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# Protecting and Protesting Notarial Exclamations and Declarations (Peru, Chile, Seventeenth-Eighteenth Centuries)

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## Abstract

The second half of the seventeenth century, and the eighteenth century, were characterized by political tensions between Lima, the seat of government of the Viceroyalty, and the Chilean General Captaincy, which was under its jurisdiction. In this context, a Chilean army captain made a statement before a notary in Madrid contradicting previous statements he had made during a judicial interrogation recorded in Lima two years earlier, in which he criticized the Viceroy of Peru. Considering the declaration made in Madrid, this article analyses a legal concept often recorded in notarial documents, called the *exclamación* (exclamation), made by men and women in the jurisdictions of Cuzco and Lima (Peru), and Santiago (Chile), during the seventeenth and eighteenth centuries. Exclamations were used by people seeking to protect themselves against future losses or to prevent the misuse of a previous written statement. Thus, they were official notarial deeds with a judicial purpose. Our hypothesis is that these notarial deeds liberated dominated voices. It allows us to delineate several functions of notarial writing, between justice and conscience. We question how truth and memory may or may not emerge from these documents, considering the location and gendering of protection and protest domination. We argue that the time factor is significant and that subalternity is not an inescapable condition.

*Keywords:* Power, Protection, Regret, Violence, Will

This text is part of a dossier titled 'Subaltern Writing and Popular Memory in the Early Modern World'. It invites us to consider how the memory of subaltern classes is reconstructed through written documents produced by social actors belonging to dominant groups in colonial societies. We will not only interpret the concept of memory as the act of recording events in writing to avoid forgetting what has occurred among individuals from lower-class backgrounds. We also wish to underscore memory

as the personal endeavor of delving into one's consciousness to contemplate the repercussions of past actions, even if they are relatively recent.

The concept of subalternity has posed challenges for historians of Spanish America who work with notarial archives. Therefore, it is important to say that we have a critical posture in relation to the intellectual trend inspired by the South Asian Subaltern Studies Collective, which emerged in the early 1980s. Many questions have arisen regarding the notarial recording of documents in the Spanish American colonial territories, far from each other and from the metropolis. Some of these questions concern the validity of documents over time, whether they contain accurate speech and the material conditions of writing and memory, which depend on the place and time of writing.

Moreover, a sense of justice emerges from notarial deeds in colonized societies. One possible way of explaining this was proposed by Kathryn Burns, who, while working on *exclamaciones*, stated: 'The *exclamaciones* may have been part of a cautious legal strategy, intended to ensure the preservation of marital property in the event of a future lawsuit. But they could also have served as a legal mechanism to mitigate the abuses of violent husbands' (2005, 64). They may refer to a 'political culture of resistance' developed by certain social groups, for example, women vis-à-vis men or Indians vis-à-vis the Spanish colonial system, which sometimes involved written expression and the office of the notary. The exclamation appears then to be a legal deed that improved the condition of 'subjects under coercion', whether subaltern or dominated, such as the wives mentioned by Burns, in colonial societies of the Ancien Régime.

In this text, we will lay the groundwork for our reflection, which is part of a broader project exploring the existence of certain legal deeds in notary protocols. This project aims to examine the strength of individuals' volition while revealing their sense of justice.<sup>1</sup> We wish to argue that we are in the presence of a practice of self-expression conditioned by a self-examination of conscience due to intimate suffering, possible for any subject of the Catholic king. We adopt this perspective by tracing the history of emotions and acknowledging the significance of emotions in individuals' decision-making. We are interested in exploring the power of guilt, regret and the awareness of having acted under coercion. Indeed, our observations on these voices, first dominated by various constraints and then liberated by the exclamation before the notary, allow us to argue that it was possible to restore legal vigour to speech that had been suspended or altered. Hence, the time factor associated with this form of protest contrasts with the very condition of an inescapable subalternity.

After introducing our working hypothesis regarding notarial protocols, we will present the corpus of *exclamaciones* in the notarial archives of Cuzco and Santiago de Chile that attracted our attention. This will help us highlight the continuity of this practice over time and across colonial territories. We will then propose a classification of the *exclamaciones* encountered

<sup>1</sup> This work is part of research on *exclamaciones* and *declaraciones*, based on the archives of Hispanic-American notaries, and follows a dual approach: a) cultural history of social relations and judicial instruments for resolving conflicts, supported by written culture, the history of speech and the history of feeling and emotions (Albornoz Vásquez 2007a, 2007b, 2008, 2010, 2011, 2012, 2015 and 2016a, 2016b) and b) socio-cultural history of justice from a gender perspective (Albornoz Vásquez 2007a, 2007b, 2020 and 2022). We would like to extend our sincere thanks to Kathryn Burns for sharing her field notes, to Andrea Sanzana Saez who, with the consistency and seriousness that characterizes her work, facilitated our access to primary sources in Chile, and to Marianne González Le Saux for her careful reading and good suggestions. This study has been undertaken as part of the research project 'Vox Populi. Spaces, Practices and Strategies of Visibility of Marginal Writing in the Early Modern and Modern Periods' (PID2019-107881GB-I00AEI/10.13039/501100011033), financed by the Ministerio de Ciencia, Innovación y Universidades and the Agencia Estatal de Investigación, Gobierno de España.

thus far, based on the constraints placed on the declarants. Finally, in the last section, we will conclude by examining the moral constraint weighing on the declarants, which emerges in the notarial acts.

### 1. *Subalterns and Ventriloquists*

One of the main concerns of subaltern studies has been whether the dominated, particularly the poor, can write their own history. A complementary orientation has emerged, in which scholars have studied marginal groups and the processes of marginalization (Guglielmi 1986). Thus, the first step of the subaltern studies involved the provincialization or decentralization of Europe and recognition that its categories were not universal. In the second stage, the focus shifted towards ‘restoring dignity to the forms of transmission of historical knowledge that existed outside Europe before the colonialism of the nineteenth century erased or suppressed them while educating indigenous elites according to Western educational models’ (Marcocci 2016, 10).

It is partly in their relationship to writing, and to the conditions of access to registers, that several groups have been identified as subaltern. From this perspective, subalterns who express themselves in written documents have been considered ventriloquized. This seems particularly relevant for historical studies undertaken with notarial sources produced in the Andes, where the subaltern groups (the indigenous Indians) did not speak Spanish, the language of judicial and notarial records in the Spanish colonies of the Viceroyalty of Peru, and did not have a mastery of writing (Burns 2010; Guerrero 2010). This idea of the notary as ventriloquist questions the possibility of recognizing these declarants as social agents capable of seizing writing and language to tell their own story.

Thus, the disciplinary focus of ‘Latin Americanism’ has largely centered on ‘studies on problems of hegemonic formation, ideology, cultural politics, social identities and symbolic economy’ (Moraña and Sánchez Prado 2012, 11),<sup>2</sup> while often neglecting what Sara Ahmed (2004) refers to as ‘the cultural politics of emotion’, despite there being numerous publications on this subject. In contrast, studies on Christianized North American Indians have been noted for their bicultural nature and the inclusion of autobiography in traditional native cultures (Wyss 2000).

In an Ancien Régime colonial context, such as Spanish America, the presence of subaltern groups can be explained by two enmeshed social hierarchies: imperial, where Spaniards from the Metropole were above all Creoles; and local, where notables and important landowners, generally Spaniards or descendants of Spaniards, were mostly mestizos, Indians and people of African descent. Therefore, being poor is not related to a lack of money or wealth, but to reputation (credit). And having credibility depends on the circumstances and the location, so that the same person may be considered as poor in one town and not poor in another (Albornoz Vásquez 2014). Furthermore, from a gender perspective, women are also a subordinate group to men. When considering these three categories of subaltern groups in Hispanic-Catholic America, the most ‘subaltern’ of all would be black slave women, who were deprived of the possibility to express themselves.

How then can the voices of subalterns be recovered in circumstances where they were constantly coerced and forced into categories, particularly legal ones, that were imposed upon them? To what extent can the public, legal and formalist writing that constitutes much of the documen-

<sup>2</sup> Unless otherwise stated, all translations are the authors’.

tation used by historians record these voices in the context of the Spanish Catholic monarchy? These questions lead to a reexamination of the role of writing officers, especially notaries, in the transmission of knowledge from subaltern, dominated and marginal groups (Herzog 2010).

In addition to the mechanisms of submission to authority in this monarchical and Catholic society, we should examine the willpower of the actors of the past to validate their declarations before the king's notaries. Rather than studying the capacity of subalterns to be social agents or their agency, in this text we aim to examine the conditions that made it possible for writing officers, who were charged with public writing, to record the expression of emotions and feelings unique to the individuals who declared them (Argouse 2016b). We believe that the question of subalternity cannot be studied by separating social groups according to categories unfamiliar to the societies being considered. Instead, the concrete conditions of access to writing, that allow them to be able to speak for themselves before the authorities, should be pondered; for example, clamouring for consolation for their suffering before jurisdictional authorities (Albornoz Vásquez 2012) or establishing their choices and defending their interests before notaries (Albornoz Vásquez and Argouse 2017). From this perspective, a particular power relationship appeared when the document was being written. This power relationship was determined by the social and cultural backgrounds of the time. This is why some social historians have described notaries as brokers (Nussdorfer 2009).

Considered as assistants to justice, most notaries were laymen, often urban, who had links with rather dominant groups, i.e., property-owning groups. Thus, a classical and anachronistic approach, reflected in most of the cataloguing efforts available in the archives and which relate to property rights and their transmission, suggests that notaries were essentially at the service of landlords eager to protect their property from the onslaught of other social groups, and that what they wrote reflected the concerns of the wealthy. However, a complete reading of notarial archives, such as the one proposed by French historian and notary Jean-Paul Poisson, shows that the notary could also be seen as a figure who was available to everyone (Clanchy 1979; Beal 1998; Bertrand 2015). In other words, at first glance, nothing predetermined that the notaries of Hispanic America were at the service of one social group rather than another; hence, it seems necessary to ask what, in the notary's office, would predispose him to record the voices of dominant classes to the detriment of subaltern voices. Indeed, as a counterargument, there are often significant proportions of women's wills in colonial archives, as well as those of Indians (Kordić Riquelme and Goić 2005; Pizzigoni 2007; Argouse 2016a). Therefore, the notary's records consist of a collection of words and meanings going beyond statements of principle.

In this text, we will explore what happened to individuals who lived in or passed through various places within the jurisdiction of the Viceroyalty of Peru during the seventeenth and eighteenth centuries. Two examples should illustrate our point, showing that the notary's register could accommodate the speech of those usually considered to be dominated and subject to social, economic and legal constraints. In Cajamarca, Peru, in the seventeenth century, an Indian woman, Juana Lachos, made her will and declared in a clause that her grandson, whose name was Domingo de la Cruz, never visited her.<sup>3</sup> Through this act, the testator left a trace of this man's family bond with an Indian woman, and although he had a Spanish name, his blood purity could be questioned. It also means that the declarant made use of the space of the clause to express what seemed to her to be an important truth. At the same time, this Indian woman implicitly recognized the validity of the notary's register to establish this truth.

<sup>3</sup> Archivo Regional de Cajamarca, Escribano Pascual Culquirayco, Legajo 41, 27 de julio de 1693, 566.

Sometimes, writing also captures a fleeting moment when an individual was able to express themselves and alter their destiny, thanks to the revelation of new or previously undisclosed information. For instance, in 1650, a recently purchased slave who was about to board a ship in Valparaiso informed the buyer's agent that the fistulas he had were 'old'. This information about the slave altered the characteristics of the item being purchased because the prior illness impacted its value. This revelation from the slave was duly documented by a clerk, potentially leading to the annulment of the sale on the grounds of non-conforming merchandise, thereby preventing the slave from being transported to Lima.<sup>4</sup>

These two cases suggest the possibility that the notarial authority could be a means for subalterns, such as slaves, foreigners, women and Indians, to express themselves. They declared something *para que conste* (for the record), which would be recorded in writing. At the margin of what was expected in a will or a power of attorney, the expression of oneself, one's situation, and one's suffering seemed to be possible. In short, we can infer that this Indian woman and this slave knew that the witness and the register could be used to convey their message in writing.

Another case allows us to consider the condition of the subaltern as that of any person who has been coerced by force, and to demonstrate that subalternity would not then be an intrinsic absence of speech but the distortion of its expression by violence.

This is what occurred in Lima, the capital of the Viceroyalty of Peru, in a tavern during the early afternoon of a day in November 1671.<sup>5</sup> Cristobal Gaona had just had a difficult time with the viceroy's secretary, Phelipe Romanes, who gave him some paper and ordered him to write a statement about the actions of the captain general of Chile, Juan Henríquez. Viceroy Conde de Lemos was rather worried about the way the captaincy was being administered. He had received very negative information that could also harm his reputation. It was not only Henríquez who had bad press but the whole of Chile, which was perceived as a realm of depravity and abuse, which its captain general was unable to put behind him, especially following the scandals that had erupted during the mandate of Captain General Francisco de Meneses in the previous decade (Argouse 2013). It must be said that Henríquez was involved in affairs that reached the viceroy's ears and would be catastrophic for everyone if they also reached the king's, without discernment or the necessary context.

Cristobal Gaona, a native of Cordoba, Spain, and a captain in the Chilean army for more than sixteen years, was on his way to Spain when he was disembarked in the early hours of the morning from the ship on which he intended to travel to Coro, in the jurisdiction of Caracas. Forced into the viceroy's palace, he was obliged to declare what he knew about Henríquez, or rather against Henríquez. The Conde de Lemos probably did not trust this individual any more than the captain general and therefore demanded this statement in writing, which would allow him to be safe if the rumours of the scandals in Chile reached Madrid. Gaona complied and was even obliged to sign a deed modified by the viceroy as part of a judicial investigation against Henríquez.

Two years later, in May 1673, in Madrid, Cristobal Gaona appeared before Juan Burgos, one of the most famous notaries in the city. He came to make a declaration to deny everything he had written in Lima two years earlier. He explained that he had been forced to declare against Juan Henríquez, not being in a position to contradict what the viceroy seemed to want to hear to save his own honour by smearing Henríquez. Thus, a man, a military man who

<sup>4</sup> Archivo Nacional Histórico de Chile, Escribanos de Santiago, vol. 298, 5.

<sup>5</sup> Archivo Histórico de Protócolos de Madrid, Protocolo 8173, 331-373. We have mentioned this case previously (Argouse 2016c).

had risen to the rank of captain, who could write and who could reply to the viceroy 'de voz y de habla crítica' (with full voice and critical speech), found himself under duress, forced to declare and sign a document against his will. For his part, the viceroy feared that the clamour and hunger of the desperate soldiers would lead to his downfall and so he gave in to the need to open legal proceedings to inform the public about what was happening in Chile. But let us leave the turpitude of these gentlemen, which is quite symptomatic of the moral crisis of the seventeenth century.

The act by Gaona in Madrid, recorded as a 'declaration', raises several questions about the strength of the word given and authenticated before a notary, especially in a space as large as the Catholic monarchy was between the sixteenth and early nineteenth centuries. Declarations are expressions of volition that can be revoked. Revocation is a mechanism often used, for example, for wills or powers of attorney. This revocability raises the question of their legal value in time and space, between jurisdictions. Moreover, how can one know whether a grantor has not contradicted himself between two deeds, one drawn up in Lima, the other in Santiago, for example? Small arrangements are possible, as shown by the practice of wills or powers of attorney. When two wills by the same person can be compared, the rule is simple: the most recent one prevails.

However, Gaona's act in Madrid corresponds to something other than an intention to repeat, or to note changes in the establishment of debts or properties. It expresses a willingness to disavow what was said in Lima because the Lima declaration was made under duress. Thus, Gaona's declaration made in Madrid shows the limits of the idea of a firm will, of the 'good will' of a subject who desires something and whose own intentions preside over the writing, whether by his own hand or by having recourse to a notary. For a long time, this approach has guided historiographical readings of notarial acts in the Spanish-Catholic world. Gaona indicates that things may have been different in Madrid to how they were in Lima, and that the will may be altered yet remain valid, not according to the subject but to the circumstances. As Kathryn Burns points out in relation to the confessions of the accused:

The wishes and intentions that influenced the statements and confessions of the convicts, for example, were largely those of the plaintiffs in the cases (and/or the judges, barristers, and solicitors). When the defendants were examined, they proceeded according to the tenor of the case, asking them questions according to the accusations that the plaintiffs (and/or judges, barristers, and solicitors) had made against them. The very structure of criminal justice privileged the wishes and intentions of the plaintiffs and their representatives far more than those of the defendants. The attribution of agency would have to be done, as far as possible, within an interpretative context enriched by other documents, other indices of the subjects' local strength, wealth and power. (Burns 2005, 64-65).

From a methodological perspective, this implies that notaries can no longer be viewed as a homogeneous social group serving only the wealthy. Nor were declarants a homogeneous social group, as they included prisoners, women, widows, Indians, the poor, the rich and inhabitants of both urban and rural areas. In summary, the two examples, namely the captain who travels between Santiago, Lima and Madrid with the desire to share his truth, and the situation of prisoners facing considerable pressure, which was permissible in the judicial practices of the Ancien Régime, highlight the vulnerability of those willing to testify. This vulnerability appears to be the primary constraint preventing them from testifying calmly. Thus, in Ancien Régime societies, the relationship to legal writing, specifically in the notaries' offices as spaces that had to be accessible to all subjects (guaranteed by the king), shaped the relationships between people because it lay at the heart of power dynamics (Beal 1998; Petrucci 1999; Castillo Gómez 2006).

## 2. Exclamations and Protests

In the notarial archives of Peru and Chile, we can find a type of deed that corresponds to the one made by Gaona in Madrid: the exclamations (*exclamaciones*). In her field notes on the Peruvian archives, Kathryn Burns (2003) indicates that a preliminary examination establishes that this was a retraction, or more precisely, a precaution taken to nullify an earlier act. A typical exclamation protested against the violence of a husband who had threatened his wife to sign, along with him, some instrument (obligation letter, sale, etc.). This is the meaning of what Gaona did in Madrid: his declaration shows how much he protested about the coercive circumstances in which he had been forced to make and sign his declaration against Henríquez. The difference is that Gaona made the first act in the context of a legal proceeding, while the exclamations identified by Burns are more in the context of contractual situations and joint legal action leading to wonder ‘How many of the hundreds of other contracts one has just read might have been the result of coercion? When it comes to interpreting women’s will, can we take the notarial records at their word?’ (Burns 2003, 152).

In Madrid, we searched through various records of the notary Juan de Burgos for similar deeds. No exclamation was uncovered. The archivists at the Archivo Histórico de Protocolos in Madrid confirmed that they have never seen this type of document. It does not appear in the catalogues either. However, the typology of notarial acts for the sixteenth, seventeenth and eighteenth centuries is extremely varied, so the repertoires of actions of the declarants seem infinite (González García and Fernández 2021). We studied the notes of specialists, including Alejandro Martín Ortega, but we have not found a similar document thus far.<sup>6</sup>

To date, our main corpus is based on the examination of 94 volumes of the Escribanos de Santiago de Chile (Notary Public of Santiago de Chile), which has allowed us to detect almost a hundred *exclamaciones* (93) for the seventeenth and eighteenth centuries, overlapping a little with the early nineteenth century (1636-1807). We also consulted a volume by a notary from Lima, Antonio de Bahamonde, who practiced in Santiago between 1671 and 1675. For Central America, Juan José Falla indicates some similar deeds for the seventeenth century (between 1624 and 1693).<sup>7</sup> We have supplemented this corpus with around forty *exclamaciones* from the archives of the Biblioteca Nacional de Lima regarding the jurisdiction of Cuzco, dating between 1565 and 1833. Kathryn Burns kindly shared her notes with us, as well as personal reflections and complete transcriptions of these exclamations.

As part of a research project on everyday legal life, Sergio Martínez Baeza conducted a systematic study of Chilean notarial archives and examined the notarial documents of the city of Santiago for the seventeenth and eighteenth centuries. He identified 37 *exclamaciones* written between 1600 and 1800 out of a total of almost 4,000 notarial acts preserved in 200 volumes, which constitute 20% of a collection of around a thousand volumes that make up the Escribanos de Santiago fonds (Martínez Baeza 1980).<sup>8</sup> It should be noted that the collections of Escribanos and Notarios at the Archivo Nacional Histórico de Chile are composed of volumes that were bound in the nineteenth century. This act of collection has, in many cases, altered the bundles created by the notaries.<sup>9</sup> As a result, the size of notarial protocols may vary and contain writings spanning from six months to several years, and there may also be gaps caused by lost or destroyed folios.

<sup>6</sup> Archivo Histórico de Protocolos de Madrid 1990-1991.

<sup>7</sup> Falla 1994-2007.

<sup>8</sup> For now, we have not been able to verify whether these 37 exclamations are in the 94 volumes that we analysed because unfortunately, in his article, the author only refers to five out of the 37 documents.

<sup>9</sup> On the disappearance of the notarial protocol archives in Santiago, see Argouse (2022).

The appearance of *exclamaciones* in notarial archives raises questions. Sergio Martínez Baeza claims to have encountered them in Santiago de Chile in the second half of the eighteenth century. However, in the Viceroyalty of Peru, exclamations are mentioned as early as the sixteenth century, as demonstrated by Kathryn Burns' work on Cuzco. The same is true for the General Captaincy of Chile. On 14 November 1565, Martín de Herrera states in a waiver (*carta de apartamiento*), 'Declaro que contra lo [que, testado] en este perdón no tengo hecha exclamación pública ni secreta e si pareciere en algund tiempo, que no me valga ... y si pareciere en algund tiempo que tengo hecha la dicha exclamación, que non valga en juicio ni fuera del el...' (Jara and Mellafe 1996, 462).<sup>10</sup> Moreover, we find this same formula, 'no tengo hecha exclamación pública ni secreta', in two notarized sales made in Moquegua in 1637 and 1642 (Cubillos and Muñoz 2014, 11-18).<sup>11</sup>

The question of declarants is equally interesting to us. Burns states, 'Of the forty cases we have found, half were granted by married women who exclaimed against deeds that had been forced upon them to sign against their will' (2005, 64). However, the situation is somewhat different in Santiago, as much more than half of the 41 women who made exclamations, about 30, were married. Of these 41 women, around 20 did not know how to sign, which was not the case for men. Only two out of forty-six individual male declarants did not know how to sign.

To elaborate on our Santiago corpus, we have followed the findings and indications of Martínez Baeza, who specifies that the exclamations correspond to *protestas* or *protestaciones*. In fact, among the 93 Santiago acts, four *exclamaciones* are also indicated by the notaries as *protestas* (between 1722 and 1795), while five are only qualified as *protestas* but their wording is identical to *exclamaciones* (towards the end of the eighteenth century).

In addition, the *Diccionario general del notariado de España y ultramar* by José Gonzalo de las Casas, published in Madrid in 1857, offers a definition under the entry *protesta*, which also corresponds to the *exclamaciones* we have found and which we will retain here:

La declaración que se hace para adquirir o conservar algún derecho o precaver algún daño que pueda sobrevenir. La protesta es declaratoria, prohibitoria o inhibitoria, invitatoria o monitoria y certificatoria. La primera es una declaración de la voluntad del que protesta, la segunda, aquella en que se prohíbe la ejecución de alguna cosa, la tercera la en que se incita o estimula para que se haga, y la cuarta, aquella por la cual uno se cerciora de estar o no hecha cierta cosa. El remedio de la protesta se ha establecido principalmente para cuando uno hace contra su voluntad alguna cosa, o que se ejecuta con gran perjuicio suyo, y que no puede impedir por el miedo, la opresión o el respeto reverencial (de las Casas 1857, 312).<sup>12</sup>

<sup>10</sup> (I declare that I have not publicly or secretly made any exclamation against what is stated in this pardon, and if it appears at any time that my exclamation is valid, it shall not be considered in court or outside of it).

<sup>11</sup> (I have not made any public or secret exclamation). In Lima, Beatriz Rodríguez de Avendaño, a resident of Lima, exclaims against her husband Cosme Milanés, who obligates her to pay his debts and mistreats her (Catálogo de Protocolos Notariales 2021, 20, 3 diciembre 1591, 86v-87v) and Diego de Castro, resident of Lima, exclaims against Francisco de Saldaña, regarding a lawsuit they were pursuing (Catálogo Protocolos Notariales 2021, 445, 31 diciembre 1599, 665v-666v).

<sup>12</sup> (The statement made to acquire or preserve a right or prevent any damage that may occur. The protest can be declarative, prohibitive or inhibitory, inviting or monitorial, and certificatory. The first is a statement of the protester's will, the second is the one in which the execution of something is prohibited, the third is the one in which one is urged or stimulated to do something, and the fourth is the one in which one verifies whether something has been done or not. The remedy of protest has been established primarily for when something is done against one's will, or when something is executed to one's great detriment and cannot be prevented due to fear, oppression or reverential respect).



This definition is followed by practical guidance on how to draft an *escritura de protesta* against a contract, which resembles an exclamation. This indicates that an *exclamación* would be well-suited to a contractual setting, whereas a declaration, such as Gaona's in Madrid, would be the term used in a procedural setting. As previously stated, one of the questions that guided this study was to establish whether the documents were written by people who could be categorized as 'subalterns'. However, this category poses a problem as it erases the plural and varied nature of the population in the cities of the Viceroyalty of Peru and does not consider the question of the concrete access to public writing and legal tools by the subjects of the Hispanic-Catholic monarchy. In fact, in the Spanish-Catholic Ancien Régime, subaltern groups were caught up in relationships of domination, domesticity or service, in such a way that they were always dependent on those who governed them, even when they rebelled or resisted this subordination.

The concept of subalternity, as used by the social sciences, defines the fixed position of certain social sectors within oppressive power relations. Subalternity thus refers to the condition of inequality in the imposition of hegemonic ideas and defines a particular form of appropriation of these dominant values under conditions of imbalance. This term is therefore quite problematic as it carries a contradiction since subalterns were originally defined as deprived of a voice of their own or the possibility of conveying their intentions.

If we consider the notary's office solely as a tool of European hegemony in colonized territories, in line with Ángel Rama's book (2004), an approach that has been widely contested in recent years (Jouve Martín 2005; Rappaport and Cummins 2011; Brewer-García 2020), we cannot consider notarial deeds to be acts of speech that allow subaltern voices to be 'heard'. According to this interpretation, notarial records can only reveal dominated voices, crushed by coercion and violence, as we shall see below.

Our attention was therefore drawn to the circumstances of this deprivation of voice and the possibility of distinguishing, in the 'subaltern' condition, a criterion linked to the moment of expression of the power relationship. In other words, it is a question of behaviour situated in time and marked by a categorical imperative. A characteristic shared by all the declarants in our corpus, in Santiago as well as in Cuzco or in Guatemala and Lima, is that these people find themselves, at least momentarily, in a situation where their will, supposedly validating a previous act, has been dominated by coercion, by something that imposes itself on them and which they cannot resist. They have abdicated their power of decision to another person who enjoys, in the circumstances, a superior *potestas*, i.e., an authority that is difficult to contest or to resist since it is, on this occasion, a vector of force and violence.

In their exclamations people affirm that they have been forced by an external will, and their voice has been crushed by the constraint. However, it seems to us that for this constraint to be exercised, it must first be recognized as obligatory, and that it is a 'Technology of Will that requires a willing submission, a willingness to be under the moral law, an act of volition that is explicitly narrated (and justified) as an act of volition' (Ahmed 2014, 92-93). This could also be the meaning of the famous common saying throughout Hispanic-Catholic America, 'se acata pero no se cumple' (it is accepted but not fulfilled). This principle advocates the recognition by all subjects of the authority of the king while preserving the possibility for each jurisdiction to make the necessary adjustments.

The *protestas* and *exclamaciones* are part of a legal mechanism that guarantees the will of everyone, despite the constraints they may have suffered. Subalternity (absence of a voice/speech) therefore does not depend exclusively on class, gender, race, economic conditions or the condition of slavery, but rather on being subject to pressures, fears and threats arising from violence. This could happen to any inhabitant of Catholic Spanish America.

### 3. *The Binding Force of Duty*

The mandatory nature of duty gives rise to the fear of disobedience, and thus of failing to fulfil the command and the burden of expectation. In our research, we grouped protest situations under three types of cases in which the power of the one who obliges and makes people fear something is displayed: a domestic relationship, such as the husband over his wife, the father or mother over the child; threats exerted by a public or religious authority; and social or economic pressure.

Among the exclamations transcribed by Kathryn Burns, that of Doña Catalina Osorio de Villagra in 1650 is quite symptomatic of the effects of the husband's power over his wife in a city like Cuzco. Noting that her husband, Don Francisco de Figueroa, had left for Lima, she makes an exclamation denouncing his spendthrift behaviour and the fear that when he returns, he will again force her into debt with various people. Catalina describes the form that the threats take: 'me ha puesto las manos en muchas ocasiones y será posible usar de estos rigores para que yo venga a hacer lo que se me pidiere de temor del susodicho y que no me maltrate'.<sup>13</sup> What compels her to obey is undoubtedly the fear of being hit, but also the fear of failing in her duty to obey:

porque no las ejecute y por ser mi marido a quien debo tener todo respeto será posible que otorgue con él las dichas escrituras o vender los dichos mis bienes y para que en caso que las hiciere o cualquiera de ellas vendiendo o obligándome juntamente con el suso dicho conste en todo tiempo que le he de hacer contra toda mi voluntad y por ser forzada oprimida y atemorizada para cualquiera de las dichas escrituras.<sup>14</sup>

The expression is repeated at the end of the deed:

otorgo por ante el presente escribano infra escrito que desde luego para cuando sucediere otorgar las dichas escrituras obligándome o vendiendo o en otra manera protesto reclamo exclamo de las dichas escrituras una dos y tres veces y las que el derecho me permite para que no me pare perjuicio ninguno ni valga ni haga fee en juicio ni fuera de él por cuanto las he de hacer y otorgar contra mi voluntad, oprimida forzada y atraída para ello por las dichas amenazas y malos tratamientos que de ordinario me hace el dicho Don Francisco de Figueroa mi marido así de obras como de palabra y no de mi libre voluntad.<sup>15</sup>

Thus, unable to imagine disobeying, she fears the consequences of going before a notary. Then 'para no me pase ningún perjuicio ni a mis herederos y quede pobre y sin los dichos mis bienes no he hallado otro remedio más de hacer protesta y exclamación'.<sup>16</sup>

<sup>13</sup> (He has put his hands on me on many occasions and it may be possible to use these harsh measures to make me do what is asked of me out of fear of the aforementioned person and to avoid mistreatment).

<sup>14</sup> Archivo Regional de Cusco, Notarios, Lorenzo Messa Andueza, Protocolo 177, 1650, 1508v-1509v (Because I dit not execute them and because he is my husband, to whom I owe all respect, it may be possible that I agree with him to sign the said deeds or to sell my property. And in case I sign them, or sell or oblige myself together with the aforementioned, it should be stated that I did so against my will and because I was forced, oppressed, and intimidated to sign these deeds).

<sup>15</sup> Archivo Regional de Cusco, Notarios, Lorenzo Messa Andueza, Protocolo 177, 1650, 1508v-1509v (I grant before the present notary, undersigned, that henceforth, whenever I am compelled to execute the said documents, whether by obligating myself, selling, or otherwise, I protest, claim, and challenge the said documents once, twice, and three times, and as many times as the law allows, so that they may not cause me any harm or be valid or have any effect in court or outside it, since I am doing so against my will, being oppressed, forced, and coerced into it by the threats and ill-treatment that Don Francisco de Figueroa, my husband, regularly inflicts upon me, both in actions and words, and not of my free will).

<sup>16</sup> Archivo Regional de Cusco, Notarios, Lorenzo Messa Andueza, Protocolo 177, 1650, 1508v-1509v (So that I or my heirs do not suffer any harm and I would do end up poor and without my said assets, I have found no other remedy but to make a protest and outcry).

Here, the reference to the memory of the violence suffered is quite explicit, and the exclamation serves rather to record facts that could affect future acts carried out under duress, without reference to a deed that was previously written. This is also the case in the village of Urubamba, on 5 March 1616, where Doña Bernarda de Cabrera, legitimate wife of Pedro de Ecos Ojeda, made an exclamation before the notary Francisco Hurtado. Her husband wanted to force her to sell her dowry lands. Bernarda de Cabrera did not want to, 'por ser pobre y cargada de hijos no quiere vender las dhas posesiones'.<sup>17</sup> So her husband hit her, as she describes it:

El dicho mi marido me ha amenazado y me ha tratado mal de obra y palabra en presencia de los dichos testigos y me amenazó que si no otorgaba la dicha carta de venta me había de maltratar y darme mala vida y que si no estuvieran los que estaban presentes hiciera un disparate que a el y a ella les pesará / yo temiéndome de que el dicho mi marido no me haga alguna demasía habrá de conceder lo que el dicho mi marido me pide lo cual hago forzada y contra mi voluntad y desde ahora digo y reclamo y protesto que lo hago forzada y contra toda mi voluntad y que lo he de pedir en el tiempo que pudiere ante las justicias de su majestad y ante quien con derecho pueda y deba y a los presentes testigos pido y les ruego tengan muy en la memoria lo que entre mi y el dicho mi marido pasó para que en tiempo que fuere necesario lo juren y declaren y por no haber [431v.] al presente escribano ni justicia en este dicho pueblo ante quien otorgar esta dicha exclamación ruego y pido lo firmen de sus nombres para que haga fe en juicio y fuera del y porque no se escribir ruego y pido d[unreadable] a los dichos testigos lo firmen por mi siendo a todo presentes.<sup>18</sup>

She then went to Cuzco to ensure that it was properly registered. The deed was recorded in a notary's office on 23 March of the same year. Before the notary Juan Rodríguez de Cellorigo, the dispossessed woman repeated her exclamation to protect herself from the commitments that her submission to her husband would force her to make against her will.

In 1646, the authority of a father over his son could also be invoked as grounds for compulsion that would annul all acts made by a minor child. Thus, again in Cuzco, Don Francisco de Loaysa Centeno protested any deed that his father could have made him do, 'por ser como es menor de edad y estar debajo de dominio paternal'.<sup>19</sup>

In 1717, in Santiago de Chile, the Comisario General Don Pedro de Pardo y Carrera protested a declaration and bond that his father had asked him to make in his favor, but which was contrary to Don Pedro's interests. During the hearing, an altercation occurred between the father and son, as the son protests his father's will. The son argues:

<sup>17</sup> Archivo Regional de Cusco, Notarios, Francisco Hurtado, Protocolo 115, 1616, 431v (because she is poor and has many children, she does not want to sell her possessions).

<sup>18</sup> *Ibid* (My husband has threatened me and mistreated me both physically and verbally in the presence of the aforementioned witnesses. He threatened that if I did not sign the said deed of sale, he would mistreat me and make my life miserable. And if the witnesses who were present were not there, he would have done something that would have affected both him and her. Fearing that my husband might commit some excess against me, I have decided to concede to what he asks of me, which I do out of force and against my will. From now on, I state, claim, and protest that I am acting under duress and against my entire will, and that I will seek justice at the time I am able, before the courts of his Majesty and before any authority who can and should hear me. I request and urge the present witnesses to keep in mind what happened between my husband and me, so that they may swear and declare it when necessary. Since there is no notary or justice in this town before whom to make this declaration, I request and ask that they sign with their names so that it may be recognized in court and elsewhere. And because I cannot write, I request and ask that the aforementioned witnesses sign on my behalf, being fully present).

<sup>19</sup> Archivo Regional de Cusco, Notarios, Alonso Beltrán Lucero, Protocolo 10, 1646, 5-5v (Being a minor and under paternal rule).

que usando de la patria potestad sin más razón que la de mandar como su padre le hizo venir en el otorgamiento del dicho resguardo y por el respeto reverencial y obediencia que es notoria que siempre ha tenido por no llegar al caso de faltarle al respeto y obediencia vino en ello y no obstante al tiempo de otorgarle expresó la fuerza y violencia que el dicho su padre hacia en presencia del capitán Lorenzo Zumita [?] que escribió la dicha declaración y resguardo y de mi el presente escribano, y habiendo le propuesto que no le otorgase respondió que estando como estábamos en el cuarto que sirve de estudio o recibimiento del dicho su padre no podía menos que otorgarle por no faltarle a su respeto y por otras precisas obligaciones que le movían.<sup>20</sup>

In other cases, we find a similar situation with a mother and her son. Two situations that occurred in Santiago de Chile in the second half of the eighteenth century show the pressure that two adult, literate men experienced from their mothers. In 1764, Don Antonio Carlos de Morales, who worked as a public *escribano* in the city of Concepción, protested the sale of a child slave that he had just made before the *escribano de cámara* of the Real Audiencia of Santiago because, he says:

lo firmó, y condescendió a el contra toda su voluntad por serle en sumo perjuicio y que solo lo hiso; y efectuó, por el respecto reverencial de su madre, quién hallándose, en suma, y lamentable, inopia, sin tener mas bienes, ni congrua alguna para su manutención, y Su entierro (que dicho mulatillo,) y tan solo al abrigo de el otorgante quién con la cortedad de sus bienes mantiene una numerosa familia de mujer e hijos, se ha despojado de dicho mulatillo, perjudicándose el otorgante.<sup>21</sup>

In 1777, Friar Thadeo de Herrera y Rojas, a novice, presented an exclamation to invalidate the renunciation of assets that he had just made in favour of his mother and emphasized the displeasure that he feared would be provoked if he did not obey her.

pareció el hermano Fray Thadeo de Herrera y Roxas religioso novicio; y dijo que por cuanto hoy día de la fecha acaba de hacer y otorgar su renuncia para efecto de profesar en su sagrada religión y por ante don Joseph Rubio escribano público y de cabildo des esta ciudad y por que la citada renuncia la hizo a contemplación de doña Mercedes Roxas su madre y por no disgustarla contra la voluntad del otorgante por la razón dicha y no darle disgusto, en cuyo instrumento de renuncia citado dejaba a dicha su madre todo cuanto le tocaba por herencia y futuras subvenciones a excepción de quinientos pesos que reservaba para libros. Por tanto, y siendo como dicho es hecha dicha citada renuncia contra su deliberada voluntad usando de la facultad que el derecho le permite exclama y reclama de la dicha renuncia, una, dos, y tres veces y tantas cuantas el derecho le permite para que no valga ni haga fe en juicio ni fuera de él, y quiere que en cuanto a que sus bienes temporales y futuras sucesiones que le puedan tocar y pertenecer se los deja a su hermana doña María del Carmen Herrera y Roxas para que los lleve para si en virtud de este instrumento los herede y goce a excepción de los quinientos pesos que siempre reserva para si y para libros por ser esta su última y deliberada voluntad.<sup>22</sup>

<sup>20</sup> Archivo Nacional Histórico de Chile, Escribanos de Santiago, vol. 509, 1717, 354v-355v (Using parental authority, without any reason other than to command, as his father made him come to grant the said certificate, and due to the reverential respect and obedience that he has always had for him, he complied to avoid disrespecting him and disobeying him. Despite this, at the time of granting it, he expressed the force and violence that his father exerted in the presence of Captain Lorenzo Zumita, who wrote the said declaration and certificate, and of myself, the present scribe, and the receipt of the said from his father. Having proposed that he could do nothing but grant it, he responded that he did so out of respect and to avoid failing his duties, despite the situation).

<sup>21</sup> Archivo Nacional Histórico de Chile, Escribanos de Santiago, vol. 773, 1764, 63-63v (He signed it and consented to it against his own will, as it was extremely detrimental to him, and he did it only because of the reverential respect he had for his mother, who, being in extreme and lamentable poverty, without any other assets or sufficient means for her maintenance and burial [which the said mulatto was left with], and only under the protection of the grantor, who, with the limited means of his own, supports a large family of wife and children, has been deprived of said mulatto, thereby harming the declarant).

<sup>22</sup> Archivo Nacional Histórico de Chile, Escribanos de Santiago, vol. 786, 1777, 457-457v (Brother Fray Thadeo de Herrera y Roxas, a novice religious, appeared and stated that today, on the date mentioned, he has made

The exclamations make it possible to discover individuals who were forced to accept compromises or commitments because they had to obey a public or religious authority. Thus, in 1731, in Santiago, Don Francisco Ruiz, a resident of the city, made an exclamation against a bond deed that he said he had been forced to make in favour of Captain Don Pedro del Portillo, for 258 pesos, with a nine-month deadline to pay.<sup>23</sup> The money in question came from *ropa de la tierra* (traditional indigenous clothing) and ordinary laces, the goods that Pedro del Portillo deposited with Francisco Ruiz. But the goods were stolen from Ruiz, so he believed that he was not obliged to pay, but he was forced to do so. Ruiz was led on a false pretext to go with Pedro del Portillo to the Alcalde don Juan Luiz de Arcaya, where he was pressured to sign a bond deed: ‘Y sobre haberse este otorgante resistido oponiendo la excepción de que habiendosele robado no estaba obligado a la paga’.<sup>24</sup> The alcalde, not wanting to acknowledge the existence of the theft, threatened Francisco Ruiz with imprisonment. He accepted the obligation deed because he was in a hurry to leave; he had to return to take sheep and cow hides to the district magistrate of Aconcagua, north of Santiago, whom he was serving: ‘y porque [para que] no lo lastase su crédito ...’.<sup>25</sup>

So, it was the alcalde’s threat of prison that made Francisco Ruiz – who came to protest the obligation signed by his own hand – give in. This case is quite like the *protestas por avería* legal acts before a notary that were practiced on ships when the merchandise was lost during transport. It is a kind of force majeure that allows the carrier not to be obliged to reimburse the goods. It is possible that Francisco Ruiz, a goods carrier, knew this possibility well and was therefore able to oppose the alcalde. But when the latter did not accept the theft thesis, he threatened Ruiz with prison, which put him in a situation of coercion, as the alcalde did indeed have this prerogative as a magistrate.

Sixty years later, Master Mariano Barros was forced by the legal advisor of the Intendant’s office to put an end to an obligation of a debtor who had not fully repaid his debt. This was a non-titled authority, but with strong coercive power and a significant ability to influence, which overcame Barros’s will:

viéndome yo en la forzosa e indispensable obligación de obedecer sus órdenes, pasé a hacer la expresada cancelación, guardando el respeto y veneración que se debe a los superiores, y excusar las malas consecuencias que se ocasionarían si me hubiera resistido a lo mando por lo que ha venido en exclamar de dicha cancelación en todo aquello en que le perjudique: y desde luego exclama de lo contenido y obrado por ella, y pruebas dadas por dicho señor teniente asesor letrado, una, dos, y tres veces, y cuantas el derecho le permitia ...<sup>26</sup>

and granted his resignation to effectuate his profession in his sacred religion before Don Joseph Rubio, public notary and city council notary of this city. He made this resignation in the presence of Doña Mercedes Roxas, his mother, and to avoid displeasing her against the will of the grantor, and to not cause her any discomfort. In this resignation document, he left to his mother everything that pertained to her by inheritance and future benefits, except for five hundred pesos reserved for books. Therefore, and since as stated, the mentioned resignation was made against his deliberate will, exercising the power permitted by law, he declares and claims against the said resignation once, twice, and three times, and as many times as the law allows, so that it may not be valid or effective in court or outside of it. He wishes that his temporal goods and future inheritances, which might belong to him, be left to his sister Doña María del Carmen Herrera y Roxas so that she may inherit and enjoy them in virtue of this instrument, except for the five hundred pesos that he always reserves for himself and for books, as this is his final and deliberate will).

<sup>23</sup> Archivo Nacional Histórico de Chile, Escribanos de Santiago, vol. 493, 1731, 278.

<sup>24</sup> *Ibid.* (and regarding the fact that this declarant resisted, raising the objection that having been robbed, he was not obliged to pay).

<sup>25</sup> *Ibid.* (so that his reputation would not be harmed).

<sup>26</sup> Archivo Nacional Histórico de Chile, Escribanos de Santiago, vol. 912, 1790, 426-426v (Seeing myself in the forced and indispensable obligation to obey his orders, I proceeded to carry out the stated cancellation, main-

This shows the vulnerability of a creditor without coercive power over his debtors. In addition, the records show that this situation was not an exception but could occur throughout the colonial period. For example, in Lima in 1668, the widow Doña María Carrión exclaimed against a payment deed (*carta de pago*) that she made in favour of a convent to which she sold oil but had stopped paying her. The friars had forced her to make this *carta de pago* and declare herself satisfied and to donate the rest of what she was owed because one of her sons was a friar: ‘todo esto redundara de manifiesto daño de la otorgante’,<sup>27</sup> who claimed to be poor and burdened with debts ‘en que forzosamente a de ... a conceder asi por no litigar al presente por las muchas necesidades con una religión y el dicho provincial que le parece a la otorgante que es hombre aspero de condición como por que al presente esta ejecutada por muchos pesos’.<sup>28</sup>

Under the Hispanic-Catholic monarchy, moral pressure made people give in. Thus, in Santiago in 1643, Doña Beatriz de la Herrera exclaimed against her violent husband, who, with the many expenses and debts he has incurred, is in some way somewhat known and heard of for spending and dissipating their dowry property. She declared that between her husband and her, ‘hemos tenido disgustos y pesadumbres’.<sup>29</sup> So, to avoid new conflict, she made an exclamation, specifying that it was to ‘conservar paz y amistad que se deben tener y guardar entre casados y personas nobles y de obligaciones principales y honrradas y como mujer temerosa y reselarme de no quedar del todo sin mi dote y arras’.<sup>30</sup>

A little later, in Lima on 4 June 1669, a merchant named Lorenzo de Silva was unable to collect a debt. His debtor forced him to settle the matter before the ordinary court and then left town. Lorenzo declared:

por hallarse pobre y desvalido no pudo costear la dicha causa por lo cual ha carecido de valerse de la dicha cantidad y comerciar con ella en el corto trato que tiene ... sustenta sus obligaciones honrradas de mujer e hijos y al presente le han instado muchas personas de respeto y poderosas a que tome seis cientos pesos de a ocho reales y de carta de pago de toda la cantidad de los dichos ochos cientos pesos de a ocho reales y en especial el alferez don Joseph Calero por cuya mano le quieren hacer la dicha paga...<sup>31</sup>

In Santiago in 1794, two friends exclaimed to the *escribano* because they had regretted a charitable gesture and preferred to recant from an established obligation to prevent another friend from going to jail:

taining the respect and reverence due to superiors, and to avoid the adverse consequences that would arise if I had resisted what was ordered. Therefore, he has come to challenge the said cancellation in all aspects in which it harms him: and from then on, he challenges the content and actions resulting from it, and the evidence provided by said Lieutenant Advisor and lawyer, once, twice, and three times, and as many times as the law permits ...).

<sup>27</sup> Archivo General de la Nación, Lima, Protocolos Notariales, vol. 1800, 1668, 290 (and all of this would result in manifest harm to the declarant).

<sup>28</sup> *Ibid.* (that she is being forced to concede because of her many needs and because of the provincial priest who, in the declarant’s opinion, is a harsh man, and also because at present she is being pursued for many pesos).

<sup>29</sup> Archivo Nacional Histórico de Chile, Escribanos de Santiago, vol. 174, 1643, 160 (we have had disagreements and distress).

<sup>30</sup> *Ibid.* (preserve the peace and friendship that should exist and be maintained between married and noble persons of principal and honourable obligations, and as a distrustful woman fearful of being left completely without my dowry and arras).

<sup>31</sup> Archivo General de la Nación, Lima, Protocolos Notariales, vol. 1800, 1679, 467-467v (Due to being poor and defenseless, he was unable to cover the legal case, which is why he has been unable to make use of the said amount or engage in trade with it in the short dealings he has ... He supports his honorable obligations to his wife and children, and at present, he has been urged by many respected and powerful individuals to accept six hundred pesos in eight-real coins and a payment receipt for the entire amount of the said eight hundred pesos in eight-real coins, particularly by Lieutenant Don Joseph Calero, through whom they want to make the said payment).

parecieron el maestro Manuel Cardosa y don Antonio Duran, como a cosa de las once de la mañana de dicho día, y dijeron que por cuanto el día de ayer diez y ocho el presente, como ahora de las ocho de la noche firmaron una obligación simple de cantidad de noventa y siete pesos a favor de don Juan Antonio Barcelona por don Juan Castañeda cuya obligación y firma hicieron y echaron estimulados de ver que el dicho don Juan Antonio llevaba a la cárcel al referido Castañeda con orden (quiza) supuesta del excelentísimo señor presidente y solo por librarle del sonrojo movidos de caridad. Pero reflexionando ambos que el primero no tiene bienes algunos pues los que posee son de su legitima mujer Juana Cruz, y el segundo de sus habilitadores y conociendo el gran perjuicio que se les origina exclaman de dicha obligación simple y su contenido una, dos, y tres veces; y cuantas el derecho les permite porque desde ahora, en mi presencia, y las de los testigos Declaran, que no quieren ni es su voluntad pasar por el contenido de ella ante dicha obligación.<sup>32</sup>

Moral pressure affected all subjects of the king because they obeyed the mandates of Catholicism: to be a good wife, to be an honest debtor, to be charitable friends. These legal instruments illustrate to what extent this moral pressure could cause harm when one's own interests were damaged in the name of this Catholic duty.

#### 4. *Courage to Protect Oneself or Courage to Protest and Speak the Truth?*

The study of exclamations relates to the experience of individuals in situations of subordination and whose will was altered when pledging their word. What all the situations in which individuals exclaim have in common is domination, strongly felt and difficult to resist. The circumstantial nature of domination is important because, in Hispanic-Catholic society, people's situations were liable to change over time or place (Milton 2007; Albornoz Vásquez 2014). Once liberated from constraints, individuals could confide in a public notary who would formally document particular circumstances. This could include disclosing the nature of a grandson who disavows his grandmother or specifying the age of wounds as either past or recent, as exemplified by the Indian and the slave mentioned at the outset of this text. These voices initially seem to be influenced by various constraints. However, because of their agency and the influence of their Catholic conscience, individuals freed themselves through their exclamations before the notary. This action reinstated legal validity to a speech that had been suspended or altered. Thus, subjugated speech does not signify the absence of will but rather its momentary alteration.

Thus, given the diversity of the parties involved and of notarial acts in colonial society, the dominant and the subjugated cannot be reduced to the opposition of two social groups (elite vs. popular classes) or, in the case of colonial societies, ethnic groups (Europeans, Africans and indigenous peoples), in which one had no choice but to submit to the values of the dominant

<sup>32</sup> Archivo Nacional Histórico de Chile, Escribanos de Santiago, vol. 914, 1794, 312v-313 (Maestro Manuel Cardosa and Don Antonio Durán appeared around eleven in the morning of the said day and stated that on the previous day, the eighteenth of the present month, and now at eight in the evening, they signed a simple obligation for the amount of ninety-seven pesos in favor of Don Juan Antonio Barcelona in the name of Don Juan Castañeda. They made and signed this obligation and document, motivated by seeing that Don Juan Antonio was taking Don Juan Castañeda to prison under what seemed to be an order from the Excellency President of the Real Court, and solely to spare him from embarrassment, moved by charity. However, upon reflection, both realized that the first one has no assets, as the ones he possesses belong to his legitimate wife Juana Cruz, and the second has no assets as they belong to his guardians. Recognizing the significant harm it would cause them, they exclaim against the said simple obligation and its content once, twice, and three times, and as many times as the law allows, because from now on, in my presence and that of the witnesses, they declare that they do not wish to be bound by the content of the said obligation).

group. This would deny entire sectors of colonial society the possibility of expressing themselves through the notarial deeds. As mentioned before, the mechanisms at work, established by the institutions of the Hispanic-Catholic monarchy, protected the will of all subjects, even those under the tutelage or protection of others (such as wives before their husbands, or children before their fathers, or indigenous peoples, or members of religious orders before their superiors), so as to preserve trust in written speech. In fact, having the ability to act, was not a sufficient condition for going to the notary. The notaries were in cities, towns and villages, and their offices were open for access to all the king's subjects. Everyone knew where the notaries' offices were. This physical proximity and guaranteed accessibility facilitated the expression of complaints and the possibility of restoring a truth or obtaining legal protection against acts carried out under pressure. Therefore, it was also necessary that, in a given society, the notary (understood as an institution) could be considered a trusted place for individual expression. It is, then, an entire mechanism, a proceeding, that allows for the reversal of spoken words without altering general confidence in public writing. The archives as monuments, thus preserved, allow for the memory of those who are inscribed in these papers to be retained. In Hispanic-American societies, all the king's subjects could thus go back on their commitments, as their Catholic consciences could act *ex-post* on *faits accomplis*. They could also express their feelings about a situation that harmed or haunted them. Once their lives were over, the preservation of their memory, and particularly their memory through writing, fell to those who survived them in accordance with a 'politics of death' in Western societies that is accompanied by a written practice of death (Petrucci 2013).

However, during their lifetime, the conditions for access to the notary's office could be discriminatory. Hence the importance of considering each case individually. In addition, in the case of the exclamation, individuals had to realize that their will had been altered and explain how the lesion or prejudice was notorious. Men and women thus placed under constraint and possibly harmed could change the order of things that erroneously established their responsibility and *ex-claim*, literally 'to shout after', their injury and prejudice.<sup>33</sup>

Exclamations are therefore the place of expression of a feeling of constraint and the mandatory force of certain previous facts or compromises whose effects would cause prejudice (Laé 1996). They are part of a set of legal instruments that allow for the possibility of lodging a complaint. The steps are: learning submission from superiors and everyone's expected behaviours; formation of a conscience of the possibility of contradicting in order to repair the error; gathering the courage to go to declare, protest, exclaim, complain. It is not easy to conceptualize, as historians trained in binary views of Hispanic-American society, the transition from a subject who expresses his or her will before a notary and then, once again before a notary, retracts and denies the voluntary act he or she initially performed. What prompts an individual to decide to exclaim, that is, to clamour *ex-post*, or to protest, a legal act that produces a testimony of oneself, of one's suffering and fears?

In the analysis of a testamentary clause of an Indian from Cajamarca, we argued that the declaration responds to a psychological necessity (Argouse 2010). Faced with a situation of constraint, which can be perceived as an aggression through the annihilation of the will, it is possible that the declarants felt the need to 'ex-claim', that is, to clamour *ex-post*, or to declare *para que conste* and demand justice. The psychological figure that is retained is that of the Freudian counterblow. Thus, testamentary clauses have been highlighted as a place of expression

<sup>33</sup> We thank Catalina León Lazcano for having suggested to us the idea of the etymology of the word as the very first explanation for the meaning to be given to this term.



for a speaking subject. In a colonial society, the spaces where it was possible to express oneself in writing were narrow and infrequent. But not non-existent, and above all, exclamations and protests demonstrate to us that it does not only occur on the brink of death. As we have seen throughout this text, it is not the fear of the final judgment that drives the subject to reconsider what they have done or to restore the truth. It is just as much about nullifying the effect of a legal act without altering public faith as it is about highlighting the violence or coercion they endured. It is up to the historian to search between the lines, amidst thousands of declaratory and exclamatory clauses, for the expression of these feelings to obtain justice.

Elsewhere, not only in a colonial society, there is also the idea of the notary's register as a place of accommodation or even a private justice, *justice de cabinet* (Garapon 1985), which would counterbalance expensive, slow and uncertain judicial practices. This would also make the notarial register the place where consensus is invented, necessary for maintaining social cohesion, through obligations, powers of attorney, debt acknowledgments, guarantees, etc. In addition to settlements (*avenimientos*), transactions, agreements and waivers (*apartamientos*). The notary's office therefore seems to represent a place where one can escape the grip of a tax-hungry and severe administration in terms of punishment and correction (Scardaville 2003). Without a doubt, the distance of the colonial territories allows for an exacerbation of these practices. Thus, in Lima in 1721, the public notaries specify that:

[en el registro del escribano] no solo se otorgan los instrumentos de los contratos y de ventas y remates sino otros muchos de disposiciones exclamaciones y negocios que piden toda seguridad y secreto que no pudiera guardarse manifestándose el registro original y pudiéndose seguir como se siguiera tan grave inconveniente y perjuicio a la fee y secreto que se confía de la legalidad de los escribanos en tales instrumentos.<sup>34</sup>

Trust was placed in the hands of the notaries, who were relied upon for their confidentiality and took charge of a large part of the information that served the government from a distance (Brendecke 2016). The tensions arising from this distance gave notarial practice a certain relevance in defusing daily violence. Rather than the justice of judges, the parties came before the notary seeking a consolation that contributed to defining a common sense in colonial society (Albornoz Vásquez 2012; Argouse 2021). With confession, declaration and especially exclamation before a notary, there was the possibility of expressing a whole range of legitimate feelings and promises in a Catholic world that granted them an important place, and of restoring the balance of values. The practice of 'going to exclaim' maintained an ancient practice of self-expression, like confession, and allowed for the constitution of 'speaking subjects' who participated in the definition of a common sense inscribed in the notarial registers (Clanchy 1993; Dulong 2002; Bertrand 2015).

The presence of these exclamations in the archives of Lima or Santiago raises questions about the intentions and circumstances that governed the individual's ability to commit in writing, to declare, and the possibility of bringing forth the voices of those who were, or felt, under

<sup>34</sup> Archivo General de la Nación, Lima, Gobierno, 1, 4, 27, 1721, 25, 'José de Garazatua, administrador de las Reales rentas de alcabalas de Lima, sobre que los escribanos cumplan con remitir certificaciones de las ventas que se otorgaron ante ellos para el control de alcabalas', Antre Real Acuerdo de Justicia, s/n ([In the notary's register] not only are the instruments of contracts, sales, and auctions recorded, but also many others related to dispositions, declarations, and business matters that require full security and confidentiality. These cannot be maintained if the original register is made public, as it would lead to significant inconvenience and harm to the trust and secrecy placed in the legal integrity of the notaries regarding such instruments).

constraint at the time of deposition or commitment. The constraint before a notary appears, in fact, as a brake on self-assertion and a flagrant contradiction to the very principles of legal acts, which must be established in complete freedom of the subject who gives his or her word and/or consent. However, we wanted to show that in a colonial Catholic society of the Ancien Régime, it may have been otherwise, and that constraint is, on the contrary, a condition of possibility for the written expression of truth. There is a paradoxical idea here: it is precisely because there is a constraint that a form of truth appears in these acts, deeply anchored in a Catholic culture. Morality constantly delves into consciences and seeks harmony in the face of colonial violence. The language of truth then entered American notarial practices, between the volition and the freedom to express oneself.

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