THE PERSISTENCE OF CASTILIAN LAW IN
FRONTIER TEXAS: THE LEGAL
STATUS OF WOMEN

THESIS

Presented to the Graduate Council of the
University of North Texas in Partial
Fulfillment of the Requirements

For the Degree of

MASTER OF ARTS

By

Jean A. Stuntz, B.A., J.D.

Denton, Texas

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Castilian law developed during the Reconquest of Spain. Women received certain legal rights to persuade them to move to the villages on the expanding frontier. These legal rights were codified in *Las Siete Partidas*, the monumental work of Castilian law, compiled in the thirteenth century.

Under Queen Isabella, Castilian law became the law of all Spain. As Spain discovered, explored, and colonized the New World, Castilian law spread. The *Recopilación de Los Leyes de Las Indias* compiled the laws for all the colonies.

Texas, as the last area in North America settled by Spain, retained Castilian law. Case law from the Béxar Archives proves this for the Villa of San Fernando (present-day San Antonio). Castilian laws and customs persisted even on the Texas frontier.
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CHAPTER ONE

THE CREATION OF WOMEN'S LEGAL RIGHTS DURING THE RECONQUEST

To understand the legal rights of women on the Texas frontier, it is first necessary to understand the origin of those rights. Spain, and especially the kingdom of Castile, developed differently from other European countries. This development influenced the laws of the land, as well as the status of women. As in all the other countries of medieval and early modern Europe, women were relegated to inferior status in Spain. Their status, and their subsequent ability to handle frontier situations, grew through the experience of the Reconquest in Spain (ca. 720-1492). Laws governed all aspects of Spanish life, and the laws regarding women demonstrate the ideal of the woman's place in society. Because women were subordinate to men, they had to conform exactly to the expectations of society in order not to be outcast. The woman's place was specified by law, her rights and responsibilities were entrenched in the culture, and her legal rights were spelled out and protected.

Just as the laws of Castile came to govern most of Spain in 1492, when the Reconquest was completed, these same laws were used in the settlement of the New World. Women's legal status in the New World derived from their traditional rights on the peninsula, which were transferred and applied to conditions on the expanding frontier. Because the legal rights of women were both traditional and explicitly
written into the law, Spanish women could depend on the law to protect them even in remote and desolate places like eighteenth-century Texas.

On this distant frontier, women survived, prospered, and overcame all sorts of obstacles because their rights were protected by Spanish law. Women adapted to the frontier conditions without giving up any of their rights, and proved that the combination of feminine resourcefulness and liberal legal privileges could surmount the hurdles of poverty, widowhood, and hostile Indian attacks. Because women were so protected by law, they may have even adapted and survived better than their male counterparts. To find out how Spanish women got this strength, it is necessary to begin at the beginning.

The recorded history of Spain begins with the invasion by the Romans in 197 B.C. It took two hundred years for the Romans to completely subdue the inhabitants, and then followed four hundred years of peace known as the *Pax Romana*. The centuries of Roman rule left their impact on the Iberian Peninsula. Roman roads and aqueducts, and the landholding system known as *latifundia*, are notable remnants of Roman rule. The Roman Empire had already begun to disintegrate when the Visigoths swept through Spain and established their capital at Toledo in 554. The Visigoths left few physical reminders of their presence, but they did have the tradition that women could own property. This privilege became more important though the centuries as other countries in western Europe denied property rights to women.

In the year 711, Muslims invaded Spain, conquering in seven years what had taken the Romans two centuries to subdue. Spain and Portugal are the only Western
European countries to be occupied for substantial lengths of time by a non-Christian, non-Western, culture. Though the Moorish influence was mostly beneficial as regarded education, religious tolerance, and medicine, the Spanish Christians were determined to take back their country. This crusade, called the Reconquista, or Reconquest, was the most influential event in shaping the society of Spain, and later that of New Spain (Colonial Mexico).

The Reconquest was not the work of a national army, nor was it led by a king. Individuals led campaigns, and they became wealthy through the booty and land that they acquired. Good warriors became great captains, and great captains became high nobles. The aristocracy were the military elite, and they held all military power. Another important consideration was that the spread of Christianity was the pronounced motivation for the national crusade, and this linkage of warfare and religion carried over into the conquest of the New World.

A third consideration was that the armies, like all armies, had to be fed. Since there was no time between battles to raise crops, military captains kept herds of livestock on the frontier to feed their men. Thus, ranching became linked with the military elite, who were the aristocracy. Ranching, like warfare, was conducted on horseback, and it became the only profession available for a gentleman. Farming, on the other hand, became the work of peasants. A fourth innovation was the growth of towns. Since it was too dangerous for people to live alone on the war's frontier, they banded together and formed villages. Whenever one side would win a village from
the other, the victors would encourage their own people to immigrate to that
settlement in order to repopulate it and hold it against the enemy.

The first phase of the Reconquest ended in 1248 with the capture of Seville by
Christian forces, and Muslims were henceforth confined to the kingdom of Granada.
By then, thirteenth-century Castile had distinct social and economic values. From the
Reconquest came the idea that income derived from conquest, not work. Gentlemen
did not work for material gain but enjoyed wealth as a result of conquering lands from
the infidel. And on the frontier, the only occupations that were suitable for nobility
were fighting and stock-keeping, for these were the roles that came to be connected
with the military elite. The aristocracy gained great political power because of their
private armies. As mentioned, they did not fight under the king, nor for him. They
fought for themselves and for their own private gain. These attitudes transferred
easily to the conquest of the New World in the sixteenth and seventeenth centuries.1

Throughout the Reconquest, men seized land from other men, but women were
needed to settle it and extend the Spanish community to the new land. Newly won
cities had to be repopulated with Spanish people as the Moorish population was killed,
captured, or forced to move. "Women, therefore, played indispensable roles as
settlers, wives of colonizers, mothers of successive generations of defenders, and vital
members of the new Hispanic communities." To induce people to move to the
hazardous new areas, a city would pass fueros or codes of laws that guaranteed
property rights and justice under the law. Significantly, to persuade single, respectable
women to come to the new territory to marry, and to persuade married women to join
their husbands in this dangerous area, the codes protected and even expanded their rights.\textsuperscript{2}

The \textit{fueros} regarding women encouraged and fostered marriage, birthing children, and settled life in the cities. Many women who lived in the cities were respected as property-owning citizens, and maidens of landowning families had great value as prizes for bachelor warriors whom the citizens wished to have settle in the city. This consideration did not mean that women were completely independent, for they were not. The husband still controlled the wife’s property, but community pressures, and the wife’s family, would usually keep him from wasting it. The wife was an important part of the family, and shared in all the financial gains and losses of the marriage. Since most husbands fought in the wars of the Reconquest, they were gone much of the time; therefore, it was up to the wife to handle many the family’s financial transactions.\textsuperscript{3}

Also, because of almost continuous fighting, there were many widows on the Spanish frontier. These women had to honor the memory of their deceased husbands for one year, but after that they were encouraged to remarry. Remarriage helped to repopulate the town, kept the widow from losing her reputation, and placed her once more under the control of a man. According to this society, all women needed the protection and control of a man, whether father or husband, and widows did not fit into this pattern. Therefore, there was great incentive and peer pressure for the widow to reenter normal society by remarrying.\textsuperscript{4}
Married women, especially when their husbands were absent, filled important and respectable roles in community life. They presided over bakeries, bathhouses, washing places at the river, and, of course, spinning and weaving. If disputes occurred in these areas, as they often did given the volatility of Spanish temperaments, women often served as witnesses for the lawsuits that resulted. Women also witnessed land sales, arraignments, and other legal matters; and they had to pay taxes if they were the head of household. They could sue and be sued on their own, and they were responsible for the actions of their children and servants.  

Women, mostly married women and widows, held respectable jobs. They might serve as domestic servants, as wet nurses (who were especially held in high esteem), or as shopkeepers. Other married women worked alongside their husbands in shops and in various occupations. A slightly less respectable occupation was the job of barmaid. Widows often kept up their husband’s shop or profession after he died, and if they remarried their new husband would have a ready-made career.  

All of these examples show that women were an important part of frontier society. Their property rights increased as various city councils lured them to settle within the village boundaries. Their increased legal rights were guaranteed by the city codes, and the pioneer women passed these rights on to their daughters and granddaughters. Eventually these expanded rights became traditional, an ingrained part of Castilian culture. Although respectable Castilian women usually were not totally independent of the protection of a man, they had much more freedom than in other European societies. Castilian women were not totally subservient to their men;
for women had the right to own property, and this right was the basis for all other civic freedoms.

The law ensured that Castilian women would be able to take care of their own rights in the event of widowhood. Women were much too valuable in the effort to repopulate the newly reconquered areas to be relegated totally to a subservient, helpless position. Since the men were often absent during warfare, women had to be capable of carrying on the family affairs. This capability spread to other areas of female jurisdiction, and women were the equals of men in these areas. It was this ability, this accumulation of rights passed down through generations of Castilian women, that was so important to the settlement of the frontier in the New World.
ENDNOTES -- CHAPTER ONE


3. Ibid., 26, 76, 78, 94.

4. Ibid., 98.

5. Ibid., 149-150.

6. Ibid., 156-161.
CHAPTER TWO

LAS SIETE PARTIDAS

One of the beneficial effects of the long period of Islamic culture was the emphasis on learning that filtered into medieval Christian minds. The twelfth and thirteenth centuries were the height of cultural transmission of Islamic knowledge to Christian cultures, as reflected in the translations of Islamic documents in Toledo. During this time, Spanish kings had more available income derived from lands acquired by their own conquests, and they came to enjoy scholarship and the arts. The revival of Roman law made intellectuals aware of the disorganized state of Spanish law, and, as a result, differing regions such as Aragón and Navarre codified their laws. However, the greatest intellectual undertaking of that time was the codification and unification of diverse Castilian law under Alfonso X (1254-1286).

In 1256 the Castilian king Alfonso X, known as "el sabio," or "the learned," ordered the reorganization of the laws of Castile. The first book of laws, the Fueros Reales or Royal Laws, did not cover a wide enough expanse, so Alfonso dictated that a work encompassing the whole of law be compiled. The actual compilers are not known but may have included Alfonso himself. The sources consulted were so vast and the authorities cited so numerous that it took more than ten years for several scholars to complete the task. When finally finished, this compilation proved to be one of the great works in the history of law. It portrayed "a rational system of
universal justice under central monarchy and [was] the first great didactic literary
classic in the Castilian vernacular."²

Las Siete Partidas, or Seven Divisions of Law, is so named because it is
divided into seven parts. It draws heavily from Roman law, but it also contains canon
law, maritime law, Visigothic law, and the customs and fueros of the various Spanish
cities. It cites both Scriptures and the writings of saints as authorities. Since it was
written at a time of much Moorish influence, it is perhaps surprising that it does not
cite many Islamic sources.³

The Partidas cover every known aspect of law, from the role of the king to
appropriate candidates for a mistress, with rationale given for each. Even at this time,
the Spanish were exceptionally litigious, so the compilers of the Partidas went into
great detail to try to cover every possible contingency. This attempt was also aimed at
unifying laws throughout Castile. Each town had its own code of laws, many of
which were contradictory, not only with other towns but within the code itself. The
Partidas were not intended to overthrow these laws, but to give the towns an example
that they could copy in rewriting their own laws to match the Partidas.⁴

The Partidas gave great power and responsibility to a paternalistic, benevolent
king. The various political powers, both the aristocracy and townspeople, opposed the
concept of a powerful monarch, as expressed in the Partidas, because it took away
many of their traditional rights. They eventually used this supposed usurpation as a
justification to depose Alfonso. For his part, Alfonso had never intended for this code
of laws to become effective immediately as the law of the land, for even the king
himself saw that it was too visionary for that time. He did, however, intend that it would eventually become the law of the land, as people became accustomed to its ideas; and that was precisely what happened.5

The Partidas was written in the newly standardized Castilian vernacular, so schools and universities used its text in teaching grammar and vocabulary for the next three centuries. Since its laws also explained the philosophy behind each law, it was used in philosophy, as well as law classes. Because so many of the upper classes went to the universities to obtain their education, they came to regard the law as expressed in the Partidas as the true law. Likewise, men who became the bureaucrats and courtiers read and studied these laws. The ideas of the Partidas also touched the middle and lower classes as they came into legal situations, which judges resolved on the basis of these laws. Its ideas thus gradually filtered into the minds of all the people. The law as seen in the Partidas was the law as known by the people, and an examination of these laws that pertained to women provides insight into how Spaniards regarded the role of women in society.6

The seven parts into which Las Siete Partidas are divided are not logical to our modern minds. The compilers apparently used seven parts in order to honor Alfonso, because the first letter of the introduction to each part spells out his name.7 The first part deals with canon law, and with laws in general, the second part with government and administration, and the third part with procedure and property. These last two areas are usually dealt with separately in modern American jurisprudence, as each covers an enormous area of case law. The fourth part treats domestic relations, and
the fifth deals with obligations and maritime law. Again, these two areas are usually separated in American jurisprudence. The sixth part covers wills and inheritances, and guardianships, and the seventh incorporates crime and general principles of law. Again, two separate bodies of law are joined in one part, but perhaps a bit more logically, for the modern mind can readily associate crime with the practice of law.³

The main impression a reader receives from the Partidas is the extraordinary detail with which each area is covered. As in Roman law, the compilers evidently tried to think of every single possibility for each situation and decide the legal consequences in each case. This approach aimed at providing stability to Castilian society, because everyone would know, through custom and usage, their own rights and responsibilities. This understanding was important, for the Castilians were litigious by nature and brought lawsuits at the slightest excuse. Castilian society was so litigious, with virtually everyone knowing the rules, and this attitude so pervasive that even royalty had to follow the dictates of law. Neither kings nor emperors could grant royal concessions that were contrary to law, nor could they deprive people of their property without following proper procedure or giving due compensation. This adherence to law is all the more remarkable when compared to the absolute monarchs of later European countries.⁹

Women were well protected in Castilian society, although their legal status both guarded and limited their actions. The law protected women from conniving and unscrupulous men, as well as from their own feminine weaknesses. Their legal rights and responsibilities were carefully delineated in the Partidas, and the detailed
explanations as to why certain limits applied to women gives the reader a clear view of a woman’s place in medieval Castilian society. As noted, the Partidas are not arranged in logical or systematic order. Therefore, various aspects of law regarding women will be discussed in this paper, not by their arrangement in the actual work, but by their modern classification in contemporary American jurisprudence. These classifications are the legal capacity of women; their ability to make contracts; hold property; sue and be sued for torts; their domestic relations; and their liability for criminal actions. The first four topics will be discussed in this chapter, the last two in the following chapter.

In the Partidas, women held full legal capacity but with several important limitations. For example, though judges usually did not want women to be in their courtroom, women could be, and often were, witnesses to a lawsuit. Their testimony was as fully credible as a man’s, but as a protection for her reputation, a woman could not be summoned to make an appearance in court. Instead, the judge was required to go himself to the woman’s house to take her deposition, or to send a notary to do it. If a woman was a party to a civil suit, she should send an attorney to represent her instead of appearing in court herself. The rationale for these rules held that it was not proper for women to mingle publicly with men. However, if the woman was accused in a criminal case, she did have to appear in court.10

For similar reasons, a woman could not be an advocate for anyone. Part III, Title VI, Law III of Las Siete Partidas reads,
No woman, however learned she may be, can act as an advocate for others in court. There are two reasons for this; first, because it is neither proper nor honorable for a woman to assume masculine duties, mingling publicly with men. . . [a]nd, moreover, when women lose their modesty it is a difficult matter to listen to them and dispute with them.\textsuperscript{11}

Another reason for restricting circumstances under which women could appear in court is given in the law itself. In ancient times, a woman named Calpurnia was very learned. She would act as an advocate for others and was so learned that the judges could not overcome her arguments, whereby she would prevail over male advocates. This prospect, in a male-dominated society, was so unseemly that the compilers of the Partidas acted to prevent such a circumstance from ever happening again.\textsuperscript{12}

Although women could never act as advocates for others, under special circumstances they could act as sureties for others, even though they could not be compelled to do so. A surety is generally defined as a person who stands liable for another's obligations, if the primary debtor does not repay the debt. The general rule barred women from acting as sureties for other parties, "for it would not be proper for women to go into court . . . and be compelled to resort to places where many men are assembled, and to do things which might be contrary to chastity." There were, however, seven exceptions to this rule. These exceptions deal with areas normally associated with women's roles in society, and with the circumstances where it could be shown that the woman knew what she was doing. A woman could be surety for the amount needed to free a slave. She could be surety for another woman's dowry. If she wished, she could renounce the laws that protected her and become a surety, bound by all the laws that bound men. If she received compensation, this proved that
she understood the consequences of her actions, and she could be held liable as a surety. A woman could be surety for her own acts, and for a person from whom she was expected to inherit. Lastly, if she fraudulently dressed like a man and deceived others into thinking she was a man, she could be held to her suretyship. In this circumstance, she would have to pay what she had guaranteed for another, because the protection was given to women not so they could defraud others, "but on account of their artlessness and their natural weakness."\

Despite their "artlessness" and "natural weakness," women did have legal power to act for others under specific circumstances. If a widow petitioned the king and officially waived all laws that protected her, she could be named legal guardian for her own children. However, if she remarried, the children had to be taken from her and given to their nearest respectable relative. The rationale given for this is that the widow would have so much affection for her new husband that she would neglect her children, or perhaps even injure them. If she mismanaged her children's property while she was guardian, she could be held liable for it. Another example of a woman's legal capacity to be responsible for others is that, under special circumstances, she could adopt an heir. The general rule was that a woman could not adopt children, since it was assumed that she, if she were of suitable age, would be able to have her own. But if a woman lost a son in battle, and the king consented, she could adopt another son to replace her loss.\

Women of good character could be effective witnesses in legal battles, for their testimony carried the same weight as that of a man. One restriction to this law is that
a woman could not testify in favor of her husband, but then neither could the husband testify in favor of his wife. The same restriction applied to a brother testifying for his brother. This limitation is not, then, actually based on gender, but on relationship. The other exception to a woman's full capacity to act as a witness was gender-based, and this pertained to wills. Women could not be witnesses to a will. However, and this shows the detail with which these laws were drafted, if a person had the characteristic of both sexes, but was more similar to a man than to a woman, this person could indeed witness a will.15

Though judges held enormous power in Castilian society, the rights of women were expressly protected from magistrates by law. Women held a special exemption from being summoned to appear before a judge who wished to marry her without her consent, either to himself or to another. Neither could the judge summon the woman to his chambers to have his way with her, or to use force of any kind upon her. If this happened, neither she nor any member of her family ever had to appear before that judge, and anyone who wished to make a complaint against her or her family had to take it to a different court. All appeals from widows and orphans went directly to the king, because he was required by law to protect those who needed him most.16

Legal capacity could be lost in various ways. Marriage put many woman's legal rights in abeyance for the duration of the marriage. For instance, a married woman could not accuse anyone of a crime, except that of treason. The same restriction applied to minors, persons with a bad reputation or who had been proven to be false accusers, the very poor, and criminals. Treason was again the sole exception,
because it was such a serious crime that anyone, even a slave or a married woman, could accuse a person of that offense. In civil cases, likewise, anyone who suspected guardians of mismanaging their ward’s property could accuse them and bring him or her to justice. Mothers, grandmothers, sisters, and nurses, any one of whom could be a married woman, had the obligation to bring such an accusation on behalf of the children.17

If a woman lost her good reputation, she lost most of her legal rights. For example, it was considered improper for a widow to remarry within a year of her husband’s death. Such an action might cast doubt on the parentage of any children born during her widowhood or soon after the second marriage, and it also might raise suspicion that the widow had killed her first husband in order to marry the second. Such a woman could not inherit from anyone other than her immediate family. As discussed above, any widow, even one of good reputation, who remarried lost guardianship of her own children. The children might actually remain in her custody, especially if they were less than three years old, but a different relative would be responsible for the protection of the children’s property.18

The most common way for a woman to lose her reputation was to be involved in an extra-marital affair. Even the suspicion of involvement was enough in some cases for the woman to become infamous. "Infamous" was the legal term used to denote people who had lost their good reputation, their credibility, their honor, and their standing in the community. For example, men could become infamous if they fought wild beasts, or sang, or jested for money, but not if they performed these
entertainments for free. The law listed several ways for a woman to become infamous. A woman who was found in a place where she had committed adultery, or had committed "a wickedness with her body" less than a year after her husband’s death, was considered to be infamous. Women who acted as procuresses, or who kept "slaves or free women in her house inducing them to commit wickedness with their bodies for money," were infamous, though they themselves might commit no wickedness personally. Women did not have to charge for their entertainments, as was the case with men, in order to lose their standing in society, but that did remove all doubt as to the state of her reputation.¹⁹

Certain legal presumptions limited the extent of a woman’s rights. When twins were born, one male and one female, the male was presumed to have been born first, so that, if applicable, he could inherit exclusively. Since under Castilian law all legitimate children inherited a portion of the parent’s estate, this presumption applies only to certain entailed properties. When a husband and wife died in a common accident, such as a shipwreck, the wife was presumed to have died first, because of her being naturally weaker. This cleared the way for the husband’s heirs to inherit first. But legal presumptions could act protectively, too. The sons of traitors could not inherit from either parent, because of the legal presumption that they would have been involved in the treason, but daughters could inherit from their mothers, because "no man should presume that women will commit treason."²⁰

Married women generally did not make contracts, but they could if they renounced all protective laws in their favor. Widows had little restriction on their
power to make contracts. There was an explicit form that defined how a contract should be drawn, and the contract had to have the wife's consent to a sale of either her property controlled by the husband, or of property owned by both spouses. The wife had to verify that she released all her rights to the property and bound herself to abide by the sale made by her husband. There was also a form for when a man agreed to give his daughter in marriage, guaranteeing the dowry as well as the daughter's consent, but the daughter was not a party to this actual contract. However, a man and a woman could make a contract to marry, and in some cases that sufficed for the formal union. There were also forms for dowries and gifts from wives to husbands, and the wife was bound by the contract.\textsuperscript{21}

Women could and did hold property in their own names. The distinction for women was not so much between real and personal property, though there were many laws referring to movables, as between dotal and paraphernal property. Dotal property was that which the wife brought to the marriage, i.e., her dowry. Paraphernal property was all her property not included in the dowry, i.e., her separate property. Publicly the husband controlled all the property owned by both, but the wife could legally enjoin him not to waste her portion, and she had to officially consent to all sales of her own or commonly owned property.\textsuperscript{22}

The wife could even control the husband's property, though under very limited circumstances. Usually a wife had to have her husband's consent before she could give alms to the poor, go on a pilgrimage, or fast. If she had her own property, though, she could give alms from it and also of any from the husband's property that
was normally under the control of women, e.g., food in the kitchen. A wife could therefore give bread to the poor, even though it actually belonged to the husband, but it had to be only a reasonable amount. If she saw a poor person and thought that her husband would want to give him some money, she could do that, too, though she was not obligated to do so if she thought the husband would beat her for doing it. Lastly, if she saw a person in such straits that if he was not given alms immediately he would die, she could give him alms out of her husband’s property, even if he had strictly forbidden it.\textsuperscript{23}

The compilers of the \textit{Partidas} showed their concern for women’s property rights by including several protections for women and their property. A married woman could not usually lose her property through abandonment, because the husband was presumed to be in control, and his lack of judgment should not prejudice her rights. If, however, the property was part of her dowry and the marriage was dissolved, then she would be in control of her own property and could lose it through abandoning it for a long enough period of time. Also, if her husband was an obvious spendthrift and she did not go to court to demand the return of her dowry, then she was held to have acquiesced in its loss and could not later regain the property.\textsuperscript{24}

The only bar to a woman inheriting was a poor reputation, and even then she could still inherit from her immediate family. When the husband died, and before his estate was distributed, the dowry of the wife was repaid to her, for it was not considered part of the husband’s property. When a rich man married a poor woman,
she could receive one quarter of his estate as her share, but not if she owned enough property to support herself.25

Sometimes the reasons for the protection of women are obvious in the laws, as when they spelled out the possible actions of the men in their families. A woman, who made a gift to her son after the death of her husband and then married another man, could revoke the gift for ingratitude. The possible grounds given were if the son tried to cause her death, if he did violence to her, or if he caused her to lose her property. But again, if she lost her good reputation, she lost her legal rights. A woman who remarried within a year of her husband's death forfeited any property the husband had given or bequeathed to her.26

Women could, under special circumstances, claim assets of the property of others. When a mother or grandmother had the property of children or grandchildren under her guardianship, and the children had sufficient property for their own support, the mother or grandmother could deduct her expenses from their property. If the children had no property, the mother or grandmother had to care for them out of the goodness of her heart, and could not collect expenses. If the woman did not control the property of the children, the children had to state publicly that they wished her expenses to be paid. This law made no provision for the marital status of the woman in question. It was possible for the husband to be declared a spendthrift or otherwise incapable of handling the family money, in which case the wife was the most likely candidate to take over the family finances.27
There is very little information on women's capability to commit or be held liable for torts. Apparently the man who had authority over the woman, whether father, husband, or other, in most cases took full responsibility for her actions. The Castilians were very concerned about honor and dishonor, and the Partidas held that anyone, male or female, over the age of ten and a half years was capable of causing dishonor. Deliberately causing dishonor was an actionable offense, which meant that a suit could be brought in court for damages. The law states that a husband had the right to sue someone for dishonoring his wife, as could a father-in-law for the dishonoring of his daughter-in-law. This makes it appear that these dishonored women could not sue on their own. This argument is not clear, however, for a defense to a suit of this sort was that the good woman had dressed as a bad woman and gone to places frequented by bad women. In this case she was at fault and could not sue for being dishonored, so perhaps she did have the right to sue in her own name under ordinary circumstances. Under this construction, those men under whose control she lived could sue also, or if she declined to bring her own suit, for the dishonor would spread to the whole family.  

A husband could not sue his wife for larceny, but he could sue anyone who assisted her in her larcenous actions against him and get compensation from them. He was also allowed to punish his wife so that she would not be tempted to steal from him again. This particular law made no mention of whether the wife could sue the husband for stealing from her, but in other places the wife had the power to enjoin the husband from destroying or wasting her property. A wife could not accuse her
husband of adultery, because in Castilian society no injury or dishonor accrued to her. In more modern words: "no harm, no foul." Since she could not prove damages, she could not bring suit.  

Castilian women, for the most part, had almost equal legal status with men. By contrast, this was not the case until very recently in the United States, which inherited its legal system from the English common law. In America, until the 1960s, married women could not make contracts, could not bring suit in court, and could not alienate their own property without their husband's consent. Except in community property states, which derived their laws from those of Spain, a married woman's earnings belonged to her husband and were controlled solely by him. A married woman could not own property in her own name: by law she was submerged into her husband and he was the only legal entity.

Under the ideals of the laws of the Partidas, women had almost full legal capacity. Women could make contracts, and be held to them. They could own both real and personal property. Buying and selling of property by women was common, as evidenced by the presence of forms for these transactions. Castilian women could sue and be sued for torts, though apparently married women usually let their husbands handle these matters. Women were valuable members of the community. Their testimony was trusted and fully admissible in court. By law, and in marked contrast to the rest of Western Europe, there was very little these women could not do.
ENDNOTES -- CHAPTER TWO


4. Ibid., 49-50.

5. Ibid., 51, 57-60; Payne *History*, 80-81.


7. A servivio a Dios
   La fé Catolica
   Fizo nuestro Señor
   Onras señaladas
   Nascen entre
   Sesudamente
   Olvidanza
   from the introduction to each part of the *Partidas*.


9. *Partidas* Part 3, Title 18, Law 30; Part 2, Title 1, Law 2.

10. Ibid., Part 3, Title 7, Law 3.

11. Ibid., Part 3, Title 4, Law 3.

12. Ibid.

13. Ibid., Part 5, Title 12, Law 2; Part 5, Title 12, Law 3.

14. Ibid., Part 6, Title 16, Laws 5. 4; Part 4, Title 16, Law 2.
15. Ibid., Part 3, Title 16, Laws 1, 17.


17. Ibid., Part 7, Title 1, Law 2; Part 6, Title 18, Law 2.

18. Ibid., Part 6, Title 3, Law 5; Part 6, Title 16, Law 5.

19. Ibid., Part 7, Title 6, Laws 3, 4.

20. Ibid., Part 7, Title 33, Law 12; Part 6, Title 2, Law 2.

21. Ibid., Part 3, Title 18, Laws 58, 84, 85, 86.

22. Ibid., Part 4, Title 11, Laws 7, 17, 29; Part 3, Title 2, Law 5; Part 3, Title 18, Law 58.

23. Ibid., Part 1, Title 23, Law 12,

24. Ibid., Part 3, Title 29, Law 8.

25. Ibid., Part 5, Title 13, Law 34; Part 6, Title 13, Law 8.

26. Ibid., Part 5, Title 4, Law 10; Part 4, Title 12, Law 3.

27. Ibid., Part 5, Title 12, Law 36.

28. Ibid., Part 7, Title 9, Laws 8, 9, 18.

29. Ibid., Part 7, Title 14, Law 4; Part 3, Title 2, Law 5; Part 7, Title 17, Law 1.

CHAPTER THREE

DOMESTIC RELATIONS IN THE PARTIDAS

Part four of the Partidas deals in its entirety with domestic relations. There were many detailed laws on the subject of marriage: what constituted a valid marriage; what could annul a marriage; what causes justified a separation or divorce; and what rights married people had in relation to each other and to those outside the marriage. There were even laws concerning which women could be kept as honorable concubines without benefit of marriage, as well as the concubine's rights.

Castilian society expected women to marry. The only way for a woman to gain honors and dignities was through her husband. As families gained prestige, for example, from a daughter marrying a count and thereby becoming a countess, most families urged good marriages on their daughters. A father could disinherit a daughter who refused to be married and went to live instead in a brothel, unless he himself delayed the daughter's marriage until she was twenty-five. If that happened, then it was his fault that she was unwed and he could not disinherit her.¹

Unlike English common law, under Castilian law parents could not betroth a daughter when she was not present or without her consent. The informed consent of both bride and groom was absolutely necessary to have a valid marriage. A marriage contracted through force or intimidation of the bride could be annulled by the wronged party, though she could validate it if she wished. It was always necessary to have the
consent of the woman’s family. A man who married a woman without the consent of her family was placed, along with all of his property, in the power of her nearest relatives, whose only constraint was that they might not kill or severely injure him.\textsuperscript{2}

Marriage had to be contracted in good faith on both parts. A dowry was the contractual obligation on the part of the woman that made the marriage contract legally binding. If a woman knew that she could not legally marry a certain man, but nonetheless gave him a dowry, he was not bound by the marriage even though he had accepted the dowry. Because she had not acted in good faith, he did not even have to return the dowry. If both parties knew they could not marry, even though they gave each other gifts for the marriage, the marriage did not exist and the property was forfeited to the crown. Addressing the ultimate act of bad faith, men who killed their wives for no reason were not allowed to remarry.\textsuperscript{3}

A marriage had to be between two people who were physically suited to each other so that the marriage would produce children. If a woman married a man but she was so formed that she could not have conjugal relations with him, then the marriage would be annulled and each would be free to remarry. However, if she remarried and was able to have carnal relations with the second husband, then she was to be removed from the second husband and returned to the first, because the physical impediment had obviously been removed. But, if both men were examined and the first husband was so endowed that she would still not be able to have relations with him though she could with the second husband, she could remain with the second husband. Another cause for annulment was the impotence or "cold disposition" of the
husband that made it unlikely that children would be born to him. In either case, the wife could file for annulment so that she might marry a man who would give her children.⁴

A husband could obtain a divorce from his wife if she was proven to be an adulteress, but the wife could not sue on account of the husband’s adultery. Adultery as a crime was defined as when a man had relations with a woman who was married or betrothed to another. The man’s marital status was immaterial. The husband was dishonored through his wife’s adultery, because it might lead to a child of another man being heir to the husband. As mentioned, the woman was not perceived as suffering any dishonor through her husband’s relations with another woman, and so she was not entitled to sue. A husband could pardon his wife’s adultery by continuing to live with her after she promised to reform her behavior, but if she continued her evil ways, he, and her other male relatives, were bound to report her to the local government. Otherwise, they would be condoning a mortal sin. There was one protection for a fallen woman. If her husband separated from her for her adultery and then committed the deed himself, she could compel him to return to the marriage.⁵

Most marriages ended with the death of one of the spouses. As mentioned above, the husband’s estate did not include the wife’s dowry, her paraphernal property which was non-dower property brought into the marriage, or any of her separate property. These would be returned to the wife before any partition of the husband’s estate. There were many regulations about wills, stating who could be an heir, who could receive bequests, the proper forms of wills, and so on. If a valid will existed, it
controlled the distribution of the estate. If the husband died intestate, that is, without a will, laws governed the distribution of his property. These laws varied according to the status of the people involved. As mentioned above, in the unusual event that a rich man married a poor woman, she could claim up to one quarter of his estate for her maintenance. If she had her own property, however, she could not make this claim. Apparently, in Castile, as elsewhere, marriages usually took place between people of roughly equal social and economic status.

Unless specific action was taken before the death of the spouse, each child would share in the estate, with the eldest son being the main heir. Daughters inherited as well as sons, though if the daughters had already married, their dowry might be subtracted from their share of the estate. If the wife was, or claimed to be, pregnant when the husband died, no distribution could take place until the child was born, or it was proved she was not pregnant.

Stringent precautions were taken when a woman claimed to be pregnant at the time of her husband’s death, in order to ensure that the child was truly the issue of the deceased. First, trusted women of good reputation examined the widow to see if she was pregnant at the time of his death. If she was, she was closely guarded until she gave birth in front of reputable witnesses, none of whom was allowed to be pregnant. All doors would be locked and guarded during the birth and no visitors carrying packages would be allowed to enter. If the woman refused to accept these precautions, her child would not inherit unless she could prove conclusively that it belonged to her late husband.
The parentage of children was extremely important to the Castilians. Just as there were laws to ensure that posthumous babies really were the children of the deceased husband, there were laws to prevent the unintentional disinheriting of offspring:

Women sometimes become so greatly enraged that, through the anger which they entertain against their husbands, they declare that their unborn children, or those who are already born, do not belong to their husbands, but to others. . . the said child should not be disinherited, or its rights prejudiced in any way, by speeches of this kind.⁹

On the other hand, women who fraudulently declared the children of others to be their own were guilty of deceit, and the husband and the other heirs could take her to court so that the substituted child would not inherit. Women on the whole, though, were expected to be rational, responsible people, especially when it came to the care of their children. Mothers were in sole control of children under three years of age, after which they were given to the care of their fathers.¹⁰

As mentioned, widows were expected to honor the memory of their deceased husbands for at least one year. Those who remarried within this time lost their good reputation, as well as anything they inherited from their first spouse. But there is no note of any particular length of time that men were supposed to wait after the death of their wives. Apparently, widowers remarried quickly, especially if there were small children in the household, so that babies could be nurtured by a woman.¹¹

Men who could not find a suitable wife did not have to live alone. Concubinage was an integral part of Castilian society and the concubines, while not as respected as wives, had rights, too. A man could take any free woman as a concubine
except those who were virginal, a girl under twelve years of age, or a widow of good reputation. If he wanted a widow of good reputation to be his concubine, he must state publicly that this was his intention, or people would assume that the woman was his wife. A man could only have one concubine at a time, and she must be of such character that he could marry her if he wanted to, i.e., she must not be closely related to him, or married to another. Although concubines did not personally have the security of status as wife, their children could inherit both from them and from their natural father. Also, there was always the possibility that the man might decide to marry the concubine after all. In this case, their children would become fully legitimate, and the former mistress would have all the rights and prerogatives of any other wife.\textsuperscript{12}

Family was so important to the Castilians that there were several laws concerning the various levels of legitimacy and inheritability of heirs. At the lowest level of illegitimacy were those children "begotten contrary to law, and in opposition to natural order." These children were those resulting from incestuous unions, those born to women in religious orders, the fruit of adultery, or those whose fathers could not be ascertained. These children's whole existence was so contrary to natural law that they could not be acknowledged by the father and so made legitimate. Not being legitimate meant that a child could not inherit from his or her father, or from anyone in his or her father's line, and such a person could not hold public office.\textsuperscript{13}

It was possible for children born during a marriage to be illegitimate, though this was rare. Children born into clandestine marriages were illegitimate, if the
spouses knew of an impediment that kept them from marrying openly. This
impediment made the marriage invalid, and therefore the children were bastards. All
marriages that did not meet the dictates of the Church and were therefore invalid also
resulted in offspring being declared illegitimate. Another instance of a child being
declared illegitimate was when that child was proved to be the offspring of a man
other than his mother’s husband. This designation usually resulted from a lawsuit by
the husband’s true heirs. One more example concerns the offspring of married men.
Married men could not legally keep concubines, and so any child born to the
concubine of a married man was not, and could not ever be, legitimate.\textsuperscript{14}

Single men could keep concubines, and their children were called natural
children. Natural children could be made legitimate in different ways. The father
could take the son to court and declare to the king or council that the child was his
and that the son was now devoted to the service of the king or council. This
circumstance made the son fully legitimate. He could then inherit and hold office, just
as though he was born to a legitimate wife. If a man kept a slave as mistress, he
could not legitimate their children unless he first freed the mother, and only then if he
had no other legitimate heirs.\textsuperscript{15}

A man’s natural children could be made legitimate by being so designated in a
will, or by other notarized documents. In this case, they could only inherit from their
parents, and not from other relatives unless specifically mentioned in the other
person’s will. Natural daughters could be made legitimate by being married to a city
official. Natural children, that is, children born to a concubine who was faithful to her
keeper, automatically gained legitimacy if their father married their mother. Kings and popes could also legitimate a man's offspring, but only within their own jurisdictions.

If the pope legitimated a man, then the man could enter the priesthood and hold ecclesiastical offices, but not temporal ones. If a king legitimated a man, then the man could hold temporal offices, but not enter the priesthood. 16

All Castilian laws concerning legitimacy are in direct contrast to the common law of England, which held that all children born during a marriage were legitimate, and all children born out of a marriage were illegitimate. There existed no process for legitimation, though a suspected bastard could be disinherited. There also existed no form of adoption, which was popular in war-torn Castile.

As in all other areas, the laws regarding adoption were specific and detailed. Any free man, not under the control of his father, could adopt. The adopter had to be at least eighteen years older than the adoptee, and the adopter must be able to have his own children. Specifically, he must be physically formed so that he could naturally procreate and he must not be of a cold disposition which would prevent his having relations with a woman. However, a man could lose his natural ability to sire children through accident or injury and still be able to adopt. 17

The adoptee had to consent to the adoption, and so children under seven years of age could not be adopted, because they did not have the legal capacity to consent. Children between seven and fourteen years could be adopted with the consent of the king, and the law lists all the things the king should take into consideration before giving consent. Freedmen could not be adopted, because of the loyalty they owed to
the master who freed them, and because the former slave could be reenslaved if the master wished. Guardians could not adopt their minor wards, because guardians had to render accounts of their ward's property, and adoptive fathers did not. After the ward reached the age of twenty-five years, the guardian could adopt him, if the king consented. In this case the ward would not be defrauded by the guardian.  

There were no laws regarding the adoption of daughters, so apparently this did not happen. The purpose of adoption was to give a man an heir, and while women could inherit, males were customarily the main heirs of the father. The only thing that would be accomplished by the adoption of a daughter would be to split the inheritance and oblige the father to have to provide another dowry. Neither of these outcomes made monetary sense. As noted earlier, women could not adopt except to replace a son who had been lost in battle. This restriction suggests that having a male heir was important to the Castilians, for while women were valuable members of the family, the sons carried the family honor. When a daughter married into another family, she became part of that family, while a son remained his father's son.

Family law also dealt with circumstances that were not as felicitous as adoption. Adultery, for example, was both a crime and a family affair, and was handled in both sections of the law. What survived into twentieth-century Texas as "the unwritten law" was set down in the Partidas. If a husband found his wife in the act of committing adultery, the husband had the right to kill the other man. He did not have the right, however, to kill his wife. Instead he must turn her over to a judge. If a husband suspected that a man was trying to wrong him through his wife, the
husband must notify the suspected adulterer three times, ordering him not to speak to his wife, and the husband had to tell the wife not to speak to the other man. After these warnings, if the wife and the other man were found together, adultery was presumed to have taken place and the husband would be justified in killing the other man, though he still was not allowed to kill his wife.20

When a husband suspected his wife of adultery, it was his moral duty to accuse her, so that she would stop committing a mortal sin. He could either divorce her or pardon her, after the adultery was proved. All that was needed to pardon her was his continuing to live with her. If she continued to commit adultery after the husband pardoned her, her father, brothers, and uncles could accuse her, because her actions brought dishonor upon them.21

A man who committed adultery with a married woman was subject to severest punishment. Even if the husband did not kill him, the law would take his life. The automatic penalty for a man convicted of adultery was death. For a woman, the automatic penalty was public scourging, after which she would be sent to a convent, and she had to forfeit her dowry to her husband. The husband could still forgive her and take her back within two years. If the husband committed adultery himself, the wife could force him to take her back.22

Several defenses could be mounted to challenge the charge of adultery. If the man did not know that the woman was married, he could not be convicted of adultery. The woman would still be guilty, though, because she knew she was married. If, however, she believed that her husband to be dead, she could not be convicted of
adultery. If the husband was the procurer for the act of adultery, or if he consented to it, he could not accuse his wife. But this was a chancy defense, because any man who acted as procurer for his wife would be put to death, as would any person who acted as a procurer for any good woman. A woman's poor reputation would apparently act as a defense for the Christian man who committed adultery with her. When a Jewish man had carnal relations with a Christian woman, no matter what her reputation, he would be put to death. When a Moor had relations with a Christian woman, no matter what her reputation, he would be stoned to death. In both cases the woman would forfeit half of her property and be publicly scourged for the first offense. The penalty for the second offense was death.\textsuperscript{23}

Society also discouraged acts of seduction not culminating in adultery. It was a crime for a man to importune virgins, married women, or honorable widows. This would lead them to be suspected of dishonor, and the man was liable to punishment. When a man gave a gift "to a woman of good reputation for the purpose of inducing her to commit acts of wickedness with her body," she did not have to return the gift, even if she did not commit the act of wickedness. The man's base conduct nullified the implied contract. Likewise, if a man gave a gift to a woman of poor reputation for the same reason, he could not recover the gift from her, either, because her sin lay not in accepting gifts but in lying with men. Since she did not commit a base act but he did, he forfeited the gift to her.\textsuperscript{24}

Men and women had complete equality in one respect: the penalty for a wife killing her husband was the same as for the husband killing the wife—death. A
woman who induced her own abortion by drugs or physical means was guilty of murder only if the child was already moving in the womb. Also any man, including her husband, who struck her after the fetus had begun to move and by his violence caused an abortion was guilty of murder. Even after a woman was accused of heinous crimes, she still had some legal protection. Accused women were not put into prison with men but were kept in convents, so that in the case that they were judged innocent they would not have been dishonored.

Some murders were justified by the circumstances. A father could kill a man who was in the act of violating his daughter, and a husband could kill a man caught in the act of violating his wife. A cuckolded husband could also kill the man who was committing adultery with the husband’s wife, but the father of the misguided daughter was more restricted. If a father found his daughter committing adultery, he had two options. Legally, he could kill both parties, or kill neither. It was considered unfair to a wronged husband, who had suffered the greater dishonor but who could not kill his wife, for a father to fail to kill his daughter if he killed the daughter’s lover. As any good defense attorney would note, however, the difference between violation and adultery lies only in the mind of the woman, and it would be much in her self-interest to claim rape.

Law-abiding Castilians considered it a horrible crime for a man to carry off a virgin, married woman, widow, or a woman belonging to a religious order. This action brought dishonor to all the woman’s relatives and represented violence both against honorable people and honorable society. The penalty for carrying off and
dishonoring such a woman was death, and all the man's property was forfeited to the woman. If the woman consented to marry her abductor, he would not be killed, but if her parents did not consent to the marriage, his property would go to them. Consent of both parties and the family of the woman was usually necessary to have a valid marriage, but in this case the marriage was valid after the non-consenting parents received the man's property.27

From the Partidas, the reader can discern several things about medieval Castilian society. First, the rule of law was necessary for an orderly, stable community. The detail with which these laws are written shows that the compilers wanted every possible situation covered in advance, so everyone could know the right and proper thing to do in each circumstance. Every person would know their rights and responsibilities, and the attendant penalties for wrong-doing. Since Castilians had a great propensity for bringing lawsuits to avenge every slight, a system of laws that insured justice for all was the bedrock of the society.

The family was the basic unit of the community, and the laws tended to augment the stability of that unit. Everybody in the family knew their place, their duties, and their privileges. Children were important. Their rights were protected by law. They could own property, but their parent or guardian would administer it, since minors were presumed incapable by law and might be taken advantage of by unscrupulous people. The guardians themselves were subject to charges of malfeasance and liable for any wastage of the child's property. Women were valuable
members of the community, and had the right to consent to, if not choose, their husbands, for again no marriage was valid without her consent.

Many of the laws affecting women reflect the concern of the society that the children born to a married woman were also the children of her husband. This concern brought about stringent adultery laws, where no actual proof was needed if the circumstances were suspicious enough. Women could lose their reputations, could even become criminals, and still not face the same harsh penalties as their male counterparts. A woman had to be irredeemable to face the death penalty, while men could receive capital punishment merely for inflicting dishonor. Women, even as criminals, had value. Honorable women were the most priceless possessions of the family, the community, and the realm.

In retrospect, Castilian women had specific legal rights under the Partidas which were much greater than those of women in many other places and times. These women did not have total freedom, for they had to abide by all the rules of their community in order to claim their legal rights. As long as they kept within the framework of society, however, they could call on the law for protection from anyone who would take away those rights. Castilian women knew their rights, and their limitations, and how they could make even the limitations work for them in law. They would take this knowledge with them to the New World.
1. *Partidas*, Part 3, Title 2, Law 7; Part 6, Title 7, Law 5.

2. Ibid., Part 4, Title 1, Law 5; Part 4, Title 2, Laws 7, 15; Part 4, Title 3, Law 5.

3. Ibid., Part 5, Title 14, Laws 50, 51; Part 3, Title 2, Law 14.

4. Ibid., Part 4, Title 8, Laws 2, 3; Part 4, Title 9, Law 10.

5. Ibid., Part 4, Title 10, Law 2; Part 4, Title 9, Law 13; Part 7, Title 17, Law 1; Part 4, Title 9, Law 2; Part 4, Title 10, Law 6.

6. Ibid., Part 4, Title 13, Law 7.

7. Ibid., Part 4, Title 6, Law 16.

8. Ibid., Part 4, Title 6, Law 17.


10. Ibid., Part 7, Title 7, Law 3; Part 4, Title 19, Law 3.

11. Ibid., Part 4, Title 12, Law 3.

12. Ibid., Part 4, Title 14, Law 2; Part 4, Title 13, Law 1.

13. Ibid., Part 4, Title 15, Laws 1, 3.


15. Ibid., Part 4, Title 15, Law 5.

16. Ibid., Part 4, Title 15, Laws 4-8.

17. Ibid., Part 4, Title 16, Laws 1-3.

18. Ibid., Part 4, Title 16, Laws 4-6.

20. Ibid., Part 7, Title 17, Law 13; Part 3, Title 14, Law 12.

21. Ibid., Part 4, Title 9, Law 2; Part 7, Title 17, Law 2.

22. Ibid., Part 7, Title 17, Law 15; Part 4, Title 10, Law 6.

23. Ibid., Part 7, Title 17, Laws 5, 7; Part 7, Title 22, Law 2; Part 7, Title 24, Laws 9, 25.

24. Ibid., Part 7, Title 9, Law 5; Part 5, Title 13, Law 53.

25. Ibid., Part 7, Title 8, Law 8; Part 7, Title 29, Law 5.

26. Ibid., Part 7, Title 8, Law 3; Part 7, Title 17, Law 14.

27. Ibid., Part 7, Title 20, Laws 1, 2.
CHAPTER FOUR

COLONIAL ADMINISTRATION

By the fifteenth century, when Ferdinand and Isabella joined the crowns of Aragón and Castile, the laws of the Partidas were accepted as the customary law by the people of Castile. Though the Partidas were not the only law, as each town was still governed by its own codes, they did serve as a common law for all of Castile. It was the goal of the Catholic Monarchs to have "One Faith, One Crown, One Law" for all of Spain. This chapter deals with the one law they wished to apply to all their subjects, including those in the Indies, and this law was based on the Partidas.

The year 1492 was a watershed year for Spanish history. The Sephardic Jews had to leave Spain or convert to Christianity. With the exception of Muslims in Granada, all subjects of Spain were then Roman Catholics. The "One Faith" had been accomplished. The final phase of the Reconquest was completed, and the Moors no longer ruled the kingdom of Granada. The entire Iberian Peninsula was united under Ferdinand and Isabella, except for Portugal and Navarre, so the Catholic Monarchs had established the "One Crown." In a work called Arte de la lengua castellana, the Castilian vernacular was standardized and modernized. And lastly, an excellent navigator and self-promoter named Christopher Columbus persuaded Isabella to finance his journey to the East Indies by sailing west.
Because it was Isabella, the queen of Castile, who financed this exploration, when new lands were found the "One Law" that governed those lands was Castilian law. It was Castilians who populated the islands and mainlands of the New World, and it was the Castilian way of life that spread over the Western Hemisphere from the southern part of present-day United States to the tip of South America. The Castilians developed a science of law early, because their way of life depended on rational, reasonable laws. The Cortes (Parliament) of 1480 ordered the famous jurist Alfonso Diaz de Montalvo to codify the existing Castilian laws. The Result was the Ordenanzes Reales (Royal Ordinances) that became the basis of modern Spanish jurisprudence. The Laws of Toro in 1505 stated that everyone who would be using the laws, such as lawyers and judges, had to be familiar with the Partidas, the Fuero Real (Royal Codes), and the Ordenamientos (laws and edicts) passed by Ferdinand and Isabella. Thus, instead of relying on the medieval jurists, or the caprice of judges as in other European countries, everyone would follow the same laws. Even the Crown knew and followed the laws. Ferdinand and Isabella owned two copies of the Partidas, one a printed copy and one a manuscript made especially for them. They also owned copies of the Fuero Real, the Ordenamientos, books on canon law, books on civil law, and commentaries on many different kinds of law.1

The laws passed by Ferdinand and Isabella were "designed to buttress royal authority and maintain social stability." Laws rested not only on the strength of the monarchs, but also on the weight of authorities cited. For example, the Partidas cited the authority of the Old and New Testaments, the church fathers, and the
commentaries of Roman jurists, as well as traditional Castilian customs. Ferdinand and Isabella followed this tradition by consulting authorities before making decisions. This practice added weight to their edicts and increased the prestige of the monarchy. The Catholic Monarchs realized that the law, when it was in line with religion, political reality, and national purpose was a mighty weapon. During their reign, written law supported the monarchy and the monarchy supported written law. Justice was a royal instrument.

The *Partidas* were particularly useful in this regard, because they placed the king as absolute ruler over each of his vassals. There was a direct link between the king and each vassal, not a pyramid downward from king to chief vassal, to lesser vassal, to least vassal. Through the *Partidas*, Ferdinand and Isabella espoused total royal sovereignty. In Spain itself they had to compromise with powerful lords and other interests, but in the New World monarchy was unchallenged. Little separated the Crown from the Church. The Crown upheld the Church and the law, and the people held the two in almost the same regard. The law itself was almost religious in character: people believed in the law as the way to maintain an ordered and peaceful society. The law was so important to Queen Isabella that she incorporated into her will in 1504 a directive to recodify the laws of Castile. That this was not accomplished until the reign of Philip II in 1567 points out the slowness of Spanish bureaucracy, rather than any lack of support for the project.

One interesting insight into the Spanish psychology of this era was that even the lowest classes felt themselves part of the dominant warrior class. They did not
feel humble and downtrodden. People in the lower classes strongly identified themselves as Catholic Christians, and therefore honorable. The poor people obviously had pure blood because the popular view held that all the converted Jews were rich. This belief gave even the poorest peasant reason to be proud, since their very poverty proved the purity of their lineage. A tradition of having a military heritage, even when none actually existed in a particular family, and the custom of thinking of themselves as living on the frontline of the battle to extend Christianity, proved useful in the settlement of the New World.  

Another thing that proved useful in the New World was the traditional legal status of women. As in the Partidas, only in exceptional cases did women have full civil capacity. As single women they were under the control of their fathers, older brothers, or uncles. As married women, they were under the control of their husbands. But as widows, responsible, respectable women could gain full capacity. As the Castilians carried their laws to the Indies, there was no special difference made between the laws of the peninsula and the laws of the Indies, with regard to women’s rights. The Council of the Indies did draft a few regulations pertaining to the status of the wives, daughters, and wards of the Spanish officials, as well as those women’s capacity to go to the New World. The Council also issued regulations to protect Indian women. But as a whole, lawmakers for the Indies intended to carry over the traditional community property rights of women, because these had served so well in the Reconquest. The right of community property had helped repopulate the lands
gained from the Moors, and therefore should work just as well in populating the New World with Castilians.5

In 1524 Charles V created the Consejo Real de las Indies (Royal Council of the Indies) to govern and administer the New World. This group traveled with the Spanish court and turned the wishes of Their Majesties into law for all Spanish overseas possessions. The Council’s orders, rulings, and laws were compiled and published over the several centuries of Spanish dominion in the Americas.

This thesis uses the Recopilación de las Leyes, or Compilation of Laws, published in 1791, because it contains the compilation of laws most applicable for the period 1717-1773, the early years of San Fernando de Béxar, which will be discussed in the last chapters of this paper.

The Recopilación deals primarily with administration and bureaucracy. Much like the Partidas, the first book of the Recopilación covers the Church, its rights and responsibilities, and its limits in the new lands. Book Two pertains to the administration of the Indies, the various officials and their duties. Book Three incorporates the military establishment and its jurisdictional limits. The legalities of the process of discovery, exploration, and exploitation of the Indies is contained in Book Four, while Book Five presents more detail about the duties of the minor officials, as well as the other professional people of the cities. Book Six considers the rights of the Indians and of the encomenderos, those Spaniards who had the right to Indian tribute. Various unsavory persons, such as vagabonds and gypsies, are the topic of Book Seven, and Book Eight explains the royal rights and privileges in the
New World. The last Book covers a wide variety of topics, from the Real Audiencias and Casa de Contratación (Royal Courts and House of Trade) that governed who came from and went to the Indies, to the various offices that had to be created for the frontier situation, and to the navy. In all of these books, the laws are handled with the same detail and precision found in the Partidas, with the Council trying to foresee all possible events and promulgate laws to cover them.

The Spanish crown did not try to change Castilian society as it spread out in its overseas possessions. Instead, it was determined to enlarge the scope of that society, and purify it at the same time. The Casa de Contratación required proof of purity of lineage before it would grant licenses to go abroad. People who were considered undesirable in Spain were not allowed to emigrate to the Indies. Such undesirable people included recent converts, Jews, Moors, gypsies and other wanderers, foreigners, and heretics. Single women, too, were not allowed to make the journey overseas, but the rules encouraged, and sometimes mandated, that married men bring their wives to the Indies.6

The Spanish administrators of the New World saw the natives in the newly discovered lands as having the right of governmental protection from private abuse. The laws of the Consejo Real extended many of the traditional protections and privileges of Castilian women to the women of New Spain. These protections could also be adapted to the new situations. In the encomienda system, where the early encomenderos received the right to native labor, Indian women did receive some protection. Those women could not be locked up and forced to spin and weave
clothing for the encomenderos. When Indian men worked on the ranches of the encomenderos, the native wives and children could not be forced to work, also. If they wished to work, they had to be paid, for their labor was not part of encomienda privilege.\(^7\)

Since honor was so important to the Spanish, in so far as possible the honor of Indian women was also protected. No married native woman could be forced to work in the house of a (male) Spaniard, unless her husband was also a servant in the same house. If a woman working as a house servant married, the encomendero could not refuse to let her go live with her husband. No single woman could be forced to be a house servant, unless both she and her parents freely consented. This restriction reflects the necessity for both a woman and her family to consent to a marriage, as set forth in the Partidas.\(^8\)

One of the main goals of the conquerors was to Christianize the Indians, and this obligation included inducing them to live by Castilian standards. The native family structure was to be replaced by the Castilian structure, and the laws would punish any refusals or lapses. By law, no Indian, male or female, could have more than one spouse, and those who did so were to be punished as an example to others. No chief, even if still an infidel, was allowed to have more than one wife. Furthermore, Indians were not allowed to continue the practice of selling their children into marriages. Instead, the Spanish way, where consent was required, was to be used. Indian women, unlike Castilian women, did not have much legal capacity or
responsibility, so they did not have to pay taxes even when they were the heads of household.\(^9\)

Spanish women in the Indies kept their traditional rights of inheritance and property ownership. Widows could inherit *encomiendas* from their husbands, providing there was no legitimate male heir. Legitimate daughters, if of age, could also inherit *encomiendas*, providing that they were married or did marry within a year of the death of the *encomendero*. These constraints were expressly designed to keep helpless young women from being victimized by unscrupulous men. Similar protections for more experienced widows apparently were not needed. A further limitation was added, stipulating that in order for a spouse, male or female, to succeed to the *encomienda*, they must have lived there as the spouse for at least six months. This proviso again served to assure that the property not pass into the hands of unscrupulous persons.\(^10\)

The Spanish crown wanted the new lands to be settled and peaceful, and therefore profitable, and recognized the value of wives and family in controlling the uncivilized impulses of the conquistadors. Consequently, the rules on bringing wives to the New World became stricter as time went on. By a law announced in 1539, single women were not allowed licenses to go abroad, and married women who went overseas had to go directly to their husbands. In 1546, the law allowed men to take their wives with them when they went to the Indies. By 1549, married men could not serve in any official capacity overseas unless they took their wives with them. After 1554 wives could get licenses on their own from the *Casa de Contratación* to join
their husbands in the new lands. Even merchants who traded in the New World, except for their first, exploratory voyage, had to take their wives with them.¹¹

Though the Council of the Indies made the actual rules for the New World, it did so in accordance with the wishes of the Crown of Spain. Therefore, the personalities and temperaments of the different rulers contributed to the style of administration of the colonial possessions. Ferdinand and Isabella gave personal attention to the progress of exploration and the founding of colonies in the Indies, although not a lot of activity had taken place by the end of Ferdinand's reign in 1516. Charles V, as emperor of the Holy Roman Empire, had a much larger area to rule, and was determined to rule each of his possessions by its own laws. One effect of this decision was to stop all constitutional changes during his rule. Another effect was the development of a new bureaucracy within each territory to carry out his directives. Charles V created the Council of the Indies, because the old-style manner of government was not adequate to the new workload.¹²

The Council of the Indies had complete control over all judicial, administrative, and ecclesiastical affairs in the Indies. The Crown did not want any branch of government to become too powerful, so there was a system of checks on the various governmental powers in the Indies. The government by audiencias or courts was limited by the authority of the viceroyalties, and vice versa. After the reign of Charles V, these checks evolved into governmental stalemate, as indecisiveness became the hallmark of the Hapsburgs, especially Philip II, who approved every detail in his own handwriting.¹³
The hesitant rule of the Hapsburgs exhausted the Spanish state. Various local powers in the Spanish realms were always trying to increase their power, thereby becoming more autonomous. In the colonies, this meant the growth of some local control, but this condition did not last long. When the Bourbons came to the throne in 1700, they improved the health of the country. They instituted moral progress, material prosperity, and colonial reform. They enhanced the power of the Crown, which had diminished under the later Hapsburgs, in order to achieve their purposes. The Bourbons followed the tradition of Ferdinand and Isabella in imposing royal control over the churches, especially in the colonies. The Bourbon kings unified Spain through prosperity and religion. Their enlightened despotism was good for the country and for the Indies, ending decades of bureaucratic lassitude.  

Colonial administration, then, was based on the laws of Castile, and administered by a bureaucracy that usually acted with glacial slowness. These repeated delays led the people in the Indies to rely more on tradition than on governmental regulations. The area of women’s status did not receive much governmental attention, and thus remained true to the tradition of the Partidas. Women retained all their rights in Spain’s overseas possessions and were acknowledged as vital to the civilization of the New World.
ENDNOTES -- CHAPTER FOUR


3. Ibid., 10, 12, 149; Prescott, Reign of Ferdinand and Isabella, vol 1, 338.


7. Ibid., Book 6, Title 10, Law 14; Book 6, Title 13, Law 9.

8. Ibid., Book 6, Title 13, Laws 14, 15.

9. Ibid., Book 4, Title 1, Laws 4-6; Book 6, Title 5, Law 19.

10. Ibid., Book 6, Title 11, Laws 1, 4, 15.

11. Ibid., Book 9, Title 26, Laws 24-30.


CHAPTER FIVE

THE FOUNDING OF THE VILLA OF SAN FERNANDO DE BEXAR

Texas was one of the last Spanish provinces founded in North America. Though it had been discovered and the coast mapped by Alonso Alvarez de Pineda in 1519, and it had been explored involuntarily by Cabeza de Vaca and his castaway friends from 1528 to 1535, it was not until the French presented a threat to the valuable interior provinces that the Spanish decided to settle Texas. The entrance of Frenchman Louis Juchereau de St. Denis into Texas in 1715 provided direct motivation for the Spanish government to establish missions and presidios in Texas. Father Francisco Hidalgo, who first entered Texas in 1691, had also long wanted to establish missions among the Texas Indians. The combination of the French threat and the desire to save the Indians' souls finally led to the permanent settlement of Texas.

St. Denis was born in Canada. He was cousin to Pierre Le Moyne d'Iberville, the leader of the French venture into Louisiana in 1699. The Canadian-born adventurer accompanied Iberville on his second voyage into Louisiana, and he explored much of the area for France. St. Denis learned Indian languages and customs, and with the help of this knowledge became the most powerful man in the East Texas-Louisiana area. Spain had forbidden its subjects to trade with any other nation, and as a result, Spanish colonies on the northern frontier were very poor. St.
Denis decided to challenge the prohibition by bringing trade goods to Natchitoches in 1713. When he crossed the Río Grande in July 1713, he was arrested by Commandant Diego Ramón, and news of this attempt at trade frightened the Spanish government into action.¹

At the same time, Father Hidalgo had been petitioning the government to establish missions among the Tejas Indians of East Texas. In the summer of 1707, rumors circulated that the French were trying to trade in Spanish territory, perhaps with the intent of taking over the region. Missionaries saw these rumors as an opportunity to advance their hopes of settling Texas and Christianizing the Indians. Father Hidalgo was especially intent on establishing missions in East Texas, and used these rumors, as well as the actual entrance of St. Denis, to forward his own plans.²

The continued existence of the French in Louisiana, and their persistence in trading in Spanish territory, led the colonial government to consider more missions as a deterrent to the French. The missions would have to be protected from the hostile Indians who roamed the area, so presidios were also needed. Establishing these frontier institutions in tandem made economic sense and was practical as well. Along the Río Grande, presidio San Juan Bautista del Río Grande, established in 1703 at the present-day site of Guerrero, Coahuila, protected the nearby missions of San Bernardo (1702), San Francisco Solano (1700), and San Juan Bautista (1700). Presidio Nuestra Señora del Pilar protected against the French in Natchitoches (1713), and San Miguel de los Adaes (1717) protected other areas of East Texas and western Louisiana. The missions of Nuestra Señora de la Purísima Concepción (1716), Nuestra Señora de
Guadalupe (1716), and San José de los Nazonis (1716) tried to save the souls of the Indians along the Neches River in East Texas. Their dual purpose was to bring Christianity to the Indians and keep out the French.³

The report of Fray Antonio San Buenaventura y Olivares (1709) had noted the suitability of the area near the San Antonio River as a site for a mission outpost. He was the true father of the mission at San Antonio. It was his idea, his plan, his chosen location, and his efforts to get the approval of the viceroy that put San Antonio on the map. But it was the threat of the French that ultimately caused the government to fund the project in 1717. The purpose of placing the mission at the San Antonio River was to provide a way station between the Río Grande missions and the missions of East Texas. The presidio at the same location would provide protection from Indians who had not yet been introduced to Christianity.⁴

In accordance with Fray Olivares's plan, Viceroy Marqués de Valero appointed Martín de Alarcón as captain general and governor of the province of Texas. In 1718, Don Martín was also named head of a military expedition to guard the expedition of Fray Olivares to the site of the new mission. Because of delays caused by equipment needs and bad weather, Fray Olivares was very impatient to be on his way, and relations between him and Don Martín were not entirely amicable. Finally, on April 9, 1718, Don Martín left the Río Grande to found the mission. He led thirty families and several priests to near the headwaters of the San Antonio River, where they arrived on April 25, 1718. There they founded the mission of San Antonio de Valero,
The first site of the presidio of San Antonio de Béxar was on the west side of the San Antonio River near San Pedro Spring. In 1722 the presidio was moved across from the mission, 200 yards from the river and 30 yards from the creek. This initial presidio was never heavily fortified nor manned with more than a few soldiers. The Marqués de San Miguel de Aguayo, who became governor and captain general of Texas that same year, recommended to the viceroy that civilian settlers be brought to Texas. His reasoning was that these civilians would fight to protect their own property from hostile Indians and save the Crown the cost of maintaining a large presidio. Because of the slowness of the Spanish bureaucracy, nothing was done about this recommendation for several years.6

During the years 1718-1731, the population grew slowly. Mission records at Mission San Antonio de Valero indicate that 47 couples were married and 107 children baptized at that mission alone. The total population in 1726 was about two hundred. By 1731 there were twenty-five civilian households, composed mostly of ex-soldiers who had brought their families to the area and remained there after they retired. These settlers farmed, raised livestock, and protected themselves from Indians. The total population in 1730 was three hundred. The presidial commander was the sole source of authority, for no civilian government had been established.7

In 1724, Brigadier General Pedro de Rivera y Villalón left Mexico City to tour the presidios and missions of the entire region of the northern frontier of New Spain.
His instructions were to study the defenses of the frontier and find ways to save money. Presidial captains had a reputation for corruption and dishonesty, and had often been accused of misusing their authority. Soldiers had to buy all their equipment from the commanders, and were vastly overcharged for their gear.

Captains also used soldiers as laborers on their private lands. Some presidios had outlived their purpose, for the nearby Indians had either been pacified or exterminated. Brigadier General Rivera toured twenty-three outposts over three and a half years and filed reports on each one. His reports on the Texas presidios had an immense impact on the future of Spanish settlement in that province.8

As part of his official recommendations following his tour of inspection of all Spanish presidios, Rivera recommended reducing the number of soldiers in Texas, including the presidio of San Antonio de Béxar. His rationale for this action was that the soldiers stationed at San Antonio were actually fit for duty, as opposed to the majority of soldiers in most presidios. The area was peaceful, so fewer soldiers were needed. He recommended closing the presidios in East Texas and reducing the other garrisons. Los Adaes lost 40 men, La Bahia lost 50 men, and the total number of soldiers in Texas was reduced by 150 presidials. Three of the six missions in East Texas, which had had little success in Christianizing Indians, were closed and moved to San Antonio in 1731.9

The overall effect of the Rivera report was to save money for the king, but also to slow the progress of settlement in Texas. With peace in Europe between France and Spain, the French threat seemed less dire, and the Indians were temporarily
tranquil. Accordingly, the Spanish government decided that a large military
occupation of Texas was inappropriate. But few people in New Spain wanted to move
to a frontier where there were so few soldiers to protect them from potentially hostile
Indians. Instead, the king and Council of the Indies decided to bring over four
hundred families from the Canary Islands to settle this province.10

However, four hundred families could not be found who wanted to move to the
isolated, relatively unpopulated frontier. Fifteen families, numbering fifty-five persons,
made the trip from the Canary Islands to found the villa of San Fernando de Béxar.
They suffered many hardships on route, and arrived on March 9, 1731. Just as when
cities that wanted to attract population during the Reconquest had to make promises to
the immigrants, the Crown promised the Canary Islanders many inducements. First,
they would be named to the rank of hidalgo, meaning a "son of somebody," the lowest
rank of the nobility. They would receive free land, seed, and necessary tools with
which to raise crops, and the important right to elect their own municipal government.
Each family was to receive ten ewes and a ram, ten goats and a buck, five sows and a
boar, five cows and a bull. All of these promises would lead to legal disputes within
a short period of time.11

When the settlers arrived, their first task was to plant crops, which would
provide food for the coming winter season. Since there was no time to dig new
acequias, or irrigation ditches, the Islanders settled near the ditches dug by the older
inhabitants of San Antonio. On July 2, 1731, the townsite was surveyed and laid out.
Streets were forty varas (33 inches) wide, house lots were eighty varas square. On July 20 all the Islanders were formally recognized as Hijos Dalgo.12

By order of the viceroy, Don Juan Antonio Pérez de Almazán, captain of the presidio of San Antonio de Béjar, named the eldest and most respectable men to the offices of the cabildo, or city government. Juan Leal Goraz was the first regidor, or councilman. The other council members were Juan Curbelo, Antonio Salvas, Salvador Rodríguez, Manuel de Nis, and Juan Leal Jr. These first officials held their offices for life, or until they resigned. Vicente Alvarez Traviesa was the first sheriff, and Francisco de Arocha was named secretary to the council and notary public. The first election in Texas was for the two alcaldes, or mayors, to be chosen from among the council members. Juan Leal Goraz was the first mayor, and Salvador Rodríguez was the second.13

The laws of the Recopilación detailed the method for setting up and maintaining a city government, and the establishment of the villa of San Fernando de Béjar violated several of these laws. This violation should not be interpreted as meaning that the villa was lawless, but that the Spanish recognized that the laws had to suit the surroundings in order to be effective. The first rule to be violated was that the villa was established very close to a mission. The law specified that there be at least five leagues between settlements, but the fierceness of the Apache Indians made a compact settlement safer. Also, city officials were not supposed to be appointed for life, rather they were to be elected annually. Because of the small number of settlers, this law was disregarded. After enough years had passed, during which some of the
officials had died or otherwise left office, men other than the Islanders were elected to
office. A third violation was that all officials were supposed to be able to write. Of
all the Islanders, only Francisco de Arocha could write a fair hand, and he was
appointed to be secretary of the cabildo.\(^\text{14}\)

This group of Canary Islanders was originally intended to be only the first of
several groups of immigrants, but bringing them across the Atlantic had proved to be
so expensive that further plans were abandoned. The community stayed small for
many years, and it faced continual problems. Indians raids, strife between the original
settlers, missionaries, and the Islanders, power struggles among the Islanders
themselves, and severe weather conditions made farming unpredictable—all contributed
to the poverty of the settlement.\(^\text{15}\)

The colonial government in Mexico City appointed José de Urrutia to be
captain of the presidio in 1733. Under his leadership, retaliatory raids against the
Apaches resulted in the capture of many Indian hostages, and the fate of these
hostages provoked more quarrels between missionaries and presidials. More disputes
arose between the missionaries and the Islanders over the use of mission Indian labor,
crop damage to the settlers’ farms from mission cattle, water rights, and more. The
Islanders were very proud of being hidalgos, and their assumption of aristocratic
postures did not ease tensions between them and the older inhabitants of Béxar.\(^\text{16}\)

Part of the Islanders’ attitudes arose from the legacies of the Reconquest.
From that time, the only occupations that a gentleman could enjoy were the military
and ranching, because those could be done from horseback. Islanders felt that it was
beneath their status as *hidalgos* to work with their hands or farm. Those jobs belonged to peasants, not to nobility. The Islanders, for instance, demanded that the mission fathers fence their cattle spreads in order to prevent damage to the Islanders’ crops. The fathers responded by urging the Islanders to fence their crops. Disputes of this nature went on for years. The ill-feeling between these groups was aggravated by the fact that there was not enough food for the settlers, while the mission had excess cattle. Since the cattle ran wild, Islanders would prey on the herds at night. Initially, the missionaries did not mind the settlers taking a few of the excess cattle; they did protest when the raids turned into the wanton, wholesale slaughter of their cattle.\(^{17}\)

As time passed, the community began to come together. In 1750 the population was about five hundred, and by the mid-1770s it had grown to 1,350. Facing mutual enemies like the Apaches forced the inhabitants of villa, presidio, and mission to work together. Compromises on the issues of cattle and crops eased the stress between different groups. Inter-marriage and godfather relationships (*compadrazgo*) brought families together. Beginning with the first generation of Islanders, intermarriage with non-Islanders increased, so that by the fourth generation no person could claim pure Canary Islander descent. As the original members of the city council retired, their places were filled by non-Islanders. By the late 1740s, the forty-five families who were not Islanders, and who had chafed under the rule of the arrogant minority, started to come into power themselves. San Fernando had thus evolved into a cohesive community.\(^{18}\)
As the inspection of Pedro de Rivera in the late 1720s led to the settlement of the Islanders, the frontier inspection of the Marqués de Rubí in 1767 also led to significant changes for Texas. Rubí was not happy with the conditions of the presidios in Texas. He recommended that crumbling, useless military structures be abandoned, and that missions without Indian converts be closed. He further recommended that the missions in East Texas be closed and the people sent to San Antonio, which would be designated the new capital. As with nearly all other cases, the Spanish bureaucracy moved very slowly before accepting Rivera’s report. His recommendations were put into effect only partially in 1771, and not until 1773 was San Antonio designated the capital of Texas.19

2. Ibid., 105-113.


16. Ibid., 139-140.

17. Ibid., 140-141.

18. Ibid., 145; de la Teja, "Indians," 87-91.

The people of San Fernando did not prosper quickly. A description of the community in 1740 mentioned wretched huts, called *jacales*, as living quarters for most of the settlers, though some had built stone huts. No public buildings had been erected because there was no time for anything other than trying to survive on the harsh frontier. There was no surplus food, generally regarded as a requisite for civilization, and little or no education among the populace. In short, this was an exceedingly poor community, situated on the outlying fringe of civilization, and barely surviving, but it was Spanish. The populace still had the time and energy to sue each other.¹

Though women were a part of the San Fernando community from its founding in 1717, there is no case law recorded in the Béjar Archives regarding women until the year 1735, four years after the Canary Islanders had arrived. A study of this case law suggests that Spanish women on the frontier enjoyed all the privileges and protections established by the *Partidas* and the *Recopilación*. The legal capacity of women is partially substantiated by their ability to grant powers of attorney to those who conducted business for them in far away places. Women could buy and sell both personal and real property on their own; they could also be held and hold others to their contracts. Further, they could be held liable for their actions, both civil and
criminal. Women were witnesses in both civil and criminal trials, and their testimony was just as weighty as a man's. These women made wills and were executors of wills. In short, the Spanish legal system translated well to the frontier situation with little modification of the traditional rights enjoyed by women in Spain or in the more settled regions of New Spain.

There were few, if any, lawyers on the Spanish frontier, so it was the custom for people who had to transact business in a far distant place to appoint a friend, relative, or well-known businessman to protect their interests there. This grant of the power of attorney was used by both men and women, though usually only men received such powers. Power of attorney was made by following a form, as is evident from the fact that the wording of all such grants are almost identical. Women apparently granted this power often enough that special wording was incorporated into the form when it was conferred by them. This extra wording included the renunciation by the woman of all special protections due her by law because of her sex. In essence, she had entered the man's world of business and agreed to be as responsible as a man for her actions, and she could not claim later that she did not know what she was doing.

Most of the grants of power of attorney in the Béxar Archives were made by widows. In 1743 Doña Rosa Flores y Valdés, widow of Captain Don Joseph de Urrutia, and her children gave power of attorney to Don Juan de Angulo of Mexico City to settle the affairs of the deceased. Don Angulo must not have done a very good job, because in 1745 Doña Rosa revoked that grant and gave power of attorney
to Don Joseph de Plazas of San Pedro de Boca de Leones to settle their claims. In both cases, she renounced all laws that favored women. Another widow, Doña Josepha Flores y Valdés gave power of attorney to Don Francisco de Liñan to settle the estates of both her (deceased) husbands, since both died intestate. She also renounced all laws in favor of women.  

Married women could also grant power of attorney. Raphaela de la Garza gave power of attorney to her new husband, Francisco Flores de Abregao, to act on her behalf. This action would have been impossible under English common law, since that legal system assumed that the husband had total control over all his wife’s property. Under Spanish law, the wife had to swear that she was not compelled, persuaded, nor forced to give this power to her husband but did so of her own free will. This one-page document proves that Spanish married women did have control over their own property, that they did not have to give it up to their husbands, and that furthermore it was uncommon for them to do so. It also shows that married women did sometimes grant this power to their husbands, because there was a form for such a transaction.  

Brothers and sisters could join in granting power of attorney. In 1744, Don Francisco Javiela Maldonado, Doña María Maldonado, Luís Maldonado, and Juana Francisca Trebiño gave power of attorney to their uncle in Saltillo to settle their claims of land inherited from their mutual grandfather. Again the use of a form is evident. This one reads, "[t]he said women grantors renounce the laws relative to and
in favor of women in order that they may be compelled to comply" with a possible future court order.⁴

Women had to renounce laws in their favor in order to buy and sell property. The only instances in the Béxar Archives of personal property being sold under a contract are contracts for the sale of slaves. Black slavery was common throughout New Spain, but it was relatively scarce on the frontier, probably because of the poverty of the inhabitants. The ownership of slaves was regulated, as was every part of Spanish life. In slave sales, the ownership history of the slave had to be of public record, in order to show that this person was a previously owned slave. For example, in 1743 Doña Joseph Flores y Valdés⁵ sold her slave Luis to Lt. Colonel Don Justo Boneo y Morales, the governor and captain general of Texas. The document includes the information that she had received the slave from her late husband, Don Miguel Núñez Morillo, and that the sale was for two hundred pesos cash. At the same time, Lt. Colonel Don Justo Boneo y Morales sold to Doña Josepha Flores y Valdés a slave named Francisco Joseph, whom he got from Doña María Eugenia de Oliva, wife of Don Sebastián de Benghechea of Mexico City. The price of this slave was 270 pesos in cash.⁶

Women could not only buy and sell slaves, they could, if they were of African descent, also be slaves. Slaves, of course, had very few rights. The female slave, María de los Dolores, was bought from Doña María Fernández de Castro. This document does not list the name of the buyer, nor the sale price. It seems that only the ownership history needed to be recorded. A more complex case was that of María
Gertrudis de la Peña, an Indian native of Camargo. She was sold by José de Bocanegra to Don Pedro José de la Peña, who sold her to Don Antonio Toledo y Oquilla, who sold her in turn to Don Angel Navarro. She claimed that she was as a daughter to Pedro de la Peña, but became pregnant by him and so was sold, again as a daughter, not as a slave, to Oquillas. She was happy with Oquillas until he got angry at her and took away all her clothes. Don Navarro promised her that if he bought her and she worked for him for three years he would free her, but instead he treated her badly, so she brought suit against him to be freed.\

Since under Spanish law Indians could not be enslaved, María was declared free and not bound in any way to Navarro. The court advised her to return to her own people. By Spanish law Indians had most of the rights of Spanish people, and the laws protecting Spanish women extended to cover Indian women as well. If María had grown up in a Spanish community, she would have been familiar with her rights and known that she could not be enslaved. The court also seems to have taken the facts into account and used the laws that brought the most justice to the plaintiff. Spanish men appear to have been very protective of helpless women, even if the woman was an Indian.\

There was no question that women, married or widowed, could own land. One of the inducements for people to move to San Fernando was free land: a person simply had to petition the cabildo for a lot and live on it, or otherwise improve it, in order to own it in fee simple. Usually the husband, as head of the household, would make the petition and hold title to the land, but this was not always the case. In 1745
Thomase de la Garza, describing herself as a vecina agregada, or original resident, petitioned on behalf of her husband, Gab[r]iel de los Ríos, for a lot on which to live. In the petition, she cites the fact that their eight children, including one widow, live with them. She was granted title; she performed the acts of possession. She "dug in the ground, threw earth, pulled up the stakes, marked the boundaries, and performed all the other ceremonies necessary according to law, as the legitimate owner, holder, and possessor of the said town lot."9

Once the petitioner had lived on the lot long enough to have clear title, the land could be sold. Again, there is absolutely no question that women could buy and sell real property, provided that they renounced all laws in favor of women. In 1746, Doña Juan de Urrutia, widow of Don Ygnacio Gonsales de Ynclán, sold land to Don Diego Ramón. The lot was described as fifty varas square, fenced with a board fence on two sides, with sixteen peach trees, and included a house with all its improvements. The price was five hundred pesos. The deed followed the same form as all deeds executed by men, except that it included the now familiar clause that Doña Juana renounced all laws favorable to women.10

The hazards of life on the frontier, especially for young men, led to widowhood for many women. Many of the women selling land were widows, and this status was so stated in the deed. Much of the time the marital status does not seem to have been included for any legal purpose, but merely to identify the woman precisely. Gertrudes de la Garza, widow of Martín Sausedo, sold to Don Alberto López a lot with fruit trees on it. In this case, the husband had contracted the sale before his
death, and his widow was completing the transaction. She still had to renounce all laws in favor of women. Gabriela de los Ríos sold Juan Joseph Villegas a fenced lot on the acequia for one hundred pesos. No mention was made of her marital status. Doña Joseph Flores y Valdés bought land near the presidio from Joseph de Montmayor for fifty pesos. No mention was made of her marital status, either, but in other places she was listed as a widow.¹¹

A husband could not sell land belonging to the married couple without the consent of the wife. Don Manuel de Niz, with the express permission of his wife Doña Sebastiana de la Peña, sold land to Don Thoribio de Urrutia in 1748. "We" was used throughout the deed of sale, and in addition to renouncing all laws in favor of women, Doña Sebastiana separately averred that she was not intimidated by her husband.¹²

Normally, the husband would represent his wife's legal interests. In 1770, Don Francisco Caravajal brought suit on behalf of his wife, Doña María Caravajal, to regain land. The first owner of the lot, Mateo de Caravajal, grandfather of María had received it from the Crown. Mateo built a house on the lot and lived there. One of the town's mayors gave part of this land to two brothers, Andrés and Francisco Hernández. Andrés sold his part to his niece, Doña Josepha Hernández, and Francisco sold part of his part to Joseph Caravajal, son of Mateo, who should have had all the land by right of inheritance.

As part of this suit, Josepha Hernández claimed that she did own part of the land and that the title was in the town's archives. Doña Josepha signed her own name
to this document. One of the witnesses, Doña Juana de Oyos, was also supposed to have signed her own name, but there is no such mark in the translation. This degree of literacy was very unusual for San Fernando, for most people simply made a mark, and the scribe wrote in their names. The first decision was in favor of Don Francisco, "husband and conjoint person of" his wife María. The decision as to the exact limits of the property was disputed by the defendant, Doña Josepha Hernández. The eventual outcome of the suit was that the land was recognized as belonging to Doña María de Caravajal. The major peace officer gave possession to Doña María in the presence of Doña Josepha, and Doña María walked the boundaries. So even though the suit was brought by the husband, the land belonged to the wife.13

A married woman did face some constraints on her ability to buy and sell real property. In a suit brought in 1771, Ygnacia de Castro sought to void a contract to sell her property to her brother, because he had not made any payments beyond the down payment. Her argument was based on the lack of a written deed, and her claim that he had acted maliciously in trying to defraud her of her land. Her brother, Marcos de Castro, claimed that since she was married at the time of the contract, she could not enforce it. The court held that the plaintiff's marital status was "irrelevant," because the defendant had indeed acted maliciously. The contract was voided and Ygnacia retained her land.14

Women often exercised their rights to sue for damages. Magdalena Leal owned a reed field that was damaged by Vicente Amador's horse. Vicente belied his surname when he attacked the deputy who told him to retrieve his mare and pay the
damages. María de Carabajal, as part of the suit mentioned previously to regain her land from the Hernández family, brought suit on her own for damages resulting from the defendant’s use of the land during the lawsuit. Doña Josepha Hernández answered the order to stop building on the land until the settlement of the suit by asking that the suit be dropped. She claimed that the land was hers and she could build on it if she wanted. As noted above, María was given possession of the land in the presence of Josepha, probably to forestall any further claims of encroachment.15

Although Spanish law, as well as Spanish men enforcing it, favored women, this did not mean that women won every lawsuit that they brought against men. María Egenciaca Rodríguez, a widow, sued to retain land that she claimed had been granted to her husband and was being requested by Don Domingo Delgado. She wanted her title ratified so that he could not seize her improved land and force her onto the unimproved portion. Witnesses were called to testify as to the original grant to her husband, and they all agreed that what she was claiming was not part of the original grant. The court ruled that she had no title to the land, and the municipal council granted the land to Delgado.16

One of the earliest suits in the Béxar Archives was filed by Antonia Lusgardia Hernández. She petitioned Governor and Captain General Don Miguel de Sandoval for the return of her son from Don Miguel Núñez. She had been working for Don Miguel for eight or nine years for no salary, and had left because of poor treatment and because he would not give her any clothes. She had a daughter before she went into service, and had a son while she was there. When she left, she claimed that Don
Miguel took away her son, "the only man I have and the one who I hope will eventually support me." She threw herself on the mercy of the court: "I being but a poor helpless woman whose only protection is a good administration and a good legal system." Although she could not name them, she asked for the protection of all laws in her favor.\(^\text{17}\)

Don Sandoval, no doubt proud that being the good administrator of a good legal system enabled him to help this poor woman, ordered the boy returned. Don Miguel agreed to comply with the order, but replied that the boy Ignacio had left his mother of his own free will in order to be with his godmother, Doña Josepha Flores, who happened to be the wife of Don Miguel. Don Miguel claimed that Antonia gave the boy to Doña Josepha and renounced all her rights to him, so she should not get him back. Don Miguel also claimed that he wanted merely to protect the boy, who had a good, spiritual relationship with his godmother.\(^\text{18}\)

This case does point out the value that the Spanish placed on family, whether as a support for a "poor helpless woman," or as a godson. Nowhere was the parentage of the boy asked. Apparently, the identity of the father was not important to the disposition of the case. This case also shows that even a very poor woman knew her legal rights and was not afraid to go to court to enforce them. Spanish women living on such an isolated frontier must have passed on the knowledge of their rights from mother to daughter, and between friends.

Not every familial relationship was so loving, especially where property was involved. Raphaela de la Garza brought suit against her own son, Joseph Antonio
Curbelo. She stated that he had come into her house claiming that since she had remarried, her new husband should provide her a new house and that they should leave this one, which had been his father’s, to him. The son then tried to kill the second husband with a sword. He counter-claimed that his mother and her second husband had tried to put him out of his own house, and that was why he armed himself with the sword. He also asked for his father’s will to be probated so his stepfather would not spend all his inheritance.¹⁹

Since women had every right to dispose of their own property, they also had the right to use wills to dispose of their property after their death. The earliest woman’s will and testament to be found in the Béxar Archives is that of María Melián. Her will, dated December 3, 1740, was typical of Spanish wills of that period. She first directed that two reales be donated to the Holy Church of Jerusalem to ransom captives and help orphan girls. Doña María had been married twice, so she stated that the only property that had been brought into the second marriage was one cow, which had given birth to four offspring during her second marriage. One of this cow’s offspring was to be given to the youngest daughter, and one given to her son from her first marriage. Her other children were to be given cows from the five she had received for settling in San Fernando. All the rest of her property was to be divided equally among her children from both marriages.²⁰

This will sheds light on several aspects of property ownership under Spanish law. The gift to the Church came first, before any other property was distributed. Next, she divided her property into what was hers by right of settlement, and what
came to her in each of her marriages. A Spanish marriage was ganancial in nature—meaning that the people entering into it expected to make material gains during the marriage, and that these gains would be the result of both their efforts. Therefore, any gains accruing during the marriage would be split evenly between the marital partners. The one cow that she brought into the second marriage was her own personal property. Its offspring during the marriage would be divided equally between her and her husband, therefore she devised two of the four offspring to two of her children. The one given to her youngest daughter was probably intended to form part of her dowry, and the one given to her eldest son might be because he would not inherit from her second husband, or it might be simply because he was her eldest child.21

All her children shared equally in the rest of her estate. There was no differentiation between male and female offspring in the division of the remainder of her estate. This lack of prejudice against females was very different from what would have been the case under English common law, where males, especially the first-born son, would have received the bulk of the estate. Men and women both were vital to the survival of the community on the Spanish frontier, and Spanish wills demonstrate this.

The will of Mateo Pérez, though undated, was probably written in 1746 or 1747. Don Mateo was apparently a wealthy man by San Fernando standards. The first several items in his will were a list of debts owed to him by various people. Gertrudes de la Cruz, wife of Joseph Lisardo, owed him sixteen pesos for material. Note that she owed him, not her husband owed him, even though the husband's name
is used for identification purposes. This case nicely illustrates that married women were responsible for their own debts. Dominga (no last name) owed Mateo eight pesos, four reales. Gertrudes, widow of Joseph de Sosa, owed him twelve pesos. Ana García (marital status not mentioned) owed him six pesos in corn.22

After listing the debts, Mateo explained that his sons had already been given horses, so he bequeathed an equivalent amount of money to his daughter, María Antonia. This practice was very common. Sons and daughters would receive their expectancy during the parent’s life, and it would be deducted from what they received through the will. In this case, Mateo’s sons had been given each a horse as part of their expectancy, so the daughter received the value of a horse in cash from the estate in order that all would be equal.23

Family was very important to the Spanish, regardless of legitimacy and regardless of actual parentage. Mateo bequeathed the same amount of money to Rosa Pérez, a mestiza who was born in his house and raised as his daughter, and he also left her six breeding cows. Rosa’s son Joseph Marfa received two breeding cows, two horses, and a saddle. Even the servant who was not considered part of the family, María de Saragoza, received six cows and a bull. The legitimate children, not including Rosa, shared equally in the bulk of the estate. This distribution shows that Mateo wanted all his family to benefit from his estate, and to do so as equitably as possible. Bequests to illegitimate children and non-family members were made explicitly, as otherwise they would not share in the estate. In this will, horses were
given only to men, while cows were given to both men and women. The bulk of the estate was divided equally between Mateo’s legitimate sons and daughters.24

The contrast between this disposition and one that would have been made under English common law is immense. Under English law, Mateo’s eldest son would have inherited almost all of the estate. Younger sons would have received small portions, and the legitimate daughter might have received a dower portion. Most likely, the illegitimate children and servant would not have been included at all.

Sometimes, of course, the distribution of property through a will did not happen amicably. Suits to force distribution of estates, and to challenge distribution of estates, were common in San Fernando. One suit that was fairly simple was the suit by a widow to prove she was the only heir of her husband. His will stated that she was his lawful wife and that their children would be his heirs after her death. In other words, he left her a life estate in his share of the community property. His will stated that all he owned was gained through the marriage, so that he had no separate property to divide. That this suit was brought at all shows that the children did not want to wait for the death of their mother to receive their share of their father’s estate.25

Suits would also be filed to settle the estate where the person died intestate. In 1771 Matías Guerra filed a suit against Juan Ignacio Guerra to divide their father’s estate. Cayetano Guerra had not left a will, so his legitimate daughters Rosalia, Bernarda, and Antonia, and his legitimate sons Matías and Juan split the bulk of the estate equally. Special bequests, in the form of silk shirts, were given to Cayetano’s two illegitimate daughters. All interested parties attested that they were agreeable to
the division, with husbands signing for their wives. Again, family was important. Even illegitimate daughters shared in the estate.26

When there was no will, and land was involved in the deceased’s estate, a suit could be filed to determine the eventual disposition of the land. Such an amicable suit to settle land ownership was filed so that mutual heirs would be able to sell land to a third party. Here a copy of the entire proceeding was given to the eldest sister, so that the family would have a record and not bring any more suits.27

The criminal cases in the Béxar Archives do not often involve women. When women were part of a criminal trial, it was usually as witnesses. For example, when Quiteria Cai Múzquiz was called as a witness in the murder trial of the Indian Andrés, she took the same oath as the male witnesses and her testimony held the same weight as theirs. Even the Indian wife of Andrés was sworn in through an interpreter and allowed to give her testimony.28

The record of the one criminal case during this time period where a woman was imprisoned tells of murder and adultery. It is very enlightening about the change in Spanish attitudes toward these crimes on the frontier. Juan de Sosa was accused of murdering Diego Menchaca. Sosa confessed to the deed, but claimed he did it because Menchaca was committing adultery with his (Sosa’s) wife. Under Spanish law, this would be a complete defense to the charge of murder, but the wife would then be held guilty of adultery. Therefore, when Juan made this defense, his wife Gertrudis Barrón was arrested, shackled, and imprisoned. However, the charge brought against her was not adultery, but that her actions had led to the murder of
Diego and that she was therefore responsible for his death. Juan de Sosa was set free when it was determined that he did, in fact, act to defend his wife's honor. Gertrudis was also freed, and no charge of adultery was ever brought against her. Apparently, as in Castile, if Juan could forgive his wife, so could the law.²⁹

This case law illustrates that the traditional Spanish law as embodied in the Partidas survived the transition to the frontier mostly intact. That should not be surprising, since the ideas of the Partidas developed on the frontier of the Reconquest. Spanish women knew their rights. They knew that they could own property; that they could buy it, sell it, inherit it, and be responsible for it. On the frontier this ability of women to handle their own affairs was important, since the men were so often away fighting Indians or on other business.
ENDNOTES -- CHAPTER SIX


4. Ibid., reel 2, vol. 10, 114-116; McKnight, "Lawbooks," 74-84.

5. BAT notes that this woman's real name was María Josepha Flores.


8. Ibid., reel 6, vol. 45, 108.


10. Ibid., reel 2, vol. 10, 198-201.


12. Ibid., reel 3, vol. 18, 72-77.


15. Ibid., reel 7, vol. 48, 43, 49, 65.


17. Ibid., reel 2, vol. 7, 117-118.

18. Ibid., reel 2, vol. 7, 119-121. The outcome of this case is not recorded in the Archives.
19. Ibid., reel 7, vol. 48, 73-78. The outcome of this case is not contained in the Archives.


22. BAT, reel 3, vol. 18, 104-111.

23. Ibid.

24. Ibid.

25. Ibid., reel 7, vol. 48, 74.


27. Ibid., reel 5, vol. 32, 74-75.


CHAPTER SEVEN

CONCLUSIONS

To a great extent, it was the ancient laws of Castile that allowed the women on the Spanish frontier to adapt so well to their conditions. This should not be surprising, since the earliest of these laws were created in a frontier situation during the Reconquest. That centuries-long crusade to remove the Moors from Spain was of utmost importance in the shaping of Castilian society. There were three major adaptations of the Castilians to Reconquest life. These were: the growth of the idea that military activity and ranching were the only respectable forms of work for the nobility; the combining of the ideas of conquering and converting the infidel to Christianity and the Spanish way of life; and the practice of granting concessions in order to induce people, especially women, to move to the dangerous frontier.

For the purposes of this thesis, the last practice was the most important. When village councils granted concessions to women, such as those that allowed them to own property, the men on the council were not aware that they were setting a precedent. The council members just wanted women to move to the deserted villages so that the villages would be populated with Castilians. Having more women meant that more babies would be born, that more soldiers would decide to settle down there, and that the Spanish community would flourish. All of these things did indeed happen.
More importantly for posterity, however, these rights did not cease with the deaths of the original grantees, but continued in perpetuity. Mothers, who may have owned nothing when they came to a village, left property to their daughters. The daughters grew up knowing that they could own property, and prepared themselves to manage it well. The ability of a person to own property, especially real property, is the hallmark of citizenship. Without realizing it, perhaps, those village council members granted the status of almost full citizenship to women, at a time when most other places in Western Europe assigned women the status of property.

The gains that women had achieved during the Reconquest were combined in the great legal work, Las Siete Partidas. This collection of laws, when it came to defining the rights of women, gave more weight to the codes of the cities than to Roman or canon law. By these laws, women had almost full legal capacity, and the exceptions were carefully spelled out so that they would be known in advance. Women had the unquestioned ability to own property, but if they were married, their husbands usually administered it for them. This was not always the case, and women could go to court and claim the right to manage their own property. Women could administer their husband’s property in certain circumstances, and they could be named guardians for their children and grandchildren.

Under the Partidas, Castilian women could make contracts, if they proved to the officials that they knew what they were doing, and relinquished all laws in the favor of women. Women, unlike children, had the capacity to cause dishonor, which was the main tort in Spanish society at that time. Women would suffer from their
own misdeeds, if they lost their reputation, for example, or committed a crime. Even
in these cases, though, women were more valuable members of the community than
were men, for the punishments of women were lighter, and the death penalty used
rarely.

One of the most important considerations of the Partidas was that women had
the right to consent to, if not absolutely choose, their husbands. This right alone
placed them far above their feminine counterparts in other countries, for even the right
to veto a prospective bridegroom was not known outside of Spain. The amount of
personal freedom that this right gave to Castilian women is hard to overstate. They
did not have to spend every day and every night with a man whom they detested. The
wife did not have to hand over all her worldly goods to a spendthrift or wastrel. If a
Castilian woman thought her husband was mismanaging her property, she could go to
court and gain control of it.

Though a woman's proper role in life was carefully delineated, and the bounds
of respectability carefully guarded, Castilian women had a much greater amount of
personal freedom than her English or Continental neighbors. As long as she kept
within the limits of respectability, she could do almost anything. There were few
things that she absolutely could not do. She could not be an advocate for others, and
she could not be a witness to a will. These restrictions are not serious limitations on
the lifestyle of the average woman even today.

There did exist some pursuits that women could do only in special
circumstances, such as act as a surety for others, spend her husband’s money, or
otherwise engage in the business world. But these circumstances happened often enough that there were forms to follow, procedures to be satisfied. It did not often happen that a married woman managed her own property, but it was an not unheard-of concept, either.

Although the Partidas did not constitute the law of the land, they were absorbed into the national consciousness and became the traditional law of Castile. When Isabella, as Queen of Castile, ruled over all of Spain, the Castilian laws were the laws by which she ruled. As Spain conquered and settled the New World, these traditional laws were the laws by which the new lands were ruled. The Council of the Indies did make some additions that affected women, but their traditional rights remained untouched. Women in New Spain had all the rights of their mothers and sisters on the peninsula, and the new frontier situation forced them to grow stronger just to survive.

Of all the rights of Castilian women, perhaps the most basic, and most important, was the right to own property. Earlier, it was shown that women in the villa of San Fernando indisputably had the right to own property. They could obtain free property from the city council, they could build on their property and improve it, and they could sell it when they chose to do so. Widows had the right to live on or sell the property of their deceased husbands. Women could grant others the power of attorney to act on their behalf, or they could manage their property directly. In Western society, it was the ability to own property that separated citizens from slaves, nobility from serfs. In England and other European countries, women could not own
property, or only in very limited circumstances. Spanish women did have this right, and as a result were very capable when confronting and surmounting the various obstacles of frontier life.

It was fortunate for the Spanish colonies that women had the tradition of taking care of business, because the men were gone so much of the time. In the early years of Villa San Fernando, Indian attacks came constantly, and the men were required to fight them off. Many lost their lives this way, and widows were left to handle the family’s affairs. Widows proved very capable at executing wills and settling intestate divisions. They also proved themselves quite adept at running the family business, whether farming, ranching, or retail. They had probably helped manage things all along, because in anything gained during the marriage, half belonged to them.

Men might also be gone for long periods in carrying out business, getting supplies for the family, or serving as a soldier. In any case, the wife remained behind to keep things in order. Consequently, she not only could do her own job, she could do the husband’s, too. In a frontier situation this was highly desirable, for the reasons mentioned above. Men wanted to be able to rely on their wives to take care of the family while they were gone, and after they died. As long as women obeyed the rules and remained respectable, they had considerable freedom, much more so than that of the English women settling the Atlantic Coast of the new continent.

Because the husband was dominant in the eyes of society, the wife learned to handle things behind the scene. She did not object that the husband appeared to be
all-powerful to an outside observer. She knew better, and so did he. Marriages, though the amount of romantic love involved is hard to ascertain, were companionable partnerships. A marriage was the joining of two people, two sets of separate property, into a working relationship. All gains earned during the marriage belong equally to both partners. The wife knew she was an equal partner, though she was usually deferential to her husband in public.

All of these things encouraged and strengthened the adaptability of Spanish women on the frontier. They had traditional legal rights, which no one could take away from them. They learned early in life how to manage property so that when they married they could help their husbands. They also learned how to carry on in or during a man's absence. Because they were accustomed to working behind the scenes, they were more used to inventing creative ways to get a job done. The cliché that necessity is the mother of invention held true on the frontier. There were many times when creativity and invention on the part of the women held the family together and let them survive. Their firm knowledge that they were capable of such things was all they needed, and that knowledge permitted them to accomplish what would have been impossible for other women without such a background.

In other words, it was the tradition of the legal rights and privileges of Castilian women that allowed them to adapt and survive on the harsh, remote Texas frontier. From the concessions granted by cities during the Reconquest, to the enunciation of those rights in the Partidas, women on the frontier had a lot to be proud of. They were capable citizens, full partners in every endeavor, and their
contributions made it possible for the settlements to endure and grow. It was the
persistence of Castilian law that gave stability to the society. It was the strength of
the women that gave security to San Fernando de Béjar.
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