



**Sex Crimes, Honour,  
and the Law in  
Early Modern Spain**

*Vizcaya, 1528–1735*

RENATO BARAHONA

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To the memory of Fernand Braudel

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# Introduction

This book is the fruit of a long and unusual journey – one that began in the second half of the 1960s while I was a graduate student at the École Pratique des Hautes Études in Paris, working under Fernand Braudel's direction. Fresh out of college, I had decided to work there because of the strong French tradition of Hispanism in history and literature. After taking courses for a year at the École, I mentioned to my teacher that I would like to undertake some research in primary sources. He was receptive to the idea, and replied that he would think about it. A couple of weeks later he summoned me to his office, where he informed me that I would be going to Valladolid to do research in the archive of the Real Chancillería, one of the major Spanish courts during the *ancien régime*. But what exactly would I be doing there, I inquired? Work on criminality in early modern Spain, and in particular its manifestations in Vizcaya and the Basque provinces, was the answer. Of course, this was consistent with Braudel's interest in social history, as well as with the emphasis on *mentalités* of the *Annales* school. But why Vizcaya and the Basque provinces? Braudel had learned from a Spanish colleague that the Chancillería's archive housed a magnificent and virtually never studied collection of documents concerning the Basque region, most notably Vizcaya. In effect, Vizcayan lawsuits that had been litigated locally came on appeal to the Chamber of Vizcaya (Sala de Vizcaya). There, they were tried by the chief justice (*juez mayor*) of Vizcaya and, if petitioned, adjudicated as well, by the president and judges (*presidente y oidores*) of the Chancillería.

It was Braudel's strong belief that research in Valladolid would yield significant information on honour, marriage, deviant behaviour, sexual criminality, and related matters. Braudel was particularly taken by



picaresque literature, peppering his lectures with insightful references ranging from *Lazarillo de Tormes* to *Estebanillo González* and more obscure works. He seemed eager to know the extent to which criminal lawsuits corresponded (or not) to depictions of misconduct and delinquency (*mala vida*) in literature. (Let us not forget that the man of the *longue durée* was also the historian of everyday life.) Encouraged by my teacher's infectious excitement for the subject matter and the documents that I would study, I headed for Valladolid. My enthusiasm, however, would swiftly be tested by the severe challenges that awaited me in the Chancillería.

### Archive of the Real Chancillería

Just beyond an attractive, if rundown, sixteenth-century courtyard was a gigantic archive that was largely in shambles. The conditions of work were deplorable. First, working hours were only from 10 A.M. to 1:30 P.M., the facility was open only on weekdays, and there were many closings for official, religious, and local holidays. Second, the director, a cleric-archivist, would arrive by cab, open up for the staff (two persons, a woman archivist, and a big strong man who fetched the bundles from the stacks), and then get back in the cab and leave. Sometimes the director would show up at closing time; mostly not, however. The staff, though extremely well-meaning, was rather unprepared and unhelpful. There were often complaints that I ordered too many heavy documents. Third, there was no central heat in the building; in fact, in the so-called readers' room, there was only an electric hot plate under a huge table. This forced me to work in gloves during winter. Fourth, lighting was extraordinarily poor (best near the window but away from the heat). Fortunately, there were not many researchers or visitors vying for place. Fifth, profoundly neglected, the old and large building had many broken windows. Documents housed under these conditions had been invariably exposed for decades to destructive forces – most notably the elements and the animals.

More seriously, I quickly found myself adrift in a bewildering sea of archival data. I was immediately forced to cope with the absence of a reliable catalogue. The only form of classification was a set of small cards done by pioneering archivists in the early 1900s. One of the achievements I am proudest of was the construction of my own catalogue – one that ran over thirty single-spaced typewritten pages – separating materials according to the topics I was interested in pursuing (the Sala de



Vizcaya alone holds over 16,000 trial dossiers). Basically, I created two main categories: crimes against people and crimes against property. From those I formed other relevant subcategories. The conditions of the documents presented continual problems: deterioration and decaying paper. It was not unusual for dossiers to fall apart, literally, when reaching my desk. Still others were legible only in certain parts and so on. Also, since there had been virtually no restoration, in many documents the ink had run through the pages, blackening out entire passages and therefore making their reading close to impossible. I was woefully ill-equipped to read these documents since I had little background in early modern paleography. I therefore had to learn to read the materials *in situ* – an arduous and time-consuming task not only because of the materials' conditions but also because of the scribes' and notaries' numerous styles. Some periods' handwriting are relatively easy to discern and understand while others are virtually impenetrable. Much practice, however, would eventually enable me to overcome this problem.

Beyond their material condition, there were other problems attached to the lawsuit materials. The documentation was (and unfortunately remains) characterized by gaping holes and a lack of uniformity. In fact, only rarely does a lawsuit contain all of the relevant documentation from the case's start to its final adjudication. This makes nearly impossible any attempt at quantification. For example, at times transcripts of previous litigation are missing, forcing one to reconstruct the case's legal antecedents from fragmentary data. At other times, arguably the most important pieces of information – the verdicts – are missing. Why this should be so is open to wide speculation: possible abandonment of the lawsuit by one or two of the parties, out-of-court settlements, or even the misplacement or destruction of vital pieces of information. There are other difficulties in the structure and organization of the dossiers. Not all the lawsuits come in bound and continuous transcripts. Separated by circumstance, time, and cataloguing, some cases resemble documentary jigsaw puzzles. A single lawsuit may be divided into separate documents, its individual pieces catalogued under different names and call numbers. Tracking down each part and piecing it together might be impossible at worst, problematic at best. (For more on these questions, see Appendix A.)

### Problems and Possibilities

Beyond the daunting archival difficulties, there were numerous other ways, large and small, in which I was intellectually unprepared to begin

work on this ambitious project. For one thing, unfamiliar as I was with the secondary literature of the region, I knew surprisingly little about the Basque past. I also did not yet possess a solid or extensive grounding in Spanish history. More seriously still, overly large and diffuse, the enterprise at the outset lacked clear goals and coherent conceptualization. The absence of a firm plan only magnified my scholarly shortcomings and research inexperience. However, if the obstacles were intimidating, by the same token, paradoxically, the possibilities seemed boundless and exhilarating. Neither before that time nor since have I enjoyed the full intellectual freedom that I had during the initial stages of this study. The excitement to pursue an investigation completely unfettered by prior academic biases and preconceptions encouraged me to continue despite the uncertainties and obstacles that I first encountered. More important, in the long run, the first months at the Chancillería instilled in me a life-long passion for work in primary documents. In retrospect, the enthusiasm that I immediately felt for the sources is more than understandable. At the outset, much of what I read seemed more fiction than history. The accounts were often engrossing and at times downright astonishing. I was especially taken by the documents' vivid details and by the protagonists' dilemmas, travails, and punishments. The twists and turns of some of the cases seemed to trump the pens of even the mightiest novelists and playwrights of the Golden Age. If I could master them, the documents would serve as windows onto a remote past. This realization only made me want to read and learn more.

### Initial Work

Having overcome most of the early barriers, and after a sometimes halting start, I began to work on the subjects in alphabetical order. Fortuitously, my earliest archival endeavours were with the cases involving *amancebamiento* (cohabitation), a category that figured prominently at the top of the list. Having become somewhat familiar and quite intrigued with the materials, I decided, when work on these lawsuits was completed, to continue investigating other forms of illicit sexuality or proscribed sexual behaviour, of which the lawsuits concerning the crime of *estupro* (ravishment or defloration) constituted by far the largest number. While wrestling with the materials, I had many more questions than answers. What did these lawsuits mean? What was the historical significance of the data I was collecting? How were the materials related to larger themes of the Spanish and Basque past? As noted already, my

initial work lacked both a focus and a context. Studying the lawsuits, therefore, to borrow an example from elementary science, was akin to exploring the exquisite details of cells through the powerful magnification of microscopes while ignoring basic questions of the cells' relation to the organism's structures and functions. Simply put, I had to find ways of connecting the subject of the research to larger frameworks, and this was possible only through a more solid grounding in Basque, Spanish, and European history and social structure.

## Detours

In the secondary literature, I began to come across references to several important social and political protest movements in the Basque provinces during the seventeenth and eighteenth centuries. One of these episodes in particular – a three-year struggle in Vizcaya against centralist taxes and policies known as the *Motin de la Sal*, or the Salt-Tax Revolt of 1631–4 – powerfully seized my interest. I was astounded to discover that this episode had not been the object of a single modern monograph. Pressed to produce something tangible at the École, and seeing that my work on sexuality was still far from completion, I decided to make what I thought would be a temporary detour. Putting my newly learned skills on primary sources to use, I wrote a *mémoire* – the rough equivalent of a master's thesis – on the Salt-Tax Revolt. (Both in study and in practice, resistance against authority was very much in vogue and, as with many of the era, my interest in social and political change was far from coincidental or academic.) Upon its termination, I planned to take up again the larger project on sexual criminality. Then, just as I thought that I was finally ready to return to my earlier and broader study, important personal considerations prompted me to return to graduate school in the United States. Unknown to me then, I would not return to the original investigation for nearly two decades.

Back in graduate school in the early 1970s, I directed my work towards a long-term analysis of the social and economic foundations of Vizcaya during the 1750–1850 period, a project aimed at explaining the antecedents and causes of the successful industrialization of the Basque region in the second half of the nineteenth century. I suppose that, had I chosen, I could well have opted for revisiting my previous work on sexuality, but, given my growing familiarity with Basque macro socio-economic and political structures, I settled into the new line of research. To my surprise and dismay, when I arrived in Vizcaya for archival work on

my dissertation, I found that several local investigators had similar and advanced projects well under way. This forced me to revise my ambitious original thesis proposal for a far more modest though no less interesting endeavour: an examination of the general causes and background of Carlism and the First Carlist War (1833–9) in Vizcaya.

The next decade proved academically and professionally rewarding. After defending my thesis, I worked on Spain and the Basque region during the 1600–1840 period. In particular I concentrated on the socio-economic and political origins of Carlism and the Carlist Wars in the Basque provinces; on the sociopolitical bases of popular protest and resistance movements against central authority (both urban and rural) during the seventeenth and eighteenth centuries; on centre-periphery relations in Spain during the 1600–1850 era, especially long-term conflicts pitting the Basques against Madrid and the growth of the modern state; and, to a lesser extent, on how the loss of the overseas possessions affected both Spain and the Basque provinces in the first half of the nineteenth century. By the late 1980s I felt ready to return to the subjects that had first attracted me: sexuality, criminality, honour, religion, marriage, and the law in the early modern era.

### **New Perspectives on Old Interests**

Now at last I was ready to tackle old materials in new (and I hoped) better ways. Several main reasons accounted for this. To begin with, I had acquired a considerably greater general knowledge of Basque history in the interval. As never before, I had come to understand many of the geographical and historical foundations upon which the Basque region rested: for example, its frontier location, the impact of the mountains and sea in its formation, the significance of the provinces' medieval legacy, claims of universal nobility, horizontal and vertical mobility (migration and social change), and the extraordinary importance of the New World in Basque economic success in the early modern era (as a source of colonial goods: as a market for manufactures: as a key region for capital formation and the extraction of profit revenue from trade, mining, and land ownership: and as a place for employment in the public, private, and clerical sectors). Moreover, by reading materials on Basque social organization, kinship, family patterns, customs and behaviour in contemporary anthropology and eighteenth- and nineteenth-century accounts of the region (by local writers and a host of foreign visitors), I had gained a deeper grasp of the Basque world and

its sociohistorical agents. Broadening my concerns, I had become much more interested, too, in the role of religion, ecclesiastical history, and culture in early modern European society (for instance, the Reformation, the Council of Trent, and the Counter-Reformation). I had also read widely on violence, dispute resolution, the courts, and other institutions involved in the administration of justice. Finally, new readings in early modern Europe, and in particular in areas of non-traditional history (gender, marginality, the lower classes, and, recently, the popular field of the history of sexuality), provided me with helpful suggestive comparisons and tools for the study of sexuality in Vizcaya.

In essence, with greater intellectual depth and new forms of analysis, I could re-examine old materials with fresh perspectives. More to the point, whereas in the late 1960s and early 1970s I might well have approached the subject matter with a greater emphasis on formal and institutional considerations (such as the nature of the crime, punishment, and the legal system in early modern Spain), now, owing to the influence of Marxism, feminism, and newer historical concerns, I became far more attentive to class conflict and social disparities, to patriarchy and gender, and to questions of individual experience and the formation of the self. In connection with the latter, I became interested in contemporary debates over the degree of females' personal freedom. Did they, independent of their families and other ties, have the capacity to formulate individual strategies – for example, pursue non-matrimonial amorous ventures or marriage plans – during the early modern era? In short, over time, my research focused less and less on crime alone; a re-examination of the sources inexorably led me to consider more closely the wider social and cultural meaning of the litigants' experiences. Little stories, hundreds of them – often no more than fleeting, fragile fragments of peoples' lives – did not have much significance by themselves or in isolation; however, these accounts – limited in scope and significance when viewed individually – collectively acquired compelling coherence on larger historical questions of sexuality and social mores. In other words, seemingly lost voices and experiences were gradually brought back through patient attention to apparently mundane details, allowing the reconstruction of important facets of litigants' behaviour and their public and private lives and spheres.

Not that all of my prior findings and insights changed radically or dramatically. For instance, some of my interpretations of the modes of behaviour – and models of crime – researched previously have not undergone basic alterations. I still believe, for example, that ravishment

cases follow consistent patterns and contain fundamental structures and elements. What is new, and where modifications have ensued, is the manner in which I have re-evaluated and reinterpreted data through new concerns, using contemporary historical work and theory to ask essentially new questions. Finally, I have continued to gather data on sexual criminality on several visits to the Chancillería since the early 1990s. A far cry from the state of the archive when I first encountered it, after extensive and artful remodelling, the institution has become a modern, efficient and pleasant place of work. The holdings of the Sala de Vizcaya are now fully catalogued – even computerized – a situation that vastly facilitates research. In addition, some important sections that were previously largely uncatalogued – for instance, Sala de lo Criminal, Pleitos Criminales – are now partly classified. Since most of the latter sources concern Old Castile, they can assist us in making informed comparisons between Basque and non-Basque early modern sexual misconduct (more on these matters in the conclusion to this study). Though several dozen *pleitos criminales* from the seventeenth and eighteenth centuries have been consulted for this study, I make only modest use of them.

### Overview of the Analysis

Chapter 1 of this book examines courtship, seduction, and abandonment. Using an emblematic lawsuit to introduce the major elements of the crime of *estupro* (defloration), the chapter devotes close attention to how couples courted with an eye towards marriage, doing so publicly in their communities. It also looks at male sexual advances, which pressured women with various solicitations, persuasions, and inducements. When the advances proved insufficient, males turned to promises of marriage and other offers to effect the females' seduction and defloration. By contrast to courtship, these mechanisms – or what I have labelled as facilitators – largely took place in private. After offers of matrimony and the ensuing sexual consummation of the relationship, some couples may indeed have regarded themselves as duly wed. However, numerous women were eventually abandoned by their seducers, leading to claims of dishonour among women who could now not marry as well as they might have before. In sum, their seduction and subsequent repudiation had disgraced women in the court of public opinion and seriously impaired their marriageability.

Chapter 2 analyses the language of sex – 'carnal knowledge' – in the

lawsuits. Close attention is devoted to the terminologies of virginity, defloration, and sexual intercourse in general. The chapter then explores the use of sexual rhetoric and its relation to the legal discourse, and examines the accusations of ordinary and mostly uneducated individuals in the context of the legal culture and litigation.

Chapter 3 studies the roles of coercion, violence, and subordination in sexual attacks. Distinctions are made between different degrees of coercion: threats and intimidation, on the one hand, and force and sexual aggression, on the other. Likewise, consideration is given to the place and circumstances of the assaults – whether committed outside, in deserted and uninhabited locations, or inside, after breaking and entering into victims' residences. Abduction, another important form of violence against women, is also examined. Indicative of extensive tensions and conflicts, the male and female wills are continually portrayed in the lawsuits as in opposition to one another – invariably, the male's as active and domineering, the female's as passive and acquiescing. Finally, the chapter analyses socioeconomic inequality and gender subordination as contributing factors in women's sexual victimization.

Chapter 4 investigates a far different sexual transgression – that of cohabitation.<sup>1</sup> Important issues concerning cohabitation are raised and discussed: Why was cohabitation prosecuted by the authorities? What were the chronological trends of cohabitation and the profiles of cohabitators? Why did individuals cohabit? What were the effects of cohabitation? How was cohabitation punished and what were the consequences of penalties for the parties?

Chapter 5 discusses the litigation of honour and dishonour by victims of seduction and defloration, examining their strategies and interests before the courts: assertions of their honesty and virtue, as well as claims of lost dowries and damages. Defendants, meanwhile, both in their confessions and in more formal defences, used the courts to launch important counter-attacks on the plaintiffs, effectively subjecting women to a second victimization. On both sides, a significant part of the legal battle was conducted through witnesses, who acted as proxies for each party. Plaintiffs who navigated the perilous legal seas successfully – as most did – gained tangible benefits from the courts for their dowry and remedy.

This work, then, is intended as a contribution to early modern European courtship patterns, sexual practices and attitudes, and violence and aggression against women. It is also meant to cast light on issues of female honour and dishonour, as well as on the legal means used by



victims and their families in their attempts to remedy the women's disgrace. Inexorably, these questions fully intersect with local social customs and matters of religion. For instance, considerable evidence suggests that there was much confusion over the nature of marriage even well after the Council of Trent. Several types of popular unions and living arrangements illustrate this key point. Traditional betrothals and engagements – often self-administered and without a priest – were sometimes mistaken by the parties as bona fide nuptials. Likewise, clandestine or secret marriages contributed to widespread uncertainty over the propriety of the sexual relations entered into subsequently by the couples. Finally, some parties entered into long-term cohabitations that often amounted to common-law marriages. Clearly, when engaging in significant sexual relationships, individuals often skirted ecclesiastical tenets and codes of conduct in various ways. In short, it is my hope that this investigation will advance our understanding of early modern customary engagements, matrimonies, and sexual practices.

Finally, I am profoundly aware that this work is far from the final word on most of the issues examined. There is simply too much that I ignore in the questions explored below to claim that my study is definitive. For example, nearly all of the primary documents in this investigation are secular in nature. Ecclesiastical materials must be patiently mined as well to shed additional light on the effects of the Counter-Reformation and Tridentine measures on lawsuits involving breach of promise to marry and other matrimonial litigation, clerical sexual abuses, and traditional social and sexual behaviour contrary to church teachings – to name but three important areas about which not nearly enough is known for the Basque region. Notwithstanding important contributions by a number of authors, more needs to be known, too, about the functions and intricate workings of the early modern Spanish justice system. Much the same applies to the state of our knowledge on questions of honour; though much has been written about this quintessential question, relatively little effort has been made to examine it – and its consequences – in a specifically historical context. For these and other reasons, this book should be primarily a point of departure for important and much-needed inquiries. If it has succeeded in opening some windows onto early modern society a little wider, future studies must draw fuller portraits of the world beyond them.

Interestingly, as I was finishing the first draft of my PhD thesis, I was reunited with my teacher Fernand Braudel at a conference in Baltimore

in 1976. I had not seen him in several years. As I recall, the two of us took a long, leisurely stroll through Homewood Campus one afternoon and chatted amiably. At one point in the conversation, however, in a tone and demeanour that I had come to know well through the years, he chided me gently and affectionately: 'I am told that you're interested in Carlists. That's not serious. The work you were doing on criminality and honour was much better!' ('On me dit que vous vous occupez des carlistes. Ce n'est pas sérieux ça. Votre travail sur la criminalité et l'honneur était bien meilleur!'). I tried to explain the importance of my doctoral subject matter, but apparently to little avail since he remained largely unconvinced. Unfortunately, it was the last time that I saw him. In hindsight, I realize that we were both correct in our assessments. I have often thought with mixed feelings about our last encounter. Yet, despite the possibly excessive length of time that has elapsed between this project's halting initial steps and its appearance now, not once did I envision shelving it. In effect, the more time I have spent on it, the more I have become convinced that Braudel was correct that there were solid intellectual merits to this investigation. My only hope now is that I have kept faith with my teacher's spirit and vision.