

Sex and the Colonial Archive: The Case of “Mariano” Aguilera

María Elena Martínez

Abstract Building on recent scholarship that has problematized the evidentiary status of archived sources and created new methods and analytical categories for reading sex and gender in those sources, this essay considers the case of Mariano Aguilera from mid-eighteenth-century New Spain. Raised as a girl, Aguilera upon reaching adulthood petitioned ecclesiastical authorities to order a physical inspection of his body so that he could be declared a man and marry Clara Ángela López. The essay shows how both abjection and criminality—or a discourse of “queerness”—led Aguilera to be exiled from his community, denied his petition, and prohibited from having any contact with López. The essay opens further questions about the meanings of hermaphroditism and androgyny in the Atlantic world, the ways in which they shaped medical and legal discourses on sodomy in metropolitan and colonial contexts, and the role of doctors and surgeons in legal cases involving queer bodies and lives.

In the past two decades, the archive has been at the center of various academic discussions about history, methodology, and knowledge. Scholarship on the topic has flourished, and not just among historians. Scholars from various

On November 16, 2014, María Elena Martínez died after a brief, difficult, and valiant struggle with cancer. Before she died, she asked us to shepherd some of her unpublished work into publication, in close consultation with her executor and partner of many years, Sarah Gualtieri. This essay—which she had completed and arranged to publish in Spanish as “Sexo y el archivo colonial: El caso de ‘Mariano’ Aguilera,” in *El archivo y el campo: La producción de la evidencia desde miradas transdisciplinarias*, eds. Frida Gorbach and Mario Rufer (Mexico City: Siglo Veintiuno Editores, forthcoming)—represents our first effort to honor her request. In response to the generous and thoughtful comments of two anonymous readers and the editors of *HAHR*, we have made a few relatively minor edits to the version that María Elena left us, in each instance indicating where we have done so with the annotation “DK/DS.” We would like to thank those readers for their input and to express our deepest gratitude to John D. French, Jocelyn Olcott, Pete Sigal, and Sean Mannion at *HAHR* for the sensitive manner in which they have made this publication possible. We invite the reader to visit <http://hahr-online.com/category/open-forum/maria-elena-martinez> for a forum on this essay, featuring contributions by Ivonne del Valle, Marta Valentin Vicente, Zeb Tortorici, and Pamela Voekel. We should mention too that arrangements have been made with the University of Chicago to make María Elena’s papers available to the public in the near future. With heavy hearts and great respect for a life so cruelly cut short, as well as the utmost respect for an intellect that we will always hold as a model and an inspiration, we offer this essay on behalf of our dear friend, the kind and brilliant María Elena Martínez.—David Kazanjian and David Sartorius.

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disciplines (including literature, anthropology, and philosophy) and different theoretical orientations have studied and deconstructed “the archive” as a condensed site of knowledge or meaning production and power, thereby challenging its status as a repository of objective facts. Building on theorizations of the links between institutional archives and state projects, especially by Michel Foucault and Jacques Derrida, numerous recent works have called attention to the importance of treating the archive as an ethnographic subject itself and of exposing the collusion of archived sources and law/authority.¹ In other words, they have problematized the evidentiary status of archived sources and turned the archive into an object of inquiry rather than treat it just as a source of information.

Current studies of the archive have also been concerned with the creation of new methods for reading written sources and the development of new analytical categories. Perhaps because of the challenges of studying topics as charged and filtered as same-sex sexual practices and desires, some of the most animated and productive discussions about methodological and analytic innovation have been taking place within the rubrics of gender, queer, and transgender studies.² Although both among and within these studies there is great variation in terms of methodological approaches and theoretical concerns, they generally share, first, an understanding of gender and sex as sociohistorical constructs and, second, an interest in developing new reading strategies for deconstructing the logics of sexuality. These strategies can include carefully scrutinizing the language in documents to reveal links between concepts and modes of discourse (narrative strategies, for example) and operations of power, refusing teleological readings of the past (that is, readings of history that assume a linear chronological progression in which one dominant sexual identity in a given period leads to another in the next), and focusing not just on what is written in sources but what is missing in them and why.

Contributing to discussions about the possibilities and limitations of archived sources for studying queer lives, subjectivities, and sexuality more

1. See Derrida, *Archive Fever*, esp. the opening note (pp. 1–5); Foucault, *Archaeology*, 129–31. For an introduction to some of the literature and debates on the archive, see Hamilton et al., *Refiguring the Archive*; Steedman, *Dust*; and the essays on the topic in Hand and Velody, “Archive.”

2. The literature in this field is too extensive, but for an insightful recent discussion of debates about historicism in queer studies, see Traub, “New Unhistoricism.” And for an introduction to transgender studies, see Stryker and Whittle, *Transgender Studies Reader*; Stryker and Aizura, *Transgender Studies Reader 2*. Works by historians of sexuality who have used feminist, queer, and/or postcolonial theories and diverse sources and analytic strategies to tackle challenges of the archive include Chauncey, *Gay New York*; Shah, *Stranger Intimacy*.

generally, this essay employs some of these strategies in an analysis of a case from mid-eighteenth-century New Spain. The case involves Mariano Aguilera, who was raised as a girl but who upon reaching adulthood petitioned ecclesiastical authorities in central Mexico to order a physical inspection of his body so that he could be declared a man and be able to marry a woman.³ Before delving into the case, however, it is first necessary to discuss how “queers” (people who are socially constructed as such because their sexual behavior, desires, or organs don’t conform to dominant definitions of the normal) are generally represented in the colonial Mexican archive.⁴

Sex and Sexes in the Mexican Colonial Archive

It would be an exaggeration to state that colonial Mexican archives are replete with references to sexuality or that they betray an obsession with same-sex sexual relations, as some historians have found in British sources for nineteenth- and early twentieth-century India.⁵ But there is no shortage of documents with which to study discourses of nonnormative sexuality in New Spain. These documents have to be approached carefully, however, because of the strongly mediated nature of most written sources and, more generally, the power dynamics involved in the production of “queerness,” which in the early modern period was strongly related to sin and criminality and, in colonial contexts, to racialized populations as well.⁶

In the archives of colonial Latin America, for example, “queers” sometimes appear because they were the subject of theological, juridical, and medical speculations about nonnormative sexual behavior or sexual organs, or, more

3. Archivo General de la Nación, Mexico City (hereafter cited as AGN), Indiferente Virreinal, caja 1163, exp. 2, Matrimonios, 1759, fol. 6.

4. As one of *HAHR*'s readers for this essay pointed out, the use of the term *queer* for the colonial or early modern period is one of this essay's significant theoretical challenges. While that challenge is not explicitly theorized here, the reader can turn to two special issues of *Radical History Review* edited by Daniel Marshall, Kevin P. Murphy, and Zeb Tortorici: Marshall, Murphy, and Tortorici, “Queering Archives: Intimate Tracings”; Marshall, Murphy, and Tortorici, “Queering Archives: Historical Unravelings.” See in particular Martínez's essay “Archives, Bodies, and Imagination.” See also Menon, “Afterword.”—DK/DS.

5. Arondekar, *For the Record*. [In her work, Anjali Arondekar also brings to our attention the paucity of British archival sources on same-sex sexuality in nineteenth- and twentieth-century India. In turn, works cited in footnotes 4 and 6 show us how colonial Mexican archives could also be considered rich in such sources.—DK/DS.]

6. See Martínez, “Archives, Bodies, and Imagination.” On sexuality in colonial Mexico, see Tortorici, “Contra Natura”; Tortorici, *Sexuality*.—DK/DS.

commonly, because they were tried by different courts for “deviant” sexual desires and punishable acts. Among the most prominent of these unsanctioned acts was sodomy (*sodomía*). Closely associated with the notion of *pecado nefando* (abominable sin), it was treated within Spanish law as one of the gravest transgressions, akin to heresy. Indeed, as of the late fifteenth century, sodomy in Spain became punishable by burning at the stake, an act that religious and government officials considered a crime against God, king, and nature and that at times they associated with disease, contagion, and political sedition.⁷

In 1509, Spain transferred jurisdiction over the crime of sodomy from the Inquisition to secular and ecclesiastical courts. Technically, only in the Crown of Aragon was the Holy Office allowed to try it, which meant that in Castile and Spanish America sodomy cases were mainly handled by the *audiencias* (royal tribunals) and church courts. Because it is in the archives of these secular and religious tribunals that people with nonnormative sexual desires or relations appear most prominently, their archival presence is virtually inseparable from discourses of sexual criminality and other power relations that produced queerness.⁸ That is, “queers” who normally entered the archive were those whose sexual behavior, desires, and/or bodies were considered a problem by neighbors or church and government authorities, whereas those who escaped the arm of secular or ecclesiastical courts and the accusatory finger of scandalized townspeople or acquaintances do not normally appear in it, thus constituting a structural archival absence.⁹

That the sources for studying queers in the Spanish colonial archive consist mainly of criminal or other legal records does not mean, however, that they have nothing to offer. To the contrary, they expose important aspects of same-sex sexual discourses, including their connections to gendered, racialized, and other power relations. A 1769 list that Mexico City’s *audiencia* compiled of the sodomy cases that it had tried since the early part of that century helps to illustrate the point. The list, which is accompanied by short summaries of the charges, testimonies, and results of the cases, also includes cases of bestiality

7. See Gruzinski, “Ashes”; Garza Carvajal, *Butterflies*, 172–83; Stavig, “Political ‘Abomination,’” 143.

8. See Martínez, “Archives, Bodies, and Imagination.”

9. As one of the anonymous readers for this essay pointed out, it could also be said that *autodenuncias* (self-denunciations) played an important role in how “queer” subjects enter historical archives, based on sodomy and *pecado nefando* trials from colonial Mexico. Examples can be found in AGN, Inquisición. See also González Marmolejo, *Sexo*, 64–65.—DK/DS.

and incest.¹⁰ These crimes were lumped together in large part because religious and secular officials viewed all three as crimes against nature and God and therefore related to each other; indeed, they tended to assume that one led to another (particularly that sodomy led to bestiality).¹¹ As the 1769 list demonstrates, the archive promoted those connections through its forms of storing, organizing, and classifying documents.

The list also reflects the importance that colonial officials placed on the racial classification of the people that they tried (and of those that served as witnesses). *Casta* terms are provided for the accused (almost all non-Spaniards), thereby helping to mark both sexual deviance and racial status—indeed, to produce their connection. Thus, as some scholars have argued, the colonial archive was not just a place where documents were stored but a process where colonial power was constructed and manifest, intimately related to the production and reproduction of socioracial categories and, more generally, to colonial practices of governance.¹²

Consistent with patterns in the broader early modern Spanish Atlantic world and other colonial Mexican documents, the 1769 list also reveals the overwhelming preponderance of men among those charged with the crimes of

10. At Mexico's Archivo General de la Nación there are numerous cases that revolve around sodomy (or *pecado nefando*), bestiality, and incest. See, for example, AGN, Indiferente Virreinal, caja 6332, exp. 106, Inquisición, 1809; AGN, Indiferente Virreinal, caja 4128, exp. 13, Inquisición, 1620; AGN, Indiferente Virreinal, caja 1366, exp. 4, Inquisición, 1628; AGN, Indiferente Virreinal, caja 2660, exp. 6, Inquisición, 1633; AGN, Indiferente Virreinal, caja 4003, exp. 3, Inquisición, 1658; AGN, Indiferente Virreinal, caja 5193, exp. 54, Clero Regular y Secular, 1745; AGN, Indiferente Virreinal, caja 6574, exp. 41, Clero Regular y Secular, 1766; AGN, Indiferente Virreinal, caja 6723, exp. 105, Criminal, 1579; AGN, Indiferente Virreinal, caja 5980, exp. 2, Criminal, 1614; AGN, Indiferente Virreinal, caja 1482, exp. 7, Criminal, 1735–69; AGN, Indiferente Virreinal, caja 1482, exp. 7, Criminal, 1735–69; AGN, Indiferente Virreinal, caja 2012, exp. 8; AGN, Indiferente Virreinal, caja 1970, exp. 31, Criminal, 1804.

11. For example, in 1665 the inquisitors conducting an inspection (*visita*) of Mexico City's tribunal informed the Supreme Council of the Inquisition that the "nefarious sin" was rampant in the capital city and commented that culprits "pasan de el nefando crimen a la bestialidad." Archivo Histórico Nacional, Madrid, Inquisición, libro 1059, fols. 410–11v.

12. See, for example, Stoler, *Along the Archival Grain*; Burns, *Into the Archive*; Burton, *Dwelling in the Archive*. Colonial and postcolonial studies have been strongly influenced by Foucault's notion of governmentality, which refers to the classifications and organized practices that governments establish to produce, and rule over, citizens and, more generally, to the power of states to make subjects (socially and legally) legible through their categories. Partha Chatterjee, for example, extended the concept of governmentality to colonial situations but stressed the "logics of colonial difference" (its production and maintenance) to the system of rule. Chatterjee, *Nation*, 16–18.

sodomy and bestiality.¹³ It includes only one case involving a woman: that of Josepha de Garfias, who in 1732 was convicted of “the crime of sodomy that she perpetrated with other women” (el crimen de sodomía que perpetró con otras mujeres). Perhaps, as François Soyer has suggested about the relatively small number of prosecutions of female sodomites in the Iberian world as a whole, the imbalance had more to do with ignorance about sex between women on the part of male authorities and the main definition of sodomy than with leniency.¹⁴ In the early modern period *sodomía* was linked primarily to anal penetration, but it referred more generally to nonreproductive or nonnormative sexual acts, which meant that both men and women could be accused of being “sodomites.”¹⁵ Nonetheless, theologians and jurists who commented on it tended to be utterly confused about how it could be applied to women because of their ignorance of female bodies and sexual practices. The elusiveness of the “queer” woman in Spanish colonial sodomy cases was therefore partly a function of heterosexist and phallogocentric understandings of sexuality. Still, the “queer” woman is not entirely absent from the archive. As Sherry M. Velasco observes, there are numerous representations of “female homoeroticism” in early modern Spanish historical and literary texts as well as secular and inquisitorial court cases in both Spain and Spanish America involving women tried for having sexual relations with other women (in relation sometimes to other “deviant” domains, such as prostitution and witchcraft).¹⁶

Like many other sources involving “queers,” the 1769 list and accompanying documents pertaining to the cases that it references disclose critical aspects of discourses of same-sex sexuality, and of sodomy in particular. They do not, however, reveal much about how the people who were tried for it understood their own sexual desires and practices. There are no queer subjects in these documents, at least not ones produced independent of discursive operations; mainly there are references to bodies marked as deviant because of their alleged sexual acts and preferences and often, too, because of their racial status. Not all sources, however, are created equal. The colonial archive also contains documents on “queers” that fall outside the general criminality pattern, that have information with unexpected twists and turns, and that provide

13. For Spain, see Perry, “‘Nefarious Sin’”; Soyer, *Ambiguous Gender*.

14. Soyer, *Ambiguous Gender*, 46.

15. For more on the category of “female sodomy,” see Martínez, “Sex.”

16. Velasco, *Lesbians*, I, 7–8. [We have moved the last sentence of this paragraph from this footnote into the body of the essay, added the penultimate sentence of the paragraph for transition, and changed “relative absence” to “elusiveness” in the sentence before our addition to make the argument consistent.—DK/DS.]

rich details, clues, and angles through which to explore queer sexuality and subjectivity in the past. Such is the case of Mariano Aguilera, which is the focus of the next section.

Mariano de Aguilera, “Andrógino”

First, a few words about the documents for the case are warranted. They mainly consist of a series of petitions and reports that were sent to don Francisco González de Cervantes, *juez provisor* and *vicario general* (provisorate judge and vicar general) of the Archbishopric of Mexico, so that he would rule on the sex of Mariano Aguilera, referred to in the documents as “the supplicant” (a few times as “la suplicante,” but more frequently in the masculine, as “el suplicante”) or “petitioner.”¹⁷ The papers consist of a letter by the priest Fray Joseph Moreno Justi (dated January 3, 1759) to González de Cervantes informing him of the case; an undated letter by Aguilera with his petition and some biographical information; a more formal, sworn statement by the petitioner (dated January 18, 1759); reports by physician don Francisco González de Avendaño and surgeon don Joseph Benitez (dated January 19, 1759, and January 22, 1759, respectively); and a note by Aguilera to the juez provisor with the latter’s response (January 23, 1759) on the margins and in the final page of the dossier.

These documents reveal that at the end of 1758 or in the first days of January 1759, in his hometown of Ayotla, Mariano Aguilera asked the priest Joseph Moreno Justi to help him get a medical inspection in order to have his sex established as masculine and make it possible for him to marry a woman.¹⁸ The title that the compiler of the dossier for the church’s Provisorato archive gave to the case in 1759—“documents made on the request of Mariano Aguilera so that the sex [*sexsso*] in which [Aguilera] can marry be declared”—is not entirely accurate because the petitioner did not want simply to have his sex determined, and he did not simply want to marry. Aguilera was asking for something more concrete: to be declared a man in order to marry Clara Ángela López, with whom he presumably had been involved for some time.

17. AGN, Indiferente Virreinal, caja 1163, exp. 2, Matrimonios, 1759, fol. 6. I will refer to Mariano Aguilera in the masculine because, although raised as a girl, that is how he presented himself.

18. Ayotla was a pre-Hispanic town that in the colonial period was placed in the jurisdiction of Ixtapaluca (or Ixtapaluca). It is located in what is now the state of Mexico, about 15 miles from Mexico City.

At no point in the documents is Aguilera's age given, but it is likely that he was an adolescent or teenager because his account suggests that he had started to get male attention and to change his gender just a few years prior to making his petition—that is, in the period that he would have been entering “womanhood” and become eligible for marriage. Unclear as well is when he changed his name and what it was originally (perhaps “Mariana” or “María”?). The sources also do not reveal much information about Aguilera's relationship to Clara Ángela López and the developments that precipitated his decision to turn to religious authorities, and even less about his family and its place in the community. But his petitions do provide details and clues about his experiences as a person who did not conform to established sex roles and categories, as does the letter submitted by Fray Moreno Justí to González de Cervantes.

In the latter document, a palpably concerned Moreno Justí informed the juez provisor that Miguel Francisco and Anna López—perhaps the petitioner's parents—had appeared before him to plead that he make a decision regarding Mariano Aguilera's sex.¹⁹ According to the priest, they had explained that even though in Ayotla among kin and townsfolk the petitioner had been known as a woman (“reputada por mujer”), in “her conscience” she felt herself to be of the masculine sex (“hallaba la referida en su conciencia ser del sexo masculino”). Moreno Justí confessed that he was perplexed about what to do, especially because about a year earlier Aguilera had begun to dress as a man, which had caused a scandal in the town. Aguilera had been ordered to stop dressing as such (it is not clear by whom) until there was an investigation, but none had taken place yet. Wanting to avoid greater public turmoil and pressed to act by the urgency of Aguilera's parents' plea, the priest asked González de Cervantes to order one and make a determination.

Notably, at no point does Moreno Justí suggest that either he or Aguilera's family wanted the petitioner to go back to dressing or passing as a woman. Indeed, the letter seems to imply that the parents were urging the priest to

19. Fray Moreno Justí does not specify who Miguel Francisco and Anna López are; all he mentions is that the former had appeared before him that same day and the latter the previous one. However, toward the end of the letter he states that he is compelled to turn to González de Cervantes because of the urgency with which Aguilera's parents had spoken to him. The names that Aguilera provides for his father and mother are Juan Francisco de Aguilera and María López. Given the multiple first and last names that people in Spanish culture could have, it is feasible that Miguel Francisco was Aguilera's father (“Juan Miguel Francisco de Aguilera”) and Anna López his mother (“María Anna López,” “Anna María López”). The latter could also have been the mother of Clara Ángela López (she and Aguilera were third cousins and therefore had relatives and last names in common).

declare that their child was a man and thus allow him to marry Clara Ángela López. For if they had wanted Aguilera to return to the gender that they had chosen for him when he was born, or if they wanted to prevent the marriage, why would Moreno Justi not mention it? It would have been an odd omission given the importance that, notwithstanding the principle of free will in Aguilera's marriage choice, the church generally gave to parental authority.²⁰

In Aguilera's first petition, he explained that he wished to marry López in order to repair the damage that he had done to her virginity and to fulfill the verbal promise of marriage that he had made to her ("pagándole con esto la corrupción que en su virginidad le hizo cumpliéndole los esponsales que con ella tiene contraídos"). But in order to fulfill this duty, the law required that he overcome two impediments: one of consanguinity (Clara Ángela López was a relative in the third degree by transversal or collateral line, which meant that they were third cousins), the other of androgyny.²¹ Described in the petition as "Androgyno," Aguilera stated that because marriage required choosing a sex, he humbly implored the provisor to order that expert surgeons recognize his ability to make use of the "virile sex" ("que peritos cirujanos me reconozcan de apto para el uso de el sexo viril"). The official recognition was necessary, he added, to prevent a scandal in his town when he married López. Finally, Aguilera stated that he was willing to provide all necessary evidence for the determination ("estoy prompto a dar todas las pruebas necesarias") and that Moreno Justi could summon Clara Ángela López as a witness.

Given the basic components of the petition, the Aguilera case is unusual for a number of reasons. First, it is about a "queer" individual but did not entail a criminal or other type of trial, a formal accusation, or (as far as can be determined) any foul play. There are no references in the documents to sexual violation, multiple lovers, romantic betrayals, and so forth. Second, the case includes voluntary testimonies by the person at the center of the case, Mariano Aguilera. In fact, it was initiated by him, and his statements to religious authorities contain brief but poignant and surprisingly revealing allusions to his internal struggles around his gender identity. And third, Aguilera's petitions

20. On the principle of free marriage choice in Mexico and its changing significance in the eighteenth century, see Seed, *To Love*. Also refer to Gutiérrez, "Honor Ideology"; Socolow, "Acceptable Partners."

21. The church considered blood relation to the fourth degree an impediment to marriage and thus requiring dispensation. There is no mention of the impediment of consanguinity by any of the authorities who wrote on the case, perhaps because it was a moot point if the second obstacle could not be overcome. Spanish American consanguinity laws are discussed in Rípodas Ardanaz, *El matrimonio*, 168–93.

include terms that are not common in colonial Spanish American documents, among them “sexo” (sex) and “andrógino” (androgynous). As such, these documents raise intriguing questions about the language of sex and gender in colonial Mexico, about the sexual concepts that ordinary people used and how and where they learned them, and about the changes in meaning and use that these notions might have been undergoing in the eighteenth century because of the influence of new scientific or medical knowledge or other intellectual or social dynamics.²² But the case itself provides few leads on how Aguilera acquired the main sex and gender-related terms in his statements.

In part because little else is known about his life, it is also impossible to ascertain what reasons he might have had for wanting to marry López. They were third cousins, and their families apparently did not object to their relationship. Was there an estate or other economic issues involved? Elite families in New Spain’s main cities as well as smaller towns used marriage to ensure or enhance their socioeconomic power, and it is possible that the two parties were of good socioeconomic standing. In Aguilera’s second petition he is described as a “mestizo” of legitimate birth and López as an “española,” also legitimate, and both as “vecinos”—a term that could refer simply to “resident” but also more technically to “citizen” or person with certain duties and rights (such as access to local public office)—of Ayotla. Perhaps their families occupied the upper levels of the socioracial hierarchy in the town, which had pre-Hispanic roots and whose Nahua population had been nucleated in the middle of the sixteenth century to facilitate evangelization. But little about the families can be said with certainty. Equally mysterious is how the two parties felt about each other. Was there love between Aguilera and López, and if so, how would such a sentiment have been expressed?²³ Never does the petitioner allude to his feelings toward López, perhaps because it was not part of the culture to do so or simply because it would not have been useful or relevant in the case.

22. The idea that there are sharp distinctions between literate or elite and popular cultures—that cultural concepts (even if given different glosses) are not shared by different sectors of a given society—has been challenged in a number of historical studies, including Ginzburg, *Cheese*.

23. Patricia Seed has argued that in the sixteenth and seventeenth centuries, the concept of love in Spanish culture was redefined, its medieval association as an enslaving passion changed to more of an expression of individual will. Thus in colonial Mexico couples tended to resort to phrases such as *afiliación* and *voluntad* (attachment and will) and *de mi gusto* (to my liking) to describe their feelings toward each other. Seed speculates that they did not use the word *amor* much because it was viewed as awkwardly formal or because of its association in seventeenth-century Mexican Spanish with sexual lust. Seed, *To Love*, 47–51.

The second letter by Aguilera, addressed to the juez provisor, adds more information about his life but raises similar questions as the first petition and presents new mysteries. In what appears to be (because of the official tone of the language) an official statement that he gave either to the priest or another authority, the letter related that

Having been since he was born Androgynous, his parents dressed him in women's clothes, and it [the feminine attire] being so repugnant to him because he had no inclination toward that sex, he always performed men's work, until when he grew up he consulted with the priest of [the parish of] San Fernando, who told him to dress as a man to avoid the solicitations or harassment [*importunaciones*] that he was subject to as a woman and which perturbed him. In order to be able to wear it [masculine clothing] and be able to select the [masculine] sex when he decides to get married, he pleads that Your Honor see fit to order that he be examined by expert surgeons, and having their assessment, grant him the license [to wed] that he requests [and for which] he will be grateful.²⁴

Aguilera's statements provide insights not just into some of his experiences and self-understandings but also into the malleable meanings of concepts of gender and sex in the society in which he lived and the embodied and performative aspects of both.²⁵ In colonial Mexico, as in other parts of the early modern Atlantic world, legally and socially the two-sex, male and female binary dominated, but there was no single or fixed understanding of sex and its relationship to gender. Was being male or female established by the body (sexual and reproductive organs), behavior, or both? Embodied practices, especially in the domains of labor and dress, were critical. As literary critic Marjorie Garber has argued, in the early modern period clothes and type of work not only sent sharp signals about social status but also were important to definitions (and the

24. "Que siendo desde su nacimiento Androgino sus Padres le traian en traje de Muger y repugnandole a el por no tener a este sexo inclinacion, siempre se exercitaba en el trabajo de Varon hasta que creciendo consulto con el Padre de San Fernando que le dixo se pusiera el traje de varon para obviar las importunaciones que como a muger merced le hacían y a él le molestaban. Por lo que para poder usarlo como para hacer elección del sexo para cuando quiera tomar estado suplica a V.S. se sirva mandar los [*sic*] inspeccionen peritos cirujanos, y con su respuesta darle la licencia que pide que recibirá merced."

25. The extensive literature on gender and performativity has been strongly influenced by Judith Butler's formulation of gender as performed or produced by repetitive behavior or acts (rather than by something innate or biological). See, especially, Butler, *Gender Trouble*; Butler, *Bodies that Matter*.

performativity) of male and female. Attire in particular tended to make the gendered person, for it offered the possibility of transformation through transvestism.²⁶

One of the most famous cases of cross-dressing in the early modern period was Catalina de Erauso, a Basque nun who in 1601, at age 16, escaped the convent that she had entered in San Sebastián by dressing as a man and, disguised as such, went to South America.²⁷ After about 20 years of adventures as a male (including fighting with the Spanish against indigenous people) her disguise was uncovered, but she managed to avoid punishment and, because of her military services, secured a pension from the Spanish crown. She also received a papal dispensation that allowed her to keep dressing as a man. After producing a memoir in Europe she returned to the Americas, this time to New Spain, where she lived the rest of her life as the mule driver Antonio de Erauso.²⁸

In the following century, clothes continued to be crucial for public as well as internal gender identification. In Aguilera's case, they were so tightly connected to his masculine sense of self that he referred to feeling "repugnance" at having to dress in feminine attire. The choice of words gives an indication of how deeply he must have felt the disjuncture between his assigned gender and self-identification, between what he was publicly reputed to be and his emotions ("repugnance") and psyche ("conscience"). To mitigate the stress that dressing as a woman produced, Aguilera had from early on in his life turned to "masculine" labor activities. Masculinity was thus tied to certain behaviors, and gender more generally was something that was performed.

But Aguilera also linked gender to genitalia. After all, a key claim in his letter to González de Cervantes and in his argument for masculinity is that he had "corrupted" Clara Ángela López ("la corrupción que en su virginidad le hizo"). In other words, he was a man because, although an "andrógino," he had the right biological equipment and ability to "deflower" virgins. Aguilera's definition of maleness implied that gender was embodied in a doubled sense—

26. See Garber's foreword in Erauso, *Lieutenant Nun*, vii–xxiv; Garber, *Vested Interests*. [Few, "That Monster."—DK/DS.]

27. We preserve Martínez's use of feminine pronouns to refer to Erauso in this paragraph, but—thanks to a query on this matter by one of the anonymous readers of this essay—we acknowledge that any pronoun decision determines gender on Erauso's behalf. Throughout *Vida i sucesos de la Monja Alférez*, adjectives modifying Erauso shift between feminine and masculine forms. One recent study of Erauso avoids gender pronouns altogether. See Goldmark, "Reading Habits," 23 n8. We thank Matt Goldmark for thoughtful discussions on this matter.—DK/DS.

28. Erauso, *Lieutenant Nun*.

in and through acts or practices performed by bodies (type of work, clothing worn, sexual penetration, and so forth) and in and through the genitals (penis, vagina, clitoris).

In employing a definition of male and female that rested on the body's sexual organs and embodied performance (or what one did with those organs), Aguilera was not alone. Like their counterparts in other parts of the early modern Atlantic world, physicians, surgeons, and other medical authorities in New Spain who studied individuals to determine their sex paid close attention to genitalia (the clitoris and vagina in cases involving women said to be passing for men). But such attention to sexual organs was usually accompanied by an equal concern with how those parts were used, with whom, and where in those other bodies.²⁹ In legal cases involving charges of sodomy, these questions were central.

As the notes on the margins of Aguilera's document indicate, the juez provisor ordered that Dr. González de Avendaño and surgeon Benitez conduct an investigation and declare if the petitioner had the "capacity" (*aptitud*) to contract matrimony as a man. The inspection was conducted, and the doctor submitted a report affirming that Mariano Aguilera was a "true Androgyne" (*verdadero Androgyno*), with both "virile and feminine configurations" in the relevant physical parts but with "a clear prevalence of those of the female sex because of the ability of the diameter of the vulva to receive the masculine member during copulation." The virile member, on the other hand, was too small to achieve penetration into the vagina because it had a "diameter that was no bigger than four geometric lines" and was therefore useless for reproduction. It also lacked the passage to the urinary tract and thus the urethra, or what Dr. González de Avendaño took to be the path for the "seminal effusion." The configuration, his report stated, corresponded more to the "Vulva" and not the "Virga" (Latin for penis), and thus any copulation that Aguilera attempted as a male "would be futile, not generative but instead purely polluting."

Dr. González de Avendaño added, however, that Aguilera was also not a functioning woman. The reason was not that the petitioner lacked the ability to conceive but that the swelling of the masculine member in his body would make a man uncomfortable during copulation. Moreover, Aguilera had two "testes" on the side of the vulva that were not deposited in sacks but were of a muscular texture, which during birth would compress the head and other parts of the fetus, jeopardizing its life. González de Avendaño thus concluded that, in terms

29. See, for example, Daston and Park, "Hermaphrodite"; Laqueur, *Making Sex*; Schiebinger, *Mind*.

of the conjugal, Aguilera was “useless in one sex, and useless in the other as well, even though I see the prevalence of the parts that are destined for generation in the feminine gender.” The doctor stated, however, that he was in favor of allowing Aguilera to use masculine clothes because that would represent fewer complications than if he wore feminine ones.

Surgeon Benitez essentially echoed González de Avendaño’s views and recommendations. Having inspected the “androgynous individual” for the condition of both sexes, he concluded that the feminine sex prevailed but with such serious imperfections that it could be of no use for the generation of life, and that with regard to the masculine sex he was “totally” (*totalísimamente*) inept to make use of it as well. Benitez also agreed that the petitioner should be allowed to continue to wear the “clothes” (*traje*) that he preferred. Aguilera apparently read the medical report, for the next document in the dossier is a note from him to the juez provisor acknowledging that he had been inspected and that González de Avendaño and Benitez had issued their opinion. In what was probably an attempt to appeal to González de Cervantes’s heart and have the medical authorities’ findings overturned, Aguilera stated that it was now up to him to determine what he deemed more just.

The judge wasted little time deciding. On January 23, 1759, he wrote that having read the report by González de Avendaño and Benitez, “we declare the petitioner ineligible [*inepto*] to contract matrimony not only as a man but as a woman.” All appropriate authorities were to be given copies of the order, and the parents of Clara Ángela López were to be instructed to make sure that their daughter lived according to her Christian obligations. The juez provisor also ordered that she not have any communication with Aguilera and that the latter be exiled from Ayotla for a period of four years and at a distance of more than ten *leguas* (about 26 miles).³⁰ Finally, González de Cervantes agreed that Aguilera should continue to dress as a man because it was the less inconvenient option (“*menos inconveniente*”). In fact, he went one step further and threatened the petitioner with punishment if he dressed as a woman. The case, or at least its documentation, ends there.

The medical report and the provisorate judge’s orders prompt several observations and questions. First, the doctors and the judge ultimately determined sex by sexual organs and the ability to reproduce. However, they also recognized, first, that there were cases of ambiguous sex (including “*andróginos*”

30. A legua was a common unit of measurement in New Spain. Although its value was not consistent, it corresponded to about 4.19 kilometers, or 2.6 miles. Garza Martínez, “Medidas,” 192.

who had male and female parts) and, second, that the relationship between biological sex and gender was fluid. Thus, Aguilera could be diagnosed as anatomically being more woman than man but allowed—indeed ordered—to dress and live as a man, albeit without the full privileges of one.

Why did the religious and medical authorities that ruled on his fate allow him to wear masculine clothing? Was it to protect Aguilera from unwanted male attention, as the first priest that he had turned to apparently tried to do? Or did they fear that if the petitioner dressed as a woman he would respond to male harassment by disclosing his identification as a man, leading to more scandals and a greater public recognition or “visibilization” of the potential dissonance of sex and gender? Aguilera’s life as a “she” and transformation into a “he” was not a secret to the people in his community, but perhaps the juez provisor assumed that his life as a woman would not be known in his place of exile, and thus that his identification as a man would not cause scandals there. Because the medical reports and the judge only refer to “inconveniences” that might result from the petitioner wearing feminine attire, the reasons behind the order that he had to dress as a man are impossible to know. The decision, however, affirmed the Spanish American tradition of recognizing that what one was in private or by birth was not necessarily the same as what one was in public.³¹

The case presents other mysteries. Aguilera’s case for his masculinity rested on affective and behavioral definitions of sex—not feeling like a woman and working as a man—but in particular on anatomical ones, or having a “sexo viril” capable of deflowering women. The argument was risky because, as he himself stated, he was an “andrógino” and thus with male and female organs. Why, then, would Aguilera rest his case on his genitals? Perhaps he believed that the anatomical argument, together with the cultural weight that the marriage promise he had made to López could carry, would have the most juridical force before the ecclesiastical judge. Perhaps he simply hoped that the doctor and surgeon would register his “mixed parts,” decide that the male ones predominated, and declare him of that sex.³² Whatever Aguilera’s reason for placing emphasis on his “sexo viril,” his initial petitions convey a confidence and conviction that his male parts dominated and that the ruling would be in his favor. Aguilera apparently did not anticipate that the medical authorities who examined him and the juez provisor would focus not just on his ability to “deflower” women but on being able to contribute to reproduction, that to access the sacrament of

31. See, for example, Twinam, *Public Lives*.

32. In Europe, doctors and surgeons who inspected “hermaphrodites” for sodomy or other legal cases normally followed similar steps in order to rule on a sex. See Daston and Park, “Hermaphrodite,” 425.

marriage as a male, he had to be able not just to penetrate, but to impregnate. Perhaps he thought, or hoped, that he could.

Other intriguing aspects of the case are the apparent support that Aguilera's parents gave to the marriage and Clara Ángela López's presumed willingness to marry someone who had been raised as a woman. If the families did not object, was it because of economic reasons or simply because they supported the union and believed that Aguilera was suitable as a male? Did López start to have relations with him while he dressed as a woman or after? The documents for the case don't shed much light on these matters, and even though Aguilera tells Fray Moreno Justi to call López to testify if need be, her voice is entirely absent in the sources.

Finally, the case raises questions relating to the lack of criminal proceedings against the petitioner. For by declaring that he had "deflowered" Clara Ángela López, Aguilera essentially confessed not just to having sex with her outside marriage and thus dishonoring her and her family but to committing the crime of sodomy, or nonreproductive sex. Neither the term *sodomy* nor *pecado nefando* appears in any of the sources, however. Was it because the case was not technically a criminal one or because the social status of the families protected the couple from prosecution? This matter too is left unresolved. The numerous unanswered questions and ambiguities in the sources clearly place limits on how much of Aguilera's life can be known and more generally on accessing the meanings of sex, gender, and sexuality in colonial Mexico. But impasses and ambiguities can also enrich those understandings while illuminating some of the connections among archives, power, and queerness.

Limits and Possibilities of the "Queer Archive"

Aguilera's case, which was archived by Mexico's Archivo General de la Nación under "Matrimonios" (Marriages), is a kind of gem, among other reasons, because it is not missing documents, the official investigation that it involves was completed, and the records include the official ruling. It is also not the typical case of a persecuted "queer"; it was not initiated by legal or religious officials, and there was no trial in the technical sense. Aguilera presented himself before a priest, and he requested the medical examination of his body. Scandals in the town had pressured him to take action, but his case amounted to a voluntary request to be examined physically and have his sex officially changed from female to male. As such, the case seems to offer an extraordinary opportunity to glimpse the subjectivity of a person living in eighteenth-century Mexico who did not fit the sex and the gender roles that his family and community had imposed on him early on in life.

What did it mean and what was it like to grow up as an “andrógino” in a relatively small Catholic town in eighteenth-century New Spain? Aguilera refers to feeling a profound schism between his public or assigned gender and his internal self, and to the strategies he developed for narrowing it. From early on, he claimed, he turned to masculine types of labor, and as he grew up he shed feminine clothes and became romantically involved with a woman. In the colonial Mexican archive there are few existing testimonies conveying this sense of a “real” and stable self and rejection of sex and gender roles, especially not ones that are given outside the framework of criminal procedure or other legal investigation.

Yet it would be a mistake to treat Mariano Aguilera’s voluntary testimony as a clear “window” into his mind. It is not possible to know, for example, who wrote his initial petition and the role that person played in shaping the terms, claims, and rhetorical strategies of the appeal. Although the document does not have any notarial signatures or other official marks, it was clearly dictated to someone because it is mainly in the third person and begins with formulaic colonial bureaucratic information and language (including Aguilera’s classification as a mestizo and Clara Ángela López as an española). The petition dated January 18, 1759, was a sworn statement given before ecclesiastical authorities and likely involved a scribe or notary, and thus also was not unfiltered.

The nature of the documents for the case and the context in which they were produced restrict access not just to Aguilera’s subjectivity but to his personal motivations. They make it difficult to know, for example, whether, to make his claims more effective, Aguilera strategically mobilized Spanish cultural-legal principles regarding marriage and honor, narrating aspects of his life and hopes in ways that made them fit what he thought the law and his society privileged. To make his case for marrying Clara Ángela López, for example, he turned to the concept of *esponsales*, which was part of an ecclesiastical tradition that gave romantically deceived women a tool (if not always effective) to protect their honor by requiring that men fulfill their promises of marriage. Although cultural codes regarding marriage and the value of a woman’s word were changing in eighteenth-century Mexico, the *esponsales* tradition remained important, and women continued to attempt to use it.³³ Aguilera resorted to

33. Four years after Aguilera submitted his petition, for example, María de la Luz German, an “española doncella” (young and chaste Spanish woman), appeared before the ecclesiastical judge of the local parish of the central Mexican town of Otumba to lodge a formal complaint against don Pedro de Blancas, the son of wealthy landowners. She claimed that he had announced his marriage to another woman after having promised her repeatedly in the previous three years that he would marry her, which she considered a grave offense

that tradition and the cultural values of virginity and honor that it promoted for a different purpose: to strengthen his case for legal sexual reassignment.

Had he internalized these values, or did he simply believe that they would be the most effective arguments and thus adapted his narrative accordingly? It is impossible to know not only because of the mediated nature of his testimony but because of the difficulty of disentangling personal motivations from official discourses in legal documents, where the testimonies and the language used are constrained by the law itself.³⁴ In Aguilera's case, the parameters for expressing motivations and making claims are at least partly established by both secular and religious power and, more concretely, by state and ecclesiastical recognition of only two sexes for marriage and other purposes.

Thus in his petition Aguilera stressed that he needed to choose a sex because the sacrament of marriage required it, which raises the question of whether he would have chosen one had he not wanted to marry. Or was access to that institution a way of having his maleness recognized? Aguilera stated that he did not feel like a woman, but did he just feel like a man (as generally understood in his culture), or was it more complex than that? What did the term "andrógino" mean to him, and did he apply it to himself, or was it a term that others (such as the religious authorities he turned to) used on him? Did he understand and experience his sex or being in the world in forms that were not reducible to available categories of male and female and, indeed, "andrógino," but these ways are occluded by the very nature of the sources? A close reading of the Aguilera case thus reveals the multiple filters, ambiguities, and power dynamics that obstruct access to his thoughts.

The limits that the sources place on the historian's ability to access Aguilera's subjectivity and other aspects of his life are partly the function of the colonial Mexican archive's condition of production, and in particular of its collusion with the state and church in making subjects socially and legally legible through their classification schemes. Through laws, censuses, parish records, and other technologies of rule, both government and ecclesiastical institutions promoted not only the binary of male-female but also *casta* classifications. The colonial archive is characterized by this preoccupation with race. In Aguilera's case, the moment in which the archive and race—bureaucratic and racializing practices—come together most vividly is in the opening of his

against her and her family's honor. AGN, Indiferente Virreinal, caja 1163, exp. 3, 1763. For more on the *esponsales* tradition and eighteenth-century changes in marriage and honor values, see Seed, "Marriage Promises"; Seed, *To Love*.

34. Following Michel Foucault, Arlette Farge elaborates this point in her study of French judicial archives, Farge, *La atracción*, 27.

petition, in which he is identified as a “mestizo” and López as a “Spaniard.” There is not much, indeed nothing, in the documents about what the statuses implied for the two parties or their families. The designations, however, register the importance that such classifications had for administrative purposes and, in general, how not only sexual but also racial schemes were crucial to colonial governmentality and the reproduction of the hierarchical social order.

In New Spain and Spanish America as a whole, sex and caste categories were embedded in, and supported, a patriarchal and racialized social structure that not only privileged “Spanishness” (through the ideology and requirements of purity of blood, or *limpieza de sangre*, for example) but granted more rights and value to males than females through legal principles such as *patria potestad* (authority granted to fathers within the family) and cultural notions regarding the alleged superior rational capacities and physiologies of men.³⁵ These notions might provide a clue as to why Aguilera, despite having more female than male parts (according to González de Cervantes), was allowed to continue to dress as a man. Perhaps the physician and surgeon who examined him and judge González de Cervantes agreed with some early modern male jurists, theologians, and writers who argued that because nature veered toward perfection, it was logical that women would want to become men and that those who could perform masculinity well (recall Catalina de Erauso) should be allowed to do so.³⁶ Perhaps all three authorities were sympathetic to Aguilera’s adoption of conventionally masculine sorts of activities, including having insertive sex with a woman. But the relative flexibility that they exercised on the matter of dress should not obscure the social and juridical dynamics that produced his queerness and turned him into a historical subject.

Although Aguilera’s presence in the archive seems to constitute an exception within the corpus of colonial Mexican documents dealing with “queers” because he was not formally being tried for anything, upon closer scrutiny it becomes evident that both abjection and criminality loom large in the case. First, his case made it into the archive because his behavior—his transvestism

35. On the Spanish ideology of *limpieza de sangre* and its connection to the *sistema de castas* in New Spain, see Martínez, *Genealogical Fictions*; on the concept of *patria potestad* and the legal status of women within the Spanish legal system, see Arrom, *Women*, esp. 53–81, 206–32.

36. The conceit that nature tends to move toward perfection helps explain why the reverse process, men allowed to turn into women, is nonexistent or rare in the early modern European archive, as are cases or stories of spontaneous sexual transmutation involving a change from male to female. For discussions of these topics as they relate to Spain, see Lafuente and Moscoso, *Monstruos*; Velasco, *Lesbians*, 27–28. Also see Schiebinger, *Mind*.

and relations with López—was considered a problem by his community—that is, because of his socially produced queerness. And though Aguilera was not tried for sodomy, he was punished. He was exiled from his community, barred from having any contact with Clara Ángela López, and denied his petition to be declared male and be able to marry a woman.

Aguilera's legal punishment, which helped to produce and criminalize his queerness, begs a return to the question of why the terms *sodomy* and *pecado nefando* never appear in the documents. Was it because the case was not technically a trial about him as a “sodomite”? Was it because male ignorance of (presumed or “predominantly”) female bodies and sexualities made it harder for “women” to be charged with that crime? Or was it because, as the surgeon Dr. Narciso Esparragosa would argue in an 1803 Guatemalan case in which he had to examine an alleged hermaphrodite being tried for “pecados nefandos,” the crime of sodomy required a sex and thus individuals who did not fit neatly into one could not be prosecuted for it?³⁷

The lack of references to sodomía cannot be explained with certainty, but attention to this absence opens up new questions about, among other things, changing understandings of hermaphroditism and androgyny in the Atlantic world in the second half of the eighteenth century, the ways in which they were shaping medical and legal discourses on sodomy in different metropolitan and colonial contexts, and the role of doctors and surgeons in legal cases involving queer bodies and lives. Such questions, however, can only be addressed by returning to the archive and continuing to mine its sources for their limitations and possibilities.

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37. See Martínez, “Archives, Bodies, and Imagination”; Martínez, “Sex”; Few, “‘That Monster.’”

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María Elena Martínez was Associate Professor of History and American Studies and Ethnicity at the University of Southern California. Her book *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico* (2008) received in 2009 the American Historical Association's James A. Rawley Prize in Atlantic History and the Conference on Latin American History's prize for the best book in Mexican history. She received a fellowship from the Stanford Humanities Center and an Advancing Scholarship in the Humanities and Social Sciences Research and Creative Project Grant for 2014–2015, both for research on a book about theories of race, sex, science, and the Enlightenment in the Spanish Atlantic world. Tragically, on November 16, 2014, she died after a brief, difficult, and valiant struggle with cancer. This essay was submitted to *HAHR* by David Sartorius, Associate Professor of History at the University of Maryland, and David Kazanjian, Professor of English and Comparative Literature at the University of Pennsylvania, in consultation with her executor and partner of many years Sarah Gualtieri, Associate Professor of History and American Studies and Ethnicity at the University of Southern California.