

Parental Authority and Freedom of Marriage: Cases from the Ecclesiastical Tribunal of Manila (1781-1790)

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Abstract: Through the Real Pragmática of 23 March 1776 and its derivative laws, parental permission for betrothal and marriage of minors became a civil requirement in Spain and its overseas colonies. The law primarily intended to prevent marriages of persons of unequal status with a view to preserving familial position and stability, an objective that coincided with the critical importance of parental intervention in marriage choices among Filipino natives. This extension of royal jurisdiction in marriage, which for centuries had belonged to ecclesiastical jurisdiction, confronted the Church's defense of freedom of marriage as essential for its validity. Against the backdrop of legal-moral doctrine on freedom of consent and obedience to parents, on the one hand, and sociocultural values related to marriage on the other, this article examines how the Real Pragmática was understood and applied in the territory of the archdiocese of Manila through some cases processed in the ecclesiastical tribunal approximately in the first decade of implementation.

Keywords: betrothal, freedom of marriage, Real Pragmática of 23 March 1776, canon law, parental authority, colonial Philippines.

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Introduction

In 1788 Doña Rufina Augustina registered at the office of the *alcalde ordinario* of Manila her opposition to her son Juan Manuel Tuason's plan to marry Felizarda Velasco Morelos, a sixteen-year old girl belonging to the local elite or *principalía* of the town of Bulacan. She objected to the union because she deemed the woman's social status unworthy of the Tuason family's *hidalgo* lineage.¹ As her main legal basis, she cited the Real Pragmática or Pragmática Sanción of 23 March 1776 and the Real Cédula of 7 April 1778.² Her dissent was declared "reasonable and just" (*disenso racional y justo*) by the civil judge. In accordance with those royal decrees, children under twenty-five who went against such parental objection to their intended marriage would be disinherited and lose their rights to family titles and properties. However, twenty-year-old Juan Manuel disregarded the civil injunction and went ahead to request the pre-nuptial investigation of freedom of marriage. Again invoking the new laws, Doña Rufina Augustina filed a case against her son in the ecclesiastical tribunal, presenting her objection already upheld by the civil jurisdiction as a major impediment to canonical marriage. She thereby asked for prompt action from the provisor to prohibit the respective parish priests of Juan Manuel and Felizarda from officiating their wedding.³

¹ Juan Manuel's paternal grandfather was Antonio Tuason, a wealthy Chinese mestizo from Binondo who had been rewarded by Charles III with *hidalgo* status for his loyal service to the Crown especially during the British occupation of Manila (1762-1764). For a summary of his life, see Luciano P. R. Santiago, "The Last *Hacendera*: Doña Teresa de la Paz, 1841-1890," *Philippine Studies* 46/3 (1998): 343-344.

² The *Diccionario de Autoridades* (tomo 5 [1737]) defines *pragmática* as follows: "*La ley o estatuto, que se promulga o publica, para remediar algún exceso, abuso o daño que se experimenta en la República*" (The law or statute promulgated to remedy an excess, abuse or harm experienced in the Commonwealth). "Diccionario de Autoridades," <https://webfrl.rae.es/DA.html>, accessed 30 January 2021. The definition in the *Diccionario Panhispánico del español jurídico* is "a royal provision given by virtue of the king's legislative power," (*disposición dada por el rey en virtud de su poder legislativo*); and the *pragmática sanción* particularly deals with "fundamental aspects of the State" (*aspectos fundamentales del Estado*). "Diccionario Panhispánico del español jurídico," <https://dpej.rae.es/lema/pragm%C3%A1tica-sanci%C3%B3n> and <https://dpej.rae.es/lema/pragm%C3%A1tica-sanci%C3%B3n>, accessed 30 January 2021.

In the Ancien Régime, the *real cédula* was a provision or regulation issued by the king with a Council's intervention. It was the usual form in which the king communicated with collegial bodies and resolved matters of governance. They were not always in the form of orders but could also be requests or grants. *Diccionario panhispánico del español jurídico*, <https://dpej.rae.es/lema/c%C3%A9dula-real>, accessed 30 January 2021.

³ Demanda puesta por Gervacia Apolonia contra Juan Manuel Tuason sobre trato de esponsales, 1788, AAM, Box 14.A.4, folder 5.

As the title of this dossier indicates, this is a double case involving the same man: the more prominent one initiated by the mother Doña Rufina Augustina, and the other about an alleged breach of promise by a Chinese mestiza servant girl who had worked for various members of the Tuason family. Gervacia Apolonia's demand properly belonged to ecclesiastical jurisdiction while Rufina Augustina strove to point out the latter's limits vis-à-vis royal jurisdiction. Both women had the same objective of preventing Juan Manuel's marriage.

Through the abovementioned decrees which came into force in Spain and its overseas possessions, Charles III reinforced the authority of parents, families, and guardians as a key factor for the choice of spouse, bringing up to date the centuries-old conviction that marriages were optimally between socioeconomic equals and that such unions contributed to social order.⁴ The venerated filial practice of asking for parental consent or its equivalent was established as a civil requirement for the validity of the matrimonial contract. Thus royal jurisdiction expanded into a critical societal component that hitherto had been largely under ecclesiastical jurisdiction.

As a preliminary inquiry into the impact of the Real Pragmática of 23 March 1776 and its derivative laws in the Philippines, this article covers the first decade after its promulgation in the colony through the Real Acuerdo of 21 January 1781, using the available matrimonial records from the Archdiocesan Archives of Manila (AAM).⁵ It looks into the way that the new laws were understood and applied in the territory of the ecclesiastical tribunal of Manila, and in the process examine the extent of assimilation of the notions and values of Catholic marriage as well as the social values and family dynamic affecting marriage among Filipino natives (*indios*) and Chinese mestizos. This study also queries the extent to which the notion of parental authority in regard to marriage enshrined in the royal laws intersected with indigenous values and customs. Since it focuses on the activity of the ecclesiastical tribunal, we need to bear in mind that the exercise of royal jurisdiction should likewise be examined if we wish to obtain a comprehensive view of the initial implementation of the Real Pragmática in the Philippines.

The normative aspect of marriage during the Spanish colonial period has rightfully been the subject of studies in canon law which regulated it in its dual nature as a sacrament and contract. Excelso Garcia's work continues to be a fundamental and practically the only reference for the matrimonial legal history of that period.⁶ Summarily, John Leddy Phelan concluded that marriage was a principal area of successful Christianization, a finding that he left to other scholars to flesh out.⁷

⁴ For this article, the author used the printed copy of these laws found in the Archivo Provincial de los Agustinos Filipinos in Valladolid, APAF, 147-1.

⁵ For a comparative study on the application of this law in the Americas, which can also serve as a bibliographical source for the topic, see Diana Marre, "Historia de la familia e historia social. La aplicación de la pragmática sanción de Carlos III en América Latina: una revisión," *Quaderns de l'Institut Català d'Antropologia*, 10 (1997): 217-249.

⁶ See Marya Svetlana T. Camacho, "Marriage in the Philippines after the Council of Trent (Seventeenth to Eighteenth Centuries)," *Rechtsgeschichte - Legal History* 27 (2019): 153, DOI: <http://dx.doi.org/10.12946/rg27/153-162>. The referred work is Excelso Garcia, "Particular Discipline on Marriage in the Philippines during the Spanish Regime," *Philippiniana Sacra* 8/1, no. 22 (1973): 7-88.

⁷ John Leddy Phelan, *The Hispanization of the Philippines. Spanish Aims and Filipino Responses* (Madison, Wisconsin: University of Wisconsin Press, 2011), 61-62.

The field remains largely *terra incognita* but nonetheless holds promise for a rich confluence of law, society, culture, and history.

Freedom of Consent vis-à-vis Obedience to Parental Authority: Doctrine and Legislation

At the outset it must be stated that parental and familial intervention in arranging marriages and selecting spouses was characteristic of indigenous societies in the Americas as well as in the Philippines. As Abelardo Levaggi notes, many of those customs persisted and they basically dovetailed with Castilian and colonial legislation.⁸ Sixteenth- and seventeenth-century Spanish chroniclers showed keen interest in Philippine matrimonial practices which included the negotiation of betrothals that took place between the parents or families of the contracting parties. They observed that generally matches were made between families of similar socioeconomic rank.⁹ In the eighteenth century the continuance of customary practices was reflected in handbooks for parish priests which instructed them about the extent to which such traditions were compatible with canonical marriage and the virtues attached to it, including those regarding sexuality. In this normative literature, the primary concern was to ensure that the forms and discipline of the sacrament according to the doctrine of the Council of Trent were maintained, with the overarching goal of making marriage integral to Christian living.¹⁰

⁸ Abelardo Levaggi, “Esponsales: Su régimen jurídico en Castilla, Indias y el Río de la Plata hasta la codificación,” *Revista de la Historia del Derecho Ricardo Levene* 21 (1970): 33-34.

⁹ See Pedro Chirino, *Relación de las Islas Filipinas y de lo que en ellas han trabajado los padres de la Compañía de Jesus [...]* (Rome: Estevan Paulino, 1604), 69-71; Francisco Colín, *Labor evangelica, ministerios apostolicos de los obreros de la Compañía de Jesus, fundacion, y progressos de su Provincia en las islas Filipinas [...]*, (Madrid: Ioseph Fernandez de Buendia, 1663), 71-72; Juan Francisco de San Antonio, *Chronicas de la Apostolica Provincia de S. Gregorio de Religiosos Descalzos de N.S.P. S. Francisco en las Islas Philipinas, China, Japon. Parte primera* (Sampaloc [Manila]: Imprenta de N. S. de Loreto, 1738), 168-171. Francisco Ignacio Alzina dedicated four chapters to Visayan marriage practices (*Historia de las Islas e Indios Bisayas, Una ethografía de los indios Bisayas del padre Alzina*, ed. Victoria Yepes [Madrid: CSIC, 1996]), libro IV, cap. 12-15; Antonio de Morga, “Events in the Filipinas Islands,” in Emma Helen Blair and James A. Robertson, eds., *The Philippine Islands, 1493–1898*, vol. 16 (Cleveland: The Arthur H. Clark Company, 1905), 146-147, Project Gutenberg; Miguel de Loarca, “Relacion de las Yslas Filipinas,” *The Philippine Islands*, vol. 5, 145-153; *Boxer Codex, A Modern Spanish Transcription and English Translation of Sixteenth-Century Exploration Accounts of East and Southeast Asia and the Pacific*, ed. Isaac Donoso (Quezon City: Vibal Foundation, 2016), 46-47.

¹⁰ See Casimiro Díaz, *Parrocho de indios instruido: idea de un perfecto pastor copiada de los SS. PP. y Concilio. Con la resolución de las principales deudas que en la administracion de los Sacramentos se ofrecen à cerca de los Indios* (Manila: Imprenta de la Compañía de Jesús, 1745), 54-55, 200-212; Manuel del Río, *Instrucciones morales y religiosas para el gobierno, dirección y acierto en la nuestros ministerios [...]* (Manila: Imprenta de Santo Thomas, 1739), 9r-10v; Tomás Ortiz, *Práctica del ministerio que siguen los Religiosos de N.P.S. san Augustin en Philippinas [...]* (Manila: Convento de Nuestra Señora de los Ángeles, 1731), 23-26; Francisco de San Joseph, *Baculo de Parrocos y Ministros de Doctrinas que observan los Religiosos de N.P.S. Francisco en esta Provincia de S. Gregorio el Magno de estas Islas Philipinas*

From the medieval period till the eighteenth century, in the Hispanic world marriage remained under ecclesiastical jurisdiction and was governed by canon law. Castilian law harmonized with ecclesiastical norms in regard to the nature and requirements of valid and licit marriage. The Council of Trent authoritatively declared the Church's jurisdiction and power to legislate on discipline regarding marriage. The Tridentine canonical form of marriage encapsulated the Church's campaign against clandestine marriage by emphasizing the visibility and public character of marriage: the mutual consent of the spouses should be expressed in the presence of their parish priest or the authorized priest (*in facie Ecclesiae*), and of two or three witnesses; and it should be preceded by the publication of banns in church at Mass on three consecutive feast days. Marriages were to be duly registered in parish records, also called *libros de matrimonios*.¹¹

Consent was essential to marriage. As the Castilian legal code *Siete Partidas* defined it, consent is the external expression of the desire to marry derived from internal willingness.¹² Thus the Church took pains to safeguard the freedom of consent, that is, freedom from coercion as that which grave fear might cause. The pre-matrimonial investigation conducted by parish priests was a crucial responsibility of theirs to ascertain the free consent of each party to take the other for spouse, and thereby ensure the validity of the marriage to be celebrated. Ana de Zaballa has discussed the importance that the question of requiring parental consent assumed in the Americas as it did in Europe given the widespread indigenous practice of parents making marriage choices for their children. While the Church understood the importance of respecting parental authority and seeking their advice, also in line with the ancient European tradition of *patria potestas*, ultimately it defended the freedom of the contracting parties. The Council of Trent qualified that marriages celebrated without parental consent remained valid.¹³ In his eighteenth-century work *Cursus iuris canonici Hispani et Indici*, the Jesuit Pedro Murillo Velarde adhered to Tridentine doctrine and European tradition, affirming the obligation to obedience

[...] 1740 (cited by Luis Balquiedra, "The Liturgical Principles Used by the Missionaries and the Missionary Background to the Christianization of the Philippines," *Philippiniana Sacra* 30/88 [1995]: 5-79.

¹¹ Pilar Latasa, "Matrimonios clandestinos y matrimonios secretos (Clandestine Marriages and Secret Marriages)," *Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas*, Max Planck Institute for European Legal History, Research Paper Series No. 2019-11, 1-3, 10-17, <http://dx.doi.org/10.2139/ssrn.3368752>.

¹² Ana de Zaballa Beascoechea, "Matrimonio (Marriage)," *Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas*, Max Planck Institute for European Legal History Research Paper Series No. 2018-15, 17, <http://dx.doi.org/10.2139/ssrn.3299914>. Zaballa makes reference to *Las Siete Partidas*, libro IV, título ii, ley 5.

¹³ Zaballa, "Matrimonio," 18-20; Council of Trent, sess. 24, cap. 1, *Decretum de Reformatione matrimonii*.

within reasonable limits. Cases of unjust parental dissent were to be submitted to episcopal judgment.¹⁴

The Augustinian Casimiro Díaz expressed the same opinion in his manual for parish priests published in Manila about the same time as the *Cursus*. To the question (*duda* or *dubium*) of whether a son or daughter sinned if they married against the will of their parents, which he observed was occurring more frequently, his reply was in the negative if the spouse chosen was of equal or superior descent. However, if the marriage was between unequal parties and worse, if it brought shame to the family, they committed grave sin if they went against their parents' will.¹⁵ In consonance with canon law, he advised parish priests to remit cases of extremely unequal marriage to the bishop, for example, when an *indio principal* promised marriage to a Negro or *cafre*. The priest should not allow those unions to avoid scandal to the family of superior condition.¹⁶ Experience must have dictated this counsel which is indicative of the racial hierarchical notions held by natives in colonial society.

The Church's defense of freedom of marriage of children vis-à-vis the wishes of their parents, family or guardians would be radically confronted by Bourbon absolutism. The Real Pragmática of 23 March 1776 was adjusted for promulgation in the Indies as Real Cédula of 7 April 1778.¹⁷ It applied to Spanish America the concern of Benedict XIV, expressed in his encyclical *Satis Vobis Compertum* dated 17 November 1741, to regulate the practice of secret marriages, in particular insofar as they involved children disobedient to their parents who justly opposed their marriage.¹⁸ The Real Pragmática primarily intended to prevent "unequal marriages" (*matrimonios desiguales*) in function of the importance of choosing the right person for a spouse to establish social order beginning with families. Zaballa, framing this law in the dissonance between the Church and the Crown's position relative to the freedom of marriage, concludes that it was meant to force children to obedience by imposing on those who went against their parents' will the heavy price of losing the right to inheritance and family titles.¹⁹ Susan Socolow notes that the ecclesiastical

¹⁴ Murillo Velarde, libro IV, tit. 1, Sponsalibus & Matrimoniis, no. 26. He states the grave obligation of children to ask for advice from their parents for two reasons: their prudence enables them to see the possible harm or advantage which children in love might be blind to; it is a sign of respect that children owe their parents. He ends this point declaring that parents, however, cannot unjustly impede their children's marriage because it would cause great scandal and violate their children's freedom.

¹⁵ Díaz, *Parrocho de indios*, 212.

¹⁶ Díaz, *Parrocho de indios*, 203.

¹⁷ Antonio Dougnac Rodríguez, *Esquema del derecho de familia indiano* (Santiago de Chile: Ediciones del Instituto de Historia del Derecho Juan de Solórzano y Pereyra, 2003), 42.

¹⁸ Benedict XIV, *Satis Vobis Compertum*, Vatican website, <http://www.vatican.va/content/benedictus-xiv/it/documents/enciclica--i-satis-vobis-compertum--i-17-novembre-1741--il-pont.html>, accessed 26 January 2021.

¹⁹ Zaballa, "Matrimonio," 20. Diana Marre ("Historia de la familia," 226 and 242) concludes

courts usually rejected parents' opposition to their children's marriages on grounds of ethnic or economic inequality. For the Church, only canonical impediments could validly prevent marriage.²⁰ Antonio Dougnac explains that since betrothals were not formally governed by Tridentine decrees, they could be subject to civil regulation. The Crown could then stipulate other impediments such as parental consent, taking a position contrary to ecclesiastical law.²¹

The eighteenth-century Spanish jurist Francisco Antonio Elizondo traced the history of Castilian legislation regarding the obedience that children owed their parents in matters of marriage and the importance of equal-status marriages to preserve family honor. He thus presented the primary objective of Charles III's decree to remedy the continued inobservance of previous norms. Distinguishing between the character of matrimony as contract and as sacrament, he explained that this new law addressed marriage as a civil contract while safeguarding its canonical regulation as a sacrament.²² He was careful to give due importance to children's freedom to marry and the possibility of defending their right in the face of unjust opposition from parents, family, or guardians through recourse to the royal judicial system in their respective territories.²³ To resolve conflictive situations arising from children's insistence on contracting unequal marriages, he underlined the role of the clergy in reconciling parents and children.²⁴ In a conciliatory tone, he thus articulated the confluence of the Crown's perspective with the Church's and the Crown's fundamental desire to promote harmony of wills of parents and children as regards the choice of spouse.²⁵

that the increasing predominance of social control by royal authority vis-à-vis the Church's extended beyond matrimonial affairs.

²⁰ Susan M. Socolow, "Parejas bien constituidas: la elección matrimonial en la Argentina colonial, 1778-1810," *Anuario del Instituto de Estudios Históricos-Sociales* 5 (1990), 134. Impediments are classified as diriment and prohibitory: the first renders marriage invalid, and the second only renders it illicit but not invalid. Diriment impediments are of three main types: first, that which arises from personal conditions like incapacities, vows, want of consent, family relationship; second, defect of form; and third, defect of consent. Auguste Boudinhon, "Canonical Impediments," *The Catholic Encyclopedia*, vol. 7 (New York: Robert Appleton Company, 1910), <http://www.newadvent.org/cathen/07695a.htm>, accessed 31 January 2021. Precisely the purpose of the pre-marital investigation was to check whether the contracting parties possessed the freedom to marry and the concomitant absence of impediments. Garcia, "Particular Discipline," 32.

²¹ Antonio Dougnac Rodríguez, *Esquema del derecho de familia indiano* (Santiago de Chile: Ediciones del Instituto de Historia del Derecho Juan de Solórzano y Pereyra, 2003), 43.

²² Francisco Antonio de Elizondo, *Práctica universal forense de los tribunales de España y de las Indias*, tomo 7 (Madrid: Imprenta de don Pedro Marin, 1789), 72-77.

²³ Elizondo, *Práctica universal forense*, tomo 7, 84

²⁴ Elizondo, *Práctica universal forense*, tomo 7, 73.

²⁵ Asunción Lavrin, *Sexualidad y matrimonio en la América hispánica. Siglos XVI-XVIII* (México, D.F.: Centro Nacional para la Cultura y las Artes, 1991), 32.

Applicable to persons in all stations in life, the Real Pragmática invoked divine and natural law as the universal basis of respect for parents. Children 25 years of age and below were required to obtain parental permission to contract betrothals, while those over 25 only needed to ask for parental advice. In both cases the same penalties were imposed for failure to comply with the norm. Socolow has remarked that in Río de la Plata the age limit placed women under greater parental control than men since the majority of women got married before reaching that age.²⁶ Through the Real Pragmática, the jurisdiction over parental opposition passed to the civil courts. As mentioned above, the principal justifiable reason for parents to impede betrothals was the inequality between the contracting parties. Ecclesiastical tribunals were obliged to submit to the decision of the royal courts regarding parental objection.²⁷ Subsequent decrees became more specific in instituting as prerequisite for the celebration of marriage the consent of parents or their substitutes, or in its absence, court authorization with the corresponding advertence to the clergy about that civil requirement.²⁸ Moreover, all other cases related to betrothals, whether about dispensation from impediments, breach of promise, or multiple betrothals brought before ecclesiastical tribunals should be suspended while the question of parental dissent over unequal marriage was pending in the secular court. Also, parish marriage registers should include the information that the marriage had been contracted with parental permission, with the civil effects that it entailed.²⁹ The Real Cédula of 17 July 1803 lowered the age limit of those subject to parental permission but did not require parents to give an explanation of their dissent as before.³⁰ Thus was the Crown able to diminish the Church's centuries-long authority to determine who could marry or not.³¹

Antonio Dougnac Rodríguez points out that the Real Cédula for the Indies took into consideration not only the spatial distances that reduced access to parents and other relatives, but also the wider variety of ethnicities and cultures and the interaction among them.³² This was a distinctly American reality which logically

²⁶ Socolow, "Parejas bien constituidas," 137. The Real Pragmatica of 1803 lowered the age limit: if the father was alive, it was 25 for men and 23 for women; if only the mother was alive, it was set at 24 for men and 22 for women; for orphans it was 23 for men and 21 for women; for those with guardians, it was 22 for men and 20 for women.

²⁷ Elizondo, tomo 7, 256-261.

²⁸ Socolow, "Parejas bien constituidas," 135-136.

²⁹ Elizondo, *Práctica universal forense*, tomo 7, 253-254.

³⁰ García, "Particular Discipline," 15; Dougnac, *Esquema*, 47. Through the decree of 10 April 1803, superseded by the Real Pragmática of 19 July 1803, only the contracting parties could initiate litigation over betrothals, and these were to be treated as civil cases. Also, only written promises of marriage were considered valid.

³¹ Dougnac, *Esquema*, 136.

³² Dougnac, *Esquema*, 40-41.

affected the main concern of promoting marriages between persons of similar socioeconomic standing, given the differences in juridical status accorded to the various ethnicities. In its application to Mexico in 1779, the Real Pragmática covered indigenous peoples for whom unequal marriage meant unions with *castas* (racial groups resulting from miscegenation among whites, *indios*, and Negroes). Violation of the law was punished with ineligibility for honorific posts in the *república de indios*, reserved for pure *indios*.³³ Parish priests were asked to advise them against such choices and to remit cases of parental objection to the bishop who judged whether it was within reason or not. Ecclesiastical tribunals were not to accept cases about betrothals between parties of markedly different status, but should persuade them to desist for the sake of familial honor.

As instructed by the king, the royal decree was to be adapted to local conditions, especially the difficulties for communication and travel that Philippine geography and climate posed. The Real Acuerdo of the Audiencia of Manila dated 21 January 1781 issued the Philippine version which became statutory.³⁴ In accordance with the Real Cédula, the requirement of parental permission, with the general provisions for substitutions, was applied to the betrothals of the colonial elite. In this category, aside from Spaniards and other Europeans, other groups included were Spanish mestizos born from legitimate marriages, *indios principales* or *caciques*, proprietary *cabezas de barangay* and their firstborn children, and Christian Chinese mestizos (*mestizos de sangley*) who had served in the militia. The next category consisted of a second order of *cabezas de barangay* serving *ad interim*, tribute-paying natives, and Chinese mestizos of at least the fifth generation. As was established generally for the Indies, this second group was obliged to secure parental consent, or that of the parish priest or *doctrinero*. Similar to Mexico, in the Philippines violators and their descendants up to the fourth generation were deprived of the opportunity to occupy honorific posts and the public office of *cabeza de barangay* should it be hereditary. Exempted from the requirement of parental consent were recent converts such as Chinese mestizos and Japanese, as well as Malabars, Negroes, and *castas* as they were in the Americas. However, parish priests and *doctrineros* were exhorted to persuade native women from marrying into those groups and to warn them and their parents of its disadvantages to their families and communities, not only in terms of the lost opportunity of public office, but even more importantly of the danger it could present to their religious faith. On the other hand, unions between Spaniards and native high-status women were to be encouraged while the latter's marriage with recently converted Chinese mestizos was not. The last group obliged to seek consent

³³ Zaballa, "Matrimonio," 20.

³⁴ APAF, 147-1. On the issuance of the Real Acuerdo of the Audiencia of Manila, 21 January 1781, the three concatenated laws were printed together in chronological order.

from parents, guardians, or superiors were male and female students in the *colegios* in Manila.³⁵

The Ecclesiastical Tribunal of Manila as Arbiter of Matrimonial Cases

In the Indies and the Philippines, the judicial faculty in a diocese resided solely in the bishop who exercised it through the episcopal *audiencia*. Some decades after the erection of the archbishopric of Manila in 1595, the ecclesiastical tribunal, commonly referred to as *juzgado*, was created. The *Anales eclesiásticos* attributed its establishment to Archbishop Miguel de Poblete (1653–1667) and cited as its chief accomplishment the expeditious resolution of a good number of matrimonial cases.³⁶ The vicar general and provisor (*juez provisor*) was appointed judge and was assisted by two officials. As the archbishop's representative, he had competence in the first instance in civil and criminal cases involving benefices, matrimony, and tithes; likewise in cases of appeal from suffragan bishoprics and vicariates forane. As an attached appointment, he was judge for matters pertaining to testaments, chaplaincies, and bequests.³⁷ Territorially, the tribunal covered the Tagalog provinces (Bulacan, Batangas, Laguna, Cavite, Bataan, Zambales, Mindoro, and Tondo which included the *arrabales* or suburban towns of Manila) and Pampanga.³⁸ Vicars forane, who concurrently served as parish priests in some major towns such as Bacolor (Pampanga) and Marikina (Tondo), served as delegates of the tribunal with limited jurisdiction in their respective territories.³⁹ In cases concerning betrothals, which lay within the competence of the bishop, many cases were sent to the *juzgado* in Manila. In turn, the tribunal could request vicars forane and parish priests to carry out investigation or receive depositions.

³⁵ The Real Cédula of 11 June 1792 required students of conciliar seminaries to secure permission from the bishop in order to marry. Apparently by the late nineteenth century it ceased to be in force. García, "Particular Discipline," 14.

³⁶ *Anales eclesiásticos de Philipinas y de la excellencia de potestad que los Señores Arzobispos gozan como metropolitanos de ellas* [...], (Manila, n.d.), fol. 114.

³⁷ Título de Juez Provisor y Vicario general Juez de testamentos, capellanías y obras pías al Sr Dr y Mro Dn Joseph Altamirano y Cerbantes, 12 August 1777, AAM, Box 1.C.7, folder 9, Libro de Gobierno Eclesiástico, Fr. Cuesta (1707-1724) A, fols. 2v-3v. The vicar exercised full powers in the name of the bishop in whom those powers properly resided. On the figure, competencies and duties of the vicar general and provisor, see Sebastián Terráneo, "El oficio de juez en la Iglesia indiana," *Anuario Argentino de Derecho Canónico* 21 (2015): 359, 362-368. <http://bibliotecadigital.uca.edu.ar/repositorio/revistas/oficio-juez-iglesia-indiana-terraneo.pdf>, accessed 21 January 2021.

³⁸ Pablo Fernández, OP, *History of the Church in the Philippines (1521-1898)* (San Juan, Metro Manila: Life Today Publications, 1988), 30.

³⁹ Terráneo, "El oficio de juez," 369-370. Buzeta mentions eighteen *vicariatos* or *partidos foráneos* in the Archdiocese of Manila in the early part of the nineteenth century (Manuel Buzeta and Felipe Bravo, *Diccionario geográfico, estadístico, histórico de las islas Filipinas* [...], tomo 3 (Madrid: Imprenta de José C. de la Peña, 1850-1851), 271.

The ecclesiastical tribunal's functions corresponded to the bishop's areas of responsibility. These included the defense of episcopal dignity and ecclesiastical jurisdiction, internal discipline in the Church, civil, and criminal cases involving the clergy, the sacraments, especially matrimony (except bigamy which belonged to the jurisdiction of the Inquisition), faith and morals of indigenous peoples, and general conduct of all societal groups, and matters pertaining to testaments, chaplaincies and bequests, as mentioned above.⁴⁰ In regard to matrimony and morals, the same norms applied to everyone. Ana de Zaballa has pointed out that the wide-ranging competence of the ecclesiastical tribunal, which was not limited to cases of deviant behavior or specific groups, put it in a position to address ordinary problems of people from all sectors of colonial society and thereby shape their lives. Ecclesiastical tribunals were governed by European canon law, the laws issued by the Spanish Crown, the decrees of the Council of Trent and of the provincial councils, particularly the Third Mexican Council (1585) and the Third Council of Lima (1582-1583).⁴¹ The decrees of the Third Mexican Council were applied officially in the Philippines after the plans to hold its own provincial council did not materialize.⁴²

In the absence of historiographical and canonical studies on marriage in Spanish colonial Philippines, the work of Jorge Traslosheros is useful to understand the administration of justice by the ecclesiastical *audiencia* in the matrimonial cases in the archdiocese of Mexico up to the second half of the seventeenth century.⁴³ He identifies three main areas of concern: to ensure the validity of marriage contracted, to resolve marital problems, and to safeguard the dignity of the institution and sacrament. The first was a twofold task: to guarantee the freedom of marriage of the contracting parties and the absence of impediments, and to ensure the observance of canonical forms. The second revolved around the couple's right and duty to live together, nullity of marriage, and separation. The third concern focused on remedying behavior harmful to marriage, like adultery and concubinage, and irregular relationships such as clandestine marriages and incestuous unions. Traslosheros

⁴⁰ Terráneo, "El oficio de juez," 359-360.

⁴¹ Ana de Zaballa Beascochea, "Del Viejo al Nuevo Mundo: Novedades jurisdiccionales en los tribunales eclesiásticos ordinarios en la Nueva España," in *Los indios ante los foros de justicia religiosa en la Hispanoamérica virreinal*, coord. Jorge E. Traslosheros and Ana de Zaballa Beascochea (México, D.F.: UNAM, Instituto de Investigaciones Históricas, 2010), 19-20.

⁴² *Anales eclesiásticos*, fols. 43r-44r. Archbishop Juan Ángel Rodríguez affirmed this development in a letter to the king (Carta de Juan Ángel Rodríguez sobre concilio provincial y bula de erección, 5 May 1739, AGI, Filipinas, 291, N.23). Archbishop Miguel García Serrano made this request to Pope Urban VIII (Fernández, *History of the Church*, 94).

⁴³ See Jorge E. Traslosheros, *Iglesia, justicia y sociedad en la Nueva España. La audiencia del arzobispado de México 1528-1668* (México, D.F.: Porrúa and Universidad Iberoamericana, 2004), 133-159.

highlights the ecclesiastical perspective on marriage as primarily a sacrament and therefore a means to save souls.⁴⁴

The View from Baras, Laguna: A Parish Priest's Experience and Opinion

Amidst the sparseness of information on the impact of the Real Pragmática in the Philippines, the *parecer* or opinion of the Spanish Franciscan Fr. Casimiro Pitarque provides a substantial lead as regards the juridical and social dimensions of this landmark piece of legislation and its derivative laws. Pitarque, native of Valencia, professed in the Franciscan order in the Province of San Juan in Valencia in 1737 and arrived in Manila in April 1747. Most of the three decades he spent in the Philippines was dedicated to administering parishes mostly in the Tagalog province of Laguna. He served ten years in his last parish, in the town of Baras, which back then formed part of Laguna, where he died in 1787.⁴⁵ His views on the aforementioned royal decrees reveal his long experience in the pastoral frontlines where he became familiar with indigenous values and customs concerning marriage.

Pitarque wrote his *parecer* in 1781 in Baras.⁴⁶ This document has been archived by itself, in isolation from contextual documents that would indicate whether Pitarque was requested to write or he did it on his account. Since it addresses two questions that were legal in nature, it could very well have been a consultation circulated to senior Franciscans after the Royal Audiencia had issued the abovementioned Real Acuerdo a few months earlier. It has the appearances of a study of moral-canonical cases, termed *dudas*, intended for the instruction of the clergy. In this section we will focus on the questions insofar as they provide insight into socioeconomic considerations, matrimonial practices and family dynamics among the natives, and will not pursue the technicalities of judicial proceedings, much less in the royal courts which lie beyond the scope of this article.

Pitarque replied in the affirmative to the first question, "If tribute-paying Indians, and not those whom we call *Principales*, who have no parents, can marry

⁴⁴ Traslosheros, *Iglesia, justicia y sociedad*, 134.

⁴⁵ Fr. Casimiro Pitarque was born in 1717 in Torreblanca (in the present-day province of Castellón), then belonging to the diocese of Tortosa. He was first Commissary of the Franciscan Third Order in Manila. In 1759 he was assigned to the parish of Pangil, Laguna where he served for eleven years. In 1771 he became Commissary again for a year before he went back to Pangil. In 1774 he was assigned to Sampaloc, a suburb of Manila, and thereafter in Baras in 1777. He was the author of *Consulta mística regular* (1756) and *Conferencias morales* (1771). (Eusebio Gómez Platero, *Catálogo biográfico de los religiosos Franciscanos de la provincia de San Gregorio Magno de Filipinas* [Manila : Imprenta del Real Colegio de Santo Tomás, 1880], 460-461).

⁴⁶ Casimiro Pitarque, *Parecer sobre las dudas de Reales Cédulas y acuerdos en orden al casamiento de los indios*, Baras, 5 October 1781, AFIO 52/32.

without the consent of their grandparents, guardians, etc.”⁴⁷ Through a close reading of the legal texts, he guarded against possible inconsistency about this fundamental stipulation that the Real Acuerdo might give rise to. The Real Cédula for the Indies stated that if it was not possible to ask for consent from parents because of distance and other considerable difficulties, tribute-paying natives were not required to seek it from grandparents or guardians, as was the case for the *indios caciques* or *principales* who were classified as elite. The only obligation of the “ordinary” Indians was to secure the consent of the local parish priest of *doctrinero*. To establish this point, Pitarque took pains to clarify where the tribute-paying natives stood in the colonial racial hierarchy, that is, in between the elite and the mulattos and Negroes; and the latter were exempt from the obligation to seek parental consent.

Central to Pitarque’s argumentation was a comparative reading of the three legal texts. He used as a basic principle not to include what was not expressed in the text, for example, the consent of other relatives should parents be not available. Concerning the second question, “If in cases that the parents object to the marriage intended by the children, will the latter be obliged to have recourse to secular justice if they wish to carry out their intention, subject to the penalty of their and their children’s ineligibility for public office, etc.,” he insisted that in no way was secular justice mentioned as the ordinary arbiter of conflict between parents and children over diverging preferences, but rather the parish priest or *doctrinero* who had received the delegated faculty as substitute for parental consent, according to the Real Cédula.⁴⁸ It seems that on this point he was over-reading considering that there was nothing about handling cases of irrational dissent mentioned in the second article of that decree to which he was making reference. Overall he underlined what he interpreted to be the general intention of the law which was to be prudently cautious about the choice of spouse, but not to put obstacles to betrothals.

Following that line of thinking, Pitarque even dared to suggest that in some extreme cases of violation of freedom of marriage, natives could be exempted from the requirement of parental consent like the mulattos, so as not to prevent legitimate betrothals. He quickly qualified that he was not equating the natives with mulattos or Negroes, since that would be tantamount to excusing them from the civil duty of seeking parental consent; rather, it was another way of arguing that tribute-paying natives were not be classified as elite and therefore additional requirements—of asking permission from relatives in the absence of parents—that said status entailed

⁴⁷ “Si los Yndios tributantes y no de los que llamamos Principales, no teniendo Padres, puedan casarse sin el consentimiento de sus Abuelos Tutores etc.”

⁴⁸ “Si en caso de no asentir los Padres al Casamiento intentado por los hijos, estaran estos obligados á recurrir á la Justicia Secular, si quisieren llevar adelante su intento, pena de no poder ellos, ni sus hijos obtener officios, etc.”

should not be applied to them. He expressed fear of coercion of women in particular which, as he averred, was common knowledge among parish priests and *doctrineros* as well as among diocesan authorities. He paints the following scenario which he must have seen frequently enough as a parish priest.

Many times, and perhaps most of the time, parents make marriage promises without even asking their daughters if they agree to the marriage. At other times, daughters have a secret agreement with someone, and the parents have it with another. The latter receive gifts, service at home or on the farm, etc. from the man they like. Maybe the daughters have dishonorable relations with the man they love, and for fear of their parents they do not dare contradict them. Some of them explain their situation when they are about to get married with the man that their parents have chosen; but they do not explain themselves to their parents but to the diocesan officials, or to the parish priest or *doctrinero*. And usually a lawsuit about the brideservice follows. Others wed those whom their parents prefer, but by chance—incurring much offense to God—they continue to love the man of their choice.⁴⁹

He was wary of relatives' self-interest, especially of pecuniary nature, which could motivate them to withhold permission: "If this happens to parents, how much more to other relatives, especially if they find themselves gifted and served by those [men] whom their grandchildren or nieces do not want?"⁵⁰

Pitarque reverted to this argument on answering the second question. Presenting the reality that most parental opposition had to do with daughters, he appealed to common sense as well as to compassion not to require young women to go through the trouble of going to the provincial capital to pursue their case before the *alcalde mayor*. This seldom happened in regard to sons' betrothals because in the Philippines the material benefit accrued to the woman's parents in the form of *bigay-kaya* (bridewealth) and *servicio personal* (brideservice). Pitarque claimed that therein

⁴⁹ "Muchas vezes, y acaso las mas, los Padres dan palabra de Casamiento sin preguntar siquiera á sus hijas, si gustan de tal Casamiento. Otras, las hijas tienen concierto oculto con uno, y los Padres lo tienen con otro. Estos reciben regalos, el servicio en casa, ó en las sementeras, etc. del que quieren. Las hijas quiza tienen trato deshonesto con el que ellas quieren, y por miedo á sus Padres no se atreven á contradecirles. Destas, unas se explican, quando las van á casar con el querido de los Padres; pero no se explican con sus Padres, sino con los Señores Diocesanos, ó con los Curas, ó Doctrineros, y luego se suele seguir pleito sobre el servicio del varon. Otras se casa con el que quieren sus Padres, pero el afecto, y por ventura, a costa de muchas ofensas de Dios, lo conservan muchas vezes con el que ellas querían."

⁵⁰ "Si en los Padres sucede lo dicho, que no se podrá temer de otros Parientes, maxime, si se hallan regalados, y servidos de los que no quieren las Nietas, ó Sobrinas?"

lay the usual cause of parental dissent to the man who could not provide sufficient prestations, construed by Europeans as purchase, which the law of the Indies had long prohibited.⁵¹ Such objection in turn led to a demand from the rejected man for the restitution of everything he had given; therefore, for the parents the immediate way out was to oppose the betrothal on the purported grounds of inequality between the contracting parties. This argument might be tangential to the question of jurisdiction, but at bottom it touched on the core freedom of matrimonial consent.

As mentioned above, Pitarque's pastoral experience gave him basis for his contention about the ways that family dynamics and interests heavily affected marriage among Filipinos. In his last assignment as parish priest of Baras, in 1781 he reported to the ecclesiastical tribunal of Manila on Servando de los Santos's demand against Maria de la Concepcion for breach of marriage promise. From his investigation of the case Pitarque discovered that the woman's family resented Servando's failure to render the expected brideservice. But actually he had done his part indirectly both for the farm work and construction of the house for his future in-laws by hiring laborers and lending his carabaos. He chose to perform his obligations in that manner because the prohibition of *servicio personal* had been enforced more strictly in Baras upon the urging precisely of Fray Casimiro in obedience to the ecclesiastical and civil injunctions to uproot that custom. Pitarque was ready to wed the couple since he found no canonical impediment for the union. He intimated to the provisor that he was of the view that Servando should be favored. To illustrate the transcendence of broken marriage promises, he briefly narrated that in the previous year, because of a similar situation, he had to intervene when the female relatives of the spurned party and of the spurner fought in the church courtyard.⁵²

Pitarque got involved in a similar case two years later, in 1784.⁵³ Esteban de los Santos, a Chinese mestizo from the hacienda of Angono in the province of Laguna, went to court over his betrothal to Doña Maria Antonia Aliualas, who belonged to the *principalía* of the nearby town of Baras. They had presented themselves to Fr. Casimiro for the usual pre-marital investigation when Antonia's family and Manuel, a *principal* from the neighboring town of Tanay to whom Antonia was allegedly engaged, stopped them. The woman was placed in a neutral house in Manila, away from the quarreling parties, to stay there while the case was unresolved.

⁵¹ For a discussion of the legislation on brideservice during the Spanish colonial period, see Garcia, "Particular Discipline," 20-32.

⁵² Presentacion de Ygnacia de Sta Maria en que solicita se le ponga en libertad a su hija Maria de la Concepcion, [...] con motivo del trato de casamiento que con ella tiene celebrado con un nombrado Servando de los Santos, 1782, AAM, Box 14.A.3, folder 12.

⁵³ Manuel Constantino contra Esteban de los Santos, 1783, AAM, Box 14.A.3, folder 13.

In his deposition Esteban recounted how he had gone through the customary steps to court Antonia; she gave “her word on her own will” that she would marry him, upon which he began to render service on her family’s farm with two of his men and a carabao, and gave Antonia many gifts. Her father Mariano received all those services “with certain knowledge” of his suit. When he asked for her hand, the father rejected him. On Antonia’s part, from her very first deposition she denied having given her word to Esteban while stating, on the other hand, that she had been betrothed to Manuel two years ago. The parish priest of Baras had reported to the ecclesiastical judge the results of his own investigation, which the latter used to probe Antonia. She denied having urged Esteban to elope to the hacienda of Marikina where the vicar forane could wed them. When asked about the tokens symbolizing the marriage promise—a ring, buttons, and a handkerchief—that Esteban supposedly had given her, she said she had just been forced to take the ring and buttons but gave them to her brother-in-law to be returned, and she had never received the third item. When Antonia and Esteban were made to question each other face to face (*careo*), Antonia lamely explained why she did not know Manuel’s surname when they had known each other for two years: because there was no need. When confronted with the fact that Esteban had in his possession a ring that belonged to her, which was the token she supposedly gave in turn, each one told quite a different story of how it happened although they referred to the same day and house in which it happened. Esteban’s version was that Antonia had sworn to keep fidelity when she gave it, while Antonia’s was that Esteban threatened her to surrender it. Antonia confirmed that when Esteban and his parents and relatives visited their house in Tanay to ask for her hand, her father refused them. In the end, Esteban desisted from pursuing marriage, and the verdict was that each party should restitute what it had received from the other, with the brideservice that Esteban had rendered to be pursued in the competent civil forum. Both Esteban and Antonia’s father promised to abide by the tribunal’s decision. Manuel and Antonia were then declared free to proceed with the pre-nuptial requirements.

In all this, the perspective of Pitarque sheds a different light: he plainly suspected a plot on the part of Antonia’s family. He favored Esteban because he knew that he was truly betrothed to Antonia, who actually had remained firm in her commitment to him. They had exchanged tokens as signs of their mutual promise. The drama unfolded when Antonia suggested that she and Esteban elope to Marikina, but the father found them out. Pitarque moved to protect Antonia’s freedom to marry by arranging to transfer her to another house, but the father had acted faster and hid her in the nearby town of Pililla. The family made it known that she had been taken there to have her cured of some kind of spell. Pitarque wrote to the mayor (*alcalde*) and the parish priest of Pililla to no avail; it seemed that Antonia’s father, being a

principal, exercised some influence there and obtained the mayor's cooperation. Due to various considerations, Pitarque desisted from further action, also afraid that if he pursued the matter Antonia might be withdrawn further and violently. After two weeks he wrote again and perhaps that took effect, which was probably why Antonia was taken to Manila. The Franciscan parish priest ended his letter to the provisor with a reminder that in such cases women suffered so much coercion; therefore it caused not surprise that from the beginning of the judicial proceedings Antonia had denied everything that might indicate her to be a willing party in the betrothal to Esteban.

Although in this study the response of the clergy to the Real Pragmática is limited to Pitarque's opinion, nonetheless it is a voice in the colonial Church expressive of the initial reception of the referred law grounded in the knowledge of social realities. The decree extended the reach of royal jurisdiction over betrothals and in effect, over matrimony as a civil contract. It was a move that did not go unprotested by the colonial Church for two interrelated reasons: in defense of the basic freedom of consent constituting Catholic marriage, and of ecclesiastical jurisdiction over this sacrament which was a contract at the same time. In the following section, by examining some lawsuits about betrothals and parental objection, we shall take a closer look at the implications of the Real Pragmática in delineating jurisdictions and how it was interpreted and used in the forum of the ecclesiastical tribunal of Manila by the native litigants, the provisor, and parish priests.⁵⁴

The Real Pragmática in force

Breach-of-marriage-promise lawsuits predominate in the eighteenth-century archdiocesan archival records on matrimony which are lodged in the generic category of *informaciones matrimoniales*.⁵⁵ Of the 42 cases, only a handful (5 cases, comprising roughly 12 percent) date from the period prior to the British occupation of Manila (1762-1764), thus validating in part the disruption it caused in colonial governance. With regard to locality, aside from the towns closest to Manila and constituting the province of Tondo, most cases issued from the contiguous provinces of Bulacan and Pampanga to the north and Laguna to the south. The absence of cases

⁵⁴ The activity of the ecclesiastical tribunal can be a source for knowing the extent of social and cultural assimilation of notions of justice and how they were used by natives (Zaballa, "Del Viejo al Nuevo Mundo," 20).

⁵⁵ Although labeled "Informaciones matrimoniales," the content of the series is not limited to pre-matrimonial information for determining whether the contracting parties were free to marry. It is a generic designation for all the records of the ecclesiastical tribunal pertaining to the sacrament of matrimony.

from Bataan, Zambales, and Mindoro cannot be explained with certainty until more documentation from those areas is accessed.⁵⁶

For the period from 1781, the year the Real Acuerdo of 21 January was promulgated, until the end of the century, there are 20 cases of broken betrothals, representing approximately 47 percent of the total for the eighteenth century. Of these, five have to do with the issue of equal-status marriages and involve at least a parent of one of the contracting parties. There are four others in which parental objection premised on the Real Pragmática figures as the origin and center of the lawsuit. This section will be devoted to identifying the ways in which the Real Pragmática was used—either explicitly or indirectly—in the justification of demands brought before the ecclesiastical judge and to detect to what extent jurisdictional rights as laid out in the aforementioned decree were observed. In all this it must be kept in mind that these legal disputes present an extreme way of pursuing the divergent choices that disrupted family relationships. It is possible to imagine that many other peoples opted to have recourse to quieter, more informal channels of settlement. And of course it is also highly probable that many children fully acquiesced to their parents' decision while others ended up as sadly as Pitarque painted it.

Most of the cases were initiated by parents to abort their children's plans to marry either because the parents preferred another man or disapproved of their children's choice, reasons which sometimes coincided. The earliest case in which the Real Pragmática was invoked documents the violent opposition of Eugenio Gregorio to his daughter's insistence on marrying the man of her choice. The setting being in Binondo, it is not surprising that it antedated the Royal Audiencia's Real Acuerdo by two months, thus demonstrating that the new law had been in circulation and in force prior to the promulgation of the localized version. The father declared that "although his daughter Gregoria might bear many children fathered by Lorenzo Guzman, he does not want them to wed."⁵⁷ According to Clara Gregoria her father had attempted to kill Lorenzo. Her parents had arranged her to be married to Francisco de Borja, a dependent of a deceased priest, probably a friend of the family, who had gone home to the Visayas the year before when his mother called for him. The pre-nuptial investigation of Gregoria and Lorenzo's freedom to marry was suspended when the

⁵⁶ The records of many cases end without any verdict issued by the tribunal, and even stop in the middle of the judicial process. This would indicate, among the probable reasons, the loss of documentation or an out-of-court settlement, which was encouraged by the Church in line with its thrust to mend relationships and to honor the serious implications of the matrimonial bond and freedom of marriage.

⁵⁷ "Que aunque salgan por los ojos hijos a su Hija Gregoria, engendrados por Lorenzo Guzman, no quiere que se casen."

former's father presented to the ecclesiastical judge his objection on the premise of an earlier betrothal. But Gregoria argued that if Francisco knew that she was already pregnant with Lorenzo's child, he would not want to marry her; also, she claimed that her parents had recently wanted her to marry another man by the name of Ygnacio. Clara Gregoria had escaped to a *casa de recogimiento*, a shelter for women, while she pursued her demand to be allowed to marry. The documentation of this case ends in the middle of the testimonies, leaving us to guess how it was settled.⁵⁸

From the same year of 1781 was the case from Santiago, another *arrabal* of Manila. Like the previous one, it was brought to the ecclesiastical court because it revolved around the contested desire of an engaged couple, Feliciana and Pablo Manuel, to wed.⁵⁹ This time the rationale of the Real Pragmática was rendered salient in the certification that the *principales* of the town issued regarding Pablo Manuel: "we have not known anything about his conduct that may have tarnished his personal reputation in this town as well as outside it; neither has he descended from parents of vile status; on the contrary, most of his relatives have been and are *principales* in their town according to what we have ascertained and been informed about."⁶⁰ Furthermore, three *capitanes* had presented his suit to Feliciana's father who stubbornly refused it despite apparently having already given his word to Pablo Manuel. Apparently the father was a man of influence as he was able to get the *gobernadorcillo* turn over his daughter to him after the *fiscal* had put her under the official's custody upon the instructions of the provisor when the latter discovered the couple did not have the parents' permission to marry. The *gobernadorcillo* advised them that this case was beyond his jurisdiction, and thus it reached the ecclesiastical tribunal. In accordance with the Real Pragmática, the judge requested the father to state his reasons for not granting permission to marry. But after two notifications without receiving a reply—perhaps because the father had relented—he authorized the couple to proceed with the requisite pre-nuptial inquiry.

The civil court's recognition of Doña Rufina Augustina's "reasonable and just" objection to her son's marriage with which this article opened, reinforced her determination to impede a union "prejudicial to the family and with fatal results" (*perjudicial a la familia y de fatales resultas*) with the full backing of royal law.⁶¹ Her

⁵⁸ Oposición de los Padres de Gregoria Clara sobre el matrimonio que intenta contraer con Lorenzo de Guzman, 1781, AAM, Box 14.A.3, folder 11.

⁵⁹ Oposición de los Padres de Feliciana sobre el matrimonio con Pablo Manuel, 1781, AAM, Box 14.A.3, folder 11.

⁶⁰ "cuio proceder no hemos tenido noticia aya dado mala nota de su perzona assi en esste Pueblo como fuera del; ni menos que aya descendido de Padres viles ante si la mayor parte de su parentela han sido y son principales en sus Pueblos segun nos co[n]sta y estamos Informados."

⁶¹ Demanda puesta por Gervacia Apolonia contra Juan Manuel Tuason, 1788, AAM Box 14.A.4, folder 5.

advocate was quite up-to-date, adding to their legal repertoire the royal decree issued the previous year (El Pardo, 8 March 1787) on consultation with the provisor of the archbishopric of Charcas, which ordered ecclesiastical judges to refuse requests for the celebration of marriage if parental dissent had been declared reasonable by the competent civil judge, which was exactly his client's case. Furthermore, he contended that the contract the son desired was against the "holy purposes of matrimony and the dispositions of the Church relative to this holy sacrament" (*por ser opuesto a los santos fines del Matrimonio y disposiciones de la Yglesia relatibas a este santo sacramento*).

Juan Manuel countered that his mother's opposition was "unjust and unreasonable" (*injusta e irracional*). To her high-sounding protestation that Felizarda was beneath their family's rank, he responded sarcastically that he would have to remain celibate because it was a well-known fact that there was no other family in the Philippine Islands that could match his privileged lineage. His betrothed Felizarda satisfied the requirements of the Pragmática Sanción of an honorable choice, being the daughter of *principales* who were publicly known as such in their community. In sum, he was ready to accept the penalties as the consequence of his defiance and did take the steps towards the celebration of their marriage.

Based on the last records in the dossier about this case, upon the urging of the mother the ecclesiastical tribunal issued orders to the parish priests of Binondo and Bulacan—the respective parishes of the couple—not to officiate the marriage. This could very well indicate that the provisor observed the impediment of civilly recognized parental opposition imposed by the Real Pragmática and its derivative provisions. We know nothing more about this young man who was the grandson of Antonio Tuason from his second eldest son Santos Luciano. If he managed to wed Felizarda, he would have been disinherited in accordance with the law and thereafter disappeared into oblivion.

Juana Climaca's case similarly revolves around a mother's preoccupation with finding a high-status spouse for her child, presumably as a step towards social advancement.⁶² Juana explained that her mother Doña Antonia Sarmiento, a Spanish mestiza, wanted her to marry a Spaniard but there was no one in sight yet. The daughter, who in the documents is identified as a Chinese *mestiza*, disagreed with her plan claiming that most of them mistreated their wives. So she decided to elope with Martin de Medina, whom she had promised to marry, to his town Silang in the province of Cavite. But since marriage banns were also issued in her parish of Binondo, her mother found out and rushed to the ecclesiastical court to abort the intended marriage. Juana Climaca was already pregnant with Manuel's child and therefore

⁶² Oposición de D^a Antonia Sarmiento sobre el matrimonio de Juana Climaca con Manuel Siminiano [Martín de Medina], 1783, AAM, Box 14.A.3, folder 12.

considered that marriage would save her honor. Also, referring to the rationale of the requirement of parental consent, she defended her choice and commitment by declaring that Medina, an *indio*, was of superior standing than she “despite [the fact that] he was dark-skinned [*negro*] and a servant [*esclavo*].” Like Juan Manuel Tuason in the previous case, she was ready to be penalized, and to underline her determination, she would accept a punishment heavier than being disinherited and disowned as stipulated in the Real Pragmática. The provisor overrode the mother’s opposition and inclined in favor of the daughter by authorizing her marriage if no impediments resulted from the publication of the marriage banns; to expedite the wedding, it was to be celebrated in the *casa de recogidas* where she was temporarily sheltered, instead of the parish. The documentation of the case stops with a note that the mother had appealed to the provisor, even as she had raised her case to the Royal Audiencia. She asked about Juana Climaca’s motives for wanting to marry against her wishes and requested the provisor not to allow Martin to visit her daughter in the *casa de recogidas* while the case was pending in the secular court. At that point, no impediments had surfaced after the marriage banns were read but the judicial proceedings do not record whether the marriage actually took place. Perhaps the mother finally had her way in the secular jurisdiction.

Geronimo Bernabé of Santa Cruz de Malabon in Cavite ran after his daughter Maria after she had asked Manuel to take her to the house of the *fiscal celador* of the parish.⁶³ Accusing Manuel of kidnapping Maria, he made a request to the ecclesiastical court to issue imperative orders to Malabon’s parish priest to refrain from proceeding with all nuptial requisites, as the other parents who were against their children’s planned marriage had done. In the account of the parish priest, Maria had taken advantage of a business trip of her father to ask her betrothed to take her to the house of the *fiscal* until the father should return and be told of their plan to marry and give his consent. She claimed that her father approved of Manuel and that he had been rendering brideservice around their house and in their fields. They had become engaged as “she had not found any inequality with the man which may contradict the object of the Sacrament that they wished to receive since it [the match] was in conformity with the Real Pragmática Sanción.”⁶⁴ Geronimo’s representative denied that Manuel had courted Maria at all; neither had his elders presented his suit. Manuel had helped out twice in the last harvest but only to reciprocate the work rendered by fellow workers. Geronimo demanded the ecclesiastical judge to order the parish priest of Malabon to stop the attempted marriage of the couple and to make them

⁶³ Expediente que sigue Geronimo Bernabé del Pueblo de Sta. Cruz de Malabon sobre la suspension del Matrimonio de su hija Maria Bernabe, 1784, AAM, Box 14.A.3, folder 14.

⁶⁴ “que ella no encuentra desigualdad alguna con dicho hombre, de que contradiga el fin del Sacramento que ellos pretendian por hallarse conforme a la Pragmatica Real Sanzion.”

submit to the judicial process. The father's representative insisted that even if they were truly engaged, according to the Real Pragmática their improper conduct had caused public scandal injurious to Geronimo's name, and therefore deserved to be sanctioned. Was the parish priest, who had reported that Maria was too ill to travel and Manuel was too busy on his farm, on their side and trying to defend their freedom to marry? This story is unfinished in the records and might have ended either in some compromise or because one of the parties desisted.

Similarly, resistance to the requirements of the Real Pragmática is implicit in a case of elopement in which the clergy involved were trying to resolve the question of validity of marriage based on parochial jurisdiction. Juan Liuanag and Maria de la Rosa had eloped to Parañaque, a town south of Manila, where with the connivance of the *fiscal celador* of Parañaque and a *cabeza de barangay* they were able to convince the parish priest to wed them to make lawful the illicit relationship they had been supposedly having. The parish priest of Juan, native of Yndang in the province of Cavite, had been notified by the parish priest of Balayan, the hometown of Maria de la Rosa, about their marriage which had been celebrated without have been preceded by the stipulated banns in their respective parishes and without the required parental consent (Juan was nineteen and Maria de la Rosa eighteen years of age) in accordance with the Real Pragmática. The parish priest of Parañaque confirmed that the marriage had taken place and assured the others that if he had known about the deception, he certainly would not have allowed it and now would like this entanglement to be settled amicably. Thus he left it to their judgment whether to invalidate the marriage and celebrate it again once the requirements were fulfilled. He commented that the couple's version of the story—that Maria de la Rosa had wanted to elope because she was being forced by her parents and family to marry another man—was not new as it had occurred in several other marriages he had officiated in the parish “without the Real Pragmática having been an obstacle” (*sin qe haya obstado la real pragmática*).⁶⁵

In a case dating from the year 1790, the Real Pragmática was used uncharacteristically as a proof of the non-existence of betrothal. Juan Guillermo Sagun, coachman of the archbishop of Manila, alleged that he was engaged to Juana Dominga, a seamstress from the suburban district of Santa Ana. When he heard that banns for her marriage to another man had been issued in the neighboring town of Pandacan, he initiated a lawsuit in the episcopal *audiencia*.⁶⁶ Presenting a list of varying amounts of money, he claimed having given them to Juana Dominga and

⁶⁵ Diligencias practicadas por el Vicario Foraneo de Balayan, sobre haberse huido y casado su feligresa Maria de la Rosa en el Pueblo de Parañaque con Juan Liuanag estando ya proclamada en su Pueblo con un Novio, 1782, AAM, Box 14.A.3 folder 12.

⁶⁶ Juan Guillermo Sagun contra María Dominga, 1790, AAM, Box 14.A.4, folder 3 (B).

her mother on account of their marriage promise. To which the woman's defense responded that the canonical and civil requirements of betrothals were absent:

a very necessary requirement for betrothals is the willingness of the contracting parties, [indicated] with some external sign; and according to the Real Pragmatica of our Catholic sovereign it has to be made with the permission and consent of the parents of the parties; since there is none of this, it is very clear that I have reason and justice on my side in this affair.⁶⁷

In this enumeration of the essential conditions of betrothals, the third one was clearly an addition to the requirements of the Church. In canon law the validity of marriage and therefore of a betrothal rested primarily on the freedom of consent which had to be externalized either by utterances or signs. Thus most litigation about breach of marriage promise focused on producing incontrovertible evidence that those two conditions had been fulfilled. In effect, Juan Guillermo's list did not prove that Juana Dominga had reciprocated his intention since he failed to produce anything that he had received from her in turn. Absent that indication of her free consent, the contract would be null "without the prior mutual promise and acceptance of future marriage" (*no se verifico en mi aquella mutua promesa, y aceptacion del futuro casamiento*). In contrast to Juan Guillermo's unfounded contention, Juana Dominga declared that her parents had agreed to betroth her to Nicolas de Paz and all the canonical steps were in place, that is, the pre-nuptial information of their freedom to marry, followed by two marriage banns with only the third one pending before the wedding could be celebrated.

The case of Joachin Athanasio Sánchez, a *fiscal* in the *arrabal* of Santa Cruz was a dramatic show of parental authority to stop what he considered the illicit relationship of his son with a mestiza and prevent him from squandering his life and his family's resources.⁶⁸ After securing authorization from the *corregidor* or governor of the province of Tondo to have his son Bernardino arrested, Joachin barged into the house of Maria Barbara where he knew Bernardino visited frequently, but the son tried to escape by jumping out of a window and broke his waist and some ribs. Bernardino ended up under house arrest. Maria Barbara pursued the marriage promise with him in the ecclesiastical court. In his statement of defense Joachin denied that his motive was to direct his son, a student, to enter the ecclesiastical state.

⁶⁷ "para esponsales, es requisito mui necesario la voluntariedad de los contrayentes, con algun señal externo; y segun Real Pragmatica [sic] Sancion de nuestro Catholico soberano se ha de hazer con licencia y consentimiento de los Padres de los contrayentes; y como quiera, que nada de esto hay; es muy clara la razon y justicia que tengo en el asunto."

⁶⁸ Maria Barbara mestiza, residente en Sta Cruz, contra Joachin Athanasio Sanchez sobre trato, 1784, AAM, Box 14.A.3, folder 14.

He simply felt responsible for correcting Bernardino's waywardness, as he had already corrupted a maiden with the promise of marriage. As a father, he was concerned with his son's future and did not want him to be offending God by continuing that kind of relationship with Maria Barbara. He ended with an appeal to keep his son in his custody "because otherwise I will discharge my conscience before His Honor and before God's tribunal" (*pues de lo contrario descargo mi conciencia ante V.S. y para ante el tribunal de Dios*). But the provisor did not give in; he ordered the father to release his son and present his objection to the betrothal before the civil judge of the district (*juez del territorio*). While there is no mention of the Real Pragmática in the documentation of the proceedings, the delineation of judicial competence is clear enough: the pursuit of the marriage promise belonged to the ecclesiastical court and the parent's opposition to his son's engagement to civil jurisdiction.

In the 1784 case involving Fr. Casimiro Pitarque narrated in the previous section, the source dossier does not reveal exactly the motives of Antonia Aliualas's father for preferring Manuel Constantino over Esteban de los Santos, but they can be gleaned from the various circumstances that surfaced in the testimonies. The statement of Manuel might provide a clue: "the father and relatives of the girl in no way wanted such marriage with a Chinese mestizo." Antonia belonged to the local elite, and so did Manuel. The match was evidently more prestigious and therefore more advantageous to the Aliualas family than the one that the daughter desired. The Real Pragmática was not invoked against Esteban and Antonia; instead the family focused their efforts on breaking Antonia's determination to honor her marriage promise to Esteban which they must have perceived to be the main obstacle. In the end the young woman gave in to her family's wishes and Esteban had to concede. Pitarque witnessed once again a violation of freedom of marriage of native Filipino women through the force of parental authority.

Elopement was one of the means to escape such a situation, as in the cases of Maria de la Rosa and Juana Climaca both of whom had initiated the plan. The former admitted to the vicar forane of Balayan that she had lied in the earlier pre-nuptial inquiry to avoid further maltreatment from her parents and grandparents. She had said that she was freely consenting to the marriage to the man they had chosen for her—after which she escaped with Juan to Parañaque.⁶⁹ Juana Climaca likewise spoke of having suffered abuse from her mother who was intent on getting her a Spaniard for a husband.⁷⁰ These and most of the other cases presented here show how the Church—whether through the office of the *fiscal celador* or the parish

⁶⁹ Diligencias practicadas por el Vicario Foraneo de Balayan, AAM, Box 14.A.3, folder 12.

⁷⁰ Oposición de D^a Antonia Sarmiento sobre el matrimonio de Juana Climaca, 1783, AAM, Box 14.A.3, folder 12.

priest—and the *casa de recogimiento* provided women with spaces where they could enjoy a measure of independence from the pressure of parents and families.

Final notes

The scarcity of cases does not permit us to make a general assessment of the initial reception and application of the Real Pragmática of 23 March 1776 in the archdiocese of Manila. Parents who had ventilated their objection to their children's betrothal or planned marriage before the royal officials had to go to the ecclesiastical court if their children were also involved in a case of breach of promise or simply pursuing their desire to wed. Also, in most of the cases presented here, they went to the ecclesiastical tribunal to forewarn the clergy concerned about the civil impediment of lack of parental consent and thereby stop the intended marriage. The delineation of jurisdictions seemed to have been unproblematic as the ecclesiastical tribunal respected the legislated right of parents and children to pursue their disputes about parental consent in the civil court. Nonetheless, traces of subtle resistance on the part of some churchmen appear occasionally in the documentation, whether in comments of individual clergy or in the judicial process.

What is immediately striking is that the Real Pragmática formed part of the legal repertoire in the litigation initiated by residents of Manila and its *arrabales*. This would seem a logical consequence of proximity and readier access to royal legislation emanating from the colonial capital. In the provinces, where similar situations of parental objection occurred, at least in the cases from the period under study, the Real Pragmática seemed to have been invoked less or gave rise to fewer lawsuits judging by the number of cases whose records have survived. The way to oblige children to acquiesce to their family's preference continued to be based on the sheer strength of traditional parental authority and family pressure.

The Real Pragmática gave legal support to the value given to respect for parental authority in native Filipino society and to the critical importance of marriages that were acceptable to the family. The number of lawsuits revolving around marriage promises and arrangements in which not only parents but other relatives were involved is indicative of the tension within families that could arise from divergent choices of spouse. Parents and children asserted their respective rights emanating from and declared by divine and human law. Clara Gregoria's representation summed up the paradoxical situation in regard to freedom of marriage which the Real Pragmática brought in its wake: "my father Eugenio Gregorio . . . without heeding that God our Lord through the holy doctrine of our Catholic law commands that children assume

the state in life [that is] not contrary to their will, appealed to Your Honor to impede [my marriage] by virtue of the most noble Real Pragmática.”⁷¹

Only with more documentation on cases from the subsequent years will it be possible to see if the impact of this royal decree was felt increasingly in places farther from Manila. It would likewise aid in validating the observation from other cases of alleged broken betrothals not included in this study, and which the cases presented above reveal, that the native elite were particularly concerned with equal-status marriages. Last but not least, extending this study to the nineteenth century would show on the one hand, the extent to which civil jurisdiction made inroads into the institution of marriage via the Real Pragmática and its later modifications, and on the other, how the Church dealt with that challenge to freedom of marriage.^{PS}

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AAM, Box 14.A.3, folder 12. Oposición de D^a Antonia Sarmiento sobre el matrimonio de Juana Climaca con Manuel Siminiano [Martin de Medina]. 1783.

⁷¹ “que Dios nuestro Sor por la santa doctrina de nuestra Catholica ley manda que a los hijos se de estado no opuesto a la voluntad) ocurrio a V.S. impidiendo en virtud de la nobilissima Real pragmática.”

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