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"He did not know what other things his wife did' (Or did he?): Women, Kinship, Laws,  
and Lawlessness on the East Texas Borderlands"

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In 1801 the Spanish governor of Texas interrogated Gertrudis de Los Santos and her husband Antonio Leal. Under questioning, Santos admitted to being a mujer fragile, or a fallen woman, because she had slept with her husband's business partner. Next the governor asked her husband what he knew about the matter. Leal stated that he asked his wife to "take care of [his partner's] personal assistance, and whatever other things he needed," but Leal claimed that he "did not know what other things his wife did." He had been trading with the Tonkawa when she perpetrated her mala amistad, or adultery. Whether he was aware of his wife's affair or not, this incident represents a moment when Spanish laws and borderland ethics came into conflict with one another. In fact, the Spanish borderlands legal record is filled with such mala amistades. Apparently, the multiethnic groups that gathered in places such as Spanish Nacogdoches did not think extramarital love was as sinful as the Spanish friars and governors that forbade it. Although she broke Spanish laws, Santos' actions conformed to the unwritten borderland legal codes that drew selectively from various European and Native American traditions. Above all, this informal and ultimately creole justice system worked both within and against national laws to serve the needs of family clans that sought to dominate Texas and Louisiana. In the end, I suspect that Leal knew about his wife's affair -- he may have even expected her to fulfill his business partner's sexual desires.<sup>1</sup>

People from more populated European centers such as Madrid, Mexico City, London, or Washington viewed East Texas and West Louisiana as an anarchic zone where few restraints prevailed, a perception that remains predominant in historical

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<sup>1</sup>"Criminal proceedings against Santiago Cook, Antonio Leal, his wife Gertrudis de los Santos, and Pedro Geremias Longueville, all accused of secret conspiracy with Felipe Nolan," 1-23-1801, B  xar Archives, Center for American History, University of Texas, Austin (hereafter cited as BA). Translations of BA are mine.

literature and popular accounts. But emphasizing the lawlessness of the region deemphasizes the codes that did operate in the borderlands. To be sure, East Texas in the 1790s and early 1800s stood on the most peripheral outskirts of Spain, France, and, after 1803, the United States. Because they could not agree on a mutual border in 1806, Americans and Spaniards negotiated a "neutral zone" from the Sabine just east of Nacogdoches (Texas) to the Arroyo Hondo just west of Natchitoches (Louisiana) into which neither army (but lots of outlaws) would enter. In a sense this agreement merely formalized the status quo. Fugitives had poured into and out of Louisiana and Texas to escape unpaid debts and failed marriages. A few slaves too hoped to find more favorable situations when they crossed the Sabine and Neches Rivers. But these escapees did not arrive into empty -- or lawless -- lands. Spanish, French, and Native American people had long established their own villages and borderlands codes -- many of which welcomed at least some outsiders. For Gertrudis de los Santos, a resident of Spanish Nacogdoches, and the other women of the borderlands, East Texas was hardly a lawless place. A tangle of borderland codes and weak but operative Castilian rules dictated what they could and could not do. Like most other people in Nacogdoches, Santos and Leal followed an alternate legal system that often ran afoul of the Spanish law. And in contradistinction to the Spanish law, which sought to separate Spaniards and foreigners (whether Indian, French, or Anglo) the Spanish people who lived in the borderlands sought to connect with other peoples. In fact, Santos' lover and Leal's business partner was the well known Irish-American horse trader Philip Nolan.<sup>2</sup>

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<sup>2</sup> General overviews of East Texas include, Mattie Austin Hatcher [The Opening of Texas to Foreign Settlement, 1801-1821](#) (1927; reprint 1976); Odie B. Faulk, [The Last Years of Spanish Texas, 1778-1821](#) (London, 1964); Patrick J. Walsh, "Living on the Edge of the Neutral Zone: Varieties of Identity in Nacogdoches, Texas, 1773-1810", [East Texas Historical Journal](#) (1999); Donald E. Chipman, [Spanish](#)

This essay explores women's relationship to the legal culture -- both written and unwritten -- of Nacogdoches, Texas in the late 1790s and early 1800s as a window to better understand the role that gender played in the multicultural southeastern borderlands of the greater revolutionary era just before Lewis and Clark made their western entrance. This article therefore adds to a growing body of scholarship that expands our knowledge of the pre-Jeffersonian southeast, and that suggests that Lewis and Clark's trek was neither first nor singular. This piece also adds to our increasingly complicated understanding of the varied multicultural gender relations that predated the famous expedition. Paying particular attention to the micro level of a village, I disentangle one variation of a larger borderlands culture in which people from different places traded and married. By the 1790s the people of Nacogdoches had created a dynamic borderlands code that impacted identity, kinship, honor and that ultimately eased the extension of King Cotton into Texas. I argue that to understand the place of women and their relation to the law in the borderlands it is essential to analyze their experiences within the context of family and local webs.<sup>3</sup>

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Texas: 1519-1821 (Austin, 1992). On Anglo-America and Spanish relations in this zone see Gilbert C. Din, "Spain's Immigration Policy in Louisiana and the American Penetration, 1792-1803," Southwestern Historical Quarterly (1973), (hereafter SWHQ); and Jack D. L. Holmes, "Showdown on the Sabine: General Wilkinson vs. Lieutenant Colonel Simon de Herrera," Louisiana Studies (1964).

<sup>3</sup> New work on the southeast borderlands includes the writings of Dan L. Flores such as, Jefferson & Southwestern Exploration: The Freeman and Custis Accounts of the Red River Expedition of 1806 (1984) and Kathleen Du Val, The Native Ground: Indians and Colonists in the Heart of the Continent (Philadelphia, 2006) and "Cross-Cultural Crime and Osage Justice in the Western Mississippi Valley, 1700-1826," Ethnohistory 54 (Fall 2007), 697-722; Jesus de La Teja, San Antonio de Béxar: A Community on New Spain's Northern Frontier. (Albuquerque, 1995). For gender in Texas borderlands see Juliana Barr, Peace Came in the Form of a Woman: Indians and Spaniards in the Texas Borderlands (Chapel Hill, 2007); David La Vere, "Between Kinship and Capitalism: French and Spanish Rivalry in the Colonial Louisiana-Texas Indian Trade," Important works on Louisiana include Jennifer M. Spear, "'They Need Wives': Métissage and the Regulation of Sexuality in French Louisiana, 1699-1730," in Sex, Love, Race: Crossing Boundaries in North American History ed. Martha Hodes, (New York, 1999), 35-59; Journal of Southern History 64 (May 1998); Jack D. Holmes, "Do It! Don't Do It!: Spanish Laws on Sex and Marriage" in The Spanish Presence in Louisiana, 1763-1803 ed. Gilbert C. Din (Lafayette, 1996). For French-Indian relations see Susan Sleeper Smith, Indian Women and French Men : Rethinking Cultural

Moments such as the one in Santos' trial, when Spanish authorities accused people of committing egregious crimes, even though the borderlands people acted in normative ways, offer the best views of the unwritten codes that predominated in Nacogdoches during this pre-United-States era. One might think that women could benefit from this more fluid system, but overall conditions in the southeastern borderlands, like those in James Brook's southwestern borderlands, ultimately mimicked the "asymmetrical gender relations within all the participant societies." Individually, some women profited from the system while others did not. Gertrudis de los Santos lived by these codes to attempt to improve her family's lot away from intense Spanish oversight. But what might initially seem like a free-will choice -- in the case of Santos taking a lover -- may have been at least partially constricted by borderlands creeds that required women to be lovers. Moreover, her actions were conditioned by her prominent place in a powerful family. One need only look at Santos' (or Ramos') female slaves to understand that most women did not share even Santos's limited privileges.<sup>4</sup>

To understand women's relation to the laws of the borderlands, part one of this article explores Spanish and Indian legal systems, especially as they pertained to marriage. Part two looks at the development of the diverse kinship networks that developed among the people of East Texas prior to the 1780s. Part three closely examines the Nacogdoches legal record created at the turn of the century, returning to Santos and her supposed criminal infractions against the Spanish state. Attentive to

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Encounter in the Western Great Lakes (Amherst, 2001); Lucy E. Murphy, A Gathering of Rivers: Indians, Métis, and Mining in the Western Great Lakes, 1737-1832 (Lincoln, 2000). Andrés Reséndez, Changing National Identities at the Frontier: Texas and New Mexico, 1800-1850 (New York, 2005) focuses on local identities (shaped by both markets and states). Carolina Castillo Crimm, De León: A Tejano Family History (Austin, 2003) stresses familial ties.

<sup>4</sup> James F. Brooks, Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands (Chapel Hill, 2002), 366.

ethnohistorical methods, this essay sits at the intersection of Latin American, Native American, and early U.S. history. For this article, I focus especially on the Spanish legal records and early European descriptions of Native American societies, recognizing that these sources contributed to the imperial project of western expansion. The people who made up the village of Spanish Nacogdoches in East Texas were a mixed group of Spaniards, Mexicans, Frenchmen, Indians, Africans, Englishmen, Anglo-Americans and various others who connected with each other through marriage and who did not necessarily appreciate or accept European laws (and who might have told different stories than the written accounts we have). Yet despite their uniqueness, heterogeneity, and relative egalitarianism, the women who lived under borderlands laws (perhaps inadvertently or even against their own wishes) paved the way for the extraordinary shift of population that would transform Texas in the nineteenth century.

#### Part I. Marriage in Spanish and Indian Legal Codes

The people of Spanish Nacogdoches were at least nominally subject to Spanish laws, and no less than in other parts of Spain and New Spain marriage worked to maintain social, economic, and political power among an exclusive group of families. Compared to English feme covert, Spanish women could benefit from laws that favored the family rather than an individual male head of household. Women maintained their parents' surnames even after marriage, could legally participate in economic affairs, retained individual rights to property, and owned half the property accumulated during marriage. But if Spanish women maintained a great deal of economic power within families, deep Catholic patriarchal honor codes limited their options outside of the

family, especially regarding sexuality and marriage. Male kin expected women to remain virgins up until marriage, and husbands could severely punish adulterous wives, including in some cases with murder. Most significantly, married women could not divorce and remarry. Both the permissive economic and restrictive sexual laws worked to maintain property and power within a select group of families.<sup>5</sup>

Elite Spanish Americans, whether born in Iberia or America, made up this select group and protected their status through the concept of sangre limpia or pure blood. To do this Spaniards built a caste system that differentiated themselves from non-Spaniards, whether Indians or the mix of peoples the Spaniards termed castas. During the earliest days of American conquest some Spaniards did marry into local elites as a strategy to extend their command through powerful indigenous families and because there were few Spanish women. But royal policies quickly dissuaded Spaniards, especially wealthy ones, from marrying outsiders by building up differential laws that favored Spaniards. Even in faraway Texas, to prevent soldiers from marrying – or raping – indigenous women, early settlement laws required wives to accompany soldiers to their posts. Additionally, friars and governors founded separate Spanish and Indian communities.<sup>6</sup>

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<sup>5</sup> The following discussion draws greatly on Susan Migden Socolow, The Women of Colonial Latin America (New York, 2000) and the essays in Sexuality and Marriage in Colonial Latin America, ed. Asunción Lavrin, (Lincoln, 1989). For women and the law in later Texas see, Mark M. Carroll, Homesteads Ungovernable: Families, Sex, Race, and the Law in Frontier Texas, 1823-1860 (Austin, 2001) and for New Mexico, Janet Lecompte, "The Independent Women of Hispanic New Mexico, 1821-1846," The Western Historical Quarterly 12:1 (Jan. 1981), 17-35.

<sup>6</sup>The literature on caste is extensive. See Ilona Katzew, Casta Painting: Images of Race in Eighteenth-Century Mexico (New Haven, 2004); María Concepción García Sáiz, Las Castas Mexicanas: Un Género Pictórico Americano (Milan, 1989); Douglas R. Cope, The Limits of Racial Domination: Plebian Society in Colonial Mexico City, 1660-1720 (Madison, 1994); Susan Kellogg, "Depicting Mestizaje: Gendered Images of Ethnorace in Colonial Mexican Texts," The Journal of Women's History 12.3 (2000), 69-92; José Cuello, "Racialized Hierarchies of Power in Colonial Mexican Society: The Sistema de Castas as a Form of Social Control in Saltillo," in Choice, Persuasion, and Coercion: Social Control on Spain's North American Frontier eds. Jesus F. De la Teja and Ross Frank, (Albuquerque, 2005).

Thus throughout New Spain Spanish elites dominated social, economic, and political positions by claiming pure blood, yet with the exception of some friars, most elites did not trouble themselves about Indian and casta marriage practices. According to historian Susan Socolow, a legitimate marriage in most of the Spanish colonies marked racial status, "the indication that one was a person of rank rather than a mere plebeian, a Spaniard rather than a mixed-blood." But for most women marriage was far from a "universal practice" especially for, "castas, mulattas, mestizas, slaves and very poor Spaniards" among whom "it was more common to find women entering into relationships, sometimes short-term, sometimes lengthy, without the benefit of matrimony." Therefore in much of New Spain legitimated marriages remained the preserve of elites, and the idea of privileged families.<sup>7</sup>

Nonetheless, royal and elite attempts to use marriage to separate classes and castes failed miserably, especially in peripheries such as Nacogdoches. While the church and state only recognized children from legitimate unions, many high status men maintained illegitimate relations across caste and class, often in permanent relations akin to polygamy. As Socolow suggested, non-elites throughout New Spain disregarded marriage laws altogether. And in newly settled places, such as Texas, even the so-called Spanish people were mostly mestizo, or people of mixed Spanish and indigenous descent. By the late eighteenth century, Bourbon reformers became increasingly fearful of the increasing social disorder that this exogamy seemingly bred, and they clamped down on intermarriage. And beginning in the 1770s the crown published a series of Real Pragmaticas intended to prevent marriages between social unequals by requiring

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<sup>7</sup> Socolow, The Women of Colonial Latin America, 60 and 64.

increasing levels of parental consent and adjudication before government panels rather than in ecclesiastical courts. In April 1778 Spanish authorities published the Pragmaticas in all of its Texas villages. Initially, the Pragmaticas applied only to full-blooded Spaniards, but in America cases could take on unusual permutations. For example, in 1781 the brothers and uncles of mulatta Ana María Trinidad Games petitioned the Governor of Texas to prevent her marriage to Urbano Ynojosa because he was a mission Indian. Ynojosa ended up marrying another mission Indian, and by 1803 the crown extended the Pragmaticas to all citizens regardless of caste. Very much aware of the Spanish caste system, even non-Spanish locals used the law to serve the interest of the larger family group.<sup>8</sup>

As in the earliest days of conquest, Spaniards continued to recognize Indians of higher status, nonetheless, most Native Americans had no use for Iberian legal distinctions that structured power through race and class and generally placed indigenous people on a lower social rung. Indeed, Spain failed to exert hegemonic power over most East Texas Indians who lived in separate villages and maintained their own laws. According to ethnologist George Sabo III, Caddo Indian descent followed their own patterns when it came to kinship: partially matrilineal, men lived with their wives' families and uncles played more significant roles than biological fathers. But key political and religious positions followed patrilineal lines. Historian Juliana Barr points out that among Texas' Native Americans gender readily trumped the categories of class or caste as the main site to differentiate people within the group, and Texas Indians' marriages followed the model of "bride service." Men paid and continued to pay a wife

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<sup>8</sup> "Jose Miguel Sales Games, Francisco Sales Games, Pedro Hernández, and Carlos Hernández v. Urbano Ynojosa and Ana María Trinidad Games," 6-4-29/1781, BA; "Expediente Governing Marriage of Minors," 4/7/1778. BA.

and her family for her labor, a practice that worked in conjunction with serial monogamy.<sup>9</sup>

One of the earliest observers of Caddo marriage practices Fray Francisco Casañas de Jesús María commented on the "not very commendable" economic and social aspects of Caddo marriages in 1691. According to Casañas a man wanting to marry a "maiden" took the best things he had to her and if her parents allowed her to accept the gift they consented to the marriage. For women who had already been married "there is no other agreement necessary than for the man to say to the woman that if she is willing to be his friend he will give her something." This new arrangement might be for a few days or "binding forever." But to Casañas' dismay few "kept their word" and divorce was easy "because they soon separate from each other -- especially if the woman finds a man who gives her things she likes better than those the first man gave her." The couple usually arranged the divorce between themselves. When a woman sought a separation she told the man that he had given her "many things but what he gave her was but little in comparison to what the new man offers her; therefore, the first one should bear the proposed change patiently and hunt him another wife, or he should go out and hunt something else to give to her so that she will stay with him." When a man sought a separation "he makes a difference between them," and "if the first wife finds that he has another wife in view, she makes it a point of honor (a rare thing among them) to leave him at once and go away in search of another husband." Casañas thought it commendable that the Caddo "never have but one wife at a time" and noted approvingly that noble families did consider marriage contracts binding, and "in *their* circles, no one

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<sup>9</sup>George Sabo III, "The Structure of Caddo Leadership in the Colonial Era" in Native American History of the Caddo: Their Place in Southeastern Archaeology and Ethnohistory, ed. Timothy K. Perttula and James E. Bruseth. (Austin, 1998) 159-74; Barr, Peace Came in the Form of a Woman, 2, 82-83

dares to trouble another's wife." Casañas noted that Caddo's cavalier attitudes towards adultery and divorce explained their lack of "disputes and quarrels," but this did not cause him to change his opinion of marriage as an eternal sacrament. Despite Casañas's indictment of Indian practices there were some striking similarities between Spanish and Caddo customs. Each culture: (1) recognized both patrilineal and matrilineal lines, (2) privileged clan membership over the rights of (especially female) individuals for first marriages, (3) followed differential marriage practices based on a hierarchical social family status, and (4) used marriage as a site for economic exchanges between larger clans -- though in the Caddo case the goods went to the women's family and in the Spanish case goods remained in the wife's name.<sup>10</sup>

By the 1790s Wichita had also established themselves in East Texas, along with many other indigenous groups. American horse trader Anthony Glass described the Taovaya Wichita marriage and sexual practices in 1808 noting that Indian men bought their wives from an uncle or brother usually for one or two horses. Husbands dressed their wives as they pleased, and they were "not addicted to Jealousy and nothing is more common than for a Man to loan or hire out his Wife; particularly to Strangers who visit the nation." Strangers, that is, traders such as Glass, could also buy a wife with a payment of straw, blankets, vermilion, and beads.<sup>11</sup> About twenty years later naturalist Jean Louis Berlandier captured the new mix of indigenous cultures in a manuscript that summarized marriage practices. According to Berlandier all but the Caddo practiced polygamy and "Men are in no way bound to live continuously with the women they have

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<sup>10</sup>[Francisco Casañas de Jesús María], "Description of the Tejas or Aisnai Indians: 1691-1722," trans. Mattie Austen Hatcher, *SWHQ* 30 (April 1927), 283-284.

<sup>11</sup> For the Wichita see, F. Todd Smith, *The Wichita Indians: Traders of Texas and the Southern Plains, 1540-1845* (2000); *Journal of an Indian Trader: Anthony Glass and the Texas Trading Frontier, 1790-1810* ed. Dan L. Flores (College Station, 1985), 61, 63,53-55.

married. If a man takes the notion, even for frivolous reasons, he breaks the bond of marriage and abandons his wife, although the wife has no such right." Among the Arapaho, Towakonis, and Waco adultery per se was not a problem; in fact, "husbands would offer their wives to strangers, and be deeply offended if their offer was refused." Among the Comanche, a few women traveled on their long-range campaigns, and they were "expected to accommodate their husband's relations and friends." But if a wife committed adultery without her husband's consent, he had the right to kill her, though most were happy to simply slash her nose and ears and disown her. There is no question that all of the indigenous marriage practices conflicted with Spanish marriage ideals set forth by church and state, yet their accounts of multiple sex-partners also described the behaviors of the Spanish people of the borderlands. Moreover, both Spanish and Indian husbands could, at least in some cases, choose to severely punish their adulterous wives. While Indians and Spaniards had different laws pertaining to marriages, similarities allowed for the borderland villagers to draw on both cultures as they intermarried.<sup>12</sup>

## Part II: Diverse kinship networks in East Texas

Historians such as David La Vere and Barr have documented extensive French and Indian intermarriages in the Texas-Louisiana region, contrasting endogamous French patterns to closed Spanish ones. According to Barr's formulation, Europeans would have to abide by Native American gender constructs and understand that "kinship" ties were the key that "provided the foundations for every institution." While French traders wed

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<sup>12</sup> [Jean Louis Berlandier] *The Indians of Texas in 1830* ed. John C. Ewers, (Washington D.C.:Smithsonian Institution Press, 1969), 36. Spain also had laws that allowed husbands to kill wives for adultery for most of its colonial period. Although Bourbon reforms challenged this, Spanish Louisiana Governor O'Reilly issued a set of orders that allowed a husband to kill his wife. See Holmes, "Do It! Don't Do It!", 161.

indigenous women, "Spaniards did not emulate their imperial rivals, rejecting Caddos' overtures of intermarriage." The Caddo thus remained "outsiders to Spanish society, religion, and authority" and officials developed a more formal "diplomacy of gender" based on metaphorical exchanges and trade of female captives. Both La Vere and Barr recognize that Spanish citizens did not always follow the endogamous preferences of their superiors. This essay takes that point farther and argues that the Spanish people of East Texas rejected endogamy, acting much like the French in West Louisiana. Some coupled with indigenous people in their villages; others with Indians in Spanish villages; and still others with non-Spaniards. This paper, then, extends the argument that developing kinship ties across ethnicities was crucial to borderlands culture, including the Spanish population of East Texas.<sup>13</sup>

Government correspondence, baptismal records, and census data all show that by the 1790s Spanish Nacogdoches was a creole place, by which I mean both its Caribbean variant (a mixture of European, Indian, and African cultures) as well as its colonial variant (people born in America rather than Europe). Caddo and French began to marry in accordance to Caddo practices at least as early the 1680s when several of La Salle's men took Indian wives. Spanish soldiers in search of La Salle likewise slept with Caddo women, though at least some of these encounters did not meet with Caddo approval, as when a soldier raped a member of their nobility. In 1736 Governor Sandoval reminded the French that the Spanish had been the first to occupy Texas, and for evidence he cited

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<sup>13</sup>Barr, Peace Came in the Form of A Woman, 88-9.

a well-known forty-four year old prenda or captive that had been born of a Spaniard in 1692, and who still lived among the "Asinays nation in the same land of her birth."<sup>14</sup>

Like the French, Spaniards sought and received refuge in local Indian communities during tough times, or following desertions. For example, four Spanish soldiers abandoned the fathers fleeing East Texas in the early 1720s. One of these, Joseph Urrutia, went to the Tonkawa and Xaranames before returning to the Spanish seven years later. And when the Spanish closed down the Presidio at Los Adaes in 1773 many Adaesaños escaped to French and Indian communities rather than move to San Antonio. Throughout the eighteenth century Spaniards traded illegally in Indian villages and military deserters continued to live there well beyond the 1790s when officials began a concerted effort to track these renegades down -- especially the ones such as Alonso de León who had become influential leaders. When Spanish authorities captured and interviewed an illegal American trader in 1795 they found out that León lived with the Tawakoni, where he had two wives and a daughter. In addition, his two Spanish sons, Manuel and Ignacio de León, were also in Wichita villages. Other Spaniards living there included Patricio and his son, and two others who the American could not identify, except that one was from Coahuila and the other from Béxar. When Spanish officials sent out notices to arrest three deserters: Manuel de León (Alonso's son), Francisco Chávez, and José Antonio Munive, they captured León, but not Chávez and Munive who

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<sup>14</sup>For East Texas in the seventeenth and eighteenth centuries see Elizabeth A.H. John, Storms Brewed in Other Men's Worlds: The Confrontation of Indians, Spanish, and French in the Southwest, 1540-1795 (Norman, 1996); Francis X. Galán, "Last Soldiers, First Pioneers: The Los Adaes Border Community on the Louisiana-Texas Frontier, 1729-1779," (Ph.D. diss., Southern Methodist University, 2006). José Antonio Pichardo, Pichardo's Treatise on the Limits of Louisiana and Texas, ed. and trans. Charles Wilson Hackett, (Austin, 1941. 1971), III, 503.

had moved on to the Comanche. The Wichita from Pueblo de la Tortuga (Turtle Village) assaulted their official trader when the Spaniards extradited León's other son Ignacio.<sup>15</sup>

Although contrary to Spanish policy, sexual interrelations -- indeed what Spanish officials termed marriages -- occurred early and often. Like the French, illegal Spanish traders such as the Leóns married Indian wives in the manner of the country.

Additionally, hundreds of captured Spanish children remained in the Indian towns.

American Anthony Glass became "the most intimate acquaintance" of Tatesuck, "a Spaniard...who was taken prisoner when a child and raised amongst the [Wichita]" and his wife a Pawnee. Given Wichita customs it seems likely that Glass' "intimate acquaintance" with the couple meant that he would have had sexual relations with her -- thus creating Spanish-Taovaya-Pawnee-American kinship circle.<sup>16</sup>

If Spaniards married Indians, the record is even clearer about early French and Spanish interrelationships. In 1714 Louis Juchereau de St. Denis, a prominent Louisiana trader, accompanied by several French men and Tejas Indians arrived at the Spanish presidio San Juan Bautista on the Rio Grande with some French merchandise. Not sure what to do about this violation of Spain's mercantilist laws, the commander Don Diego Ramón detained St. Denis at his home while awaiting word from the Governor of Coahuila. By the time Spanish authorities decided to send St. Denis to Mexico City for interrogation, the Frenchman had courted Ramón's step-granddaughter, Manuela Sánchez

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<sup>15</sup>On the deserters see "Bexar Proceedings of the Investigation of John Joseph Gálvez or Calvert an English-America from Philadelphia," 7/6/1795 - 9/24/1795 and "Bexar Cuaderno of Muñoz's letter to Nava," 1/4/1796 - 7/10/1796 (#441). Other dates on deserters include: 6/4/1795; 6/4/1795-6/22/1795; 9/13/1797; 10/17/1797; 4/19/1795-5/5/1795 7/10/1795, BA. For Spanish and Indian trade see: David La Vere and Katia Cambell, "A Expedition to the Kichai: The Journal of François Grappe, September 24, 1783," SWHQ, 98 (July, 1994), 58-78.

<sup>16</sup>Journal of an Indian Trader, 61. On Spanish captives see Joaquín Rivaya-Martínez, "Captivity and Adoption among the Comanche Indians, 1700-1875" (Ph.D. diss., University of California, Los Angeles, 2006).

Navarro. Now connected to a Spanish family officials hired St. Denis to lead an expedition into East Texas to found several missions. The marriage between St. Denis and Sánchez began a frontier trade cartel that connected two prominent French and Spanish families for the next century. Even at this higher level of government, families on the borderlands chose to marry non-Spaniards rather than maintain the purity of their Spanish blood.<sup>17</sup>

Nonetheless, the St. Denis-Ramón clan -- and other borderland cartels -- had to build their networks under the noses of more disapproving and distant Spanish authorities. Soon after St. Denis returned to East Texas, Captain Ramón confiscated a new batch of his grandson-in-law's trade goods, perhaps to stem accusations Ramón participated in contraband trade. St. Denis traveled to Mexico City to file a protest, but instead of returning his goods the Spanish incarcerated him and ordered that he and his family be exiled to Guatemala. St. Denis managed to escape and make his way back to Louisiana, and eventually, the French appointed him as commander of Natchitoches. Despite these troubles both St. Denis and his family continued to cultivate Spanish ties. A few years later Spanish priests baptized their child at Spanish Los Adaes, and Manuel Antonio de Soto Bermúdez, a Spanish soldier, deserted to marry St. Denis' and Sánchez Navarro's daughter, Marie des Neges de St. Denis. When St. Denis retired in 1743 he petitioned the French crown to return to New Spain. Instead, the French governor urged St. Denis to remain in Natchitoches, promising to bestow honors on his children. Many of the sons and sons-in-laws of this honored "French" clan would in turn work for Spain

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<sup>17</sup> For French and Spanish intermarriage see Patricia R. Lemée, "Tios and Tantes: Familial and Political Relationships of Natchitoches and the Spanish Colonial Frontier," *SWHQ* 101 (Jan 1998), 341-358. On St. Denis see Ross Phares, Cavalier in the Wilderness: The Story of the Explorer and Trader Louis Juchereau de St. Denis (Baton Rouge, 1952).

when France turned Louisiana over in 1762.<sup>18</sup> National allegiances shifted easily for these multi-ethnic families who had more connections (and rivalries) with each other than with their more distant crowns.

While St. Denis wed a Spanish woman, one of his partners François Derbanne married a former Chitimaca slave, Jeanne de la Grande Terre. Their wealthy but métis son caused a stir when he married the daughter of Joseph González, a Spanish commander at Los Adaes. In 1736 twenty-five-year old Jean Baptiste Derbanne sought the advice of the Jesuit priest of French Natchitoches in order to pursue fifteen-year-old Victoria Margarita González. The priest suggested approaching the priests at Los Adaes, but Franciscan Father Vallejo "gave cogent reasons for not mixing in the matter." Vallejo could see that this would be an "injudicious marriage" because of the "inequality between the couple." Thus rebuked, Derbanne went back to the Jesuit who suggested petitioning "her parents in person for her hand." When Derbanne approached González, the Captain met him "courteously", but "without giving him hope." González conceded that some might consider Derbanne a gentleman, and he did not wish to hurt his feelings, therefore Gonzalez told the suitor he could not allow the marriage due to the governor's absence at the post. But González's letter to the governor reveals a different concern: if Derbanne "were of the highest French nobility," he would have refused to have his "blood mix." Soldiers and soldiers' families in frontier posts had to both marry people of equal status and have their superior's approval. A marriage between a French métis (even a gentlemanly one) and a Spanish daughter thus violated both church laws and military laws against unequal marriages. So Jean Baptiste and Victoria eloped. The couple fled

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<sup>18</sup>Lemée, "Tios and Tantes," 354.

in a canoe to Natchitoches arriving around midnight. According to the Spanish Franciscan priest, the French Jesuit "scorning the laws of the Church...performed his rash wedding ceremony." To a degree, people on the borderlands could pick and choose who would legitimize their marriages.<sup>19</sup>

González proclaimed that Derbanne had "sorely tried" his "patience." Or had he? It's possible that González masterminded the elopement plot to build ties to a powerful Natchitoches trading family, without violating Spanish laws and losing his post. But this is unlikely. In charge of the Spanish presidio, Gonzalez's authority was tested on other fronts as well. In particular, St. Denis had just moved Natchitoches' fort from an Island in the Red River to its western bank, territory that the Spaniards claimed. A more likely explanation was that Victorias mother and/or her side of the family supported the marriage. González accused his wife's foster brother, one de La Cerda, of abetting the plot, and locked up another supposed Spanish accomplice, Juan de Mora for his involvement. Indeed, Victoria and Jean Baptiste did not act alone; at the very least, a significant portion of the Nacogdoches community sanctioned this "unequal" marriage in which Victoria may have obtained the better economic deal. Borderland matriarchs may have been especially keen on creating kinship ties -- even if they violated government policy. In the same series of correspondence that describes the elopement, Father Vallejo wrote that St. Denis' wife Sánchez, "has not failed to tell us repeatedly that we ought to busy ourselves with other work and not concern ourselves so much in these affairs ...and that it would be better for us if neither Spaniards nor Frenchmen were on this frontier, for when the two come together they devise whatever infamous schemes come into their

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<sup>19</sup> Pichardo's Treatise, 489, 484-5.

heads." Sánchez -- and most of the people in East Texas -- had a different view of kinship that did not privilege nationality, at least not in an exclusive way.<sup>20</sup>

People in the Texas borderlands likewise adopted distinctive coupling practices. Ethnohistorian Gray Whaley has pointed out the difficulty of separating intermarriage, interracial sexual marriage, and prostitution at the Lower Columbia River fur trading villages where "prostitution never remained static or easily defined." In Texas French and Spanish men engaged in sexual exchanges that priests regarded as prostitution, though the men and women who participated in them probably understood them in the context of borderlands kinship patterns. Alexis Grappe, a French trader and carpenter living among the Kadohadacho scandalized Father Santa María y Sylva who "had in his house five captive Indian women, of various nations" that he kept "for the infamous traffic of the flesh." The friar hoped to "rescue" the women in Grappe's home, but the commander who had taken him to the village, Athanase de Mézières (St. Denis's son-in-law), would not allow the priest to break up the group. The priest had to content himself with saving an old man who had been living like the "barbarians" for thirty years. Mézières and Grappe probably thought of the five women as wives "loaned" or "hired" out to "strangers" -- to again use Glass's language. In the end, it may be that Father Santa María was closer to the mark. After all, the women belonged to five different nations -- almost certainly captive slaves -- and they might not have had strong kinship ties to protect them from sexual exploitation and abuse. Grappe eventually married a métis woman in the church, Louis Marguerite Guedon, and their son François would become an

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<sup>20</sup> Pichardo's Treatise, 484-5, 489.

important Caddo-French-Spanish-American go-between and translator in the late eighteenth and nineteenth century.<sup>21</sup>

A 1776 murder case sheds further light on the fuzzy interrelationship of kinship, marriage, and prostitution on the Texas borderlands. At Los Adaes María Refugio de Jesús Santa María, a baptized Ais Indian, had married vecino José Antonio Calderón, alias Vallejo, who was probably a Spaniard or mestizo as he is called a vecino. When Calderón beat her she fled to her nation, but returned when he promised to treat her "as she deserved." The couple eventually moved to San Antonio, probably as part of the larger evacuation of Los Adaes. A notorious drunkard and a gambler, Calderón continued to assault Refugio and failed to supply her with adequate food and clothes. According to the Father at Mission San José, Calderón sold Refugio's sexual services to other men in order to pay off his debts. After Calderón's murder, Refugio claimed that Francisco Arocha, a weaver and ranch hand at the San José mission, gave her husband two pesos so he could have an illicit relation with her. When she refused to participate in their deal Arocha killed Calderón. But Arocha and a female relative, Angela Pacheco, told a different story. According to their account, María Refugio had sent a message to Arocha through Angela: she wanted Arocha to kill her husband and told him where they would be the next day. Arocha did not intend to fulfill her request, but when he saw Calderón abusing Refugio he feared for her life and killed Calderón to protect her. Given the conflicting testimonies, the governor called Pacheco, Arocha, and Refugio before him for a confrontation. In the end, Refugio conceded to Arocha and Pacheco's version, and

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<sup>21</sup> Gray Whaley, "'Complete Liberty'? Gender, Sexuality, Race, and Social Change on the Lower Columbia River, 1805-1838," *Ethnohistory*, 54 (Fall, 2007), 691; Miguel Santa María y Silva to the Viceroy" July, 21, 1774, in *Athanase de Mézières and the Louisiana-Texas Frontier, 1768-1780*, ed. Herbert Eugene Bolton, (Cleveland: The Arthur Clark Company, 1914), II, 74-5.

both Refugio and Arocha admitted to having had an illicit relationship with each other; it seems that Arocha had hoped to make the widowed Refugio his wife.<sup>22</sup>

Ultimately, all four -- Calderón, Refugio, Arocha, and Pacheco -- ignored Spanish law and marriage ideals, relying at least in part on indigenous and borderlands norms as they made important choices. Calderón sold his wife to other men. Refugio left her husband and returned to her family when Calderón failed to provide continuing bride service. Refugio engaged in extramarital relations willingly, at least in the case of Arocha. When Refugio moved to San Antonio she could no longer rely on the proximity of the Ais, and had initially turned to the Spanish priests for protection. But as the fathers could not dissolve her marriage or offer her relief from Calderón's violence, Refugio created a new kinship circle with the San José Indians who helped engineer the murder. The inability to obtain a divorce in the Catholic Church perhaps left her few choices, and both Arocha and Refugio's defenses cited Calderón's abuse as justification for the murder.<sup>23</sup>

Refugio and Arocha did not receive the death sentence as Spanish law required. In Arocha's defense, Vicente Camaño asserted that "If [Arocha] is to be punished in a severe manner, according to the Royal Laws, all the Indians who have been converted to the Catholic Church, and others who are going to be converted, shall abandon these Missions, which will cause lamentable consequences." 109 As in virtually all cases involving Indians, both Arocha and Refugio's defenses declared their ignorance of Spanish laws, despite having been baptized and educated at the missions. In the end, the governor sentenced each to seven years of exile and labor, and it's likely that he did not

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<sup>22</sup> 6-4-1776, BA.

<sup>23</sup> 6-4-1776, BA.

fully enforce even this lighter punishment. By the proceeding's conclusion, Refugio had married again -- not Francisco Arocha -- but instead one Santiago Saucedo, another San José Mission resident. Thus an Ais Indian who plotted the murder of her vecino husband through a San José Indian ended up marrying a different man from that same mission. The possibilities for intermarriage could not have been more complex.<sup>24</sup>

The official population records offer excellent evidence that intermarriage among the Spanish population was the norm -- perhaps even more so than in French Natchitoches. In 1795 the Spanish authorities ordered an extensive census of Nacogdoches, Texas. The 608 people who lived there came from a wide variety of places. Some people were born in nearby posts, such as Nachitoches and La Bahia. Others hailed from further a field: San Antonio, New Orleans, New Mexico, Laredo, Saltillo, Monterrey, Havana, and the Canary Islands. There were very few peninsulares, or people born in Spain. On the other hand, there were individuals from Philadelphia, Canada, Ireland, France, Virginia, England, and Italy. The census listed 33 black slaves but did not report where they came from. Indians included Apache, Lipan, Campuhey, Malley, and Nachez, among others. More people (219) originated from the abandoned town of Los Adaes than anywhere else -- but these local Adaeseños were also a heterogenous mix of Indian, Spanish, French, and African. The census also cited a wide variety of racial castes, or what the census takers called calidad. There were 81 Spanish,

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<sup>24</sup> 6-4-1776, BA. On Indian crime, defense, and punishment see, Steven W. Hackel, Children of the Coyote, Missionaries of Saint Francis: Indian-Spanish relations in Colonial California, 1769-1850 (Chapel Hill, 2005), chap. 8: 321-366.

63 mestizo, 40 mulatto, 33 negros, 20 indios, 14 callotes, 6 lobos, and 5 castizo. The census did not list race for non-Spanish Europeans, or for underage children.<sup>25</sup>

Though Nacogdoches lacked extensive church and state institutions, the marriage rate was extremely high. Of the 268 non-dependent adults 210 were married. In addition, there were 21 widows and 9 widowers. Four women and 1 man were listed as having an absent partner. Unmarried adults included 2 priests and 5 single men. In addition there were 9 men of age living with relatives or employers, and 2 elderly women living with relatives. The group of nine slaves belonging to Gil Ybarbo noted marriage status for the adults: two had married, one was widowed, and one remained single. The census reveals very little about the age, origin, and marital status of the twenty-four slaves that did not belong to Ybarbo. The seven couples that were not listed as married mostly came from other places, including Virginia, France, Canada, Italy, and Apacheria. Such non-Spaniards and their slaves would have been baptized and formed unions in other churches (if at all).<sup>26</sup>

Even more significant than the overall diversity and high marriage rate was the fact that a majority of Nacogdochians married someone of a different caste. 64 marriages took place between people of different categories, and only 33 marriages were between two people in the same category. And being Spanish did not prevent either men or

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<sup>25</sup> Sophie Burton argues against extensive intermarriage in "Family and Economy in Frontier Louisiana: Colonial Natchitoches, 1714-1803," (Ph.D. diss., Texas Christian University, 2002). Also my own quick perusal of the Mills data suggests that intermarriage was not as extensive in Natchitoches. See, Elizabeth Shown Mills, Natchitoches, 1729-1803: Abstracts of the Catholic Church Registers of the French and Spanish Post of St. Jean Baptiste des Natchitoches in Louisiana (NAACCR), (New Orleans: Polyanthos, 1977), II. Alicia V. Tjarks describes Texas as a melting pot in "Comparative Demographic Analysis of Texas, 1777-1793," SWHQ 77 (1974), 291-338. The most extensive study of Texas population is Tina Laurel Meacham, "The Population of Spanish and Mexican Texas, 1716-1836." (Ph.D. diss., University of Texas at Austin, 2000). I did not use her data as she combined distinct categories. I collected the census data from "General Census Report of Nacogdoches," 12/25/1795, BA.

<sup>26</sup>"Census," 12/25/1795, BA; One Spanish couple, Mariano Santa Cruz and Josefa Torres, were not listed as married, but this may have been a clerical omission because the entry does describe Torres as "su mujer."

women from marrying outside of their caste. 11 Spanish men and women married each other. But 14 Spanish women and 24 Spanish men married outside of their group, and all groups intermarried. The 1795 census is the most powerful testament to the diversity of Spanish Nacogdoches and the willingness of the population to intermarry. But this hardly means Nacogdoches was egalitarian.<sup>27</sup>

Like every French, Spanish, and Indian village in East Texas and West Louisiana, Nacogdoches had slaves and participated in the Indian slave trade. A 1795 Nacogdoches list of gifts to Indian visitors included an entry for "one slave and one Josepha Diabuxas" to Tawakoni Captain Chiquita and his wife. At least by 1776 neighboring Natchitoches was not just a society with slaves, but a slave-holding society as African, mulatto and Indian slaves comprised 42% of the population. Though Nacogdoches had a smaller percentage of slaves over twenty years later, the evidence suggests that the Spanish town hoped to replicate Natchitoches's economy. In 1795 the 33 esclavos negros or negro slaves that made up about 5.5% of the total population included 15 men, 12 women, and 6 unidentified. But only 3 of Nacogdoches' slaves lived in households with one slave (9%), while 24 slaves lived in groups of 6 or more (73%). Most of these slaveowners were French. For example, Francisco Morban was from New Orleans, and Pablo Lafitte and José Mariano were both from Bordeaux, France. The census identifies Don Pedro Dolet and María Dupre as Spaniards, but each had French names, and Pedro is almost certainly Pierre Dolet born in Natchitoches on July 17, 1761. Ybarbo, was not French, but had extensive contraband ties to Natchitoches.<sup>28</sup>

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<sup>27</sup>"Census," 12-25-1795, BA.

<sup>28</sup>12/25/1795, BA; Natchitoches Census information is from Mézières in Louis Raphael Nardini Sr., My Historic Natchitoches, Louisiana and its Environment, (Natchitoches, LA: Nardini Publishing Company, 1963), 89. I have excluded Indian traders from the count. Mézières said there were an additional 84

As in the case of marriage records, servitude records could be deceiving. Spanish law prohibited Indian slavery, yet Spaniards took in captive Indians, calling them criadas and criados libres (free servants). The census listed a total of 6 criados libres: one was Spanish, two were Indian, three were not identified. The census also recorded two mestizo-headed households with an Indian boy (indito 4) and an Ais girl (indita 5 months). The role the female servants played is not entirely clear. Francisco Morban's household included himself (61), four nephews, one negro slave, and one Apache female. Was she Morban's partner? The slave's partner? Did she have multiple partners? Another unusual household consisted of Spaniard Juan Ignacio Guerrero, his wife María Antonia Ibarvo, their two sons, one black female slave (18), two free servants, Ana Sanchez (22) and Josefa Barrera (11), and a widowed aunt (69). Why did the Guerrero-Ibarvo family have so many female servants? Were they involved in some kind of service? Perhaps sexual? The census also had a third dependent category: sirviente or servant. People in this category included one Anglo name, two Spanish names, and five unnamed Irish; none of these servants were Indian or black. While the census reveals a great deal of intermarriage, it also offers a view of Nacogdoches as a hierarchical place that assigned work within families and according to race and ethnicity.<sup>29</sup>

### Part III. Turn of the century legal records for Nacogdoches

Foremost legal scholar of the Spanish frontier, Charles Cutter notes that both modern historians and contemporaneous Anglo-Americans believed the Spanish legal system was "ponderous, tyrannical, arbitrary, and corrupt." One traveler to New Mexico,

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bachelors and non-residents trading and hunting with Indians. If we include them 37 % of Natchitoches were slaves. "Census," 12/25/1795, BA.

<sup>29</sup>The census also lists one free black man, Francisco González, from Guatemala.

Josiah Gregg, complained that "there is scarcely one alcalde in a dozen who knows what a law is." In contrast, Cutter proposes that the Spanish legal systems drew on Castilian and Indian laws and justice to develop effective, just, and harmonious mediations between the diverse elements of colonial society. Thus "while imperial administrators and the 'better sorts' of colonists may have been guardians of the dominant culture, the constant negotiation between various strata created, even in the formal setting of the law, what might be termed the consensual hegemony of Spanish rule." According to Cutter, "local usage and long-standing practice" often prevailed, and "respect for local particularism... has been the most overlooked dimension of the Spanish colonial legal system." In Nacogdoches this particularism evolved in the fusion of different cultures rather than in the practices of one locally rooted people.<sup>30</sup>

The success of Spain's complex judicial system throughout the Northern frontier, as another scholar, Alfredo Jiménez, suggests was rooted in the idea and actuality that ultimately the monarch dispensed justice -- anybody could appeal to the crown though it might take a long time and a large expense. Throughout America, Spanish rulers built a colonial system based on an extensive written culture in which all clerical, governmental, and military officials, ultimately reported to the King or Queen of Spain. Even in remote regions officers kept detailed records. But unlike the more settled parts of colonial Spain that had established courts, full-time judicial officers, and access to lawyers, newly-settled distant places had no formal full-time judiciary. Instead, governors and

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<sup>30</sup> Charles R. Cutter, The Legal Culture of Northern New Spain (Albuquerque: University of New Mexico Press, 1995), 164-5, 38, 3. On the law in Spanish America in general see, for example, Susan Kellogg, Law and the Transformation of Aztec Culture, 1500-1700 (Norman, 1985); M.C. Mirow, Latin American Review: A History of Private Law and Institutions in Spanish America (Austin, 2004); Kenneth L. Karst and Keith S. Rosean, Law and Development in Latin America (Berkeley, 1975) On the law in Louisiana see, Mark F. Fernandez, From Chaos to Continuity: The Evolution of Louisiana's Judicial System, 1712:1862 (Baton Rouge, 2001).

lieutenants heard complaints, as could the priest in some cases, especially in missions or if a citizen had broken a sacrament. In Nacogdoches during this period, the lieutenant governor had the last word in terms of dispensing everyday justice, including marriage cases, due to the Real Pragmatica. Occasionally, if the commander could not resolve a dispute or if he sought a criminal investigation, he collected evidence and sent it to the next level -- which was the governor of Texas. In some especially egregious cases, Spanish soldiers brought suspects to San Antonio so the Governor could obtain direct testimonies.<sup>31</sup> The highest figure was the Commander-General who rarely interceded in local affairs. These Spanish authorities could be tyrannical, arbitrary, and corrupt, but they could not completely disregard the wishes of local populations. Indeed, authorities often participated in illegal practices that diverged from strict Spanish law.

Commanders did not keep an official record of the smaller disputes that they must have settled on a regular basis. But there are occasional traces of everyday squabbles in Nacogdoches, such as the following argument between Mauricia Mora and Antonia de los Ríos over a cow. In 1801 Antonia Ríos came before Miguel Músquiz the Lieutenant Commander of Nacogdoches with a complaint against Mora. Ríos had bought a cow from Juan Domingo Dominguez for six pesos. But Mora claimed that this was not a legitimate sale because Juan Ibarvo, Mora's deceased husband, did not own the cow that he sold to Dominguez. The "improperly sold" cow "very much belonged to" Mora who had received it from her father Jacinto Mora. Ríos did not dispute Mora's initial claim that Mora (the wife) rather than Ibarvo (the husband) owned the cow, but if she couldn't have the cow, she wanted her six pesos back. Músquiz then called Mora before him to

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<sup>31</sup>Alfredo Jiménez, "Who Controls the King?", in Choice, Persuasion, and Coercion, 1-25.

hear that side of the story and grew suspicious that Jacinto Mora had ever given his daughter the cow. Ultimately, the commander determined that Mora should keep the cow, but give Ríos back the six pesos. Mora, however, could not pay Rios, so they all agreed that she would make the payment at the end of the month. When Mora did not come up with the money Músquiz decided that ownership of the cow should revert to Ríos. The case was closed. Over the years, Músquiz probably had many other people come before him over similar property and other personal disputes.<sup>32</sup>

Meanwhile, the cow had several calves and the Spanish crown replaced Músquiz with a new commander, José Joaquin de Ugarte. At that point Mauricia Mora and her father Jacinto Mora appeared before Ugarte arguing that Músquiz had ruled unjustly in the case of the cow. Ugarte agreed with the Moras, and the cow and her calves went back to Mauricia Mora. The case might have ended there. But Ríos complained to Músquiz, and -- more significantly -- the crown eventually redeployed Músquiz back to Nacogdoches. Now he wrote to the governor claiming that Ugarte's actions had unfairly hurt Ríos, and most importantly had damaged Músquiz's authority and honor by reopening a closed case without consulting him first. Músquiz wanted the cow and calves returned to Ríos, and an apology from Ugarte.<sup>33</sup>

Had there been no dispute between the commanders, historians would not have this window into this everyday execution of justice -- and an opportunity to see the workings of women's dowry practices and property rights on the borderlands. Both commanders put Spanish laws that recognized separate property rights for husband and wife at the center of their rulings. Mauricia Mora was probably 13 when she married 27

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<sup>32</sup>"Miguel Músquiz request to have the case of Antonia de los Ríos v. Mauricia Mora revised," 2-1-1807, BA.

<sup>33</sup> "Músquiz request," 2/1/1807, BA.

year-old Juan Ibarvo, but he had no right to alienate the cow Jacinto Mora had (perhaps) given his daughter as a dowry. Even Músquiz -- who did not fully believe the Moras -- tried to mediate a settlement that recognized Mora's ownership of the cow: she could keep the bovine, but only if she repaid Ríos. The dispute suggests that both locals and commanders followed Spanish principles of property ownership that allowed women to own property and retain dowries. The cases also hint at other factors at work in borderlands codes. Although women had a right to property ownership, Mora's father filed the complaint against Ríos. Families worked together, against other families, and often through alignments with powerful Spanish officers. The typical three year shift for commanders was intended as a check on their power, but an unintended consequence drew these authorities into the local politics that developed along kinship lines.<sup>34</sup>

Regardless of which faction governors aligned with, the official records indicate when it came to women most differences involved marriage. In the 1790s, following the introduction of the Real Pragmaticas, the government became more intrusive in marriage choices. Several presidio soldiers -- and one mother -- asked the governor for special dispensations to marry. When Domingo Trejo requested a military leave from La Bahía so that he could fulfill his promise to marry in Nacogdoches, the governor of Texas said he could not grant the license at the moment, due to the war with France. But he would concede to a leave during more peaceful times so that he could finalize his marriage and celebrate the wedding. Following a request from the mother of soldier the Commander-General of the Internal Provinces made it clear that once the soldier joined the military, only his captain could grant him the right to marry -- and only the company's priest could

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<sup>34</sup> "Músquiz request," 2/1/1807, BA.

ratify the wedding. Her son had erred in making vows without their permission. Even the powerful one-time commander of Nacogdoches Antonio Gil Ybarbo, had to request permission to marry María Guadalupe de Herrera.<sup>35</sup>

One Nacogdoches commander took an especially strong interest in regulating marriages. In August of 1797 José María Guadiana, wrote to the governor complaining about the many couples that cohabited with someone other than their marriage partner. There were "various married heads of families that practiced sinful concubinage," although he and the friars had done everything possible to correct the matter through warnings and punishments. Guadiana singled out one couple in particular: Jacinto Mora (Mauricia's father) and María de Jesús del Río, who had been living together for more than twenty years, though both were married to someone else. This case had special urgency because the scandalous behavior reflected badly on both families. María Antonia de Berbán, Mora's legitimate wife (and almost certainly a relation of Jacques Baptiste Derbanne who had eloped with Victoria González's half a century earlier) repeatedly complained about the matter. When she confronted her husband, Mora snapped that only God could take his love away. Guadiana noted Mora and Rio had an illegitimate son living with his grandmother, and that Berbán had remained innocent throughout the desertion. María del Jesús del Río's husband, Pedro González (likely another relation of Victoria González), had not -- as he too engaged in illegitimate relations. Guadiana suggested that because neither family had any goods, except a house and a plot, one of the families should relocate in Béxar. Though none of these couples

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<sup>35</sup> "Correspondence between Cortés and Muñoz concerning soldier Domingo Trejo who is to be married in Nacogdoches," 9/9/1795, BA; "Nava to Governor of Texas giving instructions for securing discharge and celebrating marriages of certain soldiers," 12/15/1795, BA; "Nava to Governor of Texas granting permission for marriage of Antonio Gil Ibarvo and María Guadalupe de Herrera," 12/15/1795, BA.

lived with their original marriage partner, all of the individuals in this case were listed in the 1795 census as being married. Jacinto Mora was listed as married to María Antonia Berbán, with two boys. And Pedro González was listed as married to María de Jesús del Río, with a son aged 3.<sup>36</sup>

By 1797 a woman could press state authorities to force her husband's return, and Berbán likely complained because her husband did not provide for her. Perhaps Guadiana supported Berbán due to her connections with the important Derbanne clan in Natchitoches; the Ríos and Berbán case suggest that factions might have broken down according to Derbanne/Musquiz/Guadiana v. Ugarte/Mora/Ybarbo (at least at this juncture). Possibly Guadiana supported Berbán to fulfill new Bourbon marriage regulations and increase his power over the Spanish village. Guadiana's support for Berbán was almost certainly not due to a strong moral imperative or religious principle. Indeed, a few years later, Guadiana would also come under suspicion for his own illicit relationship. In 1801, the commander-general wrote a secret letter informing the governor that Nacogdoches lieutenants Músquiz and Guadiana lived in scandalous relationships: Músquiz with the daughter of soldier Juan de la Cruz and Guadiana with the daughter of one Padilla. The commander-general cited the illegitimate relations in conjunction with involvement in contraband trade, and both Guadiana and Músquiz lost their jobs shortly (and temporarily). As both Guadiana's actions and his comments suggest many people lived with someone other than their marriage partner -- and most were not prosecuted. Clan membership and easy separations rather than strict adherence to Spanish and Catholic law marked the marriages of the borderlands as the people of

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<sup>36</sup>"Guadiana to Muñoz asking that certain troublesome people be deported to Bexar," 8/18/1797, BA.

Nacogdoches fused indigenous, American, French, and Spanish practices. Others on the borderlands did likewise. At least one Indian woman rejected Comanche laws when she sought refuge from her husband among the Spanish, claiming that her husband intended to kill her.<sup>37</sup>

As in other places, borderland slaves had few legal rights and their families could be broken up in legal disputes. When the governor of Texas ordered the liquidation of Ybarbo's property to pay a Louisiana debt in 1795, an appraiser listed his slaves including one Isabel (37), her daughter Manuela (7), her son Manuel (4), and her other son Ylario(16). Don Vincente Michely acquired these slaves and in 1797 sold María Isabel for 350 pesos, Manuel for 150 and Manuela for 200 pesos. Three days later Lieutenant Guadiana informed Governor Nava that Michely had bought another slave, Juan Bautista, to set up a "vaqueria" or cow herd at Sabine Pass; Michely promised not to sell Bautista to the French for any price.<sup>38</sup> Spanish slave laws drew on Catholic principles that ensured slave baptisms, recognized slave marriages, and required humane treatment. Spanish slaves often petitioned for freedom due to unusual cruelty and a slave had a right to buy his or her freedom -- measures that Louisiana slaveowners resisted when they became part of the Spanish empire. But if Spain had more favorable slave laws, Isabel and her daughter Manuela were still slaves, now subject to new owners. In San Antonio or Santa Fe most slaves worked within a household as a mark of status for their owners, but the large numbers of slaves in a few Nacogdoches households, the large number of women in some households, and Michely's plans to put Juan Bautista in charge of a cow herd suggest that the people of Nacogdoches intended to use African slaves in more

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<sup>37</sup>7-21-1801, BA.

<sup>38</sup> 8-1-1795- 0717, BA; 3-20 -1797, 0142, BA.

extensive operations involving ranching, trade, and perhaps, prostitution. Not surprisingly, ranchers and traders Gertrudis de los Santos and her husband Antonio Leal contributed to this extension of slavery. After exporting horses for Nolan, the couple imported four slaves, including a woman and her child from Louisiana.<sup>39</sup>

So how did Santos -- a prominent Spaniard and slave owner -- come to the attention of Spanish authorities? She became involved with the wrong smuggler. Santos was about fifty years old in 1801, and had recently moved to a ranch near Nacogdoches, to take advantage of the growing opportunity to trade with Americans. A descendant of the Canary Island families that had populated San Antonio in its earliest days, Santos had married another Canary Island descendant and Indian agent Antonio Leal. By 1800 the two were working with Philip Nolan, friend of American General James Wilkinson and a horse trader who had made several drives from Texas to the United States -- with Spanish consent. Although born in Ireland, Nolan was a knowledgeable participant in borderlands culture, having lived in Nacogdoches and its surrounding Indian villages during the 1790s. When Spanish authorities became increasingly concerned with American incursions, they refused to issue Nolan a passport for his last run, but Nolan decided to go anyway, with a crew of armed Americans, Spaniards, and African slaves. When a deserter informed Spanish officials that Nolan planned to build a fort and takeover Texas, the commander at Nacogdoches rounded up Santos and sent them to the Governor at San Antonio. His questions focused on several points. Did they know about Nolan's military plans? Had they had secret correspondences with him? Had they introduced contraband trade items into Texas? And did Santos have illicit relations with

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<sup>39</sup> On slavery see Gilbert C. Din, Spaniards, Planters, and Slaves: the Spanish Regulation of Slavery in Louisiana (College Station, 1999); Jane Landers, Black society in Spanish Florida (Urbana, 1999) .

Philip Nolan?<sup>40</sup> The evidence suggests that Santos was unaware of any of Nolan's military designs (indeed the record is not clear that he had any). But she did receive a secret letter, participated in contraband trade, and had an illicit relationship with the horse trader. In short, she broke the Spanish laws on several counts.<sup>41</sup>

Yet she was hardly alone. Both political and ecclesiastic leaders in Nacogdoches benefited from Nolan's illegal ventures and his illicit relations with Leal and Santos. One post commander enabled the couple to purchase the ranch used to stage Nolan's horses. Another commander refused 100 pesos when they came directly from Nolan, but accepted the money from Santos, supposedly as payment for a debt. Even the Nacogdoches priest, Father Gaitan, welcomed a gun Santos gave him from Nolan. If Santos acted illegally she did so with the tacit complicity of these other powerful figures. Indeed, her actions did not violate local ideas of right and wrong on the borderlands -- even when she became Nolan's lover.<sup>42</sup>

She certainly did not hide her affair. According to one informant everyone knew about Santos' illegitimate relations with the trader, after all, they had traveled together on a cattle drive. During her testimony Santos readily admitted to being a "fallen woman", and the relationship did not seem to bother her husband either. When the governor asked Leal why his wife served Nolan, what she did for him, how much did she earn, and where did she go with him? Leal responded that his wife served Nolan due to his own friendship with the trader, that she did not receive a salary, that she took care of his personal assistance and any other things Nolan needed. Leal did not know "what other things his wife did for Nolan, nor where they had traveled together, because he was

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<sup>40</sup>"Criminal Proceedings," 1-23-1801-9-13-1801, BA.

<sup>41</sup>"Criminal Proceedings," 1-23-1801-9-13-1801, BA.

<sup>42</sup>"Criminal Proceedings," 1-23-1801-9-13-1801, BA.

absent trading with the Tanchahues, as per the former deceased governor's orders."

Antonio Leal had asked his wife to provide hospitality for his trading partner. Did he ask for more? Possibly. Leal traded with Wichita villages and likely had sexual relationships, or even a wife, among the Tonkawa. Perhaps Leal followed Wichita practices as described by Glass when he "loaned" his wife to his friend.<sup>43</sup> No less than other groups on the borderlands, Spanish families welcomed sexual relations with outsiders in order to create new kinship ties.

Scholars Noel L. Loomis and Abraham P. Nasitir have described the Santos-Nolan affair as an unusually genuine moment of true romance. Others have seen the relationship as a business venture. A letter from Nolan to Santos intersperses information about business and debt with romantic touches. Nolan told Gertrudis after he finished his horse run he would buy a house and call for her in his new home or she could send for him in Nacogdoches. He assured her that "his heart belonged to her". He closed the letter by asking her to write "everything that she is thinking and wants", and if she found no one who could write a secret letter to confide all of her thoughts to his assistant James Cook. Nolan also told a friend that he wanted to bring Santos to Natchez after he made his fortune. There is no Santos letter, so we do not have her words. Nolan's letter ultimately cannot prove Santos' and Leal's love for each other -- though it might have been very strong. But this was more than a simple business relation as well: their affair took place within the context of borderlands kinship building.<sup>44</sup>

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<sup>43</sup>"Criminal Proceedings," 1-23-1801-9-13-1801, BA.

<sup>44</sup>Noel M. Loomis and Abraham P. Nasitir, Pedro Vial and the Roads to Santa Fe (Norman: University of Oklahoma Press, 1967); Maurine T. Wilson and Jack Jackson, Philip T. Nolan and Texas: Expeditions to the Unknown Land, 1791-1801, (Waco Texas, 1987); Noel M. Loomis, "Philip Nolan's entry into Texas in 1800" in The Spanish in the Mississippi Valley, 1762-1804, ed. John Francis McDermott (Urbana, , 1974).

For Nolan this included ties with other women, including perhaps another member of the Leal-Santos clan. In San Antonio Nolan impregnated teenager Gertrudis Quiñones, the daughter of Juana María (Leal) Quiñones and god-child of Juan José and Josefa Leal -- possible relations of Antonio Leal. Nolan's letter to Santos also mentioned two other women. He told Santos that the "little black girl (la negrita) could expect the flowered silk" and "to send his love to la Chepita". Was the little black girl Santos' slave? Was she Nolan's daughter? Was she Nolan's lover? Was la Chepita Nolan's daughter, lover, or slave? Were "la negrita" and/or "la Chepita" the slaves that Santos brought back from Natchez? Or was la Chepita a nickname for Gertrudis Quiñones? I can't prove any of these with the available historical evidence -- but any one of these propositions could have been true. By looking closely at formal and informal gender relations it becomes clear that the people in Nacogdoches had their own rules rooted in building kinship relations across cultures -- in which no one expected monogamy.

At the turn of the century Spanish creole elites in Nacogdoches increasingly extended ties to incoming Americans, as they had done earlier with the French and Indians. Thus Gertrudis de los Santos' brother, José de los Santos, chose to marry Maria Hooper, an American. When the priests at Nacogdoches refused to marry him, he followed in the footsteps of earlier Spaniards who crossed over to Natchitoches to fulfill their vows. And like earlier marriages, these provided cover for contraband trade with the settlers from the United States -- as it extended the institution of African slavery.<sup>45</sup>

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<sup>45</sup> 9-23-1796, BA;

## Conclusion

While diplomats in Europe wrangled over Texas' boundaries, the people of the borderlands created villages and communities that often challenged the written laws of Spain, including marriage laws. Still, at the turn of the century the Spanish crown did have some power over the citizens in its borderlands villages. Spanish authorities banned Antonio Leal and Gertrudis de los Santos from living in East Texas and the couple returned to San Antonio. Leal died shortly, and the newly widowed Santos married the governor of Texas. Philip Nolan's luck was not as good. The Spanish military tracked him down at his corral near the Trinity River, and shot him (perhaps accidentally). In addition to his Texas lovers, Nolan left behind a pregnant widow in Mississippi. Shortly before leaving for Texas he asked for the hand of Frances Lintot, a member of the Natchez slave-owning aristocracy. Her family objected to the marriage -- but she too eloped. Nolan, of course, has been the subject of much historical and literary speculation. Many have depicted him as a Texas filibuster -- the first in a long line of heroes who sacrificed their lives to wrest Texas away from the tyrannical Spanish (and later Mexican) governments. Others, perhaps more accurately, have described him as a man without a country. Nolan thus corresponded with President Jefferson, as well as the governors of Louisiana and Texas, becoming a powerful middleman who could navigate between different cultures. But Nolan did not work alone as he made kinship connections from Natchez to San Antonio. If he was a man without a country, he was also a man with an extended family.

Instead of focusing on Nolan, this paper has taken a different angle, telling the story of the women of the borderlands. Historians have long known that the people in East Texas defied mercantile rules that prohibited trade with their Indian, French and American neighbors. This essay has shown that they likewise defied Spanish marriage laws -- especially the ones concerning divorce and caste separation. Indeed, the contraband trade depended on the creation of new kinship patterns that crossed ethnic and national lines. On the borderlands both exogamous marriages and control of female labor provided the best opportunities to elevate family status. Indians, whose family ties are less visible in the Spanish records, also encouraged extensive kinship relations with Spaniards in at least some of their villages. In part, Spanish and Indians could intermarry because they shared (at least some) similar notions concerning gender, marriage, and justice. Each valued the larger clan above the individual; each had strong patriarchal and matriarchal elements in their family structures; each used marriage as a way to achieve and maintain wealth; each allowed some men to have multiple partners; and each recognized different social ranks. Interrelations in the borderlands began with Indigenous people such as the Spanish soldier and the Ais captive, but the cultural fusion eventually included a Spanish Tejana and an Irishman from the United States. Without a doubt, Spanish women, such as Santos, disregarded Spanish laws and customs when they developed extensive kinship networks across different groups. It may even seem as though they rejected the Spanish caste system outright. But in fact, the more prominent families worked with local officials to create new hierarchies that advanced their position

on the borderlands -- this system enabled European men to exploited indigenous women on the borderlands.<sup>46</sup>

During this period of expansion the Spanish kings struggled to maintain monarchical rule in their distant colonies as revolutionary governments in the United States, France, and Haiti swept into power. Yet the Spanish crown -- as much as any western country -- extended Enlightenment ideas to streamline government, classify nature, and exploit non-western "others". Thomas Paine's Common Sense circulated in the borderlands, but I have found no evidence of women's rights, such as an awareness of the writings of Mary Wolstonecraft. Feminist Enlightenment ideals do not seem to have surfaced in east Texas. It's possible that Santos freely welcomed her affair with Nolan -- but she acted within the parameters of borderland codes. Other women had fewer choices; this culture rooted in kinship did not make for egalitarian rights. On the contrary, all evidence points to an extremely hierarchical society in which some men ruled over other women and men, and some women ruled over other women and men. More than a diffusion of Enlightenment or democratic ideals, the fusion created by the mix of cultures bound the women of the borderlands. This was certainly revolutionary, although these early multicultural formations ultimately served as a first step to dominate local populations and extend European empire in the Americas.<sup>47</sup>

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<sup>46</sup>My findings support the work of scholars such as Anne McClintock, Imperial Leather: Race, Gender, and Sexuality in the Colonial Context (New York, 1995) who argue that a significant aspect of colonialism required the sexual exploitation of indigenous women, and that race, class, and gender are not distinct realms of experience.

<sup>47</sup>For Spanish Enlightenment see, Jorge Cañizares-Esguerra, How to Write a History of the New World: Histories, Epistemologies, and Identities in the Eighteenth-Century Atlantic World (Stanford, 2001) and David Weber, Bárbaros: Spaniards and their Savages in the Age of Enlightenment (New Haven, 2005). On the Enlightenment as western colonization see, Linda Tuhiwai Smith, Decolonizing Methodologies: Research and Indigenous Peoples (London, 1999), esp. chapter 3, "Colonizing Knowledges," 58-77.

One wonders what would have happened if Nolan had survived. Would he have returned to Frances Lintot and built a home for Gertrudis de los Santos? How many slaves would their households hold? Eventually the Natchez nabobs and other Anglos would extend slave-owning operations into Texas. By making familial connections with these outsiders the powerful clans of Spanish Texas who increased their slave holdings and contributed to this extension of a slave society into Texas. But whereas the eighteenth century inhabitants of the borderlands welcomed fusion, nineteenth century newcomers brought a very different vision of the family rooted in a clear separation of Christian and pagan, European and African, free and slave. Slaveowners, of course, would have both voluntary and involuntary sex with their slaves. And in these former borderlands some Anglo men continued to officially and unofficially marry non-Anglo women, whether African, Indian, or Hispanic. But marriage in the manner of the country lost its centrality with the extension of the southern paradigm that placed white women on a pedestal and racialized slaves along with other non-Anglos, especially Mexicans. Massive migrations, expansionist government policies, and virulent prejudice would combine to displace most Hispanics and Indians from the East Texas and Louisiana borderlands. Even so, some creole communities, families and individuals remained. The new Anglo populations of West Louisiana and East Texas could not entirely wipe out the borderlands people or their codes.