

Rechtsgeschichte Legal History

www.rg.mpg.de

<http://www.rg-rechtsgeschichte.de/rg27>
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 27 (2019)
<http://dx.doi.org/10.12946/rg27/090-104>

Rg **27** 2019 90–104

Ana de Zaballa Beascoechea *

Indian Marriage Before and After the Council of Trent: From pre-Hispanic Marriage to Christian Marriage in New Spain

* Universidad del País Vasco UPV/EHU, ana.dezaballa@ehu.eus



Abstract

This article, based on the canonical norms and the manuals for parish priests in its various modalities, analyses the problems of assimilating marriage practices among Indians, as well as the discussions and the solutions adopted by the first canonists of New Spain. These relied on natural law, canon law and indigenous legislation. At the same time, through the pastoral practice gathered in the aforementioned sources, what can be shown is the adaptation of the doctrine on Catholic marriage to the local and particular aspects of indigenous reality, the permanence of pre-Hispanic customs, as well as the incorporation of certain corrupt European practices, such as clandestine marriage. What emerges is an active indigenous population who showed initiative regarding the prevailing legal culture and everything that could be useful for them in the new established order.

Keywords: Marriage history, Trent, Indian marriage, pre-Hispanic marriage, canon law in colonial Spanish America



Ana de Zaballa Beascochea

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Introduction

When studying the transformation of Indian culture during colonial times, it is common to consider that transformation resulted from two factors: First, the policies imposed by the Crown, explicitly seeking hispanisation; second, the activities performed by missionaries, which sometimes backed up such policies. Nonetheless, there seems to be a third aspect that has been overlooked: Indians' willingness to make the culture, law, and privileges pertaining to the new established order their own.

I have discussed some examples of the reception of legal practices by the Indian population,¹ which can be understood as the reception of the Spanish legal culture to serve Indians' interests. In those previous studies, I have explained the presence of natives at Spanish courts of law for different reasons, including marriage issues. The idea of the appropriation of Spanish habits and culture by Indians can be called into question when considering that marriage habits were imposed, since polygamy – among other Indian customs – was forbidden and punished according to Christian marital morality. While this is true, there were some other aspects concerning marriage that could have been disregarded by Indians but in fact were not. The fact is that Indians presented accusations, complaints, and lawsuits concerning issues that can be considered rather proper of *criollos* – namely, the importance given to a marriage promise, women's freedom to marry, and the need for parental marriage permission, especially in the case of unequal marriages. That is, when analysing marriage among Indians, it can be seen that not

only was Christian marriage assimilated, but so too were certain habits and customs, social links, assumptions or preferences, and practices related to Christian marriage, over pre-Hispanic habits. All of these demonstrate a profound assimilation of marriage and social guidelines.

Imolesi² questions historiographic studies that emphasise both a supposed coercive power on the part of the Church and a generalised resistance from natives to Christian marriage. These imposition-resistance interpretations are contradicted by the fact that, on the one hand, there were privileges granted by the Church so as to suit Indian marriage habits, and on the other, that the Indian population responded to Christian marriage in a wide array of ways, in addition to the strategy of gradual modification of behaviours especially used by Jesuits. Medrano and Kellogg,³ just as Traslosheros⁴ or Rojas and Lesbre,⁵ insist on the assimilation and exploitation of Spanish legal culture by natives, analyse recent historiography on what they call »Indian negotiation«, and affirm that natives played an active role in instances of justice. Thus, little by little researchers have begun to gain a wider and more diverse perspective of an Indian population that demonstrated dynamism and initiative in the face of the new social, legal, and political order.⁶

The sources used for writing this paper are the pastoral tools used for Indians in New Spain. Treatises and manuals addressed to parish priests for Indians presented the peculiarities in the celebration of marriages as well as the problems, doubts, and ways to solve them. It was the missionaries of religious orders who faced for the first time the dilemma of how to apply the general

* This paper is part of the Ministry of Economy and Competitiveness's I+D Project, on Ecclesiastical Justice and the shaping of society in Colonial Hispanic America, HAR2012-35197 (sub-program HIST).

1 ZABALLA (2011).

2 IMOLESI (2005).

3 RUIZ MEDRANO/KELLOGG (2010); CUNILL (2012).

4 TRASLOSHEROS (2002); TRASLOSHEROS (2004); TRASLOSHEROS/ZABALLA (2010).

5 ROJAS (2010); LESBRE (2001).

6 Vid. For example, CASTRO (2010); CIRIZA (2019).

doctrine of the sacraments to these new Gentiles, so it was them – at least during the sixteenth century – who wrote the manuals, catechisms, and treatises to solve it. Except for the catechism resulting from the Council of Trent,⁷ called the Roman Catechism, valid and applicable to all Christendom, the rest of the catechisms, manuals, confessionaries, or any other tool intended to be employed by parish priests, have always been written for local use, as support for specific circumstances or populations.

These sources are a gateway not to court practices, but to those employed by parish priests. Their authors, who almost always took part in the first evangelisation or the subsequent cure of souls, adapted the theological, moral or discipline doctrine to the local and particular reality. It must be borne in mind that the moral doctrine of the Church is a source of legal interpretation, i. e., it is part of the complex body of doctrine in Canon law.⁸ These books show the solutions adopted in specific cases after consulting with different authorities and applying the considerations shaped by experience with Indians. That is to say, pastoral tools portray the ideas prevailing in the sixteenth, seventeenth, and eighteenth centuries: the experience and the adaptation of the doctrine and regulations to actuality, to the specific circumstances

prevailing at the colonies. These works spread the Tridentine doctrine, namely the reforms concerning marriage,⁹ and included the adaptations of the Third Mexican Council, across the Viceroyalty. As it is known, the Directory for Confessors outlined at the Third Mexican Council was not published,¹⁰ but it must be taken into account since it was written by the assembly of bishops and advisers participating at that council, based on the memorials and pastoral views or experiences discussed during the sessions. Therefore, it collected the common doctrine and the experiences of the first stage of pastoral actions in New Spain. The sources used for its creation make it a quite useful tool to get to know the prevailing rules, pastoral experience, and moral theology at the late sixteenth century.¹¹

In contrast with the numerous synods occurring in the Peruvian Viceroyalty and applying the Tridentine doctrine in the different bishoprics throughout the seventeenth century, in New Spain there had been a lack of synod regulations ever since the Third Mexican Council.¹² The specificity of synod legislation was intended to reinforce episcopal authority, since it was signed by all the diocese's clergymen and had the consensus of all ecclesiastic groups. Sometimes synods were convened so as to strengthen ordinances or discipli-

7 Recently, the Catechism of the Catholic Church, which presents the doctrine of the Second Vatican Council, is also valid for the universal Church: CATECISMO DE LA IGLESIA CATÓLICA (1992).

8 TRASLOSHEROS (2014).

9 In fact, just as Candau Chacón states concerning Spain: «la adaptación de la doctrina conciliar y su divulgación en los diferentes países habrían de venir de la mano de los Concilios provinciales, los Sínodos Diocesanos y, más comúnmente, los catecismos [the adaptation of the Council doctrine and its spreading in the different countries would occur hand in hand with provincial councils, diocesan synods, and most frequently, catechisms]». He is referring specifically to the Roman catechism, which constituted a gateway, written in Latin, for parish priests to the decrees from the council, and a path for the spreading of the reform concerning marriage. CANDAU (2006) 182–183.

10 Hipólito Vera quotes the only manuscript copy ever mentioned, which would have been kept at the Metropolitan Cathedral (oral communication by Alberto Carrillo).

11 «Así se hace patente la forma en que el Directorio de Confesores y Penitentes fue compuesto en sus partes mas originales, reproduciendo literalmente las resoluciones que en sus pareceres dieron los consultores teólogos ya juristas a dichas consultas. De esta manera el Directorio resume el concilio convirtiéndose en un instrumento de pastoral pensado como la manera practica de hacer efectiva la reformatión de la vida novohispana que constituía el principal propósito del mismo concilio [This shows how the Directory of Confessors and Penitents was elaborated in its most original parts, reproducing in a literal way the resolutions that according to their views the Theology advisers, now jurists, delivered. This is how the Directory summarizes the Council, becoming a pastoral tool intended to be a practical

way to enforce the reformation of life in New Spain, which was the main purpose of the Council]»: CARRILLO (2011) XXXIV.

12 Some synods were conducted in the vast territory of New Spain, but only one under the suffragan of the Archbishopric of Mexico: The synod at Yucatan, convened by Gregorio de Montalvo and possibly held in 1585, and whose text has not been found. See JUARROS (1810), vol. 2, 183. The Synod of Santiago de León in Caracas was held in 1687, and at the Santo Domingo ecclesiastical province several synods and a council took place: In 1610, the synod convened by Cristóbal Rodríguez Suárez and the First Dominican Council (1622–1623), called by Pedro de Oviedo; in 1626, a synod convened again by Pedro de Oviedo; and in 1683 and 1685, two synods convened by the Bishop Domingo Fernández de Navarrete.

nary rules established during an episcopal visit.¹³ After the Third Provincial Mexican Council that took place in New Spain, there was no other synod or council that allows tracking the evolution of concerns and solutions provided by the local ecclesiastical authorities regarding marriage issues, but until the late eighteenth century. Much of these local diocesan regulations can be found in provisions for governing dioceses, such as visit ordinances, provisions for the whole of the diocese or for specific problems ... and, of course, in pastoral tools, precisely the source this paper is based on.

1 The First Canonists in New Spain: Major Disputes Prior to Trent

In the early stage of evangelisation, missionaries focused on solving issues derived from pre-Hispanic marriage practices that opposed natural law and therefore prevented those relationships to become a sacrament and a Christian marriage. The most important of these obstacles were polygamy, incest or consanguinity closeness, repudiation, and lack of consent freedom.¹⁴ Monogamy and consanguinity degrees were two of the aspects that natives found most hard to observe, so missionaries had to insist on them. Historiography on Indian marriage has discussed in detail these aspects, so controversial when the relation was to become Christian, as well as the elements distinguishing Indian marriage from Christian marriage, in particular by the granting of privileges. Thus, this paper will only refer briefly to the main disputes¹⁵ prior to Trent, as analysed by the two main New Spain canonists in the sixteenth century. These problems were also treated in the First and Second Mexican provincial meetings and councils.¹⁶

The documents from the First Mexican Council¹⁷ (1555) present concerns about marriage that can be considered as general for the entire Christian world: First, secret marriage and impediments;¹⁸ second, bigamy, which was a possibility when traveling to far places and affirming being unmarried. Documents insisted this was likely to happen with Indian merchants, who used to go away from their homeland and even settle in another distant place where they could feign being single.¹⁹ In addition, the council also dealt with one of the topics of great importance to Trent: freedom. The council tried to draw attention to the fact that *macebuales* were in danger of lacking freedom due to the pre-Hispanic habit of *caciques* telling their subjects whom they must marry.

In the years of foundational evangelisation, these specific problems among the Indian population demanded different solutions from New Spain canonists: Issues derived from polygamy and mixed marriage – a Christian and a gentile – and, due to the endogamous practices of Indian cultures, the question of which consanguinity degrees had to be considered as natural law and therefore an obstacle for marriage.²⁰

Juan Foher²¹ and Alonso de la Veracruz²² tried to answer missionaries' questions on pre-Hispanic marriage based on late medieval legal sources. Despite the fact that, according to the general doctrine confirmed by the decretal *De infidelibus* by Pope Innocent III (twelfth century), marriage among gentiles was accepted as natural marriage, the actual problems missionaries faced were not easily solved.

According to both of these authors, the core of the arguments – whether in polygamy or monogamy – consisted in real marriage consent, absence of impediments related to natural law, intent of permanence and indissolubility, and obedience to the marriage laws prescribed by their legitimate

13 TRASLOSHEROS (1998).

14 SAHAGÚN (1982) 295–299; AZNAR (1992).

15 Concerning the theological argument on the validity or nullity of Indian pre-Hispanic marriage, see CASTAÑEDA (1974); AZNAR (1985); RÍPODAS (1977); ALBANI (2009); ZABALLA (2018).

16 For this topic, see: ALBANI (2009) 50–89, where the doctrine on

marriage of the Mexican meetings and the first two councils is revised.

17 Quotes from the First Mexican Provincial Council come from the edition by LORENZANA (1769).

18 LORENZANA (1769) 98–100 and 102–103.

19 LORENZANA (1769) 147.

20 AZNAR (1990).

21 FOCHER (1960); AZNAR (1986).

22 Veracruz published it for the first time in 1556 and then revised it for a second edition, adding Tridentine remarks. One of the most famous editions is the one issued in Milan in 1556. VERA CRUZ (2009); GOÑI (1999); TEJERO (1990).

rulers. That is to say, these authors found support on two basic ideas: natural law, on the one hand, and the laws and legitimate habits of those societies, on the other. The reference to natural law when discussing marriage was reinforced by the School of Salamanca. Francisco de Vitoria dealt with moral theology and legal topics, grounding his arguments on natural law: »se constituye en un hito ... de la doctrina iusnaturalista del matrimonio. Defendió en puntos concretos el derecho natural frente al derecho positivo de los canonistas [becoming a milestone of the marriage doctrine of natural law. He defended in very specific points natural law against canonists' positive law]«. ²³

Focher, adhering to this natural law trend, considered pre-Hispanic marriage was valid, even between catechumens, as long as it complied with the legislation of Indian legitimate rulers:

Cuando el catecúmeno contrae con un infiel en conformidad con los ritos y leyes de su propia región, contrae verdadero matrimonio. Ambos son infieles, entendiendo por infiel quien no está aún bautizado. Por tanto si han contraído según sus propias leyes, dese por válido y no se les separe después que sean bautizados, por más que hayan contraído en grados prohibidos por la Iglesia [When a catechumen gets married with a gentile according to the rites and laws of their own region, their marriage is real. They are both gentiles, i. e., persons not baptized. Therefore, if they have gotten married in accordance with their own laws, that must be

regarded as valid and they must not be separated after being baptized, no matter if the degree of consanguinity is forbidden by the Church]. ²⁴

It can be stated that, overall, all authors considered that marriage among Indians was natural, ²⁵ but there were some slight variations. For example, Focher insisted that only laws applicable to everyone – nobles and commoners – were legitimate. If habits were followed only by those in power, Focher regarded them as an abuse and consequently illegitimate. Meanwhile, Veracruz claimed that Indian marriage was legitimate even if the possibility of repudiation was accepted when celebrating the wedding, just as – according to him – marriage among Jews was legitimate prior to the preaching of Jesus, when the possibility to repudiate women existed. He meant that if marriage among Jews did not include the ideas of everlastingness or indissolubility and was still considered true marriage, the more it would be real between gentiles. ²⁶

The other two problems to which these authors devoted their attention were mixed marriage – solved by the Pauline privilege, and deciding who the real wife of a polygamous man was.

Concerning mixed marriage, Focher was very strict and accepted the application of the Pauline privilege only when the gentile member of the marriage questioned it. Focher demanded that this party claimed refusal to interact with the Christian member or to let them practice their faith peacefully. Some other evangelisers, just as the Holy See

23 VITORIA (2005) 14-15. Francisco de Vitoria had studied this topic, which he also explained in regular lectures, and was able to »comprobar que muchos aspectos doctrinales del mismo eran muy controvertidos en el derecho positivo y no estaban ni mucho menos fijados en la doctrina de los teólogos [prove that many doctrinal aspects of it were controversial within positive law and were not really conclusively defined in theologians' doctrine]«. Domingo de Soto adopted the notion of natural law marriage and his doctrine was also followed by Trent.

24 FOCHER (1960) 223. *English translations here and in the following by myself.*

25 CARRILLO (2011) vol. 3, 397. The First Mexican Council indicated priests

that, in the case of converted Indians of faraway places perhaps, where there was no constant doctrine teaching, they had to »inquirir y hacer buscar los que están juntos por vínculo de matrimonio, y no se han casado en haz de la santa madre Iglesia, y se les manda que confirmen el matrimonio por la Yglesia [ask for and look for those persons together by a marriage bond but who had not gotten married according to the Holy Church, so that they can confirm their marriage through the Church]«. This shows that it was assumed that a wedding celebrated before baptism was valid, and Indians just had to confirm it at the Church.

26 Vid. VERACRUZ (2009) II Parte, Art. 9. In fact, he would conclude that Christ

explained that Moses agreed to the possibility of repudiation »por la dureza de vuestro corazón, pero al principio no fue así [because of the hardness of the heart, but that was not so at the beginning]«. Nonetheless, Veracruz does not seem to have used this kind of comparison for polygamy, which he could have easily done by referring to the polygamy that the patriarchs of the Old Testament practiced.

confirmed later, removed this requirement since they admitted there were cases in which such verification was impossible. Regarding polygamy, most priests followed the late medieval doctrine already practiced with barbarians and more recently with Muslims, determining that the legitimate wife was the first woman with whom marriage consent had been exchanged. However, due to the obstacles and complications in making men marry their first wife, priests applied the Pauline privilege to this choice and the Holy See even granted men freedom to pick the wife who would get baptised along with them.

A problem that arose from applying both the Pauline privilege and the freedom to choose a wife simultaneously was that Papal bulls and privileges²⁷ could lead to the dissolution of a legitimate natural law and already consummated marriage: the one that, according to natural law, had occurred with the first wife. This extended far beyond the Pauline privilege, especially with the Constitution *Populis* by Gregory XIII, which deemed valid dissolution even when it was later confirmed that the unfaithful party had converted to Christianity prior to the second marriage. This turned out to be rather problematic for evangelisers.²⁸

1.1 *Secret Marriage Among Indians?*

Not many scholars have paid attention to the problems shared by Indians and Spaniards in terms of the sacrament of marriage. More specifically, secret marriage among Indians in New Spain has not been discussed. As stated above, the idea of marriage introduced by Spaniards was the one prevailing prior to the Council of Trent, with all the corrupt practices used in Europe: The period of time in which it could develop was certainly brief – from the beginning of evangelisation, in 1523, to the publication of the documents from Trent. Nonetheless, when reviewing New Spain missionaries' chronicles and treatises, it appears to have been practiced by natives.

Alonso de la Veracruz discovered that Indians had already the habit of marrying secretly. Besides, although repudiation was part of their pre-Hispanic traditions, its consequences were not as grave as among Christians, and it was hard for Indians to understand this gravity after their conversion. The outstanding New Spain theologian insisted in the importance of preventing Indian secret marriage.²⁹ It was Alonso de Molina, with his deep understanding of Indians, who was so worried about this problem that he included it in his major confessional as one of the questions to be asked to married Indians who wanted to be confessed. It might seem this secrecy was due to Indians' wish to avoid Church's complex rites or to their will to follow certain habits »from their pagan times«, as evangelisers used to say. However, Friar Alonso's question suggests it was not so, for he underlined that priests had to find out if marriage had taken place without family knowledge and a priest's presence and blessing: That is, similarly to what happened in Europe, where secret marriages were the result of parents' opposition or the existence of some kind of impediment:

cuando te casaste, fue clandestinamente, no lo haciendo saber a la santa Iglesia ni dando parte a tus deudos y parientes, dandoos el uno al otro el consentimiento de las voluntades [...] no os habiendo examinado el sacerdote, ni os habiendo tomado las manos, ni os habiendo dado las bendiciones, ni os habiendo dicho las misas? [when you got married, was it secretly, without giving notice to the Holy Church or your relatives, just by giving each other will consent [...] without having been examined by a priest, given your hands to him, receiving his blessings or hearing masses?].³⁰

This shows Friar Alonso de Molina had met people who had married without telling their families – possibly, to avoid opposition, without the presence of a priest and, therefore, without the

27 *Altitudo Divini consilii*, by Paul III (1537) and *Romanus Pontificis*, by Pius V (1571).

28 CASTAÑEDA (1975) 690–691. He discusses in detail the problem of distinguishing between Pauline privilege and Papal supremacy.

29 VERA CRUZ (2009) 197.

30 MOLINA (1578) fol. 36v.

necessary previous monitions and the rites established by the Church. As it is known, prior to Trent, these circumstances made a marriage illegal but not invalid.

Jerónimo de Mendieta, who was almost contemporary to Molina, affirms that

en aquél tiempo (antes de Trento) los matrimonios clandestinos eran válidos y se casaban de ordinario grandísima cantidad de indios nuevos cristianos, ofrecíanse por momentos gravísimas dificultades [in those times – prior to Trent – secret marriages were valid and ordinarily a great amount of new Christian Indians got married, leading to serious difficulties].³¹

Indeed, to the old problems of a secret marriage among Christians, some new issues had to be added: the degree of consanguinity, the possibility that one of the parties had not been baptised, and so on. When praising Juan Focher, Mendieta remarked that people from all across the Viceroyalty came to him to try and solve their doubts on this issue, and how he responded to each of them in writing.

In fact, many of the issues analysed by Focher in his *Itinerario para párrocos* assumed the practice of secret marriage. So, for example, when clarifying that mixed marriages – a Christian with a gentile, a Christian with a catechumen – were null, he devoted several sections to the problems resulting from those pretended marriages. The conflict emerged from the fact that Indians considered them valid because the ones that had occurred prior to conversion had been deemed so, on the grounds of natural law. Sometimes those mixed weddings had been held without a priest to bless that clearly null union because of the validity of secret marriages in the early years of colonisation.

Therefore, Indians needed to be told that even after the baptism of the gentile party, the previous

ceremony was null and had to take place again. However, when a new consent for marriage had been given after the christening, the marriage was validated. It was assumed that both the first *wedding* and its renewal after baptism could be secret, so Focher – prior to Trent – pointed out that if there had been

prestado nuevo consentimiento a la primera (esposa) después del bautismo, sea esto secreta o públicamente, bien por testimonio de los interesados, bien por el de quienes lo escucharon cuando se prometieron por segunda vez ... [granted new consent to the first (wife) after baptism, either secretly or publicly, whether by the testimony of the interested parties, or by that of those who heard the couple making the promise to each other for the second time ...],³²

this consent, even if it was secret, constituted a marriage deemed valid by the Church. The same problem arose when there were expressions of present consent and carnal intercourse between the Christian and the gentile parties.

Although secret marriage was not the main concern regarding newly converted Indians, it certainly constituted a challenge, just as among Spaniards, one that priests and evangelisers needed to pay attention to in order to prevent its negative consequences.

Many of these dilemmas were clarified in the Council of Trent, which dealt in depth with the sacrament of marriage, discussing both the doctrinal and the disciplinary aspects, reinforcing its indissolubility and sacramental nature, defending freedom and, as a key point for this, definitely setting marriage as a public practice by deeming secret marriages as null. The Third Mexican Council would adapt the doctrine from Trent to New Spain, and in particular to the circumstances of the Indian population.

31 MENDIETA (1994) 149: «Porque como en aquél tiempo (antes de Trento) los matrimonios clandestinos eran válidos y se casaban de ordinario grandísima cantidad de indios nuevos cristianos, ofrecíanse por momentos gravísimas dificultades, que fuera menester a consulta de una Universidad para desatarlas, con todas las cuales se acudía de trescientas leguas alrededor de México a sólo el decreto

de este doctísimo santo varón, (se refiere a Focher) para la declaración de ellas, y a todas respondía por escrito con admirable claridad la resolución de ellas [Since in those times, before Trent, secret marriages were valid and ordinarily a great amount of new Christian Indians got married, lots of serious difficulties appeared, so it was necessary to consult with a University so as to solve them, and

from lots of miles away people came to Mexico just to ask what this erudite and holy man – Focher – decreed, and he answered all of them in writing with remarkable clarity].«

32 FOCHER (1960) 210–211.

2 The Council of Trent, the Third Mexican Council and Indian Marriage

The points concerning the sacrament of marriage emphasised by Trent were its sacramentality,³³ indissolubility, public nature, and parental responsibility. These regulations were applicable to both Indians and Spaniards. For the former, the great change had arrived ever since the imposition of monogamous marriage and Christian marriage morality, but in the late sixteenth century, Trent would also include the sacramental, free, and public nature of marriage for Indians as well.

The Third Mexican Provincial Council clarified some doubts concerning the solutions that had been given for Indian marriage issues such as consanguinity degrees, the identification of polygamous men's real wife, the legitimisation of pre-Hispanic marriage and the acceptance of some Indian habits for weddings. This Council gathered some privileges for Indians in terms of rite stages, such as reducing the period of time between monitions and how to conduct them, or the subsequent occurrence of consent and vigils.³⁴ The Council firmly established the nullity of marriage between siblings,³⁵ declaring invalid that kind of marriages of converted Indians who had wed before conversion.³⁶

Concerning consent freedom, fundamental in Christian marriage, the Third Mexican Council condemned, under *penalty of ipso facto excommunication*³⁷ any form of violence exerted on Indians to force them to marry against their will. The Council especially warned about the possibility of coercion on the part of *encomenderos* to Indians or slaves, and on the part of *caciques* to anyone under their rule. It is worth pointing out that this remark

appears almost exactly as it does in Tridentine decrees, with *encomenderos* instead of *masters*, which shows coercion of subjects was also common in Europe.³⁸

2.1 Marriage in post-Tridentine Pastoral Tools

Pastoral tools from the seventeenth and eighteenth centuries followed, logically, the rules of the Council of Trent. However, they were not mere copies of the Roman ritual or catechism, but an adaptation of the latter to New Spain needs, particularly of parishes or Indian doctrines across the different regions of the Viceroyalty.

One question that emerges when reviewing manuals is which books most priests consulted to solve doubts concerning their pastoral tasks, for both Spaniards and – especially – Indians. Some authors assumed that parish priests had access to the Roman ritual and some other similar sources. Others, on the contrary, wrote their works precisely to show priests the basics of those documents.

My research indicates that there is a lack of studies on this issue in New Spain, besides the fact that the data provided by the regulations of the Mexican councils is scarce. The First Council demanded that parish priests used the manual it decided to print,³⁹ and that

que todos los curas tengan Biblias, y algunas Sumas de casos de conciencia en latín, o en romance, así como la Suma de Navarro, o *Defecerunt* de S. Antonino, o Silvestrina, o Angélica, y algún Libro Sacramental, en que lean [all priests have Bibles, and some summae of conscience cases in Latin or romance language, like the Summa by Navarro, or the *Defecerunt*

33 BEDOUELLE (2003).

34 MARTÍNEZ FERRER (2009), libro cuarto, título 1º De sponsalibus et matrimoniis, nº 490.

35 Acosta made an effort to be as clear as possible in this regard due to the well-rooted habit in the Viceroyalty of Lima among Incas and their subjugated caciques to be polygamous and have their sisters as first wife. He points out three main vices in marriage: incest, lack of consent or freedom among commoners, and the acceptance of fornication. See: ACOSTA (1984) 495 and following. He also criticizes contempt for virginity: »no

wife can be ideal if she had not been first a good concubine«, 465.

36 MARTÍNEZ FERRER (2009), libro cuarto, título 1º De sponsalibus et matrimoniis, nº 509.

37 MARTÍNEZ FERRER (2009), libro cuarto, título 1º De sponsalibus et matrimoniis, nº 497.

38 MARTÍNEZ FERRER (2009), libro cuarto, título 1º De sponsalibus et matrimoniis, nº 497.

39 This manual was printed in 1556 and soon two other editions appeared: one in 1560 and the other in 1558. The latter included decrees from the Council of Trent. SARANYANA (1999)

vol. I, 449. He states, quoting Jakob Baumgartner, that this manual is inspired in contemporary manuals from Seville, Salamanca and Toledo.

by S. Antonino, or Silvestrina, or Angelica, and some Sacramental book, where they can read].⁴⁰

The Third Council ordered priests to have »the catechism, the confessionary, and the book from this Council« in their churches. However doubts remained, for one thing is regulations and another quite different is life itself.

Treatises themselves include clues in this regard. In the seventeenth century, Lorra Baquío writes that his book must be completed with one from Toledo, one written by Martín de León, and a third one by Martín de Zárate, the last two authors from New Spain. He assumes priests have access to the Toledan manual, since he suggests following it when an issue is not specific for Indians.⁴¹ Saenz de la Peña lists, among the manuals present at parishes, the manual from Toledo adapted according to Trent and published in Salamanca.

This manual was already used in Spain back in the fourteenth century. It was improved throughout the sixteenth century, as shown by the 1520, 1530, and 1554 editions, up to the one printed in Salamanca in 1583, which adapted the content according to Trent.⁴² Indeed, in the manuscripts from the Third Mexican Council and some other contemporary texts, it can be clearly seen that the Toledan manual was used in New Spain dioceses. It is interesting to note that the Roman ritual and catechism, as well as the Toledan manual, were books that a rural priest in Spain also owned.⁴³ It is likely that there were many differences in terms of access to doctrine books, not only among regular and secular priests, but also among priests for Indians living at cities inhabited by Spaniards and those at Indian parishes or doctrines in remote regions.

Among the different topics that can be discussed concerning marriage issues, I will focus on the importance given to the visibility of the rite with a liturgy in accordance with Trent, and on the

freedom of the spouses-to-be. Both aspects are related, for visibility is related to marriage's public nature and freedom.

2.2 *The Visibility of Sacraments and Liturgy*

Up to the Middle Ages, the exchange of consent took place at home, but from the ninth century on, so as to guarantee the bride's freedom, mutual consent had to be expressed at a church's doors, *in facie ecclesiae*.⁴⁴ Trent's doctrine and canons on marriage defended it from the Protestant doctrine, which considered marriage a mere civil agreement rather than one of the seven sacraments of the Church. Besides reaffirming marriage's sacramentality, the Council declared secret marriages null and established that the liturgical form carried out by a priest was mandatory for the wedding to be considered valid. The Council set a rite common to the entire Western world for the celebration of this sacrament. There are two important aspects to this: the strengthening or consolidation of the jurisdictional powers of the Church, and the importance of the visibility of faith – in this case, by a solemn celebration in the church and a rite, a liturgical form showing the actuality of the sacrament of marriage.⁴⁵

In line with this, the Council of Trent sought to clarify and unify the way this sacrament was carried out, while also accepting and regarding as good local ritual habits and peculiarities, as long as fundamental aspects were respected. Peculiarities were greater among Indians, for they incorporated pre-Hispanic habits. One dilemma in the early years of evangelisation was the extent to which maintaining Indian marriage traditions was good – since it meant valuing and preserving the characteristics of Indian natural marriage – or not, for those habits could lead to practical errors in the application of this sacrament's doctrine.

Thus, in the Third Council there were complaints about the lack of printed sacrament man-

40 LORENZANA (1769) 199.

41 LORRA BAQUIO (1634) 110: »si se han de velar juntamente, bendiga las Aras como se dize el manual toledano (...) [in case of a shared vigil, bless the wedding coins as indicated in the Toledan manual (...)]«.

42 This Salamanca edition was in charge of Cardinal Quiroga.

43 ZABALZA (2005) 214.

44 GUTIÉRREZ-MARTÍN (2006) 132.

45 IMOLES (2005).

uals, and priests claimed that many of the manuals used at parishes were handwritten and contained mistakes.⁴⁶ A constant wish expressed in seventeenth- and eighteenth-century treatises' covers or introductions⁴⁷ was to adapt the celebration of sacraments to the Roman ritual. Echoing this need, in the prologue to a manual he asked presbyter Saenz de la Peña to write, Palafox complained about the large amount of sacrament books in handwriting and with liturgical differences. For this bishop, that liturgical variety did not mean tradition richness, but rather a corruption of the rites, with omissions or additions that could result in mistakes.⁴⁸ So as to achieve the desired unification, Palafox ordered, under penalty of major excommunication *latae sententia* that »ninguno de nuestros Curas, Beneficiados, [...] ni otros de los que en su lugar administran, usen de otro [none of our priests, beneficiaries [...], nor those in charge of managing for them, shall use another one]«. ⁴⁹ The same or a similar solution is found in other manuals.⁵⁰ The wish for unity did not mean uniformity or rigidity: the Bishop from Puebla himself indicated that parish priests' experiences

and some local habits concerning weddings were to be included in the new tool.⁵¹

They were concerned with making the Indian population follow the same ritual than Spaniards, including the three stages – promise, betrothal, and blessings – rings and wedding coins, the wedding mass and blessings.⁵² This was repeated by almost all manuals.⁵³ In order to get to know the origin of that liturgy, it is useful to look at the explanation by Venegas, who stated that in addition to faithfully follow the Roman Ritual, he had made to these rites,

algunas adiciones tocantes a los estilos de los reinos de España que se hallan al fin del dicho Ritual, sacadas del Manual toledano y puesta para el uso de los reynos de España. Pero para distinguir lo que es del Ritual Romano de lo que va añadido, todo lo que es adición, lleva por señal a la margen una estrella [some additions in line with the style of Spain's reigns that can be found at the end of that Ritual, which come from the Toledan Manual and included for use in Spain's reigns. But in order to distin-

46 CARRILLO CAZARES (2006) vol. 1, 151.

47 That is stated in the manual's or confessional's title or introduction. For example, OSSORIO (1748); VENEGAS (1731).

48 SAÉNZ DE LA PEÑA (1691). Introducción de Juan de Palafox: »Porque ... en la administración de los cinco sacramentos, ... era con tanta diversidad en las ceremonias, tanta diferencia en los ritos: los unos omitiendo, los otros añadiendo, y quitando de las ceremonias, que causaba no pequeña confusión a que viese la orden en la unidad, la regularidad con que el Santo Concilio quiere y conviene que en cada uno se administre [Because ... the celebration of the five sacraments ... was so diverse, the rites so different, ones with omissions and others with additions, or removing things from the ceremonies, that it was confusing and so there was the order for unity from the Holy Council that regularly wants it and finds convenient to apply it].« MANUAL DE PARROCOS (1789) donde se recoge la misma idea en las licencias del Arzobispo. SERRA (1731). Etc.

49 This is going to be one of the most praised things in the comments and

approvals to the text. For example, in the manual by SAÉNZ DE LA PEÑA (1691), Doctor Jacinto de la Serna wrote the following in his approval: »Y por lo que toca á la administración de santos Sacramentos en lengua Mexicana, tan precisamente necesario, que cesará con el, el inconveniente de administrarse por tantos, y tan diversos Manuales y fe ajustarán todos los Parrochos á las Reglas del Romano [And concerning the celebration of the Holy Sacraments in Mexican language, it is precisely necessary, and will end with the disadvantage of being celebrated according to so many and so different manuals, and all parish priests will have to follow the rules from the Roman rite].«

50 SERRA (1731) 51v–64r; VENEGAS (1731), prologue: »según esta regla deben todos nuestros sacerdotes en la administración de los sacramentos y mayormente los misioneros, que administran los que son propios de los parrocos, ser uniformes en el modo de administrarlos; y para esto deben conformarse con los ritos de la santa Iglesia, que en el Ritual Romano se nos propone [according to this rule,

all of our priests, when celebrating the sacraments, especially missionaries, who conduct those typical of parish priests, must do it with uniformity, and to do so they must follow the rites from the Holy Church, that presents them in the Roman Ritual].«

51 SAÉNZ DE LA PEÑA (1642) 96v and 99v.
52 PALAFOX (1826).

53 PALAFOX (1826) 114–116: »Modo de dar las bendiciones nupciales a los indios [How to give wedding blessings to Indians]: En la misma forma que a los españoles se darán las bendiciones nupciales a los Indios. (...) A la puerta de la Iglesia y revestido del mismo modo que se advirtió en la Rúbrica de los españoles, hará el sacerdote la bendición de las Arras y Anillos; y al ponerse el anillo en las manos el uno de los novios al otro irá diciendo ... [In the same way that they are given to Spaniards, wedding blessings will be given to Indians (...)] At the church's door and dressed as indicated in the Rubric for Spaniards, the priest will bless the Rings and Wedding Coins, and when one of the parties puts the ring in the hand of the other, he will say ...].«

guish what comes from the Roman Ritual from the additions, the latter are marked in the margin with a star].⁵⁴

Additions referred to the blessing of the wedding coins and the rings, as well as to the wedding blessings. It is clear, therefore, that the foundation was the rite established by the Council of Trent, plus the habits from Spain's reigns, and then the Indian local traditions accepted by the competent authority were also added.

One of the pre-Hispanic marriage habits considered harmful for the sacrament and that were still practiced in the eighteenth century was the *Motequitl* or service of the son in law, which made the groom work for the bride's parents as a kind of dowry.⁵⁵ Saénz de la Peña, Manuel Pérez, and Andrés Miguel Pérez de Velasco⁵⁶ wrote against this practice. On the contrary, they deemed as good the tradition in which the grooms used an intermediary or matchmaker, who asked for the bride's hand at her house. This was a ceremony with candles and flowers; the bride's parents answered after a week, once relatives had been consulted and the girl's freedom to choose has been secured. In fact, in Mexico City, the gift or presents the groom had to deliver was only food and some other gift.

In the most remote regions, once the marriage had been arranged, the groom moved into the bride's house to work during three months for his future in-laws. This practice led to a lot of trouble for marriage, since it was common for the couple to have sexual intercourse during this period. Thus, so as to preserve this custom, they advised priests to accept it as long as, at the very moment of arranging the wedding and before the service of the son in law, the bride moved to an honorable person's house so as to secure her vir-

ginity. It seems the correct adaptation of rituals among Indians was achieved little by little. Manuel Pérez,⁵⁷ who worked in a parish for Indians in Mexico City, wrote in the early eighteenth century that, against the Indian habit of getting married in their homes, now their weddings took place at the Church.

3 The Defence of Freedom as Mandatory Requirement

In Europe, parents constituted an obstacle for marriage freedom,⁵⁸ since they arranged marriages according to family interests. Prior to the Council of Trent, this practice led to secret marriages; after the Council, to the so-called surprise marriage. It is well known that parental consent was one of the topics discussed at the Council of Trent, due to the fact that the couple's freedom and consent are key elements of marriage as a sacrament:

... el consentimiento es la causa eficiente del matrimonio según lo enseñaron los Padres del concilio de Florencia, toda vez que la obligación y el vínculo no pueden constituirse sino en virtud del consentimiento y del contrato [... according to the teachings of the Priests at the Council of Florence, consent is the efficient cause of marriage, because obligations and links cannot exist but based on consent and agreement].⁵⁹

Evangelisers were well aware of the lack of freedom in the marriage customs in certain Indian regions.⁶⁰ This is why, when the discussions about the validity of marriages celebrated prior to baptism started in the Indies, all authors agreed that a

54 VENEGAS (1731), prologue without page numbers.

55 For Indian womens' dowries, vid.: BURKETT (1978).

56 PÉREZ DE VELASCO (1766) 86–87.

57 PÉREZ (1713) 145–146.

58 USUNARIZ (2005); CANDAU (2006); SEED (1991); SPERLING (2004); LATASA (2008).

59 CATECISMO PARA PÁRROCOS (1972) 355; CASERTA (2007).

60 LORENZANA (1769) 147: »Y porque es costumbre entre los indios maceguals no se casar sin licencia de sus

principales, ni tomar muger, sino dada por su mano, de lo cual se siguen grandes inconvenientes, y el Matrimonio no tiene entre las Personas libres la libertad, que debe tener: mandamos y ordenamos que ningún indio Principal de cualquier estado, y calidad, que sea, no dé de su autoridad muger a nadie, ni ponga impedimento a ningún macegual, para que no se pueda libremente casar con la muger que quisiere ... [And because it is customary among Maceguals to avoid getting married without per-

mission of their leaders or picking a woman if she had not been given to them, which causes a lot of troubles, for marriage then has no free persons as it should, so we order that no Indian head anywhere and whatever his status should give away a woman based only on his authority, nor should he forbid any Macegual to freely marry any woman he wants ...].«

marriage in which parties had been forced to wed was invalid.⁶¹ Freedom of choice is an essential point for Christian marriage,⁶² as was emphasised by the Council of Trent. The Council had advocated free will to the extent that marriages blessed by a priest but without parental permission were forbidden and considered a grave sin, but still valid. Indeed, invalidating this kind of marriages would have meant contradicting a principle as fundamental to the Catholic Church as is freely choosing a spouse, especially when the sacrament of marriage was celebrated on the basis of the couple's consent. The provisions of the Council added the requirement of the presence of a priest, who had to bless the wedding.

Due to its fundamental importance, all manuals for Indians began recalling priests' obligation to verify the parties' freedom. They included very detailed questionnaires for this verification, and warned about the main obstacles priests might face when trying to make sure future spouses were acting freely.⁶³ Questions should be asked at the beginning of presenting the information and at the end of monitions, with all necessary precautions to secure the couple was able to answer unrestrictedly, without family pressure or in fear of declaring an impediment. There are many examples of this.⁶⁴

Among the Indian population, besides the possible arrangement between important families, there was also a well-rooted tradition of accepting the will of parents, chiefs or governors, many times against youngsters' freedom not only to marry, but

in general. Afterwards there was also the problem represented by the *encomenderos* or masters, who took away freedom of choice or of marriage life.⁶⁵ Since obstacles to marriage freedom existed also in Europe, the Council of Trent included condemning those who prevented this freedom.⁶⁶ In the mid seventeenth century, Peña Montenegro wrote, in his famous *Itinerario para párrocos*,⁶⁷ widely used in New Spain, that if this was a habit and »the maiden does not express opposition, there is consent«, and thus the marriage could be considered valid, though with caution. He stated taking into account local customs was important so as to decide where this habit could be preserved or not. He added that he had suspended a wedding of the kind for he had serious doubts about the bride's consent, which he discovered actually did not exist.

Thus, at the beginning of the eighteenth century Manuel Pérez, in his *Farol Indiano*, indicated priests to forbid answers given only by the parents, since that practice casted doubts on the validity of the union.⁶⁸ In defence of that freedom, he also referred to the lack of authority of the bride's parents to establish conditions to the man who wanted to marry their daughter, even mentioning that despite the groom's promise to obey those conditions, the marriage was still valid in the event he failed to do so.⁶⁹ In these circumstances, parental opposition among Indians led to corrupt practices, such as avoiding monitions or attending the submission of information with false witnesses.

61 PEÑA MONTENEGRO (1995–1996) 271–272.

62 TRASLOSHEROS (2002) 153; ZARRI (1996).

63 I only include two examples: One from the first half of the seventeenth century and the other from the early eighteenth century: LORRA (1634) 101r–101v; PÉREZ (1713) 129.

64 SAÉNZ DE LA PEÑA (1642) 93r; CORTÉS Y ZEDEÑO (1765) 180–182; PÉREZ DE VELASCO (1766) 92; SERRA (1731) 51v–54r; CONTRERAS (1638) 66v–69r etc.

65 AZNAR (1992) 444.

66 CATECISMO PARA PÁRROCOS (1972) 357.

67 PEÑA MONTENEGRO (1995–1996) 236–238: »por quitarme estas dudas, siendo como soy juez y Prelado, suspendí un matrimonio, que al tiempo de contraerlo la mujer no quiso res-

ponder a las preguntas que hizo el cura a ella, conforme el Manual ordena, si quería por esposo y marido. Y aunque los padres respondían que sí por ella y en su nombre, nunca alzó los ojos del suelo, ni abrió la boca para declarar su voluntad. No quise que se pasase adelante el matrimonio, y después examinándola a solas, respondió, que era contra su voluntad el casamiento que le mandaban sus padres y que por temor que les tenía, había ido a la Iglesia [so as to solve my doubts, being a judge and Prelate, I suspended a wedding, because at that moment the bride would not answer to the questions made to her by the priest, as the Manual dictates, about her wanting him as his husband. And although her parents said yes on her behalf, she kept looking at the floor and did not speak to express her will.

I did not want the wedding to go on, and I questioned her alone, and then she answered she did not want the wedding, which had been ordered by her parents so it had been out of fear to them that she had attended the church]«.

68 PÉREZ (1713) 149.

69 PÉREZ (1713) 162.

After secret marriage was deemed null by Trent, references to this issue among Indians logically disappeared from the seventeenth- and eighteenth-century pastoral tools. However, there are mentions to an abuse that could be considered a result of this practice. The Council of Trent⁷⁰ included an exception to the occurrence of prior monitions in case of suspicion about a malicious preventing of the wedding. The exception was accepted but Trent demanded that, after the betrothal and before cohabitation, monitions had to be held. That is, it was necessary to secure there were no impediments before the consummation of the marriage.

Juan Bautista Viseo wrote about marriages held by a priest but without previous monitions, considering them nothing extraordinary but likely to happen among Indians. This was a marriage to the Church, but it lacked the public nature Trent had insisted upon. It seems that, on the basis of the exception quoted above, in some places weddings without prior monitions became common. Viseo reminded both priests and parishioners that »consuming the wedding held by a priest and witnesses before denunciations or monitions are carried out, is a mortal sin«, for it would go against the rules from Trent. It might be surprising that Friar Juan Bautista reinforced the importance of this precept, which might seem obvious since it had been sanctioned by the Council, by quoting moralists and canonists. Nonetheless, his explanations show that this was necessary because there were some biased interpretations of the exception. Thus, he dismissed the exegesis of the opinions by Ledesma and Navarro,⁷¹ who claimed that consuming marriage before the denunciations was

no mortal sin. In his manual, he clarified that they had made that remark under the assumption that priests had diligently asked the spouses-to-be whether there were impediments and concluded, with moral certainty, that there were not.⁷² Perhaps because of the previous existence of secret marriage and its validity before the Council of Trent, the issue of marriage without monitions was extremely carefully dealt with.

Still, they faced other problems, for it was common that witnesses were not qualified persons, but friends or people who, on account of bribery⁷³ or other reasons, lied⁷⁴ about the situation of spouses-to-be. It was parental opposition what motivated the presence of false witnesses.

Esta habilidad (traer falsos testigos) de ellos, las mas vezes no es con malicia, de que pueda resultar nulidad, sino que, o no hallan breve testigos de los que devieran serlo, porque suele ser a disgusto de sus padres, y ninguno de los conocidos se atreve a ser testigo, porque es entre ellos muy sensible agravio para el padre y madre [...] [Their skill – bringing false witnesses – usually lacks malice: either they do not find appropriate witnesses, because it often goes against their parents' will, or none of their acquaintances dares to witness, because they consider it a serious offense to the father and the mother [...]].⁷⁵

That is, qualified witnesses did not dare to declare because they did not want to offend the parents, who opposed to that wedding. The bride and groom, without any moral dilemma, looked for someone who agreed to serve as witness, even

70 Tametsi Decree: »[...] Y si alguna vez hubiere sospecha probable de que pueda impedirse maliciosamente el matrimonio, si preceden tantas amonestaciones; entonces, o hágase sólo una amonestación o, por lo menos, se celebre el matrimonio delante del párroco y de dos o tres testigos. Luego, antes de consumado, háganse las amonestaciones en la Iglesia, a fin de que, si existiere algún impedimento, más fácilmente se descubra, a no ser que el ordinario mismo juzgue conveniente que se omitan las predichas amonestaciones, cosa que el santo Concilio deja a su prudencia y a su

juicio [...] In case of suspicion about a malicious preventing of the wedding, if there are so many monitions, then conduct only one, or at least celebrate the wedding before a priest and two or three witnesses. Then, after its consummation, conduct monitions at the church so that, if there are impediments, they are more easily discovered, except when the Ordinary deems it convenient to omit those monitions, which the Holy Council leaves to his prudence and discretion].«

71 It is worth noting that Juan Bautista Viseo, who included numerous cases

of conscience in his manual, contrasted his opinion with both European authors, as for example *Navarro, Aquino, and especially Manuel Rodríguez*, with whom he shared religious order, and New Spain authors: *Vera-cruz, Focher, and Ledesma*.

72 VISEO (1600) Final Table, marriage (no page number).

73 SAÉNZ DE LA PEÑA (1642) 92r; ALVA (1634) 16v.

74 LEÓN (1611) 113r.

75 PÉREZ (1713) 133–134.

if they had not met before. Among the Spanish population, lack of parental consent led to the so-called surprise marriages, which were deemed as actual marriages even if they had canonical penalties. Manuals for Indians only refer to the likelihood of null marriages on account of witnesses' disqualification: surprise marriages are not mentioned due to inequality issues. There is a lack of studies on parental consent problems among Indian nobles, despite the fact that today there are important studies dealing with marriage alliance policies among Indians throughout the colonial period.⁷⁶

Therefore, there were peculiarities concerning the problems and difficulties related to the sacrament of marriage among Indians, but the sources used for the writing of this paper also show that in terms of freedom, consent, and public nature, there were issues and solutions identical to those for the Spanish population. These conclusions shall be contrasted in future studies, based on the analysis of legal sources, so as to verify the problems related to the Indian population in the diocesan tribunal. ■

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76 For example: ROJAS (2010); SPORES (1997); MENEGUS/AGUIRRE (2005).

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