sheds light on the significant interplay between gender and honor in war-torn and post-war Popayán. Its analytical juxtaposition of the debates contained in criminal trials and the epistolary production of elite men allows us to see how in this society, male honor was constructed vis a vis the subjugation of women. Men were expected to control and supervise women in order to protect the public reputation of their families and live in accordance to

Catholic standards. In Popayán, it was upper-class men such as Don Santiago Arroyo or Francisco José de Caldas who publicly represented this ideal type of men. These men's wealth, political influence, and power over their nuclear and extended families distinguished them as the type of patriarchs that political and legal elites celebrated and promoted as role models during and after the war. Poor men stood in sharp contrast to this model. This is why in the deliberations of criminal trials examined throughout this dissertation, these men are described as ignorant men who required disciplining. Their actions –creating families outside marriage or battering women– are almost always justified by their lack of “true” masculinity. In this respect, the connections between class and gender are evident and suggest how ideas about masculinity and femininity were constructed around the honorability granted by high social standing.

Along these lines, this dissertation also pushes the conversation, at least within gender studies in the Colombian context, about the role that women played in the wars of independence. In these chapters, poor and mixed-race women appear fighting in their homes and in the streets. The criminal records describe them actively pursuing justice in cases where their physical honor and that of their families was questioned or wounded. We learn, then, that women used different mechanisms to demand punishment for their aggressors and call for economic reparations. Even though these demands were not always granted, the fact that these women mobilized their resources to confront aggressors and authorities stands as a testament to their courage and persistence.

The criminal cases analyzed in this dissertation also show women who confronted each other out in the public and in the legal sphere by using ideas and concepts related to patriarchal notions of power and domesticity. Similarly, there are several moments throughout this work when women are a central part of disputes but they stand voiceless in the deliberations led by

men. Uncovering and highlighting these different portrayals of women in the judicial records is significant because they help to make women visible in male-dominant historical narratives about war. More importantly, perhaps, is that they illustrate the central role that gender played in shaping interpersonal relations and legal practice in Colombia.

This dissertation's discussion of the law also makes a contribution to the history of the justice system in Colombia. The period under examination, particularly the post-war years, was characterized by an effervescent growth in the lawmaking process. This process was marked, in turn, by ideological disputes about the role of the Catholic church and its values in the conception and execution of the law that played out in everyday life and in local and higher courts across the territory. During the early post-war years, the church had the role of strengthening Catholic culture and legitimizing the new state. It could not, however, interfere in criminal proceedings regarding family and sexual matters as it had done in the past. This dissertation shows, then, how the separation of sin and crime led to heated debates among cultured elites about moral policing and the disciplining of poor people. In this sense, contrasting definitions of sin, morality, and crime during independence became critical fields of contention that had serious repercussions on the lives of common people.

Thus, these chapters trace the creation, negotiation, and implementation of laws both at the macro and micro levels by interconnecting the stories of poor people caught in the justice system with the ideological tensions that arouse among political elites and legal authorities. This multilevel analytical approach serves to cast a light on the complex relationships of power that emerged from and characterized the interplay between these two spheres. While large-scale political decisions and events impacted the living experience of common people on the ground, those who were directly impacted questioned and attempted to reconfigure the ways in which the

law operated and determined the course of their lives. This was true even among the enslaved and freed men and women who appeared involved in criminal cases throughout this dissertation. Their criminalization not only illuminates concerns about the social behavior of people coming out of captivity, but also exposed authorities' fears about the potential end of slavery and the magnitude of its consequences.

Connected to this is the complicated relationship between authorities from different hierarchical positions when ruling over a criminal case. During and after the war, higher judicial authorities made it a priority to instruct local officials on the specific ways to interpret and make proper use of the law. These exchanges were not always amicable, revealing misunderstandings and different political agendas among authorities. Overall, this dissertation touches on all these different points to demonstrate how questions about gender, family, and sexuality were critical both in the war and to the creation and development of the justice system in the post-war years in Colombia.

EPILOGUE

GENDER IDEOLOGY: “THE HIDDEN DANGER” (*ELPELIGRO OCULTO*)

“If we look back and remember what Colombia was like the day of the publication of our code [constitution], we will recognize with pleasant surprise that we have traveled a great distance and have overcome enormous difficulties”

Francisco de Paula Santander, Bogotá, 2 January (1825)¹

In 2016, under the presidency of Juan Manuel Santos, the Colombian government was finalizing drafts of a peace accord that would bring the 60-year war with guerrilla (FARC) rebels to an end. At the negotiations in Cuba, a special subcommittee had the task of outlining the perverse effects of gender-based violence during the war and its disproportionate impact on women. The subcommittee members were also responsible for suggesting reparations for female victims. These suggestions were to be included in the final draft of the accord that would become publicly available to every Colombian by August, 2016. In the final negotiation stages, however, this subcommittee’s work became a focal point of criticism by Colombia’s conservative right led by former President Alvaro Uribe.

Uribe’s political party, which opposed the peace negotiations from the start, had spent months publicly vilifying what they called “gender ideology.” Their campaign against gender

¹ “Mensaje del vicepresidente de la República, January 2, 1825,” *Gaceta de Colombia* (Bogotá) No. 169. “Si volvemos los ojos hacia atrás y recordamos lo que era Colombia el día de la publicación de nuestro código, reconoceremos con agradable sorpresa que hemos recorrido un gran espacio venciendo enormes dificultades.”

ideology crystalized after Colombia's Department of Education – led by the country's first openly lesbian Secretary of Education – distributed sex education manuals (*cartillas de educación sexual*) to help public school teachers prevent discrimination based on sexual orientation in their classrooms. According to conservative leaders, teachers, and families, the manuals promoted a gender ideology that threatened to destroy Colombia's Catholic society by normalizing sexual diversity in public schools and legitimizing same-sex marriage and adoption. After mounting pressure and protests, President Santos took the manuals out of circulation in August. Two months later, a majority of Colombians voted against the signed peace accord and several members of the president's cabinet resigned, including the Secretary of Education.

Conservative politicians and activists used this victory to demand modifications of the peace accord. They demanded, among other things, the removal of any references to gender in the revised draft that was now due in November, 2016. Just as in the manuals, they said that the use of the word gender was a conspiracy meant to change Catholic values and the only traditional family unit, headed by the union of a man and a woman. Beyond delaying the approval of the final revised version of the accord, this political tactic also overshadowed the advancements made around gender-based violence in Colombia's armed conflict and discredited the concept of gender in public debates.²

From Ann Arbor, I followed the Colombian and international press coverage of these ideological battles and political tensions. The growing hostility around the concept of gender made me think about the impact that historical scholarship like mine could have in debates occurring at such a specific social and political juncture: a country's attempt to end years of civil war. This thought became even more salient when, as conservatives counted the number

² I thank my friend and colleague Ana María Silva, for the time we spent together discussing and interpreting these events as they unfolded in the fall of 2016.

of times the word gender appeared on the first version of the accord, news about battered and raped women continued inundating local newspapers and national evening news broadcasts.

Given this context, I asked, in what ways could the themes and threads that run through these chapters be relevant to contemporary discussions about gender and violence against women in Colombia? How could I establish a dialogue between past and present without running the risk of being teleological? Although I am still pondering on these questions, I observe that the events described above signal to the ways that gender and patriarchy are shaping social relations of power in Colombia today. In this epilogue, I illustrate this dynamic by focusing on a high-profile criminal case that took place shortly after the revised final version of the peace accord was signed in late November. This is significant because it shows how a lack of understanding about the ways gender constructions shape society is reflected in the contemporary use of language in media outlets (the press and social networks) to dissect violence against women.

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On the early morning of Monday, December 5, 2016, I was in my Ann Arbor home rewriting a paragraph for Chapter 4. While writing, the Colombian version of NPR's Morning Edition was playing in the background. The morning was running smoothly until a breaking news story interrupted my writing flow: a 38-year-old architect had allegedly abducted and killed a seven-year-old girl named Yuliana Samboní the day before in Bogotá. News about abductions are not uncommon in Colombia, but this particular case rapidly caught the attention of the authorities and the press. It did not make sense, within Colombia's class hierarchy, that an architect would abduct and kill a lower-class girl in broad daylight. The radio hosts asked: Was he mentally ill? Was he under the effects of hallucinogenic drugs? How had he met the girl of

“humble origins”? Yuliana was a poor, indigenous girl born in El Tambo, Cauca – a town that figures in the criminal cases I analyze throughout this dissertation. After being forcibly displaced allegedly by guerrilla rebels, Yuliana’s family moved to Bogotá in 2012 and settled in a *barrio de invasión*, or shantytown located on the east side of Colombia’s capital.

Across Latin America, *barrios de invasión* are known as zones in the outskirts of urban centers inhabited by groups of poor families without proper government authorization. As such, these neighborhoods lack necessary services (no schools), infrastructure (paved streets), and decent housing. In Yuliana’s case, witnesses – other children – reported that they were playing with Yuliana on the street when a stranger forced her into his car and drove away. All pointed to the abductor’s luxury SUV because it stood out against their neighborhood’s background of poverty. Yuliana’s mother immediately reported her daughter’s disappearance to the authorities, who found the main suspect within hours. It was Rafael Uribe Noguera, the son of a wealthy and influential family from the capital. By noon, I had completely abandoned my dissertation writing and was, instead, watching the Colombian national TV news online and following the conversation on Twitter and Instagram. Social media users (including celebrities, politicians, and athletes) used the hashtags *#yosoyyuliana* (I am Yuliana) and *#niunamas* (Not another [woman]) to condemn Rafael’s brutal actions and demand justice.

I won’t go into all the details of this disturbing and entangled case, but a few things need to be said for clarity. The police found and arrested Rafael in a private clinic on December 6. He was charged with abduction, sexual abuse, and femicide (*secuestro agravado, acceso carnal violento y feminicidio*). Rafael accepted all charges and, on March 29, 2017, he was sentenced to fifty-one years in prison. At the time of his arrest, Rafael was a patient at a clinic because his two siblings had checked him in to be treated for a supposed cocaine overdose. This meant that when

the police arrived at Rafael's luxurious apartment building on the late afternoon of December 4, the siblings had already taken Rafael to the clinic. They, however, left behind Yuliana's dead body covered in cooking oil and with signs of torture and sexual abuse. By taking Rafael to a private clinic, the siblings hoped that a medical report about his drug and alcohol intoxication could both delay his arrest and justify his actions. When these details were revealed by news outlets, crowds of people on the streets and in social media denounced how Rafael's class privilege would likely win over Colombia's justice system. Given the level of outrage, the country's attorney general pronounced himself via Twitter and promised Colombians that there would be justice and that it would happen immediately (*Habr  justicia y de manera inmediata*).

For weeks, media outlets described how Yuliana's case "shocked" and "paralyzed" the country. On social media, users posted message after message asking, "why a little girl?" From the distance, I wondered how people's questions and clamors for justice would be unpacked and explained in the national conversations that would follow. I painfully wondered about this because months before Yuliana was killed, conservative activists had been casting a negative light on "gender" as an evil concept. In light of this, I thought, how would indignant Colombians make sense of what happened to Yuliana and to other hundreds of women in 2016? In other words, through what lens would Colombians examine and understand contemporary violence against women?

§

On Sunday, January 15, 2017, a popular investigative journalism evening show, *S ptimo D a*, aired an episode about Yuliana on one of the two private TV channels in Colombia.³

³ *S ptimo D a*. "Castigo ejemplar." Directed by Manuel Teodoro. Caracol Televisi n, January 15, 2017.

Because these channels have a monopoly over national TV coverage, this type of shows play an important role in shaping the perspectives of the wide audiences they reach across the territory every Sunday night. The show framed the one-hour episode about Yuliana and two other girls around one question: what should an exemplary punishment for pedophiles be in Colombia, where neither the death penalty nor life imprisonment exist? The show's producers set out to answer this question by interviewing doctors, legal experts, and the families of victims. Their investigation showed that pedophiles in Colombia enjoy more benefits in the judicial process than they should be entitled to. This was explained, in their view, by the protective model of Colombia's constitutional court (*el espíritu garantista de la corte constitucional*.) In other words, they argued that the country's high court in its eagerness to protect the liberal constitution afforded pedophiles too many rights for abusing children. In light of Yuliana's case, the show claimed that an exemplary punishment was one that would not grant convicted pedophiles benefits to reduce their sentences. They claimed that by limiting judicial benefits, potential criminals would think twice about committing a crime. Such measure would also guarantee that men who failed to control their "dangerous instincts" and abused children would receive the punishment they truly deserved.

Overall, this show's investigation concluded that judicial benefits enjoyed by convicted criminals in Colombia signal flaws in the application of justice that must be corrected. Beyond this, however, the show's focus on the category of pedophiles ignored a discussion specifically about one of the crimes for which Yuliana's murderer was sentenced: femicide. After Rafael was charged and in the months leading up to the final sentence, social media users debated the significance and appropriate use of the term femicide. According to the World Health Organization, femicide "is generally understood to involve intentional murder of women because

they are women, but broader definitions include any killings of women or girls.”⁴ On social media, many users described the word femicide as a fashionable term for crimes that already had names. This reasoning suggested that Rafael had not killed Yuliana because she was a girl. He killed her because he was a child abuser, a pedophile. This, too, was the stance that the TV show assumed and disseminated.

A month after Rafael was sentenced, however, *Séptimo Día* aired another one-hour episode titled *Celos enfermizos*, or sick jealousy.⁵ The episode’s goal was to explain the reason behind high figures of femicide – defined broadly by the show as violence against women – in Colombia. The reason was, quite simply, that men who abuse women suffer from an illness: they cannot control their jealousy. Sick jealousy was the reason why, according to the show, 135,000 women were victims of physical violence in Colombia between 2014 and 2016. The show producers consulted with psychologists from Colombia and the United States, who agreed that pathological jealousy is a real condition. One of the psychologists, Susan Krauss, said on camera that people “are products of [their] own culture” and, in the Colombian context, cultural traits go beyond *machismo*. What did this mean? An anthropologist explained that in Colombia, men view women as objects and as their property. That perspective, he said, was a manifestation of a deeply rooted “cultural legacy” from colonial times. This seemed like a key moment in the episode to discuss, perhaps, historical constructions of gender and patriarchy. However, the hosts simply suggested that in Colombia, that nameless “cultural legacy” continued to chain (*encadenar*) women and men to the past. An example was how:

⁴ Claudia Garcia-Moreno, Alessandra Guedes, and Wendy Knerr. *Understanding and addressing violence against women*. World Health Organization, 2012.

⁵ *Séptimo Día*. “Celos enfermizos.” Directed by Manuel Teodoro. Caracol Televisión, April 23, 2017.

[a]n obsessively jealous man is not different from a slave. Both are chained, they cannot escape, they yearn for their freedom, but jealousy rots them and torments them⁶

As the episode aired on TV, viewers took over Twitter with the hashtag *#carceldeloscelos* (Jealousy's jail). The majority of tweets repudiated the show's angle to explain femicide in Colombia. Many viewers resented how the show turned convicted criminals (*victimarios*) into victims by normalizing their behavior as a pathology (*celotipia*) and describing them as "slaves of their own imagination" (*esclavos de su propia imaginación*) and "men dominated by jealousy" or by "irrational impulses" (*hombres dominados por los celos; por impulsos irracionales.*) In a Twitter post on April 23, 2017, a grassroots women's organization (@rmjcolombia) stated it bluntly, "No no no no. No, it's not jealousy, it's not an illness, it's patriarchy. [Men] are here and they abuse us, they kill us."⁷

§

The way conservative politicians, activists, and families across Colombia have demonized the concept of gender in the last year has and will have critical consequences for everyone. In a country where the study of gender is in its early stages in the academic field of history, this situation may threaten the availability of funds for research projects and events that seek to stimulate more fruitful discussions about the importance of gender as an analytical tool. Without gender, how could we interpret the position of widely-watched television shows that justify, much like the judges and the lawyers of the early nineteenth century, the behavior and

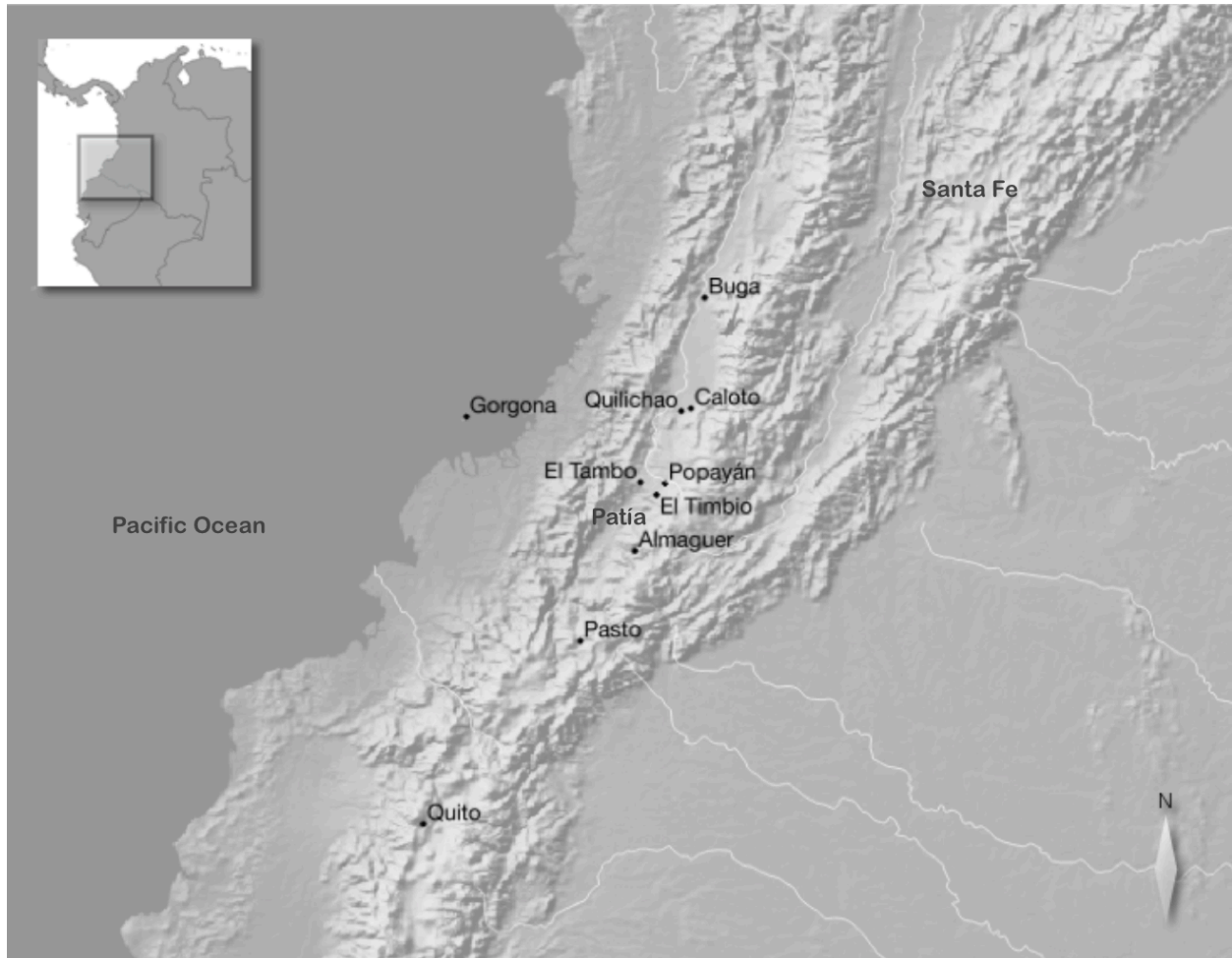
⁶ "El celoso obsesivo no es muy diferente a un esclavo. Ambos están encadenados; escaparse es muy difícil; anhelan la libertad; los celos los carcomen, los atormentan."

⁷ Red Mujeres Jóvenes, Twitter post, April 23, 2017, 10:35 pm, <https://twitter.com/rmjcolombia/status/856335678262702080>. "No no no no No son celos ni enfermedad es patriarcado. Ellos están aquí y nos violentan y nos matan."

actions of abusive men by alluding to external causes? How could we understand the historical role that gender continues to play in the creation and implementation of laws? How could we understand the Colombian case in a broader context in which the justice systems in other Latin American countries such as Argentina and Chile have enacted laws to punish femicide? Beyond academia, this issue also impacts the way ordinary citizens develop and exchange ideas about domestic and gender-based violence in their private spaces as well as in public platforms and forums. And, tragically, it is reflected in the women and girls who suffer abuse. For all of these reasons, this is a pivotal time to make the study of women and gender even more relevant inside and outside academic spaces.

FIGURES


Figure 1. Province of Popayán



Map created by Ana María Silva.

Figure 2. Petition by María Isidora Polanco

Vol. de R. Rad. de S. D. Fernando
11 Ja
 S. Alcalde Ord.^o

 María Ysidora Polanco vecina de esta Ciu.^d Madre de Ysenta Polanco. ante V. Md. Segun dño. pareco, y digo: Que ha llegado a mi noticia haverme presentado Severino Gonz.^o a quien se estaba llamando por edictos en la Causa Criminal que debe seguir por las cridas mortales que le dio a dha mi hija, por no haver querido Condes endea a vus torpe descor: En esta aserucion ocurrio ala piedad de V. Md. V. plique dele se viva mandan que dha debeano me satisfaga veinte pesos que impendi en sustentan ala referida mi hija en su enfermedad los que adeudo a varias personas que movidas ala Caridad me socorrieron prestandome para lo necesario a su sustento, y tambien cinco pesos de un rebajo que despedas con el cuchello que le dio las cridas, y asimismo los dias que estubo en cama sin poder haver diligencia alguna, pues la ocupacion de dha mi hija era estar sujeta a su trabajo endonde la ocupaban que no deaba de ganar sus dos, o tres mil. dineros. Por tanto



A V. Md. pido, y suplico se viva proveer, y mandan como solo yo y no necerario fuere.


María Ysidora Polanco


Popayán y Octubre 14 de 1811

Agregues ala causa, y Pare al Acuson

Sarasti
Antoni


Astudillo 

En el mismo dia se hizo saber el Dño. q. antecede ala parte presentanse doyfee - Astudillo 

En quinze del mismo mes, y año se para este exped. re. al estudio del D. D. Felix Restrepo doyfee Astudillo 

Archivo Central del Cauca, Popayán-Colombia, “Causa criminal contra Severino González, 1811,” Ind, J-Cr, I-3, sig. 1773

Figure 3. Deposition by Matea Tejada

REPUBLICA DE COLOMBIA
ANOTE 19.24.
Y 1825.

Sr. Intendente

Matea Tejada vecina de esta Ciudad, muger legitima de Fran. Fernandez ante V.S. seun dño digo: que el Sr. Juez Político ha tenido puer al estado mi marido p. destinarlo al servicio de las armas p. la mala vida q. me da, cuya circunstancia lo hace comprendia en los decretos del Gobierno p. las Levas. Yo estoy entendida q. se trata de ponerle en libertad en espuecos de una informacion mala q. se ha actuado sin mi citacion, y dejandome expuesta al furor de un hombre q. jamas ha consultado al honor, ni ala prudencia. Las dos q. ^{expelidas} presentes a V.S. son los testigos mas inefragables de su mala conducta y de los amargos ratos q. padesco, puer este hombre puer de solo p. malo informar de algunos peadidos q. no han reflexionado los danos q. causan ala sociedad conyugal. En la prision, Fernandez ha vomitado contra mi expresion. amenazante, q. indican su puer intencion, y si en este caso no encuentro la proteccion del Juroado, desde luego seré víctima.

V.S. pido y sup. se siava toman en consideracion esta materia, y puer cuanto conduca ala reunion de una pobre muger devalida. Top. En 27 de 25.
Entre reg. Laguchita: O. S.

Matea Tejada

Archivo Central del Cauca, Popayán-Colombia, "Fernández contra el juez político, 1825," Ind, J-Cr, I-3, sig. 2142

Figure 4. Evidence presented by Matea Tejada

mi mas apreciable cosa de todo mi Corason no pue
do menos qe divulgate esta afesaa de los Sentimien
to qe abraan tu pecho; te encargo y te obligo por toda
la Santissima Trinidad y por esa ifita qe tengo te
dejes de minusas pues Siempre Soy tu esposo y no
puedo menos sino cumplir con las obligaciones
de mi estado. y asi no tengo ese Corason tan in-
taepido por con tu negro qe esas son focuidas de
una Rabia y los puedo estar en el conocimiento
qe no hay hombre quando acabayo, y mayormente
el abarme creido de los quentos qe me meti
eron contra vos. y asi espero de tu mas pia-
doso y berino Corason qe te deses der

Sentimientos pasados Pues con miqo abo de
ben la Casa de Dios y Separanderos nunca
entraremos en gracia de Dios y asi espero de
tu favor por vida de tu madre y de la defun-
ta mania manuela te me lleques aqui para
blaa quatro palabras con vos qe tengo qe decir
qe son muy interesantes,
y manda a tu mas aferto esposo qe con
ancias desea verte.

Juan Antonio Fernandez

Archivo Central del Cauca, Popayán-Colombia, "Fernández contra el juez político, 1825,"
Ind, J-Cr, I-3, sig. 2142

Figure 5. Simona Mosquera's testimony in the case of Gregoria Sánchez

SELLO CUARTO 3

VALE MEDIO REAL, AÑOS DE MIL OCHOCIENTOS
VEINTIOCHO Y MIL OCHOCIENTOS VEINTINUEVE-

*Venida, y siete del mismo mes, y año se solucio G. Simona Mosquera
p. de ocasionel en su casa, y no fue habida lo q. yompa G. Tillyema
Gacheco*

Declar. de Simona Mosquera
na Mosq.
Mad. Oba.
sin sen.

In veinte, y ocho del mismo mes, y año se compareció Simona Mosquera vecina de esta ciudad a quien el Sr. Alca. G. ante mi le recibí juramento de Dios, y de San Pedro, y una Señal de Cruz, bajo cuya gravedad prometió decir verdad de lo q. supiere, y le fueron preguntado, y siendo sobre el caso cabeza de proceso inteligencia dijo: q. el Jueves veinte, y tres q. la tarde se le apareció en su casa Gregoria Gómez muger de Marcelino Rojas, y conociendola triste le preguntó q. tema, y q. estaba triste q. si habia peleado con su marido, y le respondió q. si, q. le habia pegado traza con el machete, y la habia echado de la casa, y q. iba a quejarse a un Juez, y se fue, y cuando volvió le dijo q. le habia dicho el Alca. q. volviese al otro día, y q. no volvió: q. el viernes le dijo a la exponente q. comoharia y saca un reboro, y empenarlo y trabajar q. sosteniendo y la declarante entonces le dijo q. ella le prestaría un poco, y habiendose dado salio a buscar q. comprar, a poco tiempo volvió trayendo unos guacas, q. elabado subió con ellas a la plaza a venderlas, y cuando volvió le expuso a la exponente q. su marido la habia encontrado G. S. Aguirre y q. la habia recomenado q. q. se fuese a su casa, y q. le aconsejaba, q. volviera, o no, y le contó q. que habia de hacer q. siempre habia de volver q. eran pleitos de casado, q. no faltaban, y q. estaban obligados a su fine unos, a otros, y q. como la declarante tenía q. hacer una dilig. salio y se fue, q. cuando volvió ya encontró la novedad de q. su marido la habia herido. Que lo dicho en la verdad en fuerza de su juramento, y toda q. le fue declaracion en ella se afirmó, y ratificó dijo sea de treinta, y seis años, q. fecho, y no le temo, y por no saber firmar lo hace el Sr. Alca. G. ante mi de q. no se acuerda con q. tema.

Simona Mosquera

Archivo Central del Cauca, Popayán-Colombia, "Contra Marcelino Rojas, 1830," Ind, J-Cr, I-6, sig. 4514

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