

# Lawsuits and Egodocuments on Sexual Intimacy in Early Modern Bilbao

*Nere Jone Intxaustegi Jauregi* | ORCID: 0000-0001-8940-7875

## 1 Introduction

A promise of marriage, also known as a promise of the future, is a commitment made by a couple to get married. Throughout history, the different legal systems of the Iberian Peninsula have regulated it in different ways. In Roman law, therefore, a betrothal was no more than an unformed contract, and no action could be brought for its breach. In Germanic law, on the other hand, a claim for damages for breaking a betrothal was controversial.<sup>1</sup> In relation to medieval law, the *Siete Partidas* of King Alfonso X (1252–1284) stated that the promise of marriage could only be broken unilaterally in particular cases and provided that the couple had not known each other intimately. In fact, in the case of a refusal to marry without a valid reason, the Church would oblige them to fulfil the promise of marriage.<sup>2</sup> As the majority of the population was illiterate, the word was the clearest expression of the binding nature of the marriage promise. It was as important to the people as any notarial document. The procedure was always the same: the prospective spouses spoke a few short sentences in which they declared their intention to marry in the future (*futurarum nuptiarum*) and expressed their desire not to marry anyone other than the person they were addressing, from whom they also accepted the reciprocal offer.<sup>3</sup> The promise was not just a project for the future. The exchange of marriage vows was the constitutive act of the bond that created a new relationship between the couple: it made man and woman spouses in the eyes of the community. As a result, the promise of marriage allowed young people to progress in the intimacy of their relationship and even to start living together and having sexual relations before the marriage was celebrated before a priest and

1 A. Geduld, M. Dirksen, “The right to say “I don’t”: the reception of the action for breach of promise”, *De Jura Law Journal*, 46, 4 (2013): 957–967, here 959.

2 King Alfonso X, *Siete Partidas*, Boletín Oficial del Estado, Madrid, 2018.

3 M. Ruiz Sastre, *El abandono de la palabra. Promesas incumplidas y ruptura de noviazgo en el Arzobispado sevillano durante el siglo XVII*, Madrid, 2018, 113–114.

witnesses. The church ceremony was, for many, nothing more than a public and solemn confirmation of a union that had already taken place, and this belief was at the root of many legal disputes.<sup>4</sup>

The Council of Trent (1545–1563) ended in December 1563, and King Philip II accepted the Tridentine legislation in July 1564.<sup>5</sup> This meant complying with the Tametsi Decree, which contained all the means necessary for a successful reform of the marriage law; thus, for a marriage to be valid, it had to be celebrated before a priest and with two or three witnesses.<sup>6</sup> So the wedding was the execution of the promise of the future marriage.<sup>7</sup> The ecclesiastical aim was clear: to put an end to the custom of carnal access between men and women under the promise of marriage.

Although the promise of marriage was recognised in medieval canon law as a means of protecting women's rights in cases of premarital seduction,<sup>8</sup> the words of the future became just a first step towards marriage in the Tridentine legislation. But people continued to equate these marital promises and sexual intercourse with being married. In fact, it was very common for the couple to live together and have children. It should be noted that the partners often made written commitments in front of a notary, and not just verbal ones.<sup>9</sup> Hence, the belief and confidence in the commitment made. So when one of the 'spouses' decided to marry someone else, the abandoned party sued for breach of promise. In fact, much of the legal activity in early modern Europe involved litigation over the breach of marriage promises. For example, in the Archdiocese of Seville, between 1707 and 1762, out of 2,599 documents, 1,397 were trials for promises of the future, while they accounted for 86.8% of the total number of trials initiated by Galician women, 68.4% in Navarre, and almost half of the trials initiated in the areas of Zamora, Toro and León. This situation was also observed at the European level and in Spanish territories in the Americas.<sup>10</sup>

4 Ruiz Sastre, *El abandono de la palabra*, 150–151.

5 P. Tineo Tineo, "La recepción de Trento en España (1565). Disposiciones sobre la actividad episcopal", *Anuario de Historia de la Iglesia*, 5 (1996): 241–296, here 241.

6 W. van Ommeren, "Tametsi", in *New Catholic Encyclopedia*, 2003, 749–750, here 749.

7 M. Korpiola, *Between Betrothal and Bedding. Marriage formation in Sweden, 1200–1600*, Leiden, 2009, 48.

8 D. Lombardi, "Women's Reputation and Marriage Disputes in Protestant and Catholic Europe, 1500–1800", in *The History of Families and Households: Comparative European Dimensions*, S. Sovic, P. Thane, P.P. Viazzo (eds.), Leiden, 2016, 122.

9 J. Hardwick, "Sexual Violence and Domesticity", in *The Routledge History of the Domestic Sphere in Europe*, J. Eibach, M. Lanzinger (eds.), London, 2020, 237–253, here 246.

10 M.L. Candau Chacón, *Entre procesos y pleitos. Hombres y mujeres ante la justicia en la Edad Moderna (Arzobispado de Sevilla, siglos XVII y XVIII)*, Sevilla, 2020, 192–196; A. Martín García, "Demandantes, acusadas y testigos. El papel de las mujeres en los procesos matrimoniales castrenses del reino de Galicia durante la Edad Moderna", *Historia et ius*.

These trials tell us about the personal relationship of a couple, their conversations and promises, their feelings, their intimate sexual life, etc. The intimacy and privacy of a man and a woman were discussed in public. Michel Foucault observed that sexual practices had little need for secrecy; words were said without undue reticence, and things were done without too much concealment. It was a time of direct gestures, unashamed discourse and open transgression. However, this mentality and behaviour were suppressed by Victorian society.<sup>11</sup> As Laura Gowing points out, in the early modern world, much that is now considered private, such as sex and marriage, was a public matter, understood and interpreted through the law as well as through drama, cheap print and local gossip.<sup>12</sup>

So how can we talk about the intimacy and privacy of a couple and, at the same time, claim that sexuality was expressed publicly in the early modern period? As Mette Birkedal Bruun and her team at the Centre for Privacy Studies at the University of Copenhagen have shown, early modern notions of intimacy and privacy were not fixed and stable, but somewhat situational. Before the right to privacy in the late nineteenth century, there was a multiplicity of intimacies that were not legally recognised but that permeated the cultural imaginary.<sup>13</sup> People were aware of premarital sexual practices; they consented to them, talked about them, and they were neither hidden nor concealed. At the same time, however, there was an inner intimacy that affected the couples. In fact, the statements and descriptions of the female litigants and witnesses sometimes directly and sometimes indirectly express and evoke situations of sexual and personal intimacy and privacy between the couple.

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*Rivista di storia giuridica dell'età medievale e moderna*, 9 (2016): 1–11, here 4; J. Campo Guinea, “Los procesos por causa matrimonial ante el Tribunal Eclesiástico de Pamplona. Siglos XVI y XVII”, *Príncipe de Viana*, 55, 202 (1994): 377–390, here 381; F.J. Lorenzo Pinar, “Conflictividad social en torno a la formación del matrimonio (Zamora y Toro en el siglo XVI)”, *Studia historia. Historia moderna*, 13 (1995): 131–154, here 142; M.J. Pérez Álvarez, “Amores, engaños e intereses familiares en el León del siglo XVIII. Los pleitos por palabra de matrimonio”, in *Mujeres, sociedad y conflicto (siglos XVII–XIX)*, M. Torremocha Hernández (ed.), Valladolid, 2019, 237–266, here 239; M.A. Malaniková, “Female litigants in Secular and Ecclesiastical Courts in the Lands of the Bohemian Crown, c.1300–c.1500”, in *Litigating Women: Gender and Justice in Europe, c.1300–1800*, T. Phipps, D. Youngs (eds.), London, 2022, 63–80, here 70; P. Latasa, “La reforma del matrimonio en Lima, 1600–1700: de las promesas incumplidas al matrimonio clandestino”, in *Para la reforma del clero y pueblo cristiano. El Concilio de Trento y la renovación católica en el mundo hispánico*, F. Labarga García (ed.), Madrid, 2020, 239–260, here 243.

11 M. Foucault, *The History of Sexuality*, vol. 1, Harmondsworth, 1976, 3.

12 L. Gowing, “The Twinkling of a Bedstaff. Recovering the Social Life of English Beds 1500–1700”, *Homes cultures*, 11, 3 (2015): 275–304, here 277.

13 L.C. Nørgaard, “Past Privacy”, in *Early Modern Privacy: Sources and Approaches*, M. Birkedal Bruun, L.C. Nørgaard, M. Green (eds.), Leiden, 2021, 1–11, here 11.

## 2 Sources

This paper focuses on the use of breach of marital promise lawsuits and egodocuments to study intimacy and sexuality in early modern Bilbao. The main sources are records from four archives: the Archivo Catedralicio y de la Diócesis de Calahorra, the Archivo Histórico Eclesiástico de Bizkaia, the Archivo Histórico Foral de Bizkaia, and the Archivo de la Real Chancillería de Valladolid. The first is a diocesan archive containing the lawsuits and sentences of the Bishop of Calahorra. Unfortunately, during the Peninsular War of Independence (1808–1814), many of the documents of the Archbishopric of Burgos were burned. Since it was here that the sentences of the Bishop of Calahorra were appealed against, it is not possible to know the final verdict in many cases of breach of promise. The second archive contains baptismal, marriage and death records, which are essential for any family research. The last two archives are secular: the Archivo Foral contains, among other things, the trials that took place before the Corregidor (the royal representative), while the Chancillería was the highest court of the Crown of Castile, where the sentences of the Corregidor could be appealed against. The reason for using archives of a different type is simple: actions for breach of promise were mainly brought before the ecclesiastical authorities, but sometimes also before the Corregidor. The same couple could be involved in both ecclesiastical and secular litigation, as was the case in Bilbao.

Egodocuments have also been used. According to Tosato-Rigo, egodocuments are autobiographies, memoirs, diaries, correspondence and other documents written voluntarily and from a personal point of view.<sup>14</sup> I think these documents are invaluable for studying cases involving emotions and personal situations such as those described in this paper. Unfortunately, only a few letters and short writings have been found in the above-mentioned archives. In addition to the high illiteracy rate of the time, I think that the low number of egodocuments could be due to the fact that in Bilbao two languages were spoken (Basque and Spanish), but only one (Spanish) was written. In fact, some letters written in Spanish contain expressions and words in Basque. I believe that this reflects the use of the Basque language between the parties and could explain the small number of egodocuments.

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14 D. Tosato-Rigo, "Paroles de témoins. Vers une pluralisation de récit historique", *Recontres sur l'éducation*, 15 (2014): 137–159, here 140.

### 3 Breach of Promise of Marriage in Bilbao

#### 3.1 *Lawsuits*

The archives show that there were countless trials for breach of promise. The reason was simple: the promise of marriage, in the popular mentality, created a bond between those who had made it.<sup>15</sup> In 1709, for example, María de Ondorica declared that she and Marcos de Zugazu had given and accepted each other's word of marriage, and that they had agreed to be husband and wife.<sup>16</sup> Likewise, Domingo de Landa, a town councillor in Bilbao, was a witness in a court case and described how the promise was made "palabra de cassamento el uno al otro y el otra al otro ante el escribano [...] esposo y esposa",<sup>17</sup> that is "word of marriage one to the other and the other to the other before the public notary [...] husband and wife".

All these trials began with the women explaining how the men had asked them for love, but the women had refused, so the men ended up promising them marriage. Many women then accepted these marriage proposals and also assured the men that they would marry them. In doing so, they effectively promised to marry each other. According to popular belief, they became a married couple when they exchanged those promises, binding them together for the future. For example, the notary Nicolás de Bentaes tried to have an intimate relationship with Mariana de Astica y Bengoa, who refused, and he subsequently pledged to marry her.<sup>18</sup> Throughout the documentation, there is evidence of women refusing to have intimate relationships without the promise of marriage.

According to Renato Barahona Arévalo, the women's demands in the lawsuits were simple and straightforward: that the defendant would marry the betrothed or, alternatively, pay her a sum of money as compensation for the damage she had suffered and for the maintenance of the children (if any). It was understood that such a solution would allow her to marry just as easily as if no dishonour had occurred, since the money would constitute a dowry for another marriage.<sup>19</sup>

15 M. Ruiz Sastre, M.L. Candau Chacón, "El noviazgo en la España Moderna y la importancia de la palabra. Tradición y conflicto", *Studia histórica. Historia Moderna*, 38, 2 (2016): 55–105, here 56.

16 Archivo Catedralicio y de la Diócesis de Calahorra [ACDC], 27.142.61.

17 Archivo Histórico Foral de Bizkaia [AHFB], JCR0450/026.

18 ACDC, 27.141.14.

19 R.B. Arévalo, "Mujeres vascas, sexualidad y ley en la España Moderna (siglos XVI y XVII)", in *Historia silenciada de la mujer. La mujer española desde la época medieval hasta la contemporánea*, A. Saint-Saëns (ed.), Madrid, 1996, 91–92.

In 1658, Magdalena de Ibarra sued San Juan de Aguirre for *estupro* and breach of promise of marriage.<sup>20</sup> She claimed “me hubo gozado y privado de mi limpieza y birxinidad y dexandome perdida de la dha mi repputazion y fama no se quiere cassar”. In other words, after deflowering her, he did not want to marry her. The crime of *estupro* or statutory rape seemed to allude to a variety of issues, such as fornication, rape, adultery, incest, sexual access by deception, relations with virgins, etc.<sup>21</sup> In this case, it would refer to sexual access by deception and relations with a virgin woman, since there had been a promise of marriage and she had mentioned her virginity. These procedures show the essential role that female virginity played in the mentality of this society.

### 3.2 *Virginity and Sexuality*

Female virginity held a prominent place in the religious and moral teachings, as well as in the social and legal norms of the medieval West,<sup>22</sup> whereas pre-modern law had a different view of the nature and duties of spouses, with some legal differentiation for women.<sup>23</sup> For example, the Barcelona Ordinances of 1344 regulated how women should dress, even within the household, banning certain fabrics and ornaments,<sup>24</sup> and only women, not men, who married without parental consent could be disinherited in the early modern peninsula.<sup>25</sup>

The reason for this was simple: virginity and the good reputation of young girls were highly valued, as these were considered to be highly valuable economic and social values that enhanced the honour of women and, consequently, of the whole family.<sup>26</sup> The loss of virginity and the intimate relationship with the promise of marriage were essential elements in the trials.

20 AHFB, JCR 0450/026.

21 I. Bazán, “El estupro. Sexualidad delictiva en la Baja Edad Media y primera Edad Moderna”, *Mélanges de la Casa de Velázquez*, 33 (2003): 13–46, here 13.

22 J.A. López Sabatel, “Perception of Female Virginity in the Medieval West and its Conceptualisation in the Medieval Welsh Law Codes”, *Musas*, 5 (2020): 93–109, here 95.

23 V. Fernández Vargas, M.V. López-Cordón Cortezo, “Mujer y régimen jurídico en el Antiguo Régimen: una realidad disociada”, in *Ordenamiento jurídico y realidad social de las mujeres: siglos XVI a XX. Actas de las IV Jornadas de Investigación Interdisciplinaria*, M.C. García-Nieto París (coord.), Madrid, 1986, 13–40, here 27–28.

24 I. Pérez Molina, “La normativización del cuerpo femenino en la Edad Moderna: el vestido y la virginidad”, *Espacio, tiempo y forma. Serie IV, Historia moderna*, 17 (2004): 103–116, here 106.

25 E.G. Friedman, “El estatus jurídico de la mujer castellana durante el Antiguo Régimen”, in *Ordenamiento jurídico*, 41–54, here 43.

26 P.L. Lorenzo Cadarso, “Los malos tratos a las mujeres en Castilla en el siglo XVII”, *Brocar. Cuadernos de Investigación Histórica*, 15 (1999): 119–136, here 122.

That is why the women always asked for the promise to be kept and for the wedding to be celebrated, because this was the only way to make up for the loss of virginity.

Paying a dowry was the other way of repairing the damage. Thus, Catalina de Elosu demanded that Juan de Cortazar marry her or pay her a dowry of 1,000 ducats, since no one would marry her because she was not a virgin and had had two children with him.<sup>27</sup> The demand for money was justified on the grounds that having lost her virginity, she would no longer be able to find a suitable husband easily. Therefore, a large dowry would help her in this hypothetical marriage. In fact, in many of the sentences, the bishop condemned the man and ordered him to enter into the promised marriage or to pay a recompense fee. For example, in the trial of Josefa de Ubirichaga Arana and Ortuño del Barco, the bishop's verdict of July 1687 stated that Ortuño had the option of marrying Josefa or paying her a dowry of 1,000 ducats.<sup>28</sup>

Another point that appears in the trials concerns offspring. In 1733, María Ignacia de Lorra declared that she was a virgin and single when Juan Manuel de Aranguren promised to marry her. Under this promise, he strangled her and enjoyed her carnally, after which she gave birth to a child that he recognised as their son.<sup>29</sup> Thus, the belief in the bond between man and woman paved the way for premarital sex and many women became pregnant as a result. There were also women who gave birth to more than one child, which reflected a long-term nature of the relationship and their belief that they were indeed husband and wife. For example, Teresa Galbarriartu and Miguel de Fano had two children, Joana Bautista and Ignacia Bentura, born in 1713 and 1714<sup>30</sup> respectively, and the bishop decided that the couple should marry.<sup>31</sup> Having children was no guarantee, however. For example, Catalina de Elosu had two children with Juan de Cortazar, but the bishop, as I have already mentioned, decided that Juan had the option of marrying Catalina or paying her 1000 ducats.<sup>32</sup>

The issue of virginity is often a key element in more than one trial. While the woman defended herself by saying that she had been a virgin before meeting the man with whom she had sexual relations, the man would try by all means to prove that the woman in question was not chaste when he met her.

27 ACDC, 27.140.10.

28 ACDC, 27.140.3.

29 AHFB, JCR 1940/041.

30 Archivo Histórico Eclesiástico de Bizkaia [AHEB], 713828, 713430.

31 ACDC, 27,149.24

32 ACDC, 27.140.3

The woman's position would be compromised and her reputation and honour seriously damaged if the latter could be proven.<sup>33</sup> In fact, in the trials for breach of promise, one can see how the husband's legal defence was based on questioning the woman's decency by pointing out that he was not the only man with whom she had been intimate. For example, in 1714, Águeda de Isunza took Juan de Andechaga to court to make him keep his word to marry her, and during the trial he argued that she had been seen with other men in dark places.<sup>34</sup>

Despite legislation and public morality, the rates of premarital conception in Europe were very high. This means that many women were not virgins when they married. In fact, in the words of Julie Hardwick, early modern governments generally paid little attention to premarital conception, as long as the babies were born to a married couple, no matter how little time couples had been married for before becoming parents.<sup>35</sup> However, the failure to fulfil the promise of marriage, and therefore the failure to celebrate a wedding, had an impact on the high number of illegitimate children. The illegitimacy rate in the early modern Basque Country was over fifteen per cent.<sup>36</sup>

For example, Luisa de Cortazar became pregnant with Antonio de Villazana, and they had a son named Miguel Antonio, who was baptised with the surnames of both of them, although he was registered as a natural child,<sup>37</sup> i.e. the child of unmarried parents. In those days, it was not unusual for a Basque child born out of wedlock to take his father's surname. In 1776, Manuela Echavarría filed for divorce from her husband, Gaspar de Guizabauruaga, and the documents show that he had an illegitimate daughter, Mariana, to whom he did not hesitate to give his surname.<sup>38</sup>

Despite having children, some men refused to keep their word and would not marry. As a result, many women in legal disputes demanded the payment of a dowry in order to marry another man. This was the case of Marina Zamácola, who demanded a dowry of 2,000 ducats from Pedro at the Court

33 P. Aldama Gamboa, *Sexualidad, escándalo público y castigo en Bizkaia durante el Antiguo Régimen*, Doctoral Thesis, Universidad del País Vasco, 2015, 272.

34 ACDC 27.142.91.

35 J. Hardwick, "The State and the Family", in *A Cultural History of Childhood and Family*, S. Cavallo, S. Evangelisti (eds.), London, 2014, 136–170, here 140.

36 A. Poska, *Women and Authority in Early Modern Spain: the Peasants of Galicia*, Oxford, 2005, 233.

37 ACDC, 27.142.9; AHEB, 1104746.

38 ACDC, 20.222.12.

of Valladolid in 1673,<sup>39</sup> while María Juana de Galíndez demanded a dowry of 1,000 ducats in 1793.<sup>40</sup>

In early modern Europe, a woman's family was the centre of her life. She was expected to perpetuate her family by producing heirs and to love and care for its members.<sup>41</sup> However, the non-fulfilment of marriage promises meant that many women were unable to follow this model imposed on them. Moreover, many suffered severe social consequences as a result of a broken marriage promise: loss of honour and social status, diminished marriage prospects and a reduction in the amount of dowry demanded.<sup>42</sup> It should not be forgotten that the woman was the object of the family's concern, since the family's honour depended fundamentally on the honesty of its daughters, sisters and wives being kept intact.<sup>43</sup> Therefore, during the trials, the women had to convince the court that they were respectable because, although they were pregnant out of wedlock, they had only had sexual intercourse in anticipation of marriage.<sup>44</sup> The pressure to get married and start a family was so great that it became clear that the suits were an effective mechanism to force their lovers to keep their marriage promises.<sup>45</sup>

In this context, Mathieu Laflamme discusses the discourses of sexual, emotional and affective intimacy of couples living their sexuality on the margins of legality in the eighteenth-century Toulouse.<sup>46</sup> Julie Hardwick points out that young couples in Lyon explored both physical and emotional intimacy by linking arms, hugging, kissing, and sitting on each other's laps. In this way, the women were able to demonstrate that they were regarded as part of a stable couple in which marriage was a genuine possibility.<sup>47</sup> In fact, the testimonies of the women in Bilbao clearly show that the intimate relations took place only because the man had promised to marry, otherwise the intercourse would

39 Archivo de la Real Chancillería de Valladolid, Salas de lo Criminal, Caja 492,1.

40 AHFB, JCR0551/002.

41 C. Fairchild, *Women in Early Modern Europe, 1500–1700*, Harlow, 2007, 33.

42 R. Barahona Arévalo, "Seduction, Sexual Aggression and the Defense of Feminine Honor in the Basque Provinces, 16th–18th Centuries", *Vasconia*, 35 (2006): 77–101, here 81.

43 M. Defourneaux, *La vida cotidiana en la España del Siglo de Oro*, Barcelona, 1983, 34.

44 J. Hardwick, "In search of a remedy: young workers, intimate partners, and the challenge of fertility in early modern France", in *The Youth of Early Modern Women*, E. Cohen, M. Reeves (eds.), Amsterdam, 2018, 315–331, here 318.

45 B. Premo, "Before the Law: Women's Petitions in the Eighteenth-Century Spanish Empire", *Comparative Studies in Society and History*, 53, 2 (2011): 261–289, here 278.

46 M. Laflamme, "Entering the Bedroom through the Judicial Archives: Sexual Intimacy in Eighteenth-Century Toulouse", *Early Modern Privacy*, 194–212, here 195.

47 Hardwick, "Sexual violence and domesticity", 244.

not have taken place. In 1636, for example, Petronila de Aldecoa sued Rodrigo de Mintegui for breach of promise. Catalina de Salcedo was one of the witnesses called by the plaintiff, and she recalled how one-night Rodrigo came to Petronila and told her that he was going to marry another woman; then Petronila replied “cómo podía hacerlo si le tenía dada palabra a ella y encima la había conocido carnalmente”, that is “how he could do it if he had given her his word and knew her carnally”. This statement leaves no doubt about the connection between the promise of marriage and sexual intercourse.

To be clear, these were not naive young women blinded by romantic love. Women knew that pregnancy was a consequence of intimate relations, so they tried to ensure that men’s promises were made in front of witnesses. In this context, I have already mentioned the declaration of promise made in the presence of a notary public. Another way of proving such a promise was made was to demand it in writing and not just orally. In 1767, for example, María Antonia Aranguren said that four years earlier she had received a promise of marriage from Juan Matías Aguirre Barandica. The priest Nicolás Antoino Landazuri knew this, and Juan Matías had written her letters in which he spoke of their marital compromise and his feelings for her.<sup>48</sup> It was common for the husband to dispute these egodocuments and other letters that the women used as evidence. For example, María Jacinta de Beitia said that Martín Antonio de Escoiquiz had written the promise on paper, but he denied writing the document and claimed that it was not his handwriting. The court requested the document and Martín Manso Sagredo, chief notary of the Civil and Criminal Secretariat of the Audiencia of Calahorra and La Calzada, declared that he was telling the truth because the letters did not match.<sup>49</sup> Martín Antonio was a lawyer, so one wonders to what extent he drafted the document, but knowing the legal procedures, he would have written it differently to make it look as if it were not his handwriting.

It should not be forgotten that there were women who could not prove their claims, so the men were released from their promises.<sup>50</sup> In fact, there were times when even the presence of witnesses, writing and children was not enough proof.<sup>51</sup>

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48 ACDC, 20.43.01.

49 ACDC, 27.141.26.

50 Malaníková, “Female litigants in Secular and Ecclesiastical”, 63.

51 M. O’Dowd, “Women Litigants in Early Eighteenth-Century Ireland”, in *Litigating Women*, 193–208, here 195.

### 3.3 *Dark Places*

The records also show information about where these promises were made and the personal events that followed. The notary Juan Martínez de Jarabeitia mentioned his house, its roofs and doors. This means that the sexual encounters between his daughter and San Juan took place in his household.<sup>52</sup> María Antonia Aranguren mentioned the house of Pedro Belbeck in her encounters with Juan Matías Aguirre Barandica.<sup>53</sup> María Enrique was a maid, and witnesses in her trial she brought against José de Asturiazaga testified that she had intimate relations in the house of her employer, Juan Mendiola. It is also said that he “slept in her” and on her bed.<sup>54</sup>

On the other hand, María Juana Galíndez and Lucas Antonio de Ochoa Mugaburu were servants in the house of Josepha de Olabarria,<sup>55</sup> where they shared a room and a bedroom “llegaron ambos con el tratto reciproco sucesivo al lleno de los fondos de la libertad, perdieron la vergüenza e hicieron todo lo que pudieron hacer dirigidos de amor impúdico y sensual” meaning “both of them, with mutual consent, lost their shame and did everything they could, guided by impudent and sensual love”. The bed is also mentioned several times in the trial between Agueda de Isunza and Juan de Andechaga.<sup>56</sup>

According to Lawrence Wright, the importance of a bed lies in the number of hours people spend in it.<sup>57</sup> There were different types of beds, but all three raised the sleeper off the floor, protecting them from insects, rodents and potentially unhealthy damp. Beds with legs had the added advantage of allowing people to get underneath.<sup>58</sup> Moreover, the curtains surrounding the bed gave its occupants a degree of privacy and physical protection, creating their own space within a larger room.<sup>59</sup> Furthermore, as Laura Gowing points out, the space under the bed was not only large enough for boots and chamber pots, but also for hidden lovers.<sup>60</sup> As archival documents and countless

52 AHFB, JCR1399/040.

53 ACDC, 20.43.01.

54 ACDC, 27.140.26.

55 AHFB, JCR0551/002.

56 ACDC, 27.142.91.

57 L. Wright, *Caliente y confortable. Historia de la cama*, Barcelona, 1964, 13.

58 B. Blasco Esquivias, “Vivir y convivir. Familia y espacio doméstico en la Edad Moderna”, in *La(s) casa(s) en la Edad Moderna*, M. Birriel Salcedo (ed.), Zaragoza, 2017, 65–92, here 83.

59 A.M. Ágreda Pino, “Vestir el lecho. Una introducción al ajuar textil de la cama en la España de los siglos xv y xvi”, *Res Mobilis*, 6–7 (2017): 20–41, here 25.

60 Gowing, “The Twinkling of a Bedstaff”, 281.

examples of courtly love poetry show, the bed was clearly and unmistakably the place where sexual experiences took place.<sup>61</sup>

In addition, the witnesses often referred to *la noche* or the night. Although the image of nocturnal youth culture is often that of young men drinking in public, these incidents make us think about how the definition of private and domestic spaces changed at night, providing a refuge from adult supervision and an opportunity for young women and men to engage in extramarital affairs.<sup>62</sup> In 1731, for example, Ana Alonso stated that Antonio de Achútegui *repetidas ocasiones viniendola a buscar de noche*, that is, he visited her repeatedly at night.<sup>63</sup> It is clear that the darkness of the night created an atmosphere of intimacy and secrecy. It was the ideal place for lovers to meet. In 1703, for example, Domingo de Chavarría Dirin and María de Abieta promised to marry on the night of 29 May.<sup>64</sup> The notary Juan Martínez de Jarabeitia filed a criminal complaint against the servant San Juan de Urquieta on behalf of his daughter María Ibáñez.<sup>65</sup> The father said that San Juan lived in the neighbourhood and had been eyeing his daughter for a year, secretly courting her and asking for her hand in marriage. After him promising to marry her, they had sexual intercourse and she lost her virginity. At night, San Juan would enter through the roofs and sometimes through the doors with keys and other instruments.

### 3.4 Social Status

Another issue is the social differences that may have existed between couples. I say this because the questions that the court used to put to the witnesses were aimed precisely at finding out whether the relationship was in line with the social position and expectations of the families.<sup>66</sup> It was believed that if there were obvious social differences, the woman could never be fooled into thinking that the marriage was actually taking place. In this respect, the documents show that many of the women were servants. But there were also daughters of

61 A. Classen, "The Cultural Significance of Sexuality in the Middle Ages, the Renaissance, and Beyond", in *Sexuality in the Middle Ages and Early Modern Times: New Approaches to a Fundamental Cultural-Historical and Literary-Anthropological Theme*, A. Classen (ed.), Berlin, 2008, 34.

62 E. Hubbard, "A Room of Their Own. Young Women, Courtship and the Night in Early Modern England", in *The Youth of Early Modern Women*, 297–313, here 299.

63 AHFB, JCR 0944/030.

64 ACDC, 27.142.21.

65 AHFB, JCR1399/040.

66 I. Morant Deusa, M. Bolufer Peruga, *Amor, matrimonio y familia. La construcción histórica de la familia moderna*, Madrid, 1992, 69.

wealthy families, such as the notaries. Thus, María de Ordorica and Marcos de Zugazu were both servants in the house of Martin de Basurto, where she was deflowered and then opened a shop selling food and other products.<sup>67</sup> María Juana Galíndez and Lucas Antonio de Ochoa Mugaburu also worked as servants and met in the house of Josefa de Olabarria.<sup>68</sup> It is possible to find other occupations: José Ignacio Gallatebeitia was a merchant<sup>69</sup> and Martín Antonio de Escoiquiz was a lawyer.<sup>70</sup> Irrespective of their social background, women usually provided a dowry when they married; they demanded it as a reward, because if they did not marry the man who had promised them, he would at least help them to marry another suitor.

### 3.5 *Thoughts and Feelings*

A number of egodocuments were presented by the women in the trial documentation as proof of promises made by men and of the relationship between the two parties.

The most complete information on egodocuments can be found in the letters that Domingo de Chavarría y Dirin wrote to María de Abieta.<sup>71</sup> In them, he describes his feelings for her, usually saying goodbye with such beautiful phrases as “quien de corazón te quiere y te estima” (who loves and cherishes you with all his heart). Even more, he also used to write “agur” at the end of his letters, which means goodbye in Basque. He also refers to himself as Chomin and to her as Marichu, the familiar Basque forms for people who go by the Castilian names of Domingo and María. They had a daughter called Josefa, whom he called Pepachu. In this case, Pepa is a Castilian abbreviation of the name Josefa, but the suffix “chu” is Basque and in common family use. In these letters, he describes his memories of Christmas 1701, when María was pregnant with Pepachu, and how he felt her belly kick when he put his hand on her belly. His words convey feelings of sweetness, affection and love, as well as his desire to repeat the experience of fatherhood with her. In fact, their daughter Josefa was born in February 1702 and they also had a son, called José Ignacio, and born in August 1703.<sup>72</sup>

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67 ACDC, 27.142.61.

68 AHFB, JCR0551/002.

69 ACDC, 20.37.11, 20.137.03.

70 ACDC, 27.141.26.

71 ACDC, 27.142.21.

72 AHEB, 721850, 714672.

#### 4 Last Thoughts

The archives are full of lawsuits for breach of promise. It was common for women to initiate such cases when they saw that the promised marriage did not take place. It is clear that although the early modern Church had laid down rules about the steps that had to be taken in order for a marriage to be considered legal, the population continued to practice medieval traditions. A promise of marriage was very important to the people and it could be said that it was synonymous with actually getting married. This was the case in Bilbao, but it was true practically everywhere in the Catholic world. It is clear, then, that the Council of Trent was not a success in this respect.

On the other hand, it can be seen that premarital sexuality was both a public and a private issue. The archives show that the community was fully aware of the practice of sexual intercourse between unmarried couples, and it was openly discussed during the trials. But it was also a private and intimate matter that concerned only the couple. For example, in the testimonies of couples and witnesses, words such as “darkness”, “night”, “indoors” or “in bed” are used, referring to an intimate and private environment. It is therefore possible to see that both concepts are relevant in relation to premarital sexuality. One can see the public-private dynamic already mentioned: a couple’s sexuality was known and discussed in public, but the couple’s encounters took place in the privacy of the home.

Finally, court records include personal records such as egodocuments. I have not found many egodocuments, but I consider them extremely important because they reflect the private feelings and thoughts of the senders, meaning they are their direct words. Indeed, the defining feature of egodocuments is the directness of the author’s words. It is true that the archives contain many legal documents, but they were written by notaries and not by the litigants. Moreover, in the case of many Basques, they needed a linguistic translation, so the difference between what they could have said and what was actually recorded in the documents is greater. Hence, the importance of the egodocuments and the need to use them in research, as they open a new window into the world of historical research, especially on issues related to privacy and sexual intimacy.

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