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Doing the Same But With Different Arguments: Matrimonial Dispensations in the Indigenous and Spanish Population of Colonial Charcas

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Abstract

This paper deals with the use of matrimonial dispensations to marry relatives in prohibited degrees by Canon law, mainly among the indigenous peoples of Charcas (present Bolivia) during the seventeenth and eighteenth centuries. As a source to understand social and religious practices, the dispensations provide a privileged place of observation, insofar as they constitute a gap between the norm and the social practice, and a space of interaction and agency, from the anthropological point of view, since the request for dispensations was part of the social and material reproduction strategies of indigenous groups. Even when, in this sense, the use of this legal recourse does not seem to differ much from what the population of European origin did, which secularly employed the same resource, this paper proposes that the reasoning behind the use of matrimonial dispensations, as well as the arguments employed varied in both socio-ethnic groups.

From the vantage point of a global history of law which involves the Tridentine Church, expanded around the globe, dispensations are an example of the accommodation in terms of »time, place and circumstances«. Taking into account that the Council of Trent had extended matrimonial impediments, the granting of dispensations among the indigenous population serves as an example of the paradoxes of the Christianisation of marriage in colonial Hispanic American territories, which frequently forced the Church to dissimulate and make concessions rather than to restrict and discipline.

Keywords: Dispenses, Indian marriage, impediments, Council of Trent, cultural hybridity



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Doing the Same But With Different Arguments: Matrimonial Dispensations in the Indigenous and Spanish Population of Colonial Charcas

1 Introduction

This paper will discuss some of the cultural practices carried out by the indigenous population of colonial Charcas (now Bolivia) by means of which, faced with the imposition of a Catholic marital union, the natives adopted and reinterpreted it and took action. I also take the practices of Spanish and *mestizo* sectors into account, especially considering the hypothesis that certain practices of accommodation, elusion and appropriation of norms were not limited to the indigenous population, but they did have different meanings in each group.

I will focus on the request for matrimonial dispensations by the Indians as a legal recourse in order to attain unions in degrees that were forbidden for the Catholic Church, i. e., as part of their strategies for material and social reproduction.

In recent years there has been an important development in fields of academic study which are relevant to the understanding of the topic discussed in this paper.

As regards the field of legal history, it has been most relevant to our knowledge of the study of contributions provided by ecclesiastical legal norms to the Indian right call, from a transnational and multidisciplinary perspective. The study of any exemption analysed in this paper, should be regarded as an effort to avoid the risks of ethnocentrism, since such analysis will allow us to discern on social issues as relevant as the existing matrimonial practices of both the European and indigenous societies. That is to say, we can appreciate an interconnection between the legal and cultural fields of societies on both sides of the Atlantic and how they influenced one another, since the experiences of the encounter with the

New World gave rise to all kinds of reflections and consultations. We can suggest here that, as Subrahmanyam says, »the cores must become rimlands, as the rimlands developed advanced features«.¹

The requests and granting of dispensations, are linked to the issue of broader negotiations and mediations and they enable us to view the colonial regime as a space for interaction and gray areas, »where the creative adaptations of indigenous societies as well as the complex construction of differences by the colonial agents can be seen«.²

2 The Christianisation of Marriage in the Colonial Andes: Incompatibilities, Impediments and Prohibitions

In the case of the Andes, the main incompatibility between indigenous and Catholic norms derived from the practice of *servinakui*: a long period of cohabitation prior to marriage that comprised a series of stages, in which relatives were actively involved. In accordance with this, some values linked to marriage, such as female virginity, differ from one culture to the other.

One of the elements that enables the measuring of incompatibilities between Andean and European norms is the variety of notions regarding marriage prohibitions. José de Acosta, a renowned Jesuit theologian and missionary in Peru, had pointed out that impediments had to be dealt with carefully because the Indians

[...] due to their traditional customs, tend to fancy forbidden unions [and] it is a common practice among the Indians to take as wives sisters or nieces or aunts or cousins with whom they have cohabited. And it would be too much to ask that for these degrees in the same way

1 SUBRAHMANYAM (1997) 735.

2 Guillaume Boccara, quoted by WILDE (2018) 106.

[sic] the Council of Trent has abolished the latter two [Council of Trent, Session XXIV, Chapter 4], the bishops of the Indies should have the power to grant dispensations to neophytes.³

The Jesuit is faced with grave difficulty as regards this »indigenous fancy« for relationships considered incestuous, particularly with reference to *servinakui*. As it will be shown, preference for »forbidden unions« was not the natives' prerogative, but a recurrent practice in various socio-ethnic groups.

The notion of *impedimentum* had been used by jurists since Roman Antiquity. The development of a theory of matrimonial impediments by churchmen had started in the Middle Ages in the Western World. It dealt with prohibitions sanctioned with the obligation of putting an end to irregular unions. Canon law classifies them into *diriment* or *prohibitory* impediments. The former involved nullity of marriage, i. e., supposing that for any reason marriage was contracted (e. g., ignorance of kinship or false identity), it was annulled without the right of reply. *Prohibitory* impediments, on the other hand, were those considered lesser offenses which did not question the union.⁴ The Council of Trent had included *abduction* and *clandestinity* among them. These two, following the prevailing trend of the Council, reinforced ecclesiastical control over marital unions by making the presence of the parish priest and the witnesses compulsory for marriages to be valid.⁵

In the case of Peru, the Third Council of Lima (1582–1583) listed the following as impediments for the natives: *Infidelitas* or disparity of worship (both parties have to be baptised), *secundae nuptiae* (the former spouse cannot be alive, also known as prior bond impediment), consanguinity in the first and second degrees (because for the natives there had been automatic dispensation in the third and fourth degrees since 1537),⁶ licit affinity (it arises

from marriage to the relatives of the spouse) and illicit affinity (*afinitas ex fornicatione*), i. e., which arises by intercourse with any relative of the future spouse, *crimen* (having murdered or taken part in the murder of the former spouse), *violentia et metus* (forcing someone to get married) and *impotence*.⁷ One of the council sermons warned: »it is better to do what God wills, than not do what the *cacique* (native or ethnic leader) wishes«,⁸ clearly alluding to the traditional intervention in matrimonial matters by indigenous authorities. Among the consanguinity relationships that constituted an impediment those in the direct line (parents – children – grandparents), the collateral line (siblings) and the transversal line (uncle / aunt – niece / nephew) are mentioned.

The list could be modified, especially when Indians were concerned. In 1631, Juan Pérez de Bocanegra mentioned as one of the impediments for the Indians that of *public honesty*, which, in accordance with the regulations of the Council of Trent, only applied to the parents, children and siblings of the future spouse and only in the case of undissolved marriages.⁹

In the case of Peru, early premarital cohabitation or *servinakui*, a practice that still stands in the Andean world, constituted the main difficulty for the Catholic point of view in the sense that premarital sexual intercourse impeded marriages by generating affinity bonds in various degrees, as it is evidenced in the requests for dispensations.

The use of matrimonial dispensations in order to formalise or maintain marital unions that implied the couple's prior sexual cohabitation and which were therefore forbidden by the Catholic Church but normalised for the natives through *servinakui* throws light on the gaps through which they objectively accepted novelties imposed by the dominant culture but also attempted to adapt them so as to preserve pre-existent relational practices, as will be discussed in the next section.

3 ACOSTA (1954) 606.

4 AVENDAÑO CERRADA (2003).

5 COUNCIL OF TRENT, Session XXIV Decree on the Reformation of Marriage, Chapters I and VI.

6 Paulo III, Bull *altitudo divini consilii*, 1537.

7 Complementos del Confesionario del Tercer Concilio, in: DURÁN (1990) 594–596.

8 Sermonario del Tercero Catecismo, Sermón XVI, in: DURÁN (1990) II, 676.

9 COUNCIL OF TRENT, Session XIX, Decree on Marriage, Chapter III; PÉREZ BOCANEGRA (1631) 606.

3 Accommodation: Dispensations for the Marriage of Indians in the Colonial Andes

The intersection between legal or canon norms and practices can be seen in the requests for dispensations that the natives made before the authorities with the purpose of getting married in degrees forbidden by the Catholic Church. This had been a widespread and very common practice in the Christian Western World since the Middle Ages, a period in which the Church extended prohibitions and their control of unions.

I will account for the colonial dispensations requested by the indigenous population in various jurisdictions, especially those originated in the territory of the *Audiencia* de Charcas (now Plurinational State of Bolivia). The requests for dispensations display very common patterns. The analysed corpus consists of about thirty requests, which date from between 1731 and 1807, for the population of San Luis de Francia de Sacaca and San Juan de Acasio, in the Bolivian Altiplano, to the north of the Potosí Mining District, the only settlements for which we have access to the complete series of marriages and dispensations between 1692 and 1811. They are existing dispensations within a series of 11 750 marriage records, which is an exceptionally long series.¹⁰

I will also present several cases, more geographically scattered likewise belonging to Charcas (the mining centre of Potosí and Tarija City, among others), which include not only cases relative to the indigenous population, but also to mixed marriages (natives with *mestizos* and inter-caste or with Spaniards) as well as marriages among Spaniards or among the latter and *mestizos*. With the purpose of thoroughly analysing and expanding the trends of the dispensations initially analysed for Charcas, we will add cases found in the Diocese of Mérida (Venezuela) for the Colonial Period.¹¹

Canon norms indicated that dispensations applied to natives should include, likewise, all »mixed

racas« (*mestizos*, *cuarterones* (quadroons) and *pu-chuelas*, or people with one eighth of indigenous ancestry).¹²

I will refer to dispensations granted to the Indians and, in some specific cases, with the intention of allowing unions between Indians and *mestizos* or Indians and Spaniards. This is due to several reasons: on the one hand, unions and dispensations entered as »marriages of Indians« in parish records include unions between Indians and members of other ethnic categories. But on the other hand, surely this »disorder« in the registration reveals what really occurred, in defiance of the separation that colonial authorities desired.

Dispensations that are, elusive, scattered and almost frequently lost among thousands of marriage records are particularly revealing considering that they represent an area of intersection between norms and practice. Through the arguments of the Indians that make requests and the ecclesiastics who make concessions, we can approach the universe of the real and the possible in the colonisation process. Likewise, we observe that requests most probably went through numerous councillors or legal procedures, inasmuch as the language contained in the dispensations, of a legalistic and artificial nature, is difficult to have been uttered by an Indian. Not an Indian or a couple, but several experts, clerks, lawyers, solicitors and councillors were responsible for the text of the dispensations.

The legal procedure consisted in a request made by a party, usually male, since women, with a few exceptions, did not make these kinds of requests, even if they had been the ones involved in illicit relationships. Frequently, it was the Protector of Indians who presented the request before the bishop.

The resolution of every case is not at our disposal (in favour or against dispensation granting). Witnesses were publicly summoned to testify to kinship with three banns. That was the moment when the impediment came to light, which in

10 The series of marriages and dispensations, together with baptism records, was processed and studied within the Project »Marriage Strategies and Genealogical Memory in the Colonial Andes«, directed by Enrique Tandeter and subsidised by Fundación Carolina CEHI3/02. Before its processing, the material was obtained from the microfiches of the parish archives of

Sacaca and Acasio, which are kept in the Family History Centre of the Church of the Latter-day Saints (CDHF) in Salt Lake City.

11 Considering other places of Colonial Hispanic America, Benedetta Albani did a systematic treatment of dispensations for New Spain, which takes into consideration the proceedings between the Holy See and Mexican

authorities regarding 70 requests for dispensation substantiated between 1585 and 1676. ALBANI (2009) 264.

12 Padre Antonio Xaramillo to Gregorio Solórzano, del Consejo, 1/9/1696. Expediente relativo a los privilegios de los Jesuitas para conceder dispensas en orden a los matrimonios. 1620–1703. AGI, Charcas 388.

certain occasions was reported subsequently. Until the mid-eighteenth century, the bishop was compelled to refer the request to the rector of the nearest Jesuit college, who announced his decision quoting the corresponding bulls and privileges.¹³ Then, the bishop would grant the dispensation, after having imposed a fine.

In the case of indigenous marriages, most impediments arise from kinship by affinity in the second degree (twelve out of twenty cases), i. e., generally due to the existence of a prior relationship with a cousin of the future spouse. In terms of quantity, the next most relevant cases are those of affinity in the first degree (due to a prior relationship with a sibling of the future spouse) and in some cases due to consanguinity, also in the second degree (between first cousins, uncles/aunts, nieces/nephews). The impediments usually arose from *cópulailícita*, i. e., due to prior sexual intercourse between one of the parties and a relative of the future spouse, but also due to *copulalícita*, when one of the parties was a widow/er of a relative of the future spouse. From the point of view of the Church, what generates affinity with the relatives is *unitascarnis* (sexual contact) and, therefore, it made no difference whether sexual intercourse had taken place before or after marriage.¹⁴

4 Arguments for Requesting Dispensations

The petitioners' arguments varied according to the natives' social position. In 1748, an *indio principal*, Joseph Limachi, son of Don Andrés Limachi, former *cacique* Governor of Huaqui, on the banks of Lake Titicaca, and Doña Catalina Acarapi, »both full-blooded native Indians« requested dispensation from the impediment of affinity in the second degree. Having married Doña Cecilia Proleon, »a destitute Spaniard« and celebrated the wedding ceremony, an impediment arose because of prior intercourse with the first cousin of Doña Cecilia

(whom apparently had no knowledge of the impediment). Then Limachi requested a dispensation:

Its causes are, for the aforementioned party Doña Cecilia, her extreme poverty, youth and celibacy, and therefore the danger of prostituting her integrity [...] And on my part the love that I have professed to her for more than six months with known danger of incontinence and risk of insulting Our Lord.¹⁵

The petition was remitted to the vacant see of the bishopric and sent by the latter to the Jesuit Pedro Ignacio Romero, rector of the Colegio de la Santísima Trinidad in the city of La Paz.

The request made by the *cacique's* son (the document does not specify whether Joseph had succeeded his father Don Andrés in the role) contains commonly used arguments: love and the need to support a woman – a Spaniard in this case – with no financial means.

It was common for indigenous local authorities to use the legal system for their own benefit and they had taken the initiative to take legal action since the early colonial period.¹⁶ The ecclesiastical norm also helped the natives to protect their heritage, previously established alliances and formerly acquired rights, so as to enhance both their symbolic and material capital.

In the same way that *cacique* don Joseph Limachi was most likely seeking to consolidate his position in society by marrying a woman that, notwithstanding her poverty, was Spanish, there is the case of Don Lorenzo Mecía Balboa, *cacique* of Pucarani, (in the current Department of La Paz, east of Lake Titicaca) who in 1733 made a request to marry the daughter of the late *cacique* with whom there was an impediment of affinity in the second degree, due to a prior relationship with a relative of his future spouse. Dispensation was granted following the council of the Jesuit Father Pedro Romero.

13 The use of these privileges by the Jesuits was the subject of multiple controversies between the Society of Jesus and the secular clergy. IMOLESI (2013).

14 According to Civil Law, kinship by affinity only arose from marriage,

but it is not so for canon law. Cf. MURILLO VELARDE (2008) 4, 69.

15 1748. Archivo Arzobispal de La Paz. Libro de Pliegos matrimoniales. AC-13-B2-S2.

16 MUMFORD (2008) 11.

[...] and upon the death of Don Mathias Colque Xauregui, cacique of the Pucarani people, I will act as guarantor of all the property that remained upon the death of the aforementioned, which belongs to his underage children, as well as of the *cacicazgo* of one of his sons [...] and so that from now on the underage children of the deceased are not deprived of their rightful legal portion, I have decided to wed one of the daughters of said deceased to look after them with more affection and fondness.¹⁷

The argument of being in charge of the late *cacique's* family so as to protect his material heritage and his *cacicazgo* rights does not obscure the fact of claiming their own rights to the »intangible heritage«,¹⁸ since don Lorenzo sought (and obtained) a position and prestige through a convenient marriage. His strategy consisted of protecting the *cacique's* family and, as a counter gift, he became part of that family through marriage.

I suppose that in the case of *caciques* and *indios principales*, the resource of matrimonial dispensation was part of the »strategies for biological, cultural and social reproduction that any group may put into action with the purpose of transmitting the power and privileges inherited, intact or enhanced, to the next generation«.¹⁹

Among *indios del común*, the reasons adduced could be several. The strategy of alleging kinship in order to impede or dissolve a marriage was frequently used among relatives (generally, the mother of one of the parties involved). In 1786, Lucas Condori, an Indian, requested permission to marry María Lazara. The girl's mother was the one who informed Lucas that the future spouses were blood relatives in the second degree in the transversal line. Considering their »illicit relationship« and forthcoming birth of a child, Condori required dispensation.²⁰

Requests usually contain family conflicts and grudges. Such is the case of Clemente Ramos, a »poor« *tributario* Indian from Tomina,²¹ who requested dispensation to marry Manuela Jufra, with

whom he had lived for a year and was expecting a child. Subsequently, he had a simultaneous relationship with María Jufra, Manuela's first cousin (affinity in the second degree due to illicit intercourse). Ramos alleged not having knowledge of the kinship between both women »because if my will faltered with María, it was without knowing the bond that existed between them«.²² He also stated that Manuela wished to marry him, and refused to return to her mother's house in spite of her progenitor's insistence. The arguments with which she reinforced her petition are usual: she put forward her »miserable condition« and the risk of giving birth to an »unhappy offspring«, all of which denotes legal formulae that support the presentation of an Indian with no financial means.

5 Dispensations Due to Affinity in the First Degree

The requests for dispensation due to affinity in the first degree are particularly interesting, because, according to Catholic norms, given the close kinship bond, the possibility of granting them in this degree had always been grounds for debate.

In most cases impediments arose from illicit intercourse (due to a prior relationship with one of the parties' siblings). In these situations, we can observe that the discretionary power of the granting authority prevailed: on some occasions dispensation is granted and in others, it is not. In this way, in 1695, Pascual Quispe, an Indian, requested dispensation to marry Agustina Sissa, a native Indian of Villa de Tomina, for an impediment in the first and second degrees due to illicit intercourse with her two sisters (Francisca and María) and Agustina's first cousin. In order to justify his sexual behaviour with women bound by close kinship, he alleged having lived in the area for three years and that, as a consequence, he had »no knowledge« of the bond between them. The argument of »ignorance«, which it must be pointed out that was also used by the Spaniards, even if it

17 Don Lorenzo Mecia Balboa, Cacique and Governor of the Pucarani People in the Province of Omasuio, requests dispensation to marry Doña Ursula Colque Xauregui, Archivo Arzobispal de La Paz. Libro de Pliegos matrimoniales. AC-13-B2-S2.

18 The expression comes from LEVI (1990).

19 BOURDIEU (2007) 265.

20 Year 1786. Sucre. Archivo Arzobispal Monseñor Taborga. The file contains a single sheet. The petitioner's place of origin is not recorded.

21 East of Sucre, in the modern-day Department of Chuquisaca.

22 Dispensation requested before don Eusebio Ovando, parish priest of Pomabambillo. La Plata, 27 August 1794. Sucre. Archivo Arzobispal Monseñor Taborga.

seemed difficult to believe or highly implausible, was put forward so far as it was legally valid and a mitigating factor, and, therefore, particularly useful in difficult cases of affinity in the first degree. In this sense, the decrees of the Council of Trent were followed only partially, since the Council considered that ignorance of such decrees could be a reason for dispense:

In the contraction of marriages either no dispensation at all shall be granted or rarely, and then for a reason and gratuitously. In the second degree a dispensation shall never be granted except in the case of great princes and for a public cause.²³

We can see that this was not applied in numerous cases we have presented.

The Provisor and Vicar-General of the Archbishopric of Charcas, Don Joseph Antonio de Vega, referred the request to Father Juan de Mora, a priest and theologian belonging to the Society of Jesus, to give his point of view. The latter decided that »dispensation for consanguinity in the first degree of affinity due to illicit intercourse cannot be granted, and that there are papal bulls that assert this repeatedly«. ²⁴

Mariano Gutiérrez, a native Indian from the town of Tomahave (now in the Department of Potosí, Bolivia), was more successful with his request for dispensation which he made in 1787 for having married Pascuala Rodríguez, and hiding the impediment in the first degree due to illicit intercourse with her cousin María Marcela. When he learnt about the impediment, the priest put the wife under custody. The resource of safeguarding the woman was applied in the case of crimes (for instance, the woman being accused of bigamy) or, as in this case, due to offenses considered serious, such as the existence of an impediment in the first degree.²⁵ In the end dispensation was granted and the marriage, validated. It is highly probable that the woman's imprisonment and public knowledge of the impediment that threatened public order and peace were pre-eminent in this case.

The requests for dispensation show the tensions and interests that could be at stake. In the same year, 1787, there is a case that stands out because the dispensation was requested by a woman. It was Martina Chuquivilca, a single Indian, placed under custody due to the accusation made by Juana Vicaria, mother of her boyfriend, Lucas Condori. The future mother-in-law had stated that Martina had had a prior relationship with one of her other sons, Juan de Dios Condori. The latter attested to his mother's statement and confirmed having had illicit intercourse with the accused woman, who was also the petitioner, »and that once he learnt that she had the same relationship with his brother, he had separated from her and married another«. ²⁶ María claimed dispensation to marry Lucas, alleging the wish to restore her good name and live decently.

There are several trends that arise from the examples given: on the one hand, they expose the doubts that the clergy expressed throughout the Colonial Period in connection with delicate matters such as establishing matrimonial impediments. The study of these dispensations enables us to re-signify the natives' behaviour: they used the norms to serve their own interests, whereas the Church frequently choose to grant dispensations even at the expense of the existing principles and norms. Such is the case of the dispensations granted to the *caciques*, which contravened the ideas of the Jesuit Acosta as regards keeping a stricter norm for those who held hierarchical positions. This conflict with Andean practice would be revealing that, above ecclesiastical norms, the *caciques'* political role in the community and their alliance with colonial authorities was undoubtedly necessary, and for that reason offenses arising from theoretically forbidden unions could be forgiven or mitigated.

Owing to their proximity to the mining centre of Potosí, Sacaca and Acasio (just to mention both populations referred to and for which I have more information at my disposal) constituted one of the areas where colonial control was exerted with more intensity and, consequently, colonial burdens such

23 COUNCIL OF TRENT, Session XXIV, Chapter V.

24 1695. Sucre. Archivo Arzobispal Monseñor Taborga (ABAS). Causas y dispensas Matrimoniales (1638–1940).

25 1787. Potosí. Sucre. ABAS. Causas y dispensas Matrimoniales (1638–1940).

26 Sucre. ABAS. Causas y Dispensas matrimoniales (1638–1940). The file does not record the place of origin,

although it belongs to the jurisdiction of the Archbishopric of La Plata (Sucre, Bolivia).

as taxes, *mita*²⁷ and migrations had a strong effect.²⁸ Between 1614 and 1792, these two settlements presented a life expectancy that fluctuated between 25 and 31 and a child mortality rate, that fluctuated between 252 and 373 of every thousand.²⁹ The risks of a »bad marriage« were impossible to face back then. To the natural difficulties of living in the Andes we must probably add the worsening of the risks derived from colonial exploitation (with their tax burdens and population drains), which had tended to reinforce social reproduction strategies such as unions in forbidden degrees, especially those due to illicit affinity, in terms of Catholic norms.

The next section discusses cases of dispensations in the population of European origin. It provides a broader scope for understanding the behaviour of the natives of the Andes, not only because they were not the only agents in their society, but also because in the sources at our disposal, the Indians' practices were judged according to European parameters.

6 The Spaniards Facing Canonical Marriage Prohibitions

In order to understand the type of cultural transfer that was brought about with the introduction of Christian marriage, I deem it necessary to question the opposition »Indian / European« in the sphere of religious practice. As Jean Gaudemet points out, with reference to what we could call the »long duration« of Christian marriage in the Western World, kinship »was for a long time the reason most frequently alleged with the purpose of putting an end to a union that somebody wanted to be free from«. ³⁰ But likewise and in the opposite

sense, throughout history European population attempted to evade ecclesiastical prohibitions when a convenient marital union was desired.³¹

Contrary to the frequent reference to the »degenerate customs« of the Indians who, according to the bishop of Charcas, showed a »natural tendency [and] notorious disorder by getting illicitly involved with their relatives«, ³² we can observe that in America there were numerous requests for dispensation by the Spanish population to get married to relatives in forbidden degrees, i. e., what was presented as the utter otherness is far from being so. Likewise, in 1741 Pope Benedict XIV complained about the easiness with which judges would grant marriage annulments.³³

In fact, the analysed dispensations for affinity in the first degree resulting from illicit intercourse were not only granted to the Indians. In 1689, in Yanahuara (Arequipa, Peru), Bishop Don Rodrigo de Villegas granted dispensation from the impediment in the first degree due to illicit intercourse to a couple of Creoles. The bride, Francisca Bernal, was a »doña« and, therefore, it can be assumed that she was a member of the local elite.³⁴

The dispensations granted to Spaniards in Charcas which I had access to display an outstanding regularity: all cases involve relatives in the second, third and fourth degrees and practically always this impediment is combined with one of affinity, i. e., they are situations in which there was sexual intercourse prior to the »discovery« of the blood relationship.³⁵ In the case of Blas Rojas, a Spanish inhabitant of Acasio, the deponent even confesses that »overcome by weakness« he raped a woman whom he eventually discovered was his cousin and whom he wished to marry.³⁶

It is evident that in the case of blood relatives (usually cousins) ignorance of kinship seems im-

27 Forced labour in shifts performed by natives, used in mining.

28 TANDETER (2001) 259.

29 It has been estimated that there were 2039 inhabitants in Sacaca and Acasio in 1614, 4318 in 1684, 2675 in 1725, which coincided with a demographic crisis in the Andes, and 12 735 in 1792. Figures from BOLEDA (2007) 146.

30 GAUDEMET (1993) 237.

31 Bestard Camps has placed marriage among relatives within the set of marriage strategies of European rural

families. He analyses the meaning of marriage prohibitions defined by the Church and gathers that they did not fit into the idea of kinship that of the families who had no choice but to request dispensations. In the case of Formentera (Balearic Islands) that the author studies, almost half the marriages carried out required dispensations by the end of the nineteenth century, cf. BESTARD CAMPS (1998) 149–150.

32 Archbishop of La Plata to SM, La Plata, 5 June 1704, AGI, Charcas, 388.

33 HERNÁEZ (1879) 210.

34 Request for dispensation by Martín de Garate before Father Preacher Friar Juan de Morato. Archbishopal dispensation granted. CDHF, 1157360/4.

35 Archivo Arzobispal de La Paz. Libro de Pliegos matrimoniales. AC-13-B2-S2.

36 Blas Roxas requests dispensation to marry Juana Rioja. Acasio, 1797. CDHF, 624652/3, f. 224.

plausible; however, even such cases display a certain creativity in the presentation of requests.

Mainly, in dispensations that involve Spanish women there appears explicit reference to the »dishonor« brought about by an illicit relationship, or else, the need to »restore their decorum«. ³⁷ Honour or »decorum« are the Spaniard's most prevailing arguments (although not the only ones), as well as the reference to honour as a value and foundation of the family. In 1751, Julián Estrada, an inhabitant of San Lorenzo de Tarija, requested dispensation to marry his second cousin Nicolasa, »a Spanish girl of acknowledged virtue« but »devoid of temporal goods and therefore in grave danger of being corrupted or perverted and bringing her family into disrepute«. ³⁸

I also had access to a corpus that provides keys to interpreting the requests for dispensation by Spaniards in the Colonial Society. The *Archivo Arzobispal de Mérida* (Venezuela) contains very valuable information, since it stores about two thousand requests made between 1745 and 1799. ³⁹ The exceptionality of the source lies, foremost, in the seriality of the set, which includes dispensations from several cities in the bishopric (Maracaibo and Coro, among others) requested by Europeans, Indians, *mestizos* and mulattoes; but I will focus on the first group.

The arguments presented in the requests for dispensation are varied: poverty of one or both parties, woman's old age (30 years old or older); but in the case of Merida, among the population of European origin, the most recurrent reason is the »smallness of the place«, a concept derived from canon law, which takes into consideration *angustia loci* as one of the canonical reasons to request dispensation. ⁴⁰ In 1789, Don Francisco Miguel de la

Madrid, native and inhabitant of Coro City, requested dispensation due to consanguinity in the fourth degree to marry Doña María Nicolasa de Arecaya and presented the following argument as the main one:

[...] that all the main families in this city and its jurisdiction marry among themselves, more or less immediately, and that it is not easy for its members to marry well without being wed to a relative, as innumerable practical cases prove [...]. ⁴¹

Several witnesses confirmed this need because »owing to the lack of foreigners of good repute it is essential for the families in this city to marry among themselves«. ⁴² This reasserts the validity of stratified society in the colonial world and the marriage prejudices upon which numerous dispensations are based. The bishop granted dispensation and, in the same way as in many other cases, he authorised the union imposing prior confession, prayer and fasting. There are several similar cases throughout the cities in the bishopric. ⁴³

Probably the most open statement made by a petitioner was that of Juan Casiano Sambrano, an inhabitant of the city of Espíritu Santo de la Grita, who in 1784 requested dispensation to marry Doña Juana García, to whom he was bound by consanguinity in the third with fourth degrees »on the side of the Guerreros« (their great-grandparents were siblings). I consider that, given the context, the pride with which the petitioner presents his genealogy is particularly interesting, despite his kinship being the reason for his offense. This is made clear through his convincing statement:

37 Blas Rojas requests dispensation to marry Juana Rioja, both Spanish inhabitants of Acasio, due to consanguinity in the fourth degree. 1797. Entry 15291. Parish Registers, CDHF, 624652/3, f. 224. Don Joseph de Córdoba's request for dispensation due to secret marriage with a blood relative in the fourth degree. Dispensation was granted after consulting the rector of the Jesuit College of La Paz. 1743. Archivo Arzobispal de La Paz. Libro de Pliegos Matrimoniales. AC-13-B2-S2.

38 Julián Estrada's request for dispensation. San Lorenzo de Tarija Parish

Church. 1751. Libro de Actas matrimoniales. CDHF, 1224443.

39 Catalogue of the section of matrimonial dispensations and impediments. 1745–1799. Archivo Arzobispal de Mérida (AAM). Section 26. Digitalized by the Family History Centre of the Church of the Latter-day Saints. Also see AVENDAÑO CERRADA (2003).

40 See BESTARD CAMPS (1992); ALBANI (2009) 261.

41 Archivo del Palacio Arzobispal de Mérida. Section 26. Dispensations and impediments. CDHF, 1855878.

42 Ibid.

43 E. g., Request for dispensation by Juan Cacio Sambrana, inhabitant of the city of Espíritu Santo de la Grita, and Doña Juana García, due to third with fourth degree of consanguinity. 1784. AAM. Section 26. Dispensations and impediments.

In this place all the families are related, being that the reason why to marry someone in the same social strata, it is necessary to marry a blood relative.⁴⁴

From his point of view, consanguinity is not an offense but a reason to put forward and it does not seem, in this case, that he was asking for forgiveness, but, on the contrary, claiming what he deemed urgent and necessary. This proves that, in spite of ecclesiastical norms, the logic of behaviour was defined by the demands of social status as a whole. What then used to be called the »quality« (*calidad*) of the individual, and that in addition to the caste to which the individual belonged, included other social markers, such as occupation, social reputation and interpersonal networks.⁴⁵

At this point it is necessary to return to the concept of »smallness of the place« or *angustia loci*. Canon law lists twelve sufficient causes to request dispensation. The first one is *angustia loci*, i. e., the difficulty for the petitioner to find a person of a similar social standing to marry in his place of residence. Among the other causes that were usually adduced (both *canonical* or *sufficient* causes and *supplementary* causes), there are reasons that, to sum up, could be classified as those for the protection of the family and social group, especially concerning the situation of women (their sustenance, their honour) and, secondly, for the protection of the children.⁴⁶

Also, there are cases of consanguinity in the first degree within the extensive Meridian corpus. In 1792 a wedding was suspended due to kinship in this degree. The strategy of the couple consisted in declaring that they had no knowledge of being siblings.⁴⁷

When the same kind of impediment arises between castes or Indians, the argument for the request of dispensation is almost diametrically opposite: they do not adduce the need to maintain the purity of the blood or to relate to people of a similar status, but to *avoid occasions of sin and incontinence*.⁴⁸ That shows the variety of values that

are attributed to each stratum and the stereotypes used in legal formulae which describe and justify cases liable to dispensation as opposed to criticism regarding practices and requests of others.

In this regard, I would like to suggest here that the granting of any exemption tended to reinforce the mechanisms of ethnification, process by which social groups are built. As Juan Carlos Estenssoro has pointed out, the colonial policy tried to keep the Indians in his capacity as such and as »neophytes« until the end of the Hispanic period: not only because the colonial society founded its social order in hierarchical way, but because the Indians who were subject to tribute, were not willing to deal with the risk of non-legal differentiation.⁴⁹

On the other hand, and from the opposite perspective, i. e., that of the subaltern sectors seeking the dispensations, the condition of »Indian« could be perceived as a potential advantage, because of the regulatory benefits involving such category. As late a date as 1831, in the city of Mexico, Matthew O'Hara said that a couple of mestizos argued to be of indigenous origin to access the automatic waiver that the Indians had for the third and fourth degree of kinship.⁵⁰

Lastly, we consider that the granting of dispensations, according to Víctor Tau Anzoátegui, falls within the category of disimulation (*disimulatio*), in the sense of »forgive, allow, dispense«, which was a legal mechanism of the canon law adopted by the Indian law which allowed the loosening of the law to make possible the adaptation of the general rules to situations which were in fact very dissimilar.⁵¹ Such recourse implied situations of what was called invincible ignorance.

This medieval notion is defined as the state in which one cannot overcome their ignorance, despite one's utmost diligence, and hence cannot be blamed for the acts resulting from that circumstance. Salamancan theologians had made use of this concept since sixteenth century, when they warned that entire native people could, in fact, be invincibly ignorant of Christianity and some principles of divine and natural law.⁵²

44 1784. AAM. Dispensations and impediments. Doc. 26-18. CDHE, 1875878.

45 O'HARA (2010) 4–5.

46 The complete list of canonical causes to request dispensations can be found in ALBANI (2009) 261–263.

47 1792. AAM. Catalogue in Section 26. Matrimonial dispensations and impediments, CDHE, 1855878. 246–247.

48 1787. AAM. Catalogue in Section 26. CDHE, 1855878.

49 ESTENSSORO FUCHS (2001) 457.

50 O'HARA (2010) 199.

51 TAU ANZOÁTEGUI (2016) 229.

52 TOSTE (2018).

7 Conclusions

It is not my intention to make generalisations as regards the Christianisation of marriage in the Andes, but to show some behaviours and strategies relative to the execution of marital unions among the Andean population. The most frequent marriage impediments were affinity among the Indians and consanguinity among the Spaniards. Neither were the arguments necessarily alike. While women's old age, the protection of the offspring (widow or single mother) and the lack of a dowry were arguments presented by all socio-ethnic groups, the *smallness of the place*, on the other hand, was an argument pertaining to the more well-to-do sectors or at least to those with the pretension to claim a higher status within society, in conformity with an ideology shared by both Spanish and Colonial stratified societies which presumed that marital unions between people of different social backgrounds could only lead to disorder. In agreement with this conception, in 1776, Charles III issued the *Pragmatic Sanction to avoid the abuse of contracting unequal marriages*, a regulation applied in America in 1778, which established the need for the father's authorisation to marry.⁵³ Despite the differences pointed out, both the European, native and caste groups used dispensations as strategies for preservation and social reproduction and to this end they skilfully combined a variety of reasons, using the norms of canon law for their own benefit. I wish to stress that it was the Church which provided the population with something they had created centuries before: arguments to request dispensations and obtain them successfully, bearing in mind that these arguments varied according to the social stratum.

The requests for dispensation also enable us to observe that the reasons (real or adduced) presented by indigenous sectors who belonged to the elite surrounding *caciques* differ from those presented by the *indios del común*, since the former frequently claim the defence of political or material heritage, which is clearly not observed among poor Indians. This leads us to propose the theoretical and methodological inadequacy of the usage

of the pair Indian/European, which suggests that it might be more productive to think in terms of the stratified society and its multiple variations: in the case of indigenous groups, on the one hand, *principales* and, on the other hand, *indios del común*, whose cultural behaviour could vary significantly, even when they shared a common ethnic origin or status. In fact, both the European and the Colonial societies and, within it, its indigenous sectors, were hierarchically structured and their rules of behaviour, as well as their diverse strategies that involved options, exclusions, integrations and attempted to put in motion what Giovanni Levi calls an intangible network of friendships, bonds and protections.⁵⁴

As regards indigenous groups, the application of exemptions demonstrates a significant degree of initiative and indigenous agency where the negotiation and interaction concepts are much more useful than the »dominance/resistance« to account for the always complex dynamics of colonial society. It is in this sense that so-called »Westernization«,⁵⁵ one whose crucial component was the process of Christianisation of the beliefs and practices of the indigenous societies of the new world, finds its limits.

In addition, the granting of exemptions are a good observation point from which one can analyse the mechanisms at work, of a society based on the legal inequality which was a reflection of the ethnic and social inequality. We suggest that any exemption reinforcing the idea of the two »republics«: that of the Indians, in view of the lower quality and its »invincible ignorance« required a loosening of the canonical rules, against the Spaniards, whose privilege and the urgent need to maintain the purity of blood required some concessions.

But the cases studied also make it possible to understand the strategies of the colonial power, as well as their legal reasons and doubts regarding matrimonial issues, about which there never were univocal opinions. The general policy of the Spanish Crown and the Church (which were a unit by virtue of the royal Patronage) tended to the relaxation of the norms. It brought about a scenario in which the exception tended to be-

53 MARRE (1997).

54 LEVI (1990) 54.

55 GRUZINSKI (2000) 93.

come a usual solution. Paradoxically, while the Council of Trent tried to reinforce control on sacramental practices such as marriage, the global expansion of the Spanish crown and, in conjunc-

tion with it, of Catholicism in colonial areas made it necessary to become more flexible and adapt to local situations. ■

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