

COMENTARIOS

LAW AND CULTURAL VALUES IN COLONIAL MEXICO: THE CASE OF PRENUPTIAL CONFLICT SUITS *

Patricia Seed in *To Love, Honor, and Obey Colonial Mexico: Conflicts over Marriage Choice, 1574-1821* explores changing cultural values evident in prenuptial conflict suits between parents and children during the colonial era. Charles III transferred jurisdiction for those suits from ecclesiastical courts to civil courts in the late 1770s. Illustrating that control over the outcome of prenuptial conflicts shifted from the child to the parent, Seed carefully developed her thesis that "[...] the ideological changes accompanying the initial stages of capitalism [...] brought patriarchy in the authoritarian sense to bear on parent-child relations concerning marriage". Seed applied content and textual analysis to marriage applications, lawsuits over proposed marriages, canon law, civil law, and the ecclesiastical and secular literature of the era. This study, a model for the analysis of changing values and the impact of those changes on the family and law in colonial Mexico, is a significant contribution to the literature.

Following a brief introduction, the book is organized in three parts. Part I, "The Early Colonial Period, 1574-1689", contains five chapters: "The Mexican Background", "Will", "Love", "Honor", and "The Role of the Church". These chapters define the basic cultural values and institutional responses to uphold those values during the sixteenth and the seventeenth centuries. Part II, "The Transitional Period, 1690-1779", contains four chapters: "Changing Attitudes Toward Honor", "Changing Attitudes Toward Love and Will", "Interest and Patriarchy", and "Honor as Status". Key to the development of Seed's thesis and key to the explanatory power of that thesis are the changing definitions and valuations of love, free will, honor and interest that are

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analyzed in these chapters. With apt quotations from relevant cases and effective use of secondary sources, the author shows that popular definitions of words and new cultural values changed prior to formal changes in law and jurisdiction. Part III, "The Transformation of Church and Crown", also contains four chapters: "Changing Positions of the Church and Crown", "The Church's Retreat on Aggressive Intervention", "The Church's Retreat on Doctrine", and "The Royal Pragmatic and Social Inequality". These chapters show that during the eighteenth century in New Spain, prior to the 1778 promulgation of the royal Pragmatic that ordered litigation of prenuptial conflict into civil jurisdiction, the Mexican Church and local secular authorities had responded both formally and informally to ideological and cultural changes. Finally, in a brief conclusion Seed reflects on the significance of this ambitious case study within the context to the extensive body of literature on the history of the family in the western world.

The study, written for audiences both familiar and unfamiliar with Hispanic culture, begins with a brief recounting of the 1591 real life Mexican drama of Gerónimo and Juana. Like their sixteenth century literary counterparts - Shakespeare's Romeo and Juliet, these youth had fallen in love and wanted to marry against the vociferous objections of their rival fathers. Gerónimo's father, much like Romeo's father, forcibly confined his son in a locked room in order to prevent his marriage to Juana. Unlike the Shakespearean tragedy, though, this drama concluded happily for the couple because with popular support from other relations and friends, the royal police at the behest of an ecclesiastical judge freed the young man so he could marry his beloved. Cultural values, canon law, ecclesiastical courts, and the royal police supported the children's preference over parental objection. Gerónimo and Juana, the very day of his release from confinement, wed in secret; shortly thereafter, the Church publicly announced the couple's marriage.

This enchanting tale of the children's triumph over parental objections set the stage for Seed's analysis. Within two centuries public attitudes, royal authority, and canon law shifted to favor the parents. In a most similar 1785 case, "[...] no royal police went immediately to the rescue, no church official ordered the secret marriage of the couple, and the son languished for several months [...] while his father persuaded officials of the royal court that as a father he had superior rights over his son's choice of a wife". Parental authority prevailed in late colonial Mexico. Seed showed that parental authority prevailed

because the Church and the state by the late eighteenth century had changed their policies in response to different social values and a different popular culture. By the eighteenth century parental authority, indeed normative patriarchy-popular cultural support for social organization based on the legal supremacy of the father, superceded traditional cultural definitions of love, will, and honor and the right of children "[...] to follow their own will and choose marriage partners on the basis of attachment".

Legal and political historians might argue that this change in jurisdiction is but one more indication of the subordination of the institution of the Church to the crown, a change that illustrates the emergence of the dominant secular state during the eighteenth century. Seed offers much more than an illustrative case study to support that traditional political and legal history theme, however. In fascinating detail and with penetrating logic steeped in the literature and amplified with exceptional archival documentation, she shows that this change arose not from the ambitions of the crown to subordinate the the Church; rather, normative authoritarian patriarchy became valued culturally before the crown began to limit the ecclesiastical *fuero*. Even before the enlightened Bourbons became the elite noble Spanish family, peninsular and American cultural values had begun to change. And before Charles III, that most enlightened of the enlightened despots, became the monarch, the behavior of ecclesiastics and royal officials had changed in response to different cultural values. The crown during the second half of the eighteenth century acted to institutionalize some of those new cultural values. Seed is careful to point out that changes in values are neither uniform nor universal; traditional cultural values remained stronger in some families than in others. Nevertheless, she leaves little doubt that normative patriarchy began to replace normative paternalism in social behavior by the second half of the seventeenth century.

Normative paternalism was the cultural norm during the sixteenth century when the Council of Trent (1545-1563) reconfirmed the sacramentality of marriage and the Church's exclusive ecclesiastical jurisdiction over matters relating to marriage. In contrast to the trend in the new protestant cultures of Europe, hispanic cultures during the sixteenth century did not reflect normative patriarchal values, values evident in other European cultures that required parental consent for marriage, in essence the secularization of marriage and the redefinition of marriage as a contractual relationship. Essential to Seed's argument that cultural change spurred behavioral change, which in turn led to

legal and institutional changes, are the three major values affecting marriage: *voluntad*, *amor* and *honor*. The changing definitions and valuations of will, love, and honor were inherently related to the cultural appreciation of self-interest. A summary of Seed's discussion of changing cultural values and will explain the essence of her argument.

Voluntad. The Council of Trent's decrees supported exclusive jurisdiction of church courts over matters relating to marriage. Parental consent to marry was not required. Still, the conflict between an individual child's wishes and obedience to parents, "Honor thy father and thy mother", remained unresolved in canon law. Nevertheless, during the sixteenth century, hispanic society, as evidenced by moral treatises, guides to confessors, hispanic theatre and literature, and case files, valued the exercise of free will in marriage. The doctrine of individual consent to marry and the exercise of freedom of choice or free will in choosing a marriage partner was grounded in the belief that *voluntad* was rational. Moreover, theologians and secular writers cast negative value on parental exercise of force in matters of marriage. Parents should not use force to prevent marriage nor should they use force to constrain a child to marry someone a parent might prefer as a spouse for the child. Perception of *voluntad* as rational, however, came into doubt as young men and later young women began to justify terminations of engagements with arguments of immaturity, "disturbed mental state", and ignorance. Parents too soon began using arguments of immaturity and irresponsibility to contest children's prenuptial agreements. By the late eighteenth century child's *voluntad* came increasingly to mean rebelliousness; *voluntad* became defined culturally as irrational or emotional rather than rational.

Amor. This same transformation of meaning was evident in the changing use of the word *amor*. Sixteenth century hispanic writers expressed a connection between will and love, based on "a belief in one's capacity to control emotions or passions". Though recognizing illicit love as blind passion, hispanic writers "exalted love for what were termed 'honest ends', or marriage as worthy and well chosen". Marriage for love was valued; marriage for self-interest or personal gain in sixteenth and early seventeenth century society was looked on in a decidedly negative fashion. Ample case evidence illustrates that economically unequal marriages, even those that thwarted dynastic intentions, were accepted by Catholic courts and cultural and moral imperatives. Marriage for love, though, came to be seen as an emotional rather than rational phenomenon. Key to that transformation was the changing popular definition of honor.

Honor. Honor as the sexual honor of Spanish women and honor as the sacredness of a pledge or promise were two aspects of the complex Spanish social code. Honor was personal and public; it was virtue "For men, maintaining honor implied a willingness to fight, to use force to defend one's reputation against those who would impugn it". An honorable woman had to conduct herself in a virtuous fashion. "Before marriage, honorable conduct meant the appearance of chastity; afterward, fidelity". While it is not clear if dishonorable conduct by men, such as battlefield cowardice or refusing to fight slander and libel, affected public perception of the honor of the women in his family. Seed explains that a man's honor could be impugned by the public disclosure of his wife or sister's sexual activities. Extraordinary moral authority was brought to bear on young men who pledged to marry and on young whose sexual activities became public, even within the family.

During the era of transition from paternalism to patriarchy, attitudes toward honor began to change. Men became willing to go back on their promise to marry; and as families supported their sons, the Church and State retreated from long standing policies and activities that previously had been used to enforce the honor of women. After 1650 the recourse to secret marriage, principally through the dispensation of marriage bans, the recourse that permitted Gerónimo and Juana to marry, became a recourse only for the very summit of the colonial elite. Royal officials also retreated, refusing to respond to Church requests for enforcement assistance. Responding to changing social values and behavior, the Church redefined prenuptial conflicts as *de parte* or private suits rather than *de oficio*, or actionable by the Church. With the curtailment of the secret marriage option, the refusal of royal police to enforce Church court orders, and the extinction of *de oficio* action by the Church, children who wanted to marry against their parent's wishes faced theretofore unsurmountable odds. Patriarchal authority over marriage choice became socially acceptable.

Interés. The cultural acceptance and support for patriarchal authority over marriage choice followed widespread cultural acceptance of new definitions and valuing of self-interest. Because traditional Catholic values associated greed with immorality, through the sixteenth century in Hispanic culture associated self-interest and the calculated pursuit of economic gain with the sin of covetousness. Elite and popular attitudes toward calculated behavior and self-interest had changed by the late eighteenth century. Tracing the roots of change from Machia-

velli's *The Prince* through Spinoza, Seed states, "Calculation became a desirable human characteristic, and acquisitiveness a means to achieve order, peace, and predictability in human society". That perspective and the belief that man could control his passions through reason were the philosophical foundations for the emerging market economy in Western Europe. As Spain created its own mercantile capitalist system during the eighteenth century, calculated pursuit of economic gain had acquired cultural legitimacy and the social prestige of entrepreneurship supplanted traditional religious and moral attitudes toward gain. Though acquisitiveness remained one of the seven deadly sins, secular writers and royal advisors supported the notion that money was a means to happiness.

In New Spain, the mercantilist flower of empire with its vast silver deposits and ennobled miners and merchants, "[...] status hierarchies openly based on wealth appeared, and as they took shape, the practices of the most successful Hispanic families in Mexico served as model and set fashion for others". Analyzing the language used in prenuptial conflict cases, Seed draws attention to the fundamental changes evident in mid-eighteenth century prenuptial conflict suits:

[...] a new toleration by church courts of parents' use of economic sanctions in opposing their children's marriage choices; an increasingly general acknowledgement by some church officials, parents, and their allies that considerations of social status and economic self-interest should take priority over love and attraction in choosing marriage partners; and a novel legitimation of the role of parental authority in children's marriages.

"The newly recognized parental authority was specifically patriarchal authority". The shift toward parental authority and away from youthful choice was accompanied by claims that only one parent, the father, had a legitimate role. Moreover, the father had the right to exercise his authority over both sons and daughters. "Such claims emphasized the belief that marriage decisions were strategic rather than personal, and that the role of the father in such decisions was critical". In essence, the economic role and power of the father in the mercantile capitalist economy of eighteenth century Mexico translated into political authority within the family. This transformation of the father into the patriarch became official as the royal Pragmatic that granted parental veto rights in cases of social inequality also admonished mothers to support the father's wishes.

Noting that not everyone supported the doctrine of authoritarian patriarchy, Seed nevertheless effectively argues that changing cultural definitions of *voluntad*, *amor* and *honor* and a new appreciation for calculated self-interest long preceded the transfer of prenuptial conflict disputes to civil jurisdiction. There was no moral outrage about civil intrusion into this aspect of the ecclesiastical *fuero* when the Pragmatic was published in Mexico City. In fact, armed with the Pragmatic parents cited it as justification for objecting to their children's choices for spouses well beyond the strict definition of substantial social inequality as racial inferiority. Parents pointed to differences in social status, wealth, and political power, that is to a lower ranking in the perceived social hierarchy, to justify and explain their objections to children's choices. More significantly, the civil courts in Mexico were sympathetic to these explanations. By the late eighteenth century Mexican society equated economic inequality with social inequality.

In the emerging capitalist system, the *raison d'être* for patriarchal authority, individual right were the rights of the patriarch. And in that system legal asymmetry came to characterize the relationship between parents and children and between husbands and wives in the area of marriage choice. Seed's interpretation, supported by ample documentary evidence, gives rise to new questions about the impact of the capitalist system on society in late colonial Mexico. Are there identifiable conflicts that have their roots in the rise of mercantile capitalism? Was there a relationship between cultural change and political change? Did the emergence of the caudillo in nineteenth century Mexico have its roots in the rise of the patriarch? What additional arenas of institutional and legal change may be attributed to other changing cultural values? That these questions are beyond the scope of Seed's study is a tribute to the significance of.

TO LOVE, HONOR, AND OBEY

In clearly establishing the relationship between cultural change and mercantile capitalism in colonial Mexico, Seed has laid the groundwork for new approaches to family history and the history of law in Mexico. This study, one that should be translated into Spanish in order to become accessible to students and scholars in a variety of disciplines,

is rapidly becoming required reading for historians. Because it analyzes the cultural meanings of words in legal and moral arguments in pre-nuptial conflict suits, literary and ecclesiastical writings, and law, *To Love, Honor, and Obey* is a model for understanding cultural, economic, and legal change.

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