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Love as a Crime and a Sin: Sodomy, Power, and Identity in Colonial Peru in the 16th–17th Centuries

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administración de justicia, y en las dificultades que presenta hoy en día la defensa de los derechos de los ciudadanos, lo cual es más grave aun en el caso de las poblaciones rurales y andinas. No por casualidad, Mauricio Novoa concluye su estudio recordando que en la segunda mitad del siglo XIX hubo quien planteó el restablecimiento de los protectores de indios, ante la evidencia de que el triunfo, con la Independencia, de los ideales liberales y

democráticos, no había supuesto una mejora en las condiciones de vida de las poblaciones menos favorecidas. Además de ser un brillante estudio de un crucial aspecto de nuestra historia jurídica y social, este libro nos compele a reflexionar en torno a la importancia clave de una reforma de la justicia si queremos afrontar el futuro exitosamente. ■

David Rex Galindo

Love as a Crime and a Sin: Sodomy, Power, and Identity in Colonial Peru in the 16th–17th Centuries*

It was seventeen years ago when the first same-sex marriage was celebrated in a civil ceremony in Amsterdam, right after the Dutch Parliament passed legislation that legalized same-sex marriages. Since then, same-sex marriage has become legal in over two dozen countries worldwide. Last year, the German *Bundestag* added Germany to the growing list of countries where same-sex couples can obtain a legal marriage license. The past decades have indeed witnessed social mobilizations around the globe for LGBTI+¹ rights. Whether through legislation, court rulings, or popular referenda, 25 countries grant full juridical marital recognitions only recently enjoyed by opposite-sex partners to all citizens, regardless of their gender and sexual preferences. However, this legal evolution has been uneven. Currently, in many countries, LGBTI+ relations not only contravene moral codes but are still punishable crimes with varying amounts of prison time, fines, and in a few cases, with the death penalty.²

Beyond the juridical sphere, LGBTI+ people face widespread prejudice, abuse, and marginalization in their daily lives. In most cases, moral, religious, and juridical prosecution and discrimination force people with different sexual and gender orientations to live hidden lives within their societies. This invisibility particularly materializes in the archives, the bread and butter for historical research. Only recently have scholars began digging for historical records to show the historicities behind sexual behaviors and transgressions; the historical roots of moral, religious, and juridical discrimination against sexual and gender minorities; and the daily lives of those pushed into the «closet». For the early modern period, scholars have found juridical cases as well as legal and theological treatises; sources that offer invaluable insights into the intimate world of early modern subjects and the construction of sexual subjectivities. Because of its transgressive nature both then and now, the historicity of legal, popular, and

* FERNANDA MOLINA, *Cuando amar era pecado. Sexualidad, poder e identidad entre los sodomitas coloniales (Virreinato del Perú, siglos XVI–XVII)*, IFEA; Plural Editores 2017, 179 p., ISBN 978-99954-1-742-0

1 Inclusive acronym that stands for Lesbian, Gay, Bisexual, Transgender,

Transsexual, Intersexed and other forms of sexual and gender identities beyond the male and female binaries.

2 MARÍA R. SAHUQUILLO, YOLANDA CLEMENTE, «El avance de los derechos LGTBI se estanca», *El País*, June 29, 2018 <https://elpais.com/internacional/2018/06/28/actualidad/15301916>

80_934093.html (accessed July 8, 2018); and ALISON SMALE and DAVID SHIMER, «German Parliament Approves Same-Sex Marriage», *New York Times*, June 30, 2017 <https://www.nytimes.com/2017/06/30/world/europe/germany-gay-marriage.html> (accessed July 8, 2018).

religious prejudice against sexual diversities becomes handy to study our contemporary times. Indubitably, much of the early historical research on LGBT+ communities has taken a double scholarly and activist approach.³

Fernanda Molina's path-breaking *Cuando amar era pecado* contributes to such trends that seek to deepen our understanding of the historicities and complexities of sexual and gender subjectivities, with a focus on male same-sex relations in viceregal Peru in the 16th and 17th centuries. This is hence an important scholarly addition to the study of the history of discrimination against queer people in Latin America. *Cuando amar era pecado* is a thoughtful and mature revision of a doctoral thesis the author defended in 2010 at the University of Buenos Aires in Argentina. It is a stimulating book, which uses a well-written narrative to address her topic in all of its historical and historiographical complexities. Beyond anachronistic and essentialist approaches, Molina demonstrates that sexual practices are historically and socially conditioned, and that they are deeply connected to politics, religion, the institutions, and society. She chose sodomy as the polysemic term that best describe the sexual phenomena of her study, though Molina focuses on male-to-male relations. Overall, this is thus an important addition to the study of masculinity and male same-sex sexual practices within colonial studies. It should further appeal to legal historians. Molina's deep knowledge of early modern Spanish legal culture and her thoughtful analysis of court cases and the intricacies behind the colonial juridical system as it pertained to sodomy makes *Cuando amar era pecado* an important legal historiographical contribution.

Molina has arranged her book thematically. In the first chapter, titled »Sodomía«, Molina delineates the colonial legal framework that stems from medieval Castilian legal culture (particularly the *Siete Partidas* and the *Leyes de Toro*) and medieval theological scholasticism (mainly Thomas Aquinas) to pinpoint the intertwined sinful and criminal nature of sodomitical male-to-male practices in colonial Peru. Because of its criminal nature in the period under study, Molina reminds readers

that those convicted of sodomy faced capital punishment, e.g. burning at the stake. A second chapter, »Justicia«, fleshes out the multifaceted juridical culture that regulated the administration of justice in the early modern Hispanic world. Molina points out that a multi-normative system or »juridical pluralism« (»pluralismo jurídico«, 54) of competing legal practices and normativities in both ecclesiastical and civil courts placed sodomy cases under three different jurisdictions: ecclesiastical courts, criminal civil courts, and the Inquisition. Surprisingly, Molina shows that such multinormativity hampered rather than fostered the prosecution of sodomy in colonial Peru. For instance, cases of sodomy within the Catholic Church either disappeared or were destroyed to prevent civil procedures against their cohort and the consequent unwanted publicity and social stigmatization; this is of critical importance in the cases of sodomy due to the scandal that it elicited in *ancien régime* societies and the harsh punishments it entailed. Hence, sodomy is perhaps an illustrative window to show how socio-economic, religious, corporative, and ethnic privileges prevailed in the administration of justice. Overall, Molina proves what other scholars have already pointed out for other juridical scenarios: that the administration of justice rested on the existence of privileges and the juridical casuistry of judges.

Based on juridical cases from archival repositories, legal historians might also find much value in the following chapter titled »Poder« or »Power«. Even if power is a good analytical tool to delve into sexual relations in general and within sodomitical practices in colonial society in particular, Molina suggests being cautious when assigning sexual roles based on power relations. It is true that manifestations of sexual coercion appear in situations of hierarchical, socioeconomic, racial, age, and labor submissions – even more so in exclusively male environments of enclosure such as religious convents and ships. Yet when studying sodomy (and sexual relations in general), the author further seeks out eroticism, desire, affection and pleasure, and the alteration the socio-economic and ethnic roles as features to comprehend

3 For instance, George Chauncey, a professor of History at the University of Columbia is an illustrative example of these two focuses. See his *Why Marriage? The History Shaping Today's*

Debate over Gay Equality (New York: Basic Books, 2004), and his Columbia website: <https://history.columbia.edu/faculty/chauncey-george/> (accessed July 8, 2018).

sexual relations and the daily lives of colonial men. Obvious inequality need not solely reflect the active-passive or penetrated-penetrator roles in sexual intercourse as mirrors of submission. In some cases, »[f]ar from what might be expected, it is not the master who commanded and subordinated the will of his dependent but, in defiance of the hierarchies and the social order itself, it was the servant who seemed to take the lead in the relationship.«⁴ Consent, Molina asserts, becomes an important variable to look at.

The few Inquisitorial cases are the backbone of the fourth chapter, »Religión«, which showcases how the Peruvian Holy Office prosecuted sodomites for heretical manifestations as well as for moral transgressions. Her last chapter, »Identidad«, turns to the sexual subject from an empirical, historical perspective that pursues an approach without limitations to sexual diversities instead of rigid and, in some cases, anachronistic terminologies and models. Sodomy was more than a juridical and theological category, Molina convincingly asserts: archival sources expose the complexities and pluralities of being a sodomite in 16th and 17th-century Peru. Because sodomy not only related to sexual intercourse but also to affections, emotions, desires, pleasure, and eroticism, sodomy varied as much as those individuals involved. In this vein, the author further speculates that like in other parts of the Ibero-American worlds, sodomites in colonial Peru might have also enjoyed social networks and spaces to construct a sort of »sodomite solidarity« (160).

Molina's research rests substantially on a solid examination of archival sources of civil, ecclesiastical, and inquisitorial cases from national and local archives in Spain, Peru, and Bolivia. A corpus of around 50 juridical cases (mostly criminal but also a dozen inquisitorial cases) comprise the backbone of her study. The lack of archival evidence

stems from the juridical process that involved sodomy – various juridical layers overlapped in addressing the »nefarious sin« in the early modern Hispanic world, which hampered the proper functioning of the juridical system and caused the loss and destruction of legal proceedings. As Molina carefully shows, juridical juxtaposition in the administration of justice further resulted in jurisdictional struggles over privileges among local interests and corporativism that obstructed justice. Supplementing the meagerness of the empirical legal archives, she masterfully weaves together a vast array of juridical and theological treatises, legislation, dictionaries, chronicles, and pastoral literature to construct a view (even if fragmentary in some cases) into the daily lives and feelings of colonial men. Although it would not change Molina's conclusions, and notwithstanding possible editorial delays in publishing the book, an updated bibliography beyond 2011 might have offered readers the most recent scholarship on the ever-growing field of gender and sexuality in Latin America.

This is a long-awaited book and a much-needed study of same-sex sexual relations in the viceroyalty of Peru during the first centuries of Spanish colonialism. The author has done a superb job of exploiting juridical sources and gender, juridical, and social methodologies to offer a vivid insight into colonial same-sex relations. The book is exquisitely written, full of detail, and nicely presented. Molina's book is an important addition to the study of »Derecho Indiano« or Spanish colonial law from the viewpoint of colonial transgressions, gender studies, the history of sexuality, and social studies. *Cuando amar era pecado* will further appeal to students and scholars of colonial Latin America.



4 »Lejos de lo que podría esperarse, no es el amo el que mandaba y subordinaba la voluntad de su dependiente sino que, desafiando las jerarquías y el propio ordenamiento social, era el

criado quien parecía lleva la voz cantante en la relación« (101; my own translation).