



FEMALE LEGAL IDENTITY

in Medieval Spain

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Historical Context

The Crown of Aragon

- Late 13th - early 14th century
- Period of stabilization of borders between Aragon & neighbors
 - Catalano-Aragonese monarchs focused on consolidation of authority over own territory and expansion into the Mediterranean
- 1229-1324: Catalano-Aragonese monarchs (Jaume I, Pere II) expanded territories into Mallorca, Sicily, southern Italy & Sardinia
- Trade and cultural exchange encompassed everything from grain to ostrich plumes to ideas (architecture, painting, humanist literature, philosophy, law)
- Intellectual interchange of scholars from across Europe
- Development of shared legal culture based in the Mediterranean and spread north of the Alps & Pyrenees to continental Europe

Crown of Castile

- Alfonso VI of Castile and León (d. 1157) - divided kingdom between sons
- 1217: Ferdinand III receives kingdom of Castile from mother Berenguela of Castile
- 1230: Ferdinand III receives kingdom of León from father Alfonso IX
- Crown of Castile reunited the kingdoms of Castile and León, plus all southern territories reconquered from the Moors
 - Taifas of Córdoba, Murcia, Jaén, and Seville
- Alfonso X (1221-1284) fostered multicultural & multilingual court - included Christian, Jewish & Muslim scholars
 - Encouraged use of vernacular Castilian over Latin
 - Introduced first vernacular law code in Castile (*Siete Partidas*)
 - Also introduced consistent judicial system across Castile

Significant Moments in Spanish Law

Ius commune

Largely based on Mediterranean concepts carried from the universities of Bologna & Montpellier

- Combination of Roman law (*corpus iuris civilis*) and canon law (*corpus iuris canonici*)
 - Roman law: drawn from Emperor Justinian's legal compilations and classical age of Roman jurisprudence (2nd-3rd cent, CE)
 - Canon law: based on Gratian's *Concordantia discordantium canonum* (AKA the *Decretum*) - attempt to collect and resolve conflicts between canons
- *Ius commune*: conceptual framework for the creation & interpretation of secular codes
 - In Crown of Aragon, *Ius commune* was layered over existing local or regional laws and traditions as well as the existing Visigothic law codes (*Liber iudiciorum*)
 - Adopted very quickly in Catalunya (existing ties to Italy) & somewhat more slowly in Aragon

1247 CE: Jaume I gives approval to *Fueros* of Aragon

- Collection of customs, judicial rulings, royal laws
- Compiled by the bishop of Huesca Vidal de Cañellas

By 1359, Pere III requires advocates, judges & assessors to be familiar with the legal principles of either the *Corpus iuris civilis* or the *Corpus iuris canonici*

A Note on Aragonese Muslims and Jews

Technically, Muslim & Jewish communities retained political & judicial sovereignty

- *Aljamas* (religious minority districts w/in Aragon) adjudicated internal disputes according to own laws
- Rabbinical authorities only brought internal affairs to the Crown if one of involved parties threatened to subvert internal judicial process of the *aljama*
- Muslims generally only ended up in court re: appeals or due to inter-religious legal disputes

While we won't be looking at the legal status of women under either Jewish or Muslim law in this class, I can recommend the following texts for those interested in exploring these areas further:

1. Dawson, Daniel (2015) "Women under the law in Islamic Spain, 700s-1492." *Armstrong Undergraduate Journal of History*. Vol. 5 : Iss. 2, Article 1. <https://digitalcommons.georgiasouthern.edu/aujh/vol5/iss2/1>
2. Fuente, M. J. (2009). "Christian, Muslim and Jewish Women in Late Medieval Iberia," *Medieval Encounters*, 15(2-4), 319-333. doi: <https://doi.org/10.1163/157006709X458873>
3. Klein, Elka. "The Widow's Portion: Law, Custom and Marital Property among Medieval Catalan Jews." *Viator* 31 (2000): 147-163.

Gendered Ideas in the *Ius commune*

1. *Fragilitas* - weakness
2. *Imbecilitas* - incapacity
3. *Verecundia* - female modesty/shame

Under classical Roman law, women were often consigned to guardianship under a man, and were treated as permanent minors due to their perceived weakness and inability to handle their own legal affairs

Idea of female modesty combined with the idea of the "inherently incapable" woman firmly rooted in Roman legal literature by 3rd century CE

- Ulpian: women should not involve themselves in the lawsuits of others in a way that was "contrary to the modesty suitable for their sex, so that women not discharge men's duties" (Kelleher 25)

However, as the early Roman system of guardianship for women broke down, women became increasingly recognized as competent to handle legal affairs -

Causes ambiguity for medieval women - jurists recognize that women could & did act for themselves in the public forum, but concepts of female weakness, vulnerability to male influence, and social norms about female behavior created a climate hostile to women's participation in the public forum of law

Gendered Assumptions in Canon Law

Layered over Roman law are gender assumptions in canon law

- Biblical ideas that reinforced a strict gender hierarchy
- Theological assumptions about the nature of women (inherently weak and incapable)

“Regarding witnesses: condition, nature, and manner of life should be considered. Condition: that they be free, not slave, because sometimes a servant may be pressured by his master to suppress the truth. Nature: that they be male, not female, for females always produce varying and changeable testimony. Manner of life: if guiltless and irreproachable of deed.” (Gregory IX, *Liber extra*, quoting Isidore of Seville)

Gendered Legal Assumptions in the Crown of Aragon

1. Natural subordination of women to men
 - a. Husband obliged to support wife financially (*oneira* of matrimony)
2. Female weakness/incapacity
 - a. Husband forbidden to encumber marital property without wife’s consent - “fragility of the female sex should not be turned against her or result in the diminution of her goods” (*Furs* of Valencia)
 - b. Penal law:
 - i. Woman may not be imprisoned for debt or fine from civil offense unless she had already liquidated all of her property to pay the debt (*Fueros* of Aragon)
 - ii. Ideally, women never imprisoned at all - if absolutely necessary, should be housed away from male prisoners - preference for corporal or financial penalty
3. Natural womanly modesty
 - a. Women could not be compelled to appear in court for any contract signed with their husband (Code of Tortosa)
 - b. Extended to social status:
 - i. Social condition linked to husband’s status

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- ii. If unmarried, status linked to nearest male relative (*Constitucions of Catalonia*)

The *Siete Partidas*

- Compiled by committee (probably) during the reign of Alfonso X - completed in 1265
- Purpose: to unify the legal system of the Kingdom of Castile via a general code that applied to all regions - may have intended to establish Castilian as primary language of the country
- Sources:
 - a. *Corpus Iuris Civilis* of Justinian
 - b. *Libri Feudorum* compilation of Lombardic law
 - c. Roman glossators and commentators
 - d. Canon law texts
 - e. Philosophical works of Aristotle and Seneca
 - f. *Villiyet* Islamic Spanish legal text
 - g. *Doctrinal de los juicios* (Trial Manual)
 - h. *Flores de Derecho* (Flowers of the Law) by Maestro Jacobo
 - i. *Roles D'Olerons* writings on commercial law
 - j. *Margarita de los pleytos* by Fernando Martínez de Zamora
- In addition, the *Partidas* collated and reconciled municipal and regional judicial systems and local custom

Women in the *Siete Partidas*

“Man is of better condition than woman in many things and in many ways.”

The Catholic Faith (First *Partida*)

- During confession, women must sit to one side of but not in front of or too close to the confessor - because “the face of a woman is like a flame of fire that burns the one who tastes it.” (Part. I, Tit. 4, Ley 26)
- Women cannot become clerics or preach or exercise any of the rights of a cleric (Part. I, Tit. 6, Ley 26)

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- Defined types of marriage allowed to clerics
 - Defined requirements for entry to religious orders & circumstances under which married persons could be recalled from orders by spouse
 - Laid parameters for excommunication, almsgiving, swearing vows, and pilgrimage

Overall, women were not allowed to take orders, go on pilgrimage, make vows, or give alms from joint property without permission from her husband

Royal Women (Second *Partida*)

- Defines qualities of a good royal wife (good family, beauty, good breeding, wealth) and which can be omitted (beauty and wealth)
- Lays out king's duty to queen (love, honor, and guard)
- Defines provisions for royal children re: education and upbringing
- Established laws and penalties for dishonoring women of the royal household
 - Royal Family
 - Punishment = death
 - If culprit escapes, punishment = exile and confiscation of goods
 - Any accomplices lose their eyes and all their goods
 - Queen's household
 - Penalty for noble = exile
 - Penalty for lower rank = death or confiscation of goods
 - Women appealing to court
 - Same as queen's household
 - Nurses & wardrobe women
 - Death and confiscation of half his goods
 - If escaped, exile and loss of all goods
 - These women were seen as being more intimately close to the queen & thus could become an influence for evil and/or impersonate the queen & destroy her reputation

Courts of Law (Third *Partida*)

- Husbands and wives are limited re: complaints against each other
 - Adultery and treason are permissible

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- Legal dispute over property is seen as impossible because man and wife are same entity
 - Women cannot be judges or lawyers - it is “unseemly” for her to mix with “crowds of men” in the courts
 - Also cannot be a representative for anyone in court
 - Exception: old or ill relatives in her direct line who have no other trusted representative - cannot defend, only give reason for not appearing
 - **Respectable women** may only be summoned to court in cases of bloodshed
 - May send a representative to court so as to avoid contact with men
 - Judge may choose to visit and question them in person or send a notary
 - Limited ability to witness
 - Cannot testify for husband
 - Woman “of good character” can be a witness in any case except regarding wills
 - No woman “of ill repute” may be a witness
 - Women “of good character” may become guardian to their own children if no one else is named in her husband’s will and she does not marry while the shield is in her care

Betrothals and Marriage (Fourth *Partida*)

Types of Betrothals

1. For the future (*por venire*)
2. For the present - more binding
 - Legal age of betrothal = 7
 - Legal age of marriage = 14 (men), 12 (women)
 - 9 cases in which betrothal may be broken with equal fault
 - Parents may not betroth a daughter without her consent or in her absence

Types of Marriage

1. Church wedding (*de bendicion*)
2. Clandestine marriage (*a yuras*)
3. Concubinage (*barraganía*)

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- Women take the rank of their husband and retains it after he dies
 - Clandestine marriages (without the knowledge of the woman's parents) are generally considered bad and incur penalties "because nothing good ever comes from them"
 - Establishes parameters for marriage among all social strata
 - Defines and regulates dowries, donations, and marriage gifts

Barraganías

- A *barraganía* is a type of concubinage
- *Barraganías* are permitted under the law although forbidden by the church, because "it is less bad to have one than to have many"

"The *barraganía* was not a vague, indeterminate, and arbitrary link; it was based on a contract of friendship and company, whose main conditions were permanence and fidelity...the generality with which the *fueros* speak of *barraganías*, of clerics and of laymen and even of the married men, and their political dispositions and civil laws regarding the conservation, subsistence, and rights of children and mothers proves how universal was the habit." (Lansing 495)

Commerce (Fifth Partida)

There's not a lot about women in this section - it's largely about loans, sales, purchases, and exchanges (and maritime law)

- Women may not stand in security for another, again because it's not seemly for her to mix with men in the courts
 - However, in cases of freeing a slave or regarding a dowry, she may do so
 - She also can't dress as a man in order to stand as security, because that is deception

Wills and Inheritances (Sixth Partida)

- Women cannot be witness to a will
- Sets limits on inheritance and disposition of property in case of intestate death
- Only mothers or grandmothers who promise not to marry during the guardianship may be guardians of children

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- Defines circumstances under which a daughter may be disinherited
 - Refusal to marry or leading an “evil life”
 - Note: a father cannot disinherit a daughter for either an evil life or marrying against his will if he has delayed her marriage until she is older than 25 (that’s his fault)

Crimes and Penalties (Seventh *Partida*)

- Woman cannot bring accusations generally, but can do so in the matter of her husband’s death
- Her husband (or master, if she is a slave) cannot be summon her as a thief
- If a woman lives with her husband, only he, her father, her brother, or her uncle can accuse her of adultery
 - If it is proven, the man must die and the woman is beaten publicly and placed in a nunnery - her husband has the option to take her back after two years
- Accused women facing the death penalty or corporal punishment may not be jailed with men - should be kept in a nunnery
- Pregnant women may not be tortured
 - “This is...because of the child she has in her womb which does not deserve it” (Lansing 507)

Female Litigants and the Creation of Legal Identity

Effects of the *ius commune* -

1. Excluded women from most roles of public power
2. Backed male authority over women in the private sphere
3. Enforced gendered standards of propriety - especially sexual

Somewhat moderated by canon law -

1. Emphasized legal personhood of women
2. Rights to own property
3. Capacity to give & withhold consent in marital matters

End result is that law codes treat women as weak and vulnerable, in need of protection both from others but also from their own nature

However. Court records and trial transcripts show that women were active participants in litigation on their own and others' behalf

Kelleher suggests that women and their representatives used the vocabulary of the law to structure their legal narratives, but that the layers of legal discourse surrounding women created a complex female legal identity

1. How assumptions of weakness et al were applied to individual women depended on
2. A relational taxonomy (wife, daughter, mother, etc) which was modified by
3. A distinction between respectability and disreputability

Unfortunately, this complex identity is most effectively illustrated in discussions of litigation involving sexual violence against women

Sexual Violence Against Women

Area of the law where relational category, sexual reputation, and socio-legal ideas about gender and women overlap

- Indicated what type and level of violence was acceptable in an individual case
- Prescribed what penalties - if any -were appropriate

In response to this overlap, female litigants construct their "legal persona" to take advantage of assumptions about vulnerability and/or dependency

- Spousal abuse cases
 - Natural dependency & submission to men = husband has latitude to "correct" his wife but
 - Vulnerability = more latitude for women when suing for dowry return to support self after separation from an abusive husband
- Rape cases
 - Emphasized particular vulnerabilities -youth, virginity, isolation from family - in order to

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- Offset assumptions about disreputable sexual habits by the opposing party

Relational categories *within* category of “woman” also important

- Married women appealed to Roman and canon law principle of *maritalis affectio* to show that violent husbands were in violation of the law
- Rape victims may emphasize that they were betrothed or a virgin, or married victim might demonstrate she was at home when the crime occurred - in other words, these women were exactly where a respectable woman *should* be and thus did not deserve their assault

Line between deserving and undeserving women

- Abused wives positioned themselves as good women in opposition to their violent husbands (or the “depraved” women with whom those husbands had affairs)
- Courts punished the rape of sex workers and “depraved” women less harshly than that of respectable married or unmarried women
 - Sex worker’s sexuality was considered public property
 - No legal standing to give or withdraw consent

Women’s litigation of violent act shows that

1. They were aware of how closely they were watched
2. They were aware of the need for strategic legal positioning
3. They were able to use gendered assumptions in the various layers of the law to their best advantage

Sources

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