

## Ecclesiastical Divorce in the 19th Century: Implications and the Status of Women

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Nineteenth-century Mexico was an extremely Catholic society, and the common doctrine surrounding marital unions was that they were divine, and that those whom God united through marriage should not be parted. Divorces were rare, and only occurred in especially trying circumstances. I will be examining a divorce case filed on March 24th, 1839 in Mexico City. Doña Hilaria, the petitioner, was seeking a divorce from her husband, Felix Morales, insisting that “[t]his hellish [marriage] has become unbearable for me and I’m unable to carry on without risk to my safety.”<sup>1</sup> The only option available for women like Doña Hilaria, who were caught in abusive and loveless marriages, was to file for an ecclesiastical divorce, which was akin to legal separation.<sup>2</sup> In this paper, I will closely analyze Doña Hilaria’s petition to answer the following questions: what were the promises and drawbacks of ecclesiastical divorce, and what arguments did Doña Hilaria draw on to make her claims? Moreover, what does this petition tell us about the status of women in the early nineteenth century, just decades after Mexico’s Independence?

Postcolonial Mexico was a time of great political instability. Mexico was still a young nation, and was facing inequities that it was not fully equipped to confront. The inequities were evident during the revolution and led to ideological tensions, as there were largely different agendas amongst the plebeian and elite rebels. Some indicate that the struggle for independence was less “a two-way struggle than a three-way conflict amongst the Mexican masses, the elite creole directorate... and the colonial regime.”<sup>3</sup> In the transition from colony to nation, the landed elite wanted to ensure their interests. Although politicians did proclaim large, sweeping reforms, much remained unchanged. Factional fighting amongst conservatives and liberals further impeded any social progress for women. Additionally, when creating a new legal code after independence, colonial laws were simply reviewed. This led to a large amount of written law that was “centuries old, [but] largely accepted in the 19th century.”<sup>4</sup> Many laws surrounding the legal rights of women depended on the woman’s purity, and characterized women according to their supposedly innate weakness. Women were in many regards second-class citizens subject to the control of men. By virtue of their gender, women “relinquished sovereignty over most of [their] legal transactions, property, earnings, and even their domestic activities.”<sup>5</sup> They were not afforded autonomy or legal rights, and this ultimately left most women no choice but to comply with the wishes of the men in their lives. Doña Hilaria’s case occurred less than 20 years following independence. During this time, which saw tumultuous shifts in power, a newly conservative Santa Anna was in power. Social conservatives wanted to preserve Catholicism as the state religion and to maintain hierarchies from colonial times. Therefore, Doña Hilaria had to go through divorce while being scrutinized to archaic colonial laws.

Marriage, like most Mexican societal institutions of the time, was patriarchal in nature. Men’s role was as providers. To accurately sum up power relations, one man stated, “it was the

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<sup>1</sup> Pamela S. Murray, *Women and Gender in Modern Latin America* (New York: Routledge, Taylor & Francis Group, 2014), 50.

<sup>2</sup> Silvia M. Arrom, “Marital Relations and Divorce,” in *The Women of Mexico City, 1790-1857* (Stanford University Press, 1985), 208.

<sup>3</sup> Eric Van Young, *Agrarian Rebellion and Defense of Community: Meaning and Collective Violence in Late Colonial and Independence-Era Mexico* (Oxford University Press, 1993), 249.

<sup>4</sup> Arrom, “Legal Status”, 54.

<sup>5</sup> *Ibid.*, 65.

pants that gave the orders, not the naguas.<sup>67</sup> The role of the wife within a marriage was to be subservient and maintain the household. Gender held more weight in society than social class, as evidenced by the case, in which Doña Hilaria reflects that she married her husband “despite his former lowly status as [her] domestic servant.”<sup>8</sup> He subsequently was granted complete access to her inheritance, which he spent in its entirety. Marriage eliminated any large measure of economic independence that the woman had been offered. Financial self-sufficiency was not something a woman was expected to be capable of, especially considering the role of the man as the main contributor to the family income. This was particularly problematic in scenarios in which men did not fulfill their societally-expected obligations. Morales, for example, continued to go out of his way to take any money that his wife may have earned, stealing her savings and clothes, and also terrorizing her atole stand, causing further financial strain on Doña Hilaria’s limited income. In her first petition, she cites these reasons as to why she should be granted a divorce.

Ecclesiastical divorces were a Church construct. The concept of Church sanctioned separation dates to the 1100s, when the Church implemented its marriage laws across Europe and displaced secular law.<sup>9</sup> When the Spanish colonized Mexico, they brought these practices with them. Ecclesiastical divorces were used throughout colonial times and continued after independence, as Catholicism became a part of early Mexican identity. Obtaining an ecclesiastical divorce took a large amount of effort and time from both parties, and was rarely pursued by any except the most daring and desperate. Before the couple could be pronounced legally separated, women were often pressured to stay with their husbands during a trial of reconciliation. This consisted of a face-to-face meeting of the husband, wife, and their attorneys. Reconciliation was codified into procedure, and was a necessary and expected step of all couples. In fact, a divorce petition was only accepted after going through two trials of reconciliation, after which neither produced the desired result. Doña Hilaria filed her case a “few days after attempting to comply with the reconciliation order,”<sup>10</sup> a sentence presumably handed down by the ecclesiastical judge, or provisor.

Filing for divorce was a largely female domain, and in many cases, the trial of reconciliation was reminder enough of the woman’s power to undermine the man’s social standing. A man’s ability to provide for a woman and keep her submissive was a large marker of his societal worth. The authority of a man who could not maintain or allocate adequate food or clothing was illegitimate. If the spouse continued not providing enough, ecclesiastical divorce was a way for women to get their complaints heard. Divorce was essentially a small challenge to patriarchal authority. The centrality of honor in guiding social norms was a large reason many found divorce so embarrassing. The accusation of incapability to provide for the household questioned a man’s masculinity, which in turn, undermined his honor. A man’s reputation was questioned and “sullied simply by being involved in such litigation.”<sup>11</sup> However, divorce was also detrimental to the social status of women. Women like Doña Hilaria took large risks by filing divorce petitions, as the

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<sup>6</sup> Sonya Lipsett Rivera, “Behind Closed Doors,” in *Gender and the Negotiation of Daily Life in Mexico, 1750-1856* (University of Nebraska Press, 2012) 90.

<sup>7</sup> *Naguas* roughly translates to skirt, or petticoat.

<sup>8</sup> Murray, *Women and Gender in Modern Latin America*, 52.

<sup>9</sup> Rudolf Huebner, *The Continental Legal Series, Volume 4*, trans. Francis Philbrick (Little, Brown, and Company, 1918), 91.

<sup>10</sup> Murray, 52.

<sup>11</sup> Arrom, “Marital Relations and Divorce,” 211.

process was elaborate and had drastic social implications. After divorce, women were also considered pariahs. A divorced woman was watched by church officials for the rest of her life to determine if she was living her life within the respectable standard of conduct she owed to her husband. Furthermore, divorce lowered the economic status of women, as they were not capable of earning similar amounts of money as men. To a large degree, after a divorce, most women never regained a semblance of normalcy within their lives.

A large number of ecclesiastical divorces were filed based over complaints about clothing. In fact, nearly half of ecclesiastical divorces broached the topic of clothing; either that the husband was not providing enough, or that he was pawning the woman's wardrobe. Clothing played a large part in the marital power structure.<sup>12</sup> As a part of his role as husband, and therefore, provider, Morales was expected to give his wife clothing and food. However, Doña Hilaria notes in her divorce petition that her husband was not fulfilling these obligations, even stealing several pieces of clothing from her to give to one of his mistresses. Providing clothes was the cornerstone to marital authority, largely due to the importance clothes had in maintaining modesty. This exchange of material goods was a societally ingrained formula for both gender roles to fulfill the duties expected of them: the husband as the provider, and the wife as the receiver. By stealing his wife's clothes, Morales was making a statement far grander than his explicit adultery. It served as an indirect attack on Doña Hilaria's modesty, and reasserted his control over her. Doña Hilaria cites this lapse in husbandly duties as an argument for her divorce.

Throughout her case, Doña Hilaria also speaks of her husband's frequent beatings of her. A witness recounted seeing Doña Hilaria "bleeding freely from a blow to her head that her husband had inflicted" in their testimony.<sup>13</sup> In Mexican culture, the head maintained a large amount of cultural importance. This is due to both Nahua and European influences. The head was used in both cultures to describe seats of power, including head of state, head of household, and so on. A judge in one case in the 19th century singled out the fact that the man in question had dared to wound a woman on "a part of the body so noble as the head" as his main reason for convicting the man.<sup>14</sup> Domestic violence was so common at the time that the location of wounds often had social significance and symbolic meaning. As cited in the petition, Morales took his wife out to a tortillería with a fresh wound on her head, disregarding social norms and conventions, and making a public display meant to humiliate his wife. Hitting a wife's head was seen as abusive maneuver, meant to remind her of her place, and to reassert the authority of the male head of the household. The power of an audience was evident in this case. Doña Hilaria's neighbors took notice of her husband's mistreatment of her, and advised her to consult an attorney. This is very telling of neighborhood culture at the time. Neighbors in some Mexican neighborhoods lived in very close proximity to each other, and privacy was often very hard to achieve.<sup>15</sup> It was common in Mexican culture at the time to intervene if there was "evidence of quarrels or domestic violence."<sup>16</sup> This aspect of culture is apparent in Doña Hilaria's petition, as her neighbors confronted her after she was beaten and forced to serve her husband's mistress food. The community frequently took on the role of the caretaker for the woman. Women could not often stand up for themselves due to fear of retribution, and having allies in the neighborhood ensured their safety. Due to the frequency

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<sup>12</sup> Ibid., 214.

<sup>13</sup> Murray, 52.

<sup>14</sup> Lipsett Rivera, "The Body in Daily Life," 147.

<sup>15</sup> Ibid., 117.

<sup>16</sup> Ibid., 147.

of domestic violence, and it was often up to observers to ensure that it did not go too far. Neighborly intervention often spurred women into taking action.

After the divorce suit was initiated, a woman was taken from her home and placed in a depósito for the duration of the trial. The depósito had many functions. It was a safeguard from husbands, as they were specifically denied from entering or could be criminally prosecuted. However, the depósito was also a patriarchal institution, meant to observe women and “keep watch over her conduct.”<sup>17</sup> A woman had to ask for permission to leave the house or to see visitors. Furthermore, the husband had to agree to the depósito, and had a say in where the woman was placed and who she could see. Though many lived comfortably with family during this time, other women lived with strangers. Ultimately, the strictness of the depósito varied. In Doña Hilaria’s case, it is reasonable to suspect that she lived with a stranger, as she requested to end her depósito, as they were so stringent that they “[did not allow] her a means to pay for basic expenses.”<sup>18</sup> The husband could also restrict whom the wife could see while she was under the protection of the depósito, and subsequently maintained indirect control over her life. The depósito became a new locus of control for the husband. It is notable that the institution of the depósito only applied to women. Men were not obligated to be watched during the duration of the trial. Furthermore, in the case of an ecclesiastical divorce, women were watched over the by the ecclesiastical court to ensure that they were not breaking the imposed chastity that came with ecclesiastical divorce in order to maintain “the fidelity she owed her husband.”<sup>19</sup> Men were also exempt from this. Most legal inequities in 19th century Mexico were written with the assumption of women’s inferiority to men. The gender role imposed on women as obedient was further codified legally, as women were banned from holding leadership or governance positions. Women who were considered “impure” were discriminated against, offered far fewer societal protections, and punished for their sexual behavior. In fact, the *Siete Partidas*, the foundation of Mexican law at the time, explicitly stated that women were not “of good a condition or of high a status as the man.”<sup>20</sup>

Despite the action a wife may take against her husband, unless the woman was in an immediate threat of physical danger, the courts moved rather slowly to address divorce suits. The husband could further delay this process by not complying with served notices. During the 5th year of the divorce case, Morales was refusing to separate from his wife, claiming that “not even the Pope has the right or authority to take her from [me].”<sup>21</sup> Morales often claimed that it was his wife’s duty to tolerate his behavior, stating that “it was [Doña Hilaria’s] obligation to put up with him and not [his mistress’s].”<sup>22</sup> It is evident from this statement that Morales felt as though it was his right to cheat on his wife, and that Doña Hilaria’s role as the wife gave her no right to dispute this behavior. Morales expected Doña Hilaria to uphold all of the qualities of the wife, mainly meekness, without fulfilling any obligations as the *paterfamilias*.

Doña Hilaria’s case took over six years, illustrating the court’s reluctant role in providing pathways for divorce to occur. The court didn’t actively pursue or follow up on cases. It was a system that was meant to discourage the practice of divorce and took every possible step it could to impede it. In fact, divorce cases didn’t move along further unless one of the spouses instigated each stage of the process. Doña Hilaria informed the court and asked for every single step of the

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<sup>17</sup> Arrom, “Marital Relations and Divorce,” 212.

<sup>18</sup> Murray, 53.

<sup>19</sup> Arrom, “Marital Relations and Divorce,” 216.

<sup>20</sup> *Ibid.*, 79.

<sup>21</sup> Murray, 53.

<sup>22</sup> *Ibid.*

procedure to occur. Most of the requests made by the person pursuing the divorce were not investigated by the court and divorce eventually did occur, but the court's passivity led to some petitioners staying at one step of the process for a prolonged period of time, as Doña Hilaria was for a period of three years.<sup>23</sup> Divorce was not a reasonable option for those who wanted a quick separation, except for those in higher classes. In one instance, an elite woman's entire case was resolved in the span of a month.<sup>24</sup> The court's *modus operandi* did not give similar priority to lower class petitioners, even if their circumstances were more burdensome. This is particularly problematic for Doña Hilaria, as the divorce leached so many of her resources that she eventually asked for the court to aid her financially. Along with this request for poverty alleviation, after the long stagnancy in her case, Doña Hilaria filed another petition for divorce. In this second petition, she cited adultery as her primary reason for separation.

In most cases, adultery was not the principal reason why women sought to divorce their husbands. In fact, within marriage, many women "did not consider a husband's infidelity important in and of itself to consider a divorce."<sup>25</sup> Doña Hilaria's her first petition for divorce included her husband's admission of adultery and the appearance of two of Morales' mistresses at the reconciliation hearing, but as additional information regarding Morales' questionable character. The court clearly did not consider this reason enough to pursue divorce, as the constitutional mayor presiding over Doña Hilaria's case still tried to get her and her husband to agree to a reconciliation. The main reasons that a woman filed for divorce were mistreatment and failure to provide resources. Doña Hilaria was an anomaly in that her second petition focused solely on Morales' admission of adultery as its focus. It is plausible that in seeing no action taken on her case, Doña Hilaria chose to refile it under a more easily provable reason, rather than her initial claim of Morales "forgett[ing]... his obligations within the sacrament of marriage."<sup>26</sup> Morales was not particularly remorseful when these charges are brought against him, and initially denied the legitimacy of the claims, however, later that year, he finally agrees to the divorce.

This case provides interesting insight into divorce cases and the social and economic circumstances that came with them. However, the facts of the case must be interpreted with some caution. Ecclesiastical divorce was a trying process for women and was hindered by patriarchal social constructs. Divorce cases only occurred and moved forward under the most debilitating circumstances, and it is possible that Doña Hilaria exaggerated the events that occurred in order to advance her case. Furthermore, the case is only presented through the perspective of Doña Hilaria's petitions and requests. Morales' side is never fully covered or elucidated. Consequently, there are large gaps in the narrative of this case. Morales abruptly agrees to the divorce after five and a half years of avoiding it, and no explanation is provided for this sudden shift in opinion. Ultimately, it is not known whether a divorce actually occurred.

Looking at court divorce documents for historical context is particularly problematic because the petitioners in these cases only represent a small fraction of the population; not much is known about women in unhappy marriages who were too afraid to file for divorce. The number of divorces filed accounted for only around one percent of all marriages. Despite this, the evidence presented by this case reveals major trends in popular thought and of the narrative that surrounded divorce in a theological society. The nineteenth century is commonly known as a period of major political change and instability, but the history of gender during this period is marked by

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<sup>23</sup> Ibid.

<sup>24</sup> Arrom, "Marital Relations and Divorce," 219.

<sup>25</sup> Arrom, "Marital Relations and Divorce," 242.

<sup>26</sup> Murray, 50.

remarkable continuity. Doña Hilaria's case clarifies the complex traditional culture that shaped gender roles and status of women in Mexico during this time.

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