

Between Prescription and Practice: Licensure and Women's Legal Identity in Bourbon Quito, 1765–1810

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Introduction

Recent scholarship on early Latin America explores the limitations of the patriarchal model for explaining colonial gender relations.¹ Investigations of marriage choice, economic activities, and criminal and civil court proceedings demonstrate that during the Habsburg period male domination of women was neither so monolithic nor so absolute as could be characterized as patriarchal authority. This article extends this skepticism through the end of the colonial period by investigating licensure and women's legal identity in the *Corregimiento* of Quito from 1765 to 1810.² Through a comparative analysis of Bourbon-era prescriptive legal literature and judicial cases collected under the auspices of the city's First Notary, I will demonstrate that local legal custom (*derecho vulgar*) continued to protect women's autonomous legal status through the end of the colonial period, precisely at a moment when Spanish bureaucrats were attempting to construct a colonial governance founded on values of 'paternal authority and filial obedience' (Saethe 2003, 476). While the 'Bourbon reforms' were not a concerted, unitary effort at remaking colonial society, the centralizing tendencies of Bourbon rule did work their way into the many facets of American life long organized under the ethos of Habsburg decentralism.³

The Spanish legal inheritance contained many internal tensions and a complex of constraints that simultaneously restricted and enhanced gendered power. Bourbon-era legal manuals demonstrate the extent to which eighteenth-century legal prescription emphasized restrictive constraints for women, while deemphasizing avenues to mitigate or deflect male privilege. The manuals set forth a vision of procedural and interpretive coherence for a system heavily reliant on judicial discretion and circumstantial interpretation. Taken as a whole, the legal commentaries of the period amount to a prescription for predictability in legal practice.⁴ In

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stark contrast, the case set collected under the First Notary exemplifies the judiciary in action. The practices of judges, plaintiffs, scribes, defendants, attorneys, and witnesses attested to the distance between an ideal of patriarchal control and a reality of women's agency. In comparing practices with prescriptions, I will excavate the space in which those actors expressed local cultural codes of identity and legitimacy in Bourbon Quito. The judicial record demonstrates that in practice the gendered prescriptions of the commentaries, and particularly the constraining requirement for women to gain license to make legal acts, held little sway over men and women in the closing decades of Spanish rule.

Ana Faces Her 'Patriarchs'

In 1766 Juan Cleto, husband of Ana Arguelles, borrowed 50 pesos (ps) from his brother-in-law, Eusevio Arguelles, placing several pieces of his wife's jewelry as collateral on the loan.⁵ He further agreed to pay an unreasonably high rate of 2 ps/month interest on the original 50 ps principal, and then quickly violated the arrangement. On 3 June 1768, Ana Arguelles appeared before the *corregidor* of Quito and the Five Leagues to file a complaint radiating from this transaction that brought her into direct conflict with the three most significant males of her life: her husband, brother, and father (AN/Q Primer Notaría Juicios [1NJ] 46, 3-vi-1768). When Cleto's payments lagged, Eusevio Arguelles confiscated property belonging to his sister, in addition to the jewelry he held as collateral. Ana Arguelles responded to her brother's actions by appealing to the justice of royal officials in an effort to secure her personal property.

Ana's initial petition utilized boilerplate language: 'Ana Arguellas, citizen [*vesina*] of this City, legitimate wife of Juan Cleto Manzano, absent; whereas it is within my rights I appear before Your Honor and say ...' She neglected to mention her husband's license or permission to plead the court, even though such permission was required by law. In the petition, Ana claimed the confiscation of her property amounted to an illegal act, as her husband's property had no relation to her personal property. Moreover, she claimed the original terms of the loan were usurious, and therefore contrary to the dictates of canon and civil law. She went on to explain that she had re-negotiated these terms on behalf of her husband, reducing the rate of interest to 5 ps/year. This second contract was being honored, which combined with the prohibited terms of Eusevio Arguelles's original loan eliminated any fiscal reason for her brother's actions.

The financial case formed but one element of Ana's legal argument. Significantly, she played to legal and cultural values to marginalize her brother's ability to control her property. Ana maintained that the law protected her property from her husband's debts, reasoning that, just as a son could not be held responsible for his father's obligations, neither could a woman be responsible for those of her husband. Because the loan was arranged between Eusevio Arguelles and Juan Cleto, she argued, satisfying the loan and paying the interest was a matter involving only her husband's

estate. To further enhance her position, Ana then claimed a need for protection of the court, portraying herself as too poor and saddled with too many children to afford repayments even if her brother had legitimate rights to her property. This claim appealed directly to culturally inscribed values that conceived of women as subjects of protective constraints offered by judicial institutions to shield women from their perceived weaknesses. Finally, Ana asserted that in returning her property and relieving her of a debt that was her husband's the court would enable her to help pay for the beautification of her local church in Tumbaco, a village in the valley east of Quito. The *corregidor* agreed with Ana Arguelles's carefully crafted argument, appealing as it did to a combination of legal rights, maternal obligations, and Christian charity. He ordered the local lieutenant sheriff (*teniente alguacil mayor*) to notify Eusevio he had three days to appear before the court with his sister's property and explain himself.

The sheriff never complied with the order. In July 1770, Ana appeared again before the *corregidor* to complain that she was still without her property. She alleged that after the 1768 order, someone had tipped off Eusevio about the *corregidor's* ruling, and her brother had fled the jurisdiction. This was not the end of his attempt to skirt accountability. Eusevio informed his sister that the property he was holding actually belonged to their father, and that he was only returning it to him as the rightful owner. Ana rejected this assertion outright, explaining to the court, 'I find myself out from under paternal authority [*patria potestad*] through emancipation, and . . . the jewelry is mine, not my Father's, much less my Husband's, as the aforementioned Eusevio Arguelles falsely supposes in his maliciousness.' Once again, Ana begged the *corregidor* to order her brother to appear within two days with both the jewelry of the original loan and the property he had confiscated two years earlier. Furthermore, she requested that a royal official go to her brother's house and deliver in person the order to appear to Eusevio, his wife, a servant, or anyone who happened to be there, and to add the possibility of jail time should her brother fail to appear. The *corregidor* complied with Ana's request on 6 July 1770; two weeks later, Eusevio was informed personally to appear before the judge with all documents and property related to the dispute. Thus ended the folio.

Ana Arguelles skillfully played to the ambiguities inherent in the Spanish legal system in order to protect her material interests. Despite the fact that her personal property had been used to secure the original loan, it was Ana's husband who was personally obligated. Spanish law protected her from his debts, a constraint to which she directly appealed. And yet, Spanish law also required a married woman to gain license from her husband to make legal acts. Juan Cleto was permanently absent, living north of Quito in the town of Ibarra for the duration of the two-year litigation. According to the law, Ana should have filed a petition with a magistrate specifically requesting license to appear absent her husband's authority. This legal constraint was blatantly ignored, and yet she held standing before the region's *corregidor*. Ana displayed economic savvy in renegotiating the terms of the loan on her husband's behalf. She asserted a right to appear before a judge to seek legal remedy, crafting a

multifaceted argument that appealed to legal and cultural values in defense of her resources. The combination of legal and cultural arguments, which referenced simultaneously a woman's right to be insulated from her husband's debt, as well as the much vaunted image of the poor, miserable woman, saddled with children and in need of the charity and protection of the institutions of Spanish justice, formed a matrix of legitimacy from Arguelles's perspective. In short, Ana Arguelles's use of the judicial system demonstrated considerable pluck.

Conversely, Eusevio Arguelles, whose voice we only hear through the filter of his sister, presumably operated from a position of gender right. He treated his sister's property as collateral on her husband's financial dealings. When pressed on his own lack of claim, Eusevio appealed to paternal privilege, in the absence of Ana's husband, to control her property. It was an argument rejected not only by Ana, but by the Spanish legal system as well. It is clear from the litigation that the *corregidor* of Quito willingly questioned Eusevio's *modus operandi* of gender privilege. Was this unusual? It certainly ran counter to the dictates of Bourbon-era judicial commentary.

Prescription: Legal Formalism in the Age of Reform

... and when the law is clear and conclusive, interpretation is not allowed ... (Juan y Colom 1795, 71)

The *corregidor* who heard Ana Arguelles's complaint exemplifies the centrality of the judicial function to the political power of the state. In addition to his bureaucratic and political responsibilities as a member of Quito's municipal council and as the provincial administrator of the city's hinterland, the *corregidor* exercised significant judicial power as a key magistrate in his geographic jurisdiction. In fact, the Spanish ruled their vast empire through 'a government of judges, where nearly every appointed official exercised some sort of judicial authority' (Cutter 1995, 31). The concentration of judicial and political power in the hands of individual magistrates and offices of the bureaucracy often has led to depictions of colonial administration as 'ponderous, tyrannical, arbitrary, and corrupt' (Cutter 1995, 34). Yet, this depiction misses the adaptability of the system, in which the melding of judicial and political power was tempered by the structural conflicts of overlapping jurisdictions, the malleability of Hispanic law, the primacy of *derecho vulgar*, and the power of judicial discretion. On an operational level, jurisdictional authority over bureaucratic and judicial functions tended to be reproduced across administrative entities (Phelan 1960, 55). This meant, for example, that secular authorities could not enact policies concerning marriage without taking into account the ecclesiastical position on the issue. Likewise, a murder in the *Corregimiento* of Quito of the late eighteenth century could be investigated and prosecuted by any one of four authorities: an *alcalde* of the Court of the Audiencia, an *alcalde ordinario*, the *corregidor*, or an *alcalde* of the Santa Hermandad (rural police). As a corollary to the decentralization of jurisdiction, litigants could search out the authority most likely to

support their position in a dispute, and what they found from judge to judge could vary greatly across the empire (Kagan 1981, 32, 34). The famous dictum, 'I obey but do not execute,' was a formula that gave primacy to local customs and conditions over royal wishes, providing in Phelan's view 'an institutional device for decentralizing decision making' (1960, 60). Jurists' decisions on any one set of facts presented in a case were likely to be most responsive to the same local customs and conditions that enabled them to resist implementing crown dictates. Justice existed at the confluence of law, custom, and a desire for communal harmony (Cutter 1995, 34, 41). Even if a judge desired to base decisions on written law, he was faced with a labyrinth of contradictions.

The practice of Hispanic law into the nineteenth century was one of accrual, rather than precedence. A plaintiff, their attorney, and the presiding court had at their disposal a body of law extending back as far as Rome, including the Justinian Code, the *Siete Partidas* (1251) of Alfonso X, the *Fuero Real*, the *Ordenamiento de Aclalá* (1348), the *Ordenanzas Reales de Castilla* (1485), the royal *pragmática*, *Los Capítulos de Corregidores y Jueces de Residencia* (1500), and the *Leyes de Toro* (1505), along with such compilations as the *Nueva Recopilación de Leyes de Castilla* (1536) and the *Recopilación de Indias* (1681). Local municipalities, certain kingdoms, and some corporate groups (military officers, ecclesiastics, indigenous peoples, merchants, etc.) also enjoyed their own particular *fueros*, legal charters, or privileges.⁶ Add to this already impressive list any number of *cédulas*, *leyes*, and *pragmáticas* issued by the Castilian monarchy, which retained their stature regardless of when they had been handed down (Kagan 1981, 21–31). Kagan's observation that 'Castilian justice in the sixteenth and seventeenth centuries was a hodgepodge of confused laws and competing jurisdictions that crafty litigants exploited to their advantage' could easily apply to the kingdoms of Spain in the Americas into the eighteenth century (1981, 31).

The judicial manuals published during the eighteenth century reflected the desire of Bourbon reformers to bring some clarity and order to the judicial functions of the state. In contrast to legal writings of the preceding centuries, Bourbon-era commentators sought to produce a didactic literature emphasizing an organized and practical presentation of legal concepts, procedures, and forms (Cutter 1994, 16). Writing in *castellano* as opposed to Latin, scholars in both Spain and America shunned esoteric dissertations and the internecine arguments of the doctors of the law in favor of works that were 'fundamentally compendiums intended to facilitate the work of judges, lawyers, and scribes' (Bravo Lira 1988, 63, quoted in Cutter 1994, 16). Moreover, the force of these works rests in their push for some measure of predictability in a vast array of legal situations. Predictability clearly would mean an end to *derecho vulgar*, jurisdictional squabbling, and judicial discretion.

Joseph Juan y Colom's *Instrucción jurídica*, published originally in 1736 and reissued in 1795, consists of three books: (1) 'On Justice, Right, Law, Jurisdiction, and Privileges: Their Definition and Use;' (2) 'On Marriage;' and (3) 'On Advisors and Companions of Common Judges.' Book 1 is the most theoretical of the three, prone to long discourses defining foundational concepts of law, right, jurisdiction,

and justice. The author provides general descriptions of each idea, and then further divides them into rubrics of type, breaking individual concepts into further subcategories with their own definitions and functions. So, for example, *derecho* is defined as, ‘a good and fair art, whose precepts are to live honestly, cause no harm to others, and give to each that which is his’ (Juan y Colom 1795, 2). This general definition is then broken into three types:

1. Natural Right: that which is common to all of the human genus, both the rational and irrational, who are inclined by their natural instinct towards self preservation and survival, through the procreation, care, and nourishment of children . . .
2. Rights of Men: that which men established by mutual agreement in prudent judgment.
3. Positive Right: that which is imposed at the will of the supreme Monarch, be he Emperor, King, or Prince, and which recognizes no greater temporal authority, and which changes according to the circumstances of the times . . . It is divided between Canon and Civil law. (Juan y Colom 1795, 2–3)

Juan y Colom demonstrates a desire for classification that betrays a sensitivity towards order and rationality, a sensitivity confounded by a decentralized legal structure that gives no rank to precedent for judging cases and assigning jurisdictional priority. Following an extensive lineage of Hispanic law, Juan y Colom advises jurists to apply the following hierarchy of legitimacy to the various legal compilations at their disposal:

1. *Nueva Recopilación*, including the *Reales Pragmáticas* and *Autos Acordados*.
2. *Fuero Real*.
3. *Fueros Municipales*.
4. *Siete Partidas*.
5. Local custom.
6. Laws collected in the *Ordenamientos Real*, the *Fuero Juzgo*, and the *Derecho Canónico*, the *Civil Romano*, and ‘which ever laws are adaptable to natural reason.’
7. In the absence of laws speaking directly to the type of case being adjudicated, a judge should turn to the closest law he can find (Juan y Colom 1795, 18–25).

Despite this extended attempt to provide a hierarchy of legal authority, the prominence of the *fueros* and local custom forced Juan y Colom to recognize exceptions to royal will.

The most tortured effort to bring order to a chaotic situation notably occurs in the longest chapter of the first book, when Juan y Colom determines which judge should hear which type of case. As a guiding principle, Juan y Colom advises that the judge of first instance should always be the *corregidor*, *alcalde mayor*, or *alcalde ordinario* of the town or territory where the defendant resides, unless, of course, it is a real estate dispute, in which case the judge of the place where the disputed land is located has jurisdiction. Or, in cases of vagrancy, the appropriate judge is the residing magistrate

of the place where the vagrant was found. Or, in criminal cases where the defendant committed their crime in a region outside of where they are resident, the local magistrate again has jurisdiction. And what if someone stole something moveable? Or if the act was committed at sea? Likewise, the *corregidor*, *alcalde mayor*, or *alcalde ordinario* may not have primary jurisdiction if the dispute occurred within five leagues of an Audiencia, in which case certain disputes become the primary provenance of the Audiencia court (Juan y Colom 1795, 23–34). Just as the legal foundation of judicial discretion could not be easily dispensed with, the jurisdictional confusion inherited from the Habsburg period was not easily overcome. In all, Juan y Colom needed 17 pages to spell out the intricacies of jurisdictional assignment. To a large extent, the specificity and enumeration of each entry point to thoroughness as an antidote to complexity. By covering as many contingencies as possible, Juan y Colom endeavors to remove the ambiguity that long served the venue-shopping interests of litigants.

The section on jurisdiction is also where Juan y Colom first broaches the subject of women in the courts, stating that ‘the arbiter of a suit against a woman should be the Judge who would have had jurisdiction over cases involving her husband’ (Juan y Colom 1795, 32). That the woman’s position before a judge would be derivative of her husband’s standing is indicative of a desire to enhance male authority during the eighteenth century. The line of argumentation is continued in Book 2, ‘On Marriage.’ Comprising 13 chapters, the book endeavors to delineate the privileges and restrictions that apply to married relationships. Though Juan y Colom recognizes the religious nature of marriage, that acknowledgment is limited to defining the institution.⁷ This extensive secular exposition places the surveillance and control of marriage firmly in the hands of a rationalist state. This is in line with the movements by the crown against ecclesiastical control of marriage embodied in the 1776 *Pragmática* against unequal marriage. Furthermore, the secular matters of legal behavior (emancipation and legitimation of children, *patria potestad*, penalties for adultery) and contracts (dowries, marital profits, inheritance) dominate the text. On the first account, the Juan y Colom’s interpretation is unambiguously patriarchal, whereas on issues of property the diagnosis is decidedly more mixed.

In describing the operational relationship between a man and a woman in marriage, Juan y Colom adopts the classic patriarchal metaphor of body and head, stating that in ‘depicting the married husband and wife as of one flesh and body . . . the husband should be the head of this body, and wherever he wants to dwell, so should the wife as his subject’ (Juan y Colom 1795, 66). The extent to which Juan y Colom envisioned a wife’s status as derivative of male headship is revealed in his argument that a noblewoman who marries a commoner is to have her privileges revoked as long as they remained married. Within this position of headship, the husband has right to administer and control his wife’s property.⁸ Furthermore, in virtually every form of legal and economic activity, Juan y Colom’s vision of a women’s authority is derived from that of men:

And the married woman, during her marriage, cannot repudiate an unexpected inheritance without license from her husband . . .

Nor can a woman sign any contract or waive any action undertaken . . . nor appear as the plaintiff in any suit, nor in her defense without license from her husband. *Ley 2. tit. 3. lib. 5. Recopilación*. But her husband can confer to her a general license to make contracts, and to do all that she is unable to do without a license. Under this form, all acts of the woman are valid. *Ley 4. tit. 3. lib. 5 Recopilación*.

A judge, hearing a legitimate case, based solely on the summary information of witnesses, can compel the husband to grant her license . . .

Likewise, a judge, in hearing a legitimate case that is necessary or beneficial to the woman, can grant her license to act and appear in the case if her husband is absent.

A husband can also ratify an action of his wife, engaged without his license.

Limits to women's access to the courts were expanded to cases outside the marriage. Juan y Colom also advised limits to women's ability to sue or bring criminal charges against their husbands, advocating that judges only admit the most serious of suits, and not elevate 'flippan't disputes (Juan y Colom 1795, 66–69).

In the following chapters, Juan y Colom further enumerates the restrictions and privileges associated with dowry and inherited wealth. He presents the legal definitions of the dowry, varying types of marital property, profits, who must provide a dowry, the *parafernales* (non-dowry property brought into a marriage by the woman), and processes for the restitution of the dowry.⁹ The integrity of dowry wealth had one significant exception, according to Juan y Colom, which was in cases of adultery. 'The married woman who commits adultery loses her dowry, *arras*, and marital profits, which should be transferred to the husband' (Juan y Colom 1795, 130).¹⁰ But the discussion of the dowry, and particularly the means to restitution of the dowry, points to enduring legal protections of women's access to their personal property within the Hispanic tradition. Likewise, the elucidation of procedures for inheritance, in which a wife was entitled to the property she brought into the marriage in addition to 50 percent of the profits of the marriage, demonstrates that long-established practices were difficult to overcome. On the one hand, women's legal activity was to be subsumed under the authority of the leading males of their lives. On the other hand, venerable traditions that protected their access to property carried the force of law in spite of a husband's authority. This tension between the centralizing, rationalizing authority of Bourbon reform and the messy yet flexible customs of Hispanic law exemplified the tension between imperial designs and local expectations.

Alonso Villadiga's *Instrucción política*, published 11 years later, took Juan y Colom's penchant for covering all contingencies to a new level. Villadiga sought in 500 pages to clarify the procedural application of the law from a suit's inception through its final appeal. Rather than utilizing Juan y Colom's topical organization built upon foundational concepts, the *Instrucción política* is divided by case type (civil, criminal, appellate, and *residencia*), in addition to chapters dealing with good governance in the office of *corregidor* (uniting judicial and bureaucratic power) and proper

testaments. Finally, formulas for petitions comprise approximately 40 percent of the text. Much like Juan y Colom, Villadiga structures his work to move from the general to the specific. He defines each step of a civil, and later a criminal, case, enumerates the rules governing that step, and then discusses contingencies. Above all, the *Instrucción política* emphasizes the importance of proper form and procedure in the successful adjudication of disputes, as in the example of the *demanda*.

Villadiga begins his discussion of the *demanda* by explaining that civil suits ‘can be pursued in five ways: against the defendant in his presence, in contempt, in his absence, after his death, or as a case [prosecuted] by the Court’ (1747, 2). Regardless of how the case is brought, there are six phases through which it must pass: petition, reply, order of investigation, publication of witnesses, and the definitive sentence. The chapter then follows these steps in order. The initial petition, or *demanda*, as the first step in the process is further enumerated. Villadiga explains that an effective petition requires five specific elements: the name of the plaintiff, the name of the defendant, the dispute and its attendant details, the penalty desired, and certification that the information provided is sworn testimony. Each of these elements is then further defined, with examples. Finally, the section ends with Villadiga’s clarification of exceptions to the normal procedure. Of key concern was who had the ability to file a petition before a judge. It is here that women first appear in the *Instrucción*:

And if the plaintiff is an *hijo de familia*, or a minor with a guardian, or a married woman, she cannot bring a suit without license from her father, guardian, or husband. And furthermore, any member of these categories has to request a license at the beginning of the *demanda*, or petition for it first. (1747, 3)

Grouping together women and children in a discussion of licensure reinforces the perception of a woman’s legal minority. It is only in his further exposition that Villadiga clarifies the issue of licensure for women. Following his pattern of defining, explaining, excepting, this passage continues by describing cases in which the license is not necessary, including requests for the restitution of the dowry for women. The rest of Villadiga’s work proceeds in this manner, allowing a judge or scribe to turn at any point during a proceeding to the applicable section and read a synopsis of the ideal form of the relevant procedure, as well as exceptions to these rules.

At the end of the work Villadiga includes some 200 templates for petitions, covering every conceivable action taken in judicial proceedings.¹¹ The importance of this section to the author cannot be overstated, for Villadiga asserts that it is in proper form and procedure that justice is located: ‘The successful creation of a petition . . . is of the utmost utility, and essential for the litigant to get justice, because a well-crafted petition carries virtually all of the force of a suit’ (1747, 330). The numerous petitions designed for women emphasize the particular relationship they are to have with the court. The standard petitions clearly assume male participants, and templates for women’s actions fall into categories of acceptable participation, centered on marital and inheritance disputes. Villadiga defines a woman’s status in these special petitions

by her relationship to a man—be it her husband, father, deceased husband, or the court standing in for one of the above—placing at the fore the patriarchal tendencies that lay beneath the complicated layers of Hispanic legal tradition.¹²

Taken together, judicial manuals such as these express a nascent legal formalism. The minimization of the capriciousness of the Spanish legal tradition and the elaboration of predictable outcomes unite the two manuals. The authors sought to accomplish this by placing procedure, classification, and an encyclopedic explanation of contingency at the center of their discourse. The intention of this didactic literature was to normalize legal practice throughout the Spanish realms. As Villadiga explained, success in the law was to be found in adherence to rules, and particularly to written procedures of petition, response, and appeal. The effect of this attempt to centralize and expedite judicial activity would be to make the system indifferent to substantive justice by gutting judicial discretion. For women, the implications of the texts are clear. Outside of financial disputes rooted in the system of dowry exchange and inheritance, legal identity would be restricted to a woman's relationship to men. This is the heart of the legal form of patriarchy, and only the interlinking traditions of the dowry and partible inheritance—in both law and practice—prevented eighteenth-century legal theorists from fully disenfranchising women, and consolidating an economic patriarchy. At least this would be the case if judicial practice reflected the ideal expressed in the legal commentaries.

Practice: Licensure and Legal Identity in Bourbon Quito

In both legal commentaries, licensure follows what was perceived as a woman's natural progression from being a minor under the tutelage of parents to the marital relationship under the auspices of a husband. The prevalence of unmarried-female-headed households, widows, separated married couples, and long-term absent husbands confounded this supposed succession of male guardianship. In cases of an absent spouse, a woman carrying general permission from her husband was obligated to request from the court license to act, for example, in the collection of debts owed to the couple.¹³ Villadiga's template for this circumstance states,

Name, as a woman who belongs to Name, my husband, with his consent, say, that some individuals from such and such place owe my husband and me a certain quantity of *maravedis*, which I need for my sustenance; and, that my husband is absent and I do not expect him to return promptly. I ask and implore Your Honor, based on this information that you order I be given license so I may collect the referenced debts, and to appear in court, in accordance with my rights. (Villadiga 1747, 349)

Single women of majority age, widows, and divorcees, however, had no special provision established for gaining permission to access legal resources, in the form of either litigation or making contracts. It is likely this was so because women in these categories did not fit the natural progression expressed in the ideal world of the legal

commentaries. The oversight suggests the extent to which the real world of local legal culture and social authority could and did differ from the Bourbon ideal. One final category of women who regularly required license to engage in judicial or contractual actions was members of religious communities. The issuance of license for members of religious communities, whether male or female, was governed by the ecclesiastical *fuero*, which required that the bishop or other ranking ecclesiastic grant permission for religious individuals or corporations to act in a secular context. This license, which mirrored that given to soldiers protected by the military *fuero* when engaged by civilian courts, enabled the religious to act outside the protections of their *fuero*.¹⁴ As such, ecclesiastical license represented a renunciation of the privileges and protections of the ecclesiastical *fuero*. This model of renunciation of privilege and protection may well be the best explanation for the local understanding of the operation of gendered licensure in the *corregimiento*.

The phrase ‘with his consent’ or ‘based on his consent’ (*premisa la venia*) was one of two generally used tropes to claim license in a legal act, along with a form of ‘with license’ (*bajo licencia, previa licencia, or con su licencia*). That was, of course, when legal actors deemed it necessary to present permission, which was surprisingly not all that often. Despite the far-reaching insistence of Bourbon-era legal commentaries, licensure and, as a corollary, male representation of women in legal acts were far from normative in *quiteño* legal culture. It was much more common to find women appearing before the court under the gender-neutral boilerplate ‘whereas it is within my rights I appear and say’ (*como mas aya lugar en derecho paresco y digo*), the same language utilized by men. Tables 1 through 9 contain tabulations for license claims, male representation, and unlicensed activities by marital status for the periods 1765–69, 1785–89, and 1805–9 as represented by primary litigants (defendants and plaintiffs) in the cases transcribed by the First Notary. The numbers are quite startling. For the five-year period 1765–69, only four women claimed license, three married and one married with an absent husband. A further five women were

Table 1 License Claims by Status, 1765–69^a

Year	Religious	Married	Married, absent husband	Married, separated	Judicial grant	Total
1765	0	1	0	0	0	1
1766	0	1	0	0	0	1
1767	0	1	0	0	0	1
1768	0	0	0	0	0	0
1769	0	0	1	0	0	1
Total	0	3	1	0	0	4

^a The tables are derived from tabulating licensure claims for all women who were primary litigants (defendants or plaintiffs) in 1NJ 43–47, 87–112, 220–55. In instances where loan instruments were incorporated, the license status was included in the litigation count. A total of 444 cases were analyzed, with 27 from the period 1765–69, 169 for 1785–89, and 248 for 1805–9. This growth across the decades is reflective of a general trend towards more and more litigation.

Table 2 License Claims by Status, 1785–89

Year	Religious	Married	Married, absent husband	Married, separated	Judicial grant	Total
1785	0	2	1	0	0	3
1786	1	3	0	0	0	4
1787	2	5	0	0	0	7
1788	0	3	0	0	0	3
1789	0	8	0	0	0	8
Total	3	21	1	0	0	25

represented by men before the court. Of those five, three hired attorneys, one appointed a third party to represent her interests, and only one was represented by her husband. By contrast, 20 women represented themselves in litigation without reference to license. As one would expect, widows and single women were prominent in the non-licensed category, together accounting for 35 percent of the actions. Women whose status never was noted in the course of litigation accounted for another 35 percent of the cases. Surprisingly, four married women and two married women with absent husbands took the remaining 30 percent of non-licensed actions. Taken together, non-licensed legal actions totaled 69 percent of women acting as primary litigants for the period 1765–69. The remaining 31 percent were evenly distributed between licensed appearances and male representations. It should be noted that attorneys were usually hired by women on their own accord, and therefore served no different purpose than when representing male litigants.

These ratios remained fairly constant for the ensuing decades. For the period 1785–89, 63 percent (122) of women acted without license, 24 percent (47) were represented by men in court, and the remaining 13 percent (25) presented license. The licensed individuals included three religious women, 21 married women, and one married with an absent husband. Male representatives included eight husbands, four husbands representing both spouses, six fathers, 14 attorneys, five lawyers from the office of the Protector of Indians, and ten third parties. As above, representation by an attorney was not a gendered prerogative. Non-licensed actions included one religious, two divorced, one married with an absent husband, 20 married, five singles,

Table 3 License Claims by Status, 1805–9

Year	Religious	Married	Married, absent husband	Married, separated	Judicial grant	Total
1805	0	6	0	0	1	7
1806	0	2	0	1	0	3
1807	0	6	0	0	0	6
1808	0	5	0	0	1	6
1809	0	2	0	0	0	2
Total	0	21	0	1	2	24

Table 4 Litigants without License by Status, 1765–69

Year	Religious	Married, separated	Married, husband absent	Married	Single	No status	Widow	Total
1765	0	0	0	3	0	2	1	6
1766	0	0	0	0	2	1	1	4
1767	0	0	1	0	0	2	1	4
1768	0	0	1	1	0	1	1	4
1769	0	0	0	0	0	1	1	2
Total	0	0	2	4	2	7	5	20

35 widows, and again a predominant 58 with no status indicated. Combining the various categories of married women, 34 presented license or were represented by their husbands, as compared with 23 who acted alone. This comparison does not include married women who hired attorneys or indigenous married women who were represented by the office of the Protector of Indians.

Finally, for the period 1805–9, 69 percent (204) of women acted without license, followed by 23 percent (67) represented by men, and 8 percent (24) appearing with license. The relative drop in license presentations was accounted for by an increase in non-licensed self-representation. Married women presented 21 licenses, with an additional one by a separated married woman, as well as two rare judicial license grants. Husbands, who represented either their wives or the marriage’s communal interests in 24 instances, dominated male representation for the first time. Twenty attorneys, 15 Protectors of Indians, six third parties, and two fathers standing for their daughters followed them. Meanwhile, litigants without license were overwhelmingly of no denoted status (108, or 53 percent of non-licensed parties). Forty-three widows combined with 12 singles to fill out the categories traditionally outside of consent requirement. All married women together totaled an additional 38 litigants.

Taken together, in the 15 years compiled for the closing decades of Spanish rule in Quito, 518 women were primary litigants in disputes compiled by the First Notary. Of those, 346 (67 percent) claimed no license to appear before the court. An

Table 5 Litigants without License by Status, 1785–89

Year	Religious	Married, separated	Married, husband absent	Married	Single	No status	Widow	Total
1785	1	0	0	3	2	14	13	33
1786	0	0	0	6	0	7	6	19
1787	0	2	1	3	2	12	8	28
1788	0	0	0	1	1	7	3	12
1789	0	0	0	7	0	18	5	30
Total	1	2	1	20	5	58	35	122

Table 6 Litigants without License by Status, 1805–9

Year	Religious	Married, separated	Married, husband absent	Married	Single	No status	Widow	Total
1805	1	1	0	8	1	27	9	47
1806	0	0	0	7	1	26	11	45
1807	0	0	0	8	3	23	13	47
1808	0	0	6	0	2	18	7	33
1809	1	0	1	8	5	14	3	32
Total	2	2	7	31	12	108	43	204

additional 53 (10 percent) appeared claiming license, while 119 (23 percent) were represented in some capacity by men. Of those in the last category, only 37 were husbands representing their wives. What are we to make of 68 married women acting without license, while only 48 claimed permission? What do these numbers signify? Is it safe to assume that women who presented petitions before the court or who signed contracts without reference to marital status were single? Ancillary details of the cases suggest this assumption cannot safely and universally be made. The answer to all these questions is that the devil is in the details.

As predicted from the legal commentaries, single women of majority age and widows never sought or presented permission for legal acts. But the licensure of married women was much more complicated than the simple instructions of Villadiga and Juan y Colom. There are numerous examples of cases that followed the rules. In April 1769, Josepha Villafaña filed suit to legitimate her parentage in hopes of gaining inheritance. Her husband was absent from the city, but she still presented a formal, notarized writ of license from him. The text of the license restricted the permission to this specific instance of litigation. In gaining legitimation of her questionable heritage, Villafaña stood to gain a significant inheritance. It may be she felt her dubious parentage required a higher attention to procedural formalities to impress the court. In December 1772, doña Elena de Leon y Otalero, the legitimate wife of General don Phelip Arechua y Sarmiento, filed suit with his license to regain the proceeds of a commercial venture she had contracted with Manuel Barraza (AN/

Table 7 Women Represented by Men in Litigation, 1765–69

Year	Husband	Husband for both	Father	Attorney	General protectorate	Third party	Total
1765	0	0	0	2	0	1	3
1766	0	0	0	1	0	1	2
1767	0	0	0	0	0	0	0
1768	0	0	0	0	0	0	0
1769	1	0	0	0	0	0	1
Total	1	0	0	3	0	2	5

Table 8 Women Represented by Men in Litigation, 1785–89

Year	Husband	Husband for both	Father	Attorney	General protectorate	Third party	Total
1785	0	0	1	3	0	1	5
1786	0	1	1	1	0	0	3
1787	2	0	2	2	1	2	9
1788	3	1	0	1	2	1	8
1789	3	2	2	7	2	6	22
Total	8	4	6	14	5	10	4,747

Q 1NJ 53, 22-xii-1772). Barraza had carried unspecified goods for sale to Guayaquil. Upon his return, Barraza refused to divulge to doña Elena what was sold, for how much, and what her cut of the proceeds should have been. She brought suit, and the court attempted to compel Barraza first to produce a record of the activity, and later to pay up to doña Elena. Ultimately, she had Barraza placed in jail for non-compliance. In January 1785, doña Ysidora Sanchez, the legitimate wife of Josef Carcelen who was absent in Latacunga, claimed permission to appear before the court to request a royal financial grant for her son to attend college (AN/Q 1NJ 87, 7-i-1785). The scholarship was awarded for the following period of matriculation. By that time, the son to whom the award was assigned was too sick to attend classes and Josef Carcelen, who had returned to Quito, resumed the case, petitioning the Audiencia to reassign the grant to another son. In December 1787, Manuela Gomez Astudillo, wife of Josef dela Cruz, claimed permission to file criminal charges against the city's Lieutenant Tribute Collector for a set of pearls she claimed he had unjustly taken from her (AN/Q 1NJ 101, 6-xii-1787). The dispute radiated from an attempt to impress a mestizo named Mariano Santos into tribute payment. Gomez stood up for Santos, angering the Lieutenant, who proceeded to confiscate her pearls for Santos's supposed tribute debt. Finally, in June 1805, doña Mariana Paez y Coleti, legitimate wife of Prospero Ocampo, sought and received judicial license (*premisa la benia del juzgado*) to bring suit against her father-in-law, don Gregorio Ocampo (AN/Q 1NJ 223, 10-vi-1805). She alleged that her husband had taken property she had inherited from her parents and given it to Gregorio Ocampo against her wishes, and was suing

Table 9 Women Represented by Men in Litigation, 1805–9

Year	Husband	Husband for both	Father	Attorney	General protectorate	Third party	Total
1805	5	0	0	3	3	1	12
1806	4	3	2	5	4	0	18
1807	6	1	0	4	4	2	17
1808	2	1	0	5	2	1	11
1809	1	1	0	3	2	2	9
Total	18	6	2	20	15	6	67

for its return. In all likelihood, Prospero Ocampo refused to support the legal action, as he was responsible for funneling the property to his father. The court concurred with Paez, and ruled in her favor. Each of these cases represented procedurally correct but varied forms of criminal and civil litigation in which married women specifically sought licensed consent to appear before the court, including those with absent or, in the last case, uncooperative husbands.

Much of the licensed litigation was not so transparent. For example, in April 1788 doña Maria Ventura Padilla, a resident of Quito and legitimate wife of merchant don Pedro Herrera, filed suit against her husband over abandonment and financial support (AN/Q 1NJ 103, 4-iv-1788). Padilla phrased her opening petition with the expression, 'based on the necessary [permission],' and then proceeded to catalog the disastrous behaviors of her husband. In his response to the petition, Pedro Herrera feigned shock that his wife would complain to the court about his treatment of her and particularly that she would assume the right to appear in court. Technically, married women could sue their husbands for alimony, as food, shelter, and clothing were marital obligations, so the reference to consent was unnecessary. The court ignored Herrera's surprise and allowed the case to continue. In January 1789, doña Ysidora Aguayo filed charges with an *alcalde ordinario* alleging her husband, Francisco Xavier Garzon, was engaged in an adulterous relationship with a *pardo* woman named Josefa Larrea that had lasted the entire length of their marriage (AN/Q 1NJ 107, 16-i-1789). As would be expected, Aguayo filed the complaint without permission of her husband, and the *alcalde ordinario* immediately arrested Garzon. Two weeks later, Aguayo appeared before him again, this time under the phrase *premisa su benia* to request her husband's release from jail. In the interim, the couple had reconciled and she no longer wanted to sustain the complaint. Interestingly, now that Aguayo was filing a petition on behalf of her husband's interests, she referenced his consent.

In a similar case from December 1805, Tomasa Saures claimed license from her husband to file charges against his lover Juana Molineros for adultery (AN/Q 1NJ 227, 12-xii-1805). The complaint also included a list of physical and verbal assaults that Saures had suffered at the hands of Molineros, who had publicly called her a *samba* and a thief. In response to the complaint, the *alcalde ordinario* ruled that Saures could not file against Molineros for *concubinato*, claiming, 'A wife cannot bring charges of adultery,' and required Saures to consult an attorney to conform her complaint to the law.¹⁵ In response to the *alcalde's* ruling, Saures changed her tactic and re-filed a criminal complaint for verbal and physical assault against Molineros. A second plaintiff, Margarita Ortis, whose marital status was never noted, joined her in a new case. With the charges moved from adultery to injurious words and actions, Saures dropped the claim of license and proceeded to file petitions before the court together with Margarita Ortis without reference to consent. There no longer was a perceived tactical advantage to the consent. Interestingly, the *alcalde* never questioned Margarita Ortis's status, or the shift for Tomasa Saures. In certain instances the claim

of consent plainly confounds logic. In September 1806, doña Josefa Ypes filed a suit against her husband, don Nicolas Araujo, in secular court to complement divorce proceedings underway before an ecclesiastical judge (AN/Q 1NJ 234, 22-ix-1806). The secular charges amounted to attempted murder for an assault Araujo had perpetrated against her with a knife. Still, in filing the opening petition of the criminal complaint, Ypes utilized the standard phrase, *premisa la venia*.

Women often utilized license language in instances where they were representing the interests of the marriage, their husbands, or legitimate children. If a husband was incapacitated by an assault and unable to petition the court directly, his wife represented his interests under his assumed consent.¹⁶ The privilege extended beyond assault cases as well, with wives occasionally representing their husbands before the court out of convenience.¹⁷ In either case, the extension of license appears to have worked much the same as power of attorney given to third-party representatives and lawyers. Contrary to expectations, it appears from the litigation that fathers were unlikely to represent their legitimate children except in cases in which daughters were sexually assaulted. Five of the eight cases filed by fathers on behalf of minors were cases of *estrupo*, the other three involving monetary disputes.¹⁸ Women, on the other hand, represented the interests of their sons, daughters, and servants on a much wider variety of cases, both with and without license from their husbands. In January 1767, Manuela Aguirre, legitimate and licensed wife of Mathias Carbajal, filed charges against Mariano dela Cadena for assaulting her daughter in a fit of jealous rage after she rebuffed his courtship (AN/Q 1NJ 44, 22-i-1767). Two decades later, but without expressed consent, Agustina Araus filed charges against Ventura, Tomasa, and Luisa dela Zenda for beating up her 16-year-old legitimate daughter, doña Nicolasa Baldes y Arauz (AN/Q 1NJ 100, 17-ix-1787). A year later, in June 1788, Beatris Seballos's mother, doña Roza Navarro, filed a criminal complaint against Agustin Fiallos for sexually violating her daughter with no reference to marital status or consent (AN/Q 1NJ 10-vi-1788). Mothers also represented their sons and daughters in inheritance and dowry disputes, against abusive employers, and for protection from abusive royal officials, among other things.¹⁹

Some of the most telling information on the customary attitudes toward paternal consent in the legal system comes from cases in which licensure was made a specific point of legal argument. In June 1772, don Gaspar Antte had his attorney file a brief with the Audiencia in response to a credit action taken against his mother, doña Dionicia Donazo (AN/Q 1NJ 52, 2-vi-1772). On the face of it, this would tend to suggest doña Dionicia's access to the court was linked to her relationship with her son, likely the oldest male left in her life. Doña Dionicia found herself in a precarious position, owing some 5,000 ps to two creditors, who together held a lien on her hacienda. The attorney's rejoinder was in response to the creditors' request for an appraisal of the hacienda in a move to foreclose on doña Dionicia's debt. The complication for a gendered reading of this case comes in the form of the lead representative of the creditors: doña Ysavel dela Flor, the legitimate wife of don

Gaspar Antte. Doña Ysavel was joined in the action against doña Dionicia by the Marqués de Villa Orellana (himself an *alcalde ordinario* charged with upholding the law in Quito), and yet it was doña Ysavel who initiated and managed the legal action. Don Gaspar's attorney used this fact as a platform to challenge the suit, claiming that neither the original loan nor the current suit were valid because doña Ysavel operated without license from her husband, arguing,

It is indisputable, that in order to appear in a suit, a woman must legitimate her person by extending, as an unavoidable requirement, license from the husband . . . The opposing party having omitted the formality, the petition should be rejected for this reason.

The attorney employed this argument of gender right as one element of the petition, arguing further that any garnish from the profits of his mother's hacienda would prevent her from meeting other important obligations, most notably the payment of royal tribute for the property's resident Indians. But this economic argument was based on a different mode of defense than the first. The gendered argument questioned the legitimacy of the court action a priori, whereas the economic argument was a plea to mercy in the interest of the royal treasury. Unfortunately, the folio ends with an order by the judge to pass on the petition to the creditors, so we do not have the response of doña Ysavel to the attorney's line of reasoning.

The ancillary details of the dispute speak to normative actions outside of the framework of licensure. The case against doña Dionicia was filed initially by doña Ysavel, which the Audiencia accepted in due course. It can be inferred from the text that doña Ysavel did not have license from her husband to bring the suit, but this did not deter the Audiencia from accepting her petition and forwarding it to the defendant. Don Gaspar's response was crafted by an attorney, Mariano Coello, who would have been familiar with the intricacies of Castilian law, and who sought to exploit the gender rights of his client as a tactic for dismissing the case. It should be noted that this argument could only have come in the name of don Gaspar, as his mother could not have invoked gender right as a legal strategy. Finally, the underlying facts of the quite substantial loan between doña Ysavel and doña Dionicia points to an independent and legally documented economic contract between women. Clearly, in this case, the argument of the gendered right to consent employed by don Gaspar and his attorney was a tactical option, chosen as a last-ditch effort to protect his mother's property, and his future inheritance.

Husbands were not the only ones who attempted to tactically employ gendered legal procedures to get out of sticky situations. In May 1806, doña Victoria Ponze, legitimate wife of Juan Teran, was indebted to various creditors she could not afford to repay (AN/Q 1NJ 230, 17-v-1806). In a rather unusual maneuver, Ponze petitioned the court to abolish her debts, arguing, 'the obligations that I have signed are null because I took them without the intervention of my husband, and because they are

expressly usurious.²⁰ The court rejected the argument outright, and ordered Ponze to liquidate her personal house in the barrio of San Roque and other belongings to the tune of 555 pesos in order to satisfy her creditors. Ponze's argument was surprising to her creditors. In at least one case the loan receipts showed Ponze had borrowed money together with her husband and included a legal instrument documenting her request and demand for license from Juan Teran, though this was an exception among her many debts.

The one instance when women regularly requested license from their husbands was when married couples mutually borrowed monies with formally notarized instruments. The standard language utilized by notaries in this instance explained that the married couple appeared before the notary to make a legal instrument; the woman, before all other acts, 'requested and demanded' license from her husband to sign and swear to the document. Once granted by the husband, the license could not be revoked. A declaration then followed the legal act in which the married couple proclaimed they were borrowing money, buying property, or whatever was to occur with one voice, jointly (*de mancomún*). In effect, this placed the personal property of both the man and the woman at peril of debt collection, which required the couple to renounce the legal protections in Spanish law against a husband or wife being responsible for their spouse's debt. In essence, the request and demand for license in this situation acted as a legal renunciation of those privileges, and clarified to all parties involved that dowry property, communal property, and the couple's personal estates all were subject to repayment of the loan or as collateral on the property. Interestingly, in cases where married couples borrowed from women, the creditors' marital status is never noted, nor any license indicated.²¹

Female lenders controlled all of the cumulative debts of Ponze. Only one of the loans was made with a formal, notarized instrument—the same that carried license. The rest of the debts were made with simple instruments, witnessed and signed, but not notarized, and which the court still enforced. Ponze's report of her debts included:

Doña Manuela Sandoval, with a notarized loan instrument	220 pesos
Doña Gregoria Salazar, with a simple instrument	110 pesos
The widow of Señor Angulo, with a simple instrument	073 pesos
Señora doña Antonia Donoso, without an instrument	020 pesos
Doña Francisca Arias, with a simple instrument	050 pesos
Doña Josefa Andrade, with a simple instrument	060 pesos
Doña Antonia Velasquez, with a simple instrument	030 pesos
Doña Rosa Arisa, with a simple instrument	038 pesos
Doña Petrona Camacho, without an instrument	030 pesos
Plus, monies she owed her son, don José Ribadeneyra	030 pesos
Total debts	661 pesos

In the instruments presented in the case, none of the lenders ever referenced either their marital status or any form of consent for the loans made. That only one of the loans (the largest) was made before one of the city's public notaries suggests an informal debt economy in which women regularly participated. Likewise, those simple instruments of the informal debt economy were always gender neutral. The court's rejection of the argument questioning those loans made without male intervention provides further evidence for customary autonomous female economic identities.

Issues of gender right were most likely to appear at moments of tactical necessity, as was the case in the arrest of Maria Ortiz and Ygnacia Paredes in April 1774 (AN/Q 1NJ 55, 12-iv-1774). Maria and Ygnacia found themselves in the *recogimiento* of Santa Marta for having publicly insulted an officer of the court and the administration of Royal Justice, hurling at an *alcalde* of the *cabildo* the most 'denigrating words.' Maria and Ygnacia had come to the *cabildo* court for a verbal hearing of a petty dispute with an unidentified third party. When the presiding magistrate, *alcalde ordinario* don Pablo de Unda y Luna ruled against the women, they began to berate him as unjust, and continued to do so outside the court in the Plaza Mayor. Don Pablo proceeded to have the two arrested, despite their protestations that an *alcalde ordinario* did not have the ability to arrest married women. The claim is interesting, as the women had initiated a verbal hearing outside of the presence of the husbands, and it was only in the face of possible punishment that they invoked their status as *mugeres casadas*, arguing that don Pablo's actions contravened the right of the women's husbands to manage their relationship to the legal system. His actions, though, were upheld upon further investigation, and the women remained in jail. Although, as previously noted, gender rights, including in the form of licensure, most often appeared in cases where the litigants perceived a tactical advantage in the prosecution or defense of a claim, it would appear that the relative tactical appeal of gendered prerogatives was weak in the *corregimiento*. This can be seen in the fact that 67 percent of cases involving women as primary litigants did not invoke licensure or male representation, either as a proactive proclamation or reactive defensive maneuver. In fact, the majority of women in the *corregimiento* of Quito who engaged the legal system in the closing decades of Spanish rule did so assuming an independent legal identity that included the right to make and defend both criminal and civil legal actions without the intervention of the men in their lives.

Conclusion

The disparate application of the strict legal norms for gendered participation in the judicial process points to a disarticulation between the ideal organization of legality under Bourbon rule and the expectations and customary practices of local magistrates and litigants in the *corregimiento* of Quito. In the space between prescription and practice, judicial records present a picture of economically and legally active women who used the region's various courts to great effect in protecting

their material interests. Articulations of gender right, in the form of either license or male representation of female litigants before the court, were utilized scarcely and tactically. The legal status of women in late colonial Quito was not equal to that of men, and though they made contracts and wills and filed petitions, they had no direct access to the avenues of political power. However, the statistics on licensure clearly demonstrate that women maintained an autonomous legal identity apart from their relationship to husbands, fathers, guardians, and magistrates through the end of Spanish rule in Quito's small corner of the Andes. Gender was not a determinative factor in the ability of litigants to make legal acts, despite legal prescriptions to the contrary. Women occupied this legal space, claiming independent access to legal resources, because of structural legal constraints that privileged *derecho vulgar* over metropolitan dictates, even in the case of gender privilege. Despite the Bourbon intervention into the organization of legal identity and its associated procedural formalism, local customary practice continued to support women's access to the courts, and by extension defied the patriarchal project of the closing decades of Spanish rule.

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Archives Consulted

AN/Q Archivo Nacional del Ecuador, Quito

Sections:

1NJ Notaría Primera, Juicios

Notes

¹ Seed (1988) pioneered skepticism about the applicability of the patriarchal model for understanding colonial gender relations by demonstrating the effects of jurisdictional wrangling on marriage choice in the seventeenth and eighteenth centuries. She identified the emergence of patriarchalism with late eighteenth-century Bourbon secularization of marriage procedures and the penetration of capitalism. Further work that questions the patriarchal monolith implicitly, if not explicitly, includes Mangan (2005), Gauderman (2004; 2003), Salomon (1988), Sousa (1997), and Wood (1997). For Brazil, see Nazarri (1990; 1991), and Lewin (1992). For contemporary Spain, see Nader (2004) and Poska (2005; 1996). Jane Mangan maintains the use of the term 'patriarchy' in her study of colonial Potosí with a certain measure of skepticism to indicate a situation in which 'men [were] dominant in controlling power and resources, but allow[ed] women room to maneuver in both economic and legal contexts' (Mangan 2005, 200).

Despite a growing number of examples of limitations to patriarchal authority, use of the term 'patriarchy' to designate generalized gender domination remains par for the course. See for example, Powers (2005), Premo (2005), Socolow (2000), Chambers (1999), Stern (1995), and Arrom (1985). The model is likewise ubiquitous in modern studies, and particularly modern studies' portrayal of the colonial period. See for example, Caufield and colleagues (2005), O'Conner (2002), Dore and Molyneux (2000), Hünefeldt (2000), Caufield (2000), and Besse (1996). In the cases listed above, modern historians accept wholesale the a priori assumption of patriarchal gender relations in the early period, and thus explain modern patriarchy as an updated version of colonial social relations. Elizabeth Dore (1997, 113) has noted the difficulties of broad-stroke applications of the patriarchal model in the nineteenth century due to the prevalence of female-headed households. For the purposes of this article, I borrow the definition of patriarchy posited by Sousa as a system 'in which (1) authority is invested in the eldest male; (2) a woman has no individual legal status and, therefore, cannot order testaments, witness legal documents, or legally represent herself; (3) a woman has no individual economic status and, therefore, cannot own property or carry out economic transactions without approval of her legal guardian (usually either her father or her husband); and (4) a woman's identity is derived from her association with the family patriarch (either her husband or her father)' (Sousa 1997, 395). This definition is particularly useful for its specificity and testability, moving beyond a simple equation of patriarchy= male domination.

² The year 1765 marked the real beginning of the Bourbon period in the Audiencia of Quito, with an attempt to restructure the city's sales tax and liquor monopoly. This article tracks women's legal status from the arrival of intensive reform in 1765 through the beginning of the crisis of governance of the independence period in 1810.

³ For descriptions of the nature of Spanish rule under the Habsburgs, see Haring (1975), Phelan (1960; 1967), Cutter (1995), Cañeque (2005), Kagan (1981), and Nader (1990).

⁴ The legal commentaries used by this article to document official legal culture during the Bourbon period are but one means to establish official perspectives on legal practice in the region. Victor Uribe (1995; 2000) has successfully used prosopographic studies of legal offices as well as analysis of the innovations in university education in the 1790s to document the effects of Bourbon-era reforms on the lawyerly class of the Viceroyalty of New Granada, of which Quito was a part. It is not my intention to reproduce this type of valuable investigation, but rather to look specifically at the discursive conditions of legal acts as prescribed by metropolitan Bourbon commentators in practical manuals intended for the notaries, magistrates, attorneys, and lawyers engaged in daily legal practice. For more on *quiteño* legal education and university reform, see Black (2006, 121–31).

⁵ In order to maintain the texture of the judicial disputes, I have chosen to keep the original orthography of individuals' names. In cases where names appear multiple ways within individual documents, I have used the most common spelling.

⁶ For example, Basques could request their cases be heard before the *juez mayor* of Vizcaya, even if they were arrested in the New World (Kagan 1981, 29). On the *fuero militar*, see Tompson (1976, 45–48). As Kagan has noted in the case of Castile, the many *fueros* 'created . . . a web of jurisdictional refuges which many used to escape prosecution and to delay proceedings in the king's courts' (1981, 30).

⁷ Juan y Colom's definition is still remarkably secular: 'Marriage is the con-joining or sexual union of a man and a woman, with the intention of living forever together, without separating one from the other, nor he knowing another woman, nor she another man. It is called matrimony and not patrimony because it is composed of the Latin words, *matris* and *munium*, which is in the romance, charge of the mother, because she bears more work with the children than the father. She carries them in the womb, births them with pain, feeds them from her breast, and when they are young, they need her more than their father. . . . [Marriage] was instituted in two

principles; which are, before Adam sinned, for the propagation of the human species, and after, when it was elevated to being a Sacrament, in order to evade the sin of fornication' (1795, 61). Juan y Colom recognizes the sacramental nature of marriage, but the natural union of man and woman stands foremost.

- ⁸ For more on the intricacies of women's property and Castilian law, see Gauderman (2003, 31–47), Poska (2005, 43–55), and Korth and Flusche (1987).
- ⁹ Dowry and other property brought into the marriage are dealt with in Chapter 3, 69–90. Issues relating to profits are treated in Chapter 4, 91–99.
- ¹⁰ The *arras* was property given as a gift to the woman by her husband upon entering marriage. Exceptions to the penalty include occasions where the woman was forced to commit adultery or where her husband turned out to be Jewish, Muslim, or a heretic (Juan y Colom 1795, 131).
- ¹¹ Petitions in this section vary widely, and include such templates as general phrases utilized in every suit (opening phrases, ways to address the court, closing phrases, etc.), married women in the absence of their husbands, accusations of contempt, requests for restitution, interrogation of witnesses, appeals to the Audiencia, requests for defendants to be jailed, requests by creditors to embargo the assets of a debtor, appointment of a legal guardian, requests by married women that their fathers give them a dowry, requests for the release of the assets of an individual who died intestate, proper petition for a woman whose husband has mistreated her, requests by natural children for alimony, requests to investigate one's parentage to legitimate one's personhood, and so on.
- ¹² See for example, 'Muger casada en ausencia de su marido' (349); 'Demanda por caso de Corte por una viuda' (356); 'Pide yerno la dote de su muger al suegro' (376); 'Pide una muger viuda, que los herederos de su marido le dè su dote' (376); 'Pide la muger legitima los bienes de su marido, que murió abintestado, sin hijos' (380); 'Demanda y querella de muger contra su marido, de malos tratamientos' (383); 'Pedimiento de la hija natural sobre alimentos' (401).
- ¹³ Gauderman (2003, 40–42) has argued that the available option of seeking license directly from a magistrate acted as a check on paternal authority. Critics would observe that license from the judiciary still placed women's access to legal resources under male tutelage, the process Stern has termed 'pluralizing patriarchs.' I argue below, however, that this disagreement is made moot by a *quiteño* legal culture that normalized disregard of the procedural requirement.
- ¹⁴ For examples of religious women granted ecclesiastic license, see AN/Q 1NJ 47, 10-ix-1770, 'La Reverenda Madre San Ygnacio Romero religiosa, demanda cantidad de pesos a D.n Juan Fran.co Rivadeneyra,' 1NJ 93, 18-i-1786, 'Juicio ordinario que sigue el procurador Manuel dela Parra a nombre de Sor Maria Jasienta de la Presentas.n Barba, relig.a dela Concep.n contra la posehedora dela haz.da de Turubamba, que fue de D.n Nicolas Barba, por 650 ps. que este tomó con hipotec a de ella, al 5 por ciento,' 1NJ 101, 6-x-1787, 'Expediente relativo à la demanda que sigue la Madre Rosalia dela Visitacion y Moreno religiosa del Monasterio dela Concep.n contra la testamentaria de Dn Salvio Balladares, sobre el encargo de una puerca y el procreo de doce serdos.' As a corollary, for an example of a loan made by a male *cofradía* under license from the Bishop, see AN/Q 1NJ 44, 3-ii-1767. In another interesting twist, Josefa Aguirre, a single woman, requested ecclesiastical license for Dr Francisco Xavier Suares Alava, the local priest of the pueblo of Aloag, to participate in a contract dispute she had engaged against married couple Mariana Ballejos and Jose de Luna. For examples of license being granted to a soldier to testify in a criminal proceeding, see 1NJ 111, 3-9-1789, 'Criminales seguidos pr Margarita Espinosa contra D.a Sebastiana Olais, sobre injurias,' a case brought by Margarita Espinosa, a married woman, without her own license; and 1NJ 230, 26-iii-1806, 'Antonio Garcia contra Antonia Morales, sobre injurias,' a case brought by a husband on his wife's behalf.
- ¹⁵ The judge's ruling stated, 'Esta parte consulte esta Querella con Letrado, y proponga conforme a derecho respecto de que la muger no puede Querella el adulterio.' Technically, the judge's ruling was correct for the context of secular court. See Arrom (1985, 65). Twenty years earlier, judges

openly ignored the rule. One of the customary means around the restriction was for the wife to simply denounce her husband for publicly scandalous behavior, which was then investigated *de oficio*. In the course of Quito's customary practice, however, both men and women regularly filed spousal prosecutions for adultery. See Black (2006, 160–94).

- ¹⁶ See, for example, AN/Q 1NJ 110, 13-viii-1789, 'Ysavel Vermudes contra Francisco Donoso y Josefa Navate de Segura por el temerario acensinato que han cometido contra mi marido.' Donoso and Navate stabbed Vermudes's husband 14 times, but he lived. She was then filing on his behalf, 'premisa la licencia.' Also AN/Q 1NJ 111, 12-x-1789, 'Expediente criminal relativo á la causa que sigue Agueda de Leon por su marido, contra el negro Manuel esclavo de don Simon Saenz por heridas.'
- ¹⁷ See, for example, AN/Q 1NJ 99, 10-v-1787, 'Autos criminales seguidos contra Manuel Ysquierdo sobre aber formado un escrito denigrativo con el Jues.' The case was pursued by Francisca Biscaino of the village of Pujilli on behalf of her husband Domingo Espinar, who was the subject of the injurious letter. Notably, there was no mention of license or consent in this case. Also, in AN/Q 1NJ 244 8-ii-1808, doña Eulalia Ramirez, wife of the absent don Cebilio Xaramillo, represented him in the adjudication of a tax dispute over lands he owned in the village of Machache, south of Quito.
- ¹⁸ For the *estrupo* cases, see AN/Q 1NJ 94, 2-v-86; 100, 2-vii-1787; 100, 4-vii-1787; 108, 26-iii-1789; and 231, 7-vii-1806.
- ¹⁹ For inheritance and dowry cases, see AN/Q 109, 14-v-1789, 'Expediente sobre pretender el menor Yldefonso de Albuja, como hijo de don Manuel de Albuja y Jacinta Villacis su legitima muger, ser uno de los herederos del yntestado Dr Dn Nicolas Albuja Presbytero;' and 238, 27-ii-1807. For protection of a son from an abusive employer, 241, 1-ix-1807, 'Criminales seguidos por Da. Petrona Mogollon contra Bernardo Ruyloba, de oficio Platero.' For protection from an abusive royal official, see 221, 5-iii-1805, 'Expediente criminal seguido pr Da Narsisa Duarte, contra el Teniente del Quinche Dn Manuel Oñate, por los exesos executados en Da Juaquina Baraona y Duarte su hija.'
- ²⁰ 'de que las obligaciones que tengo otorgadas, son nulas, por haverlas hecho sin interncion de mi Marido, y contener manifiesta usura.'
- ²¹ In addition to the current case, see for example AN/Q 1NJ 99 15-vi-1787, in which don Sebastian Nuñez, his wife doña Ysabel Ponce, don Josef Ponce, and his wife doña Maria Calle y Vega borrowed 375 pesos from doña Maria Mena. Before proceeding with the transaction, the two women verbally requested license from their husbands in the presence of the notary; AN/Q 1NJ 222 29-iii-1805, in which doña Maria Bermeo, a *vecina* of Quito, sued doña Josefa Coloma and don Luis Gazia over a house sale in San Sebastian; and AN/Q 1NJ 251 4-iii-1809, in which don Josef de Leon and his wife doña Ana Jiron together borrowed 500 pesos from don Jose Moreno de Paz. In each of these cases, the act of licensure was proffered verbally in front of the notary recording the legal act.

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