

Seduction by Promise of Marriage: Law, Sex, and Culture in Seventeenth-Century Spain

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Historians agree that early modern Spaniards' sexual behavior deviated significantly from norms set forth in royal and canon law. The question of how Spaniards resolved the tensions between their sexual norms as encoded in law and their nonnormative sexual behaviors has yet to be addressed. This essay argues that seventeenth-century Spaniards mitigated such tension by using laws and legal systems to transform deviant behavior into acceptable behavior when it was culturally expedient. Specifically, early modern Spaniards used "seduction by promise of marriage" litigation to transform dishonorable women who had committed premarital sexual transgressions into honorable women, victims of a sexual transgression perpetrated against them. Seduction trials mitigated the bloodiest consequences of the honor code and tacitly allowed Spanish men and women more leeway in their sexual comportment. Seventeenth-century Spaniards proved themselves aware of the law's possibilities for refashioning behavioral realities, and they exploited them to the hilt.

WHEN MARÍA DE ARBIZU realized in 1648 that her boyfriend had no intention of marrying her, she decided the time had come to tell her parents of her year-long relationship with Francisco de Cicujano and of the resulting pregnancy. María's stepfather, Miguel de Salinas, and her mother, María de Inza, took the news relatively well. Together with their daughter they went to the vicar general of Pamplona and, on María's behalf, initiated litigation against Francisco. María and her parents, coached by their lawyer, sued Francisco for "seduction by promise of marriage" and asked that "Francisco de Cicujano be taken prisoner ... and condemned to marry the aforementioned María de Arbizu, as he has promised on several occasions to do, or that he dower her decently and competently."¹

Secular and ecclesiastical court records reflect that 1,804 women from the Spanish province of Navarre (1598–1700) had premarital sexual relations and, like María de Arbizu, sued their lovers for "estupro bajo palabra de matrimonio," an

¹Archivo Diocesano de Pamplona (hereafter ADP), c/582, n. 6. fol. 17v.

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offense best translated as "seduction by promise of marriage."² Records indicate that sexual relations recorded as "seduction by promise of marriage" were not forcible, although they were allegedly carried out under the false pretense of a marriage promise. Several plaintiffs stated that they had cohabited with and/or been involved in long-term relations with the men who "seduced" them. Just under 20 percent of these plaintiffs reported having had children with their seducers.³

Premarital sexual acts, according to Catholic doctrine and contemporary notions of honor, should have caused a woman's immediate descent into disgrace and, later, hell. The *Diccionario de autoridades* (1732), citing usage in volume 1 of the 1605 *Quijote*, defines a woman's honor (*honra*) as her "virginal integrity."⁴ Moralists tracts, such as that written by Jesuit Gaspar Astete (1597), warned that premarital loss of virginity, a woman's "most precious treasure," would result in "irreparable damage suffered by the virgin ... whose [future] husband would be forever disgusted by her. She would cause the gravest dishonor to herself and her father or guardian."⁵ Royal (also called "secular") law compilations reinforced the importance of women's premarital chastity by casting "filial adultery" (sexual relations willingly engaged in by an unmarried woman living under her father's roof) as a capital crime and offense against the sexual honor of the woman's father.⁶ Adultery, filial or spousal, was considered such a devastating blow to the victim's reputation that no one but the woman's husband and her immediate family was allowed to accuse her of infidelity, giving the woman's guardian three choices, as laid out in legal commentaries:⁷ a man could kill his wife or daughter, bring her up on charges in secular or ecclesiastical courts, or ignore the transgression. Yet, in contrast to the

²The Archivo General de Navarra (hereafter AGN) has catalogued 1,049 seduction cases (1598–1700). Catalogued cases to date represent a third of the archive's total holdings; 755 such cases have been catalogued in the ADP. Nearly all seventeenth-century cases held in the ADP have been catalogued. For a discussion of these sources in relation to marriage patterns in the sixteenth and seventeenth centuries, see Daniel Charles Becker, "There Is No Harm in a Boy Talking to a Girl! The Control of Sexuality and Marriage in Early Modern Navarre and Guipuzcoa" (Ph.D. dissertation, University of Maryland, 1997). Navarre's royal and ecclesiastical holdings in marriage cases are among the most complete in all of Spain. Dra. María del Juncal Campo Guinea, author of *Comportamientos matrimoniales en Navarra (siglos XVI–XVII)* (Pamplona: Gobierno de Navarra, 1998) and assistant archivist at the Archivo Diocesano de Pamplona, explained that Navarre's holdings are complete because the province was spared destruction in all of Spain's major wars. By coincidence, Navarre had always sided with the victor; therefore, the city of Pamplona, where both the royal and ecclesiastical archives are located, was never plundered or burned.

³Of the 755 plaintiffs to the vicar general of Pamplona, 135, or 18 percent, were pregnant. Cases from other courts in which *stuprum* plaintiffs were pregnant or had recently given birth at the time of the trial: Archivo Histórico Nacional (hereafter AHN), CC, 5575; Archivo de la Chancillería de Valladolid (hereafter ACV), PC, 18.2, 1.58. Archivo Provincial de Guadalajara (hereafter APG), Sección Protocolos, 4114/15. In addition, the murder victim in Archivo General de Simancas (hereafter AGS), CC, 2572, killed by her lover because she had sued him for seduction, was pregnant at the time she entered her complaint, and had given birth by the time she was killed. Similarly, the murder victim in AGS, CC, 2557, slain by her father for her immodest behavior with a priest, was discovered to have been pregnant.

⁴*Diccionario de autoridades* (1726; repr., Madrid, 1964), 2:173.

⁵Gaspar Astete, *Tratado del gobierno de la familia, y estado de las viudas y doncellas* (Burgos, 1597), 160.

⁶*Fuero Juzgo*, Biblioteca Nacional, MS 1598, libro III, ley V, título 4; Gregorio López, *Las Siete Partidas* (Madrid, 1555), séptima partida, ley xiv, fol. 65r.

⁷López, *Siete Partidas*, séptima partida, fol. 65r. On the decision to publicize dishonor or keep it secret see Alonso de Vega, *Suma llamada nueva recopilación y práctica* (Madrid, 1598), 795–808.

women and their families who, in 1804, sued for seduction, court records from Navarre tell of only one instance of a woman whose father killed her in what may have been an honor-based filicide.⁸

Historians have realized that Spaniards' sexual behavior did not conform either to an honor code or to Catholic doctrine, the "two axes" around which seventeenth-century Spain is said to have revolved.⁹ Plaintiffs in seduction cases, for example, were women publicly known to have engaged in premarital sexual relations. Yet they were not social outcasts, nor were they rejected by family and neighbors. In nearly all cases the plaintiffs had friends and family testify to their good names and reputations. In approximately 33 percent of these cases, the women had their fathers, brothers, or other blood relatives beside them in court, litigating on their behalf.¹⁰ The question remains of how Spaniards resolved the tensions between their sexual behaviors and the legal norms for the same. Evidence suggests that Spain's royal and ecclesiastical justice systems mitigated the tensions between behaviors and norms by acting as transformative agents, able to change shame into honor through acts of legal alchemy.

This article argues that Spanish justice systems had the power not only to uphold norms for sexual behavior, but also to disguise and refashion transgressive acts when this became culturally expedient. Furthermore, early modern Spaniards understood how their secular and ecclesiastical justice systems worked, and they successfully exploited the transformative capacities of both through seduction litigation. Using the language of honor, seventeenth-century litigants and the law courts that heard these cases regularly transformed women's "dishonorable" premarital sexual behavior into seduction by promise of marriage, a crime in which the woman was a blameless victim. Seizing the opportunity provided them by law, jurists and litigants used seduction litigation as a way to eliminate the need for blood revenge. Plaintiffs, in particular, used seduction litigation as a means to shift culpability for sexual transgression away from themselves and onto their seducers, thereby absolving themselves both of sexual sin and dishonor.¹¹

⁸AGN, Tribunales Reales, Procesos, legajo 1, no. 33.

⁹On the importance of honor and Catholicism see José Antonio Maravall, *Poder, honor y élites en el siglo XVII* (Madrid: Taurus, 1984), 15. On deviation from the honor code and Catholic doctrine see Allyson Poska, *Regulating the People* (Boston: Brill, 1998); Ann Twinam, *Private Lives, Public Secrets* (Stanford: Stanford University Press, 1999). Poska has found that early modern Gallegos functioned according to a popular culture credo which, despite the Counter-Reformation church's best efforts, readily accepted dissolvable marriages and illegitimate births. Twinam, similarly, found that colonial Latin Americans frequently ignored the dictates of honor though they at least had the good graces to create flimsy cover stories to explain away transgressions that resulted, for example, in illegitimate births. Anthropologists have recognized that members of other Mediterranean societies with honor codes do not always, or even regularly, abide by their dictates. See Elaine Combs-Schilling, *Sacred Performances* (New York: Columbia University Press, 1989), 208-9, and Richard Antoun, "On the Modesty of Women in Arab Muslim Villages," *American Anthropologist* 70 (1968): 671-97, at 694.

¹⁰Of the 718 complete seduction cases catalogued to date in the AGN, one third, or 215, involve parents litigating on their daughters' behalf.

¹¹While litigation over marriage promises was common in the sixteenth century, the first case of seduction by promise of marriage in the diocesan archive of Pamplona dates from 1598. For questions

This is not the first study to read seduction cases against the grain. Seduction suits were, on their face, economic and social transactions. Successful plaintiffs frequently won monetary awards from the defendants, who were sentenced to dower plaintiffs as befitted the woman's station. The financial benefits that a legal victory could bring, in the form of child support to unwed mothers or dowries to young ladies who could no longer attract suitors on the basis of virtue alone, were of great importance to both the plaintiff and the court. Restoration of the plaintiff's honor through an award in damages was also key. Seduction cases can also tell us more than the market price of virginity in seventeenth-century Spain. Sandra Cavallo and Simona Cerutti have read Italian seduction cases as indicative of a need to prove paternity and gain child support rather than to preserve female sexual honor.¹² Beatrice Gottlieb has read French seduction cases as commentaries on popular versus official marriage practices, and how verbal marriage promises were interpreted in each category.¹³ The purpose of the present study is twofold: to use seduction cases as indicators of the ways in which law functioned in early modern Spanish culture and to examine the ways in which early modern Spaniards both understood and shaped the relationship of law to sexual norms.

The majority of the evidence for this study is taken from the ecclesiastical tribunal records of the vicar general of Pamplona, between 1598 and 1700.¹⁴ Corroborating evidence comes from the secular tribunals of the royal chamber of Castile (Spain's highest court of appeals), the chancelleries of Valladolid and Navarre (regional courts of appeals), and the local court of the corregidor of Guadalajara. The definition of seduction, the types of arguments used to support or refute the charge, and the legal decision-making process were remarkably similar from one region to another and from one justice system to another. Differences in treatment of seduction by the secular and ecclesiastical judicial systems were primarily in their sentencing powers. Secular courts were empowered to sentence defendants to corporal punishment, including the death penalty, while ecclesiastical courts were not. Ecclesiastical courts could impede a defendant's forthcoming

of increased social control, see Mary Elizabeth Perry, *Gender and Disorder in Early Modern Seville* (Princeton: Princeton University Press, 1990); idem, *Crime and Society in Early Modern Seville* (Berkeley: University of California Press, 1991); and Anne J. Cruz and Mary Elizabeth Perry, eds., *Culture and Control in Counter Reformation Spain* (Minneapolis: University of Minnesota Press, 1992).

¹²Sandra Cavallo and Simona Cerutti, "Female Honor and the Social Control of Reproduction in Piedmont between 1600 and 1800," in *Sex and Gender in Historical Perspective*, ed. Edward Muir and Guido Ruggiero (Baltimore: Johns Hopkins University Press, 1990), 73-109. Cavallo and Cerutti, studying 650 cases from ecclesiastical courts in Florence, found that depositions for seduction cases heard in ecclesiastical courts in seventeenth-century Italy were often framed in terms of honor, but were in fact an attempt to have the father of an illegitimate child recognize his paternity.

¹³Beatrice Gottlieb, "The Meaning of Clandestine Marriage," in *Family and Sexuality in French History*, ed. Robert Wheaton and Tamara K. Hareven (Philadelphia: University of Pennsylvania Press, 1980), 49-83.

¹⁴This investigation was greatly facilitated by José Luis Sales Tirapu and Isidoro Urusía Irigoyen, *Catálogo del Archivo Diocesano de Pamplona: Sección Procesos* (Pamplona: Gobierno de Navarra 1988-). Seventeen volumes of the archive's holdings, covering the years 1500 to 1700, are currently in print. An eighteenth is in press.

marriage to another woman or demand that the defendant marry the plaintiff, while secular courts could not. Because of the similarities between them, this article treats secular and ecclesiastical trials, and trials from different regions, together. Institutional or regional particularities are signaled as they appear. Taking the case of María de Arbizu and Family versus Francisco de Cicujano as a guide, this article goes step-by-step through a typical seduction trial, diverging periodically to give a broader overview of seduction legislation and the legal and moral systems that informed it.

* * *

When María de Arbizu and her stepfather decided to sue Francisco de Cicujano for seduction by promise of marriage, they brought their case before the vicar general of Pamplona. The vicar was an ecclesiastical magistrate who, like his royal counterparts (local magistrates known as *corregidores*), presided over a curious mix of what we understand as civil and criminal proceedings. Cases could either be initiated by the prosecutor (*ex officio*) or by the victim (plaintiff, *querellante*, or *demandante*). Defendants (*defendientes* or *demandados*) convicted in secular or ecclesiastical courts were often forced to make reparations (usually monetary) to the victim, and to undergo punishment by the magistrates (excommunication in ecclesiastical courts, corporal punishment, and/or banishment in secular courts). However, in cases of a verdict of not guilty, the plaintiff could be fined for malicious prosecution and plaintiffs and witnesses alike could be tried for perjury.¹⁵ Most seduction suits, royal and ecclesiastical, were initiated by the seduced woman, sometimes with the aid of family members, as was the case of María de Arbizu. Both plaintiffs and defendants in ecclesiastical courts had lawyers (*procuradores*) to lead them through the legal system, though lawyers were not always the norm in secular seduction suits.

The crime in question in María de Arbizu's case, seduction by promise of marriage (in Spanish *estupro*), had its roots in the Roman crime of *stuprum*, an offense that connoted illicit sexual activity between unmarried persons.¹⁶ Subject to prosecution for *stuprum* were unmarried men who seduced young women or boys from respectable families, unmarried women who had sexual relations with their slaves (considered degrading to the honor of the woman's family), and, additionally, the women themselves who had been seduced by promise of marriage, who could be prosecuted by their fathers for staining the family's honor. In contrast to the Roman *stuprum*, the Spanish *estupro* was a crime committed against women, never by them. But like *stuprum*, *estupro* could only be committed against respectable persons.

The definition of *estupro* was unstable in the seventeenth century to the point that no two sixteenth- or seventeenth-century legal commentaries agree on its def-

¹⁵See, for example, ADP, c/742 n.11, for a witness convicted of perjury, and ADP, c/1105 n.10, in which a plaintiff was fined for entering false accusation.

¹⁶Judith Evans Grubbs, *Law and Family in Late Antiquity* (New York: Oxford University Press, 1995), 95, 215-16; Joëlle Beaucamp, *Le statut de la femme à Byzance (4-7 siècle)*, vol. 1, *Le droit impérial* (Paris: Collège de France, 1990), 178-81.

inition. *Estupro* meant both seduction and rape, though jurists and deponents usually distinguished between the two by calling one *estupro* "by promise of marriage," (*estupro bajo palabra de matrimonio*) and the other "forced" *estupro* (*stupro forzoso*). In 1598, Alonso de Vega defined *estupro* as forcible intercourse with a virgin; in 1611, his contemporary Sebastián de Covarrubias defined the term as sexual relations (*ayuntamiento*) with an unmarried woman or a widow.¹⁷ An eighteenth-century dictionary defines *estupro* as "illicit and forced" intercourse "with a maid or a virgin."¹⁸ The *Siete Partidas*, Spain's major medieval law compilation, which was glossed in 1555 by Gregorio López, came closest to matching the definition of *estupro* as it was used in seventeenth-century seduction cases. The *Partidas* defines *estupro* as "pertaining to those who lie with women of [holy] orders, or with a widow who lives chastely in her house, or with virgins, by talk or by trickery, not by force."¹⁹ Victims of seduction were entitled to a monetary award in damages, also called *el estupro*, made in the form of a dowry befitting the woman's station. The payment of the *estupro* was meant to restore the woman's honor and her status as marriageable. Seduction, according to the López edition of the *Partidas*, was consensual, in contrast to rape (*fuerza de mujer*), which was not. No matter how they defined the term, however, all jurists agreed that *estupro* (whether forcible intercourse or deception) was a crime against a woman's sexual honor and, therefore, could only be committed against women "of good repute." Prostitutes and other women of low regard could not, technically speaking, be "estupradas" in either sense of the word because they had no sexual honor to lose.

For seventeenth-century cases of seduction by promise of marriage, the marriage promise was a necessary prerequisite to a lawsuit. However, by the mid-sixteenth century marriage promises had ceased to constitute valid marriage according to canon law. Prior to the mid-sixteenth century, marriage promises had been the essence of a valid marriage. Promises worded in the present tense (*de presente*) immediately formed a binding union. Vows worded in the future tense (*de futuro*) became binding upon consummation. Until 1563 promises alone, without church services, banns, clergy, or witnesses, constituted valid, if legally problematic, "clandestine marriages." The Council of Trent's 1563 *Tametsi* decrees reversed the long-standing church position on clandestine marriage and, with it, diminished the power of the marriage promise. According to the *Tametsi* decrees, all promises to marry were invalid unless they had been made in front of the couple's parish priest and other witnesses.

In spite of the Council of Trent's decrees, the notion that an exchange of vows made either in private or before lay witnesses constituted marriage persisted in some parts of Spain into the nineteenth century.²⁰ Also in spite of the Council of

¹⁷Vega, *Suma llamada nueva recopilación*, 592; Sebastián de Covarrubias, *Tesoro de la Lengua Castellana o Española* (1611; repr., Madrid: Ediciones Turner, 1977), 572.

¹⁸*Diccionario de autoridades*, 660.

¹⁹López, *Siete Partidas*, partida 7, título xix.

²⁰Archivist María del Juncal Campo has confirmed that although they are not yet catalogued, the ADP holds several nineteenth-century seduction suits (personal communication, June 2000).

Trent, seventeenth-century ecclesiastical courts occasionally sentenced defendants to marry plaintiffs when the two had exchanged unwitnessed vows, reinforcing rather than correcting popular practice.²¹ As with secular legislation, post-Tridentine canon law commentaries agreed that a woman who had been seduced by promise of marriage was entitled to an award equivalent to her dowry to ameliorate "the great damage done to her reputation."²² However, the commentaries agreed that if news of a woman's seduction had not become public, she was not entitled to compensation since she had suffered no damage to her honor. As with secular seduction legislation, a woman of ill repute could not be seduced.

By the seventeenth century seduction trials in both secular and ecclesiastical courts centered on three issues: the plaintiff's virginity prior to her seduction, her good reputation, and the exchange of a marriage promise. If in her first interview with the vicar general of Pamplona María de Arbizu had any doubts about the components necessary to prove she had been seduced by a promise of marriage, the vicar general's formulaic, leading questions would have cleared them up immediately. In response to the vicar's inquiry as to whether Francisco de Cicujano had taken her virginity, and if she had only consented to have sexual relations with Francisco because he had promised to marry her, María replied that Francisco had sworn a marriage oath before an image of Our Lady of the Immaculate Conception that hung over María's parents' bed, in which Francisco had "deprived her of the flower of her virginity and her wholeness, which at the time she possessed." She added that she had only "condescended with her will and let him enjoy her" after Francisco made "many pleas and oaths that he would marry her and would not have any other woman for his wife but her." All of this, she reported, happened a year ago, "more or less," around the time of the Feast of Our Lady of Candelas.²³

María's long-term relationship with her seducer was typical. Far from instant seduction à la Don Juan, most litigants had been sexually involved for several months or years. The litigants in these long-term sexual relations rarely thought to bring suit unless the man in question tried to marry another woman (78 percent of ecclesiastical seduction trials) or the seduced woman herself became pregnant (as with María de Arbizu and in approximately half the secular court cases). These find-

²¹See, for example, ADP, c/287 n. 22; c/320 n.7; c/373 n.7; c/380 n.35; c/405 n.24; c/426 n.2; c/469 n.22; c/476 n.28; c/504 n.27; c/577 n.16; c/582 n.6; c/601 n.30; c/624 n.11; c/642 n.8; c/1096 n.5, in which defendants were ordered to marry plaintiffs without the option of dowering them. This practice, which occurred in approximately 6 percent of ecclesiastical cases, may have been particular to the diocese of Pamplona. Allyson Poska and Patricia Seed have found for Galicia and colonial Mexico respectively that after the Council of Trent, ecclesiastical courts did not sentence seduction defendants to marry their accusers, and moreover, accusers sought only material compensation, not marriage, in their complaints. See Poska, "When Love Goes Wrong," *Journal of Social History* 29 (1996): 876-77; Patricia Seed, *To Love, Honor and Obey in Colonial Mexico* (Stanford: Stanford University Press, 1988), 260, 276. Seed found, however, that the Mexican church on occasion acted out of concern for honor instead of Catholic orthodoxy. Overruling church prohibitions against clandestine marriage, the Mexican church would regularly allow couples to dispense with formalities such as banns and to marry immediately if their situation involved a question of honor. See Seed, *To Love, Honor*, 267 n. 9.

²²Vega, *Suma llamada nueva recopilación*, 756.

²³See ADP, c/582 n.6. fols. 1r, 2v.

ings lend credence to Allyson Poska's assertion that unions not sanctioned by the church were common in seventeenth-century Spain.²⁴ María's testimony is also representative of seduction plaintiffs' statements in that, with prompting from the vicar, it confirmed two of the three necessary components of her complaint: the marriage promise and her virginity prior to the seduction. It was unusual for María not to have mentioned her honor herself. Instead, María's lawyer had added this necessary third component in his letter to the vicar, in which he claimed that María de Arbizu was "and always had been an honorable, honest, and modest girl, of good life and customs, without any evidence to the contrary, as witnesses will attest."²⁵

There are cases similar to that of María de Arbizu. In 1624, Catalina de Zubelzu testified to the vicar of Pamplona that she was "an honest and modest maid" and a virgin prior to her seduction by master carpenter Domingo de Iramendia.²⁶ In 1683, Catalina Sánchez, a servant in Guadalajara, seduced and left pregnant by her mistress's son, testified to the corregidor of Guadalajara that she had been a reputable, honorable virgin before the seduction and that she was suing "so that the marriage promise would be given force, and I might recover my honor and reputation in their entirety."²⁷ Likewise, Luisa de Pico testified to the corregidor of Madrid that she had been "an honorable virgin" prior to her seduction in 1655 by Juan Núñez Camacho, a guest at the inn where Luisa worked as a maid.²⁸ The lawyer for Doña Victoria de Onis, who, in 1636, had also entered a seduction complaint before the corregidor of Madrid, testified that prior to her seduction by Don Cristobal de Villa Padierna, "Doña Victoria had been and was reputed to be a maid without anyone's holding an opinion to the contrary."²⁹

María Luisa Candau Chacón has found similar arguments among women and their lawyers who sued clerics of minor orders (who had not yet taken vows of chastity) for seduction in eighteenth-century Seville.³⁰ Doña Ana Ruiz, testifying before the vicar of Seville in 1702, said of the incident in which a cleric seduced her that "she let herself be won over by his continual promises, being, as she was, a maid.... She intended to marry him, and demand that he keep his [marriage] promise, which he gave to her in order to deflower her and take her virginity." Likewise, Doña Francisca Josefa Gordillo testified before the same court, in 1690, that she was "an honorable and honest girl, and although she had resisted such perdition, since [the cleric] gave her a marriage promise, she gave in to him ... and he

²⁴Of 755 trials for seduction by promise of marriage from the ADP, 588, or 78 percent, of seduction plaintiffs began their suits by asking the vicar general to impede the defendant's forthcoming marriage to another woman. Secular courts did not have the authority to impede marriages, which left the plaintiff's pregnancy as one of the primary motivating factors for seduction suits (six of eleven; for a listing of the six cases see n. 3 above).

²⁵ADP, c/582 n. 6, fol. 1r.

²⁶ADP, c/504 n. 27, fol. 1r.

²⁷APG, Protocolos, 4114/15, fol. 1r-v.

²⁸AHN, leg. 5579/80, fol. 4r.

²⁹AHN, Cámara de Castilla, leg. 5575, fol. 4v.

³⁰María Luisa Candau Chacón, *Los delitos y las penas en el mundo eclesiástico sevillano del XVIII* (Seville: Diputación Provincial de Sevilla, 1993), 127.

seduced her."³¹ Plaintiffs stressed honor, chastity, and the marriage promise in all eleven seduction cases examined by Candau.

Testimony to the woman's good reputation was common to all seduction cases, as was testimony about the woman's virginity prior to the marriage promise and testimony confirming the marriage promise itself. Deponents and most lawyers used the terms "honor" and "reputation" interchangeably. The two terms are also synonymous in many anthropological honor code models.³² Such was not the case in seventeenth-century Spanish royal and ecclesiastical law, and it was this legalistic deviation from common usage that lay at the heart of seduction legislation.

In its most general, or anthropological, formulation, female sexual honor is equivalent to reputation, and it connotes primarily chastity. Male sexual honor, also equivalent to reputation, consists of a man's ability to protect and control the chastity of the women under his guardianship.³³ A sexual honor code, whatever its regional particularities, inextricably links household members to one another in an individual and collective concern for reputation. If the sexual purity of a woman (whether wife, mother, daughter, or servant) is attacked verbally or physically, the woman and her male guardians are dishonored, and the men are responsible for taking appropriate honor-restorative revenge against the attacker. If the woman of a household violates the rules of the sexual honor code, the male guardians (whether husbands, fathers, brothers, or masters) face social disgrace. In such a case, the men are responsible for taking revenge against the woman and her lover.

In contrast to anthropological honor code models and to common usage among litigants and witnesses in seventeenth-century courtrooms, Spanish justice systems separated the concepts of a woman's honor and her good reputation, tying only her honor, not her reputation, to her virginity. Spanish justice systems then allowed a woman of good repute to "avenge" her sexual honor through the court system, by coding herself as a victim and winning reparations from the perpetrator. Therein lay the key to a successful seduction suit.

Spanish law centered on two separate but intertwined legal concepts: honor and reputation. In secular and ecclesiastical courts, honor was commonly understood as being dependent upon extrinsic factors (for example, injury caused by another person).³⁴ Reputation was understood as intrinsic, a quality inherent in an individual's character. Dishonor, according to the *Partidas*, was brought about through circumstances external to the dishonored party, such as an insult or a bodily attack. Ill repute, on the other hand, derived from the circumstances of a person's

³¹Candau, *Los delitos y las penas*, 294.

³²See, for example, Julian Pitt-Rivers, *The Fate of Shechem: Or, the Politics of Sex: Essays in the Anthropology of the Mediterranean* (Cambridge: Cambridge University Press, 1977); J. G. Peristian, ed., *Honor and Shame: The Values of Mediterranean Society* (Chicago: University of Chicago Press, 1966).

³³See Michael Herzfeld, "Honour and Shame," *Man* 15 (1980): 339-51; idem, "The Horns of the Mediterraneanist Dilemma," *American Ethnologist* 11 (1984): 439-54; Unni Wikan, "Shame and Honor, A Contestable Pair," *Man* 19 (1984): 635-52; Lila Abu-Lughod, *Veiled Sentiments* (Berkeley: University of California Press, 1986).

³⁴Vega, *Suma llamada nueva recopilación*, 1:1122, "de fama," caso v.; López, *Siete Partidas*, partida 7, fols. 22v-32v.

birth or from law. Children of adulterous unions, for example, were "of ill repute" (*de mala fama*) by birth, while an adulteress was of ill repute by law.³⁵ Hence, a raped woman, according to secular law, was dishonored but was still of good repute. The rapist, on the other hand, was a man of ill repute and, therefore, dishonorable, as was the illegitimate child.

In secular and ecclesiastical courts, then, it was possible for a woman to retain her good reputation yet "have her honor stolen" and recovered through a lawsuit, as happened in seduction trials, including the case of María de Arbizu versus Francisco de Cicujano. In legal theory, jurists made no distinction between men's and women's relationships to honor and reputation; in legal practice, however, the difference would take on great importance. A woman of good repute who could prove that she had been dishonored by rape or seduction did not lose her reputation. Quite the contrary—only women of good repute could sue for damages if they had been dishonored. A woman of ill repute presumably had no sexual honor to be lost and thus could not ask the legal system to help her recover it. Spanish justice systems separated the concepts of a woman's honor and her good reputation, tying only her honor, not her reputation, to her virginity. The same systems allowed a woman of good repute to "avenge" her sexual honor through the courts by coding herself as a victim and winning reparations from the perpetrator. Therein lay the key to a successful seduction suit.

For male plaintiffs, unlike female plaintiffs, honor and reputation were conjoined, so that if a man suffered an external injury to his sexual honor, his intrinsic worth was damaged as well. When a man presented himself as a victim, he in effect caused his own disrepute by proving unable to preserve or avenge his sexual honor. Courts of law could punish the woman who had dishonored a male plaintiff, but the conviction could not restore a male plaintiff's honor or reputation. Nevertheless, dishonored men did find creative ways to turn the legal system to their advantage.

A seduction plaintiff's end run around disgrace and blood revenge could be accomplished through the legal system, but it could not be done by oneself alone. It necessitated the creation of a common fiction, and for this witnesses proved invaluable.³⁶ In seduction cases witnesses were not, as they might be in a modern justice system, a random collection of bystanders who happened to have observed an allegedly illegal act. Rather, witnesses were friends and family, handpicked by litigants and their lawyers, ready to testify to whatever they thought would help their side the most. Seduction trials were particularly notable because the legal processes facilitated, even encouraged, agreement among witnesses and the telling of untruths.

³⁵López, *Siete Partidas*, partida 7, fols. 22v–32v.

³⁶On courtroom testimony as fiction, sometimes agreed upon by members of a family or a village, see Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, Mass.: Harvard University Press, 1983); Lyndal Roper, *Oedipus and the Devil* (New York: Routledge, 1994); R. Po-chia Hsia, *Tienc 1475* (New Haven: Yale University Press, 1992).

If plaintiffs like María de Arbizu had the prompting of the vicar general and their own lawyers, witnesses were just as thoroughly coached. Witness testimony in seduction cases was not spontaneous, but was elicited from each deponent in response to a series of leading questions that produced suspiciously homogeneous answers. Some seduction litigants had "publicly notorious," long-term sexual relationships with other men in the village before suing their current lovers for "seduction of a virgin by promise of marriage." One, Águeda de Unzurrunzaga, was so bold as to enter complaints of seduction of a virgin by promise of marriage against two different men, the first in 1674, the second in 1676.³⁷ Yet in all of these cases, including the last, the neighbors, friends, and family of the plaintiff testified to the plaintiff's virginity prior to her seduction and to her impeccable modesty, honesty, and virtue.

After María de Arbizu had completed her statement to the vicar general of Pamplona, her case moved on to the witness deposition phase. María's lawyer, armed with his list of friendly witnesses and foolproof leading questions, began each deposition by asking "if the witness knew the aforementioned María de Arbizu and if she considered her an honorable, honest, and modest girl, of good life, dealings and customs, without having heard or seen any evidence to the contrary." Not coincidentally, all the plaintiffs' witnesses testified that María was "an honorable, honest, and modest girl, of good life, dealings and customs" and that they had not "heard or seen any evidence to the contrary." Similarly, all witnesses for Gracia de Aranguíbel (1645) testified in response to her lawyer's question that "it was public and well known that the aforementioned Gracia de Aranguíbel is the daughter of honorable and very well respected parents.... The aforementioned Gracia de Aranguíbel has always had a good reputation, and this witness has never heard anything to the contrary."³⁸ Luisa de Pico's coworkers at an inn in Madrid all swore that Luisa was "honorable, of honorable parents who live in this court city, and no man should try to trick her, and if he dared to do so, he should marry her." María, Gracia, and Luisa's neighbors may indeed have thought them honorable, honest, and modest maidens seduced by unscrupulous fiancés, but that is not the story the defendants would tell.

Defendants in seduction suits understood that their best line of defense was an attack on the plaintiff's reputation, which the plaintiff herself and the witnesses in her favor had worked so hard to construct. Alternate defense strategies included claims that the defendant had not slept with the woman in question or that he had slept with her but had not promised to marry her.³⁹ Francisco de Cicujano, the young man accused of seducing María de Arbizu, attempted both of these lines of defense. In his interview with the vicar general, Francisco tried to establish his own

³⁷ADP, c/1105 n.10.

³⁸See ADP, c/390 n.19, fol. 71; ADP, c/582 n.6, fols. 3v, 6r.

³⁹Gottlieb, "Meaning of Clandestine Marriage," 49-83. Gottlieb, researching clandestine marriage in France in the dioceses of Troyes and Châlons-sur-Marne (1455-92), found that of sixty-nine seduction defendants fifty-two were found guilty and fined even though several tried to defend themselves by impugning the good reputation of the woman they had seduced.

good reputation by asserting that he was "an honorable and God-fearing man ... and honest in his dealings ... as witnesses will attest." They did. Francisco went on to claim, first, that "it is not true that [he,] the defendant, has solicited or amorously pursued the aforementioned María de Arbizu, or that he offered to marry her, or that he took her flower and virginity, much less that he had carnal acts with and access to her." Moreover, he continued, "María de Arbizu is a woman of low regard and is fond of conversing with men ... and this made her reputation suspect well before this defendant had seen her." In other words, Francisco claimed he had not slept with María de Arbizu or promised to marry her, but if he had, he had not been the first. Witnesses in Francisco's favor, who answered the same brand of leading questions as those put to the plaintiff's witnesses, confirmed that María was "of low regard" and "very friendly with two men ... who used to write her love letters" and ply her with gifts, which included gold-plated chokers, silk hair ribbons, and castanets.⁴⁰

Francisco's strategy was typical. In a similar case the priest of Azpieta claimed (1660) that the woman he seduced while studying for his vows was "easy" and a drunk (*perdida del vino*).⁴¹ Cleric Don Francisco García excused his behavior to the vicar general of Seville on the basis that his accuser "has always taken every liberty with her behavior and is completely independent from her parents ... and as a result she has engaged in the all the conversation she has desired with various neighbors, including Antonio Luis López and Francisco Guillén."⁴² Don Cristobal de Villa Paderna (1636) told the corregidor of Madrid that he had courted Doña Victoria de Onis "and sometimes entered her house," thereby casting aspersions on her chastity.

Occasionally these counteraccusations were successful, as in the 1636 case of Catalina de Echeverría versus Tomás de Aroztegui, who admitted to having slept with Catalina, but who claimed that Catalina had promised one of the witnesses a petticoat in exchange for her testimony, and that both the witness and Catalina were known to be "easy libertines," whose loose living had caused their parents "a great deal of anguish."⁴³ Having verified the petticoat-for-testimony pact and Catalina's checkered sexual past, the vicar general absolved Tomás de Aroztegui of wrongdoing and convicted the witness in question of perjury. Decisions in most cases were not nearly so clear-cut.

The señor doctor Don Miguel Pérez Anguía, vicar general of Pamplona, found that "María de Arbizu has proven that the aforementioned Francisco de Cicujano has been in bed with her various times and had promised to marry her, and he, in turn, has not proven anything to the contrary." The vicar then "condemned the aforementioned Francisco de Cicujano to, within twenty days ... celebrate marriage in a church, as commands the holy mother Church, with said María de

⁴⁰See ADR, c/582 n. 6, fols. 15r-v, 17r-19v.

⁴¹ADR, c/839 n. 23, fol. 19r.

⁴²Cited in Candau, *Los delitos y las penas*, 301.

⁴³ADR, c/742 n.11, fols 42r-46r.

Arbizu." Like María de Arbizu, María Fermín de Noáin, seduced and left pregnant in 1601 by Juan de Aldaz, and Gracia Ibáñez, seduced and left pregnant by Juan de Inza in 1620, presented evidence of their good reputations, marriage promises, and virginity prior to seduction. The vicar general absolved each of their seducers because the plaintiff "had not proven her case," with no further explanation offered.⁴⁴

The corregidor of Madrid, working within his powers, ordered Don Cristobal de Villa Paderna to marry Doña Victoria de Onis or pay her a thousand ducats. One thousand ducats was no paltry sum. One ducat was equivalent to 375 marvedies. The daily wage of a skilled worker in early-seventeenth-century Spain was 136 marvedies.⁴⁵ Don Cristobal chose to pay. Francisco de Iturri, ordered by the vicar general of Pamplona to marry or dower Francisca de Uralda, chose to marry her. Francisca, however, appears to have been the only plaintiff in the vicar general's court who thought it unwise to marry a man who had repeatedly refused to marry her. When at the altar the officiating priest asked Francisca for her consent, she "responded, 'No, señor, I do not want to marry this shameless pícaro!'"⁴⁶ Francisco was then sentenced to dower Francisca, but shameless pícaro that he was, he still had not paid the fine two years following the trial.

The notion of seduction as a crime committed against—but never by—women hinged on the difference between honor and reputation, in which honor could be lost by injury while reputation could only be lost by the circumstances of one's birth or through disgraceful personal conduct. The seduced woman's successful complaint turned on this distinction, for while claiming to have been dishonored (that is, to have lost her virginity) she simultaneously had to prove herself reputable to win her case. By bifurcating the concepts of female sexual honor and a woman's reputation, secular courts provided young unmarried women with a safety net against social ruin, in the form of victim status.⁴⁷ Spanish law shifted responsibility for premarital sexual misconduct onto the male partner, leaving any woman in possession of a good reputation before the seduction had occurred, or any woman who could fabricate a good reputation with the help of her lawyer and her witnesses, able to claim continued respectability by virtue of her victimhood.

Displacement of responsibility for the premarital sexual transgression on the defendant not only gave seduction plaintiffs a safety net against disgrace; it also protected against the need for blood revenge against the plaintiff herself. Sixteenth-century jurist Gregorio López noted that contemporary legal practice reversed the law of the *Siete Partidas* and absolved fathers of responsibility for punishing their widowed daughters' sexual transgressions.⁴⁸ However, López noted no such legal boon to husbands, or to fathers of sexually transgressive unmarried daughters (who were

⁴⁴See ADP, c/169 n. 5, fol. 66v; c/283 n. 30, fol. 25r; ADP, c/582 n. 6, fol. 159r.

⁴⁵Rafael Carrasco, *Histoire et civilisation de l'Espagne classique* (Paris: Gallimard, 1991), 224.

⁴⁶ADP, c/1096 n. 5, fol. 104v.

⁴⁷Wikan, "Shame and Honor," 635–52. Wikan acknowledges that courts serve as honor restorative mechanisms in present-day Cairo and Oman.

⁴⁸López, *Siete Partidas*, partida 7, fol. 23r, gloss on, "su fija."

still, at mid-sixteenth century, allowed to kill their daughters and the daughters' lovers in order to restore their family name).⁴⁹ Yet early modern Spanish fathers who chose to take legal action used none of the three options jurists offered.⁵⁰ Instead of killing the fornicating couple, bringing them up on charges in royal or church courts, or ignoring the situation entirely, they used the law to perform a nonviolent, two-phase honor restoration process: first, remove dishonor from themselves by placing it on their daughters; second, remove responsibility for dishonor from their daughters by placing it on the daughter's lover.

Miguel de Salinas, María de Arbizu's stepfather, performed such a stain-removing two-step to get his pregnant, unmarried stepdaughter, and himself, out of trouble.⁵¹ When he charged Francisco de Cicujano with seduction, Miguel uttered not a word about his own injured sexual honor, but instead testified that his stepdaughter María de Arbizu "was and has always been an honorable, honest, and modest girl, of good life and habits." The strategy worked. In spite of the counteraccusations against María de Arbizu that she had received castanets, necklaces, and hair ribbons in exchange for sexual favors, the vicar general "condemned" Francisco de Cicujano to marry María within twenty days from the date of sentencing.⁵² Similarly, in 1652, María Gómez's father, Juan, took his case before the corregidor of Villapiedra (outside Valladolid), charged Domingo García Moreno with seduction, and then testified that his pregnant daughter, María Gómez, was "a modest and chaste maid."⁵³ Juan de Aranguíbel likewise made no mention of his own sexual honor, but instead testified first before the corregidor of Rentería (Navarre) and then before the vicar general of Pamplona (1645) that his daughter Gracia was "an honest, virtuous, and modest maid" even though Miguel de Celayandía had "deprived her of her wholeness and virginity, leaving her lost."

Despite his daughter's being the only witness to the alleged marriage promise and the fact that the sexual relations between his daughter and Domingo García Moreno had gone on for three years before anyone thought to bring a lawsuit, Juan Gómez won his case. Domingo García Moreno was sentenced to two years' banishment from the city of Valladolid and all surrounding towns, and ordered to marry María Gómez or else pay her 400 ducats. Gracia de Aranguíbel and her father, Juan, won a dowry of 300 ducats from the secular courts, though the vicar general refused to compel Miguel de Celayandía to marry Gracia. Instead of losing daughters, Juan García and Juan de Aranguíbel had gained dowries. Their daughters' sexual honor was returned and their own good names were secured. In addi-

⁴⁹López, *Siete Partidas*, partida 7, ley xiv, fol. 69r.

⁵⁰On the facility with which early modern Italians manipulated the legal system, specifically by manipulating concepts of honor, see Thomas V. Cohen, "Three Forms of Jeopardy: Honor, Pain, and Truth Telling in a Sixteenth-Century Italian Courtroom," *Sixteenth Century Journal* 29 (1998): 975-98.

⁵¹For cases in which parents acted on their daughters' behalf, see ADP, c/582 n. 6; c/466 n. 9; c/742 n. 11; c/1096 n. 5; c/333 n. 8; c/482 n. 22; c/495 n. 33; c/619 n. 7; c/650 n. 15.

⁵²ADP, c/582 n. 6, fol. 159r.

⁵³AGS, CC, 2708/9, fol. 2r.

tion, the families now had enough money to marry off their daughters to some man, any man, they might have hoped, who would prove less of a cad.

The displacement of male dishonor onto a woman whose honor could be restored through marriage or money, instead of bloodshed, was in no way anticipated by law, which placed seduction and filial adultery in totally distinct legal categories, even though the sexual act (consensual intercourse between an unmarried woman and an unmarried man) was, in many cases, exactly the same. Moreover, according to traditional Mediterranean honor codes and Spanish law, men like Miguel de Salinas, Juan Gómez, and Juan de Aranguibel, whose wives, daughters, or servants had been dishonored, should have considered themselves dishonored by the crimes committed against "their" women.⁵⁴ Yet no such concern for dishonor by proxy surfaces in the court records of cases of seduction, rape, or persecution (akin to sexual harassment) in which men acted as legal advocates for dishonored women. Pedro García, for example, arguing on behalf of his "persecuted" wife, Catalina, declared, "I, Pedro García, as the husband and partner of Catalina Balenciano ... enter a complaint against Julián Bermejo, shoemaker, for abuse [of my wife] in word and deed. May his crimes not go unpunished."⁵⁵ The master of a raped servant stated, "I, Lope de Salaçar, head of the Valladolid jail, as the master of María Gómez, an eleven-year-old girl in my service, complain that the defendant forced the girl and took her virginity."⁵⁶ None of the men who appeared in court on behalf of women argued his case in terms of violated male honor and the need for blood revenge. Instead, when entering seduction accusations on behalf of women, men argued in terms of female honor, asking the court to compensate the woman's loss through money, marriage, and/or punishment of the malefactor.

Seventeenth-century Spaniards clearly needed a means for reconciling their notion of honorable or religiously orthodox sexual comportment with their behavior. Without recourse to the law as a transformative mechanism the streets of seventeenth-century Spain would have been littered with bodies of fornicating daughters and their lovers. But why build this means for reconciliation directly into law, which was traditionally used to enshrine cultural ideals? Seventeenth-century Spaniards' recourse to law as a refashioning agent reflects a cultural understanding of law in which law has not only the power to judge, but also to disguise and transform. Sixteenth-century Spain witnessed a growing respect for law as an outgrowth of royal authority, an increased access to secular and ecclesiastical tribunals, and increasing monarchical and ecclesiastical attempts to control sexual behavior. What more powerful tool could seventeenth-century Spaniards use to reshape transgressive acts than the law itself?

⁵⁴ Anthropological literature suggests that when women, by will or by force, lose their honor they cause the dishonor of their male guardians as well. See, e.g., Abu-Lughod, *Veiled Sentiments*, 159-67.

⁵⁵ AGS, CC, 5589, fol. 21v.

⁵⁶ AGS, fol. 2r.

The authority of law in seventeenth-century Spain was intimately linked with royal authority.⁵⁷ Sixteenth-century jurist Alfonso de Castro identified law as "the right will of him who governs in the name of the people."⁵⁸ Jurist Castillo de Bobadilla envisioned the king as "God on earth," and the embodiment of law.⁵⁹ Throughout the seventeenth century Spanish monarchs maintained the right to legislate independently, without the obligation to consult counselors or advisory bodies. Thus royal tribunals in seventeenth-century Spain, no matter how far removed from Madrid or how limited their jurisdiction, derived their power from the "king's justice."⁶⁰

The theme of the monarch as font of law was popular in seventeenth-century literature, especially in seventeenth-century plays in which the king appears in the finale as *deus ex machina* to dispense poetic justice, tempered with mercy.⁶¹ A fictional Ferdinand and Isabella intervene at the close of Lope de Vega's *Fuenteovejuna* (The sheepwell) to absolve oppressed villagers of the consequences of conspiring to kill their violent and malicious lord. In the final scene of Calderón de la Barca's *El médico de su honra* (Physician of his honor), the king absolves the protagonist, Don Gutierre, of guilt for killing his wife on an ultimately unfounded suspicion of adultery and praises Gutierre's zealous, if misguided, sense of honor. While Don Juan's poetic justice would be meted out by a vengeful statue, in the final scene of Tirso de Molina's *Burlador de Sevilla* (Trickster of Seville), Don Juan's victims, too, make a direct appeal to the king for recompense.

At the turn of the seventeenth century, a respect for the law as a reflection of the king's authority joined with increasingly active church and state attempts at social control. As royal court prosecution of sexual offenses increased, occasions for accusation and prosecution of church court crimes also became more frequent, though the church courts did not become any more effective in combating popular religious or sexual practices.⁶² The expanded secular and ecclesiastical legal bureaucracy of the sixteenth century, coupled with the authority Spanish culture afforded its legal systems, made it conceivable and possible for seventeenth-century Spanish men and women to resolve injuries to honor through litigation instead of through

⁵⁷On the notion shared by popular and elite cultures that all justice should emanate from the monarch, see Luis R. Corteguera, "The Painter Who Lost His Hat: Artisans and Justice in Early Modern Barcelona," *Sixteenth Century Journal* 29 (1998), 1023-42.

⁵⁸Alfonso de Castro, *De potestate legis penalis* (Salamanca, 1556), 14-18; cited in José Luis de las Heras Santos, *La justicia penal de los Austrias en la Corona de Castilla* (Salamanca: Ediciones Universidad de Salamanca, 1991), 31.

⁵⁹J. Castillo de Bobadilla, *Política para Corregidores y Señores de Vasallos* (1704; repr., Madrid: Real Academia de la Historia, 1978), 2.10.15; cited in Heras, *La justicia penal*, 30.

⁶⁰Heras, *La justicia penal*, 30-31, and Enrique Villalba Pérez, *La administración de la justicia penal en Castilla* (Madrid: Actas, 1993), 23.

⁶¹Villalba, *La administración de la justicia*, 23.

⁶²On episcopal court visits, see Poska, *Regulating the People*. On an increase in secular court prosecutions over the course of the sixteenth century, see Abigail Dyer, "Heresy and Dishonor: Sexual Crimes before the Courts of Early Modern Spain" (Ph.D. dissertation, Columbia University, 2000).

informal, nonviolent solutions or through blood revenge.⁶³ Increasing church and monarchical attempts at control over sexual behavior may also have heightened Spaniards' need legally to recategorize sexual behaviors that deviated from those the law deemed honorable or religiously orthodox. The authority of the royal and ecclesiastical legal systems would have provided women with an efficacious means for shifting the blame for sexual misconduct onto a male partner, thus legally absolving themselves of sexual impurity.

This reading of seduction trials adds another dimension to our understanding of the functions and cultural meanings of law in seventeenth-century Spain, and it helps us to see how early modern Spaniards conceptualized and manipulated the relationship between law and sexual mores. The stated purpose of royal and canon law on sexual comportment may have been to enforce adherence to a strict sexual morality, but its function was precisely the opposite. Seduction litigation reframed reality to fit morals. By disguising a greater violation of honor as a lesser violation of honor, seduction trials mitigated the bloodiest consequences of the honor code and tacitly allowed Spanish men and women more leeway in their sexual comportment. Seventeenth-century Spaniards proved themselves aware of the possibilities built into law for refashioning behavioral realities, and they exploited them to the hilt.

⁶³For a study on the transition from violence to judicially regulated honor disputes, see Thomas Gallant, "Honor, Masculinity and Ritual Knife Fighting in Nineteenth-Century Greece," *American Historical Review* 105 (2000): 359-82.

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